

██████████ PUBLIC SCHOOLS

██████████, a minor, by and through
Student's Parent, Dr. ██████████,

Petitioner,

DECISION AND ORDER

- and -

VDOE Case No. 23-034

██████████ **PUBLIC SCHOOLS,**

Carl Schmidt
Hearing Officer

Respondent.

PROCEDURAL HISTORY

On September 29, 2022¹, the Student's Father ("Petitioner") requested a due process hearing with the ██████████ Public School Board ("Respondent") pursuant to the Individuals with Disabilities Education Act ("IDEA"). The Student's Father used the Virginia Department of Education Form to make the request.

Respondent was represented by LaRana Owens, Esquire.²

The Hearing Officer, Carl Schmidt, accepted the appointment to preside over this case on October 5, 2022.

On October 6, 2022, Ms. Kathryn Jones, Coordinator of Due Process Services, Office of Dispute Resolution and Administrative Services, Virginia Department of Education, informed the Hearing Officer that the case number was 23-034 and the Evaluator was Reggie Frazier, Esquire.

On October 9, 2022, Respondent filed a Response to the Complaint.

On October 12, 2022, Respondent filed a Notice of Insufficiency and Motion to Dismiss.

¹ The request is dated September 28, 2022.

² Ms. Owens stated, "I represent the ██████████ School Division." Transcript page 8.

On October 13, 2022, a pre-hearing video conference was held from 4:00 p.m. to 5 p.m. The issues were identified as:

1. Whether the Student is being denied a free appropriate public education by the Respondent?
2. Whether the Hearing Officer should order implementation of the September 6, 2022 IEP?
3. Whether the Student's placement is appropriate at [REDACTED] School?
4. Whether the Student should be allowed to take the Standards of Learning test at another school or location?

On October 17, 2022, the Hearing Officer issued a Ruling denying the relief requested by the Notice of Insufficiency. Petitioner's complaint was sufficient.

A hearing was held by video conference on November 8, 2022, beginning at 9 a.m., and November 10, 2022 beginning at 9 a.m. Petitioner appeared at the hearing but did not testify. LaRana Owens, Esquire represented the Respondent. Ms. [REDACTED] was the only witness.

At Petitioner's request, the Hearing Officer issued witness subpoenas for Ms. [REDACTED], Ms. [REDACTED], Dr. [REDACTED], Ms. [REDACTED] and Mr. [REDACTED]. Prior to the hearing, the Hearing Officer ruled upon the Respondent's motion that Ms. [REDACTED] and Mr. [REDACTED] were not relevant to the issues. The Petitioner did not have the remaining subpoenas properly serviced and the witnesses did not appear at the hearing with the exception of Ms. [REDACTED]. Both parties questioned Ms. [REDACTED] extensively.

BURDEN OF PROOF

In a special education administrative due process proceeding initiated by the parents, the burden of proof is on the parents to establish by a preponderance of the evidence that the Local Educational Authority, School Board, has failed to provide the student with a Free Appropriate Public Education concerning the issues they have raised. *Schaffer, ex rel. Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005).

FINDINGS OF FACT

[REDACTED] ("Student"), was born [REDACTED]. [REDACTED] resided at an address in [REDACTED], Virginia with the zip code of [REDACTED].

The Student attended [REDACTED] School in [REDACTED], Virginia. [REDACTED] was a seventh-grade student during the 2021-2022 school year.

The Student received special education services under the category of Autism.³

February 26, 2021 IEP

The Student had an Individualized Education Program (IEP) dated February 26, 2021, created March 11, 2021, and signed by a parent on March 15, 2021. The IEP was a “stay-put” IEP last signed by the Student’s parents.⁴ The stay-put IEP was written while the Student was at home during COVID and written for a virtual setting.⁵ Parts of the stay-put IEP are confusing.⁶

The February 26, 2021, IEP form states, “Will the student be at a grade level or enrolled in a course for which the student must participate in a state and/or divisionwide assessment?” The box for “Yes” is checked. The IEP form states, “Based on the Present Level of Academic Achievement and Functional Performance is this student being considered for participation in the Virginia Standards of Learning (SOL) Assessments (select appropriate content area).” The box for “Yes” is checked. The boxes for “Reading” and “Math” are checked.⁷

