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| **Before The**  **State Of Wisconsin**  **DIVISION OF HEARINGS AND APPEALS** |

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| In the Matter of [Student]  v.  [School District] | **DECISION**  DHA Case No. DPI-16-0027  DPI Case No. LEA-16-0015 |

The Parties to this proceeding are:

[Student]

[School District]

PROCEDURAL HISTORY

On October 31, 2016, the Department of Public Instruction (DPI) received a request for a due process hearing under Wis. Stats. Chapter 115 and the federal Individuals with Disabilities Education Act (IDEA) from [Parent] (the “Parent”) and [Parent] (the “Parents”) on behalf of [the Student] (the “Student”) against the [School District] (the “District”). DPI referred the matter to this Division for hearing.

The due process hearing was held on January 12, 2017 and on February 22 and 23, 2017. The decision is due by April 12, 2017.

ISSUES

1. From January to May 2016, did the District fail to provide the Student with a free, appropriate public education by not offering a math class appropriate to meet his individual needs and by not paying the costs of the Student taking a needs-appropriate math class at the University of Wisconsin-[XXXXX]?
2. During the 2015-2016 school year, did the District fail to provide the Student with a free, appropriate public education by not implementing provisions of his individualized education program related to:
3. informing all of the Student’s teachers about his IEP and their duties pursuant to his IEP;
4. working with the Student on skills to organize his homework and paperwork and turn in assignments by deadlines;
5. requiring the Student to use email to communicate study strategies three days before quizzes and tests;
6. requiring the Student to program reminders regarding appointments and late homework into his cell phone or other electronic device;
7. verifying the accuracy of the Student’s self-reporting by checking his grades and missing assignments on the school intranet;
8. consulting with teachers to determine if the Student’s grades were lower than expected due to incomplete rubrics;
9. consulting with teachers about working with the Student on study strategies;
10. tracking the Student’s late, partial or missing assignments in order to accurately report his progress on goal #1 (assignments should be 100% on time and 100% complete);
11. instructing and requiring the Student to make progress on transition goal #2 (identify three career areas that satisfy his interest areas and skill sets); and,
12. coaching the Student to explore college entry requirements himself, per his transition goal, rather than providing the information to him.

FINDINGS OF FACT

1. In 2012, an IEP team at the [resident school district] identified the Student (d.o.b. XX/XX/XX) as a child with a traumatic brain injury (TBI) disability who was eligible to receive special education and related services. (Ex. 1, p. 7) Prior to the Student’s head injury in December 2010, the Student had been identified as a gifted and talented student in 2008 with standardized test scores in the 96th percentile for reading and math. (Ex. 1 and Ex. 2, p. 20)
2. The Student and his Parents are residents of the [XXXXX] District. For the 2015-2016 school year, the Parents applied to the [XXXXX] and [XXXXX] Districts for the Student to attend school in one of those districts, pursuant to Wisconsin’s open enrollment statute. The Student began the 2015-2016 school year attending high school in the [XXXXX], and that district developed an individualized education plan (IEP) for the Student. After the first week of school, the Parents contacted the [District] about the Student transferring attendance from [XXXXX]. The [District] accepted the Student under the open enrollment statute, and the Student began attending the [District] High School as a junior on September 9 or 10, 2015. (Tr. 19)
3. When the Student transferred into the District in September 2015, the District adopted the Student’s IEP that had been developed by the [XXXXX] in August 2015. (Ex. 2; Tr. 26)
4. The Student’s IEP provided that the Student would participate full-time with non-disabled peers in regular education classes and would receive special education services for 15 minutes once per week from special education staff. The special education services were described as academic self-management and focused on “teaching [Student] study skills and following up with organization and prioritization.” (Ex.2, p. 27)
5. The Student’s IEP also provided that the Student would receive the following supplementary aids and services:

(a) Double time on math assessment(s);

(b) May use personal cell phone for organizational purposes;

(c) Pair written directions and information with verbal cues to support awareness and memory. Repetition of cues if [Student] does not respond;

(d) Checks and reminders for understanding of instructions, task requirements, due dates, study strategies, and assistance breaking down long-term assignments/projects into components with due dates – to be provided by regular education staff 10 minutes three times per week;

(e) For situations where [Student] missed a component of the requirements due to faulty executive functioning, extended timeline for assignment completion or redoing assignment(s); and,

(f) Must follow class policy to qualify for retake of summative assessments, may retake assessments for replacement grade.

