OSSE
Student Hearing Office
July 19, 2013

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, NE, 2nd Floor
Washington, DC 20002

STUDENT,[1]

Petitioner,

v.

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Respondent.

Date Issued: July 18, 2013

Hearing Officer: Peter B. Vaden

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

The matter was remanded to the Hearing Officer[2] by order of the Honorable Beryl A. Howell, U.S. District Judge for the District of Columbia, following issuance of a Memorandum and Order in the matter of *GRANDMOTHER, et al. v. District of Columbia*, Civ. Action No. 09-1612 (D.D.C. Apr. 24, 2013)[3] (the "Remand Order"). The remand hearing was held before the undersigned Hearing Officer on June 12, 2013 at the Student Hearing Office. In the Remand

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[1] Personal identification information is provided in Appendix A.

[2] The hearing officer formerly assigned to this case is no longer affiliated with the Student Hearing Office. The case on remand was assigned to the undersigned Hearing Officer on May 8, 2013.

[3] This case was originally brought in 2009 by Grandmother on behalf of Student, who was then a minor child. Student has since reached the age of majority and she wishes to continue these proceedings in her own right. *See* Declaration of Student, April 9, 2013.

Order, the Court directed the Hearing Officer to conduct a "fact specific exercise of discretion," to determine an award of compensatory education services to compensate Student for speech and language therapy or other specialized instruction that Student was not provided in the period between March 19, 2007 and June 2008, when Student attended D.C. PRIVATE SCHOOL.

Student, now an AGE adult, is a resident of the District of Columbia. Grandmother's original Due Process Complaint, filed on March 18, 2009, named DCPS as respondent. Following a truncated due process hearing on May 18, 2009, FORMER HEARING OFFICER dismissed the due process complaint, without prejudice. The Petitioner appealed the administrative dismissal to the United States District Court for the District of Columbia. On appeal, the parties filed cross-motions for summary judgment, where were referred to a Magistrate Judge for a Report and Recommendation. The Magistrate Judge issued a Report and Recommendation recommending that both motions be denied. Both parties filed objections to the Magistrate Judge's Report and Recommendation. After considering the parties' objections, the United States District Judge rejected the Magistrate Judge's recommendations in full, and granted in part and denied in part the parties' Cross-Motions for Summary Judgment.

As pertains to the remand hearing now before this Hearing Officer, in its conclusions of law, the Court found,

> (i) that DCPS failed to implement Student's 2007 Individualized Education Program ("IEP"), which required speech therapy for Student, and furthermore that Grandmother and Student had raised significant questions regarding whether Student was due speech therapy even before the 2007 IEP. Accordingly, since Student was not provided speech therapy in the period between March 19, 2007 and June 2008, she was denied a free and appropriate public education ("FAPE"), namely in the form of at least 11.6 hours of speech therapy, while at D.C. Private School;
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> (ii) that Student was denied a FAPE by DCPS during the period between March 19, 2007 and June 2008 because of the failure to provide speech therapy, and DCPS must therefore provide Student with compensatory education services;

(iii) that the levels of speech therapy Student received at PRIVATE SCHOOL TWO may have been the appropriate levels all along, and Student may well have been denied much more than 11.6 hours of speech therapy when she was enrolled at D.C. Private School;

(iv) that DCPS and Grandmother waived the resolution meeting, pursuant to 34 CFR § 300.510(c), following filing of the amended due process complaint in this case on April 2, 2009 and Former Hearing Officer erred in requiring Grandmother to waive her right to a timely Hearing Officer Determination ("HOD"). Therefore the untimely issuance of the May 28, 2009 original HOD, which was due by May 17, 2009, was a procedural violation of the IDEA which resulted in a delay in Student's receiving compensatory speech therapy.

