

STATE OF ARIZONA
IN THE OFFICE OF ADMINISTRATIVE HEARINGS

1
2
3 [REDACTED], Student by and through Parent(s)
4 [REDACTED],
5 Petitioners,
6 v.
7 FIT KIDS, INC.
8 dba CHAMPION SCHOOLS,
9 Respondent.

No. 12C-DP-008-ADE

ADMINISTRATIVE LAW JUDGE
DECISION

9 **HEARING:** Conducted on November 21, 2011 and November 22, 2011; the
10 Court Reporter's transcript was received and reviewed.¹ The hearing record concluded
11 on December 21, 2011.

12 **APPEARANCES:** Parent [REDACTED] represented Student [REDACTED]. Attorneys Deanna
13 Rader and Sean Carroll represented Fit Kids, Inc. dba Champion Schools ("Champion"
14 or "Respondent"), accompanied by Carolyn Sawyer, Principal at Champion.

15 **WITNESSES:**² For Petitioners: Parent [REDACTED]. For Champion: Jennifer Redmond
16 ("Special Education Director"); Mallory Miller ("Second Grade Teacher"); Christine Boyd
17 ("Special Education Consultant"); Carolyn Sawyer ("Principal").

18 **ADMINISTRATIVE LAW JUDGE:** Kay Abramsohn

19 Parent, on behalf of Student, brings this due process action raising multiple
20 issues, primarily asserting that Champion failed to provide a free and appropriate public
21 education ("FAPE") as a result of several alleged actions or inactions. Among other
22 allegations in the due process complaint notice ("Complaint"), Petitioners alleged that
23 Respondent had denied FAPE to Student by "not implementing" Student's IEP, by not
24 providing a 1:1 aide, and by not providing "all accommodations as outlined" in Student's
25 Individualized Education Program ("IEP").³ Petitioners alleged that Respondent had
26 denied FAPE to Student by not reviewing, discussing or implementing an April 2011

27 ¹ Pursuant to the ORDER dated November 9, 2011, the Court Reporter's transcript is the official record of
28 the due process hearing. Litigation Services transcribed the proceedings and the company provided its
29 transcript to the parties and to the Tribunal. The Tribunal has, by statute, also made a digital recording of
30 the proceedings.

² To avoid the use of proper names, in order to protect confidentiality, witnesses are designated a
generally descriptive title to be used in the body of the Decision. The witnesses' proper names are
grouped here for ease of redaction.

³ In the ORDER dated October 24, 2011, the Administrative Law Judge dismissed some of Petitioners'
Complaint allegations. Because Petitioners did not specify any other "accommodation" set forth in the
IEP, the Administrative Law Judge presumed, at the time of the Complaint, that the provision of a 1:1 aide

1 FBA and Petitioners also alleged that the IEP team "moved forward" with the FBA plan
2 without IEP team agreement.⁴ Petitioners alleged Respondent violated 34 C.F.R. §
3 300.613 when Parent, the Father and a case manager were not allowed to review or
4 inspect, and/or Parent did not receive, Student's requested educational records.

5 The law governing this due process proceeding is the Individuals with Disabilities
6 Education Act ("IDEA"), 20 United States Code (U.S.C.) §§ 1400-1482 (as re-
7 authorized and amended in 2004),⁵ and its implementing regulations, 34 Code of
8 Federal Regulations (C.F.R.) Part 300,⁶ as well as the Arizona Special Education
9 statutes, Arizona Revised Statutes (A.R.S.) §§ 15-761 through 15-774, and
10 implementing rules, Arizona Administrative Code (A.A.C.) R7-2-401 through R7-2-406.

11 The parties presented testimony and Exhibits at the two hearing sessions.
12 During the hearing sessions, Parent presented her own testimony and Exhibits
13 designated A through P. Respondent presented evidence from the witnesses noted
14 above and Exhibits designated 1 through 23.

15 The Administrative Law Judge has considered the hearing record, including the
16 testimony and exhibits,⁷ and now makes the following Findings of Fact, Conclusions of
17 Law, and Order finding:

- 18 (1) that Petitioners have met the burden to show that
19 Champion failed to implement Student's IEP;⁸
20 (2) that Petitioners have not shown that Champion denied
21 FAPE by not reviewing or discussing the April 20, 2011
22 Functional Behavioral Assessment ("FBA") with Parents
23 prior to its implementation; and,
24 (3) that Petitioners have not shown that Champion violated
IDEA with regard to access to review or inspect Student's
educational records.

was the primary failure.

⁴ Based on inconsistency in the allegations, the Administrative Law Judge presumed, at the time of the
Complaint, that Parent's allegation was that the data and FBA were not discussed with her prior to
implementation.

⁵ Through Public Law 108-446, known as the "Individuals with Disabilities Education Improvement Act of
2004," IDEA 2004 became effective on July 1, 2005.

⁶ The current federal regulations became effective October 13, 2006; several amendments have
subsequently been made, effective December 31, 2008.

