**#20-071**

***V I R G I N I A:***

# DEPARTMENT OF EDUCATION

# DIVISION OF SPECIAL EDUCATION AND STUDENT SERVICES

***OFFICE OF DISPUTE RESOLUTION AND ADMINISTRATIVE SERVICES***

**In the matter of**

**XXXXXXXXXXXXXX, a minor,**

**By his Parents, XXXXXXXXX AND XXXXXXXXXXX, Petitioners**

**and VDOE Case #: 20-071**

**XXXXXXXXXXXX PUBLIC SCHOOLS, Respondent**

### AMENDED HEARING OFFICER DECISION

### Present for Hearing, July 13, 2020:

**Rhonda J. S. Mitchell, Hearing Officer**

**XXXXXXXXXXX, Parent, Petitioner**

**Kandise Lucas, Advocate for Petitioners**

**Bradford King & Nicole Cheuk, Counsel for XXXXXXXXXXXX Public Schools (XXPS)**

**XXXXXXXXXXXXX, Coordinator, Due Process and Eligibility, XXPS**

**Reginald Frazier, Case Monitor, Virginia Department of Education (VDOE)**

### Present for Hearing, July 14, 2020:

**Rhonda J. S. Mitchell, Hearing Officer**

**XXXXXXXXXXX, Parent, Petitioner**

**Kandise Lucas, Advocate for Petitioners**

**Bradford King & Nicole Cheuk, Counsel for XXPS**

**XXXXXXXXXXXXX, Coordinator, Due Process and Eligibility, XXPS**

**Reginald Frazier, Case Monitor, VDOE**

### Present for Hearing, July 15, 2020:

**Rhonda J. S. Mitchell, Hearing Officer**

**XXXXXXXXXXX, Parent, Petitioner**

**Kandise Lucas, Advocate for Petitioners**

**Bradford King & Nicole Cheuk, Counsel for XXPS**

**XXXXXXXXXXXXX, Coordinator, Due Process and Eligibility, XXPS**

### Present for Hearing, July 16, 2020:

**Rhonda J. S. Mitchell, Hearing Officer**

**XXXXXXXXXXX, Parent, Petitioner**

**Kandise Lucas, Advocate for Petitioners**

**Bradford King & Nicole Cheuk, Counsel for XXPS**

**XXXXXXXXXXXXX, Coordinator, Due Process and Eligibility, XXPS**

### Present for Hearing, July 17, 2020:

**Rhonda J. S. Mitchell, Hearing Officer**

**XXXXXXXXXXX, Parent, Petitioner**

**Kandise Lucas, Advocate for Petitioners**

**Bradford King & Nicole Cheuk, Counsel for XXPS**

**XXXXXXXXXXXXX, Coordinator, Due Process and Eligibility, XXPS**

**Hearing Location:**

**Conducted Virtually - Blackboard Platform**

**Court Reporter:**

**XXXXXXX**

### INTRODUCTION and PROCEDURAL HISTORY

This matter came to be heard upon the filing of a *pro se* request for due process hearing (complaint) by XX and XXXXXXXXXXX (parents or petitioners), on behalf of their minor son, XXXXXXXXXXXXXX (XXXXXXX, student or child) pursuant to the Individuals with Disabilities Education Act (IDEA). The complaint was filed on May 1, 2020. Although initially unrepresented, the parents later retained the services of Advocate Kandise Lucas of Advocates for Equity in Schools. XXXXXXXXXXXX Public Schools (XXPS) was represented by Attorneys Bradford King and Nicole Cheuk of the Sands Anderson Law Firm.

The Hearing Officer (HO) was formally appointed by letter dated May 4, 2020 from XXXXXXXXXXXXX, Coordinator, Due Process and Eligibility, XXPS, XXXX, Virginia. The HO formally accepted the appointment by letter dated May 5, 2020. Reginald Frazier was appointed by the Virginia Department of Education as case monitor on May 5, 2020.

The five day hearing was virtually conducted July 13 thru 17, 2020. Prior to the hearing, the HO rendered timely notices for prehearing conferences; conducted five prehearing conferences; sent timely notice of the hearing; issued a timely prehearing report; entered three decisions on motions; entered five prehearing orders; and provided a hearing agenda. These documents have been placed on record and filed with the proceedings in this case.

### Prehearing Order Summaries:

The Hearing Officer entered five prehearing orders dated May 9, May 27, June 10, June 24 and July 10, 2020. Via these prehearing orders, the HO memorialized the following administrative matters:

* There were no objections to the appointed Hearing Officer.
* The hearing will be open to the public. This does not include camera coverage or live streaming. There will be no recording devices permitted (either audio or visual), other than those required by the court reporter. Witnesses, except the parent(s) and XXXXXXXXXXXXX, XXPS representative, will not be permitted to attend the hearing other than to provide testimony.
* The parent is represented by Advocate Kandise Lucas.
* The student may be present for the hearing, if deemed appropriate.
* There is no need for a foreign language interpreter.
* The parties do not object to decisions or other pertinent information being transmitted electronically or by facsimile.
* Motions, objections or other problems will be addressed via conference call and/or written decision.

As a matter of procedure, the Hearing Officer put the parties on notice of the following matters:

* that the petitioner would proceed first at the hearing;
* that the petitioner would carry the burden of proof;
* that the parties should be prepared to present oral opening and closing arguments;
* that the parties would be provided with a written decision by August 31, 2020; and
* that the parties would be required to provide the Hearing Officer with written closing statements or briefs.

Additional matters were addressed in the prehearing orders such as: timelines; issues of the case; a resolution session dispute; subpoenas; exhibits; witnesses; and instructions regarding prehearing disputes. All five prehearing orders are fully incorporated herein by reference, have been summarized below, and have been filed with the record of this proceeding.

* May 9, 2020: The HO provided administrative information, timelines, listed the issues of the case and guidance regarding the proceeding. The order also memorialized discussions from a May 8, 2020 conference call. XXXXXXXXXXXXX was directed to coordinate a resolution session to be conducted on either May 18 or 19, 2020. Counsel for XXPS was directed to provide petitioners with a copy of their child's student records not later than 5:00 PM, May 13, 2020, at no cost to petitioners.
* May 27, 2020: The order memorialized the second prehearing conference call conducted on May 26, 2020. It was recognized that petitioners retained the services of Kandise Lucas as their advocate. It was reported that the resolution session was conducted on May 18, 2020 as ordered, without resolution. Mediation was declined by petitioners. The HO took under advisement petitioner's subpoena request pending voluntary compliance by XXPS for student records and emails. The HO ordered compliance of a *subpoena duces tecum* (subpoena) issued by XXPS. The case was delayed from June 16 thru 19, 2020 to July 13 thru 17, 2020 due to the volume of documents involved and the COVID-19 pandemic.
* June 10, 2020: The HO memorialized an unscheduled conference call conducted on June 9, 2020. On the call, petitioners made a plea for noncompliance of a subpoena issued by XXPS to petitioners' only expert witness. The HO extended the deadline by seven days for compliance and ordered counsel for XXPS to review audio recordings that petitioners claim contained the subpoenaed information. The HO's decision date was set for August 31, 2020.
* June 24, 2020: The HO memorialized a video conference held on June 24, 2020. Neither petitioners nor their advocate appeared for this video conference. XXPS was represented by counsel and reported that they had reviewed the audio recordings and that they did not satisfy the subpoena. XXPS also received a summary in response to the subpoena that additionally failed to satisfy the subpoena requirements.
* July 10, 2020: The HO memorialized a video conference held on July 7, 2020. The HO addressed expected hearing decorum, witness and evidence exclusions. Petitioner's advocate was denied her request to be provided moderator privileges for Blackboard during the hearing.

## Summary of Prehearing Decisions on Motions:

The HO entered three decisions in response to motions filed by XXPS. Petitioners filed a timely response to each motion. These decisions are fully incorporated herein by reference, have been summarized below, and have been filed with the record of this proceeding.

* June 5, 2020: The HO granted XXPS' Demurrer and Special Plea of Statute of Limitations. Evidence was limited to May 1, 2018 and after. However, this issue was revisited during the hearing and limited evidence regarding the child find issue was allowed.
* July 3, 2020: XXPS filed a motion to exclude a witness that failed to comply with a *subpoena* *duces tecum*. The HO granted the motion to exclude the witness and any evidence associated with the witness.
* July 14, 2020: XXPS filed a motion to dismiss the case based on petitioners' sparse exhibit book submission. XXPS claimed that petitioners' failed to meet their burden of proof. The HO denied the motion.
* On September 8, 2020, respondent filed a Motion to Reopen this case to which petitioners agreed. The original decision in this case was timely entered on August 28, 2020. The parties interpreted the Hearing Officer's initial decision and orders differently, resulting in a dispute regarding IEP implementation. The Hearing Officer granted respondent's Motion to Reopen, considered the position and interpretation of each party and entered this amended decision on September 8, 2020.

## ISSUES

The issues of the case were identified by the Hearing Officer and agreed to by petitioners as follows:

* Whether the Local Education Agency (LEA) has provided the student with a free appropriate public education (FAPE).
* Whether the proposed Individualized Education Program (IEP) sufficiently addresses the student's special education needs so as to provide a FAPE.
* Whether the LEA failed to provide services pursuant to the stay put IEP, thereby denying the student a FAPE.
* Whether the parents are entitled to reimbursement from the LEA for educational expenses unilaterally secured for the student.
* Whether the parents' procedural rights were violated by the LEA, and if so, did the violation deny the student a FAPE.
* Whether the LEA failed to timely identify the student as a disabled child thereby violating Child Find laws.

## BURDEN OF PROOF

In *Schaffer v. Weast,* 546 U.S. 49, 126 S. Ct. 528, 163 L.Ed.2d 387 (2005), the Supreme Court held that the burden of proof in a special education administrative hearing is properly placed upon the party seeking relief, whether that is the disabled child or the school district. In this case, the burden of proof and persuasion rests with petitioners. The standard of proof is based upon a preponderance of the evidence. 8 VAC 20-81.O.13.

