

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

Office of Dispute Resolution
1050 First Street, N.E., 4th Floor
Washington, D.C. 20002

OSSE
Office of Dispute Resolution
April 22, 2018

<i>Student</i> , ¹)	Case No.: 2018-0016
through <i>Parent</i> ,)	
<i>Petitioner</i> ,)	Date Issued: 4/22/18
)	
v.)	Hearing Officer: Keith L. Seat, Esq.
)	
District of Columbia Public Schools)	Hearing Date: 4/18/18
("DCPS"),)	ODR Hearing Room: 112
Respondent.)	
)	

HEARING OFFICER DETERMINATION

Background

Petitioner, Student’s Parent, pursued a due process complaint alleging that Student had been denied a free appropriate public education (“FAPE”) in violation of the Individuals with Disabilities Education Improvement Act (“IDEA”) because Student was not evaluated when agreed. DCPS responded that the delay in evaluation was a mere oversight that could have been easily corrected.

Subject Matter Jurisdiction

Subject matter jurisdiction is conferred pursuant to the IDEA, 20 U.S.C. § 1400, *et seq.*; the implementing regulations for IDEA, 34 C.F.R. Part 300; and Title V, Chapter E-30, of the District of Columbia Municipal Regulations (“D.C.M.R.”).

Procedural History

Following the filing of the due process complaint on 1/23/18, the case was assigned to the undersigned on 1/24/18. Respondent filed a timely response on 1/31/18, which did not challenge jurisdiction. The resolution session meeting (“RSM”) took place on 2/5/18 without success. The 30-day resolution period ended on 2/22/18. A final decision in this matter must be reached no later than 45 days following the end of the resolution period as

¹ Personally identifiable information is provided in Appendix A, including terms initially set forth in italics.

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extended by a 20-day continuance, which requires a Hearing Officer Determination (“HOD”) by 4/28/18.

The due process hearing took place on 4/18/18 and was closed to the public. Petitioner was represented by *Petitioner’s Counsel A* and *Petitioner’s Counsel B*. DCPS was represented by *Respondent’s counsel*. Petitioner participated in the entire hearing.

Petitioner’s Disclosures, submitted on 3/12/18, contained documents P1 through P16, which were admitted into evidence without timely objection. Respondent’s Disclosures, submitted on 3/12/18, contained documents R1 through R11, which were admitted into evidence without objection.

Petitioner’s counsel presented 2 witnesses in Petitioner’s case-in-chief (*see Appendix A*):

1. Parent
2. *Psychologist* (qualified without objection as an expert in Psychology)

Respondent’s counsel presented 2 witnesses in Respondent’s case (*see Appendix A*):

1. *Monitoring Specialist* (qualified without objection as an expert in Special Education Programming and Placement)
2. *Resolution Team Manager*

The issue to be determined in this Hearing Officer Determination is:

Issue: Whether DCPS denied Student a FAPE by (a) failing to reevaluate Student for over 9 months in violation of Petitioner’s substantive rights, and/or (b) denying Petitioner’s rights to meaningfully participate in decision-making regarding the provision of FAPE to Student.² *Petitioner has the burden of persuasion on this issue.*

The relief requested by Petitioner is:

1. A finding that DCPS denied Student a FAPE.
2. DCPS shall authorize an independent comprehensive psychological evaluation at the provider’s customary rate.
3. Within 60 days from the date of decision, DCPS shall convene an IEP meeting to review the findings of the evaluation ordered above and update Student’s IEP and placement.
4. Any other relief that is just and appropriate.

² This Issue combines both issues a. and b. on pages 7-8 of the due process complaint.

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When Petitioner rested her case-in-chief, counsel for Respondent made an oral motion for directed verdict, which the undersigned denied without argument on the record.

