

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

Office of Dispute Resolution
1050 First Street, N.E., Third Floor
Washington, D.C. 20002

OSSE
Office of Dispute Resolution
May 27, 2024

<i>Student</i> , ¹)	Case No.: 2024-0054
through <i>Parent</i> ,)	
<i>Petitioner</i> ,)	Date Issued: 5/27/24
)	
v.)	Hearing Officer: Keith L. Seat, Esq.
)	
District of Columbia Public Schools)	Hearing Dates (using Microsoft Teams):
("DCPS"),)	5/13/24, 5/14/24 & 5/15/24
Respondent.)	
)	

HEARING OFFICER DETERMINATION

Background

Petitioner, Student’s Parent, pursued a due process complaint alleging that Student had been denied a free appropriate public education (“FAPE”) in violation of the Individuals with Disabilities Education Improvement Act (“IDEA”) due to DCPS’s failure to comprehensively evaluate and find Student eligible for special education services and develop an Individualized Education Program (“IEP”). DCPS responded that its evaluation of Student and determinations that Student was not eligible in either 2022 or 2024 were appropriate.

Subject Matter Jurisdiction

Subject matter jurisdiction is conferred pursuant to the IDEA, 20 U.S.C. § 1400, *et seq.*; the implementing regulations for IDEA, 34 C.F.R. Part 300; and Title V, Chapter A30, of the District of Columbia Municipal Regulations (“D.C.M.R.”).

Procedural History

Following the filing of the due process complaint on 3/28/24, the case was assigned to the undersigned on 3/29/24. Respondent filed a response on 4/5/24, and did not challenge

¹ Personally identifiable information is provided in Appendix A, including terms initially set forth in italics. Personal pronouns and other terms that would indicate Student’s gender are omitted.

Hearing Officer Determination

Case No. 2024-0054

jurisdiction. A resolution meeting took place on 4/10/24, but the parties neither settled the case nor shortened the 30-day resolution period, which ended on 4/27/24. A final decision in this matter must be reached no later than 45 days following the end of the resolution period, which requires a Hearing Officer Determination (“HOD”) by 6/11/24.

A prehearing conference was held on 4/22/24 and a Prehearing Order was issued that same day, addressing, among many other things, the use of a videoconference platform to conduct the due process hearing. The due process hearing took place on 5/13/24, 5/14/24 and 5/15/24, and was open to the public. Petitioner was represented by *Petitioner’s counsel*. DCPS was represented by *Respondent’s counsel*. Petitioner participated throughout the hearing.

Documents and Witnesses

Petitioner’s Disclosure, submitted on 5/6/24, contained documents P1 through P67, all of which were admitted into evidence without objection, except for P36, which was withdrawn by Petitioner. Respondent’s Disclosure, also submitted on 5/6/24, contained documents R1 through R20, all of which were admitted into evidence without objection.²

Petitioner’s counsel presented 5 witnesses in Petitioner’s case-in-chief (*see* Appendix A):

1. Parent
2. *Tutor* (qualified over objection as an expert in Special Education)
3. *Neuropsychologist* (qualified without objection as an expert in Neuropsychology)
4. *Special Education Advocate* (qualified without objection as an expert in Special Education)
5. *Educational Advocate* (qualified over objection as an expert in Neuropsychology and Special Education Programming)

Respondent’s counsel presented 4 witnesses in Respondent’s case (*see* Appendix A):

1. *Psychologist* (qualified without objection as an expert in Psychology, Evaluation and Eligibility)
2. *Writing Teacher*

² Citations herein to the parties’ documents are identical except that Petitioner’s documents begin with a “P,” while Respondent’s documents begin with an “R,” followed by the exhibit number and then a “p” (for page) and the Bates page number or numbers (which are numbered consecutively through to the end of the exhibits), with any leading zeros omitted.