## HEARING SUMMARY

This hearing was virtually conducted on July 13, 14, 15, 16 and 17, 2020. The hearing commenced with opening statements from both parties. The following witnesses were duly sworn and provided testimony on behalf of the petitioners:

Day 1, July 13, 2020:

Transcript I Page#: 70

XXXXXXXXXXXXX Coordinator, Due Process and Eligibility, XXPS

Day 2, July 14, 2020:

Transcript II Page #: 168

XXXXXXXXXXX Petitioner/Parent

XXXXXXXX Family Friend 242

Day 3, July 15, 2020:

Transcript III Page #: 304

Dr. XXXXXXX Audiologist

The following witnesses were duly sworn and provided testimony on behalf of the respondent:

XXXXXXXX History Teacher, XXPS 371

XXXXXX School Psychologist, XXPS 453

Day 4, July 16, 2020:

Transcript IV Page #:

XXXXXXXX Procedural Support Liaison, XXPS 629

XXXXXXXXX Educational Consultant 708

Day 5, July 17, 2020:

Transcript V Page #:

XXXXXXXXX Supervisor, Communication Disorders, XXPS 907

Upon conclusion of their testimony, the witnesses were dismissed subject to recall on rebuttal. Each witness was instructed by the HO to not discuss their testimony. Each witness agreed to comply.

Petitioners presented the following witnesses in rebuttal:

XXXXXXXXXX Family Friend 1036

XXXXXXXXXXX Parent/Petitioner 1040

## FACTUAL SYNOPSIS and FINDINGS OF FACT

XXXXXXXXXXXXXX, the subject of this proceeding, is a rising 8th grade student at XXXXXXXXXXX Middle School, XXPS. XXXXXXX was first identified as a student in need of special education services and supports pursuant to the IDEA on May 1, 2018. Prior to receiving an IEP, XXXXXXX received assistance pursuant to a 504 plan, Rehabilitation Act. XXXXXXX has been identified as twice exceptional. He enjoys caring for his pets, playing his saxophone in the band and being on the swim team.

XXXXXXX has been described as a pleasant, polite and motivated student. He has been identified by XXPS as a gifted and talented student. His IQ is 139 which is considered to be in the superior range.

XXXXXXX is qualified for participation in the Advanced Academic Program and is currently enrolled in advanced classes for English, science, history and math. XXXXXXX is an "A" or "B" student and has passed his Standards of Learning Tests (SOLs).

Petitioners allege that XXXXXXX's identified special needs include:

* Dyslexia;
* Auditory processing disorder (auditory discrimination subtype);
* Proprioception and visual closure weaknesses that affect reading and writing;
* Dysgraphia; and
* Expressive language disorder and higher order language processing difficulties.

Although XXXXXXX has suffered in the past from depression, this condition appears to be controlled. There is some question as to whether XXXXXXX suffers from anxiety. XXPS claims that some of the identified disability categories listed by petitioners are not found in the IDEA or implementing regulations. Nonetheless, XXPS contends that XXXXXXX's IEPs addressed these unique needs via specific learning disability.

XXXXXXX's initial individualized education program (IEP) was approved by his parents on December 18, 2018. XXPS conducted six IEP meetings from on or about May 29, 2018 to on or about November 13, 2018 before the first IEP was finalized on December 18, 2018. Petitioners provided input at each IEP meeting.

The six meetings were conducted to entertain requests by the parents for revisions to the proposed IEP along with their requests for four additional independent educational evaluations (IEEs). XXPS approved and paid for the requested IEEs. The IEEs were conducted in the areas of speech and language, psychological, educational, and occupational therapy. XXPS also conducted additional observations of XXXXXXX between May 2018 and November 2018.

After four IEEs, six IEP meetings, XXPS observations, and considerable parent in-put were all considered, the initial IEP was finally proposed on November 13, 2018. (XXPS Exhibits 22, 26, 28, 35, 36 and 41). The parents consented to implementation of the IEP on or about December 18, 2018.

XXXXXXX's IEP contained four goals in the areas of writing, written language, reading and metacognition. As accommodations, the IEP allowed for extended time, copies of the teacher's notes, advance notice of when XXXXXXX might be called on in class, grading for quality and not quantity, reduced homework, preferential or strategic seating, pre-teaching for vocabulary, and assistive technology. At request of the parents, frequent breaks and counseling opportunities were also added as accommodations to the final IEP. With the exception of 3.25 hours per week in a special education classroom, XXXXXXX would be educated in the general education school setting. Another 1 hour weekly included special education instruction in the general education classroom.

Following implementation of the December IEP, two IEP addendum meetings were conducted on February 14, 2019 and March 22, 2019. The meetings were held due to parent concerns regarding the IEP and to consider additional test results presented by the parents. On April 12, 2019, the parents provided only partial consent to implementation of the amended IEP. Five subsequent IEP addendum meetings were conducted on May 17, June 6, June 24, August 22, and August 23, 2019. Again, these meetings were conducted to entertain parent concerns about the current IEP. On August 29, 2019, the parents again only provided partial consent to the amended IEP. Parent in-put was considered at each meeting. The parents were often accompanied at the meetings by an attorney, specialist or advocate.

In July 2019, XXPS conducted three new evaluations in the areas of educational, psychological and speech-language. (XXPS Exhibits 61, 63 and 64). XXXXXXX's eligibility team met on August 1 and 22, 2019. The team determined that XXXXXXX remained eligible for special education services and supports.

However, on August 22, 2019, the team changed his disability category from other health impaired to specific learning disability. The parents participated in this decision and provided informed consent. When changing the disability category, the team specifically considered XXXXXXX's private providers' diagnosis of the following concerns: specific reading disorder, dyslexia, dysgraphia, auditory processing disorder, expressive language disorder, disorder of written expression, higher order language skills and other depressive disorder. (XXPS Exhibit 68). The team also considered the results of the three XXPS evaluations.

The eligibility team made changes to the IEP based on the parents' assertion that XXXXXXX's updated information no longer supported a diagnosis of Attention Deficit Hyperactivity Disorder. They also considered the fact that XXXXXXX underachieved in the areas of reading fluency and rapid naming processing disorder.

The team further determined that XXXXXXX did not qualify as a student with a speech and language impairment. (XXPS Exhibits 65 and 68). The parents disagreed with this determination. The parents reported that XXXXXXX had been receiving speech and language therapy since he was a toddler.

With these changes to XXXXXXX's eligibility category in mind, the IEP team met on August 22 and 23, 2019 to determine whether the revised eligibility category required changes to his current IEP. The parents were present for the meetings and provided in-put along with their representative(s). The IEP team proposed several changes to the IEP and the parents provided partial consent on August 29, 2019. (XXPS Exhibit 69).

Between September 2019 and January 13, 2020, XXXXXXX's IEP team met twelve times in an effort to develop his annual IEP. The parents, usually accompanied by an attorney, advocate, friend versed in special education or private provider, were present and provided in-put at each meeting. With comments added, the parents provided partial consent to the annual IEP on March 2, 2020. The parents also sent numerous email messages to the IEP team during the deliberation process. In disagreement with the ultimately proposed IEP, the parents filed a request for due process hearing on May 1, 2020.

## WITNESS SUMMARIES

The witnesses were duly sworn by the Hearing Officer.

*Witnesses for Petitioners:*

*XXXXXXXXXXXXX:* Ms. XXXXXXXX is coordinator for due process and eligibility, XXPS. She testified that she had been in her current position for eleven years. Her testimony was credible.

Ms. XXXXXXXX testified to the XXPS IEE process and the role of her staff as it relates to the process and to the training that she and her staff provides to parents and XXPS personnel. Ms. XXXXXXXX took the position that an IEE should be denied if the school division had not yet had an opportunity to test the child.

Ms. XXXXXXXX testified about managing special education files. She testified that there were over 200 schools in XXPS and that each school maintained their files slightly differently. She mentioned that her team trained on what needs to be kept in the files but not on the organizational structure of the files.

Ms. XXXXXXXX also provided testimony about the XXXXXXXXX computer program filing system. The system maintains special education files with access limited to staff. However, she testified that files can be printed from the system and provided to parents when they ask. The system also serves as a tool for the creation of certain documents such as IEPs. She testified that there is a log-in/log-out prompt but the system does not have an access log. (Note: The lack of an access log was confirmed in a letter from XXPS computer support personnel that was requested by the HO.)

When questioned about the composition of XXXXXXX's IEP teams, Ms. XXXXXXXX testified that the team needs to be composed of members that can address the student's areas of difficulties to meet the requirements of IDEA. She opined that XXXXXXX's IEP teams met this requirement. She testified that the IEP team did not need to have a member specifically versed in each and every disability so long as the child's unique needs could be addressed by the team.

The U.S. Department of Education issued a letter on June 23, 2020 that cited the Virginia Department of Education (VDOE) for violating IDEA by precluding publicly funded IEEs if the school district had not first had an opportunity to evaluate the child. VDOE was given one year to change its policy on this issue. Ms. XXXXXXXX addressed this issue by stating that XXPS would continue to follow VDOE policy until such time as Virginia officially changed its policy. Therefore, requests for IEEs would continue to be denied unless XXPS was first able to evaluate the child and the parents disagreed with the evaluation.

Ms. XXXXXXXX explained XXPS' informal dispute resolution process. Parents who disagree with a decision made by the school district may use this administrative review process to appeal the decision.

When asked about the availability of direct services, Ms. XXXXXXXX acknowledged that most children do not require more than 30 hours per week but added that an IEP team would make the actual determination. She stated that the average school week for a student is around 30 hours and that although some students may require 30 hours or more of direct services, those students usually require direct nursing assistance. She opined that XXXXXXX, with his level of functioning, would not require 30 hours of direct services. She testified that XXXXXXX was a gifted child who is enrolled in advanced academic courses. She stated that the data did not support the contention that XXXXXXX required 30 hours or more of direct services. (Transcript I, page 70).

*XXXXX (XXXXXXXX) XXXXX*: Ms. XXXXX is XXXXXXX's mother and the petitioner in this case. Her testimony was extensive, and although sometimes rambling, her testimony was credible. It was obvious from her testimony that Ms. XXXXX wants what she believes is best for XXXXXXX.

Ms. XXXXX began her testimony by providing a brief description of XXXXXXX's medical history. She explained that she took XXXXXXX to Child Find at around 4 years old because he seemed to be having a problem communicating. She realized that XXXXXXX was memorizing words and not really reading them.

