

**Individuals with Disabilities in Education Improvement Act
Before the Local Hearing Officer**

L.R. (Parent) on behalf of F.R.	)	
(Student),	)	
	)	
Petitioner,	)	
	)	
vs.	)	Final Order
	)	
Florence County School District	)	
One,	)	
	)	
District/Respondent.	)	

I. Procedural Background

Parent submitted the pending due process complaint ("DPR") on February 12, 2024. The DPR raises two allegations. First, Parent contends that District denied Parent the right to have her advocate attend a February 9, 2024, manifestation determination review ("MDR") "virtually or present per my consent." Second, she alleges that District did not provide an updated meeting notice for the MDR that included everyone in attendance.

II. Facts

Parent and District scheduled a MDR for February 9, 2024 at 1:00 pm. [Pet. Exh. 1]. Before the meeting, Parent emailed District, asking that it email Parent & Student's advocate ("Advocate") a link for her to participate virtually. [Resp. Exh. 2].

When Parent arrived for the meeting, she asked District whether it sent Advocate a link. District's assistant superintendent for exceptional children ("ASEC") informed Parent that Advocate could not participate. District refused to provide the requested link and would not allow Advocate to listen to the meeting on Parent's phone. When Parent

asked why, ASEC responded, “she [Advocate] knows why.” Although ASEC “assumed” Advocate would seek to participate, District did not inform Parent or Advocate that it would exclude Advocate.¹

Parent became upset not only because District excluded Advocate, but also because District had representatives present who were not previously listed on the meeting notice. As a result of these two issues, Parent declined to move forward with the meeting. Parent then filed the pending DPR.

III. Analysis

A. District’s exclusion of Advocate from the February 9 MDR.

1. Advocate’s status as IEP team member

The first question is whether Parent and Student have a substantive right to have Advocate present at a meeting. The IEP team conducts an MDR:

[T]he IEP Team . . . shall review all relevant information in the student’s file, including the child’s IEP, any teacher observations, and any relevant information provided by the parents to determine . . . if the conduct in question was caused by, or had a direct and substantial relationship to, the child’s disability.

20 U.S.C. § 1415(k)(1)(E)(i)(I) (emphasis added); 34 C.F.R. § 300.530(e)(1). The statute makes clear that Advocate is a member of the IEP team.

The term “individualized education program team” or “IEP Team” means a group of individuals composed of . . . **at the discretion of the parent . . . other individuals who have knowledge or special**

¹ Two days before the meeting, Advocate alleged to police and on social media that another principal at a different school pushed Advocate during a meeting. District issued a letter, referred to as the Trespass Notice, on the day of the meeting. [Resp. Exh. 4]. Advocate insists, however, that she did not receive it until days later. District did not provide any email showing it was sent to her earlier.

expertise regarding the child, including related services personnel as appropriate.

20 U.S.C. 1414(d)(1)(B)(vi) (emphasis added); 34 C.F.R. § 300.321(a)(6).² “The determination of the knowledge or special expertise of any individual . . . must be made by the . . . parent[] . . . who invited the individual to be a member of the IEP Team.” 34 C.F.R. § 300.321(c).

Because Advocate is an IEP team member, her participation on the IEP team would normally be necessary to conduct an MDR. *See Fitzgerald v. Fairfax Cty. Sch. Bd.*, 556 F. Supp. 2d 543, 546 (E.D. Va. 2008).

Barring Advocate from participating in any form was unreasonable and unnecessary. ASEC discussed his understanding of the dispute that led to the Trespass Notice [*supra* n. 1]. But none of that relates to Parent or Student. The sole reason cited by ASEC for the exclusion of Advocate involves the allegations in the Trespass Notice. [Resp. Exh. 4].³ Nothing in that rationale, however, explains why Advocate could not even listen in over Parent’s phone.

² By contrast, the IEP makes “advocates” third parties for due process hearings, although it provides parents with the right to be accompanied and advised by such persons:

Any party to a hearing . . . shall be accorded . . . the right to be accompanied and advised by . . . individuals with special knowledge or training with respect to the problems of children with disabilities.”

20 U.S.C. § 1415(h)(1); 34 C.F.R. § 300.512(a)(1)

³ The testimony became sidetracked with testimony from ASEC that various District personnel believe that Advocate is disruptive and prolongs meetings. That testimony came in response to questions from Parent. ASEC did not cite these concerns as a reason for barring Advocate from participating in Student’s IEP meetings,

District's total exclusion of Advocate on February 9 violated the IDEA. But that hardly resolves the ongoing dispute. The question becomes what to do about this.

