

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 July 7, 2017, at the District of Columbia Office of the State Superintendent of Education (“OSSE”) Office of Dispute Resolution 810 First Street, N.E., Washington, D.C. 20003, in Hearing Room 2003.

BACKGROUND AND PROCEDURAL HISTORY:

The student is age _____ and in grade _____.² _____ resides with _____ parent in the District of Columbia and has been determined eligible for special education and related services pursuant to IDEA with a disability classification of multiple disabilities (“MD”) including emotional disability (“ED”) and other health impairment (“OHI”) due to Attention Deficit Hyperactivity Disorder (“ADHD”).

During school year (“SY”) 2016-2017 the student attended a non-public special education school (“School A”). District of Columbia Public Schools (“DCPS”) is the student’s local education agency (“LEA”). During SY 2015-2016 the student was attending a DCPS school (“School B”). DCPS developed an individualized educational program (“IEP”) for the student at School B that is dated December 2, 2015.

On April 4, 2017, School A suspended the student for ten school days. DCPS and School A convened a meeting for the student on May 4, 2017, at which the team determined the student should not return to School A. The student’s mother (“Petitioner”) agreed that the student was in need of new school placement. Petitioner alleges DCPS failed to provide any proposed placements and DCPS’ action and/or inaction has prevented the student from attending school since April 4, 2017.

On June 9, 2017, Petitioner filed her due process complaint alleging that DCPS denied the student a free appropriate public education (“FAPE”) by (1) failing to provide the student a school to attend from April 4, 2017, until the filing of the due process complaint, (2) failing to provide the student an appropriate IEP because (a) DCPS allowed _____ IEP to expire in December 2016, and (b) the IEP that was developed in May 2017 was not finalized because DCPS failed to conduct transition plan assessment(s) before the student’s May 2017 IEP meeting.

RELIEF SOUGHT:

Petitioner seeks as relief that the Hearing Officer find DCPS has denied the student a FAPE, and that the Hearing Officer direct DCPS to conduct the required transition plan assessment within ten (10) calendar days of the hearing officer determination (“HOD”); convene an IEP meeting to finalize the student’s IEP within twenty (20) calendar days of the HOD; provide Petitioner with at least three proposed placements for the student and after those placements have, at least tentatively, accepted the student, those placements and any placement proposed by Petitioner

² The student’s current age and grade are indicated in Appendix B.

will be presented to an IEP team at least twenty-one (21) calendar days before the beginning of SY 2017-2018. Petitioner also seeks an award of compensatory education.

LEA Response to the Complaint:

DCPS filed a timely response to the complaint on June 13, 2017, and denies that there has been any failure to provide the student with a FAPE. DCPS asserts the student attended School A at public expense since the beginning of SY 2016-2107, and was at [REDACTED] ([REDACTED]) under the [REDACTED] from approximately April 4, 2017 to May 18, 2017. The last meeting regarding placement occurred on May 4, 2017, at School A. At that meeting, the parties noted that student was not taking medication and that student most likely needed a new placement.

The parties worked cooperatively to find the student a new placement and that process is ongoing. Petitioner mentioned that she would like her child to attend a particular public charter school, which is an independent charter school. Petitioner has the right to contact that school directly. DCPS also asserts this proceeding is premature as placement referrals have been sent and Petitioner must now interview at schools. The transition section of the student's IEP was unable to be completed as student was defiant and did not cooperate in the process of completing the transition interview. Otherwise, the IEP was and is complete.

ISSUES:³

The issues adjudicated are:

1. Whether the LEA denied the student a FAPE by failing to provide an appropriate interim and permanent placement after April 4, 2017.
2. Whether the LEA denied the student a FAPE by failing to develop an appropriate IEP because (a) the IEP expired in December 2016 and was not timely renewed and (b) the IEP that was developed in May 2017 was not finalized and was inappropriate because it did not include a transition plan based on appropriate assessment(s).

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 14 and Respondent's Exhibits 1 through 8) that were admitted into the record and are listed in Appendix A.⁴ Witnesses' identifying information is listed in Appendix B.⁵

³ The Hearing Officer restated the issue at the outset of the hearing and the parties agreed that this is the issue to be adjudicated.

⁴ Any items disclosed and not admitted or admitted for limited purposes was noted on the record and summarized in Appendix A.

