

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 1525 Sherman St., 4 th Floor, Denver, CO 80203	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>[Student], a minor, by and through his Parents, [Father] and [Mother], Complainants,</p> <p>vs.</p> <p>BRIGHTON SCHOOL DISTRICT 27J, Respondent.</p>	
AGENCY DECISION	

On November 1, 2013, the Colorado Department of Education, Exceptional Student Services Unit, received a due process complaint filed by [Father] and [Mother] (“Complainants”), who are the parents of [Student], a minor. The complaint alleges that Brighton School District 27J (“District”) failed to provide a free and appropriate public education (“FAPE”) under the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1415(f), its implementing regulations at 34 C.F.R. § 300.511, and Colorado’s Exceptional Children’s Educational Act (“ECEA”), 1 CCR 301-8.

The complaint was forwarded to the Office of Administrative Courts and assigned to Administrative Law Judge (ALJ) Laura A. Broniak for an impartial due process hearing. A hearing was held in Denver, Colorado on February 26 and 27, 2014.¹ Complainants represented themselves and the interests of [Student]. The District was represented by Stuart Stuller, Esq. At hearing, the ALJ admitted into evidence the District’s exhibits A through G. The proceedings were recorded and transcribed by Verbatim Reporting and Transcription.

ISSUES PRESENTED FOR DETERMINATION

The Complainant’s complaint contained several allegations many of which fall outside the scope of the IDEA. The District filed a Notice of Insufficiency and on December 6, 2013, ALJ Michelle Norcross issued an Order Re: Notice of Insufficiency. The issues for hearing were narrowed and thus the ALJ must determine whether the District failed to provide FAPE by failing to implement [Student]’s most recent Individual Education Program (“IEP”); whether the District erroneously failed to conduct a Functional Behavior Assessment (“FBA”) and/or develop a behavior intervention plan (“BIP”); and whether the District failed to provide [Student]’s parents with supporting

¹ The parties selected February 26-28, 2014 as the hearing dates and the decision deadline was extended to March 14, 2014.

documentation and data related to the measurable goals in the IEP. The Complainants propose that if the ALJ determines that violations have occurred, the District should be ordered to strictly comply with the IEP and to conduct a FBA.

FINDINGS OF FACT:

Based on the evidence in the record, the ALJ finds as fact:

1. [Student] is presently [age] years old ([D.O.B.]) and enrolled in the seventh grade at [Middle School]. He resides with his parents and [] siblings within the District.

2. During his fourth grade year, [Student] was identified as a student with a disability having been diagnosed with Attention Deficit Hyperactivity Disorder (“ADHD”). Under Colorado regulations, ADHD is categorized as a physical disability. [Student] is eligible for services under the IDEA.

3. On February 21, 2013, [Student]’s IEP team, which included his parents and his grandfather, met to determine his present levels of academic achievement and functional performance. They also set goals and objectives, determined appropriate accommodations in order for [Student] to meet his goals and objectives, and determined the method for measuring [Student]’s progress toward meeting his goals and objectives. The IEP team specifically indicated that no standards needed modification in order for [Student] to access the general curriculum or to make effective progress.

4. The February 21, 2013 IEP identified two annual goals and objectives. The first is in the area of written communication. [Student]’s goal in that area is to improve his writing conventions by using correct capitalization and punctuation in his writing and maintain an 80% on writing assignments across the curriculum. The written communication goal is to be measured by student work samples.

5. [Student]’s second goal is in the area of organization. [Student]’s goal is to report to class prepared 80% of the time, which will be measured by teacher observation.

6. The IEP provides that [Student]’s progress toward each goal will be provided by report card at the end of each quarter.

7. During the IEP team meeting on February 21, 2013, the team identified that [Student]’s strengths are: peer relationships, respectfulness toward adults, positive attitude and showing excitement for learning. The team identified that [Student]’s areas of needed growth were: becoming easily distracted by peers at times and recently showing minimal academic effort. [Student]’s parents, grandfather and teachers expressed concerns regarding [Student]’s poor effort and whether he was lacking focus or just displaying poor effort.

