

Case Number: 2012-0405

[Redacted] vs. [Redacted]

Hearing Officer: Stacey Stutzman

Illinois State Board of Education
Special Education Services
100 North First Street
Springfield, Illinois 62777

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**Impartial Due Process Hearing Decision
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District Name [Redacted]
Superintendent [Redacted]
Address [Redacted]
Represented by [Redacted]

Phone: [Redacted]

Parent Name [Redacted]
Address [Redacted]
Represented by [Redacted]

Phone: [Redacted]

Date and Timelines

Date of Written Request: 04/02/2012
Date of Pre-hearing Conf: 05/03/2012

Date of Hearing: 05/22/2012 to 05/23/2012
Date of Decision: 06/04/2012

Summary of Decision

Parent of a 16 year old boy enrolled by Parent in a college preparatory charter school requested a due process hearing on FAPE and LRE issues related to the IEP developed for Student as a second year freshman at [Redacted] on March 22, 2012. She argued that application of [Redacted]'s discipline policy to Student, with which both she and Student agreed to comply when Student was enrolled, even with IEP goals, accommodations and modifications, and development and implementation of functional behavior assessments and behavior intervention plans, deprived Student of FAPE, and that [Redacted] recommendation of a more restrictive placement within the [Redacted] at the time of his IEP meeting, was done in retaliation of her public criticism of the discipline policy rather than to provide an environment in which Student could be satisfactorily educated. However, the credible testimony of witnesses, including those called to testify by Parent, did not support Parent's contention that District failed to offer Student FAPE or that the IEP team proposed a change in his special education placement for any reason other than to try to keep Student in school and to help him learn in accordance with his academic ability, when he was failing all of his classes in the general education setting with special education instruction, and paraprofessional and social worker support, since Student was not complying with the Code of Conduct, completing his assignments or his homework, or taking advantage of the availability of his instructors and student tutors for afterschool assistance. Additionally, District requested hearing to obtain an order allowing it to conduct a re-evaluation of Student after Parent revoked her consent for re-evaluation, which request was joined with the Parent's pending hearing request in this cause.

HELD: For District on its request to conduct a re-evaluation of Student and against Parent on her various requests for relief.

ORDERED: That District shall be permitted to conduct a full and individual re-evaluation of Student.

ILLINOIS STATE BOARD OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

██████████

v.

City of Chicago SD 299

)
) ISBE CASE NO. 2012-0405
)
) Stacey Stutzman
) Impartial Due Process
) Hearing Officer

DECISION AND ORDER

This matter is before the undersigned impartial hearing officer for a due process hearing concerning Parent's request for Orders that District and the ██████████ Student attends within the District (hereinafter referenced as "██████████") maintain Student's placement in the ██████████ general education classes with appropriate supports, conduct a functional behavioral assessment of Student and prepare and implement a behavioral intervention plan, prepare an IEP with present levels of performance consistent with assessment of Student, provide 200 hours of compensatory private tutoring, provide for reasonable credit recovery, provide positive behavior interventions and strategies aligned with research based methods, and individualize the application and implementation of discipline and punishment policies and procedures. Also before the undersigned impartial hearing officer for hearing, upon ISBE's joinder of same, is District's request for an Order permitting it to conduct a full and individual re-evaluation of Student in light of Parent's revocation of consent for same. The hearing officer has jurisdiction to hear and decide this matter under 105 ILCS 5/14-8.02a(g)(2010). The parties have been informed of their hearing rights under 23 ILAC 226.625(2007) and 34 CFR 300.512(2006). The undersigned hearing officer has also advised the parties that there are and have been no conflicts which prevent her from conducting a fair and impartial hearing and rendering a fair and impartial decision in this cause.

Procedural History

Parent, who was not represented by an attorney, submitted her request for due process hearing, dated March 27, 2012, to District's and ██████████ Superintendents and to the Illinois State Board of Education and District's counsel. District received the request on April 2, 2012 and forwarded the hearing request to the Illinois State Board of Education (hereinafter *ISBE*) on April 9, 2012, which received it on that date. (See *District Request for an Impartial Due Process Hearing Officer*) ISBE assigned the matter to the undersigned impartial hearing officer on April 10, 2012. District's counsel submitted a written response to the Parents' due process hearing request on April 13, 2012, wherein she addressed each of the issues raised by Parent in her hearing request by either denying the allegations or requesting clarification and offered the Parent participation in a resolution session or mediation. The parties signed a waiver of the resolution session and participated in mediation in lieu of resolution session on April 17, 2012, providing all information relating thereto directly to ISBE per its requirements.

On April 20, 2012, District submitted its Motion for an Interim Order to allow it to conduct a re-evaluation of Student, for which Parent had revoked her consent. A teleconference was convened on April 25, 2012 to discuss procedure on said motion, at which time District counsel was advised that the *IDEA* regulations required a due process hearing on the issue. District counsel withdrew her Motion on April 26, 2012 and submitted District's request for due process hearing seeking an order to permit the re-evaluation. (See Status Report dated 4/26/12) District's request was joined with Parent's pending hearing request by ISBE and assigned to the undersigned hearing officer on April 27, 2012. Parent responded to the District's hearing request by email on May 1, 2012, and the parties waived any further resolution session or mediation on

the District's hearing request. (See Parent's email response dated 5/1/12 and waiver form dated 5/3/12)

Pre-Hearing Conference on Parent's and District's hearing requests was held as scheduled, without postponement or continuance, on May 3, 2012, and a copy of the *Pre-Hearing Conference Report*, dated May 4, 2012, is incorporated into the record as Hearing Officer Exhibit A. As noted therein, Parent's attorney requested that hearing be rescheduled from the designated date of May 17, 2012 to May 22, 2012 for the reason that school staff were registered to attend a professional development event, and the request was allowed. District counsel's request to allow two days for hearing in case it could not be completed in one day was also allowed, and hearing was scheduled to proceed on May 22 and May 23, 2012.

