

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

Student Hearing Office  
810 First Street, N.E...  
Washington, DC 20002

OSSE  
Student Hearing Office  
April 08, 2014

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PARENT, on behalf of  
STUDENT,

Petitioner,

Hearing Officer: Michael Lazan

V

DISTRICT OF COLUMBIA PUBLIC SCHOOLS,

Respondent.

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**HEARING OFFICER DETERMINATION**

**INTRODUCTION**

This is a case involving a student who has been determined to be eligible for services.

A Due Process Complaint (“Complaint”) was received by District of Columbia Public Schools (“DCPS” or “Respondent”) pursuant to the Individuals with Disabilities Education Act (“IDEA”) on January 23, 2014 in regard to the Student. This Hearing Officer was appointed to preside over this case on January 27, 2014.

A response was filed by the District denying this contention on January 30, 2014. This response was timely filed. A resolution meeting was held on February 11, 2014. This meeting was untimely pursuant to the applicable regulations. The resolution period ended on February 22, 2014.

On March 10, 2014, this Hearing Officer held a prehearing conference.

A prehearing conference order issued on March 16, 2014, summarizing the rules to be applied in this hearing and identifying the issue in the case.

The parties agreed that there were no factual issues to be resolved in this case. As a result, no witnesses were presented by the parties. The parties agreed to present this IHO with a stipulation of facts and to present written argument in support of their positions. The parties submitted a stipulation of facts to this IHO dated March 14, 2014. (IHO-1) Petitioner submitted a motion for summary judgment on the same date, with exhibits. (IHO-2) Respondent submitted a motion for summary judgment on March 21, 2014, also with exhibits. (IHO-3) The parties then orally argued the matter on the record on March 26, 2014.

### **JURISDICTION**

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the Individuals with Disabilities Improvement Act (“IDEIA”), 20 U.S.C. Sect. 1400 et seq., its implementing regulations, 34 C.F.R. Sect. 300 et seq., Title 38 of the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-E, Chapter 30.

### **ISSUE**

As identified in the Prehearing Conference Summary and Order, the issue to be determined is as follows:

Did DCPS fail to appropriately respond to Petitioner’s November 12, 2013 request for an occupational therapy assessment, speech and language therapy assessment, FBA, comprehensive psychological assessment, and educational assessment? If so, is Petitioner entitled to an I.E.E. of

the Student in regard to occupational therapy, speech and language therapy, an FBA, a comprehensive psychological assessment, and an educational assessment?

### **FINDINGS OF FACT**

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

1. The Student is eligible for services as a Student with a developmental delay. (IHO-1; IHO-2, Exh. A)
2. The Student has an expressive vocabulary of less than 10 words. He is not toilet trained and has severely impaired receptive and expressive language skills. (IHO-3, Exh. A)
3. The Student struggles in math, and struggles in writing numbers without reversals. His overall mathematics ability is limited. The Student's overall reading ability is limited. The Student has poor letter writing and letter reversals. (IHO-3, Exhs. A, C)
4. The Student has difficulty with answering "wh" questions and will become angry when things do not go his way. (IHO-3, Exh. A)
5. Petitioner suspects that the Student falls on the autism spectrum. (IHO-1)
6. The Student has an IEP that requires him to receive academic support, behavioral support, speech and language therapy, and occupational therapy. (IHO-3, Exh. B)
7. The Student attends School A. (IHO-1)
8. Petitioner submitted a written request for Respondent to re-evaluate the Student via email on November 13, 2013. In the email, Petitioner asked whether Respondent had as yet completed a psychological assessment and a functional behavior assessment ("FBA"). (IHO-1)
9. The email also requested that Respondent conduct an occupational therapy assessment and speech and language assessment. (IHO-1)

10. Respondent completed an FBA, an educational assessment, and a social history interview for special education services in November, 2013. (IHO-1)

11. The educational assessment tested the Student's academic skills through the Woodcock-Johnson-III Tests of Achievement. The assessment tested the Student in broad written language, math calculation skills, broad math, and broad reading. The assessment found that the Student has overall limited ability in reading and math. (IHO-3, Exh. C)

12. The FBA found that the Student's behavior occur because of internal frustrations and displacement. (IHO-3, Exh. D)

13. A triennial eligibility meeting was held on December 3, 2013 to determine the Student's eligibility for services. (IHO-1)

14. At this meeting, Respondent reviewed the FBA, educational assessment, and social history interview. (IHO-1)

15. At this meeting, Petitioner expressed disagreement with Respondent's FBA, educational assessment and social history interview. (IHO-1)

16. At this meeting, Petitioner requested that Respondent conduct formal assessments in occupational therapy, speech and language therapy, and a comprehensive psychological assessment. (IHO-1)

17. At this meeting, Petitioner orally requested an IEE for the following assessments: psychological assessment, occupational therapy assessment, speech and language assessment, FBA, and educational assessment. (IHO-1)

