



## **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 E30](#). The Due Process Hearing was convened on June 16, 2014, and concluded on June 20, 2014, at the District of Columbia Office of the State Superintendent of Education (“OSSE”) Student Hearing Office 810 First Street, NE, Washington, D.C. 20003, in Hearing Room 2006.

## **BACKGROUND AND PROCEDURAL HISTORY:**

The student \_\_\_\_\_ resides in the District of Columbia with his parent. The student is a child with a disability pursuant to IDEA with a disability classification of multiple disabilities including other health impairment (“OHI”) for Attention Deficit Hyperactivity Disorder (“ADHD”) and emotional disturbance (“ED”). During school year (“SY”) 2013-2014 the student was in tenth grade in a self-contained full-time special education program (“School A”) housed in a DCPS high school.

On March 31, 2014, the student engaged in a fight with another student in the School A cafeteria and was suspended for 45 days. On April 3, 2014, DCPS convened a manifestation determination review (“MDR”) meeting and concluded the student’s behavior was not a manifestation of his disability. The length of the suspension was subsequently reduced by a Hearing Officer. However, the student remained out of school for at least thirty days following the March 31, 2014 incident.

On April 14, 2014, Petitioner filed a due process complaint asserting, inter alia, DCPS inappropriately determined the student’s March 31, 2014, conduct was not a manifestation of his disability. On May 9, 2014, Petitioner filed a motion to withdraw without prejudice only the issue in the complaint challenging DCPS’ MDR determination. The other issues in the complaint were not withdrawn and are the subject of a separate Hearing Officer’s Determination (“HOD”) issued by this Hearing Officer. DCPS did not object to the withdrawal of the issue and that issue was dismissed by this Hearing Officer without prejudice.

On May 14, 2014, the student engaged in conduct that resulted in him being suspended from school for nine days. On May 16, 2014, DCPS convened a MDR and determined the student’s May 14, 2014, behavior was not a manifestation of his disability. The student’s conduct in question allegedly involved him pushing past a behavioral technician in his self-contained classroom and subsequently causing disruptions in both the school hallway and bathroom.

On May 19, 2014, Petitioner filed the current due process complaint reasserting the claim that DCPS’ April 3, 2014, MDR determination regarding the student’s March 31, 2014, behavior was inappropriate. In addition, in this complaint Petitioner challenged DCPS’ May 16, 2014, MDR determination regarding the student’s behavior of May 14, 2014. Petitioner asserted that both MDR determinations were inappropriate and the student’s behaviors in both instances were

manifestations of his disability. Thus, this HOD is adjudicating the appropriateness of both MDR determinations.

Petitioner seeks as remedy for the time the student was out of school because of both suspensions that DCPS be ordered to provide the student compensatory education in the form of “wrap around” and related services to include therapeutic transport, individual tutoring, family counseling, medication management and therapeutic recreation.

DCPS filed a timely response to the complaint on April 24, 2014. On June 3, 2014, DCPS filed a supplemental response to address the allegations regarding the May 16, 2014, MDR determination. DCPS denied any alleged violation(s) and asserted that neither the student’s March 31, 2014, nor his May 14, 2014, conduct were manifestations of his disability and DCPS stood by the MDR determinations that had been made by School A regarding both incidents.

The parties convened a resolution meeting on May 5, 2014, on Petitioner’s initial complaint.<sup>2</sup> Nothing was resolved. The issues alleged in Petitioner’s May 19, 2014, complaint required an expedited hearing within twenty (20) school days of the date the complaint was filed and a decision within ten (10) school days of the date the hearing was convened. Thus, the decision in this matter is due on or before July 8, 2014.<sup>3</sup>

This Hearing Officer convened pre-hearing conferences on May 16, 2014, May 29, 2014, and June 2, 2014, and issued a pre-hearing conference order on June 2, 2014, delineating, inter alia, the issues to be adjudicated<sup>4</sup> in this case and the companion case (2014-0192).

The parties appeared for hearing on the MDR issues on June 16, 2014, and June 20, 2014.<sup>5</sup>

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<sup>2</sup> The resolution meeting was held on the initial complaint filed which included the challenge to the April 3, 2014, MDR determination. There was no resolution meeting held on the second complaint filed as to the May 19, 2014, MDR determination.

