

BALTIMORE COUNTY PUBLIC
SCHOOLS

v.

████████████████████
STUDENT

* BEFORE M. TERESA GARLAND,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH NO. MSDE-BCNY-OT-18-18773

* * * * *

DECISION

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STATEMENT OF THE CASE

On June 12, 2018, the Baltimore County Public Schools (BCPS) filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing to review the identification, evaluation, or placement of ██████████ (Student) by BCPS under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2017). BCPS seeks a ruling that the Functional Behavior Assessment (FBA) it administered to the Student in the spring of 2018 was appropriate, and that the request by the Student's parent, ██████████ (Parent), for an independent educational evaluation (IEE) of the Student at public expense is not warranted.

The relevant procedural history of this dispute, prior to the June 12, 2018 hearing request, is as follows: On March 19, 2018, the Parent consented to BCPS conducting an FBA of the Student by a school psychologist to determine the current functions of the Student's behaviors.

As part of the information gathering for the FBA, in April 2018, the school psychologist had the Student's teachers complete Antecedent/Behavior/Consequences Data Sheets, Questions About Behavioral Function (QABF) and an FBA Teacher Survey. The school psychologist analyzed data she gathered and developed an FBA which resulted in a May 2, 2018 Behavioral Intervention Plan (BIP). On or about May 2, 2018, the Parent advised that she disagreed with the BCPS assessment and requested an IEE at public expense.

On June 21, 2018, I conducted a Telephone Prehearing Conference. BCPS was represented by J. Stephen Cowles, Esquire, Deputy Counsel for BCPS. The Student and Parent were not represented. I issued a Prehearing Conference Report and Scheduling Order on June 27, 2018. A hearing on the merits was scheduled for July 20, 2018 by agreement of the parties.

Federal regulations require that the due process hearing be held, and a decision issued, within forty-five days of certain triggering events described in the federal regulations. 34 Code of Federal Regulations (C.F.R.) §§ 300.510(b)-(c), 300.515(a) (2017).¹ OAH received the due process complaint on May 4, 2015. Neither party requested mediation, and a resolution session was not required because the school system filed the hearing request. *Id.* § 300.510(a); Code of Maryland Regulations (COMAR) 13A.05.01.15C(11)(d)(iii). Therefore, the triggering event for the forty-five-day time period in this case was the filing of the due process request. 34 C.F.R. §§ 300.510(b)-(c), 300.515(a). Forty-five days from June 12, 2018, when BCPS filed its due process hearing request, was July 27, 2018.

I conducted the due process hearing in this matter on Friday, July 20, 2018 at the OAH in Hunt Valley, Maryland. BCPS was represented by J. Stephen Cowles, The Parent was present and unrepresented, but was assisted by [REDACTED] Advocate.

¹ All references to Title 34 of the Code of Federal Regulations hereinafter cite the 2017 volume.

The legal authority for the hearing is as follows: IDEA, 20 U.S.C.A. § 1415(f) (2017); 34 C.F.R. § 300.511(a) (2017); Md. Code Ann., Educ. § 8-413(e)(1) (2018); and COMAR 13A.05.01.15C.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act; Maryland State Department of Education (MSDE) procedural regulations; and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2017); COMAR 13A.05.01.15C; COMAR 28.02.01.

ISSUES

The issues are as follows:

- 1) Whether the FBA of the Student conducted by BCPS staff in April 2018, which resulted in a BIP, was appropriate; and, if not,
- 2) Whether BCPS should be required to pay for an IEE of the Student at public expense.

SUMMARY OF THE EVIDENCE

Exhibits

BCPS offered the following exhibits which I admitted into evidence:²

- | | |
|----------|---|
| BCPS #1 | Individualized Education Program Team Summary (IEP), dated May 2, 2018 and supporting documents |
| BCPS #2 | BCPS Notice of Documents, dated May 1, 2018 and supporting documents |
| BCPS #3 | BCPS Notice of Documents, dated April 26, 2018 and supporting documents |
| BCPS #4 | Parent Permission for FBA, dated March 19, 2018 |
| BCPS #5 | IEP Team Summary, dated March 16, 2018 and supporting documents |
| BCPS #7 | BCPS Psychological Assessment, dated November 28, 2017 |
| BCPS #10 | BCPS Data Collection Sheets, April 2018 |

² Other numbered exhibits not listed here were not offered by BCPS or admitted into evidence. They have been retained in the OAH file to preserve the record.

