

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

STUDENT,
By and through PARENT,¹

Petitioner,

v.

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Respondent.

Bruce Ryan, Hearing Officer

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STUDENT HEARING OFFICE
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HEARING OFFICER DETERMINATION

I. INTRODUCTION AND PROCEDURAL BACKGROUND

This is a consolidated due process complaint proceeding pursuant to the Individuals with Disabilities Education Act ("IDEA"), as amended, 20 U.S.C. §§1400 *et seq.*, against Respondent District of Columbia Public Schools ("DCPS"). The two complaints were on behalf of a -year old student (the "Student") who resides in the District of Columbia and who has been determined to be eligible for special education and related services as a child with a disability under the IDEA. The Student attends his neighborhood DCPS middle school ("Middle School"). Petitioner is the Student's mother.

In Case No. 2011-1082, filed November 4, 2011, Petitioner claims that that DCPS has denied the Student a free appropriate public education ("FAPE") by: (1) failing to comply with a prior Hearing Officer Determination ("HOD") dated October 1, 2011; (2) failing develop an appropriate individualized education program ("IEP") for the Student, based on the evaluations reviewed and the findings of the 10/01/2011 HOD; and (3) failing to provide an appropriate educational placement for the Student. In Case No. 2011-1166, filed December 8, 2011, Petitioner claims that DCPS denied the Student a FAPE by failing to follow appropriate

¹ Personally identifiable information is attached as an Appendix to this HOD and must be removed prior to public distribution.

procedures for students who have been removed from their educational placements for more than 10 school days due to disciplinary actions, which requires a manifestation determination review. Petitioner requests appropriate relief for the denials of FAPE, including private placement.

DCPS filed a Response on November 17, 2011 denying Petitioner's various allegations. DCPS responded (*inter alia*) that Petitioner "alleges a number of persnickety grievances with how the student's services are delivered outside of general education," which do not amount to a violation of the HOD or the IDEA. *Response*, p. 2 ¶ 3.²

On November 22, 2011, DCPS held a resolution meeting that did not resolve the Complaint, and the parties appear to have agreed to end the 30-day resolution period early as of that date. *See Resolution Period Disposition Form*.³ The resolution period therefore ended November 22, 2011, and the 45-day timeline expires on January 6, 2012.

On December 6, 2011, a Prehearing Conference ("PHC") was held to discuss and clarify the issues, and a Prehearing Order was then issued on December 9, 2011. On December 16, 2011, the Hearing Officer issued an Order Consolidating Cases, which granted the parties' consent motion to consolidate Case Nos. 2011-1082 and 2011-1166 and hear all claims and issues in one due process hearing. The Order also amended the Prehearing Order statement of issues.

On December 20, 2011, the parties filed their five-day disclosures. The Due Process Hearing was then held as scheduled on December 28, 2011. Petitioner elected for the hearing to be closed. At the Due Process Hearing, the following Documentary Exhibits were admitted into evidence without objection:

Petitioner's Exhibits: P-1 through P-28.

Respondent's Exhibits: R-1 through R-6.

In addition, the following Witnesses testified on behalf of each party:

² The 11/17/2011 Response also addressed the substance of the discipline/manifestation claim later asserted in Case No. 2011-1166 because the original complaint had included this same claim. At the PHC, Petitioner decided to withdraw such claim without prejudice to re-filing it in a separate due process complaint, rather than bifurcate or proceed to hearing on an expedited timeline. The parties agreed that the claims were the same, that Case No. 2011-1166 would be consolidated with Case No. 2011-1082, and that DCPS' Response would apply equally to the complaint in Case No. 2011-1166.

³ Although the disposition form was signed only by the LEA representative because the parent participated by phone, "Box B" was checked, and the form stated that "counsel requested that we choose to end the timeline earlier." This information, together with Petitioner's original written waiver of resolution, was deemed sufficient to constitute an agreement in writing for purposes of adjusting the 30-day resolution period under 34 C.F.R. §300.510.

Petitioner's Witnesses: (1) Student; (2) Parent-Petitioner; (3) Educational Advocate ("EA"); and (4) Volunteer Educational Advocate ("Volunteer EA").

Respondent's Witnesses: DCPS presented no witnesses.

At the conclusion of the hearing, both parties presented oral closing statements.

