

**DC OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
OFFICE OF COMPLIANCE & REVIEW
STATE ENFORCEMENT & INVESTIGATION DIVISION
STUDENT HEARING OFFICE**

CONFIDENTIAL

Jane Dolkart, Due Process Hearing Officer
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HEARING OFFICER'S DETERMINATION

IN THE MATTER OF:)	
)	
DOB)	DATE OF HEARING
)	May 13, June 19, 2009
Student I.D.)	
Petitioner)	DATE OF COMPLAINT
)	April 17, 2009
V.)	
)	
The District of Columbia)	ATTENDING SCHOOL:
Public Schools,)	
Respondent)	

COUNSEL FOR PARENT/STUDENT: **Roberta Gambale**
James E. Brown & Assoc.
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STUDENT HEARING OFFICE
2009 JUN 30 AM 9:29

STUDENT¹, by and through his Parent

Petitioners,

v.

DCPS

Respondent.

HEARING OFFICER'S
DETERMINATION

June 29, 2009

Representatives:

Petitioner – Roberta Gambale
DCPS – Nia Fripp

Hearing Officer:

Jane Dolkart

¹ Personally identifiable information is attached as Appendix A to this decision and must be removed prior to public distribution.

HEARING OFFICER'S DECISION AND ORDER

I. INTRODUCTION

This is a year old student presently completing the grade at for the third time and found eligible for special education on March 18, 2008 as a student with a Learning Disability (LD). The student's 2008-2009 IEP provided for 15 hours of specialized instruction in an out of general education setting, one hour of counseling and one hour of speech and language (S/L) therapy per week. The student's most recent IEP, completed in March 2009, provides for 15 hours of specialized instruction in a general education setting, 1 hour of counseling, and 1 hour of S/L therapy per week. The student has had a serious truancy problem for at least the past two school years. Pursuant to an October 30, 2008 HOD, DCPS was to fund IEE's including a clinical psychological evaluation, a vocational assessment, and a functional behavioral assessment. The clinical psychological evaluation was completed on December 19, 2008, and the vocational Assessment was completed on December 17, 2008. The FBA was not completed until April 19, 2009.

This due process complaint was filed on April 17, 2009, alleging that an MDT/IEP meeting was held on March 10, 2009 without the presence of the parent, a transition plan was developed without the presence of the student, the student's 2008-2009 IEP was not implemented, and both the 2008-2009 and 2009-2010 IEP are inappropriate. DCPS filed a response on April 24, 2009.

A waiver of resolution session was filed by DCPS on April 21, 2009.

A pre-hearing conference was held on May 1, 2009, and a pre-hearing order was issued on May 5, 2009.

The case was heard on May 13, 2009. The hearing was not completed, a continuance was granted and the hearing reconvened on June 19, 2009.

II. JURISDICTION

The hearing was held and this decision was written pursuant to the Individuals With Disabilities Education Improvement Act (IDEA), 84 Stat.175, as amended, 20 U.S.C. ¶ 1400 *et seq.*, 34 CFR Part 300 *et seq.*, and the D.C. Municipal Regulations, Chapter 30, Title V, Sections 3000, *et seq.*

III. ISSUES

Has DCPS denied the student FAPE by

1. Failing to include the parent or a representative in a March 10, 2009 MDT/IEP meeting in which evaluations were reviewed and the student's 2009-2010 IEP was developed?
2. Failing to include the student in the development of a transition plan?
3. Failing to implement the student's 2008-2009 IEP?
4. Failing to provide appropriate IEPs during the 2008-2009 and 2009-2010 school years?
5. Failing to put strategies in place to address the student's truancy?
6. Failing to provide an appropriate placement for the student?

