



## **JURISDICTION:**

The hearing was conducted, and this decision was written, pursuant to the Individuals with Disabilities Act (“IDEA”), P.L. 101-476, as amended by P.L. 105-17 and the Individuals with Disabilities Education Improvement Act of 2004, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter E30. The Due Process Hearing was convened on September 4, 2018, at the District of Columbia Office of the State Superintendent of Education (“OSSE”) Office of Dispute Resolution 1050 First Street, N.E., Washington, D.C. 20003, in Hearing Room 111. Petitioner’s counsel participated in person and Respondent’s counsel participated by telephone.

## **BACKGROUND AND PROCEDURAL HISTORY:**

The student or (“Student” or “the student”) is age \_\_\_\_\_ and in grade \_\_\_\_\_.<sup>2</sup> Student resides with Student’s parent (“Petitioner” or “the parent”) in the District of Columbia. Student has been determined eligible for special education and related services pursuant to IDEA with a disability classification of specific learning disability (“SLD”). During school year (“SY”) 2017-2018 Student was enrolled at a public charter school in the District of Columbia (“School A”) that served as Student’s local educational agency (“LEA”).

During SY 2017-2018 School A expelled Student for a code of conduct violation. Petitioner filed a due process complaint challenging, inter alia, the interim alternative placement that School A provided Student following the expulsion. Following a due process hearing School A was directed pursuant to a December 22, 2017, Hearing Officer’s Determination (“HOD”) to among other things, provide Student a different placement.

During the latter part of SY 2017-2018, School A initiated a change of placement meeting in conjunction with OSSE and Student’s individualized educational program (“IEP”) and least restrictive environment (“LRE”) placement were changed to prescribe a non-public separate day school. Student began attending the non-public special education day school (“School B”) during SY 2017-2018. School A maintained, however, that because of Student’s expulsion from School A, School A would remain Student’s LEA only until the end of SY 2017-2018, and Petitioner would need to enroll Student in another LEA for SY 2018-2019.

On August 14, 2018, School A informed Petitioner’s attorney that Student would not be allowed to re-enroll at School A for SY 2018-2019 and that Petitioner should enroll Student in another LEA. Petitioner filed the current due process complaint on August 14, 2018, asserting that School A failed to comply with the disciplinary provisions of IDEA by not allowing Petitioner to register Student at School A for SY 2018-2019 to continue as Student’s LEA responsible for the special education services delivered to Student at School B.

Petitioner seeks as relief a finding that Student has been denied a free appropriate public education (“FAPE”) and an order directing School A to continue to provide Student services at School B as Student’s LEA for SY 2018-2019.

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<sup>2</sup> The student’s current age and grade are indicated in Appendix B.

### **LEA and Petitioner's Motions:**

On August 22, 2018, the LEA filed a motion to dismiss the complaint in lieu of a response to the complaint. Respondent asserts the complaint should be dismissed based on res judicata or in the alternative decided in Respondent's favor as a matter of law. On August 22, 2018, Petitioner filed a motion for judgment on the pleadings. On August 30, 2018, Respondent filed an opposition to Petitioner's motion.

Respondent asserts that the due process complaint should be dismissed on the basis of res judicata and/or collateral estoppel because Petitioner in her response to a prior due process complaint that was adjudicated and resulted in the HOD issued on December 22, 2017, could have, but did not adjudicate, a challenge to Student's expulsion from School A.

"The collateral estoppel doctrine provides that 'when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit.' ") U.S. v. Wells, 347 F.3d 280, 285 (8th Cir. 2003). The requirements that must be satisfied before the doctrine of collateral estoppel is applied are similar to those for res judicata, but there are differences. First, the issues in the first and second litigation must be identical and must have been before a court. Second, the issue must have been actually litigated. Third, a final judgment must have been rendered, ultimately deciding the issue in question.

