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OFFICE OF ADMINISTRATIVE HEARINGS
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STATE OF NORTH CAROLINA

COUNTY OF ONSLOW

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
23 EDC 03873

[redacted] (minor) by parents [redacted] & [redacted] Petitioner, v. Onslow County Schools Board Of Education Respondent.	**FINAL DECISION GRANTING PETITIONERS' MOTION TO DISMISS BUT WITH PREJUDICE & ORDERING SANCTIONS IN FAVOR OF RESPONDENT**

THIS MATTER came on for hearing before the Honorable Karlene S. Turrentine, Administrative Law Judge presiding, on November 30, 2023, in Wilmington, New Hanover County, North Carolina. Petitioner-parent [redacted] was present and *pro se*. Respondent was represented by counsel, Attorney Carolyn Murchison of Tharrington Smith, LLP with Respondent Board's Representatives: Dr. Christopher Barnes, Dr. Barry Collins and Ms. Misty Williams.

APPEARANCES

For Petitioner: Petitioner [redacted]
Appeared *Pro Se*

For Respondent: Carolyn Murchison,
Tharrington Smith, LLP
Attorneys for the Respondent

WITNESSES

For Petitioner: [redacted]

For Respondent: Christine Hogan, Respondent's Exceptional Children ("EC") Program Development Coordinator
Denise Collins, Respondent's former Digital Learning & Teaching Facilitator (& wife of Dr. Barry Collins)
Julie Barnes, Respondent's EC Program Coordinator (& wife of Dr. Christopher Barnes)
Melissa Oakley, Onslow County School Board Member
Officer Phillip Williams, Jacksonville Police Department

(& husband of Misty Williams)
Brent Anderson, Respondent's Chief Communications Officer
Jeff Pittman, Respondent's Chief Technology Officer
Dr. Barry Collins, Superintendent of Respondent
Dr. Christopher Barnes, Respondent's Chief Executive Officer

EXHIBITS

For Petitioner: None.

For Respondent:

EXHIBIT NO.	RESPONDENT'S EXHIBITS ADMITTED WITHOUT OBJECTION
1	Affidavit of Christine Hogan, dated 11/29/2023, 5 pages
2	Affidavit of Denise Collins, dated 11/29/2023, 4 pages
3	Affidavit of Julie Barnes, dated 11/29/2023, 4 pages
4	Affidavit of Melissa Oakley, dated 11/29/2023, 3 pages
6	Affidavit of Lowell Murchison, dated 11/29/2023, 3 pages
7A	Facebook messages to Onslow County Schools official Page on 2/1/2022 and 9/23/2022, 1 page
7B	Email Subject: FW: Follow-up, 4/20/2022, 3 pages
7C	Email Subject: FW: Staff, 8/29/2022, 12 pages
7D	Email Subject: RE: [redacted] vs. Onslow, 9/15/2022, 2 pages
7E	Email Subject: RE: [redacted] vs. Onslow, 9/15/2022, 3 pages
7F	Email Subject: RE: [redacted] vs. Onslow, 9/15/2022, 1 page
7G	Email Subject: RE: [redacted] vs. Onslow, 9/15/2022, 3 pages
7H	Email Subject: RE: [redacted] vs. Onslow, 9/15/2022, 2 pages
7I	Email Subject: RE: Scheduling the evalatuions (sic), 9/19/2022, 3 pages
7J	Email Subject: FW: Asynch Course Items & Questions, 9/19/2022, 1 page
7K	Email Subject: Text Messages, 2/17/2023, 1 page
7L	Email Subject: RE: My daughter, 3/20/2023, 1 page
7M	Email Subject: RE: Meeting Tomorrow- 8/16/23, 8/15/2023, 2 pages
7N	Email Subject: Re: OCS recording [redacted] in her Pajamas, 8/31/2023, 1 page
7O	Email Subject: FW: [redacted], 9/05/2023, 1 page
7P	Email Subject: [redacted] vs Onslow, 2/18/2023, 2 pages
7Q	DM between [redacted] and board member M. Oakley, 8/20/2023, 1 page
8A	Direct Message via Facebook to the fiancée of Tia Aunkst, 08/30/2022, 2 pages
8B	Text messages to the wife of Dr. Barry Collins, 3/10/2022, 1 page
8C	Text messages to a Speech Therapist for Onslow County, 3/10/2022, 2 pages

8D	Text messages to Denise Collins, the wife of Dr. Barry Collins, 8/29/2022, 1 page
8E	Text messages to Julie Barnes, the wife of Dr. Chris Barnes, 8/30/2022, 1 page
8F	Direct Message via Facebook to Dr. Chris Barnes, 8/30/2022, 1 page
8G	Screenshot of family members of Dr. Chris Barnes, 4 pages
9A	Various Text messages, 8/29/2022, 6 pages
9B	Various Direct Messages via Facebook forwarded from Amy Commish to Dr. Chris Barnes, 8/30/2022 through 08/31/2022, 1 page
9C	Chat Message from Steve [redacted] undated, 1 page
10A	Email Subject: FW: Finals, Course Replacements, CIDD, 1/12/2023, 6 pages
10B	Minnesota Multiphasic Personality Intventory(sic)-2-Restructured Form, 4-19-2018, 1 page
10C	Email w/attachments Subject: Letter, 10/19/2023, 2 pages
11A	Email Subject: OCS recording [redacted] in her Pajamas, 8/31/2023, 1 page
11B	Email Subject: Fwd: Secret recording, 8/31/2023, 2 pages
11C	Email Subject: Inappropriate record OCS, 8/31/2023, 4 pages
11D	Email Subject: Re: OCS recording [redacted] in her Pajamas, 8/31/2023, 1 page
11E	Email Subject: School Recording, 8/31/2023, 2 pages
11F	Email Subject: FW: OCS recording [redacted] in her Pajamas, 8/31/2023, 2 pages
12A	Email Subject: [redacted] v. Onslow, 3/07/2022, 3 pages
12B	Email Subject: Documents, 5/04/2023, 1 page
12C	Email Subject: [redacted] v Onslow, 9/01/2022, 3 pages
12D	Email Subject: Re: Facilitated meeting, 8/19/2023, 1 page
12E	Email Subject: Re: Facilitated meeting, 8/17/2023, 5 pages
12F	Email Subject: FW: [redacted] 8/30/2023, 5 pages
12G	Email Subject: Re: attendance, 9/12/2023, 4 pages
13	Email Subject: Request for IEE, 8/17/2023, 4 pages
14A	Email Subject: Hi, 10/18/2023, 3 pages
14B	Email Subject: Hola, 10/18/2023, 1 page
14C	Email Subject: Latest News, 10/18/2023, 1 page
14D	Email Subject: FW: Letter, 10/24/2023, 1 page
15	Email Subject: Fwd: Pleading Accepted On Case: 23EDC03873, 8/30/2023, 28 pages
16	March 28, 2022 Order Granting Respondent's Motion to Strike and Motion for Amended Notice Setting Hearing (22 EDC00832), 6 pages
17	Email Subject: RE: Rescind OOD Letter for [redacted] [redacted] 8/31/2022, 12 pages
18	Criminal Docket Sheet, Commonwealth of Pennsylvania v. [redacted] Scott [redacted] Docket Number: MJ-0200-1-CR-0000469-2018, 7 pages
19A	Email Subject: Fwd: e-OAH eervice: A Document (Motion for Sanctions) has been filed in case: 23EDC03873, 11/03/2023, 1 page

19B	Email Subject: Re: Stephanie replied in 05 Math Grade 10 Support [redacted] Sem1 23-24, 11/03/2023, 1 page
19C	Email Subject: Email 11.3.2023, 11/03/2023, 5 pages
19D	Email Subject: FW: test, 11/05/2023, 2 pages
19E	Email Subject: Re: Settlement Proposal, 11/05/2023, 3 pages
19F	Email Subject: FW: Grade Manipulation ONSLOW COUNTY, 11/05/2023, 1 page
19G	Email Subject: FW: [redacted] S, 11/05/2023, 1 page
19H	Email Subject: RE: Math Progress report, 11/06/2023, 2 page
19I	Email Subject: FW: Grade Manipulation ONSLOW COUNTY, 11/05/2023, 1 page
19J	Email Subject: Email 11.3.2023, 11/03/2023, 2 pages
19K	Email Subject: FW: [redacted] S, 11/05/2023, 2 pages
19L	Email Subject: OCS, 11/05/2023, 1 page
19M	Email Subject: FW: Your wife, 11/05/2023, 2 pages
19N	Email Subject: FW: Grade Report, 11/05/2023, 1 page
19O	Email Subject: Picture, 11/05/2023, 1 page
19P	Email Subject: Re: Science final [redacted] 11/06/2023, 1 page
19Q	Email Subject: Re: e-OAH eService: A Document (Response) has been filed in case: 23EDC03873, 10/24/2023, 1 page
EXHIBIT NO.	**RESPONDENT'S EXHIBITS ADMITTED OVER PETITIONER'S OBJECTION -THOUGH NOT FOR THE TRUTH OF THE MATTER ASSERTED-**
5	Affidavit of Tia Zulu, dated 11/29/2023, 6 pages

PRELIMINARY MATTER

The hearing began at 10:00 a.m. and concluded at approximately 5:46 p.m. Although this matter began with a Petition alleging Respondent failed to provide a free and appropriate public education ("FAPE") to the minor child at issue, Petitioners sought to dismiss their Petition prior to this motions' hearing. No court reporter was present to record the hearing. An audio recording of the proceeding was created by a NC Office of Administrative Hearings' ("OAH") hearing assistant, but that individual failed to realize the audio recording equipment was malfunctioning by stopping and starting or skipping throughout the hearing.

Thus, while the audio recording is very useful, it failed to capture all comments, testimony, and dialogue during the hearing itself due to the malfunctioning equipment. The length of the recording from that day is five hours and fifty-four minutes. Thus, the audio recording is just one hour short of the actual length of the hearing. A transcript of the proceeding based on this audio recording was created by a third-party, which transcript represents only a partial record of the November 30, 2023, hearing. Moreover, the transcriptionist has likewise made some errors in the transcription process, such as incorrectly attributing comments made by the Undersigned to Respondent's counsel and vice versa. Therefore, in addition to relying on the transcript, the Undersigned has also relied on the audio recording of the proceeding, as well as her own notes and recollection to reach the decisions herein made.

ISSUES BEFORE THE TRIBUNAL

The following motions were noticed for hearing and heard on November 30, 2023:

a) Petitioners' Motion to Compel educational records pursuant to FERPA, filed November 27, 2023;
b) Petitioners' Motion to Dismiss contested case, filed November 8, 2023;
c) Respondent's Motion for Sanctions, filed November 3, 2023; and,
d) Respondent's Amended Motion for Sanctions with attached Exhibit ("Amended Motion"), filed November 8, 2023;

The substance of the underlying FAPE case was not addressed.

BURDEN OF PROOF

"The administrative law judge shall decide [each contested] case based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency." N.C.G.S. § 150B-34(a). Thus, the standard of proof is by a preponderance of the evidence. *See Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005). North Carolina provides that actions of local boards of education are presumed to be correct and "the burden of proof shall be on the complaining party to show the contrary." N.C.G.S. § 115C-44(b). The Petitioners have the burden of proof on their filed motions, and the Respondent has the burden of proof on its filed motions.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, along with documents and exhibits received and admitted into evidence and the careful review of the entire record in this proceeding, the Undersigned makes the following Findings of Fact. In making the Findings of Fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witnesses, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know, or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case. Thus, pursuant to N.C.G.S. § 150B-33(b)(10) and N.C.G.S. § 150B-34(a), Undersigned hereby makes the following:

FINDINGS OF FACT

Relevant Procedural History

Unless specifically contradicted, this Order incorporates and reaffirms all Findings of Fact and Conclusions of Law contained in previous Orders entered in this litigation.

1. This contested case began with Petitioners' Petition filed August 28, 2023[1], in which Petitioners assert that they are petitioning for relief from actions by Respondent Onslow County School Board of Education ("Respondent" or "BOEd") which caused the minor child, Andy to be deprived of a Free Appropriate Public Education ("FAPE") beginning "June 1, 2023[] to present, for the end of the 2021/2023 [sic] and 2023/2024 school years." Petition, p.1.

2. The relief sought by Petitioners in the Petition included:

> "Respondent will provide the mentioned progress monitoring report and any other withheld documents[;]
>
> …[R]espondent will file for a facilitated IEP Meeting or mediation within five days of receipt of this petition[which] meeting will not end until the parents confirm their input is complete[;]
>
> …[R]espondent will assist and afford [Andy] to visit multiple times the two high schools she desires to possible [sic] attend[;]
>
> …[R]espondent will correct the defects in the IEP regarding describing the least resistance [sic] environment[;]
>
> …[R]espondent will not block communication between [Andy] and school staff, administration, and school board members[;]
>
> …and several…] if [Andy]…choses [sic] [or] selects…the[n] respondent will…." Petition, Proposed Resolutions, ¶1-17.

3. On August 31, 2023, Dad filed two (2) separate emails alleging Respondent had refused to sign for the Petition he mailed. Dad provided the United States Postal Service ("USPS") tracking number as: 7022 2410 0000 0305 2288. However, the Tribunal takes official notice that USPS tracking information (reflected below) reveals that Respondent's agent "picked

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[1] The NC Office of Administrative Hearings' Clerk opened this case with the following caption: [redacted] (minor) by parents [redacted] & [redacted] v. Onslow County Schools Board of Education. However, [redacted] father's initials are [redacted] *not* [redacted] Because of the Clerk's original mistype, "[redacted] has been utilized throughout the record as much or perhaps more than "[redacted]" to delineate [redacted] father. Nevertheless, both "[redacted] and "[redacted] in the record refer to [redacted] father. The Tribunal further notes that [redacted] father has filed some documents delineating himself as "[redacted] as well.

From here on throughout this Final Decision, for ease of reading, Petitioner [redacted] shall be referred to as "Andy", Petitioner [redacted] as "Mom" and, Petitioner [redacted] as "Dad".

[the Petition] up at postal facility" on September 1, 2023, at 10:35 AM in Jacksonville, North Carolina:

Track USPS package www.usps.com
USPS package #70222410000003052288
Delivered: Fri, Sep 1, 10:35 AM

Processed		In transit	Delivered
DATE	TIME	LOCATION	STATUS
Sep 1	10:35 AM	Jacksonville, NC, United States	Delivered, individual picked up at postal facility
Aug 30	7:58 PM	Jacksonville, NC, United States	Redelivery scheduled for next business day
Aug 30	7:14 AM	Jacksonville, NC, United States	Out for delivery
Aug 30	7:03 AM	Jacksonville, NC, United States	Arrived at post office
Aug 30	2:12 AM	Fayetteville NC Distribution Center Annex	Arrived at USPS regional facility

Thus, there is no record in the USPS tracking system to support that Respondent rejected or refused Petitioners' mail.

4. Respondent received a copy of the Petition on September 1, 2023, as signified by the Respondent's acknowledgment filed September 6, 2023.

5. On September 6, 2023, Respondent filed a Motion for Extension of Time to Respond to Petition. That same day, the Tribunal issued an Order Extending Respondent's Time to Respond to Petition until Monday, September 18, 2023, at 5:00 p.m. (This Order specifically noted that Respondent's time to notice insufficiency was not thereby extended.)

6. On September 13, 2023, the parties filed their fully executed Due Process Resolution Meeting Form in which they agreed to waive Resolution meeting and participate in mediation instead.