8. The IEP team determined that due to his ADHD, [Student] needs certain accommodations in order make effective progress. The accommodations are:

- Abbreviated assignments
- Extended time on assessments and assignments, as needed
- [Student] will attempt the original assessment provided to his peers. When offered reassessment opportunity he will receive differentiation in format, to include: oral response, projects, or other format as appropriate for the topic
- Flexible breaks during scheduled class times
- Flexible breaks after transitions to decompress, to aid in adjusting to new setting and activity
- Allow an early three minute release from class per [Student's] request; to help support transition between classes
- Preferential seating, at the teachers' discretion in order to reduce distractions
- [Student] will be allowed to stand when completing work, self-directed as needed
- Teachers will provide copies of notes to reduce visual tension
- [Student] will be allowed self-directed eye breaks, to include: closing eyes, resting head on arm with head down, or covering closed eyes with palms of hands
- Teachers will encourage [Student] to wear his prescription glasses on a full time basis
- Frequent checks for understanding
- Graphic organizers to assist in organizing thoughts when writing or planning projects
- Chunk information when providing instruction, break down multi-step tasks
- Provide graph paper to support visual organization for math, as needed
- Provide visual/physical cues to reinforce key concepts to include: highlighting, color coding, touching on shoulder, or a tap on the desk
- [Student] will utilize a planner to record homework on a daily basis; he will receive support with this as needed.
- Teachers will support the use of a binder which accommodates homework folder, assignments, and the planner always being kept together
- [Student] will be provided a laminated checklist in his locker and binder to help remind him of what he needs to bring to class.

9. The IEP also requires that [Student] receive specialized literacy instruction and indirect support in the form of consultation with [Student], his parents and teachers.

10. In February 2013, the IEP team determined that [Student] did not exhibit behaviors that would warrant a BIP. All of [Student]'s teachers felt that [Student]'s behaviors are typical of a middle school student and not interfering with [Student]'s learning or other students' learning.

11.[Father] agreed that [Student] did not have behavior problems in February 2013.

12.[Special Education Teacher] is a special education teacher at [Middle School]. She presently provides specialized literacy instruction to [Student]. She also provides indirect support to [Student] in the form of consultation with [Student], his parents and teachers.

13.Prior to the beginning of the 2013-2014 school year, [Special Education Teacher] met with [Student]’s teachers to familiarize them with [Student]’s IEP, specifically his accommodations.

14.Approximately nine days into the 2013-2014 school year, [Mother] sent an e-mail message to the principal at [Middle School]. She felt that [Student]’s teachers were not following his IEP, particularly the accommodations. [Mother] maintains that [Student] had regressed within nine days significantly or “back to square one” with the new staff at [Middle School].

15.On September 10, 2013, the parents met with [Special Education Teacher] and other teachers. During this meeting, the parents and [Special Education Teacher] agreed to modify the method of implementing some of the accommodations in [Student]’s IEP.

16.Specifically, [Student] was to complete any “homework” in his advisory class with [Special Education Teacher]’s assistance rather than at home. [Student] discontinued using the laminated checklist in his locker. Instead, if [Student] failed to come to class prepared and needed to return to his locker to retrieve materials, the teachers were supposed to sign a tracking sheet in order to document his level of preparedness. [Student] was responsible for keeping the tracking sheet in his binder.

17.The IEP was not amended in any way as a result of the September 10, 2013 meeting. [Student]’s goals and objectives did not change. Only the method of tracking his level of preparedness was modified and [Student]’s use of the homework planner also became unnecessary.

18.The IEP team met on September 24, 2013 for the purposes of creating a new IEP, but the IEP meeting was not completed.

19.On October 1, 2013, the District notified [Mother] that it was proposing a full re-evaluation for [Student] and notices would be issued in the near future. The District informed [Mother] that it would be involving its legal counsel in the IEP development process in order to address her concerns. This IEP process has never been completed for reasons not developed by the record. It is also unclear whether [Student]’s parents provided consent for the proposed evaluations. The District would have conducted a FBA as part of [Student]’s re-evaluation had the process continued.

20. [Student] continued to attend school and receive the services required by his IEP. He received specialized literacy instruction in the Language Arts Learning Lab in the fall of 2013. At the time of the hearing, [Special Education Teacher] was providing specialized literacy instruction to [Student].

