

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

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

OSSE
Office of Dispute Resolution
January 30, 2019

<i>Student</i> , ¹)	Case Nos.: 2018-0290 & 2018-0320
through <i>Parent</i> ,)	
<i>Petitioner</i> ,)	Date Issued: 1/30/19
)	
v.)	Hearing Officer: Keith L. Seat, Esq.
)	
<i>PCS</i> ,)	Hearing Date: 1/23/19 & 1/25/19
Respondent.)	ODR Hearing Room: 112
)	

HEARING OFFICER DETERMINATION

Background

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 had not been adequately evaluated and had not been found eligible for special education and related services. PCS responded that it had properly evaluated Student and appropriately determined lack of eligibility. PCS pursued its own due process complaint alleging that its comprehensive psychological evaluation was appropriate, although Parent sought an independent evaluation.

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 Parent's due process complaint in Case No. 2018-0290 on 11/7/18, the case was assigned to the undersigned on 11/8/18; PCS filed a response on 11/20/18 and did not challenge jurisdiction. PCS filed its due process complaint in Case

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

Hearing Officer Determination

Case Nos. 2018-0290 & 2018-0320

No. 2018-0320 relating to the same issues on 12/6/18 and the case was assigned to the undersigned on 12/7/18; Parent filed a response on 12/17/18 and did not challenge jurisdiction.² The undersigned on 12/11/18 granted a consent motion to consolidate the cases. A resolution meeting in Case No. 2018-0290 occurred on 11/30/18, but did not resolve the dispute or shorten the 30-day resolution period, which ended on 12/7/18. A final decision in this matter must be reached no later than 45 days following the end of the resolution period in that case and 45 days after the complaint was filed in Case No. 2018-0320, as extended in each case by a continuance, which will require a Hearing Officer Determination (“HOD”) by 2/4/19.

The due process hearing took place on 1/23/19 and 1/25/19 and was open to the public. Parent was represented by *Parent’s counsel*. PCS was represented by *PCS’s counsel*. Parent participated in all of the hearing.

Parent’s Disclosures, submitted on 1/15/19, contained documents P1 through P68, which were admitted into evidence without objection. PCS’s Disclosures, submitted on 1/15/19, contained documents R1 through R59, which were also admitted into evidence without objection.

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

1. *Clinical Psychologist* (qualified without objection as an expert in Clinical Psychology, particularly as related to conducting evaluations and making related recommendations)
2. Parent
3. *Godparent*
4. *Educational Advocate* (qualified without objection as an expert in Special Education, particularly with respect to students with emotional behavior disorders)

PCS’s counsel presented eight witnesses in PCS’s case (*see* Appendix A) :

1. *Teacher* at PCS
2. *School Psychologist A* at PCS (qualified without objection as an expert in School Psychology)

² Each party is technically the “Petitioner” in the case that party filed and “Respondent” in the case the party did not file, so this HOD generally refers to the parties as “Parent” and “PCS.” However, unless specified otherwise, any reference to “Petitioner” herein refers to Parent, while any reference to “Respondent” refers to PCS.

Hearing Officer Determination

Case Nos. 2018-0290 & 2018-0320

3. *School Psychologist B* at PCS (qualified without objection as an expert in School Psychology)
4. *Compliance Manager* at PCS (qualified without objection as an expert in Special Education)
5. *Director of Student Support* at PCS (qualified without objection as an expert in Special Education)
6. *Occupational Therapist* at PCS (qualified without objection as an expert in Occupational Therapy)
7. *Speech-Language Pathologist* at PCS (qualified without objection as an expert in Speech-Language Pathology)
8. *School Social Worker* at PCS (qualified without objection as an expert in School Social Work)

Parent's counsel presented Parent as the sole rebuttal witness.

The issues to be determined in this Hearing Officer Determination are:

Issue 1 (Parent³): Whether PCS denied Student a FAPE by failing to find Student eligible for special education and related services during 2017/18⁴ as a Student with emotional disturbance and/or other health impairment, with the latter due to characteristics of Attention Deficit Hyperactivity Disorder ("ADHD") and/or oppositional defiance disorder. *Parent has the burden of persuasion on this issue.*

Issue 2 (Parent): Whether PCS denied Student a FAPE by failing (a) to refer the Student for an initial evaluation by September 2017 pursuant to Child Find, (b) to conduct a comprehensive initial evaluation that included a thorough comprehensive psychological, occupational therapy and speech-language pathology evaluations, and (c) to conduct or amend Student's Functional Behavioral Assessment ("FBA") in 2016/17, 2017/18 and/or 2018/19. *Parent has the burden of persuasion on this issue.*

Issue 3 (Parent): Whether PCS denied Student a FAPE by failing to provide access to Student's education records in response to Parent's 10/3/18 request via counsel, specifically the 12/13/17 Safety Plan and the initial referral for therapy in September 2017. *Parent has the burden of persuasion on this issue.*

³ In this consolidated case, the issues raised and remedies sought by each side are identified parenthetically as being from "Parent" or "PCS."

⁴ All dates in the format "2017/18" refer to school years.

Hearing Officer Determination
Case Nos. 2018-0290 & 2018-0320

Issue 4 (PCS): Whether the 3/6/18 comprehensive psychological evaluation conducted by PCS is appropriate under the IDEA. *PCS has the burden of persuasion on this issue.*

The relief requested by the parties is:

1. (Parent) PCS shall find Student eligible for special education and related services and fund independent evaluations in the areas of (a) occupational therapy, (b) speech-language pathology, and (c) FBA followed by development and implementation of an appropriate Behavioral Implementation Plan (“BIP”).
2. (Parent) Following the assessments in the previous paragraph, PCS shall convene an Individualized Education Program (“IEP”) team meeting to develop and finalize an IEP for Student, including consideration of whether a dedicated aide should be provided, and determine proper placement for Student.
3. (Parent) PCS shall fund compensatory education in the form of grief counseling and/or mentoring for any denial of FAPE,⁵ following an independent evaluation on the scope of compensatory education, if needed.
4. (PCS) A finding that the 3/6/18 comprehensive psychological evaluation conducted by PCS is appropriate.
5. Any other just and reasonable relief.

