

**DISTRICT OF COLUMBIA**  
**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**  
Office of Dispute Resolution  
1050 First Street, NE, 3<sup>rd</sup> Floor  
Washington, DC 20002

OSSE  
Office of Dispute Resolution  
November 25, 2019

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PETITIONER,  
on behalf of STUDENT,<sup>1</sup>

Date Issued: November 23, 2019

Petitioner,

Hearing Officer: Peter B. Vaden

v.

Case No: 2019-0230

DISTRICT OF COLUMBIA  
PUBLIC SCHOOLS,

Hearing Date: November 21, 2019  
Office of Dispute Resolution  
Washington, D.C.

Respondent.

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**HEARING OFFICER DETERMINATION - CORRECTED\***

**INTRODUCTION AND PROCEDURAL HISTORY**

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by the Petitioner (MOTHER), under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations (“D.C. Regs.”). In her due process complaint, Petitioner alleges that Respondent District of Columbia Public Schools (DCPS) denied Student a free appropriate public education (FAPE) by failing to conduct or fund a psychiatric reevaluation of Student.

Petitioner’s Due Process Complaint, filed on September 11, 2019, named DCPS as Respondent. The undersigned hearing officer was appointed on September 12, 2019.

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<sup>1</sup> Personal identification information is provided in Appendix A.

\* This decision has been corrected to provide the correct case number in the Heading on page 1. No other changes have been made.

On October 7, 2019, the parties met for a resolution session meeting (RSM) and were unable to resolve the issue in dispute. On October 3, 2019, I convened a telephone prehearing conference with counsel to discuss the issues to be determined, the hearing date and other matters. My final decision in this case is due by November 25, 2019.

The due process hearing was convened before the undersigned impartial hearing officer on November 22, 2019 at the Office of Dispute Resolution in Washington, D.C. The hearing, which was closed to the public, was recorded on an electronic audio recording device. MOTHER appeared in person for the hearing and was represented by PETITIONER'S COUNSEL. Respondent DCPS was represented by DCPS' COUNSEL.

Counsel for the respective parties made an opening statements. Mother testified and called SCHOOL PSYCHOLOGIST 1 as an additional witness. DCPS called as witnesses SCHOOL PSYCHOLOGIST 2, and COUNSELOR and TEACHER from NONPUBLIC SCHOOL. Petitioner's Exhibits P-1 through P-30 and DCPS' Exhibits R-1 through R-12 were all admitted into evidence without objection. At the conclusion of Petitioner's case-in-chief, counsel for DCPS made a motion for a directed finding in its favor, which I denied. After all of the testimony was concluded, both sides made oral closing arguments. There was no request to file post-hearing written memoranda.

### **JURISDICTION**

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

### **ISSUES AND RELIEF SOUGHT**

The issue for determination in this case, as certified in the October 3, 2019

Prehearing Order, is:

Whether District of Columbia Public Schools (“DCPS”) denied Student a FAPE by failing to conduct or fund a psychiatric evaluation of Student, as requested by the parent in June 2019.

For relief, the parent requests that DCPS be ordered to fund an Independent Educational Evaluation psychiatric evaluation of Student at the prevailing market rate. At the due process hearing, Petitioner withdrew her request for a compensatory education award for Student.

### **FINDINGS OF FACT**

After considering all of the evidence received at the November 21, 2019 due process hearing in this case, as well as the argument of counsel, my findings of fact are as follows:

1. Student, an AGE youth, is a resident of the District of Columbia.

#### **Testimony of Mother.**

2. Student is currently enrolled in GRADE at Nonpublic School where Student has been placed by DCPS. Previously, from the 2016-2017 through the 2018-2019 school years, Student attended CITY SCHOOL. Testimony of Mother. At City School, Student was placed in the Communication and Education Support (CES) classroom.

3. Student is eligible for special education as a student with Multiple

Disabilities (MD), based upon underlying Autism Spectrum Disorder (ASD) and Other Health Impairment (OHI) disabilities. Student's most recent Individualized Education Program (IEP) provides for Student to receive full-time, 27.5 hours per week, of Specialized Instruction outside general education, 120 minutes per month of Behavioral Support Services, and 30 minutes per month, each, of Speech Language Pathology and Occupational Therapy services. Exhibit R-2.

