

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

Student Hearing Office  
810 First Street, N.E., 2<sup>nd</sup> Floor  
Washington, DC 20002

OSSE  
Student Hearing Office  
March 11, 2013

Parent,<sup>1</sup> on behalf of,  
Student,

Petitioner,

Date

Issued: March 11, 2013

Hearing

Officer: Melanie Byrd Chisholm

v.

Case

No: 2013-0056

District of Columbia Public Schools,  
Respondent.

Hearing

Date: February 25, 2013

Room

: 2004

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**HEARING OFFICER DETERMINATION**

**BACKGROUND AND PROCEDURAL HISTORY**

The student is a [REDACTED] whose location of services was changed from School A to School C. The student's current individualized education program (IEP) lists Multiple Disabilities (MD) as his primary disability and provides for him to receive fifteen (15) hours per week of specialized instruction outside of the general education environment, thirty (30) minutes per week of behavioral support services outside of the general education environment and one hundred twenty (120) minutes per month of speech-language therapy outside of the general education environment.

On January 30, 2013, Petitioner filed a Due Process Complaint against Respondent District of Columbia Public Schools (DCPS), alleging that DCPS denied the student a free appropriate public education (FAPE) by failing and refusing to convene a manifestation determination review of the student's suspension/expulsion/involuntary transfer in January 2013; failing to comply with critical procedural requirements of the Individuals with Disabilities Education Act (IDEA) by failing to provide notices to the parent, failing to provide notices in the parent's native language and failing to provide the parent with notice of her rights regarding a hearing; and failing and refusing to provide the parent with access to and a copy of the student's complete educational records, including but not limited to the student's disciplinary records. As relief for this alleged denial of FAPE, Petitioner requested, *inter alia*, that the student's location of services immediately be changed to School A; all records regarding the incidents which prompted the student's involuntary transfer be removed from the student's records; that DCPS

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

convene an IEP Team meeting to review and revise the student's IEP, including a review and revision of the student's behavior intervention plan; and that DCPS immediately provide the parent access to and a copy of the student's educational records.

The parties did not participate in a Resolution Meeting.

On February 5, 2013, Respondent filed a timely Response to the Complaint. In its Response, and orally during the prehearing conference, the Respondent asserted that the student's transfer from School A to School B was not a discipline transfer but a safety transfer; there was no manifestation determination required; involuntary transfer is not an issue governed by the IDEA; and DCPS has provided the parent's attorney with all of the student's educational records with the possible exception of the records regarding the safety transfer and the student's report cards. The Respondent's Response also includes a Motion to Dismiss or in the Alternative Motion for Summary Adjudication and an Opposition to Petitioner's Motion for Stay Put.

On February 5, 2013, Hearing Officer Melanie Chisholm convened a prehearing conference and led the parties through a discussion of the issues, relief sought and related matters. During the prehearing conference, the parties identified February 25, 2013 as the date for the due process hearing in this matter. Accordingly, the parties agreed that the 20-school day timeline started to run on January 30, 2013, and the 10-school day timeline for the Hearing Officer Determination (HOD) to be issued, following the date of the due process hearing, ends on March 11, 2013. The Hearing Officer issued the Prehearing Order on February 6, 2013. The Prehearing Order clearly outlined the issues to be decided in this matter. Both parties were given three (3) business days to review the Order to advise the hearing officer if the Order overlooked or misstated any item. Neither party disputed the issue as outlined in the Order.

The Prehearing Order also included an Order for the Respondent to comply with 34 CFR §300.613. The Order also mandated that the parent, or parent representative, must give reasonable notice (at least two (2) full business days and at a time mutually convenient for School B) to DCPS of the date and time intended to inspect and review the student's records; that the Petitioner be permitted to disclose any education records after the disclosure deadline that were included in the student's education records and had not been previously provided to Petitioner; and barred the Respondent from disclosing any education records that had not been made available to Petitioner at the time the Petitioner inspected and reviewed the student's records.

