DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, NE 2nd Fl.
Washington, DC 20002

PETITIONER, on behalf of [STUDENT],[1]

Petitioner,

v

DISTRICT OF COLUMBIA PUBLIC SCHOOLS,

Respondent.

Date Issued: July 30, 2012

Hearing Officer: Ternon Galloway Lee

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HEARING OFFICER DETERMINATION

I. INTRODUCTION AND PROCUDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed on May 16, 2012, by PARENT ("Parent"), through her attorney, under the Individuals with Disabilities Education Act, as amended (the "IDEA"), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations ("D.C. Regs."). In her Due Process Complaint ("Complaint"), Parent alleges that District of Columbia Public Schools ("DCPS") failed to provide Student a Free Appropriate Public Education ("FAPE") because DCPS failed to provide an independent educational evaluation ("IEE") or failed to provide an IEE without unnecessary delay.

For relief, Petitioner sought in her Complaint an order directing DCPS to (i) fund an independent comprehensive psychological assessment and (ii) convene a MDT/IEP meeting within 10 days of receipt of the IEE to review the assessment, Student's progress, and Student's IEP and to determine Student's placement and location of services.[2]

Student, is a resident of the District of Columbia. He was found eligible for special education services under the disability category, Autism. The Hearing

[1] Personal identification information is provided in Appendix A.
[2] By letter dated June 25, 2012, DCPS authorized the parent to obtain the IEE it sought. (R-3). *As of the hearing date, the IEE had not been obtained.* (Testimony of Educational Advocate).

Officer was appointed on May 17, 2012. The parties met to discuss resolution on June 21, 2012; however, settlement was not reached.

No request was made to adjust the resolution period applicable during the prehearing conference ("PHC") held on June 25, 2012, and it was determined that the non-expedited 45 day due process hearing time period would begin/had begun on June 16, 2012. Also during the PHC held on June 25, 2012, the issue was further clarified and determined as well as other matters related to managing the case and the due process hearing.

The Hearing Officer held the due process hearing ("DPH") on July 9, 2012, at the Student Hearing Office in Washington, D.C. The hearing, which was closed to the public by Parent's choice, was recorded on an electronic audio recording device. Petitioner was represented by an attorney at the hearing as well as DCPS. On behalf of Parent, two witnesses testified – Parent and the Educational Advocate ("EA"). On behalf of DCPS, the Compliance Case Manager testified. The Hearing Officer admitted Parent's Exhibits P-1 through P-5.[3] She also admitted DCPS' exhibits R-1 through R-4.[4]

II. ISSUE

The issue presented to the Hearing Officer to be determined is noted below:

A. Whether DCPS denied Student a FAPE under 34 C.F.R. § 300.502 (b) when DCPS either failed to provide an IEE or failed to provide for an IEE without unnecessary delay?

Petitioner now seeks as relief an order from the Hearing Officer directing DCPS to convene a MDT/IEP meeting within 10 days of receipt of the IEE to review the assessment, Student's progress, Student's IEP, and to determine Student's placement and location of services.[5]

III. FINDINGS OF FACT

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

1. Student is a child with a disability. During the 2011-2012 school year, Student was a second grader at Elementary School. He has been identified as having a primary disability of Autism Spectrum Disorder ("Autism "). (P-2, p. 1; Testimony of EA).

2. Student's current IEP is dated March 10, 2011.[6] This IEP reflected that an educational evaluation of the Student was conducted on March 12, 2009. The IEP noted that this evaluation

[3] "In this HOD, P" refers to Petitioner's exhibits, "R" to Respondent's exhibits.

[4] At least five business days prior to the hearing, the Hearing Officer had informed counsel that all emails, correspondence, documents, notices, and orders she had received/issued would be made part of the record.

[5] As noted previously, by letter dated June 25, 2012, DCPS authorized the IEE requested. Thus, Parent no longer seeks an order for an IEE.

[6] While DCPS provided a witness who testified that Student's current IEP was developed March 8, 2012. DCPS did not present that document as evidence. The Hearing Officer finds insufficient evidence to find Student's current IEP

could not obtain a calculation score from the Woodcock Johnson III ("WJIII") because of Student's inability to write numbers or complete computational problems. (P-2, p. 3).

