

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

Student Hearing Office  
810 First Street, NE, 2nd Floor  
Washington, DC 20002

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

Date Issued: May 18, 2012

Petitioner,

Hearing Officer: Peter B. Vaden

v.

DISTRICT OF COLUMBIA  
PUBLIC SCHOOLS,

Respondent.

2012 MAY 2  
OSSE  
STUDENT HEARING OFFICE

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**HEARING OFFICER DETERMINATION**

**INTRODUCTION AND PROCEDURAL HISTORY**

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by PETITIONER (the “Petitioner” or “Grandfather”), 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 his Due Process Complaint, Petitioner alleges that DCPS denied Student a free appropriate public education (“FAPE”) by refusing his request to provide a developmental optometry evaluation.

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

Student, an AGE girl, is a resident of the District of Columbia. Petitioner's Due Process Complaint, filed on March 16, 2012, named DCPS as respondent. The undersigned Hearing Officer was appointed on March 19, 2012. The parties met for a resolution session on April 25, 2012, but did not come to an agreement. The 45-day timeline for issuance of this HOD began on April 16, 2012. On April 17, 2012, the Hearing Officer convened a prehearing telephone conference with counsel to discuss the hearing date, issues to be determined and other matters.

The due process hearing was held before the undersigned Impartial Hearing Officer on May 9, 2012 at the Student Hearing Office in Washington, D.C. The hearing, which was closed to the public, was recorded on an electronic audio recording device. The Petitioner appeared in person, and was represented by PETITIONER'S COUNSEL. Respondent DCPS was represented by SPED COORDINATOR and DCPS COUNSEL.

The Petitioner testified and called, as witnesses, EDUCATIONAL ADVOCATE, INDEPENDENT OCCUPATIONAL THERAPIST, and OPTOMETRIST. DCPS called, as witnesses, SPED COORDINATOR, DIRECTOR OF LOW INCIDENCE DISABILITIES, DCPS OFFICE OF SPECIAL EDUCATION ("Program Director") and DCPS OCCUPATIONAL THERAPIST. The parties stipulated to admission, without objection, of Petitioner's Exhibits P-1 through P-10, P-20, P-21, P-22 and Respondent's Exhibit R-1 through R-10. DCPS declined to stipulate to admission of Exhibits P-11 through P-19, P-23, P-24 and P-25 and Petitioner did not seek to introduce these Exhibits.

Counsel for both parties make opening and closing statements. At the request of Petitioner's Counsel, the parties were granted leave to file post hearing memoranda on or before May 16, 2012. Petitioner's brief was filed on May 16, 2012. No brief was filed for DCPS.

## **JURISDICTION**

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

## **ISSUE AND RELIEF SOUGHT**

- WHETHER DCPS DENIED STUDENT A FAPE BY REFUSING PETITIONER'S REQUEST TO PROVIDE A DEVELOPMENTAL OPTOMETRY EVALUATION.

For relief, Petitioner seeks an order for DCPS to fund an Independent Educational Evaluation (“IEE”) developmental vision assessment of Student.

## **FINDINGS OF FACT**

After considering all of the evidence, as well as the arguments of counsel, this Hearing Officer's Findings of Fact are as follows:

1. Student is an AGE resident of the District of Columbia, where she lives with her Grandfather. Testimony of Grandfather.
2. Student was last determined eligible for special education and related services on December 7, 2010 under the primary disability classification Specific Learning Disability (“SLD”). Exhibit R-3.
3. Since October 2011, Student has attended CITY SCHOOL, her neighborhood school, where she is in the GRADE. Testimony of SPED Coordinator, Testimony of Grandfather. Prior to the current school year, Student attended NONPUBLIC SCHOOL in Washington, D.C. Testimony of Grandfather.
4. Student's November 3, 2011 Individualized Education Program (“IEP”) identifies Areas of Concern and Annual Goals for Academic-Mathematics, Academic-Reading, Academic-Written Expression, Communication/Speech and Language, and Motor Skills/Physical

Development. The IEP provides that Student receives 12 hours per week of Specialized Instruction, 120 minutes per week of Occupational Therapy (“OT”) and 120 minutes per week of Speech-Language (“S/L”) Pathology. All special education and related services are provided outside of the general education setting. Exhibit P-2. The IEP was amended on April 12, 2012 to add Extended School Year (“ESY”) goals and services. Exhibits R-3, P-9.

