**DISTRICT OF COLUMBIA**
**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**
Student Hearing Office
810 First Street, N.E.
Washington, D.C. 20002

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| **Parent, on behalf of STUDENT,**[1] | ) | **Case Number: 2012-0469** |
| **Petitioner,** | ) | |
| **v.** | ) | |
| **THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS,** | ) | |
| **Respondent.** | ) | **Hearing Officer: Frances Raskin** |

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**HEARING OFFICER DETERMINATION**

## I. JURISDICTION

This proceeding was invoked in accordance with the Individuals With Disabilities Education Act ("IDEA"), as amended in 2004, codified at 20 U.S.C. §§ 1400, *et seq.*; the District of Columbia Code, §§ 38-2561.01, *et seq.*; the federal regulations implementing IDEA, 34 C.F.R. §§ 300.1, *et seq.*; and the District of Columbia regulations at D.C. Mun. Reg. tit. 5-E §§ 3000, *et seq.*

## II. BACKGROUND

Petitioner is the parent of a year-old student ("Student") with a disability. On July 2, 2012, Petitioner filed a due process compliant ("Complaint") against Respondent District of Columbia Public Schools ("DCPS") that alleges violations of the Individuals with Disabilities Education Act ("IDEA"). On July 3, 2012, this Hearing Officer was assigned to preside over this case.

On July 16, 2012, Respondent filed a response to the Complaint. Respondent filed its Response four days after the deadline established by IDEA.[2]

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[1] Personal identification information is provided in Attachment A.
[2] If Respondent has not sent a prior written notice under 34 C.F.R. § 300.503 to the parent

On July 17, 2012, the parties participated in a resolution meeting but did not resolve the Complaint. The parties agreed to continue to work to resolve the Complaint through the end of the resolution session. Thus, the resolution period ended on August 1, 2012.

On August 7, 2012, this Hearing Officer held a prehearing conference in which counsel for Petitioner and counsel for Respondent participated. During the prehearing conference, both counsel agreed that the forty-five day, due process hearing timeline began on August 2, 2012. This Hearing Officer informed counsel that the end of the forty-five-day timeline, and the deadline for the hearing officer determination ("HOD"), is September 15, 2012.

The due process hearing commenced at 10:00 a.m. on August 30, 2012. At the outset of the hearing, this Hearing Officer entered into evidence Petitioner's proposed exhibits[3] Respondent's proposed exhibits number 4.[4] Petitioner testified and presented one witness on her behalf, the educational advocate ("Advocate"). Respondent called one witness, a DCPS progress monitor ("Monitor"). After the parties presented oral closing arguments, the due process hearing concluded at 1:45 p.m. on August 30, 2012.

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regarding the subject matter contained in the parent's due process complaint, Respondent must, within ten days of receiving the due process complaint, send to the parent a response that includes (i) an explanation of why the agency proposed or refused to take the action raised in the due process complaint; (ii) a description of other options that the IEP team considered and the reasons why those options were rejected; (iii) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and (iv) a description of the other factors that are relevant to the agency's proposed or refused action. 34 C.F.R. § 300.508(e).

[3] This Hearing Officer admitted into evidence Petitioner's exhibits 1-18, inclusive.

[4] With the consent of the parties, this Hearing Officer declined to admit into evidence Respondent's exhibits 1-3, inclusive, as they were duplicative of Petitioner's exhibits.

## III. ISSUE PRESENTED.

This Hearing Officer certified the following issue for adjudication at the due process hearing: Whether Respondent denied the Student a free, appropriate, public education by failing to conduct a psychiatric re-evaluation in response to Petitioner's June 25, 2012, request.[5]

Petitioner requests relief in the form of an order that requires Respondent to fund an independent psychiatric re-evaluation.[6] Petitioner further requests that the order require Respondent to review the independent re-evaluation within ten business days of receiving it.

