

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(s), Parent v. County Public Schools  
Case No. 23-046b

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

Child's Attorney/Advocate(s):  
Advocate

County Public Schools' Attorney  
Attorney for LEA

Superintendent of County Public Schools:  
Dr. Superintendent

**NON EXPEDITED DECISION**

**I. PROCEDURAL HISTORY<sup>1</sup>**

On November 9, 2022, the parents, filed a due process complaint (DPC/complaint). (AR 2). The Hearing Officer held an initial telephonic prehearing conference (PHC) on November 22, 2022, to address matters pertaining to the DPC.

The Hearing Officer then issued a scheduling order on November 22, 2022. This order provided a summary of discussions that occurred during the PHC, related directives from the Hearing Officer, and the scheduling of upcoming proceedings. (AR 6). As the Hearing Officer determined that the parents pled expedited and non-expedited issues in their complaint, the Hearing Officer bifurcated the matter scheduling an expedited hearing for December 8, 2022, on the expedited issue, and a non-expedited hearing for January 4, 2023, on the non-expedited issue. These dates were noted in the scheduling order and agreed to by the parties.

The Hearing Officer also determined that the parties timely held a resolution meeting for the expedited and non-expedited matters on November 16, 2022.

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<sup>1</sup> Throughout the decision, the Hearing Officer will use the following abbreviations:

Transcript	-	Tr.
Parents' Exhibit		P
Local Educational Agency Exhibit	-	S
Administrative Record	-	AR

The Hearing Officer conducted the expedited hearing on December 8, 2022. She issued the decision regarding the expedited issue on January 6, 2023.

The Hearing Officer held the non-expedited hearing on January 4, 2023. Before taking testimony, the Hearing Officer afforded the parties an opportunity to inform the Hearing Officer of any matters of concern. The parties presented none. The Hearing Officer admitted the Administrative Record, Parents' Exhibits 1 through 19, and LEA's Exhibits 1 through 26. Neither party objected.

During the due process hearing, each party presented an opening statement and conducted direct examination of their witnesses and cross examination of the opposing party's witnesses. Neither party offered rebuttal testimony. The parties jointly requested leave to present their closing arguments in writing. The Hearing Officer granted this joint motion, and each party timely submitted his/her/its closing argument.

The Hearing Officer's decision regarding the non-expedited matter is set forth here.

## **II. NON-EXPEDITED ISSUE**

Did the LEA deny the parents meaningful participation by requiring the parents to come to the school to review the child's educational records?

## **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 parents bear the burden of proof as they are challenging the LEA's actions.

## **IV. STATEMENT OF FACTS**

1. Child is a ninth grader and has been determined eligible for special education and related services under the disability category other health impaired (OHI) due to child being diagnosed with ADHD. (S9 at 1, 8).

2. By Mother's testimony, in 2015, their family experienced a house fire; everything was lost, including any school documents pertaining to Child. (Tr. 247).

October 5, 2022 Request for Records

3. On October 5, 2022, at 8:37 p.m., Parents electronically transmitted correspondence to Principal stating "[i]n preparation for disciplinary hearing and IEP meetings, we are requesting a copy of [Child's ] (DOB: ...) educational records since entering [the LEA]." (P1-P3; S1).

4. In this October 5, 2022 correspondence, Parents note that the record request includes but is not limited to Child's cumulative, confidential, special education, disciplinary and compliance

files. Parents' correspondence asks for Principal to include in Principal's response to the request the following:

- all reports written as a result of school observations and evaluations;
- reports of independent evaluations;
- medical records;
- nurse's records;
- summary reports of evaluation team and eligibility committee meetings;
- 504/IEPs;
- School team committee meeting notes;
- Any correspondence written between school personnel regarding Child where Child is mentioned by name, initials or code (including emails, chats, and messages);
- Any correspondence written between parents and school personnel (including emails, chats, and messages);
- Any records maintained by teachers and any member of the 504/IEP team;
- Notes or letters written in connection with any planning or discussions, or any other matters in connection with the student; and
- Any personally identifiable information, print, email, video or audio recording that exists.

(P2;S1; Tr. 251).

5. Also, Parents requested Principal provide the records as an attachment to an email. (P2; S1 at 3).

6. Parents' October 5, 2022 record request does not state that Parents are unable to come into the school to review Child's educational records. (S1 at 3; P2).

7. Child entered the LEA's school division 10 years ago. Accordingly, Parents' October 5, 2022 request was for 10 years of educational records pertaining to Child. (Tr. 251).

8. During this 10-year period, Child has attended an elementary school, a middle school, an alternative school, and a high school. Tr. (236-237). Child has had over 40 teachers within the 10-year period he has been a student in the LEA. (Tr. 396).

9. Not all of Child's records are electronically maintained. Records from the 10-year period are housed in different locations. (Tr. 396).

10. Hearing Officer finds Parents made an expansive request for documents on October 5, 2022. This finding has been made after considering Parents requested 10 years of records, the multiple schools Child attended in the district, the number of teachers child had, the listing of categories of documents requested, and records pertaining to Child are likely be housed in different locations. *See* Statement of Facts ##4, 7 through 9.

