

District of Columbia
Office of the State Superintendent of Education

Office of Dispute Resolution
810 First Street, N.E., Suite 2001
Washington, DC 20002

<p>CHARTER SCHOOL¹,</p> <p style="text-align: center;"><i>Petitioner,</i></p> <p>v.</p> <p>STUDENT, By and through PARENT,</p> <p style="text-align: center;"><i>Respondent.</i></p>	<p>Case No. 2015-0256</p> <p>Date Issued: September 11, 2015</p> <p>Date of Hearing: September 3, 2015</p> <p>Hearing Room 2006</p> <p>Representatives:</p> <p>Lauren E. Baum, Esq. for Petitioner</p> <p>Marlon Charles, Esq. for Respondent</p> <p>Impartial Hearing Officer: Charles M. Carron</p>
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HEARING OFFICER DETERMINATION

I. BACKGROUND

The Student is female of Current Age. During School Year (“SY”) 2013-2014, when the events relevant to this case occurred, the Student was in Grade at Charter School, the Petitioner herein. In March 2014, the Student was determined by Petitioner to be no longer eligible for special education and related services as a child with a disability

¹ Personally identifiable information is attached as Appendix A to this decision and must be removed prior to public distribution.

under the Individuals with Disabilities Education Act (“IDEA”), as amended, 20 U.S.C. §§1400 *et seq.*

Petitioner asserts that the evaluation of the Student it conducted during School SY 2013-2014, upon which the determination of non-eligibility was made, was appropriate.

Respondent asserts that the evaluation was not appropriate because it was not sufficiently extensive, specifically because the evaluation did not assess the Student for Emotional Disturbance (“ED”) based upon depression that she suffered as a result of a home fire in November 2013.

II. SUBJECT MATTER JURISDICTION

This is a Due Process Complaint (“DPC”) proceeding pursuant to the IDEA. The Due Process Hearing (“DPH”) was held pursuant to the IDEA, 20 U.S.C. §1415(f); IDEA’s implementing regulations, 34 C.F.R. §300.511, and the District of Columbia Code and Code of D.C. Municipal Regulations, *see* DCMR §§5-E3029 and E3030. This decision constitutes the Hearing Officer Determination (“HOD”) pursuant to 20 U.S.C. §1415(f), 34 C.F.R. §300.513, and §1003 of the *Student Hearing Office Due Process Hearing Standard Operating Procedures*.

III. PROCEDURAL HISTORY

The DPC was filed August 4, 2015, by Petitioner, against Respondent, the Student’s grandparent and guardian, a District of Columbia resident.

The 45-day timeline for this HOD started to run on August 4, 2015 and will conclude on September 18, 2015.

On August 7, 2015 the undersigned was appointed as the Impartial Hearing Officer.

The undersigned held a Prehearing Conference (“PHC”) by telephone on

August 13, 2015, at which the parties discussed and clarified the issues and the requested relief. At the PHC, the parties stipulated (a) that Respondent is the Student's Parent for purposes of IDEA, and (b) that Respondent does not assert that Petitioner should have conducted a speech and language evaluation of the Student. At the PHC, the parties agreed that five-day disclosures would be filed by August 27, 2015 and that the DPH would be held on September 3, 2015. The undersigned issued a Prehearing Conference Summary and Order ("PHO") on August 13, 2015.

On August 18, 2015, Petitioner filed a Motion for Default Judgment/Finding (the "Motion").

On August 19, 2015, five days after the statutory deadline, Respondent filed its Response to the DPC, stating, *inter alia*, that Petitioner failed to evaluate the Student in all areas of suspected disability and failed to conduct a comprehensive evaluation.

On August 24, 2015, Respondent filed an opposition to the Motion.

Also on August 24, 2015, Respondent filed a Revised Response to the DPC.

The undersigned issued an Order on August 25, 2015, granting the Motion in part and denying it in part for the reasons stated in that Order. As a result of that Order, Respondent was prohibited from introducing evidence that the Student had any suspected disability that Petitioner failed to evaluate other than ED based upon depression.

