

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Office of Dispute Resolution
810 First Street, N.E., 2nd Floor
Washington, DC 20002

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Office of Dispute Resolution
March 17, 2017

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| STUDENT, ¹ |) | |
| through the PARENT, |) | Hearing Officer: NaKeisha Sylver Blount |
| <i>Petitioner,</i> |) | |
| |) | Case No: 2017-0034 |
| v. |) | |
| |) | Date Issued: March 17, 2017 |
| Public Charter School, |) | |
| <i>Respondent.</i> |) | |

Hearing Officer Determination

SUBJECT MATTER JURISDICTION

Subject matter jurisdiction is conferred pursuant to the Individuals with Disabilities Education Act (“IDEA”), as modified by the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. Section 1400 et. seq.; the implementing regulations for the IDEA, 34 Code of Federal Regulations (“C.F.R.”) Part 300; Title V, Chapter E-30, of the District of Columbia Municipal Regulations (“D.C.M.R.”); and D.C. Code 38-2561.02(a).

PROCEDURAL BACKGROUND

This is a due process complaint (“DPC”) proceeding pursuant to the Individuals with Disabilities Education Act (“IDEA”), as amended, 20 U.S.C. §§1400 et seq.

The DPC was filed on January 31, 2017 by Petitioner (Student’s parent), a resident of the District of Columbia, against Respondent, Public Charter School, a charter school in the District of Columbia that serves as its own local education agency (“LEA”) for special education purposes. On February 10, 2017, Respondent filed its Response, denying that Respondent denied Student a free appropriate public education (“FAPE”).

The parties agreed to waive the Resolution Session Meeting (“RSM”) in this matter. The DPC contains a discipline related allegation; therefore, the case had to proceed on the expedited timeline and the DPH had to occur by March 2, 2017 (twenty school days after the DPC was filed). The final decision is due by March 17, 2017 (ten school days after the DPH concluded).

The undersigned Impartial Hearing Officer (“IHO” or “Hearing Officer”) convened a Pre-hearing Conference (“PHC”) on February 14, 2017, during which the parties discussed and clarified the issue and the requested relief. At the PHC, the parties agreed that five-day

¹ Personal identification information is provided in Appendix A.

disclosures would be filed by February 23, 2017 and that the DPH would be held on March 2, 2017. The PHC was summarized in the Pre-Hearing Conference Summary and Order (the "PHO") issued on February 14, 2017.

The DPH was held on March 2, 2017 at the Office of Dispute Resolution, 810 First Street, NE, Room 2004. Petitioner elected for the hearing to be closed. Petitioner was represented by [PETITIONER'S COUNSEL A], Esq. and [PETITIONER'S COUNSEL B], Esq. and Public Charter School was represented by [RESPONDENT'S COUNSEL], Esq.

Petitioner's and Respondent's disclosures were timely filed. At the DPH, Petitioner's exhibits P-1 through P-7 were admitted without objection. Respondent's exhibits R-1 through R-9 were admitted into evidence without objection.

Petitioner called the following witnesses at the DPH:

- (a) Parent

Respondent called the following witness at the DPH:

- (a) Director of Student Support (Program A)
- (b) Operations Assistant
- (c) Operations Manager
- (d) Director of Student Support (Program B)
- (e) Principal

Petitioner and Respondent gave oral closing arguments.

ISSUE

As discussed at the PHC and reflected in the PHO, the following issue was presented for determination at the DPH:

- (a) Whether Public Charter School denied Student a FAPE by illegally expelling ■■■ by misleading Parent into unenrolling ■■■ following behavioral issues, rather than complying with the procedures required by the IDEA for expelling a student who receives special education services.

RELIEF REQUESTED

Petitioner requested the following relief:

- (a) an Order that Public Charter School immediately allow Student to return to Public Charter School with ■■■ IEP behavioral supports fully implemented;
- (b) an Order that Public Charter School conduct an FBA to collect additional data regarding Student's behaviors that will inform whether Student needs additional behavioral supports and interventions in ■■■ IEP.

