

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

OSSE
Office of Dispute Resolution
October 17, 2014

PETITIONER,
on behalf of STUDENT,¹

Date Issued: October 17, 2014

Petitioner,

Hearing Officer: Peter B. Vaden

v.

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Office of Dispute Resolution,
Washington, D.C.

Respondent.

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard by the undersigned Impartial Hearing Officer 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 (DCMR). The matter was remanded to the Hearing Officer² by order of the Honorable Christopher R. Cooper, U.S. District Judge for the District of Columbia, following issuance of a Memorandum and Order in the matter of *PETITIONER v. District of Columbia*, Case No. 1:13-cv-00409 (CRC) (D.D.C. Aug. 7,

¹ Personal identification information is provided in Appendix A.

² The hearing officer formerly assigned to this case is no longer affiliated with the Student Hearing Office. The case on remand was assigned to the undersigned Hearing Officer on August 7, 2014.

2014) (the “Remand Order”). The remand hearing was held before the undersigned Hearing Officer on October 14, 2014 at the Office of Dispute Resolution. In the Remand Order, the Court directed the Hearing Officer to determine 1) Whether DCPS denied the student a FAPE when it failed to provide an independent psychiatric evaluation until months after Petitioner’s original August 7, 2012 request; and 2) If so, whether to grant Student compensatory education “to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” (citing *Reid v. Dist. of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005).

Petitioner’s original Due Process Complaint, filed on October 12, 2012, named DCPS as respondent. Petitioner alleged that DCPS had failed to comprehensively re-evaluate Student and requested an order for DCPS to fund an independent psychiatric evaluation of Student and to convene a Individualized Education Program (IEP) meeting within 10 days of receiving the psychiatric evaluation to review and revise Student’s IEP. Following a truncated due process hearing on December 20, 2012, FORMER HEARING OFFICER dismissed the due process complaint, because prior to the hearing, DCPS had already provided Petitioner with authorization to obtain an independent psychiatric evaluation and, therefore, “the instant matter present[ed] no controversy” for the hearing officer to review. Former Hearing Officer clarified that the dismissal did not apply to a claim for compensatory education resulting from the delay in the completion of the psychiatric evaluation.

The Petitioner appealed the administrative dismissal to the United States District Court for the District of Columbia. On appeal, the parties filed cross-motions for summary judgment, where were referred to U.S. Magistrate Judge Deborah A. Robinson for a Report and Recommendation. On February 28, 2014, the Magistrate Judge issued

a Report and Recommendation concluding that DCPS' authorization of a psychiatric evaluation of Student rendered the case moot. Petitioner filed objections to the Magistrate Judge's Report and Recommendation. After considering Petitioner's objections, U.S. District Judge Cooper found that the case presented a live controversy because relief in the form of compensatory education remained available. The Court further concluded that Petitioner's evidence failed to support a conclusion that DCPS had denied Student a FAPE. By its order entered August 7, 2014, the Court remanded the case to a hearing officer to determine whether DCPS denied Student a FAPE, and if so, whether to grant Student a compensatory education remedy.

On August 21, 2014, I convened a prehearing conference with counsel at the Student Hearing Office. At that conference, I discussed with counsel the issues to be determined in the remand hearing, set a hearing date and addressed procedural issues, including prehearing disclosure requirements. In my August 21, 2014 Prehearing Order, I identified the issues to be determined on remand as,

- 1) Whether DCPS denied the student a FAPE when it failed to provide an independent psychiatric evaluation until months after Petitioner's original August 7, 2012 request; and
- 2) If so, whether to grant the student compensatory education to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.

Prehearing Order, August 21, 2014. In the order, I scheduled the remand hearing for September 12, 2014.

