

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

G.J. (Parent) on behalf of Z.B.	)	
(Student),	)	
	)	
Petitioners,	)	
	)	
vs.	)	Final Order
	)	
	)	
	)	
Florence County School	)	
District One,	)	
	)	
District/Respondent.	)	

I. Introduction and Summary

Parent submitted the present Due Process Request (DPR)/Complaint on June 17, 2022, which was the last day of the hearing in *GJ IV*.¹ Parent presumably did so because of the rulings in *GJ IV* about the scope of the Complaint. I ruled in *GJ IV* that complaints about the May 5, 2022 IEP meeting were not covered by the DPR in that matter. In any event, the scope of this proceeding is narrow. It covers only events after the March 17, 2022 IEP meeting through the end of the 2021-22 school year.

This matter was heard on August 23, 2022. Along with the testimony on that date, parts of the Record in *GJ IV* were incorporated in accordance with

¹ To keep the several DPR's straight, I will refer to them based on the cases about which I am aware. This is the fifth such DPR. Other DPR's were filed on March 20 ("*GJ IV*"), Feb. 10 ("*GJ III*"), June 17, 2021 ("*GJ II*"), and October 6, 2020 ("*GJ I*").

my Order of August 12, 2022.² I provided District more time to submit the exhibits referenced in the incorporated testimony and Parent another opportunity to provide any information from *GJ IV* in reply. Both sides were provided time to submit post-hearing arguments, which they have submitted.

II. Analysis

Both the Individuals with Disabilities Education Act (IDEA) and the Fourth Circuit have stressed that claims of a free appropriate public education (FAPE) denial must be based on substantive grounds, rather than on procedural complaints that do not lead to substantive harm. 20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2); *R.F. v. Cecil Cnty. Pub. Schools*, 919 F.3d 237, 248 (4th Cir. 2019), cited in *E.S. v. Smith*, 767 F. App'x 538, 538 (4th Cir. 2019). Here, the “big picture” continues to elude me. On the one hand, Parent continues to acknowledge the good works of the faculty and staff at the Student's Elementary School. On the other hand, she asserts that, despite the efforts of the teachers, the assistant superintendent of special education (BD) and the elementary supervisor for programs for exceptional children (AD) are denying a FAPE at the district level. [*E.g.*, Parent Exh. 4 at Resp. 207 (“It is truly a blessing to have good administrators that has worked with me in striving to do what’s best for my son. This comment does not include the way I have been treated by the District administrators.”)]. One of Parent’s statements during the May 5, 2022

² District supplemented again on August 25 to include exhibits referenced in the prior testimony. I again allowed Parent to submit any material in reply.

meeting at issue exemplifies her focus: “My issue is not with the team. Ms. [G] – great job. Ms. [G] – great job. Ms. [B] – great job. My issue is AD, you are not doing as requested” [Parent Exh. 1 at 34:26-36]. This is the tenor of the May 5 meeting, and it appears to be largely the basis for Parent filing this DPR.

In short, Parent perceives that District is not responding enough to her demands for records and information.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 his elementary school.

I will first examine the procedural allegations about the May 5, 2022 meeting in Section II(A). Allegations about procedure and the cancellation of May 31 meeting are addressed in Section II(B). Substantive allegations of failure to provide services are discussed below. [Infra Sections II C-G].

A. Procedural issues of the May 5,2022 IEP meeting

The IEP team met virtually on May 5. AD opened the meeting by noting that it

³ The DPR repeats allegations in different sections. For purposes of this analysis, I will cite the primary allegation unless other substance is added in later allegations.

was requested by Parent, and District allowed Parent to identify the issues to be discussed. [Parent Exh. 1 at 2:30]. Further, at each transition during the meeting, Parent introduced the next topic, either by invitation or on her own initiative. [*E.g.*, *id.* at 50:45 (placement); *id.* at 1:06:55 (tutoring); *id.* at 1:19:57 (ESY); *id.* at 1:27:11 (assessment); *id.* at 1:29:00 (tutoring); *id.* at 1:41:41 (paraprofessional); *id.* at 1:51:39 (testing)]. AD gave Parent a final opportunity at the end to raise any other issues. [*Id.* at 2:04:47].

1. IEE review

Parent alleges: “In the 05/05/2022 IEP meeting [AD] did not provide IEE results for parent and team to review and determine services.” Parent stated before the May 5, 2022 meeting she wanted the IEP team to review “IEE evaluation report results.” [Parent Exh. 14 at Resp. 0159].