II. JURISDICTION

The due process hearing was held pursuant to the IDEA, 20 U.S.C. §1415 (f); its implementing regulations, 34 C.F.R. §300.511; and the District of Columbia Code and Code of D.C. Municipal Regulations, *see* DCMR §§ 5-E3029, E3030. This decision constitutes the Hearing Officer's Determination ("HOD") pursuant to 20 U.S.C. §1415 (f), 34 C.F.R. §300.513, and Section 1003 of the *Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures* ("SOP"). The statutory HOD deadline is January 6, 2012.

III. ISSUES AND REQUESTED RELIEF

The following issues were presented for determination at hearing:

- (1) **Failure to Comply With Oct. 1, 2011 HOD** – Did DCPS deny the Student a FAPE by failing to comply with the 10/01/2011 HOD issued by Hearing Officer Leff, for the reasons alleged at pages 7-8 of the 11/04/2011 Complaint?
- (2) **Failure to Develop Appropriate IEP** – Did DCPS deny the Student a FAPE by failing to develop an appropriate IEP (*i.e.*, one that is reasonably calculated to confer educational benefit) on October 13, 2011, for the same reasons stated at pages 7-8 of the 11/04/2011 Complaint?
- (3) **Failure to Provide Appropriate Placement** – Did DCPS deny the Student a FAPE by failing to provide an appropriate educational placement, for the reasons alleged at pages 8-9 of the Complaint?
- (4) **Manifestation Determination Review** – Did DCPS deny the Student a FAPE by failing to follow required procedures relating to students with disabilities who have been removed from an educational placement for more than 10 school days pursuant to 34 C.F.R. §300.530 (e)?

As relief, Petitioner requests that the Hearing Officer order DCPS to (a) identify and present an appropriate placement that meets the requirements set out in the 10/01/2011 HOD; (b) if DCPS cannot do so, then order it to fund a private placement of the parent's choice, with transportation; and (c) hold a manifestation determination review meeting in accordance with IDEA requirements.

As the party seeking relief, Petitioner was required to proceed first at the hearing and carried the burden of proof on the issues specified above based on a preponderance of the evidence. *See* DCMR 5-3030.3; *Schaffer v. Weast*, 546 U.S. 49 (2005).

IV. FINDINGS OF FACT

Based upon the evidence presented at the Due Process Hearing, this Hearing Officer makes the following Findings of Fact:⁴

1. The Student is a year old student who has been determined to be eligible for special education and related services under the IDEA as a child with a disability. His primary disability is Emotional Disturbance ("ED"). *See P-1; P-2; P-12; Parent Test.*
2. The Student is a resident of the District of Columbia, and Petitioner is the Student's mother. *P-1; Parent Test.* He currently attends Middle School, where he is in the Grade. *Id.*
3. The Student has had behavioral problems in school, which have escalated since his enrollment in Middle School. *P-2-5, ¶ 3.*
4. On June 16, 2011, DCPS convened an MDT/IEP Team meeting pursuant to a June 2, 2011 HOD, to review a 05/17/2011 independent Comprehensive Psychological Evaluation and to review and revise the Student's IEP. *P-2-6, ¶ 5.* The IEP developed on June 16, 2011 required the Student to receive 10 hours per week of specialized instruction in the General Education setting, plus 240 minutes per month of behavioral support services in an Outside general Education setting. *Id.; P-2-7, ¶ 8; P-20-9.*
5. As found in the 10/01/2011 HOD: "Student requires small, structured classes with a low student-teacher ratio and minimal distractions to access his educational program. He also

⁴ As agreed at the PHC and hearing, the findings and conclusions made in the October 1, 2011 HOD which were accepted into evidence as Exhibit P-2 are binding on the parties and cannot be re-litigated in this proceeding. To the extent relevant to the issues presented in this case, they are incorporated into the Findings of Fact and Conclusions of Law herein.

requires reinforcement of his efforts, significant one-on-one time with his teacher to assure his understanding of the material and that he is working at an appropriate pace. He requires extended time for testing. He also requires services to address his social/emotional needs, including helping him develop appropriate social skills.” P-2-8, ¶ 10.

