

This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.

**Pennsylvania Special Education Hearing Officer
Final Decision and Order**

CLOSED HEARING

ODR File Number:

25489-21-22

Child's Name:

M.R.

Date of Birth:

[redacted]

Parent:

[redacted]

Counsel for Parent:

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Fort Washington, PA 19034

Local Education Agency:

Laboratory Charter School

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Hearing Officer:

James Gerl, CHO

Date of Decision:

January 12, 2022

BACKGROUND

The parent filed a due process complaint and an amended complaint alleging that the charter school wrongfully excluded the student from attending the charter school in violation of IDEA and seeking a stay put order regarding placement. The parties agreed not to present or argue certain other issues raised by the amended complaint after coming to a tolling agreement. A ruling on the stay put issue was entered in this case and remains in effect. I find in favor of the parent with regard to the issue of whether the charter school violated IDEA by excluding the student from attendance at the charter school.

PROCEDURAL HISTORY

This hearing presented a number of unusual logistical problems. A hearing session was scheduled and ready to go, but it had to be continued at the last minute because counsel for the charter school attended a conference at which he was exposed to the COVID virus. The hearing was rescheduled to the earliest possible date. On the day of the next scheduled hearing session, counsel for the charter school notified the hearing officer that there had been an outbreak of COVID at the charter school and that a number of witnesses were potentially not available. A hearing session was convened with the available witnesses. At one point, the student's mother began experiencing extreme technical difficulties during the virtual hearing session. A break was taken for the parent to be transported to the parent's lawyer's office to complete the parent's testimony on another computer. During the break, the student suffered some type of crisis which required the mother to not complete her testimony on that day. A second session was necessary, and the hearing was completed at the second session.

The hearing required two virtual/video sessions. The failure of counsel to agree to any stipulations of fact unnecessarily protracted the hearing and delayed the decisional process. A total of five witnesses testified at the hearing, including the student's mother, who testified at both sessions. The following exhibits were admitted into evidence at the hearing: joint exhibits J-1 through J-5, parent exhibits P-1 through P14, and LEA exhibits S-1 through S-9.

At the close of the hearing, counsel for the parties elected to present oral closing arguments. In addition, both counsel submitted written prehearing memoranda in advance of the first hearing session. All arguments submitted by the parties have been considered.

To the extent that the arguments advanced by the parties are in accordance with the findings, conclusions and views stated below, they have been accepted, and to the extent that they are inconsistent therewith, they have been rejected. Certain arguments and proposed findings have been omitted as not relevant or not necessary to a proper determination of the material issues as presented. To the extent that the testimony of various witnesses is not in accordance with the findings as stated below, it is not credited.

Personally identifiable information, including the names of the parties and similar information, has been omitted from the text of the decision that follows. FERPA 20 U.S.C. § 1232(g); and IDEA § 617(c).

ISSUES PRESENTED

The parties agreed to a tolling agreement and to stipulate to the dismissal of certain claims presented by the amended due process

complaint. (J-5). As a result, and as clarified at the prehearing conference convened herein, the due process complaint presented the following two issues for resolution at the hearing:

1. Whether the parent has proven that the stay put placement for the student is the itinerant learning support special education program at the charter school, as set forth in the student's May 5, 2020 IEP?

2. Whether the parent has proven that charter school violated IDEA by wrongfully excluding the student from attending the charter school?

FINDINGS OF FACT

Based upon the evidence in the record compiled at the due process hearing, the hearing officer makes the following findings of fact: ¹

1. The student is an artist and loves helping people. (NT 272 - 274)

2. The student began attending the charter school in April of 2019 for [redacted] grade in the 2019-2020 school year. (S-6; P-1, P-2; NT 84 - 85)

3. An individualized education program (IEP) was developed by the student's IEP team on May 5, 2020. The IEP includes a number of

¹ (Exhibits shall hereafter be referred to as "P-1," etc. for the parent's exhibits; "S-1," etc. for the charter school's exhibits; and "J-1," etc. for the joint exhibits; references to page numbers of the transcript of testimony taken at the hearing is hereafter designated as "NT___").

