

**DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Student Hearing Office
810 First Street, N.E., 2nd Floor
Washington, DC 20002

OSSE
Student Hearing Office
April 01, 2013

STUDENT, ¹)	
through the Parents,)	
)	Date Issued: April 1, 2013
Petitioners,)	
)	Hearing Officer: Virginia Dietrich
v.)	
)	
District of Columbia Public Schools)	
Respondent.)	
)	
)	

HEARING OFFICER DETERMINATION

Background

Petitioners, the mother and father of eight-year old Student, filed a due process complaint notice on January 16, 2013 alleging that Student had been denied a free appropriate public education (“FAPE”) in violation of the Individuals with Disabilities Education Act (“IDEA”).

Petitioners alleged that since the beginning of the 2012-2013 school year, District of Columbia Public Schools (“DCPS”) had failed to provide Student with an Individualized Education Program (“IEP”) that was sufficient to confer educational benefit. Petitioners specifically alleged that the IEP should have provided Student with 100% specialized instruction outside of general education in a self-contained program for autistic children. Secondly, Petitioners alleged that the related services providers (speech-language and occupational therapy) were not specialized enough; i.e., they should have been trained to provide services to high functioning autistic children. Thirdly, Petitioners alleged that since the beginning of the 2012-2013 school year, Student’s Behavior Intervention Plan (“BIP”) was insufficient to address Student’s autistic behaviors.

DCPS asserted that (1) it had not denied Student a FAPE, (2) Student’s current IEP that prescribes part-time specialized instruction inside of general education and related services both inside and outside of general education, was sufficient to confer educational benefit, (3) the public elementary school that Student attended was able to implement Student’s IEP, and (4) the

¹ Personal identification information is provided in Appendix A.

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complaint was filed prematurely because Petitioners' request for a full-time self-contained autism program that was made on January 8, 2013 was made only eight days prior to the filing of the complaint. DCPS asserted that it had not had sufficient time to respond to Petitioners' request for an increase in services.

Subject Matter Jurisdiction

Subject matter jurisdiction is conferred pursuant to the IDEA, as modified by the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. Section 1400 et. seq.; the implementing regulations for the IDEA, 34 Code of Federal Regulations ("C.F.R.") Part 300; Title V, Chapter E-30, of the District of Columbia Municipal Regulations ("D.C.M.R."); and 38 D.C. Code 2561.03.

Procedural History

The due process complaint was filed on 01/16/13. This Hearing Officer was assigned to the case on 01/16/13. DCPS filed a response to the complaint on 01/25/13. A prehearing conference took place on 02/12/13. A Prehearing Order was issued the same day. Petitioners elected mediation. The complaint was not resolved at the mediation meeting that took place on 02/08/13. DCPS did not waive the resolution meeting. A resolution meeting took place on 02/13/13. The 30-day resolution period expired on 02/15/13, the 45-day timeline to issue a final decision began on 02/16/13, and the final decision was due on 04/01/13.

The due process hearing was a closed hearing that took place on 03/19/13 and 03/22/13. Petitioners were represented by Brian Gruber, Esq. and DCPS was represented by William Jaffe, Esq. Neither party objected to the testimony of witnesses by telephone. Petitioners participated in the hearing in person. Parties elected to discuss settlement at the beginning of the due process hearing, but despite two hours of negotiations, settlement could not be reached. During the recess for settlement negotiations, DCPS offered Petitioners a public school placement that Petitioners toured and rejected.

At the close of the first day of the hearing. Petitioners requested permission for their educational consultant, who qualified as an expert in special education, to remain in the hearing room after her testimony had been completed. Petitioners contended that their educational consultant, who had been working closely with them since January 2012, was most familiar with the facts of the case and would be of prime assistance to them throughout the rest of the hearing. DCPS objected, but only if the expert were to be called as a fact witness rather than an expert witness in Petitioners' rebuttal case. Neither party presented any regulatory or case law in favor of their respective positions. The Hearing Officer took the matter under advisement.

