STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

[redacted],	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 11-0410E
	)	
BROWARD COUNTY SCHOOL BOARD,	)	
	)	
Respondent.	)	
_____	)	

FINAL ORDER

Pursuant to notice, a due process hearing was held in this case on February 18, 2011, by video teleconference with connecting sites in Lauderdale Lakes and Tallahassee, Florida, before Errol H. Powell, an Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Brion L. Blackwelder, Esquire
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For Respondent: Barbara J. Myrick, Esquire
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STATEMENT OF THE ISSUE

The issue for determination is whether the Child's unweighted grade point average (GPA) was determined incorrectly resulting in the Child's being denied a free appropriate public education (FAPE).

PRELIMINARY STATEMENT

On January 21, 2011, the School Board received a request for a due process hearing (DPH Request) from the Parent of the Child. The DPH Request was referred to the Division of Administrative Hearings (DOAH) by the School Board on January 24, 2011.

On January 25, 2011, the School Board filed a Motion to Challenge the Sufficiency of the Request for a Due Process Hearing, challenging the sufficiency of the DPH Request. Subsequently, the School Board filed a Motion Regarding the Child's Status as a Party to Request a Due Process Hearing on January 27, 2011, suggesting that the Child should be a full participant in the due process proceedings together with the Child's Parent, who was bringing the action.

On January 31, 2011, a telephone conference was held on the motions, the issues, and setting a date for the due process hearing. During the telephone conference, the School Board's motion regarding the sufficiency of the DPH Request was denied. Additionally, the Parent was provided an opportunity to respond

to the motion regarding the Child's participation in the due process proceedings. Further, the parties agreed that only one issue would be addressed immediately in a due process hearing, and that the due process hearing would be scheduled for February 8, 2011. Related to the agreed upon issue to be immediately heard, the parties discussed a temporary solution pending this Administrative Law Judge's final decision on that issue; the parties agreed to revisit the temporary solution after additional information was gathered.

Telephone conferences were held on February 1 and 2, 2011. During the telephone conferences, the parties agreed that no temporary solution was possible and that the due process hearing should proceed on the one issue, as previously agreed, on February 8, 2011. Further, the parties agreed on the time periods for filing witness and exhibit lists.

Subsequently, the Parent obtained counsel. An Emergency Motion for Continuance was filed by the Parent's counsel, which was granted. The due process hearing was canceled and re-scheduled. The 45-day decision requirement was extended.

On the morning of the due process hearing, the Parent filed a Motion for Temporary relief. At hearing, the motion was denied.

Further, at hearing, the Parent presented the testimony of two witnesses, including the Parent, and entered seven exhibits

(Petitioner's Exhibits numbered 6, 7, 9, 11, 14, 17, and 18) into evidence.[1] The School Board presented the testimony of three witnesses and entered ten exhibits (Respondent's Exhibits numbered 3 through 12) into evidence. The parties entered two exhibits into evidence as joint exhibits (Joint Exhibits numbered 1 and 2, which were originally Respondent's Exhibits numbered 1 and 2).

A transcript of the due process hearing was ordered. At the request of the parties, the time for filing post-hearing submissions was set for less than ten days of the filing of the transcript.

The Transcript, consisting of one volume, was filed on March 4, 2011. The parties' post-hearing submissions were considered in the preparation of this Final Order.

FINDINGS OF FACT

1. The Child is enrolled in the School Board's school system and is completing the senior year of school. The Child will graduate in June 2011.

2. The Child is a gifted student.

3. The Child participates in the School Board's Dual Enrollment program.

4. Dual Enrollment programs are authorized by section 1007.271, Florida Statutes, which includes the definition and eligibility requirements for Dual Enrollment programs.

5. School Board Policy 6000.1, Student Progression Plan, provides, among other things, the Eligibility for College Dual Enrollment. The Eligibility for College Dual Enrollment provides, among other things, that students are required to have a 3.0 unweighted GPA to be eligible for dual enrollment. Further, in order to continue in dual enrollment, students are required to maintain a 3.0 unweighted GPA. Additionally, any exception to the GPA eligibility requirement is required to be set forth in an Inter-institutional Articulation Agreement (Agreement) between the School Board and a postsecondary institution.

