

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

Student Hearing Office  
810 First Street, NE, 2nd Floor  
Washington, DC 20002

OSSE  
Student Hearing Office  
November 18, 2013

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PETITIONERS,  
on behalf of STUDENT,<sup>1</sup>

Date Issued: November 18, 2013

Petitioners,

Hearing Officer: Peter B. Vaden

v.

PUBLIC CHARTER SCHOOL,

Respondent.

Student Hearing Office,  
Washington, D.C.

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**HEARING OFFICER DETERMINATION**

**INTRODUCTION AND PROCEDURAL HISTORY**

This matter came for an expedited hearing upon the Administrative Due Process Complaint Notice filed by Petitioners (the “Petitioners” or “PARENTS”), 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 and Title 5-B, Chapter 5-B25 of the District of Columbia Municipal Regulations (“DCMR”). In their Due Process Complaint, Petitioners appeal a Manifestation Determination Review team (“MDR”) determination that Student’s October 8, 2013 violation of Respondent PUBLIC CHARTER SCHOOL’s (“PCS”) student conduct code was not a manifestation of his disability.

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<sup>1</sup> Personal identification information is provided in Appendix A.

Student, an AGE child, is a resident of the District of Columbia. Petitioners' Due Process Complaint, filed on October 17, 2013, named PCS as respondent. On October 30, 2013, the Hearing Officer convened a telephone prehearing conference with counsel to discuss the hearing date, issues to be determined and other matters.

Pursuant to the IDEA, the due process hearing was convened on an expedited basis before the undersigned Impartial Hearing Officer on November 8, 2013 at the Student Hearing Office in Washington, D.C. This Hearing Officer Determination must be issued within 10 school days after the hearing. The hearing, which was closed to the public, was recorded on an electronic audio recording device. The Petitioners appeared in person, and were represented by PETITIONERS' COUNSEL. PCS was represented by its HEAD OF SCHOOL and by PCS' COUNSEL and CO-COUNSEL.

Both Parents testified, and called as witness CHARTER SCHOOL PSYCHOLOGIST. PCS called as witnesses Head of School, CHIEF ACADEMIC OFFICER and PCS SCHOOL PSYCHOLOGIST. Petitioners' Exhibits P-2, P-5 through P-8, and P-13 through P-16 were admitted into evidence without objection. Exhibits P-1, P-3, P-4 and P-9 through P-12 were admitted over PCS' objection. Respondent's Exhibits R-1 through R-22 were admitted into evidence without objection, with the exception of Exhibit R-14<sup>2</sup> which was admitted over Petitioners' objection. Counsel for both parties made opening and closing statements. I granted the parties leave to file additional citations of authority on the MDR issue by November 12, 2013. On November 12, 2013, counsel for PCS submitted an email to the Hearing Officer citing authority for consideration.

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<sup>2</sup> Exhibit R-14 is an electronic video recording, in three segments, of the October 8, 2013 incident, taken by Chief Academic Officer on her cell phone.

## JURISDICTION

The Hearing Officer has jurisdiction under 20 U.S.C. § 1415(f), (k) and DCMR tit. 5-E, § 3029 and tit. 5-B, § 2510.

## ISSUES AND RELIEF SOUGHT

The issues to be determined in this case are:

- A.
  - Whether the PCS MDR team erred in determining that Student’s October 8, 2013 violation of the student conduct code was neither caused by, nor had a direct and substantial relationship to, Student’s disability;
  - Whether PCS has violated the IDEA by failing to ensure that Student has continued to receive appropriate educational services, since the October 8, 2013 incident, so as to enable him to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in his IEP;
  - Whether PCS has violated the IDEA by failing to ensure that Student received a functional behavioral assessment and behavioral intervention services and modifications designed to address his October 8, 2013 behavior violation, so that it does not recur.
- B. Whether Respondent denied Student a FAPE by failing to conduct a comprehensive psychological reevaluation when requested by MOTHER prior to the October 8, 2013 disciplinary incident.

