

**DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Student Hearing Office
810 First Street, NE, 2nd Floor
Washington, DC 20002

OSSE
Office of Dispute Resolution
November 19, 2014

PETITIONER,
on behalf of STUDENT,¹

Date Issued: June 30, 2014

Petitioner,

Hearing Officer: Peter B. Vaden

v.

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Student Hearing Office,
Washington, D.C.

Respondent.

HEARING OFFICER DETERMINATION²

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by Petitioner (the “Petitioner” or “MOTHER”), under the Individuals with Disabilities Education Act, as amended (the “IDEA”), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations (“DCMR”). In her Due Process Complaint, Petitioner alleges that Respondent District of Columbia Public Schools (“DCPS”) denied Student a Free Appropriate Public Education (“FAPE”) by not finding him eligible for special education and related services.

¹ Personal identification information is provided in Appendix A.

² Corrected on November 18, 2014. Order Para. 3 (Page 18) date corrected to July 31, 2014.

Student, an AGE youth, is a resident of the District of Columbia. Petitioner's Due Process Complaint, filed on April 17, 2014, named DCPS as respondent. This case, which was initially assigned to Hearing Officer Michael Lazan, was reassigned to the undersigned Hearing Officer on May 22, 2014. The parties met for a resolution session on May 15, 2014 and did not reach an agreement. The 45-day period for issuance of this decision started on May 18, 2014. On May 27, 2014, I convened a telephone prehearing conference with counsel to discuss the hearing date, issues to be determined and other matters.

The due process hearing was held before this Impartial Hearing Officer on June 16, 2014 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 appeared in person, and was represented by PETITIONER'S COUNSEL. Respondent DCPS was represented by DCPS' COUNSEL.

Petitioner testified and called as witnesses EDUCATIONAL ADVOCATE and PCS DIRECTOR OF SPECIAL EDUCATION. DCPS called as witnesses SCHOOL SOCIAL WORKER, COMPLIANCE CASE MANAGER and SPECIAL EDUCATION COORDINATOR. Petitioner's Exhibits P-11 through P-21, P-23 through 37, P-39 and P-40 were admitted into evidence without objection. Exhibit P-22 was admitted over DCPS' objection. DCPS' objections to Exhibits P-4 through P-7 and P-38 were sustained. Petitioner did not offer Exhibits P-1 through P-3 and P-8 through P-10. DCPS' Exhibits R-2 through P-17, R-13 and R-16 were admitted into evidence without objection. Exhibits R-1 and R-12 were admitted over Petitioner's objections. Exhibits R-14 and R-15 were not offered by DCPS. The Hearing Officer admits R-15 as Hearing Officer Exhibit 1. Counsel for Petitioner made an opening statement. Counsel for both

parties made closing arguments. Neither party requested leave to file a post-hearing memorandum.

JURISDICTION

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

ISSUES AND RELIEF SOUGHT

The following issues for determination were certified in the May 27, 2014

Prehearing Order:

- Whether DCPS failed in its “Child Find” obligations under the IDEA in February 2013 by not determining that Student was eligible for special education services as a student with a Specific Learning Disability and/or an Emotional Disturbance, and by failing to develop an Individualized Education Plan (“IEP”) for Student; and
- Whether DCPS failed to evaluate Student in all areas of suspected disabilities, specifically for an occupational therapy (OT) disability and for other mental health concerns.

For relief, Petitioner seeks a determination that Student is a child with a disability as defined in the IDEA; and that DCPS be ordered to ensure that an appropriate IEP is developed, to conduct or fund an OT evaluation, comprehensive testing to assess for Attention Deficit-Hyperactivity Disorder (ADHD) and a psychiatric evaluation of the Student, and to fund Student’s placement at a suitable nonpublic school. In addition, Petitioner seeks an award of compensatory education to compensate Student for alleged denials of FAPE since February 2013.

STIPULATION

The parties, by counsel, stipulated that for the 2012-2013 school year, PCS-3, having elected to be treated as a local education agency (LEA) for purposes of the IDEA and the Rehabilitation Act of 1973, was an independent LEA. *See* 5-E DCMR § 924.2.

