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

STUDENT, a minor, by and through
his Parent[1]

Petitioner,

v

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Respondent.

SHO Case No: 2012-0675
Erin H. Leff, Hearing Officer

OSSE
STUDENT HEARING OFFICE
2012 NOV -7 PM 4: 50

HEARING OFFICER DETERMINATION

STATEMENT OF THE CASE

On September 26, 2012 Parent, on behalf of her child ("Student"), filed an Administrative Due Process Complaint Notice ("Complaint"), HO 1,[2] 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 4) on October 4, 2012.

The instant Complaint includes, among other matters, an alleged failure to hold a required manifestation determination. Pursuant to 34 C.F.R. § 300.532(c), such cases are to be

---

[1] Personal identifying information is provided in Appendix A, attached hereto.
[2] 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.

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 October 25, 2012, and the hearing officer determination must be issued within 10 school days of the hearing, or, in this instance,[3] by November 7, 2012. *Id.* A resolution meeting in an expedited matter is to be held within 7 days of receiving notice of the complaint. *Id.* In the instant matter, the resolution meeting was held on October 12, 2012, nine days late. The parties were not able to reach an agreement and executed a Resolution Period Disposition Form on October 12, 2012 so indicating. HO 9. Following the Prehearing Conference held on October 5, 2012, I issued a Prehearing Conference Order on October 8, 2012. HO 6.

At all times relevant to these proceedings Petitioner was represented by Carolyn Houck, Esq. and Michelle Kotler, Esq. William Jaffe, Assistant Attorney General, represented DCPS. By agreement of the parties, the hearing was scheduled for October 24, 2012. The hearing was held as scheduled in Room 2009 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).

Petitioner's Motion to Exclude Respondent's Exhibits

The Prehearing October 8, 2012 Prehearing Order in this matter required the parties to file their 5-day disclosures by 5:00 PM on October 17, 2012. HO 6. On October 18, 2012, at approximately 4:28 PM, Petitioner filed a *Motion to Exclude Respondent's Exhibits ("*Motion*")* arguing Respondent had not filed Respondent's 5-day disclosures on a timely basis. The Motion specifically requests the exclusion of all documents and witnesses listed in Respondent's disclosure letter "untimely filed on October 18, 2012." HO 10. In addition to the Motion,

[3] Due process hearing was held on October 24, 2012. See below.

Petitioner's filing included *Petitioner's Memorandum in Support of the Motion to Exclude Exhibits and Opposition to the Nunc Pro Tunc Deadline Extension.* On October 18, 2012, at approximately 10:36 AM, Respondent's counsel had requested, by email, a 4 hour extension of the deadline for filing the 5-day disclosures *nunc pro tunc.* In this request he noted he was unaware of the 5:00 PM deadline for filing the 5 day disclosures On October 17, 2012 contained in my Prehearing Conference Order. He added that other hearing officers allow filings of the disclosures to occur later in the day, that he had been in a hearing on another matter the day the disclosures were due thereby making the filing of the disclosures by 5:00 PM "virtually impossible," and that there was no prejudice resulting from his late filing. HO 7 (email chain re alleged late filing of Respondent's 5-day disclosures). Shortly after Petitioner filed the instant Motion, Respondent's counsel provided a reply to Petitioner's *Motion* by way of email on the same date making the same arguments he had made in his earlier email (as discussed above) and adding he had shown good cause for the delay. *Id.*

At the start of the due process hearing on October 24, 2012, following admission of Hearing Officer Exhibits and Petitioner Exhibits, as identified below, I heard argument on the Motion. Petitioner argued the 4 hour late filing was not acceptable, that it was prejudicial in that it was late. Petitioner's memorandum indicates that the late filing constitutes filing on October 18, 2012 rather than October 17, 2012 as required by the Prehearing Conference Order, and I agree.[4] Petitioner's counsel noted the 5:00 PM filing deadline was stated in the Prehearing Conference Order, and Respondent's counsel could have met that deadline, despite being in a hearing on another matter, if he had made the plans necessary to do so. Petitioner's counsel further argued that Respondent's counsel's office has a pattern of late filings which puts

[4] See discussion at p. 4. *Infra.*

opposing parties at a significant disadvantage.[5] Respondent's counsel acknowledged his mistake, noting again he was unaware of the 5:00 PM deadline for filing the disclosures and the impossibility of filing by 5:00 PM due to being in another hearing. He added there had been no showing of prejudice and that he would not repeat this mistake.

