

**DISTRICT OF COLUMBIA**  
**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**  
Office of Dispute Resolution  
810 First Street, N.E., 2<sup>nd</sup> Floor  
Washington, DC 20002

OSSE  
Office of Dispute Resolution  
June 30, 2015

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PUBLIC CHARTER SCHOOL, <sup>1</sup>	)	
	)	Hearing Officer: NaKeisha Sylver Blount
<i>Petitioner,</i>	)	
	)	Case No: 2015-0163
v.	)	
	)	<b>Date Issued:</b> June 29, 2015
STUDENT,	)	
through PARENT	)	
	)	
<i>Respondent.</i>	)	

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**Hearing Officer Determination**

**SUBJECT MATTER JURISDICTION**

Subject matter jurisdiction is conferred pursuant to the Individuals with Disabilities Education Act (“IDEA”), as modified by the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. Sections 1400 *et seq.*; the implementing regulations for the IDEA, 34 Code of Federal Regulations (“C.F.R.”) Part 300; Title V, Chapter E-30, of the District of Columbia Municipal Regulations (“D.C.M.R.”); and D.C. Code 38-2561.02(a).

**PROCEDURAL BACKGROUND**

This is a due process complaint (“DPC”) proceeding pursuant to the Individuals with Disabilities Education Act (“IDEA”), as amended, 20 U.S.C. Sections 1400-1482.

The DPC was filed on May 5, 2015 by Petitioner, Public Charter School, a Local Education Agency (“LEA”) in the District of Columbia against Respondent, Student’s mother (“Parent”). On June 1, 2015, Respondent filed her Response, denying the allegation Petitioner raised in its DPC. Because the LEA filed the DPC in this action, the parties were not required to meet in a Resolution Session Meeting, although they could have elected to do so, and did not. The hearing officer determination (“HOD”) in this matter was initially due on June 19, 2015. However, on June 1, 2015, Parent filed a motion for continuance, which was granted on June 3, 2015, and as a result, the HOD deadline changed to June 29, 2015.

The undersigned Impartial Hearing Officer (“IHO” or “hearing officer”) held a Pre-hearing Conference (“PHC”) on May 20, 2015, during which the parties discussed and clarified the issue and the requested relief. At the PHC, the parties agreed that witnesses and exhibits would be disclosed by May 28, 2015 and that the DPH would be held on June 4, 2015. The PHC

was summarized in the Pre-Hearing Conference Summary and Order (the “PHO”) issued on May 20, 2015.

After a continuance was granted on June 3, 2015, the DPH date was changed to June 19, 2015, and was held on June 19, 2015 at the Office of Dispute Resolution, 810 First Street, NE, Room 2004. Petitioner elected for the hearing to be closed. Petitioner/LEA was represented by Lauren Baum, Esq. and Respondent/Parent appeared *pro se*, accompanied by an advocate (“Educational Advocate”).

Petitioner’s and Respondent’s disclosures of witnesses and exhibits were filed at least five business days prior to the rescheduled DPH date. At the DPH, Petitioner’s exhibits P-1 through P-15 were admitted without objection. Respondent’s exhibits R-1 through R-25 were admitted without objection.

Petitioner/LEA called the following witness at the DPH:

- (a) Learning Support Coordinator/Local Education Agency Representative (“LEA Representative”).

Respondent/Parent called the following witness at the DPH:

- (a) Grandparent.

Petitioner and Respondent gave oral closing arguments.

### ISSUE

As discussed at the PHC and reflected in the PHO, the following issues was presented for determination at the DPH.

- (a) **Whether Public Charter School should be permitted to conduct a comprehensive psychological or neuropsychological evaluation to determine if Student continues to be eligible for special education services pursuant to 34 C.F.R. §§ 300.300 and 300.303.**

### RELIEF REQUESTED

Petitioner requested the following relief:

- (a) an Order requiring Parent to consent to make Student available for a comprehensive neuropsychological or comprehensive psychological evaluation;
- (b) an Order that Student is no longer eligible to receive special education services under the IDEA if Parent does not consent to and make Student available for the re-evaluation.

### FINDINGS OF FACT<sup>2</sup>

1. Student is █ years old, and resides with his mother (“Parent”/“Respondent”) in Washington, D.C. Student was been determined eligible for special education and related

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<sup>2</sup> Unless otherwise noted, findings are based on the testimony of both witnesses.

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services in February 2012 under the disability classification “speech and language impairment,” and Student attends Public Charter School.<sup>3</sup>

2. As it had been three years since Student had last been evaluated for special education and related services eligibility, Student was due to receive his triennial evaluation as of February 2015.<sup>4</sup>

3. In December 2014 Parent gave written consent for Student to receive a psychological evaluation and various other evaluations; however, Parent revoked her consent for the psychological in January 2015, because an intern was slated to conduct the evaluation, and Parent did not agree with the choice of provider.

4. Public Charter School arranged to have a licensed psychologist evaluate Student instead; however, this did not allay Parent’s concerns. Therefore, in January 2015 Public Charter School agreed to fund an independent neuropsychological evaluation through the provider of Parent’s choice.

5. As a condition for receiving funding for the independent neuropsychological, Public Charter School required Parent to acknowledge in writing that Student’s the updated triennial evaluations would soon be due. Parent provided this written acknowledgement.

6. Though Public Charter School never set a definitive deadline for receiving the independent neuropsychological, Public Charter School’s understanding was that it would be completed on a short turn around (within a few weeks).

