

intervention plan (“BIP”); and (e) failing to provide behavioral support services as called for in the March 2009 and March 2010 IEPs.

DCPS filed a Response on May 28, 2010, which generally asserts that the Student has not been denied a FAPE and that Petitioner’s requests for relief are not warranted. More specifically, with respect to the above claims, DCPS responds that (a) a team met and developed an IEP for the Student on 3/13/09 and 3/4/10; (b) “the student’s IEP accommodates his unique needs and it contains all appropriate requirements under the IDEA”; (c) manifestation determination meetings were held on May 14, 2009, and March 30, 2010; (d) DCPS developed a BIP on 3/13/09 and has implemented that BIP; and (e) “[w]hen the student has attended school, DCPS has provided all of the student’s services on his IEP.” DCPS also asserts that any issues regarding a failure to develop a BIP or convene a manifestation determination meeting *prior to 12/16/08* already have been litigated and decided, and thus cannot now be re-litigated.

On June 1, 2010, the case was reassigned to this Hearing Officer. The resolution process was not successful, and the 30-day resolution period ended as of June 19, 2010. Prehearing Conferences were held on June 25, July 2, and July 5, 2010, at which the parties discussed and clarified the issues and requested relief. *See Prehearing Order* (July 12, 2010), ¶ 6. Five-day disclosures were thereafter filed by both parties as directed, on or about July 13, 2010.

The Due Process Hearing was held on July 20, 2010. Petitioner elected for the hearing to be closed. During the hearing, the following Documentary Exhibits were admitted into evidence without objection:

Petitioner’s Exhibits: P-1 through P-16.

DCPS’ Exhibits: DCPS-1 through DCPS-15.²

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

² DCPS Exhibits 12 through 15 were not included within DCPS’ five-day disclosures. However, they were presented at the hearing and admitted into evidence without objection from Petitioner. By agreement of the parties, the hearing record was held open until July 21 to enable DCPS to submit copies of Exhibits 13 through 15, which were then added to the record.

Petitioner's Witnesses: Parent-Petitioner; Student; Educational Advocate; and Admissions Director, Schools of Washington, D.C.

DCPS' Witnesses: Compliance Case Manager (B. Persett); and Special Education Teacher at the School.

Pursuant to the IDEA, the Hearing Officer must make a determination within 10 school days after the hearing. See 34 C.F.R. § 300.532 (c) (2). This decision constitutes the Hearing Officer's Determination ("HOD") pursuant to 20 U.S.C. §1412 (f), 34 C.F.R. §300.513, and Section 1003 of the *Special Education Student Hearing Office/Due Process Hearing Standard Operating Procedures ("SOP")*.

II. ISSUES AND REQUESTED RELIEF

A discussion at the prehearing conferences of the issues and requested relief raised by Petitioner resulted in the following issues being presented for determination at hearing:

- (1) **Violation of 12/26/08 HOD** — Did DCPS violate the 12/26/08 HOD by failing to develop the Student's IEP until March 13, 2009?
- (2) **Inappropriate Placement** — Did DCPS deny the Student a FAPE by failing to provide an appropriate educational placement at the March 2009 and March 2010 MDT/IEP Team meetings?
- (3) **Parent Participation in Placement Decisions** — Did DCPS violate the procedural rights of the Parent by failing to ensure that the Parent was a member of any group making decisions on the educational placement of their child in March 2009 and March 2010? And does any such procedural inadequacy constitute substantive grounds for a denial of FAPE pursuant to 34 CFR 300.513(a)?
- (4) **Failure to Convene Manifestation Determination Reviews ("MDR"s)** — Did DCPS deny the Student a FAPE by failing to convene one or more required MDR meetings during the 2009-10 school year, specifically in connection with conduct violations and/or suspensions occurring on or about 2/16/10 and 3/17/10?
- (5) **Failure to Develop and Implement BIPs** — Did DCPS deny the Student a FAPE by (a) failing to implement the March 2009 behavior intervention plan ("BIP") and/or (b) failing to develop an appropriate BIP in March 2010, in light of recent suspensions and behavior problems?

- (6) **Failure to Implement the IEP With Respect to Behavioral Support Services**
— Did DCPS deny the Student a FAPE by failing to provide behavioral support services called for in the Student's March 2009 and March 2010 IEPs?

