

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Office of Dispute Resolution
810 First Street, NE, 2nd Floor
Washington, DC 20002

PETITIONER,
on behalf of STUDENT,¹

Date Issued: March 4, 2017

Petitioner,

Hearing Officer: Peter B. Vaden

v.

Case No: 2016-0292

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Hearing Dates: February 15 and 17, 2017

Respondent.

Office of Dispute Resolution,
Rooms 2004, 2006
Washington, D.C.

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 MOTHER), 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 (“D.C. Regs.”). In her due process complaint, Petitioner alleges that Respondent District of Columbia Public Schools (DCPS) denied Student a free appropriate public education (FAPE) by not ensuring that ■ was offered an appropriate Individualized Education Program (IEP) and educational placement beginning in February 2016.

¹ Personal identification information is provided in Appendix A.

Student, an AGE youth, is a resident of the District of Columbia. Petitioner's Due Process Complaint, filed on December 19, 2016, named DCPS as respondent. The undersigned Hearing Officer was appointed on December 22, 2016. The parties met for a resolution session on January 6, 2017 and were unable to reach an agreement. My final decision in this case was originally due by March 4, 2017. On January 5, 2017, I convened a telephone prehearing conference with counsel to discuss the hearing date, issues to be determined and other matters.

The due process hearing was held before the undersigned impartial hearing officer on February 15 and 17, 2017 at the Office of Dispute Resolution in Washington, D.C. 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 LEA REPRESENTATIVE and by DCPS' COUNSEL.

The Petitioner testified and called as additional witnesses CLINICAL PSYCHOLOGIST, EDUCATIONAL ADVOCATE and ADMISSIONS COORDINATOR from NONPUBLIC SCHOOL. DCPS called as witnesses SPECIAL EDUCATION TEACHER 1, SCHOOL PSYCHOLOGIST, SCHOOL SOCIAL WORKER, SPECIAL EDUCATION TEACHER 2, and GENERAL EDUCATION TEACHER. Petitioner's Exhibits P-1 through P-49 and DCPS' Exhibits R-1 through R-24 were all admitted into evidence without objection. Counsel for the respective parties made opening statements and closing arguments. At the request of Petitioner's Counsel, the parties were granted leave until February 22, 2017 to file written citations of authority. Neither party filed a post-hearing written submission.

JURISDICTION

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

ISSUES AND RELIEF SOUGHT

The following issue for determination was certified in the January 5, 2017

Prehearing Order:

Whether District of Columbia Public Schools (DCPS) failed to provide the student with an appropriate IEP on or about February 4, 2016, and/or whether, in light of the recommendations of the fall 2016 independent psychological evaluation, DCPS failed to amend or revise the student’s IEP, as appropriate after October 20, 2016 to provide the student with a more restrictive setting and placement/location of services as well as an increase in counseling services and a dedicated aide.

For relief, the parent requests that the hearing officer determine that Student has been denied a FAPE and order DCPS to ensure that Student’s IEP is revised to provide for placement in a full-time, therapeutic, stand-alone school for students with an Emotional Disturbance, provide for a dedicated aide and provide not less than one hour per week of counseling in the school setting; and order DCPS to provide a location of services capable of implementing the IEP and/or fund Student’s placement at Nonpublic School and award Student compensatory education for the denials of FAPE alleged in the complaint.

FINDINGS OF FACT

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

1. Student an AGE child resides in the District of Columbia with Mother.

Testimony of Mother. Student is eligible for special education under the Multiple Disabilities (MD) classification based upon Other Health Impairment - Attention Deficit

Hyperactivity Disorder (OHI-ADHD) and Emotional Disturbance (ED) disabilities.

Testimony of School Psychologist.

2. For the last 2 years, Student has attended CITY SCHOOL, where ■ is currently enrolled in GRADE. Exhibit R-3.

3. Because of Student's behavior and mental health issues, Mother has been concerned that Student may need special education services since the 2011-2012 school year. Dec. 1, 2015 HOD, Finding of Fact ¶ 2.²

4. After assessing Student, a psychiatrist stated in a November 28, 2012 letter that Student had been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and possibly Psychotic Disorder NOS. Dec. 1, 2015 HOD, Finding of Fact ¶ 3.

5. On September 8, 2015, another doctor stated in writing that Student "has ADHD and emotional problems. ■ may be psychotic as well." Dec. 1, 2015 HOD, Finding of Fact ¶ 4.

6. A May 6, 2015 CAFAS (Child and Adolescent Functional Assessment Scale) Report concluded that Student was "[p]otentially psychotic" with underlying data indicating that Student's impairment had worsened from March 17, 2015 to May 6, 2015. Student was reported to experience 4-5 other voices in addition to the auditory/visual hallucinations of ■ "imaginary friend Larry." Dec. 1, 2015 HOD, Finding of Fact ¶ 6.

