

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

**G.J. (Parent) on behalf of Z.B.
(Student),**

Petitioner,

vs.

Final Order – GJ VIII¹

**Florence County School
District One,**

District/Respondent.

I. Background

Student is an eighth grader at Williams Middle School. He receives special education and related services under the category of other health impairment (OHI). His underlying medical conditions are attention deficit hyperactivity disorder (ADHD) and sleep-related concerns.

¹ This is the seventh due process hearing requests (DPRs) in three years related to Student. Parent submitted nine previous DPRs on behalf of Student: September 1, 2023 (“GV VII”); March 1, 2023 (“GJ VI”); June 17, 2022 (“GJ V”); March 20, 2022 (“GJ IV”), Feb. 10, 2022 (“GJ III”), June 17, 2021 (“GJ II”), and October 6, 2020 (“GJ I”). Parent has filed a total of ten DPRs. She withdrew *GJ III* and two other DPRs submitted in the 2023-24 school.

As used in this decision, citations to “*GJ I*” refer to the local due process hearing officer (LHO) Dent’s decision of February 22, 2021. Citations to “*GJ II*” refer to the Final Order dated September 10, 2021. Citations to “*GJ IV*” refer to the Final Order dated June 21, 2022. Citations to “*GJ V*” refer to the Final Order dated August 30, 2022. Citations to “*GJ VI*” refer to the Final Order dated May 15, 2023. Citations to “*GJ VII*” refer to the Final Order dated November 10, 2023.

District held eight individualized education Program (IEP) meetings in 2023-24, and at least one additional meeting with Parent to address questions with the functional behavioral assessment (FBA) evaluator.²

Student was on a modified schedule at the beginning of the school year. He attended in person during the afternoon. Before the school year began, Student decided that he wanted to attend full day. The IEP team deferred that decision so it could study Student's behaviors that led to the modified day decision. [Parent Exh. 17 at 2 (Resp 412 ("[Student] will be monitored over the next 2 weeks to see if he is able to avoid getting written up, interrupting class academic instructions, and following classroom rules and expectations, the IEP team will consider having a meeting to bring him back full time."))].

After the IEP team had the opportunity to observe Student during the new school year, it revised the IEP to include full-day instruction at an October 27, 2023, IEP meeting. [Parent Exh. 19]. Student began attending full-time on October 30.³

The IEP team also met to review the results of the FBA. [District Exh. 7; see *GJ VII* at 11-13]. District insisted that the meeting focus on the FBA results, not on Parent's questions about the process for developing it. To address those questions, District's supervisor for secondary

² The IEP team met on October 27, November 20, December 11 or 15, 2023 and January 17, January 23, March 4, April 18, and May 16, 2024.

³ The IEP team revised Student's behavioral intervention plan (BIP). [District Exh. 10].

special education (“SSE”) conducted a separate meeting with the FBA evaluator and Parent. Parent does not contend that she had any questions the evaluator could not answer.

Throughout the year, Parent pressed for more data on two issues: (1) Student’s use of a hoodie, and (2) whether a behavior interventionist was needed full time. The IEP team agreed to obtain more information and for Parent to select the evaluator. Although the SSE did not agree with this decision, she abided by the team’s consensus. On January 29, 2024, the SSE emailed Parent with names of evaluators for Parent’s selection. [Parent Exh. 9 (emails re FBA Providers)].

Parent did not respond until April 9. [*Id.*] Because District was only nine days away from another scheduled IEP meeting, the SSE referred the issue to the IEP team. She reasoned that the IEP team had been collecting data, and she had reason to believe that the issues were no longer germane. Specifically, she testified that using a hoodie was no longer an issue as Student rarely wore one anymore. She also testified that teachers did not believe they needed assistance from the behavior interventionist.

The team conducted a facilitated IEP meeting on April 18—the seventh meeting of the year. The meeting lasted over three hours. The team did not address the issue of the FBA revision or extended school year (“ESY”) services. The team met again on May 16. At this meeting, the team approved ESY for Summer 2024. [District Exh. 6]. The IEP team had always planned to take up ESY at the May meeting. [Parent Exh. 12].

