

**District of Columbia
Office of the State Superintendent of Education**

Student Hearing Office
810 First Street, N.E., Suite 2001
Washington, DC 20002

OSSE
Student Hearing Office
February 07, 2014

<p>STUDENT¹, By and through PARENT,</p> <p style="text-align: center;"><i>Petitioner,</i></p> <p>v.</p> <p>DISTRICT OF COLUMBIA PUBLIC SCHOOLS,</p> <p style="text-align: center;"><i>Respondent.</i></p>	<p>Impartial Hearing Officer:</p> <p>Charles M. Carron</p> <p>Date Issued:</p> <p>February 7, 2014</p>
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HEARING OFFICER DETERMINATION

I. PROCEDURAL BACKGROUND

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

The DPC was filed after 5:00 p.m. on December 23, 2013, on behalf of the Student, who resides in the District of Columbia, by Petitioner, the Student’s Parent, against Respondent, District of Columbia Public Schools (“DCPS”).

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

The DPC was received by the District of Columbia Office of the State Superintendent of Education (“OSSE”) Student Hearing Office (“SHO”) on December 24, 2013.

On January 2, 2014, the undersigned was appointed as the Impartial Hearing Officer.

On January 3, 2014, Respondent timely filed its Response, stating, *inter alia*, that Respondent has not denied the Student a free appropriate public education (“FAPE”).

A Resolution Meeting was scheduled for January 21, 2014 but canceled due to inclement weather. The statutory 30-day resolution period ended on January 23, 2014.

The 45-day timeline for this Hearing Officer Determination (“HOD”) started to run on January 24, 2014 and will conclude on March 9, 2014.

The undersigned held a Prehearing Conference (“PHC”) by telephone on January 22, 2014 at which the parties discussed and clarified the issues and the requested relief. At the PHC, the parties agreed that five-day disclosures would be filed by January 27, 2014 and that the Due Process Hearing (“DPH”) would be held on February 3, 2014.

No pre-hearing motions were filed by either party and the DPH was held on February 3, 2014 from 9:37 a.m. to 2:12 p.m. at the Student Hearing Office, 810 First Street, NE, Room 2003, Washington, DC 20002. Petitioner elected for the hearing to be closed.

At the DPH, the following documentary exhibits were admitted into evidence without objection:

Petitioner’s Exhibits: P-1 through P-8

Respondent’s Exhibits: R-1 through R-4

Hearing Officer’s Exhibits: HO-1 through HO-7

The following witnesses testified on behalf of Petitioner at the DPH:

Petitioner;

Clinical Coordinator, Non-Public School; and

Independent Consultant.²

Respondent did not call any witnesses.

The parties gave oral closing arguments and did not file written closing arguments or briefs.

II. JURISDICTION

The DPH was held pursuant to the IDEA, 20 U.S.C. §1415(f); IDEA’s 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 and E3030. This decision constitutes the HOD pursuant to 20 U.S.C. §1415(f), 34 C.F.R. §300.513, and §1003 of the *Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures*.

III. CIRCUMSTANCES GIVING RISE TO THE COMPLAINT

The circumstances giving rise to the DPC are as follows:

The Student is female, Current Age, and attends Current Grade at a public school (the “Attending School”). The Student has been determined to be eligible for special education and related services as a child with a disability, Specific Learning Disability (“SLD”), under the IDEA. Petitioner claims that Respondent has denied Student a FAPE by failing to place her in a more restrictive environment and by failing to conduct a Functional Behavioral Assessment (“FBA”) and develop and implement a Behavior Intervention Plan (“BIP”).

² Independent Consultant was qualified, after *voir dire* and over Respondent’s objection, as an expert in (a) development and implementation of the academic portion of IEPs, and (b) development and implementation of compensatory education programs. However, Independent Consultant was not qualified as an expert in determining what is required to provide a child a FAPE or whether a given child has been denied a FAPE.

IV. ISSUES

As confirmed at the PHC and in opening statements at the DPH, the following issues were presented for determination at the DPH:

(a) Did Respondent deny the Student a FAPE because her current Individualized Education Program (“IEP”), dated November 14, 2013, does not provide a sufficiently restrictive environment to address the Student’s frustration and inattention?