Hearing Officer Determination

Case No. 2024-0054

3. *Resolution Specialist* (qualified without objection as an expert in Special Education)
4. *Special Education Coordinator* (qualified without objection as an expert in Special Education Evaluation and Eligibility)

Petitioner's counsel offered additional testimony from Parent as the only rebuttal evidence.

Issues and Relief Requested

The issues to be determined in this Hearing Officer Determination are:

Issue 1: Whether DCPS denied Student a FAPE by failing to identify Student as eligible for special education services and develop an IEP under the classifications of (a) Specific Learning Disability ("SLD"), (b) Other Health Impairment ("OHI"), and/or (c) Emotional Disturbance ("ED"), based on data at the 4/19/22 eligibility meeting. (*Petitioner has the burden of persuasion on this issue.*)

Issue 2: Whether DCPS denied Student a FAPE by failing to comprehensively evaluate and/or identify Student as eligible for special education services and develop an IEP pursuant to Parent's request during 2023/24³ and/or at the 3/12/24 eligibility meeting. (*Petitioner has the burden of persuasion on this issue.*)

Relief Requested by Petitioner:

1. A finding that Student has been denied a FAPE.
2. DCPS shall find Student eligible and within 5 business days reconvene the IEP team and develop an IEP.
3. DCPS shall reimburse Parent for out of pocket expenses for tutoring services and evaluations, including a neuropsychological evaluation.⁴
4. DCPS shall provide compensatory education for any denials of FAPE found.
5. Any other just and reasonable relief.

³ All dates in the format "2023/24" refer to school years.

⁴ At the beginning of the due process hearing, Petitioner's counsel withdrew without prejudice the request for reimbursement of an occupational therapy evaluation.

Hearing Officer Determination

Case No. 2024-0054

Findings of Fact

After considering all the evidence, as well as the arguments of counsel, the Findings of Fact⁵ are as follows:

1. Background. Student is a resident of the District of Columbia; Petitioner is Student's Parent.⁶ Student is *Age, Gender,* and in *Grade* during 2023/24 at *Public School*.⁷ Student is "friendly, respectful, engaging," "a lovely child, really kind, gentle, . . . [and has] good rapport with classmates"; in March 2020, Student said Student "should be dead" due to dissatisfaction over writing.⁸ Student has never been found eligible for special education and related services, but has had robust Section 504 Plans.⁹

2. Eligibility Process in 2022. DCPS received a referral for an initial evaluation of Student on 3/3/22 to determine if Student was a child with a disability.¹⁰ DCPS agreed in its 3/3/22 Prior Written Notice ("PWN") to review the 2021 independent educational evaluation ("IEE") submitted by Parent to see if Student met the criteria for support through an IEP or a 504 Plan.¹¹

3. The IEE was a neuropsychological evaluation conducted in October and November 2021 by Neuropsychologist, which diagnosed Student with a Specific Learning Disorder with impairment in Reading, Attention-Deficit/Hyperactivity Disorder – Combined Presentation ("ADHD"), and Unspecified Anxiety Disorder.¹² The IEE noted that it might underrepresent Student's actual level of functioning in certain areas.¹³ Student's overall general cognitive ability fell in the very high range, in the top 10 percent of those Student's age.¹⁴ Student's writing skills fell in the average range, with spelling toward the lower end of average.¹⁵ The IEE noted that Student seemed to be thriving in reading and writing skills

⁵ Footnotes in these Findings of Fact refer to the sworn testimony of the witness indicated or to an exhibit admitted into evidence. To the extent that the Hearing Officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, the Hearing Officer has taken such action based on the Hearing Officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.

⁶ Parent.

⁷ Parent; P6.

⁸ P6p63; P21p154,155; Parent.

⁹ P15; P16; P19; P23; Parent.

¹⁰ P25p170; P27p174.

¹¹ P26p172.

¹² P6p53,65,66.

¹³ P6p56,62; Psychologist.

¹⁴ P6p64.

¹⁵ P6p65.

