

2.

A current individualized education program is in place, and no additional evaluation has been conducted since 2005. Pursuant to APS procedures, a tri-annual evaluation of Defendant is scheduled to be conducted by Plaintiff prior to Fall 2008. *Exhibit P-1.*

II. CONCLUSIONS OF LAW

1.

Pursuant to 34 C.F.R. § 300.502(b)(5), a student is entitled to an independent educational evaluation at public expense only when the public agency has conducted an evaluation with which the parent disagrees.

2.

To the extent Defendant disagrees with the evaluation conducted in 2005 and seeks an independent educational evaluation at public expense based on such disagreement, Defendant's request is untimely, as it was not made within a reasonable time after Plaintiff conducted its evaluation and is beyond the two-year statute of limitations. 34 C.F.R. § 300.507(a)(2).

3.

Furthermore, any request for an independent educational evaluation at the present time would be premature as Defendant is scheduled to have her regular tri-annual evaluation in the Fall of 2008. 34 C.F.R. § 300.303 (b)(2).

III. DECISION

Based on the above findings of fact and conclusions of law, this Court holds that Defendant is not entitled to an independent educational evaluation at public expense at

this time. Any request based on the 2005 evaluation is barred by the statute of limitations and the scheduled Fall 2008 evaluation by Plaintiff has not yet been conducted. Accordingly, Plaintiff's motion for summary determination hereby is granted. If Plaintiff fails to conduct the tri-annual evaluation or if Defendant disagrees with the results of the evaluation, Defendant may request an independent educational evaluation at public expense and/or a due process hearing as appropriate.

SO ORDERED this 13th day of August, 2008.


LA RONDA D. BARNES, Judge