7. On September 7, 2023, pursuant to N.C.G.S. § 1A-1, Rule 45, N.C.G.S. § 150B-27 and, 26 NCAC 03 .0113, Respondent's counsel issued two (2) Subpoenas, one to Pride in North Carolina Mental Health Services ("PRIDE") and, one to Carolina Institute for Developmental Disabilities ("CIDD") to obtain Andy's mental health records. Respondent filed a copy of the subpoenas in the record on September 15, 2023.

8. On September 15, 2023, Dad filed three (3) motions: a) a "Motion for Protection," b) a "Motion for Protection—Correction"; and, c) a second "Motion for Protection—Correction", all of which the Tribunal accepted together as a Motion to Quash. In the various documents, Dad argues that the subpoenas were not signed by a judge or by Respondent's counsel of record and "petitioners see this as harassment and abuse of power of

respondent's counsel[as t]he request for records will dampen the spirit between [Andy] and treating sources. [Also,] IDEA does not allow the respondent access to medical records." *See* 2nd Motion for Protection—Correction, ¶¶6-9.

9. Respondent filed its Response to Petition on September 18, 2023, and an Amended Response to Petition on September 19, 2023. Therein, Respondent asserts, in pertinent part:

a) That the current Petition, filed August 28, 2023, is the eighth (8th) petition[2] filed by Petitioners against Respondent since March 1, 2022;
b) That Dad's "actions in filing repeat, voluminous actions, both within OAH and in other jurisdictions, are acts of harassment and a hindrance to the District's attempts to serve" Andy; and,
c) That three of the eight contested cases filed by Petitioners were consolidated together and settled through an agreement executed May 11, 2023.

10. On September 19, 2023, Dad filed notice that Respondent's counsel had again subpoenaed records from CIDD[3] as well as Petitioners' Reply & Motion to Strike Respondent's Amended Response to Petition. Dad reasoned Respondent's Amended Response should be stricken from the record "in its entirety…for [Respondent's having] provid[ed] the mediation agreement as evidence." Petitioner's Reply, ¶10.

11. On September 21, 2023, the Tribunal issued an Order for Response to Petitioners' Motion to Quash and Motion to Strike & Order Staying Subpoena Responses.

12. Respondent filed a Motion to Continue Hearing on September 22, 2023, and the Tribunal issued an Order Granting Respondent's Motion to Continue Hearing and Amending Pretrial Scheduling Order on September 25, 2023. That Order moved the hearing from Onslow County to New Hanover County due to a lack of courtroom availability in Onslow County over the next several months.

13. On September 26, 2023, Petitioners filed an Objection to Venue in the new notice of hearing.

14. On September 27, 2023, Respondent filed a Motion to Compel Release of Records & for Protective Orders and Response to Petitioners' Motion to Quash.

15. In its Response to the Motion to Quash Respondent states that although the Subpoenas sent to CIDD and PRIDE were not signed by Ms. Murchison, they were signed by an

[2] As the evidence throughout the hearing shows, this is actually Petitioners' ninth (9th) petition filed since March, 2022.

[3] Respondent's Response to the Motion to Quash advises the Tribunal that CIDD objected to the first subpoena it received "on the grounds that the subpoena had been served on the incorrect process agent. On September 19, 2023, the Board hand-delivered the same subpoena to CIDD's specified process agent. …[Then o]n September 22, 2023, a representative from CIDD contacted counsel for the Board and informed her that CIDD would not comply with the subpoena for records without a court order." *Id.* at ¶7.

attorney on her behalf, as required by N.C.G.S. § 1A-1, Rule 45. *Id.* at ¶11. Respondent further asserts that Andy:

> "…has been diagnosed with Autism and anxiety and has been under the care of…PRIDE…and…CIDD. Petitioners' maintain that the Board has failed to provide A[ndy] with services and accommodations based on her medical and mental health needs. Petitioners also specifically allege that the Board ignored information provided by A[ndy]'s evaluators at CIDD, including testing and evaluations, regarding A[ndy]'s medical and mental health needs for participation in educational services. Petitioners similarly allege that the Board ignored recommendations from PRIDE regarding educational accommodations.
>
> . . .
>
> The Board denies Petitioners' allegations in their Motion to Quash that the subpoenas were issued for the purpose of harassing A[ndy]. The information the Board is seeking from CIDD and PRIDE is directly related to allegations contained in the Petition and is calculated to lead to the discovery of admissible evidence. A[ndy]'s health is at the front and center of this case and is the basis for numerous allegations in the Petition, including the allegations that the Board refuses to rely on information from CIDD and PRIDE providers in developing A[ndy]'s IEP and transition plan.
>
> Petitioners refuse to execute a release permitting the providers to share the requested information with the Board. Without the subpoenaed records, the Board is unable to adequately respond to and defend against numerous allegations in the Petition that relate to A[ndy]'s health and information from CIDD and PRIDE."

Id. at ¶¶3-4, 12-13. Thus, Respondent requested the Tribunal issue an Order compelling CIDD & PRIDE to comply with the subpoenas.

16. Also on September 27, 2023, Petitioners filed a Status Update/Motion which the Tribunal accepted as their Motion for Stay Put. Therein, Petitioners: a) assert that "[a]t no point did the respondent ask for a release of the records of A[ndy;]" and, b) request the Tribunal order Respondent to transfer all of Andy's services from the District to Edmentum.[4] *See* Stay Put Motion, ¶¶14 & 16.

17. On September 28, 2023, Respondent filed its Response to Petitioners' Motion to Strike.

[4] At the time the Motion for Stay Put was filed, all of Andy's general education classes were being taught by Edmentum asynchronously, with her EC classes being virtual (live video). *See* Consent Order on Stay Put, ¶9. Thus, Petitioners' motion was intended to get Andy's EC classes changed from virtual to asynchronous as well—which was not in line with stay put or the "then-current educational placement" as required.

18. On October 2, 2023, in accordance with the parties' agreement, the Tribunal issued Notice of Hearing for: Petitioners': Motion to Quash, Motion to Strike Response and Motion for Stay Put (and for) Respondent's Motion to Compel Discovery.

19. The Undersigned held a Webex Conference with the Parties[5] on October 3, 2023, and, later that same day, issued an Order Resulting from the Tribunal's 10/3/2023 WebEx Conference with the Parties (RE: Venue, Scheduling & Stipulations). It is important to note as reflected in the Order, Dad withdrew Petitioners' Motion to Strike during the conference. *See* Webex Conference Order, ¶5.

20. Pursuant to Dad's insistence that the due process hearing be held in Onslow County despite the fact that the Tribunal would be unable to obtain courtroom space for some 3-4 months, Dad filed a Motion to Continue Hearing on October 4, 2023, which motion was granted.

21. On October 6, 2023, Respondent filed its Response to Petitioners' Status Update/Motion for Stay Put.

22. On October 9, 2023, the Tribunal issued a Protective Order, in compliance with 45 C.F.R. § 164.512(e)(1), to maintain the confidentiality of Andy's confidential and protected health information as well as other records subject to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and, private and confidential student records subject to N.C.G.S. § 115C-402 and the Family Educational Rights of Privacy Act ("FERPA") pertaining to Andy (the subject child of this litigation), which may be produced and/or utilized in the prosecution and defense of this action.

23. Following the motions' hearing on October 6, 2023, the Tribunal issued two (2) orders on October 10, 2023: Order Denying Petitioner's Motion to Quash CIDD Subpoena, and Order Granting Respondent's Motion to Compel & Authorizing CIDD to Produce Discovery Subpoenaed by Respondent. Therein, the Tribunal found and concluded that "The Information sought by Respondent from CIDD is the result of Petitioners' request to Respondent for an Independent Educational Evaluation ("IEE") of A[ndy], for which Respondent contracted and paid. …Respondent requires to know the bases (methodologies, processes, etc.) upon which the IEE was produced." *Id.* at p.1. The Tribunal reserved for later its ruling regarding Petitioner's Motion to Quash the subpoena issued to PRIDE.

24. On October 12, 2023, the Tribunal issued a Consent Order on Stay Put, following the parties' on-record agreement during the October 6, 2023, motions hearing. Since any stay put order is to keep the child in the "then-current educational placement", the Order kept Andy's general education ("gen ed") classes as asynchronous with Edmentum and left the two EC courses as virtual. However, Dad argued he did not want Andy taking EC ELA (English or language arts) until the spring semester when she would also be taking gen ed English as a core class. Respondent did not object and the Tribunal granted the request as part of the stay put order. Consent Order on Stay Put, COL ¶2 and Decretal ¶¶2-6.

[5] As has been true with each of Petitioners' petitions filed in the last two (2) years, Dad is the only active Petitioner—and he was the only Petitioner to attend the Webex Conference and all hearings held in this case.

25. On October 17, 2023, Dad filed Petitioner's Status Update and Motion for Compensatory Services, alleging that Andy received an email "stating Math Services has [sic] been cancelled[]" and asking the Tribunal to award compensatory services. At no point did Dad ever provide proof of the email itself or that the services actually stopped.

26. On October 18, 2023, Dad filed a Motion for Settlement Conference.

27. On October 19 and 20, 2023, Dad sent emails to OAH to be filed in the record alleging Respondent was trying to delay the matter being heard. Then, to the contrary, he complained that Respondent's counsel of record was working on the case while on secured leave.

28. On October 24, 2023, Respondent filed objections by way of its Response to Petitioners' Motion for Settlement Conference. Respondent also filed a Motion to Compel [Dad's] Production of Audio Recording which Dad made of the Parties' facilitated IEP meeting with a NC Department of Public Instruction facilitator on August 16, 2023, without Respondent's knowledge. The motion recounts not less than ten (10) requests to Dad for said recording over the course of three (3) months, with Dad emailing parts of the recording at various times to various people but refusing to produce the entire recording. *Id.* at ¶¶3-19.

29. Also on October 24, 2023, Respondent filed a Motion to Compel Responses to Interrogatories. Attached thereto is a copy of Respondent's first informal discovery request to Petitioners on October 4, 2023. *Id.*, Resp. Exh 2. Also attached thereto is a copy of Dad's emailed response to Respondent's discovery request, dated October 12, 2023. Therein, Dad states, in pertinent part, that: a) Andy's "relationship with her therapist is protected information"; b) As for the audio recording, "I am not in custody or control until after the new year. If this changes I will let [Respondent] know[]"; c) "In previous emails I stated if [Respondent] subpoenaed her med records that was a deal breaker[, s]o the district made a choice[]"; d) "We have an audio recording from last week where…we hear an agreement to ELA services that the judge states that is the way it is going to be."[6] Resp's Motion to Compel Interrogatories, Exh 3. Dad also demanded Respondent produce various emails between various people going back to 2021. *Id.* Thus, from Dad's email, it is clear Petitioners were refusing to respond to the Interrogatories served on them. Yet, Petitioners failed to file any objection to Respondent's discovery requests served on them.

30. Respondent also filed an Amended Response to Petitioners' Motion for Settlement Conference on October 24, 2023, wherein Respondent more vehemently objects to Petitioners' motion and prays the Tribunal deny the same.

[6] The Undersigned Administrative Law Judge was unaware Dad was recording the Webex conference and/or the Parties' motions hearing and, Dad has been ordered more than once that court proceedings are not to be recorded in any manner other than by the assigned court reporter or hearing assistant.

31. Additionally on October 24, 2023, Petitioners filed a Motion to Compel Emails and Text Messages which, based on the language therein, the Tribunal understood to be Petitioners' Motion to Compel Freedom of Information Act ("FOIA") Responses.[7]

32. On October 25, 2023, Petitioners filed Response/Notice of Stipulated Issues, Motion to Strike From Record, and Status Update Violation of Stay Put. Upon review of the motion, the Undersigned deemed it to be Petitioners' Motion for Continuance and Motion to Strike Respondent's Motions and Arguments. Petitioners do not list therein any issues to which they were willing to stipulate.

33. On October 26, 2023, Respondent filed Respondent's Status Update and Motion for Declaration of Issues for Hearing wherein, in pertinent part, Respondent proposes the following three issues for hearing and prays the Tribunal adopt them as "the definitive and exclusive issues for the hearing, and to clarify to the parties that, consistent with 20 U.S.C. § 1415(f)(3)(B), any attempts by Petitioners to raise any other issue will be denied, unless Respondent provides its consent[]":

> 1) Whether Petitioners [redacted] and [redacted] were denied the opportunity to meaningfully participate in the August 16, 2023, IEP meeting, and if so, did this denial lead to a substantive denial of a free appropriate public education for Andy (See Petition pp.6 and 7, ¶¶1-2)
>
> 2) Whether the IEP developed for Andy on August 16, 2023, provides Andy with a free appropriate public education in her least restrictive environment (See Petition p. 10 ¶¶3; 11 ¶¶4; p. 15, ¶ 5; p.18, ¶ 2; p. 20 ¶ 6; p. 23 ¶ 7; p. 25 para 8; p. 28 ¶ 9; p. 31 ¶ 10; p. 33 ¶ 11; p. 38 ¶ 12; 39 ¶ 13; p. 45 ¶ 16); and,
>
> 3) Whether the District improperly restricted Andy's schedule through her assigned classes in a way that denied her an opportunity for a free appropriate public education (Petition page 52 paragraph 14).

Id. at ¶¶32-33.

34. Although 26 NCAC 03 .0107(b) grants a settlement conference be held at the request of any party, 34 CFR § 300.506(b)(1)(i) requires that "[e]ach public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part…must meet the following requirement[…including] ensur[ing] that the mediation process … [i]s voluntary on the part of [both] the parties[.]" *Id.* Therefore, on that basis, Petitioners' request for settlement conference was denied. *See* Order Denying Petitioners' Motion for Settlement Conference, filed October 27, 2023.

[7] In the Order Denying Petitioners' Motion to Compel FOIA Responses, the Undersigned held that FOIA only apply to federal agencies; however, it was made clear that Respondent accepted Dad's request as a public records request and responded accordingly. The Order thereafter held that OAH has no jurisdiction to require compliance thereof. Instead, non-compliance of public records requests must be appealed to the Superior Court. *Id.* at p.1-2, filed 11.29.23.

35. On November 3, 2023, Respondent filed Respondent's Motion for Sanctions, with 166 pages of exhibits, alleging, in part:

> Since their move to Onslow County in November of 2021, and particularly during the course of litigation, [Dad] has sent District staff and counsel ***voluminous emails that are not substantive or relevant*** and ***whose sole purpose is to irritate, taunt, and at times, intimidate***.
>
> Many mornings, staff are greeted by emails in the double digits that had been sent the night before and in the early hours of the morning. Many of these ***emails are repetitive of complaints previously lodged, or are designed solely to taunt the reader, mock another staff member, or make promises of future litigation***.
>
> …[Dad's] communications [are] stressful, exhausting, intimidating, and at times, scary[to the] staff [who] receive the[m].
>
> Because of the tone, content, and volume of [Dad]'s communications, the District has created a central email account to which most of [Dad]'s emails are forwarded for review by the District's Chief Academic Officer, Dr. Chris Barnes. On Friday afternoons, Dr. Barnes sends one response to the emails received over the course of the week which warrant responses. To further insulate District staff from [Dad]'s abuses, undersigned counsel also communicates information to Petitioners on behalf of the District.
>
> When he first came to the District, [Dad]'s ***communications contained incredibly offensive language and promises of future conflict***. The following is just a sampling[8] of the profane, offensive, and upsetting voice mails and emails:
>
> > On January 31, 2022, [redacted] left a voicemail for Dr. Barnes stating the following, as transcribed by Dr. Barnes, "Dr. Barnes, [Dad] here, hey I wanna let you know you're just a real big FUCKING PILE of SHIT.[9] You want me to explain to you. [Dad then recited his phone number]. Thank you."
> >
> > Also on January 31, 2022, [redacted] left a voicemail for Superintendent Dr. Barry Collins stating the following, as transcribed, "***This is protected speech***…you can tell him he is a big fucking file of dishonest bull shit…"
> >
> > On February 1, 2022, [redacted] a message to the official Onslow County Schools Facebook page in which, after referring to Dr. Barnes as a "sick freak," stated, "***I hope his wife and kids know…they will know***

[8] Respondent-counsel's footnote here reads: "Examples of communications that are included in this Motion are copied verbatim from the original message, unless otherwise specified. Typos and other errors are [Dad]'s."