On September 5, 2014, Petitioner's counsel filed a motion for sanctions against DCPS asserting that DCPS had not complied with the requirements of the Individuals with Disabilities Education Act (IDEA) to provide the "opportunity for the parents of a child with a disability to examine all records relating to such child." *See* 20 U.S.C. §

1415(b)(1); 34 C.F.R. § 300.501(a). DCPS timely opposed the sanctions motion. By order of September 10, 2014, I denied Petitioner's motion for sanctions. On September 11, 2014, Petitioner's counsel filed a motion for a continuance in which Petitioner contended it was unfair to require her to proceed with the remand hearing before her education records access claim was resolved. After convening a telephone hearing on the record, I decided that based upon Petitioner's Counsel's representation, it appeared that Petitioner believed that there were education records, relevant to the issues in the Remand Order, to which she had not obtained access and that the purposes of the Remand Order would be best served if Petitioner were allowed more time to inspect the Student's education records. Therefore, I continued the remand hearing date to October 15, 2014.³ See Order on Petitioner's Motion for Continuance (Sept. 11, 2014). On October 9, 2014, Petitioner's Counsel filed a new motion for sanctions or for another continuance, alleging that DCPS had still failed to provide all of the education records requested on behalf of the parent. DCPS filed a response in opposition to the motion on October 10, 2014. At the beginning of the due process hearing on October 14, 2014, I heard argument on the record, and denied Petitioner's motion.

The remand hearing was convened before this Hearing Officer on October 14, 2014 at the Student Hearing Office in Washington, D.C. The hearing, which was closed to the public, was recorded on an electronic audio recording device. The Petitioner appeared in person and was represented by PETITIONER'S COUNSEL. DCPS was represented by DCPS' COUNSEL. Petitioner testified and called as witnesses FORMER ATTORNEY and EDUCATIONAL ADVOCATE. DCPS called no witnesses. Petitioner's

³ At the request of Petitioner's Counsel, the hearing date was later changed to October 14, 2014.

Exhibits P-1 through P-24 were admitted into evidence without objection, except for Exhibits P-8 and P-10 through P-12 which were admitted over DCPS' objections. DCPS' Exhibits R-1 through R-10 were admitted into evidence without objection. Petitioner's Counsel waived making an opening statement. DCPS made an opening statement. Counsel for both parties made closing arguments. Neither party requested leave to file a post-hearing memorandum.

JURISDICTION

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

ISSUES ON REMAND AND RELIEF SOUGHT

The U.S. District Court for the District of Columbia remanded this matter to the Hearing Officer to determine:

- 1) Whether DCPS denied the student a FAPE when it failed to provide an independent psychiatric evaluation until months after Petitioner's original August 7, 2012 request; and
- 2) If so, whether to grant the student compensatory education to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.

For relief, Petitioner seeks an award of compensatory education for DCPS' alleged denial of FAPE.

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:

Pertinent Factual Findings of the United States Magistrate Judge

I adopt, as relevant to this determination, the following findings of fact made by U.S. Magistrate Judge Deborah A. Robinson in her February 28, 2014 Report and

Recommendation (Report and Recommendation):⁴

A. Student is a resident of the District of Columbia, and, at the time of the administrative proceedings underlying this action, was AGE. At the time of those proceedings, DCPS had already found Student eligible for special education and related services. In April 2012, a multidisciplinary team (MDT) met to review and revise Student's Individualized Educational Program (IEP). Report and Recommendation at 2.

B. In August 2012, Petitioner, through Former Attorney, requested that DCPS reevaluate Student, "includ[ing], [but not] limited to, a comprehensive psychological evaluation (to include cognitive, clinical and educational assessments), a psychiatric evaluation, and a functional behavior assessment." During the following month, DCPS arranged for Student to receive the psychological evaluation and functional behavior assessment; additionally, DCPS informed Petitioner that it had "submitted the paperwork for [Student] to receive a psychiatric evaluation." Report and Recommendation at 2.

C. On October 10, 2012, Petitioner requested both an independent psychological evaluation and authorization for an independent psychiatric evaluation. Two days later, Petitioner filed an administrative due process complaint. In it, she alleged that DCPS failed to comprehensively and appropriately evaluate Student; failed to do so at her request; and failed to do so in all areas of suspected disability. On October 15 and 23, 2012, DCPS authorized Petitioner the obtain a DCPS-funded independent

⁴ In the Prehearing Conference, counsel agreed that I may adopt factual findings made by the Magistrate Judge, and the U.S. District Judge in Civil Action No. 1:13-cv-00409. See Prehearing Order, Aug. 21, 2014.

comprehensive psychological evaluation and an independent psychiatric evaluation.
Report and Recommendation at 2-3.

