

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

Student Hearing Office  
810 First Street, NE, 2nd Floor  
Washington, DC 20002

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Student Hearing Office  
June 06, 2014

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PETITIONER, an adult Student,<sup>1</sup>

Date Issued: June 6, 2014

Petitioner,

Hearing Officer: Peter B. Vaden

v.

DISTRICT OF COLUMBIA  
PUBLIC SCHOOLS,

Respondent.

Student Hearing Office,  
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 (the Petitioner or STUDENT), 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 (DCMR). In her Due Process Complaint, Petitioner alleges that Respondent District of Columbia Public Schools (DCPS) has denied her a free appropriate public education (FAPE) by failing to conduct a timely triennial reevaluation, failing to timely review independent evaluations, failing to ensure that she participated in a July 30, 2013 Individualized

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

Education Program (IEP) team meeting and failing to provide her access to her educational records.

Student, an AGE adult, is a resident of the District of Columbia. Her due process complaint, filed on March 28, 2014, named DCPS as respondent. This Hearing Officer was appointed on April 1, 2014. The parties met for a resolution session on April 22, 2014, but did not reach an agreement. The 45-day period for issuance of this decision started on April 28, 2014. On April 15, 2014, I convened a telephone prehearing conference with counsel to discuss the hearing date, issues to be determined and other matters.

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. Respondent DCPS was represented by DCPS' COUNSEL and DCPS' CO-COUNSEL.<sup>2</sup>

Petitioner testified and called as witnesses FATHER, CLINICAL PSYCHOLOGIST and EDUCATIONAL ADVOCATE 2. DCPS called no witnesses. Petitioner's Exhibits P-1 through P-29 and DCPS' Exhibits R-1 through R-5 were admitted into evidence without objection. Counsel for both parties made opening statements and closing arguments. Neither party requested leave to file a post-hearing memorandum.

### **JURISDICTION**

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

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<sup>2</sup> DCPS' Counsel had to leave the hearing early because of another engagement. DCPS' Co-Counsel remained for the rest of the hearing.

## **ISSUES AND RELIEF SOUGHT**

This issues to be determined in this case, as set forth in the April 15, 2014

Prehearing Order, are:

Whether DCPS denied Student a FAPE, by:

- failing to conduct a meeting to review recently completed Independent Educational Evaluations;
- failing to ensure that Student or her parents participated in a July 30, 2013 MDT/IEP meeting;
- failing to timely comprehensively reevaluate Student in spring 2012; and
- failing to provide Student access to her educational records.

For relief, Petitioner seeks an order for DCPS to convene an MDT/IEP team meeting with the appropriate members, including Petitioner's parent and representative, within 10 days to review the completed evaluations, update Student's IEP and transition plan and determine continuation of services; to provide Student's representatives her July 30, 2012 IEP, service trackers and IEP progress reports for the past three years; to provide Student compensatory education for alleged educational harm resulting from denials of FAPE in this case, such as remedial college preparatory course work; and to furnish Student recommended Assistive Technology such as Livescribe software for note taking.

## **FINDINGS OF FACT**

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

1. Student a young adult, resides in the District of Columbia. She is eligible for special education and related services under the IDEA primary disability classification Specific Learning Disability (SLD). Exhibit P-14.

2. Beginning in 4<sup>th</sup> Grade, Student attended PRIVATE SCHOOL 1.

Testimony of Student. On May 23, 2011, when Student was still enrolled at Private School 1, Student's IEP team met to consider her continued special education eligibility and to update her IEP. At that meeting, Student's eligibility was discussed and the IEP team agreed that Student continued to be eligible for special education services as a student with an Emotional and Behavioral Disturbance. Exhibit P-6.

3. In December 2011, Student enrolled in PRIVATE SCHOOL 2 (where she was apparently a DCPS-funded Student.) Father felt that at first, Private School 2 was a good school for Student. After several months, Father concluded that Private School 2 was not teaching Student well. He alerted DCPS to his concerns over a year ago.

Testimony of Father. Student feels that Private School 2 did not teach her anything.

Testimony of Student.