She explained that she was upset when she first received XXXXXXX's records during discovery because she learned that XXXXXXX should have been monitored for speech and language difficulties from Kindergarten. She asserted that she had been asking for help from XXPS during that time.

Ms. XXXXX testified that XXXXXXX has an auditory processing disorder. She explained that in a test environment XXXXXXX was really processing only 70% of what he hears and that this percentage would diminish during the course of an entire school day. Shortly after XXXXXXX's auditory processing disorder was diagnosed, his reading deficiency, dyslexia and dysgraphia were also diagnosed. She went on to list all of XXXXXXX's disabilities as earlier set forth in this decision. She stated that XXXXXXX has a complex disability profile.

Ms. XXXXX testified about her disappointment and frustration over the years when trying to explain XXXXXXX's disabilities to his teachers and other XXPS personnel. She testified that XXPS conducted three evaluations on XXXXXXX in March of 2016, March of 2018 and July of 2019. She explained that she took issue with the evaluations for various reasons and requested IEEs. She expressed that she no longer had trust in XXPS to craft an appropriate IEP for XXXXXXX.

When asked who should draft XXXXXXX's IEP if she did not trust XXPS, Ms. XXXXX expressed that perhaps having an independent consultant along with XXXXXXX's private speech language pathologist to draft the IEP would be a solution. She testified that she did not even trust XXPS to manage IEP implementation since they did not provide services the past year. She stated that the people they assigned XXXXXXX to did not understand his disability profile, did not have appropriate expertise in his disabilities and were unwilling to devote the time required to appropriately address his disabilities.

When asked about collaboration with XXPS, she testified that too much time had already been wasted with collaboration. Ms. XXXXX said that she brought in experts regarding XXXXXXX's disabilities such as a speech-language pathologist, an expert on twice exceptional and an audiologist, but that she felt that their voices went unheard. Ms. XXXXX testified that XXXXXXX had received no educational benefit from XXPS.

Ms. XXXXX testified that she had not seen XXXXXXX's cumulative file until discovery in this case and that still, some of the documents were missing. She complained that only three boxes were delivered, but that counsel for XXPS represented that there would be six boxes. She also complained that many of the documents were duplicates and that they were in no particular order.

Ms. XXXXX testified as to the services and lack of services that have been provided to XXXXXXX. She testified that XXXXXXX needed related services in language through practice and pre-teaching, not by a computer-based program.

Ms. XXXXX discussed her frustrations with the re-eligibility and subsequent IEP processes. She discussed her frustrations with the stay-put IEP and her concerns about the lack of implementation. She described XXXXXXX's frustrations with school work. She opined that XXXXXXX was not performing on grade level.

On cross-examination, Ms. XXXXX testified that she had one or more attorneys with her when attending eligibility and IEP meetings. She admitted to consenting to eligibility on May 1, 2018 and consenting or partially consenting to one or more IEPs.

On redirect examination, Ms. XXXXX testified that she was not provided by XXPS with all of the relevant information she needed to make informed consent. She stated that for years she trusted XXPS to do what was best for XXXXXXX but that now she does not believe that XXPS has acted in XXXXXXX's best interests. She expressed distrust regarding co-teaching services and a perceived discrepancy in XXXXXXX's grades. She testified that she wants a total rewrite of the IEP because it does not have proper placement, does not provide for the least restrictive environment and does not list the specific services needed for XXXXXXX to meet his goals. She testified that she provided partial consent because she wanted to get things moving and because she agreed with some parts of the IEP but disagreed with others.

On the fifth day of the hearing, Ms. XXXXX was again called as a witness on rebuttal. She testified that the IEPs presented to her at the meetings were already prepared. She felt the team was closed to any revisions she might suggest or to consider any additional information she might provide. She testified that it was frustrating because all she wanted to do was to help her son. She summarily opined that the process took so long because they were not listening to her nor did they take into account the information or independent evaluations she provided. She testified that she wanted the HO to order that XXXXXXX's files be sent to her in proper order. She expressed concern about XXXXXXX being able to function independently and even in the next grade.

Ms. XXXXX testified that during the 2019-2020 school year, XXXXXXX received all "As" with the exception of one "B+" in his advanced Algebra class. Nonetheless, Ms. XXXXX expressed concern about XXXXXXX's areas of need being predetermined by the school division as well as his goals. She did not think that Ms. XXXX understood XXXXXXX's disabilities.

Ms. XXXXX explained why she chose to file a due process complaint. She said that after fighting for three years she decided to file. She felt her back was against the wall, and that she could either accept the faulty IEP or to try to get one that was meaningful and beneficial to XXXXXXX. She testified that XXPS summarily failed to consider her input or the input of private evaluators. She expected the team to consider her perspectives before the IEP draft. Ms. XXXXX testified that the bottom line for her was that XXXXXXX's IEP be independently drafted and managed. (Transcript II, page 168; in rebuttal, Transcript V, page 1040).

*XXXXXXXXXX*: Ms. XXXXX testified as a friend of the family. By profession, she is a special education consultant. She served as a member of XXXXXXX's IEP team and attended five IEP meetings. Her testimony was credible.

Ms. XXXXX testified about her concerns regarding the composition of XXXXXXX's IEP team. She was specifically concerned that there was no audiologist at the meetings; that the team did not refer to evaluation data, observational data or work samples; that XXXXXXX's complete educational file was not at the meetings; and there was no dyslexia specialist at the meetings. She was also concerned about the approach taken by the speech-language pathologist.

Ms. XXXXX testified that she felt "shut down" at the meetings and it did not appear that the team was willing to consider her concerns or recommendations. She felt that the team already had a draft IEP in place that they did not want to change.

She expressed concern about the way XXXXXXX's cumulative records were delivered to Ms. XXXXX by counsel for XXPS. She testified that the files were not organized.

Ms. XXXXX further testified that she was present when Ms. XXXXX was denied access to XXXXXXX's writing samples. Ms. XXXXX wanted to provide the samples to XXXXXXX's private provider who would use them to develop additional programming for XXXXXXX. She also testified that Ms. XXXXX was denied access to XXXXXXX's XXXXXXXXX file.

On cross-examination, Ms. XXXXX admitted that she was not a licensed educator in Virginia; that she had not observed XXXXXXX in the classroom setting; had not administered any formal evaluations on XXXXXXX; had not taught XXXXXXX in a classroom setting; and that no one on the team ever told her that she could not ask questions or provide in-put.

On redirect, Ms. XXXXX testified that her license was from New York. She felt that the IEP team was just going through the motions, as a formality, without actually collaborating with either she or Ms. XXXXX. She felt that she and Ms. XXXXX were not treated as equals on the IEP team.

On rebuttal, Ms. XXXXX testified that she would be willing to serve as XXXXXXX's independent special education consultant. (Transcript II, page 242; in rebuttal, Transcript V, page 1036).

*Dr. XXXXXXXXXXX*: Dr. XXXXX is an audiologist, speech and language pathologist and professor at Howard University. He first became familiar with XXXXXXX in March of 2015 when he performed an auditory processing evaluation on XXXXXXX. He performed a second evaluation in January of 2018. He diagnosed XXXXXXX with specific auditory processing deficits. His testimony was credible.

He explained the impact of an auditory processing deficit generally as well as how it impacts XXXXXXX. He explained that XXXXXXX's auditory deficit primarily deals with the speed in which his brain processes incoming information. This means that XXXXXXX may be slow to process information or he may misunderstand what is said to him. He opined that an audiologist who understands auditory processing should be a member of XXXXXXX's IEP team.

Dr. XXXXXX testified that XXXXXXX was constantly fidgeting when he was conducting his evaluation. Based on this, Dr. XXXXXX recommended that XXXXXXX be evaluated for sensory motor deficits. He explained how deficits in social and pragmatic language could affect XXXXXXX.

On cross-examination, Dr. XXXXXX was questioned about his licensure. He explained why he signed a consent order and paid a $1,500 fine to have his license reinstated.

Also on cross-examination, Dr. XXXXXX acknowledged that he had not observed XXXXXXX in his classroom setting but denied that this would have in any way assisted him with his evaluations or impacted his report. On re-direct examination, he acknowledged having performed a file review. He stated that he believed that XXPS considered his report when deciding XXXXXXX's educational programming. (Transcript III, page 304).

*Dr. XXXXXXXXXX*: Dr. XXXXXX is an educational consultant. He consulted with the parents for approximately 1 1/2 years regarding language concerns. He reviewed documents and also provided advice on XXXXXXX as a twice exceptional student. He testified that the parents sought his assistance because they were struggling with getting XXXXXXX's needs met by the school district. His testimony was credible. Dr. XXXXXX testified that he advised the XXXXXs that it was always best to work with the school district and to even compromise if necessary so long as the student's needs were met.

Note: Dr. XXXXXX was neither presented nor qualified as an expert. When direct examination drifted to an area requiring his expert opinion, the witness was dismissed. (Transcript IV, page 708).

## Witnesses for Respondent:

*XXXXXXXXX*: Ms. XXXX is a history teacher at XXXXXXXXX Middle School, XXPS. She taught XXXXXXX. Her testimony was credible.

She testified that XXXXXXX was a critical thinker and very analytical. He was friendly, polite, quiet, social with other students and pleasant. As a weakness, she testified that XXXXXXX could be easily distracted by other students. She testified that it did not appear that XXXXXXX had any problems communicating with or understanding her or his peers.

Ms. XXXX testified that whenever Ms. XXXXX communicated with her, she tried to accommodate her requests. She testified that Ms. XXXXX would randomly ask for an extension on an assignment due date. At the XXXXXs' request, Ms. XXX provided weekly feedback about XXXXXXX to Ms. XXXXX on a form provided by the special education department.

XXXXXXX was able to easily access the general curriculum. He would occasionally come to her during rock time to ask questions about an assignment. She discussed what she thought were XXXXXXX's greatest successes in her class, mentioning an oral presentation of his Walt Disney Project and his unprompted identification of states on a map.

Ms. XXX testified that XXXXXXX started the year very strong, performing at the same rate as his peers, but that she noticed after each IEP meeting he began to question whether he had to do work or was supposed to get extra time. She said his work got less and less.