Hearing Officer Determination

Case No. 2024-0054

despite lower phonological processing, and recommended that Student continue working with Student's tutor.¹⁶

4. SLD. Psychologist reviewed the IEE, and the Woodcock-Johnson IV ("WJ-IV") revealed some issues with Student's decoding, but strong comprehension; the impressions of Student's teachers and Student meeting grade level expectations and benchmarks showed there was insufficient data for a disability classification of SLD.¹⁷ Despite much of 2020/21 being virtual instruction, Student's curriculum-based assessments reflected solid academic performance, including reading comprehension.¹⁸ A 3/3/22 Analysis of Existing Data ("AED") noted that Student had grown as a writer that year.¹⁹ Student's 2021/22 EOY SRI Lexile score was 1036, indicating that Student was reading about 8 years above grade level.²⁰

5. OHI. OHI was considered due to Student's diagnosis of ADHD and unspecified anxiety disorder, which must adversely affect a child's educational performance.²¹ OHI was not warranted as of 3/2/22; issues with executive functioning that impacted written expression could be adequately addressed in a 504 Plan.²² Based on diagnosis and treatment for anxiety, DCPS determined that the disability was not impacting Student's academic performance in school, and thus did not meet the criteria for special education and was referred for support through a 504 Plan.²³

6. ED. In Psychologist's 3/2/22 review of Student's neuropsychological evaluation, Psychologist knew that Student had anxiety, but did not consider an ED disability classification.²⁴ Student's anxiety did not adversely impact Student's social or academic performance, so there was no need for special education.²⁵ ED was not "on the table" until the current due process complaint was filed; Special Education Coordinator never heard about ED in connection with Student until the first day of the due process hearing.²⁶ Psychologist testified that there was no mention of ED prior to March 2024; multiple teachers would have raised ED if it was impacting Student's ability to show what Student knew.²⁷

¹⁶ P6p70.

¹⁷ P7p79; Psychologist (didn't see information for learning disability).

¹⁸ P7p75,76; P8p85-86.

¹⁹ P13p115; P14p117 (3/3/22 meeting noted that Student had improved through year in writing).

²⁰ R19p233; Resolution Specialist.

²¹ P7p79; Psychologist; P9p92 (ADHD diagnosed).

²² P7p79.

²³ P29p179 (4/19/22 PWN).

²⁴ Psychologist.

²⁵ *Id.*

²⁶ Special Education Coordinator.

²⁷ Psychologist.

Hearing Officer Determination

Case No. 2024-0054

7. 2022 Conclusion. The 3/3/22 team meeting concluded that special education was not needed by Student.²⁸ Student's 4/19/22 final eligibility determination report indicated that Parent and the other team members agreed that Student did not need special education and related services.²⁹

8. Eligibility Process in 2024. On PARCC in Spring 2023, Student scored 745 on English Language Arts ("ELA"), which approached expectations; Student scored better than 17% of students in Student's grade at Public School and better than 70% of all students in DC.³⁰ On 11/17/23, Parent sought to revisit Student's evaluation and reconsider the need for an IEP.³¹ As of 11/30/23, Special Education Coordinator thought Student was receiving support as needed and was not falling behind.³² Special Education Coordinator explained that an IEP provides for specialized instruction, which Student did not need due to testing within or above grade level; Special Education Coordinator sought to "celebrate" Student's ongoing success in school.³³

9. Parent began the second referral process seeking special education for Student on 2/2/24, with consent provided by Parent on 2/1/24.³⁴ In 2024, the disability classification of SLD was considered, as well as OHI due to Student's diagnosis of ADHD and unspecified anxiety disorder.³⁵ An eligibility meeting seeking special education was held on 3/12/24; the team denied special education for Student.³⁶