11. On October 7, 2022, at 3:09 p.m., Principal responded to the parents' October 5, 2022 correspondence. In this response, along with other comments, Principal requested the parents "identify as precisely as possible the educational record or records the parents sought to obtain to

enable the LEA to process the request.” Principal also informed Parents that once the requested records can be determined, they would be available at High School for review. Principal continued her response by providing Parents with available times they could come to High School and review the records. Specifically, Principal provided October 10, 2022, from 8:00 a.m. to 4:00 p.m., and October 11, 2022, from 1:30 p.m. to 4:00 p.m. Principal also supplied her telephone number where she could be contacted and requested the parents call her so Principal could assist in making arrangements for any record review. (P5 at2; S 2 at 3; Tr. 371-372).

12. Further, in her October 7, 2022 response, Principal acknowledged Parents’ right to inspect and review any educational records related to their children that are collected, maintained, or used by the LEA. Principal also referenced the LEA’s Policy JO relating to student records. Principal provided the following section of policy pertaining to the procedure for inspecting educational records :

Parents of students or eligible students may inspect and review the student’s education records within a reasonable period of time, which shall not exceed 45 days, and before any meeting regarding an IEP or hearing involving a student with a disability. Further, parents have the right to a response from the school division to reasonable requests for explanations and interpretations of the education record.

Parents or eligible students shall submit to the students’ school principal a written request which identifies as precisely as possible the record or records he or she wishes to inspect.

(P5 at 2; S2 at 3; S20 at 5).

13. Policy JO also continues in pertinent part and states the following:

#### Procedure to Inspect Education Records

The principal (or appropriate school official) will make the needed arrangements for access as promptly as possible and notify the parent or eligible student of the time and place where the records may be inspected.

When a record contains information about students other than a parent’s child or the eligible student, the parent or eligible student may not inspect and review the portion of the record which pertains to other students.

(S20 at 5-6).

14. Parents did not respond to Principal’s October 7, 2022 letter that requested clarity from the parents. (Tr. 254).

15. By Mother's testimony, although the October 5, 2022 correspondence requesting records does not state the parents were unable to present themselves at High School to review the records because Child was on house arrest, Parents did inform the school orally. (Tr. 243, 245, 273).

16. By Assistant Principal and Special Education Coordinator testimonies, the Parents did inform the IEP team that the child was on house arrest. However, Parents did not inform the LEA that the child's house arrest precluded them from coming into the school to inspect the records. (Tr. 333, 343).

17. By Principal's testimony, Parents never informed Principal that the parents were unable to come in a review the records. (Tr. 372).

18. Hearing Officer had an opportunity to observe the demeanor of the witnesses and finds the testimonies of Principal, Assistant Principal and Special Education Coordinator are credible and corroborated by other evidence of record; that is, Father coming to school on September 1, 2022, September 27, 2022, October 13, 2022, and November 21, 202, as noted in other Statements of Facts here.

19. In addition, the uncontradicted testimony by Principal is that historically, a child being on house arrest has not precluded parents from coming to school to review educational records. (Tr. 381).

20. Moreover, Parents' own statement contradicts Mother's testimony claiming Parents could not present themselves to the school in person to review records. Particularly, Parents sent an email to Assistant Principal stating that their adult children are home with Child during the day. (S12 at 1; Tr. 275-276). Further, Parents' October 5, 2022 request for records does not state the parents are unable to come to the school and review the records. (P2; S1). In addition, Parents only lived about 10 miles from High School, about a 20-minute commute. (Tr. 279-280; S21).

21. In consideration of the credible evidence mentioned in Statements of Facts ## 15 through 20, Hearing Officer finds that the parents could have come into High School to review the child's records. Hearing Officer also finds, Parents did not inform school personnel that they were unable to report to school to review the records.

#### October 13, 2022 IEP Meeting

22. In addition to requesting records in their electronic correspondence sent on October 5, 2022, Parents requested that the LEA schedule an IEP meeting. Parents indicated that, among other times, they were available on October 13, 2022, at 8:00 a.m. for any scheduled IEP meeting. (S1 at 3; P2).

23. The LEA scheduled an IEP meeting for 8:00 a.m. on October 13, 2022. The LEA provided Parents with notice of this meeting. (S3; Tr. 327).

24. On October 13, 2022, the IEP team met to determine Child's placement and how services

would be delivered to Child during his long-term removal due to discipline. (P7; S5; Tr. 325).<sup>2</sup>

25. At the time the IEP team held the October 13, 2022 IEP meeting (October 13 IEP meeting), Parents had not come to school to review Child's educational records. Further, Parents had not responded to Principal's October 7, 2022 correspondence. Parents had not contacted Principal by telephone even though Principal had provided her telephone number. (Tr. 254-256).

26. Parents and their advocate attended the October 13 IEP meeting. Parents participated virtually. School Psychologist attended. In addition, Special Education Coordinator attended. Further, Child's general education teacher and special education teacher participated as well as Assistant Principal. (S 4; Tr. 281).