For relief, Petitioners seek a determination by the Hearing Officer that Student’s violation of the PCS code of conduct was a manifestation of his disability and an order that Student be returned to his classroom, or, in the alternative, that Respondent be ordered to provide Student appropriate interim alternative services. Petitioners also seek an order for Respondent to fund an IEE comprehensive psychological evaluation and functional behavioral assessment (“FBA”) of Student and to convene Student’s MDT/IEP team to review the reevaluations and develop an appropriate Behavior Intervention Plan (“BIP”) and revise, as appropriate, his IEP. Petitioners also requested an award of compensatory education to compensate Student for harm resulting from the period he was out of school following the

disciplinary incident.

### **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:

1. Student, an AGE child, resides with Parents in the District of Columbia.

#### Testimony of Mother.

2. Student is eligible for special education and related services under the Primary Disability classification Other Health Impairment ("OHI"). Exhibit P-2. Student's OHI disability is due to Attention Deficit Hyperactivity Disorder. Testimony of Charter School Psychologist. Student was last reevaluated, and determined to be a child who continued to have a disability and in need of special education and related services, on July 26, 2012. Exhibit P-10.

3. Parents enrolled Student in PCS at the beginning of the 2013-2014 school year. He is currently in the GRADE. Prior to enrolling in PCS, Student attended CHARTER SCHOOL 2 for three years. For the 2009-2010 school year, Student attended CHARTER SCHOOL 1. Testimony of Mother.

4. Student has a history of behavior issues in school. At Charter School 1, Student exhibited physical outbursts and tantrums. Testimony of Father. In a July 2012 Occupation Therapy ("OT") evaluation report, Student was reported by his Charter School 2 special education teacher to have marked mood variations with a tendency to outburst or tantrum. Exhibit P-15. In a July 26, 2012 Charter School 2 Evaluation Summary Report, Student was reported as not able to control his anger during boys group. Exhibit P-3. In Student's May 31, 2013 Individualized Education Plan ("IEP") developed at Charter School 2, Student was reported to have displayed a moderate level of progress as it relates to remaining on task and self

regulation, to be working on improving behavior, and to require assistance with regulating emotions and remaining on task. The May 31, 2013 IEP provided Student 60 minutes per week of Behavior Support Services. Exhibit P-2.

5. Since enrolling at PCS in August 2013, Student has been subjected to over 25 lunch detentions and several in-school suspensions for conduct violations, including, *inter alia*, disrespect, profanity, and disrupting class. Exhibit R-9.

6. Student was expelled from PCS following an incident in the afternoon of October 8, 2013. A little before 2:45 p.m., CLASSROOM TEACHER asked Student to leave the classroom and step outside to the hallway because, in the classroom, Student had been tapping on his desk, calling out, making noises, and not following directions. Testimony of Head of School. In the hallway, HALL MONITOR approached Student, whom she found sitting on the stairs and hitting the wall. Student stated that he was going to kill the teacher. "I hope she dies and then I'm going to light her grave on fire." Exhibit R-8. Hall Monitor sent Student to the Dean of Solutions' office for the Dean to address what had occurred. At the Dean's office, Student continued the disruption. At the time the Dean was busy with another matter. Chief Academic Officer, who saw what was occurring, took Student upstairs to her office to calm down. Testimony of Chief Academic Officer.

7. Chief Academic Officer's account of what transpired in her office, was recorded as follows:

At approximately 2:45 on Tuesday, October 8th, Student arrived in the Dean of Solution's office as a result of saying he was going to kill one of his teachers and then burn her grave. As the teacher who escorted Student down to the Dean's office shared what had occurred upstairs, Student began interacting with another child in the office. I told the Dean that I would bring him upstairs so he could sit in my office while I completed some work.

Student came right upstairs with me without resistance or hesitation. He sat down

where he was instructed to sit and remained there for about 10 minutes while I worked on my computer. I took a phone call from the Dean to let him know about a meeting that I had scheduled with the parent of a 7th grade female student. While I was on the phone, Student picked up a box of tissues and threw it across the office. I instructed him to pick it up, which he did right away. About 2 minutes later, Student threw the tissue box again, along with a book. He was again instructed to pick up both items, which he did.

