

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Office of Dispute Resolution
1050 First Street, NE, 3rd Floor
Washington, DC 20002

PARENT,
on behalf of STUDENT,¹

Petitioner,

v.

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Respondent.

Date Issued: April 23, 2018

Hearing Officer: Peter B. Vaden

Case No: 2018-0006

Hearing Dates: April 12 and 13, 2018

Office of Dispute Resolution
Rooms 111 and 112
Washington, D.C.

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter, the second due process proceeding this year between these parties, came to be heard upon the Administrative Due Process Complaint Notice filed by the parent against Respondent, District of Columbia Public Schools (DCPS), 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 (“D.C. Regs.”). In the prior case, Case No. 2018-0005 brought by DCPS, the District prevailed on its claim that its April 8, 2017 auditory processing evaluation of Student was appropriate and that the Parent was not entitled to a public funded Independent Educational Evaluation (IEE). *See* Hearing Officer Determination issued March 15, 2018. In the present due process proceeding, the parent alleges that DCPS failed to

¹ Personal identification information is provided in Appendix A.

develop an appropriate Individualized Education Program (IEP) for Student at a December 6, 2017 IEP team meeting and that DCPS failed to conduct a necessary psychiatric evaluation of Student as recommended in an independent psychological evaluation of Student.

Student, an AGE youth, is a resident of the District of Columbia. Petitioner's Due Process Complaint, filed on January 11, 2018, named DCPS as respondent. The undersigned Hearing Officer was appointed on January 12, 2018. On January 17, 2018, Petitioner filed a motion to consolidate this case with Case No. 2018-0005, which motion I denied by order issued on January 23, 2018. The hearing in this case was originally scheduled for March 13-14, 2018 and my final decision was due by February 23, 2018. Subsequent to the filing of Petitioner's complaint, DCPS agreed to changes in Student's IEP and educational placement. In order to assess these changes, the parent requested that the hearing date and final decision date be continued. Over the objection of DCPS, I granted the parent's request, continued the hearing and extended the final decision due date to April 27, 2018. On January 29, 2018, I convened a telephone prehearing conference with counsel to discuss the hearing date, issues to be determined and other matters.

The due process hearing in Case No. 2018-0006 was convened on April 12-13, 2018 at the Office of Dispute Resolution in Washington, D.C. The hearing, which was closed to the public, was recorded on an electronic audio recording device. The Parent appeared in person on the first day of the hearing and was represented by PARENT'S COUNSEL. Petitioner DCPS was represented by SPECIAL EDUCATION TEACHER and by DCPS' COUNSEL.

MOTHER testified and called INDEPENDENT SLP, MARYLAND SPECIAL EDUCATION TEACHER, IEE PSYCHOLOGIST, EDUCATIONAL ADVOCATE and MARYLAND SCHOOL PSYCHOLOGIST as witnesses. DCPS called as witnesses DCPS SLP, SCHOOL SOCIAL WORKER and Special Education Teacher. Parent's exhibits, P-5 through P-48, were admitted into evidence without objection, except for Exhibit P-42 which was withdrawn and Exhibit P-44 to which DCPS' objection was sustained. Exhibits P-1 through P-4 were also withdrawn. DCPS' Exhibits R-1 through R-5, R-8, R-10 through R-12, R-15 through R-19, R-21, R-27 and R-28 were admitted without objection. Exhibits R-14 and R-29 were admitted over Petitioner's objections. Exhibits R-6, R-7, R-9, R-13, R-20 and R-22 through R-26 were not offered. Counsel for the Petitioner made an opening statement. In lieu of filing post-hearing briefs, counsel for the respective parties made oral closing arguments.

JURISDICTION

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

ISSUES AND RELIEF SOUGHT

The following issues for determination were certified in the January 29, 2018

Prehearing Order:

A. Whether DCPS denied the student a free appropriate public education (FAPE) at a meeting on or about December 6, 2017 and/or during the 2017-2018 school year, when DCPS failed to provide an appropriate IEP, with services in a full time or close to full time, outside of general education, setting, appropriate goals and present levels of performance, direct speech and language services, and an appropriate disability classification;

B. Whether DCPS failed to comprehensively evaluate Student by failing to conduct a psychiatric evaluation as recommended by Student's most recent comprehensive psychological evaluation.

