

**District of Columbia**  
**Office of the State Superintendent of Education**

Office of Dispute Resolution  
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<b>District of Columbia Public Schools,</b>	)	
<b>Petitioner,</b>	)	
	)	<b>Hearing Dates: 8/23/21; 8/25/21; 9/10/21</b>
<b>v.</b>	)	<b>Hearing Officer: Michael Lazan</b>
	)	<b>Case No. 2021-0070</b>
<b>Parent<sup>1</sup>, on behalf of Student,</b>	)	
<b>Respondent.</b>	)	

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**HEARING OFFICER DETERMINATION**

**I. Introduction**

This is a case involving an X-year-old student who is not currently eligible for services (the “Student”). A due process complaint (“Complaint”) was filed by District of Columbia Public Schools (“DCPS” or “Petitioner”) pursuant to the Individuals with Disabilities Education Act (“IDEA”) on May 26, 2021, with the Student’s mother as Respondent. On June 3, 2021, Respondent filed a response. The Hearing Officer Determination (“HOD”) was due on September 20, 2021.

**II. Subject Matter Jurisdiction**

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the IDEA, 20 U.S.C. 1400 *et seq.*, its implementing regulations, 34 C.F.R. Sect. 300 *et seq.*, Title 38 of the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-E, Chapter 30.

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

### **III. Procedural History**

A prehearing conference was held on June 22, 2021. Attorney A, Esq., counsel for Petitioner, appeared. Attorney B, Esq., counsel for Respondent, appeared. A prehearing conference order was issued on June 25, 2021, summarizing the rules to be applied in the hearings and identifying the issues in the case. Respondent filed a motion to dismiss the Complaint on June 9, 2021. Petitioner filed opposition on June 15, 2021. The motion to dismiss was denied by an order dated June 30, 2021.

On July 8, 2021, Respondent moved on consent to extend the timelines to allow for the case to be tried on the hearing dates, and to allow the Hearing Officer to issue an HOD on September 10, 2021. This motion was granted, without objection, on July 9, 2021. On September 7, 2021, Respondent again moved for a continuance to extend the decisional timelines in this case to September 20, 2021, without objection. An order was issued on September 9, 2021, granting the motion.

The hearing was conducted through the Microsoft Teams videoconferencing platform, without objection. Petitioner was again represented by Attorney A, Esq. Respondent was again represented by Attorney B, Esq. This was an open proceeding.

The matter proceeded to trial on August 23, 2021, August 25, 2021, and September 10, 2021. During the proceeding, Petitioner moved into evidence exhibits P-1 through P-7 without objection. Respondent moved into evidence exhibits R-1 through R-21 without objection. Petitioner presented as witnesses: Witness A, a psychologist (expert in school psychology). After Petitioner's presentation of Witness A, Respondent orally moved for dismissal. This motion was denied. Respondent presented as witnesses, in the following order: herself; Witness B, an educational consultant (expert in special

education programming, reviewing evaluations, and in making and reviewing disability determinations); and Witness C, a psychologist (expert in child and adolescent psychology). Petitioner then presented a rebuttal case through additional testimony from Witness A. Oral closing arguments were presented after the end of testimony on September 10, 2021.

#### **IV. Issues**

As identified in the Prehearing Order and in the Complaint, the issue to be determined in this case is as follows:

#### **Did Petitioner properly evaluate the Student in or about April, 2021, after Respondent signed a consent for an evaluation?**

Petitioner contended that the evaluation was sufficiently comprehensive, and that Respondent would not allow it to conduct additional testing. Respondent contended that the evaluation, which consisted of a psychological assessment, was not comprehensive enough because it did not assess the Student's anxiety and panic disorder issues. As relief, Petitioner is seeking an order declaring that it does not have a duty to provide Respondent with an Independent Educational Evaluation ("IEE") and that its April, 2021, evaluation of the Student was appropriate. Respondent is seeking an IEE of the Student, consisting of a new comprehensive psychological assessment by a private evaluator.

#### **V. Findings of Fact**

1. The Student is an X-year-old who is currently ineligible for services. The Student has received below average grades for the bulk of his/her academic career. The Student can get frustrated and emotional about schoolwork and has had trouble

completing work. Testimony of Respondent. According to recent Reading Inventory (“RI”) testing, the Student is currently well below grade level in reading. R-9-1-2.