By email dated 03/20/13, the Hearing Officer advised the parties that Petitioners' expert would be allowed to remain in the hearing room. The Hearing Officer used Federal Rules of Evidence Rule 615 by analogy. That rule allows for participation of a witness whose presence is shown by a party to be essential to the presentation of the party's cause. On the morning of the second day of the hearing, the Hearing Officer and Petitioners' Attorney were served with a copy of District of Columbia Public Schools's Opposition To Petitioner's Request To Allow Her

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Expert To Sit In On The Remaining Proceedings. It was filed on 03/22/13 just prior to the start of the hearing. The Hearing Officer ruled on the record that Petitioners' expert would be allowed to remain in the hearing room since her testimony had been concluded. DCPS objected on the basis that a fact witness should not be allowed to remain throughout the hearing and then testify as a fact witness on rebuttal. DCPS' objection was noted for the record. The arguments were academic. Petitioners did not call their expert as a rebuttal witness.

By email dated 03/12/13, parties agreed to extend the disclosure deadline to 03/13/13. Petitioners' disclosures dated 03/12/13, containing a witness list and Exhibits P-1 through P-19, were admitted into evidence without objection.

DCPS' disclosures dated 03/13/13, containing a witness list and Exhibit R-1, was admitted into evidence without objection.

Petitioners presented three witnesses in their case in chief: Educational consultant ("educational consultant") who qualified as an expert in special education with an emphasis on programming, placement and assessment; Petitioner (mother); and Director of Admissions at the nonpublic school where Petitioners requested placement ("Nonpublic School"). Petitioner presented no rebuttal evidence.

DCPS presented three witnesses: Special education teacher; speech-language pathologist; and social worker; all of whom were DCPS employees at the public elementary school ("Public School") that Student attended during the 2011-2012 and 2012-2013 school years.

The two issues to be determined in this Hearing Officer Determination are as follows:

Issue #1 – Whether DCPS denied Student a FAPE by failing to provide Student with an Individualized Education Program ("IEP") since the beginning of the 2012-2013 school year that was reasonably calculated to provide Student with meaningful educational benefit; specifically, (1) the IEP failed to prescribe 100% specialized instruction outside of general education in a self-contained class with a teacher trained in autism; (2) the IEP failed to prescribe that related services of speech-language, occupational therapy and behavior management were to be provided by related service providers trained in servicing high-functioning autism students; and (3) the IEP failed to include an appropriate Behavioral Intervention Plan that addressed Student's autistic behaviors.

Issue #2 – Whether DCPS denied Student a FAPE since the beginning of the 2012-2013 school year by failing to provide Student with a location of services where Student could participate in a full-time, self-contained, integrated autism program.

For relief, Petitioners requested a finding that Student was denied a FAPE; that DCPS amend Student's IEP to reflect 100% specialized instruction outside of general education in a full-time, self-contained, integrated autism program; that DCPS immediately place and fund Student at Nonpublic School; and within 60 calendar days of Student's placement at Nonpublic School, DCPS to develop an appropriate Behavioral Intervention Plan for Student.

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Footnotes hereinafter refer to the testimony of a witness or an exhibit admitted into evidence.

Findings of Fact

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Findings of Fact are as follows:

#1. Student, age eight, is a resident of the District of Columbia. Petitioners are the mother and father of Student.² During the 2011-2012 and 2012-2013 school years, Student attended Public School in the District of Columbia as a special education student with a disability classification of autism spectrum disorder.³

#2. During the first semester of Student's first grade year, Student required intervention in the area of social regulation as he was having difficulty making friends, solving social problems and waiting for his turn. Transitions and change also were problem areas for Student.⁴ In the classroom, Student was distractible and had difficulty attending to group discussion and oral directions.⁵ He often hit, cried and threw things. Student had difficulty negotiating space as evidenced by standing too close to others and bumping into others. Most problematic was Student's playground behavior. He was either not interacting with the other children or in an altercation with them.⁶ Without direct instruction, opportunities for supervised and guided practice, and peer modeling, Student would not learn appropriate interpersonal skills.⁷

#3. In February 2012, Student's standardized cognitive and achievement test scores revealed that Student had an Average nonverbal IQ, High Average and Superior scores in Vocabulary, Superior and High Average scores in Reading, High Average and Average scores in Math, and High Average and Average scores in Written Language.⁸ Student had Average ability in the non-verbal realm and quite significantly delayed oral language skills. During Student's first grade year, Student did well academically.⁹

#4. Petitioners' educational consultant provided information that was used by the IEP Team to add goals and objectives to the IEP and to increase Student's services.¹⁰ On 04/30/12, an IEP was developed for Student that provided for 1 hour/week of specialized instruction in the general education setting, 210 minutes/month of speech-language therapy outside of general education, 120 minutes/month of occupational therapy services outside of general education, 240 minutes/month of behavioral support services within general education, 60 minutes/month of speech-language services within general education, and 60 minutes/month of occupational

² Petitioners.