[9] Respondent-counsel's footnote here reads: "Capitalization is for emphasis where [Dad]'s tone of voice became louder or more aggressive."

soon…maybe I will come visit and we can have a discussion about this." Exhibit 1, at 1.

On March 8, 2022, [redacted] left a voicemail for Dr. Barnes stating the following, as transcribed by Dr. Barnes, "Hey your voicemail says you'll call me back but you never do. This is uh [Dad] [phone number]. Me and the district need to have a heart to heart conversation, pretty much the district needs to come to Jesus type of conversation.

On April 20, 2022, [redacted] emailed Dr. Barnes and Superintendent Dr. Barry Collins in response to Dr. Barnes' email about scheduling evaluations, stating, "See this piece of shit is starting again. Treating my daughter like he is her slave owner. Telling when and where to show up like this…Who is this mother fucker think the is talking down to? I am her fucking parent, not this POS." Id. at 2.

Mere minutes later, [Dad] forwarded the aforementioned email to counsel for the Board and stated, "U better get Dr. Barnes in line, he is not going to treat my daughter like he is her slave owner…Dr. Barnes likes to start shit, writing checks his ass cant cash". Id.

On June 10, 2022, [Dad] emailed counsel for the Board and a law clerk for OAH, "You can tell Dr. Barnes and Dr. Collins, they are fucking with the wrong person." Id. at 3.

On August 23, 2022, [Dad] sent a message to the District's official Facebook page asking, "any children die on your hands this week?" Id. at 1.

On August 29, 2022, after A[ndy] attended Richlands High School in person the first and only time and [redacted] ***claimed she was forced to eat lunch on the floor (which is untrue)***[10], [Dad] emailed Dr. Collins, Dr. Barnes, and a Board member, "Either your staff is revengeful or complete fucking idiots," calling Dr. Barnes "a complete asshole," and threatening to "see the District in court." Id. at 5.

Following A[ndy]'s only in-person day at school, [Dad] sent numerous emails on August 30, 2022:

[10] Dad's claim that his daughter was made to eat off the floor was actually alleged in one of Petitioners' earlier contested cases which came before the Honorable Stacey Bawtinhimer here at OAH. After reviewing a video of the alleged incident offered by Dad, Judge Bawtinhimer adjudged the claim was false as the video did *not* support such a conclusion and ordered Dad to cease recounting it. Nevertheless, Dad continued to argue that issue throughout this litigation—even after the Undersigned *also* ordered him to cease bringing it up since the matter had already been litigated and is completely irrelevant to the present contested case.

> [Dad] emailed Dr. Barnes and Dr. Collins the following, in part, "First, Dr. Barnes I hate you!...NOT EVEN CLOSE. NO FUCKING IDIOT WITH ONE SENSE WOULD HAVE THOUGHT THAT. THE 'EVALUATION PROCESS' WAS FOR HER PARENTS (THAT IS US AND NOT YOU) TO EVALUATE [ANDY] IN THE SCHOOL SETTING…STOP FUCKING WITH [ANDY] AND HER SERVICES…Complete bullshit what was done to her…Protected speech under 1st Amendment. So I have to tell you to fuck off about this one. But this is the final time you fucking embarrass my daughter, make her to have a panic attack or attempt to take services away she needs. Happens again I am coming for you and your boyfriend Dr. Collins." *Id.* at 6.
>
> [Dad] emailed Dr. Barnes, Dr. Collins, and the principal of Richlands High School, "All you mother fuckers will be held accountable." *Id.* at 8.
>
> [Dad] emailed Dr. Barnes and school staff and said, "Dr. Barnes, You are a complete douchebag chicken shit mother fucker, who is fucking with wrong person. You will be held accountable." *Id.* at 10.
>
> [Dad] emailed Dr. Barnes, calling him "White trash." *Id.* at 12.
>
> [Dad] emailed Dr. Barnes and Dr. Collins and demanded, "DO you fucking job for once properly you piece of shit." *Id.* at 14.

On September 15, 2022, [Dad] sent the following numerous emails to Dr. Barnes and counsel for the Board:

> "Dr. Barnes, Is using my daughter to get to me. If you need to reach out to Richlands High School for details. But no motherfucker will get away from intentionally harming my daughter. This year is just a repeat of last year. Locking my daughter in a room is asking me to fight. I wont touch them." *Id.* at 17.
>
> "I just want to make sure we are on the same field. You are using my daughter and my family to get to me? I will kindly do the same." *Id.* at 18.
>
> "Oh the morning of testing which we emailed the school and said was not a good day for her to test, but then locked her in a room. We talking about how this Mrs. Barnett knew but did not follow? Are we talking about this day in which she 'could not complete

> and rushed to test' as your email states. It is amazing how the story changes and shows they intended to do harm to my daughter. What piece of shits can sleep at night and do this? Worthless, klan followers." *Id.* at 19.
>
> "All we are asking for is Dr. Barnes to do his fucking job the right way. Integrity and lies towards a disabled child in which has an effect on her, is considered fight provoking in NC. A father has a right to protect his child against the harm Dr. Barnes uses his position to put on my daughter. Be fucking truthful for once you piece of shit. You did emotional harm every time my daughter was in school." *Id.* at 21.
>
> "Are you encouraging Dr. Barnes and the district to lie and emotionally effect my daughter? I hope he fucking chokes on his lunch." *Id.* at 22.
>
> "I am going to tell you one last time, stop fucking with my daughter." *Id*. at 23.
>
> "This is not true. I sent the report to a school psychologist and he disputes your claim. A report will not print, just a report stating invalid if the all the test results are not entered. At no point at the district say that tests were missed. So their lack of integrity is effected my daughter and her needs. This is an act of war. They are using my daughter to get to me, point blank period. I will kindly return the favor." *Id*. at 24.
>
> "We are trying to be reasonable, but we are not seeing that from the district. Nothing but lies…I have a problem as everyone is coming across of following Dr. Barnes' orders. If he feels like a man of attacking a child instead of a man, he has serious issues in which we need to have conversation about." *Id.* at 26.
>
> "Your continuing with the assaults and lies on my daughter are provoking. If they continue to place a part in her emotions and education, your ass is mine. Call the police, they pretty much said what the district is doing is fight provoking." *Id.* at 27.

On September 19, 2022, after the Board filed its response to a petition filed by petitioners, [Dad] emailed Dr. Barnes, Exceptional Children's Director Misty Williams, and counsel for the Board, "I think it is rude and unprofessional to put your words in my daughter's mouth. Who is the mother fucker that said she said I caused the anxiety attack? Complete bullshit and will be addressed at mediation. I guarantee no one from this

law firm will mention that is person. If you don't like how I talk to you, stop your bullshit. Capice." *Id.* at 28.

Also on September 19, 2022, [Dad] emailed Dr. Barnes after receiving the District's response, "After reading the response from the district. The putting words in my daugther's mouth and is fight provoking. If it does not stop, someone is going to need to visit the dentist. Please have it removed." *Id.* at 31.

¶8. **…[Dad]** ***has also contacted staff members and family members of staff members and undersigned counsel on their personal cellphones and social media pages, using profanity*** and sharing his perception of the qualifications of the individuals. These messages included, but were not limited to, the following:

a. On March 10, 2022, a text message to a phone number that [Dad] believed to the be the school psychologist who had attempted to conduct A[ndy]'s evaluation, but was actually a family member's number, stating, among other things, "My goal is to get the state to take away ur license so no other child will suffer." Exhibit 2, at 2.

b. On March 10, 2022, a text message to the Superintendent's wife stating, "So your piece of shit husband allows staff to trick my daughter by saying there is a present in the room and locking the door…My dad's family owns one of the largest newspaper company, making to be a great article. So far we have gotten 63 police officers fired, 226 suspended, 96 teachers suspended or fired, 2 principals, and looking like a school psychologist. Barry is too chicken to join a podcast with us." *Id.* at 3.

c. ***A text message to a District speech therapist's personal cellphone (who was not involved with A[ndy] or Petitioners in any way)*** on March 10, 2022, stating, "I am hearing you were involved with tricking [Andy] into the room just to lock the door behind her. I don't want you near her. It is recorded. I will total use this to get ur license suspended, I know what was done, just want to know why. Were you two going to hold her hostage and not even allow her to eat lunch You disrespected [Andy], and you fucked with the wrong person." *Id.* at 4.

d. ***A text message to the husband of the District speech therapist***, on March 10, 2022, stating, "So ur piece of shit wife was involved tricking my daughter into a room just to lock the door behind her. She knocked on the wrong door. My daughter has autism and anxiety" *Id.* at 5.

e. On August 29, 2022, ***a text message to the Superintendent's wife*** stating, "Your husband is a real piece of shit. Allowing his EC staff to retaliate toward my daughter with autism to the point she had a severe anxiety attack. I dare him to call the police on this one…Real piece of shit

that allowed assholes to attack my daughter…People will be held accountable…Next time my daughter is harmed by his staff in any way, I will have a problem with him as he is the top…So she was made to eat her lunch from the floor. Talk about public embarrassment. Add that to a child with autism and anxiety" *Id.* at 6.

f. On August 30, 2022, ***a Facebook message to the fiancé of the school psychologist who had attempted to conduct Andy's evaluation***, stating, "You know your piece of shit fiancee tricked my daughter into a room by telling her there is a present in the room and locking the door behind her. My daughter was anxiety and autism. I am glad no children will be at your wedding, might lock them in the bathroom…all recorded…i cant wait until the Russians bomb the shit out of this base…You can do so much better…I dont want her any fucking where near my daughter" *Id.* at 1.

g. On August 30, 2022, ***a Facebook message to Dr. Barnes' wife, who is also a District employee***, saying, "Your husband is a complete douchebag…Since you too work for the district contacting u is not off limits." In response, Ms. Barnes stated, "Do not contact me again. Your messages are unwelcome, harassing, and will be turned over to law enforcement." *Id.* at 7. [Dad] then "unsent" the Facebook messages and sent a message stating, "Don't know what you are talking about. I never sent you anything." *Id.* Unfortunately for [Dad], Ms. Barnes had taken screenshots of the original messages and had screenshots showing that [Dad] "unsent" the messages. *Id.* Despite [Dad]'s attempts at gaslighting, the evidence shows that [Dad] did in fact send these messages, and those screenshots are attached here. *Id.*

h. At the same time, on the evening of August 30, 2022, [Dad] sent a ***message to Dr. Barnes's personal Facebook account***, stating, "Douche bag chicken shit motherfu Cher," and "Contacting your wife is not off limits as she too works for the district. Please choke on your dinner tonight so I can piss on your grave and smear crap o your tombstone Please."

Dr. Barnes replied, "The content of this message is threatening and constitutes harassment and cyberstalking. Do not communicate with me or my family through this platform again. I'll now be taking legal action."

In response, [Dad] utilized the "unsend" feature on Facebook messaging to delete the aforementioned messages he had sent. [Dad] then said, "I think you have the wrong person. I did not send u any messages. Did u have some One hack my account as retaliation for filing federal entitled petitions." *Id.* at 8. As with the messages to Ms. Barnes, the original messages and the evidence that the messages were "unsent" was all captured through screenshots. *Id.*

i. ***A text message to undersigned counsel's husband*** on September 19, 2022, stating, "Ur wife is a real piece of shit. Putting totally false information in an autistic child's mouth to hid the fact the district locked her in a room. Her actions are fight provoking."

¶9. [Dad] ***contacted additional staff members and their family members on their personal phone numbers and social media accounts*** with similar messages. It is unclear how [redacted] found the personal contact information of these individuals, and staff who were targeted were placed in fear for their own safety and the safety of their family members.

¶10. …[Dad] once sent a screenshot of his own personal computer desktop to show Dr. Barnes something related to the District's terms of use. Dr. Barnes noticed that ***saved to* [Dad]*'s desktop, there were seven (7) screenshots of photographs of Dr. Barnes and his family, including photographs of Dr. Barnes' young children***. *Id.* at 9-13. …These photographs were taken from Dr. Barnes' personal social media accounts and saved to [Dad]'s computer.

¶11. [Dad]'s attacks on Dr. Barnes have also occurred in the public sphere, such as Facebook pages and Twitter/X.

. . .

¶13. …[Dad] …consistently contends that it is his First Amendment right to harass staff. In an email to counsel for the Board and Dr. Barnes on February 18, 2023, [Dad] asserted that, "You need to explain to Dr. Barnes what is allowed to be sent to his school used cell phone. I can text, 'hey little bitch stop fucking with my daughter.' That is protected speech and related to his job." *Id*. at 38.

¶14. [Dad] also attributes his profane and abusive language and behaviors to his diagnoses of Bipolar Disorder and Personality Disorder, for which he has stated he is not receiving treatment. In fact, in response to a reminder from Dr. Barnes on January 12, 2023, to refrain from inappropriate and abusive language, [Dad] stated, "In regards to the profane and abusive language, I guess you are going to have to learn to accept it from me. I have a ASPD diagnosis (along with others) from a state and federal doctor. For some reason the facility here has not been treating it even after being told to do so. So I guess it is what it is." Exhibit 4, at 1.

. . .

¶17. Eventually, after numerous demands from District staff and undersigned counsel, [Dad] did curb his use of profanity during the fall of 2022 and somewhat toned down the offensive nature of his messages. However, these behaviors have at times reemerged and have appeared since the filing of the current Petition:

a. On February 17, 2023, [Dad] emailed Dr. Collins and counsel for the Board, "I never wished violence on a school. But I would laugh my ass off if someone smoked one of [Respondent's school] buildings. This county deserves it." Exhibit 1, at 32.

b. On March 20, 2023, [Dad] emailed a school psychologist, calling her "White trash" and stating, "You are a white piece of shit." *Id.* at 33.

. . .

d. On August 20, 2023, a Facebook message to Board member Melissa Oakley, suggesting that "there is a link between Dr. Barnes and harming my daughter," and stating that "If there is an issue with Dr. Barnes is it well with my rights of a parent to prevent a predator going after my child." *Id.* at 40.

e. On August 31, 2023, [Dad] emailed District staff (including the Superintendent and A[ndy]'s teachers), a Board member, a DPI staff person, and undersigned counsel 15 and stated, "Now I see why North Carolina is called the White Trash Colony." *Id.* at 33.

f. On September 5, 2023, in an email to A[ndy]'s teachers, [Dad] asked, "How many kids blood is on [Dr. Barnes'] hands now?" *Id.* at 37.

¶18. Based on [Dad]'s online behaviors, staff have had reasonable fears regarding potential actions by [Dad] in person. In fact, as a result of [Dad]'s inappropriate and threatening behaviors while on District property, he has twice been banned from entry onto District property, and the most recent ban remains in place. Additionally, the Jacksonville Police Department banned [Dad] from the Board's central office building for five years (until September 16, 2027), and provided him notice that if he returns to the building at any time during that time frame, will be subject to trespassing charges.

. . .

¶20. Despite not being permitted on campus without prior permission, and the various mechanisms that the District has taken to protect staff, including directing all of [Dad]'s emails to a central email account, [Dad] continues to find ways to interact inappropriately with District staff.

