STATE EDUCATIONAL AGENCY FOR THE DISTRICT OF COLUMBIA
STATE ENFORCEMENT AND INVESTIGATION DIVISION (SEID)
SPECIAL EDUCATION PROGRAMS

STUDENT,[1] by and through his Parent,

Petitioner,

v.

DISTRICT OF COLUMBIA PUBLIC SCHOOLS,

Respondent.

Case No.
Bruce Ryan, Hearing Officer

Hearing: January 13, 2010
Decided: January 23, 2010

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STUDENT HEARING OFFICE
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HEARING OFFICER DECISION

I. PROCEDURAL BACKGROUND

The due process complaint in this matter was filed November 17, 2009, against Respondent District of Columbia Public School ("DCPS") pursuant to the Individuals with Disabilities Education Act ("IDEA"), as amended, 20 U.S.C. §§1400 *et seq.,* and its implementing regulations. The complaint concerns a -year old student who resides in the District of Columbia, currently attends his DCPS neighborhood school and has been determined to be eligible for special education and related services as a child with a disability under the IDEA.

The complaint alleges that DCPS has denied the Student a free appropriate public education ("FAPE") by (1) failing to develop an appropriate individualized education program ("IEP") for the Student on or about July 23 and August 5, 2009, (2) failing to conduct a functional behavioral assessment ("FBA") and/or develop a behavior plan for the Student, and (3) failing to provide the Student with an appropriate placement and/or location for services.

DCPS filed a Response to the Complaint, which asserts that the Student has not been denied a FAPE. DCPS states (*inter alia*) that the Student was found eligible under IDEA on 7/23/09, that DCPS issued an independent evaluation ("IEE") letter on 7/29/09 authorizing an

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

independent comprehensive psychological evaluation in response to Petitioners' request, that DCPS reconvened an MDT meeting on 8/5/09 at which the parent agreed to increase counseling from 30 to 60 minutes per week, and that DCPS issued another IEE letter on 9/9/09 authorizing an independent FBA. DCPS also filed a separate Motion to Dismiss, arguing that the complaint failed to properly state a claim upon which relief can be granted.

A Prehearing Conference ("PHC") was held on December 7, 2009, and a Prehearing Order was issued the same date, which discussed and clarified the issues and requested relief. *See Prehearing Order* (Dec. 7, 2009), ¶ 6. The Hearing Officer also denied DCPS' motion, concluding that DCPS' arguments were not appropriately raised by a motion to dismiss for failure to state a claim, which requires a court or hearing officer to accept the factual allegations of the complaint as true. *Id.*, ¶ 5; *cf. Fed. R. Civ. P. 12(b)(6).* However, given that DCPS had already authorized an independent FBA through the 9/9/09 IEE letter, Petitioners' counsel confirmed at the PHC that this item of requested relief was being withdrawn as moot. *Id.* The resolution period ended on December 17, 2009, without an agreement of the parties, and thus the 45-day HOD timeline under IDEA is scheduled to expire on or about 1/31/10. *Id.*, ¶ 1.

On or about December 29, 2009, DCPS filed a further pleading styled "Partial Motion to Dismiss for Mootness and Exclusion of Recently Produced FBA." DCPS argued, *inter alia*, that in light of Petitioner's notification on 12/23/09 that an independent FBA had now been completed, (a) "the claims brought against DCPS relating to the behavioral and emotional needs of the student in the instant complaint [should] be dismissed as moot," and (b) "the result of that assessment should be barred from substantive consideration at the due process hearing." On the record at the outset of the Due Process Hearing, the Hearing Officer ruled on this motion, granting in part and denying in part DCPS' requests. The Hearing Officer ruled that (a) Petitioner's claims that the IEP does not appropriately address behavioral and emotional issues has *not* been rendered moot by completion of the FBA, and (b) the FBA may be potentially relevant to prospective private placement relief, assuming Petitioner were to carry her burden of proof on her claims of FAPE denial through an inappropriate IEP and placement. However, the FBA would *not* constitute relevant evidence with respect to the FAPE denial claims themselves, since the FBA was not completed until approximately four months after the IEP and placement were developed. Five-day disclosures were then filed by both parties as directed, on or about January 6, 2010.

