

**DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

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

OSSE
Student Hearing Office
March 24, 2014

PETITIONER,
on behalf of STUDENT,¹

Petitioner,

Hearing Officer: Peter B. Vaden

v.

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Respondent.

Student Hearing Office,
Washington, D.C.

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came for an expedited hearing upon the Administrative Due Process Complaint Notice filed by Petitioner (the Petitioner or MOTHER), under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 and Title 5-B, Chapter 5-B25 of the District of Columbia Municipal Regulations (DCMR). In her Due Process Complaint, Petitioner alleges that Respondent District of Columbia Public Schools (DCPS) denied Student a free appropriate public education (FAPE) by not following the IDEA's disciplinary requirements after suspending Student for more than ten school days, by failing to conduct a reevaluation and functional behavioral assessment (FBA) requested by

¹ Personal identification information is provided in Appendix A.

Mother and by failing to ensure that Student's Individualized Education Program (IEP) team made appropriate revisions to her September 30, 2013 IEP.

Student, an AGE child, is a resident of the District of Columbia. Petitioner's Due Process Complaint, filed on February 12, 2014, named DCPS as Respondent. On February 28, 2014, I convened a telephone prehearing conference with counsel to discuss the hearing date, issues to be determined and other matters.

Pursuant to the IDEA, the expedited due process hearing was convened before me on March 13, 2014 at the Student Hearing Office in Washington, D.C. This Hearing Officer Determination must be issued within 10 school days after the hearing. The hearing, which was closed to the public, was recorded on an electronic audio recording device. The Petitioner appeared in person, and was represented by PETITIONER'S COUNSEL. DCPS was represented by DCPS' COUNSEL.

Mother testified, and called as witnesses PSYCHOLOGIST and GRANDMOTHER. DCPS called as witnesses CASE MANAGER, BEHAVIOR SUPPORT SPECIALIST, SPECIAL EDUCATION TEACHER and SOCIAL WORKER. Petitioner's Exhibits P-2, P-3, P-4, P-6 through P-11, P-18 and P-20 through P-24 were admitted into evidence without objection. Exhibits P-15, P-16, P-17 and P-19 were admitted over DCPS' objections. Exhibits P-1, P-5 and P-12 through P-14 were not offered. DCPS' Exhibits R-1 through R-14 were admitted without objection, with the exception of Exhibit R-6 which was admitted over Petitioner's objection. Petitioner's Counsel made an opening statement. Counsel for both parties made closing statements. Neither party requested leave to file a post hearing memorandum.

JURISDICTION

The Hearing Officer has jurisdiction under 20 U.S.C. § 1415(f), (k) and DCMR tit. 5-E, § 3029 and tit. 5-B, § 2510.

ISSUES AND RELIEF SOUGHT

The issues to be determined in this case are:

- Whether DCPS has denied Student a FAPE because it has failed to make appropriate revisions to Student’s current IEP, which does not provide an appropriate placement/site location or level of services, contains inappropriate baselines, present levels of performance and annual goals in writing and behavior, and does not meet Student’s need for increased hours of specialized instruction outside of the general education setting and one-on-one instruction, and fails to provide a BIP;
- Whether DCPS has denied Student a FAPE by failing to conduct a reevaluation and an FBA, requested by Mother at a September 2013 IEP meeting; and
- Whether DCPS failed to convene an Manifestation Determination Review (MDR) meeting and provide appropriate interim educational services after suspending Student for more than 10 school days in the current, 2013-2014, school year.

For relief, Petitioner requests that the Hearing Officer develop a revised IEP consistent with the Petitioner’s claims or order Student’s IEP team to do so; that the Hearing Officer order DCPS to fund Student’s placement at and transportation to a suitable public or non-public school; that the Hearing Officer order DCPS to fund Independent Educational Evaluation (IEE) assessments of Student, including an educational assessment, auditory processing assessment, an FBA, a psychological assessments and all other evaluations/assessments deemed necessary to evaluate Student’s social-emotional, behavioral, attentional, and academic deficits; and that the Hearing Officer determine that Student’s behaviors that led to her alleged suspensions were a manifestation of her disability or order DCPS convene an MDR meeting to make that determination. In addition, Petitioner seeks an award of appropriate compensatory

education to compensate Student for alleged denials of FAPE since the beginning of the 2013-2014 school year.

