**VIRGINIA DEPARTMENT OF EDUCATION DIVISION OF SPECIAL EDUCATION AND STUDENT SERVICES OFFICE OF DISPUTE**

**RESOLUTION AND ADMINISTRATIVE SERVICES**

**Xxxxxxx Public Schools Mr. Xxxxxxx and Ms. Xxxxxxx Xxxxxxx**

**School Division Parents**

**Mr. Jason H. Ballum, Esq. Xxxxxx xxxxx Xxxxxxx**

**Mr. Alan D. Bart, Esq. Child**

**Counsel Representing the LEA**

**Morgan Brooke-Devlin, Esq. Parents initiated Hearing**

**Hearing Officer**

# DUE PROCESS HEARING DECISION

# CASE HISTORY:

The Parents filed a ”Notice of Request for Due Process Hearing” with attachments, dated October 25, 2017, against Xxxxxxx Schools (Respondent, XXS or the LEA), under the Individuals with Disabilities Education Act, ( “the IDEA”) 20 U.S. C. 1400, *et seq*,, and the regulations at C.F. R., Part B. Section 300, *et seq*.

The Request was received by the Xxxxxxx Public Schools on October 30, 2017. Counsel for the Xxxxxxx Public Schools filed a timely Notice of Insufficiency on November 14, 2017. On November 20, 2017, this Hearing Officer found the Parent’s original Due Process Request Insufficient as a matter of law, and permitted the Parents time to file an Amended Due Process Request.

The Parent’s First Amended Due Process Request was accepted by the Hearing Officer on December 13, 2017. On December 19, 2017, Counsel for the Xxxxxxx Public Schools filed a timely Notice of Insufficiency. On December 24, 2017 the Hearing Officer found the Parent’s First Amended Due Process Request to be Insufficient and granted them leave to file a Second Amended Due Process Request.

The Second Amended Due Process Request was received on January 5, 2018. (The Parent did not properly title the document sent to the Hearing Officer and the LEA 0n January 5, 2018, as his Second Amended Due Process Request. However, at the January 24, 2018, Third Pre-Hearing Telephone conference he identified the document as intended to be his Second Amended Due Process Request.) During that conference the Parent raised an additional claim that he wished to pursue. He was given leave to file a Third Amended Due Process Complaint which was accepted on February 7, 2018. The LEA issued its Notice of Insufficiency on February 19, 2018, which was within the required 15 day period. However, due to technical issues it was not received by the Hearing Officer until February 27, 2018. The Hearing Officer found the Third Amended Due Process Request to be sufficient and the matter was set for a hearing. On March 8, 2017, XXS filed a Motion to Dismiss that was denied.

Xxxxxxx Schools filed a *Motion in Limine* regarding a Due Process Hearing that was dismissed with prejudice in May of 2017 and a second Motion to Dismiss the present case on the basis that all claims were moot. (TR. p. 11-13) The Parent agreed that he would not be going forward on the issues raised in the May 2017 Due Process Request and noted that “No. This is a totally different matter.” (TR. p. 13). This resolved the LEA *Motion in Limine*. The Hearing Officer determined that she would take the Motion to Dismiss under advisement.

The Due Process Hearing was held before the undersigned Hearing Officer on March 12, 2018, at the Xxxxxxx School’s xxxxxxxxxxx Administration Building in xxxxxxx Virginia. The hearing was closed to the public and transcribed by a court reporter.

This Decision is timely and within the time limitation period imposed by the IDEA.

# ISSUES

**1.** Whether Xxxxxx Xxxxxxx was denied FAPE when Xxxxxx Public Schools failed to comply with the Parent’s request to schedule an IEP meeting in August of 2017.

**2.** Whether Xxxxxx Xxxxxxx was denied FAPE when the Xxxxxx Public Schools conducted a Triennial Component Review (“TCR”) meeting on October 212, 2017, without the Parents being present.

# BURDEN OF PROOF

Although the IDEA does not specifically contain provisions determining which party has the burden of proof or persuasion the United Supreme Court has determined that the party seeking relief has the burden. In the controlling case of *Schaeffer v. Weast*, 546 U. S., 49, 126 S. Ct. 528, 163 L. Ed. 2d, 387 (2005) the United States Supreme Court held that the burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief, whether that is the disabled child or the school district. *Id* at 537

This Request for a Due Process Hearing against the Xxxxxxx Public Schools was brought by the Parents. Accordingly, the Parents have the burden of proof in this Due Process Hearing.