10. Evaluation. Public School sought to do more testing of Student; Parent did not want Psychologist to conduct a more thorough evaluation due to Parent's concerns about bias by Psychologist and Special Education Coordinator.³⁷ Parent sought recusal by Special Education Coordinator due to "continued disrespect."³⁸ Parent had been concerned about Psychologist for some time, so proposed an IEE to determine if Student met the criteria for an IEP; at some point, Parent was no longer concerned about bias.³⁹ DCPS agreed in its 4/9/24 PWN to conduct an academic assessment of Student with a WJ-IV Broad Reading Composite and Broad Written Expression Composite to see if Student was at grade level, with review of ANET, iReady and PARCC as well, but did not agree to the IEE requested by Parent.⁴⁰

²⁸ Special Education Coordinator; P14p117.

²⁹ R6; P17p135,136; P18p140,141.

³⁰ P65p373-74.

³¹ P31p188.

³² P31p184.

³³ P31p186.

³⁴ P20p151.

³⁵ P10p102,103.

³⁶ P21; Special Education Advocate.

³⁷ Special Education Coordinator; Psychologist.

³⁸ P33p193-94.

³⁹ P33p195; Parent.

⁴⁰ P32p190.

Hearing Officer Determination

Case No. 2024-0054

11. Public School completed an Educational Evaluation on 3/5/24, with administration of the WJ-IV and Word Identification and Spelling Test (“WIST”) by another qualified DCPS staffer.⁴¹ The 3/5/24 evaluation of language comprehension found Student in the average range; in WJ-IV reading, Student’s overall skills fell in the high average range; in written expression, Student’s overall skills were in the average range, with spelling toward the lower limit of average.⁴²

12. SLD. Student did not meet eligibility criteria for SLD on 3/5/24, nor did Student’s overall performance support a classification of OHI, as the student’s educational performance must be adversely affected.⁴³ Overall test performance indicated that Student is a bright child who was meeting academic expectations across the curriculum.⁴⁴ Educational Advocate asserted that Student was getting a lot of outside tutoring that masked performance difficulties; Special Education Coordinator noted that many parents at Public School supported their children’s education with private tutoring.⁴⁵

13. Writing. Student’s writing was appropriate for Grade; all children in Student’s grade need help with organizing before they draft.⁴⁶ The ELA special education teacher for Grade stated that Student’s writing falls within the grade level band.⁴⁷ The special educator for Grade-1 provided some in-class support to help Student structure writing, similar to that given other students, but did not provide Student with special education services or specialized instruction.⁴⁸

14. OHI. Parental concerns of emotional stress, low self-esteem and ADHD were being addressed by a 504 Plan; the IEP team recommended that behavior support be considered in the 504 Plan and that the team reconvene to revise the 504 Plan.⁴⁹ In a doctor’s letters dated 3/15/24 and 4/4/24, Student was diagnosed with a chronic motor tic disorder.⁵⁰ Tics had not been recognized at school, as Student’s neck stretching was not out of the ordinary.⁵¹ Educational Advocate could not say that Student needed special education due to often stretching neck.⁵²

15. 2024 Conclusion. Educational Advocate testified that Public School was putting supports in place in Student’s 504 Plan that should have been included in an IEP and that

⁴¹ P10p94; Special Education Coordinator.

⁴² P10p94.

⁴³ P10p103-04.

⁴⁴ P10p103.

⁴⁵ Special Education Coordinator.

⁴⁶ P10p96; Writing Teacher (Student’s writing teacher).

⁴⁷ P10p96.

⁴⁸ P10p96; Psychologist.

⁴⁹ P35p201.

⁵⁰ P11p107; Special Education Advocate; Educational Advocate.

⁵¹ Special Education Coordinator; P19p146.

⁵² Educational Advocate.