Stipulations

The parties agreed on the following stipulations prior to the due process hearing⁶:

1. Student is *Age* and in *Grade* at PCS.
2. Student was in Grade-2 at PCS during 2016/17.
3. Student was in Grade-1 at PCS during 2017/18.

⁵ Parent’s counsel was put on notice that, at the due process hearing, Parent must introduce evidence supporting the requested compensatory education, including evidence of specific educational deficits resulting from Student’s alleged denial of FAPE and the specific compensatory measures needed to best correct those deficits, i.e., to elevate Student to the approximate position Student would have enjoyed had Student not suffered the alleged denial of FAPE. PCS should be prepared at the due process hearing to introduce evidence contravening the requested compensatory education in the event a denial of FAPE is found.

⁶ The stipulations have been lightly edited by the undersigned to mask personally identifiable information and conform to the style of this HOD. Stipulations directly relevant to this HOD are included in the Findings of Fact, below.

Hearing Officer Determination

Case Nos. 2018-0290 & 2018-0320

4. Student was referred for an initial evaluation for special education on 11/28/17.
5. A student evaluation plan (“SEP”) meeting was held on 12/18/17.
6. At the SEP meeting, the team⁷ agreed to evaluate Student for special education.
7. At the SEP meeting, the team identified the following suspected disabilities: other health impairment and specific learning disability.
8. Parent signed consent to evaluate on 12/18/17.
9. The comprehensive psychological evaluation report was updated on 3/6/18 to include additional information related to Student’s behavior incident reports, success plan and safety plan.
10. An FBA was completed on 3/1/18.
11. An eligibility meeting was held on 3/7/18.
12. At the eligibility meeting, the team considered the disability categories of emotional disturbance, specific learning disability and other health impairment and determined that Student did not meet criteria for any of those categories.
13. At the eligibility meeting, a BIP was reviewed.
14. On 5/22/18, Student was found eligible for a Section 504 Plan and a 504 Plan was developed.
15. The 504 Plan included a BIP, among other things.
16. The BIP was reviewed and updated on 8/30/18; the updated BIP was finalized on 9/4/18.
17. A 504 Meeting was held on 11/7/18 where the team updated the 504 Plan and BIP.
18. Parent signed the 504 Plan reviewed at that meeting on 12/4/18.
19. PCS later agreed to update Student’s FBA to assess Student’s use of sexually explicit language on 12/4/18.
20. A meeting to review and update Student’s BIP was held on 12/19/18; a dedicated aide, among other things, was added to Student’s BIP.
21. A speech-language evaluation was completed on 11/16/18.

⁷ Unless indicated otherwise, “team” is used in this HOD to mean Student’s multi-disciplinary team.

Hearing Officer Determination
Case Nos. 2018-0290 & 2018-0320

22. An occupational therapy evaluation was completed on 1/11/19.

23. An FBA was completed on 1/8/19.

Findings of Fact

After considering all the evidence, as well as the arguments of both counsel, the Findings of Fact⁸ are as follows:

1. Student is a resident of the District of Columbia; Petitioner (in Case No. 2018-0290) is Student's Parent.⁹ Student is Age, Gender and in Grade at PCS, where Student began in 2016/17.¹⁰ Significant concerns for Student arose from Student learning in February 2017 of a *traumatic event* involving Student's mother and father.¹¹ Student does not have an IEP; Parent believes Student needs an IEP to address behavioral issues based on emotional disturbance and/or other health impairment.¹²

2. Background, Grades, Standardized Testing. Student's overall cognitive abilities are within the Low Average range, with a full scale IQ score of 88, as assessed by the Wechsler Intelligence Scale for Children – Fifth Edition ("WISC-V") in the 3/6/18 comprehensive psychological evaluation.¹³

3. Student's academic achievement had a majority of High Average or Superior results for reading, writing and math, as measured by the Woodcock-Johnson – Tests of Achievement, Fourth Edition ("WJ-ACH, IV") in the 3/6/18 comprehensive psychological evaluation.¹⁴ An updated psychological evaluation on 1/11/19 found that Student's WJ-ACH, IV continued to show a majority of High Average to Very Superior results in reading, writing and math.¹⁵

4. In 2016/17, Student's grades improved over the year, from 2.80 to 3.20 GPA.¹⁶ In 2016/17, Student's ANET and MAP performance was "impressive across the board";

⁸ Footnotes in these Findings of Fact refer to a stipulation, 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.

⁹ Parent.

¹⁰ Parent; Stipulation ("Stip.") 1.

¹¹ Parent; Godparent; P19-5; R12-15.

¹² Parent.

¹³ R12-6.

¹⁴ R12-8,9,10.

¹⁵ R38-2.

¹⁶ R19-1; R11-2; R2-5.

Hearing Officer Determination

Case Nos. 2018-0290 & 2018-0320

Student's MAP scores increased from the 76th to 87th percentile in reading and from the 53rd to 74th percentile in math.¹⁷

5. Student's PARCC score in English Language Arts for 2016/17 was above 85% of the other students in DC; in 2017/18 Student only exceeded 58%.¹⁸ Student's PARCC score in Mathematics for 2016/17 was above 77% of the other students in DC; in 2017/18 Student only exceeded 10%.¹⁹

6. Student's grades declined in 2017/18 from 2.23 to 1.90 GPA; there was a "stark contrast" between Student's term grades and outstanding performance on standardized tests.²⁰ Student's MAP scores for both reading and math declined in 2017/18, then increased at the beginning of 2018/19.²¹ Student's grades increased in the first Trimester of 2018/19 to 2.05 GPA; Trimester 2 was not complete but looking notably worse.²²

7. Behavior. In 2016/17, Student had one out-of-school suspension (for one day for walking out of the cafeteria toward the lobby despite directions to come back) on 9/8/16 soon after beginning at PCS, and a total of six discipline issues logged for the year.²³ Based on the first incidents, a safety plan meeting was held for Student on 8/9/16, days after arriving at PCS.²⁴ Student didn't miss much instruction in 2016/17.²⁵

8. Teacher in 2016/17 saw Student improve over the year, as Student was dealing with emotions better at the end of the year; Student's behavior did not stand out compared to peers.²⁶ Student did well in reading and was where Student should be in math.²⁷ Teacher in 2016/17 did not think Student had a disability or needed special education.²⁸ Neither Parent nor Godparent expressed concerns about Student or sought an evaluation; Student grew a lot in 2016/17 and was very successful in Grade.²⁹

9. Student had moved to a higher level in 2017/18, which often causes many students to have challenges that can last a year or more.³⁰ Student had an initial "honeymoon" after beginning at the higher level, then behaviors became troublesome.³¹ Student did not need

¹⁷ R11-2; R19-1.

