

*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

### DECISION

Child's Name: K.B.

Date of Birth: [redacted]

Dates of Hearing:

March 12, 2015

April 7, 2015

CLOSED HEARING

ODR Case #

15604-1415AS

Parties to the Hearing:

Representative:

Parent[s]

Jeffrey Ruder, Esquire  
Michelle Kline, Esquire  
429 Forbes Avenue  
Suite 450  
Pittsburgh, PA 15219

Propel Charter Schools  
3447 East Carson Street  
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Pittsburgh, PA 15203

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Date Record Closed:

May 4, 2015

Date of Decision:

May 12, 2015

Hearing Officer:

Jake McElligott, Esquire

## **INTRODUCTION**

Student<sup>1</sup> is an early teen-aged student who attends Propel Charter School (Charter School) who has been identified as a student with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 (IDEA)<sup>2</sup>. The student has been identified under the terms of IDEA as a student with health impairments, including attention deficit hyperactivity disorder (ADHD), and specific learning disabilities in reading and mathematics.

The student's parent asserts that the last agreed-upon individualized education plan (IEP) for the student, in July 2014, is inappropriate and has denied the student a free appropriate public education (FAPE), both as to its design and implementation. The Charter School asserts that, at all times, it provided the student with a FAPE. In a prehearing stipulation, the parties agreed that this decision should speak only to a declaratory finding as to whether the Charter School met its obligations to provide the student with a FAPE; by stipulation, the parties agreed that the decision would not result in any award of compensatory education.<sup>3</sup>

For the reasons set forth below, I find in favor of the parent.

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<sup>1</sup> The generic "student", and gender-neutral pronouns will be utilized throughout the decision to protect the student's confidentiality.

<sup>2</sup> It is this hearing officer's preference to cite to the implementing regulation of the IDEA at 34 C.F.R. §§300.1-300.818. *See also* 24 PA Code §§14.101-14.162.

<sup>3</sup> Hearing Officer Exhibit [HO]-1, HO-2, HO-3, HO-4; Notes of Testimony at 21-24.

## **ISSUES**

Was the student's July 2014 IEP reasonably calculated to yield meaningful education benefit?

## **FINDINGS OF FACT**

1. The student has attended the Charter School since the 2011-2012 school year, the student's 4<sup>th</sup> grade year. (Parent's Exhibit [P]-10; School District Exhibit [S]-2).
2. In the 2011-2012 school year, the student was referred to the school office 19 times (seven for defiance/disrespect, three for inappropriate/abusive language, two for physical aggression, two for bus violations, one for bullying, one for threats, one for multiple minor infractions, one for skipping class, and one for forgery/theft). (P-10; S-2, S-13).
3. In the 2012-2013 school year, the student's 5<sup>th</sup> grade year, the student was referred to the school office four times (one for class disruption, one for negative comments, one for defiance/disrespect, and one for multiple minor infractions). (P-2, P-10; S-2, S-13).
4. In the 2013-2014 school year, prior to March 2014, the student's 6<sup>th</sup> grade year, the student was referred to the office three times (one for disrupting class, and two for degrading comments). (P-2, P-10; S-2, S-13).

5. In March 2014, the student was involved in a bus incident where the student had a jar of noxious liquid, asking other students to smell the liquid. Upon investigation of this incident, Charter School administrators found a 7.5 inch knife in the student's backpack. (P-2, P-10; S-2, S-13; Notes of Testimony [NT] at 164-165).
6. The student was removed from the Charter School and placed in a 45-day alternative placement. (P-10; S-2).
7. In May 2014, as the alternative placement was due to conclude, the student was found in possession of small bags containing faux illegal drugs. The alternative placement was extended, and the student completed the 2013-2014 school year at the alternative placement. (P-10; S-2).
8. The student's grades in core academic subjects at the Charter School in the first two trimesters, respectively, were: C and D in language arts, D and C in mathematics, B and B in social studies, and D and D in science. The student's grades at the alternative placement in the final two quarters, respectively, were: B and C in reading, A and C in mathematics, B and D in social studies, and A and D in science. (P-10; S-2).
9. In June 2014, the Charter School issued a re-evaluation report (RR) for the student. (P-10; S-2).
10. The June 2014 RR included information about the student's discipline history at the Charter School as well as information from

community mental health (MH) services. The most recent MH service plan (from February 2014) was referenced in the RR and identified behavioral health issues such as aggression, impulsivity, depression, and passive suicidal ideation/history of (threats). The most recent MH evaluation yielded diagnoses of depressive disorder/not otherwise specified, ADHD/not otherwise specified, and oppositional defiant disorder. (P-10; S-2).