In the section addressing Placement, the IEP states, “[Student] will participate, at [REDACTED] assigned zone middle school, in the general education environment with [REDACTED] non-disabled peers for all academic, whole-group and small-group instruction. [REDACTED] will participate, at [REDACTED] assigned zoned middle school in all nonacademic activities, such as lunch, recess, and field trips with [REDACTED] nondisabled peers.⁸ *** At the time of this IEP implementation, [REDACTED] assigned zoned school was [REDACTED] School.”⁹

Director of Student Services

Ms. [REDACTED] (“Director”) was the only witness for each party. Ms. [REDACTED] was the Director of Student Services for the [REDACTED] School

³ Exhibit SB page 2.

⁴ Transcript page 78.

⁵ Transcript page 124.

⁶ Transcript page 248.

⁷ Exhibit SB page 14.

⁸ Petitioner questioned how the Student could participate virtually in lunch, recess, and field trips.

⁹ Exhibit SB page 18.

Division.¹⁰ She qualified as an expert witness in the area of IEP development and IEP programming or educational programming.¹¹ The Director has never met the Student, but is familiar with the Student's case.¹²

The Director was not responsible for setting up SOL testing. Her responsibility was to make sure special education accommodations were available to the Student.¹³

Petitioner alleged the Director "showed classical medical sign of cognitive impairment (altered perception of temporal event.)"¹⁴ In Exhibit P4, Cognitive Impairment is described as:

Cognitive impairment is when a person has trouble remembering, learning new things, concentrating, or making decisions that affect their everyday life. Cognitive impairment ranges from mild to severe. With mild impairment, people may begin to notice changes in cognitive functions, but still be able to do their everyday activities. Severe levels of impairment can lead to losing the ability to understand the meaning or importance of something and the ability to talk or write, resulting in the inability to live independently.

Petitioner called the Director as his witness. After being sworn to tell the truth, the Director answered questions from the Petitioner, Respondent's Counsel, and the Hearing Officer. She was able to understand the questions asked and seek further explanation when necessary. She was able to remember what was asked of her. She was able to provide coherent answers based on her recollection of facts and formed opinions. She displayed the ability to understand meaning and importance. The Director did not have diagnosis of cognitive impairment.¹⁵ The Hearing Officer does not believe that the Director's testimony was based on the undue influence of others. The Hearing Officer does not believe the Director has cognitive impairment.

SOL Tests

¹⁰ Transcript page 10.

¹¹ Transcript page 213.

¹² Transcript page 71.

¹³ Transcript page 46.

¹⁴ Exhibit P1, page 2.

¹⁵ Transcript page 231.

Standards of Learning (SOL) tests are available to Virginia students. According to the Director, “The SOL test is the test that we give at the end of a course that measures the student's mastery of the specific standards for that course or grade level.¹⁶” The testing coordinator at ██████████ School sets up the SOL test sessions. The Student was supposed to take SOL tests at the assigned school which was ██████████ School.¹⁷ SOL tests were developed by the Virginia Department of Education.¹⁸ SOL tests are given during a time period window established at the division level based on a proposal from the division testing coordinator and approved by the cabinet.¹⁹

SOL tests cannot be taken virtually (online). The State does not allow that test to be given virtually. It must be proctored. The Respondent had to make arrangements for students to come into its schools to be tested.²⁰

Seventh-grade students were not required to pass the SOLs to move to eight-grade.²¹ Parents could opt out of SOL testing. The school would follow their wishes.²²

May 20, 2021 Math SOL and May 24, 2021 Reading SOL

Seventh-grade students at ██████████ School were scheduled to take the Standards of Learning test for math on May 20, 2021. These students were scheduled to take the reading Standards of Learning test on May 24, 2021. The testing window for SOL tests was given by the Virginia Department of Education and then ██████████ decided within that window what was the best time frame for students to take the tests. Those dates were proposed by the ██████████ division coordinator and approved by their cabinet.²³ If a student was sick on one of those days, the school would set up a make-up session at ██████ S. The school did not offer a make-up session at ██████ S to the Student because the school was not asked to do so.²⁴

¹⁶ Transcript page 72.

