DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Office of Dispute Resolution
1050 First Street, N.E., Third Floor
Washington, D.C. 20002

Student,[1] through *Parent*, *Petitioner*,	)	Case No.: 2023-0257 (Expedited)
	)	Date Issued: 2/6/24
v.	)	Hearing Officer: Keith L. Seat, Esq.
Public Charter School ("PCS"), *Respondent*.	)	Hearing Date (using Microsoft Teams): 2/2/24

HEARING OFFICER DETERMINATION

Background

Petitioner, Student's Parent, pursued a due process complaint alleging that Student had been denied a free appropriate public education ("FAPE") in violation of the Individuals with Disabilities Education Improvement Act ("IDEA") due to PCS's failure to follow proper disciplinary procedures in 2022. PCS responded that it had not taken disciplinary action to remove Student in 2022, but properly implemented its administrative procedures based on expulsion of Student in 2019, so there was no denial of FAPE.

Subject Matter Jurisdiction

Subject matter jurisdiction is conferred pursuant to the IDEA, 20 U.S.C. § 1400, *et seq.*; the implementing regulations for IDEA, 34 C.F.R. Part 300; and Title V, Chapter A30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

Procedural History

Following the filing of the due process complaint as an expedited discipline case on 12/20/23, the case was assigned to the undersigned on 12/22/23. Respondent filed a timely response on 1/5/24 disagreeing that the case should be expedited, but not challenging jurisdiction. No resolution meeting has occurred pursuant to the written agreement of the

[1] Personally identifiable information is provided in Appendix A, including terms initially set forth in italics. Personal pronouns and other terms that would indicate Student's gender are omitted.

parties on 1/11/24 waiving the resolution meeting. A final decision in this matter must be reached no later than 10 school days following the due process hearing on 2/2/24, which requires a Hearing Officer Determination ("HOD") by 2/20/24.

A prehearing conference was held on 1/11/24 and a Prehearing Order was issued that same day addressing, among many other things, the use of a videoconference platform to conduct the due process hearing. The due process hearing took place on 2/2/24 and was closed to the public. Petitioner was represented by *Petitioner's counsel*. PCS was represented by *Respondent's counsel*. Following a late arrival, Petitioner participated in the remainder of the hearing.

Documents and Witnesses

Petitioner's Disclosure, submitted on 1/26/24, contained documents P1 through P11, all of which were admitted without objection. Respondent's Disclosure, also submitted on 1/26/24, contained documents R1 through R7 (which PCS numbered LEA-1 through LEA-7), which were admitted into evidence without objection.[2] PCS also filed a Supplemental Disclosure on 2/1/24 containing documents R8 and R9 (numbered LEA-8 and LEA-9), to which Petitioner objected, so the documents were not admitted pursuant to the requirements of the Prehearing Order.

Petitioner's counsel presented 3 witnesses in Petitioner's case-in-chief (*see* Appendix A):

1. Parent
2. *Compliance Manager*
3. *Principal*

Respondent's counsel presented 1 witness in Respondent's case (*see* Appendix A):

1. *Operations VP*

Petitioner's counsel submitted no rebuttal evidence.

Issues and Relief Requested

The issues to be determined in this Hearing Officer Determination are:

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[2] Citations herein to the parties' documents are identical except that Petitioner's documents begin with a "P," while Respondent's documents begin with an "R" (as required by the Prehearing Order) followed by the exhibit number and then a "p" (for page) and the Bates page number or numbers (which are numbered consecutively through to the end of the exhibits), with any leading zeros omitted.

Issue 1: Whether PCS denied Student a FAPE by terminating access to classes at PCS for more than 10 consecutive days pursuant to 34 C.F.R. § 300.536, and failing to provide educational services to progress toward Student's goals in another setting pursuant to 34 C.F.R. § 300.530(d). *(Petitioner has the burden of persuasion on this issue.)*

Issue 2: Whether PCS denied Student a FAPE by failing to permit Parents to participate in IEP meetings and placement decisions pursuant to 34 C.F.R. § 300.501. *(Petitioner has the burden of persuasion on this issue.)*

The relief requested by Petitioner is:

1. PCS shall immediately restore Student's ability to enroll at *Desired PCS*.
2. PCS shall fund an independent educational evaluation to assess Student's current educational needs and determine appropriate compensatory education for any denials of FAPE.
3. PCS shall convene an IEP meeting after Parents have reviewed Student's record to revise Student's IEP to appropriately meet Student's individual needs.
4. PCS shall pay for appropriate compensatory education as determined by the independent evaluation, including private tutoring, therapy, behavior support, parent training/counseling, assistive technology, and school supplies and materials.
5. PCS shall provide all records relating to its decision to disenroll Student in October 2022.
6. Any other just and proper relief.

