# COMMONWEALTH OF VIRGINIA

# VIRGINIA DEPARTMENT OF EDUCATION

# DIVISION OF SPECIAL EDUCATION & STUDENT SERVICES

# OFFICE OF DISPUTE RESOLUTION AND ADMINISTRATIVE SERVICES

**Re: Child, by and through his parent, Parent v. LEA**

**Child & Parent(s)/Guardian: Administrative Hearing Officer:**

Child Ternon Galloway Lee, Esquire

Parent(s) 215 McLaws Circle, Suite 3A

Williamsburg, VA 23185

**Child’s Advocate(s):** (757) 253-1570

Advocates for Child (757) 253-2534

**LEA’s Attorney**

Attorneys for LEA

**Superintendent of LEA:**

Dr. Superintendent

# DECISION

# I. PROCEDURAL HISTORY[[1]](#footnote-1)

On January 10, 2019, Parent submitted a due process complaint (Complaint/Due Process Request) requesting a due process hearing. The Local Educational Agency (LEA) received this Complaint on January 11, 2019. The Hearing Officer scheduled the due process hearing on February 14, 2019, and February 28, 2019.

Prior to holding the due process hearing, the Hearing Officer held pre-hearing conferences confirming the hearing dates, identifying the issues, and addressing other relevant matters. The Hearing Officer issued orders following the referenced PHCs related to the matters discussed and concerns noted.[[2]](#footnote-2)

The Hearing was held as scheduled on February 14 and 28, 2019. During the hearing, the Hearing Officer admitted Parent’s Exhibits 1, 2, 4, 5 through 23, 24 (pages 1-9 as redacted), 24 (pages 40-41), 25[[3]](#footnote-3), 26, 27 through 32. The Hearing Officer also admitted Hearing Officer exhibits 1 through 17.[[4]](#footnote-4) At the conclusion of the hearing, the parties were granted leave to submit written closing arguments. They have been submitted and made a part of the record.

The Hearing Officer now issues her decision in this matter.

# II. ISSUES

1. Whether the January 10, 2018 IEP is appropriate?

(i) Does the January 10, 2018 IEP address or give consideration to any academic, behavior, social skills deficits of the Child? On or before January 10, 2018, were any such deficits brought to the LEA’s attention by the parent, Dr. , and any educators’ proposals to retain the Child?

(ii) Does the January 10, 2018 IEP provide for supports, services, and accommodations to address any deficits of which the LEA had been informed?

(iii) Does the January 10, 2018 IEP deny the Child FAPE?

2. Did the parent request an eligibility meeting on or about August 2018, to determine if the Child is eligible for Special Education under a category in addition to speech?

(i) Did the LEA hold a Special Education Evaluation Team (SEET) meeting on September 13, 2018? Was the SEET meeting held in lieu the eligibility meeting requested by the parent? Did the LEA unnecessarily delay holding the eligibility meeting requested by the parent or decline to hold one?

(ii) Was there a denial of FAPE?

3. Was any IEP presented to the parent on January 8, 2019 appropriate?

(i) Did the LEA hold an IEP meeting on January 8, 2019, without parental consent or input?

(ii) Was any IEP presented to the parent on January 8, 2019, incomplete or inaccurate? Did it exclude, among other information, independent assessments regarding the Child being diagnosed with an Autistic Spectrum Disorder? Did any January 8, 2019 IEP minimize any disabilities of the Child and their impact on his academic, social and behavior performances?

(iii) Was any IEP presented to the parent on January 8, 2019, a working draft or a final IEP?

(iv) Did any IEP meeting held on January 8, 2019, or any IEP presented to the parent on the same date constitute a denial of FAPE?

# III. BURDEN OF PROOF

The United States Supreme Court held in *Shaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528, 163 L. Ed.2d 387 (2005), that the party seeking relief bears the burden of proof. Therefore, in this case the parent bears the burden of proof as she is challenging the LEA’s actions.

# IV. FINDINGS OF FACTS

1. Child is currently a third grader and has been determined a child with a disability. (S Exhs. 28 and 29). More details regarding Child’s eligibility determination are included in several “findings of facts” that are within this section of the decision.

2. About two (2) years and seven (7) months prior to Child entering the third grade, the LEA’s speech pathologist conducted a speech and language evaluation of Child. The school year was 2015-16 and Child was a kindergartener at Elementary School 1. The evaluation was conducted over a two day period on January 20 and 29, 2016. On February 10, 2016, this speech pathologist issued her speech and language report (February 2016 Speech and Language Report) regarding the two day assessment. (P Exh. 16; S Exh. 1; S Exh. 2).

One pertinent section of the February 2016 Speech and Language Report discussed the speech pathologist’s observations of Child in the classroom. Her observations noted Child’s demonstrated distractibility and failure to follow instructions. For example, the report mentions that while the teacher was showing the class how to produce the /th/ sound. “[Child] was looking around the room or playing with his shoes.” In the same section of the report, it notes that “[Child] was not looking at the teacher during the lesson; rather he was observing other students.” Moreover, the report mentions that the speech pathologist observed that Child did not participate when the teacher instructed the students to correctly initiate the /th/ sound. (P Exh. 16 at 4; S Exh. 1 at 4).

3. On or about June 23, 2016, Mother referred Child for a child study meeting to determine if Child was eligible for special education. The referral mentioned that Mother was concerned about Child’s reading. Also, under the heading “Medical” on the referral is a listing of conditions: Asthma – Inhaler, Allergies – Zytrex, iron deficiency and takes iron, and a notation that Child had ear tubes when he was six (6) months. In addition, the referral form notes that Child missed 25 days during the 2015-16 school-year. (S Exh. 3).

4. Next, the school held a child study committee meeting on July 7, 2016. Mother, Kindergarten General Education Teacher, 2 special education teachers, School Psychologist 1, a school social worker, Special Education Instructional Specialist, and an individual identified as ASE attended the Child Find meeting. This committee recommended evaluations of Child to determine if he is a child with a disability. (S Exh. 4).

5. On the same day as the Child Find meeting, July 7, 2016, Mother consented to multiple evaluations. The specific evaluations proposed by the school and agreed to by Mother were Educational Assessment, Psychological Assessment, Hearing Screening, Vision Screening, Sociological Assessment, and Observation. (S Exhs. 5 and 6).

6. Child entered first grade at Elementary School 2 for the 2016-17 school-year. Child’s grouping card for Elementary School 2 notes that he has health issues, specifically asthma. In addition, Child’s grouping card indicates that Child has excessive absences. (S Exh. 8).

Further, a hand written note on the card reads “Mother is upset he does not qualify for SPED. She has an advocate and plans to continue asking for it.” (S Exh. 8).

7. **Psycho-educational Assessments conducted August 24, 2016 and September 2, 2016:**

On August 24, 2016, and September 2, 2016, School Psychologist 1 conducted the Psycho-educational Evaluation. As previously mentioned, Mother had provided consent for this evaluation on July 7, 2016. (P Exh. 14; S Exh. 10).

Subsequent to conducting her evaluation, School Psychologist 1 submitted a written report. The report showed testing had been conducted in, among other areas, Child’s cognitive ability. According to the report, testing showed that although Child’s overall cognitive skills and abilities were within the average range, Child’s auditory processing could not be scored. This was the case because Child failed to pass enough items at the basic level of the phonological processing test to measure his ability in this area. Also, regarding this section of the test, School Psychologist 1 noted that Child had ended his kindergarten year reading at less than a first grade level. The report mentioned that he was still developing. School Psychologist 1 ended this section of her report by noting that Child’s auditory processing/phonological processing needs to be monitored. (P Exh. 14 at 5; S Exh. 10 at 5).

The psychologist’s report also showed that Child’s Attention and Executive Function were assessed. Test results showed that Child’s ability to listen to a set of words and respond immediately to a signal/target word was only better than 16% of other students his age. The psychologist did note that general observations of Child showed that he is very attentive. But she added that a bigger problem for Child is likely his ability to maintain pace with the rapid auditory input of such a task rather than his sustained attention. (P Exh. 14 at 6; S Exh. 10 at 6).

The psychologist also noted that on several occasions during attention/executive function testing, Child delayed in reacting to hearing a targeted word. She mentioned that his “delay in decision making ability” could be related to executive function or attention issues. She referenced Child’s long history of having tubes put in his ears and blockage. Then School Psychologist 1 stated that Child’s ability to maintain attention during sustained listening tasks require monitoring. She also offered suggestions on what might benefit Child in this area. Those suggestions included the following: (i) frequent comprehension checks, (ii) simplified instructions, (iii) visual cues to support directions, (iv) chunking of steps for multi-step procedures, (v) encouraging Child to raise his hand and ask for repetition, and (vi) teaching the child the best ways to get his teachers to explain things to him. (P Exh. 14 at 6; S Exh. 10 at 6).

In assessing Child’s attention and executive function, School Psychologist 1 received input from Mother by having the parent complete the Behavior Assessment System for Children, Third Edition (BASC-3). The T Score on the attention scale was 61 and indicated that Child’s symptoms related to attention problems was at high risk range. Moreover, the T Score on the Hyperactivity scale was 69 and fell in the at-risk range to borderline significant range. School Psychologist 1 noted that the Child’s scores in the referenced areas could be related to an attention or auditory issue and may require close monitoring. The parent’s input regarding executive function resulted in a T Score of 64 indicating Child having Executive Function difficulty. (P Exh. 14 at 5; S Exh. 10 at 5). The report interprets a T score ranging from 60-69 as indicating symptoms place the student at risk and therefore monitoring of the student in the area should take place. In addition, the report interprets T scores of 70 or above as significant and illustrating maladaptive behavior or the absence of adaptive behavior. (P Exh. 14 at 7; S Exh. 10 at 7).