At the beginning of the due process hearing on April 12, 2018, Petitioner's Counsel stated that a revised IEP developed by DCPS on February 6, 2018 was satisfactory to the parent and that DCPS' proposed location of services for Student at CITY SCHOOL 2 was suitable. The remaining relief requested by the parent is for an order that DCPS fund an independent psychiatric evaluation of Student and that Student be awarded compensatory education for the alleged denial of FAPE from the December 6, 2017 IEP meeting through the date of Student's pending transfer to City School 2.

FINDINGS OF FACT

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

1. Student, an AGE youth, resides in the District of Columbia with Mother. Testimony of Mother. Student is eligible for special education, as a student with an Other Health Impairment (Attention Deficit Disorder or Attention Deficit-Hyperactivity Disorder) (OHI-ADHD). Exhibit P-16. Student currently attends DCPS' CITY SCHOOL 1, where Student is in the GRADE.
2. Student has been repeatedly determined eligible for special education, beginning in March 2012. Student's initial eligibility classification was Developmental Delay. Exhibit P-10. In 2015, Student was determined eligible under the OHI-ADHD classification. Exhibit P-10.
3. In August 2017, Independent Psychologist conducted a comprehensive psychological evaluation of Student. In her October 5, 2017 assessment report, Independent Psychologist reported that Student's full scale IQ score, 76, was in the Very

Low range when compared to other children of the same age. On the Woodcock Johnson IV Tests of Achievement (WJ-IV), Student demonstrated academic performance that was largely two to three years below that of average peers of Student's age. Student's WJ-IV scores fell in the lowest two categories, Very Limited or Extremely Limited. Notably, Student's scores for Broad Reading, Reading Fluency, Academic Skills and Academic Fluency, fell in the Extremely Limited range. Independent Psychologist summarized that Student's current behavior suggested that Student was functioning at a borderline level of intelligence, that Student is significantly impaired by ADHD and that Student suffers severe emotional dysregulation. Independent Psychologist recommended that Student met IDEA criteria for the Emotionally Disturbed (ED) disability classification as well as for OHI-ADHD. She recommended that Student most likely should be placed in a therapeutic school to better meet Student's needs. Independent Psychologist also recommended that Student would strongly benefit from a psychiatric evaluation to determine if a medication might help to manage Student's symptoms related to either ADHD or emotional dysregulation, or both. Exhibit P-10, Testimony of Independent Psychologist.

4. At City School 1, DCPS' speech-language pathologist (DCPS SLP) has provided speech and language services to Student since the 2015-2016 school year. Student demonstrated progress in speech and language. In the February 4, 2016 IEP, the IEP team changed Student's speech and language services from direct pull-out services to consultative services to be sure that Student could maintain appropriate speech and language progress in the classroom setting. Student continued to make progress. Testimony of DCPS SLP.

5. In January 2017, DCPS SLP proposed to end speech and language services for Student. Mother and Educational Advocate disagreed and requested an Independent Educational Evaluation (IEE) speech and language evaluation. The IEP team decided to leave speech and language consultation services in Student's January 31, 2017 IEP. Testimony of DCPS SLP.

6. In the January 31, 2017 IEP, the City School 1 IEP team provided for Student to receive 7.5 hours per week of Specialized Instruction, including 5 hours outside general education, 120 minutes per month of Behavioral Support Services and 30 minutes per month of Speech-Language Pathology Consultation Services. Exhibit P-12.

7. In the 2017-2018 school year, Student's City School 1 IEP team met on September 28, 2017, November 17, 2017, December 6, 2017, January 11, 2018 and February 6, 2018. Mother and her representatives attended all of the meetings in person or by telephone. Exhibits R-1 through R-5.

8. At the September 28, 2017 IEP meeting, DCPS proposed to evaluate Student in the area of core language and to conduct a classroom speech and language observation. After consulting with her attorney, Mother refused consent for the assessments. DCPS also proposed to conduct a psychological reevaluation of Student. Mother withheld consent because Independent Psychologist's evaluation was then in process. At the meeting, Mother granted DCPS permission to update Student's IEP to provide for a personal FM system designed to assist children with ADHD and to update Student's least restrictive environment from general education to partial mainstream/partial inclusion. Exhibit R-5.

9. At the November 17, 2017 IEP team meeting, the IEP team reviewed Student's functional behavioral assessment (FBA) and an IEE Speech and Language evaluation report and an Occupational Therapy evaluation. Exhibit R-5.