FINDINGS OF FACT

After considering all of the evidence, as well as the argument of counsel, this Hearing Officer's Findings of Fact are as follows:

1. Student, an AGE girl, resides with Mother and her siblings in the District of Columbia. Testimony of Mother.
2. Student is eligible for special education and related services as a student with an Emotional Disturbance (ED) primary disability. Exhibits R-6, R-7.
3. Mother enrolled Student at CITY ELEMENTARY SCHOOL at the beginning of the 2013-2014 school year. Before enrolling in City Elementary School, Student attended CHARTER SCHOOL. Charter School closed before the beginning of the current school year. Testimony of Mother.
4. In December 2011, Student was assessed at the D.C. Department of Mental Health's School Mental Health Program. She was diagnosed with ADHD, Combined Type and Disruptive Disorder, NOS. Exhibit P-16.
5. In the spring of 2012, Student was referred by Charter School's special education director for a comprehensive psychological evaluation. Student was reported to have been experiencing behavioral difficulties at school which were having an impact on her learning. The purpose of the psychological evaluation was to determine the nature of Student's difficulties and to develop recommendations to improve Student's functioning. In a June 13, 2012 Comprehensive Psychological Evaluation report, the examiner reported, *inter alia*, that Student's Full Scale Intelligence Quotient puts her in the High Average range of functioning. Her Perceptual Reasoning Index fell in the High

Average range and was significantly higher than her Verbal Comprehension Index, which placed her abilities in the Average range. Student's Working Inventory Index fell in the High Average range and her Processing Speed Index fell in the Average range of functioning. Overall, Student's abilities were extremely consistent. Student's Early Achievement Composite, an overall measure of her academic functioning, placed her in the 73rd percentile compared to her same-aged peers and was equivalent to what would be expected of a child slightly older than Student. On a test of visual-motor integration, Student performed in the Average range of functioning and better than 65 percent of her same-aged peers. Student performed in the Extremely Low range on the Motor Coordination test. On a test of executive functioning, Student's classroom teacher, indicated that emotional control, inhibition, and planning/organizing were of Clinically Significant concern for Student. Most significant was Student's difficulty modulating or controlling her emotional responses to undesirable changes, expectations, requests, or limits. These situations cause her to shut down or throw a tantrum that has a negative effect on the rest of her day as well as a deleterious impact on the classroom environment and other students' learning. On assessments of Student's behavior, the classroom teacher further indicated that Student's most salient issues were her externalizing problems, which includes aggression and conduct problems. The teacher's responses also expressed concern about Student's anger and bullying behaviors. Adaptability was another area of concern for Student that was identified by her teacher. The examiner concluded that Student was a child who was functioning above average cognitively. However, her behavioral difficulties were detracting from her time in the classroom, which would result in Student's falling behind if proper interventions were not put into place. As such, Student would require behavioral supports in order to be

successful in her school environment. Exhibit R-11.

6. Charter School's initial July 17, 2012 IEP for Student identified her Primary Disability as ED. The IEP identified areas of concern in Written Expression, and Emotional, Social and Behavioral Development. For Student's Present Levels of Performance in Emotional, Social and Behavioral Development, the IEP cited the spring 2012 comprehensive psychological report that Student has difficulty modulating or controlling her emotional responses to undesirable changes, expectations, requests or limits. These situations cause her to shut down or throw a tantrum that has a negative effect on the rest of her day as well as a deleterious impact on the classroom environment and other students' learning. The IEP provided Student five hours per day of Specialized Instruction in the General Education setting and 30 minutes per week of Behavioral Support services outside General Education. Exhibit P-4.

7. Charter School conducted a Functional Behavioral Assessment (FBA) of Student in November to December 2012. The assessor noted that since Student had been on medication (Citaloprom), there had been a significant decrease in outbursts and verbally and physically aggressive behaviors. Exhibit R-9.

8. A Behavior Intervention Plan (BIP) for Student was drafted at Charter School on December 17, 2012. Exhibit R-10. Mother did not know that the BIP had been developed, Testimony of Mother.

9. The Charter School June 7, 2013 IEP Progress Report, for the 2012-2013 fourth reporting period, reported that Student was progressing on or had mastered her Written Expression annual goals, but that she was regressing or had shown no progress on her Emotional, Social and Behavioral Development goals. Exhibit R-8. For Emotional, Social and Behavioral Development, a special education counseling intern

reported that Student had regressed in the frequency in which she exhibited socially appropriate behaviors, that she had not demonstrated the ability to regulate her emotions consistently and that the instances of Student's externalizing aggressive behaviors had increased. Exhibit R-8.

