

District of Columbia
Office of the State Superintendent of Education
Office of Dispute Resolution
1050 First Street, N.E., Third Floor, Washington, DC 20002
(202) 698-3819 www.osse.dc.gov

Parent, on behalf of Student,¹)	
Petitioner,)	Hearing Dates: 2/14//24; 2/15/24
)	
v.)	Hearing Officer: Michael S. Lazan
)	
District of Columbia Public Schools,)	Case No. 2023-0234
Respondent.)	

HEARING OFFICER DETERMINATION

I. Introduction

This is a case involving an X-year-old student who is currently ineligible for services. A due process complaint (“Complaint”) was received by District of Columbia Public Schools (“DCPS” or “Respondent”) pursuant to the Individuals with Disabilities Education Act (“IDEA”) on December 1, 2023. The Complaint was filed by the Student’s parent (“Petitioner”). This Hearing Officer was appointed to the case on December 4, 2023. On December 12, 2023, Respondent filed a response. A resolution meeting was held on January 10, 2024. The parties could not come to an agreement, and the resolution period expired on December 31, 2023.

II. Subject Matter Jurisdiction

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the IDEA, 20 U.S.C. 1400 et seq., its implementing regulations, 34 C.F.R.

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

Sect. 300 et seq., Title 38 of the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-E, Chapter 30.

III. Procedural History

A prehearing conference was held on January 4, 2024. Attorney A, Esq., counsel for Petitioner, appeared. Attorney B, Esq., counsel for Respondent, appeared. A prehearing conference order was issued on January 9, 2024, summarizing the rules to be applied in the hearing and identifying the issues in the case. A corrected prehearing conference order was issued on January 12, 2024. On February 9, 2024, Respondent moved to extend the timeline for the Hearing Officer Determination (“HOD”) to March 1, 2024, on consent. On February 12, 2024, an order was issued extending the HOD timeline to March 1, 2024.

The hearing proceeded on February 14, 2024, and February 15, 2024. Petitioner was again represented by Attorney A, Esq. Respondent was again represented by Attorney B, Esq. After testimony, closing arguments were presented on February 15, 2024. This was a closed proceeding. During the proceeding, Petitioner moved into evidence exhibits P-1 through P-50. Objections were filed with respect to exhibits P-1 through P-3, P-26 through P-34, P-41, P-42, and P-44 through P-50. These objections were overruled. Exhibits P-1 through P-50 were admitted. Petitioner presented as witnesses, in the following order: Witness A, a clinical and forensic psychologist (expert in clinical psychology); herself; the Student; and Witness B, an educational advocate (expert in special education as it relates to identification and eligibility determinations, Individualized Educational Plan (“IEP”) programming, and placement of students). Respondent presented as witnesses: Witness C, director of special education at School A;

and Witness D, a psychologist (expert in school psychology). On February 22, 2024, both parties presented a list of citations of cases in support of their respective positions.

IV. Issues

As identified in the Prehearing Conference Summary and Order and in the Complaint, the issues to be determined in this case are as follows:

1. Did Respondent fail to comply with its Child Find obligation when it failed to timely and comprehensively evaluate the Student and find him/her eligible for services by December 2021? If so, did Respondent deny the Student a Free Appropriate Public Education (“FAPE”)?”

Petitioner contended that DCPS should have known that the Student was hospitalized at Hospital A, was chronically absent, struggled with focus in class, and had been retained in grades.

2. Did Respondent fail to comprehensively evaluate the Student as of May 6, 2022? If so, did Respondent deny the Student a FAPE?

Petitioner contended that the psychological evaluation of the Student that DCPS conducted was not thorough enough.

3. Did Respondent fail to determine that the Student was eligible for services at the May 24, 2022, eligibility meeting? If so, did Respondent deny the Student a FAPE?

Petitioner contended that the Student should be deemed to be eligible as a student with Emotional Disturbance.

