

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

Student Hearing Office  
810 First Street, N.E., 2<sup>nd</sup> Floor  
Washington, DC 20002

---

STUDENT, <sup>1</sup>	)	
through the Parent,	)	
	)	Date Issued: March 25, 2012
Petitioner,	)	
	)	Hearing Officer: Virginia A. Dietrich
v.	)	
	)	
District of Columbia Public Schools	)	
	)	
	)	
Respondent.	)	

---

**HEARING OFFICER DETERMINATION**

**Background**

Petitioner, the mother (“Parent”) of -year old Student, filed a due process complaint notice on January 27, 2012 alleging that the District of Columbia Public Schools (“DCPS”) had denied Student a free appropriate public education (“FAPE”) in violation of the Individuals with Disabilities Education Act (“IDEA”).

Petitioner alleged that DCPS had denied Student a FAPE by failing to conduct or fund a psychiatric evaluation, as was requested by Petitioner. Petitioner asserted that the purpose of the evaluation was to ascertain whether or not Student had a diagnosis of a mood disorder so that proper programming for Student could be developed, because Student, with a Specific Learning Disability (“SLD”) classification and school placement, displayed many severe social/emotional behaviors that were out of the normal range for SLD students and that interfered with Student accessing the curriculum.

DCPS asserted that it denied Petitioner’s request for a psychiatric evaluation because a psychiatric evaluation was not necessary for educational programming for Student. DCPS asserted that a recent psychological evaluation with a diagnosis of Mood Disorder, NOS, provided all of the information that was necessary to design a program to meet Student’s

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

## Hearing Officer Determination

educational needs and that DCPS' refusal to conduct the psychiatric evaluation was not a denial of a FAPE.

### **Subject Matter Jurisdiction**

Subject matter jurisdiction is conferred pursuant to the Individuals with Disabilities Education Act ("IDEA"), as modified by the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. Section 1400 et. seq.; the implementing regulations for the IDEA, 34 Code of Federal Regulations ("C.F.R.") Part 300; and Title V, Chapter E-30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

### **Procedural History**

The due process complaint was filed on 01/27/12. This Hearing Officer was assigned to the case on 01/30/12.

Petitioner waived the resolution meeting, but DCPS did not. The resolution meeting took place on 02/15/12 at which time parties agreed to end the 30-day resolution period and proceed to a due process hearing. The resolution period ended on 02/15/12, the 45-day timeline to issue a final decision began on 02/16/12 and the final decision was due on 03/31/12.

The due process hearing was a closed hearing that took place on 03/22/12. Petitioner was represented by Domiento C.R. Hill, Esq. and DCPS was represented by Daniel McCall, Esq. Neither party objected to the testimony of witnesses by telephone. Petitioner participated in the hearing in person.

Petitioner presented three witnesses: Petitioner; special education advocate ("Advocate"); and social worker/head counselor at School ("Student's school therapist"). DCPS presented two witnesses: DCPS student progress monitor ("DCPS progress monitor") at School; and a psychologist who qualified as an expert in the evaluation of students for special education ("special education evaluation expert").

Petitioner's disclosures dated 03/15/12, containing a witness list and Exhibits P-1 through P-27, were admitted into evidence without objection.

DCPS' disclosures dated 03/15/12, containing a witness list and Exhibits DCPS-1 through DCPS-5, were admitted into evidence without objection.

Parties agreed upon the following stipulation of fact:

#1. On 01/27/12, DCPS stated that a psychiatric assessment was not necessary for the educational programming of Student.

The sole issue to be determined in this Hearing Officer Determination is as follows:

## Hearing Officer Determination

Whether DCPS denied Student a FAPE by failing to evaluate Student in all areas of suspected disability; specifically, DCPS failed to reevaluate Student by failing to conduct a psychiatric assessment as was recommended by Student's school therapist and as was requested by Petitioner at the Individualized Education Program ("IEP") Team meeting on 01/27/12, in order to address Student's severe mood dysregulation that resulted in suspension, hospitalization, failing grades and inability to access the curriculum since the beginning of the school year.

For relief, Petitioner requested a finding that Student was denied a FAPE; funding from DCPS for an independent psychiatric evaluation; and DCPS to convene a meeting within 10 school days of receipt of the evaluation to review all outstanding assessments, determine Student's eligibility for special education and related services, develop an appropriate IEP, and discuss and determine placement.

Footnotes hereinafter refer to the testimony of a witness or an exhibit admitted into evidence.