# FACTUAL FINDINGS REGARDING ISSUES

# AND PARENT’S CLAIMS OF VIOLATIONS BY FCPS:

**1**. The student, Xxxxxx Xxxxxxx (“Xxxxxx”, “Student”, or “child”), who was born on xxxxxx 00, 2001, is a sixteen year old boy who is a tenth-grade student at Xxxxxx High School in Xxxxxx Virginia.

**2.** Xxxxxx was found eligible for special education and related services in 2005.

**3.** In 2013 Xxxxxx was identified as a student with an Intellectual Disability. (Sch. Ex. 6)

**4.** Xxxxxx and seven other students receive educational services in a self-contained classroom for students with low incidence disabilities. (Tr. 68:10-69:7). Xxxxxx also receives assistance from an aide who stays with him throughout the day. (Sch. Ex .6.: Tr. ).

**5.** The Parents had attended all of Xxxxxx’s IEP meetings until 2017. (Tr. p. 78) They are devoted to his wellbeing.

**6.** The last IEP to which the Parents agreed was dated April 27, 2017. (Sch. Ex. 6).

**7.** The April 27, 2017, IEP was Xxxxxx’s current IEP as of March 12, 2018. (Tr. p. 83)

**8.**  Mr. xxxxx Xxxxxx is currently Xxxxxx’s teacher in a self-contained classroom. He has eight students in his classroom, including Xxxxxx. Mr. Xxxxxx has been a special education teacher for the past twelve years. He has always taught in a self-contained classroom. He teaches low functioning students who have been identified with autism, intellectual disability, and OHI. (Tr. p. 68)

**9.** Mr. Xxxxxx was qualified as an expert witness (over the objection of Mr. Xxxxxxx) in providing special education services to students with disabilities and education programming for students with disabilities. (Tr. p.81)

**10.** Mr. Xxxxxx opined that Xxxxxx is making appropriate progress towards each of his IEP goals in light of his circumstances, (Sch. P. Ex. 6,; Tr. 83:1-90:25;. 92:10-19; 94:13-95:7), and that Xxxxxx’s IEP was appropriate in light of his circumstances. (TR. 190:23-25; 207:7-209:3)

**11.** Mr. Xxxxxx appeared to be honest and credible in his testimony about Xxxxxx. His description of Xxxxxx’s progress towards his IEP goals and other observations about him were detailed and demonstrated a high degree of competence and concern for Xxxxxx. The Hearing Officer found Mr. Xxxxxx entirely credible and placed great weight on his testimony and his opinions.

**12.** The Hearing Officer finds that the child’s April 27, 2017, IEP was reasonably calculated to enable Xxxxxx to make progress appropriate in light of his circumstances; that the LEA offered the child an appropriate education and further that Xxxxxx is making appropriate progress in light of his circumstances.(Sch. Ex. 6 p. 1-26)

**August 2017 IEP Meeting Request by Parents:**

**13.** The Parent, Mr. Xxxxxxx, left a telephone message on August 16, 2017, for the Xxxxxxx Schools Special Education department asking that they convene an IEP meeting before the beginning of the 2017-2018 school year. (Sch. Ex. 8 and TRR. 143:21-24). He did not specify the reason for requesting the IEP meeting. (Sch. Ex. 8; Tr. 145:6-7).

**14.** Ms. xxxx Xxxxxx, Xxxxxx Special Education Coordinator, responded by telephone to the Parent’s request for an IEP meeting on August 17, 2017. Not reaching him she left a voicemail message. (Sch. Ex. 8; Tr. 143:25-144:1)

**15.** The Parents failed to respond to Ms. Xxxxxx’s August 17, 2017, message. *Id.*

**16.** Ms. Xxxxxx sent the Parent an e-mail on August 24, 2017, advising him that Xxxxxx’s IEP team was available to meet on August 31, 2017. Mr. Xxxxxxx did not respond. (Tr. 144:1-10)

**17.** Ms. Xxxxxx again attempted to contact the Parent by telephone on August 29, 2017. Not finding him at home she left a message for Mr. Xxxxxxx with Mrs. Xxxxxxx Xxxxxxx, Xxxxxx’s mother, about setting up an IEP meeting. (Sch. Ex. 8; Tr. 144:1-10). On that same day Mr. Xxxxxxx left Ms. Xxxxxx a voicemail message stating that he refused to attend the August 31, 2017, IEP meeting if it was going to be held at Xxxxxx High School. (Sch. Ex. 8: Tr. 1`44:24-145:2).

