HEARING DECISION

STUDENT: R.E.

PARENT: [Redacted]

ATTORNEY: None

LOCAL EDUCATION AGENCY: Limestone County Board of Education

ATTORNEY: Rodney C. Lewis, Esq.

HEARING DATES: October 25, 2017

DATE OF DECISION: January 15, 2018

HEARING OFFICER: P. Michael Cole, Esq.
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BEFORE THE DEPARTMENT OF EDUCATION
OF THE STATE OF ALABAMA

R.E., )

Petitioner, )

v. ) SPECIAL EDUCATION

LIMESTONE COUNTY ) CASE NO. 17-118
BOARD OF EDUCATION, )

Respondent. )

FINAL ORDER

I. PROCEDURAL HISTORY

This due process hearing was conducted under the authorization of the Individuals with Disabilities Education Improvement Act ("IDEA"), 2004 reauthorization, 20 U.S.C. § 1400, *et seq.*, implementing federal regulations at 34 C.F.R. Part 300, and implementing State regulations, the Rules of the Alabama State Board of Education, Chapter 290-8-9, *et seq*. The undersigned Hearing Officer was appointed by the State Superintendent of Education to hear this matter.

This due process complaint matter originated with Petitioner’s September 28, 2017 filing of a "Request for Impartial Due Process Hearing." Respondent filed a response to Petitioner’s complaint denying the allegations.

The due process hearing was conducted on October 25, 2017. The Parent appeared Pro Se. The Respondent appeared by and through their attorney, the Honorable Rodney C. Lewis. This was a one (1) day hearing.
Prior to commencement of the hearing, a determination was made by this Hearing Officer that Respondent had complied with all aspects of procedural safeguards necessary to have a fair due process hearing. Petitioner was advised of the right to have the hearing open or closed, and Petitioner elected a closed hearing. Petitioner also waived [redacted]’s presence at the hearing.

At the conclusion of the taking of testimony, this Hearing Officer gave to both parties the option of filing post-hearing briefs. Both parties indicated that they would like the opportunity to do so. Both parties agreed upon a briefing schedule and complied with same.

II. EXHIBITS ADMITTED INTO EVIDENCE

At the hearing, exhibits were submitted by the parties and accepted into evidence by this Hearing Officer. These exhibits have been examined by this Hearing Officer subject to the issues heard at the due process hearing and in light of the testimony presented at said hearing. The documents and materials have been in the constant possession of this Hearing Officer until the rendering of this decision. Hereafter, they will be delivered to the State of Alabama Department of Education.

This Hearing Officer placed no weight on the fact that any particular matter was offered by either party since the purpose was to have all of the appropriate documents produced for consideration by this Hearing Officer, so long as they were not prejudicial to the other party participating in the due process hearing based upon objection. The documents were examined and the weight given to each was based upon the contents of the document which was submitted and not on which party introduced said document.
This Hearing Officer has examined the exhibits based upon the substantive nature contained therein for the purpose of making a decision in this matter.

The parties each exchanged, and admitted into evidence without objection, binders of documentary exhibits to be considered by this Hearing Officer. Petitioner submitted two binders consisting of Petitioner's Exhibits 1 through 30. Respondent submitted a single binder consisting of Respondent’s Exhibits 1 through 35. In addition, the parties submitted the following separate exhibits:

A. **Petitioner’s Exhibits.**

31. Student Progress for [Redacted] (1)

32. Student Progress for [Redacted] (2)

33. Edgenuity Login Records

B. **Respondent’s Exhibits.**

2. Special Education Rights.

III. **WITNESSES**

Both parties were permitted to offer testimony by way of witnesses sworn under oath. The testimony from these witnesses has been examined by this Hearing Officer subject to the issues heard at the due process hearing and in light of the testimony presented at said hearing. The testimony has been recorded and transcripts have been delivered to the State of Alabama Department of Education.

This Hearing Officer placed no weight on the fact that any particular testimony was offered by either party since the purpose was to provide all of the appropriate and admissible testimony for consideration by this Hearing Officer. The witnesses were
examined and the weight given to each was based upon the substantive nature contained
therein for the purpose of making a decision in this matter.