### **Findings of Fact**

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

#1. Student, age      and in the      grade, resides in the District of Columbia and has a current disability classification of Specific Learning Disability ("SLD"). Since the beginning of the 2011-2012 school year, Student attended      School, having been placed there by DCPS.<sup>2</sup>      School, a non-public school, services students with disability classifications of SLD and Other Health Impairment ("OHI") resulting from Attention Deficit Hyperactivity Disorder ("ADHD").<sup>3</sup>      School does not provide services to students with an Emotional Disturbance because it does not have a crisis management team<sup>4</sup> and it is not equipped to use restraints to keep students from leaving the classroom or eloping from the school.<sup>5</sup>

#2. At the outset of the 2011-2012 school year, Student evidenced a moderate degree of social/emotional and academic success at      School; however, by the time the IEP Team met on 01/27/12, Student's mood dysregulation was so severe that she was rarely able to access the academic curriculum in any meaningful and predictable way.<sup>6</sup> Student was observed to be extremely sad, crying, and experiencing feelings of despair on a daily basis. Student experienced suicidal ideation on two occasions.<sup>7</sup> Student's severe behaviors that interfered with learning also included elopement from school, insubordination, use of profanity, disrespect, walking out of class, general non-compliance with directives, non-compliance with cellphone use, disorderly conduct, severe emotional distraction and dysregulation of mood. These behaviors resulted in Student spending a lot of time outside of the classroom, as well as in-school and out-of-school

---

<sup>2</sup> Petitioner.

<sup>3</sup> Advocate, DCPS progress monitor.

<sup>4</sup> DCPS progress monitor.

<sup>5</sup> Therapist, DCPS progress monitor.

<sup>6</sup> Advocate, Student's school therapist.

<sup>7</sup> Student's school therapist.

## Hearing Officer Determination

suspensions.<sup>8</sup> Student's level of moodiness was well above the typical moodiness of adolescents.<sup>9</sup>

#3. Petitioner received daily calls from the school about Student's behaviors.<sup>10</sup> Every possible intervention was put into place to address Student's behaviors at school, e.g., a point sheet, breaks, problem solving, and individual and group therapy; however, none of these measures were effective to curtail the problem behaviors. Student's elopement from school caused a safety risk to the school and danger to Student, as School was not equipped with the services to restrain Student from leaving. And, if the behaviors were not curtailed, Student's placement at School would be in jeopardy. The behaviors were present at Student's prior school, but to a lesser degree, and the behaviors were exacerbated by Student's loss of close family members in November 2011 and January 2012.<sup>11</sup>

#4. Student's therapist/counselor at School, who had been providing services to Student since August 2011 for two 45 minute sessions per week, adamantly recommended to the IEP Team on 01/27/12 that Student receive a psychiatric evaluation to diagnose the source of the mood dysregulation and to aid in educational programming for Student.<sup>12</sup> The other members of the School IEP Team agreed, as did Petitioner and Petitioner's special education advocate. The DCPS representatives disagreed and refused to conduct or fund a psychiatric evaluation on the basis that the psychiatric evaluation would not report much more in terms of educational implications and that it was not necessary for developing an IEP.<sup>13</sup>

#5. At the IEP Team meeting on 01/27/12, an independent Comprehensive Psychological Evaluation dated 08/19/11, was reviewed. At the time the evaluation was conducted, Student was experiencing significant emotional distress due to her longstanding academic difficulties. Per the independent psychological evaluation, Student was diagnosed with Mood Disorder, NOS;<sup>14</sup> Disruptive Behavior Disorder, NOS; Attention-Deficit/Hyperactivity Disorder ("ADHD"); and Reading Disorder. None of the IEP Team members disagreed with the diagnosis of Mood Disorder, NOS.<sup>15</sup> The evaluator suggested that Student be classified as Multiple Disabilities to include Learning Disabled, Other Health Impaired (ADHD) and Emotionally Disturbed.<sup>16</sup>

#6. On 01/27/12, Student's IEP was reviewed and revised, and it classified Student with a Specific Learning Disability ("SLD") and provided Student with 25.5 hours/week of specialized instruction outside of general education, 2 hours/month of speech-language pathology services, and 90 minutes/week of behavioral support services.<sup>17</sup> Notably, at the IEP

---

<sup>8</sup> Petitioner, Student's school therapist.

<sup>9</sup> Student's school therapist.

<sup>10</sup> Petitioner.

<sup>11</sup> Student's school therapist.

<sup>12</sup> Advocate, Student's school therapist.

<sup>13</sup> DCPS-3, DCPS progress monitor, Advocate, Student's school therapist.

<sup>14</sup> Per the special education evaluation expert, NOS means that Student exhibited some criteria associated with the diagnosis, but not all of the criteria for the disorder.