6. On October 13, 2011, DCPS convened an MDT/IEP Team meeting pursuant to the 10/01/2011 HOD, to review the Addendum to the Student’s independent psychological evaluation, to review and revise the Student’s IEP as necessary, and to discuss and determine a placement that is able to implement the revised IEP. *See R-4; P-2-21.* Participants included: Petitioner; the Student’s educational advocate; the Special Education Coordinator (“SEC”), Assistant Principal, teacher, and social worker at Middle School; DCPS Psychologist; and DCPS Compliance Case Manager (“CCM”).
7. The IEP developed on October 13, 2011, provides 13.5 hours per week of specialized instruction in an Outside General Education setting and 240 minutes per month of behavioral support services in an Outside General Education setting. *R-2, p. 8; P-12-8.* The IEP also requires the support of a dedicated aide. *P-12-9.*
8. On October 13, 2011, DCPS also issued a Prior Written Notice (“PWN”) proposing changes in the IEP and educational placement for the Student. *R-3.* The PWN proposed (*inter alia*) an increase in hours of specialized instruction and proposed that Middle School would continue to implement the Student’s IEP, with added changes. *Id., p. 2.*
9. Since the beginning of the 2011-12 school year, the Student has been suspended for multiple instances of misconduct totaling more than 10 school days. Through such suspensions, the Student has been subjected to a series of removals that constitute a pattern, and the pattern constitutes a change of placement. The evidence shows that the Student was suspended for five days on 09/13/2011, for another five days on 10/06/2011, for four days on 10/20/2011; and for two days on 11/30/2011. *See P-9; Parent Test.* The suspensions appear to involve substantially similar disruptive behaviors at school, are of similar lengths, and are closely proximate in time. *Id.*
10. DCPS has failed to convene an IEP Team meeting to determine whether the Student’s conduct resulting in the suspensions and change of placement was a manifestation of his disability.

V. DISCUSSION AND CONCLUSIONS OF LAW

Issues 1-3

The parties agreed that the first three issues should be considered together, given their substantially overlapping allegations. Under Issue 1, Petitioner alleges that DCPS has failed to fully and timely implement certain determinations made by a prior hearing officer in an HOD issued October 1, 2011, and argues that such failure constitutes a denial of FAPE – presumably under the *Jones* portion of the Consent Decree in *Blackman/Jones v. District of Columbia*, Civil Action Nos. 97-1629 & 97-240 (D.D.C. Aug. 24, 2006), Section II. A., pp. 10-11.⁵ As the language of the Complaint in Case No. 2011-1082 makes clear – and as Petitioner’s counsel further explained at both the PHC and Due Process Hearing – this claim is supported by the same factual allegations as Petitioner’s inappropriate IEP claim (Issue 2) and inappropriate placement claim (Issue 3). For example, each of the alleged failures to comply with the 10/01/2011 HOD are reasserted as failures to develop an appropriate IEP based on the findings of the evaluations and findings of the prior hearing officer at pages 7-8 of the Complaint. *See P-1-10 – P-1-11; Prehearing Order* (Dec. 9, 2011).

Accordingly, the Hearing Officer will analyze Petitioner’s claims under Issues 1-3 in the same manner presented in Petitioner’s closing argument – *i.e.*, by going through each aspect in which DCPS’ 10/13/2011 actions are alleged to violate the 10/01/2011 HOD. This analysis will also determine whether or not DCPS has developed an appropriate IEP and provided an appropriate educational placement for the Student, as recognized by the parties.⁶

⁵ *See also Letter to Shaw*, 50 IDELR 78 (OSEP 2007) (While IDEA does not specifically address enforcement by hearing officers of settlement agreements reached by the parties, complaints alleging a failure to implement a settlement agreement may be within the jurisdiction and authority of a hearing officer if it amounts to a dispute over the provision of FAPE); 34 C.F.R. 300.507 (a) (matters to be addressed in due process complaints).

⁶ *See* 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; DCMR 5-E3001.1. To be sufficient to provide FAPE under the IDEA, an “IEP must be ‘reasonably calculated’ to confer educational benefits on the child, but it need not ‘maximize the potential of each handicapped child commensurate with the opportunity presented non-handicapped children.’” *Anderson v. District of Columbia*, 109 LRP 18615 (D.D.C. 2009), slip op. at 6, quoting *Board of Education v. Rowley*, 458 U.S. 176,200,207 (1982); *see also Kerkam v. McKenzie*, 862 F. 2d 884 (D.C. Cir. 1988). “DCPS must also implement the IEP, which includes offering placement in a school that can fulfill the requirements set forth in the IEP.” *O.O. v. District of Columbia*, 573 F. Supp. 2d 41, 53 (D.D.C. 2008) (emphasis added). *See also Branham v. District of Columbia*, 427 F. 3d 7, 12 (D.C. Cir. 2005), citing *McKenzie v. Smith*, 771 F.2d 1527, 1534-35 (affirming “placement based on match between a student’s needs and the services offered at a particular school”) (emphasis added); *Jenkins v. Squillacote*, 935 F. 2d 303, 305 (D.C. Cir. 1991) ; D.C. Code §38-2561.02 (b) (“DCPS shall place a student with a disability in an appropriate special education school or program in accordance with this chapter and the IDEA.”).

