

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

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PETITIONER,  
on behalf of STUDENT,<sup>1</sup>

Date Issued: August 21, 2018

Petitioner,

Hearing Officer: Peter B. Vaden

v.

Case No: 2018-0055

DISTRICT OF COLUMBIA  
PUBLIC SCHOOLS,

Hearing Dates: August 6 and 10, 2018

Respondent.

Office of Dispute Resolution, Room 112  
Washington, D.C.

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**HEARING OFFICER DETERMINATION**

**INTRODUCTION AND PROCEDURAL HISTORY**

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by Petitioner (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 (“D.C. Regs.”). In her due process complaint, Petitioner alleges that Respondent District of Columbia Public Schools (DCPS) failed to comprehensively reevaluate Student for special education needs and failed to offer Student appropriate Individualized Education Programs (IEPs) from March 2016 forward.

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<sup>1</sup> Personal identification information is provided in Appendix A.

Petitioner's Due Process Complaint, which named DCPS as respondent, was initially filed on February 28, 2018. The undersigned hearing officer was appointed on March 1, 2018. With leave of the hearing officer, Petitioner filed an amended due process complaint on March 20, 2018. I convened telephone prehearing conferences with counsel on March 19, 2018 and on April 27, 2018 to set the hearing date and discuss the issues to be determined and other prehearing matters. On motion of the Petitioner, the final decision due date was extended from June 3, 2018 to July 13, 2018.

The due process hearing was first convened on June 26, 2018 at the Office of Dispute Resolution in Washington, D.C. When the parties convened on that date, the parties agreed that the parent would attempt to secure Student's admission to a nonpublic special education day school and that DCPS would endorse the application. The parties agreed to continue the hearing to allow time for the private school admissions process to be completed. The due process hearing was continued to August 6 and 10, 2018. To accommodate those hearing dates, on motion of the Petitioner, the final decision due date was further extended to August 24, 2018.

The due process hearing was held before the undersigned impartial hearing officer on August 6 and 10, 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 Petitioner appeared in person and was represented by PETITIONER'S COUNSEL 2. Respondent DCPS was represented by COMPLIANCE CASE MANAGER and by DCPS' COUNSEL.

Counsel for Petitioner made an opening statement. DCPS waived making an opening. Mother testified and called as additional witnesses, PEDIATRIC PSYCHOLOGIST, PEDIATRIC CARDIOLOGIST, PSYCHIATRIST, EDUCATIONAL

ADVOCATE 1 and EDUCATIONAL ADVOCATE 2. DCPS called as witnesses SCHOOL PSYCHOLOGIST 1, SCHOOL PSYCHOLOGIST 2, HHIP SPECIALIST 1, SPECIAL EDUCATION COORDINATOR (SEC), HHIP SPECIALIST 2 and Compliance Case Manager. Petitioner's Exhibits P-1 through P-137 were admitted into evidence, with the exceptions of Exhibits P-50, P-131 and P-132 which were withdrawn, and Exhibits P-33, P-54, P-55, P-56 and P-58 to which DCPS' objections were sustained. DCPS' Exhibits R-1 through R-12 were admitted into evidence, including Exhibit R-11 admitted over Petitioner's objection. 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 issues for determination, as certified in the April 27, 2018 Prehearing Order, are:

- a. Whether District of Columbia Public Schools (DCPS) failed to comprehensively and timely evaluate Student in light of Student's deficits, medical recommendations, and of the lack of evaluative data available for Student;
- b. Whether District of Columbia Public Schools (DCPS) failed to provide Student with an appropriate Individualized Educational Program (IEP) on or about March 22, 2016 or March 21, 2017 in light of Student's increased medical needs and the impact that Student's health condition was having on Student's ability to attend school. The IEPs allegedly lack appropriate baseline data, goals, and services, and are not based on comprehensive evaluations;
- c. Whether District of Columbia Public Schools (DCPS) failed to develop and/or provide Student with an appropriate IEP or Placement and/or Location of Services for the 2017/2018 school year to reflect Student's need for additional medical supports at school to enable Student to attend school in light of Student's deteriorating health situation. Student allegedly requires a dedicated nurse or medical aide to assist Student in school and

d. Whether DCPS denied Student a FAPE by improperly exiting Student from Special Education Services at an eligibility meeting held on March 12, 2018.