(b) Did Respondent deny the Student a FAPE by failing to conduct an FBA and implement a BIP to address her inappropriate behavior during School Year (“SY”) 2013-2014?

(c) Did Respondent’s failure to conduct an FBA violate IDEA’s procedural provisions by significantly impeding Petitioner’s opportunity to participate in the decision-making process regarding the Student’s IEP?

V. RELIEF REQUESTED

Petitioner requests the following relief:

- (a) findings in favor of Petitioner on all issues;
- (b) that the undersigned develop an appropriate IEP for the Student or order Respondent to do so;
- (c) that Respondent be ordered to fund placement and provide transportation for the Student to attend an appropriate public or non-public school;

(d) that Respondent be ordered to convene a meeting of the Student's Multidisciplinary Team ("MDT") or IEP Team³ with Petitioner within ten days of the HOD to revise the Student's IEP and determine placement, with placement to be made within ten days;

(e) an award of appropriate compensatory education;

(f) an order that all meetings be scheduled through Petitioner's counsel;

and

(g) any other relief deemed appropriate.

In the DPC, Petitioner also requested the following relief that the undersigned determined to be inappropriate for the reasons stated in the Prehearing Conference Summary and Order issued January 23, 2014 (HO-7):

(a) an Order that Respondent convene an MDT or IEP Team to determine compensatory education;

(b) attorney's fees and costs;

(c) an Order that Respondent file a Response within 10 calendar days of the filing of the DPC;

(d) an Order that if Respondent failed to file a timely Response, the arguments and facts averred by the Parent be deemed true and accurate and act as a waiver, on the part of Respondent, of the desire to have a Resolution Session Meeting, and that the timeline of the DPH be accelerated accordingly;

(e) an Order that Respondent, within 15 calendar days of receiving the DPC, file any Notice of Insufficiency; and

³ The parties use the terms MDT and IEP Team interchangeably.

(f) an Order that if Respondent failed to file a Notice of Insufficiency within 15 calendar days of receiving the DPC, that this constitute a waiver on the part of Respondent to make such an argument subsequently.

VI. FINDINGS OF FACT

Facts Related to Jurisdiction

1. The Student is a female, Current Age. P-2-1.⁴
2. The Student resides in the District of Columbia. P-6-1.
3. The Student has been determined to be eligible for special education and related services under the IDEA as a child with SLD. P-2-1.

The Student's Behavior During SY 2013-2014

4. According to Petitioner, approximately twice a week in September 2013, the Student's general education teacher at the Attending School called Petitioner to inform her about the Student's behavior problems, that she was not doing her work, and that she was getting up out of her chair and walking around. Testimony of Petitioner.

5. The Student was suspended for five days in September 2013 for fighting. *Id.*

6. There is no evidence in the record that the fighting was asserted or determined to be a manifestation of the Student's disability.

⁴ When citing exhibits, the third range represents the page number within the referenced exhibit, in this instance, page 1.

7. According to Petitioner, in October 2013 the Student's general education teacher at the Attending School called Petitioner about once each week to inform her that the Student was pacing in the classroom. Testimony of Petitioner.

8. According to Petitioner, in October 2013 the Student's special education teacher at the Attending School called Petitioner approximately every other week to inform her that the Student was not doing her work. *Id.*

9. There is no evidence in the record that the Student's teachers have called the Petitioner about the Student's behavior since October 2013.

10. Since November 2013, the Student's behavior has improved. Testimony of Petitioner.

11. There is no evidence in the record that the Student's behavior ever impeded her learning or that of others.

12. There is no evidence in the record that the Student was suspended after the five-day suspension in September 2013 or otherwise removed from her educational placement.

The Student's Academic Performance From the Beginning of SY 2013-2014 to November 14, 2013

13. In Mathematics, the Student was performing three grade levels below Current Grade and her tendency to be inattentive and without focus made it difficult for her to access the curriculum continuously (R-1-3); however, she was progressing on all of her mathematics goals (R-3-1 and -2).

