

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 Due Process Hearing Officer

Final Decision and Order

CLOSED HEARING

ODR No. 28405-23-24

Child's Name:

H.P.

Date of Birth:

[redacted]

Parents:

[redacted]

Counsel for Parents:

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Hearing Officer:

James Gerl, CHO

Date of Decision:

November 8, 2023

BACKGROUND

The parents filed a due process complaint alleging denial of a free and appropriate public education from the beginning of the 2021 – 2022 school year through March 16, 2023, when the parents disenrolled the student from the charter school. The charter school contends that it did not deny FAPE to the student. I find in favor of the parents with regard to the denial of FAPE.

PROCEDURAL HISTORY

This matter was heard in one efficient in-person session. The hearing and decisional processes were greatly facilitated by the excellent job done by counsel for both sides in this case by agreeing to 128 stipulations of fact as well as to the admissibility of most exhibits.

Six witnesses testified at the hearing. Parent Exhibits P-1 through P-29 were admitted into evidence. Charter school Exhibits S-1, S-2, S-3, S-5, S-6, S-8, S-12 through S-17, S-27, S-28, and S-39 through S-51 were admitted into evidence. All other marked exhibits from the charter school were withdrawn.

After the hearing, counsel for each party presented written closing arguments/post-hearing briefs and proposed findings of fact. 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.

To the extent possible, 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).

ISSUE PRESENTED

The due process complaint, as explained and clarified at the prehearing conference for this matter, presents the following single issue:

Whether the parents have proven that the charter school denied a free and appropriate public education to the student from the beginning of the 2021 – 2022 school year through March 16, 2023?

FINDINGS OF FACT

Based upon the parties' stipulations of fact, I have made the following findings of fact:

1. [redacted]
2. Parent enrolled Student at the Charter for [redacted].
3. Charter was Student's local educational agency ("LEA") from [redacted] until Parent disenrolled Student on or about March 16, 2023.
4. Charter evaluated Student and issued an evaluation report on November 30, 2015.
5. The Wechsler Preschool and Primary Scale of Intelligence-Fourth Edition ("WPPSI-IV") was used to assess the student's cognitive ability across five areas of cognitive functioning. The evaluation states: "When interpreting

these scores, it is important to view these results as a snapshot of ... current intellectual functioning.”

6. Student earned the following scores on the WIPPSI, placing the student’s full-scale IQ in the low average range when compared to other children the student’s age: Full Scale 87; Verbal Comprehension 79; Visual Spatial 91; Fluid Reasoning 100; Working Memory 84; Processing Speed 89.

7. Student scored as follows on the Wechsler Individual Achievement Test-Third Edition (“WIAT III”):

Subtest	Standard Score	Percentile
Listening Comprehension	76	5
Early Reading Skills	66	1
Oral Expression	79	8
Spelling	102	55
Alphabet Writing Fluency	88	21
Numerical Operations	88	21
Math Problem Solving	81	10

8. Charter found Student eligible for special education services under the primary exceptionality category of Other Health Impairment (“OHI”) and the secondary disability category of Speech and Language Impairment.

9. On December 10, 2015, the Charter offered Student a Notice of Recommended Educational Placement (“NOREP”) for learning support at an itinerant level and speech therapy as a related service and Parent approved the NOREP.

10. On June 14, 2016, the Charter offered Student a NOREP for Extended School Year (“ESY”). On June 16, 2016, Parent responded by requesting a meeting to discuss. The Charter sent another NOREP for ESY on June 20, 2016, and Parent approved it the same day.

11. When Student was in [redacted] grade Charter conducted a Functional Behavioral Assessment ("2016 FBA"). The behavior of concern was described as "[Student] displays disruptive and off task behaviors. "[Student] will refuse to do classwork, will frequently say 'I can't', and put ... hands on classmates instead of using ... words."

12. The 2016 FBA noted "[t]he behavior frequently happens when [Student] does not know how to do something in class, like a new skill, that the class is working on" and that, while the behavior does not occur in response to certain stimuli, "the behavior often occurs when demands are placed on [Student], during transitions and unstructured activities."

13. The 2016 FBA noted that there are no circumstances in which the behavior always occurs.

14. The 2016 FBA noted that "[d]uring a preferred activity [Student] is very compliant" and under these circumstances, the behavior never occurs.

15. The 2016 FBA noted that the behavior could be related to skill deficits in academic, communication, and self-regulation skills.

16. The 2016 FBA further noted that "there is no pattern to the time of day the behavior occurs."

17. The Charter School developed a positive behavior support plan for Student dated December 2, 2016 ("2016 PBSP").

18. The 2016 PBSP reported the behavior of concern as "[Student] will say," I can't", refuse to do classwork, refuse to follow class during transitions, and/or put [the student's] hands on other students and not use [the student's] words."

19. The replacement behavior identified was following directions with minimal prompting, completing classwork, and expressing needs appropriately.

20. On April 12, 2017, Parent approved a NOREP for ESY.

21. The Charter conducted an FBA when Student was in [redacted] grade ("2017 FBA"). The behavior of concern was described as "[Student] displays disruptive and off task behaviors. Student] will refuse to do classwork, will frequently say 'I can't', become upset and not use ... words."

22. The 2017 FBA noted that Parent reported Student "gets [an] adequate amount of sleep but [the student] will sometimes complain of being tired."

23. The 2017 FBA noted that "[t]he behavior frequently occurs when [Student] perceives the assignment as being too much or when [Student] does not know how to do something in class, like a new skill, that the class is working on" and "when demands are placed on [Student], during transitions and unstructured activities."

24. The 2017 FBA noted that there are no circumstances in which the behavior always occurs.

25. The 2017 FBA noted that the behavior could be related to skill deficits in academic, communication, and self-regulation skills.

26. The 2017 FBA further noted that "the behavior [did not] only (or more likely) [occur] during a certain time of day".

27. On April 25, 2018, Parent signed a NOREP for ESY.

28. The Charter reevaluated Student when Student was in [redacted] grade and issued its reevaluation report on November 16, 2018 ("2018 Reevaluation").

29. The 2018 Reevaluation administered selective subtests of the WIAT III and included a review of records and classroom observation.