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:

1. Student an AGE youth, resides with Petitioner in the District of Columbia. Student is currently enrolled in GRADE at PCS-5. Testimony of Mother.
2. Student attended CITY ELEMENTARY SCHOOL 1 for Grades 1 and 2. He attended PCS-1 for Grades 3 and 4. Student attended PCS-2 for Grades 5 and 6. He attended CITY ELEMENTARY SCHOOL 2 for the 2010-2011 school year. Student attended CITY MIDDLE SCHOOL 1 for the 2011-2012 school year. Mother enrolled Student at PCS-3 at the beginning of the 2012-2013 school year. During that school year, on November 20, 2012, the parent withdrew Student from PCS-3 and enrolled him at CITY MIDDLE SCHOOL 2. Testimony of Mother. At the start of the 2013-2014 school year, Student was enrolled at PCS-4. Exhibit P-26. Student enrolled in PCS-5 in January 2014, where is currently in the GRADE. Testimony of PCS School Social Worker, Exhibit R-2.
3. PCS-4 and PCS-5 are District Public Charter Schools, for which DCPS serves as the LEA. Hearing Officer Notice.
4. Student was first found determined eligible for special education and related services at City Elementary School 1. He had IEPs at subsequent schools he attended, until he enrolled at PCS-3 at the beginning of the 2012-2013 school year. Testimony of Mother. In a revised IEP developed in September 2008 at PCS-2, Student's IDEA disability was identified as Learning Disability (LD). The impact of his disability was reported to be impulsivity, reading difficulties, working and reading at too fast a pace, and impulsive/hyperactive behavior which affected his attention in class and

his ability to follow classroom rules and procedures. The September 2008 IEP provided Student 23 hours per week of Specialized instruction, including 8 hours outside of general education, and one hour per week, each, of Psychological Counseling and Speech Therapy related services. Exhibit P-21. (None of Student's other past IEPs was offered into evidence.)

5. After Student enrolled in PCS-3 for the 2012-2013 school year, his prior IEP could not be located. PCS-3 decided to conduct a new special education eligibility determination process. Testimony of Mother. PCS-3 convened a Multidisciplinary Team (MDT) meeting for Student on September 25, 2012. The MDT team noted that Student's areas of concern were inattentiveness, organization, assignment completion, and comprehension. The MDT team recommended that a psychoeducational evaluation be conducted to determine Student's needs for special education services. Mother provided written consent for the evaluation to be conducted. Exhibit P-15.

6. CLINICAL PSYCHOLOGIST administered a comprehensive clinical and psycho-educational evaluation of Student over three days in October and November 2012. She administered a battery of cognitive, educational and behavioral tests, including, *inter alia*, the Wechsler Intelligence Scales for Children, Fourth Edition (WISC-IV) and the Wechsler Individual Achievement Test, Third Edition (WIAT-III). She also sent Behavior Assessment System for Children, Second Edition (BASC-2) questionnaires to Student's teachers and Mother for completion. However, only the BASC-2 Self-Report questionnaire, completed by Student with the assistance of Clinical Psychologist, was obtained. Exhibit P-17.

7. In her November 12, 2012 evaluation report, Clinical Psychologist reported, *inter alia*, that test results indicated that in the areas of Verbal

Comprehension, Perceptual Reasoning, and Working Memory, Student has cognitive abilities that fall solidly in the Average range when compared to similarly-aged peers. His ability to reason with and without the use of words is similarly developed. He demonstrated a significant deficit in his Processing Speed abilities relative to his abilities in the other cognitive domains. Student's score on the Processing Speed Index fell in the Extremely Low range and at the 2nd percentile when compared to similarly-aged peers. Results from a test of academic achievement were generally consistent with results from the measure of cognitive ability. On all of the individual composites (Oral Expression, Reading, Math), Student performed in the Average range with the exception of the Written Expression composite, on which he performed in the Below Average range. He performed lower than would be expected given his measured cognitive ability on the individual subtests of Math Problem Solving, Sentence Composition, Oral Reading Accuracy, and Spelling. Clinical Psychologist stated that, because Student has a history of being diagnosed with a Reading Disorder, because he demonstrated clinically significant deficits in reading accuracy, and because he was receiving a failing grade in English, the diagnosis of Reading Disorder continued to be appropriate. Clinical Psychologist reported that her findings suggested that Student seemed to have some impairments in his visual perception, particularly with regards to abstract images. These impairments were further pronounced when Student was required to process visual information quickly, as well as when he was required to integrate visual and motor skills. Exhibit P-17.

8. Clinical Psychologist noted that it was reported that Student received occupational therapy (OT) services in the past and recommended that Student may need

an occupational therapy reevaluation to determine if he would still benefit from OT services for perceptual and visual-motor difficulties. Exhibit P-17.