21. There is no credible evidence that the District is not providing [Student] with the specialized literacy instruction or the indirect support, both of which are required by the IEP.

22. [Student]'s progress report dated October 17, 2013 reflects that he averaged 69.2% on his writing assignments during the first quarter of the 2013-2014 school year. He also came to class prepared 98% of the time based on the tracking sheets the teachers were utilizing.

23. The Complainants believe that the teachers were not accurately tracking whether [Student] was prepared 80% of the time. [Student] believes he reports to class prepared about 50% of the time, and that his teachers do not accurately track whether or not he is prepared. [Student] recalled that a teacher did not sign his sheet when he needed to leave the class to retrieve materials from his locker. He could not cite any additional more specific examples.

24. During the first quarter, [Student] received passing grades as follows: C- in Language Arts; D in Language Arts Learning Lab; C- in Math; A+ in Physical Education; B- in Science; and B in Social Studies.

25. The Complainants filed their due process complaint on November 1, 2013.

26. On November 11, 2013, [Student]'s parents removed him from school for various reasons. He did not return to school until January 2014. Teachers sent work home to [Student] for him to complete, but he did not complete or return any of it to his teachers. The parents claim [Student] did not complete the work because he was only required to complete homework at school per the decision made at the September 10, 2013 meeting.

27. As the teachers explained, they sent work home for [Student] to complete to prevent him from regressing academically while he was out of school. The parents' idea that [Student] should not have had to complete the work because he was only supposed to work on homework at school defies logic.

28. [Student]'s progress report dated December 17, 2013 reflects that [Student]'s writing improved to 87.8% during the second quarter from October 14, 2013 through November 8, 2013. He also reported to class prepared 98% of the time. [Student] did not attend school after November 8, 2013.

29. [Student] failed every class during the second term because he did not attend school and did not complete or return any of the work teachers sent home to help keep him current academically.

30. [Student]'s progress report dated February 19, 2014 reflects that he met his goals for the period of January 7, 2014 through February 13, 2014. [Student] averaged scores of 84% on his writing assignments and he reported to class prepared 98% of the time.

31. [Student]'s third quarter midterm progress report reflected the following grades: C in Computer Apps; C- in Language Arts; B- in Math; A in Physical Education; F in Science; and B in Social Studies.

32. [Student]'s progress reports reflect that he achieved his IEP goals.

33. The Complainants believe that the District manipulated the data to show more progress, particularly in the area of organization, than [Student] actually made. This assertion is based on the belief that the teachers failed to sign the tracking sheet each time [Student] was unprepared for class. The ALJ finds this claim unsupported. [Student] could not cite to any specific time when a teacher failed to sign his tracking sheet.

34. The Complainants did not assert that the District manipulated the data used to measure [Student]'s progress toward his writing goal.

35. The District sent all of [Student]'s progress reports and report cards to his parents in accordance with the IEP. The parents did not assert that they never received progress reports or report cards.

36. The Complainants also believe that the District staff has failed to provide the accommodations contained in [Student]'s IEP and re-stated in paragraph 8 above. The ALJ also finds this claim unsupported.

37. The Complainants assert that [Student]'s teachers have failed to allow him to take breaks as needed. As an example, the parents claim that giving [Student] in an "in class" break is in violation of his IEP. There is no persuasive or credible evidence to support this claim. The IEP states that [Student] may take breaks as needed. It does not specify the location of the break. The ALJ finds that an "in-class" break is not unreasonable and does not violate the IEP.

38. [Student]'s IEP provides several accommodations to assist [Student] with organization. One such accommodation is that [Student] will utilize a planner to record homework on a daily basis and receive support with this as needed. The Complainants maintain that this accommodation requires that [Student]'s teachers be responsible for ensuring that they sign [Student]'s planner before he leaves the classroom. The Complainants assert that each time [Student]'s teachers failed to sign his planner they

have failed to implement his IEP. Again, this claim is unsupported. The IEP does not specify that a teacher must sign [Student]'s planner on a daily basis nor does it put the burden on the teachers to pursue [Student] to ensure they sign his planner. Further, the homework planner became irrelevant once [Student] began completing homework at school rather than at home.