Ms. XXX attended XXXXXXX's eligibility meeting on August 22, 2019. She also attended four IEP meetings as the general education teacher. She testified that the concerns of Ms. XXXXX and her attorney were considered at the meetings. She stated that the XXXXXs were given access to XXXXXXX's file at the meetings.

She testified that she implemented XXXXXXX's accommodations in her class and thought that he most benefitted from preferential seating and extended time. She testified that XXXXXXX scored a 98 or above on all formative and summative assessments.

Ms. XXX testified that during the IEP meetings, Ms. XXXXX did not seem to want to hear positive things about XXXXXXX. She seemed to want to move along from comments about XXXXXXX doing well in school. Whereas Mr. XXXXX seemed pleased by the positive comments.

She testified that after the meetings, she thought XXXXXXX would not be able to keep up with his peers but XXXXXXX proved capable of doing a lot more than was expressed at the meetings. She also stated that XXXXXXX did well with his work. He worked well with her and his peers. He did not appear frustrated or frazzled. Overall, XXXXXXX appeared to be a smart, creative, capable student but as the year progressed, this changed. She testified that XXXXXXX would self-advocate.

On cross-examination, Ms. XXX testified that XXXXXXX never showed any auditory difficulties in her class. She said that an auditory specialist came to her class to observe XXXXXXX and her observation was discussed at the meeting. From that observation, it was suggested that XXXXXXX could use a small microphone but he rejected using it. Since her classroom was in a trailer, preferential seating away from noise and air vents was also suggested and implemented.

She discussed how a special education support person came into her class twice a week to assist XXXXXXX. He was to perform as a one-on-one for XXXXXXX. However, per the parents' request, the instructional assistant was not to interact with XXXXXXX. He would take notes during class and then give them to XXXXXXX at the end of class.

Also during cross-examination Ms. XXX listed the accommodations she implemented in her class for XXXXXXX. She testified that she implemented the following accommodations: extended time, preferential seating, word bank, announced transitions, offered textbooks and other resources, offered group work, and provided XXXXXXX with notes at the beginning of class.

Ms. XXX testified about confusion around exactly when to give XXXXXXX the notes. At one point she was told to give the notes to XXXXXXX a week in advance. At another time she was told to give XXXXXXX the notes at the beginning of class. She said that Ms. XXXXX kept changing the goalpost and that she did what she was told by the special education department. It was pointed out that the IEP said the notes should be provided prior to class.

Ms. XXX testified that XXXXXXX did not display anxiety in her class. She admitted that she had not reviewed all of XXXXXXX's cumulative file.

There was discussion on cross-examination and on redirect examination as to whether or not Ms. Ryan used discretion when implementing the accommodations in the IEP. Petitioners' advocate emphasized to the witness that accommodations were not discretionary. Counsel for XXPS emphasized with the witness that discretion had to sometimes be used when implementing accommodations because implementation often depended on XXXXXXX's responses to different situations. (Transcript III, page 371).

*XXXXXXXX*: Ms. XXX is a school psychologist with XXPS. She has served in that job for eight years. She belongs to an array of organizations related to her field of work. She has been with the public school system for almost 25 years. She conducts psychological evaluations for special education students. She qualified as an expert in school psychology. Her testimony was credible.

Ms. XXX evaluated XXXXXXX in July of 2019 based on an IEP team referral. The reason for the referral was to consider an updated speech and language evaluation that had been conducted by a private provider. From that evaluation, the private provider diagnosed XXXXXXX with higher order language difficulties.

Ms. XXX explained that prior to performing a psychological evaluation, she would gather as much available information about the student as possible from a variety of sources, including parent input, private provider evaluations, other professionals, student files and XXXXXXXXX, prior to determining which evaluation instrument(s) would be used to conduct the testing. She wanted to be succinct with the assessments and not administer any unnecessary evaluations.

After reviewing XXXXXXX's records, Ms. XXX testified that she became concerned about the emotional toll so much testing may have had on XXXXXXX since he had been tested a lot even from an early age. She was also concerned about the result differences for similar tests. After reviewing XXXXXXX's academic record, Ms. XXX testified that XXXXXXX was doing well in his advanced academic placement classes and that his SOL scores were solid.

She ultimately determined that she needed to target XXXXXXX's word retrieval, processing speed ability and short-term verbal and nonverbal working memory in her evaluation. Ms. XXX testified that when she tested XXXXXXX on July 9, 2019, he presented as a typical developing young man. He was worried about making mistakes and was very conscientious. Ms. XXX testified that she had produced an earlier report and that Ms. XXXXX highlighted some information she thought was inaccurate or wanted edited. So Ms. XXX made two corrections to the original report and produced an updated report on July 30, 2019.

When Ms. XXX asked Ms. XXXXX to complete the rating scale normally used to address general behavioral concerns, Ms. XXXXX declined and submitted her own narrative. Although inconsistent with normal protocol, Ms. XXX accepted and considered Ms. XXXXX's narrative outlining her concerns. She added the narrative in the background section of her report.

Ms. XXX testified that during a pre-interview with XXXXXXX, she surmised that he did not have a positive attitude about school. He thought math was a strength but he did not like reading and writing and thought the school days were long and the work was hard. XXXXXXX also shared with Ms. XXX that he liked playing the saxophone, being on the swim team and playing the piano.

During the evaluation, Ms. XXX testified that XXXXXXX was slow to respond and that rapport was slow to be established. She stated that XXXXXXX appeared visibly anxious and seemed afraid to make a mistake. She attributed some of these behaviors to this being her first time working with XXXXXXX.

Ms. XXXX used the Reynolds Intellectual Assessment Scale (RIAS) to evaluate XXXXXXX. Taking into consideration the fact that XXXXXXX performed within the superior range for nonverbal abilities as well as Ms. XXXXX's concern that XXXXXXX not be over tested, she decided not to administer subtests that would target nonverbal abilities. So ultimately she administered subtests that would target XXXXXXX's short-term working memory, verbal abilities and processing speed. The test results revealed that XXXXXXX's overall cognitive functioning was within average range. Although XXXXXXX scored higher on a previously administered test called WISC, she explained that the RIAS was a more focused evaluation tool. XXXXXXX's scores for crystallized intelligence and visual prompts were within average range.

Ms. XXXX also administered the RAN test to measure word retrieval and efficiency on processing visual stimuli. XXXXXXX scored in the low average range. Ms. XXXX also evaluated XXXXXXX's anxiety by using the Revised Children's Manifest Anxiety Scale. His scores fell within the moderately problematic range. She explained that XXXXXXX has a poor perception of school and lacks confidence in his abilities. Ms. XXXX recommended that his anxiety be monitored.

Although Ms. XXXXX was concerned that XXXXXXX had problems with auditory reading, decoding and language difficulties, Ms. XXXX' report did not find that XXXXXXX had auditory or language difficulties. At the end of her report, Ms. XXXX made several recommendations. She recommended that XXXXXXX be provided opportunities to develop leadership skills; learn and use health-coping skills; employ self-monitoring strategies; and establish a routine. In addition to sending her psychological report to Ms. XXXXX, Ms. XXXX also sent two different reports by other evaluators. Those reports were the speech and language and educational evaluations. Ms. XXXX testified that all three reports were completed about the same time.

On July 25, 2019, Ms. XXXXX sent an email message to Ms. XXXX in which she claimed that there were errors in the report. Ms. XXXX testified that her response was to ask that the errors be sent to her directly if they related to the psychological report. When she received Ms. XXXXX's response, the cited errors were extensive. Ms. XXXX consulted with her supervisor about how to handle the situation and incorporate Ms. XXXXX's concerns. Ms. XXXX testified that she made two factual corrections to the report, one regarding a grade level and another surrounding language related to an ADHD diagnosis. No other changes were made to the report since Ms. XXXXX's comments were more like an edited version of her report. Ms. XXXX stated that parent revisions to reports are not acceptable since the reports are a result of the evaluator's assessment interpretation and a reflection of clinical judgment. Ms. XXXX testified that she informed Ms. XXXXX that she could include her proposed edits in the file for consideration by the team.

An interpretive meeting was conducted on August 1, 2019 to discuss the reports with Ms. XXXXX. Ms. XXXX, XXXXXXXXXXXX (XXPS speech and language pathologist), and a speech and language professional accompanying Ms. XXXXX, were present at the meeting. Ms. XXXX testified that Ms. XXXXX and her companion had a lot of questions about the selection of assessments, the interpretation and the report format. Ms. XXXX testified that she was not provided much opportunity to defend her report because Ms. XXXXX was very diligent in her interpretation of the report.

Also on August 1, 2019, the eligibility team met. Ms. XXXX testified that based on information provided by Ms. XXXXX and information gleamed from recent evaluation reports, the team changed XXXXXXX's eligibility category from other health impairment to specific learning disability based on information from Ms. XXXXX and XXPS evaluations. XXXXXXX was not found eligible for a speech/language impairment. Ms. XXXXX disagreed with this decision.

In February 2020, Ms. XXXXX and her friend, XXXXXXXXXX, Ms. XXXX and the XXXXXXXXX Middle School psychologist, XXXXXXXXXXX, all met at XXXXXXXXX Middle School to discuss and review testing protocols. Also, a speech and language pathologist was on the telephone with Ms. XXXXX. A copy of the protocols were provided to Ms. XXXXX, but rather than discuss the protocols, Ms. XXXXX had interpretive questions regarding her report.

Ms. XXXX testified that the meeting was hostile and that she felt attacked, both personally and professionally. Ms. XXXX further testified that they threatened to have her license revoked. She stated that she misspoke and said a copy of XXXXXXX's clinical interview had been shredded but the document was later found that day and sent to Ms. XXXXX. Ms. XXXX also sent a copy of her observation notes.

Ms. XXXX closed her direct examination by stating that she is concerned about XXXXXXX being constantly tested and evaluated. Summarily, she testified that constantly being compared to his peers could adversely affect his self esteem and eventually take an emotional toll on him. She opined that extended time could ease the pressure on him. She stated that processing is an area of weakness for XXXXXXX.