Findings of Fact

After considering all the evidence, as well as the arguments of counsel, the Findings of Fact³ are as follows:

1. Student is a resident of the District of Columbia; Petitioner is Student's Parent.⁴ Student is *Age*, *Gender* and in *Grade* at Nonpublic School.⁵

2. Student has been eligible for special education and related services from an early grade; Student's eligibility classification is now Multiple Disabilities ("MD"), with both Emotional Disturbance ("ED") and Other Health Impairment ("OHI") due to Attention Deficit Hyperactivity Disorder ("ADHD").⁶

3. Student's most recent IEP in the record in this proceeding is dated 4/13/17 and provided 30 hours/week of specialized instruction outside general education, with 1 hour/week of Behavioral Support Services ("BSS") outside general education and 1 hour/week of speech-language consultation service, and added a dedicated aide that is not on the prior IEP.⁷ Student's previous IEP was dated 4/12/16 and provided 27.5 hours/week of specialized instruction outside general education, 6 hours/week of BSS outside general education and 4 hours/week of speech-language pathology outside general education.⁸

4. Student's last Comprehensive Psychological Reevaluation was dated 3/6/15 and was conducted to determine whether Student would continue with a qualifying disability of Specific Learning Disability or would be better described as Emotionally Disabled based on "explosive" behaviors, such as screaming, yelling, running away and destroying property, as well as dealing with sadness, low self-esteem and abandonment.⁹

5. Student's annual IEP team meeting for 2016/17 was on 4/13/17 and attended in person by Student, Parent, Petitioner's Counsel B and Monitoring Specialist, along with

³ Footnotes in these Findings of Fact refer to the sworn testimony of the witness indicated or to an exhibit admitted into evidence. To the extent that the Hearing Officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, the Hearing Officer has taken such action based on the Hearing Officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.

⁴ Parent.

⁵ *Id.*

⁶ P14-2; P3-1; Monitoring Specialist.

⁷ P3-1,11; P1-1,12.

⁸ P1-1,12.

⁹ P14-1,16; Parent (Student is violent).

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others in person and by telephone.¹⁰ Monitoring Specialist was the DCPS monitor of Nonpublic School in 2016/17 and checked in with Nonpublic School about once a week and checked on Student about once a quarter.¹¹

6. At the 4/13/17 IEP meeting, Parent stated that she wanted a comprehensive psychological reevaluation of Student; the Overall Conclusion in the IEP notes (taken by Nonpublic School) was that Student “will be given a Comprehensive Psychological Evaluation which will be included in [the] new IEP along with a dedicated aide.”¹² An updated comprehensive psychological evaluation is important beyond classification in order to get a complete assessment which can guide interventions in various ways.¹³

7. In the 4/13/17 IEP meeting notes, Monitoring Specialist was recorded as stating that a “Psychological assessment needs to be done to remove Speech from IEP”; that she “[w]ill reach out to have psychological done”; and that “[n]ew IEP will include Psychological Evaluation and add dedicated aide”; Monitoring Specialist testified that those statements by Nonpublic School were not fully accurate (and that the reference to a Psychological being done to remove Speech was incorrect).¹⁴

8. Parent signed a DCPS consent form at the 4/13/17 IEP meeting giving her consent for an evaluation/reevaluation; the form does not indicate which evaluation(s) it covers.¹⁵ Petitioner’s Counsel B stated at the RSM meeting on 2/5/18 that Parent consented to the comprehensive psychological evaluation at the 4/13/17 IEP meeting.¹⁶ Monitoring Specialist testified that the consent was needed to complete the paperwork in the SEDS database which was missing consent from an earlier speech evaluation.¹⁷

9. Parent expected the comprehensive psychological testing to be completed over the summer of 2017 and then the IEP completed, but DCPS didn’t do the evaluation or follow up on it.¹⁸ From 4/13/17 until the due process complaint was filed on 1/23/18, neither Parent nor her counsel ever contacted Monitoring Specialist regarding Student’s comprehensive psychological evaluation.¹⁹ Parent contacted Nonpublic School at the

¹⁰ P5-1.

¹¹ Monitoring Specialist.

¹² P5-2,4; Monitoring Specialist.

¹³ Psychologist.

¹⁴ P5-2,3.

¹⁵ P6-1; Parent; Monitoring Specialist.

¹⁶ R2-1,2.

¹⁷ Monitoring Specialist; R2-2 (consent that Parent signed on 4/13/17 was for speech evaluation).

¹⁸ Parent.

¹⁹ Monitoring Specialist.