Parent had a copy of the IEE before the meeting, and Parent acknowledged that she never brought up the IEE at the May 5 meeting. Parent, though, blames AD for not providing the information. [Parent Exh. 6 at Resp. 2289]. Because there is no evidence that District precluded Parent from discussing this, or any other issue, at the May 5 meeting, District committed no violation by failing to discuss the IEE.

2. [Tutor's] records

Parent alleges: “[The tutor's] records was not provided to review strengths and weaknesses of services she provided to my son for compensatory services, tutoring, and ESY for the 2020-2021 and 2021-2022 school year.” This issue was addressed in *GJ IV* where I found a procedural

violation and rejected the notion that [Tutor's] records were “personnel documents.” [GJ IV Final Order at 21-23]. In July 2022, the SRO in *GJ IV* concurred, and ordered that District provide [Tutor's] records before the first IEP meeting of the 2022-23 school year. [GJ IV SRO Order at 10]. District has complied already, as the records were made available to Parent on June 2, 2022. [Parent Exh. 8 at Resp. 2204 (6/2/22 entry)].⁴

The records [Parent Exh. 10] render puzzling the assertions of both parties. As stated in *GJ IV*, AD's assertion that the [Tutor's] records are confidential personnel records is incorrect. [GJ IV Final Order at 21].⁵ But Parent already saw the records 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 the records. The contents themselves are unenlightening, as the records only show what both sides have acknowledged: the 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 inform whether additional services in the IEP are necessary.

⁴ For reasons unclear, these records were available to Parent as of the hearing dates in *GJ IV*, but they were not used there to make the same arguments Parent makes now.

⁵ 20 U.S.C. § 1415(b)(1) (providing “[a]n opportunity for the parents of a child with a disability to examine all records relating to such child”)

Tutor was again present at the May IEP meeting and could have provided any information sought by IEP team members. As noted in *GJ IV*, the Tutor also was present at the March meeting, and did not participate only because Parent insisted on starting with another topic, knowing full well that the Tutor needed to leave early. [*GJ IV* Final Order at 7-8].

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

The failure to provide the Tutor's documents in May 2022 was a procedural violation for the same reason found in *GJ IV*. It was remedied before Parent filed this DPR. There is still no evidence that this led to a denial of FAPE or that it warrants any further relief as Parent has the documents and an order to comply is unnecessary. *Fry v. Napoleon Cmty. Sch.*, 137 S. Ct. 743, 754 n. 6 (2017) ("Without finding the denial of a FAPE, a hearing officer may simply order a school district to comply with the [IDEA's] various procedural requirements."); 20 U.S.C. § 1415(f)(3)(E)(iii); 34 C.F.R. § 300.513(a)(3).

B. Canceled meeting for May 31, 2022

District scheduled a meeting for May 31, 2022 but then canceled the meeting. At the hearing, District offered two reasons for the cancellation. At the time, however, District documented only one reason for the cancellation: the fact that Parent had filed *GJ IV*. [Parent Exh. 18]. Parent alleges: “Parent requested an IEP meeting and AD scheduled a meeting and canceled the meeting on 05/31/22. Parent request the meeting to continue and meeting remained canceled and not rescheduled.”

District contends that it was not refusing to communicate with Parent during this time, as the parties were engaged in the resolution process for *GJ IV*, and that many issues Parent discussed at the May 5 meeting were issues about which she also raised in *GJ IV*.⁶

District is correct that it was continuing to discuss the issues during this time. I understand, however, Parent’s perspective that the issues should have been kept separate and her concerns should have been discussed with the full IEP team, and not just those members designated by District to participate in a resolution session.

As a general proposition, Parent is correct. An IEP team’s proceedings normally should not be halted because a parent pursues his or

⁶ The IDEA provides: “Prior to the opportunity for an impartial due process hearing . . . the local educational agency shall convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the complaint.” 20 U.S.C. § 1415(f)(1)(B)(i); 34 C.F.R. § 300.510(a)(1).

her right to due process. This is not, however, a normal circumstance. The IEP team had just met for two hours and provided Parent with an opportunity to raise any issue she felt was necessary. Further, May 31, 2022, is in the waning days of the school year when staff and faculty are busy handling myriad administrative, instruction, and testing duties to close out the year. The request that the IEP team reconvene so soon to address an issue Parent failed to raise was unreasonable under the circumstances.⁷

At the hearing, I questioned Parent as to what difference a May 31, 2022, meeting would have made in terms of services provided. Parent states in her post-hearing submission that June 1, 2022, is the last day of classes. And that is the point here. Even if the IEP team met on May 31, 2022, and agreed to everything that Parent wanted, it would not have made any difference as to the services provided during the 2021-22 school year.