Judge Howell remanded the case to the Hearing Officer to conduct a fact-specific exercise of discretion to determine the amount of speech and language therapy or other specialized instruction Student was deprived in the period between March 19, 2007 and June 2008, and to determine what Student requires in compensatory education services to place her in the same position she would have been, but for DCPS' not providing her speech and language therapy in that period. The Court further ordered the Hearing Officer to consider the 11-day delay in issuing the May 28, 2009 HOD when calculating the amount of compensatory education to which Student is entitled.

On May 15, 2013, I convened an on-the-record prehearing conference with counsel at the Student Hearing Office. At that conference I discussed with counsel the issues to be determined in the remand hearing, set a hearing date and addressed procedural issues, including prehearing disclosure requirements. In my May 15, 2013 Prehearing Order, I identified the issues to be determined on remand as,

A. What was the appropriate level of speech/language services that Student should have received at D.C. Private School between March 19, 2007 and June 2008?

B. What was the amount of speech and language therapy and other speech/language specialized instruction, as to which Student was deprived in the period between March 19, 2007 and June 2008?

C. What is the level of compensatory education services that Student requires to

> place her in the same position she would have been (including the effect of the untimely issuance of the May 28, 2009 HOD) but for DCPS' IDEA violations during the period between March 19, 2007 and June 2008?

Prehearing Order, May 15, 2013.[4]

The remand hearing was convened before the undersigned Impartial Hearing Officer on June 12, 2013 at the Student Hearing Office in Washington, D.C. The hearing, which was closed to the public, was recorded on an electronic audio recording device. The Petitioner, who did not appear for the hearing[5], was represented by Grandmother and by PETITIONER'S COUNSEL. DCPS was represented by SPEECH-LANGUAGE PATHOLOGIST ("S-L Pathologist") and by DCPS COUNSEL.

At the beginning of the due process hearing, DCPS' Counsel made an oral motion to bar Petitioner from presenting evidence on a compensatory evidence remedy, on the grounds that Petitioner did not provide notice of her proposed remedy to DCPS before the hearing. I denied

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[4] The May 14, 2013 Order included uniform prehearing order language that,

> The parties and their counsel will be held to the matters agreed upon, ordered, or otherwise set forth in this Order. If either party believes this Hearing Officer has overlooked or misstated any item, the party is directed to advise this Hearing Officer of the omission or misstatement within three (3) business days of the date of this Order (and provide a copy to opposing counsel). The Hearing Officer will address the party's concern promptly.

Neither party advised the Hearing Officer of any omission or misstatement in the prehearing order before the due process hearing was convened.

[5] Prior to the June 12, 2013 remand hearing, Petitioner's Counsel informed the Hearing Officer that Student needed to be at a graduation rehearsal exercise on the day of the hearing and requested permission for Student to attend the graduation rehearsal. The Hearing Officer granted permission for Student to miss part of the hearing so that she could attend the graduation rehearsal. Student did not appear for any part of the all-day due process hearing. Counsel for DCPS made an oral motion to dismiss the hearing for Student's failure to appear, pursuant to § 700.3 of the Student Hearing Office Standard Operating Procedures. (If the party who requested the hearing (complainant) does not appear at the hearing, the hearing may be dismissed by the Hearing Officer. *Id.*) Student was not identified as a possible witness in DCPS' prehearing disclosures. In my discretion as Hearing Officer, I denied DCPS' motion to dismiss the hearing.

DCPS' motion.