(Id. at 28)

1. The Student’s IEP contained two annual goals. The first goal stated that the Student “will break down assignments and organize his work so that he is able to turn in 100% of summative and formative assignments on time.” The IEP indicated that the procedures for measuring the Student’s progress toward this goal would be review of student progress and grades and discussion with teachers and the Student. The first goal was supported by five short-term objectives, as follows:

Objective #1: [Student] will use an organizational system of his choice and share it with his case manager at least one time a week;

Objective #2: [Student] will independently use a study skill strategy and he will communicate to his case manger *[sic]* by email to study for all test *[sic]* at least three days before the summative assessments;

Objective #3: [Student] will independently review summative assignment requirements/rubrics by an email that he sends to his case manager at least three days before they are due;

Objective #4: [Student] will independently complete a check list of task *[sic]* to be completed for each assignment and check them off as they are completed daily;

Objective #5: [Student] will independently set a reminder on his personal cell phone for nightly actives *[sic]* that he has to complete on a daily basis.

(Id. at 22)

1. The second annual goal in the IEP was that the Student “will research at least three career opportunities of his interests by the end of the IEP.” This goal was supported by three objectives for the Student: 1) explore at least three careers and evaluate how they meet both his interests and his skill sets; 2) explore the entry requirements and career and educational path for the careers he identified; and, 3) identify at least three post-secondary schools which have programs in his area of interest and identify admission requirements. (Id. at 22-23)
2. The Student’s special education teacher/case manager provided the Student’s regular education teachers with an “IEP At-a-Glance” that informed the teachers of the accommodations and modifications in the Student’s IEP that the teachers were responsible for implementing. (Ex. 12; Tr. 99-101, 177)
3. The special education teacher met with the Student 15 minutes per week to work on academic self-management, including: checking the Student’s planner to make sure he had recorded his assignments; reviewing and discussing the Student’s study plans for upcoming tests, assignments and projects; working with him on strategies and study skills to help him turn in assignments on time; and discussing and checking his grades. (Tr. 112, 175-176)
4. The special education teacher did a weekly check of the Student’s grades on [XXXXX], the District’s electronic grade book system. By doing weekly checks, she could see if the Student had missing assignments. If the Student had missing assignments, she contacted his regular education teachers to check on the status of the assignments and see if she could provide assistance. (Tr. 178-180, 223) The Student did not turn 100% of his assignments in on time. (Tr. 181)
5. The Student’s organizational system of choice was a paper planner, which the special education teacher reviewed with him each week. She requested that the Student send her emails about his study strategies at least three days prior to tests and to program reminders regarding activities and assignments into his cell phone. When he did not do so, she asked the Student to write reminders to himself in his planner and continued to discuss these issues and provide prompts to him. She also had the Student add these tasks to his checklist of items to complete, but she could not force him to do these tasks independently. (Tr. 182-183)
6. The special education teacher prepared progress reports for the Student for each trimester. (Ex. 9; Tr. 189)
7. The special education teacher worked with the Student on the second goal in his IEP and discussed his career interests. The Student already had career ideas in mind, including engineering, and specifically sound engineering. They also discussed colleges that the Student was interested in, and the teacher printed out entrance requirements for those colleges and provided them to the Student to review and look into further. (Tr. 184-187)
8. The Student’s IEP did not contain provisions that required the special education teacher (or other staff) to: verify the accuracy of the Student’s self-reporting of missing and completed assignments by checking his grades and missing assignments on the school intranet; consult with teachers to determine if the Student’s grades were lower than expected due to incomplete rubrics; or consult with teachers about working with the Student on study strategies. (Ex. 2)
9. For the 2015-2016 school year, the District implemented a new math curriculum at the high school called College Preparatory Math (CPM). (Tr. 330-331, 615) The CPM curriculum is not a traditional teaching methodology and utilizes little direct instruction where the teacher provides math instruction to the students prior to them working to solve problems. Instead, the CPM methodology generally involves students initially using deductive reasoning, but also inductive reasoning, to work on math problems with their peers and then receive feedback, assistance or redirection from the math teacher, as well as their peers, as they work to figure out solutions to math problems. (Tr. 329-330, 353) Many other school districts in the surrounding area also use the CPM curriculum. (Tr. 675)
10. During the first trimester of the 2015-2016 school year, the Student was enrolled in a pre-calculus math class that utilized the CPM methodology. There were five students in the class. (Tr. 327, 342)
