District of Columbia

Office of the State Superintendent of Education

Office of Review and Compliance
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Confidential

STUDENT[1], by and through her Parent Petitioners, v. District of Columbia Public Schools ("DCPS") Respondent. Case	HEARING OFFICER'S DETERMINATION Hearing Date: August 4, 2011 Representatives: Counsel for Petitioners: Roberta Gambale, Esq. Brown and Associates 1220 L Street, NW #700 Washington, D.C. 20005 Counsel for DCPS: Assistant Attorney General Kendra Berner, Esq. 1200 First Street, NW Washington, DC 20002 Hearing Officer: Coles B. Ruff, Esq.

[1] Personally identifiable information is attached as Appendices A & B to this decision and must be removed prior to public distribution.

JURISDICTION:

The hearing was conducted and this decision was written pursuant to the *Individuals with Disabilities Act* ("IDEA"), P.L. 101-476, as amended by P.L. 105-17 and the *Individuals with Disabilities Education Improvement Act of 2004*, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter E30. The Due Process Hearing was convened August 4, 2011, at the OSSE Student Hearing Office 810 First Street, NE, Washington, D.C. 20003, in Hearing Room 2009.

BACKGROUND:

Student or "the student" is age and has been determined eligible as a child with a disability under IDEA with a disability classification of multiple disabilities ("MD") including Speech Language Impairment ("SLI") and Other Health Impairment ("OHI"). The student attends a District of Columbia public charter school that serves only students with disabilities, hereinafter referred to as "School A." DCPS is the local educational agency ("LEA") for School A. The student was found eligible in second grade and has attended School A since 2006.

The student has extremely low cognitive abilities and moderately low adaptive abilities across all domains. The student suffers from Kleine-Levine Syndrome, a complex neurological disorder characterized by periods of excessive sleep and/or drowsiness. In addition, the student suffers from a seizure disorder. The student's physical abilities have recently begun to regress because of his medical condition. The student's grandmother has been the primary contact with School A.

In February 2008 the student's individualized educational program ("IEP") prescribed physical therapy ("PT") services along with full-time specialized instruction, speech/language therapy and counseling. At the student's IEP meeting in February 2009 the PT and counseling services were removed from the student's IEP. In August 2009 DCPS conducted a psycho-educational and adaptive reevaluation. The evaluation included an assessments of the student's visual-motor functioning. On September 22, 2009, an IEP team met at School A and reviewed the student's evaluations. The team noted the student's perceptual difficulties but did not add occupational services to the student's IEP.

In January 2010 the School A occupational therapist conducted an observation after the student had been hospitalized. The student's teacher had noticed regression in the student's fine motor skills after his hospitalization. As a result of the observation the therapist recommended an OT evaluation be conducted. On February 2, 2010, DCPS convened an IEP meeting for the student at School A at which the IEP team determined that updated PT and OT evaluations would be completed to determine if PT and/or OT services were appropriate for the student and should be added to his IEP.

In March 2010 School A conducted PT and OT evaluations of the student. The evaluations recommended the student receive PT and OT services. An IEP meeting was scheduled for March 25, 2010, to review the evaluations. The grandparent was not available for the meeting and the meeting was rescheduled and convened on June 4, 2010. The grandmother participated in the June 4, 2010, meeting. The IEP team reviewed the student's evaluations and determined that PT and OT evaluations would be added to the student's IEP. The student's IEP was amended to

include 1 hour per week of OT individual and group services and 1 hour per month of PT services until the end of the school year. On January 25, 2011, DCPS convened an IEP meeting at School A and the student's IEP was amended to eliminate the PT services. All other services remained the same. The grandmother participated in the meeting.

On April 28, 2011, an IEP meeting was convened at School A at which the parent requested additional evaluations based on the student's recent medical concerns. DCPS did not immediately agree to the evaluations. Consequently, Petitioner filed a due process complaint on April 28, 2011, alleging inter alia, DCPS failed to provide the student PT services and inappropriately removed the PT services from the student's IEP in January 2011. (Case

DCPS ultimately authorized independent evaluations. On June 6, 2011, Petitioner's counsel filed the current complaint (Case alleging similar issues as the first complaint. Because DCPS authorized independent evaluations and an IEP meeting might occur prior to a hearing on the second complaint Petitioner's counsel initially made a motion that the two complaints be consolidated. However, rather than consolidate the two complaints Petitioner's counsel then chose to file a motion to amend the second complaint to incorporate the issues and claims for relief in the first complaint and withdraw her motion to consolidate. On June 14, 2011, filed a motion to amend the second complaint to incorporate all claims and requests for relief in the first complaint and submitted a withdrawal of the complaint in Case On June 15, 2011, this Hearing Officer issued an order granting the motion to amend and issued a second order dismissing the complaint in Case Thus, in this due process hearing the claims alleged in both complaints are adjudicated.