IV. DOCUMENTS AND WITNESSES

Petitioner submitted a five day disclosure letter dated May 5, 2009, containing a list of witnesses with attachments P 1-24. The disclosure was admitted in its entirety. Petitioner submitted a supplemental disclosure letter dated June 11, 2009 containing an additional witness and attachments 25-34. The disclosure was admitted in its entirety. Petitioner called as witnesses the student's mother, the student's educational advocate, the admissions director at the School, and a licensed psychologist employed by Interdynamics, the firm that conducted the student's IEE's. DCPS moved to disallow testimony from the psychologist for several reasons. First, Petitioner failed to provide a copy of his resume in her two f day disclosures and he was, therefore, precluded from testifying as an expert. Second, he neither conducted nor supervised the evaluations for the student and could not be a fact witness. The Hearing officer granted DCPS' motion.

DCPS submitted a five day disclosure letter dated May 4, 2009, containing a list of witnesses with attachments DCPS 1-17. The disclosure was admitted in its entirety. DCPS called as a witness the student's case manager at

V. FINDINGS OF FACT

1. This is a year old student presently completing the grade at for the third time and found eligible for special education on March 18, 2008 as a student with a Learning Disability (LD). The student's 2008-2009 IEP provided for 15 hours of specialized instruction in an out of general education setting, one hour of counseling and one hour of speech and language (S/L) therapy per week. The student's most recent IEP, completed in March 2009, provides for 15 hours of specialized instruction in a general education setting, 1 hour of counseling, and 1 hour of S/L therapy per week. The student has had a serious truancy problem for at least the past two school years. (P 11, 19).
2. Pursuant to an October 30, 2008 HOD, DCPS was to fund IEE's including a clinical psychological evaluation, a vocational assessment, and a functional behavioral assessment. The clinical psychological evaluation was completed on December 19, 2008, and the vocational Assessment was completed on December 17, 2008. The FBA was not completed until April 19, 2009. (P 7, 17, 18, DCPS 7).

3. The student has had a serious truancy problem during the three years he has been at
During the 2007-2008sy the student was absent for 283 classes from September 4, 2007 through April 8, 2008. He was absent from math 105 times, from English 58 times, and from Naval Science for virtually the entire course. (DCPS 16).

During the 2008-2009sy the student was absent for 352 classes from August 28, 2008 through May 3, 2009. He was absent from math 99 times, from English 50 times between September 2, 2007 and January 16, 2008, from Anatomy and Physiology 59 times from January 21 to May 1. (DCPS 10).

4. During Spring 2007, the school attempted interventions to address the student's truancy. At least one letter was sent to the parent by the attendance counselor/SEC and she spoke with the parent by phone at least three times. An attendance intervention assistance form was completed indicating that as of April 30, 2007 the student was to sign in with the attendance counselor in the am and after lunch. On May 4, 2007, a conference was held with the parent. On the same day a district of Columbia Superior court Truancy Referral Form was filled out and signed by the school principal. (DCPS 17).

5. At the student's April 22, 2008 IEP meeting, the MDT notes reflect that truancy referrals had been made and child protective services had been contacted. (P 23).

6. During the 2008-2009sy attempted several strategies to address the student's truancy. A behavior management plan was developed using a token economy. The student was given the opportunity to earn 50 cents or one dollar for arriving to his first period on time. The student never arrived on time and did not earn any money. The token economy did not work. (DCPS 14). The student's case manager spoke with the parent about the student's truancy. She called the parent approximately 1 or 2 times per week early in the year and less frequently as the year progressed. The student's English teacher also called the parent several times concerning the student's truancy. Truancy referrals were made and Child and Family Services came to the school to discuss the student's truancy problems. (Testimony of case manager).

7. The student's 2008-2009 IEP called for 15 hours of specialized instruction in an out of general education setting, 1 hour of counseling and 1 hour of S/L therapy per week. Individual counseling was made available to the student, but he failed to attend. The provider tracking form indicates that the student never showed up for his counseling which was provided once a week. He failed to show up for 20 counseling sessions between 9/4/08 and 3/20/09. The provider was unavailable for 4 additional sessions. stipulated to the fact that there was no S/L therapist at for the first semester and that the student was entitled to 20 hours of compensatory S/L services. The

² There is some suggestion in the record that the student was not enrolled in school for the first semester of the 2006-2007sy and began attending in January 2007.

student did not show up for S/L therapy during the second semester of the school year. (P 9, 16, 19).