39. The Complainants assert that teachers did not permit [Student] to take self-directed eye breaks as permitted by the IEP. [Student] claims he has gotten into trouble for putting his head down on the desk. He recalled one or two incidents, one of which he admitted he had put his head down due to embarrassment not because he needed to rest his eyes.

40. [Student] also claimed that not all of his teachers gave him abbreviated assignments but he provided no foundation for his claim. The record lacks any evidence as to the assignments [Student] received versus the assignments other students received.

41. [Student] also recalled that his science teacher, [Science Teacher], would not allow him to stand up in class. This incident is described in paragraph 44 below.

42. The Complainants claim that [Student]'s teachers did not encourage him to wear his prescription glasses. [Student] admitted that he does not like wearing his glasses. The District's contact log also documents numerous incidents when [Student]'s teachers asked him about his glasses and he almost always responded that he had failed to bring them to school.

43. The Complainants also assert that [Student]'s negative behaviors increased at the beginning of the 2013-2014 school year and that he has had more contact with school administrators than in the past. The Complainants believe that [Student]'s behaviors warrant a FBA.

44. On August 15, 2013, five days into the school year, [Student]'s science teacher, [Science Teacher], documented an incident when [Student] behaved defiantly by continuing to talk to other students and refusing to get settled and engage. [Science Teacher] documented that [Student] refused to sit down when asked and he responded by saying that he "always gets to stand up when he wants to." [Science Teacher] and [Student] briefly discussed his behavior in the hallway and resolved the issue. [Student] returned to the classroom and got on task. Since then, [Science Teacher] has not observed [Student] engage in negative behaviors.

45. [Science Teacher]'s impressions of [Student] were positive. In her class, [Student] is enthusiastic and quick to learn the science concepts though he struggles with conveying his understanding in writing. She also noted that [Student] advocates for himself and is self-monitoring. For instance, [Student] realized that if he stood up in the front of the class he would talk to the other students so he positioned himself in the back of the classroom so he would avoid talking during class.

46. [Science Teacher] recalled that [Student] rarely, if ever, reported to her class unprepared. She allows students to use pencils she keeps in her classroom. Thus if [Student] ever reported to class without a pencil, she would not have documented it.

47. As of the date of the hearing, [Student]'s grade in science was a D, which [Science Teacher] attributes to his lengthy absence from school from November 2013 to January 2014 and a poor grade on a recent quiz. [Science Teacher] offered [Student] the opportunity to revise his answers on the quiz but he declined. [Student] had also just retaken a test which may help to improve his grade.

48. [Learning Lab Teacher] is [Student]'s language arts learning lab teacher. She has a master's degree in special education. The 2013-2014 school year is the second year she has taught [Student]. She did not observe that [Student] had any behavior problems during the 2012-2013 school year.

49. At the beginning of the 2013-2014 school year, [Learning Lab Teacher] noticed that [Student] began exhibiting defiant behavior, which is not a characteristic of ADHD, in her opinion. She does not feel [Student]'s defiance warrants a FBA.

50. [Learning Lab Teacher] did not feel that [Student]'s behavior, although it disrupted the classroom, was impacting his education or the education of others. She admitted she had sent [Student] to the office to complete an assignment because he was being disruptive but she does not attribute his behaviors to his ADHD diagnosis.

51. [Social Studies Teacher] is [Student]'s social studies teacher. She did not observe [Student] come to class unprepared very often nor did [Student] display negative behaviors in her classroom.

52. [Math Teacher] is [Student]'s math teacher. She did not observe any atypical negative behavior from [Student]. He does well in her class and is usually prepared. She has offered abbreviated assignments when appropriate.

53. [Language Arts Teacher] is [Student]'s language arts teacher. [Student] meets grade level expectations in her class. He attempts full level work, which is modified as necessary for [Student]. She did not observe any significant negative behavior from [Student].

54. [Dean of Students] is the Dean of Students at [Middle School]. Her job duties include handling students' disciplinary issues. She has a master's degree in special education and has significant experience with ADHD students. She explained that typical ADHD students will avoid tasks they cannot perform but they are not usually defiant. Defiance, in her opinion, is not a characteristic of ADHD.