11. On September 23, 2015, the Parent sent the Student’s math teacher an email in which the Parent asked about the teaching methodology used in CPM and informed the teacher that, because of his TBI, the Student has some problems with organization and deductive reasoning but does well with inductive reasoning (grasping information that is told to him directly). (Ex. 15, pp. 165-166)
12. At a parent-teacher conference in October 2015, the Parent learned that the Student’s current grade in pre-calculus was a D. (Ex. 27) During the parent-teacher conference, the Parent and the math teacher discussed concerns about how the Student was doing in math and gaps in the Student’s algebra skills from the prior school year when he attended the [XXXXX]. (Tr. 337-338) Following that conference, the math teacher began meeting with the Student a couple times per week to assist the Student in getting caught up with homework, providing direct instruction if needed and helping organize his missing assignments because he had problems turning in his homework assignments. (Tr. 333-336)
13. The math teacher also began working with the Student as his coach for [XXXXX], a free on-line program that provides direct instruction in math, which the Student used to supplement the CPM curriculum and to assist him in the area of algebra. (Tr. 336-337)
14. The Student received a C+ grade in pre-calculus for the first trimester. His other first trimester grades were: A in introduction to engineering; B+ in literature; A in band; and A in history. (Ex. 8)
15. The Parent was concerned that, without receiving a grade of B or higher for two trimesters in pre-calculus, the Student would not meet the prerequisite requirements to be eligible to enroll in calculus his senior year. In response to the Parent’s concerns, the math teacher reassured the Parent that pre-calculus grades were not the only measure she used when considering a student for calculus and that, in the past, she had worked with other students to make a plan and set goals so that students’ areas of weakness could be improved upon to render them eligible to take calculus. (Ex. 15, pp. 230-231)
16. On December 2, 2015, shortly after the end of the first trimester, the District convened an IEP team meeting to address concerns raised by the Parent related to the Student’s math instruction. (Tr. 40-41) The Parent, the Student, the math teacher, the special education teacher/case manager and the District’s special education director attended the IEP team meeting. (Tr. 45)
17. The discussion at the December 2 IEP meeting focused on two topics: 1) changes to the IEP goals proposed by the Student’s special education teacher/case manager so that she could provide more services to the Student in the area of study skills and organizational/executive functioning skills; and, 2) providing more math instruction services to the Student. (Ex. 4; Tr. 44-45, 195) The Parent did not agree with the proposed changes to the Student’s annual goals or to increased services provided by the special education teacher. (Tr. 45-46, 196-196) The meeting of the IEP team ended after approximately 40 to 45 minutes when the special education teacher became upset and left because of comments directed towards her by the Parent. The Parent and the special education director continued to meet for another hour and discussed possible changes to the IEP. (Ex. 4; Tr. 51-55)
18. The Parents emailed the IEP team later on December 2, 2015 and stated that they did not agree to any of the proposed revisions to the Student’s IEP. (Ex. 15, p. 232, 241)
19. By email on December 7, 2015, the Parent requested that the District schedule another IEP team meeting as soon as possible to revise the Student’s IEP to change it to a “consultation” IEP. The Parent also asked that the math teacher continue to monitor the Student’s [on-line] assignments and requested that the special education teacher stop meeting with the Student until after the next IEP team meeting. (Id. at 247)
20. The next IEP team meeting was scheduled for December 16, 2015, but the Parents asked to have it rescheduled to a later date after the holidays because their advocate was not available. (Id. at 252)
21. The Parent met with the high school principal and the special education director on December 18, 2015 to discuss a distance-learning math class option for the Student that was being used by some smaller school districts in the area that did not have pre-calculus teachers on staff. (Tr. 62) It was not an IEP team meeting. The special education director and the principal informed the Parent that, because the high school had a pre-calculus teacher on staff who could meet the Student’s educational math needs, there was no need to set up a distance-learning math program for the Student. (Tr. 63, 618)
22. During the beginning of the second trimester, from December 2016 until the Student left her math class in January 2017, the math teacher continued to provide additional support services and accommodations to the Student in math. (Tr. 262-270)
23. The rescheduled IEP team meeting was held on January 7, 2016. The special education director provided a draft IEP to the Parents prior to the meeting. (Ex. 5; Tr. 58, 64-65) The Parents, the parent advocate, the high school principal, the special education director, the special education teacher/case manager, the math teacher, the school psychologist and the special education director from the [XXXXX] (the Student’s resident district) attended the IEP meeting. (Tr. 66)
