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OSSE  
Office of Dispute Resolution  
May 22, 2024

**Confidential**

<p>Parent on Behalf of Student, <sup>1</sup></p>  <p>Petitioner,</p>  <p>v.</p>  <p>District of Columbia Public Schools (Local Education Agency “LEA”)</p> <p>Respondent.</p>  <p>Case # 2024-0055</p>  <p>Date Issued: May 15, 2024</p>	<p>HEARING OFFICER’S DETERMINATION</p>  <p>Hearing Dates: April 30, 2024 May 1, 2024</p> <p>Counsel for Each Party listed in Appendix A</p>  <p><u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u></p>
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<sup>1</sup> Personally identifiable information is in the attached Appendices A & B.

## **BACKGROUND AND PROCEDURAL HISTORY:**

The student who is the subject of this due process hearing ("Student") resides with Student's parent in the District of Columbia. The District of Columbia Public Schools ("DCPS" or "Respondent") is Student's local education agency ("LEA"). Student has been determined eligible for special education pursuant to IDEA with a disability classification of emotional disability ("ED"). At the start of school year ("SY") 2023-2024, Student attended a DCPS school ("School A"), from which Student was later transferred to another DCPS school ("School B") in October 2023.

On March 29, 2024, Student's parent ("Petitioner") filed a due process complaint ("DPC") alleging that DCPS denied Student a free appropriate public education ("FAPE") by failing to comply with the disciplinary procedures of 34 CFR 300.530 by failing to convene a manifestation review determination ("MDR") meeting following Student's November 21, 2023, out of school suspension, failing to determine that Student's behavior during a January 18, 2024, incident was a manifestation of Student's disability, failing to update Student's behavior intervention plan ("BIP") and failing to return Student to Student's school placement following the out of school suspension(s). Petitioner seeks as relief an award Student compensatory education services for denials of FAPE that are alleged.<sup>2</sup>

### **DCPS's Response to the Complaint:**

DCPS filed a response to the DPC on April 11, 2024, and an amended response on April 18, 2024. In its responses, DCPS stated, inter alia, the following:

By November 2023, Student had three suspension incidents, which totaled nine school days. There is no information in Student's record indicating Student was suspended more than ten school days in the school year by that date; thus, there was no statutory requirement for an MDR to convene for that incident.

DCPS proposed a safety/involuntary transfer for Student from School A to School B at the end of September 2023. Petitioner initially refused to send Student to School B, but ultimately accepted the transfer, and Student began attending School B in November 2023.

During Student's time at School B, Student was suspended a few times. DCPS sought to schedule an MDR for December 15, 2023. Petitioner rejected the proposal and the MDR. DCPS followed up after winter break on or about January 4, 2024, for the MDR. The meeting was delayed with DCPS seeking to ensure Petitioner's participation. The MDR was finally scheduled and convened on January 9, 2024.

On or about October 27, 2023, Petitioner filed a due process complaint requesting a nonpublic school or to return to School A. DCPS offered a nonpublic school as part of the resolution process upon receipt of an acceptance letter. The parent, through counsel, rejected the nonpublic school proposal and proceeded to hearing instead. The hearing officer (ODR case 2023-0210) ultimately

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<sup>2</sup> This is the relief Petitioner sought as of the due process hearing. At the time of the hearing, DCPS had already granted some of the relief initially requested in Petitioner's DPC and listed in the PHO.

ordered a residential placement as Student's appropriate IEP placement and an evaluation. DCPS received rejection/denial letters from the two non-public separate day schools in late March/early April 2024.

DCPS proposed a safety/involuntary transfer for Student from School B to School C. Again, Petitioner initially refused to send Student to School C and appealed the decision. An appeal hearing was held March 28, 2024, and a decision was rendered April 2, 2024, upholding DCPS' involuntary transfer of Student to School C. DCPS made clear on the record during the transfer hearing and throughout the process that DCPS was not altering, revising or rejecting the IEP placement for Student determined by the HOD. Both transfers (School A to School B and School B to School C) complied with DCMR transfer requirements outside of the IDEA determinations, and neither changed or revised Student's IEP placement. School C provides Student a smaller school and a more supportive environment for Student's behavioral needs than School B.

On April 9, 2024, Petitioner and DCPS received a letter of acceptance for Student to a non-public day school ("School D"). Petitioner and Student participated in an interview process with that school on the same day. DCPS sent a notice of interim placement/location for Student on April 11, 2024. School D is an interim setting/placement pending a residential facility being identified per the January 2024 HOD.

**Resolution Meeting and Pre-Hearing Conference:**

Petitioner and DCPS participated in a resolution meeting on April 4, 2024. This matter is on an expedited hearing timeline. The due process complaint ("DPC") was filed on March 29, 2024. The hearing was required to be held within twenty school days of the date the DPC was filed, and a Hearing Officer's Determination ("HOD") must be rendered within ten school days of the hearing date: May 15, 2024.

The undersigned impartial hearing officer ("IHO") conducted a pre-hearing conference on April 17, 2024, and issued a pre-hearing order ("PHO") on April 22, 2024, stating, inter alia, the issues to be adjudicated.

