DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

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

[Parent], on behalf of,
[Student], [1]

Petitioner,

v

District of Columbia Public Schools (DCPS),

Respondent.

Date Issued: June 7, 2011

Hearing Officer: Jim Mortenson

Case No:
(Expedited Discipline)[2]

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HEARING OFFICER DETERMINATION

I. BACKGROUND

The complaint in this matter was filed by the Petitioner on April 18, 2011. The Petitioner is represented by Karin Hassan, Esq., and the Respondent is represented by Kendra Berner, Esq. A resolution meeting was held on April 29, 2011, and did not result in a settlement or any other agreements. A response was filed on May 2, 2011. A prehearing conference was held on May 3, 2011, and a prehearing order issued on that date.

The hearing was held on May 24, 2011, in room 2006 at 810 First Street NE, Washington, D.C. The Independent Hearing Officer (IHO) requested, during the hearing, information on the Student's eligibility for special education services if and when it became available following the

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[1] Personal identification information is provided in Appendix A which is to be removed prior to public dissemination.

[2] This matter involves an appeal of a manifestation determination or disciplinary placement pursuant to 34 C.F.R. § 300.532.

hearing (the Student had not been determined eligible at the time of the hearing). This information was provided on June 1, 2011, indicating the Student had been determined eligible.

The due date for the hearing officer's determination (HOD) is June 8, 2011, pursuant to 34 C.F.R. § 300.532(c)(2). This HOD is issued on June 7, 2011.

II. JURISDICTION

This hearing process was initiated and conducted, and this decision is written, pursuant to the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. § 1400 et seq., its implementing regulations at 34 C.F.R. Part 300, and D.C. Mun. Regs. tit. 5, Chaps. 30 and 2510.

III. ISSUES, RELIEF SOUGHT, AND DETERMINATION

The issue to be determined by the IHO is:

> Whether the Respondent changed the Student's placement for more than ten school days in the school year for disciplinary reasons without a manifestation determination?

The substantive requested relief includes:

1) Return to School.
2) Independently provided speech and language, occupational therapy, and functional behavioral assessments.
3) A manifestation determination that the Student's behavior was a manifestation of his disability.

Based on the findings of fact and conclusions herein, this IHO has determined that the Student's placement was changed for more than ten school days and no manifestation determination was held. This IHO has also determined these were procedural failures and they

did not result in a denial of FAPE, and the Respondent's placement of the Student at is not a change in placement.

IV. EVIDENCE

Five witnesses testified at the hearing. Three for the Petitioner and two for the Respondent.

The witnesses for the Petitioner were:

1) Petitioner, Student's Mother (P)
2) Dr. Kara Covington, Psychologist (K.C.)[3]
3) Chithalina Khanchalern, Advocate, (C.K.)

The witnesses for the Respondent were:

1) Andrew Bolton, Case Compliance Manager (A.B.)
2) Principal, School

33 documents were disclosed by the Petitioner and 28 were admitted into evidence. (The IHO excluded five documents as redundant.) The Petitioner's exhibits are:

Ex. No.	Date	Document
P 3	April 29, 2011	Resolution Meeting Notes
P 7	[Undated]	Comprehensive Psychoeducational Evaluation
P 8	[Undated]	Comprehensive Psychoeducational Evaluation
P 9	September 27, 2007	Behavior Plan
	September 28, 2007	Behavior Plan
	October 1, 2007	Behavior Plan
	October 10, 2007	Behavior Plan
	October 11, 2007	Behavior Plan
P 10	September 28, 2007	Student Support Team History Intervention Data
P 11	[Undated]	Student Report [Grade 3, 2008]
P 12	[Undated]	4th Grade Report Card
P 13	[Undated]	Student Report [Grade 4, 2009]
P 14	November 16, 2009	Letter from Jennings to Parent
P 15	[Undated]	5th Grade Report Card SY 2009
P 16	May 12, 2010	Administrative Due Process Complaint Notice
P 17	June 9, 2010	Proposed Settlement

[3] Expert opinion on Student's behaviors.