¶21. While A[ndy] receives services and instruction remotely from home, at the choice of Petitioners, [Dad] has taken the remote instruction as an opportunity to verbally accost staff. During A[ndy]'s synchronous lessons, [Dad] inappropriately interjects and uses A[ndy]'s learning time as a way to communicate with her EC teachers. Often, the teachers do not even see A[ndy], and when the camera turns on it is [Dad] waiting to talk.

> ¶22. Similarly, using A[ndy]'s remote learning, [Dad] orchestrates situations that he twists to mischaracterize A[ndy]'s teachers' actions. For example, at the start of one synchronous math lesson, A[ndy] appeared on screen briefly and then left. [Dad] informed the teacher that he was recording the lesson for A[ndy] and demanded that the teacher continue with her presentation, despite A[ndy]'s absence. Following this interaction, [Dad] used the situation as ammunition against the District to allege that the teacher completed A[ndy]'s work for her and to assert that the District was engaged in grade manipulation.

Respondent's (First) Motion for Sanctions, filed 11.3.23, ¶¶3-22

36. As a result, Respondent prayed the Tribunal:

a) "…[D]irect [Dad] to send no more than one and only one email to the district staff, employee, contractor, teacher, or officer of his choosing, to restrict the content of those emails to substantive issues regarding A[ndy]'s educational services, and to refrain from including in those emails any language that would not comport with the community standards of what constitutes vulgar or profane language;

b) …[D]irect [dad] to limit his communications with attorneys for the District to no more than three emails per day, to limit the content of those emails to the substantive issues raised in the pending litigation, and to refrain from including in those emails any language that would not comport with the community standards of what constitute vulgar or profane language;

c) …[P]rohibit [Dad] from using A[ndy]'s and [mom]'s email accounts to contact District staff or undersigned counsel;

d) …[P]rohibit [Dad] from contacting family members of District staff and counsel;

e) …[D]irect Petitioners to communicate with this Tribunal through formal motions and to direct the clerk of court to only enter items into the docket that are in the proper format; [and,]

f) That emails, evaluations, letters, and other items that are not motions, attachments to motions, or proposed orders that have been added to the docket at the request of Petitioners be removed from the docket…."

Id. at pp.30-31 Decretal.

37. On November 3, 2023, the Tribunal issued the following orders: a) Order for [the Parties'] Responses to Various Motions Filed October 17, 24 & 25, 2023; b) Order for Response to Respondent's Proposed Issues for Hearing & For Petitioners' Proposed Issues for Hearing; c)

Order for Petitioners' Response to Respondent's Motion for Sanctions, and; d) Order Granting in Part Respondent's Motion to Compel Release of Records from PRIDE & Qualified Protective Order Authorizing PRIDE to Produce Discovery.

38. On November 8, 2023, Respondent filed an Amended Motion for Sanctions, asserting that:

> ¶2. "[w]ithin approximately 36 hours of Respondent filing its [first] Motion[for Sanctions on November 3, 2023], Petitioner intensified his campaign of harassment and abuse, including contacting the spouse of a chief witness for Respondent to malign the witness and threatening school system witnesses.
>
> ¶3. Further, Petitioner [Dad] has admitted that he views – and uses – the due process procedures of the Individuals with Disabilities Education Act ("IDEA") as a weapon to harass school employees and counsel, cause unnecessary delay, and hoist upon the Board exorbitant attorneys' fees, rather than utilizing IDEA as a vehicle to effect a free and appropriate public education for his daughter.
>
> ¶4. Petitioner's most recent conduct reveals that the lesser sanctions sought in Respondent's Motion will not shield the Board from his misuse of the judicial system and campaign of harassment and abuse, let alone enforce his compliance with the Rules of Civil Procedure.
>
> ¶5. It is even more abundantly clear that Petitioner is not utilizing this Tribunal to vindicate any rights of his child, nor does he intend to actually present a case regarding his child's rights under the IDEA."

Amended Motion for Sanctions, ¶¶2-5.

39. In support of its Amended Motion, Respondent attached exhibits of emails sent from Petitioners' email addresses to various of Respondent's employees, contractors and/or attorneys which contain threats, insults, taunts and profanity. For example:

a) On November 3, 2023, Dad writes "This sanctions [motion] is more than the settlement. Guess we made a good choice printing it out and wiping my ass with it. The filing brings smiles to my face as it serves for [costing the District] a few bucks." Amended Motion, Exh 1-001.

b) Less than two hours later, Dad writes: "I just reviewed the filing over lunch. You forgot posting names, phone number[s] and addresses of district employees…. There are a few [District employees/administrators] that live with cops and those addresses and emails are [being] post[ed] on group[chat]s that hate pigs[.]"

c) Some five hours later, Dad starts out "Since Dr. Barnes is hiding…" and then proceeds to talk about the family is moving and they are getting money from the state of Pennsylvania for "not living in PA" which is from where the family moved when

they came to North Carolina. The email has nothing to do with Andy's education but Dad feels the need to state: "Because of this[, Andy] receives $40,000 a year for the rest of her life. The district cannot interfere. Don't hate the player. …I do want to thank every one of you for focusing on me, and not my children. Actually I am ok with the attempt, because ***our focus is on 11/19, the date our trust [from PA] is opened and funds has [sic] to be available by 12/31.*** 11/19 is two years of not living in [redacted], thus they agreed to unfreeze the funds. [11] We will save the reason the funds were froze [sic] for another day."[12]

d) The next day, November 4, 2023, Dad writes: "Well well well, 1st grading period is over. The district failed to create proper goals or address proper social services. Along with disability related absences. ***I believe another petition is justified. Or should I withdraw the first one, the so the district cant [sic] use the items subpoenaed.***"

e) Later the same day, Dad writes about destroying Respondent's property in Andy's possession: "I have a quick question. Let's say a laptop accidentally gets damaged. ***I was thinking falling into a shredder. What is the cost to replace?***"

f) The next day, November 5, 2023, Dad asserts that: *i*) his communications with Respondent Board is "protected speech" and then asserts that since Respondent has set its system to forward all emails from Dad "to a central email address as.coms@onslow.k12.nc.us. The emails are not received directly from me but forwarded. That makes the emails from as.coms@onslow.k12.nc.us [not from me (Dad)]."

g) Also on November 5, 2023, Dad sent an email to Onslow County Deputy Sheriff Williams—the husband of Misty Williams—stating that his wife "is a piece of shit" and accusing Dep. Williams of abusing his wife. Dad cc:d the high Sheriff on this email.

h) That night, Dad emailed Respondent's counsel and others to say as a "going away present[]" he was sending her a "picture [she] missed. This was posted online along with the fact this is LT Williams and their address is--------. [The address has been redacted from this matter's record but was in the original email.] This group hates the district because their children were shot…."

i) In an email dated October 24, 2023, Dad wrote: "When are you and the district [going to] realize[] we got what we needed for A[ndy?] That all is address[ed] in the Stay Put Order. A[ndy] will be long gone before a hearing. The district will not even

[11] Thus, it appears from Dad's 11/3/23 email that Petitioners were "paid" to leave the State of [redacted] and, after remaining away for two years, the payment would be made. This support why the District believes Dad has been working to get paid by Respondent.

[12] At the bottom of this email, Dad asserts the email is copyright protected: "*Forwarding or printing without our written permission is infringement of the copyright protection.*" Amended Motion, Exh 1-003 (emphasis in original).

know when A[ndy] is gone until well after the fact. There is a school records request that is actually going to process to sanitize her records to transfer to her real district. …***Just remember we got what we wanted for the best interest of A[ndy]. The rest is watching your horse and pony show.***"

Id. at Exh 1-001 thru 1-028.

40. Thus, in its prayer, the Amended Motion expands on its earlier requests to the Tribunal:

a) Dismiss the Petition with prejudice, pursuant to 26 NCAC 03 .0114;

b) Sanction Petitioners by ordering them to pay costs incurred by Respondent to pursue such remedy;

c) Require Petitioners to seek appointment of a guardian ad litem to serve as Andy's educational advocate and decision maker and represent her in any future litigation filed regarding her FAPE;

d) Bar Dad from filing any further petitioners in the Office of Administrative Hearings without certification by a licensed attorney or prior approval from an Administrative Law Judge;

e) Enter a show cause order returnable in Superior Court for contempt proceedings, pursuant to N.C.G.S. § 150B-33(b)(8) and 26 NCAC 03 .0114; and/or,

f) Enter a gatekeeper order.

41. Following receipt of Respondent's Amended Motion for Sanctions, on November 8, 2023, Petitioners filed a Motion to Dismiss ("MTD") asserting therein that: a) the family is "relocating in the next 60 days, give or take a few…; b) "**the parents have no dispute to the Motion to Dismiss** without prejudice, **including if they need to retain an attorney for future litigation**"; c) "If the tribunal desires, a dismissal barring future litigation up to the date of the filing would not be disputed"; d) "[R]espondent has not authenticated any emails or other evidence. ***[Dad] never sent or claimed he has sent any emails to respondent.***" Petitioners' MTD, ¶¶3, 5, 6, and 13.

42. On the foregoing basis (outlined in FOF[13] #39 above), Petitioners then "motion" the Tribunal to: a) dismiss the case without prejudice (Petitioners' MTD, ¶14) and **"[p]arents will accept [that] any future litigation will be though [sic] legal counsel[]**"; and, b) require Respondent "to forward all records under protective order to be sent to [parents] directly within 10 business days[and] provide written confirmation [that] they no longer possess any [of Andy's] records." *Id.* at ¶7.

[13] Throughout this Final Decision, the Tribunal uses "FOF" for Finding of Fact and "COL" for Conclusion of Law.

43. Also on November 8, 2023, Petitioners filed a Notice to Withdraw ("NTW"), in which they assert that Respondent's counsel emailed them saying, "the district wants to be 'heard[,]" but the parents desire to 'move on' based upon relocation. The [R]espondent's response on November 8, 2023 is burdensome on A[ndy] and her parents[and R]espondent's counsel is refusing to discontinue and is increasing costs for the district. …Parents kindly desire to withdraw the petition. Please have the clerk of court docket the matter as withdrawn and without prejudice." NTW, ¶¶5-7, 9 and 10.

44. On November 9, 2023, Respondent filed its Response to Petitioners' Motion to Dismiss Without Prejudice ("Response to MTD"), wherein Respondent's counsel advises the Tribunal that "[a]fter the Board filed its Motion for Sanctions[, Dad]'s behavior escalated [causing the Board to file] an Amended Motion for Sanctions [to request] additional relief[,] Petitioners filed [their] Motion to Dismiss without Prejudice. …[C]ounsel immediately notified [the Undersigned's] law clerk…and [Dad] of the Board's intent to respond to Petitioners' Motion, to which [Dad] responded with a Notice to Withdraw…." Thereafter, Respondent argues that a motion for sanctions survives any voluntary withdrawal and the District objects to dismissal without prejudice and seeks to be heard on its Motion(s) for Sanctions. Response to MTD, ¶¶3-5 and 9.

45. On November 9, 2023, the Tribunal issued an Order for Petitioners' Response to Respondent's Amended Motion for Sanctions.

46. On November 13, 2023, Petitioners filed a Response Motion of Sanctions, Motion for Contempt, Motion to Strike, Motion for Change of Judge ("Petitioners' Multiple Motions" or "PMM").

47. In their PMM, Petitioners:

a) Again, assert they are relocating out of the county in the next 60 days as their house had sold.[14]

b) ***Allege for the first time*** that, "[t]he parents were in the process withdrawing [sic] the petition as they became concerned this tribunal was not impartial, as required by IDEA."[15] They further state: "If there was ever a case for a tribunal not being impartial, this is the one. The parents have *discussed* withdrawing this petition and asking this tribunal to allow a re-file of 30 days."

c) Again, assert that "…[R]espondent's counsel is refusing to discontinue and is increasing costs for the district.

[14] When the Motions for Sanctions came on for hearing, Dad admitted that the sale of Petitioners' house had fallen through.

[15] Petitioners complain that the Tribunal and OAH "*show extreme favoritism to the Respondent. The parent's perception is this [T]ribunal sees [Respondent's counsel] can do no wrong and the parents can do no right. …[As an example, Respondent] is allowed to issue subpoena after a motion to quash, yet [Dad] is not allow protected speech [foul and abusive language] after [the] Motion of Sanctions*" PMM, ¶6 (emphasis in original).

d) Argue that Respondent's counsel, the District EC Director and Dad "do not get along. The respondent uses A[ndy's] disabilities and services as a manner to excite and retaliate against [Dad]."

e) Argue that a motion for sanctions is "outside the scope of this [T]ribunal."

f) Assert that all of Dad's Facebook posts are protected speech against government agencies and "are not specific enough to from [sic] a 'threat'."

g) Argue that Dad never admitted to the production of the emails and as such, the emails are without authentication, are hearsay and cannot be admitted into evidence.

h) Request the Tribunal "notify the state bar for the violations of [Respondent's counsel] requesting subpoenas for mental health records both not signed and without a judge's order."

i) Request the Tribunal:

a) strike from the record any communication prior to August 31, 2023;

b) strike from the record any "protected speech";

c) strike from the record Respondent's Motion and Amended Motion for Sanctions;

d) strike from the record Dad's summary offense citation as "[p]rior convictions are not a true measure of 'character[]'";

e) dismiss both of Respondent's Motions for Sanctions;

f) Dismiss Respondent's Motion for Show Cause;

g) If Motions for Sanctions are not dismissed, "schedule a hearing to determine which emails were actually received by the employee[s]…and discuss other vital information[]";

h) "Accept outside of this [R]esponse, acting of his own, [Dad] will agree to no contact with the [R]espondent in any manner, unless in response to a direct question, including board members[and…Dad] will agree to not further file any complaints unless there are integrity issues, change of services or an act to warrant a petition."

PMM, ¶¶3, 6, 9-10; p.17, ¶¶1-2, 4; p.27.

48. Also on November 13, 2023, Petitioners filed a Motion for Civil Contempt of Court & (2nd) Motion to Strike, citing a document in one of Respondent's exhibits in which Dad's social security number and driver's license number was not redacted, Dad requests a show cause order issue for Respondent's counsel's failure to redact the document.

49. On November 17, 2023, Respondent filed its Response to Petitioners' Motion to Compel FOIA Request as well as Respondent's Response to Petitioners' October 17, 2023 Status Update & October 25, 2023 Motion to Strike/Status.

50. On November 21, 2023, the Tribunal issued a Notice of Hearing on Respondent's Motions for Sanctions and Petitioners' Motion to Dismiss & Order Amending the Tribunal's Protective Order & Qualified Protective Orders Authorizing Discovery Release. The motions' hearing was therein set for December 1, 2023.

51. On November 22, 2023, Petitioners filed a Motion to Continue the Motions' Hearing due to Dad having surgery on December 1, 2023.

52. That same day, the Tribunal granted Petitioners' Motion to Continue and set the hearing for November 29, 2023.

53. On November 22, 2023, Dad filed a Second Request for Continuance arguing several unrelated things but also stating they were all scheduled to be "meeting…with a school district in another state[]" on November 29, 2023. Minutes after filing the Second Request, Dad filed a third (3rd) document stating they would not be available on November 29, 2023.

54. The Tribunal issued an Order Granting [Dad]'s Motion for New Motions Hearing Date and Notice of Rescheduled Hearing, which set the hearing for November 30, 2023.

55. On November 27, 2023, Petitioners filed a Motion to Reconsider & Motion to Compel, praying the Tribunal compel Respondent to provide to Petitioners all of Andy's educational records and also the PRIDE and CIDD records received and, grant parents five (5) days to review records received before holding the hearing.

56. Also on November 27, 2023, Respondent filed under seal all the records received by it from CIDD and PRIDE, along with its Response to Petitioners' Motion to Reconsider & Motion to Compel, in which Respondent vehemently denies it has not produced Andy's educational records to Petitioners, objects to any reconsideration and requests the Tribunal order Petitioners to provide the Tribunal with a current address.

