

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

Student Hearing Office
810 First Street, N.E., 2nd Floor
Washington, DC 20002

OSSE
Student Hearing Office
June 12, 2014

PETITIONER ¹)	
On behalf of STUDENT)	
)	
Petitioner,)	Date Issued: June 10, 2014
)	
v.)	Hearing Officer: Christal E. Edwards, Esq.
)	
District of Columbia Public Schools (DCPS))	
)	
Respondent.)	
)	

REVISED HEARING OFFICER DETERMINATION²

INTRODUCTION AND PROCEDURAL HISTORY

This is a Due Process Complaint ("DPC") proceeding pursuant to the Individuals with Disabilities Education Act ("IDEA"), as amended, 20 U.S.C. §§1400 *et seq.*

The DPC was filed March 27, 2014, on behalf of the Student, who resides in the District of Columbia, by Petitioner (MOTHER), the Student's Parent, against Respondent, District of Columbia Public Schools ("DCPS").

On April 3, 2014, Respondent filed its Response, stating, *inter alia*, that Respondent has not denied the Student a Free Appropriate Public Education ("FAPE").

The undersigned held a Prehearing Conference ("PHC") by telephone on May 20, 2014, at which the parties discussed and clarified the issues and the requested relief. At the PHC, the parties

¹ Personal identification information is provided in Appendix A

² This Hearing Officer Determination has been revised to correct clerical errors only.

agreed that five-day disclosures would be filed by May 22, 2014 and that the Due Process Hearing ("DPH") would be held on May 29, 2014.

A Resolution Meeting was held on April 23, 2014 but it failed to resolve the DPC. The statutory 30-day resolution period ended on April 26, 2014. The 45-day timeline for this Hearing Officer Determination ("HOD") started to run on April 27, 2014 and will conclude on June 10, 2014.

The Petitioner filed a Motion for Summary Judgment on May 13, 2014. Respondent filed its reply on May 16, 2014. The undersigned denied Petitioner's Motion on May 29, 2014.

Petitioner elected for the hearing to be closed.

At the DPH, the following Documentary Exhibits were admitted into evidence:

Petitioner's Exhibits: P-1 through P-13

Respondent's Exhibits: R-1 through R-13³

The following witnesses testified on behalf of Petitioner at the DPH:

- (a) Petitioner;
- (b) Petitioner's Student Education Advocate.

The following witnesses testified on behalf of Respondent at the DPH:

- (a) Respondent's Special Education Coordinator;
- (b) Respondent's School Psychologist.
- (c) Respondent's School Social Worker.

Both parties gave oral arguments. On June 3, 2014, Petitioner submitted a 15-page written closing argument and on the same day, Respondent submitted a 6-page written closing argument. Neither party requested or filed any other post hearing memorandum.

JURISDICTION

The Hearing Officer has jurisdiction under 20 U.S.C. § 1415(1), (k) and DCMR tit. 5-E, § 3029 and tit. 5-6, § 2510.

ISSUES AND RELIEF SOUGHT

The issue to be determined in this case, as identified in the Prehearing Order, is:

- Whether DCPS denied Student a Free and Appropriate Public Education (“FAPE”) by failing to timely complete the Student’s parental requested reevaluation of student given on January 29, 2014, consisting of comprehensive psychological assessment, occupational therapy, speech and language assessment, and functional behavior assessment.

RELIEF REQUESTED

Petitioner requests the following relief:

- (1) A finding that DCPS denied the student a FAPE;
- (2) An Order that DCPS fund independent assessments consisting of a comprehensive psychological assessment, functional behavioral assessment, and a speech and language assessment, and Occupational Therapy;
- (3) An Order that within 10 days of the receipt of the last of the independent assessments, DCPS shall convene a Multi-Disciplinary Team (“MDT”) team meeting to review the assessments, and review and revise the Individualized Education Program (“IEP”) for student;

- (4) An Order to discuss and determine placement, after review of IEP, and if so determined, identify placement within 10 days and provide transportation; and
- (5) Compensatory Education.

FINDINGS OF FACTS

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

- 1) Student is a female, current age. P 2-1⁴
- 2) Student is a resident of the District of Columbia. *Id.*, testimony of Petitioner.
- 3) The Student has been determined eligible for Special Education and its related services under the IDEA as a child with other health impaired. P1-1, testimony of Petitioner's educational advocate.
- 4) The student's most recent functional behavioral assessment was conducted on March 18th, 2012. P - 3.
- 5) The student's most recent comprehensive psychological evaluation was conducted on March 14th & 20th, 2012 and a report prepared on April 4th, 2012. P 4 -1.
- 6) The student's most recent occupational therapy evaluation was conducted on June 11, 2012 and a report prepared shortly thereafter. P 5-1.
- 7) The student's most recent speech and language evaluation was conducted on July 11, 2012 and a report prepared on July 13th, 2012. P 6 -1.
- 8) On October 24, 2013 the student's MDT Meeting was reconvened at the request of the student's teachers at School A. P 8-1, Petitioner's educational advocate.