II. Discussion

The DPR presents a laundry list of theoretical violations, but Parent did not address most of them at the hearing. Like prior hearings, Parent focuses mostly on her communications with others, her dissatisfaction with how they respond to her, and the fulsomeness of their record keeping. Parent continues to ask many “Did I ask?,” “Did I request?,” and “Did I say?” type questions. In the end, however, there is nothing *substantive* in terms of any Individuals with Disabilities Education Act (IDEA) concern. [*E.g.*, District Exh. 4 at 2-3].

At the end of the testimony, I invited closing submissions and suggested topics for each party to address. I urged Parent to focus on any substantive violation and to explain to me what she believes went wrong during this past school year. In her closing submission, Parent makes three references to a denial of a free appropriate public education (FAPE):

- “I responded to the district with additional suggestions to accommodate my son for the denial of FAPE;”
- “Not providing my son the missed instructions, a general education teacher to provide the missed instructions, or anything to assist with the sleeping disorder causing him to not receive these skills to assist with maintaining his IEP goals and services, denied my son FAPE.”
- “Failing to implement the many areas of the IEP as it was written all constitutes a denial of FAPE for my son in the 23-24 school year.”

The first reference does not explain *how* there was a denial of a FAPE that required accommodations. The second reference is just another theory. Parent does not explain what evidence supports this theory in terms of the purported

failures or how they resulted in a denial of a FAPE. The third reference contains several issues discussed below.⁴

FAPE is not a term to just be bandied about. It does not require that a local educational agency (LEA) provide whatever a parent wants at any time. FAPE requires that LEAs establish ambitious goals.

To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.

The "reasonably calculated" qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. [Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty. v. Rowley, 458 U. S. 176, 207 (1982)]. The Act contemplates that this fact-intensive exercise will be informed not only by the expertise of school officials, but also by the input of the child's parents or guardians. *Id.*, at 208-209. Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal. *Id.*, at 206-207.

* * * *

That the progress contemplated by the IEP must be appropriate in light of the child's circumstances should come as no surprise. A focus on the particular child is at the core of the IDEA. The instruction offered must be "specially designed" to meet a child's "unique needs" through an "[i]ndividualized education program." [20 U.S.C.] §§1401(29), (14) (emphasis added). An IEP is not a form

⁴ Parent does not explain at this point in the submission how District failed to implement the IEP, nor does she address how any such failure to implement resulted in a denial of FAPE. In reviewing the submission, Parent's implementation claims appear to relate to: (1) travel reimbursement; (2) behavioral interventionist services; (3) counseling; (4) the FBA; and (5) general education teachers failing to provide data. These issues are discussed below.

document. It is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth. §§1414(d)(1)(A)(i)(I)-(IV), (d)(3)(A)(i)-(iv). As we observed in *Rowley*, the IDEA "requires participating States to educate a wide spectrum of handicapped children," and "the benefits obtainable by children at one end of the spectrum will differ dramatically from those obtainable by children at the other end, with infinite variations in between." 458 U. S. at 202.

* * * *

. . . [An] IEP need not aim for grade-level advancement. But his educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.

Of course this describes a general standard, not a formula. But whatever else can be said about it, this standard is markedly more demanding than the "merely more than de minimis" test It cannot be the case that the Act typically aims for grade-level advancement for children with disabilities who can be educated in the regular classroom, but is satisfied with barely more than de minimis progress for those who cannot.

Endrew F. v. Douglas Cty. Sch. Dist. RE-1, 580 U.S. 386, 399-402 (2017); *M. L. v. Smith*, 867 F.3d 487, 496 (4th Cir. 2017) (quoting *Endrew F.* for the proposition that the Supreme Court "rejected [the] argument that 'a FAPE is an education that aims to provide a child with a disability opportunities to achieve academic success, attain self- sufficiency, and contribute to society that are substantially equal to the opportunities afforded children without disabilities.'").

