

STATE OF NORTH CAROLINA

**BEFORE A STATE HEARING REVIEW OFFICER
FOR THE STATE BOARD OF EDUCATION
PURSUANT TO G.S. 115C - 109.9**

STUDENT by parent ***FATHER***
Petitioner

v.

Granville County Board of Education
Respondent

DECISION

10 EDC 8869

This is an appeal of the Decision of Administrative Law Judge Melissa Owens Lassiter issued on March 31, 2011.

The records of the case received for review included:

1. One (1) day of transcript of the hearing.
2. The Official Record of the case issued by the Office of Administrative Hearings; which included the Decision of Judge Lassiter, motions, procedural documents, orders, and Exhibits from both parties.
3. Additional written arguments submitted by both parties to the Review Officer.

The hearing of this case was held before Administrative Law Judge Melissa Owens Lassiter on February 17, 2011 in Oxford, North Carolina.

Appearances:

For Petitioner *Father, pro se;*

For Respondent James E. Cross, Jr.; Royster Cross & Hensley, LLP; PO Drawer 1168, Oxford, North Carolina 27565

To provide a document that does not have personally identifiable information regarding the Petitioner and/or for convenience, the following will be used to refer to the parties:

For the Child/Petitioner - *Student*; the child

For Parent/Petitioner - *Father*; Petitioner; parent; father

For Respondent - Respondent; Granville County Schools; LEA

ISSUES

The Petitioner's petition included several possible problems the Petitioner was having with the Respondent, but clearly stated only one issue: The Respondent failed to follow the Behavior Intervention Plan (BIP) established for *Student*.

The ALJ separated this issue into three "sub-issues."

- The Respondent failed to follow the BIP by issuing a November 9, 2010 letter to Petitioner prohibiting *Father* from entering the school campus or contacting any school staff. The Petitioner alleged that this prevented him from participating in *Student's* education.
- The Respondent failed to follow the BIP, which required Respondent take certain steps before they suspended *Student* from school; namely, "call parent, parent conference, out of school suspension 1 day per an incident." (as stated in Petition) Specifically, *Father* contended that the Respondent failed to notify him before it suspended *Student* from school.
- The Respondent failed to follow the BIP by suspending *Student* from school for 3 days for one incident that occurred on December 9, 2010.

The Petitioner requested the following relief:

1. Determine and declare the appropriate use of a student assistant.
2. Reinstate the student assistant (parent's choice).
3. Expunge *Student's* records of any references to the disciplinary reports filed by Mrs. *Student*.
4. Respect and observe the IEP BIP regarding parent involvement. The BIP calls for notification and involvement.
5. Respondent invite Ms. J.S., Educational Specialist to any future meeting.
6. All meetings will be audio recorded and transcribed legibly.

LIST OF WITNESSES

Petitioner:

Ms. J.S.
Father

Respondent:

Ms. A.M., (Exceptional Children Program Director)
Ms. K.T. (Principal)

EXHIBITS

PRELIMINARY STATEMENT

Judge Lassiter's decision was appealed by the Petitioner on April 5, 2011 and the undersigned was appointed as Review Officer on April 6, 2011. The parties were provided a Request for Written Arguments on April 6, with Written Arguments due on April 27, 2011. The Decision was to be completed by May 5, 2011, within the 30 day timeline established by 34 CFR 300.515(b) and the *Policies Governing Services for Children with Disabilities*, NC 1504-1.16(b).

Standard of Review by the State Review Officer

The review of this case is in accordance with the provisions of G.S. 115C-109.9 and the *Policies Governing Services for Children with Disabilities*, NC 1504-1.15. The standard of review that must be used by the Review Officer for the State Board of Education is found in *Board of Education v. Rowley*, 458 U.S. 176 (1982). The Supreme Court held that due weight shall be given to the state administrative proceedings. In *Doyle v. Arlington County School Board*, 953 F.2d 100 (4th Cir. 1991), the Fourth Circuit explained *Rowley's* instruction that "due weight" be given to state administrative hearings. *Doyle* reviewed a product of Virginia's two-tiered administrative system. The court first noted, "By statute and regulation the reviewing officer is required to make an independent decision" *Doyle*, 953 F.2d at 104 The court held that in making an independent decision, the state's second-tier review officer must follow the "accepted norm of fact finding."

