District of Columbia

Office of the State Superintendent of Education

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Confidential

Student [1] Petitioner, v. Local Education Agency "LEA" Respondent. Case # 2025-0169 Date Issued: December 24, 2025	HEARING OFFICER'S DETERMINATION Hearing Dates: December 3, 2025 December 8, 2025 Counsel for Each Party listed in Appendix A Hearing Officer: Coles B. Ruff, Esq.

[1] Personally identifiable information is in the attached Appendices A & B.

JURISDICTION:

The hearing was conducted, and this decision was written, pursuant to the Individuals with Disabilities Act ("IDEA"), P.L. 101-476, as amended by P.L. 105-17 and the Individuals with Disabilities Education Improvement Act of 2004, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter 5-A30.

BACKGROUND AND PROCEDURAL HISTORY:

At the time the due process complaint ("DPC") in this matter was filed the student who is the subject of this decision ("the Student") was in the custody of the LEA and housed at the LEA's location of service ("LOS") pending trial for an alleged criminal offense in the District of Columbia for which the Student is charged as an adult. LEA is the state public agency responsible for delivering educational services at LOS.

The due process complaint ("DPC") against LEA was initially filed by the Student's parent on Friday, _____, 2025, a day prior to the Student turning age _____. After the Student turned age ____, the parent's attorney requested and was granted permission for the Student to replace his/her parent as Petitioner in this/her matter. There was no objection from the Respondent, LEA, to this request, and the undersigned impartial hearing officer granted that request.

On Monday,_____, 2025, the Student was transferred to the District of Columbia Department of Corrections ("DOC") and transferred from LOS to the DOC's Central Detention Facility ("D.C. Jail") pursuant to a District of Columbia Superior Court Order. (Respondent's Exhibit 2)

The Student is a resident of the District of Columbia, has not obtained his/her high school diploma, and has never been identified as a student with a disability who is eligible for special education under the IDEA. In the DPC, the Student ("Petitioner") principally alleges that LEA ("Respondent") denied the Student a free appropriate public education ("FAPE") by failing to comply with the IDEA's child find obligations to locate, identify, and evaluate the Student as a child suspected of having a disability in need of special education. Petitioner also alleges that Respondent denied the Student a FAPE by constructively imposing a long-term in-school suspension in violation of D.C. Law § 22-157, and that the Student was entitled to IDEA's "stay-put" to remain at LOS upon the filing of the DPC.

Petitioner requests, in addition to a finding that LEA denied the Student a FAPE, that LEA be ordered to convene an eligibility meeting and develop an IEP for the Student, and once the IEP is developed, that LEA provide an appropriate educational placement that aligns with the IEP and award the Student compensatory education services for the alleged denial of FAPE.

LEA's Response to the DPC:

LEA filed a response to the complaint on October 15, 2025. In its response, LEA stated, inter alia, the following:

LEA is an agency whose primary mission is to improve the security, supervision, and rehabilitation services provided to committed and detained juvenile offenders. LOS is a juvenile detention facility for both male and female youth. LOS provides for the care and custody of youth placed in secure detention by court order from the D.C. Superior Court Family Court Division. LOS's population consists of youth who are: Part of the Adult Transition Unit (ATU), which houses Title 16 youth (charged as adult offenders); youth awaiting court proceedings (pre-adjudicated) or hearings (overnight); youth adjudicated and pending court action; and youth committed to LEA. LEA is not a local education agency, ("LEA") but is more accurately described as a public agency as defined in 34 C.F.R. 300.33.

The _____("SCHOOL") provides on-site educational services for youth at LOS through a contractual agreement with LEA. SCHOOL's 2024-2025 school year began on September 3, 2024, and ended on August 1, 2025. The Student was marked present in school on July 17, 2025, and August 1, 2025. SCHOOL was on summer break from August 4, 2025, through August 29, 2025. SCHOOL's 2025-2026 school year began on September 3, 2025.