On February 20, 2013, the Hearing Officer convened a second prehearing conference to discuss the status of Petitioner's access to the student's educational records and Respondent's Motion to Dismiss. The Petitioner contended that the parent has not been given access to the student's disciplinary records. The Respondent contended that the Petitioner had been given all school records. The Hearing Officer required the Respondent to submit, by the end of the day on February 20, 2013, a certification from the Respondent that all of the student's educational records had been provided to the parent. DCPS submitted the requested certification. The Hearing Officer also informed the parties that the issue regarding educational records would not be decided by the hearing officer since the remedy had already been granted in the Prehearing Order.

On February 20, 2013, the Hearing Officer issued an Order Denying Respondent's Motion to Dismiss and Respondent's Motion for Summary Judgment concluding that in the light most favorable to the Petitioner, the factual allegations that the student was suspended for disciplinary purposes and the change in location of services constituted a change in placement were sufficient to move to hearing. The Hearing Officer did not address Respondent's Opposition to Petitioner's Motion for Stay Put because Petitioner did not file a Motion for Stay Put in the present matter.

On February 15, 2013, Petitioner filed Disclosures including four (4) exhibits and four (4) potential witnesses.<sup>2</sup> On February 22, 2013, pursuant to the Prehearing Order, the Petitioner filed supplemental Disclosures including one (1) additional exhibit. On February 15, 2013, Respondent filed Disclosures including one (1) exhibit and one (1) witness.

The due process hearing commenced at approximately 9:30 a.m. on February 25, 2013 at the OSSE Student Hearing Office, 810 First Street, NE, Washington, DC 20002, in Hearing Room 2004. The Petitioner elected for the hearing to be closed however a Spanish interpreter was present and offered simultaneous interpretation of the proceedings to the parent.

Petitioner's Exhibits 1-5 were admitted without objection. The Petitioner objected to "everything except page 1" of Respondent's Exhibit 1, arguing that the document had not been sent or given to the parent prior to the Disclosure deadline. Respondent's Exhibit 1 was admitted over Petitioner's objection with the understanding that the exhibit was not being admitted to prove that the entire document had been sent or given to the parent prior to the Disclosure deadline.

The hearing concluded at approximately 1:26 p.m. following closing arguments by both parties.

### Jurisdiction

The hearing was conducted and this decision was written pursuant to the Individuals with Disabilities Education Act (IDEA), P.L. 101-476, as amended by P.L. 105-17 and the Individuals with Disabilities Improvement Act of 2004, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter E-30.

### ISSUES

The issues to be determined are as follows:

1. Whether DCPS was required to convene a manifestation determination prior to involuntarily transferring the student from School A to School B, and if so, whether this failure constitutes a denial of a free appropriate public education (FAPE)?
2. Whether, in January 2013, DCPS failed to provide the parent with written disciplinary notices, notices in her native language and notice of procedural safeguards related to

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<sup>2</sup> A list of exhibits is attached as Appendix B. A list of witnesses who testified is included in Appendix A.

the involuntary transfer of the student and, if so, whether these failures constitute a denial of a FAPE?

### **FINDINGS OF FACT**

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Findings of Fact are as follows:

