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OSSE
Office of Dispute Resolution
November 19, 2014

Confidential

<p>Parent on Behalf of Student¹,</p> <p>Petitioner,</p> <p>v.</p> <p>District of Columbia Public Schools (“DCPS”)</p> <p>Respondent.</p> <p>Date Issued: November 18, 2014</p>	<p>HEARING OFFICER’S DETERMINATION</p> <p>Hearing Date: October 23, 2014</p> <p><u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u></p>
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¹ Personally identifiable information is attached as Appendices A & B to this decision and must be removed prior to public distribution.

JURISDICTION:

The hearing was conducted and this decision was written pursuant to the *Individuals with Disabilities Act* (“IDEA”), P.L. 101-476, as amended by P.L. 105-17 and the *Individuals with Disabilities Education Improvement Act of 2004*, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 [Chapter E30](#). The Due Process Hearing was convened on October 23, 2014, at the District of Columbia Office of the State Superintendent of Education (“OSSE”) Office of Dispute Resolution 810 First Street, NE, Washington, D.C. 20003, in Hearing Room 2006.

BACKGROUND AND PROCEDURAL HISTORY:

The student is _____ is receiving special education and related services pursuant to the IDEA with a classification of emotional disturbance (“ED”). During school year (“SY”) 2013-2014 the student attended a District of Columbia public charter (“School A”). DCPS is the local education agency (“LEA”) for School A.

Prior to attending School A the student attended another D.C. public charter school, “School B.” Sometime after the student’s parent enrolled the student at School A at the start of SY 2013-2014 School A obtained a copy of the student’s School B individualized educational program (“IEP”).

School A convened an IEP meeting for the student on October 3, 2013. The student’s parent participated by telephone. School A updated the student’s IEP. The updated IEP prescribed the following services: 25 hours per week of specialized instruction outside the general education setting, 120 minutes per month of speech/language services outside the general education setting and 160 minutes per month of behavioral supports outside of the general education setting.

During the October 3, 2014, meeting School A informed the student’s parent that School A could not fully implement the IEP as prescribed. The parent acknowledged that the IEP could not be fully implemented at School A and chose for the student to remain at School A.

During SY 2013-2014 the student had the following courses: English-Language Arts (“ELA”)/Math Enrichment, English II, Film, Geometry, Government, Journalism, Latin II. She was provided 90 minutes per day of specialized instruction outside general education and her related services. During two of her classes the student was provided inclusion services with both a special education teacher and a general education teacher in the classroom.

During SY 2013-2014 the student was excessively absent and was referred by School A to D.C. Superior Court for truancy. Because of the student’s continued truancy on March 5, 2014, School A dropped the student from its roster. The parent unsuccessfully attempted to enroll the student in another school then eventually called School A and reenrolled the student in School A on April 7, 2014. The student attended School A school a for a short time after she was reenrolled and then the student’s parent withdrew her and reenrolled her at School B where she now attends.

On September 4, 2014, Petitioner filed this due process complaint. Petitioner asserted that School A: (1) failed to implement the student's October 3, 2013, IEP, (2) failed to timely comprehensively evaluate the student by performing a functional behavioral assessment ("FBA") and developing a behavioral intervention plan ("BIP") and (3) failed to provide the student an appropriate placement for SY 2013-2014. Petitioner seeks as relief that DCPS place and fund the student in an appropriate public or non-public school, fund an independent FBA and fund compensatory education.

DCPS filed a timely response to the complaint on September 15, 2014. DCPS denied any alleged violation(s) or denial of a free appropriate public education ("FAPE"). DCPS asserted School A staff reiterated to Petitioner that School A could not implement the student's full time IEP. Despite this Petitioner agreed to maintain the student's level of service and enrollment at School A. Due to the student's poor attendance DCPS was unable to conduct a FBA. The student was absent for greater than 50% of the school year and School A initiated the truancy process. After 20 consecutive absences the student was withdrawn from school because of her non-attendance. The student reenrolled at School A and attended briefly and then her parent enrolled her at School B before SY 2013-2014 concluded.