3. The March 10, 2011 IEP also reflected that on May 23, 2009, Student's adaptive functioning had been measured by a psychologist using the Vineland Adaptive Behavior Scales-Second Edition teacher rating form. Results indicated that Student was mildly mentally retarded. Student's receptive and expressive language skills had also been assessed and revealed Student functioning with a mild deficit in this area. (P-2, p. 4).

4. The March 10, 2011 IEP also noted that 2009 assessments showed that Student had a profound impairment in receptive and expressive communication skills. (P-2, p.5).

5. In the area of motor skills/physical development, the March 10, 2011 IEP notes that Student continues to demonstrate difficulty imitating a cross, square, triangle, and diagonal lines. It also notes that Student requires moderate assistance from his therapist to hold his scissors with a functional grass to snip along the edges of paper. (P-2, p.7).

6. The March 10, 2011 IEP also reflects that Student is in a full-time special educational setting where he receives 24.5 hours a week of specialized instruction; 1.5 hours a week of occupational therapy services; and 1 hour a week of speech and language services. (P-3, p. 2; P-2, p. 10).

7. Teacher comments issued on June 20, 2011, indicated that Student's ability to stay on task had been reduced significantly. Specifically, during task time it was reported that Student was exhibiting such behaviors as laughing and mocking teachers and aides. Interventions at home and school were recommended to improve Student's behaviors. Also recommended were regular academic and social skills training to prepare Student for the 2011-2012 school year. (P-1, p. 3).

8. Parent deemed Student had regressed. On September 30, 2011, Parent requested DCPS re-evaluate Student. To determine Student's special education and related service needs, Parent sought as components of the re-evaluation several evaluations: a comprehensive psychological assessment, an occupational therapy assessment, an adaptive vineland assessment, and a speech and language assessment. Simultaneously, Parent provided written consent for the re-evaluation. By November 7, 2011, DCPS had not responded to the re-evaluation request. Therefore, on that date, Parent filed a Complaint contending denial of FAPE for failure to re-evaluate Student. This Complaint was subsequently withdrawn/dismissed without prejudice. (P-1,p. 3).

9. Subsequent to the filing of the November 7, 2012 Complaint, an MDT/IEP meeting was held on December 20, 2011. At that meeting DCPS informed Parent that her September 30, 2011 consent was unacceptable and DCPS required Parent to submit another consent. Parent provided DCPS with written consent again for the reevaluation on January 3, 2012. (P-1, p 3).

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was developed March 8, 2012. Student's EA testified that Student's current IEP is dated March 10, 2011, and that neither he nor Parent had been provided another more current IEP. The March 10, 2011 IEP was entered as evidence.

10. On February 2, 2012, Parent, through her attorney, requested an update on the status of the reevaluation. On February 10, 2012, Parent received a telephone call from the school psychologist informing Parent that she had commenced the comprehensive psychological evaluation, but had not completed it. (P-1,p. 4). Thereafter, the school psychologist finished the evaluation. The resulting written report was issued on February 17, 2012. DCPS provided Parent a copy of the report. (P-1, p. 4; P-3, p. 1).

February 17, 2012 Psychological Assessment

11. The purpose of the February 17, 2012 Psychological Evaluation was to assess Student and provide data on whether Student's difficulties in his current educational setting were a result of an intellectual deficiency or autism spectrum disorder. Further, the results of this evaluation was to provide the MDT/IEP team with relevant information to assist the team in determining the Student's instructional needs (educational planning) and disability. (P-3, p. 1).

12. Tools administered to assess Student included testing/testing observations, interviews, and rating scales. (P-3).

13. Testing observations reported on the evaluation indicated that Student had difficulty staying on tasks and responding to test questions; that Student was not able to follow directions; that he moved constantly about the room and had to be redirected many times. The psychologist noted that Student's intellectual assessments were attempted but did not provide any results because Student was unable to complete any of the tasks required. The evaluator reported that Student's intellectual functioning or IQ was unattainable due to Student not being able to stay on task and answer questions during cognitive testing. (P-3, pp. 5, 9).