7. A June 10, 2015 diagnostic assessment by the DC Department of Behavioral Health concluded that in addition to symptoms of ADHD and rebellious

² On December 1, 2015, in Case No. 2015-0325, Hearing Officer Keith Seat issued a Hearing Officer Determination concerning this Student. Exhibit P-45. In the prehearing conference for the present case, counsel agreed that I may adopt relevant findings of fact from the prior decision (the Dec. 1, 2015 HOD).

behavior, a. Student “experiences auditory, visual, and tactile hallucinations of seeing imaginary friends, hearing voices;” b. Student “has also started experiencing insects and flies on his skin” and c. Student appears to be developing early on-set Schizophrenia.

Dec. 1, 2015 HOD, Finding of Fact ¶ 6.

8. In a DCPS Functional Behavioral Assessment (FBA) dated November 10, 2015, Student was reported to have a history of presenting with bizarre and unusual behaviors both at home and at school. Student’s treating psychiatrist diagnosed him with ADHD and Oppositional Defiant Disorder. During the 2014-2015 school year at City School, Student received several disciplinary referrals, presenting with fighting, refusing to adhere to teacher’s requests, elopement, impulsivity, academic disengagement, noncompliance and disruptive behaviors. Student’s behaviors in the 2015-2016 school year were described as less intense and more easily managed in the classroom. ■■■ behaviors through November 2015 had not warranted interventions from the principal or other behavior interventionist. However, Mother described Student’s behaviors as being more intense at home during the same time period.

Exhibit P-8.

9. In the Dec. 1, 2015 HOD, Hearing Officer Seat ordered, *inter alia*, that DCPS conduct a comprehensive psychological evaluation of Student and hold a special education eligibility committee meeting within 10 school days after completion of the comprehensive psychological evaluation. Exhibit P-45.

10. School Psychologist conducted a comprehensive psychological evaluation of Student in November and December 2015. In her December 16, 2015 Comprehensive Psychological Evaluation Report, School Psychologist reported that Student was presenting with cognitive skills which overall fell within the Average to Low Average

range of functioning. ■■■ intellectual skills indicated that ■■■ had the cognitive capacity to achieve at grade level work. Academic assessments indicated that Student also had academic skills ranging from the Average to the High Average range which indicated that ■■■ had the ability to perform grade level tasks. However, of great concern were Student's behaviors in the classroom setting. Student had presented with varying degrees of classroom behaviors of concern throughout several years. Teacher comments on early report cards indicated that Student needed work on following directions, often had to be reminded and redirected during transition time, that ■■■ was making steady progress but had the ability to do more, and that Student was making an effort to handle ■■■ emotions and problem solve. Student had been noted to need frequent prompting to adjust to new situations, follow classroom rules and with getting along with peers. Later teacher comments indicated that Student needed clear directions and expectations. In the 2015-2016 school year, Student was having difficulty with math across the spectrum, but had shown "proficient skills" in reading, science and social studies. It had been reported that Student was then having a difficult time with staying on task when doing class assignments. In class, Student might have had some difficulty getting started on assignments, completing assignments, fatigue, irritability, restlessness and difficulty concentrating. It had been reported that ■■■ had difficulty staying focused, difficulty starting and completing class work and comprehending and completing ■■■ homework, displaying levels of behaviors associated with symptoms of having attention concerns in the school environment, including inattention, impulsivity and sensory seeking behaviors. According to ■■■ teachers, these behaviors had interfered with Student's access to the general education curriculum. ■■■ could be distractible and have difficulty finishing class work. Student needed work

broken down into small pieces, frequent redirection and teacher feedback to remain on task. Cognitively, the Wechsler Intelligence for Children Fifth Edition was used to determine Student's intellectual functioning. Academically, according to [REDACTED] report cards and the Kaufman Test of Educational Achievement, Third Edition (KTEA-3) results, Student performed weaker in the areas of math fluency, math computation, math concepts and listening comprehension. According to [REDACTED] teacher, Student was struggling in particular with math where [REDACTED] received "Below Basic" for the first marking period. Socially, Student was experiencing behavioral concerns that included [REDACTED] being easily distracted, needing constant repetition of directions and needing close proximity of the teachers to complete [REDACTED] class work. Student could be distractible and had difficulty finishing class work. Student needed work broken down into small pieces, frequent redirection and teacher feedback to remain on task. In the area of Work Habits, Student was rated as needing "Frequent Prompts or "Limiting Prompting" in the areas of following directions, working well with others and making an effort. Student's teachers had not reported that [REDACTED] talked out loud to his "imaginary friends." It was reported by [REDACTED] teachers that Student often hummed, sang rap songs, danced and tapped on the desks during classroom instruction. Based on the Clinical Assessment of Behavior (CAB) ratings, Student was rated to be in the Normal range on all clinical clusters. Student's teachers rated Student to be in the Normal range for Emotional Disturbance and Social Maladjustment. Mother rated Student to be in the Normal Range with the exception of Critical Behaviors-Mild Clinical range. Thus, Student was rated in the Normal range for Social Maladjustment and Mild Clinical range for an Emotional Disturbance. On the Behavior Assessment Scale for Children (BASC-2), Mother rated Student to be in the Clinically Significant range for Hyperactivity, Conduct