accommodations and specially designed instruction, as well as annual goals in literacy and math. The IEP includes the related service of school bus transportation curb to curb. The IEP places the student in the regular education classroom 88% of the school day. The educational placement specified in the IEP is an itinerant learning support program to be provided at one of the campuses of the charter school. The May 5, 2020 IEP was the most recent agreed upon IEP that was operative at the time that this case arose. (J-4; NT 188 – 189, 87 - 88)

4. The parent had ordered a school uniform in August 2021 for the 2021 – 2022 school year for the student to wear as required by the charter school. Walmart notified the parent that the uniform was on backorder, and the parent never received the uniform. (P-10; NT 111 – 112; 240 - 242)

5. An independent educational evaluation (IEE) of the student that was funded by the charter school was conducted by a neuropsychologist from April 21 to June 3, 2021. The parent and her previous education lawyer were intending to use the report of the independent educational evaluator at an upcoming IEP team meeting scheduled for September 14, 2021 to request that the charter school fund a private school placement for the student pursuant to a Notice of Recommended Educational Placement (NOREP). (S-8; NT 92 – 98, 264 – 265; P – 5, P - 13)

6. In anticipation of a potential settlement with the charter school involving a placement of the student in a private school pursuant to a NOREP by the charter school, the parent began considering private schools. The student visited a particular private school on August 30, August 31 and September 1, 2021, and participated in “shadow days” to determine whether the school was a good fit for the student and whether the student was a good fit for the school. (S-7; NT 47 – 50, 95 – 96, 116 - 117)

7. On September 1, 2021, the charter school's guidance counselor sent an e-mail to the parent referencing a telephone call the previous day stating that the student would be "transferred to" a private school. The e-mail stated, "Please return (the student's) laptop and withdraw (the student) from (the charter school)." The principal who was copied on the e-mail replied, "Great. Thank you so much" and the parent replied, "No problem." The parent was referring to the return of the laptop in the event that the student changed to a private school pursuant to the IEP/NOREP process. (P-3; NT 228 - 230)

8. On September 7, 2021, the attorney for the charter school sent an e-mail to the former education attorney for the parent stating that he had been advised that the student would not be returning to the charter school but noting that he had not yet received the transfer forms. The e-mail asks the parent's education lawyer to confirm that the parent is transferring the student, and if so, to send the transfer forms to the charter school's lawyer. The e-mail also asks whether the IEP team meeting scheduled for September 14 was now not necessary. (P-4; NT 101 - 102)

9. On September 7, 2021, the parent's education lawyer emailed the charter school's lawyer stating that "No, (the student) is not transferring. The parent was looking at a private school so that we would know what to ask for at our meeting or right after in order to resolve. We still want the meeting. (The student) is still enrolled at (the charter school)." (P-5; NT 103 - 104)

10. The attorney for the charter school responded to the e-mail from the attorney for the education attorney for the parent on September 7, 2021. The e-mail states that the attorney "will advise the school to maintain the 9/14 meeting date and time and will forward your demands below..." The e-mail also asks the parent to keep an open mind with regard to the

charter school's ability to meet the student's need at the upcoming September 14, 2021 IEP team meeting. (P-5)

11. On September 8, 2021, the parent emailed the charter school principal asking for a return phone call. The principal responded asking for the parent's number. The parent replied with a phone number. (P – 7)

12. On September 8, 2021, the parent sent an e-mail to the parent's then education lawyer with copies to the school principal and the school's attendance official stating that the parent had just emailed the principal regarding a "huge mix up with (the student's) enrollment" and requesting a call back. The e-mail is in reply to a September 3, 2021 e-mail from the attendance official asking the parent to complete and return the "necessary form" to remove the student from the charter school. (P- 6; NT 100 - 102)

13. On September 10, 2021, the parent emailed the charter school principal requesting clarification regarding transportation for the student. The principal replied in an email the same day saying, "We have added (the student) to transportation. It might take a couple of days. We will let you know when it will start. Until then, could you possibly bring (the student) into school?" (P-8; NT 105 - 107)