6. The School Board has an Agreement with a local college (College). Among other things, the Agreement between the School Board and the College provides that: (a) the School Board must weigh dual enrollment courses the same as advanced placement, International Baccalaureate, and Advanced International Certificate of Education courses when grade point averages are calculated, and alternative grade calculation and weighting systems that discriminate against dual enrollment courses are prohibited[2]; (b) eligibility for dual enrollment includes a 3.0 cumulative unweighted GPA[3]; and (c) eligibility for continuation in dual enrollment includes a 3.0 unweighted GPA in high school academic work and a 2.0 ("C") or better in college-level work.[4]

7. On April 30, 2010, the Child was recommended for admission into the Dual Enrollment program for the 2010 Summer Term, Session 3 at the College. The recommendation was made by the Principal at the Child's high school (High School) and the Guidance Counselor at the High School. The recommendation indicated that the Child's unweighted GPA was 3.0.

8. On May 4, 2010, the Child made application to the College for Dual Enrollment during the 2010 Summer Term 3, which was May through June 2010 at the College. In addition to being signed by the Child, the application was signed by the Parent.

9. The Child attended Summer Term 3 at the College.

10. On June 17, 2010, the Child was recommended for admission into the Dual Enrollment program for the 2010 Fall Term, Session 1 at the College. The recommendation was made by the High School's Principal and the Guidance Counselor. The recommendation indicated that the Child's unweighted GPA was 3.0.

11. On June 24, 2010, the Child made application to the College for Dual Enrollment during the 2010 Fall Term 1, which was August through December 2010 at the College. In addition to being signed by the Child, the application was signed by the Parent.

12. The recommendation for admission into the Dual Enrollment program for the 2010 Fall Term 1 was made before the

College had transferred the Child's grades to the High School for the 2010 Summer Term 3.

13. On or about August 23, 2010, the 2010-2011 school year began at the High School. On or about August 26, 2010, which was also after the beginning of the College's 2010 Fall Semester, the College transferred the Child's grades to the High School for the 2010 Fall Term 1 at the College. One of the grades that the Child received at the College was a "C."

14. The grades from the College were automatically transferred to the School Board's ETS.

15. The ETS is the School Board's Technology Department that manages the database of all students' records. The ETS loads the data received onto the appropriate TERMs panels. A grade received by the ETS is not changed. The ETS automatically recalculates a student's GPA at the time the grade is loaded into the system.

16. When the Child's 2010 Summer Term 3 grades were received by ETS, the data was loaded into the system without changes, and the Child's GPA was automatically recalculated. The "C" reduced the Child's unweighted GPA from 3.0 to 2.96.

17. The Child's unweighted GPA fell below 3.0, and this reduction occurred only approximately three days into the school year for both the High School and the College. Regardless, the High School permitted the Child to continue in the Dual

Enrollment program at the College because, at the time of the Child's registration, the Child's unweighted GPA was 3.0 and because classes had already begun at both the High School and the College.

18. In or around late October or November 2010, the Child requested from the High School a recommendation for admission into the Dual Enrollment program for the term beginning January 2011 at the College. The request was denied because the Child's unweighted GPA had fallen below 3.0 to 2.96 due to the Child's receiving a "C" for a course in the 2010 Summer Term 3.

19. By letter dated November 19, 2010, to the Principal, the Parent stated, among other things, that the Child's unweighted GPA had been erroneously calculated. As a result, the Principal, using the Child's high school transcript, calculated the Child's GPA and determined that the unweighted GPA had been correctly calculated.

20. Additionally, the School Board's Guidance Office reviewed the Child's unweighted GPA. The Guidance Office determined that there was no miscalculation of the Child's unweighted GPA.

21. Even though the Principal found no error in the calculation of the Child's unweighted GPA, the Principal informed the Parent that, if the Child's unweighted GPA at the end of first semester of the 2010-2011 school year was 3.0, the

Child would be permitted to re-enroll in the Dual Enrollment program.

22. At the end of the first semester of the 2010-2011 school year, the Child received the following grades at the High School: three "Bs" and one "C." However, the grades received at the College for the 2010 Fall Term 1 (August through December) in the Dual Enrollment program were the following: three "As" and one "F." The ETS recalculated the Child's unweighted GPA, which included the grades received at the College, and determined it to be 2.9167.

