

**DISTRICT OF COLUMBIA**  
**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**  
Student Hearing Office  
810 First Street, N.E., 2<sup>nd</sup> floor  
Washington, D.C. 20002

OSSE  
Student Hearing Office

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PETITIONER on behalf of  
STUDENT<sup>1</sup>

Petitioner,

v

Erin H. Leff, Hearing Officer

DISTRICT OF COLUMBIA  
PUBLIC SCHOOLS,

Respondent.

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**HEARING OFFICER DETERMINATION**

**STATEMENT OF THE CASE**

On \_\_\_\_\_ Petitioner, on behalf of student (“Student”), filed an Administrative Due Process Complaint Notice (“Complaint”), HO 1,<sup>2</sup> requesting a hearing to review the identification, evaluation, placement or provision of a free, appropriate public education (“FAPE”) to Student by District of Columbia Public Schools (“DCPS”) under the Individuals with Disabilities Education Act, as amended (“IDEA”). 20 U.S.C.A. §1415(f)(1)(A). Respondent DCPS filed a timely Response to Parent’s Administrative Due Process Complaint Notice (HO 6) on \_\_\_\_\_

The instant Complaint includes, among other matters, alleged incorrect manifestation determinations resulting in suspensions of \_\_\_\_\_ and \_\_\_\_\_ Pursuant to 34

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<sup>1</sup> Personal identifying information is provided in Appendix A, attached hereto.

<sup>2</sup> Hearing Officer Exhibits will be referred to as “HO” followed by the exhibit number; Petitioner’s Exhibits will be referred to as “P” followed by the exhibit number; and Respondent’s Exhibits will be referred to as “R” followed by the exhibit number.

C.F.R. § 300.532(c) such cases are to be held on an expedited basis. The due process hearing must be held within in 20 school days of the filing of the complaint, or no later than

The hearing officer determination must be issued within 10 school days of the hearing, or by *Id.* A resolution meeting in an expedited matter is to be held within 7 days of receiving notice of the complaint. In the instant matter the resolution meeting was held on six days beyond the 7 day timeline established in IDEA for expedited matters. The parties were not able to reach an agreement and executed a Resolution Period Disposition Form on the same date indicating the matter should proceed to hearing. HO 5. I issued a Prehearing Conference Order (HO 6) following the Prehearing Conference held on

At all times relevant to these proceedings Petitioner was represented by Kiran Hassan, Esq., and Tonya Chor, Assistant Attorney General, represented DCPS. By agreement of the parties, the hearing was scheduled for The Hearing Officer Determination is due, therefore, on The hearing was held as scheduled in Rooms 2005 and 2006 of the Student Hearing Office.

The legal authority for the hearing is as follows: IDEA, 20 U.S.C.A. § 1415(f) (2010); 34 C.F.R. § 300.511(a) (2010); and the District of Columbia Municipal Regulations, Title 5e, Chapter 30, Education of Handicapped (2003).

### **ISSUES**

The issues are:<sup>4</sup>

Whether DCPS has denied Student a free appropriate public education (“FAPE”) by:

- 1) Failing to develop an appropriate individualized education program (“IEP”) and placement for the student from through the filing of the instant complaint. The student should be classified as having an emotional disability rather than a specific learning disability. He requires a full time placement out of general education in a therapeutic setting in a

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<sup>4</sup> The parties agreed during the prehearing conference that the expedited and non-expedited issues in the case would not be bifurcated for hearing. All issues were heard on an expedited basis.

separate, non-public school. He also requires additional behavioral support services throughout the school day that include crisis intervention and de-escalation techniques; and

2) Incorrectly determining the student's behavior resulting in the \_\_\_\_\_ and the \_\_\_\_\_ suspensions were not a manifestation of the student's disability. He was not provided required educational services during these suspensions.

**RELIEF REQUESTED**

Petitioner requested:

- 1) Placement at a separate, non-public, special education school; and
- 2) Compensatory education.