57. On November 27th, and 28th, 2023 respectively, Petitioners filed their First Reply to Respondent's Motion to Reconsider/Motion to Compel and Second Reply to Respondent's Motion to Reconsider/Motion to Compel.

58. In the First Reply, Petitioners advise the Tribunal that the buyer of their home "is having issues with their VA mortgage[and so, p]arents will not be moving out of Onslow

County Schools [sic] jurisdiction no [sic] earlier than January 15, 2024." First Reply, ¶¶3-4. Dad also therein offers the same address for the record as was already in the record. *Id.*at ¶6.

59. In the Second Reply, although Dad has been informing the District and the Tribunal that he and his family were moving shortly, he asserts they have the same address and states: "No information was provided to the [R]espondent that once could assume parents moved." Second Reply, ¶4. Then Dad goes on to admit that "…[R]espondent provided records from CIDD and PRIDE to the parents through this [T]ribunal[; yet Dad then says, that i]ssuing educational records through the [T]ribunal is insufficient. The record must be either 'electronic or hard copy.'" *Id.* at ¶¶12-13.[16]

60. Dad goes on to allege that "[**t]he parents were never provided any links to files as respondent alleges, including 'emails'.** More so, if the emails are 9600 pages as alleged, parents need additional time once received to prepare for the hearing."

61. On November 29, 2023, the Tribunal issued its Order Denying Petitioners' Motions to Compel FOIA Responses (filed 10.24.2023 & 11.27.2023), Denying as Moot Petitioners' Motion to Reconsider (filed 11.27.2023) & Reserving Ruling on Petitioners' Motion to Compel FERPA Responses. Also therein, the Tribunal confirmed the motions to be heard on November 30, 2023.

62. The noticed motions came on for hearing on November 30, 2023, before the Undersigned.

63. Following the hearing, the Undersigned issued a Post-Hearing Scheduling Order on December 1, 2023, which held the evidence open to allow exhibits admitted at trial to be filed in the record, set deadlines therefore and also for the Parties to file their proposed decisions.

64. On December 6, 2023, Respondent filed a Motion for Extension of Time to File its Proposed Decision. The Post-Hearing Scheduling Order granted Petitioners' an additional three days following the filing of Respondent's Proposed Decision to file their Proposed Decision. *See* Post-Hearing Scheduling Order, ¶3.

65. On December 6, 2023, the Tribunal issued an Order Granting Respondent's Motion for Extension to File Proposed Decisions & Amended Post Hearing Scheduling Order, and by which extended Petitioners' time as well. *Id.* at ¶2.

66. On December 11, 2023, Respondent requested additional time to file Exhibits and the Tribunal issued an Order Extending Time for Respondent to File Exhibits Admitted at Trial.

67. On January 16, 2024, Respondent filed its Proposed Decision.

[16] The Tribunal takes official notice that *all* records "provided through" OAH are 'provided' electronically by way of electronic filing into the record.

68. On January 19, 2023, Petitioners filed a Motion to Dismiss Moot/Motion to Strike, in which Dad asserts that "Information parents have requested and under law are entitled [to] and are relevant to this hearing have not been provided by Respondent. Under IDEA the respondent should have provided ALL evidence and witness list 5 days prior to this hearing." *Id.*at ¶5. Dad further goes on to argue that Dr. Barnes testimony should be stricken from the record—with no reason offered (*Id.* at ¶6), and argues the Gatekeeper Order is now moot and not part of IDEA. Additionally, Dad states: a) Andy has been approved to enroll a school district outside of North Carolina, "upon obtaining an Air BNB within their assigned area because construction delays have prevented her new home to be completed[]"; b) "A[ndy] has not resided at 120 Pear Tree Lane, Richlands, NC 28574 since December 22, 2023. A[ndy] has temporarily resided in an Air BNB in Onslow County, North Carolina, up to the filing of this motion[,]" and; c) "Parents will not be providing the respondent with their new mailing address…." *Id.* at ¶¶9, 11 and 12.

69. On January 25, 2024, Respondent filed Respondent's Status Update, advising the Tribunal that it had received an email from Mom on January 23, 2024, stating Petitioners were "contemplating staying here" in Onslow County and inquiring what options they would have regarding Andy's schooling with Respondent and whether they could retain asynchronous and/or virtual instruction. Resp. Status Update, ¶6, and attached Exhibit A.

70. According to exhibits attached to Respondent's Status Update, emails went back and forth between Mom and Respondent's counsel and Dad and Respondent's counsel on January 24, 2024. Within an hour and a half, Respondent's counsel received three emails from the account affiliated with Mom, and one from the account of Dad:

> "a. In the first email, the sender indicated that A[ndy] will not be in the area beyond March 1, that they have not established a permanent residence and don't have to provide anything, and that [redacted] is going to reach out to the department of education stating the district is refusing to allow her to attend.
>
> b. Five minutes later, in the second email, the sender indicated that [Respondent's counsel's] email violated stay put.
>
> c. In the third email, received fifteen minutes later, from [Dad]'s email, the sender stated, 'Somebodies [sic] mad, her 22 years experience does not reflect on her performance. I will text Lowell to get you a crying towel.' To refresh this Tribunal's memory, Lowell is the first name of [Respondent's counsel's husband].
>
> d. And finally, in the fourth email, the sender apologized for 'how [[Dad]] at times treats all of you,' stated that the AirBNB they are staying in is actually in the jurisdiction of Pender County, and that they will be reaching out to Pender County regarding [Andy's]enrollment."

Respondent's Status Update, ¶8, *see also* attached Exhs A-C.

71. Also on January 25, 2024, Petitioners filed a Status Update and Evidence whereto they attached a redacted copy of the first page of a real estate contract. The alleged contract lists a seller but fails to disclose the name of a buyer and the address of the property is redacted. Petitioners assert that such document is proof they were, at that time, planning a move to the state of Georgia. With the substantial term of the contract incomplete, the document proved nothing.

72. On January 30, 2024, Dad filed a Pender County Schools' Parent/Guardian Affidavit for Enrollment of Student Domiciled in Pender County Who is Transferring into Pender County Schools. It appears the document *may* be for Andy and lists "Holly Ridge, NC 28445" (which town is *entirely* in Onslow County) as her address—the rest having been redacted.

73. On February 27, 2024, the Tribunal issued an Order for Respondent's Updated Motion (Petition) for Attorneys' Fees & Petitioners' Response Thereto. Therein Respondent was given until March 8, 2024 to file its updated petition for attorneys' fees and Petitioners were, thereafter, given until March 18, 2024 to file a response with any objections thereto.

74. On February 28, 2024, Petitioners filed a Response (to Respondent's fee petition yet to be filed). Therein, Petitioners state: "Due to limited computer access the Petitioners will file this response prior to the filing of the respondent." *Id.* at ¶7. Petitioners go on to argue that "North Carolina's Administrative Law Judges cannot award attorney's fees[and, as such, petitioners] requests [sic] this [T]ribunal to not award attorney fees based upon this is not the proper venue for such award." *Id.* at ¶¶8-9.

75. On March 8, 2024, Respondent filed its Verified Updated Motion for Attorneys' Fees and Supplemental Filing in Support of the Board's Motion for Sanctions and Amended Motion for Sanctions ("Motion for Attorneys' Fees"). Attached to the Motion are the Affidavit of Carolyn Murchison (Respondent's counsel) and separate Statements of Account detailing the legal work for: a) Motion for Sanctions filed November 3, 2023 (Exh A); b) Amended Motion for Sanctions filed November 8, 2023 (Exh B); c) Response to Petitioners' Motion to Dismiss Respondent's Motion for Sanctions filed November 9, 2023 (Exh C); d) Hearing Preparation for and Defense of Board at Motions Hearing on November 30, 2023 (Exh D); e) Preparation of Exhibits Admitted at Hearing filed December 15, 2023 (Exh E), and; f) Preparation of Proposed Final Decision (Exh F).

76. Although having advised the Tribunal they would not be filing a later Response, Petitioners filed their Response to Respondent's Motion for Attorneys' Fees, as well as a Motion to Supply Supplemental Evidence, Motion to Stay, and Motion to Reopen ("Dad's Response, 3.15.24). Therein Petitioners assert that:

a) "Parents provide [Respondent's counsel] a 'Notice of Claim' for civil rights violation of A[ndy] by using subpoenas without a judge's order'.

b) …[t]he FBI is…investigating the complete history of the respondent's actions towards A[ndy] and [Dad].

c) …Outside of these sanctions, the parents offered the respondent, excluding attorney fees, more than the respondent is 'asking for'.

d) As of January 6, 2024, A[ndy] no longer resides in the respondent's district."

e) The Petitioners would entertain this matter in an appeal or federal court to provide 'due process' not afforded by the respondent, respondent's counselor, or this tribunal.

f) Respondent provided several witnesses that were not part of the 'identification', 'evaluation', 'placement', 'provision of FAPE[,] or part of any 'manifest destinating [sic] determination.' These witnesses and testimony should have no weight in this tribunal's determination.

g) Over $40,000 in attorney fees is excessive for these sanctions. A simple low cost 'do not contact' letter would have been sufficient.

h) Judge Turrentine did not allow [Dad] provide evidence or witnesses as Court was 'closing for the day.'

i) The Tribunal is "barred from awarding attorney fees."

j) Thus, Petitioners request their Petition be dismissed without prejudice; Respondent's Motion for Sanctions be denied "as they are without merit"; "If not dismissed without prejudice, stay and re-open this proceedings [sic] until [Dad] is afforded cross-examination of Dr. Christopher Barnes, provide [sic] evidence and offer witnesses; Dismiss all other matter [sic] as moot, as A[ndy] does not attend school in this State"; and, Return all of Andy's psychological records.

Dad's Response, 3.15.24, p.1-5, ¶¶3, 4, 10, 12, 14; p.6, ¶¶1, 1Q, 2; p.10, 16-18.

October 3, 2023 Hearing on Petitioners' Objection to Venue for Hearing on the Merits

77. When the Tribunal could not obtain space in Onslow County in which to hold the hearing on the merits, the Tribunal noticed the parties that the hearing would be held in New Hanover County, NC—about an hour's drive. Dad objected to the hearing not being in Andy's home county, as was his prerogative. In response, the Tribunal held a WebEx hearing with the parties on October 3, 2023. During that hearing regarding venue, the Undersigned advised the parties that it was unlikely Onslow County would have space to host a hearing for OAH for some 4-6 months. Even though Dad took Andy to New Hanover County on a regular basis for therapy, Dad was adamant that the hearing be held in Onslow County and not New Hanover County and Dad consented to the extenuating time it would take to obtain courtroom space.

78. In its resulting Order, the Tribunal found as fact and concluded as law that:

> "Petitioner[-Dad] understands that the Tribunal has not found availability for a courtroom in Onslow County through the end of the year and, with the holiday season, it may be February or March before an opening is available. Nevertheless, **[Dad] has declined having this case heard outside Onslow County and, instead has chosen to wait until a courtroom is available in Onslow County. Respondent does not object to the wait. As such, the Tribunal will do its best to obtain space in which this case may be tried in Onslow County not later than the first week of March, 2024."**

Order Resulting from the Tribunal's 10/3/2023 WebEx Conference with the Parties (RE: Venue, Scheduling & Stipulations), p.1 (emphasis added).

79. The Tribunal then decreed, in pertinent part, as follows:

> "1. Pursuant to Petitioner's insistence, the Tribunal is prepared to work to finding a courtroom to accommodate him in having the matter heard in Onslow County. However, doing so (as well as any change in timelines listed herein) is contingent upon Petitioner's filing a Motion to Continue the Hearing on or before October 9, 2023.
>
> 2. With the timeline outlined above, the Final Decision in this case will be issued on or before May 17, 2024[;] and,
>
> . . .
>
> 6. On or before October 26, 2023, the Parties shall confer and file a Notice of Stipulated Issues, including a separate list of those issues which are contended to be tried and Motion for Clarity from the Tribunal on all issues to be tried during the hearing on the merits."

Id. at decretals 1, 2, and 6.

80. Still, even though the long wait was due solely to Dad's insistence, Dad later argues in one of his filings that the Tribunal has failed to set a hearing in a timely manner.

<u>October 6, 2023 Hearing on Petitioners' Motion to Quash Subpoenas & Respondent's Motion to Compel Subpoenaed Documents</u>

81. Dad is the only Petitioner that has ever appeared before the Undersigned.

82. On October 6, 2023, as part of Petitioners' Motion to Quash Subpoenas, Dad argued that the PRIDE and CIDD subpoenas for Andy's mental health records should be quashed because everything needed for Respondent to provide Andy a FAPE was already in her educational records. Dad further alleged that because Respondent subpoenaed records from a former mental health provider (not at issue in this case), that former provider refused to continue

working with Andy. He stated the subpoena is "a fishing expedition," it's "overbroad and a lot of protected information." Rec17:23. [17]

83. Andy is in 10th grade and Petitioner-parents chose for Andy to attend school asynchronously, since March 2022.[18] Respondent believes it appropriate and best that Andy attend school in person. However, excepting of the first day of school, August 22, 2022,[19] Petitioners have refused to allow her to come back to school.

84. She has four (4) general education classes—all of which are asynchronous—recorded so that Andy can "attend class" whenever she [redacted] also has access to a teacher she can communicate with should she desire to do so. Respondent provides this education through a third-party provider, Edmentum. Respondent also provides 15 minutes/twice per week of services for social-emotional assistance to Andy. Rec21:00

85. Throughout Petitioners' filings and arguments, Petitioners assert that the reason Andy is not attending school in person is because school employees and officials cause her to have panic attacks and anxiety. However, the record does not support this conclusion.

86. The issue of Dad sending inappropriate and threatening emails and text messages—to Respondent's counsel, staff, administrators, board members and their varying family members by way of their private email accounts, private social media sites and private cell phones—arose again. During this October 6, 2023 hearing, Respondent asserted that when Respondent attempted to have Andy evaluated, Dad had sent threatening messages, texts, and posts to (and/or about) various staff members, contractors and their family members (including Respondent's counsel's husband) Rec30:42. After which, the following inquiry occurred in court:

COURT: Is that true that you were sending texts to these people?

DAD: I was a county Sheriff's Office investigator…

COURT: Mr. [Dad] do not curtail my question.

DAD: Um…no.

COURT: Did you or did you not

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[17] There is no transcript from the October 6, 2023 motions hearing, only a recording. Therefore, the cites listed are from the recording's timer, i.e.: Rec17:23—seventeen minutes and 23 seconds into the hearing.

[18] Petitioners arrive in North Carolina from P[redacted]a in December 2021. The parties met and agreed—due to Petitioners' insistence—that Andy would attend school part-time (to assist with her anxiety) until she got comfortable enough to come to school fulltime. 29:10. As Respondent planned and prepared to evaluate Andy, Dad began asserting there was a male who had treated Andy in an inappropriate manner

[19] *See footnote #9 above*. On the first day of the 2022-2023 school year, Andy *chose* to take her tray from the cafeteria—as several other children did—and sit in the hallway while eating lunch. Dad has consistently, irrationally and disingenuously argued again and again that Andy was "made to eat on the floor" and at times that Andy was "made to eat *off* the floor" by school administrators/teachers.

DAD: (Interrupting) No.

COURT: No, what?

DAD: No, I did not do that.

COURT: So…you are telling me that if she produces emails and text messages that were, according to her, sent by you to various members of the board and staff of the school and to her husband, that they did not come from you. Is that your testimony? Is that what you're telling me?

DAD: Well, I can, I can plead the fifth, right?

