

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Office of Dispute Resolution
810 First Street, N.E., 2nd Floor
Washington, DC 20002

OSSE
Office of Dispute Resolution
December 29, 2015

STUDENT, by and through)	
MOTHER, his Attorney-in-Fact, ¹)	Date Issued: December 29, 2015
)	
Petitioner,)	Hearing Officer: Peter B. Vaden
)	
v.)	Case No: 2015-0338
)	
DISTRICT OF COLUMBIA)	Hearing Date: December 9, 2015
PUBLIC SCHOOLS,)	
)	Office of Dispute Resolution, Room 2006
Respondent.)	Washington, D.C.
)	

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by Mother as attorney-in-fact for the adult Student, Petitioner, 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 his due process complaint, Petitioner alleges that respondent District of Columbia Public Schools (DCPS) denied him a free appropriate public education (FAPE) by exiting him from special education and not providing special education services since the 2010-2011 school year.

Student, an AGE adult, is a resident of the District of Columbia. Petitioner’s Due Process Complaint, filed on October 19, 2015, named DCPS as respondent. The

¹ Personal identification information is provided in Appendix A.

undersigned Hearing Officer was appointed on October 20, 2015. The parties convened for a resolution session on November 3, 2015, which did not result in an agreement. On November 4, 2015, I granted Petitioner's unopposed motion to amend his complaint, which resulted in starting anew the due process timelines effective October 26, 2015.

The 45-day period for issuance of this Hearing Officer Determination began on November 26, 2015 resulting a decision due date of January 2, 2016. On October 27, 2015, I convened a prehearing telephone conference with counsel to discuss the hearing date, issues to be determined and other matters.

The due process hearing was held before this Impartial Hearing Officer on December 9, 2015 at the Office of Dispute Resolution in Washington, D.C. The hearing, which was open to the public, was recorded on an electronic audio recording device. Student and Mother appeared in person and were represented by PETITIONER'S COUNSEL. Respondent DCPS was represented by DCPS' COUNSEL.

Student testified and called as witnesses EDUCATIONAL ADVOCATE, CLINICAL PSYCHOLOGIST, NONPUBLIC SCHOOL DIRECTOR and Mother. DCPS called no witnesses. Petitioner's Exhibits P-1 through P-21 and DCPS' Exhibits R-1 through R-34 were all admitted into evidence without objection. Counsel for both parties made opening statements and closing arguments. There was no request to file post-hearing written argument.

JURISDICTION

The Hearing Officer has jurisdiction under 20 U.S.C. § 1415(f) and D.C. Regs. tit. 5-E, § 3029.

ISSUES AND RELIEF SOUGHT

The following issues for determination² were certified in the October 27, 2015

Prehearing Order:

- Whether DCPS denied Student a FAPE by unlawfully exiting him from special education services in the 2010-2011 school year;
- Whether DCPS denied Student a FAPE by failing to offer him Individualized Education Programs (IEPs) for school years 2010-2011 through 2015-2016;
- Whether DCPS denied Student a FAPE by failing to offer him suitable educational placements to implement special education and related services for school years 2010-2011 through 2015-2016;
- Whether DCPS denied Student a FAPE by failing to conduct special education reevaluations, including triennial reevaluations, after April 2010;
- Whether DCPS denied Student a FAPE by failing to conduct a special education reevaluation when requested by the parent beginning January 2015 and
- Whether DCPS denied Student a FAPE by failing to conduct a special education reevaluation as allegedly agreed with the parent in March 2015.

For relief, Petitioner requests that the Hearing Officer find that DCPS has denied Student a FAPE on the above issues; determine that Student is a student with a disability and that the Student was unlawfully exited from special education during School Year 2010-2011; that the Hearing Officer order DCPS to fund Student's prospective placement at Nonpublic School; and that the Hearing Officer order DCPS to fund an Independent Educational Evaluation (IEE) comprehensive psychological evaluation and functional behavioral assessment (FBA) of Student and to ensure that a multidisciplinary/IEP team is convened to review the evaluations and develop an IEP

² An additional issue, whether DCPS denied Student a FAPE by failing to comply with procedural requirements for transfer of his IDEA rights when Student reached the age of majority, was withdrawn by Petitioner's counsel at the beginning of the due process hearing.

and placement for Student. In addition, Petitioner seeks an award of compensatory education for the denials of FAPE alleged in the due process complaint.