V. Findings of Fact

1. The Student is an X-year-old who is currently ineligible for services. The Student has been diagnosed with Disruptive Mood Dysregulation Disorder (“DMDD”). This is a relatively new diagnosis, added to the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (“DSM-5”) in 2013. The addition of DMDD to the DSM-5

was intended, in part, to address the overdiagnosis and overtreatment of bipolar disorder in children. P-26-1. The Student's condition is characterized by delusions, disorganized speech and behavior, and negative symptoms such as a flattened affect, the inability to do anything, false beliefs about the world, paranoia, persecutory beliefs, and auditory hallucinations. The Student hears voices that distract him/her from doing schoolwork. The Student has had issues with school attendance, peer relationships, and being alone too much. The Student's condition is also characterized by a pervasive sense of depression. The Student has engaged in behaviors that have led to inpatient hospital care. The hospitalization makes it harder for the Student to attend school because of the disruption to his/her schedule. Testimony of Witness A; Testimony of Petitioner.

2. To focus and learn, the Student needs close supervision and help. The Student needs a small classroom setting, needs to sit close to the teacher, and needs direct help on request (instead of waiting until the class is over). Testimony of Petitioner.

3. The Student attended School C for the 2016-2017 and 2017-2018 school years. At School C, the Student had issues with concentration and focus, and s/he got bullied. The Student sometimes hid in closets to protect him/herself. The Student failed every math class since s/he started attending School C. Testimony of Petitioner; P-35-2. Interventions were attempted to address some of the Student's academic issues during the 2016-2017 and 2017-2018 school years. The goal was to get the Student to complete assignments and pass classes. The Student did not meet these goals. The Student was recommended for summer school and evening credit recovery courses but did not improve his/her attendance or grades. P-7-5.

4. The Student has been excessively absent since the 2017-2018 school year. The Student has been retained at least three times. P-7-2; Testimony of Witness D.

5. By the 2018-2019 school year, the Student was attending School A. School A contains students who have not been successful at a traditional, comprehensive school. School A uses a “competency-based” learning model to help students earn credits toward a diploma. The school also uses an online learning platform that involves some “self-directed” learning. A high percentage of students at School A were not successful at previous locations. Accordingly, School A uses a multi-tiered system of support (“MTSS”) for struggling students. If students do not respond to MTSS interventions, a request for special education “can” be made. Testimony of Witness C.

6. The Student continued at School A for the 2019-2020 school year. During this school year, the Student’s score on benchmark testing in reading was in the expected proficient range for his/her grade level. P-7-2. In February 2020, the Student was admitted to Hospital A for a comprehensive exam after suicidal ideation and aggression due to a conflict. The Student was discharged after eleven days in the hospital with a diagnosis of DMDD with adjustment disorder. P-7-2. Petitioner spoke to the principal of School A and told the principal that the Student needed extra assistance. Testimony of Petitioner.

7. The Student continued at School A for the 2020-2021 school year. On October 29, 2020, an incident involving Petitioner and the Student occurred. Petitioner then expressed to School A staff her concerns about the Student’s mental health. R-11-47. On March 17, 2021, the Student ran away from home. R-11-46.

8. The Student continued at School A for the 2021-2022 school year. During this school year, the Student had a Section 504 plan in place, and there “was a time” when the Student attended school. The Student took a little long to complete some of the work, but s/he did complete the work. Then the Student’s work “kind of tapered off” and became sporadic, and s/he then rarely came to school at all. Testimony of Witness C. When the Student did come to class, s/he sometimes needed assistance to keep up with instruction and would resort to getting ad hoc tutoring from his/her sibling’s tutor. Testimony of Student. Comments from teachers on September 21, 2021, October 6, 2021, April 1, 2022, and April 7, 2022, all indicated that the Student talked and laughed to him/herself throughout the school day and also fell asleep in class. P-7-9.

9. On November 22, 2021, School A’s assistant principal sent an MTSS and mental health referral for the Student. According to the assistant principal, the Student had difficulty interpreting other students’ facial expressions, engaged in odd gestures and body language, missed social cues, had issues regulating his/her emotions and keeping up a conversation with others, and talked and laughed to him/herself. R-11-45.

10. In or about December 2021, Evaluator A told Witness C about the Student. Evaluator A shared that the Student had a Section 504 plan and that Petitioner had called about having the Student evaluated. Witness C called Petitioner back to get more information. Petitioner told Witness C what she was seeing with respect to the Student’s issues. Testimony of Witness C.