The Due Process Hearing was held on January 13, 2010. Petitioners elected for the hearing to be closed. At the hearing, 32 documentary exhibits submitted by Petitioners (identified as "P-1" through "P-32") and 10 documentary exhibits submitted by DCPS (identified as "DCPS-1" through "DCPS-10") were admitted into evidence.[2] Testifying at the hearing on behalf of Petitioner were: the Parent-Petitioner; Psychologist James Ballard, Ph. D; Dean of Students at Counselor/Case Manager at and Principal of Testifying on behalf of DCPS were: Special Education Coordinator ("SEC") at and Ms. Jennifer Penn, DCPS School Psychologist.

This decision constitutes the Hearing Officer's determination 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 PHC of the issues and requested relief raised by Petitioners, along with the pleadings filed by both parties, has resulted in the following issues being presented for determination at hearing (*see Prehearing Order,* ¶ 6):

a. ***Inappropriate IEP*** — Whether DCPS has denied the Student a FAPE by failing to develop an appropriate IEP at the July 23 and August 5, 2009 MDT meetings, as specifically set forth in subparagraphs (a) through (f) on page 8 of the Due Process Complaint and as clarified in paragraph 6 (a) of the *Prehearing Order*;

c. ***Failure to Conduct FBA and/or Develop BIP*** — Whether DCPS has denied the Student a FAPE by failing to conduct an FBA and/or develop a BIP in connection with developing the initial IEP, as clarified in paragraph 6 (b) of the *Prehearing Order*; and

d. ***Inappropriate Placement*** — Whether DCPS has denied the Student a FAPE by failing to provide an appropriate educational placement and/or location for services, as clarified in paragraph 6 (c) of the *Prehearing Order.*

The relief sought by Petitioners, as clarified at the PHC, includes (1) a finding that the Student has been denied a FAPE by DCPS; (2) requiring DCPS to fund a private placement with

[2] Exhibits P-2 (response to DCPS' motion and FBA), P-7 (correspondence transmitting FBA), P-8 (private placement acceptance letter), P-9 (placement referrals), and P-18 through P-30 inclusive were admitted over DCPS' objections, for the reasons stated on the record at hearing. All other exhibits were admitted without objection.

transportation for the Student; and (3) the convening of a further MDT/IEP meeting "to review evaluations and revise the IEP to include a behavior plan, accommodations such as small structured setting and low student teacher ratio, written expression goals, and increased instructional services." *P-3*, p. 11, ¶¶ 1, 2, 4; *see also Prehearing Order (P-1).* At the PHC, Petitioners' counsel agreed to withdraw the request that "DCPS shall fund a functional behavioral assessment for this student" (*P-3,* p. 11, ¶ 4), since DCPS had already authorized such in September 2009.

III. FINDINGS OF FACT

1. The Student is a year old student who resides in the District of Columbia, currently attends and has been determined to be eligible for special education and related services as a child with a disability under the IDEA. The Student's primary disability under his current IEP is Emotional Disturbance ("ED"). *See P-3; DCPS-7.*

2. The Student began attending in about the middle of the 2008-09 school year. In late March 2009, the Student was referred for initial evaluation in response to a request by his parent, due (*inter alia)* to significant behavioral concerns in the school, poor academic progress, and poor attendance. *See P-3; DCPS-4*, p. 1; *Parent Testimony.*

3. On or about May 6, 2009, DCPS convened an MDT meeting at to develop a student evaluation plan ("SEP"). DCPS agreed, *inter alia*, to conduct a functional behavioral assessment ("FBA") so that an appropriate behavior plan could be developed. *See P-3; P-14.* However, an FBA was never completed by DCPS. The evidence suggests that there may have been limited opportunity to conduct an FBA in the classroom setting prior to DCPS' authorization of an independent FBA on 9/9/09. *See, e.g., P-21* (7/23/09 email correspondence from Petitioner's counsel stating that "the team should address whether an FBA is warranted once school reconvenes").

4. On or about June 4, 2009, a comprehensive psychological evaluation was completed by the DCPS school psychologist (Jennifer Penn). *DCPS-4.* According to her evaluation report, "test results reveal a child who has difficulty with impulsivity, inattention and distractibility, which are related to a lack of impulse control." *Id.,* p. 7. The report "recommended that psychological counseling support services be provided in the school to

address social, interpersonal and communication skills." *Id.,* pp. 7-8. The report also recommended that special education programming be provided to address deficits in math calculation skills revealed by the academic achievement testing. *Id.,* p. 8. [3]

5. On or about July 14, 2009, a social work evaluation report was completed by DCPS, based on a parent interview conducted 7/10/09. *See DCPS-9.*

6. On or about July 23, 2009, DCPS convened an MDT meeting (without the parent in attendance) to review evaluations, determine eligibility, and develop an IEP for the Student. *See P-13.* [4] The team determined that the Student was eligible for special education as a child with specific learning disabilities ("LD"), and it developed goals and objectives for math and counseling which were incorporated into the initial IEP. *Id.* The 7/23/09 IEP provided five hours per week of specialized instruction in math and 30 minutes per week of behavioral support services, both in a general education setting. *Id.*, IEP at p. 3.