24. The primary focus of discussion at the January 7 IEP team meeting was the Student’s math instruction. The Parents requested that a math goal be added to the IEP. (Ex. 20; Tr. 67-68, 204) The Parents also requested that the Student’s IEP be changed to a “consultation” IEP in which the only special education services provided to the Student would be meeting with a special education teacher approximately once per trimester. (Ex. 15, p. 254; Tr. 68-69) The IEP team also discussed the Student’s goals related to study skills and executive functioning and some of the scores on the Student’s prior special education evaluation. The District proposed that the Student’s special education services be increased to 60 minutes per week (20 minutes three times per week) to allow more time for the special education teacher to work on academic coaching with the Student so that he could become more independent in his study skills in preparation for college. (Tr. 203)
25. The IEP team did not reach consensus regarding revisions to the Student’s IEP at the January 7 IEP. The Parent stated that she wanted the IEP meeting to end and that she would be requesting a facilitated IEP meeting. Before the Parents left, the special education director asked each of the other team members their opinion about the revisions proposed to the IEP by the District. (Ex. 15, p. 276) As the local education agency representative at the IEP meeting, the special education director then informed the Parents that, in 15 days, the District would be implementing a revised IEP with increased special education services as had been discussed at the IEP meeting. (Tr. 75-76)
26. At the January 7 IEP meeting, the Parents did not inform the District that they were considering or would be enrolling the Student in a math class at the University of Wisconsin-[XXXXX]. At the January 7 IEP meeting, the Parents did not ask the District to place the Student in a math class at UW-[XXXXX] and did not request that the District pay for the cost of the Student taking a math class at UW-[XXXXX]Madison. (Tr. 87)
27. On January 13, 2016, the Parent met with the high school principal and informed him that the Parents wanted to enroll the Student in a math class at UW-[XXXXX] for spring semester 2016 in lieu of him continuing in the pre-calculus class in the District. Although the principal did not actually believe or agree that the Student had exhausted “all available high school courses in academic subject area first,” as stated on the form, he signed the enrollment form to allow the Student to enroll in math 114 at UW-[XXXXX]. (Ex. 41, Tr. 677-678) The Parent did not request that the District pay for the cost of the UW-[XXXXX] math class and indicated to the principal that the Parents would pay for the cost of the class. (Tr. 619-620)
28. The Parents did not provide the District with prior written notice that they were enrolling the Student in a UW-[XXXXX] math class for the remainder of the 2015-2016 school year. (Tr. 87, 620)
29. On January 15, 2016, the special education director provided the Parents with a copy of the revised IEP from the January 7 IEP meeting. (Ex. 7; Ex. 15, p. 275)
30. The revised IEP contained one annual goal: “[Student] will stay current with his class work and prepare for assessments by meeting the following objectives.” Seven objectives related to planning, organization skills and study strategies accompanied the goal. (Ex. 7, p. 59) The revised IEP provided that the Student would receive special education services in the form of academic coaching in the special education resource room for 20 minutes two times per week. (Id. at 60) The revised IEP also set forth several supplemental aids and services to be provided to the Student by regular education teachers in the regular education classes, including double time on all math assessments. (Id. at 62)
31. On January 22, 2016, the special education director was informed by the administrator of the Wisconsin Special Education Mediation System that the Parents had filed a request for a facilitated IEP. (Tr. 287) On that same date, the special education director notified the Parents that the District would hold off on implementing the January 2016 revised IEP to honor the facilitated IEP process and would continue to implement the Student’s IEP from September 2015. (Tr. 286)
32. The District agreed to a facilitated IEP, but the first facilitator withdrew and the Parents cancelled the second facilitated IEP meeting, scheduled for March 23, 2016. The Parents then requested mediation. The District did not agree to mediation. (Tr. 81-83)
33. The District implemented the January 2016 IEP for approximately one week until the Parents filed a due process hearing request and an IDEA complaint with DPI in mid-March 2016, and in accordance with the law’s “stay put” provision, the District then implemented the Student’s September 2015 IEP through the end of the 2015-2016 school year. (Ex. 17, Tr. 83-84)
34. The Student received a grade of B- in the traditionally taught math class at UW-[XXXXX]. (Ex. 8)
35. The Student is no longer attending high school in the District and is attending the [XXXXX], his school district of residence, for the 2016-2017 school year.
36. The Parents requested that the District be ordered to pay them $5,537 to cover the costs of the Student taking math 114 at the UW-[XXXXX]. (Parents’ post-hearing brief, p. 9) In addition, the Parents requested that the District be ordered to pay them $20,250 to cover the cost of 14 months of executive functioning coaching for the Student to compensate for the District allegedly failing to provide executive functioning coaching to the Student, pursuant to the September 2015 IEP, during the 2015-2016 school year. (Id. at 18-19)