¹⁸ R20-2.

¹⁹ P54-4.

²⁰ R11-7; R17-5; R19-1.

²¹ R36-1.

²² *Id.*

²³ R1-1; R12-3; R4.

²⁴ R4-3,4.

²⁵ Parent; Godparent.

²⁶ Teacher.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Compliance Manager.

³¹ *Id.*

Hearing Officer Determination

Case Nos. 2018-0290 & 2018-0320

an initial evaluation prior to November 2017.³² Student's behavior issues worsened in 2017/18, with 40 logged behavior incidents and four days of out-of-school suspension by 3/1/18, and a total of 57 incidents by the end of the year.³³ Student's behavior is relatively OK at home, according to Parent.³⁴

10. Teachers noted in the 3/1/18 FBA that while Student struggled to complete work in class, especially in math, Student was "highly capable of the work" and academic struggles predominantly resulted from Student's behavior.³⁵ One teacher noted that Student was "able to access grade level texts and complete grade appropriate writing," and Student's academic struggles were "only a result of [Student's] behavior."³⁶ Director of Student Support credibly explained that with Student's behavioral problems there was no need for a modified curriculum with an IEP.³⁷

11. Student missed a good deal of instruction in 2017/18, but less in 2018/19.³⁸ School Social Worker credibly testified that Student was calming down quicker by using coping strategies, so was spending less time out of class; there were fewer office visits in recent months.³⁹ In the past, Student was being sent out of class one to three times a week, primarily during math; the time out of class depended on the severity of the behavior and could be less than half an hour up to the remainder of the block (math and reading blocks were 100 minutes long).⁴⁰

12. Observations showed a broad range of engagement by Student in class, with observation in a science class on 10/29/18 finding Student on-task with appropriate behavior "0%" of the time, while in a second observation an hour later Student displayed on-task, appropriate behaviors 82% of the time in reading class.⁴¹

13. Evaluations. Student was referred for an initial evaluation for special education on 11/28/17.⁴² A student evaluation plan ("SEP") meeting was held on 12/18/17, where the team agreed to evaluate Student for special education based on the suspected disabilities of other health impairment and specific learning disability.⁴³ The SEP meeting determined that Student needed a comprehensive psychological evaluation and noted the social worker was completing an FBA.⁴⁴ Compliance Manager explained the purpose of occupational therapy

³² *Id.*

³³ R6-1; R12-3,15; R27-3.

³⁴ Clinical Psychologist.

³⁵ R11-16.

³⁶ R11-6.

³⁷ Director of Student Support.

³⁸ Parent (attributes decline to the impact of litigation).

³⁹ School Social Worker.

⁴⁰ *Id.*

⁴¹ R27-4.

⁴² Stip. 4.

⁴³ Stips. 5,6,7.

⁴⁴ R7-3.

Hearing Officer Determination

Case Nos. 2018-0290 & 2018-0320

and speech-language evaluations to Parent and Godparent and sought their input on whether occupational therapy and speech-language should be explored; they stated that neither of the areas were of concern.⁴⁵

14. Comprehensive Psychological Evaluation. The comprehensive psychological evaluation was completed on 2/23/18; the report was updated on 3/6/18 to include additional information related to Student's behavior incident reports, success plan and safety plan.⁴⁶ School Psychologist B concluded in her testimony that the comprehensive psychological evaluation adequately assessed everything, so she had no concerns with the evaluation; the comprehensive psychological evaluation was appropriate and comprehensive.⁴⁷ School Psychologist A credibly testified that she had no concerns about the appropriateness of the comprehensive psychological evaluation and the resulting eligibility determination; the evaluation was sufficiently comprehensive.⁴⁸

15. Clinical Psychologist criticized the comprehensive psychological evaluation for not including a self-report measure of Student, who was a good reader so capable of responding; Clinical Psychologist acknowledged that a self-report was simply "prudent" and "useful," and not required.⁴⁹ School Psychologist A testified that a self-report is not required for a comprehensive psychological evaluation and she saw nothing in the evaluation calling for a self-report.⁵⁰ School Psychologist B agreed that no self-report is necessary, but is "always helpful."⁵¹

16. The comprehensive psychological evaluation was not flawed without Post-Traumatic Stress Disorder ("PTSD") scales, which are not used in the school setting; the BASC addresses concerns such as depression and anxiety that the PTSD scales may capture.⁵² PTSD addresses mental health, not a school issue impacting the need for special education.⁵³

17. Additional assessments were conducted in a psychological evaluation dated 1/11/19 due to an increase in Student's behavioral difficulties.⁵⁴ The Connors Rating Scale

⁴⁵ R7-3; Compliance Manager (credibly testified that the meeting notes she prepared inadvertently left the "n" off "neither" in the key phrase that reported both Parent and Godparent "stated that either of the areas were an area of concern" (R7-3); while both Parent and Godparent testified at the hearing that they wanted everything assessed, the notes are only grammatical as "neither"; there is another obvious typo in Godparent's name in the same sentence).

⁴⁶ R10; R12-3,4; Stip. 9.

⁴⁷ School Psychologist B.

⁴⁸ School Psychologist A.

⁴⁹ Clinical Psychologist.

⁵⁰ School Psychologist A.

⁵¹ School Psychologist B.

⁵² School Psychologist A.

⁵³ School Psychologist B.

⁵⁴ R38-1.

