

District of Columbia
Office of the State Superintendent of Education
Office of Dispute Resolution
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| Parent, on behalf of Student,¹ |) | |
| Petitioner, |) | |
| |) | Hearing date: 6/24/24 |
| v. |) | Hearing Officer: Michael Lazan |
| |) | Case No.: 2024-0096 |
| District of Columbia Public Schools, |) | |
| Respondent. |) | |

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| District of Columbia Public Schools, |) | |
| Petitioner, |) | |
| |) | Hearing date: 6/24/24 |
| v. |) | Hearing Officer: Michael Lazan |
| |) | Case No.: 2024-0099 |
| Parent, on behalf of Student, |) | |
| Respondents. |) | |

HEARING OFFICER DETERMINATION

I. Introduction

This is a case involving an X-year-old student who is currently eligible for services as a student with Multiple Disabilities (Autism, Other Health Impairment) (“the Student”). The Student’s mother (“Parent”) filed a due process complaint (“Parent Complaint”) against District of Columbia Public Schools (“DCPS”), pursuant to the Individuals with Disabilities Education Act (“IDEA”). DCPS received the Parent Complaint on May 20, 2024, and designated it as Case # 2024-0096. A resolution meeting was held on June 4, 2024. The matter was not resolved. The resolution period expired on June 19, 2024.

¹Personally identifiable information is attached as Appendix A and must be removed prior to public distribution.

DCPS filed a due process complaint (“DCPS Complaint”) against the Parent on May 22, 2024, and designated it as Case # 2024-0099. A motion to consolidate the two cases was filed on June 10, 2024. An order consolidating the two cases, on consent, was issued on June 10, 2024. The Hearing Officer Determination (“HOD”) due date was August 3, 2024, for Case # 2024-0096, and July 6, 2024, for Case # 2024-0099.

II. Subject Matter Jurisdiction

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the IDEA, 20 U.S.C. 1400 et seq., its implementing regulations, 34 C.F.R. Sect. 300 et seq., Title 38 of the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-A, Chapter 30.

III. Procedural History

A prehearing conference was held on June 7, 2024. Attorney A, Esq., counsel for Parent, appeared. Attorney B, Esq., counsel for DCPS, appeared. A prehearing conference order was issued on June 10, 2024, summarizing the rules to be applied in the hearing and identifying the issues in the consolidated cases.

The matter proceeded to hearing on June 24, 2024. Oral closing arguments were also presented on June 24, 2024. Final citation lists were filed on June 28, 2024. The hearing was conducted through the Microsoft Teams videoconferencing platform, without objection. The Parent was again represented by Attorney A, Esq. DCPS was again represented by Attorney B, Esq. This was a closed proceeding. DCPS moved into evidence exhibits R-1, R-2, R-4, R-6, R-7, R-13 through R-15, R-20, R-23, R-30, R-33 through R-40, R-42, and R-43. Objections were sustained with respect to exhibits R-6 and R-13 only. Exhibits R-1, R-2, R-4, R-7, R-14, R-15, R-20, R-23, R-30, R-33 through

R-40, R-42, and R-43 were admitted. The Parent moved into evidence exhibits P-1 through P-15 without objection. DCPS presented as witnesses, in the following order: Witness A, a school psychologist (expert in school psychology); and Witness B, manager of special education at School A (expert in determining appropriate evaluation measures and procedures for eligibility consideration). The Parent presented as a witness: herself.

IV. Issues

As identified in the Prehearing Conference Order and in both due process complaints, the issue to be determined in this case is as follows:

1. Did DCPS improperly refuse to grant the Parent’s request for an Independent Educational Evaluation (“IEE”) in or about February 2024?

The Parent contended that DCPS’s reevaluation of the Student in or about February 2024 was not comprehensive enough or appropriate, and that DCPS then failed to notify the Parent of its decision on the request for an IEE until May 9, 2024, which was too late.

Issue #2 and Issue #3 in the prehearing order were withdrawn.

As relief, the Parent seeks an IEE for the Student.

V. Findings of Fact

1. The Student is an X-year-old who is eligible for services as a student with Multiple Disabilities (Autism and Other Health Impairment).
2. The Student has been diagnosed with Autism Spectrum Disorder and has experienced significant behavioral issues inside and outside the classroom. Testimony of Parent; R-34-323. The Student experiences difficulties processing sensory information.

The Student was diagnosed with attention-deficit/hyperactivity disorder (“ADHD”) by a pediatrician and by a psychiatrist with Hospital A in or about 2018. R-34-323.

3. The Student received an Individualized Educational Program (“IEP”) in pre-school, when the Student was eligible for services as a student with developmental disability. The Student received services in writing and occupational therapy. R-34-323.