In addition to School Psychologist 1 testing Child on his cognitive abilities and his attention and executive functioning, input was obtained from Mother regarding Child’s social and emotional functioning in the home setting. Mother’s rating scale on symptoms of withdrawal indicated Child ranked in the 99th percentile at home. Mother’s data also indicated Child experiencing anxiety in the significant range. In addition, information provided by Mother indicated Child had clinically significant levels of depression. Mother’s data also indicated Child fell in the at-risk range for exhibiting behaviors in the areas of hyperactivity, somatic complaints, aggression, and atypicality behavior such as banging head, babbling, etc. The psychologist indicated in her report that Child would benefit from specific interventions due to the behavioral symptoms noted. (P Exh. 14 at 7; S Exh. 10 at 7). The report indicates that Mother was offered resources to County Mental Health and supports, but Mother declined them at the time and indicated she was currently focusing on helping Child succeed academically. (P Exh. 14 at 9; S Exh. 10 at 9).

School Psychologist 1 received only input from Mother regarding Child in the home setting because Child’s teacher had not yet had enough time with him to provide data on him socially and emotionally. Accordingly, a supplemental Psychological report was conducted on October 17, 2016, to obtain input from Child’s teacher. Pertinent findings regarding the October 17, 2016 psychological report are set forth below in “Findings of Facts” # 8.

8. **Psychological Assessment Addendum conducted October 17, 2016;**

On October 17, 2016, School Psychologist 2 conducted a psychological assessment to supplement the evaluations performed by School Psychologist 1. The written evaluative report of the assessment was issued on November 4, 2016. The assessment device used for this evaluation was the BASC-3 Teacher rating scale. The results of the teacher rating showed, among other things, that Child’s scores in the areas of Learning Problems, Atypicality, and Functional Communication were clinically significant. Particularly, his teacher’s ratings indicated that Child often had difficulties with reading, math, spelling and keeping up in class. Regarding atypicality, this teacher rated him as often acting confused, saying things that did not make sense, and using confused or disorganized speech. Child’s T scores indicating they were clinically significant indicated that in those areas rated, adaptive behavior was absent or Child was highly maladaptive. (P Exh. 18; S Exh. 15).

In addition to this supplemental assessment identifying clinically significant problems, it showed Child’s scores regarding school problems and functional communications fell in the at-risk range. As such the school was notified in the report that those areas should be closely monitored. In the areas of adaptability, social skills, and study skills, the teacher’s rating scale indicated Child was functioning within normal limits. (P Exh. 18; S Exh. 15).

This supplemental psychological report ended by mentioning that interventions should focus on academic areas, such as reading, math and spelling and helping Child to communicate his thought clearly to others. (P Exh. 18; S Exh. 15).

9. **Sociological Assessment conducted September 7, 2016:**

In addition to the psychological-educational assessments mentioned above, on September 7, 2016, a school social worker conducted a sociological assessment of Child. As previously mentioned, Mother had provided consent for this evaluation on July 7, 2016. (P Exh. 13; S Exh. 9).

Reasons provided in the report for the referral to Child Study included, among others, concerns about Child’s reading, lack of confidence to start writing, need for prompting to start assignments and to stay focused, attention deficits. In addition, the report noted Mother’s input, to include her reports of Child experiencing anxiety about attending Elementary School 2 during the current school year at the time, which was the 2016-17 school-year. (P Exh. 13 at 2; S Exh. 9 at 2).

Also, this report listed Child’s medications as well as reported medical conditions. Specifically, Child was noted to have asthma, and allergies for the past three (3) years and iron deficiency for at least the past 2 years. Accordingly, the Hearing Officer finds that the school’s records indicate Child has chronic medical conditions – asthma/allergies and iron deficiency. (P Exh. 13 at3-4; S Exh. 9 at 3-4).

Under a section of the sociological report titled “Medical Risks Factors,” the asthma and allergies were specifically identified as risk factors that are associated with a higher incidence of disability. Other risk factors listed were surgeries/hospitalization/ER visits, delays in developmental milestones, and problems eating/sleeping. (P Exh. 13 at3-4; S Exh. 9 at 3-4).

Further, the sociological report identified multiple circumstances as events in the Child’s life that may be contributing to Child difficulties with learning. Those mentioned in the report are (i) Changes in family composition, (ii) Utilization of public assistance, (iii) Changes between schools/school districts, (iv) Relevant test history (SOL, DRA, etc., (v) Financial stressors, (vi) Homework support and (vii) other. Chronic absenteeism was absent from this list. (P Exh. 13 at 5; S Exh. 9 at 5).

As noted in the report also, Mother informed the evaluator of traumatic situations experienced by the family. They included homelessness, Child’s sibling’s autistic behaviors, and another sibling’s suicidal attempt. It was reported that they have caused Child to experience anxiety. (P Exh. 13 at 5; S Exh. 9 at 5).

10. On November 8, 2016, the eligibility team met and determined that Child was not eligible for special education under categories Special Learning Disability and Other Health Impaired due to Attention Deficit Hyperactive Disorder (ADHD). (S Exhs. 19 through 21).

11. On November 8, 2016, Mother consented to additional evaluations. Specifically she agreed to an educational assessment; a psychological assessment to determine strengths and weaknesses in social, motor, emotional, and intellectual abilities; and an observation. (S Exhs. 23).

12. Then on November 14, 2016, Mother consented to a Speech/Language Assessment and another observation. (S Exhs. 24).

13. On November 16, 2016, Speech/Language Pathologist 3 conducted an evaluation. Her resulting report is dated November 29, 2016. The report noted that Child had strengths in voice and fluency. A weakness was noted in the area of articulation. (S Exh. 25).

14. **Educational Evaluation conducted on November 17, 2016:**

The next day, November 17, 2016, the school’s educational diagnostician conducted an educational evaluation. According to the written report regarding the evaluation, standard scores from the assessments that are 90 and above are considered to show strengths in an area tested, standard scores of 84 and below are considered to show weakness in a tested area, and standard scores falling between 85 and 89 are considered to be neither a weakness nor a strength. (S Exh. 26).

The report continues by noting that Child’s scoring indicated an academic strength in word reading and an academic weakness in pseudo-word decoding when compared to peers his same age. Child’s scoring in his basic and early reading fell in the average range of abilities and showed neither a weakness nor strength in those areas. (S Exh. 26 at 3).

15. **Psychological Evaluation conducted on November 29, 2016:**

On November 29, 2016, School Psychologist 2 conducted another psychological evaluation. This evaluation consisted of (i) a classroom observation to observe Child’s reading and (ii) the administration of the Comprehensive Test of Phonological Processing – Second Edition (CTOPP-2). The written report of this additional psychological assessment is dated December 6, 2016. It provided an addendum to the other psychological evaluations conducted in August 24, 2016; September 2, 2016; and October 17, 2016.

Child was observed in the classroom during a reading assignment. The report reflects he was attentive, participated, and on task over 90% of the time. The observer noted, however, that Child had difficulty making the lower case “m.” In addition to the reading observation, the psychologist administered the CTOPP-2. According the report, this testing is employed to obtain additional information about a child’s phonological awareness and skills. The report notes that the psychologist was unable to obtain a composite score on this test because Child was unable to perform one of the sub-test. Specifically, Child was asked to say a word, then drop a sound and then say the remaining sound. Further, when asked to blend sounds together to make a word, he performed poorly. He did perform in the average range when asked to select pictures that corresponded to a certain sound. (S Exh. 27 at 3).

16. On December 13, 2016, the eligibility committee met again. This time the committee determined Child is a child with a disability under the category of speech and language impairment. The committee had previously determined Child was not eligible for special education under the categories of specific learning disability and other health impaired as a student with attention deficit. Mother agreed with the initial eligibility determination by the committee. (S Exhs. 28 and 29).

17. On January 11, 2017, the IEP team developed Child’s initial IEP. Mother consented to this IEP. (S Exh. 32; P Exh. 4; Tr. 122).

In the Present Level of Academic and Functional Performance (PLOP) section of the initial IEP, Child’s disability is described as “ a mild articulation impairment in the form of a frontal lisp.” Moreover, in the section of the PLOP titled “Strengths of Student,” it is noted that “[Child] struggles to finish assignments unless he has help as he is working below grade level. [Child] receives support in math and reading.” (P Exh. 4 at 2).

The IEP contained only one goal which reads “[Child] will correctly produce /s/, /z/ and /s/ blends in all positions of words in sentences with 75% accuracy in 3 out of 4 documented opportunities by January 2018.” The IEP also contained Short-term Objectives/Benchmarks related to the goal. (P Exh. 4 at 4).

Special Education services provided in this initial IEP are set forth below:

**Services Disability Location Amount of Time Begin Date End Date**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Hours Frequency\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Speech SL Therapy 2 monthly 01/11/2017 06/16/2017

Language (SL) room

Therapy

Speech SL Therapy 2 monthly 09/06/2017 01/10/2018

Language (SL) room

Therapy

(P Exh. 4 at 5).

18. Child was in the first grade during the 2016-17 school year. This was the school-year that the IEP mentioned in the above “Finding of Fact” # 17 was initially implemented.

Child’s report card for this school year indicates that Child was failing in reading and writing and performing below grade level in mathematics and science by the end of the second marking period. Also, his work-related communication skills fell below grade level. Particularly, his grade report noted that Child was below standard or expectations in the following areas:

(i) Demonstrating the ability to communicate effectively for a variety of purposes;

(ii) Providing relevant contributions to the class;

(iii) Demonstrating listening skills and asking questions to clarify understanding.