For the 2021-22 school year, Parent was requesting instruction (whether called tutoring or something else). She also claimed she wanted transportation to be provided. The May 5 meeting led to both as it

⁷ The IEP met many times during the 2021-22 school year, which is itself noteworthy given the dearth of disputes over the instruction the elementary school educators provided Student. In *GJ IV*, I noted that Parent's demand for a an "emergency meeting" just after the winter break was unreasonable in that there had not even been time to assess the impact of changes agreed to before the break. [*GJ IV* Final Order at 4, 10]. My concern about the frequency of Parent's requests for the IEP team to convene is also piqued by the fact that the discussions in May largely mirror what already was discussed in March 2022. Parent cannot expect multiple educators and administrators to continue to drop everything to convene and discuss – often for hours -- one particular student's issues, particularly when most of the discussion is about data requests and not substance.

relates to the balance of the 2021-22 school year. District offered transportation to far more instructional hours than what the IEP team found to be necessary in terms of extended school year (ESY) services. Those services were instructional, and they were provided by a teacher in a setting with which Student was familiar.

From an “angels dancing on a pinhead” perspective, one could articulate a weak, at best, theory of a procedural violation here. On balance, I do not believe one occurred because District was actively engaging with Parent. If, however, District did commit a procedural violation, I find as a separate basis for denying relief that any such violation had no effect on the denial of services, let alone that it led to a denial of a FAPE. Not only has Parent failed to show a denial of a FAPE, but District offered Student a significant number of educational hours right away. Parent’s after-the-fact efforts to demand something different do not change that.

C. ESY for 2022

Parent alleges:

The IEP team agreed . . . to add ESY and to provide a one to one special education teacher and not have the services provided at the school. The teacher and the parent would work out the ESY schedule due to the appropriate needs of the student.”⁸

At the hearing, Parent stated her complaint was that ESY was not provided in accordance with the IEP team’s agreement. Parent claimed that there was an agreement that

⁸ In the DPR, Parent claims this occurred during the March 17 meeting. That is an error because the team agreed to ESY at the May 5 meeting. [Parent Exh. 1 at 1:19:57 – 1:27:11]. Thus, I will consider the allegation as a reference to the agreement reached at the May 5 meeting.

services would be provided in the evening. The discussion on ESY is found at 1:19:57 – 1:27:10 of Parent Exh. 1.

During the May 5, 2022 meeting, AD questioned one of the Student's teachers on whether there was any evidence of regression after any break. When the teacher stated there was, AD promptly concluded that there was a basis for documenting a justification for ESY. [Parent Exh. 1 at 1:21:50 – 1:22:06]. AD was looking for a way to justify ESY with data.

Parent then asked, “can we talk number of hours?” [*Id.* at 1:22:14]. The team discussed and agreed upon twenty-six hours total at 1-1.5 hours per day. [*Id.* at 1:24:36-48]. After the Tutor stated that she was not performing ESY services this year, the Student's teacher volunteered that she was, which seemingly pleased Parent. [*Id.* at 1:25:45-50]. Parent then suggested that she be allowed to work with Green to determine hours and a schedule. [*Id.* 1:26:10-32]. Because of the positive relationship between Parent and the teacher the IEP team readily agreed. [*Id.* at 1:26:34-59].⁹

Contrary to Parent's assertion, there was no agreement to provide services in the evening, nobody even suggested that this teacher, or anyone else, worked evenings, and there is no evidence that transportation is provided in the evening or that the buildings were even open then. The teacher testified that she did not agree to provide services in the evening, nor is

⁹ At some point later, District assigned the teacher to work with children, with autism and another teacher instructed Student this past summer.

there any evidence—medical or otherwise—on which a finding could rest that ESY services needed to be provided only in the evenings. Student attended school during the day, and there was never even a claim that IEP services should be restricted to evening hours. Parent simply keeps moving the goalpost without justification, and that does not evidence a denial of a FAPE on the part of District.

The IEP team also never committed to Student receiving only one-to-one ESY services. Having reviewed the ESY discussion again, I cannot identify any place where Parent claimed that the ESY services needed to be on a one-to-one basis, although I don't question the fact that she may have assumed that this would be the arrangement.