For the reasons that follow, I granted Petitioner's *Motion* on the record, excluding all documents and witnesses identified in Respondent's letter dated October 17, 2012 and filed on October 18, 2012. In granting Petitioner's Motion I cited 34 C.F.R. § 300.512(a)(3) which states, in pertinent part, "Any party to a hearing . . . has the right to . . . [p]rohibit the introduction of evidence at the hearing that has not been disclosed to that party at least five business days before the hearing." It is my view that this regulation expressly provides it is the right of the party who receives a late filing to exclude the introduction of evidence. It is not within the hearing officer's authority to make such a determination. My only authority under this regulation is to determine whether the filing was timely, and I find Respondent's filing was not timely.

In the instant matter I filed a Prehearing Conference Order requiring the 5-day disclosure be provided by 5:00 PM on October 17, 2012. The specification of the time for filing of the 5-day disclosure defines the day for purpose of the filing of the disclosures. Any filing made after 5:00 PM on October 17, 2912 is, due to this explicit time requirement, deemed to have occurred on October 18, 2012. In the instant matter, Respondent's filing was made after 5:00 PM on October 17, 2012 and is, therefore deemed to have been filed on October 18, 2012. Therefore, the filing was not disclosed to Petitioner at least five business days prior to the hearing, and Petitioner has the right to prohibit the introduction of evidence by Respondent. *Id.*

[5] Respondent's counsel argued the alleged practice of other attorneys in his office were not relevant to the instant proceedings. I agree. It is his filing in the instant matter that is to be addressed by my determination on this Motion.

In reaching this determination I reject Respondent's counsel's claim that he has established good cause for his late filing. My cover email forwarding the Prehearing Conference Order on October 8, 2012 (HO 6) asks counsel to review the Order and inform me immediately should counsel have any questions or concerns regarding the Order. I received no communication regarding the Order. I further note Respondent's counsel's claim of virtual impossibility for timely filing due to his appearance in another matter has no merit. My Order did not require counsel to file his 5 day disclosures *at* 5:00 PM on October 17, 2012. Rather, he was required to file the disclosures *on or before* 5:00 PM. In order to address the conflict created by his appearance in another matter on the date the 5-day filing was due, Respondent's counsel could have planned for his time conflicts and filed the disclosures prior to October 17, 2012 rather than filing them late.[6] Counsel's arguments regarding a failure to establish prejudice are not relevant because IDEA does not require a showing of prejudice. Finally Respondent's counsel's argument regarding other hearing officers allowing later filings is inapposite to the instant matter.[7] My Order required filing by 5:00 PM. That is the only deadline relevant to the instant matter, and Respondent's counsel did not meet it. Finally, I do not address Respondent's request *ex post facto* for a *nunc pro tunc* extension of the filing deadline as I have found there is no basis under IDEA to deny Petitioner's request that Respondent's evidence be excluded and have granted Petitioner's Motion.[8]

---

[6] Counsel also could have used other approaches to meet the filing deadline.

[7] I note Respondent's counsel argued, and I agreed, when Petitioner's counsel noted Respondent's counsel's office's alleged pattern and practice of late filing was not relevant to his actions. In a similar vein, the same argument, of course, applies here. Other hearing officers' practice of allowing later filings is not relevant to my requirement in the instant matter and should not be considered.

[8] I note Respondent's counsel's objection to my granting Petitioner's Motion.

