

**DISTRICT OF COLUMBIA OFFICE OF THE STATE SUPERINTENDENT
STATE ENFORCEMENT AND INVESTIGATION DIVISION
OFFICE OF COMPLIANCE AND REVIEW**



HEARING OFFICER DECISION

SHO Case No. 2009-1416

- against -

District of Columbia Public Schools,
Respondent.



I. Introduction

Petitioners assert that the Respondent District of Columbia Public Schools ("DCPS") has denied the Petitioner Student ("Student") a Free Appropriate Public Education ("FAPE") by failing to comply with the Petitioner Parent's request that DCPS either conduct or fund a neuropsychological evaluation as part of a pending reevaluation of the Student.

For the reasons stated, and in accordance with the conditions specified below, Petitioners are authorized to obtain an independent neuropsychological evaluation as part of the pending reevaluation of the Student.

II. Jurisdiction

The Student is a resident of the Respondent school district and has been identified by Respondent as a child with a disability in accordance with the Individuals with Disabilities Education Act ("IDEA") and as such is entitled to receive a FAPE. At all relevant times, Respondent DCPS was and is responsible for providing the Student with a FAPE.

The Petitioner Parent is afforded, and has exercised her right under applicable law to initiate a complaint with respect to an issue concerning the identification, evaluation and placement of the Student by requesting a due process hearing that alleges the denial of a FAPE for the Student, by reason of the Respondent DCPS' failure to comply with the Parent's request that DCPS either conduct or fund a neuropsychological evaluation as part of a pending reevaluation of the Student's educational needs. 28 U.S.C. §1415 (b)(6); 34 C.F.R. §300.507; CDCR 5-3029.

I was appointed to hear this matter by Respondent on October 20, 2009, in accordance with 28 U.S.C. §1415(f)(1)(A), (f)(3)(A)-(D).

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III. Procedural History

Petitioners commenced this matter by filing a Due Process Complaint Notice ("DPCN") dated October 16, 2009. PE-1.¹

By Order issued on October 20, 2009, the parties were required to advise the Hearing Officer of the waiver of or scheduled date for, as well the results of, the mandated resolution meeting. PE-4.

The parties participated in a resolution meeting on November 4, 2009. No resolution was reached. The parties did not advise the Hearing Officer of this meeting in accordance with the Order of October 20, 2009.

Respondent filed a Response to the DPCN, dated November 4, 2009, which essentially denied the allegations in the DPCN and argued that Petitioners were not entitled to the requested relief. PE-3.

On November 19, 2009, a Pre-Hearing Conference was held. Counsel for the respective parties appeared by telephone. A Pre-Hearing Conference Summary and Order, dated November 20, 2009 was subsequently issued, which in significant part scheduled the due process hearing for December 3, 2009. The Order also stated two issues to be addressed and determined at the due process hearing. PE-5.

On November 24, 2009, the parties exchanged their respective five-day disclosures of documentary evidence and prospective witnesses.

On December 2, 2009, Petitioner served "Petitioners' Pre-Hearing Memorandum or in the Alternative Petitioners' Motion for Summary Judgment" ("Memorandum/Motion").² The document is listed in Appendix C.

The due process hearing commenced and concluded on December 3, 2009.

As a preliminary matter I denied Petitioners' proposed Motion for Summary Judgment, but further advised that Petitioners' Memorandum/Motion would be considered to the extent that it constituted a memorandum addressing the legal issues raised in this matter.³

¹ References to Petitioners' Exhibits 1-15 are noted throughout as "PE-(applicable exhibit no.). References to Respondent's Exhibits 01-05 are noted throughout as "DCPS-(applicable exhibit no.); Respondent's Ex. 1 is admitted as Petitioners' Ex. 7.

² Service was initially made on December 1, 2009 on the counsel who had previously represented Respondent in this matter. Service on the substituted Respondent Counsel was made on December 2, 2009.

³ My denial of the proposed motion is discussed in Section IV below.

The parties agreed to the introduction of Petitioners' Exhibits 1 through 15, and Respondent's Exhibits 01 through 05. The exhibits are listed in Appendix A.

Appearing for Petitioners was the Parent, and an Educational Advocate. Respondent chose not to present any witnesses. Counsel appeared on behalf of both parties. Counsel and all witnesses are identified by name and affiliation in Appendix B.

