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

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by her Parent,

Petitioners,

- against -

District of Columbia Public Schools,

Respondent.

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HEARING OFFICER DECISION

SHO Case No.

OSSE
STUDENT HEARING OFFICE
2010 JAN 25 PM 4:03

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 for a neuropsychological evaluation of the Student as part of a pending reevaluation of the Student. Upon consideration of the arguments and evidence submitted by the parties, Petitioners' request for an independent neuropsychological evaluation is granted in accordance with the terms of the Order made below.

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 provide for 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 November 26, 2009, in accordance with 28 U.S.C. §1415(f)(1)(A), (f)(3)(A)-(D).

III. Procedural History

Petitioners commenced this matter by filing a Due Process Complaint Notice ("DPCN") dated November 23, 2009, with the Student Hearing Office ("SHO").[1]

In accordance with applicable law and regulation, the SHO recorded that the resolution period expired on December 23, 2009, notified the parties that the pre-hearing conference and due process hearing were scheduled for December 23, 2009 and January 27, 2010, respectively, and recorded the Hearing Officer Decision ("HOD") due date as February 6, 2010. The SHO also appointed the Hearing Officer.

By Order issued on November 26, 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.

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

The parties participated in a resolution meeting on December 11, 2009. No agreement was reached. On December 17, 2009, Respondent provided notice of this result to the SHO by filing a Due Process Complaint Disposition form and the SHO provided notice of its receipt of the form to Hearing Officer.

Upon receipt of notice of the result of the resolution meeting, the Hearing Officer, in accordance with applicable law and regulation rescheduled the HOD due date for January 25, 2010.

On December 29, 2009, a Pre-Hearing Conference was held. Counsel for the respective parties appeared by telephone. The parties agreed that the DPCN presented legal issues that could likely be resolved by motion practice, obviating the need to proceed to a hearing on the record. The parties also agreed to a schedule for the submission of their written arguments and supporting documents.

The parties also agreed that, in the event that the Hearing Officer determined, after consideration of the parties' written submissions, that the matter could not be resolved by motion practice, the due process hearing would take place on January 22, 2010.

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[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.

A Pre-Hearing Conference Summary and Order, dated December 30, 2009, was subsequently issued, which in pertinent part recorded the above-described agreements.

On January 6, 2010, Petitioners submitted their "Pre-Hearing Memorandum Regarding the Respondent's Obligation to Comply With the Parent's Request for a Neuropsychological Reevaluation".[2]

On January 8, 2010, Respondent submitted its "Memorandum of Law re Evaluation Request of Parent".

On January 12, 2010, the Hearing Officer informally notified the parties that he required additional factual information to complete the record prior to being able to render a decision.

On January 14, 2010, the parties served their respective five-day disclosure of documentary evidence and prospective witnesses.

On January 15, 2010, the Hearing Officer formally notified the parties that the due process hearing would proceed on January 22, 2010 for the purposes of obtaining additional factual evidence to complete the record.

The due process hearing commenced and concluded on January 22, 2010. The parties agreed to the introduction of Petitioners' ·1 through ·15 and ·17, and Respondent's Exhibits 01 through 07. Appearing for Petitioners was an Educational Advocate and the Student's treating Clinical Psychologist employed at the Student's school of attendance. Appearing for Respondent was an LEA Representative and a Clinical Psychologist. Counsel and all witnesses are identified by name and affiliation in Appendix B.

IV. Discussion.

The Relevant Facts

At all relevant times, Respondent has classified Petitioner Student as a child with a disability. In particular, Respondent has recommended that the Student be classified with an emotional disturbance. The Student, who is years old, attends 4th grade at a private school for children with disabilities.[3] She has attended the School at Respondent's expense since September 2007. Her initial placement at the School was the result of a prior HOD, however, Respondent has continued to

[2] Petitioners' submission was due on or before 5:00 PM on January 5, 2010, per the Pre-Hearing Conference Summary and Order. However, Petitioners' counsel asked for an extension of time to 8:00 PM on January 6, 2010 to complete service. Respondent's counsel agreed to the extension without objection.

[3] The school is identified in Appendix C.

recommend this placement, most recently as a result of a multidisciplinary team ("MDT") meeting held on November 19, 2009.

At the School, she receives a full time weekly program of special education and related services, consisting of 27 hours of specialized instruction, 2 hours of behavioral support services[4], 1 hour of Speech and Language therapy and 1 hour of occupational therapy.