10. Charter School's IEP team reviewed Student's IEP on July 15, 2013. The July 15, 2013 IEP identified Written Expression and Emotional, Social and Behavioral Development as areas of concern. The Present Levels of Performance for Emotional, Social and Behavioral Development were unchanged from the July 17, 2012 IEP. The July 15, 2013 IEP changed Student's Specialized Instruction to ten hours per week outside General Education and increased her Behavioral Support Services to one hour per week. In the IEP Least Restrictive Environment (LRE) narrative, the IEP team reported that Student required small group instruction to address deficits in academics and that Student's behavioral concerns warranted time allocated outside the classroom for counseling sessions. Exhibit P-3.

11. Mother thought that Student was "doing good" at Charter School. Student was placed in a general education classroom with 20-plus children and two teachers. Charter School closed after Student's July 15, 2013 IEP was completed. Student started at City Elementary School in August 2013. For the first month, Student's behavior at City Elementary School was not a problem. Testimony of Mother.

12. On September 20, 2013, DCPS provided written notice to Mother that it had accepted the July 15, 2013 Charter School IEP and that it would place the provisions of the IEP on DCPS documents. Exhibit P-7.

13. Student's IEP team at City Elementary School was convened on September 30, 2013. Mother attended the meeting. The purpose of the meeting was to transfer

Student's IEP document from Charter School to DCPS, without making any changes to the IEP. The school representatives on the IEP team reported generally that Student had been cooperative and participated in class. The special education teacher reported that Student had been very cooperative and engaging, that she participated in class, that she was helpful and wanted to learn. However, Student's regular education teacher reported that Student would become upset when she did not get her way and may become angry and shut down. Social Worker also reported that, though her meetings with Student had been fine, she had been called in to the classroom to assist on an occasion when Student would not listen to the teacher. On that occasion, Student completely shut down. Mother told the team about Student's behavior problems the preceding year at Charter School and that those behaviors had not yet presented themselves at City Elementary School. The September 30, 2013 IEP team decided that Student would continue to receive the services provided in the Charter School July 15, 2013 IEP – ten hours per week of Specialized Instruction in written expression and four hours per month of behavioral support services. Exhibits R-6, P-2.

14. At the time of the September 30, 2013 IEP meeting, Mother felt there were no problems with Student at City Elementary School. Mother did not object to the IEP team's decision to adopt the July 15, 2013 Charter School IEP. Testimony of Mother.

15. Academically, Student is performing near grade level in nearly all subjects. She is very smart and has the ability to reason, comprehend and perform in class. She is a top student. Testimony of Special Education Teacher.

16. According to Mother, over the 2013-2014 school year, REGULAR EDUCATION TEACHER repeatedly telephoned Mother to ask her to come to school to pick up Student because Student would not listen to the teacher. This happened around

seven times a month. Mother would “go along with that to get along.” Testimony of Mother. At the March 6, 2014 resolution meeting in this case, Regular Education Teacher said that she had only telephoned Mother to inform her that Student was going home, but that she had not sent Student home. Exhibit R-1. Student has never been suspended from City Elementary School for disciplinary reasons and there have been no major disciplinary incidents since she started attending the school. Testimony of Behavior Support Specialist, Exhibit R-2.

17. Regular Education Teacher has reported to Behavior Support Specialist that in the second half of the school day, Student decompensates. She is extremely impulsive and does not respond to redirection. Behavior Support Specialist is not sure of the reason for the behavior. There is a BIP in place to support Student and Behavior Support Specialist provides consultation to Student’s teaching team. Student’s behaviors, described in the July 15, 2013 IEP, have not changed in description, but there has been an increase in the disruptive behaviors. Testimony of Behavior Support Specialist.

18. Beginning around December 2013, Special Education Teacher has been told that Student does not spend a lot of time in the classroom after lunch, that she walks out of the cafeteria and that she runs in the halls when she should be in class. Special Education Teacher has attempted to talk with Student about this behavior, but Student shuts down and will not say why she walks out of the classroom or out of the cafeteria. Student is on the cusp of being a proficient student, but if she does not stay in class, she is not available for learning. Testimony of Special Education Teacher.

