

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

PETITIONER,
on behalf of STUDENT,¹

Date Issued: November __, 2025

Petitioner,

Hearing Officer: Peter B. Vaden

v.

Case No: 2015-0174

PUBLIC CHARTER SCHOOL,

Online Videoconference Hearing

Respondent.

Hearing Date: November 3, 2025

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by Petitioner (MOTHER) under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-A, Chapter 5-A30 of the District of Columbia Municipal Regulations (DCMR). In her Due Process Complaint, Mother alleges Respondent PUBLIC CHARTER SCHOOL denied Student a free appropriate public education (FAPE) by expelling him/her in September 2025, in violation of the IDEA's procedural safeguards for students with disabilities. Student, an AGE resident of the District of Columbia, enrolled in Public Charter School in the 2023-

¹ Personal identification information is provided in Appendix A.

2024 school year. In September 2025, Public Charter School expelled Student. In her Second Revised Due Process Complaint, filed on October 6, 2025, Mother appealed Student's expulsion by requesting an expedited due process hearing under 34 C.F.R. § 300.532(a). The undersigned Hearing Officer was appointed on October 6, 2025. The parties agreed to mediate the dispute in lieu of holding a resolution session meeting. Mediation did not resolve the complaint. On October 10, 2025, I convened a prehearing telephone conference with Mother, who is self-represented, and PCS COUNSEL to discuss the hearing date, issues to be determined and other matters.

On October 18, 2025, PCS, by counsel, filed a summary judgment motion, which I denied by order issued October 19, 2025.

With the parent's consent, the due process hearing was held online and recorded by the hearing officer using the Microsoft Teams videoconference platform. The hearing, which was closed to the public, was convened before the undersigned impartial hearing officer on November 3, 2025. MOTHER appeared online for the hearing. Respondent PCS was represented by STUDENT SUPPORT DIRECTOR and by PCS' Counsel. Mother and PCS' Counsel made opening statements. Mother testified and called no other witnesses. PCS called Student Support Director as its only witness. Petitioner's Exhibits P-1 and P-2 and PCS' Exhibits R-1 through R-41 were admitted into evidence without objection. PCS' Counsel made an oral closing argument. Neither party requested leave to file post-hearing written briefs.

JURISDICTION

The Hearing Officer has jurisdiction under 20 U.S.C. § 1415(f), (k), 34 C.F.R. § 300.532(b) and DCMR tit. 5-A, § 3049.

ISSUE AND RELIEF SOUGHT

The issue to be resolved in this case, and relief requested, are:

Whether PCS denied Student a FAPE by expelling him/her from PCS on or about September 17, 2025.

For relief, the parent requests that the hearing officer order Student's return to PCS.

FINDINGS OF FACT

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

1. Student is an AGE resident of the District of Columbia, where he/she resides with Mother. Testimony of Mother. Student enrolled in PCS, a separate local education agency in the District of Columbia, at the start of the 2023-2024 school year.
2. On March 24, 2023, at PRIOR LEA, Student was determined eligible for special education and related services under the primary disability classification Specific Learning Disability (SLD). Exhibits R-1, R-7. In October 2023, the IEP team at PCS conducted an annual review of Student's IEP. Exhibit R-6.
3. On May 22, 2025 Mother executed a written form revoking her consent for the provision of special education and related services for Student. On the form, Mother

acknowledged that she understood, *inter alia*, that PCS would not be considered to be in violation of the requirement to provide FAPE to Student due to a failure to convene an IEP Team meeting, develop an IEP for Student or provide Student with further special education and related services; that Student would be considered a general education student, and would no longer receive the discipline protections available under the IDEA and that once Mother revoked consent for services, PCS must treat a subsequent evaluation request as a request for an initial evaluation under 34 C.F.R. § 300.301, rather than a reevaluation under 34 C.F.R. § 300.303. Exhibits R-21, R-22. Mother understood that after her May 2025 revocation of consent, Student would be considered a general education student. Testimony of Mother.