4. Outside of school, Student is regularly seen by a psychiatrist (PSYCHIATRIST 1), who provides medication management. Psychiatrist 1's services are provided under Mother's family health insurance plan. Testimony of Mother.

5. In June 2018, Mother obtained an Independent Educational Evaluation (IEE) psychiatric evaluation of Student from a different psychiatrist. Exhibit P-19. The IEE psychiatric evaluation was funded by DCPS. Exhibit P-20. In the June 18, 2018 psychiatric evaluation report, the IEE psychiatrist diagnosed Student with Attention Deficit/Hyperactivity Disorder (ADHD) - Combined type, Autism Spectrum Disorder (by history) and Specific Learning Disorder (by history) with impairments in reading, written expression and math. Exhibit P-19.

6. In the 2018-2019 school year, Student's behavior at City School started very well, but there was a steady decline after the winter break. Exhibit P-13.

7. At school, Student would generally accept "redirection," but there were days when Student would become violent or aggressive. Student was observed to have full-blown self-conversations talking out loud. Toward the end of the 2018-2019 school

year, Student ran across the CES classroom and hit the special education teacher. The police had to be called. Testimony of School Psychologist 1.

8. At the request of the parent, a multidisciplinary team (MDT) meeting was held on April 11, 2019. At the meeting, Student's special education teacher reported that Student was "self-medicating" with marijuana and coming to school "high" most days. At the meeting, the MDT team talked about Student's escalating behaviors and agreed they needed to get Student looked at to get some help and so that Student would not self-medicate. The team agreed that the June 2018 IEE psychiatric evaluation did not get at Student's talking to self or the deeper issues that were getting in the way of Student's education. Testimony of School Psychologist 1, Exhibit P-13. Petitioner's Counsel stated at the meeting that Student was currently seeing a psychiatrist and the parent had a meeting the following week to get a psychiatric evaluation of Student by that psychiatrist (Psychiatrist 1). Exhibit P-13. Mother participated in the April 11, 2019 meeting by telephone. Representation of Petitioner's Counsel.

9. After the April 11, 2019 MDT meeting, Mother learned that Psychiatrist 1 would only do medications and would not do a psychiatric evaluation of Student. Testimony of Mother.

10. Student's City School IEP team convened for an IEP review meeting on May 15, 2019. The attendance form indicates Mother did not attend, but she did attend by telephone. Mother told the team that she had not been able to get a psychiatric evaluation of Student by Psychiatrist 1. The school representatives on the IEP team said

they would try to get DCPS to do a psychiatric evaluation of Student. Testimony of Mother.

11. Since at least February 8, 2018, Petitioner had been requesting that DCPS fund Student's educational placement in a full-time, separate, special education day program. Exhibit P-21 (p. 1). On June 13, 2019, Nonpublic School notified Mother that Student had been accepted for admission. Exhibit P-24. On June 20, 2019, DCPS provided notice to Mother that Nonpublic School had been identified as Student's location of service for the 2019-2020 school year and for the Extended School Year (ESY) program starting on July 1, 2019. Exhibit P-23. The parent agreed to send Student to Nonpublic School. Exhibit P-21 (p. 13).

12. On June 17, 2019, Petitioner's Counsel attempted to send an email to DCPS PLACEMENT SPECIALIST requesting, *inter alia*, for Student to have an updated psychiatric reevaluation, by a child psychiatrist, because of concerns that Student was possibly suffering from, among other things, personality disorder as well as an emotional disturbance. There was no addressee on the "To:" line for this June 17, 2019 email and it does not appear that the email was actually sent to DCPS Placement Specialist. Exhibit P-21 (p. 13). Petitioner's Counsel sent a follow-up email to DCPS Placement Specialist on June 20, 2019 to request that Student be reevaluated with an updated psychiatric assessment/evaluation to determine possible emotional disturbance and/or mood disorder and/or possible bipolar disorder. Exhibit P-21 (p. 14). I deem the parent's request to DCPS to conduct a psychiatric reevaluation of Student to have

been made on this date, June 20, 2019. On June 21, 2019, DCPS Placement Specialist responded to counsel's June 20, 2019 email advising, *inter alia*, that the request for updated evaluations had been forwarded to the DCPS local education agency (LEA) representative currently assigned to Nonpublic School. Exhibit P-21 (p. 15).

