DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

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

[Grandparent], on behalf of
[Student],[1]

Petitioner,

v

District of Columbia Public Schools (DCPS),

Respondent.

Date Issued: July 16, 2012

Hearing Officer: Jim Mortenson

Case No: 2012-0419

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HEARING OFFICER DETERMINATION
On Cross Motions for Summary Adjudication

I. Background

The Complaint in this matter was filed with the Student Hearing Office (SHO) and served on the Respondent on June 7, 2012. The Respondent filed a response on June 18, 2012. A prehearing conference was held, via telephone, on June 22, 2012. Participating in the prehearing were Petitioner's Counsel, Domiento Hill, Esq. and Respondent's Counsel, Daniel McCall, Esq. A prehearing order was issued June 22, 2012.

A scheduling order for dispositive prehearing motions was included in the prehearing order. Such motions were to be filed no later than 5:00 p.m. on July 6, 2012, and any reply to a dispositive motion within three business days. A decision would then be issued within five business days of any reply. The Petitioner filed a dispositive motion on July 6, 2012. The Respondent filed a reply to the Petitioner's motion and a cross motion to dismiss on July 9, 2012.[2] This decision is issued on July 16, 2012.

The Petitioner's motion was styled as one for summary judgment and the Respondent's motion as one to dismiss. After careful consideration of the pleadings, motions and supporting documents, and undisputed facts of this case, the Petitioner's motion is granted and the

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[1] Personal identification information is provided in Appendix A which is to be removed prior to public dissemination.

[2] The reply and cross motion arrived at 6:33 p.m. on Friday, July 6, 2012, and so was effectively filed Monday, July 9, 2012, the next business day.

Respondent's motion is denied for the reasons stated herein. In sum, the undisputed facts show the Petitioner requested a specific set of assessments as part of a reevaluation which was refused by the Respondent for an inappropriate reason. The requested assessments are reasonable and necessary to provide sufficient relevant information to the individual education program (IEP) team to appropriately revise the IEP for the Student.

II. Standard for Summary Adjudication

There are no rules under the Individuals with Disabilities Education Improvement Act (IDEA) or the District of Columbia Municipal Regulations for special education hearings dealing with summary disposition. Hearing Officers have the "authority and responsibility" to "take actions necessary to complete the hearing in an efficient and expeditious manner[.]" Student Hearing Office Standard Operating Procedure (SOP) § 600.1. Thus, to ensure the efficient and expeditious use of time and resources, this Independent Hearing Officer (IHO) closely examines the requirements for due process complaints and decisions under the IDEA and makes a determination based on those requirements and under the authority to complete the hearing in an efficient and expeditious manner. In this case, because both parties believe the hearing can and should be determined based on the documentary facts provided with the motions, and because only the conclusions drawn from those facts differ, it is appropriate to draw findings of fact from those documents, and make legal conclusions based on the IDEA and local special education law and the facts of the case.

III. Findings of Fact

After considering the pleadings of both parties, including their motions and supporting documents, this Hearing Officer's findings of material undisputed fact are as follows:

1. The Student recently completed the 8th grade at a non-public day school in which he was placed by the Respondent. The Student currently receives special education and related services, has an individualized education program (IEP) and has been determined eligible for such services under the category of speech and language impairment.

2. A neuropsychological evaluation of the Student was conducted in January 2007. The evaluation included: a clinical observation and interview with the Student, an interview with the Petitioner; a review of selected school records; a review of cognitive and achievement testing conducted in May 2006; and a Developmental Neuropsychological Assessment (NEPSY) including the following domains: Attention/Executive Core Domain; Language Core Domain; Sensorimotor Core Domain; Visuospatial Core Domain; and Memory and Learning Core Domain.