For relief in this case, Petitioner requests as follows:

- a. That the Hearing Officer order DCPS to immediately put Student's IEP back in place and revise it to provide for a dedicated aide, an abbreviated school year schedule, and related medical accommodations; and revise Student's IEP to provide for a dedicated nurse;
- b. That the Hearing Officer order DCPS to conduct or fund an independent neuropsychological evaluation, speech and language evaluation, physical therapy evaluation, and occupational therapy evaluation for Student and convene an IEP team to review the results and revise Student's IEP as appropriate;
- c. That the Hearing Officer order DCPS to provide Student with a location of services capable of implementing the revised IEP and/or fund the private placement of Student and
- d. That Student be awarded compensatory education for denials of FAPE that have allegedly occurred.

### **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.**

2. At all times concerned in this matter, Student was eligible for special education under the IDEA disability classification Multiple Disabilities, based upon the underlying impairments Specific Learning Disability and Other Health Impairment.

**Stipulation of Counsel.** On or about March 12, 2018, the CITY SCHOOL 3 eligibility team made a unilateral determination that Student was no longer eligible for special education because Student had not attended school for the entire school year and there was a lack of evaluation and academic data to support Student's continued eligibility.

Exhibits P-44 through P-48. However, this ineligibility determination was not implemented and by April 2, 2018, DCPS had resumed efforts to provide a FAPE to Student. Exhibit P-67.

3. Student has a history of a host of physical and mental health diagnoses. Student has previously been diagnosed with Attention-Deficit/Hyperactivity Disorder (ADHD), Binge-Eating Disorder, Panic Disorder, social anxiety, and a depressive disorder. Student is followed at CITY HOSPITAL 1 for Postural Orthostatic Tachycardia syndrome (POTS), a syndrome of clinically significant falls in blood pressure and elevated heart rate after standing or eating; Amplified pain syndrome and Ehlers-Danlos Syndrome (EDS). EDS is the term used for a group of relatively rare genetic disorders of connective tissue which are characterized by one or another of several features, including skin hyperextensibility, joint hypermobility, and tissue fragility. EDS results in increased susceptibility to injury and chronic pain and acute and recurrent Migraine headache syndrome. In addition, Student suffers from asthma, food allergies, sleep apnea and Gastroesophageal reflux disease (GERD). Exhibits P-14, P-15.

4. Student was admitted to CITY HOSPITAL 2 in March 2017 for 29 days for a weight management program. Exhibit P-30.

5. Student has been enrolled in or assigned to at least five DCPS schools and public charter schools over the last few years. These include PCS 1 (2014-2015 school year), PCS-2 (2015-2016 school year, prior to 2<sup>nd</sup> quarter), CITY SCHOOL 1 (2015-2016 school year, beginning 2<sup>nd</sup> quarter), CITY SCHOOL 2 (2016-2017 school year) and CITY SCHOOL 3 (2017-2018 school year). Exhibits P-34, P-37, Testimony of Mother.

6. Student has had an IEP since preschool. Testimony of Mother. Student

was last determined eligible for special education on June 1, 2015 under the MD classification. Exhibit R-4.

7. Student's IEP was revised on March 22, 2016 at City School 1. At the time, Student had only been at City School 1 since the second quarter of the 2015-2016 school year. The March 22, 2016 IEP identified Mathematics, Reading, Written Expression and Emotional/Social/Behavioral Development as areas of concern. For Special Education and Related Services, the IEP provided for 11 hours per week of Specialized Instruction, all in the general education setting, and 2 hours per month of Behavioral Support Services. Exhibit P-37.

8. Student did not attend school consistently during the last quarter of the 2015-2016 school year and was not available for behavioral support services. During that reporting period, Student made no progress on IEP behavioral goals. Student reportedly was progressing on all of the March 22, 2016 IEP academic goals. Exhibit P-36.

9. Student's last completed IEP, dated March 21, 2017, was developed by the IEP team at City School 2. The March 21, 2017 IEP identified Mathematics, Reading, Written Expression and Emotional/Social/Behavioral Development as areas of concern. For Special Education and Related Services, the IEP provided for 11 hours per week of Specialized Instruction, including 3 hours outside general education, and 30 minutes per month of Behavioral Support Services. Exhibit P-37.