On August 27, 2015, Petitioner filed its five-day disclosures, comprising a cover letter with lists of witnesses and documents, and 30 proposed exhibits numbered P-1 through P-30.

On August 27, 2015, Respondent filed her five-day disclosures, comprising a cover letter with lists of witnesses and documents, and 12 proposed exhibits numbered R-1 through R-12.²

² The cover letter referred to all but one of these documents with the prefix "P"; however, the documents are correctly marked with the prefix "R."

On September 1, 2015, Petitioner filed a revised witness list, as permitted by the Order issued by the undersigned on August 25, 2015.

No other motions were filed by either party and the DPH was held on September 3, 2015 from 9:10 a.m. to 1:47 p.m. at the Office of Dispute Resolution, 810 First Street, NE, Room 2006, Washington, DC 20002. Respondent elected for the hearing to be closed.

At the DPH, the following documentary exhibits were admitted into evidence without objection: Petitioner's Exhibits P-1 through P-30 and Respondent's Exhibits R-1 through R-7 and R-12. Respondent's exhibits R-9 through R-11 were admitted over Petitioner's objections. Respondent's exhibit R-8 was excluded based upon Petitioner's objection.

The following witnesses testified on behalf of Petitioner at the DPH: Educational Advocate (who was admitted by stipulation as an expert in the identification and evaluation of students with disabilities), Director of Student Support Services ("Director"), School Psychologist (who was admitted by stipulation as an expert in the identification and evaluation of students with disabilities), and School Counselor.

The following witnesses testified on behalf of Respondent at the DPH: Respondent, the Student, and Psychologist (who was admitted by stipulation as an expert in clinical psychology and the evaluation of students for special education eligibility).

The parties gave oral closing arguments and did not file written closing arguments or briefs.

IV. ISSUE

As discussed at the PHC and confirmed in the PHO, the following issue was presented for determination at the DPH: whether the evaluation of the Student conducted by Petitioner during SY 2013-2014 was appropriate.

V. RELIEF REQUESTED

Petitioner requests a finding that the evaluation of the Student that it conducted during SY 2013-2014 was appropriate.

VI. BURDEN OF PROOF

In a special education DPH, the burden of persuasion is on the party seeking relief. DCMR §5-E3030.3; *Schaffer v. Weast*, 546 U.S. 49 (2005). Through documentary evidence and witness testimony, the party seeking relief must persuade the Impartial Hearing Officer by a preponderance of the evidence. DCMR §5-E3022.16; *see also, N.G. v. District of Columbia*, 556 F. Supp. 2d 11, 17 n.3 (D.D.C. 2008).

VII. CREDIBILITY

Respondent was not credible. Her testimony was vague and inconsistent. For example, on direct examination she testified that after the home fire in November 2013, the Student struggled, cried, “couldn’t think anymore,” could not focus, was diagnosed with depression by doctors, did not want to attend school, and was falling behind, and that Respondent communicated all of that to School Counselor at the time. Upon questioning by the undersigned, Respondent contradicted herself, stating that the Student was not avoiding going to school; rather, she was a “school person” and that is why Respondent asked Petitioner if the Student could get help with transportation. Respondent also admitted that her communication with School Counselor about the Student’s depression was after the March 20, 2014 meeting at which the Student’s evaluations were discussed and she was determined no longer to be eligible for special

education. Respondent also admitted that no doctor issued a written a diagnosis of the Student's depression; rather, around May 2014 (after the time period at issue in the instant case), a doctor gave her a pamphlet on depression. Accordingly, the undersigned has disregarded Respondent's testimony that prior to March 20, 2014 she informed anyone that the Student was depressed or had any other symptoms of ED.

The undersigned found the Student to be honest, but her memory of events of several years ago was lacking. For example, she did not know how many days she missed from school as a result of the home fire, did not recall moving to Pennsylvania for several weeks, and did not recall when—even what school year—she told School Counselor she was having a difficult time focusing and getting her work done. The Student testified that she did not recall whether she told her special education teacher that she needed additional support in class to focus. Accordingly, when the testimony of the Student conflicted with the testimony of Petitioner's witnesses, the undersigned credited the latter.