**SUMMARY OF THE EVIDENCE**

A. Exhibits

Exhibits admitted on behalf of Petitioner are:

Meeting Notes and IEP's

- P- 2012 Individualized Education Program
- P- 2012 Individualized Education Program
- P- 2013 Advocate MDR Meeting Notes
- P- 2013 Advocate's MDT & MDR Meeting Notes

Evaluations

- P- 2010 Comprehensive Psychological
- P- 2012 Psychological Evaluation
- P- 2013 Functional Behavior Assessment
- P- 2013 Vocational Evaluation—Level II

School Records

- P-9 2012-2013 Incidents for 2012-2013 SY
- P-10 2012-2013 Notices of Disciplinary Actions for Incidents
- P- 2013 Report Card

Emails

- P- Emails Regarding scheduling MDT Meeting & Follow up

Curriculum Vitas/Resumes

P-13 Undated Independent School Psychologist  
P-14 Undated Special Education Teacher/Consultant

Miscellaneous

P-15 Undated Compensatory Education Proposal  
P- 2013 Individualized Education Program

Exhibits admitted on behalf of Respondent are:

R 01	IEP Progress Report	
R 02	Behavior History	12/13 SY
R 03	Manifestation Determination	
R 04	Student File Discipline Entry	
R 05	MDR Notes	
R 06	BIP	
R 07	Student File Discipline Entry	
R 08	Notice of Disciplinary Action	
R 09	Student Incident Report	12/13 SY
R 10	PWN	
R 11	Independent Vocational Assessment Report	
R 12	Independent FBA Assessment Report	
R 13	Behavioral Support Review Evaluation	
R 14	BIP	
R 15	Communication Log Entry	12/13 SY
R 16	Resume J Robinson	

Exhibits admitted by the Hearing Officer are:<sup>5</sup>

- 1 Administrative Due Process Complaint Notice filed
- 2 Notice of Hearing Officer Appointment of
- 3 Prehearing Notice dated
- 4 District of Columbia Public Schools's [sic] Response to Petitioner's Administrative Due Process Complaint of 20113
- 5 Resolution Period Disposition Form of
- 6 Prehearing Conference Order dated
- 7 Miscellaneous emails
  - re need for telephone conference for scheduling purposes
  - re Respondent's counsel being out of office
  - Chain re telephone conference
  - Four interrelated chains re delayed telephone conference and rescheduling
  - re Respondent's counsel's telephone contact for conference
  - from HO to Respondent's counsel re additional case to be provided

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<sup>5</sup> Emails forwarding the following documents to opposing counsel and the hearing officer are filed with the document unless otherwise noted.

8 List of Proposed Hearing Officer Exhibits filed  
9 HOD of re case 2012-0021  
10 Documents re case withdrawn (2012-0268) on

B. Testimony

Petitioner testified and presented the following witnesses:

- Independent School Psychologist, admitted as an expert in school psychology and conducting educationally related evaluations
- Program Director, Nonpublic School
- Educational Advocate
- Special Education Teacher/Consultant

DCPS presented the following witness:

- Special Education Coordinator/LEA representative, Attending School testified as an expert in educational programming and appropriate behavior interventions and strategies for students with emotional disorders or behavior concerns<sup>6</sup>

**FINDINGS OF FACT**

Based upon the evidence presented,<sup>7</sup> I find the following facts by a preponderance of the evidence:

1. attend 9<sup>th</sup> grade at DCPS high school for the third time in the 2013 – 2014 school year. He receives special education and related services as a student with Other Health Impairment under the IDEA. P 1; P 2; Testimony of Petitioner;
2. Student has a history of academic and behavioral problems dating back to first grade. He repeated 1<sup>st</sup> grade. P 5; P 6; P 7; P 8.
3. Student’s cognitive abilities are within the average to low average range of ability. Student’s academic skills fall in the low average range. In March 2010 when Student was in 7<sup>th</sup> grade he earned scores on the Woodcock Johnson Test of Academic Achievement III (“WJ III”)

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<sup>6</sup> Petitioner made a standing objection to my admittance of the witness as an expert as stated herein.

<sup>7</sup> In the findings that follow I cite exhibit numbers and/or testimony as bases for the findings. Some exhibits were introduced by both Petitioner and Respondent. The citations to exhibits reference only one party’s exhibits in those instances where both parties have introduced the same exhibit.

that resulted in grade equivalencies ranging from 2-4 in story recall to 13 in calculation. Most of his scores were at the 4<sup>th</sup> to 6<sup>th</sup> grade level. In May 2012, Student earned scores on the WJ III that resulted in grade equivalencies at the 7<sup>th</sup> grade equivalency level except for Brief Math which was at the 5.8 grade equivalency level. In May 2013 Student tested on the Brigance at the 7<sup>th</sup> grade level in math calculation and on the 6<sup>th</sup> to 8<sup>th</sup> grade level in reading. Student is able to do the work in his classes, but his behaviors interfere with his performance. P 5; P 6; P 7; P 8; P 16; Testimony of Psychologist; Testimony of SEC.