11. At the request of Petitioner, the Student was then referred for “Tier 2” interventions. An MTSS plan was created in December 2021 to help the Student’s social-emotional functioning and attendance. P-4-3; P-7-5. The Student received one

day per week of one-on-one math support in class, and one counseling session per week with a community-based organization (“CBO”) that partnered with School A. Despite these interventions, the Student did not make progress after six weeks, primarily due to his/her absence from school. P-7-4-5. Still, an activity log showed that the Student frequently requested feedback and submitted assignments until January 2022. P-7-9.

12. In February 2022, the Student was admitted to Hospital A after exhibiting erratic and bizarre behaviors. S/he was given a discharge diagnosis of Unspecified Schizophrenia Spectrum and other Psychotic Disorder. P-7-2. Petitioner asked that the Student be switched to virtual learning. Petitioner told School A that academic and mental health support, including counseling and medication, would be provided temporarily by the Student’s residential facility. The Student did not engage with virtual instruction, according to school records. P-7-5.

13. The Student reported for in-person learning at School A in or about March 2022, but s/he rarely went to school thereafter. After the Student’s hospitalization, when s/he did go to school, s/he often slept in class. P-7. On March 22, 2022, the Student was referred for an initial evaluation, with parental consent. Testimony of Witness C; P-22.

14. An Analysis of Existing Data (“AED”) meeting was held for the Student on April 4, 2022. There was limited academic data regarding the Student’s performance in math. The team reported that a teacher said that when the Student came to class, s/he had issues with attention and focus and often slept in class. The team decided that it did not have enough information to determine if the Student was eligible for services. The team agreed to proceed with an additional assessment; namely, the assessment of Evaluator A. Petitioner expressed concerns regarding the Student’s mental health,

attention, and how those issues impacted his/her ability to perform and stay on task. The team also noted that teachers had described the Student as a quiet and polite person who attempted to engage in his/her work and work independently to complete assignments. P-4-1.

15. By May 2022, the Student had accumulated 100 unexcused absences for the year. Evaluator A conducted a psychological evaluation of the Student in April and May 2022 and issued a report on May 6, 2022. Evaluator A also attempted to administer a comprehensive cognitive evaluation, including the Wechsler Adult Intelligence Scale, 4th edition (“WAIS-4”), the Wechsler Individual Achievement Test, 4th edition (“WIAT-4”), and the Behavior Assessment System for Children, 3rd Edition (“BASC-3,” self-report, parent report, and teacher report). The Student attended School A for only five days during this period. As a result, Evaluator A was able to meet with the Student only once. Testimony of Witness C; Testimony of Witness D.

16. The BASC-3 provides composite scales related to different mental health issues and concerns, including internalizing behaviors, school problems, behavioral symptoms, and adaptive skills. According to the teacher report, the Student’s testing on the BASC-3 indicated that s/he was not at risk on any of the scales. On the other hand, the Student’s science teacher reported that the Student engaged in strange or odd behaviors and generally seemed disconnected from his/her surroundings. The Student was reported generally to keep to him/herself, have difficulty making friends, and sometimes be unwilling to join group activities. P-7.

17. Evaluator A interviewed the Student’s English teacher and math teacher, who indicated some positive things about the Student. However, there was concern

regarding his/her attendance, sleeping in class, and following through on assignments.

The Student's English teacher described a polite, respectful, cooperative student who liked to draw, was productive, and completed work "when [s/he] is awake in the class."