The undersigned found Psychologist to be honest, but his testimony lacked foundation. He never evaluated the Student, never discussed her with teachers or staff at the school, and never observed her in school. Rather, he based his expert testimony on alleged events that the undersigned has determined (*see*, Section VIII, *infra*) did not occur. Specifically, Psychologist testified that Petitioner should have been on notice of the Student's suspected depression and ED because (a) her grades showed regression from November 27, 2013 to March 20, 2014, (b) Respondent and the Student had reported the Student's depression to School Psychologist, and (c) Respondent had informed Petitioner of changes in the Student's behavior. Apparently Respondent had

informed Psychologist of these supposed facts. However, upon questioning by the undersigned, Psychologist could not point to any evidence that the Student's grades had declined during that period, and he retracted that testimony. Because the undersigned has found Respondent's and the Student's testimony regarding event (b) and Respondent's testimony regarding event (c) to be unreliable, there is no remaining factual basis for Psychologist's opinion that Petitioner should have been on notice of the Student's suspected depression and ED and therefore should have conducted a psychological evaluation of the Student.³

The undersigned found all of the other witnesses to be credible.

VIII. FINDINGS OF FACT

Facts Related to Jurisdiction

1. The Student is a female of Current Age. P-21-1.⁴
2. During SY 2013-2014, the Student and Respondent resided in the District of Columbia. Testimony of Respondent.

³ Psychologist tried to rehabilitate his expert opinion by testifying that because teenagers often hide symptoms of depression, a school should conduct a complete psychological evaluation of any teenage student who suffers a traumatic event, even in the absence of symptoms. The absurdity of that opinion is self-evident, particularly in view of the statutory definition of ED that requires adverse effects on the student's educational performance over a long period of time and to a marked degree. *See*, Section IX, Paragraph 6, *infra*.

⁴ When citing exhibits, the third range represents the page number within the referenced exhibit, in this instance, page 1.

SY 2010-2011 Evaluation

3. During SY 2010-2011 the Student was evaluated for special education.

P-1, P-2.

4. Specifically, a comprehensive psychological evaluation of the Student was completed on May 15, 2011, with the following findings: (a) the Student's cognitive abilities were in the Low Average range; (b) although the Student was two grade levels below her same-age peers in math, her academic achievement abilities were in the Average range and commensurate with or above her cognitive potential; (c) the Student did not have a memory impairment; (d) the Student did not have a visual-motor impairment; and (e) the Student's social, emotional and behavioral functioning did not reveal any areas of significant impact on academic functioning. P-1-4, -7 and -10.

June 29, 2011 Eligibility Meeting

5. On June 29, 2011, the Student's Multidisciplinary Team ("MDT") met and determined that she did not meet the criteria for special education under IDEA because she did not meet the criteria for Specific Learning Disability ("SLD") and there was no evidence of any other disability at that time. P-2.

September 2011 Speech-Language Evaluation

6. On September 9, 2011, Petitioner conducted a speech and language evaluation of the Student, which found a mild receptive and expressive semantics disorder for which speech and language services were recommended. P-3-4.

November 10, 2011 Eligibility Meeting

7. On November 10, 2011, the Student's MDT met and determined that she was eligible for special education as a student with a speech and language impairment.

P-4-5 through -8.

November-December 2012 Reduction in Speech and Language Services

8. In November 2012, based upon the Student's mastery of her speech and language goals, her speech-language pathologist recommended reduction of her services from direct weekly services to monthly consultation, a change to which Respondent agreed. P-5-1.

9. On December 12, 2012 the Student's Individualized Education Program ("IEP") was amended to change the Student's speech and language services to monthly consultation. P-6-3.

10. The Student's December 12, 2012 IEP also provided four hours per week of specialized instruction in the general education setting and four hours per week of specialized instruction in the outside of general education setting.⁵ *Id.*

March 2013 Request for IEP Team Meeting

11. On March 4, 2013, a paralegal working with Educational Advocate, both of whom were employed by Respondent's then counsel, sent a letter to Petitioner's Principal requesting a "30 day review with the special education team." Testimony of Educational Advocate, P-8-1.