On May 16, 2012, ISBE advised the undersigned hearing officer via email that Parent had submitted an amended due process hearing request in the form of an email dated May 7, 2012, which had been provided to ISBE by District. Because the matter was set for hearing, a teleconference was convened with the parties to discuss the amended request on May 16, 2012, at which time Parent advised that she was withdrawing the amended request because the issue had been taken care of, and ISBE was advised of the withdrawal. (See Report of Telephone Conference dated 5/16/12)

Hearing proceeded as scheduled on May 22 and May 23, 2012 at [REDACTED]. This Decision is being issued within 45 days of the initiation of the 45 day timeline and within 10 days of completion of the due process hearing.

In attendance at the hearing of this matter were Parent and District's attorney, [REDACTED]. Also in attendance as District's representative was [REDACTED] Special Education Director, D.C., on May 23, 2012, after having given his testimony on May 22, 2012. The hearing was reported by [REDACTED].

Ten witnesses were called to testify at hearing over a period of two days. The following testified on behalf of both Parent and District: **Parent; Student; [REDACTED]**, Charter's Principal; [REDACTED], Charter's Director of Special Education; [REDACTED], Charter general education reading teacher; [REDACTED], Charter special education teacher and advisor;

In addition to the above, [REDACTED], Superintendent of [REDACTED] and [REDACTED], District's Director of [REDACTED] Behavior Support, were called to testify by Parent only.

Additional witnesses called to testify by District only were [REDACTED], [REDACTED] Social Worker, and [REDACTED], [REDACTED] Psychologist.

The parties jointly submitted 386 pages of documents for use at hearing at the designated disclosure deadline. Parent submitted 199 additional pages of documents, and District submitted 337 additional pages of documents at the disclosure deadline.¹ The documents placed in evidence by stipulation of the parties or through witness testimony are listed in the *Appendix* attached to this Decision.

Parent did not submit copies of nor cite law upon which she was relying at the time of closing arguments. In support of her client's position, District counsel submitted copies of *Board of Education v. Ross*, 486 F.3d 267(7th Cir. 2007) and *Alex R. v. Forrestville Valley CUSD #221*, 375 F.3d 603(7th Cir. 2004) at the time of her closing argument. She also cited further case law in her closing argument, including *School District of Wisconsin Dells v. Z.S. ex rel. Littlegeorge*, 295 F.3d 671(7th Cir. 2002), *Kerry M. and Kristine M. v. Manhattan School Dist. #114*, 46 IDELR 194(N.D.Ill. 2006), and *O'Toole v. Olathe Unified School District #233*, 144 F.3d 692(10th Cir. 1998).

¹ In this Decision, joint documents are referenced with a "J" preceding the page number(s), Parent's documents with a "P" preceding the page number(s), and District's documents with a "D" preceding the page number(s)

Issues

1. Whether one or more of the following actions/inactions constituted violation of Student's right under the IDEA and the Illinois School Code and their attendant regulations to a free appropriate public education in the least restrictive environment:

- A. Failure to develop and/or implement an individual education plan (IEP) that:
 - i. Was based upon accurate and appropriate levels of academic and behavioral performance;
 - ii. Included measurable academic and behavioral goals to address Student's needs;
 - iii. Accounted for Student's lack of reasonable academic, emotional, and behavioral progress;
 - iv. Included appropriate supplemental services and supports, including related services, to address Student's academic and behavioral needs;
 - v. Included an appropriate behavior intervention plan based upon an appropriate functional behavioral assessment, developed and implemented by staff appropriately trained in the area of behavior support, management, and intervention and based upon appropriate policies and procedures, the lack of which resulted in
 - a. use of improper discipline of Student, including failure to individualize the application of s of demerits and detention and failing Student for detentions
 - b. grade retention and the negative consequences of same
 - vi. Provided compensatory services to address previous denial of FAPE?
- B. Recommendation of removal of Student to a more restrictive environment without first developing and implementing an IEP appropriate to Student's needs in his current placement?
- C. Attempting to prevent Parent's participation in the development of Student's educational programming by creating a hostile environment for Student in response to Parent's advocacy?

2. Whether District shall be permitted to conduct a full and individual re-evaluation of Student without parental consent?

Statement of Facts

The material facts relevant to the stated issues in this case are as follows: Student is a 16 year old male of average intelligence who was enrolled by Parent [REDACTED] beginning his freshman year of high school on August 10, 2010. (Parent; J78) He is eligible for special education and related services in the categories of Emotional Disturbance and Other Health Impairments. His most recent evaluation was completed on October 28, 2009. (J330) Student was diagnosed with Acute Stress Disorder² in 2007. He has been diagnosed with ADHD, but does not take any prescribed medications for same. (J334, 336) With the exception of attendance at a private school in Grade 5, Student attended District's public schools prior to attending [REDACTED] Student has had outside counseling in the past, but Parent reported to [REDACTED] that it was not effective for Student. (Parent; J80; J125)

[REDACTED] is a non-selective college preparatory high school whose charter was issued by District. Its mission is to provide the necessary education and academic and behavioral skills to low income and minority students to allow them to gain acceptance to and graduate from college. The three "pillars" of a [REDACTED] education are scholarship, discipline, and honor. [REDACTED] issues and provides a Student and Parent Handbook to its students and their parents, which clearly sets forth its promotion and graduation requirements and its Student Code of Conduct and discipline policy. The Code of Conduct is approved by District and by the Illinois State Board of Education annually. It is provided to families seeking enrollment in [REDACTED] prior to the beginning of the school year. [REDACTED] meets three times with parents and also tests each student's ability to

² A disorder occurring after a traumatic event with a duration of one month. (C.F.)

comply with its rules, so that students and parents know what is expected of them, prior to beginning attendance at [REDACTED]. (M.M.; [REDACTED]; D1-22)

[REDACTED] is a very structured environment. [REDACTED] In order to be promoted, a [REDACTED] student is required to meet certain Academic, Health, and Discipline requirements, including passing his classes and compliance with the Student Code of Conduct. ([REDACTED]; D18) [REDACTED] staff are required to enforce the Code of Conduct consistently, but appeal can be made to the school principal. There is flexibility in [REDACTED] policies to allow it to follow special education students' IEPs and behavior intervention plans and adhere to the legal requirements of the IDEA and the Illinois School in the discipline of Student's with disabilities. [REDACTED] is graduating its first class of students this year, and 100% of its graduates, including special education students, have been accepted to colleges. (M.M.; J.T.)