14. As part of the psychological testing, the evaluator conducted an interview with Student's teacher. The teacher indicated that Student was performing well in school. The teacher noted that Student had shown progress toward almost all his goals on his IEP. However, the teacher stated that Student exhibited some impulsive, erratic, and inappropriate behaviors at times such as throwing paper out the window for no reason. The teacher also noted Student needed a lot of prompting, repetition, and redirection. Further, she reported that Student does not retain information once he has learned it. (P-3, p. 5). The Hearing Officer finds the teacher's latter observation contradicts her reporting that Student is performing well in school and is making progress on his goals.

15. An interview with Parent indicated she was frustrated with being provided with inconsistent diagnoses and interpretations of Student's difficulties. The Parent reported that while she had observed some growth in Student's learning and his ability to communicate, Student was hyperactive at times and displayed some inappropriate behaviors for his age. (P-3, p. 5).

16. The evaluator noted that she was unable to conduct an age appropriate interview with Student. (P-3, p. 5).

17. In addition to gathering data by conducting interviews, the evaluator used the Gilliam Aperger's Disorder Scale ("GADS") as an assessment tool. The GADS is a screening test designed to evaluate individuals with unique behavior problems who may have an Asperger's Disorder. The evaluation noted that testing results obtained from responses from Student's mother and teacher revealed that Student displays a high number of behaviors associated with Asperger's. Those behaviors demonstrated by Student included (i) eccentric conduct and (ii) behaviors indicating Student was unaware of social conventions or codes of conduct. (P-3, pp. 8-9).

18. The psychological assessment also tested Student's adaptive daily living skills using the Adaptive Behavior Assessment System 2nd Edition ("ABAS-II"). Scoring obtained by responses received from Parent and Student's teacher indicated Student's adaptive living skills fell in the extremely low range as evidenced by composite scoring of 58 and 54 on the ABAS=II. (P-3, pp. 7, 9).

19. Regarding educational implications, the report addressed any results regarding evaluations conducted to determine an Autistic and or intellectual disability.

The report noted that based on testing results, Student met the standards for a student with Autism Spectrum Disorder. (P-3, p. 9). It defined autism spectrum disorder as a developmental disability significantly affecting verbal and nonverbal communication and social interaction; generally evident before age 3, that adversely affects a child's educational performance. The report noted that other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The report noted that a child who manifests the characteristics of autism after age 3 could be identified as having autism if the other criteria are satisfied. Further, it noted that autism does not apply if a child's educational performance is adversely affected primarily because a child has an emotional disturbance. (P-3, p. 10).

The report also noted that Student's cognitive potential could not be fully assessed because Student was unable to maintain attention and focus and respond to questions to measure his cognitive ability. The report concluded that an intellectual disability could not be determined because Student was not able to respond to cognitive assessment. (P-3, p. 9, 11).

20. In summary the report noted that Student's current functioning in school is significantly below average with deficits in all areas. The evaluator noted that data on Student indicates he displays problems with speech and language, social communication; displays difficulty interacting with people and at events; exhibits delays/regression in motor, sensory, social or learning skills; exhibits abnormalities in the thinking process and in general displays an inability to perform on age and grade level. (P-3, p. 11).

21. Parent and EA found the February 17, 2012 psychological assessment inadequate because it did not include a cognitive evaluation. (P-4; Testimonies of EA and Parent). The Hearing Officer finds DCPS' psychological assessment did not evaluate Student for a suspected intellectual disability. It was therefore insufficient.

May 26, 2012 MDT/IEP Meeting

22. The MDT/IEP team met on March 26, 2012. Those in attendance included the EA and Parent. The purpose of that meeting was to discuss, among other things, the February 17, 2012 psychological assessment conducted by DCPS' psychologist, to receive input about Student, and to make revisions as needed to Student's IEP. (Testimony of EA; P-1, p. 4).