30. The following subtests were administered and composite scores obtained:

SUBTEST	Standard Score	Percentile	GradeEquivalent
Listening Comprehension	71	3	k.0
Early Reading Skills	82	12	1.2
Reading Comprehension	74	4	1.3
Math Problem Solving	77	6	1.5
Sentence Composition	84	14	1.5
Word Reading	75	5	1.2
Essay Composition	82	12	<3.0
Pseudoword Decoding	71	3	<1.0
Numerical Operations	84	14	1.7
Spelling	74	4	1.0
COMPOSITE	Standard Score	Percentile	Qualitative
Basic Reading	73	4	Below Average
Written Expression	76	5	Below Average
Mathematics	79	8	Below Average

31. The 2018 Reevaluation determined that Student's "overall achievement skills in the area of reading and math were generally commensurate with ... previously reported cognitive abilities (2015)."

32. The 2018 Reevaluation identified the following strengths: motivated to learn; gets along well with peers and teachers; and attention span with one-on-one support.

33. The 2018 Reevaluation identified the following needs: word decoding, reading comprehension, written expression, numerical computation, and math problem solving.

34. The Charter continued to find Student eligible for special education services under the primary disability category of OHI and secondary disability category of Speech and Language Impairment.

35. The 2018 Reevaluation recommended, among other things, accommodations in the areas of reading/language arts and math, a speech/language evaluation, a multisensory reading program with emphasis on phonics, and additional math support.

36. The Charter conducted an FBA on January 29, 2020, when Student was in [redacted] grade ("2020 FBA"). P-4 at 1. The behavior of concern was described as "[Student] is at times not willing to complete much of [Student's] assigned work and [the student] will sit quietly seeming very lethargic and 3 to 4 times a week while sitting at [the student's] desk [the student] will fall asleep. This occurs throughout the day and is not at specific times or during specific subjects."

37. The 2020 FBA noted that Student "has stated [Student] had trouble sleeping or has gone to bed late."

38. The 2020 FBA noted that "[t]he behaviors occur when requested to complete classwork after [the student] has placed [the student's] head

down and presenting as extremely exhausted and non-interactive with teacher and peers” and the behaviors “occur across all times of the day.”

39. The 2020 FBA noted that there are no circumstances in which the behavior always occurs; “behaviors occur across all times of the day.”

40. The 2020 FBA noted that the behavior could be related to skill deficits in academic, participation, and self-regulation skills.

41. The 2020 FBA Hypothesis Regarding Function of the Behavior of Concern states “When [Student] does not get enough rest or has trouble falling asleep at night (antecedent to behavior of concern), [Student] is lethargic and falls asleep at school (behavior of concern) in order to get the rest [Student] needs and avoid doing ... assignments (perceived function of the behavior).”

42. The Charter developed a positive behavior support plan for Student dated February 18, 2020 (2020 PBSP)—Student’s [redacted] grade year. The 2020 PBSP noted that “[t]he behavior of falling asleep allows [Student] to avoid classwork and completion of assignments.”

43. The 2020 PBSP identified the program modifications and specifically designed instruction (SDI) of “Motor Breaks” and “Positive and verbal praise” across all environments: Antecedent (prevention) strategies; Replacement Behavior; Consequences (reinforcement) for when the student performs the Replacement Behavior; and Consequences (including procedures to follow) when the student performs the behavior of concern.

44. The Charter School issued a NOREP for ESY on May 1, 2020; the document indicates that Parents did not return the NOREP.

45. On November 16, 2020, the Charter issued an invitation to participate in a meeting to develop an IEP on December 3, 2020 (“November 16, 2020 Invitation”). The November 16, 2020 Invitation indicates that

Parents did not return it. On December 9, 2020, the Charter issued an invitation to participate in a meeting to develop an IEP on December 11, 2020 ("December 9, 2020 Invitation"). The December 9, 2020 Invitation indicates that Parents did not return it. On December 11, 2020, the Charter issued an invitation to participate in a meeting to develop an IEP on December 15, 2020 ("December 11, 2020 Invitation"). The December 11, 2020 Invitation indicates that Parents did not return it.

46. The Charter convened an IEP meeting on December 15, 2020. Parent attended the meeting along with a special education teacher, regular education teacher, and the principal as LEA.

47. On January 25, 2021, the Charter School issued a NOREP for ESY; the document indicates that Parents did not return the NOREP.

48. The Charter reevaluated Student in 2021 after the Charter reviewed existing evaluation data on July 8, 2021.

49. The Reevaluation reports "Parent input forms were sent out via e-sign. The document was opened on 8/26/2021 but no information was not provided in time for this report."

50. The Charter issued its reevaluation report on September 22, 2021 ("2021 Revaluation"). Student was in [redacted] grade.

51. The 2021 Reevaluation reports Student's grades from the student's 2020-2021 [redacted] report card including final grades:

ELA	F 65
MATH	F 65
SCIENCE	F 65
SOCIAL STUDIES	F 65
GYM	F 67
SPANISH	F 73
ART	F 20 (second semester course)

52. Student's [redacted] grade report card also includes an "I" for homeroom and specialized services.

53. The 2021 Reevaluation includes input from H.P.'s Math/Science teacher including that Student's instructional level is below grade level; the student's rate of acquisition appears to be below grade level; it was too early to assess the student's rate of retention; the student's rate of progress approaches that of the rest of the class with a great amount of support; needs a lot of support to be successful with the work on ratios the class was doing; the student has trouble staying on task sometimes; and the student seems to get along well with the student's peers and teachers.

54. Student's ELA/Social Studies teacher reported Student struggles to complete assignments; "[Student's] "overall strengths include the masterful skills the student displays when the student is focused;" the student's overall needs include organizational skills, controlling the student's frustration when the student does not understand something, and a better work completion rate. The teacher reported that Student's instructional level seems below grade level; the student's rate of acquisition appears to be average, but it is too soon to assess the student's rate of retention. The student's rate of progress remains deficient even with support. The student is usually on time and present for classes. The teacher reported that Student uses appropriate structures and conventions in writing assignments and has demonstrated the ability to read fluently and at a steady pace. The teacher reported that Student struggles to communicate the student's needs, is generally quiet, and avoids working with others. Student requires a lot of prompting throughout a class to stay on task. Teacher noted that the teacher was in contact with Student's parents.

55. The 2021 Reevaluation notes that interventions were put into place to aid Student, including a leveled support program for ELA.

