

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

G.J. (Parent) on behalf of Z.B.	)	
(Student),	)	
	)	
Petitioner,	)	Final Order – GJ IX
	)	
vs.	)	
	)	
Florence County School Dist. 1,	)	
	)	
District/Respondent.	)	

I. Introduction and Summary

We are approaching the fifth anniversary of the COVID shutdown, which generated the first case between the parties. Five grades and three schools later, they remain embroiled in never-ending email exchanges, long and unproductive individualized education program (“IEP”) meetings, and biannual due process hearings.

To fully understand this case, one must understand the contentious history between the parties. This relationship appears to be unprecedented, at least in South Carolina.

Section II will address the parties’ prior cases seven hearings, including common threads. Section III addresses the procedural background of this matter while Section IV reviews its facts, Section V analyzes the current claims and Section VI, provides recommendations for handling any future disputes.

II. The history of due process between the parties

This case involves the parties’ eighth due process hearing in four years.

Parent submitted nine previous due process complaints (“DPCs”) on behalf of Student since the fall of 2020:

April 26, 2024 (“*GJ VIII*”); September 1, 2023 (“*GJ 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 eleven DPCs. She withdrew *GJ III* and two other DPCs submitted in the 2023-24 school.

Parent’s complaints involve IEP disputes in four schools. They entail every year since the fourth grade. The first four involved fourth through sixth grades at two elementary schools (School-A (*GJ I*) and the school where Parent subsequently requested the District transfer the Student (*GJ II-V*)). The next three involved the seventh and eighth grades in middle school (*GJ VI-VIII*).

Reviewing past decisions is necessary to appreciate the context of this intractable battle for which no intervention has worked. Below is a summary of the issues addressed at the hearings and on review in seven prior matters. These do not include all the issues raised. Many of these cases involve allegations that drew sufficiency challenges and motions to dismiss, some of which I partially granted. In other words, the following summarizes only the issues that ultimately proceeded to a hearing:

A. The Elementary School Cases

1. *GJ I*¹

GJ I was a COVID-related case about services District provided Student in the fourth grade (2019-20) at School-A. The local hearing officer (“LHO”/”Dent”) found, perhaps resulting from a combination of factors, “more of an effort could have been made to provide services to this child during the shutdown and summer.” [*GJ I* LHO Order at 6]. The LHO rejected Parent’s argument that District improperly inflated grades. [*Id.* at 7].

The LHO also provided guidance that would prove insightful over the following few years:

This child will be eleven years old this year. Given the natural order of maturity, whether mental growth occurs, physical growth will and middle school and high school are not far off. This means that the parties have about two years to lay the foundation for him to continue to learn as his distractions grow more intense. If he is to be prepared for what lies ahead of him and life, now is the time.

[*Id.*].

¹ As used in this decision, citations to “*GJ I*” refer to LHO Dent’s decision of February 22, 2021, and the state review officer (“SRO”) decision dated April 2, 2021. “*GJ II*” refers to the LHO Order dated September 10, 2021, and the SRO decision dated October 13, 2021. “*GJ IV*” refers to the LHO Order dated June 21, 2022, and the SRO decision dated July 27, 2022. “*GJ V*” refers to the LHO Order dated August 30, 2022, and the SRO decision dated October 6, 2022. “*GJ VI*” refers to the LHO Order dated May 15, 2023, and the SRO decision dated June 16, 2023. “*GJ VII*” refers to the LHO Order dated November 10, 2023, and the SRO decision dated December 13, 2023. “*GJ VIII*” refers to the LHO Order dated July 1, 2024, and the SRO decision dated August 2, 2024.

He then ordered:

Respondent [must] design an IEP which provides a more aggressive approach to the child's education to include more aggressive goals and a compensatory education component designed to get his education back on track. This component should include one on one instruction. In addition, the parties should conduct a review of the child's [behavioral intervention plan] BIP to see if there are additional measures that will improve his ability to focus and improve his opportunity to achieve educationally. The check in/check out point system may be effective but it should be reviewed. Possibly there is an alternative that may work better for everyone. Finally, it appears that the "shadow" was ineffective and not wanted by the Petitioner or the child. While student will need additional attention, it seems that rather than a paraprofessional, one-on-one attention would be more effective. If a paraprofessional is involved, that person should be attentive and interested in the child's well-being.

[/d. at 7-8].

District sought review. The SRO (Gupta-Kagan) affirmed the findings related to the free appropriate public education ("FAPE") denial, but she changed the remedy to compensatory education. [GJ / SRO Order at 20-21].²

2. GJ II

GJ II involved services during the fifth grade (2020-21) at Student's second elementary school. Virtual learning continued to challenge Student even after District moved to a hybrid (A day/B day) model. During this case, it became apparent that Parent focused most of her allegations on District's assistant superintendent for exceptional children ("ASEC").

² Parent then commenced an action in the District Court for fees. *ZB v. Florence One Schools*, 4:21-cv-01971-JD (D.S.C). That action did not address the merits of Individuals with Disabilities Education Act ("IDEA") claims.

GJ II involved a host of allegations about both design and implementation of the IEP. Parent proved a procedural violation when District failed to consider or discuss tutoring. District argued that tutoring was not a related service under the IDEA. I disagreed, noting that labels were unimportant.³ After determining that the failure to consider was a procedural violation, I did not order substantive relief because District had offered in-person instruction. Student remained at home only because Parent chose the virtual option.⁴ In other words, because District offered Student what everyone agreed he needed (one-to-one instruction), the failure to consider tutoring did not result in a substantive violation. [*Id.* at 15-20]. Otherwise, I found that Parent did not prove that (1) District failed to add extended school year (“ESY”) to the IEP [GJ II LHO Order at 10-11]; (2) instructors failed to provide services under the IEP [*id.* at 11]; (3)

³ In my view, tutoring was instruction, and instruction is a service the IEP must consider along with the “when” and “how” and “where” District provides it. [*Id.* 12-15].

⁴ This is the first case between the parties in which allegations about “medical homebound” arose. As I explained in GJ II, IDEA LHOs have no jurisdiction to address the grant or denial of medical homebound. IEP teams and LHOs should, however, address whether certain services need to be “home based.” [*Id.* at 20-21].

the move to virtual was a change in placement [*id.* at 12]; (4) District failed to consider information other than tutoring [*id.* 22-23]; and (5) District failed to provide information [*id.* at 23- 25].

Parent sought review. The SRO affirmed on all grounds. [*GJ II* SRO Order at 7-8].

Two recurring problems first appeared in *GJ II*. First, Parent failed to cooperate in providing access to medical providers. [*GJ I* LHO Order at 23]. Second, Parent asserted numerous allegations of a failure to provide information when it appeared clear that she had and knew the information. [*Id.* at 24-26].

3. *GJ IV*

GJ IV involved allegations spanning Student's fifth grade (2020-21) and sixth grade (2021-22) years of elementary school. Student had returned to in-person instruction by 2021-22, which necessitated changes to the IEP. [*GJ IV* at 2].

For the third case in a row, Parent proved problems with District's handling of services provided to Student.⁵ I found another procedural violation as to how the administrator over elementary special education conducted the meetings, including limiting the participation of both parent and instructors. [*GJ IV* at 4-8, 10-14.]. I could not, however, find that the violations resulted in a denial of FAPE under the statutory test as interpreted by Fourth Circuit authority. Parent also did not request an order to comply. [*Id.* at 17-21].

Another serious concern was District's refusal to disclose tutoring records because it argued they were "personnel documents" and not "educational records." Because the records "summarized the instructional activities and services" the tutor provided, I found that they are educational records. [*Id.* at 21-22]. District's position also was undercut by the fact that the administrator claimed to have spoken to the tutor about the services. [*Id.* at 22-23]. As a result, I found another procedural violation. [*Id.* at 23]. At the same time, the procedural violation did not warrant a finding for substantive relief or an order to comply. [*Id.*]

⁵ In *GJ I*, Parent proved a substantive denial of FAPE. In *GJ II*, Parent established a procedural violation that, while not resulting in substantive relief, concerned me because District denied that tutoring was not a related service merely because of the label attached to it.

I also found that Parent raised several issues on which she did not carry her burden of proof, including allegations that District failed to: (1) schedule IEP meetings appropriately [*id.* at 10]; (2) provide Student with a dedicated teacher [*id.* at 23-24]; (3) provide sleep apnea related services [*id.* at 25]; and (4) provide transportation services or bullied parent about them [*id.* at 25-29]. I also found that District did not inappropriately discipline Student and District was not precluded from holding him responsible for his actions per his BIP. [*id.* at 29-30].

At the end of the decision, I made my first futile effort to reset the acrimonious relationship, hoping that middle school could start on a different note.⁶ I acknowledged the serious issues Parent raised about how District conducted the IEP meetings. At the same time, however, I implored Parent to: (1) change her approach in dealing with District personnel; and (2) focus on substantive issues and not as much on every perceived procedural shortcoming. [*id.* at 30-33 (footnotes omitted)].