23. Because Parent deemed the February 17, 2012 psychological assessment unacceptable for the reason noted above, on April 2, 2012, Parent, through her EA, made a written request for an independent comprehensive psychological evaluation to include assessing Student's intellectual ability. (Testimony of EA; P-4; Stipulation of parties).

24. By May 16, 2012 DCPS had not responded to the request for the IEE. Neither had DCPS filed a due process complaint regarding the IEE request. (P-1, pp. 4-5; Testimony of EA).

25. DCPS also did not respond to the request for an IEE from May 16, 2012, to June 21, 2012. (Testimony of EA).

Resolution Meeting

25. On June 21, 2012, a resolution meeting ("RM") was held and the parties attempted to resolve the due process complaint filed by Parent on June 16, 2012. Parent participated by telephone. Her attorney participated in person. As part of the settlement negotiations, DCPS authorized the IEE requested. This authorization was not independent of the proposed settlement agreement. (P-5, pp. 2, 5).

26. The proposed offer of settlement was not accepted because Petitioner did not agree to several provisions contained in it. One provision rejected by Parent would have required Parent to give up her right to other relief to which she might have been entitled in exchange for the letter awarding the IEE. Another provision limited attorney fees to (P-5, p. 2).

27. On June 25, 2012, independent of the proposed settlement agreement made during the RM, DCPS authorized an independent comprehensive psychological assessment which entailed cognitive, clinical, educational, and social history assessments.[7] (R-3).

28. The compliance manager facilitated the RM and prepared the notes regarding what took place during the meeting. She has had no contacts with Student. (Testimony of Compliance Manager).

[7] The June 25, 2012 letter authorizing the IEE was sent to counsel for the Petitioner after the PHC held on June 25, 2012, and received by the Hearing Office after she issued an order dated June 28, 2012, denying DCPS' motion to dismiss the Complaint on grounds of mootness.

Other

29. Student' s EA holds a bachelor's degree in psychology and sociology, a Master's degree in counseling and mental health. He also is currently in the dissertation stage of a doctorate of education. (Testimony of EA).

30. The EA has worked as an educational advocate for Student since May 2011.[8] In that role, he has participated in MDT/IEP meetings on behalf of Student since that time. (Testimony of EA).

31. DCPS delayed responding to Parent's request to reevaluate Student and to authorize an independent comprehensive psychological assessment. (P-1; Testimony of EA).

32. Parent participated in IEP meetings prior to April 2, 2012. (Testimony of Parent).

IV. BURDEN OF PROOF

The Burden of proof in a due process hearing is the responsibility of the party seeking relief, in this case, Parent. *See* D.C. Regs. tit. 5-E, § 3030.3. *See, also, Schaffer ex rel. Schaffer v. Weast,* 546 U.S. 49, 62, 126 S. Ct. 528 536, 163 L.Ed.2d 387 (2005); *Hester v. District of Columbia,* 433 F. Supp.2d 71, 76 (D.D.C. 2006). Below, the Hearing Officer examines the issue(s) and evidence to determine if Parent has met her burden.

V. CONCLUSIONS OF LAW/APPLICABLE LAW AND ANALYSIS

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

The vital purpose of the IDEA is to ensure that all children with disabilities have available to them special education and related services designed to meet their unique needs and provided in conformity with a written IEP (that is, a FAPE). 20 U.S.C. §§1400 (d)(1)(A), 1401 (9)(D); 1414(d); 34 C.F.R. §§ 300.17(d), 300.320; *Weast,* 456 U.S. at 51, *Bd. Of Educ. v. Rowley,* 458 U.S. 176, 179-81(1982).

Pursuant to IDEA each LEA is required to locate, identify, and evaluate all children in its district that are suspected of being in need of special education and related services. 20 U.S.C. § 1412(a)(3)(A). Once a child is determined to be a child with a disability, a group of knowledgeable individuals is required to develop, as referenced above, an IEP to meet the unique needs of the child. *Branham v. Gov't of the District of Columbia,* 427 F. 3d 7, 8 (D.C. Cir. 2005).