FINDINGS OF FACT

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

1. Student is an AGE adult resident of the District of Columbia. Testimony of Mother.
2. Student's most recent Individualized Education Program (IEP) was dated December 22, 2006 and indicated he was eligible for special education and related services based upon a Speech and Language Impairment (SLI) disability. Exhibits P-4, P-9. The December 22, 2006 IEP was not offered into evidence. Statements in past assessments of Student indicate that the IEP provided Student either 1 hour (Exhibit P-4) or 11.1 hours (Exhibit R-4) per week of Specialized Instruction. According to a March 11, 2010 speech and language evaluation, the 2006 IEP provided Student 11.5 hours per week of Specialized Instruction, 30 minutes per week of speech-language services, 30 minutes per week of occupational therapy services and 30 minutes per week of counseling. Exhibit R-4.
3. Beginning in the 2008-2009 school year, Student attended City High School 1.
4. Around December 2009, Student was allegedly assaulted by a group of fellow students and suffered both physical and psychological injuries. Exhibit P-5. Student stayed at home for the rest of the school year. During the 2010-2011 school year, at the time of the winter break, Student received a safety transfer to CITY HIGH SCHOOL 2. Testimony of Mother.

5. On or about February 2, 2010, Mother filed a prior due process complaint concerning Student. The case was settled by a written settlement agreement executed February 17, 2010. In the settlement agreement, DCPS agreed, *inter alia*, to conduct comprehensive psychological, OT, speech and language and vocational reevaluations of Student. Exhibit R-2.

6. Independent psychological, OT and Speech and Language assessments of Student were conducted in March 2010. Exhibits P-5, R-03, R-04.

7. On October 14, 2010, a City High School 1 multidisciplinary team (MDT) determined that Student was not eligible for special education and related services. Mother attended the meeting by telephone. EDUCATIONAL ADVOCATE C from the law firm then representing Mother attended the October 14, 2010 IEP meeting in person. Although Mother testified that she did not recall this meeting, I find that the documentation establishes that she did in fact attend by telephone. Exhibit R-6.

8. In March 2013, Student was referred by the Superior Court of the District of Columbia Family Court, Court Social Services Division, for a neuropsychological evaluation, subsequent to a psychoeducational evaluation completed at the Child Guidance Clinic and a psychiatric evaluation conducted through the District of Columbia Department of Mental Health. The court neuropsychologist reported, *inter alia*, that results of the evaluation indicated that Student experienced deficits across many psychological processes, such as memory, learning, retrieval, organization and attention. The results suggested that Student presented with cognitive dysfunction associated with developmental delays as well as acquired injury. The examiner reported that Student had not been able to make progress in learning and adaptive functioning at least since 2011 when he had been initially evaluated at the court. The

examiner recommended, *inter alia*, that Student should be placed in a residential and secure neurorehabilitation or neurobehavioral unit. Exhibit P-6.

9. Student was hospitalized at PSYCHIATRIC HOSPITAL from November 20, 2013 to January 3, 2014. He was diagnosed with post traumatic stress disorder (PTSD). Exhibit P-7. Student was again hospitalized at Psychiatric Hospital from October 9, 2014 to October 15, 2014. Exhibit P-10.

10. On March 31, 2014, DCPS SCHOOL PSYCHOLOGIST attempted to conduct a psychological evaluation of Student, then an adult, upon referral of Mother, for the purpose of determining his eligibility status for special education services. Student's teachers were not able to provide information because of Student's excessive absences from school. The examiner was unable to obtain reliable score results because of what she described as poor effort and purposeful attempts to attain poor scores by Student. The examiner concluded that because assessment data could not be obtained and teachers could not provide feedback on Student, Student did not qualify for special education services. Exhibit R-13.

