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Office of the State Superintendent of Education
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Confidential

Parent on Behalf of Student, Petitioner, v. School A Public Charter School (“School A”) Local Educational Agency (“LEA”), Respondent. Case # 2018-0195 Date Issued: November 10, 2018	HEARING OFFICER’S DETERMINATION ¹ Hearing Date: October 23, 2018 Counsel for Each Party listed in Appendix A <u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u>
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¹ This “Corrected” HOD is issued to only make typographical and/or grammatical changes and/or to remove personally identifiable information; no substantive changes have been made. The HOD issuance date, November 10, 2018, remains unchanged, as does the applicable appeal date. Personally identifiable information is in the attached Appendices A & B.

JURISDICTION:

The hearing was conducted, and this decision was written, pursuant to the Individuals with Disabilities Act (“IDEA”), P.L. 101-476, as amended by P.L. 105-17 and the Individuals with Disabilities Education Improvement Act of 2004, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter E30. The Due Process Hearing was convened on October 23, 2018, at the District of Columbia Office of the State Superintendent of Education (“OSSE”) Office of Dispute Resolution, 1050 First Street, N.E., Washington, D.C. 20003, in Hearing Room 112.

BACKGROUND AND PROCEDURAL HISTORY:

The student or (“Student”) is age _____ and in grade _____.² Student resides with Student's guardian (“Petitioner”) in the District of Columbia. Student has been determined eligible for special education and related services pursuant to the IDEA with a disability classification of multiple disabilities (“MD”), including emotional disability (“ED”) and other health impairment (“OHI”) for Attention Deficit Hyperactivity Disorder (“ADHD”). Student’s local educational agency (“LEA”) is a District of Columbia Public Charter School (“School A”). Student currently attends a non-public special education day school (“School B”).

Student attended School A during school year (“SY”) 2016-2017. School A and OSSE conducted a change of placement meeting in January 2017. Shortly thereafter, Student began attending School B. School A remains Student’s LEA. Based on Student’s behaviors at School B, Petitioner, through counsel, requested a neuropsychological evaluation and a psychiatric evaluation. School A agreed to conduct the neuropsychological evaluation, but denied Petitioner’s request for the psychiatric evaluation. On July 27, 2018, Petitioner filed this due process complaint asserting School A denied Student a free appropriate public education (“FAPE”) by its refusal to conduct or fund a psychiatric evaluation.

RELIEF SOUGHT:

Petitioner seeks as relief a finding that Student has been denied a FAPE, an order that School A, Student’s LEA, conduct or fund a psychiatric evaluation, with compensatory education to be reserved until the psychiatric evaluation is performed.

LEA Response to Petitioner’s Complaint:

School A (“Respondent”) filed a response to the due process complaint on August 3, 2018. Respondent denies that there has been any failure to provide the student with a FAPE. In its response Respondent asserts, inter alia, the following: that Student has been adequately evaluated. School A agreed to fund the neuropsychological evaluation and the school-based team has determined that a psychiatric evaluation is not necessary for educational purposes. There is no basis for the request, as the general reasons for such an evaluation are not present. Student poses no serious threat of harm to self or others as noted by health care providers and

² The student’s current age and grade are indicated in Appendix B.

school staff. Medication management is not an educational purpose and is the purview of the parent and Student's physician. School A continues to work with School B to ensure Student's needs are being met.

Resolution Meeting and Pre-Hearing Conference:

The parties participated in a resolution meeting on September 11, 2018. The parties did not resolve the complaint and did not mutually agree to proceed directly to hearing in this matter. The 45-day period began on August 27, 2018, and ended [and the Hearing Officer's Determination ("HOD") was originally due] on October 10, 2018.

Respondent's counsel was not available for the original hearing dates proposed: September 26, 2018, and September 28, 2018. In addition, Petitioner's counsel delayed the resolution meeting, and Petitioner then had a change of counsel. The parties agreed to a continuance and extension of the HOD due date to allow for the agreed upon hearing dates. Petitioner filed a motion to that effect that was granted extending the HOD due date to November 10, 2018.

The undersigned Hearing Officer ("Hearing Officer") convened a pre-hearing conference ("PHC") on September 5, 2018, and issued a pre-hearing order ("PHO") on September 11, 2018, outlining, inter alia, the issue to be adjudicated.