Additional Findings of Fact

After considering all of the evidence introduced at the October 14, 2014 due process hearing, as well as the argument of counsel, this Hearing Officer's additional Findings of Fact are as follows:

1. Student is a resident of the District of Columbia where he resides with MOTHER. Testimony of Mother.
2. During the 2011-2012 and 2012-2013 school years, Student attended CITY SCHOOL. Testimony of Mother.
3. Student has an extensive history of mental health services. In 2009, PSYCHIATRIST 1 worked with Student at MENTAL HEALTH FACILITY. Student was also hospitalized at CITY HOSPITAL in 2009 as a result of aggressive behaviors. Student received a psychiatric evaluation in November 2010. Exhibit P-3. In April 2012, Student was hospitalized at Mental Health Facility for four weeks. Testimony of Mother. Exhibit P-3. In the summer of 2012, Student was arrested and was evaluated pursuant to a court order. His mental health diagnosis and medications were changed at that time. Then Student had to change psychiatrists. Since the summer of 2012, Student has been under the care of PSYCHIATRIST 2, who sees Student on a monthly basis. Psychiatrist 2 told Mother that she did not trust the prior psychiatric assessments of Student and she declined to prescribe medications for Student. After Mother obtained an IEE psychiatric assessment of Student by Psychiatrist 1 in December 2012, Psychiatrist 2 resumed prescribing medications for Student. Testimony of Mother.

4. On December 3, 2012, INDEPENDENT PSYCHOLOGIST issued a report of her IEE psychological evaluation of Student. Independent Psychologist diagnosed Student with Mood Disorder Not Otherwise Specified, Oppositional Defiant Disorder and Attention Deficit-Hyperactivity Disorder (ADHD). Exhibit P-3.

5. After DCPS issued authorization for Mother to obtain an IEE psychiatric assessment of Student on October 23, 2012, Mother took Student back to Psychiatrist 1, who had seen Student “a lot of times” and was familiar with him. Testimony of Mother. Psychiatrist 1 evaluated Student at Mental Health Facility on December 7, 2012. In his December 12, 2012 Psychiatric Evaluation Report, Psychiatrist 1 reported that during the interview, Student’s thinking was linear and goal directed. He did not have any suicidal or homicidal thoughts intents or plans. He was future oriented and did not have any signs of anxiety. He did not have psychotic symptoms. He denied experiencing hallucinations or delusions. He exhibited a full range of normal emotions. His mood was not depressed and not euphoric. Psychiatrist 1 diagnosed Student with Depressive Disorder NOS and ADHD. He noted that there is not much difference between Depressive Disorder NOS and Mood Disorder NOS, as diagnosed by Independent Psychologist. He agreed with Independent Psychologist’s classification of Student’s having ADHD. Psychiatrist 1 reported that Student would likely benefit from a return to psychiatric medication for management of mood and possibly ADHD. Exhibit P-3.

6. Since 2009, Student has continuously received psychiatric medications except for the period when Psychiatrist 2 stopped the medicines in summer 2002 until a new medication regime was started following the December 7, 2012 evaluation by Psychiatrist 1. In April 2013, pursuant to a court order, Student underwent a psychiatric

reevaluation by Psychiatrist 2. According to Mother, Psychiatrist 2 changed Student's diagnosis from ADHD to Bipolar Disorder and changed his prescription from medications for ADHD to medications for Bipolar Disorder. Testimony of Mother.

7. Student's IEP team met at City School on April 11, 2012 for an annual IEP review. Student's Primary Disability was identified as Emotional Disturbance (ED). The April 11, 2012 IEP provided annual goals for Mathematics, Reading, and Emotional, Social and Behavioral Development. The IEP provided Student 30.5 hours per week of Specialized Instruction and 1.5 hours per week of Behavioral Support Services. The setting for all services was Outside General Education. In the IEP Least Restrictive Environment (LRE) narrative, the IEP team stated that Student requires a smaller class size in order to access the curriculum, that numerous behavioral intervention plans were unsuccessful, that pull out services created disruptions for all involved and that pursuant to team consensus, Student required full-time services. Exhibit P-4.