The starting point to any remedy analysis is determining whether a violation is merely procedural or substantive. The failure to include a member of the IEP team in decision-making is a procedural violation. See *R.F. v. Cecil County Pub. Schools*, 919 F.3d 237, 249 (4th Cir. 2019) (analyzing the exclusion of a parent from IEP team decisions). A hearing officer may find that a child did not receive a FAPE as to procedural inadequacies only if the procedural violations "impeded the child's right to a FAPE," they "significantly impeded the parent's opportunity to participate in the decision-making process," or they "[c]aused a deprivation of educational benefit." 20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2).

As to the first and third possibilities, District's exclusion of Advocate neither impeded Student's right to a FAPE nor caused a deprivation of an educational benefit. There was no issue about removal or change in placement as of February 9, 2024, and Parent neither alleged nor sought to prove that this issue resulted in the deprivation of an educational benefit.

The question then boils down to the second alternative: Whether the complete exclusion of Advocate, "significantly impeded [Parent's] opportunity to participate in the decision-making process." 20 U.S.C. § 1415(f)(3)(E)(ii)(II). This is a high standard to meet under Fourth Circuit law. See, e.g., *R.F.*, 919 F.3d at 249. Under these circumstances, however, the violation significantly impeded Parent's opportunity to

including the MDR. Because ASEC does not claim that these purported complaints played a role in the decision to exclude Advocate, I have not considered any of it.

participate at the February 9 MDR, It impeded it so greatly that the meeting could not happen.⁴ There is no question that Parent relies heavily on Advocate. Parent credibly testified that she distrusts District, and that she is unable to deal with the IEP process without assistance. Intentional or not, District intimidated Parent by precluding her from having Advocate available, even by phone. At the same time, Parent did not expect the additional people to the meeting. I credit Parent's testimony that she was not able to function under these circumstances. District frustrated Parent's ability to participate.

District must allow the Advocate to participate in IEP-related meetings for the Student. Reaching that conclusion under these facts is easy, and it does not matter whether District's violation was procedural or substantive.⁵ The harder question here is whether District can physically exclude Advocate from its property when other IEP team members appear in person. Unlike the statutory provision for DPR hearings, the IDEA entitles neither Student nor Parent to be "accompanied" by an Advocate. [*See supra* n. 2]. Nor does the IDEA require that an IEP team member appear in person. In fact, the

⁴ District points to the fact that the meeting did not happen to suggest that no violation occurred. But the nonoccurrence of the meeting results from the violation. It would be nonsensical to allow a violation to serve as the basis for a defense. Parent's decision to not proceed was reasonable, if not entirely predictable.

⁵ A finding that Parent's rights were not significantly impeded limits means that the violation is purely procedural. For procedural violations, relief is limited to an order to comply with the IDEA. 20 U.S.C. § 1415(f)(3)(E)(iii); 34 C.F.R. § 300.513(a)(3). Because inclusion of IEP team members is a requirement of the IDEA, an order to comply would compel District to allow Advocate to participate. In other words, District is required to allow Advocate to participate under these circumstances even if the violation does not satisfy any provision of Section 1415(f)(3)(E)(ii).

IDEA sometimes requires the use of technology.⁶ See 34 C.F.R. § 300.328 (“When conducting IEP Team meetings . . . the parent of a child with a disability and a public agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.”); see *also* 34 C.F.R. § 300.322(c) (“If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with § 300.328”)

District argues that state law gives school boards and their appointed administrators the power to control school property. That is clear, but District also must always operate in compliance with federal law. That includes the way it operates its property. The issue at this point is not whether District was correct, as I have already found it was not. The issue is whether District’s reason for barring Advocate from its property violates the IDEA.

I credit ASEC’s testimony that he decided to exclude Advocate based on his understanding of the facts alleged in the Trespass Notice. District over-reacted in excluding Advocate from participating *in any fashion*, but the reason it has given was its reason. and ASEC did not base that reason directly on Advocate’s activities in serving as an IEP team member for Student or anyone else. [See *supra* n. 3]⁷

⁶ Advocate has no physical limitations that impedes her ability to participate virtually.

⁷ I would likely have reached a different result if there was sufficient evidence that District was retaliating against Advocate for serving as an IEP team member. But that is not what happened here. Advocate has participated in meetings for years on behalf of different parents and students. District has apparently never sought to bar her from the property before. Who “started it” is debatable here. Advocate would claim that District “started it” when its principal at another school

Because District's reason does not violate the IDEA, there is no basis to order District to permit Advocate on its property for Student's IEP team meetings.