This teacher indicated that the Student's attendance had worsened since the winter break, that the Student presented as being more lethargic than when s/he attended class at the beginning of the school year, and that the Student had been observed to talk and/or laugh to him/herself. The Student's math teacher reported that the Student was quiet and friendly, but that s/he was often absent or slept in class. This teacher indicated that, when present and alert, the Student was able to understand instruction and complete assignments at the rate of his/her peers. Testimony of Witness D; P-7

18. The Student was observed by Evaluator A in a history and government class for thirty minutes in the morning. The Student sat at a table by him/herself, near the door of the room. Four other students were in the classroom. The Student appeared attentive to an independent task on his/her laptop computer. The Student was quiet and calm while seated. After approximately three minutes, the Student placed his/her head down on a table for a couple of minutes. Before the end of the class period, the general education teacher checked in with the Student about his/her progress on the work. The general education teacher encouraged the Student to attend school more often. During the observation period, the Student followed directions well, put forth effort toward tasks, and appeared mostly attentive to his/her work and teachers. After the bell rang, the Student ran to his/her next class and immediately sat down with a laptop but did not log in. The Student sat at a desk with his/her eyes closed, then put his/her head down to rest. Shortly thereafter, the Student was told to go to another location to complete make-up

district-wide testing. The Student demonstrated on-task behavior for 44% of the time during the observation period. Testimony of Witness D; P-7.

19. Evaluator A reported that the Student's adaptive skills were within the average range. The Student's teachers reported to Evaluator A that the Student was able to adapt to a variety of situations as well as most other students of the same age, though the Student had difficulty complimenting others and suggesting improvements in a tactful, socially acceptable manner. Evaluator A's report indicated that the Student generally exhibited adequate organizational and study skills and completed most homework in a timely fashion. Teachers reported that the Student generally exhibited adequate expressive and receptive communication skills and was usually able to seek out and find new information when needed. P-7-8.

20. Evaluator A assessed whether the Student should be deemed to be eligible for services as a student with Other Health Impairment. Evaluator A found that the Student struggled to maintain focus on tasks but did not display significant inattentive, hyperactive, or impulsive behavior in the school environment, and that the then-current data did not suggest that the Student met the criteria for Other Health Impairment. One section of Evaluator A's report, assessing whether the Student should be deemed eligible as a student with Emotional Disturbance, indicated that the Student displayed some concerning behavior that impacted his/her ability to make progress at school, and that the Student had received diagnoses of DMDD with adjustment disorder, and unspecified schizophrenia disorder. Evaluator A indicated that the Student could complete work and get along with others, did not demonstrate significant deficits in reading, but did not make the expected progress due to his/her absences from school. The evaluator

concluded that there was insufficient data to determine the Student's eligibility as a student with Emotional Disturbance. P-7-9-11.

21. Evaluator A concluded that the Student appeared withdrawn, struggled with prosocial behavior, and exhibited odd or unusual behavior, but could complete work at the rate of his/her peers when s/he was present at school. Evaluator A also indicated that the Student did not make adequate progress through interventions because of his/her numerous absences. P-7-11.

22. A meeting was held on or about May 24, 2022, in which DCPS filled out worksheets to determine the Student's eligibility. With respect to eligibility under the Other Health Impairment classification, the staff felt that if the Student had ADHD, it did not impact his/her access to the curriculum because, in terms of his/her attention when s/he came to school, the Student appeared to be engaged in class. Testimony of Witness C. The team determined that the Student was also not eligible as a Student with Emotional Disturbance. The team felt that there was insufficient data on which to base such a conclusion. The team filled out a "Disability Worksheet: Emotional Disturbance" form by simply writing "2022 Due Diligence report" (apparently referring to Evaluator A's report). The team found that the Student did not meet the eligibility criteria for Emotional Disturbance. R-6.

23. After the May 24, 2022, meeting, DCPS made no attempts to conduct supplemental evaluations of the Student to gather cognitive or achievement data. The Student did not return to school after s/he was hospitalized during the 2021-2022 school year. Testimony of Witness C.

24. A Section 504 plan was written for the Student in June 2022. The plan provided for thirty minutes of consultation services per month, with one goal relating to self-awareness and coping strategies. The plan also stipulated that the Student receive special redirection, grouping with “positive” peers, chunking, and extended time. P-37; Testimony of Witness B.

25. The Student enrolled in a virtual program at School A for the 2022-2023 school year, but s/he only attended one day and then stopped coming to school. The Student was eventually withdrawn from the school for non-attendance, in or about November or December 2022. The Student did not attend school between December 2022 and June 2023. Testimony of Witness C; Testimony of Witness B.