3. A psychological evaluation of the Student was conducted in September 2009. The evaluation included: a review of records; clinical interview with the Student; Kaufman Assessment Battery for Children – Second Edition (KABC-II); Comprehensive Test of Nonverbal Intelligence (C-TONI); Woodcock-Johnson III Tests of Achievement (WJ-III); Reynolds Child Depression Scale (RCDS); and Behavior Assessment System for Children, Second

Edition (BASC-2) (competed by the Petitioner and two teachers). No direct measures of attention/executive functioning were utilized and the emotional assessment was only based on a self-assessment and one other assessment returned.

4. The Student's IEP team met on April 5, 2012, to discuss his reevaluation and IEP. At the meeting the Petitioner, her advocate, and school staff discussed what they knew about how the Student's disability was affecting his educational progress and determined a new neuropsychological evaluation for the Student was necessary to provide additional data in order to program for the Student. The concern was generally about why he was having emotional/behavioral outbursts in class, problems the Student experienced with modulating mood and behavior, and sensory concerns. The LEA representative at the meeting advised the team that another meeting would have to be convened with additional staff before a determination about whether the neuropsychological evaluation would be provided could be made. (It is unknown why the LEA representative took this position, but her reasons are not relevant to the determination herein.) No written notice of the Respondent's refusal to conduct the neuropsychological evaluation at that time was provided.

5. The IEP team met again on May 31, 2012, with additional staff from the Respondent consisting of a psychologist. The team again discussed the Student's areas of need and the data necessary to appropriately program for him. A majority of the team again determined a neuropsychological evaluation was necessary to collect data to appropriately program for the Student. Additional data necessary included: his level of functioning in the areas of attention, memory, and sensory motor processing. The Respondent advised it would provide a comprehensive psychological evaluation, and not a neuropsychological evaluation until the comprehensive psychological were first conducted. The Respondent did not explain why it was refusing the neuropsychological evaluation in a prior written notice. The Respondent did agree, generally that assessment of the Student's motor and sensory processing and cognitive and academic functioning was necessary.

6. A comprehensive psychological evaluation consists of: clinical, cognitive, and educational areas. Which of these areas were to be examined for the Student, or whether all of them would be examined, was not identified in the prior written notice.

7. A neuropsychological evaluation consists of assessment of: processing of visual and auditory material; profound attention deficits; problem solving; organization; motor functioning; and other areas of cognitive processing believed to result from physical deficits.

8. The Petitioner refused to provide consent for the undefined comprehensive psychological evaluation.

IV. 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:

1. A reevaluation of a child with a disability must be conducted at least once every three years or when a parent or teacher requests. *See,* 34 C.F.R. § 300.303(a)(2), D.C. Mun. Regs. tit. 5, § 3005.7.

2. The evaluation or reevaluation of a child is an overall process that includes, as a component, one or more assessments. An assessment is the process of collecting data. *See*, D.C. Mun. Regs. tit. 5, § 3001.1. Tests and other assessment procedures must be conducted by qualified evaluators under the direction of the IEP team, to produce the data required by the IEP team to make determinations about whether the child has or continues to have a particular disability category, the present levels of performance and educational needs of the child, whether the child needs or continues to need special education and related services, and "whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum." D.C. Mun. Regs. tit. 5, §§ 3005.4 and 3005.5. An evaluation includes: 1) procedures used in determining whether a child is a child with a disability and the extent of the needs of the child; 2) the process of reviewing information from the parents of the child, existing data about the child, and results of assessments; and 3) a review of all of this information at an IEP team meeting. D.C. Mun. Regs. tit. 5, § 3001.1.

3. An evaluation must include, among other things: "a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent;" "use of technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors;" be "sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified;" and include "[a]ssessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child. . . ." 34 C.F.R. § 300.304(b), *see also,* D.C. Mun. Regs. tit. 5, § 3005.9. The determination by the IEP team, sans the local education agency representative, that a new neuropsychological assessment was necessary to gather data on the Student's attention and memory was reasonable given that the team had determined more and current data was necessary. The Respondent's position that a less intensive collection of such data through the use of a comprehensive psychological assessment must be done first was not reasonable. The IEP team's determination must be made based on the individual needs of the child. The Respondent's position was not explained in a written notice about the refusal (in fact the refusal was merely referenced in the written notice that was provided). Furthermore, the specific facts of this case show the Student had been provided a comprehensive psychological assessment in 2009, including collection of data on the Student's cognitive skills in the areas of memory and attention. The majority of the team believed the data was insufficient and that more in-depth data on the Student's memory and attention and sensory motor processing was necessary. The Respondent refused this without justification.