Problems, Somatization, and Atypicality. Exhibit R-3.

11. On January 14, 2016, School Psychologist completed an addendum to her Comprehensive Psychological Evaluation report after speaking to Student's new community-based support worker at HEALTHCARE AGENCY. After this interview, School Psychologist made the additional recommendations that Student's MDT team should consider the IDEA classification of Multiple Disabilities (MD) for Student based on ED and OHI impairments. She recommended that the DCPS psychologist speak to Student's physician or psychiatrist about making a diagnosis of Schizophrenia. Exhibit P-10.

12. On February 4, 2016, a special education eligibility committee meeting was convened for Student at City School. Student was determined to be eligible for special education and related services on the basis of having Multiple Disabilities (ED, to include Schizophrenia and OHI, to include ADHD.) Mother agreed with this determination. Exhibit R-5, Testimony of School Psychologist.

13. At the time of the February 4, 2016 eligibility meeting, Student's teachers reported to School Psychologist that they had not noticed Student exhibiting delusions or hallucinations at school. Testimony of School Psychologist.

14. On February 4, 2016, Student's initial IEP meeting was also convened. The IEP team identified Mathematics and Emotional, Social and Behavioral Development as areas of concern for Student. For Special Education and Related Services, the initial IEP provided 5 hours per week of Specialized Instruction outside of general education and 120 minutes per month of Behavioral Support Services in general education. Exhibit R-6. Mother and Educational Advocate attended the IEP meeting. At the meeting, no disagreement with the initial IEP was communicated by Mother or

Educational Advocate. Testimony of School Psychologist, Exhibit P-2.

15. For the rest of the 2015-2016 school year, after the February 4, 2016 IEP was developed, Student was a very positive, well-mannered student. ■ was a little distracted at times, but was easy to get back on task. Student was always receptive of instruction in math and progressed well. In the special education reading classroom, it was comparable to the math class. Sometimes Student would be distracted, but ■ could be brought back on task. Student's special education teacher never saw ■ eloping from the classroom or exhibiting hallucinations or bizarre behaviors. ■ interacted quite well with other students. For the rest of the school year, neither Mother nor her representatives communicated any concern to the special education teacher about Student's IEP. Testimony of Special Education Teacher 1.

16. Student's final term grades for the 2015-2016 school year were all 3's (Proficient) except for 2's (Basic) in Social Studies and Music. Exhibit R-11.

17. On Student's final reporting period IEP Progress Report for the 2015-2016 school year, Student was reported to have mastered two of three Mathematics goals and to be progressing on the third goal. Student was reported to be progressing on ■ Emotional, Social and Behavioral Development goals. Exhibit R-10.

18. As of September 12, 2016, on the i-Ready assessment of Student's math proficiency, Student had improved from start of the 2015-2016 school year. Student scored more than one level below basic at the beginning of the 2015-2016 school year and less than one level below basic at the beginning of the 2016-2017 school year. ■ scale score increased from 432 to 463. Exhibits P-16, P-21.

19. On September 21, 2016, Clinical Psychologist conducted an Independent Educational Evaluation (IEE) comprehensive psychological evaluation of Student. As

part of her assessment, Clinical Psychologist made a 20-minute classroom observation of Student. Student was on task for the entire observation and no behaviors of concern were noted. Exhibit P-6.