4. Student has chronic attendance problems. On many days he does not attend school. On others he arrives late. When he is in school he does not attend all his classes and walks out of some classes before they are over. Petitioner makes effort to get Student to school on time each day. P 16; Testimony of Petitioner; Testimony of SEC

5. Student was suspended several times in the 2012- 2013 school year. He was suspended on for 3 days, on for forty five days and on for 9 days. In addition Student received several in school suspensions. He also was sent home for behavioral reasons on multiple occasions. These send home incidents were not recorded as suspensions. Petitioner also received telephone calls indicating Student should be kept home from school the next day because he did not stay for detention. These incidents also were not recorded as suspensions. P 4; P 9; P 10; R 2; R 9; Testimony of Petitioner; Testimony of SEC; Testimony of Educational Advocate

6. The incident was the only time Student exhibited physical aggression in school. This incident was part of an on-going situation between two groups. Some students informed Student there was a disturbance in the cafeteria. Student descended three flights of stairs and began assaulting another student. When staff intervened Student left the cafeteria, ran

into the gym and began assaulting a second student. Student was suspended for fighting and for inciting. A manifestation meeting was held on \_\_\_\_\_ No manifestation was found. Student was to attend CHOICE Academy. The assignment to attend CHOICE was discussed at the meeting, but no formal written notification was provided Petitioner. Student began attending CHOICE after petitioner received a telephone call. P 3; Testimony of Petitioner; Testimony of Education Advocate; Testimony of SEC.

7. On \_\_\_\_\_ Student was suspended for roaming the halls and being disruptive. Eventually he was removed from the building by the police. At the manifestation meeting on \_\_\_\_\_ the parent and advocate expressed their view that the behavior resulting in the suspension was a manifestation of Student's disability. P 4; R 7; R 9; Testimony of SEC.

8. Student's \_\_\_\_\_ IEP has goals in mathematics, reading, written expression and emotional/social/behavioral development. It requires he receive 5 hours per week of specialized instruction outside the general education environment and 10 hours per week of specialized instruction inside the general education environment. He also is to receive 60 minutes of behavioral support services each week. The IEP includes a Transition Plan. Student's \_\_\_\_\_ IEP had goals in the same goal areas. P 2; P 16.

9. Three Behavior Intervention Plans ("BIPs") were developed for Student during the 2012 - 2013 school year. They are dated \_\_\_\_\_ and sometime in June 2013.<sup>8</sup> R 6; R 14; Testimony of SEC.

10. Student requires multiple interventions and supports to achieve academically. He requires a structured environment that provides, among other components, reinforcement of on-task behavior, intensive work on written expression including possible alternatives to writing such as a word processor or dictation, extended time to complete assignments, repetition of directions,

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<sup>8</sup> The June 2013 BIP is not in the record.

minimal distractions, regular breaks, counseling, a small classroom environment, social skills training, vocational training and low student-teacher ratio. P 5; P 6; P 7; P 8; Testimony of Psychologist; Testimony of Educational Advocate

11. Nonpublic School is a separate, nonpublic, special education school that is approved by the Office of the State Superintendent of Education. In the Upper School, NPS provides special education and related services to students ages 14 through 21 who have emotional disabilities, attention deficit hyperactivity disorder, speech language disabilities, and other health impairments. Many of the students have behavior issues. The classroom size ranges from an average of 8 to a maximum of 10. The school has staff certified in behavior management. All teachers in the Upper School are certified in special education or in subject matter. Each class has a teacher and a teaching assistant. The school uses a point system for behavior management and has three quiet rooms available for students who need time to regain behavior control. The school provides a transition program in barbering, construction and graphic design. Student has been accepted to the program for students with emotional disabilities. Testimony of Program Director.

12. The Compensatory Education Plan is intended to address Student's educational loss in the 2012 -2013 school year. It focuses on the time he was out of school due to the \_\_\_\_\_ and the \_\_\_\_\_ suspensions. The plan indicates Student has been inappropriately placed throughout the school year, referring specifically to Student's Attending School. It proposes Student receive 6 hours of tutoring each week for 50 weeks and 2 hours of behavior support services each week for 50 weeks. The number of hours of service in this plan is based on the academic gap between Student and his age-based peers. It is also based on what other

students have required to close this educational gap. P 15; Testimony of Special Education Teacher/Consultant

### DISCUSSION

The following discussion is based on my review of the exhibits introduced by the parties, witness testimony and the record in this case. While I find all witness testimony presented in this matter to be credible, some witnesses were more persuasive than others. Where these differences in persuasiveness are relevant to my determination, I so indicate.