27. The IEP team considered various items related to Child. The PWN related to the October 13 IEP meeting notes that the team considered the following during the meeting:

Parental input

Child's IEP

Star math diagnostic screener

Star reading diagnostic screener

Discipline from September 27, 2022

Manifestation Determination Review dated October 5, 2022

Disciplinary Hearing determination dated October 12, 2022

Oral and written contributions of all committee members

Other relevant portions of Child's educational record, including but not limited to attendance data, historical grades, current grades

Whether a regional alternative program would be appropriate for Child

(P7; S5).

28. As previously referenced, Special Education Coordinator attended the October 13 IEP meeting. Special Education Coordinator is responsible for assuring compliance with Special Education procedures. She has served in this role for over two years. She qualified as an expert in special education and compliance with special education procedures. (Tr. 320,321-322; S26). By Special Education Coordinator's testimony, which the Hearing Officer finds credible, the October 13 IEP considered all the items listed in Statement of Fact #27. This included parental input. While each member of the team did not have a hard copy of documents, any document considered was pulled up or displayed for the team to review. (Tr. 327, 329-333).

29. Any questions asked by Parents during the October 13 IEP meeting were addressed by the team. For example, Parents had a question about the diagnostic screeners. Those screeners were then shown during the meeting and discussed to address Parents' questions. (Tr. 333).

30. Parents made no complaints about not having access to any documents during the October 13 IEP meeting, with one exception. Parents requested a copy of a PWN to which Parents had

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<sup>2</sup> The long-term removal had resulted from the manifestation determination review team (MDR team) finding that Child's behavior on or about September 26, 2022, was not a manifestation of his disability. (Tr. 242-243).

already been sent. Parents indicated they had had some trouble with their mail carrier and asked for another copy of the PWN. The copy was sent to the parents. (Tr. 308-309, 333-334).

31. Moreover, the child's cumulative file was present at the meeting. Any item in the cumulative file that a team member desired to consider was available to be retrieved and considered by the team. (Tr. 335).

32. During the October 13 IEP meeting, it had been reported that Child was on house arrest. Parents did not report that Child's house arrest prohibited them from coming to High School. Parents did not state they could not come to the school to review the documents. (Tr. 343).

33. The decision made by the IEP team on October 13, 2022 was to provide Child with services virtually using the Zoom platform. Moreover, Child's grades could be accessed through APEX, an online educational platform used by the LEA. Accordingly, the IEP team amended Child's IEP to reflect the amendment to Child's IEP. In making this decision, the IEP team considered Parents' preference to have in-person homebase instruction. However, the team decided that because of the nature of Child's misconduct "threatening to shoot up the school," virtual homebase instruction was appropriate. (P7; S4 and S5; Tr. 327).

34. The LEA provided parents with the PWN regarding the October 13 IEP meeting on October 18, 2022. After being provided the PWN for the October 13, 2022 meeting Parents did not contact the Special Education Coordinator with concerns regarding the PWN relating to the October 13, 2022 meeting. (Tr. 337-338; P7 at 2; S5 at 2).

#### October 18, 2022 Record Request

35. On October 18, 2022 at 6:51 a.m., Parents sent another request for records pertaining to Child's records. In this correspondence, Parents state they need "Special Education documents" to help them prepare for the "upcoming meeting with the Eligibility team on Monday, October 24, 2022. In this correspondence, Parents also state "we are requesting the following Special Education documents be sent to [Parents] as attachments to an email":

- All Special Education Parent Eligibility Documents to include: Referral, Consent to Evaluate, Meeting Notice, Meeting Minutes/Summary, Reports for each evaluation, Worksheets, Summary of Eligibility Deliberation, PWN;
- Discipline Record to include: referrals, dates and times parent was contacted regarding behavior, dates and times the school requested the student be picked up from school for behavior with accompanying notice of suspension, any current or previous FBA and BIP evaluations/reports;
- All MRD paperwork: to include this years and previous years; meeting Notice, MDR meeting Minutes and PWN;
- Current IEP Documents to include: meeting notice, IEP, 504, PWN, progress reports with documentation of progress towards IEP goals for each of the data points as indicated on the students IEP goals and benchmark objectives;
- Previous 5 years IEPs: to include amendments, meeting notice, IEP, 504, PWN, progress reports with documentation of progress towards IEP goals for each of the data points as

indicated on the students IEP goals and benchmark objectives. (P8; S7).

36. Once more, Parents requested records covering a 10-year period and that Principal send them by email. However, Parents did not indicate in their correspondence that they were unable to report to school to review the records. (S7; Tr. 262-264).

37. Hearing Officer finds that Parents' October 18, 2022 record request was also unduly burdensome due to the record request spanning 10 years and a review of the documents or category of documents requested. (*See* Statement of Facts 35 and 36; P8; S7).

38. By letter dated October 18, 2022, Principal responded by letter to Parents' October 13, 2022 correspondence. In this response, Principal again acknowledged Parents' right to inspect and review any educational records related to their children that are collected, maintained, or used by the LEA. Principal also again referenced the LEA's Policy JO relating to student records and provided related portions of the policy in her October 18, 2022 response. Particularly, Principal set forth the first two paragraphs of Policy JO, Procedure to Inspect Education Records. These provisions are the same ones noted in the above "Statement of Fact" #12. (P10; S8).