Hearing Officer Determination

Case Nos. 2018-0290 & 2018-0320

indicated mostly Very Elevated ratings from two teachers, but rating scales were not back yet from Parent and Godparent, which will be added in an addendum.⁵⁵

18. Occupational Therapy Evaluation. School Psychologist A testified that an occupational therapy evaluation of Student was not required even though the WISC-V visual spatial results were Low Average in the comprehensive psychological evaluation.⁵⁶ It is important not to pull Student from class for unneeded services, as Student needs to be learning in class to the greatest extent possible.⁵⁷

19. An occupational therapy screening checklist was completed on 10/22/18.⁵⁸ An occupational therapy evaluation was completed on 1/11/19, finding that Student did not need occupational therapy services.⁵⁹ The evaluation found Student average in every subtest of the Bruininks-Oseretsky Test of Motor Proficiency, 2nd Edition (“BOT-2”), and average in all but one of the subtests in the Developmental Test of Visual Perception – 3rd Edition.⁶⁰ The Sensory Processing Measure noted “some problems” in most subtests; Occupational Therapist credibly testified that the sensory problems could best be worked on in the classroom with accommodations, as opposed to involving an occupational therapist in an artificial situation outside the classroom.⁶¹ Student demonstrated excellent attention and perseverance in the individual testing environment.⁶²

20. Speech-Language Evaluation. School Psychologist A testified that based on the comprehensive psychological evaluation results she would not have referred Student to a speech-language pathologist.⁶³ The need for a speech-language evaluation can be seen when the WISC-V visual comprehension score differs by more than one standard deviation from the fluid reasoning score, but the difference here was well under a standard deviation.⁶⁴

21. A comprehensive speech-language evaluation was completed on 11/16/18.⁶⁵ The evaluation found that Student was average or above on every measure, so there was no educational need for speech-language services for Student to access the educational curriculum and make reasonable academic progress.⁶⁶ Student should not be pulled from class for speech-language services.⁶⁷

⁵⁵ R38-2,3.

⁵⁶ School Psychologist A; R12-7.

⁵⁷ School Psychologist A.

⁵⁸ R24; Occupational Therapist.

⁵⁹ Stip. 22; R37; Occupational Therapist.

⁶⁰ R37-4,5.

⁶¹ R37-6; Speech-Language Pathologist.

⁶² R37-7.

⁶³ School Psychologist A.

⁶⁴ School Psychologist A; R12-7.

⁶⁵ Stip. 21; R32.

⁶⁶ R32-5; Speech-Language Pathologist.

⁶⁷ Speech-Language Pathologist.

Hearing Officer Determination

Case Nos. 2018-0290 & 2018-0320

22. FBA/BIPs. Student did not need a behavior assessment in 2016/17 as Student's behavior was not impacting Student or peers.⁶⁸ In 2017/18, the comprehensive psychological evaluation repeatedly emphasized the need for an FBA for Student to focus on classroom behavior and determine potential antecedents and reinforcing consequences.⁶⁹ A thorough, 18-page long FBA was completed on 3/1/18 and shared at the conclusion of the 3/7/18 eligibility meeting.⁷⁰ PCS later agreed to update Student's FBA to assess Student's use of sexually explicit language on 12/4/18; that FBA was completed on 1/8/19.⁷¹ PCS did not consider the update needed, as the sexually explicit language was covered by "verbal disruption" in the first FBA.⁷²

23. A BIP, also known at PCS as a FAIR Plan, was prepared for Student on 2/28/18 and reviewed at the 3/7/18 eligibility meeting.⁷³ The BIP/FAIR Plan was updated on 5/22/18.⁷⁴ The BIP was reviewed and updated on 8/30/18; the updated BIP was finalized on 9/4/18.⁷⁵ A meeting to review and update Student's BIP was held on 12/19/18; a dedicated aide, among other things, was added to Student's BIP.⁷⁶

24. Eligibility. An eligibility meeting was held on 3/7/18; the team considered the disability categories of emotional disturbance, specific learning disability and other health impairment and determined that Student did not meet the criteria for any of those categories.⁷⁷ Both Parent and Godparent signed documentation stating that they agreed with the lack of eligibility.⁷⁸ Student can access general education in the classroom.⁷⁹

25. The comprehensive psychological evaluation concluded that the criteria for other health impairment were not met as there was no historical diagnosis and behavior reports were not consistent across settings to suggest that a mental health diagnosis such as ADHD would be warranted.⁸⁰ Specifically, the results of the Conners-3 Rating Scale did not

⁶⁸ Compliance Manager.

⁶⁹ R12-10,14,15,16; School Psychologist A (agreed).

⁷⁰ R11; R13-4; Stip. 10.

⁷¹ Stips. 19,23; R51-1,8 (dated 2018 in error).

⁷² School Social Worker.

⁷³ R10A; R13-4; Stip. 13.

⁷⁴ R16.

⁷⁵ R22; Stips. 13,16.

⁷⁶ R34; Stip. 20.

⁷⁷ R13-4; Stips. 11,12; School Psychologist B (agreed Student did not need special education services at the time of the evaluation); Compliance Manager (agreed Student didn't demonstrate a need for special education services).

⁷⁸ R13A-2.

⁷⁹ Compliance Manager.

⁸⁰ R12-14.

Hearing Officer Determination

Case Nos. 2018-0290 & 2018-0320

support the multiple location presentation of difficulties for a diagnosis of ADHD.⁸¹ Student's behaviors were impacting grades, suggesting the need for an FBA.⁸²

26. As for emotional disturbance, the comprehensive psychological evaluation concluded that Student was not demonstrating an emotional disturbance, as criteria were not met for any of the five characteristics: (A) an inability to learn that cannot be explained by intellectual, sensory, or health factors; (B) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; (C) inappropriate types of behavior or feelings under normal circumstances; (D) a general pervasive mood of unhappiness or depression; and (E) a tendency to develop physical symptoms or fears associated with personal or school problems.⁸³ The comprehensive psychological evaluation noted the need for behavioral and emotional regulation and again suggested an FBA be conducted.⁸⁴

27. Eligibility for special education will be determined again by Student's team at PCS once scheduling is worked out; a 1/18/19 meeting had been planned but was postponed.⁸⁵

28. Section 504 Plan. In response to Student being clinically diagnosed with PTSD and major depressive disorder (as noted below), Student was found eligible for a Section 504 Plan on 5/22/18; a 504 Plan was developed which included a BIP, among other things.⁸⁶ A 504 meeting was held on 11/7/18 where the team updated the 504 Plan and BIP; Parent signed that 504 Plan on 12/4/18.⁸⁷

29. The 504 Plan provided numerous accommodations, including 120 minutes/month of Behavioral Support Services ("BSS"); extended time on classwork and tests, with the ability to take them home; continued implementation of the BIP; and others.⁸⁸ Student loved BSS and was very talkative during the group counseling, providing insightful comments to peers.⁸⁹ The 504 Plan noted that Student's emotional functioning consistently and negatively impacted Student's ability to access general education, despite the BIP and other school supports.⁹⁰ Director of Student Support credibly testified that Student didn't require specialized instruction, so needed a 504 Plan rather than an IEP.⁹¹

⁸¹ R12-12; School Psychologist A; School Psychologist B (there were many inconsistencies in the Connors, with the result that Student did not meet eligibility requirements for special education).