District must, however, permit Advocate to participate fully in Student's IEP team-related meetings. It must provide video access via the video conferencing methods typically used by District for such meetings. District also must provide Advocate access to the same information that the IEP team is reviewing during the meetings. If, for example, the IEP team is reviewing an evaluation or other documents, District must provide Advocate access to them during any discussion of the document as if she were attending in person. Otherwise, District must schedule in-person IEP meetings for Student off school premises if it wishes to continue to ban Advocate from school property.⁸

This Order is limited to the unique circumstances of this case. The rights addressed here are those of Parent and Student. Thus, this decision is limited to dealings between the parties to this case. This Order should not be interpreted as a finding that a hearing officer lacks the authority to act if he or she determines that District is excluding IEP team members for a retaliatory or discriminatory purpose. Nor should it be read to suggest that District could never bar an Advocate from participating by any mode.

pushed her. District would claim that Parent "started it" with allegedly false police reports and social media posts about the incident. Either way, there is something more to what led to the Trespass Notice than Parent's routine participation at a meeting.

⁸ If District has a concern about whether Parent is disrupting or prolonging meetings, it is always free to record them.

2. Parent's additional objections

Parent objects to District including its "Exhibit 1" to District's post-hearing submission. Exhibit 1 is an Order from the school board, ruling on a grievance from Advocate. As Parent notes, District did not offer the document at the hearing. I sustain Parent's objection, and I have not considered it.⁹

B. Meeting notice issue

Parent alleged that the meeting notice violated IDEA. [Pet. Exh. 1].¹⁰ The notice does not include the supervisor for secondary programs or the assistant principal. [*Id.*; compare Pet. Exh. 5]. It is not clear that such an omission violates the IDEA at all.¹¹

⁹ Parent also reiterated an objection she raised at the beginning of the hearing. Parent objects to District forwarding an email to me that includes an email with a link to District's exhibits. For the reasons stated at the hearing, I overrule this objection. Again, District did not provide me with exhibits before the hearing. Nor did I click on the link and review whatever the link leads to. So even if that would have constituted a procedural concern, it did not happen. District provided the email to show compliance with the five-day disclosure requirement. And that was the only purpose for which I considered it.

I would again urge Parent to focus on what really matters here. Nitpicky procedural objections are a waste of time and money. Underlying these cases is a very serious issue regarding Student's behavior for which real solutions must be found. That will take the full cooperation of everyone involved and a united front. Bickering about procedural issues or what other people think about Advocate is not going to help Student mature and develop appropriate coping skills.

¹⁰ At the hearing the parties debated whether Parent had notice that the meeting (that never occurred) would include issues such as the functional behavioral assessment ("FBA"), but none of that is before me. Issues at a due process local hearing are limited to those raised in the Complaint. 34 C.F.R. § 300.511(d).

¹¹ The IDEA addresses the excusal of required IEP team members. 20 U.S.C. § 1414(d)(1)(C)(ii).

Fitzgerald v. Fairfax Cty. Sch. Bd., 556 F. Supp. 2d 543, 554 (E.D. Va. 2008) (quoting 20 U.S.C. § 1414(d)(1)(B)(vi), additional citations omitted).

Granted, the meeting notice did not identify all the participants gathered on February 9, 2024. And that helps to explain Parent's decision to not proceed with the meeting. But it shows nothing substantive. The contents of the notice affected nothing.

I find no violation regarding the notice, but even if Parent proved a procedural violation, there would be no remedy. The parties met in March. District did not delay any services between February 9, 2024, and the March meeting and there was no change in placement during that time. This allegation is pointless.

IV. Conclusion

District violated the IDEA by excluding Advocate from participating in any fashion at the February 9 meeting. Under the current circumstances, District must permit Advocate the opportunity to participate as an IEP team member as set forth above. District is not, however, required by this Order to allow Parent [sic] on school property.

There is no violation regarding the failure to provide proper notice of the February 9, 2024 MDR.

See next page for appeal information.



Brian P. Murphy
Local Due Process Hearing Officer

Dated March 25, 2024.

Notice of Appeal Process¹²

Any party may appeal this ruling. A party seeking to appeal this ruling must do so **in writing** and **within ten (10) days** of receipt of this Order. The written appeal must be addressed to:

The South Carolina Department of Education
Office of General Counsel
1429 Senate Street
Rutledge Building
Columbia, SC 29201

¹² I will not accept, read, or consider any further argument about the merits on this matter unless it is remanded to me by the SRO or the District Court. No email, letter, or other written communication will be construed or considered as either a Motion to Reconsider or as a Motion to Alter or amend this Order. Further, no such communication may toll or extend the time limit above for filing an appeal.