Petitioner testified and called, as her only witnesses, AUDIOLOGIST. DCPS called as witnesses YOUTH SERVICES COORDINATOR and S-L Pathologist. The following Petitioner's Exhibits were admitted into evidence, over DCPS' objections, as records of the case - but not to establish the truth of the conclusions drawn or the recommendations made by the evaluators who did not testify: P-1, P-2, P-3, P-5, P-8, P-9, P-12, P-17, P-18, P-19, and P-20. Exhibits P-11 and P-27 were admitted without objection. Exhibits P-6, P-14, P-15, P-16, P-21, P-23, and P-24 were admitted over DCPS' objections. DCPS' objections to Exhibits P-10 and P-26 were sustained. Exhibits P-4, P-7, P-13, P-22, P-25, P-28, P-29, P-30, P-31, and P-32 were withdrawn. DCPS' Exhibit R-1 was admitted, over Petitioner's objection, as a record of the case - but not to establish the truth of the matters contained therein; Exhibits R-4, R-5, R-7 (Resume of S-L Pathologist only) and R-11 were admitted without objection. Exhibits R-3, R-9 and R-10 were admitted over Petitioner's objections. Exhibits R-2, R-6, R-8 and part of R-7 (Resume of DCPS Project Coordinator) were withdrawn. (Exhibit R-2 pertained to another child in an unrelated matter and had been disclosed by error. The Hearing Officer directed all parties to destroy their copies of Exhibit R-2.)

At the conclusion of Petitioner's case-in-chief, DCPS made an oral motion for a directed finding that Student was entitled to no more than 11.6 hours of compensatory education, on the grounds that her evidence did not establish that D.C. Private School failed to provide more than 11.6 hours of compensatory education. I denied DCPS' motion.

In lieu of making closing arguments, the parties were granted leave, until July 19, 2013, to file post-hearing memoranda. Both parties filed closing briefs.[6]

[6] Petitioner's post-hearing memorandum was filed one day late, which Petitioner's Counsel attributed to email problems. In my discretion, I have accepted the untimely brief for filing.

Petitioner's Counsel filed post-hearing motions (1) that the remand hearing be reopened to receive additional testimony from Petitioner's expert witness as to his recommendation that a Reading specialist, or a tutor with Wilson or Orton-Gillingham training, work with Student; and (2) for reconsideration of the Hearing Officer's evidentiary ruling, made during the remand hearing, that educational and psychological reports and evaluations of the Student, predating the remand of this case, would be admitted as records of the case - but not to establish the truth of the conclusions drawn or the recommendations made by the evaluators who did not testify. DCPS filed responses in opposition to both motions. I denied the motions by orders entered June 18, 2013 and July 2, 2013, respectively.

JURISDICTION

The Hearing Officer has jurisdiction under 20 U.S.C. § 1415(f) and DCMR tit. 5-E, § 3029.

ISSUES ON REMAND AND RELIEF SOUGHT

The U.S. District Court for the District of Columbia remanded this matter to the Hearing Officer to determine:

i. What was the appropriate level of speech/language services that Student should have received at D.C. Private School between March 19, 2007 and June 2008?

ii. What was the amount of speech and language therapy and other speech/language specialized instruction, as to which Student was deprived in the period between March 19, 2007 and June 2008?

iii. What is the level of compensatory education services that Student requires to place her in the same position she would have been (including the effect of the untimely issuance of the May 28, 2009 HOD) but for DCPS' IDEA violations during the period between March 19, 2007 and June 2008?

For relief, Petitioner seeks an award of compensatory education that meets the

recommendation of her expert, Audiologist, namely 7.5 hours per week of one-on-one speech-language services for 1 to 1½ school years.

FINDINGS OF FACT

After considering all of the evidence, as well as the arguments of counsel, this Hearing Officer's Findings of Fact are as follows:

Pertinent Factual Findings of the U.S. District Court

i. Student was diagnosed with multiple learning disorders in reading, speech and language within the meaning of the IDEA. Remand Order at 31.

ii. Student received speech and language therapy that focused on her phonological awareness deficits while attending PRIOR PRIVATE SCHOOL and PRIVATE SCHOOL TWO. Remand Order at 31.

iii. Student's 2007 IEP at D.C. Private School included 30 minutes per week of speech and language therapy services, but Student did not receive these services between March 19, 2007 and June 2008 because of staff shortages at the private school. Remand Order at 31-32.

iv. Following an October 2008 IEP meeting at Private School Two, Student's IEP was revised to include three hours a week of speech/language services. Remand Order at 33.

v. Former Hearing Officer's HOD in this case was issued on May 28, 2009. 11 days after the IDEA's 45-day deadline for the issuance of the final decision. Remand Order at 41-42.