[REDACTED] discipline policy specifies both the merits to be given for appropriate behaviors and the demerits to be given for rule infractions. Demerits add up to a detention, and detentions may result in suspension. Demerits numbering less than 4 in a two week cycle are erased at the end of the cycle. ([REDACTED]; D4-19) In accordance with its Code of Conduct, Charter does not promote students who accumulate a certain number of detentions for violating its rules during a given school year. ([REDACTED]) They were required to have less than 33 detentions in order to be promoted in 2010-2011 and less than 37 in 2011-2012. ([REDACTED]) Staff is rewarded for keeping the number of demerits of their students as low as possible, while still enforcing the Code of Conduct. Staff members are positive in addressing students' behaviors and have a desire to see [REDACTED] students succeed and prepare for college. Good communication exists between the Deans of Discipline, teachers, and special education team. ([REDACTED]) Staff have been trained in disciplinary procedures and in conducting functional behavioral assessments and developing and implementing behavior intervention plans. ([REDACTED]; D54-57)

Each individual school within the District school system chooses strategies to address student behaviors. Research indicates that any structured, systematic, consistent strategies can be effective in improving a student's attendance and on-task behavior. ([REDACTED])

Parent investigated high school placements for Student, and she chose to enroll Student in [REDACTED] because she was impressed by its structure, including its three pillars of scholarship, discipline, and honor, and its Code of Conduct. She feels that Student "thrives better in structure", noting that Student loved the private school he attended for 5th grade. She liked [REDACTED]'s small school environment and its dress code. She desired a college preparatory school for Student and knew that Student could not get into a District select enrollment high school. She liked the idea of [REDACTED] requirement that students who fail to do their homework must serve a homework detention during which they are to complete their homework because it teaches self-discipline. (Parent; D20) The homework detention is not a punishment but an intervention to make sure that work gets done, and for which students earn credit for doing their assignments. Students receive an actual detention only if they fail to attend the homework detentions when required of them at the end of the school day. (J.T.)

Prior to enrollment, Parent provided [REDACTED] with Student's IEP, to be addressed in [REDACTED] college preparatory environment. (Parent; [REDACTED]) On May 7, 2010, Parent signed an agreement with [REDACTED] to attend parent-teacher conferences, monitor Student's homework assignments daily, provide time and space for Student to do his homework each night, talk with Student about school, support [REDACTED]'s code of conduct, dress code and homework policy, including support of Detention or Suspension when necessary, and to treat [REDACTED] faculty and staff with respect. Student also agreed to abide by [REDACTED] requirements, which included attending each class, doing approximately 3 hours of homework each night, participating in before or after school tutoring sessions if necessary, following the code of conduct and the dress code, serving all detentions or suspensions earned by him, improving and maintaining his health and fitness, and treating faculty and staff with respect. (Parent; D29)

An IEP was prepared for Student by a District IEP team during Spring of his 8th Grade year in a District public school, which was dated April 16, 2010, and which was effective at the time Student began his attendance at Charter on August 10, 2010. (Stipulation of the parties; J74-116)

Student attended summer school in the summer of 2010 in order to graduate from 8th grade in District. Parent obtained a homework packet at the end of June or beginning of July from [REDACTED], which was to be completed by Student before the beginning of the Fall term at [REDACTED]. Student did not complete the packet, and, on the first day of attendance at [REDACTED] on August 10, 2010, he was required to attend a homework detention after school to complete the packet. However, he fell asleep and was removed from the room and was given a detention for falling asleep, pursuant to the Code of Conduct. (Parent) When Student received a detention to be served on November 5, 2010, Parent refused to have him to serve the detention, for which he was suspended, in accordance with the Code of Conduct, and the Principal explained to Parent the importance that Student learn to accept responsibility for his actions. (Parent; [REDACTED]; P8)

During the first 6 weeks of his freshman year at [REDACTED] in the Fall of 2010, Student, whose academic abilities were noted to be comparable to those of his typical classmates, received grades ranging from C+ to A+, passed his Advisory, had no absences or tardies, and had only 4 detentions and no suspensions. (Parent; [REDACTED] P177; J124) As of October 4, 2010, Student's grades ranged from C- to A, he continued to pass his Advisory, had one absence, and he had accumulated 7 detentions. (Parent; P178)

During the Fall of 2010, Student did not turn in his homework assignments, for which he was assigned [REDACTED] homework detention in order to complete his homework, but he failed to attend the required homework detentions, and he received detentions for failure to attend. [REDACTED] convened an IEP meeting on November 23, 2010. Both Student and Parent participated in the meeting, which resulted in an IEP, including a behavior intervention plan (BIP) based upon a functional behavioral assessment (FBA) including the information required by law. ([REDACTED]; J121-145) At that time, Student's test scores evidenced an increase of one grade level in reading during the first quarter, putting him on a par with his typical peers. Furthermore, he was not having any problems during unstructured transitions between his classes, which had been a problem area for him in grade school. (J124-125; J80) In addition to his BIP, the IEP developed at that meeting included functional and academic goals, accommodations and modifications, and transition service plan, and called for direct special education services in the regular classroom and direct social work services, with removal from general education classes for same for only 1% of his school day. (J121-145)

The November 23, 2010 BIP was directed toward homework completion. Thereafter, Student completed his homework consistently for two months, and he had straight A's at the beginning the second semester. (Parent; D.C.; J143-144)

At an IEP meeting convened on March 7, 2011 to revise Student's previous IEP, in which Parent and Student participated, the team updated Student's benchmarks and added an accommodation for teachers to greet Student on his way into the classroom to set clear expectations and provide encouragement. At that point, Student had accumulated sufficient detentions to prevent his promotion, per school policy. Student's BIP, pursuant to FBA, was revised to address Student's inappropriate responses to teachers' attempts to redirect him and encourage his class participation, which had resulted in his receipt of demerits, and they doubled Student's special education service minutes to provide more behavior support and to allow rapid growth toward his goals. The application of detentions pursuant to the Code of Conduct was modified for Student. (D.C.; J152-177)