⁵ Apparently this specialized instruction was in support of the Student's speech and language goals, because the IEP contains no other goals. P-6.

April 15, 2013 MDT Meeting

12. The Student's MDT met on April 15, 2013 to review the Student's progress, which was minimal. P-9-1.

13. Respondent's then counsel requested that the Woodcock-Johnson [Test of Achievement, Third Edition ("WJ-III")] be administered to identify any areas of academic concern to be addressed in the Student's IEP. *Id.*, P-10-1, testimony of Educational Advocate.

14. Petitioner agreed to conduct that assessment. P-9-1, P-10-1.

15. The MDT agreed to reconvene once the assessment was complete to determine what [IEP] goals were necessary. *Id.*

May 8, 2013 Educational Evaluation

16. On May 8, 2013, School Psychologist administered the WJ-III to the Student and reviewed her file. P-11-1.

17. The evaluation determined that the Student's academic achievement was in the Average range for reading and written language, and in the Low Average range for math. P-11-2.

18. Overall, the Student's academic achievement was found to be at or above her grade level. *Id.*

June 19, 2013 MDT Meeting

19. The Student's MDT met on June 19, 2013 to review the educational evaluation. P-12-1.

20. The MDT agreed to add a math goal to the Student's IEP, to continue the speech and language consultation, and to continue special education services for SY 2013-2014 and then reconsider the Student's eligibility. *Id.*, P-13-1, testimony of Educational Advocate.

September 17, 2013 MDT Meeting

21. The Student's MDT met on September 17, 2013 to discuss the amendments to the Student's IEP that had been agreed to at the June 19, 2013 meeting. P-14-1, P-15-1.

22. The MDT agreed to provide more specificity in the Student's math Present Level of Performance in her IEP. P-14-1.

23. The MDT discussed changing the [specialized instruction] support from communication to written expression, but Respondent disagreed and the MDT apparently did not make that change. *Id.*, P-15-1.

24. The MDT agreed to reevaluate the Student to determine if she continued to qualify for special education services as a child with a speech and language impairment. *Id.*

25. Initially, the MDT agreed to conduct a new psychological evaluation. P-14-1. However, after School Psychologist stated her opinion that such an evaluation was not necessary, the MDT—including Respondent and her representatives—agreed that a psychological evaluation was not necessary. Testimony of Petitioner's Director of

Student Support Services (“Director”).⁶

26. The Student’s IEP was revised as a result of the meeting. P-16.

October 10, 2013 Speech-Language Evaluation

27. A speech and language evaluation of the Student was completed on October 10, 2013, finding (a) that the Student’s speech and language abilities were in the Average range, (b) that she no longer manifested a speech and language “handicap,” (c) that she had made maximum progress, and (d) that she no longer required the services of a speech and language pathologist. P-17-2.

November-December 2013 Attempts to Schedule MDT Meeting

28. On November 26 and 27, 2013, the parties exchanged emails regarding scheduling an MDT meeting in mid-December 2013. P-20-1 and -2.

29. The meeting had to be rescheduled because Respondent and her family were displaced by a fire (P-20-1) that occurred on November 27, 2013 (Testimony of Respondent).

30. The parties agreed to update the Student’s IEP without a meeting to prevent it from being out of date, and to reconvene at a later date to review the IEP. P-20-1.

⁶ Director testified credibly that she typed the meeting notes (P-14) during the meeting, and failed to update the notes to reflect the MDT’s subsequent agreement not to conduct a psychological evaluation. Testimony of Director. Similarly, Director testified credibly that the reference in the notes to the consent form signed by Respondent was a consent to evaluate, not specifically for a psychological evaluation. *Id.* Director’s explanation is corroborated by Respondent’s then counsel’s paralegal’s notes of the meeting (P-15) which make no mention of a psychological evaluation. Even if the MDT had agreed to conduct a psychological evaluation of the Student, the failure to conduct an agreed evaluation is not an issue in the instant case. Rather, the issue is whether the evaluation conducted by Petitioner was appropriate.