The student was placed in an inclusion class for math. The student was placed in a general education class for English. During the second semester he was placed in honors English. The student's case manager agreed this was not the best choice for the student. The case manager testified that she was available to assist the student in English if he showed up for class. There was no special education teacher in the student's English class. The student was in general education classes without special education support in the remainder of his classes. (Testimony of case manager).

8. During the first semester of the 2008-2009sy, the student received grades of F in English, math, and physical education. He received a C- in health education and an A in Spanish. During the second semester, through March 30, 2009, the student received an F in English, algebra, phys ed, and anatomy and physiology, a D in world history, a C- in health education, and an A in Spanish. The student's case manager explained that the student's Spanish teacher had left during the semester and the student was taught by substitutes. The student's IEP progress report through three of five reporting periods showed that the student had not had introduced or made no progress in 14 of 26 goals. (P 10, 14, 31, Testimony of case manager).

9. Pursuant to the October 30, 2008 HOD an independent functional behavioral assessment (FBA) was to be completed. Interdynamics, Inc. was retained to conduct the assessment. The examiner attempted to conduct the classroom observation of the student on 12/19 /08, 1/29/09, 1/30/09, and 2/23/09. The student was absent from school on all of the attempted dates. The FBA was completed solely based on information obtained from the student's teachers. The report is dated March 20, 2009 but was not submitted to Petitioner until April 7, 2009, and was not sent to _____ until May 5, 2009.

10. On 1/29/09, the SEC at _____ sent a letter of invitation (LOI) to Petitioner for a 2/11/09 MDT meeting to review the assessments that had been completed (clinical psychological and vocational). On 2/2/09 a follow-up email was sent by DCPS to determine if the date was acceptable. On 2/3/09, Petitioner, through her attorney, indicated that the FBA was still outstanding and that she wanted to delay the meeting. On 2/11/09 the SEC sent additional LOI's with proposed meeting dates of 2/23, 24, and 25/2009. No response was received from Petitioner. On 3/12/09, the SEC coordinator sent a letter to Petitioner's attorney indicating the need to have an MDT/IEP meeting, accompanied by LOI's for 3/30, 3/31, and 4/1/2009. On 3/13/09, Petitioner agreed to meet on March 30, 2009 at 1:00 pm. (DCPS 2, 3, 4, 12, 13).

11. On March 10, 2009, DCPS convened an MDT/IEP meeting without the presence of the parents or their representative. No notice of this meeting was provided to the parents, and two days later an LOI was sent to Petitioner to convene an MDT/IEP meeting to review evaluations, update the student's IEP and determine placement. At the March 10th meeting, the student's evaluations were reviewed and the student's specialized instruction and related services as well as placement were determined. The student's transition plan

was developed. There is no evidence that an IEP was presented at the meeting. Present at the meeting were the student, the SEC, the social worker, the school psychologist, the special education teacher and the S/L pathologist. (P 3, 4, 13)

12. Present for the March 30, 2009 IEP meeting were the student, the SEC, the social worker, the school psychologist, the special education teacher, the S/L pathologist, and the student's special education advocate. The IEP provided for 15 hours of specialized instruction in a general education setting, 1 hour of counseling, and 1 hour of S/L therapy per week. Among the accommodations listed was participation in small group work. The IEP determined placement at _____ The advocate dissented from the proposed placement.

The educational advocate testified that changes to the IEP or its implementation were discussed at the meeting. The advocate argued that the student should be labeled as emotionally disturbed (ED) based on his clinical psychological evaluation, should have more specialized instruction, and should be in a full time placement. Further, the educational advocate believed that a Behavior Intervention Plan should be developed. (Testimony of educational advocate).

The parent testified that she had no knowledge that her attorney is attempting to have the student labeled as ED. She was notified by her attorney of the filing of the complaint after it had been filed. The parent's main concern is that she wants the student to attend a different school where he is more likely to attend classes and make educational progress. (Testimony of mother).