The record is replete with information describing the Student's strengths and, far more often, deficits. She presents with significant social-emotional issues with respect to both teachers and peers that are consistent with her classification and diagnoses of Attention Deficit Hyperactivity Disorder and Oppositional Defiant Disorder. The treating psychologist at the School also reports that the Student receives little benefit from her prescribed medication.[5] She has significant deficits in nearly all educationally related areas, including core expressive and receptive language skills, fine and visual motor as well as visual perception skills. Her cognitive levels were assessed to fall within the low average to borderline range, her academic skills are delayed by up to 2 or more years, and she has evidenced minimal progress. The record further establishes that the Student presents with deficits in her memory and retention skills and has a history of reported traumatic head injuries.

On November 19, 2009 a multidisciplinary team ("MDT") meeting was held to conduct an annual/triennial review of the Student's needs. The Petitioner Parent and her Educational Advocate, the Student's teacher, psychologist, speech pathologist, and occupational therapist attended the meeting. Also in attendance was a representative of the Respondent District of Columbia Public Schools ("DCPS").

The parties have disclosed three separate sets of notes taken by MDT members; KJ-6 (School staff), KJ-7 (Petitioners' Educational Advocate) and KJ-8 (DCPS Representative). The recorded discussions evidence a frank and open discussion of the Student's strengths and weaknesses, which are entirely consistent with the information reported in the then existing evaluative materials and the Individualized Education Program ("IEP") that was developed at the MDT meeting.[6] The MDT members ultimately determined that a reevaluation of her needs was necessary.

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[4] This is consistent with the November 19, 2009 IEP, previously the Student received 1 hour of behavioral support services per week. The additional hour of services was agreed to by DCPS at the request of the School made at the November 2009 MDT meeting.
[5] The Student is prescribed to receive Concerta to treat her ADHD.
[6] The Parent reported at the MDT that the Student's problems at home were similar to those she evidenced at school.

This matter concerns that pending reevaluation of the Student, for while the parties agree that a reevaluation should occur, they disagree on the assessments that should be conducted as part of that reevaluation. There is agreement that a speech and language evaluation and a reading assessment should be conducted.[7] However, the Parent has requested, and DCPS has declined to comply with the Parent's request for a neuropsychological evaluation.

The Parent's request is based upon the Student's School-based treating Psychologist's recommendation. At the MDT meeting, the Psychologist advised that the Student required a neuropsychological evaluation to assess the Student's deficits in attention and memory functioning.[8]. The evaluation was further warranted by reports of 2 separate head injuries that the Student had previously suffered; the first, occurring at the age of 3 when the Student hit her head jumping from her bed and the second occurring in 2006 when a television fell on the Student's head.

The DCPS representative sought medical documentation of the injuries. Apparently, the Student had never been hospitalized for a traumatic brain injury and no medical reports of such injuries were produced. Accordingly, the DCPS representative denied the request for the neuropsychological on the grounds that it could not be authorized in the absence of such medical documentation of the reported injuries and/or any hospitalizations for a traumatic brain injury. The DCPS representative advised that DCPS would conduct a comprehensive psychological evaluation as part of a reevaluation of the Student's needs.

The MDT Meeting Notes record Petitioners' disagreement with this decision.

The MDT Meeting Notes also record the parties' agreement that the Student would continue to receive counseling, occupational therapy and speech and language therapy (all at 60 minutes/week). They also record that the Student would receive 2 hours of consultation services per the Psychologist's recommendation. Further, the MDT Notes record that as part of a reevaluation, DCPS would conduct a speech and language evaluation and a comprehensive psychological evaluation, and the School would conduct a reading assessment, the Grey Oral Reading Test.

The Parent provided written consent to conduct a reevaluation on November 19, 2009.

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[7] The occupational therapist requested that DCPS conduct a new occupational therapy evaluation, as the previous one had been conducted in December 2006. The record does not contain any information regarding the status of this request. Further, Petitioners have raised no claim with respect to that request.

[8] The Psychologist testified at the hearing in support of her recommendation.

Issues Presented – Positions of the Parties

The Pre-Hearing Conference Summary and Order in this matter identified and summarized 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 to conduct a 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's needs?

Petitioners' Position.

Form a legal point of view, Petitioners assert that existing case law precedent in the District of Columbia unequivocally requires Respondent to comply with the Parent's request for the conduct of a neuropsychological evaluation. In particular, Petitioners rely, in significant part, on the decisions of the District Court for the District of Columbia in Herbin by Herbin v. District of Columbia, 362 F. Supp.2d 254 (D.D.C. 2005), Cartwright v. District of Columbia, 267 F. Supp. 83 (D.D.C. 2003) and Edwards-White v. Dist. of Columbia, 785 F. Supp. 1022, 1024 (D.D.C. 1992).