The relief Petitioner requests under these issues includes: (a) appropriate findings of FAPE denial; (b) an immediate appropriate placement in the ED program at the School; and/or (c) an order requiring DCPS to convene an MDT/IEP team meeting within 30 days to review the student's IEP and discuss/determine appropriate placement.

III. FINDINGS OF FACT

1. The Student is a -year old student who resides in the District of Columbia and attended his DCPS neighborhood middle school (the "School") during the 2009-2010 school year. He expects to attend the grade in DCPS for the 2010-2011 school year. *See P-2; Student Testimony.*
2. On or about February 4, 2009, the Student's MDT/IEP team reviewed a comprehensive psychological evaluation (*P-13*) and determined the Student to be eligible for special education and related services as a child with a disability under the IDEA, specifically an Emotional Disturbance ("ED"). *P-9.*
3. On or about March 13, 2009, an initial IEP was developed for the Student providing for a full-time special education program. The IEP provided for 26.5 hours per week of specialized instruction and 60 minutes per week of behavioral support services, all in a setting Outside General Education. *P-8, p. 4.* The team also developed a BIP dated March 13, 2009 (*DCPS-9*), based on a functional behavior assessment ("FBA") conducted in December 2008 (*P-14*). *See also DCPS-13 (2/4/09 MDT meeting notes).*
4. On or about March 4, 2010, the MDT reconvened to review the Student's IEP. The team adopted the current IEP, which provides for the same amount and type of services as was provided in the 3/13/09 IEP. *See P-6.*
5. Since March 2009, DCPS has placed and provided the Student with special education and related services, including both academic and behavioral support, within the full-time, self-contained ED cluster program at the School. *See Testimony of Teacher,*

Parent, and Student; P-8; P-9; see also DCPS-13 (Student to be placed in a “highly-structured, therapeutic school setting that specializes in providing ED students with academic and social/emotional supports”).

6. The Student has had a history of behavioral difficulties resulting in disciplinary actions and suspensions from school over the past two school years, most recently on February 16 and March 17, 2010. *See P-5; P-10; Testimony of Parent, Student, and Teacher.* The incidents include fighting and other disruptive behavior, smoking, using profanity, and damaging school property. *See, e.g., DCPS-5; DCPS-7; P-10.*
7. “In addition to the increasing negative behavior in school, the student has gone through the courts for charges pertaining to assault and unauthorized use of [a] vehicle, and spent time at _____ respectively, between September 2009 and January 2010 as a result of court rulings,” according to undisputed facts set forth in the Complaint. *P-2, p. 4, ¶ 8.*
8. On or about March 30, 2010, DCPS convened a manifestation determination review (“MDR”) meeting and determined that the Student’s behaviors were not a manifestation of his disability. *See DCPS-5; DCPS-6. See also DCPS-7 (5/14/09 MDR reaching same determination); P-7 (9/2/09 MDR reaching same determination).*
9. Since mid-May 2010, shortly before the Complaint was filed, the Student has been detained at _____ for offenses committed both on school property and outside of school property, including violation of probation. *See Parent Testimony; Student Testimony; Petitioner’s Closing Argument* (filed July 23, 2010), p. 1. He was released to attend the due process hearing and returned to _____ afterwards. *Id.*
10. The Student’s final report card for the 2008-09 school year (dated 6/15/09) shows that he received “C” grades in all subjects, with 27 unexcused homeroom absences and 36-38 absences each in English, math, and science classes. *DCPS-4, p. 1.* The Student’s final report card for the 2009-10 school year (dated 6/18/10) reveals a similar record, with four C’s and one D, along with continued excessive class absences. *DCPS-12.*

IV. DISCUSSION AND CONCLUSIONS OF LAW

A. Burden of Proof

The burden of proof in a special education due process hearing is on the party seeking relief. DCMR 5-3030.3; *see Schaffer v. Weast*, 546 U.S. 49 (2005). This burden applies to any challenged action and/or inaction, including failures to provide an appropriate IEP and/or placement, as well as failures to implement an IEP.

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 5-3030.3. The normal standard is preponderance of the evidence. *See, e.g., NG v. District of Columbia*, 556 F. Supp. 2d 11 (D.D.C. 2008); *Holdzclaw v. District of Columbia*, 524 F. Supp. 2d 43, 48 (D.D.C. 2007); 20 U.S.C. §1415(i)(2)(C)(iii).