1. The student is a student with disabilities as defined by 34 CFR §300.8. (Stipulated Fact)
2. The student's August 20, 2012 IEP prescribes 15 hours per week of specialized instruction outside of the general education environment. (Petitioner's Exhibit 3)
3. From August 27, 2012 through January 9, 2013, 14 disciplinary referrals were completed at School A regarding the student's behavior. (Petitioner's Exhibits 1 and 5; Assistant Principals' Testimony)
4. School A did not provide the parent with copies of disciplinary referrals. (Parent's Testimony; Assistant Principal's Testimony)
5. Discipline referrals are not official school records. (Assistant Principal's Testimony)
6. In October 2012, the student and his family were referred by DCPS to a truancy diversion program because the student was often late to school and often "skipped" class. (Family Support Specialist's Testimony)
7. The Family Support Specialist began working with the student and his family in October 2012 to address the student's truancy issues. (Family Support Specialist's Testimony)
8. The student received an out-of-school suspension for four school days from October 15-18, 2012. (Petitioner's Exhibits 1 and 5; Parent's Testimony; Assistant Principal's Testimony)
9. For the incident which occurred on November 19, 2012, School A had the student sign a behavior contract rather than suspend the student. (Petitioner's Exhibits 1 and 5; Assistant Principal's Testimony)
10. For the incident which occurred on November 26, 2012, the student received an in-school suspension on December 21, 2012. (Petitioner's Exhibits 1 and 5)
11. The student did not receive specialized instruction during in-school suspension. (Assistant Principal's Testimony)
12. The student received related services during in-school suspension. (Assistant Principal's Testimony)
13. The student received an out-of-school suspension for four school days from December 10-14, 2012. (Petitioner's Exhibits 1 and 5; Parent's Testimony; Family Support Specialist's Testimony; Assistant Principal's Testimony)
14. The student's parent was informed of the student's out-of-school suspensions. (Parent's Testimony; Assistant Principal's Testimony)
15. November 2, 2012 and December 14, 2012 were district-wide staff days for which there was no school for students. (Assistant Principal's Testimony)

16. With the exception of the eight days of out-of-school suspension, the student was never prohibited from attending school. (Parent's Testimony; Assistant Principal's Testimony)
17. On or about December 11, 2012, DCPS completed a Notice of Proposed Involuntary Transfer for the student. (Petitioner's Exhibit 2; Respondent's Exhibit 1)
18. School A decided to involuntarily transfer the student out of School A because the student was bullying and physically and sexually harassing English Language Learners (ELL) students. (Petitioner's Exhibits 1 and 5; Respondent's Exhibit 1; Family Support Specialist's Testimony; Assistant Principal's Testimony)
19. The process governing involuntary transfers is conducted through the DCPS Office of Youth Engagement not the DCPS Office of Special Education. (Assistant Principal's Testimony)
20. The student's parent was aware of the involuntary transfer in December 2012. (Parent's Testimony; Family Support Specialist's Testimony)
21. In December 2012, the parent informed School A that School B was too far and requested a school closer to the family's home. (Parent's Testimony; Assistant Principal's Testimony)
22. DCPS hand delivered the Notice of Proposed Involuntary Transfer to the student's grandfather on January 7, 2013. (Parent's Testimony; Assistant Principal's Testimony)
23. The Notice of Proposed Involuntary Transfer provided to the student's grandfather was not provided in Spanish and did not contain the accompanying Summary of Proposed Involuntary Transfer Procedures. (Parent's Testimony)
24. During the first week of January 2013, the Family Support Specialist contacted the Assistant Principal to confirm the student's assigned school. (Family Support Specialist's Testimony)
25. The Assistant Principal responded to the Family Support Specialist on the same day and confirmed that the student was being transferred because of bullying and was assigned to School C. (Family Support Specialist's Testimony)
26. Following a call from DCPS, in the second or third week of January 2013, indicating that DCPS would begin truancy proceedings if the student did not attend school, the parent enrolled the student in School C. (Parent's Testimony)
27. DCPS arranged for the student to receive transportation to School C. (Parent's Testimony)
28. School C is able to implement the student's IEP. (Assistant Principal's Testimony)

### **CONCLUSIONS OF LAW**

Based upon the above Findings of Fact, the arguments 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 special education due process hearing is on the party seeking relief. 5 DCMR §E-3030.3; *see Schaffer v. Weast*, 546 U.S. 49 (2005). Based solely upon the evidence presented at the due process hearing, an impartial hearing officer must determine

whether the party seeking relief presented sufficient evidence to prevail. 5 DCMR §E-3030.3. The recognized standard is the preponderance of the evidence. *See N.G. v. District of Columbia*, 556 F. Supp. 2d 11 (D.D.C. 2008); *Holdzclaw v. District of Columbia*, 524 F. Supp. 2d 43, 48 (D.D.C. 2007); 20 U.S.C. §1415(i)(2)(C)(iii).