*Whether DCPS denied Student a FAPE by failing to develop an appropriate IEP and placement for Student from through the filing of the instant complaint. Student should be classified as having an emotional disability rather than a specific learning disability. He requires a full time placement out of general education in a therapeutic setting in a separate, non-public school. He also requires additional behavioral support services throughout the school day that include crisis intervention and de-escalation techniques*

Under the IDEA each local education agency is required to provide a free appropriate public education (“FAPE”) to each student found eligible for special education and related services. A FAPE is:

Special education and related services that . . . are provided at public expense, under public supervision and direction, and without charge; . . . [m]eet the standards of the [state educational agency] . . . [i]nclude an appropriate preschool, elementary school, or secondary school education . . . ; and . . . [a]re provided in conformity with an . . . IEP that meets the requirements of [the IDEA regulations]. 34 C.F.R. § 300.17. See also, D.C. Code § 30.3001.1.

An IEP is a written statement that includes, in pertinent part, the eligible student’s: present levels of academic and functional performance; the effect of the student’s disability on his/her involvement and progress in the general curriculum; measurable annual academic and functional goals designed to meet the student’s educational needs resulting from his/her disability; a statement of the special education and related services, supplementary aids and services, and program modifications and supports to be provided to the student to allow him/her

to advance toward attaining the IEP goals and progress in the general curriculum and to participate in nonacademic activities. In addition the extent of the student's participation with nondisabled peers must be addressed. 34 C.F.R. § 300.320. *See also*, D.C. Code § 30.3009. In developing the IEP the team is to consider the strengths of the child, the concerns of the parent for enhancing the education of the student, the results of the most recent evaluation and the academic, developmental and functional needs of the student. 34 C.F.R. § 300.324(a). *See also*, D.C. Code § 30.3007. If a student's behavior impedes the student's learning or that of other students, the team is to consider interventions and strategies to address the behavior. *Id.* An IEP that memorializes the team's FAPE determination must be designed to provide the student with some educational benefit. *Hendrick Hudson Board of Education v. Rowley*, 458 U.S. 176, 203-204 (1982).

The content of an IEP is a team decision 34 C.F.R. §§ 300.320 – 300.323. *See also*, D.C. Code §§ 30.3007.1 & 3008.1. Teams are required to consider all the relevant information before them. *Id.* In reviewing whether an IEP provides a student a FAPE as required by IDEA, a hearing officer must consider whether the district complied with IDEA's procedural requirements and determine whether the program was reasonably calculated to enable the student to receive educational benefit. *Rowley*, 458 U.S. at 207.

#### *IEP Services*

Student's IEP includes goals in reading, written language, mathematics and social/emotional/behavioral development. Student's IEP had goals in the same goal areas. Student's tested cognitive ability is in the average to low average range, and his academic achievement is in the low average range for the most part. Petitioner argues that Student is many years behind where he should be academically because he is 17 and should be in

the 12<sup>th</sup> grade, but he is testing at the 6<sup>th</sup> to 8<sup>th</sup> grade level depending on the academic area. In making this argument, Petitioner is looking only at Student's age, not at his assigned grade. It is not reasonable, in my opinion, to think a student should be achieving at the 12<sup>th</sup> grade level based on his age when he has not attended school beyond the 9<sup>th</sup> grade level. To assume otherwise is in error. Student has repeated grades multiple times

. Learning does not come automatically with age; it is based on instruction and resultant learning. Student has not been instructed past the 9<sup>th</sup> grade level and has not mastered the subject matter at the ninth grade level. I would therefore expect him, were he to achieve at the grade level he has achieved, to demonstrate academic skills no higher than the 9<sup>th</sup> grade level but more likely the 6<sup>th</sup>, 7<sup>th</sup> or 8<sup>th</sup> grade level just as he is doing. Student's failure to achieve beyond the 6<sup>th</sup> to 8<sup>th</sup> grade level is attributable, in part, to his failure to attend school. It is also attributable to his having ADHD and learning disabilities. DCPS has attempted to address Student's absenteeism, and it has attempted to address his other behavior issues with little effect. Student does not attend school on a regular basis; when he does attend, he does not arrive on time nor attend all his classes.