³ P-2.

⁴ Educational consultant.

⁵ P-3 (page 37 of 130).

⁶ Educational consultant.

⁷ P-3 (page 37 of 130), social worker.

⁸ P-3 (page 36 of 130).

⁹ Educational consultant.

¹⁰ Educational consultant.

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therapy services within general education.¹¹ Petitioners were satisfied with the goals and services in this IEP.¹²

#5. With an IEP that provided Student with services and accommodations that Petitioners were satisfied with, coupled with the support of a calm, well-organized and helpful teacher, Student was academically and behaviorally successful during his 1st grade year. Petitioners were pleased with Student's progress during his 1st grade year.¹³

#6. On or about September 2012, Student began his 2nd grade year at Public School with the same IEP that was in effect during the 2011-2012 school year. As early as September 2012, it became clear that Student was not adjusting well behaviorally in school.¹⁴ Transitions and change in routine were antecedents for escalated agitation and frustration.¹⁵ Student had a different classroom teacher. Student exhibited behaviors that included difficulty with self-regulation, social interaction, behavioral control, transitioning, following directions, sharing, and working independently. Playground activities were the most problematic with Student not knowing how to play with other children, not knowing how to problem solve, running from adults, hitting and taking things from other children.¹⁶ Student's lack of self-regulation, impulsivity and other behavioral problems were consistent with his diagnosis of autism. Although these behaviors could be reduced by appropriate interventions, they could never be completely eliminated.¹⁷

#7. In order to properly address Student's behaviors, a collaborative team met many, many times between September 2012 and January 2013. The collaborative team consisted of Petitioners, Petitioners' educational consultant, Student's special education teacher, the special education coordinator, Student's speech-language pathologist, and the school principal. The collaborative team collected and reviewed data provided by all of the collaborative team members as well as data from private clinicians and assessments.¹⁸

#8. In response to the need to formulate a comprehensive behavior management system to address Student's problem behaviors that arose from autism, DCPS conducted a Functional Behavioral Assessment ("FBA") in September 2012. Based on the results of the FBA, the collaborative team that also included an autism specialist, used a holistic team approach to develop an initial Behavioral Intervention Plan ("BIP").¹⁹ The BIP provided guidance and strategies for behavior interventions.²⁰ The BIP addressed Student's difficulty with transitioning to and from the classroom, task refusal, crying, invading others' body space and playground

¹¹ P-2.

¹² Educational consultant.

¹³ Petitioners, educational consultant.

¹⁴ Educational consultant.

¹⁵ Social worker, educational consultant.

¹⁶ Social worker, educational consultant.

¹⁷ Special education teacher, educational consultant.

¹⁸ Social worker.

¹⁹ Social worker.

²⁰ Educational consultant.

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etiquette.²¹ The BIP included movement breaks, gum chewing, music, fidget toys and different sensory interventions.

#9. The BIP was implemented continuously by Public School beginning in September 2012. Public School undertook a massive data collection effort that began on September 28, 2012. Petitioners' educational consultant was instrumental in defining the terms of the data collection.²² The data collection effort entailed the use of a full-time dedicated data collector who collected data throughout the day and on a daily basis.²³ The data was used by the collaborative team to continually revise Student's BIP many, many times between September 2012 and January 2013.²⁴ All of the many recommendations that were provided to DCPS by the educational consultant from September 2012 through January 2013 were utilized, implemented and/or incorporated into Student's IEP and Behavioral Intervention Plan.²⁵ All strategies and interventions that were included in the BIP were also included on Student's IEP.²⁶

#10. DCPS used other interventions to address Student's behaviors. Student's behavioral support services of 60 minutes/week outside of general education occurred on the playground so that Student would receive direct instruction on proper playground etiquette. The counseling proved to be successful. Student played with other children and the other children didn't avoid him. DCPS also trained staff and Student's classmates on the use of a common vocabulary so that Student would not receive mixed messages through the use of random language. The interventions and accommodations used, per the BIP and the IEP, were successful. Over the 2012-2013 school year, Student showed growth in social, emotional and behavioral development. Student's self-regulation improved. His hitting behaviors decreased. The other students liked Student; they were kind and protective of him.²⁷