In North Carolina, District Court Judge Osteen further interpreted this requirement of *Rowley* and *Doyle*. *Wittenberg v. Winston-Salem/Forsyth County Board of Education*, Memorandum Opinion and Order 1:05CV818 (M.D.N.C. November 18, 2008) A State Review Officer (SRO) must follow the same requirements as the courts. The SRO must consider the findings of the ALJ as to be *prima facie* correct if they were regularly made. An ALJ's findings are regularly made if they "follow the accepted norm of fact-finding process designed to discover the truth."

Having reviewed the records of the case, the Review Officer for the State Board of Education independently makes Findings of Fact and Conclusions of Law in accordance with 20 U.S.C. 1415(g); 34 CFR §300.532; G.S. 115C-109.9; and the *Policies Governing Services for Children with Disabilities*, NC 1504-1.15.

The Review Officer finds that the ALJ's Facts appear to be regularly made. The Review Officer's Findings of Fact are consistent with those of the ALJ, although sometimes stated in a slightly different manner. The Review Officer concurs with and uses many of the ALJ's Facts. The Review Officer has, in some instances, consolidated the information from testimony and exhibits into a reduced number of Facts. Those eliminated are usually recitations of testimony, redundant, or those that have no bearing on the issues of the case. Some Facts concerning the ALJ's Hearing and Decision have been added. The overall impression one gets when reading the ALJ's Facts and the Review Officer's Facts is basically the same.

Some of the Review Officer Conclusions of Law are stated differently but are consistent with those of the ALJ and supported by IDEA, Federal Regulations, and state law. A few necessary conclusions have been added. None of the Conclusions reached by the Review Officer are inconsistent with those of the ALJ.

To the extent that the Findings of Facts may contain Conclusions of Law, or that the Conclusions of Law may include Findings of Fact, they should be so considered without regard to the given labels.

FINDINGS OF FACT

1. The Petitioner, *Father*, is a resident of Granville County and the father of *Student*. At the time of the hearing, *Student* was nine years old and was in the fourth grade at ABC Elementary School in Granville County.

2. The Respondent is a local education agency (LEA) receiving funds pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. §1400 *et seq.*, (IDEA) and is responsible for providing special education to the child pursuant to Article 9, Chapter 115C, of the North Carolina General Statutes.

3. *Student* has been identified as a child with a disability, categorized as having a Serious Emotional Disability (SED). He has Attention Deficit Hyperactivity Disorder (ADHD) and Oppositional Defiant Disorder (ODD). As such, he is eligible for and requires special education and related services, including an Individualized Education Program (IEP) pursuant to state and federal law.

4. Included in *Student's* IEP was a Behavior Intervention Plan (BIP) that had been adopted from ** County, where he had been previously enrolled. On October 12, 2010, the IEP Team had made slight modifications to the BIP. One modification was to combine several steps in the consequences for behavior. In the original BIP the parent was to be called prior to administrative intervention. The amended BIP had these occurring simultaneously. (Pet. Ex. 1; Resp. Ex. 2 & 3)

5. The October 12, 2010 BIP focused on the primary areas of behavioral concern for *Student*:

Behavior 1: *Student* has difficulty understanding appropriate practices of social interaction with students.

Behavior 2: *Student* often has outbursts and can be verbally aggressive and argumentative. (Pet. Ex. 1; Resp. Ex. 2 & 3)

6. While not written specifically in the BIP, the minutes of the meeting included a statement that if behaviors go beyond what is written in the BIP, then administrators follow local and state guidelines. The BIP did include that there would be one day of suspension per incident. (Pet. Ex. 1; Resp. Ex. 2 & 3)

7. On November 22, 2010 the IEP Team conducted an annual review. The BIP was "tweaked" with specific rating scales, which were explained to *Student* by his special education teacher the following day. (Resp. Ex. 2 & 7; T. p. 89, 6-14)

8. The behavior rating scale developed for *Student* and explained to him on November 25 contained the following rules:

5 - no redirections for the behavior in question

4 - one redirection for said behavior + remind *Student* of what he should be doing

3 - two redirections for said behavior + remind *Student* of what he should be doing

2 - timeout + remind *Student* of what he should be doing

1 - call to parent/administrative intervention
(Resp. Ex. 7 & 9)

9. On December 9, 2010 a fourth grade teacher, *Ms. M.*, advised the principal, *Ms. K.T.*, that three students wanted to talk with her about an incident that happened on the playground that day.