4. Student's July 30, 2012 Private School 2 IEP identified her primary disability as Emotional Disturbance (ED). The IEP provided annual goals for Mathematics, Reading, Written Expression, Communication/Speech and Language, and Emotional, Social and Behavioral Development. The IEP provided Student would receive full-time Specialized Instruction (25.5 hours per week) outside the General Education setting, 30 minutes per week of Speech-Language Pathology and one hour per week of Behavioral Support services. Exhibit P-5.

5. DCPS unilaterally updated Student's IEP on July 30, 2012, without a meeting of Student's IEP team, to "maintain compliance" at a time when Private School 2 staff was in transition. Exhibits P-4, R-3.

6. On August 26, 2013, EDUCATIONAL ADVOCATE 1 wrote DCPS PROGRESS MONITOR by email to request an MDT meeting to review Student's IEP

and discuss all educationally related concerns. In the same email, Educational Advocate 1 requested copies of Student's most recent IEP, report cards, progress notes, attendance records and behavioral logs. A Multidisciplinary Team (MDT) meeting was scheduled for September 9, 2013. Exhibit P-7.

7. An MDT/IEP meeting for Student was convened at Private School 2 on September 9, 2013 to review Student's IEP. Student, her parents and Educational Advocate 1 attended the meeting. At that meeting, the MDT team revised Student's IEP. The IEP team was in agreement with the revised IEP. DCPS agreed to continue to provide FAPE to Student at Private School 2 for the 2013-2014 school year. DCPS agreed to conduct a Comprehensive Psychological/Clinical Assessment of Student and to fund Independent Educational Evaluation (IEE) Vocational II and Speech and Language assessments. Exhibits P-3, R-3.

8. The September 9, 2013 IEP duplicated the annual goals and services from the July 30, 2013 IEP. Student was provided annual goals for Mathematics, Reading, Written Expression, Communication/Speech and Language, and Emotional, Social and Behavioral Development. The IEP provided Student would receive full-time Specialized Instruction (25.5 hours per week) outside the General Education setting, 30 minutes per week of Speech-Language Pathology and one hour per week of Behavioral Support services. Exhibit P-3.

9. Licensed Psychologist and a psychology resident conducted a Comprehensive Psychological Evaluation of Student in December 2013. Student was administered the Woodcock-Johnson III Tests of Cognitive Abilities (WJ-III, Cognitive) which yielded the following scores: General Intellectual Ability - 59 (Very Low); Verbal Ability - 70 (Low); Thinking Ability - 68 (Very Low); Cognitive Efficiency - 60 (Very

Low). Student evidenced a particular weakness on a subtest measuring her working memory, attention, and concentration (numbers reversed). On the Woodcock-Johnson III Tests of Achievement (WJ-III Achievement), the following scores were attained: Broad Reading - 73 (Low); Broad Math - 47 (Very Low); Broad Written Language - 76 (Low). Student's academic scores were all below age and grade expectancy: (Reading at 4th grade equivalent; Math at 3rd grade equivalent; Written Language at 5th grade equivalent). An analysis of Student's academic testing scores from March 2009 and December 2013 revealed lower current scores on the Broad Math domain. All other composites were not significantly discrepant between the respective administrations. Clinical Psychologist diagnosed Student with Specific Learning Disorder with severe impairments in Reading, Written Expression and Mathematics, as well as with an Unspecified Neurocognitive Disorder. Student did not meet full diagnostic criteria for Attention Deficit/Hyperactivity Disorder (ADHD) or Opposition Defiant Disorder. The evaluators reported that, by parent and teacher reports, Student was not exhibiting any emotional problems that were impacting her ability to learn. Exhibit P-8.

10. The Speech-Language evaluator reported that Student's Oral Composite score (79) was below average and indicated a language disorder. Her Listening Comprehension score (67) was more than two standard deviations below norm which was significantly below average. Student exhibited a 27-point difference between her Listening Comprehension and Oral Expression indices, indicating a significant difference between her receptive and expressive language skills. The evaluator recommended that Student receive one hour per week of speech and language therapy to address her receptive and expressive language disorder and word finding difficulties. Exhibit P-10.

11. On April 30, 2014, a special education eligibility review meeting for Student was convened at Private School 2. At this meeting, Student's disability classification was changed from ED to SLD based upon the December 27, 2013 Comprehensive Psychological Evaluation report. Exhibits R-1, R-2.