10. The March 21, 2017 IEP team noted that as of the meeting date, Student had missed some 90 days of school and these chronic absences, apparently caused by Student's medical condition, impeded on Student's access to the general education curriculum. The school social worker further reported that when Student did attend

school, Student had difficulty remaining in class due to poor emotional regulation after negative interactions with peers. Exhibit P-37. At the end of the 2016-2017 school year, Student was reported not to have attended school after being served in a hospital-based setting, apparently at City Hospital 2, in March 2017. Student was reported to have made no progress on IEP goals in the last quarter. Exhibit P-41. For the 2016-2017 school year at City School 2, Student reportedly attended about 60 out of 180 school days in the school year. Exhibit R-11. School officials proposed to allow Student to pass for the 2016-2017 school year and for Student to matriculate to the next grade at CITY SCHOOL 3. Mother objected to Student's not being held back in the prior grade. Exhibit R-56.

11. For the 2017-2018 school year, Mother requested DCPS Home and Hospital Instruction Program (HHIP) services for Student. In the summer of 2017 HHIP Specialist 1 and HHIP Specialist 2 spoke to Student's physicians, including Psychiatrist, Pediatric Cardiologist and the GI specialist from CITY HOSPITAL 3. All of the physicians agreed that Student could return to school with supports. Psychiatrist advised that Student could attend school with proper supports, such as a smaller classroom. She reported that Student was doing much better, but was still fragile. Psychiatrist felt like Student could begin transitioning back to school, but may need a small, perhaps therapeutic, setting. Pediatric Cardiologist also supported Student's returning to school. The GI specialist informed HHIP Specialist 1 that Student's POTS condition was stable and that, if Student followed nutritional guidelines, Student could return to school. Testimony of HHIP Specialist 1, Testimony of HHIP Specialist 2.

12. City School 3 has a full-time nursing clinic staffed by personnel from City Hospital 1. Testimony of Special Education Coordinator.

13. In a compensatory education proposal provided to DCPS after June 18, 2018, Educational Advocate 2 opined that Student's educational placement should be a more restrictive setting such as a small, non-public, therapeutic day school and, as compensatory education for the denials of FAPE alleged in this case, that Student should receive 240 hours of academic tutoring and 60 hours of peer-mentoring to address social skills development and reduce school anxiety. Exhibit P-130. On June 21, 2018, on behalf of DCPS, Compliance Case Manager provided funding authorization for the parent to obtain 300 hours of tutoring and/or mentoring for Student at \$65.00 per hour. DCPS also agreed that if Student were admitted to one of the nonpublic schools requested by the parent, DCPS would place Student there. Testimony of Compliance Case Manager.

### **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 the local education agency, in this case DCPS, the agency 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 agency. The



burden of persuasion shall be met by a preponderance of the evidence. See D.C. Code § 38-2571.03(6).

### Analysis

A. Did District of Columbia Public Schools (DCPS) fail to comprehensively and timely evaluate Student in light of Student's deficits, medical recommendations, and the lack of evaluative data available for Student?

The IDEA requires that a special education reevaluation must occur at least once every three years, unless the parent and the public agency agree otherwise. See 34 CFR § 300.303. In addition to conducting triennial reevaluations, the District must also reevaluate a child with a disability if the District determines that the educational or related services needs of the child warrant a reevaluation, or if the child's parent or teacher requests a reevaluation. See 34 CFR § 300.303(a). See, also, *M.M. ex rel. Matthews v. District of Columbia*, 607 F. Supp. 2d 168, 174 (D.D.C. 2009) (Where student failed to make any progress in two years, DCPS needed to take steps to reevaluate the student and consider what services and placement were necessary to ensure that she received a FAPE); U.S. Department of Education, *Assistance to States for the Education of Children with Disabilities*, 71 Fed. Reg. 46579, 46644, -648 (August 14, 2006) (One of the purposes of a reevaluation is to determine the educational needs of the child, including whether any additions or modifications to the special education and related services are needed to enable the child to meet IEP goals and to participate in the general education curriculum.)

Student's last special education reevaluation was completed on June 1, 2015, when Student was enrolled in PCS-1. Since then, Student has made four school changes. Student has also undergone continuous medical procedures and mental health treatment for serious physical and psychological health concerns. Student missed

school for the majority of the 2016-2017 school year and made no progress on IEP behavioral goals. Student did not attend school for the entire 2017-2018 school year. Based on this difficult educational history, I find that DCPS should have determined that Student's educational and related services needs warranted a special education reevaluation when Student transferred from the on-line public charter school to a DCPS school for the 2016-2017 school. *Cf. Herbin ex rel. Herbin v. District of Columbia*, 362 F.Supp.2d 254, 259 (D.D.C.2005) (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.) Although there was no evidence that Mother or a teacher had requested a reevaluation, a reevaluation was warranted because of Student's lack of IEP progress, poor attendance and ongoing physical and mental health challenges. That DCPS did not seek to reevaluate Student until March 2018 was an undue delay.