After having reviewed the prior HOD, this Hearing Officer concludes that the issue of whether School A could expel Student, not allow Petitioner to re-enroll Student, and require that Petitioner enroll Student in another LEA for SY 2018-2019 was not an issue that was specifically adjudicated in the prior HOD. Thus, Petitioner's ability to adjudicate the issue alleged in the current due process complaint, although it derives from Student's expulsion during SY 2017-2018, is not barred. The Hearing Officer hereby denies Respondent's motion to dismiss based upon res judicata or collateral estoppel.

In the alternative, Respondent asserts that it is entitled to judgment as a matter of law. Petitioner in her motion asserts there is no genuine issue of material fact and urges the Hearing Officer to render judgment for Petitioner on the pleadings. Both parties agreed that the complaint could be decided on the pleadings, the documents submitted by each party attached to their respective motions and the oral arguments made by each party. The findings of fact and conclusions of law below constitute the ruling on both parties' motions and on the due process complaint.

### **Pre-Hearing Order:**

The parties did not participate in a resolution meeting as the hearing is being conducted pursuant to the appeal procedures of 34 C.F.R. 300.530 et. seq. The hearing was conducted within ten (10) school days of the date Petitioner's due process complaint was filed. The HOD is due within ten (10) school days of the date of the hearing.<sup>3</sup> The undersigned Hearing Officer

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<sup>3</sup> Pursuant to 34 §300.532(c)(1) & (2): Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent

("Hearing Officer") issued a pre-hearing order ("PHO") on August 30, 2018, outlining, inter alia, the issue to be adjudicated.

The parties agreed to stipulations of fact that were reflected in the PHO and the parties agreed that the oral arguments on the record regarding their respective motions would constitute the hearing on the record and that no presentation of witnesses or evidence other than the documents attached to each party's respective motions would be necessary.

**ISSUE:** <sup>4</sup>

The issue adjudicated is:

Whether School A denied Student a FAPE by failing to follow the disciplinary procedures of 34 C.F.R. 300.530(d) by failing to continue to provide Student educational services through placement at School B for SY 2018-2019 as Student's LEA. <sup>5</sup>

**RELEVANT EVIDENCE CONSIDERED:**

This Hearing Officer considered the documents that each party submitted attached to their respective motions and that were admitted into the record, as well as the stipulations of fact that the parties agreed to on the record during the hearing. Documents submitted and admitted into the record and are listed in Appendix A. The identifying information for the parties is listed in Appendix B.

**SUMMARY OF DECISION:**

Petitioner held the burden of persuasion. The Hearing Officer concluded that there was no denial of FAPE to Student as Student is currently being provided a FAPE and attending a non-public day school where Student's IEP is being implemented. The Hearing Officer also concludes that School A can, and has, expelled the Student and is justified in its decision not to permit Petitioner to enroll Student in School A for SY 2018-2019. The Hearing Officer dismisses Petitioner's due process complaint with prejudice and directs in the order below that Petitioner register Student in another LEA for SY 2018-2019 in order to continue Student's placement at School B and OSSE funding of same.

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with the requirements of §§300.507 and 300.508(a) through (c) and §§300.510 through 300.514, except as provided in paragraph (c)(2) through (4) of this section. (c)(2) The SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.

<sup>4</sup> The Hearing Officer restated the issues at the hearing and the parties agreed that this was the issue to be adjudicated.

<sup>5</sup> Petitioner asserts that pursuant to 34 C.F.R. 300.530(d) School A cannot bar Student from re-enrollment in School A and that School A must continue as Student's LEA for SY 2018-2019.