IV. Discussion

A. Petitioners' Proposed Motion for Summary Judgment.

The status of the proposed Motion for Summary Judgment was discussed as a preliminary matter at the opening of the hearing. At that time, the parties' counsel stated their respective positions in support of and in opposition to the proposed Motion, and I stated my ruling that to the extent that Petitioners' submission constitutes a Motion for Summary Judgment, it is denied.

Fundamentally, the Motion is untimely. Applicable procedures permit the submission of pre-hearing motions by no later than the 5-day deadline for the submission for the disclosure of evidence and witnesses. §401(4) Standard Operating Procedures, Special Education Student Hearings and Appeals, Revised February 8, 2006. The parties' 5-day disclosures in this matter were due on or before November 24, 2009. Petitioners' Memorandum/Motion was effectively served on Respondent on December 2, 2009.⁴ Although applicable procedures provide me with discretion to grant the Motion upon a showing of good cause, I decline to accept the Motion for the following reasons.

The Motion: (1) is not consistent with or anticipated by the discussions of the parties at the Pre-Hearing Conference. At the conference the parties were advised that they may wish to brief the presented legal issues and that any written memoranda would be due on or before the scheduled hearing date. No discussions were held regarding the submission of any pre-hearing motions;⁵ (2) Petitioners purport to move pursuant to Rule 56(c) of the Federal Civil Rules of Procedures ("FCRP"), but provide no authority for the application of the FCRP to these proceedings, see §401 Standard Operating Procedures; and (3) the proposed Motion would not support judicial economy. A decision in favor of Petitioner would resolve the matter. However, a denial of summary judgment would require that the matter proceed to a hearing on the merits, and result in the concomitant delay in rescheduling the hearing and issuing a Hearing Officer Decision. On December 3, 2009, I assessed that the parties were already present at hearing, and presumably

⁴ See note 2 supra.

⁵ The Pre-Hearing Conference Summary and Order does not accurately reflect the parties' discussions in this regard. It does indicate that no motions were contemplated, but fails to indicate the discussions concerning the possible submission of legal memoranda addressing the presented issues. PE-5-5.

prepared to proceed. Accordingly, the legal issues raised by the proposed Motion as well as all of the other legal and factual issues presented by the matter could be argued and reasonably determined within the current applicable timelines.⁶

As I noted at the hearing, to the extent that Petitioners' written submission is a legal memorandum addressing the legal issues raised in this matter it was considered in the course of rendering this decision.

B. Issues Presented

The Pre-Hearing Conference Summary and Order in this matter identified two issues to be addressed and determined at hearing.

Should a finding be made that Respondent denied the Petitioner student a FAPE, in accordance with applicable law and regulation, by failing, in accordance with the Petitioner Parent's request made on July 13, 2009, to conduct the neuropsychological evaluation as part of a reevaluation of the Petitioner Student's needs.

Should an Order be issued, in accordance with applicable law and regulation, requiring Respondent to either conduct or fund a neuropsychological evaluation as part of a reevaluation of the Petitioner student, in accordance with Petitioner Parent's request of July 13, 2009. PE-5-5.

C. Findings and Conclusions of Law.

The evidence consists of the limited testimony of two witnesses called by Petitioners, and the various Exhibits submitted by the parties.

The Testimonial Evidence

The parties disclosed respective witnesses lists, with Petitioner listing 6 potential witnesses, and Respondent 14 potential witnesses. However, Petitioner presented only two witnesses, the Parent and Petitioners' Educational Advocate and then rested. Respondent presented no witnesses prior to resting its case.⁷

⁶ With respect to this basis, I was unaware at the start of the hearing that the parties would not call even a reasonable number of their disclosed witnesses and present either very limited testimony, or none at all.

⁷ At hearing, Respondent's counsel indicated the intent to present a single witness, a psychologist with no personal knowledge of the Student. The witness was unavailable at the time Petitioners unexpectedly rested their case, as she was appearing as a witness in another due process hearing and, in reasonable anticipation of the presentation of Petitioners' case, had been advised to be ready to testify later that morning. Accordingly, the hearing was adjourned for approximately one hour to await her availability.