On cross-examination, Ms. XXXX reiterated the reason she felt threatened by Ms. XXXXX. She also stated that although she may have felt XXXXXXX had been overly tested, she was not a part of the referral process. When asked why she just didn't refuse to test, she stated that Ms. XXXXX would have had to withdraw consent.

Since Ms. XXXX thought XXXXXXX may have had some anxiety issues, she was asked why she did not recommend a functional behavioral assessment (FBA). She testified that anxiety had not been corroborated to a level that would have supported the recommendation for a FBA. Ms. XXXX explained that she did not view XXXXXXX's cumulative file before her evaluation because she did not have access to that file. She reviewed the student file provided to her. When asked why she did not reach out to XXXXXXX's private providers or evaluators, Ms. XXXX explained that she had the records with results and did not need to reach out to the private providers.

Ms. XXXX conceded that the only documents annotated on the eligibility meeting notes that were considered by the team were the three XXPS evaluations. She testified that other documents were considered as mentioned in the reports and that she did not know why the note-taker only annotated those three evaluations. Ms. XXXX testified that she was not a part of the second eligibility team meeting because it was conducted by XXXXXXXXX Middle School and she works at XXXXX High School. She testified that she was unaware of XXXXXXX having bullying issues when administering her evaluation. She first learned of bullying issues while reviewing documents in preparation for the hearing.

When asked why she did not complete a curriculum based assessment, Ms. XXXX explained on re-direct examination that such an assessment would be conducted by the educational evaluator. She also testified on re-direct examination that neither Ms. XXXXX or XXXXXXX mentioned the bullying issue to her prior to her conducting the psychological evaluation. (Transcript III, page 453).

*XXXXXX XXXX*: Ms. XXXX serves as the procedural support liaison (PSL) for XXPS. In that capacity, she serves as a resource to parents, teachers and staff regarding the laws relating to IDEA and 504 plans. She bridges the gap between families and schools. She conducts classroom observations, professional development sessions and also attends IEP and eligibility meetings. She qualified as an expert in special education. She testified that around 26,000 students out of about 187,000 students receive special education services from XXPS. Her testimony was credible.

Ms. XXXX testified that she observed XXXXXXX in his history class. From what she heard from teachers, and from what she observed, she described XXXXXXX as highly intelligent, respectful and social with other students. She noted that XXXXXXX had an IQ of 131 and is strong in math. She also noted that XXXXXXX has weaknesses in the areas of fluency when asked to perform, and he has anxiety. XXXXXXX poses no behavioral problems.

She testified that over her 20-year career she had attended thousands of IEP meetings. She stated that it was not typical to review a student's entire cumulative file at an IEP meeting. She stated that she had never received a complaint from the XXXXXs regarding the absence of XXXXXXX's cumulative file during an IEP meeting. She said the team reviewed XXXXXXX's student file and the results of XXXXXXX's latest evaluations.

She stated that XXPS does not have a "monitoring" status for students. She was unaware of any such status being assigned for XXXXXXX in the area of speech and language. She explained that teachers can reach out to speech and language pathologists if they need assistance.

She attended XXXXXXX's IEP meeting on May 17, 2019. Ms. XXXXX and her attorney also attended the meeting. She testified that Ms. XXXXX and her attorney's positions and input were considered throughout the meeting. The team also considered a speech-language IEE brought in by Ms. XXXXX from XXXXXXXXXXXX. She testified that the team was not required to adopt the recommendations in the IEE but that they considered it.

Ms. XXXX also discussed an IEP meeting that she attended on June 24, 2019. Ms. XXXXX and her attorney were also present at that meeting. Based on the parent concerns about XXXXXXX's current areas of eligibility, it was recommended at that meeting that XXXXXXX be re-evaluated. It was decided that his educational, psychological and speech-language evaluations would be updated. The XXXXXs consented to the evaluations.

Ms. XXXX also attended XXXXXXX's August 22, 2019 eligibility meeting. This meeting was a follow-up to an August 1, 2019 eligibility meeting. Ms. XXXX did not attend the August 1st meeting. However, the August 22nd meeting was held because of concerns by Ms. XXXXX that there were certain elements of XXXXXXX's profile that his eligibility documents did not capture. At the meeting, the team made certain to note Ms. XXXXX's concerns. Ms. XXXX testified about the worksheet used to document XXXXXXX's eligibility and testified that Ms. XXXXX's input was considered throughout.

She discussed the 12 IEP meetings conducted between September 2019 and January 2020 and how the XXXXX's provided partial consent to implementation of the IEP addendums. She testified that she often received email messages from Ms. XXXXX and that Ms. XXXXX provided input at the meetings. She testified that changes were often made to the IEP because of suggestions and concerns expressed by Ms. XXXXX. She testified that the frequent messages received from Ms. XXXXX were overwhelming.

She testified that Ms. XXXXX would edit the present level of performance (PLOP) documents. She incorporated 80-85% of the parents' edits. She did not incorporate edits that were data or fact changing.

XXPS proposed that XXXXXXX receive assistance with reading in a special education reading class four hours per week but the parents would not provide consent. XXPS ultimately implemented those portions of the IEP that the parents consented to.

Ms. XXXX testified that the IEP and eligibility teams were appropriately staffed; that the parents' and their invitees concerns were considered; that the XXXXXs were provided with their procedural rights; and that XXPS could provide XXXXXXX with the services he needs. She opined that the parents inhibited XXPS' ability to complete the IEP proposal in a timely fashion. She felt that the school team went above and beyond to consider the parents concerns, comments and the abundance of information they received from the XXXXXs at or before each meeting. She testified that it became frustrating. She testified that the team would come to the meetings with draft goals and the present level of performance piece, but not a completed IEP.

On cross-examination, Ms. XXXX testified that the PLOP is infused throughout the IEP. She testified that XXXXXXX's fluency deficits in reading, writing and math were documented throughout his IEP. She was unaware that XXXXXXX had received a functional behavioral assessment since his behavior had not impeded his ability to learn.

She testified that a staff member from XXPS attended the IEP meetings who had training in dyslexia and dysgraphia. Ms. XXXXX was often appreciative of the input provided by that person.

Ms. XXXX testified that she often reviewed XXXXXXX's file and that it was not necessary for IEP team members to review every piece of paper in a student's file to make decisions. She testified that she often used the XXXXXXXXX system to review the file. She testified that on the data before the team, they denied the parents' proposal for speech-language as a related service. She testified that the case manager and department chair were responsible for drafting the PLOP information as it pertains to goals. She said that the PLOP, when presented to the parents, is in draft form and can be changed. She explained that the draft PLOP is the starting point for the IEP team. She emphasized that the IEP was not drafted ahead of time.

Throughout the process, Ms. XXXXX and/or her representative expressed concerns. Some of the discussions involved the QRI assessment, reading fluency, the team's decision not to provide speech-language services, lack of supports, the number of service hours, the least restrictive environment, auditory fatigue, elective classes, assistive technology device and the parents' request for more testing. Ms. XXXX testified that all of Ms. XXXXX's concerns were considered, not ignored.

Ms. XXXX testified that at one of the meetings, Ms. XXXXX expressed that she thought the team was not addressing her concerns. She responded that the team had spent hours considering parent input and reviewing pages and pages of documents submitted by Ms. XXXXX. Just because the team did not always agree did not mean that Ms. XXXXX's concerns were being ignored. She mentioned that following a meeting, Ms. XXXXX said to her that she liked the way Ms. XXXXX's input was being considered even if they did not always agree. (Transcript IV, page 629, 734).

*XXXXXXXXXX*: Ms. XXXXXXX is a speech-language pathologist who works as a communication disorder supervisor for XXPS. She has approximately 25 years of experience in public schools. She qualified as an expert in speech-language pathology within the school setting. Her testimony was credible.

Ms. XXXXXXX testified that she attended some of XXXXXXX's 2019 IEP meetings and had consulted with two speech-language pathologists who assessed XXXXXXX. She also assisted with performing a 45-minute classroom observation. She administered a language sample analysis for XXXXXXX.

Her impression of XXXXXXX is that he is a kind, caring young man who wants to do well. He is hard-working and self-conscious. She did not appreciate any speech-language disorder in XXXXXXX. She conducted her first observation of XXXXXXX on November 1, 2018. She did not identify any concerns at that time. He communicated effectively in the class.

Ms. XXXXXXX testified that she conducted the speech-language assessment on May 7, 2019. She explained in great detail on both direct and cross-examination about what tools were used and how she conducted the assessment.

She testified that she was not aware of a speech language evaluation conducted by XXXXXXXXXXX in April 2019 when she performed her evaluation in May, nor was she made aware of it at the May 2019 IEP meeting she attended. She first reviewed the evaluation before an IEP meeting conducted in December of 2019.

Ms. XXXXXXX testified that the parents were displeased with the comprehensiveness of her assessment. They wanted the words to be more difficult. She explained that although the parents wanted a language sample analysis, they really wanted to test vocabulary retention. She further explained that a language sample analysis is not a measure of vocabulary and that the parents were provided with that information before she conducted the assessment. The purpose of the assessment was to determine XXXXXXX's communication effectiveness, which he did very well. She explained how she rated XXXXXXX. She explained that based on her findings, XXXXXXX did not have a speech-language impairment. (Transcript V, page 907).

## ARGUMENTS

***Petitioners:***

Petitioners claim that their procedural safeguards were violated by XXPS. They claim that XXPS denied them access to XXXXXXX's complete cumulative record until after a request for due process hearing was filed. Even then, once they received the file, they allege that the file was both inaccurate and incomplete. They contend that this failure denied them the opportunity to effectively engage in the educational decision-making process for XXXXXXX. They allege that XXXXXXX's records were mismanaged by XXPS as evidenced by the fact that his records were ultimately compiled from three different locations and when delivered, were totally disorganized. Petitioners further claim that XXPS failed to perform adequate testing. They contend that these failures to provide complete records and adequate testing were intentional and designed by XXPS to deny XXXXXXX services.

Petitioners also allege that XXXXXXX's IEPs were predetermined prior to IEP meetings thus reducing them to editors instead of creators of the document. They contend that this predetermination denied the parents an opportunity to collaborate in a meaningful way on creation of the IEP, as is required by IDEA.

