19-030

**VIRGINIA DEPARTMENT OF EDUCATION**

**DIVISION OF SPECIAL EDUCATION AND STUDENT SERVICES**

**OFFICE DISPUTE RESOLUTION AND ADMINISTRATION SERVICES**

**DECISION**

Xxxxxxx County Public Schools Ms. Xxxx Xxxxxxx

**School Division Name of Parents**

xxxxxxxxxxx Xxxxx X. Xxxxxxx

**Division Superintendent Name of Child**

Patrick T. Andriano, Esquire Kandise Lucas

**Counsel Representing LEA Advocate for the Parent/Child**

Robert J. Hartsoe, Esquire Parent/Child

**Hearing Officer Party Initiating Hearing**

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**LEGEND**

Child Xxxxx Xxxxxxx

Mother Xxxxx Xxxxxxx

LEA Xxxxxxx Public Schools

Parties Child, Mother & LEA

VDOE Psychologist Martha Faye Montgomery

VDOE Director Henry Joseph Millward, Jr.

Private School Director xxxxxxxxxxxx

Child’s Psychiatrist Dr. xxxxxxxxx (Did Not Testify)

LEA Chief xxxxxxxxxx

Former LEA Director xxxxxxxxxxx

Occupational Therapist xxxxxxxxxx

Case Manager xxxxxxxxx

LEA Compliance Specialist Dr. xxxxxxxxxxx

GE Teacher xxxxxxxxxx

Principal xxxxxxxxxxxx

Special Education Teacher xxxxxxxxxxxxxx

# DECISION

# INTRODUCTION

This is a straight-forward case wherein the Parent/Child requested, inter alia, private placement. For reasons stated herein, the Due Process Request is dismissed with prejudice. The Mother failed to prove, by a preponderance of the evidence, that the Parent/Child should be granted the relief requested.

# PROCEDURAL BACKGROUND

On January 2, 2019, the Mother filed a Request for Due Process. The effort was found insufficient. On February 17, 2019, the Mother filed her Amended Due Process Request. The LEA filed responsive pleadings timely. With the exception of the matters addressed by prior Prehearing Reports, procedural issues were not at issue.

# ISSUES PRESENTED

I. Did the LEA deny the Child FAPE by refusing to convene IEP meetings at a “mutually agreed upon” location?

II. Did the LEA deny the Child FAPE by refusing to allow the Parent/Child and their Advocate to appear *via* teleconference or telephone at IEP meetings?

III. Did the LEA deny the Child FAPE by failing to educate the Parent regarding opportunities available under IDEA?

IV. Did the LEA deny the Child FAPE by requiring the Parent/Child and their Advocate to convene an IEP meeting on school locations?

V. Did the LEA deny the Child FAPE by failing to accept “partial consent” including homebound services?

VI. Did the LEA deny the Child FAPE by finding that the Child was not eligible for IDEA services including a designation of “autism”?

VII. Did the LEA deny the Child FAPE by failing to develop goals that addressed “toileting needs” or other medical limitations?

VIII. Did the LEA deny the Child FAPE by interfering with parental access to “work samples”?

IX. Did the LEA deny the Child FAPE by denying the Child’s placement in a private placement including the School?

X. Did the LEA deny the Child FAPE by not providing compensatory homebound services?

XI. Did the LEA deny the Child FAPE by denying reimbursement for costs incurred by placement of the Child in homebound services?

XII. Did the LEA deny the Child FAPE by failing to provide the Child “trained staff” at times relevant to the Due Process Request?

XIII. Did the LEA deny the Child FAPE by providing the Child a “behavior plan” to address “safety issues” including, but not limited to, “anxiety” during the times relevant to the Due Process Request?

XIV. Did the LEA deny the Child FAPE by ignoring the independent psychological report from Dr. xxxxxxxxxxx, provided on or about December, 2018?

XV. Did the LEA deny the Child FAPE by ignoring the data, contained in the correspondence, dated on or about December 3, 2018, from xxxxxxxxxxxxxx?

XVI. Did the LEA deny the Child FAPE by abruptly terminating a meeting on December 14, 2018, with an LEA employee, *i.e*, Principal xxxxxxxxxxx.

XVII. Did the LEA deny the Child FAPE by not considering the Child’s frequent use of the Clinic?

# SUMMARY OF PERTINENT TESTIMONY

# Parent/Child Testimony

The following witnesses testified on behalf of the Parent/Child: Mother, VDOE Psychologist, VDOE Director, Private School Director, LEA Chief, Former LEA Director, Occupational Therapist, Case Manager, LEA Compliance Specialist, GE Teacher and Principal.

Mother’s Testimony

The Mother was called as a factual witness. (Although there was an attempt to designate the Mother as “an expert on the Child,” the Mother was not designated as an expert. (HT at 89-90.) She testified that the Child “cried all the time.” (HT at 29.) Further, he “wasn't verbal.” (*Id*.) “He did everything late, like crawling, walking. We couldn't have a conversation with him. I noticed that he would get hurt a lot and, in my opinion, especially having raised another child before him, he should be feeling some kind of pain. And he, in most cases, did not. And it really concerned me.” (*Id*.; HT at 95-96.)

The Child was diagnosed on September 24, 2015, with “Autism spectrum disorder with attention deficit hyperactivity disorder.” (HT at 31; Parent’s Exhibit 18.)