- a. Before lunch, the three students told *Ms. K.T.* that several days ago, *Student* had spit on the shoe of one of those three students. *Student* also kept following them around on the playground. The teacher on the playground intervened and got *Student* to go away from them, but the students did not tell their teacher what *Student* had done.
- b. The students explained that several heard *Student* say, "I am going to take care of business today," when he was going on the playground that morning. The students told the principal that *Student* spat on the same student's shoe again that morning while on the playground. The student was upset. Her cousins, also fourth graders on the playground, asked *Student* why he was messing with that student. The students explained that *Student* was cussing, and *Student* and the cousins were in kind of a huddle. The students indicated that the incident happened while *Ms. H.*'s class and *Ms. M.*'s class were on the playground around 10:25 that morning.
- c. *Ms. H.* and *Ms. M.* approached the students in the huddle and told them to break it up. After being told to get away from the other students, *Student* disobeyed the teacher and went right back to the playground set where the other students were located. The students said that they saw *Student* hit a student in the back as *Student* followed that student who was climbing a ladder to a slide. The students claimed that *Student* said the "f" word, the "b" word, and the "a" word. Another student alleged that *Student* hit other students in the face and shoulder. (Resp. Ex. 10; T. pp. 130-35) *Student* had some words with *Ms. M.* and said, "This is not over yet." *Ms. H.* told *Student*, "You need to come with me," but *Student* refused. He threw up his arm at *Ms. H.* and she stepped back. The students were more upset about how *Student* talked to the teachers than they were about *Student* hitting them. (T. p. 135)

10. Before lunch that day, the principal talked with *Ms. H.* about what the students had told her. *Ms. H.* told the principal that she had put her arm up to block *Student*'s arm, and that "*Student* would have hit me had I not stepped back." *Ms. H.*'s and *Student*'s arms touched each other. The principal asked *Ms. H.* to complete a Student Discipline Referral. (T. pp. 135-137)

11. At 11:15 am that day, *Ms. H.* completed the Incident Description portion of the Student Discipline Referral. *Ms. H.* described the incident:

Today on the playground, I witnessed *Student* being aggressive with other students. When I intervened in an attempt to follow his plan, *Student* would not listen to me. He continued to scream at me as well as the students. *Student* was being aggressive toward me as I continued to try to speak to him.
(Resp. Ex. 10)

12. The principal had to attend a student assembly until 2:30 that day so she could not follow-up on the discipline referral immediately. After assembly, she called *Student* to her office and

talked with him. *Student* “admitted right off the bat what he had done with the teacher and what he had said.” (T. p. 135) *Student* admitted spitting on the student’s shoe on that day, December 9, 2010, and a couple of days before. *Student* denied hitting anybody or cursing. He said he was yelling and screaming at Ms. H., and indicated he raised his arm because he did not want to go with her. (Resp. Ex. 10, p. 2; T. pp. 136-37) *Student* gave the principal names of students who were possible eyewitnesses. She told *Student* she would question those students since *Student* did not admit to everything alleged.

13. The principal completed the bottom section of the Student Discipline Referral by writing the students’ allegations against *Student*. She advised *Student* to give the form to his father. She suspended *Student* from school beginning Friday, December 10 through Tuesday, December 14. (Resp. Ex. 10; T. p. 139)

14. At the hearing, *Father’s* primary argument that the BIP was not being followed simply because he was not called before Ms. K.T. began her investigation and decided to suspend *Student* for aggressive behavior, which was not covered by the BIP. For behaviors not covered by the BIP, normal school board policy was to be followed. The BIP did include that *Father* was to be called simultaneously with administrator intervention. Ms. K.T. did attempt to call.

15. Around 3:30 p.m., Ms. K.T. phoned the Petitioner *Father* regarding the morning incident on the playground. She left a message on *Father’s* cell phone as *Father’s* home phone was not working. She advised him of the discipline referral and of her investigation so far. She said that *Student* was suspended for Friday, December 10 for refusing time-out and being disrespectful to teachers. She indicated that she would investigate further on Friday, and call and e-mail her decision. (Resp. Ex. 10, p. 2; T. p. 139) Ms. K.T. followed up with an e-mail to *Father* at 4:33 p.m. The e-mail advised *Father* that she had left a message on his cell phone and reiterated the same information left in the phone message. (Resp. Ex. 10, p. 2; T. p. 140)