39. Moreover, in her October 18, 2022 response, Principal informed Parents that the records, should they exist, "will be available for review at [High School] on Thursday, October 20, 2022 from 11:00 a.m. to 3:30 p.m. and Friday, October 21, 2022, from 8:00 a.m. to 11:00 a.m." Providing her telephone contact number, Principal again asked Parents to call her to assist Principal in planning for Parents' review of Child's educational records. (P10; S8).

40. Parents did not report to school to review the records/documents on October 20 or 21, 2022. Parents never contacted Principal about arranging a time to review the records. Further, Parents never contacted parents and stated they could not report to school for the review because Child was on house arrest. (Tr. 373-375). *See* above Statement of Facts ##15-20 for credibility finding regarding conflicting testimony about whether Parents informed school personnel that they were unable to report to school to review Child's educational records.

#### October 24, 2022 IEP Meeting

41. During the October 13 IEP meeting mentioned above, Parents requested a follow-up IEP meeting because of Parents' concerns about Child's eligibility category. (P7; S9 at 9; S14).

42. As requested, the LEA scheduled an IEP meeting for 9:15 a.m. on October 24, 2022. The LEA provided Parents with notice of this meeting. (S6; Tr. 338).

43. As scheduled, on October 24, 2022, the IEP team met to discuss Parents' concerns regarding Child's eligibility category. (S9 at 9, S 14).

44. At the time the IEP team held the October 24, 2022 IEP meeting (October 24 IEP meeting), Parents had not come to school to review Child's educational records. Further, Parents had not responded to Principal's October 18, 2022 correspondence. Parents had not contacted Principal



by telephone even though Principal had provided her telephone number. Parents had not informed school personnel that they were unable to report to school to review the records. (Tr. 263-264, 373-375; Statement of Facts ##16-20 and 40).

45. Those in attendance at the October 24, 2022 meeting included Parents, their advocate, School Psychologist, Child's Special Education Teacher, Child's general education teacher, Assistant Principal, Special Education Coordinator. (S9; Tr. 281-282; 323, 338-339).

46. During the October 24, 2022 IEP meeting, the documents were considered orally through discussions of relevant portions regarding the child's eligibility. Moreover, Parents and Parents' advocate were provided the opportunity to ask questions which the IEP team addressed. (Tr. 344).

47. During the meeting, Parents did not voice that they were unable to come into the school to review records or state they needed copies of any documents that they had requested. (Tr. 343).

48. During the October 24, 2022 meeting, Parents also reported that Child's doctor had expressed concerns about Child having a possible intellectual disability and autism. The school members of the IEP team requested the reports from the doctor. Those reports had not been received by the LEA as of the January 4, 2023 hearing date. (Tr. 353-354).

49. As a result of the October 24 IEP meeting, IEP team revised Child's IEP after considering, among other input, the parents' contributions to the meeting. Specifically, IEP team revised the IEP to indicate the team met to discuss Parents' concerns about the child's eligibility category, or request to reevaluate Child. Further, the team determined at the meeting that a suspicion of a specific learning disability existed and the team proposed a comprehensive evaluation. Parents consented to the comprehensive evaluation. The components of this evaluation included an educational evaluation, a psychological evaluation, a sociological evaluation, teacher comments on Child's current class performance, classroom observation(s), and a medical screening by the school nurse. Further, the IEP team considered Parents' concerns about child's sensory processing and decided to obtain a sensory profile of Child. (S9 at 9 and 25; Tr. 340-342).

50. Special Education Coordinator prepared a PWN about the October 24 IEP meeting and sent it to the parents on November 2, 2022. Parent received and signed the PWN and amended IEP resulting from the October 24 IEP meeting. Parent has not contacted the LEA about concerns regarding the PWN. (Tr. 343-344; S9 at 25 and S14).

51. The PWN states in pertinent part that the IEP team on October 24, 2022, considered the following

Parental input  
Teacher input  
Progress notes/reports  
Child's IEP  
Star math diagnostic screener  
Star reading diagnostic screener  
Independent Reading Level Assessment

Oral and written contributions of all committee members and other relevant portions of the educational record, including but not limited to attendance information, historical and current grades of Child (S14).

52. Based on the above referenced factual findings, the Hearing Officer finds the IEP team considered Parents' input. (Statement of Facts ## 46 through 51; Tr. 282, 338-339, 345).

October 24, 2022 Request for Records

53. By communication dated October 24, 2022, Parents made a request for the following public records pertaining to Child:

- a. All evaluations, assessments, eligibility summaries, worksheets, IEPs, 504 plans, prior written notices(s), minutes, or summaries of meetings related to [the child's] eligibility for special education services or provision thereof;
- b. Report cards and IEP Progress Reports to include supportive data;
- c. Results of standardized testing, including SOL test results;
- d. Communication regarding [Child's] behavior;
- e. Discipline records, including incident reports, video recordings, witness statements, and statements by [Child];
- f. [Child's] behavior intervention plans, if any;
- g. Attendance Records;
- h. Minutes of FAPT team meetings or any other documents relating to any FAPT referrals for [Child]; and
- i. Any other documentation concerning [Child] on file with the school, including any electronic records

Parents requested these records be sent by email.