13. The IEP contained a transition plan. The student's case manager conducted an interview with the student at the beginning of the year and conducted a P.A.R. self directed search authored by John Holland, PhD. Additionally, Interdynamics, Inc. conducted an independent vocational assessment on December 17, 2008. The assessment included a student interview, and a variety of tests including the VOC-TIES Survey, work performance samples, a learning styles inventory, and the Wide Range Achievement Test 4 (WRAT 4). The student's WRAT 4 scores were grade equivalent 10.2 in word reading, 4.9 in sentence comprehension, and 5.7 in math computation. All of this information was used in developing the transition plan, and the student was present for the development of the plan on both March 10 and March 30, 2009.

14. The student received a psycho-educational evaluation in February 2007. The student was administered the WISC-IV and the WIAT II test of achievement. The student was found to have cognitive functioning in the borderline range. His academic achievement scores were in the low average to extremely low range. The student performed lower on tasks that required verbal reasoning skills such as reading comprehension and math reasoning. The student's lowest score was in the writing sub-test. (P 22).

15. The student received a clinical psychological evaluation on December 17, 2008. The evaluator reported that the student presented as introverted, guarded, lethargic and passive. Testing and the student's own behavior show that the student becomes defensive

when expected to discuss psychological problems. He feels inadequate, and insecure and is excessively conformist. The evaluation noted that the student's profile provides evidence that he suffers from a moderate level of anxiety. The student was given a diagnosis of Generalized Anxiety Disorder, NOS. The report recommended that the student receive individual and group therapy, obtain a male mentor and become involved in sports. (P 18).

The clinical psychological evaluation was reviewed at the March 30, 2009 IEP meeting. (P 9, 12).

16. The student's behavior in the classroom was described by his case manager as cooperative and well behaved. He sometimes falls asleep in class and has a tendency to space out. The student is not disruptive in class, is always respectful and is very quiet. It is difficult to ascertain the student's academic performance because he is absent so often. (DCPS 14, Questionnaire filled out by case manager for the FBA).

17. All of the student's teachers and service providers agree that the student's truancy impacts significantly on his educational performance. The student's special education teacher, world history teacher and English teacher believe that the student is capable of doing the work with minimal support when he comes to class. Because of the student's poor attendance, no work samples or other indicia of the student's performance are available. (P 14, 27).

18. Another MDT meeting was held on June 8, 2009, in order to review the FBA which was received by DCPS on May 5, 2009. The team determined that additional evaluations are needed to better understand the student's general anxiety and its relationship to school attendance. The team recommended that a psychiatric evaluation was warranted. (P 27).

19. On June 9, 2009, Petitioner received a letter from DCPS authorizing an independent psychiatric evaluation at DCPS expense. (P 26).

VI. DISCUSSION AND CONCLUSIONS OF LAW

The Individuals with Disabilities Act (IDEA), 20 U.S.C. ¶ 1400 *et seq.*, guarantees "all children with disabilities" "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). The IDEA defines FAPE as

Special education and related services that – (a) Are provided at public expense, under public supervision and direction, and without charge; (b) Meet the standards of the State educational agency..., (c) Are provided in conformity with an IEP that meets the requirements of 34 CFR 300.320 – 300.324.

Central to the IDEAs guarantee of FAPE "is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped

child.” *Bd. Of Educ. Hendrick Hudson Central Sch. Dist. V. Rowley*, 458 U.S. 176, 200 (1982). The educational agency must provide a “basic floor of opportunity” for students with disabilities. It need not provide the best education possible, but the educational benefit must be more than de minimus or trivial. *Polk v. Central Susquehanna Intermediate Unit 16*, 331 IDELR 10 (3rd Cir. 1988).

As a condition of receiving funds under the Act, IDEA requires school districts to adopt procedures to ensure appropriate educational placement of disabled students. *See*, 20 U.S.C. ¶ 1413. In addition, school districts must develop comprehensive plans for meeting the special education needs of disabled students. *See*, 20 U.S.C. ¶ 1414(d)(2)(A). These plans or Individualized Education Programs (IEPs), must include “a statement of the child’s present levels of educational performance, ... a statement of measurable annual goals, [and] a statement of the special education and related services ... to be provided to the child....” 20 U.S.C. ¶ 1414(d)(1)(A).