16. Ms. K.T. conducted a further investigation on Friday, December 10. She questioned five additional eyewitnesses and the three students directly involved. All the students heard *Student’s* cursing and being disrespectful to the teachers. One additional student saw *Student* hit a boy in the back. None saw *Student* hit a boy in the face. Following this investigation, Ms. K.T. decided to suspend *Student* for a total of two days rather than the three days originally stated. One day was for being disrespectful to teachers and not going to time out as instructed, and one day for hitting a student in the back and cursing. (Resp. Ex. 10, p. 3; T. pp. 136-42)

17. Ms. K.T. sent an e-mail to the Petitioner at 12:58 p.m. on December 10 about her investigation and the suspension for two days. (Resp. Ex. 10, p. 3)

18. On Friday, December 10, *Father* called Ms. K.T.. She returned the call at 3:40 p.m. and discussed the matter for about twenty minutes. *Father* told Ms. K.T. that he thought that the BIP had not been followed. (T. p. 141) During the phone call, Ms. K.T. advised *Father* that she could have suspended *Student* for three days just for the behavior directed toward Ms. H. alone. She explained that she was actually being quite lenient. There had been previous discussions about aggression not being included in *Student’s* BIP. As aggression is not one the regular behaviors covered by the BIP, *Student* is to be treated like any other student. Generally, regular students get three days suspension for aggression. (T. pp. 138-40)

19. During the hearing Petitioner *Father* asserted that the team did not define the phrase, “if behaviors go beyond what is written in the BIP, then administrators will follow local and state guidelines.” A preponderance of evidence, however, showed that the IEP Team did discuss this issue at the October 12, 2010 meeting. Even Ms. J.S., the Petitioner’s specialist who testified stated: “And this has been discussed not just at this meeting, but it also was discussed again when we were together in November. ... I believe the discussion ... at the meeting was that school board policy would follow for anything not in the BIP. (T. pp. 44-45) Ms. J.S. clarified that the BIP addressed two behaviors. The goal for Behavior 1 was that outbursts would decrease as listed on the plan. The goal for Behavior 2 was that *Student* will improve his ability to interact appropriately with adults by decreasing the amount he argues with adults. She noted in testimony that aggressive behavior is not directly written on the BIP. She pointed out, however, that *Father* has requested that it be included. (T. p. 47)

20. Ms. K.T. also testified that she had suspended *Student* in October for aggression toward another student. She and the Petitioner, at that time, had discussed that whenever *Student*’s behavior is aggression and not a regular behavior addressed on the BIP, then *Student* will be treated like any other student when deciding upon discipline measures. (T. p. 138)

21. The Petitioner filed a petition for a due process hearing solely based on one issue, that the Respondent failed to follow the BIP. The Petition was filed on December 13, 2010. The hearing was conducted by Administrative Law Judge Melissa Owens Lassiter in Oxford, North Carolina on February 17, 2011.

22. On February 21, 2011 the Petitioner filed a Request to Disclose Conversation with OAH. The Petitioner requested the ALJ and Respondent disclose and make known the reason and content of their conversations during, prior to, and after the hearing. Despite this allegation that there may be some bias by the ALJ in favor of the Respondent, the Petitioner submitted nothing to substantiate his Request. In her Decision, Judge Lassiter responded to this allegation, noting that no *ex parte* communications occurred. The Respondent’s attorney responded in like manner and his letter was included in the ALJ’s documents. Judge Lassiter stated that she exchanged pleasantries with all present, including the Petitioner. Such pleasantries are a normal part of any meeting of adults who gather for a designated purpose.

23. The transcript shows that the Judge Lassiter did much to assist the Petitioner who came to the hearing not well prepared to present his case. The ALJ actually helped the Petitioner question witnesses and present his case.

24. Judge Lassiter issued a Final Decision on March 31, 2011, stating:

The undersigned finds that Respondent did not fail to follow *Student*’s BIP and did not deny *Student* a FAPE.

25. Judge Lassiter’s decision was appealed by the Petitioner on April 5, 2011 and the undersigned was appointed as Review Officer on April 6, 2011. The parties were provided a Request for Written Arguments on April 6.

26. The Petitioner’s appeal was succinct and to the point. The Petitioner was appealing the Decision of Judge Lassiter, that Respondent did not fail to follow *Student*’s BIP and did not deny FAPE. The Petitioner, however, attempted to add other issues during the appeal. In arguments submitted on April 19, 2011, the Petitioner attempted to add three new issues and submitted additional exhibits. The additional issues were that the Petitioner was: 1) Denied right to an Impartial

Hearing Officer; 2) Denied Free and Appropriate Education; and 3) Denied a Fair Hearing. Most of the additional Exhibits were e-mails that purported to support these issues. One additional exhibit was a letter from a psychologist written on April 11, 2011.

