

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

Office of Dispute Resolution
810 First Street, N.E., 2nd Floor
Washington, D.C. 20002

OSSE
Office of Dispute Resolution
December 1, 2015

<i>Student</i> , ¹)	Date Issued: 12/1/15
through his <i>Parent</i> ,)	
<i>Petitioner</i> ,)	Case No.: 2015-0325
)	
v.)	Hearing Officer: Keith L. Seat, Esq.
)	
District of Columbia Public Schools)	Hearing Date and Location:
("DCPS"),)	11/20/15, ODR Room 2006
Respondent.)	
)	

HEARING OFFICER DETERMINATION

Background

Petitioner, Student’s mother, filed a due process complaint alleging that Student had been denied a free appropriate public education (“FAPE”) in violation of the Individuals with Disabilities Education Improvement Act (“IDEA”) because DCPS did not timely evaluate Student despite repeated requests by Petitioner and her counsel, and did not provide all of Student’s educational records. DCPS responded that it had not denied Student a FAPE because it is now conducting needed evaluations and that it provided all available educational records.

Subject Matter Jurisdiction

Subject matter jurisdiction is conferred pursuant to IDEA, 20 U.S.C. § 1400, *et seq.*; the implementing regulations for IDEA, 34 C.F.R. Part 300; Title V, Chapter E-30, of the District of Columbia Municipal Regulations (“D.C.M.R.”) and 38 D.C. Code 2561.02.

¹ Personally identifiable information is provided in Appendix A, including terms initially stated in italics.

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Procedural History

Following the filing of the due process complaint on 10/1/15, the case was assigned to the undersigned on 10/6/15. DCPS's response to the complaint was timely filed on 10/9/15 and did not challenge jurisdiction.

The Resolution Session Meeting ("RSM") took place on 10/13/15, but the parties neither settled the case nor terminated the 30-day resolution period early, which ended on 10/31/15. A final decision in this matter must be reached no later than 45 days following the end of the resolution period, which requires a Hearing Officer Determination ("HOD") by 12/15/15.

The due process hearing took place on 11/20/15. The hearing was closed to the public. Petitioner was represented by *Petitioner's counsel*. DCPS was represented by *Respondent's counsel*. Counsel discussed settlement near the beginning of the hearing without success. Petitioner was present for the entire hearing.

Neither party objected to the testimony of witnesses by telephone. The parties agreed on no stipulations.

Petitioner's Supplemental Disclosure statement, submitted on 11/12/15, consisted of a witness list of 4 witnesses and documents P1 through P33, which were admitted into evidence without objection.

Respondent's Disclosure statement and Supplemental Disclosure statement, both submitted on 11/13/15, consisted of a witness list of 7 witnesses and documents R1 through R11, which were admitted into evidence without objection.

Petitioner's counsel presented 2 witnesses in Petitioner's case-in-chief (*see Appendix A*):

1. *Special Education Consultant*, who was qualified over objection as an expert in Special Education and Evaluation as It Relates to the Identification Process of Children with Special Needs
2. Parent

Respondent's counsel presented *School Psychologist* from *Public School* as the only witness in Respondent's case (*see Appendix A*):

Petitioner's counsel presented no rebuttal witnesses.

The issues to be determined in this Hearing Officer Determination are:

Issue 1: Whether DCPS denied Student a FAPE by failing to comprehensively evaluate Student on a timely basis to determine whether he is eligible for special education services as a child with an Other Health Impairment ("OHI") and/or an Emotional

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Disturbance (“ED”), where (a) Student’s doctor recommended in a 11/28/12 letter shared with the school that Student be evaluated, (b) Parent began requesting an evaluation at the beginning of the 2014/15 school year, and (c) a written request for evaluation was submitted on or about 5/26/15, but no efforts were taken to evaluate Student.

Issue 2: Whether DCPS denied Student a FAPE by failing to provide Petitioner access to or a copy of Student’s complete educational records pursuant to her 5/26/15 written request.