The Mother trusted the LEA and consented to everything regarding the Child’s education through October, 2018. (HT at 46.) After October, 2018, she felt the LEA could do more for the Child regarding education--a cause of distrust. (HT at 47-49.) She appeared on school grounds in October, 2018. (HT at 49.) Evidently, in October, 2018, the Mother felt “blind-sided” by her interaction with an LEA employee regarding the Child’s education. *(Id.*) As a result, she requested the LEA to communicate only through email with a copy to her Advocate. (*Id*.) According to the Mother, the LEA compromised her participation in the IEP process by failing to adhere to this directive. (HT at 49-50.) The Mother provided a change of clothing which was never used by the LEA. (HT at 52.)

The Mother testified that she did not agree to the termination of the speech services (as provided for in the IEP, dated April 7, 2017 (“2017 IEP”), although she officially consented to it on December 12, 2017 (in the IEP Amendment, dated December 8, 2017) (2017 IEP Amendment). (HT at 86; LEA Exhibit 5, page 10 of 10.) (The Mother consented to, and gave permission for implementation of, the 2017 IEP, LEA Exhibit 1, page 10 of 10. *But see*, the Mother attempted to revoke her consent to the 2018 IEP regarding speech services. (Parent’s Exhibit 6, page 10; HT at 197.) The speech services were not restored. (HT at 198.)) According to the LEA, the Child had met all the goals. (*Id*.) She was not allowed to observe the speech services. (HT at 88.) The LEA did not provide progress reports. (*Id.*; HT at 89) She did not understand the speech services provided. (*Id*.) She opined that the speech services provided no benefit to the Child. (HT at 89.) She observed that the Child was making no progress with his speech. (*Id*.) During the entire time the LEA provided services, the Mother expressed her concerns regarding the Child’s speech and services provided. (HT at 91.)

The Mother requested the LEA to classify the Child under the designation of autism during IEP meetings. (HT at 93.) The LEA declined. (*Id*.) Instead, the LEA identified the Child as having a significant developmental delay. (HT at 93.) The Mother felt that autism should be “in the paperwork.” (HT at 108.) She did not understand the term “developmental delay.” (*Id*.)

The Mother repeatedly raised concerns during IEP meetings regarding toileting issues. (HT at 95, 97 and 251.) She requested the Child receive an occupational therapy evaluation. (*Id.*) The LEA declined on the basis that there was insufficient evidence to support the need for such an evaluation. (HT at 96.) According to the Mother by implication, the LEA’s decision was inconsistent with the reality that the Child received occupational therapy services from a professional for the last thirty months. (HT at 96-97.) This therapy addressed issues of toileting and personal hygiene. (*Id*.) Further, the therapy trained the Child to recognize and address issues of hunger, pain, heat, cold, etc. (*Id*.) According to the Mother, the LEA failed to address these concerns. (HT at 271.)

As referenced in the 2017 IEP, the Mother never received any “checklists, classwork or classroom participation” regarding the Child’s IEP goals, despite several requests. (HT at Page 101.) This included “progress reports” such the “IEP Progress Report-Annual Goal,” LEA Exhibit 7. (HT at 108.)

The Mother continued to have all the same concerns when the IEP, dated March 28, 2018 (2018 IEP) was drafted and finalized as she expressed to the LEA toward the drafting and finalization of the 2017 IEP. (HT at 108-118.) (The Mother consented to, and gave permission for implementation of, the 2018 IEP. (LEA Exhibit 9, page 8 of 8.)) These concerns included: toileting; failing to eat certain foods or a variety of foods; cleaning himself properly after using the bathroom; failing to pick up on social cues; acting aggressive; and, failing to sit in his chair. (HT at 114, 271 and 277.) While he made progress in speech, he continued to have difficulty communicating his observations or opinions regarding his home/community setting. (*Id*.) Further, he continued to confuse words, *e.g.*, hot and cold. (*Id*.) In addition, the Mother raised concerns regarding the Child’s visits to the clinic. (HT at 123; “Student Health Incident Report,” Parent’s Exhibit 13, pages 10-11.) She opined that the Child was at risk because he failed to recognize when he was in pain. (HT at 123-129.) On October 2, 2018, the Mother requested the LEA to provide the Child with a personal aide to allow him to function in the school setting. (HT at 154-155.) She was concerned that the Child was having difficulty with personal hygiene, eating and bodily safety. *(Id*.) The LEA discounted these concerns on the basis that it did not possess sufficient evidence to justify the request. (HT at 155, 271 and 274-275.)

In July, 2018, the Mother requested the LEA to convene an Eligibility meeting. (HT at 134.)

The Mother did not feel that she was an equal party at the Eligibility Meeting on December 18, 2018. (HT at 292-293 and 300.) According to the Mother and of interest to her, the LEA never explained assistive technology services, non‑academic and extracurricular services, physical education services, extended school year services or options related to length of the school day. (HT at 429.) At this meeting, the LEA confirmed receipt of a document from a medical professional regarding toileting recommendations. (HT at 115; Parent's Exhibit 13, page 1.) The Mother testified that the LEA failed to adhere to these recommendations. (HT at 118 and 251.) The Mother requested verification of such implementation several times from the LEA. (HT at 121 and 251.) The Mother questioned the GE Teacher as to her knowledge of basic special educational principles. (HT at 290.) The Mother’s request that the GE Teacher retrieve “worksheets,” “sample documents,” *etc.*, from her desk (or any source) was denied. (HT at 291-292.) The Document, entitled “Patient Visit Notes”, and dated December 3, 2018, from the Child’s Psychiatrist, was considered by the Eligibility participants. (HT at 295-297.) (While the document was admitted insofar as it was considered by the Eligibility participants, the opinions contained therein were not considered on the basis that the Child’s Psychiatrist did not appear as a witness, subject to cross-examination, hearsay, *etc*. (HT at 296-297.) While she initially testified that she was not provided “evaluation procedure, test, record, or report” at the meeting, she clarified that she did not receive “work samples” and questioned the GE Teacher’s professional knowledge. (HT at 300.) The Mother did not feel that she (or her Advocate) were disruptive at the meeting. (HT at 1164.)