- BCPS #11 QABF Responses
- BCPS #12 Analysis of QABF
- BCPS #13 FBA Teacher Survey and Student Interview Sheet
- BCPS #14 ABC Data Analysis
- BCPS #15 Care Room Logs
- BCPS #16 Care Room Data Analysis
- BCPS #17 BIP, dated May 2, 2018
- BCPS #18 IEP, dated May 2, 2018
- BCPS #20 E-mail Communication regarding the BIP, FBA, and IEP Team Meeting

The Parent submitted a binder which contained forty-nine tabbed exhibits, none of which were offered into evidence. I have retained the binder and exhibits to preserve the record.

Testimony

BCPS presented the following witnesses:

1. [REDACTED] School Psychologist, Student's Elementary School (accepted as an expert in psychology);³
2. [REDACTED] Assistant Principal, Student's Elementary School, (accepted as an expert in education);⁴ and
3. [REDACTED] Special Education Specialist, BCPS Office of Special Education (accepted as an expert in Special Education and Behavioral Intervention).⁵

The Parent did not testify, but presented the following witnesses:⁶

1. [REDACTED] Special Education Specialist, BCPS Office of Special Education, Board Certified Behavior Analyst;⁷ and
2. [REDACTED] Assistant Principal, Student's Elementary School, (previously accepted as an expert in education).

³ Hereinafter identified as Ms. [REDACTED]

⁴ Hereinafter identified as Ms. [REDACTED]

⁵ Hereinafter identified as Mr. [REDACTED]

⁶ The Parent requested subpoenas for a total of ten witnesses; four of the witnesses were also subpoenaed by BCPS and were present at the hearing. The remaining six witnesses did not appear for the hearing as they are ten-month employees, the hearing was held during summer break, and their subpoenas were mailed to the elementary school where they are employed during the school year.

⁷ Hereinafter identified as Ms. [REDACTED]

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

Background

1. The Student was age ten when the FBA at issue in this case was performed.
2. The Student attends a BCPS Elementary School⁸ and is in a Behavior Learning Support classroom which provides structured behavioral, social-emotional and academic support. During the 2017-2018 school year, the Student was in the fourth grade.
3. The Student qualifies for special education under the IDEA and has a coding of Multiple Disabilities due to an emotional disability, specific learning disability and speech/language impairment. (BCPS Ex. 7.)
4. During the 2017-2018 school year, the Student's primary teacher had increasing concerns regarding the Student's attention, behavior and anxiety. The Student perseverates, displays obsession and compulsion and experiences separation anxiety. (T. Ms. [REDACTED])
5. The areas of concern were the Student's physical aggression, including intentional forceful contact toward others (biting, grabbing, kicking) and verbal aggression, including cursing and verbal threats. (BCPS Ex. 3.)
6. The Student also made threats to harm himself by stating, "I am going to kill myself" while wrapping his hands around his throat. These behaviors required intervention and removal of the Student from the classroom to the "Care Room" until he was calm enough to return to class. (T. Ms. [REDACTED])

⁸ I have not identified the school by name to preserve the Student's confidentiality.

6. At an IEP Team meeting on March 16, 2018, the IEP team proposed that an updated FBA be conducted because of the Student's aggressive and non-compliant behavior, behaviors which were not reflected in his current BIP. The data gathered for the FBA would form the basis for an updated BIP. (BCPS Ex. 5.)
7. The Parent was not present at the March 16, 2018 IEP Team meeting. She was notified of the meeting and gave permission for the Team to proceed in her absence. (BCPS Ex. 5.)
8. Ms. [REDACTED] was the IEP Chairperson. (T. Ms. [REDACTED] BCPS Ex. 5.)
9. On March 19, 2018, the Parent signed a form consenting to the FBA. (BCPS Ex. 4.)