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

1. The student was enrolled at School A for the SY 2017-2018. Student is eligible for special education services as a student with a specific learning disability. On September 8, 2017, Student was expelled from School A as a result of an incident that occurred on August 24, 2017. A manifestation determination review meeting was held and the entire team, including the parent, agreed that Student's behavior was not a manifestation of Student's disability. (Stipulation)
2. An interim alternative educational setting was agreed upon at a meeting held on September 18, 2017. The interim placement was to last until the end of the school year unless the student left the LEA. On September 20, 2017, a prior written notice was issued detailing the agreed upon interim alternative educational setting. (Stipulation)
3. The prior written notice stated that Student would "remain in an interim alternative education setting for the remainder of the school year." (Stipulation)
4. The parent appealed the expulsion decision to School A's Board of Trustees, and on October 6, 2017, the Disciplinary Appeal Panel of the Board of Trustees issued a decision upholding the expulsion. In that decision, School A advised the parent that School A would "continue to provide special education services in an alternative educational setting (another PCS) until [the student] is enrolled in another school or until the beginning of the next school year if the student is still not enrolled in another school." (Stipulation)
5. On December 1, 2017, Petitioner filed a due process complaint raising claims related to the student's expulsion and School A's compliance with IDEA's discipline procedures. Five issues arising from Student's expulsion were before the hearing officer. Included in those five issues was an allegation that School A failed to identify an appropriate interim alternative educational setting in violation of 34 CFR 300.530(d). After a due process hearing was held, the hearing officer issued a decision on December 22, 2017, and ordered School A, among other things, to convene the IEP team and identify a different interim alternative educational placement. (Stipulation)
6. In accordance with the December 22, 2017, hearing officer's decision, the team identified another interim alternative educational setting for Student where the student would receive one-on-one instruction daily at School A. On April 5, 2018, the team determined that the student required a change in placement to a nonpublic special education day school. (Stipulation).
7. Pursuant to the OSSE location assignment process, a location assignment was issued for

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

Student and Student was placed at School B. After the Student began attending School B, a 30-day review meeting was held at which the team agreed that School B continued to be an appropriate placement for Student. (Stipulation)

8. Student's current IEP prescribes placement in a special education day school and School B continues to be the location of services for that placement. (Stipulation)
9. The parent was notified on September 20, 2017, and October 6, 2017, that School A would provide an interim alternative educational placement for the student until the end of SY 2017- 2018. The parent was again reminded of School A's position on April 5, 2018, and April 20, 2018. Specifically, the parent was advised that Student was not eligible for reenrollment at School A for SY 2018-2019 as a result of Student's expulsion and would need to be enrolled at another LEA. The parent was further advised that Student's nonpublic placement would not be impacted by a change in enrollment. Further notice to that effect was provided on August 14, 2018. (Stipulation)

### **CONCLUSIONS OF LAW:**

Pursuant to IDEA §1415 (f)(3)(E)(i) a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education ("FAPE").

Pursuant to IDEA §1415 (f)(3)(E)(ii) in matters alleging a procedural violation a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision making process regarding provision of FAPE, or caused the child a deprivation of educational benefits. An IDEA claim is viable only if [DCPS'] procedural violations affected the student's substantive rights." *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006)

34 C.F.R. § 300.17 provides:

A free appropriate public education or FAPE means special education and related services that--  
(a) Are provided at public expense, under public supervision and direction, and without charge;  
(b) Meet the standards of the SEA, including the requirements of this part; (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Sec. 300.320 through 300.324

In *Board of Education v. Rowley*, the United States Supreme Court set forth a two-part inquiry for determining whether a school district has satisfied the FAPE requirement. First, the state must have "complied with the procedures set forth in the Act." *Rowley*, 458 U.S. at 206. Second, the IEP that is developed must be "reasonably calculated to enable the child to receive educational benefits." *Rowley*, 458 U.S. at 206-07. In this instance there has been no challenge to Student's IEP. The sole question is whether School A has complied with the procedures set forth in the Act.

Pursuant to 5E DCMR 3030.14, the burden of proof is the responsibility of the party seeking

relief. *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). Petitioner held both the burden of production and persuasion on the issue adjudicated. The normal standard is for the burden of persuasion 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:** Whether School A denied Student a FAPE by failing to follow the disciplinary procedures of 34 C.F.R. 300.530(d) by failing to continue to provide Student educational services through placement at School B for SY 2018-2019 as Student’s LEA.