Under 34 C.F.R. § 300.303(a), a LEA is also required to reevaluate a child with a disability (i) if the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or (ii) if the child's parent or teacher request reevaluation. A parent who disagrees with an evaluation by the LEA has a right to request an IEE. 34 C.F.R. § 300.502(b).

[8] The exact date in May 2011 was not provided.

In the case before this Hearing Officer, the evidence shows Parent requested a reevaluation due to her concerns and perception that the child was regressing. She disagreed with an evaluation and requested an IEE. She contends DCPS's delay in authorizing the IEE denied Student a FAPE. Below, an analysis is undertaken to determine if the claim is substantiated.

A. ISSUE

Whether DCPS denied Student a FAPE under 34 C.F.R. § 300.502 (b) when DCPS either failed to provide an IEE or failed to provide for an IEE without unnecessary delay?

A parent may have a right to an independent education evaluation ("IEE") at public expense if she disagrees with an evaluation obtained by the LEA. 34 CFR § 300.502(b)(1). If a parent requests an IEE, the LEA must either file a due process complaint to show that its evaluation is appropriate or ensure that an IEE is provided at public expense without unnecessary delay. 34 CFR § 300.502(b)(2).

In this case, on April 2, 2012, Parent, through her educational advocate, requested an independent comprehensive psychological evaluation to assess, among other things, Student's cognitive functioning. Parent disagreed with the February 17, 2012 psychological evaluation performed by DCPS because Student's cognitive abilities were not tested. DCPS did not file for a due process hearing to uphold the validity of its psychological evaluation. Neither did it communicate with Parent as to why it did not authorize the IEE. Thus, on May 16, 2012, Parent filed for a due process hearing. On June 21, 2012, five weeks after Parent filed her Complaint, a resolution meeting was held. At that time and as part of a proposed settlement, DCPS offered Parent an IEE. The proposed settlement if accepted required Parent to, among other things, give up any other rights she had regarding the case. The settlement agreement was rejected for this reason as well as a dispute over reasonable attorney fees. On June 25, 2012, independent of any proposed settlement agreement DCPS authorized funding for the requested IEE.

Granted DCPS has now authorized financing the IEE without condition. Nonetheless, the Hearing Officer must decide if DCPS was dilatory in funding the IEE, and if so whether the delay was a denial of FAPE. To address this inquiry, the Hearing Officer undertakes a fact specific analysis. *See e.g.*, 111 LRP 48178 (July 7, 2011) (noting whether the length of time that has passed before a school district initiates a due process hearing or provides the IEE at public expense constitutes "unnecessary delay" is a question of fact, based upon the circumstances of the particular case).[9]

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[9] 111 LRP 48178 cites to two cases to support its determination that the circumstances determine whether unnecessary delay exists. First, it noted that in *J.P. v. Ripon Unified School District* (E.D. Cal. 2009) 2009 WL 1034993; 52 IDELR 125.) *(Ripon.)* the court found no unnecessary delay even though the school district's due process request was filed more than two months after the request for an IEE. The court reasoned that the school

In the case before this Hearing Officer, DCPS did not respond to Parent's request for an IEE for 80/84 days. That is, for nearly three months, it did not request a due process hearing to uphold the validity of its psychological evaluation, nor did it fund an IEE. DCPS has offered no reason for the delay. What is more, in the interim the parties were not in communication about the IEE. Further, the authorization was not provided until after Parent filed her Complaint. Mindful of these facts, the Hearing Officer finds DCPS' conditional funding (based on Parent accepting the settlement offer) of the IEE 80 days after the IEE request and its unconditional authorization four days later constitute unnecessary delay.

Having made this finding this Hearing Officer is cognizant of DCPS's contention that the issue before this Hearing Officer is not ripe because DCPS eventually authorized the IEE. DCPS provides two letters dated June 21 and 25, 2012, authorizing the funding, to support its assertion. This argument is unpersuasive. IDEA requires a response without unnecessary delay. 34 C.F.R. § 300.502 (b)(2). As discussed previously, the facts show DCPS' delay was needless and thus unnecessary.[10]

The Hearing Officer finds DCPS' violation a procedural violation of IDEA. See, e.g., *Taylor v. District of Columbia*, Civil Action No. 09-175 (EGS) (D.D.C. March 16, 2011) (DCPS' failure to timely respond to a request for an independent evaluation is a procedural violation of IDEA and may constitute a denial of FAPE if the Student suffered an "educational harm.") The Hearing Officer now examines whether DCPS' procedural violation denied Student a FAPE.