19. Social Worker provides counseling services to Student. She has observed that Student can be very difficult. She may not respond, may refuse to communicate, or

may walk away. There has not been a lot of progress addressing Student's behaviors.

Testimony of Social Worker.

20. In the classroom, Student interacts well with peers in a small group setting. In the larger group setting, Student has problems interacting, especially with one other child. Testimony of Behavior Support Specialist.

21. At the March 6, 2013 resolution meeting in this case, DCPS offered to conduct a comprehensive psychological assessment, an FBA, a social history and an educational assessment of Student, and to convene Student's IEP team meeting to review and revise, as appropriate, her IEP based upon the new assessments. Exhibit R-1. Mother did not give her consent at the meeting for the new assessments because she wanted to get a better understanding of DCPS' offer. Testimony of Mother.

22. The law firm representing Petitioner has contacted NONPUBLIC SCHOOL about Student. Student has not interviewed at the school and her admission there would be contingent upon a review of her referral packet and a successful interview and visit to the school. Exhibit P-19.

CONCLUSIONS OF LAW

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

Burden of Proof

The burden of proof in a due process hearing is the responsibility of the party seeking relief – the Petitioner in this case. *See* DCMR tit. 5-E, § 3030.3. *See, also, Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 536, 163 L.Ed.2d 387

(2005); *Hester v. District of Columbia*, 433 F.Supp.2d 71, 76 (D.D.C. 2006).

Analysis

- A. Did DCPS deny Student a FAPE because it has failed to make appropriate revisions to Student's September 30, 2013 IEP, which does not provide an appropriate placement/site location or level of services, contains inappropriate baselines, present levels of performance and annual goals in writing and behavior, and does not meet Student's need for increased hours of specialized instruction outside of the general education setting and one-on-one instruction, and fails to provide a BIP?

The IDEA guarantees children with disabilities the right to a FAPE with services designed to meet their unique needs. 20 U.S.C. §§ 1400(d)(1)(A), 1412(a)(1). At the beginning of each school year, DCPS must have in effect, for each child with a disability in its jurisdiction, an IEP as defined in 20 U.S.C. § 1414(1)(A) and 34 C.F.R. § 300.323(a). The Act requires that DCPS must ensure that an 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. It must revise the IEP as appropriate to address annual goals, results of any reevaluation, information about the child, the child's anticipated needs, or other matters. 34 C.F.R. §§ 300.324(b)(1) (i)-(ii), 300.324(b)(2). *Eley v. District of Columbia*, 2012 WL 3656471, 4-5 (D.D.C. Aug. 24, 2012).

Student's September 30, 2013 IEP

There are two prongs to Petitioner's first issue: First, was Student's September 30, 2013 IEP inappropriate as developed by Student's City Elementary School IEP team and, second, was Student denied a FAPE by the IEP team's failure to revise the IEP during the current 2013-2014 school year. The IDEA requires that to provide a FAPE, "[t]he IEP must, at a minimum, 'provide personalized instruction with sufficient support

services to permit the child to benefit educationally from that instruction.” *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 519 (D.C.Cir.2005), quoting *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist., Westchester County v. Rowley*, 458 U.S. 176, 203, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982). To determine whether a FAPE has been provided, courts must determine whether: (1) the school complied with the IDEA’s procedures; and (2) the IEP developed through those procedures was reasonably calculated to enable the student to receive educational benefits. *N.T. v. District of Columbia*, 839 F.Supp.2d 29, 33 (D.D.C.2012), quoting *Loren F. v. Atlanta Indep. Sch. Sys.*, 349 F.3d 1309, 1312 (11th Cir.2003). The measure and adequacy of an IEP must be determined as of the time it is offered to the student. *S.S. ex rel. Shank v. Howard Road Academy*, 585 F.Supp.2d 56, 66 (D.D.C. 2008).