Hearing Officer Determination

Case No. 2024-0054

Student should have been found eligible for special education in March 2024.⁵³ A 3/12/24 PWN noted that the DCPS IEP team members concluded that Student did not qualify for special education based on the fact that Student was achieving adequately in all areas, did not demonstrate a discrepancy between achievement and measured ability of 1.5 standard deviations below cognitive ability, no academic impact was noted due to grade level assessments, and grading indicated Student was meeting benchmarks in all subjects.⁵⁴

16. Overall. Resolution Specialist testified that nothing in Student's educational records or data indicated the need for an IEP and specialized instruction.⁵⁵ Psychologist testified that DCPS had done nothing concerning Student for which compensatory education would be owed.⁵⁶

Conclusions of Law

Based on the Findings of Fact above, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law are as follows:

The overall purpose of the IDEA is to ensure that "all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). *See Boose v. Dist. of Columbia*, 786 F.3d 1054, 1056 (D.C. Cir. 2015) (the IDEA "aims to ensure that every child has a meaningful opportunity to benefit from public education").

"The IEP is 'the centerpiece of the statute's education delivery system for disabled children.'" *Andrew F. ex rel. Joseph F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 994, 197 L. Ed. 2d 335 (2017), quoting *Honig v. Doe*, 484 U.S. 305, 311, 108 S. Ct. 592, 98 L. Ed.2d 686 (1988). "The IEP is the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Andrew F.*, 137 S. Ct. at 994, quoting *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 181, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982).

Once a child who may need special education services is identified and found eligible, Respondent must devise an IEP, mapping out specific educational goals and requirements in light of the child's disabilities and matching the child with a school capable of fulfilling those needs. *See* 20 U.S.C. §§ 1412(a)(4), 1414(d), 1401(14); *Andrew F.*, 137 S. Ct. at 994; *Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385 (1985); *Jenkins v. Squillacote*, 935 F.2d 303, 304 (D.C. Cir. 1991); *Dist. of Columbia v. Doe*, 611 F.3d 888, 892 n.5 (D.C. Cir. 2010).

⁵³ *Id.*

⁵⁴ P35p200; R11; R13.

⁵⁵ Resolution Specialist.

⁵⁶ Psychologist; P33p320-21.

Hearing Officer Determination

Case No. 2024-0054

The IEP must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.*, 137 S. Ct. at 1001. The Act’s FAPE requirement is satisfied “by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” *Smith v. Dist. of Columbia*, 846 F. Supp. 2d 197, 202 (D.D.C. 2012), *citing Rowley*, 458 U.S. at 203. The IDEA imposes no additional requirement that the services so provided be sufficient to maximize each child’s potential. *Rowley*, 458 U.S. at 198. In its decision, the Supreme Court made very clear that the standard is well above *de minimis*, however, stating that “[w]hen all is said and done, a student offered an educational program providing ‘merely more than *de minimis*’ progress from year to year can hardly be said to have been offered an education at all.” *Endrew F.*, 137 S. Ct. at 1001.

Importantly, the local education agency (“LEA”) must ensure that to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. § 300.114; *Endrew F.*, 137 S. Ct. at 1000 (children with disabilities should receive education in the regular classroom to the extent possible); *Montuori v. Dist. of Columbia*, No. 17-cv-2455 (CKK), 2018 WL 4623572, at *3 (D.D.C. 2018).

A Hearing Officer’s determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a Hearing Officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child’s right to a FAPE; (ii) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a). In other words, an IDEA claim is viable only if those procedural violations affected the child’s *substantive* rights. *Brown v. Dist. of Columbia*, 179 F. Supp. 3d 15, 25-26 (D.D.C. 2016), *quoting N.S. ex rel. Stein v. Dist. of Columbia*, 709 F. Supp. 2d 57, 67 (D.D.C. 2010).

Petitioner carries the burden of production and persuasion, except on issues of the appropriateness of an IEP or placement on which Respondent has the burden of persuasion, if Petitioner establishes a *prima facie* case. D.C. Code Ann. § 38-2571.03(6); *Z. B. v. Dist. of Columbia*, 888 F.3d 515, 523 (D.C. Cir. 2018) (party seeking relief bears the burden of proof); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S. Ct. 528, 537, 163 L. Ed. 2d 387 (2005).