Pursuant to IDEA § 1415 (f)(3)(E)(i), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education (FAPE).

Pursuant to IDEA § 1415 (f)(3)(E)(ii), in matters alleging a procedural violation a hearing officer may find that the child did not receive FAPE only if the procedural inadequacies impeded the child’s right to FAPE, significantly impeded the parent’s opportunity to participate in the decision-making process regarding provision of FAPE, or caused the child a deprivation of educational benefits.

Petitioner has the burden of proof in this case. *Schaffer et al. v. Weast*, 546 U.S. 49 (2005).

A. Did DCPS commit a procedural violation of IDEA by failing to include the parent in the March 10, 2009 IEP meeting?

The IDEA requires that “Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate....” 34 CFR 300.322 (a). The public agency must notify parents of meetings early enough to ensure attendance and must schedule meetings at a mutually agreeable time. *Id* at 300.322 (a)(1)(2). “A parent’s right to be involved with the creation and development of their child’s educational plan is one of the most important procedural safeguards provided for by the IDEA. *E.P. v. San Ramon Valley Unified School District*, 2007 WL 1795747 (N. D. Cal. 2007) (unreported case).

The record is clear that DCPS held an MDT/IEP meeting on March 10, 2009, without the presence of the parent or her representative. There is no evidence that DCPS made any effort to notify the parent of the March 10th meeting, although there was substantial correspondence in January and February concerning a date for such a meeting. Petitioner requested that the meeting await the completion of the last of the ordered evaluations, the

FBA. No explanation for holding the meeting without parental participation was provided by DCPS. The failure to include the parent in this meeting was a clear procedural violation of the IDEA.

However, not all procedural violations of the statute constitute denials of FAPE. In the instant case, DCPS quickly corrected its procedural error by convening an MDT/IEP meeting for March 30, 2009. All of the DCPS participants in the March 10th meeting attended the March 30th meeting, and the parent was represented by her educational advocate. The completed evaluations were reviewed and discussed. Changes to the IEP and its implementation were discussed. The educational advocate argued that the student should be classified as ED as well as LD. Educational placement was discussed at the meeting. The parent was afforded a full opportunity to participate in the formulation of the student's IEP and the determination of his placement.

Furthermore, The IEP process has continued since the March 30, 2009 meeting. On June 8, 2009, an MDT meeting was convened to review the student's FBA. As a result of that meeting it was determined that the student's psychological problems should be further evaluated and DCPS agreed to fund an independent psychiatric evaluation.

DCPS did not deny the student FAPE by failing to include the parent in the March 10, 2009 meeting.

B. Did DCPS develop a transition plan for the student without his participation?

When transition services are to be addressed at an MDT meeting there is an obligation to ensure that the student participates. 34 CFR 300.321 provides that "...the public agency must invite a child with a disability to attend the child's IEP Team meeting of the purpose of the meeting will be the consideration of postsecondary goals for the child and the transition services needed to assist the child in reaching those goals...."

The record is clear that the student participated in both the March 10th and March 30th MDT/IEP meetings. His signature appears on the sign-in page for both meetings. There was no denial of FAPE.

C. Did DCPS fail to implement the student's 2008-2009 IEP?

The 2008-2009 IEP provided for 15 hours of specialized instruction in an out of general education setting, 1 hour of counseling and 1 hour of S/L therapy per week. The record supports a finding that individual counseling was made available to the student but that he failed to show up for any counseling sessions. The record also supports a finding that S/L therapy was made available to the student but he failed to show up. The parties agree that a S/L therapist was not available until January 2009, and DCPS has already agreed to provide 20 hours of S/L therapy to make up for the missed sessions.³

³ The student was previously awarded 20 hours of tutoring with a tutor of the parent's choice. The student has yet to take any advantage of the tutoring of additional S/L therapy.