18. Respondent indicated that it did not agree with Petitioner's request for an occupational therapy assessment, a speech and language therapy assessment, and a comprehensive psychological assessment. (IHO-1)

19. Respondent based this position on informal observations of the Student and a review of existing data. (IHO-1)

20. At this meeting, Respondent did not authorize any IEE. (IHO-1)

21. As result of the meeting, the student was determined to need special education services. His disability was found to impact him in mathematics, communication/speech and language, emotional, social and behavioral development, written expression, and motor skills. (IHO-3, Exh. A)

22. On December 3, 2013, a prior written notice was sent to the parent describing each evaluation procedure, assessment, record or report used as a basis for the proposed or refused action. (IHO-3, Exh. E)

23. On December 3, 2013, Respondent issued a “Final Eligibility Determination Report.” This report indicates that “the team has reviewed the relevant evaluation information” and that “the team used assessment procedures that were valid for the purposes intended and valid for the student.” (IHO-3, Exh. A)

24. An Evaluation Summary Report, was issued on December 3, 2013. This document states:

(u)pon completion of the initial evaluation or reevaluation process and the determination of eligibility we must prepare a comprehensive written report to be provided at no cost to you. Because the intent of this report is to summarize the information from a variety of sources gathered during the evaluation process and used to determine if your child is a child with a disability and the educational needs of your child, it is important that you review this information.

25. On December 6, 2013, Petitioner made a second request for the IEE. This request was made through email. (IHO-1)

26. On December 6, 2013, a prior written notice was sent to the Petitioner agreeing with the request for an occupational therapy assessment. (IHO-3, Exh. F)

27. On December 6, 2013, Respondent agreed to conduct an occupational therapy assessment. An email was sent in this connection. (IHO-1)

28. On December 6, 2013, Respondent sent Petitioner a form to sign. This form would provide consent to the occupational therapy assessment. (IHO-1)

29. Petitioner has not signed this consent form. (IHO-1)

30. Petitioner sought the IEE again on January 3, 2014. This request was made through email. (IHO-1)

31. Respondent did not respond to this request by issuing an IEE. (IHO-1)

32. A resolution meeting was held in connection to the instant litigation on February 5, 2014. (IHO-1)

33. During this meeting, Respondent offered to conduct a psychological assessment, speech and language therapy assessment, and occupational therapy assessment. (IHO-1)

34. Respondent authorized authorizations for an independent educational assessment and for an independent FBA on February 5, 2014. (IHO-1)

35. On February 14, 2014, a letter authorizing an independent FBA and independent educational assessment was issued to Petitioner. (IHO-3, Exh. I)

### **CONCLUSIONS OF LAW**

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

The burden of proof in a special education due process hearing lies with the party seeking relief. 5 DCMR 3030.3; Schaffer v. Weast, 546 U.S. 49 (2005).

An evaluation means procedures used in accordance with 34 CFR Sects. 300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.<sup>1</sup> A reevaluation means an evaluation conducted after the initial evaluation.<sup>2</sup>

In conducting the evaluation, the LEA must use a variety of tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, to determine whether the child is eligible and, if so, the content of the child's IEP.<sup>3</sup>

A reevaluation of a child with a disability must occur when conditions warrant or if the parent or teacher requests a reevaluation.

An independent educational evaluation ("IEE") is a procedural safeguard available under the IDEA that provides the parents with the opportunity to obtain their own private evaluation of their child.<sup>4</sup> When the parent disagrees with an evaluation obtained by the LEA, the parent has the right to an IEE at public expense.<sup>5</sup>

Because the parent has a right to an IEE at public expense, upon request<sup>6</sup>, the LEA must, without unnecessary delay, either: file a due process complaint to request a hearing to show that

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<sup>1</sup> 34 C.F.R. Sect. 300.15. In the District of Columbia, an evaluation is defined to include the process of reviewing at a meeting of the IEP team information from parents; existing data; and results of assessment procedures used to determine the child's present level of performance, educational needs and whether a child has a disability, and the nature and extent of the special education and related services that the child needs. DCMR. 5-E Sect. 3001.1.

<sup>2</sup> DCMR 5-E Sect. 3001.1.

<sup>3</sup> 34 C.F.R. Sect. 300.304(b)(1). In the District of Columbia, the IEP team is tasked with implementing the IDEA procedures for determining eligibility when conducting an evaluation even though the procedures under the IDEA are intended for use when interpreting evaluation data. DCMR 5-E Sect. 3005.3.

<sup>4</sup> See 34 C.F.R. Sect. 300.502.

<sup>5</sup> 34 C.F.R. Sect. 300.502(b)(1).