<sup>15</sup> DCPS progress monitor.

<sup>16</sup> P-4.

<sup>17</sup> DCPS-3.

## Hearing Officer Determination

meeting, the IEP Team discussed changing Student's disability classification to Emotional Disturbance due to her behaviors, but the team did not have adequate data at hand to make the determination at that time.<sup>18</sup>

#7. For purposes of special education at DCPS, a psychiatric evaluation involves testing of a student, review of education and medical history, and data collection from teachers, parent and medical caregivers. The psychiatric evaluation is used to diagnose emotional, behavioral or development disorders and determine educational impact.<sup>19</sup> A psychiatric evaluation can be helpful in determining the nature and extent of Student's mood dysregulation and in the educational programming for Student.<sup>20</sup> Without a psychiatric evaluation, the IEP Team at

School could not effectively program for Student without clarification of whether Student's ADHD or Mood Disorder was driving Student's behaviors.<sup>21</sup> The IEP Team, with the exception of the two DCPS representatives, were in agreement that a psychiatric evaluation was necessary to determine if School was an appropriate school placement for Student.<sup>22</sup>

#8. A psychological evaluation guides the IEP Team towards classification of the disability. A particular diagnosis is not determinative of whether or not a student has a disability, it is the behaviors that are relevant and the modifications necessary to address the behaviors that are relevant for educational programming.<sup>23</sup>

### Conclusions of Law

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

The overall purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 34 C.F.R. 300.1.

A hearing officer's determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. 300.513(a).

"Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide

---

<sup>18</sup> P-27, DCPS progress monitor.

<sup>19</sup> P-24, Expert.

<sup>20</sup> Student's school therapist.

<sup>21</sup> Advocate, Student's school therapist.

<sup>22</sup> Advocate.

<sup>23</sup> Special education evaluation expert.

## Hearing Officer Determination

the student with a FAPE.” 5 D.C.M.R. E-3030.3. The burden of proof in an administrative hearing is properly placed upon the party seeking relief. *Schaffer v. Weast*, 44 IDELR 150 (2005).

The sole issue to be determined is whether DCPS denied Student a FAPE by failing to evaluate Student in all areas of suspected disability; specifically, DCPS failed to reevaluate Student by failing to conduct a psychiatric assessment as was recommended by Student’s school therapist and as was requested by Petitioner at the IEP Team meeting on 01/27/12, in order to address Student’s severe mood dysregulation that resulted in suspension, hospitalization, failing grades and inability to access the curriculum since the beginning of the school year.

Consistent with the overall purpose of the IDEA, which is to ensure that children with disabilities have the services available to them that meet their unique needs, is the provision of the IDEA that requires the local education agency to conduct evaluations in all areas of suspected disability. 34 C.F.R. 300.1, 34 C.F.R. 300.304(c)4, 5 D.C.M.R. 3005.9. Such evaluations are used to determine what services the child needs and the content of the child’s IEP. 34 C.F.R. 300.305, 34 C.F.R. 300.320, 5 D.C.M.R. 3005, 5 D.C.M.R. 3007. To be sufficient to confer a FAPE, an IEP must be “reasonably calculated to enable the child to receive educational benefits.” *Board of Education of Hendrick Hudson Central School District, Westchester County, et. al. vs. Rowley*, 458 U.S. 176 (1982).

In the present case, all IEP Team members, excluding the DCPS representatives, agreed that Student should undergo a psychiatric evaluation in an effort to determine the origins of Student’s behaviors because Student’s acting out behaviors were very severe and beyond what could be programmed for at Student’s school. There were valid reasons for the school to request a psychiatric evaluation: (1) All behaviors interventions at school had been tried and had failed; (2) Student’s school therapist, the person who knew Student best on the social/emotional domain, strongly recommended that Student undergo a psychiatric evaluation to gain understanding of the origin of Student’s behaviors; (3) a psychiatric evaluation was the only relevant evaluation that had not been conducted to diagnose an emotional, behavioral or developmental disorder and determine educational impact; (4) Petitioner was getting calls from the school about Student’s behavior on a daily basis; (5) Student had suicidal ideations on two occasions during the school year, suggesting not only that Student’s mood dysregulation was far out of the range of normal moodiness of adolescents, but that medical clinical intervention might be appropriate; (6) Student’s behavior of leaving school without permission was a security risk to the school and a danger to Student herself; (7) Student’s placement at the school was in jeopardy, and (8) Student had a history of social/emotional problems that interfered with access to the curriculum that dated back prior to the beginning of the 2010-2011 school.