(A) Petitioner first claims that DCPS did not review the evaluations that the 10/01/2011 HOD directed it to review (*i.e.*, the 05/17/2011 comprehensive psychological and 05/18/2011 FBA) and did not incorporate this evaluative data into the 10/13/2011 IEP. Petitioner complains that the substitute DCPS Psychologist attending the IEP meeting actually reviewed DCPS' Review of Independent Evaluation, rather than the evaluation itself at the meeting. *See P-1-8*. Since the substance of the evaluation report was reviewed with the Team, this procedure did not violate the 10/01/2011 HOD. *See also* 34 C.F.R. 300.324 (a).

(B) The 10/01/2011 HOD also required that the "IEP Goals are to be reviewed, amended, and/or added or deleted to assure Student's strengths and needs identified in the Comprehensive Psychological Evaluation (with Addendum) dated 5/17/11 are addressed." *P-2-20*. Under each area of academic goals (Math, Reading, Written Expression), DCPS appears to have added to the statement of "Needs" the following sentence: "Due to his HOD, [Student] is required to be in a small, structured class with a low student-teacher ratio." *P-12-15, -16, -17*. Otherwise, the goals appear to have remained essentially the same as in the June 2011 IEP that predated the 10/01/2011 HOD.⁷ The 10/01/2011 HOD also held that "additional accommodations, modifications and classroom behavioral interventions" were necessary to adequately address the evaluative data and recommendations. *P-12-16*. In at least some respects, the Hearing Officer concludes that DCPS failed to comply with these directives in the 10/01/2011 HOD. For example, DCPS does not appear to have incorporated into the IEP the following specific recommendations in the evaluation reports (as summarized in the 10/01/2011 HOD): (1) "that Student's teachers provide reinforcement of his on-task behaviors"; (2) "that his tasks be presented in a short and varied manner"; and (3) "that the teacher monitors Student closely for understanding and pacing of his assigned tasks." *P-2-15 – P-2-16*. While the 10/13/2011 BIP may touch on some of these subjects (*e.g.*, "close teacher proximity; frequent verbal prompting/cueing"), *P-15*, they are not fleshed out sufficiently there and, in any event, are not connected to the academic goal areas of the IEP. On the other hand, other specific classroom procedures recommended by the independent psychologist do appear to be included in the academic goal sections (*e.g.*, "to study pictures, graphs and headings to help with

⁷ The IEP team stated that "the student's goals remained the same in these areas because he has not mastered the goals since the last MDT meeting held over the summer." *R-4, p. 2*.

comprehension” and “to highlight, summarize and review important ideas in text” under Reading; and “to learn how to use a calculator to check his work on math assignments”).

Compare P-22-15 with P-20-4 – P-20-6.

(C) Petitioner claims that DCPS failed to revise and update the Student’s BIP to reflect the antecedents to his problematic behaviors and to incorporate effective behavioral interventions. The 10/01/2011 HOD required the Student “to have a behavioral plan that provides immediate response and support to remediate inappropriate behavior in both the general and special education classrooms.” *P-2-20*. The Hearing Officer concludes that DCPS did revise the BIP pursuant to the 10/01/2011 HOD, and does appear to have addressed one of the key points specified in the HOD – *i.e.*, how the Student’s teachers can provide reinforcement of his on-task behaviors. *See P-15-1* (Positive Intervention Strategies to include “frequent verbal prompting/cueing; frequent redirection; immediate recognition when desired behavior is demonstrated (*i.e.*, notes on work, thumbs up, etc.)...rewards, and incentives...”). Since DCPS will likely need to review the BIP again as part of the MDR process (as discussed under Issue 4 below), further refinements can be accomplished in that context.