In March 2018, School Psychologist 1 obtained Mother's consent to conduct a psychological reevaluation of Student. Mother was not willing for Student to be assessed at City School 3, so School Psychologist 1 arranged to conduct the assessment at Student's home. She scheduled several appointments with Mother to assess Student at the home, but Mother was never present on the agreed dates. Eventually, in April 2018, Mother agreed to bring Student to DCPS' Central Office for the evaluation. Student became fatigued during the testing and the assessment could not be completed at that session. In May 2018, School Psychologist 2, completed the psychological reevaluation and issued his evaluation report on May 30, 2018.

I find that, beginning in March 2018, DCPS made a good faith effort to conduct its reevaluation of Student, but was hampered by Mother's unwillingness to bring

Student to City School 3 and by Mother's missing scheduled appointments. (Mother, who also suffers from life-threatening health issues may be excused for missing appointments with the DCPS evaluator.) However, DCPS' not initiating a reevaluation of Student from the beginning of the 2016-2017 school year until March 2018 was a failure on the part of DCPS to ensure that Student was timely reevaluated.

The failure to conduct a timely special education reevaluation is a procedural violation of the IDEA. *See, e.g. G.G. ex rel. Gersten v. District of Columbia., supra*, 924 F. Supp. 2d at 280 (School district's failure to adequately evaluate student was a procedural error.) Procedural violations may only be deemed a denial of FAPE 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 CFR § 300.513(a)(2). In this case, DCPS' failure to complete Student's reevaluation, is a factor, along with Student's not regularly attending school, in Student's not having an appropriate updated IEP since March 21, 2017. I conclude that DCPS' failure to timely reevaluate Student has impeded Student's right to a FAPE.

B. Did DCPS fail to provide Student with an appropriate IEP on or about March 22, 2016 or March 21, 2017 in light of Student's increased medical needs and the impact that Student's health condition was having on Student's ability to attend school?

C. Did DCPS fail to develop and/or provide Student with an appropriate IEP or Placement and/or Location of Services for the 2017-2018 school year to reflect Student's need for additional medical supports at school to enable Student to attend school in light of Student's deteriorating health situation?

Petitioner contends that Student's March 22, 2016 IEP at City School 1 and

March 21, 2017 IEP at City School 2 were not appropriate for Student in light of Student’s health issues. Petitioner also contends that both IEPs lacked appropriate baseline data, goals, and services, and were not based on comprehensive evaluations. In *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, ——— U.S. ———, 137 S.Ct. 988, 197 L.Ed.2d 335 (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 (1982), for what constitutes an appropriate IEP. Discussing these decisions in *Z. B. v. District of Columbia*, 888 F.3d 515 (D.C. Cir. 2018), the D.C. Circuit Court of Appeals explained that in *Andrew F.*, the Supreme Court

raised the bar on what counts as an adequate education under the IDEA. *Andrew F.* held that the Act requires education “reasonably calculated to enable a child to make progress in light of the child’s circumstances”—a standard that the Court described as “markedly more demanding than the ‘merely more than *de minimis*’ standard the Tenth Circuit had applied. . . . In requiring more than merely some “educational benefits,” *id.* at 77 (quoting *Bd. of Educ. v. Rowley*, 458 U.S. 176, 207, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982) ), the Court in *Andrew F.* stressed that “every child should have the chance to meet challenging objectives,” and that a student’s “educational program must be appropriately ambitious in light of his circumstances.” 137 S.Ct. at 1000.

*Z. B.*, 888 F.3d at 517.

Substantively, the IDEA “requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances,” *Andrew F.*, 137 S.Ct. at 1001, even as it stops short of requiring public schools to provide the best possible education for the individual child, *Rowley*, 458 U.S. at 200, 102 S.Ct. 3034, or an education “equal” to that of non-disabled peers, *Andrew F.*, 137 S.Ct. at 1001; *Rowley*, 458 U.S. at 198-99, 102 S.Ct. 3034.

*Z. B.*, 888 F.3d at 519.

The IDEA calls on public schools throughout the United States to provide a free, appropriate education. Congress has not committed to educational perfection: “Any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.” *Andrew F.*, 137 S.Ct. at 999 (emphasis in original). If there is a gap between the best education that money can buy at a private school for a student with disabilities and the free and

appropriate education at a public school that the IDEA promises, one might justly hope to close that gap for all students. Meanwhile, what Congress has required is that public schools be “ambitious” for every child, giving each the opportunity to “meet challenging objectives.” *Id.* at 1000. Disabilities can be subtle and complex. They may require expertise to identify accurately.