FINDINGS OF FACT

1. Student is [AGE] years old and is in the [GRADE] grade. Student resides in Washington, D.C. with Parent, and attended Public Charter School from the 2014-2015 school year until January 2017.²
2. During the 2016-2017 school year until January 13, 2017, Student attended Public Charter School.³
3. Student's current IEP is from April 21, 2016, and provides ■ 6 hours per week of specialized instruction outside the general education setting and 10 hours per week of specialized instruction inside the general education setting, along with 30 minutes per week of occupational therapy services outside the general education setting.⁴
4. Student is eligible for special education services under the disability classification as Other Health Impairment ("OHI") due to ■ diagnosed Attention Deficit Disorder or Attention Deficit Hyperactivity Disorder, which manifests at school through blurting out, uncooperative and disrespectful behavior, an angry temper, difficulty remaining still, and walking out of class without permission.⁵
5. Student takes medication to treat ■ ADHD. When ■ is not on ■ ADHD medication ■ behavior is more difficult to manage.
6. In December 2016, Student's physician changed ■ ADHD prescription. Due to complications with the family's insurance provider, Parent could not immediately obtain the newly prescribed form of medication. As a result, Student did not have access to, and was not able to take, ■ medication from mid-December to mid-January.
7. Student had significant behavioral difficulties during the 2016-2017 school year. School personnel at times called Parent to the school to provide support for Student's behavior, and Parent took Student home from school on several of these occasions.⁶

² Testimony of Parent.

³ Testimony of Parent.

⁴ P-2.

⁵ Testimony of Parent; P-2.

⁶ The parties gave directly contradictory testimony on the matter of whether a particular staff member at the school required Parent to pick Student up early, or not bring ■ to school at all, on various occasions during the school year. Parent's testimony, though compelling, varied on details such as the number of times Parent received such mandates and heeded them. Parent also testified that after a certain point during the school year, she ceased to heed these instructions and sent Student to school anyway, and ■ was allowed in the building, though on one occasion she received a call after dropping ■ off saying that a parent was supposed to have escorted ■ inside that day. Respondent's witnesses testified adamantly that the person Parent stated had been giving her the mandates to not bring Student to school, or to pick ■ up early, would not have had the authority to make such decisions or give such instructions to a parent, that they would have known that the person was doing this if ■ had done so, and that it did not happen. The staff member Parent indicated had given her the instructions did not testify. The record does

8. Student and Parent became increasingly frustrated with Public Charter School's responses to Student's behaviors, and Parent began contemplating homeschooling Student or pursuing other educational options for [REDACTED].⁷

9. Student was suspended twice during the 2016-2017 school. [REDACTED] had been suspended on November 3, 2016 for one day and on January 12, 2017 [REDACTED] was again suspended for one day.⁸

10. Until January 12, 2017, Parent thought she would be able to homeschool Student, because she had been under the mistaken impression that a relative would be coming from out of town to stay with the family, and that the relative would be able to homeschool Student. Parent had told school staff that she planned to homeschool Student. Parent had communicated to Public Charter School that she intended to homeschool Student. After learning on January 12, 2017 that she would not be able to homeschool Student, Parent no longer told Public Charter School that she would be homeschooling Student, but also did not tell the school she had learned she would not be able to homeschool [REDACTED].

11. On or around January 13, 2017, Parent signed an unenrollment form for Student and submitted it to Public Charter School.⁹ The form states that in signing the form, a parent is forfeiting their child's spot at Public Charter School, and that future enrollment is not guaranteed. Nonetheless, when Parent signed the form, her intention was to reenroll Student once [REDACTED] was back on [REDACTED] ADHD medication.¹⁰

12. When Parent was signing the unenrollment form, Director of Student Support (Program A) was with her, because Director of Student Support (Program A) was trying to convince Parent not to withdraw Student's sibling, who also attended Public Charter School.¹¹

13. Director of Student Support (Program A) was unsure, and communicated to Parent her lack of clarity, regarding whether the school was required to provide special needs students who are being homeschooled some or all of the special education services included on their IEP. She indicated to Parent that she would look into whether Student would receive work

not support a finding by a preponderance of the evidence that Student was constructively suspended from Public Charter School, including for at least eight school days, during the 2016-2017 school year.

⁷ Testimony of Parent.

⁸ P-4 and P-5.