**18.** Because of Mr. Xxxxxxx’s refusal to attend the IEP meeting at Xxxxxx High School the IEP team did not meet on August 31, 2017.

**19.** Ms. Xxxxxx telephoned Mr. Xxxxxxx on September 8, 2017. She advised him that the IEP team “was available to meet and would continue to be available to meet at Xxxxxx High School” (Sch. Ex. 8;Tr. 145:10-13) Mr. Xxxxxxx indicated that he would only meet at Xxxxxx High School if the meeting was held on the weekend or after 5:00 p.m. (Sch. Ex. 8). Ms. Xxxxxx also offered Mr. Xxxxxxx the option of his participating in the IEP by telephone or videoconferencing as an accommodation to address the concerns with the location and/or time of the proposed IEP meeting: he declined her offer. (Tr. p. 136).

**20.** On September 15, 2017, Ms. Xxxxxx sent the Parents a letter in which she advised them that the Xxxxxx IEP team was available to convene on either September 20, 21, or 22, 2017. (Sch. Ex.9; Tr. p. 146) \

She also invited Mr. Xxxxxxx to provide her with three additional dates and time at which he would be willing to meet with the IEP team. In the September 15, 2017, letter she also advised Mr. Xxxxxxx that “If he did not reply to let us know if he could come for one of these dates or times or provide us with additional dates and times, we would not be holding the meeting, since he had still, at this point, not expressed to us what he wanted to meet about.” She noted that “Xxxxxx’s annual IEP review is not due until April of 2018, and we do not have any concerns or matters we need to discuss related to the current IEP at this time.” (Sch. Ex. 9. 1-2). Mr. Xxxxxxx never responded to the letter. (Sch. Ex 9; Tr.; p. 146)

**21.** Ms. Xxxxxx described step by step the School System’s efforts to comply with the Parent’s request to convene an IEP meeting. The Parent failed to introduce any evidence or testimony to contradict Ms. Xxxxxx’s testimony that the LEA made significant efforts to set up the requested IEP meeting. The Hearing Officer found Ms. Xxxxxx and her testimony to be credible.

**22.** The Parents failed to introduce any expert witness or testimony regarding denial of FAPE resulting from the Xxxxxxx Schools failure to convene an IEP meeting prior to the 2017-2018 school year.

**23.** The Xxxxxxx Schools made and documented significant and concerted attempts to respond to the Parent’s request to hold an IEP meeting for Xxxxxx prior to the commencement of the 2017-2018 school year. (Sch. Ex. 8) The failure to convene the requested IEP meeting was caused by the Parent’s intransigence and refusal to cooperate with setting a date and time for the meeting*. Id.*

**24.** There was no denial of FAPE as a result of Xxxxxxx Schools failing to convene an IEP meeting for Xxxxxx prior to the 2017-2018 school year as requested by the Parents.

# Xxxxxxx Schools holding Eligibility Meeting Without Parents

**25.** Pursuant to the IDEA the School System must convene a Triennial Component Review for students receiving special education services once every three years to make an eligibility determination. The Triennial component review comes before the eligibility decision. The TCR team reviews the student’s records to determine if updated evaluations are required to determine the student’s continued eligibility to receive special education. (Sch. Ex. 10; Tr. 147: 13-148:3) Xxxxxx’s TCR needed to be completed by December 9, 2017.

**26.** Ms. Xxxxxx Xxxxxx has had approximately fifteen years of experience in the field of special education. She has been a Xxxxxxx Schools Special Education Coordinator for a year and a half. Prior to that she had worked as a special education teacher for twelve years in the Xxxxxx and xxxxxxxxxxx School Systems and as a special education instructional coach for a year.