COURT: …No…you can't. This is absolutely not a criminal issue. But of course, if you do plead the fifth, I will understand what your answer is.

DAD: OK. I don't know. I don't know.

COURT: You don't know if you did or not?

DAD: I don't know.

COURT: OK. Mr. [Dad], you do understand that you've chosen to represent yourself and your child and, if you…if your credibility is at issue then that becomes an issue throughout the trial. If I can't believe you. You understand that, right?

DAD: (Interrupting…) Well. Yes. …Well, they're not telling you the whole truth either…she says…

COURT: That's not. …No, no, no, no. Sir, this is my courtroom. So we will have a conversation and I will give you time to talk. I am Your Honor. You are Mr. [Dad]. We will respect each other, yes?

DAD: Yes, your Honor.

COURT: But, bottom line, if I ask you a question, I want an answer. I'm happy to let you explain, but what I'm not happy about is when I ask you a question, you attempt to circumvent that question and then argue with me about whatever. That's not going to happen in my courtroom. OK? Just so that we're clear.

DAD: OK. …Your Honor.

COURT: Alright. …So am I to understand that we're going to have a credibility issue with you?

DAD: No.

COURT: …Alright, did you or did you not send those text messages that she's talking about?

DAD: I do not recall.

COURT: OK. You went from…[no]…to I don't want to answer…to I don't know…to I don't recall…. I'm just trying to figure out which answer is true.

DAD: I don't recall. …I do not recall ever doing this stuff. …This is the harassment I've been putting up since she enrolled in their school. They're not telling you…they locked my daughter up in a room. …They don't tell you that she went to [redacted] High School for one day and they made her eat from the floor, while the principal walked by her, while she had a panic attack. ….[20]

Rec30:42-33:55.

87. Then Dad argued Andy entered the school building one (1) day, had a panic attack, and has never been back in school. "In person attendance is just not working." Rec1:00:07 "Currently, she has team meetings in which she's been struggling to attend because of the overwhelming schedule." Rec1:01:21. "We're concerned that [Respondent] can't even treat her anxiety, because she left school after two hours and had to have emergency medical treatment." Thus, Petitioners again argued they did not want Respondent to have Andy's medical records. Rec1:03:04.

88. The Parties agreed that Andy was never a patient of CIDD and never received services from CIDD.

89. The information sought by Respondent from CIDD is the result of Petitioners' request to Respondent for an Independent Educational Evaluation ("IEE") of [redacted] for which Respondent contracted and paid. Dad filed a copy of the IEE in the record on September 28, 2023, and Respondent required to know the bases (methodologies, processes, etc.) upon which the IEE was produced. Respondent, therefore, sought entry of an order to obtain disclosure of certain confidential and protected health information to be produced in the instant case which, absent a court order, is not obtainable. To that end, the Undersigned orally denied Petitioners' Motion to Quash the CIDD subpoena and granted Respondent's Motion to Compel CIDD to respond to the subpoena. Rec1:05:15.

90. Dad stated that at the time of the October 6, 2023 motions hearing, Andy had been being serviced by PRIDE "for about a year" and, although Dad argued over and over about

[20] Dad continued for several minutes before this Tribunal to make arguments about events that had already been adjudicated or settled by agreement as well as some that did not actually occur.

how Andy had issues of anxiety and panic caused by the Respondent and was overwhelmed by her classes, among other things, Dad asserted Respondent did not need to see Andy's mental health records to understand what was causing her anxiety in school or how certain things in school were contributing to said anxiety and panic.

91. The Undersigned also orally denied Petitioners' Motion to Quash the PRIDE subpoena but reserved ruling on the extent of the Tribunal's grant of Respondent's Motion to Compel PRIDE to respond to the subpoena issued to it.

October 6, 2023 Hearing on Petitioners' Motion for Stay Put

92. Because Petitioners' Motion for Stay Put was unclear, the Undersigned noticed it to be heard on October 6, 2023, as well.

93. At hearing the Parties agreed that an IEP meeting was held on August 16, 2023, twelve days before the Petition was filed in this matter. Although Dad signed off on the IEP at the time, one day later he advised Respondent that he was not satisfied therewith, claiming he "agreed with the services but did not agree that the IEP provided a FAPE."

94. The IEP required Andy to return to school but, Dad admitted that by the parents' unilateral decision, she never did. Andy has not been in a school building since March 2022—with the exception of the first day of school in August 2022, when she came for some hours but never returned.

95. Nevertheless, the hearing revealed there was no contradiction as to what stay-put was for Andy: four (4) general education classes: Math, Creative Writing, Science and, Social Studies using the asynchronous learning platform (that is, all pre-recorded for Andy's viewing at home); plus, Exceptional Children's ("EC") Math and EC ELA for 45 minutes each, five days per week synchronously (via virtual platform), and; Social/Emotional services once per week for thirty (30) minutes.

96. While Dad argued that, *after* the petition was filed, Respondent had "promised" a different option for servicing Andy[21], and Dad provided an email from Dr. Barnes which reflected that, indeed, Respondent attempted to get the additional (EC) servicing for Andy from Edmentum in accordance with what Petitioners had requested.

97. Further,

a) Dr. Barnes' email, produced by Dad, further explained that Respondent was unable to get Edmentum to agree to provide the EC services asynchronously as requested by Petitioner, agreed upon for the new servicing—which was what was intended when the parties agreed.

[21] Specifically, Petitioners wanted Respondent to contract with Edmentum to provide Andy her two (2) EC classes—the only classes that were live-virtual—so that **all** of Andy's schooling and services would be asynchronous. 1:48:48.

b) Dad continued to argue it took Dr. Barnes 12 days to let Petitioners know Respondent would be unable to change Andy's servicing—so, according to Dad—Andy missed 12 days of servicing.

c) However, Dad admitted he and his wife unilaterally stopped Andy from utilizing the services that were already being provided by Respondent, believing that the new services would begin sometime later.

d) Finally, Dad advised the Tribunal that he did not want Andy to have EC ELA until the spring semester when she would also be taking English as a core class, and; Dad argued that he wanted Andy's EC Math course to be "cut back" so Andy would not be "overwhelmed."

98. When given the opportunity to remove the EC Math, Dad did not wish it to stop.

99. At what should have been the end of the hearing, and for the very first time, Dad brought up that Respondent provides social-emotional services once per week but Dad argued that the billing of the service "needed to be tweaked" as there was some issue with Medicaid.

100. The Undersigned advised that no such billing issue or Medicaid issue was before the Tribunal and therefore, the Tribunal had no jurisdiction to consider such. In addition, Stay Put requires no "tweaking."

101. At various times throughout the October 6, 2023 hearing, Dad argued with and tried to talk over the Undersigned judge, argued issues that had already been adjudicated in past hearings under dismissed and/or settled contested cases, and brought up issues that had either been found to be untrue or would later prove untrue—**even after the Undersigned judge sustained objections and ordered him to cease raising those issues**. Moreover, toward the end of the hearing, Dad had raised his voice, ignoring the admonishments of the Tribunal to the point that OAH's security officer *heard the commotion outside the closed courtroom* and stepped in to attend to the ruckus. Dad was ultimately escorted out of OAH by security when the hearing was completed.

102. When finally able to come to the end of the October 6, 2023, hearing, since Dad had argued for stay put to not include EC ELA until the next spring semester—but to which Respondent agreed—the Tribunal requested the parties enter into a consent agreement about stay put and submit it to the Undersigned for review and consideration.

103. Having determined that Petitioners' arguments and allegations regarding Respondent's failure to properly handle Andy's anxiety and panic issues in the educational setting raised a genuine issue for Respondent since it had no understanding of Andy's diagnoses and triggers, the Tribunal issued both an Order Denying Petitioners' Motion to Quash CIDD Subpoena and an Order Granting Respondent's Motion to Compel & Authorizing CIDD to Produce Discovery Subpoenaed by Respondent on October 10, 2023.

104. Based on the Petition, Motion for Stay Put, Respondent's Response, arguments of the parties and counsel, Petitioner–Dad's on-record agreement, and the Parties' Proposed Consent Order on Stay Put (filed October, 11, 2023), the Tribunal entered a Consent Order on Stay Put, on October 12, 2023, in which the Tribunal granted Petitioners' Invocation of Stay Put.

November 30, 2023 Hearing on Respondent's Motion & Amended Motion for Sanctions[22]

105. During its presentation of evidence in support of its Motion for Sanctions & Amended Motion for Sanctions (together hereinafter, "Motions for Sanctions" or "Motions"), Respondent put on nine (9) witnesses to testify under oath as to the treatment they had received at the hands of Dad.

106. Christine Hogan is the EC program development coordinator with Onslow County Schools. T103:15-17. She has been a speech pathologist for 30 years. T116:9-10. She has been a contractor with Respondent for fourteen (14) years but only a few months in the position of EC program development. She testified on direct that:

a) **She had never met Dad, Mom, or Andy**. T104:1-6. However, she had heard about his antics from other school personnel, knew that some of her colleagues had been contacted with similar language and intent. T111:1-25.

b) On March 10, 2022, she received a text message on her personal cell phone from Dad which read: "I'm hearing that you were involved with tricking [Andy] into the room just to lock the door behind her. I don't want you near her. It is recorded. I will total use this to get ur license suspended. I know what was done, just want to know why. Were you two going to hold her hostage and not even allow her to eat lunch. You disrespect [Andy] and you fucked with the wrong person." T105:19 -25, 109:21-25; *see also,* Resp. Exh 1 Admitted, Affidavit of Christine Hogan, ¶4, Motions Exh 1A.

c) She knew the text was from Dad because he utilized Andy's name therein.

d) The text made her feel unsafe and she feared for her family. She called her parents (who are 80), her sons, other family members, and her husband to make sure they were safe.

e) When she reached her husband, he had already received a text message from the same phone number (717-870-7206), which read: "So you're piece of shit wife was involved tricking my daughter into a room just to lock the door behind her. She knocked on the wrong door. My daughter has anxiety—autism and anxiety." T107:6-10, Motions Exh 1B.

[22] At some point early in the 11.30.23 hearing, the Tribunal learned from the OAH hearing assistant that the device used to record the hearing had malfunctioned at some point by turning itself off and on during the hearing. It became apparent upon receipt of the transcript that the malfunction continued to occur throughout the hearing as the Undersigned's notes reveal several moments of testimony and argument that are not reflected in full in the transcript.

f) In googling herself, Ms. Hogan found that her MPI number was publicly posted and that a public comment had been submitted on her National Provider Identifier website profile. The National Provider Identifier website (which provides profile pages for health care providers by the provider's numeric identifier) showed a comment posted by "NCDAD1995" which read: "Totally does not understand autism and anxiety. Was involved in locking a student in a room while attempting an evaluation. Was arguing and yelling at the student. DO NOT UNDER ANY CIRCUMSTANCES LEAVE YOUR CHILD ALONE WITH HER." Motions Exh 1C (emphasis in original).

g) The NCDAD1995[23] comment is still on Ms. Hogan's public profile some two (2) years later. *Id.*

h) Ms. Hogan **never** attempted to conduct an evaluation on Andy and had no involvement in Andy's education or servicing. T109:13-15, 20-25.

107. On cross examination, through his questioning of her, Dad confirmed that Ms. Hogan had nothing to do with Andy's being given (or not given) a FAPE by Respondent. T112:1-21. In fact, Ms. Hogan had nothing to do with Andy whatsoever. T113:1-15. "[A]s the lead speech language pathologist…[she] support[s] the therapists that are in the county. [She] did not and was not involved in anything determining A[ndy]'s case…." T113:11-15.

108. Even after receiving the texts referenced in FOF #97 above, she has had no involvement with Dad, Mom, or Andy. T113:11-19.

109. Denise Collins is the wife of Respondent's superintendent, Dr. Barry Collins. T118:3-5. At the time of hearing, she had retired on July 1, 2022 (T127:15) after 32 years with Onslow County Schools but was a digital learning and teaching facilitator with Respondent in 2022. T117:20-23; Motions Exh 2, ¶2. On direct examination, she testified that:

a) She received a text message from Dad on March 10, 2022 which read: "So your piece of shit husband allows staff to trick my daughter by saying there's a present in the room and locking the door on her. On top of that she has anxiety and autism. I hope you find better. My dad's family own one of the largest newpaper company [sic], making to be a great article. So far we have gotten 63 police officers fired, 226 suspended, 96 teachers suspended or fired, 2 principals, and looking like a school psychologist. Barr is too chicken to join a podcast with us." Motions Exh 2A, T120:13-22.

b) She showed the text to a colleague who was "aware of allegations [Dad] was making against other staff members and [Respondent], and she learned that the…message[to her] w[as] consistent with what had been sent to [her]

[23] Dad's posts to OCS weekly update reveal "@NCdad1995 is "[redacted] and the posts themselves assert Dr. Barnes is a "real piece of shit…forcing my 14 year old daughter with autism into a small room against her will." Motions Exh 9a, OCS-Ex3-001 - 006.

colleagues." T121:20 – 122:9. Motions Exh 2, Affidavit of Denise Collins, ¶6.

c) On August 29 and 30, 2022, Mrs. Collins received other text messages from Dad which read: *i)* "Your husband is a real piece of shit. Allowing his EC staff to retaliate toward my daughter with autism to the point she had a severe anxiety attack. I dare him to call the police on this one. Real piece of shit that allowed assholes to attack my daughter"; *ii)* "People will be held accountable"; *iii)* "Next time my daughter is harmed by his staff in any way, I will have a problem with him as he is the top"; and, *iv)* "So she was made to eat her lunch from the floor. Talk about public embarrassment. Add that to a child with autism and anxiety." Motions Exh 2A-B.

d) These messages were all sent to Mrs. Collins' personal cell phone (T119:16-18) and from the same phone number as was used to send messages to Ms. Hogan: 717-870-7206. T120:1-6.

e) Mrs. Barnes was very alarmed and concerned especially by the second set of Dad's messages to her. T122:12-17. She felt threatened. As a result, she and Dr. Barnes beefed up the security of their home—adding cameras to the driveway and home. T123:24 – 124:6.

110. On cross examination, through his questioning of her, Dad confirmed that Mrs. Collins had nothing to do with Andy's being given (or not given) a FAPE by Respondent. 125:25 – 126:12, 127:2-7. In fact, Mrs. Collins testified "I don't even know who she is." T124:17. She never met Andy. T127:10-12.

111. Mrs. Collins confirmed that by the time she received the second set of text messages from Dad, she was already retired from Respondent's employ. T127:15-21. Even when she was working for Respondent, her work had nothing to do with Andy. T127:21 – 128:6.