Parent sought review. The SRO (Yell) found the case to be “a close call,” but he “agree[d] . . . that the District committed procedural violations and find no compelling reason to overturn [the] conclusion that these violations did not cause substantive harm or deny a FAPE to Student.” [GJ /V SRO Order at 9]. He also noted:

⁶ As noted above, this was not the first effort. LHO Dent tried as well in GJ I.

In [*GJ I*], similar errors were made by special education personnel in the District. The LHO also noted these continuing problems. These procedural errors committed by the school district are serious and must be addressed and corrected.

[*Id.*] He ordered the production of tutoring records and training for District personnel. [*Id.* at 10]. The SRO also found that the IEP team should address transportation. [*Id.* at 8-9].

4. *GJ V*

GJ V is the third consecutive case where Parent established procedural violations.⁷ *GJ V* covered allegations during the waning months of Student's sixth grade (2021-22) school year. The purpose or point of *GJ V* was never clear. [*GJ V* at 2 ("The 'big picture' continues to elude me.")]. *GJ V* demonstrated Parent's fixation on complaining about district administration, rather than what was taking place at the school level. [*Id.* at 2-3]. Specifically, Parent proceeded to a hearing on issues involving her demands for records and information. [*Id.* at 3].

The more substantive issues about whether services such as additional instruction (e.g., tutoring) continue to get lost in arguments over procedural matters and squabbling with District representatives about who said what at one of the several prior meetings during the 2021-22 school year. In the end, there remains little substance to any dispute over the education Student received at [elementary school]. [*Id.*]

⁷ In other words, in the four cases that went to a hearing, Parent proved a substantive violation in one (*GJ I*) and procedural violations in three (*GJ II*, *IV*, and *V*).

Parent provided no violation, including her allegations that: (1) she was denied effective participation in meetings [*id.* at 3-4]; (2) District failed to provide Independent Educational Evaluation (“IEE”) results [*id.* at 4]; (3) District inappropriately cancelled a meeting [*id.* at 6-9]; District failed to provide ESY; (4) Student required a dedicated inclusion special education teacher [*id.* at 12-13]; (5) District inappropriately agreed to Parent’s request for an assignment to a different middle school [*id.* at 13-15]; (6) District failed to provide necessary tutoring [*id.* at 15-21]; and (7) District failed to provide transportation services [*id.* at 21-22].⁸

Most disappointing was the revelations about the tutor records District failed to produce in *GJ IV*. While those records reinforced the frivolity of District’s claim that they were not education records, they revealed another problem with Parent’s claim:

Parent already saw them since she initialed the entries. Thus, any notion that they are confidential also makes no sense. At the same time, it is baffling that Parent continues to complain about not having documents when she knew the contents of them. The contents themselves are unenlightening, as the records only show what both sides have acknowledged: that [Tutor] provided educational services to Student on specific dates. They contain no assessments, nothing as to present levels of performance, and they have no content that would inform whether additional services in the IEP were necessary. [*Id.* at 5]. In other words, over the course of two cases, considerable time and money was spent about information Parent already had and that mattered little.

⁸ This was a close call as District should not have cancelled a meeting because Parent filed *GJ IV*.

Once again, Parent has put issues of process above issues of substance. The tutor provided her services at Parent's office and Parent initialed the contents each day. [Dist. Exh. 2]. Knowing full well what [Tutor] was doing, Parent never focused the IEP team substantively on how the services [Tutor] provided support the contention that additional services should be added to the IEP. Instead, she complained about whether her document request demands had been met. Even at the hearing, Parent failed to explain how the documents prove that additional services should be added to the IEP

[*Id.* at 6]. Ultimately, Parent once again proved a procedural violation, though only the same one proved in *GJ IV*. [*Id.*] But once again, it was one for which no relief was appropriate. [*Id.*]

I also noted that, unlike prior situations, District administrators acted laudably in conducting the IEP team meetings, even to the point of advocating for services requested by Parent and ensuring that her requests received a full airing. [*Id.* at 23-24].

I also observed that Parent ignored the providers' information and "focused more on what Student wanted than on the behaviors that are impeding him academically and that affect [student's] communications with educators." [*Id.* at 24]. I added, "Parent has been more intent on 'advocating' for Student's preferences than in appreciating the core problems that interfere with Student's ability to fully access the education offered him." [*Id.*]

Because Student was entering a new school and a critical time in his development, I took another shot at urging a more productive approach. I again

asked Parent to let the teachers teach, to focus more on Student's education than on her squabbles with District personnel, and to allow Student to learn accountability. [*Id.* at 25-26].

Parent again sought review. The SRO (Yell) affirmed in all respects. Echoing my pleas for more cooperation, he added: "I urge the parties to heed his advice." [*GJ V SRO Order* at 10]. And he expressed optimism that middle school would present a fresh start:

The Student is attending [middle school] and receiving the services Parent requested. Relations between Parent and administration at faculty at the new middle school seem good and as the LHO noted the District seems to have shown a desire for a fresh start. Problems have occurred on both sides during this process but hopefully these problems will be relegated to the past.

[*Id.* at 10].

But alas, that was not meant to be.

B. Middle School Cases

Middle School did not begin with the fresh start advocated by me and the SRO. Nor did it end on such a note.

1. *GJ VI*

GJ VI involved Student's seventh grade year (2022-23), his first year of middle school. It was the fifth straight case in which Parent proved some violation and the second case in which she proved at least one substantive violation.

I found numerous violations. There was one violation related to the development of the IEP, while others related to implementation. First, I found a substantive violation in the development of the IEP concerning the provision of tutoring services. [GJ VI LHO Order at 15-17]. Second, I found that District failed to implement an agreement to conduct a functional behavior analysis (“FBA”). [*Id.* at 19-20]. Third, I found that District failed to document sleeping time properly. [*Id.* at 20-21]. Fourth, I found that teachers did not send daily behavior logs required in the IEP. [*Id.* at 22]. Fifth, I found that teachers did not email assignments as required by the IEP (even though Parent and the tutor were aware of at least some of the information). [*Id.* at 23-24].

But again, the case was far from one-sided. I found that Parent failed to prove that: (1) there was an improper delay in meeting [*id.* at 13-14; (2) District representatives acted inappropriately at the IEP meetings [*id.* at 14-15]; (3) District failed to provide transportation accommodations [*id.* at 18-19]; (4) District failed to provide abbreviated days [*id.* at 19]; (5) District failed to count late assignments [*id.* at 25-26]; (5) District failed to allow Student to wear a hoodie [*id.* at 26]; (6) District failed to allow Student to see a behavior therapist [*id.* at 26]; (7) there was any issue based on a delay in re-certifying medical homebound [*id.* at 26-27]; (8) District failed to include parent in therapy [*id.* at 27]; or (9) District targeted Student [*id.* at 27-31].

I also discussed the Parent’s continued improper use of the IDEA to seek immunity for Student from consequences of his behavior. [*Id.* at 5-6; *id.* at 28].

Likewise, Parent inappropriately complained about teachers including “negative content” in behavior logs, which I noted was the very purpose of the logs. [*Id.* at 22-23].

I also addressed my concern that Parent was essentially bullying District into leaving Student alone, and that District was allowing this to happen. I also admonished Parent that she was inappropriately attributing all of Student’s behavioral issues to disabilities and then reinforcing those behaviors by assailing District personnel. [*Id.* at 28-31]. I added that, while Parent has proven some violations, the confrontational approach with District and those trying to serve Parent is counterproductive and that Parent was the only common denominator in all her disputes at the various schools. [*Id.* at 32-34].

As a result of the violations, I ordered compensatory education, that the IEP be updated, improved record-keeping, monthly reporting to Parent, compliance with daily reporting, and completion of the FBA. [*Id.* at 34–41].

Parent again sought review. The SRO (Yell) again affirmed but reduced the number of ESY hours I ordered. [GJ VI SRO Order at 19]. Parent apparently took exception to my comments on her approach. The SRO responded:

It is concerning that Parent has complained about the schools her [child] has attended, besieged the District with demands and accusations, and filed six due process complaints. I, like the LHO, do not see this pattern ending soon. District personnel have made a commendable effort in working with Parent.