ISSUE:³

The issue adjudicated is:

Whether School A denied Student a FAPE by failing to conduct or authorize funding of a psychiatric evaluation of Student in response to Petitioner's request.

RELEVANT EVIDENCE CONSIDERED:

This Hearing Officer considered the testimony of the witnesses and the documents submitted in each party's disclosures (Petitioner's Exhibits 1 through 97 and Respondent's Exhibits 1 through 31) that were admitted into the record and are listed in Appendix 2.⁴ The witnesses testifying on behalf of each party are listed in Appendix B.⁵

³ The Hearing Officer restated the issue at the outset of the hearing and the parties agreed that this was the issue to be adjudicated.

⁴ Any item disclosed and not admitted, or admitted for limited purposes, was noted on the record and is noted in Appendix A.

⁵ Petitioner presented five witnesses: (1) Student's guardian ("Petitioner"), (2) Student's other guardian (3) an independent psychiatric nurse practitioner testifying as an expert witness, (4) Petitioner's educational advocate, employed by the law firm that represents Petitioner, testifying as an expert witness, (5) a second educational advocate employed by the law firm that represents Petitioner, who is also a psychologist, testifying as an expert witness. Respondent presented three witnesses: (1) School B's educational coordinator (2) School B's clinical social worker, and (3) School A's director of student-scholar support.

SUMMARY OF DECISION:

Petitioner held the burden of production and the burden of persuasion on the issue adjudicated. The Hearing Officer concluded that Petitioner did not sustain the burden of persuasion by a preponderance of the evidence that Student was denied a FAPE by School A's refusal to conduct or fund a psychiatric evaluation. Petitioner's complaint is dismissed with prejudice.

FINDINGS OF FACT:⁶

1. Student resides with Petitioner in the District of Columbia. Student has been determined eligible for special education and related services pursuant to the IDEA with a disability classification of MD, including ED and OHI, for ADHD. Student's LEA is School A, a public charter school. Student currently attends School B, a non-public special education therapeutic day school. (Respondent's Exhibit 9-1, Petitioner's testimony)
2. While Student was attending School A, a comprehensive psychological evaluation was conducted of Student in May 2017. School A found Student eligible for special education services on June 28, 2017, and Student's initial individualized educational program ("IEP") was developed on July 26, 2017. The IEP prescribed the following services: 5 hours per week of specialized instruction inside general education, 240 minutes per month of behavioral support services ("BSS") outside general education, and 240 minutes per month of BSS inside general education. (Respondent's Exhibits 9-9, 10-1, 10-2)
3. School A authorized an independent comprehensive psychological evaluation ("IEE") that was conducted in October 2017. Student's cognitive abilities were Average. Student's academic achievement scores were Average for reading and written language and Low Average for math. The evaluator noted Student had significant problems with aggression, hyperactivity, and conduct problems. The evaluator noted Student's diagnosis of Bipolar Disorder, ADHD and Generalized Anxiety Disorder. (Respondent's Exhibits 10-1, 10-5, 10-6, 10-8, 10-18)
4. On November 17, 2017, School A convened a meeting to review the IEE and a functional behavioral assessment ("FBA"). During the meeting, the independent psychologist who conducted the IEE reviewed her evaluation results. School A members of the team asked about the diagnosis of Bipolar Disorder referred to in the IEE report. The independent psychologist acknowledged she had never seen any documentation of an official diagnosis for Student of Bipolar Disorder. School A asked that the independent psychologist clarify that point in her report. The independent psychologist initially said she would revise the report as requested if no documentation could be found, and later stated she would consider revising her report to make the Bipolar diagnosis herself. The

⁶ The evidence (documentary and/or testimony) that is the source of the Findings of Fact ("FOF") is noted within a parenthesis following the finding. A document is noted by the exhibit number. The second number following the exhibit number denotes the page of the exhibit from which the fact was extracted. When citing an exhibit that has been submitted by more than one party separately, the Hearing Officer may only cite one party's exhibit.

independent psychologist reviewed her recommendations with the team and noted that she believed Student should see a psychiatrist to regulate Student's mood. After a review of Student's performance under Student's initial IEP, the team agreed that Student was in need of a more restrictive placement totally removed from non-disabled peers. School A amended Student's IEP to prescribe 24.5 hours per week of specialized instruction outside general education, and 480 minutes per month of BSS outside general education. (Respondent's Exhibits 11-1, 11-2, 11-3, 12-1, 12-11)