A. Petitioner’s Witnesses

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B. Respondent’s Witnesses

1. 

IV. BURDEN OF PROOF

The burden of proof in this due process hearing is upon Petitioner as the party
seeking relief. *Schaffer v Weast*, 546 U.S. 49 (2005); Ala. Admin. Code § 290-8-
9.08(9)(c). The standard of proof is by a preponderance of the evidence.
V. SUMMARY OF THE TESTIMONY AND EVIDENCE

Below is a summary of some of the pertinent testimony and evidence presented to this Hearing Officer during the course of the due process hearing. These facts are not the only facts considered by this Hearing Officer in making this decision. This Hearing Officer has heard all of the testimony and has reviewed the transcript of said testimony and the documentary exhibits submitted by the parties as well as the post-hearing briefs of the parties.

A. Events Prior to the 2015-16 School Year.

is [redacted] years old. There is no dispute that is a student with a disability under the IDEA. was initially evaluated in [redacted] while in the [redacted] and was found eligible for special education services on the basis of Specific Learning Disability due to a severe discrepancy between ability and achievement. (Pet. Ex. 3).

In [redacted] underwent a triennial reevaluation while in the [redacted] (Pet. Ex. 4). Based upon the reevaluation, continued to meet the eligibility requirements for special education services under the category of Specific Learning Disability. (Id.).

For [redacted] school year, was enrolled in the Respondent school district. In [redacted], a triennial reevaluation was conducted by Respondent. (Pet. Ex. 7). As part of the reevaluation, Respondent administered (among other items) the achievement test, the intelligence test, and behavior rating scales. (Id., pp. 3-5). Based upon the reevaluation, continued to be eligible in the area of Specific Learning Disability based upon a severe discrepancy between ability and achievement. (Id., p. 6).
On [redacted] 2014, the IEP team considered whether [redacted] might be eligible for special education services under the alternate disability category of Other Health Impairment, based upon [redacted]'s diagnosis of [redacted] (Resp. Ex. 7). However, the option of eligibility under Other Health Impairment was ultimately rejected “due to testing scales not indicating any concerns in this area.” (Id.).


In [redacted] 2015, [redacted] was enrolled at the [redacted], a [redacted] facility located in [redacted] Alabama. (Tr. 18, 23-24). On [redacted], 2015, an IEP team from the [redacted] conducted [redacted]'s triennial reevaluation, as well as developed [redacted]'s annual IEP for the upcoming 2015-16 school year. (Tr. 22, 250; Resp. Exs. 11, 13). For purposes of the triennial reevaluation, the IEP team did not conduct any new testing of [redacted] but made a determination that the existing data was sufficient to determine [redacted]'s continued eligibility status under the category of Specific Learning Disability. (Resp. Ex. 12).

[redacted], Respondent’s Director of Special Education, testified that the triennial reevaluation process is not the sole manner in which an IEP team obtains information about a student. (Tr. 22-23). The IEP team, as part of the annual IEP review, gathers specific data and information as to a student’s progress towards his or her IEP goals as well as to a student’s proficiency at grade-level standards. (Id.). According to [redacted], the IEP team is not necessarily required to conduct new testing or gather new data for each triennial reevaluation. (Tr. 33). Instead, the IEP team is to make an individual determination as to the need for new assessments or data to determine the continued
IDEA eligibility of a student. (Id.).

C. 2015-16 School Year.

completed his program at the  in the of 2015 and returned to the Respondent school district for the beginning of the 2015-16 school year. (Tr. 24-25). 's IEP team met on 2015 to review and revise 2015-16 IEP, which had been developed at the . (Resp. Ex. 14, p. 3). The IEP team added additional behavioral supports to 's IEP to include services from a behavior teacher for  sessions each week. (Id.).

On , 2015, allegedly made a threat that "" after being counseled by one of teachers for . (Tr. 256-57; Resp. Ex. 18). As a result, was charged with a school code of conduct violation, with recommended disciplinary action to attend the School for days. (Id.).