A resolution meeting was held on September 17, 2014. Nothing was resolved. The parties did not mutually agree to proceed to hearing. The 45-day period began on October 5, 2014, and ends [and the (Hearing Officer's Determination "HOD") is due] on November 18, 2014.

The Hearing Officer convened a pre-hearing conference on September 26, 2014, and issued a pre-hearing order, outlining, inter alia, the issues to be adjudicated.

ISSUES:²

The issues adjudicated are:

1. Whether DCPS denied the student a FAPE by failing to implement the student's October 3, 2013, IEP.
2. Whether DCPS denied the student a FAPE by failing to provide the student with an appropriate placement/setting during SY 2013-2014.
3. Whether DCPS denied the student a FAPE by failing to conduct a FBA by January 2014 and develop a BIP due to the student's attention and conduct issues.

² The alleged violation(s) and/or issue(s) listed in the complaint or in the pre-hearing order may not directly correspond to the issues outlined here. The Hearing Officer restated the issue(s) at the outset of the hearing and the parties agreed that these were the issue(s) to be adjudicated. Petitioner also asserted the student was inappropriately removed from School A without a manifestation review meeting ("MDR") and a BIP being developed. Those issues were withdrawn by Petitioner and refiled in a subsequent complaint on September 30, 2014, under a separate case number (2014-0420). All issues were heard on October 23, 2014, in the same hearing but the decision for (2014-0420) was subject to an expedited hearing and decision and an HOD has been issued in that case. This HOD is a decision on all other issues raised in the September 4, 2014, complaint.

RELEVANT EVIDENCE CONSIDERED:

This Hearing Officer considered the testimony of the witnesses and the documents submitted in the parties' disclosures (Petitioner's Exhibits 1 through 26 and Respondent's Exhibits 1 through 7) that were all admitted into the record and are listed in Appendix A.³ Witnesses are listed in Appendix B.

FINDINGS OF FACT:⁴

1. The student is receiving special education and related services, pursuant to the IDEA with a classification of ED. During SY 2013-2014 the student attended a School A. DCPS is the LEA for School A. (Petitioner's Exhibit 15-1)
2. Prior to attending School A the student attended another D.C. public charter school, School B. The student's disability classification was changed at School B from specific learning disability ("SLD") to ED. When the student's parent enrolled her at School A at the start of SY 2013-2014 she provided School A with the student's eligibility documentation noting her new ED classification but did not provide School A the student's School B IEP. Therefore, School A was not aware of the service hours in the student's IEP when the student was first enrolled. (Witness 2's testimony, Petitioner's Exhibit 16-1, 16-11)
3. School A convened an IEP meeting for the student on October 3, 2013. The student's parent and a DCPS LEA representative participated by telephone. The student's general education and special education teachers were in attendance. (Parent's testimony, Petitioner's Exhibit 15-10, 15-11, 15-15, Respondent's Exhibit 4)
4. The student's IEP developed on October 3, 2013, required that she receive 25 hours per week of specialized instruction outside the general education setting, 120 minutes per month of speech/language services outside the general education setting and 160 minutes per month of behavioral supports outside of the general education setting. (Petitioner's Exhibit 15-1, 15-12)
5. At the October 3, 2013, IEP meeting School A personnel acknowledged to the parent that the student's IEP could not be fully implemented at School A. Nonetheless, the student's parent chose to keep the student at School A. (Parent's testimony, Witness 2's testimony, Respondent's Exhibit 4-3)

³Any items disclosed and not admitted or admitted for limited purposes was noted on the record and summarized in Appendix A.

⁴ The evidence that is the source of the Finding of Fact ("FOF") is noted within a parenthesis following the finding. The second number following the exhibit number denotes the page of the exhibit from which the fact was extracted. When citing an exhibit that has been submitted by more than one party separately the Hearing Officer may only cite one party's exhibit.