Findings of Fact

After considering all the evidence, as well as the arguments of counsel, the Findings of Fact[3] are as follows:

1. Student is a resident of the District of Columbia; Petitioner is Student's Parent.[4] Student is *Age, Gender* and attends another public charter school while seeking to reenroll at

[3] Footnotes in these Findings of Fact refer to the sworn testimony of the witness indicated or to an exhibit admitted into evidence. To the extent that the Hearing Officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, the Hearing Officer has taken such action based on the Hearing Officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.
[4] Parent.

PCS.[5] Student is charismatic, loves people and wants to learn.[6] Student has an IEP with the classification of Specific Learning Disability.[7]

2. Student attended PCS in 2018/19[8] until expelled on 1/30/19 for a serious physical altercation.[9] Student attended other schools until reenrolled at PCS from the waitlist on 9/12/22.[10] Enrolling Student at PCS in 2022 was an error that PCS did not discover until Student was involved in a fight at PCS in which Student pushed down and injured an adult on Thursday, 10/20/22.[11] Student was suspended on 10/21/22, pending a hearing scheduled for 10/26/22 which did not occur because Student was removed from the PCS student information system ("unenrolled") on Monday, 10/24/22, prior to the hearing.[12] PCS's error occurred when receiving thousands of applications; PCS now has better "data cleaning" processes in place.[13]

3. PCS communicated with Parent and her legal representatives multiple times with the consistent explanation that Student was unenrolled on 10/24/22 due to expulsion from PCS in 2019, not because of the incident on 10/20/22.[14] The assistant general counsel of PCS had substantive communications with counsel for Parent, both orally and in writing.[15] Petitioner was unable to determine at the due process hearing who at PCS was responsible for checking that incoming students were eligible to enroll at PCS.[16] Student's reenrollment in September 2022 occurred without any fault of Parent or Student.[17]

4. PCS's Student & Parent Handbook for 2022/23 stated that "[a]n expulsion permanently prohibits a student from attending a [PCS] school and taking part in any [PCS] function."[18] PCS's Student & Parent Handbook for 2022/23 further stated that "Students who are expelled from school are permanently barred from participating in school functions

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[5] Parent; P4p15.
[6] Parent.
[7] P4p15.
[8] All dates in the format "2018/19" refer to school years.
[9] P9p57 (redacted); R1p4 (unredacted).
[10] Parent; R2p7; Stipulation by counsel at hearing ("Student was enrolled at PCS on 9/12/22"); P2p10.
[11] P5p36; Principal; P8p49; Compliance Manager (a physical incident in which a staff member is injured receives significant attention from supervisors at PCS).
[12] P5p36; Principal; P8p49; R2p7 (exit comment in PCS's student information system was that "Student was ineligible for enrollment due to previous expulsion"; exit date was 10/24/22).
[13] Operations VP.
[14] P7p41 ("previously expelled students cannot attend" PCS); R3p9 (unenrollment unrelated to recent behavior; Student had been ineligible for reenrollment in the first place); P6p38 (texting); Compliance Manager.
[15] P8 (redacted); R4 (unredacted).
[16] Compliance Manager; Principal.
[17] Operations VP.
[18] P11p162.

and/or being on [PCS] property, even as a spectator or visitor."[19] These policies were identical in PCS's Student & Parent Handbook for 2018/19, apart from referring to "school" rather than "[PCS]" in the definition of "expulsion."[20] PCS considered the "consistent administration of the LEA enrollment policy for everyone ensures equity to everyone."[21]