* * *

I agree with the LHO that there may be no end to these disputes. In observing the 4 IEP meetings, I found that all participants were well-prepared, acted responsibly, and respected each other's opinion. District has seemingly gone the extra mile to work with Parent but she, at least in emails, continues to assail and make accusations at the District and District personnel and makes excuses for Student's behavior. I would hope that communication between the parties improve and the Parent's confrontative behavior lessens. As the LHO aptly observes, with the focus on winning battles, "the Student could lose the war"

[*Id.*]

2. GJ VII

GJ VII is the first of two cases involving Student's eighth grade (2023-24) in middle school. Parent proved no violations.⁹

Parent again focused on her perceived entitlement to records. But again, she complained about information she already knew. [*GJ VII* LHO Order at 4-6]. Parent also insisted on a hearing about District's alleged failure to provide the video of a "bathroom incident" in the prior year. But there was no evidence that District had retained any video and the alleged incident occurred in a bathroom with no camera. [*Id.* at 7].¹⁰ The IEP team also did not violate the IDEA by failing to provide information about the grade changes or the alleged bathroom incident. [*Id.* at 7-9]. Parent also failed to provide evidence that Student needed the

⁹ Even though I found substantive violations in *GJ VI* and the fourth straight case in which I found at least procedural violations, Parent moved for me to recuse myself on the grounds of bias.

¹⁰ Parent ultimately argued that she needed this data to show Student was skipping class, which was never in dispute.

specific outside therapist Parent wanted. [*Id.* at 9-10]. Parent also failed to show that District failed to provide school-based therapy or behavioral support services. [*Id.* at 10-11, 13].

Parent raised a seemingly legitimate issue about District's delayed completion of the FBA. [*Id.* at 11-12]. In the end, however, that did not matter either because Parent insisted it was not part of the DPC. [*Id.* at 13].

I more directly addressed Parent's insistence on pressing non-issues to a hearing. And I warned her that continuing to press meritless issues could result in a finding that could subject her to liability for attorney fees. I pointed out that Parent was again not focused on any purported denial of FAPE. Rather, she continued to make herself the focus of every case by seeking to adjudicate her confrontations with other adults. [*Id.* at 14-20 (footnotes omitted)].

Parent again sought review. The SRO (Bateman) affirmed all rulings. [*GJ VII* SRO Order at 14]. Again, in response to Parent's complaint about my perspective, this new SRO commented that my observations, "underscore the necessity for both parties to engage in meaningful dialogue and work towards solutions that truly benefit the student, rather than getting entangled in prolonged legal battles." [*Id.* at 4].

That plea did not work either.

3. *GJ VIII*

GJ VIII is the second case involving the eighth grade (2023-24). Parent proved one procedural violation. District denied Parent access to a single

counseling record because it argued they were “personal notes.” Because District offered nothing to substantiate this claim, I ordered that it produce the information. [*GJO VIII* LHO Order at 19-20].

Again, however, Parent failed to prove most of her allegations. And like before, she pressed them to a hearing without any apparent plan to offer supporting evidence. Parent failed to prove that: (1) District failed to reimburse transportation [*id.* at 8]; (2) District should develop more “data” about whether Student should be allowed to wear a hoodie [*id.* at 9]; (3) District must provide a dedicated behavior interventionist [*id.* at 10]; (4) District delayed Student’s abrupt decision to return full time to the classroom [*id.* at 11-12]; (5) Student needed the same outside therapist Parent sought in *GJ VII* [*id.* at 13-14]; (6) District improperly denied family counseling [*id.* at 14]; (7) District failed to train staff [*id.*]; (8) District failed to consider ESY [*id.*]; (8) District failed to provide daily guidance counseling [*id.* at 15-16]; (9) District violated the IDEA when District suspended Student from football as it did other football players who failed courses [*id.* at 16-17]; and (10) District violated the IDEA by failing to document every instance where a teacher abbreviated assignments [*id.* at 17-18].

Parent’s contention that a black male role model should be constantly present to provide “positive reinforcement,” was undercut by her reflex rejection of any effort to hold Student accountable:

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 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 [student's] work, student is 14 years old and needs to be accountable for not listening.

[Dist. 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 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. 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.

[*Id.* at 10-11].

I also admonished Parent for continuing to demand things for no apparent purposes and for continued efforts to play "gotcha" over issues such as information Parent already had and for her claim that she could not access information provided to her the same way it is provided to other parents. [*Id.* at 20-22]. I also pointed out the wastefulness of the case given that District had agreed to the substantive requests Parent had made during the year:

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.

[*Id.* at 22].

Even though District denied Student nothing, Parent again sought review. The SRO (Yell) again affirmed. [*GJ VIII* SRO Order at 15]. The SRO also

addressed Parent's continued complaints that District denied her the right to participate by not agreeing with her. The SRO rejected this argument as well. He observed that "District's efforts to involve Parent in decision-making were exemplary." [*Id.* at 10].

4. Summary

The foregoing summary reflects a fraction of the time and resources the parties have spent fighting. In the prior cases (as well as this one), there also have been references to multiple state-level and OCR complaints. In addition, there has been testimony about multiple daily emails from Parent that demand responses.

Parent has proven substantive violation in two of the seven cases that proceeded to a hearing (*GJ I* & *GJ VI*). She also proved procedural violations in five cases, or every case other than *GJ I* and *GJ VII*. At the same time, District has likely spent hundreds of thousands of dollars on these disputes. Ultimately, even the proven violations probably had a minor effect on educational outcomes at best. These issues are routinely resolved before a hearing.

III. Procedural Background of this Case

This is the first case Parent has filed regarding Student's high school education. Parent submitted the pending DPC on October 31, 2024. District submitted a response and partial motion to dismiss on November 9, which was largely resolved based on Parent's stipulation regarding scope.¹¹

In my November 20 Order, I informed Parent that we need to focus on

substantive issues or on proving that alleged procedural violations warranted

substantive relief:

After reviewing the DPC and response, I formed a concern that we were headed to another multi-day hearing in which teacher after teacher are called to the stand to answer questions about emails Parent sent. In most instances, the testimony of the teachers and staff does not support Parent's allegations. After several days of hearings, Parent has sometimes proven an occasional procedural violation. But to date, these similar allegations about procedural matters never approach the level of a substantive violation.

My concern in this regard was piqued by Parent's response to District's Motion: "The issues always seem the same because the district does not follow my [child's] IEP every year." And that is the problem. Parent has not proven these violations every year. But every year, we have at least one hearing on the same type of allegations.

That is not to suggest that Parent has not brought forward legitimate concerns. In addition to procedural violations, she has proven in the past a denial of FAPE in GJ I and implementation issues in GJ VI. I am concerned that any legitimate issues remain buried under a mountain of immaterial grievances over slights and disagreements that do not establish a FAPE denial. And I am concerned about the cost to the taxpayers of sorting through every one of those issues.

There does not appear to be another situation in South Carolina ever where a Parent needed to proceed to a due process hearing eight times in four years. Given that South Carolina has well over 100,000 students with IEPs in any given year, something has to change here.

¹¹ On November 20, I issued an Order, dismissing allegations related to the 2023-24 school year. What remains are allegations related solely to this school year.

In the past, hearings have proceeded with Parent calling teachers, staff, and administrators first. Understanding what substantive allegation is at issue is often difficult during this testimony. Parent has certainly proven that she often disagrees with the IEP team. But the expense of doing so is unwarranted when nobody disputes the notion that the parties have a disagreement.

* * *

Having reviewed the current DPC, it again appears that most of the allegations again center on the back-and-forth between Parent. But I do not see a factual allegation as to how District denied FAPE. As with GJ VIII, there are apparent differences between what Parent wanted and what the IEP team apparently provided. But I do not yet see how District allegedly denied FAPE. In other words: What is the problem with Student's achievement with this goals or academics?

* * *

In past hearings, we have spent considerable, unproductive time listening to testimony that does not support Parent's allegations before determining whether there is a possible violation to prove. We need to determine a more efficient way to proceed for this hearing. Parent is certainly entitled to a hearing and, as I noted above, she has raised legitimate issues before. But the procedure and limits on that proceeding are within my sound discretion. And I am inclined to believe that I must exercise that discretion to more efficiently get to the bottom of any material issues.

* * *

At the prehearing conference on Thursday, the parties should be prepared to discuss ways to more efficiently define and focus on alleged violations. The parties should note that I am giving serious consideration to having Parent testify first to explain the violations. For example, for failure-to-implement claims, she should be

prepared to specify what specific part of the IEP District failed to implement and then explain how it failed to implement that portion. For the substantive claims, Parent should, for example, be prepared to explain what accommodations were required and why. As to pure procedural issues, including failure-to-respond and participation claims, I am considering holding these to the end unless Parent can first explain how they would justify substantive relief. I may permit Parent to compile her emails related to requesting information into one exhibit. But I do not want the “didn’t I say,” and “didn’t I ask for,” questions to dominate the hearing if they lead to nothing more than proving that the parties disagree. Again, a disagreement is not evidence of a violation. And it is the evidence of violations that we need to move to the forefront.

Those are my thoughts at this point. I have not made any decisions as I welcome and want to consider the parties’ input on these issues. There is no need to email me before the prehearing conference. We can discuss the issues at that time.

[Order at 7-12].