5. On December 19, 2017, School A convened a change of placement meeting with an OSSE representative in attendance. Based on the IEP team's recommendation for Student to be in a non-public therapeutic environment, OSSE moved forward to place Student in a non-public therapeutic school. Thereafter, Student began attending School B. (Respondent's Exhibit 14-1, 14-3)
6. Student has been attending School B since January 2018. Petitioner is of the opinion that Student demonstrates no respect for School B staff. Student has had to be restrained on multiple occasions at School B and Petitioner receives telephone calls from Student's teacher or a behavior specialist almost on a daily basis. During the telephone calls, Student is placed on the line to talk with Petitioner and she tries to calm Student down. (Parent's testimony)
7. On February 20, 2018, School A convened an IEP meeting to conduct a thirty (30) day review of Student's attendance at School B and to review a behavior intervention plan ("BIP"). School B's therapist asked Petitioner about Student's medication and dosage. Petitioner stated Student was on the same dosage that was noted in a previous evaluation, that Student sees a psychiatrist every two months and had just seen the psychiatrist the week prior to the meeting. The team reviewed and agreed to the BIP, and agreed to reconvene on March 12, 2018, to review implementation of the BIP. The targeted behaviors in the BIP included following directions, staying on task and using appropriate language, rather than profanity. (Respondent's Exhibit 15-1, 15-2, 15-3)
8. On March 23, 2018, Student had an incident at School B in which Student threatened to kill a teacher, and took a shoestring from Student's shoe and tried to tie it around Student's neck. School B's therapist counseled Student after the incident. Student stated to the therapist that the threatening statements were made out of anger and Student had not intended to act on the statements. Student calmed down and the School A therapist was assured Student was not a danger to self or others. (Respondent's Exhibit 17-1)
9. As result of being informed of the incident at School B, Petitioner took Student to [REDACTED] emergency room on the evening of March 23, 2018, for a medical assessment. Student was not admitted, but was released from the emergency room with a discharge summary that stated that Student could return to school. (Respondent's Exhibit 18-2, 18-3)
10. Student has visits with Student's psychiatrist once every two (2) months. Student takes medication for anxiety and ADHD and Student's dosage of medication has increased

over the last year. After the March 23, 2018, incident, Petitioner took Student for a visit with Student's psychiatrist. Student denied attempting suicide and advised the psychiatrist that Student was angry during the incident. (Parent's testimony)

11. After being informed about the March 23, 2018, incident Petitioner's educational advocate sent an email to School A's Director of Scholar Support and requested a psychiatric evaluation be conducted to determine Student's "emotional health, psychiatric treatment, and any imminent treatment needs." The advocate also requested that Student's safety plan be revised to prevent Student from acting on threats. (Witness 5's testimony, Respondent's Exhibit 17-2)
12. The advocate was unable to state the rationale for her request that Student receive a psychiatric evaluation other than the notion that the psychiatrist may provide some insight into what the advocate has determined are Student's suicidal and/or homicidal ideations. Although Student has a psychiatrist who treats Student outside of school, the advocate and has not spoken to the psychiatrist. However, the advocate is aware that Student consults with the psychiatrist regarding medications and that Student's psychiatrist has been advised of Student's school behaviors. (Witness 2's testimony)
13. During SY 2017-2018 Petitioner's educational advocate observed Student at School B where Student was engaged in a reading project. There were three (3) students, including Student in the classroom. Student appeared to be anxious and did not engage in the reading activity when prompted to do so. School B's Behavior Technician described Student to the advocate as physically aggressive, always agitated and unresponsive to positive praise. (Witness 2's testimony)
14. On April 12, 2018, School A convened an IEP meeting to review Student's progress at School B. The team discussed Student's behavior and academic progress. The team discussed the March 23, 2018, incident. Petitioner's attorney inquired about the previous request for the psychiatric evaluation. The School B therapist stated that Student did not appear to be a danger to self or others. Petitioner stated that when Student discharged from [REDACTED] emergency room following the March 23, 2018, incident the hospital had no psychiatric concerns. At the meeting, the team did not agree that a psychiatric evaluation was warranted or would be conducted. (Witness 4's testimony, Respondent's Exhibit 19-1, 19-4)
15. On April 12, 2018, Petitioner's attorney sent a copy of the [REDACTED] discharge summary to School A asking that School A inform Petitioner within a week of School A's decision regarding Petitioner's request for a psychiatric evaluation. (Respondent's Exhibit 18-1)
16. On July 2, 2018, Student's treating psychiatrist provided Petitioner with a letter stating that Student had been her patient since 2015, and due to past and recent events reflecting symptoms related to diagnosis of ADHD, and Depressive Disorder, she was recommending, and believed that Student was in need of, a neuropsychological evaluation from a clinical psychologist. (Respondent's Exhibit 20-3)

