

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

Office of Dispute Resolution  
810 First Street, N.E., 2<sup>nd</sup> Floor  
Washington, DC 20002

OSSE  
Office of Dispute Resolution  
September 5, 2014

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STUDENT, <sup>1</sup>	)	Date Issued: 9/5/14
through her Parent,	)	
Petitioner,	)	Hearing Officer: Keith L. Seat, Esq.
	)	
v.	)	Case No.: 2014-0295
	)	
District of Columbia Public Schools	)	
("DCPS"),	)	
Respondent.	)	
	)	
	)	
	)	
	)	

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**HEARING OFFICER DETERMINATION**

**Background**

Petitioner, grandmother of Student, filed a due process complaint on 6/27/14, alleging that Student had been denied a free appropriate public education ("FAPE") in violation of the Individuals with Disabilities Education Improvement Act ("IDEA") because DCPS did not provide transportation for after-school programming and refused to fund a neuropsychological evaluation. DCPS responded that Student was not denied a FAPE as the after-school programming was optional and a comprehensive psychological evaluation had been conducted which was sufficient to determine proper programming.

**Subject Matter Jurisdiction**

Subject matter jurisdiction is conferred pursuant to IDEA, 20 U.S.C. § 1400, *et seq.*; the implementing regulations for IDEA, 34 C.F.R. Part 300; Title V, Chapter E-30, of the District of Columbia Municipal Regulations ("D.C.M.R.") and 38 D.C. Code 2561.02.

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<sup>1</sup> Personally identifiable information is provided in Appendix A.

## Hearing Officer Determination

### Procedural History

Following the filing of the due process complaint on 6/27/14, this Hearing Officer was assigned to the case on 6/30/14. DCPS filed a timely response to the complaint on 7/7/14 and made no challenge to jurisdiction.

Only Petitioner sought to waive the resolution meeting, which took place on 7/9/14. At that time, the parties neither settled the case nor agreed to end the resolution period early, so the standard 30-day resolution period concluded on 7/27/14. 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 9/10/14.

A prehearing conference was held on 7/18/14, a Prehearing Order was issued on 7/18/14, and a Revised Prehearing Order was issued on 7/24/14.

Neither party objected to the testimony of witnesses by telephone. The parties made no admissions and agreed on no stipulations.

Petitioner’s Disclosure statement, filed on 7/24/14, consisted of a witness list of 7 witnesses and documents P-1 through P-23. Petitioner’s documents were admitted into evidence without objection, except for P-6 (meeting notes of Petitioner’s counsel), which was admitted into evidence over objection.

Respondent’s Disclosure statement, filed on 7/24/14, consisted of a witness list of 2 witnesses and documents R-1 through R-16. Respondent’s documents were admitted into evidence without objection, except for R-1, R-2, R-3, R-4, R-5, R-6, R-7, R-8, R-9, R-10, R-12, R-13, R-14 and R-15, which were admitted into evidence over objections on multiple grounds including relevancy, hearsay, authentication, being cumulative and illegibility.

Petitioner presented 4 witnesses in her case-in-chief (*see* Appendix A):

1. Psychologist – qualified without objection as an expert in Clinical Psychology
2. Petitioner
3. Educational Advocate – qualified over objection as an expert in Special Education
4. Audiologist – qualified without objection as an expert in Auditory Processing

## Hearing Officer Determination

Respondent presented 1 witness in its case (*see* Appendix A): School's Special Education Chair.

Petitioner did not present any rebuttal witnesses.

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

**Issue 1** – Whether DCPS denied Student a FAPE by denying her an equal opportunity to participate in extracurricular services and activities, based on the facts that (a) her IEP team on 12/12/13 agreed to add after-school tutoring/programming to her IEP, which was conditioned on transportation, (b) Parent was instructed to arrange transportation directly with DCPS Transportation, which Student needed to utilize the after-school tutoring/programming, and (c) DCPS refused to provide transportation.

**Issue 2** – Whether DCPS denied Student a FAPE by failing to draft her IEP on 12/12/13 to add after-school tutoring/programming without conditioning it on whether transportation could be provided.