Approximately one more minute passed and then Student began grabbing other items around the room and throwing them and slamming them against other objects and furniture in the room. His aggression intensified, leading him to pick up a lacrosse stick and slam it against furniture in the room. He approached me with the stick and began slamming it against my desk, which I was still behind. At this point, I called down to the Dean so he could tell Mother she needed to come to the school right away.

STAFF MEMBER arrived at my office to support. Over the course of the next 10 - 15 minutes, Student threw multiple items throughout the office including books, papers, extra uniforms, umbrellas, and a metal coat rack. Student pushed stacks of papers off of furniture and onto the floor, which he then kicked throughout the room, ruining multiple documents and breaking other objects in the office.

Mother arrived at approximately 3:40 and was brought up to the office. She immediately saw the mess that had been created by Student and told him to clean it up. Student refused her direction. Mother asked for myself and the staff member to step out of the room for a minute so she could talk to Student. Once she was done we came back in. Student was still very upset and continued to refuse to clean up the mess. Student then became aggressive again, throwing more items throughout the office. Mom had to restrain Student after he became more and more physically aggressive and we called Student's father. After an additional 25 minutes, Student was brought by staff member to get his things from his classroom and Mother took him home.

#### Exhibit R-12.

8. Staff Member provided a separate written account of the October 8, 2013

incident:

I was called to Chief Academic Officer's office at approximately 3pm. Once I entered I witnessed Student destroying the office, by knocking things over, throwing books, and using a Lacrosse stick to even further damage things in the office. For the next 30 minutes I witnessed Student out of control and in rage. I tried to move towards him to see if he would calm down and he continued to swing the stick and scream. Mother asked that we step out the room so she could try to calm Student. Once she was done we came back in. Student was still upset and continued to refuse to pick up his mess. Student was still upset once we entered back into the office and he continued to throw things.

Student's mom had to hold him after he became more and more physical and his dad had to be called. After 30 minutes I calmed Student down and we went to get his things and wait for his mother in the front Lobby.

Exhibit R-13.

9. Student was immediately suspended from school after the October 8, 2013 incident and has not been allowed to return. Testimony of Mother.

10. In response to the incident in the Chief Academic Officer's office, PCS convened an MDR team meeting on October 15, 2013. The meeting was attended by both Parents, PCS School Psychologist, and teachers and administrators from the school. After a school administrator summarized the incident that occurred on October 8, 2013, PCS School Psychologist reviewed symptoms of ADHD – inattention, impulsivity, staying on task, not following directions, failing to complete assignments, fidgeting, and running about. PCS School Psychologist clarified that Student was not facing disciplinary action as a result of displayed frustration or difficulty responding to redirection which were demonstrated earlier that day, but rather the culmination of more severe and safety-related issues, namely threatening bodily harm to a teacher, destruction of property and attempted and actual physical assault toward adults. Based on this information, the team determined that Student's conduct was not a manifestation of his disability. Exhibit R-15. Both Parents disagreed with this determination. Testimony of Mother, Father.

11. The PCS Disciplinary Board met on October 15, 2013 after the MDR meeting. Student and both Parents attended this meeting. After deliberating, the Disciplinary Board recommended Student for expulsion from PCS. Exhibit R-16. After expelling Student, PCS did not initially offer him any other school placement. Testimony of Mother.

12. As of the October 15, 2013 MDR meeting, PCS did not have access to Student's educational file pre-dating the 2013-2014 school year, except for the May 31, 2013 IEP and the July 2012 Occupation Therapy evaluation report. Representation of PCS' Counsel; See PCS' Response to Due Process Complaint.

13. On October 17, 2013, PCS Co-Counsel sent an email to Petitioners' Counsel offering to set up an interim placement for Student "so as to enable [Student] to continue to participate in the general education curriculum and to progress toward meeting his IEP goals." PCS proposed to provide Student the weekly hours of specialized instruction and behavioral support required by his IEP, at an off-site location. Exhibit R-17. These services would include 6 hours per week of Reading and Mathematics special education services and 60 minutes per week of Behavioral Support Services. Testimony of Head of School.

14. The interim services were provided for just one session, on October 28, 2013. The same day, Mother withdrew Student from PCS and placed him at DCPS PUBLIC SCHOOL. Testimony of Head of School, Exhibit R-19. As of the date of the due process hearing, Student was attending DCPS Public School. Testimony of Mother.