This Hearing Officer's Findings of Fact

1. Student is a resident of the District of Columbia. Testimony of Grandmother.

2. As of April 17, 2013, Student was eligible for special education and related services under the primary disability classification, Emotional Disturbance ("ED"). Exhibit P-23.

3. Student's 2006 IEP at D.C. Private School did not include speech-language services. Exhibit P-6. That school's September 20, 2007 IEP omitted speech-language annual goals for Student, but provided .5 hours per week of speech therapy services. Exhibit P-11.

4. In an August 2007 Speech-Language Evaluation report, D.C. Private School speech-language pathologist recommended 60 minutes per week of direct speech-language intervention to address Student's below-average expressive and receptive vocabulary and language skills. Exhibit P-9.

5. D.C. Private School was in session for approximately 321 days between March 19, 2007 and June 2008, including 60 days from March 19 through June 2007 and 261 days in School Year 2007-2008. Exhibit P-14.

6. Student began attending Private School Two during the Extended School Year ("ESY") program on June 27, 2008. She began speech and language services on that date for 30 minutes per week. At a September 15, 2008 IEP meeting, Student's speech and language services were increased to 60 minutes per week. Exhibit P-16.

7. In an October 2008 report, the Private School Two speech-language pathologist reported that Student currently exhibited age-appropriate receptive and expressive language skills and that articulation, voice and fluency were within normal limits. Student demonstrated below average skills in the area of receptive and expressive vocabulary skills, specifically, word classes and word definitions. Student's scores indicated a significant deficit in many areas of phonological awareness. Her ability to process sounds was very slow. She had great difficulty taking sounds apart (segmenting) which is essential to being a good speller. Her current decoding rate and accuracy levels were roughly seven grade levels below her school grade level. Her reading comprehension skills were 5 years below her grade level. There was a 54-percentile

point difference between Student's reading and her oral comprehension, with reading comprehension falling far below her oral comprehension score. This evaluator recommended that Student receive 3 hours per week of services in a phonological awareness treatment program using an integrated version of the Lindamood-Bell Phoneme Screening Program and Orton-Gillingham approach. The speech pathologist stated that due to Student's very slow processing speed, her progress was expected to be slow and consistent. Under this recommended program, speech pathologist predicted that Student would progress steadily. Exhibit P-16. On October 23, 2008, Student's IEP team at Private School Two increased Student's speech/language services to 3 hours per week. *Id.*

8. In a March 19, 2009 Testing Summary Report, PRIVATE READING PROGRAM recommended that Student would benefit from intervention to develop her language and literacy skills in the form of intensive instruction, 6 hours a day, 5 days a week for an initial period of 10-15 weeks. Exhibit P-18.

9. For the 2009-2010 school year, Student attended PRIVATE SCHOOL THREE where she did not receive speech-language services. Testimony of Grandmother.

10. After Private School Three, Student attended RESIDENTIAL SCHOOL. At Residential School, Student was assessed by a speech-language pathologist. Residential School was not able to implement the speech-language services in the Private School Two IEP. Testimony of Grandmother.

11. After attending Residential School, Student went to a residential program in Georgia. In January 2011, Student entered PRIVATE SCHOOL FOUR. Testimony of Grandmother. On May 17, 2011, Student enrolled in FIRST CITY HIGH SCHOOL. At an IEP annual review meeting at Private School Four on May 17, 2011, which Student attended by

telephone, the Private School Four speech-language pathologist recommended that Student needed 1 hour per week of speech/language services and 1 hour per week of reading instruction, both provided 1:1 by a speech-language pathologist. Exhibit R-3.