20. Clinical Psychologist administered the Woodcock-Johnson IV Tests of Cognitive Abilities (WJ-IV Cognitive) to Student. Student achieved a General Intellectual Ability (GIA) score of Average. To assess Student's academic functioning, Clinical Psychologist administered the Woodcock-Johnson IV Tests of Achievement (WJ IV). Student's standard scores were High Average for Reading, Average for Math and High Average for Written Language. Student's scores on Reading and Written Language placed ■ skills at or above ■ grade level. ■ Math skills were one year behind grade level. To assess Student's Social-Emotional Functioning, Clinical Psychologist had Mother, Student and two of ■ City School teachers complete the Behavior Assessment Scale for Children - Second Edition (BASC-2) rating scales. The respective responses from Mother, Special Education Teacher 1 and General Education Teacher responses were not consistent. Special Education Teacher 1's responses indicated Student was in the Average Range for Externalizing Problems, Internalizing Problems, Behavioral Symptoms Index and Adaptive Skills, and At Risk for School Problems. General Education Teacher's responses indicated Student was in the Clinically Significant Range for Externalizing Problems, School Problems and Behavioral Symptoms Index and At Risk for Internalizing Problems, and Adaptive Skills. Mother's responses indicated that Student was in the Average Range for Externalizing Problems and Internalizing Problems, and At Risk for Behavioral Symptoms Index and Adaptive Skills. On the Attention-Deficit Disorder test (ADHDT), Mother's and the Teachers' responses all were commensurate with Student's previous

diagnosis of ADHD. Clinical Psychologist inferred from the rating scales the following problems for Student: Attention Problems, Hyperactivity, Aggression, Conduct Problems, Somatization, Learning Problems, Atypicality, Withdrawal, Adaptability, Leadership, Functional Communication and Activities of Daily Living. Student's response indicated Atypicality, Depression and Self Reliance as areas of concern. Clinical Psychologist diagnosed Student with Schizophrenia and ADHD, Combined Type. In her report, Clinical Psychologist recommended that Student required a full-time IEP and placement in a special education, stand-alone school and that Student required a dedicated aide. Exhibit P-6.

21. Petitioner's Counsel provided the IEE psychological evaluation to DCPS on October 19, 2016. Originally LEA Representative and Petitioner's Counsel agreed to convene an MDT meeting on November 28, 2016 to review the IEE evaluation. However, on November 23, 2016, School Psychologist wrote Petitioner's Attorney that she could not complete her review of the IEE because she had been unable to reach Mother and Student's community-based mental health team to discuss Student's progress and request ■ records. School Psychologist requested Petitioner's Counsel's assistance with these contacts. Exhibit P-25. School Psychologist conducted two separate one hour observations of Student in ■ ELA and Math classrooms, apparently in late October 2016, and she reviewed the IEE psychological evaluation. As of December 19, 2016, School Psychologist was still unable to talk to Mother or Student's Psychiatrist or community health workers and she completed her IEE review report without their data and input. Exhibit P-7, Testimony of School Psychologist.

22. In her December 19, 2016 report reviewing the October 18, 2016 IEE psychological evaluation, School Psychologist recommended that Student continued to

be eligible for special education services as a child with Multiple Disabilities, and that Student's academic and behavioral needs could be addressed at the local school level.

Exhibit R-19.

23. On December 21, 2016, DCPS issued a Letter of Invitation for a meeting to conduct the annual review of Student's IEP on January 10, 2017. Exhibit R-20.

24. In the 2016-2017 school year, Student presents with behaviors typical for a child of ■ age. At lunch, recess and in transitions, ■ interacts with other children and does require redirection during transitions. School Social Worker has not observed any behavioral issues outside of the classroom. In the afternoon, Student is a little more off-task when ■ meets with School Social Worker. ■ is able to be redirected and participates in Behavioral Support group activities. ■ is progressing on ■ pro-social skill goals. School Social Worker has not been concerned by any inappropriate or bizarre behaviors by Student. Testimony of School Social Worker.

25. At lunch and recess, Student is friendly and empathetic. In the Math and ELA classes, Student will complete ■ work and is pretty much on task. When ■ is not, it is not very difficult to get Student back on task. Student has not eloped from or exhibited physical aggression in these classes. Testimony of Special Education Teacher 2. Student has a reading partner and participates in group assignments. When ■ is distracted or impulsive Student can be redirected. Student's general education teacher has never observed any schizophrenia-type behaviors. Student has not indicated to her that ■ hears command voices. Testimony of General Education Teacher.

26. Over the last three years, Student has been hospitalized two times for asthma. Student has never been hospitalized for schizophrenia or mental health issues. Student currently sees ■ treating psychiatrist every month and ■ mental health

therapist every week. Testimony of Mother.

27. In 2014, Student wrote a suicide note to ■■■ therapist stating that ■■■ father did not want ■■■ and that ■■■ “didn’t want to be here anymore.” Exhibits P-14, P-36.

28. On October 6, 2016, Mother sought services for Student from FAMILY SERVICES. Mother reported that at an unspecified time in the past, Student had set fire to the house with a piece of paper and a lighter and blamed it on an imaginary friend. Mother also reported that Student would get a knife and threaten to hurt ■■■ and that ■■■ had written the letter, described above, to ■■■ therapist that ■■■ did not want to be here anymore. Exhibits P-36, P-14.

29. In an April 19, 2016 Family Services report, it was reported that Student’s last suicidal ideation experience had occurred one year before. Exhibit P-37.