On June 24, 2011, a resolution meeting was convened. The parties did not resolve the complaint and the parties agreed that full 30-day resolution period would continue. With the amendment of the second complaint the 45-day timeline and HOD due date was reset to August 29, 2011.

DCPS asserted the March 2010 OT and PT evaluations were conducted timely and given the student's illness and absence, the IEP meetings were conducted timely and services were added timely. DCPS asserted that it provided the appropriate amount of PT services to the student that the IEP prescribed and the services were to be completed at the end of the 2009-2010 school year. DCPS maintained the student has not been denied a FAPE. Nonetheless, DCPS authorized Petitioner to conduct independent evaluations: PT, OT and comprehensive psychological.

On July 7, 2011, this Hearing Officer convened a pre-hearing conference ("PHC"). The Hearing Officer stated during the PHC that a meeting to review the independent evaluations should be convened prior to the hearing. On July 11 2011, an IEP meeting was convened at School A at which PT services were added to the student's IEP. Petitioner originally sought as relief in the complaint that PT services be reinstated. As a result of the July 11, 2011, IEP meeting Petitioner withdrew this request and sought only compensatory education for alleged missed PT and OT services. This Hearing Officer issued a pre-hearing order on July 12, 2011, and issued a revised pre-hearing order noting the July 11, 2011, IEP meeting on July 16, 2011.

ISSUES: [2]

The issues adjudicated are:

1. Whether DCPS denied the student at FAPE by failing to timely conduct and timely review a physical therapy ("PT") evaluation and an occupational therapy ("OT") evaluation that were not reviewed until June 4, 2010? [3]

2. Whether DCPS denied the student at FAPE by failing to fully implement the student's IEP by failing to provide the student PT services from August 2010 to January 2011 when the services were removed from the IEP? [4]

3. Whether DCPS denied the student at FAPE by developing an inappropriate IEP on January 25, 2011, by removing PT services and goals from the IEP? [5]

4. Whether DCPS denied the student at FAPE by developing an inappropriate IEP on February 2, 2010, by failing to include PT and OT services and goals in the IEP?

RELEVANT EVIDENCE CONSIDERED:

This Hearing Officer considered the testimony of the witnesses and the documents submitted in the parties' disclosures (Petitioner's Exhibits 1-32 and DCPS Exhibit 1-23) that were admitted into the record and are listed in Appendix A. Witnesses are listed in Appendix B.

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[2] The alleged violation(s) and/or issue(s) listed in the complaint may not directly correspond to the issue(s) outlined here. However, the parties agreed at the hearing that the issue(s) listed here and as stated in the pre-hearing order are the issue(s) to be adjudicated.

[3] Petitioner alleges the OT evaluation was recommended in evaluation(s) in August 2009 that were reviewed in September 2009, but the OT evaluation was not conducted until March 2010 and not reviewed until June 4, 2010, partly because the student was ill during the time. Petitioner alleges DCPS should have taken immediate action based on the August 2009 evaluation that recommended OT services. In June 2010 the IEP team included OT services in the IEP. The alleged harm is that the student did not receive the related services for approximately 8 months. As to PT services Petitioner alleges the PT services were previously discontinued and a PT evaluation was recommended following an observation by a DCPS occupational therapist in January 2009. However, the evaluation was not conducted until March 2010 and the services were not added until June 2010. Petitioner alleges the student should have been provided PT services sooner (by the February 2010 IEP meeting) based on the January 2009 observation.

[4] The IEP developed in June 2010 included an hour per month of PT services and an hour per week of OT services. Petitioner alleges the student did not receive any PT services from August 2010 through the IEP amendment in January 2011 when the services were removed.

[5] Petitioner alleges DCPS inappropriately removed PT services from the IEP in January 2011 and no evaluation was conducted prior to the removal and the student still needs the service based on service reports.