⁸² R12-14; School Psychologist A.

⁸³ R12-14; School Psychologist A; School Psychologist B; 34 C.F.R. § 300.8(c)(4).

⁸⁴ R12-14,15.

⁸⁵ Compliance Manager; Godparent.

⁸⁶ R15-5; R33-1; Parent; Stips. 14,15; R15-1 (eligibility form).

⁸⁷ Stips. 17,18; R33.

⁸⁸ R15-6,7,8.

⁸⁹ School Social Worker.

⁹⁰ R15-5.

⁹¹ Director of Student Support.

Hearing Officer Determination

Case Nos. 2018-0290 & 2018-0320

30. Additional Actions by PCS. PCS took multiple steps to try to address Student's behavior, including counseling, a BIP, testing, a success plan, and a 504 Plan.⁹² Other interventions with Student included student conferences about behavior, changing seat location, counselor involvement, schoolwide token economy, and calls home/conferences with Parent and Godparent.⁹³

31. The success plan (similar to a BIP) was developed for Student to address unsafe and disruptive behaviors, as well as absconding; it was signed by Parent on 12/10/17.⁹⁴ Student was provided a safety plan, which had the stated purpose of ensuring the safety of Student and all students and staff; the plan listed behaviors and provided consequences, including the schoolwide consequences ladder, de-escalating in the office with a timer, calling home and maintaining adult presence if Student was roaming.⁹⁵

32. Based on the concerns of Student's team at PCS for Student's emotional and behavioral dysregulation at school, in September 2017 Student was referred for therapy to *Outside Therapy*.⁹⁶ A 2/28/18 report from Outside Therapy found that Student met the DSM-V criteria for PTSD and major depressive disorder.⁹⁷ Student received 30 minutes of therapy weekly during the school day from Outside Therapy, beginning on 9/27/17 and continuing through 6/6/18; in 2018/19, Student received 45 minutes/week beginning on 10/10/18 and continuing at least through 12/12/18.⁹⁸

33. As of 3/6/18, Student was also receiving 45 minutes/week of BSS from the social worker at PCS in group counseling.⁹⁹ The comprehensive psychological evaluation recommended that Student would likely benefit from time to review the traumatic event and its impact on Student, and might benefit from a support group; the recommendations were noted as outside the scope of the educational setting.¹⁰⁰

34. In response to ChAMPS' involvement in a crisis on 5/1/18, Student wrote out (and formally signed and dated) that options to prevent a crisis with Student were "1. Going outside for a break, 2. Laying head down, 3. Asking for a drink of water," while Student's answers about what to do if a crisis occurs were "1. Be left alone to go to a safe space of my choice, 2. Call godmom and talk to her, 3. Talk to [social worker]."¹⁰¹

⁹² *Id.*

⁹³ R12-3,15.

⁹⁴ R6; R12-3.

⁹⁵ R12-4.

⁹⁶ P19-4.

⁹⁷ P19-6,15.

⁹⁸ P19-2,3; R11-2; R7-3; R6-2.

⁹⁹ R11-2.

¹⁰⁰ R12-16.

¹⁰¹ P28-1,2.

Hearing Officer Determination

Case Nos. 2018-0290 & 2018-0320

35. A part-time dedicated aide was recently provided to assist Student at the beginning of the day and in math class.¹⁰²

36. Records. A great deal of effort was expended by the parties in trying to obtain (Parent) and provide (PCS) Student's education records.¹⁰³ Parent failed to offer clear evidence that any education records of Student had not been provided and at least one of the documents that Parent's counsel asserted was first disclosed in PCS's disclosures in fact had been provided previously; Parent failed to demonstrate any harm from delay in allegedly seeing a few documents for the first time in PCS's disclosures.¹⁰⁴

37. Independent Educational Evaluation. On 11/13/18, Parent formally requested an independent educational evaluation ("IEE") due to disagreement with the 3/6/18 comprehensive psychological evaluation.¹⁰⁵

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 centrepiece of the statute's education delivery system for disabled children.'" *Endrew 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." *Endrew 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, Respondent 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); *Endrew 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

¹⁰² Director of Student Support.

¹⁰³ *See, e.g.*, P66-37 ("missing" incident log); R43-8,9 (listing documents); R46; R45-1; P66-27; R44-1,2; R43-11; P66-159; R42-1; P66-1,2 (formal records request dated 10/3/18).

¹⁰⁴ P66-37; Administrative Notice.

¹⁰⁵ R43-11,12.

Hearing Officer Determination

Case Nos. 2018-0290 & 2018-0320

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.” *Endrew F.*, 137 S. Ct. at 1001. The Act’s 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 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.” *Endrew F.*, 137 S. Ct. at 1001.

In addition, Respondent must ensure that to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. § 300.114; *Endrew F.*, 137 S. Ct. at 1000 (children with disabilities should receive education in the regular classroom to the extent possible); *Montuori ex rel. A.M. v. Dist. of Columbia*, 2018 WL 4623572, at *3 (D.D.C. 9/26/18).

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 the LEA has the burden of persuasion, if Parent establishes a *prima facie* case. D.C. Code Ann. § 38-2571.03(6); *Z.B. v. Dist. of Columbia*, 888 F.3d 515, 523 (D.C. Cir. 2018) (party seeking relief bears the burden of proof); *Schaffer ex rel. Schaffer v. Weast*, 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 Student with a FAPE.” 5-E D.C.M.R. § 3030.3.

Issue 1 (Parent): *Whether PCS denied Student a FAPE by failing to find Student eligible for special education and related services during 2017/18 as a Student with emotional disturbance and/or other health impairment, with the latter due to characteristics*

Hearing Officer Determination

Case Nos. 2018-0290 & 2018-0320

of ADHD and/or oppositional defiance disorder. (Parent has the burden of persuasion on this issue.)