The Mother expressed confusion between the LEA documents and the opinions of independent professionals such as, by implication, the Child’s occupational therapist. (HT at 156.)

From October of 2018 to the present, the Mother made countless attempts to arrange a Eligibility Meeting at a “mutually agreed‑upon location.” (See, *e.g*., HT at 208.) By mutual agreement, the Parties convened the Eligibility Meeting on December 14, 2018. (“Prior Written Notice,” LEA Exhibit 37, page 1.)

The LEA did not provide a copy of the Child’s record, despite requests. (HT at 224 and 249.) The LEA made the Child’s record available for inspection. (HT at 225.) The Mother had no idea of the number of grades the Child received during the first and second quarter. (HT at 217.) She did not understand or could not interpret school records. (HT at 280.) She possessed some understanding as to the “rubrics” regarding grades, *i.e,* 1 through 4, at least as to the 3 category. (HT at 224.) She made one attempt to arrange a teacher/parent conference. (HT at 217.) The Mother required the LEA to communicate by email. (HT at 231.) According to the Mother, no LEA employee attempted to educate her regarding her rights and obligations under the IDEA. (HT at 265-266.) She distrusted the Case Manager. (HT at 421.) The Mother received a copy of the procedural safeguards (or parent’s educational rights) “at the meetings.” (*Id*.) Although she consented to the 2017 IEP and 2018 IEP, she testified that she did not understand her rights. (*Id*.; LEA Exhibits 5 and 6.)

The Mother requested an Independent Educational Evaluation which was denied by the LEA as unnecessary. (HT at 274-276 and 475.)

The Mother felt that she could not meaningfully participate at any meeting with the LEA. (HT at 461.) She felt that the LEA disrespected her at every meeting. (HT at 458.) She felt that she was not allowed to share information at any meeting. (HT at 460.)

She testified that her appearance on any school property, even at the Hearing, caused her to break out in hives, requiring Benadryl. (HT at 234.) Further, she testified that she had taken Valium to prepare for her testimony. (*Id.*) According to her testimony, that was “why my brain's all over the place. I just don't feel comfortable. It makes me completely, completely, on edge.” (*Id*.) Her demeanor was consistent with this testimony. At no time did the Mother introduce any evidence--physical, medical or otherwise--to support her assertion.

On September 20, 2018, the Mother sent the Principal an email requesting reimbursement for the Child (and evidently his brother) for transportation, 504 Plan services and special educational services. (HT at 281-284; Parent’s Exhibit 23, page 3.) The Mother indicated that the 2017 IEP required the Child to attend one school but evidently the Child attended another school, inferring that the change in schools required the LEA to reimburse the Parent. (HT at 284-286.) No testimony was provided as to why the first school was inappropriate or why the Mother should be reimbursed under the mandates of IDEA.

On cross examination:

- The Mother never observed the Child in a class-room setting. (HT at 383.)

- The Mother was unaware that the Child had a special education teacher. (HT at 384.)

- The Mother never attended a parent-teacher conference with either the Child’s general or special educational teachers. (HT at 383-384.)

- While the Mother claimed she did not understand her actions, she consented to the 2017 IEP (HT at 385.)

- The Mother never contacted the references published on the document which provide parents an informative resource to address any concerns, *e.g.,* the XXPS parent‑teacher resource center. (HT at 387 and 405.)

- The Mother consented to the IEP amendment from December 8, 2017, terminating speech services. (HT at 388; LEA Exhibit 5.)

- The document entitled “Commonwealth of Virginia School Entrance Health Form,” dated August 28, 2018, and submitted by the Mother which included a report from the Child’s physician. This form indicated that the Child did not suffer from the physical, mental or other difficulties referenced in her testimony including autism, toileting and learning issues (*e.g.* problem solving and communication). (HT at 392-394; LEA Exhibit 12.)

- By email, dated October 22, 2018, the Mother indicated that her desire not to appear on school property was based on her fear that she and her Advocate would be requested to leave school property as opposed to medical reasons. (HT at 402; LEA Exhibit 21.)

- On February 26, 2019, the Mother appeared on school property for an unrelated matter despite her testimony regarding her medical aversion to such appearance. (HT at 402-404; Parent’s Exhibit 22, page 110.)

- On October 2, 2018, the Mother was provided a document entitled “Parental Consent for Evaluation,” dated October 2, 2018. (HT at 404-405.) Procedural Safeguards were provided to the Mother. (HT at 405.) The Mother was also reminded of the resource of the Case Manager for questions regarding the IDEA. (*Id*.)

- The Mother ignored telephone calls from the LEA. (HT at 419.)

Overall, the evidence was that the Mother is devoted to the Child. With that stated, the Mother’s testimony was found unpersuasive and, at times, unbelievable. By her own admission, she was under the influence of a prescription drug during her testimony. This was verified by her demeanor. Her presentation was disjointed and repetitive. Her explanations regarding her actions presented as self-serving.

VDOE Psychologist

The VDOE Psychologist was an employee of the Virginia Department of Education (VDOE) as its school psychology specialist, providing technical assistance to school psychologists across the state. (HT at 55.) She had no prior contact with the Child, his IEPs, *etc*. (HT 61-66.) While included as a recipient on emails, she had no knowledge of the instant matter. (*Id*.) While a credible witness, she provided no relevant testimony regarding the instant matter.

VDOE Director

The VDOE Director was called as Director of Facilities and Family Engagement for VDOE. (HT at 67.) While a credible witness, he provided no relevant testimony regarding the instant matter.