⁵ Petitioner presented two witnesses: Petitioner, Petitioner's educational advocate. Respondent presented one

SUMMARY OF DECISION:

Petitioner sustained the burden of proof by a preponderance of the evidence that DCPS denied the student a FAPE by failing to provide the student an interim placement after [redacted] was suspended on April 4, 2017, as required by 34 CFR 300.530 et seq. Respondent did not sustain the burden or proof by a preponderance of the evidence with regard to whether there was a denial of a FAPE for DCPS failing to update the student's IEP in December 2016. However, Respondent's sustained the burden of proof with regard to the portion of the second issue related to the alleged failure to conduct a transition assessment to finalize the student's May 2017 IEP. The Hearing Officer grants 50 hours of independent tutoring as relief for the denials of FAPE.

FINDINGS OF FACT:⁶

1. The student resides with [redacted] parent in the District of Columbia. [redacted] has been determined eligible for special education and related services pursuant to IDEA with a disability of MD, including ED and OHI due to ADHD. (Petitioner's Exhibit 2-1)
2. During SY 2016-2017 the student attended School A, a private special education school. DCPS is the student's LEA. (Petitioner's Exhibit 2-1)
3. During SY 2015-2016 the student was attending School B, a DCPS school. DCPS developed an IEP for the student at School B that was dated December 2, 2015. (Petitioner's Exhibit 1-1)
4. The student's December 2, 2015, IEP prescribed that [redacted] be provided specialized instruction of 26.5 hours per week outside general education and 240 minutes per month of behavioral support services ("BSS") outside general education. (Petitioner's Exhibit 1-12)
5. At the end of SY 2015-2016 DCPS issued a location of services letter informing Petitioner that the student should attend [redacted] neighborhood school ("School C"). (Witness 2's testimony)
6. Petitioner received a letter from School A stating that the student was accepted to School A. Petitioner took the acceptance letter she received from School A to School C because Petitioner was receiving letters from School C about the student attending School C. (Petitioner's testimony).⁷

witness: DCPS student progress monitor.

⁶ The evidence (documentary and/or testimony) that is the source of the Findings of Fact ("FOF") is noted within a parenthesis following the finding. A document is noted by the exhibit number. 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.

⁷ Petitioner testified on direct examination that she received letters from School C then on cross-examination she stated she did not receive any letter from School C. The Hearing Officer credited Petitioner's testimony on direct

7. Although the student began attending School A in September 2016. School A did not notify DCPS that the student was attending School A until October 2016. (Witness 2's testimony, Petitioner's Exhibit 10)
8. After being notified that the student was attending School A, the DCPS progress monitor assigned to School A emailed School A residency forms to officially enroll the student for SY 2016-2017. It took until December 2016 to obtain the residency forms and to officially enroll the student at School A. Once the student was officially enrolled, the DCPS progress monitor then had access to the student's IEP and became aware that the student's annual IEP review and update were due. (Witness 2's testimony)
9. The DCPS progress monitor reached out to the School A special education coordinator to schedule an IEP meeting. In January 2017 School A convened a manifestation determination review ("MDR") meeting in which Petitioner participated. The DCPS progress monitor participated by telephone. The team discussed the student's IEP during the meeting and that a transition assessment needed to be conducted in order to update the student's IEP. No one raised concerns about the appropriateness of the student's December 2015 IEP and no one asked to amend the student's IEP goals or services during the meeting. (Witness 2's testimony)
10. The student's attendance problems, suspensions and spring break made it difficult for School A to complete the student's transition assessment in order to update IEP. School A made phone calls to and had in person communication with Petitioner during February, March, April and May 2017 to get the assessment and information ready to convene an IEP meeting. During this period the student continued to be provided the specialized instruction, BSS and the dedicated aide December 2015 IEP prescribed. (Witness 2's testimony, Respondent's Exhibit 8-6, 8-7)
11. On March 23, 2017, School A suspended the student for one school day. On April 4, 2017, School A suspended the student for ten (10) school days because disrespected staff members, refused to follow school rules and regulations, destroyed school property, physically assaulted school staff members, and left school grounds without permission. (Petitioner's Exhibits 4-1, 6-1)
12. After the April 4, 2017, suspension the student was detained at [REDACTED] and was thereafter placed in a group home. The student returned to [REDACTED] for one week and was then sent from [REDACTED] to another group home on May 10, 2017. The student was at [REDACTED] for one month total. The student has since returned to live with Petitioner. During the time the student was at [REDACTED] was attending school and receiving special education services.⁸ While in the group homes [REDACTED] was not attending school and has not attended

examination regarding this point.