14. In Reading, the Student was performing three grade levels below Current Grade and often needed to be redirected to stay on task with assignments (R-1-4); however, she was progressing on three of her four Reading goals (R-3-2 through -4).

15. In Written Expression, the Student was performing three grade levels below Current Grade and often would request assistance (R-1-5); however, on the two goals for which instruction had been introduced in the first reporting period, the Student was progressing (R-3-4 and -5).

16. Respondent's notes of the November 15, 2014 MDT/IEP Team meeting (R-2) state that the Student was performing two grade levels below Current Grade. However, the author of the notes did not testify and the undersigned gives more weight to the Student's IEP (R-1) which is a formal business record.

17. Based upon all of the record evidence, the undersigned finds that the Student was making progress on most of her academic goals and was receiving educational benefit.

The November 14, 2013 MDT/IEP Team Meeting

18. The Student's MDT/IEP Team, including both of the Student's parents, met on November 14, 2013. R-1-1.

19. Petitioner expressed her concerns about the Student's academics and behavior, noting that the Student's teacher was calling Petitioner's home "constantly" about the Student's behavior. R-2-3.

20. Petitioner expressed her opinion that the Student needed more hours of specialized instruction due to her short attention span and tendency to get frustrated when a teacher was not immediately available to help her. Testimony of Petitioner.

21. Petitioner did not want to discuss a behavior plan for the Student; rather, she wanted to discuss the Student's hours of specialized instruction. *Id.*

22. Petitioner expressed her opinion that the Student would benefit from smaller class size.⁵ *Id.*

23. The Student's IEP developed at the meeting continued the services in her prior IEP, *i.e.*, ten hours per week of specialized instruction outside the general education setting. R-1-7. The IEP mentioned that the Student would receive one-on-one assistance from a special education teacher when needed, but this was not placed in the section of the IEP that specifies services the Student is entitled to receive. *Id.*

24. Although not reflected in the IEP, Respondent's notes of the meeting indicate that the ten hours per week of specialized instruction comprised five hours of Mathematics, 2.5 hours of "writing" and 2.5 hours of Reading. R-2-3.

25. Although not reflected in the IEP, Respondent's notes of the meeting indicate that the Student would receive a "behavior plan" and that the MDT would "write an

⁵ The Student's IEP does not specify class size, and class size is not an issue raised in the DPC (HO-1) or accepted for resolution at the DPH (HO-7-2). At the DPH, Petitioner testified that she believed the Student needed a school like the Non-Public School, where she would be one of three special education students with a full-time special education teacher. The Clinical Coordinator of the Non-Public School testified that the school follows the "inclusion" model, meaning that its students receive instruction in the general education classroom except when "pulled out" –just as at the Attending School. The testimony of the Clinical Coordinator of the Non-Public School did not identify any feature of the Non-Public School that distinguished it from the Attending School with regard to instruction or services available. The same range of placements is available at the Non-Public School and the Attending School. Petitioner simply prefers the Non-Public School.

intervention plan (behavior plan) to help with behavior and [reconvene] in the middle of the school year to check for progress.” R-2-4 and -5.

26. Although not reflected in the IEP, Respondent’s notes of the meeting indicate that the MDT “would like to sit down with parents after 2nd report card to determine if more support or intervention is needed.” R-2-5.

27. At the November 14, 2013 meeting, Petitioner did not object to the Student receiving a behavior plan and the MDT reconvening after the second report card to determine if more support or intervention was needed. Testimony of Petitioner.

28. There is no evidence in the record that Respondent’s failure to have conducted an FBA prior to November 14, 2013 in any way impeded Petitioner’s opportunity to participate in the development of the Student’s IEP.

29. The undersigned specifically finds that there is no factual support in the record for Petitioner’s belief, however sincere, that the Student would benefit from more hours of specialized instruction.

30. Although Independent Consultant never met or spoke with the Student, never tested her, never observed her, never spoke with her teachers or Attending School administrators, and did not review any of the Student’s IEP progress reports, he testified at the DPH that the Student required full-time out-of-general-education specialized instruction. Testimony of Independent Consultant.