ISSUES

The issues are:

1) Whether DCPS failed to provide Student a free, appropriate public education ("FAPE") when DCPS failed to conduct a manifestation determination meeting at the beginning of the 2011 - 2012 school year when Student was subject to an undocumented disciplinary removal from Kramer Middle School of more than 10 days. This removal constitutes a change of placement. Student was removed for running the halls, failing to pay attention in class and other related behaviors;

2) Whether DCPS failed to provide Student a FAPE when DCPS failed to have a current individualized education program ("IEP") for Student in effect at the beginning of the 2012-2013 school year;

3) Whether DCPS failed to provide Student a FAPE by failing to provide Student a placement for the 2012 -2013 school year;[9] and

4) Whether DCPS failed to provide Student a FAPE by failing to evaluate Student in the social/emotional/behavioral area during the 2011-2012 school year. Student exhibited a pattern of disruptive and inattentive behavior reflecting a need to evaluate him.

RELIEF REQUESTED

Petitioner requested:

1) Placement at the Monroe School retroactive to the beginning of the 2012-2013 school year;
2) Independent comprehensive psychological and adaptive behavior assessments and any other assessment recommended by the independent psychologist;
3) DCPS' participation in an IEP meeting at the Monroe School; and
4) Compensatory education pursuant to the compensatory education plan provided with Petitioner's 5-day disclosures.

SUMMARY OF THE EVIDENCE

A. Exhibits

Exhibits admitted on behalf of Petitioner are:

1. 08/27/12 Formal and Informal Testing by Ms. Anthony[10]

[9] Original issue 3) was withdrawn at hearing. The remaining issues have been renumbered. Current issue 3) was original issue 4), and current issue 4) was original issue 5).

2. 10/17/12 Compensatory Education Plan
3. Not admitted
4. Curriculum Vitae, [redacted], M.S.
5. Curriculum Vitae, [redacted], M.S.

Pursuant to my Order granting Petitioner's Motion to Exclude Respondent's Exhibits, no exhibits were admitted on behalf of Respondent.

Exhibits admitted by the Hearing Officer are:[11]

1	Administrative Due Process Complaint Notice dated September 24, 2012 and filed September 26, 2012
2	Notice of Hearing Officer Appointment of October 28, 2012
3	Prehearing Conference Notice (with attachment) of October 3, 2012 with Order Correcting Record
4	District of Columbia Public Schools' Response of October 4, 2012 to Petitioner's Due Process Complaint
5	Student's IEP of 4/12/12 forwarded 10/5/12 as requested during PHC
6	Prehearing Conference Order of October 8, 2012
7	Email • Chain regarding expedited nature of hearing , shortened timeline and need to schedule PHC quickly • Chain regarding Petitioner's assertion that Respondent's 5 day disclosures were late and should be excluded
8	Proposed Hearing Officer Exhibits sent August 13, 2012
9	Executed Resolution Period Disposition Form for meeting held October 12, 2012
10	Petitioner's Motion to Exclude Respondent's Exhibits of October 12, 2012

B. Testimony

Petitioner testified and presented the following witnesses:

- Twilah Anthony, admitted as an expert in special education and compensatory education plan development
- [redacted] President and CEO and former, Head of School of the Monroe School.

[10] This exhibit was admitted after [redacted] had been admitted as an expert and testified
[11] Emails, constituting documents of record, forwarding the following documents to counsel and the hearing officer, are filed with the document unless otherwise noted.

Pursuant to my Order granting Petitioner's Motion to Exclude Respondent's Exhibits,[12] DCPS presented no witnesses.