15. Around the end of September 2013, in discussions with Mother about Student's behavior issues at PCS, PCS School Psychologist offered to conduct a Functional Behavioral Assessment ("FBA") of Student. The FBA was not conducted before Student's expulsion from PCS. Testimony of PCS School Psychologist. The Parents never requested PCS to conduct a psychological evaluation of Student. Testimony of Head of School, School Psychologist. At the October 22, 2013 resolution meeting for this case, Petitioners' Counsel requested, and PCS' Co-Counsel agreed, for PCS to conduct a comprehensive psychological evaluation and FBA of Student. Exhibit R-18.

## CONCLUSIONS OF LAW

Based upon the above Findings of Fact and argument and legal memoranda 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 the responsibility of the party seeking relief – the Petitioners 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).

### Analysis

The issues raised by Petitioners in this case are (i) whether the PCS MDR team erred in determining that Student's October 8, 2013 conduct was not a manifestation of his disability; (ii) whether PCS violated the IDEA by failing to ensure that Student has continued to receive appropriate alternative interim educational services after the October 8, 2013 incident; (iii) whether PCS has violated the IDEA by failing to ensure that Student received a functional behavioral assessment and behavioral intervention services and modifications designed to address his October 8, 2013 behavior violation, so that it does not recur; and (iv) whether PCS denied Student a FAPE by failing to conduct a comprehensive psychological reevaluation, when allegedly requested by Mother prior to the October 8, 2013 disciplinary incident. I address each of these issues in turn.

i. The October 15, 2013 Manifestation Determination Review

Student was expelled from PCS as a result of his conduct violations in Chief Academic Officer's office on October 8, 2013. The facts of that incident were not disputed at the due

process hearing. A little before 2:45 p.m. on October 8, 2013, Student's teacher told him to leave the classroom and go outside to the hallway because of his disruptive behavior, including tapping on his desk, calling out, making noises, and not following directions. In the hallway, Student told Hall Monitor that he was going to kill the teacher. Hall Monitor sent him to the Dean of Solution's office for the Dean's attention. There, Student continued being disruptive. Because the Dean was occupied with another matter, Chief Academic Officer took the initiative to escort Student upstairs to her office to calm down. After about 10 minutes, Student started the misconduct which was the direct cause of his expulsion. He threw a box of tissues, a book and other items across the office. His aggression intensified to slamming objects against other objects and furniture in the room, rocking a table, and picking up a lacrosse stick and slamming it against furniture in the room. Ultimately, Student approached Chief Academic Officer with the lacrosse stick and began slamming it against her desk. Chief Academic Officer telephoned for help. Staff Member came first. Then Mother, who worked nearby, arrived. Finally, Father was called by telephone to talk to Student. Even after both Parents had remonstrated with Student, it took Staff Member another 30 minutes to get Student to calm down. After the incident, Student was immediately suspended from school. The school convened a meeting of the MDR team on October 15, 2013, at which time the MDR team determined that Student's behavior in the Chief Academic Officer's office had not been a manifestation of his disability. He was expelled from school the same day.

In *School Board of the City of Norfolk v. Brown*, 769 F.Supp.2d 928 (E.D.Va. 2010), the court described the IDEA's provisions regarding manifestation determination reviews:

Pursuant to the IDEA, school personnel may remove a disabled student who has violated a code of conduct from his current educational setting under limited circumstances. Where school personnel intend to place the disabled child in an alternative educational setting for a period of more than ten school days, the

school must first determine that the student's behavior was not a manifestation of his disability. *See* 20 U.S.C. § 1415(k)(1)(C). In conducting this inquiry, within ten days of any decision to change the student's placement, the local educational agency, the parent, and relevant members of the student[s] IEP team (collectively, the "MDR team") shall "review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—(I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or (II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP." § 1415(k)(1)(E)(i). Where the MDR team answers either of the above inquiries in the affirmative, the student's conduct shall be determined to be a manifestation of his or her disability and the student shall be returned to the educational placement from which he or she was removed. §§ 1415(k)(1)(E)(i), 1415(k)(1)(F)(iii).