Private School Director

The Private School Director was an expert in the area of autism as well as a factual witness who was involved in the acceptance of the Child in a private school. (HT at 162-164 and 170.) The Child was accepted into the private school December 1, 2018. (Parent’s Exhibit 14, page 3.) Based on documents and information provided by the Mother, the Child was accepted into the private school’s “accelerated independent learner community.” (HT at 164, 167 and 175.) Based on the information provided, the Private School Director opined that the Child's diagnosis of autism was correct both medically and educationally. (HT at 173.) Further, the private school could satisfy the Child's needs academically. (*Id.*) She opined that there are times when an educational diagnosis under IDEA and a medical diagnosis may differ. (*Id.*) The private school is a day school. (HT at 185.) All the students have disabilities. (HT at 186.) There are no general education students. (HT at 191.) Classes contain eight students, one special education teacher and six teaching assistants. (HT at 187.) The cost was $310 per day for a two hundred and thirty-two day school year. (HT at 188.) The Private School Director’s expert opinions were discounted insofar as she had never met the Child or seen the Child in a school setting. (HT at 168.) She conducted no evaluations. (*Id*.) The documents she considered may not have included the Child’s recent IEP or current evaluations. (HT at 174-175 and 192.) Further, she never spoke with the Child’s general education teacher or special education teacher. (HT at 176-177.) Otherwise, the Private School Director was found to be a credible witness regarding factual matters.

LEA Chief

The LEA Chief was the executive director of technology and director of equity in student support services for the entire LEA. (HT at 312.) While a credible witness, he provided no relevant testimony regarding the instant matter.

Former LEA Director

Former LEA Director was the LEA Director of Special Education. (HT at 331.) While a credible witness, she provided no relevant testimony regarding the instant matter.

Occupational Therapist

The Occupational Therapist was qualified as an expert in the area of occupational therapy. (HT at 361.) While she was always willing to speak to the LEA, she was never contacted by it. (HT at 363.) In her opinion, the Child’s strengths were that he developed good fine motor skills. (HT at 361.) His weaknesses included “more related to sensory processing and intentional concerns.” (*Id*.) He can be “very overstimulated by a lot of visual input” which “prevents him from being able to complete a task.” (*Id*.) Further, he has “difficulty discriminating between relevant and irrelevant auditory stimuli.” (*Id*.) “Sequencing multi‑step directions is a struggle, and attention to task can be a challenge.” (*Id*.) She worked with the Child in a one-on-one setting and could not opine as to the Child’s reaction to a school setting. (HT at 364-365.) While credible, her expert opinion was discounted insofar as she had never observed the Child in a classroom setting or spoke with the Child’s general or special educational teachers. (HT at 372.) Further, she offered no testimony regarding the impact of her professional concerns on the Child’s current school placement, his school progress or his IDEA Eligibility. (*See*, *e.g.*, HT at 364-365.) Further, the Occupational Therapist had not reviewed relevant documents such as, *e.g.*, any educational records.

Case Manager

The Case Manager was the coordinator of special education for the Child. (HT at 491 and 496.) She qualified as an expert in special education. (HT at 492.) She routinely observed the Child in a school setting. (HT at 574.) When the 2017 IEP Amendment was drafted, the IEP team knew of the Child’s autism diagnosis. (HT at 499.) (The Mother consented to the 2017 IEP Amendment. (LEA Exhibit 5, page 10.)) Procedural safeguards were provided to the Mother at the meeting. (HT at 517.) The Mother requested meetings in locations outside the LEA. (HT at 520-521.) The Mother did not request the LEA to provide independent evaluators with information or documents to review the Child’s matter. (HT at 539.) Similarly, the Mother did not request for professionals to observe the Child in the classroom. (*Id*.) During the Eligibility meeting held on December 14, 2018, the LEA determined that the Child did not meet the IDEA criteria for autism. (HT at 551.) She opined that a medical diagnosis of autism does not support the Child’s designation of autism under IDEA. (HT at 555.) The LEA provided alternatives to the Mother when she expressed her objection to appearing on school properties. (HT at 563.) The LEA offered video conferencing. (HT at 564.) During the Eligibility meeting held on December 14, 2018, the Mother extremely disrupted the meeting. (HT at 566-572.) The Child thrived in the school setting. (HT at 572-577.) The Eligibility participants reviewed the document entitled “Confidential,” with a date of evaluation of 10/2/2018, 11/7/2018 and 11/13/2018. (HT at 532-536; LEA Exhibit 25.) The Eligibility participants also considered evaluations for speech and language, psychological--psycho-educational evaluation, sociological evaluation, functional behavioral assessment and observations. (HT at 577.) The Eligibility participants duly completed the necessary criteria to establish its decision: the five different disability categories. (HT at 582.) The Child thrived at his current placement-academically and socially. (HT at 581-593 and 597.) The decision to find that the Child was no longer eligible for special education was correct. (HT at 583 and 597.) The Mother rejected further consideration on the issue including the issue of toileting. (HT at 584.) The Child does not require private placement. (HT at 594 and 597.) The Child is receiving FAPE. (HT at 597.)