In addition, this grade report noted that Child performed below standards in showing responsibility. Particularly, the report mentioned that Child was below standard or expectations in the following areas:

Following Directions;

Planning, organizing and completing assignment/homework; and

Demonstrating respect toward self, others and property.

By the second marking period, the report card indicates Child had also accumulated seven (7) absences and one (1) tardy by this time. (S Exh. 33).

19. During Child’s first grade year, Mother continued to express concern about Child’s lack of progress in the first grade and the school’s recommendation that Child be retained in the first grade. Parent was also concerned about what she perceived as the Child experiencing anxiety about school. Mother communicated these concerns to school personnel. (P Exh 25 at 1; Tr. 42-43).

20. Mother also expressed her concerns to the child’s pediatrician. The pediatrician then referred Mother to a private clinical psychologist. (Tr. 43 and 46; P Exh. 24 at 7).

21. Mother then obtained a psychological evaluation of Child from this private psychologist. (P Exh. 12; Tr. 51). “Findings of Facts” 22 through 33 provide pertinent details of this evaluation.

22. **February 27, 2017 - April 12, 2017 Private Psychological Evaluation:**

Private Licensed Clinical Psychologist (Private Psychologist) evaluated Child during the period February 27, 2017 through April 12, 2017. Among other assessments, Private Psychologist conducted intellectual, ADHD, Autism, and Personality screenings. She provided a written report of her evaluation. (P Exh. 12).

23. This report indicated that testing administered for intellectual assessment was the Wechsler Intelligence Scale for Children – Fifth Edition (WISC-V). This assessment showed that Child’s ability to use word knowledge, verbalize meaningful concepts, and reason with language-based information was very low. Particularly, the psychological report that was completed as a result of the testing indicated Child performed better than only approximately 5 out of 100 examinees in this area. Further, Child’s score indicated his ability to think logically and use reasoning to apply rules fell in the very low range. The report indicated Child performed better than only approximately 5 out of 100 examinees. Similarly, his working memory score was in the very low range. The report indicated Child performed better than only approximately 3 out of 100 examinees. Moreover, Child’s nonverbal index score fell in the very low range and was only higher than approximately 6 out of 100 examinees. His working memory and processing speed performance also fell in the very low range. The report indicates he performed higher than only approximately 8 out of 100 examinees his age. (P Exh. 12 at 2 – 5).

24. The report did note that Child’s performance on IQ testing should be taken with caution due to his difficulty focusing. (P Exh. 12 at 2).

25. In addition to intellectual testing, Private Psychologist screened Child for ADHD. To accomplish this, she referenced using the Gordon Diagnostic System (GDS) and Amen Checklist. Further, Private Psychologist observed Child. (P Exh. 12 at 1, and 5-6).

26. Concerning the GDS, the report notes that Child’s score on this test fell below the 1 percentile on both the Vigilance and Distractibility subtests. The evaluator also noted in her report that Child “presented with a significant amount of impulsivity as he responded to test questions prior to stimuli being administered.” Private Psychologist also referenced that during his task, Child would frequently stop to look around the examining room. The report also mentioned that Mother’s Amen checklist suggests that (i) Child has difficulty playing quietly, (ii) he frequently interrupts or intrudes on conversations of others, and (iii) he is impulsive. (P Exh. 12 at 5).

27. The examiner also mentioned in her report that Mother’s completed Amen checklist indicated that Child may have anxiety issues. (P Exh. 12 at 5).

28. This psychological report indicated that Private Psychologist also screened Child for Autism by utilizing the Gilliam Autism Disorder Scales (GADS).[[5]](#footnote-5) In her report, Private Psychologist noted that Child has difficulties interacting socially and becomes upset when routines change, and withdraws in group settings.

29. Private Psychologist also administered the BASC-3. As such Mother completed a behavior rating scale for the evaluation. Private Psychologist concluded from this information that Child is prone to depression and anxiety. (P Exh. 12 at 6).

30. Upon completing her evaluation, Private Psychologist diagnosed Child with Attention Deficit Hyperactivity Disorder (ADHD)– combined presentation, Post-traumatic stress disorder (PTSD) – chronic, and Autistic Spectrum Disorder – mild. (P Exh. 12 at 7).

31. Regarding Private Psychologist’s ADHD diagnosis, she noted that Child has difficulty focusing and remaining free from distractibility and impulsivity. She further explained that “it is believed that his difficulty focusing is having a significant impact on his ability to learn.” She also specified that Child is experiencing symptoms of PTSD and having difficulties communicating and interacting socially.

32. Private Psychologist recommended a 504 plan or IEP with the following accommodations/services: extended time on written assignments and tests; preferential seating in class; distraction free test environment; frequent breaks and time to decompress; preparing Child for changes in routine; such as changes in schedule or teachers; and speech therapy. (P Exh. 12 at 7).

33. To complete her evaluation, Private Psychologist obtained input from Mother, Private Psychologist’s observations of Child, and other testing administered. There was no input from Father or behavior scales obtained from school personnel. (P Exh. 12; Tr. 900-901). 94. The report does contain the statement “[Child’s] teacher has described him as having difficulty with focusing in school.” However, this statement alone is insufficient to establish what if any input for the assessment was obtained from school personnel. (P Exh. 12, at 1).

According to the school’s psychologist, the DSM-V requires input from multiple settings to diagnose ADHD. (Tr. 905-906).

34. On June 14, 2017, Mother presented the psychological report of the Private Psychologist to Elementary School 1’s eligibility team. Mother did not provide a copy of the report to the school until a later date because corrections needed to be made due to typographical errors in the report. (Tr. 125; S Exh. 35). After presentation of the report, the school proposed conducting an observation and a psychological assessment with rating scales associated with ADHD and Autism. (S Exh. 34). Parent declined to give consent for these evaluations. (Tr. 126).

Child’s first grade report card indicated that he was absent 26 times during the 2016-17 school year, dismissed early 1 time, and arrived late 2 times. (P Exh. 23 at 1). Moreover, by the June 14, 2017 date referenced above, Child had not met expectations in reading, math, writing, and social studies. Consequently, the school recommended retaining Child in the first grade. Mother communicated to the school that she was opposed to Child being retained. (S Exhs. 33 and 35).

35. On or about June 14, 2017, Mother requested an Independent Educational Evaluations (IEE). At the request of the school, Mother later clarified that she was requesting IEEs in all areas the school had assessed Child in for his initial determination of eligibility. On August 16, 2017, the LEA granted Mother’s request for IEES. (P Exh. 25 at 5; S Exh. 37; Tr. 96-97; S Exh. 39).

36. On August 14, 2017, the IEP team met. Mother had expressed concerns that Child was experiencing anxiety and was diagnosed with autism. During that meeting the school again proposed the evaluations that had previously been proposed on June 14, 2017. The prior written notice (PWN) relating to the proposal indicates the committee had reviewed the private psychological evaluation. (S Exh. 40).

Parent declined to provide consent. The PWN indicates that Mother desired the IEE assessment be completed and considered by the school before providing consent.[[6]](#footnote-6) (S Exh. 40).

37. The 2017-18 school- year was Child’s second grade school year. Prior to the beginning of this school year, Mother requested permission for Child to attend Elementary School 4. Elementary School 4 is not designated as Child’s home school. However, Mother reported that she requested the waiver because Child is an African American male and Elementary School 4’s student population is more racially diverse than Elementary School 3. Elementary School 3 is the Child’s home school and he attended it during his first grade year. Child was recommended for retention at the conclusion of his first grade year. Further, Mother indicated she desired the transfer to Elementary School 4 because more behavior supports for students are offered at this school. (Tr. 97-98; P Exh. 25 at 37).

38. By letter dated August 24, 2017, Principal denied Mother’s request to permit Child to attend Elementary School 4 instead of his home school. (S Exh. 41). Accordingly, Child started his second grade year at Elementary School 3. (S Exh. 75; P Exh. 23 at 3).

39. On or about November 15, 2017, Principal sent Mother a letter expressing concern about Child’s absences from school and their impact on Child’s progress at school. The letter provided available dates for Mother to meet with Principal about the concern. (S Exh. 43; Tr. 197-198).

40. According to the referenced letter, by November 15, 2017, Child had already accumulated 14 absences (with only 4 of them excused), six (6) early dismissals, and 6 late arrivals to school.[[7]](#footnote-7) Mother did not respond to the letter. (S Exh. 43; Tr. 197-198).

41. On December 14, 2017, Mother sent an email to her child’s second grade general education teacher informing the teacher that Child would be out of school due to his falling at school and sustaining a head injury. In the email, Mother requested that the teacher send school work home and provide websites for interactive school activities. (P Exh. 25 at 49).

42.On January 10, 2018, the school members of Child’s IEP team met to conduct the annual review of Child’s IEP. Mother was previously notified of the meeting, but was not able to attend it. (P Exh. 5; Tr. 822). Because the annual review of Child’s IEP was required to be conducted by January 10, 2018, the LEA proceeded with holding the meeting on January 10, 2018. Those attending this meeting were Coordinator of Special Education, second grade General Education Teacher (Teacher 2), Special Education Specialist, and Speech/Language Pathologist 1. (P Exh. 5; Tr. 631, 822).

43. During the January 10, 2018 meeting, the general education teacher informed the team members present that Child was performing below level in reading, writing, and math. In addition, she noted that Child had inconsistent attendance. No action was taken to address the general education teacher’s concerns as the school’s team members took the position that the IEP dated January 10, 2018, was to only address Child’s speech or language disability. (Tr. 823; P Exh. 5 at 2).