The burden of proving any shortcoming rests with Parent. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). Parent has not shown the IEPs for 2023-24 were not reasonably calculated to provide sufficient education benefits. As with other hearings, that often is not what Parent focuses on. In this case, like others,

Parent tries to prove that District does not provide what she wants. By doing so, Parent is not focused on the proper standard. Not once does she quibble with a goal that is set in the IEP, nor does she articulate a basis on which I could find that what she wants is what *Andrew F* requires. In other words, Parent has proven that the IEP team does not agree with her or always do what she wants and how she wants it done, but that does not even suggest a violation of the IDEA absent proof that what she wants is what is needed to provide a FAPE.

As I explained to Parent, it is hard to understand from the “big picture” what the problem is for 2023-24. In this regard, Student’s special education teacher (“SET”) provided the most compelling testimony. I find her particularly credible because, while employed by District, she has been a tireless advocate for Student the last two years. Both sides of this case trust her. The SET testified that, at times, Student’s issue in completing work results from his lack of interest in doing it. In other words, Student is capable, but he is uncooperative at times.⁵

The SET corroborates the testimony of Student’s teachers. Together, they displayed a keen understanding of Student’s behaviors and described the

⁵ SET also provided valuable testimony regarding occasions during which Student puts his head down. While Parent has contended that each instance constitutes sleeping that calls for some form of compensatory education, the SET has explained that some head down behaviors is simply Student not wanting to participate in the class.

approaches they used to address his needs over the year. It is difficult, at best, to understand the theory for any claim that District failed to provide a FAPE. That said, I will separately address each issue raised in the DPR for which Parent provided testimony or argument.

A. Substantive issues

1. Transportation reimbursement

Parent conceded at the hearing that she is unaware of any transportation costs owed at this point. [See Parent Exh. 15]. In her closing submission, Parent states, “I have not researched all the information to determine if I was reimbursed for all days per IEP.” Parent showed payment for some of her mileage was made after she filed her DPR, but the record is unclear regarding the dates when she submitted reimbursement requests. There is no deadline in the IEP that District violated. Thus, there is insufficient evidence that District materially failed to implement the IEP. *Sumter Cty. Sch. Dist. 17 v. Heffernan*, 642 F.3d 478, 484 (4th Cir. 2011). Further, this would be, at most, a procedural violation. Absent a showing that it resulted in a denial of a FAPE, which Parent does not suggest, the only possible relief would be an order to do something District has already done. 20 U.S.C. § 1415(f)(3)(E)(iii); 34 C.F.R. § 300.513(a)(3).

2. Follow up FBA issues

This is the third hearing involving the FBA finally issued last fall. [See *GJ VI* at 19-20; *GJ VII* at 11-13].⁶ Substantively, the parties do not dispute the FBA's findings. [District Exh. 1]. Parent even testified favorably about the evaluator's opinions. The only remaining issues are Parent's contentions about Student's use of a hoodie as an accommodation and whether a behavior interventionist needs to always be in the classroom. Neither contention has merit.

a. Hoodie as an accommodation

Parent contends that the IEP team should develop more data to ensure that Student can wear his hoodie as an accommodation for his disabilities. Parent, however, has failed to show that any disability requires such an accommodation. Apparently, Student was wearing his hoodie last year because of a haircut. This year, there have been no concerns about him wearing a hoodie. Whether that is due to maturation or Student's perception that wearing the hoodie is undesirable does not matter. There is no evidence he needs to wear a hoodie because of any disability, and District has not disciplined him for wearing one. This is not an issue on which taxpayer funds should be expended.

