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DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

Student Hearing Office
1150 5th Street, S.E.
Washington, DC 20003

STUDENT,[1]
through the Parent,

Petitioner,

v.

District of Columbia Public Schools,

Respondent.

Date Issued: July 18, 2010

Hearing Officer: Virginia A. Dietrich

Case No:

Hearing Date: 07/12/10 Room: 4a

HEARING OFFICER DETERMINATION

BACKGROUND

Petitioner filed a due process complaint notice on 05/21/10, alleging that Student had been denied a free appropriate public education ("FAPE") when Petitioner requested that District of Columbia Public Schools ("DCPS") conduct further testing on Student in the form of a neuropsychological evaluation as had been recommended by an independent Comprehensive Psychological Evaluation that had been reviewed by the Multidisciplinary Team ("MDT"), and DCPS refused. DCPS' premise for refusing to conduct the neuropsychological testing was that the purpose of a neuropsychological evaluation is to detect or provide the organic basis for any deficits, and that type of information is not necessary or further helpful in determining Student's educational needs or designing an educational program for him. At the time of DCPS' refusal, DCPS had available to it the current results of an independent Comprehensive Psychological Evaluation, an independent Vineland Adaptive Assessment, an independent Audiological Assessment, and an independent Functional Behavior Assessment, and as far as DCPS was concerned, that was enough. Essentially, DCPS saw the neuropsychological evaluation as superfluous, and contended that Student's level of functioning had been fully assessed and his educational needs adequately determined with the existing data. Petitioner disagreed, citing Student's extremely odd behaviors in school, inattentiveness and disruptive behaviors in class when presented with difficulties or frustration regarding learning, extremely low scores in working memory index, functional illiteracy, failing or poor grades for the past two years, repeating the grade for the second time, and overall failure to make academic progress, as the

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[1] Personal identification information is provided in Appendix A.

legitimate basis for conducting the more in-depth testing that a neuropsychological evaluation would provide.

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 ("IDEIA"), 20 U.S.C. Section 1400 et. seq.; the implementing regulations for the IDEIA, 34 Code of Federal Regulations ("C.F.R.") Part 300; and Title V, Chapter 30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

This Hearing Officer was assigned to the case on 05/26/10. A prehearing conference was held on 06/16/10, and a Prehearing Order that memorialized the substance of the prehearing conference was issued on 06/17/10.

The due process hearing was a closed hearing that began and concluded on 07/12/10. Petitioner was represented by Miguel Hull, Esq. on behalf of James E. Brown and Associates and DCPS was represented by Laura George, Esq.. Petitioner presented the following three witnesses: Petitioner; Carolyn Miskel, Petitioner's educational advocate; and James Moses Ballard, Ph.D., clinical psychologist. DCPS presented one witness: Marquita Elmore, Ph.D., DCPS school psychologist.

Petitioner's Exhibits P-1 through P-21 and DCPS' Exhibits R-1 through R-6 were admitted into evidence without objection. No written closing arguments or briefs were required.

At the time the complaint was filed, Student was a years old boy repeating the grade at a public school in the District of Columbia. Student was a disabled child under the IDEIA, with his most current Individualized Education Program ("IEP") dated 04/19/10, ascribing him a disability classification of Multiply Disabled, consisting of Learning Disabled and Emotional Disturbance and prescribing 13 hours/week of specialized instruction in general education, 6.5 hours/week of specialized instruction outside of general education, 1 hour/week of behavioral support services outside of general education and Extended School Year ("ESY") services that were to occur over the summer of 2010. According to Student's 04/19/10 IEP, Student was functionally illiterate and his inability to read or write caused him to be unable to access the curriculum. Student's IEP projected that he would graduate from high school with a diploma.

The due process complaint contained more issues than were litigated. Along the way, an additional complaint was filed on behalf of Student, the parties met for resolution meetings to the resolve the issues, and ultimately all of the issues in both pending complaints were resolved except for the issue of DCPS conducting or funding a neuropsychological evaluation.

The sole issue to be determined is as follows:

Whether DCPS failed to comprehensively evaluate Student in all areas of suspected disability when it refused to conduct a neuropsychological evaluation that had been requested by Petitioner and recommended in an independent Comprehensive Psychological Evaluation in

order to further clarify Student's academic limitations and elucidate the basis for Student's auditory perceptual disturbance?