#11. Student's behaviors of ripping a girl's dress²⁸ and biting a teacher,²⁹ that occurred during the 2012-2013 school year, were isolated incidents of extreme behaviors. The staff noted that these behaviors occurred in response to change, transitioning or rigidity in the environment. Student's isolated incidents of pinching the music teacher and sticking a pencil in the music teacher's pants leg on the same day, was related to Student's anxiety over upcoming surgery.³⁰ In each instance of extreme behavior, the staff was able to target the antecedents of the behaviors and apply appropriate behavioral interventions.³¹

#12. During the 2012-2013 school year, Student enjoyed making relationships and playing with his friends at school. Student enjoyed being in the classroom and never wanted to

²¹ P-8 (page 87 of 130).

²² Educational consultant.

²³ Social worker.

²⁴ Social worker, P-12.

²⁵ Educational consultant, social worker, special education teacher, speech-language pathologist.

²⁶ Social worker.

²⁷ Social worker.

²⁸ P-10 (p. 101 of 130).

²⁹ Social worker.

³⁰ P-15.

³¹ Social worker, P-10, P-15.

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be excluded from the group.³² Student made progress with the speech-language goals on his IEP. Student's ability to comprehend spoken directions and concepts improved over the 2012-2013 school year. His ability to express himself and hold a conversation improved as well.³³ Student's academic performance was not a concern.³⁴ 60 minutes/week of specialized instruction inside general education was sufficient to address Student's academic needs.³⁵

#13. Student current IEP, amended on 11/27/12, prescribes 60 minutes/week of specialized instruction inside of general education, 210 minutes/month of speech-language pathology services outside of general education, 120 minutes/month of occupational therapy services outside of general education, 240 minutes/month of behavioral support services inside of general education, 60 minutes/week of speech-language pathology services inside of general education and 60 minutes/week of occupational therapy services inside of general education. This is the same level of services as Student's prior IEP. Student's IEP also prescribes consultation services in occupational therapy, behavioral support, speech-language pathology and specialized instruction. Student's IEP requires assistive technology that consists of an Apple iPad 2 for learning and studying.³⁶ The IEP includes very detailed present levels of academic achievement and functional performance, baselines and goals. The goals are appropriate.³⁷ Petitioners' educational consultant drafted the IEP goals meticulously, provided them to DCPS, and they were incorporated into Student's IEP without hesitation by DCPS. DCPS never rejected any of the IEP or BIP recommendations made by Petitioners' educational consultant.³⁸

#14. The 11/27/12 Amended IEP also provides for the following aids and services in the general and special education environment: use of a visual schedule; movement and sensory breaks; sensory diet; peer models; break down of information; chunk information into manageable parts; redirect as needed; use of a visual timer; use of concrete choices; use of a positive behavior reinforcement system; check in frequently; remind about personal space; use of visuals across all academic areas; use of manipulatives across all content areas; use of a communication log between home and school; provide with advance notice of schedule and staff changes; repetition of information/check for understanding; teach social skills; teach problem solving, coping, calming (to include self brushing of arms), deep pressure (to include use of steam roller using a therapy ball while Student is on stomach, body sock, and wall push-ups), and self-monitoring strategies; gain Student's attention before giving directions; and gestural and visual prompts. Per the IEP, the Multidisciplinary Team was required to collaborate for 60 minutes/month to discuss the implementation of Student's IEP across all areas of concern in the general education environment.³⁹

#15. As of 11/27/12, Student's communication deficits in receptive and expressive language as well as social pragmatic language adversely impacted his performance in the general education setting in the following areas: comprehension of information and directions presented

³² Social worker, special education teacher.

³³ Speech-language pathologist.

³⁴ Social worker, special education teacher, educational consultant.

³⁵ Special education teacher.

³⁶ P-2.

³⁷ Educational consultant.

³⁸ Social worker, educational consultant.

³⁹ P-2.

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verbally, answering questions, inferring meaning, verbally expressing himself adequately, and maintaining appropriate peer relationships. The IEP had an annual goal that addressed the comprehension and use of new social rules when engaging with peers, given direct instruction, opportunities for supervised and guided practice, adult proximity, and visual supports. Student benefitted from the use of pictures/visuals and peer modeling.⁴⁰

#16. The first time that Petitioners expressed dissatisfaction with Student's school program was at an IEP meeting on 01/08/13. At that time, the team reviewed the BIP, discussed Student's progress, and Petitioners requested a different school placement.⁴¹ Eight days later, the due process complaint was filed.