“Accommodations that have been made to meet [Student’s] needs include example problems, working with partners, one-on-one attention, graphic organizers, paragraph frames and having important information highlighted.”

56. The Charter administered WISC-V, WIAT-III, and the Connors-3. The Certified School Psychologist observed that Student’s speech was sometimes low in volume, and [Student] had to be asked ... to repeat some answers but otherwise [Student’s] speech was easy to understand. Student required minimal clarification and repetition to understand directions. Sometimes, it appeared to be a direct correlation to attention to task. At times, Student impulsively answered questions, only to change [the] answer. The student seemed to demonstrate low persistence on difficult items, choosing to skip them instead of attempting them; and although [Student] followed along during testing, [Student] did seem to give up easily. The evaluator concluded that the results were an accurate indicator of how Student performs in school.

57. Student scored as follows on the WISC-V (see P-6 at 10-12):

Composite	Standard Score	Percentile	Description
Verbal Comprehension	84	14	Below Average
Visual Spatial	75	5	Well Below Average
Fluid Reasoning	82	12	Below Average
Working Memory	85	16	Below Average
Processing Speed	72	3	Well Below Average
Full Scale IQ	76	5	Well Below Average

58. Student achieved the following scores on the WIAT-III:

Subtest	Standard Score	Percentile	Description
Reading Comprehension	81	10	Below Average
Word Reading	84	14	Below Average
Pseudoword Decoding	70	2	Well Below Average
Essay Composition	55	0.1	Significantly Below Average
Spelling	76	5	Well Below Average
Math Problem Solving	64	1	Significantly Below Average
Numerical Operations	54	0.1	Significantly Below Average

59. One of Student's general education teachers from the 2020-2021 school year was unable to complete the Conners-3 due to remote learning, lack of Student attendance, and the inability to witness the Student's abilities and behaviors. Parent Conners-3 was sent via e-sign on 8/26/2021 but the evaluator reports that they were not returned on time for the report.

60. Student's math/science teachers endorsed responses that yielded results in the very elevated range for inattention, high average range for executive functioning, and in the elevated range for ADHD Inattentive Type. He rated the following as occurring frequently and being "very much true:" has a short attention span, has trouble concentrating; inattentive, easily distracted; is sidetracked easily; fails to complete schoolwork or tasks (even when the student understands and is trying to cooperate); has to struggle to complete hard tasks; has trouble getting started on task or projects; makes mistakes; needs help to break a complex task into smaller, more manageable pieces.

61. Student's ELA and Social Studies teacher endorsed responses that yielded results in the average range for all categories except one "high average." The teacher reported minor concerns: leaves seat when the student should stay seated; forgets instructions quickly; and gives up easily on difficult tasks.

62. The 2021 Reevaluation continued to find Student eligible under the primary exceptionality category of Speech Language Impairment and the secondary exceptionality category of OHI.

63. It identified Student's strengths as relatively strong verbal comprehension, fluid reasoning and reading comprehension and word reading. It identified the student's weaknesses as time management, assignment completion, processing speed, pseudoword decoding, written expression, and math.

64. The 2021 Reevaluation states that "[t]he results of this evaluation will be reviewed at a multi-disciplinary team meeting where the committee will determine an appropriate educational program for [Student]."

65. On October 15, 2021, the Charter invited Parent to an IEP meeting to discuss possible changes to Student's current IEP and to revise as needed. The meeting was proposed for November 4, 2021.

66. The Charter convened an IEP meeting on November 4, 2021 ("November 4, 2021 IEP"). Parent attended the meeting as well as the special education teacher, a speech pathologist, the principal as LEA and Student's ELA/Social Studies regular education teacher.

67. The November 4, 2021 IEP stated: "[Student] was diagnosed with Other Health Impairment as well as speech/language difficulties. Although [the student] has an IQ in the average range without the support of accommodations and modifications the student's difficulty with reading and

math will make it difficult to access general curriculum. The student's written language, while functional, would greatly improve by consistent use of strategies. [Student]'s skill deficits, if not improved could impact h[er] independent living skills. The student's written language, while functional, could also impact the student's independent living skills."

68. Communication and behavior needs were checked as special considerations.

69. Student's reading level was reported as Level Q on Fountas and Pinnell, which the Charter identified as fourth grade. Student was able to answer comprehension questions with 95% accuracy. The student read with 95% accuracy, with 13 errors and 6 self-corrections. The Charter administered the STAR Renaissance reading composite in November 2021. Student's reading composite on that measure was at the 13th percentile and a grade equivalent of 4.1, which is in the intervention range.

70. In November 2021, the Charter also accessed Student using the STAR Renaissance math assessments to obtain the student's present level of academic achievement in mathematics. The STAR Renaissance math assessments are a norm-referenced standards-based mathematics indicator. Student scored in the 3rd percentile, placing the student in a grade equivalent of 3.2 on the overall math composite, which is in the urgent range.

71. Student's overall score on the i-Ready Benchmark for reading was at Grade 3 and for math was at Grade 1.

72. The results of a speech/language evaluation were included in the November 4, 2021 IEP (but not in the 2021 Reevaluation). The evaluator stated that Student is respectful and hard-working, participates in all speech tasks, gets along well with the other students in the small speech group, does not make any articulation errors in conversation, uses grammatically correct

sentences, met the student's speech and language goals, and scored "Average" range on all subtests of the student's Fall 2021 speech re-evaluation. The evaluator concluded that Student was no longer eligible to receive speech services.

73. The November 4, 2021 IEP included teacher input from Student's math/science teacher, who reported that [Student] had strengths in basic math skills; the student's instructional level was below sixth grade level; [Student] needs support to be successful in math class; and [Student] gets along well with staff and peers. [Student's] ELA/Social Studies teacher reported that Student works well when [Student] is on-task and focused (with redirections); struggles with organizational skills, self-control, and self-advocating; and uses appropriate structures and conventions in ... writing assignments.

74. The November 4, 2021 IEP identified the following strengths: polite, gets along with peers, phonological awareness, high frequency words, phonics, vocabulary acquisition, and ratios and proportions.

75. The November 4, 2021 IEP identifies the following needs: homework, Math STAR Renaissance Composition Test; Reading STAR Renaissance Composition Test, and behavioral.