12. Since the 2011-2012 school year, Student has attended SECOND CITY HIGH SCHOOL, where her grades are D's and F's. Testimony of Grandmother. Student had chronic truancy issues at Second City High School. Exhibit R-5.

13. As of the due process hearing date, Student expected to graduate from Second City High School at the end of the 2012-2013 school year. See Email to Hearing Officer from Petitioner's Counsel, attaching letter of Student to Hearing Officer, June 10, 2013.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact and argument of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

Burden of Proof

The burden of proof in a due process hearing is normally the responsibility of the party seeking relief – the Petitioner in this case. *See* DCMR tit. 5-E, § 3030.3. *See, also, Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 536, 163 L.Ed.2d 387 (2005); *Hester v. District of Columbia*, 433 F.Supp.2d 71, 76 (D.D.C. 2006). In a remand hearing to determine an appropriate compensatory education award, it is the Petitioner's burden to provide the Hearing Officer with additional evidence that demonstrates that additional educational services are necessary to compensate the student for the denial of a free and appropriate public education. *See Phillips ex rel. T.P. v. District of Columbia*, 736 F.Supp.2d 240, 250 n.4 (D.D.C.2010).

Analysis

i. WHAT WAS THE APPROPRIATE LEVEL OF SPEECH/LANGUAGE SERVICES THAT STUDENT SHOULD HAVE RECEIVED AT D.C.

PRIVATE SCHOOL BETWEEN MARCH 19, 2007 AND JUNE 2008?

In the Remand Order, the Court held that Student was denied a FAPE because she was not provided speech therapy in the period between March 19, 2007 and June 2008 while at D.C. Private School. The Court found that Student was denied at least 11.6 hours of speech therapy during the time period at issue, and, based upon services Student later received at Private School Two, she may have been denied much more than 11.6 hours. The Court directed the Hearing Officer to conduct a full factual inquiry to determine whether Student's IEP should have provided her more than 11.6 hours of speech therapy during this period.

The provide a FAPE, the IDEA requires that "[t]he IEP must, at a minimum, 'provide personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.'" *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 519 (D.C.Cir.2005) (quoting *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist., Westchester County v. Rowley*, 458 U.S. 176, 203, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982)). To determine whether a FAPE has been provided, courts must determine, *inter alia*, whether the IEP developed by the school district "was reasonably calculated to enable the student to receive educational benefits." *N.T. v. District of Columbia* 839 F.Supp.2d 29, 33 (D.D.C.2012) (citation omitted.)

Student's 2006 IEP at D.C. Private School did not include speech-language services. The school's September 20, 2007 IEP omitted speech-language annual goals for Student. However, the IEP provided that Student should receive .5 hours per week of "Speech Therapy," to be provided by the speech pathologist. (D.C. Private School's failure to provide these services resulted in the "at least" 11.6 hour speech-language shortfall identified by the Court in the Remand Order.) Since D.C. Private School failed to provide Student any speech-language

services after the September 20, 2007 IEP was adopted, it is not possible to know whether Student would have made progress on speech-language deficits with only .5 hours per week of services. *Cf. Smith v. District of Columbia*, 846 F.Supp.2d 197, 201 (D.D.C.2012) (Progress is "yardstick" used by courts in this district in determining whether an IEP is reasonably calculated to provide education benefits.) Notwithstanding, the .5 hours per week of speech therapy listed in the IEP was only one-half the speech language intervention recommended in August 2007 by D.C. Private School's Speech-Language Diagnostician, and was one-sixth the level of speech-language services provided in Private School Two's October 23, 2008 IEP. I conclude therefore that the evidence establishes that the provision of .5 hours per week of speech therapy in the September 20, 2007 IEP was not reasonably calculated to provide Student educational benefits and Student should have been offered more than 11.6 hours of speech therapy during the March 19, 2007 to June 2008 period.