At the time of the due process hearing, Petitioner withdrew the issue of DCPS' failure to complete a Behavior Intervention Plan ("BIP") as well as her request for relief for compensatory education as a result of DCPS' failure to conduct a neuropsychological evaluation and develop a BIP.

At the due process hearing, Petitioner's request for relief was that Dr. Marquita Elmore, a DCPS school psychologist, conduct a neuropsychological evaluation within 15 days; and that DCPS convene a MDT/IEP Team to review the results of the neuropsychological evaluation and review and revise Student's IEP as necessary, and discuss and determine placement.

As the hearing progressed and it became obvious that Student required the additional testing that Petitioner had requested, the participants were cooperative in crafting an evaluation plan that would ensure that Student's unique assessment needs would be met, and that plan is reflected in the Order that ensues.

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. At the time the complaint was filed, Student, age was currently repeating the grade at . (P-2), and was classified under IDEIA as a student with a disability of Multiply Disabled consisting of Emotional Disturbance and Learning Disability (P-9). Student's most current IEP, dated 04/19/10, prescribed 13 hours/week of specialized instruction in general education, 6.5 hours/week of specialized instruction outside of general education, 1 hour/week of behavioral support services outside of general education, a dedicated aide and Extended School Year services that were to occur over the summer of 2010. The IEP also projected that Student would exit from high school with a diploma. (P-11).

#2. Student had been receiving full time special education services since the 3rd grade with little improvement in academic functioning. (Testimony of Petitioner; P-4; P-8; P-11). On 04/30/09, when Student was in the grade for the first time at in the District of Columbia, Student was described by the MDT as failing his classes; not progressing academically; functionally illiterate and reading and writing on the Kindergarten level; and his impediment to success was a full range of bizarre behaviors. (P-2). Student's Progress Reports during the 2008-2009 school year, dated 04/28/09 and 04/30/09, indicated that Student was significantly behind his peers in both reading and writing which made class participation difficult; he fell asleep in class every day and seemed to "space out;" and showed poor motivation to understand or complete assignments. In spite of these difficulties and the necessity of receiving one-on-one assistance to complete assignments, Student had good attendance and was seldom absent. (P-2). Student's final grades at the end of the 2008-2009 school year consisted of: "C" in English I for summer school; "F" in English I; "F" in Extended

Literacy 9; "D" in World History; "F" in Algebra I for summer school; "F" in Algebra IA and IB; "D" in Learning Lab 1 and 2; and "F" in Environmental Science. (P-17).

#3. The bizarre or odd behaviors exhibited by Student continued to exist during the 2009-2010 school year and were observed during the data collection process for the independent Comprehensive Psychological Evaluation, when on 11/24/09 during a classroom observation, Student spoke in a very high pitched rather bizarre voice; demonstrated inappropriate affect by laughing at times when no one else in the classroom was laughing; Student slid out of his chair and onto the floor as the means of communicating his need to use the bathroom; Student demonstrated difficulty with eye-contact when speaking with his teacher; Student looked odd in appearance at times when making faces and rolling his eyes around the room; Student made sounds that appeared to be words but was unable to articulate what he meant by the sounds; and Student flapped his hands in front of his face while waiting in the waiting room for testing to begin. (P-2). Student's bizarre behaviors in class during the 2009-2010 were frequent, constituted his primary challenge, and made him an outcast to students and peers. (P-11). By Petitioner's reports, Student almost always repeats one activity over and over again, stares blankly sometimes, sometimes hears sounds that are not there, only pays attention sometimes, almost always has a short attention span, never listens carefully and is sometimes easily distracted. (P-2). Student self reports that he often feels like people are out to get him, that even when he is alone he feels like someone is watching him, he often hears voices in his head that no one else can hear, and has nightmares. When questioned about these things, Student chooses not to elaborate to either his mother or the evaluating psychologist. (P-2; Testimony of Petitioner). Student has never had a psychiatric evaluation conducted. (Testimony of Petitioner).

#4. At the end of the 2009-2010 school year, Student's behavior that affected academic performance was still not up to par, as reflected in a Behavior Intervention Plan dated 06/09/10, that indicated that Student needed to demonstrate a consistent interest, initiative and motivation in academics and bring his overall performance up to his expected level of academic functioning; stabilize his mood and build a healthy self-esteem so that he is able to cope effectively with the frustrations and stressors associated with academic pursuits; and eliminate the pattern of engaging in acting out, disruptive or attention seeking behaviors when confronted with difficulties or frustration regarding learning. (P-6). Student's grades were also not up to par. On 03/26/10, three quarters of the way through the 2009-2010 school year, while Student was repeating the grade at Student's grades were as follows: "D" in Biology; "B" in Learning Lab; "F" in Algebra I; "C-" in Extended Literacy 10; "C" in World History/Geography 2; "B" in Learning Lab 6; and "D" in English II. (P-8).