9. Clinical Psychologist reported that on emotional and social functioning, Student seemed to be experiencing some underlying feelings of sadness and anxiety and that on projective measures, Student's responses strongly suggested the presence of emotional difficulties. She reported that Student appeared to meet criteria for a diagnosis of Adjustment Disorder with Mixed Anxiety and Depressed Mood. Exhibit P-17.

10. Clinical Psychologist reported that data was inconclusive regarding the potential presence of an ADHD diagnosis for Student. Exhibit P-17.

11. In her November 15, 2012 report, Clinical Psychologist diagnosed Student with Adjustment Disorder with Mixed Anxiety and Depressed Mood and a Reading Disorder. Exhibit P-17.

12. Clinical Psychologist recommended, *inter alia*, that Student would benefit from special education services to address deficits in reading and writing in particular, that Behavioral Support Services would be beneficial and that an OT evaluation was recommended to further assess possible deficits in visual-perceptual and visual-motor skills. Exhibit P-17.

13. Mother withdrew Student from PCS-3 on November 20, 2012, before the school MDT team had reviewed Clinical Psychologist's evaluation report. Exhibit P-37. Mother enrolled Student at City Middle School 2 on November 20, 2012. Exhibit P-28. Although PCS-3 was no longer Student's LEA, the school convened a MDT meeting on December 6, 2012 to review the November 15, 2012 psycho-educational evaluation of Student and to determine his eligibility for special education services. Testimony of PCS

Director of Special Education, Exhibit P-16. Clinical Psychologist attended the meeting and went over her evaluation. The PCS-3 MDT team agreed that Student qualified for special education services as a child with an Other Health Impairment-Attention Deficit Hyperactivity Disorder (OHI-ADHD) disability. The team recommended that Student receive approximately 10 hours per week of special education services in an inclusive setting and 30 minutes per week of Behavioral Support Services. The team also recommended that Student receive an OT assessment to rule out “Written Disorder.” The team did not develop an IEP because Student had already been withdrawn from PCS-3. Exhibit P-16. The Director of Special Education from PCS-3 communicated with Special Education Coordinator at City Middle School 2 and informed him that she would send over all of the information with Mother. Testimony of PCS Director of Special Education.

14. On December 19, 2012, Mother provided the independent psychological evaluation of Student to Special Education Coordinator at City Middle School 2. Mother was informed that DCPS would review the assessment at an eligibility meeting within 45 school days. Exhibit R-10.

15. On January 29, 2013, DCPS sent Mother a Letter of Invitation to a Meeting. The invitation stated that the purpose of the meeting was to determine Student’s “Initial Eligibility” for Special Education. Exhibit Hearing Officer 1.

16. The eligibility team at City Middle School 2 convened on February 5, 2013. Mother attended the meeting. SCHOOL PSYCHOLOGIST reported on her review of the November 15, 2012 psycho-educational evaluation of Student. She also reported that from her review of Student’s records, Student had earned scores in the proficient range in reading and math on the DC Comprehensive Assessment System (DC CAS) exams.

Student's general education teacher stated that Student was a very bright young man and he was doing well. Following what they were told by School Psychologist, the eligibility team determined that Student did not meet criteria for a Learning Disability. Testimony of Special Education Coordinator, Exhibit R-4.

17. The February 5, 2013 eligibility team determined that Student did not meet criteria for an LD disability because he did not demonstrate a discrepancy between achievement and measured ability of two years below his chronological age or at least two standard deviations below his cognitive ability. All of the eligibility team members, except Mother, were in agreement with the eligibility determination. Exhibit R-7.

18. On February 5, 2013, DCPS issued a Prior Written Notice to the parent that it "refuses to identify the student as a student with a disability as defined by the IDEA." In the Prior Written Notice, DCPS identified only "[the November 15, 2012] Comprehensive Psychological, Teacher Input, Observations" in its description of each evaluation procedure, assessment, record, or report used as a basis for the refused action. Exhibit R-9.

19. In its February 5, 2013 Final Eligibility Determination Report, DCPS reported that the "Reason for Initiating Process" was "Reevaluation". For "Information Received," this report identified the November 15, 2012 independent psycho-educational report. The report stated that for Academics and for Emotional, Social and Behavioral Development, "[t]here were no previous interventions noted." Exhibit R-8.