DISCUSSION

Burden of Proof

The U.S. Supreme Court has ruled that the burden of proof in an administrative hearing challenging an IEP is on the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). As the complainants in this matter, the burden of proof is on the Parents. The Parents must “cite credible evidence that the choice[s] the school district made cannot be justified.” *Sch. Dist. v. Z.S.*, 184 F.Supp.2d 860, 884 (W.D. Wis. 2001), *aff’d* 295 F.3d 671 (7th Cir. 2002).

Free, Appropriate Public Education and Tuition Reimbursement

The Parents requested reimbursement from the District for the cost of the Student taking a math class at the UW-[XXXXX] on the grounds that the District denied the Student FAPE by not offering him a math class to meet his individual needs.

Under the IDEA, if parents unilaterally place their disabled child in a private school without the consent of the school district, an administrative law judge may require the district to reimburse the parents for the cost of that enrollment if the administrative law judge finds that the district did not make FAPE available to that student … and that the private placement is appropriate. 20 U.S.C. § 1412(a)(10)(C).

Reimbursement for tuition costs may be denied if the parents did not inform the IEP team that they were rejecting the placement proposed by the school district and stating their intent to enroll their child in private school at the most recent IEP meeting prior to removal, or ten days prior to the removal. In addition, the cost of reimbursement may be denied upon a judicial finding of unreasonableness with respect to the actions taken by the parents. 20 U.S.C. § 1412(a)(10)(C)(iii)(I).

The relevant provisions of the IDEA are as follows:

(C) Payment for education of children enrolled in private schools without consent of or referral by the public agency

(i) In general

Subject to subparagraph (A), this subchapter does not require a local educational agency to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility.

(ii) Reimbursement for private school placement

If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

(iii) Limitation on reimbursement

The cost of reimbursement described in clause (ii) may be reduced or denied—

(I) if--

(aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(bb) 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in item (aa);

(II) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in section 1415(b)(3) of this title, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or

(III) upon a judicial finding of unreasonableness with respect to actions taken by the parents.

20 U.S.C. § 1412(a)(10)(C). *See also* Wis. Stats. § 115.791 (1) and (2).

When considering the appropriateness of a tuition reimbursement request by parents, the first question to be addressed is whether the District offered the Student FAPE. The IDEA requires that all children with disabilities are offered FAPE that meets their individual needs. 20 USC § 1400 (d); 34 CFR § 300.1.

In 1982, the United States Supreme Court issued the landmark *Rowley* decision in which the Court ruled that the requirement of FAPE means that a child receives personalized instruction to meet the unique needs of the child, with sufficient support services to enable the child to receive educational benefits. *Board of Educ. v. Rowley*, 458 U.S. 176, 188-89, 207 (1982). The Court very recently issued a new decision that interpreted the IDEA and addressed the *Rowley* standard.