(P14; S11).

54. By letter dated October 31, 2022, the LEA's Director of Community and Media Relations (Director) responded to the parent's October 24, 2022 request for public records. In that response, Director cited to the LEA's Policy JO, the identical provision mentioned in Principal's prior written communications sent to the parents. Then Director ask for clarity regarding what

documents were being sought in items “a” through “d” and “i” of Parents’ request. (*See* Statement of Fact #49 for listing of “a” through “d” and “i.”) Director informed Parents that the LEA did not maintain documents or minutes of FAPT team meetings as they were not educational records of Child. Director also informed Parents that the other documents requested by Parents, if in existence, were available for review at High School. Director also provided Principal’s telephone number and asked that the parents contact the principal to assist in arranging the review. (P17; S13; Tr. 376).

55. Parents did not go to High School to review the documents pertaining to their Public Records’ request. Parents did not contact Principal about Director’s letter. This is the case even though Director’s letter identified Principal as the contact person and provided Principal’s telephone number for this purpose. Neither did parents state they were unable to report to school for a review of the records. (Tr. 269, 376-377).

56. On Thursday, November 17, 2022, at 9:03 p.m. Parents sent an email to Principal stating that Father and Parents’ advocate would be at High School to review the child’s records, on Monday, November 21, 2022, at 8:00 a.m. (Tr. 270-271; S15).

57. Principal responded by letter dated November 18, 2022, to Parents’ November 17, 2022 email. Principal informed parents in the response that little notice had been provided to LEA; however, the LEA would make the records available for review on November 18, 2022, at 8:00 a.m. (S16). Principal did so. (Tr. 271, 377).

58. On November 21, 2022, Father and Parents’ advocate reported to High School and reviewed Child’s records. Father and Parents’ advocate designated ones they desired copies of. School staff made the copies and provided them to Father/Parents’ Advocate on November 23, 2022. (S 19; Tr. 324-325).

#### Other Factual Findings

59. By Mother’s testimony, both parents work and it would be very challenging for either or both of them to come to school. (Tr. 273).

60. Parents’ residence is approximately 10 miles from High School. The driving time is about 20 minutes. (Tr. 279; S21).

61. The Hearing Officer finds the LEA provided Parents with the opportunity to inspect Child’s educational records prior to the October 13 and 24 IEP meetings.

62. The Hearing Officer finds that it was not until Parents filed their due process complaint on November 9, 2022, that they contended that they were not able to report to the school to review the child’s educational records.

#### **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) and § 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 in its jurisdiction. Va. Code Ann. § 22.1-214 and § 22.1-215.

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*, 137 S. Ct. 988 (2017). Moreover, the IDEA and its implementing regulations emphasize the importance of parental participation in the provision of special education services for a child with a disability.

Parental participation in the IEP process is important to achieving the purpose of the IDEA. See 20 U.S.C. § 1414(d)(1)(B)(i) (including the parent as a required member of the IEP team). Moreover, implementing regulations of the IDEA provide that the LEA must take steps to ensure that one or both parents of a child with a disability are present at each IEP meeting or given the opportunity to participate. See 34 C.F.R. § 300.322(a). In addition, the Supreme Court has emphasized that the IDEA's structure relies upon parent participation in developing successful IEPs. *Rowley*, 458 U.S. at 206, 102 S. Ct. 3034 (“Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process, as it did upon the measurement of the resulting IEP against a substantive standard.”). Courts have recognized, “[t]he core of the statute ...is the cooperation process that it establishes between parent and schools.” *Schaffer*, 546 U.S. at 53. (Citing *Rowley*, 458 U.S. at 205-06).

The parental participation in an IEP meeting referenced above, must be meaningful. *See e.g., Spielberg ex rel. Spielberg v. Henrico County Public Schools*, [853 F.2d 256](#) (4th Cir. 1988). In the instant case, the parents assert that the LEA deprived them of meaningful participation.

Issue:

Did the LEA deny the parents meaningful participation by requiring the parents to come to the school to review the child’s educational records?

Did the LEA Provide the parents with an opportunity to inspect records?

Essentially, Parents’ claim is as noted here. Parents were unable to adequately prepare for and meaningfully participate in two IEP meetings in October 2022. This problem existed because the LEA required Parents to present themselves to High School to review the child’s records. As reported by Parents, a court placed Child on “house arrest.” This situation necessitated a parent being at home with the child and therefore prohibited the parents from reporting to High School to inspect the child’s educational records and cumulative file. This circumstance required LEA to provide electronic records to the parents, not simply an offer to inspect the records at school.

First, the Hearing Officer examines whether the LEA violated Parents’ procedural

safeguard right to have access to Child's educational records.