⁴ When citing to exhibits, the third range represents the page number within the referenced exhibit, in this instant, page 1.

- 9) The student's psychiatric evaluation was conducted on November 13th, 2013. P 9- 1. The report was made available to parent's counsel on January 10, 2014 and a copy provided to DCPS that same day. P-13-5; testimony of Petitioner's educational advocate. According to the psychiatrist, the student suffered from a mood disorder; ADHD; and was recommended for a rule-out for psychosis. P – 9.
- 10) On January 29th, 2014, the parent, through counsel, made a written request to DCPS that the student be comprehensively reevaluated with a comprehensive psychological assessment a speech and language assessment, an occupational therapy assessment, and a functional behavioral assessment. P 13-6. The parent requested to determine the student's current level of academic and related service level of functioning or the lack thereof. *Id* The parent, through counsel, further asked that this communication be considered consent for DCPS to begin the reevaluation process or to please forward any necessary documentation to her representative to complete the reevaluation in a timely manner. *Id*
- 11) On February 3, 2014, a letter of invitation was sent to the parent's counsel, by the special education coordinator at School A, offering to reconvene the student's MDT meeting. P 13-7, testimony of Petitioner's educational advocate, testimony of Respondent's Special Education Coordinator.
- 12) Petitioner, through counsel, agreed to reconvene the MDT meeting on February 18, 2014. P-13-8.
- 13) On February 18, 2014, the parent's educational advocate and the parent (via teleconference) appeared at School A School for the meeting. P 13- 9 thru 13-11, testimony of Petitioner's educational advocate, testimony of Respondent's Special

Education Coordinator. However, once Petitioner's Educational Advocate arrived at School A, Respondent's Special Education Coordinator advised that the meeting was not going forward because she thought the MDT and IEP meeting would be held the same day, of Friday, February 21, 2014. *Id.*

- 14) The student's MDT Meeting was scheduled to convene on March 3, 2014, but did not proceed due to inclement weather, however; the MDT meeting did proceed on March 12, 2014. P 13- 16 thru P 13-17, testimony of Petitioner's educational advocate, testimony of Respondent's Special Education Coordinator. During the MDT meeting, the team discussed parent's independent psychiatric evaluation, the IEP, and discussed the student's current state of academic and behavioral functioning in the school setting. *Id.* Also, the IEP team, as a result of the student's violent and aggressive nature, agreed that a different disability classification as a student with an Emotional Disturbance was required. P-2-1, testimony of Petitioner's educational advocate, testimony of Respondent's Special Education Coordinator.
- 15) Further, during the March 12, 2014 MDT Meeting, Ms. Harrower acknowledged receipt of the request, but advised that none of the testing had begun despite the student's continuing academic and behavioral decline. Testimony of Petitioner's educational advocate, testimony of Respondent's Special Education Coordinator. Further, the team endorsed the student's complete reevaluation consisting of psychological, speech and language, occupational therapy, and functional behavioral testing for the student. *Id.*
- 16) At the conclusion of the MDT Meeting, the educational advocate was asked if he could sign the consent for the testing. Testimony of Petitioner's educational advocate,

testimony of Respondent's Special Education Coordinator. However, he declined to sign the consent at that time because he wanted to make certain the parent heard all of the discussions that took place during the meeting as the student was in the midst of an emotional breakdown during the meeting. Testimony of Petitioner's educational advocate. He then advised Special Education Coordinator that he would speak to the parent and follow-up with her regarding testing shortly. (*Id.*)

- 17) By email dated March 13, 2014, the student educational advocate informed the Special Education Coordinator that the parent was still in agreement with DCPS proceeding with the reevaluations of her child and to please have her sign the consent to evaluate form ASAP. P 13-17. Furthermore, in that same email, the special educational advocate also requested that if there was any delay in getting the form signed to please notify him or the parent's counsel, Mr. Hill. *Id.*
- 18) By email dated April 2, 2014, DCPS provided a blank copy of a Consent to Evaluate form to Petitioner's counsel. P 13-24
- 19) By email dated April 8, 2014, Petitioner's Counsel provided DCPS and executed Consent to Evaluate form for the student. P 13-33.
- 20) On April 23, 2014, during the student's Resolution Session Meeting, DCPS advised the parent and her counsel that no testing or reevaluations had been performed on the student. P 13-35.
- 21) The student's comprehensive psychological evaluation took place from April 24, 2014 to May 5, 2014 and the report was drafted from May 15, 2014 through May 19, 2014. P 10 – 1. However, on May 28, 2014, during the Student's MDT meeting, the comprehensive psychological evaluation report provided by DCPS to Petitioner as not

appropriate as it was normed wrong and Respondent's Psychologist, had to re-norm it. Testimony of Respondent's School Psychologist.