FINDINGS OF FACT

Based upon the evidence presented,[13] I find the following facts by a preponderance of the evidence:

1. Student is [redacted]. He has attended the Monroe School since September 2012. Student is classified as having an intellectual disability. Student was found eligible for special education and related services under the IDEA when he was in fourth grade. Testimony of Petitioner; Testimony of [redacted]; Testimony of [redacted]; HO 5.
2. The Monroe School is a full-time, private, special education school providing services to students with various disabilities. The Monroe School instructs students in conformity with the common core standards. Students are able to earn high school diplomas. The school provides academic classes, internships and job referrals and placements and preparation for college including visits to colleges. Testimony of [redacted].
3. Student began the 2011-2012 school year at Kramer Middle School ("Kramer"). He had attended Hart Middle School for the prior two years but was not allowed to return because he was an out-of-boundary student. Student was in the 8th grade in the 2011-2012 school year. Testimony of Petitioner.
4. In September 2011 Student was accused of being involved in an incident with another boy. Student was sent home. Petitioner was subsequently informed Student was not involved in the incident. Testimony of Petitioner.

[12] The *Motion* included requests to exclude both Respondent's witnesses and Respondent's documentary evidence.
[13] See discussion of witness credibility at the beginning of the Discussion section beginning at p.10.

5. In September 2011, at approximately the same time as the disciplinary incident in which it was subsequently determined Student was not involved, the Kramer principal told Petitioner Student could not return to Kramer. Initially the principal stated Student could not return to Kramer because he was an out-of-boundary student. Petitioner responded that Student and Petitioner's niece use the same address and the niece attends Kramer. The principal then stated Student could not return to Kramer because a teacher who had been involved in an incident with Student in elementary school was teaching at Kramer and was uncomfortable around Student. Testimony of Petitioner.[14]
6. In October or November 2011, Petitioner and Petitioner's mother made two telephone calls and one visit to DCPS' central Office of Special Education. Petitioner was told to return Student to school. Testimony of Petitioner.
7. Petitioner kept Student out of school for the remainder of the 2011- 2012 school year. She did not want Student to attend a DCPS school. Petitioner wanted Student to attend a school that would fit his needs. Petitioner visited Winston High School but did not want Student to attend that school, in particular, because she thought it had gang problems. Testimony of Petitioner.
8. During the 2011-2012 school year, while Student was not in school, Petitioner had an assigned community service worker. Student had a probation officer. Testimony of Petitioner.
9. In April or May 2012 a representative of Child and Family Support Agency ("CFSA") went to Petitioner's house regarding Student's lack of attendance. CFSA had been

[14] The incident occurred when Student was in 4th or 5th grade. According to Petitioner the charges stemming from this incident were dropped.

notified by Kramer of Student's absence. The CFSA representative said s/he would attempt to set up a meeting with the school. Testimony of Petitioner.

10. An IEP meeting was held at Kramer on April 12, 2012. Neither Petitioner nor Student were in attendance. HO 5.

11. On the Woodcock-Johnson III (Form B) Student, in August 2012, earned scores ranging from a low grade equivalence level of 2.0 in passage comprehension to a high of 3.4 in math fluency. These scores reflect age equivalency of 7 years 4 months to 8 years 9 months. Student is not able to spell all the days of the week or the months of the year. He cannot spell many number words or tell time using an analog clock. His other skills tend to be equally low. Testimony of [redacted]; P 1.

DISCUSSION

For the reasons that follow, I find Petitioner did not meet her burden of proof in this matter. The evidence did not establish a *prima facie* case[15] and the Complaint is, therefore, dismissed. Because I am dismissing the Complaint, I do not address Petitioner's request for a remedy. That said, I am concerned that Student did not attend school for approximately one year. He remained at home without an education from September 2011 through September 2012. It was only upon his enrollment in the Monroe School sometime in September of 2012 that Student first began to receive special education and related services following his removal in September 2011. While my dismissal of the Complaint deprives me of jurisdiction to order DCPS to take action as to Student's entitlement to a program and placement under IDEA, my dismissal of the Complaint does not in any way nullify DCPS' responsibility to provide a FAPE to an eligible, special education student resident in the district. This is a responsibility I recognize DCPS takes

[15] That is, Petitioner did not present sufficient evidence to support her claims.

seriously. I remind DCPS that this student cannot be allowed to languish without access to the FAPE to which he is entitled during this school year.