14. On September 10, 2021, the parent's education lawyer emailed the charter school's lawyer confirming their telephone conversation earlier that day that "(the student) has not transferred out of the charter school and has no intentions of doing so. (The student) has never been disenrolled from the charter and wants to ensure that (the student) is still enrolled in the charter. We will be meeting with you and the charter on the 14th." (P-9; NT 104 - 105)

15. The student attended the charter school for the entire school day on September 13, 2021. (NT 110 – 116; P - 14)

16. On September 13, 2021, the attorney for the charter school sent an email to the then parent's education lawyer cancelling the IEP team meeting for the next day. The e-mail stated that there was no reason to have the meeting in light of the fact that the student is not continuing as a student at the charter. The e-mail stated that the parent had informed the charter that the student was transferring to another school, that the student attended school that day without the student's uniform, saying that the student would be attending a new school. The e-mail states that the statements by counsel for the parent were "simply false and perhaps proffered only to permit a meeting" to justify reasons for transferring the student. The parent's then education lawyer responded to the attorney for the charter school on the same day, stating that "the parent and I have both informed the school that (the student) is still enrolled there and never disenrolled (the student). There is no new school that (the student) will be attending. I will be filing immediately for due process if the school will not allow (the student) to attend at the charter school. We expect to hold the meeting tomorrow as planned." (P-11)

17. On September 13, 2021, the parent e-mailed the school principal, the parent's education lawyer, as well as another official at the charter school, stating that the parent had attempted to call four different telephone numbers without any answer. The parent stated that she needed to speak to someone in reference to the pickup and drop off locations and other issues concerning the student. The parent noted previous e-mails concerning this matter. (P-12)

18. On September 13, 2021, the lawyer for the charter school e-mailed the parent's education lawyer, stating that transportation was an issue citywide and that the parent would likely continue to have transportation issues at the new school the student would soon be attending.

The parent's education lawyer responded to the e-mail by stating that she had written to counsel for the charter school on multiple occasions telling him that the child is and continues to be enrolled in the charter school. The e-mail states that it was not true that the student was transferring to a private school or disenrolling. Counsel for the parent stated that instead they had proposed a settlement in which the charter school would place the student by "NOREP at a private school." The e-mail notes that the lawyer for the parent previously said that she wanted to wait until the IEP team meeting to discuss all of this. The e-mail notes that the charter school is the local education agency for the student, and it remains responsible for the provision of a FAPE. Counsel for the charter school responded to that e-mail with an e-mail stating that the statements by counsel for the parent were contrary to fact because the student's parent had advised that the student would not be returning. The e-mail notes statements by the parent and the student and states that personnel from the charter school would not be participating in any meeting to discuss the student's educational needs. The e-mail states that the exchanges of e-mails would likely not lead to progress and suggests a telephone call the next day. (P-13)

19. On September 13, 2021, the student's mother e-mailed the parent's education lawyer and the school principal stating that she had tried to make clear that the student would remain a student of the charter school. "I never intended for (the student) to attend elsewhere and I want to make clear that I want to meet as planned to discuss (the student's) programming moving forward. My attorney has communicated this to your lawyer...." The student is a student at (the charter school), "(the student) is not and will not be withdrawn." The e-mail asks the principal to respond as soon as possible. (P-14)

20. The student attended school at the charter school on September 14, 2021. The student was not wearing the charter school uniform. The student was observed by the CEO of the charter school, who was aware that the student had "due process issues." The CEO determined that the student should be removed from the charter school and contacted the charter school's lawyer. (NT 110 – 116, 323, 330 – 332, 348; P - 14)

21. On September 14, 2021, the lawyer for the charter school e-mailed the education lawyer for the parent stating that he had not received the phone call he had requested. The e-mail notes that the student "came to school again today...." The e-mail states that the student is not presently registered at the charter school and that the student's mother should come to the school and take the student home. The e-mail suggests that the parent's lawyer take up any issues regarding the student's placement for the current school year with the Philadelphia School District. (P-14)