112. Julie Barnes is Respondent's EC program coordinator (T129:17-19) and the wife of Respondent's Chief Academic Officer, Dr. Christopher Barnes. T130:1-7; Motions Exh 3, ¶3. Mrs. Barnes has worked for Respondent for 20 years but as EC program coordinator for 1 year. T129:20-25. On direct, Mrs. Barnes testified that:

a) She first became aware of Dad when he began emailing Respondent saying his family "was possibly going to be moving [to Onslow County]." T131:4-6. The first email came from Dad on August 25, 2021 "about 100 days before [he] arrived" in the county informing the school about Andy's moving to the district. T138:20 – 139:11. At that time, Mrs. Barnes was the EC program lead coach and she worked closely with the coach assigned to the school into which Andy later enrolled. T131:10-13.

b) She received four (4) messages from Dad on her personal (and private) Facebook messenger on August 30, 2022. T131:18 – 132:8. The messages read as follows: (6:15PM) "Your husband is a complete douchebag"; (6:31PM)

"Since you work for the district[,] contacting u is not off limits". T132:13-15; Motions Exh 3A.

c) At 8:14 PM that same evening, Mrs. Barnes messaged back: "Do not contact me again. Your messages are unwelcome, harassing, and will be turned over to law enforcement." *Id.* In response, Dad messaged back: "Don't know what your are talking about. I never sent you anything." Then Dad "unsent" each of the messages. *Id.* At 8:57PM, Mrs. Barnes messaged back: "The content of this message is threatening and constitutes harassment and cyberstalking. Do not communicate with me or my family through this platform again. I'll now be taking legal action." *Id.*

d) The messages sent to Mrs. Barnes reflect that they came from [redacted][24]

e) Mrs. Barnes further testified that Dad "has sent emails stating things like…['W]hat you did to…I'm going to do to yours what you did to mine.' And I've even said to my husband before, we haven't done anything to her. And he has said to me, in [Dad's] mind, we have. And so I was very concerned for our children. We can't let one of our children walk home from school [anymore]. We had to upgrade our security. We had to make sure that we were paying for the extra storage and recordings, because the Ring Cameral would go off in the middle of the night and we [sic] were literally waking him up: …'[H]ey there's somebody at the front. The Ring camera is going off in the front.' …[T]he district had to lock our children's laptops down, so we didn't receive outside messages. [Dad] made comments [while] my husband's reading a book to my daughter's class[:] …'I bet $20 he's part of the clan.' It's my daughter's class. We're part of that community. I work in the school. So just for the safety of my kids…." T134:1 – 135:15.

f) To accommodate their youngest child who used to walk to and from school, Mrs. Barnes testified her mother-in-law drives from across town twice each school day to take that child to and pick her up from school. T136:315. The child's school is not even 1½ miles from their home but, because it is so close, there is no bus to ride and because of Dad's threatening behaviors, the family does not want to chance something happening to her. *Id.*

g) Dad sent a message to Dr. Barnes stating "I hope you choke on your dinner and die so I can smear feces…on your grave." T137:7-11.

h) Mrs. Barnes testified that because of Dad's threatening behavior and messages: "…[W]e blocked everything. I've quit posting to social media. I've had to tell my family. …It's not personal. I don't want him to harass [them] if

[24] Based on behavior occurring on May 7, 2018, the Commonwealth of Pennsylvania charged Dad with a) Harassment—Communicating lewd and threatening language, and; b) Harassment—Court of Conduct with no legitimate purpose, in violation of PA 1-18 § 2709 §§ A4 and 2-18 § 2709 §§ A3, Docket #: MJ-02201 CR-0000469-2018. *See* Motions Exh 12, OCS-Ex12-002. The docket shows Dad's legal name to be '[redacted] *Id.* at 001–007.

> I'm tagged on something. …I've gone through the settings and made everything private, but we've had to block everything.
>
> …[I]t is a lot, and it's impacted us on multiple levels for a very long time. …I just feel like it doesn't end. It's continuous, it's nonstop. The number of emails, the number of things that are being said, not only about my personal family, this is my work family. These are my, you know, [I] spend a lot of time in my role preparing individuals that are working, that will be working. If we have a new social worker…I spend my time prepping her on how the interactions might go with [Dad]. I have to prepare her…[I tell her] to lock down [her] social media. I need [her] to know he is possibly going to contact [her] family members. I spend my time coaching them through what the possibilities of his harassing emails or the things that he might say during team calls or anything like that. So I'm really coaching them through how to deal with him, where I should be coaching them through how to give quality instruction to all students in Onslow County, including his daughter." T137:14 – 138:15.

113. On cross examination, through his questioning of her, Dad confirmed that Mrs. Barnes had nothing to do with Andy's being given (or not given) a FAPE by Respondent. T141:5-15, 143: 5-14. She testified that no part of her work "had either a direct or indirect effect" on [Andy's] education at [sic] Onslow County[.]" T143:12-14. Moreover, Mrs. Barnes never met Andy. T143:8-9. The only thing concerning Andy that Mrs. Barnes was involved with was "helping the team organize the thousands of emails…" for this lawsuit. T141:16-18.

114. Melissa Oakley is an Onslow County School Board member and, at the time of hearing, had been for some three (3) years. T147:18-22. She became aware of Dad and his family prior to them moving to Onslow County "because [she] was aware from staff keeping [the Board] briefed on [Dad]'s communications regarding his potential enrollment of his children in Onslow County Schools. …[T]hat was in 2020." T147:25 – 148:5. The staff felt it necessary to keep the Board abreast of Dad's communications because they "were not necessarily the most cordial communications or respectful communications, and they became to be kind of a heavy part of the workload in a short period of time." T149:19 – 150:4.

115. On August 20, 2023, Dad began to post to Ms. Oakley's Board of Education Facebook page using the name "[redacted] and, in one particular post sent at 2:58 a.m., Dad stated he "like[s] to create conflict in the middle of disputes with Dr. Barnes [as i]t motivates [Dad]." *See* Motions Exh 4,[25] ¶¶4-5, Exh 4A, and T150-151. In another post that same day at 1:14 p.m., Dad asserts in a less than veiled way that Dr. Barnes is "a predator." Motions Exh 4A. In response, Ms. Oakley advised Dad to take his concerns up with the court system and that she was cutting off her correspondence with him. *Id.*

116. Ms. Oakley found that

[25] Respondent's counsel notices the Tribunal that although Ms. Oakley signed her Affidavit (Motions Exh 4), the affidavit was not notarized. Nevertheless, Ms. Oakley credibly testified in court, under oath, regarding everything she attested to in her Affidavit. As such, the Tribunal accepted her Affidavit as part of her sworn, in-court testimony. *See* T157:17-24.

> "in our exchange of the messages, to me it became quite clear, in my opinion and observation that based on everything [Dad] was saying in these messages, it was never about his child…. It was never about the services that were being provided or that he believed not to be being provided that were necessary based on her needs. It was always mainly about Dr. Barnes, the superintendent, Misty Williams, or someone that was staff, and it seemed like very personal attacks, not anything about their actual job performance that would be directly impacting the services that his child should be receiving or not receiving. …
>
> …[Dad]'s behaviors have added stress to our staff and taking [sic] up time from other students we need to serve. …The hours and hours and hours over the course of a few years with rapid fire emails. …[T]his [went] on for hourse and hours and hours a day. When you're dealing with a district of almost 30,000 children, almost 4800 of them…EC children, military services and things like that combined, [Dad took] up a lot of their day [with staff just] trying to figure out how to satisfy the needs and wants of one person."

T155:11 – 156:14.

117. On cross examination, through his questioning of her, Dad had Ms. Oakley read into the record several of his posts from her Board Facebook page in which Dad asserts that "t]he issue is with [his] daughter[and, …] right now…Dr. Barnes…plan[s to]…publicly embarrass[Andy]. Imagine your child has a disability[and at] times those disabilities are shown around others, including anxiety and outbursts. …People stare and make rude comments. Then the bullying rolls in. This is how Dr. Barnes thinks and acts. Publicly embarrass disabled children." T162:4-13. Thereafter, Dad sent Ms. Oakley a picture of Andy with her name—Ms. Oakley later confirmed that the picture was *actually* of Andy. T162:22-24. Again, Ms. Oakley responded that "board members are to refrain from investigating matters…as we operate in a quasi-judicial capacity as part of our roles. …[T]his is a legal matter and there is no discussion necessary between us as it is before the Court." T163:15 – 164:2.

118. Through further questioning, Dad confirmed that Ms. Oakley had no direct involvement with or influence in Andy's being given (or not given) a FAPE by Respondent. T165:7 – 166:21. Ms. Oakley also confirmed she has never met Andy. T167:2-4.

119. Officer Phillip Williams has been with the Jacksonville Police Department for 27 years and is the husband of Misty Williams, Respondent's EC Director. He testified on direct that he has no connection at all to the services that are provided to Andy and Onslow County Schools. T170:6-25.

120. Officer Williams further testified that he had no reason to have any connection with Andy's parents either. T171:1-3. Yet, on November 5, 2023 at 10:44 p.m., Dad sent an email to Officer Williams (and cc:d the Sheriff of Onslow County) regarding his wife. The email read:

> "Lt. Williams, I am forwarding this information in regards to ONSLOW COUNTY Schools. Anyone who feels it is ok to make a child with autism eat lunch in the hallway like my daughter is a piece of shit. That includes your wife. Your wife lacks integrity and this is a reflection of you as it appears you condone such behavior. I attached a filing your ugly wife was involved with. I am not sure if you abuse her, but it appears that way."

Motions Exh 19m, OCS-Ex 1-023 – 024; T171:12 – 172:9.

121. Because Dad copied the high Sheriff and alleged Officer Williams was abusing his wife, Officer Williams was obligated to "bring it to [his] chain of command with the police department." T173:19-23.

122. Officer Williams was also copied on an email directed to his wife from Dad dated November 5, 2023, at 9:45 p.m. which read "I forgot to include you in this crap. For someone married to a cop, you should have more integrity. My fault, I did say cop and should have concluded they are as dishonest. Want to see protective [sic] speech? I think all cops are (inaudible)." T173:2-16.

123. Officer Williams stated Dad has sent emails to his wife containing a picture of the Williams' children. The picture was taken during an orchestra concert at high school. Yet, Officer Williams had no idea where Dad got the picture because Mrs. Williams "has zero social media [and Officer Williams] do[es]n't post pictures [of his] family online." T175:2-21. Officer Williams had also remembered seeing Dad's email stating he had posted the Williams' home address on "law enforcement hate groups" sites. T177:1-8; *see also* Motions Exh 19, OCS-Ex 1-26.

124. Officer Williams had an earlier interaction with Dad in 2021 when he responded to a call about "a possible stolen wallet." T177:12-22. Officer Williams took the report and provided his work email in case the wallet was found later. T177:21-25. In fact, Dad did email Officer Williams "saying that the wallet had been returned…." T178:1-2. The email used by Dad in 2021 was the same email used to send the other emails to Officer and Mrs. Williams in 2023: [redacted]icloud.com. T178:1-4; Motions Exh 19m, OCS-Ex 1-023.

125. On cross-examination, Dad confirmed that Officer Williams had no involvement at all with Andy's being given (or not given) a FAPE by Respondent. T183:11-22, 184:24 – 185-11.

126. Brent Anderson is the Chief Communications Officer for Onslow County Schools. His department oversees media relations for the County, including managing the district's social media pages, recording board meetings for Respondent and "any other multimedia kind of things that are put up by the district." T186:15-22. He also manages records requests received by Respondent. *Id.* at lines 23-24.

127. Mr. Anderson identified social media posts by "[redacted] that were posted to Respondent's Facebook messenger page between February 1, 2022 and September 3, 2022, in

which (talking about Dr. Barnes) Dad wrote: "I hope his wife and kids know…they will know soon. Maybe I will come visit and we can have a discussion about this." T187:16-23; Motion for Sanctions, Exh 1, OCS—Ex1-001. Mr. Anderson deduced that Steve [redacted] was Dad because [redacted] posts were right in line with the same things Dad kept accusing Respondent of through the many emails and other posts and texts sent from Dad's known email addresses and cell phone number and sent to various employees and contractors of Respondent. T188:2-13.

128. Mr. Anderson also identified posts made on Respondent's twitter account by Dad using his [redacted] handle. T189:7-16. On Twitter, Dad alleged Dr. Barnes had directed a "male staff member [to] force [Andy] into a small room against her will…." T189:19-23. When an unknown poster asked Dad whether he had called law enforcement, Dad responded he was waiting for their special education lawyer "to dictate [our] next steps." T190:2-6.

129. Mr. Anderson also testified that:

a) "Steve S [posting as] NCdad1995" to Respondent's weekly update page. T190:16-25. In those posts, Dad referred to "the real piece of crap, Dr. Barnes at OCS…forcing [Andy]…into a small room against her will for their own satisfaction. #sickfreak…." T191:1-18;

b) Dad posting to Respondent's Facebook page on March 4, 2022: "Why in hell does this district keep locking my daughter with autism and depression in a room…?" T192:2-10.

c) Dad posting toward Dr. Collins on Respondent's twitter account on August 29, 2022: "Your family needs to know how you are and the emotionally abuse [sic] actions allowed by your staff. I hope your family gets help to be safe from a monster like you." T193:14-25. And, "[n]ow I see why North Carolina is called the white trash colony." T195:7-9.

d) Dad posted to Respondent's Facebook page: "If anyone is tired of how their child is bullied, harassed, or harmed in any way with no response from the district, here is Dr. Collins' [personal] cell number," and then Dad listed the cell phone number. "Flood his phone with all your concerns. If that does not work, I will post a few others' cell phone numbers." T196:3-13.

130. Mr. Anderson confirmed that he, too, received emails from Dad with allegations about Andy. T197:17-20.

131. In the two years since coming to the District, Mr. Anderson's office has spent many days pulling records in response to Dad's many—often repetitive—public records requests, student records requests and email requests. T198:18 – 199:19.

132. On cross-examination, Dad confirmed that Mr. Anderson has had no involvement at all with Andy's being given (or not given) a FAPE by Respondent. T199:22 – 200:11.

133. Mr. Anderson's office examined Dad's public records, FOIA and education records requests and crossed them with the various emails and social media accounts from which all the posts about Andy, Dr. Barnes, and staff came and, they were able to definitively determine that Dad was the holder of all the various accounts. T204:3-25.

134. Jeff Pittman is Respondent's Chief Technology Officer and has been since 2016. T206:16-18. His job encompasses the use of technology in the curriculum, across the curriculum, and to make sure Respondent's "organization is running as efficiently and effectively as possible using technology." T207:6-10. Mr. Pittman does not handle any of Respondent's social media. *Id.* at lines 11-13.

135. Mr. Pittman has been heavily involved in responding to Dad's various records requests made by or regarding emails. T208-211, 225:4-18. He went through Respondent's exhibits attached to each of the Motions for Sanctions and authenticated the various emails that had come through Respondent's system. T211-217.

136. In response to a request by Dr. Barnes, Mr. Pittman set up a way for Respondent's email system to flag every email from the "list of known email addresses that are coming from [Dad… and,] redirected [those emails] to one common email address" specifically, AS.com@onslow.k12@nc.us. T217:16 – 218:11. The purpose of A[ndy] coms was to "take some of th[e] burden off of teachers[]" due to the extreme volume and ugly content of Dad's "harassing [and] burdensome" emails being received every day. T217:23 – 218:2. Once A[ndy] coms was created, Dr. Barnes would access the emails and response once per week instead of teachers receiving them and feeling the need to have to respond several times a day, every day of the week. The A[ndy] coms email was set up in March 2022. T218:13-15. Soon thereafter, it appeared Dad's emails were slowing so Respondent went back to letting teachers receive emails and respond but had to reinstitute A[ndy] coms in September 2022 when the flood of emails from Dad returned. T218:19-24.

137. Although the AM coms rerouted many emails from certain teachers, there were 27 exceptions to the rule, including that all Respondent's seven (7) board members, Dr. Collins and Andy's principal still received messages Dad sent to their email addresses. T221:2-18.

138. Dad has used eight (8) different email addresses to harass and bully Respondent's administrators, teachers, and contractors. They are: *i*) [redacted]icloud.com; *ii*) NCdad1995@gmail.com; *iii*) amss@icloud.com; *iv*) [redacted]spectrum.net; *v*) [redacted]icloud.com; *vi*) [redacted]comcast.net; *vii*) [redacted]spectrum.net, and; *viii*) [redacted]gmail.com. Since the November 30, 2023, hearing, Dad has begun using yet another email address: steve@darkshadowstudios.net. T219:2 – 220:15. This last email address was updated in OAH's docket system pursuant to Dad's request to the Clerk.

