DISTRICT OF COLUMBIA OFFICE OF THE STATE SUPERINTENDENT
OFFICE OF COMPLIANCE AND REVIEW

STUDENT,
through the Parent,[1]

Petitioner,

v

DISTRICT of COLUMBIA PUBLIC SCHOOLS,

Respondent.

James Gerl. Hearing Officer
Case No.

OSSE
STUDENT HEARING OFFICE
2010 JAN 19 AM 9:04

HEARING OFFICER DECISION

BACKGROUND

The instant due process complaint was filed on November 23, 2009. This matter was assigned to this hearing officer on November 24, 2009. A prehearing conference by telephone conference call was convened on December 9, 2009. The due process hearing was held at the Student Hearing Office on January 7, 2010. The due date for the Hearing Officer Decision is January 17, 2010.

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[1] Personally identifiable information (for the student, parent and witnesses called at the hearing) is provided in Attachment A which must be removed prior to distribution of this decision. 20 USC §1232g; and 20 USC §1417(c).

JURISDICTION

This proceeding was invoked pursuant to the provisions of the Individuals With Disabilities Education Act ("IDEA"), 20 U.S.C. Section 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; Title V of the District of Columbia ("District" or "D.C.") Municipal Regulations ("DCMR"), re-promulgated on February 19, 2003; and Title 38 of the D.C. Code, Subtitle VII, Chapter 25.

PRELIMINARY MATTERS

All proposed exhibits and testimony received into evidence and all supporting arguments submitted by the parties have been considered. To the extent that the evidence and arguments advanced by the parties are in accordance with the findings, conclusions and views stated herein, they have been accepted, and to the extent that they are inconsistent therewith, they have been rejected. To the extent that the testimony of various witnesses is not in accord with the findings as stated herein, it is not credited.

The parent was unable to attend the due process hearing because of work commitments. Counsel for petitioner opted to proceed with the due process hearing in the absence of the parent because of a strategic decision that the testimony of the parent was not necessary. Respondent did not object to Petitioner's proceeding without the parent at the hearing.

ISSUE PRESENTED

The following issue was identified by counsel at the prehearing conference and evidence concerning this issue was heard at the due process hearing:

1. Whether the Respondent violated IDEA by failing to conduct or fund a psychiatric evaluation of the student. Petitioner seeks as relief an order requiring Respondent to conduct or fund a psychiatric evaluation of the student. Respondent contends that it is not obligated to provide the psychiatric evaluation because it was requested for medication and medical treatment purposes as opposed to academic or educational programming reasons.

FINDINGS OF FACT

Based upon the evidence in the record, the hearing officer has made the following findings of fact:

1. The student was born on (Petitioner Exhibit 9) (NOTE: References to exhibits shall hereafter be designated herein as "P-1," etc. for the petitioner's exhibits, "R-1," etc. for the respondent's exhibits and "HO-1," etc. for hearing officer exhibits).
2. A psychological evaluation of the student was conducted by Respondent on October 10, 2009. (P-14).

3. A multi-disciplinary team ("MDT") meeting for the student was convened on November 16, 2009. (Stipulation of fact as stated by counsel at the outset of the hearing; P-9; P-10; P-11).
4. The purposes of the MDT meeting on November 16, 2009 included a review of the student's progress and a review of the psychological evaluation conducted on October 10, 2009. (Stipulation of fact as stated by counsel at the outset of the record; P–14; P-9; P-10; P-11).
5. The November 16, 2009 MDT meeting was attended in person by Respondent's placement specialist, the student's treating psychologist, a special education teacher, a speech therapist, a math teacher, the student's homeroom teacher, an art therapist, Respondent's transition coordinator, a school psychologist for Respondent and an additional LEA representative. The student's mother and the student's educational advocate participated in the MDT meeting by telephone. (P-11; P-9; T. of student's educational advocate; T. of student's treating psychologist; T. of Respondent's placement specialist.)(NOTE: references to testimony of witnesses at the due process hearing shall be designated herein as "T. of _____")
6. The psychological evaluation of the student conducted on October 10, 2009 was discussed at the MDT meeting on November 16, 2009. The student's treating psychologist was highly critical of the psychological

evaluation at the MDT meeting. The treating psychologist pointed out that the WASI instrument used by the psychologist for the evaluation would not provide the sort of information that was needed about the student's current level of functioning. The treating psychologist also pointed out other errors in the report, such as misidentification of the identity of the treating psychologist. In addition, the treating psychologist expressed disappointed in the lack of obtaining more clinical information through the psychological evaluation. (P-9; P-10; P-11; T. of treating psychologist).