The testimony of Petitioners' witnesses is essentially not contradicted. The Parent, who could not attend the hearing due to employment-related restrictions, appeared by telephone for the purpose of confirming her counsel's representation and the purpose of the hearing. She further testified that she requested that DCPS conduct a neuropsychological evaluation of the Student at two meetings, one in the summer of 2009 and again at a more recent one held in November 2009. Respondent declined to cross-examine the Parent.

Petitioners' Educational Advocate testified that he possess a B.A. in Psychology and an M.A. in Social Work, has 22 years experience working with disabled children and has served as the Student's Educational Advocate for the past 8 months. He described his experience concerning neuropsychological evaluations as based on his review of hundreds of them and stated that he had never administered one. He testified regarding his participation on behalf of the Petitioners at, and the events of, the July 13, 2009 MDT Meeting and the November 4, 2009 resolution meeting. He further described the basis for the requested neuropsychological evaluation and the responses of the DCPS Non-Public School Representative who attended the referenced meetings. On cross-examination, the Educational Advocate opined on the purpose of a neuropsychological, in general and specifically for the Student. He also opined on the issue of overlap between neuropsychological and psychoeducational evaluations.⁸

The Documentary Evidence

With respect to the exhibits, neither party objected to the other's submissions, Respondent even adopted Petitioners' Exhibit PE-7 as its Exhibit DCPS-01.

The Relevant Facts

At all relevant times, Respondent has classified Petitioner Student as a child with a disability. In particular, for the 2009-2010 school year Respondent has continued to recommend that the Student be classified with a Specific Learning Disability and receive a special education program consisting of 27.5 hours per week of full time academic support along with the related services of speech and language therapy, social/emotional counseling and special transportation. PE-7; PE-14-1.

However, at the conclusion of the adjournment, Respondent's counsel stated that no witness would be presented on behalf of DCPS, and Respondent rested.

⁸ The Hearing Officer takes notice of information published by the American Psychological Association, which contradicts portions of the witness' testimony on cross-examination regarding the purposes of neuropsychological evaluations. E.g., Description of the specialty of clinical neuropsychology approved by the APA Council of Representatives, p.140-50 (1996, re-approved 2003).

The Student, who recently turned 18 years of age, attends 12th grade at a private school for children with disabilities, at public expense.⁹ PE-7-1, 7-4; PE-14-1.

Previous cognitive assessments have consistently determined that his cognitive functioning basically falls within the borderline to deficient range. PE-12-1; PE-14. However, the November 2009 Comprehensive Psychoeducational Evaluation completed at DCPS' expense for purposes of the pending reevaluation, records that the Student achieved solid low average scores on an current assessment of his intellectual functioning. This apparent and significant discrepancy with the results of his previous assessments is not explained. PE-14-5.

His most recent Individualized Education Program ("IEP") records the following grade equivalent academic scores: math computation - 4.6; word reading - 6.5; sentence completion -3.4; spelling - 7.3. PE-7-20.¹⁰

On a November 2009 Comprehensive Psychoeducational Evaluation he achieved a Reading Composite score of below average, and grade equivalent scores of: Math Concepts - 2.1; Math Computation - 5.2; Spelling Expression - 5.1; Written Expression - 2.0. PE-14-6.

It is presently anticipated that the Student will graduate at the conclusion of the 2009-2010 school year, as he requires only an additional 6.5 credits. DCPS-02-2.

On July 13, 2009, a Multidisciplinary Team ("MDT") meeting was held in order to review and update the Student's IEP. The meeting was attended by the Parent and Petitioners' Educational Advocate, the Associate Director of the Student's private school along with the Student's Special Education Teacher, Social Worker and Speech Pathologist, and a DCPS Non-Public School Representative with the authority to make decisions on behalf of Respondent. DCPS-02.

The participants discussed the Parent's concerns regarding the Student's pending graduation, with the Parent inquiring about the feasibility of his remaining in high school for an additional year and what home-based efforts could be made in order to improve his grade levels. More importantly, the participants discussed the need for additional evaluations to reevaluate the Student's educational needs, assess the his progress and appropriately plan for his transition to a post-secondary educational setting that would have the capacity to provide instruction for students with his level of cognitive and academic deficits. DCPS-02.

The participants agreed that a new speech and language evaluation, vocational II assessment and a reading specialist assessment (described as other than the RAT

⁹ The school is identified in Appendix C.

¹⁰ The Student's private school assessed him with the Wide Range Achievement Test 4 in Spring 2009. The results of that evaluation are incorporated into the July 13, 2009 IEP. PE-7-21.