As a Xxxxxxx Schools Special Education Coordinator she works directly with five schools. She oversees specific programs throughout the division as well as overseeing special education programs in the schools that she works with. She provides professional development to teachers and staff. In addition, she attends several IEP and eligibility meetings for the students in the schools that she serves. Ms. Xxxxxx holds a license in educational leadership and supervision; a special education license K-12; general curriculum, emotional disabilities and learning disabilities through the Virginia Department of Education. (Tr. p. 130-140)

**27.** Ms. Xxxxxx was qualified, with no objection, as an expert witness in the field of eligibility of students with disabilities and education programing for students with disabilities. (Tr. p.140)

**28.** Mr. Xxxxxxx sent a letter to Dr. xxxxxx, Deputy Superintendent for Curriculum Instruction and Assessment, on September 10, 2017, advising him that he had issues with Ms. Xxxxxx and did not want to interact with her in any way with regard to his son Xxxxxx; he asked that she not contact him for any reason. He also wrote that “NO MEETINGS CONCERNING MY SON TAKE PLACE WITHOUT ME BEING PRESENT” (P. Ex. 1)

**29.** Ms. Xxxxxx sent the Parents a letter on September 18, 2017, explaining the need for a Triennial Component Review (TCR) and explaining the purpose of the review. She also advised them that the Review was scheduled to be held on September 28, 2017 at 8:30 a.m., at Xxxxxx High School. It does not appear that the Parents had been consulted about this date prior to the meeting date and time being set. (Sch. Ex. 10) Mr. Xxxxxxx did not respond.

**30.** On September 27, 2017, Ms. Xxxxxx sent the Parents a letter in which she noted that it was not clear from the Parent’s response to the Notice of Meeting for the Triennial Component Review whether or not they were able to attend the Review meeting set for September 28, 2017 at 8:30 a.m. As a result, the meeting was not held. Ms. Xxxxxx noted in the letter that Mr. Xxxxxxx had refused the accommodations offered by the School System in response to his concerns regarding the location of the Review meeting. Mr. Xxxxxxx was provided three additional dates when the team would be available to meet with him. He was also asked to provide her three dates when he was available to meet with the team. Finally, she noted “We will work with you in determining a mutually agreed upon date and time to hold the TCR meeting for your son Xxxxxx at Xxxxxx High School.” (Sch. Ex. 11). Mr. Xxxxxxx provided no response to Ms. Xxxxxx regarding the September 27, 2017, letter.

**31.** Dr. Xxxxxx, when questioned by Mr. Xxxxxxx admitted that he recalled them speaking at the end of September (2017) about Mr. Xxxxxxx’s concerns that Ms. Xxxxxx was “not able to give a fair judgement” and that he would speak to Ms. xxxxxx about securing another Coordinator. (Tr. p. 56)

**32.** Mr. Xxxxxxx sent Dr. Xxxxxx a phone message on October 9, 2017. In it he referenced a telephone call that they had on September 29, 2017, in which Mr. Xxxxxxx discussed the issues that he was having with Xxxxxx Xxxxxx. “We spoke on September 29, about issues that I’m having with Xxxxxx Xxxxxx. I really thought that I was crystal clear about NEVER HAVING CONTACT with her again, yet today Xxxxxx’s teacher delivered a letter with her signature on it.” He goes on to note that the letter he received from Ms. Xxxxxx had two different dates for the meeting so he had no idea when the meeting would be held. He also complained about being given such short notice. (P. Ex. 2-5)

**33.** Another letter was sent by Ms. Xxxxxx to the Parents on October 9, 2017, as a follow up to the September 27, 2017, letter. In the letter she again stated the need to schedule Xxxxxx’s Triennial Component Review and advised them that the meeting was scheduled for October 12, 2017 at 9:00 a.m. Accompanying the letter was a Notice of Meeting which noted that the TCR meeting date was set for October 13, 2017. (P. Ex. 11) . Ms. Xxxxxx testified that this date was a typographical error and that Mr. Xxxxxxx never contacted her for clarification or to provide a response. (Sch. Ex 12 p. 1-2; Tr. p. 141). It did not appear that Dr. Xxxxxx communicated Mr. Xxxxxxx’s confusion about the date of the TCR meeting to anyone who could have let him know the correct date.

**34**. Ms. Xxxxxx behaved and testified professionally in the face of Mr. Xxxxxxx’s evident dislike and distain. Ms. Xxxxxx found herself in a difficult position and yet performed the duties of her job as required. The Hearing Officer found her testimony to be credible.