#5. An independent Comprehensive Psychological Evaluation dated 12/01/09 revealed that in the Working Memory Index ("WMI") area of cognitive testing, Student scored in the Extremely Low range, where he performed better than 0.1% of his peers. The WMI provides information regarding an individual's ability to attend to verbally presented information, to process information in memory, and then to formulate a response. Student was noted as experiencing difficulty in holding information to perform a specific task and difficulties with working memory that may make the processing of complex information more time-consuming for Student, drain his mental energies more quickly than his peers, and perhaps result in more frequent errors on a variety of learning tasks. This weakness in temporarily retaining and

manipulating information was reflected in below average scores and varying levels of difficulty in the academic areas of Written Language, Mathematics, Reading, Oral Expression, and Spelling. In summary, Student's shortfalls in working memory had a significant negative impact on all academic areas of functioning and achievement. The evaluator recommended that a psychiatric consultation be conducted to determine whether Student requires medication for his auditory hallucinations and depressive symptomatology, and that a neuropsychological evaluation be conducted to further clarify Student's academic limitations and elucidate the basis for his auditory perceptual disturbance. (P-2).

#6. The independent Comprehensive Psychological Evaluation also yielded the academic achievement testing results that Student was functioning on the following grade level equivalents: 1.8 in Word Reading; 2.9 in Reading Comprehension; PreK5:0 in Pseudoword Decoding; 2.8 in Numerical Operations; 3.2 in Math Reasoning; 1.8 in Spelling; 8.8 in Listening Comprehension; and 3.2 in Oral Expression. (P-2). The results of a separate reading diagnostic administered on 01/22/10 revealed that Student was reading on a Kindergarten level and when that same testing instrument was administered again on 03/17/10, Student was reading at the 1.0 grade level; all of which indicated that Student was functionally illiterate despite whatever minimal progress he might have made. (R-5). On Student's 04/19/10 IEP, Student was again described as functionally illiterate, and his inability to read severely hindered his ability to access the general education curriculum and his inability to write prevented him from completing class assignments and hampered his ability to express himself in everyday written correspondence. (P-11).

#7. Student does not meet the diagnostic criteria for Mental Retardation per the results of the Vineland Adaptive Assessment (P-3) and Student does not meet the diagnostic criteria for Autism based on the administration of the Gilliam Autism Rating Scale ("GARS") (P-2); however, the GARS only detects classic autism and there are many forms of autism on the autism spectrum that would be detected with the administration of testing instruments other than the GARS. (Testimony of Dr. Elmore).

#8. In the independent Comprehensive Psychological Evaluation dated 12/01/09, Student was identified as having significant auditory information processing deficits in the area of working memory. (P-2). His scores in working memory performance were particularly low, almost 30 points lower than other functioning levels and inconsistent with other areas of performance, and based on those testing results, more information is needed regarding Student's memory abilities in order to (1) assist educators in understanding how Student abstracts information and applies it to academic functions, and (2) formulate goals for Student's IEP. (Testimony of Dr. Elmore).

#9. Auditory information processing denotes those internal processes that a person uses to make sense out of auditory messages or "how the ear speaks to the brain." An auditory processing deficit ("APD") is a problem in understanding spoken language due to an imperfect ability to listen because of underlying auditory perceptual deficits. Auditory perceptual deficits are synonymous with auditory processing deficits. And, the best generic definition of auditory processing deficit is an auditory learning disability. The independent Auditory Information Processing Evaluation that was completed on 02/05/10, was an in depth assessment of Student's