55. [Dean of Students] believes that [Student]'s behaviors are in the nature of defiance and refusal which are not typical ADHD behaviors. Because [Student] has

shown academic growth and because his behaviors are minimal, [Dean of Students] concluded that [Student]'s behaviors have not impacted his education or the education of others.

56. The school's contact log documents a few behavioral issues such as [Student] not wearing shoes at school, slamming another student's head into a wall or not paying food he took from the cafeteria. The parents seemed to indicate they felt this behavior was concerning and deserving of a FBA. At the same time, the parents explained the behavior away as if it were not truly concerning. For instance, [Student] told them his feet were bothering him to explain not wearing shoes. [Student] told them he and the other student, who is his friend, were engaging in horseplay and that he did not intentionally slam the student's head into the wall. [Student] also told his parents that he thought the fruit he took from the cafeteria was included in his meal. [Student]'s parents accepted his explanations for these behaviors as accurate and seemed to believe that the behaviors were not as concerning as they initially thought.

57. All of [Student]'s teachers feel he is capable of meeting general education standards with supports such as the accommodations provided in his IEP. At hearing, credible testimony from [Student]'s teachers and [Dean of Students] established that his behavior is indistinguishable to other seventh graders and that he generally meets behavior expectations in the classroom. No credible or persuasive evidence refuted the testimony of [Student]'s teachers or [Dean of Students] concerning his behaviors.

58. None of the teachers believed that any of [Student]'s behaviors warranted a FBA, however, it appears that the District was willing to conduct one in October 2013 had the IEP re-evaluation not been prematurely terminated.

59. [Mother] admitted that any growth [Student] has made is due to the accommodations in his IEP. Her admission implies that the District has accommodated [Student] in accordance with his IEP.

60. [Student]'s deficits are mild to moderate. He does not suffer from any cognitive impairment.

61. [Student] testified during the hearing. He was articulate and focused. He was able to focus on questions and provided appropriate answers during his direct and cross examinations which lasted approximately two hours. He did not request any breaks nor did he stand up for a break, rest his head or his eyes. He did not wear his glasses.

62. There is no credible or persuasive evidence that the District is failing to implement [Student]'s IEP, or that it erroneously determined that [Student]'s behavior did not require a FBA. Further, the District provided the parents with progress reports and report cards as required. There is no persuasive or credible evidence that the objective data used to measure [Student]'s goals was manipulated as claimed by the Complainants.

DISCUSSION

General Provisions Pertaining to FAPE

The IDEA was enacted to ensure that all children with disabilities have access to “a free appropriate public education that emphasizes special education and related services designed to meet their unique needs.” 20 U.S.C. § 1400(d)(1)(A). A FAPE is defined as “special education and related services . . . provided in conformity with an individualized education program.” 20 U.S.C. § 1401(9). In *Board of Education v. Rowley*, 458 U.S. 176 (1982), the United States Supreme Court examined the issue of what is meant by the phrase “free appropriate public education”.

In *Rowley*, the Court held that the statutory definition of FAPE requires states to provide each child with specially designed instruction and expressly requires the provision of such supportive services as may be required to assist a handicapped child to benefit from special education. *Id.* at 201. The Court also held that the requirement that a state provide specialized educational services to disabled children generates no additional requirement that the services so provided be sufficient to maximize each child’s potential commensurate with the opportunity provided other children; the school district’s obligation extends only so far as to provide “a basic floor of opportunity consisting of specialized instruction and related services that are individually designed to accord some educational benefit.” *Id.* at 200.

To determine whether the District has complied with the requirement to provide FAPE, the United States Supreme Court established the following two-prong test:

First, has the State complied with the procedures set forth in the Act? And second, is the Individualized Education Program developed through the Act’s procedures reasonably calculated to enable the child to receive educational benefit?

Rowley, 458 U.S. at 206-7.

The IEP is the basic mechanism through which the school district’s obligation of providing a FAPE is achieved. *Murray by & Through Murray v. Montrose County Sch. Dist. RE-1J*, 51 F.3d 921, 925 (10th Cir. 1995). The local school district is required to develop, implement and annually revise an IEP that is calculated to meet the student’s specific needs and educate that student in the “least restrictive environment”, meaning that, “[t]o the maximum extent appropriate,” disabled children should be educated in public school classrooms alongside children who are not disabled.” 20 U.S.C. §§ 1414(d) and 1412(a)(5)(A).