The provision of specialized instruction presents a different picture. The student's IEP clearing calls for the 15 hours to occur in an out of general education setting. Instead the student was provided with math taught in an inclusion setting. He was not provided with any specialized instruction in English or writing as was required in his IEP. In fact, the student was inappropriately placed in an honors English class.

There is no question that DCPS failed to implement part of the student's IEP. The more difficult question is whether that failure constitutes a denial of FAPE in light of the fact that the student was almost never in school to take advantage of any specialized instruction that might have been offered. Petitioner has presented no evidence that the student's failure to attend classes had anything to do with the instruction he was being provided, or that the instruction was in fact inappropriate and impeded the student's educational progress.

Petitioner has failed to meet her burden of proof that the failure to implement the student's 2008-2009 IEP denied the student FAPE.

D. Did DCPS fail to provide an appropriate IEP for the 2008-2009sy?

Petitioner argues that the 2008-2009 IEP is inappropriate because DCPS has not adequately provided for the student's social emotional concerns that are interfering with his education and has failed to provide appropriate counseling and a behavior plan to address the student's truancy. Petitioner has not put on any evidence concerning the student's need for more than 15 hours of specialized instruction to address his math, reading and writing deficits. The student's primary reason for failing his classes is his truancy, not lack of instruction. *Hinson v. Merritt Educational Center*, 579 F. Supp. 2d 89 (D DC 2008).

DCPS provided for the student's social emotional concerns by including 1 hour weekly of counseling. DCPS was awaiting the results of the FBA before determining if a behavioral plan was warranted. Petitioner was given authority to conduct an independent FBA in October 2008, but did not submit the FBA until May 2009, over 6 months later. If Petitioner's assessor was having difficulty observing the student it was up to Petitioner to ensure that the student showed up for classes on the date of the observation. There does not appear to have been any coordination between the evaluator and the parent in this regard.

DCPS addressed the student's truancy, albeit unsuccessfully. In addition to the counseling, DCPS instituted a token economy which had no effect on the student's attendance. The school contacted the student's mother on a number of occasions. The school referred the student's case to Child and Family Services and to the DC Superior Court. None of these interventions was successful.

Petitioner has failed to meet her burden of proof that the 2008-2009 IEP was inappropriate.

E. Did DCPS fail to provide an appropriate IEP and placement for the 2009-2010sy?

Petitioner presented no evidence that the student was in need of additional specialized instruction beyond the 15 hours he is receiving. The sole evidence concerning the student's performance was that he was failing classes because he did not attend classes. Likewise, Petitioner did not present evidence that the student required additional related services except possibly group therapy. The clinical psychological evaluation found the student to have moderate anxiety. The evaluation did not explain how this anxiety affected the student's attendance or performance in class. Further, the evaluation did not present information that meets the criteria for an emotional disturbance. An emotional disturbance is defined in the IDEA as "a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects the child's educational performance:

- (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
- (B) An inability to build or maintain satisfactory interpersonal relationships with peers or teachers.
- (C) Inappropriate types of behavior or feelings under normal circumstances.
- (D) A general pervasive mood of unhappiness or depression.
- (E) A tendency to develop physical symptoms or fears associated with personal or school problems.

34 CFR 300.8 (b)(4)(i).

The only possibly applicable characteristic is a mood of unhappiness or depression. There is no evidence that the student has exhibited unhappiness or depression over a long period of time and to a marked degree. However, DCPS has agreed to explore the student's emotional state further by funding a psychiatric evaluation. Petitioner has not met her burden of proof that the student should be labeled as ED and the record suggests that the parent does not want her son so labeled.