17. On July 12, 2018, Petitioner's attorney requested that School A conduct a neuropsychological evaluation of Student. The correspondence also stated that Petitioner maintained her request for a psychiatric evaluation made during the April 12, 2018, meeting. Petitioner remained concerned about Student's threats of harm to self and others. (Respondent's Exhibit 20)
18. On July 22, 2018, School A issued Petitioner a prior written notice ("PWN") denying Petitioner's request for the psychiatric evaluation. (Respondent's Exhibit 22-1, 22-2)
19. School A would have agreed to conduct a psychiatric evaluation if there had been no previous diagnosis and treatment of Student's psychiatric conditions and/or if the IEP team had no understanding why Student is behaving in the manner Student behaves. (Witness 6's testimony)
20. School A agreed to conduct the neuropsychological evaluation, which was conducted on September 12, 2018, and September 17, 2018. The evaluation report is dated October 5, 2018. An IEP team has not yet reviewed the evaluation report. (Respondent's Exhibit 25-1)
21. The evaluator noted in the October 5, 2018, evaluation report that Student continued to exhibit behavioral problems that negatively impact Student's academic performance, including behaviors of verbal and physical aggression towards teachers, cursing, elopement from the classroom and defiance. The evaluator assessed Student's cognitive, academic and neuropsychological functioning to gain insight into Student's current level of functioning and to determine how best to support Student in the academic setting. The evaluator reviewed Student's prior evaluations, educational records, administered assessments and interviewed Student, Student's parent, and teachers and the social worker who provides Student behavioral support services at School B and observed Student in the classroom. The evaluator noted in the evaluation report Student's prior incidents of threatening a staff member and attempting to harm self twice by tying a shoelace around Student's neck while Student was in the School B de-escalation room. The evaluator noted the School B therapist assessed Student's safety towards self and others and concluded Student was not a safety danger to either. (Respondent's Exhibit 25-1, 25-3, 25-4)
22. Student's overall cognitive abilities fell within the Low Average range with Working Memory in the Average range and Student's Verbal Comprehension abilities in the Very Low range. Student had a full-scale IQ score of 80. Student had academic achievement scores that were below age and grade level expectancy in all areas. The evaluator noted that Student's persistent irritability and frequent episodes of extreme behavioral dyscontrol, in addition to inattention in the classroom, may have resulted in loss of instructional time and learning. (Respondent's Exhibit 25-26, 25-29, 25-35, 25-40, 25-50)
23. The evaluator noted Student's diagnosis of ADHD, Disruptive, Mood Dysregulation Disorder, Specific Learning Disorder with impairments in reading, math and written

expression. The evaluator concluded that based upon the evaluation data Student met the criteria for the MD disability classification to include ED and OHI due to ADHD. The evaluator recommended, among other things, that Student's FBA and BIP be updated, that Student's guardian schedule an appointment for a psychiatric/medication evaluation to discuss whether Student is on the best medication regimen and that the guardian seek parent management training from Student's current mental health care provider to enhance skills such as monitoring and discipline that may be effective in reducing Student's behavior problems. (Respondent's Exhibit 25-30, 25-31)