Petitioner's expert, Audiologist, testified that based upon his review of Student's assessments, in 2007, Student was reading 4 to 4.5 years below her academic grade level. He opined that the Student's 2007 IEP speech/language goal should have been to bring her up to grade level in reading, decoding and comprehension by the end of the 2007-2008 school year. To enable Student to reach that goal, Audiologist opined that Student should have been provided one hour daily, five days a week, of 1:1 speech-language services in the areas of phonological processing, sound and symbol association, listening comprehension and reading comprehension relative to language understanding. While I found Audiologist to be a highly-qualified and credible witness, I discount this opinion because he applied an incorrect standard. The IDEA does not require a school system to develop an IEP designed to bring a child up to grade level. *See N.T., supra*, 839 F.Supp.2d at 33 (While DCPS is required to provide students with an

appropriate public education, "it does not guarantee any particular outcome or any particular level of education." *Id.*) *See, also, Dawkins by Dawkins v. District of Columbia*, 1989 WL 40280, 2 (D.C.Cir. Apr. 24, 1989) (A "potential-maximizing" standard is inconsistent with the dictates of *Rowley*); *A.B. ex rel. D.B. v. Lawson*, 354 F.3d 315, 330 (4th Cir. 2004) (FAPE standards are far more modest than to require that a child excel or thrive.)

An IEP is reviewed prospectively – not in hindsight. As the Court observed in *S.S. ex rel. Shank v. Howard Road Academy*, 585 F.Supp.2d 56, 66 (D.D.C. 2008), "[b]ecause the question . . . is not whether the IEP will guarantee some educational benefit, but whether it is reasonably calculated to do so, . . . the measure and adequacy of an IEP can only be determined as of the time it is offered to the student. . . ." *Id.* Therefore, what Student should have received in speech-language services between March 12, 2007 and June 2008 must be derived from the information available to her IEP teams during that period. I find that the preponderance of evidence establishes that at the time the September 20, 2007 IEP was offered to Student, and for the entire period between March 19, 2007 and June 2008, when school was in session, the provision of 60 minutes per week of speech-language services, as recommended by D.C. Private School's Speech-Language Pathologist in her August 2007 evaluation and as provided by Private School Two in its September 15, 2008 IEP, would have been reasonably calculated to provide Student educational benefits.

ii. WHAT WAS THE AMOUNT OF SPEECH AND LANGUAGE THERAPY AND OTHER SPEECH-LANGUAGE SPECIALIZED INSTRUCTION, AS TO WHICH STUDENT WAS DEPRIVED IN THE PERIOD BETWEEN MARCH 19, 2007 AND JUNE 2008?

D.C. Private School was in session for approximately 321 school days, or 64 weeks, from March 19, 2007 through June 2008. The U.S. District Court found that Student received no speech-language services during that period. Therefore, I conclude that Student was deprived of

approximately 64 hours (1 hour for each week) of speech-language services.

iii. WHAT IS THE LEVEL OF COMPENSATORY EDUCATION SERVICES THAT STUDENT REQUIRES TO PLACE HER IN THE SAME POSITION SHE WOULD HAVE BEEN (INCLUDING THE EFFECT OF THE ISSUANCE OF THE PRIOR HOD IN AN UNTIMELY MANNER) BUT FOR DCPS' IDEA VIOLATIONS DURING THE PERIOD BETWEEN MARCH 19, 2007 AND JUNE 2008?

In the Remand Order, the Court next directs the Hearing Officer to determine what Student requires in compensatory education services to place her in the same position she would have been but for DCPS' denying her a FAPE by not providing speech and language services between March 19, 2007 and June 2008. The IDEA gives courts "broad discretion" to award compensatory education as an "equitable remedy" for students who have been denied a FAPE. *See Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 522-23 (D.C.Cir.2005). The award must "provide the educational benefits that likely would have accrued from special education services" that the school district "should have supplied in the first place." *Id.* at 524. A compensatory education award must "rely on individualized assessments" after a "fact specific" inquiry. *Id.* "In formulating a new compensatory education award, the hearing officer must determine 'what services [the student] needs to elevate him to the position he would have occupied absent the school district's failures.'" *Stanton v. Dist. of D.C.*, 680 F.Supp.2d 201, 206 (D.D.C. 2010) *(*quoting *Anthony v. District of Columbia*, 463 F.Supp.2d 37, 44 [D.D.C. 2006]; *Reid*, 401 F.3d at 527.) *See, also, e.g., Turner v. District of Columbia*, 2013 WL 3324358, 10 -11 (D.D.C. July 2, 2013).