IDEA and the Family Educational Rights Privacy Act (FERPA) grant parents the right to review and inspect their child's educational records. VAC 20-81-170(A)(1)(a)(1); 34 C.F.R. §99.10; 34 C.F.R. §300.501(a) and 34 C.F.R. §300.613. Except where a limitation applies, an LEA must provide a parent or eligible student with an opportunity to inspect and review the student's educational records. 34 C.F.R. §99.10. Under the law, the LEA must comply with an inspection request within 45 days of receiving it. 34 C.F.R. §99.10(b) and 34 C.F.R. §300.613(a). When in-person review is not feasible, an LEA must provide the parents with a copy of the records requested or make other arrangements for parental review of the educational records. 34 C.F.R. §99.10(d).

A careful review of the evidence shows that the LEA timely afforded Parents several opportunities to review and inspect the child's educational records.

One such occasion occurred after LEA received Parents first request for Child's educational records. The evidence shows that Parents initially requested on the evening of October 5, 2022, that the LEA provide Parents with all Child's educational records from the time he entered the LEA until present. The evidence shows that this time period spanned 10 years. In this correspondence, Parents also asked for an IEP meeting to discuss the IEP team's MDR determination. On October 7, 2022, less than 48 hours after the Parents' requested Child's educational records, Principal responded by letter. Because Parents' request was far-reaching, Principal cited to the LEA's policy JO. This policy address, in pertinent part, the procedure for accessing educational records. Principal asked Parents to identify as precisely as possible the educational records desired to facilitate the LEA in processing the request. In addition, Principal's response provided Parents with available dates and times to come into the school and inspect the records. Those dates were October 10, 2022, 8:00 a.m. to 4:00 p.m., and October 11, 2022, from 1:30 p.m. to 4:00 p.m. Also, Principal's October 7, 2022 letter to Parents supplied Principal's contact information and asked Parents to contact Principal to facilitate making arrangements for parents to review the records.

The evidence demonstrates that Parents were noncooperative. For instance, Parents did not contact Principal about the October 7, 2022 letter. Parents failed to provide any available time to come in prior to October 13, 2022 – the date of the IEP meeting requested by Parents. Parents never contacted Principal. Further, the evidence clearly shows that Parents' October 5, 2022 correspondence did not state the parents were unable to report to the school to review and inspect the child's educational records.

Next, on October 18, 2022, Parents submitted a second request for records. The second request asked for "Special Education Documents." More particularly, Parents requested (i) All Special Education Parent Eligibility Documents, (ii) Discipline Record, (iii) All MRD paperwork, (iv) Current IEP Documents, (v) Previous 5 years IEPs. Parents also indicated in their October 18, 2022 request that the records would assist them in preparing for an upcoming IEP meeting that the LEA had scheduled for 9:15 a.m. on October 24, 2022. Parents had requested this scheduled IEP meeting during the prior IEP meeting held on October 13, 2022. Like its predecessor, the evidence shows that this second record request was also broad.

Principal responded by letter on October 18, 2022, to the parents' second request. In her reply, Principal again acknowledged Parents' right to inspect records. She also reiterated LEA's Policy JO regarding procedures for accessing records. To this point, Principal stated that any record request must identify as precisely as possible the records a parent or eligible student desires to inspect. Principal further responded by stating that should the records Parents requested exist, they would be available for review and inspection at High School on October 20, 2022, from 11:00 a.m. to 3:30 p.m. and October 21, 2022, from 8:00 a.m. to 11:00 a.m. Principal provided her telephone number in her reply and requested that the parents contact Principal to assist the principal with arranging the review.

The evidence shows that the parents never contacted Principal about arranging a time to review the records. Neither did Parents report to school to review the records/documents on October 20 or 21, 2022, at the times offered in Principal's letter to the parents. Moreover, Parents' October 18, 2022 correspondence did not indicate the parents were incapable of coming to school to review the records. Furthermore, Parents never contacted Principal and stated that they could not report to school for the review because Child was on house arrest.

Subsequent, to making the second request for records, Parents submitted another request to the LEA on October 24, 2022. This would have been the parents' third request for the child's records. This time, Parents made a more extensive request for public records pertaining to Child and asked that they be sent as an attachment to an email. The extensive list of documents asked for in this request appear above in Statement of Facts #53

The LEA's Director of Community and Media Relations (Director) responded to the parent's October 24, 2022 request for public records by letter dated October 31, 2022. In that response, Director cited to the LEA's Policy JO, the identical provision mentioned in Principal's prior communications with parents. Regarding Parents' request for documents on FAPT team meetings, Director informed Parents that the LEA did not maintain documents or minutes of FAPT team meetings as they were not educational records of Child. In addition, Director requested clarity on specific documents requested that were listed as items "a" through "d" and "i," of Parents' request. Even though Director deemed more clarity was needed, Director informed Parents that the other documents requested by Parents, if in existence, were available for review at High School. Director also provided Principal's telephone number and asked that the parents contact the principal to assist in arranging the review.

The evidence shows that Parents did not contact Principal about Director's letter. This is the case even though Director's letter stated Principal was the contact person and provided Principal's telephone number. Parents did not go to High School to review the documents pertaining to their Public Records' request. Neither did parents state in their correspondence that they were unable to report to school for a review of the records due to Child being on house arrest or provide alternative reasons for unavailability.