20. Student's grades for the first advisory, ending October 26, 2012, at PCS-3 were a B and three C's in his core subjects. He received F's in Art and Physical Education. Exhibit P-36. For the school year ending on June 20, 2013 at City Middle

School 2, Student received D's in all core subjects except for a B in World History. He was promoted to the next grade level. Exhibit P-27.

21. For the 4th Quarter of the 2013-2014 school year at PCS-5, Student received F's in all subjects except an A in Music. Exhibit P-25.

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).

Analysis

1. Did DCPS fail in its "Child Find" obligations under the IDEA in February 2013 by not determining that Student was eligible for special education services as a student with a Specific Learning Disability and/or Emotional Disturbance and by failing to develop an IEP for the Student?

Petitioner alleges that DCPS failed in its Child-Find obligation to Student by the action of the February 5, 2013 City Middle School 2 MDT team not determining him eligible for special education. A child is eligible for services under the IDEA if he has been evaluated as having one or more of the disability conditions listed and defined in the IDEA statute and regulations, and "by reason thereof, needs special education and related services." *See* 34 CFR § 300.8. Petitioner contends that the City Middle School 2 MDT team should have found Student eligible for special education as a student with a

Specific Learning Disability (SLD) and/or an Emotional Disturbance (ED). DCPS maintains that Petitioner did not carry her burden of proof on this issue.

Contrary to Petitioner's characterization of the issue, the IDEA's Child-Find requirement is not relevant to this case. Under the Child-Find provision, 20 U.S.C. § 1401(3), "[a]s soon as a child is identified as a *potential candidate* for services, DCPS has the duty to locate that child and complete the evaluation process." *Long v. District of Columbia*, 780 F.Supp.2d 49, 56 (D.D.C.2011) (emphasis supplied). In this case, Student was not a "potential candidate" for special education services – he was already eligible. Student was first determined to be a child with a disability in 2006. Prior to enrolling at PCS-3 at the beginning of the 2012-2013 school year, Student had a DCPS IEP at City Middle School 1. (The City Middle School 1 IEP document was not offered into evidence.) When Student enrolled in PCS-3, instead of obtaining copies of his prior year IEPs, the charter school improperly elected to conduct a new "initial" evaluation. However, since Student had already been determined eligible for special education before enrolling in PCS-3, PCS-3 could only conduct a reevaluation.³ *See Assistance to States for the Education of Children with Disabilities*, 71 Fed. Reg. 46640.

An initial evaluation of a child is the first complete assessment of a child to determine if the child has a disability under the Act, and the nature and extent of special education and related services required. Once a child has been fully evaluated, a decision has been rendered that a child is eligible for services under the Act, and the required services have been determined, any subsequent evaluation of a child would constitute a reevaluation.

Id.

On November 20, 2012, before the PCS-3 evaluation process was completed, Student withdrew from PCS-3 and enrolled at City Middle School 2, a DCPS public

³ Petitioner has not asserted any claims against PCS-3 in this case or named PCS-3 as a co-respondent.

school. It then fell to DCPS to complete the evaluation process. *See* 34 CFR § 300.304(c)(5). (Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with §300.301(d)(2) and (e), to ensure prompt completion of full evaluations.)

On January 29, 2013, DCPS compounded PCS-3's error by scheduling a meeting to determine Student's "initial eligibility" for special education even though Student's eligibility had been determined years before. At the subsequent February 5, 2013 MDT meeting, the City Middle School 2 MDT team refused to identify Student as student with a disability as defined in the IDEA, thereby effectively terminating his special education eligibility. This termination violated the IDEA's procedural requirements. The IDEA requires that if a public agency determines that it will not continue the provision of special education and related services to a child with a disability, the public agency must provide the parent with prior written notice of its proposal to discontinue the provision of FAPE to the child. *See Questions and Answers on IEPs, Evaluations, and Reevaluations*, 111 LRP 63322, Question D-4 (OSERS 2011). DCPS' February 5, 2013 Prior Written Notice informed the parent that it refused to identify Student as a student with a disability – not that it proposed to discontinue the provision of FAPE to a student who had already been determined eligible. Further, an LEA must conduct a full reevaluation, with appropriate notice to the parent, before determining that a student is no longer a child with a disability. *See* 34 C.F.R. § 300.305(e); *V.S. ex rel. A.O. v. Los Gatos–Saratoga Joint Union High School Dist.*, 484 F.3d 1230, 1234 (9th Cir.2007) (finding that because the child 'was officially classified as a "child with a disability' . . . ,

the school at that point, and prospectively, had only two choices: 1) provide [the child] services in accordance with an appropriately developed IEP, . . . ; or 2) properly complete the assessment in order to find her ineligible. 20 U.S.C. § 1414(c)(5).’.)”