In this matter, the Student has a history of multiple placements at LOS. On June 27, 2025, he/she returned to LOS and remained until _____, 2025. He/she was classified as a Title 16 Youth and placed on ATU, which is designated for youth charged as adult offenders. This classification continued until _____, 2025, when the Student turned age ___. Two days later, on _____

, 2025, a Superior Court Judge ordered Student's transfer from LEA custody to the custody of the District of Columbia Department of Corrections (D.C. Jail). LEA did not deny the Student a FAPE and did not violate the Student Fair Access School Amendment (SFASA) Act.

On June 28, 2025, LEA identified credible threats to the Student's safety at LOS. For his/her protection, LEA temporarily housed the Student in the intake unit. LEA did not deny the Student access to educational services in violation of the District of Columbia Compulsory Attendance Law. The Student remained eligible for educational programming. However, due to ongoing behavioral issues – including refusal to follow safety protocols and aggressive conduct- education delivery was affected. Despite this, LEA made consistent efforts to support the Student's safe reintegration and access to school programming.

The "stay put" provision under IDEA does not apply in this case. The Student turned age ___ on _____, 2025, and was transferred by court order to D.C. Jail on _____, 2025. Additionally, the Student was classified as a Title 16 youth and charged with robbery while armed and a firearm offense, thereby making him/her an adult offender under D.C. Code §16-2301(3). There is no legal or procedural precedent for reversing a court order transferring an individual from D.C. Jail back to LEA custody once the individual is over _____and facing adult charges. LEA is no longer the public agency as defined in 34 C.F.R. 300.33, and the Student is in the custody of D.C. Jail. LEA respectfully requests that the Hearing Officer deny all relief in its entirety.

Resolution Meeting and Pre-Hearing Conference:

Petitioner and LEA did not participate in a resolution meeting and did not mutually agree to shorten the 30-day resolution period. The due process complaint ("DPC") was filed on September 26, 2025. The 45-day period began on October 26, 2025, and ended, and the Hearing Officer's Determination ("HOD") was originally due on December 10, 2025. The parties moved to continue the hearing and extend the HOD due date. The HOD is now due on December 24, 2025.

The IHO conducted a pre-hearing conference on October 21, 2025, and issued a pre-hearing order ("PHO") on November 11, 2025, stating, inter alia, the issue to be adjudicated.

ISSUE: [2]

The issues adjudicated are:

1. Did LEA deny the Student a FAPE by failing to timely evaluate him/her and determine his/her eligibility for special education pursuant to its IDEA child-find obligations?

2. Did LEA deny the Student a FAPE by constructively giving the Student a long-term in-school suspension in violation of SFASA: D.C. Law § 22-157?

3. Was the Student entitled to IDEA's "stay-put" at LEA-LOS with the filing of the DPC?

DUE PROCESS HEARING:

The Due Process Hearing was convened on December 3, 2025, and December 8, 2025, with written closing arguments submitted on December 15, 2025. The hearing was conducted via video teleconference on the Microsoft Teams platform.

RELEVANT EVIDENCE CONSIDERED:

The IHO considered the testimony of the witnesses and the documents submitted in each party's disclosures (Petitioner's Exhibits 1 through 22 and Respondent's Exhibits 1 through 13) that were admitted into the record and are listed in Appendix 2.[3] The witnesses testifying on behalf of each party are listed in Appendix B. [4]

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[2] At the outset of the due process hearing, the IHO reviewed issues to be adjudicated the parties agreed to the issues as stated herein.

[3] Any item disclosed and not admitted or admitted for limited purposes was noted on the record and is noted in Appendix A.

[4] Petitioner presented seven witnesses: (1) an independent psychologist who evaluated the Student, (2) the Student's criminal defense attorney, (3) the registrar of SCHOOL, (4) the special education coordinator of SCHOOL, (5) the Student's mother, (6) an educational consultant who testified about compensatory services, (7) the Student (Petitioner). LEA presented two witnesses, (1) the special education coordinator of SCHOOL, also called by Petitioner and (2) the Superintendent of LOS. The IHO found the witnesses credible unless noted otherwise in the conclusions of law. Any material inconsistencies in the testimony of witnesses identified by the IHO are discussed in the

SUMMARY OF DECISION:

Petitioner held the burden of persuasion on all issues adjudicated. Based on the evidence adduced, the IHO concluded that Petitioner sustained the burden of persuasion by a preponderance of the evidence of the evidence on issue #1, but not the remaining issues. The IHO directed LEA to convene an eligibility meeting to determine the Student's eligibility or ineligibility for special education.