Functional Behavior Assessment⁹

6. Ms. [REDACTED] the School Psychologist, is responsible for providing psychological services, consulting with teachers and staff, conducting FBAs and creating BIPs. She has been employed by the BCPS for six years and was previously employed for three years with the [REDACTED] County Public Schools ([REDACTED] PS). She received a Bachelor of Arts degree (B.A.) in Psychology from the University of [REDACTED] [REDACTED] County; Master of Arts in School Psychology from [REDACTED] University; and a Certificate of Advanced Study in School Psychology from [REDACTED] University.
7. Ms. [REDACTED] participates in students' IEP meetings and participated in the Student's IEP meetings.
8. After Ms. [REDACTED] conducts an FBA and designs a BIP, she conveys the results of assessments to school teams through written and oral reports.

⁹ Unless otherwise noted, Findings of Fact 8-21 in this section were derived from Ms. [REDACTED]'s testimony. If a document was referenced during her testimony which supports the Finding of Fact, it will be noted.

9. Ms. [REDACTED] also provides individual and group counseling services to students to address social-emotional and behavioral concerns.
10. Ms. [REDACTED] conducted fifteen FBAs during the 2017-2018 school year.
11. Ms. [REDACTED] has known the Student for six years. She conducted the Student's 2017 Psychological Assessment (BCPS Ex. 7), numerous threat assessments and a previous FBA of the Student.
12. On March 19, 2018, the Parent gave permission for Ms. [REDACTED] to conduct an FBA of the Student. (BCPS Ex. 4.)
13. As part of her information-gathering to administer and interpret the FBA, Ms. [REDACTED] employed numerous data collection methods. She solicited the Student's primary teacher to complete a survey which consisted of twelve questions relating to the Student's behaviors, the intensity and frequency of the behaviors, triggering factors, the time of day the behavior is most likely to occur and positive reinforcements the Student prefers. (BCPS Ex. 13.)
14. The Student also completed a Student-Assisted Functional Assessment Interview that also asked twelve questions to assess his strengths, and areas where he may struggle. (BCPS Ex. 13.)
15. Ms. [REDACTED] had three of the Student's teachers complete Antecedent/Behavior/Consequence Data Sheets that identified a negative behavior by the Student, what occurred just before the behavior occurred, the consequence of the behavior and the time and duration of the behavior. The surveys were completed from April 16, 2018 through April 27, 2018. (BCPS Ex. 10.)

16. Three professional school staff who had the most extensive contact with the Student were asked to complete QABF surveys which consisted of a list of twenty-five negative behaviors and asked the user to rate the frequency the Student exhibits the behavior on a scale of zero to three, with zero representing never and three meaning often. (BCPS Ex. 11.)
17. Ms. [REDACTED] analyzed the QABF responses to determine the two most prevalent behaviors and the triggers which caused the behaviors. (BCPS Ex. 12.) She created an Antecedent Behavioral Chart as a result of her data analysis. (BCPS Ex. 14.)
18. Based upon the information amassed by Ms. [REDACTED] she had adequate and sufficient data to analyze and identify the Student's most prevalent behaviors, the antecedents to those behaviors and contributing factors.
19. The behaviors of most concern were physical and verbal aggression, and noncompliance with adult instructions. The most prevalent reasons the behaviors occurred (the "function") was to gain attention, or to control or an object/activity, or to avoid work. Ms. [REDACTED] also delineated the triggers to the behaviors and responses. (BCPS Ex. 3 & 4.)
20. Ms. [REDACTED] compiled her findings in an FBA and shared the FBA with the Student's IEP Team and the Parent prior to a May 2, 2018 IEP Team meeting. (BCPS Exs. 1, 3 & 4.)
21. Based on her analysis of the FBA data, Ms. [REDACTED] developed a draft BIP, which was emailed to the Parent on April 30, 2018 and presented at the May 2, 2018 IEP Team Meeting. (BCPS Exs. 1 & 17.)
22. The Parent and her Advocate were present at the May 2, 2018 IEP meeting and voiced no objection to, or disagreement with, the FBA document. (T. Ms. [REDACTED]; T. Mr. [REDACTED]; BCPS Ex. 1.)