22. The student's parent received a phone call from the parent's lawyer on September 14, 2021 telling the parent to come to the school and pick up the student because the student was being "put out." When the parent arrived at the charter school, the student was standing outside the building with the principal. The principal told the parent that the principal had not put the student out of school and that the student is still a student at the charter school. The principal stated that the lawyer for the charter school was forcing the principal to put the student out. (P - 14; NT 110, 268)

23. Since September 14, 2021, the charter school has not allowed the student to be on charter school property. (NT 119)

24. The IEP team meeting scheduled for September 14, 2021 for the student was not convened or rescheduled. (NT 97, 114 – 115, 201)

25. On September 20, 2021, the parent had a telephone call with the charter school's truancy official. The parent explained the mix-up, and the truancy official stated that because the parent had never returned the paperwork, the student was still an active student at the charter school and had not been disenrolled. (NT 116 - 118)

26. The parent did not complete or return the necessary paperwork required by the charter school to withdraw the student from the school. (NT 293 - 295, 100 - 101; P - 6, 116 - 118: P - 4)

27. The charter school did not issue a prior written notice or notice of recommended educational placement (NOREP) to the parent stating that the student was no longer a student at the charter school. (NT 115, 150)

28. The student was not enrolled at the private school which the student had visited and participated in shadow days on August 30, August 31 and September 1. (NT 46, 51 - 52)

CONCLUSIONS OF LAW

Based upon the arguments of the parties, all of the evidence in the record, as well as my own independent legal research, I make the following conclusions of law:

1. A local education agency must provide a free and appropriate public education (hereafter sometimes referred to as "FAPE") to a child with a disability, as defined by Individuals with Disabilities Education Act (hereafter sometimes referred to as "IDEA") 20 U.S.C. § 1400, et seq., IDEA §613(a); 34 C.F.R. §§ 300.1, 300.101, 300.200 - 201; 22 Pa. Code § 14.102.

2. Charter schools that are local education agencies are responsible for compliance with IDEA and its implementing regulations. Children with

disabilities receiving their education in such charter schools are entitled to the same substantive and procedural protections as their counterparts in other public schools. 34 C.F.R. §§ 300.209; Frequently Asked Questions about the Rights of Students with Disabilities in Public Charter Schools Under the Individuals with Disabilities Education Act, 69 IDELR 78 (OSERS 2016). See, Weber, Mark C., "Special Education from the (Damp) Ground Up: Children with Disabilities in a Charter School-Dependent Educational System," 11 Loyola J. of Public Interest Law 217, 246 and n.137 (Spring 2010).

3. A local education agency must implement all material provisions of a student's IEP. Melissa S. by Karen S v. Sch Dist of Pittsburgh, 106 L.R.P. 34297 (3d Cir. 2006); MP by VC v. Parkland Sch Dist, 79 IDELR 126 (E.D. Penna. 2021); see, Van Duyn v. Baker School District, 481 F. 3d 770, 47 IDELR 182 (9th Cir. 2007).

4. A local education agency must provide prior written notice to the parents of a child a reasonable time before (1) initiating or changing the identification, evaluation, or education placement of the child or the provision of a FAPE to the child, or (2) refusing to initiate or change the identification, evaluation, or educational placement of the child or the provision of a FAPE to the child. IDEA §615(b)(3); 34 C.F.R. § 300.503; 22 Pa. Code § 14.102; TR v Sch Dist of Philadelphia, 79 IDELR 33 (4 F.4th 279, 79 IDELR 33 (3d. Cir 2021).

5. The parents of a child with a disability must be participants in any decision concerning educational placement of the child. 34 C.F.R. §§ 300.327. Where a charter school LEA disenrolls a student with a disability, prior written notice of the change in placement is required. Question #30, Frequently Asked Questions about the Rights of Students with Disabilities in

Public Charter Schools Under the Individuals with Disabilities Education Act, 69 IDELR 78 (OSERS 2016).