During the prehearing call, Parent agreed to testify first and to focus primarily on substantive issues.¹² Neither side requested any other changes to the normal procedure for hearings.

The hearing commenced on January 9. We continued on January 10 but recessed early because of inclement weather. The hearing resumed and concluded on January 24.

¹² Parent did focus on what she viewed as substantive during her testimony. As shown below, however, there was still time devoted to issues that made no difference. Further, examinations of District personnel still involved many questions about what was said rather than about what needs to be done.

IV. Background Facts of this DPC

This case involves the 2024-25 school year. Student is now a ninth-grade high school student. He continues to receive special education and related services under the classifications of OHI and SLD. His underlying medical conditions are ADHD and idiopathic hypersomnia.

The primary concerns over Student's progress in Q1 relate to math. Student's high school has four, ninety-minute blocks per day. Student attended math during the first block during which student's special education teacher ("SET") provided inclusion services. In the second block, Student received instruction from SET in a resource service delivery model. The SET attended the math class during first block, even if Student missed class. This enabled her to know what instruction Student missed so she could promptly review it with him during the second block. The math teacher and the SET would also discuss missed assignments, which were also available to the SET in Google Classroom. They would arrange for SET to address any missed work during second block.

A. August 6 IEP Meeting

The IEP team met on August 6 for a facilitated special review that lasted approximately 3 ½ hours. [See Parent Exh. 1]. The meeting started on a contentious note and went downhill from there. [*E.g., id.* 0:1:19, 0:2:05 (Parent objecting to SES participation)]. District representatives stressed the importance of holding Student accountable and teaching him the importance of taking

responsibility. [*Id.* 0:42:41 . . . ; *id.* 0:45:00; *id.* 2:08:15; *id.* 2:09:10].¹³ Parent was not receptive.

The last part of the meeting consisted of Parent requesting a laundry list of “accommodations” and “services.” When District’s special education supervisor for secondary education (“SES”) commented that some were unnecessary, the tension rose. The discourse continued to disintegrate throughout the meeting. At what was likely their first meeting, Parent sarcastically challenged the math teacher about whether she would be willing to drive Student home every day. [*Id.* 3:05:43 – 3:06:13].¹⁴ When the facilitator attempted to redirect the conversation, Parent continued. [3:06:18-:34]. The meeting can best be described as contentious and unproductive. [See *id.* at 3:17:14-:27; see also 3:27:14 . . .].

The IEP team nonetheless amended the IEP for the transition while noting the need to re-evaluate as part of the annual review. [Parent Exh. 11]. In relevant part, the IEP calls for one block of pull-out special education services (90 minutes) and one hour of math inclusion services per day. The IEP team also agreed on tutoring for fifteen hours per month, ten of which are for math.

¹³ SES pointed out that the football coaches report none of the issues discussed, including sleepiness or lack of respect. [*Id.* at 0:45:32]. For reasons unclear, Parent wanted to argue this point, claiming that Student was late for football. Her point was that the football coaches should not penalize Student for being late. SES responded that this was beyond the scope of the IEP team. [*Id.* 0:50:37].

¹⁴ This exchange is particularly troubling as this meeting was perhaps the first one between Parent and the new math teacher.

[*Id.* at 12]. The IEP team also included accommodations, including abbreviated assignments; chunking; time out with an adult as needed; multiple or frequent breaks; and additional time to make up assignments and complete tests. [*Id.* at 13]

B. October 29 Annual review meeting

The IEP met again on October 29 for almost three hours to begin Student's facilitated IEP annual review. [See Parent Exh. 2]. This meeting was more civil in tone. The parties more quickly moved through the IEP issues. There also was an in-depth discussion about various issues, with a consensus on present levels and issues, such as sleeping in class. [*E.g.*, Parent Exh. 2 at 42:28 – 43:06; *id.* 45:15 – 46:15 (sleeping in class)].¹⁵

The IEP team documented that it would discuss medical homebound after a discussion between District and Student's physician. [Parent Exh. 10 at 1 (first section)]. On November 1, District requested information in response to Parent's request for medical homebound.¹⁶

¹⁵ Again, District discussed accountability and the need to instill a sense of responsibility and respect, including past successful strategies. [Parent Exh. 2 at 0:19:57. . .; see also *id.* at 0:21:06 . . .].

¹⁶ District earlier denied Parent's medical homebound request in August because Parent documented an objection to District's assistant superintendent for special education dealing directly with Student's physicians. Parent stated that District should tell her what information it needed, and she would obtain it for them. [Parent Exh. 21 at 1].

As the meeting approached the typical three-hour limit, the IEP team discussed the need to reconvene to conclude the annual review. [Parent Exh. 2 at 2:53:30 . . .] Parent said that she was not going to discuss a date to reconvene but, instead, she would file for due process. [*Id.* 2:54:12 . . .]. Parent filed the present DPC two days later.

C. Medical information provided by Parent

On November 1, District sent Parent seven questions for Student's physician. [Parent Exh. 7 at 1 (1st email); *id.* at 3 (questions)]. On or about November 8, Parent provided information from a Medical University of South Carolina ("MUSC") doctor, who had been evaluating Student. The information included progress notes from October 8. [Parent Exh. 7 at 6-10]. These notes show that Student has been diagnosed with idiopathic hypersomnia along with ADHD and anxiety/depression. [*Id.* at 6, 8].

The notes state that Student wakes up between 8 a.m. and 9:30 a.m. and is sleepy during the day, especially during first period (Math). [*Id.* at 7]. They further note that Student's routine during football season was to attend practice from 4-6 pm, return home, and then nap until some point between 8-11 pm. [*Id.*]¹⁷ The physician notes also indicate that Student goes to bed at 9 pm but does not fall asleep for one to two hours and at times wakes up in the middle of the night. [*Id.*]

¹⁷ This information apparently is based on self-reporting from Student and/or Parent. This information cannot be squared with the tutoring records. [Parent Exh. 12].

Student's daytime sleepiness score is one point below excessive daytime somnolence. [*Id.* at 8]. The physician identified "poor sleep hygiene" as an impression.¹⁸ Student's physician recommended further evaluation and better sleep practices. [*Id.* at 9]. The only recommendation related to school was that Student continue to play football because "[p]hysical activity has been shown to improve sleep among teenagers." [*Id.*]

Student's physician answered six of the seven questions District posed on November 1. [See Parent Exh. 8]. In response to the question as to how often Student's condition should affect his attendance, these responses undercut Parent's claims about the strong connection between Student's sleep issues and his performance/behavior:

2. How often would you be expected to be absent/tardy?

Patients with hypersomnia including those with narcolepsy are expected to be able to attend school and perform daily activities as long as they are getting enough sleep at night and taking the prescribed medications to help them stay awake during the day. Accommodations can be given by letting the student take a 20-minute nap at noon and in the late afternoon as needed.

3. How tardy would you expect he would be?

As long as they have a consistent bedtime and wake up time, getting enough sleep at night, and taking the prescribed medication, most patients with hypersomnia can come in on time for school.

¹⁸ Sleep hygiene refers to having proper habits and environment.
<https://www.sleepfoundation.org/sleep-hygiene>

4. How should we expect his sleep disorder[] to manifest at school?

It is important that they get the right amount of sleep every night. Patients with hypersomnia may still feel sleepy during the day and may have difficulty focusing on class as the day progresses. This is why we would recommend a power nap at noon and in the late afternoon if needed.

5. Is it reasonable and safe that he goes to school, football, and then tutoring late evening after football?

As long as the patient can stay awake, he/she should be able to attend school, sports practices, and/or tutoring.

[Parent Exh. 8].

D. District efforts to reconvene annual review

On November 4, District emailed Parent to reconvene the annual review on November 15. [Dist. Exh. 6 at 1]. Parent responded that she “refuse[d] to attend another IEP meeting for my [child] with [SES] present.” [*Id.*] Parent also claimed to be unavailable until Thanksgiving week when District was closed. [*Id.*] She also offered to be available between December 9-13. [*Id.*]

Based on Parent’s request, District rescheduled the facilitated IEP meeting for December 9. [Dist. Exh. 7]. Parent then objected to having a facilitator. She also declared that she was no longer available on December 9-13. Instead, she claimed that she was only available on the last two days of December, when District was closed, and January 9-13. [Dist. Exh. 8].

E. Communications with Student, Parent, and Tutor

District provided contemporaneous access to Student's instruction, performance, and progress in various ways.¹⁹ Student, Parent, and Student's tutor ("Tutor") had access to daily communication forms, Google classroom, and PowerSchool.

1. Daily communication forms²⁰

Under accommodations, the IEP states: "General Education teachers will keep a daily communications form to list assignments missed, behavior, and other information. Mother will be provided a weekly [G]oogle link." [Parent Exh. 11 at p. 13/19].