26. Between 2020 and 2023, School A staff, including the principal, special education director, and teachers, met with Petitioner to discuss the Student’s progress. The school staff always told Petitioner that the Student did not need an IEP, and the staff came up with alternatives such as an “action plan,” more testing time, additional teacher attention, and the like. However, the action plan and the related interventions did not help the Student, whose grades did not improve after the plan was implemented. Testimony of Petitioner.

27. In August 2023, per a court intervention, the Student was placed in School B, which provides a non-public program that does not offer special education and involves virtual learning. Testimony of Petitioner; Testimony of Student. The Student has seemed to respond well to the program, which involves comprehensive psychological interventions. Testimony of Witness A.

28. The Student wants to finish school and earn a diploma or the equivalent. The Student does not always take his/her medication, even though the medication keeps the Student from hearing voices. Testimony of Student.

VI. Conclusions of Law

The burden of proof in District of Columbia special education cases was changed in 2014. The law states that “(w)here there is a dispute about the appropriateness of the child’s individual educational program or placement, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement” provided that the party requesting the due process hearing establishes “a *prima facie* case.” D.C. Code Sect. 38-2571.03(6)(A)(i). The three issues in this case do not directly relate to the appropriateness of the Student’s program or placement, and the parties agreed, per the prehearing conference order, that Petitioner bears the burden of persuasion on this claim. As a result, the burden of persuasion is on Petitioner. Schaffer v. Weast, 546 U.S. 49 (2005).

1. **Did Respondent fail to comply with its Child Find obligation when it failed to timely and comprehensively evaluate the Student and find him/her eligible for services by December 2021? If so, did Respondent deny the Student a FAPE?**

The Child Find provisions of the IDEA require each state to have policies and procedures in effect to ensure that all children with disabilities who reside in the state and who need special education services are identified, located, and evaluated. 20 U.S.C. Sect. 1412(a)(3)(A); 34 C.F.R. Sect. 300.111(a). Child Find must include any child suspected of being a child with a disability and in need of special education, even if they are advancing from grade to grade. 34 C.F.R. Sect. 300.111(c)(1); Reid v. District of Columbia, 401 F.3d 516, 518-19 (D.C. Cir. 2005); Hawkins v. District of Columbia, 539

F. Supp. 2d 108 (D.D.C. 2008). Child Find is an “affirmative obligation.” Montuori v. District of Columbia, No. CV 17-2455 (CKK), 2018 WL 4623572, at *6 (D.D.C. Sept. 6, 2018). The District of Columbia Circuit Court of Appeals has stated that the Child Find obligation is among IDEA’s “most important” requirements for a local educational agency (“LEA”). D.L. v. District of Columbia, 860 F.3d 713, 717 (D.C. Cir. 2017).

While the LEA cannot disregard clear signs that a student might have a disability, it does not have to evaluate at the first sign of behavioral problems. LEAs may consider factors such as the student’s age and recent life events when determining if a special education evaluation is necessary. Ja.B. v. Wilson Cnty. Bd. of Educ., No. 3:20-CV-00955, 2022 WL 326273, at *1 (M.D. Tenn. Feb. 2, 2022), report and recommendation adopted (Apr. 28, 2022), aff’d, 61 F.4th 494 (6th Cir. 2023) (the student’s disrespectful, noncompliant, disruptive behaviors were not entirely unusual for a teenage boy who recently moved to a new state). Moreover, evidence of a student’s solid academic performance because of Section 504 or MTSS interventions can bolster a school district’s argument that a special education evaluation was unnecessary or premature. Legris v. Capistrano Unified Sch. Dist., No. 20-56261, 2021 WL 4843714, at *1 (9th Cir. Oct. 18, 2021) (by highlighting the student’s ability to earn A’s, B’s, and C’s in the general education curriculum with Section 504 accommodations, the school district showed that it had no reason to suspect a need for special education).

The record indicates that the Student has performed inadequately at school, especially in regard to attendance, since at least the 2017-2018 school year, notwithstanding a range of MTSS interventions. In February 2020, the Student was admitted to Hospital A for a comprehensive exam after suicidal ideation and aggression

due to a conflict. The Student was discharged after eleven days in the hospital with a diagnosis of DMDD with adjustment disorder. As indicated by Witness A, the Student's DMDD with adjustment disorder has impacted the Student's education, including an impact on his/her attendance record and history of sleeping in class.