76. The November 4, 2021 IEP included four goals: reading composition, mathematic computation, PBSP goal, and homework completion.

77. Student received fourteen (14) Modifications and SDI daily across all environments and four (4) Modifications and SDI weekly across all environments.

78. On the reading goal, the Charter's progress monitoring reports that Student had independently mastered this goal in May 2022.

79. On the math goal, the Charter's progress monitoring reports that Student regressed on the student's math goal in the 3rd and 4th marking periods of the 2021-2022 school year.

80. On the PBSP goal, the Charter's progress monitoring reports independent mastery in the second marking period, limited progress in the third marking period and moderate progress in the fourth marking period.

81. On the homework completion goal, the Charter's progress monitoring reports that Student regressed in the 2nd Marking Period. Student made moderate progress in the 3rd & 4th Marking Periods of the 2021-2022 school year. The October 27, 2022 IEP baseline data showed regression from the baseline in the November 4, 2021 IEP.

82. The November 4, 2021 IEP did not include any related services.

83. The November 4, 2021 IEP determined that Student was eligible for Extended School Year ("ESY").

84. The November 4, 2021 IEP stated that Student would receive learning support pull out services for 450 minutes per week in ELA and Math.

85. The Charter issued a Notice of Recommended Educational Placement ("NOREP") on November 4, 2021, which provided for 450 minutes per week, 2-3 times a week for Math, 2-3 times per week for ELA in order to provide FAPE." The placement was itinerant learning support.

86. The Charter issued a NOREP for ESY on March 22, 2022.

87. Student earned the following final grades and teachers commented on the student's final report card for the 2021-2022 school year [redacted]:

Course	Final Grade	Comments

[redacted] Grade ELA	F 65	"[Student] is struggling in class. [The student] needs to focus on work completion.
[redacted] Grade Gym	C 86	"[Student] has the potential to do better, [the student] needs to focus on assignment completion and participating more in class."
[redacted] Grade Math	F 75	"[Student] has the potential to do better."
[redacted] Grade Science	C 82	"[Student] has the potential to do better."
[redacted] Grade Social Studies	F 65	"[Student] has the potential to do better."
[redacted] Grade Spanish	F 64	"[Student] needs improvement respecting peers and teachers."

88. On April 27, 2022, the Charter informed Parent that Student had "a very slight chance of passing" and that "summer school is a possibility" but the Charter had not "confirmed if we will have Summer School as of yet."

89. On May 20, 2022, the Charter emailed Parent: "As you know back in late April/May we discussed retention of your child because of failing grades. At that time, I didn't know if [Summer] School was a possibility. I am writing to inform you that your child will be able to attend [Summer] School in order to be promoted to the next grade. I don't know all of the details yet, but I can share Dates- July 5-August 5 Days Monday-Thursday I don't know the times as of yet, but expect it will be either 9-12 or 9-1pm. Your child can only miss (1) day, regardless of the reason. In order to be promoted, they must complete all assignments AND pass their assessments. If they meet these requirements, they will be promoted. Failure to meet the requirements will mean retention. More information will be shared in the coming weeks. If you have any questions, please reach out to me."

90. On June 21, 2022, Parent sent an email to the Charter School stating "I would like [Student] to repeat the [redacted] grade this upcoming school year."

91. Student repeated [redacted] grade in the 2022-2023 school year.

92. The Charter administered the i-Ready Mathematics Measure on September 2, 2022. Student's grade was identified as sixth. The student's overall math score was at 1st grade and the 3rd percentile.

93. On October 3, 2022, the Charter invited Parent to an annual IEP meeting scheduled for October 27, 2022.

94. Parent, special education teacher, regular education teacher and the principal as LEA attended the October 27, 2022 IEP meeting.

95. The October 27, 2022 IEP included the statement: "[Student] was diagnosed with Other Health Impairment as well as speech/language difficulties although [Student] has an IQ in the average range without the support of accommodations and modifications [Student's] difficulty with reading and math will make it difficult to access general curriculum. [Student's] written language, while functional, would greatly improve by consistent use of strategies. [Student]'s skill deficits, if not improved, could impact [Student's] independent living skills. [Student's] written language, while functional, could also impact [Student's] independent living skills."

96. Communication and behavior were checked as special considerations.

97. Under present levels, the October 27, [2022] IEP states: "[Student] is currently enrolled as a [redacted] grade student at [] Charter []. [The student] was identified as a student meeting criterion to receive services under the classification of Other Heath Impairment, second exceptionality

Specific Learning Disability based upon the results of [the] most recent Evaluation Report on September 22, 2021.”

98. The Charter administered a Level Q (identified as fourth grade) Fountas and Pinnell Reading Assessment in October 2022.

99. The October 27, 2022 IEP also reports scores on the STAR Renaissance Reading and Math Assessment.

100. For reading, the October 27, 2022 IEP reports that Student ranked in the 40th percentile at a grade equivalent of 5.4 on the STAR Renaissance Reading assessment administered in October 2022, which falls at/above benchmark.

101. For math, the October 27, 2022 IEP reports that Student ranked in the 40th percentile at a grade equivalent of 5.4 on the student’s overall math composite in October 2022, [redacted].

102. Within the Math Composite are multiple subtests. Student’s percentile rank as reported in the October 27, 2022 IEP were:

SUBTEST	PERCENTILE RANK
Expressions and Equations	6 – beginning range
Geometry	4 – beginning range
Ratios and Proportional Relationships	14 – beginning range
The Number System	10 – beginning range
Statistics and Probability	5 – beginning range

103. On the i-Ready Math Benchmark, Student’s overall math was Grade 1. The October 27 2022 IEP states “Reading: Did not complete”

104. Student’s math and science teacher reported: “[Student] works well independently, when given incentives to work towards, such as lunch with

a friend. [Student] is on-task and completes work about 75 percent of the time. At times [Student] refuses to complete classwork and will sleep. [Student] also struggles with positive peer interactions (can be argumentative) and homework completion.”

105. Student’s ELA and Social Studies teacher reported that “[Student] is cooperative during writing activities and during independent reading. [The student] uses proper grammar and conventions when speaking and writing. [Student] struggles with collaborative activities after being corrected for a behavior. [The student] is encouraged to use an agenda for recording homework assignments. [Student]’s motivated with tangible rewards.”