13. On September 11, 2019, the parent's due process complaint in this matter was filed. Hearing Officer Notice. The RSM meeting was convened on October 7, 2019. At the RSM meeting, DCPS' representative, MONITORING SPECIALIST, did not agree for DCPS to conduct or fund a psychiatric reevaluation, but stated that Student's triennial special education reevaluation due date was coming up and the team would be conducting assessments of Student and reconvening in January 2020. Petitioner's Counsel responded that he stood firm in the request for a psychiatric reevaluation of Student. No resolution was reached. Exhibit R-10.

14. Student's triennial special education reevaluation is currently due by January 25, 2020. Exhibit R-2. On or about October 25, 2019, Monitoring Specialist drafted a Consent for Evaluation/Reevaluation form for the parent to consent to have Student reevaluated for special education eligibility and needs. Exhibit R-6. On the same day, Monitoring Specialist issued a Letter of Invitation to the parent to attend an Analysis of Existing Data (AED) meeting for Student. The AED meeting was originally scheduled for November 14, 2019. Exhibit R-7. By email of November 1, 2019, Petitioner's Counsel requested that the AED meeting be rescheduled. The AED meeting was rescheduled for December 6, 2019. Monitoring Specialist proposed that the

Eligibility Meeting for Student be scheduled for January 24, 2020. Exhibit P-29.

15. On October 18, 2019, Monitoring Specialist drafted a Prior Written Notice (PWN) giving notice that DCPS denied the parent's request for a psychiatric evaluation of Student. The notice stated that a psychiatric evaluation is a medical evaluation and was not needed to make any determination about Student's disability classification or educational programming. The notice also stated that an AED meeting had been scheduled and at that meeting, the full IEP team would consider all existing data and discuss what, if any, additional assessments were needed. There is not a notation on the PWN that the notice was finalized and uploaded to DCPS' Special Education Data System (SEDS). Exhibit R-4. Mother did not receive this PWN, Testimony of Mother, and the evidence does not establish whether the PWN was ever sent.

16. Student has been enrolled in Nonpublic School since the ESY program starting in July 2019. Nonpublic School has a behavior management 3-level system where a student can move up or down levels on a daily basis. Student is transitioning really well to Nonpublic School. There are no reported concerns at Nonpublic School about aggressive or violent behaviors or Student's elopements from the classroom. Testimony of Counselor, Testimony of Teacher.

### **CONCLUSIONS OF LAW**

Based upon the above Findings of Fact and argument of counsel, as well as this hearing officer's own legal research, my Conclusions of Law are as follows:



Burden of Proof

As provided in the D.C. Special Education Student Rights Act of 2014, the party who filed for the due process hearing, the Petitioner in this case, shall bear the burden of production and the burden of persuasion, except that where there is a dispute about the appropriateness of the student's IEP or placement, or of the program or placement proposed by the local education agency, not applicable to this case, the agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided that the Petitioner shall retain the burden of production and shall establish a *prima facie* case before the burden of persuasion falls on the agency. The burden of persuasion shall be met by a preponderance of the evidence. *See* D.C. Code § 38-2571.03(6).

Analysis

Did DCPS deny Student a FAPE by failing to conduct or fund a psychiatric reevaluation of Student, as requested by the parent in June 2019?

Student has been diagnosed with Autism Spectrum Disorder (ASD), Attention Deficit Hyperactivity Disorder (ADHD) and Specific Learning Disorder. Student is under the care of a psychiatrist (Psychiatrist 1), under Mother's health insurance plan. In June 2018, DCPS funded an IEE psychiatric evaluation of Student as requested by the parent. For the 2018-2019 school year, Student was placed full-time in the CES classroom at City School. After the winter break in the 2018-2019 school year, Student's behavior in school deteriorated with marijuana use, violence, profanity and, on one

occasion an attack on a teacher. Student was also having conversations out loud with Student's self which was troubling to school staff. At an MDT team meeting on April 11, 2019, Mother stated that she would have Psychiatrist 1 conduct a psychiatric evaluation of Student. However this psychiatrist was not willing to conduct the evaluation. At an IEP team meeting for Student on May 15, 2019, the school representatives stated that they would see if DCPS would conduct a psychiatric evaluation of Student.