In *Board of Education v. Rowley*, 458 U.S. 176 (1982), the Supreme Court of the United States held that the term “free appropriate public education” means “access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped.” The Court in *Rowley* stated that the Act does not require that the special education services “be sufficient to maximize each child's potential ‘commensurate with the opportunity provided other children.’” Instead, the Act requires no more than a “basic floor of opportunity” which is met with the provision of “personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” *Id.* at 200-203. The United States Supreme Court has established a two-part test for determining whether a school district has provided a FAPE to a student with a disability. There must be a determination as to whether the schools have complied with the procedural safeguards as set forth in the IDEA, 20 U.S.C. §§1400 et seq., and an analysis of whether the IEP is reasonably calculated to enable a child to receive some educational benefit. *Id.*; *Kerkam v. Superintendent D.C. Public Schools*, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991).

#### Issue #1

The IDEA regulations discipline procedures provide that school personnel may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconducts (as long as those removals do not constitute a change in placement under §300.536). After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required in 34 CFR §300.530(d). 34 CFR §300.530(b).

Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child’s IEP Team (as determined by the parent and the LEA) must 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 if the conduct in question was caused by, or had a direct and substantial relationship to, the child’s disability; or if the conduct in question was the direct result of the LEA’s failure to implement the IEP. 34 CFR §300.530(e)(1). This process is known as a manifestation determination review. *See* 34 CFR §300.530(e).

For purposes of removals of a child with a disability from the child’s current educational placement under §§300.530 through 300.535, a change of placement occurs if – (1) the removal is for more than 10 consecutive school days; or (2) The child has been subjected to a series of

removals that constitute a pattern – (i) Because the series of removals total more than 10 school days in a school year; (ii) Because the child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals; and (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another. 34 CFR §300.536(a).

In the present matter, DCPS transferred the student from School A to School B as an “involuntary transfer” as a result of the student’s behavior. The Petitioner argued that the “involuntary transfer” constituted a change in placement which required a manifestation determination.

From the beginning of the 2012-2013 school year until the filing of the Complaint, fourteen disciplinary referrals were completed at School A regarding the student’s behavior. The Assistant Principal of School A testified that discipline referrals are not official school records. The Assistant Principal explained that referrals are a tool for teachers to communicate student behavior to administration and for administration to communicate consequences the student may have received back to the referring teacher. Nevertheless, the disciplinary referrals provide information regarding School A’s response to the student’s behavior.

On September 10, 2012, the student “skipped” class and according to the discipline referral, received a lunch detention on September 11, 2012. On September 12, 2012, the student “skipped” class and according to the discipline referral, School A contacted the student’s parent to address the student’s behavior. On October 1, 2012, the student “skipped” class and according to the discipline referral, the student received a Saturday detention on October 13, 2012. On October 31, 2012, the student “skipped” class and according to the discipline referral, the student received a detention on November 2, 2012, a district-wide staff development day for which there was no school for students. On November 14, 2012, the student “skipped” class and according to the discipline referral, the student received an “other” consequence. On November 16, 2012, the student “skipped” class and according to the discipline referral, the student received a Saturday detention on December 1, 2012. On November 19, 2012, the student kicked another student and verbally threatened a teacher and according to the discipline referral, the student received a two day suspension on November 30, 2012 and December 3, 2012. On November 26, 2012, the student “skipped” class and according to the discipline referral, the student received an in-school suspension on December 21, 2012. On November 30, 2012, the student inappropriately touched another student and according to the discipline referral, the student’s behavior was a basis for the decision to involuntarily transfer student to another school. On December 4, 2012, the student, along with another student, hit a third student and according to the discipline referral, received a half-day in-school suspension for the remainder of the school day. On December 4, 2012, the student, along with two other students, threatened another student and according to the discipline referral, the student’s behavior was a basis for the decision to involuntarily transfer the student to another school. On December 5, 2012, the student, along with another student, kicked a third student and according to the disciplinary referral, the student’s behavior was a basis for the decision to involuntarily transfer the student to another school and the student received five days of suspension. On December 5, 2012, the student wrote a gang symbol on his arm and according to the discipline referral, the student received five days