⁷ The Administrative Law Judge has read each witness-referenced Exhibit, even if not mentioned in this
Decision. The Administrative Law Judge has also considered the testimony of every witness, even if not
mentioned in this Decision.

⁸ Petitioners bear the burden of persuasion in this matter. See *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct.
528 (2005).

FINDINGS OF FACT

1
2 1. At the time of the due process complaint notice in this matter, Student
3 was an [REDACTED] year old child who was eligible for special education and related services as a
4 child categorized as other health impaired ("OHI"). Student has had diagnoses of
5 Attention Deficit Hyperactivity Disorder ("ADHD") Combined type, Mood Disorder NOS,
6 Learning Disorder NOS, Emotional Impairment, and Rule-out Bi-polar Disorder NOS.⁹

7 2. Student was attending Teleos Preparatory Academy ("Teleos"), a Great
8 Heart Academy (a Charter School). On September 20, 2010, Teleos implemented an
9 IEP for Student.¹⁰ At that time, Student was in the [REDACTED] Grade.

10 3. Regarding Student's social and emotional development, the Teleos IEP
11 stated:

12 [Student] demonstrates impulsive behaviors, is
13 noncompliant and can become physically aggressive to
14 peers and staff. He lacks general social skills and appears
15 to have difficulty reading social cues. For example, when
16 engaged in an educational game with peers, he does not
17 follow the rules of the game, does not take appropriate turns
18 and tends to cheat. When peers ask [Student] to participate
19 without cheating[,] he will leave the classroom or throws [sic]
20 the game. He does not follow directions relating to
21 undesirable tasks. He has a difficult time staying in his seat
22 or in the classroom and often leaves without consent.
23 [Student's] general attention span is five minutes or less.
24 [Student] has been asked to use a hand signal when
25 frustrated and he would be [sic] allowed to leave the room
26 for a "time-out" period; however, he does not use this signal.

27 In the general education classroom[,] [Student] will be
28 provided with a visual schedule and visual timer to assist
29 with transitions. [Student] will also be supplied with a visual
30 timer to assist with transitions. The visual schedule and
timer will be monitored by the general education teacher,
special education teacher and the general education
classroom aide working with [Student]. [Student] will be
permitted to utilize the benefits of these services; however,
not control the devices.

⁹ See Exhibit 1.

¹⁰ See Exhibit 1. The annual period for the IEP was September 20, 2010 to September 28, 2011. Student had been determined eligible on June 22, 2009 and his next re-evaluation was scheduled for June 21, 2012.

1 [Student] will need significant access to school personnel
2 such as the counselor, special education teachers, [and]
3 dean of students.

4 4. Regarding "other" information, the Teleos IEP stated:

5 [Student] is currently working with a behavior coach from
6 Graces Serenity, which is contracted though Quality Care
7 Network.

8 5. The Teleos IEP called for the following special services to be provided to
9 Student:

10 (a) 30 minutes, 5 times a week of social skills development
11 in the regular classroom provided by the special services
12 personnel.

13 (b) 150 minutes daily of behavior coach in the regular
14 classroom provided by Grace Serenity (an outside agency).

15 (c) daily supplementary aids of (i) a timer to assist with
16 transitions and deadlines; (ii) daily picture schedule; (iii)
17 small prizes and incentives as a reward for positive
18 behavior; and (iv) behavior chart sent home daily (by the
19 general education teacher).

20 (d) 360 minutes daily of "additional adult support provided
21 throughout the entire day" in the regular classroom provided
22 by an "individual assistant."¹¹

23 6. The Teleos IEP Team determined that Student should have multiple
24 accommodations, including the following: an increased distance between his and other
25 students' desks; shortened tests; extended test times; taking tests in different settings;
26 be allowed to get up frequently and circulate about the room; be given directions both
27 orally and in writing; be cued to stay on task; have the opportunity to make individual
28 contracts with teachers with regard to behavior and rewards; have a routine schedule,
29 to be provided by staff; have available a second desk in the school hallway to use when
30 he is frustrated or tired, where he "will sit ... and be assisted by the instructional
assistant or behavior coach or his special education teacher;" be given small rewards or
prizes when he is compliant regardless of how big or small the task; for staff to
implement planned ignoring for Student's negative attention-seeking behaviors; for staff

1 to avoid power struggles with Student (requesting him to do something no more than 2
2 times); for staff to utilize the 1-2-3 method (instead of engaging in a power struggle); to
3 have breaks anytime he is upset so Student has a chance to calm down and
4 understand the consequences for his behaviors, with 30 minutes being the time that
5 Student needed to think about the situation before staff gives him a consequence; for
6 staff to clear away all distractions (for Student to have no items on his desk other than
7 his daily schedule and items needed for the current lesson); for staff to establish clear
8 expectations with clear rewards and consequences for Student.¹²

9 7. In February 2011, Parent approached Champion with regard to
10 enrollment of Student. After a week of attending Champion as a "visitor," Parent
11 enrolled Student and completed the enrollment paperwork.¹³