44. Accordingly, the IEP contained one goal regarding the Child’s articulation. As written on the IEP, this goal reads as follows:

[Child] will continue to demonstrate appropriate articulation across settings of whole class, small group, and one-on-one interactions without special instruction to be understood greater than 80% of the time by January 2019.

(P Exh. 5 at 4).

45. Special Education Services on the proposed IEP included the following:

**Services Disability Location Amount of Time Begin Date End Date**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Hours Frequency\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Speech SL General Ed .5 every 9 01/11/2018 06/15/2018

Language (SL) Classroom weeks

Consult

Speech SL General Ed .5 every 9 09/10/2018 01/10/2019

Language (SL) Classroom weeks

Consult

(P Exh. 5 at 5).

46. The IEP did not provide for any accommodations. (P Exh. 5 at 5).

47. As previously noted, Mother was unavailable for the IEP meeting held on January 10, 2018. However, under the parental concern section of the IEP developed on January 10, 2018, a statement reads “[Child’s] [Mother], indicated she has concerns about [Child]. (P Exh. 5 at 2).

48. The Special Education Coordinator opined that the IEP dated January 10, 2019 is appropriate. (Tr. 633).

49. Mother was available to attend a meeting on January 11, 2018. (Tr. 821-822). The meeting notice indicated that the purpose of the meeting was to review Child’s eligibility. (S Exh. 45).

Mother, Coordinator of Special Education, General Education Teacher 2, Principal, School Psychologist, School Social Worker, Special Education Specialist, Speech/Language Pathologist, Teacher of Students with Disabilities, Special Education Leadership Policy and Programming, Founder of Life Proof Therapeutic Foundation, Parent/Child and Advocate attended the meeting on January 11, 2018.[[8]](#footnote-8) (S Exh. 51).

During this meeting, the committee members discussed the IEP dated January 10, 2018, as well as Child’s eligibility. (S Exh 53).[[9]](#footnote-9)

Also, during the January 11, 2018 meeting, the team reviewed Child’s eligibility and determined he remained eligible for special education only under the category of speech and language impairment. The school noted that Private Psychologist’s report of February 27, 2017 through April 12, 2017, was insufficient data to permit the committee to consider Child’s eligibility under the Autism category. The school noted that the report only included Mother’s rating scales and therefore lacked data of autistic characteristics across multiple settings. Accordingly, the school proposed additional assessments. Those proposed were Occupational Therapy, an Observation, an Assistive Technology Assessment, and psychological and educational evaluations. On January 11, 2018, Mother consented to 3 of the assessments: Occupational Therapy, an Observation, and an Assistive Technology Assessment. (S Exhs. 52-53). The assessments were completed and are mentioned in more detail below in “Findings of Facts” ## 51 and 52.

At the time of this eligibility meeting, it was revealed that Mother had not yet obtained the comprehensive IEE evaluation(s) that the LEA had approved 4 months before. Accordingly, there were no IEEs from the parent in existence for review. (Tr. 855).

As of January 11, 2018, Mother had declined to consent to the psychological and educational assessments on at least 3 occasions: June 14, 2017, August 14, 2017, and January 11, 2018. (S Exhs. 35, 40, 52, and 53).

50. On March 7, 2018, the school held an IEP meeting to review the Child’s annual IEP that the committee had previously developed on January 10, 2018. The school’s members of the IEP committee proposed implementation of this IEP. Mother declined to consent to the proposed IEP noting that she preferred to keep the IEP developed on January 11, 2017 in place until after evaluations were completed. (S Exh. 61).

During this IEP meeting, the school’s members of IEP committee also proposed several additional assessments: Speech/Language Assessment, Functional Behavior Assessment, Child and Adolescent needs and Strength (CANS) evaluation and an observation. Mother consented to these assessments on March 7, 2018. (P Exh. 27 at 12-14).

In addition, during the March 7, 2018 IEP meeting, the school’s members proposed conducting other evaluations about Child to gather information about Child functionally, developmentally, and academically. Mother declined to give consent for the these evaluations. (S Exh. 61).

51. **March 2018 Occupational Therapy Evaluation:**

As previously noted, during the eligibility meeting on January 11, 2018, Child’s second grade year, Mother consented to an Occupational Therapy evaluation. The evaluation was conducted. The date indicated on the written report of the evaluation is March 2018.[[10]](#footnote-10)

The occupational therapist used several tools to evaluate Child. They were a review of records, clinical observations, classroom or school observations, administration of the Beery Developmental Test, to include 3 subtests, a functional skills assessment, teacher assessment, and sensory processing forms completed by school personnel and parents.

The occupational therapist’s summary in her report noted that Child demonstrated adequate functional fine motor skills that are necessary for success within the school environment. Also, in the summary, the examiner recommended that school personnel continue to use strategies that the report from Child’s second grade teacher noted. Specifically, the teacher report mentioned that because Child has difficulty following multiple step directions and completing assignments on time, she employs several strategies that have helped Child be successful. The particular strategies mentioned by the second grade teacher are (i) extra time to complete assignments and (ii) giving him one to one step directions. The teacher also noted that Child is distracted at times and has some difficulty keeping track of his belongings and remembering to turn in his homework. (S Exh. 58 at 2 and 4).

52. **March 30, 2018 Assistive Technology Evaluation:**

An assistive technology evaluation was conducted on January 30, 2018; February 22, 2018; and March 23, 2018. The written report pertaining to the evaluation is dated March 30, 2018. The evaluator concluded that based on observations, teacher report, and Child’s performance on the AAC Genie diagnostic tool, Child was not currently a candidate for Assistive technology. The evaluator did note, however, Child’s academic struggles. The evaluator recommended a complete Speech/Language Evaluation as well as testing in all Child’s academic areas. (S Exh. 65).

53. By letter dated April 5, 2018, Child’s pediatrician recommended a comprehensive evaluation of Child as well. (S Exh. 67).

54. By the end of the second marking period during the 2017-18 school-year, Child had been absent from school 20 times and dismissed early 4 times. (S Exh. 75).

55. On February 5, 2018, and March 30, 2018, Attendance Social Worker wrote to Mother about the school attendance of her children. One of the children is Child who is the subject of the due process complaint before the Hearing Officer. The correspondence indicated Child had excessive unexcused absences. Attendance Social Worker requested in the correspondence that Mother contact Attendance Social Worker. The social worker also proposed developing an attendance plan. In her correspondence, Attendance Social Worker proposed dates for them to meet regarding Child’s attendance. Mother’s response to these communications was to copy Attendance Social Worker on communications Mother sent to school personnel about Child and to request Attendance Social Worker attend a scheduled IEP meeting. Mother’s desire was to have Child’s attendance issue addressed during this IEP meeting. Attendance Social Worker held the view that it was not her job to attend IEP meetings. Accordingly, Attendance Social Worker did not attend Child’s IEP meeting. Moreover, she did not respond to Mother’s emails and request. Thus, during the 2017-18 school year, the social worker and Mother did not meet to confer about Child’s attendance. (S Exhs. 54 and 66; Tr. 48, and 970-987).

56. Sometime between the spring of the 2017-18 school year and the ongoing current school year (the 2018-19 school-year), Attendance Social Worker became aware that most of Child’s absences (at least for 2018-19 school year) were excused. Accordingly the status of Child’s case changed such that Attendance Social Worker is now only monitoring his absences. However, Attendance Social Worker did not share with Mother that Child’s case is now in monitoring status only. Mother learned initially of this status when the social worker testified during the due process hearing on February 28, 2019. (Tr. 985-86).

57. In addition to Attendance Social Worker communicating with Mother about Child’s attendance, she sent correspondence to Mother about conducting the CANS assessment. Particularly, about April 19, 2018, Attendance Social Worker’s supervisor assigned this social worker the task of conducting the CANS assessment. As previously mentioned, on March 7, 2018, Mother consented to this evaluation. Attendance Social Worker notified Mother of her assignment by letter on or about June 7, 2018. Around this time, Mother had filed a complaint against this social worker. Accordingly, Mother responded to the social worker’s communication about setting up a time to do the CANS assessment by informing social worker that Mother believed the social worker had a conflict. Attendance Social Worker did not make any effort to notify her superior that Mother noted the social worker had a conflict. This is the case even though the school division has other social workers on staff qualified to conduct such assessments. (Tr. 977 and 1004).

58. At the end of his second grade year, General Education Teacher 2 recommended Child be retained in the second grade. Moreover, his end of the year report card reflected that Child was failing in reading and below grade level in other core subjects. The report card also noted that Child had accumulated 25 absences during the second grade, the 2017-18 school year.

59. Following the end of the 2017-18 school year, child attended summer school. His summer school report card also noted below grade level performance in core subjects. One of Child’s summer school teachers was his general education teacher in second grade. On his summer school report card, Child’s teachers also wrote “[Child] requires one-on-one assistance to complete most reading/writing assignments.” (P Exh. 23 at 5).

60. Due to continued concern regarding Child’s academics, anxiety, socialization issues, Mother was referred by the Child’s pediatrician to Hospital Pediatrician. (P Exh. 21).

61. **Initial Developmental Evaluation of Pediatrician dated 8/2/2018:**

Hospital Pediatrician conducted an initial developmental evaluation of Child on August 2, 2018. Thereafter he prepared a medical note/report. (P Exh. 21, p. 1 of 7).

This report indicates that Hospital Pediatrician spent 30 minutes reviewing records and 60 minutes with Child/Mother. Records reviewed apparently included, among others the psychological evaluation prepared by Private Psychologist, and the psycho-educational evaluation prepared by the School Psychologist 1.[[11]](#footnote-11) During half of the hour spent with Mother/Child, MCV Pediatrician provided counseling. (P Exh. 21, p. 7 of 7).