30. Student’s first quarter term grades for the 2016-2017 school year were Below Basic in Reading and Basic or Proficient in ■■■ other courses. Student was absent from school for 17 days during the term. Exhibit R-14. Student missed so much school because of a vacation to ■■■ and because there had been a lot of deaths in the family. Student also missed school to attend appointments with ■■■ community-based therapist. Testimony of Mother.

31. On January 31, 2017, Student was involved in an altercation with a peer at school. ■■■ and the peer both sustained eye injuries. Student was taken to a local Emergency Department for evaluation and was released the same day. Exhibit P-43. Afterwards, Student was afraid to go back to school. Testimony of Mother. Student returned to school on February 16, 2017. Testimony of School Social Worker.

32. Student’s IEP team meet for a Resolution Session meeting on January 6,

2017. Exhibits R-22. At that meeting, Student's IEP was reviewed. Some changes were made to Student's annual goals. ■ special education and related services were not changed. The IEP team did not agree with the parent's request for a dedicated aide for Student. Testimony of Educational Advocate, Exhibit R-21.

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

As provided in the D.C. Special Education Student Rights Act of 2014, the party who filed for the due process hearing, the Petitioner in this case, shall bear the burden of production and the burden of persuasion, except that where there is a dispute about the appropriateness of the student's IEP or placement, or of the program or placement proposed by DCPS, the District shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided that the Petitioner shall retain the burden of production and shall establish a *prima facie* case before the burden of persuasion falls on the District. The burden of persuasion shall be met by a preponderance of the evidence. See D.C. Code § 38-2571.03(6).

Analysis

The issue for determination in this case, certified in the February 4, 2017 Prehearing Order is,

Whether DCPS failed to provide the Student with an appropriate IEP on or about February 4, 2016, and/or whether, in light of the recommendations of the fall 2016 independent psychological evaluation, DCPS failed to

amend or revise the Student's IEP, as appropriate after October 20, 2016 to provide the student with a more restrictive setting and placement/ location of services as well as an increase in counseling services and a dedicated aide.

This actually presents two issues, which I will address separately. First, was the February 4, 2016 initial IEP appropriate for Student? Second, did DCPS fail to review and revise, as appropriate, the initial IEP after receiving Clinical Psychologist's October 18, 2016 Independent Educational Evaluation (IEE) psychological evaluation report?

A.

Did DCPS fail to provide Student with an appropriate IEP on February 4, 2016?

In the Dec. 1, 2015 HOD, Hearing Officer Seat ordered, *inter alia*, that DCPS conduct a comprehensive psychological evaluation of Student and hold an eligibility committee meeting to determine Student's initial eligibility for special education and related services. Pursuant to that order, DCPS completed Student's eligibility evaluation and a multidisciplinary team (MDT) meeting was convened for Student at City School on February 4, 2016. At that meeting, Student was determined to be eligible for special education and related services as having Multiple Disabilities. The underlying impairments were ED, to include Schizophrenia, and OHI-ADHD.

After determining Student eligible, the MDT team proceeded to develop Student's initial IEP. The IEP team identified Mathematics and Emotional, Social and Behavioral Development as areas of concern. For Special Education and Related Services, the initial IEP provided for 5 hours per week of Specialized Instruction outside of general education and 120 minutes per month of Behavioral Support Services in the general education setting. Mother and Educational Advocate participated in the IEP meeting and neither voiced any disagreement with the initial IEP.

Mother now alleges that the February 4, 2016 IEP was inappropriate, based primarily upon the October 18, 2016 recommendation of Clinical Psychologist that due to ■■■ schizophrenia diagnosis, Student required a full-time IEP and placement in a special school for children with ■■■ level of emotional disturbance. DCPS responds that the February 4, 2016 IEP was developed by school staff, the parent and educational advocate, who were better informed of Student's needs, and that the IEP was appropriate when developed for Student.

In *Moradnejad v. District of Columbia*, 177 F. Supp. 3d 260 (D.D.C. 2016), the U.S. District Court for the District of Columbia adopted the Report and Recommendation of U.S. Magistrate Judge G. Michael Harvey, which explained how a court or a hearing officer must assess an IEP:

The Supreme Court explained in [*Bd. of Educ. v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982)] that a court's assessment of an IEP involves two inquiries:

First, has the State complied with the procedures set forth in the [IDEA]? And second, is the [IEP] developed through the [IDEA's] procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.