106. The October 27, 2022 IEP identified Student’s strengths as helpful, vocabulary acquisition and use, independent, and ratios and proportional relationships. It identified the student’s needs as Homework completion, Math STAR Renaissance Composition Test, behavioral, and attendance.

107. The October 27, 2022 IEP included a PBSP that identified the antecedent to behavior of concern as “Teacher will re-direct multiple times to follow directions given and complete a non-preferred assignment.”

108. The behavior of concern was “[Student] needs prompting to complete the student’s assigned work, Also, [Student] needs prompting not to close eyes and fall asleep.”

109. The PBSP Assessment Summary indicates that when “[Student] is working independently in the classroom, in a group setting, or during transitions, [Student] will behave in a lethargic manner and at times fall asleep in order to avoid completing the student’s work.”

110. The October 27, 2022 IEP included 5 goals: math computation, PBSP goal (falling asleep), homework completion, attendance (absences), and attendance (tardiness).

111. Student received fourteen (14) Modifications and SDI daily across all environments and four (4) Modifications and SDI weekly across all environments.

112. The homework completion goal in the October 27, 2022 IEP was the same as the homework completion goal in the November 4, 2021 IEP. The baseline in the November 4, 2021 IEP was 54%. The baseline in the October 27, 2022 was 50%.

113. The PBSP goal in the October 27, 2022 was the same as the PBSP goal in the November 4, 2021 IEP—" [Student] will reduce the number of times [the student] falls asleep in class from a baseline of four times a per [sic] week to no more than one time per week over three consecutive trials." The baseline did not change.

114. On the math goal, for the 2022-2023 school year, the Charter's progress monitoring reports "Student has regressed" in the 2nd Marking Period.

115. On the PBSP goal, for the 2022-2023 school year, the Charter's progress monitoring reports "moderate progress" with Student falling asleep "no more than twice per week" in the 2nd Marking Period.

116. On the homework completion goal, for the 2022-2023 school year, the Charter's progress monitoring reports "moderate progress" with a homework completion rate of 65% in the 2nd Marking Period.

117. On the attendance (absence) goal (new for the 2022-2023 school year) the Charter's progress monitoring reports "Student has regressed" in the 2nd Marking Period.

118. On the attendance (tardiness) goal (new for the 2022-2023 school year) the Charter's progress monitoring reports "Student has regressed" in the 2nd Marking Period.

119. The October 27, 2022 IEP included the same 18 Modifications and SDI as the November 4, 2021 IEP.

120. The Charter determined that Student was eligible for ESY.

121. The October 27, 2022 IEP included 450 minutes per week of learning support pull out services for ELA and Math and individual counseling as needed.

122. The Charter issued a NOREP on October 27, 2022. It provided Itinerant learning support for 450 minutes per week and individual counseling as needed.

123. On the January 27, 2023 i-Ready Diagnostic 2, Student's overall math score was at Grade 2 Level and in the sixth percentile.

124. On the February 7, 2023 i-Ready Overall Reading Diagnostic 1, Student scored at Grade 5 and in the 50th percentile. [Student] was a [redacted] grade student in the 2022-23 school year.

125. On February 15, 16, 22, 27 and March 1 and 2, 2023, Student attended ELA tutoring.

126. On March 9, 2023 at 3:49 PM, Parent received an email with the subject line, "Informal Hearing Notice." That email addressed a proposed 10-day suspension for Student and described due process requirements, noting the informal hearing was a prerequisite to a formal expulsion hearing.

127. On March 16, 2023, Parent notified the Charter School that she was disenrolling Student from the Charter and [Student] would be starting at the [] Cyber Charter School on March 21, 2023.

128. Student's 2022-2023 report card through the second quarter set out grades and comments as follows:

Course	Q1	Q2	Teacher Comments
[redacted] Grade ELA	F 65	F 71	"[Student] has the potential to do better [the student] must focus on completing work.
[redacted] Grade Gym	B 89	A 98	"[Student] is making appropriate progress in class. [The student] has greatly improved in my class!
[redacted] Grade Math	D 77	F 67	"[Student] struggled this quarter in math class. [The student] often refused to complete work in class. [The student] also did not hand in many homework assignments. When given the opportunity to complete test correction, [the student] did not do them."
[redacted] Grade Music	B 90	D 76	[Student] demonstrates inconsistent participation with classwork.
[redacted] Grade Science	F 74	F 65	"[Student] struggled this quarter in science. [The student] did not compete the science fair project."
[redacted] Grade Social Studies	F 65	F 74	"[Student] is struggling in class. [The student] needs to focus on work completion."
[redacted] Grade Spanish	F 58	F 56	"[Student] needs to improvement respecting peers and teachers."

Based upon the evidence in the record compiled at the due process hearing, I have made the following findings of fact: ¹

129. This student is [redacted]. (NT 121)

130. When the student does not understand something, the student shuts down and pretends to fall asleep, often putting the student's head down. The student's mother explained this to the staff of the charter school numerous times, including discussions with two special education teachers of the student, the school counselor, and the dean of the school. (S-48; NT 69, 74 – 75, 78 – 79, 86 – 87, 109, 122 – 124; P-1; P-2; P-6)

131. The February 2, 2020 positive behavior support plan for the student that was created by the charter school does not address the student's behavior of pretending to fall asleep when the student does not understand something. The plan focuses instead upon the student having a lack of sleep at night and suggests an annual IEP goal that the student will reduce to four times per week the number of times that the student falls asleep in class. The student's November 4, 2021 IEP and the October 27, 2022 IEP both include the goal suggested by the positive behavior support plan. (P-5, P-9, P-15; P-4; NT 152 – 154, 227 – 228)

132. The February 2, 2020 positive behavior support plan and the two IEPs (November 4, 2021 and October 7, 2022) note that the student's problem behaviors are related to the student's educational deficits in reading, writing

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

and math. The problem behavior impacts the student's learning. (P-5, P-9, P-15; P-4)

133. The duties of the charter school's Lead Climate/Culture (LCC) include being called into classrooms when a student is not complying with the school rules. The LCC is not a teacher, a board-certified behavior analyst or a registered behavior technician. The LCC has not attended any of the student's IEP team meetings and is not responsible for implementing the student's IEP or positive behavior support plan. The LCC implemented a number of behavioral interventions with the student. The LCC would sometimes push into the student's classroom and sometimes pull the student out of class. The behavioral interventions by the LCC were not included in the student's positive behavior support plan or the student's IEPs. The LCC did not consult or confer with the student's teachers or other staff regarding the behavioral interventions he implemented. (NT 162 – 174)