27. The Respondent submitted Arguments to the Review Officer on April 27, 2011.

Based on the Findings of Fact, the Review Officer for the State Board of Education makes Conclusions of Law independently of those of the ALJ. Most are consistent with those of the ALJ. A few are essentially the same, but many utilize law not included in the ALJ's Decision. Those added are consistent with IDEA, state law, federal regulations, state policies, and court interpretations. The Review Officer makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings and the Review Officer for the State Board of Education have jurisdiction over this case pursuant to Chapters 115C, Article 9 of the North Carolina General Statutes (N.C.G.S.); NC 1500 *Policies Governing Services for Children with Disabilities*; the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. §1400 et seq.; and IDEA's implementing regulations, 34 C.F.R. Part 300.

2. IDEA was enacted to “ensure that all children with disabilities have available to them a Free Appropriate Public Education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living.” 20 U.S.C. §1400(d)(1)(A), IDEA; the implementing federal regulations, 34 C.F.R. Part 300; N.C.G.S. 115C, Article 9; and NC 1500 *Policies Governing Services for Children with Disabilities*. All these provisions have specific procedures that a LEA must follow in making FAPE available.

3. Respondent is a local education agency receiving funds pursuant to 20 U.S.C. §1400 et seq. and the agency responsible for providing educational services to students enrolled in Granville County. The Respondent is subject to the provisions of applicable federal and state laws and regulations, specifically 20 U.S.C. §1400 et seq.; 34 C.F.R. Part 300; N.C.G.S. 115C, Article 9; and the North Carolina *Policies*, NC 1500. These acts and regulations require the Respondent to provide FAPE for those children in need of special education.

4. *Student* is a child with a disability for the purposes of IDEA, 20 U.S.C. §1400 et seq. and a child with special needs within the meaning and definition of N.C.G.S. 115C-106.3(1). *Student* was enrolled in Respondent's school during the period relevant to this controversy. Being classified as having a serious emotional disability, he is entitled to a free appropriate public education (FAPE) from the Respondent.

5. N.C.G.S. §§115C, 109.6-109.9 and the *Policies* (NC 1504, 1.8-1.16) provide the guidelines to be used in the hearing and administrative review process. The hearing by the ALJ and review by this Review Officer are required to be conducted in accordance with these provisions.

6. A free appropriate public education (FAPE) that must be made available to all eligible children is defined by IDEA, 20 U.S.C. §1401(9):

FREE APPROPRIATE PUBLIC EDUCATION - The term 'free appropriate public education' means special education and related services that -

(A) have been provided at public expense, under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary school, or secondary school education in the State involved;

and

(D) are provided in conformity with the individualized education program required under section 614(d).

7. A free appropriate public education has also been defined as that which provides a child with a disability with personalized instruction and sufficient support services to enable the student to benefit from the instruction provided. The individualized educational program (IEP) must be reasonably calculated to enable the child to receive benefits. *Board of Education v. Rowley*, 458 U.S. 176 (1982); *Burke County Board of Education v. Denton*, 895 F.2d 973 (4th Cir. 1990).

8. In *Schaffer v. Weast*, 546 U.S. 49 (2005), the Supreme Court decided that parents who challenge educational decisions made by schools have the burden of proof in due process hearings. Thus, the Petitioner has the burden to show by a preponderance of evidence that the Respondent did not offer *Student* a FAPE by failing to follow the BIP. For the reasons set forth in the following, the Petitioner has not met this burden.

9. In *Board of Ed. v. Rowley*, 458 U.S. 176, 206 (1982) the Supreme Court established both a procedural and a substantive test to evaluate compliance with the IDEA. The Court provided:

First, has the state complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Acts' procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.

10. If there is a procedural violation of the IDEA, it must be determined whether the procedural violation either (1) resulted in the loss of an educational opportunity for the child, or (2) deprived the child's parents of the right to meaningfully participate in the development of the child's IEP. *M.M. ex rel. D.M. v. Sch. Dist. of Greenville County*, 303 F.3d 523 (4th Cir. 2002). In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies impeded the child's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of a FAPE, or caused a deprivation of educational benefit. 20 U.S.C. 1415(f)(3)(e).