auditory processing abilities and outlined in great detail all areas of Student's auditory processing deficits. (P-4). Specifically, Student was identified as having deficits with auditory phonemic extraction that could account for his severe reading problems. This type of deficit meant that Student had problems with pulling out key auditory information at the speech sound or phonemic extraction level and using the phonemes for mental manipulation. Student was also found to have deficits in general auditory attention; i.e., the ability to regulate his attention and sustain auditory focal attention over time. As well, Student was identified as having deficits related to recalling information from short-term auditory working memory that contributes to deficits with short-term auditory working memory span, and the significance of this deficit is that it can contribute to learning problems because a large part of what goes on in a classroom involves students responding to questions about lessons requiring them to remember and then recall what they have learned. Significant deficits in auditory integration were also identified for Student at both the speech sound or phonemic level and the linguistic or lexical level of processing. This deficit manifests itself in Student's difficulty in forming the meaningful mental images or symbols associated with the sounds/auditory information received. Another area of significant deficits for Student was the organization and sequencing of incoming auditory information. All of the identified deficits indicated that Student would have learning problems in phonics, reading decoding, fluency, accuracy, spelling, listening comprehension, and anything that would require organization and sequencing of verbal material. (P-4). These diagnostic findings are corroborated in Student's behavior at home, where Student can only process and execute one auditory command at a time, and often the one simple auditory command must be repeated 2-3 times before the requested task is successfully executed. (Testimony of Petitioner).

#10. The independent Auditory Information Processing Evaluation was not made available by Petitioner for review by the MDT/IEP Team at the 04/19/10 IEP meeting and its results were not taken into consideration when the 04/19/10 IEP was developed or at any time that DCPS refused to conduct the neuropsychological evaluation. (P-7; P-9; P-10).

#11. At the MDT/IEP meeting on 04/19/10, after review of the independent Comprehensive Psychological Evaluation, the Vineland Adaptive Assessment, the Functional Behavioral Assessment, and the Audiological Evaluation, Petitioner requested that DCPS conduct a neuropsychological evaluation and a psychiatric evaluation, and DCPS refused both. DCPS declined to conduct a psychiatric consultation, instead referring Petitioner to a community organization to have it done. DCPS would not conduct the requested neuropsychological evaluation because (1) it was a medical based assessment and DCPS would not fund a medical based assessment; (2) the independent Comprehensive Psychological Evaluation dated 12/01/09 along with the Vineland Adaptive Assessment provided sufficient information regarding Student's behavior and any issue that prevents him from accessing the academic curriculum; and (3) a neuropsychological evaluation would not provide any new or additional information that is not already provided in the independent Comprehensive Psychological Evaluation and Vineland Adaptive Assessment. (P-7, P-9, P-10). Petitioner made subsequent requests for the neuropsychological evaluation to be conducted; in writing on 05/06/10 (P-15) and on 05/13/10 (P-14), and verbally at the resolution meeting on 06/10/10. (P-7).

#12. The purpose of a neuropsychological evaluation is to help understand the relationship between brain function and behavior. (Testimony of Dr. Elmore). A

neuropsychological evaluation looks specifically at the operations that are going on with the brain that might cause the problem and this can help with the development of appropriate instruction packages for Student. (Testimony of Dr. Ballard). Dr. Ballard, as supervisor of the evaluator who administered the independent Comprehensive Psychological Evaluation, recommended a neuropsychological evaluation to further investigate the reason for Student's working memory deficits because he was precluded from additional testing beyond what was allowed by the standard contract terms of the comprehensive psychological evaluation funding agreement with DCPS. If he had been authorized to complete additional testing, he would have administered testing indices that routinely fall under the umbrella of a neuropsychological evaluation, which is an evaluation that examines different areas of the brain and learning styles that might be compromised by brain functioning. Dr. Ballard reviewed the independent Auditory Information Processing Evaluation and determined that the neuropsychological evaluation would answer different questions than the ones answered by the Auditory Information Processing Evaluation or any other evaluation that had been conducted. (Testimony of Dr. Ballard).

#13. There are many different types of memory, e.g., immediate, rote, short term, long term, visual and auditory memory, and there are many different types of testing instruments that can be used to evaluate memory. Student's auditory memory was evaluated with the Auditory Information Processing Evaluation, but his visual memory was not. The specific types of tests that would routinely be administered as part of a neuropsychological evaluation, e.g., Delis-Kaplan Executive Functioning Scale, NEPSY, and Wechsler Memory Scale are indices that were not administered in previous testing, would be routinely administered in the course of a neuropsychological evaluation, and would yield useful information that could be used for the appropriate programming for Student. (Testimony of Dr. Elmore).