6. The procedural safeguards provided by IDEA are crucial to the success of the special education system enacted by Congress. A local education agency may not punish a parent or student for utilizing the procedural safeguards or contemplating the use of the procedural safeguards. Board of Educ., etc. v. Rowley, 458 U.S. 178, 102 S.Ct. 3034, 3038-3039 and 3050-51, 553 IDELR 656 (1982); Schaffer v. Weast, 546 U.S. 49, 44 IDELR 150 (2005); TR v Sch Dist of Philadelphia, 4 F.4th 279, 79 IDELR 33 (3d. Cir 2021).

7. For a procedural violation to be actionable under IDEA, the parent must show that the violation results in a loss of educational opportunity for the student, seriously deprives the parents of their participation rights, or causes a deprivation of educational benefit. Ridley Sch Dist v. MR and JR ex rel. ER, *supra*; IDEA § 615(f)(3)(E); 34 C.F.R. § 300.513(a).

8. A special education hearing officer under IDEA has broad equitable powers to issue appropriate remedies when a local education agency violates the special education laws. All relief under the special education laws that may be awarded by a hearing officer is equitable relief. Forest Grove School District v. TA, 557 U.S. 230, 52 IDELR 151 at n. 11 (2009); Sharon C v. Sch Dist of Philadelphia, 612 F. 3d 712, 52 IDELR 247 (3d Cir. 2010); CH by Hayes v. Cape Henlopen School District, 606 F. 3d 59, 54 IDELR 212 (3d Cir. 2010); Sch Dist of Philadelphia v. Williams ex rel. LH, 66 IDELR 214 (E.D. Penna. 2015); Stapleton v. Penns Valley Area Sch Dist, 71 IDELR 87 (N.D. Penna. 2017); see Reid ex rel. Reid v. District of Columbia, 401 F. 3d 516, 43 IDELR 32 (D.C. Cir. 2005); Garcia v. Board of

Education Albuquerque Public Schs, 530 F. 3d 1116, 49 IDELR 241 (10th Cir. 2008).

9. Compensatory education is one remedy that may be awarded to a parent when a school district violates the special education laws. In general, courts, including the Third Circuit, have expressed a preference for a qualitative method of calculating compensatory educational awards that seeks to address the educational harm done to the student by the denial of FAPE. GL by Mr. GL and Mrs. EL v. Ligonier Valley Sch Dist Authority, 802 F. 3d 601, 66 IDELR 91 (3d Cir. 2015); Reid ex rel. Reid v. District of Columbia, *supra*. In Pennsylvania, however, in part because of the failure of special education lawyers to provide evidence regarding harm to the student caused by a denial of FAPE, courts and hearing officers have frequently utilized the more discredited quantitative or “cookie cutter” method that utilizes one hour or one day of compensatory education for each day of denial of a free and appropriate public education. The “cookie cutter” or quantitative method has been approved by courts, especially where there is an individualized analysis of the denial of FAPE or harm to the particular child. See, Jana K by Tim K v. Annville Sch Dist, 39 F. Supp. 3d 584, 53 IDELR 278 (N.D. Penna. 2014)

10. In the instant case, the parent has proven that the school district violated IDEA by excluding the student from the charter school.

11. Whole days of compensatory education for each day of the period of denial of FAPE are needed to remedy the denial of FAPE to the student.

DISCUSSION

I. Merits

A. Stay put/pendency motion

The parent made a motion to enforce the stay put placement in this case. An order was issued on December 14, 2021 ruling that the stay put placement in this case is the itinerant support special education program with all of the services specified in the May 5, 2020 IEP to be provided on one of the campuses of the charter school. Said order is incorporated by reference herein.

B. Whether the parent has proven that the charter school wrongfully excluded the student from attendance at the charter school in violation of IDEA?

The fact that the charter school ordered the student to not attend the charter school beginning on September 14, 2021 is not in dispute. The parent contends that although the student and parent were viewing other potential schools for the student to consider attending through a placement by the charter school, the student was never withdrawn or disenrolled from the charter school. The charter school contends that the parent withdrew the student from the charter school on August 31, 2021.