7. On or about August 5, 2009, DCPS reconvened the MDT with the parent in attendance. *See P-3; P-12.* The team changed the Student's disability classification from LD to ED and increased his specialized instruction hours to include assistance in reading for an additional five hours per week. *P-12,* IEP at pp. 1, 3. The team also agreed that the specialized instruction and behavioral support services are to be provided in a setting outside general education. *Id., p. 3.* [5]

8. At the 8/5/09 MDT meeting, the parent and education advocate objected to eliminating the LD classification and contended that the student should be identified as multiply disabled. They also requested more hours of instructional services based on the Student's deficits in reading and writing. *See P-3,* ¶ 22*; DCPS-6; P-12* (8/5/09 MDT meeting notes, p. 3).

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[3] Academic testing in areas other the math appeared to be at or close to grade level. *See P-16; School Psychologist Testimony.*

[4] While the complaint does not assert a child-find claim, it appears that the July 23, 2009 MDT eligibility meeting (without the parent in attendance) may have been convened in an effort to comply with the 120-day timeline for initial evaluations, given that the parent had requested an evaluation approximately four months earlier, on or about March 24, 2009. *See P-3; P-13; P-21.*

[5] SEC testified that the Student's IEP is currently being implemented within an "inclusion" program, in which the Student is in an grade class of approximately 20 students and receives "pull-aside" instruction in reading and math. *SEC Testimony.* The Hearing Officer notes that the present complaint does not include any claim that DCPS has failed to properly implement the services in the current IEP. *See* 34 C.F.R. § 300.511(d) (Petitioner may not raise issues at the due process hearing that were not raised in the due process complaint).

In addition, they stated that the Student required a full-time therapeutic placement. *Id.* The parent believes that the Student needs a smaller school setting with fewer distractions and greater teacher attention, including one-on-one instruction. *See Parent Testimony.*

9. On or about August 13, 2009, Petitioner filed a due process complaint in Case No. alleging (*inter alia*) that DCPS had failed to develop an appropriate IEP for the Student. A resolution meeting was thereafter held, on or about September 8, 2009, at which DCPS agreed to fund an independent FBA. DCPS further agreed to reconvene an MDT meeting to review the FBA, review and revise the IEP as appropriate, and discuss placement. An IEE letter authorizing an independent FBA at the expense of DCPS was then issued on or about September 9, 2009. [6] The complaint was thereafter withdrawn, without prejudice, on or about September 24, 2009. *See P-29.* [7]

10. As of the filing of the current due process complaint on 11/17/09, the independent FBA authorized in early September still had not been completed and submitted to DCPS by Petitioner.

11. On or about December 23, 2009, shortly before the five-day disclosures were due, Petitioner's counsel informed DCPS' counsel and the Hearing Officer that the independent FBA had been completed and provided a copy of the report dated December 17, 2009. *See DCPS-2.* The FBA report indicates that the Student was evaluated on December 8, 10 and 14, 2009. *P-18.*

12. Based on classroom observations and parent and teacher reports, the 12/17/09 FBA report identifies the Student's primary behavioral problems as "inattention and a lack of focus, disruptive behaviors, and inability to follow instructions." *P-18,* p. 10. It also indicates that the Student "demonstrates poor impulse control and poor judgment in interactions with peers and school authorities alike." *Id.* The report finds that these behavioral problems adversely affect the Student's ability to participate effectively in the classroom and school setting. *Id.* The report recommends (*inter alia*) that the Student should continue to receive special education

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[6] *See Due Process Complaint Disposition, Case No. 2009-1180,* dated Sept. 8, 2009 (attaching 9/8/09 resolution meeting notes and 9/9/09 IEE letter); *see also DCPS-3* (Prehearing Order), p. 3 ¶ 6(b) (noting parties' agreement at PHC that DCPS had authorized an independent FBA as of 9/9/09).