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beginning of 2017/18 and was informed that there was a new DCPS monitor at Nonpublic School.²⁰ The new DCPS monitor didn't know about Student's evaluation.²¹

10. Monitoring Specialist recently spoke with the new DCPS monitor for Nonpublic School and learned that on 3/23/18 an IEP team meeting was held for Student at which it was agreed to move forward with comprehensive psychological, speech, and occupational therapy evaluations and Parent signed consent; Petitioner's Counsel B participated.²² The DCPS comprehensive psychological evaluation is now under way and is due by the first part of May 2018.²³ It would not be desirable to have a second comprehensive psychological Independent Educational Evaluation ("IEE") of Student completed at the same time; Petitioner's counsel agreed.²⁴

11. The current OSSE rate for an independent comprehensive psychological evaluation is \$1618, as of October 2017.²⁵ DCPS, in its discretion, may permit reasonable and documented fees in excess of its authorized maximum IEE rates in certain circumstances when justified by the evaluator as essential for educational and/or diagnostic purposes.²⁶ Such exceptions for enhanced rates are sought from DCPS every couple of months and are sometimes granted.²⁷ No request was made for an enhanced rate for the evaluation of Student in this case.²⁸

12. Petitioner's primary evidence on the cost of independent comprehensive psychological evaluations was from the testimony of Psychologist, who conducts 2-3 comprehensive psychological evaluations a week and typically charges \$3000 each, generally to parents.²⁹ Psychologist sometimes conducts comprehensive psychological evaluations for DCPS at the standard OSSE rate, but stops accepting such work whenever she grows excessively frustrated with the difficulty of collecting payment from DCPS; Psychologist begins accepting cases again if she hears from colleagues about great need from children who might otherwise not be evaluated.³⁰ Psychologist has always gotten paid from DCPS eventually (apart from 2 older OSSE-rate cases that she didn't consider worth the hassle of submitting for payment).³¹

13. Psychologist confers back and forth on various topics, including rates, with at least 30 psychologists in the local area and understands that the going rate for conducting

²⁰ Parent.

²¹ *Id.*

²² Monitoring Specialist.

²³ *Id.*

²⁴ *Id.*

²⁵ Resolution Team Manager; R2-3 (rounded to the nearest dollar).

²⁶ R4-2; Resolution Team Manager.

²⁷ Resolution Team Manager.

²⁸ *Id.*

²⁹ Psychologist.

³⁰ *Id.*

³¹ *Id.*

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comprehensive psychological evaluations in the D.C. area is about \$3500, ranging from the high end of around \$5000 to the low end of about \$1600 for suburban practitioners who rely on externs and take months for each evaluation.³² Psychologist testified that she knows providers who would be willing to do a comprehensive psychological evaluation for \$3000, including 3-4 in her own practice group of about 20, although Psychologist was less sure about the likely response if payment was to be by DCPS.³³ Psychologist has also spoken with 4-5 psychologists who take the OSSE rate; all have trouble getting paid by DCPS.³⁴

14. Petitioner's remaining evidence on rates was a written analysis from an educational advocate based on calls to psychologist offices listed in the DCPS Parent Guide (plus an additional office) to inquire if they were generally willing to conduct comprehensive psychological evaluations, apparently at a rate of \$1360; the analysis found one group of psychologists who normally charges \$2900 and another office that charges \$3000 to \$4000 depending on circumstances.³⁵

15. In Respondent's case, Resolution Team Manager testified that he was confident that Student's comprehensive psychological evaluation could be conducted by an independent psychologist for the OSSE rate, and certainly for \$3000.³⁶ Resolution Team Manager explained that DCPS made inquiries by calling local psychologists about the cost of comprehensive psychological evaluations and found that about 10 were willing to take the OSSE rate (now \$1618) and that a total of 17 were willing to accept \$3000 or less.³⁷ As for billing difficulties, Resolution Team Manager noted that DCPS invoices have been receiving higher scrutiny because of generalized concerns about contract fraud.³⁸

16. At the 2/5/18 RSM, DCPS offered to authorize an IEE at the standard OSSE rate of \$1618; Petitioner's Counsel B sought authorization for an IEE at an independent provider's "customary rate," but had not chosen the provider.³⁹ Petitioner's Counsel B confirmed at the RSM that an IEE was all Petitioner sought, again asking for a provider's "customary rate."⁴⁰ At the RSM, DCPS offered to do a comprehensive psychological evaluation itself and had a psychologist ready to begin.⁴¹ DCPS followed up with Petitioner's Counsel B on 2/12/18 seeking the rate of the independent provider without success.⁴²

17. On 2/20/18, DCPS provided a \$3000 authorization for a comprehensive psychological IEE to Petitioner's counsel, without requiring settlement; DCPS attached a

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ P11-2,3; P7-10.