Student's advisor worked with Student at the beginning and the end of the school day to address his organizational skills, personal responsibility, and academic achievement. Goal contracts were used to help Student improve. In the Spring of 2011, Student did not do his homework or attend homework detentions or detentions assigned to him for his various infractions, including accumulation of demerits pursuant to school policy. He became defiant and disagreeable. When he left school grounds, he was suspended. His advisor communicated with Parent, who indicated that she was not concerned about his failure to complete homework or skipping homework detentions. [REDACTED] P101)

An IEP meeting was convened on May 26, 2011 to address Student's behavior, including his leaving the school campus without permission and cutting classes, even with attempts to escort Student to his classes. Both Parent and Student participated. The resulting IEP included

addition of a paraprofessional escort to prevent him from leaving school and cutting classes, revision of his BIP, pursuant to FBA, to address his leaving school and skipping class, including an emergency plan directed to this behavior, and new goals to allow him to see the social worker when he felt too stressed or frustrated to do his work in class. His special education direct service minutes were increased to 750 minutes per week in regular classes, and his social work minutes were increased to 30 minutes per week. Parent and Student accepted changes in Student's schedule to reduce transitions between buildings and the goals and accommodations relating to social work services and paraprofessional escort, but they declined the IEP team's recommendations relating to non-verbal communication of his frustration to his teachers through use of a sticky note on his desk, use of outside rewards to incentivize his performance, and change of placement to a more structured or restrictive environment. (██████████ J184-217)

Student was not promoted to 10th Grade. (██████████ Parent) Parent intended to transfer Student out of ██████████ at the end of the 2010-2011 and return him to a public school in the District where he could recover his credits, but she did not do so since he had made friends at ██████████, and also because his designated home school could not enroll him at that time and she did not like the high school offered by the District in its place. (Parent)

Parent attended ██████████ school board meetings, and she publicly criticized ██████████ discipline system. (Parent) ██████████ respectfully acknowledged her right to express her views while disagreeing with her criticisms. (██████████, P1)

During the Fall of 2011-2012, Student did not complete his work and received homework detentions on an almost daily basis. He consistently skipped his homework detentions and his disciplinary detentions. He did not attend office hours with his instructors. (D276) An IEP meeting was convened for Student on November 1, 2011. (J223-316) At that time, it was reported that Student's GPA was 0.0, he had all F's in his classes, and had been absent 13 times and continued to leave school without permission. He was resistant to participating in academic intervention programs to help him succeed. (J242) Student's curriculum based scores fell below the average of his classmates, but it was reported that he had a 3 per cent increase on his 2010-2011 Post-Explore Test, a standardized precursor to the ACT, as compared to the Pre-Explore Test, and that his scores were above those of classmates in English, Reading, and Science, and just barely below them in Math. (J228-229) However, his Lexile score of 11/1/11 placed him at a functioning level in Math of his 9th grade typical peers, and it was noted that he was able to learn new skills when taught 1:1 and was attentive. (J248)

The resulting IEP included a BIP, based on an FBA, targeting Student's inappropriate responses to teacher's attempts to redirect and encourage him, leaving school and cutting classes, and failure to complete homework and consistently skipping homework detentions. It removed the promotion cap called for in the Code of Conduct for detentions earned. (J256-262) The IEP increased paraprofessional support to 60 minutes per week to keep him from leaving school and cutting class and to assist him with class participation. It included a new goal to help him get organized, adding 15 minutes per week of direct independent functioning services in the regular classroom. (J231, 250) Homework detentions were removed for some of his classes, and positive motivation and verbal rewards were to be continued as accommodation for Student on a daily basis. (J233-234)

Parent requested tutoring for Student, removal of the escort, and collection of data for the FBA to look at why Student was leaving school. (D.C.; J269) The requested data was collected and the IEP team convened a meeting on November 22, 2011 to revise the November 1, 2011 IEP. (D.C.; M.W.; D58-63; J272-316) The efforts that had been made to serve Student's needs were summarized in the IEP. (J276-279) An accommodation for teachers to greet Student on his way into the classroom to set clear expectations and provide encouragement was added. In order to help Student respond positively to his teachers' redirections, Student himself signed contract on November 22, 2012 directed toward arriving to class on time and beginning to work, remaining on task, responding appropriately to redirection, and reducing his need to receive redirection, for which he was to receive rewards. (Student; Ja17-17) However, Parent declined to sign the contract as requested. (Parent) His direct social work services were increased to 45 minutes per week. (D315)

The social worker implemented a weekly successes chart to reward Student's good behavior in January, 2012, which she regularly revised. Student reported to her that he was tired because he did not go to bed until 3:00 or 4:00 a.m. because he was on Facebook and Twitter, and that he did not eat breakfast, so she attempted to address those behaviors, since he was sleepy and was leaving school when he was sleepy. She was unable to find a way to motivate him to do his homework. (D68-77)

An IEP meeting was convened on March 22, 2012, resulting in a 42 page IEP. Student and Parent participated. (J330-371) Student's school psychologist attended, an assessment plan for Student's re-evaluation was prepared, and Parent signed consent for evaluation to allow Student to evaluate Student. (J325-328). However, Parent subsequently orally revoked her consent for evaluation when the IEP team recommended that Student be removed from his general education classes into a more restrictive environment within Student. (Parent) She then requested this due process hearing due to the new schedule and the proposed change of placement, invoking Student's stay-put placement in his general education classes at Student during these proceedings. (Parent)

The IEP developed for Student on March 22, 2012 provides detailed summaries of Student's then current academic and behavioral performance. (D332-336) It addresses his strengths, including his fluent reading skills and completion of his homework and receipt of participation points in his Writer's Workshop, his ability to learn new math skills quickly when attentive and engaged, his positive social interactions with peers, his participation in choir, and his positive response to redirection in his Student class. It notes that he takes his Civics assessments seriously and that he reads thoroughly and responds to questions. (D332) It also addresses his academic and other needs, noting his continued failure to complete his homework and class work, tardiness and absences due to cutting classes in some courses, even with an escort, and his disrespectful and distracting behaviors in some classes, even with positive supports. (J332-333)