[sic]) would be ordered. It was apparently anticipated that the participants would reconvene, at the Parent's request, in four months to consider the results. DCPS-02; PE-10; PE-14-6.

There was one area of disagreement. In response to information from the participants from the Student's private school describing his continued problems with executive functioning, memory, retention of information, organization and assignment completion, the Parent's Educational Advocate requested that DCPS provide for a new neuropsychological evaluation in order for these areas to be reassessed. It was further requested that this evaluation be completed by October 15, 2009. DCPS-02-3, 4. The Student had received neuropsychological evaluations in 2003 and March of 2006. PE-12.

According to the testimony of Petitioner's Education Advocate, the DCPS Non-Public School Representative denied this request. The MDT Meeting notes record that DCPS believed that a psychoeducational evaluation would be sufficient to determine the Student's cognitive progress, and would check the criteria/guidelines for a neuropsychological, and that the MDT would need to then reconvene in order to determine if such an evaluation is warranted. DCPS-02-2, 3, 4. The DCPS Representative further indicated that the Petitioner could not dictate either what evaluations should be conducted as part of the reevaluation or the timelines for the completion of the evaluations. DCPS-02-3.

Petitioners' Educational Advocate testified that the DCPS Non-Public School Representative also expressed opposition to the conduct of the neuropsychological on the grounds that sufficient data was available to plan for the Student in this regard. He further testified that the Representative did not provide or reference any specific data in support of that position.

The Parent provided written consent for a reevaluation, dated July 13, 2009. PE-9.

By letter dated August 27, 2009, Petitioners' counsel, "as a follow-up to the [July 13, 2009] MDT Meeting", requested DCPS to provide copies of a neuropsychological and speech and language evaluation on or before September 13, 2009. PE-13. Petitioners' allegation that Respondent did not reply is not rebutted. Petitioners' Memorandum/Motion, p.3.

On October 6, 2009, Petitioners' initiated these proceedings by filing a Due Process Complaint Notice. PE-2.

On November 4, 2009, the parties held a resolution meeting. The participants were the Student, the Parent and two of Petitioners' Educational Advocates (including the one who attended the July 13, 2009 MDT Meeting), the Director of the Student's private school along with a Social Worker and a Transition Coordinator, as well as

the same DCPS Non-Public School Representative who attended the July 13, 2009 MDT Meeting. PE-11.¹¹

The participants discussed the Student's progress and his prospects for attending college. The Parent requested, and the team agreed, to hold 2 more meetings prior to the Student's graduation, in December 2009 and March 2010. PE-11.

More importantly, and consistent with the Petitioners' request for a due process hearing, the issue of the Parents' outstanding request for a neuropsychological was also discussed. The notes merely state that the evaluation was "not completed due to DCPS felt it was not warranted". PE-11. Petitioners' Educational Advocate testified that the DCPS Non-Public School Representative reiterated the position that sufficient data existed to negate the need for the neuropsychological, but once again referenced no specific data in support of that position.

The notes also record that the new speech and language evaluation had been completed¹², and that DCPS would provide Petitioners with written authorization to obtain the previously agreed upon vocational II assessment as well as a psychoeducational evaluation. The notes further record that the psychoeducational was warranted on the grounds that the most recent one, completed in 2003, was outdated. PE-11.

By letter dated November 4, 2009, DCPS advised Petitioners that it would fund an independent speech and language evaluation, comprehensive psychoeducational evaluation and a vocational II assessment. DCPS-04.

An independent Comprehensive Psychoeducational Evaluation was completed on November 20, 2009. PE-14-2 through 13. By letter dated November 23, 2009, Petitioners provided a copy of the written report of the Evaluation to Respondent. PE-14-1.

Legal Analysis

With respect to reevaluations, the applicable provisions of the IDEA prescribe, in pertinent part, that:

A local educational agency shall ensure that a reevaluation of each child with a disability is conducted in accordance with subsections (b) and (c)
(i) if the local educational agency determines that the educational or related services needs, including improved academic achievement and functional

¹¹ The Exhibit records notes of the meeting, but utilizes a form that is apparently utilized by DCPS to record the notes taken at an MDT Meeting.