5. In January 2012, Petitioner’s ATTORNEY 1 contacted SPED Coordinator to state concerns over DCPS’ 2010 OT evaluation of Student. The attorney requested that DCPS fund an independent OT evaluation. When DCPS declined to fund the requested IEE, Petitioner filed a complaint for due process. In a March 1, 2012 settlement agreement (dated February 27, 2012), DCPS agreed to fund an IEE OT evaluation for Student and, within 30 days of receipt of the evaluation, to convene Student’s IEP team to review and revise Student’s IEP as necessary. Testimony of SPED Coordinator, Exhibit P-3.

6. Student’s independent OT evaluation was performed by OT THERAPIST on February 21, 2012. Exhibit P-4. OT Therapist observed, *inter alia*, that Student tended to have difficulty locating objects without head movement; that Student had difficulty teaming her eyes together with convergence as needed for near and far point copying; and that Student often tilted her head to one side or the other when she was attempting to complete writing or drawing tasks. OT Therapist recommended, *inter alia*, that Student be referred for a visual exam “to examine her inability to dissociate [her] eyes from her head, her saccadic eye movement, and her eye convergence. Exhibit P-4. DCPS received the OT Therapist’s report (the “IEE OT Evaluation”) on March 6, 2012. Testimony of SPED Coordinator.

7. On March 12, 2012, Petitioner’s Attorney 1 sent an email to DCPS to request that DCPS perform a comprehensive vision evaluation, to include a vision-tracking assessment,

or fund an IEE vision evaluation. SPED Coordinator responded that Student's IEP team should meet first to review the IEE OT Evaluation and then discuss the need for further evaluations.

Petitioner's ATTORNEY 2 replied that "today, we are requesting a comprehensive developmental optometry exam." Exhibit P-20.

8. On March 12, 2012, DCPS Program Director sent an email to Petitioner's Attorney 2 setting forth DCPS' procedures for addressing student's vision deficits. Program Director wrote,

In this case, the parent is requesting a comprehensive developmental optometry exam to further explore visual processing problems related to an underlying visual tracking disorder. . . . [T]he school district first screens students for vision or hearing deficits before proceeding to any other assessments as part of the comprehensive evaluation process. . . . If the vision screening is failed, the family must bring in the results of an eye medical exam. If the family cannot afford this exam or does not have medical insurance, DCPS will arrange one with Children's Hospital and pay for the assessment. If the eye medical exam reveals normal visual acuity (better than 20/70 and peripheral vision within normal limits), the rest of the evaluation goes forward. If the child requires corrective lenses, then those must be in place before the rest of the evaluation goes forward. Again, if the family cannot afford glasses, DCPS will take care of the purchase. Once the child's vision is within normal limits with or without correction the evaluation can proceed. If the eye medical exam reveals visual acuity [of] worse than 20/70 even with correction, and/or abnormal peripheral vision, the child would meet eligibility criteria for vision services. If, however, the child has vision within normal limits with or without correction, but still cannot process visual information, we test for a learning disability that affects reading. I have conducted a thorough review of [Student's] records. She is qualified for special education and related services as a student with specific learning disability. A comprehensive psychological exam revealed some scatter in cognitive abilities, but basically put Student in the very low/borderline range of cognitive and adaptive functioning. Because there was at least one standard deviation between her cognitive abilities and her academic performance, she met criteria for specific learning disability. There is strong evidence of executive functioning disorder, language comprehension and production deficits, and visual perception and visual motor difficulties. If a visual tracking disorder is now suspected, this becomes a medical issue. School districts are not legally obligated to fund medical evaluations nor are school districts obligated to fund medical treatments and therapies that can only be performed by properly certified medical personnel. . . . If the family presents a report from a qualified developmental or behavioral optometrist that indicates [Student] has a visual tracking problem that requires therapy, the family will need to pay for that assessment and get her that therapy from an optometrist trained to diagnose and treat eye muscle coordination problems. Such therapy enables a child to gain control of her eye muscle coordination

and build eye teaming skills necessary for success in school. DCPS will provide vision services that give [Student] the accommodations, assistive technology, and specialized instruction needed to access the general curriculum and make meaningful progress. . . .