Petitioner suggests that *Ringwood Board of Education v. K.H.J. on behalf of K.F.J., Appellant*, 49 IDELR 63 (3d Cir. 2007) supports her position that Student's IEP does not provide him the educational benefit required by *Rowley, Supra*. However, that case is clearly distinguishable from the instant matter. In *Ringwood*, the student had especially strong cognitive abilities yet was making only minimal progress academically because the school was unable to provide the student an appropriate program. In contrast the current student has average to low average intellectual abilities and appears to be making progress that reflects his stagnation at the 9<sup>th</sup> grade level. He is achieving at the 6<sup>th</sup> to 8<sup>th</sup> grade level while in 9<sup>th</sup> grade. He has not

progressed further because he does not attend school despite both DCPS' and Petitioner's efforts to ensure his attendance. "The IDEA does not require schools to remove every impediment to learning of any kind and from any cause." *Ashland School Dist. v. Parents of Student RJ*, 585 F. Supp. 2d 1208, 1231 (Dist. Court, D. Oregon 2008). Petitioner has not provided convincing evidence that Student's failure to attend school is a result of his disability. His disability is not the causal factor in his poor attendance. While the evidence suggests Student has the ability to achieve academically and pass his classes, the obstacle to such educational success is not the kind of impediment that IDEA requires be addressed in Student's IEP.<sup>9</sup>

#### *Placement*

After a school district develops an IEP that meets all of a student's educational needs, it must identify a placement in which to implement the IEP. The placement is to be in the least restrictive environment in which the IEP can be implemented. 34 C.F.R. §§ 300.114 – 300.118. *See also*, D.C. Code §§ 30.3011 – 30.3013. The removal of a student with disabilities from the regular education environment is to occur "only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 34 C.F.R. § 300.114(a)(2)(ii). The placement decision is to be made by a group of individuals, including the parent. 34 C.F.R. § 300.116(a)(1); 34 C.F.R. § 300.327; 34 C.F.R. § 300.501(b) and (c). Moreover, the placement decision must conform to the LRE provisions cited above. 34 C.F.R. § 300.116(a)(2).

Student's IEP requires Student receive a combination program with services both in the general education setting and outside the general education setting. Student's

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<sup>9</sup> I recognize Student's behavior is deteriorating. Again, however, petitioner has not convinced me that the increasing behavior issues are disability related. Rather, I am convinced that Student's increasing behavior issues are founded on non-disability based decisions he consciously makes. See, for example the discussion of Student's suspension.

IEPs have required some variation of such a combination setting for more than one year, and it is clear that DCPS' efforts to address Student's needs in a combination push-in/pull out program in a large neighborhood high school have not been successful as evidenced by his failing ninth grade twice. While the academic goals on Student's IEP are designed to provide Student some educational benefit, it is clear Student is not able to benefit from the education available to him due to a placement that does not address his identified needs.

Petitioner and Respondent have provided two diametrically opposed approaches to meeting Student's needs. Petitioner proposes Student be placed in a full-time, separate, non-public, special education school, and Respondent proposes no change to Student's current placement – in effect arguing that Student's educational needs would be addressed if only he would attend school as he should. I do not accept either of these positions. The current program does not address Student's needs and cannot do so. I agree with Petitioner that Student requires more intervention than that found in his current placement, and he requires the intervention in a more structured and supportive environment. Student requires consistent and immediate crisis intervention when he becomes angry and upset rather than suspension. He requires a small class with a low student-teacher ratio, and he requires teacher support when he has difficulty learning. This is not provided in his current program in the general education classroom.<sup>10</sup> Student's placement does not provide him sufficient hours outside the general education setting, and it does not provide him the structure or support he requires.

#### *Classification*

Petitioner argues classifying Student as having Other Health Impairment, rather than classifying him as having an Emotional Disability is a denial of FAPE. I disagree. I recognize it

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<sup>10</sup> I received no evidence regarding what Student receives in the separate educational setting and do not address it here.

is possible that Student may have an emotional disability although he has not been so classified.<sup>11</sup> However, while every special education student is included in one of the thirteen classification categories identified in the IDEA, the categories themselves do not control the services provided to a student, and it is the programs and services in the IEP that define a student's FAPE. The classification categories are statistical warehouses used for various statistical and research purposes. A FAPE, in contrast, is an individualized determination based on the needs of a particular student identified in his/her IEP. Students with identical classifications may receive entirely different services, and students with different classifications may receive identical services based on their identified needs. It is the needs of the child that determine FAPE, not the label under which the student receives services. The IDEA regulations, moreover, state that nothing requires a child be classified by his/her disability as long as the child with an eligible disability who needs special education and related services is regarded as a child with a disability under IDEA. *See*, 34 C.F.R. § 300.111(d). Student has been found eligible and has an IEP so he is of course regarded as a child with a disability under IDEA.