FINDINGS OF FACT: [5]

1. The Student is a resident of the District of Columbia, has not obtained a high school diploma, has not attended school regularly in the past few years, and has never been identified as a student with a disability who is eligible for special education under the IDEA. (Student's testimony)

2. At the time the DPC in this matter was filed, the Student was a juvenile in the custody of LEA and housed at LOS pending trial for an alleged criminal offense in the District of Columbia for which the Student is charged as an adult. LEA is the state public agency responsible for delivering educational services at LOS. (Witness 2's testimony, Witness 6's testimony)

3. LOS, operated by LEA, is a juvenile detention facility for both male and female youth. LOS provides for the care and custody of youth placed in secure detention by court order from the D.C. Superior Court Family Court Division. LOS's population consists of youth who are: Part of the Adult Transition Unit ("ATU"), which houses Title 16 youth (charged as adult offenders); youth awaiting court proceedings (pre-adjudicated) or hearings (overnight); youth adjudicated and pending court action; and youth committed to LEA. (Witness 6's testimony)

4. LOS is a 98-bed youth detention center. Residents are usually housed in one of nine housing units. In addition to these, there is an orientation unit, a medical unit, and an intake unit. Typically, youth detained at LOS spend the first five days in the orientation unit before being moved to one of the nine programming units. After five days and once in a programming unit, residents attend school regularly at LOS. Residents on the intake, orientation, and medical units do not attend school but may receive educational work packets; however, they do not participate in formal school instruction. (Witness 4's testimony, Witness 6's testimony)

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conclusions of law. Petitioner sought to call an additional witness from LOS who did not appear to testify. Petitioner's counsel requested that the witness's failure to testify after having been provided a notice to appear result in a negative inference against Respondent. The IHO declined to make the requested negative inference based on insufficient documentary proof that the witness was a LEA employee or that LEA had the ability to compel his testimony.

[5] The evidence (documentary and/or testimony) that is the source of the Findings of Fact ("FOF") is noted within parentheses following the finding. A document is noted by the exhibit number. If there is a second number following the exhibit number, that number denotes the page of the exhibit from which the fact was obtained. When citing an exhibit submitted by more than one party separately, the IHO may only cite one exhibit.

5. SCHOOL is the educational provider selected by LEA to provide special education instruction and services to students detained at LOS. LEA is ultimately responsible for providing education, special education, and ensuring compliance with their child find obligations under the IDEA. SCHOOL provides on-site educational services for youth at LOS through a contractual agreement with LEA. SCHOOL's 2024-2025 school year began on September 3, 2024, and ended on August 1, 2025. (Witness 4's testimony, Respondent's Exhibit 11)

6. The Student was most recently detained and housed at LOS from June 27, 2025, until September 29, 2025, for a total of 91 days. The Student had the following prior detentions at LOS: August 29, 2024, for one day; August 12, 2024, for 17 days; August 11, 2024, for one day; February 29, 2024, for 5 days; January 21, 2022, for 10 days. The Student first came to LOS on October 14, 2018, but did not stay overnight and was released to his/her parent. (Witness 6's testimony, Respondent's Exhibit 1)

7. During the Student's most recent stay at LOS, the Student was assigned to one of the nine programming units on June 28, 2025. However, soon after arriving at the unit, the Student was assaulted by another resident. The Student was taken outside of LOS for medical treatment and, upon returning, was placed in the LOS medical unit. This unit is a two-bed facility within the medical department. After a brief stay there, the Student was transferred to the LOS intake unit because the threat to the Student continued, and LOS's priority was to ensure the Student's safety. (Witness 6's testimony)

8. While on the intake unit, however, the Student was unable to conform his/her behavior to LEA expectations. During the Student's time in the intake unit, the Student did not attend school and received no instruction. LOS generally does not provide educational services to residents in the intake unit because they are typically housed there for no more than five days. During the Student's time in the intake unit, LOS staff or SCHOOL staff did not make any referrals for the Student for special education evaluation, although referrals were made for behavioral health services. LEA decided to keep the Student on the intake unit, which has no classroom or teacher. The Student remained on the intake unit the remainder of his/her stay at LOS. (Witness 6's testimony)