(D) Petitioner claims that DCPS failed to comply with the HOD order requiring the IEP to include “at least 10 hours of specialized instruction in a highly structured classroom with a small teacher-student ratio and a minimum of distractions” (*P-2-20*). Petitioner argues that the 14-1 ratio allegedly provided is not small enough. However, the evidence indicates that the Student’s specialized instruction since the 10/13/2011 IEP revision has generally taken place within class sizes of 10-12 students with a special education teacher. *See Student Test*. While Petitioner testified that she had expected more like 5-6 students per class (*Parent Test.*), the Hearing Officer does not interpret the 10/01/2011 HOD as requiring classes that small, and class sizes of 10-12 students would appear to be reasonably consistent with the requirements of the IEP. *See also EA Test.* (testifying that “small setting” meant 8-10 students). Nor has Petitioner shown that these classes are not sufficiently structured to meet the Student’s needs. In fact, Petitioner testified that she does not even know what special education services the Student is currently receiving; she said she actually thought he was still in regular classrooms rather than special education classes. *See Parent Test*. Petitioner has not observed the Student in school this school

year, has not talked with the SEC, and has not visited the school other than for the 10/13/2011 IEP meeting. *Id.* (cross examination).⁸

(E) Finally, Petitioner claims that DCPS created an inappropriate program by effectively “shoehorning” the Student into Middle School, as opposed to developing an IEP designed to meet the individual needs of the Student. The Hearing Officer concludes that Petitioner has failed to prove this claim by a preponderance of the evidence. Petitioner’s own witness testified that there was no dispute concerning the IEP Team’s decision to provide 13.5 hours of specialized instruction covering the areas of Math and Reading/Written Expression (approximately 6.75 hours each). *See EA Test.* It also appears that Middle School can implement the services and setting provided in the 10/13/2011 IEP. Specifically, Petitioner has not shown that Middle School cannot provide 13.5 hours of specialized instruction in an Outside General Education setting, or that such instruction does not include Math, Reading, and Written Expression “in a small, structured class with a low student-teacher ratio.” *P-12-4, -5, -6.* And it is undisputed that the Middle School program can provide the Student with all accommodations listed on his 10/13/2011 IEP (*P-12-11*). The Student testified that he likes his teachers and that he “can do the work” in his current setting, but gets bad grades primarily due to his “talking and playing in class.” *Student Test.*

Accordingly, the evidence indicates that Middle School can provide an appropriate educational environment reasonably calculated to confer educational benefit on the Student, as long as (1) the Student’s IEP goals are appropriately revised to address all of his individual programmatic needs as previously established in the 10/01/2011 HOD and (2) his BIP is reviewed and modified as needed based on the MDR review, as discussed below. The first condition is especially important, given concerns reportedly expressed at the 10/13/2011 meeting by the special education teacher regarding whether the other ED students in the special education classes may be lower functioning than the Student. *See EA Test.* To avoid inappropriate “shoehorning,” it is critical that the Student’s program be sufficiently individualized to meet his unique educational needs.

⁸ The Student’s educational advocate also testified concerning only one classroom observation this school year. But it occurred in mid-September 2011, prior to the 10/01/2011 HOD and almost a month prior to the 10/13/2011 IEP revision. *See EA Test.* Her testimony concerning the Student’s performance since that time was not based on first-hand knowledge, but rather her review of the disciplinary records and parent reports. *Id.*

For the reasons discussed above, the Hearing Officer concludes that Petitioner has not met her burden of proof under Issues 1 through 3, other than in connection with certain revisions and refinements of the academic goal areas of the 10/13/2011 IEP discussed in Point (B) above. More specifically, Petitioner has not proved that the 13.5 hours of specialized instruction in the Outside General Education setting provided in the IEP fails to provide sufficient services and/or supplementary aids or other supports to meet the Student's educational needs, consistent with the 10/01/2011 HOD.

Issue 4

34 C.F.R. §300.530(b) provides that school personnel “may remove a child with a disability who violates a code of student conduct from his or her current placement ... ***for not more than 10 consecutive school days***...as long as those removals do not constitute a change of placement under §300.536” (emphasis added). Section 300.536, in turn, provides that a “change of placement” occurs if either (1) the removal is for more than 10 consecutive school days, or (2) the child is subject to a ***series of removals totaling more than 10 school days in a school year that constitute a “pattern,”*** determined on a case-by-case basis consistent with the factors spelled out in the rule. 34 C.F.R. §300.536 (emphasis added). If such a “change of placement” occurs, then within 10 school days, the LEA must convene a meeting of the IEP team to make a “manifestation determination” as provided in Section 300.530 (e).