134. The November 4, 2021 IEP includes no related services. The October 27, 2022 IEP includes individual counseling as a related service with a frequency of "as needed." (P-9, P-15)

135. The student's case manager at the charter school wrote the IEPs for the 2021–2022 and 2022–2023 school years using a skeleton. The skeleton is a form book of examples in Google Drive that the charter school requires the case manager to follow. (NT 198, 212 – 213)

136. The November 4, 2021 IEP and the December 27, 2022 IEP both placed the student in the regular education classroom for approximately 90% of the school day. Many pages of the two IEPs are identical, including most goals and all eighteen specially designed instruction and modifications in the two IEPs. (P-9, P-15)

137. The student's mother attended and participated in a meeting to discuss the results of the September 22, 2021 reevaluation report. (P-6)

138. The results of the September 15, 2021 speech language evaluation of the student are set forth in the student's November 4, 2021 IEP. The speech language pathologist who conducted the evaluation of the student attended the IEP team meeting. (P-9)

139. On March 7, 2023, the student [caused an incident] in the hallway at the charter school. The student took issue with a comment by the other student on a previous day [redacted]. The parents received an email on March 9, 2023 stating that the student had been suspended pending expulsion for physical aggression and fighting. The parents disenrolled the student from the charter school nine days after this incident. (NT 228-243; S-51; S-39, S-40, S-41, S-49)

CONCLUSIONS OF LAW

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

1. A parent or a local education agency may file a due process complaint alleging one or more of following four types of violations of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq, (hereafter sometimes referred to as "IDEA"): an identification violation, an evaluation violation, a placement violation or a failure to provide a free and appropriate public education. IDEA §615(f)(A); 34 C.F.R. § 300.507(a); 22 Pa. Code § 14.162.

2. The United States Supreme Court has developed a two-part test for determining whether a local education agency has provided a free

appropriate public education (hereafter sometimes referred to as “FAPE”) to a student with a disability. There must be: (1) a determination as to whether a school district has complied with the procedural safeguards as set forth in IDEA, and (2) an analysis of whether the individualized educational program (hereafter sometimes referred to as “IEP”) is reasonably calculated to enable the child to make progress in light of the child’s unique circumstances. Andrew F by Joseph F v. Douglass County School District RE-1, 580 U.S. 386, 137 S. Ct. 988, 69 IDELR 174 (2017); Board of Educ., etc. v. Rowley, 458 U.S. 178, 553 IDELR 656 (1982); KD by Theresa Dunn and Jonathan Dunn v. Downingtown Area School District, 904 F.3d 248, 72 IDELR 261 (3d Cir. 2018).

3. The IEP is the centerpiece of IDEA, and it is the central mechanism through which the local education agency provides FAPE to a child with a disability. T.R. v SD of Philadelphia, 4 F.4th 279, 79 IDELR 33 (3d Cir 2021); Ridley School District v. MR and JR ex rel. ER, 680 F.3d 260, 58 IDELR 271 (3d Cir. 2012).

4. In order to provide FAPE, an IEP must be reasonable, not ideal. KD by Dunn v. Downingtown Area School District, *supra*; LB by RB and MB v Radnor Twp Sch Dist, 78 IDELR 186 (ED Penna 2021).

5. The appropriateness of an IEP in terms of whether it has provided FAPE must be determined at the time that it was made. The law does not require a school district to maximize the potential of a student with a disability or to provide the best possible education; instead, it requires an educational plan that provides the basic floor of educational opportunity. Ridley School District v. MR and JR ex rel. ER, 680 F.3d 260, 58 IDELR 271 (3d Cir. 2012); DS v. Bayonne Board of Education, 602 F.3d 553, 54 IDELR 141 (3d Cir. 2010); Mary Courtney T. v. School District of Philadelphia 575 F.3d 235, 251, 52 IDELR 211 (3d Cir. 2009).

6. 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 School District v. MR and JR ex rel. ER, supra; IDEA § 615(f)(3)(E); 34 C.F.R. § 300.513(a).

7. 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; 22 Pa. Code § 711; 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 Pub Interest Law 217, 246 and n. 137 (Spring 2010)

8. Where a student with a disability has behaviors that impede the student’s learning or the learning of others, the student’s IEP team must consider the use of appropriate positive behavior interventions and supports and other strategies to address those behaviors. IDEA § 614(d)(3)(B)(1); 34 C.F.R. § 300.324(a)(2)(i); 22 Pa. Code 14.133; Sean C by Helen C v. Oxford Area School District, 70 IDELR 146 (E.D. Penna. 2017); Lathrop R II Sch. Dist. v. Gray ex rel BG, 611 F. 3d 419, 54 IDELR 276 (8th Cir. 2010).

9. A party to a due process hearing waives an argument if it is not properly presented and argued before the hearing officer. JL v. Lower Merion Sch. Dist., 81 IDELR 251 (E.D. Penna. 2022); LB by RB and MB v. Radnor Township Sch. Dist., 78 IDELR 186 (E.D. Penna. 2021)

10. An IDEA hearing officer has broad equitable powers to issue appropriate remedies when a local education agency violates the Act. All relief under IDEA is equitable. Forest Grove School District v. TA, 557 U.S. 230, 129 S. Ct. 2484, 52 IDELR 151 (at n. 11) (2009); Ferren C. v. Sch. Dist. of Philadelphia, 612 F. 3d 712, 54 IDELR 274 (3d Cir. 2010); CH by Hayes v. Cape Henlopen Sch. Dist., 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 (E.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 Ed., Albuquerque Public Schools, 530 F. 3d 1116, 49 IDELR 241 (10th Cir. 2008); In re Student with a Disability, 52 IDELR 239 (SEA W.V. 2009).