The parent has proven that the parent had no intention of withdrawing the student from the charter school and that the parent did not withdraw the student from the charter school. A long series of e-mails between the parent's previous attorney and the charter school's attorney, in addition to e-mails from the parent to school officials, and the credible testimony of the parent, clearly indicate that the parent did not intend to withdraw the student from the charter school. Instead, the parent's attorney made it clear that the parent was going to propose a potential private school placement by the charter school based upon the results of an independent

educational evaluation at an IEP team meeting scheduled for September 14, 2021. In addition, the special education director of the charter school testified candidly that the parent had never completed and returned the necessary paperwork to withdraw the student from the charter school. It is clear from the evidence in the record that even if the parent's or the student's word choice in discussions with the charter school staff was inartful, as the charter school contends here, the charter school certainly understood that it was not the intention of the parent to disenroll the student from the charter school.

Also, the fact that the student attended the charter school for the entire day on September 13, 2021 and then returned on September 14, 2021 clearly negates any argument that the student had been withdrawn from the school on August 31, 2021. The attendance of the student at the charter school on these two days is undisputed in the evidence in the record.

Moreover, the school principal, as an agent of the charter school, continued to discuss issues concerning the transportation to be provided to the student, as provided by the student's IEP, on September 10, 2021, well after the supposed withdrawal of the student from the charter school. The school principal certainly would have known if the student had been withdrawn from the school.

In addition, the attorney for the charter school requested that the attorney for the parent clarify whether or not the student had been withdrawn from the charter school and requested that the parent submit the necessary paperwork. If the student had in fact already been withdrawn from the charter school, no such clarification or additional required paperwork would have been necessary.

Instead, the record evidence makes it clear that the decision to interpret the parent's and/or the student's comments as a withdrawal of the student occurred only after the parent's then education lawyer mentioned that the parent would be requesting that the charter school, as the LEA, make a private school placement for the student through a NOREP based upon the results of the recent independent educational evaluation. In deciding to exclude the student from the charter school, the CEO of the charter school conceded that she considered the fact that there were "due process issues" with this particular student. The CEO of the charter school was aware that the student and parent were represented by an education lawyer and that a request for the student's educational records had been made by the parent's lawyer. Thus, the CEO took into account the fact that the parent was contemplating the exercise procedural safeguards under IDEA, possibly including a subsequent due process hearing, in determining that the student should be excluded from the charter school.

The U.S. Supreme Court and the Third Circuit Court of Appeals have recognized that the procedural safeguards provided by IDEA are crucial to the success of the special education system enacted by the U.S. Congress. It is inconsistent with the core principles of the Individuals With Disabilities Education Act to permit school officials to punish a parent or a student for exercising or contemplating the exercise of the procedural safeguards specified in the Act. It is clear from the evidence in the record that the charter school was punishing the parent and student by excluding the student from attending the charter school as a direct result of the parent's hiring of an education lawyer and contemplating the exercise of the procedural safeguards provided under IDEA. This type of blatant retaliation is simply not permissible.

In its oral closing argument, the charter school points to the parent's use of the phrase "no problem" in an e-mail early on in the controversy. The parent clarified in the parent's testimony that the parent was referring to the return of the computer with regard to that comment. It cannot be concluded that the parent's use of the phrase "no problem" was sufficient to disenroll the student from the charter school. Moreover, even if the parent's use of language was imprecise in this regard, it is clear that the school officials did not consider the student to have been withdrawn as a result of the comment. The school officials continued to request that the parent fill out the necessary paperwork to withdraw the student. The charter school's attorney requested the same as well as clarification of the student's status. The school principal continued to make transportation arrangements, and in fact, the student attended class at the charter school all day on September 13 and a portion of September 14. If in fact the charter school had any serious doubts about the parent's use of language, the correct thing to do would have been to contact the parent's lawyer to request clarification. This is exactly what the charter school's lawyer did in fact. The response was that the student was not being disenrolled. If there were no retaliatory motive here, that clarification should have ended any possible misunderstanding as to the student's enrollment status.