LEA Compliance Specialist

The LEA Compliance Specialist was the LEA’s compliance specialist regarding IDEA and 504. (HT at 647-648.) He provided support to all LEA school-based coordinators in a number of procedural and compliance‑related matters concerning the referral, identification and evaluation, and provision of free appropriate public education to students. (*Id.*) He also provided training and support around Section 504 compliance, eligibility, and plans. (*Id*.) He was designated as an expert in the area of special education, with emphasis on eligibility; compliance; administration; and implementation. (HT at 651-652.) The Mother was sent a copy of the procedural safeguards. (HT at 725.) The Mother was provided access to resources regarding her IDEA rights (*Id*.) As an expert, he opined that the IDEA term of “mutually agreed‑upon time, date, and location,” meant that both parties must agree to the time, date and location of the meeting. (HT at 730.) As to a decision regarding a location, he opined that: LEA would not have control as to space configuration as to the persons attending; the confidentiality of the meeting; and, security of, and access to, records. (HT at 738.) Further, travel time would undermine LEA employees’ capacity to effectuate their duties timely at school. (HT at 742-744.) The Child’s academic placement is in the least restrictive environment in accordance with IDEA. (HT at 751-753.) The Witness was found to be very credible.

GE Teacher

The GE Teacher was the general education teacher for the Child. (HT at 784, 786 and 788.) She was qualified as an expert in general education instruction for elementary school. (HT at 779.) She sent weekly emails to the Mother, a dialogue. (HT at 786.) She has twenty-five students in her class. (HT at 927.) The Parent’s interruptions during the Eligibility meeting held on December 14, 2018, caused the GE Teacher to be distracted. (HT at 823.) She was a member of the team which created the 2017 IEP and 2018 IEP. (HT at 909.) She provided classroom observations to the teams. (HT at 833.) The Child was able to communicate with her clearly. (HT at 39.) His fine motor skills were that of a typical five to six year old in her classroom. (Id.) He was learning how to transition, consistent with other class mates. (HT at 846.) Sharing information with a parent is important. (HT at 855.) The educators are responsible to analyze the raw data when creating grades. (HT at 855.) The Child was academically on target. (*Id*.; HT at 866 and 890-896.) The class consisted of both general and special education students. (HT at 863.) The Child had friends in school. (*Id*.) As an expert, she opined that she had no concerns with the Child’s academic skills. (HT at 866.) While high energy affected his behavior, he could be re-directed easily. (*Id.*) The Child experienced growth between September, 2018, and January, 2019, when he left the school. (HT at 869-870.) The Mother did not attend a parent/teacher conference. (HT at 872.) Although the Mother attempted to schedule a conference, she never followed up. (HT at 872-873.) The Mother returned the Child’s report card without requesting a conference. (HT at 875.) The GE Teacher assumed that the Mother had no concerns regarding the Child’s academic progress, special educational services, *etc*. (HT at 921.) The Mother never: observed the Child in the classroom; requested the opportunity to review the Child’s records; or, contacted the GE Teacher to discuss the Child’s grades, work or journal. (HT at 874-875; and 878.) The Child’s written materials were routinely sent home, sometimes in the form of a journal. (HT at 875-878.) In December, 2018, the GE Teacher received a document from the Child’s urologist. (HT at 878.) The GE Teacher never saw the Child’s wetting himself. (*Id*.) The Child never required a change of clothes during the school day. (HT at 879.) A chart was used to address the document received from the urologist, documenting the Child’s use of the toilet. (HT at 881-882.) The chart was used from January 2-11, 2019. (HT at 884.) The GE Teacher did not recall an instance when the Child cried or had tantrums in class. (HT at 883-884.) The GE Teacher opined that: the Child made progress while he attended the LEA; he received FAPE; and, he does not require special educational services generally as well as to access the general education curriculum. (HT at 897-899 and 819.) The GE Teacher was found to be a very credible witness because of her expertise, experience and demeanor as well as her interaction with the Child on a daily basis in a classroom setting. Her testimony was corroborated by documents referenced.

Principal

The Principal was called as a factual witness. He was the LEA principal for the Child’s school. (HT at 942.) He was familiar with the Child. (*Id.*) The Mother was given copies of the report cards. (HT at 944.) The first time the Parent requested access to “work samples” or the raw data that supported the Child’s grades was at the Eligibility meeting on December 14, 2018. (HT at 946.) Work samples were sent home. (HT at 946.) The Child did not exhibit signs of anxiety at school. (HT at 949.) The Mother hung up on the Principal when he attempted to schedule a meeting. (HT at 961.) The LEA and the Mother agreed to allow her to participate in the Eligibility meeting on December 14, 2018, *via* teleconference as a “mutually agreed upon location.” (HT at 970.) Before the meeting, the LEA provided the Mother with the documents that were to be used at the meeting. (HT at 976.) The Mother was fully prepared to participate in the meeting. (HT at 1021.) In response to requests from the Mother regarding work samples, the LEA attempted to arrange a meeting after the Eligibility meeting. (HT at 980.) The Mother was provided multiple copies of the Procedural safeguards at approximately five IEP meetings. (HT at 988 and 991.) Prior to the Eligibility meeting, the Mother was sent a letter requesting her to arrange a time to review the Child’s educational record before the meeting. (HT at 992.) She never responded. (*Id*.) The Eligibility members used the Child’s grades to determine strengths and weaknesses. (HT at 994.) The grades were a summary of the raw data. (*Id*.) Work samples that were consistently sent home. (*Id*.) The GE Teacher followed the guidelines in terms of determining his grades. (*Id*.) Further, there were checklists, one‑on‑one interviews, scoring rubrics and other things utilized by kindergarten teachers to determine a student's performance and ability to meet certain criteria in terms of their grades, but such information was not necessarily samples that could be sent home. (*Id*.) The members also heard about the Child’s progress in the classroom, curriculum-based measures, evaluations, educational evaluation, social history, teacher observations, parental input, outside evaluations, disability checklists including autism and developmental delay, learning disability and speech (HT at 995-996; LEA Exhibit 37.) During the approximate four hours the meeting lasted, the Parent (and her Advocate) repeatedly disrupted the meeting to where it became necessary to terminate their participation *via* video conference. (HT at 998-999, 1019; LEA Exhibit 37.) The Principal was found to be credible witness with personal knowledge regarding the matters upon which he testified. His testimony was corroborated by documents referenced.