⁸ The Hearing Officer took administrative notice that there is a school at [REDACTED]. As a result the Hearing Officer found that during the time the student was at [REDACTED], [REDACTED] was attending school and receiving special education services.

school since [redacted] returned home to Petitioner. (Petitioner's testimony, Petitioner's Exhibit 11)

13. On May 4, 2017, DCPS convened a meeting at School A. Petitioner participated by telephone and was represented by counsel at the meeting. The DCPS progress monitor for School A was present. The team concluded during the meeting that the student's April 4, 2017, conduct was a manifestation of [redacted] disability. The team also determined that School A could not longer meet the student's needs and [redacted] needed a different school placement. Petitioner agreed that the student needed a new school placement. (Petitioner's Exhibit 9).
14. At the May 4, 2017, meeting the team also discussed the student's IEP. The team agreed on goals and services on the IEP. However, the IEP could not be finalized because the transition plan could not be completed due to the student's attendance problems and because [redacted] had refused to complete the all components of the transition assessment that School A staff attempted to conduct. (Witness 2's testimony)
15. Petitioner agreed that following the May 4, 2017, meeting she would provide DCPS a recent evaluation of the student and assist in getting the student to complete the transition assessment. School A put together work packets for the student to complete along with the transition assessment. The team then took steps to identify a permanent placement for the student, as both School A and Petitioner agreed the student should not return to School A. Petitioner indicated the student would be at [redacted] for another week to be reevaluated and would return to court on May 16, 2017. (Petitioner's Exhibit 9-2)
16. DCPS agreed to send placement packets to select non-public schools for the student to be considered for placement once the student's IEP was finalized. Petitioner mentioned a public charter school. DCPS informed Petitioner that she could pursue the public charter school, but DCPS would look at non-public schools for the student to attend. (Witness 2's testimony)
17. Initially, DCPS was waiting for the Petitioner to provide the transition assessment to update the student IEP before sending the referrals to the non-public schools. DCPS had difficulty getting the transition assessment from Petitioner and eventually sent the student's December 2015 IEP with referrals to schools at the end of May 2017. (Witness 2's testimony, Petitioner's Exhibit 9-4)
18. Petitioner filed her due process complaint on June 9, 2017. On June 16, 2017, DCPS convened a resolution meeting on the complaint at which DCPS informed Petitioner of three non-public schools to which DCPS had sent placement packets to consider accepting the student. DCPS informed Petitioner that there were conditional acceptances from two of the proposed schools. Petitioner acknowledged at the meeting that she had received calls from some of the schools attempting to schedule Petitioner and the student to visit the schools as a part of the acceptance process. At this meeting DCPS gave Petitioner an acceptance letter from one of the non-public schools that DCPS had referred the student. The acceptance was conditioned on the parent and and student interviewing

at the school. Thus, as of June 16, 2016, DCPS provided a school that the student could attend. In addition, during the resolution meeting DCPS inquired of about compensatory services. Petitioner's representative declined to discuss any specific amount of compensatory services. (Witness 2's testimony, Petitioner's Exhibit 12-3, 12-4, Respondent's Exhibit 1)