Issue 1: *Whether DCPS denied Student a FAPE by failing to identify Student as eligible for special education services and develop an IEP under the classifications of (a) Specific Learning Disability (“SLD”), (b) Other Health Impairment (“OHI”), and/or (c) Emotional Disturbance (“ED”), based on data at the 4/19/22 eligibility meeting. (Petitioner has the burden of persuasion on this issue.)*

On the initial issue of Student’s eligibility for special education in 2022, Petitioner had the burden of persuasion, but did not meet it. Petitioner based her assertions on the IEE

Hearing Officer Determination

Case No. 2024-0054

that was conducted in late 2021, but the IEE did not clearly conclude that Student should be found eligible. DCPS considered the categories of SLD and OHI (based on ADHD and anxiety), but ED was not suggested prior to the due process complaint in March 2024. The evidence is clear that DCPS responded appropriately to Petitioner's request for special education eligibility of Student in 2022.

To begin, the definitions of SLD, OHI and ED are set forth in 34 C.F.R. § 300.8(c)(10), § 300.8(c)(9), and § 300.8(c)(4). But then to be eligible under the IDEA as a "child with a disability" as defined in 34 C.F.R. § 300.8(a)(1), Student must not only have an SLD, OHI and/or ED (or another listed condition), but "by reason thereof" need special education and related services, which Petitioner failed to establish.⁵⁷ "Special education" is defined in turn in 34 C.F.R. § 300.39(a) as "specially designed instruction" to meet the unique needs of a child with a disability. See *Q.C-C. v. Dist. of Columbia*, 164 F. Supp. 3d 35, 51 (D.D.C. 2016). Further, "specially designed instruction" means adapting "the content, methodology, or delivery of instruction" to address the unique needs of the child to ensure access to the general curriculum, so the child can meet educational standards. 34 C.F.R. § 300.39(b)(3). See *Leggett v. Dist. of Columbia*, 793 F.3d 59, 63 (D.C. Cir. 2015).

(a) SLD. Student had insufficient data for a disability classification of SLD based on the impressions of Student's teachers, along with Student meeting grade level expectations and benchmarks. Student's assessments showed solid academic performance, including reading comprehension. Remarkably, at the end of 2021/22, Student was reading about 8 years above grade level.

(b) OHI. DCPS considered OHI due to Student's diagnosis of ADHD and unspecified anxiety disorder, which must adversely affect educational performance. OHI was not warranted in March 2022, as it was not impacting Student's academic performance in school. Thus, executive functioning and anxiety did not meet the criteria for special education and could be and were addressed in Student's 504 Plan.

(c) ED. While Student's 2021 neuropsychological evaluation diagnosed Student as suffering from anxiety, Psychologist did not consider an ED disability classification. As Psychologist testified, Student's anxiety did not adversely impact Student's social or academic performance, resulting in no need for special education. Further, ED was not raised as an issue until the current due process complaint was filed. Psychologist and Special Education Coordinator both clearly testified that ED was not in issue prior to March 2024.

Pursuant to 20 U.S.C. § 1412(a)(3)(B), DCPS is not required to classify Student into a specific category, as the focus is on the adequacy – or need – of services. See *Letter to Anonymous*, 48 IDELR 16 (OSEP 2006) (child's identified needs, not disability category,

⁵⁷ A child who meets one of the disability classifications under the IDEA who solely is in need of behavioral intervention or a related service and does not require special education services, does not qualify as a child with a disability under the IDEA. 34 C.F.R. § 300.8(a)(2)(i).

Hearing Officer Determination

Case No. 2024-0054

determine the services to be provided); *Heather S. v. State of Wis.*, 125 F.3d 1045, 1055 (7th Cir. 1997) (the IDEA “charges the school with developing an appropriate education, not with coming up with a proper label”). Here, the undersigned is persuaded that none of the proposed labels is necessary or appropriate for Student.