7. At the MDT meeting on November 16, 2009, the educational advocate on behalf of the parent and student requested that Respondent have a psychiatric evaluation of the student conducted for the purpose of medical treatment and medicine management. (P-9; P-10; P-11; T. of Respondent's placement specialist; T. of the treating psychologist).
8. The student's treating psychologist supported the request for a psychiatric evaluation because she had suspected that the student has been suffering from depression and that the psychiatric evaluation might aid her medical treatment, in particular by suggesting a prescription for medication. (T. of treating psychologist; P - 9).
9. The student's educational advocate stated at the MDT meeting on November 16, 2009 that she believed that the student's emotions and

behaviors were greatly impacting her academic progress. At the meeting, the student's treating psychologist disagreed with the advocate concerning whether the student's emotions and behaviors were greatly impacting her educational performance. The notes of the MDT meeting indicate that the student was receiving average grades (B's and C's) in school. The notes of the MDT meeting also indicate that the student had spent less time out of class in the behavioral crisis center at school than she had during the last school year and that the student had received no out of school suspensions to date during the 2009/2010 school year. The student's behaviors were not adversely affecting her learning or the learning of other students. (P – 9; P – 11)

10. The mother of the student had made efforts prior to the November 16, 2009 MDT meeting to obtain a psychiatric assessment of the student through community sources at a local hospital. Although the mother had begun the process, she had not yet completed the "book" or questionnaire she needed to complete in order to obtain the evaluation. Respondent's placement specialist also provided the student's mother with a referral to a community mental health facility, the Department of Mental Health, and information pertaining thereto, in order to determine whether or not

said agency could help provide a psychiatric evaluation of the student. (P-11; T of Respondent's placement specialist.)

11. Because of the errors and mistakes in the psychological evaluation conducted for the student on October 10, 2009, the student's treating psychologist at the MDT meeting on November 16, 2009 suggested that the clinical aspects of the psychological assessment be redone. She noted that the cognitive functioning portions of the test could not be retested, but she suggested that the clinical portions of the psychological evaluation be done again. (P-9; T of student's treating psychologist).

12. At the end of the MDT meeting on November 16, 2009, the team accepted the treating psychologist's recommendation and authorized a new clinical psychological evaluation focused upon possible depression and upon obtaining diagnostic clarity regarding mood/attention needs of the student. The MDT team also approved two other evaluations of the student, an occupational therapy evaluation and a speech/language evaluation. (P-12; T. of Respondent's placement specialist).

13. In response to a request by the student's advocate by email after the MDT meeting, Respondent's placement specialist authorized an independent clinical psychological evaluation, rather than one conducted by Respondent, because of the problems with the previous

psychological evaluation as identified at the MDT meeting. (T. of Respondent's placement specialist).

14. The school psychologist, called as an expert witness by Respondent at the due process hearing herein, has never recommended a psychiatric evaluation for medication reasons in nine years as a school psychologist because schools do not get involved in strategies such as medication as an educational intervention strategy. (T. of Respondent's expert school psychologist; R-9).

15. The psychiatric evaluation requested for the student was for the purpose of medical treatment and medicine management and not for the purpose of assessing the student's academic or educational needs. (P-9; P-10; P-11; T. of Respondent's placement specialist; T. of the treating psychologist; record evidence as a whole)

CONCLUSIONS OF LAW

1. Respondent has not violated IDEA or the federal regulations promulgated thereunder or District of Columbia law or regulations by failing to provide or conduct a psychiatric evaluation of the student for medical treatment and medication purposes and not for the purpose of evaluating the student's educational or academic needs. IDEA § 614(b); 34 C.F.R. § 300.304; Harris v. District of Columbia, 561 F. Supp. 2nd 63, 50 IDELR 194 (D.D.C. 6/23/2008); Forest Grove School District v. T A, 109

L.R.P. 77164 (D. Oregon 12/08/2009); Ashland School District v. Parents of Student R J, 53 IDELR 176 (9th Cir. 12/7/2009); Christopher B. by Joanne B. and Ray B. v. Hamamoto, 50 IDELR 195 (D. Hawaii 6/19/2008).

2. Although a due process hearing officer or a court has broad equitable authority to fashion an appropriate remedy where there has been a violation of IDEA, or the corresponding federal and state regulations, no relief may be awarded where there has been no violation. School Committee, Burlington v. Department of Education, 471 U.S. 358, 556 IDELR 389 (1985); Reid v. District of Columbia, 401 F.3d 517, 43 IDELR 32 (D.C. Cir. 03/25/2005); Garcia v. Board of Educ. of Albuquerque Public Schools, 530 F.3d 1116, 49 IDELR 241 (10th Cir. 03/25/2008); In re Student With a Disability, 52 IDELR 239 (SEA-WV 04/08/2009).