2. After attending School A, a DCPS public school, for the 2019-2020 school year, the Student attended School B, another DCPS public school, for the 2020-2021 school year. On October 5, 2020, the Student was determined through an i-Ready assessment to be below grade level in mathematics. The Student’s mathematics teacher reported that the Student lacked motivation and failed to complete assignments. By January 26, 2021, the Student’s RI scores revealed that s/he was functioning on a third-grade level in reading. R-9-1-2.

3. During the 2020-2021 school year, Respondent became increasingly concerned about the Student’s academic progress and sought an assessment from Hospital A and an initial evaluation from DCPS. DCPS and Respondent, on behalf of the Student, held an Analysis of Existing Data (“AED”) meeting by telephone on or about January 26, 2021. Among the meeting attendees were two teachers and Witness A. The purpose of the meeting was to determine if testing for special education was warranted for the Student. At the meeting, Respondent shared that the Student was being evaluated for anxiety and Attention Deficit Hyperactivity Disorder (“ADHD”). Respondent also reported that the Student was not doing well with virtual learning, explaining that s/he did not complete assignments and was failing some of his/her classes. Respondent also expressed concerns about the Student’s reading level, pointing to the Student’s low scores on measures, such as the RI, and to the Student’s attentional issues. Testimony of Witness A; Testimony of Respondent; R-10.

4. On March 9, 2021, Witness C sent a letter to the principal at School B. The letter stated that Witness C saw the Student at Hospital A on both February 23, 2021, and March 9, 2021. The Student was seen at the request of the Student's primary care physician for concerns related to anxiety. The letter stated that the Student was diagnosed with Generalized Anxiety Disorder ("GAD"), Panic Disorder [episodic paroxysmal anxiety], and Learning Difficulty. The letter also stated that the Student would benefit from a Section 504 plan, and included a list of suggested accommodations that might be helpful to the Student for distance learning. Testimony of Witness C; P-7.

5. DCPS then conducted an evaluation of the Student through a Confidential Psychological Comprehensive Initial Evaluation (the "Psychological Assessment") by Witness A, who administered the Reynolds Intellectual Assessment Scales 2nd Edition, ("RIAS-2"), Woodcock-Johnson Test of Achievement, IV-Form A ("WJ-IV"), Conners 3-ADHD Rating Scale, Short Form ("Conners-3"), and Behavior Rating Inventory of Executive Function, 2nd Edition, ("BRIEF-2"). Witness A also reviewed the Student's attendance records, test scores, and work samples, and conducted interviews with the Student, Respondent, and the Student's teachers. Witness A also conducted an observation of the Student in a virtual setting. Testimony of Witness A; R-12-2.

6. The RIAS-2 was used to determine the Student's cognitive functioning. The WJ-IV was used to evaluate the Student's skill sets and overall knowledge. The Conners-3 was used to assess the Student's behaviors across several domains, through scales given to Respondent, the Student, and one of the Student's teachers. The BRIEF-2 was used to determine the Student's executive functioning skills, such as time-management and organizational skills. The instruments were technically valid without

social or cultural bias. The Student's anxiety did not manifest itself during the testing.

Testimony of Witness A.

7. On the RIAS-2, the Student's Composite Intelligence Index was scored at 74, in the moderately below-average range, at the 7th percentile. The Student's Nonverbal Intelligence Index score of 68 fell within the extremely low range of nonverbal intelligence skills, exceeding the performance of less than two percent of the Student's peers. On the WJ-IV, the Student's broad mathematics score was determined to be within the low average range, and the Student's broad reading score was determined to be in the below average range, with reading comprehension in the low range and reading fluency in the average range. The Student's broad written language score was also determined to be in the low average range. On the Conners-3, the Student, one of his/her teachers, and Respondent responded to thirty-nine queries. The responses described a student with poor concentration, easy distractibility, difficulty finishing tasks, restlessness, impulsive behaviors, difficulty being quiet, and difficulty with acceptance by his/her peer group. On the BRIEF-2, ratings of the Student's everyday executive functioning by the Student, Respondent, and one of his/her teachers suggested some self-regulatory problems and an inability to resist impulses. R-12-11-20.