23. The Child was not permitted to re-enroll in the Dual Enrollment program.

CONCLUSIONS OF LAW

24. The Division of Administrative Hearings has jurisdiction of these proceedings and the parties thereto pursuant to sections 1001.42(4)(l) and 1003.57(1), Florida Statutes (2010),[5] and Florida Administrative Code Rule 6A-6.03313(7).

25. The general rule is that, absent specific statutory authority, the burden of proof is on the party asserting the affirmative of an issue before an administrative tribunal. See Fla. Dep't. of Transp. v. J.W.C. Co., 396 So. 2d 778, 788 (Fla. 1st DCA 1981). The Parents have the burden of proof in these

proceedings, and the standard of proof is a preponderance of the evidence.

26. Section 1007.271 provides in pertinent part:

> (1) The dual enrollment program is the enrollment of an eligible secondary student or home education student in a postsecondary course creditable toward high school completion and a career certificate or an associate or baccalaureate degree.
>
> (2) For the purpose of this section, an eligible secondary student is a student who is enrolled in a Florida public secondary school . . . .
>
> * * *
>
> (3) The Department of Education shall adopt guidelines designed to achieve comparability across school districts of both student qualifications and teacher qualifications for dual enrollment courses. . . In addition to the common placement examination, student qualifications for enrollment in college credit dual enrollment courses must include a 3.0 unweighted grade point average, and student qualifications for enrollment in career certificate dual enrollment courses must include a 2.0 unweighted grade point average. Exceptions to the required grade point averages may be granted if the educational entities agree and the terms of the agreement are contained within the dual enrollment interinstitutional articulation agreement. Community college boards of trustees may establish additional admissions criteria, which shall be included in the district interinstitutional articulation agreement . . . .
>
> * * *
>
> (5) Each district school board shall inform all secondary students of dual enrollment as

an educational option and mechanism for acceleration. Students shall be informed of eligibility criteria, the option for taking dual enrollment courses beyond the regular school year, and the minimum academic credits required for graduation. . . Alternative grade calculation, weighting systems, or information regarding student education options which discriminates against dual enrollment courses is prohibited.

* * *

(9) The State Board of Education shall adopt rules for any dual enrollment programs involving requirements for high school graduation.

* * *

(13) Students who meet the eligibility requirements of this section and who choose to participate in dual enrollment programs are exempt from the payment of registration, tuition, and laboratory fees.

* * *

(16) Beginning with students entering grade 9 in the 2006-2007 school year, school districts and community colleges must weigh dual enrollment courses the same as advanced placement, International Baccalaureate, and Advanced International Certificate of Education courses when grade point averages are calculated. Alternative grade calculation or weighting systems that discriminate against dual enrollment courses are prohibited.
(emphasis added)

27. Section 1007.235 provides in pertinent part:

(1) District school superintendents and community college presidents shall jointly develop and implement a comprehensive

articulated acceleration program for the students enrolled in their respective school districts and service areas. Within this general responsibility, each superintendent and president shall develop a comprehensive interinstitutional articulation agreement for the school district and community college that serves the school district. . . .

* * *

(2) The district interinstitutional articulation agreement for each school year must be completed before high school registration for the fall term of the following school year. The agreement must include, but is not limited to, the following components:

* * *

(b)1. A delineation of courses and programs available to students eligible to participate in dual enrollment. . . .

* * *

11. A delineation of the process for converting college credit hours earned through dual enrollment and early admission programs to high school credit based on mastery of course outcomes as determined by the Department of Education in accordance with s. 1007.271(6).

12. An identification of the responsibility of the postsecondary educational institution for assigning letter grades for dual enrollment courses and the responsibility of school districts for posting dual enrollment course grades to the high school transcript as assigned by the postsecondary institution awarding the credit.
(emphasis added)