⁶ As noted in *GJ VII*, Parent did not even review the FBA once District provided it to her. [*GJ VII* at 12]. Here, after the SSE sent Parent a list of evaluators, Parent did not respond promptly. Parent's sincerity in demanding immediate responses to her many information requests is in serious doubt. She is the slowest member of the IEP team to respond to issues she claims to be material.

b. Behavioral interventionist

The Parent's insistence on an embedded interventionist also makes no sense. [*E.g.*, District Exh. 2 at 2]. Student's teachers would have the greatest incentive to request an interventionist, but they uniformly agree that one is not necessary. [*E.g.*, DX 1 at 4]. This mirrors the testimony in *GJ VII*. [See *GJ VII* tr. 176:17-21]. Nor has the behavior interventionist opined that he always needs to be in Student's class. All that would do is increase the risk of singling out Student, which is something Student has tried to avoid.⁷

Parent has repeatedly claimed that the behavioral interventionist should be in the classroom to provide "positive reinforcement." [District Exh. 2 at 1]. The issue with Student is not that "positive reinforcement" is lacking. The issue is that he chooses to not follow instructions, an issue the teachers claim they can handle. As the SET explained,

[I]t does not take calling everyone on the list to ask [Student] to stop playing music out loud, or to stay on task and do his work, he is 14 years old and needs to be accountable for not listening.

[District Exh. 2 at 2]. This testimony is supported by testimony of some of the male figures to whom Student chooses to show greater respect. The kind of conduct exhibited towards some teachers is simply absent in the presence of

⁷ This issue is reminiscent of Parent's prior insistence of an aide in the classroom when neither Student nor District believed it was necessary. Student did not like the attention it drew to him and that it made him different than other students. See *GJ IV* at 24.

male authority figures, such as the football coach. For them, he is obedient and respectful.

Parent does not want to hear this. She does not want Student to be held accountable.⁸ As I have stated before, Parent's desires in this regard are neither reasonable nor an IDEA issue. [See *GJ VII* at 16 (citing *GJ VI* at 28-30 and *GJ VI* SRO Order at 14-15)]. Part of growing up is learning to respect authority, and not just the persons you choose to respect. Student is running out of time to learn this lesson.

Finally, as noted above, Parent's closing submission suggests that the behavior interventionist issue is one of implementation. It is not. The IEP does not require a behavior interventionist in the classroom full-time. Nor did the IEP team agree to provide one on that basis.

3. Delay in returning to in person instruction

Parent contends that Student wanted to return to school at the beginning of the year and that District unreasonably delayed by waiting until the end of October. Before Student changed his mind, Parent persisted in claiming that he needed to be at home during the mornings. To its credit, the IEP team did not oppose Parent's about-face. Before it made the decision, however, it wanted to

⁸ Parent becomes contentious at even the possibility that Student might be held accountable. [See, e.g., Parent Exh. 6 at 1 ("This tardy should count toward this medical diagnosis of his current sleeping disorder per IEP. If this tardy will not be counted as medical, please explain why not.")]

collect data. Parent now contends that it should have made the decision without doing so. Parent's position is unsupportable and contradictory.

In no less than nineteen places in her post-hearing submission, Parent stresses a need for "data." Likewise, her cases have been premised mainly on her demands for more and more "data." When, however, the IEP team (correctly) determined that it needed data before making a major change, Parent contends that it should have acted without collecting data. Far too often, Parent's positions are based on what Student *wants* at a particular time. The IEP team would have erred by relying simply on the whims of an adolescent with disabilities that Parent claims are unmanaged. The IEP team's decisions must be based on Student's individual needs, not his wants.

The IEP team acted reasonably in wanting to observe Student before deciding if and how it can reacclimate him to full-time attendance. Further, making the change within two months was prompt under the circumstances. Those circumstances include the fact that Parent was unavailable to meet on dates proposed by District.⁹

⁹ Two months may be prompt under any circumstances. I note, however, that this all occurred at the beginning of the school year when districts are dealing with incoming students, transitional IEPs, and preparing for IEP annual reviews. District has many special education students. The sheer amount of time it has devoted to dealing with varying and numerous parental requests for Student has been significant to say the least.

4. A New You Counseling

District agreed to Parent's request for a black male behavioral therapist. The effort failed because Student refused to cooperate. Parent tried to hold out for "A New You." This may have included her interference with the black male therapist District provided.¹⁰ [See District Exh. 2 at 2-3; District Exh. 4 at 1; Parent Exh. 9 at 3].