9. The DPC was filed on Friday, September 26, 2025, [redacted] _____. On Monday, September 29, 2025, the Student was transferred to DOC and moved from LOS to the DOC's D.C. Jail pursuant to a District of Columbia Superior Court Order. (Witness 2's testimony, Respondent's Exhibit 2)

10. The LOS/SCHOOL records indicate that the Student was on the intake unit for at least 14 days and on the medical unit for 7 days. The Student was recorded as attending school at LOS for a total of two days before the 2024-2025 school year ended on August 1, 2025. The SCHOOL's 2025-2026 school year started on September 3, 2025. The Student could have attended school at LOS from September 3, 2025, to _____, 2025, prior to his/her transfer from LOS to DOC. (Witness 3's testimony)

11. Approximately two weeks prior to the Student's transfer from LOS to DOC, the Student's criminal defense attorney requested that the SCHOOL staff at LOS evaluate the Student for special education eligibility. (Witness 2's testimony, Respondent's Exhibit 2)

12. During the Student's time at LOS, SCHOOL did not initiate evaluation(s) of the Student to determine his/her eligibility for special education. Once a request was made by the Student's attorney for the evaluation prior to the Student's transfer from LOS to DOC, SCHOOL, being aware that the Student would be transferred shortly, SCHOOL did not initiate the requested evaluation, rationalizing that the evaluations could not be completed in such a short time frame prior to the Student's transfer. (Witness 2's testimony, Witness 4's testimony, Respondent's Exhibit 11)

13. The Student has been diagnosed with Attention Deficit Hyperactivity Disorder ("ADHD"). On August 13, 2025, the student's parent called LEA and informed them about the diagnosis and the student's mental health concerns. She also mentioned that the student needed an IEP. On September 12, 2025, LEA called her about adding medication for sleep and pain. She consented to the medication being administered. The student has faced academic and behavioral challenges at school since he/she was younger, partly because his/her family has experienced homelessness intermittently. (Parent's testimony)

14. The Student expressed interest in attending school to complete his/her high school diploma multiple times to various LEA staff, including school staff. Despite this/her clear interest, he/she has spent most of his/her recent time at LOS in the/she intake unit without the/she opportunity to attend school. He/she is currently enrolled in a GED program at the D.C. jail but hopes to be evaluated for special education eligibility to continue attending high school and earning a diploma. (Student's testimony)

15. The Student was recently evaluated by an independent psychologist who conducted cognitive and academic assessments of the Student and reviewed the reports and records from LEA, including the Student's LOS medical and mental health records. The records noted the Student's history of trauma and loss, and he/she was identified as having symptoms of acute stress in June 2025. There were numerous references in the LOS medical records to anxiety and depression, and he/she was prescribed medication by a LOS physician. The Student had a previous diagnosis of ADHD and symptoms of focus and being easily distracted, and was prescribed medication to address ADHD while at LOS. The Student reported auditory and visual hallucinations numerous times through the LEA records. The Student's cognitive functioning was assessed as being in the extremely low range, and his/her academic achievement was in the low to very low range. The psychologist diagnosed the Student with ADHD, combined type – hyperactivity and inattentive, specific learning disability ("SLD") in all areas – reading, math, and writing. The psychologist recommended further evaluations, including social-emotional testing, that she was unable to administer because the Student became fatigued during testing. (Witness 1' testimony, Petitioner's Exhibit 12)

CONCLUSIONS OF LAW:

Pursuant to IDEA §1415 (f)(3)(E)(i), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education ("FAPE").