In this regard, Petitioners essentially argue that the IDEA does not impose a condition precedent on a parent's right to request the conduct of a specific assessment or evaluation as part of their child's reevaluation.

> "Accordingly, as the above cited case law and regulations clearly provide, DCPS' argument that it was not obligated to comply with the parent's request for a neuropsychological assessment as a part of her reevaluation, must fail. DCPS, by arguing that the parent must demonstrate a need for a new and updated neuropsychological assessment (notwithstanding the requests for the assessment made by her teachers and related service providers) is attempting to put a condition precedent on the parent's request for the assessment, which courts in this jurisdiction have rejected time and time again."

From a factual point of view, Petitioners assert that the participants at the MDT meeting heard and considered sufficient information to warrant the request for a neuropsychological evaluation to be conducted as part of the Student's reevaluation. Petitioners note that the Student's Psychologist requested the administration of the particular evaluation based upon the stated concerns of the Student's teachers, related service providers and parent. The stated concerns included reports of two separate head injuries, static cognitive scores and demonstrated problems with memory and retention skills.

Respondent's Position.

From a legal point of view, Respondent distinguishes the case law precedent upon which Petitioners rely on the grounds that the cited decisions concern factually different situations; where the LEA refused or did not respond to a parent's reevaluation request. Here, DCPS has agreed to conduct a reevaluation and has also agreed to conduct new assessments including an updated speech and language assessment and a comprehensive psychological evaluation. Respondent further argues that the decisions do not afford a parent unilateral authority to determine the particular assessment or tool to be used to conduct the reevaluation.

From a factual point of view, Respondent asserts that it is not required to conduct the requested neuropsychological evaluation as part of the pending reevaluation, where it has offered to perform a comprehensive psychological evaluation and that assessment will provide all of the relevant information necessary to determine the Student's educational needs.

At hearing and in its legal memorandum, Respondent made no mention of the specific basis for the denial of the Parent's request for the neuropsychological that was expressed by the DCPS representative at MDT meeting.

The Relevant IDEA Provisions

The IDEA prescribes that a local educational agency ("LEA")

> shall ensure that a reevaluation of each child with a disability is conducted...
> - if the LEA determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
> - if the child's parents or teacher requests a reevaluation.

The timing and frequency of reevaluations are prescribed as well

> A reevaluation... shall occur
> - not more frequently than once a year, unless the parent and the local educational agency agree otherwise; and
> - at least once every 3 years, unless the parent and the local educational agency agree that a reevaluation is unnecessary.
>
> 28 U.S.C. §1414(a)(2); 34 C.F.R. §300.303; see also CDCR 5-3005.7.

Reevaluations must be conducted in accordance with the basic IDEA provisions governing evaluations. 28 U.S.C. §1414(a)(2)(A); 34 C.F.R. §300.303(a). An LEA is accordingly required to

> - use a variety of assessment tools and strategies to gather relevant functional,

developmental, and academic information, including information provided by the parent, that may assist in determining (i) whether the child is a child with a disability; and (ii) the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum, or, for preschool children, to participate in appropriate activities;
- not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and
- use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

28 U.S.C. §1414(b)(2); 34 C.F.R. §300.304(b).

The LEA must also ensure that the assessment and evaluation materials that are utilized to assess the child are

- selected and administered so as not to be discriminatory on a racial or cultural basis;
- provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer;
- used for purposes for which the assessments or measures are valid and reliable;
- administered by trained and knowledgeable personnel; and
- administered in accordance with any instructions provided by the producer of such assessments.

The LEA is further required to ensure that

- the child is assessed in all areas of suspected disability and
- that the chosen assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided

28 U.S.C. §1414(b)(3); 34 C.F.R. §300.304(c).

The IDEA prescribes additional requirements for reevaluations in that

As part of... any reevaluation under this section, the IEP Team and other qualified professionals, as appropriate, shall
- 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
- 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 LEA is further charged to administer the assessments and other evaluation measures as may be needed to produce the data identified by the IEP Team.
28 U.S.C. §1414(c)(2); 34 C.F.R. §300.305(c); see also CDCR 5-3005.5.

Additionally, in cases where "the IEP Team and other qualified professionals determine that no additional data are needed to determine the continued existence of a disability or the child's educational needs, the LEA -

- 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
- 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.