DISCUSSION

Merits

Issue No. 1: Did Respondent violate IDEA by failing to conduct or fund a psychiatric evaluation of the student?

Respondent argued in its closing argument that there must be a denial of a free and appropriate public education ("FAPE") before any relief can be granted at a due process hearing. Although most due process

hearings involve FAPE in some way, Respondent's argument is not exactly correct. The four general categories that due process hearing officers have jurisdiction over including the following alleged violations: identification, evaluation, educational placement (sometimes including disciplinary actions), and the provision of FAPE. IDEA §§ 615(b)(6)(A), 615(f)(1)(A); 34 C.F.R. §§ 300.507(a), 300.511(a).

This case involves an alleged violation of Respondent's duty to evaluate the student under IDEA. Evaluations under IDEA are required to determine both whether a child has a disability and the nature and extent of the special education and related services that the child needs. Harris v. District of Columbia, 561 F. Supp. 2nd 63, 50 IDELR 194 (D.D.C. 6/23/2008); IDEA § 614(b); 34 C.F.R. §§ 300.301 – 300.305. There is no dispute in this case that the student is a child with a disability for purposes of IDEA. The issue in this case is whether respondent is required to conduct a psychiatric evaluation. Accordingly, it must first be determined whether the requested evaluation was for the purpose of determining the student's educational and related services needs.

In conducting an evaluation, a school district is required to use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information... in determining (1) whether the child is a child with a disability and (2) the content of the child's

individualized education program. IDEA § 614(b)(2)(A); 34 C.F.R. § 300.304(b).

A school district's responsibility under IDEA is limited to meeting the educational needs of a child with a disability. A school district is not required to treat the medical aspects of a student's disability. Forest Grove School District v. TA, 109 L.R.P. 77164 (D. Oregon 12/08/09). Under IDEA, a school district is not responsible for the costs of hospitalization, prescription drugs or psychiatric treatment. Christopher B. by Joanne B. and Ray B. v. Hamamoto, 50 IDELR 195 (D. Hawaii 6/19/2008). See also, Ashland School District v. Parents of Student RJ, 53 IDELR 176 (9th Cir. 12/7/2009); IDEA § 602 (26); 24 C.F.R. § 300.34(a).

In the instant case, it is clear that the psychiatric evaluation was requested for purposes of the medical treatment of the student. The psychologist who was treating the student at her current school testified that she was concerned that the student had been showing signs of depression. The treating psychologist wanted a psychiatric evaluation for the purpose of obtaining recommendations for the medical treatment options available to the student, especially a prescription of medication.

The testimony of the treating psychologist in this regard is credible, and it is supported by the other testimony and documentary evidence in the record. The educational advocate who testified on behalf of Petitioner stated that medication and medical treatment was one of the purposes of

the requested psychiatric evaluation. In addition, Respondent's placement specialist testified that medication changes or additions were the purpose of the request for the psychiatric evaluation of the student. Moreover, the meeting notes for the November 16, 2009 MDT meeting show that the psychiatric evaluation was sought for medication management purposes. Although there was testimony that a psychiatric evaluation would also provide beneficial information to the student's IEP team, there is no evidence in the record suggesting that the psychiatric evaluation was needed for assessing the student's educational or academic needs.

The educational advocate who testified on behalf of Petitioner also tried to justify a need for a psychiatric evaluation because of behavioral problems allegedly being encountered by the student. In specific, the advocate testified that the student was not able to access her education because of her frequent visits to the behavior crisis center recently. This testimony, however, is not credible because it is contradicted by the documentary evidence. The meeting notes from the November 16, 2009 MDT meeting reveal that the advocate at that meeting made a statement that the student's emotions were having a great impact on her performance. The treating psychologist who was also at the MDT meeting, and who also testified as a witness on behalf of Petitioner, disagreed with the advocate's statement at the meeting. In addition, the

meeting notes from the MDT meeting on November 16, 2009 show that the student had average grades (B/C) in school. Moreover, the notes of the MDT meeting also state that the student had spent less time in the behavioral crisis center at school than last year and also that she had had no out of school suspensions during the current school year. The record evidence supports the conclusion that the student's behaviors were not adversely impacting her learning or the learning of other students. The argument advanced by Petitioner that the psychiatric evaluation was necessary because of alleged behavioral issues causing the student difficulty in accessing her education is rejected. It is clear from the record evidence that the reason for the requested psychiatric evaluation was medical treatment and medicine management.