Rowley, 458 U.S. at 206–07, 102 S.Ct. 3034. Courts have consistently underscored that the “appropriateness of an IEP is not a question of whether it will guarantee educational benefits, but rather whether it is reasonably calculated to do so.” *K.S. v. Dist. of Columbia*, 962 F.Supp.2d 216, 221 (D.D.C.2013) (citing *Thompson R2–J Sch. Dist. v. Luke P. ex rel. Jeff P.*, 540 F.3d 1143, 1148–49 (10th Cir.2008)); *Rowley*, 458 U.S. at 200, 102 S.Ct. 3034 (finding that the IDEA does not require that IEPs “maximize the potential of each handicapped child commensurate with the opportunity provided nonhandicapped children,” only that they be “reasonably calculated to enable the child to receive educational benefits”); *N.T. v. Dist. of Columbia*, 839 F.Supp.2d 29, 33 (D.D.C.2012) (“While the District of Columbia is required to provide students with a public education, it does not guarantee any particular outcome or any particular level of education.”).

Moradnejad, 177 F.Supp. 3rd at 274-75.

Petitioner has not alleged that DCPS failed to comply with the IDEA's procedural requirements in developing the February 4, 2016 IEP. Therefore, I turn to the second prong of the *Rowley* inquiry: Was the February 4, 2016 IEP reasonably calculated to enable Student to receive educational benefits?

Petitioner makes a sweeping claim, based primarily on Clinical Psychologist's IEE report and her hearing testimony, that at the initial February 4, 2016 IEP meeting, Student should have been provided placement at a special education school for children with serious ED conditions and provided a dedicated aide. DCPS' experts, Special Education Teacher 1 and School Psychologist, opined that the February 4, 2016 IEP, including Student's placement in the general education setting for all but 5 hours per week was appropriate.

Clinical Psychologist's opinion is founded on Student's schizophrenia diagnosis and Student's reported past history prior to the 2015-2016 school year, outside of school, of hearing hallucinating auditory commands, threatening suicide and starting a fire. Clinical Psychologist opined in her testimony that Student required placement in a small, therapeutic school that could provide "containment" of Student, that ■ needed small class size, where the staff could intervene as needed and that Student needed a 1:1 dedicated aide to be sure ■ does not flee from class. Otherwise, as Clinical Psychologist asserted in her IEE report, "[t]his examiner cannot confirm that [Student] will never have command hallucinations again, which may tell ■ to harm ■ or others."

Without discounting Clinical Psychologist's concerns for the safety of Student and other children at school, this witness misapprehends the IDEA's placement requirements and the limitations on the scope of the IDEA's mandate to local education

agencies. First, Congress “prescribed that IEPs should generally be addressed to and carried out in the least restrictive environment available—usually the public school classroom.” *Thompson R2-J Sch. Dist. v. Luke P., ex rel. Jeff P.*, 540 F.3d 1143, 1151 (10th Cir. 2008) (citing 20 U.S.C. § 1412(a)(5)(A)). In the 2015-2016 school year, before the February 4, 2016 IEP was adopted, Student’s behaviors at school were easily managed in the classroom and were less severe than in the prior school year. For DCPS to have placed this Student in a stand-alone school for ED students, without evidence that [REDACTED] posed a substantial danger to [REDACTED] or others at school, would have contravened the IDEA’s least restrictive environment mandate. *Cf. Hunt v. Sycamore Cmty. Sch. Dist. Bd. of Educ.*, 542 F.3d 529, 544 (6th Cir. 2008) (The urgency of a countervailing duty must be conceded to be particularly compelling here, where the duty to educate a child with dangerous propensities was imposed upon a local government actor by federal law Had the school district placed A—in a more restrictive environment, it could well have been liable to her for denying her a free appropriate public education.) *Compare Sch. Bd. of Pinellas Cty., Fla. v. J.M. By & Through L.M.*, 957 F. Supp. 1252, 1258 (M.D. Fla. 1997) (where Court enjoined enforcement of stay-put rights, 20 U.S.C. § 1415(e)(3), based on likelihood school district would prevail on the merits that the student was a dangerous child in the sense that he was substantially likely to injure himself or others if he remained in his current placement.)

The evidence in this case does not support a finding that when Student’s initial IEP team met on February 4, 2016, Student was substantially likely to injure [REDACTED] or others if [REDACTED] remained in a public [REDACTED] school. It is not disputed that Student has been diagnosed with schizophrenia or that Student’s mental health history includes reported incidents, away from school, of threats of suicide and other dangerous

behaviors. DCPS also acknowledges that in the 2014-2015 school year, Student engaged in fighting at school, elopement, noncompliance and other disruptive classroom behaviors. However, it was uncontested that since the start of the 2015-2016 school year, Student's behaviors at school had been less intense and were easily managed in the classroom. School Psychologist, School Social Worker and the three City School teachers who testified all denied having ever seen Student displaying hallucinatory or "bizarre" behaviors at school. Special Education Teacher 1 testified that in her time teaching Student, from when the February 4, 2016 IEP was completed through the rest of the 2015-2016 school year, Student was positive and well-mannered and she never had any concerns about ■■■ behavior.