of suspension<sup>3</sup>. On December 7, 2012, the student, along with three other students, hit and threw papers and rubber bands at another student and according to the discipline referral, the student received four and one half days of suspension on December 7-13, 2012<sup>4</sup>.

According to the official school record, the Student Incident Report, and accompanying Notices of Final Disciplinary Action, from the beginning of the 2012-2013 school year until the Complaint was filed, the student received two out-of-school suspensions. The first suspension was from October 15-18, 2012 (four school days). The second suspension was from December 10-14, 2012 (four school days)<sup>5</sup>. It is possible that student also served additional two days of out-of-school suspension on November 30, 2012 and December 3, 2012 for the November 19, 2012 incident, however according to the official school record, School A had the student sign a behavior contract rather than suspend the student. It is also possible that the student received in-school suspensions for one full day on December 21, 2012 for the November 26, 2012 incident, for a half day on December 4, 2012 for the December 4, 2012 incident, and for a half day on December 7, 2012 for the December 7, 2012 incident. For the half days of in-school suspension, the Petitioner presented no evidence which suggested that the student did not receive three hours of specialized instruction pursuant to his IEP prior to serving the in-school suspension. The Hearing Officer concludes that, in addition to the eight days of out-of-school suspension on October 15-18, 2012 and December 10-13, 2012, the student had one additional day of suspension, where the student did not receive specialized instruction pursuant to his IEP<sup>6</sup>, on December 21, 2012, for a total of nine days of suspension.

On or about December 11, 2012, DCPS completed a Notice of Proposed Involuntary Transfer for the student. The Notice indicated that DCPS proposed to transfer the student to School B because of the student's "bullying and physical and sexual harassment of ELL students." The reason included on the Notice aligns with discipline referrals for the student on November 19, 2012, November 30, 2012, December 4, 2012, December 5, 2012 and December 7, 2012. The Assistant Principal explained that School A made the decision to involuntarily transfer the student rather than to suspend the student because the student who was being bullied was suffering "significant emotional issues" and suspending the student would not ensure the safety of the student being bullied, it would only temporarily remove the student from the situation and would continue to allow him access to the other student following the conclusion of the suspension.

While the Notice of Proposed Involuntary Transfer is dated December 11, 2012, both the Parent and the Assistant Principal testified that DCPS hand delivered the Notice of Proposed Involuntary Transfer to the student's grandfather on January 7, 2013, the first day of school after DCPS' Winter Break. Prior to January 7, 2013, the student was not prohibited from attending school. In fact, the student had an in-school suspension on December 21, 2012, the last day of school before Winter Break.

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<sup>3</sup> The five days of suspension for the second infraction on December 5, 2012 were the same five days of suspension for the first infraction on December 5, 2012.

<sup>4</sup> The four and one half days of suspension for the December 7, 2012 infraction were the same days of suspension for the December 5, 2012 infractions.

<sup>5</sup> December 14, 2012 was a Professional Development Day for DCPS staff. Students did not attend school.

<sup>6</sup> The Assistant Principal testified that students in in-school suspension receive related services pursuant to their IEPs.