- 22) The student's speech and language reevaluation was conducted on May 13, 2014 and May 14, 2014, a report was prepared on May 19, 2014, and provided to Petitioner at the MDT Meeting on May 28, 2014. P 11- 1.
- 23) The student's occupational therapy assessment was performed on May 6, 2014, a report was prepared May 19, 2014, and provided to Petitioner at the MDT Meeting on May 28, 2014. P 12- 1.
- 24) The student's functional behavior assessment was performed on May 22, 2014 and the report was provided to Petitioner at MDT meeting on May 28, 2014. R – 13.

CONCLUSIONS OF LAW

Purpose of the IDEA

1. The IDEA is intended "(A) 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 [and] (B) to ensure that the rights of children with disabilities and parents of such children are protected..." 20 U.S.C. §1400(d)(1); *accord*, DCMR §5-E3000.1.

FAPE

2. The IDEA requires that all students be provided with a free appropriate public education ("FAPE"). FAPE means:

special education and related services that -

(A) have been provided at public expense, under public

supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

20 U.S.C. §1401(9); *see also*, 34 C.F.R. §300.17 and DCMR §5-E3001.1.

Procedural Violations of IDEA

3. Procedural issues

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies -

(I) impeded the child's right to a free appropriate public education;

(II) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or

(III) caused a deprivation of educational benefits.

20 U.S.C. §1414(f)(3)(E). *See also*, 34 C.F.R. §300.513(a); *accord*, *Lesesne v. District of Columbia*, 447 F.3d 828, 45 IDELR 208 (B.C. Cir. 2006).

Based upon the above Findings of Fact and argument and legal memoranda 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

In a Special Education DPH, the burden of persuasion is on the party seeking relief. DCMR §5-E3030.3; *Schaffer v. Weast*, 546 U.S.49 (2005). Through documentary evidence and witness testimony, the party seeking relief must persuade the Impartial Hearing Officer by a preponderance of the evidence. DCMR §5-E3022.16; *See also*, *N.G. v. District of Columbia*, 556 F. Supp. 2d 11, 17 n.3 (D.D.C. 2008).

Analysis

(1) Whether DCPS denied Student a Free and Appropriate Public Education (“FAPE”) by failing to timely complete the Student’s parental requested reevaluation of student given on January 29, 2014, consisting of comprehensive psychological assessment, occupational therapy, speech and language assessment, and functional behavior assessment.

Student was initially found eligible for special education services in May of 2011 and the last IEP annual review meeting date was March 14, 2013. For the March 14, 2013 meeting, DCPS reviewed the present level of performance and annual goals in the areas of mathematics, reading, written expression, communication/speech and language, emotional, social, and behavioral development, and motor skills/physical development. P -1. As a result, on March 18, 2014, the IEP team proscribed the student 15 hours of specialized instruction outside the general education setting on weekly basis. *See DPC Notice*. Petitioner claims that DCPS has denied Student a FAPE by failing to timely complete the Student’s parental requested reevaluation of student given on January 29, 2014, consisting of comprehensive psychological assessment, occupational therapy, speech and language assessment, and functional behavior assessment. The IDEA requires that a public agency must ensure that a reevaluation of each child with a disability is conducted at least once every three years, or sooner when, inter alia, the child’s parent or teacher requests a reevaluation, subject to the limitation that a reevaluation may occur not more than once a year, unless the parent and the public agency agree otherwise. See 34 CFR § 300.303. At the request of the student’s special education coordinator at School A, on October 24, 2013 reconvened a MDT team meeting to discuss the student’s current behavior and academic progress. The meeting was attended by the student's special education teacher, the student’s mother, the student’s community social worker, and the student’s educational advocate. The student’s special education teacher informed the team that the student's behavior had been out

of control and very disruptive in school this year. She further stated that the student was constantly seeking attention through physical and verbal provocation of other peers, constant talking, frequent refusal to do any school work and frequent outbursts, and having more bad days than good days this school year. The special education teacher further explained that two of student's teachers report that student's behavior is so disruptive that it has impeded her progress and the progress of others. Lastly the student is currently receiving D's and F's in her classes. During this meeting, the team scheduled a psychiatric evaluation of the student to be conducted on or about November 13, 2013. As a result of this information and meeting, the parent of the student, on January 29, 2014 made the aforementioned comprehensive reevaluation request of the student.