11. N.C.G.S. 115C-109.8 provides that in matters alleging a procedural violation, the hearing officer may find that a child did not receive FAPE only if the procedural inadequacies either impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision making process, or caused a deprivation of educational benefits. The Petitioner has not met the burden of showing any of these, for the preponderance of the evidence showed that Respondent complied with the procedures.

12. *Student* was entitled to an IEP that met the requirements of IDEA and North Carolina law. There was never a claim that the IEP did not comply with these requirements. The Petitioner's claim related solely to a failure of the Respondent to follow the BIP that was included in *Student's* IEP. There was absolutely no claim that the IEP or BIP were not appropriate.

13. The Petitioner failed to show that the Respondent did not follow the BIP. Following normal school board policies for behaviors not included in the BIP was not a failure to follow the BIP. The only showing made by the Petitioner was that he was not called simultaneously with the

principal being informed of *Student's* behavior. If this was a procedural error, it was very minor and did not impede the child's right to FAPE, significantly impede the parent's opportunity to participate in the decision making process, or cause a deprivation of educational benefits. 20 U.S.C. 1415(f)(3)(e); N.C.G.S. 115C-109.8 As the Petitioner failed to show that the Respondent failed to follow *Student's* BIP, the Petitioner is not entitled to any relief.

14. Following the hearing, the Petitioner filed a Request to Disclose Conversation with the Office of Administrative Hearings. In this request, he alleged that conversations took place between Judge Lassiter and Respondent that affected his right to have a fair hearing. The Petitioner's request contained no facts, merely unsubstantiated allegations. Judge Lassiter responded adequately in her decision regarding these allegations. In reviewing the records of the case, the Review Officer finds no evidence that there was any substance to the allegations. The Review Officer, instead, finds that Judge Lassiter actually assisted the Petitioner with his case. In reading the transcript of the hearing, it appeared that the Petitioner was not well prepared to present his case. Judge Lassiter assisted in the questioning of witnesses and facilitated the presentation of the Petitioner's case. If there were any bias present, it was in favor of assisting the Petitioner in having an opportunity for a fair hearing.

15. In the Appeal process, the Petitioner attempted to add three new issues and submitted additional exhibits when making arguments to the Review Officer. The additional issues were that the Petitioner was: 1) Denied right to an Impartial Hearing Officer; 2) Denied Free and Appropriate Education; and 3) Denied a Fair Hearing. These were actually not new claims, but a restatement of the Petitioner's "Request to Disclose Conversation" that had earlier been submitted to the Office of Administrative Hearings. Judge Lassiter had responded adequately to this in her Decision. The new "Exhibits" also did not support the Petitioner's new issues.

16. New issues and exhibits cannot normally be added to a case on appeal, nor can the Review Officer consider new evidence submitted after the close of the hearing and filing of the ALJ's decision. The Review Officer, however, did not consider these claims to be a new. One of the responsibilities of the Review Officer, upon appeal, is to "Ensure that the procedures at the hearing were consistent with the requirements of due process." *Policies* (NC 1504-1.15(b)(2)(ii)). In accordance with this requirement, the Review Officer examined the Petitioner's arguments submitted on appeal.

17. On appeal, the Petitioner claimed that he was denied a fair hearing. As a fair hearing is fundamental to the provision of due process, the record of the case was reviewed carefully. This included a careful reading of the transcript, exhibits, and documentation of the case. There was no evidence that the Petitioner was denied a fair hearing. Instead, the evidence in this case supports the finding of a fair hearing. The Review Officer finds that a fair hearing and due process were provided consistent with N.C.G.S. §115C-109.6 and the *Policies* (NC 1504-1.9 and 1.12-1.14)

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned enters the following:

DECISION

The Review Officer holds that the ALJ did not err in her decision:

1. The Respondent did not fail to follow *Student's* BIP and did not deny FAPE.
2. The Petitioner is not entitled to any relief.

This the 29th day of April, 2011

Joe D. Walters
Review Officer

NOTICE

Any party aggrieved by this Decision may institute a civil action in state court within 30 days after receipt of this Decision as provided in G.S. 115C - 109.9 or file an action in federal court within 90 days as provided in 20 U.S.C. §1415. Please notify the Exceptional Children Division, North Carolina Department of Public Instruction, in writing of such action so that the records for this case can be forwarded to the court.