On , 2015, the IEP team conducted a manifestation determination review meeting to consider whether the alleged code of conduct violation was a manifestation of 's disability. (Tr. 21, 256-58; Resp. Ex. 20, pp. 2-3). The IEP team reviewed a number of behavioral incidents involving but concluded that those behaviors were distinguishable and consisted primarily of task avoidance. (Tr. 155, 257). All of the members of the IEP team (except the Parent) agreed that 's 2015 code of conduct violation was not a manifestation of his disability. (Id.). Petitioner was provided a copy of the Special Education Rights in connection with the
manifestation determination review.¹ (Tr. 34-35, 46, 49-51, 54).

Because the IEP team determined that [REDACTED]’s behavior was not a manifestation of [REDACTED] disability, the matter was forwarded to Respondent’s Central Office Placement Committee for disciplinary action. (Resp. Ex. 18). On [REDACTED] 2015, Respondent issued a letter notifying Petitioner that the Committee had decided to assign [REDACTED] to the [REDACTED] School for [REDACTED] days. (Resp. Ex. 18, p. 3).

The [REDACTED] School is typically used as an interim disciplinary placement; however, it may also be used as a location for specialized non-disciplinary placements, such as when a student requires a flexible schedule or a small group program. (Tr. 36-37). The program is staffed with both general education and special education staff. (Id.).

On [REDACTED] 2015, [REDACTED]’s IEP team met to effectuate [REDACTED]’s [REDACTED]-day placement at the [REDACTED] School. (Resp. Ex. 19; Resp. Ex. 20, p. 3). [REDACTED] continued to receive [REDACTED] IEP services while attending at the [REDACTED] School program. (Id.).

On [REDACTED] 2015, the IEP team met and discussed [REDACTED]’s need for increased behavioral and academic supports. (Resp. Ex. 20). As a result of the meeting, the team decided to place [REDACTED] at the [REDACTED] after he completed [REDACTED] placement at the [REDACTED] School. (Tr. 39). The [REDACTED] is an evidence-based program which provides “intensive positive behavior support” to students. (Tr. 37-39, 58). At the [REDACTED] students receive more positive behavior support, increased behavior counseling services, increased social

¹ The Parent acknowledges that she had previously received a copy of the Special Education Rights as early as [REDACTED] 2015. (Tr. 250-51; Resp. Ex. 2).
skills instruction, and increased transition services. (Tr. 58). In contrast to the School, the is not used as a punitive or disciplinary placement. (Tr. 38, 262-63). Placement at the is determined by a student’s IEP team based upon the particular needs of the student. (Id.).

[Redacted] testified that the decision to place at the was not related to the alleged code of conduct violation on 2015. (Tr. 41). Instead, [Redacted] testified that the decision was made due to [Redacted]’s other behaviors, including refusal to do work and being argumentative. (Id.). Additionally, [Redacted] testified that the Disciplinary Committee took no part in the decision to place at the. (Tr. 52-53).

[Redacted] attended the for approximately four weeks. (Tr. 60, 63-64). While at the, [Redacted] used the “Edgenuity” computer program to complete core coursework. (Tr. 59-60, 63).

In 2016, [Redacted] was placed by the Department of Youth Services at the, a in [Redacted] Alabama. (Tr. 60, 63-64, 66). Respondent had no involvement regarding [Redacted]’s placement at the (Tr. 65-66).

[Redacted] attended the for the remainder of the 2015-16 school year. (Tr. 63-66).

[Redacted]’s IEP for the 2016-17 school year was developed on 2016 by an IEP team at the (Resp. Ex. 21).

D. of 2016.

In 2016, following release from the, [Redacted] began attending Respondent’s school program but did so without re-enrolling in the Respondent school district. (Tr. 68-72). When the Respondent learned that [Redacted] was attending the
school program without yet having re-enrolled in the school district. [Redacted]'s participation in the program was suspended. (Tr. 70-73, 190-91).