³⁶ Resolution Team Manager.

³⁷ *Id.*

³⁸ *Id.*

³⁹ R2-2.

⁴⁰ R2-3.

⁴¹ R2-2.

⁴² R3-2.

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parent guide and supplemental provider list and offered any further assistance needed in finding a provider for the evaluation.⁴³

18. Psychologist was not asked by Petitioner's counsel or anyone whether she would conduct a comprehensive psychological evaluation of Student for \$3000, but would probably not accept the work because of the frustration of trying to collect from DCPS; if she were to do the evaluation it would likely take about 3-4 months from start to finish.⁴⁴ There was no testimony or other evidence in the record that any psychologist ever refused to conduct the comprehensive psychological evaluation of Student for \$3000 (or any other amount).⁴⁵

Conclusions of Law

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

The overall purpose of the IDEA is to ensure that "all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). *See Boose v. Dist. of Columbia*, 786 F.3d 1054, 1056 (D.C. Cir. 2015) (the IDEA "aims to ensure that every child has a meaningful opportunity to benefit from public education").

"The IEP is 'the centerpiece of the statute's education delivery system for disabled children.'" *Andrew F. ex rel. Joseph F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 994, 197 L. Ed. 2d 335 (2017), *quoting Honig v. Doe*, 484 U.S. 305, 311, 108 S. Ct. 592, 98 L.Ed.2d 686 (1988). "The IEP is the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Andrew F.*, 137 S. Ct. at 994, *quoting Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 181, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982).

Once a child who may need special education services is identified and found eligible, DCPS must devise an IEP, mapping out specific educational goals and requirements in light of the child's disabilities and matching the child with a school capable of fulfilling those needs. *See* 20 U.S.C. §§ 1412(a)(4), 1414(d), 1401(a)(14); *Andrew F.*, 137 S. Ct. at 994; *Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385 (1985); *Jenkins v. Squillacote*, 935 F.2d 303, 304 (D.C. Cir. 1991); *Dist. of Columbia v. Doe*, 611 F.3d 888, 892 n.5 (D.C. Cir. 2010).

The IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Andrew F.*, 137 S. Ct. at 1001. The Act's

⁴³ R3-1; R4-1.

⁴⁴ Psychologist.

⁴⁵ Administrative Notice.

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FAPE requirement is satisfied “by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” *Smith v. Dist. of Columbia*, 846 F. Supp. 2d 197, 202 (D.D.C. 2012), *citing Rowley*, 458 U.S. at 203. The IDEA imposes no additional requirement that the services so provided be sufficient to maximize each child’s potential. *Rowley*, 458 U.S. at 198. In its recent decision, the Supreme Court made very clear that the standard is well above *de minimis*, however, stating that “[w]hen all is said and done, a student offered an educational program providing ‘merely more than *de minimis*’ progress from year to year can hardly be said to have been offered an education at all.” *Andrew F.*, 137 S. Ct. at 1001.

A Hearing Officer’s determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a Hearing Officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child’s right to a FAPE; (ii) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. 300.513(a). In other words, an IDEA claim is viable only if those procedural violations affected the child’s *substantive* rights. *Brown v. Dist. of Columbia*, 179 F. Supp. 3d 15, 25-26 (D.D.C. 2016), *quoting N.S. ex rel. Stein v. Dist. of Columbia*, 709 F. Supp. 2d 57, 67 (D.D.C. 2010).

Petitioner carries the burden of production and persuasion, except on issues of the appropriateness of an IEP or placement on which Respondent has the burden of persuasion, if Petitioner establishes a prima facie case. D.C. Code Ann. § 38-2571.03(6); *Schaffer ex rel. Schaffer v. West*, 546 U.S. 49, 62, 126 S. Ct. 528, 537, 163 L. Ed. 2d 387 (2005). “Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether . . . sufficient evidence [was presented] to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE.” 5-E D.C.M.R. § 3030.3.