Parent's request for one-on-one ESY instruction itself does not itself carry much weight. Nor would my opinion, absent a showing that the decision was improperly made or that FAPE was denied. On matters of pedagogy, I must "give appropriate deference to the decisions of professional educators." *T.B. v. Prince George's Cty. Bd. of Educ.*, 897 F.3d 566, 572 (4th Cir. 2018) (quoting *M.M. ex rel. D.M. v. Sch. Dist. of Greenville Cty.*, 303 F.3d 523, 533 (4th Cir. 2002)). While I will not defer as to issues of law or ultimate determinations on whether FAPE was provided, professional educators typically are in the best position to determine how instruction should be delivered. That is especially so where, as here, there is little to no dispute that the educators in charge were providing excellent instruction and no evidence that District personnel interfered with or overrode the considered opinions of classroom teachers. There¹¹ was *no* evidence here that the way ESY was provided led to a denial of FAPE, and there is no evidence that District

D. Dedicated special ed teacher provided in an inclusion model

Embedded in Parent's allegation about ESY is the assertion that she requested a "a one to one special education teacher." While one would normally interpret this grammatically to be a reference to her ESY claim, Parent did bring up a dedicated special ed teach in the classroom during the May 5 meeting, as she did in *GJ IV*. [Parent Exh. 1 at 14:40; see *also* Parent Exh. 17 at Resp. 2217 (PWN)]. In the interest of completeness, I will interpret the clause as a specific request for an inclusion teacher outside of ESY.

Parent contends that the Williams IEP team's agreement to a special education teacher in August shows that District knew that one was necessary all along. Parent established through questioning of AD that it was essentially a District-level decision to grant her request in August. That District agreed to a service for middle school does not prove that it was necessary to provide a FAPE in elementary school. The move from elementary to middle school is a daunting one for many students at many developmental, social, and educational levels. It is no surprise that District would consider additional supports perhaps unnecessary in elementary school.

AD testified that he agreed to Parent's various requests (transportation to the middle school, tutoring services, and an inclusion teacher) in response to my admonition to both sides about re-setting their approach to each other. [*GJ IV*

Final Order at 30-33]. That also is not an admission that an inclusion teacher was necessary to provide a FAPE at his elementary school .¹⁰

In short, District may have changed course for any number of reasons. None of those reasons, however, suggest to me that the 2021-22 IEP was not reasonably calculated to provide a FAPE. Nothing in the Record before me changes the result reached in *GJ IV* that a dedicated or inclusion instructor was unnecessary to provide FAPE in the 2021-22 school year. [*GJ IV* Final Order at 23-24].

E. Assignment to [Preferred] Middle School

Parent alleges: “In the 03/27/2022 IEP meeting and 05/05/2022 IEP meeting the parent suggested placement in the IEP meeting at the middle school she preferred and the team was not allowed to determine placement per [BD] Parent was instructed to request zoning transfer.”¹¹ The IEP “rejected” the option of determining that Student should attend the middle school preferred by the Parent. [Parent Exh. 17 at Resp. 2217].

¹⁰ Nothing would chill a district’s willingness to experiment or to agree with a parent’s request more than a finding that it is an “admission” of some kind where, as here, the parties are engaged in pending due process claims. The IDEA amendments made clear Congress’s desire that these matters be resolved by parents and educators whenever possible. That requires “give and take” and a willingness to try things with which one might normally have reservations. As with the concept of “subsequent remedial measures,” in the law (see Rule 407, SCRE), these changes might be relevant on the issue of what remedy, if any, is necessary. I will not consider them, however, in determining whether these services were necessary to provide FAPE at a different school during a different school year.

¹¹ Putting aside the meaning of the term “placement” as used by special education professionals, the parties both understand that Parent was speaking of location of services to be provided and not a designation on the continuum of services (e.g., self-

Parent's purpose in pressing this issue did not become clear until the hearing in *GJ IV*, which occurred over a month after this IEP meeting. Parent apparently wanted the IEP team to determine that Student should attend her preferred middle school as part of her assertion that District would then have to provide transportation. [See *infra* section II(G)]. It is difficult, however, to fault District for not understanding that point because Parent never made any such point on May 5, 2022. [Parent Exh. 1 at 50:45 – 1:02:45].