4. On August 14, 2025, before the start of the 2025-2026 school year, Mother reached out to PCS to have Student evaluated anew for special education eligibility. Exhibit R-28. At an Analysis of Existing Data (AED) meeting on September 8, 2025, the PCS team members agreed that there was sufficient existing data to determine Student had a disability and required special education services. However, because Mother requested that the team proceed with evaluations to gather more data on Student's present levels of performance, the team agreed to proceed with formal evaluations, including a comprehensive psychological evaluation. Exhibits R-26 through R-30.

5. At the September 8, 2024 meeting, Student Support Director said that based on PCS' current data, the team would recommend Student's educational placement in PCS' LLC program, which is a full-time, self-contained program housed

inside PCS, or at least placement in a resource classroom. Student shared that he/she did not believe that he/she needed special education services. Mother stated that Student would not come to school if placed in the LLC setting and that if Student were placed in the LLC setting, Mother would revoke her consent for services again. Mother added that if the team determined that Student required support in a smaller group setting, such as LLC or resource, Mother would revoke services at that time. Exhibit R-26, Testimony of Student Support Director. At the meeting, Student Support Director told Mother that the team was not making the placement decision at that time, and they would schedule another meeting to develop Student's IEP, at which time the placement decision would be made. Testimony of Student Support Director. The team agreed to proceed with assessments to determine Student's educational needs, including cognitive, emotional-social-behavioral development and educational. Exhibit R-28. Mother signed a consent form for Student to be evaluated. Exhibit P-1.

6. Later on September 8, 2024, the day of the AED meeting, Student was allegedly involved in an altercation with another student, a possible code of conduct violation. A Manifestation Determination Review (MDR) meeting at PCS was scheduled for September 15, 2025. Mother attended the meeting. The participants agreed to consider Student's special eligibility first and then move on to the MDR determination. The team agreed that Student qualified for special education as a student with an emotional disturbance (ED), but PCS would still move forward with additional assessments. The team agreed that the September 8, 2024 alleged altercation incident

was a manifestation of Student's ED disability. Exhibit R-34.

7. At the September 8, 2024 eligibility/MDR meeting, the PCS team discussed the proposed placement for Student at LLC. Mother stated that she did not consent for services, if it meant that Student's classes would be changed. Mother stated that she would rather Student receive services in his/her current classes. The PCS team explained that with consent for initial provision of services, the team would develop an IEP that was the most appropriate given their current data, and this would be a full time IEP that would be serviced at LLC. Student Support Director stated that the team had seen a lot of concerns in the general education classroom this school year and, based on the data they currently had, a full time self-contained program was recommended. Mother stated that if Student's schedule were changed, Student would not come to school and then Child Protective Services would be called. Mother then executed PCS' *Consent for Provision of Special Education and Related Services* form and checked the box for "I DO NOT CONSENT to the initial provision of special education and related services." The form included the following parent acknowledgment:

I understand that if I refuse to give my consent for the student to receive special education and related services, [PCS] is not permitted to implement the initial IEP and is not required to convene any subsequent IEP team meetings. I understand that [PCS] will not be in violation of the IDEA requirement to make available a free appropriate public education (FAPE) for my student if I refuse to give consent. I understand that once a parent/guardian refuses to provide consent for services, the local education agency (LEA) must treat a subsequent evaluation request by either parent/guardian as a request for an initial evaluation under 34 C.F.R. §300.301.

Exhibits R-33, R-32. After Mother signed the form, PCS did not move forward with developing an IEP for Student. Testimony of Student Support Director.

8. On or about September 17, 2025, a dean from PCS called Mother and told her that Student was expelled. PCS sent the expulsion paperwork to Mother. Mother made an appeal through the PCS hierarchy and they told Mother that PCS would not remove Student's expulsion. Mother proceeded to file the present due process appeal. Testimony of Mother.

9. Following Student's expulsion for PCS, Mother enrolled Student at a different public charter school in the District of Columbia. Testimony of Mother.