Upon learning of [Redacted]'s exit from the [Redacted], [Redacted]'s IEP team convened on [Redacted], 2016. (Tr. 69-72, Resp. Ex. 22). An individualized summer program was developed for [Redacted], which included one-to-one instruction. (Id.). [Redacted] was also provided access to Edgenuity in the [Redacted] school program. (Id.). From [Redacted] 2016 through [Redacted] 2016, [Redacted] received [Redacted] services from Respondent. (Id.).

E. 2016-17 School Year.

On [Redacted] 2016, the IEP team met to review [Redacted]'s IEP for the 2016-17 school year, which had been developed at the [Redacted] (Tr. 85-88, Resp. Ex. 23). The IEP team made no revisions to [Redacted]'s services at that meeting. (Id.) As a part of the review, the IEP team conducted a review of the appropriate location and Least Restrictive Environment (LRE) for [Redacted] (Tr. 85-88, Resp. Ex. 23). Following this review, the IEP team decided that [Redacted] would participate in Respondent’s [Redacted] program, with supplemental credit recovery services through Respondent’s homebound instructional program. (Tr. 86). [Redacted] testified that the provision of homebound services was in addition to the [Redacted] and therefore did not constitute a change of placement. (Tr. 91, 102).

The [Redacted] is a blended virtual learning program that provides flexibility regarding a student’s receipt of academic instruction. (Tr. 86, 186-87; Resp. Ex. 23, p. 2). The [Redacted] is staffed with four core general education teachers for Math, English, Science, and Social Studies, as well as a special education teacher and classroom aide. (Id.). The decision for [Redacted] to participate in the [Redacted] was based upon [Redacted]'s individual needs for
intensive accommodations and transition services, as well as [redacted] need for one-to-one supports in an environment with minimal distractions. (Resp. Ex. 23, p. 2). Utilization of the [redacted] complied with the LRE classification established by [redacted]'s IEP developed at the [redacted]. (Tr. 85-88; Resp. Ex. 23).

On [redacted] 2016, [redacted] was accused of a code of conduct violation. (Resp. Ex. 26, p. 1). In particular, it was alleged that, during a homebound session, [redacted] "[redacted]" (Id.).

On [redacted] 2016, the IEP team conducted an manifestation determination review meeting to consider the alleged code of conduct violation. (Tr. 260-61, Resp. Ex. 26). During the review, the IEP team was made aware of two recent incidents of [redacted]. (Tr. 260-61, Resp. Ex. 26, p. 1). The team concluded that those incidents were related to task avoidance and disruption. (Tr. 121-23, 260-61). All of the members of the IEP team (except the Parent) agreed that [redacted]'s 2016 code of conduct violation was not a manifestation of his disability. (Tr. 260-61). Petitioner was provided a copy of the Special Education Rights at the manifestation determination review meeting. (Tr. 128).

Because the alleged code of conduct violation was found not to be a manifestation of [redacted]'s disability, the matter was forwarded to Central Office Disciplinary Placement Committee. (Resp. Ex. 28, p. 1). The Committee upheld the charges and recommended a disciplinary sanction of expulsion. (Id., p. 5). The matter was then forwarded to the Superintendent's Student Disciplinary Committee for review. (Id., p. 7). On [redacted]
2016, Petitioner was notified of Respondent’s decision to expel [redacted] for the remainder of the 2016-17 school year, with alternative placement to be determined with collaboration between the Respondent’s Special Education Department and the local [redacted] Department. (*Id.*, p. 9).

After being expelled, [redacted] spent the remainder of the 2016-17 school year at [redacted] and [redacted] facilities for [redacted] (Resp. Ex. 32, p. 1). Such facilities included [redacted] and [redacted] (*Id.*). At the time of the due process hearing, [redacted] had been at [redacted] since [redacted] 2017. (Tr. 264).

On the limited occasions that [redacted] was available for services from Respondent, such services were provided in a conference room at the local [redacted] Office. (Tr. 129). This location has been used for several years in providing instruction to students who are expelled from the district. (*Id.*). The use of an alternate service location during this time period was the result of [redacted]’s status as an expelled student. (*Id.*).

VI. ISSUES PRESENTED

Petitioner’s post-hearing brief asserts the following issues:

1. “Failure to conduct a full, individualized, and comprehensive evaluation by [redacted] 2015.”