I therefore find by a preponderance of the evidence that DCPS has not provided Student an appropriate placement from \_\_\_\_\_ through the filing of the instant Complaint. I further find DCPS has not denied Student a FAPE by failing to develop an appropriate IEP or by classifying student as having an Emotional Disability.

*Whether DCPS denied Student a FAPE by incorrectly determining Student's behavior resulting in the \_\_\_\_\_ and the \_\_\_\_\_ suspensions were not a manifestation of his disability. He was not provided required educational services during these suspensions.*

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<sup>11</sup> Petitioner provided very little evidence suggesting Student has an emotional disability. It was mentioned by a witness, and it was mentioned in one or two meetings. However, the majority of the evidence supports Student's current classification as Other Health Impaired due to ADHD.

IDEA requires that a manifestation determination<sup>12</sup> be made anytime a student with a disability has a change in placement as a result of a disciplinary action. 34 C.F.R. § 300.530. A change of placement occurs in two circumstances. First, a change of placement occurs when a student is removed from his/her educational setting for more than 10 consecutive school days. 34 C.F.R. § 300.536(a). Secondly, a change of placement occurs when there is a series of removals that constitutes a pattern because the student has been removed for more than 10 cumulative school days in a school year, and the behavior at issue is substantially similar to that in previous incidents. In the second instance (cumulative removals of more than 10 days in a school year) the change of placement determination also must consider the length of each removal, the total amount of time the student has been removed and the proximity of the removals to each other. *Id.* If it is determined that the student's behavior was a manifestation of his/her disability, the student is to be returned to the setting from which s/he was removed. 34 C.F.R. § 300.530(f). In addition, the IEP team must conduct a functional behavioral assessment and implement a behavior intervention plan for the student. *Id.* If the student has an existent BIP at the time of the suspension, that BIP is to be reviewed and revised, as needed, to address the behavior resulting in the suspension. *Id.* Even if manifestation is found the student may still be suspended if the behavior involved illegal drugs, weapons or inflicting serious bodily injury. 34 C.F.R. § 300.530(g). An FBA and a BIP also are to be provided if no manifestation is found to address the behavior violation so that it does not recur. 34 C.F.R. § 300.530(d). A student's behavior resulting in discipline is to be deemed a manifestation in the following two circumstances:

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<sup>12</sup> A manifestation determination addresses the relationship of the student's behavior to his/her disability. At the manifestation determination meeting a team, including the parent, the local education agency (DCPS) and the relevant members of the IEP team, decides whether the behavior resulting in the suspension was a manifestation of the student's disability. If the behavior was caused by or had a direct and substantial relationship to the student's disability or the behavior was the direct result of the failure to implement the student's IEP, it is deemed a manifestation of the student's disability. 34 C.F.R. § 300.530(e). This meeting is to be held within 10 school days of the suspension constituting a change of placement. *Id.*

- 1) When the behavior was caused by or had a direct and substantial relationship to the student's disability; or
- 2) When the behavior was the direct result of the failure to implement the student's IEP.

34 C.F.R. § 300.530(e). A student receiving services under IDEA must continue to receive educational services after any removal of more than 10 consecutive or cumulative days of suspension in a school year. 34 C.F.R. § 300.530(d). The services may be provided in an interim alternative educational setting. *Id.*

### *Removal*

Student was removed for 45 school days following an incident

Student was removed for fighting and inciting others. After being informed of an incident occurring in the cafeteria, Student went down three flights of stairs, entered the cafeteria and punched another Student. He then punched a second student. The SEC credibly testified that information gathered at the time revealed this incident was part of an on-going situation involving Student's group and another group. The SEC was surprised by Student's aggression, testifying that he had not seen Student act in such a fashion before and did not think he would act in such a manner. A manifestation meeting regarding this incident was held on within the 10 school day limit for manifestation meetings mandated by 34 C.F.R. § 300.530(e). At the manifestation meeting the team determined the behavior was not a manifestation of Student's disability because he traveled through the school building before acting and because he did not respond to staff intervention and traveled to another room in the school building to hit a second student. There can be no disagreement as to this determination.