8. Witness A's Psychological Assessment of the Student indicated that during the 2020-2021 school year, the Student struggled with virtual learning. The Student's mathematics teacher reported to Witness A that she had seen very little progress from the Student, who had poor attendance. This teacher underscored that the Student would log onto his/her computer for class, but then leave shortly thereafter. The teacher also shared that the Student is not engaged in class even though s/he received

one-on-one support, easier problems to solve, and constant check-ins for understanding. The Student's science teacher said that the Student had not made significant progress and had an "F" average, also remarking that the Student missed class and failed to do assignments despite accommodations. This teacher also said that, when the Student did attend class, his/her engagement was great and s/he did very well. The Student's Reading Workshop Intervention teacher indicated that the Student had a "D+" in class and attended inconsistently. The Student told Witness A that s/he appreciated how his/her mathematics support teacher provided a breakdown of information and offered him/her extended time to complete assignments. The Student expressed that s/he felt more confident in reading than mathematics, was aware that s/he was often distracted, and believed that s/he could redirect herself from the source of distraction. Respondent told Witness A that the Student is not always truthful, can be withdrawn, and that his/her academic struggles are centered on his/her inability to comprehend what s/he reads. During Witness A's virtual observation of the Student in a mathematics class on March 23, 2021, the Student was off-camera. As a result, it was difficult for Witness A to determine if the Student was following the lesson. R-12-7-10.

9. Witness A's assessment stated that the Student had "upheld very good school attendance through the years" and had a ninety-six percent attendance rate for the 2020-2021 school year. However, the report noted that at least some of the Student's teachers said that the Student had excessive absences from class, needed to study more, and did not complete assignments. The report indicated that the Student's grades were mediocre to poor, with five "F" grades during the first term of the 2020-2021 school year. It also indicated that for the first two terms of the 2020-2021 school year, the Student

received two “F” grades in reading, with a “D” on the midterm, and “I” and “C-“ grades in mathematics, with an “F” on the midterm. Nevertheless, the report concluded that the interventions implemented in the Student’s reading and mathematics classes appeared to have resulted in steady gains, pointing to the Student’s WJ-IV scores. R-12-4, 23.

10. Witness A learned about the letter written by Witness C from Hospital A toward the end of her assessment of the Student. Witness A therefore had to revise her Psychological Assessment report to mention Hospital A’s diagnosis of the Student as having GAD, Panic Disorder [episodic paroxysmal anxiety], and Learning Difficulty. However, Witness C’s letter did not alter Witness A’s conclusions about the Student. Testimony of Witness A; R-12-3. In the report’s “Summary” section, Witness A stated that the Student’s lack of motivation and focus related to GAD as well as ADHD, and concluded that the Student was a “slow learner” who benefitted from accommodations, differentiated instruction, and structured learning environments to address his/her tendency to avoid work, strengthen his/her poor math skills, and address other academic lags. R-12-21.

11. On April 22, 2021, DCPS convened an eligibility meeting with Respondent and her counsel to review the Psychological Assessment by Witness A and determine whether the Student was eligible for services. After reviewing the Psychological Assessment, the team determined that the Student was not eligible, and “closed out” the eligibility process. Respondent told DCPS that she disagreed with the Psychological Assessment, the evaluation, and the eligibility determination. Testimony of Respondent. On April 26, 2021, Respondent again stated she disagreed with the evaluation and requested an IEE at public expense. Respondent contended that the



evaluation was inconsistent, lacked full explanations, did not include any assessment of the Student's GAD, and did not consider whether the Student was eligible for services as a student with emotional disturbance. R-14; R-15; R-16; R-17; R-18.

## **VI. Conclusions of Law**

An IEE is “an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.” 34 C.F.R. Sect. 300.502(a)(3)(i). If a parent challenges a school district's evaluation and requests an IEE at public expense, a school district must, without unnecessary delay, either ensure that an IEE is provided at public expense or initiate an impartial hearing to show that its evaluation was appropriate. 34 C.F.R. Sect. 300.502(b)(2)(i)-(ii). A parent may challenge a school district's failure to evaluate in a particular area of concern. It is an error for a hearing officer to focus only on specific assessments that were performed and not consider whether further assessments are needed. L.D. v. Anne Arundel Pub. Schs., No. CV CCB-18-1637, 2019 WL 6173818 (D. Md. Nov. 20, 2019) (remanding case to hearing officer); Letter to Baus, 65 IDELR 81 (OSEP 2015) (when a parent disagrees with an evaluation because a child was not assessed in a particular area, the parent has the right to request an IEE to assess the child in that area to determine whether the child has a disability and the nature and extent of the special education and related services that the child needs). Nevertheless, minor deficiencies in a district's evaluation do not justify public funding for the parent's IEE. B.G. v. City of Chicago Sch. Dist. 901 F.3d 903 (7th Cir. 2018) (regarding the district's psychological evaluation, the court held that the district's evaluators were qualified, that errors in test administration were harmless, that support for the recommended emotional disability classification was adequate, and that