**Issue 3** – Whether DCPS denied Student a FAPE by failing to conduct an evaluation or authorize an independent evaluation of all areas of suspected disability to identify all her special education and related service needs, when a neuropsychological evaluation had been recommended as preferable to a comprehensive psychological evaluation by an independent evaluator on 7/10/13.

Petitioner requested the following relief:

1. DCPS shall provide bus transportation to enable Student to utilize after-school tutoring.
2. DCPS shall fund at market rates (a) an independent neuropsychological evaluation, and (b) any other evaluations recommended by the neuropsychological evaluation.
3. DCPS shall convene a multidisciplinary team meeting within 10 days after receiving the last evaluation in paragraph 2, above, and review the evaluations and revise Student's IEP as appropriate.
4. DCPS shall fund compensatory education for any denial of a FAPE.

## Hearing Officer Determination

### Findings of Fact

After considering all the evidence, as well as the arguments of both counsel, the Findings of Fact<sup>2</sup> are as follows:

1. Student is a resident of the District of Columbia. Petitioner is Student's grandmother and legal guardian ("Grandmother"). Student went to live with Grandmother in 2010; Grandmother has been a strong advocate for Student.<sup>3</sup>
2. Student was found eligible for special education with a Specific Learning Disability, first in 2010 and again in a reevaluation on 3/31/14.<sup>4</sup> Student's special education services have generally been increasing in her IEPs over time, until in 2013/14<sup>5</sup> she was receiving 25 hours a week of specialized instruction outside general education, along with speech and language services.<sup>6</sup>
3. Student received very good grades and decent IEP progress reports in 2013/14, with all A's and B's for her final grades for the year<sup>7</sup> and almost all ratings of "Progressing" on her IEP reports, with two "Mastered" ratings and no "Regressing" ratings.<sup>8</sup>
4. Grandmother remains concerned that the grades are subjective and that Student is not learning as much as she needs to, for she remains far below grade level.<sup>9</sup> Grandmother is particularly concerned about an F that Student received on one assignment and how, upon inquiry, Student was allowed to turn in the assignment and receive an A.<sup>10</sup> However, much of the grading is based on completion, with full credit given if an assignment is completed; other grades depend on accuracy.<sup>11</sup>

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<sup>2</sup> 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.

<sup>3</sup> Grandmother.

<sup>4</sup> R-7-1.

<sup>5</sup> All dates in the format "2013/14" refer to school years.

<sup>6</sup> P-5; P-9-3,4.

<sup>7</sup> R-1.

<sup>8</sup> R-3 through R-6.

<sup>9</sup> Grandmother.

<sup>10</sup> *Id.*

<sup>11</sup> Special Education Chair.

## Hearing Officer Determination

5. Student's general intellectual ability was measured in the Very Low range (although that result is to be viewed with caution due to discrepancies), and she is well below grade level academically.<sup>12</sup> Nonetheless, according to her 4/10/14 Evaluation Summary Report, Student has "continued to make progress" in 6<sup>th</sup> grade<sup>13</sup>; in Math she is "very organized and completes all her assignments neatly"<sup>14</sup>; in Reading, she is "showing moderate progress"<sup>15</sup>; and in Written Expression, she is "making improvement."<sup>16</sup> In sum, Student has "flourished" at School in 2013/14.<sup>17</sup>

6. A Paced Interim Assessment ("PIA") sheet showed that Student correctly answered only 13% of the items on the assessment (3 of 24), while her class of 9 students correctly answered 23% and the School average was 50%.<sup>18</sup> However, the test was at grade level, and Student is well below grade level, so that low score standing alone does not demonstrate a lack of progress by Student.<sup>19</sup> Further, PIA assessments are given quarterly, in addition to the DC-CAS, and Petitioner only focused on the first of the 5 data points, from the beginning of the school year.<sup>20</sup> On another assessment given throughout the school year, Student scored 37% on the first one in September 2013, but improved to 46% in November 2013, and then to 70% in January 2014.<sup>21</sup>

7. Student does not have problematic behavior at School, despite the occasional in-school suspension, and is cooperative and easy to work with.<sup>22</sup> According to the Comprehensive Psychological Evaluation conducted in mid-June 2013, Student is "not displaying any behaviors of concern" and "follows directions, is attentive, respectful, demonstrates self-control and interacts appropriately with her peers and adults."<sup>23</sup> During class observations of Student, there were "no behavioral concerns noted"; Student "follows her teacher's requests."<sup>24</sup> Further, Student "demonstrates self-control in the classroom" and responds "appropriately" to directions.<sup>25</sup> Student has not received out of school suspensions.<sup>26</sup>

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<sup>12</sup> R7-5; P-9-8,9,10.

