DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
1150 5th Street, S.E.
Washington, DC 20003

STUDENT,[1]
through the Parent

Petitioner,

v.

District of Columbia
Public Schools,

Respondent.

Date Issued: May 9, 2010

Hearing Officer: James Gerl

Case No: 2010-0221

Hearing Date: April 29, 2010

Room: 6b

STUDENT HEARING OFFICE
2010 MAY 10 AM 8:26

HEARING OFFICER DETERMINATION

BACKGROUND

The due process complaint was filed on March 3, 2010. The matter was assigned to this hearing officer on March 5, 2010. A resolution session was convened on April 26, 2010 and it did result in a complete settlement. A pre-hearing conference by telephone conference call was convened on March 22, 2010. The due process hearing was convened at the Student Hearing Office on April 29, 2010. The hearing was closed to the public; the student's parent attended the hearing; and the student did not attend the hearing. Five witnesses testified on behalf of Petitioner, and four witnesses testified on behalf of Respondent. Petitioner's Exhibits 1 through 11 and 13 through 28 were admitted into evidence,

[1] Personal identification information is provided in Appendix A.

and Respondent's Exhibits 1 through 6 were admitted into evidence. Petitioner withdrew Petitioner's Exhibit 12.

JURISDICTION

This proceeding was invoked in pursuant to the provisions of the Individuals With Disabilities Education Act ("IDEA"), 20 U.S.C. Section 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; Title V of the District of Columbia ("District" or "D.C.") Municipal Regulations ("DCMR"), re-promulgated on February 19, 2003; and Title 38 of the D.C. Code, Subtitle VII, Chapter 25.

PRELIMINARY MATTERS

All proposed exhibits and testimony received into evidence and all supporting arguments submitted by the parties have been considered. To the extent that the evidence and arguments advanced by the parties are in accordance with the findings, conclusions and views stated herein, they have been accepted, and to the extent that they are inconsistent therewith, they have been rejected. To the extent that the testimony of various witnesses is not in accord with the findings as stated herein, it is not credited.

ISSUE PRESENTED

The following issue was identified by counsel at the pre-hearing conference and evidence concerning this issue was heard at the due process hearing: whether the November 25, 2009 IEP for the student provides a free and appropriate public education.

FINDINGS OF FACT

After considering all the evidence, as well as the arguments of both counsel, I find the following facts:

1. The student was identified as eligible for special education and related services on November 25, 2010. (Stipulation by counsel on the record.)

2. An IEP was developed for the student on November 25, 2009. (Stipulation by counsel on the record.)

3. The issue of compensatory education because of Respondent allegedly not previously identifying the student as eligible for special education was resolved at the resolution session held on April 26, 2010. (Stipulation by counsel on the record.)

4. The IEP Team meeting for the student on November 25, 2009 was attended by the student's parent, his educational advocate, Respondent's school psychologist, Respondent's special education coordinator, Respondent's special education – inclusion teacher, Respondent's school social worker, and a community

social worker. (Petitioner's Exhibit 7; references to exhibits shall hereafter be referred to as "P-1," etc. for the Petitioner's exhibits; "R-1," etc. for the Respondent's exhibits and "HO-1," etc. for the hearing officer exhibits; references to testimony at the hearing is hereafter designated as "T".)

5. The November 25, 2009 IEP has 19 annual goals for the student. The IEP has four goals in the area of academic-mathematics, four goals in the area of academic-reading, seven goals in the area of reading expression, and four goals dealing with behavior improvement/social-emotional. In each area the goals are preceded by a statement of the student's present levels of performance. The behavioral goals deal with such items as identifying ways to avoid being persuaded by others to misbehave and complying with requests from adults within a reasonable time. (P–7)

6. The November 25, 2009 IEP provides that the student will receive 10 hours per week of specialized instruction in the general education setting. In addition, the IEP provides for one hour per week of the related service of behavioral support services which was to be delivered as counseling by a community support worker. The student and the community support worker had developed a good rapport. (P–7; T of P's witness - community support worker.)