12 8. Student enrolled at Champion on February 16, 2011. Therefore, pursuant
13 to 20 U.S.C. § 1414(d)(2)(C)(i)(I), because Student transferred to a new Arizona school
14 district within the same academic year with a current IEP, Champion was required to
15 provide FAPE, "including services comparable to those described" in that existing
16 current IEP "until such time as the local educational agency [here, Champion] adopts
17 the previously held IEP or develops, adopts, and implements a new IEP that is
18 consistent with Federal and State law."¹⁴

19 9. On March 11, 2011, Champion issued a meeting notice for a meeting on
20 March 23, 2011.¹⁵ The stated purpose of the meeting was to develop an IEP."¹⁶

21 10. On March 23, 2011, the IEP Team developed and adopted a new IEP.¹⁷
22 The new IEP set social skills training at 90 minutes per week pursuant to Parent's
23 request; this was a reduction from 30 minutes five times a week. Additionally, Student's
24 allowable breaks were set at three to five a day. The IEP Team also noted multiple
25 accommodations. Special Education Director testified at hearing that that the IEP
26 Team wanted to keep Student in the classroom more in order that he could access

27 ¹¹ See Exhibit 1, page 8.

¹² See Exhibit 1, pages 9 and 10.

28 ¹³ See Champion's filing dated September 15, 2011, attachment 1 and its attachment C.

¹⁴ See also 34 C.F.R. § 300.323(e).

29 ¹⁵ See Exhibit 18.

30 ¹⁶ At hearing, Parent maintained that Champion had "accepted" the Teleos IEP and that the Teleos IEP
was in place during Student's entire time at Champion.

1 more of the academic lessons. The IEP Team also noted that the IEP Team would
2 reconvene to revise the daily tracking sheet and for an FBA and a behavior intervention
3 plan ("BIP").

4 11. Parents refused to sign the March 23, 2011 IEP as participants.

5 12. Parent received the March 23, 2011 Prior Written Notice ("PWN") that
6 indicated the IEP Team had revisited the existing [Teleos] IEP.¹⁸ The PWN stated that
7 "it was imperative to discuss [Student's] present level of functional performance, needs,
8 strengths, supplementary aides and services, positive behavioral strategies, behavioral
9 plan, and development [sic] a means to track progress toward goal mastery." The
10 March 23, 2011 PWN indicated that Parent received a copy of the procedural
11 safeguards; Parent initialed the PWN.

12 13. On March 23, 2011, Champion issued a meeting notice for a meeting to
13 be held on April 6, 2011.¹⁹ On that notice, the stated purpose of the meeting was to
14 review and revise the [March 23, 2011] IEP. This meeting was canceled and
15 rescheduled.

16 14. On April 14, 2011, Champion issued its meeting notice for a meeting on
17 April 20, 2011.²⁰ On that notice, the stated purposes of the meeting were to address
18 Student's behavior needs, to review and revise the [March 23, 2011] IEP and to
19 conduct an FBA.²¹

20 15. On April 20, 2010, the IEP Team convened and amended the March 23,
21 2011 IEP. The amendment included adding the support of a one-on-one aide and
22 providing an increase of special education services from 60 minutes per week to 360
23 minutes per week of specialized instruction in the resource room.²²

24 ¹⁷ See Exhibit 2.

25 ¹⁸ See Exhibit 18, PWN dated March 23, 2011. Champion phrased this in the negative, stating it "rejected
26 not revisiting the current IEP" for the reason that to do so (*i.e.*, not revisiting) would not be in Student's
27 best interest. Emphasis added here.

28 ¹⁹ See Exhibit 18, meeting notice dated March 23, 2011.

29 ²⁰ See Exhibit 18, meeting notice dated April 14, 2011.

30 ²¹ Champion's records note that the FBA was rescheduled and did not take place on April 20, 2011. See
Exhibit 3, April 20, 2011 Addendum, indicating the FBA was rescheduled to April 22, 2011 noting that
several persons present on April 20, 2011 did not feel they could contribute because they were not familiar
with Student at school. At hearing, Parent indicated that Student has a team, different from the IEP Team,
which is comprised of additional persons involved in Student's life and other outside services, and that she
and Student's team attend the IEP meetings.

²² See Exhibit 18, PWN dated April 20, 2011; see also Exhibit 3, Addendum dated April 20, 2011. Exhibits

1 16. Champion issued a PWN on April 20, 2011 and again indicated that it was
2 imperative for the IEP Team to discuss Student's functional performance, needs,
3 strengths, supplementary aides and services, positive behavioral strategies, behavioral
4 plan, and to develop a means to track Student's progress toward mastering his goals.
5 The PWN further noted that "[h]is behavior is [so] severe that he is removed frequently
6 from his general education setting." The PWN indicated that the IEP Team determined
7 Student should participate in general education in order to have exposure to the
8 general curriculum, but that he should have such access to his typical peers for three
9 hours a day "with the support of his outside agency behavioral coach."