B. Issues/Alleged Denials of FAPE

The Hearing Officer concludes that Petitioner has failed to meet her burden of proof on any of the specified issues and alleged denials of FAPE.

1. Violation of 12/26/08 HOD

In relevant part, the December 26, 2008 HOD ordered DCPS to “convene an MDT/IEP meeting within ten (10) school days of receipt of the final independent evaluation, to review the independent evaluations, implement the evaluation recommendations, determine the student’s eligibility for special education services; develop an IEP, as appropriate; discuss and determine the student’s placement; and develop a compensatory education plan.” *P-12*, p.16. Petitioner alleges that DCPS violated this 12/26/08 HOD provision by failing to develop an IEP until March 13, 2009. *P-4*, p. 3, ¶ 5.

The evidence shows that the parent faxed the final independent evaluation reports (comprehensive psychological and FBA) to DCPS on Friday, January 16, 2009, at approximately 9:18 PM. *P-11*. Monday, January 19, 2010, and Tuesday, January 20, 2010 were District of Columbia holidays (*i.e.*, Martin Luther King Day and Inauguration Day, respectively). *See Testimony of B. Persett*. Thus, 10 school days from the receipt of the final independent

evaluations would have been February 3, 2009. DCPS convened an MDT/IEP team meeting on February 4, 2009, only one day later.³

At the February 4, 2009 meeting, the team was able to complete most of the tasks required under the HOD, including reviewing the independent evaluations and determining the student's eligibility for special education services. The team agreed that the Student was eligible as a child with an emotional disturbance, and that he required one hour per week of counseling and a full-time ED program. *DCPS-13; P-9*. The team also agreed that the ED cluster program at the School was appropriate for the Student and agreed to place him there as of the February 4, 2009 meeting. *Test. of B. Persett; see also DCPS-13*. However, due in part to the late arrival of the Student's advocate, the team was unable to develop an IEP before the teachers needed to leave as a result of DCPS' contractual obligations. *Id.*

Thus, the team decided it would need to reconvene to develop the Student's IEP. *See DCPS-13*. On February 25, 2009, a letter of invitation was sent to Petitioner's counsel proposing March 5, March 11, and March 13, 2010, which dates ranged from 29 to 37 days after the eligibility meeting. *DCPS-15*. The meeting ultimately proceeded on the last day proposed, *i.e.*, March 13, 2009, and the IEP was completed on that date. *P-8*.

Even though the IEP was not developed until March 13, 2009, the Student was not harmed as a result of that delay because the Student did not have to wait until the development of his IEP to begin receiving special education services. He was placed and began receiving special education services immediately upon determination of eligibility, which took place approximately 11 school days after DCPS received the final independent evaluations. *See Persett Testimony; DCPS-13*. Moreover, the HOD directive should be read in the context of the ordinary IDEA framework, which contemplates a meeting to develop an initial IEP within 30 days of an eligibility determination. 34 CFR 300.323(c); *see also* DCMR 5-E3007.1 ("The IEP team shall meet and develop an IEP for a child with a disability within thirty days of a

³ Mr. Persett testified that he personally received the final independent evaluation on January 22, 2009. *Testimony of B. Persett*. On January 23, 2009, he promptly sent a letter of invitation to Petitioner's counsel. *DCPS-14*. This letter proposed four meeting dates: February 2, February 3, and February 4, 2009. *Id.* The meeting was then scheduled for, and proceeded on, the last date proposed. *Testimony of Advocate; Testimony of B. Persett*.

determination that a child needs special education and related services.”). The March 13, 2009 meeting date was generally consistent with this timeframe.

In sum, the Hearing Officer concludes that DCPS did not commit any material violation of the 12/26/08 HOD; and that to the extent any violation was committed, it did not result in any educational harm to the Student. Thus, there was no denial of FAPE in this respect. Accordingly, Petitioner has failed to meet her burden of proof on Issue 1.⁴

2. Inappropriate Placement

Petitioner next claims that DCPS denied the Student a FAPE by failing to provide an appropriate educational placement at both the March 2009 and March 2010 MDT/IEP meetings. Specifically, Petitioner alleges that the comprehensive psychological report dated 12/20/08 recommended an educational placement “with intensive one-on-one instruction and small group in a therapeutic environment,” and that DCPS improperly rejected the parent’s proposed placement into the ED program with such characteristics. *P-4*, p. 4, ¶ 6. Petitioner asserts that DCPS’ proposed placement at the ED cluster program at the School did not meet these unique needs of the Student. *See Petitioner’s Closing Argument* (filed July 23, 2010), p. 2.