5. Parent testified that she received a call in late October 2022 from Compliance Manager asking why Student had so many absences from PCS; Compliance Manager denied having any involvement with attendance at that time.[22] PCS's assistant general counsel acknowledged that Student's family should not have received any attendance notifications after 10/24/22 from the "baffling" new attendance system, "although [she] would not be surprised if they did."[23] PCS's assistant general counsel on 11/7/22 offered to help Parent find a new school for Student and expedite records requests by the next LEA; she renewed the offer on 11/14/22, with the suggestion that other schools were still trying to fill open seats and PCS could leverage its contacts at other schools to assist Student.[24]

Conclusions of Law

Based on the Findings of Fact above, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law are as follows:

The overall purpose of the IDEA is to ensure that "all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). *See Boose v. Dist. of Columbia*, 786 F.3d 1054, 1056 (D.C. Cir. 2015) (the IDEA "aims to ensure that every child has a meaningful opportunity to benefit from public education").

"The IEP is 'the centerpiece of the statute's education delivery system for disabled children.'" *Endrew F. ex rel. Joseph F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 994, 197 L. Ed. 2d 335 (2017), *quoting Honig v. Doe*, 484 U.S. 305, 311, 108 S. Ct. 592, 98 L.Ed.2d 686 (1988). "The IEP is the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Endrew F.*, 137 S. Ct. at 994, *quoting Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 181, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982).

Once a child who may need special education services is identified and found eligible, Respondent must devise an IEP, mapping out specific educational goals and requirements in light of the child's disabilities and matching the child with a school capable of fulfilling those needs. *See* 20 U.S.C. §§ 1412(a)(4), 1414(d), 1401(14); *Endrew F.*, 137

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[19] P11p164.
[20] P10p90,93.
[21] P8p46.
[22] Parent; Compliance Manager.
[23] P8p49.
[24] P8p46,49.

S. Ct. at 994; *Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385 (1985); *Jenkins v. Squillacote*, 935 F.2d 303, 304 (D.C. Cir. 1991); *Dist. of Columbia v. Doe*, 611 F.3d 888, 892 n.5 (D.C. Cir. 2010).

The IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 137 S. Ct. at 1001. The Act's FAPE requirement is satisfied "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Smith v. Dist. of Columbia*, 846 F. Supp. 2d 197, 202 (D.D.C. 2012), *citing Rowley*, 458 U.S. at 203. The IDEA imposes no additional requirement that the services so provided be sufficient to maximize each child's potential. *Rowley*, 458 U.S. at 198. In its decision, the Supreme Court made very clear that the standard is well above *de minimis*, however, stating that "[w]hen all is said and done, a student offered an educational program providing 'merely more than *de minimis*' progress from year to year can hardly be said to have been offered an education at all." *Endrew F.*, 137 S. Ct. at 1001.

A Hearing Officer's determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a Hearing Officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a). In other words, an IDEA claim is viable only if those procedural violations affected the child's *substantive* rights. *Brown v. Dist. of Columbia*, 179 F. Supp. 3d 15, 25-26 (D.D.C. 2016), *quoting N.S. ex rel. Stein v. Dist. of Columbia*, 709 F. Supp. 2d 57, 67 (D.D.C. 2010).

Petitioner carries the burden of production and persuasion, except on issues of the appropriateness of an IEP or placement on which Respondent has the burden of persuasion, if Petitioner establishes a *prima facie* case. D.C. Code Ann. § 38-2571.03(6); *Z. B. v. Dist. of Columbia*, 888 F.3d 515, 523 (D.C. Cir. 2018) (party seeking relief bears the burden of proof); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S. Ct. 528, 537, 163 L. Ed. 2d 387 (2005).

Issue 1: *Whether PCS denied Student a FAPE by terminating access to classes at PCS for more than 10 consecutive days pursuant to 34 C.F.R. § 300.536, and failing to provide educational services to progress toward Student's goals in another setting pursuant to 34 C.F.R. § 300.530(d). (Petitioner has the burden of persuasion on this issue.)*

The heart of this case is whether the action taken by PCS in October 2022 was a disciplinary action requiring the full protections of the disciplinary procedures of the IDEA, 34 C.F.R. § 300.530, *et seq.*, or merely a school enforcing longstanding policies to keep expelled students from returning to campus for any reason, from attending school to merely being on school property as a spectator or visitor. This Hearing Officer is persuaded that there was no disciplinary action that required disciplinary proceedings and nothing that barred PCS from enforcing its policies concerning expulsion.