In this case, the U.S. District Court found that Student was denied a FAPE by DCPS' failure to provide her speech and language services between March 19, 2007 and June 2008. This Hearing Officer has determined that Student was deprived of approximately 64 hours of speech-language services during the period in question. Petitioner's expert, Audiologist, opined

that Student should receive compensatory services to work on phonemic awareness, general language comprehension, reading comprehension and sound-symbol association. He opined that because Student is now an adult, her likely frustration with not being able to comprehend and understand and her resistance to learning would add another component to her instruction. Student's speech-language provider would now need to go more slowly in order to establish rapport with Student and build her confidence. Audiologist recommends that Student receive 1.5 hours of services for every hour of services she missed, provided by a professional speech-language therapist who has experience with working with older students.

Audiologist's opinion is buttressed by the October 2008 report of the Private School Two speech pathologist, who reported that even after Student's speech and language services had been increased to 60 minutes per week, she needed an additional 2 hours per week of intensive services in a phonological awareness treatment program. Private Reading Center also reported, on March 19, 2009, that Student would benefit from 10 to 12 weeks of intensive instruction (6 hours a day, 5 days a week) for 10 to 12 weeks to develop her language and literacy skills.

DCPS' expert, S-L Pathologist opined that Student should receive as compensatory education 1 hour per week of speech language services for the March 19, 2007 to June 2008 period that DCPS did not provide speech-language services. However, this witness was vague on Student's speech-language requirements even though she testified that she personally provided services to Student. For example, she did not know whether Student's most recent IEP provided that her speech-language services were to be provided in – or outside of – the general education setting. I did not find her opinion persuasive.

Due to the passage of time, the evidence does not enable this Hearing Officer to determine with any certainty what position Student would have occupied had DCPS not failed to

provide her speech-language services from March 19, 2007 through June 2008. DCPS also has shown that Student has a dismal school attendance record, which undoubtably has negatively affected her academic performance.[7] However, the controlling case law does not require Student "to have a perfect case to be entitled to compensatory education." *See Cousins v. District of Columbia*, 880 F.Supp.2d 142, 148 (D.D.C.2012), citing *Stanton ex rel. K.T. v. D.C.*, 680 F.Supp.2d 201, 207 (D.D.C.2010). Moreover, refusing to grant a compensatory education award to a student who is entitled to one "clashes with *Reid*," *supra*. *See Banks ex rel. D.B. v. District of Columbia*, 720 F.Supp.2d 83, 91 (D.D.C.2010). Accordingly, I find that the preponderance of the evidence establishes that an award of 96 hours of speech-language services, *i.e.*, approximately 1.5 hours for each of the 64 hours not provided. would be reasonably calculated to place Student in the same position she would have been had DCPS provided appropriate speech-language services to Student during the period between March 19, 2007 and June 2008. *See Reid, supra*, 401 F.3d at 524 (Ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school