In the section of the report titled “Development,” MCV Pediatrician reports, among other things, that Child is able to follow one step commands but often needs repetition. Under the “Deviance” section of the report, Hospital Pediatrician notes that 60% of Child’s utterances are echoed. Moreover, Child bangs his head, does not always get jokes, has poor eye contact, laughs inappropriately, and socially is a loner. Further, under the section of the report titled “Behavior,” the Hospital Pediatrician states that Child has a short attention span, does better one on one and is easily distracted and frustrated, and always exhibits a high energy level. (P Exh. 21, p. 4 of 6).

At the conclusion of Hospital Pediatrician’s evaluation, he makes several assessments. For one, he diagnoses Child with an Autism spectrum disorder. Moreover, Hospital Pediatrician diagnosed Child with Attention Deficit Hyperactivity disorder with anxious and depressive features. (P Exh. 21; Tr. 920).

The report does not indicate Hospital Pediatrician, other than observation, conducted any formal testing or screening to derive his diagnoses. Rather, Hospital Pediatrician appears to have adopted findings and test results from other evaluations in addition to his observation. Even then, Hospital Pediatrician appears to have confused some of the findings in the report by the private psychologist with those in the school’s psycho-educational report. (P Exh. 21 , p. 1 of 7; P Exh. 12 at 7 (Private Psychologist Diagnosis of mild autism); Tr. 915; S Exh. 10 at 4-5 (School Psychologist report of cognitive testing results).

62. Child entered his 3rd grade year, the current school year, reading at a first grade level. He has not yet progressed to the point that he is reading to learn. Reading to learn is a skill needed to succeed in the third grade. (Testimony of Principal).

63. Sometime prior to September 13, 2018, the Child’s mother requested an eligibility meeting. The parent requested this meeting because she believed the child was autistic and experienced anxiety. As such she believed the child needed special education to address more than a speech and language impairment. (P Exh. 25; S Exh. 76).

64. **Special Education Evaluation Team Meeting on September 13, 2018:**

The Special Education Evaluation Team (SEET) is the school’s committee that meets to discuss whether a child is eligible for special education or to review special education eligibility of a child. Because of the mother’s request for an eligibility meeting, the Special Education Coordinator scheduled a SEET meeting for September 13, 2018. The purpose of the September 13, 2018 SEET meeting was to determine what, if any, evaluations were needed for the Child and or to determine if the Child was in need of special education under a category other than or in addition to speech and language impairment. (Tr. 547 and 576).

The SEET meeting was convened as scheduled. Eligibility team members and IEP team members were present at the meeting. The team was prepared to address referrals, eligibility, and reevaluations. (Tr. 653; Testimony of Special Education Coordinator).

The parties have offered dueling versions of what occurred during the SEET meeting.

**School’s Version:**

According to the Special Education Coordinator, at the beginning of the meeting Mother and her advocate stated words to the effect of “We are not going to play nice.” Parent and Advocate constantly raised their voices or interrupted others speaking. Parent’s advocate at one point leaned over the conference tables and pointed to individuals. Due to Mother’s and Advocate’s behaviors the meeting turned hostile. Mother and Advocate who are African American females spoke of racism, white fragility, and the school to prison pipe-line.[[12]](#footnote-12) According to the Special Education Coordinator, the team was unable to discuss the August 2, 2018 and newest report from the Hospital Pediatrician due to the atmosphere in the meeting. Further, two team members were unable to speak because of the commotion. Also, according to the Special Education Coordinator, Mother referred to the speech pathologist that was present at the meeting inappropriately as “Ms. Two Sounds.” A name, the coordinator states the parent assigned to the speech pathologist because the speech pathologist was working with the child on 2 sounds. Nothing was accomplished at the meeting and it ended by the principal after 19 minutes because of its hostile nature. The school called the police on Parent and her advocate. (Tr. 548-550) (Tr. 655- 668)**.**

The school contends the SEET meeting was ended due to Mother and her advocate violating school board policy, particularly uncivil and disrespectful behaviors. (S Exhs. 80 and 81). Mother denies the claim.

# Mother’s version:

The impression Mother got during the meeting was that the members were cold and uncaring about Child. She noted this was concerning, especially since Child had been recommended for retention. Mother stated that the school team members had not read the file even though they initially claimed to have done so. Also, Mother noted that she believed the school’s team members were unable to relate to her. Particularly, she indicated that she and the child are African Americans and the school’s entire team comprises “white females.” In addition, she mentioned that the school’s staff consisted of few African American teachers. Mother referred to these factors as fostering “cultural incompetence” of Elementary School 3 and in effect contributing to the “school to prison pipeline” of African Americans in the school division. Mother believed the school to prison pipeline directly affected Mother because her Child is an African American and a male. Moreover, she noted that Elementary School 3 fails to provide targeted day treatment services. (Tr. 78 and 84 through 89, 775).

Mother also reported that Speech Pathologist 1 was the team member that was disrespectful. Particularly, Mother noted that Speech Pathologist 1 had left the room and then reentered making a scene before sitting down. Then, Mother reports while Special Education Coordinator was preparing to review the Autism and ADHD eligibility checklist, Speech Pathologist snatched the summer school report card from Special Education Coordinator and began to read out loud. Mother then informed Speech Pathologist 1 that she would not interrupt Special Education Coordinator. At that point, Speech Pathologist 1 stood up, “made a commotion,” and exited the conference room a second. The Principal then entered the room and abruptly ended the meeting at the point Special Education Coordinator was about to go over the eligibility checklists. Mother also stated that both she and Principal called the police. (Tr. 82).

Mother reported that after the meeting, she requested and was granted removal of Speech Pathologist 1 from her Child’s case. Mother asserts the Speech Pathologist 1 intentionally caused the eligibility meeting to end and her child was denied his right to this eligibility meeting. (Tr. 79-82, and 361).

65. Dr. Sociologist viewed a video of the SEET meeting. Dr. Sociologist was qualified as an expert in sociology and social work. She observed that once parent/advocate’s brought up the issue of race, the subject triggered tension and hence “white fragility.” That is, it was when race was brought up that the meeting was abruptly ended. And all the school members, 3 white females, got up and left. (Tr. 287, 292).

Dr. Sociologist also testified that it is a sociological phenomenon for Caucasians to call the police on people of color when they are challenged. (Tr. 291-292).

66. Several days after the SEET meeting, on September 18, 2018, Mother sent an email to Teacher 3 informing the teacher that Child needed assistance in completing his math assignments. (P Exh. 25 at 69).

67. On December 5, 2018, by email Mother requested an IEP meeting. The school made several attempts to set a meeting date. It was eventually set for January 8, 2019 The meeting notification sent to the parent indicated that the purpose of the meeting was to develop the child’s annual IEP. (S Exhs. 87 through 91).

71**. January 08, 2019 IEP Meeting:**

The IEP meeting was held on January 8, 2019, for the annual review of Child’s IEP. (P Exh. 5 at 14; Tr. 682-683). Those in attendance were Father, Mother, Special Education Coordinator, General Education Teacher 3, Special Education Specialist, and Speech/Language Pathologist, NAACP member, and Advocate. (S Exh. 92). Prior to the meeting, the parents had been sent a draft of the IEP by email. Also, drafts of the IEP were available for the participants to work from during the meeting. In the PLOP section, the IEP summarized evaluations that had been obtained on behalf of the (Tr. 362 and 685; S Exh. 92 at 2-3;P Exh. 5 at 14).[[13]](#footnote-13)

During the course of the meeting, Special Education Coordinator described Advocate as interrupting others, speaking with a raised voice. Special Education Advocate noted that at times, Mother would ask Advocate to allow Mother to speak. After the meeting had gone on for about three (3) hours, Advocate and Mother announced they were leaving and did so. Before exiting, Mother and Advocate were informed that the team needed to continue to work on the IEP. Mother exited the room and Advocate hung up. The remaining team members continued to meet and discuss the IEP. (Tr. 686-691).

During the meeting General Education teacher 3 expressed that Child continues to struggle academically in all academic areas. Moreover, Child’s report card for the first making period indicated that he had been absent 6 times and dismissed early on 3 occasions. (Tr. 324; P Exh. 23 at 7).

The PLOP section of the IEP under the title “Impact of Disability in Assessing Curriculum,” reads in pertinent part:

On December 18, 2018, [Child’s] classroom teacher said he is struggling in reading, writing, math, and social studies, and science. She does not see the speech sound errors on the /s/ and /z/ sounds affect his academic performance.

\*\*\*

[Child] is currently being evaluated to determine the presence of any other disabilities which may require special education services and specialized instruction.

(S Exh. 92 at 4).

The January 8, 2019 proposed IEP contained one goal regarding the Child’s articulation. As written on the IEP, this goal reads as follows:

[Child] will continue to demonstrate appropriate articulation of /s/, /z/, and /s/ blends with 80% accuracy across school settings of one-on-one interactions, small group setting, and whole class setting without special instructions by January of 2020.

(P Exh. 92 at 6).

The proposed IEP also contained short term objectives/benchmarks related to the goal. (P Exh. 92 at 6).

Further, Special Education Services noted on this IEP included the following:

**Services Disability Location Amount of Time Begin Date End Date**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Hours Frequency\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Speech SL General Ed .5 every 9 01/9/2019 06/14/2019

Language (SL) Classroom weeks

Consult

Speech SL General Ed .5 every 9 09/03/2019 01/08/2020

Language (SL) Classroom weeks

Consult

(S Exh. 92 at 7).

No accommodations were provided for in the IEP. (S Exh. 92 at 7). Moreover, interventions Child was receiving in class and in math and reading were not specifically noted on the IEP. (S Exh. 92).