Petitioner seeks the following relief:

1. A finding that Student was denied a FAPE.
2. DCPS shall fund a comprehensive psychological evaluation to determine whether Student has an Other Health Impairment and/or an Emotional Disturbance disability.²
3. DCPS shall convene an MDT/IEP team meeting within 10 school days after receiving the evaluation in paragraph 2 to determine eligibility.
4. DCPS shall provide all of Student’s educational records from the 2013/14 school year, as well as missing standardized test scores, behavior/discipline records, and complete attendance records.³
5. Compensatory education for any denial of FAPE shall be reserved pending the completion of Student’s evaluations and a determination of eligibility for special education and related services.
6. Any other relief that is just and reasonable.

An oral opening statement was made by Petitioner’s counsel and waived by Respondent’s counsel. Oral closing arguments were made by counsel for both parties at the end of the due process hearing.

² At the due process hearing, Petitioner expressly withdrew her request for a functional behavioral assessment (“FBA”), as DCPS completed an FBA on 11/10/15 which was included in its Disclosure as R11.

³ At the due process hearing, Petitioner expressly withdrew her request for “notes from a September 2014 meeting at school discussing evaluations,” which have been provided to Petitioner.

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Findings of Fact

After considering all the evidence, as well as the arguments of both counsel, the Findings of Fact⁴ are as follows:

1. Student is a resident of the District of Columbia; Petitioner is Student's Parent.⁵ Student is *Age* and in *Grade*.⁶ Student began Public School in 2014/15⁷ and was previously at *Prior Public School*.⁸

2. Because of Student's behavior and mental health issues, Parent has been concerned that Student may need special education services since 2011/12, when his teacher raised these issues to Parent's attention.⁹ Student's teacher in 2013/14 also suggested to Parent that Student should be evaluated.¹⁰ Parent discussed evaluation of Student during a Parent-Teacher Conference at *Prior Public School*.¹¹ Parent asked for evaluation of Student and had a meeting about evaluation of Student at *Prior Public School* with his teacher and the school psychologist.¹² That meeting only resulted in a "504 Screening."¹³

3. After assessing Student, a psychiatrist stated in an 11/28/12 letter that Student had been diagnosed with Attention Deficit Hyperactivity Disorder ("ADHD") and possibly Psychotic Disorder NOS.¹⁴ The psychiatrist "strongly recommend[ed]" that Student receive psychological testing to assess his educational function and level and social-emotional status, as he may qualify as Learning Disabled or Emotionally Disturbed.¹⁵ At the psychiatrist's suggestion, Parent shared this letter with Student's teacher and vice principal at *Prior Public School* the next day.¹⁶

⁴ Footnotes in these Findings of Fact refer to the sworn testimony of the witness indicated or to an exhibit admitted into evidence. To the extent that the Hearing Officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, the Hearing Officer has taken such action based on the Hearing Officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.

⁵ Parent; Due process complaint.

⁶ Parent.

⁷ All dates in the format "2013/14" refer to school years.

⁸ P23-1; Parent.

⁹ Parent.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Parent; P21.

¹⁴ P16-1; Parent.

¹⁵ P16-1.

¹⁶ Parent.

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4. Another doctor stated in writing on 2-15-15 that Student was being medicated for ADHD and that a “large percentage of children with ADHD are known to have a Learning Disorder which can only be proven by Psycho-educational testing.”¹⁷ The doctor further indicated that Student requires testing for an IEP and a small class setting.¹⁸ Parent shared the doctor’s note (P11) with Public School.¹⁹ As recently as 9-8-15, that doctor stated in writing that Student “has ADHD and emotional problems. He may be psychotic as well.”²⁰ Parent also shared that note (P12) with Public School.²¹

5. A CAFAS Assessment Report dated 5/6/15 stated that Student wrote a note in September 2014 stating a specific plan to kill himself (which he did not attempt).²² While Student has not mentioned specific suicide plans since then, Parent reported that Student thinks about suicide “a lot” and “subtly eludes (sic) to suicidal thoughts or ideations.”²³ Parent shared this Report (P14) with Public School.²⁴ In addition, Student engages in self-destructive behaviors that seem non-intentional, such as running into the path of a car or opening car doors in moving traffic.²⁵

6. The 5/6/15 CAFAS Report concluded that Student is “[p]otentially psychotic” with underlying data indicating that Student’s impairment has worsened from 3/17/15 to 5/6/15.²⁶ Student experiences 4-5 other voices in addition to the auditory/visual hallucinations of his “imaginary friend Larry.”²⁷

7. A 6/10/15 diagnostic assessment by the DC Department of Behavioral Health concluded that in addition to symptoms of ADHD and rebellious behavior²⁸:

- a. Student “experiences auditory, visual, and tactile hallucinations of seeing imaginary friends, hearing voices....”
- b. Student “has also started experiencing insects and flies on his skin.”
- c. Student “appears to be develop[ing] early on-set Schizophrenia.”