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[7] DCPS also argues on brief that Student should be denied a compensatory education remedy because she has graduated from high school. This argument has no merit. *See L.R.L. ex rel. Lomax v. District of Columbia*, 896 F.Supp.2d 69, 76 (D.D.C.2012) ("The defendant's argument is specious. Of course, the overarching purpose of the IDEA is to provide a current FAPE to students with disabilities, but the defendant's focus on the present tense of the language ignores the broad remedial reach of the law. The IDEA sets forth stringent procedural safeguards to permit disabled children and their parents to seek redress from an LEA that is currently or has in the past, failed to fulfill its statutory responsibilities. Indeed, to remedy past failures, district courts have broad power to grant equitable relief, including compensatory relief, to remedy past failures by an LEA. *Reid*, [*supra*] 401 F.3d at 518 ("[C]ompensatory awards should aim to place disabled children in the same position they would have occupied but for the school district's violations of IDEA."). Thus, LEAs have been required to provide compensatory relief to vindicate a student's substantive right to receive a FAPE and to compensate the student for past deprivations of educational opportunity, including where the student is no longer eligible for IDEA benefits." *Id.*)

district should have supplied in the first place.)

Finally, the Court in its Remand Order directed the Hearing Officer to consider the 11-day delay in issuance of the May 28, 2009 HOD in the calculation of the compensatory education to which Student is entitled. I find that the evidence does not establish that this delay resulted in further loss of educational opportunity or seriously deprived Grandmother or Student of their IDEA participation rights. *See Lesesne ex rel. B.F. v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006) ("[O]nly those procedural violations of the IDEA which result in loss of educational opportunity or seriously deprive parents of their participation rights are actionable.") Therefore, I find there is no basis for augmenting Student's compensatory education award to compensate for the untimely issuance of the May 28, 2009 HOD.

SUMMARY

In the Remand Order, the U.S. District Court ordered the Hearing Officer to conduct a fact-specific exercise of discretion to determine the amount of speech and language services Student was deprived of in the period between March 19, 2007 and June 2008, and to determine what Student requires in compensatory education services to place her in the same position she would have been but for DCPS' denial of FAPE. In this decision, I have found that during the period at issue, in an IEP reasonably calculated to provided education benefit, Student should have been provided one hour per week of speech-language services and that by providing her no services at all, DCPS deprived Student of approximately 64 hours of services. I have further found that an appropriate, equitable, compensatory education remedy, to place Student in the same position she would have been but for DCPS' denial of FAPE, would be an award of 96 hours of speech-language services. Lastly, I find that no basis has been established for augmenting the compensatory education award for the IDEA procedural violation of issuing the May 28, 2009 HOD eleven days late.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ORDERED:

1. As compensatory education relief for DCPS' denial of FAPE to Student by not providing speech-language services for the period March 19, 2007 through June 2008, DCPS is ordered to provide Student, at public expense, 96 hours of one-on-one speech-language services by a certified speech pathologist, who has the requisite experience and qualifications to work with an adult student. The services shall include instruction in phonemic awareness, general language comprehension, reading comprehension, sound-symbol association and such other speech-language deficits as may be decided appropriate by the provider and Student.

   DCPS shall make these services available to Student beginning no later than 30 days from the date of issuance of this Hearing Officer Determination. The schedule and location for the services shall be worked out between the provider and Student. Notwithstanding, DCPS must ensure that the provider provides the services on the schedule recommended by Audiologist (1.5 hours per day/five days per week) or on such other schedule as may be reasonably agreed upon by the provider and Student.

   DCPS may only curtail or suspend the aforesaid speech-language compensatory services if Student repeatedly, and without reasonable justification, fails to attend the speech-language sessions and the agency is unable to convince Student to attend. In that event, DCPS must keep a record of its attempts to ensure Student's attendance, such as—

   (a) Detailed records of telephone calls made or attempted and the results of those calls;
   (b) Copies of correspondence sent to Student and any responses received; and
   (c) Detailed records of visits made to the Student's home or place of employment and the results of those visits.[8]

2. All other relief requested by the parties herein is denied.

Date: July 18, 2013

s/ Peter B. Vaden
Peter B. Vaden, Hearing Officer

[8] This provision is intended to mirror the record-keeping requirements in 34 CFR § 300. 322(d) regarding ensuring parents' participation in IEP meetings.

NOTICE OF RIGHT TO APPEAL

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 U.S.C. §1415(i).