Student's most current standardized test scores are provided in the current IEP and compared to his previous scores, indicating a pattern of decline in performance on the Explore Interim tests. (J334) He was failing all of his classes except Student at the time of his recent IEP. (J332) Even though he has a good relationship with his instructor and he is doing his homework, he was not passing that class at the time of this hearing. She believes that Student is capable but that in order to be motivated, he needs to understand what he wants from school and how it connects to what he wants in the bigger picture. (D332)

The IEP documents the school social worker's efforts to improve Student's homework behavior, improve his relationships with his instructors, and eliminate his leaving school grounds during the school day. (D335)

As noted in the current IEP, Student had accumulated 173 detentions and 9 suspensions for the 2011-12 school year at the time of the IEP, due to various violations of school rules, ranging from inappropriate and disrespectful responses to staff redirection and skipping detention to leaving school without permission to physical aggression toward his peers. He has resisted interventions to help him complete his work and to organize his binder, advising staff that if he wanted to complete his homework, he would, and that he would purposely leave his binder at home to avoid having to organize it. (J335; Student)

Parent has advised the school psychologist that she does not monitor Student's homework, and she declined the request to complete a homework problems checklist. (D82) When Student doesn't understand his homework, he doesn't do it, but he doesn't go to homework detentions, office hours, or tutoring to get help and get the work done. Nevertheless, he understands that in order to be promotable he needs to get better grades by doing his school work and his homework and by having better relationships with his teachers by talking to them and letting them help him with his work. (Student). Student has had good rapport with his social worker, reading instructor and with his previous advisor. (Student; Student) Parent is not able to make Student go to detentions, and she does not support suspensions for what she considers to be "non-egregious behavior". (Parent)

The IEP of March 22, 2012 includes six functional and academic goals and benchmarks, and numerous accommodations and modifications, all individualized to Student's stated needs and directed toward helping him do his work and make educational progress. (J338-356) It also includes a transition service plan and a BIP based on an FBA. (J362-370)

The IEP team considered various placement options for Student on March 22, 2012, noting Student's need for a lower student:teacher ratio and a small structured setting. After less restrictive placements were rejected, it was determined that Student would receive direct special education services in a separate class for 587 minutes per week, including provision of direct social work and psychological services for 90 and 15 minutes per week respectively, resulting in his removal from the general education classroom for 26% of the school day. (██████████; J357) In determining a placement to allow Student to recover skills, complete homework, and to make academic progress, ██████████ offered to "reset" Student's grades and discipline record and start fresh, and gave Parent the option of providing Student with 1:1 guided and independent instruction at ██████████ while allowing him to participate in lunch, choir, and art with his peers. However, Parent rejected that proposal. (Parent; ██████████ J376) A therapeutic setting would be beneficial to Student to allow him to regulate his emotions during the day and allow him to be successful. (██████████)

Parent kept Student home from school in May, 2012 rather than allow him to serve a 5 day in school suspension with IEP services. (██████████ Parent; D175-176)

Parent has not shared current information regarding Student's outside psychological or psychiatric evaluation and treatment with the IEP team. (██████████) The IEP team requires more information as to the nature and extent of Student's disabilities are how they impact his ability to learn and perform, for example why he does not do his homework, which they feel can be obtained from a re-evaluation. (██████████)

Conclusions of Law

At a due process hearing convened pursuant to the provisions of the Illinois School Code, it is incumbent upon the District to present evidence that, at all times relevant to the issues in the case, it properly evaluated and identified Student's needs and either provided or offered to provide him with a free appropriate public education in the least restrictive environment. 105 ILCS 5/14 8.02a (g-55)(2010) The burden of persuasion, however, is on the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005); *Kerry M. v. Manhattan School Dist. #114*, 46 IDELR 194 (N.D. Ill. 2006) In this case, Parent bears the burden of persuasion on Issue No. 1 and District bears the burden on Issue No. 2.

Issue No. 1: The preponderance of the evidence does not support Parent's contention that District, through Charter, failed to offer Student a free appropriate public education (FAPE) in the least restrictive environment.

In this case, according to Parent's due process hearing request, her Pre-Hearing Conference Statement, and her testimony at hearing, Parent requested this hearing as the result of recommendations made at the Student's most recent IEP meeting on March 22, 2012. She is alleging that ██████████ violated Student's right to FAPE in the LRE by not using positive behavioral interventions to obtain his cooperation and compliance with the disciplinary code within the school setting and also to obtain his cooperation and compliance in completing his homework. She does not feel that Student should receive ██████████ designated consequences for what she considers "minor" violations of the Code of Conduct. She argues that the IEP team's offer to provide Student with 1:1 instruction at the IEP meeting of March 22, 2012 constituted recommendation for his removal to a more restrictive environment without having tried positive behavioral interventions and other supports and services with him first, and that the IEP team's desire to provide him with 1:1 instruction was not being done to help Student learn successfully, but was being done to isolate and punish Student because of Parent's exercise of her right to free speech in publicly criticizing ██████████ discipline policies. For the following reasons, Parent's arguments in this regard are rejected.

A. [REDACTED] developed and made reasonable efforts to implement an IEP appropriate to Student's needs, which was reasonably calculated to provide Student with meaningful educational benefit.

For purposes of the *IDEA* and the *Illinois School Code* a charter school whose charter is issued by a local board of education shall be considered as a school within the district over which that district's board of education exercises jurisdiction. 23 ILAC 226.60(2007)

District presented evidence that [REDACTED] developed and made reasonable efforts to implement a number of IEPs to address Student's needs prior to and including the IEP of March 22, 2012 of which Parent complains, based on the information available to it, and in compliance with applicable law. See *Alex R. v. Forrestville Valley CUSD #221*, 375 F.3d 603(7th Cir. 2004)

Parent did not persuade through her testimony, the testimony of any other witness she called to testify, including Student, [REDACTED], and [REDACTED] staff, that Student was deprived of FAPE by the [REDACTED]'s failure to develop and implement an appropriate IEP for Student, specifically that it was not or did not