In order to establish a violation of the IDEA based on DCPS' failure to follow statutory procedures, Parent must show that Student's substantive rights were affected. *See Lesesme ex rel. B.F. v. District of Columbia*, 447 F. 3d 828, 834 (D.C. Cir. 2006) ("[A] claim is viable only if those procedural violations affected the Student's substantive right."). In other words, Student has been denied FAPE only if there was harm; that is, if the procedural violations (1) impede the child's right to a FAPE, (2) significantly impede the parents' opportunity to participate in the decision making process regarding the provision of a FAPE to the parents' child; or (3) cause a deprivation of educational benefits. 20 U.S.C. Section 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2).

In this case, the Hearing Officer after careful deliberation finds Parent's ability to participate in the decision making process was significantly impeded for the reasons stated below.

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district was not dilatory because the parties were communicating regarding the request for the IEE in the interim. Further, the parties did not come to a stalemate on the issue until less than three weeks before the school district filed for a due process hearing. Second and in contrast to *Ripon*, 111 LRP 48178 cited to the case of *Pajaro Valley Unified School District v. J.S.* (N.D. Cal. 2006) 2006 WL 3734289; 47 IDELR 12) *(Pajaro Valley)*. In *Pajaro Valley* the court found unnecessary delay when the school district offered no explanation for waiting approximately 11 weeks to file a due process complaint challenging Parent's request for an IEE.

[10] Further, the Hearing Officer finds that to grant DCPS' request for dismissal under the facts here would allow DCPS to circumvent the law; that is, unduly stall on its duty under IDEA until Parent files a due process complaint, wait for a resolution meeting and then shortly thereafter act on what it had been already obligated to do for months. The Hearing Officer declines to approve these actions.

The evidence shows that, Student was performing well below his expected age and grade level in his special education program. Parent had concerns about Student regressing. She reported his behavior had worsened. An intellectual disability was suspected. Thus, on September 30, 2011, Parent asked that Student be reevaluated. Parent requested the reevaluation include, among other assessments, a comprehensive psychological evaluation, to determine among other things Student's cognitive functioning. After several months of delay, DCPS conducted a psychological assessment of Student on February 8, 2012. The purpose of this assessment was to determine if difficulties Student was experiencing in his current educational setting were caused by an intellectual disability or Autism Spectrum Disorder. Thus, Student was to be assessed in the suspected areas of disability - intellectual disability and autism.

The school psychologist issued a written report on February 17, 2012, titled "Confidential Psychological Re-evaluation." Pertinent to this case is the report's comments regarding cognitive testing. They reflect that while cognitive testing was attempted, it was not completed because the evaluator was unable to assess Student's cognitive abilities due to what the evaluator described as "Student's hyperactivity, his being incapable of maintaining attention, and his not responding to test questions." Accordingly, the evaluator's assessment did not determine Student's IQ score.

An MDT/IEP meeting was held on March 26, 2012, to review the February 17, 2012 psychological evaluation. The Parent and her advocate disagreed with it because Parent was concerned that Student was regressing. Also, without cognitive testing, no determination or data could be provided regarding any intellectual disability of Student. Also any Student needs due to intellectual deficits could not be determined and addressed in developing Student's IEP. Thus, on April 2, 2012, Parent requested a comprehensive psychological assessment with, among other components, intellectual testing.

The IEE was not granted until almost three months later. This protracted delay significantly impeded Parent's right to participate in the decision making process. This is so because for several months Parent could not even engage an appropriate professional to obtain objective data regarding Student's intellectual abilities. In addition, without being able to obtain a provider to conduct the IEE, Parent was also precluded from contributing the IEE to the MDT/IEP team for consideration.