⁹ R-5. On cross examination, Parent testified that she only completed the first page of the form, did not sign the form, and had not seen the second page of the form containing the signature line on January 13, 2017 when she completed the first page of the form. However, the hand printing also included on the second page of the form (such as the hand printed date) looks consistent with Petitioner's printing on the first page of the form. The signature on the second page of the form looks slightly different from, but not inconsistent with, Parent's signature on Student's IEP. Director of Student Support (Program A) testified that she witnessed Parent signing the form. The totality of the evidence supports a finding by a preponderance of the evidence that Parent signed the unenrollment form on January 13, 2017.

¹⁰ Testimony of Parent.

¹¹ Testimony of Parent; testimony of Director of Student Support (Program A).

packets and be able to continue the occupational therapy services on [REDACTED] IEP at the school one day per week when [REDACTED] came to the school to pick up [REDACTED] sibling, whom Parent did not unenroll.

14. Public Charter School did not reenroll Student at Parent's request on or around January 26, 2017.¹²

15. Student currently attends [REDACTED] neighborhood DCPS school.

CONCLUSIONS OF LAW

"Based solely upon 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 that the action and/or inaction or proposed placement is inadequate or adequate to provide Student with a FAPE." 5 D.C.M.R. E-3030.3. The burden of proof in an administrative hearing is properly placed upon the party seeking relief, except that once Petitioner has established a prima facie case, Respondent shall carry the burden of persuasion on issues regarding the appropriateness of an IEP or placement (Petitioner has the burden of persuasion for the issue alleged in this proceeding). The burden of persuasion shall be met by a preponderance of the evidence. *Schaffer v. Weast*, 546 U.S. 49 (2005). Through documentary evidence and witness testimony, the party with the burden of persuasion must persuade the impartial hearing officer by a preponderance of the evidence. DCMR 5-E3022.16; *see also, N.G. v. District of Columbia*, 556 F.Supp.2d 11, 17 n.3 (D.D.C. 2008).

A hearing officer's determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the student's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. 300.513(a).

- (a) Whether Public Charter School denied Student a FAPE by illegally expelling [REDACTED] by misleading Parent into unenrolling [REDACTED] following behavioral issues, rather than complying with the procedures required by the IDEA for expelling a student who receives special education services.**

Within ten 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 child's IEP team, including the child's parent, must review all relevant information in the child's file, to determine if the child's conduct was a manifestation of the child's disability. See 34 CFR § 300.530(e). A disciplinary change of placement occurs under IDEA if a student is subjected to a series of removals that total more than ten school days in a school year. See 34 CFR § 300.536. Once an eligible student has been suspended for more than ten days in a school year, the LEA must conduct a Manifestation Determination Review ("MDR") to determine whether the conduct in question was caused by, or had a direct relationship to, the student's disability. 34 CFR § 300.530(e). As stated above, the

¹² Testimony of Parent; R-6.

undersigned does not find the record to establish by a preponderance of the evidence that Student was suspended for ten school days. Student was formally suspended for two school days, and while Parent asserts that Student was also constructively suspended, the record does not lead the undersigned to find by a preponderance of the evidence that Student was constructively suspended, including for eight or more school days. As such, a requirement for Public Charter School to have convened an MDR would not have been triggered as of January 13, 2017 when Parent withdrew Student. Additionally, the record does not lead to a conclusion that Public Charter School pressured or mislead Parent into signing the unenrollment form.

It appears that Parent unenrolled Student at a point of great frustration and without a full understanding or clear plan for next steps. It is also appears that Public Charter School was not sorry to see Student unenrolled, as it would have been to see ■ sibling unenrolled. This unfortunate combination of circumstances is unsettling and gives the undersigned pause. However, as the record does not demonstrate by preponderance of the evidence that Parent was misled into unenrolling Student, or that a required MDR had been triggered as of the time she did so, Petitioner did not meet the burden of proof on this issue.

As there has not been a finding of a denial of FAPE, Petitioner's requested relief must be **DENIED.**

IT IS SO ORDERED.

Date: March 17, 2017

/s/ NaKeisha Sylvester Blount
Impartial Hearing Officer

Copies to:
Petitioner (by U.S. mail)
Petitioner's Attorney (electronically)
Respondent's Attorney (electronically)
OSSE-SPED (electronically)
ODR (electronically)

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).