A parent or public agency may file a due process complaint relating to, among other things, the provision of FAPE. Under the IDEA, a complainant has the burden of proving by a preponderance of the evidence that the District failed to provide the

student with a FAPE, in the least restrictive environment. The controlling decision in the Tenth Circuit regarding the provision of FAPE is *Thompson R2-J Sch. Dist. V. Luke*, 540 F.3d 1143, 1148 (10th Cir. 2008). In *Thompson*, the Court found that a school district had provided a disabled student with a FAPE when demonstrable evidence from the student's educational records established that the student made some measureable progress on the goals and objectives in his IEP. *Id* at 1148. Thus, the standard for determining whether the District provided [Student] with a FAPE is whether he made some measureable progress on the goals and objectives in his IEP as demonstrated in his educational records, not whether he achieved his potential. *See, Thompson* at 1148. (Congress simply did not guarantee children "a potential-maximizing education," *Thompson*, 540 F.3d at FN 11.) To comply with the requirements of the IDEA, the District is not required to provide services sufficient to maximize each child's potential. *O'Toole v. Olathe Dist. School*, 144 F.3d 692, 697-98 (10th Cir. 1998). The IDEA does not guarantee outcomes and an IEP does not have to provide the best conceivable education. An IEP meets the requirements of the IDEA if it is reasonably calculated to enable the child to receive educational benefit by furnishing a basic opportunity for an individually structured education. *Rowley*, 458 U.S. at 206-7.

In this case, the Complainants have the burden of proving that the District failed to implement [Student]'s IEP, erroneously failed to conduct a FBA, and failed to provide to the parents documentation and data related to [Student]'s IEP goals, and that such failures resulted in a denial of FAPE to [Student]. For the reasons set forth below, the Complainants have failed to meet their burden.

The IEP and its Implementation

In order to comply with the requirements of the IDEA, a school district shall insure that each handicapped child's educational placement: Is determined at least annually; is based on his or her IEP; and, is as close as possible to the child's home. 20 U.S.C. § 1412(5)(B). The IEP consists of a written document containing:

- (A) A statement of the present levels of educational performance of such child;
- (B) A statement of annual goals, including short-term instructional objectives;
- (C) A statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs;
- (D) The projected date for initiation and anticipated duration of such services; and
- (E) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.

20 U.S.C. § 1401(a)(19).

The February 21, 2013 IEP contains detailed descriptions of [Student]'s present levels of educational performance, statements of annual goals and objectives with evaluation procedures and schedules for determining progress towards those goals and objectives, and a description of how supports and services are to be provided to [Student] during the day, week or month. The IDEA does not guarantee outcomes and an IEP does not have to provide the best conceivable education. An IEP meets the requirements of the IDEA if it is reasonably calculated to enable the child to receive educational benefit by furnishing a basic opportunity for an individually structured education. *Rowley*, 458 U.S. at 206-7. The ALJ concludes that the District has complied with all the IDEA's procedural requirements in preparing [Student]'s IEP, and that [Student]'s IEP is reasonably calculated to enable [Student] to receive an educational benefit.

A school district violates the IDEA if it materially fails to implement a child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP. *Van Duyn v. Baker School Dist.* (9th Cir. 2007) 502 F.3d 811, 815. The Complainants allege that the District committed violations of [Student]'s IEP by not implementing his accommodations with fidelity 100% of the time. The ALJ acknowledges that the District staff did not implement [Student]'s IEP accommodations with perfection; however, the few incidents described by the Complainants do not constitute a material failure to implement [Student]'s IEP. This is especially true because [Student] made progress and achieved his IEP goals. As such, the Complainants have failed to establish that [Student] was denied a FAPE based on any failure on the part of the District staff to implement [Student]'s IEP.