11. DCPS sent multiple Letters of Invitation to Student and Mother beginning May 14, 2014 to review the results of its March 2014 evaluation of Student. These letters were sent on or about May 14, 2014, June 3, 2014, July 14, 2014, and July 23, 2014. Exhibits R-19 through R-25.

12. On December 2, 2014, City High School 2 issue a Prior Written Notice to Mother stating that it did not proceed further with the Evaluation process for Student because Student "did not attend the evaluation." Exhibit R-14.

13. Student's school attendance has been a concern since he was allegedly

assaulted by other Students in December 2009. According to DCPS transcripts, Student's attendance from school year 2009-2010 through 2012-2013 was as follows:

		Days Present	Days Absent
2009-2010	City High School 1	78.5	103.5
2010-2011	City High Schools ½	15.5	140.5
2011-2012	City High School 2	91	74
2012-2013	City High School 2	59	87

Exhibit P-11. (More recent attendance records were not offered into evidence.) As of March 31, 2014, Student had been present for 18 out of 135 total school days for the 2013-2014 school year. Exhibit R-13. During this period, Student failed almost all of his courses. Exhibit P-11. He was never promoted beyond GRADE. Exhibit P-11, Testimony of Educational Advocate.

14. On January 13, 2015, Student and Mother wrote a letter to the principal at City High School 2 to request that the school conduct a comprehensive psychoeducational evaluation of Student and any necessary additional testing. Exhibit P-13.

15. On March 17, 2015, Student filed a state complaint with the D.C. Office of the State Superintendent of Education (OSSE) to request the office's intervention to establish special education services and other relief. Exhibit P-14. The state complaint was withdrawn following a May 29, 2015 mediation agreement. In the mediation agreement, DCPS agreed, *inter alia*, to conduct neuropsychological and assistive technology evaluations of Student and to convene an MDT meeting to review the evaluations and determine Student's eligibility for special education services. Exhibit P-15.

16. DCPS NEUROPSYCHOLOGIST attempted to schedule neuropsychological evaluations of Student on multiple dates including June 17, 2015, June 18, 2015, June 23, 2015, June 25, 2015, July 29, 2015, July 30, 2015, July 31, 2015, August 5, 2015 and August 15, 2015. Student did not attend any of these scheduled appointments. Exhibits R-31 through R-34. In her testimony, Mother blamed DCPS for Student's not attending these appointments because for one appointment, DCPS School Neuropsychologist was allegedly hours late. I did not find Mother to be a reliable witness, because her assertions were frequently erroneous. For example she testified that before attending City High School 1, Student's IEP provided 20-30 hours of special education services and that he had a current IEP when he transferred from High School 1 to High School 2 in the 2010-2011 school year. Both statements were inaccurate.

17. Licensed Psychologist conducted an independent psychological evaluation of Student in November 2015. Exhibit P-16. Her report was provided to DCPS after November 28, 2015, Testimony of Licensed Psychologist, and had not been reviewed by the District prior to the December 9, 2015 due process hearing.

CONCLUSIONS OF LAW

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

Burden of Proof

The burden of proof in a due process hearing is the responsibility of the party seeking relief – the Petitioner in this case. *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 LED.2d 387

(2005); *Hester v. District of Columbia*, 433 F.Supp.2d 71, 76 (D.D.C. 2006).

Analysis

A.

Statute of Limitations Defense

Before reaching the specific issues in this case, I review the IDEA's statute of limitations, which DCPS maintains bars many of Petitioner's claims. "The IDEA statute of limitations requires a parent to request a due process hearing within two years of 'the date the parent . . . knew or should have known about the alleged action that forms the basis of the complaint.'" *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 244 (3d Cir. 2012) (citing 20 U.S.C. § 1415(f)(3)(C); 34 C.F.R. § 300.511(e)). There are two exceptions to the two-year statute of limitations. The statute shall not apply . . . if the parent was prevented from requesting the hearing due to—

(i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or

(ii) the local educational agency's withholding of information from the parent that was required under this subchapter to be provided to the parent.