<sup>3</sup> The hearing was convened on June 16, 2014, prior to the 20th school day following the filing the complaint. The decision is due within 10 school days of the date the hearing is convened. The regular school year ended on June 20, 2014, and summer school began on June 30, 2014. None of the days between these two dates were counted as school days. Thus, July 8, 2014, is the 10th school day following the date the hearing was convened.

<sup>4</sup> The PHO did not list the challenge to the May 16, 2014, MDR determination; however, the incident was discussed during the PHC and the parties agreed that issue was to be adjudicated. The issue was also agreed to by the parties at the outset of the due process hearing.

<sup>5</sup> All issues in this case and the companion case (2014-0192) which involved issues that were not subject to an expedited hearing were addressed in the same hearing. However, the cases were not officially consolidated. The evidence and arguments on the issues subject to an expedited hearing were concluded on June 20, 2014. However, the companion case had an additional day of hearing on July 1, 2014.

**ISSUES:**<sup>6</sup>

The issues adjudicated are:

1. Whether DCPS denied the student a free appropriate public education (“FAPE”) by failing to conclude at the April 3, 2014, MDR that the student’s behavior on March 31, 2014, that led to his 45-day suspension was a manifestation of his disability.
2. Whether DCPS denied the student a FAPE by failing to conclude at the May 16, 2014, MDR that the student’s behavior on May 14, 2014, that led to his 9-day suspension was a manifestation of his disability.

**RELEVANT EVIDENCE CONSIDERED:**

This Hearing Officer considered the testimony of the witnesses and the documents submitted in the parties’ disclosures (Petitioner’s Exhibits 1 through 66 and Respondent’s Exhibits 1 through 38) that were admitted into the record and are listed in Appendix A. Witnesses are listed in Appendix B.

**FINDINGS OF FACT:**<sup>7</sup>

1. The student \_\_\_\_\_ resides in the District of Columbia with his parent. The student is a child with a disability pursuant to IDEA with a disability classification of multiple disabilities including OHI for ADHD and ED. He is currently in tenth grade in School A, a self-contained full-time special education program housed in a DCPS high school. The student began attending the high school in which his program is housed at the start of SY 2012-2013 and was transferred to his current special education program in March 2013. (Petitioner’s Exhibit 31-1, 33-8, Respondent’s Exhibits 12-1, 19-1)
2. On March 18, 2013, the student received a three-day school suspension for repeated violations of walking the hallways, skipping class and becoming belligerent with staff once he was redirected. A MDR was held at that time and the team determined the student’s conduct was caused by or had a direct and substantial relationship to his disability. (Respondent’s Exhibits 14-1, 15-1)

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<sup>6</sup> The alleged violation(s) and/or issue(s) listed in the complaint or in the pre-hearing order may not directly correspond to the issues outlined here. The Hearing Officer restated the issue(s) at the outset of the hearing and the parties agreed that these were the issue(s) to be adjudicated.

<sup>7</sup> The evidence that is the source of the Finding of Fact (“FOF”) is noted within a parenthesis following the finding. The second number following the exhibit number denotes the page of the exhibit from which the fact was extracted. When citing an exhibit that has been submitted by more than one party separately the Hearing Officer may only cite one party’s exhibit.