What Parent sought during the meeting was assignment to the middle school that she prefers. AD opined at the May 5, 2022 meeting that the IEP team would not make the determination since the same services available at the middle preferred by the Parent are available at the middle school for which Student is zoned. [*Id.* at 52:23; *id.* at 53:02; *id.* at 55:28; *id.* at 1:01:31]. Complicating this issue is the fact that it was the elementary school IEP team that was presented with the issue of which middle school Student should attend. Whether elementary teachers at one facility can be expected to have an opinion on the relative merits the services offered at two middle schools at which they do not work is questionable. It is

contained, inclusion, pull out, etc.). Placement and location of services are distinct concepts under the IDEA. *AW v. Fairfax Cty. Sch. Bd.*, 372 F.3d 674, 682 (4th Cir. 2004) (“[T]he touchstone of the term “educational placement” is not the location to which the student is assigned but rather the environment in which educational services are provided.”); see also *A.K. v. Alexandria City Sch. Bd.*, 484 F.3d 672, 683 (4th Cir. 2007) (Gregory, J., dissenting) (noting that location or setting under the IDEA is different from “placement”).

reasonable to assume that, as administrators, someone from District would have a more informed perspective.

Parent stated that her desire for her preferred middle school is based on the relationships Student formed with his peers. That is an issue about which teachers at the elementary school would have insight and there was discussion on that topic, which neither BD nor AD questioned or rejected. [*E.g.*, *id.* at 56:27; *id.* at 58:40 (Parent)].

The full team IEP team at elementary school likely viewed AD's comments as meaning that the IEP team did not have the authority to decide whether services at her preferred middle school were unique from those that could be offered at Student's zoned middle school. In the end, however, Parent's assertion that the team should have made the decision is a point without a purpose. Even if general and special education elementary instructors at the Student's school could make that determination, District never opposed Parent's request for her preferred middle school. Any theoretical procedural issue simply could not be the basis of an alleged denial of a FAPE when Parent immediately got precisely what she wanted.

F. Tutoring/Instructional Services

Parent alleges: "In IEP meeting 05/05/22, Mom requested tutoring services and was denied. Mom requested evening services to help with missing services during the day due to Sleep Apnea. Mom stress student struggling and not meeting IEP goals."

The issue stated here is stated more substantively than the issue raised in *GJ IV*. Parent's claim is not so much that the IEP team did not discuss tutoring. Her claim is that the IEP erred in failing to provide it.

Parent's primary argument is that added instruction was required because of Student's propensity to fall asleep in class. All agree that there were occasions during which Student slept in class.¹² District also has never denied that Student's inability to stay awake may be related to medical conditions. But, as District notes, that issue has always been accounted for in the IEP and the BIP, which included accommodations to permit Student to go to the nurse. [See Parent Exh. 6 at Resp. 2282].

Parent has used the terms "tutoring" and "compensatory services" to refer to additional instructional services she believes are necessary to enable Student

¹² The paraprofessional records District provided after the meeting do not support the notion that Student was not receiving a FAPE because of habitual sleepiness. They mention only two occasions in April in which Student fell asleep, although there clearly were more instances. [Parent Exh. 10, pp. 11 (April 1), 13 (April 4); see *also* Parent Exh. 6 at Resp. 2282 (email noting "difficulty with [Student] sleeping in my class"); Parent Exh. 8 at Resp. 2203 (2/8/22 entry)].

Parent posits that there were "sleeping logs" or documents the Student's teacher kept specifically documenting each occasion on which Student nodded off. There is no evidence, however, of any documents that were ultimately not provided to Parent. Nor is there any requirement to document every such occurrence.

The Student's teacher acknowledged during the May 5, 2022 IEP meeting that there were paraprofessional notes. AD stated she was unaware of that, and neither she nor AD objected to them being produced to Parent. The teacher was providing information to Parent on both a daily and weekly basis. There has been no suggestion that the teacher was intentionally withholding anything, and a review of the paraprofessional notes confirms there is no reason why District would seek to withhold them.

to access a FAPE because he was falling asleep. This issue is a closer call than District seems to acknowledge. In its post-hearing submission, District argues that Student's progress, while uneven, clears the bar set by *Endrew F.*¹³ If Student cleared that bar because of the efforts of the tutor in the evening, then perhaps those services were, in fact, necessary to provide Student with a FAPE.

The discussion on May 5, 2022, revolved around a debate on whether the tutor was working on classroom related work or on homework. [Parent Exh. 1 at 26:30 – 28:20]. District representatives have contended that tutoring on homework is not work related to IEP goals, and therefore not a related service because specific goals are not being worked on. [*Id.* at 34:59 – 35:30]. I rejected that assertion in *GJ IV*. [*GJ IV* Final Order at 14]. Again, the Regulations do not create a direct nexus between goals and service; they create one more broadly between service and education. [*Id.*]

One difference between this hearing and the hearing in *GJ IV* is that Parent let the tutor speak this time. The tutor stated that she worked on what was in Google Classroom and that she was not clear on whether it involved classroom assignments along with homework assignments. She agrees that she did not document progress as to IEP goals. [Parent Exh. 1 at 30:45 – 31:52]. Parent stated that she wanted the tutor to be included in the IEP goals and the tutor was working on daily requirements and not

¹³ *Endrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999-1001 (2017).

just homework. [*Id.* at 31:54 – 33:46]. The tutor did not testify.