The parents contend that the proposed IEP was inadequate, thereby requiring them to secure outside or private support, at personal expense, in order to access a FAPE for XXXXXXX. As further evidence of the denial of a FAPE, petitioners allege that XXPS denied XXXXXXX a FAPE by failing to put in place the monitoring protocols documented in his kindergarten records to determine if XXXXXXX required speech and language services.

The parents also contend that XXPS failed to provide services in accordance with the stay-put IEP. They claim that XXPS failed to implement applicable IEP provisions. They claim that XXPS attempted to educate XXXXXXX in a special education classroom thereby violating IDEA provisions that require students to be educated in the least restrictive environment. XXPS proposed limited services to XXXXXXX in a special education classroom for reading difficulties. The parents declined these services alleging a violation of least restrictive environment.

Petitioners also argue that XXPS violated Child Find laws by denying the parents' request for evaluation in the area of sensory deficits. They argue that XXPS further violated Child Find laws by failing to perform a functional behavioral assessment to determine if XXXXXXX suffered from possible anxiety and auditory fatigue.

Petitioners allege that XXPS failed to equip the IEP team with the required professionals needed to address XXXXXXX's unique needs as a twice exceptional student. They contend that the team was also inadequate because XXPS failed to include an IEP team member with experience in the areas of dyslexia and/or dysgraphia.

## Respondent:

In contrast, XXPS argues that throughout this proceeding, petitioners have summarily failed to meet their burden of proof. They argue that the petitioners have failed to demonstrate in any way that XXPS violated the rights of XXXXXXX or his parents under the IDEA. They contend that the parents, and/or their representative(s), were present for the IEP meetings and significantly contributed during the meetings. XXPS argues that the parents or their representatives provided input throughout the IEP process and that sometimes their suggestions were implemented and sometimes not. XXPS contends that the parents were not ignored and fully collaborated during the IEP process. They allege that petitioners were actively and fully involved in the educational decision-making process for XXXXXXX.

XXPS contends that XXXXXXX was clearly provided a FAPE by XXPS. They state that at all appropriate times, XXPS properly served XXXXXXX as a student with a disability. XXPS argues that their proper implementation of XXXXXXX's IEPs has allowed him to succeed in an advanced studies program, make progress towards his IEP goals, receive passing (sometimes exceptional) grades and often receive advanced SOL scores. XXPS argues that XXXXXXX's IEPs were reasonably calculated to afford him the opportunity to receive the educational benefit required by the IDEA.

XXPS argues that they properly identified XXXXXXX as a student with a disability. They allege that petitioners have provided no evidence that XXXXXXX had not been properly identified as a student eligible for special education services and supports. He was first identified on May 1, 2018 and determined to be re-eligible on August 1, 2019. Since his identification as a child with disabilities, XXPS claims to have provided appropriate services to XXXXXXX. They contend that petitioners' allegations of Child Find violations are baseless.

XXPS adamantly denies having withheld information from XXXXXXX's records in an effort to deny services. They contend that the records provided to petitioners were voluminous and complete. In fact, XXPS claims that they initially provided XXXXXXX's educational records to petitioners in the spring of 2019 at her lawyer's request. They claim that there was no evidence presented during the hearing to substantiate petitioners' claim that XXPS intentionally or maliciously withheld information from petitioners.

As for petitioners' allegation that XXPS denied evaluations, they contend that XXXXXXX was evaluated 14 times between May 1, 2018 and when petitioners filed their request for a due process hearing on May 1, 2020. Some of the evaluations were conducted by XXPS and others by private providers. All of the evaluations were considered when designing XXXXXXX's IEP.

As for petitioner's allegation that the IEP team was ill-equipped to address XXXXXXX's dyslexia and dysgraphia, XXPS takes the position that neither is considered a disability pursuant to IDEA. Further, they contend that both conditions were indeed addressed in XXXXXXX's IEPs and included specialized instruction, accommodations and supports that addressed both conditions.

## LEGAL ANALYSIS

### IEP and FAPE

The Individuals with Disabilities Education Act (IDEA), requires the development and implementation of IEPs that are reasonably calculated to provide an educational benefit to the disabled student. See *Hartmann v. Loudoun County Board of Education*, 118 F 3d 996, 1001 (4th Cir. 1997.) The substance of the IEP must be reasonably calculated to provide the student with some educational benefit. See *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 205, 102 S. Ct. 3034, 3050, 73 L. Ed. 2d 690 (1982). In the case of *Endrew F. v. Douglas County School District*, 137 S. Ct. 988 (2017), the U. S. Supreme Court further defined the standard of *some* educational benefit by requiring school systems to offer an IEP that is reasonably calculated to enable a child to make educational progress in light of the child's individual circumstances.

XXXXXXX undoubtedly received educational benefit from his IEP. He performed well in his advanced academic program. He performed well on his SOLs. There is no evidence to support the claim that XXPS failed to implement XXXXXXX's IEP or provisions of his stay-put IEP.

IEPs are a necessary component of FAPE. IEPs should include academic and functional goals designed to meet the child’s needs resulting from his disabilities. The IEP is also important for the disabled child since it identifies and implements special education and related services as well as supplemental aids to be provided the child that will enable that child to advance appropriately and reach the identified goals.

When reviewing an IEP for FAPE, the following legal analysis should be considered:

“Insofar as a State is required to provide a handicapped child with a ‘free appropriate public education,’ we hold that it satisfies this requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. Such instruction and services must be provided at public expense, must meet the State's educational standards, must approximate the grade levels used in the State's regular education, and must comport with the child's IEP. In addition, the IEP, and therefore the personalized instruction, should be formulated in accordance with the requirements of the IDEA, and, if the child is being educated in the regular classrooms of the public education system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” See *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 205, 102 S. Ct. 3034, 3050, 73 L.Ed. 2d 690 (1982).

In XXXXXXX's case, he received passing marks and advanced from grade to grade. XXPS provided personalized instruction with sufficient support services for XXXXXXX to educationally benefit from the instruction he received. XXXXXXX did well on his SOLs, often better than other students at his grade level. With the exception of one "B+," XXXXXXX earned "As" in the rest of his advanced classes. XXXXXXX clearly made overall progress. XXPS not only satisfied the requirements of *Rowley* but also the standard set forth in *Endrew* by providing XXXXXXX the opportunity to make educational progress in light his individual circumstances.

Local educators should be afforded latitude when determining the IEP most appropriate for a disabled child. The IDEA was not designed to deprive local educators of the right to apply their professional judgment. Instead, it should establish a "basic floor of opportunity" for every handicapped child. *See Rowley,* [458 U.S. at 201](http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?navby=case&court=us&vol=458&page=201). States must provide specialized instruction and related services "sufficient to confer some educational benefit upon the handicapped child," id. at 200, but the Act does not require "the furnishing of every special service necessary to maximize each handicapped child's potential," id. at 199. Local educators should be given deference when educating a disabled child. *T.B., Jr. by and through his Parents, T.B., Sr. and F.B. v. Prince George's County Board of Education*, et al., 897 F.3d 566 (4th Cir., 2018). Such is the case here.

Although the parent(s) may disagree with some of the decisions made by XXPS, the evidence does not substantiate the parents' claim that they, nor those persons accompanying the parents to meetings, were ignored. In fact, the evidence shows that most of the IEP meetings were conducted to discuss parent concerns or to review additional information presented by the parents.

XXPS clearly provided XXXXXXX with a basic floor of opportunity to educationally succeed and progress. XXPS personnel, as educational professionals, should be given deference. As summarily testified to by Dr. XXXXXX in his limited capacity as an educational consultant for petitioners, "It is always best to work with the school district and to sometimes compromise so long as the student's needs are met." In this case, petitioners appeared reluctant to compromise as well as reluctant to offer XXPS educators deference.

I FIND that the IEP last proposed by XXPS to which petitioners provided partial consent on or about March 2, 2020, meets the standards set forth by the IDEA. The IEP provides XXXXXXX with academic and functional goals designed to meet his needs. It identifies and implements special education and related services as well as supplemental aids to be provided to XXXXXXX that will enable him to advance appropriately and reach the identified goals.

### Parental Participation and Safeguards

In this case, the parents allege that they were unable to fully participate in the crafting of XXXXXXX's IEPs. They further allege that the IEPs were predetermined before the IEP team met and that they were reduced to editing an already drafted IEP. XXPS is expected to develop and bring an IEP proposal and/or a PLOP as a starting point to the meetings. The team must offer some documentation to commence discussions. The failure to bring any documentation to start discussions at the meeting would indicate that the team was unprepared and ill-equipped. Ms. XXXX, a XXPS witness, testified that the drafts were always open to revisions. The drafts were sent to the parents prior to each IEP meeting and were often commented on by Ms. XXXXX.

The parents contend that their concerns went unheard during the IEP meetings, however, the evidence does not support this allegation. The parent(s) attended every IEP meeting (often accompanied by an attorney, advocate or specialist) and provided input at each meeting. The evidence shows that the parents' concerns were listened to by other IEP team members and often incorporated into the IEP. Many of the changes made to the proposed IEP were based on the parent concerns. Dr. XXXXXX, the parents' own witness, testified that he believed that XXPS considered his report when deciding XXXXXXX's educational programming.

The parents wanted additional evaluations and so, three additional evaluations in the areas of educational, psychological and speech-language were conducted on XXXXXXX by XXPS. In fact, between May 1, 2018, when XXXXXXX was first identified as eligible for special education services, and May 1, 2020, when this case was filed, XXXXXXX had been evaluated 14 times. The results of the evaluations were considered by the team. (Of note, when the speech-language evaluation results from XXPS did not comport to what Ms. XXXXX wanted them to say, testimony indicates that Ms. XXXXX inappropriately attempted to substantively edit the results to her liking.)

The testimony and documented evidence suggests that Ms. XXXXX overwhelmed the IEP team with additional information and emails while the team was working on XXXXXXX's IEP. Although the team considered this information, they did not incorporate every change or suggestion made by Ms. XXXXX or her meeting companion(s). It is clear that petitioners were not completely satisfied with the proposed IEP, however, petitioners cannot dictate the terms of an IEP to the school district. They may only provide their input. *County School Bd. of Henrico v. RT*, 433 F. Supp 2d 657 (ED Va 2006); 8 VAC 20-81-110F.6. *Tice v. Botetourt Co. School Board*, 908 F.2d 1200 (CA4 VA 1990).