20 U.S.C. § 1415(f)(3)(D)(i)-(ii); accord 34 C.F.R. § 300.511(f)(1)-(2). For the first exception to apply, the parent must show a "misrepresentation' akin to intent, deceit, or egregious misstatement." *D.K., supra*, at 245. A petitioner can satisfy the second exception only by showing that the District failed to provide him with a written notice, explanation, or form specifically required by the IDEA statutes and regulations. *Id.* at 246.

B.

Did DCPS deny Student a FAPE by unlawfully exiting him from special education services in the 2010-2011 school year?

At an MDT team meeting on October 14, 2010 at City High School 1, Student was determined not eligible for special education and related services, based upon a psychological evaluation and other assessments conducted in March 2010. Petitioner now contends that this decision was erroneous and denied him a free appropriate public education. DCPS maintains that this claim is barred by the IDEA's two-year statute of limitations. The IDEA's statute of limitations provision would typically limit Petitioner's claims to those occurring after October 19, 2013, two years prior to the date the due process complaint was filed. Mother and an educational advocate representing her participated in the October 14, 2010 MDT meeting when the decision to exit Student from special education was made. On June 7, 2011, DCPS sent Mother a Prior Written Notice confirming its refusal to identify Student as a student with a disability as defined by the IDEA. Although the Prior Written Notice was not timely, it was still sent more than four years before the due process complaint was filed. The Petitioner has not shown that he or the parent was prevented from filing a timely due process hearing request due either to a specific misrepresentation made by DCPS or to DCPS' withholding of any information required by the IDEA. I conclude, therefore, that Petitioner's claim that DCPS denied Student a FAPE by unlawfully exiting him from special education services in the 2010-2011 school year is barred by the IDEA's two-year statute of limitations.

C.

– Did DCPS deny Student a FAPE by failing to conduct special education reevaluations, including triennial reevaluations, after April 2010?

– Did DCPS deny Student a FAPE by failing to conduct a special education reevaluation when requested by the parent beginning January 2015?

– Did DCPS deny Student a FAPE by failing to conduct a special education reevaluation as allegedly agreed with the parent in March 2015?

I next consider Petitioner’s claims that DCPS denied him a FAPE by failing to conduct special education reevaluations after April 2010. As explained above in the discussion of the IDEA’s statute of limitations provision, the Act’s two year statute of limitations would typically bar Petitioner’s reevaluation claims which existed before October 19, 2013. Petitioner has not shown that either of the exceptions to the statute of limitations is applicable. I conclude that Petitioner’s claim that DCPS should have reevaluated Student before October 19, 2013 is barred by the statute of limitations.

On January 13, 2015, Mother and Student requested, in writing, that Student be evaluated for IEP eligibility. This request triggered the D.C. Code’s 120-day deadline to complete Student’s eligibility evaluation. “DCPS must conduct initial evaluations to determine a child’s eligibility for special education services ‘within 120 days from the date that the student was referred [to the LEA] for an evaluation or assessment.’ D.C. Code § 38–2561.02(a).” *Long v. District of Columbia*, 780 F.Supp.2d 49, 56 (D.D.C. 2011). On May 29, 2015, Petitioner and DCPS entered into a mediation agreement which required DCPS to conduct neuropsychological and assistive technology assessments of Student within 45 calendar days.