Pursuant to IDEA §1415 (f)(3)(E)(ii), in matters alleging a procedural violation, a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE, or caused the child a deprivation of educational benefits. An IDEA claim is viable only if [DCPS'] procedural violations affected the student's substantive rights." *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006)

34 C.F.R. § 300.17 provides:
A free appropriate public education or FAPE means 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 Sec. 300.320 through 300.324

Pursuant to 5A DCMR 3053.6, the burden of proof is the responsibility of the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005). Petitioner held the burden of persuasion on the issues adjudicated. [6] The burden of persuasion shall be met by a preponderance of the evidence. The normal standard is a preponderance of the evidence. See, e.g., *N.G. V. District of Columbia* 556 F. Sup. 2d (D.D.C. 2008) see also 20 U.S.C. §1451 (i)(2)(C)(iii).

ISSUE 1: Did LEA deny the Student a FAPE by failing to timely evaluate him/her and determine his/her eligibility for special education pursuant to its IDEA child-find obligations?

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[6] DC Code § 38-2571.03 (6) provides:
(A) In special education due process hearings occurring pursuant to IDEA (20 U.S.C. § 1415(f) and 20 U.S.C. § 1439(a)(1)), the party who filed for the due process hearing shall bear the burden of production and the burden of persuasion; except, that:
(i) Where there is a dispute about the appropriateness of the child's individual educational program or placement or of the program or placement proposed by the public agency, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided, that the party requesting the due process hearing shall retain the burden of production and shall establish a prima facie case before the burden of persuasion falls on the public agency. The burden of persuasion shall be met by a preponderance of the evidence.
(ii) Where a party seeks tuition reimbursement for unilateral placement, the party seeking reimbursement shall bear the burden of production and the burden of persuasion on the appropriateness of the unilateral placement, provided that the hearing officer shall have the authority to bifurcate a hearing regarding a unilateral placement; provided further, that if the hearing officer determines that the program offered by the public agency is appropriate, it is not necessary to inquire into the appropriateness of the unilateral placement.
(B) This paragraph shall apply to special education due process hearings resulting from complaints filed after July 1, 2016.

Conclusion: Petitioner sustained the burden of persuasion by a preponderance of the evidence that DCPS denied Student a FAPE by failing to timely evaluate him/her and determine his/her eligibility for special education pursuant to its IDEA child-find obligations.

IDEA guarantees children the right to receive a free, individually appropriate, public education. 20 U.S.C. § 1400(d)(l)(A). A free individually appropriate public education or a FAPE "consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child 'to benefit' from the instruction." See *Board of Educ. Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 188-89 (1982). District of Columbia municipal regulations have placed the burden on the local educational agencies to "ensure that procedures are implemented to identify, locate, and evaluate all children with disabilities residing in the District who are in need of special education and related services, including children with disabilities attending private schools, regardless of the nature or severity of their disabilities." 5-A DCMR § 3003.

IDEA's regulations define a child with a disability as follows: Child with a disability means a child evaluated in accordance with 34 CFR §§ 300.304 through 300.311 as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services. 34 C.F.R. § 300.8(a)(1).

IDEA requires local education agencies to identify and evaluate all students suspected of having disabilities to determine their eligibility for special education services: All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services. 20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.111(a)(1)(i).

The public agency's child find obligation is an affirmative one. *Lincoln County Sch. Dist. A. A.,* 39 IDELR 185 (D. Or. 2003). *Wise vs. Ohio Dept of Education*, 80 F.3d. 177, 181 (6th Cir. 1996); *Robertson County School System vs. King*, 24 IDELR 1036 (6th Cir. 1996) (affirmative obligation on states and local school districts-not parents-to identify, locate and evaluate all children, including migrants and the homeless, with disabilities residing within the jurisdiction who have disabilities and are in need of special education or related services.)

Courts uniformly recognize that Child Find is a fact-intensive inquiry, dependent on the information actually available to the agency at the relevant time. A failure to identify a disability at the earliest possible moment is not, standing alone, actionable. D.*K.v. Abington School District*, 696 F.3d 233(3rd Cir. 2012). Nor may Child Find be triggered by conjecture, incomplete records, or behavioral challenges unconnected to educational need. *Spring Branch Independent School District v. O.W. ex rel. Hannah W.*, 983 F.3d 695(5th Cir.2019).