## IV. FINDINGS OF FACT

1. The Student is years old and in the grade.[7] She is eligible for specialized instruction and related services as a student with an emotional disturbance.[8]

2. The Student's full-scale IQ is seventy, in the third percentile of her same-age peers, and in the borderline range.[9] In 2009, she functioned between the second- and eighth-grade levels in broad reading, broad math, and academic skills.[10] Her performance in broad reading was equivalent to a student in the fourth month of sixth grade and in the twenty-second percentile of her same age peers.[11] Her performance in broad math was equivalent to a student in the eighth month of second grade and below the first percentile of her same-age peers.[12] Her academic skills were equivalent to a student in the seventh month of fifth grade and in the twelfth percentile of her same age peers.[13] Her academic fluency was equivalent to a student in the ninth month of sixth grade and in the twenty-

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[5] During the prehearing conference, counsel for Petitioner withdrew her claim that Respondent had denied the Student a FAPE by failing to conduct a vocational level II evaluation. At the outset of the due process hearing, Respondent agreed to fund an independent comprehensive psychological evaluation of the Student, resolving Petitioner's claim that Respondent had denied the Student a FAPE by failing to conduct a comprehensive psychological evaluation of the Student. The parties agreed that the only remaining issue is whether Respondent denied the Student a FAPE by failing to conduct a psychiatric evaluation of the Student in response to Petitioner's June 25, 2012, request.
[6] During the prehearing conference, counsel for Petitioner withdrew all other relief requested in the Complaint, including the request for compensatory education and residential placement.
[7] Petitioner Exhibit 7 at 1 (June 25, 2012, individualized educational program ("IEP")).
[8] *Id.*
[9] Petitioner Exhibit 18 at 8 (November 23, 2009, Confidential Psychological Evaluation).
[10] *Id.* at 11-12.
[11] *Id.* at 11.
[12] *Id.*
[13] *Id.*

first percentile.[14] Overall, her performance reflected mild to moderate impairments in skills and abilities.[15]

3. In 2009, the Student was diagnosed with mood disorder, not otherwise specified, cannabis and alcohol abuse, and post-traumatic stress disorder.[16] She had a serious impairment in her ability to think logically and coherently, indicating a potential for a diagnosis on the schizophrenic spectrum.[17] She also appeared to experience delusional thinking and may have been experiencing dissociative symptoms.[18] She was emotionally immature and had low self-esteem.[19]

4. In 2009, the Student's social skills were poor, and she had limited capacity to deal with real people in her life.[20] She tended to identify with partial objects, imaginary figures, or people who do not regularly participate in the real world.[21] She did not identify with adolescents of her age, tended to be less sympathetic toward others, and maintained only superficial interactions.[22] Due to these personality characteristics, the Student was diagnosed with Asperger's disorder in 2009.[23]

5. In 2009, the Student was arrested for simple assault, when she assaulted a man and a woman.[24] She then was arrested for robbery after she used force to take an iPhone from a police officer.[25] While under court supervision, she ignored curfew, missed school, violated her electronic monitoring restrictions, and was rearrested.[26] She was suspended from school for fighting and running away.[27] She often ran away from home, absconded to dangerous areas of the city where she spent time with men, and stole money from her mother.[28]

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[14] *Id.*
[15] *Id.*
[16] *Id.* at 15. As a child, the Student was severely neglected and may have been abused. *Id.* At age three and a half, the Student was placed in Petitioner's home as a foster child. *Id.* at 3. Petitioner and later adopted the Student. *Id.*
[17] *Id.* at 14.
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.* at 14-15.
[22] *Id.* at 15.
[23] *Id.*
[24] *Id.* at 3.
[25] *Id.*; Petitioner Exhibit 17 at 2 (June 10, 2010, Report to the Family Division, D.C. Superior Court).
[26] Petitioner Exhibit 18 at 3.
[27] *Id.*
[28] *Id.* at 5.

6. In 2009, the Student was hospitalized four times at the and Children's National Medical Center ("Children's Hospital").[29] Her discharge diagnoses included depressive disorder and oppositional defiant disorder.[30]

7. On May 23, 2010, the Student was again admitted to for an emergency psychiatric hospitalization after she failed to take her prescribed medication and became violent toward Petitioner.[31] The Student was diagnosed with mood disorder, not otherwise specified, and cannabis abuse.[32]

8. On August 27, 2010, Respondent placed the Student in a residential treatment center ("RTC") due to her inability to access the curriculum in a less restrictive setting.[33] The Student entered the RTC in September 2010 and remained there until May 11, 2012.[34]

9. In May 2012, Respondent informed Petitioner that it had conducted an evaluation and determined that the Student was ready to transition to a less restrictive environment.[35] Respondent informed Petitioner that, after returning home, the Student would attend a nonpublic, day school for students with disabilities ("Nonpublic School").[36]