It is noteworthy that Respondent in the instant matter was precluded from presenting any evidence due to late filing of the 5-day disclosures. Yet despite Respondent having presented no case on direct, I still cannot find for Petitioner due to the credibility and weight issues addressed below. Petitioner's case relies on two substantive exhibits[16] (P 1 and P 2) and the testimony of three witnesses. This evidence does not meet the burden of proof as to any of the issues raised in the instant complaint. Exhibit P 2 is Petitioner's Compensatory Education Plan and cannot be relied upon regarding the substantive matters before me. Exhibit P 1 is the educational assessment performed in August 2012, and while it does demonstrate Student's significant educational needs, it does not provide evidence regarding the issues raised herein.[17] Because neither of these exhibits address the instant issues, I would need to rely on the testimony of Petitioner's witnesses to reach determinations in Petitioner's favor. Yet each of the three witness' testimony lacked credibility to a greater or lesser degree and/or merits limited weight.

Credibility/Weight Determinations

A credibility determination is an assessment of the truthfulness and accuracy of a witness' testimony. There is no particular standard for assessing a witness' credibility. Rather, it is based on a combination of factors such as demeanor, candor, and/or responsiveness to the questions asked. In making credibility determinations I must consider, among other factors, the

[16] Two additional exhibits were introduced into evidence. These were the resumes of the two witnesses who, in addition to Petitioner, testified on Petitioner's behalf.

[17] The issues before me are, in summary, whether Student 's September 2011 removal from school was a noncompliant disciplinary removal; whether Student had an appropriate program and placement for the 2012 -2013 school year ; and whether Student should have had an evaluation in the social/emotional/behavioral/area in the 2011-2012 school year.

plausibility of the witness' testimony, the internal consistency of his/her testimony, inaccuracies or falsehoods in such testimony and the witness' motivation to provide honest or dishonest testimony. Based on my finding that a witness was not credible in one part of his/her testimony, I may accept some or none of that particular witness' testimony. Weight determinations address how much significance or the extent to which I can rely on a particular witness' testimony.

In the instant matter, I have found each witness' testimony included both credible and incredible statements, and it is that credible testimony in combination with the scant documentary evidence that formed the basis for the findings of facts incorporated herein. However, little of the credible evidence addresses the core of the issues raised in this matter. Parsing the testimony to distinguish the truths from the distortions and from the disingenuous and incredible statements is not, in my view possible, to the extent necessary to allow me to make legal determinations as to the issues raised. The limited credibility of each witness and/or the limited weight to be given to her testimony precludes my finding the Petitioner has met her burden of proof. For example, in some instances witnesses sometimes contradicted themselves when follow-up questions were asked either on cross-examination or by me. In other situations the testimony was evasive and non-responsive. In the discussion that follows I address the credibility and/or weight issues as to each witness.

1. Petitioner

Petitioner's testimony included both credible and incredible moments. Her high emotion and lack of sophistication could account for some of the credibility concerns regarding her testimony, and this high emotion is understandable. She is a mother concerned about her son. In other instances, however, her statements were not believable. Petitioner testified Student was sent home in September 2011, and the principal told her Student could not return to Kramer

Middle School. I do not doubt this occurred.[18] Petitioner further testified that she received no other communication from Kramer regarding Student for the remainder of the school year. While this would be an extraordinary occurrence, it is not beyond possibility that Kramer staff did not contact her for many months, and, I agree, with Petitioner's counsel that there is no way to prove a negative, that is the alleged lack of communication, other than to state it. It stretches credulity, however, to accept Petitioner's testimony that after the school contacted CFSA regarding Student's non-attendance, they made no effort to contact Petitioner. Having contacted an external agency regarding Student's lack of attendance, it is not believable that the Kramer staff would not have taken steps to assure Student was attending school as required. It is not believable that Kramer would have accused Petitioner of not getting Student to attend school and simultaneously not attempted, on their part, to get Student to attend school.