Even so, there is nothing in the record to establish that the school district was told about the Student's hospitalization prior to the fall of 2021. Petitioner argued that the school district violated Child Find because on or about February 24, 2020, Petitioner met with a social worker at School A to advise the school of the Student's mental health concerns and to seek assistance to try to get the Student into some kind of programming that could help him/her. But there is no evidence that Petitioner mentioned the Student's diagnosis or hospitalization. Then, in a meeting on October 29, 2020, Petitioner advised the school of the Student's aggressive behaviors and noted that the Student was not living at home because of those behaviors. But again, there is no evidence that Petitioner mentioned the Student's diagnosis or hospitalization.

Petitioner's most persuasive point focused on the undisputed fact that, by November 2020, the Student was falling asleep in class far too much and on a regular basis. Petitioner argued that this fact, combined with the fact that the Student was failing almost every class and had been retained several times, triggered "Child Find." But there is no clear documentary proof that Petitioner clearly notified DCPS about Hospital A's evaluation of the Student prior to December 2021, and the record is light on facts about the Student's education during the 2020-2021 school year, except to show that the Student did little work and did poorly. Most of the documents in the record were created after November 2021, which is when the assistant principal of School A initiated an

evaluation of the Student. There was a delay in obtaining consent from Petitioner, but this delay was at least partly attributable to the fact that the Student was admitted to Hospital A again in February 2022. After the hospital released the Student, the school district initiated the evaluation process in March 2022. Though DCPS could have moved more quickly, Petitioner did not focus on the delay after December, 2021, had little effect on the Student who was unavailable for instruction during the period of delay. Petitioner did not meet her burden on this claim, which must therefore be dismissed.

2. Did Respondent fail to comprehensively evaluate the Student as of May 6, 2022? If so, did Respondent deny the Student a FAPE?

Petitioner contended that Evaluator A's comprehensive psychological evaluation of the Student was not thorough enough.

Pursuant to 34 CFR 300.303 (a) and (b), a public agency must ensure that a reevaluation of each child with a disability is conducted at least once every three years, in accordance with 34 CFR 300.304 through 34 CFR 300.311. The reevaluation should involve assessments in "all areas of suspected disability." 20 U.S.C. Sects. 1414(b)(3)(B), (c)(1); 34 C.F.R. Sect. 300.304(c)(4). The school district is required to "[u]se a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent." Sect. 300.304(b). For there to be a finding of FAPE denial on this issue, a parent should show that the failure to evaluate resulted in substantive harm to the student. Suggs v. District of Columbia, 679 F. Supp. 2d 43 (D.D.C. 2010).

Petitioner argued that the evaluation should have included, among other things, cognitive and academic testing, but the record indicates that Evaluator A tried to

administer those measures, but the Student was mostly unavailable for the evaluation.

Indeed, the record indicates that the Student was unavailable for school most of the time, making it difficult for the school district to conduct assessments of him/her. Petitioner did not explain how DCPS could have made the Student appear for the evaluations.

Moreover, there is no support for Petitioner's contention that psychological evaluations must include an assessment of academic skills. Hill v. District of Columbia, No. 14-CV-1893 (GMH), 2016 WL 4506972, at *18 (D.D.C. Aug. 26, 2016). In fact, the IDEA lacks specific parameters regarding the content of psychological evaluations or any other assessments or evaluations. The IDEA merely requires that such assessments or evaluations use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. 20 U.S.C. Sect. 1414(b)(2)(C). Here, as in Hill, under the circumstances that DCPS had to face, Evaluator A's psychological evaluation was enough of an evaluation to determine if the Student was eligible for services. This claim must be dismissed.

3. Did Respondent fail to determine that the Student was eligible for services at the May 24, 2023, eligibility meeting? If so, did Respondent deny the Student a FAPE?

Petitioner contended that the Student should be deemed to be eligible for services as a student with Emotional Disturbance.