**35.** Mr. Xxxxxxx sent Vice Principal xxxxx a letter in which he set out his issues with Xxxxxx Xxxxxx and problems that he had with another Vice Principal at Xxxxxx High School who refused to accept his US passport as identification to enter the high school. He ended with “I have written my concern that “NO MEETING CONCERNING MY SON TAKES PLACE WITHOUT ME BEING PRESENT” (P. Ex. 1)

**36..** The Parents promptly advised XPS on October 12, 2017 at 7:24 a.m., that they could not be present at the TCR meeting because their other son was critically ill and was in the Children’s Hospital of the King’s Daughters (CHKD). Because of this the Parent’s requested that the meeting be continued.

On October 12, 2017 at 7:24 a.m., Mr. Xxxxxxx sent Vice Principal Xxxxx a telephone text message that read:

“This is Xxxxxxx Xxxxxxx, Xxxxxx’s father. Xxxxxx’s older brother, xxxxxxxx, has developed a condition that requires emergency surgery and he’s going to CHKD …..Because the documents that Mr. Xxxxxx brought to our house had both today’s date as well as tomorrow’s date for the meeting, I don’t know when it’s been scheduled. Regardless, I’ll be at the hospital with xxxxxxx this morning and will have to re-schedule the meeting for another day.”(P. Ex. 7-8)

**37.** Vice Principal Xxxxx wrote back at 9:40 a.m.: “Thank you for letting me know. I hope all goes well with surgery. We are still holding the meeting today. I will call you to let you know what was discussed. “(P. Ex. 8)

**38.** Mr. Xxxxxxx responded:

“FYI, I wrote a letter to Dr. Xxxxxx telling him that no meeting is authorized without me.” Your meeting is not authorized by parents who reserve the right to be present for all events that involve Xxxxxx Xxxxxxx.” (P. Ex. 9)

**39**. Mr. xxxxxx Xxxxxxx, Xxxxxx’s elder brother, testified that he was hospitalized for an emergency operation at Children’s Hospital of the Kings daughters on the morning of October 12, 2017, and that Mr. Xxxxxxx Xxxxxxx was at the hospital with him during the relevant period. The Hearing Officer finds Mr. Xxxxxxx’s testimony credible.

**40.** Xxxxxxx Schools did not cancel the meeting following receipt of Mr. Xxxxxxx’s message but instead proceeded with holding the Triennial Component Review on October 12, 2017.

**41.** The TCR team determined that there was enough information available to make the determination that Xxxxxx remained eligible as a student with an intellectual disability. Since it had been several years since a psychological evaluation had been done they requested that one be done for IEP planning purposes. (TR. p. 148)

**42.** Xxxxxx’s disability category did not change as a result of the October 12, 2017 meeting. (Tr. p. 149)

**43.**  It was Ms. Xxxxxx’s opinion that the decision of the TCR team that Xxxxxx continued to be eligible as a student with intellectual disabilities had no impact on Xxxxxx’s education. *Id.*

**44.** Ms. Xxxxxx sent the Parents a letter on November 20, 2017, advising them that the Triennial Component Review had taken place on October 12, 2017. She also wrote that “Although you were provided with written notice of this meeting, you were unable to participate. Xxxxxxx Schools is willing to reconvene the eligibility meeting so that either of you can attend.” Mr. Xxxxxxx did not respond. (Sch. Ex. 15:Tr. 150)

**45.** The Xxxxxx Schools had been put on notice several times that the Parents did not agree to the LEA having any meeting regarding Xxxxxx Xxxxxxx unless a Parent was present.

**46.** Despite making agood faith, collaborative and reasonable effort to provide the Parents an opportunity to be present and to participate at the child’s TCR meeting, the Xxxxxx School System nevertheless violated the Parent’s right, under IDEA, to be meaningful participants at their child’s Triennial Component Review. By failing to cancel and reconvene the meeting scheduled for October 12, 2017, when timely advised by the Parent that an emergency prevented his participation, XXS violated his rights under IDEA.

**47.** The LEA violation of the Parent’s right to attend the HTCR meeting was a technical procedural violation which did not result in any failure or interference with the provision of FAPE to Xxxxxx.