Petitioner also testified that after two telephone calls and a visit to DCPS central office in October or November 2011, the only act central office took to ensure Student returned to school was to tell Petitioner to return him. In addition, at one point in her testimony, Petitioner stated she did not remember what the staff at central office had told her to do. These two statements are both unbelievable and contradictory. While I am willing to believe a school principal may have removed a student without appropriate process, I cannot attribute similar malfeasance to the administrators and managers in DCPS central office who are under OSSE scrutiny and who are making great efforts to establish community credibility regarding the provision of education to Washington, D.C. students. I do not believe central office staff would have provided no assistance in returning Student to school, and I do not believe Petitioner had no recollection of

[18] I note that in my view there is some question as to whether Petitioner may have misinterpreted a statement intended to have limited duration. There was no evidence on this point and I raise it here only as a possible explanation of what, on its surface, appears to be an extraordinary statement on the part of the principal. I add, that were this explanation, or another possible explanation, able to address the initial removal of Student in September 2011, it does not address the school's failure to act on Student's lace of attendance until April or May 2012.

what they told her to do. All of Petitioner's testimony must be viewed in light of her expressed desire that Student not attend a DCPS school.

Petitioner testified that during the months Student was out of school in the 2011-2012 school year she had an assigned community service worker, and Student had a probation officer. Her testimony asks me to believe that neither of these individuals took any action to assure Student return to school from September 2011 through the end of the 2011-2012 school year. I cannot do this. Each of these individuals had a position *vis s vis* Petitioner and her family that would, of its nature, require them to take action to return Student to school, and while I might believe one of these professional individuals, due to oversight, failed to take action to return Student to school, I cannot believe both of these individuals failed to take such action.[19]

Petitioner's claims that no one attempted to assist her in returning Student to school are further undercut by her own testimony. She stated on at least three separate occasions that she kept Student home, that she knew he had to be in school and/or that she did not want him to attend a DCPS school. I believe this testimony, and in so stating, I note that I think Petitioner's motivations were to help Student. She wanted him in a school that she believed would meet his needs, and she did not believe DCPS schools could do that. Her testimony included a comment that every time Student is in a DCPS school something happens. Petitioner was, for example, particularly concerned about possible gang problems at one DCPS high school. That said, Petitioner's desire to find a school that she believed would address Student's needs does not allow her to act as she chooses outside the parameters of IDEA and DCPS education law. Similarly, I think Petitioner intended her testimony to create a picture that would support placing

[19] I note Respondent's counsel questioned Petitioner about the names of these individuals and others repeatedly. Petitioner consistently responded that she did not know the individuals' names. The only exception was her current Community Service Worker who she was able to identify by name. While I recognize it would be unusual for Petitioner to be unable to recall the name of any of the individuals who worked with Petitioner and her family throughout the 2011-2012 school year, it is possible and I take no meaning from her inability to recall names.

Student at a private school, but the internal inconsistencies and implausibility of some of her testimony resulted in my finding her testimony lacked lack of credibility, and finding a lack of credibility regarding her testimony contributed to preventing me from finding in Petitioner's favor. I note, moreover, that it is Petitioner's testimony that forms the core of her case.