12. Student voluntarily stopped going to Private School 2 in December 2013 because she had earned all of the credits she needed for high school graduation. Student has been informed by DCPS that she will be awarded her high school diploma in August 2014. She currently is working a local supermarket. Testimony of Student.

### **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**

The burden of proof in a due process hearing is normally the responsibility of the party seeking relief – the Petitioner in this case. *See* DCMR tit. 5-E, § 3030.3. *See, also, Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 536, 163 L.Ed.2d 387 (2005); *Hester v. District of Columbia*, 433 F.Supp.2d 71, 76 (D.D.C. 2006).

#### **Analysis**

- A. Did DCPS deny Student a FAPE by failing to timely comprehensively reevaluate her in spring 2012 or by failing to conduct a timely MDT meeting to review her 2013 IEE assessments?

The first issue asserted by Petitioner is that DCPS failed to conduct a timely special education reevaluation before April 2014. The IDEA requires that a reevaluation of each student with a disability is conducted at least once every three years and sooner, if the student's parent (or the adult student) or teacher requests a reevaluation or if the

LEA determines that the needs of the student warrant a reevaluation. *See* 34 CFR § 300.303. DCPS contends that Student’s triennial reevaluation was not due until the spring of 2014.

Before the current school year, Student’s last special education reevaluation was completed on May 23, 2011 at Private School 1. At that time, Student’s MDT team discussed her eligibility and determined that she continued to be eligible for special education services as a student with an Emotional and Behavioral Disturbance. Ordinarily, Student’s next triennial reevaluation would have been due by May 23, 2014 – not in spring 2012 as alleged by the Petitioner. Student’s educational advocate requested a reevaluation at the September 9, 2013 IEP team meeting and DCPS agreed to undertake the assessments. IEE psychological, speech-language and vocational assessments were conducted in the fall and winter of 2013. Petitioner’s Counsel forwarded the completed assessment reports to DCPS on January 15, 2014. The new assessments were reviewed by Student’s MDT team on April 30, 2014 and her special education eligibility was confirmed. Petitioner contends that DCPS should have ensured that the reevaluation was completed sooner.

The IDEA regulations do not set a time frame within which a local education agency (LEA) must conduct a reevaluation after one is requested for a student. *See Herbin ex rel. Herbin v. Dist. of Columbia*, 362 F.Supp.2d 254, 259 (D.D.C.2005) (decided under the IDEA, prior to enactment of the 2004 amendments to the statute.) In light of the lack of statutory guidance, U.S. District Judge Roberts concluded in *Herbin* that “[r]evaluations should be conducted in a ‘reasonable period of time,’ or ‘without undue delay,’ as determined in each individual case.” *Id.* (quoting *Office of Special Education Programs Policy Letter in Response to Inquiry from Jerry*

*Saperstone*, 21 Individuals with Disabilities Education Law Report 1127, 1129 (1995)).  
*See, also, Williams v. District of Columbia*, 771 F.Supp.2d 29, 31 n.1 (D.D.C.2011). A failure to timely reevaluate is a procedural violation of IDEA. *See Smith v. District of Columbia*, 2010 WL 4861757, 3 (D.D.C. Nov. 30, 2010).

In the present case, Student's MDT team completed her reevaluation some ten weeks after DCPS received the IEE assessments from Petitioner's Counsel. The reason for this delay was not explained at the hearing. Assuming that the 10-week delay in reviewing the reassessments were a procedural violation of the IDEA, procedural violations do not, in themselves, mean a student was denied a FAPE. *See Schoenbach v. District of Columbia*, 309 F.Supp.2d 71, 78 (D.D.C.2004). Student was required to demonstrate that she suffered an "educational harm" in order to establish that she was denied a FAPE by a procedural violation of the Act. *See, e.g., Taylor v. District of Columbia*, 770 F.Supp.2d 105, 109-110 (D.D.C.2011). Here, it is unlikely that Student suffered educational harm from her MDT team's not completing her IDEA reevaluation until April 2014 because, after December 2013, Student having already completed her high school graduation requirements, was no longer attending school. I find that Student has not met her burden of proof to establish that she was denied a FAPE by DCPS' not ensuring that her IDEA reevaluation was completed before April 2014.