FINDINGS OF FACT: [6]

1. The student is age and has been determined eligible as a child with a disability under IDEA with a disability classification of multiple disabilities ("MD") including Speech Language Impairment ("SLI") and Other Health Impairment ("OHI"). The student attends a District of Columbia public charter school that only serves students with disabilities, School A. The student was found eligible in the second grade and has attended School A since 2006. (Grandmother's testimony, Petitioner's Exhibit 25-2)

2. The student suffers from Kleine-Levine Syndrome, a complex neurological disorder characterized by periods of excessive sleep and/or drowsiness. The student has extremely low cognitive abilities ad moderately low adaptive abilities across all domains. (Petitioner's Exhibit 25-2, 25-7)

3. In February 2008 the student's individualized educational program ("IEP") prescribed the following weekly services: 27.5 hours of specialized instruction, 1.5 hours of speech/language therapy, and 1 hour of physical therapy ("PT") and 30 minutes of counseling. (Petitioner's Exhibit 28-2)

4. At the student's IEP meeting in February 2009 the PT and counseling services were removed from the student's IEP. (DCPS Exhibit 6-7)

5. In August 2009 DCPS conducted a psycho-educational and adaptive reevaluation. The evaluation included an assessments of the student's visual-motor functioning. The student was found to have good fine motor control but perceptual difficulties and the evaluator suggested the student might warrant occupational services. (Petitioner's Exhibit 25-5)

6. On September 22, 2009, an IEP team met at School A and reviewed the student's evaluations. The student's grandmother participated in the meeting. The team noted the student's perceptual difficulties but did not add occupational services to the student's IEP. (Petitioner's Exhibit 23-1)

7. In January 2010 a School A occupational therapist conducted an observation after the student had been hospitalized. The student's teacher had noticed regression in the student's fine motor skills after his hospitalization. As a result of the observation the therapist recommended an OT evaluation be conducted. (Petitioner's Exhibit 19-1)

8. On February 2, 2010, DCPS convened an IEP meeting for the student at School A at which the IEP team determined that updated PT and OT evaluations should be completed

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[6] The evidence that is the source of the finding of fact is noted within a parenthesis following the finding. The second number following the exhibit number denotes the page of the exhibit from which the fact was extracted. When citing an exhibit that has been submitted by both parties separately the Hearing Officer may only cite one party's exhibit.

to determine if PT and/or OT services were appropriate for the student and should be added to his IEP. The parent granted permission for the evaluations to be conducted. At the time the student's IEP prescribed the student receive 27.5 hours of specialized instruction in the out of general educations setting and 1.5 hours of speech/language therapy per week. (Petitioner's Exhibits 16, 17, 18-1)

9. In March 2010 School A conducted a PT evaluation of the student. The evaluation recommended the student receive 1 hour of PT services per month for three months to allow the staff to address the student's strength, balance and environmental awareness. (Petitioner's Exhibit 22-1, 22-3)

10. In March 2010 School A also conducted an OT evaluation of the student. The evaluation recommended the student receive 1 hour of direct OT services in the following areas: personal care skills and prevocational/vocational tasks. (Petitioner's Exhibit 20-5)

11. An IEP meeting was scheduled for March 25, 2010, to review the evaluations. The grandparent was not available for the meeting. On March 25, 2010, the student was sick and was not at school. The meeting was rescheduled and convened on June 4, 2010. The grandmother participated. The IEP team reviewed the student's evaluations and determined that PT and OT evaluations would be added to the student's IEP. The IEP was amended to include 1 hour per week of OT individual and group services and 1 hour per month of PT services until the end of the school year principally to work with classroom staff to help assure the student's safety in school and community environments especially working on transitions from floor to standing. (Petitioner's Exhibit 15-1, 15-2, DCPS Exhibit 13-2)

12. On January 25, 2011, DCPS convened an IEP meeting at School A and the student's IEP was amended to eliminate the PT services. All other services remained the same. The student's grandmother participated in the meeting. There was no mention in the meeting notes as to why the PT services were being removed and there was no PT therapist who participated in the meeting. (Petitioner's Exhibit 11-4, 13-1, 13-8)

13. The student periodically experiences seizures and episodes related to his illness and as a result he may loose much of the academic, physical and occupational gains he makes prior to the seizures and episodes. Consequently, the student will need more intensive services following these occasions in order to not regress any further and to regain the skills that have been set back due to the episodes and seizures. The student has sometimes had seizures daily. When the student has a seizure at home his grandmother will notify the school so the staff can be aware and monitor him closely due the side effects of the seizure which generally affect his coherence, equilibrium and mobility. The student's grandmother has been the primary family member participating in the student's educational planning and IEP meetings. (Grandmother's testimony)