**48.** The LEA offer to re-convene the TCR meeting, while it does not cure their violation demonstrates the School System’s good faith effort to remediate its error.

**49.** Mr. Xxxxxxx Xxxxxxx, while present at the Hearing, did not testify. Mr. Xxxxxx Xxxxxxx did not attend the Hearing.

# CONCLUSIONS OF LAW and DISCUSSION

The IDEA is a federal statute that provides students with disabilities with the right to a Free and Appropriate Public Education (FAPE) designed to meet their needs. 20 U.S.C. § 1400(d)(1)(A).

The parties do not dispute that Xxxxxx Xxxxxxx has a disability, that he needs special education and related services, and that he is entitled to a free appropriate public education pursuant to the IDEA.

The U.S. Supreme Court in *Board of Education of the Hendrick Hudson Central School District, et al, v. Rowley,* *et a*l, (102 S. Ct 3034 IDELR 553:656 (1992) held that an inquiry in determining whether a FAPE is provided is twofold:

**1.** Have the procedures set forth in the IDEA been adequately complied with?\

**2.** Is the IEP reasonably calculated to enable the child to receive educational benefits?

In reference to the first issue in this case: “Whether Xxxxxx Xxxxxxx was denied FAPE when Xxxxxx Public Schools failed to comply with the Parent’s request to schedule an IEP meeting in August of 2017.” The answer to the Supreme Court’s two part test is that FAPE was provided. The procedures set forth in the IDEA had been more than adequately complied with and Xxxxxx’s IEP is reasonably calculated to enable the child to receive educational benefits.

.In *Dervishi v. Stamford Board of Eduucation*, 68 IDELR 3 (United States Court of Appeals, 2’d Circuit (.216)[[1]](#footnote-1), the Parents of a student with autism initiated a due process hearing alleging that FAPE had been denied. Among the allegations, the Parents argued that the school violated their IDEA rights to be meaningful participants at their student’s IEP meetings by holding two meetings during the summer while the parents were out of the country. The Hearing Officer’s decision that there were no violations was affirmed by the Court. The school had offered numerous dates to the Parents for an IEP meeting and also offered alternative means of participating through telephone or videoconferencing. The Court concluded that there was no denial of FAPE since the school had made significant efforts to involve the Parents in the IEP process.

Similarly, in this case before the Hearing Officer, the Xxxxxxx Schools made and documented extensive efforts to schedule the IEP meeting requested by the Parents and to provide alternative methods of participation, such as telephone and videoconferencing. It was the Parents who failed to cooperate in the LEA’s efforts to convene an IEP meeting. Thus, following the decision of the Court in *Dervishi* it is held that there was no denial of FAPE to Xxxxxx as a result of the LEA not convening an IEP meeting before the 2017-2018 school year.

The second issue presented in this case is: “Whether Xxxxxx Xxxxxxx was denied FAPE when the Xxxxxx Public Schools conducting an Triennial Component Review (“TCR”) meeting on October 212, 2017, without the Parents being present.”.

Parents of children with disabilities should have an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of their child, and the provision of FAPE to the child (including IEP meetings) (CFR Secs. 300.501(b), 300.344(a)(1), and 300.517) They are also entitled to be part of the groups that determine what additional data are needed as part of an evaluation of their child (Sec 300.533(a)(1)), and to have their concerns and the information that they provide regarding their child considered in developing and reviewing their child’s IEPs. (Sec’s. 300.343(c)(iii) and 300.346(a)(1)(i) and (b)

The U.S. Supreme Court essentially expanded the definition of FAPE in *Winkelman v. Parma City School District*, 550 U.S. 127 (2007). The Court ruled that (a) the IDEA mandates parental involvement, (b) parents have enforceable rights under the law, and (c) parental participation in the special education process is crucial to ensuring that children with disabilities receive FAPE.

In *Doug C. v. Hawaii Department of Education,* -F. 3d-, 2013 WL 2631518 (C.A. 9) (Hawaii), decided in 2013, the Parent was the father of an eighteen year old student with autism. He sued the Hawaii Dept. of Education for failing to comply with the IDEA. The father alleged that the LEA held an IEP meeting despite the Parent’s request that it be rescheduled due to his inability to attend which resulted in a denial of FAPE to his son Spencer.