It is also significant that the charter school did not issue a prior written notice/NOREP or conduct an IEP team meeting in order to clarify the parent's position if the charter school had had any legitimate doubt with regard to whether the student had been withdrawn. Instead, the charter school did the opposite when it cancelled and did not reschedule the previously scheduled IEP team meeting at which the parent's previous lawyer had suggested that this topic be discussed.

The charter school's closing argument also refers to the application process and lottery program agreed to by a group of charter schools under the "Apply Philly" agreement. The argument made by the charter school in this regard is premised upon the assumption that the parent had withdrawn the student from the charter school on August 31. It is clear from the record evidence, however, that the parent had not withdrawn the student from the charter school. Accordingly, the logic of this argument is flawed.

The charter school's position- that the parent and/or the student, who were represented by an education lawyer, themselves uttered some magic words suggesting withdrawal of the student, despite repeated denials of withdrawal by both the parent's legal counsel and the parent, coupled with requests by the charter school lawyer for clarification, that was in fact provided, and requests from the charter school and counsel that the parent submit the necessary paperwork, which did not happen- is unreasonable and defies belief. Moreover, it is significant that the charter school only decided that the student had been withdrawn after the parent's lawyer mentioned a possible private school placement to be funded by the charter school through NOREP or due process. The charter school's argument is rejected.

The testimony of the parent and the head of school of the private school concerning this issue was more credible and persuasive than the testimony of the charter school staff and officials because of the demeanor of the witnesses, as well as the following: the testimony of the charter school witnesses to the effect that the parent had withdrawn the student from the charter school is contradicted by the documentary evidence in this case. The testimony of the CEO of the charter school regarding whether the parent had completed paperwork necessary to withdraw the student was contradicted by the candid testimony of the special education director, who

admitted that the parent had not completed the withdrawal process. These key contradictions severely undermine the credibility of the charter school's witnesses. Moreover, the implausible nature of the factual assertions by these witnesses concerning the alleged withdrawal of the student further undermines the credibility and persuasiveness of their testimony.

By excluding the student from school, the charter school completely deprived the student of all educational benefit. It is concluded that the charter school violated IDEA by excluding the student and refusing to permit the student to attend the charter school, thereby failing to provide a free and appropriate public education to the student and failing to implement all material components of the student's IEP.

II. Relief

The charter school violated IDEA by excluding the student from September 14, 2021 through the date that the student resumed or resumes attendance at the charter school, thereby denying the student a free and appropriate public education during that time frame. By wrongfully excluding the student, the charter school denied student all educational benefit for the entire period of time that the charter school refused to permit the student to attend. Given that the student's individual needs as identified by the student's IEP were not met during this period, the appropriate remedy for the denial of FAPE in this case consists of full days of compensatory education for the entire period of denial of FAPE.

ORDER

Based upon the foregoing, it is HEREBY ORDERED as follows:

1. The charter school is ordered to provide full days of compensatory education to the student for the entire period of denial of FAPE. The award of compensatory education is subject to the following conditions and limitations:

a. The student's parent may decide how the compensatory education is provided. The compensatory education may take the form of any appropriate developmental, remedial or enriching educational service, product or device that furthers the student's educational and related services needs;

b. The compensatory education services may be used at any time from the present until the student turns age twenty-one (21); and

c. The compensatory education services shall be provided by appropriate and qualified professionals selected by the parent. The cost to the district of providing the awarded days of compensatory education may be limited to the average market rate for private providers of services in the county where the district is located.

2. The stay put placement shall continue to be the placement ordered in the December 14, 2021, stay put order issued in this case, which is incorporated by reference herein.

3. The parties may adjust or amend the terms of this order by mutual written agreement signed by all parties and counsel of record.

IT IS SO ORDERED.

ENTERED: January 12, 2022

James Gerl

James Gerl, CHO
Hearing Officer