14. As to the March 25, 2010, the grandmother does not recall having cancelled a meeting and maintains she would have been available for an IEP meeting, if not in person, by telephone. However, the grandmother acknowledged that some scheduling difficulties may have missed the mark and the date of the meeting could have been

miscommunicated. In every other instance the school has routinely communicated effectively the grandmother. The grandmother has no recollection that the student missed any PT services. She was not aware the PT services had been removed from the IEP until the parent's mother analyzed the IEP documents carefully. (Grandmother's testimony)

15. In January 2011 an independent PT evaluation was conducted of the student. The evaluator concluded the student needs assistance improving his balance and recommended the student receive PT services for 1 hour per month to get enough exercises to improve his gross motor skills, balance and posture and for the therapist to update the staff to assist in them in monitoring the student's safety and helping develop his ability to navigate his environment. The evaluator recommended the student receive 14 hours of direct services as compensatory education for the time he was not provided services. testimony, Petitioner's Exhibit 1)

16. On April 28, 2011, an IEP meeting was convened at School A at which the parent and her educational advocate requested additional evaluations because of difficulties the student was experiencing with his gait, and abilities maneuvering in the classroom. The OT therapist attending the meeting also requested an updated OT evaluation. DCPS did not immediately agree to the evaluations. DCPS eventually authorized the parent to obtain independent evaluations. testimony, Petitioner's Exhibits 8 & 9)

17. In July 2011 an independent OT evaluations was conducted of the student. The evaluation included the Berry Assessment of Visual/Motor Integration ("VMI") or eye/hand coordination. Based on the evaluation the evaluator found the student had profound delays in VMI and recommended the student direct OT services to develop his skills and prevent regression. The evaluator concluded the student performed comparable to a child of early elementary age. The evaluator recommended that based on a delay in providing the student OT services the student should be provided 40 hours of OT services and with this amount provided in a consistent manner the student's functioning would improve. The evaluator spoke with the OT provider at School A and believes the student is being provided quality OT services at School A. testimony, Petitioner's Exhibit 2)

18. The parent's educational advocate associated with the law firm representing the parent participated along with the student's grandparent the student's recent IEP meetings on July 11, 2011. At the July 11, 2011, meeting the IEP team added PT services to the student's IEP of 1 hour per month. (Petitioner's Exhibits 5, 6, 8 & 9)

19. In February 2010, the student's annual IEP review was conducted and OT and PT evaluations were ordered. The evaluations were ready for a March 2010 meeting the parent did not attend because the student had had a seizure and requested the meeting be rescheduled. There were no documented attempts to reschedule the meeting prior to June 2010. The School A staff did not remember if attempts were made to convene the meeting sooner than June 2010. When the meeting was held on June 4, 2011, the team added OT and PT services. The PT services were to continue to the end of the school

year and the teacher would work on the skills thereafter to get the student to the place he was before his hospitalization and then allow the classroom staff to continue the activities once the skills were regained. The student has other physical education activities and assist in maintaining and developing his gross motor and other PT skills. testimony, DCPS Exhibit 7& 8)

20. The student has received PT services at School A since May 2011. The PT provider reviewed the students previous goals and is working with the student on improving his ambulation and transfer from floor to standing with balance. She sees him once per month to address the goals. He has been progressing on these goals. There is collaboration between the PT provided and the student's teacher and classroom staff to provide a gait belt and advise the staff on the most effective ways to assist the student relative to these goals. The student's decreased alertness due to seizure may cause difficulties with his ambulation. The student's needs staff closer to him when ambulating; however, he has improved in transition from floor to standing. The provider is hoping for more independence but he will probably continue to need some level of assistance ambulating. The student has received three formal PT sessions since the services were added to his IEP in July 2011. testimony)

21. Generally prior to PT services being removed from an IEP an evaluation is conducted and a PT therapist would participate in the meeting if the services were being terminated. testimony)

22. The student has made minimal progress with his OT goals. Some days the student is alert and some days he is lethargic. When he is alert he can perform skills more proficiently. The student's current OT goals should be continued for the next school year. The student may have made small gains had his OT services started sooner than June 2010; however, the student's medical concerns slows his level of progress despite the services he receives. testimony)

23. On May 23, 2011, DCPS offered Petitioner 10 hours of independent OT services and 3 hours of independent PT services. (DPCS Exhibit 21)

CONCLUSIONS OF LAW:

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

Pursuant to IDEIA §1415 (f)(3)(E)(ii) in matters alleging a procedural violation a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision making process regarding provision of FAPE, or caused the child a deprivation of educational benefits.