**ISSUES:**<sup>3</sup>

The issues adjudicated are:

1. Did DCPS deny Student a free appropriate public education ("FAPE") by failing to comply with the disciplinary procedures set forth in the IDEA 34 CFR § 300.530 by failing to convene an MDR meeting following Student's November 21, 2023, suspension?
2. Did DCPS deny Student a FAPE by failing to comply with 34 CFR § 300.530 by failing to determine that Student's behaviors exhibited during the January 18, 2024, incident was a manifestation of Student's disability?

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<sup>3</sup> At the outset of the due process hearing, the IHO reviewed the issues to be adjudicated the parties agreed to the issues as stated herein.

3. Did DCPS deny Student a FAPE by failing to comply with 34 CFR § 300.530 by failing to update Student's BIP following the January 26, 2024, MDR determination?
4. Did DCPS deny Student a FAPE by failing to comply with 34 CFR § 300.530 by failing to return Student to the placement from which Student was removed and/or proceeding with an involuntary transfer as a disciplinary response?

**DUE PROCESS HEARING:**

The Due Process Hearing was convened on April 30, 2024, and May 1, 2024. The hearing was conducted via video teleconference on the Microsoft Teams platform.

**RELEVANT EVIDENCE CONSIDERED:**

The IHO considered the testimony of the witnesses and the documents submitted in each party's disclosures (Petitioner's Exhibits 1 through 114 and Respondent's Exhibits 1 through 23 ) that were admitted into the record and are listed in Appendix 2.<sup>4</sup> The witnesses testifying on behalf of each party are listed in Appendix B.<sup>5</sup>

**SUMMARY OF DECISION:**

Petitioner held the burden of persuasion on the issues adjudicated except issue #2. Based on the evidence adduced, the IHO concluded that Petitioner did not sustain the burden of persuasion by a preponderance of the evidence on issues #1 and #3 but did sustain the burden of persuasion on issue #4. DCPS sustained the burden of persuasion by a preponderance of the evidence on issue #2. The IHO granted Petitioner's request for compensatory education for the denial of FAPE.

**FINDINGS OF FACT:**<sup>6</sup>

1. Student resides with Student's parent, Petitioner, in the District of Columbia. DCPS is Student's LEA. Student has been determined eligible for special education pursuant to

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<sup>4</sup> Any item disclosed and not admitted or admitted for limited purposes was noted on the record and is noted in Appendix A.

<sup>5</sup> Petitioners presented three witnesses: (1) Student's mother (Petitioner), (2) an educational advocate who testified as an expert witness, (3) an independent movement specialist testifying about proposed compensatory services. Respondent presented two witnesses, one of whom testified as expert witness: (1) the OSSE Placement Coordinator and (2) the DCPS School B Principal. The IHO found the witnesses credible unless otherwise noted in the conclusions of law. Any material inconsistencies in the testimony of witnesses that the IHO found are addressed in the conclusions of law.

<sup>6</sup> The evidence (documentary and/or testimony) that is the source of the Findings of Fact ("FOF") is noted within parentheses following the finding. A document is noted by the exhibit number. If there is a second number following the exhibit number, that number denotes the page of the exhibit from which the fact was obtained. When citing an exhibit submitted by more than one party separately, the IHO may only cite one exhibit.

IDEA with a disability classification of ED. Student is currently in \_\_\_\_\_ grade and at the start of SY 2023-2024 was attending School A, a DCPS school. (Parent’s testimony, Petitioner’s Exhibit 15)

2. Student began attending School A in \_\_\_\_\_ grade during SY 2021-2022. During Student’s \_\_\_\_\_ grade year in SY 2022-2023, School A developed a BIP to address Student’s demonstrated in-school behavioral difficulties. The BIP noted and addressed the following behaviors:

- The student engages in avoidance type behaviors. This can include refusing to complete assignments, playing on [Student’s] phone, walking out of class without permission, coming late to class, and refusing to hold [ ]-self accountable for behaviors: 15 minutes 3 per day.
- The student engages in physical/ verbal aggression and intimidation type behaviors towards peers. These behaviors include profanity, hitting others, throwing objects, and making threatening postures: 5 minutes 3 per day.
- The student engages in power struggles with staff. This can look like refusing to follow directions, arguing with staff, refusing to accept responsibility for [Student’s] actions. (Petitioner’s Exhibit 29)

3. On June 27, 2023, a DCPS school psychologist completed a comprehensive psychological evaluation as a part of DCPS determining Student’s eligibility for special education services. In the evaluation, the psychologist noted Student’s prior diagnosis of Oppositional Defiance Disorder and Attention Deficit Hyperactivity Disorder, for which Student had been provided a 504 plan. The psychologist completed a behavioral assessment, classroom observation, and clinical interviews and attempted to administer testing to Student, but was unsuccessful due to the Student’s unavailability and refusal to participate in the evaluation process. (Petitioner’s Exhibit 9)

4. The psychologist recounted, among other things, Student’s history of behavior difficulties at School A, which increased during SY 2022-2023:

“A review of records revealed approximately 57 incidents or behavior referrals accumulated for SY 2022-23. Infractions include fighting where there is no injury and no weapon; behaviors that disrupt or interfere with classroom teaching and learning; directing profanity or obscene/ offensive gestures toward staff; engaging in reckless behavior that may cause harm to self or others; verbal, written, or physical threat to person or property (including intimidating postures); inappropriate or disruptive physical contact between students; communication with staff and peers that is not polite, courteous, or respectful; leaving classroom without permission; intentional misuse of school equipment/supplies/facilities; obscene, seriously offensive, or abusive language or gestures; any other intentional use of violence, force, coercion, threats, intimidation, or other comparable conduct which causes or attempts to cause severe physical injury, substantial disruption, or obstruction of any lawful mission; assault/physical attack on student or staff; fighting which creates substantial risk of or results in minor injury; inappropriate use of DCPS

computer or network (restricted websites, offensive emails); inciting others to violence or disruption; leaving school without permission; refusal to comply with reasonable staff instructions, or classroom or school rules; throwing objects that may cause injury or damage property; and unauthorized presence in hallway during class time.” (Petitioner’s Exhibit 9)

5. Based on her evaluation, the psychologist concluded that Student “is a vulnerable youth due primarily to social-emotional/behavioral issues whose academic performance has been significantly impacted by these concerns. Given the available data, [Student] appears to meet criteria for a disability classification of Emotional Disturbance. The MDT Team makes the final determination for a student’s eligibility for special education and related services.” (Petitioner’s Exhibit 9)
6. On July 13, 2023, a DCPS multidisciplinary team (“MDT”) met and determined Student eligible for special education with the ED disability classification. (Petitioner’s Exhibits 25, 33)
7. On August 4, 2023, School A convened an IEP meeting at which Student’s initial IEP was developed. The IEP included academic, social/emotional and behavioral goals and prescribed the following services outside general education: 20 hours per week of specialized instruction and 240 minutes per month of behavior support services. The IEP noted the following in the Positive Behavior Interventions and Support section: “[Student] has a history of acting out behaviors from elementary school. [Student’s] diagnosis of (ADHD & Oppositional Defiant Disorder) has impacted [Student’s] ability to appropriately function in the academic & school environment. [Student’s] short attention span, low tolerance for frustration, poor self-regulation, difficulty maintaining positive interpersonal relationships & maintaining appropriate boundaries, poor social skills & negative interactions with peers & staff members, have hindered [Student’s] educational & social emotional successes.” (Petitioner’s Exhibit 15)
8. Student's IEP was implemented at School A for SY 2023-2024, and Student received special education services in School A's Behavior and Education Support ("BES") classroom. (Petitioner's Exhibit 79)
9. On September 19, 2023, School A suspended Student with an out-of-school suspension for five (5) school days for an incident of bullying that occurred on September 15, 2023. (Petitioner's Exhibit 66)
10. On September 29, 2023, School A issued a "Notice of Proposed Disciplinary Action" proposing suspending a Student with an out-of-school suspension for four (4) school days for participating in a group fight on September 25, 2023. The notice stated that Student was to continue to attend school until the proposed suspension was reviewed by a DCPS Instructional Superintendent. The suspension was upheld, and the Student served a four-day out-of-school suspension. As a result of this four (4) day suspension, Student had been suspended for a total of seven (7) school days for the school year. (Petitioner's Exhibit 69)

11. On or about September 30, 2023, Principal A issued a Notice of Immediate Involuntary Transfer of Student due to her/his assault of a classmate, causing injury requiring stitches at a hospital. The victim "stated that [s/he] is in fear of [Student] and did not want to attend school further. The parent also stated her intent to press charges against [Student]." (Respondent's Exhibit 2-13) <sup>7</sup>
12. On October 4, 2023, DCPS issued a PWN notifying Petitioner that Student was being involuntarily transferred to School A due to Student's assault on another student. "Due to the severity of the assault and injury, the intent of the parent of the victim to press charges and this being the second assault resulting in an injury by [Student] as well as repeated examples of bullying to the same victim, DCPS proposes an immediate involuntary transfer." (Respondent's Exhibit 2-13) <sup>8</sup>
13. On October 10, 2024, DCPS initiated the involuntary transfer of Student from the BES program at School A to the BES program at School B. School A convened a meeting to discuss Student's transfer to School B, at which Petitioner and her representative expressed their disagreement with Student's transfer to School B. DCPS provided Petitioner a letter regarding the transfer that stated the following:

"This letter is written to inform you that after careful review the District of Columbia Public Schools has assigned the above-mentioned student to [School B] for SY 23-24 academic school year. It is our understanding that the student receives special education services. Since the student is identified as special needs, an electronic copy of all documentation will be forwarded to the school's special education POC at [School B]. Please be advised that the receiving school leadership team is aware of the school assignment, and they are prepared to receive [Student] on 10/12/2023. An onboarding meeting will be scheduled and facilitated by [School B] where the student and family can meet the administrative team." (Petitioner's Exhibits 79, 87)
14. On October 17, 2023, Petitioner's counsel notified DCPS that Petitioner disagreed with the involuntary reassignment, that Student had been unsuccessful the BES program at School A and required a more restrictive environment with a therapeutic program. After Petitioner enrolled Student at School B on October 24, 2023, Petitioner's counsel reiterated the request for a more restrictive environment with a therapeutic program. (Respondent's Exhibit 2-14) <sup>9</sup>
15. Student attempted to attend school at School A on October 12, 2023, using public transportation. Student was supposed to start School B on October 12, 2023, but Petitioner was told Student could not attend until Student' parent came to School B and enrolled