2. [redacted]

Petitioner's second witness was [redacted], her educational expert. Of the three witnesses presented, [redacted] had some minor credibility issues, but her testimony was of limited weight. [redacted] testimony, for the most part, did not address the issues before me. [redacted] could not testify to the circumstances regarding Student's removal from Kramer as she had no independent knowledge of this removal, nor did she have independent knowledge of the basis for Student's remaining at home for the 2011-2012 school year. She also had no knowledge regarding whether Student had a current IEP or placement at the beginning of the 2012 2013 school year. Her only testimony in this regard was that the IEP she reviewed was out of date. She did not provide the date of the IEP nor was the IEP she reviewed entered into evidence. She could not testify, and did not testify, as to whether the IEP she reviewed was Student's most current IEP. Finally [redacted] offered no testimony regarding the need for an evaluation in the social/emotional/behavioral area nor whether such an evaluation occurred. [redacted] testimony addressed, primarily, Student's limited academic achievement and his needs for particular kinds of interventions. She also testified to his progress at the Monroe School during his three weeks of attendance there prior to the hearing. Finally she testified to the compensatory education plan proposals which are not addressed herein because I am dismissing the Complaint.

[redacted] testimony regarding her observations of Student at the Monroe School raised some credibility issues. While I accept her statements that she had observed Student at the Monroe School two times a week and meets with him once a week to monitor his progress, these contacts are of limited duration, and, therefore, in my view of limited value. Yet in testifying to these contacts [redacted] did not address their limited duration of less than a month. It was only when I asked her how often she had made the visits to the Monroe School or Student's home that the short two to three week[20] duration became clear, and it is my opinion that the shorter the duration of these visits the less weight can be given to the information gleaned. Students experiences and behaviors often change as they become familiar with new surroundings.

[redacted] testimony also must be given limited weight due to her statement that Student should be functioning at the 10th grade level based, it appears, on his chronological age. This statement raises concerns about her view of Student and her understanding of special education under the IDEA. Student is classified as having an intellectual disability. He is in special education. It is difficult to understand how a student with an intellectual disability who is to receive services under the IDEA should be functioning at his chronological grade level. If that were true, by definition, he would not qualify for special education under IDEA because he would be at grade level and therefore would not need special education. See §34 CFR 300.8.[21] Services under IDEA are limited to those students whose disabilities establish a need for special education because there is an educational impact form the disability. If Student were at grade

[20] It is possible, though highly unlike, that [redacted] could have been visiting the Monroe School for approximately one month as of the date of hearing. However, according to Petitioner's third witness, the President and Chief Executive Officer of the Monroe School Student had been attending the school for three to four weeks.
[21] I note the distinction between passing from grade to grade with a student's peers and actually functioning at grade level which is the position [redacted] has taken. I note this position also is distinguishable from using Student's chronological age or grade level to determine how many years he is behind.

level, it is likely that his disability would not have an educational impact. If [redacted] understands the interaction of disability and eligibility for special education it was not clear from her testimony and therefore here testimony must be given limited weight. Again the testimony does not establish Petitioner's case.

3. [redacted]

[redacted] is the Director and Chief Executive Officer of the Monroe School, the school Student has been attending since mid-September 2012. [redacted] provided credible testimony regarding Student's general experience at the Monroe School when addressing his overall program and experience. However, her responses to specific questions about Student and/or the Monroe School's communication with DCPS frequently were evasive at best, and, in some instances, clearly unbelievable. In other instances, under cross-examination or my own questioning, [redacted] directly contradicted her earlier testimony.

For example, when asked on cross-examination whether DCPS had been notified that Student was attending the Monroe School, [redacted] replied that she had not personally notified DCPS. When asked whether anyone else had notified DCPS [redacted] replied that she did not know. I found [redacted] testimony that she did not know about notifications to DCPS to be questionable for someone in her position who was appearing at hearing. I, therefore, further questioned [redacted] about notification to DCPS. In response to my questions [redacted] testified that someone had notified DCPS that Student was attending the Monroe School. She subsequently added that Student's name appears on the rosters sent to DCPS and to OSSE. Her evasiveness and lack of candor in her testimony in this regard is obvious. It is, in my view, a significant deviation from the reality and causes me concern about the remainder of [redacted] testimony. If she was unwilling to

acknowledge, without repeated questioning, that DCPS was aware that Student was attending her school, I must ask what other information she is withholding or distorting. On another occasion [redacted] testified that no one had spoken to DCPS about Student, and then subsequently testified that some unspecified person had made contact but she did not know when. Again, it is my view, highly unlikely that someone in her position who was appearing at a hearing would not know this information.[22] The witness further testified that the Monroe School had not requested any educational records for Student.[23] These examples of [redacted] testimony provide ample reason for finding her to lack credibility. Yet there are additional examples as well.