Issue 2: *Whether DCPS denied Student a FAPE by failing to comprehensively evaluate and/or identify Student as eligible for special education services and develop an IEP pursuant to Parent’s request during 2023/24 and/or at the 3/12/24 eligibility meeting. (Petitioner has the burden of persuasion on this issue.)*

Petitioner failed to meet her burden of persuasion on the need for a more comprehensive evaluation of Student in early 2024 or eligibility for special education. The importance of assessing students in all areas of suspected disability was emphasized in *Z. B. v. Dist. of Columbia*, 888 F.3d 515, 518 (D.C. Cir. 2018), quoting 20 U.S.C. § 1414(b)(3)(B). The D.C. Court of Appeals explained in *Z. B.*, at 524, that failing to conduct adequate assessments is a procedural violation that could have substantive effects by preventing the IEP team from obtaining necessary information about the student. However, “[t]he IDEA does not require LEAs to administer every test requested by a parent or educational advocate. Rather, to ensure that a child with a disability receives a FAPE, an LEA must use ‘a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information.’ See 20 U.S.C. § 1414(b)(2)(A).” *Long v. Dist. of Columbia*, 780 F. Supp. 2d 49, 60 (D.D.C. 2011).

Here, Public School would have done more testing of Student in early 2024 had Parent not objected to Psychologist conducting the evaluation, as Parent was concerned about bias by both Psychologist and Special Education Coordinator. The undersigned found both Psychologist and Special Education Coordinator to be forthright in caring about Student. Parent testified that she had gotten over her concerns about Psychologist conducting a more comprehensive evaluation, but it was not clear that Parent conveyed her change of heart to Psychologist or Special Education Coordinator in a timely fashion. While Parent proposed an IEE, DCPS agreed to conduct an educational evaluation itself using another qualified staffer to administer the WJ-IV and WIST. The 3/5/24 evaluation of language comprehension found Student in the average range; in WJ-IV reading, Student’s overall skills were in the high average range; in written expression, Student was in the average range, with spelling toward the lower end of average. The undersigned concludes that these assessments, together with the neuropsychological evaluation that was less than 3 years old, constituted an adequate evaluation of Student.

Turning again to special education eligibility, Student failed to meet the eligibility criteria for SLD on 3/5/24. Nor did Student meet the OHI classification, as Student’s educational performance was not adversely affected as required. Quite simply, testing indicated that Student is a bright child who was meeting academic expectations. The fact that Student was assisted by a private tutor does not differentiate Student from many peers at Public School. Focusing on writing in particular, Student’s abilities were appropriate for Student’s grade. Student’s writing teacher noted that all children in Student’s grade need help organizing before they draft. Student’s writing came within the grade level band, and the writing assistance Student received at Public School was similar to peers.

Hearing Officer Determination

Case No. 2024-0054

As for OHI, Parent's concerns of emotional stress, low self-esteem and ADHD were addressed by Student's 504 Plan, and the team recommended that behavior support be considered in the 504 Plan as well. While Parent's team put a great deal of emphasis on Student's chronic motor tic disorder – which involved frequent neck stretching – the doctor's letters explaining the disorder were sent after the eligibility determination was made by the team. Moreover, in her testimony Educational Advocate could not say that Student needed special education due to often stretching neck.

In sum, Resolution Specialist persuasively testified that nothing in Student's educational data or records indicated the need for an IEP and specialized instruction, while Psychologist credibly testified that DCPS had done nothing concerning Student which merited compensatory education. This Hearing Officer agrees.

ORDER

Petitioner has not prevailed on either issue in this case. Accordingly, **it is hereby ordered** that any and all claims and requests for relief are **dismissed with prejudice**.

IT IS SO ORDERED.

Dated in Caption

/s/ Keith Seat

Keith L. Seat, Esq.
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).

Copies to:

Counsel of Record (Appendix A, by email)
ODR (hearing.office@dc.gov)