On June 20, 2019, Petitioner's Counsel made a formal request to DCPS to conduct the psychiatric reevaluation. In the meantime, Student had been accepted by Nonpublic School, a full-time therapeutic special needs school in suburban Virginia, where Student began attending in early July 2019. DCPS did not respond to the parent's June 20, 2019 request for a psychiatric evaluation of Student until after the due process complaint in this case was filed on September 11, 2019, but DCPS' representative at the RSM meeting stated that DCPS would not conduct or fund a psychiatric reevaluation. The parent contends that DCPS' not conducting or funding the requested psychiatric reevaluation was a denial of a free appropriate public education (FAPE). DCPS responds that for special education eligibility and programming purposes, there was no need for Student to have a psychiatric reevaluation and that, in any event, its not conducting the requested evaluation did not result in any harm to Student. The parent has the burden of proof for this claim.

#### Parent's Request for Reevaluation

The IDEA requires that a special education reevaluation must occur at least once

every three years, and not more frequently than once a year, unless the parent and the public agency agree otherwise. *See* 34 CFR § 300.303. In addition to conducting triennial reevaluations, the District must also reevaluate a child with a disability if the District determines that the educational or related services needs of the child warrant a reevaluation, or if the child's parent or teacher requests a reevaluation. *See* 34 CFR § 300.303(a). If a parent requests a reevaluation and the public agency disagrees that a reevaluation is needed, the public agency must provide prior written notice (PWN) to the parent, consistent with 34 CFR § 300.503, that explains, among other things, why the agency refuses to conduct the reevaluation and the parent's right to contest the agency's decision through mediation or a due process hearing. *See* Department of Education, *Assistance to States for the Education of Children with Disabilities*, 71 Fed. Reg. 46540, 46640 (August 14, 2006).

In the present case, Student was last reevaluated by DCPS on January 25, 2017. In the normal course, Student's triennial reevaluation would have been due by January 25, 2020. On June 20, 2019, the parent made a request to DCPS that Student be reevaluated with a psychiatric assessment/evaluation to determine a possible emotional disturbance, mood disorder and/or bipolar disorder. Although the parent only asked for a psychiatric evaluation, I find that this request sufficed to put DCPS on notice that the parent was requesting a reevaluation of Student, triggering DCPS' duty to conduct the reevaluation or to issue a PWN, within a reasonable time, explaining why it refused to do so. *See* 34 CFR § 300.503(a); *James v. District of Columbia*, 194 F. Supp. 3d 131, 143

(D.D.C. 2016) (A reevaluation requires a new round of tests and analysis to evaluate the child.)

The IDEA does not set a time frame within which an LEA must conduct a reevaluation after receiving a request from a student's parent. *See Herbin ex rel. Herbin v. District of Columbia*, 362 F.Supp.2d 254, 259 (D.D.C.2005). In light of the lack of statutory guidance, the court in *Herbin* concluded that "[r]evaluations should be conducted in a 'reasonable period of time,' or 'without undue delay,' as determined in each individual case." *Id.* (quoting Office of Special Education Programs, *Policy Letter in Response to Inquiry from Jerry Saperstone*, 21 IDELR 1127, 1129 (1995)). *See, also, Smith v. District of Columbia*, 2010 WL 4861757, 3 (D.D.C. Nov. 30, 2010).

DCPS has now begun the reevaluation process for Student. On October 25, 2019, Monitoring Specialist issued a Letter of Invitation to the parent to attend an Analysis of Existing Data (AED) meeting for Student. (At the request of Petitioner's Counsel, the AED meeting, originally scheduled for November 14, 2019, was put off to December 6, 2019.) In light of the facts particular to this case, that is, DCPS' changing Student's placement in the summer of 2019, at the parent's request, from the CES classroom at City School to the more restrictive special school setting at Nonpublic School, and the time required for Student to adjust to this new educational setting, I conclude that DCPS' deferring Student's reevaluation to the fall of 2019 did not amount to an unreasonable period of time or undue delay. *See Herbin, supra.*

Prior Written Notice

Until the October 7, 2019 RSM meeting for this case, DCPS did not inform the parent that it would not reevaluate Student in advance of the regular triennial reevaluation date. (It is not clear when, if at all, DCPS issued a *written* notice to the parent of its refusal.) I find that this notice of refusal, whether oral or written, delivered almost four months after the parent requested the psychological evaluation, was not provided within a “reasonable time,” as required by the IDEA’s PWN provision, 34 CFR § 300.503(a). DCPS’ failure to give the parent a timely PWN of its refusal to conduct the psychiatric evaluation of Student constituted a procedural violation of the IDEA. *See, e.g., Shaw v. District of Columbia*, No. CV1700738, 2019 WL 498731, at 14 (D.D.C. Feb. 8, 2019), *report and recommendation adopted*, No. 17-CV-0738, 2019 WL 935418 (D.D.C. Feb. 26, 2019) (Failure to provide prior written notice is a procedural violation of the IDEA.) Procedural violations of the IDEA may only be deemed a denial of FAPE 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 CFR § 300.513(a)(2).