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<sup>7</sup> Finding of Fact #31 from HOD issued January 10, 2024: Case # 2023-0210

<sup>8</sup> Finding of Fact #32 from HOD issued January 10, 2024: Case # 2023-0210

<sup>9</sup> Finding of Fact #34 from HOD issued January 10, 2024: Case # 2023-0210

Student. Student did not officially start School B until November 19, 2023. Student was out of school from October 12, 2023, until November 19, 2023, as result of the involuntary transfer and the resulting confusion over the requirement that Petitioner enroll Student in School B. (Parent's testimony)

16. On October 27, 2023, Petitioner filed a DPC alleging denials of FAPE for DCPS's alleged failure to timely and comprehensively evaluate Student and identify Student eligible for services pursuant to child find, as well as DCPS's alleged failure to provide Student with an appropriate IEP and placement. (Respondent's Exhibit 2-1)
17. On November 21, 2024, School B issued a "Notice of Final Disciplinary Action" for an incident that occurred on November 20, 2023, that was described as "inciting others to violence." Although School B had initially proposed a four (4) day out-of-school suspension, ultimately, the out-of-school suspension was reduced to two (2) school days by the DCPS Instructional Superintendent. Student served the two (2) day out school suspension for this incident. As a result of this two (2) day suspension, Student had been suspended for a total of nine (9) school days for the school year. Consequently, DCPS did not convene an MDR meeting for this suspension. (Parent's testimony, Petitioner's Exhibit 70)
18. School B proposed an out-of-school suspension for Student due to a December 5, 2023, incident. Student was informed not to return to school until the school heard from the Student's parent. School B eventually wiped the suspension off Student's record. Nonetheless, Student missed two weeks of school as result. Student was suspended December 5, 2023, and was not allowed to attend until December 19, 2023. Petitioner had a call with the School B on December 19, 2023, in which the school staff stated that Student could return to school; however, by that date the winter holiday break was starting. Although School B did not uphold the suspension, Student missed 14 days of school. (Parent's testimony)
19. School B updated Student's BIP in December 2023. Petitioner's educational advocate participated in its development on behalf of Petitioner. (Witness 1's testimony, Petitioner's Exhibit 30)
20. The due process hearing on Petitioner's October 27, 2023, DPC was held on December 18 & 19, 2023, and resulted in the HOD issued on January 10, 2024, which awarded compensatory education to Student and ordered that DCPS to place Student in a residential program and conduct an occupational therapy evaluation. (Respondent's Exhibit 2-30)

A behavioral incident occurred at School B on January 18, 2024, in which Student became agitated after being left by transportation at school and allegedly destroyed property and threw chairs. Another behavior incident occurred at School B on January 24, 2024, in which Student allegedly used an article not normally considered a weapon to threaten another individual. (Petitioner's Exhibit 73)

21. DCPS generated a document that requested to exceed a 20-day suspension that included the incidents of January 18, 2024, and January 24, 2024. The document also noted a proposed ten (10) day suspension for an incident of an assault or physical attack on a student or staff on December 5, 2024, a two (2) day suspension for incident of vandalism and destruction of property on January 18, 2024, and use of an article to intimidate or threaten or intimidate an individual on January 24, 2024. The document included a summary of Student’s behavioral incidents that had occurred up to that date since Student began attending School B:

<i>01/24/2024</i>	Using an article that is not normally considered a weapon to intimidate or threaten another individual	<i>Teacher/student conference or Administrator/student conference</i>	<i>10 (pending)</i>
<i>01/18/2024</i>	Vandalism/destruction of property over \$500	<i>1-5 days of OSS</i>	<i>2</i>
<i>12/05/2023</i>	Assault/physical attack on student or staff	<i>6-10 days OSS</i>	<i>10 (pending)</i>
<i>11/20/2023</i>	Inciting others to violence or disruption	<i>1-5 days of OSS</i>	<i>5</i>

The document gave the following as the reason that School B believed out-of-school suspension for the January 24, 2024, incident was appropriate: "[Student's] behavior is continuing to escalate and become more physically and verbally aggressive towards staff, peers, and becoming a danger and threat to [ ]self by attempting to take [Student's] life at [School B] on 1/24/24 by attempting to jump two (2) floors above ground to the pavement." [School B has exhausted all resources available at the school to best support [Student] For example, they have committed 10-15 people to support and supervise the daily movements and actions of the day which take way staff from supporting others.” (Petitioner’s Exhibit 73)

22. The document also gave a historical context of Student's behavior, noting that Student was involuntarily transferred from School A to School B "on 11/06/2023 because of egregious behavior. Prior to transferring to [School B], [School B] was supposed to initiate the IEE, develop an FBA-II/BIP-II, and complete all other relevant documentation needed for [Student] to start at [School B] with all support. The documentation and support were never completed, but Student started at [School B.]. Since [Student's] arrival here [Student] has earned several egregious suspensions and multiple infractions which the school staff have implemented and exhausted all interventions as stated below to support [Student]. However, without having a fully staffed mental health (psychologist and social worker, educational aides (5), they are stretched thin to provide support, structure and an appropriate educational experience to all [School B] stakeholders included.” (Petitioner’s Exhibit 73)