The sole question concerning the appropriateness of the IEP is whether it effectively addresses the student's truancy. Petitioner argues that the requirement that DCPS provide the student with FAPE tailored to the unique needs of the student means that DCPS must take whatever steps are necessary to get the student to attend school since he cannot get any educational benefit if he is not in class. In *Ranocas Valley Regional Board of Education*, 41 IDELR 46 (NJ SEA, 2004) quoting Letter to Borucki, 16 EHLR 884 (U.S. Dept. of Educ. Off. Of Sp. Ed. Programs 1990) the court stated that "[t]he failure of a student to cooperate with school staff in attaining goals and objectives in the student's IEP does not relieve school officials of the responsibility to provide FAPE to that child... [T]he student's failure to cooperate with school staff may be an indication of the need for reevaluation, a revision to the child's IEP, or change in the child's educational placement." *Id.* However, in the *Ranocas* case the student was classified as ED and her oppositional behavior in not attending school had been clearly determined to be a

symptom of her emotional disturbance. Likewise, the question addressed to the Department of Education in Letter of Borucki was whether the school district was relieved of its obligation to provide FAPE because of the lack of cooperation of the student. In this case, DCPS has not proposed withdrawing services from the student. The only question is the amount of services to which he is entitled. Thus, neither case addresses the question of DCPS' obligations where a student is not classified as ED, where his truancy has not been determined to be a part of an ED, and where the school district is prepared to continue to offer him services.

If the student is not ED but socially maladjusted DCPS has fulfilled its obligations to the student by making available to him the specialized instruction and counseling listed on his IEP. Thus, if the student's IEP is appropriate, DCPS has provided the student with FAPE. A number of cases have addressed the distinction between emotional disturbance and socially maladjusted. In *Edward P. Springer v. The Fairfax County School Board*, 134 F.3d 659 (4th Cir. 1998), the court held that the student was not suffering from a serious emotional disturbance because the IDEA does not equate juvenile delinquency with a serious emotional disturbance. The student had a high rate of absenteeism, stayed out all night, stole from his parents and others, and used marijuana and alcohol His difficulties in school were a result of his truancy, lack of motivation, and poor study habits. Fairfax County determined that the student had a conduct disorder and dysthymic disorder, consistent with his inability to abide by school rules. The court determined that the student was socially maladjusted and defined the term as referring to "continued misbehavior outside acceptable norms." *Id.* at 664. A "bad conduct" definition of serious emotional disturbance would encompass a significant percentage of the adolescent population, and would require schools to take on the roll of the criminal justice system. *See also, Dale M. v. Board of Education of Bradley-Bourbonnais High School District No. 307*, 237 F.3d 813 (7th Cir. 2001), *Hinson v. Merritt educational Center*, 579 F. Supp. 2d 89 (D.D.C. 2008).

In this case, the evidence does not support a serious emotional disturbance. However, the student's behavior is not consistent with a finding of social maladjustment. The record suggests that the student's truancy is at least in part the result of emotional issues. DCPS does have an obligation to initiate interventions to address the student's truancy. While a few interventions have been tried, there is clearly more that DCPS can do. As yet, there is not even a BIP in place and a more structured environment might be needed for this student. It is not clear that the student's present placement at [REDACTED] is an appropriate placement for the student. If the school is unable to get the student to attend he will not access his education and will not obtain any educational benefit. So far Woodson has been unable to impact the student's truancy. However, Petitioner has not met her burden of proof that there are other strategies or placements that could better address the student's truancy. Based on the evidence, the student is not in need of a full time therapeutic placement at [REDACTED]. However, he may be in need of a placement that can provide a more structured environment and smaller classes with students his own age. The Hearing Officer urges DCPS to consider whether there is another placement at which the student can be more successful.

Petitioner has failed to meet her burden of proof that the 2009-2010 IEP is inappropriate, including the placement at [REDACTED].

VII. SUMMARY OF RULING

DCPS has not denied the student FAPE.

VIII. ORDER

It is hereby **ORDERED** that Petitioner has not met her burden of proof on any issues and that **THEREFORE**, the case is dismissed with prejudice.

This is the final administrative decision in this matter. Appeals on legal grounds may be made to a court of competent jurisdiction within 90 days of the rendering of this decision.

/s/ Jane Dolkart

Impartial Hearing Officer

Date Filed: June 29, 2009