10 17. Champion issued its April 20, 2011 Addendum to the March 23, 2011 IEP.
11 The hearing record contains a discrepancy with regard to that Addendum, which
12 remains unexplained through the presented documents. Champion's Exhibit 3 and
13 Parent's Exhibit F are the same document; however, Parent's Exhibit D is purported to
14 be the copy of the Addendum that she received. Parent testified that, on May 9, 2011,
15 she received an e-mail from Special Education Consultant with an attached copy of the
16 April 20, 2011 PWN and the Addendum, which Parent provided as Exhibit D.²³ Special
17 Education Consultant testified that the correct copy of the Addendum is not Exhibit D
18 but is Exhibit 3. Champion provided to the hearing record a copy of Special Education
19 Consultant's May 9, 2011 e-mail to Parent, which contains a copy of the Exhibit 3;
20 Champion received this document from Special Education Consultant.²⁴

21 18. The meeting that was intended to conduct the FBA was rescheduled from
22 April 22, 2011 to April 29, 2011. A series of e-mails ensued.²⁵ On April 25, 2011,
23 Parent requested clarification regarding what would be discussed at the meeting. On
24 April 26, 2011, Special Education Director provided a thorough explanation of the FBA
25 process. Subsequently, on April 27, 2011, Parent indicated that she needed time to
26 coordinate her team's availability and, therefore, was unable to say that they could

27 11 and 12 document Champion's efforts and non-progress in securing a one-on-one aide.

28 ²³ See Exhibit P. Special Education Consultant indicated that she understood that Parent had been given
29 a copy of the Addendum [Exhibit 3] at the meeting on April 20, 2011, and that she was later contacted by
30 Special Education Director (because Special Education Consultant had Student's file at that time to
review), and that she was asked to e-mail a copy of the April 20, 2011 PWN and Addendum to Parent.

²⁴ See Exhibit 23.

²⁵ See Exhibit 19.

1 attend on April 29th but would provide dates of availability. On April 28, 2011, Special
2 Education Director forwarded Parent's message to the IEP Team, but also indicated to
3 the recipients, including Parent, that Student's outside team members had already
4 indicated they would not be able to provide relevant input and queried whether Parent
5 wanted to participate telephonically.

6 19. Special Education Consultant observed Student on April 27, 2011.²⁶

7 20. Parent did not attend the April 29, 2011 meeting.

8 21. On April 29, 2011, the IEP Team conducted an FBA and created a
9 Behavior Intervention Plan ("BIP") for Student.²⁷ The IEP Team reviewed and
10 discussed Student's documented behaviors,²⁸ a Teleos FBA, and an April 27, 2011
11 observation by Special Education Consultant.²⁹

12 22. In response to Student's behaviors and, apparently, a final precipitating
13 incident, on May 16, 2011, Champion scheduled a Manifestation Determination
14 Review.³⁰ Champion conducted its Manifestation Determination on May 18, 2011 and
15 completed it on May 24, 2011, ultimately determining that Student's conduct was a
16 manifestation of his disability and a direct result of Champion's failure to implement the
17 IEP.³¹

18 23. In May of 2011, Champion conducted its enrollment process for the
19 coming academic year, 2011-2012.³² Champion's students were provided a copy of the
20 re-enrollment form, which form was due back to the school no later than May 13, 2011.

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22 ²⁶ See Exhibit 5.

²⁷ See Exhibit 4.

23 ²⁸ See Exhibit 7 (Student's Daily Sheets), Exhibit 8 (Student's Behavior Charts), Exhibit 9 (Student's
24 referrals and incident reports) and Exhibit 10 (Substitute teacher's notes).

25 ²⁹ In answer to cross-examination questions from Parent, Special Education Consultant testified that she
26 was familiar with an FBA from "Counseling Consultant Services," that the Team only had one prior FBA for
27 Student, and that she understood Champion to have received it from Teleos. Exhibit E is a copy of an
28 undated Teleos FBA; the hearing record does not contain any other prior FBA.

29 ³⁰ See Exhibit 14, meeting notice and Champion's related letters to Parent. At this time, Student was
30 already suspended and, by e-mail dated May 17, 2011, Champion extended that suspension through May
20, 2011. Because Student had been suspended and the time frame would have apparently exceeded 10
days, pursuant to 34 C.F.R. § 300.530(d)(1)(ii), Champion provided Student's FAPE services for the last
two school days. See Champion's September 15, 2011 filing, attachment 1 and its attachment G.

³¹ With the due process complaint notice, Parent provided a copy of the Manifestation Determination
Review, concluding that Student's "behavior is manifestation of disability." See also Champion's
September 15, 2011 filing, attachment 1 and its attachment H.

³² See Champion filing dated September 13, 2011, attachment 1 and its attachment B.