6. School A's special education coordinator ("SEC") believed it was too early to reduce the hours of specialized instruction in the student's IEP to what School A could provide until there was an opportunity to review the student's academic performance. At the October 3, 2013, meeting there was no discussion of the student attending a different school after the parent stated she desired the student remain at School A and School A took no action to make the parent withdraw the student. (Witness 2's testimony, Respondent's Exhibit 4-3)
7. During SY 2013-2014 the student had the following courses: ELA/Math Enrichment, English II, Film, Geometry, Government, Journalism, Latin II. The student took every course every day of the week. (Witness 2's testimony, Petitioner's Exhibit 10-5)
8. During SY 2013-2014 School A provided the student 22.5 hours of specialized instruction per week (of which 7.5 hours per week were provided outside general education) and her related services. The student received 3 hours per day of specialized instruction inside general education and 1.5 hours per day outside general education where she worked one on one with a special education teacher in whatever courses she needed assistance. The student took all of classes as part of a cohort of six students. Four of the six students had IEPs. In three of the student's classes: Geometry, English 2 and ELA/Math Enrichment there were two teachers – a special education and a general education teacher. In the courses where the student did not have a special education teacher the special education teacher conferred with the general education to modify the student's work. (Witness 2's testimony)
9. The student struggled in math and Latin but she was able to come out of the classroom to do her work for those classes with a special education teacher. The student was able to function well in her other classes as long as she was not upset at the start of the day by issues such as her lateness to school or not having the proper school uniform. (Witness 2's testimony)
10. The student felt that some of her classes at School A were difficult particularly math and Latin. However, the student received "a lot of help" from teachers in her classes who would stand beside her and teach her the work so she was then able to do what the teacher wanted her do for the class. The student believes ultimately she was not successful at School A because of her "attitude" and bad behavior. (Student's testimony)
11. The student's October 2013 IEP includes emotional, social and behavioral development goals that address her inattention and off task and impulsive behaviors that can be perceived by others as oppositional or uncooperative. The IEP does not mention truancy or non-attendance to class or school as a problem area for the student at the time the IEP was developed. (Petitioner's Exhibit 15-10, 15-11, 15-15, Respondent's Exhibit 4)
12. The student's academic skills are below grade level. She is easily distracted in class and her impulsive behaviors impede her learning. (Witness 2's testimony, Respondent's Exhibit 15-2, 15-3, 15-4, 15-5, 15-6, 15-7, 15-8)

13. The student's parent believes the student began to have behavioral problems with the School A staff members soon after she started attending. The School A Dean of Students was often able to calm the student. The student's parent would talk the Dean of Students about the student's behaviors approximately three times per week. In November 2013 the student began to be sent home occasionally because of her behaviors. If the student got into an altercation at school or staff could not calm her down the student would be given a street pass to come home so that she would not be considered truant if she were stopped by truancy officials. (Parent's testimony, Student's testimony, Petitioner's Exhibit 12)
14. Petitioner's expert witness expressed his opinion based on his review of the student's behaviors as documented in her IEPs that when School A observed that the student's tardiness and impulsive behaviors had become a pattern in fall 2013 a FBA should have been conducted between two weeks and one month of when the behaviors began. (Witness 3's testimony)
15. Soon after the October 2013 meeting the School A SEC informed the student's parent that a FBA needed to be conducted based on the student's behaviors and her ED eligibility determination that had been made at School B. In early November the parent came to School A and signed a consent form for the FBA to be conducted. However, the FBA was not completed because the days the evaluator came to observe the student she was not in school. The evaluator made several attempts to conduct the FBA over a period of weeks. (Witness 2's testimony)
16. When the student first began attending School A at the start of SY 2013-2014 she attended the first ten school days without any absences. The student then had 9 unexcused absences between September 10, 2013, and September 30, 2013. The student had 4 unexcused absences during October 2013. The student had three unexcused absences in November 2013. The student had 4 consecutive unexcused absences the first week of December 2013. (Respondent's Exhibit 5-2, 5-3, 5-4)
17. During SY 2013-2014 the student was excessively absent and was eventually referred by School A to D.C. Superior Court for truancy. The student failed to attend school at all from January 31, 2014, through March 5, 2014, and accumulated a total of an additional 18 unexcused absences during that period. Because of the student's continued truancy, on March 5, 2014, School A dropped the student from its roster. The student's parent unsuccessfully attempted to enroll the student in another school then eventually called School A and reenrolled the student in School A on April 7, 2014. (Parent's testimony, Witness 2's testimony, Respondent's Exhibit 5)
18. During SY 2013-2014 the student missed days from school sometimes because she was sick and other times did not go to school because she did not like School A particularly its dress code and rules and regulations. (Student's testimony)