10. Petitioner then requested that the RTC provide her all of the Student's records, including her evaluations.[37] Petitioner wanted to find out whether the evaluations on which Respondent based its decision to transition the Student to a less restrictive environment were in accordance with the Student's 2010 psychiatric evaluations.[38] Petitioner subsequently learned that the RTC did not have any academic records for the Student.[39] Petitioner also learned that neither Respondent nor the RTC had conducted any evaluations of the Student prior to determining that she should be placed in a less restrictive setting.[40]

11. When she returned home after leaving the RTC, the Student was very anxious about being allowed to return to school.[41] Respondent assured Petitioner that it would

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[29] *Id.* at 3; Petitioner Exhibit 16 at 1-2 (April 17, 2010, Psychiatric Evaluation).
[30] Petitioner Exhibit 16 at 2.
[31] Petitioner Exhibit 17 at 1. The Student had been diagnosed with bipolar disorder and had been noncompliant with her medication regimen. *Id.*
[32] *Id.*
[33] Petitioner Exhibit 15 (August 27, 2010, Multidisciplinary Team Prior to Action Notice); testimony of Advocate.
[34] Testimony of Petitioner.
[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] *Id.*

transport the Student to the Nonpublic School beginning the following Monday.[42] On Monday, May 14, 2012, Respondent did not provide transportation for the Student to attend the Nonpublic School.[43] The Student remained at home for another two days, passing the time by reading and listening to music.[44]

12. On May 17, 2012, after spending three days at home due to Respondent's failure to provide her transportation to school, the Student climbed out of a window and absconded from her home.[45] She attempted to enroll in a DCPS senior high school ("DCPS School").[46] After the DCPS School did not allow her to enroll, the Student disappeared for several days.[47] Petitioner then filed a missing persons report.[48]

13. On May 22, 2012, officers of the District of Columbia Metropolitan Police Department ("MPD") arrested the Student.[49] The Student was released from custody the following day.[50]

14. Following her release from custody, Petitioner took the Student to PIW.[51] Petitioner requested that conduct a psychiatric re-evaluation of the Student.[52] PIW declined to conduct the re-evaluation.[53]

15. The Student remained at for three to four days.[54] Petitioner then placed the Student in a short-term, transitional residence for at-risk youth.[55] Petitioner placed the Student in this facility so that the Student would receive the stability, medication management, and supervision she required.[56]

16. After Student returned home in late June 2012, she attended the Nonpublic School for eight days.[57] This was the first time she had attended school since leaving the RTC on May 11, 2012.[58]

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[42] *Id.*; Petitioner Exhibit 9 at 2 (June 25, 2012, Meeting Notes).
[43] Testimony of Petitioner.
[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] *Id.*
[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] Testimony of Petitioner; Petitioner Exhibit 9 at 4.
[56] Testimony of Petitioner.
[57] *Id.*
[58] Testimony of Monitor.

17. On or about the Fourth of July, the Student ran away from home.[59] Three days later, the Student was arrested for attempting to break into an elementary school.[60] From the date of this incident through the date of the due process hearing, the Student had been detained in a group home, pursuant to a court order, until her trial on the charges stemming from the break-in.[61]

***The June 25, 2012, Teleconference***

18. On June 25, 2012, Respondent convened a teleconference to review the Student's individualized education program ("IEP").[62] Petitioner, the Student, the Advocate, the Monitor, and the Student's special education teacher participated in the teleconference.[63]

19. During the June 25, 2012, teleconference, Petitioner questioned whether the Nonpublic School was an appropriate placement for the Student.[64] Petitioner expressed concerns about the Student's diminishing interest in school and her behavioral difficulties during her last few months in the residential facility.[65] She informed the teleconference participants that the Student had refused to attend her community-based counseling sessions, had run away from home more than once, and refused to adhere to household rules.[66] She informed the participants that, even though the Student takes her prescribed medication, Abilify and Zoloft, it has not curtailed the dangerous behavior she has exhibited since returning from the RTC.[67]

20. During the June 25, 2012, teleconference, Petitioner requested a psychological re-evaluation to determine whether the Student had regressed academically, to determine her academic capabilities, and to provide information on the appropriateness of her current placement.[68] Petitioner also requested a psychiatric re-evaluation to determine whether the Student continued to require a residential placement as she was concerned about the Student's precipitous decline after returning home from the RTC.[69] Petitioner informed the conference call participants that she felt that the Student left the residential setting too soon.[70]

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[59] Testimony of Petitioner.
[60] *Id.*
[61] *Id.*
[62] Petitioner Exhibit 8 at 1 (June 27, 2012, Prior Written Notice); Petitioner Exhibit 9 at 1; Petitioner Exhibit 7 at 1.
[63] Petitioner Exhibit 7 at 1.
[64] Testimony of Petitioner.
[65] Testimony of Advocate.
[66] *Id.*
[67] *Id.*
[68] Petitioner Exhibit 9 at 2.
[69] *Id.* at 4; testimony of Advocate.
[70] Petitioner Exhibit 9 at 2.