the evaluators considered the possibility of the Student having ADHD). Additionally, “there is no provision in the IDEA that gives a parent the right to dictate the specific areas that the public agency must assess as part of the comprehensive evaluation; the public agency is only required to assess the child in particular areas related to the child’s suspected disability, as it determines appropriate.” Letter to Unnerstall, 68 IDELR 22 (OSEP Apr. 25, 2016). The burden is on the school district to show that its evaluation is appropriate. Collette v. District of Columbia, No. CV 18-1104, 2019 WL 3502927, (D.D.C. Aug. 1, 2019) (ruling that the hearing officer incorrectly shifted burden to the parents).

The right to an IEE exists against a background of duties on the part of public school authorities to evaluate all children suspected of having disabilities. To satisfy the requirements of the IDEA, a school district’s evaluation must be comprehensive, using a variety of assessment tools and strategies to obtain relevant functional, developmental, and academic information about the child. The public agency must ensure that each child is assessed in all areas related to the suspected disability, including, as appropriate, academic performance. 34 C.F.R. Sect. 300.304(b); 34 C.F.R. Sect. 300.304(c)(4). Information obtained through an evaluation is to assist in determining whether a child is a child with a disability, as well as determining the content of an eligible child’s IEP. 34 C.F.R. Sect. 300.304(b)(1).

At the January 26, 2021, AED meeting, Respondent shared that the Student was being evaluated for anxiety and ADHD. On March 9, 2021, Witness C sent a letter to School B stating that the Student had been assessed by Witness C at Hospital A on February 23, 2021, and March 9, 2021, at the request of his/her primary care physician

for concerns related to anxiety. The letter stated that, based on screening tests and an evaluation, the Student should be diagnosed with Generalized Anxiety Disorder (“GAD”) and Panic Disorder [episodic paroxysmal anxiety].

However, the Student’s anxiety issues were not addressed in Witness A’s Psychological Assessment report, which was issued almost a month after the March 9, 2021, letter was sent. Witness A’s assessment did include Connors-3 testing information on the Student’s behavioral concerns, based on input from the Student, Respondent, and the Student’s teachers. However, the Connors-3 scales did not provide information relating to the Student’s issues with anxiety in school. While there was one reference to GAD in the “Summary” section of Witness A’s report, contending that the Student’s lack of motivation and focus were “related” to GAD, there was nothing in the report about the underlying reasons for the Student’s anxiety, the triggers for the Student’s anxiety, the impact of the Student’s anxiety on his/her schoolwork, or whether the Student had issues relating to panic at school. In fact, on cross-examination, Witness A admitted that the report did not address the Student’s anxiety issues.

DCPS argued that the disagreement between the parties concerned the Psychological Assessment’s conclusions, and that a dispute about the conclusions of an evaluation should not result in the issuance of an IEE. L.S. ex rel. K.S. v. Abington Sch. Dist., No. CIV. 06-5172, 2007 WL 2851268, at \*12 (E.D. Pa. Sept. 28, 2007) (parents’ IEE claims related to a lack of conclusions in the report, school district delay, a lack of a Prior Written Notice, and a failure of the school district to assess student’s blood disorder). However, the testimony of Witness C, an expert in child and adolescent psychology, did not focus on the Psychological Assessment’s conclusions. Witness C

instead clearly explained that the main issue for Respondent was that the school district failed to assess the Student's anxiety issues in school.

DCPS also argued that its evaluation was appropriate because its scope was limited to whether the Student was eligible for services as a student with Specific Learning Disability or Other Health Impairment. However, a Local Educational Agency ("LEA") is not allowed to frame issues relating to an evaluation before it occurs, then rigidly limit the scope of the evaluation to the questions that were originally posed. Instead, the inquiry must focus on whether the evaluation is "a full and individual initial evaluation." 34 C.F.R. Sect. 300.301(a). If, during the evaluation process, it becomes apparent that a particular assessment is needed to ascertain whether the child has a disability and whether the child has special educational needs, then the public agency must conduct the necessary assessment. Letter to Unnerstall, 68 IDELR 22 (OSEP Apr. 25, 2016). That was the case here. During the course of Witness A's Psychological Assessment, DCPS received clear notice from a credible source that the Student had anxiety issues and was diagnosed with GAD, as well as a panic disorder. Notwithstanding the way the evaluation was originally framed, DCPS therefore had a duty to explore the extent to which the Student's anxiety and panic issues impacted him/her in school.