4. Written notice must be provided whenever a school district proposes or refuses an evaluation of a student. *See* 34 C.F.R. § 300.503(a), D.C. Mun. Regs. tit. 5, § 3024.1. The notice must

include, among other things, an explanation of why the school district proposes or refuses the evaluation. *See* 34 C.F.R. § 300.503(b).

5. The Respondent failed to provide written notice explaining its proposal and refusal and so the Petitioner's lack of consent for the psychological evaluation will be held harmless.[3]

Determination

The Petitioner's motion for summary adjudication is granted and the Respondent's motion to dismiss is denied.

Order

1. The Student will be provided with a reevaluation consisting of, at a minimum, the following assessments:
    - Review of existing educational and related records
    - Clinical interviews with the Student and Petitioner
    - KABC-II
    - C-TONI
    - WJ-III
    - RCDS
    - BASC-2
    - NEPSY – which will examine the following domains: attention/executive functioning core domain; language core domain; sensorimotor core domain; visualspatial core domain; and memory and learning core domain.
    - Any additional assessment necessary to ensure sufficient and relevant data is available to program for the Student as determined by members of the IEP team.

2. Because the reevaluation was requested in April 2012, and the next school year will begin in late August 2012, the reevaluation must be completed prior to the start of the 2012-2013 school year. The reevaluation is complete when the IEP team has met and drafted the evaluation report, based on all of the assessments conducted, in accordance with D.C. Mun. Regs. tit. 5, § 3006.

3. Any delay in the completion of the reevaluation that is caused by the Petitioner or Student will not be counted against the Respondent. For a delay to not be counted against the Respondent in terms of measuring compliance with this order, the Respondent must demonstrate, via affidavit and supporting documentation, the efforts it made to timely complete the assessments and reevaluation.

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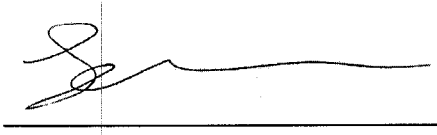
[3] The Respondent argued that the Petitioner's refusal to consent to the proposed reevaluation results in a waiver of the Student's right to a free appropriate public education. This cannot be the result where the parent is involved in the programming for the Student, has made her own request for particular assessments, and is not provided the required written notice for the proposal for which consent is sought.

IT IS SO ORDERED.

Date: July 16, 2012



Jim Mortenson,
Independent Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 USC §1415(i).

APPENDIX A

Margaret Morgan (Grandmother), on behalf of James Houck (Student) v. District of Columbia Public Schools (DPCS). Case No: 2012-0419

Child	James Houck
Date of Birth	3/7/1998
Student ID Number	9083556
Attending School	Kingsbury Day School
Petitioner (specific relationship)	Margaret Morgan (Grandmother)

DCSHO: Re: Case # 2012-0419 (J.H.); Motion Order/HOD From <Jim.Mortenson@dc.gov>

admin@dcsho.i-sight.com [admin@dcsho.i-sight.com]

Sent: Monday, July 16, 2012 4:19 PM

To: domientocrhill@gmail.com; McCall, Daniel (DCPS-OGC)

Cc: Due, Process (OCTO); HearingOffice, Student (OSSE)

Attachments: HOD.071612.0419JH.pdf (294 KB)

** NOTE: Please do not modify subject line when replying **

** This email was sent by Jim Mortenson [mailto: Jim.Mortenson@dc.gov] **

Attached is the motion order/HOD in this matter.

Please review it carefully.

If you cannot open the attachment, contact me at 202.536.3180.

Thank you.

Jim Mortenson, Independent Hearing Officer

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