Analysis

Petitioners Are Not Entitled As a Matter of Law to the Requested Neuropsychological Evaluation.

The parties respective legal positions are in significant part based on their interpretations of the holdings of the District Court for the District of Columbia in Cartwright v. District of Columbia, 267 F. Supp. 83 (D.D.C. 2003), and Herbin by Herbin v. District of Columbia, 362 F. Supp.2d 254 (D.D.C. 2005). These decisions interpreted and applied, in significant part, a particular provision of the IDEA that governs the reevaluation process.

Section1414(a)(2) of the IDEA prescribes that a local educational agency ("LEA")

shall ensure that a reevaluation of each child with a disability is conducted...
- if the LEA determines that the educational or related services needs, including

improved academic achievement and functional performance, of the child warrant a reevaluation; or
- if the child's parents or teacher requests a reevaluation.

Petitioners claim that the holdings in Cartwright and Herbin provide the Parent with an unequivocal right to the requested neuropsychological evaluation. Respondent contends that the holdings are distinguishable on the grounds that they apply to situations where DCPS has failed or refuses to conduct a reevaluation, and that they do not provide the Parent with unilateral authority to determine the assessments that should be completed as part of the pending reevaluation.

A review of the Cartwright and Herbin decisions raises questions regarding the application of District Court's interpretation of §1414(a)(2) to other IDEA provisions concerning reevaluations, but they are beyond the scope of the present proceedings. That review also indicates that Respondent's basic conclusions about the decisions are correct.

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),[9] 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

[9] 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).

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)[10] 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 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.

The evidence establishes that, similar to the situation in Herbin and Cartwright, the Parent has made an unambiguous request for a reevaluation. 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 reading assessment, and is willing to conduct a comprehensive psychological evaluation.

Herbin and Cartwright concern factual situations where the LEA had essentially failed to conduct a parent requested reevaluation, and not, as here, agreed to conduct a reevaluation but not a specifically requested assessment as a component of the reevaluation. E.g., Herbin, 362 F. Supp.2d 254 at fn. 3 (parent's complaint was not based on the alleged inadequacy of the evaluations provided by the LEA for the reevaluation, but alleged instead that the LEA conducted no reevaluation at all).

Each decision is also concerned with the scope of the parental right to request a reevaluation as afforded by §1414(a)(2) of the IDEA. In interpreting and applying that section to the presented facts, the District Court consistently recognizes 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 an LEA. E.g., Herbin, 352 F. Supp.2d 254.

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[10] See note 13, supra.

But in neither case does the District Court reach the determination that the IDEA provides parents with the ability to unilaterally determine the particular assessments that the LEA must undertake in order to conduct a reevaluation. See Herbin, 362 F. Supp.2d 254 at fn. 3 (a parent's unilateral determination of what constitutes an appropriate reevaluation does not alone entitle a plaintiff to relief, *citation omitted*).

The Individual Needs of the Student Warrant Her Assessment Consistent with the Recommendation of Her School-based Psychologist.

Accordingly, the question of whether the DCPS must comply with the Parent's request for a neuropsychological evaluation must be determined on the basis of the Student's individual needs. As noted above, the IDEA prescribes the process for the conduct of reevaluations in some detail.

In particular, the IDEA requires DCPS to ensure that

- the child is assessed in all areas of suspected disability and
- the chosen assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided

28 U.S.C. §1414(b)(3); 34 C.F.R. §300.304(c).

DCPS is further charged to administer the assessments and other evaluation measures as may be needed to produce the data identified by the IEP Team. 28 U.S.C. §1414(c)(2); 34 C.F.R. §300.305(c); see also CDCR 5-3005.5.

The evidence establishes that DCPS must conduct an appropriate assessment of the Student with respect to her deficits in memory and retention and reported head injuries, consistent with the recommendation of the Student's School-based Psychologist.

The MDT members explicitly identified these areas as requiring assessment to appropriately plan for the Student's educational needs at the November 19, 2009 meeting. The Student's School-based Psychologist identified a neuropsychological evaluation as the appropriate assessment tool. Significantly, Respondent has not even defended the specific and only basis articulated by its representative at the MDT meeting in support of its denial of the Psychologist's recommendation.[11]

The testimony presented by the parties at hearing supports the Student's need to receive the assessment tools that are routinely employed in the conduct of such an evaluation, to break down and assess in detail all of the individual components of

[11] The DCPS representative attended the hearing but did not testify.

the Student's memory and retention related abilities and deficits, as well as the possible impact of her reported head injuries.