19. When the student was dropped from the School A roster because of her non-attendance the student's parent simply needed to come to School A for the student to be re-enrolled. When the parent came to School A on April 7, 2014, the student was re-enrolled and the School A developed an attendance BIP for the student. The parent and student participated in creating the BIP. The student attended School A sporadically thereafter but did not complete the school year at School A. (Witness 2's testimony, Respondent's Exhibit 3)
20. After the student was reenrolled at School A she attended for approximately one week before the student's parent withdrew her and enrolled her in School B where she currently attends. The parent submitted an official withdrawal form at School A on August 18, 2014. (Parent's testimony, Petitioner's Exhibit 13)
21. The student failed all classes she had at School A during SY 2013-2014 except one and earned one half credit. (Petitioner's Exhibit 14)
22. The student's parent has visited a private special education day school ("School C") in hopes the student can attend. The parent believes School C would be good for the student because classes are small and she thinks the student would do well there and her IEP could be implemented. (Parent's testimony)
23. Petitioner educational consultant prepared a compensatory education plan to compensate the student for what Petitioner believes the student missed as result of her IEP not being implemented at School A. The compensatory education plan is based on the following alleged missed services: 40 weeks or 1000 hours of specialized instruction, 20 hours of speech and language services and 26 hours of behavioral support. The consultant proposed 480 hours of academic tutoring, 80 hours of behavioral support/counseling, and 40 hours of speech and language pathology. (Witness 4's testimony, Petitioner's Exhibit 24)

CONCLUSIONS OF LAW:

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

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

34 C.F.R. § 300.17 provides:

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

Pursuant to 5E DCMR 3030.14 the burden of proof is the responsibility of the party seeking relief.⁵ *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). In this case the student/parent is seeking relief and has the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with FAPE.

Based solely upon the evidence presented at the due process hearing, an impartial hearing officer must determine whether the party seeking relief presented sufficient evidence to prevail. See DCMR 5-3030.34. The normal standard is preponderance of the evidence. See, e.g. *N.G. V. District of Columbia* 556 f. Sup. 2d (D.D.C. 2008) se also 20 U.S.C. §1451 (i)(2)(C)(iii).

ISSUE 1: Whether DCPS denied the student a FAPE by failing to implement the student's October 3, 2013, IEP.

Conclusion: Petitioner did not sustain the burden of proof by a preponderance of the evidence that the student was denied a FAPE by School A failing to fully implement the student's October 3, 2014, IEP.

A material failure to implement a student's IEP constitutes a denial of a free appropriate public education. *Banks ex rel. D.B. v. District of Columbia*, 720 F. Supp. 2d 83, 88 (D.D.C. 2010). Although the District of Columbia Circuit has not directly addressed what standard applies to failure-to-implement claims, the consensus among federal courts has been to adopt the standard articulated by the Fifth Circuit. E.g., *S.S. v. Howard Rd. Acad.*, 585 F. Supp. 2d 56, 67 (D.D.C. 2008). In *Houston Independent School District v. Bobby R.*, 200 F.3d 341 (5th Cir. 2000), the Fifth Circuit held that "to prevail on a claim under the IDEA, a party challenging the implementation of an IEP must show more than a de minimis failure to implement all elements of that IEP, and, instead, must demonstrate that the ... authorities failed to implement substantial or significant provisions of the IEP." *Id.* at 349; see also *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist.* 5J, 502 F.3d 811, 822 (9th Cir. 2007)

("[A] material failure to implement an IEP violates the IDEA. A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP."). "[C]ourts applying [this] standard have focused on the proportion of services mandated to those actually provided, and the goal and import (as articulated in the IEP) of the specific service that was withheld." *Wilson v. District of Columbia*,

⁵ The burden of proof shall be the responsibility of the party seeking relief. Based solely upon the evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof.