1 24. Parents did not file the re-enrollment form with Champion until June 12,
2 2011.³³ However, by that time, Champion had determined that Student was
3 "withdrawn" from Champion.³⁴ In its letter dated July 29, 2011, Champion advised
4 Parents that Student could not be re-enrolled for two reasons: (a) that Champion had
5 learned that Student had previously been expelled from another school (which Parents
6 had not revealed either at the February 2011 enrollment time or with the June 2011 re-
7 enrollment request); and, (b) that Parents had not timely applied for re-enrollment.³⁵

8 25. On September 2, 2011, Parents fax-filed an expedited due process
9 complaint notice with the Arizona Department of Education; however, Parents mailed
10 the notice to Champion.

11 26. On September 9, 2011, Champion notified the Tribunal that it had
12 received, by certified mail, Petitioners' due process complaint notice on September 7,
13 2011.

14 27. By ORDER dated September 9, 2011, the Administrative Law Judge
15 adjusted the time frame for the resolution period and Champion's Response according
16 to the asserted Complaint receipt date.

17 28. On September 16, 2011, following a telephonic pre-hearing conference,
18 the Administrative Law Judge issued a Minute Entry Advising Parties, dated September
19 20, 2011, determining that the Petitioners' Complainant was not properly handled as an
20 expedited matter.

21 29. The Administrative Law Judge's September 20, 2011 Minute Entry is
22 incorporated by reference into this Administrative Law Decision.

23 30. The parties conducted a resolution session on September 15, 2011, at
24 which time a settlement agreement had been reached. However, Parent desired to
25 have one more provision clarified and, thereafter, the parties did not execute the
26 settlement agreement.

27 31. Because the parties did not notify the Tribunal of any settlement, following
28 consideration of Champion's September 15, 2011 Response and Motion to Dismiss

29 ³³ See Champion filing dated September 13, 2011, attachment 2.

30 ³⁴ See Exhibit 15.

³⁵ See Champion filing dated September 13, 2011, attachment 1 and its attachment K.

1 Petitioners' Due Process Complaint, the Administrative Law Judge issued an ORDER,
2 dated October 24, 2011, dismissing Issues One, Five, Seven, Eight, Nine and Ten.³⁶

3 32. The Administrative Law Judge's October 24, 2011 ORDER is incorporated
4 by reference into this Administrative Law Decision.

5 33. Petitioners' remaining issues for consideration, based on evidence
6 presented at the due process hearing, are as follows:

7 (a) Combined issues Two and Three: Petitioners alleged that Respondent had
8 denied FAPE to Student by "not implementing" Student's IEP, by not providing a 1:1
9 aide, and by not providing "all accommodations as outlined" in Student's IEP.

10 (b) Issue Four: Petitioners alleged that Respondent had denied FAPE to Student
11 by not reviewing, discussing or implementing an April 2011 FBA and Petitioners also
12 alleged that the IEP team "moved forward" with the FBA plan without IEP team
13 agreement.

14 (c) Issue Six: Petitioners alleged Respondent violated 34 C.F.R. § 300.613 when
15 Parent, the Father and a case manager were not allowed to review or inspect, and/or
16 Parent did not receive, Student's requested educational records.³⁷

17 34. Regarding Issues Two and Three, Petitioners argued that, while they
18 provided the outside resource behavioral coach, that person was not a replacement for
19 the one-on-one aide that was required under the Teleos IEP. Petitioners argued that
20 the "additional adult support" called for in the Teleos IEP to be provided by an
21 "instructional assistant" was a one-on-one aide. Respondent argued that Student's
22 Teleos IEP had not contained a one-on-one aide, further arguing that the terminology in
23 the Teleos IEP was not that of one-on-one aide. This issue was revisited by the IEP
24 Team on April 20, 2011, at which time the IEP Team determined that a one-on-one
25 aide was needed. While Respondent presented testimony at the hearing regarding the
26 services actually provided, including many of the provided accommodations, the
27
28

29 ³⁶ Despite being given the opportunity to do so, Parent failed to file any response to the motion to dismiss.

30 ³⁷ During the hearing, Parent provided documentation of requests for educational records that she made in November of 2011. See Exhibits M and N. These requests were made after the filing of Petitioners' Complaint and are not relevant to this Complaint.

1 hearing record clearly demonstrated that Respondent has acknowledged that it failed to
2 implement Student's IEP at the time of its Manifestation Determination Review.³⁸

3 35. Regarding Issue Four, Petitioners argued that this was an IDEA violation;
4 however, Parents failed to cite to any particular IDEA provision or federal rule.
5 Respondent argued that it had to reschedule the meeting to April 29, 2011, which it
6 understood to be a good date for Parent(s), and argued that the Team had to move
7 forward in her absence and prepared the FBA based on the existing data. The hearing
8 record demonstrates that Parent was given notice of the meeting and the reasons for
9 the meeting. Respondent conducted an FBA in order to address Student's existing
10 behaviors.