Under the IDEA, an “IEP must be ‘reasonably calculated’ to confer educational benefits on the child, but it need not ‘maximize the potential of each handicapped child commensurate with the opportunity presented non-handicapped children.” *Anderson v. District of Columbia*, 109 LRP 18615 (D.D.C. 2009), slip op. at 6, quoting *Board of Education v. Rowley*, 458 U.S. 176,200,207 (1982); see also *Kerkam v. McKenzie*, 862 F. 2d 884 (D.C. Cir. 1988). “DCPS must also implement the IEP, which includes offering placement in a school that can fulfill the requirements set forth in the IEP.” *O.O. v. District of Columbia*, 573 F. Supp. 2d 41, 53 (D.D.C. 2008) (emphasis added); see also D.C. Code 38-2561.02 (“DCPS shall place a student with a disability in an appropriate special education school or program in accordance with this chapter and the IDEA” (emphasis added); *Branham v. District of Columbia*, 427 F. 3d 7, 12 (D.C. Cir.

⁴ To the extent Petitioner argues that any failure to receive timely implementation of the letter of the 12/26/08 HOD should give rise to a rebuttable presumption of harm under the *Blackman-Jones Consent Decree* (see *P-4*, p. 5, Issues Presented, ¶ 2), the Hearing Officer concludes that DCPS has rebutted that presumption in this case. Moreover, under the Consent Decree, the presumption generally applies only to class members’ claims for compensatory education, and all issues with respect to compensatory education were expressly reserved in the Complaint. *P-4*, pp. 5-6, ¶ 10.

2005) (affirming “placement based on match between a student’s needs and the services offered at a particular school”); *Hinson v. Merritt Educ. Ctr.*, 579 F. Supp. 2d 89, 104 (D.D.C. 2008) (“To show that placement is inappropriate, Plaintiff must show that Merritt is unable to implement the IEP as written. “). The placement must, *inter alia*, be based upon the child’s IEP and be in conformity with the least restrictive environment (“LRE”) provisions of the IDEA. *See* 34 C.F.R. §§ 300.114 -300.116; DCMR §§ 5-3011, 5-3013; *Roark v. District of Columbia*, 460 F. Supp. 2d 32 (D.D.C. 2006).

Based on the evidence adduced in this record, the Hearing Officer concludes that Petitioner has failed to carry her burden of proving that the School selected by DCPS cannot offer an appropriate educational placement that can fulfill the requirements of the Student’s IEP. No testimony presented at the due process hearing challenged the Student’s IEP. While Petitioner claims that “escalating behavior” resulting in the Student’s being suspended on a number of occasions suggests that the DCPS’ placement was inappropriate (*P-4*, p. 4, ¶ 6), such suspensions were specifically contemplated as a behavior intervention under the Behavior Intervention Plan (“BIP”) developed at the March 13, 2009 IEP meeting. *See DCPS-9*. Such suspensions in and of themselves have not been shown to render either the IEP or school placement inappropriate. In fact, the major obstacle to the Student’s achievement according to his classroom teacher was his poor attendance and absences from class, which resulted more from his incarcerations than suspensions. *Teacher Testimony*. The teacher also stated that the Student was eager to learn and had made significant progress in her class over the year and half he had been there. *Id.*

DCPS’ school placement decision also meets the other applicable criteria established under the IDEA’s regulations, the District of Columbia Code, and the District of Columbia Municipal Regulations. The placement is based on the IEP, is at the school closest to his home for his age group, and is the school that the Student would attend if he were not disabled. *See* 34 C.F.R. §§ 300.116 (b)-(c); DCMR 5- E3013.2; 3013.4. The placement also appears consistent with the statutory priorities contained in D.C. Code § 38-2561.02 (c); *see DCPS-13*. Finally, the placement appears to comply with IDEA’s Least Restrictive Environment requirement, 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114; DCMR 5-E011.1, and does not “remove [the Student] from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.” 34 C.F.R. § 300.116(e); DCMR 5-E3013.4.