As of the due process hearing date, DCPS had been unable to complete its evaluation of Student. DCPS School Psychologist had previously attempted to conduct a psychological evaluation of Student on March 31, 2014. However she reported that Student’s cognitive and academic functioning could not be scored properly, due to Student’s poor effort and what appeared to be purposeful attempts to attain poor scores. (Petitioner’s expert, Licensed Psychologist, testified that she did not see a “valid

reason” for school psychologist’s conclusions that Student purposefully gave wrong answers, because Student tried to do his best for Licensed Psychologist’s evaluation. Licensed Psychologist was not present for the March 2014 evaluation and she did not consult with School Psychologist concerning Student. Whether or not Student cooperated with Licensed Psychologist in October 2015, I find no basis for the expert’s assertion that School Psychologist wrongly stated that Student purposely gave incorrect responses when she tested him in 2014.) DCPS School Psychologist recommended that Student undergo a neuropsychological evaluation to determine if he suffered from brain injuries. DCPS Neuropsychologist attempted to schedule testing for Student on multiple dates in July and August 2014. However, Student did not appear for the testing sessions.

Pursuant to the May 29, 2015 mediation agreement, DCPS Neuropsychologist attempted to schedule testing sessions on multiple dates in June 2015, for which Student also did not appear. On June 25, 2015, Mother told DCPS Neuropsychologist that Student was having anxiety issues about coming to see the psychologist and trusting her. Licensed Psychologist completed an independent neuropsychological evaluation of Student on November 28, 2015. DCPS had not completed its review the independent evaluation prior to the December 9, 2015 due process hearing.

Petitioner’s claim that DCPS should have “reevaluated” him after he was exited from special education on October 14, 2010 is not correctly pleaded. Technically, the IDEA’s *reevaluation* requirement is applicable only to students who are already determined eligible for special education. A reevaluation under the IDEA is the process by which the IEP team determines whether the child *continues* to need special

education and related services. *See* 34 CFR §§ 300.303 through 300.305. Once a child has been fully evaluated (the “initial evaluation”), a decision has been rendered that a child is eligible for services under the IDEA, and the required services have been determined, any subsequent evaluation of a child would constitute a “reevaluation.” *See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, Analysis of Comments and Changes*, 71 Fed. Reg. 46640 (August 14, 2006). In this case, because Student was exited from special education in October 2010, DCPS was not required to conduct a triennial reevaluation or other reevaluations after that date.

However, following Student’s exit from special education in 2010, the IDEA’s Child Find requirement became relevant.³ The IDEA requires Local Education Agencies (LEAs) to have a comprehensive Child Find system to ensure that all children who are in need of early intervention or special education services are located, identified, and referred appropriately. *See* 20 U.S.C. § 1412(a)(3). This duty is triggered by a reasonable suspicion that a student has a disability. *Henry v. Friendship Edison P.C.S.*, 880 F. Supp. 2d 5, 7 (D.D.C. 2012). The Child Find mandate requires that LEAs identify disabled children “within a reasonable time after school officials are on notice of behavior that is likely to indicate a disability.” *See D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 250 (3d Cir. 2012). The Child Find obligation also applies to “[c]hildren who are suspected of being a child with a disability . . . and in need of

³ Although Petitioner did not specifically plead a Child Find violation by DCPS, he alleged that DCPS failed to evaluate Student after he was exited from special education in October 2010. I construe Petitioner’s allegations as a claim for failure to timely evaluate Student as required by the Child Find mandate, even though Petitioner did not identify the IDEA’s Child Find provision as the source for the evaluation requirement.

special education, even though they are advancing from grade to grade.” *A.P. ex rel. Powers v. Woodstock Bd. of Educ.*, 572 F. Supp. 2d 221, 224-25 (D. Conn. 2008) *aff’d sub nom. A.P. v. Woodstock Bd. of Educ.*, 370 F. App’x 202 (2d Cir. 2010). Child Find is applicable both to students who have never been determined eligible for special education and to students who have been exited from services.