<sup>13</sup> R-7-5.

<sup>14</sup> R-7-6.

<sup>15</sup> R-7-7.

<sup>16</sup> R-7-9.

<sup>17</sup> Special Education Chair.

<sup>18</sup> P-10-1.

<sup>19</sup> Special Education Chair.

<sup>20</sup> *Id.*

<sup>21</sup> R-7-6.

<sup>22</sup> Special Education Chair; P-9-14; Psychologist.

<sup>23</sup> P-9-14.

<sup>24</sup> P-9-6.

<sup>25</sup> P-9-13.

<sup>26</sup> Grandmother.

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8. Student received tutoring previously that had greatly benefited her.<sup>27</sup> The After-School Programming at issue, however, was not offering tutoring, but a structured setting in which students could do their homework for one hour and could ask adults – either teachers or volunteers – for assistance.<sup>28</sup> Grandmother often worked with Student at home on her homework.<sup>29</sup> Nor was the After-School Programming aimed only at students with IEPs, as it is available to both disabled and nondisabled students at School, and neither group was provided transportation.<sup>30</sup>

9. The After-School Programming was discussed at the 9/25/13 IEP Team meeting and again at the 12/12/13 IEP Team meeting, after which it was added to Student’s IEP under the heading “Other Classroom Aids and Services” as follows: “After-school programming recommended if transportation from OSSE Transportation can be provided.”<sup>31</sup>

10. The IEP Team agreed that the After-School Programming would be beneficial for Student, but Special Education Chair credibly testified that it was a mere recommendation for Student, as the language says, and not a requirement necessary for Student to access the curriculum or receive a FAPE.<sup>32</sup> Special Education Chair, a relatively new DCPS employee, added the reference on the IEP at the behest of the Team, but mistakenly added the reference to transportation for the After-School Programming, which should not have been there.<sup>33</sup> Although Transportation is on her IEP as a related service,<sup>34</sup> Student would not have received transportation home by DCPS school bus following the After-School Programming even if the transportation condition had not been added to the Disputed Provision.<sup>35</sup> Grandmother confirmed that transportation was not discussed at the IEP Team meeting.<sup>36</sup>

11. While Student lives quite a distance from the location of the After-School Programming, public transportation is available. Grandmother did a trial run with Student at one point, which required taking two city buses, and found that Student was easily distracted by all that was going on around her and missed her stop.<sup>37</sup> While DCPS students can ride city buses without charge on weekdays with their school IDs, DCPS suggested Metro as an alternative for Student and offered Metro fare cards to

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<sup>27</sup> *Id.*

<sup>28</sup> Special Education Chair.

<sup>29</sup> Grandmother.

<sup>30</sup> Special Education Chair.

<sup>31</sup> P-5-11 (the “Disputed Provision”).

<sup>32</sup> Special Education Chair.

<sup>33</sup> *Id.*

<sup>34</sup> P-5-14.

<sup>35</sup> Special Education Chair.

<sup>36</sup> Grandmother.

<sup>37</sup> Grandmother.