Accordingly, the Hearing Officer concludes that Petitioner has not carried her burden of proof on Issue 2.

3. Parent Participation in Placement Decisions

The Complaint alleged that the parent was not involved in the March 13, 2009 and March 4, 2010 placement decisions, contrary to 34 CFR 300.327.⁵ However, at the due process hearing, Petitioner did not testify regarding her alleged lack of participation at these meetings; nor does Petitioner's Closing Argument even mention this issue. The record shows that Petitioner signed the March 13, 2009 IEP indicating that she was a team participant (*P-8*), and that she signed the March 4, 2010 IEP to indicate that she participated in the meeting and that she agreed with the contents of the IEP. *DCPS-08*. Consequently, Petitioner did not meet her burden of proof on Issue 3.

4. Failure to Convene Manifestation Determination Reviews ("MDRs")

Petitioner contends in closing that "[t]he student has been suspended numerous times, for more than ten days each time and without [a] legally mandated manifestation determination meeting." *Petitioner's Closing Argument* p. 2.⁶ Under the agreed Prehearing Order, this issue was clarified for hearing as whether DCPS "fail[ed] to convene one or more required MDR meetings during the 2009-10 school year, specifically in connection with conduct violations and/or suspensions occurring on or about 2/16/10 and 3/17/10." *Prehearing Order*, at 2.

⁵ The IDEA requires that parents have meaningful participation in the placement decisions involving their child. *See* 20 U.S.C. 1414(e); 34 CFR 300.116(a) (1), 300.327. Specifically, each public agency must "ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child." *Id.*, 1414(e); 300.327. *See, e.g., T.T. v. District of Columbia*, 48 IDELR 127 (D.D.C. 2007)

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

Here, the documentary evidence presented demonstrates that Petitioner was invited, through her counsel, to an MDR on March 30, 2010, and that a MDR occurred on that date. *See DCPS-5; DCPS-6.* No testimonial evidence contradicted what these documents demonstrate. Even assuming that no separate MDR occurred with respect to an earlier 2/16/10 incident (a suspension which is not documented in the record), Petitioner failed to demonstrate any harm to the Student as a result. Accordingly, Petitioner has failed to meet her burden of demonstrating a denial of FAPE under Issue 4.

5. Failure to Develop and Implement BIPs

The IDEA requires that, in developing each child's IEP, the "IEP team must — in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior." 34 C.F.R. §300.324(a)(2)(i). D.C. law further provides in such circumstances that an "individual behavior plan shall be developed and incorporated into the IEP." DCMR 5-E3007.3.

Pursuant to the Prehearing Order, Petitioner was to present evidence demonstrating that DCPS denied the Student a FAPE by failing (a) to implement the Student's March 2009 BIP and/or (b) to develop an appropriate BIP in March 2010, in light of recent suspensions and behavior problems.

With respect to the implementation claim, the March 2009 BIP required the Student's teacher to "model pro-social skills (appropriate tone of voice)" and to "give student reminders regarding tone of voice, volume, hands to self, etc." *DCPS-9.* Neither Petitioner nor the Student testified that the Student did not receive this modeling or method of communication. The teacher testified that she knew how to address the Student in a way to engage him academically and to prevent any disciplinary referrals from her classroom. *Teacher Testimony.* Thus, Petitioner did not prove that this part of the BIP was not implemented.

Other behavioral intervention strategies included in the March 2009 BIP called for "[i]mmediate removal from the classroom for verbal or physical abuse" and for the Student "to return to class when he is calm and prepared to work." *DCPS-9.* Also, "[f]ollowing more serious physical aggression, his family will be notified and student will receive a suspension." *Id.* Neither Petitioner nor the Student testified that the Student did not receive these interventions. In fact, their testimony demonstrates the opposite: the Student has been disciplined and

suspended for fighting and other misconduct in school. *See Testimony of Parent and Student; DCPS-5; DCPS-7; P-10.* Consequently, Petitioner failed to demonstrate that the Student's March 2009 BIP was not properly implemented.