**CONCLUSION:** Petitioner did not sustain the burden of persuasion by a preponderance of the evidence. 34 C.F.R. 300.530(d) in this instance does not prohibit School A from barring Student from re-enrollment in School A for SY 2018-2019 based on Student’s expulsion from School A in SY 2017-2018.

34 C.F.R. §300.530 states:

(a) School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

(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>7</sup>

(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 in pertinent part:

(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

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<sup>7</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.

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.

34 CFR 300.101 requires that FAPE must be provided to all children with disabilities residing within the state including children who have been suspended or **expelled** from school. **(Emphasis added)**

34 C.F.R. §300.530 (c) states:

*For disciplinary changes in placement that would exceed 10 consecutive school days, **if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.** (Emphasis added)*

According to D.C. Code §38-235 et seq.<sup>8</sup> "Expulsion" means the removal of a student from the student's school enrollment for disciplinary reasons for the remainder of the school year **or longer, in accordance with local education agency policy.** **(Emphasis added)**

Petitioner asserts that there is no limitation in IDEA on the obligation of an LEA to provide special education and related services to an eligible student between the ages of 3 through 21 except for the student graduating with a high school diploma prior to the age of 21 years and the LEA's obligation, even to a student who is expelled, cannot be limited to the end of a school year.

It is undisputed based upon both the stipulations of fact agreed to by the parties in this case as well a reading of the December 22, 2017, HOD, that Student was expelled from School A and that the conduct for which Student was expelled was not a manifestation of Student's disability.

There was no assertion raised by Petitioner that School A's policy does not allow Student to be expelled and unable to reenroll in School A for the 2018-2019. School A's policy falls squarely within the definition of expulsion found at D.C. Code §38-235 et. seq. in that a student can be removed from School A for the remainder of the year or longer. Pursuant to 34 C.F.R. §300.530 (c) because Student's behavior was not a manifestation of Student's disability Student could be disciplined as would any other student at School A, including being expelled from School A and being unable to re-enroll.

However, Student's expulsion constituted a change of placement for which School A was required to and did provide Student with an interim alternative placement. School A advised Petitioner that Student was not eligible for reenrollment at School A for SY 2018-2019 as a

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<sup>8</sup> (Sept. 19, 2013, D.C. Law 20-17, § 201, 60 DCR 9839; Aug. 25, 2018, D.C. Law 22-157, § 2(b), 65 DCR 7499.)

result of Student's expulsion and Student would need to be enrolled in another LEA. However, Petitioner asserts that because of the requirements of 34 C.F.R §300.530(d), School A must provide Student the interim alternative placement indefinitely, irrespective of Student's expulsion and School A policy, until Petitioner voluntarily enrolls Student in another LEA, and Petitioner cannot be required to do so.

As noted by Petitioner in her motion, courts have held that even though a student is expelled the LEA remains responsible for providing a student with an interim alternative placement. Petitioner cites *Fisher v. Friendship PCS*, 875 F.Supp.2d 64 (D.D.C. 2012) to support her position. In *Fisher* the student was expelled from the LEA for an infraction that was not a manifestation of his disability during the school year. The District Court held that expelled students with disabilities have continuing rights to receive FAPE and that LEAs have to identify alternative educational settings for such students that permit them to participate in general education curriculums and to progress toward meeting goals in their IEPs during their expulsions. The Court ordered the LEA to continue the implementation of the student's IEP through the reimbursement of the student's placement at a private school. Petitioner asserts that the Court, however, did not conclude that the charter school's obligation to continue providing educational services to the student would have ended at the end of the school year.