¹² The November 20, 2009 independent Comprehensive Psychoeducational Evaluation also records that the evaluation has been completed. PE-14-2. The speech and language evaluation was not introduced into evidence.

performance, of the child warrant a reevaluation; or
(ii) if the child's parents or teacher requests a reevaluation. 28 U.S.C. §1414(a)(2)(A); 34 C.F.R. §300.303(a); see also CDCR 5-3005.7.

As part of... any reevaluation under this section, the IEP Team and other qualified professionals, as appropriate, shall
(A) review existing evaluation data on the child, including (i) evaluations and information provided by the parents of the child; (ii) current classroom-based, local, or State assessments, and classroom-based observations; and (iii) observations by teachers and related services providers; and
(B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine (i)...; (ii) the present levels of academic achievement and related developmental needs of the child; (iii) ... in the case of a reevaluation of a child, whether the child continues to need special education and related services; and (iv) 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 individualized education program of the child and to participate, as appropriate, in the general education curriculum. 28 U.S.C. §1414(c)(1); 34 §300.305(a); see also CDCR 5-3005.3.

The local educational agency shall administer such assessments and other evaluation measures as may be needed to produce the data identified by the IEP Team under paragraph (1)(B). 28 U.S.C. §1414(c)(2); 34 C.F.R. §300.305(c); see also CDCR 5-3005.5.

If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs, the local educational agency -
(A) shall notify the child's parents of (i) that determination and the reasons for the determination; and (ii) the right of such parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child's educational needs; and
(B) shall not be required to conduct such an assessment unless requested to by the child's parents. 28 U.S.C. §1414(c)(4); 34 C.F.R. §300.305(d); see also CDCR 5-3005.6.

The District Court for the District of Columbia has considered and applied certain of these provisions to claims involving parental requests for reevaluations similar to the one presented here.

In Cartwright v. District of Columbia, 267 F. Supp. 83 (D.D.C. 2003), the parent initiated a due process hearing based on DCPS' alleged failure to honor the parent's written request for a comprehensive reevaluation. The hearing officer dismissed the parent's request finding that DCPS was not obligated to complete new evaluations upon request, that it was necessary to show that conditions warranted

them and, ultimately concluded that the circumstances did not warrant the student's reevaluation. In the process, the hearing officer interpreted the applicable Federal regulation, then 34 C.F.R. §300.536(b),¹³ to require the application of "clearly warranted" standard to the parent's request for a reevaluation. The parent appealed.

In granting the parent's motion for summary judgment, the District Court held that the hearing officer's interpretation was in direct conflict with the wording of the regulation. The District Court held that the plain language of the regulation made it clear that the standard applied only to a general request for a reevaluation of a child by a person or agency and that a request made by either a teacher or parent is stated in a separate clause "to which no articulated standard applies." The District Court further held that the plain language of the regulation imposed no condition precedent to be met by a parent requesting a reevaluation, and accordingly, DCPS' failure to comply with the parental request was a violation of the regulation. Further, the District Court found that the lack of any ambiguity in the regulatory language negated any consideration of the "reasonableness" of the hearing officer's interpretation. DCPS was ordered to promptly conduct the requested reevaluation.

Thereafter, in Herbin by Herbin v. District of Columbia, 362 F. Supp.2d 254 (D.D.C. 2005), the parent requested her son's charter school to conduct a comprehensive reevaluation that included five specific assessments, and advise her of the school's intended action within 30 days. Receiving no response, the parent initiated a due process hearing.

Similar to the situation presented in Cartwright, the hearing officer, in significant part, interpreted applicable law, §1414(a)(2) of the IDEA, to require the party requesting the reevaluation to show that conditions warrant one, concluding that the school was not obligated to complete the requested new evaluations upon request in the absence of a showing that conditions warrant their completion.

The District Court, consistent with the holding in Cartwright, held that the clear language of the statute and the implementing regulation, then 34 C.F.R. §300.536(b)¹⁴ did not permit the hearing officer's interpretation, which imposed "triggering conditions to warrant a reevaluation upon parental request."

The District Court further dismissed the defendant's argument that the hearing officer's interpretation was supported by policy considerations, rejecting the argument that a limitation on the conduct of reevaluations in the absence of articulated substantive supporting reasons would conserve available limited time and economic resources. The District Court declined to "create conditions where the statute unambiguously expresses none." Accordingly, the District Court granted

¹³ Re-codified at 34 C.F.R. §300.303(a), effective October 13, 2006. 71 Fed. Reg. 46540 (August 14, 2006). The governing statutory authority is found at 28 U.S.C. §1414(a)(2).