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

As provided in the D.C. Special Education Student Rights Act of 2014, the party who filed for the due process hearing, the parent in this case, shall bear the burden of production and the burden of persuasion, except – not applicable in this case – where there is a dispute about the appropriateness of the child's IEP or placement, or of the program or placement proposed by the public agency. The burden of persuasion shall be met by a preponderance of the evidence. *See* D.C. Code § 38-2571.03(6).

Analysis

Did PCS deny Student a FAPE by expelling him/her from PCS on or about September 17, 2025?

The only issue in this case is whether PCS violated the IDEA by expelling Student, a student with an IDEA disability, from the charter school in September 2025. The substantive facts are not in dispute:

- Student is a student with an ED disability as defined by the IDEA.
- On or about September 8, 2025, Student allegedly violated a PCS code of student conduct.
- On September 15, 2025, Student's conduct was determined by PCS to be a manifestation of his/her IDEA disability.
- On September 15, 2025, Student was determined eligible for special education by the PCS eligibility committee. At the meeting, PCS sought Mother's consent for the initial provision of special education services to Student. This was not an Individualized Education Program (IEP) team meeting and PCS did not provide a proposed IEP to the parent. At the meeting, Student Support Director stated that the PCS team had seen a lot of concerns for Student in the general education classroom and, based on the data they currently had, a full time self-contained program was recommended. Mother stated that she did not consent for services, if it meant that Student's classes would be changed. The PCS team explained that with the parent's consent for initial provision of services, the team

would develop an IEP that would be the most appropriate given their current data, and this would be a full time IEP that would be serviced at LLC – which is a full-time, self-contained program housed inside PCS – or at least in a resource classroom. PCS gave Mother a form, *Consent for Provision of Special Education and Related Services*, to sign. The form had alternative boxes to check – I CONSENT or I DO NOT CONSENT – to the initial provision of special education and related services. Mother checked the box for I DO NOT CONSENT. By signing the form, Mother understood that Student would thereafter be considered a general education student, and would no longer receive the discipline protections available under the IDEA.

- On or about September 17, 2025, PCS expelled Student without affording him/her any of the discipline protections not available to students without disabilities.

IDEA Discipline Procedures

Under the IDEA, a student with a disability may *not* be expelled for violating a code of student conduct if the behavior was determined to be a manifestation of the student's disability. *See* 34 C.F.R. § 300.530(d)(1). *See, also*, 5A DCMR § 3043.12. ²

² If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall:

- (a) 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;

PCS does not question this rule, but argues that it was permitted to discipline Student as a “non-disabled” student because, at the September 15, 2025 eligibility meeting, Mother refused to give her consent to the initial provision of special education and related services to Student.

As authority for its position, PCS cites the parental consent provision of the IDEA regulations:

If the parent of a child . . . refuses to consent to . . . the initial provision of special education and related services, the public agency,

- Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and
- Is not required to convene an IEP Team meeting or develop an IEP under §§ 300.320 and 300.324 for the child.

34 C.F.R. § 300.300(b)(3)(ii), (iii). PCS also relies on 34 C.F.R. § 300.534(c)(1)(ii) for the provision that a public agency would not be deemed to have knowledge that a student facing discipline was a child with a disability if the parent has refused special education services.

(b) Implement a behavioral intervention plan for the child or, if a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it as necessary to address the behavior; and

(c) 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.

5A DCMR § 3043.12

I find that PCS' reliance on these "safe harbors" is unavailing for a number of reasons. Most important, as the U.S. Department of Education explains in its guidance to the IDEA regulations, for an LEA to rely a parent's refusal of consent for provision of services, the parent should be fully informed. "Fully informed" in this context mean that a parent has been given an explanation of what special education and related services are and the types of services that might be found to be needed for her child. *See* Department of Education, *Assistance to States for the Education of Children with Disabilities*, 71 Fed. Reg. 46540 at -634 (August 14, 2006). Here, I find that Mother was not fully informed before PCS sought her consent for the provision of services to Student at the September 15, 2025 meeting.