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Grandmother, which were not accepted.<sup>38</sup> Student has peers in special education who take public transportation and, from her knowledge of Student, Special Education Chair believes that Student could safely take public transportation home from After-School Programming, but recognizes that it is ultimately up to the parent or guardian to determine what is appropriate for each student.<sup>39</sup>

12. Audiologist conducted an auditory evaluation and discovered indicia suggesting a need for further evaluation of Student's executive functioning.<sup>40</sup> Specifically, Audiologist recommended that Student "needs a comprehensive clinical psychological assessment, preferably a neuropsychological evaluation, in order to identify whether she has any specific executive functioning problems."<sup>41</sup> Audiologist was unaware that a comprehensive psychological evaluation had been completed the month before, with a report Audiologist testified that his recommendation is that executive functioning needs to be explored, but that was not part of the comprehensive psychological evaluation that was conducted by Psychologist.<sup>43</sup> A neuropsychological evaluation goes deeper into the functioning of the brain in order to determine precisely what the problem is and how it might be addressed.<sup>44</sup>

13. Nonetheless, Audiologist has had many years of experience with children with symptoms similar to Student and has found that working on executive functioning training programs has been "very helpful" for them.<sup>45</sup> Audiologist recommended that Student be provided with specific computer programs for executive functioning training.<sup>46</sup>

14. Psychologist conducted the Comprehensive Psychological Evaluation and obtained mixed responses in the Attention Deficit Hyperactivity Disorder ("ADHD") screening. Student's general education teacher saw significant signs of ADHD, while Student's special education teacher and Grandmother did not.<sup>47</sup> Because the instrument is normed on ADHD students generally, the general education teacher's results are considered statistically significant, while the other two are not.<sup>48</sup> However, Psychologist did not recommend a neuropsychological evaluation in her Comprehensive

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<sup>38</sup> Special Education Chair.

<sup>39</sup> *Id.*

<sup>40</sup> Audiologist.

<sup>41</sup> P-7-6.

<sup>42</sup> Audiologist; P-9.

<sup>43</sup> Audiologist.

<sup>44</sup> *Id.*

<sup>45</sup> P-7-6.

<sup>46</sup> P-7-7.

<sup>47</sup> P-9-13; Psychologist.

<sup>48</sup> P-9-13,14; Psychologist.

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Psychological Evaluation report, although she now says that she should have.<sup>49</sup> Grandmother intends to take Student to her doctor to inquire further about ADHD and has an appointment for a physical in September 2014.<sup>50</sup>

15. DCPS's school psychologist did not believe a neuropsychological evaluation was needed for Student.<sup>51</sup> Nor did Student have difficulty paying attention in her self-contained classroom.<sup>52</sup> The neuropsychological evaluation was discussed at both IEP Team meetings on 9/25/13 and 12/12/13, but there was no conclusion that it was needed for Student.<sup>53</sup>

### 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).

"The IEP is the 'centerpiece' of the IDEA's system for delivering education to disabled children," *D.S. v. Bayonne Bd. of Educ.*, 54 IDELR 141 (3d Cir. 2010), quoting *Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 173 (3d Cir. 1988), and is the primary vehicle for providing a FAPE. *S.H. v. State-Operated Sch. Dist. of the City of Newark*, 336 F.3d 260, 264 (3d Cir. 2003).

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. District of Columbia*, 846 F. Supp. 2d 197, 202 (D.D.C. 2012), citing *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 203, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982). The IDEA imposes no additional requirement that the services so provided be sufficient to maximize each child's potential commensurate with the opportunity provided other children. *Rowley*, 458 U.S. at 198. Congress, however, "did not intend that a school system could discharge its duty under the [IDEA] by providing a program that produces some minimal academic advancement, no matter how trivial." *Hall ex rel. Hall v. Vance County Bd. of Educ.*, 774 F.2d 629, 636 (4th Cir. 1985).

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<sup>49</sup> Psychologist; P-9.

<sup>50</sup> Grandmother.

<sup>51</sup> P-6-4,5; Psychologist.

<sup>52</sup> Psychologist.

<sup>53</sup> Special Education Chair.

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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.

"Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE." 5 D.C.M.R. E-3030.3. The burden of proof is on the party seeking relief. *Schaffer v. West*, 44 IDELR 150 (U.S. 2005).