11 36. Regarding Issue Six, Petitioners alleged Respondent violated 34 C.F.R. §
12 300.613 when Parent, the Father and a case manager were not allowed to review or
13 inspect, and/or Parent did not receive a copy of, Student's requested educational
14 records. Parent argued that, one time when they were reviewing records, the records
15 were taken away from them and that, another time, although the case manager had
16 been given a signed statement from Parent to be able to see the records, she was not
17 permitted to do so. Parent also argued that when Champion sent her a copy of the
18 records, there were duplicates of certain documents and not all the records were
19 provided; Parent mentioned a restraint record that should have been completed and
20 should have been included. Respondent acknowledged that it had denied the case
21 manager access to Student's records when Respondent was unable to confirm that
22 Parent had authorized, noting that it had done so at that time in order to protect
23 Student's privacy but not to deprive any authorized person from access or review of
24 Student's records. Finally, Respondent argued it had previously provided copies of
25 Student's records to Parent.

26 37. In the Complaint, Petitioners requested the following remedies:

27 (a) Stay-put, in the context of Student to return to Champion;

28
29

³⁸ While each and every accommodation in the March 23, 2011 IEP could be discussed herein, the
30 Champion's acknowledgement of its failure suffices to demonstrate the IDEA violation of a failure to
provide FAPE by failing to implement the IEP.

1 (b) Champion to reconvene an IEP/Manifestation meeting and to “come to a
2 conclusion of the manifestation determination and how it affects [Student’s] special
3 education services and placement;”

4 (c) Compensatory time for the time Student has been out of school during the
5 academic year 2011-2012;

6 (d) Champion to provide the records of all access to Student’s records pursuant
7 to 34 C.F.R. § 300.164;

8 (e) Champion to self-report FERPA violations to the Family Policy Compliance
9 Office of the U.S. Department of Education;

10 (f) Champion to provide access, “and copies if requested,” to Parents along with
11 any representative of their choice to Student’s educational records at a time and
12 location convenient for Parents and their representative;

13 (g) Champion to report itself to the Secretary of Education within 30 days of the
14 due process hearing;

15 (h) Champion to reimburse Parents for any fees and expenses incurred for the
16 alleged violations and in connection with the due process hearing;

17 (i) Student to return to Champion’s after-school program, or a private tutoring
18 program at Champion’s expense;

19 (j) Compensatory time for the after-school programming he was denied, at a
20 private tutoring program, at Champion’s expense, along with transportation to and from
21 the program at Champion’s expense;

22 (k) Champion to provide to Parents a “true, accurate and complete copy of all
23 disclosures of [Student’s] educational records made by Champion to their attorneys,
24 including all electronic mail communications that mention, discuss or in any way
25 reference Student.”

26 CONCLUSIONS OF LAW

27 1. Through the IDEA, Congress has sought to ensure that all children with
28 disabilities are offered a FAPE that meets their individual needs.³⁹ These needs
29 include academic, social, health, emotional, communicative, physical, and vocational

30 ³⁹ 20 U.S.C. §1400(d); 34 C.F.R. § 300.1.

1 needs.⁴⁰ To do this, school districts are required to identify and evaluate all children
2 within their geographical boundaries who may be in need of special education and
3 services. The IDEA sets forth requirements for the identification, assessment and
4 placement of students who need special education, and seeks to ensure that they
5 receive a free appropriate public education. A FAPE consists of "personalized
6 instruction with sufficient support services to permit the child to benefit educationally
7 from that instruction."⁴¹

8 2. Pursuant to IDEA, the District is required to annually review a student's
9 IEP to determine whether the annual goals are being achieved and to revise the IEP as
10 appropriate to address the lack of expected progress, the results of any reevaluations,
11 information about the student provided by parents, the student's anticipated needs and
12 any other unique matters.⁴² These IEP determinations and the placement decisions are
13 made by a group of people, the IEP Team which includes the parents, knowledgeable
14 about the student, about the available evaluations and about the placement options.⁴³
15 One other mandate is that a school district ensure that a child's placement is
16 determined annually, is based on the IEP and is as close as possible to the child's
17 home.⁴⁴

18 3. A petitioner who files for a due process hearing alleging non-compliance
19 with the IDEA must bear the burden of proving that claim.⁴⁵ The standard of proof is
20 "preponderance of the evidence," meaning evidence showing that a particular fact is
21 "more probable than not."⁴⁶ Therefore, Petitioners bear the burden of proving by a
22 preponderance of evidence the allegations and arguments raised.

23 ⁴⁰ *Seattle Sch. Dist. No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9th Cir. 1996) (quoting H.R. Rep. No. 410, 1983
24 U.S.C.C.A.N. 2088, 2106).

⁴¹ *Hendrick Hudson Central Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 204 (1982).

⁴² See 34 C.F.R. § 300.324(b).

⁴³ See 34 C.F.R. §§ 300.116(a) and 300.501(c). While the parties could have worked through additional
26 goals (both academically and communicative) and options to attempt to fashion an IEP calculated to
27 provide meaningful educational benefit, they did not and the Administrative Law Judge is now bound to
28 make determinations within the confines of the IDEA and its purposes and mandates.