¹⁷ Transcript page 50.

¹⁸ Transcript page 72.

¹⁹ Transcript page 73.

²⁰ Transcript page 137.

²¹ Transcript page 144.

²² Transcript page 147.

²³ Transcript page 89.

²⁴ Transcript page 142.

The Student was entitled to take the SOL tests at [REDACTED] School. Under the IEP, the Student was to be provided accommodations including scheduled breaks during long testing sessions and a quiet testing location away from distractions.²⁵ [REDACTED] School was prepared to implement the accommodations set forth in the IEP for the Student's SOL tests.²⁶ The Director did not believe there were any special education reasons for the Student to take the SOL tests at another location.²⁷ The practice was for students to take SOL tests at their assigned schools.²⁸

On May 17, 2022 at 12:18 p.m., the Petitioner sent Director an email:

[Student] should be participating in the SOL testing. It is in [REDACTED] IEP. How should we proceed since for [REDACTED] safety we were forced to withdraw [REDACTED] from [REDACTED]S? We did not receive any information relevant to [Student's] SOL testing. Please advise.²⁹

On May 17, 2022 at 5:42 p.m., the Director replied to Petitioner with a copy to [Principal]:

At this time, my understanding is [REDACTED]SD did not approve a change in school location. I have included [Principal], the [REDACTED]S Principal, in this email. [Principal] will communicate the time and dates for your [REDACTED]'s SOL testing in accordance with the last agreed upon IEP.³⁰

On May 18, 2022 at 4:25 p.m., the Principal sent Petitioner an email:

I hope we can continue to work together to support [Student]. If you recall, you were going to provide me a doctor's note to begin considering adjustments to [Student's] daily schedule. I know you are working to provide the note but without it I am bound to the attendance expectations of the state of Virginia. [Student] is expected to join classes every day and come to school to take [REDACTED]

²⁵ Transcript page 81.

²⁶ Transcript page 82.

²⁷ Transcript page 85.

²⁸ Transcript page 138.

²⁹ Exhibit P8, page 4.

³⁰ Exhibit P8, page 3.

SOLs. I have taken the steps to give [redacted] a small testing session. [redacted] schedule is as follows and I hope [redacted] will join us for SOL testing.

FOA 7 on Friday 5/20 @ 11:30
Reading 7 5/24 also @ 11:30³¹

On May 20, 2022 at 12:13 a.m., the Petitioner sent [Principal] an email with a copy to [Director]:

[Student] is not willing to go back to [redacted] S. [redacted] has been put there in situations that trigger [redacted] anxiety multiple times and [redacted] does not feel safe there and [redacted] doesn't trust you or anyone from [redacted] S.

[redacted] SD has to provide an alternative place for SOL tests that are not [redacted] S or [redacted] S. [redacted] has been traumatized in both places.

Please provide an alternative safe environment for [redacted] to take these tests.³²

On May 20, 2022 at 8:51 a.m., [the Principal] sent Petitioner an email:

Can you bring [Student] to speak with myself and/or a counselor? We can also make arrangements to come to your home for a visit. We understand anxiety and can help [redacted] work through [redacted] concerns. As [Student] becomes a young [redacted] [redacted] will continue to face challenges. Please allow us to help [redacted] face these challenges head on. [redacted] needs to know that we want to help [redacted] and [redacted] is safe here even when uncomfortable. We support many families and students but it has to be a team effort. Please consider arranging the visit. [redacted] loves [Mrs. [redacted]] so [redacted] can be part of the meeting as well.³³

On May 20, 2022 at 11:21 a.m., the Petitioner sent [Principal] an email:

It seems you have no idea of what is going on. Can you understand that [Student] has been traumatized TWICE by people that told us "we want to help". [redacted] has been betrayed by [redacted] SD that covered up an alleged bullying incident in [redacted] S. Now [redacted] has been betrayed by your staff at [redacted] S. You promised one-on-one instructions but could not do anything when [Dr. [redacted] and Ms. [redacted]] put [redacted] in the general classroom (knowing that that triggers [redacted] anxiety). That is why they

³¹ Exhibit P8, page 3.