To conduct a lawful special education reevaluation of Student, the IDEA required DCPS to:

- (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

. . . On the basis of that review, and input from the child’s parents, identify what additional data, if any, are needed to determine . . . whether the child continues to have such a disability, and the educational needs of the child.

34 CFR § 300.305(a).

When the City Middle School 2 MDT team met on February 5, 2013, the MDT team considered only School Psychologist’s review of the November 15, 2012 independent psycho-educational evaluation of Student, teacher input and observations. The MDT team did not consider Student’s prior evaluations or IEP data, even though Student had received special education services under DCPS IEPs at City Middle School 1 for the 2011-2012 school year and at City Elementary School 2 for the preceding school year. In its February 5, 2013 Final Eligibility Determination Report, DCPS stated that no previous interventions had been attempted for Student, even though he had been receiving special education and related services continuously since 2006 except for when he attended PCS-3.

I conclude that DCPS’ termination of Student’s special education eligibility on

February 5, 2013 was a procedural violation of the IDEA because DCPS failed to provide the parent with prior written notice of its proposal to discontinue the provision of FAPE to Student and because the MDT team's February 5, 2013 eligibility determination was not based upon a complete review of the existing evaluation data on Student or on consideration of his prior history as a child with a disability. *Cf. Smith v. District of Columbia*, 2010 WL 4861757, 3 (D.D.C. Nov. 30, 2010) (Failure to timely reevaluate is a procedural violation of IDEA.) Although a procedural violation may rise to the level of a denial of a FAPE, an IDEA claim is viable only if procedural violations affected the student's substantive rights. *See Lesesne ex rel. B.F. v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006). *See, also, K.E. v. District of Columbia*, 2014 WL 242986, 6 (D.D.C. Jan. 13, 2014) (Procedural violation is actionable under the IDEA only if it results in a loss of educational opportunity for the student, seriously deprives parents of their participation rights, or causes a deprivation of educational benefits.) Clearly DCPS' failure to comply with the IDEA's requirements for terminating special education eligibility, and its failure to ensure that Student received appropriate special education and related services since the February 5, 2013 MDT meeting, have affected Student's substantive rights and he has been denied a FAPE. DCPS' failure in 2013 to provide Mother prior written notice of its proposal to discontinue the provision of FAPE to Student also deprived the parent of her IEP participation rights.

Parent further contends that the City Middle School 2 MDT team erred in not finding Student eligible for special education as a student with an SLD or ED disability. Because DCPS must ensure that a proper reevaluation of Student is conducted in order to determine whether Student continues to have a disability and his current educational needs, I decline to reach the issue of whether Student met the IDEA criteria for an SLD

or ED disability as of the February 5, 2013 MDT meeting.

2. Has DCPS failed to evaluate Student in all areas of suspected disabilities, specifically for an OT disability and for other mental health concerns?

The IDEA regulations require that, as part of a special education evaluation, the local education agency (LEA) must administer such assessments as may be needed to produce the data needed to determine (i) whether a child is a child with a disability and (ii) what are the educational needs of the child. *See* 34 CFR § 300.305(a), (c). The LEA must ensure that the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, communicative status and motor abilities. 34 CFR § 300.304(c)(4). When conducting an evaluation, it is the responsibility of a child's IEP team, on the basis of its review of existing data and input from the parent, to identify what additional data are needed to determine Student's educational needs. *See* 34 CFR § 300.305(a)(2).

In her November 15, 2012 psycho-educational evaluation, Clinical Psychologist recommended an OT evaluation of Student to assess for possible deficits visual-perceptual and visual-motor skills and, particularly related to handwriting, fine motor skills. There was no evidence at the due process hearing that the MDT team at City Middle School 2 considered this recommendation in deciding whether additional data were needed to determine Student's educational needs. I find that Mother has established that an OT assessment is needed in order to determine whether Student has possible functional skill deficits. Clinical Psychologist also recommended that further evaluation would be warranted to gain additional information about unspecified "other mental health concerns." It is unclear from the November 15, 2012 report whether these concerns relate to Student's educational needs or to general health concerns. I find that

Petitioner has not established that the February 5, 2013 MDT team erred by not requiring additional mental health assessments to determine Student's needs.