21. A psychiatric re-evaluation would provide information on the Student's bipolar disorder and oppositional defiant disorder ("ODD"), how these disorders affect her mental processes, and how they affect her academic and social emotional functioning.[71] The Student's psychiatric functioning affects every aspect of her life, including her academic performance and her ability to access the curriculum.[72] Additionally, a psychiatric re-evaluation would provide further insight into the complexities of her emotional disturbance.[73] It would inform the Student's IEP team of whether and how the Student is available for instruction.[74] A comprehensive psychological re-evaluation would not provide this information.[75]

22. A psychiatric re-evaluation would provide information on the additional supports the Student requires due to her bipolar disorder and ODD.[76] Additionally, a psychiatric re-evaluation would determine whether the Student continues to require a residential placement.[77] A comprehensive psychological re-evaluation would not provide this information.[78]

23. A psychiatric re-evaluation can provide useful information to an IEP team in drafting a student's IEP because a student's mental health can affect her academic functioning.[79] In the past, the Monitor has authorized independent psychiatric evaluations when a student acted out in school, or her behavior interfered with her ability to access the curriculum.[80] Additionally, before it places a student in a residential facility, Respondent must obtain a psychiatric evaluation of the student.[81] A psychiatric evaluation is necessary because the residential treatment facilities focus on addressing each student's psychiatric issues.[82]

24. Nonetheless, during the June 25, 2012, teleconference, the Monitor denied Petitioner's re-evaluation requests.[83] The monitor explained that she would revisit Petitioner's requests after the Student had attended the Nonpublic School for thirty days.[84] The Monitor explained that Respondent needed thirty days to collect data on the Student's performance, and assess her functioning in the full-time, out of general education setting, before it could determine whether the Nonpublic School was an appropriate setting for the

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[71] Testimony of Petitioner.
[72] *Id.*
[73] Testimony of Monitor.
[74] *Id.*
[75] *Id.*; testimony of Petitioner.
[76] Testimony of Petitioner.
[77] Testimony of Advocate.
[78] *Id.*; testimony of Petitioner.
[79] Testimony of Monitor.
[80] *Id.*
[81] *Id.*
[82] *Id.*
[83] Testimony of Petitioner; testimony of Advocate; Petitioner Exhibit 9 at 2-3, 5.
[84] *Id.*

Student.[85] She informed the participants that Respondent intended to conduct a thirty-day review meeting to revisit Petitioner's requests.[86]

25. During the June 25, 2012, conference call, Respondent developed an IEP for the Student.[87] Respondent also determined that the Student would be eligible for extended school year services, including specialized instruction and behavioral support services, during the 2012 summer.[88] Respondent informed Petitioner that the Student would receive bus transportation to the Nonpublic School once she exited the transitional residence.[89]

26. After the June 25, 2012, teleconference, the Advocate sent an email to the Monitor that further explained Petitioner's request that Respondent conduct or fund a psychiatric re-evaluation of the Student.[90] The Advocate explained that due to the Student's history of absconding from home for several days, her promiscuity, and her failure to earn more than 3.5 Carnegie units during the two years she spent in the RTC, Petitioner was concerned that the Student may have regressed since she was last evaluated in 2010.[91] He reiterated Petitioner's concern that the Student may continue to require a residential placement.[92]

27. On June 29, 2012, the Monitor sent an email to the Advocate and counsel for Petitioner.[93] In her email, the Monitor informed the Advocate and counsel for Petitioner that, while "the parent retains the right to request evaluations annually, the Local Education Agency (LEA) also maintains the right to review the circumstances of the request and data reviewed to determine if the evaluations are warranted."[94] She further stated that Respondent rejected Petitioner's request for a comprehensive psychological re-evaluation and a psychiatric re-evaluation.[95]

28. Respondent did not plan to authorize an independent psychiatric re-evaluation of the Student any time in the near future.[96]

29. Petitioner was a credible witness. She testified forthrightly about the Student's behavioral difficulties and her efforts to get psychiatric services for the Student.