23. During the May 2, 2018 IEP meeting, the draft BIP was discussed. Because the BIP had not been sent to the Parent five days prior to the IEP meeting, the Parent was offered the option of rescheduling the IEP meeting to a later date. The Parent waived her option to reschedule the IEP meeting. (T. Ms. [REDACTED])
24. The Parent disagreed with the BIP because it did not consider an informal Student observation conducted by Ms. [REDACTED] a Board Certified Behavioral Analyst and Specialist in the BCPS Office of Special Education, and because Ms. [REDACTED] left the IEP meeting after an hour when the meeting lasted two and one-half hours. Ms. [REDACTED] had offered her input and observations of the Student prior to her departure. The IEP Team BIP discussion continued in Ms. [REDACTED]'s absence and the Parent's requested changes to the BIP were made. (BCPS Exs. 1 & 17; T. Ms. [REDACTED])
25. After the conclusion of the IEP meeting on May 2, 2018, the Parent, through her Advocate, requested an IEE for an FBA. (T. Ms. [REDACTED]; T. Ms. [REDACTED]; T. Mr. [REDACTED].)

DISCUSSION

When a local education agency performs an evaluation of a student, the student's parents have the right to seek an IEE as a procedural safeguard. 20 U.S.C.A. § 1415(b)(1) (2017). However, the right to obtain an IEE at public expense is qualified. The federal regulations provide the following, in pertinent part:

(b) Parent right to evaluation at public expense.

(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either—

(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

(3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

34 C.F.R. § 300.502(b)(1)-(3).

The appropriateness of an evaluation, however, is not determined by the progress, or lack thereof, that a student experiences after being evaluated, or whether all parties agree with the findings and recommendations of an evaluation. The focus of the determination of the appropriateness of a student assessment is a review of the procedures, methodology, and assessment tools that are employed, and the qualifications of the evaluator, in accordance with the requirements of the IDEA and its accompanying regulations. *D.K. v. Abington Sch. Dist.*, 696 F.3d 233 (3rd. Cir. 2012). However, “while an evaluation should be tailored to the specific problems a potentially disabled student is having, it need not be designed to identify and diagnose every possible [educational] disability.” *Id.* at 250.

The federal regulations provide guidance in determining whether an assessment is appropriate:

(b) *Conduct of evaluation.* In conducting the evaluation, the public agency must –

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child . . . ;

(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(c) *Other evaluation procedures.* Each public agency must ensure that –

(1) Assessments and other evaluation materials used to assess a child under this part—

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

(iii) Are used for the purposes for which the assessments or measures are valid and reliable;

(iv) Are administered by trained and knowledgeable personnel; and

(v) Are administered in accordance with any instructions provided by the producer of the assessments.

(2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

(5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with § 300.301(d)(2) and (e), to ensure prompt completion of full evaluations.

(6) In evaluating each child with a disability under §§300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

34 C.F.R. § 300.304(b)-(c). Similarly, COMAR 13A.05.01.05C(1) provides:

C. Assessment Materials.

(1) A public agency shall ensure that testing and assessment materials and procedures used to assess a student's need for special education and related services are:

- (a) Technically sound; and
- (b) Provided and administered in the student's native language or other mode of communication, in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to provide or administer.

The Court in *E.P. ex rel. J.P. v. Howard County Public School System* adopted the language of previous courts and stated:

“In challenging an evaluation, courts have found that a parent ‘cannot simply argue that the evaluation was inappropriate because they disagree with its findings.’” In [*West Chester Area School District v. G.D.*], the court explained: “Because IDEA evaluations depend on the exercise of professional judgment, they are entitled to a reasonable degree of deference. Accordingly, when plaintiffs challenge a decision reached by an educational professional, they must show more than simple disagreement with the conclusion; they must show the professional judgment rendered is actually wrong, and not just in doubt. For example, a plaintiff must show evidence of a flawed evaluation process, by failing to follow regulatory requirements, or if the district failed to investigate an area of suspected disability with little or no explanation why.”

No. ELH-15-3725, 2017 WL 3608180, at *28 (D. Md. Aug. 21, 2017), *aff'd per curiam*, 727 F. App'x 55 (4th Cir. June 19, 2018) (citations and footnotes omitted).