10. At the December 6, 2017 IEP team meeting, the IEP team reviewed Independent Psychologist's October 5, 2017 IEE psychological evaluation report on Student. PETITIONER'S ATTORNEY 2 requested that Student be evaluated for an Intellectual Disability (ID) and for a Specific Learning Disability (SLD). The DCPS school psychologist indicated that additional data would be needed to evaluate Student in these areas. DCPS SLP proposed to remove Student's speech and language consultation services from the IEP. The parent's representatives disagreed. The team, including the parent and her representatives, agreed to increase Student's Specialized Instruction services in the general education classroom from 2.5 hours to 4 hours weekly. At the December meeting, Petitioner's Attorney 2 also requested that Student's special education hours be increased and that Student's placement be changed to a therapeutic setting. After meeting for 1 hour and 40 minutes, the team did not complete revision of Student's IEP. The team agreed to reconvene to complete revision of Student's IEP. Exhibit R-3. Two days after the meeting, Educational Advocate requested in writing, on behalf of the parent, that DCPS conduct an "Adaptive Evaluation" to determine if Student had an Intellectual Disability and that Student be assessed for an SLD. Exhibit R-29.

11. At the January 11, 2018 IEP team meeting, revisions were made to Student's IEP annual goals. Specialized Instruction Services hours were increased to 9 hours per week in the general education services and 6 hours per week outside general

education. The general education teacher reported improvement in Student's behavior in the classroom. At the meeting, the parent and her representatives renewed their request for a full-time therapeutic placement for Student. The school representatives did not agree then to these requested changes, but committed to meet again in February 2018 after the results of Student's middle-of-year standardized tests, then underway, were obtained. There was no objection from the parent's team to that plan. Testimony of Special Education Teacher. The parent and her representatives also requested Speech and Language and Occupational Therapy related services for Student. These requests were not agreed to by the school members of the IEP team. Exhibits R-2, P-16.

12. At the January 11, 2018 IEP team meeting, Communications/Speech and Language was removed as an area of concern for Student. Speech and Language consultation services were removed from Student's IEP. Exhibit P-16.

13. At an IEP team/Resolution Session Meeting (RSM) for this case convened on February 6, 2018, the IEP team increased Student's hours of Specialized Instruction Services to 21 hours per week outside of general education and decided that Student's location of services would be changed from City School 1. Exhibit P-17. The parent is in agreement with Student's IEP as revised on February 6, 2018, except for the disability classification and the omission of Speech and Language Services. Mother has visited DCPS' proposed new school location for Student, City School 2, and agrees that City School 2 is a suitable location of services for Student. Representation of Petitioner's Counsel.

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

As provided in the D.C. Special Education Student Rights Act of 2014, the party who filed for the due process hearing, the Petitioner in this case, shall bear the burden of production and the burden of persuasion, except that where there is a dispute about the appropriateness of the student's IEP or placement, or of the program or placement proposed by DCPS, the District shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided that the Petitioner shall retain the burden of production and shall establish a *prima facie* case before the burden of persuasion falls on the District. The burden of persuasion shall be met by a preponderance of the evidence. See D.C. Code § 38-2571.03(6).

Analysis

- a. Did DCPS fail to comprehensively evaluate Student by not conducting a psychiatric evaluation as recommended by Independent Psychologist?

In her October 5, 2017 Comprehensive Psychological Evaluation Report on Student, Independent Psychologist recommended, *inter alia*, that Student would strongly benefit from a psychiatric evaluation to determine if a medication might help Student to manage symptoms related to ADHD or emotional dysregulation. Student's IEP team at City School 1 reviewed Independent Psychologist's Independent Educational Evaluation (IEE) of Student at a December 6, 2017 IEP team meeting, but DCPS has not conducted a psychiatric evaluation of Student or provided funding for the parent to obtain an independent evaluation. Petitioner contends that this was a failure

to comprehensively evaluate Student in all areas of suspected disabilities. DCPS responds that a psychiatric evaluation of Student was not warranted for educational purposes. The Petitioner has the burden of persuasion on this issue.