Pursuant to 5E DCMR 3030.14 the burden of proof is the responsibility of the party seeking

relief.[7] *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). In this case the student/parent is seeking relief and has the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with FAPE.

ISSUE (1): Whether DCPS denied the student at FAPE by failing to timely conduct and timely review a physical therapy ("PT") evaluation and an occupational therapy ("OT") evaluation that were not reviewed until June 4, 2010?

Conclusion: DPCS should have provided the student PT and OT services by March 2010 and the failure to due so was a denial of FAPE. Petitioner sustained the burden of proof by a preponderance of the evidence.

34 C.F.R. §300.303 provides:

> (a) A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with Sec. Sec. 300.304 through 300.311--
> (1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or (2) If the child's parent or teacher requests a reevaluation.
> (b) Limitation. A reevaluation conducted under paragraph (a) of this section--
> (1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and (2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.

34 C.F.R. §300.305 provides: (a) Review of existing evaluation data.

> As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must--
> (1) Review existing evaluation data on the child, including-
> (i) Evaluations and information provided by the parents of the child;
> (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and
> (iii) Observations by teachers and related services providers; and
> (2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine--(i)(A) Whether the child is a child with a disability, as defined in Sec. 300.8, and the educational needs of the child; or
> (B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child...

Petitioner alleges the OT evaluation was recommended in evaluation(s) in August 2009 that were

[7] The burden of proof shall be the responsibility of the party seeking relief. Based solely upon the evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof.

reviewed in September 2009, but the OT evaluation was not conducted until March 2010 and not reviewed until June 4, 2010. Petitioner alleges DCPS should have taken immediate action based on the August evaluation that recommended OT services. The Hearing Officer is not convinced by this argument. The psycho-educational evaluation alone was insufficient to put School A on notice that the student was in need of these services. School A and thus DCPS acted reasonably in conducting an OT observation in January 2010 and considering the need for evaluations at the students IEP meeting in February 2010. At the February 2010 IEP meeting the team agreed OT and PT evaluations would be conducted. These evaluations were completed in March 2010 and should have been reviewed in March 2010. However, the student's IEP was not amended and these services provided until June 2010. Although there was some conflicting testimony as to whether the grandparent cancelled the March 2010 meeting the Hearing Officer concludes that a three month delay in convening that meeting without some evidence by DCPS that additional attempts were made was unreasonable and concludes the student should have been receiving both OT and PT services by March 2010 and the failure to promptly provide him services was a denial of FAPE that warrants compensatory education.

ISSUE (2): Whether DCPS denied the student at FAPE by failing to fully implement the student's IEP by failing to provide the student PT services from August 2010 to January 2011 when the services were removed from the IEP?

Conclusion: There was no evidence that the student was not receiving PT services from August 2010 to January 2011. Petitioner did not sustain the burden of proof by a preponderance of the evidence.

34 C.F.R. § 300.17 provides:

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

IDEA requires that an LEA provide a student a FAPE and implement the student's IEP. The student's IEP developed in June 2010 included an hour per month of PT services and an hour per week of OT services. Petitioner alleges the student did not receive any PT services from August 2010 through the IEP amendment in January 2011 when the services were removed. However, there was credible testimony by Ms. Warden that the student received PT services. Although Ms. Warden testified that the PT services were to be provided until the end of the 2009-2010 school year she did not state that the services actually ended then. And the grandparent testified that she was not aware that the student missed any services at School A. There was insufficient evidence presented to support a finding that the student was not provided PT services from August 2010 to the January 2011 when the IEP was amended to remove the services and Petitioner did not sustain the burden of proof in this regard.

ISSUE (3): Whether DCPS denied the student at FAPE by developing an in appropriate IEP on January 25, 2011, by removing PT services and goals from the IEP?

Conclusion: DCPS inappropriately removed PT services from the student's IEP in January 2011. Petitioner sustained the burden of proof by a preponderance of the evidence.

The IEP is the central part of the special education process and the failure to develop an appropriate IEP is a substantive denial of a Free Appropriate Public Education ("FAPE"). 20 U.S.C. § 1401 (9) (FAPE consists of special education and related services that are provided in conformity with the student's IEP, which in turn is to be developed according to a student's unique educational needs); 34 C.F.R. § 300.17; D.C. Mun. Regs. Tit. 5 § 3000.1. See also Scott v. District of Columbia, (D.C. Cir.) 03-1672 DAR (March 31, 2006); and Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 276, 182 (1982) ("The free appropriate public education required by the Act is tailored to the unique needs of the handicapped child by means of an Individualized Educational Program ("IEP")).