*Id.* at 945–46 (emphasis supplied). The criteria that the LEA, parent, and relevant members of the IEP Team must consider to determine whether a child's conduct is a manifestation his disability is "broad and flexible," and would include such factors as "the inter-related and individual challenges associated with many disabilities." In amending the MDR provisions of the IDEA in 2004, Congress intended to ensure that the manifestation determination is done carefully and thoroughly, with consideration of any rare or extraordinary circumstances presented, and that the manifestation determination will analyze the child's behavior as demonstrated "across settings and across time." *See* Department of Education, Assistance to States for the Education of Children with Disabilities, 71 Fed. Reg. 46720 (August 14, 2006).

Here the Parents appeal the MDR team's October 15, 2013 determination that Student's conduct in the Chief Academic Officer's office on October 8, 2013 was neither caused by, nor had a direct and substantial relationship to, Student's disability. The MDR team's decision, informed by the views of PCS School Psychologist, was evidently based upon a rather narrow understanding of Student's disability. At the MDR meeting, PCS School Psychologist reviewed typical symptoms of ADHD – inattention, impulsivity, staying on task, not following directions, failing to complete assignments, fidgeting, and running about. PCS School Psychologist

informed the MDR team that Student was not facing disciplinary action as a result of displayed frustration or difficulty responding to redirection which were demonstrated earlier that day, but rather the culmination of more severe and safety-related issues, namely threatening bodily harm to a teacher, destruction of property and attempted and actual physical assault toward adults. Based upon the ADHD criteria explained by PCS School Psychologist, the MDR team determined that Student's conduct was not a manifestation of his disability.

I find that, by focusing so narrowly on Student's ADHD diagnosis, the MDR team failed to give the "broad and flexible" consideration to Student's disability and the October 8, 2013 incident which the IDEA requires. Prior to the October 15, 2013 MDR meeting, PCS had not obtained Student's records or evaluations from his prior schools except for his May 31, 2013 IEP and July 2012 OT evaluation. In the OT evaluation, Student was reported by his Charter School 2 special education teacher to have marked mood variations with a tendency to outburst or tantrum. In a July 23, 2012 educational reevaluation, Charter School Psychologist reported that Student continued "to deal with perceived power struggles with adults as well as peers. He is overly concerned about what is 'fair'. These behaviors may stem from his underlying poor self image, which may accompany Attention Deficit/ Hyperactivity." A July 26, 2012 Charter School 2 Evaluation Summary Report noted that Student was unable to control his anger during boys group. It appears that the MDR team did not have access to these two reports. By not obtaining Student's special education evaluations from Charter School 2, PCS failed to ensure that the MDR team was able to review all relevant information in Student's file. Had the MDR team reviewed the relevant educational records from Charter School 2, the team should have understood that Student's OHI disability, "as demonstrated across settings and across time," was not limited to the common symptoms of ADHD described by PCS School Psychologist.

At the due process hearing, Charter School Psychologist testified that Student's ADHD manifested itself as poor impulse control, as well as inattention, and that his poor impulse control was reflected in impulsivity, acting out, poor self-regulation and emotional peaks and valleys. She opined that Student's October 8, 2013 behaviors appeared to be consistent with his ADHD diagnosis, because the incident demonstrated poor impulse control (threatening to kill the teacher), impulsivity, not considering the consequences of his behavior, and lack of self regulation. Respondent's expert, PCS School Psychologist, testified, to the contrary, that while Student's antecedent behaviors – acting out in the classroom, threatening to kill his teacher, being disruptive in the Dean's office – could all have been manifestations of his disability, his conduct in Chief Academic Officer's office a few minutes later was not, because his latter behavior was prolonged, not impulsive.