7. The November 25, 2009 IEP for the student provided that the student would receive the following classroom accommodations: small group work; assignments broken into segments; praise for effort; define appropriate behavior; tests administered over several days; extended time on subtests; preferential

seating; small group testing; location with minimal distractions; calculators. In addition, the student's teachers modified assignments for the student and granted him extended time where he needed it and when used it properly. The November 25, 2009 IEP also contains the following modifications to be permitted for the student during assessments: praise for effort; define appropriate behavior; tests administered over several days; extended time on subtests; preferential seating; small group testing; location with minimal distractions; calculators. (P–7; T of R's inclusion teacher; T of R's regular education teacher).

8. The November 25, 2009 IEP for the student also acknowledged that he would be given compensatory education for not receiving services before that date, and it provided that the student was eligible for extended year services from June 28, 2010 to July 23, 2010, including ten extended school year goals and four hours per day of specialized instruction and one hour per week of the related service of behavioral support services during that timeframe. (P–7; R-6).

9. The IEP team that developed the November 25, 2009 IEP for the student considered the report of a psychoeducational and clinical evaluation of the student conducted on July 25, 2007 and August 7 and 9, 2007. The evaluator found that the student had specific learning disabilities in reading and written expression, although he had a relative strength in math. The evaluator also found the student to have attention deficit hyperactivity disorder. The evaluator made a number of recommendations for the student, many of which are reflected in his IEP. (P-18; P-

7; T of P's clinical psychologist; T of R's school psychologist; T of R's special education coordinator.)

10. The IEP team that developed the November 25, 2009 IEP for the student considered the report of a functional behavior assessment of the student conducted on November 6, 2007. Some recommendations were included in the behavioral goals. (P-21; P-7; T of R's school psychologist; T of R's special education coordinator.)

11. At the November 25, 2009 IEP team meeting, Petitioner's advocate asserted that the student should have a full-time therapeutic special education placement. The members of the team employed by Respondent disagreed and stated that the student did not need and would not benefit from a full-time therapeutic special education placement. The members of the team agreed to reconvene the student's IEP team at a meeting on a date certain in mid January, 2010 in order to determine whether any changes or tweaks to the November 25, 2009 IEP were needed. There was no promise or agreement that the student would receive a full-time therapeutic special education placement if things did not go well under the November 25, 2009 IEP. (T of R's special education coordinator; T of R's School Psychologist;P-7.)

12. The student benefits from interactions with his non-disabled peers. He gets along well with other students, and has many friends. He relates to non-disabled peers in the same ways that they relate to each other. He once refused to use the calculator accommodation provided by his IEP in math class because it

would call attention to his disability. In English class, the student was once paired with a non-disabled student and the two read an entire novel together. The student would hate a full-time special education placement, and he would have great difficulty obtaining educational benefit in such a placement. (T of R's special education coordinator; T of R's School Psychologist; T of R's inclusion teacher; T of R's regular education teacher.)

13. The full-time special education school proposed by Petitioner as relief in this case would afford the student with no interaction at all with his non-disabled peers. (T. of P's witness-Director of private school.)

14. A full-time special education school for the student would be inappropriate for the student's needs. The student is very capable, particularly in mathematics. (T of R's inclusion teacher; T of R's special education coordinator; T of R's school psychologist.)

15. The student did very well under his IEP shortly after it was implemented and continued to do well until about spring break. During the reporting period from November 2, 2009 until January 26, 2009, the student made progress under each of his IEP goals that were introduced during that period. The student's attitude was markedly improved during this timeframe. (R-3; T of R's inclusion teacher.)

16. The student's school performance is adversely affected by his truancy, his tardiness and his cutting classes. The student had a total of eighty-nine

unexcused absences from August 17, 2009 to April 22, 2010. (R-2; T of R's inclusion teacher; T of R's school psychologist.)

17. The student is irresponsible concerning his school work. He makes excuses; does not do his homework or other assignments; and fails to come to class prepared when he does show up for class. The student does not take school seriously. He is very capable, especially in math, when he is being responsible and focused. (T of R's inclusion teacher; T of R's regular education teacher; T of R's special education coordinator; T of R's School Psychologist; R-2; R-3.)