LEA is the state public agency responsible for the delivery of educational services at LOS. LEA is responsible for providing youth in its custody with food, shelter, education, and ordinary medical case. *See* D.C. Code § 16-2302(21)(C), *see also* D.C. Code § 2-1515.01(5)(A)(ii). As such, the IDEA requires LEA to provide special education and related services to all eligible District of Columbia residents, including students with disabilities aged eighteen through the end of the school year in which they turn twenty-two. D.C. Mun. Regs. tit. 5-A, §§ 3001.2 and 3001.4. This responsibility includes identifying, locating, and evaluating all potentially eligible students pursuant to IDEA child find obligations when there is suspicion of a disability. D.C. Mun. Regs. tit. 5-A, § 3003.1(a).

School districts are not relieved of their IDEA obligations to evaluate a child suspected of having a disability because the student is not currently enrolled in school or is non-attending. *See Hawkins ex rel. D.C. v. District of Columbia*, 539 F. Supp. 2d 108, 115 (D.D.C. 2008) (noting that the IDEA contemplates that a student may not be enrolled in school prior to an initial evaluation since FAPE is guaranteed even to children as young as three years old, yet the obligation to evaluate remains).

A student does not need to be formally diagnosed with a disability to be included in the child find requirement; schools are obligated to evaluate a student once that student is merely suspected of having a disability. 34 C.F.R. § 300.111(c)(1). The child find requirement is an "affirmative obligation of every public school system to identify students who might be disabled and evaluate those students to determine whether they are indeed eligible." *N.G. v. District of Columbia*, 556 F. Supp. 2d 11, 16 (D.D.C. 2011). Failure to comply with child find by not identifying, locating, and evaluating a potentially disabled child constitutes a denial of FAPE. *Hawkins ex rel. D.C. v. District of Columbia*, 539 F. Supp. 2d 108, 116 (D.D.C. 2008) (holding that DCPS's refusal to complete the evaluation process for a student identified as a potential candidate for special education services constituted a denial of FAPE).

The District of Columbia regulations impose strict timelines once a child is referred for evaluation for services: An LEA shall: (a) Make and document reasonable efforts, as defined in this chapter, to obtain parental consent within thirty (30) days from the date on which the child is referred for an initial evaluation, and begin such efforts no later than ten (10) business days from the referral date; and (b) Evaluate and make an eligibility determination for a student who may have a disability and who may require special education services within sixty (60) days from the date that the student's parent or guardian provides consent for the evaluation. 5-A DCMR § 3005.4.

The compulsory education law in the District of Columbia mandates that students receive education until they reach the age of majority. *See* D.C. Code § 38–202(a).

Petitioner asserts that LEA was on notice based on its experience with the Student, as well as his/her medical treatment and medical records, in addition to requests made by the Student's parent and attorney that he/she be considered for an IEP, that LEA failed to identify and evaluate the Student pursuant to its child find obligations.

On the other hand, LEA asserts that the Student's placements within LEA were brief, and his/her most recent stay lasted approximately 91 days, which included the 30-day August summer school break and that it was not put on notice, even by the Student's medical and mental health concerns

that the Student's was suspected of having a disability that might qualify him/her for special education.

Although the SCHOOL special education coordinator testified that LEA received no educational records from any school- no teacher reports, no academic data, and no documentation suggesting cognitive impairment or special education needs - she testified that when any student comes to SCHOOL at LOS, SCHOOL staff immediately assesses students as a part of complying with child find obligations. She also testified that SCHOOL staff does not control when a student is placed on a programming unit, where they can attend school and have the opportunity to be assessed.

The evidence demonstrates that the Student only attended school at LOS for two days during his/her entire stay at LOS, despite the fact that he/she was housed at LOS a full month prior to the school year ending and almost another month after the 2025-2026 school year started, and two weeks after his/her attorney had requested that she/he be evaluated. The evidence demonstrates, based upon the Student LOS medical records, that LOS, which holds the ultimate responsibility for complying with its child find obligations under IDEA, had knowledge of the Student's medical conditions and prescribed the Student medication for a condition that should have put LOS staff on notice that the Student was child suspected of having a disability and in need of special education.