23. On January 25, 2024, an independent psychological evaluation of the Student was conducted that assessed the Student's cognitive, academic and social/emotional, and

behavior functioning. The evaluation report was issued on February 12, 2024. In January 2024, in compliance with the January 10, 2024, HOD, DCPS conducted an occupational therapy evaluation with an evaluation report dated February 23, 2024. (Respondent's Exhibits 13, 14)

24. School B convened an MDR meeting on January 26, 2024, in which the team determined that Student's behaviors in the January 18, 2024, and January 24, 2024, incidents were not a manifestation of Student's disability. Petitioner participated in the MDR meeting but was not represented by counsel at the meeting. (Petitioner's Exhibits 73, 80)
25. During the MDR, a staff member who was present during the January 18, 2024, incident, recapped the incident in which Student's transportation provider left without transporting Student. The MDR meeting notes state: "She also stated that they attempted to call [Student] a few times to come down and [Student] was refusing to oblige. As a direct result of [Student] not adhering to the calls and attempts made to get [Student] to come downstairs, the driver left. Eventually, the scholar came downstairs. When it was communicated that the bus left, [Student] became upset and demanded that the other attendance counselor call the Youth Center back. When it was communicated that we would not be able to call anyone, [Student] became upset and began to use profane language. [Student] later returned after 4:00 p.m. and proceeded to "trash the place" [Student] destroyed a CAAS machine and the monitors along with throwing chairs that were in the space." (Petitioner's Exhibit 80)
26. The notes for the MDR meeting reflect the following regarding the team's determination of the January 18, 2024, incident:  
The posing of the MDR guiding questions: Incident #1-Janury 18th 2023
  1. Question: "Was the scholar's behavior a direct result of the school's failure to implement ■ IEP or to provide FAPE. Yes or No: All participants stated "No."
  2. Question: "Is this behavior caused by or had a direct or substantial relationship to the child's disability? Yes or no team.": The majority vote stated that this was not a manifestation. (Petitioner's Exhibit 80)
27. Regarding the January 24, 2024, incident, the MDR meeting notes reflect the following:  
The posing of the MDR guiding questions: Incident #2-January 24th 2023
  1. Question: "Was the scholar's behavior a direct result of the school's failure to implement ■ IEP or to provide FAPE. Yes or No: All participants stated "No."
  2. Question: "Is this behavior caused by or had a direct or substantial relationship to the child's disability? Yes or no team.": The majority vote stated that this was not a manifestation. (Petitioner's Exhibit 80)
28. On February 1, 2024, DCPS conducted an IEP meeting, at which Student's IEP was amended to reflect the residential placement pursuant to the January 10, 2024, HOD. (Petitioner's Exhibit 17)
29. On February 8, 2024, School B developed a safety plan for Student which was updated on February 12, 2024, to include closer monitoring and escorting of Student by staff during

the school day and when Student entered and exited the school building. (Respondent's Exhibits 9, 10)

30. An incident occurred on February 27, 2024, in which Student allegedly punched a school staff member after being physically detained in the auditorium. (Petitioner's Exhibits 74, 75, 76, Respondent's Exhibit 22)
31. On March 7, 2024, DCPS informed Petitioner that School B was proposing a second involuntary transfer of Student, this time to School C. Again, Petitioner objected to the transfer to another BES program within DCPS. On March 11, 2024, DCPS conducted an immediate involuntary transfer meeting and determined that Student would transfer to School C. Petitioner opposed this involuntary transfer and expressed her intent to appeal DCPS's determination. On or about March 28, 2024, a hearing was held on Petitioner's appeal of the involuntary transfer. Petitioner expressed her concern about the involuntary transfer because the identified school, School C, had the same BES program as School B and School A. The hearing officer who conducted the hearing concluded, inter alia, the following: "Based on the evidence presented, the Hearing Officer finds that the requirements of 5-E DCMR §§ 2107.1 and 2108.1 have been met, and the involuntary transfer to [School C] is appropriate. Since February 27, 2024, [Student] has not attended school due to the emergency suspension. Therefore, [Student] has not received any services as outlined in [Student's] IEP. This Hearing Officer urges the Parties to move quickly in finding a long-term solution to accommodate Student [Student's] diagnosis of ADHD and Oppositional Defiant Disorder as ordered by the Hearing Officer's Determination of the Office of the State Superintendent of Education, issued January 10, 2024." (Respondent's Exhibit 3)
32. Despite the disciplinary referrals and/or suspensions, DCPS did not update Student's BIP with Petitioner's input to address Student's escalating behaviors. Although there are updated versions of Student's BIP since December 2023, neither Petitioner nor her representative participated in any update of Student's BIP since December 2023. (Witness 1's testimony, Petitioner's Exhibit 31, 32)
33. During the times that Student was excluded from school due to the January 2024, and February 2024, suspensions, Student had limited access to schoolwork and no access to instruction or related services. Student was not attending school and no services were provided per Student's IEP. (Witness 1's testimony)
34. On April 3, 2024, D.C.'s Office of the State Superintendent of Education ("OSSE") convened a change in placement meeting for Student pursuant to the January 10, 2024, HOD. (Witness 3's testimony)
35. On April 10, 2024, DCPS issued an location of service ("LOS") letter to provide Student an interim educational location/ setting at a non-public special education separate school, School D, until an appropriate residential setting/ location is identified by OSSE per the January 10, 2024, HOD, which determined Student's educational needs and least restrictive environment ("LRE"). The letter stated "DCPS's intention of the interim placement is to provide student as close a location as possible to [Student's] current FAPE needs. The

interim placement and location are not a placement subject to stay put.” (Respondent’s Exhibits 15, 17)