December 8, 2013 Evaluation

31. On December 8, 2013, School Psychologist administered the Wechsler Individual Achievement Test, 3rd Edition (“WIAT-III”) to the Student to assess her reading and math skills, and reviewed her file. P-19-1.

32. The Student’s achievement was found to be in the Average range for reading, and in the Below Average range for math (P-19-2 and -3), consistent with previous testing (Testimony of School Psychologist).

32. The Student was “over-performing” her cognitive ability and School Psychologist had no reason to suspect that the Student had decreased cognitive functioning, depression or ED. Testimony of School Psychologist.

December 11, 2013 IEP

33. The Student’s IEP was updated on December 11, 2013 with no change in specialized education or related services. P-21.

The Student’s Transportation Needs After November 27, 2013

34. As a result of the home fire on November 27, 2013, Respondent and the Student moved to a hotel for a month, then to Pennsylvania for two weeks. Testimony of Respondent.

35. The Student sometimes stayed with friends. Testimony of the Student.

36. Respondent contacted School Counselor for assistance with transportation for the Student. Testimony of School Counselor.

37. Petitioner made sure the Student had Metro cards, which School Counselor provided to the Student. *Id.*

The Student's Academic Performance During SY 2013-2014

38. According to the Student's report card for the first semester of SY 2013-2014, August 28, 2013 through January 24, 2014, she earned grades ranging from 1.75 to 3.0, with a GPA [grade point average] of 2.25. R-9-6.

39. The Student's report card contained the following comments:

[The Student] is a thoughtful yet sometimes passive student. She enjoys working with others, but can rely on them too much for the work instead of taking initiative to complete the work herself. In Geometry Foundations [she] can be an asset to the class, but her attendance has been an issue. [She] struggles to maintain self-motivation. Her music teacher reports that [the Student] just does the minimal amount of work required to pass, and does not seek to meet expectations only just slide by. In World History, Geometry Foundations, Geometry and Chemistry [the Student] does not complete all of her assignments, and has an extremely low homework completion. [She] is most successful in her English class where her teachers report that she doesn't require redirection, has exemplar[y] organization, and takes initiative to ask for work when she is absent. [The Student] needs to transfer these skills, which she does possess into her other classes including Foundations of Geometry, World History 2, Chemistry, and Geometry. [She] is equipped with the skills to make her successful in all of her classes, but she must take responsibility to apply these for herself. [The Student] set the goal for herself in December to stay after school and attend homework center. This was to be monitored by her online document. [The Student] has not updated it. This would benefit her in both (sic) Spanish, Chemistry and Geometry as teachers report that she rarely stays after for help, as well as does not take the opportunity to reassess. [The Student] needs to be proactive about asking for help and take advantages (sic) of the opportunities put in place here to help her be successful. These options include homework center, teacher support after school, and writing center. If [the Student] takes accountability for her grades and seeks out support when she needs it, [she] can be a strong leader in all of her classes. Remember, education is about learning and not just passing.

R-9-6 and -7.

40. The Student's report card contained no mention of her appearing depressed or having any social-emotional issues.

41. A Progress Report bearing the date June 16, 2014, with no indication of the period it covers, shows that the Student earned grades ranging from 1.7 to 2.9. R-9-1 through -5. Without context, the undersigned cannot make any findings from this Progress Report.

42. There is no evidence in the record that the Student's academic performance changed between the November 27, 2013 home fire and the March 20, 2014 MDT meeting discussed *infra*.

43. After March 20, 2014, the Student had a serious illness and was in and out of the hospital (Testimony of the Student) which could be expected to have adversely affected her year-end grades.

Respondent's Communications with Petitioner Between November 27, 2013 and March 20, 2014

44. Respondent told Educational Advocate that the Student was having an academic impact as a result of absences resulting from the fire. Testimony of Educational Advocate.

45. Respondent did not tell Educational Advocate that the Student was experiencing depression or a social-emotional impact as a result of the fire. *Id.*

46. Respondent never stated to School Counselor that the Student was depressed or was avoiding attending school. Testimony of School Counselor.