The fact that the Student's safety was its primary concern did not absolve LEA from its obligation to ensure that the Student attended school under the compulsory school attendance requirements. Had LOS made school available to the Student even if he/she was on the intake unit, the SCHOOL staff likely would have been able to assess the Student under its existing child find procedures and would likely have identified the Student as needing evaluation. Because LEA did not fulfill its obligation to the Student in this regard, the IHO concludes that LEA failed to meet its child find obligations regarding the Student and denied him/her a FAPE.

ISSUE 2: Did LEA deny the Student a FAPE by constructively giving the Student a long-term in-school suspension in violation of SFASA: D.C. Law 22-157?

Conclusion: Petitioner did not sustain the burden of persuasion by a preponderance of the evidence that LEA denied the Student a FAPE by constructively giving the Student a long-term in-school suspension in violation of D.C. Law 22-157.

D.C. Law 22-157 (D.C. Code § 38-236.04(b)(2)-(3)) provides:
(b) No student, except a student over 18 years of age at a school where more than 1/2 of the students are over 18 years of age, may be subject to an out-of-school suspension for longer than: (1) Five consecutive school days for any individual incident in grades kindergarten through 5; (2) Ten consecutive school days for any individual incident in grades 6 through 12; or (3) Twenty cumulative school days during an academic year, regardless of grade…

Petitioner asserts that LEA subjected the Student to an illegal suspension and that during the Student's most recent stay at LOS, the Student attended school only two full days.

LEA points out that on June 28, 2025, LEA identified credible threats to the Student's safety and, for his/her protection, temporarily housed the Student in its intake unit, worked to resolve interpersonal conflicts, and supported a safe housing placement for the Student. LEA argued that the combination of behavioral challenges, peer conflict, and safety concerns required the Student's continued placement in the intake unit.

As discussed earlier, LEA's concerns about the Student's safety and his/her placement in the intake unit did not exempt LEA from providing the Student with education services. As noted above, the compulsory education law in the District of Columbia requires students to receive education until they reach the age of majority. *See* D.C. Code § 38–202(a). Despite the safety concerns, LEA should have nonetheless provided the Student with educational services during his/her stay at LOS.

However, the evidence does not demonstrate that the Student's in-school behavior during the two days he/she attended SCHOOL was the basis for the Student not attending school, such that the IHO would consider it an out-of-school suspension. There was no specific testimony, documentary evidence, or legal authority to support Petitioner's theory of a constructive out-of-school suspension.

ISSUE 3: Was the Student entitled to IDEA's "stay-put" at LEA-LOS with the filing of the DPC?

Conclusion: Petitioner did not sustain the burden of persuasion by a preponderance of the evidence that the Student was entitled to IDEA's "stay-put" at LEA-LOS with the filing of the DPC?

Pursuant to 34 C.F.R. § 300.518 [7] during the pendency of due process complaint, Petitioners may seek to enforce "stay put" rights for Student to remain in Student's current placement during the pendency of the proceeding.

Pursuant to IDEA, the LEA must maintain Student in the current educational placement "through both administrative and judicial proceedings, including an appeal from an administrative decision following a due process hearing." *Douglas v. District of Columbia*, 4 F. Supp. 3d 1, 2 (D.D.C. 2013) (citing *District of Columbia v. Vinyard*, 901 F.Supp.2d 77, 83 (D.D.C.2012)). Generally, the child's current placement is judged by an existing IEP and may not be considered to be location-specific.[8]

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[7] 34 C.F.R. § 300.518(a) provides: Except as provided in Sec. 300.533, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under Sec. 300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.

[8] The commentary to the IDEA regulations states:

> "The current educational placement during the pendency of any administrative or judicial proceeding described in § 300.518 and section 615(j) of the Act, refers to the setting in which the IEP is currently being implemented. The child's current placement is generally not considered to be location-specific." (See Federal Register /Vol. 71, No. 156 /Monday, August 14, 2006 /Rules and Regulations page 46709)

Petitioner alleged that the Student was entitled to an automatic statutory injunction requiring the Student to remain at LEA throughout the pendency of this proceeding. On the other hand, LEA asserts that the "stay put" provision under IDEA does not apply in this case, as the Student turned age ___ on _____, 2025, and was transferred by court order to D.C. Jail on _____, 2025, as an adult offender under D.C. Code §16-2301(3).