One day after the August 6 IEP meeting, the assistant principal emailed the requirements for daily communication forms:

As to our meeting yesterday, please be reminded of the following:

1) Please add [Tutor] as a Co-Teacher on your Google Classrooms so that she can access all instructional materials. If there are additional materials needed for [Student] to receive instruction for what was missed, please ensure she is given that also.

2) If [Student] misses an assignment due to his disability, you are not to assign a grade of zero. Instead the assignment should be marked "Exempt" and "Missing" with a note:

¹⁹ In addition to having daily access to information, Parent also attended parent-teacher conferences.

²⁰ These are similar to the documents referred to as "communication logs" in prior cases.

For example: Assignment was not completed. Student has until (date) to submit.

*Reason should be included on the communication form.

*When the assignment is turned in, the “missing” and “exempt” notations should be removed and the note should be updated to reflect when assignment was turned in.

3) When assignments are abbreviated this should be included as a note in PS

Ex. Student was assigned 5/10 Questions

4) For each day that the teacher and student are present, communication logs should be sent before the end of the day. Please note on the form that:

- If late-Please document how much time was missed
- If student sleeps in class-Include the duration time
- If student does not complete assignment-Please note how much is left for student to complete and if the assignment was abbreviated
- If student does not follow classroom rules or shows disrespectful behavior, please provide a description of what occurred

[Dist. Exh. 18].

The assistant principal created an online form for teachers to complete. Once completed, the form emails Parent a pdf and saves a copy of the form in folders on Google Drive to which Parent also had links.

The communication form did not require teachers to document the specific instruction Student missed when asleep. [Parent Exh. 22; Dist. Exh. 18]. It merely required that teachers document the “assignments missed,” regardless of why Student missed them.

On August 14, Parent emailed concerns that: (1) dates did not appear on the communications forms; (2) completed assignments were not listed; (3) incomplete assignments were not listed; (4) the form needed to include whether Student met his daily goal and provided an incentive. Parent also contended that Student should not make up work during his lunch. [Parent Exh. 25 at 1].

District changed the form to add the dates. [See Parent Exh. 22; Dist. Exh. 17]. As to District's failure to list completed assignments, the IEP does not require listing completed assignments. Nor does the communications form require instructors to identify daily goals or incentives.

On September 16, Student's tutor emailed the assistant principal, requesting that she be copied daily on the daily communication forms. [Parent Exh. 25 at 3]. The assistant principal responded that Tutor had co-teacher access to Google Classroom and that teachers would put missed assignments in communications, using comments in PowerSchool. [*Id.*] The next day, Tutor responded that District should copy her on daily emails. [*Id.* at 4]. The assistant principal stated that this was not her recollection but that she would add Tutor to the emails. [*Id.*] That resolved the issue.

2. Google Classroom

Google Classroom is an online resource for teachers, students, and parents. There are three levels of access in Google Classroom. At the teacher level, one can access (and change) all information, including instructional materials and plans. Teachers also can send out group notices to students and

others. Students have access to the instructional materials made available to the students in class (e.g., videos, links to background material). Students also have access to the assignments, teacher notes, and grades. Students essentially have access to everything except the teacher notes and materials. District provides Parents with separate access. It is more limited because it does not include access to the Student's work.

There was some confusion or misunderstanding about when Parent and Tutor had access to Google Classroom or the file folders on Google Drive containing the daily communication forms. [See Parent Exh. 25 at 4]. But Parent or Tutor could always access Google Classroom on Student's Chromebook.

3. PowerSchool

PowerSchool provides parents with access to attendance information, grades, assignments, and other information inputted by teachers. For example, Student's math teacher documented what occurred on each day as well and accommodations provided (e.g., limiting assignment, "given extra time," "chunked"). She also documented how much time she gave Student to complete assignments. [Dist. Exh. 16]. This includes documentation where the math teacher communicated with Parent and Tutor about Student's failure to complete assignment and her follow up with Tutor. [See *id.* at Resp. 483 (9/25/24 entry)]. The math teacher also documented efforts to provide incentives when Student refused to perform any work. [Id. at Resp. 484 (9/5/24 entry)].

V. Analysis

Issues in due process are limited to those raised in the DPC. 20 U.S.C. § 1415(f)(3)(B); 34 C.F.R. § 300.511(d). Parent bears the burden of proving the alleged violations. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

A. Substantive violation claims

There do not appear to be any disputes over the present levels. [*E.g.*, Parent Exh. 2 at 0:49:06-:13; *see also* 0:28:49 – 0:37:10 (parent discussion on present levels)]. Parent also does not allege that the goals set are improper. Rather, Parent’s substantive violation allegations involve services and support.

1. “Denial of Compensatory Services for Documented Educational Gaps”

Parent seeks compensatory education, but she failed to identify the “documented educational gaps” on which she relies. Nor does she point to any request for compensatory services that the IEP team denied.

If “education gaps” is a reference to Student’s failing grades in Q1, the IEP team has not had a chance to address them. Again, Parent left the annual IEP meeting and has not reasonably cooperated in scheduling its continuation.

2. Denial of “necessary support in math, English Language Arts (“ELA”), and Study Skills class”

Parent offered no evidence of any failure to support ELA or study skills. The “necessary support” issue for math appears to relate solely to the amount of tutoring provided for math.

Students' move to high school resulted in a schedule of longer blocks (ninety minutes vs. sixty in middle school). Student attends math during first block. He then receives pull-out special education services during the second block. In the August IEP, District reduced tutoring, but increased special education resource services daily because of the longer blocks:²¹

Service	Middle School	Current IEP	Difference
Resource	100 min	190 min	+ 90 min
Inclusion	60 min	60 min	=
Tutoring	270 min (4.5 hours)	150 min (10 hours per month)	-120 min

[Parent Exh. 11 at 11; Dist. Exh. 13 at 13, 14].

SES based the amount of tutoring she proposed on how much time Student misses because of sleep. [Parent. Exh. 11 at 12]. Parent has not shown that the amounts arrived at in August were inappropriate given the data available to the IEP team at the time.²²

Nor can Parent credibly fault District for arriving at fifteen hours per month when that is what Parent proposed. In the August meeting, SES initially proposed eleven

²¹ District lists services provided on a daily, weekly, or monthly basis. It appears that "monthly" assumes a four-week month. For purposes of this calculation, all services are converted to weekly.

²² There is, of course, new data about attendance and sleeping from the first semester, but the IEP team has not reconvened the annual review. The IEP needs to consider this new information and input from teachers at the appropriate time. Absent a violation, I have no authority to order the IEP team to take any action. Nor do I have the authority to order Parent to cooperate with the IEP team.

hours per month. [Parent Exh. 1 1:18:58 – 1:19:45]. SES was clear that she was discussing hours on a per month basis. [/d. 1:19:30 - :40].

Parent suggested that the team add hours if requested by Tutor, and SES agreed that the team could consider that once there was data. [/d. at 1:19:48 – 1:22:04]. Unsatisfied, Parent replied, “You’re proposing eleven and I’m proposing fifteen.” [/d. 1:22:05-08]. SES eventually said she was “fine with fifteen hours a month of tutoring.” [/d. 1:39:36 - :40].

After the meeting, Parent claimed she was tricked, and that the fifteen hours she proposed was per week, not per month. [Parent Exh. 13 at 1 (8/7 11:47 pm email)].²³ Parent made the same argument during the hearing. I do not credit her testimony. During the meeting, SES consistently referred to tutoring hours on a monthly basis. And when Parent asked during the meeting what the difference was between what Student had and what was proposed, SES again clarified that they were discussing fifteen hours per month. [Parent Exh. 1 1:49:42 – 1:49:50]. Parent did not dispute that. Rather, she accused SES of being “slick,” and she argued over the documented reason for the tutoring. [/d. 1:50:01 – 1:50:25].

²³ Parent essentially claimed that, while knowing that District was proposing a reduction in tutoring, she was seeking to double the amount of tutoring provided.

Even if one could fault District for agreeing to Parent's proposal, District has let Tutor provide more than 150 minutes (2.5 hours) of math per week. [See, e.g., Parent Exh. 12 at 1 (4.5 hours); *id.* at 2 (3 hrs 10 min); *id.* at 3 (3.5 hours); *id.* at 5 (6 hours 10 min)]. This corroborates Tutor's testimony that, in practice, she has been providing Student what he needs.

The effectiveness of tutoring is unclear. Even by Tutor's account, it works when Student is receptive. But the evidence also suggests that Student is receptive to math tutoring for more than 2.5 hours per week. The IEP team can consider this information when it meets next, as SES has already promised to do. [Parent Exh. 1 1:19:48 – 1:22:04].

Parent has not met her burden of showing that the amount of tutoring provided (as she requested) is insufficient based on the information available to the IEP team at the August 6 meeting. Thus, there is no basis in the Record to find that District denied Student a FAPE by not providing enough tutoring. If Parent believes current data calls for a different amount, she and Tutor may raise that issue during an annual review.