¹⁷ P11-1.

¹⁸ *Id.*

¹⁹ Parent.

²⁰ P12-1.

²¹ Parent.

²² P14-1.

²³ *Id.*

²⁴ Parent.

²⁵ P14-1.

²⁶ P14-2,4.

²⁷ P14-1.

²⁸ P9-3,6.

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8. Schizophrenia is prevalent in Student's family history.²⁹ Student hears voices in his head and appeared to be "responding to internal stimuli throughout" the 6/10/15 assessment interview.³⁰ Parent shared this (P9) assessment with Public School.³¹

9. Student takes 2 medications to manage his ADHD and mental health symptoms; it took several medication adjustments to find effective medications for Student.³²

10. Parent began requesting an evaluation of Student from Public School before the 2014/15 school year began, talking to administrators in the front office.³³ Parent was told that she needed to wait a couple of weeks after school began in 2014/15 for Student's teacher to get to know him and then the team would come together for a meeting.³⁴

11. As recorded in a DCPS Behavior Log tracking Student, on 8/28/14 Parent stated her concerns about Student's behavior and "wanted him to be tested for special education services ASAP."³⁵ The Log noted that on 9/2/14 Parent "inquired about when the possible testing would be for [Student] for special education services" and was told a meeting would be scheduled the following week.³⁶

12. A multidisciplinary team (comprised of Parent, Student's Teacher, Principal, School Psychologist, School Social Worker and Caseworker) met on 9/15/14, discussed concerns about Student, and recommended only that the school psychologist observe Student and suggest strategies, and that the behavior health specialist might support Student.³⁷ At the meeting, Parent reiterated her request for testing and an IEP for Student and was told that Public School would do testing, but it never did.³⁸ The team did not decide additional testing or evaluation was necessary.³⁹

13. On 5/7/15, Parent spoke to Student's teacher and asked for Student to be tested; the teacher promised to talk with the principal.⁴⁰

14. Petitioner through counsel requested an evaluation of Student by letter dated 5/26/15, which was transmitted to the principal of Public School and the DCPS Director of

²⁹ P9-1,8.

³⁰ P9-7,8.

³¹ Parent.

³² R11-2.

³³ Parent.

³⁴ *Id.*

³⁵ P19-1.

³⁶ P19-2.

³⁷ P20-1.

³⁸ Parent.

³⁹ Parent; P20-1.

⁴⁰ P22-2.

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Special Education on 5/26/15 and to the DCPS Office of General Counsel on 5/28/15.⁴¹ The request for an evaluation sought a comprehensive psychological evaluation and a functional behavioral assessment (“FBA”), at a minimum.⁴²

15. Petitioner’s counsel followed up on 7/10/15, noting that no response had been received to the written request for an initial evaluation.⁴³ DCPS took no action to evaluate Student during the summer of 2015 or at any time prior to the 10/13/15 RSM.⁴⁴

16. DCPS agreed at the RSM on 10/13/15 to complete a comprehensive psychological evaluation and an FBA within 30 calendar days.⁴⁵ The FBA was completed on 11/10/15, within 30 days as promised.⁴⁶

17. The comprehensive psychological evaluation was begun in mid-October 2015, soon after the RSM, but could not be completed due to Student unexpectedly needing reading glasses to complete his portion of the evaluation.⁴⁷ Parent took prompt steps to obtain glasses for Student and expected them to be available on 11/23/15.⁴⁸

18. School Psychologist was certain that the comprehensive psychological evaluation could be completed within 1 to 2 weeks after Student comes to school with his new glasses, notwithstanding the Thanksgiving holidays (on 11/26/15 and 11/27/15).⁴⁹

19. If an independent comprehensive psychological evaluation were to be ordered or authorized, it would take a month or so to conduct the evaluation and prepare the report, and then it would take a couple of weeks for School Psychologist to review the report and be ready to meet with the parent.⁵⁰

20. The 6/10/15 assessment by the DC Department of Behavioral Health noted impacts on Student’s education⁵¹:

- a. Student’s “disruptive behavior and ADHD behaviors interfere with teaching in the classroom.”