The parties each presented the testimony of psychologists with appropriate qualifications who I judged to be responsive and informative, replying thoughtfully and credibly based on their professional and personal knowledge. However, this was not a typical "battle of experts" as each witness testified from a very different point of view. Petitioner presented the Student's School-based Psychologist who attended the MDT meeting and possesses significant direct knowledge of the Student. Respondent's Psychologist, who testified that she had reviewed the Student's records that were disclosed by the parties, did not offer any testimony specific to the Student. Instead, this witness provided informative testimony regarding the composition and conduct of neuropsychological evaluations, with reference to her use of such testing in 2 cases for Respondent[12], and offered insight into DCPS evaluation procedures.

Each witness described the assessment tools that are regularly included in a neuropsychological evaluation to assess a student's memory and retention related issues. Each described how the tools break out and assess in detail the various categories of "memory," verbal, visual, auditory, short and long term, to provide a far more detailed analysis of a student's abilities than can be obtained, for example, through reliance on the subtests of a standard cognitive assessment.

Of particular interest was Respondent's Psychologist's testimony that all psychological assessments conducted by DCPS are currently referred to as "comprehensive psychological evaluations," apparently regardless of the assessment tools that comprise the evaluation. The witness credibly testified that the "referral," i.e., the particular needs of the student, should drive the choice of assessment tools. However, the witness could not categorically account for the choices made by all of Respondent's psychologists when conducting evaluations.

In this regard, Petitioners' Psychologist testified that a comprehensive psychological evaluation would suffice for the needs of this Student if it also included the assessment tools that are routinely employed in neuropsychological evaluations to assess memory, retention and the potential effect of head injuries. It was her experience, however, that DCPS' comprehensive psychological evaluations do not include those tools.

At the hearing, the Hearing Officer was advised that Respondent had recently completed a comprehensive psychological evaluation of the Student. The report of that evaluation was not admitted into evidence.

At the time these proceedings were initiated the comprehensive psychological

[12] One of the described cases concerned a child who presented with at least facially similar attention, memory, retention and head injury related issues.

evaluation had not been conducted, and accordingly, Petitioners' DPCN does not reference it and does not contain any allegations with respect to its sufficiency, especially in terms of Petitioners' position that the Student requires a neuropsychological evaluation in order to appropriately assess her deficits. Any allegations regarding the sufficiency of the evaluation in this regard are therefore beyond the scope of the allegations stated in the DPCN. The Hearing Officer's authority to allow Petitioner to amend the DPCN has expired and such an amendment could be effective only with Respondent's agreement. However, Respondent objected to any attempt by Petitioners to introduce testimony regarding the sufficiency of the evaluation.[13] The parties agreed that the matter should be considered and determined on the basis of the allegations in the DPCN without reference to subsequent events or facts post the November 19, 2009 MDT meeting.[14]

Regardless, my determinations and Order are not undermined by the existence of the new comprehensive psychological evaluation. Respondent will have complied with this HOD to the extent that the evaluation utilized and reported the results of the assessment tools that, in accordance with the testimony, recommendation and intent of the Student's School-based Psychologist, would commonly be utilized in the conduct of a neuropsychological evaluation to assess the Student's described deficits in memory, retention and possible impact of her reported head injuries. To the extent that the comprehensive psychological evaluation did not rely on these tools, Respondent is required to fund the further evaluation of the Student through the specific use of those assessment tools.

Further, in light of the fact that the Student's reevaluation has been pending since November 19, 2009, the parties are directed to adhere to the timelines established below for the conduct of the further evaluation of the Student, consistent with this HOD, and the completion of the reevaluation.

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[13] The objection was framed in terms of the IDEA's provisions concerning Petitioner's right to request an individual education evaluation, but it is more properly understood as an objection intended to limit Petitioners' case to those allegations made and relief sought in the DCPN.

[14] Any claims that Petitioners may have regarding the sufficiency of the comprehensive psychological and related requested relief must be the subject of another due process proceding.

V. Order

It is ORDERED that:

1. Petitioners are hereby authorized, as of the date of this Decision, to obtain an evaluation of the Student that employs the assessment tools generally used in the conduct of a neuropsychological evaluation to assess memory, retention and the potential impact of traumatic head injuries, as described and intended by the Student's School-based Psychologist, 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 independent 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 evaluation, Respondent shall convene an MDT meeting to consider the results of the independent 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: January 24, 2010

/s/ Paul Ivers
Hearing Officer

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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 90 days from the date of the Decision of the Hearing Officer in accordance with 20 U.S.C. §1415(i)(2)(B).