DCPS also argued that Witness A was able and qualified, and that her Psychological Assessment is therefore entitled to deference. E.P. By & Through J.P. v. Howard Cty. Pub. Sch. Sys., No. CV ELH-15-3725, 2017 WL 3608180, at \*8 (D. Md. Aug. 21, 2017), aff'd sub nom. E.P. v. Howard Cty. Pub. Sch. Sys., 727 F. App'x 55 (4th Cir. 2018). But Witness A, while impressively credentialed, did not vigorously contest

Witness C's position that the Student needed additional testing in the area of anxiety.

Witness A instead suggested that DCPS had the right to conduct further testing on the Student after the eligibility meeting had taken place. During closing argument, DCPS supported this proposition by citing to Z. B. v. District of Columbia, 888 F.3d 515, 523 (D.C. Cir. 2018), and Johnson by Johnson v. Duneland Sch. Corp., 92 F.3d 554, 558 (7th Cir. 1996).

However, these cases stand only for the proposition that a school district has to have a fair opportunity to evaluate a student. DCPS had a fair opportunity to evaluate the Student, and did evaluate the Student through Witness A's Psychological Assessment. Subsequently, based on that assessment, the Student was denied the right to services under the IDEA in an eligibility meeting conducted on April 22, 2021. As the Prior Written Notice stated: "On April 22, 2021, the MDT convened an eligibility meeting with the parent and her counsel to review the Psychological Assessment and determine eligibility. After the review of the Psychological Assessment, the team determined that the student was not eligible and closed out the eligibility process."

Respondent sought the IEE four days later, on April 26, 2021. DCPS reacted to this request by seeking to conduct its own additional assessments of the Student in regard to his/her anxiety issues. However, a school district cannot "cure" defects in its already-completed evaluation because a parent complains about it and requests an IEE. Letter to Carroll, 68 IDELR 279 (OSEP Oct. 22, 2016). As OSEP stated in Carroll: "The IDEA affords a parent the right to an IEE at public expense and does not condition that right on a public agency's ability to cure the defects of the evaluation it conducted prior to granting the parent's request for an IEE." OSEP continued by stating that "it would be

inconsistent with the provisions of 34 C.F.R. Sect. 300.502 to allow the public agency to conduct an assessment in an area that was not part of the initial evaluation or reevaluation before either granting the parents' request for an IEE at public expense or filing a due process complaint to show that its evaluation was appropriate.”

Finally, there is nothing in the record to suggest that Witness C had any reason to stretch the truth in this proceeding. This independent witness came across credibly throughout her testimony, which emphasized that the Student is not available to learn because of his/her significant anxiety issues. Witness C explained that the Student is internally distracted by anxiety, fearful of meeting new people, often embarrassed, and reluctant to be on video because s/he is worried that people will judge him/her. Witness C said that the Student is now so far behind, s/he feels that school is hopeless and wants to escape, which might explain why the Student has attendance issues and does not complete assignments. However, Witness A's Psychological Assessment of the Student did not provide DCPS with any data or analysis on these issues. Respondent is therefore entitled to her own evaluation of the Student,<sup>2</sup> by a provider of her choosing, at public expense.<sup>3</sup>

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<sup>2</sup> Respondent's alternative argument was that the DCPS evaluation was deficient because of inconsistencies within it. For instance, the Psychological Assessment reported that the Student had ninety-six percent attendance during the 2020-2021 school year (through the date of the assessment), but also reported that the Student was not regularly attending some of his/her classes. While it might have been helpful for Witness A to address this issue in her Psychological Assessment, Respondent failed to provide support for the proposition that a parent is entitled to an IEE if a psychological assessment fails to resolve factual inconsistencies.

<sup>3</sup> Jones-Herrion v. District of Columbia, No. CV 18-2828, 2019 WL 5086693, at \*4 (D.D.C. Oct. 10, 2019) (student was entitled to independent assessments necessary to formulate an evaluation).

**VII. Order**

As a result of the foregoing, Respondent is hereby awarded an IEE, by a provider of her choosing, at public expense.

Dated: September 20, 2021

Michael Lazan  
Impartial Hearing Officer

cc: Office of Dispute Resolution  
Attorney A, Esq.  
Attorney B, Esq.  
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### **VIII. Notice of Appeal Rights**

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

Dated: September 20, 2021

*Michael Lazan*  
Impartial Hearing Officer