Position of BCPS

BCPS maintains that the issue here is a narrow one; specifically, whether the FBA of the Student administered by BCPS in April 2018, with the FBA completed on April 25, 2018, met

the IDEA requirements outlined above. BCPS contends that the FBA, and the resulting BIP, were comprehensive, appropriate, and consistent with the requirements of the IDEA and its accompanying regulations, thereby warranting denial of the Parents' request for an IEE at the school system's expense.

Position of the Parent

The Parent asserts that she was denied participation throughout the FBA process and that the FBA, and the resulting BIP, were incomplete without considering the classroom observations of Ms. [REDACTED]

For this reason, the Parent argues that the FBA conducted by BCPS was inappropriate.

Functional Behavior Assessment

The evidence presented by BCPS establishes that Ms. [REDACTED] had the proper education, training, licensing, and qualifications to administer the FBA and interpret the results, in accordance with the federal regulations. § 300.304(c)(1)(iv). Ms. [REDACTED] has worked as a School Psychologist with BCPS for six years, and worked in the same capacity with [REDACTED] PS for three years. She received a B.A. in Psychology from the University of [REDACTED] [REDACTED] County; Master of Arts in School Psychology from [REDACTED] University; and a Certificate of Advanced Study in School Psychology from [REDACTED] University. She also earned an Advanced Professional Certificate in July 2017.

The evidence also clearly establishes that Ms. [REDACTED] is trained and knowledgeable to conduct FBAs of students in accordance with the requirements of the IDEA and federal regulations. 34 C.F.R. § 300.304(c)(1)(iv). Ms. [REDACTED] has been a Certified School Psychologist in Maryland since 2009. She estimated that she has conducted approximately fifteen FBAs per

school year, and the numbers are increasing. Ms. [REDACTED] was accepted without objection as an expert in school psychology.

Ms. [REDACTED] testified that she has known the Student for six years and conducted his 2017 Psychological Assessment, as well as numerous threat assessments and a previous FBA. She stated that she conducted the Student's FBA in response to increased concerns at the school regarding the Student's physical and verbal aggression and his threats of self-harm. She explained that the function of the FBA is to identify the two behaviors that impact the student most in the classroom, the antecedents to the behaviors (i.e. boredom, negative peer interactions) and the purpose (reason) for the behaviors (i.e. to gain attention or access to a preferred activity, or to avoid something). Ms. [REDACTED] explained that by identifying and addressing the two behaviors, it is more likely that other negative behaviors may diminish.

Ms. [REDACTED] employed a number of data collection methods to gain specific information from individuals in the school who were most familiar with the Student, his behaviors and the triggers which cause his behaviors. She asked the Student's primary teacher, Ms. [REDACTED] to complete an FBA Teacher Survey, which consisted of a series of twelve questions, beginning with the identification of the two behaviors which impact the Student most in the classroom. The remaining questions focus on interventions tried, the intensity of each behavior, the frequency of each behavior, factors which contribute to the behaviors, the time of days the behaviors are most likely to occur and the factors which seem to trigger the behaviors. The survey also asked about positive reinforcements preferred by the Student, the Student's special strengths or interests and persons with whom the Student has a good rapport. Ms. [REDACTED] completed the FBA Teacher Survey and returned it to Ms. [REDACTED].

Ms. [REDACTED] also utilized a Student –Assisted Functional Assessment Interview. This tool, which consisted of twelve short questions, answered by the Student, “always/sometimes/never,” was specific to the Student’s classroom experience.

Ms. [REDACTED] had three school professionals who have extensive contact with the Student complete Antecedent Behavior Consequence (ABC) Data Sheets, which were completed between April 16 and April 27, 2018. This tool memorialized the behavior displayed, the time and duration of the behavior, the activity or location, the antecedent and the consequences. Ms. [REDACTED] compiled and analyzed the data she acquired from the ABC Data Sheets and created a chart to determine the most prevalent antecedents and likely function or reason for the behavior.

The final assessment tool Ms. [REDACTED] utilized was the QABF. She, again, asked three school professionals best familiar with the Student to respond to twenty-five statements regarding the reason for (function) the Student’s two identified behaviors. Each statement was rated by number, with zero meaning “never” and three meaning “often.” Examples of the statements are, “Engages in the behavior to get attention” and “Engages in the behavior to escape work or learning situations.” Again, Ms. [REDACTED] analyzed the responses and determined the most prevalent reasons for the Student’s behaviors.