LEA also asserts that it is no longer the public agency as defined in 34 C.F.R. 300.33, and the Student is in the custody of D.C. Jail. However, complaints alleging due process violations are routinely brought against LEAs and public agencies after a student no longer attends school in that LEA. Consequently, LEA remains subject to directives to remedy a denial of FAPE for a student who has previously been under its care and control.

As Respondent aptly points out, however, there was no legal or procedural precedent cited of a hearing officer reversing a court order transferring an individual from D.C. Jail back to LEA custody once the individual is over age ____and facing adult charges.

At this point, the Student is no longer in LEA custody and is no longer housed at LOS. Although LOS was the location at which the Student was housed and where the Student was attending school, if only for only two days, the evidence supports a conclusion that SCHOOL at LOS was an educational location and not an educational placement.

Testimony and/or representations were made during the hearing that the same entity operating SCHOOL at LOS also runs a similar school for DOC at the D.C. Jail. It was also stated that the Student's rights under IDEA can still be pursued, especially with the support of LEA and SCHOOL. Based on this, the IHO cannot conclude that LOS was the Student's educational placement with respect to which stay-put rights attach, rather than a location, particularly given the directives the IHO has given to LEA below regarding the determination of the Student's eligibility for special education.

Remedy:

A hearing officer may award appropriate equitable relief when there has been an actionable violation of IDEA. *See* 20 U.S.C. § 1415(f)(3)(E)(ii)(II); *Eley v. District of Columbia*, 2012 WL 3656471, 11 (D.D.C. Aug. 24, 2012) (citing *Branham v. District of Columbia*, 427 F.3d at 11–12.) The IHO has concluded that School A denied Student a FAPE in failing to timely evaluate Student and determine eligibility.

Under the theory of compensatory education, "courts and hearing officers may award educational services to be provided prospectively to compensate for a past deficient program. The inquiry must be fact-specific and, to accomplish IDEA's purposes, 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." *Reid*, 401 F.3d 522 & 524. To aid the court or hearing officer's fact-specific inquiry, "the parties must have some opportunity to present evidence regarding [the student's] specific educational deficits resulting from his loss of FAPE and the specific compensatory measures needed to best correct those

deficits." Id. at 526.
When a hearing officer finds denial of FAPE, he has "broad discretion to fashion an appropriate remedy, which can go beyond prospectively providing a FAPE, and can include compensatory education.... [A]n award of compensatory education 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." *B.D. v. District of Columbia*, 817 F.3d 792, 797-98 (D.C. Cir. 2016) (internal quotations and citations omitted.)

Because the Student has not yet been found eligible for special education, the IHO cannot determine whether special education is warranted. Consequently, in the order below, IHO grants Petitioner authorization to pursue compensatory services if the Student is found eligible and after an IEP is finalized.

ORDER:

1. LEA shall, within fifteen (15) business days of the date of this order, convene an eligibility meeting, at which the Student's existing educational evaluation(s) and any other available educational, social-emotional and behavioral records shall be reviewed, and determine the Student's eligibility or ineligibility for special education pursuant to IDEA and its implementing regulations, including the related D.C. Code and DCMR provisions.

2. In making the eligibility determination noted above, LEA shall also determine whether additional assessments or evaluations of the Student are warranted.

3. If the Student is determined eligible, LEA shall promptly develop an IEP for the Student, take all appropriate action to ensure that the Student's IEP is implemented, and determine whether the Student is due compensatory services.

4. Petitioner shall have the right to pursue in a subsequent due process complaint any compensatory education that Student might be due based on the denial of FAPE in this case if the parties are unable to reach an agreement in that regard.

5. All other relief requested by Petitioner is denied.

APPEAL PROCESS:

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have ninety (90) days from the date of the decision of the Hearing Officer to file a civil action with respect to the issues presented at the due process hearing in a District Court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. §1415(i)(2).

/S/ *Coles B. Ruff*

_____

Coles B. Ruff, Esq.
Impartial Hearing Officer

Date: December 24, 2025
Copies to:
Counsel for Petitioner
Counsel for LEA
ODR {hearing.office@dc.gov}