24. Petitioner's other educational advocate who is a psychologist is concerned about School B's ability to meet Student's therapeutic needs and address Student's behaviors. She believes that psychiatric evaluation is not only for medication management but would provide more data and information concerning what is fueling Student's behaviors. She acknowledged that a psychiatric evaluation is for diagnostic clarity and may include blood lab work to clue into missing physiological data that could be contributing to Student's behavior. (Witness 3's testimony)
25. The School B Education Coordinator has witnessed Student's verbal behaviors of cursing in the classroom, which is the same behavior Student displayed at School A. It is not unusual to see a student continue to exhibit the same behaviors once he/she is moved to School B and to act out as he/she gradually becomes acclimated to School B's more restrictive interventions as a therapeutic school. If Student is out of control or not showing behaviors that can be reasonably controlled, then restrictive intervention is necessary. Restrictive intervention requires that Student be handled and restrained to ensure that Student does not harm self or others. In each instance Student receives a restrictive intervention, School B completes a medical assessment of Student's safety. (Witness 4's testimony)
26. During the time Student has been at School B, Student has had one (1) to four (4) restrictive interventions per month. Among Student's most alarming behavior was Student's attempt to choke Student's self with shoelaces. The therapist did not view Student as an immediate threat to Student's self or to others, but she did find that Student acted out of anger. Student has also been reported for being talkative and disruptive in the classroom during instruction, but Student was getting along with others and the teacher during independent time. Student wants to be able to complete work without assistance and only requires encouragement to remain focused. (Witness 4's testimony)
27. During SY 2018-2019, Student still experiences issues with managing Student's mood. However, Student is spending more time inside the classroom than Student did last year. Student is not being removed from Student's classroom as much as Student was last year. Student's teacher praises Student, stating that Student is able to manage Student's behaviors and is capable of performing well academically. Student has passed all courses. (Witness 4's testimony)

28. School B's clinical social worker was assigned to Student in September 2018 and sees Student once or twice per week inside Student's classroom. Generally, Student's behaviors are not the most extreme of the students who attend School B, and Student is not referred to the Behavior Intervention Center ("BIC") more than other students within Student's peer group. (Witness 5's testimony)
29. Petitioner's expert witness, a psychiatric nurse practitioner, reviewed documents including Student's educational records and IEPs. This witness believes that there is enough information on Student to appropriately assess Student's educational needs. This witness stated Student may need medication management to help calm behaviors and help Student focus more. In order to receive medication Student would need a psychiatric evaluation and that a psychiatric evaluation will not help beyond that. A psychiatric evaluation is not going to do much in terms of determining educational programming for the Student. The more appropriate assessment for that purpose is a neuropsychological evaluation. This witness hoped that Student would have already had a psychiatric evaluation to address emotional and behavioral problems, and appeared to be unaware that Student was currently under the care of psychiatrist for medication management. (Witness 1's testimony)

CONCLUSIONS OF LAW:

Pursuant to IDEA §1415 (f)(3)(E)(i) a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education ("FAPE").

Pursuant to IDEA §1415 (f)(3)(E)(ii) in matters alleging a procedural violation a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding provision of FAPE, or caused the child a deprivation of educational benefits. An IDEA claim is viable only if [DCPS'] procedural violations affected the student's substantive rights." *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006)

34 C.F.R. § 300.17 provides:

A free appropriate public education or FAPE means special education and related services that--
(a) Are provided at public expense, under public supervision and direction, and without charge;
(b) Meet the standards of the SEA, including the requirements of this part; (c), Include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Sec. 300.320 through 300.324

Pursuant to 5E DCMR 3030.14 the burden of proof is the responsibility of the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). In this case, Petitioner carried the burden of production and persuasion on the issue adjudicated.⁷ The normal standard is

⁷ DC Code § 38-2571.03 (6) provides:

(A) In special education due process hearings occurring pursuant to IDEA (20 U.S.C. § 1415(f) and 20 U.S.C. §

preponderance of the evidence. See, e.g., *N.G. V. District of Columbia* 556 F. Sup. 2d (D.D.C. 2008) see also 20 U.S.C. §1451 (i)(2)(C)(iii).

ISSUE: Whether School A denied Student a FAPE by failing to conduct or authorize funding of a psychiatric evaluation of Student in response to Petitioner's request.

Conclusion: Petitioner did not sustain the burden of persuasion by a preponderance of the evidence that School A denied Student a FAPE by failing to conduct or authorize funding of a psychiatric evaluation of Student in response to Petitioner's request.

