

**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
June 06, 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: Charles M. Carron</p> <p>Date Issued: June 6, 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 April 25, 2014, 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.

On April 29, 2014, the undersigned was appointed as the Impartial Hearing Officer.

On May 5, 2014, Respondent filed its timely Response, stating, *inter alia*, that Respondent has not denied the Student a free appropriate public education (“FAPE”). Respondent filed an amended response on May 9, 2014.

A Resolution Meeting was held on May 7, 2014 but it failed to resolve the DPC. The statutory 30-day resolution period ended on May 25, 2014.

The 45-day timeline for this Hearing Officer Determination (“HOD”) started to run on May 26, 2014 and will conclude on July 9, 2014.

The undersigned held a Prehearing Conference (“PHC”) by telephone on May 12, 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 May 27, 2014 and that the Due Process Hearing (“DPH”) would be held on June 3, 2014. The undersigned issued a Prehearing Conference Summary and Order (“PHO”) on May 12, 2014.

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-10

Respondent’s Exhibits: R-1 through R-6

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

Petitioner

Advocate

No witnesses testified on behalf of Respondent at the DPH.

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 male, 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, Developmental Delay ("DD") under the IDEA.

Petitioner claims that Respondent has denied Student a FAPE by providing an insufficient level of services under the Individualized Education Program ("IEP") developed for the Student on November 12, 2013.

IV. ISSUES

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

- (a) On or about November 12, 2013, did Respondent deny the Student a FAPE because (i) the IEP developed for him provides

insufficient services, and/or (ii) the Student requires a more restrictive placement?

(b) Since November 12, 2013, has Respondent denied the Student a FAPE by failing to review and revise the Student's IEP to provide a more restrictive placement to address (i) the Student's lack of expected progress toward annual goals and in the general education curriculum and/or (ii) the Student's behavioral problems?

V. RELIEF REQUESTED

Petitioner requests the following relief:²

(a) a finding in Petitioner's favor on all issues;

(b) that the undersigned develop an appropriate IEP, including a more restrictive placement for the Student or order Respondent to convene a meeting of the Student's IEP Team within five days to do so; and

(c) any other relief determined appropriate.

² In the DPC, Petitioner also requested the following relief which the undersigned determined to be inappropriate: (a) a request for attorney's fees and costs that only a court can award, and (b) a request for an order that a Multidisciplinary Team ("MDT") determine compensatory education, which is inappropriate because a hearing officer cannot remand such a determination to an MDT or any other body that has representatives of Respondent. In the DPC, Petitioner also requested an order that Respondent provide funding and transportation for the Student to attend specified non-public schools; however, the day before the DPH, Petitioner, through counsel, advised that she no longer was seeking that remedy.

VI. CREDIBILITY

The undersigned found Petitioner not to be credible. The undersigned could not determine whether she was dishonest or had a very faulty memory. Either way, her testimony was inconsistent. For example, she testified on direct examination that the Student attended a specific public school last school year (*i.e.*, SY 2012-2013), but on cross-examination she acknowledged that he had attended a charter school last school year. She could not reconstruct which school he attended which year before SY 2012-2013, even though the reason for his change in schools was her change in employment. On direct examination, Petitioner testified that “every other day” when she picked up the Student at the Attending School, the Student’s teacher told her about the Student’s bad behavior. On cross-examination she admitted that she did not pick up the Student that often. Petitioner could not recall what was discussed at the November 12, 2013 IEP Team meeting or at the May 7, 2014 Resolution Session Meeting. On direct examination, Petitioner testified that she had received no reports of the Student’s academic progress after the report card for the third advisory period of SY 2013-2014. On cross-examination she admitted that she had received a more current IEP progress report that stated the Student had mastered two of his goals and was progressing on his other goals. On redirect examination, Petitioner could not recall when she received the Student’s last report card. On direct examination, Petitioner testified that she received numerous calls from the school during SY 2013-2014 to pick up the Student due to his behavior. Upon further questioning she acknowledged that she received only two such calls (the nature of one of which was contradicted by Respondent’s notes of a meeting). Because Petitioner was an entirely unreliable witness, the undersigned has not credited any of her testimony.

Advocate was not credible, and given his education and experience the undersigned must conclude that he deliberately slanted his testimony. For example, he testified on direct examination that Respondent had refused him the opportunity to observe the Student in the classroom because of Respondent's policy set forth in a Chancellor's directive. He further testified on direct examination that he had been refused the opportunity to speak with the Student's teachers because of that Chancellor's directive. Upon cross-examination and questioning by the undersigned, Advocate admitted that no one had told him he could not speak to the Student's teachers when they were not in the classroom, and that the Chancellor's directive did not preclude such conversations. Because Advocate was not credible, the undersigned has not credited any of his testimony.