The evidence shows that what followed next was at 9:03 p.m. on Thursday, November 17, 2022, parents transmitted an email to Principal. The email informed Principal that Father and Parents' advocate would be at High School to review the child's records, on Monday, November

21, 2022, at 8:00 a.m. Principal responded by letter dated November 18, 2022, to Parents' November 17, 2022 email. Principal informed parents in the response that little notice had been provided to LEA; however, the LEA would make the records available for review on November 21, 2022, at 8:00 a.m. On November 21, 2022, Father and Parents' advocate reported to High School and reviewed Child's records for at least two hours. Father and Parents' advocate designated ones they desired copies of. The LEA made copies of the ones designated and they were provided to Parents/Parents' Advocate on November 23, 2022.

In sum, the evidence reveals that each time the parents requested the educational records of the child, the LEA responded promptly and offered availability for parents to come into the school and review the records. As shown by the documentary and testimonial evidence, Parents resided about 10 miles from the school. Parents never informed LEA that because the child was on house arrest, they were unable to report to school for the review and did not provide other unavailability reasons. Accordingly, the Hearing Officer finds the LEA provided the parents with multiple opportunities to review the record or inspect them. Parents have failed to meet their burden and show that the LEA failed to afford the parents their procedural right.

In making this decision, Hearing Officer has carefully considered Parents' claim that they required electronic records because reportedly Child had been placed on house arrest. As previously referenced, under FERPA, if circumstances exists that in effect preclude parents (or an eligible student) from exercising their right to inspect their child's educational records, the LEA must provide parents/eligible student with a copy of the requested records or make other arrangements for the inspection. 34 C.F.R. § 99.10(d). The facts in the instance case fail to show the LEA had an obligation to make other arrangements. For one, the evidence shows the parents lived only 10 miles from High School. The commute took no more than about 20 minutes. *See Letter re: Karns City School District Family Policy Compliance Office*, 103 LRP 39325 (July 29, 2003)(Parents lived within commuting distance – usually interpreted to mean within 50 miles of the school- and the LEA did not have to provide copies). In addition, Father had reported to school on several occasions – September 1, 2022; for an IEP meeting; September 27, 2022, for an interview; October 13, 2022, to retrieve a device for the child; and November 21, 2022, to review the records for at least two hours. Furthermore, the Hearing Officer does not find the parents' work schedules precluded Parents from reporting to school to review the records. *See Lyon County School District*, 60 IDELR 83 (April 6, 2012) (Work schedule of parents does not require school district to provide copies to the parents in lieu of parent reporting to school and reviewing the records).

Moreover, during the due process hearing, Mother testified that she had informed the school that the parents were not able to report to school to review the child's records because the child had been placed on house arrest. The Hearing Officer did not find this testimony reliable for several reasons. Three employees of the school were asked during their examinations whether the parents had asserted that they could not come into the school to inspect the records due to Child being on house arrest. Each – Principal, Special Education Coordinator, and Assistant Principal – testified that the parents never made such a representation. The Hearing Officer had an opportunity to observe the witnesses' demeanors and found their testimony credible. In addition, a review of the parents' written requests for records fail to reveal that the parents made such a declaration. Further, as noted above, contrary to the parents' claim of not being able to report to school, at least

one parent did so four times between September 2022, and November 21, 2022. Furthermore, written communication from the parents states that the adult children are home with Child during the day.

What is more, the evidence shows that it was not feasible for LEA to provide all the requested records electronically for several reasons. Parents requested 10 years of records. While some were in electronic form, others were not. Over the 10 years Child attended four different schools in the district and had over 40 teachers. These factors indicated that not all records could have been provided electronically, or to undertake such a task would have imposed a burden on the LEA.

Furthermore, regarding LEA Policy 70, the LEA may implement a policy addressing the inspection of educational records by parents or eligible students so long as the policy does not deprive parents of the ability of inspecting and reviewing records. *See* 108 LRP 47595 (FPCO 2008). In the instant case, the LEA adopted Policy 70 regarding Parents or eligible students inspecting educational records. After examining this policy, the Hearing Officer cannot find that its implementation would deprive the parents of their right to inspect and review Child's educational records.

Did the Parents meaningfully participate in the IEP meetings?

Hearing Officer now turns to Parents' claim that LEA denied them meaningful participation in the October 13 and 24, 2022 IEP meetings. The Hearing Officer has already determined that the LEA presented Parents with the opportunity to inspect Child's educational records. Accordingly, no merit exists in Parents' assertion that the LEA denied them meaningful participation because the LEA failed to provide the records. That said, the Hearing Officer examines further to determine if other grounds exists which constitute a denial of meaningful parental participation.