Parent did not meet her burden of persuasion on the initial issue of eligibility for special education services. In analyzing this issue, compliance with IDEA procedures is to be considered first, followed by inquiry into “whether the ineligibility determination was proper under the Act.” *N.G. v. Dist. of Columbia*, 556 F. Supp. 2d 11, 30 (D.D.C. 2008), quoting *Kroot By & Through Kroot v. Dist. of Columbia*, 800 F. Supp. 976, 981 (D.D.C. 1992).

The process for determining eligibility for special education is set forth in 34 C.F.R. § 300.306, which requires a group of qualified professionals and the parent to determine whether the child has a disability by carefully considering not only the student’s assessments, but significant additional information, drawing on a variety of sources and including parental input, teacher recommendations and other information. Importantly, to qualify as a child with a disability under the IDEA, Student must have both a listed concern, such as emotional disturbance or other health impairment as asserted here, and as a result, be in need of special education and related services. See 34 C.F.R. § 300.8(a); *Parker v. Friendship Edison Pub. Charter Sch.*, 577 F. Supp. 2d 68, 74 (D.D.C. 2008). Here, there was no challenge to the process of determining eligibility, as the team came together on 3/7/18 in a meeting to determine whether Student met the necessary criteria and reached a unanimous conclusion.

As for whether the team reached the proper substantive conclusion, Parent raised questions about the adequacy of the comprehensive psychological evaluation, asserting both that Student should have been found eligible based on the 3/6/18 comprehensive psychological evaluation as it was, and that the failure to find Student eligible was due to shortcomings in the evaluation, as discussed in more detail in Issue 2, below.

The evaluation concluded that Student demonstrated an ability to achieve academically despite the behavior concerns found. Indeed, testing demonstrated that Student’s academic achievement levels were significantly higher than Student’s cognitive levels, with a majority of High Average or Superior results for reading, writing and math, as measured by the Woodcock-Johnson, even though Student’s full scale IQ score was 88, in the Low Average range. Despite significant behavioral challenges, the updated psychological evaluation on 1/11/19 continued to show a majority of High Average to Very Superior results in reading, writing and math. There was a notable contrast between Student’s outstanding performance on standardized tests and Student’s grades, which declined from a GPA of 2.23 to 1.90 in 2017/18, showing the impact of behavioral issues rather than Student not being able to access the curriculum or needing specialized instruction. When Student’s behaviors were not in the way, Student could access the general education curriculum; when behaviors were in the way, a modified curriculum or specialized instruction would not help.

Here, the key question is whether Student should have been found eligible for special education services during 2017/18, and specifically at the 3/7/18 eligibility meeting, when a group of qualified professionals and Parent came together to determine eligibility

Hearing Officer Determination

Case Nos. 2018-0290 & 2018-0320

based on the 3/6/18 comprehensive psychological evaluation and other information. The evaluation considered the classifications of emotional disturbance¹⁰⁶ and other health impairment¹⁰⁷ (along with specific learning disability, which Parent did not pursue in this case).

Considering other health impairment first, ADHD may indeed be considered an other health impairment disability under the IDEA, although not every child with an ADHD diagnosis is eligible for special education, for parents must prove that the condition adversely affected the student's academic performance. *See* 34 C.F.R. § 300.8(c)(9). Here, there was not an ADHD diagnosis, even apart from the question of Student's academic performance. The comprehensive psychological evaluation, supported by School Psychologists, concluded that the criteria for other health impairment were not met. Specifically, the results of the Conners-3 Rating Scale in early 2018 did not support the multiple location presentation of difficulties for a diagnosis of ADHD. This conclusion was credibly supported at the hearing by School Psychologists A and B.

In addition to ADHD, Parent also raised oppositional defiance disorder in her complaint as a basis for other health impairment, while at the due process hearing Parent asserted that other health impairment should be based on the DSM-V diagnoses of PTSD and major depressive disorder. These are mental health diagnoses, not educational issues directly impacting the need for special education. The issues they highlight were covered by the BASC (addressing concerns such as depression and anxiety) and other assessments in the comprehensive psychological evaluation. Importantly, none of these concerns require

¹⁰⁶ The IDEA regulations define emotional disturbance to mean a condition exhibiting one or more of the following characteristics, over a long period of time and to a marked degree, that adversely affects a child's educational performance:

- (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
- (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- (C) Inappropriate types of behavior or feelings under normal circumstances.
- (D) A general pervasive mood of unhappiness or depression.
- (E) A tendency to develop physical symptoms or fears associated with personal or school problems.

34 C.F.R. § 300.8(c)(4)(i).

¹⁰⁷ Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that –

- (i) Is due to chronic or acute health problems such as, *inter alia*, attention deficit disorder or attention deficit hyperactivity disorder; and
- (ii) Adversely affects a child's educational performance.

34 C.F.R. § 300.8(c)(9).

Hearing Officer Determination

Case Nos. 2018-0290 & 2018-0320

“specially designed instruction” for Student to access general education. *See* 34 C.F.R. § 300.39. Instead, PCS took significant steps to address the concerns, through FBAs, BIPs and a Section 504 Plan, among other things.

As for emotional disturbance, the comprehensive psychological evaluation concluded that Student did not demonstrate an emotional disturbance, as the criteria were not met for any of the five characteristics which must be exhibited “over a long period of time” and “to a marked degree”: (A) an inability to learn that cannot be explained by intellectual, sensory, or health factors; (B) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; (C) inappropriate types of behavior or feelings under normal circumstances; (D) a general pervasive mood of unhappiness or depression; and (E) a tendency to develop physical symptoms or fears associated with personal or school problems. 34 C.F.R. § 300.8(c)(4). Parent’s counsel did argue that every one of these emotional disturbance characteristics was met, but did not offer evidence in support. The evaluation noted the need for Student’s behavioral and emotional regulation and suggested an FBA.

When Student’s team at PCS met for the eligibility meeting on 3/7/18, they determined that Student was not eligible for special education based on emotional disturbance or other health impairment. Parent and Godparent were part of the team and both agreed with the lack of eligibility conclusion. While ineligible for special education services, PCS did find that Student qualified for a 504 Plan and provided other support. This Hearing Officer concludes that Parent did not meet her burden of demonstrating that PCS erred by not finding Student eligible for special education services in 2017/18.