[redacted] testified that there was a Behavior Intervention Plan ("BIP") in place for Student and stated she did not know the contents of the BIP as it was developed by the psychologist and teachers. The witness then described the content of the BIP including that it is intended to address Student's frustration, leaving class and shutting down. She added it includes a sign-in sheet for each class for each day and that Student receives behavior grades from each teacher each day. I cannot hypothesize the basis for this inherently self-contradictory testimony, I can only note that the witness' apparent inability to testify with candor leads me to conclude her testimony, as a whole, is not credible. I am unable to distinguish among the truths, half-truths and misrepresentations.

Because Petitioner has not provided credible evidence supporting the allegations in the Complaint, I dismiss the Complaint in its entirety. For each of the issues before me, identified

---

[22] I note that it could be possible that [redacted] did not have this information because she chose not to have it. This posture, too, would create a credibility issue.

[23] As to this particular statement, the Monroe School is either not following good educational practice or, once again, [redacted] testimony is not credible.

below, I note the failures to establish the *prima facie* case and therefore Petitioner's failure to meet her burden of proof.

1) Whether DCPS failed to provide Student a FAPE when DCPS failed to conduct a manifestation determination meeting at the beginning of the 2011 - 2012 school year when Student was subject to an undocumented disciplinary removal from Kramer Middle School of more than 10 days. This removal constitutes a change of placement. Student was removed for running the halls, failing to pay attention in class and other related behaviors

Under IDEA a manifestation meeting is required when a student's disciplinary removal constitutes a change in placement. 34 C.F.R. § 300.519. Petitioner provided no evidence indicating Student's removal was for disciplinary purposes. Petitioner's testimony and the summary in her proposed compensatory education plan indicated Student was removed for the entire school year either because he was out of boundary or because a staff member did not feel safe with Student in the school. A manifestation meeting is required only in relation to a disciplinary removal creating a change of placement. There is no evidence regarding a disciplinary removal so a manifestation meeting was not required. I therefore find Petitioner has not established the basic facts needed for a prima facie case. Petitioner has failed to meet the burden of proof as to this allegation.

2) Whether DCPS failed to provide Student a FAPE when DCPS failed to have a current IEP for Student in effect at the beginning of the 2012-2013 school year;

3) Whether DCPS failed to provide Student a FAPE by failing to provide Student a placement for the 2012 -2013 school year; and

Allegations 2) and 3) are founded on Petitioner's assertion that she was not invited to an IEP meeting for Student in the Spring of 2012 and, therefore, the IEP developed at that meeting was not developed in compliance with IDEA requirements and should not be recognized. I have found that the testimony regarding these specific allegations is not credible. Therefore, Petitioner

has not established the basic facts needed for a prima facie case. Petitioner has failed to meet the burden of proof as to this allegation.

Whether DCPS failed to provide Student a FAPE by failing to evaluate Student in the social/emotional/behavioral area during the 2011-2012 school year. Student exhibited a pattern of disruptive and inattentive behavior reflecting a need to evaluate him.

Petitioner provided no evidence regarding this allegation. Therefore, she has not met the burden of proof as to this claim and it is dismissed.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law Petitioner has not met the burden of proof as to any of the four claims in the instant Complaint. She has failed to establish a *prima facie* case as to each claim.

ORDER

Based upon the above Findings of Fact and conclusions of law, it is hereby ordered that the instant complaint is dismissed, with prejudice, in its entirety.

IT IS SO ORDERED:

Nov 7, 2012
Date

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).