To reiterate, all behavior interventions had been tried and failed. Student was already at the maximum capacity for special education services; she received all specialized instruction outside of the general education setting and 90 minutes/week of behavioral support services in a separate school that serviced only special education students. The reasons for the psychiatric evaluation and the implications of the results on educational programming were numerous, obvious and relevant. All of the available data was more than sufficient for DCPS to realize that

## Hearing Officer Determination

Student needed a different clinical perspective on her severe behaviors that interfered with learning and jeopardized her school placement.

While it is true that a psychiatric evaluation was not necessary for the team to agree that Student had a Mood Disorder or that Student met the criteria for Emotional Disturbance under the IDEA; it was also very true that something about Student's educational programming was not correct because Student's severe behavior problems in school prevented her from effectively accessing the curriculum and made her a danger to herself and a safety risk to the school. Student's school therapist was aware of the Mood Disorder, NOS diagnosis contained in the 08/19/11 psychological evaluation because she too was at that the IEP Team meeting on 01/27/12 where the psychological evaluation was reviewed by the IEP Team. Regardless, the school therapist *still* strongly recommended a psychiatric evaluation to aid in educational programming for Student because the school had exhausted intervention measures and nothing seemed to help curb Student's problem behaviors. The facts in evidence clearly suggested that another step had to be taken to understand the nature and scope of Student's behavior problems and to devise effective behavior intervention methods. And, there was evidence in the record that a psychiatric evaluation was an appropriate evaluation, for educational purposes, to diagnose emotional, behavioral or development disorders and determine educational impact. The IEP Team from School had exhausted the information it had before them at that time; the team needed new information in order to properly program for Student and the IEP Team identified the specific type of evaluation it needed as a psychiatric evaluation.

Under the IDEA, DCPS is required to develop a program to meet Student's unique educational needs. DCPS is also required to evaluate Student in all areas of suspected disability. The assertion by DCPS that a psychiatric evaluation was not necessary for the educational programming of Student defies logic and the evidence in the record that Student *needed* a psychiatric evaluation to assist in educational programming and that the IEP Team that included Petitioner, wanted a psychiatric evaluation conducted, was overwhelming.

An IEP may not be reasonably calculated to provide benefits if, for example, a child's social behavior or academic performance has deteriorated under his current educational program, see *Reid v. District of Columbia*, 401 F.3d 516, (D.C. Cir. 2005); or a particular service or environment not currently being offered to a child appears likely to resolve or at least ameliorate his educational difficulties. See *Gellert v. District of Columbia Public Schools*, 435 F. Supp. 2d 18, 25-27 (D.C.C. 2006), quoting from *Suggs v. District of Columbia*, 679 F. Supp. 2d 43 (D.C.C. 2010), 53 IDELR 321.

In *Suggs*, the issue was identical to the issue in the present case; i.e., whether or not the child was denied a FAPE by DCPS' failure to conduct specific evaluations recommended by the IEP Team; thus depriving Student of educational benefit. In *Suggs*, the court indicated that the determination of whether or not the child was deprived of a FAPE depended largely upon the adequacy of the child's IEP. In *Suggs*, the court could not draw a conclusion due to the inadequacy of the record. However, in the present case, the evidence in the record is more than sufficient for the Hearing Officer to draw the conclusion that Student was denied a FAPE because she was deprived of an educational benefit by DCPS' failure to conduct a psychiatric evaluation.

## Hearing Officer Determination

The Hearing Officer concludes that the IEP Team could not effectively program for Student without a psychiatric evaluation that would yield insight, a diagnosis and possible interventions for the treatment of Student's behavior problems. The IEP Team was at an impasse as how to help Student access the curriculum, and without help, Student's placement at the school would be in jeopardy. Student was denied a FAPE not only because DCPS' refusal to conduct a psychiatric evaluation denied her the right to an educational benefit, but also because the lack of a psychiatric evaluation significantly impeded Petitioner's opportunity to participate in the decision-making process regarding the provision of a FAPE to Student.

### **ORDER**

(1) DCPS shall provide Petitioner with funding for an independent psychiatric evaluation, at the prevailing market rate, within 10 business days of this Order; and

(2) Within 10 business days of receipt of the independent psychiatric evaluation, DCPS shall initiate correspondence to convene an IEP Team meeting to review the psychiatric evaluation and any other outstanding assessments, determine Student's eligibility for special education and related services, review and revise Student's IEP as appropriate, and discuss and determine school placement/location of services; and

(3) Any delay caused by Petitioner or Petitioner's representatives shall extend any deadline herein for DCPS, day for day.

**IT IS SO ORDERED.**

### **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).

Date: March 25, 2012

*/s/ Virginia A. Dietrich*  
Hearing Officer