# LEA Witnesses

The LEA called the Special Education Teacher.

Special Education Teacher

The Special Education Teacher was qualified in the area of special education. (HT at 1036-1037.) She was the Child’s special educational teacher. (HT at 1029-1030 and 1039.) She attended the Child’s eligibility meetings. (HT at 1030.) She provided the Child with the 2018 IEP services. (HT at 1040.) The Child’s classroom was fully integrated with special and general educational students. (*Id.*) She saw the Child daily in a classroom setting. (*Id*.) The Special Education Teacher heard concerns from the Mother which were investigated and found nonexistent, *e.g.*, crying during school. (HT at 1042-1045.) The Mother had access to her. (HT at 1048.) The Mother never requested a meeting with her to discuss the Child for any reason. (HT at 1050.) The Special Education Teacher was a member of the Eligibility meeting. (HT at 1105.) The tone of the Eligibility meeting was “very hostile.” (HT at 1053 and 1055; Parent’s Exhibit 26.) The Mother (or her Advocate) consistently talked over other members during the meeting and impeded the meeting. (HT at 1054 and 1058; Parent’s Exhibit 26.) Despite the Principal’s good-faith attempts to redirect, the Parent (or her Advocate) continued to disrupt the meeting. (HT at 1059-1065.) The members reviewed the necessary information, documents and evaluations to decide eligibility. (HT at 1073-1080, 1084-1085 and 1128.) The LEA timely generated a chart to address the concerns of the Mother’s urologist. (HT at 1090-1091.) The Child’s visit to the clinic was not a concern. (HT at 1091-1092.) She never saw the Child exhibit in the school setting: anxiety; wetting; crying or tantrums. (HT at 1092.) As an expert, she opined that she had no concerns regarding the Child: academically, functionally, behaviorally. (HT at 1095.) The Child exceeded academic benchmarks. (*Id.*; HT at 1042-1045.) His status was consistent with other children his age. (*Id*.) He should be in an integrated class. (*Id*.) He progressed academically. (*Id.*) The Child does not require special instruction. (HT at 1096.) The Child received FAPE. (*Id*.) The Special Education Teacher was found to be a very credible witness with personal knowledge regarding the matters upon which she testified. Her testimony was corroborated by documents referenced.

# EXHIBITS ADMITTED INTO EVIDENCE

1. All LEA Exhibits were admitted into evidence with the direction that the weight to place on each and every exhibit, if any, was reserved by the Hearing Officer.

2. The following Parent/Child Exhibits were admitted: 2, pages 2-6; 6,pages 1-10; 8, page 1 9, page 7; 12, pages 1-5, 8; 13, pages 1, 8-11; 14, pages 1, 3; 17, pages 5-13; 18; 19, page 26, 30-36, 57-60, 87; 22, page 110; 23, page 1, 3, 10, 13, 84-85; 25, page 86-89; 27, pages 20-22; 26 (Disk containing a recording of the Eligibility Meeting).

# FACTUAL FINDINGS

After reviewing the PreHearing Reports, testimony, exhibits and the closing arguments, the following factual findings are made:

1. The Parent/Child knowingly and voluntarily consented to, and gave permission to implement, the 2017 IEP.
2. The Parent/Child knowingly and voluntarily consented to the termination of speech service, the 2017 IEP Amendment.
3. The Parent/Child knowingly and voluntarily consented to, and gave permission to implement, the 2018 IEP.
4. The Child was subject to the 2018 IEP.
5. The Parent/Child was timely provided documents and information which includes the Child’s daily work product.
6. The Parent/Child was provided report cards timely.
7. The Parent/Child was provided “raw data” timely including, *e.g*., work samples.
8. The Mother’s testimony was unbelievable.
9. By choice, the Mother avoided a parent/teacher conference.
10. The LEA correctly identified the Child as having significant developmental delay *via* 2017 IEP and 2018 IEP.
11. By choice, the Mother testified under the influence of a drug during her testimony, rendering her testimony unpersuasive.
12. By choice, the Mother never observed the Child in a class-room setting.
13. By choice, the Mother never attended a parent-teacher conference with either the Child’s general or special educational teachers.
14. By choice, the Mother never contacted any LEA referral or resource provided, to educate herself regarding IDEA rights.
15. The Child has no physical, mental or other difficulties to prevent his participation in academic activities as a general educational student.
16. The Mother possessed no impairments to prevent her from appearing on school property.
17. The Parent/Child’s assertion that the Mother could not appear on school property was a falsehood and simply a litigation ploy.
18. The Eligibility member possessed sufficient tests, observations and data to render a valid decision.
19. The Eligibility meeting was conducted consistent with the mandates of the IDEA.
20. The conduct of the Parent/Child (or Advocate) at the Eligibility meeting was outrageous and disruptive by design.
21. The Parent/Child (or Advocate) sabotaged the Eligibility meeting on December 14, 2018, by intentionally disrupting the proceeding without valid excuse or cause.
22. The Principal’s decision to terminate the Parent/Child’s access to the Eligibility meeting was correct under the IDEA.
23. The Child does not require special educational services under the IDEA.
24. The LEA provided the Child with FAPE.
25. The Child thrived academically while attending the LEA.
26. Private placement is not required for the Child.
27. The LEA complied with all procedural requirements under the IDEA.
28. No conspiracy existed to inflate the Child’s academic or behavior credentials.
29. No conspiracy existed to deny the Child FAPE.