8. By letter of August 9, 2012 emailed a letter to DCPS, Former Attorney requested that Student be reevaluated for special education and related services. Former Attorney specified that the re-evaluation request included, but was not limited to, a comprehensive psychological evaluation, a psychiatric evaluation and a functional behavioral assessment (FBA). Former Attorney originally attempted to send this request to the principal at City School by telephone facsimile on August 7, 2012. However due to telephone line problems, that communication was not delivered. Exhibits, P-13, P-14.

9. In response to Former Attorney's reevaluation request, DCPS advised that there needed to be a meeting to discuss the request. Testimony of Former Attorney. An IEP team meeting was convened at City School on September 4, 2012. The school

representatives stated that a psychiatric evaluation was not warranted, but agreed to conduct a comprehensive psychological reevaluation and an FBA. Testimony of Former Attorney.

10. Student's IEP team reconvened on September 19, 2012, at which time the recently completed psychological reevaluation and FBA were reviewed. The IEP team decided, *inter alia*, that Student's primary disability classification would continue to be ED. Former Attorney again reminded the team that Petitioner had requested a psychiatric evaluation and DCPS again said it was not warranted. Testimony of Former Attorney, Exhibit P-11. However, it was reported that paperwork for the psychiatric evaluation had been "put in." Exhibit R-7.

11. On October 10, 2012, Former Attorney made a request to DCPS by email for an authorization letter for a DCPS funded IEE comprehensive psychological evaluation and an IEE psychiatric evaluation. Exhibit P-15. Two days later, Petitioner filed her complaint for due process seeking DCPS funding for an IEE psychiatric evaluation. Exhibit P-1. On October 23, 2012, DCPS issued to Petitioner an authorization to obtain a DCPS funded psychiatric evaluation of Student. Exhibit R-9. The IEE psychiatric evaluation was conducted on December 7, 2012 by Psychiatrist 1. Exhibit P-3.

12. On January 16, 2013, Student's IEP team reconvened at City School to review the IEE psychiatric and psychological assessments of Student and to review his IEP. The school psychologist reported that the IEE psychological assessment recommended that Student met criteria for ED and Other Health Impairment - ADHD. The school psychologist also reported that Psychiatrist 1 recommended that Student's IEP be updated to include ED, Learning Disability (LD) and ADHD. The IEP team

revised Student's IEP to, *inter alia*, change his primary disability classification to Multiple Disabilities (MD), based upon the concomitant impairments ED and Other Health Impaired (ADHD). No change was made to Student's IEP Special Education and Related Services. Exhibits P-12, R-5, R-6.

13. Student's 2012-2013 Report on Student Progress indicates fairly consistent grades throughout the school year. His final grades were one A, four B's and one C. He was promoted to the next grade. Exhibit P-22. Mother did not believe the grades were "earned". In August 2013, Mother testified at an earlier due process hearing that Student had made no academic or social-emotional progress at City School over the 2012-2013 school year. Testimony of Mother.

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 normally the responsibility of the party seeking relief – the Petitioner in this case. *See* DCMR tit. 5-E, § 3030.3. *See, also, Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 536, 163 L.Ed.2d 387 (2005); *Hester v. District of Columbia*, 433 F.Supp.2d 71, 76 (D.D.C. 2006). In a remand hearing to determine an appropriate compensatory education award, it is the Petitioner's burden to provide the Hearing Officer with evidence that demonstrates that additional educational services are necessary to compensate the student for the denial of a free and appropriate public education. *See Phillips ex rel. T.P. v. District of Columbia*,

736 F.Supp.2d 240, 250 n.4 (D.D.C.2010).

Analysis

In the Remand Order, the Court directed the hearing officer to make the following determinations:

- 1) Did DCPS deny Student a FAPE when it failed to provide an independent psychiatric evaluation until months after Petitioner's original August 7, 2012 request; and
- 2) If so, is Student entitled to a compensatory education award "to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place."