[7] An earlier due process complaint in Case No. filed prior to the July-August MDT meetings, also was withdrawn by Petitioner on or about June 25, 2009. *See P-30;* DCPS' Response to Petitioner's Due Process Complaint, filed Nov. 20, 2009, p. 1.

services under the ED categorization, receive supportive therapy to address his emotional disability, and receive the benefit of an appropriate behavioral intervention plan. *Id.,* pp. 10-12. The report also suggests that the Student "may be better served by being in a classroom setting where he can receive more focused individual and/or pull-out instruction, and possibly alternate assignments," and that he may also benefit from one-on-one tutoring. *Id.,* p. 11.

13. On or about December 28, 2009, Petitioner's counsel transmitted the completed independent FBA report to the Principal of The letter states that Petitioner "hereby requests a MDT meeting for her son to review the enclosed evaluation and develop/revise his IEP." *P-7.* As of the date of the due process hearing, this further MDT meeting had not yet been convened or scheduled.

14. During the current 2009-10 school year, the Student's behavioral problems have continued and may have worsened, with numerous reports of misbehavior from teachers and several disciplinary suspensions. *See Parent Testimony; Best Testimony; Jackson Testimony.* [8] These behavior problems are likely impacting his education. *See Best Testimony; Ballard Testimony.* The Student also continues to have attendance problems and is often late to school and/or skips classes, which adversely affects his ability to avail himself of the educational benefits of his IEP. *Best Testimony* (cross examination); *SEC Testimony. See also Ballard Testimony* (noting need for greater stability in Student's structure outside school, which has "high degree of dysfunctional nature"); *DCPS-9* (social work evaluation describing significant trauma, domestic instability, and other environmental factors relating to behavior issues).

15. The Student has recently been accepted into Schools' middle school program at as of December 3, 2009. *See P-8.* is a non-public school located in Maryland, which offers a smaller academic environment with therapeutic support for students with emotional difficulties. *Okine Testimony.* Approximately half of the students enrolled at are students from the District of Columbia. *Id.*

[8] The Dean of Students did note, however, that the Student experienced substantially fewer behavioral problems in the most recent month of December 2009, which she attributed to greater involvement by the Student's godparents. *See Best Testimony* (remarking that Student was a "whole different person" in school that month).

IV. DISCUSSION AND CONCLUSIONS OF LAW

A. Burden of Proof

1. 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.

2. 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 standard generally applied is preponderance of the evidence. *E.g., N.G. 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); *see also* 20 U.S.C. §1415(i)(2)(C)(iii).

B. Issues/Alleged Denials of FAPE

3. For the reasons discussed below, the Hearing Officer concludes that Petitioners have failed to carry their burden of proof on all issues.

Issue (a): Inappropriate IEP

4. 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); *J.G. v. Abington School,* 51 IDELR 129 (E.D. Pa. 2008), slip op. at 8 ("while the proposed IEP may not offer [the student] the best possible education, it is nevertheless adequate to advance him a meaningful educational benefit."). The issue of whether an IEP is appropriate is a question of fact. *See, e.g., S.H. v. State-Operated School Dist. of Newark,* 336 F. 3d 260, 271 (3d Cir. 2003). Moreover, whether an IEP is appropriate "can only be determined as of the time it is offered for the student, and not at some later date." *Fuhrmann v. East Hanover Bd. of Educ.,*993 F. 2d 1031, 1040 (3d Cir. 1993). An appropriate IEP does not guarantee results.

5. As summarized in the *Prehearing Order,* the specific aspects in which Petitioner alleges that the Student's IEP is inappropriate are set forth in subparagraphs (a) through (f) on

page 8 of the Complaint. *See P-1*, ¶ 6(a); *P-3,* p. 8. The Hearing Officer concludes that Petitioner has presented insufficient evidence at the due process hearing to prevail on any of these allegations.

6. Petitioner's principal contention is that the Student's IEP is inappropriate because it fails to respond to the Student's behavioral and emotional needs. Specifically, the complaint alleges that the IEP "fails to adequately address the student's behavior or emotional issues in that it does not contain a behavior intervention plan and/or appropriate behavior strategies"; and that it "fails to include necessary classroom accommodations to address his emotional disturbance and attention and behavior issues." *P-3,* p. 8, subparagraphs (a) – (b). However, there are emotional, social, and behavioral development goals spelled out in the 8/5/09 IEP, and the IEP was revised to include 60 minutes per week of behavioral support services outside the general education setting, as agreed to by the team. *See DCPS-7,* pp. 2, 4. The testimony at hearing did not show that these goals and services were inadequate to advance a meaningful educational benefit as of the date the IEP was developed. *See Ballard Testimony; SEC Testimony; School Psychologist Testimony.* Now that the FBA is available, DCPS needs to analyze each specific behavior in order to determine what specific behavioral intervention strategies would be most effective in addressing the Student's attention-seeking and other behaviors. *See School Psychologist Testimony;* 34 C.F.R. § 300.324(a)(2)(i). [9]