⁴¹ P3; P2; Parent.

⁴² P3-1.

⁴³ P1-3.

⁴⁴ Parent.

⁴⁵ R4-2.

⁴⁶ R11-1.

⁴⁷ School Psychologist; R10-2,6.

⁴⁸ Parent.

⁴⁹ School Psychologist.

⁵⁰ *Id.*

⁵¹ P9-3.

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- b. Student “is very bright and intelligent, but his unusual behavior of playing with and talking with his imaginary friends is becoming more disruptive to the learning process in the classroom.”

21. Student has difficulty focusing, paying attention and completing his school assignments.⁵² Student does complete his homework, but he forgets to turn it in, negatively impacting his grades.⁵³ Parent shared the DC Department of Behavioral Health report (P15) with Public School.⁵⁴

22. Student is negatively impacted by not receiving special education services as he was often removed from class and didn’t receive any instruction as he was required to sit by himself or with the assistant principal or was sent home early.⁵⁵

23. Student does not have many friends at school, so plays with two imaginary friends he named “Larry” and “Myktatious.”⁵⁶ While Student’s teachers “have not reported witnessing any incidents of [Student] talking to or interacting with imaginary friends” in 2015/16, they report that Student will “wander off (daydreaming) into his ‘own world.’”⁵⁷

24. Student’s 11/10/15 FBA stated that during 2014/15, Student received “several disciplinary referrals” and his behaviors that year were “more prevalent and more intense” compared to 2015/16.⁵⁸ On 9/16/14, Student got in a fight and had to stay in the office, where class work was provided.⁵⁹ On 10/30/14, Student was edgy and marked up a chair with permanent marker, which resulted in a 1-day suspension.⁶⁰

25. Student’s grades for 2014/15 were good, with a mark of “Proficient” for each subject in the final grading period.⁶¹ Earlier in 2014/15, Student’s mClass for Unit 1 in English Language Arts showed that Student scored only 36%, while his class scored an average of 59% and the school average was 56%.⁶² In 2015/16 Student is performing at or above proficiency in reading and math.⁶³ Student’s grades are better in 2015/16 than in 2014/15.⁶⁴

⁵² P15-1.

⁵³ P15-1; P28-1,2; School Psychologist.

⁵⁴ Parent.

⁵⁵ *Id.*

⁵⁶ P9-2,7.

⁵⁷ R11-4.

⁵⁸ R11-1.

⁵⁹ P19-3.

⁶⁰ P19-4.

⁶¹ P27-1.

⁶² P24-1.

⁶³ R11-4.

⁶⁴ R11-3.

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26. The 11/10/15 FBA noted that in addition to prescription medications, other effective interventions include, “allowing [Student] extra time to read or write, allowing him extra time to work independently, the use of fidgets, time to move about the classroom or take small breaks, verbal prompts and redirection, number count down, positive reinforcement, praise, and verbal recognition from teacher...”⁶⁵

27. The 11/10/15 FBA concluded that Special Education Services were not recommended at that time as Student’s behaviors could be effectively managed in the classroom without affecting performance, but recommended a current psychological assessment, a Multidisciplinary Team meeting to consider the evaluation results, and development of a Behavior Intervention Plan.⁶⁶

28. Petitioner through counsel requested Student’s entire academic file on 5/26/15.⁶⁷ Petitioner’s counsel made ongoing efforts to obtain Student’s records during the summer.⁶⁸

29. Public School provided the documents it had concerning Student, but did not provide documents for 2013/14 from Prior Public School because that school did not respond to Public School’s “numerous requests.”⁶⁹ Student’s cumulative record did not “follow him” from Prior Public School when he began at Public School in August 2014.⁷⁰

30. At the RSM on 10/13/15, DCPS promised to provide the remainder of Student’s educational records within 10 days.⁷¹ The documents were not provided; Petitioner’s counsel followed up by email on 10/23/15.⁷²

Conclusions of Law

Based on the Findings of Fact above, the arguments of counsel, as well as this Hearing Officer’s own legal research, the Conclusions of Law 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 [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A). *See Boose v. Dist. of Columbia*, 786 F.3d 1054, 1056 (D.C. Cir. 2015) (the IDEA “aims to ensure that every child has a meaningful opportunity to benefit from public education”).