In assessing whether a student should be deemed to be eligible as a student with Emotional Disturbance, one of the following conditions must apply over a minimum duration of three months and to a marked degree that adversely affects the child's educational performance: (1) an inability to learn that cannot be explained by intellectual, sensory, or health factors; (2) an inability to build or maintain satisfactory interpersonal

relationships with peers and teachers; (3) inappropriate types of behavior or feelings under normal circumstances; (4) a generally pervasive mood of unhappiness or depression; or (5) a tendency to develop physical symptoms or fears associated with personal or school problems. 34 C.F.R. Sect. 300.308(C)(4)(i); 5-A D.C.M.R. Sect. 3011.5(a).

The statute continues by explaining that a child shall not be identified as having an emotional disability solely because the child is socially maladjusted, the child's behavior repeatedly violates the LEA's code of child conduct, or the child is involved with a court or social service agency. 34 C.F.R. Sect. 300.308(C)(4)(ii); 5-A D.C.M.R. Sect. 3011.5(d).

Where a student simply does not want to go to school, a school district should not be held responsible. Garcia ex rel. Garcia v. Bd. of Educ. of Albuquerque Pub. Sch., 2007 WL 5023652 (D.N.M. Jan. 10, 2007), aff'd in part sub nom. Garcia v. Bd. of Educ. of Albuquerque Pub. Sch., 520 F.3d 1116 (10th Cir. 2008) (school district made an exceptional number of attempts to contact both the student and the mother, including phone calls and certified letters to the parents and attempts to conduct a home visit); S.J. ex rel. S.H.J. v. Issaquah Sch. Dist. No. 411, 2007 WL 2703056 (W.D. Wash. 2007) (school district was not responsible for the parents' failure to ensure the student was at school). But at the hearing, the DCPS witnesses did not say that the Student "does not want to go to school." Instead, Witness D talked about how polite, cooperative, and quiet the Student was. And DCPS did not deny that the Student's DMDD diagnosis was real or clearly explain why it felt that the Student's DMDD had no connection with his/her issues with attendance or sleeping in class. Accordingly, based on the Student's poor

grades, poor attendance history, history of sleeping in class, and DMDD diagnosis from a prominent hospital, and further based on the testimony of Witness A and Witness B to the effect that the Student's DMDD contributed to his/her persistent issues with attendance and sleeping in class, which caused his/her failing grades, the Student should be deemed to be "unable to learn" pursuant to 34 C.F.R. Sect. 300.308(C)(4)(i)(A) and 5-A D.C.M.R. Sect. 3011.5(a)(1), since the Student failed virtually every class at School C and School A. The Student should also be deemed to engage in inappropriate types of behavior or feelings under normal circumstances, pursuant to 34 C.F.R. Sect. 300.308(C)(4)(i)(C) and 5-A D.C.M.R. Sect. 3011.5(a)(3), given his/her issues with attendance and sleeping in class.

DCPS did not deny that the Student's attendance issues and sleeping issues reflected inappropriate behavior under normal circumstances and were causing the Student's failing grades, but still argued that it did not have enough data on the Student. But data on the Student was available to DCPS, starting with its own psychological evaluation, which discussed that the Student was not attending school and that s/he had been diagnosed with a mental disorder. This evaluation also discussed how the Student engaged in odd behavior, which caused an assistant principal of School A, apparently on his own, to seek an evaluation of the Student in November 2021. DCPS's psychological evaluation also discussed that the Student was failing all of his/her classes, not attending any classes, had been admitted to Hospital A for a comprehensive examination after suicidal ideation and aggression due to a conflict, and had been discharged from Hospital A after eleven days with the diagnosis of DMDD with adjustment disorder. DCPS's evaluation also discussed the Student's subsequent admission to Hospital A in February

2022 for “exhibiting erratic and bizarre behaviors.” The Student was given a discharge diagnosis of Unspecified Schizophrenia Spectrum and other Psychotic Disorder.