18. The student's parent checked the box that she agreed with the November 25, 2009 IEP. The student's parent signed the November 25, 2009 IEP signifying her agreement. The participant's at the November 25, 2009 IEP team meeting believed that the student's parent agreed with the IEP and all of its contents. (P-7; T of student's Parent; T of R's special education coordinator.)

19. The November 25, 2009 IEP is reasonably calculated to confer some educational benefit upon the student. (All record evidence)

20. At the November 25, 2009 IEP team meeting, a date was selected in mid-January for the team to reconvene. The parent and her educational advocate did not show up at the January meeting. The special education coordinator for Respondent then called the Petitioner's advocate on the telephone and left a voicemail message for him. Thereafter, the advocate and the special education coordinator were unable to reach the other and left telephone messages. On February 2, 2010 the advocate sent a letter to the special education coordinator

saying that the dates he had proposed were not good and proposing new dates. The special education coordinator scheduled an IEP team meeting for February 11, 2010. The advocate showed up at the meeting but not the parent, and the parent requested that the meeting be rescheduled for a time when she could be there. This due process complaint was filed on March 3, 2010. An IEP team meeting was scheduled for March 11, 2010. The parent's advocate sent an email to the special education coordinator requesting that the meeting be rescheduled and the meeting was rescheduled for March 15, 2010. On March 15, 2010 as the IEP team meeting was about to occur, the advocate called the special education coordinator to say that he was being detained in another IEP team meeting and would arrive approximately 45 minutes late. Because the teachers were available only during their one hour work period on March 15, the special education coordinator cancelled the meeting. The meeting was later rescheduled for April 26, which became a resolution meeting because the instant due process complaint had been filed. The resolution meeting was held on April 26, 2010. (T of R's special education coordinator; P-14.)

21. At the resolution meeting held on April 26, 2010, the parties were not able to resolve all issues, but the parties did resolve the compensatory education issue for allegedly not identifying the student earlier and Petitioner consented to a functional behavioral analysis and Respondent agreed to conduct a functional behavioral analysis and develop a behavioral intervention plan for the student. (Stipulation; R-6; T of R's school psychologist; T of R's special education coordinator)

22. The student's parent participated meaningfully in the student's IEP development. (All record evidence)

CONCLUSIONS OF LAW

Based upon the evidence in the record, the arguments of counsel, as well as my own legal research, I make the following Conclusions of Law:

1. The United States Supreme Court has established a two-part test for determining whether a school district has provided a free and appropriate public education to a student. There must be a determination as to whether the schools have complied with the procedural safeguards set forth in the Individuals with Disabilities Education Act, 20 U.S.C. §§1400 et seq. (hereafter sometimes referred to as "IDEA"), and an analysis of whether the individualized education plan (hereafter sometimes referred to as "IEP") is reasonably calculated to enable the child to receive some educational benefit. Bd. of Educ, etc. v. Rowley, 458 U.S. 178, 102 S. Ct. 3034, 553 IDELR 656 (1982); See, Kerkham v. Superintendent, D.C. Public Schools, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991).

2. The student's parent actively and meaningfully participated in the development of the November 25, 2009 IEP, and the parent's input was duly considered by the IEP team. 34 C.F.R. §300.322; TT v. District of Columbia, 48 IDELR 127 (D.D.C. July 23, 2007).

3. The individualized education plan (hereafter sometimes referred to as "IEP") developed by Respondent for the student on November 25, 2009 was

reasonably calculated to provide educational benefit for the student in the least restrictive environment. The November 25, 2009 IEP contains a sufficient level of services and appropriate accommodations for the student, and it appropriately addresses the student's behavior issues. IDEA §§612(a)(1) and (5); 34 C.F.R. §§300.101, 300.114, 300.320 to 300.324; Bd. of Educ, etc. v. Rowley, 458 U.S. 178, 102 S. Ct. 3034, 553 IDELR 656 (1982); Kerkham v. Superintendent, D.C. Public Schools, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991).

4. IDEA does not require a school district to maximize the potential of a child with disability; rather, it requires that an IEP be reasonably calculated to confer some educational benefit. Bd. of Educ, etc. v. Rowley, 458 U.S. 178, 102 S. Ct. 3034, 553 IDELR 656 (1982); Kerkham v. Superintendent, D.C. Public Schools, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991).