With respect to the development of the September 30, 2013 IEP, Petitioner does not allege any procedural violations. Therefore, I consider whether, when the September 30, 2013 IEP was offered to Student, the plan was reasonably calculated to provide Student educational benefits. Because Student transferred from Charter School to City Elementary School at the beginning of the 2013-2014 school year, City Elementary School provided written notice to Mother that it had accepted the July 15, 2013 Charter School IEP and that it would place the provisions of the IEP on DCPS documents. Mother testified that she agreed with this proposal because Student had been doing well at Charter School and, as of September 30, 2013 when the IEP team met, Student was not having problems at City Elementary School. At the September 30, 2013 IEP meeting, Student’s IEP team adopted the goals and continued the services in the Charter School IEP, which provided ten hours per week of Specialized Instruction services outside General Education and four hours per month of Behavioral Support

Services. Mother has offered no persuasive evidence that the September 30, 2013 IEP was not appropriate when it was offered to Student. I find that the September 30, 2013 IEP was reasonably calculated to enable Student to receive educational benefits

Failure to revise September 30, 2013 IEP

Because the IEP must be “tailored to the unique needs” of each child, *Rowley*, 458 U.S. at 181, 102 S.Ct. 3034, it must be regularly revised in response to new information regarding the child’s performance, behavior, and disabilities. *D.S. v. District of Columbia*, 699 F.Supp.2d 229, 234 (D.D.C.2010). *See also, Harris v. District of Columbia*, 561 F.Supp.2d 63, 68 (D.D.C. 2008) (The IDEA is replete with provisions emphasizing the necessity of monitoring the IEP for revision purposes.) Although I have found that the September 30, 2013 IEP was appropriate for Student when it was developed, the hearing evidence establishes that after September 30, 2013, Student’s in-school behavior regressed. Mother testified about General Education Teacher’s frequent calls to her about Student’s behavior. DCPS’ witnesses testified that after lunchtime, Student would leave her classroom and run in the halls. Social Worker testified to her understanding that after lunch, Student does not spend a lot of time in the classroom. She observed the obvious – if Student is not in class, she is not available for learning. I find, therefore, that Student’s behaviors, subsequent to the September 30, 2013 IEP meeting, have impeded her learning, thus requiring Student’s IEP team to consider additional interventions, supports and strategies to address those behaviors. *See* 34 CFR § 300.324(a)(2)(i) (The IEP team must, in the case of a child whose behavior impedes the child’s learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.)

I do not find, however, that Student was denied a FAPE by her IEP team’s not

revising the September 30, 2013 IEP prior to Mother's filing her due process complaint. The IDEA does not set a time frame for revising a child's IEP, except that the IEP must be reviewed at least annually. *See* 34 CFR § 300.324(b)(1). In an analogous analysis of the timeliness of a parent-requested special education reevaluation, the U.S. District Court for the District of Columbia decided that in light of the lack of statutory guidance, a Local Education Agency (LEA) must conduct a special education reevaluation, when requested by a parent, in a "reasonable period of time," or "without undue delay," as determined in each individual case. *See Herbin ex rel. Herbin v. District of Columbia*, 362 F.Supp.2d 254, 259 (D.D.C.2005). Because the IDEA does not provide a time period within which an IEP team must review an IEP (outside of the annual review), I conclude that, in response to new information about the child's behavior that is impeding her learning, an LEA must likewise ensure that the child's IEP team is convened within a reasonable period of time or without undue delay.

In the present case, although both parties' witnesses testified to Student's behavior issues which impeded her learning, the evidence does not establish when, after the September 30, 2013 IEP meeting, Student's behavior regressed or a specific occurrence or series of events, which would have triggered a duty for Student's IEP team to consider additional behavior interventions or supports. Compare *Richardson Independent School Dist. v. Michael Z*, 580 F.3d 286, 294 -295 (5th Cir. 2009) (IEP insufficient to confer any educational benefit based on student's failure to progress and on stark pattern of regression over a significant period of time under similar IEPs.) Moreover, this was Student's first year at City Elementary School and DCPS should have been afforded a reasonable period of time to assess the new IEP's effectiveness. *See M.C. ex rel. JC v. Central Regional School District*, 81 F.3d 389, 396–97 (3d Cir.), *cert.*

denied, 519 U.S. 866, 117 S.Ct. 176, 136 L.Ed.2d 116 (1996) (School district should have a reasonable period of time to review and develop a programming alternative once it becomes clear the student's IEP is not working.)