3. The student's November 6, 2013, individualized educational program ("IEP") prescribed that the student is on regular high school diploma track and includes academic goals in the areas of math, reading, and written expression. The IEP also included goals in the areas of emotional, social and behavior development and in motor skills physical development. The IEP prescribed the student be provided 20.5 hours per week of specialized instruction outside general education and 120 minutes per month of occupational therapy ("OT") and 240 minutes per month of behavioral support services. The IEP included a behavior intervention plan ("BIP"), classroom and statewide testing accommodations and provided transportation services. (Petitioner's Exhibit 28, 29)
4. The student's IEP emotional social and behavior support goal stated: "by the end of the IEP when emotionally upset the student will utilize socially appropriate coping skills developed in weekly counseling sessions in an effort to de-escalate himself in 4 out of 5 given opportunities. The baseline stated "the student uses conversations with trusted adults as a means of coping with feelings of anger and/or frustration in two out of five opportunities." (Respondent's Exhibit 20-7)
5. In January 2014 D.C. Superior Court ordered a psycho-educational evaluation and a psychiatric evaluation be conducted of the student while he was detained at the D.C. Youth Services Center for a juvenile offense that allegedly occurred on December 2013. The psycho-educational evaluation found the student's cognitive abilities fell in the extremely low range and his academic functioning was at approximately second grade in all areas. The evaluation also confirmed the student's diagnosis of Severe Oppositional Defiant Disorder, ADHD and Unspecified Depressive Disorder. He was diagnosed by the psychiatric evaluation with Bipolar Disorder NOS, Marijuana Abuse, Anti-Social Behaviors of Adolescent. The psycho-educational evaluation noted the student's history of school truancy and disruptive school behaviors including bullying, throwing tantrums, challenging staff members and leaving the classroom without permission. Both the psychological and psychiatric evaluations recommended the student be placed in a residential treatment facility. (Witness 3's testimony, Petitioner's Exhibit 33-1, 33-8, 33-14, 33-16, 33-18, 33-20, 34-9 34-10)
6. On March 19, 2014, DCPS completed a review of the court ordered evaluations. The DCPS review recommended the student's IEP team develop and implement an attendance plan to improve the student's school attendance and for the student's IEP team to discuss the recommendations of the independent evaluations for the student's placement in a residential program. (Petitioner's Exhibit 35-1, 35-4)
7. During SY 2013-2014 the student had numerous incidents of leaving school or being in the hallway and received verbal reprimands and redirections or in-school disciplinary action on some of these occasions. (Petitioner's Exhibit 50)
8. On March 31, 2014, the student engaged in a fight with another student in the School A cafeteria and was suspended for 45 days. On April 3, 2014, DCPS convened a

MDR meeting and concluded the student's behavior was not a manifestation of his disability. The length of the suspension was subsequently reduced by a hearing officer.<sup>8</sup> However, the student remained out of school for at least thirty days following the March 31, 2014 incident. (Student's testimony, Petitioner's Exhibits 42, 43, 44, 45)

9. The student related the March 31, 2014, incident in the following manner: At School A all students in the student's School A program are allowed sit anywhere in the cafeteria as long as they can be seen by staff. On March 31, 2014, while the student was in the cafeteria during lunch another student spat on him. The student was embarrassed and left the cafeteria. A teacher's aide followed the student out of the cafeteria and brought him back in the cafeteria. When the student got back into the cafeteria he found the student who had spit on him and put him in a chock hold while the student was hit by another student. The School A staff then took the student to the school office and the principal told him he had to leave the building for the day. The student was later suspended for 45 days because of this incident. Although the length of suspension was eventually reduced the student remained out of school after the incident for approximately 30 days. (Student's testimony)
10. The student, his parent and his educational attorney were present along with the school A staff at the April 3, 2014, MDR meeting at which the team reviewed the March 31, 2013, incident to determine if the student's behavior was a manifestation of his disability. The meeting notes indicate that on March 31, 2014, prior to the incident the student left the school cafeteria along with another student (Student 1) and they were observed by School A staff conversing and were soon directed back to the cafeteria by School A staff. After reentering the cafeteria the student began talking with the school principal and was visibly upset. The other student (Student 1) who reentered the cafeteria with the student began punching another student (Student 2) and then the student intervened by putting Student 2 in a chokehold while Student 1 continued to hit Student 2. The School A members of the team concluded the student's behavior was not a manifestation of his disability (ADHD). The School A staff reasoned that if the student was spat upon by Student 2 he had time to inform school staff and his actions of holding the student was discussed and planned with the other student. The student's parent and attorney did not agree with the determination made by the School A staff. (Respondent's Exhibit 25-1, 25-2)
11. On April 9, 2014, School A issued a prior written notice that it would conduct a functional behavioral assessment ("FBA") to determine the functions of the student's behavior and the need for a behavior intervention plan ("BIP"). (Respondent's Exhibit 26-1)
12. On April 10, 2014, DCPS conducted the FBA. The FBA noted that since the student's enrollment in School A he has a history of excessive absences and suspensions as a result of physical altercations. When the student is present he is