Failure to Provide Independent Psychiatric Evaluation

Under the IDEA implementing regulations, 34 CFR § 300.502(b), subject to certain limitations, a parent has the right to an independent educational evaluation (IEE) at public expense if the parent disagrees with an evaluation obtained by the public agency. If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either (i) file a due process complaint to request a hearing to show that its evaluation is appropriate; or (ii) ensure that an independent educational evaluation is provided at public expense. *Id. See Taylor v. District of Columbia*, 770 F.Supp.2d 105, 107 n.2 (D.D.C.2011). A failure to timely provide an IEE, when properly requested by a parent, is a procedural violation of IDEA. *Id.* at 109.

In his August 9, 2012 letter to DCPS,⁵ Former Attorney requested that Student be reevaluated for special education and related services to include, *inter alia*, a psychiatric evaluation. However, in that letter, Former Attorney only reserved the right to seek

⁵ I use the August 9, 2012 letter to DCPS as the date Former Attorney requested the reevaluation because his earlier August 7, 2012 letter, faxed to the principal of City School, was not delivered due to telephone line problems.

independent evaluations if DCPS did not complete the requested reevaluation of Student within a reasonable time. Petitioner's first request for an IEE psychiatric assessment of Student was made on October 10, 2012, when Former Attorney sent an email to DCPS seeking both an IEE comprehensive psychological evaluation and an IEE psychiatric evaluation. On October 23, 2012, after Petitioner filed her due process complaint on October 12, 2012, DCPS did issue an authorization for the parent to obtain an IEE psychiatric evaluation of Student. Whether DCPS was, or was not, required to fund an IEE psychiatric evaluation at that time (*see* discussion below), I find that the 13-day period, from October 10, 2012 when Mother first requested an IEE psychiatric evaluation to October 23, 2012 when her request was granted, did not constitute "an unnecessary delay." *See* 34 CFR § 300.502(b).

Under 34 CFR § 300.502(b), a parent only has a right to obtain an IEE evaluation if she disagrees with an evaluation obtained by the public agency. *See Tyler V., ex rel. Desiree V. v. St. Vrain Valley School Dist. No. RE-1J*, 2011 WL 1045434, 4 (D.Colo.2011); *R.L. ex rel. Mr. L. v. Plainville Bd. of Educ.*, 363 F.Supp.2d 222, 234 (D.Conn.2005) (concluding that, because the federal regulations provide an IEE at the public's expense if a parent disagrees with a district's IEE, reimbursement was not appropriate where the parents sought the IEE "as an additional source of information . . . , not because they disagreed with any of the defendant's evaluations"). Here, Former Attorney requested an IEE psychiatric evaluation of Student, when there had been no prior DCPS evaluation with which she disagreed. Student's last psychiatric assessment was apparently an independent psychiatric evaluation obtained on November 30, 2010 and there was no evidence that Mother informed DCPS that she disagreed with that evaluation. Therefore, the IDEA's condition precedent for a parent's obtaining an

independent evaluation – that the parent disagrees with an evaluation obtained by the public agency – was not met when Mother requested an IEE psychiatric evaluation in this case. I conclude, therefore, that DCPS did not violate the IDEA or deny Student a FAPE when it failed to provide an independent psychiatric evaluation until October 23, 2012.

Failure by DCPS to Provide Psychiatric Assessment as Part of Reevaluation

Petitioner argued at the due process hearing that Student was denied a FAPE because DCPS did not comply with the parent's request to conduct a psychiatric evaluation as part of Student's September 2012 special education reevaluation. Although this claim is beyond the scope of the IEE timeliness issue identified in the Court's Remand Order and in my prehearing order, for completeness, I find it appropriate to also address this issue. Subject to certain limitations, the IDEA requires that a public agency must ensure that a reevaluation of each student with a disability is conducted when requested by the student's parent. *See* 34 CFR § 300.303. Importantly, the reevaluation commences with the review of existing data in accordance with 34 CFR § 300.305(a). *Letter to Anonymous*, 48 IDELR 136 (OSEP 2007). Once a reevaluation has been requested, the IEP team and other qualified professionals, as appropriate, must review existing evaluation data, and on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine whether the child continues to have a disability, and the educational needs of the child. *See* 34 CFR § 300.305(a); *Analysis and Comments to the Regulations*, Federal Register, Vol. 71, No. 156, Page 46641 (August 14, 2006).