Petitioner argued the behavior should have been found to be a manifestation of Student's disability because the team did not consider that Student's IEP was not providing Student the services Petitioner asserts he needs. However, this is a misunderstanding of the manifestation determination standard. Petitioner did not suggest Student's behavior was a result of a failure to implement the IEP, *Id.*, rather she indicated it was the result of the IEP not providing the services Petitioner believes he needs. This is not the IDEA requirement for such a finding.

I therefore find by a preponderance of the evidence that DCPS did not deny Student a FAPE by determining Student's behavior resulting in the suspension was not a manifestation of his disability.

At the manifestation meeting held on Petitioner was informed Student was to attend Academy during his period of suspension. DCPS did not provide written notice of this school assignment. Petitioner did not understand this was Student's school assignment until some time had passed and Academy contacted Petitioner. Petitioner was not specific about when she was contacted and Petitioner provided no specific evidence as to the number of days Student attended Academy. However it is clear that Student did attend as Independent School Psychologist obtained information from one his teachers there. It cannot be determined whether the loss of days of education was of such duration that Student incurred an educational harm due to DCPS' failure to provide notification of Student's assignment to Academy.

Petitioner has not met her burden of proof as to the denial of education during this suspension. She has not established the number of days Student was without education during this suspension due to DCPS action.

*Removal*

Student's removal on \_\_\_\_\_ resulted from his verbal aggression toward the Assistant Principal. He eventually had to be removed from the school building by the police. A manifestation meeting regarding this incident was held on \_\_\_\_\_. While witnesses spoke of the manifestation determination meeting, I was provided no evidence regarding whether this 9 day suspension was determined to be a change in placement, See 34 C.F.R. § 300.530(e), requiring a manifestation meeting. I also was not provided evidence as to the team's manifestation determination regarding this incident. The Advocate's notes summarizing the meeting do not indicate the substance of the team's discussion of the core manifestation determination. The notes reflect only Petitioner's and Advocate's opinion as to manifestation. Petitioner also provided little evidence as to Student's education during this suspension.

I, therefore, find by a preponderance of the evidence that Petitioner has not met her burden of proof as to the denial of education during this suspension.

**CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law as follows:

1. DCPS did not provide Student an appropriate placement from \_\_\_\_\_ through the filing of the instant Complaint.
2. DCPS did not deny Student a FAPE by failing to develop an appropriate IEP nor by classifying student as having an Emotional Disability
3. DCPS did not deny Student a FAPE by determining Student's behavior resulting in the suspension was not a manifestation of his disability.

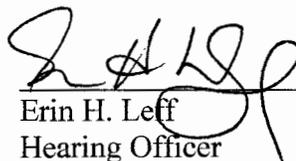
4. Petitioner did not meet her burden of proof as to the alleged failure to provide Student required educational services during the \_\_\_\_\_ suspension.
5. Petitioner did not meet her burden of proof as to the alleged the failure to find the \_\_\_\_\_ suspension was a manifestation of Student's disability.
6. Petitioner did not meet her burden of proof as to the alleged failure to provide Student required educational services during the \_\_\_\_\_ suspension.

**ORDER**

Based upon the above Findings of Fact and conclusions of law, it is hereby ordered that DCPS is to hold a multidisciplinary team meeting within 10 school days of DCPS' receipt of this Hearing Officer Determination. The meeting is to include Student's IEP team, Petitioner, and her advisor and/or advocate, if she so chooses. At this meeting the team is to determine a new placement for Student that provides, at minimum, the following:

- Small class(es) with low student-teacher ratios. Special instruction outside the general education environment is to be provided in all major subjects. Student is to be educated in diploma track classes unless Petitioner expressly agrees otherwise in writing;
- Consistent and immediate crisis intervention when he becomes angry and upset; and
- Tteacher support when he has difficulty learning, including, when needed, one on one tutoring;

**IT IS SO ORDERED:**

  
Erin H. Leff  
Hearing Officer

**NOTICE OF RIGHT TO APPEAL**

This is the final administrative decision in this matter. Any party aggrieved by the Findings and/or Decision 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 Decision of the Hearing Officer in accordance with 20 USC §1451(i)(2)(B).