With respect to the second claim (*i.e.*, March 2010 BIP development), Petitioner complains that the Student does not have a current BIP, which should be a component of the IEP. *Petitioner's Closing Argument*, p. 3. The Hearing Officer agrees that the Student's March 2009 BIP does not appear to have been formally reviewed and modified, as necessary, in March 2010 to address the behaviors and suspensions occurring over the past year, as required by the IDEA. *See* 34 CFR 300.324 (a) (2) & (b), 300.530 (f) (2). However, the evidence indicates that other behavioral interventions not captured in the March 2009 BIP were put in place over the course of the next year. *See Teacher Testimony.* Petitioner, the Student, and Teacher all testified consistently that the Student was required to and did carry behavior point sheets and/or conduct cards throughout the 2009-2010 school year. *Testimony of Parent, Student, and Teacher.* Thus, even without a formal revision of the March 2009 BIP, DCPS expanded its efforts to address the Student's behavior. In light of these actions, Petitioner failed to show that lack of a revised BIP in March 2010 resulted in harm to the Student and a denial of FAPE.⁷

Accordingly, Petitioner did not meet her burden of proof on Issue 5. Nevertheless, it would be procedurally appropriate for DCPS to convene another MDT/IEP team meeting to revise the Student's BIP and include the updated plan in the Student's current IEP. In doing so, it also would be advisable for DCPS to obtain or authorize independently an updated FBA, which it previously offered to do in an April 2010 settlement proposal to Petitioner (*P-3*). While no denial of FAPE has been found in this case, ***the Hearing Officer strongly encourages DCPS to take these procedural steps for the 2010-11 school year.***

⁷ Under IDEA, "a hearing officer's determination of whether a child received FAPE must be based on substantive grounds." 34 C.F.R. §300.513(a)(1). "In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies – (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit." *Id.* § 300.513 (a)(2). *See also Lesesne v. DC*, 447 F.3d 828, 834 (D.C. Cir. 2006); 20 U.S.C. §1415(f)(E).

6. Failure to Implement IEP Re: Behavioral Support Services

The Complaint alleged that the Student did not receive behavioral support services during the past two school years in accordance with his March 2009 and March 2010 IEPs. However, Petitioner failed to establish this claim at hearing, and she does not even mention it in her written Closing Argument.

The documentary evidence shows that DCPS made these services available to the Student as planned in her IEPs, and that he received them to the extent he was available. *See DCPS-3 (Encounter Tracking Forms)*. Also, the testimony of the Student and Teacher tend to show that he received group counseling weekly in his classroom. *Testimony of Student and Teacher*. The Teacher also testified that the Student received individual counseling when he was pulled from the classroom by the social worker. *Teacher Testimony*.⁸ Further, it is undisputed that the Student missed a lot of school due to incarcerations as well as suspensions. Thus, those absences clearly limited the ability of DCPS to provide behavior support services to him.

Accordingly, the Hearing Officer concludes that Petitioner failed to meet her burden of proof under Issue 6, *i.e.*, she did not prove that DCPS denied the Student a FAPE by failing to provide behavioral support services called for in the IEPs.⁹

⁸ The Student contradicted the Teacher's testimony with respect to the frequency of these sessions, but he did not state that they never happened. *See Student Testimony*. Considering the Teacher's professional experience, role, familiarity with the Student, and demeanor, and the Student's demeanor, the Hearing Officer finds the Teacher's testimony to be more credible with respect to the provision of the behavioral support services to the Student.

⁹ To establish a denial of FAPE, the aspects of the IEP not followed in this regard would need to be "substantial or significant," and "more than a *de minimus* failure"; in other words, the deviation from the IEP's stated requirements would need to be "material." *Catalan v. District of Columbia*, 478 F. Supp. 2d 73 (D.D.C. 2007), *quoting Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341,349 (5th Cir. 2000); *see also* 34 C.F.R. §300.513(a)(2) (deviation causing a deprivation of educational benefit).

V. **ORDER**

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

1. Petitioner's requests for relief in her Due Process Complaint are **DENIED**.
2. The Complaint is **DISMISSED, With Prejudice**; and
3. This case shall be, and hereby is, **CLOSED**.

IT IS SO ORDERED.

Dated: July 30, 2010



Impartial Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the findings and decision made herein has the right to bring a civil action in any District of Columbia court of competent jurisdiction or in a District Court of the United States, without regard to the amount in controversy, within ninety (90) days from the date of the Decision of the Hearing Officer in accordance with 20 U.S.C. §1415(i)(2).