3. "Medical Accommodations and Related Services"

a. Medical accommodations

Parent's medical accommodations claim is unclear. Her DPC states she requested "medical accommodations," but these appear to relate mostly to her request for medical homebound. Parent has acknowledged that I have no

jurisdiction to review or decide medical homebound.²⁴

At the hearing, Parent also discussed wanting Student to have an individual health plan (“IHP”). There is nothing in the DPC about an IHP. Nor was there any proof of the need for an IHP. At best, there is evidence that Parent wanted one for Student. But Parent offered no evidence that one is necessary, or even what it would contain.

The DPC also references “behavior support” as part of accommodations sought. Again, however, Parent offered no evidence of any necessary behavioral supports that are not already in place.

b. Football

This is the second year in a row where Student received failing grades during football season. [See *GJ VIII* at 16-17]. Parent nonetheless focuses on football because she believes it incentivizes him. Parent complains that District refuses to provide “accommodations” related to football:

The district team refused to acknowledge football accommodations and services are an issue..... The district shares football accommodations and services does not relate to any accommodation or support for my [child] to receive FAPE My

²⁴ Medical Homebound is not part of the IDEA. Accordingly, the statute under which I am appointed does not provide me with the authority to issue any orders with regard to the grant or denial of medical homebound decisions made by the superintendent or his designee. Neither state statutes (e.g., S.C. Code Ann. § 59-21-540) nor the Homebound Instruction regulation (43-241) authorize me to make decisions or overturn any decision to place or not placed a student on medical homebound.

[child] would like to play football and student's sleep disorder has affected [student] in going to practice on time. I shared this with the team.

Football is a positive reinforcement and strategy that is used to support and promote positive behavior. I feel my [child's] disability was discriminated against to deny [student] accommodations and support in football due to the district refusal to spend federal funding to assist supporting my [child] as it relates to [student's] IEP goals.

To the extent Parent is arguing that football should be part of Student's IEP, there is nothing to support such a claim. Parent offered no evidence that football is necessary to provide FAPE.²⁵ And nothing in the IDEA suggests that sports are a related service. Nor does the statute require LEAs to ensure that a child with a disability be provided with anything other than an equal opportunity to participate as his or her talents merit. Finally, I agree with District that football coaches imposing consequences for Student not meeting expectations or rules is beyond the purview of an IEP team. [*See supra* n. 13].

Parent also seeks a requirement that District reimburse her for driving Student home from football practice. Student's disabilities do not require transportation from football to provide Student a FAPE. All parents must deal with transportation issues when their child participates in extracurricular activities. The IDEA regulations only require services needed to provide an *equal*

²⁵ Parent offered the MUSC records in which the sleep doctor recommended football to assist Student with his sleep. But that is not evidence that he needs football to receive a FAPE. The physician noted that it is "physical activity," and not specifically football, that helps young people sleep. Presumably, Student engages in other physical activities or sports outside of football season.

opportunity for students with disabilities to participate in extracurricular activities, including sports. 34 C.F.R. § 300.107.

Parent also complains that District was not paying for expenses related to football. Again, Student's disability status would not justify spending federal IDEA funds on football-related expenses. To play football, Student needs the same things other players need. Those things are required by the nature of the game, not by Student's disabilities.

In any event, the school's booster club agreed to pay these expenses.²⁶ Parent is still unsatisfied, and she insists that District expend federal funds because Student wants to play football. Parent is again pressing pointless issues and wasting staff time and taxpayer money simply because District did not agree on *how* to do everything she wants. There is no disagreement over whether Student should be allowed to play football. Nor is there even a disagreement about whether he will get free supplies. Yet Parent still forces District to expend public funds over a dispute about nothing.

c. Counseling

The DPC alleges that SES "refused to address . . . counseling" and that Parent "requested the district, school or [SES] to provide counseling data." At the hearing, however, Parent offered no evidence of any counseling-related

²⁶ Nothing in the IDEA requires an LEA to pay expenses for extracurricular activities on the basis of alleged financial need.

services needed by Student that District refused.

Parent argued that District failed to provide counseling during the summer of 2024. District argues that the issue is barred by *GJ VIII* and Parent's earlier agreement that this matter is limited to the 2024-25 school year. [See Order on Motion to Dismiss at 3-7 (Nov. 20, 2024)]. I denied the motion to dismiss then and allowed Parent to create a Record.

Having reviewed the Record and the DPC, I agree with District that ESY services adjacent to the 2023-24 school year are part of the 2023-24 school year issues. ESY in 2024 was neither arranged by nor provided by the high school.

[See Parent Exh. 4 at 1; Dist. Exh. 13 at 16].

Even if the issues were somehow related to the current school year, I find the evidence of noncompliance lacking. Parent's only evidence is Medicaid bill showing billing through a particular date. [Parent Exh. 5]. While that might raise a question about what services District provided, it falls short of answering that question.

Finally, I find that Parent failed to allege any failure to provide counseling during ESY. Thus, the issue is beyond the scope of this proceeding. 20 U.S.C. § 1415(f)(3)(B); 34 C.F.R. § 300.511(d).

B. Implementation claims

Parent also alleges several implementation claims. An implementation claim requires Parent to prove: (1) that the IEP calls for something District failed

to do; and (2) that the failure affected a material part of the IEP. The IDEA does not require flawless implementation:

[T]he failure to perfectly execute an IEP does not necessarily amount to the denial of a free, appropriate public education. However, as other courts have recognized, the failure to implement a material or significant portion of the IEP can amount to a denial of FAPE. See *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist.* 5J, 502 F.3d 811, 822 (9th Cir. 2007) (“[A] material failure to implement an IEP violates the IDEA.”); *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022, 1027 n.3 (8th Cir. 2003) (“[W]e cannot conclude that an IEP is reasonably calculated to provide a free appropriate public education if there is evidence that the school actually failed to implement an essential element of the IEP that was necessary for the child to receive an educational benefit.”); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000) (“[A] party challenging the implementation of an IEP must show more than a de minimis failure to implement all elements of that IEP, and, instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP.”). Accordingly, we conclude that a material failure to implement an IEP, or, put another way, a failure to implement a material portion of an IEP, violates the IDEA.

Sumter Cty. Sch. Dist. 17 v. Heffernan, 642 F.3d 478, 484 (4th Cir. 2011).

1. “Failure to implement South Carolina Department of Education (“SCDE”) Mandated Corrective Actions”

Parent alleged that District failed to implement corrective actions required under a state complaint Parent filed. The SCDE issued a letter in response to Parent’s state complaint on July 28, 2023. [Parent Exh. 28].

District earlier moved to dismiss these allegations, which I denied at the time because there was no context for either the complaint or the facts surrounding District’s objection. [Order of November 20 at 2-4]. Parent’s

offer of Parent Exhibit 28 provided some context. District reasserted its objection and produced a subsequent SCDE letter from May 13, 2024. It states that District resolved all corrective actions at issue. [Dist. Exh. 1]. In other words, the SCDE determined that District resolved any issues over five months before Parent filed this DPC. I sustained District's objection to Parent Exhibit 28 and dismissed the allegations related to the failure to implement the corrective actions.

2. "Failure to Implement IEP as Written"

a. Transportation reimbursement

Parent again raises the claim that District has not reimbursed her for mileage on occasions when she drives Student to school in the morning. Parent testified that District has not reimbursed her. District responded with records from August, September, and October and a copy of a post-DPC check issued to Parent for the documented instances over those three months. [Dist. Exh. 3 (September 24 record covering August and September dates); Dist. Exh. 4 (October 15 record showing dates in early October); Dist. Exh. 5 (Nov. 15 check)].

The IEP does not specify the frequency of any submissions or payments. Nor does it specify how District is to provide payments to Parent. [Parent Exh. 13 at 12 (stating only that "Parent will be reimbursed when she has to bring her [child] to school in the AM.")].

Parent claims she never saw District's records, including the check, even after District provided copies in the five-day exchange. On the one hand, this testimony is questionable given Parent's propensity to deny reading or receiving documents that refute her claims. At the same time, however, it would be perilous for Parent to deny having seen a check if she received it, endorsed it, and sent it through for payment. Although District provided a copy of the front of the check [Dist. Exh. 5], it provided no proof that the check cleared. Nor did it provide any proof of delivery. I recognize the burden of proof is not on District. But what happened is not clear, and District could have cleared it up.