In the end, Parent confirmed the efficacy of the regular therapy from Student's current school-based therapist (SBT). In fact, Parent requested that her services continue at the next school. Against this background, it is impossible to find them lacking. But even if District's therapy had been deficient, there is still no evidence that A New You would be necessary to provide a FAPE. Student stated

¹⁰ As District points out, the therapy notes suggest that Parent instructed Student to not cooperate. Student recanted his comments only after Parent obtained a copy and read them. [District Exh. 9 at Resp. 733, 735, 739, 744]. After Parent emailed District stating that the comments were out of context, she was present when Student also claimed that District took the comments out of context. This was a total missed opportunity. While I agree with Parent that Student's regular therapist has done a fine job, the male therapist presented exactly the kind of male role model that could have greatly helped Student. His testimony was impressive as he serves out of a sense of mission for helping young men like Student.

Parent's demand for the therapy records raises another serious issue. Student knows that Parent is reading the therapy notes. While Parent can exercise her "right" to do so, Student will never be candid in therapy knowing that whatever he says will go directly to his mother. Again, Parent is elevating her rights to information over the needs of Student. And there is no point in advocating for a particular therapist if Student knows that there will be no confidentiality. Student will not open up.

that his prior therapy with A New You was unhelpful. Student has not even been to A New You in several years. [District Exh. 9 at 733; see *GJ VII* at 9-10]. Parent's continued demands for A New You are based only on her subjective opinions. That is not evidence. Once again, the IEP is driven by Student's individual needs, not what Parent subjectively prefers.

5. Family counseling

Parent contends that District should provide family counseling and sessions between herself and an SBT. Parent is correct that such services fall within the definition of "related services." 34 C.F.R. § 300.34(a). But such services are necessary only if "required to assist a child . . . benefit from special education." *Id.* Parent has provided no evidence that either service would be necessary for Student to benefit from special education. He is receiving such benefits without family counseling.

6. Training of staff

Parent also contends that District failed to implement the IEP by failing to train staff on Student's disabilities. District provided training, and the teachers confirmed that they participated. There is no evidence of any violation regarding any failure to implement training.

7. ESY

Parent's ESY claim has no merit. The IEP team addressed ESY in May, which was always the intent. There is no dispute about ESY services as Parent does not contend that the agreement she reached is lacking.

8. Guidance counseling

Parent reads Student's BIP as requiring that every resource listed be provided to Student every day. [See Parent Exh. 21 at 1 (last section "Frequency/Location/Person(s) responsible"); see *also* Dist. Exh. 10 (same section)]. That section provides: "The teachers, school guidance counselors, school based behavior interventionist, school based counselors, administrative staff, and all stakeholders will work with [Student] daily." [*Id.*]

Parent's interpretation would lead to an absurd result because it would be pointless to require that Student receive: (1) daily guidance counseling; (2) daily SBT; and (3) daily behavior intervention. The listed resources were *available* to Student daily. As the guidance counselor noted, students do not typically receive support from a guidance counselor on behavioral issues if they receive treatment from an SBT. And that makes sense. She added that District could bring Student to her if he had a crisis and the SBT was unavailable. Apparently, that never happened. There is no evidence of Student needing services when no provider was available. So what is the point, other than to just demand more services?

Student saw the counselor once in January 2024. He did so at the request of Parent, and not because Student had a need that the SBT could not provide. Again, there is no evidence that Student needed services at any time that they were unavailable. If Parent is just seeking more and more services, the IDEA

does not require that District make every type of service available because a parent requests it.

Parent's contention that District needed to provide guidance counseling for the same issues as it provided SBT makes no sense. Nor has Parent shown how the purported failure to provide duplicative services denied Student a FAPE. On the contrary, continuing to pull Student away from instruction for services nobody believed necessary would threaten academic progress.

In any event, District offered more services through its Clinical Day Program, but Parent rejected that proposal because she contended that Student needed more academic instruction and not as much behavioral services. [Parent Exh. 8 at 6 of 16]. Given that position, it makes no sense to pull Student out of class to provide more behavioral services that nobody contended were necessary.