The record in this case is replete with information which should have caused DCPS to have a “reasonable suspicion,” at least after March 2013, that Student was a student with a disability. These indicators include the District of Columbia Family Court Neuropsychological Evaluation Report dated March 26, 2013, which recommended that Student be placed in a residential facility with a comprehensive program to address his medical, neurological, substance abuse and behavioral/emotional needs, School excusal letters from Psychiatric Hospital reporting that Student was hospitalized in the psychiatric facility for six weeks from November 2013 to January 2014 and again in October 2014, a City High School 2 Section 504 Plan developed on January 23, 2014, which reported that Student had a PTSD disability, and the fact that since School Year 2010-2011, Student had been retained in GRADE despite having cognitive abilities which tested in the Average range. I find that for all of the two calendar year period (within the statute of limitations) proceeding Petitioner’s October 19, 2015 request for a due process hearing, DCPS was on notice that Student was reasonably suspected of having a disability and that DCPS had an affirmative Child Find obligation to evaluate Student for possible restoration of his special education eligibility. At the due process hearing, DCPS offered no justification for not attempting to evaluate Student until March 2014.

I find that Petitioner did not meet his burden of proof that DCPS denied him a

FAPE by failing to evaluate him for special education when requested in January 2015 or as agreed in the May 29, 2015 mediation agreement. Although DCPS would normally have been required to complete Student's evaluation within 120 days of his January 2015 request, in the mediation agreement the parties voluntarily extended the deadline for DCPS to complete the evaluations by 45 days to July 13, 2015. Beginning in June 2015, DCPS attempted to conduct the agreed upon evaluations, but was not able to secure the Student's appearance for testing. Absent the adult Student's consent and cooperation, DCPS is unable to complete the evaluation process. *See Patricia P. v. Bd. of Educ. of Oak Park*, 203 F.3d 462 (7th Cir.2000) ("Practically speaking, a school board needs the cooperation of the parent(s) to properly evaluate a child and convene a case conference to thereby determine what level of services would address the child's disability." *Id.* at 468 (internal citation omitted)). *See, also Torda ex rel. Torda v. Fairfax Cty. Sch. Bd.*, No. 1:11CV193 GBL/TRJ, 2012 WL 2370631, at *8 (E.D. Va. June 21, 2012) *aff'd*, 517 F. App'x 162 (4th Cir. 2013).

In summary, I find that DCPS violated its Child Find obligations by not evaluating Student prior to March 2014, that is, within a reasonable time after being provided the March 2013 court-ordered neuropsychological evaluation report. However, since March 2014, when DCPS School Psychologist was unable to complete her assessment of Student because of what appeared to be purposeful attempts by Student to attain poor scores, Mother and the adult Student share responsibility for DCPS' not completing Student's eligibility evaluation.

D.

– Did DCPS deny Student a FAPE by failing to offer him IEPs for school years 2010-2011 through 2015-2016?

– Did DCPS deny Student a FAPE by failing to offer him suitable educational placements to implement special education and related services for school years 2010-2011 through 2015-2016?

Since Student was exited from special education in October 2010, he has not had an IEP or an IEP educational placement. Student contends that DCPS' failure to continue to develop IEPs for him has denied him a FAPE. DCPS maintains that Student was properly exited out of special education and was no longer entitled to an IEP.

[T]he IEP is the vehicle through which school districts typically fulfill their statutory obligation to provide a free appropriate public education and that officials must have an IEP in place *for each student with a disability* “[a]t the beginning of each school year.” *Leggett v. District of Columbia*, 793 F.3d 59, 67 (D.C. Cir. 2015) (*citing* 20 U.S.C. § 1414(d)(2)(A) (emphasis supplied). The IDEA’s conditions for a student to receive an IEP are (i) that he must be fully evaluated (the “initial evaluation”) and (ii) a decision is rendered that he is eligible for services under the IDEA . *See* 34 CFR § 300.323(c). The determination of eligibility is made by “a group of qualified professionals” from the LEA and the parent (or the adult student if he has reached the age of majority). *See* 34 CFR § 300.306.