³² Exhibit P8, page 2.

³³ Exhibit P8, page 2.

did it again and that is why they are under investigation and, that is why we had to withdraw [REDACTED] from [REDACTED]S. Your suggestion: "We can also make arrangements to come to your home for a visit." is a clear example that you have no idea of how serious trauma is. No parents with a clear mind will invite the people responsible for traumatizing their child to their home. Besides, you cannot help. You have no real authority. The only one with real authority is [Superintendent] who is not willing to help. The fact that you sent us "TEAM links" for [Student] to attend classes online is another clear example that you do only what is best for [REDACTED]SD. You know very well that [Student] performed poorly attending online learning during the pandemic. You know very well that Virginia Virtual did not work for [Student]. Now, offering "TEAM links", is just a waste of time that only denies [Student] a proper and safe educational environment. You and [REDACTED]SD administrators are only offering things that do not really help [Student] but on the contrary hurt [REDACTED] at the academic level. In the past I told you, the IEP team and other [REDACTED]SD administrators: "if you really want to help [Student] provide one-on-one instruction during a transition period to allow [REDACTED] to be comfortable to later join the general classroom". That never happened. Now, I am telling you: "If you really want to help [Student], [REDACTED]S needs to step away from [Student], the IEP team needs to convince [Superintendent] to allow her to start fresh in an alternative place. [REDACTED]SD has the resources to help [Student] but the IEP team does not want to use them."³⁴

The Student did not take the May 2021 SOL tests at [REDACTED]S. The Director was not aware of any reason why the Student could not go to [REDACTED]S to take the tests in person.³⁵ The Director had no record of any kind of trauma or PTSD for the Student.³⁶ The record does not contain any documents from the Petitioner asking that the Student be moved to another school for in-person education.³⁷

Respondent did not let the Student take the SOL tests at another school because it was not required. The Director believed the School Division was fully able to administer the test and meet all of the Student's accommodations at [REDACTED] School.³⁸

³⁴ Exhibit P8, page 1.

³⁵ Transcript page 144.

³⁶ Transcript page 224.

³⁷ Transcript page 267.

³⁸ Transcript page 139.

The Student is in the eighth-grade.³⁹ ■ is not eligible to take the seventh-grade SOL tests. A student must be enrolled in the seventh-grade in order to take the seventh-grade SOL tests.⁴⁰

Attendance

Before October 21, 2021, the Student was attending school in person.⁴¹

The Student was enrolled in Virtual Virginia from October 26, 2021 to April 20, 2022.⁴² Virtual Virginia is a State-run program that ■ students had the opportunity to use if they were not comfortable coming back to school due to COVID. It was not a ■ School Division program.⁴³ Virtual Virginia was offered to the Student and she took advantage of Virtual Virginia during the last school year.⁴⁴ The Student was removed from the program because of a lack of ■ logging in and doing any of ■ work.⁴⁵ ■ was removed from Virtual Virginia in February or March of 2022.⁴⁶ When the Student was unenrolled from Virtual Virginia ■ had the opportunity to return to ■ School Division.⁴⁷ ■ School Division planned for the Student to return in person but with opportunities to participate in ■ instruction virtually as well in order to meet the special education services outlined in the stay-put IEP.⁴⁸ The Student did not participate in the instruction virtually. ■ did not log into the virtual services.

The Student was enrolled in the summer academy in the summer of 2022, but only attended a few of the days.⁴⁹

³⁹ Transcript page 145.

⁴⁰ Transcript page 88.

⁴¹ Transcript page 171.

⁴² Exhibit SB page 71.

⁴³ Transcript page 108.

⁴⁴ Transcript page 107.

⁴⁵ Transcript page 108.