2. “Improperly conducting a manifestation determination review on [redacted] 15 prior to a proper triennial or otherwise mandated reevaluation having been conducted.”

3. “Failure to conduct a proper manifestation determination on [redacted] 15 by performing the MDR prior to the alleged conduct code violation hearing.”
4. “Respondent failed to provide Petitioners with their special education rights at the time [ ]’s placement was changed on [ ] 2015.”

5. “Failure to develop an IEP that provided appropriate services for the educational needs of [ ] during the 2015-2016 regular school year.”

6. “Failure to design an appropriate IEP by not placing [ ] in the least restrictive environment in the amended IEP dated [ ] 15.”

7. “Failure to implement the 2015-16 regular school year IEP, assuming it was properly designed.”

8. “Failure to implement the 2016-17 regular school year IEP during the extended school year, assuming it was properly designed.”

VII. DISCUSSION OF THE ISSUES

It is very obvious to this Hearing Officer that the [ ] loves this Student greatly and is trying to make sure that this Student receives every possible service and benefit that [ ] may be entitled to. The [ ] was very professional during the hearing and did a great job of presenting the issues that [ ] desired this Hearing Officer to review.

The IDEA offers States federal funds to assist in educating children with disabilities. 20 U.S.C. § 1400 et seq.; Endrew F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 993 (2017). In exchange for the funds, States pledge to comply with a number of statutory conditions. Id. Among them, the State must provide a free appropriate public education (“FAPE”) to all eligible children. 20 U.S.C. § 1412(a)(1).

The IDEA requires schools and parents together to develop an individualized education program (“IEP”) that addresses the child’s unique needs. R.L. v. Miami-Dade

“To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Endrew F., 137 S. Ct. at 999. The “reasonably calculated” qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. Id. The IDEA contemplates that this fact-intensive exercise will be informed not only by the expertise of school officials, but also by the input of the child’s parents or guardians. Id. Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal. Id.

**ISSUE ONE:** “Failure to complete a full, individualized, and comprehensive evaluation by [redacted] 2015.”

For triennial reevaluations, 20 U.S.C. § 1414(c) directs the IEP team to (A) “review existing evaluation data on the child” and (B) on the basis of that review, and input from the child’s parents, identify what additional data, if any, are needed ....”
In this case, the evidentiary record establishes the provision of a triennial reevaluation by the [redacted] on [redacted] 2015. (Resp. Ex. 11). Petitioner asserts that the reevaluation was defective because it did not include any new testing. However, the IDEA does not require that new testing be conducted with each reevaluation. In this case, the IEP team concluded that the existing data was sufficient to determine [redacted]'s continued eligibility for special education services in the area of Specific Learning Disability. (Resp. Ex. 12).

Petitioner asserts that the 2015 reevaluation did not consider [redacted]. However, as part of the reevaluation, the IEP team reviewed [redacted]'s previous behavioral rating scales and found that results of behavior rating scales and other data gathered revealed no behaviors that would affect [redacted] academic functioning. (Resp. Ex. 12, p. 4). Moreover, on [redacted] 2014, the IEP team had considered whether [redacted]'s might be eligible under the alternate disability category of Other Health Impairment due to [redacted] diagnosis of [redacted] (Resp. Ex. 7). At that time, [redacted] did not meet the eligibility requirements to receive special education services under the category of Other Health Impairment. Id.

Petitioner cites T.P. v. Bryant County School District, 729 F.3d 1283 (11th Cir. 2015). However, this Hearing Officer has reviewed that case and finds it to be distinguishable and inapplicable to the present circumstances.

Based upon the foregoing, this Hearing Officer does not find any IDEA violation by Respondent under Issue One.

ISSUE TWO: “Improperly conducting a manifestation determination review on [redacted] 15 prior to a proper triennial or otherwise mandated reevaluation having been conducted.”
Schools districts are required to conduct a manifestation determination review before carrying out a disciplinary change in placement of a student with a disability. 20 U.S.C. § 1415(k). If the IEP team determines that a student's behavior is not a manifestation of the student's disability, the relevant disciplinary procedures applicable to children without disabilities may generally be applied to the student in the same manner in which the procedures would be applied to students without disabilities. 20 U.S.C. § 1415(k)(1)(C). Alternatively, if the IEP team determines that the behavior is a manifestation of the disability, then the team is required to, among other things, conduct a functional behavior assessment and implement behavior intervention plan, if one does not already exist. 20 U.S.C. § 1415(k)(1)(F).