Exhibit P-20.

9. On March 13, 2012, Petitioner's Attorney 2 replied by email to Program Director that there needed to be no further communication about the matter other than the issuance of an IEE authorization by DCPS. The attorney put DCPS on notice that they were drafting a due process hearing request. Exhibit P-20. Petitioner's due process hearing request was filed on March 16, 2012. Exhibit P-5.

**CONCLUSIONS OF LAW**

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

**Burden of Proof**

The burden of proof in a due process hearing is the responsibility of the party seeking relief – the Petitioner in this case. *See* D.C. Regs. tit. 5-E, § 3030.3. *See, also, Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 536, 163 L.Ed.2d 387 (2005); *Hester v. District of Columbia*, 433 F.Supp.2d 71, 76 (D.D.C. 2006).

**ANALYSIS**

**DID DCPS DENY STUDENT A FAPE BY REFUSING PETITIONER'S REQUEST TO PROVIDE A DEVELOPMENTAL OPTOMETRY EVALUATION?**

The sole issue in this case is whether DCPS denied Student a FAPE by refusing Petitioner's March 12, 2012 request for a comprehensive vision evaluation of Student. Petitioner requested the vision evaluation shortly after providing DCPS the IEE OT evaluation funded pursuant to the March 1, 2012 settlement agreement. DCPS contends that Petitioner's request for

the developmental optometry evaluation was premature and that Student's IEP team should first have the opportunity to review the IEE OT Evaluation to identify whether additional data was needed to determine Student's educational needs. DCPS' Program Director also testified at the due process hearing, that the IDEA does not require DCPS to fund an optometry evaluation for Student, because such evaluations are "medical in nature." For the reasons explained below, I find that DCPS is correct that it was not required to conduct an optometry evaluation before Student's IEP team met to review the IEE OT Evaluation. However, I also find that DCPS' contention, that the IDEA does not require it to provide an optometry evaluation, even if needed by Student to benefit from special education, is erroneous.

Before reaching the issue of whether DCPS denied Student a FAPE, by not providing a developmental optometry evaluation before Student's IEP team met to review the IEE OT Evaluation, I find it appropriate to address DCPS' apparent erroneous understanding that it is never required, under the IDEA, to provide a vision assessment by an optometrist or a medical doctor. At the due process hearing, Program Director testified that it was the parents' responsibility to obtain an optometry examination, although, in the case of a child whose parents could not afford to pay for an optometry examination and did not have Medicaid or insurance coverage, DCPS would arrange for the child to be examined at Children's National Medical Center at the LEA's expense. Program Director insisted that DCPS is not obligated under the IDEA to fund vision evaluations that can only be performed by properly certified medical personnel. Program Director's understanding is erroneous.

The IDEA requires that the LEA must ensure that the child with a suspected disability 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. *See* 34 Code of Federal Regulations, Part 300—Assistance to States for the Education of Children with Disabilities (“34 CFR”), § 300.304(c)(4). The evaluation of a child with a disability must be sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified. *See* 34 CFR § 300.304(c)(6); Analysis and Comments, Federal Register Vol. 71, No. 156 (August 14, 2006) (“Analysis and Comments”) at page 46643. The evaluation of a child must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. 34 CFR § 300.304(b)(3). Finally, an LEA must provide, as related services, “medical services,” provided by a licensed physician for diagnostic and evaluation purposes, to the extent needed to determine a child with a disability’s medically related disability that results in a need for special education and related services. *See* 34 CFR § 300.34(c)(5). The IDEA stipulates that such medical services must be for diagnostic and evaluative purposes and required to assist a child with a disability to benefit from special education to be considered a related service. Analysis and Comments at page 46581. Accordingly, if an optometric examination is needed by the IEP team to determine Student’s educational needs and/or the service is required to assist Student to benefit from special education, the IDEA requires DCPS to provide this evaluation whether or not the Petitioner has the ability to pay.<sup>2</sup>

DCPS was not required to conduct additional evaluations of Student before the IEP team reviewed the March 6, 2012 OT IEE.