28. Florida Administrative Code Rule 6A-14.064 provides in pertinent part:

> (1) To be eligible to receive college credit through dual enrollment:
>
> (a) Students must meet the grade point average (GPA) requirements, as specified in Section 1007.271, F.S., for the degree or certificate program selected. Procedures for determining exceptions to the GPA requirements on an individual student basis must be noted in the District Interinstitutional Articulation Agreement . . . .
>
> * * *
>
> (d) In order to remain eligible for college credit coursework, students must maintain the high school grade point average required for initial eligibility unless otherwise noted in the District Interinstitutional Articulation Agreement.
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> * * *
>
> (4) The following environmental standards shall apply to college credit dual enrollment:
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> * * *
>
> (b) Dual enrollment courses may not be combined with other high school courses, except in accordance with Section 1007.272, F.S.
>
> (c) A formalized process between the high school counselor and the college must be delineated in the District Interinstitutional Articulation Agreement for informing students and parents or guardians of college course-level

> expectations, including, but not limited to the following:
>
> 1. Any letter grade below a "C" will not count as credit toward satisfaction of the requirements in Rule 6A-10.030, F.A.C.; however, all grades are calculated in a student's GPA and will appear on their college transcript.
>
> 2. All grades, including "W" for withdrawal, become a part of the student's permanent college transcript and may affect subsequent postsecondary admission. (emphasis added)

29. The evidence demonstrates that, upon registration for the Dual Enrollment program in the 2010 Summer Term 3, the Child had a 3.0 unweighted GPA.

30. Additionally, the evidence demonstrates that the Child received a grade of "C" in one of the courses at the College; and that, when the School Board received the grades from the College, the Child's GPA was automatically recalculated. Further, the evidence demonstrates that the grades from the College courses were included in the recalculation; and that the inclusion of the "C" in the recalculation reduced the Child's unweighted GPA from 3.0 to 2.96.

31. Also, the evidence demonstrates that the Child's grades for the College courses taken in the 2010 Fall Term 1 were included in the recalculation of the Child's unweighted GPA and that, such recalculation, resulted in the Child's unweighted GPA being 2.9167.

32. The statutory and rule provisions provide that a 3.0 unweighted GPA is required to be eligible for the Dual Enrollment program; and that exceptions to the required GPA may be made by a school district and postsecondary institution through the Agreement. § 1007.271, Fla. Stat.; Fla. Admin. Code R. 6A-14.064.

33. Pertinent hereto, the Agreement provides that, for continued eligibility in the Dual Enrollment program, a student is required to have a 3.0 unweighted GPA in high school academic work and to earn a 2.0 ("C") or better in college-level work.

34. The evidence demonstrates that the School Board failed to comply with the Agreement in determining the Child's continued eligibility for the Dual Enrollment program. For continued eligibility, in accordance with the Agreement, the School Board should have performed two separate calculations: (a) a recalculation of the Child's unweighted GPA using only the grades that the Child received in the High School's academic courses; and (b) a calculation using only the grades received by the Child in the College's courses.

35. Hence, the evidence demonstrates that the School Board incorrectly calculated the Child's unweighted GPA for continued eligibility in the Dual Enrollment program at the College.

CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that:

1. The School Board miscalculated the Child's unweighted GPA for continued eligibility in the Dual Enrollment program at the College.

2. For continued eligibility in the Dual Enrollment program, in accordance with the Interinstitutional Articulation Agreement between the School Board and the College, the Child was required to have a 3.0 unweighted GPA using only the High School's academic courses and to earn 2.0 or better in the College's courses.

DONE AND ORDERED this 10th day of March, 2011, in Tallahassee, Leon County, Florida.

S

ERROL H. POWELL
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of March, 2011.

ENDNOTES

[1/] The Parent offered Petitioner's Exhibit numbered 19 into evidence but it was rejected.

[2/] Agreement, Art. 4, § 4.01.

[3/] Agreement, Art. 4, § 4.09.

[4/] Agreement, Art. 4, § 4.01.

[5/] Unless indicated otherwise, all future references to the Florida Statutes are to the year 2010.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

This decision is final unless an adversely affected party:

a) brings a civil action, within 30 days after the date of this decision, in the appropriate state circuit court pursuant to Section 1003.57(1)(b), Florida Statutes (2009), and Florida Administrative Code Rule 6A-6.03313(7)(j); or

b) within 30 days after the rendition of this decision, files a notice of appeal with the clerk of the Division of Administrative Hearings, and files a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the appropriate state district court of appeal, in accordance with Section 1003.57(1)(b), Florida Statutes; Section 120.68(2)(a), Florida Statutes; and the Florida Rules of Appellate Procedure.