31. Independent Consultant based his recommendation on statements in the Student’s IEPs that she continued to perform at the same grade level, and on one report of the Student’s reading scores at the beginning of SY 2013-2014 (P-4). *Id.* However,

on cross-examination he acknowledged that he did not know when the testing had been done.⁶ *Id.*

32. The undersigned finds that Independent Consultant had insufficient basis to make a determination that the Student required full-time out-of-general-education specialized instruction, *i.e.* that she could not be educated with non-disabled peers even part of the school day.

33. In view of the lack of foundation for Independent Consultant's testimony, there is no competent evidence in the record that the Student could not be educated with non-disabled peers for part of the school day.

34. Based upon all of the record evidence, the undersigned finds that the IEP developed at the November 14, 2013 meeting was reasonably calculated to confer educational benefit upon the Student because she was making some progress on most of her academic goals.

Compensatory Education

35. Independent Consultant testified that 90 hours of tutoring would be the appropriate remedy for failure to provide the Student with full-time out-of-general-education specialized instruction since the beginning of SY 2013-2014. Testimony of Independent Consultant.

36. Because there is no evidence in the record supporting the need for full-time out-of-general education specialized instruction, the undersigned finds that there is no factual basis for Independent Consultant's recommendation of tutoring.

⁶ Independent Consultant then testified that he had not relied upon those test results. He may have misunderstood the question.

VII. BURDEN OF PROOF

In a special education DPH, the burden of persuasion is on the party seeking relief. DCMR §5-E3030.3; *Schaffer v. Weast*, 546 U.S. 49 (2005). Through documentary evidence and witness testimony, the party seeking relief must persuade the Impartial Hearing Officer by a preponderance of the evidence. DCMR §5-E3022.16; *see also, N.G. v. District of Columbia*, 556 F. Supp. 2d 11, 17 n.3 (D.D.C. 2008).

VIII. CREDIBILITY

The undersigned did not find Petitioner credible. Her testimony was inconsistent, particularly as to the dates of events, and she was evasive and argumentative on cross-examination and questioning by the undersigned. Accordingly, the undersigned has discounted Petitioner's testimony regarding the frequency of calls she received from the Attending School regarding the Student's behavior.

The undersigned found the two remaining witnesses to be credible, although as discussed *supra* (*see* Findings of Fact 32 and 36), Independent Consultant lacked sufficient basis for his opinion testimony.

IX. CONCLUSIONS OF LAW

Purpose of the IDEA

1. The IDEA is intended "(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further

education, employment, and independent living [and] (B) to ensure that the rights of children with disabilities and parents of such children are protected...” 20 U.S.C.

§1400(d)(1). *Accord*, DCMR §5-E3000.1.

FAPE

2. The IDEA requires that all students be provided with a free appropriate public education (“FAPE”). FAPE means:

special education and related services that –

(A) have been provided at public expense, under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

20 U.S.C. §1401(9); *see also*, 34 C.F.R. §300.17 and DCMR §5-E3001.1.

IEP

3. The “primary vehicle” for implementing the goals of the IDEA is the individualized education program (“IEP”) which the IDEA “mandates for each child.”

Harris v. District of Columbia, 561 F. Supp. 2d 63, 65 (D.D.C. 2008) (citing *Honig v.*

Doe, 484 U.S. 305, 311-12 (1988)). The IDEA defines IEP as follows:

(i) In general The term “individualized education program” or “IEP” means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes—

(I) a statement of the child's present levels of academic achievement and functional performance, including—

(aa) how the child's disability affects the child's involvement and progress in the general education curriculum;

(bb) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; and

(cc) for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

(II) a statement of measurable annual goals, including academic and functional goals, designed to—

(aa) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

(bb) meet each of the child's other educational needs that result from the child's disability;

(III) a description of how the child's progress toward meeting the annual goals described in subclause (II) will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

(IV) a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child—

(aa) to advance appropriately toward attaining the annual goals;

(bb) to be involved in and make progress in the general education curriculum in accordance with subclause (I) and to participate in extracurricular and other nonacademic activities; and