19. The student completed the transition interview a few days after the resolution meeting and DCPS was able to complete and update the student's IEP. DCPS prepared a draft IEP for the student dated May 9, 2017. The draft IEP prescribes that the student be provided 30 hours per week of specialized instruction outside general education and 1 hour per week of BSS outside general education. No meeting has been scheduled to review the IEP. DCPS is awaiting Petitioner to choose one of the schools that have accepted the student so that IEP can be finalized with the input of new school. (Witness 2's testimony, Respondent Exhibit 2-1, 2-13)
20. On June 29, 2017, DCPS sent an email listing the schools that accepted the student. The parent eventually visited the schools. (Witness 2's testimony, Respondent's Exhibit 7)
21. By the time of the due process hearing, Petitioner and the student had visited two of the proposed non-public schools that had provided conditional acceptances. Petitioner did not believe that one of the two schools that had accepted the student would be appropriate for the student. (Petitioner's testimony, Witness 2's testimony)
22. Petitioner engaged her educational advocate to provide testimony with regard to compensatory education. The advocate recommended that the student be provided a computer and a variety of computer programs that would allow the student to gain some skill in computer graphics. She also recommended the student be provided tutoring from an art therapist on the use of the computer. The advocate opined that art is the student's passion and seems to be the way "to get to the student" and the art therapist would be able to help in the other areas. The advocate recommended six months of tutoring for the art therapist to develop rapport with the student and for the student to begin to work independently. The advocate could not say that the recommendation she offered correlated with the services the student's missed; she cited no evidence of progress or lack of progress the student incurred while was out of school. (Witness 1's testimony)

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

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).

Pursuant to 5E DCMR 3030.14 the burden of proof is the responsibility of the party seeking relief. *Schaffer v. West*, 546 U.S. 49, 126 S.Ct. 528 (2005). In this case, as noted in the PHO and at the hearing, Petitioner had the burden of production and the burden of persuasion on issue # 1. Petitioner established a prima facie case with regard to issue # 2. Thus, Respondent had the burden of persuasion with respect to that issue. The burden of persuasion is to be met by a preponderance of the evidence. 9

ISSUE 1: Whether the LEA denied the student a FAPE by failing to provide an appropriate interim and permanent placement after April 4, 2017.

Conclusion: Petitioner sustained the burden of proof by a preponderance of evidence that DCPS failed to provide the student a placement after the April 4, 2017, suspension from the time the

⁹ 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.

student was released from █████ in mid May 2017 until DCPS offered Petitioner a placement for the student at the resolution meeting on June 16, 2017. DCPS' failure to at least provide interim services upon the student's release from █████ until DCPS offered a school placement for the student to attend was a denial of FAPE.

Pursuant to the requirements 34 C.F.R. § 300.530 et seq., once a student is removed from school for a violation of a code of conduct for more than ten (10) school days in a school year a MDR must be convened with the parent, and relevant members of the student's IEP team to 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 if the student's conduct in question was caused by, or had a direct and substantial relationship to, the child's disability. A student should not be removed from school if his or her behavior is determined to be a manifestation of his or her disability.

Pursuant to 34 C.F.R. § 300.530 (f)(2) If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must— (2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

The evidence in this case demonstrated that the student received formal suspensions at School A and based on the incident occurring on April 4, 2017, the student was entitled to a MDR. A MDR was conducted and the student's behavior was determined to be a manifestation of disability. Consequently, the student was then supposed to return to School A. However, at that the time of the MDR the student was in juvenile detention at █████. Petitioner testified that the student was at █████ for a month.

The Hearing Officer takes administrative notice that there is a school at █████. Petitioner did not verbally testify regarding the student's schooling at █████ but simply submitted a declaration prepared by her counsel that stated in part that she did not believe the student's IEP was implemented at █████. This evidence was insufficient to establish any claim that the student's IEP was not implemented at █████. Thus, the Hearing Officer concludes that the student was provided a placement at which █████ received services pursuant to IEP while █████ was detained at █████ for at least a month following █████ April 4, 2017, suspension.

34 C.F.R. § 300.17 provides:

A free appropriate public education or FAPE means special education and related services that--
... (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved;

N.W. v. District of Columbia, 70 IDELR 10 (D.D.C. May 15, 2017) (“The IDEA requires school districts to offer [a] placement in a school that can fulfill the requirements set forth in [the student's] IEP.”).

School A conducted an MDR meeting on May 4, 2017, at which time the team determined the student was in need of a new school placement at that the student should not return to School A.

Petitioner was in agreement that the student should not return to School A. At the time of that meeting the student was detained at [REDACTED]. The team then took steps to identify a permanent placement for the student. At that meeting Petitioner stated that she wanted to consider a specific public charter school. Petitioner indicated the student would be at [REDACTED] for another week to be reevaluated and would return to court on May 16, 2017. Based upon the evidence presented the Hearing Officer concludes that following the student's April 4, 2017, suspension the student was provided an interim alternative placement for at least the time [REDACTED] was attending [REDACTED].