#14. Dr. Elmore, a DCPS clinical psychologist with a recent certification in brain injury and special education, who has completed neuropsychological evaluations in the past, and who reviewed Student's Comprehensive Psychological Evaluation, Audiological Evaluation, Auditory Information Processing Evaluation, Functional Behavioral Assessment, Student's records and spoke with Petitioner about Student, was concerned about Student's very low Working Memory Index and felt that more information and testing was needed on Student's memory abilities in order to help school personnel understand how Student abstracts information and applies it to the academic functions. Dr. Elmore noted concerns about Student's odd or bizarre behaviors such as flapping his hands, odd voice tones, vocalizations that weren't verbalizations, inability to maintain appropriate eye contact, and desired isolation from others; all of which were behaviors beyond the normal range of behaviors and behaviors that impacted Student's ability to achieve in the academic environment. (Testimony of Dr. Elmore). Neurological problems can cause a person to have ringing in the ears or hallucinations. (Testimony of Dr. Ballard).

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:

Hearing Officer Determination

"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 the student with a FAPE." 5 D.C.M.R. 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).

In this case, Petitioner's proof was adequate to demonstrate by a preponderance of the evidence that DCPS' refusal to conduct a neuropsychological evaluation resulted in the denial of a FAPE.

The overall purpose of IDEIA 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. Special education is defined as specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability. 34 C.F.R. 300.39(a). Specially designed instruction means adapting, as appropriate to the needs of an eligible child under IDEIA, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability and to ensure access of the child to the general education curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children. 34 C.F.R. 300.39(1)(b)(3).

To that end, each public agency must ensure that the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. 34 C.F.R. 300.304(a)(C)(4). Assessment results are important for academic programming because it is these results that drive the development of appropriate goals and services in the IEP. Pursuant to 34 C.F.R. 300.305(a)(2)(ii), 300.305(a)(2)(iv), the public agency is required to review evaluation data and identify what additional data, if any, is needed to determine...the present levels of academic achievement and related developmental needs of the child; and whether any additions or modifications to the special education and related services are needed to enable the child to meet the measureable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum. It is these particular statutory provisions of IDEIA that Petitioner alleges that DCPS violated when it refused to conduct a neuropsychological evaluation to gather additional data about Student's identified working memory deficits that affected his ability to access the academic curriculum and make academic progress from year to year.

Two evaluations were conducted that identified Student's significant auditory information processing deficits that interfered with learning; i.e., an independent Comprehensive Psychological Evaluation that was reviewed by the MDT and an independent Auditory Information Processing Evaluation that was not reviewed by MDT because it was not made available to DCPS. (Findings #5, #9, #10, #11). Based on a finding that Student had significant working memory deficits, a recommendation was made in the evaluation that the MDT reviewed, that Student receive a neuropsychological evaluation to help clarify the nature of his auditory processing deficits in order to determine appropriate programming for Student.

Petitioner endorsed this recommendation and requested several times that DCPS conduct the neuropsychological evaluation because she needed additional information about why her child who had been receiving special education services since the 3rd grade, was functionally illiterate and still couldn't read or write as a student in the grade for the second time; what was the cause of her son's bizarre behaviors in class that made him a social outcast and was the main impediment to his learning; why her son could not remember and execute a simple one step verbal command; and what could be done to help him because he was , hearing voices at home and at school, and had been failing or performing poorly in all of his classes for the past two years. (Findings #2, #3, #4, 6, #9). Current testing had ruled out Mental Retardation and classic Autism (Finding #7), but no testing instrument administered so far had really identified the root cause of Student's working memory deficits and bizarre behaviors that impeded learning and resulted in negligible to zero academic and behavioral growth. (Finding #12).

Was the recommendation for a neuropsychological evaluation an appropriate one that should have been implemented by DCPS? At the due process hearing, this recommendation was endorsed by two credible psychologists; not only by the psychologist who supervised the independent Comprehensive Psychological Evaluation that contained the recommendation (Finding #12), but also by one of DCPS' school psychologists who had reviewed Student's evaluations and school records and spoken with Petitioner about Student's behavior. (Finding #14). Dr. Elmore, a DCPS school psychologist, unequivocally stated that more information was needed about Student's memory and information processing difficulties, and that the tests routinely administered in a neuropsychological evaluation would yield useful information that could be used for appropriate programming for Student. (Finding #13). Dr. Elmore testified that based on her review of Student's records and testing results, she didn't believe that Student could master phonemic awareness, and if that is the conclusion that she reaches after additional testing, then the implications for programming for Student are extraordinary because he will never be able to read using conventional teaching methods. And, perhaps that is why he can't read now. Under IDEIA, Student has a right to a FAPE through specially designed instruction that will allow him to access the curriculum, and in this case, the record is overwhelming that Student currently is not receiving a FAPE because he has not been able to access the curriculum for the past two years due to functional illiteracy. (Findings #2, #6). If more testing is required to ensure that Student receives an IEP that can help him access the curriculum, then pursuant to 34 C.F.R. 300.304(a)(C)(4), DCPS must conduct the testing.