Issue: *Whether DCPS denied Student a FAPE by (a) failing to reevaluate Student for over 9 months in violation of Petitioner’s substantive rights, and/or (b) denying Petitioner’s rights to meaningfully participate in decision-making regarding the provision of FAPE to Student. (Petitioner has the burden of persuasion on this issue.)*

Petitioner prevailed on her burden of persuasion on the central question of whether there was a denial of FAPE due to the delay in conducting the comprehensive psychological evaluation of Student, but not on the question of being denied meaningful participation in decision-making regarding Student.

Evaluations of children by experts are central to the determination of what special education and related services are needed. *See Hill v. Dist. of Columbia*, 2016 WL 4506972, at *18 (D.D.C. 2016) (“evaluation’s primary role is to contribute to the development of a sound IEP,” *quoting Long v. Dist. of Columbia*, 780 F. Supp. 2d 49, 60 (D.D.C. 2011)). The IDEA requires a reevaluation of each student with a disability at least once every three years, or sooner if the student’s parent or teacher requests a reevaluation, or if DCPS determines that the needs of the student warrant reevaluation. 34 C.F.R. 300.303.

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Here, Parent unambiguously sought a comprehensive psychological reevaluation (often simply called an “evaluation” herein) of Student and the team apparently agreed at the 4/13/17 IEP meeting. The Nonpublic School notes from the meeting are clear that Student would be given a comprehensive psychological evaluation, and specified that Monitoring Specialist would reach out to have the evaluation done. While an exculpatory explanation was put forth by DCPS at the due process hearing, according to DCPS’s 1/31/18 Response the comprehensive psychological evaluation of Student was not done simply due to “oversight” or “miscommunication.” There is no dispute that the evaluation remains undone to this day, despite DCPS providing an IEE at a much higher than usual rate to Petitioner’s counsel 2 months ago.

Petitioner’s Counsel B was at the 4/13/17 IEP meeting when the evaluation was requested, but no reminder was provided DCPS until the due process claim itself was filed on 1/23/18, by which time Petitioner’s counsel asserted that the damage to Student was done. But as an initial matter, the responsibility and legal obligation to carry out the evaluation was on DCPS. Accordingly, just as in *James v. Dist. of Columbia*, 194 F. Supp. 3d 131, 143 (D.D.C. 2016), the failure to provide Student a comprehensive psychological evaluation was not merely a procedural violation but a denial of FAPE, at it may well have meant that Student’s services and IEP were inadequate, depriving Student of educational benefit. 34 C.F.R. 300.513(a).

On the other hand, the undersigned is not persuaded that there was a further violation by Parent not participating in decision-making based on the results of the evaluation, for she and her counsel participated in the IEP team meetings and there was no evidence that they did not participate in all decision-making meetings that were held. While the comprehensive psychological evaluation was not completed in time for the 3/23/18 IEP meeting, any harm from that delay will be fully addressed in the denial of FAPE found above. As the Court explained in another case emphasized by Petitioner, *Smith v. Dist. of Columbia*, 2010 WL 4861757, at *5 (D.D.C. 2010), the parent there failed to establish an inability to participate in any follow up meeting that took place because the reevaluations were not more timely, so was not denied the right to participate meaningfully in IEP development.

After the due process complaint was filed, an RSM was conducted on 2/5/18 at which DCPS first offered to authorize an IEE at the standard OSSE rate of \$1618 in order to resolve the matter. Then on 2/20/18, DCPS authorized an IEE for \$3000 with no requirement of settlement, but the evaluation inexplicably still did not begin despite Petitioner’s counsel receiving authorization at the higher rate.

This Hearing Officer concludes that Petitioner failed to demonstrate that the \$3000 IEE was an insufficient rate, for Petitioner’s own evidence revealed a variety of psychologists willing to conduct comprehensive psychological evaluations for \$3000, even including Petitioner’s expert Psychologist (albeit not sure she wanted to accept a DCPS IEE at that time due to frustrating billing issues). Petitioner’s counsel acknowledged never asking Psychologist or anyone else whether they would evaluate Student for \$3000 and thus were refused by no one. Moreover, the testimony from both Psychologist and Resolution Team Manager was that each knew (or knew of) psychologists who were willing to conduct

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comprehensive psychological evaluations even for the lower OSSE rate, much less the \$3000 authorized in this case. The undersigned is particularly unpersuaded by any assertion that DCPS is obliged to issue a “blank check” to Petitioner’s counsel by authorizing an unspecified independent provider to conduct an evaluation at an unknown and uncapped “customary rate.” *See, e.g., Letter to Kirby*, 213 IDELR 233 (OSERS May 4, 1989) (to avoid unreasonable charges a district may establish a maximum rate for IEEs, but that maximum rate must allow parents to choose from among qualified professionals in the area); *M.V. v. Shenendehowa Cent. Sch. Dist.*, 2013 WL 936438, at *7 (N.D.N.Y. 2013) (existence of several willing providers needed to show reasonableness of IEE fee cap).