In this case, Respondent gave notice of an IEP team meeting to conduct a manifestation determination review of the alleged 2015 code of conduct violation. (Resp. Exs. 17-20). The meeting was conducted by [Redacted]'s IEP team on 2015. (Tr. 256-57; Resp. Ex. 20, pp. 2-3). At the meeting, the IEP team reviewed various data and information in determining whether the code of conduct violation at issue resulted from [Redacted]'s disability such as discipline records, IEPs, eligibility reports, and input provided by IEP team members to include the Petitioner. Id. The IEP team specifically reviewed [Redacted]'s prior disciplinary infractions during the year but found that the prior infractions were related to task avoidance and thus not similar to [Redacted]'s alleged threat involving a [Redacted]. Id. Accordingly, the team concluded that the alleged code of conduct violation was not a manifestation of [Redacted]'s disability. Id.
As discussed above, this Hearing Officer does not find that ___'s triennial reevaluation was improper. Additionally, this Hearing Officer does not find any violation based upon the IEP team’s determination that ___'s behavior was not a manifestation of his disability. Accordingly, this Hearing Officer finds no violation by Respondent under Issue Two.

**ISSUE THREE:** “Failure to conduct a proper manifestation determination on ___ 15 by performing the MDR prior to the alleged conduct code violation hearing.”

20 U.S.C. § 1415(k)(1)(E)(i) provides that the IEP team will conduct a manifestation determination review within 10 school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct. Petitioner argues that the Respondent violated the IDEA by conducting a manifestation determination review on ___ 2015, before a hearing on ___’s code of conduct violation.

The purpose of the 10-day requirement is to ensure that the IEP team conducts a prompt review of the student’s behavior to determine whether it is a manifestation of his or her disability. In this case, the IEP team conducted the manifestation determination review before forwarding the code of conduct violation for consideration of disciplinary action. This Hearing Officer does not interpret 20 U.S.C. § 1415(k)(1)(E)(i) as prohibiting the IEP team from conducting manifestation review before a final decision to change a student’s placement has been made. Nor does this Hearing Officer find any resulting harm from the fact that the review was conducted before the matter was
forwarded for disciplinary action. Accordingly, this Hearing Officer does not find a violation or a resulting denial of FAPE under Issue Three.

**ISSUE FOUR:** “Respondent failed to provide Petitioners with their special education rights at the time [redacted]’s placement was changed on [redacted] 2015.”

Regarding the requirement to provide notice of the Special Education Rights, Petitioner cites 20 U.S.C. § 1415(k)(1)(H), which states: “Not later than the date on which the decision to take disciplinary action is made, the local educational agency shall notify the parents of that decision, and of all procedural safeguards accorded under this section.” Petitioner also cites Ala. Admin. Code § 290-8-9-.08(6)(c), which states, in pertinent part:

A copy of the Special Education Rights under IDEA must be given to the parents only one time per school year, except that a copy must also be given to the parents:

(a) Upon initial referral or parental request for an initial evaluation,

(b) Upon receipt of the first State complaint under these rules and upon receipt of the first due process hearing request in a school year,

(c) In accordance with the discipline procedures in these rules,

and

(d) Upon request by the parent.

Regarding [redacted]’s placement at the [redacted] School, this Hearing Officer finds that Respondent received a copy of the Special Education Rights in connection with the [redacted] 2015 manifestation determination review. (Tr. 34-35, 46, 49-51, 54).
Regarding [redacted]’s placement at the [redacted] this Hearing Officer finds that the Respondent was not required to provide additional notification of rights because the [redacted] was not a disciplinary change of placement. Because the change of placement to the [redacted] was not a “disciplinary action,” 20 U.S.C. § 1415(k)(1)(H) does not apply. Moreover, the IEP team’s non-disciplinary decision to change [redacted]’s placement to the [redacted] did not trigger a requirement to provide the Special Education Rights under § 290-8-9-.08(6)(c). Therefore, this Hearing Officer finds no violation under Issue Four.