At the meeting, aside from PCS' proposing the LLC self-contained program for Student, Mother was not given an explanation of the types of special education and related services that might be found to be needed for Student before the parent was asked to sign the consent for services form. Moreover, PCS' Consent to the Initial Provision of Special Education and Related Services form provided to mother referred expressly to the parent's providing written consent for PCS to provide the "services described in this student's Individualized Education Program (IEP)." This information was wrong. PCS sought Mother's consent to the provision of services to Student before PCS had drafted an IEP. While an LEA is not required to draft the IEP before seeking the parent's consent, PCS was still required to explain the type of special education and related services that Student might need. For these reasons, I find that Mother was not

fully informed before she executed the consent to services form.

Mother was also less than fully informed when asked to sign the consent form because at the September 8, 2025 AED meeting, the PCS team agreed that Student needed a comprehensive psychological evaluation to determine Student's educational needs, including cognitive, emotional-social-behavioral development and educational assessments. The psychological evaluation was not even begun when PCS sought Mother's consent a week later for the initial provision of services to Student.

Another concern is that even though the September 15, 2025 meeting was not an IEP meeting, Student Support Director stated at the meeting that based on the data they currently had, a full time self-contained program was recommended for Student. This placement discussion was premature, since Student's psychological evaluation was pending and the IEP team had not met. *See, e.g., Deal v. Hamilton Cty. Bd. of Educ.*, 392 F.3d 840, 857-59 (6th Cir. 2004) (Explaining that a predetermination of services can violate the parents' right to participate in the IEP process).

Finally, at the September 15, 2025 meeting, the PCS team members should have understood that Mother did not wish to refuse the provision of any special education and related services to Student, but rather Student's placement in a self-contained setting. In a case with comparable facts, *A.H. by & Through A.H. v. Clarksville-Montgomery Cnty. Sch. Sys.*, No. 3:18-CV-00812, 2019 WL 483311 (M.D. Tenn. Feb. 7, 2019), the court held that "[T]he educational agency is relieved of its obligation to provide a FAPE if the parent or guardian rejects the proposition that the child should be

provided special education or related services *at all*. Nothing in the IDEA shields an agency in a case where parents agree that their child is entitled to services but refuse to consent to the way in which the agency wishes to provide them.” *Id.*, 2019 WL 483311, at *8. Emphasis supplied.)

In the present case, Mother agreed that Student needed special education. After all, it was Mother who sought restored special education services for Student for the 2025-2026 school year. Even though Mother rejected, in advance, a self-contained educational placement for Student, she clearly still wanted Student to receive special education services. But PCS’ consent to services form, gave the parent only a binary choice: Consent to – or Not Consent to – the initial provision of special education and related services. While Mother checked the box for “I DO NOT CONSENT to the initial provision of special education and related services,” I find that under the facts in this case, this act does not constitute an informed refusal of special education services which would shield PCS from fault for expelling Student, when his/her behavior was determined to be a manifestation of the student’s disability. I conclude that PCS’ subsequent expulsion of Student violated 34 C.F.R. § 300.530.

For relief in this case, the parent requests that Student be returned to PCS. The IDEA regulations provide that the hearing officer may return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of § 300.530. I will, therefore, grant the requested relief.

To be clear, the hearing officer makes no finding as to the appropriate educational placement or least restrictive environment for Student. That decision must be made in the first instance by Student's IEP team, including the parent and her advisors, if any.

ORDER

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

ORDERED:

– Pursuant to 34 C.F.R. § 300.532(b)(2)(i), PCS is ordered to return Student to the placement at PCS from which he/she was removed on or about September 17, 2025. This is without prejudice to PCS' right and obligation to develop an appropriate initial IEP for Student, pursuant to 34 C.F.R. § 300.320 *et seq.*, upon Student's return.

– All other relief requested by the Petitioner herein is denied.

Date: November 11, 2025

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).