Ex. No.	Date	Document
P 18	September 16, 2010	Multidisciplinary Team (MDT) [IEP team] Meeting Notes
P 19	December 3, 2010	Report to Parents on Student Progress
P 20	January 21. 2011	Report to Parents on Student Progress
P 21	February 14, 2011	Teacher Questionnaire
P 22	February 22, 2011	Report to Parents on Student Progress
P 23	March 16, 2011	Notice of Final Disciplinary Action
P 24	March 25, 2011	Report to Parents on Student Progress
P 25	April 8, 2011	Notification of Scheduled Hearing Date
P 26	April 14, 2011	Notice of Final Disciplinary Action
P 27	February 9, 2011	Office Discipline Referral Form
	February 14, 2011	Office Discipline Referral Form
	March 2, 2011	Office Discipline Referral Form
	March 7, 2011	Office Discipline Referral Form
	March 31, 2011	Office Discipline Referral Form
	April 5, 2011	Office Discipline Referral Form
	[Undated]	Office Discipline Referral Form
P 28	April 11, 2011	Student Discipline Report 08/23/2010 to 04/11/2011
P 29	April 27, 2011	Period to Daily Conversion Attendance Summary 16 Aug 2010 to 27 APR 2011
	April 27, 2011	Attendance Summary 16 Aug 2010 to 27 APR 2011
P 30	April 11, 2011	Student Discipline Report 08/23/2010 to 04/11/2011
	April 5, 2011	Office Discipline Referral Form
	February 14, 2011	Office Discipline Referral Form
	March 2, 2011	Office Discipline Referral Form
	[Undated]	Office Discipline Referral Form
	March 7, 2011	Office Discipline Referral Form
	February 9, 2011	Office Discipline Referral Form
	March 31, 2011	Office Discipline Referral Form
P 31	[Undated]	Resolution Meeting Notice
P 32	[Undated]	Resume - Kara Thompson Covington
P 33	May 17, 2011	Compensatory Education Plan

Ten documents were disclosed by the Respondent and all were admitted into evidence. The Respondent's exhibits are:

Ex. No.	Date	Document
R 1	September 16, 2010	Multidisciplinary Team (MDT) [IEP team] Meeting Notes
R 2	December 13, 2010	Letter of Invitation
R 3	February 25, 2011	Letter of Invitation

Ex. No.	Date	Document
R 4	May 5, 2011	Letter of Invitation
R 5	May 9, 2011	Email from Douds to Hassan
R 6	May 11, 2011	Email from Douds to Hassan
	May 11, 2011	Email from Khanchalern to Douds
R 7	May 17, 2011	Email from Douds to Khanchalern
	May 17, 2011	Confirmation of Meeting Notice
R 8	April 5, 2011	Office Discipline Referral Form
R 9	May 4, 2011	Notice of Proposed Disciplinary Action
R 10	May 4, 2011	Notice of Final Disciplinary Action

V. 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 an year old learner who was attending the grade at School since the fall of 2010.[4]
2. An initial evaluation had begun in the summer of 2010 and was completed after the due process hearing in this matter, finding that the Student is eligible for special education and related services.[5]
3. The Student was disciplined and suspended off-site for six days during the 2010-2011 school year as of the end of March 2011.[6] The Student was disciplined and suspended out of school at least seven additional days starting on or about April 7, 2011.[7]
4. On April 14, 2011, the Petitioner was notified the Student could attend during the remainder of his suspension, until June 17, 2011. is a public

[4] Testimony (T) of P, P 8.
[5] P 17, Petitioner's Notice Regarding Student's Eligibility, June 1, 2010 (requested by the IHO at the hearing). The reasons for the excessive delay in the completion of the evaluation are not material or relevant to the findings and determination of the issue in this case.
[6] P 28, P 29.
[7] P 26.
[8] P 26. (R 9 indicates the Student is not permitted to attend school at all. However, P 26 and R 10, written May 4 and nearly identical to P 26, along with the testimony of A.Z. convinces this IHO that the Student was indeed permitted to attend school at Choice Academy.)

school were some of the students with challenging behavior from School are sent, regardless of disability unless another setting is appropriate.[9]

5. No manifestation determinations were made for the Student.[10]

VI. 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:

1. A free appropriate public education (FAPE) for a child with a disability under the IDEA is defined as:

> special education and related services that –
> (a) Are provided at public expense, under public supervision and direction, and without charge;
> (b) Meet the standards of the SEA, including the requirements of this part;
> (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
> (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.320 through 300.324.