Remedy

The IDEA gives Hearing Officers broad discretion to provide an equitable remedy for students who have been denied a FAPE. *See Reid ex rel. Reid v. Dist. of Columbia*, 401 F.3d 516, 522-23 (D.C. Cir. 2005); *B.D. v. Dist. of Columbia*, 817 F.3d 792, 797-98 (D.C. Cir. 2016); *Hill v. Dist. of Columbia*, 2016 WL 4506972, at *25 (D.D.C. 2016) (IDEA prescribes broad discretion in fashioning relief for educational deprivation). Further, “hearing officers are reminded that ‘[t]he essence of equity jurisdiction’ is ‘to do equity and to mould each decree to the necessities of the particular case.’” *Lopez-Young v. Dist. of Columbia*, 211 F. Supp. 3d 42, 55 (D.D.C. 2016), *quoting Reid*, 401 F.3d at 523-24.

Turning to the appropriate remedy in this case, it is notable that Petitioner’s counsel did not seek compensatory education in the due process complaint in this case and expressly clarified during the RSM that they were seeking only IEE authorization. Further, in a status conference with the undersigned on 3/19/18 and again at the beginning of this hearing, Petitioner’s counsel made clear that they were seeking to reserve compensatory education for a future proceeding after the evaluation is completed, so disclosed no evidence and put on no evidence during the hearing for a compensatory education award. Thus, the Order below reserves a claim for compensatory education until the evaluation is completed in case there was harm to Student that needs to be remedied due to the 9-month delay which exceeds the remedy discussed next.

In addition to the reservation of compensatory education discussed above, however, immediate steps are taken by the undersigned to provide an appropriate measure of compensatory education now. Significantly, Student’s IEP team meeting on 3/23/18, which Petitioner’s Counsel B attended, resulted in DCPS finally beginning the comprehensive psychological evaluation which is to be completed in due course by the first part of May 2018 (and is thus not the subject of the Order below). Further, there was no disagreement at the hearing that it would be undesirable to have a second comprehensive psychological IEE completed at the same time as the DCPS evaluation under way. In fact, DCPS’s counsel suggested in closing arguments that it might be desirable to change or modify the pending IEE in some way into compensatory education.

Accordingly, in an exercise of equity jurisdiction, this Hearing Officer picks up these strands to order the following in an effort to return the central focus to the needs of Student. The \$3000 IEE authorization is no longer needed for the comprehensive psychological evaluation and appears to this Hearing Officer to be sufficient for a reasonable amount of

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services to compensate at this time for the delay caused by DCPS. Thus, the undersigned orders as a form of immediate compensatory education, based on the modest denial of FAPE from the delay in the evaluation, that DCPS shall apply the \$3000 value of the pending IEE toward a mix of counseling, mentoring and/or tutoring as determined by Parent. All hours are to be used within 18 months in order to ensure that the beneficial services that Student needs are obtained without undue delay, along with minimizing any administrative burdens on Respondent which may result from compensatory education awards stretching over excessively long timeframes.

ORDER

Petitioner has prevailed in part, as set forth above. Accordingly, **it is hereby ordered that:**

As immediate compensatory education for the denial of FAPE found above, DCPS shall provide a letter(s) of authorization for a total of \$3000 worth of counseling, mentoring and/or tutoring services at Petitioner’s option from independent provider(s) chosen by Petitioner, with such letter(s) to be provided within 10 business days after Petitioner’s request(s). All value is to be provided and used within 18 months; any unused value will be forfeited.

Any and all other claims and requests for relief, except for any appropriate additional compensatory education based on the delay by DCPS in conducting the comprehensive psychological evaluation, are **dismissed with prejudice**.

IT IS SO ORDERED.

Dated in Caption

/s/ Keith Seat

Keith L. Seat, Esq.
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).

Copies to:

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