Petitioner's Staff Members' Lack of Knowledge of the Student's Alleged Depression or ED

47. None of the Student's teachers stated to School Counselor that the Student demonstrated any signs of depression or behavior changes, and teachers typically would report to her any behavior out of the norm to School Counselor. *Id.*

48. School Counselor did not observe any emotional disturbance in the Student and had no reason to suspect the Student might be depressed. *Id.*

Educational Advocate's Lack of Knowledge of the Student's Alleged Depression or ED

49. Educational Advocate had no reason to suspect that the Student might have ED, because there were no indications from the Student's assessments, her teachers, or anyone else that the Student had behavior issues or was "internalizing." Testimony of Educational Advocate.

March 20, 2014 MDT Meeting

50. The Student's MDT met on March 20, 2014 to review the Student's reevaluation. P-22-1, P-23-1.

51. The MDT discussed the Student's attendance, which was a major concern; specifically, the Student had 17 excused absences and 12 unexcused absences. P-23-1, P-24-1, P-26.

52. Many of these absences were due to the home fire and the family's relocation, which required numerous meetings to get replacement housing (Testimony of Educational Advocate) and caused transportation difficulties due to the distance between Respondent's temporary residences and the school (*Id.*, P-25-1, testimony of Director).

53. The MDT expressed the importance of the Student's attendance to "positively impact her academic progress." P-23-1.

54. Respondent stated that she was working on the Student's absences and they would get her attendance back on track. P-24-1.

55. Respondent stated that the Student had behavior issues at home (P-24-2); however, she did not indicate any concern about the Student's social or mental state or social-emotional functioning (Testimony of Director, testimony of School Psychologist).

56. Respondent did not state that the Student was depressed or refusing to attend school. Testimony of Educational Advocate, testimony of Director, testimony of School Psychologist.

57. Respondent did not share any concern about the Student's behavior or social-emotional functioning at school. Testimony of Educational Advocate.

58. No one stated that the Student's absences resulted from her not wanting to come to school. *Id.*

59. No one expressed any concern about the Student's cognitive functioning or her behavior at school. Testimony of Director.

60. The MDT reviewed all of the Student's prior evaluations as well as work samples from her classes. *Id.*

61. Respondent and her representatives raised no concern that the Student had ED or depression,⁷ or that her absences were caused by any disability. P-23, P-24, P-25.

⁷ Respondent introduced into evidence research articles finding a correlation between anxious/depressed and withdrawn symptoms in the borderline/clinical referral range and cognitive and academic measures for children (R-10) and a correlation between anxiety/depression and school refusal (R-11). While such correlations may well exist, neither Respondent nor her representatives raised a concern that the Student was

62. The MDT determined that the Student no longer was eligible for special education because she had met all of her speech and language goals, she did not meet the criteria for speech and language impairment or SLD (because her math skills, although Low Average, were commensurate with her cognitive ability), and no other disabilities were suspected. *Id.*, testimony of Educational Advocate, P-22, P-23-1.

63. Respondent disagreed with that determination. Testimony of Educational Advocate, P-22-2, P-23-1, P-24-2.

64. Neither Respondent nor her representatives expressed disagreement with the evaluations that Petitioner had conducted or the failure to conduct a psychological evaluation. Testimony of Respondent, testimony of Educational Advocate, testimony of Director, P-23, P-24.

65. Respondent did not request additional evaluations because no other evaluations were indicated. Testimony of Educational Advocate.

66. At Respondent's request, on March 24, 2014 Educational Advocate documented Respondent's disagreement with exiting the Student from special education, specifically that Respondent had "noted changes since the accident, and that the doctor told her that [the Student] still needs special education services because of residual damage from the accident particularly the loss of short-term memory."⁸ *Id.*, P-25-1.

exhibiting symptoms of depression, anxiety or withdrawal, or that she was staying home because she had severe emotional distress about attending school. The Student's progress reports and report cards did not contain any such concerns either.