IDEA and its implementing regulations do not set a time frame within which an LEA must conduct a reevaluation after one is requested by a student's parent. *See Herbin ex rel. Herbin v. District of Columbia*, 362 F. Supp. 2d 254, 259 (D.D.C. 2005) Further, the court in *Herbin* concluded that "reevaluations should be conducted in a 'reasonable period of time' or 'without undue delay,' as determined in each individual case." *Id.* While DCPS may not conduct reevaluation assessments of a child without the parent's consent, See 34 CFR § 300.300(c), it does not stop there. See CFR § 300.300(c)(2); CFR § 300.300(d)(1), CFR § 300.300(d)(5)

DCPS was on notice the student was having extreme difficulty both academically and behaviorally since the MDT meeting on October 24, 2013, the student's psychiatric evaluation report, the multiple phone calls the parent was receiving regarding the student disciplinary problems, and the March 12, 2014 MDT Meeting discussions of the student's academic and behavior problems. Furthermore, the Petitioner's counsel gave consent for the parent in his letter dated January 29, 2014 and if such consent was not sufficient, counsel ask DCPS to send the

appropriate paper work. However, DCPS did not acknowledge such letter until the March 12, 2014 MDT Meeting and informed Petitioner that none of the testing had performed. I conclude therefore that DCPS did deny Student a FAPE by failing to conduct a special education reevaluation requested by the parent.

Compensatory Education

Petitioner has requested an award of compensatory education in this case. It is appropriate to consider compensatory education because I have found that Student was denied a FAPE by DCPS' failure to develop an IEP for him. See *Walker v. District of Columbia*, 786 F.Supp.2d 232, 239 (D.D.C.2011) (Once a student has established a denial of the education guaranteed by the IDEA, hearing officer must undertake a fact-specific exercise of discretion designed to identify those services that will compensate the student for that denial.) The courts have recognized that there may be situations where a student, who was denied a FAPE, may not be entitled to an award of compensatory education. See, e.g., *Thomas v. District of Columbia*, 407 F.Supp.2d 102, 116 (D.D.C.2005) (Conceivable that no compensatory education is required for the denial of FAPE because it would not help or because student has flourished in his current placement); *Gill v. District of Columbia*, 751 F.Supp.2d 104, 113 (D.D.C.2010). In the present case, there is sufficient evidence that Student suffered any educational deficit as a result of DCPS' failure to reevaluate the student and provide appropriate services and a revised IEP. Because the student has experienced extreme difficulty both academically and behaviorally since the MDT meeting on October 24, 2013 and continued through the MDT meeting on March 12, 2014, the student has suffered an educational deficit. Therefore, I am inclined to make a compensatory educational award.

ORDER

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

- (1) DCPS shall fund the parent's independent assessments consisting of a comprehensive psychological assessment, functional behavioral assessment, a speech and language assessment, and Occupational Therapy.
- (2) No later than ten (10) business days of the receipt of the last of the independent assessments, DCPS shall convene a Multi-Disciplinary Team ("MDT") team meeting to review the assessments, and review and revise the Individualized Education Program ("IEP") for student. Specifically: (a) develop a Behavior Intervention Plan ("BIP") based upon the FBA, to be implemented immediately; (b) review the student's academic, social, emotional, and behavioral progress and make necessary revisions to student's IEP that may be appropriate, including discussing appropriate placement and transportation for student, to be implemented immediately.
- (3) If DCPS decides to make revisions to the student IEP besides those proscribed above, nothing in this Order shall Preclude Petitioner from filing a new Due Process Complaint if Petitioner disagrees with those revisions.
- (4) As Compensatory Education for the denial of FAPE, beginning July 1, 2014 and continuing through October 31, 2014, DCPS shall provide or fund 240 hours of academic tutoring for student, provided that if student is approved to attend summer school or appropriate placement, the hours of instruction offered during summer school or placement shall offset the hours of tutoring on an hour for hour basis. Any tutoring hours not used by October 31, 2014 shall be forfeited. If the tutoring is not provide at student's residence or school, DCPS shall provide transportation.

IT IS SO ORDERED.

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).

06/12 /14

Dated

Christal E. Edwards /s/

Christal E. Edwards, Esq.
Hearing Officer