⁴⁶ Transcript page 135.

⁴⁷ Transcript page 109.

⁴⁸ Transcript page 110.

⁴⁹ Transcript page 185.

The Student has not been enrolled in the [REDACTED] School Division for the school year beginning in 2022. [REDACTED] parents enrolled [REDACTED] in private school.⁵⁰ [REDACTED] was disenrolled from the private school because [REDACTED] only attended school about three of the 15 or 16 days [REDACTED] was enrolled. The Student is now in an online school.⁵¹

The Director did not believe there was any special education reason for the Student to attend a school other than [REDACTED] S. Respondent did not have an agreed upon IEP where those services could be delivered at another school. In addition, the Student must be a good standing. There are concerns about the Student's attendance and discipline.⁵²

The Director did not believe the Student would be traumatized by going to [REDACTED] S. The Director believed the Student's reluctance to attend school was not specific to [REDACTED] School. The Student demonstrated that behavior in multiple settings and to send her to another middle school was just going to create this problem in another setting according to the Director. Respondent was fully able and ready to provide support for the Student at [REDACTED] S.⁵³ For example, [REDACTED] had the virtual link set up, and had worked with the family and was able to implement special education services. The Director had no information from the special education team that would require the Student's placement at another public day school.⁵⁴

Proposed September 6, 2022 IEP

An IEP was proposed at an IEP meeting on September 6, 2022.⁵⁵

[REDACTED] School Division has not implemented the proposed IEP because the Petitioner has not given consent to implement the IEP. Respondent cannot implement the IEP without parental consent.⁵⁶

The Director was familiar with the Students educational needs. The Director reviewed the proposed IEP and believed the IEP was appropriate to address the Students educational needs. She believed the services and support, the goals,

⁵⁰ Transcript page 112.

⁵¹ Transcript page 112.

⁵² Transcript page 148.

⁵³ Transcript page 149.

⁵⁴ Transcript page 236.

⁵⁵ Transcript page 94.

⁵⁶ Transcript page 91.

and accommodations listed met the Student's needs to make progress in the educational program.⁵⁷ The School Division was proposing that the Student receive in-person services as the most preferred method of instruction for the Student because the Student had a history of not being successful in virtual settings.⁵⁸

On September 7, 2022 at 7:35 a.m., the Principal sent Petitioner an email:

I am following up. When the IEP dated 2/26/2021 was agreed upon, it was based on your request for all virtual instruction for [Student]. The request was not for partial virtual instruction and in no way does the IEP reflect partial virtual instruction. As such, in accordance with the last agreed upon IEP, all general and special education instruction will continue to be virtual. Please note that █SD has proposed multiple new IEPs with all in-person instruction within the inclusion setting where [Student] can benefit from both general and special education instruction. Should you wish to pursue mediation as to the proposed IEP please complete the attached form. Thank you.⁵⁹

On September 7, 2022 at 7:51 p.m., the Petitioner sent Principal an email stating, in part:

The "last agreed upon IEP " clearly indicated that [Student's] placement was █S (See page 18) in-person. Otherwise, how can "*█ will participate, at █ assigned zoned middle school. in all non-academic activities, such as lunch, recess, and fieldtrips with █ non-disabled peers*". As of today, hologram technology, the only option for remote participation in those activities is science fiction.⁶⁰

Respondent presented Petitioner with a proposed IEP Amendment Without a Meeting Form. The description of the amendment was:

This document serves as an amendment to [Student's] IEP dated 2/26/2021, which was the last IEP that the parent(s) provided consent to implement. █ School Division is proposing that [Student] return to in person instruction for the 2022-2023 academic school year.

⁵⁷ Transcript page 96.

⁵⁸ Transcript page 150.

⁵⁹ Exhibit P16.

⁶⁰ Exhibit P16.