5. In determining placement for a child with a disability, a school district is required to the maximum extent appropriate to ensure that the child is educated with children who are not disabled, and that any removal from the regular education environment must occur only if the nature or severity of the disability is such that education in the regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily. IDEA §612(a)(5); 34 C.F.R. §§300.114, 300.115. The placement of the student contained in the November 25, 2009 IEP developed by Respondent for the student was the least restrictive environment appropriate for this student.

6. The November 25, 2009 IEP developed for the student by respondent provides the student with a free and appropriate public education. . Bd. of Educ, etc. v. Rowley, 458 U.S. 178, 102 S. Ct. 3034, 553 IDELR 656 (1982); See, Kerkham v. Superintendent, D.C. Public Schools, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991).

DISCUSSION

Merits

The sole issue in this case is whether the November 25, 2009 IEP for the student provides a free and appropriate public education. IDEA requires school districts, such as Respondent, to provide a child with a disability, such as Petitioner, with a free and appropriate public education (hereafter sometimes referred to as "FAPE") IDEA §§612(a)(1) and (5); 34 C.F.R. §§300.101, 300.114.

The United States Supreme Court has established a two-part test for determining whether a school district has provided FAPE to a student. There must be a determination as to whether the schools have complied with the procedural safeguards set forth in IDEA and an analysis of whether the IEP is reasonably calculated to enable the child to receive some educational benefit. Bd. of Educ, etc. v. Rowley, 458 U.S. 178, 102 S. Ct. 3034, 553 IDELR 656 (1982);

See, Kerkham v. Superintendent, D.C. Public Schools, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991).

In the instant case the only procedural issue raised by Petitioner involves an allegation that Respondent was not sufficiently diligent in reconvening an IEP team meeting for the student. The evidence in the record does not support the allegation. It was the testimony of all witnesses that on November 25, 2009, the IEP team met and created an IEP but agreed to reconvene in approximately January 2010 to review the IEP and consider possible modifications. It was the credible testimony of Respondent's special education coordinator that at the November IEP meeting, a date certain in January, 2010 was selected and agreed to among the parties. The parent and her advocate failed to show up at the January meeting. Petitioner's advocate testified that he had not received written confirmation of the date. Respondent's special education coordinator testified that the date had been confirmed. Whether or not there was a confirmation, the meeting was scheduled by Respondent. Thereafter, the special education coordinator for Respondent called the advocate and did not get him on the telephone but left a voicemail message for him. Then, the advocate and the special education coordinator played phone tag for a period of time but were unable to reach the other. On February 2, 2010, the advocate sent a letter to the special education coordinator saying that the dates that he had proposed were not good and proposing new dates. The special education coordinator scheduled an IEP team meeting for February 11, 2010. The advocate showed up at the

meeting but not the parent, and the parent requested that the meeting be rescheduled for a time when she could be there. The instant due process complaint was filed on March 3, 2010. Subsequently, a March 11, 2010 IEP team meeting was scheduled. The parent's advocate sent an email to the special education coordinator requesting that the meeting be rescheduled and the meeting was rescheduled for March 15, 2010. On March 15, 2010 as the IEP team meeting was about to occur, the advocate called the special education coordinator to say that he was being detained in another IEP team meeting and would arrive approximately 45 minutes late. Because the teachers were available during their one-hour work period only on March 15, the special education coordinator cancelled the meeting. The meeting was later rescheduled for April 26, and it became a resolution meeting. The resolution meeting was held on April 26, 2010. It is obvious from the above description of events that Respondent made numerous good faith efforts to attempt to reschedule the IEP team meeting. It was the inability of the Petitioner or her advocate to attend numerous scheduled meetings that caused the difficulty in having the meeting. Petitioner is apparently trying to benefit from her own unavailability and the unavailability of her educational advocate. There is no basis for the procedural argument. To the extent that Petitioner claims procedural noncompliance, the argument is rejected.