The argument that the tutor's services prove necessity requires a close examination of those services. That is where the Record is lacking. As noted in the Scheduling Order,¹⁴ Parent bears the burden of proof. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). Here, the private tutoring payments for which Parent seek reimbursement are from May 2022. [Parent Exh. 19].¹⁵ Parent provides no such data as to the services the tutor during this time. There is not even detail about how much time was provided.

I have no doubt that the tutor provided valuable tutoring and has connected well with Student. Because there is no competent evidence about the substance, details, and amount of the services the tutor provided, however, I cannot point to any data showing that District failed by not providing those same services.

Nor does the private IEE provider provide anything. Through the incorporated testimony of Courtney Matthews, District challenges the IEE. Of primary interest here is the conclusion that the independent evaluator's observations and testing do not support her statement that Student "would benefit from 1:1 tutoring." [GJ /V Parent Exh. 2 at Resp. 0168 ¶ 5]. Matthews

¹⁴ See Scheduling Order at 2-3 ¶ 5.

¹⁵ The limited records we have on the services provided by the tu as part compensatory education from November 2021 through early February 2022. [Dist. Exh. 2].

testified a recommendation for tutoring does not flow from: (1) a playground observation; (2) observations the independent evaluator made in the classroom; or (3) the assessment tests administered during the IEE. [GJ IV tr. 481:24 – 482:9; *id.* at 483:14-19; *id.* at 485:25 – 486:5; *id.* at 486:6-12].¹⁶

The IEE report may not be much ado about nothing, but it is much ado about little. The issue here is not whether Student could benefit from tutoring as the independent evaluator states. The issue is whether tutoring, which I will interpret broadly to mean additional instruction,¹⁷ was necessary to provide FAPE during the 2022-23 school year. The evaluator does not make that claim.¹⁸

¹⁶ The only basis I see for the evaluator's opinion about tutoring would be information provided by Parent. Most of Parent's understanding of what occurred in school appears to be based on what Student conveyed. We know that Student conveyed inaccurate information at times or is not supported by any evidence. For example, he blamed a broken Chromebook on the paraprofessional [Parent Exh. 10 3/30 entry at 11:10]. He also accused R.G of throwing his backpack at him, injuring his nose. [Parent Exh. 4 at Resp. 208-09]. Nobody believes that is true.

¹⁷ Matthews bases her opinion on a definition of "tutoring" that are services provided outside the normal school. [*id.* at 489:14-20. Since that is how both parties have approached the issue, her view of the services encompassed by the term is not at issue. The evaluator does not define tutoring. [GJ IV tr. At 492:20-22 (Matthews)]. the independent evaluator apparently views tutoring as something that could occur in the educational setting, as she refers also to "group tutoring or an in-class paraprofessional." [GJ IV Parent Exh. 2 at Resp. 0168 ¶ 5; see GJ IV tr. at 491:5-11]. This raises yet another apparent point of disagreement as to terminology. The evaluator apparently uses the term "paraprofessional" to refer to someone providing instruction, while District has been adamant that paraprofessionals do not deliver instructions.

¹⁸ It is therefore unnecessary to resolve the issues Matthews raises about methodology or the efficacy of certain tests. Assuming that every test the independent evaluator administered is valid, I see nothing in the published results that inform us somehow about the need for extra instruction provided either during the day or after it, or provided in the school rather than outside of school.

Parent argues, for example, that tutoring is necessary because Student could not complete his classwork. While that is true at times, the independent evaluator observed that Student, while inattentive at times, “completed his classwork with prompting from his teacher.” [GJ IV Parent Exh. 2 at Resp. 0165]. The IEE simply does not advance the ball in a way that establishes either a violation or that any change was needed.