The assistant principal who was concerned about the Student was not called as a witness by DCPS to support its contention that the Student did not need an IEP, nor did DCPS call any of the Student’s teachers as witnesses. DCPS argued that some testing indicated that the Student was reading at or near grade level, but there is nothing in the record to suggest that the Student can be educated in a general education setting. Witness D argued that an IEP would have been pointless because the Student would not have attended school, but the Student *might* have attended school if his/her placement had been appropriate. N.G. v. District of Columbia, 556 F. Supp. 2d 11, 28 (D.D.C. 2008) (N.G.’s declining grades and poor attendance were caused by disabilities); cf. M.M. v. New York City Dep’t of Educ., 26 F. Supp. 3d 249, 256 (S.D.N.Y. 2014) (“(t)he government must find ways to open the school house doors, by helping children who suffer from emotional problems to attend school”). DCPS therefore denied the Student a FAPE when it failed to determine that the Student was eligible for services at the May 2022 meeting.

RELIEF

When school districts deny students a FAPE, courts have wide discretion to ensure that students receive a FAPE going forward. As the Supreme Court stated, the statute directs the Court to “grant such relief as [it] determines is appropriate.” School Committee of the Town of Burlington v. Dep’t of Education, Massachusetts, 471 U.S. 359, 371 (1985). These words confer broad discretion on a hearing officer, since the type of relief is not further specified, except that it must be “appropriate.”

Petitioner seeks compensatory education for the failure to provide the Student with an IEP after May 24, 2022. Courts and hearing officers may award “educational services to be provided prospectively to compensate for a past deficient program.” Reid ex Rel. Reid v. District of Columbia, 401 F.3d 516, 521-23 (D.C. Cir. 2005).

Compensatory education aims to put a student in the position he or she would have been in absent the FAPE denial and “must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” B.D. v. District of Columbia, 817 F.3d 792, 797-798 (D.C. Cir. 2016) (quoting Reid, 401 F.3d at 524).

In Witness B’s compensatory education plan, Petitioner seeks as relief: extended eligibility (an additional two school years of special education services and supports for certain students with disabilities); 720 hours of tutoring (ten hours per week for seventy-two weeks); seventy-two hours of counseling or behavior support services; thirty-six hours of mentoring; an independent psychological evaluation; a laptop computer; a referral to the Rehabilitation Services Administration (“RSA”); and round-trip transportation for tutoring, counseling, and mentoring sessions.

This ruling only upholds claims relating to the requirement to provide the Student with a FAPE after May 24, 2022. The request for tutoring and counseling or behavioral support services is reasonably connected to the findings of FAPE denial, though this Hearing Officer agrees with DCPS that the requested compensatory education award does not take into account the fact that the Student probably would have missed a fair amount of school during the period of FAPE denial, even under the most favorable academic circumstances. This Hearing Officer will therefore reduce Petitioner’s

compensatory tutoring award from the requested 720 hours to 400 hours, though the requested award on counseling or behavior support services will not be reduced, given the Student's needs. This Hearing Officer will also exercise the discretion to award the Student reasonable reimbursement for transportation costs to and from the tutoring and counseling or behavior support services.

Finally, Petitioner also seeks extended eligibility for the Student. While this request is considered in light of the Student's needs, few cases support the relief of extended eligibility in this or any jurisdiction, and the record provides no assurances that the Student would regularly attend class with children who are much younger than s/he is. This request will therefore be denied.

VII. Order

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

1. The Student is eligible for services as a student with Emotional Disturbance;
2. DCPS shall write an IEP for the Student within thirty days;
3. Respondent shall pay for 400 hours of one-to-one academic tutoring for the Student, to be provided by a certified special education teacher, at a rate that is usual and customary in the community;
4. Respondent shall pay for seventy-six hours of behavioral support services for the Student, to be provided by a licensed professional, at a reasonable and customary rate in the community;
5. All other requests for relief are hereby denied.

Dated: March 1, 2024

Hearing Officer Determination
Case # 2023-0234
Michael Lazan, Hearing Officer

Michael Lazan
Impartial Hearing Officer

cc: Office of Dispute Resolution
Petitioner's Representative: Attorney A, Esq.
Respondent's Representative: Attorney B, Esq.

VIII. Notice of Appeal Rights

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety days from the date of the Hearing Officer Determination in accordance with 20 USC Sect 1415(i).

Dated: March 1, 2024

Michael Lazan
Impartial Hearing Officer