*Issue 1 – Whether DCPS denied Student a FAPE by denying her an equal opportunity to participate in extracurricular services and activities, based on the facts that (a) her IEP team on 12/12/13 agreed to add after-school tutoring/programming to her IEP, although the revised IEP was conditioned on transportation, (b) Parent was instructed to arrange transportation directly with DCPS Transportation, which Student needed to utilize the after-school tutoring/programming, and (c) DCPS refused to provide transportation.*

The central question in this case is whether DCPS was obliged to provide transportation for Student to be able to attend After-School Programming. Children with disabilities must have an equal opportunity to participate in nonacademic and extracurricular services and activities, such as After-School Programming, pursuant to 34 C.F.R. 300.107. Here, School did not provide transportation for the After-School Programming for nondisabled students or for Student, and the parents of her peers were responsible for arranging transportation following After-School Programming, just as was required of Grandmother. The difference between Student and her nondisabled peers is, of course, her disability and the fact that Transportation is a related service on Student's IEP.

However, the inclusion of Transportation on Student's IEP together with the equal opportunity for participation in extracurricular activities requirement in 300.107 (and the similar provision in 34 C.F.R. 300.117) does not mean that, without any consideration of her needs, Student is entitled to Transportation for any and every extracurricular activity that she might be interested in, which might well vary day by day and week by week.

As long ago as *Letter to Anonymous*, 17 IDELR 180 (OSEP 1990), a clear distinction was been made between extracurricular activities that are "a specific component" of a student's IEP and those that are not. If the activity is required by the IEP, then the district "must ensure" that it is provided to the child. But, if not, the district need not actually provide the services, but simply afford an equal opportunity for

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participation. Similarly, in *Fick v. Sioux Falls Sch. Dist.*, 337 F.3d 968 (8<sup>th</sup> Cir. 2003), the court held there was no violation of the IDEA when transportation to one destination instead of another “was not necessary for [student] to benefit educationally” from her IEP. The appellate court went on to conclude that a “facially neutral transportation policy” is lawful if it does not impact the child’s educational needs, *citing Timothy H. v. Cedar Rapids Cmty. Sch. Dist.*, 178 F.3d 968 (8<sup>th</sup> Cir. 1999).

Thus, the key issue becomes whether the After-School Programming was necessary for Student to access the curriculum or receive a FAPE, and Petitioner has not met her burden of demonstrating that by a preponderance of the evidence. While it is understandable for Grandmother to seek every possible support for Student, the inclusion of After-School Programming on Student’s IEP was not a requirement, but simply a recommendation. Special Education Chair credibly explained that the After-School Programming was merely “recommended” in Student’s IEP because the IEP Team did not find that it was necessary or required for a FAPE.

The content of the After-School Programming further supports that it was not required for a FAPE. The uncontroverted testimony was that the first half of the After-School Programming is not tutoring but merely an opportunity to work on homework in a structured environment with an adult that can be consulted with questions or problems. The second half of the After-School Programming is an opportunity to engage in arts and crafts. All of this may well be desirable but is not needed for a FAPE, especially where Student is already receiving 25 hours per week of specialized instruction outside general education, along with other related services. Thus, this Hearing Officer concludes that the After-School Programming is not a requirement for Student. And if it is not a requirement of Student’s IEP, then DCPS is not obligated to provide transportation for Student.

*Issue 2 – Whether DCPS denied Student a FAPE by failing to draft her IEP on 12/12/13 to add after-school tutoring/programming without conditioning it on whether transportation could be provided.*

DCPS acknowledged that needed components in a student’s IEP should not be conditioned on whether transportation is available (or whether they can be carried out generally). But as concluded above, the After-School Programming was not needed in Student’s IEP for her to receive a FAPE, but was merely recommended. Thus, the language in the IEP relating to transportation for the After-School Programming was mere surplusage and not a denial of FAPE.

Special Education Chair, a relatively new employee of DCPS, testified that the reference to transportation in the Disputed Provision of the IEP was her mistake and should not have been included. However, even if there had been no mention of transportation, the result would have been no different. DCPS would not have rearranged its school bus schedules in order to transport Student home based on a mere recommendation that she attend After-School Programming. Without a difference in

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impact, it cannot be a denial of a FAPE to have erroneously included the transportation condition. Thus, Petitioner did not meet her burden of proof on this issue.