Under 34 CFR § 300.303(a), an LEA must conduct a reevaluation of a child with a

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<sup>2</sup> An LEA is encouraged to use public benefits or insurance to the extent possible to provide or pay for services special education and related services provided to a child with a disability. However, if another agency fails to provide or pay for the services, the LEA must provide or pay for such services in a timely manner. *See* 34 CFR § 300.153(b); Analysis and Comments, *supra*, page 46609.

disability,

(1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(2) If the child's parent or teacher requests a reevaluation.

34 CFR § 300.303(a). As part of any reevaluation, the IEP team and other qualified professionals, as appropriate, must review existing evaluation data. On the basis of that review, and input from the child's parents, the IEP team and other qualified professionals must identify what additional data, if any, are needed to determine whether the child continues to be a child with a disability, and the educational needs of the child; the present levels of academic achievement and related developmental needs of the child; whether the child continues to need special education and related services; and whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum. *See* 34 CFR § 300.305(a); *See, also, Letter to Sarzynski*, 51 IDELR ¶ 193 (OSEP 2008). A reevaluation may generally occur not more than once a year, unless the parent and the public agency agree otherwise. *See* 34 CFR § 300.303(b). A parent, who disagrees with an evaluation obtained by the LEA has the right to request an independent educational evaluation at public expense, subject to the limitation that the parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees. 34 CFR § 300.502(b).

In this case, Student was reevaluated in December 2010. In January 2012, Petitioner's Attorney 1 notified DCPS that Petitioner disagreed with the December 2010 reevaluation and Petitioner exercised his right to obtain a DCPS-funded independent OT evaluation. DCPS

agreed in a March 1, 2012 settlement agreement to fund an independent OT reevaluation and, within 30 days of receipt of the independent evaluation, to convene Student's IEP team to review and revise Student's IEP as necessary. Petitioner provided the IEE OT Evaluation report to DCPS on March 6, 2012. Under the settlement agreement and 34 CFR § 300.305(a), Student's IEP team was then required to review the IEE OT Evaluation, and on the basis of that review and input from the Petitioner, to identify what additional data, if any, were needed to determine the educational needs of Student and whether any additions or modifications to her special education and related services were needed. After receiving the IEE OT Evaluation, DCPS sought to convene Student's IEP team to review the data. However, Petitioner's Counsel insisted that DCPS provide a comprehensive developmental optometry evaluation before the IEP team met. When DCPS responded that Student's IEP team should meet first to review the IEE OT Evaluation and then discuss the need for further evaluations, Petitioner filed the present due process complaint.

Under the IDEA, the IEP team is charged with identifying what additional data, if any, are needed to determine the educational needs of a child with a disability. *See* 34 CFR 300.305(a). The IEP team makes that determination after reviewing existing evaluation data on the child, including evaluations and information provided by the parents. *Id.* Assuming, without deciding, that Petitioner is correct that Student needs a developmental optometry evaluation, counsel cites no authority for requiring DCPS to conduct the evaluation before Student's IEP team convenes to review the IEE OT Evaluation and other existing data. I find that DCPS' offer to convene Student's IEP team to review the IEE OT Evaluation, and then discuss the need for further evaluations, complied with the parties' March 1, 2012 settlement agreement and the requirements of the IDEA. Petitioner's argument to the contrary ignores the requirements of the

settlement agreement and the plain language of 34 CFR § 300.305. DCPS prevails on this issue.

**ORDER**

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

1. Within 10 school days of entry of this order, DCPS shall convene Student's IEP team to review the IEE OT Evaluation and revise Student's IEP as necessary;
2. On the basis of its review of the IEE OT Evaluation, other existing data and input from Petitioner, the IEP team shall identify what, if any, additional data is needed to determine Student's educational needs. In the event the IEP team determines that it needs a vision evaluation by an optometrist or other medical professional to determine Student's educational needs, and/or the service is required to assist Student to benefit from special education, subject to obtaining Petitioner's informed consent, DCPS shall promptly arrange for and fund this evaluation; and
3. All other relief requested by Petitioner herein is denied.

Date: May 18, 2012

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).