On September 4, 2012, DCPS convened Student's IEP team to review the parent's August 9, 2012 reevaluation request. At that meeting the IEP team reviewed existing

data, including the 2010 independent psychiatric evaluation which Former Attorney provided. The IEP team decided that an updated psychological evaluation and an FBA – but not a psychiatric reevaluation – were needed to determine if Student continued to have a disability and to determine his educational needs.

Petitioner contends that Student was denied a FAPE because the IEP team did not also obtain a psychiatric evaluation. Petitioner's Counsel reasons that Student benefitted educationally from the IEE psychiatric evaluation conducted in December 2012, because after reviewing the independent evaluation Student's regular psychiatrist prescribed new psychiatric medications. Petitioner argues that this outcome demonstrates that DCPS denied Student a FAPE by not obtaining a psychiatric assessment when first requested by the parent.

Even if Student did ultimately benefit from the new psychiatric medications, Petitioner has not shown that the IEP team's September 4, 2012 decision not to obtain a psychiatric assessment was erroneous or inappropriate at the time the decision was made. *Cf. Forest Grove School Dist. v. Student*, 2014 WL 2592654, 19 -20 (D.Or.2014) (The sufficiency of a school district's actions, including evaluation decisions and decisions regarding the student's substantive educational curriculum are judged by the "snapshot rule." *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir.1999). Under the "snapshot rule," the court analyzes whether the school district's decision or action was reasonable considering the facts and circumstances known at the time the decision was made.) Further, whether Student did or did not make academic progress as a result of his psychiatrist's prescribing new medications has no bearing on the question of whether the September 4, 2012 IEP team should have obtained a psychiatric assessment as part of Student's reevaluation. In the summer of 2012, Student was under the care of

Psychiatrist 2, who made the decision to take him off psychiatric medications. The appropriateness of medicating Student for his mental health issues was a decision for Mother and Student's physicians. This was not a decision over which DCPS had any right to intervene. *Cf.* 34 CFR § 300.174(a) (Prohibition against local education agency's requiring parents to obtain a prescription for controlled substances for a child as a condition to receiving services.)

Finally Petitioner asserts, correctly, that at the January 16, 2013 IEP meeting to review the IEE psychological and psychiatric evaluations, Student's disability classification was changed from ED to MD (with the underlying impairments ED and OHI-ADHD). However the change to Student's disability classification is immaterial to whether his September 2012 special education reevaluation should have included a psychiatric evaluation. It is well established in the case law that so long as a student is determined eligible for special education services, the disability category on the IEP is immaterial. *See, e.g. Letter to Anonymous*, 48 IDELR 16 (OSEP 2006). (Child's identified needs, not the child's disability category, determine the services that must be provided to her.0; *Heather S. v. State of Wis.*, 125 F.3d 1045, 1055 (7th Cir. 1997) (IDEA not concerned with labels, but with whether a student is receiving a FAPE); *M.M. v. Lafayette School Dist.*, 2012 WL 398773, 17 (N.D.Cal.2012), *aff'd in part, rev'd in part on other grounds*, 2014 WL 4548725 (9th Cir.2014). (Changing the name of the disability would not have changed the necessary intervention.)

Here, on September 19, 2012, Student's IEP team determined that he remained eligible for full-time special education services. Upon review of Student's IEE psychological and psychiatric evaluation reports, the January 16 2013 IEP team made no changes to Student's Specialized Instruction or related services. I conclude, therefore,

that Petitioner has not shown that Student was denied a FAPE by DCPS' not obtaining a psychiatric assessment as part of the September 2012 special education reevaluation.

CONCLUSION

In its August 17, 2014 Remand Order, the U.S. District Court ordered the hearing officer to determine 1) whether DCPS denied Student a FAPE when it failed to provide an independent psychiatric evaluation until months after Petitioner's original August 7, 2012 request; and 2) if so, whether to grant Student compensatory education to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. In this decision, I find that Student was not denied a FAPE by DCPS' failure to provide an independent psychiatric evaluation before October 2012 or by DCPS' not obtaining a psychiatric evaluation as part of Student's September 2012 special education reevaluation. I conclude, therefore, that Student is not entitled to a compensatory education award.

ORDER

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

Petitioner's request herein for a compensatory education award is denied.

Date: October 17, 2014

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).