9. Academic suspension from football

Student and other football players were not permitted to practice or play after receiving failing grades in Quarter 1 of the 2023-24 school year. Rather than practicing, they were provided tutoring and instruction during practice times. Student received instruction from a SET during this time. Student's grades improved, and he was allowed to play in the season's last two games.

Parent's complaint about missed football is puzzling. Putting aside the fact that Student also was injured for most of this time, District used the practice time to provide more educational services to Student that improved his academic standing. It is paradoxical for Parent to claim that District's successful response

to failing grades somehow denied Student a FAPE. Football is not a related service or accommodation in the IEP. Academically, Student benefitted from the disqualification. There may again be a difference between what Student wants and what he needs educationally, but this proceeding is only concerned with what he needs educationally.

In the DPR and at the hearing, Parent also complained that Student could not participate in post-season conditioning sessions because District has barred Parent from its property. Conditioning, like football, is not an IEP or IDEA issue.

10. Abbreviation of assignments

Parent is correct that the instructors did not always document how they abbreviated assignments. At first, they were not clear as to how they could. The ability to abbreviate assignments was a work in progress because, as the IEP recognizes, it is appropriate when there are multiple questions on the “exact skill.” Some subjects could not be abbreviated because the assignments were based more on building blocks than repetitive testing of the same skill. So District also used other techniques such as “chunking.” [District Exh. 5 at 1].

The SET testified that, while she agreed that documentation was sometimes lacking, the teachers were exemplary in modifying lessons and tests to accommodate Student’s needs. For example, the social studies teacher testified that he accommodated Student by letting him complete what he could. SET met continuously with all subject teachers and monitored their efforts to accommodate Student. The language arts teacher noted that many of her

questions were on the same skill so she could abbreviate the questions Student needed to answer. In the end, the teachers accommodated Student successfully. The SET testified these efforts are why Student passed the eighth grade.

Parent's complaints in this area continue to emphasize form over substance. No IEP is implemented with perfection, and the law does not require perfection. Parent must show that the failure to implement was "material," in that the provision not implemented was necessary to provide FAPE. *Heffernan*, 642 F.3d at 484.

The SET made sure that each teacher made appropriate accommodations, which were understandably fluid. [*E.g.*, District Exh. 2 at 3 (discussing limitations on abbreviation approach and alternatives such as chunking)]. The fluidity of the situation and willingness of the IEP team to adjust accommodations throughout the year further proves the effectiveness of its efforts. I would be far more concerned if the teachers adhered to a rigid plan even though they learned that other techniques could be more effective.

Further, any failure to submit forms early on affected nothing. The teachers made accommodations, and Student made progress. And Parent knew this all along. She communicates *daily* with the SET. Yet Parent continues to complain about District not providing her with documents about things she already knows. [See *GJ V* at 4-6; *GJ VI* at 18 & n. 11; see *also GJ VII* at 4-5]. This is just another example of Parent complaining about process while ignoring the substance of an issue. [*GJ IV* at 30-31; *GJ VI* at 33; *GJ VII* at 4-5, 14-15, 20].

B. Parental participation and access-to-information issues

1. Counseling records

As discussed above, Student saw the guidance counselor one time. Parent requested those records, and the guidance counselor admitted that they did not respond to the request. [See Parent Exh. 24 at 1]. “Under FERPA, medical records (including counseling records) are generally considered to be education records.” United States Dept. of Educ. Dear Colleague Letter: Protecting Student Medical Records at 2 (Aug. 24, 2016).¹¹

District argues that Parent is not entitled to the notes because they are “personal notes” that somehow belong to the guidance counselor. District relies on the FERPA definition of “Education records,” which “does not include “Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.” 34 C.F.R. 99.3 Education Records paragraph (b).

The guidance counselor’s scant testimony does not support the notion that her records were a “personal memory aid.” District is raising an argument in the nature of an affirmative defense and District is the only party with access to the information. Further, Parent had no notice of the exception until District provided

¹¹ Available at: https://studentprivacy.ed.gov/sites/default/files/resource_document/file/DCL_Medical%20Records_Final%20Signed_dated_9-2.pdf

its post-hearing submission. I cannot require Parent to prove a negative in that context. It is only reasonable for District to bear the burden of showing that the Record falls within the exception District cites and the evidence is lacking in that regard.