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<sup>8</sup> The hearing was on April 23, 2014, and resulted in a recommendation by the Hearing Officer that the student's suspension be reduced from 45 days to 10 days. (Petitioner's Exhibit 44-6)

easily distracted by peers and rarely remains for the duration of the school day. He is easily angered and engages in negative verbal exchanges with peers and has been involved in physical altercations. Most recently he was involved in a physical altercation that resulted in an emergency 45- day suspension. The student was unavailable for input in the FBA. (Respondent's Exhibit 27-2)

13. On March 19, 2014, School A convened an IEP meeting to review the student's court ordered psycho-educational and psychiatric evaluations. The student's parent participated in the meeting along with the School A staff. At the meeting the student's parent explained the student's poor school attendance despite the student being provided bus transportation. Both the student's social worker and OT provider stated the student had made little if any progress on IEP goals in those areas due to his poor school attendance and having received suspensions for verbal and physical altercations with peers and destruction of property. At the meeting it was noted the student had been truant with 69 excused absences and 170 unexcused absences from his scheduled classes and 32 late arrivals. The School A staff recommended the parent seek support of community based organizations to assist the student with "wrap-around" support. The team agreed to meet again on May 8, 2014, and to discuss the recommendations in the independent evaluation for the student's placement in a residential program. (Petitioner's Exhibit 30-1, 30-2)
14. On May 8, 2014, the student's IEP team met and reviewed the student's recent evaluations and determined the student remained eligible for special education. The student's IEP was updated to include an additional hour per week of specialized instruction outside of general education and DCPS issued a prior written notice that documented the student's parent's disagreement with the student's disability classification of ED and concluded the student would continue to have the MD classification. (Petitioner's Exhibits 31-1, Respondent's Exhibit 30, 32, 33-12)
15. School A developed an updated FBA and BIP on May 7, 2014. (Petitioner's Exhibit 32-1)
16. On May 12, 2014, School A convened a meeting with the student and developed an attendance plan for the student. (Respondent's Exhibit 29)
17. The student's most recent IEP is dated May 13, 2014, and signed by the student, the parent and the student's educational attorney. The student's emotional social and behavioral development goal was continued from his previous IEP. The IEP prescribes the following services outside general education: 21.5 hours of specialized instruction per week, 240 minutes per month of behavioral support services, 120 minutes per month of occupational therapy. (Respondent's Exhibit 33-8, 33-12)
18. The student's BIP is designed to target the student's behaviors of yelling and resorting to physical violence when he has feelings of anger and frustration and replacing those behaviors with the coping skills developed through his counseling sessions. (Petitioner's Exhibit 29-1)

19. On May 14, 2014, the student engaged in conduct that was resulted in him being suspended from school for nine days. The student reportedly brushed passed the classroom staff to get to the rest room and in the rest room threw trashcans and displayed belligerent and aggressive behavior that lasted over an hour. (Witness 7's testimony, Petitioner's Exhibits 46, 47, Respondent's Exhibit 34)
20. On May 16, 2014, DCPS convened a MDR and determined the student's behavior was not a manifestation of his disability. Student is classified as having multiple disabilities ("MD"), due to a combination of ED and OHI/ADHD characteristics. The conduct in question involved the student pushing past a behavioral technician in his self-contained classroom and subsequently causing disruptions in both the school hallway and bathroom. (Petitioner's Exhibits 46, 47 Respondent's Exhibit 34)
22. During the May 14, 2014, incident the student called his parent by telephone. The parent could over hear the student stating he had to use the bathroom and could also over hear a staff member talking to the student in a manner the parent deemed harsh telling him he was not going anywhere. The student seemed to be getting more and more agitated. (Parent's testimony)
23. On May 16, 2014, School A convened a MDR meeting at which the student's May 14, 2014, behavior was reviewed. The student and his educational attorney participated. The team first looked at the manifestation of the student's behavior relative to his disability and the implementation of the student's IEP. The attorney had the student continually retell the story. At a certain point the student got frustrated and left the room and engaged in disruptive behaviors in the hallway. The student eventually returned but later got upset again in the meeting. DCPS staff stopped the meeting and informed Petitioner's counsel that due to his interactions with the student that they considered helped cause the student to get upset they were ending the meeting. As the student's disability and conduct had already been discussed the DCPS staff members concluded that student's May 14, 2014, behavior

was not a manifestation of his disability. (Witness 7's testimony, Petitioner's Exhibit 46, Respondent's Exhibit 34)