7. Petitioner next alleges that the IEP "fails to appropriately identify the student's disability by failing to address both ED and LD issues." *P-3,* p. 8, subparagraph (c).[10] In that regard, Petitioner alleges that the IEP "doesn't contain goals in written expression despite the fact that the student is significantly below level in this area" and "doesn't provide the student with sufficient instructional services to address his academic needs," and that these defects render the IEP insufficient to meet the Student's unique needs. *P-3,* p. 8, subparagraphs (d) –

[9] Petitioner attempted to rely on the findings of the FBA report to support its contentions in this complaint, but DCPS correctly points out that this report was not available to the MDT at the time the IEP was developed. Petitioner's independent FBA report was not completed until 12/17/09, based on an evaluation conducted in early December, over four months after the IEP was developed. As Petitioner has specifically requested (*P-7*), DCPS now needs to convene another MDT meeting to review the FBA to determine what, if any, changes are needed in the IEP.

[10] Petitioner's counsel conceded at the PHC that this claim is properly subsumed within subparagraphs (d) and (e) – *i.e.,* that the "LD issues" referred to in subparagraph (c) concern written expression goals and sufficient instructional services. *See P-1*, ¶ 6(a). Petitioner's counsel also agreed at hearing that the disability classification of an eligible child does not make a difference as long as the IEP appropriately addresses the child's needs.

(e). Based on the evidence presented at hearing, Petitioner has not demonstrated that additional goals and/or instructional hours were required to confer a meaningful educational benefit as of August 5, 2009, when the current IEP was developed.

8. Finally, Petitioner alleges that the IEP is inappropriate because it "doesn't contain an adequate transition plan and/or goals despite the fact that the student will be turning 16 before it expires." *P-3,* p. 8, subparagraph (f). At the PHC, the Hearing Officer noted that based on the DOB alleged in the complaint, the Student would be turning age before the current IEP expires. *See P-1*, ¶ 6(a). This fact was confirmed at the hearing. *See Parent Testimony.* Accordingly, the 8/5/09 IEP was not required to include transition services. *See* 34 C.F.R. § 300.320 (b) (IEP must include transition services "beginning not later than the first IEP to be in effect when the child turns or younger if determined appropriate by the IEP Team").

9. As discussed further below, the proper way to proceed at present is for DCPS to convene an MDT meeting to review the recently completed FBA and determine if changes should be made in the IEP to better address the Student's behavioral and emotional needs in light of the FBA and other updated information from the 2009-10 school year. Petitioner has just recently requested such review, and DCPS has already indicated its intention to do so. In addition, the SEC testified that the addition of a dedicated aid may be appropriate to assist with redirection intervention (a point reiterated by DCPS' counsel in her closing statement), so the MDT can be expected to consider that issue at the same time. *See SEC Testimony.*

Issue (b): Failure to conduct FBA and/or develop BIP

10. As clarified in the *Prehearing Order*, Petitioner alleges that DCPS denied the Student a FAPE by failing to conduct an FBA and/or develop a BIP when it developed the Student's IEP in late July and early August 2009. Petitioner takes the position that DCPS' issuance of the 9/9/09 IEE letter does not eliminate this issue because DCPS should have conducted an FBA prior to that date (as agreed at the May MDT meeting), as part of the initial evaluation of the Student. *See P-1*, ¶ 6(b); *Findings,* ¶ 7.

11. Assuming *arguendo* that DCPS should have conducted an FBA and developed a BIP as part of the initial IEP, Petitioner has not shown that the Student suffered specific educational harm from that omission between late July and early September, when Petitioner

requested and received authorization to conduct her own independent FBA. Petitioner has not presented evidence demonstrating how the absence of an FBA impacted behavioral support services the Student received or the emotional, social, and behavioral development goals of his IEP during this brief period (about two weeks of the current school year). The subsequent three-month period in which an FBA/BIP has been outstanding is properly attributable to Petitioner's own delay in completing and submitting the independent evaluation to DCPS, as was discussed at the PHC and in the *Prehearing Order*. *See P-1*, p. 3, ¶ 6(b).