770 F. Supp. 2d 270, 275 (D.D.C. 2011). What provisions are significant in an IEP should be determined in part based on "whether the IEP services that were provided actually conferred an educational benefit." *Bobby R.*, 200 F.3d at 349, n. 2.

In *Catalan v. District of Columbia*, 478 F. Supp. 2d 73 (D.D.C. 2007), the student's IEP required that the student receive three, forty-five minute sessions of speech therapy per week. The student missed several sessions because of the unavailability of the therapist, and some sessions were terminated early because the student's "fatigue was rendering the therapy unproductive." *Id.* at 76. Judge Henry H. Kennedy found that since the student received consistent speech therapy, the failure to provide all of the required sessions was not a material deviation from the student's IEP. *Id.*

The evidence in this case demonstrates that it was not until after the student had been enrolled at School A and the school year had started that School A received a copy of the student's School B IEP. School A promptly convened an IEP meeting in early October 2013 to update the student's IEP and clearly informed the parent that the school could not fully implement the IEP and the parent clearly agreed to the level of services that School A could provide.

The evidence demonstrates that although School A did not provide the student 25 hours of specialized instruction per week outside general education, it did provide the student 22.5 hours of specialized instruction per week, of which 7.5 hours per week were provided outside general education and School A provided her the prescribed related services.⁶ The student received 3 hours per day of specialized instruction inside general education and 1.5 hours per day outside general education where she worked one on one with a special education teacher in whatever courses she needed assistance. The student took all of classes as part of a cohort of six students. Four of the six students had IEPs. In three of the student's classes: Geometry, English 2 and ELA/Math Enrichment there were two teachers – a special education and a general education teacher. In the courses where the student did not have a special education teacher the special education teacher conferred with the general education to modify the student's work.

The student stated with regard to the services School A provided her: she received "a lot of help" from teachers in her classes who would stand beside her and teach her the work so she was then able to do what the teacher wanted her do for the class.

Based upon the amount and intensity of services that School A provided the student - the one to one instruction and low student to teacher ratio, the fact that most of the students in all the classes had IEPs, this Hearing Officer considers there to have been under these facts, a minimal difference in the services provided by School A and that required by the student's IEP.

The student's parent clearly agreed to the services that School A could provide. Albeit School A did not obtain a written waiver or consent from the parent for the full complements of the student's IEP to not be implemented, the parent nonetheless agreed to keep the student at School A rather than enrolling her in another school. School A is public charter school, and a school of choice for parents who apply and whose children are accepted. Despite being clearly told that

⁶ There was no evidence presented from which the Hearing Officer conclude that School A did not provide the student all related services prescribed by her IEP.

School A could not fully implement the student's IEP the student's parent clearly elected for the student to remain at School A. The Hearing Officer concludes based upon the two factors of the parent's clear agreement for the student to remain and School A and the intensity of special education services the student received at School A even though the IEP was not strictly implemented, the Hearing Officer concludes that the difference in services provided to the student were de minimis and that the student was not denied a FAPE by School A and DCPS.

ISSUE 2: Whether DCPS denied the student a FAPE by failing to provide the student with an appropriate placement/setting during SY 2013-2014.

Conclusion: Petitioner did not sustain the burden of proof by a preponderance of the evidence that School A was an inappropriate placement/setting for the student.

Removing a child with disabilities "from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes cannot be achieved satisfactorily." 34C.F.R. § 300.550; see also 20 U.S.C. § (a)(5)(A) (a disabled child is to participate in the same activities as non-disabled children to the "maximum extent appropriate"); *Roark ex rel. Roark v. District of Columbia*, 460 F.Supp.2d 32, 43 (D.D.C. 2006) ("The IDEA requires school districts to place disabled children in the least restrictive environment possible.")

In determining the educational placement of a child with a disability, each public agency must ensure that the placement decision (1) is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; (2) is made in conformity with the Least Restrictive Environment ("LRE") provisions of the IDEA that mandate that to the maximum extent possible, disabled children are to be educated with their nondisabled peers and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily; (3) is determined annually; (4) is based on the child's IEP; and (5) is as close as possible to the child's home. 34 C.F.R. 300.114, 34 C.F.R. 300.116.