- i. based upon accurate and appropriate levels of academic and behavioral Performance;**
- ii. Include measurable academic and behavioral goals to address Student's needs;**
- iii. Account for Student's lack of reasonable academic, emotional, and behavioral progress;**
- iv. Include appropriate supplemental services and supports, including related services, to address Student's academic and behavioral needs;**
- v. Include an appropriate behavior intervention plan based upon an appropriate functional behavioral assessment, developed and implemented by staff appropriately trained in the area of behavior support, management, and intervention and based upon appropriate policies and procedures, the lack of which resulted in
 - a. use of improper discipline of Student, including failure to individualize the applications of demerits and detention and failing Student for detentions**
 - b. grade retention and the negative consequences of same****
- vi. Provide compensatory services to address previous denial of FAPE?**

An appropriate education, commonly referred to as *FAPE*, is an education that is reasonably calculated to provide a disabled student with meaningful educational benefit, as based upon an individual education plan, or *IEP*, developed by an *IEP* team, including a student's parents. *Hendrick Hudson Dist. Bd. Of Ed. v. Rowley*, 458 U.S. 176 (1982) ; and see *Board of Education v. Ross*, 486 F.3d 267(7th Cir. 2007) The school district is required to follow procedures that are designed to allow the parent to participate in the development of the IEP. The applicable procedures are set forth in 34 CFR 300.300-.328(2006) and 23 ILAC 226.110-.350(2007). Procedural violations alone, where they occur, cannot be deemed a denial of FAPE unless the evidence proves that the violations impeded the student's right to FAPE, the parent's right to participate in the decision making process, or caused the student to be deprived of an educational benefit. Otherwise, a hearing officer's determination of whether FAPE was received must be based on substantive grounds. 34 CFR 300.300-.328(2006) and 23 ILAC 226.110-.350(2007)

In regard to the above allegations, a disabled student's IEP must include, inter alia, a statement of his present levels of academic achievement and functional performance; measurable annual goals based on his stated needs and reflecting Illinois Learning Standards, accompanied by benchmarks or short-term objectives; a description of how his progress on his goals is to be measured and when reports of progress are to be issued; a statement of the special education,

related services, supplementary aids and services, and any modifications and accommodations which are to be provided to him; and, in the case of a child who requires a behavior intervention plan, a summary of the findings of his functional behavioral assessment, the prior interventions implemented, a description of any behavioral interventions to be used, identification of the measurable behavioral changes expected and how the changes are to be evaluated, a schedule for a review of the interventions' effectiveness, and provisions for parental communication and coordination between home and school regarding home-based and school-based interventions. 34 CFR 300.320(2006); 23 ILAC 226.230(2007)³

A.i. through A.iv. Levels of Performance, Goals and Benchmarks, progress, and supplemental services and supports:

The Student's IEP of March 22, 2012, like the IEPs developed prior to it, included all of the information required by law. The IEPs were extensive and the team met regularly to update and adjust Student's IEP in an effort to make him successful. In regard to allegations of any substantive violations of Student's right to FAPE, ██████ personnel testified to the development and implementation or offers and reasonable attempts to implement multiple IEPs during Student's attendance at ██████, pursuant to which ██████ has provided Student with classes co-taught by general and special education teachers, accommodations and modifications to enable him to receive his education in the general education setting, check-ins with his advisor and the social worker relating to his conduct and his academic needs, direct individual social work services, psychological services, behavioral intervention plans developed pursuant to functional behavioral assessments, behavior contracts, rewards, and paraprofessional assistance to assist him in transitioning, participating, and getting organized. It relaxed and altered its application of its Code of Conduct to Student at Parent's request. It continues to seek additional information about Student's needs from Parent and desires to do an immediate re-evaluation of Student to determine his current needs and plan his educational programming.

Therefore, Parent has not shown by a preponderance of evidence that ██████ failed to offer or provide FAPE to Student either procedurally or substantively in relation to these allegations. It is noted that all of the ██████ personnel, from the Superintendent of the ██████ Network to the classroom teacher, were excellent witnesses who gave credible testimony in regard to ██████'s efforts to educate Student. There was no indication that the IEP team desires to punish or isolate Student or to prevent Parent from participating in Student's educational programming, as Parent has alleged, as discussed below. To the contrary, ██████ personnel, according to the evidence presented, have a desire to make Student successful and to see him attend and graduate from college if that is his desire. The evidence shows that it is more likely that Student's lack of success has resulted from his lack of desire to attend this particular school and the disagreement of he and his Parent with the school's clearly stated policies and procedures, even though he has been enrolled there by Parent's choice.

A.v.a. and b. Behavior Intervention Plan

In addition to the requirement that the IEP of a Student whose behavior impacts the ability of himself or his fellow students to receive an education, the Illinois School Code requires school districts to have adequately trained school staff available to effectively address the behavioral intervention needs of students with disabilities. 105 ILCS 5/14-8.05(2010) ██████ complied with the legal requirement that it include in Student's IEP a behavior intervention plan based on a functional behavior assessment, including the required data and information, and its staff was appropriately trained to address the needs of students with disabilities.

The preponderance of evidence introduced at hearing shows the IEP team's ongoing efforts to adjust Student's BIP and to respond to Parent's complaints and concerns. Parent

³ Illinois regulations define a functional behavioral assessment as *an assessment process for gathering information regarding the target behavior, its antecedents and consequences, controlling variables, the student's strengths, and the communicative and functional intent of the behavior, for use in developing behavioral interventions.* Behavioral intervention is defined as *an intervention based on methods and empirical findings of behavioral science and designed to influence a child's actions or behaviors positively.* 23 ILAC 226.75(2007)

requested that she be allowed to call [REDACTED] an employee of District, as an expert in behavior intervention, and she was allowed to do so over District's objection. However, [REDACTED] testimony did not support Parent's contention that [REDACTED] failed to provide FAPE because it did not employ specific strategies referenced by Parent, including "PBIS" and "Wrap Around". Rather, she testified that any structured, systematic, consistent strategies can be effective in improving a student's attendance and on-task behavior.