In *Endrew F. v. Douglas Co. Sch. Dist. RE-1,* 117 LRP 9767,580 U.S. \_\_\_ (March 22, 2017), the Court ruled that the IDEA requires a school district to offer an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child’s unique circumstances. The Court noted that a child should have the chance to meet challenging objectives and rejected the 10th Circuit Court’s interpretation of the IDEA that an IEP is appropriate if it allows a child with a disability to make “merely more than *de minimus*” progress. The Court also declined to adopt the parents’ argument that FAPE is “an education that aims to provide a child with a disability opportunities to achieve academic success, attain self-sufficiency, and contribute to society that are substantially equal to the opportunities afforded children without disabilities.”

In this case, the Parents alleged that the District denied the Student FAPE by refusing to revise his IEP at the January 7, 2016 IEP meeting to include a pre-calculus math course taught using a traditional methodology through the verbal presentation of material. (Parents’ post-hearing brief, pp. 2-3)[[1]](#footnote-1)

Courts have generally held that school districts have the discretion to determine which methodology will be used to educate a child with a disability and that, as long as the IEP produces progress, the IEP does not need to use a specific instructional method or technique in order to provide FAPE. *See Lachman v. Illinois State Bd. of Educ.,* 441 IDELR 156 (7th Cir. 1988), *cert. denied*, 111 LRP 7412, 488 U.S. 925 (1988); *W.S. v. City Sch. Dist. of the City of New York*, 67 IDELR 242 (S.D.N.Y. 2016); *See also Forest Grove Sch. Dist. v. Student*, 116 LRP 50688 (9th Cir. 2016, *unpublished).*

The Student was receiving math instruction in the regular education classroom. His September 2015 IEP, that was developed by the [XXXXX] and adopted by the District when the Student transferred, did not include special education services in the area of math, did not include an annual goal or objectives related specifically to math and did not specify an instructional methodology to be used in teaching the Student math.

However, when the Student’s grade in pre-calculus fell to a D in October 2015, the math teacher began providing supplemental support and accommodations to the Student, including working with him on [on-line] assignments and providing assistance and instruction to him on assignments outside of class. The Student ended up earning a grade of C+ in pre-calculus for the first trimester. The Parents viewed this grade in pre-calculus as unacceptably low for the Student because “he is a gifted student with no deficits in math.” (Tr. 780-781) The math teacher testified that she believed the Student made meaningful educational progress in the pre-calculus class and that other regular education students in pre-calculus also found certain areas or concepts challenging. (Tr. 341, 350-351) The math teacher reassured the Parent that pre-calculus grades were solely determinative in whether students were allowed to take calculus and that she worked with students to help them improve in areas of weakness in order for them to qualify for calculus as seniors.

At the January 2016 IEP meeting, the Parents requested that a math goal be added to the Student’s IEP, although based upon their arguments, it does not appear that they actually wanted the IEP to have an annual goal that provided for the Student to receive special education services in math. In fact, they disagreed with the District’s proposal that the Student receive more special education services. Rather, the Parents wanted the Student’s IEP to specify that regular education math would be taught to the Student using a traditional methodology.

It is within the District’s discretion to determine what instructional methodology it will utilize in educating students in special education and certainly in regular education classes. The evidence on the record shows that the Student did make appropriate educational progress in the CPM pre-calculus class during the first trimester, at least after the math teacher began providing additional support and instruction to him outside of the classroom. The regular education math teacher continued to provide additional support and accommodations to the Student during the beginning of the second trimester, until he left her class and enrolled in math at UW-[XXXXX]. (Tr. 262-270)

Pre-calculus was challenging for the Student, as it was for other regular education students who were in that quite advanced class, and it provided him with meaningful educational benefit appropriate for his unique circumstances. Based upon the credible evidence on the record, I find that, from January to May 2016, the District provided FAPE to the Student by offering him math instruction appropriate to meet his individual needs.

Even if the Parents had been able to show that the District did not offer FAPE to the Student from January to May 2016, they would not be entitled to reimbursement for the cost of the UW-[XXXXX] math class because they did not provide the District with proper notice that they were enrolling the Student at UW-[XXXXX] and they acted unreasonably. At the January 2016 IEP meeting, it was apparent that the Parents did not agree with the District’s proposed IEP. By stopping the meeting and stating that she would be requesting a facilitated IEP, the Parent essentially provided the District with notice that she disagreed with the proposed IEP and placement.