# ANALYSIS

# Legal Analysis

This administrative proceeding was initiated by the Parents/Child, they have the burden of proof. Schaffer, *ex rel*. Schaffer v. Weast, 126 S.Ct. 528 (2005). Further, the Parents/Child must prove their case by a preponderance of the evidence. Hendrick Hudson Dist. Bd. of Ed. v. Rowley, 458 U.S. 176, 206 (1982).

In Arlington County School Board v. Smith, 230 F.Supp.2d 704, 715 (E.D. Va. 2002), the Court reversed the decision of the Hearing Officer on the basis that he made factual findings that were not supported by expert testimony:

In summary, the preponderance of the record evidence points persuasively to the conclusion that APS's proposed placement of Jane in the Interlude program would provide her with a FAPE because it was “reasonably calculated to enable [her] to receive educational benefit.” *See* Rowley, 458 U.S. at 206-07, 102 S. Ct. 3034. The hearing officer's contrary conclusion that Jane would not benefit from the Interlude program finds no support in the record, **as no expert testified to this effect**, and Jane had not yet fully experienced the program. It is apparent that the hearing officer succumbed to the temptation, which exists for judges and hearing officers alike in IDEA cases, to make his own independent judgment as to the best placement for Jane, instead of relying on the record evidence presented in the hearing. This temptation stems from the fact that judges and hearing officers are typically parents who are in the habit of making such judgments. Yet, the Supreme Court and Fourth Circuit have admonished hearing officers and reviewing courts alike when they substitute personal opinions or judgments as to proper educational policy, and best placements for the disabled student, in the place of the local educators' expert judgments. *See* Rowley, 458 U.S. at 206, 102 S. Ct. 3034; Hartmann v. Loundon County Bd. Of Educ., 118 F.3d 996, 1000-1001. These courts have also reminded hearing officers and reviewing courts that school districts are not required to provide a disabled child with the best possible education. *See* Rowley, 458 U.S. at 192, 102 S. Ct. 3034. The result reached here is properly deferential to Jane's educators' unanimous determination that the Interlude placement was appropriate. *See also* Hartmann, 118 F.3d at 1001 (holding that “local educators deserve latitude in determining the [IEP] most appropriate for a disabled child”) [Emphasis added.]

A review of Smith is important to emphasize the restrictions, constraints or limitations placed on hearing officers when deciding IDEA cases in Virginia. Although a child is involved, current law prevents an hearing officer’s review of evidence as a Virginia juvenile district court judge must review in a custody matter with the “best interests of the child” standard as described in 20-124.1 of the Virginia Code. Instead, hearing officers must respect the limitations that evidence, especially expert testimony, determine the outcome in IDEA cases as well as respect the Federal directive that IEPs are reviewed with the standard established by Rowley and its progeny. The difference between the standard established by the “best interests of the child” and the standard established by Rowley (and its progeny) can never be reconciled. Quite frankly, this difference causes a great deal of litigation, cost and heartache.

In DeVries v. Fairfax County School Bd., 882 F.2d 876, 878 (4th Cir. 1989), the Court recognized the importance of mainstreaming when it opined that “[m]ainstreaming of handicapped children into regular school programs where they might have opportunities to study and to socialize with nonhandicapped children is not only a laudable goal but is also a requirement of the Act.” *In accord* Barnett v. Fairfax County School Bd.*,* 927 F.2d 146, 153 (4th Cir. 1991).

To rule that the LEA violated the IDEA where a procedural violation has been alleged, a hearing officer must find: (1) that the Parent/Child alleged a procedural violation; (2) that the violation “significantly impeded the parents’ opportunity to participate in the decision making process regarding the provision of FAPE to the child”; and (3) the Child did not receive FAPE as a result. (*See* R.F. v. Cecil Cnty. Pub. Schs., 919 F.3d 237, 248 (4th Cir. 2019). In short, unless a procedural violation denies a child FAPE, a hearing officer “may only order compliance with the IDEA’s procedural safeguards and cannot grant other forms of relief, such as private placement or compensatory education.” *Id.*

**Specific Issues**

I. Did the LEA deny the Child FAPE by refusing to convene IEP meetings at a “mutually agreed upon” location?

The overwhelming evidence is that any meeting, especially the Eligibility meeting, was effectuated by mutual consent. For reasons unclear or supported by the evidence, the Mother created “roadblocks” to avoid interaction with the LEA regarding the Child. These roadblocks included: no telephone communication; requiring communications *via* email; not reviewing the Child’s records; not arranging a Parent/Teacher conference; not appearing on school property for the Child’s IEP and Eligibility meeting; and disrupting the Eligibility meeting by design. Assuming without finding, no LEA procedural irregularity had an impact on the Child’s receiving FAPE.

II. Did the LEA deny the Child FAPE by refusing to allow the Parent/Child and their Advocate to appear *via* teleconference or telephone at IEP meetings?

The overwhelming evidence is that any meeting, especially the Eligibility meeting, was effectuated by mutual consent. Assuming without finding, no LEA procedural irregularity had an impact on the Child’s receiving FAPE.

III. Did the LEA deny the Child FAPE by failing to educate the Parent regarding opportunities available under IDEA?

The overwhelming evidence was that Parent/Child was provided multiple avenues to discuss the Child’s special educational issues. Moreover, she was provided every opportunity to engage the LEA to discuss the Child’s situation including work samples, grades, checklists, *etc*. The overwhelming evidence was that the Parent/Child actively avoided any reasonable effort to communicate meaningfully with the LEA. Assuming without finding, no LEA procedural irregularity had an impact on the Child’s receiving FAPE.