The IDEA regulations require that the District's special education reevaluation of a student be sufficiently comprehensive to determine whether Student continues to need special education and related services and whether any additions or modifications to the special education and related services are needed to enable Student to meet the measurable annual goals set out in the IEP and to participate, as appropriate, in the general education curriculum. *See* 34 CFR § 300.305(a)(2)(B). Decisions regarding the areas to be assessed are determined by the suspected needs of the student. *See* Department of Education, *Assistance to States for the Education of Children with Disabilities*, 71 Fed. Reg. 46643 (August 14, 2006). Generally, when a student has been evaluated for special education eligibility and the adequacy of the agency's evaluation is at issue, the hearing officer must consider whether the agency adequately gathered functional, developmental and academic information about the student's special education and related services needs to determine the content of the IEP in all areas of suspected disability and that the evaluation was sufficiently comprehensive to identify all of the student's needs. *See* 20 U.S.C. §§ 1412(a)(6)(B), 1414(b)(1-3); 34 C.F.R. § 300.304(b)(1-3), (c)(4, 6).

Student's IEP team did not need a psychiatric evaluation to determine whether Student is "a child with a disability" as defined under the IDEA. It is undisputed that Student has a qualifying OHI-ADHD disability. The question in this case is whether a psychiatric evaluation was needed to determine the content of Student's IEP or to

identify all of Student's special education and related services needs. In her October 5, 2017 IEE evaluation report and in her testimony, Independent Psychologist explained that she recommended that Student have a psychiatric evaluation to determine if a medication might help Student to manage symptoms related to ADHD or emotional dysregulation. Whether Student would, or would not, benefit from medication management for ADHD or emotional dysregulation is a health care issue, not information needed by the IEP team to determine Student's educational needs. *See* 34 CFR § 300.305(a)(2)(i)(A) (IEP team must identify what additional data are needed to determine whether the child is a child with a disability and the educational needs of the child.) None of the expert witnesses testified that Student's IEP team needed a psychiatrist's input to determine Student's educational needs or the content of Student's IEP. I find that Petitioner has not met her burden of persuasion that DCPS' decision not to conduct a psychiatric evaluation of Student was a failure to comprehensively evaluate Student as required by the IDEA.

- b. Did DCPS deny Student a FAPE, on or about December 6, 2017 and/or during the 2017-2018 school year, when DCPS failed to provide an appropriate IEP, with services in a full time or close to full time outside of general education setting, appropriate goals and present levels of performance, direct speech and language services, and an appropriate disability classification?

At an IEP team meeting on February 6, 2018, DCPS' IEP team finalized the revision of Student's IEP to increase Student's Specialized Instruction Services to 21 hours per week. DCPS and the parent have also decided that Student will be placed in the Specific Learning Support (SLS) program at City School 2. The parent agrees that the February 6, 2018 IEP and Student's new educational placement at City School 2 are appropriate, except for the IEP team's decision not to change Student's disability

classification to Multiple Disabilities (OHI-ADHD and Emotional Disturbance) and not to include Speech and Language services in Student's IEP. DCPS has the burden of persuasion as to the appropriateness of Student's IEP.

– ED Disability Classification

With regard to the disability classification on the IEP, Independent Psychologist recommended that Student's classification include Emotional Disturbance (ED) as well as OHI-ADHD, because she found that Student's conflicts and struggles go beyond what is expected for ADHD and demonstrate a deeper emotional regulation problem. At the December 6, 2017 IEP team meeting, DCPS PSYCHOLOGIST stated that under D.C. Office of the State Superintendent of Education (OSSE) eligibility criteria, for Student to be classified ED, there had to be evidence that the IEP team had reviewed and/or conducted two scientific research-based interventions to address Student's behavior/emotional skill deficiency and that the IEP team had documented the results of the intervention, including progress monitoring documentation. DCPS Psychologist told the IEP team that this criterion had not been met. In his hearing testimony, Petitioner's expert, Independent School Psychologist, opined to the contrary that DCPS had implemented a Behavior Intervention Plan (BIP) for Student and that the BIP met OSSE's researched-based interventions criterion.