Conclusions of Law

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

The overall purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 34 C.F.R. 300.1.

"Based solely upon 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 that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE." 5 D.C.M.R. E-3030.3. The burden of proof in an administrative hearing is properly placed upon the party seeking relief. *Schaffer v. Weast*, 44 IDELR 150 (2005).

A hearing officer's determination of whether a child received a FAPE must be based on substantive grounds. 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. 34 C.F.R. 300.513(a).

The first issue to be determined is whether DCPS denied Student a FAPE by failing to provide Student with an Individualized Education Program ("IEP") since the beginning of the 2012-2013 school year that was reasonably calculated to provide Student with meaningful educational benefit; specifically, (1) the IEP failed to prescribe 100% specialized instruction outside of general education in a self-contained class with a teacher trained in autism; (2) the IEP failed to prescribe that related services of speech-language, occupational therapy and behavior management were to be provided by related service providers trained in servicing high-functioning autism students; and (3) the IEP failed to include an appropriate Behavioral Intervention Plan that addressed Student's autistic behaviors.

⁴⁰ P-2.

⁴¹ Educational consultant, Petitioners.

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First of all, the Hearing Officer must determine whether the procedural requirements of the IDEA have been followed. Second, the Hearing Officer must determine whether the IEP developed under those procedures is “reasonably calculated to enable the child to receive educational benefits.” *Board of Education of Hendrick Hudson Central School District, Westchester County, et. al. vs. Rowley*, 458 U.S. 176 (1982). If the Hearing Officer finds that both requirements are satisfied, then the government “has complied with the obligations imposed by Congress and the courts can require no more.” *Id.* The IDEA’s requirement of a “free appropriate public education” is satisfied when the State provides personalized instruction with sufficient support services to permit the handicapped child to benefit educationally from that instruction. *Id.*

The IDEA also requires each public agency to ensure that: (1) to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and (2) 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. 34 C.F.R. 300.114.

An IEP is a written statement for each child with a disability that is developed, reviewed and revised by the IEP Team. The IEP must contain a statement of the special education and related services and supplementary aids and services, and a statement of the program modifications or supports for school personnel that will be provided to enable the child (1) to advance appropriately toward attaining the annual goals, (2) to be involved in and make progress in the general education curriculum, and (3) to be educated and participate with other children with disabilities and nondisabled children. 34 C.F.R. 300.320, 300.324.

Petitioners alleged that Student’s IEP was insufficient to confer educational benefit during the 2012-2013 school year. Petitioners also alleged that Student needed an IEP with full-time specialized instruction outside of general education in a self-contained autism program in order to receive educational benefit. The evidence proved otherwise.

Student was a high functioning autistic child with academic achievement ability that was consistently in the Average to Superior range. Student had no problems with academics during the 2012-2013 school year. The testimony of the special education teacher that 60 minutes/week of specialized instruction inside of general education was sufficient to meet Student’s educational needs, was credible and credited. The special education teacher was the person with the most direct knowledge of what Student’s educational needs were. That level of instruction was sufficient to confer educational benefit.

The Hearing Officer’s conclusion that Student did not require more than 1 hour/week of specialized instruction to meet Student’s academic needs was corroborated by other evidence in the record. Petitioners were satisfied with the IEP goals that had been drafted primarily by Petitioners’ educational consultant. There was no dispute among the witnesses that Student had no problems with academics. There was no evidence in the record that Student needed additional specialized instruction either inside or outside of the general education setting in order

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to access the general education curriculum. Petitioners failed to meet their burden of proof that Student required 100% specialized instruction outside of general education in order to receive meaningful educational benefit.

Petitioners also failed to prove that Student required related service providers who were specially trained in servicing high functioning autism students in order for Student to receive educational benefit. The credible and uncontroverted testimony of the DCPS speech-language pathologist was that Student was making progress towards his speech-language goals. Student's ability to comprehend spoken directions and concepts had improved. Student's ability to express himself and hold a conversation had improved as well. The speech-language pathologist utilized Student's behavioral intervention plan to address any behavior problems exhibited by Student. Petitioners failed to provide *any* evidence that the speech-language service provider was incapable of delivering services in a way that conferred an educational benefit to Student.

Petitioners failed to provide *any* evidence that the occupational therapy services provided by DCPS during the 2012-2013 school year were insufficient to confer educational benefit.