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[85] Petitioner Exhibit 9 at 3.
[86] *Id.* at 3, 5.
[87] *Id.* at 5; Petitioner Exhibit 7 at 1.
[88] Petitioner Exhibit 9 at 7.
[89] *Id.*
[90] Petitioner Exhibit 10 (June 25, 2012, email from Advocate to Monitor).
[91] *Id.* at 1.
[92] *Id.*
[93] Petitioner Exhibit 13 at 1 (June 29, 2012, email from Monitor to Advocate, Counsel for Petitioner).
[94] *Id.*
[95] *Id.*
[96] Testimony of Monitor.

She testified forthrightly about her attempts to obtain a psychiatric re-evaluation of the Student, and the reasons she believed a psychiatric re-evaluation was necessary. Petitioner's testimony about her requests for the re-evaluation, the Student's behavior, and the June 25, 2012, teleconference were corroborated by the testimony of both the Advocate and the Monitor.

30. The Advocate was a credible witness. He testified in detail about the Student's behavioral difficulties, the events that precipitated her placement in the RTC, and the reasons why Petitioner requested a psychiatric re-evaluation of the Student. The Advocate's testimony about Petitioner's request for a psychiatric re-evaluation, the Student's behavior, and the June 25, 2012, teleconference were corroborated by the testimony of Petitioner and the Monitor.

31. The Monitor was a credible witness. She provided in-depth testimony about the discussions during the June 25, 2012, teleconference and the reasons Respondent denied Petitioner's request for a psychiatric re-evaluation of the Student. She admitted that a psychiatric re-evaluation would provide insight into the Student's emotional disturbance, and that this information would be helpful to the Student's IEP team in developing the Student's IEP because a student's mental health can affect her academic functioning. She testified forthrightly that she has authorized independent psychiatric evaluations in the past when a student's behavior prevented her from accessing the curriculum.

## V. CONCLUSIONS OF LAW

The purpose of IDEA is "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."[97] Implicit in the congressional purpose of providing access to a FAPE is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child.[98] FAPE is defined as:

> [S]pecial education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the SEA . . . include an appropriate preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with the individualized education program (IEP)."[99]

In matters alleging a procedural violation, a hearing officer may find that the child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making

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[97] *Bd. of Educ. v. Rowley*, 458 U.S. 176, 179-91 (1982); *Hinson v. Merritt Educ. Ctr.*, 579 F. Supp. 2d 89, 98 (2008) (citing 20 U.S.C. § 1400(d)(1)(A)).
[98] *Rowley*, 458 U.S. at 200; *Hinson*, 579 F. Supp. 2d. at 98 (citing *Rowley*, 458 U.S. at 200).
[99] 20 U.S.C. § 1401 (9); 34 C.F.R. § 300.17.

process regarding provision of FAPE, or caused the child a deprivation of educational benefits.[100] In other words, an IDEA claim is viable only if those procedural violations affected the student's *substantive* rights.[101]

The burden of proof is properly placed upon the party seeking relief.[102] Petitioner must prove the allegations in the due process complaint by a preponderance of the evidence.[103] The preponderance of evidence standard simply requires the trier of fact to find that the existence of a fact is more probable than its nonexistence.[104] In other words, preponderance of the evidence is evidence that is more convincing than the evidence offered in opposition to it.[105]

## VI. DISCUSSION

### Petitioner Proved that Respondent Denied the Student a FAPE by Refusing Her June 25, 2012, Request for a Psychiatric Re-evaluation.