72. The IEP team did receive input from the parents during the January 8, 2019 IEP meeting, reviewed existing evaluations and the Child’s cumulative file. However, the proposed IEP only addressed continuing Child’s speech services. The school members on the IEP team proposed a comprehensive re-evaluation of Child, and holding another meeting to reassess Child’s eligibility once the school’s proposed evaluations are completed. Mother declined to consent to the full evaluation. (Tr. 694-697); S Exh. 92 and 94).

73. The evidence is insufficient to determine when or if Father provided consent for the comprehensive evaluation proposed by the school. (S Exhs. 86 and 92; Testimonies of Special Education Coordinator and Principal).[[14]](#footnote-14) However, the school contends the father has given such consent. As such, at the time of the due process hearing, the school represented it was in the process of re-evaluating Child.

74. On January 28, 2019, Father consented to the IEP dated January 8, 2019. Accordingly, the school has now implemented it. (Tr. 691; S Exh. 92 at 11).

75. Interventions employed for Child in math during the 2018-19 school year include (i) Child receiving math instruction in a class in which the Title 1 Math Specialist co-teaches and (ii) Child being placed in a small group five days a week addressing specific skills. (S Exh. 82 at 1).

76. Interventions employed for Child in reading during the 2018-19 school year include (i) Reading Specialist working one-on-one with Child four times a week for 30 minutes each session and (ii) Child’s teacher working one-on-one with Child in the classroom 5 days a week. (S Exh. 82 at 1).

# OTHER

77. Child’s chronic absences impede the benefits of the interventions. He responds more positively and makes more progress when consistently present. The interventions were helping Child advance in the general educational curriculum. (Tr.192, 831; S :Exh. 65 at 2).

78. Special Education Coordinator qualified as an expert in special education. (Tr. 610).

79. Dr. Sociologist qualified as an expert in the fields of social work and sociology (Tr. 252).

80. School Psychologist 1 qualified as an expert in the field of school psychology. (Tr. 882).

81. Social Worker qualified as an expert in the field of social work. (Tr. 946).

82. Attendance Social Worker qualified as an expert in the field of school social work. (Tr. 965).

83. Principal qualified as an expert in the area of school administration and special education. (189).

84. A comprehensive evaluation is obtaining data from more than one source. (Tr. 298).

85. A Functional Behavior Assessment (FBA) was completed on May 24, 2018. The conclusion was Child did not require a behavior intervention plan. Child was on task the vast majority of time in the school setting. Behaviors of anxiety noted by Mother at home were not exhibited at school. (S Exh. 70).

86. The evidence does not show that Private Psychologist is a speech pathologist. Nor does it show that Private Psychologist administered any testing on Child’s speech. (P Exh. 12).

87. Mother communicated with her Child’s teachers and other personnel of the LEA in an effort to help her child succeed in school. (P Exh. 25).

88. Second Grade General Education Teacher had been informed to be on “medical alert” for Child due to his asthma. (Tr. 803).

89. Second Grade General Education Teacher indicated on Child’s report card, first marking period that Child’s poor attendance adversely affects his grades. (P Exh. 23 at 4).

90. By the third grading period of the 2017-18 school year, Second Grade General Education Teacher gave Child extended time on assignments/tests/quizzes. (Tr. 813).

91. Second Grade General Education Teacher indicated that when Child came to her in the second grade, he did not have the knowledge to succeed in second grade. She was aware that he in the first grade, he had been a candidate for retention. (Tr. 845).

92. The LEA can provide the child with a Free Appropriate Public Education.

93. Private Day School is a private day school is a non-public school for special needs children. The school’s student body is about 28 students. Class sizes are small. Students receive behavior supports. Autistic students receive ABA therapy in addition to behavior supports. Supports are offered including one on one assistance and reading intervention supports. Private Day School staff has experience in developing attendance plans and providing for such goals in IEPs. (Tr. 415- 424).

94. The evidence fails to establish that the school staff or LEA is culturally incompetent.

# V. LEGAL ANALYSIS

The Individuals with Disabilities Education Improvement Act (IDEA/Act), 20 U.S.C. § 1400 et seq., requires a state, as a condition of acceptance of federal financial assistance, to ensure a "free appropriate public education" (FAPE) to all children with disabilities. 20 U.S.C. § 1400(d), § 1412(a)(1). The Commonwealth of Virginia has elected to participate in this program and has required its public schools, including the LEA here, to provide FAPE to all children with disabilities residing within its jurisdiction. Va. Code Ann., § 22.1-214-215.

The Act imposes extensive substantive and procedural requirements on states to ensure that children receive a FAPE. 20 U.S.C. § 1415. *See also Board of Education v. Rowley,* 458 U.S. 176 (1982) and *Endrew v. Douglas County – School District RE-1,*  580 U.S. \_\_\_\_\_\_ (2017) 137 S. Ct. 988 (ruling that the FAPE test is more than “ *de minimus progress”* and a child’s educational program must be appropriately ambitious in light of the child’s circumstances). The Supreme Court also emphasized the requirement that “every child should have the chance to meet challenging objectives.”

Further, the Commonwealth of Virginia Regulations Governing Special Education Programs provides that “the services and placement needed by each child with a disability to receive a FAPE shall be based on the **child’s unique needs and not on the child’s disability**. 8 VAC 20-81-100. (A)(1)(b). (emphasis added).

# A. Whether the January 10, 2018 IEP is Appropriate

In the case before this Hearing Officer, Mother challenges the appropriateness of the IEP dated January 10, 2018, and the one dated January 8, 2019. Now, the Hearing Officer undertakes an examination of the evidence to determine if Mother has met her burden.

The Supreme Court's decision in *Endrew F. v. Douglas County School District RE-1*,[69 IDELR 174](https://www.specialedconnection.com/LrpSecStoryTool/servlet/GetCase?cite=69+IDELR+174)(2017), established the standard that IEPs should meet, and that is that a district must offer an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.

**January 10, 2018 IEP and 2017-2018 School Year**

The school proposed the January 10, 2018 IEP for portions of the 2017-18 and 2018-19 school years. Regarding Child’s second grade year – the 2017-18 school-year, this plan was written to serve as Child’s IEP from January 11, 2018, to June 15, 2018.

# Interventions/Accommodations/Strategies/Supports

The evidence shows that at the time the IEP was written Child’s academic performance was poor, he was frequently absent, and had chronic health issues – Asthma/allergies. Further, the LEA has classified Child as transient because he has attended 3 different elementary schools within the last 3 school years. The educators have noted that transiency often adversely impacts a child’s school success. This is the case because it subjects a child to constantly having to adjust to new school environments and routines. Particularly, Child entered the second grade having been recommended for retention in the first grade. Mother was against Child being retained. Child was promoted and entered school as a second grader at the beginning of the 2017-18 school year. At the time Child started the second grade, his second grade teacher described Child’s academic skill level as “failing to meet expectations in all core subjects.” Moreover, his second grade report card for the first marking period indicates that Child’s performance in the core subjects remained substandard. As a result, the school began to employ multiple interventions. Particularly, Child was placed in a small reading group of 3 students. Due to Child reading significantly below grade level, the reading specialist taught this group, instead of the general education teacher. Child was also provided with one-on-one instruction in science, math, and social studies. He was also given extended time on assignments/tests/quizzes. What is more, the general education teacher tested child one-on-one in math. Another intervention implemented to help Child progress academically was the teacher reading aloud to the class.

Also, the Assistive Technology (AT) evaluation which was conducted in January, February, and March of the 2017-18 school-year confirms those interventions that were implemented. The AT report also provided additional details about them. Specifically, the written report of this evaluation mentions that the interventions in place during his second grade year were (i) small group reading 4 times/week for 45 minutes, (ii) small group instruction 2 times a week, (iii) small group instruction with the classroom teacher 2 times a week, (iv) one-on-one read aloud in math, (v) read aloud with the class for science and social studies, (vi) editing one-on-one, (vii) use of highlighter on pre-writing plan to help with organization of writing, (viii) preferential seating at the front of the room, and (ix) directions given one-on-one with checks for understanding.

The Hearing Officer has considered the second grade general education teacher’s testimony regarding interventions in place by January 10, 2018. They are mentioned above. The Hearing Officer has also carefully compared them to ones identified in the AT report. Having conducted this review, the Hearing Officer concludes that all the accommodations that have been mentioned here were in place at the time the IEP team developed the January 10, 2018 IEP. Hence, the school members of the IEP knew of them. Moreover, the evidence shows that Child was making academic progress because of these interventions. In fact, Child’s second grade teacher indicated that with these interventions in place, Child made progress. She noted however, that more progress was made when Child consistently attended school.

Having perused the IEP, the Hearing Officer observes that in the PLOP section the term “interventions” is mentioned as it relates to Child. Specifically, under the caption “Functional Performance,” it is noted that Child receives reading interventions from the reading specialist. Further under the PLOP’s caption “Impact of Disability on Accessing Curriculum,” it is noted that Child is below grade level in his reading, writing, and math skills. Other than these two general statements nothing further is provided in the IEP regarding any interventions. That is, no accommodations, strategies, and supports being implemented were set forth with particularity in the IEP. This is so even though they were being employed so that Child could access the general educational curriculum.

# Absenteeism

In addition to the PLOP mentioning child’s dismal academic performance, under the caption “Impact of Disability on Accessing Curriculum,” a brief note indicates concern about Child’s inconsistent attendance.