(cc) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this subparagraph;

(V) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in subclause (IV)(cc);

(VI)

(aa) a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 1412 (a)(16)(A) of this title; and

(bb) if the IEP Team determines that the child shall take an alternate assessment on a particular State or districtwide assessment of student achievement, a statement of why—

(AA) the child cannot participate in the regular assessment; and

(BB) the particular alternate assessment selected is appropriate for the child;

(VII) the projected date for the beginning of the services and modifications described in subclause (IV), and the anticipated frequency, location, and duration of those services and modifications

20 U.S.C. §1414(d)(1)(A).

4. 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*, 606 F. Supp. 2d 86, 92 (D.D.C. 2009), quoting *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty. v. Rowley*, 458 U.S. 176, 200, 207 (1982)(“*Rowley*”).

[T]he “basic floor of opportunity” provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.

Rowley, 458 U.S. at 201.

5. The United States District Court for the District of Columbia recently summarized the case law on the sufficiency of an IEP, as follows:

Consistent with this framework, “[t]he question is not whether there was more that could be done, but only whether there was more that had to be done under the governing statute.” *Houston Indep. Sch. Dist.*, 582 F.3d at 590.

Courts have consistently underscored that the “appropriateness of an IEP is not a question of whether it will guarantee educational benefits, but rather whether it is reasonably calculated to do so”; thus, “the court judges the IEP prospectively and looks to the IEP’s goals and methodology at the time of its implementation.” Report at 11 (*citing Thompson R2-J Sch. Dist. v. Luke P. ex rel. Jeff P.*, 540 F.3d 1143, 1148-49 (10th Cir. 2008)). Academic progress under a prior plan may be relevant in determining the appropriateness of a challenged IEP. *See Roark ex rel. Roark v. Dist. of Columbia*, 460 F. Supp. 2d 32, 44 (D.D.C. 2006) (“Academic success is an important factor ‘in determining whether an IEP is reasonably calculated to provide education benefits.’”) (*quoting Berger v. Medina City Sch. Dist.*, 348 F.3d 513, 522 (6th Cir. 2003)); *Hunter v. Dist. of Columbia*, No. 07-695, 2008 WL 4307492 (D.D.C. Sept. 17, 2008) (citing cases with same holding).

When assessing a student’s progress, courts should defer to the administrative agency’s expertise. *See Cerra v. Pawling Cent. Sch. Dist.*, 427 F.3d 186, 195 (2d Cir. 2005) (“Because administrative agencies have special expertise in making judgments concerning student progress, deference is particularly important when assessing an IEP’s substantive adequacy.”). This deference, however, does not dictate that the administrative agency is always correct. *See Cnty. Sch. Bd. of Henrico Cnty., Virginia v. Z.P. ex rel. R.P.*, 399 F.3d 298, 307 (4th Cir. 2005) (“Nor does the required deference to the opinions of the professional educators somehow relieve the hearing officer or the district court of the obligation to determine as a factual matter whether a given IEP is appropriate. That is, the fact-finder is not required to conclude that an IEP is appropriate simply because a teacher or other professional testifies that the IEP is appropriate The IDEA gives parents the right to challenge the appropriateness of a proposed IEP, and courts hearing IDEA challenges are required to determine independently whether a proposed

IEP is reasonably calculated to enable the child to receive educational benefits.”) (internal citations omitted).

An IEP, nevertheless, need not conform to a parent's wishes in order to be sufficient or appropriate. *See Shaw v. Dist. of Columbia*, 238 F. Supp. 2d 127, 139 (D.D.C. 2002) (IDEA does not provide for an “education ... designed according to the parent's desires”) (citation omitted). While parents may desire “more services and more individualized attention,” when the IEP meets the requirements discussed above, such additions are not required. *See, e.g., Aaron P. v. Dep't of Educ.*, Hawaii, No. 10-574, 2011 WL 5320994 (D. Hawaii Oct. 31, 2011) (while “sympathetic” to parents' frustration that child had not progressed in public school “as much as they wanted her to,” court noted that “the role of the district court in IDEA appeals is not to determine whether an educational agency offered the best services available”); *see also D.S. v. Hawaii*, No. 11-161, 2011 WL 6819060 (D. Hawaii Dec. 27, 2011) (“[T]hroughout the proceedings, Mother has sought, as all good parents do, to secure the best services for her child. The role of the district court in IDEA appeals, however, is not to determine whether an educational agency offered the best services, but whether the services offered confer the child with a meaningful benefit.”).