36. Student was out of school from the February 27, 2024, incident until Student returned to school on April 22, 2024, and began attending School D. Student was negatively impacted by all the school days Student missed. (Parent’s testimony, Witness 1’s testimony)
37. Petitioner’s educational advocate developed a compensatory education proposal based on Student having been out of school for a total of at least twenty-four (24) days since the January 2024 suspensions and the involuntary transfer. She proposed an interim nonpublic therapeutic day school educational placement, revision of Student’s BIP, eighty (80) hours of academic tutoring, fourteen (14) hours of counseling, and one year of weekly sessions at a “movement camp.” (Witness 1’s testimony Petitioner’s Exhibit 109)
38. Petitioner proposed weekly sessions at the Integrity of Self Movement Arts (“ISMA”), an after-school and summer program to assist students with disabilities. ISMA is focuses on five (5) core disciplines: breathing, skeletal awareness, energy dynamics, help with self-regulation through movement and expanding coping skills for uncomfortable situations. The program has included students with autism, ADHD, behavioral challenges, low self-esteem, low self-confidence, and low academic progress. The cost is \$90 per hour. There are two ways to participate: in person or virtually. The virtual option is available if a student occasionally needs to miss a session. (Witness 2’s testimony, Petitioner’s Exhibit 97)

#### **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 the 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 5A DCMR §3053.6, the burden of proof is the responsibility of the party seeking relief. *Shaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005). Petitioner held the burden of persuasion on

issues #1, #3, and #4. DCPS held the burden of persuasion on issue # 2.<sup>10</sup> 5B DCMR §2510.16 provides: 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 burden of persuasion shall be met by a preponderance of the evidence. The normal standard is a preponderance of the evidence. See, e.g., *N.G. V. District of Columbia* 556 F. Sup. 2d (D.D.C. 2008) see also 20 U.S.C. §1451 (i)(2)(C)(iii).

**ISSUE 1:** Did DCPS deny Student a FAPE by failing to comply with the disciplinary procedures set forth in the IDEA 34 CFR § 300.530 by failing to convene an MDR meeting following Student's November 21, 2023, suspension?

**Conclusion:** Petitioner did not sustain the burden of persuasion by a preponderance of the evidence that DCPS denied Student a FAPE by failing to convene an MDR meeting following the student's November 21, 2023, suspension.

Pursuant to the discipline procedures of IDEA, once a school suspends a student from school for a total of ten school days in a school year, the school must comply with and afford the student the rights under the procedures of 34 C.F.R. §300.530, which in pertinent part states:

(b)(1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under §300.536).<sup>11</sup>

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<sup>10</sup> At the outset of the hearing the IHO inquired of counsel for both parties whether they were aware of a D.C. regulation that placed the burden of persuasion as to the MDR determination on the school district. Neither counsel was aware of the regulation, and the hearing proceeded with the understanding that Petitioner held the burden of persuasion on all issues. After the hearing, the IHO determined that the DCMR placed the burden on the school district and informed both counsel of that regulation and that the IHO would consider the burden to be on DCPS on this issue irrespective of what the IHO conveyed at the outset of the hearing and stated in the PHO.

<sup>11</sup> 34 C.F.R § 300.536 states: Change of placement because of disciplinary removals. (a) For purposes of removals of a child with a disability from the child's current educational placement under §§ 300.530 through 300.535, a change of placement occurs if— (1) The removal is for more than 10 consecutive school days; or (2) The child has been subjected to a series of removals that constitute a pattern— (i) Because the series of removals total more than 10 school days in a school year; (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another. (b)(1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. (2) This determination is subject to review through due process and judicial proceedings.

(2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section.

34 C.F.R §300.530 (d) states:

(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 §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; (2) The services required by paragraph (d)(1)... of this section may be provided in an interim alternative educational setting.

IDEA provides a specific process by which a school may remove a child with a disability who violates the school's code of conduct. The relevant statutory provision and corresponding regulation provide that the school must convene a manifestation determination review ("MDR") meeting. 20 U.S.C. § 1415(k)(1)(E); 34 C.F.R. § 300.530(e). The meeting must be attended by a parent of the child, a representative from the school, "and relevant members of the child's IEP team (as determined by the parent and the [school])." 20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e)(1).

At the meeting, the attendees--together the "MDR team"--"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." 20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e)(1). The objective of this exercise is two-fold, namely, to determine: (1) "if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability" and (2) "if the conduct in question was the direct result of the local education agency's failure to implement the IEP." 20 U.S.C. § 1415(k)(1)(E)(i)(I)--(II); 34 U.S.C. § C.F.R. § 300.530(e)(1)(i)--(ii). This decision is known as the "manifestation determination." 20 U.S.C. § 1415(k)(1)(E); 34 C.F.R. § 300.530(e). If the MDR team answers both questions in the negative, "the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities." 20 U.S.C. § 1415(k)(1)(C); see 34 C.F.R. § 300.530(b)(1).