Particularly, the evidence establishes that school records document Child’s longstanding attendance issue. For example, data on Child’s grouping card compiled from his time as a kindergartener noted that excessive absences were a problem What is more, school records show during Child’s first grade year, he missed 25 school days. Further, by the end of the first marking period of Child’s second grade year, according to his report card, Child had been absent 13 days. Child was a candidate for retention in the first grade. As previously noted, his grade report for the first making period in the second grade continued to show his academic performance was poor. Child’s second grade principal and general education teacher testified that Child’s absenteeism adversely affects his success in school. Moreover, Child’s second grade teacher stated that with the implemented interventions, Child showed progress.

Considering the plethora of data mentioned above which the evidence shows was known by the school’s IEP team, the IEP team was required to do more than briefly mention the Child’s absenteeism in the IEP. Having made this finding the Hearing Officer is aware of correspondence sent to Mother from Principal and Attendance Social Worker about Child’s absences. Even though Child’s absenteeism was a conspicuous feature of his circumstances, neither division staff offered to address Child’s absences in the context of the IEP. In fact, the evidence demonstrates that although Mother did not directly respond to Principal’s correspondence, Mother did request that the social worker attend a scheduled IEP meeting so that the matter could be addressed. The evidence shows that the social worker did not respond to the request, declined to attend the IEP meeting, and took the position that “it was not her job” to attend.

Additionally, the evidence establishes that during the development of the IEP, the school was aware that Child’s unique circumstance also included his having certain medical risks factors, for example asthma and allergies. To this point, his first grade grouping card referenced previously noted Child had medical issues. Moreover the evidence shows that school staff had been placed on medical alert regarding Child’s asthma. The IEP does not indicate that the team considered these risk factors. Hearing Officer finds that a reasonable consideration of the child’s unique circumstances in developing the IEP would have included an inquiry regarding such factors and their relationship, if any, to his absenteeism and academic performance.

# Deference to the educators

IDEA requires great deference to the views of the school system. However, the hearing officer as the fact-finder is not required to determine that an IEP is appropriate simply because the teacher or other educational professional testify that the plan is appropriate. *Cnty. Sch. Bd. Of Henrico Cnty. v. Z.P*., 399 F.3d 298, 307 (4th Cir. 2005). The Hearing Officer is required to determine as a factual mater whether the IEP is appropriate. *Id.*

In the case at bar, the educators have opined that the child’s IEP is appropriate. The Hearing Officer declines to give deference to this view. Clearly the educators’ opinion is contrary to controlling law which requires the IEP to address the unique circumstance of a child. *Endrew F. v. Douglas County School District RE-1*,[69 IDELR 174](https://www.specialedconnection.com/LrpSecStoryTool/servlet/GetCase?cite=69+IDELR+174)(2017), 8 VAC 20-81-100(A)(1)(b).

As previously discussed in detail the IEP fails. The evidence shows that the IEP contains only one goal pertaining to Child’s speech. In addition, there are no services, accommodations or supports for any of Child’s circumstances, except his speech. Yet the facts show that Child has high risk medical factors. The evidence shows that Child was a candidate for retention in both the first and second grades. He is chronically absent from school which has resulted in loss of educational instruction. His academic success has been adversely impacted by the absences. Moreover, he is reading substantially below grade level. In addition, interventions employed to assist Child in accessing the general educational curriculum during the second grade were one-on-one instructions, read aloud, extended time on assignments, small group instruction in core areas, small group reading with the reading specialists. With implementation of these interventions, the evidence shows that Child is making progress, thereby assessing the general educational curriculum. None the less, none of these services, supports or accommodations are specified in the Child’s IEP. Accordingly, the Hearing Officer finds that the facts of this case fail to support the testimonies of school witnesses that the IEP is appropriate.

**January 10, 2018 IEP and 2018-2019 School Year**

In addition to the January 10, 2018 IEP being proposed for the 2017-18 school year, the evidence shows that it was also proposed for the 2018-19 school year from September 9, 2018 to January 10, 2019.

# Interventions/Accommodations/Strategies/Supports

Before and during Child’s third grade year in school, the evidence continues to show that Child’s academic performance was poor. His longstanding chronic absenteeism had not changed. Medical risk factors continued to exists. He carried the consequences of being a transient student.

Specifically, the evidence shows prior to and during Child’s third grade year his performance continued to be poor, he was frequently absent, and had chronic health issues. To illustrate, at the end of his second grade year, General Education Teacher 2 recommended Child be retained in the second grade. Moreover, his second grade end of the year report card reflected that Child was failing in reading and below grade level in other core subjects. The report card also noted that Child had accumulated 25 absences during the second grade, the 2017-18 school year. Following the end of the 2017-18 school year, child attended summer school. His summer school report card also noted below grade level performance in core subjects. On his summer school report card, Child’s teachers also wrote “[Child] requires one-on-one assistance to complete most reading/writing assignments.”

Moreover, during the current school year, Child’s general education teacher reports that Child continues to struggle academically. Further, the evidence shows that although Child should be reading on a DRA 34 level in the third grade, by February 14, 2019, he was only reading on a DRA 12 level. He started the third grade reading on a DRA 6 level. Even though, Child’s reading has improved to the DRA 12 reading level, he is still only reading on a first grade level. Due to Child’s poor academic performance, the school has implemented supports for him in reading and math. Child received through January 2019, one on one reading instruction from the Title 1 reading specialist for 4 days a week and 30 minutes each session. As of February 2019, he is receiving that service in a small group of two (2) students. In addition, his third grade classroom teacher provides him with one on one reading for 15 minutes 4 days a week. In math, Child receives small group instruction daily. Moreover, the class is taught by a Title 1 math specialist and the students have access to a tutor in the class. He is also receives small group instruction in math. With these interventions, Child is making progress. Progress is most evident, however, when he attends class consistently.

# Absenteeism

Regarding attendance, since the end of his second grade year, the evidence shows that Child’s chronic absenteeism continues. For instance, his summer school report card shows that out of 16 sessions, Child missed 2. Also, during the first grading period of the current school year, Child was absent 6 times and dismissed early on 3 occasions. Thus, in the third grade, Child has continued to be chronically absent from the classroom. As noted previously, the evidence demonstrates that Child is more successful academically in school when his attendance is consistent.

As mentioned in the section pertaining to school year 2017-2018, the January 10, 2018 IEP fails to provide with specificity the accommodations, strategies, and supports provided to the child so that he can access the general educational curriculum. Nor does it provide for any interventions or plans regarding his attendance. Again the Hearing Officer finds that the IEP fails to address the unique circumstances of the Child. Accordingly, it is not appropriate.

# Deference to the educators

In the case at bar, the educators have opined that the child’s IEP is appropriate. The Hearing Officer declines to give deference to this view. Unequivocally, the educators’ opinion is contrary to controlling law which requires the IEP to address the unique circumstance of a child. *Endrew F. v. Douglas County School District RE-1*,[69 IDELR 174](https://www.specialedconnection.com/LrpSecStoryTool/servlet/GetCase?cite=69+IDELR+174)(2017), 8 VAC 20-81-100(A)(1)(b).

As previously discussed in detail the IEP fails miserably. The evidence shows that the IEP contains only one goal pertaining to Child’s speech. In addition, there are no services, accommodations or supports for any of Child’s circumstances, except his speech. Yet the facts show that Child has high risk medical factors. The evidence shows that Child was a candidate for retention in both the first and second grades. He is chronically absent from school which has resulted in loss of educational instruction. He is impacted by having been a transient student. His academic success has been adversely impacted by the absences. Moreover, he is a third grader who is reading on first grade level. In addition, interventions employed to assist Child in accessing the general educational curriculum during the 2018-19 school year are one on one reading instruction from the Title 1 reading specialist for 4 days a week and 30 minutes each session. As of February 2019, he is receiving that service in a small group of two (2) students. In addition, his third grade classroom teacher provides him with one on one reading for 15 minutes 4 days a week. In math, Child receives small group instruction daily. Moreover, the class is taught by a Title 1 math specialist and the students have access to a tutor in the class. He is also receives small group instruction in math. With implementation of these interventions, the evidence shows that Child is making progress. However, more progress is noted when he attends school consistently. That said, the January 10, 2018 IEP does not contain the accommodations/supports mentioned immediately above. Nor does it address Child’s attendance issue. Accordingly, the Hearing Officer finds that the facts of this case fail to support the school’s claim that the IEP is appropriate.

# B. Whether the January 8, 2019 IEP is Appropriate

**January 8, 2019 IEP and 2018-2019 School Year**

The school proposed the January 8, 2019 IEP for portions of the 2018-19 and 2019-20 school years. Regarding Child’s current third grade year of school, this plan is written to serve the Child from January 9, 2019, to June 14, 2019.

The evidence establishes that Child’s circumstances continue to show possible effects of having been a transient student. In addition, Child academic performance is substandard and he struggles academically in all core subjects. In addition, he has a history of chronic absenteeism. As of February 14, 2019, Child had been absent from school 10 times and dismissed early 8 times. His absences adversely impact his academic success in school. Further, Child is noted to have health risks, to include asthma/allergies. To help Child be successful in school, intervention supports have been implemented. For the third grade they consist of the ones previously noted for the 2018-2019 school year.

The PLOP section of the January 8, 2019 IEP mentions that Child receives certain interventions. Specifically, the section states that Child receives individualized, general education instruction from the reading specialist 4 days a week for 30 minutes. Further, the PLOP mentions that Child receives a math intervention identified as Title 1 Math services. This service consists of small group instruction in the general education classroom for 5 days a week.

Although these services are mentioned in the PLOP section of the IEP, they are not indicated in the accommodation and services section of the IEP. Moreover, the evidence shows that in March of 2018, it was recommended that Child receive extra time on assignments and one to one steps on directions. These accommodations are not referenced in the PLOP or accommodation section of the IEP either. Moreover, the IEP does not address Child’s chronic absenteeism with a plan. This is the case even though Child’s inconsistent attendance impedes his ability to be academically successful in school.