7. The LEA and Parent agreed that the LEA would pay the rate set by the Office of State Superintendent of Education (“OSSE”) for the neuropsychological. The parties all understood that OSSE’s rate was lower than the rate the independent neuropsychologist charges, and that Parent would be responsible for paying the balance.

8. Parent requested a written authorization letter from Public Charter School confirming the authorization for the independent neuropsychological. LEA Representative asked Parent to provide details on what specific information the neuropsychologist was requesting be included in the letter, which Parent did not provide. An authorization letter was not issued.

9. LEA Representative followed up with Parent, Grandparent and Educational Advocate several times to ascertain the status of the evaluation, and did not receive definitive information about when it would be completed. On one occasion when LEA Representative spoke with Grandparent in person, Grandparent told LEA Representative that “payment” was the issue causing the delay; however, neither party clarified what that meant.

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<sup>3</sup> P-4; testimony of Grandparent; testimony of LEA Representative.

<sup>4</sup> P-4; testimony of Grandparent; testimony of LEA Representative.

10. On April 8, 2015, Parent informed LEA Representative that Student's independent neuropsychological was scheduled for June 28 and June 29, 2015.

11. Due to the delay, on or around April 13, 2015, LEA Representative notified Parent that Public Charter School was revoking its consent to have an independent neuropsychologist evaluate Student, and again requested Parent's consent for Public Charter School to evaluate him.

### CONCLUSIONS OF LAW

"Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE." 5 D.C.M.R. E-3030.3. The burden of proof in an administrative hearing is properly placed upon the party seeking relief. *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).

**(a) Whether Public Charter School should be permitted to conduct a comprehensive psychological or neuropsychological evaluation to determine if the student continues to be eligible for special education services pursuant to 34 C.F.R. §§ 300.300 and 300.303.**

Pursuant to 34 C.F.R. § 300.303(b)(2), a student who has been determined eligible for special education and related services under the IDEA must be reevaluated at least once every three years unless the parent and the LEA both agree that a reevaluation is unnecessary, which has not happened in this case. Reevaluation data is part of what a student's IEP team must review and consider in determining whether a student remains eligible for special education and related services. *See* 34 C.F.R. § 300.305(a)(1)(i) and (a)(2)(i)(B). The LEA is required to obtain informed parental consent prior to conducting a student's reevaluation. If a parent refuses to provide consent for their child to be reevaluated, the LEA may attempt to override the parent's consent, however, it is not required to do so, and an LEA has not violated its obligations to the student under the IDEA, including its obligation to reevaluate the student and determine the student's continued eligibility for special education and related services, if the parent refuses to consent to have the student reevaluated. *See* 34 C.F.R. § 300.300(c).

In this case, Parent has refused to allow the LEA to reevaluate Student because Parent wants Student to be evaluated by a particular neurologist whose credential Parent feels comfortable with. The parties had initially agreed to the independent neuropsychological; however, the LEA revoked its consent due to the fact that Student's triennial would be approximately five months overdue by the time the neuropsychological evaluation was completed. The IDEA does not impose upon an LEA an obligation to authorize an independent evaluation before it has had the opportunity to conduct its own evaluation. In fact the law specifically states that while a parent may obtain an independent evaluation any time the parent desires to do so if the parent will be funding the full cost of the evaluation, the parent is only

entitled to an independent evaluation at public expense if and when the parent disagrees with the evaluation the LEA has conducted, and even then certain limitations apply. 34 C.F.R. § 300.502.

The IDEA did not require the LEA to authorize the independent neuropsychological prior to completing its own evaluation, and nothing in the IDEA would prohibit the LEA from revoking its authorization for the independent evaluation, particularly in light of the delay for an evaluation that was time-sensitive with respect to Student's continued eligibility. As Petitioner pointed out in her closing argument, Petitioner's assertions are more closely akin to a breach of contract argument. However, a hearing officer is not a court, and does not have broad jurisdiction such as would extend to such a claim. Public Charter School meets the burden of proving that it should be permitted to conduct a comprehensive psychological or neuropsychological evaluation to determine if Student continues to be eligible for special education services.

**ORDER**

Based on the Findings of Fact and Conclusion of Law above, it is hereby **ORDERED** that:

- (a) Within 20 business days of this Order, Parent shall provide written consent to allow Public Charter School to conduct a comprehensive neuropsychological or comprehensive psychological evaluation for Student,
- (b) Upon providing the written consent described in Order "(a)" above, Parent shall timely make Student available for the evaluation described in Order "(a)" above;
- (c) To the extent Parent opts not to consent to having Student evaluated and/or opts not to make Student available to be evaluated as described in Order "(a)" and Order "(b)" above, Public Charter School shall not have an obligation to continue providing special education and related services to Student pursuant to the IDEA. However, the IDEA obligations of Public Charter School (or other applicable LEA) with respect to Student, including determining his eligibility, resume immediately resume upon Parent providing written consent and making Student available for evaluation.

All other relief Petitioner requested in the complaint is **DENIED**.

**IT IS SO ORDERED.**

Date: June 29, 2015

**/s/ NaKeisha Sylvester Blount**  
Impartial Hearing Officer

Copies to:  
Petitioner (by U.S. mail)  
Petitioner's Attorney: Lauren Baum, Esq. (electronically)  
Parent/Respondent: Parent and Parent's Advocate (electronically)  
Chief Hearing Officer Virginia Dietrich, Esq. (electronically)  
OSSE-SPED (electronically)  
ODR (electronically)

**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).