Here, there was no dispute that Student was expelled from PCS in early 2019. Nor was there any dispute that PCS made a mistake by reenrolling Student at PCS on 9/12/22, when Student reached the top of the waitlist and was given a spot at PCS for 2022/23. The parties are clear that it was the 10/20/22 physical altercation that focused PCS's attention on the fact that Student had previously been expelled and should not ever have been reenrolled pursuant to PCS's policy. Petitioner's counsel asserts that PCS took disciplinary action against Student in October 2022 by keeping Student out of school for more than 10 days.

A plain reading of the relevant documents indicates that Student was suspended and removed from school for only 1 school day, 10/21/22, and that on the next school day, Monday, 10/24/22, Student was unenrolled based on PCS's expulsion policy. The undersigned finds those facts dispositive. PCS intended to conduct a disciplinary hearing on 10/26/22 about the incident, but did not have a hearing because the matter was resolved by PCS by applying its expulsion rule.

Petitioner's counsel argued that PCS's error in reenrolling Student could not be rectified by PCS and that Student's reenrollment should be considered permanent, but suggested no legal reason why PCS should not be able to enforce its expulsion policy. PCS did try to minimize the impact of unenrolling Student after the school year began by offering to help find a new school for Student and expediting records requests. PCS's assistant general counsel noted that other schools still had open seats and offered to help by leveraging contacts at other schools to assist Student. In short, the regulations cited by Petitioner's counsel are not relevant and this Hearing Officer concludes that there was no violation of the IDEA or denial of a FAPE on the first issue.

Issue 2: *Whether PCS denied Student a FAPE by failing to permit Parents to participate in IEP meetings and placement decisions pursuant to 34 C.F.R. § 300.501. (Petitioner has the burden of persuasion on this issue.)*

Petitioner did not meet her burden of persuasion on this issue, for there was no evidence presented that there were any IEP meetings held or placement decisions made in the 5 or 6 weeks that Student attended PCS in the Fall of 2022, much less that Parent had not been able to participate in them. Petitioner's counsel argued that the lack of IEP meetings shows that disciplinary action was taken against Student in October 2022 without the obligatory multidisciplinary team meeting. But as discussed above, the action taken in October 2022 to unenroll Student at PCS was not a disciplinary action, but enforcement of PCS's policies prohibiting an expelled student from returning to PCS as a student or even a visitor.

Petitioner is quite right that the IDEA does require parental involvement regarding any decisions "on the educational placement of their child." *See Aikens v. Dist. of Columbia*, 950 F. Supp. 2d 186, 190 (D.D.C. 2013), *citing* 20 U.S.C. § 1414(e); 34 C.F.R. 300.116(a)(1), 300.327. However, a change in location need not require involvement of the parent. As the court explained in *Aikens*, 950 F. Supp. 2d at 192:

> In the absence of a "fundamental change in" or "elimination of" a basic element of [student] T.A.'s educational program at [prior school] Shadd when it moved to [new

> school] BAT, there has been no change in educational placement. Without such a change, DCPS was not required to . . . involve [parent] in the decision to move T.A. from Shadd to BAT. T.A. was not denied a FAPE.

See also James v. Dist. of Columbia, 949 F. Supp. 2d 134, 137 (D.D.C. 2013) ("[w]hile the IDEA requires a student's parents to be part of the team that creates the IEP and determines the educational placement of the child, it does not 'explicitly require parental participation in site selection.' *White*, 343 F.3d at 379.").

In sum, this Hearing Officer concludes that there was no violation of the IDEA or denial of a FAPE on the second issue.

ORDER

Petitioner has not prevailed on either issue in this case. Accordingly, **it is hereby ordered** that any and all claims and requests for relief are **dismissed with prejudice**.

IT IS SO ORDERED.

Dated in Caption

/s/ *Keith Seat*
Keith L. Seat, Esq.
Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. § 1415(i).

Copies to:

Counsel of Record (Appendix A, by email)
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