The rationale for the amendment was:

Although the services offered through both the last agreed upon and last proposed IEPs remain available to [Student] (with parent consent), the parents have not granted consent to either option. As an alternative to these two options, █SD proposes an IEP amendment which only changes [Student's] February 26, 2021 services and placement from a virtual platform to the public-school setting. This proposal is being made so that [Student] can begin attending the public school as soon as possible upon receiving parental written consent to the IEP amendment, and while the parents and █SD work through the parents' concerns related to the proposed annual IEP.⁶¹

Accommodations included:

Extended time on Assignments (not to exceed one instruction block)
Flexible Schedule: Prompt to take breaks every 30 minutes during testing.

Meet with School counselor or trusted adult when requested by student.

Provide [Student] a copy of notes during note taking session.

Provide breaks throughout the school day (especially if [Student] appears anxious)

Seat near instruction

Setting: Small group Testing for state and district assessments: quiet environment to minimize distractions.⁶²

The Director sent Petitioner a letter dated September 16, 2022 stating:

As you are aware, [Student's] last agreed upon IEP, dated February 26, 2021, provides services through a virtual platform. It is my understanding that you have not granted consent to the most recently proposed IEP, which would serve [Student] in public school. The services offered through both the last agreed upon and last proposed IEPs remain available to [Student] with your consent, although it is my understanding that you do not agree to either option. As an alternative to these two options, █SD proposes an IEP amendment which only changes [Student's] February 26, 2021 services and placement from a virtual platform to the public-school setting. The IEP amendment is enclosed. █SD proposes to amend

⁶¹ Exhibit P13.

⁶² Exhibit P13.

the last IEP without an IEP meeting pursuant to 8 VAC 20-81-110(B)(9).

If you give consent to the IEP amendment, the goals, accommodations, and services from the last agreed upon IEP dated February 26, 2021, 2021 will be implemented in the public school. This proposal is being made so that [Student] can begin attending the public school as soon as possible upon receiving your written consent to the attached IEP amendment. You and █SD can continue to work through your concerns related to the proposed annual IEP, but this amendment will allow [Student] to return for in-person instruction in the interim. █SD cannot implement this IEP amendment until you return the IEP amendment with your written consent. Please contact me if you have questions about the provisions of the IEP amendment. If you require an IEP meeting, then please let me know.⁶³

Retaliation Allegation

Petitioner presented exhibits relating to his assertion that he had been denied access to █ School. This issue did not relate to an issue before the Hearing Officer so the Hearing Officer will not address those exhibits.

CONCLUSIONS OF LAW

Virginia administrative regulation defines free appropriate public education. 8 VAC 20-81-10 provides:

"Free appropriate public education" or "FAPE" means special education and related services that: (34 CFR 300.17)

1. Are provided at public expense, under public supervision and direction, and without charge;
2. Meet the standards of the Virginia Board of Education;
3. Include an appropriate preschool, elementary school, middle school or secondary school education in Virginia; and
4. Are provided in conformity with an individualized education program that meets the requirements of this chapter.

Respondent was required to provide the Student with SOL testing as part of a free appropriate public education. SOL testing was provided at public expense, met the standards of the Virginia Board of Education, included appropriate middle school education in Virginia, and was specifically mentioned in the Student's stay-put IEP.

⁶³ Exhibit P12.

Respondent argued:

the School Division has previously issued an objection to the issue pending before the Hearing Officer with regard to SOL testing, as the parent has not raised an issue under the IDEA, as this issue does not pertain to the identification, evaluation, or educational placement of the student, nor does it pertain to the provision of a free, appropriate public education.⁶⁴

Respondent's argument fails based on the facts of this case. The stay-put specifically mentions SOL testing. Indeed, all four criteria of 8 VAC 20-81-10 are met.

Petitioner's Allegations

Petitioner makes several allegations:

[1] The student [Student] was denied to take the SOL test while attending ██████████ School (████S).

[2] I asked several times to [Director] and [Principal] to allow ████ to take the SOL testing in another school because █████S became a hostile environment to our family and ████ was intentionally traumatized by two special education teachers.

[3] As of today, our allegations about these special education teachers were not properly investigated (and later ignored by [the Superintendent]) and therefore

[4] █████S is still a hostile environment that triggers avoidance behavior in [Student].