XXPS considered the parents' input, adopted some of the changes wanted by the parents, but also rejected others based on data and other information available to the team. XXPS was not obligated to accept each and every suggested IEP change or modification made by petitioners.

Five IEP addendum meetings were conducted between February 14, 2019 and June 24, 2019. Ms. XXXXX fully participated in each meeting. XXPS also held 12 IEP meetings between September 20, 2019 and January 13, 2020 in which Ms. XXXXX participated in the IEP process. Petitioners provided partial consent to the proposed IEP on March 2, 2020.

I FIND that there is no merit to petitioners' claim that their procedural rights or safeguards were violated or that XXPS in any way precluded them from meaningfully participating in the IEP process. I FIND that petitioners were able to effectively and fully participate in XXXXXXX's IEP composition process. I FIND that XXPS appropriately considered petitioners' concerns and reasonably acted on those concerns.

### IEP Team Composition

An IEP is a written plan that incorporates the placement decisions made by the child's IEP team. That team should include school authorities, the child's parents and other knowledgeable persons. See 20 U.S.C. §1401(a)(20). Congress devised procedural safeguards and remedial provisions to insure full parental participation and the proper resolution of substantive disagreements. See 20 U.S.C. §1415.

* As for the alleged inadequacies of the IEP team, there is no evidence to support that the team was unable to formulate an effective IEP. The parents claim that the team could not effectively address XXXXXXX's dyslexia and dysgraphia because they did not have a professional versed in these conditions on the team. Neither the law nor the evidence supports this claim. The proposed IEP clearly identifies XXXXXXX as a student with a specific learning disability. It acknowledges that XXXXXXX has dyslexia and dysgraphia by providing accommodations and supports designed to assist XXXXXXX with reading deficits that are reflexive of both conditions.
* As a general rule, the IEP team is composed of the following persons: the child's parents; at least one of the child's special education teachers or providers; at least one of the child's regular education teachers; a representative of the school system; and an individual who can interpret the evaluation results. XXPS met this standard for each meeting. The parents failed to produce any expert witnesses or other evidence to substantiate their claim that the IEP team's composition was inappropriate.

I therefore FIND that the team was able to draft an appropriate IEP for XXXXXXX and that his diagnosed conditions of dyslexia and dysgraphia were considered and supported. I further FIND that the team was appropriately composed and met the requirements of IDEA.

### Least Restrictive Environment

IDEA encourages disabled children to be educated in the regular classroom. However, the law permits disabled children to also be privately placed where appropriate. Least restrictive environment requires that students with disabilities receive their education, to the maximum extent appropriate, with nondisabled peers and encourages special education students to not be removed from regular classes unless, even with supplemental aids and services, education in regular classes cannot be achieved satisfactorily. [20 United States Code (U.S.C.) Sec. 1412(a)(5)(A); 34 Code of Federal Regulations (C.F.R.) Sec. 300.114.]

IDEA does not mandate that every child with a disability be placed in the regular classroom regardless of individual abilities and needs. This recognition that placement in the regular class may not be appropriate for every disabled child is reflected in the requirement that school districts make available a range of placement options to meet the unique educational needs of children with disabilities. These required placement options are known as a continuum of alternative placements. This requirement for the continuum recognizes the importance of an individualized analysis, not a "one-size-fits-all" approach, when determining what placement is the least restrictive environment for each child with a disability. The options on this continuum must include alternative placements. These alternative placements include the availability of instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. 34 CFR 300.551(b)(1). These options must be available to the extent necessary to implement the IEP of each disabled child.

A placement or IEP team must select the option on the continuum from which the child's IEP can best be implemented. Any alternative placement selected for a disabled child outside of the regular educational environment must maximize opportunities for the child to interact with nondisabled peers, to the extent appropriate to the needs of the student.

The general rule in placement is that each disabled child's placement must be individually determined based on that individual child's abilities and needs. In determining if a placement is appropriate under IDEA, the following factors are relevant: the educational benefits available to the disabled student in a traditional classroom, supplemented with appropriate aids and services, in comparison to the educational benefits to the disabled student from a special education classroom; the non-academic benefits to the disabled student from interacting with nondisabled students; and the degree of disruption of the education of other students, resulting in the inability to meet the unique needs of the disabled student.

In XXXXXXX's case, XXPS proposed limited hours per week in a special education setting to address XXXXXXX's identified reading deficits, possibly resulting from his dyslexia and dysgraphia. XXPS also proposed that an assistant come into XXXXXXX's classroom on a limited basis to assist. Petitioners not only refused the proposal to provide XXXXXXX with assistance in a special education setting, but also refused to allow the assistant to come into contact with XXXXXXX during class. Under the circumstances of this case, petitioners actions could be construed as unreasonable.

On the one hand, petitioners claim that XXPS failed to address and support XXXXXXX's dyslexia and dysgraphia, but on the other hand, denied XXPS' efforts to provide assistance. Here again, petitioners did not trust XXPS, the educators, to provide the assistance it deemed appropriate for XXXXXXX in the least restrictive environment. Petitioners did not afford XXPS deference when the team offered XXXXXXX what they considered reasonable and appropriate services designed to address XXXXXXX's needs and parent concerns. XXXXXXX's removal from the general education classroom was limited but designed to provide him with specialized instruction.

I FIND that as XXXXXXX's educators, XXPS' proposal to place XXXXXXX in a special education setting for four hours per week, and to provide an in-class assistant, was the least restrictive environment when considering XXXXXXX's disabilities, including his diagnosis of dyslexia and dysgraphia. The evidence does not support a finding that XXPS violated IDEA as related to educating XXXXXXX in the least restrictive environment.

However, XXXXXXX has demonstrated that he can perform in school without removing him from his general education classroom to a special education classroom. Although XXPS' proposal to provide XXXXXXX with special education services outside the regular classroom may not be a violation of the legal doctrine of "least restrictive environment," petitioners concerns must be considered as well as XXXXXXX's best interests.

As for the instructional assistant, petitioners argue that these services were ineffective. Petitioners did not want the assistant to interact with XXXXXXX. This limitation significantly diminished the purpose of the instructional assistant. The evidence does not support continued use.

### Child Find

Petitioners allege that XXPS violated Child Find laws. 8 VAC 20-80-52 directs that all children suspected of having a disability shall be referred to the special education administrator or designee, who shall initiate the process of determining eligibility for special education and related services. Petitioners also argue that XXPS violated Child Find laws by denying the parents' request for evaluation in the area of sensory deficits. They argue that XXPS failed to perform a functional behavioral assessment to determine if XXXXXXX suffered from possible anxiety and auditory fatigue.

XXXXXXX has been evaluated 14 times since he was determined eligible for special education services. The evaluations did not raise concerns sufficient enough in the areas of anxiety or auditory fatigue to require further testing. In any case, a failure to evaluate XXXXXXX for auditory fatigue or anxiety does not constitute a Child Find violation.

XXXXXXX was identified by XXPS on May 1, 2018 as a child in need of special education services. XXXXXXX has been classified as a twice exceptional child. Based on information provided by petitioners, XXXXXXX's eligibility designation was changed in August 2019 from other health impairment to specific learning disability. XXXXXXX was eligible for an IEP, special education services and supports during all times relevant to this proceeding.

## Prior to his eligibility for special education services pursuant to the IDEA, XXXXXXX received assistance pursuant to a 504 Plan of the Rehabilitation Act. No evidence has been presented to indicate that XXPS violated Child Find laws.

## I FIND that petitioners failed to provide any expert testimony or other evidence sufficient to support a Child Find violation. I FIND this claim meritless.

### Records Production

Petitioners allege that XXPS and their attorneys have intentionally and in bad faith withheld XXXXXXX's records. They also claim that XXXXXXX's records were mismanaged, having to be compiled from three different locations prior to this hearing. They contend that they still do not have all of XXXXXXX's records, thereby precluding them from effectively participating in XXXXXXX's educational decisions. They allege that records were withheld to deny XXXXXXX services.

Petitioners presented no evidence to support any wrongdoing by XXPS or its attorneys. With the exception of one comment made by Ms. XXXXX during her testimony regarding speech-language monitoring during XXXXXXX's kindergarten year, petitioners have presented no credible evidence to establish how the missing records, if any, would have affected their decision-making. Simply because the records were in three locations does not establish mismanagement, malicious intent or deception.

I FIND that petitioners have presented no credible evidence that XXPS intentionally withheld records to deny XXXXXXX services nor that the records were mismanaged such as to cause harm to XXXXXXX, deny XXXXXXX a FAPE or deny parental participation. I FIND these claims meritless.

## SUMMARY OF FINDINGS

*Whether the Local Education Agency (LEA) has provided the student with a free appropriate public education (FAPE).* I FIND that the LEA (XXPS) provided XXXXXXX with a FAPE. I FIND that the stay-put IEP was properly implemented. Petitioners failed to meet their burden of proof. No relief is granted.

*Whether the proposed Individualized Education Program (IEP) sufficiently addresses the student's special education needs so as to provide a FAPE.* I FIND that the IEP last proposed by XXPS sufficiently addresses XXXXXXX's special education needs by providing appropriate accommodations, supports and services. The IEP set appropriate goals. Petitioners failed to meet their burden of proof. No relief is granted.

*Whether the LEA failed to provide services pursuant to the stay put IEP, thereby denying the student a FAPE.* I FIND that XXPS implemented the stay put IEP. Petitioners failed to meet their burden of proof. No relief is granted.

*Whether the parents are entitled to reimbursement from the LEA for educational expenses unilaterally secured for the student.* I FIND that petitioners are not entitled to reimbursement for any expenses they may have incurred to provide additional services, education or evaluations for XXXXXXX. Petitioners are not entitled to have an independent educational consultant to either oversee implementation of XXXXXXX's IEPs or to draft XXXXXXX's IEPs. In collaboration with the parents, XXPS is fully capable of drafting and implementing XXXXXXX's IEP, without outside oversight or management. Moreover, this HO has no authority to order that XXPS put a consultant on payroll to manage or draft XXXXXXX's IEP. Petitioners failed to meet their burden of proof. No relief is granted.