However, the Parents did not inform the District at the IEP meeting that they were considering or planning to enroll the Student in a math class at UW-[XXXXX] in lieu of the District’s pre-calculus class for the remainder of the school year. Instead, the Parents unilaterally enrolled the Student in a math class at UW-[XXXXX]. Presenting the enrollment form to the high school principal for a signature did not constitute proper notice to the District under the IDEA and Wisconsin special education statutes. They unilaterally enrolled the Student at the UW-Madison despite having requested a facilitated IEP meeting, which the District had agreed to participate in while holding off on implementing the revised IEP.

Pursuant to the IDEA and Wisconsin statutes, I find that the Parents are not entitled to reimbursement from the District for the cost of the Student taking a math class at UW-[XXXXX].

Failure to Implement IEP Provisions

The Parents also alleged that the District failed to provide the Student FAPE during the 2015-2016 school year by failing to implement several provisions of his IEP.

The IDEA has not been interpreted by the courts to require perfect implementation of IEP provisions. *See Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811 (9th Cir. 2007); *Melissa S. v. Sch. Dist. of Pittsburg*, 183 F. App’x 184, 187 (3rd Cir. 2006). Rather, courts have held that the IDEA is violated if there is evidence that a school district failed to implement substantial provisions of an IEP or “an essential element of the IEP that was necessary for the child to receive an educational benefit.” *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022, 1027 n. 3 (8th Cir. 2003); *see also Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 348-349 (5th Cir. 2000).

First, the Parents alleged that the special education teacher failed to inform all of the Student’s teachers about the Student’s IEP and their responsibilities pursuant to the IEP. The credible evidence on the record showed that the special education teacher provided the Student’s regular education teachers with the “IEP At-a-Glance” that informed the teachers of the accommodations and modifications in the Student’s IEP that the teachers were responsible for implementing. The Student’s complete IEP was available for the teachers to review, and the special education teacher was not legally required to provide the regular education teachers will complete copies of the Student’s IEP. The Parents failed to meet their burden of proving that the District failed to implement this IEP provision.

The Parents also failed to meet their burden of proving that the special education teacher failed to work with the Student on skills to organize his homework and paperwork and turn in assignments by deadlines. Although the IEP only provided for the special education teacher to meet 15 minutes per week with the Student, she credibly testified that she used that time to check the Student’s planner to make sure he had recorded his assignments, to discuss the Student’s study plans for upcoming tests, assignments and projects, and to work with him on strategies and study skills to help him turn in assignments on time.

The Parents also alleged that the District failed to provide FAPE to the Student by not requiring him to use email to communicate study strategies three days before tests and quizzes and by not requiring him to program reminders regarding appointments and late homework into his cell phone. The special education teacher testified that she discussed these objectives with the Student repeatedly and prodded him to write reminders to himself in his planner to take these actions. She stated that she did not have sufficient time in 15 minutes per week to have him enter the reminders in his phone during their sessions together. The special education teacher admitted that the Student did not meet these objectives in his IEP.

The IEP did not state that the District had to require the Student to take these actions, presumably because it would be unreasonable for the District to try to require or force the Student to meet the objectives in his IEP. The evidence shows that the special education teacher made reasonable efforts to help the Student meet these two objectives, but he did not do so. The Parents did not present evidence showing that the Student’s failure to meet these two objectives resulted in him failing to receive meaningful educational benefit. In fact, the lowest grade that the Student received during the 2015-2016 school year was a C+, and the special education teacher and the special education director testified that, in their opinion as educators, the Student received educational benefit and made progress. (Tr. 108-109, 190-191, 206-207)

The Parents further argued that the District failed to provide FAPE by not doing the following: verifying the accuracy of the Student’s self-reporting of missing and completed assignments by checking his grades and missing assignments on the school intranet; consulting with teachers to determine if the Student’s grades were lower than expected due to incomplete rubrics; or consulting with teachers about working with the Student on study strategies. However, a review of the Student’s IEP shows that it did not contain such requirements.