In its manifestation determination review (“MDR”), the IEP Team is to review all relevant information and then determine if the conduct in question was “caused by, or had a direct and substantial relationship to, the child’s disability” or was “the direct result of the LEA’s failure to implement the IEP.” 34 C.F.R. §300.530 (e) (1). If the IEP Team determines that the conduct was a manifestation of the child’s disability, then the Team must either (i) conduct an FBA and implement a BIP, or (ii) review and modify an existing BIP. 34 C.F.R. §300.530 (f) (1). In addition, the child generally must be returned to the placement from which the child was removed. *Id.*, §300.530 (f) (2).

In this case, Petitioner has proved by a preponderance of the evidence that the Student was subjected to a series of removals via disciplinary suspension that totaled more than 10 school days during the 2011-12 school year, and that the series of removals constituted a pattern within the meaning of 34 C.F.R. §300.536. The evidence shows that the Student was suspended

for five days on 09/13/2011, for another five days on 10/06/2011, and for four days on 10/20/2011. *See P-9-11, -12, -21; Parent Test.* Thus, as of approximately October 20, 2011, the Student had been suspended and removed for a total of 11 school days in the same school year. Moreover, the suspensions appear to involve substantially similar disruptive behaviors at school, are of similar lengths, and are closely proximate in time. *Id.*; *see* 34 C.F.R. §300.536 (a) (2). Thus, DCPS should have conducted an MDR within 10 school days of that date, or by approximately **November 3, 2011**. Petitioner filed her initial complaint (Case No. 2011-1082) the next day. Moreover, by the time the MDR claim was withdrawn and re-filed in a second complaint (Case No. 2011-1166) on December 8, 2011, the Student had been subjected to further suspension on 11/30/2011, again without benefit of any MDR. *See P-9-3; Parent Test.*

Had DCPS properly convened an MDR meeting and reviewed all relevant information by November 3, 2011, it is likely that the IEP team would have determined that the Student's conduct was a manifestation of his emotional disability. The IEP Team then would have been required to review and modify, as necessary, the Student's BIP to address the continued behavior problems and return the Student to his Middle School placement. *See* 34 C.F.R. §300.530 (f). While DCPS included in its five-day disclosures a revised BIP dated 12/15/2011, it did not present any witness to explain how it was developed or how it would address the behavior that was the subject of the recent suspensions. In any event, it does not appear from the testimony and documentary evidence that this BIP was the product of any IEP Team/MDR meeting, and certainly not one involving the parent. *See R-6; Parent Test.* The purported BIP thus does not moot this claim.

Assuming *arguendo* that DCPS' failure to convene a timely MDR meeting is deemed to be a procedural violation of the IDEA only, the Hearing Officer concludes that this violation has affected the student's substantive rights. *See Lesesne v. District of Columbia*, 447 F. 3d 828 (D.C. Cir. 2006). Such procedural inadequacy has impeded the Student's right to a FAPE and has significantly impeded Petitioner's opportunity to participate in the decision-making process regarding the provision of a FAPE to her child since approximately November 3, 2011. *See* 34 C.F.R. 300.513 (a) (2) (i), (ii). Accordingly, Petitioner has met her burden of proof on Issue 4.

Appropriate Relief

The IDEA authorizes the Hearing Officer to fashion “appropriate” relief, *e.g.*, 20 U.S.C. §1415(i)(2)(C)(iii), and such authority entails “broad discretion” and implicates “equitable considerations,” *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15-16 (1993); *Reid v. District of Columbia*, 401 F.3d 516, 521-24 (D.C. Cir. 2005). The Hearing Officer’s determination of appropriate equitable relief is set forth in the Order below. DCPS is ordered to convene an MDR meeting to determine if the Student’s behaviors occurring since the October 13, 2011 IEP meeting are a manifestation of his disability and, if so, to review and modify the Student’s BIP accordingly. DCPS is also ordered to convene an IEP Team meeting to review and revise the academic goal sections of the 10/13/2011 IEP to address the specific programmatic needs specified at page 7 above, in accordance with the 10/01/2011 HOD. If the relevant members of the IEP Team are the same for both meetings, the meetings may be consolidated to the extent appropriate. *Cf.* 34 C.F.R. §300.324 (a) (5) (consolidation of re-evaluation and other team meetings where possible).