- B. Did DCPS deny Student a FAPE by failing to ensure that Student or her parents participated in a July 30, 2013 MDT/IEP meeting?

On July 30, 2013, DCPS unilaterally updated Student's IEP without convening an IEP meeting. DCPS' purported justification for this action was that Private School 2's staff was in transition over the summer and the LEA decided to update the IEP "to maintain compliance," presumably with the IDEA's mandate that an IEP be reviewed

not less than annually. *See* 34 CFR § 300.(b)(i). DCPS' revising Student's IEP, without convening an IEP team meeting, was a clear procedural violation of the IDEA. *See* 34 CFR § 300.23 (IEP Team [including the parents] is group responsible for developing, reviewing, or revising an IEP for a child with a disability.) *See, also, e.g., Metropolitan Bd. of Public Educ. of the Metropolitan Government of Nashville and Davidson County v. Bellamy*, 116 Fed.Appx. 570, 578, 2004 WL 2452567, 7 (6th Cir. 2004) (Affirming failure to timely convene IEP meeting constituted a procedural violation.) As noted in the preceding part of this decision, procedural violations of IDEA do not, in themselves, mean a student was denied a FAPE. *See Schoenbach, supra*, 309 F.Supp.2d at 78. Procedural violations that seriously infringe upon an adult student's opportunity to participate in the IEP formulation process will result in a denial of a FAPE. *See, e.g., A.I. ex rel. Iapalucci v. District of Columbia*, 402 F.Supp.2d 152, 164 (D.D.C.2005). However, in this case, DCPS corrected its error by convening another, properly constituted, IEP meeting on September 9, 2013 at which Student, her parents and Educational Advocate 1 participated. The September 9, 2013 IEP team reviewed and revised Student's IEP and the team members were in agreement with the revised content. (Petitioner has not raised the appropriateness of the September 9, 2013 IEP as an issue in this case.) I find that because Student's IEP was properly reviewed at the September 9, 2013 IEP meeting, her opportunity to participate in the IEP formulation process was not seriously infringed upon by DCPS' unilateral revision of the IEP over the preceding summer. I conclude, therefore, that Student was not denied a FAPE by DCPS' improperly revising her IEP on July 30, 2014 without convening an IEP team meeting.

- C. Did DCPS deny Student a FAPE by failing to provide her access to her educational records?

The IDEA regulations afford parents (an adult students) an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the child, and the provision of a FAPE to the student. *See* 34 CFR § 300.501(a); *Friendship Edison Public Charter School Collegiate Campus v. Murphy* 2006 WL 2711524, 4 (D.D.C.2006). On August 26, 2013, Educational Advocate 1 requested Progress Monitor to provide her copies of Student's IEP, report cards, progress notes, attendance records and behavioral logs.<sup>3</sup> At the September 9, 2013 IEP meeting, DCPS agreed to provide the parents and Educational Advocate 1 with copies of service tracker logs, progress reports and prior evaluations. No evidence was adduced at the due process hearing that DCPS failed to provide the requested records or that Student was not permitted to inspect and review her records. I find, therefore, that Petitioner has not met her burden of proof to show that DCPS violated her right to access to her educational records.

#### Summary

As the testimony at the due process hearing made clear, Student's underlying grievance in this dispute is that Private School 2 allegedly failed to provide her an appropriate education, even though she earned the credits required to graduate with a high school diploma. However, this concern implicates the appropriateness of Student IEPs and their implementation by Private School 2 – issues that are not before me. With respect to the issues identified in the Prehearing Order – the timeliness of

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<sup>3</sup> By letter of July 15, 2013, Petitioner's Counsel wrote separately to the administrators of Private School 2 to request copies of Student's educational records. No evidence was adduced that this letter was also sent to DCPS.

Student's April 2014 reevaluation, DCPS' unilateral revision of Student's IEP, and Student's access to her educational records – Petitioner has not met her burden of proof to establish that she was denied a FAPE by DCPS' procedural violations of the IDEA. Therefore, Petitioner's requests for relief must be denied.

**ORDER**

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

All relief requested by Petitioner herein is denied.

Date: June 6, 2014

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).