20 U.S.C. 1414(a)(i) defines Individualized Education Program as a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes a statement of the child's present levels of academic achievement and functional performance." It includes measurable goals, statements of related services, assistive technology and other appropriate accommodations. It is developed by the IEP team which consists of the child's parent, general education teachers, LEA special education teachers and anyone deemed as a necessary participant by reason of the services provided to the student. The IEP is the centerpiece or main ingredient of special education services.

Petitioner alleges DCPS inappropriately removed PT services from the IEP in January 2011 and no evaluation was conducted prior to the removal and the student still needs the service based on service reports and the student had not mastered the goals. There was credible testimony from the School A PT provider that generally services are not removed from a student's IEP without an evaluation and without a PT provider at the meeting when the IEP is amended to remove the services. Although there was testimony that the student PT services were to end with the 2010-2011 school year, the evidence demonstrates that the services were continued. Ultimately, in July 2011 the services were reinstated that the student's current PT provider has acknowledged the student is in need of and benefitting from these services. Consequently, the Hearing Officer concludes the student's PT services were inappropriately removed in January 2011 and as a result the student was denied a FAPE.

ISSUE: (4) Whether DCPS denied the student at FAPE by developing an inappropriate IEP on February 2, 2010, by failing to include PT and OT services and goals in the IEP?

Conclusion: DPCS should have provided the student PT and OT services by March 2010 and the failure to due so was a denial of FAPE. Petitioner sustained the burden of proof by a preponderance of the evidence.

Although Petitioner alleges alternatively that the student should have at least received OT and PT services as of the February 2010 IEP meeting, the Hearing Officer is not convinced by this

argument. As mentioned above School A and thus DCPS acted reasonably in conducting an OT observation in January 2010 and considering the need for evaluations at the students IEP meeting in February 2010. At the February 2010 IEP meeting the team agreed OT and PT evaluations would be conducted. These evaluations were completed in March 2010 and should have been reviewed in March 2010. The student's IEP was not amended and these services provided until June 2010. The Hearing Officer concludes that a three-month delay in convening that meeting without evidence by DCPS that additional attempts were made was unreasonable and concludes the student should have been receiving both OT and PT services by March 2010 and the failure to promptly provide him services was a denial of FAPE that warrants compensatory education.

Compensatory Education

Under the theory of compensatory education, "courts and hearing officers may award educational services ... to be provided prospectively to compensate for a past deficient program." "the inquiry must be fact-specific and, to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *Reid, 401 F.3d 522 & 524.* To aid the court or hearing officer's fact-specific inquiry, "the parties must have some opportunity to present evidence regarding [the student's] specific educational deficits resulting from his loss of FAPE and the specific compensatory measures needed to best correct those deficits." Id. at 526.

In closing argument DCPS counsel stated that if there was a delay, if at all, in providing the student PT and OT services, it would have been reasonable to start the services in March 2010 but they would have been only for a few months. However, DCPS argues that the compensatory education proposed by Petitioner does not meet the *Reid* standard. DCPS asserted that the evidence demonstrates that piling on more services will not actually assist the student and DCPS offered 10 hours of OT and 3 hours of PT services.

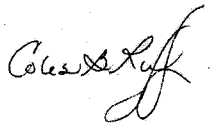
The evidence demonstrates that that student missed 5 hours of PT services from January 2011 until July 2011 when the services were reinstated and the student missed three months of OT services from March 2010 to June 2010 for a total of 12 hours. Petitioner's witnesses testified that the student should be compensated in the amount of 40 hours of OT services and 10 hours of PT services. However, based upon the evidence these alleged missed services were incorrect. There was no testimony offered as to what services would be appropriate to bring the student to the place he would be had he missed no services. However, it would be inequitable to provide the student no compensatory education as result of his loss. Consequently, based on equitable considerations, the Hearing Officer concludes the offer made by DCPS as to OT and PT independent services was reasonable and should be granted as compensatory education.

ORDER:

As compensatory education to the student for the denials of FAPE determined herein DCPS shall provide the student 10 hours of independent OT services and 3 hours of independent PT services at the DCPS prescribed rates not to exceed per hour for each service.

APPEAL PROCESS:

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



Coles B. Ruff, Esq.
Hearing Officer
Date: August 17, 2011