Out of abundance of caution, I dismiss this allegation without prejudice. If Parent still contends that District did not deliver the check, she should address the matter first to SES. District can then check bank records to see if the check cleared.²⁷

b. Abbreviation of assignments

Parent also alleges District failed to abbreviate assignments. Parent provided no evidence of any assignment that District did not abbreviate. And Parent had ample access to records showing that assignments were abbreviated. District Exhibit 16, for example, documents several abbreviated

²⁷ The IEP team can specify means for delivering and documenting future compliance if necessary. This is never an issue that should require a due process hearing.

assignments in math.²⁸

c. Communication forms

The final implementation claim is an alleged failure to provide timely and compliant communication reports because the forms do not list missed assignments. But Parent did not introduce evidence of any missed assignments that District failed to list on the forms. Principal testified that Student's grade went from a 44 to a 60 because he met with the math teacher, and she agreed to allow Student to submit Q1 assignments sometime during Q2. And we know that those assignments represented a significant amount (almost 27%) of the Student's adjusted grade.²⁹

District released first quarter grades on October 15. [Parent Exh. 23, p. 2]. Parent submitted this DPC two weeks later. District issued the updated report card on December 31, after Q2 and during the winter break.³⁰ That is also two months *after* Parent submitted her current DPC and less than two weeks before the hearing. [Dist. Exh. 2]. Thus, while District disputed the claim that Student failed math in Q1, he did.

²⁸ There also was testimony that teachers offered to abbreviate assignment and even told Student to do what he could. On occasion, however, Student chose to complete all aspects of the assignment or all questions on the quiz/test.

²⁹ What was surprising, however, was the math teacher's testimony that there were only two missed assignments.

³⁰ <https://resources.finalsite.net/images/v1717081313/f1sorg/kvntdyn4ba45ny3tgeqd/24-25F1SCalendarRev530.pdf>

Failing grades are an important consideration when determining whether students in the general education setting receive a FAPE. *G.M. v. Barnes*, 114 F.4th 323, 342 (4th Cir. 2024). But they do not settle the issue. The ultimate issue is whether the IEP team devised “an educational program ‘reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.’” *Id.* (quoting *Endrew F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 394 (2017)).

Tutor acknowledged that she knew during Q1 that Student was failing, and Parent should have known as well. The Record is also replete with testimony and documents that Student, Tutor, and Parent had access to information about missed assignments. Again, the math teacher even documented her follow up with Tutor about missed assignments. [*Supra* § IV(E)(3)]. Parent and Tutor always had access to Student’s Google Classroom, Tutor had co-teacher access in August, and Parent always had access to PowerSchool and the parent portal aspects of Google Classroom.

Student failed because: (1) he did not attend school for reasons that Parent has not proven are related to his disability; and (2) he would not complete work. District provided contemporaneous communications as to his progress, including missed assignments. Communication was not the problem.

C. Procedural claims

1. “Exclusion of Parent from Meaningful Participation in IEP Development”

We are now in Q3 and the second semester of Student’s freshman year. There still is no annual IEP in place for the 2024-25 school year. Parent’s lack of cooperation and refusal to reasonably reschedule the annual review has precluded the IEP team from doing its job. [*Supra* § IV(D)]. Parent attempts to circumvent that process and seek through due process what she did not properly present and discuss with the IEP team.

LHOs do not write IEPs. First, the IEP team meets and attempts to reach consensus. Parent should seek due process only if Parent believes District denied Student something he needs *after* the IEP process. But Parent would not allow that to happen this year. Rather than cooperate with scheduling the next meeting, Parent announced she would seek due process. Parent refused to participate if SES does. Then she played cat-and-mouse with meeting dates even after District tried to accommodate dates she proposed. Parent’s later proposal of dates she knew were infeasible (e.g., New Years Eve) also illustrates her failure to cooperate.

No fair review of the IEP meetings could suggest that District denied Parent the opportunity to provide input. As noted above, she not only provided input, but District adopted her request on the amount of tutoring. [*Supra* § V(A)(2)]. Outside of IEP meetings, Parent provides input daily. And District has

implemented her suggestions on such issues as improving the daily communication forms. Parent's ability to participate in IEP meetings ended only because Parent refused to reconvene the meeting.

Parent also seeks to exclude certain individuals under the guise that their presence denies her the opportunity to participate. Not only do the videos contradict that assertion, but Parent's belief that she should be able to control who attends for District is inappropriate. District has the same right as Parent to designate members of the IEP team. 20 U.S.C. 1414(d)(1)(B)(vi); 34 C.F.R. § 300.321(a)(6).³¹

2. "Failure to Provide Timely Access to Records"

Parent repeats her allegations that District failed to provide timely access to records, but she fails to identify any record to which she did not have access. Even if Parent could establish that she could not access something that would be, at most, a procedural violation. *R.F. v. Cecil County Pub. Schools*, 919 F.3d 237, 248 (4th Cir. 2019) (quoting 20 U.S.C. § 1415(b) and citing 34 C.F.R. § 300.322). That could not lead to a substantive deprivation here because: (1) any failure to provide timely information did not significantly impede Parent's right to participate in the decision-making process; and (2) it did not lead to any denial of

³¹ District's decision to have central administrators attend the IEP meeting is understandable. First, this is another transitional year and the high school staff are unfamiliar with Student's past plans and accommodations. Even if this was not a transition year, Parent's conduct towards teachers and staff has been overtly hostile. I understand why District may want to include someone with authority to defend school-level personnel and to ensure the meetings remain on task.

FAPE. *R.F.*, 919 F.3d at 248. In other words, even if there were a violation, I could only order that District provide information it already provided. 20 U.S.C. § 1415(f)(3)(E)(iii); 34 C.F.R. § 300.513(a)(3); *Miller v. Charlotte-Mecklenburg Sch. Bd. of Educ.*, 64 F.4th 569, 576 (4th Cir. 2023).

D. Impressions and credibility determinations

In reaching the above findings, I have weighed evidence based on my assessment of witness credibility, including witness and party demeanor at the hearing. *Doyle v. Arlington Cty. Sch. Bd.*, 953 F.2d 100, 104 (4th Cir. 1991). I will provide some observations that might not be obvious from a review of the cold record. *County Sch. Bd. v. Z.P.*, 399 F.3d 298, 307 (4th Cir. 2005).

Student's profile is not complex. His issues are well known and largely not in disputed. They are typical of issues that school districts and special education professionals deal with every day. And they deal with these issues on behalf of many students.

Parent has dramatically overstated the effect of Student's sleep condition on his performance and behavior.³² Even the records provided by Parent contradict her claims about the extent to sleep issues require the level of services she has sought. [*Supra* § IV(C)]. And Parent inappropriately tries to use Student's disability status to request that public funds be spent on things never

³² Parent persists in citing Student's disability as an excuse for any shortcoming, academic or behavioral. For example, during the IEP meetings [Parent Exh.s 1-2], whenever someone mentions an absence or a behavior that needs to be addressed, Parent reflexively interjects "because of his disability."

contemplated under the IDEA. In addition to the football supply issue [*supra* § V(A)(3)(b)], Parent has even sought to have District buy her a chair because, she claims, Student has damaged her chairs at home. Like everything else, Parent attributes this to his disability. [Parent Exh. 11 at 2].

The IEP team documented Student's reluctance to learn math: "[Student] said that none of this makes any sense to him. Student said, 'I am never going to do any of this and I am never going to use the Math, no matter how hard you try to get me to learn it I am never going to learn it.'" [Parent Exh. 11 at 3].

Student takes this approach because student can. Student needs to mature, and that requires exposing student to consequences. This has been the refrain since *GJ I*. [*Supra* § II(A)(1)]. And District cannot be faulted for Parent's refusal to assist in District's efforts to hold Student accountable.

In assessing this situation, I give considerable weight to the testimony of the Tutor. Tutor works with Student on a near daily basis. Both sides recognize that Tutor has significant knowledge about Student's background and progress through the past few years. Tutor testified that she knows of no other student to whom District provides more attention and effort. She testified that teachers have done their best and gone "over and above" to ensure Student gets what student needs. She also agrees that Student needs to be held accountable and needs to be accept efforts to hold him accountable. Those are all accurate assessments of the situation. Parent now needs to heed them.

I also give considerable weight to the testimony of Student's math teacher and SET. The math teacher, who is native to another country, clearly has no interest in or much knowledge of American football. Yet she researched it to explain to Student how math relates to his career goals. She even attended at least one of his football games to show interest.

SET detailed how she developed signals with the math teacher on dealing with Student in a particular situation. She also explained how the two work together to address Student's concerns about being singled out. Like the math teacher, she has tried explaining to Student the importance of academics to student's life goals. She also impressed me with her advocacy of Student in working to address student's concerns and issues with other teachers. She also displayed an impressive knowledge as to Student's tendencies and what triggers behaviors like shutting down.