There were no other witnesses. Accordingly, this HOD is based entirely upon the written record.

VII. FINDINGS OF FACT

Facts Related to Jurisdiction

1. The Student is a Current Age male. P-3-1.³
2. The Student resides in the District of Columbia. P-2-1.
3. The Student has been determined to be eligible for special education and related services under the IDEA as a child with DD. P-3-1.

³ When citing exhibits, the third range represents the page number within the referenced exhibit, in this instance, page 1.

The Student's Evaluations

4. On August 30, 2011, an Educational Assessment of the Student was conducted. P-9. The evaluator found that the Student was performing "low average" in spoken language and the adaptive domain, and "low" in reading, math and written language. P-9-5.

5. Also on August 30, 2011, a Speech and Language Evaluation of the Student was conducted. P-8. The evaluator found that the Student had an articulation disorder and a receptive and expressive language delay, and the evaluator recommended speech and language therapy services. P-8-5.

6. On August 31, 2011, Psychological Evaluation of the Student was conducted. P-6. The evaluator found that the Student's general cognitive ability was in the Extremely Low range of intellectual functioning, as measured by his Full Scale Intelligence Quotient ("FSIQ") of 67. P-6-2. The evaluator found that the Student's verbal reasoning abilities were in the Low Average range as measured by his Verbal Intelligence Quotient ("VIQ") of 84, that his non-verbal reasoning abilities were in the Borderline range as measured by his Perceptual Intelligence Quotient ("PIQ") of 74 and that his processing speed abilities were in the Extremely Low range as measured by his Processing Speed Intelligence Quotient ("PSIQ") of 64. P-6-2 and -3. The evaluator recommended specialized instruction. P-6-4.

7. On September 6, 2011, an Occupational Therapy Evaluation of the Student was conducted. P-7. The evaluator found that the Student had difficulty applying visual motor and motor planning (praxis) skills to functional activities such as cutting and design copying (printing letters); that he demonstrated an immature grasp on scissors and

was unable to complete accurately age-appropriate cutting activities; and that he demonstrated mild sensory-seeking behaviors that might impact his ability to establish and maintain a quiet, alert state for learning. P-7-8 and -9.

The Student's Eligibility Determination and Initial IEP

8. On October 6, 2011, the Student was found eligible for special education and related services and an initial IEP was developed for him. P-3-1.

The Student's March 7, 2012 IEP

9. On March 7, 2012, the Student's IEP was revised. P-3.

10. Academic goals were established for Mathematics (P-3-2), Reading (P-3-3), Communication/Speech and Language (P-3-4 and -5) and Motor Skills/Physical Development (P-3-6).

11. The Student's IEP prescribed 10 hours per week of specialized instruction in the general education setting, four hours per month of Speech-Language Pathology services in the outside of general education setting, 90 minutes per month of Occupational Therapy ("OT") services in the outside of general education setting and 30 minutes per month of OT services in the general education setting. P-3-7.

The Student's December 10, 2012 IEP

12. On December 10, 2012, the Student's IEP was revised. P-4.

13. Academic goals were established for Mathematics (P-4-2 through -4), Reading (P-4-4 and -5), Communication/Speech and Language (P-4-6 through -8) and Motor Skills/Physical Development (P-4-8 and -9).

14. The Student's IEP prescribed eight hours per week of specialized instruction in the general education setting, eight hours per week of specialized instruction in the outside of general education setting, four hours per month of Speech-Language Pathology services in the outside of general education setting, 90 minutes per month of OT services in the outside of general education setting and 30 minutes per month of OT services in the general education setting. P-4-10.

The Student's April 2, 2013 IEP

15. On April 2, 2013, the Student's IEP was amended to provide for Extended School Year ("ESY") services. P-4-1.

The Student's Academic Performance as of November 12, 2013

16. During Term 1 of School Year ("SY") 2013-2014, the Student's grades were at the lowest level ("Below Basic") in Reading, Writing & Language and Math; at the second-lowest level ("Basic") in Speaking & Listening, Social Studies, Science, Music and Art; and at the second highest level ("Proficient") in Health & Physical Education. P-5-1.

17. Based upon the entire record, and particularly the lack of any evidence that the Student was not receiving appropriate instruction, the undersigned finds that the Student's grades were the result of his extremely low level of intellectual functioning.

His grades in courses taught outside the general education setting were in fact lower than his grades in courses taught in the general education setting, contradicting Petitioner's theory of the case that the Student needs more instruction outside of general education to make academic progress.

18. During IEP Reporting Period 1 (*i.e.*, August 26 through November 1, 2013), the Student mastered one of his Mathematics goals and was progressing on his four other Mathematics goals. R-4-13 through -16. He was progressing on three of his four Reading goals; the fourth had not yet been introduced. R-4-17 and -18.