In addition to data collection, Ms. [REDACTED] conducted frequent, but brief, classroom observations of the Student and included the results of her observations in the FBA. She noted that last year the Student saw her for counseling thirty minutes per month, which the Student found difficult to tolerate. Accordingly, Ms. [REDACTED] adjusted the Student’s counseling time to fifteen minutes every week. This adjustment was in effect when she conducted the FBA.

As a result of her data collection and analysis, and her classroom observation, Ms. [REDACTED] had sufficient data to identify the behaviors which impact the Student most in the classroom, the

triggers of those behaviors and the function of the behaviors. She memorialized her findings in a written FBA on April 25, 2018. In that document, Ms. [REDACTED] identified the two behaviors which impact the Student most in the classroom as physical and verbal aggression and non-compliance. The most likely time the Student's behaviors will occur is upon arrival at school and when there is less structured time. Verbal aggression happened on average seven times per day, physical aggression four times per day and non-compliance seven times per day with duration of between five minutes up to an hour. There were four predominant triggers to the Student's behavior: negative peer interaction, presentation of undesirable tasks, the Student's request denied and teacher demand. The functions or reasons for the behaviors were determined to be: to gain attention, or control of an object/activity, and work avoidance.

Based upon her FBA, Ms. [REDACTED] developed a BIP which delineated strategies to address the function of the behaviors, the contributing factors and the triggers. It also addressed skill development, positive strategies to reinforce appropriate replacement behaviors, consequence strategies, staff development and the development of a response plan.

Ms. [REDACTED] the school Assistant Principal and the IEP Chair, was accepted without objection as an expert in education. Ms. [REDACTED] earned her Bachelor of Science degree in Early Childhood Education from [REDACTED] University and a Master of Science in School Administration and Supervision from [REDACTED] University. She testified that the IEP Team convened on May 2, 2018 during which the FBA and the BIP were discussed. The Parent was sent the FBA prior to the meeting, but was sent the BIP fewer than five days before the meeting. The Parent, who was accompanied by her Advocate, did not object and the meeting continued, although the Parent was offered the opportunity to reconvene on a later date. Ms. [REDACTED] conveyed that Ms. [REDACTED] a Special Education Specialist with the BCPS Office of Special Education, was present at the

IEP Team meeting. Ms. [REDACTED] had conducted an informal classroom observation of the Student on a single occasion. Ms. [REDACTED] gave an oral report of her informal classroom observation to the IEP Team, after which she left the meeting. The Parent objected to Ms. [REDACTED]'s departure before the conclusion of the IEP Team meeting. However, Ms. [REDACTED]'s classroom observation was not a factor in the FBA. Ms. [REDACTED] opined that the FBA was appropriate and that the Student's physical and verbal aggression has subsided since the beginning of the year:

Mr. [REDACTED] is a Special Education Specialist in the BCPS Office of Special Education. He earned a degree in Liberal Arts and Technology: Elementary from [REDACTED] College, a Master's degree in Leadership in Teaching: Special Education from the College of [REDACTED] and an Administrator I Certification from the College of [REDACTED]. Mr. [REDACTED] has numerous certifications, including Elementary Education and Special Education. He was accepted, without objection, as an expert in Special Education and Behavior Intervention. He testified that he had a phone conversation with the Parent during which he brought Ms. [REDACTED] into the discussion. The Parent had concerns that the Student's behaviors were escalating and questions about his educational placement. As a result of the phone conversation, Ms. [REDACTED] agreed to conduct an informal classroom observation of the Student. Ms. [REDACTED]'s observations were not used in formulating the FBA because the rest of the IEP Team knew the Student much better as they interact with him on a regular basis. Ms. [REDACTED] works outside of the school setting in the BCPS Office of Special Education. Mr. [REDACTED] testified about the May 2, 2018 IEP Team meeting and said that, although Ms. [REDACTED] left the meeting after speaking about her classroom observation, the Team continued to have "rich discussions." He conveyed that the Parent had no disagreement with the FBA findings and the FBA adequately addressed the antecedents and responses.

The Parent did not testify, but called two witnesses.