Although the parents did not receive the Notice of Proposed Involuntary Transfer until January 7, 2013, the student's parent was aware of the involuntary transfer in December 2012. The student's parent testified that she knew not to send the student back to School A after the Winter Break but did not know which school the student would attend because she had not received the "paperwork." The Family Support Specialist also testified that the parent contacted her in December 2012 to inform her that the student was not to return to School A after the Winter Break. While the parent testified that she did not know which school to which the student was assigned, she also testified that she indicated to someone at School A that School B was too far and she was requesting a school closer to the family's home. The parent further testified that she was told that the student was assigned to School C but could not recall who informed her that the student was assigned to School C.

During the first week of January 2013, the Family Support Specialist contacted the Assistant Principal to confirm the student's assigned school. The Assistant Principal responded to the Family Support Specialist on the same day and confirmed that the student was being transferred because of bullying and was assigned to School C because of the parent's concern that School B was too far from the family's home. Following a call from DCPS indicating that DCPS would begin truancy proceedings if the student did not attend school, the parent enrolled the student in School C and DCPS arranged for the student to receive transportation to School C. Both the parent and the Assistant Principal testified that the student was never prohibited from attending school; he was only prohibited from attending School A.

"Educational placement," as used in IDEA means the educational program, not the particular institution where the program is implemented. *White v. Ascension Parish School Board*, 343 F.3d 373, 379 (5th Cir. 2003) (citations omitted); *see also, A.K. v. Alexandria City School Board*, 484 F.3d 672, 680 (4th Cir. 2007) (citing *AW v. Fairfax County School Board*, 372 F.3d 674, 676 (4th Cir. 2004)). School districts are afforded much discretion in determining which school a student is to attend. *See White, supra*. The Comments to the Federal Regulations note that "placement" refers to points along the continuum of placement options available for a child with a disability and "location" refers to the physical surrounding, such as the classroom, in which a child with a disability receives special education and related services. 71 Federal Register 46540:46588 (14 August 2006).

"The touchstone of 'educational placement' is not the location to which the student is assigned but rather the environment in which educational services are provided. Where a change in location results in a dilution of the quality of a student's education or a departure from the student's least restrictive-compliance setting, a change in educational placement occurs." *AW v. Fairfax County School Board*, 372 F.3d 674, 676 (4th Cir. 2004).

The Petitioner presented no evidence which suggested that School B or School C is unable to implement the student's IEP, has differences in educational programming from School A or is more restrictive than School A. Likewise, the Petitioner presented no evidence which suggested that the student's IEP or services changed in any way as a result of the involuntary transfer. The Assistant Principal testified that she confirmed with School C that School C could and would implement the student's IEP.

The Hearing Officer concludes that despite Petitioner's assertion to the contrary, the Respondent's decision to involuntarily transfer the student from School A did not constitute a change in placement in terms of educational programming or in terms of a disciplinary removal. *See e.g., J.S. v. Lenape Regional High School District Board of Education*, 102 F.Supp.2d 540 (D.N.J. 2000) (school district's transfer of LD student from one school to another school within same district did not constitute change in placement where the two schools had slightly different student demographics but there was no substantive difference between the two class settings). The student did not receive a removal for more than ten consecutive days, or a series of removals totaling more than ten days nor was the student's educational programming altered by the change in location of services from School A to School C. Therefore, DCPS was not required to conduct a manifestation determination prior to transferring the student from School A to School C.

The Petitioner failed to meet its burden with regard to Issue #1.

#### Issue #2

The IDEA imposes strict procedural requirements on educators to ensure that a student's substantive right to a "free appropriate public education" is met. 20 U.S.C. § 1415. The IDEA regulations at 34 CFR §300.513(a)(2) state that in matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit.

The IDEA and its implementing regulations require that the parent be fully informed of all information relevant to an activity for which consent is sought in his or her native language (34 CFR §300.9); that procedural safeguards notices be provided in the native language of the parent (34 CFR §300.504(d)); that prior written notice be provided in the native language of the parent (34 CFR §300.503(c)(1)(ii)); that the district take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English (34 CFR §300.322(e)); and that notice to inform parents about confidentiality of personally identifiable information (34 CFR §300.612(a)(1)).