*Whether the parents' procedural rights were violated by the LEA, and if so, did the violation deny the student a FAPE.* I FIND that there is no merit to petitioners' claim that their procedural rights or safeguards were violated or that XXPS in any way precluded them from meaningfully participating in the IEP process. I FIND that petitioners were able to effectively and fully participate in XXXXXXX's IEP decision-making process. I FIND that XXPS appropriately considered petitioners' concerns and reasonably acted on those concerns. I FIND that petitioners have presented no credible evidence that XXPS intentionally withheld records to deny XXXXXXX services nor that the records were mismanaged such as to cause harm to XXXXXXX, deny XXXXXXX a FAPE or deny parental participation. I FIND these claims meritless. Petitioners failed to meet their burden of proof. No relief is granted.

## *Whether the LEA failed to timely identify the student as a disabled child thereby violating Child Find laws.* I FIND that petitioners failed to provide any expert testimony or other evidence sufficient to support a Child Find violation. I FIND this claim meritless. Petitioners failed to meet their burden of proof. No relief is granted.

Any additional or incidental matters raised by petitioners or respondent during the course of this proceeding that were not directly addressed herein were considered but found to be either outside the scope of the HO's authority or extraneous to the identified issues.

## ORDERS

For school year 2020-2021, it is hereby Ordered that XXPS will implement the draft IEP dated January 13, 2020, with those limited exceptions later set forth in this order. Petitioners provided partial consent to this IEP on March 2, 2020. This IEP will serve as XXXXXXX's IEP until such time as his next scheduled IEP is finalized.

Implementation of this IEP will incorporate the services, supports and goals that were, or should have been, implemented prior to this hearing, with exception of the use of an instructional assistant and with exception of the provision that requires XXXXXXX's removal from the general education classroom to a special education classroom for four hours per week. All other provisions of the draft IEP dated January 13, 2020 will be implemented. It is understood that some services may be interrupted or modified due to precautions being taken for the COVID-19 pandemic. An IEP team will conduct an annual review of XXXXXXX's IEP as required by law.

An eligibility team will meet as necessary to review XXXXXXX's continued eligibility for special education services and to reevaluate whether XXXXXXX's needs have changed. This team will meet as required by law but not less than triennially.

## RIGHTS OF APPEAL

Pursuant to 8 VAC 21-81-T and §22.214 D of the Code of Virginia, 1950, as amended, a decision by the hearing officer in any hearing, including an expedited hearing, shall be final and binding unless either party appeals in a Federal District Court within 90 days of the date of the decision, or in a state Circuit Court within 180 days of the date of this decision.

It is so Ordered.

ENTERED: September 8, 2020

/s/

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Rhonda J. S. Mitchell

Hearing Officer

Copy Furnished:

Counsel for XXPS

XXPS Due Process Coordinator

Advocate for Petitioner

VDOE

VDOE Case Monitor

***V I R G I N I A:***

# DEPARTMENT OF EDUCATION

# DIVISION OF SPECIAL EDUCATION AND STUDENT SERVICES

***OFFICE OF DISPUTE RESOLUTION AND ADMINISTRATIVE SERVICES***

**In the matter of**

**XXXXXXXXXXX, a minor,**

**by his parents, XXXXXXXX AND XXXXXXXXX, Petitioners**

**and VDOE Case #: 20-071**

**XXXXXXXXXXXXX PUBLIC SCHOOLS, Respondent**

## Decision - Motion to Reopen Hearing

The original decision in this case was entered on August 28, 2020. The parties interpreted the Hearing Officer's initial decision and orders differently, resulting in a dispute regarding implementation of the student's Individualized Education Program (IEP). Of primary concern is the issue of Least Restrictive Environment.

During the hearing, petitioners objected to the IEP's inclusion of an individual assistant and the student's removal to a special education classroom for four hours per week. Although the Hearing Officer discussed the issue of Least Restrictive Environment in her decision, she did not make clear her position regarding petitioner's failure to consent to these specific provisions of the draft IEP dated January 13, 2020. This oversight was reflected in her order, resulting in a post hearing dispute between the parties.

On September 8, 2020, respondent filed a Motion to Reopen the Due Process Hearing so that the Hearing Officer could settle the dispute and offer clarification of her orders. Via email message, petitioners, through their advocate, agreed to reopening the proceeding for this purpose.

Petitioners motion is hereby granted. The Hearing Officer will amend her August 28, 2020 decision by amending her orders and amending her comments regarding the issue of Least Restrictive Environment. An addition will also be made in the decision summaries section of the decision that references this matter.

### Rights of Appeal

Pursuant to 8 VAC 21-81-T and §22.214 D of the Code of Virginia, 1950, as amended, a decision by the hearing officer in any hearing, including an expedited hearing, shall be final and binding unless either party appeals in a Federal District Court within 90 days of the date of the decision, or in a state Circuit Court within 180 days of the date of this decision.

It is so Ordered.

ENTERED: September 8, 2020

/s/ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ RHONDA J. S. MITCHELL

Hearing Officer

#### Certificate of Service

I, Rhonda J. S. Mitchell, Hearing Officer in this case, do hereby certify that a true copy of the above was emailed to Bradford King and Nicole Cheuk, counsel for XXXXXXXX Public Schools, and to Kandise Lucas, advocate for petitioners, on the 8th day of September, 2020.

/s/ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Rhonda J. S. Mitchell

Hearing Officer

Cc (via email):

Virginia Department of Education

Case Monitor

Local Education Agency

Local Hearing \_\_\_\_x\_\_\_\_\_ State Level Hearing \_\_\_\_\_\_\_\_\_\_

### AMENDED CASE CLOSURE SUMMARY REPORT

VDOE Case #: 20-071

***(This summary sheet must be used as a cover sheet for the hearing officer’s decision at the end of the special education hearing and submitted to the Department of Education before billing.)***

**XXXXXXXXXXXXXX PUBLIC SCHOOLS XXXXXXXX and XXXXXXXXX**

**School Division Names of Parents**

**XXXXXXXXXXXX September 8, 2020**

**Name of Child Date of Decision**

BRADFORD KING and NICOLE CHEUK KANDISE LUCAS

Counsel Representing LEA Advocate Representing Parents / Child

XXXXXXXX and XXXXXXXXXX LEA

Party Initiating Hearing Prevailing Party

**Hearing Officer’s Identification of Issues:**

* Whether the Local Education Agency (LEA) has provided the student with a free appropriate public education (FAPE).
* Whether the proposed Individualized Education Program (IEP) sufficiently addresses the student's special education needs so as to provide a FAPE.
* Whether the LEA failed to provide services pursuant to the stay put IEP, thereby denying the student a FAPE.
* Whether the parents are entitled to reimbursement from the LEA for educational expenses unilaterally secured for the student.
* Whether the parents' procedural rights were violated by the LEA, and if so, did the violation deny the student a FAPE.
* Whether the LEA failed to timely identify the student as a disabled child thereby violating Child Find laws.

Case Filed: May 1, 2020

Resolution Session Conducted: May 18, 2020

**Hearing Officer’s Orders and Outcome of the Hearing:**

### SUMMARY OF FINDINGS

*Whether the Local Education Agency (LEA) has provided the student with a free appropriate public education (FAPE).* I FIND that the LEA (XXPS) provided XXXXX with a FAPE. I FIND that the stay-put IEP was properly implemented. Petitioners failed to meet their burden of proof. No relief is granted.

*Whether the proposed Individualized Education Program (IEP) sufficiently addresses the student's special education needs so as to provide a FAPE.* I FIND that the IEP last proposed by XXPS sufficiently addresses XXXXX's special education needs by providing appropriate accommodations, supports and services. The IEP set appropriate goals. Petitioners failed to meet their burden of proof. No relief is granted.

*Whether the LEA failed to provide services pursuant to the stay put IEP, thereby denying the student a FAPE.* I FIND that XXPS implemented the stay put IEP. Petitioners failed to meet their burden of proof. No relief is granted.

*Whether the parents are entitled to reimbursement from the LEA for educational expenses unilaterally secured for the student.* I FIND that petitioners are not entitled to reimbursement for any expenses they may have incurred to provide additional services, education or evaluations for XXXXXXX. Petitioners are not entitled to have an independent educational consultant to either oversee implementation of XXXXXXX's IEPs or to draft XXXXXXX's IEPs. In collaboration with the parents, XXPS is fully capable of drafting and implementing XXXXXXX's IEP, without outside oversight. Moreover, this HO has no authority to demand that XXPS put a consultant on payroll to manage or draft XXXXXXX's IEP. Petitioners failed to meet their burden of proof. No relief is granted.

*Whether the parents' procedural rights were violated by the LEA, and if so, did the violation deny the student a FAPE.* I FIND that there is no merit to petitioners' claim that their procedural rights or safeguards were violated or that XXPS in any way precluded them from meaningfully participating in the IEP process. I FIND that petitioners were able to effectively and fully participate in XXXXXXX's IEP decision-making process. I FIND that XXPS appropriately considered petitioners' concerns and reasonably acted on those concerns. I FIND that petitioners have presented no credible evidence that XXPS intentionally withheld records to deny XXXXXXX services nor that the records were mismanaged such as to cause harm to XXXXXXX, deny XXXXXXX a FAPE or deny parental participation. I FIND these claims meritless. Petitioners failed to meet their burden of proof. No relief is granted.

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An eligibility team will meet as necessary to review XXXXXXX's continued eligibility for special education services and to reevaluate whether XXXXXXX's needs have changed. This team will meet as required by law but not less than triennially.

*This certifies that I have completed this hearing in accordance with applicable regulations. Either party may appeal in a federal district court within 90 days of the date of this decision, or in a state circuit court within 180 calendar days of the date of this decision.*

XXPS is reminded of its responsibility to submit an amended implementation plan to the parties, the Hearing Officer, and the State Education Agency within 45 calendar days.

September 8, 2020 /s/

Rhonda J. S. Mitchell \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name of Hearing Officer Signature

Copy furnished to:

Counsel for LEA

LEA Liaison

Parent's Advocate

Virginia Department of Education

Case Monitor