⁶⁵ *Id.*

⁶⁶ R11-4,5.

⁶⁷ P4.

⁶⁸ P5-1; P7-1.

⁶⁹ P1-1.

⁷⁰ P1-2.

⁷¹ R4-2; Parent.

⁷² P8-1; Parent.

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“[T]o further Congress’ ambitious goals for the IDEA, the Supreme Court has focused on the centrality of the IEP as ‘the centerpiece of the statute’s education delivery system for disabled children.’” *Harris v. Dist. of Columbia*, 561 F. Supp. 2d 63, 67 (D.D.C. 2008), quoting *Honig v. Doe*, 484 U.S. 305, 311, 108 S. Ct. 592, 98 L. Ed. 2d 686 (1988).

Once a child who may need special education services is identified, DCPS is obligated to conduct an initial evaluation and make an eligibility determination within 120 days. D.C. Code § 38-2561.02(a). If the child is found eligible, DCPS must then devise an IEP, mapping out specific educational goals and requirements in light of the child’s disabilities and matching the child with a school capable of fulfilling those needs. *See* 20 U.S.C. §§ 1412(a)(4), 1414(d), 1401(a)(14); *Sch. Comm. of Town of Burlington, Mass. v. Dep’t of Educ. of Mass.*, 471 U.S. 359, 369, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385 (1985); *Jenkins v. Squillacote*, 935 F.2d 303, 304 (D.C. Cir. 1991); *Dist. of Columbia v. Doe*, 611 F.3d 888, 892 n.5 (D.C. Cir. 2010).

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). In other words, an IDEA claim is viable only if those procedural violations affected the child’s *substantive* rights.

“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-E D.C.M.R. § 3030.3. The burden of proof is on the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S. Ct. 528, 537, 163 L. Ed. 2d 387 (2005).

Issue 1: *Whether DCPS denied Student a FAPE by failing to comprehensively evaluate Student on a timely basis to determine whether he is eligible for special education services as a child with an Other Health Impairment and/or an Emotional Disturbance, where (a) Student’s doctor recommended in a 11/28/12 letter shared with the school that Student be evaluated, (b) Parent began requesting an evaluation at the beginning of the 2014/15 school year, and (c) a written request for evaluation was submitted on or about 5/26/15, but no efforts were taken to evaluate Student.*

In this case, Parent is concerned that Student may need special education services due to behavioral and mental health issues. Parent repeatedly asked for testing and evaluation of Student from the beginning of 2014/15, and formally sought an evaluation of Student through her counsel’s 5/26/15 letter to Public School. But an initial evaluation of Student was not begun until after the due process complaint was filed and the parties met at the Resolution Session Meeting. This Hearing Officer concludes that DCPS’s failure to

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evaluate Student following Parent's requests at the beginning of 2014/15 was a violation of the IDEA and a denial of FAPE for the reasons discussed below.

The IDEA is unambiguous that upon the request of a parent a school must conduct a "full and individual initial evaluation" to determine if the student is a child with a disability. 34 C.F.R. 300.301(a),(b). This initial evaluation must be conducted within 120 days from the date that Student was referred for evaluation. 34 C.F.R. 300.301(c); D.C. Code 38-2561.02(a); *Long v. Dist. of Columbia*, 780 F. Supp. 2d 49, 56 (D.D.C. 2011). Here, Parent began seeking an evaluation at the beginning of 2014/15.⁷³ DCPS's own documents record Parent's concerns and requests for evaluation on 8/28/14 and 9/2/14. A multidisciplinary team meeting was held on 9/15/14 to discuss Student, but no evaluation was conducted. Importantly, there was no evidence in the record nor any assertion that DCPS provided a Prior Written Notice concerning its decision not to proceed with an evaluation of Student. 34 C.F.R. 300.503(a)(2); *Roark ex rel. Roark v. Dist. of Columbia*, 460 F. Supp. 2d 32, 42 (D.D.C. 2006) (failure to provide prior written notice is a procedural violation). Parent turned to legal counsel and a letter was sent on 5/26/15 formally requesting evaluation of Student. Even counting from that point, the 120 days allowed for evaluation ended on 9/23/15. This Hearing Officer concludes that DCPS's failure to evaluate Student after receiving Parent's requests at the beginning of the 2014/15 school year was a violation of the IDEA.