Chapter 5E § 2500.13 provides that except for those corrective and disciplinary measures permitted pursuant to § 2408 of this title, involuntary transfers pursuant to Chapter 21 shall not be used as a disciplinary response.

Petitioner contends that DCPS failed to comply with the disciplinary procedures set forth in the IDEA which require a school to convene an MDR team if a disciplinary removal or series of such removals exceeds 10 school days in the same school year to determine whether Student's conduct is a manifestation of a disability.

However, the evidence belies this assertion. Petitioner alleges that the involuntary transfer resulted in a continued disciplinary removal beyond 10 days that required that an MDR be convened. However, the evidence does not support such a finding. Petitioner testified that she was aware that Student should no longer attend School A as of the date of the involuntary

transfer. She did not testify to facts from which the IHO can conclude that Student's removal due to the September 25, 2023, incident continued beyond the four-day suspension. She testified that Student returned to School A after that suspension and continued to attend School A until the involuntary transfer occurred on October 10, 2023. She testified that she was required to enroll Student in School B. Although Student did not ultimately begin attending School B until November 19, 2023, the reason for Student's nonattendance at School B until then was not related to any disciplinary action associated with the September 25, 2023, incident.

On November 21, 2024, School B issued a "Notice of Final Disciplinary Action" for an incident that occurred on November 20, 2023, that was described as "inciting others to violence." Although School B had initially proposed a four (4) day out of school suspension, ultimately the proposed out of school suspension was reduced to two (2) school days by the DCPS Instructional Superintendent. Student served a two (2) day out school suspension for this incident. As a result of this two (2) day suspension, Student had been suspended for a total of nine (9) school days for the school year by that time. DCPS was not required to convene an MDR meeting for this suspension. Consequently, the IHO concludes that Petitioner did not sustain the burden of persuasion by a preponderance of the evidence on this issue.

**ISSUE 2:** Did DCPS deny Student a FAPE by failing to comply with 34 CFR § 300.530 by failing to determine that Student's behaviors exhibited during the January 18, 2024, incident was a manifestation of Student's disability?

**Conclusion:** DCPS sustained the burden of persuasion by a preponderance of the evidence that Student's behaviors exhibited during the January 18, 2024, incident was not a manifestation of Student's disability.

As previously stated, at the MDR meeting the team 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." 20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e)(1). The objective of this exercise is two-fold, namely, to determine: (1) "if the [potentially expellable] conduct in question was caused by, or had a direct and substantial relationship to, the child's disability" and (2) "if the conduct in question was the direct result of the local education agency's failure to implement the IEP." 20 U.S.C. § 1415(k)(1)(E)(i)(I)--(II); 34 U.S.C. § C.F.R. § 300.530(e)(1)(i)--(ii). If the MDR Team answers both questions in the negative, "the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities." 20 U.S.C. § 1415(k)(1)(C); see 34 C.F.R. § 300.530(b)(1).

Petitioner contends that Student's behavior in the January 18, 2024, incident was a manifestation of Student's disability demonstrated by Student's ongoing emotional instability of past overt acts of impulsivity and lack of control. Petitioner asserts that despite of the existing link between Student's disability and Student's conduct at that time, DCPS failed to determine that Student's conduct was a manifestation of Student's disability.

Petitioner's educational advocate, who testified as an expert witness, testified generally that Student's behaviors resulting in disciplinary referrals and suspensions, including fighting and other aggressive behaviors, were manifestations of Student's disability. However, that witness had never met Student, and she did not, during her testimony, directly address Student behavior during the January 18, 2024, incident.

On the other hand, the School B principal who testified has had direct interaction with Student, was aware of Student's behavior at School B since Student's began attending there and was directly asked about Student's behavior on January 18, 2024, and why the team determined that the behavior was not a manifestation of Student's disability. That witness credibly testified that Student's behavior during the January 18, 2024, incident was not a manifestation of Student's disability because there were multiple opportunities for Student to disengage.

The evidence reflects that during the MDR, a staff member who present during the January 18, 2024, incident, recapped the incident in which Student's transportation provider left without transporting Student. She noted that when Student found out Student's bus had left, Student became upset and demanded that staff call the driver back and began to use profane language. Student left the location and returned sometime later and then proceeded to "trash the place."

Based on the evidence presented, the IHO concludes that the rationale offered by the DCPS witness as to why the team determined that Student's behavior in destroying property on January 18, 2024, was not a manifestation of Student's disability was that Student had the opportunity to disengage. Student left the area for some time and then returned to that area and began the destruction.

The fact that this witness had personal contact with the Student causes the IHO to give greater weight to his testimony and to the rationale that the delay between Student being informed that the transportation left and when Student's began destroying property tends to demonstrate that Student's behavior in destroying property was not a manifestation of Student's disability. The IHO concludes, therefore, that DCPS met its burden of persuasion by a preponderance of the evidence.

The IHO notes that although the January 26, 2024, MDR included both the January 18, 2024, incident and the January 24, 2024, incident, Petitioner did not challenge the MDR determination as to the January 24, 2024, incident.