In this case, Petitioner was represented by experienced counsel at all times concerned and counsel promptly filed a due process complaint when DCPS did not

timely respond to the parent's request for a psychiatric reevaluation. Moreover, even before the parent requested the psychiatric reevaluation, DCPS had fulfilled the parent's request to change Student's placement from the CES classroom at City School to a more restrictive special school setting at Nonpublic School. By the accounts of Student's counselor and math teacher at Nonpublic School, Student's behavior issues, which were so troubling at City School, have subsided since Student was placed in the more restrictive therapeutic school setting. Student's triennial reevaluation is due by January 25, 2020 and DCPS has already reached out to the parent to schedule the AED meeting. Student's next annual IEP review is not due until May 2020.

On these facts, I conclude that Petitioner has not shown that DCPS' failure to timely respond to her reevaluation request impeded Student's right to a FAPE, impeded the parent's right to participate in the decision making process or caused a deprivation of educational benefit. Therefore, I do not deem DCPS' procedural violation, not timely providing its PWN refusing the parent's request for a psychiatric reevaluation, to be a denial of FAPE.

#### Student's Need for a Psychiatric Reevaluation

The parent's right to request an IDEA reevaluation does not mean that DCPS must conduct a psychiatric reevaluation, or any other specific reassessment of Student requested by the parent. *See Montuori v. District of Columbia*, No. CV 17-2455 (CKK), 2018 WL 4623572, at 8 (D.D.C. Sept. 26, 2018) (The reevaluation provision does not require schools to re-do any specific tests as part of the process of updating an IEP or

BIP.) Rather, as with all evaluations and reevaluations, based on their review of the existing data, and input from the student's parents, the student's MDT team must decide, on a case-by-case basis, depending on the needs of the student and the information available regarding the student, what additional data, if any, are needed to determine whether the student is a student with a disability, and the educational needs of the student. *See Assistance to States for the Education of Children with Disabilities*, 71 Fed. Reg. at 46658. I conclude, therefore, that Petitioner has not shown that DCPS' failing to conduct or fund a specific psychiatric evaluation of Student, as requested by the parent in June 2019, was a denial of FAPE.

The purpose of a reevaluation, under the IDEA, is to determine whether a child continues to have a qualifying disability and the nature and extent of the special education and related services that the child needs. *See* 34 CFR § 300.15. At the due process hearing in this case, DCPS' expert, School Psychologist 2, opined that a psychiatric reevaluation of Student was not warranted because the information obtained from a comprehensive psychological assessment would provide the information needed to determine Student's continued eligibility and Student's needs for special education and related services. While School Psychologist 2 was a credible witness, I conclude that it remains the duty of Student's MDT team to determine what data are needed for Student's reevaluation – which may include a psychiatric reevaluation. Because Student's MDT team has not yet considered whether Student needs a psychiatric reevaluation as part of the current reevaluation, I decline to decide that issue in this

decision. Ultimately, if the parent disagrees with the special education reevaluation of Student conducted by DCPS, she may have the right to an Independent Educational Evaluation at public expense, as provided in 34 CFR § 300.502(b).

**ORDER**

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

- (1) All relief requested by the Petitioner herein is denied;
- (2) If Student's MDT team, with input from the parent and her representatives, shall determine at the upcoming AED meeting that a psychiatric assessment of Student is needed for Student's reevaluation, then DCPS must conduct or fund an appropriate psychiatric evaluation.

Date: November 23, 2019

s/ Peter B. Vaden  
Peter B. Vaden, Hearing Officer

**NOTICE OF RIGHT TO APPEAL**

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. § 1415(i).



Case No. 2019-0230  
Hearing Officer Determination  
November 23, 2019

cc: Counsel of Record  
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