Conversely, I find that many of Parent's assertions lack credibility. In case after case, Parent asserts that District failed to do something. When District provides evidence that it did that thing, Parent becomes hostile and withdrawn. She either claims that she did not receive the information, that it contradicts a

copy of the document she has (but does not introduce), or that she never reviewed it.³³

For example, Parent claims that District did not document assignments missed and accommodations provided. Putting aside the daily communication forms, District provided the math class PowerSchool records that detail this information. When I questioned Parent about this, she claimed that the information did not appear in her version of PowerSchool. Parent knew District would use this document (as it was part of the five-day exchange). But Parent never introduced any other version of PowerSchool portal showing the lack of that information.

Parent also used hearing time to press her allegation that I should enforce an SCDE agreement when she already knew that the issues were fully resolved. [*Supra* § V(B)(1)].

Parent also continuously claims she does not have access to information. [See *GJ VI* at 38-39; *GJ VIII* at 22]. While I have not found these to be credible either, it is inarguable that she has repeatedly complained about District failing to provide

³³ The latest example is the evidence that District paid Parent. When questioned about the documents District relied on, Parent would not even concede that they were part of the five-day exchange. She claimed to have not read the documents, which I do not find credible. This reminded me of Parent's demeanor when questioned about the Functional Behavior Assessment in *GJ VII*. In *GJ VI*, both myself and the SRO faulted District for not providing one promptly. [*GJ VI* at 19-20; *GJ VI* SRO Order at 9, 17-18]. When District finally provided one in September 2023, Parent refused to acknowledge months later that she had read it. [*GJ VII* at 12].

information she already has. [*Id.* at 21].

Parent's credibility is further diminished by her continual use of due process to air grievances that amount to nothing more than her inability to get along with teachers and administrators. For example, Parent's DPC alleges "ongoing abuse of authority." There has been no abuse of authority by District, let alone an "ongoing" one. Parent is the only one who has been uncooperative and uncivil. And Parent is the only common denominator in all these disputes over several schools and years.

The efforts by teachers to serve Student this year have been exemplary. There also has been no failure on the part of district-level staff. With one notable exception, both the SROs and I have generally lauded the efforts of District's special education staff. Every year, Parent attacks and accuses whatever District administrator is in place. But video after video disproves Parent's assertions about their alleged "abusive" conduct in IEP meetings. In fact, those videos consistently illustrate Parent's own antagonistic behavior.

Parent has ample access to evidence if her claims are true.³⁴ For example, Parent continues to fault teachers for what Parent claims is occurring in

³⁴ I have allowed Parent to testify about the basis for the nature of her concerns. For example, Parent has been allowed to testify that she had a concern because she claims Student provided her certain information. As I have explained to her, however, that testimony is not evidence of what Student supposedly told her.

the classroom. But Parent offers no evidence to support her claim of what is occurring. Instead, Parent continues to call teachers to the stand who refute her claims. Although Parent contends her understanding is based on what Student tells her, she refuses to call student to provide supporting testimony. That this continues to happen year after year, case after case, indicates that Parent has no plan to prove her allegations, even if she sincerely believes them.

Parent also proceeds to hearings without apparently any intent of providing evidence to support the relief she requests. Consider the requested relief in the present DPC:

	Relief Requested:	Response:
1	Immediate provisions of compensatory services in math, reading, ELA, and behavior from qualified providers to address the instructional gap from the 22-23, 23-24 and 24-25 school year. ([Student's tutor], current tutor)	District has not denied tutoring. It agreed to her proposal. While Parent might now contend that Student should receive more tutoring, she offered no evidence from anyone to support this assertion.
2	Implementation of Extended School Year (ESY) services for [Student] during the upcoming summer session to prevent further regression.	Parent offered nothing about the need for ESY, which is a matter that she should address to the IEP team before seeking orders in due process. That said, District has been offering Student ESY services for years, so I greatly doubt there is even a dispute.
3	The school administrators trained on IDEA regulations and areas of student disability that assures the district LEA is not required to attend IEP meeting due to the IEP team is competent to handle the IEP meeting	Parent offered no evidence that District personnel lack training. And her demand that District staff not participate in the IEP meetings is improper.

	Relief Requested:	Response:
	to prevent ongoing abuse of district authority in decision-making	
4	Provide parent with records requested in meetings that were not provided	Parent also offered no evidence that District failed to provide her any records she requested.
5	Reimbursement of out-of-pocket educational services and private tutoring obtained due to the District's failure to meet IDEA regulations	Parent offered no evidence that she incurred out-of-pocket expenses, let alone that District is obligated to reimburse them.
6	Implementation of quarterly monitoring by SCDE to ensure the District's adherence to corrective measures.	An LHO has no authority to order SCDE monitoring. Even if I had such authority, there is no evidence in the Record to which I could point to justify it.

Parent reflexively argues whenever she questions something, even if things go her way. In this case, for example, Parent objected to me allowing a witness to answer one of Parent's questions. The math teacher testified on direct that she offered additional tutoring to Parent, but she received no response. On cross-examination, Parent asked the math teacher when she made that offer. It was a good question. The math teacher stated she needed to refer to emails to answer Parent's question. I allowed the witness to view the email to refresh her recollection of the date. The math teacher's response helped Parent. After reviewing her email, the math teacher testified that she made her offer in November, after Parent filed for due process. Rather than take the win, Parent complained that I allowed the math teacher to look at her phone

to answer Parent's direct question. Parent again refused to see the substance of an issue, even when it went her way.

VI. Moving forward

As discussed above, the repeated nature of these hearings is unprecedented. That is disturbing because there is nothing particularly complex or demanding about Student's profile or needs. Parent has raised some legitimate issues over the years. Yet District has spent likely hundreds of thousands of dollars continuously battling allegations of abuse and violations that have no merit whatsoever.

Parent once again proceeds to a due process hearing when the existence of a substantive problem is unclear, at best. Parent filed this DPC after she got mad in a meeting. And the video makes clear that she was mad only because District would not give her everything she wanted the way she wanted it. Nothing in the IDEA suggests that an LEA must give a parent what they want and how they want it. The only issue here is whether the LEA denied Student something student *needs*. But that is not rarely the focus of Parent's filings. And like prior cases, Parent seeks to use the IDEA to either insulate Student from consequences or to seek things that are not necessary to provide a FAPE.

Both myself and the SRO's have implored Parent to let teachers teach, to focus on substance and Student's progress and needs, and to cease with endless information demands and attacks on Student's teachers and school personnel. Those pleas have fallen on deaf ears.

This must end. If it does not end, then it must be managed. Parent is on notice that future DPCs may be subject to preliminary review and framing of issues to avoid more hearings and other proceedings where allegations are unsupported by any evidence.³⁵

If, for example, Parent claims that “Student needs x,” she may be required to specify what she will introduce to show that Student needs x, and not merely that she demanded it. Hearings may be limited if Parent is not prepared to make such a showing. Likewise, her ability to call witnesses may be limited if she cannot explain how those witnesses will provide testimony to support her claims.

If Parent brings implementation claims, she needs to start with the IEP language. She needs to first identify the provision in issue. She then needs to show how District failed to implement the specific provision at issue and how such failure is material.

Finally, if Parent claims a procedural violation and requests substantive relief, she needs proof that the alleged violations “impeded the child’s right to a FAPE,” that they “significantly impeded the parent’s opportunity to participate in the decision-making process,” or that 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). Otherwise, she

³⁵ The IDEA entitles Parent to a hearing on cognizable violations, but it does not restrict LHOs in how they conduct the hearing. Nothing in this Order requires such an approach as I have no authority as to how other local hearing officers exercise their discretion.

can only seek orders to comply. 20 U.S.C. § 1415(f)(3)(E)(iii); 34 C.F.R. § 300.513(a)(3).

As shown above, Parent has raised the same claims, based on the same theories, that were ruled on in prior years. Parent needs to understand that any preliminary inquiry into a future DPC may require her to explain how the evidence in that case differs from what she previously presented.

Finally, I again remind Parent that proceeding to a hearing without evidence subjects her to a finding that she is not proceeding for a proper purpose, which could subject her to a claim for attorney fees.

In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs ... to a prevailing ...local educational agency ... against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

20 U.S.C. § 1415(i)(3)(B)(i)(III). This is not the first warning. [See *GJ VII* at 18-19.³⁶ But it likely will be the last one I give. Parent needs to understand that there could be consequences for pushing non-issues to a hearing or to proceeding without any evidence.

³⁶ See also *GJ VII* SRO Order at 3.

VII. Conclusion

I dismiss the allegation regarding transportation reimbursement without prejudice. [*Supra* § V(B)(2)(a)]. In all other respects, Parent has failed to carry her burden of proving any violation. I also find that Parent's requested remedies would be improper even if she could establish one or more violations.



Brian P. Murphy
Local Due Process Hearing Officer

Dated January 28, 2025

Notice of Appeal Process³⁷

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
849 Learning Lane
West Columbia, SC 29172

³⁷ I will not accept, read, or consider any more argument about the merits on this matter unless it is remanded to him 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. No such communication may toll or extend the time limit set forth above for filing an appeal.