34 C.F.R. § 300.17.

2. A child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated any rule or code of conduct of the Respondent, may assert any of the applicable protections provided for in the Individuals with Disabilities Education Improvement Act, if the Respondent had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. D.C. Mun. Regs. tit. 5, § 2510.22, 34 C.F.R. § 300.534. The Respondent is deemed to have knowledge that a child is a child with a disability if the parent has requested an evaluation of the child. D.C. Mun. Regs. tit. 5, § 2510.23, 34 C.F.R. § 300.534.

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[9] T of A.Z.
[10] T of A.Z.

3. A child with a disability generally may not be removed from his educational placement for more than ten school days. 34 C.F.R. § 300.530(b).
4. In this case, the Respondent is deemed to have had knowledge that the Student was a child with a disability at the time of both of his suspensions out of school because the evaluation process had been underway for nearly a year. The Student's out of school suspensions exceeded 10 school days on or about April 13, 2011, in violation of 34 C.F.R. § 300.530(b).[11]
5. A change in placement occurs if: 1) The child is not afforded the opportunity to continue to appropriately participate in the general education curriculum; 2) The child does not continue to receive the services specified in the IEP; or 3) The child will not continue to participate with non-disabled children to the extent they would have in their current placement. *Discipline Procedures (§ 300.530(b))* 71 Fed. Reg. 46715 (2006).
6. In this case, when the Student was suspended but prior to his placement at he was not afforded the opportunity to participate in the general curriculum and so his placement had been changed under 34 C.F.R. § 300.530. Following the opportunity to go to , there was no change in placement because the Student had the opportunity to continue to appropriately participate in the general curriculum and to continue to participate with nondisabled students to the extent he had prior to being moved to The implementation of the IEP is not a factor because he did not yet have one as the evaluation process was still underway. The Student's placement had been changed for approximately 13 days total. Services need only be provided to a student with a disability following the tenth day of removal, thus the Student was denied approximately three days of education. *See* 34 C.F.R. § 300.530(b)(2). This amount, for this Student who was not yet receiving special education and related services, in not a significant deprivation of service.

[11] No special circumstances were present in this case pursuant to 34 C.F.R. § 300.530(g).

7. A manifestation determination is an examination of whether a student's conduct was caused by or had a direct and substantial relationship to his disability, or was the result of a failure to implement the student's IEP. 34 C.F.R. § 300.530(e)(1). Such a determination must be made within ten school days of any decision to change the placement of a child with a disability because of the conduct. Id.
8. No manifestation determination was made in this case, in violation of 34 C.F.R. § 300.530(e).
9. A determination that a child was denied a FAPE must be on substantive grounds. 34 C.F.R. § 300.513(a). A procedural violation may result in a determination that a child was denied 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.

   34 C.F.R. § 300.513(a).
10. The Student was not harmed by the procedural inadequacies in this case. Had a manifestation determination been held concerning either the first six days he was suspended in March or the next seven days in April, there could be no finding that the behavior was a manifestation of his disability because the initial evaluation was still underway and so he was not yet determined to have a disability and had no IEP. Furthermore, the Petitioner's right to participate in decision-making concerning the provision of FAPE to the Student likewise cannot be found to have been significantly impeded because the evaluation was pending. Thus, the violations found herein resulted in no deprivation of a FAPE or educational benefit to the Student. The Student is now reportedly eligible for special education and related services and is entitled to an IEP with special education designed to enable him to be

involved in and progress in the general education curriculum and meet all of his other needs resulting from his disability, providing him educational benefit.

VII. DECISON

The Respondent prevails because despite its procedural violations noted herein, no denial of a FAPE occurred.

VIII. ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered that this matter is hereby dismissed with prejudice.

IT IS SO ORDERED.

Date: June 7, 2011

Independent 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 USC §1415(i).