¹⁴ See note 13, supra.

summary judgment to the parent and directed the defendant to conduct the requested reevaluation, to the extent that the parent still sought to obtain one.

Accordingly, controlling precedent appears to provide a swift resolution of this matter. The evidence establishes that, similar to the situation in Herbin and Cartwright, the Parent has made an unambiguous request for a reevaluation consisting of more than one assessment, including a neuropsychological. However, the present matter is distinguishable for reason that here DCPS agrees that a reevaluation should occur and has taken affirmative steps to provide for a speech and language evaluation, a psychoeducational evaluation and a vocational II assessment. But does this distinction require a different result?

In Hanson by Hanson v. Board of Education of Ann Arundel County, 212 F. Supp.2d 474 (D. Md. 2002), The parents sought to apply §1414(c)(4) of the IDEA to require the district to conduct an updated psychological evaluation as part of a reevaluation.

As part of the student's reevaluation process the school district obtained a report of the student's academic abilities, a speech and language assessment and a classroom observation. An updated psychological examination was not conducted. A new IEP was ultimately developed at an annual review meeting. Thereafter, the district proposed changing the student's placement and the parents initiated due process proceedings to review the student's evaluation and the recommended change in placement. In pertinent part, the parents alleged the school district's failure to conduct an updated psychological examination and asserted that §1414(c) of the IDEA required the district to conduct the examination. The hearing officer found for the school district and the parents appealed.

In granting summary judgment for the school district, the District Court for Maryland found that the parents misread §1414(c) and determined that it does not require re-testing in all areas of suspected disability. The Hanson court concluded that the district did not have to comply with §1414(c)(4) for reason that the parties did not dispute that the student continued to be a child with a disability, the school district determined that additional data in certain areas was needed, which required re-testing but not a new psychological examination. The Hanson court further examined the record, concluded that no procedural violation occurred when the psychological examination was not conducted and determined that the hearing officer did not err in concluding that it was not necessary to conduct a psychological reevaluation of the student.

Neither Herbin, nor Cartwright, apply §1414(c) to the reach their respective holdings, and the section is not factually applicable to presented facts. But the present matter is factually similar to the one in Hanson, in the broad sense that DCPS concurs that a reevaluation is warranted and has undertaken to provide assessments, but not an updated neuropsychological evaluation. However, the reasoning of the District Courts in Herbin and Cartwright indicate that the District Court for the District of Columbia would not reach a conclusion regarding DCPS'

obligations under §1414(c) similar to the one stated in Hanson. To understand this, a review of the reevaluation process is required.

Herbin and Cartwright recognize that the IDEA provides parents with the right to request a reevaluation of their child, and that such right is not subject to a showing of any conditions precedent to warrant its conduct by a school district. 28 U.S.C. §1414(a)(2); e.g., Herbin v. DC, 352 F. Supp.2d 254.

Once a parent requests a reevaluation, the IDEA requires, in pertinent part, that the IEP team and other qualified professionals, as appropriate, conduct a review of existing evaluation data on the child...and on the basis of that review, and input from the parents, *identify what additional data, if any, are needed to determine...*[the continued eligibility of the child for special education and related services and/or the child's educational needs]. 28 U.S.C. §1414(c)(1)(emphasis added). Once this process is complete, there are only a few possible outcomes.

If a determination is made that no additional data is needed, the IDEA provides that the district must notify the parent of that determination, the reasons for it and the right of the parent to request an assessment, §1414(4)(A), and the apparent unqualified right to have the district conduct the requested assessment. §1414(4)(B). The language in §1414(4)(B) is similar to that in §1414(a)(2), in that it also does not specify any conditions precedent to the district's obligation to conduct the requested assessment, save for the parental request.

If the parties agree on the content of the additional data, there is no controversy to determine at hearing. Where the parties disagree, as they do in the present matter, the adoption of the position articulated by the Hanson court precludes an unqualified parental right to a requested assessment. In Hanson, the parental request for an updated psychological assessment is essentially denied for reason that it is found to be unnecessary to determine the student's educational needs. The Maryland District Court also finds that the student experienced no harm as a result of the failure to conduct an updated psychological assessment. In the process, the Hanson court clearly applied a condition precedent to determine the district's need to comply with the parent's request for an updated psychological assessment. Hanson v. BOE of Ann Arundel County, 212 F. Supp.2d 474.