Next, the Parents alleged that the special education teacher did not track the Student’s late, partial or missing assignments in order to accurately report his progress on goal #1. However, the special education did check the District’s electronic grade book system weekly to see if the Student had missing assignments. If the Student had missing assignments, the special education teacher contacted his regular education teachers to check on the status of the assignments.

In addition, she prepared progress reports for each trimester. The progress reports may have had some minor errors regarding the number of missing assignments the Student had over the course of a trimester, but there is no evidence or reasonable argument on the record showing that the progress reports were so inaccurate that they resulted in a denial of FAPE to the Student. The Student did not turn in 100% of his assignments on time in accordance with the first annual goal, but the evidence shows that the special education teacher worked with the Student to help him make progress towards this goal. Moreover, the special education teacher proposed revising the Student’s IEP during the 2015-2016 school year to provide more time for her to work with the Student on this type of skill, but the Parents refused to agree to such revisions.

Lastly, the Parents alleged that the special education teacher failed to instruct and require the Student to make progress on the transition goal in his IEP and did not coach him to explore college entry requirements himself, rather than providing the information to him. Again, the IEP did not and could not reasonably mandate that the District require the Student to make progress on his transition goal. Nevertheless, the evidence on the record showed that the special education teacher did work with the Student on his transition goal. The Student had career ideas in mind when the teacher discussed careers with him; which did not mean that the Student did not make progress towards the goal. The special education teacher also discussed post-secondary school with the Student. The IEP did not require that the Student print out entry requirements; the fact that the teacher printed out the material and provided it to the Student did not mean that the Student did not explore the admission requirements as stated in the objective.

The Parents were unable to meet their burden of showing that the District denied the Student FAPE or with meaningful educational benefit pursuant to his IEP by not implementing various provisions of the IEP during the 2015-2016 school year. The Parents are not entitled to an award of compensatory education services for the Student.

All of the arguments presented by the parties were carefully considered by the undersigned administrative law judge. Any arguments and evidence on the record that were not specifically mentioned were determined to not merit comment in the decision.

CONCLUSIONS OF LAW

1. From January to May 2016, the District provided a free, appropriate public education to the Student by offering him math instruction appropriate to meet his unique, individual needs.
2. The Parents are not entitled to District reimbursement for the cost of the Student taking a math course at the University of Wisconsin-[XXXXX] from January to May 2016.
3. The School District did not deny the Student a free, appropriate public education during the 2015-2016 school year by failing to implement various provisions of his IEP.

ORDER

It is hereby ordered that the due process hearing request in this matter is dismissed.

Dated at Madison, Wisconsin on April 12, 2017.

STATE OF WISCONSIN

DIVISION OF HEARINGS AND APPEALS

5005 University Avenue, Suite 201

Madison, Wisconsin 53705-5400

Telephone: (608) 266-7709

FAX: (608) 264-9885

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Sally Pederson

Administrative Law Judge

APPEAL RIGHTS FOLLOW ON NEXT PAGE

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| **NOTICE OF APPEAL RIGHTS** |
| APPEAL TO COURT: Within 45 days after the decision of the administrative law judge has been issued, either party may appeal the decision to the circuit court for the county in which the child resides under §115.80(7), Wis. Stats., or to federal district court pursuant to U.S.C. §1415 and 34 C.F.R. §300.512.  A copy of the appeal should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.  **The Division will prepare and file the record with the court only upon receipt of a copy of the appeal. It is the responsibility of the appealing party to send a copy of the appeal to the Division of Hearings and Appeals. The record will be filed with the court within 30 days of the date the Division of Hearings and Appeals receives the appeal.** |

1. When addressing the first issue related to the math class in their post-hearing brief, the Parents also alleged that the District violated the IDEA and 34 CFR § 300.321(a)(5) by not including an individual on the Student’s IEP team who could interpret the instructional implications of evaluation results, arguing that the District’s school psychologist was unable to do so. The Parents’ argument was not persuasive; moreover, the Parents did not set forth this allegation in their request for a due process hearing. Under Wis. Stats. § 115.80 (4), the party requesting the hearing may not raise issues at the hearing that were not raised in the hearing request unless the other party agrees. Because this allegation was not properly raised in the hearing notice, and the District did not agree to add it as an issue at the hearing, it will not be addressed in this decision. [↑](#footnote-ref-1)