Ms. [REDACTED] Special Education Specialist with the BCPS Office of Special Education, is a Board Certified Behavior Analyst. She was not offered as an expert witness. Ms. [REDACTED] testified that she became involved when the Parent contacted the Office of Special Education and spoke with Mr. [REDACTED] and her. As a result of that interaction, Ms. [REDACTED] agreed to conduct an informal classroom observation of the Student to address the Parent's concerns regarding the Student's placement. After her classroom observation, she discussed those observations with the Parent and her Advocate. The Parent requested that Ms. [REDACTED] create a written report and present her findings at the May 2, 2018 IEP Team meeting. Ms. [REDACTED] complied with both requests. After Ms. [REDACTED] gave her report to the IEP Team on May 2, 2018, she departed the meeting. She explained that the meeting was scheduled for one hour and she had completed her presentation. She is not a part of the IEP Team and she is not typically involved in school-based matters. Ms. [REDACTED]'s testimony did not reflect the results of her informal classroom observation; neither did it address any issue related to the FBA or the BIP.

The Parent called Ms. [REDACTED] as a witness. She did not offer any testimony regarding the FBA or the BIP. She did offer that the IEP Team made changes throughout the school year to address the Student's behavioral issue. For example, the Student's counseling sessions with the school psychologist were adjusted from one thirty-minute session per month to one fifteen-minute session per week. The school also added social worker supports.

The instruments used by Ms. [REDACTED] in the FBA were tailored to assess the Student's specific areas of need. She used the instruments for the purposes for which they were intended and to determine the behaviors that impact the Student's access to classroom learning, identify the triggers which cause those behaviors and the reason for the behaviors. These instruments complied with the IDEA requirements and procedures. 34 C.F.R. § 300.304(b)-(c).

Ms. [REDACTED] engaged the professional staff who had the most interaction with the Student when she conducted the FBA. She provided them with a variety of appropriate and meaningful tools to gather information about the Student's behavior which included such input as the time of day or activity during which a behavior is most likely to occur, the circumstances which prompted the Student's behavior, the consequence undertaken in response to the behavior and whether that consequence was effective.

It is clear that Ms. [REDACTED] did not use a single measure or assessment as the sole criterion for determining the predominate behaviors which impact the Student's learning and the factors which contribute to those behaviors. 34 C.F.R. § 300.304(b)(2). Ms. [REDACTED] used three different instruments, as well as the Student-Assisted Functional Assessment Interview which was completed by the Student. Three professionals completed the ABC Data Sheets, three completed the QABF and Ms. [REDACTED], the Student's primary educator, completed the FBA Teacher Survey. Ms. [REDACTED] was the only professional to complete all three instruments and no other participant completed more than one. Ms. [REDACTED] had previously conducted the Student's Psychological Assessment on November 28, 2017 and had access to that information as well. It is clear that BCPS, through the Assessment conducted by Ms. [REDACTED] used a variety of assessment tools and strategies to gather relevant functional behavior information regarding the Student.

The evidence in this record demonstrates that Ms. [REDACTED] prepared a detailed and insightful report. She included a complete record of the results of the instruments used, included a detailed analysis of the results of the assessment, employed a clear structure for presenting information in the Report, and included a detailed description of the instruments used and their purpose. I credit the knowledgeable and detailed testimony of Ms. [REDACTED] with regard to information that is properly included in an FBA and the propriety of her Assessment. I find that Ms. [REDACTED]'s Functional

Behavior Assessment was detailed and supported by the assessment instruments. The resulting BIP was well-crafted, contained useful background information and analysis, relevant recommendations, and was appropriate under federal and State law.

Ms. [REDACTED]'s BIP, which was an off-shoot of the FBA, identified the "problem behaviors" as physical and verbal aggression and non-compliance with adult instructions. She identified replacement behaviors and well as goal behaviors. The BIP addressed in detail strategies that address the function of the behavior, strategies to address the contributing factors of the behavior, strategies to minimize the triggers of the behavior and positive strategies to reinforce appropriate replacement behaviors. The BIP also addressed consequence strategies for the problem behavior, staff development and a response plan. It is noteworthy that the Student missed 1,425 instructional minutes due to behavioral problems in March 2018. By May 2018, that number was 513 minutes, a dramatic decrease.