Disciplinary procedures specific to students with disabilities are set forth at 23 ILAC 226.400(2007) and at 34 CFR 300.530-.536(2006)⁴ Among those procedures is a requirement that a school must provide services during periods of removal to a child with a disability who has been removed from his current placement for 10 school days or less in a school year, only if it provides services to a child without disabilities who is similarly removed. 34 CFR 300.530(c)(3)(2006) Otherwise, Illinois schools must conform to the requirements of Illinois' statute governing the discipline of all public school students. See 105 ILCS 5/10-22.6(2010)

Parent selected [REDACTED] for Student because of its structure and its disciplinary policies. Those policies are clearly stated in [REDACTED] Handbook, including reference to the law applicable to disabled students. And Parent presented no evidence that she and Student did not understand the policies before enrolling Student and agree to abide by the stated rules. [REDACTED] success in preparing its students for college relies on consistent application of its policies and its intention to instill the need for self-discipline and personal responsibility in its students. In response to Parent's criticisms and Student's and Parent's failure to comply with policies with which they had agreed at the time of enrollment, it relaxed and individualized its policies for Student substantially in an effort to encourage Student's cooperation and comply with Parent's concerns. However, as District counsel correctly argued, as it did so, Student's behavior declined, as he had no accountability for his failure to stay in school and do the required work. The evidence also shows that the IEP team tried repeatedly to find and apply positive interventions to motivate Student, and included them in Student's IEPs and BIPs. It is concluded that [REDACTED] complied with both the procedural and substantive requirements of the law in the provision of its behavioral intervention plan for Student.

A.vi., Compensatory Services

A student is entitled to compensatory education and services where appropriate as relief for the deprivation of a free appropriate public education in accordance with the preponderance of the evidence at hearing. 20 U.S.C 1415(i)(2)(C)(iii)(2004); *Evanston C.C.S.D. 65 v. Michael M.*, 356 F.3d 798, 803(7th Cir. 2002), *Petrina W. v. City of Chicago Dist. 299*, 53 IDELR 259(N.D. Ill. 2010) However, there is no legal requirement that the IEP developed for Student in this case prior to this hearing include compensatory services in order for Student to receive FAPE, and Parent did not provide any further explanation for inclusion of this issue in her Pre-Hearing statement of issues. Although she asked [REDACTED] for tutoring in November of 2011, [REDACTED] was not legally required to provide it in any form other than it was already being made available to Student in the form of daily office hours with instructors and National Honor Society tutoring. Student declined those services, and he also failed to comply with the homework detentions assigned to him, which were not punitive but designed to allow him time to complete his homework for credit when he failed to do it at home. [REDACTED] did not deprive Student of FAPE procedurally or substantively by not including provision of compensatory services in Student's IEP.

B. [REDACTED] did not violate Student's right to be educated in the least restrictive environment

Each special education student is to be placed in the least restrictive environment in which he can receive a satisfactory education, determined to be the setting in which his IEP providing him with FAPE can be appropriately implemented. To the maximum extent appropriate

⁴ There is no allegation or sufficient evidence introduced at hearing that Student was suspended from school for more than 10 school days during a school year.

for the individual student, he is to be educated with his typical peers. 20 U.S.C. 1412(a)(5)(2005); 105 ILCS 5/14-8.02(d)(2011); 34 CFR 300.114(2006); 23 ILAC 226.240(2007) However, when a school's reasonable efforts to provide a student with FAPE in a mainstream environment with supports and services have proven unsatisfactory for the student, as in this case, it is legally permissible for the IEP team to recommend a more restrictive placement. *Board of Education v. Ross*, 486 F.3d 267(7th Cir. 2007)

The preponderance of the evidence introduced at hearing shows that [REDACTED] made reasonable efforts to educate Student in the regular education environment with numerous supports and services before recommending a more restrictive placement within the [REDACTED] on March 22, 2012. In fact, it recommended a more restrictive placement within [REDACTED] in May 2011 when Student was not doing his work or attending class in spite of the support and services being made available to him at that time, but Parent rejected the recommendation, and [REDACTED] continued to attempt to educate Student by increasing the support provided to him and adjusting IEP and BIP in accordance with those efforts. As noted above, [REDACTED] has not failed to offer or provide Student with FAPE as Parent has alleged, according to the evidence presented at hearing.

Therefore, the IEP team's recommendation to provide Student with the specialized instruction designated in his March 22, 2012 IEP within Charter but outside of the general education classroom, for his academic classes did not violate Student's right to FAPE in the least restrictive environment. Rather, the evidence shows that the recommendation was made with a desire to help Student catch up and to learn in accordance with his abilities and in light of his behavioral challenges while still remaining at [REDACTED] after continuous efforts to educate him in a less restrictive environment had proven unsuccessful at that point in time. The team advised Parent that it recommended 1:1 intervention in the form of independent and guided study, but when Parent rejected it, they determined placement for 26% of the school day outside of the general education classroom instead.

C. [REDACTED] did not attempt to prevent and did not prevent Parent's participation in the development of Student's educational programming in retaliation for her public criticism of its policies by creating a hostile school environment for Student.

As noted above, the procedural requirements of the *IDEA* and the *Illinois School Code* have been designed to assure a parent's participation in the development of her disabled child's individual educational program. 34 CFR 300.300-328(2006) and 23 ILAC 226.110-.350(2007) Parent has not proven by a preponderance of evidence that she has been denied an opportunity to participate in Student's programming at [REDACTED] nor that Student has been deprived of educational benefit or of FAPE due to any procedural violation by District or [REDACTED] relating to Parent's public criticism of its policies. To the contrary, the evidence shows that Parent has been a very active participant in Student's education and that [REDACTED] has been responsive to her concerns, even when it respectfully disagreed with her views. She did not present sufficient evidence that [REDACTED] personnel responded to her criticism of its policies in any way detrimental to Student's education. As noted above, [REDACTED] personnel, according to the evidence presented, have a desire to make Student successful and to see him attend and graduate from college if that is his desire.

Issue No. 2: The preponderance of the evidence supports District's request that it be permitted to conduct a re-evaluation of Student without Parent's consent.