[5] Because [Student] could not take the SOL test ████ cannot enroll in Free Online Public School and we were forced to enroll [Student] in Private School. Under VA laws, the denial of SOL test "Caused a deprivation of educational benefits."⁶⁵

In his opening statement, Petitioner stated:

The first thing I would like to highlight is the fact that my ██████████ was denied an SOL test, and that's why we are here. So this meeting is about the denial of the SOL test, and that was denied in several ways.⁶⁶

⁶⁴ Transcript page 9.

⁶⁵ Exhibit P1, page 2.

⁶⁶ Transcript page 6.

Allegation 1: “The student [Student] was denied to take the SOL test while attending ██████████ School (█████S).” This allegation fails because on May 18, 2022, the Principal sent Petitioner an email stating, “I hope ██████ will join us for SOL testing. FOA 7 on Friday 5/20 @ 11:30 Reading 7 5/24 also @ 11:30.”⁶⁷ The Student was not denied the opportunity to take SOL testing at ██████████ School.

Allegation 2: “I asked several times to [Director] and [Principal] to allow ██████ to take the SOL testing in another school because ██████S became a hostile environment to our family and ██████ was intentionally traumatized by two special education teachers.” Petitioner established that he asked that the Student be allowed to take the SOL tests in another school. On May 20, 2022 at 12:13 p.m., the Petitioner sent Principal an email, “Please provide an alternative safe environment for [Student] to take these tests.” Petitioner did not establish that ██████S became a hostile environment and that the Student was intentionally traumatized by two special education teachers. Respondent’s Chief Human Resource Officer investigated the Petitioner’s allegations about two employees and concluded the Petitioner’s allegations were unfounded. Grievant did not present evidence showing how the two special education teachers traumatized the Student. The Petitioner did not present testimony showing the details of the behavior the two employees supposedly engaged in that caused the Student trauma. The only witness who testified did not believe the Student had been intentionally traumatized by two employees.

In this case, the Petitioner asked Respondent to provide an alternate testing location because the Student would be traumatized by going to ██████S. Respondent could have and should have investigated the issue immediately. If Respondent had concluded another location would be better suited for the Student, the Respondent should have allowed the Student to take the SOL tests at that other school. Respondent’s failure to investigate and consider moving the Student’s testing location is not a denial of a free appropriate public education because (1) Respondent established that the Student could take the SOL tests at ██████S, and (2) no testimony was presented showing that the Student could not take the SOL tests at ██████S. There was no evidence presented during the hearing, that would allow the Hearing Officer to conclude the Student had to be tested at another location.

Allegation 3: “As of today, our allegations about these special education teachers were not properly investigated (and later ignored by [the Superintendent]).” Respondent conducted an employee investigation of two employees at ██████████ School in response to Petitioner’s complaints. The Respondent’s Chief Human Resource Officer based the investigation on allegations submitted by the Petitioner on May 4, 2022, confirmed with a telephone call on May 12, 2022, and during an interview on May 26, 2022. The Chief Human

⁶⁷ Exhibit P8, page 3.

Resource Officer issued a written disposition on August 22, 2022. The Chief Human Resource Officer found, in part:

I find school staff complied with the requests made by [Student's Mother] and [Petitioner]. While these requested changes may have contributed to increase anxiety levels, the claim that the school intentionally caused them is not supported by verifiable facts. *** This report finds that the mistrust [Petitioner] and [Student's Mother] demonstrated is likely due to a lack of understanding of middle school scheduling parameters; prior negative experiences with the educational system; a lack of understanding of the inner workings of K-12 public schools; and a deep seated suspicion of teachers, school administrators, division staff, the superintendent, and the [REDACTED] elected school board that is substantiated by the numerous negative social media posts referenced above.⁶⁸

Allegation 3 is not supported by the evidence. Respondent investigated Petitioner's allegations regarding two [REDACTED]S employees. Simply because Petitioner does not agree with the findings of the investigation does not mean the allegations were "not properly investigated." The Chief Human Resource Officer did not testify. Petitioner did not present evidence that the Chief Human Resource Officer failed to understand the nature of Petitioner's allegations or disregarded material information about the two employees. In addition, Respondent's obligation to provide a free appropriate public education does not require it to conduct investigations of employees. Failure to properly investigate allegations against school employees would not in itself result in the denial of a free appropriate public education.