24. During SY 2013-2014 on occasion the student's in school behaviors were uncontrollable and unsafe for him and other students and staff and on those occasions School A staff decided to suspend the student. (Witness 8's testimony,
25. Petitioner proposed a compensatory education program to compensate the student for the alleged denials of FAPE during SY 2013-2014 including the student being suspended inappropriately. Petitioner's has inquired about the services that can be provided to the student to assist him in getting to school timely and attending regularly. The Capital Region Children's Center contracts with DCPS to provide compensatory education services including counseling, tutoring social skills counseling, and therapeutic transport to and from school. It can also provide the home based mental health services and can provides students who struggle with school attendance assistance in the home in the morning to get the student up and out to school on time. This is intended to be short-term service to get the student to a point he or she is attending school on his or her own. Petitioner has proposed the student be provided home-based treatment services, individual and family counseling and intensive mentoring and therapeutic transport, collectively called "wrap around" services. (Witness 1's testimony, Witness 6's testimony, Petitioner's Exhibit 65)

#### **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 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 5E DCMR 3030.14 the burden of proof is the responsibility of the party seeking

relief.<sup>9</sup> *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). In this case the student/parent is seeking relief and has the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with FAPE.<sup>10</sup>

Based solely upon the evidence presented at the due process hearing, an impartial hearing officer must determine whether the party seeking relief presented sufficient evidence to prevail. See DCMR 5-3030.34. The normal standard is preponderance of the evidence. See, e.g. *N.G. V. District of Columbia* 556 f. Sup. 2d (D.D.C. 2008) se also 20 U.S.C. §1451 (i)(2)(C)(iii).

**ISSUE 1:** Whether DCPS denied the student a free appropriate public education (“FAPE”) by failing to conclude at the April 2, 2014, MDR that the student’s behavior on March 31, 2014, that led to his 45-day suspension was a manifestation of his disability.

**Conclusion:** The evidence establishes that the student’s conduct on March 31, 2014, was a manifestation of his diasability and DCPS inappropriately concluded otherwise and inappropriately suspended the student.

34 C.F.R. § 300.530 (e) provides:

- (e) Manifestation determination. (1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine--
- (i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
  - (ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP.
- (2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.

The evidence in this case demonstrates that the student has been diagnosed with a number of psychological disorders and has a history of bullying, fighting, physical and verbal agression and that his IEP goal and his BIP was designed to address such behaviors.<sup>11</sup> The evidence indicates that in the incident of March 31, 2014, the student was directed back to the school cafeteria where he engaged with the school principal and was visibly upset while talking to

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<sup>9</sup> The burden of proof shall be the responsibility of the party seeking relief. Based solely upon the evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof.

<sup>10</sup> At the conclusion of the hearing the Hearing Officer pointed out the provision in Title 5B, Chapter 25, section 2510.16, which states in whole “In reviewing a decision with respect to the manifestation determination, the hearing officer must determine whether DCPS has demonstrated that the child’s behavior was not a manifestation of such child’s disability.” The parties had not been made aware of this provision.

<sup>11</sup> FOF #s 3, 4, 5

him. Thereafter, he engaged with another student assisting in the physical pulmulting of a third student in the caferteria that the student claimed had spit on him earlier. The student offered credible evidence that he was angered by the student spitting on him and then was redirected into the caferetia - returned to where the student who had angered him was located.<sup>12</sup> There was insufficient evidence<sup>13</sup> presented by DCPS to refute the logical conclusion that the student's behavior of engaging in physical agression was a behavior that was being targeting by his IEP and his BIP. Based on this evidence the Hearing Officer concludes that the student's March 31, 2014, behavior of engaging in physical agression even though it did not directly follow in time with him being spat on by the other student, was, nonetheless a manifestation of his ED disabilitiy.