Although the services in Student's IEP did not change from the 2011-2012 school year to the 2012-2013 school year, it became apparent at the start of the 2012-2013 school year that Student's lack of self-regulation and Student's social skills were problematic both in the classroom and on the playground. In response to Student's behavioral problems, DCPS took a series of steps, all of which were designed to help Student achieve behavioral success. The interventions were successful.

The BIP is a vehicle that provides a systematic way of addressing Student's autistic behaviors. The testimony of the school social worker that a BIP, based on a recently completed Functional Behavioral Assessment, was developed and finalized in September 2012, was more credible than the testimony of the educational consultant that DCPS never produced a finalized BIP. From September 2012 through January 2013, DCPS spearheaded an extensive behavior data collection effort that included data collection of Student all day on a daily basis. A large collaborative team worked on the development and revisions to the BIP. That team included an autism specialist as well as Petitioners' educational consultant who qualified as an expert in special education.

DCPS worked intensively with Petitioners and Petitioners' educational consultant to collect relevant data that was used to fine-tune the BIP. The IEP team met many, many times from September 2012 – January 2013 to review data and make revisions to the IEP, based on the newly collected data. Petitioners' educational consultant played a vital role in defining the terms of data collection, analyzing the data with the team, and making modifications to the BIP. With every meeting, there were revisions to the BIP and the revised BIP was always implemented by DCPS. DCPS also conducted training for Student's service providers as well as the members of Student's class, so that all relevant staff and students would have a common vocabulary that Student was familiar with, could understand and could easily respond to.

Student made social, emotional and behavioral progress during the 2012-2013 school year. The IEP goals were appropriate. The strategies and interventions used by Public School

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were successful. Student was able to play with other children on the playground. The other children liked Student and looked out for him. In order to address Student's serious receptive language deficits, the school social worker taught staff and children a common vocabulary for speaking with Student. Student was able to hold a conversation. And, in accordance with one of the goals in Student's IEP, Student was able to utilize nondisabled peer modeling to improve his behavior.

Although Student did bite and hit on very limited occasions, these instances were the exception rather than the rule. Appropriate behavioral interventions were applied. The evidence was clear that although Student's autistic behaviors could be reduced through appropriate interventions, the behaviors could never be completely eliminated. The Hearing Officer concludes that Public School did an exceptional job of addressing Student's autistic behaviors so that Student could remain in the least restrictive environment where Student could receive educational benefit.

Student received educational benefit with his IEP that prescribed 60 minutes/week of specialized instruction inside of general education. There was insufficient evidence in the record for the Hearing Officer to conclude that Student required more specialized instruction. There was no evidence in the record that Student required related service providers with training in providing services to high functioning autistic children in order for Student to receive educational benefit. The BIP was sufficient and appropriate to address Student's autistic behaviors.

If Petitioners wanted a different program than what was offered at Public School, they should have worked with DCPS to find a solution rather than file a complaint before DCPS had an opportunity to respond. Up until the time the complaint was filed, DCPS had been very, very cooperative in working with Petitioners to meet Student's educational needs. A jump from 60 minutes/week of specialized instruction inside of general education to 100% specialized instruction outside of general education in a self contained autism program is not supported by the facts of this case. Petitioners failed to meet their burden of proof on the entirety of Issue #1.

The second issue to be determined is whether DCPS denied Student a FAPE since the beginning of the 2012-2013 school year by failing to provide Student with a location of services where Student could participate in a full-time, self-contained, integrated autism program.

Free appropriate public education or FAPE means special education and related services that are provided at public expense, meet the standards of the State Education Agency, include an appropriate school and are provided in conformity with the IEP. 34 C.F.R. 300.17.

Petitioners failed to meet their burden of proof on Issue #1. Student did not require an IEP that provided for full-time specialized instruction outside of general education in a self-contained, integrated autism program. Consequently, Petitioners failed to meet their burden of proof on Issue #2. DCPS did not deny Student a FAPE by failing to provide Student with a location of services where Student could participate in a full-time, self-contained, integrated autism program.

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ORDER

All requested relief is denied. The complaint is **DISMISSED** with prejudice.

IT IS SO ORDERED.

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state 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 Hearing Officer Determination in accordance with 20 U.S.C. §1415(i).

Date: April 1, 2013

/s/ Virginia A. Dietrich
Hearing Officer