12. Under these circumstances, the Hearing Officer concludes that Petitioner has not carried her burden of proving a denial of FAPE in this regard. *Cf. Harris v. District of Columbia,* 561 F. Supp. 2d 63, 68-69 (D.D.C. 2008) (DCPS' failure to act on parent's request for a publicly funded independent FBA constituted a deprivation of FAPE where student "languished for over two years with an IEP that may not be sufficiently tailored to her special needs").

Issue (c): Inappropriate Placement and/or Location for Services

13. Petitioner also alleges that DCPS has denied the Student a FAPE by failing to provide an appropriate educational placement and/or location for services. The complaint alleges that "is unable to provide the type of setting required by the student to address social emotional and/or behavioral needs so as to allow him to access his education"; and that "school personnel have advised parent that they are unable to handle his behaviors and/or address his needs." *P-3,* p. 10. Petitioner contends that the Student requires a full-time, out of general education program to meet his needs. *P-1,* ¶ 6(c).

14. Like the IEP, a child's educational placement must be "reasonably calculated" to confer educational benefit. *Board of Education v. Rowley*, 458 U.S. 176 (1982). The placement also is required to be based upon the child's IEP, and to 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. *See also O.O. v. District of Columbia,* 573 F. Supp. 2d 41, 53 (D.D.C. 2008) ("Designing an appropriate IEP is necessary but not sufficient. DCPS must also implement the IEP, which includes offering placement in a school that can fulfill the requirements set forth in the IEP."); *Roark v. District of Columbia,* 460 F. Supp. 2d 32 (D.D.C. 2006).

15. Based on the evidence presented at hearing, the Hearing Officer concludes that Petitioner has not shown that is an inappropriate placement for the Student, based on the 8/5/09 IEP and the information considered by the MDT at that time. As far as the evidence shows, it is reasonably calculated to provide meaningful educational benefits and is capable of implementing the existing IEP. At the same time, Petitioner has not shown that a full-time out-of-general education placement such as would be appropriate for the Student at this time.[11] Again, a placement and/or location of services determined by the MDT to be appropriate at the beginning of the current school year cannot be shown to be inappropriate based on information assembled four months later (*i.e.,* FBA and teacher reports) that the MDT has not yet had an opportunity to review.

16. When the MDT meets to review this updated information and review/revise the IEP as needed, the team can and should also discuss placement going forward. "In considering the equities, courts [and hearing officers] should generally presume that public-school officials are properly performing their obligations under IDEA." *Forest Grove School District v. T.A.,* No. 08-305, __U.S.__ (June 22, 2009), slip op. at 16. Accordingly, Petitioners' request for an immediate private placement at in advance of such meeting is denied.

C. <u>Appropriate Relief</u>

17. The IDEA authorizes district courts and hearing officers to fashion "appropriate" relief, *e.g.,* 20 U.S.C. §1415(i)(2)(C)(iii), and such authority entails "broad discretion" and implicates "equitable considerations," *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15-16 (1993); *Reid v. District of Columbia*, 401 F.3d 516, 521-23 (D.C. Cir. 2005). In this case, there is no basis to grant the relief requested by Petitioner or to fashion any other equitable relief, as Petitioner has failed to prove any denial of FAPE. The MDT process should continue to move forward. Based on the representations of DCPS' counsel and witnesses, the Hearing Officer expects that DCPS will soon convene an MDT meeting to (i) review the FBA and any other updated information, (ii) review and revise, as appropriate, the Student's current IEP, including consideration of a dedicated aid, and (iii) discuss and determine an appropriate educational placement and/or location of services going forward.

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[11] *See, e.g., School Psychologist Testimony* (indicating belief that a full-time special education program would not be appropriate for the Student because, *inter alia,* he needs to interact with his non-disabled peers due to the nature of his behavioral issues); *P-18* (FBA), p. 11, ¶¶ 6-7 (recommending positive role models and self-monitoring).

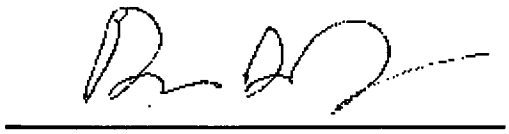
V. ORDER

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 shall be, and hereby are, **DENIED**.
2. Petitioner's Due Process Complaint filed November 17, 2009 shall be, and hereby is, **DISMISSED, With Prejudice;** and
3. This case shall be, and hereby is, **CLOSED.**

IT IS SO ORDERED.

Dated: January 23, 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).