In the present matter, the Petitioner alleged that DCPS failed to provide the parent with written disciplinary notices, notices in her native language and notice of procedural safeguards related to the involuntary transfer of the student. The Petitioner did not allege that the parent has not received Notice of Procedural Safeguards related to IDEA processes in her native language.

The record contains evidence that the parent did not receive disciplinary referrals and that the parent did not receive the Notice of Proposed Involuntary Transfer and the accompanying Summary of Proposed Involuntary Transfer Procedures in her native language. The Assistant Principal testified that disciplinary referrals are not provided to the parents since they are not official school records and serve as a communication tool for teachers and administrators. The Notice of Proposed Involuntary Transfer is an official school record however this type of notice

is not specifically required by the IDEA to be provided to the parent in the parent's native language.

Beyond the circumstances specifically outlined in the IDEA regulations, the U.S. Department of Education Office of Special Education Programs (OSEP) and the courts have contemplated other circumstances in which notice must be provided in the parent's native language. For example, in *Letter to Boswell*, 49 IDELR 196 (OSEP 2007), OSEP stated that with respect to translation of the IEP, there is no specific requirement that a district translate IEP documents into a parent's native language. However, with respect to "fully informed" parental consent, "[f]or parents who read in their native language, providing the parents with written translations of the IEP documents may be one way for a school district to demonstrate that the parent has been fully informed of their child's educational program."

In *E.H. and H.H. v. Gerald N. Tirozzi*, 735 F.Supp. 53, (U.S. District Court, Conn. April 16, 1990) (citing *Kaplan v. Board of Educ.*, 759 F.2d 256 (2d Cir. 1985); *Barry v. City of New York*, 712 F.2d 1554, 1560 (2d Cir.), cert. denied, 464 U.S. 1017 (1983)), the court discussed the rights of the parent, whose native language was not English, in tape recording an IEP Team meeting for the purpose of later reviewing the IEP Team meeting discussion with a dictionary. The court concluded that the privacy interests of district employees "would be outweighed by the legitimate and substantial interests of the EHA in ensuring parents a right to meaningful participation and in enforcing the procedural safeguards to protect that right."

The present case is distinguished by these examples because the examples include processes surrounding the student's IEP and IEP Team meetings. In the present matter, the Notice of Proposed Involuntary Transfer and the Summary of Proposed Involuntary Transfer Procedures are not elements of the student's IEP and are not documents mandated to be discussed by an IEP Team. The process governing involuntary transfers is conducted through the DCPS Office of Youth Engagement not the DCPS Office of Special Education and governed by DCMR 5-E §§ 2107 and 2018. Student's parents may request a hearing to review an involuntary transfer pursuant to DCMR 5-E § 2504 however this review is beyond the authority of the Hearing Officer and outside of the scope of a special education Due Process Hearing.

Next, the parent testified that while she did not recall receiving Notice of Final Disciplinary Action, she was informed of the student's out-of-school suspensions in October and December. It may be that the failure to provide disciplinary notices in the parent's native language could rise to the level of a procedural violation if the parent is not given adequate information to meaningfully participate in an IEP meeting or a manifestation determination however in this case, an IEP Team meeting was not held and a manifestation determination was not required.

The Hearing Officer concludes that the IDEA and its implementing regulations as well as relevant provisions of the District of Columbia Code and the Code of DC Municipal Regulations related to special education do not require the LEA to provide the parent with written disciplinary notices, disciplinary notices in her native language or notice of procedural safeguards related to the involuntary transfer of the student.

The Petitioner failed to meet its burden with regard to Issue #2.

**ORDER**

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

The due process complaint in this matter is **dismissed** with prejudice. All relief sought by Petitioner herein is **denied**.

**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 USC §1415(i).

Date: March 11, 2013

  
Hearing Officer