Accordingly, the analysis now turns to the question of whether the November 25, 2009 IEP was reasonably calculated to confer educational benefit upon the

student. The primary complaint of Petitioner in this regard is that the IEP does not provide for a placement at a full-time special education therapeutic school, and therefore, that insufficient instructional hours are provided in the IEP. The testimony of the mother, the advocate and the clinical psychologist, who testified on behalf of Petitioner, was that the student needs a full-time therapeutic school.

By contrast, the testimony of Respondent's school psychologist and special education coordinator was that a full-time placement would not be appropriate for the student and that the student would likely not obtain an educational benefit in such a placement. Respondent's witnesses also testified that the November 25, 2009 IEP, which provides that the student will receive 10 hours per week of specialized instruction in the general education setting, was appropriate for the student. To the extent that the testimony of Respondent's witnesses contradicts the testimony of Petitioner's witnesses, the testimony of Respondent's witnesses is more credible and persuasive because of the demeanor of the witnesses and because of other problems with regard to the testimony of Respondent's witnesses as outlined below.

The testimony of Petitioner's witnesses with regard to the student's alleged need for a full-time therapeutic placement is tainted by their holding the school district to a potential maximizing standard. The law does not require a school district to maximize the potential of a student with a disability; rather, IDEA requires that an IEP be reasonably calculated to confer some educational benefit. Bd. of Educ, etc. v. Rowley, 458 U.S. 178, 102 S. Ct. 3034, 553 IDELR

656 (1982); Kerkham v. Superintendent, D.C. Public Schools, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991). For example, the testimony of Petitioner's parent was that she felt that a therapeutic full-time school would be "better for the student." In addition, the testimony of the clinical psychologist who testified on behalf of Petitioner was that the full-time placement and the other recommendations in the report of her colleague were things that could "help (the student) achieve his potential," and "maximize his success." The clinical psychologist also testified that the student "can't do his best work" without the accommodations the report recommended. In addition, the report of the psychoeducational evaluation of the student offered into evidence by Petitioner stated that the student would "do best in small classroom" setting with fewer students.

In addition, a letter dated April 9, 2010 submitted to Respondent's special education coordinator by Petitioner's advocate states that the student "would do best in a small classroom of between 1 to 15 students". The emphasis of the testimony of Petitioner's witnesses was upon what would be best for the student rather than upon what the student needs to benefit from his education. Thus, it is clear that the testimony of Petitioner's witnesses is based upon a potential maximizing standard rather than a some benefit standard. Accordingly, the testimony of Respondent's witnesses that the student does not need and would actively be harmed by a full-time therapeutic setting is more credible and persuasive than the testimony of Petitioner's witnesses.

Secondly, IDEA requires that to the maximum extent appropriate, children with disabilities be educated with children who are not disabled, and IDEA requires that special classes, separate schooling or other removal of children with disabilities from the regular education environment occur only if the nature or severity of the disability is such that education in the regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily. Student placement decisions under IDEA must be made in conformity with the least restrictive environment (hereafter sometimes referred to as "LRE") provisions quoted above. IDEA §612(a)(5); 34 C.F.R. §§300.114 through 300.120. The representative of the private school that provides the full-time special education, therapeutic school setting for the student that Petitioner seeks as relief herein, admitted on cross-examination that at said school, the student would have no interaction whatsoever with his non-disabled peers. In all cases, LRE is required, but in the instant case, interaction with non-disabled peers is extremely important. It was the unrebutted testimony of the teachers who worked with the student and the special education coordinator of Respondent that this student, in particular, benefits from interactions with his non-disabled peers and that he gets along well with his non-disabled peers. Respondent's inclusion teacher testified that there is nothing atypical with regard to the interactions of this student with his non-disabled peers and that this particular student would hate a full-time therapeutic school because he does not like attention called to his disability. His general education teacher testified that he

interacts well with his non-disabled peers, and that in English class, he and a non-disabled student with whom he was paired read an entire novel together. Thus, the record evidence is clear that this student, in particular, benefits from interactions with his non-disabled peers and that the student would have difficulty obtaining an educational benefit in a full-time special education setting.