Further, the most worrisome behaviors cited by Clinical Psychologist, Student's alleged threat to take ■■■ own life and ■■■ lighting a paper on fire, occurred away from the school setting in an earlier school year. As upsetting as these incidents undoubtedly were, there was no evidence that these out-of-school behaviors interfered with Student's learning, at least from the beginning of the 2015-2016 school year. To the extent that a child's problems pertain only outside the educational realm, then, "other resources [not IDEA] must be looked to." *Thompson R2-J Sch. Dist. v. Luke P., ex rel. Jeff P.*, 540 F.3d 1143, 1152 (10th Cir. 2008) (quoting *Gonzalez v. Puerto Rico Dep't of Educ.*, 254 F.3d 350, 353 (1st Cir. 2001)(internal citation omitted). *See, also, Rome Sch. Comm. v. Mrs. B.*, 247 F.3d 29, 33 n. 3 (1st Cir.2001) ("The question is whether these behavioral disturbances interfere[] with the child's ability to learn.")

Similarly, I find that Clinical Psychologist's opinion, that Student required provision for a dedicated aide in ■■■ initial IEP to keep ■■■ from fleeing class, was unfounded. Special Education Teacher 1 taught Student from February 2016 to the end

of the school year. She testified that she never saw Student eloping from the classroom and never observed a need for a dedicated aide. Special Education Teacher 2, who teaches Student this school year, testified that Student does not need a dedicated aide because ■ is very capable, on grade level, and is progressing on ■ IEP goals. Clinical Psychologist, herself, observed Student for some 20 minutes in the classroom in September 2016, and she, likewise, did not observe any behavior concerns.

Clinical Psychologist also opined that the February 4, 2016 IEP should have identified Reading and Written Expression – not just Mathematics – as academic areas of concern. DCPS' expert, Special Education Teacher 1, opined to the contrary that the services in the February 4, 2016 IEP were definitely appropriate for the deficits Student exhibited. Special Education Teacher 1 explained that there were no goals for Reading or Written Expression because Math was the only subject where Student was below grade level. Her testimony was supported by DIBELS Next Literacy Skills Assessment which indicates that Student met benchmark goals for Reading from the beginning of the 2014-2015 school year through the most recent assessment at the middle of the 2016-2017 school year. Also, on the KTEA-III educational assessment administered in December 2015, Student's scores for Reading and Written Expression were generally in the Average to High Average Range.

Unlike Clinical Psychologist, Special Education Teacher 1 is an educator who worked on a daily basis with Student from the time ■ was determined eligible for special education. I found her opinion regarding Student's specialized instruction needs, at the time the initial IEP was developed, more credible than that of Clinical Psychologist, who assessed Student some eight months later. *See S.S. ex rel. Shank v. Howard Rd. Academy*, 585 F.Supp.2d 56, 66 (D.D.C.2008) (measure and adequacy of

an IEP can only be determined as of the time it is offered to the student.)

Clinical Psychologist further opined that the February 4, 2016 IEP's provision of 120 minutes per month of Behavioral Support Services was insufficient and Student should have been provided at least 1 hour per week of counseling services. School Psychologist opined to the contrary that the 120 minutes per month specified in the IEP was appropriate. School Social Worker, who provides counseling services to Student in the current school year, opined that 30 minutes per week was appropriate because Student's behaviors are not so severe that they cannot be worked on in this time period and because increasing Student's counseling services would lead to ■■■ being bored or idle. Student's IEP progress reports for the last term of the 2015-2016 school year and the first half of the current school year indicate that ■■■ is progressing on all of ■■■ Emotional Social and Behavioral Development goals and that ■■■ has mastered ■■■ socialization goal. Student's teachers from last year (Special Education Teacher 1) and in the 2016-2017 school year (Special Education Teacher 2 and General Education Teacher) all testified that Student's behavior at school has not been a problem. On this evidence, I find the opinions of the City School experts more credible than that of Clinical Psychologist. I conclude, therefore, that DCPS has met its burden of persuasion that the February 4, 2016 IEP's provision for 120 minutes of Behavioral Support Services in the general education setting was appropriate for Student.

Lastly, Educational Advocate, who qualified as a special education expert for Petitioner, testified that she did not think that the provision for 5 hours per week of Specialized Instruction in Student's initial IEP was adequate. This witness attended the February 4, 2016 IEP meeting, and as she admitted in her testimony, she did not note any disagreement with the Specialized Instruction Services or make any alternative

proposals at the meeting or thereafter. As noted above, DCPS' experts, notably Special Education Teacher 1, who provided Student's Specialized Instruction Services in the 2015-2016 school year, testified that the services were appropriate for the deficits Student exhibited. I did not find credible the contrary opinion of Educational Advocate, which was not shared with DCPS until the present case was filed.