Parental participation in an IEP meeting must be meaningful. *See e.g., Spielberg ex rel. Spielberg v. Henrico County Public Schools*, [853 F.2d 256](#) (4th Cir. 1988). For instance, the LEA must provide parents with notice. Also, generally, the scheduled IEP meeting must be at a mutual time and place. 34 C.F.R. § 300.322. Moreover, this participation should include consideration of the parents' comments or suggestions, and to the extent appropriate, incorporating them into the IEP. *Deal v. Hamilton County Bd. Of Educ.*, 42 IDELR 109 (6<sup>th</sup> Cir. 2004), *cert denied*, 110 LRP 46999, 546 U.S. 936 (2005), *on remand*, 46 IDELR 45 (E.D. Tenn. 2006), *aff'd*, 49 IDELR 123 (6<sup>th</sup> Cir. 2008). 34 C.F.R. § 300.322. Meaningful consideration also includes answering parents' questions. *See Board of Educ. of Waterford-Halfmoon Union Free Sch. Dist.*, 20 IDELR 1092 (SEA NY 1994). Further, the LEA must show in an IEP meeting that school members of the team have come to the meeting with an open mind and the school members of the team are receptive and responsive to the parents' view throughout the IEP meeting. *R.L. v. Miami-Dade County School Board*, 63 IDELR 182 (11<sup>TH</sup> Cir. 2014).

### **October 13, 2022 IEP Meeting**

First, the Hearing officer considers the October 13, 2022 IEP meeting (October 13 meeting)



and whether the parents were able to meaningfully participate. In her October 5, 2022 request for records, Mother also asked for an emergency IEP meeting to discuss the Manifestation Determination Review Team's decision which had been made on October 5, 2022, but prior to Parents' request for records.

The LEA scheduled the meeting for October 13, 2022, for the purpose of amending the child's IEP. Specifically, the LEA scheduled the IEP meeting to consider Parents concerns as well as to determine child's placement and services while he was out of regular school for disciplinary reasons. The LEA provided Parents with notice of this meeting.

At their request, Parents virtually attended the meeting. In addition, Parents' advocate attended. School employees in attendance at this meeting were Assistant Principal, Special Education Teacher, General Education Teacher, and Special Education Coordinator.

A review of the evidence, to include documents and testimony, shows that the parents provided input during that meeting. For example, parents reported that Child had been ordered on house arrest. The team considered this information and concluded Child could not receive services at a regional alternative location because per parental report, a court had restricted him to his home. Accordingly, the team decided Child's services would be homebased. The IEP team discussed whether the homebased services should be in-person or virtually. Parents voiced their preference was in-person. The IEP team considered the parents' preference but decided that because Child had threatened to "shoot up the school," it was inappropriate to have in-person services delivered to Child's home. In addition, the evidence demonstrates that Parents' questions were answered. Specifically, the parents asked about the child's diagnostic screeners. The cumulative file was assessable during the meeting, the screeners were assessed, and the parents' questions addressed. Moreover, Parents' advocate had an opportunity to ask questions. Furthermore, during the October 13 meeting, Parents requested a follow-up IEP meeting because they had concerns about Child's current special education eligibility category. The IEP team responded by scheduling another IEP meeting for October 24, 2022.

After careful consideration of the above, the Hearing Officer finds the evidence is insufficient to demonstrate the LEA deprived Parents of meaningful participation during the October 13 meeting.

### **October 24, 2022 IEP Meeting**

Next, the Hearing Officer considers the October 24, 2022 IEP meeting (October 24 meeting). As referenced above, during the October 13, meeting, parents requested a follow-up IEP meeting because they had concerns regarding Child's current eligibility status and desired the child be reevaluated and his disability category amended. The PWN regarding the October 13 meeting addressed the scheduling of the follow-up meeting. The PWN indicates that Parents were unavailable to meet again for the follow-up between October 18 and 23, 2022, and a request had been made to avoid meeting on Wednesdays. With these restrictions, the LEA scheduled the follow-up IEP meeting for October 24, 2022. The evidence shows that this was a mutual time for Parents and LEA. Parents received notice of this meeting as well.

During the October 24 meeting, Parents voiced their concerns regarding Child's current eligibility category. Parents asked questions. After considering Parents' concerns and other contributions made during the meeting, the IEP team acted on Parents' concerns. Particularly, documentation shows the IEP team proposed the following evaluations: educational evaluation, psychological evaluation, sociocultural evaluation, observations, current classroom performance, and medical screening. In addition, the LEA proposed a sensory profile be obtained. Parents consented to the evaluations and profile proposed. Parents also voiced that Child's doctor had indicated that child may intellectually disabled or carry an autism diagnosis. The IEP team considered this information from the parents and requested copies of reports related to any intellectual disability or autism diagnosis. As of the hearing date, Parents had not provided those reports. IEP team also considered concerns raised by the advocate at the IEP meeting.

After careful consideration of the evidence, the Hearing Officer finds that the parents have failed to meet their burden and show the LEA deprived them of meaningful participation in IEP meetings.

## **VI. CONCLUSION**

The Hearing Officer has considered all arguments and all evidence, testimonial and documentary, and finds the parents have failed to meet their burden

## **VII. DECISION AND ORDER**

For reasons stated above, the Hearing Officer finds in favor of LEA and dismisses with prejudice the parents' complaint.

## **VIII. PREVAILING PARTY**

I have the authority to determine the prevailing party on the issues and find the prevailing party is the LEA .

## **IX. 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 23<sup>rd</sup> day of January, 2023.

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Ternon Galloway Lee, Hearing Officer

Cc: Parents

Advocate for Parents

Counsel for LEA

Dir. of Special Education for LEA

VDOE Coordinator

Hearing Officer Monitor of the Proceedings