4. The Student was assessed for eligibility in or about May 2019. The eligibility team concluded that the Student did not meet the criteria for special education eligibility under the classification of specific learning disorder, autism, or other health impairment. At the time, the Student’s teachers expressed few areas of concern for the Student. R-34-323.

5. An occupational therapy evaluation of the Student was conducted in or about 2020. The evaluation noted that the Student had significant deficits in visual motor integration, spatial organization, and motor skills. In-school occupational therapy services were recommended. R-34-323.

6. A private neuropsychological evaluation of the Student was conducted in or about 2019. The Student was diagnosed with Autism Spectrum Disorder, ADHD, and a learning disability in written expression. R-34-323. The Student was given an IEP in 2020, which provided for specialized instruction, behavioral support services, and a variety of other accommodations, including checklists, visual timers, and a point person for the Student to talk to when s/he felt anxious. R-34-323-324.

7. During the 2020-2021 school year, which was significantly impacted by the COVID-19 pandemic, the Student’s academic performance declined. During the winter, s/he received failing grades in science and English, and s/he did not complete

assignments in music or physical education, though the Student's reading level suggested well-developed reading abilities. R-34-324. An occupational therapy evaluation of the Student was conducted in the fall and winter of 2020. The evaluator found that the Student displayed average non-motor visual perception but had difficulty with many tasks requiring a motor component. Test scores and observations of the Student indicated sensory-motor and neurodevelopmental deficits, which impacted his/her handwriting. Concerns were also noted with respect to the Student's organizational skills. R-36.

8. An independent psychological evaluation of the Student was conducted in spring 2021. The evaluator administered the Wechsler Intelligence Scale for Children-Fifth Edition ("WISC-V"), Delis Kaplan Executive Function System ("DKEFS"), Brown Executive Function/Attention ("Brown EF/A"), Multidimensional Anxiety Scale for Children-Second Edition ("MASC-2"), Trauma Symptoms Checklist for Children ("TSCC"), Personality Assessment Inventory-Adolescent (PAI-A), and Risk Inventory and Strengths Evaluation ("RISE"). The evaluation found that the Student was above average cognitively and in the high-average range in reading and written expression. The Student was diagnosed with Autism, ADHD, Specific Learning Disorder with Impairment in Written Expression (by history), and Adjustment Disorder, With Disturbance of Conduct. R-34.

9. The Student changed schools and started attending School A for the 2023-2024 school year. R-34. The Student has had significant issues with attendance at class, staying in class, and paying attention in class. Testimony of Witness B; Testimony of Parent.

10. An IEP meeting was held for the Student on September 11, 2023. The IEP team concluded that the Student still needed supports and accommodations to succeed in the school environment. The team decided to evaluate the Student and indicated that an academic assessment would be needed. A consent form was to be provided to the Parent for the administration of the Woodcock Johnson Tests of Individual Achievement IV-Second Edition (“WIAT-IV”). The resulting IEP recommended specialized instruction in the general education setting for seven hours and twenty minutes per week, behavior support outside the general education setting for two hours per month, use of a school-issued device with an immersive reader, and notes provided in advance of lessons.

Testimony of Witness A; Testimony of Witness B; R-20; R-34.

11. DCPS filed a due process complaint on November 9, 2023, to override the Parent’s refusal to consent to an evaluation of the Student. An HOD dated January 28, 2024, found that the Parent’s refusal was unjustified and ordered the testing. DCPS was authorized to reevaluate the Student by conducting the WIAT-IV and seek information from medical providers from the Student’s former outpatient program (to the extent that the Parent granted consent to release such information and allow the providers to discuss the Student with DCPS). R-4.

12. The Student’s spring 2021 independent psychological evaluation was reviewed by Witness A on February 16, 2024, about three years after the original evaluation. Witness A also reviewed documents, conducted observations, and administered a WIAT-IV measure. In a geometry class observation, Witness A found that the Student did not pay attention in class. However, it was reported to the evaluator that the Student made progress in geometry after s/he changed seats and did not have a

personal electronic device to distract him/her. The Student was noted as barely completing work in an information technology class, and as “trending downward” in social studies, where s/he only wanted to watch music videos, a complete change in engagement from the Student’s first term of the school year. In chemistry, the Student was engaged and enthusiastic about class during the first term, but following winter break, s/he fully disengaged from class. The evaluator indicated that the Student believed that s/he would be transferred to a new school and that s/he did not need to do any more schoolwork at School A. R-34; Testimony of Witness A.

13. DCPS staff held an Analysis of Existing Data (“AED”) meeting for the Student in February 2024. The staff reported that the Student was not performing his/her work and not cooperating in class. R-39. DCPS proposed that the Student be evaluated for occupational therapy on February 22, 2024. R-35.