I sum, I conclude that DCPS has carried its burden of persuasion that at the time the February 4, 2016 IEP was offered to Student, the IEP was reasonably calculated to enable Student to receive educational benefits. *See Moradnejad, supra.*

B.

Did DCPS deny Student a FAPE by failing to ensure that ■■■ IEP was revised after receiving the IEE report of Clinical Psychologist?

Turning to the second part of the issue in this case, Petitioner alleges that DCPS denied Student a FAPE by not revising ■■■ initial IEP to provide Student with a more restrictive setting and placement, a dedicated aide and an increase in counseling services, after receiving Clinical Psychologist's IEE comprehensive psychological evaluation. Clinical Psychologist's October 18, 2016 IEE psychological evaluation report recommended, *inter alia*, that Student required a full time IEP and placement in a stand-alone special education school, a dedicated aide, and at least one hour per week of counseling in ■■■ school.

The IDEA mandates that an LEA must ensure that the IEP team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved and revises the IEP, as appropriate. *See* 34 CFR § 300.324(b). *See, also, D.S. v. District of Columbia*, 699 F. Supp. 2d 229 (D.D.C. 2010) ("Because the IEP must be 'tailored to the unique needs' of each child, *Bd. of Educ. v.*

Rowley, 458 U.S. 176, 181, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982), it must be regularly revised in response to new information regarding the child's performance, behavior, and disabilities." *Id.* at 234 (citing 20 U.S.C. §§ 1414(b)-(c).)

The IDEA does not set a time frame within which an LEA must reconvene the IEP team to review new information provided by the parent. In an analogous context, the U.S. District Court for the District of Columbia has held that after receiving a request for a special education reevaluation from a student's parent, that "[r]evaluations should be conducted in a reasonable period of time, or without undue delay, as determined in each individual case." *See Herbin ex rel. Herbin v. District of Columbia*, 362 F.Supp.2d 254, 259 (D.D.C.2005) (citation and internal quotations omitted). Adopting the principle pronounced in *Herbin*, when a parent provides new information about her child and requests an IEP team meeting, the District must ensure that the IEP team is convened in a reasonable period of time, or without undue delay.

Petitioner's Counsel provided the IEE psychological evaluation to DCPS on October 19, 2016. Originally LEA Representative and Petitioner's Counsel agreed to hold a meeting on November 28, 2016 to review the IEE evaluation. However, on November 23, 2016, School Psychologist wrote Petitioner's Counsel by email that she could not complete her review of the IEE because she had been unable to reach Mother and Student's community-based mental health team to discuss Student's progress and request ■ records. School Psychologist requested Petitioner's Counsel's assistance with these contacts. As of December 19, 2016, School Psychologist was still unable to talk to Mother or Student's Psychiatrist or community-based health workers and she completed her IEE review report without their data and input. On December 21, 2016, DCPS issued a Letter of Invitation to the parent for a meeting to conduct an annual

review of Student's IEP on January 10, 2017. In the meantime, on December 19, 2016, Petitioner filed her due process complaint in this case.

Clearly, before convening Student's IEP team to review Clinical Psychologist's IEE psychological evaluation, it was desirable and appropriate for School Psychologist to seek the input of Student's treating psychiatrist and community mental health providers. (Unfortunately, Petitioner's Counsel was also unable to secure these providers' appearance to testify at the due process hearing.) Under these circumstances, I determine that DCPS' not convening an IEP team meeting to review the October 18, 2016 IEE psychological evaluation report before December 19, 2016, when Petitioner filed her due process complaint, did not constitute undue delay.

On January 6, 2017, DCPS convened a Resolution Meeting where proposed revisions to Student's IEP were discussed. DCPS agreed to make minimal changes to the IEP goals but refused to change Student's special education and related services or provide for a dedicated aide. The January 6, 2017 IEP meeting was held subsequent to the filing of Petitioner's due process complaint and DCPS' December 29, 2016 response. Although I have determined that DCPS met its burden of persuasion that the February 4, 2016 IEP was appropriate for Student at the time it was offered, whether the January 6, 2017 IEP, with no change in services, is also appropriate is not an issue before me.³

ORDER

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

All relief requested by the Petitioner herein is denied.

³ In this decision I expressly do not determine whether the January 6, 2017 IEP is appropriate for Student.

Date: March 4, 2017

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).

cc: Counsel of Record
Office of Dispute Resolution
Chief Hearing Officer
OSSE Division of Specialized Education
DCPS Resolution Team