Even if there had been a violation, the remedy would have been compensatory services at the earliest opportunity, which would have been this past summer. District offered eighty hours of instruction this summer, which is fifty-four hours over the twenty-six ESY hours to which everyone agreed. There is no basis in the Record to find that compensatory services of anything approaching fifty-four hours would have been necessary for any alleged loss of instruction from occasional sleeping issues. Although I do not find that any violation occurred, there is no remedy that would have come near the instructional services already offered.¹⁹

¹⁹ There is one aspect of the tutoring issue that is a real head shaker. Parent paid the tutor, and she seeks reimbursement as a remedy. Parent introduced the checks she wrote to as part of that request. [Parent Exh. 19]. Those checks total \$195. That is, no doubt, a significant expense for the average household, but it pales in comparison to the amount spent here arguing over the issue. The Undersigned directed the parties to not provide information about their resolution discussions as I believe that parties will not aggressively seek to offer compromise if those discussions are revealed to the hearing officer. One must wonder, however, how seriously resolution was pursued when the parties proceed to a hearing over a \$195 claim. This is not a criticism aimed at either party, as I have no idea whether offers were made or what information was shared. Both parties, however, should consider this fact in their future dealings and ensure that

What happened during this Summer does, however, raise questions about the extent to which Student's attendance and cooperation in the class are medically related. District offered instruction for five hours per day, four days per week, for four weeks, or eighty hours over sixteen days. Parent Exhibit 20 documents what happened. On the eighth page, Student's attendance is charted. Of the sixteen days, Student arrived timely and was "present," on only six occasions (37 1/2%). He was completely absent on the same number of days (37 1/2%), and he was late on four other occasions (25%).²⁰ Five of the six days he was absent were either Thursdays (three occasions) or a Monday coupled with a Tuesday (6/27 and 6/28) that followed a Thursday absence (the 23rd). He was never present for a full day after June 15, with each of the last nine days being either an absence or a late arrival. The rate of absences and tardiness totaling 62.5%, is far higher than any rate of absenteeism and tardiness during the school year.

G. Transportation as a related service

Parent alleges: "Parent requested transportation added as a service in the 05/05/2022 IEP meeting and the team was not allowed to determine transportation due to the District not allowing the team to decide."

they fully explore what is at stake before causing the expenditure of public funds on an issue that, while important, is small compared to what was spent arguing about it.

²⁰ In a note, the ESY teacher added: "There were only 3 days that [Student] stayed awake the entire 5 hours of ESY."

In *GJ IV*, I determined that District did not have to provide transportation to his elementary school. [*GJ IV* Final Order at 25-29]. The SRO disagreed with part of my analysis and determined that transportation, as a related service, was within the purview of the IEP team. [*GJ IV* SRO Order at 8-9]. That ruling came months after the May 5, 2022 meeting.

Parent has failed to identify where she raised this issue during the May IEP meeting. Oddly, however, the IEP team documented that it was rejecting Parent's request for transportation to the preferred middle school for the same reason it gave in *GJ IV*. [Parent Exh. 17 at Resp. 2217].

There is nothing in this Record to warrant a finding different from the one I reached in *GJ IV*. Parent stated that she seeks reimbursement as a remedy for the alleged transportation violation. As a separate grounds for denying relief, I find that there is no basis for any such award. Parent never provided records or a breakdown as to her request, and never even stated an amount sought. Moreover, compensating Parent for driving Student would be inappropriate here. When District did provide transportation in the summer, Student did not avail himself of it on most days. Thus, the idea that Student would have gotten on the bus during the school year is speculative, at best.

H. Various requests for relief

1. Facilitated IEP meetings

Without a finding of a violation, I lack any authority require facilitation of meetings based on this Record. To the extent there was a violation, I do not find

that there are facts suggesting that facilitation is necessary as part of an order to comply. 20 U.S.C. § 1415(f)(3)(E)(iii); 34 C.F.R. § 300.513(a)(1).

2. Removal of BD and AD as IEP team members

Parent's request for the removal of BD and AD as IEP team members is denied. Removal of an IEP team member would be an extraordinary remedy, and it is not appropriate here where there is no evidence of any misconduct on the part of either BD or AD, and none during the May 5, 2022 meeting. Both AD and BD allowed Parent to essentially set the agenda. Neither treated Parent rudely. The only rudeness at the May 5, 2022 meeting was from Parent, who interrupted BD and interjected accusations even when he was agreeing with Parent's requests. AD never provided any resistance to any Parent's desire to discuss issues substantively,²¹ and, in fact, she went looking for data to support Parent's request for ESY.

BD turned the team around as to Parent's request to remove the paraprofessional.²² The teachers' hesitation on this point is well taken. The

²¹ AD did defend herself when Parent made allegations about what was said in prior meetings. Even when she did, however, her statements were factual and never personal or accusatory.