Moreover, the Hearing Officer finds it reasonable to conclude that since about 2.5 months remained of the 2011-2012 school year when Parent submitted her request for the IEE, had DCPS without unnecessary delay funded it, the IEE would have been available for review by the MDT/IEP team before the end of the 2011-2012 school year. Further, because DCPS failed to authorize the IEE until after the school year ended any resulting report presumably cannot be considered by the MDT/IEP team until the 2012-2013 school year begins. As referenced previously, the consideration of the report is a means by which Parent participates. Thus, DCPS' 3 month delay in authorizing the IEE has suspended Parent's ability to participate in deciding Student's educational plan until roughly September 2012 at the earliest.[11] This is so because the

[11] The Hearing Officer is aware that Parent did attend at least one IEP meeting prior to the April 2, 2012 request for the IEE. The Hearing Officer finds that this pre-April 2, 2012 participation does not amend the substantive harm to Student/Parent incurred due to the unnecessary delay in authorizing the IEE.

independent comprehensive psychological evaluation is a component of Student's reevaluation. Further, the purpose of evaluating/reevaluating Student is to determine or assist in determining the content of the IEP. *See* 34 C.F.R. § 300.304(b).[12]

Moreover, the Hearing Officer finds Student has been harmed because the reevaluation was insufficient as it failed to evaluate Student in an area of suspected disability. That area was intellectual disability. As noted earlier, when DCPS' psychologist performed her psychological reevaluation she could not or did not test Student's intellectual functioning. DCPS then unnecessarily delayed funding an IEE that would contain data regarding Student's cognitive functioning.

For the reasons noted above, the Hearing Officer finds that DCPS' needless and unjustified delay in authorizing the IEE has significantly hampered Parent's opportunity to participate in the decision process and impeded Student's right to a FAPE. Thus, Parent has met her burden and shown a denial of FAPE.

VI. REMEDY

The Hearing Officer has determined DCPS' procedural violation has significantly impeded the Parent's opportunity to participate in the decision making process regarding the provision of a FAPE to Student and caused Student harm. Thus, the Hearing Officer has found a denial of FAPE.

For relief Parent sought an order directing DCPS to (i) fund an independent comprehensive psychological assessment and (ii) convene a MDT/IEP meeting within 10 days of receipt of the IEE to review the assessment, Student's progress, Student's IEP, and to determine Student's placement and location of services.

The evidence shows that on June 25, 2012, DCPS unconditionally authorized funding of the IEE requested. Accordingly, considering DCPS has already granted this IEE request and DCPS' history of stalling in performing its duties under IDEA, the Hearing Officer finds that an appropriate remedy is to direct DCPS to convene a MDT/IEP meeting within 10 days of receipt of the IEE for purposes of reviewing the IEE, Student's progress, Student's IEP, and to determine Student's placement and location of services.

VII. DECISION

The Hearing Officer has reviewed and considered all the evidence of record whether specifically mentioned in this decision or not. Based upon the above Findings of Fact and Conclusions of Law, the Hearing Officer finds that DCPS denied Student a FAPE because it did not authorize the IEE without unnecessary delay. Further, DCPS procedural violation affected Student's substantive rights and caused harm.

[12] The Hearing Officer has also considered the EA's testimony. The Hearing Officer finds the EA knowledgeable and credible and accepts his testimony that Student was harmed by the delay because the IEP team has no evaluative results on Student's intellectual ability. And further, without the IEE, the team has not been able to consider results derived from the IEE in planning Student's IEP for the 2012-2013 school year.

VIII. ORDER

Thus, for the reasons discussed here, the Hearing Officer orders DCPS to take the following action:

> Convene a MDT/IEP meeting within 10 days of receipt of the IEE for purposes of reviewing the IEE, Student's progress, Student's IEP, and to determine Student's placement and location of services.

IX. PREVAILING PARTY

The Petitioner prevails in this case for the reasons provided in this HOD. DCPS' motion to dismiss is denied for reasons stated above.

X. 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 30, 2012

Hearing Officer