19. The Student's Communication/Speech and Language and Motor Skills/Physical Development goals had not yet been introduced. R-4-18 through -22.

The Student's Work Habits, Personal and Social Skills as of November 12, 2013⁴

20. During Term 1 of SY 2013-2014, the Student rarely followed directions, completed class work on time, worked well with others/cooperated, used time wisely, completed and returned homework, made an effort, followed classroom rules, listened while others spoke, or practiced self-control. P-5-1.

21. During Term 1 of SY 2013-2014, the Student followed playground rules and school rules with frequent prompting. P-5-1.

22. During Term 1 of SY 2013-2014, the Student participated in class discussion and respected the rights/property of others with limited prompting. P-5-1.

⁴ The DPC did not include as an issue whether Respondent should have conducted a Functional Behavioral Assessment ("FBA") of the Student and/or developed or implemented a Behavior Intervention Plan ("BIP") for him. Accordingly, even though the evidence in this case points to the need for an FBA and a BIP, the undersigned has no authority to adjudicate such claims.

The Student's Behavior as of November 12, 2013

23. There is no record evidence that the Student was suspended or had any disciplinary referrals from the beginning of SY 2013-2014 to November 12, 2013.

The Student's Attendance as of November 12, 2013

24. From the beginning of SY 2013-2014 through November 12, 2013, the Student had two unexcused days of absence for unstated reasons, was absent one day due to illness, was absent one day due to a medical appointment, and was late one day due to a medical appointment. R-3.

The Student's November 12, 2013 IEP

25. On November 12, 2013, the Student's IEP was revised. P-2.

26. Academic goals were established for Mathematics (P-2-3), Reading (P-2-4 and -5), Communication/Speech and Language (P-2-6 and -7) and Motor Skills/Physical Development (P-2-8).

27. The Student's Mathematics goals include learning the concept of place value (P-2-3), which was also a goal in his December 10, 2012 IEP (P-4-3).

28. The Student's Communication/Speech and Language goals (P-2-6 and -7) remained mostly unchanged from the goals in his December 10, 2012 IEP (P-4-7).

29. Several of the Student's Motor Skills/Physical Development goals (P-2-8) remained unchanged from the goals in his December 10, 2012 IEP (P-4-8).

30. The Student's IEP reduced his specialized instruction in the general education setting from eight hours to one hour per week, increased his specialized instruction in the

outside of general education setting from eight to 10 hours per week, and retained his hours of related services, *i.e.*, four hours per month of Speech-Language Pathology services in the outside of general education setting, 90 minutes per month of OT services in the outside of general education setting and 30 minutes per month of OT services in the general education setting. P-2-9.

31. Based upon the entire record, including the fact that the Student had made progress since the beginning of SY 2013-2014, the undersigned finds that the Student's November 12, 2013 IEP was reasonably calculated to confer educational benefit upon him.

The Student's Academic Performance Since November 12, 2013

32. During Terms 2 and 3 of SY 2013-2014, the Student's grades were the same as during Term 1. P-5-1.

33. Based upon the entire record, and particularly the lack of any evidence that the Student was not receiving appropriate instruction, the undersigned finds that the Student's grades during Terms 2 and 3 of SY 2013-2014 were the result of his extremely low level of intellectual functioning. As noted in Paragraph 17 *supra*, the Student's grades in courses taught outside the general education setting were in fact lower than his grades in courses taught in the general education setting, contradicting Petitioner's theory of the case that the Student needs more instruction outside of general education to make academic progress.

34. During IEP Reporting Period 2 (*i.e.*, November 4, 2013 through January 24, 2014), the Student mastered one of his Reading goals, and he was progressing on two

Mathematics goals, his remaining three Reading goals and all four of his Communications/Speech and Language goals. R-4-7 through -11. His Motor Skills/Physical Development goals had just been introduced. R-4-11 and -12.

35. During IEP Reporting Period 3 (*i.e.*, January 27 through March 28, 2014), the Student mastered one of his Mathematics goals and one of his Reading goals, and he was progressing on another Mathematics goal, his remaining three Reading goals, all four of his Communications/Speech and Language goals and all four of his Motor Skills/Physical Development goals. R-4-1 through -6.

36. From November 15, 2013 through May 23, 2014, the Student made progress in Mathematics, specifically in “Number and Operations in Base Ten.” R-5-2.

37. During the first half of SY 2013-2014, the Student’s reading accuracy and fluency increased. R-6.

The Student’s Work Habits, Personal and Social Skills Since November 12, 2013

38. During Terms 2 and 3 of SY 2013-2014, the Student’s work habits, personal and social skills remained the same as during Term 1. P-5-1.