<sup>6</sup> If a parent requests an IEE, the LEA may ask the parent's reason why s/he objects to the LEA evaluation. However, the LEA may not require the parent to provide an explanation and may not unreasonably delay either providing the IEE at public expense or filing a due process complaint to request a hearing to defend the LEA's evaluation. 34 C.F.R. Sect. 300.502(b)(4).

its evaluation is appropriate;<sup>7</sup> or ensure that an IEE is provided at public expense<sup>8</sup>, unless the LEA demonstrates in a hearing that the evaluation obtained by the parent did not meet the LEA's criteria.<sup>9</sup>

Here, there is no dispute that Petitioner requested an IEE on December 3, 2014. The IEE seeks five assessments: a psychological assessment, an occupational therapy assessment, a speech and language assessment, an FBA, and an educational assessment. There is also no dispute that Respondent did not respond by providing an authorization for those assessments, and did not initiate a Due Process Complaint to contest Petitioner's right to the IEE. As a result, Petitioner posits, she is entitled to the IEE.

Respondent argues that Petitioner's statutory right to an IEE has not yet been triggered because Respondent has not had an opportunity to complete the reevaluation process. The record shows that the Petitioner requested an evaluation via email on November 13, 2013. Respondent completed an FBA, and educational assessment, and a social history interview for special education services in November, 2013. A triennial eligibility meeting was held on December 3, 2013 to determine the Student's eligibility for services. At this meeting, Respondent reviewed the FBA, educational assessment, and social history interview. Then, after the meeting, a Prior Written Notice was sent to Petitioner informing her of a change to the Student's IEP.

To this IHO, Respondent's evaluation process was over when the IEP team met, reviewed the assessments, created a program for the Student, and sent a Prior Written Notice to

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<sup>7</sup> 34 C.F.R. Sect. 300.502(b)(2)(i).

<sup>8</sup> The LEA may not impose conditions or timelines related to obtaining an IEE at public expense. 34 C.F.R. Sect. 300.502(e)(2).

<sup>9</sup> 34 C.F.R. Sect. 300.502(b)(2)(ii).

the Petitioner. Further, this is the viewpoint that has been expressed by Respondent at least twice.

After Respondent's meeting on December 3, 2013, Respondent issued a "Final Eligibility Determination Report." (IHO-3, Exh. A) This report indicates that "the team has reviewed the relevant evaluation information" and that "the team used assessment procedures that were valid for the purposes intended and valid for the student." This is language that suggests that Respondent considered the reevaluation process to be complete by the date of the IEP meeting on December 3, 2013.

Even more telling is language in the Evaluation Summary Report, also issued on December 3, 2013. The very title of this report indicates that the evaluation was completed. It is hard to understand why there would be a need to "summarize" an evaluation that was ongoing and needed to be completed. Moreover, language in this report makes clear that the evaluation process was over. This document states:

(u)pon completion of the initial evaluation or reevaluation process and the determination of eligibility we must prepare a comprehensive written report to be provided at no cost to you. Because the intent of this report is to summarize the information from a variety of sources gathered during the evaluation process and used to determine if your child is a child with a disability and the educational needs of your child, it is important that you review this information.

This language makes clear that a report would be issued once the reevaluation process was complete. Since the report was in fact issued, the reevaluation process has to be deemed complete by Respondent. It will therefore be deemed to be complete by this IHO.

Respondent's position is, in effect, that it can expand its evaluation after the parent rejects an evaluation and requests an IEE. I have found no authority for such a proposition in the caselaw, and Respondent has presented me with no such authority. Instead, the caselaw

counsels that a District is not permitted to expand its evaluation after a parental request for an IEE. M.Z. by D.Z. v. Bethlehem Area Sch. Dist., 111 LRP 47437 (M.D. Pa. 2011).

The one court case cited by Respondent is not to the contrary. In G.J., L.J., and E.J. v. Muscogee County Sch. Dist., 668 F.3d 1258 (M.D. Ga 2010), the decision favored the school district because parents did not consent to the Respondent's evaluation. That is not the case here. Respondent was able to conduct all the assessments it wanted to in connection to the evaluation process that started in November, 2013 and ended on December 3, 2013.

Respondent did not respond to the request for an IEE by either providing such IEE or by initiating a Due Process Hearing. Accordingly, I conclude that the Petitioner has established a right to the IEE. I will order that the District provide the parent with authorizations for the IEE, consisting of an occupational therapy therapy assessment, a speech and language assessment, a psychoeducational assessment, a functional behavior assessment, and an educational assessment<sup>10</sup>.

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<sup>10</sup> The District has already agreed to provide an authorization for an educational assessment and an FBA. (IHO-1)

**ORDER**

Based upon the above Findings of Fact and Conclusions of Law, I hereby order the District to provide Petitioner with an IEE consisting of consisting of an independent occupational therapy assessment, an independent speech and language assessment, an independent psychoeducational assessment, an independent functional behavior assessment, and an independent educational assessment. Authorizations for such assessments shall issue within 5 business days.

Dated: April 8, 2014

*Michael Lazan*  
Impartial Hearing Officer

**NOTICE OF RIGHT TO APPEAL**

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

Date: April 8, 2014

*Michael Lazan*  
Impartial Hearing Officer