I find the opinion of Charter School Psychologist more persuasive than that of PCS School Psychologist. Charter School Psychologist, who had worked with Student for several years, had conducted and/or reviewed his prior evaluations and was familiar with the anger control and power struggle aspects of his disability. PCS School Psychologist was less familiar with Student's disability because she had worked with Student only in the current school year, she had not conducted any formal evaluations and, before the MDR meeting, she had not reviewed most of his records from prior years. Furthermore, PCS School Psychologist agreed that Student's conduct in the classroom, in the hallway and in the Dean's office on October 8, 2013 may have been manifestations of his disability. I am not persuaded by her opinion that the child's conduct a few minutes later in the Chief Academic Officer's office is separable from the antecedent disability-related conduct. I conclude, therefore, that Parents have met their burden of proof to establish that the MDR team erred in determining that Student's October 8, 2013

conduct in Chief Academic Officer's office was neither caused by nor had a direct and substantial relationship to his IDEA disability.

(ii) Alternative Interim Educational Services

In view of my finding that the MDR team erred in deciding that Student's conduct was not a manifestation of his IDEA disability, the IDEA requires that Student be returned to his educational placement at PCS. However, even if the MDR team's determination had been correct, PCS also violated the IDEA's requirements for providing interim alternative educational services. A child with a disability, who is removed from his current placement for disciplinary reasons, must continue to receive educational services, so as to enable him to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in his IEP. *See* 34 CFR § 300.530(d). The services to be provided a child, placed in an interim alternative educational setting, must be decided by the child's IEP team. *See Assistance to States for the Education of Children with Disabilities, supra*, 71 Fed. Reg. 46683.

Here PCS did not convene Student's IEP team to determine his requirements for interim educational services after the October 15, 2013 MDR meeting. On October 17, 2013, PCS unilaterally proposed an "interim placement" for Student. As described in an email from PCS' Co-Counsel, PCS offered to provide Student 6 hours per week of specialized instruction and 60 minutes per week of behavioral support services at an off-site location. Head of School discussed this proposal with the Parents at the October 22, 2013 resolution meeting for this case. Whether or not this level of services would have sufficed to enable Student to continue to participate in the general education curriculum and to progress toward meeting the goals in his IEP (a doubtful proposition), PCS violated the IDEA's requirement that Student's IEP team,

including his Parents, decide the interim services that Student must be provided.

PCS' failure to convene Student's IEP team to determine what interim services Student required was a procedural violation of the IDEA. *See, e.g., Metropolitan Bd. of Public Educ. of the Metropolitan Government of Nashville and Davidson County v. Bellamy* 116 Fed.Appx. 570, 578, 2004 WL 2452567, 7 (6<sup>th</sup> Cir. 2004) (Affirming failure to timely convene IEP meeting constituted a procedural violation.) Procedural violations of IDEA do not, in themselves, mean a child was denied a FAPE. *See Schoenbach v. District of Columbia*, 309 F.Supp.2d 71, 78 (D.D.C.2004). Parents are required to demonstrate that their child suffered an "educational harm" in order to establish that he was denied a FAPE by a procedural violation of the IDEA. *See, e.g., Taylor v. District of Columbia*, 770 F.Supp.2d 105, 109-110 (D.D.C.2011). On October 28, 2013, after only one session of PCS' alternative educational services, Parents withdrew Student from PCS and enrolled him in a DCPS public school. No evidence was offered that Student has not been able to participate in the general education curriculum or progress toward meeting his IEP goals in the DCPS setting. I find, therefore, that the Parents have not shown that Student suffered educational harm, or was denied a FAPE, by PCS' failure to follow the IDEA procedural requirements for interim alternative educational services.

iii. Failure to Conduct FBA after October 8, 2013 Incident

The IDEA requires that when a child with a disability is removed from his current placement for a conduct code violation, he must receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur. *See* 34 CFR § 300.530(d)(ii). PCS did not conduct an FBA of Student after the October 8, 2013 incident. However, because the Parents withdrew Student from PCS on October 28, 2013, there was no educational harm to Student

from this omission. *See Taylor, supra*. I find that Student has not been denied a FAPE by PCS' failure to conduct an FBA of Student or develop a BIP. Hearing officers have broad discretion in ordering relief for a denial of FAPE. *See, e.g., G.G. ex rel. Gersten v. District of Columbia*, 2013 WL 620379, 8 (D.D.C. Feb. 20, 2013) (Once a court holds that the public placement violated the IDEA, the court enjoys broad discretion in granting such relief as it determines is appropriate.) Assuming that Parents elect to have Student return to PCS, I find that appropriate equitable relief will include requiring PCS to conduct an FBA of Student and to provide appropriate behavior intervention services and modifications.