**ISSUE 2:** Whether DCPS denied the student a FAPE by failing to conclude at the May 16, 2014, MDR that the student's behavior on May 14, 2014, that led to his 9-day suspension was a manifestation of his disability.

**Conclusion:** The evidence establishes that the student's conduct on May 14, 2014, was a manifestation of his diasability and DCPS inappropriately concluded otherwise and inappropriately suspended the student.

As previously stated the evidence in this case demonstrates that student has been diagnosed with a number of psychological disorders and had a history of bullying, fighting, physical and verbal agression and that his IEP goal and his BIP were designed to address such behaviors.<sup>14</sup> The evidence indicates that in the incident of May 14, 2014, the student was attempting to leave classroom has he had done on many occasions and been reprimanded for.<sup>15</sup> As result of him being repeatedly denied the ability to use the rest room he eventually became beligerant and pushed pass the School A staff member. The student and the parent offered credible evidence that he was angered by the repeated refusal by staff to allow him to use the bathroom.<sup>16</sup> There was insufficient evidence presented by DCPS to refute the logical conclusion that the student's behavior of engaging in verbal and physical agression was a behavior that was being targeting by his IEP and his BIP. Based this evidence the Hearing Officer concludes that the student's May 14, 2014, behavior was a manifestation of his ED disabilitiy.

Pursuant to 34 C.F.R. § 300.530 (d) (1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must-- (i) Continue to receive educational services, as provided in Sec. 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and (ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur. (2) The services required by paragraph

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<sup>12</sup> FOFs # 9, 10

<sup>13</sup> The Hearing Officer did not find the DCPS witness testimony regarding either incident to be convencing.

<sup>14</sup> FOF #s 2, 4, 18

<sup>15</sup> FOF # 7

<sup>16</sup> FOF #s 21, 22

(d)(1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational setting. (3) A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.

The evidence in this case demonstrates that the student was provided no services during the time of any of the suspensions during SY 2013-2014 and was thus denied a FAPE.<sup>17</sup>

Pursuant to 34 C.F.R. § 300.530 (d) (1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must--(i) Continue to receive educational services, as provided in Sec. 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and... The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational setting.

The evidence demonstrates that once the student was suspended on March 31, 2014, DCPS provided the student no alternative placement while he was out of school and even though the suspension was eventually reduced to 10 days that decision was after the student had continued to be out of school for approximately 30 days. In addition, following the May 14, 2014, suspension the student was removed for 9 days and received no services. The Hearing Officer concludes that DCPS provided the student no alternative placement as IDEA requires and he missed services as a result was harmed thereby and denied a FAPE.

### **Compensatory Education**

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.

The evidence demonstrates that the student was suspended for a total of 39 days after which he was supposed to have the benefit of an alternative school placement. The Hearing Officer concludes based on the evidence that tutoring and mentoring would serve to place the student in the stead he would have been had he received appropriate services consistent with his IEP during SY 2013-2014 at School A. However, the evidence did not support a specific amount of services. Despite Petitioner's failure to propose appropriate compensatory services the Hearing Officer concludes that to award the student no compensation for the missed services would be

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<sup>17</sup> FOF #s 4, 5, 11

inequitable and therefore concludes that the student should be awarded at least nominal services as compensation. Consequently, the Hearing Officer directs that the student be provided the academic tutoring and mentoring services in the order below.

**ORDER:<sup>18</sup>**

1. As compensatory education for the days the student was inappropriately suspended from School A and provided no appropriate alternative placement during the time he was suspended DCPS shall within 30 calendar days of the issuance of this Order provide the student 30 hours of independent tutoring and 15 hours of independent counseling or mentoring at the prescribed OSSE/DCPS rates. Petitioner shall use and complete this award by December 31, 2014.
2. All other requested relief 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 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*

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**Coles B. Ruff, Esq.**  
**Hearing Officer**  
**Date: July 8, 2014**

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<sup>18</sup> Any delay in Respondent in meeting the timelines of this Order that are the result of action or inaction by Petitioner shall extend the timelines on a day for day basis.