11. Compensatory education is a remedy that is often awarded to parents when a local education agency 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 addresses the educational harm done to the student by the denial of a free and appropriate public education. GL by Mr. GL and Mrs. EL v. Ligonier Valley Sch. Dist. Authority, 802 F. 3d 601, 66 IDELR 91 (3d Cir. 2015); see Reid ex rel. Reid, supra. In Pennsylvania, 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 the courts, especially where there is an individualized analysis of the denial of FAPE or harm to the particular child. See, Jana K. by Kim K. v. Annville Sch. Dist., 39 F. Supp. 3d 584, 53 IDELR 278 (M.D. Penna. 2014).

12. The parents have proven that the charter school denied a free and appropriate public education to the student from the beginning of the 2021 – 2022 school year through March 16, 2023.

DISCUSSION

I. Merits

Whether the parents have proven that the charter school denied FAPE to the student from the beginning of the 2021-2022 school year to March 16, 2023?

The parents contend that the charter school denied a free and appropriate public education to the student from the start of the 2021 – 2022 school year through March 16, 2023. Specifically, the parents contend that the November 4, 2021 IEP and the October 27, 2022 IEP for the student were substantively inappropriate because they did not appropriately address the student's problem behaviors, because the academic goals and other portions of the IEPs were not substantially changed despite the fact that the student had received failing grades and regressed; because the IEPs provided insufficient services and because the student's social issues were not addressed. In addition, the parents allege two procedural violations: that the parents did not participate in a meeting with regard to a reevaluation in 2021 and that the results of a speech language evaluation were not included in a reevaluation report. The charter school contends that a free and appropriate public education was provided to the student at all relevant times.

The parents have proven that the charter school did not appropriately address the student's problem behaviors during the relevant time period. The unique individual circumstances of this student include the fact that when the student does not understand something, the student becomes frustrated, shuts down and pretends to be asleep. The student's mother told the staff of the charter school, including the student's two special education teachers, many times that the student shuts down, puts the student's head down and pretends to be asleep when the student does not understand the material. Moreover, the 2016 FBA and the 2017 FBA conducted by the charter school both found that the student's problem behaviors frequently occur when the student doesn't understand something- like a new skill in class. Similarly, the teacher comments in the 2021 reevaluation report indicate that the student becomes frustrated when the student does not understand something in class. Despite the mother telling charter school staff and the prior FBAs and the student's teachers suggesting a cause for the behavior, the charter school did not take steps to address this most important problem behavior.

The charter school conducted multiple functional behavioral analyses of the student, some of which indicated that the student's problem behaviors were linked to the student's frustration when the student does not know how to do something. The charter school also developed a positive behavior support plan for the student, but the positive behavior support plan, and the resulting IEP behavior goal, did not address the problem of the student pretending to go to sleep when the student did not understand something. The positive behavior support plan treated the student's falling asleep in class as a problem related to not getting enough rest or sleep at home rather than as a problem related to the student not understanding something in class.

The charter school did not attempt any behavioral interventions that addressed the student's pretending to go to sleep when the student did not understand the subject matter. The documentary evidence shows that the student's behavior adversely affected the student's education. The student's positive behavior support plan and the resulting IEP goal concerning sleeping did not address the student's pretending to go to sleep in class.

The 2021 IEP for the student did not include counseling. The 2022 IEP for the student did add counseling as a related service, but only on an "as-needed" basis. The 2022 IEP put the onus upon the student to seek out counseling when the student needed it. This approach is wholly unsuited to addressing the problem of the student pretending to go to sleep. The student is not likely to seek out the counselor and tell the counselor that the student had been pretending to sleep because of the difficulty of the material. Adding counseling on an as needed basis did not address the student's unique behavioral issue appropriately.

Moreover, the charter school's Lead of Climate/Culture (hereafter sometimes referred to as "LCC") attempted behavioral interventions with the student. The LCC is the guy at the charter school whom they call when one of the students violates the school rules. Apparently, when the student was pretending to go to sleep in class, the teacher sometimes called the LCC. The LCC has no formal certification or training in behavior analysis or intervention, and he is not a teacher. The LCC was not a member of the student's IEP team and was not responsible for implementing the student's positive behavior support plan or the student's IEP. Despite this, the LCC attempted numerous *ad hoc* behavioral interventions with the student that were not included in the student's positive behavior support plan or IEP. It appears that the LCC attempted these behavior interventions without consulting with or

coordinating with the staff who were trained in these matters and responsible for implementing the student's positive behavior support plan and IEP. These *ad hoc* interventions by the LCC were wholly inappropriate and did not address the student's problem behavior. The charter school's behavioral interventions for the student were disorganized and unplanned, and they did not address the problem behavior that was impeding the student's learning.

The charter schools' failure to appropriately address the student's behavior in the student's IEPs or positive behavior support plan rendered the student's IEP inappropriate because, as a result, the IEPs were not reasonably calculated to confer meaningful benefit in view of the student's unique individual circumstances.

One argument raised by the charter school in its brief needs to be addressed. The charter school argues that it need only address behaviors that lead to student discipline. That is not the legal standard. It is true that IDEA provides special protections for students with disabilities when a local education agency seeks to change their placement as a result of a violation of a code of student conduct because of the long history of schools using student discipline to exclude students with disabilities. Honig v. Doe, (1988) 484 U.S. 305, 559 IDELR 23 (1988) But the IDEA standard for behavior is that a local education agency must appropriately address behaviors by a student that affect the learning of the student or the learning of other students. The charter school's argument that IDEA's behavioral requirements only apply to disciplinary cases is emphatically rejected.

The parents also contend that the charter school denied a free and appropriate public education to the student because the student's IEPs continued to have substantially the same goals and other IEP components from year to year despite the fact that the student was failing all of the

student's substantive classes and regressing or not making progress on goals. The parents have proven that the school district failed to appropriately update the student's IEPs after the student received failing grades and regressed on IEP goals.

First, however, it should be noted that the legal standard asserted in the parents' brief is not correct. Quoting language from the Rowley decision by the Supreme Court, the parents contend that if a special education student assigned to regular education classes receives failing grades, the student has been denied FAPE. That is not the law. The Rowley decision does contain language suggesting that when a student with a disability is assigned to regular education classes and is receiving passing grades, the student is likely receiving FAPE. The opposite, however, is not necessarily true. The parents' proposed standard attempts to reverse the quote from Rowley. The standard cited by the parents, however, is incorrect and is not supported by the citations given. Instead, the correct legal standard, and the standard applied in this decision, is that an IEP must be reasonably calculated to provide meaningful educational benefit in view of the student's unique individual circumstances.