The Student’s Behavior Since November 12, 2013

39. There is no evidence in the record that the Student was suspended or had any disciplinary referrals from November 12, 2013 to the date of the DPH.

The Student's Attendance Since November 12, 2013

40. From November 12, 2013 through the date the instant DPC was filed (*i.e.*, April 25, 2014), the Student had seven unexcused days of absence for unstated reasons, was absent four days due to illness, was absent one day due to an unspecified emergency, and was late twice for unspecified reasons. R-3.

Appropriateness of the Student's November 12, 2013 IEP through May 8, 2014

41. Based upon the entire record, particularly the Student's progress on his IEP goals and his improved reading scores, the undersigned finds that the Student's November 12, 2013 IEP continued to provide him educational benefit through May 8, 2014 and that Respondent was not on notice of a need to amend the IEP.

The Student's May 9, 2014 IEP

42. On May 9, 2014, the Student's IEP was amended to increase his hours of specialized instruction [in the outside of general education setting] from 10 to 15 hours per week.⁵ R-1.

Petitioner's Compensatory Education Plan

43. Petitioner's Compensatory Education Plan (P-10-3) is based upon mere surmise that the Student's November 12, 2013 IEP was inappropriate.

⁵ The undersigned does not infer an admission that the hours of specialized instruction in the Student's November 12, 2013 IEP were insufficient at the time that IEP was developed, or at any time between November 12, 2013 and the date the instant DPC was filed, April 25, 2014.

44. The Plan asserts that because the Student failed to make reasonable progress in academic areas and classroom behavior, “he should receive 60 hours of one-on-one tutoring outside of the school day and 10 hours of counseling outside of the school day.”

45. The Plan does not address specific educational deficits resulting from the Student’s alleged loss of FAPE or the specific compensatory measures needed to best correct those deficits, *i.e.*, to elevate the Student to the approximate position he would have enjoyed had he not suffered the alleged denial of FAPE.

46. The Plan was developed by Advocate, who was not proposed as an expert witness.

VIII. 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).

The opinion testimony of an educational advocate who has not been qualified and admitted as an expert witness is “inadmissible to prove anything.” *Gill v. District of Columbia*, 770 F. Supp. 2d 112 (D.D.C. 2011). Petitioner’s Compensatory Education Plan (the “Plan”), prepared by Advocate, is tantamount to opinion testimony by an educational advocate who has not been qualified and admitted as an expert witness.

Accordingly, the Plan is inadmissible to prove anything.⁶

⁶ Moreover, as discussed in Section VI *supra*, Advocate was not a credible witness.

IX. CONCLUSIONS OF LAW

Purpose of the IDEA

1. The IDEA is intended “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)(A), *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.

Contents of the 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).

Sufficiency of the IEP

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. 2d ___, 113 LRP 34725 (2013).

6. Because the Student’s November 12, 2013 IEP was reasonably calculated to confer educational benefit upon the Student at the time it was developed (Finding of Fact 31) the undersigned concludes that it was appropriate for the Student at that time.

When an IEP Must be Revised

7. IEPs must be reviewed and revised:

Review and revision of IEPs—(1)General. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team—

(i) Reviews the child’s IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

(ii) Revises the IEP, as appropriate, to address—

(A) Any lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate;

(B) The results of any reevaluation conducted under §300.303;

(C) Information about the child provided to, or by, the parents, as described under §300.305(a)(2);

(D) The child’s anticipated needs; or

(E) Other matters.

34 C.F.R. §300.324(b).

8. Because the Student was making expected progress toward his annual goals and otherwise (Findings of Fact 34-37), and there is no evidence of any reevaluation or information provided by the parent prior to the filing of the DPC herein, the undersigned concludes that the Student’s IEP Team was not required to revise his IEP between November 12, 2013 IEP and the filing of the DPC herein.

Summary

9. The IEP developed for the Student on or about November 12, 2013 provided sufficient services and there is no evidence that the Student required a more restrictive placement at that time.

10. From November 12, 2013 through the filing of the DPC herein, Respondent was not on notice of a need to review and revise the Student's IEP because the Student was making expected progress toward annual goals and in the general education curriculum, and he did not have any behavioral problems requiring a more restrictive placement.⁷

X. ORDER

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

Petitioner's DPC dated April 25, 2014, is dismissed in its entirety, with prejudice.

Dated this sixth day of June, 2014.



Charles Carron
Impartial Hearing Officer

⁷ As discussed at 10 n.4, *supra*, the Student might well have needed, and may continue to need, a BIP to address his work habits and his personal and social skill deficits. The issue of a BIP was not raised in the DPC and therefore is not within the jurisdiction of this 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).