IV. Did the LEA deny the Child FAPE by requiring the Parent/Child and their Advocate to convene an IEP meeting on school locations?

The overwhelming evidence was that the LEA made extreme attempts to allow the parties to conduct all IEPs on a mutual agreed upon location. Such meeting on LEA property is necessary given the reality of the circumstance: teacher location, document location, security and convenience. By agreement, the Eligibility meeting on December 14, 2018, was conducted on a mutually agreed upon location. The overwhelming evidence was that the Parent/Child actively avoided any reasonable effort to address this issue. Assuming without finding, no LEA procedural irregularity had an impact on the Child’s receiving FAPE.

V. Did the LEA deny the Child FAPE by failing to accept partial consent including homebound services?

This issue was not considered insofar as “homebound services” was generated after the Due Process Request was filed. Further, the Parent/Child did not carry the burden on reimbursement of any preschool expenses.

VI. Did the LEA deny the Child FAPE by finding that the Child was not eligible for IDEA services including a designation of “autism”?

There was no evidence support overwhelmingly the Child should be designated under the category of autism as defined by the IDEA. The overwhelming evidence was that the LEA considered the designation in its review during all IEP meetings and especially the Eligibility meeting held on December 14, 2018.

VII. Did the LEA deny the Child FAPE by failing to develop goals that addressed “toileting needs” or other medical limitations?

The overwhelming evidence was that the LEA considered these references during the Eligibility meeting held on December 14, 2018. These issues simply do not exist in the school setting. With that stated, the evidence was that the LEA timely complied with any recommendations from the Child’s urologist. In addition, no credible evidence was introduced regarding the Child’s “medical limitations” and the LEA’s lack for response thereto.

VIII. Did the LEA deny the Child FAPE by interfering with parental access to “work samples”?

The overwhelming evidence was that the Parent possessed access to this data at all times relevant hereto. Further, the LEA considered the culmination of this data as grades during the Eligibility meeting held on December 14, 2018. The overwhelming evidence was that the Parent/Child actively avoided any reasonable effort to communicate meaningfully with the LEA. The Parent/Child used this issue to promote an “agenda” unrelated to the Child. Assuming without finding, no LEA procedural irregularity had an impact on the Child’s receiving FAPE.

IX. Did the LEA deny the Child FAPE by denying the Child’s placement in a private placement including the School.

The overwhelming evidence was that the Child does not require special educational service and, in fact, thrived during his attendance at the LEA. Further, the proposed private placement would violate the IDEA’s mandate against placing students in the least restrictive environment.

X. Did the LEA deny the Child FAPE by not providing compensatory homebound services?

The Due Process Complaint was filed on January 2, 2019. This issue was outside the scope the Due Process Request insofar as such services were rendered (or denied) after the date of filing.

XI. Did the LEA deny the Child FAPE by denying reimbursement for costs incurred by placement of the Child in homebound services?

The Due Process Complaint was filed on January 2, 2019. This issue was outside the scope the Due Process Request as the circumstances arose after that date.

XII. Did the LEA deny the Child FAPE by failing to provide the Child trained staff at times relevant to the Due Process Request?

No evidence from any source supports this issue.

XIII. Did the LEA deny the Child FAPE by providing the Child a “behavior plan” to address “safety issues” including, but not limited to, “anxiety” during the times relevant to the Due Process Request?

No evidence from any source supports this issue.

XIV. Did the LEA deny the Child FAPE by ignoring the independent psychological report from Dr. xxxxxxxxxxxxx, provided in or about December, 2018?

The overwhelming evidence was that this report was reviewed by the Eligibility members when it found that the Child was not eligible for special educational services. Further, the overwhelming evidence was that the that the Child thrived in the LEA setting.

XV. Did the LEA deny the Child FAPE by ignoring the data, contained in the correspondence, dated on or about December 3, 2018, from xxxxxxxxxxxxx?

No evidence from any source supports this issue. Further, the overwhelming evidence was that the that the Child thrived in the LEA setting.

XVI. Did the LEA deny the Child FAPE by abruptly terminating a meeting on December 14, 2018, with an LEA employee, *i.e*, Principal xxxxxxxxxxx.

No evidence from any source supports this issue. The LEA’s termination of communication was appropriate and necessary to allow the Eligibility members to constructively complete the task. Assuming without finding, no LEA procedural irregularity had no impact on the Child’s receiving FAPE.

XVII. Did the LEA deny the Child FAPE by not considering the Child’s frequent use of the Clinic?

No evidence from any source supports this issue. In contrast, the evidence was that Child’s visit to the Clinic was routine.

# CONCLUSION

The Due Process Request is dismissed with prejudice for reasons stated herein.

RELIEF GRANTED**:**

None.

# APPEAL, IMPLEMENTATION AND PREVAILING PARTY NOTIFICATIONS

1. **Appeal**. Pursuant to 8 VAC 21-81-T and 22.214 D of the Virginia Code, this decision is final and binding unless either party appeals in a federal district court within 90 days of the date of this decision, or in a state court within 180 days of the date of this decision.

2. **Implementation**. The LEA shall develop and submit an implementation plan within 45 calendar days of the rendering of a decision.

3. **Prevailing Party**. The LEA is deemed the prevailing party.

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Hearing Officer Date

**CERTIFICATE OF SERVICE**

I certify that on this 6th day of May, 2019, a true and accurate copy of this pleading was mailed, *via* First-class, postage prepaid mail, to:

Ms. xxxxxx xxxxxxxxxxxx

xxxxxxxxxxxxxxxxxx

xxxxxxxxxxx, Virginia xxxxx

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Robert J. Hartsoe

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