With respect to the appropriateness of Student's IEP, it is unnecessary for me to decide whether Student's disability classification should include ED, in addition to OHI-ADHD. That is because the IDEA does not require that a child's disability classification be identified in the IEP, so long as the child's special education and related services needs are met. *See, e.g. Letter to Anonymous*, 48 IDELR 16 (OSEP 2006) (Child's

identified needs, not the child's disability category, determine the services that must be provided to her); *Heather S. v. State of Wis.*, 125 F.3d 1045, 1055 (7th Cir. 1997) (IDEA not concerned with labels, but with whether a student is receiving a FAPE.) To address Student's Emotional, Social and Behavioral Development area of concern, Student's December 6, 2017 IEP team provided for Student to receive 240 minutes per month of Behavioral Support Services. There has been no allegation that these behavioral services, which were continued in Student's February 6, 2018 IEP, are inadequate to meet Student's needs. I conclude, therefore, that DCPS has met its burden of persuasion that the December 6, 2017 IEP was not inappropriate for the IEP team's failure to identify ED as an additional disability classification for Student.

– Speech and Language Services

Student's February 4, 2016 IEP provided for Speech and Language as a consultation service. Previously, Student had received direct Speech and Language services from DCPS SLP. At the January 31, 2017 IEP team meeting, DCPS SLP recommended that based on Student's progress, Student's Speech and Language services should be discontinued. The parent objected and the IEP team decided to continue Speech and Language consultation services for Student. At the February 6, 2018 IEP team meeting, over the parent's objection, the IEP team decided not to provide for any Speech and Language services. The parent contends that the team's decision to curtail IEP Speech and Language services was inappropriate.

In *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S.Ct. 988 (2017), the U.S. Supreme Court elaborated on the standard, first enunciated in *Bd. of Educ. v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982), *supra*, for what

constitutes an appropriate IEP:

To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Endrew F.*, 137 S.Ct. at 999. . . . The "reasonably calculated" qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. *Id.* . . . Any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal. *Id.* (emphasis in original.) . . . The IEP must aim to enable the child to make progress. . . . [T]he essential function of an IEP is to set out a plan for pursuing academic and functional advancement. *Id.* . . . A focus on the particular child is at the core of the IDEA. The instruction offered must be "*pecially designed*" to meet a child's "*unique needs*" through an "*individualized education program.*" . . . A reviewing court may fairly expect [school] authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances. *Id.*, 137 S.Ct. at 1002.

DCPS' Speech-Language expert, DCPS SLP, testified that she had worked with Student since 2015. She observed Student several times in the classroom in the current school year and found that overall, Student was demonstrating good progress. In discussions with Mother, the parent had not reported any actual concerns relating to Student's communication skills. Student's 2017-2018 classroom teacher reported that she had no concerns about Student's understanding what was said, answering questions or responding as quickly as Student's peers. Prior to the January 2017 IEP meeting, DCPS SLP found from her informal and formal assessments that Student's receptive language skills were age appropriate. Student's expressive language skills were moderately below average, but Student had compensation strategies and did not exhibit an inability to express ideas in the classroom or to communicate with peers. Overall, Student's listening comprehension and oral expression were average. DCPS SLP opined that based on Student's performance, Student should not have difficulty understanding

or using age-appropriate language and that Student's oral language skills did not negatively affect Student's ability to access the curriculum or to make educational progress.

Petitioner's expert, Independent SLP, noted that reports from DCPS and INDEPENDENT AUDIOLOGIST confirmed Student's weakness in expressive language and that Independent Audiologist had reported that Student had scored moderately below average on pragmatic language skills. Independent SLP opined that these data indicated that Student should have 60 minutes per month of Speech and Language related services directed to social pragmatic language skills and vocabulary skills.

I found DCPS SLP's opinion more persuasive than that of Independent SLP. Independent SLP's opinion was based solely on her review of Student's records. As Independent SLP agreed in her testimony, a child may perform differently in the classroom than in a testing situation and observing the child in the classroom is a factor in determining the child's needs. Independent SLP also agreed that she had not seen any data to indicate that Student had difficulty interacting in a social setting. With regard to Independent Audiologist's June 2017 IEE evaluation of Student, DCPS SLP discounted the independent evaluation because Independent Audiologist had not obtained a Core Language score for Student. In her assessment, DCPS SLP found that Student's Core Language score, which is a measure of general language ability, was 85, in the Average range. Also, like Independent SLP, Independent Audiologist had not made behavior observations or a classroom observation of Student. Considering DCPS SLP's years of working with Student and her opportunity to observe Student at school and to conduct formal and informal assessments, I found DCPS SLP's opinion that

Student no longer needs Speech and Language services on the IEP more credible than Independent SLP's contrary opinion. DCPS has met its burden of persuasion that the omission of Speech and Language services in its February 6, 2018 IEP for Student does not make the IEP inappropriate or not reasonably calculated to enable Student to make progress appropriate in light of Student's circumstances. *See Andrew F., supra*, 137 S.Ct. at 999.