*Z. B.*, 888 F.3d at 528.

Understanding the particulars of a child’s current skills and needs is critical to developing an “individualized” educational plan: “An IEP is not a form document. It is constructed only after careful consideration of the child’s present levels of achievement, disability, and potential for growth.” *Andrew F.*, 137 S.Ct. at 999 (citing 20 U.S.C. §§ 1414(d)(1)(A)(i)(I)-(IV), (d)(3)(A)(i)-(iv) ).

*Z. B.*, 888 F.3d at 522.

Applying the IDEA as interpreted in *Andrew F.*, we must ask whether, in developing the [contested IEP], the [education agency] adequately evaluated [the student’s] particular needs and offered her an IEP tailored to what it knew or reasonably should have known of her disabilities at the time. *See Andrew F.*, 137 S.Ct. at 999.

*Z. B.*, 888 F.3d at 524.

The key inquiry regarding an IEP’s substantive adequacy is whether, taking account of what the school knew or reasonably should have known of a student’s needs at the time, the IEP it offered was reasonably calculated to enable the specific student’s progress. *See Andrew F.*, 137 S.Ct. at 999. . . . [T]hat standard calls for evaluating an IEP as of “the time each IEP was created” rather than with the benefit of hindsight. . . . At the same time, . . . evidence that post-dates the creation of an IEP is relevant to the inquiry to whatever extent it sheds light on whether the IEP was objectively reasonable at the time it was promulgated.

*Z. B.*, 888 F.3d at 524 (internal quotations and citations omitted.)

With regard to the March 21, 2017 IEP, Petitioner’s expert, Educational Advocate 1, opined that the IEP was inappropriate because the annual goals were “drastically different” than Student’s abilities and functioning level at the time. DCPS’ witnesses did not rebut this opinion. Moreover, as I concluded above in this decision, DCPS had failed to timely reevaluate Student prior to the IEP team’s developing this IEP. The IEP was not based on an understanding of the particulars of Student’s then-current skills and

needs. *See Z. B., supra* at 522. I conclude that DCPS has not met its burden of persuasion that the March 21, 2017 IEP was reasonably calculated to enable Student's progress.

With regard to the prior year, March 22, 2016, IEP, neither Educational Advocate 1 nor Educational Advocate 2 testified about this IEP or opined as to its alleged inappropriateness in their testimony. In her compensatory education proposal, Education Advocate 2 wrote that the present levels of performance information in the March 22, 2016 IEP was copied, verbatim, from Student's 2015 IEP. However, the 2015 IEP was not offered into evidence and the witness did not address the "copying" concern in her testimony. I find that Petitioner did not make out a *prima facie* case sufficient to show that the 2016 IEP was inappropriate or meet her burden of persuasion on this claim. *See, e.g., St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 527, 113 S. Ct. 2742, 2758, 125 L. Ed. 2d 407 (1993) (*Prima facie* case requires production of enough evidence to raise an issue for the trier of fact.) Because the Petitioner did not establish a *prima facie* case, the burden of persuasion as to the appropriateness of the March 22, 2016 IEP did not shift to DCPS. *See* D.C. Code § 38-2571.03(6).

D. Did DCPS deny Student a FAPE by improperly exiting Student from special education services at an eligibility meeting held on March 12, 2018?

At an eligibility meeting on March 12, 2018, a City School 3 multidisciplinary team (MDT) made a unilateral determination that Student was no longer eligible for special education, because Student had not attended school for the entire school year and the team found there to be a lack of evaluation and academic data to support Student's continued eligibility. This decision was invalid among other reasons, because DCPS did not reevaluate Student before making the determination. *See* 34 CFR §

300.305(e) (Public agency must evaluate a child with a disability in accordance with §§ 300.304 through 300.311 before determining that the child is no longer a child with a disability.) The MDT team’s purportedly exiting Student from special education was a procedural error, which DCPS promptly corrected. By April 2, 2018, DCPS was again proposing a FAPE for Student. Because Student, unfortunately, did not attend school for the entire 2017-2018 school year – before or after the March 12, 2018 eligibility decision – there was no evidence that the MDT team’s invalid decision that Student was no longer eligible had any effect on Student’s receiving a FAPE. *See* 34 CFR § 300.513(a)(2), *supra*.<sup>2</sup>