Compensatory Education

Petitioner seeks an award of compensatory education for DCPS' failure to provide special education and related services to Student since February 2013. The IDEA gives Hearing Officers "broad discretion" to award compensatory education as an "equitable remedy" for students who have been denied a FAPE. *See 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*, 952 F.Supp.2d 31 (D.D.C.2013). 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. *Gill v. District of Columbia*, 770 F.Supp.2d 112, 116-117 (D.D.C.2011), *aff'd.*, *Gill v. District of Columbia*, 2011 WL 3903367, 1 (D.C.Cir. Aug. 16, 2011).

In this decision, I have found that DCPS denied Student a FAPE by improperly exiting him from special education services at the MDT meeting on February 5 2013. Educational Advocate recommends that Student be awarded 200 hours of 1:1 tutoring in

math, reading, and written language to compensate for missed specialized instruction since February 2013. Her analysis takes into consideration that in his September 16, 2008 IEP (the most recent IEP introduced into evidence), Student had been provided 13 hours per week of specialized instruction, and that he has not been provide services since February 2013. The record also establishes that the PCS-3 MDT team determined on December 6, 2012 that Student should receive 10 hours per week of specialized instruction in an inclusive setting. If DCPS had provided those services to Student after February 2013, Student would have been offered some 500 hours of specialized instruction through the date of the due process hearing. Instead of proposing hour-for-hour compensation, Educational Advocate recommended 200 hours of 1:1 academic tutoring for Student in order not “to overwhelm Student with too many hours” of instruction. Educational Advocate has extensive experience as a special education teacher and administrator. I find her recommendation for compensatory specialized instruction services in this case to be reasonable and I will order DCPS to provide the recommended tutoring services.

Educational Advocate also recommended that Student receive some 26 hours of additional behavioral support services as compensation for not receiving psychological counseling since February 2013. I find that the Petitioner has not established what, if any, educational harm Student suffered from not receiving counseling or what services he would need “to elevate him to the position he would have occupied” had he received counseling services. Lastly, Educational Advocate also recommended an award of some 26 hours of compensatory speech and language services for DCPS’ failure to provide Student these related services after February 2013. Although Student received speech and language services under his 2008 IEP, the PCS-3 MDT team did not recommend

speech and language services. I find that Petitioner has not established that Student has a continuing need for speech and language services. Therefore, I will not include compensatory behavioral support or speech and language services in the relief ordered.

Summary

In this decision, I have determined that Student was denied a FAPE by being improperly exited from special education services at the February 5, 2013 City Middle School 2 MDT meeting and that DCPS violated the IDEA's requirement to evaluate Student in all areas of suspected disabilities by not conducting the recommended OT assessment. DCPS will be required to ensure that Student is properly reevaluated, pursuant to 34 CFR §§ 300.304 through 300.311, to enable his current IEP team to determine whether he continues to have a disability, and what are his educational needs. In the interim, Student must receive specialized instruction and related services as provided in his last IEP. DCPS will also be required to provide Student compensatory education in accordance with this decision.

ORDER

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

ORDERED:

1. DCPS' February 5, 2013 refusal to identify Student as a student with a disability as defined in IDEA is vacated. Pending an IDEA reevaluation of Student, DCPS must ensure that Student continues to receive all special education and related services due him as a child with a disability, in accordance with his most recent eligibility determination and IEP, developed prior to the 2012-2013 school year;
2. DCPS shall ensure that a Occupational Therapy assessment of Student is conducted, subject to obtaining parental consent, without undue delay;
3. DCPS shall ensure that Student's MDT/IEP team at his current school convenes no later than July 31, 2014 to conduct an IDEA reevaluation of Student and to review and revise, as appropriate, his last IEP. DCPS shall ensure that the

MDT/IEP team is provided existing evaluation data on the Student, including data available to the last IEP team which reevaluated Student prior to the 2012-2013 school year, his last IEP, IEP progress reports for the 2011-2012 school year as well as the other data specified in 34 CFR § 300.305(a). If DCPS proposes to discontinue the provision of special education and related services to Student, DCPS shall provide the parent with prior written notice of such proposal and must ensure that the requirements of 34 CFR 300.305(e) are met before Student's current MDT/IEP team considers such a determination.

4. DCPS shall provide Student, as compensatory education, 200 hours of publicly-funded 1:1 academic tutoring in such academic areas and on a schedule as may be reasonably agreed upon with the parent; and

5. All other relief requested by Petitioner herein is denied.

Date: June 30, 2014

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

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).