ISSUE FIVE: “Failure to develop an IEP that provided appropriate services for the educational needs of [redacted] during the 2015-2016 regular school year.”

Petitioner contends that [redacted]’s 2015-16 IEP did not provide services to address [redacted]’s behavioral related issues. However, the record reflects that [redacted]’s IEP team met on [redacted] 2015 to review and revise his IEP, which had initially been developed at the [redacted] (Resp. Ex. 14, p. 3). At that time, the IEP team added additional behavior supports to [redacted]’s IEP to include services from a behavior teacher for two [redacted] sessions each week. (Id.). Therefore, this Hearing Officer finds that [redacted]’s 2015-16 IEP appropriately considered [redacted]’s behavioral issues.

Petitioner also contends that Respondent was required to conduct a functional behavior assessment and develop a behavior intervention plan as a result of the code of conduct violation the led to [redacted] placement in the [redacted] School. Absent a disciplinary change of placement, there is no legal requirement that an IEP contain either a BIP or FBA, even when a student exhibits behavioral issues. See 34 C.F.R. § 300.530(d)(1)(ii); Kornblut v. Hudson City Sch. Dist. Bd. of Educ., No. 5:14-CV-1986,
2015 WL 5159082, at *10 (N.D. Ohio Sept. 2, 2015). In this case, because the underlying disciplinary incident was deemed to not be a manifestation of [redacted]’s disability, the IDEA did not require the Respondent to conduct a functional behavior assessment or develop a behavior intervention plan as argued by the Petitioner.

Petitioner further contends that the 2015-16 IEP did not address [redacted]’s diagnosis of [redacted] and other [redacted] issues. However, behavior was a specific area of assessment included in [redacted]’s [redacted], 2015 reevaluation. (Tr. 19-20; R. Ex. 11). The reevaluation included review of several behavioral evaluations scales, classroom observations, as well as adaptive behavior scales. *Id. Such behavioral evaluations did not indicate a need for specific IEP [redacted] interventions. Moreover, on [redacted] 2014, [redacted] had been evaluated to determine if [redacted] would qualify under an Other Health Impairment classification due to [redacted] diagnosis of [redacted] (Resp. Ex. 7). The evaluations failed to establish an adverse educational impact at that time. *Id.

Based upon the foregoing, this Hearing Officer finds that there was no evidence presented at the hearing to conclude that [redacted]’s IEP for the 2015-16 was not reasonably calculated to enable [redacted] to make appropriate progress in light of his circumstances. Therefore, this Hearing Officer finds no violation under Issue Five.

**ISSUE SIX:** “Failure to design an appropriate IEP by not placing [redacted] in the least restrictive environment in the amended IEP dated [redacted]-15.”

On [redacted] 2015, [redacted]’s placement was temporarily changed to the [redacted] School based upon a code of conduct violation, which his IEP team determined was not a manifestation of [redacted] disability. As discussed above, this Hearing Officer finds no IDEA
violation on that issue. Further, this Hearing Officer finds no IDEA violation based upon
the IEP’s team’s subsequent non-disciplinary decision to place ☐ in the ☐ based
upon ☐ individual needs. Therefore, this Hearing Officer finds no violation under Issue
Six.

ISSUE SEVEN: “Failure to implement the 2015-16 regular school year IEP,
assuming it was properly designed.”

This Hearing Officer finds no evidence to establish that Respondent did not
comply with ☐’s IEP prior to his stint at the ☐ School and subsequent
placement at the ☐ Petitioner’s post-hearing brief primarily challenges whether
Respondent complied with ☐’s IEP while ☐ was at the ☐ This Hearing Officer
notes that ☐ attended ☐ for only ☐ weeks before his removal to the ☐ (Tr. 60, 63-64). Moreover, Petitioner primarily attempts to draw inferences from
Edgenuity login records; however, there was no testimony at the due process hearing to
interpret the Edgenuity records, and Edgenuity was not the only source of coursework
provided to ☐ while at the ☐ (Tr. 182).