A local education agency ("LEA") must ensure that a re-evaluation of each child with a disability is conducted if the child's parent or teacher requests a re-evaluation.[106] Re-evaluations should be conducted in a "reasonable period of time," or "without undue delay," as determined in each individual case.[107] A parent need not articulate the reasons the re-evaluation is necessary before an LEA is required to conduct it.[108]

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[100] 34 C.F.R. § 300.513 (a)(2).
[101] *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006) (emphasis in original; internal citations omitted).
[102] *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005).
[103] 20 U.S.C. § 1415 (i)(2)(c). *See also Reid v. District of Columbia*, 401 F.3d 516, 521 (D.C. Cir. 2005) (discussing standard of review).
[104] *Concrete Pipe & Products of California, Inc. v. Construction Laborers Pension Trust for Southern California*, 508 U.S. 602, 622 (1993) (internal quotation marks omitted).
[105] *Greenwich Collieries v. Director, Office of Workers' Compensation Programs*, 990 F.2d 730, 736 (3rd Cir. 1993), *aff'd*, 512 U.S. 267 (1994).
[106] 34 C.F.R. § 300.303 (a)(2); D.C. Mun. Reg. tit. 5-E § 3005.7 (A re-evaluation shall be conducted at least once every three years, or more frequently if conditions warrant re-evaluation; if the child's parent or teacher requests a re-evaluation; or before determining a child is no longer a child with a disability).
[107] *Herbin v. District of Columbia*, 362 F. Supp. 2d 254, 259 (D.D.C. 2005) (upholding hearing officer's determination that four-month delay in reevaluating a student with a current IEP was not unreasonable) (citations omitted).
[108] *Analysis of Comments and Changes* [*to the IDEA Regulations*], 71 Federal Register 46640 (August 14, 2006). From the statute and regulation, it is clear that the obligation to conduct re-evaluations "if conditions warrant" is distinct from the obligation arising from a parent or teacher request. Policy Letter in Response to Inquiry of Deborah S. Tinsley, 16 Education for the Handicapped Law Report 1076, 1078 (1990).

In conducting an evaluation, an LEA must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child that may assist in determining whether the child is a child with a disability and the content of the child's IEP, *including information related to enabling the child to be involved in and progress in the general education curriculum.*[109] *The LEA may not use any single measure or assessment* as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.[110]

The LEA must ensure that assessments and other evaluation materials include those tailored to assess specific areas of educational need.[111] The evaluation must identify all of the child's special education and related services needs, whether or not commonly linked to the disability category.[112]

The LEA shall ensure the child is assessed in all areas related to the suspected disability.[113] This could include, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.[114] However, this is not an exhaustive list of areas that must be assessed.[115] Decisions regarding the areas to be assessed are determined by the suspected needs of the child.[116] If a child's behavior or physical status is of concern, evaluations addressing these areas must be conducted.[117]

Qualified evaluators, under the direction of the IEP team, shall administer tests and other assessments procedures as may be needed to determine: (1) whether the child has a particular category of disability or, in the case of a re-evaluation of a child, whether the child continues to have such a disability; (2) the present levels of performance and educational needs of the child; (3) whether the child needs special education and related services, or in the case of a re-evaluation of a child, whether the child continues to need special education and related services; and (4) *whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.*[118] The LEA is required to use assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.[119]

Finally, there is no requirement that a reason for the re-evaluation be given by the parent(s) and the re-evaluation cannot be conditioned on the parent(s) providing a reason for

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[109] 34 C.F.R. § 300.304 (b)(1) (emphasis added).
[110] *Id.* at (b)(2).
[111] *Id.* at (c)(2).
[112] *Id.* at (c)(6).
[113] *Id.* at (c)(4).
[114] *Id.*
[115] 71 Federal Register 46643.
[116] *Id.*
[117] *Id.*
[118] D.C. Mun. Reg. tit. 5-E § 3005.5 (emphasis added).
[119] 34 C.F.R. § 300.304(c)(7).

requesting a re-evaluation.[120] Thus, viewing the plain language of the IDEA regulations, and the absence of a condition precedent to be met by a parent requesting a re-evaluation, upon receipt of the parent's request, the LEA must re-evaluate the student.[121]

Here, the Student began exhibiting maladaptive behaviors four days after leaving the RTC. She ran away from home twice. While on the run, she engaged in sexual activities, committed crimes, and showed no respect for authority. She refused to obey household rules and failed to partake in the community-based counseling Petitioner had arranged for her. Even though the Student took her medications as prescribed, it did not curtail her dangerous behavior.

Then, on June 25, 2012, Petitioner requested a psychiatric assessment to determine whether the Student was prematurely released from the RTC. She was concerned about the Student's behavior upon returning from the RTC and whether the Nonpublic School was a sufficiently restrictive setting to provide the structure that the Student requires.