In closing argument, Petitioner also attempted to justify the need for a psychiatric evaluation based upon problems with a psychological evaluation conducted for the student on October 10, 2009 by Respondent. Review of this psychological evaluation report was the major purpose of the MDT meeting, which took place on November 16, 2009. Respondent concedes that there were numerous problems with the evaluation and inaccuracies and errors contained in the psychological evaluation report. Problems with the report were discussed in detail at the November 16, 2009 MDT meeting. The October 10, 2009 psychological evaluation had been requested by the student's treating psychologist who testified that

she was concerned about signs of depression and the student's attentional problems. However, to the extent that Respondent may have committed errors with regard to the October 10, 2009 psychological evaluation, it has already remedied those errors. At the end of the November 16, 2009 MDT meeting, the team prepared a student evaluation plan form. The plan included approval of three additional evaluations of the student, one of which was a clinical psychological evaluation focused on depression and mood/attentional needs of the student. The form acknowledges that there were errors in the previous psychological report as discussed by the team at the MDT meeting on November 16, 2009. Moreover, it was the uncontradicted testimony of Respondent's placement specialist that after the meeting, she approved a request by Petitioner's advocate authorizing an independent psychological examination of the student, as opposed to an evaluation done by respondent's staff. Thus, to the extent that the errors in the October 10, 2009 psychological evaluation may be construed to have had an adverse impact upon the student, the situation has already been rectified by Respondent. Accordingly, the errors in and problems with the October 10, 2009 psychological evaluation of the student and subsequent report thereof do not justify Petitioner's request that Respondent conduct or fund a psychiatric evaluation.

It should be noted that Respondent's expert school psychologist testified that the October 10, 2009 psychological evaluation was not so bad

and did address the depression and attention needs of the student. This testimony is not credible. It is contradicted by the more credible testimony of the student's treating psychologist and by the documentary evidence. It is also contradicted by the fact that Respondent has authorized a new clinical psychological evaluation of the student focused upon depression and the mood/attention needs of the student, as evidenced by the Student evaluation form completed by the MDT team on November 16, 2009, and the fact that Respondent later authorized an independent psychological evaluation of the student. It is also impaired by the fact that Respondent's expert school psychologist was unaware that the MDT team had conceded errors in the October 10, 2009 psychological evaluation and had authorized a new evaluation. Although this does not affect the result in this case, this portion of the testimony of respondent's expert witness is not credited.

Finally, in closing argument, Petitioner attempted to justify the request that Respondent pay for a psychiatric evaluation for the student on the basis of considerations of fairness. Essentially, the argument is that it is fairer for the Respondent to pay for the psychiatric evaluation than it is for the student or her parents or her parents' insurance to do so.

Due process hearing officers and courts clearly do have broad equitable discretion to fashion an appropriate remedy where there has been a violation of IDEA. School Committee, Town of Burlington v.

Department of Education, 471 U.S. 358, 556 IDELR 389 (1985); Reid v. District of Columbia, 401 F.3d 517, 43 IDELR 32 (D.C. Cir. 03/25/2005); Garcia v. Board of Educ. of Albuquerque Public Schools, 530 F.3d 1116, 49 IDELR 241 (10th Cir. 3/25/2008); In re Student With a Disability, 52 IDELR 239 (SEA-WV 04/08/2009). Nevertheless, it goes without saying that an administrative hearing officer cannot issue relief of any kind unless there has been a violation of the enabling statute or the regulations promulgated thereunder. In this case, Petitioner has not proven any violation of IDEA or of the federal regulations, or D.C. law or regulations. Accordingly, any argument seeking relief based upon considerations of fairness alone must be rejected.

It is concluded that the psychiatric evaluation requested for the student was for medical treatment and medicine management purposes. Because the requested evaluation was not for the purpose of assessing the student's educational or academic programming needs, Respondent did not violate IDEA, or the federal regulations, or D.C. law or regulations, by failing to conduct or to pay for the requested psychiatric evaluation.

ORDER

In view of the foregoing, is concluded that the record evidence does not establish any violations of IDEA or the federal regulations promulgated there under, or of the D.C. Code or the District or Columbia Municipal Regulations. It is HEREBY ORDERED that the relief sought by Petitioner herein is denied. Respondent has prevailed on the sole issue raised by the due process complaint.

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the Findings and/or Decision 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 Decision of the Hearing Officer in accordance with 20 USC §1451(i)(2)(B).

Date Issued: January 16, 2010

s/ James Gerl
James Gerl
Hearing Officer