Petitioner contends that Respondent promised to provide a full-time therapeutic placement for the student if his behaviors did not improve after about 45 days of implementation of the new modifications on the IEP developed on November 25, 2009. The more credible and persuasive testimony of Respondent's witnesses was that there was an agreement at the IEP team meeting on November 25, 2009 to return to the IEP team table after approximately 45 days to discuss whether or not changes or modifications to the student's IEP were needed. The agreement was not to provide a full-time therapeutic placement for the student if he did not immediately do well under the IEP as petitioner contends. The parent and the advocate testified that that such an agreement had been made. The credible and persuasive testimony of Respondent's witnesses, however, was that the parent's advocate brought up the concept of a full-time therapeutic placement at the November 25, 2009 IEP team meeting and that the idea was discussed but that Respondent's representatives on the IEP team stated their disagreement with a full-time placement because it was inappropriate for the student. As has been discussed herein, the evidence

reveals that the student did not need a full time special education placement in order to benefit from his IEP. Moreover, even if there had been such an agreement at the IEP team meeting on November 25, 2009, the agreement would be in direct conflict with the least restrictive environment provisions of IDEA quoted above, and therefore, would be unlawful. The fact that the alleged agreement would violate IDEA further diminishes the credibility and persuasiveness of Petitioners' witnesses. It is concluded that a full-time placement in special education for the student would not be appropriate for this student.

Another area where Petitioner's complaint alleges that the November 25, 2009 IEP is deficient concerns the accommodations offered under the IEP to the student. It is clear, however, that appropriate accommodations are provided for the student in the November 25, 2009 IEP. On page eight of the IEP for the student, the following accommodations are provided for the student's classroom: small group work; assignments broken into segments; praise for effort; define appropriate behavior; tests administered over several days; extended time on subtests; preferential seating; small group testing; location with minimal distractions; calculators. Additional accommodations are provided for assessments. In addition, the student's teachers testified at the hearing concerning how they modified assignments for the student and granted him extended time where he needed it and used it properly. Although some of the accommodations suggested by the psychoeducational evaluation of the student

were not adopted by the IEP team, it is clear that Respondent duly considered the suggestions made by the psychoeducational evaluation and adopted many of the accommodations suggested by the evaluator. The accommodations provided by the IEP developed on November 25, 2009 for the student are appropriate.

Another area of the IEP that is challenged by Petitioner's complaint as allegedly insufficient involves the provisions of the IEP dealing with the student's behaviors. The IEP developed on November 25, 2009, however, does make appropriate provision for the behaviors exhibited by the student. In addition to the classroom accommodations mentioned above, the emotional, social and behavioral development portion of the IEP contains four goals concerning the student's behavioral, social and emotional needs. In addition to describing his needs, the goals deal with such items as the following: identifying ways to avoid being persuaded by others to misbehave and complying with requests from adults within a reasonable time. Moreover, the IEP specifically provides for one hour per week of behavioral support services as a related service, which has been delivered by a community social worker with whom the student has a good rapport. Thus, the IEP, as written, appropriately contains provisions to deal with the student's behavioral needs. Petitioner points to the lack of a behavioral intervention plan as an alleged deficiency in the IEP. The testimony of Respondent's special education coordinator and respondent's school psychologist, however, was that the student's parent consented to an updated functional behavioral analysis at the resolution meeting on April 26, 2010.

There were many diligent efforts by Respondent to conduct a meeting prior to that date; however, no such meeting occurred. At the resolution meeting convened on April 26, 2010, Respondent agreed to develop a behavioral intervention plan based on the results of the functional behavioral analysis when it is completed. Thus, to the extent that Petitioner alleges that a behavioral intervention plan is necessary, this issue is now moot. It is concluded that the IEP developed for the student on November 25, 2009 appropriately addresses the behaviors that were exhibited by the student at that time.

In addition, the parent noted her agreement with the IEP on the IEP form. It was the parent's testimony that she agreed with the IEP when it was written. All members of the IEP team employed by Respondent who testified at the hearing were of the impression that the parent agreed with the November 25, 2009 IEP. The parent did not disagree with the number of hours of special education or request any changes to the goals, accommodations or the behavior provisions. It follows from the collaborative nature of the IEP process requires that a school district should be given a chance to correct alleged problems with an IEP before the parent invokes the dispute resolution process. See, Shaffer v. Weast, 546 U.S. 49, 126 S. Ct. 528, 44 IDELR 150 (2005). Accordingly, the fact that Petitioner now challenges the same IEP with which she had previously agreed diminishes the persuasiveness and credibility of the attack upon the IEP by Petitioner and her witnesses.