In *Board of Education v. Rowley*, the United States Supreme Court set forth a two-part inquiry for determining whether a school district has satisfied the FAPE requirement. First, the state must have "complied with the procedures set forth in the Act." *Rowley*, 458 U.S. at 206. Second, the IEP that is developed must be "reasonably calculated to enable the child to receive educational benefits." *Rowley*, 458 U.S. at 206-07. To be appropriate under 34 C.F.R. § 300.324, the IEP must consider the (i) strengths of the child; (ii) concerns of the parents; (iii) results of the initial or most recent evaluation; and (iv) academic, developmental, and functional needs of the child.

Petitioner's complaint does not challenge Student's IEP. Rather, Petitioner has challenged whether School A has failed to comply with IDEA by denying Petitioner's request for a psychiatric evaluation to be conducted or that an independent psychiatric evaluation be funded.

Pursuant to 34 C.F.R. § 300.304 (c) a school district must ensure that a student has been appropriately evaluated in all areas of suspected disability. D.C. law requires that "a full and individual evaluation is conducted for each child being considered for special education and related services." D.C. Mun. Regs. Title. 5E, § 3005.1 (2006). "Qualified evaluators [are to] administer tests and other assessment procedures as may be needed to produce the data required" for the MDT to make its determinations. D.C. Mun. Regs. Title. 5E § 3005.5 (2006).

The evaluators shall utilize "a variety of assessment tools and strategies [to] gather relevant functional and developmental information about the child, including information provided by the

1439(a)(1)), the party who filed for the due process hearing shall bear the burden of production and the burden of persuasion; except, that:

(i) Where there is a dispute about the appropriateness of the child's individual educational program or placement, or of the program or placement proposed by the public agency, 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 shall retain the burden of production and shall establish a prima facie case before the burden of persuasion falls on the public agency. The burden of persuasion shall be met by a preponderance of the evidence.

(ii) Where a party seeks tuition reimbursement for unilateral placement, the party seeking reimbursement shall bear the burden of production and the burden of persuasion on the appropriateness of the unilateral placement; provided, that the hearing officer shall have the authority to bifurcate a hearing regarding a unilateral placement; provided further, that if the hearing officer determines that the program offered by the public agency is appropriate, it is not necessary to inquire into the appropriateness of the unilateral placement.

(B) This paragraph shall apply to special education due process hearings resulting from complaints filed after July 1, 2016.

parent, and information related to enabling the child to be involved in and progress in the general curriculum ... that may assist in determining whether the child is a child with a disability." D.C. Mun. Regs. Title 5E § 3005.9(b).

All areas "related to the suspected disability" should be assessed, including academic performance, health, vision, hearing, social and emotional status, general intelligence (including cognitive ability and adaptive behavior), communicative status, and motor abilities. D.C. Mun. Regs. Title 5E § 3005.9(g). The evaluations must be "sufficiently comprehensive to identify all of the child's special education and services needs." D.C. Mun. Regs. Title 5E § 3005.9(h) (2007).

34 C.F.R. § 300.303 provides:

- (a) General. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with Sec. 300.304 through 300.311--
 - (1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
 - (2) If the child's parent or teacher requests a reevaluation.
- (b) Limitation. A reevaluation conducted under paragraph (a) of this section--
 - (1) May occur not more than once a year unless the parent and the public agency agree otherwise; and
 - (2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.

Students are also entitled to a re-evaluation of their disability upon a parental request, provided that no re-evaluation occurs "more frequently than once a year," though a requested re-evaluation must occur "at least once every 3 years." 34 C.F.R. § 300.303(a)(2); see *Cartwright v. Dist. of Columbia*, 267 F. Supp. 2d 83, 87 (D.D.C. 2003) ("DCPS' failure to comply with [the parent's] request clearly violates the language of [34 C.F.R. § 300.303]."). See 34 C.F.R. § 300.303(a)(2).

Pursuant to 34 C.F.R. § 300.324 Development, review, and revision of IEP. (a) Development of IEP—(1) General. In developing each child's IEP, the IEP Team must consider— (i) The strengths of the child; (ii) The concerns of the parents for enhancing the education of their child; (iii) The results of the initial or most recent evaluation of the child; and (iv) The academic, developmental, and functional needs of the child. (2) Consideration of special factors. The IEP Team must— (i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

In this case, the evidence reveals that Student displayed verbal and physically aggressive behavior while attending School A and Student has continued to display this type of behavior at School B. School B has had to frequently use restrictive intervention with Student because of Student's unsafe behaviors. However, School B staff credibly testified that Student's behaviors are not unusual or the most egregious of the students who attend School B. It is not unusual for students to act out upon initially attending School B as they gradually become acclimated to School B's more restrictive interventions as a therapeutic school. Student began attending School A in January 2018 and had an incident in March 2018 in which Student out of anger

threatened a staff member and then threatened to harm self and even put a shoelace around Student's neck during perhaps as many as two instances during SY 2017-2018. School B's therapist assessed Student's level of threat to self and others and determined that Student was not a threat to either.