11. The Charter School sought parental input, but neither a behavior assessment scale nor a parental input/developmental history packet were returned to the Charter School. (P-10; S-2; NT at 76).
12. Charter School teachers who provided written input for the June 2014 RR indicated that the student did not present behavioral needs. (P-10; S-2).
13. The June 2014 RR contained behavior assessment scale results from the student and one Charter School teacher. (P-10; S-2).
14. The student's self-assessment showed elevated scores for attention problems, hyperactivity, and sensation seeking. While scores for social stress and interpersonal relations fell within the average range, the evaluator opined that these scores bordered on at-risk scoring levels and recommended that further follow-up was warranted. Overall, however, the RR noted that the student's self-

assessment should be handled cautiously “due to consistency”. (P-10; S-2).

15. The Charter School teacher’s assessment showed clinically significant scores for anxiety and depression, and at-risk scores for hyperactivity, attention problems, aggression, conduct problems, withdrawal, and adaptability to change. (P-10; S-2).
16. The Charter School evaluator requested teacher input, including behavior assessment scales, from the alternative placement where the student attended in spring 2014, but the input/assessment instrument were not returned. (P-10; S-2; NT at 76).
17. The June 2014 RR contained results from a neuropsychological assessment, specifically the sub-tests of the social perception composite portion of that assessment. The student scored in the below average range on memory for faces, facial affect recognition, and theory of mind (which assesses understanding of the mental functions such as belief, intention, deception, emotion, imagination, and pretending, as well as perspective-taking on thoughts/ideas/feelings of others which differ). In the RR, the evaluator offered classroom strategies in light of these deficits, and recommended that a functional behavior assessment (FBA) be performed and a positive behavior support plan be developed. (P-10; S-2).

18. The June 2014 RR also contained cognitive testing and academic achievement testing. The results of these assessments found that the student had an average IQ of 97, but achievement scores indicated that the student had specific learning disabilities, especially in the areas of oral reading fluency and numerical operations. (P-10; S-2).
19. The June 2014 RR identified the student as having health impairments and specific learning disabilities in reading and mathematics. (P-10; S-2).
20. In July 2014, the student's IEP team met to craft the student's IEP for the upcoming 2014-2015 school year, the student's 7<sup>th</sup> grade year. The IEP meeting included a regular education teacher of the student, a special education teacher, and a special education administrator. The student's parent did not attend the meeting, and the school-based members of the team discussed the IEP. (S-3; NT at 180-182).
21. The July 2014 IEP indicated that the student did not exhibit behaviors which interfered with the student's learning or that of others. (P-11; S-4).
22. The July 2014 IEP contained five goals (one in overall academic performance, two in reading, one in mathematics, and one in task-focus in class). (P-11; S-4).

23. In August 2014, the student's parent returned a notice of recommended educational placement (issued in July) for the student's return from the alternative placement. (S-5).
24. In August 2014, the Charter School performed a FBA. (P-12).
25. The August 2014 FBA identified two behaviors of concern: attention-seeking from peers and attention-to-task. (P-12).
26. Along with the FBA, in August 2014 the Charter School developed a positive behavior support plan (P-13; S-7).
27. The August 2014 behavior support plan was based on the FBA. The behavior support plan contained the behavior goal which had been drafted for the July 2014 IEP. The consequences contained in the behavior support plan (both positive reinforcement of preferred behaviors and the procedures for handling behaviors of concern) were regular education interventions largely applicable to any student in the school. (P-13; S-7; NT at 103-106).
28. The student returned to the Charter School for the 2014-2015 school year, the student's 7<sup>th</sup> grade year. (NT at 85-86, 166).
29. In August 2014, early on in the school year, following three incidents in class, the student was assigned the writing of three "respect essays", one of the consequences from the regular education behavior response chart. The parent also shared



concerns regarding assignment completion and homework. (P-15; S-13).

30. In September 2014, parent continued to share concerns about assignment completion/homework and a failing grade in language arts. The teacher of the class noted that the student had difficulty with organization, note-taking, and assignment completion. The student's academic and behavioral success increased over the course of the month. (P-15; S-13).
31. In early October 2014, on consecutive days, the student first was defiant of a teacher directive and left the classroom (to return shortly thereafter). The next day, the student slapped a fellow student across the face in an unprovoked altercation. Over the course of the month, the student's behaviors improved. (P-5; S-13).
32. In November 2014, the student was involved in multiple behavior incidents. Early in the month, the student was defiant of a teacher directive, defiance that resulted in the student throwing a pencil case and a stapler, and attempting to drag a desk from the room when the teacher attempted to remove the student from the classroom. (P-2, P-15; S-10, S-13).
33. A few days after the throwing incident, the student was defiant of a repeated teacher directive not to bang a calculator on the desk. The student mocked the teacher, claiming not to have a calculator. When the teacher attempted to remove the student from