The evidence demonstrates that sometime between May 10, 2017 and the date that the resolution meeting was held on June 16, 2017, the student was released from [REDACTED] and placed in a group home(s) and then returned to reside with Petitioner. DCPS was, at the point the student was released from [REDACTED], required to provide a placement and continued special education services.

Following the May 4, 2017, meeting DCPS took action to identify a non-public school where the student could attend after [REDACTED] was released from [REDACTED]. At this June 16, 2017, resolution meeting DCPS gave Petitioner an acceptance letter from one of the non-public schools where DCPS had referred the student. The acceptance was conditioned on the parent and student interviewing at the school. Thus, as of June 16, 2016, DCPS provided a school that the student could attend.

There is evidence that Petitioner contributed to the delay in interviewing at the proposed schools that resulted in acceptances for the student being conditional. Those interviews were completed by the time of the due process hearing and at that time there was a full acceptance to a school placement that Petitioner could either accept or reject. The Hearing Officer concludes, therefore, that based upon the evidence of this case, that as of the June 16, 2016, resolution meeting DCPS had offered the student a placement and had complied with its obligation to provide both an interim and permanent placement to the student.

Although the evidence demonstrates that School A provided work packets for the student to complete after [REDACTED] left School A, there is no evidence that either School A or DCPS provided any instructional services or tutoring or BSS to make up for the time the student was not attending school. The evidence demonstrates that the student was without a school and without special education services for approximately a month from mid May 2017 until DCPS provided a school the student could attend at the June 16, 2017, meeting. A month of missed instruction of services is significant. Consequently, the Hearing Officer concludes that because the student was without a school placement and no special education services were offered or provided to [REDACTED] during this one-month period, [REDACTED] was denied a FAPE.

The evidence also demonstrates that at that resolution meeting there was an attempt by DCPS to ascertain an agreeable amount of compensatory services for the period the student was out of school. There was no agreement by the parties on compensatory services. The Hearing Officer concludes that the student is due compensatory services for approximately one month after [REDACTED] was released from [REDACTED] and not attending any school until the acceptance letter was provided Petitioner at the June 16, 2017, resolution meeting.

ISSUE 2: Whether the LEA denied the student a FAPE by failing to develop an appropriate IEP because (a) the IEP expired in December 2016 and was not timely renewed and (b) the IEP that was developed in May 2017 was not finalized and was inappropriate because it did not include a transition plan based on appropriate assessment(s).

Conclusion: Respondent did not sustain the burden of proof with regard to appropriateness of the student's IEP because it was not timely reviewed and updated. However, Respondent sustained the burden of proof by a preponderance of the evidence with regard to the alleged inappropriateness of the student's IEP related to the transition plan and assessment because that determination is pre-mature.

In *Board of Education v. Rowley* the United States Supreme Court set forth a two-part inquiry for determining whether a school district has satisfied the FAPE requirement. First, the state must have "complied with the procedures set forth in the Act." *Rowley*, 458 U.S. at 206. Second, the IEP that is developed must be "reasonably calculated to enable the child to receive educational benefits." *Rowley*, 458 U.S. at 206-07. To be appropriate under 34 C.F.R. § 300.324, the IEP must consider the (i) strengths of the child; (ii) concerns of the parents; (iii) results of the initial or most recent evaluation; and (iv) academic, developmental, and functional needs of the child.

Pursuant to *Schaefer v. Weast*, 554 F.3d 470 (U.S. App. 2009), the Hearing Officer must "focus on the adequacy of the IEP at the time it was created, and ask if it was reasonably calculated at that time to enable the student to receive educational benefits." The "reasonably calculated" qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials, informed by their own expertise and the views of a child's parents or guardians; any re-view of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal. *Schaefer v. Weast*, 554 F.3d 470

Pursuant to 34 C.F.R. §300.324(b)(1), DCPS must ensure that...the IEP Team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and revises the IEP, as appropriate, to address any lack of expected progress toward the annual goals...and in the general education curriculum, if appropriate; the results of any reevaluation conducted ...; information about the child provided to, or by, the parents...; the child's anticipated needs; or other matters.

Pursuant to 34 C.F.R. § 300.323(a) as to when IEPs must be in effect, "At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in § 300.320."