**ISSUE 3:** Did DCPS deny Student a FAPE by failing to comply with 34 CFR §300.530 by failing to update Student's BIP following the January 26, 2024, MDR determination?

**Conclusion:** Petitioner did not sustain the burden of persuasion by a preponderance of the evidence that DCPS denied Student a FAPE by failing to update Student's BIP following the January 26, 2024, MDR determination.

34 CFR §300.530 (f) provides: 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— (1) Either— (i) Conduct a functional behavioral assessment, unless the LEA had conducted

a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

(ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and (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 demonstrates that the team determined that Student's behavior on January 24, 2024, was not a manifestation of Student's disability. Therefore, there was no requirement in this instance for the team to update Student's BIP following that meeting. Consequently, the IHO concludes that DCPS sustained the burden of persuasion by a preponderance of the evidence on this issue and there was no denial of a FAPE to Student in this regard.

However, as to the February 27, 2024, incident, the team at the March 4, 2027, MDR meeting concluded that Student's behavior was a manifestation of Student's disability. Although the DCPS witness testified about an updated BIP, he did not know when the BIP was updated and there was no evidence that after the March 4, 2024, MDR DCPS updated the BIP with Petitioner's input as an IEP team member. Consequently, the IHO in the order below directs DCPS to update Student's BIP.

**ISSUE 4:** Did DCPS deny Student a FAPE by failing to comply with 34 CFR 300.530 by failing to return Student to the placement from which Student was removed and/or proceeding with an involuntary transfer as a disciplinary response?

**Conclusion:** Petitioner sustained the burden of persuasion by a preponderance of the evidence that DCPS denied Student a FAPE by failing to return Student to the placement from which Student was removed.

As previously stated, 34 CFR §300.530 (f) provides: 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)<sup>12</sup> 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.

Petitioner contends that DCPS failed to return the student to the placement from which Student was removed and proceeded with a second involuntary transfer as a disciplinary response.

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<sup>12</sup> 34 CFR §300.530 (g) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child— (1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA; (2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or (3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

The evidence demonstrates that an incident occurred on February 27, 2024, in which Student allegedly punched a school staff member after being physically detained. An MDR was held on March 4, 2027, at which it was determined that Student's behavior was a manifestation of Student's disability. However, Student was not allowed to return to School B following the February 27, 2024, incident.

On March 7, 2024, DCPS informed Petitioner that School B was proposing a second involuntary transfer of Student, this time to School C. Student was out of school from the time of the February 27, 2024, incident until Student returned to school on April 22, 2024, and began attending School D.

Although DCPS asserts that the involuntary transfer from School B to School C was not a disciplinary removal, the facts nonetheless demonstrate that Student did not return to school after the MDR determined that Student's behavior was a manifestation of Student's disability and the regulations require that Student return to the placement from which Student was removed.

Despite DCPS initiating the involuntary transfer that Petitioner opposed, DCPS put the onus on Petitioner to enroll Student in School C, and until Petitioner did so, Student, as with the previous transfer to School B, would not have been able to attend School C. During the month-long period that Petitioner appealed the involuntary transfer, DCPS took no action to provide Student any services. Student, as a result, remained out school and without services from February 27, 2024, until an interim placement was provided Student at School D and Student began attending on April 22, 2024.

Although the DCPS witness testified that School C would have been responsible for any services missed from the February 27, 2024, following the the March 4, 2024, MDR determination, there was no indication that DCPS took action to compensate Student for the missed attendance following the February 27, 2024, suspension. Based upon the evidence, the IHO concludes that despite DCPS attempts to involuntary transfer Student to School C, which was not an official disciplinary removal, the resulting loss to Student of being out of school and missing services that occurred was a denial of a FAPE to Student.

### **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 IHO has concluded that DCPS denied Student a FAPE by failing to return Student to Student's school placement following the February 27, 2027, incident, and the March 4, 2024, MDR determination.

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.

When a hearing officer finds denial of FAPE, he has "broad discretion to fashion an appropriate remedy, which can go beyond prospectively providing a FAPE, and can include compensatory education.... [A]n award of compensatory education 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." *B.D. v. District of Columbia*, 817 F.3d 792, 797-98 (D.C. Cir. 2016) (internal quotations and citations omitted.)

Petitioner has requested the compensatory education included in her educational advocate's proposal. Petitioner's educational advocate asserted that the proposal was designed to compensate Student for at least 24 days of missed services. The IHO finds the proposal and Petitioner's witnesses' testimony regarding the proposal to be credible as to its ability to provide Student the educational benefits that likely would have accrued from special education services that DCPS should have supplied Student in the first place.

**ORDER:**

1. DCPS shall, within fifteen (15) business days of the date of this order, update Student's BIP to address the behaviors that were the subject of the February 24, 2024, incident, and provide Petitioner authorization to obtain the following in compensatory education: eighty (80) hours of independent academic tutoring and fourteen (14) hours of independent counseling at the OSSE prescribe rates, and funding for eighty (80) hours of participation in the Integrity of Self Movement Arts after school and/or summer camp at an amount not to exceed \$90 per hour.
2. All other relief requested by Petitioner 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 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*

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**Coles B. Ruff, Esq.**  
**Impartial Hearing Officer**  
**Date: May 15, 2024**

Copies to:      Counsel for Petitioner