Petitioner’s request for placement into the full-time private school program proposed at hearing (“Private School”) is not granted. Private School offers a full-time, self-contained, special education program with no interaction with non-disabled peers. This proposed placement has not been shown to be the Student’s least restrictive environment (“LRE”) or to be necessary and appropriately tailored to meet the specific needs of the Student at this time. *See Branham v. District of Columbia*, 427 F.3d 7, 11-12 (D.C. Cir. 2005); 34 C.F.R. §§ 300.114-116; 5-E DCMR §3011. The Hearing Officer notes that the parties just recently litigated this very same issue in Case No. 2011-0752, with the result that the October 1, 2011 HOD specifically found that “Petitioner has not met the burden of persuasion in demonstrating that Student requires a full-time, separate private school placement” and that “DCPS did not deny Student a FAPE by failing to provide him a placement in a full-time, special education, therapeutic environment.” *P-2-18, -19*. Petitioner has not shown any basis for reaching a different conclusion in this proceeding, either with respect to the IEP team’s decision less than two weeks later or based on any new facts occurring since that date. Indeed, in seeking the Private School placement, Petitioner continues to rely on the testimony of her expert psychologist and Private School’s assessment regarding the Student’s needs as of May 2011. *See P-26; P-27*. No evidence was presented as to whether or how such assessments continue to apply to her present needs in light of the updated IEP.

Finally, the Hearing Officer notes that Petitioner did not request or present any evidence to support an award of compensatory education for any claim in this proceeding; and the Hearing Officer has not found any demonstrated educational harm resulting from any failure to comply with the 10/01/2011 HOD or failure to conduct a timely MDR. Thus, compensatory education services are not included as relief in this case. *Cf. Reid v. District of Columbia, supra.*

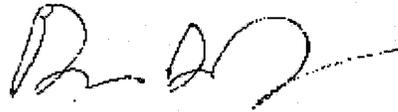
VI. ORDER

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

1. Within **10 school days** of this Order (*i.e.*, by no later than **January 23, 2012**), DCPS shall convene a meeting of the Student's IEP Team (with all relevant members, including Petitioner participating) to conduct a **manifestation determination review** process with respect to all behaviors of the Student resulting in suspension pursuant to any Notice of Final Disciplinary Action during the 2011-12 school year, in accordance with 34 C.F.R. §300.530(e) and this HOD. If the IEP Team determines that the Student's conduct was a manifestation of his disability, then it shall take the actions required under 34 C.F.R. §300.530(f), including but not limited to reviewing and modifying as necessary the Student's existing Behavioral Intervention Plan (BIP) to address the behaviors.
2. By no later than **January 31, 2012**, DCPS also shall convene a meeting of the Student's IEP Team (with all relevant members, including Petitioner participating) to review and revise the "Present Levels of Performance and Annual Goals" section of the October 13, 2011 IEP within all academic areas of concern (Mathematics, Reading, and Written Expression) and, to the extent necessary, the "Classroom Accommodations" section of such IEP. Unless Petitioner and DCPS agree otherwise, the IEP shall be revised to incorporate appropriate provisions in sufficient detail to require at least the following supports:
 - (a) Teachers shall provide appropriate reinforcement of the Student's on-task behaviors. Reinforcement should occur after the completion of each activity. When his ability to attend to tasks improves, reinforcement can be provided at longer intervals.
 - (b) The Student's tasks should be presented in a short, varied manner, and gradually increased in length.
 - (c) Teachers shall monitor the Student closely for understanding and pacing of his assigned tasks.

3. The IEP Team meeting required under Paragraph 2 of this Order may be consolidated with the IEP Team meeting required under Paragraph 1 of this Order, provided the consolidated meeting is held no later than January 23, 2012.
4. Any delay in meeting any deadline in this Order caused by Petitioner or Petitioner's representatives (*e.g.*, absence or failure to attend a meeting, or failure to respond to scheduling requests) shall extend the deadline by the number of days attributable to such delay.
5. Petitioner's other requests for relief in her Due Process Complaints filed November 4 and December 8, 2011, are hereby **DENIED**.
6. This case shall be, and hereby is, **CLOSED**.

IT IS SO ORDERED.



Dated: January 6, 2012

Impartial Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the findings and decision made herein has the right to bring a civil action in any District of Columbia 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 Decision of the Hearing Officer in accordance with 20 U.S.C. §1415(i)(2).