The "educational placement" consists of: (1) the education program set out in the student's IEP, (2) the option on the continuum in which the student's IEP is to be implemented, and (3) the school or facility selected to implement the student's IEP. *Letter to Fisher*, 21 IDELR 992 (1994).

In this jurisdiction, the educational placement is the child's IEP, and the school designated by the public agency to implement the child's IEP is the location of services. *Johnson v. District of Columbia*, 2012 L 883125 (D.C.C., March 16, 2012). The school district is not required to maximize or provide the best program; rather, it need only be an education that is specifically designed to meet the child's unique needs, supported by services that will permit the child to benefit from the instruction. *Board of Education of Hendrick Hudson Central School District, Westchester County, et. al. vs. Rowley*, 458 U.S. 176 (1982).

The IDEA only mandates a "basic floor of opportunity." *Id.*; *Carlisle Area Sch. Dist. v. Scott P.*, 62 F.3d 520, 534 (3d Cir. 1995). To accomplish this, an IEP must only "be reasonably calculated to enable the child to receive meaningful educational benefits in light of the student's intellectual potential." *Chambers v. Sch. Dist. of Philadelphia Bd. of Educ.*, 587 F.3d 176, 182 (3d Cir. 2009) (quoting *Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 198 (3d Cir. 2004)).

As discussed in the issue above the student's parent fully agreed to the student's IEP not being fully implemented at School A and the difference in the level of services that were provided to the student at School A from that prescribed by her IEP were in this instance de minimis. Although the student was truant and was eventually withdrawn from School A due to her truancy and then reenrolled and withdrawn again by her parent, the reason for the student's truancy was primarily due to the student's dislike for the school, its rules and its dress code - not because School A was providing the student insufficient special education services. Thus, the Hearing Officer concludes based upon the facts of this case that the student's placement at School A was not inappropriate.

ISSUE 3: Whether DCPS denied the student a FAPE by failing to conduct a FBA by January 2014 and develop a BIP due to the student's attention and conduct issues.

Conclusion: Petitioner did not sustain the burden of proof by a preponderance of the evidence that DCPS denied the student a FAPE by failing to conduct a FBA by January 2014 and develop a BIP due to the student's attention and conduct issues.

According to 34 C.F.R. Sec. 300.303 (a)(2) of the Individuals with Disabilities Education Act (IDEA) "a public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§ 300.304-300.311 if the public agency determines that the educational or related service needs, including improved academic achievements and functional performance, of the child warrant a reevaluation, or child's parent or teacher requests a reevaluation, but at least once every three years. The Hearing Officer takes administrative notice that initial evaluations are to be conducted within 120 days of a request but no such strict time line applies to requests for reevaluations, yet they must be conducted within a reasonable time.

Although Petitioner's expert witness testified the FBA should have been conducted from two weeks to one month of when the student first displayed behavioral concerns he did not specifically state when the student's behavioral concerns began. The evidence demonstrates that soon after the October 3, 2013, IEP meeting the School A SEC mentioned to the parent there was a need to conduct a FBA and the parent signed the consent form in early November 2013. School A then attempted to conduct the FBA and could not do so due the student's absenteeism and truancy. Based upon the evidence this Hearing Officer concludes that School A attempted to conduct the FBA in a reasonable time after the student began to display behavioral difficulties and made reasonable and multiple attempts to conduct the FBA but was unable to do so due to the student's failure to attend school. Thus, Petitioner did not sustain the burden of proof that DCPS denied the student a FAPE by failing to conduct a FBA by January 2014 and develop a BIP due to the student's attention and conduct issues.

ORDER:

The due process complaint is hereby dismissed with prejudice and all requested relief is denied.

APPEAL PROCESS:

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have 90 days from the date of the decision of the Hearing Officer to file a civil action with respect to the issues presented at the due process hearing in a District Court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. §1415(i)(2).

/s/ Coles B. Ruff

Coles B. Ruff, Esq.
Hearing Officer
Date: November 18, 2014