14. An IEP meeting was held for the Student on March 11, 2024. The team reviewed the February evaluation. At this meeting, the Parent disagreed with the Student’s testing and present levels of performance, and the Parent requested an IEE. The Parent disagreed with the conditions under which the testing took place, in particular that the Student was not properly medicated at the time. R-40; Testimony of Witness B; Testimony of Parent.

15. The Student’s March 11, 2024, IEP contained goals in math, reading, written expression, and emotional, social, and behavioral development. The IEP indicated that the Student required frequent redirection, especially related to electronic devices/screen time. The IEP also indicated that the Student’s disabilities affected his/her executive functioning, resulting in difficulty with organization, planning, paying

attention, and inhibiting inappropriate responses. The IEP also indicated that the Student was functioning in the above-average range in reading. The IEP described the Student's verbal abilities as well above those of peers and indicated that the Student knew words and read at a higher level than peers. The IEP noted that on a Strengths and Difficulties Questionnaire ("SDQ"), a brief behavioral screening survey, the Student scored in the very high range for behavioral difficulties, hyperactivity, and concentration difficulties, and high for overall stress. The IEP also reported on DCPS's administration of the Children's Automatic Thoughts Scale ("CATS") for the Student. CATS is a self-report measure designed to assess a wide range of negative self-statements related to physical threats, social threats, personal failures, and hostility. The Student scored 76, which was clinically significant. The IEP provided the Student with specialized instruction inside general education for seven hours and twenty-five minutes per week, with behavioral support services for two hours per month. The IEP indicated that the Student was expected to complete eighty percent of the assigned work, and the IEP provided for a variety of accommodations for the Student. P-4.

16. On May 3, 2024, the Student enrolled in a short-term residential treatment program. The time spent in the program depends on the progress made while enrolled. The Student takes online classes as part of this program. The Student's anticipated release date from the program is July 31, 2024. R-14.

17. On May 9, 2024, DCPS denied the Parent's March 2024 request for an IEE and indicated that it would file a due process complaint to resolve the issue. R-7.

VI. Conclusions of Law

The District of Columbia code states that “(w)here there is a dispute about the appropriateness of the child’s individual educational program or placement, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement” provided that the party requesting the due process hearing establishes “a *prima facie* case.” D.C. Code Sect. 38-2571.03(6)(A)(i). However, in cases such as this one, which solely involve a request for an IEE, the burden of persuasion is on the school district. Collette v. District of Columbia, No. CV 18-1104 (RC), 2019 WL 3502927, at *12 (D.D.C. Aug. 1, 2019).

1. Did DCPS improperly refuse to grant the Parent’s request for an IEE in or about February 2024?

A public agency must ensure that a reevaluation of each child with a disability is conducted if the agency determines that the child’s education warrants a reevaluation, or if the child’s parent or teacher requests a reevaluation. 34 CFR Sect. 300.303(a). Such a reevaluation may occur not more than once per year (unless the parent and the public agency agree otherwise) and must occur at least once every three years (unless the parent and the public agency agree that a reevaluation is unnecessary). 34 C.F.R. Sect. 300.303(b).

A “reevaluation” is more than a single assessment. A reevaluation consists of a review of assessments of a child in all areas of suspected disability to assist in determining the educational needs of the child. 28 U.S.C. Sect. 1414(b)(3); 34 C.F.R. Sect. 300.304(c). When conducting a reevaluation, the Local Educational Agency (“LEA”) is directed to use a variety of assessment tools and strategies to gather “relevant

functional, developmental, and academic information,” including information from the parent, which may assist in determining (i) whether the child is a child with a disability and (ii) the content of the child’s IEP. The LEA must also use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. 28 U.S.C. Sect. 1414(b)(2); 34 C.F.R. 300.304(b).

In spring 2021, an independent neuropsychological evaluation of the Student was conducted, and a corresponding report was written. About three years later, this evaluation was reviewed by Witness A through a “Review of Independent Educational Evaluation,” which consisted of a review of the neuropsychological evaluation, the administration of a WIAT-II, observations of the Student, interviews, and a record review. DCPS also proposed that the Student be screened for occupational therapy, per the request of the Parent. This occupational therapy assessment was apparently never completed, but DCPS determined that it had enough data for the IEP team to reasonably calculate the Student’s March 11, 2024, IEP. The Parent disagreed, and there is no dispute that the Parent requested an IEE for the Student on March 11, 2024, during the Student’s IEP meeting. DCPS did not respond to this request until approximately two months later.