Based upon the foregoing, this Hearing Officer finds that there was no evidence
presented during this hearing to conclude that ☐’s IEP was not implemented during the
2015-16 school year. Therefore, this Hearing Officer finds no violation under Issue
Seven.

ISSUE EIGHT: “Failure to implement the 2016-17 regular school year IEP
during the extended school year, assuming it was properly designed.”

Petitioner challenges the provision of extended year services to ☐ during the
☐ of 2016. Upon learning of ☐’s exit from the ☐, ☐’s IEP team
convened on [redacted] 2016. (Tr. 71; Resp. Ex. 22). An individualized summer program was developed for [redacted], which included one-to-one instruction. Id. [redacted] was provided summer services by Respondent pursuant to this individualized summer program from [redacted] 2016 through [redacted] 2016. (Tr. 71-72). Therefore, this Hearing Officer finds no violation under Issue Eight.

OTHER ISSUES

Petitioner contends that the 2016-17 IEP provided that the School was to provide the related service of behavioral counseling. This Hearing Officer finds that the 2016-2017 IEP did not provide for the related service of behavioral counseling. [redacted] testified that the IEP only provides that a behavior teacher would work with [redacted] for [redacted] minutes each week as well as collaborate with [redacted]'s general education teachers. (Tr. 254-56; Resp. Ex. 25, p. 9). She specifically testified that [redacted]'s 2016-17 IEP did not provide [redacted] with the IDEA related service of behavioral counseling. (Tr. 255-56).

[redacted], the District’ behavioral counselor, reviewed [redacted]'s 2016-2017 IEP at hearing and verified that [redacted]'s 2016-2017 IEP did not provide behavioral counseling as a related service. (Tr. 149; Resp. Ex. 21). She testified that the IEP only provides that a “behavioral teacher” would provide strategies to [redacted] and collaborate with [redacted]'s general education teachers as to behavioral concerns. (Tr. 150-152). Behavioral counseling is an IEP related service and when provided in a student’s IEP is specifically identified under the related services provisions of an IEP.

This Hearing Officer finds that there was no requirement in the IEP for the related services of behavioral counseling.
In addition to the foregoing, this Hearing Officer has reviewed and considered the other claims and arguments made by the Petitioner in the due process complaint, at the hearing, and in the Petitioner’s post-hearing brief. This Hearing Officer finds that any remaining claims not specifically addressed above in this Hearing Decision either lack any evidentiary or legal support, or involve matters that are beyond the jurisdiction of this Hearing Officer. This Hearing Officer is an IDEA Hearing Officer with jurisdiction over IDEA matters only. This Hearing Officer does not have any jurisdiction over claims alleging violations of Section 504 of the Rehabilitation Act, Title II of the Americans with Disabilities Act, Title VI of the Civil Rights Act of 1964, 42 U.S.C. §1983, or provisions of the United States and Alabama Constitutions.

VIII. SPECIFIC RULINGS

1. Respondent did not violate any of the provisions of the IDEA in regard to this Student;

2. The Respondent did not deprive this Student of FAPE.

IX. NOTICE OF APPEAL RIGHTS

Any party dissatisfied with the decision may bring an appeal pursuant to 20 U.S.C. §1415(i)(2). The party dissatisfied with this decision must file a notice of intent to file a civil action with all other parties within thirty (30) calendar days of the receipt of this decision. Thereafter, a civil action must be initiated within thirty (30) days of the filing of the notice of intent to file a civil action. Ala. Admin. Code, § 290-8-9-.8(9)(c)16.
DONE and ORDERED this 15th day of January, 2018.

[Redacted]
P. Michael Cole
Hearing Officer
X. **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Decision has been forward to the following individuals by Certified Mail with postage prepaid and return receipt requested properly addressed as well as by electronic mail on this the 15th day of January, 2018.

1. 

2. Honorable Rodney C. Lewis

P. Michael Cole
Due Process Hearing Officer