Allegation 4: "[REDACTED]S is still a hostile environment that triggers avoidance behavior in [Student]." There is little doubt that Petitioner strongly believes this allegation to be true. Petitioner's belief, however, is not evidence that the allegation is true. Evidence of a hostile environment and avoidance behavior could have been presented through (1) testimony from the Student, (2) testimony of others such as the Student's mother and father or friends who had observed the Student's "avoidance behavior", or (3) testimony or medical notes from a medical professional who had evaluated the Student and concluded [REDACTED]S was a hostile environment for the Student. The only testimony presented was from the Director who did not agree with Petitioner's belief. Petitioner has not established that [REDACTED]S is a hostile environment that triggers avoidance behavior by the Student.

Allegation 5: "Because [Student] could not take the SOL test [REDACTED] cannot enroll in Free Online Public School and we were forced to enroll [Student] in Private School." This allegation is not supported by the evidence. Because the Petitioner has not established that [REDACTED]S was a hostile environment that triggered the

⁶⁸ Exhibit P18.

Student's avoidance behavior, Petitioner has not established that the Student could not take the SOL test at █S. Indeed, the only witness testified that the Student could have taken the SOL tests at █S. Petitioner did not testify that the Student could not be enrolled in a Free Online Public School. He did not present testimony showing that he was forced to enroll the Student in Private School. Petitioner presented exhibit P3 which appears to be a screen shot of a website stating, "Your student will not be eligible or enrollment with our school at this time." Petitioner did not present any testimony explaining the significance of this exhibit.

Relief Requested

Petitioner seeks a proposed resolution "to allow [Student] to take the SOL test in another place (not in █S)."⁶⁹ The evidence showed that it is not possible to grant the relief the Petitioner's seeks. In order to take the seventh-grade math and reading SOLs, the Student would have to be enrolled in seventh-grade. The Student is enrolled in eighth-grade and, under the State's requirements, the Student would not be eligible to take seventh-grade SOL tests.

Placement

Based on the evidence presented, the Student's placement should be at █ School, a public day school. Based on the Director's testimony, █ School is best suited to provide in-person and virtual to the Student in a public day school setting. The Petitioner did not present any evidence showing that the Student would be assigned to another school that could provide █ with appropriate special education services.

September 6, 2022 IEP

Respondent seeks implementation of the September 6, 2022 proposed IEP. This request is denied for several reasons. First, the elements of the IEP have not been presented in sufficient detail for the Hearing Officer to confirm the proposed IEP is in the best interest of the Student even though the Director's opinion was that the proposed IEP would meet the Student's special education needs. Second, the Respondent intends to transport the Student by regular bus while the Petitioner wanted the Student to receive "door to door" transportation. The Hearing Officer is unsure whether the Student, an Autistic student, would require additional transportation to be taken to and from school for in-person attendance. Third, the proposed IEP provides for the accommodation of "Meet with school counselor or trusted adult" with the frequency of "As requested by student."⁷⁰ It is unclear how often an Autistic student would request to meet with a school counselor even when

⁶⁹ Exhibit P1, page 2.

⁷⁰ Exhibit SB page 82.

the student needed to do so. Fourth, according to the Petitioner there is another pending hearing in which the proposed 2022 IEP will be discussed.⁷¹

ORDER

Petitioner's request for relief is **denied**. Respondent's request to implement the proposed September 6, 2022 IEP is **denied**.

Dated: December 23, 2022

s/ Carl Schmidt

Carl Schmidt
Hearing Officer
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APPEALS

Each party has the right to appeal this decision within 180 days to State Circuit Court or within 90 days to Federal District Court from issuance of the decision.

Copies to:



LaRana Owens, Esquire
Reggie Frazier, Esquire
Ms. Kathryn Jones, VDOE

⁷¹ Transcript page 97.