The right to obtain and examine records is procedural. *R.F. v. Cecil County Pub. Schools*, 919 F.3d 237, 248 (4th Cir. 2019) (“The IDEA and its regulations grant the parents of a child with a disability certain procedural rights, including the right to ‘examine all records’ relating to that child and to ‘participate in meetings with respect to the identification, evaluation, and educational placement’ of the child.”) (quoting 20 U.S.C. § 1415(b) and citing 34 C.F.R. § 300.322).

District’s failure to provide Parent the counseling notes does not rise to the level of a substantive violation. It did not significantly impede Parent’s ability to participate in the decision-making process, and it did not result in a denial of FAPE. 20 U.S.C. § 1415(f)(3)(E)(ii)(II). For purely procedural violations, hearing officers may issue orders to comply. *Id.* § 1415(f)(3)(E)(iii); 34 C.F.R. § 300.513(a)(3).

I order that District comply with Parent’s request for the guidance counselor notes.

2. Remainder of issues

It is hard to conceive how there could be any issues regarding Parent’s ability to participate. On top of the innumerable emails, the IEP team held eight

meetings in 2023-24 alone (at least one exceeded three hours). Student's situation is not complex or particularly dynamic.¹² Parental participation is an important right under the IDEA. Far too often, however, Parent tries to convert that into a right to dictate every agenda and how District provides services. The IDEA affords her no such right.

Parent needs to stop claiming a violation every time District does not provide what she wants when she wants it and in the manner that she demands it. [*E.g.*, *GV II* at 23-26; *GJ IV* at 18-19, 22-23; *GJ V* at 3, 26]. That is not a violation. We have now had another multi-day hearing for which the taxpayers have had to pay lawyers, a court reporter, and a hearing officer when there is not even a cognizable denial of a FAPE. In addition, multiple staff persons had to be available during their vacations to provide testimony – none of which advanced any substantive allegation.

Parent's claim that she was not provided information also ring hollow. Parent was in daily contact with the SET, and the SET was in daily or weekly contact with the subject-matter teachers. The SET documented many issues about which Parent claimed to be concerned. [District Exh. 7 at 2 (discussing monthly reports)].

¹² Parent's desire to participate continues to revolve around trying to ensure that Student incurs no consequences (poor grades or discipline) for his failure to apply himself. (See *GJ VI* at 22-23, 29; *GJ VII* at 17-18).

I also do not credit Parent's continued claims that she cannot access information online. Parent digs in when she cannot demand information in the form she wants. For three years now, Parent has continued to demand information excessively, even when she has the information she demands. In *GJ VI*, I finally ordered that District may provide communications by normal means (e.g., Google Classroom, PowerSchool, and email). [*GJ VI* at 38-39]. In other words, District need not accede to Parent's special demands for providing documents and information. I also specifically ordered that District have SET help Parent if she was having computer problems accessing those services. [*Id.* at 39]. SET is routinely at Parent's house, including on weekends. Parent has never contended that she sought any help or assistance to use Google Classroom or PowerSchool.

III. Conclusion

From a substantive standpoint, District has not denied Student anything. Parent requested that Student attend full time, and District agreed. Parent requested follow up on the FBA, and District agreed. Parent sought a black male therapist, and District provided one. Parent requested a re-evaluation, and District agreed.

Parent has established no substantive IDEA violation. She provided a single procedural violation for District failing to provide guidance counselor notes addressed above.



Brian P. Murphy
Local Due Process Hearing Officer

Dated July 1, 2024.

Notice of Appeal Process¹³

Any party may appeal this ruling. A party seeking to appeal this ruling must do so **in writing** and **within ten 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

¹³ I will not accept, read, or consider any further argument about the merits on this matter unless it is remanded to me by the state-level review officer (SRO) or the District Court. I will not construe any email, letter, or other written communication 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 set forth above for filing an appeal.