No child shall be eligible for special education without a carefully completed case study, currently defined as a full and individual evaluation (FIE), fully reviewed by professional personnel in a multidisciplinary staff conference and only upon the recommendation of qualified specialists. 105 ILCS 5/14-8.02a(b)(2008) Children who are already receiving special education must be reevaluated by the District at least once every 3 years unless the parents and the district agree that a reevaluation is unnecessary. 23 ILAC 226.120(2007); 34 CFR 300.303(2006) The

school district must inform parent of the domains in which assessment is needed and obtain parents' consent for evaluation, after which the evaluation is to be conducted and an eligibility meeting convened within 60 days of the signed consent. 105 ILCS 5/14-8.02(b)(2008), 23 ILAC 226.110(2007)

When a Parent refuses consent or revokes consent after providing it, District may seek an order from a due process hearing officer to compel the evaluation without parental consent. 34 CFR 300.300(a)(3)(i) and .300(c)(2)(2006); 23 ILAC 226.540(2007)

██████████ personnel have proven the need to re-evaluate Student at this time through their testimony at hearing rather than waiting until his triennial re-evaluation is due in October, 2012. Student has been failing all of his classes as a second year freshman at ██████████. Parent has not provided any reason for why the evaluation should not be conducted, and the evidence shows that she did in fact provide her consent to the evaluation on March 22, 2012, revoking it after ██████████ recommended a more restrictive environment for Student, with which she disagreed, and which precipitated the submission of the due process hearing request in this cause. The evidence supports the assertion that a re-evaluation is needed at this time.

District counsel requested in her closing argument that ██████████ be allowed to change Student's current placement in general education. Because the rendering of this decision lifts the IDEA's stay put requirement, the IEP of March 22, 2012, of which Parent complained but which she has not proven to be in violation of Student's right to a free appropriate public education in the least restrictive environment by a preponderance of the evidence in this case, can be implemented as written if Parent intends to maintain Student's enrollment in ██████████ during the course of the re-evaluation process. Otherwise, the parties are free to convene an IEP meeting and develop a new IEP. Further placement decisions will need to be made once the re-evaluation has been completed and an eligibility determination and IEP meeting convened to develop an IEP based on the results of the re-evaluation.

IT IS THEREFORE ORDERED:

1. That Parent's request for relief is denied.
2. That ██████████ and District shall be permitted to conduct a full and individual re-evaluation of Student forthwith.

DATED: June 4, 2012


Stacey L. Stutzman
Impartial Hearing Officer

APPENDIX TO DECISION AND ORDER
2012-0405

Joint Documents

J 74- 116: IEP dated 4/16/10 (admitted by stipulation of the parties)
J 120: Conference Notification dated 11/18/10
J121-145: IEP dated 11/23/10
J143-144: Functional Behavioral Assessment and Behavior Intervention Plan dated 11/23/10
J 151: Conference Notifications dated 2/22/11
J152-181: IEP dated 3/7/11
J 183: Conference Notification dated 4/27/11
J184-221: IEP dated 5/26/11
J 223: Conference Notification dated 9/22/11
J 224: Conference Notification dated 9/22/11
J225-316: IEPs and notes dated 11/1/11 and 11/22/11 (admitted by stipulation of the parties)
J317-318: Academic Contract dated 11/22/11
J325-328: Consent for evaluation and Assessment Plan dated 3/22/12
J330-371: IEP dated 3/22/12 (admitted by stipulation of the parties)
J 376: Independent Study plan proposal

Parent Documents

P 1: [REDACTED] email to Parent dated 6/13/11
P 6- 9: emails between Parent and school personnel dated 11/5/10
P 11: email from [REDACTED] to Parent dated 2/16/12
P 12-13: email from Parent to [REDACTED] dated 11/17/11
P 19-20: emails between Parent and school personnel dated 3/28/12 and 3/29/12
P 80-81: Student notes dated 2/13/12
P 84: [REDACTED] letter to [REDACTED] families dated 2/16/12
P 85: [REDACTED] letter to [REDACTED] parents dated 2/16/12
P 89-93: Power School log of Student's demerits dated 8/24/10 through 3/1/11
P 94-95: Discipline Notification and Misconduct Report dated 9/9/11
P 101: Incident Report
P114-118: Power School entries of communication from staff to Special Education Director dated 3/29/11 through 10/31/11
P167-168: Article by [REDACTED]
P177-182: Progress Reports dated 9/22/10 through 2/8/12
P 188: Afterschool Records dated 1/10/11 through 4/25/11

District Documents

D 1-22: [REDACTED] Student and Parent Handbook-2011-2012
D 29: School-Parent Compact dated 5/7/10
D 45b: Power School log entries
D 47-49: Student Performance Summaries dated 11/11/10
D 50-53: Crisis Intervention/Client Assessment dated 5/18/11
D 54-57: FBA/BIP Professional Development Agenda dated 10/21/11
D 58-67: Functional Assessment Observations forms
D 68-77: Weekly Successes Charts dated 1/23/12 through 3/26/12
D 78-79: Log/notes dated 8/31/11 through 4/12/12
D 81: [REDACTED] letter to [REDACTED] parents dated 2/16/12
D 82: Homework Problems Checklist
D 88: Student drawing/sign

D 98: Unofficial Transcript
D 99-104: Emergency intervention plan and training signature pages dated 1/10/12
Da109-a128: PowerSchool demerit log dated 10/6/11 through 5/14/12
D109-121: RTI log dated 3/29/11 through 4/12/12
D134-149: PowerSchool demerit log dated 8/23/11 through 4/23/12
D 158: behavioral incident log entry for 3/29/11 through 4/11/11
D175-176: email from Parent to [REDACTED] dated 5/1/12

RIGHT TO REQUEST CLARIFICATION


Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned hearing officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought, and a copy of the request shall be mailed to the other party and to the Illinois State Board of Education. The right to request such a clarification does not permit a party to request reconsideration of the decision itself, and the hearing officer is not authorized to entertain a request for reconsideration.

RIGHT TO FILE A CIVIL ACTION

This decision shall be binding upon the parties unless a civil action is commenced. Any party to this hearing aggrieved by this final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to ILCS 5/14-8.02a(i), that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of the decision of the impartial due process hearing officer is mailed to the parties.

CERTIFICATE OF SERVICE

The undersigned due process hearing officer certifies that she uploaded this Decision and Order onto the ISBE SEDS on June 4, 2012, and served copies of the aforesaid Decision and Order upon Parent, District counsel, and the Illinois State Board of Education at their respective addresses by depositing same with the United States Postal Service at Libertyville, IL, certified mail postage prepaid, on June 4, 2012 before 5:00 p.m.


Stacey L. Statzman
Impartial Hearing Officer