A procedural violation of the IDEA does not, by itself, mean Student was denied a FAPE. *See Schoenbach v. Dist. of Columbia*, 309 F. Supp. 2d 71, 78 (D.D.C. 2004). Only violations of the IDEA that seriously deprive parents of their participation rights, or impede the child's right to a FAPE, or result in deprivation of educational opportunity for the child are actionable. *See Lesesne ex rel. B.F. v. Dist. of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006); *but cf. Harris v. Dist. of Columbia*, 561 F. Supp. 2d 63, 69 (D.D.C. 2008) (failure to act even on a request for an independent evaluation is not a mere procedural inadequacy, for such inaction jeopardizes the whole of Congress's objectives in enacting the IDEA).

In this case, DCPS's delay of an evaluation for well over a year interfered with Parent's ability to engage in decision-making concerning what services might be necessary for Student to receive a FAPE. DCPS's delay in evaluating Student may also have harmed Parent's ability to know how best to help Student with his mental health issues, which may include early on-set schizophrenia or psychosis. Student contemplated suicide in September 2014 and continues to think about suicide, adding urgency to Parent's efforts to obtain all help available for Student. Further, DCPS's lack of action impeded Student's right to a FAPE by delaying evaluations that might have resulted in needed special education and

⁷³ In fact, Parent submitted to Prior Public School a psychiatrist's 11/28/12 letter strongly recommending that Student receive psychological testing to see if he suffers from a disability, but that request for evaluation falls outside the 2-year statute of limitations. 34 C.F.R. 300.507(a)(2). Evidence of efforts to obtain an evaluation during 2013/14 may have been stymied by lack of educational records, as discussed in Issue 2 below.

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related services being provided to him a year ago. Accordingly, this Hearing Officer concludes that DCPS did deny Student a FAPE by failing to evaluate him for over a year.

DCPS argues no harm, no foul, since Student is now doing fine academically and is managing his ADHD with medications. Yet the Supreme Court in *Rowley* explained that the student there was able to make better than average grades in a regular classroom, so the Court refused to hold “that every handicapped child who is advancing from grade to grade in a regular public school system is automatically receiving a ‘free appropriate public education.’” *Rowley*, 458 U.S. at 203 n.25. See also *Nein v. Greater Clark County Sch. Corp.*, 95 F. Supp. 2d 961, 977 (S.D. Ind. 2000). Here, as described in Student’s 11/10/15 FBA, Student is now receiving many interventions from Public School on an ad hoc basis that are helping him to be as successful as he is in school. These include extra time to read or write, extra time to work independently, use of fidgets, time to move about the classroom or take small breaks, verbal prompts and redirection, number count down, positive reinforcement, praise, and verbal recognition from teachers. While helpful, these are no substitute for the IEP process, beginning with a proper evaluation of the full range of Student’s possible issues and determination of whether Student is eligible for special education and related services.

Due to the delays by DCPS, Petitioner seeks funding of an independent comprehensive psychological evaluation, which would be unlikely to be completed in much less than a month, given the need for scheduling school observations and teacher interviews. However, School Psychologist has a comprehensive psychological evaluation of Student well under way, and testified that she will be able to complete the evaluation and report within no more than 2 weeks after Student receives his reading glasses, which had prevented completion prior to the due process hearing. Thus, this Hearing Officer concludes that the best path for expeditious evaluation and a prompt eligibility meeting is to continue with the DCPS evaluation, rather than beginning an independent evaluation at this point. However, given the year’s delay, Parent should not be required to merely take DCPS’s word that the evaluation will be completed promptly. Accordingly, DCPS is ordered below to complete its evaluation within 14 days after Student has his glasses at school, which was expected to be as soon as 11/23/15, and to move forward with an eligibility meeting promptly thereafter.