²² After the teachers expressed their opinion that the paraprofessional should remain, BD persuaded the IEP team to relent for the final days of the year. [Parent Exh. 1 at 1:41:41 - 1:51:25]. BD's overture was not met with even some appreciation. Some expression of gratitude when issues are resolved would likely go a long way. Instead, Parent continues to direct accusations toward District personnel, even when they are giving Parent what she wants.

paraprofessional's notes and other documentation since the March 17 IEP meeting show a consistent trend of Student being defiant and disrespectful to both teachers and to the paraprofessional. [Parent Exh. 10; Parent Exh. 5 at Resp. 209 (“[Student’s] behavior was not good. Today he was defiant”); Parent Exh. 6 (Green email of 4/25 at 1:34 pm); Parent Exh. 7 (entries for May 16, May 12, May 9, May 6, May 2, April 29, April 28, April 13, April 12, April 11, April 6, April 4, March 17); Parent Exh. 8 at Resp. 2204 (entries for April 8, May 2)]. Parent conveying Student’s dissatisfaction with the paraprofessional is concerning. S.H., the school’s behavioral therapist, noted regression in Student’s conduct towards staff. [Parent Exh. 9 at p. 6 of 6 (interim and final Q4 report)]. Yet Parent was focused more on what Student wanted than on the behaviors that are impeding him academically and that affect his communications with educators.

In reaching credibility determinations, therefore, I factor in the conclusion that 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. [See *also supra* n. 5].²³

²³ As District notes, demands for a monitor on the bus while opposing a paralegal in the classroom are inconsistent at best. They both serve the same purpose. In *GJ IV*, Parent rightfully objected to District representatives overriding the opinions of the classroom teachers. But Parent then turns around and does the same thing regarding the paraprofessional. Allegations of FAPE denial cannot be based on a strategy of complaining about what is there and demanding whatever isn’t there. At many times during these cases, the strategy appears to be more about fighting for X or against X (depending on who proposed X), rather than focusing on the merits of X. The issue in these cases is not whether District denied something Parent wanted. The issue is not whether District introduced something Parent does not want. The issues in these cases

3. Remedies related to the 2022-23 school year

Parent also requests as a remedy that services be provided for the 2022-23 school year, including tutoring and transportation. In its post-hearing submission, District apparently seeks a finding that all is well as of August 1, 2022. To be clear, nothing in this Order constitutes a finding about the correctness of any revision to the IEP on August 1, 2022. Nor do I opine as to any services provided during the 2022-23 school year.²⁴

Because there has been no substantive violation proven as to the 2021-22 school year, Parent's specific request for such relief is denied.

III. Conclusion

Student is now at the Middle School of his choosing. The school is led by Ms. Brigman with whom Parent seemingly has a good relationship. Student is now receiving transportation, tutoring, and an inclusion teacher. While the road to this point has had some potholes and obstacles, District has shown a sincere desire for a fresh start. In turn, Parent needs to focus on the positive changes and cease the endless accusations and demands about the very people who have made those changes. [*E.g.*, Parent Exh. 16].

are whether the IEP is reasonably calculated to provide a FAPE and whether it was implemented correctly.

²⁴ At the hearing, Parent stipulated that she was not challenging the August 1, 2022, revisions to the IEP in this matter.

Parent should now let the teachers teach, and she should now focus more on the substance of Student's IEP and less on the "who said what when" arguments or on duplicative and endless requests for information.²⁵ Middle school is a challenge for every student and parent, and Student needs for everyone to be on the same team. Student is entering a phase where young people are expected to take more accountability for their actions. That is where the focus needs to be -- not on hard feelings among the adults over issues that arose some time ago. AD testified credibly that he heeded my request for a "reset." [See *GJ IV* Final Order at 30-33]. But that request applied equally to both parties!

For these reasons, I find no violations of the IDEA that warrant relief.²⁶ As a result, there is no basis for relief that can



Brian P. Murphy
Local Due Process Hearing Officer

Dated August 30, 2022

²⁵ Parent's demands for information have been unreasonable and excessive. [See, e.g., Parent Exh. 3 (1:33 a.m. email demanding that Green provide files "before you destroy records . . ."). Further complicating matters is Parent's claim that she cannot access the online portals made available to every other family. Parent is an intelligent businessperson and tax preparer, who also uses a computer to communicate in the performance of her business and to participate in the IEP process. I simply do not find credible her assertion that she cannot utilize the software designed to be used by all parents.

²⁶ The only procedural violation here is the failure to timely produce the records, which District remedied by early June. [*Supra* Section II(A)(2)].

Notice of Appeal Process²⁷

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

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

²⁷ The Undersigned will not accept, read, or consider any further 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. Further, no such communication may toll or extend the time limit set forth above for filing an appeal.