Finally, the student's problems in school are at least partially the result of the student's own irresponsibility. The student has been tardy or absent or has cut class on numerous occasions. His attendance summary from August 17, 2009 to April 22, 2010 indicates that he has had 89 unexcused absences during that period. A student cannot be successful in school if he does not attend school. The credible and persuasive testimony of Respondent's witnesses was that the student clearly has the ability to succeed when he tries to do so and is present and focused. The student's attitude was irresponsible, however, he makes excuses, he does not take school seriously and he does not do his schoolwork. He often either does not show up or comes to school unprepared. The truancy, absenteeism and other irresponsibility exhibited by the student has impacted his educational performance. It is unfair for Petitioner to attempt to blame Respondent when it is clear that the student simply does not take school seriously. It is significant that the student had some significant success and made good progress toward his IEP goals in school beginning shortly after the new IEP was being implemented and up until spring break. His inclusion teacher testified that his attitude was more responsible during this period. Clearly the IEP was appropriate and it was working for the student. Since then, however, it is clear that the student is no longer seriously trying to do well. Respondent cannot be held responsible for the student's lack of responsibility with regard to his own school work.

It is concluded that the record evidence compels a conclusion that the November 25, 2009 IEP was reasonably calculated to lead to educational benefit. The November 25, 2009 IEP provides FAPE to the student. Respondent has prevailed with regard to this issue.

ORDER

Based upon the foregoing, it is HEREBY ORDERED that the complaint in this matter is dismissed with prejudice. None of the relief requested by Petitioner is awarded.

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 USC §1415(i).

Date: May 9, 2010

/s/ James Gerl
James Gerl,
Hearing Officer

APPENDIX A

Jeremy Pittman v. DCPS
Case No: 2010-0221

Child	Jeremy Pittman
Date of Birth	August 20, 1996
Student ID Number	9079489
Attending School	Browne Educational Center
Date Complaint Filed	March 3, 2010
Hearing Officer	James Gerl
Date Hearing Officer Assigned	March 5, 2010
Date of Due Process Hearing	April 29, 2010
Parent	Barbara Pittman
Petitioner's Witness/Community Social Worker	Kenneth Bridgers, Jr.
Petitioner's Witness/Clinical Psychologist	Dr. Maria Zimmitti
Petitioner's Witness/Director Accotink Academy Private School	Ann Warnke
Petitioner's Witness/Educational Advocate	Kevin Carter
Respondent's Witness/School Psychologist Expert in Special Education	Dr. Esther Mills
Respondent's Witness/Regular Education Teacher	Lorraine Philyaw
Respondent's Witness/Inclusion Teacher	Benjamin Lookner
Respondent's Witness/Special Education Coordinator	George Clarke
Parent's Counsel	Roberta Gambale, Esquire (Copy of HOD emailed to counsel on the date HOD was issued)
School System's Counsel	Nia Fripp, Esquire (Copy of HOD emailed to counsel on the date HOD was issued)
Date Decision Due	May 9, 2010

DCSHO: Re: Case # 2010-0221 Jeremy Pittman From <james.gerl@dc.gov>

admin@dcsho.i-sight.com [admin@dcsho.i-sight.com]

Sent: Sunday, May 09, 2010 4:12 PM

To: rgambale@jeblaw.biz; Fripp, Nia (DCPS-OGC); Student Hearing Office (OSSE); Due, Process (OCTO)

Cc: Gerl, James (OSSE-Contractor)

Attachments: 2010-0221_JG.doc (86 KB)

** NOTE: Please do not modify subject line when replying **
** This email was sent by James Gerl <mailto: james.gerl@dc.gov> **

Dear Counsel:
Attached is a Hearing Officer Determination.
Your cooperation in this matter is appreciated.
James Gerl,
Hearing Officer
(304)645-7345 telephone
(304)667-7704 cell
(304) 645-7362 fax
James.Gerl@dc.gov
www.osse.dc.gov
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