In this case, the parents have proven that the student's IEPs from year to year contained substantially the same goals and identical specially designed instruction and modifications. This was true despite the fact that the student was failing all of the student's substantive classes and that the student had shown regression and lack of progress on many IEP goals.

The parents have proven that the student's IEPs were not individualized to meet the student's unique circumstances. Indeed, the student's IEPs had the same eighteen specially designed instruction and modifications and nearly identical goals. The lack of individualized IEPs for the student very likely the

result of the fact the student's case manager used a "skeleton," or a form book of examples in Google Drive that the charter school requires, to write the student's IEPs rather than considering the unique individual circumstances of the student. In this case, the use of the skeleton form book examples resulted in remarkably similar IEPs from year to year despite the fact that the student was not benefiting from the prior year's IEP. The charter school denied FAPE to the student by continuing to develop IEPs that were substantially similar to IEPs that had not worked in the past. As a result, the IEPs were not reasonably calculated to confer meaningful benefit in view of the student's unique individual circumstances.

One argument in the charter school's post-hearing brief needs to be addressed here. The charter school argues that the snapshot rule for reviewing IEPs requires that the parents' complaint be dismissed because the parents did not complain about the IEPs at the time that they were written. This is an incorrect statement of the snapshot rule. The law does require that the appropriateness of an IEP be measured as of the time that an IEP is written. That does not mean, however, that a parent must issue an objection to the IEP at the time it is written. Indeed, the burden is upon the local education agency to develop an appropriate IEP. A determination as to whether the IEP was appropriate is made at the time that the IEP was developed. There is no corresponding requirement, however, that the parents issue a formal objection or protest of some kind at that specific time. Indeed, the IDEA two-year statute of limitations negates the argument that parents must immediately complain regarding an IDEA violation. The argument by the charter school in this regard is rejected.

The parents asserted additional allegations of a denial of FAPE, but the parents have not proven these additional bases for finding a denial of FAPE.

The parents assert two more substantive arguments: that the student's IEPs provided insufficient services and that social issues were not addressed. Parents' posthearing brief does not address these issues, and, therefore, the parents have waived these issues. Moreover, except as aforesaid, the record evidence does not support these arguments, and they are rejected.

In addition, the parents also assert two procedural violations. The parents have not proven the alleged procedural violations. The first alleged procedural violation is that the parents did not participate in a meeting concerning the 2021 reevaluation. The evidence in the record, however, reveals that the student's mother did attend and participate in a meeting to discuss the results of the September 22, 2021 reevaluation report. Thus, there is no factual basis for the parents' argument of a procedural violation, and the parents' argument is rejected.

The parents also argue that the school district committed a procedural violation because the speech language evaluation was not included in a reevaluation report. The record evidence reveals, however, that the results of a September 15, 2021 speech language evaluation of the student are included in the student's November 4, 2021 IEP. Also, the speech language pathologist who evaluated the student attended the IEP team meeting.

Accordingly, it is concluded that the parents have not proven either of the two alleged procedural violations. Even assuming, *arguendo*, that the parents had proven either of the two alleged procedural violations, there is no evidence in the record that either procedural violation adversely affected the education of the student or deprived the parents of meaningful participation in the process. Any procedural violation, therefore, would be harmless. The parents' arguments with regard to procedural violations are rejected.

The testimony of the mother is more credible and persuasive than the testimony of the charter school witnesses because of the demeanor of the witnesses, as well as the following factors: the testimony of the mother was consistent with the documentary evidence and the stipulated facts in this case, especially concerning the mother's efforts to notify the representatives of the charter school that the student pretended to fall asleep or shut down when the student did not understand the material. In addition, the testimony of the charter school's Lead of Climate/Culture was inconsistent and evasive regarding the circumstances in which a teacher would call him into a classroom and regarding the reason why he had reviewed the student's IEP despite not being a member of the IEP team.

It is concluded that the parents have proven that the charter school denied FAPE to the student by failing to appropriately address the student's problem behavior of pretending to sleep and by failing to properly individualize the student's IEPs given the student's needs and unique individual circumstances. For those reasons, it is clear that the student's IEPs during the relevant timeframe were not reasonably calculated to confer meaningful educational benefit in view of the student's unique individual circumstances.

II. Relief

In this case, the parents have proven a denial of FAPE. The beginning of the period of denial of FAPE is the beginning of the 2021 – 2022 school year. The denial of FAPE ended when the parents disenrolled the student from the charter school after a proposed expulsion on March 16, 2023. The expulsion is not at issue in this case, but the disenrollment date of March 16, 2023 ends the period of denial of FAPE.

The appropriate compensatory education remedy is one full day of compensatory education for each school day during the period of denial of FAPE. Although the qualitative compensatory education calculation method is more fair and more directly addresses the harm caused by a denial of FAPE, there is no evidence in the record by either party concerning the harm done to the student which would enable the appropriate qualitative calculation of compensatory education. Accordingly, the hearing officer must utilize the widely discredited quantitative compensatory education method based upon an individualized determination of the student's unique circumstances and individual needs. In this case, the student's unique individual needs included pretending to fall asleep during class when the student had difficulty with the subject matter. The combination of the failure to address this behavior and the lack of individualization of the student's IEPs made it clear that one full day of compensatory education per day of denial of FAPE should adequately compensate the student for the denial of FAPE.

Because all relief under IDEA is equitable relief and should be flexible, and because special education under IDEA requires a collaborative process, Schaffer v. Weast, 546 U.S. 49, 44 IDELR 150 (2005), the parties shall have the option to agree to alter the relief awarded herein so long as both parties and their lawyers agree to do so in writing.

ORDER

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

1. The charter school is ordered to provide one full day of compensatory education to the student for each school day during the period of denial of FAPE, as described above. The award of compensatory education is subject to the following conditions and limitations:

a. The student's parents 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 for 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 appropriately qualified professionals selected by the parents. The cost to the charter school of providing the awarded days of compensatory education may be limited to the average market rate for private providers of those services in the county where the charter school is located; and

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

3. Any and all other relief requested by the instant due process complaint is hereby denied.

IT IS SO ORDERED.

ENTERED: November 8, 2023

James Gerl

James Gerl, CHO
Hearing Officer