If it had conducted or authorized Petitioner to obtain a psychiatric re-evaluation of the Student, Respondent would have received information on the Student's bipolar disorder and ODD, how these disorders affect her mental processes, and how they affect her academic and social emotional functioning. This information is critical to determining the Student's academic needs, as well as her educational placement, because her psychiatric functioning affects every aspect of her life, including her academic performance and her ability to access the curriculum.

A psychiatric re-evaluation would inform the Student's IEP team of whether and how the Student is available for instruction. It would have provided information on the additional supports the Student requires due to her bipolar disorder and ODD. A comprehensive psychological re-evaluation would not provide this information.

In the past, the Monitor has authorized independent psychiatric evaluations when a student acted out in school, or her behavior interfered with her ability to access the curriculum. Respondent routinely obtains psychiatric evaluations of students before placing them in residential facilities. Considering that neither Respondent nor the RTC had re-evaluated the Student since she was placed at the RTC, Respondent should have conducted a psychiatric re-re-evaluation *prior to* determining that she should be placed in a

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[120] *Analysis and Comments to the Regulations*, Federal Register, Vol. 71, No. 156, Page 46640 (August 14, 2006).

[121] *Cartwright v. District of Columbia*, 267 F. Supp. 2d 83, 87 (2003); *Herbin v. District of Columbia*, 362 F. Supp. 2d 254, 264-265 (D.D.C. 2005) (Given that the statute expressly requires triggering conditions for a re-evaluation if not requested by a parent or an LEA, and omits that same condition from the language controlling parental requests for re-evaluations, a hearing officer is not entitled to engraft a comparable condition upon the parental request for re-evaluation. The language of the statute and regulation simply do not permit such an interpretation).

less restrictive setting. Nonetheless, during the June 25, 2012, teleconference, the Monitor denied Petitioner's request for a psychiatric re-evaluation of the Student..

Moreover, although Petitioner was not required not articulate the reasons the re-evaluation is necessary before Respondent was required to conduct it, Petitioner provided ample justification for reevaluating the Student. Considering that she informed Respondent of the extent of the Student's behavioral difficulties after returning from the RTC, Petitioner put Respondent on notice that the Student's behavior and physical status were of concern. Petitioner further informed Respondent, due to her behavioral difficulties and absences from her home, she was unable to access the curriculum because she was not attending school. Thus, Respondent was required to conduct the psychiatric re-evaluation to address these concerns and to determine whether any additions or modifications to the special education and related services are needed to enable the Student to meet the measurable annual goals set out in her IEP and to participate in the general curriculum.

Thus, by failing to authorize the independent psychological evaluation Petitioner requested, Respondent committed a procedural violation of the IDEA. Respondent's procedural violation resulted in a denial of FAPE when the Student missed more than a month of school after she ran away from home, was arrested, and remained in pre-trial detention following Respondent's denial of the psychiatric re-evaluation Petitioner requested.

Thus, this Hearing Officer finds that Petitioner proved by a preponderance of the evidence that Respondent denied the Student a FAPE by failing to conduct a psychiatric re-evaluation of the Student.[122]

## ORDER

Based upon the findings of fact and conclusions of law herein, it is this 15th day of September 2012 hereby:

**ORDERED** that Petitioner shall obtain an independent psychiatric re-evaluation at public expense, to be completed by October 15, 2012;

**ORDERED** that Petitioner shall provide a copy of the completed independent psychiatric re-evaluation and report to Respondent within five business days of receiving it;

**ORDERED** that, within twenty school days of receiving the Student's independent psychiatric re-evaluation, Respondent shall convene a meeting of the Student's IEP team, including Petitioner, to review the re-evaluation; and it is further

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[122] Reimbursement for a private evaluation may be an equitable remedy when the LEA fails to evaluate a student upon parental request and who is exhibiting maladaptive behaviors. *See, e.g., Los Angeles Unified School District v. D.L.*, 548 F. Supp. 2d 815, 822 (C.D. Cal. 2008).

**ORDERED** that Respondent shall receive one additional day in which to comply with this Order for every day of delay caused by Petitioner, her counsel, and/or her educational advocate.

By: /s/ Frances Raskin
Frances Raskin
Hearing Officer

**NOTICE OF APPEAL RIGHTS**

The decision issued by the Hearing Officer is a final determination on the merits. Any party aggrieved by the findings and decision of the Hearing Officer shall have ninety days from the date of the decision of the 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).

Distributed to:

Counsel for Petitioner
Counsel for Respondent
Student Hearing Office