Issue 2 (Parent): *Whether PCS denied Student a FAPE by failing (a) to refer the Student for an initial evaluation by September 2017 pursuant to Child Find, (b) to conduct a comprehensive initial evaluation that included a thorough comprehensive psychological, occupational therapy and speech-language pathology evaluations, and (c) to conduct or amend Student’s FBA in 2016/17, 2017/18 and/or 2018/19. (Parent has the burden of persuasion on this issue.)*

Parent failed to meet her burden of persuasion on this issue, despite the importance of Child Find and the need to thoroughly assess children in all areas of suspected disability. *See Z.B. v. Dist. of Columbia*, 888 F.3d 515, 518 (D.C. Cir. 2018), *quoting* 20 U.S.C. § 1414(b)(3)(B). The timing of the initial evaluation and concerns about specific evaluations are considered in turn.

(a) Initial Evaluation. Parent asserted that the initial evaluation of Student should have been conducted no later than September 2017, based on Student’s difficulties prior to Parent’s later request for evaluation. The Court of Appeals for the District of Columbia emphasized in *DL v. Dist. of Columbia*, 860 F.3d 713, 717 (D.C. Cir. 2017), that Child Find is among the most important IDEA requirements, in order to identify, locate and evaluate every child in need of special education. *See* 34 C.F.R. § 300.111. The Child Find obligations of a Local Education Agency (“LEA”) are triggered either by awareness of the child’s circumstances or by parental request. *See Long v. Dist. of Columbia*, 780 F. Supp. 2d 49, 57 (D.D.C. 2011).

Hearing Officer Determination

Case Nos. 2018-0290 & 2018-0320

Here, there is no dispute that Parent sought evaluation of Student in the fall of 2017 and that Student was referred for an initial evaluation on 11/28/17. The issue is whether PCS was aware of circumstances that should have resulted in “finding” Student no later than September 2017 based on Student’s challenges in the first year at PCS in 2016/17 or very early in 2017/18.

The facts in the case were clear that Student did well in 2016/17. Student’s grades improved over the year, from a GPA of 2.80 to 3.20. Student’s ANET and MAP performance was “impressive across the board,” as Student’s MAP scores increased from the 76th to 87th percentile in reading and from the 53rd to 74th percentile in math. Student’s PARCC score in English Language Arts was above 85% of the other students in DC, while the Mathematics score was above 77% of the other students in DC. Even behaviorally, Student had just one out-of-school suspension – for one day for walking away against directions – and only six discipline issues logged for the entire year. As for early 2017/18, the evidence was that Student had an initial “honeymoon” at the beginning of the year after beginning at the higher level, and Compliance Manager credibly testified that Student did not need an initial evaluation prior to November 2017.

Accordingly, this Hearing Officer concludes that Parent did not meet her burden of showing a denial of FAPE due to PCS not “finding” Student by September 2017. *See D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 249 (3rd Cir. 2012); *G.G. ex rel. Gersten v. Dist. of Columbia*, 924 F. Supp. 2d 273, 275 (D.D.C. 2013).

(b) Comprehensive Initial Evaluation. The Court explained in *Z.B.*, 888 F.3d at 524, that failing to conduct adequate assessments was a procedural violation that could have substantive effects by preventing the IEP team from obtaining necessary information about the student’s needs. *See also Long v. Dist. of Columbia*, 780 F. Supp. 2d 49, 60-61 (D.D.C. 2011) (“in the absence of necessary and appropriate evaluations the district cannot develop a program that is tailored to the student’s unique needs and reasonably calculated to enable [the student] to receive educational benefits” (citation omitted)); *Hill v. Dist. of Columbia*, 2016 WL 4506972, at *18 (D.D.C. 2016).

As the public agency, PCS must ensure that a child is “assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.” 34 C.F.R. § 300.304(c)(4). Decisions on the areas to be assessed are to be made based on the suspected needs of the child. *Z.B.*, 888 F.2d at 518; Office of Special Education and Rehabilitative Services, U.S. Department of Education, *Analysis of Comments and Changes*, 71 Fed. Reg. 46643 (2006). However, the IDEA does not require a public agency to administer every test requested by a parent or recommended in an evaluation, as the public agency has the prerogative to choose assessment tools and strategies to gather relevant information. *See, e.g., James v. Dist. of Columbia*, 194 F. Supp. 3d 131, 143 (D.D.C. 2016).

Comprehensive Psychological Evaluation. After Student was referred for an initial evaluation on 11/28/17, a student evaluation plan meeting was held on 12/18/17, which determined that Student needed a comprehensive psychological evaluation and noted that an

Hearing Officer Determination

Case Nos. 2018-0290 & 2018-0320

FBA was also being completed. The comprehensive psychological evaluation was completed on 2/23/18 and the report updated on 3/6/18 to include additional information. Clinical Psychologist criticized the evaluation for not including a self-report measure of Student. But Clinical Psychologist acknowledged that a self-report was not required, which School Psychologists A and B confirmed. Further, the evaluation was not flawed by the absence of PTSD scales, which School Psychologists A and B testified are not used in the school setting. In her testimony, School Psychologist B concluded that the comprehensive psychological evaluation adequately assessed everything, so the evaluation was comprehensive and appropriate. School Psychologist A also testified that she had no concerns about the appropriateness of the comprehensive psychological evaluation and the resulting eligibility determination.

Occupational Therapy Evaluation. PCS presented persuasive evidence that an occupational therapy evaluation was not needed at the time of the initial evaluation. School Psychologist A explained that an occupational therapy evaluation of Student was not required even though the WISC-V visual spatial results were Low Average in the comprehensive psychological evaluation. It was certainly important not to pull Student from class for services that were not needed, for Student needs to be in class to the greatest extent possible in order to learn, which is the key concern of Parent.

Moreover, Compliance Manager explained the purpose of occupational therapy and speech-language evaluations to Parent and Godparent at the SEP meeting and sought their input on whether the occupational therapy and speech-language areas should be assessed. They stated that neither of the areas were of concern. Although beyond the issue in this case, PCS did proceed to conduct an occupational therapy evaluation on 1/11/19, which found that Student did not need occupational therapy services.