⁸ To the contrary, the Student's short term memory had been determined not to be impaired. P-1-4

67. The “accident” referenced in Educational Advocate’s March 24, 2014 statement was the concussion the Student sustained on February 24, 2011 (P-1-1), not the [November 27, 2013] house fire (Testimony of Educational Advocate).

68. Based upon the entire record, the undersigned finds that although Respondent disagreed with the decision to exit the Student from special education, Respondent and her representatives did not disagree with the evaluations that Petitioner had conducted or the failure to conduct additional assessments or evaluations.

Respondent’s Request for Independent Educational Evaluation

69. On July 7, 2015, more than a year after the March 20, 2013 MDT meeting, Psychologist, on behalf of Respondent, requested an independent psychological evaluation of the Student. DPC Para. 22.

IX. CONCLUSIONS OF LAW

Purpose of the IDEA

1. The IDEA is intended

(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living [and] (B) to ensure that the rights of children with disabilities and parents of such children are protected...”

20 U.S.C. §1400(d)(1), *accord*, DCMR §5-E3000.1.

FAPE

2. The IDEA requires that all students be provided with a free appropriate public education (“FAPE”). FAPE means:

special education and related services that –

- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State educational agency;
- (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

20 U.S.C. §1401(9); *see also*, 34 C.F.R. §300.17 and DCMR §5-E3001.1.

Evaluation

3. Either a parent of a child or a public agency may initiate a request for evaluation to determine if the child is a child with a disability. 34 C.F.R. §300.301(b).

4. When a parent disagrees with an evaluation because the child was not assessed in a particular area, the parent has the right to request an Independent Educational Evaluation (“IEE”) to assess the child in that area to determine whether the child has a disability and the nature and extent of the special education and related services the child needs. *Letter to Baus*, 115 LRP 8855 (OSEP, February 23, 2015).

5. Upon receipt of such a request, the Local Educational Agency must either provide the IEE at public expense, or, as Petitioner did here, file a DPC to request a hearing to show that its evaluation was appropriate. 34 C.F.R. §300.502(b).

Emotional Disturbance

6. “Emotional disturbance” is defined as follows:

(i) ... a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behaviors or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.

34 C.F.R. § 300.8(c)(4); *accord*, DCMR §5-E3001.1.

7. There is no evidence in the record that, prior to March 20, 2014, (a) the Student demonstrated an inability to learn; (b) the Student was unable to build or maintain relationships; (c) the Student engaged in inappropriate behaviors or demonstrated inappropriate feelings at school; (d) the Student displayed a general pervasive mood of unhappiness or depression (or that Respondent or the Student communicated to Petitioner that the Student had such a mood or depression); or (e) the Student demonstrated physical symptoms or fears (or that Respondent or the Student communicated to Petitioner that the Student had such physical symptoms or fears).

8. Respondent and her representatives did not disagree with Petitioner's evaluation of the Student until more than a year after the March 20, 2014 MDT meeting.

Finding of Fact 69.

9. In these circumstances, based upon the entire record, the undersigned concludes that Petitioner reasonably attributed the Student's absences and resulting academic difficulties to the transportation issues associated with displacement from her home due to the fire, and that Petitioner was not on notice of the need to conduct any evaluation of depression or ED.

Summary

10. The evaluation of the Student conducted by Petitioner during SY 2013-2014 was appropriate.

X. ORDER

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

The undersigned finds that the evaluation of the Student conducted by Petitioner during SY 2013-2014 was appropriate.

Dated this 11th day of September, 2015.



Charles Carron
Impartial Hearing Officer

Copies to: Petitioner's Counsel Lauren E. Baum, Esq.
 Respondent's Counsel Marlon Charles, Esq.
 Office of Dispute Resolution
 Chief Hearing Officer Virginia Dietrich, Esq.
 OSSE Division of Specialized Education
 Contact.Resolution@dc.gov

XII. NOTICE OF APPEAL RIGHTS

The decision issued by the Impartial Hearing Officer is final, except that any party aggrieved by the findings and decision of the Impartial Hearing Officer shall have 90 days from the date of the decision of the Impartial Hearing Officer to file a civil action with respect to the issues presented at the due process hearing in a district court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. §1415(i)(2).