*Issue 3 – Whether DCPS denied Student a FAPE by failing to conduct an evaluation or authorize an independent evaluation of all areas of suspected disability to identify all her special education and related service needs, when a neuropsychological evaluation had been recommended as preferable to a comprehensive psychological evaluation by an independent evaluator on 7/10/13.*

Petitioner also failed to meet her burden on the third issue, based on (i) Audiologist's lack of a definitive recommendation for a neuropsychological evaluation, along with a practical recommendation for enhancing Student's executive functioning; (ii) Psychologist's concern with ADHD, but failure to indicate any need for a neuropsychological evaluation; and (iii) the practical indicia that Student is doing quite well in School.

In evaluating a student, the district must use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about Student. 34 C.F.R. 300.304(b)(1). The district must also ensure that the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. 34 C.F.R. 300.304(c)(4). Here, Petitioner asserts that a neuropsychological evaluation of Student was necessary for a FAPE when a comprehensive psychological evaluation had just been completed. However, IDEA does not require a district to administer every test requested by a parent or recommended in an evaluation, as the district has the prerogative to choose assessment tools and strategies to gather relevant information. *Letter to Baumtrog*, 39 IDELR 159 (OSEP 2002); *Letter to Anonymous*, 20 IDELR 542 (OSEP 1993).

This issue arose when Audiologist conducted an evaluation and recommended in his Auditory Processing Evaluation Report on 7/10/13 that Student “needs a comprehensive clinical psychological assessment, preferably a neuropsychological evaluation” in order to identify any specific executive functioning problems.

Audiologist's recommendation suggests to this Hearing Officer that a neuropsychological evaluation may be desirable, but is not strictly necessary. However, Audiologist testified that his recommendation was that executive functioning needs to be explored, which was not part of the Comprehensive Psychological Evaluation that had been conducted the month prior to his Auditory Evaluation, but of which he was unaware when he wrote his recommendations. Nonetheless, Audiologist's report continues on to note that he has had many years of experience with children with symptoms similar to Student's and has found that executive functioning training programs have been very helpful for them. Thus, Audiologist also recommended that Student be provided with specific computer programs for executive functioning training. This recommended solution apparently does not depend further testing.

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Psychologist conducted a Comprehensive Psychological Evaluation in mid-June 2013 and obtained mixed responses in the ADHD screening. While Student's general education teacher saw significant signs of ADHD, Student's special education teacher and Grandmother did not; it is noteworthy that the former is statistically significant, while the latter two are not. Nonetheless, Psychologist did not recommend a neuropsychological evaluation in her Comprehensive Psychological Evaluation report, although at the due process hearing she testified that she should have. This Hearing Officer notes Psychologist's great care and thoughtfulness in responding to questions during her testimony, and thus gives weight to Psychologist's omission based on his expectation that Psychologist exercises similar care and thoughtfulness in her reports. In addition, DCPS's school psychologist rejected the need for a neuropsychological evaluation of Student since a comprehensive psychological evaluation had been completed which was sufficient to determine proper programming for Student.

The final element that contributes to this Hearing Officer's conclusion is that Student has been doing quite well in school. Student's grades have been excellent, with all A's and B's, her IEP reports have been positive, and the observations and comments of her teachers have largely been encouraging. As set forth above, Student is not displaying behaviors of concern and follows directions, is attentive, respectful, demonstrates self-control and interacts appropriately with her peers and adults. During class observations of Student, there were no behavioral concerns noted, and Student follows her teacher's requests. Further, Student demonstrates self-control in the classroom and responds appropriately to directions.

While a neuropsychological evaluation goes deeper into the functioning of the brain to determine the problem with more precision and how to address it, the question is whether this additional depth is required by the IDEA in order for Student to benefit from her education. Here, Student appears to be making decent progress and is already receiving essentially full-time specialized instruction where teachers commonly work with students with ADHD and those exhibiting symptoms of ADHD. Thus, for the reasons discussed herein, this Hearing Officer concludes that a neuropsychological evaluation is not required by IDEA in these circumstances.

### ORDER

Petitioner has failed to meet her burden of proof on the issues 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

## **Hearing Officer Determination**

### **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).