Functional Behavioral Assessment

The IDEA provides that the IEP team shall 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. 20 U.S.C. § 1414(d)(3)(B)(i). "Failure to conduct [a functional behavior assessment], therefore, does not render an IEP legally inadequate under the IDEA so long as the IEP adequately identifies a student's behavioral impediments and implements strategies to address that behavior." *M.W. ex rel. S.W. v. N.Y.C. Dep't of Educ.*, 725 F.3d 131, 140 (2d Cir. 2013).

When behavior does impede learning, the IDEA does not dictate the types of behavioral interventions, supports or other strategies a district must implement to address behavior. Rather, the IDEA merely requires that an IEP team must consider the use of positive behavioral interventions, supports and other strategies.

In this case, [Student]'s behavioral impediments related to his ADHD diagnosis were adequately addressed in his accommodations which included flexible breaks, early release times, permission to stand when completing tasks, allowing abbreviated

assignments and extended time on assessments and assignments. The Complainants have failed to establish that these strategies inadequately addressed [Student]'s ADHD-related behaviors. In addition, the credible testimony from the District staff demonstrated that [Student]'s behaviors are typical and consistent with the behaviors of other seventh grade students. Accordingly, the Complainants have failed to establish that a FBA or BIP is necessary to allow [Student] to make some progress toward the goals and objectives in his IEP. [Student] has actually made progress and achieved his IEP goals. Thus, his IEP is reasonably calculated to enable him to receive educational benefit and provides a FAPE. The Complainants have failed to establish a violation of the IDEA on this basis.

Failure to Provide Documentation and Data

The Complainants alleged that the District has failed to provide them with documentation and data related to [Student]'s IEP goals. The Complainants never adequately addressed this allegation during the hearing, and the ALJ is unclear as to what data or documentation the Complainants believe they have never received from the District.

Assuming that the Complainants allege that they did not receive a sufficient number of progress reports or report cards, the ALJ concludes that this claim is unsupported. The IDEA provides, in pertinent part, that an IEP shall describe when periodic reports on the progress the child is making will be provided. 20 U.S.C. §1414 (d)(1)(A)(i)(III). [Student]'s IEP provides that his progress toward each goal will be provided by report card at the end of each quarter. The District consistently and timely provided [Student]'s report cards and progress reports to his parents in accordance with his IEP.

To the extent the Complainants allege that the District manipulated the data upon which they relied to determine [Student]'s progress, the ALJ concludes such allegations are unfounded. [Student] made measureable progress towards his IEP goals and actually achieved his goals throughout the 2013-2014 school year. There is no credible evidence that the District manipulated the data to demonstrate growth or progress when there was little or no progress. [Student] did not always make significant progress and the District staff documented it. For instance, his teachers have issued failing or low grades. They have also documented in his progress reports when he did not achieve his writing goal or his organization goal. Had the District staff intended to manipulate data they could have always given him passing grades or always reported that he achieved his goals when he, in fact, had not. As such, the Complainants have failed to establish a violation of the IDEA on this basis.

CONCLUSIONS OF LAW

1. A hearing officer's determination of whether a student received a 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 student 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 provisions of a FAPE to the parent’s child; or (iii) caused deprivation of educational benefit. 34 CFR 300.513 (a)(2)(i) – (iii).

2. The ALJ concludes that Complainants failed to prove that the District committed any violation of IDEA or ECEA, whether procedural or substantive, that denied a FAPE to [Student]. The District met all of the procedural requirements for developing [Student]’s IEP, including the determination that a FBA or BIP was not warranted. In addition, [Student] has made measureable progress towards his IEP goals and actually achieved his goals at times throughout the 2013-2014 school year. Any alleged violations of his IEP have not resulted in a denial of a FAPE. There is also no credible evidence that the District failed to supply documentation or data to the Complainants concerning [Student]’s IEP goals. To the contrary, the District has consistently and timely provided progress reports and report cards to the Complainants.

DECISION

Based on the above Findings and Conclusions, it is the decision of the ALJ that Complainants have not met their burden of proof. Complainant’s due process complaint is dismissed in its entirety and their request for relief is denied and dismissed.

This Decision is the final decision except that any party has the right to bring a civil action in an appropriate court of law, either federal or state, pursuant to 34 C.F.R. 300.516.

DATED AND SIGNED

March 14, 2014

LAURA A. BRONIAK
Administrative Law Judge