Speech-Language Evaluation. Similarly, PCS presented persuasive testimony that a speech-language evaluation was not needed at the time of the initial evaluation. School Psychologist A testified that based on the comprehensive psychological evaluation results she would not have referred Student to a speech-language pathologist even though there was a small difference between the WISC-V visual comprehension score and the fluid reasoning score. Although beyond the issue in this case, PCS did proceed to conduct a speech-language evaluation on 11/16/18 which also found that Student did not need speech-language services, as Student was average or above on every measure.

The undersigned concludes that the initial evaluation of Student was sufficiently comprehensive. The comprehensive psychological evaluation was appropriate and Parent did not meet her burden of demonstrating that an occupational therapy or speech-language evaluation was necessary.

(c) Functional Behavioral Assessment. Student did have significant behavioral challenges that are of concern, which is the heart of this case. Student's behavior issues did not become serious until 2017/18, for in 2016/17 Student had just one day of out-of-school suspension and only six logged discipline issues. As Compliance Manager credibly testified, Student did not need an FBA in 2016/17 because the behavior had not risen to the level of impacting Student or peers.

Hearing Officer Determination

Case Nos. 2018-0290 & 2018-0320

In 2017/18, the comprehensive psychological evaluation repeatedly emphasized the importance of an FBA for Student to focus on classroom behavior and determine potential antecedents and reinforcing consequences. An FBA was in fact prepared at the same time the comprehensive psychological evaluation was conducted. The detailed, 18-page FBA was shared at the 3/7/18 eligibility meeting. In 2018/19, PCS agreed to update Student's FBA to address Student's use of sexually explicit language, with the FBA revised on 1/8/19.

Beyond conducting FBAs, PCS also developed BIPs – also known as FAIR Plans at PCS – with one reviewed at the 3/7/18 eligibility meeting, and updates on 5/22/18 and 8/30/18. A further meeting to review and update Student's BIP was held on 12/19/18 when a dedicated aide – among other things – was added to Student's BIP.

Accordingly, the undersigned concludes that Parent did not meet her burden on the issue of FBAs.

Issue 3 (Parent): *Whether PCS denied Student a FAPE by failing to provide access to Student's education records in response to Parent's 10/3/18 request via counsel, specifically the 12/13/17 Safety Plan and the initial referral for therapy in September 2017. (Parent has the burden of persuasion on this issue.)*

Parent also failed to meet her burden on the issue of education records. As a general matter, parents of a child with a disability have the right to examine all education records that pertain to the identification, evaluation, and educational placement of the child, and provision of a FAPE. 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.501(a); 34 C.F.R. § 300.613(a) (parents must be permitted to inspect and review any education records relating to their child that are collected, maintained, or used by an agency); *Jalloh ex rel. R.H. v. Dist. of Columbia*, 535 F. Supp. 2d 13, 21 (D.D.C. 2008) (“parents have the right to examine records and [the LEA] must give parents the opportunity to inspect, review, and copy records”).

Here, a great deal of effort was expended by Parent in trying to obtain, and PCS in trying to provide, Student's education records. Yet at the due process hearing, Parent neither withdrew the issue nor offered clear evidence that education records had not been provided, apart from counsel's assertion that a couple of documents in PCS's disclosures may not have been previously provided. The extensive email record in the case demonstrated that at least one of the challenged document had been provided previously. Importantly, Parent did not show that there was any impact on Student's education from the lack of any prior disclosure of documents or that Parent's opportunity to pursue her rights was significantly impeded. See 34 C.F.R. §§ 300.513(a), 300.613(a). Thus, this Hearing Officer finds no violation of the IDEA and no denial of FAPE.

Issue 4 (PCS): *Whether the 3/6/18 comprehensive psychological evaluation conducted by PCS is appropriate under the IDEA. (PCS has the burden of persuasion on this issue.)*

PCS met its burden of persuasion on the appropriateness of the disputed evaluation. The basic framework for IEEs is straightforward. Under 34 C.F.R. § 300.502(b), with

Hearing Officer Determination

Case Nos. 2018-0290 & 2018-0320

certain limitations Parent has a right to seek an IEE at public expense if she disagrees with a public agency evaluation. *See Taylor v. Dist. of Columbia*, 770 F. Supp. 2d 105, 109 (D.D.C. 2011); *Letter to Baus*, 115 LRP 8855 (OSEP 2/23/15). Once an IEE at public expense is requested, the public agency must without unnecessary delay either (i) file a due process complaint to show that its evaluation is appropriate; or (ii) ensure that an IEE is provided at public expense. *Id.*; 34 C.F.R. § 300.502(b). *See also L.S. ex rel. K.S. v. Abington School Dist.*, 2007 WL 2851268, at *6 (E.D. Pa. 2007). PCS must pay for the full cost of the evaluation or otherwise ensure that the IEE is provided at no cost to parents. 34 C.F.R. § 300.502(a)(3)(ii).

Here, Parent sought an IEE on 11/13/18, based on her disagreement with the comprehensive psychological evaluation, and PCS brought its due process complaint on 12/6/18 to show its evaluation was appropriate. This timing appears to the undersigned to be without unnecessary delay, given the circumstances, including the filing of Parent's due process complaint on 11/7/18. *See, e.g., Horne v. Potomac Preparatory PCS*, 209 F. Supp. 3d 146, 152-53, 155 (D.D.C. 2016) (three months was unnecessary delay). Considering the substance of the comprehensive psychological evaluation, for all the reasons discussed in Issue 2, above, this Hearing Officer concludes that PCS's comprehensive psychological evaluation was appropriate, and an IEE at public expense is therefore not required.

ORDER

Parent has not prevailed on any of her issues in this case. Accordingly, **it is hereby ordered** that any and all claims and requests for relief in Case No. 2018-0290 are **dismissed with prejudice**.

PCS has prevailed on its sole issue in this case. Accordingly, **it is hereby ordered** that PCS need not fund an IEE for Parent based on her disagreement with the 3/6/18 comprehensive psychological evaluation. Any and all other claims and requests for relief in Case No. 2018-0320 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).

Hearing Officer Determination

Case Nos. 2018-0290 & 2018-0320

Copies to:

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