iv. Failure to conduct a comprehensive psychological reevaluation

The final issue alleged by the Parents in this case is that PCS failed to conduct a comprehensive psychological reevaluation of Student when requested by the Parents. The IDEA requires that an LEA must ensure that a reevaluation of each child with a disability is conducted, *inter alia*, when the child's parent or teacher requests a reevaluation, subject to the limitation that a reevaluation may occur not more than once a year, unless the parent and the LEA agree otherwise. *See* 34 CFR § 300.303. The Act does not set a time frame within which an LEA must conduct a reevaluation after receiving a request from a student's parent. *See Herbin ex rel. Herbin v. District of Columbia*, 362 F.Supp.2d 254, 259 (D.D.C.2005). In light of the lack of statutory guidance, *Herbin* concluded that "[r]evaluations should be conducted in a 'reasonable period of time,' or 'without undue delay,' as determined in each individual case." *Id.* (quoting *Office of Special Education Programs Policy Letter in Response to Inquiry from Jerry Saperstone*, 21 IDELR 1127, 1129 (1995)).

At the resolution meeting on October 22, 2013, Petitioners' Counsel requested PCS to conduct an FBA and a comprehensive psychological evaluation. The evidence in this case does

not establish that the Parents requested a psychological reevaluation of Student before the resolution meeting. Mother and PCS School Psychologist did discuss conducting an FBA of Student around the end of September 2013. I find that the “reasonable period of time” mandate would not have required that PCS conduct the FBA of Student before the October 8, 2013 disciplinary incident. Parents, therefore, have not shown that Student was denied a FAPE by PCS’ failure to timely conduct an FBA or psychological reevaluation of Student.

#### Compensatory Education

Parents presented no evidence in support of the request, in their due process complaint, for an award of compensatory education. The IDEA gives hearing officers “broad discretion” to award compensatory education as an “equitable remedy” for students who have been denied a FAPE. *See Reid v. District of Columbia*, 401 F.3d 516, 522-523 (D.C. Cir. 2005). A compensatory education award must “rely on individualized assessments” after a “fact specific” inquiry. *Id.* at 524. “In formulating a new compensatory education award, the hearing officer must determine ‘what services [the student] needs to elevate him to the position he would have occupied absent the school district’s failures.’” *Stanton v. Dist. of D.C.*, 680 F.Supp.2d 201, 206 (D.D.C. 2010) (quoting *Anthony v. District of Columbia*, 463 F.Supp.2d 37, 44 (D.D.C. 2006); *Reid*, 401 F.3d at 527.) *See, also, e.g., Turner v. District of Columbia*, 2013 WL 3324358, 10-11 (D.D.C. July 2, 2013). The ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. *Gill v. District of Columbia*, 770 F.Supp.2d 112, 116-117 (D.D.C.2011), *aff’d.*, *Gill v. District of Columbia*, 2011 WL 3903367, 1 (D.C. Cir. Aug. 16, 2011). Here Parents were able to enroll Student in DCPS Public School on October 28, 2013, some eight school days after the October 15, 2013 MDR meeting. There was no evidence of what, if any, additional educational benefits this Student would have received if the MDR

team had returned him sooner to his classroom. Therefore, I decline to grant an award of compensatory education. However, I will order PCS to provide Student such additional make-up work or other academic assistance he may reasonably need to get caught up with his classmates.

### **ORDER**

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

1. PCS is ordered to return Student, without delay, to his placement at the school, from which he was removed as a result of the October 8, 2013 incident. PCS shall ensure that Student receives such appropriate academic assistance, as he may reasonably need, to make up for instruction missed during his absence from the school;
2. Upon Student's return to PCS, subject to obtaining parental consent, PCS shall, without undue delay, conduct a functional behavioral assessment of Student and convene Student's IEP team to develop a Behavior Intervention Plan based upon the evaluation; and
3. All other relief requested by Petitioners herein is denied.

Date: November 18, 2013

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).