Although Petitioner cites *Fisher* as providing legal authority on the issue of whether the public charter school must permit a student to reenroll after disciplinary removal, this Hearing Officer finds that the case offers little guidance in this instance. In *Fisher*, the parent had placed the student in a private school and then sought reimbursement for payments made to the student's private placement. In Petitioner's case, Student was removed due to a disciplinary matter that was found not to be a manifestation of Student's disability. Student's placement was later changed to a non-public special education day school at School B because of a recommendation made by an IEP team at School A, and student was placed at School B with the assistance of OSSE. OSSE has evidently paid the tuition and costs of Student's placement at School B since Student's arrival at School B. Unlike in *Fisher*, in this instance School A provided Student an interim alternative placement.<sup>9</sup>

Petitioner asserts that IDEA requires School A to continue to provide Student a FAPE indefinitely even though Student was expelled. As Respondent aptly points out, such a reading of IDEA would effectively prevent charter schools from expelling students with disabilities. School A asserts that that Student's interim alternative placement pursuant to 34 C.F.R §300.530 (d) should last for the single school year of SY 2017-2018 because the provisions of 34 C.F.R. §300.530 et seq. are limited to a single school year as evidenced by the language of the section repeatedly referencing removals during the "same school year."

The heart of the issue in both Respondent's and Petitioner's positions regarding this matter is whether, in accordance with IDEA and D.C. law, Respondent, School A, has a legal right to prohibit Student from enrolling at School A for SY 2018-2019, after Student has been expelled such that School A can untether itself as Student's LEA.

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<sup>9</sup> Petitioner also cited, as instructive, a 2010 HOD in which a Hearing Officer concluded that a public charter school was required to provide an alternative placement following a student's expulsion. The HOD like *Fisher* had facts that were distinguishable from the instant case.

As noted above, 34 CFR 300.530(c) provides that students with disabilities may be disciplined in the same manner and for the same duration as nondisabled students for behavior that is not a manifestation of their disabilities. The only difference is that students with disabilities must continue to receive services once the student exceeds 10 days of removal in the same school year. 34 CFR 300.530(b)(2). If a District of Columbia public charter school, consistent with its policy, were unable to restrict the re-enrollment of an expelled special education Student, as it would any non-disabled student, then the provisions of 34 CFR 300.530(c) would be meaningless.

As Respondent aptly points out, once that school year is over, the discipline procedures effectively reset for the next school year. This is evident from IDEA's repeated reference throughout the regulations to removals in a given school year. See, 34 CFR 300.530(b)(1) ("in the same school year"), 300.530(b)(2) ("in the same school year"), 300.530(d)(4) ("in that school year"), 300.530(d)(3) ("in the same school year"). IDEA's definition of a "change of placement" also relies on removals "in a school year." 34 CFR 300.536.

As Respondent also points out, IDEA's focus on one school year at a time supports the conclusion that School A was only obligated to provide services in an interim alternative educational setting for the remainder of the 2017- 2018 school year. After that, Student could be treated like any non-disabled student who is expelled and thus, Student is not eligible for reenrollment for SY 2018-2019.

Respondent asserts in its motion that there is no dispute that School A policy prohibits the student from reenrolling at School A for the 2018-2019 school year as a result of Student's expulsion from School A. Respondent also asserts there is also no reasonable dispute that an appropriate placement for the 2018-2019 school year has been identified for Student and that continued public funding for that placement can be secured by enrollment in another District of Columbia LEA. Student can continue to receive educational services in SY 2018-2019. However, the only requirement School A has insisted upon is that Petitioner enroll Student in another LEA. Certainly, if Student did not have access to another LEA in the District of Columbia, School A could not untether itself from the continued responsibility of providing Student a FAPE, despite Student being expelled.

Further insight into the roles of the School A as the District of Columbia public charter school LEA can be garnered through a review of 5-E DCMR §3002.1.