#### Remedy

For relief in this case, Petitioner requested an order for DCPS to conduct or fund an independent neuropsychological evaluation, a speech and language evaluation, a physical therapy evaluation, and an occupational therapy evaluation for Student. DCPS has already conducted a comprehensive psychological evaluation and has issued funding authorization for the parent to obtain an independent educational evaluation (IEE) neuropsychological evaluation and an IEE physical therapy evaluation. DCPS has also agreed to conduct occupational therapy and speech-language assessments of Student as

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<sup>2</sup> Procedural violations may only be deemed a denial of FAPE 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 CFR § 300.513(a)(2).

soon as Mother's signed written consent is received. *See* 34 CFR § 300.300(c) (Public agency must obtain informed parental consent prior to conducting any reevaluation of a child with a disability.) Because the requested reevaluations are already in process or have been authorized, I find that it is unnecessary to order DCPS to take this action.

The parent also seeks an order for Student's IEP to be revised to provide for a dedicated aide, a dedicated nurse, an abbreviated school year schedule, and related medical accommodations. I decline to order any changes to Student's IEP pending a meeting of Student's IEP team after the reevaluations are completed. However, both Psychiatrist and Pediatric Psychologist testified that Student could return to school but would require supports. Psychiatrist testified that Student requires a small classroom setting with other children with related challenges, a low student-to-teacher ratio and access to a therapist and a nurse at school. Pediatric Psychologist testified that at this point, if Student returns to school, Student will need access to a school nurse, support from a buddy, counselor or therapist to assist with panic or anxiety attacks, and a safety plan to address medical issues. I found these opinions persuasive and will order DCPS to ensure that these recommendations are provided for in the forthcoming revised IEP.

Petitioner also sought an order for DCPS to provide Student with a location of services capable of implementing the revised IEP and/or fund a nonpublic placement for Student. The IDEA requires that every special education placement location must be "based on the child's IEP," 34 C.F.R. § 300.116(b)(2), and be "capable of fulfilling the student's IEP." *See, e.g., Lofton v. District of Columbia*, 7 F.Supp.3d 117, 123 (D.D.C. 2013). It is unnecessary to order the District to comply with this requirement because the evidence at the due process hearing showed that DCPS is committed to providing Student a suitable placement location. Resolution Specialist testified that DCPS had



agreed to fund Student's private placement at either of two nonpublic schools requested by the parent's representatives. However, neither school had yet offered admission to Student. Of course, DCPS must ensure that another suitable educational placement location is identified, if Student's admission to one of the preferred private schools cannot be secured.

Lastly, Petitioner requested that DCPS be ordered to provide Student compensatory education. In a written proposal submitted prior to the due process hearing, Petitioner's expert, Educational Advocate 2, recommended that Student be awarded, as compensatory education, 240 hours of academic tutoring and 60 hours of peer-mentoring to address social skills development and reduce school anxiety. After DCPS received this proposal prior to the hearing, DCPS provided full funding authorization for the parent to obtain 300 hours of tutoring and/or mentoring for Student at \$65.00 per hour. Educational Advocate 2 also recommended that Student be provided a computer and access to on-line computer programs to remediate Student's academic needs. Educational Advocate 2 has not met or assessed Student. Nor was there evidence offered at the due process hearing on Student's need for a computer. I will defer to Student's IEP team to decide, based on Student's updated reevaluations and other data, whether on-line educational programming would be appropriate for Student. *See T.T. v. District of Columbia*, 2007 WL 2111032, 9 (D.D.C. 2007) (DCPS personnel had special education expertise requiring deference.)

### **ORDER**

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

1. DCPS shall ensure that upon receipt of the IEE evaluation reports and other

assessments authorized for Student, Student's IEP team is promptly convened to review and revise, as appropriate, Student's IEP and educational placement, in accordance with this decision and 34 CFR § 300.320, *et seq.* DCPS shall ensure that the revised IEP provides, *inter alia*, for a small classroom setting with a low student-to-teacher ratio, that Student will have access at all times during the school day, as needed, to a counselor or therapist and a nurse and that a safety plan is developed for responding to Student's medical emergencies;

2. Petitioner's request for compensatory education for Student is denied because DCPS has already issued funding authorization for Student to receive the hours of compensatory academic tutoring and mentoring recommended by Educational Advocate 2 and

3. All other relief requested by the Petitioner herein is denied.

Date: August 21, 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 - SPED  
DCPS Resolution Team