DCPS' reasons for not conducting the neuropsychological evaluation (Finding #11) do not hold water with this Hearing Officer. The evidence was clear that Student required additional testing because the evaluations that had been completed did not provide enough information about Student's working memory deficits. (Finding #8, #14). Pursuant to 34 C.F.R. 300.304(a)(C)(4), DCPS must evaluate Student in all areas of the suspected disability. The independent Comprehensive Psychological Evaluation indicated that Student had an auditory processing deficit that affected his ability to learn and access the curriculum. Student, at age , was in the grade for the second time, failing or performing poorly in all of his classes, and everything that DCPS had been doing over the years to provide Student with special education services wasn't working because Student was still functionally illiterate and had made negligible academic progress over the years because his inability to read or write denied him access to the curriculum. Rather than provide Student with more specialized testing to elucidate the nature of

Student's newly identified working memory deficits, which would in turn enable DCPS to get a better grasp on the source of Student's inability to learn and then use that information to provide the appropriate supports and accommodations, DCPS gave him a dedicated aide and Extended Year Services. (Finding #1).

In this case, DCPS was required to test Student in the areas relating to his communicative status (bizarre sounds and behaviors, vocalizations without verbalizations), his social and emotional health (auditory hallucinations and nightmares), and his memory. 34 C.F.R. 300.304(a)(C)(4). The Hearing Officer concludes that the types of evaluations that might yield results in the areas of concern would be a psychiatric evaluation, the types of testing indices normally administered under the category of a neuropsychological evaluation, and testing to rule out the full spectrum of Autism Disorders.

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).

The Hearing Officer concludes that DCPS violated the IDEIA when it failed to evaluate Student in all areas of suspected disability by failing to conduct the neuropsychological evaluation that was repeatedly requested by Petitioner and was recommended in an independent Comprehensive Psychological Evaluation in order to further clarify Student's academic limitations and elucidate the basis for Student's auditory perceptual disturbance. This violation resulted in the inability of Petitioner to gather all relevant information that could be used to develop more appropriate IEP goals and programming for Student, and it resulted in Student being denied educational benefit because he could not access the curriculum due to the lack of specially designed instruction that could meet his unique needs.

What is crystal clear from review of this record is that something is extremely atypical about the way Student behaves and learns, no one has a good grasp on what it is, he is functionally illiterate and not making any academic progress, and Student's past and current educational programming cannot possible prepare him for higher education, vocational training or independence. The very basic and broad goal of IDEIA, i.e., to provide Student with specially designed instruction to meet his unique needs so that he can be prepared for the future, is not being met.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, this Hearing Officer orders:

(1) DCPS shall complete a comprehensive psychological evaluation of Student that (a) addresses memory, including short term, long term, immediate, remote and visual memory; (b)

rules out the autism spectrum disorders including Asperger's Disorder; and (c) addresses visual attention; no later than 30 calendar days from the date of the Order;

(2) Petitioner shall obtain the testing protocols for the educational and cognitive components of the WIAT-II and WAIS-III from the independent Comprehensive Psychological Evaluation completed on 12/01/09 and provide them to DCPS and Dr. Marquita Elmore, no later than 07/23/10;

(3) DCPS shall complete a psychiatric evaluation of Student no later than 30 calendar days from the date of this Order; and

(4) The MDT/IEP shall convene to review all of the above testing results as well as the independent Auditory Information Processing Evaluation dated 02/05/10, no later than 15 business after the results of the last testing has been completed, and include Dr. Marquita Elmore in the MDT/IEP Team meeting to the extent possible, and at that meeting, the MDT/IEP Team shall review the evaluations with all necessary and appropriate personnel in attendance, review and revise Student's IEP as appropriate, and discuss and determine placement.

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 USC §1415(i).

Date: July 18, 2010

/s/ Virginia A. Dietrich
Hearing Officer

Copies to:

Petitioner (via U.S. mail)
Petitioner's Attorney: Miguel Hull, Esq. (electronically)
DCPS' Attorney: Laura George, Esq. (electronically)
DCPS (electronically)
SHO (electronically)