5-E DCMR §3002.1(a)(b)(c) state:

#### 3002 LEA RESPONSIBILITY

##### 3002.1 Provision of FAPE

(a) The LEA shall make a free appropriate public education (FAPE) available to each child with a disability, ages three to twenty-two, who resides in, or is a ward of, the

District including children who are suspended or expelled and highly mobile children, such as migrant or homeless children, even if they are advancing from grade to grade.

(b) For DCPS, the responsibility to make FAPE available extends to all children with disabilities between the ages of three (3) and twenty-two (22) years old, who are residents of the District of Columbia but are not enrolled in a public charter school LEA, and children with disabilities attending private and religious schools in the District of Columbia, pursuant to the requirements of IDEA.

(c) Unless otherwise provided in § 3002.9, a public charter school LEA's obligation to determine eligibility for special education services or to provide special education services on an existing IEP is triggered upon completion of the registration of the student in the Student Information System (SIS) by the school upon receipt of required enrollment forms and letter of enrollment agreement, in accordance with subparagraph (4) in the definition of enrollment in 5-A DCMR § 2199.

As Respondent aptly points out, unlike a school district of residence (DCPS), a charter school is only responsible for providing or offering a FAPE to enrolled students. Under DC law a charter school's responsibilities are contingent on enrollment. 5E DCMR 3002.1(c); 5E DCMR 3002.9. More specifically, an LEA charter school is only required to implement IEPs for enrolled children. 5E DCMR 3019.7. As a result of the student's expulsion from School A during SY 2017-2018, Student is not eligible for reenrollment at School A for SY 2018-2019. The Hearing Officer finds Respondent's arguments in this regard persuasive.

Pursuant to 5E DCMR 3002.1(a) School A is required to "make FAPE available" to students with disabilities including those who are suspended and expelled. Thus, School A was responsible for continuing to provide FAPE to Student after Student's expulsion. However, that responsibility only extended to SY 2017-2018, the school year that Student was enrolled at School A. An interim alternative educational setting was provided after Student's expulsion that continued for the duration of SY 2017-2018. Through developing Student's current IEP in which it determined a placement for Student, School A also secured an appropriate placement for the student for SY 2018-2019.

School A advised Petitioner and Petitioner's counsel several times via email that Petitioner would not be permitted to reenroll Student at School A for SY 2018-2019. School A also advised Petitioner that the interim placement at School B would only extend through the end of SY 2017-2018. School A notified Petitioner that Student's nonpublic placement at School B would not be impacted by a change in enrollment. School A provided further notice to that effect on August 14, 2018. The messages School A provided Petitioner were clear and concise and were provided in enough time for her to find another LEA in which to enroll Student for SY 2018-2019.

There is no dispute that an appropriate placement for the 2018-2019 school year has been identified for Student and that continued public funding for that placement can be secured by enrollment in another District of Columbia LEA. As previously stated, if Student did not have access to another LEA in the District of Columbia, School A could not untether itself from the

continued responsibility of providing Student a FAPE, despite Student being expelled. But, Student has access to another LEA in the District of Columbia through which Student's placement at School B can be continued with funding by OSSE.

As Respondent correctly points out, prior to the conclusion of the 2017-2018 school year, School A determined an appropriate placement for Student for the following school year and the only thing that the Petitioner needs to do in order to ensure continued public funding for that placement is enroll the student in an LEA in the District of Columbia.

The Hearing Officer concludes School A has complied with its obligations pursuant to IDEA and D.C. law regarding Student, and Student has not been denied a FAPE. It is for the reasons detailed above that the Hearing Officer rules that Petitioner's Motion for Judgment on the Pleadings is DENIED and Respondent's Motion for Judgment as a matter of law is GRANTED.

**ORDER:**

1. Petitioner's due process complaint is hereby dismissed with prejudice and all relief requested by Petitioner is denied.
2. Petitioner shall within ten (10) school days of the issuance of this order enroll Student in another District of Columbia LEA, either DCPS or another District of Columbia public charter school.

**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.**

**Hearing Officer**

**Date: September 18, 2018**

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