I conclude that BCPS employed appropriate instruments and measures that were designed to evaluate the Student's behavior, and the antecedents to and functions of those behaviors. I further conclude that the FBA and the supporting documents contained appropriate analysis of the results of the instruments that were administered and included appropriate recommendations for the Student's BIP.

The Parent has presented no evidence, either through testimony, documentation or expert opinion, that challenged the BCPS FBA or demonstrated that it failed to meet the IDEA requirements as provided in 34 C.F.R. § 300.304(b)-(c) and COMAR 13A.05.01.05C(1). The Parent baldly alleged, without substantiation, that the absence of Ms. [REDACTED]'s informal classroom observation from consideration in the FBA impacts the validity of the assessment. However, she failed to elicit testimony regarding the informal classroom observation or offer Ms. [REDACTED]'s report

into evidence. Moreover, the Parent did not challenge the soundness of the tools Ms. [REDACTED] used in conducting her assessment, nor did she express that she disagreed with the results of the FBA.

Summary

For all the reasons addressed above, BCPS has proven that the FBA of the Student administered by Ms. [REDACTED] in April 2018 and presented at the IEP Team meeting on May 2, 2018 was appropriate in accordance with the requirements of the IDEA and federal and State regulations. The school system's evaluator testified credibly and in detail regarding the assessment she administered, the reasons she chose the instruments she used and the basis for the information she included, and why certain information was not included. She also analyzed the data she obtained and explained the basis for her conclusions. Ms. [REDACTED] conducted an appropriate assessment with regard to the areas of behavioral difficulty disability identified by the IEP team.

The FBA was sufficiently comprehensive to meet the IDEA standard for administering and reporting appropriate assessments. Although there may have been information not included in the Assessment, specifically Ms. [REDACTED]'s informal classroom observation, BCPS proved that the FBA included the information that was required for an appropriate assessment, and the Parent did not show that any information she claimed was not included was required to be present for an appropriate evaluation under federal or State law. While the Parent has not articulated the basis of her disagreement with the Assessment, whatever the disagreement is does not render the Assessment inappropriate. Therefore, I conclude that the Parent is not entitled to obtain an IEE at public expense. The Parent is certainly entitled to obtain her own assessment of the Student, but that assessment need not be funded by BCPS.

As noted above, the critical question before me is not the *results* of the BCPS testing, or any action taken by the IEP team after the Assessment was considered, but whether the Assessment was properly administered in accordance with the standards and requirements set forth above. It is important to note that the applicable legal issues in this proceeding, which resulted from the due process complaint filed by the school system, do not involve a determination of whether the Student has an educational disability or whether he is eligible for special education and related services. In this case, BCPS has established that the FBA conducted by BCPS was proper, comprehensive, and in compliance with applicable law.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the FBA of the Student conducted by BCPS in April 2018 is appropriate under the applicable standards and, therefore, the Parent is not entitled to an IEE at public expense. 20 U.S.C.A. § 1415(b)(1) (2017); 34 C.F.R. §§ 300.304, 300.309, 300.502(b) (2017); COMAR 13A.05.01.05 and 13A.05.01.06.

ORDER

I **ORDER** that the Baltimore County Public Schools' Functional Behavior Assessment administered in April 2018 is appropriate and that the Parent's request for an independent educational evaluation at public expense be denied.

July 27, 2018
Date Decision Mailed

Signature Appears on Original

M. Teresa Garland
Administrative Law Judge

MTG/sw
174906

REVIEW RIGHTS

Any party aggrieved by this Final Decision may file an appeal with the Circuit Court for Baltimore City, if the Student resides in Baltimore City, or with the circuit court for the county where the Student resides, or with the Federal District Court of Maryland, within 120 days of the issuance of this decision. Md. Code Ann., Educ. § 8-413(j) (2018). A petition may be filed with the appropriate court to waive filing fees and costs on the ground of indigence.

Should a party file an appeal of the hearing decision, that party must notify the Assistant State Superintendent for Special Education, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, in writing, of the filing of the court action. The written notification of the filing of the court action must include the Office of Administrative Hearings case name and number, the date of the decision, and the county circuit or federal district court case name and docket number.

The Office of Administrative Hearings is not a party to any review process.

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