Is such an analysis and determination consistent with the controlling precedent in this District? It is this Hearing Officer's opinion that the answer is that it is not.

In Herbin, the District Court for the District of Columbia determined that the parent's basic right to request a reevaluation, consisting of five discrete assessments, could not be made subject to a condition precedent that would require the parent to make a showing that such assessments are warranted by the facts and circumstances. In the process, the District Court reiterated its previous finding in Cartwright, that the parent's basic right to obtain a reevaluation of their child, as

stated in §1414(a)(2), simply does not contain any qualifications. Herbin v. District of Columbia, 362 F. Supp.2d 254.

It is clear that at least one result of the application of the reasoning articulated in Hanson would afford a school district an opportunity to limit the parent's basic right to a reevaluation, by simply agreeing to conduct a reevaluation and then declining to conduct one or more requested assessments on the grounds of necessity. The district's action would thereby impose a condition precedent on a parental request for a reevaluation that contradicts the meaning and import of the holding in Herbin. See Herbin v. District of Columbia, 362 F. Supp.2d 254; see also Cartwright v. District of Columbia, 267 F. Supp. 83.

Accordingly, I find that the acceptance of Respondent's assertions that it is not obligated to provide the requested neuropsychological evaluation on the grounds that either sufficient data is allegedly already available to plan for the Student's needs, and/or that a comprehensive psychoeducational evaluation would provide the necessary data, would effectively impose a condition precedent for DCPS' compliance with the Parent's request, i.e., a showing that the requested neuropsychological evaluation is warranted by the facts and circumstances. Consistent with the determinations in Herbin and Cartwright, neither this Hearing Officer, nor Respondent, has the authority to impose such a "triggering condition" on Respondent's obligation to comply with the parents' unambiguous request for an updated neuropsychological evaluation. E.g., Herbin v. District of Columbia, 362 F. Supp.2d 254; 28 U.S.C. §1414(a)(2)(A).¹⁵

Respondent is therefore directed to conduct the requested neuropsychological evaluation as part of the pending reevaluation. The evaluation should, in part, explore the significant discrepancy between the results of intelligence testing obtained on the Weschsler Abbreviated Scale of Intelligence in November 2009, where the Student achieved a Full Scale IQ score of 80, with the results of earlier intelligence testing conducted in 2000 (FSIQ of 64) and 2006 (FSIQ of 58).

Further, in light of the fact that Petitioners initially requested that the neuropsychological evaluation be completed by October 15, 2009, and the parties have previously agreed to reconvene MDT meetings in December 2009 and March 2010, the parties are directed to adhere to the timelines established below for the conduct of the neuropsychological and the completion of the reevaluation.

¹⁵ The statute's express limitation, which constrains the conduct of a reevaluation to a no more than once annually, or at least once every three years, unless the parent and the LEA agree to a different schedule, is not applicable to this matter. 28 U.S.C. §1414(a)(2)(B).

V. Order

It is ORDERED that:

1. Petitioner is hereby authorized, as of the date of this Decision, to obtain an independent neuropsychological evaluation at public expense, consistent with the rates established by the Chancellor in the Directive issued on July 18, 2008.
2. Upon Petitioners receipt of a copy of the written report of the completed evaluation, Petitioners shall provide a copy of the written report to Respondent, by providing a copy to the Non-Public School Special Education Coordinator assigned to the Student's private school and a copy to the OSE Resolution Team in the DCPS Office of Special Education. Petitioners shall obtain and maintain written proof of its provision, and Respondent's receipt, of the written report.
3. Within 30 days of Respondent's receipt of the written report of the independent neuropsychological evaluation and a copy of the independent vocational II assessment, whichever is later, Respondent shall convene an MDT meeting to consider the results of the neuropsychological evaluation, and the results of all other evaluations and assessments conducted for purposes of the reevaluation, as well as any other relevant information available to the MDT, and complete the Student's reevaluation.

All other requests for relief are DENIED.

IT IS SO ORDERED.

DATED: December 10, 2009

/s/ Paul Ivers
Hearing Officer

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