The IEP meeting had been previously rescheduled at the father’s request and the LEA was disinclined to reschedule it again due to the difficulty in in asking the thirteen IEP members to change their schedules again to accommodate Doug C. The LEA decided to deny the father’s request that the IEP meeting be continued to another date and to proceed with the meeting. It was also decided that it would be easier to hold the meeting and then schedule a further follow-up meeting at which time the father could give his input. At the IEP meeting the IEP team changed the child’s placement to a different high school without the father’s participation or input.

The Hearing Officer who heard the Due Process Request dismissed the claim holding that the LEA did not deny Spencer FAPE. On appeal, the district court affirmed the Hearing Officer’s decision. The Ninth Circuit overruled the district court’s ruling, finding that the LEA was required to include the child’s parents in the IEP creation process unless the parents affirmatively refuse to participate. The Court went on to say that the inherent difficulty in scheduling a meeting does not excuse this requirement. The Court found that the attendance of the child’s Parent should take priority over the convenience of the IEP team as well as over any deadlines.

The Court noted that parental participation in the IEP and educational placement process was critical to the IDEA. The U.S. Supreme Court has stressed that the IDEA’s structure relied upon parental participation to ensure the success of the IDEA in providing quality education to students with disabilities. In *Doug C*. *Id.* The Court noted that the IDEA requires agencies to include Parents in the IEP process and that they are required to take steps to ensure that Parents of a child with disabilities is present at each IEP meeting or are afforded an opportunity to participate, including ample notice and “scheduling the meeting at a mutually agreed upon time and place.” *Id.*

The LEA argues that the IDEA implementing regulations expressly allow a School Board staff to meet when a Parent is unable or unwilling to meet; that a placement decision may be made by the IEP… team without the involvement of the Parent if the local educational agency is unable to obtain the Parent’s participation. (8 VAC 20-81-170 (c)(4); 20-110 €(3).

That, however, is neither the case nor relevant in regard to the October 12th Triennial Component Review meeting. The Parent affirmatively asserted his desire to have the TCR meeting rescheduled so that he could attend at a later date and he repeated his often stated position that the LEA should not hold any meeting regarding Xxxxxx without a Parent present. Although there had been difficulties in scheduling the IEP requested by the Parents in August of 2017, the Parents had demonstrated a strong pattern of participation in Xxxxxx’s IEP and other meetings throughout the years. Given that Xxxxxx’s TCR was not due until December 9, 2017, there was no reason why the IEP team could not have met a few days later and still have had time to complete any testing that they deemed necessary.

Despite the LEA error in convening the TCR meeting without the Parent being present this did not result in a denial of FAPE to Xxxxxx. Unlike the Doug C. case. *Id*. the Xxxxxxx School’s TCR team did not make any changes to Xxxxxx’s continued eligibility to receive special education services.

There is no question but that Mr. Xxxxxxx’s refusal to communicate with or interact with Ms. Xxxxxx, due to friction between them, caused unnecessary difficulties and frustration in 2017. However, at no time did these result in a denial of FAPE to Xxxxxx. The replacement of Ms. Xxxxxx with another Special Education Coordinator for Xxxxxx will hopefully permit the parties in the future to avoid the difficulties experienced during the 2017 school semester. .

The Parents bear the burden to establish, by a preponderance of the evidence, that the Xxxxxxx Schools failed to provide Xxxxxx with FAPE concerning the issues addressed in this proceeding. The Parents failed to establish by a preponderance of the evidence that Xxxxxx was denied FAPE, and thus, did not sustain their burden of proof.

# DECISION

**PREVAILING PARTY**: Xxxxxxx Public Schools.

**ENTERED** this 24th day of April, 2017.

Morgan Brooke-Devlin

Hearing Officer

# RIGHT OF APPEAL

This decision shall be final and binding unless either party appeals in 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.

Morgan Brooke-Devlin

Hearing Officer

# CERTIFICATE

I certify that I have served by e-mail the foregoing Hearing Officer Decision to all parties listed below on this 25th day of April, 2017.

Morgan Brooke-Devlin

**Morgan Brooke-Devlin, Esq.**

Hearing Officer

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Mr. and Mrs. Xxxxxxx Xxxxxxx

Mr. Brian Miller, Esq

1. This is an unpublished Summary Order [↑](#footnote-ref-1)