Issue 2: *Whether DCPS denied Student a FAPE by failing to provide Petitioner access to or a copy of Student’s complete educational records pursuant to her 5/26/15 written request.*

Petitioner met her burden of proof that DCPS failed to provide Student’s educational records to Petitioner or make them available for review as required by the IDEA. Petitioner made ongoing efforts to obtain Student’s educational records, beginning with a written request by counsel on 5/26/15, but only received a portion of them. Petitioner requested and was promised records at the RSM on 10/13/15, but did not receive them even then.

Under the IDEA, DCPS must permit parents to inspect and review any education records that are collected, maintained, or used by the agency, with respect to the identification, evaluation, and educational placement of their child, and the provision of a

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FAPE to the child. 34 C.F.R. 300.501(a), 300.613(a). *See Jalloh ex rel. R.H. v. District of Columbia*, 535 F. Supp. 2d 13, 21 (D.D.C. 2008) (“parents have the right to examine records and DCPS must give parents the opportunity to inspect, review, and copy records,” *quoting* District of Columbia Municipal Regulations, 5 D.C.M.R. § 3021, and the Student Hearing Office - Standard Operating Procedures § 800.2). Moreover, the regulations are clear that the “agency must comply with a request without unnecessary delay and before . . . any hearing. . . .” 34 C.F.R. 300.613(a).

In the circumstances of this case, the failure of DCPS to provide documents rises to the level of a denial of a FAPE to Student because it significantly impeded Parent’s opportunity to pursue her rights pursuant to 34 C.F.R. 300.507 and demonstrate requests for evaluation and a potential denial of FAPE in 2013/14, and the possibility of additional compensatory education for that school year. 34 C.F.R. 300.513(a), 300.613(a).

DCPS reasonably argues that it cannot provide documents that it does not have. Public School explained that it did not receive Student’s cumulative file or other educational records about Student from Prior Public School despite “numerous requests.” However, this Hearing Officer concludes that is not enough to satisfy the requirements of the IEDA. There is no indication that Prior Public School responded in any way or made any effort to provide Student’s education records as required by the IDEA. As ordered below, DCPS must diligently search for Student’s education records for 2013/14 at Prior Public School, including review of backup files for copies of electronic documents, and provide them within 30 days. If substantially all of Student’s education records cannot be located through a diligent search, DCPS shall submit within 30 days a declaration under oath setting forth the steps taken to find the missing education records and the results of those efforts.

ORDER

Petitioner has met her burden of proof as set forth above. Accordingly, **it is hereby ordered that:**

- (1) DCPS denied Student a FAPE by failing to evaluate him following requests made by Parent from the beginning of the 2014/15 school year.
- (2) DCPS shall complete a comprehensive psychological evaluation of Student within 14 days from the day Student was first available at school with his glasses (11/23/15 or later), with day for day extensions of that deadline for any subsequent school days on which Student was needed to complete the evaluation but did not have his glasses at school.
- (3) DCPS shall hold an eligibility meeting for Student within 10 school days after completion of the comprehensive psychological evaluation.
- (4) DCPS shall diligently search for Student’s missing education records for the 2013/14 school year at Prior Public School and provide within 30 days all records located. If substantially all of Student’s records cannot be located, DCPS shall submit to

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Petitioner within 30 days a declaration signed under oath setting forth the steps taken to find the remaining records, including review of backup files for copies of electronic documents, and the results of those efforts.

- (5) All claims for compensatory education are reserved pending the completion of the comprehensive psychological evaluation and a determination of eligibility for special education and related services.

Any and all other claims and requests for relief are **dismissed with prejudice**.

IT IS SO ORDERED.

Dated in Caption

/s/ Keith Seat

Keith L. Seat, Esq.
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 U.S.C. § 1415(i).

Copies to:

Counsel of Record (Appendix A, by email)

OSSE-SPED (due.process@dc.gov)

ODR (hearing.office@dc.gov)

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