⁴⁴ See 34 C.F.R. § 300.116(b).

⁴⁵ *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).

⁴⁶ *Concrete Pipe & Prods. v. Constr. Laborers Pension Trust*, 508 U.S. 602, 622, 113 S. Ct. 2264, 2279
29 (1993) quoting *In re Winship*, 397 U.S. 358, 371-372 (1970); see also *Culpepper v. State*, 187 Ariz. 431,
30 437, 930 P.2d 508, 514 (Ct. App. 1996); *In the Matter of the Appeal in Maricopa County Juvenile Action No.*
J-84984, 138 Ariz. 282, 283, 674 P.2d 836, 837 (1983).

1 4. In this case, the hearing record demonstrated that Champion acknowledged
2 that it had failed to implement Student's IEP. As a result, the Administrative Law Judge
3 concludes that Champion failed to provide FAPE to Student. However, due to Parent's
4 failure to timely apply to re-enroll Student for the academic year 2011-2012, and the
5 resulting automatic withdrawal by Champion, Student had no existing educational
6 placement with Champion at the time of the September 2011 Complaint and the
7 Administrative Law Judge is, therefore, unable to order Champion as a Stay-put location.
8 Further, the Administrative Law Judge has no authority under the IDEA to order
9 Champion to re-enroll Student. Therefore, Parents' request to re-enroll Student must be
10 denied and, thus, Champion cannot be required to reconvene any IEP meeting to
11 determine what special education services are required. Although Champion determined
12 on April 20, 2011, that Student required a one-on-one aide, no aide was able to be hired
13 and provided; however, Special Education Director testified that she and other staff
14 provided some additional one-on-one service time. **Based on the foregoing, with
15 regard to the demonstrated violation of Champion's failure to implement the IEP,
16 the Administrative Law Judge will order compensatory education in an amount
17 calculated to correspond both with the number of hours of specialized services not
18 documented as being provided and with the number of days that Student was
19 suspended in an amount of special education services that would have been
20 provided on those days.**

21 5. Parent did not provide any documentation of, or any estimate of, any
22 number of hours of social skills training or special education specialized instruction that
23 was not provided to Student. Parent provided no specific request for a particular amount
24 of compensatory services.

25 6. Based on Exhibit 6, the Administrative Law Judge concludes that Student
26 was suspended on the following days: May 12, 2011; May 16, 2011; May 17, 2011 and
27 May 20, 2011. Although Champion extended Student's suspension through May 20,
28 2011 pending the Manifestation Determination Review, based on Champion's May 17,
29 2011 e-mail to Parents, Champion arranged to provide Student with educational services
30 on May 19, 2011 and on May 20, 2011. Therefore, the only other day of suspension that

1 may be determined from the documentary record is May 18, 2011, the day of the
2 Manifestation Determination. However, Exhibit 6 documents that Champion, through its
3 Special Education Director, provided special education services to Student on May 18,
4 2011 and May 19, 2011. Additionally, based on Exhibit 6, from April 20, 2011 to May 20,
5 2011, Student's IEP called for the provision of 30 hours of specialized instruction and
6 Special Education Director documented 19 hours of services. **Based on the foregoing,**
7 **the Administrative Law Judge concludes that Student's compensatory special**
8 **education services for the time frame of April 20, 2011 to May 20, 2011 shall amount**
9 **to 16 hours of social skills training/tutoring.**⁴⁷

10 7. The hearing record failed to demonstrate that Champion, or the IEP Team,
11 violated the IDEA when it conducted the FBA on April 29, 2011 at a noticed and
12 scheduled time when Parent(s) did not make themselves available. The hearing record
13 demonstrated that the FBA was put off from the March 23, 2011 meeting; thus, it is
14 demonstrated that there were behavior issues that Student had that the IEP Team,
15 including Parents, were aware had to be discussed. This was clearly noted in the March
16 23, 2011 PWN. The hearing record demonstrated that, on April 20, 2011, members of
17 Student's outside team had indicated that they could not contribute to the FBA process
18 for the reason that they were not familiar with Student in the school arena. The meeting
19 notice for the April 20, 2011 meeting also clearly informed Parent that the purposes of the
20 meeting were threefold: to discuss Student's behavior needs, to review and/or revise
21 Student's IEP, and to conduct the FBA. The April 20, 2011 PWN also clearly informed
22 Parent with regard to the nature of the action needed; the IEP Team had noted that
23 Student's behavior was so severe that he was frequently removed or absent from the
24 general education setting. Additionally, in response to Parent's inquiry for more
25 explanation, on April 26, 2011, Special Education Director provided a thorough
26 explanation of the FBA process. Subsequently, while on April 27, 2011, Parent
27 indicated that she needed time to coordinate her team's availability, she did not state
28 that she herself could not attend the meeting. The Administrative Law Judge concludes

29 ⁴⁷ This determined amount is the Administrative Law Judge's effort to combine the services called for in
30 Student's March 23, 2011 IEP (90 minutes per week of social skills training) and in the April 20, 2011
Addendum (360 minutes per week of special education services, *i.e.*, specialized instruction) over the

1 that the hearing record demonstrates that Champion complied with its obligations under
2 20 USC § 1414 (d)(1)(B)(i) and 34 C.F.R. § 300.322(a) and (d) with regard to parental
3 participation at IEP Team meetings.