Petitioner's filing of her due process complaint on February 12, 2014 did put DCPS on notice of the need to consider revising Student's IEP to address the regression in her behavior. *See Edwards-White v. District of Columbia*, 785 F.Supp. 1022, 1024 (D.D.C. 1992) (Parents' request for a due process hearing constituted reasonable notice that the parents were dissatisfied with DCPS' placement and DCPS was obligated to review and possibly to revise the child's IEP); *Park Hill School Dist. v. Dass*, 655 F.3d 762, 767 (8th Cir.2011). (The purpose of requesting a due process hearing is to challenge an aspect of a child's education and to put the school district on notice of a perceived problem. Once the school district receives notice, it has the opportunity to address the alleged problem.) After the complaint was filed, at the March 6, 2013 resolution meeting, DCPS offered to conduct a comprehensive psychological assessment, an FBA, a social history and an educational assessment, and to convene Student's IEP team meeting to review and revise, as appropriate, her IEP based upon the new assessments.² This approach was supported by the testimony of Parent's expert, Psychologist, who opined that before developing a new BIP, the best practice would be for the school district to conduct a psychological evaluation followed by an FBA. I find that DCPS' March 6, 2013 proposal was an appropriate, timely response to the regression in Student's in-school behavior subsequent to the September 30, 2013 IEP meeting and I conclude that Petitioner has not met her burden of proof to show that Student has been

² At the resolution meeting, Mother did not initially give her consent for the new assessments because she wanted to get a better understanding of DCPS' offer.

denied a FAPE by a failure of DCPS to timely review and revise her IEP.

- B. DID DCPS deny Student a FAPE by failing to conduct a reevaluation and an FBA, requested by Mother at the September 2013 IEP meeting?

The IDEA requires that a reevaluation of each child with a disability is conducted at least once every three years and sooner, if the child's parent or teacher requests a reevaluation or if the LEA determines that the needs of the child warrant a reevaluation. *See* 34 CFR § 300.303; *Herbin, supra*, 362 F.Supp.2d at 260. Student was reevaluated for special education eligibility on January 17, 2012 when she attended Charter School. Petitioner claimed that DCPS denied Student a FAPE by not conducting a reevaluation or an FBA, which Mother allegedly requested at the September 30, 2013 IEP meeting. However, at the due process hearing, there was no evidence of Mother's requesting a reevaluation or an FBA at the meeting. To the contrary, Mother testified that at the September 30, 2013 IEP meeting, she agreed with keeping the Charter School IEP because Student had been "doing good" at Charter School and her behavior for the first month at City Elementary School was not a problem. Because Mother has not established that there was a request for a reevaluation or an FBA of Student at the September 30, 2013 IEP meeting, and Student's triennial reevaluation is not due until January 2015, I find that Student was not denied a FAPE by DCPS' not conducting a reevaluation or FBA following the September 2013 IEP meeting.

- C. Did DCPS fail to convene an MDR meeting and provide appropriate interim educational services after suspending Student for more than 10 school days in the current 2013-2014 school year?

Mother contends that General Education Teacher telephoned her numerous times over the first half of the 2013-2014 school year to say that Student was not listening to her and to ask Mother to come up to the school to get her child. Petitioner's

Counsel argues that these requests for Mother to come get Student were the equivalent of disciplinary suspensions and DCPS was therefore required to implement the IDEA's discipline procedures. I disagree. The IDEA protects disabled children from being removed from the classroom because of their disabilities. 34 C.F.R. § 300.530(e); 34 C.F.R. § 300.536(a). However, by their terms, the provisions apply only to children who may be disciplined for violating a code of student conduct. *See, e.g.*, 34 C.F.R. § 300.530(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.

Id. (emphasis supplied).

In this case, it was not proven how often Mother was called to school to pick up Student. However, even if it had been shown that Student missed more than ten school days as a result of General Education Teacher's alleged requests to Mother to pick up her child, there was no evidence that Student was disciplined or removed from school for violation of a code of student conduct. Therefore, the IDEA's discipline procedures do not apply. *See M.N. v. Rolla Public School Dist. 31*, 2012 WL 2049818, 8 (W.D.Mo.2012) (Analysis of applicability of IDEA's discipline procedures).

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ORDERED:

All relief requested by Petitioner in this case is denied.

This order is without prejudice to Petitioner's rights under the IDEA to obtain a reevaluation of Student, in accordance with 34 CFR 300.303, and to request a meeting of Student's IEP team to review, and, if appropriate, revise the September 30, 2013 IEP.

Date: March 23, 2014

s/ Peter B. Vaden
Peter B. Vaden, 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).