Federal regulations do not set a specific time limit for responding to a Parent's request for an IEE. Instead, the regulations state that the district must act “without unnecessary delay.” 34 CFR Sect. 300.502 (b)(2). Whether the time that has passed before a district initiates a due process hearing or provides an IEE at public expense constitutes “unnecessary delay” is a question of fact, based upon the circumstances of the

particular case. For instance, in J.P. ex rel., E.P. v. Ripon Unified Sch. Dist., No. 207CV02084MCEDAD, 2009 WL 1034993, at *1 (E.D. Cal. Apr. 15, 2009), a due process complaint, filed by a school district more than two months after the request for an IEE, was properly deemed to be timely, as the parties were communicating regarding the request for the IEE in the interim period.

DCPS did not make this argument. Instead, DCPS's argument was that it had to conduct a legal analysis in order to respond to the Parent's request for an IEE. DCPS argued that this case is distinguishable from other cases involving delays because it involves implementation of an HOD order. However, this Hearing Officer has found no caselaw to support the argument that a school district can take up to two months to develop a legal analysis in order to respond to an IEE request, and DCPS did not provide any on-point caselaw. Moreover, DCPS's witnesses did not clearly explain or prove that two months of legal analysis were necessary to respond to the Parent's request for an IEE. Pajaro Valley Unified Sch. Dist. v. J.S., 2006 WL 3734289, at *3 (N.D. Cal. 2006) (lack of explanation for less than a three-month delay in filing complaint to show validity of evaluation was an unnecessary delay).

DCPS also argued that the reevaluation of the Student had to be completed before the Parent could request an IEE. The United States Department of Education's Office of Special Education Programs has indicated that a parent must wait until the district has completed an evaluation or reevaluation of a student before initiating an IEE request. Letter to Anonymous, 55 IDELR 106 (OSEP 2010). In support of its argument, DCPS pointed to an occupational therapy evaluation of the Student, which had not been conducted as of the date of the IEE request on March 11, 2024.

However, there is little evidence that the IEP team considered the Student's reevaluation still active as of the date of the IEP meeting. To the contrary, the record suggests that the IEP team felt that the reevaluation was over by March 11, 2024, when the IEP team wrote an educational program for the Student for the next twelve months. None of the school district witnesses said that they personally considered the reevaluation to be incomplete as of the date of the IEP meeting, or that the occupational therapy assessment needed to be conducted for the reevaluation to be complete.

Moreover, the Student's WIAT-II assessment is at issue here. This assessment and the Student's entire reevaluation were discussed at the March 11, 2024, IEP meeting, where the Parent objected to the WIAT-II. DCPS did not change its position at the meeting with respect to the WIAT-II, which created an impasse on this issue. The law suggests that, after such an impasse, a parent has a right to request an IEE and a right to expect a school district's response to the request within a short period of time. Nome v. Potomac Preparatory PCS, 209 F. Supp. 3d at 152-53, 155 (D.D.C. 2016).

Within the District of Columbia, the precedent favors the Parent in IEE cases involving a delay. In Nome, a hearing officer denied a request for an IEE, excusing a three-month delay as reasonable because the school had the impression that the IEE request had been resolved, and because the mother did not bring up her request for an IEE in a July 2014 meeting. The federal court reversed, finding that the hearing officer misstated the law and the record, and that the IDEA does not require a parent to do more than request an IEE.

Similarly, in Herbin ex rel. Herbin v. District of Columbia, 362 F. Supp. 2d 254, 264-65 (D.D.C. 2005), a hearing officer found that the LEA could delay a parental

request for reevaluation for four months due to the existence of current evaluations, the lack of emergency conditions, and the parent's failure to provide reasons for the request. The court reversed the hearing officer, finding that a parental request for reevaluation must result in an immediate reevaluation. The court indicated that the LEA's obligation to conduct reevaluations upon parental request must be distinguished from a reevaluation if "conditions warrant," where more flexibility can be appropriate. *Id.* at 263-264 (citing to Policy Letter in Response to Inquiry of Deborah S. Tinsley, 16 Education for the Handicapped Law Report 1076, 1078 (1990)).

As a result of the foregoing, this Hearing Officer finds that DCPS failed to timely respond to the Parent's request for an IEE, and that the Parent's request for an IEE for the Student must be granted in full.

VII. Order

As a result of the foregoing, the following is hereby ordered:

1. The Parent is awarded an IEE for the Student;
2. All other requests for relief are denied.

Dated: July 6, 2024

Michael Lazan
Impartial Hearing Officer

cc: Office of Dispute Resolution
Parent's Representative: Attorney A, Esq.
DCPS's Representative: Attorney B, Esq.

Hearing Officer Determination
Michael S. Lazan, Hearing Officer
Case # 2024-0096, Case # 2024-0099

VIII. Notice of Appeal Rights

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. Sect 1415(i).

Dated: July 6, 2024

Michael Lazan
Impartial Hearing Officer