4 8. The hearing record failed to demonstrate that Champion violated the IDEA
5 with regard to Student's educational records. The hearing evidence demonstrated that
6 Parent has been provided a copy of Student's educational records, which Champion
7 sent to Parent in September 2011. 34 C.F.R. § 300.613 requires that parents be
8 permitted to inspect and review their child's educational records, and that the school
9 "comply with a request [to inspect and review] without unnecessary delay." A right to
10 "inspect and review" may include a request for copies "if the failure to provide those
11 copies would effectively prevent the parent from exercising the right to inspect and
12 review the records" and the right to "inspect and review" may include a "representative"
13 having the opportunity to inspect and review the records. The hearing record
14 demonstrated that there was some delay in the case manager being able to review
15 records, and that this was done because Respondent was unable to confirm that Parent
16 had authorized that person and was done in order to protect Student's privacy but not
17 to deprive any authorized person from access or review of Student's records. Parent's
18 allegations of a restraint record, that should have been completed but was or was not
19 completed, was not documented. Therefore, based on the foregoing, the
20 Administrative Law Judge concludes that Parents have not demonstrated a violation of
21 34 C.F.R. § 300.613.

22 9. For the reasons stated herein, the Administrative Law Judge concludes
23 that Petitioners' Complaint is partially granted and is partially denied. The
24 Administrative Law Judge further concludes that, other than the specific tutoring remedy
25 that is set forth in Conclusion of Law No. 6 above, Petitioners are not entitled to any
26 other of the remedies sought in the Complaint.

27 **ORDER**

28 Based on the findings and conclusions above,

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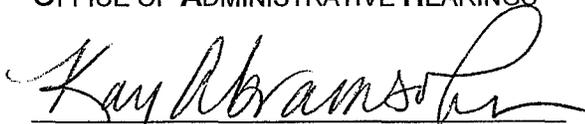
period of April 20, 2011 to May 20, 2011 (the end of the school year).

1 IT IS ORDERED that Petitioners' Complaint is granted in part and Champion is
2 ordered to provide 16 hours of social skills training/tutoring for Student. Because
3 Student is no longer a student at Champion and because the Administrative Law Judge
4 has no authority under the IDEA to order that Student be re-enrolled at Champion,
5 Champion is ordered to provide this compensatory education to Student through an
6 outside provider.

7 IT IS FURTHER ORDERED that Petitioners' Complaint is otherwise denied and no
8 other remedy is granted herein.

9 ORDERED this 31st day of January, 2012.

10 OFFICE OF ADMINISTRATIVE HEARINGS

11 

12 Kay A. Abramsohn
13 Administrative Law Judge

14
15 **RIGHT TO SEEK JUDICIAL REVIEW**

16 Pursuant to 20 U.S.C. § 1415(i) and A.R.S. § 15-766(E)(3), this
17 Decision and/or Order is the final decision at the administrative level.
18 Furthermore, any party aggrieved by the findings and decisions made
19 herein has the right to bring a civil action, with respect to the complaint
20 presented, in any State court of competent jurisdiction or in a district court
21 of the United States. While the federal law sets forth a time frame for an
22 action for judicial review of a Decision, the federal law also allows that a
23 State may have a different time frame.

24 *Pursuant to Arizona rule A.A.C. R7-2-405(H)(8), any appeal of a*
25 *Hearing Officer's decision must be filed within 35 calendar days after*
26 *receipt of the Hearing Officer's decision.*⁴⁸

27
28 ⁴⁸ A.A.C. R7-2-405, Due Process Standards Relating to Special Education, was amended and, as
29 amended, was adopted by the State Board of Education on January 26, 2006 for purposes of comporting
30 Arizona's due process hearing rules with IDEA 2004. Those rules contained a new provision regarding an
appeal time frame. Those amendments have been published, and the Code updated, by the Arizona
Secretary of State in A.A.C. Supp. 09-1.

Copies distributed or e-mailed this 31st day of January, 2012, to:

[Redacted]

Petitioner/Parents
[Redacted]

Deanna Rader
Gordon & Rees LLP
111 W Monroe St., Ste 1600
Phoenix, AZ 85003
Counsel for Respondent
drader@gordonrees.com

Arizona Department of Education
Exceptional Student Services
ATTN: Kacey Gregson, Dispute Resolution
1535 West Jefferson Street
Phoenix, AZ 85007

By Kay Abramson

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