K.S. v. District of Columbia, ___ F. Supp. 3d ___, 113 LRP 34725 (2013).

6. Because the Student’s IEP developed in November 2013 was reasonably calculated to confer educational benefit (Finding of Fact 34), the undersigned concludes that it was appropriate and provided the Student a FAPE.

7. Moreover, in the absence of evidence that the Student cannot be educated, at least part of the time, with non-disabled peers (Finding of Fact 33), the more restrictive placement sought by Petitioner would violate IDEA’s Least Restrictive Environment (“LRE”) provisions:

To the maximum extent appropriate, children with disabilities ... are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C. §1412(a)(5)(A); *accord*, DCMR §5-E3011.1; *see also*, 34 C.F.R. §300.114(a)(2).

8. Parental choice does not supersede the LRE requirement. *See* 71 Fed. Reg. 46541 (August 14, 2006).

FBA and BIP

9. A child with a disability who is removed from her current educational placement must receive, as appropriate, “a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.” 20 U.S.C. §1415(k)(1)(D)(ii), *accord*, 34 C.F.R. §300.530(d)(ii).

10. If a Local Educational Agency (“LEA”), the child’s parent, and relevant members of the child’s IEP Team make the determination that the child’s conduct violating a code of student conduct was a manifestation of the child’s disability, the IEP Team must “conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child. . . .” 20 U.S.C. §1415(k)(1)(F)(i), *accord*, 34 C.F.R. §300.530(f)(1)(i) and DCMR §5-2510.13.

11. In the instant case, there is no evidence that the Student was removed from her educational placement or that her violation of a code of conduct was determined to be a manifestation of her disability; accordingly, the IDEA provisions requiring an FBA and a BIP were not triggered.

12. Apart from the specific provisions of IDEA regarding FBAs and BIPs, IDEA requires a child’s IEP Team, in developing the IEP of a child whose behavior impedes his

learning or that of others, to “consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.” 20 U.S.C. §1414(d)(3)(B)(i).

13. In the instant case, there is no record evidence that the Student’s behavior impeded her learning or that of others; accordingly, the Student’s MDT or IEP Team was not required to consider behavioral interventions and supports or other strategies to address her behavior.⁷

Summary

14. Respondent did not deny the Student a FAPE because her current IEP, dated November 14, 2013, is reasonably calculated to provide educational benefit.

15. Respondent did not deny the Student a FAPE by failing to conduct an FBA and implement a BIP to address her inappropriate behavior during SY 2013-2014 because (a) in the absence of a removal from educational placement or manifestation determination, no FBA or BIP is required by IDEA; (b) the Student’s behavior did not impede her learning or that of others that would have triggered a need for the MDT or IEP Team to consider behavior interventions and supports; and (c) in any event, the MDT or IEP Team decided to implement a BIP if needed.

16. Respondent’s failure to conduct an FBA did not violate IDEA’s procedural provisions because there is no evidence that the lack of an FBA in any way impeded Petitioner’s opportunity to participate in the decision-making process regarding the Student’s IEP.

⁷ Although not required by IDEA to do so, the Student’s MDT or IEP Team did agree to consider behavior interventions and supports to address her behavior (Findings of Fact 25-27).

X. ORDER

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

Petitioner's DPC dated December 23, 2013 and received by the SHO on
December 24, 2013, is dismissed in its entirety, with prejudice.

Dated this 7th day of February, 2014.



Charles Carron
Impartial Hearing Officer

NOTICE OF APPEAL RIGHTS

The decision issued by the Impartial Hearing Officer is final, except that any party aggrieved by the findings and decision of the Impartial Hearing Officer shall have 90 days from the date of the decision of the Impartial 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).