As explained in the statute of limitations discussion above, Petitioner’s claim that he was denied a FAPE by not being offered an IEP and IEP educational placement prior to October 19, 2013 is barred by the IDEA’s two year statute of limitations. With regard to whether Student’s should have had an IEP since October 19, 2013, the evidence at the due process hearing was not sufficient to make a determination. Petitioner’s expert, Licensed Psychologist opined that Student is eligible for special education as a student with Traumatic Brain Injury (TBI), Emotional Disturbance and

a PTSD. However, Petitioner only provided Licensed Psychologist's report to DCPS after November 28, 2015 and the District must be allowed a reasonable period to review the report. Moreover, DCPS cannot be required to determine eligibility without conducting its own evaluation. *See Patricia P., supra* at 468 (“[I]f a student's parents want him to receive special education under the IDEA, they must allow the school itself to reevaluate the student and they cannot force the school to rely solely on an independent evaluation.”) Accordingly, until DCPS is afforded the opportunity to fully evaluate Student and convene an MDT team meeting to revisit Student's special education eligibility, I find it is premature to determine whether Student has been denied a FAPE by DCPS' not offering him an IEP or IEP placement after October 19, 2013.

Remedy

In this decision, I have determined that Petitioner's claim that DCPS improperly exited him from special education in October 2010 is barred by the statute of limitations and that Student requires a full eligibility evaluation in order to determine whether he is now a student with a disability in need of special education and related services. Because of the apparent complexity of Student's alleged TBI and PTSD impairments, I find it appropriate to order DCPS to fund an independent evaluation, at the market rate, by a psychologist, who is neither an employee of DCPS nor regularly engaged as an expert witness for parents in due process proceedings. In order for a future MDT team to be informed as to Student's possible entitlement to compensatory education, I will further order that if the independent neuropsychologist finds that Student has an impairment which could result in a requirement for special education, that the professional determine, if possible, how long the impairment has been present.

Until it is determined whether Student is currently eligible for special education and, if so, how long he has had a qualifying disability, it is premature to decide whether Student requires a private school placement or compensatory education for prior denials of FAPE. I will deny these requests without prejudice.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby

ORDERED:

1. DCPS is ordered, subject to obtaining consent from Student, to obtain a new comprehensive neuropsychological evaluation of Student, conducted at public expense by a qualified, independent, psychologist, who is neither an employee of DCPS nor regularly engaged as an expert witness for parents in due process proceedings.⁴ The psychologist shall be charged with comprehensively evaluating Student in order to assess whether Student has TBI, PTSD, ED or any other impairment which affects his educational needs and to make a report and recommendation for consideration by a multidisciplinary team convened to determine whether Student is a student with a disability, as defined by the IDEA, and his educational needs. The psychologist shall also be directed to determine, if possible, how long Student has been so affected by any diagnosed impairment. DCPS shall fund the independent evaluation at the prevailing market rate and shall not limit payment to any fee schedule issued by DCPS or OSSE. Said evaluation shall be conducted within 30 calendar days of this issuance of this order. Upon receipt of the completed evaluation, DCPS shall promptly convene an MDT team to determine, based upon the new evaluation and any other relevant data, whether Student is a student with a disability in need of special education and related services. DCPS shall not be held responsible for any reasonable delay in complying with this evaluation requirement, to the extent that it has not been able to obtain consent from the Student for the evaluation or cooperation from Student in scheduling and conducting the evaluation;
2. Petitioner's requests for prospective placement at a nonpublic school and for compensatory education for any denial of FAPE after October 19, 2013

⁴ The Hearing Officer notes that in Case No. 2015-0267, there was testimony given by an independent psychologist retained by DCPS. In that case, because the student was not attending a DCPS school, DCPS contracted with an independent psychologist to conduct an evaluation ordered in a prior hearing officer determination.

are denied without prejudice; and

3. All other relief requested by the Petitioner herein is denied.

Date: December 29, 2015

s/ Peter B. Vaden
Peter B. Vaden, 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).

cc: Counsel of Record
Office of Dispute Resolution
Chief Hearing Officer
OSSE - SPED
DCPS Resolution Team