

ABSTRACT
NM SEA DPH No. 1213-05

Request for Due Process granted in-part. Student special education eligible under DD; two IEPs questioned on implementation of FBA/BIP, services provided, and denial of FAPE.

Among other things, major issues held:

Denial of FAPE by school failing to implement the FBA/BIP required by first IEP, yet compensatory education request denied because Student did not provide evidence of compensatory services to remedy past action. Second IEP did not require an FBA/BIP and that preponderance of evidence did not show Student's behavior impeded his learning or that of others; therefore, no FBA/BIP demanded. Teacher changed services from those required under IEPs, yet did not affect academic and non-academic performance under IEPs, thus de minimis failure and no denial of FAPE. Various challenged methodologies left to discretion of school; services provided did not deny FAPE. Parent initiated independent evaluation not first fully presented to school and not reviewed by IEP team, thus report not considered in due process hearing because Student failed to first exhaust internal action; nonetheless, by school's written response that it had received report through the litigation process and would consider the evaluation, ordered that facilitated IEP be commenced to consider report.

DPHO Morgan Lyman
1.11.2013