Upon being informed of the March 2018 incident Petitioner immediately took Student for a medical assessment. Student denied being suicidal or homicidal and was discharged without the referral for a psychiatric evaluation or treatment. However, the evidence reflects that Petitioner informed Student treating psychiatrist of the incident. Student has been treated by a psychiatrist for some time and visits the psychiatrist every other month for treatment including medication management.

Although Petitioner testified the psychiatrist told her that Student would benefit from a psychiatric evaluation, the documentary evidence does not support this contention. The letter from Student's psychiatrist recommended and requested a neuropsychological be conducted, not a psychiatric evaluation. School A agreed to conduct the requested neuropsychological evaluation but not the psychiatric evaluation, as there appeared to be insufficient basis for the request.

The request was first made by Petitioner's educational advocate, who testified that she was at a loss for what else to ask for to address Student's ongoing behavioral difficulties and wanted a psychiatrist to weigh in. However, the advocate did not confer with Student's treating psychiatrist or request that the psychiatrist participate in Student's IEP meeting to offer input regarding Student's behaviors.

The reasons articulated during the hearing for a psychiatric evaluation to be conducted is to determine if Student is a danger to self or others, for medication management or to determine if Student is in need of a more restrictive placement than a therapeutic day school. There was credible testimony from the School B staff, Petitioner, as well as the evidence of Student's discharge summary from [REDACTED], that support a conclusion that Student was not, and currently is not, a danger to self and others. There is also no indication that Student is currently in need of, or that there has been a request for Student to have, a more restrictive placement than a therapeutic day school. The evidence clearly demonstrates that Student is currently under the care of a treating psychiatrist from whom Student receives medication management. Based on this evidence, there is an insufficient basis for a finding that Student is in need of a psychiatric evaluation.

Although one of Petitioner's witnesses testified that a psychiatric evaluation would also include blood work to determine physiological factors that might affect Student's behaviors, Petitioner's other expert witness testified otherwise. That witness made no mention of the blood work being an element of a psychiatric evaluation and actually testified that a psychiatric evaluation would provide no input that would assist in helping to determine educational programming for Student. He testified that the more appropriate evaluation for that purpose is a neuropsychological evaluation. That expert witness testified that he conducts psychiatric evaluations and the Hearing Officer gave his testimony greater weight than that of Petitioner's educational advocate/psychologist in this regard.

School A agreed to conduct the neuropsychological evaluation requested by Student's treating psychiatrist. That evaluation has been conducted but has not yet been reviewed by an IEP team. The Hearing Officer suggests that based upon Student's treating psychiatrist's request that a neuropsychological evaluation be conducted, that those results be provided to the psychiatrist and that the psychiatrist also be invited to participate in the upcoming IEP meeting at which a team will review that evaluation.

The Hearing Officer does not, based on this evidence adduced, conclude that a psychiatric evaluation is warranted or that School A's refusal to comply with Petitioner's request for the evaluation was denial of a FAPE to the Student or significantly impeded the parent's opportunity to participate in the decision-making process regarding provision of FAPE.

The preponderance of the evidence supports a finding that School A has, at least at this juncture, comprehensively evaluated Student to determine Student's eligibility for special education and Student's educational, social-emotional and related services needs. The Hearing Officer concludes that Petitioner did not sustain the burden of persuasion by a preponderance of the evidence on the issue adjudicated and concludes that Petitioner's due process complaint should be dismissed with prejudice.

ORDER:

Petitioner's Due Process Complaint is hereby dismissed with prejudice and all requested relief is denied.

APPEAL PROCESS:

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have ninety (90) days from the date of the decision of the Hearing Officer to file a civil action with respect to the issues presented at the due process hearing in a District Court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. §1415(i)(2).

/S/ Coles B. Ruff

Coles B. Ruff, Esq.
Hearing Officer
Date: November 10, 2018

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