Accordingly, the Hearing Officer finds that deference is not due to the educators’ statements that the IEP is appropriate. This is so because the facts show that the IEP does not provide for accommodations or services needed by the child based on the child’s unique needs. 8 VAC 20-81-100 (A)(1)(b).

The Hearing Officer has made her determinations being cognizant of the school’s assertions noted here. First, the LEA contends that Mother and/or her advocate is an obstructionist and prevented the orderly business associated with the development of an IEP meeting or eligibility meeting. Second the LEA asserts more information is needed to determine if Child has a disability in other areas in addition to speech and language. And further, Mother has blocked the school from obtaining this information by declining to give consent to a comprehensive evaluation.

The Hearing Officer notes that the Child has been evaluated multiple times since the child was referred for eligibility on or about June 23, 2016. Moreover, Mother has consented to at least 10 evaluations or observations between June 23, 2016, and March 7, 2018. In addition, Mother has provided the school with at least 2 private evaluations she has obtained. The last one conducted was dated August 2, 2018. In addition, the school has the right, if desired, to pursue a due process hearing to override the Mother’s denial of consent. It did not.

Important to this case is the Child’s unique circumstances and needs. The parties agree that Child is far behind in is reading skills. This deficit adversely has impacted him in all his core subjects. For two consecutive years, Child was a candidate for retention. In the words of his current third grade teacher, “he is struggling in all core areas.” Interventions that have been employed help the child to succeed in his academics. Further, the parties are in agreement that Child’s chronic absenteeism impacts his ability to achieve in school. The parties also acknowledge that Child has certain medical risk factors. The Child’s IEP is supposed to be the vehicle that permits the Child to access the general educational curriculum based on the Child’s unique needs and not on his disability. Under the facts of this case, the IEPs have failed to deliver for the reasons already noted.

# C. Was the SEET/Eligibility Meeting held unnecessarily delayed?

The evidence shows that on September 13, 2018 an SEET meeting was held. The meeting was abruptly ended after about 20 minutes. The evidence shows that the meeting was to reassess Child’s eligibility or determine if additional evaluations were needed before reassessing Child’s eligibility. Mother contends that the meeting was ended prematurely and intentionally by the school. This action, she contends, caused an unnecessarily delay in holding a meeting to reassess child’s eligibility.

The evidence shows that each party presented their perception of what occurred. After careful deliberation of the evidence to include the “Findings of Facts” as set forth above here and all documents admitted regarding the meeting, the Hearing Officer has determined that neither version of events is more credible than the other. Accordingly, parent has not borne her burden and shown the LEA intentionally delayed any assessment or reassessment of Child’s eligibility.

# VI. DECISION AND ORDER

The Hearing Officer has carefully considered all evidence whether specifically mentioned or not. For reasons stated above, the Hearing Officer finds with respect to the IDEA issues the following:

**1. Whether the January 10, 2018 IEP is appropriate?**

The Hearing Officer has determined that the January 10, 2018 IEP is inappropriate because if fails to address Child’s chronic absenteeism and provide for the services/accommodations/supports based on the child’s unique needs to receive a FAPE. Accordingly, the Child has been denied a FAPE.

**2. Did the parent request an eligibility meeting on or about August 2018, to determine if the Child is eligible for Special Education under a category in addition to speech? Was it intentionally delayed? Was there a denial of FAP**

**E?**

The Hearing Officer has determined the parent did not meet her burden and show the SEET/Eligibility meeting was unnecessarily delayed. Accordingly, with respect to this issue FAPE was not denied.

**3. Was any IEP presented to the parent on January 8, 2019 appropriate?**

The Hearing Officer has determined that the January 8, 2018 IEP is inappropriate because if fails to address Child’s chronic absenteeism and provide for the services/accommodations/supports based on the child’s unique needs to receive a FAPE. Accordingly, the Child has been denied a FAPE.

Further, the Hearing Officer finds that with regard to the issues before her that the requirements of notice to the parents have been satisfied. The Hearing Officer also finds that the school reports Child is one with a disability as defined by applicable law 34 C.F.R. Section 300.8 and that Child is in need of special education and related services. The Hearing Officer also with respect to the issues before her finds that the LEA has failed to provide Child with a FAPE since on or about January 10, 2018.

Accordingly, the Hearing Officer orders the following:

1. The IEP team is to meet within the next 30 days to address Child’s chronic absenteeism and determine appropriate, accommodations, services, and strategies;

2. The Hearing Officer is concerned about the Child’s attendance issue and its effects on Child’s success in school. Moreover, the Hearing officer finds compensatory education is appropriate and orders the LEA to provide the following compensatory education through December 31, 2019:

(i) individualized and general education instruction from the reading specialist 4 days a week for 30 minutes;

(ii) small group math instruction in the general education classroom 5 days a week;

(iii) extra time on assignments and one to one steps on directions with checks for understanding;

(iv) one on one assistance in completing reading and writing assignments;

(v) preferential seating at the front of the class; and

(vii) 25 hours of homebased instruction.

The request for private placement is denied.

3. Further, the Hearing Officer orders an independent CANS evaluation of the child.

**Motion to Dismiss:**

On the second day of the hearing, Counsel for the LEA asserted that the parent/child advocate had sent a threatening email to some school witnesses after the first day of the hearing. The LEA then moved to dismiss the case. After careful deliberation, the Hearing Officer denies the motion.

# VII. PREVAILING PARTY

I have the authority to determine the prevailing party on the issues and find the prevailing party on IDEA issues 1 and 3 is the parent. Further, the Hearing Officer finds the LEA has prevailed on IDEA issue 2.

# VIII. APPEAL INFORMATION

This decision is final and binding, unless either party appeals in a federal district court within 90 calendar days of the date of this decision or in a state circuit court within 180 calendar days of the date of this decision.

ENTERED THIS 27th day of March, 2019

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

Ternon Galloway Lee, Hearing Officer

Cc: Parents

Advocate for Mother

Counsel for LEA

Dir. of Special Education for LEA

VDOE Coordinator

1. Throughout the decision, the Hearing Officer will use the following abbreviations:

   Transcript - Tr.

   Parents’ Exhibit P Exh.

   Local Educational Agency Exhibit - S Exh.

   Hearing Officer Exhibit - HO Exh.

   [↑](#footnote-ref-1)
2. The Scheduling order issued on January 18, 2019, following the initial PHC set forth the issues to which neither party objected. [↑](#footnote-ref-2)
3. Regarding Parent’s exhibit 26, to the extent students’ names are identified other than the child who is the subject of this case, those names will be redacted. [↑](#footnote-ref-3)
4. Counsel for the LEA objected to page 2 of HO Exh. 5. Accordingly, that page of HO Exh. 5 was excluded. [↑](#footnote-ref-4)
5. School Psychologist testified that the correct name for the testing device is Gilliam Asperger Disorder Scale (GAD). (Tr. 908). [↑](#footnote-ref-5)
6. A PWN dated August 31, 2017, also states that on September 1, 2017 the school proposed to conduct a psychological evaluation. The only meeting referenced on this PWN is the August 14, 2017 meeting. Accordingly, the Hearing Officer finds this PWN relates back to the August 14, 2017 IEP meeting. [↑](#footnote-ref-6)
7. Mother contends the LEA failed to maintain accurate attendance records and all Child’s absences were excused. (Tr. 105-106). [↑](#footnote-ref-7)
8. The Advocate participated by telephone. (S Exh. 53; Tr 636) [↑](#footnote-ref-8)
9. Parent had initially been notified that the meeting would be held on January 8, 2018, but because of school closure or a late start due to snow, the meeting was rescheduled to January 10, 2018. The evidence is contradictory as to whether Mother refused to attend the January 10, 2018 IEP or was not able to attend.. [↑](#footnote-ref-9)
10. As to the date of the report, only the month and year were provided by the examiner. [↑](#footnote-ref-10)
11. The Hearing Officer has determined that Hospital Pediatrician reviewed these documents because he references that Child was diagnosed with Autism, and anxiety disorder and depression by Private Psychologist. Moreover, Pediatrician references testing scores found in the Psycho-Educational Report of School Psychologist 1. (P Exh. 21, p. 1 of 7). [↑](#footnote-ref-11)
12. White fragility is defined as discomfort and defensiveness on the part of a white person when confronted by information about racial inequality and injustice. *Wikipedia.* A characteristic of white fragility is people of color protecting and supporting it due to their own implicit or explicit bias. (Tr. 301).

    School to prison pipeline is also known as the school-to-prison link or the schoolhouse-to-jailhouse track. It is the disproportionate tendency of minors and young adults of disadvantaged backgrounds to become incarcerated because of increasing harsh school and municipal policies. *Wikipedia*  [↑](#footnote-ref-12)
13. Father, Advocate, and Special Education Coordinator participated by telephone. (Tr. 684). [↑](#footnote-ref-13)
14. This is the case because of unresolved conflicting evidence presented regarding Father’s purported consent for the evaluations. Of note, the school offered its exhibit 86 which purported to be a consent form signed by Father. Thereafter, according to un-contradicted evidence, Father signed the proposed IEP on January 28, 2019. That said, the Hearing Officer has observed that the signature appearing on the consent form is different from the father’s signature on the IEP. Moreover, the testimonies from several school witnesses conflicted regarding when and how Father purportedly provided consent for the evaluations. Father was scheduled to appear as a witness for the hearing, but according to counsel for the school was unable to attend due to his work schedule. [↑](#footnote-ref-14)