- the classroom, the student attempted to ride a supply cart before an administrator came to the classroom to remove the student. (P-2, P-15; S-10, S-13).
34. In the middle of the month, the student engaged in multiple acts of defiance with teachers related to various classroom events over the course of the day. The student would not respond appropriately when a fellow student fell and hit her head and became defiant when a teacher addressed this. The same day, the student was defiant and would not complete a “respect essay”; when a second teacher intervened, the student spit in a trash can and, upon being reprimanded, spit on the teacher, claiming it was accidental. Having been escorted into the hallway, the student’s behavior escalated and the student refused to go to the office; ultimately, the police were summoned. (P-2, P-15; S-10, S-13).
35. In early December 2014, the student was involved in two incidents of defiance to teacher directives. The first incident involved repeated defiance in response to teacher requests. The second incident involved continuing to make loud noises and to drum on objects in class after a teacher’s request to stop. (P-2, P-15; S-10, S-13).
36. On December 15, 2014, the student made a statement about shooting another student. When school administrators were informed, the student’s bookbag was searched. Administrators

found a lookalike gun and a bag of marijuana. (P-2, P-15; S-10, S-13).

37. The student was removed from the Charter School and placed in a 45-day alternative placement. (P-19).

38. The parties agreed that the student would remain in the alternative placement through the end of the school year. (HO-4).

### **CREDIBILITY FINDINGS**

All witnesses testified credibly. No witness's testimony was accorded significantly more, or significantly less, weight than any other's. (NT at 59-81, 82-160, 161-177, 178-190).

### **DISCUSSION AND CONCLUSION OF LAW**

To assure that an eligible child receives a FAPE (34 C.F.R. §300.17), an IEP must be reasonably calculated to yield meaningful educational benefit to the student. Board of Education v. Rowley, 458 U.S. 176, 187-204 (1982). 'Meaningful benefit' means that a student's program affords the student the opportunity for "significant learning" (Ridgewood Board of Education v. N.E., 172 F.3d 238 (3<sup>rd</sup> Cir. 1999)), not simply *de minimis* or minimal education progress. (M.C. v. Central Regional School District, 81 F.3d 389 (3<sup>rd</sup> Cir. 1996)). The obligations of school district and charter schools under IDEA is geared around the

educators' knowledge, or presumed knowledge, of a student's educational needs: when did the school district or charter school know, or should it have known, about the need to address a student's special education programming? (See Ridgewood, M.C.).

Here, the Charter School's programming for the student's behavior needs was inappropriate and denied the student a FAPE. First, the overall engagement of the student's behavior by the Charter School is brought into question where the July 2014 IEP indicates that the student did not exhibit behaviors that impeded the student's learning or the learning of others. Granted, the student's behavior had improved dramatically from the student's first year of enrollment (4<sup>th</sup> grade) as compared to the student's behavior in the 5<sup>th</sup> and 6<sup>th</sup> grades. But those behaviors still involved defiance with adults and negative interactions with peers. By July 2014, with a behavior incident in March 2014 that resulted in a removal to an alternative setting (and problematic behavior in that setting which prolonged the placement), the District was in a position to answer definitively that the student exhibited behavior in school that impeded the student's learning or that of others. This procedural error by itself does not amount to a denial of FAPE, but it serves as a backdrop to the substantive denial of FAPE that followed under the terms of the July 2014 IEP.

Second, the behavior goal in the July 2014 IEP was developed prior to the FBA being performed and the behavior support plan was drafted.

Again, this is not problematic in itself except that, once that assessment and plan were in place in August 2014, the IEP goal remained identical. To undertake the necessary behavioral assessment and programming and not make that data and those conclusions part of the student's IEP amounts, in this matter, to a denial of FAPE.

Third, on this record, the student's social skills with both adults and peers have been consistently problematic. The lack of any social skills training or interventions amounts to a denial of FAPE, especially in light of the Charter School evaluation which showed uniform below-average skills in facial and social signaling. The Charter School evaluator herself indicated that programmatic approaches that should be part of the student's program, none of which were implemented as part of the student's July 2014 IEP.

Fourth and finally, the consequences in the positive behavior support plan are almost exclusively the regular education interventions that would be implemented in a similar situation with any student. In effect, the behavior support plan as to the student was not individualized; the student's behavior would be addressed through the behavior plan almost exactly as it would have been addressed had the student been in regular education. This lack of individualization is a denial of FAPE.

Accordingly, the student's July 2014 IEP was not reasonably calculated to yield meaningful education benefit regarding the student's

social and behavioral needs. This hearing officer, however, respects the parties' stipulation that compensatory education is not a remedy sought by parent in this matter, and so a compensatory education analysis will not be undertaken, nor will an award of compensatory education be made.

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### **ORDER**

In accord with the findings of fact and conclusions of law as set forth above, the student's July 2014 IEP was not reasonably calculated to yield meaningful education benefit regarding the student's social and behavioral needs, thereby denying the student a free appropriate public education. By stipulation of the parties, there is no compensatory education award.

Any claim not specifically addressed in this decision and order is denied.

*Jake McElligott, Esquire*

Jake McElligott, Esquire  
Special Education Hearing Officer

May 12, 2015