Delay in Revising Student's IEP

Finally, Petitioner complains that without disputing the appropriateness of Student's IEP, as revised on February 6, 2018 (except for the disability classification and the omission of Speech and Language services discussed above), DCPS still denied Student a FAPE by not ensuring that the February changes were made back when the IEP team met on December 6, 2017. DCPS responds that the purpose of the December 6, 2017 meeting was for the IEP team to consider the Independent Psychologist's IEE psychological evaluation of Student and that there was not time at that meeting to complete revision of Student's IEP.

At the December 6, 2017 IEP team meeting, the IEP team did review the IEE psychological evaluation as well as DCPS School Psychologist's review of the IEE assessment. Petitioner's Attorney 2 also requested at the December meeting that Student's special education hours be increased and that Student's placement be changed to a therapeutic setting. A number of other matters were discussed, including requests by Petitioner's Attorney 2 that the IEP team review Specific Learning Disability (SLD) as an additional possible disability for Student and that Student be evaluated for a possible Intellectual Disability (ID). After meeting for 1 hour and 40 minutes, the team did not

complete revision of Student's IEP, but the team did agree to increase Student's Specialized Instruction in the general education setting from 2.5 hours to 4 hours per week. The team agreed to reconvene to complete revision of Student's IEP. Two days after the meeting, Educational Advocate requested, on behalf of the parent, that DCPS conduct an "Adaptive Evaluation" to determine if Student had an ID and that Student be assessed for an SLD.

Student's IEP team met again on January 18, 2018. At that meeting, the parent and her representatives renewed their request for a full-time therapeutic placement for Student. The school representatives did not agree then to the requested changes, but committed to meet again in February 2018 after the results of Student's middle-of-year standardized tests, then underway, were obtained. There was no objection from the parent's team to that plan. When the IEP team reconvened on February 6, 2018, the entire team agreed that Student needed more Specialized Instruction Services in a more restrictive environment. The parent agreed with the resulting February 6, 2018 IEP, which provided for Student to receive 21 hours per week of Specialized Instruction in an outside of general education setting.

The IDEA does not set a time frame for revising a student's IEP, except that the IEP must be reviewed at least annually. *See* 34 CFR § 300.324(b)(1). In an analogous analysis of the timeliness of a parent-requested special education reevaluation, the U.S. District Court for the District of Columbia decided that in light of the lack of statutory guidance, a Local Education Agency (LEA) must conduct a special education reevaluation, when requested by a parent, in a "reasonable period of time," or "without undue delay," as determined in each individual case. *See Herbin ex rel. Herbin v.*

District of Columbia, 362 F.Supp.2d 254, 259 (D.D.C.2005). I conclude that, similarly, the IEP team must revise a student's IEP, as appropriate, in a reasonable period of time, or without undue delay, upon receipt of significant new information about the student's needs. Before amending a child's IEP, the IEP team is required to identify what additional data are needed "to determine any additions or modifications to the special education and related services . . . needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum." See 34 CFR § 300.305(a)(2).

In this case, Student's IEP team completed revision of Student's IEP on February 6, 2018. At the December 6, 2017 IEP meeting, the parent's representatives requested that DCPS conduct additional evaluations and there had not been enough time then to complete the revision of Student's IEP. When the IEP team met again on January 18, 2018, both sides agreed to await Student's 2017-2018 middle-of-year (MOY) test data before completing the revision to Student's IEP. Under these circumstances, I find that the IEP team's completing the revision of Student's IEP on February 6, 2018 was within a reasonable period of time and did not amount to an undue delay. In sum, I conclude that DCPS has met its burden of persuasion that the February 6, 2018 IEP was reasonably calculated to enable Student to make progress appropriate in light of Student's circumstances and that DCPS completed this revision to Student's IEP without undue delay.

ORDER

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

ORDERED:

All relief requested by the Petitioner herein is denied.

Date: April 23, 2018

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).

cc: Counsel of Record
Office of Dispute Resolution
OSSE Division of Specialized Education
DCPS Resolution Team