Pursuant to 34 C.F.R. §300.320 (b) "Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include— (1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and (2) The transition services (including courses of study) needed to assist the child in reaching those goals."

The evidence demonstrates that the student began attending School A in September 2016. However, DCPS had issued a location of services letter for the student to attend neighborhood school for SY 2016-2017. Despite the fact that School A accepted the student and allowed the student to attend School A as early as September 2016, DCPS was not aware the student was attending School A until October 2017. It took until December 2016 for School A to obtain official enrollment documentation for the student. By the time that occurred the student's IEP was due to be renewed. The evidence demonstrates there was a MDR meeting for the student in January 2017 at which the student's IEP was discussed. Although the IEP was discussed there was apparently no effective action taken to update the student's IEP prior to the MDR meeting that occurred in May 2017.

Although the evidence demonstrates there were some unsuccessful attempts to reach Petitioner for four months, there is no indication that there were any letters of invitation sent or concrete actions taken to convene an IEP meeting to conduct an annual review of the student's IEP. Although there is evidence that due to the student's absences, suspensions and refusal to participate in the transition assessment to complete a transition plan, the student's IEP was not updated, the Hearing Officer concludes based on the evidence that School A's, and consequently DCPS's, efforts to ensure the student's IEP was updated were lacking.

Although there is no evidence that concerns were raised about that the student's December 2015 IEP and the services that IEP prescribed continued to be provided, there was evidence the student continued to have behavioral difficulties and was suspended from school during the four months that student's IEP was not updated.

There was no evidence that the behavior and disciplinary problems the student experienced were directly related to the student's IEP not being updated, DCPS did not present sufficient evidence to counter the student's behavioral difficulties such that Hearing Officer could rule its favor, at least with regard to the student's IEP not being updated timely.

Although the update of the IEP required that a transition plan be included in the IEP and that the transition plan be based on an assessment of the student, and there was evidence that the student refused to complete the assessment, these factors do not excuse School A's failure to convene an annual IEP review meeting prior to the May 4, 2017, MDR.

The draft IEP DCPS has proposed and that is dated May 9, 2017, actually remains a draft IEP unless and until an IEP team finalizes the IEP. The draft IEP now apparently includes a transition plan based on the assessment that the student has now completed. The draft IEP must be reviewed and finalized by an IEP team that includes Petitioner. Because the IEP remains a draft IEP, the Hearing Officer does not conclude that the draft IEP is inappropriate. The determination of the appropriateness of the student's updated IEP is premature.

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 Hearing Officer has concluded that the student was not provided special education services for a total of three (3) school days, that [redacted] was removed from school without the benefit of a MDR, no FBA, and no BIP.

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.

In this instance, Petitioner presented a witness who testified that the student should be provided a graphic computer, software and tutoring by an art therapist because art is how "to get to the student." The Hearing Officer did not find the testimony of the witness convincing as to the relationship between the one-month the student was without a school and services and the compensatory education proposed. The Hearing Officer, however, was convinced from the evidence presented about the student that the student would benefit from tutoring services. Consequently, the Hearing Officer concluded that despite the lack of credible and specific evidence on compensatory education, the student should be granted independent tutoring in sufficient amount as to have an impact on the student and to assist in making up for the lack of special education services from the time [redacted] was released from [redacted] until DCPS offered the student a placement. The Hearing Officer, thus, grants the student fifty (50) hours of independent tutoring as compensatory education.

ORDER: ¹⁰

1. DCPS shall, within ten (10) school days of the issuance of this Order, authorize and fund fifty (50) hours of independent tutoring for the student at the OSSE prescribed rate as compensatory education.
2. If it has not already done so prior to this decision, DCPS shall, within fifteen (15) business days of issuance of this order, convene an IEP meeting to review any pending evaluations and/or assessments and review and revise the student's IEP as appropriate and to determine an appropriate school placement for the student for SY 2017-2018 and issue a prior written notice ("PWN") regarding the placement decision.
3. All other relief requested by Petitioner is hereby denied.

¹⁰ Any delay in Respondent meeting the timelines of this Order that is the result of action or inaction by Petitioner shall extend the timelines on a day for day basis.

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.
Hearing Officer
Date: July 21, 2017

Copies to: Counsel for Petitioner
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