139. Dad sent a total of **4500 unique emails** from the 8 email addresses (listed in FOF #129 above) to the District (T222:19 – 223:5), with 3883 of those coming from [redacted]icloud.com. T223:9-15.

140. Mr. Pittman has nothing to do with providing a FAPE for Andy.

141. Dr. Barry Collins is the Superintendent for Onslow County Schools. He has spent most of his 35-year career work for Respondent and has been Superintendent for the entire time during which Petitioners have lived in Onslow County.

142. On February 17, 2023, Dr. Collins was copied on an email Dad sent to the District in which Dad stated: "Now, you see why this school has a security issue. I never wish violence on a school, but I would laugh my ass off if someone smoked one of [the] OCS buildings. This county deserves it." T233:1-11; 1st Motion, OCS Exh 1-032.

143. On October 24, 2023, Dad directed an email to Dr. Collins, Respondent's counsel and, Ken Reddick (one of Respondent's 7 board members) in which Dad stated: "Just remember, we got what we wanted for the best interests of [Andy]. The rest is watching your horse and pony show." T234:2-20; 1st Motion, OCS Exh 1-028. "…When are you and the district realized [sic] we got what we needed for A[ndy], that is all addressed in the Stay Put order. A[ndy] will be long gone before hearing. The district will not even know when [Andy] is gone until well after the fact. There is a school records request that is actually going to process to sanitize her records to transfer to her real district. We could be gone with a 24-hour notice to our movers." T235:3-11; 1st Motion, OCS Exh 1-028.

144. Never before in his 35 years has Dr. Collins experienced threats of violence, harassment or verbal attacks on himself, his wife, children, or staff like what he has experienced from Dad. Never before has he known of another situation with such an overwhelming volume of requests from a parent. T235:16 – 236:9, T239:8-13. Even for the present day's hearing, four or five of Respondent's top executives were present and tied up for the all-day hearing. T236:10-11.

145. Dad's insatiable appetite to harass and threaten Respondent and keep Respondent's staff busy with him and him alone has cost Respondent thousands and thousands of dollars and man hours and, has cost Respondent's staff, officers, and many of their family members significant stress, concern and fear. T236:5-15.

146. Dr. Christopher Barnes is Respondent's Chief Executive Officer. He has worked for Onslow County Schools for 31 years. T241:2-5. He first became aware of Dad on August 25, 2021, when Dad sent an email to an employee, Ms. Wilmouth, asserting he and his family were moving into the district and had a settlement with the prior district. T241:13-23. That email arrived "about 100 days before [Andy] actually enrolled." T241:24-25.

147. Andy's first day of enrollment (entry date) into Onslow County Schools was December 2, 2021. T242:1-5.

148. When Andy and her family arrived in Onslow County, Dr. Barnes was the Executive Director of Exceptional Children and Student Support. He was promoted to Chief Executive Officer sometime in 2022. T242:9-12. Nevertheless, upon Dad's arrival in and Andy's admission into Respondent's school, Dr. Barnes' work life almost immediately had to

become focused on Andy and all the various and outlandish (and often profane) accusations, attacks and threats made by Dad against Respondent and/or Dr. Barnes specifically. Instead of

> "being able to focus [the] majority of his time on instructional priorities of the district[…and] assist our schools in performance[, …Dad's behavior toward the district] has been an incredible burden, mentally, emotionally…[as I] try[] to manage a bizarre and challenging situation." T242:14-17, 21-23.

> "We've had nine due process cases, nine state complaints, and about 30 other filings by [Dad]…. [Today] could be a typical day for us. Just we wouldn't be here. We'd be working out of office to try and digest and understand messages, weed through and figure out what's the best course of action to try to serve a student's needs and manage some challenging adult behaviors." T243:2-10.

> "In [my] over 25 years…in education, [there is no comparison] to the amount of time [I] have dedicated to any other parent or any other student[. This is [u]nprecedented. To include even the amount of time I've spent on the education of my [own] four children, [it is] unprecedented in terms of the amount of time and effort [that has been required of me due to Dad's behavior]. T244:3-10.

> "Outside the loss of a loved one or the hospitalization of one of my children, which had a much shorter duration than this, I would say [this situation with Dad i]s the most taxing…of [my] life[. (T244:14-19)]…In terms of the amount of time, energy, emotional energy spent on this…compared to other parents…[it's hard to say] because most situations, I know of almost no situation that was not ultimately resolvable. In short order, this matter has been the most different in that at any given moment there's going to be a flurry as there will likely be after this hearing of personal attacks, nasty comments and implications that 'if my children don't know what a sick freak I am, they soon will.' I don't know what that means. And to be able to protect my own children and then also staff members. And it's not about age but often young staff members who some may be making decisions to leave the field. It's a heavy burden to try to offer a level of protection to all of those folks and at the same time deciding do I explore a protective order for myself or my family—which I have certainly explored." T244:20 – 245:12.

> "Unless we were in a couple of the down times which I think tended to be may a few weeks in the summer[s], it would be as you've already heard just a dizzying number of messages usually [sent in the] middle of the night whatever and the next day. Part of the reason for [Andy] com[]s was in a way to manage without simply taking up every moment of every day to check for a new message because if [Dad] is awake he's sending something soon. …[W]e put in a communication plan to try and answer those on Fridays for the things that were real relevant, not already answered if we could get through them." T245:15 – 246:2.

> "…[I]t was more challenging when we initially were trying to answer [Dad's emails in] live time which is nearly impossible because we didn't realize initially that within short order there would be a dramatic change in position. So maybe [he'd] demand…virtual classes for [Andy. Then] several minutes later maybe, [he'd email:] 'How dare you give my child virtual classes.' So the change in communication was that by Friday we could look at 40, 50, 120, 200 messages and sort of chart out…what do we think his final position was on this particular matter and can we do this, can we not do it? Is it right or reasonable for the child? …." T246:25 – 247:11.

149. Dr. Barnes went through several of the emails he received from Dad with profane, threatening, and harassing language directed at him, his wife, his family, and his staff, affirming their authenticity and his receipt thereof. In responding to one such email, Dad was asked to stop sending emails with profanity and lewd references to Respondent's staff. Dad's response to the request was that his was "Pretended [sic] speech under the First Amendment, period. So I have to tell you to fuck off about this one." T249:19 - 250:3.

150. In other efforts to intimidate Dr. Barnes and other staff, Dad has asserted to Respondent at various times that he: a) is a government informant; b) has complete immunity; c) can't be arrested; d) is doing investigative work about Dr. Collins' and Dr. Barnes' supposed involvement with January 6, pursuant to a request from Senator Toomey from Dad's home state; and, e) will get them fired from their jobs. T252:6-11. However, Dad advised the Undersigned he had retired from restaurant management with Darden Restaurants, Inc. (Olive Garden).

151. With the exception of "losing a kid in my own school," this 2-year long hostile environment created by Dad has been the weightiest issue Dr. Barnes has faced in his career "because it's both home things and trying to protect my own children…[as well as] staff members…. T255:20-23. He has had staff members who are "unwilling to provide…service [to Andy] because [they are] scared this guy who has all of these federal connections is going to take away [their] livelihood." T255:20 – 256:1.

152. Toward the end of Respondent's direct examination of Dr. Barnes, Dad began to state loudly that he had to leave. When given the opportunity to cross-examine Dr. Barnes, Dad began but then, instead of continuing to ask Dr. Barnes questions, Dad began arguing with the Undersigned, during which he engaged in a barrage of profanity—for the third time of the day—and overtalked the Tribunal. After doing all but having the bailiff cease Dad, the Undersigned excused Dr. Barnes from the witness chair; at which point, Dad stated "I need to present my witnesses. My daughter Andy is in the car downstairs and I want her to testify."[26] The Court advised that Andy was not an appropriate witness for a sanctions hearing. T267:18-21.

153. Nevertheless, the Tribunal offered Dad an opportunity to deny writing *any* of the emails offered into evidence by Respondent and admitted. T268:16 – 269:13. Dad responded: "I don't recall anything." T269:14-22.

[26] It appears this was another moment when the recorder stopped as the transcript does not reflect Dad's desire to produce Andy to testify.

154. When Petitioners filed their Motion to Compel FOIA records, attached thereto was the initial FOIA request Dad had sent to Respondent. Therein, Dad states: "Any further questions you may respond to the email or [to] my cell phone (717) 870-7206." Petitioners' Motion to Compel FOIA Records/Motion to Compel Emails and Text Messages, filed October 24, 2023, p.3 (emphasis added). **The text messages received by various of Respondent's staff and counsel were sent from Dad's cell phone number: (717) 870-7206.**

Witness Credibility

155. Although there was no sequestration order in place for the present hearing, with the exception of Dr. Collins and Dr. Barnes, none of Respondent's witnesses were in the courtroom for other witnesses' testimony due to the lack of space in the courtroom. (Respondent's Exceptional Children's Director Misty Williams was present in the courtroom throughout the hearing but she did not testify.)

156. Emotions ran high with several of Respondent's witnesses as they each credibly testified to the turmoil and stress, even fear and intimidation caused them by Dad's actions and verbal attacks. A few of the witnesses were brought to tears while reliving the fear and concerns they felt for themselves and their family members as they reread into the record text messages and emails received by them from Dad over the last two (2) years. The demeanor of Respondent's nine (9) witnesses was straight-forward and their testimonies given without leading, coercion or embellishment. Doubtless each of these witnesses spoke from their own personal experience and knowledge.

157. Moreover, the testimony of each of Respondent's witnesses was completely consistent with that of the other witnesses and completely consistent with all other believable evidence in the case. The Undersigned found every one of Respondent's nine (9) witnesses to be wholly credible.

158. Petitioner-Dad was the only witness for Petitioners. Dad consistently *remembered* and recounted details of things that were not at issue and, things that had already been adjudicated or settled—i.e.) Andy's eating on the floor—and, things for which he wanted to have Respondent held accountable. Yet, Dad claimed to have little to no memory regarding the pertinent issues at hand—i.e.) the sent emails and text messages and the social media posts. At times, Dad was so intent on not answering questions that he changed his answer two or three times to the same question. **Dad was consistently evasive and, at the last, settled on "I don't recall[]" as his answer to whether he sent any of the texts, emails, or social media posts.**

159. At the beginning of the hearing, Dad started with a barrage of profanity. The Tribunal admonished him that such language would not be tolerated. Thereafter, Dad did not use such language for 2 or 3 hours. But about midway through the hearing, when one of his objections was overruled and he had been cautioned *yet again* to cease discussing already-adjudicated and settled issues, Dad had a tantrum and began railing profane accusations at Respondent's representatives. The Tribunal addressed Dad's profanity for the second time and warned him that if there was a third outburst, he would be removed from the courtroom and the hearing would continue without him. During the last 10 minutes of the hearing, Dad began to

rail on the Tribunal and Respondent with yet another torrent of profanity. While addressing his behavior and language, Dad continued to overtalk the Undersigned. Finally, the Undersigned motioned for the Sheriff's deputy to escort Dad out of the courtroom. Dad almost immediately stopped cursing when the deputy moved toward him. However, when the hearing ended, he again began his unruly behavior and, three Sheriff's deputies had to escort Dad out of the courthouse to his vehicle.

160. What bit of testimony (and argument) Dad did give was riddled with inconsistencies and, as the evidence of record now shows, several deliberate untruths. For example, at the crux of Dad's Motion to Compel FERPA records was Dad's continued assertion that Respondent had not provided to him Andy's report card. Yet, through witness testimony and admitted exhibits, Respondent's evidence revealed it had not only provided the requested records (including Andy's report card) but, had done so more than once. In fact, at one point, Dad emailed the report card back to Respondent's counsel during one of his email rants. When confronted with questions about such provision, Dad admitted Respondent had provided documents to him at least twice—one time of which he refused to access the documents because they were 'in a cloud' that he believed to be unsecure, and; as to the last provision of records, Dad actually admitted that he never read the documents provided to him by Respondent. He did some sort of AI search and when it did not produce the report card, he *assumed* the report card was not in the provided documents. Dad's testimony therefore is not credible and cannot be relied upon.

Behavior For Which Sanctions Are Meant to Curb

161. In earlier cases between the parties, most of Dad's voluntary dismissals ("VD") without prejudice were taken at or about the time Respondent was entitled to receive discovery with which it could defend itself, and; in the instant case, after documents covered by the parties' Protective Order had been subpoenaed. Specifically, Dad took VDs without prejudice as soon as Respondent issued subpoenas for Andy's mental health records. Upon taking the VD, Dad immediately contacted Andy's mental health provider/s to advise them not to respond to the subpoena/s due to the case being closed. In the present case, instead of taking a VD, Dad filed two Motions to Quash the subpoenas—and then contacted the providers to tell them not to respond to the subpoenas.

162. Following a hearing on Petitioners' Motion to Quash, the Tribunal denied Petitioners' motion and issued two Qualified Protective Orders authorizing the two mental health providers to produce the subpoenaed discovery. Even with the issued Orders, Dad continued to try blocking Respondent's receipt of the authorized discovery.

163. Although he had "perfect" memory of what he *wanted* to testify about, on cross-examination, Dad continuously asserted that he had "no recollection[…] no idea[or answered that opposing counsel's questions were] irrelevant[]" whenever asked about issues he did not wish to discuss. T51:24 – 52:13; 48:22 – 49:1. He also repeated "I don't know" in answers to questions about which he clearly had full knowledge. T49:2-6.

164. Then, when questioned about the many emails produced by Respondent to support its argument for sanctions, Dad's response was "I don't recall." With Dad taking the position that 'he doesn't recall' having sent any of the threatening, harassing and offensive emails and text messages to Respondent's staff and family members and, also refusing to respond to questions about the many social media posts made on Respondent's various platform pages, the only competent evidence of record is that of Respondent regarding such.

165. The uncontroverted evidence of record plainly reveals that all the text messages at issue came from Dad's cell phone. There is no evidence that, during the two years those messages were being sent, Dad's cell phone was in anyone else's possession but Dad. Moreover, in most of Dad's emails to Respondent over the course of the two years in question, as well as in some of Dad's own filings in this matter, Dad noted the same cell phone number by which he could be reached. A preponderance of the evidence supports that Dad sent all the text messages of which Respondent complains.

166. Likewise, the uncontroverted evidence of record plainly reveals that almost all the email messages at issue came from one of Dad's email addresses. There were a very few that were attributed to email addresses with Petitioner-Mom's name therein. However, the vast majority of the inappropriate emails sent to Respondent were written in the exact same way, using almost exact language and threats, including those from Mom's supposed email addresses. Many of the emails recount the same allegations regarding the author's autistic daughter. Additionally, in the two hearings over which the Undersigned has presided in this case, and during which Dad has appeared alone to argue, Dad utilized the same or similar language, including threats and inconsistencies in his oral arguments. Due to the consistencies in tone, tenor, and content, a preponderance of the evidence supports that Dad wrote all the emails of which Respondent complains.

167. Similarly, the undisputed evidence of record plainly reveals that all the social media posts to Respondent's Facebook page and twitter/X account, various staff members' Facebook pages and twitter accounts, school board member Melissa Oakley's Facebook page, and, the derogatory post against Christine Hogan's MPI number on her National Provider Identifier website profile were made by Dad. Dad admitted writing messages to Ms. Oakley through her Facebook page. T158:15 - 159:7. Those messages were consistent in tone and content with the messages Ms. Barnes received on her Facebook account, and with the messages sent to the official Onslow County Schools Facebook page. Furthermore, all of the Facebook communications described herein were sent by a user named "[redacted] [redacted] which are Dad's first and middle names. A preponderance of the evidence supports that Dad authored the various Facebook messages and posts.

168. Dad's conduct during the hearing was inappropriate with his repeated use of profanity, insults and threats. More than once, Dad engaged in personal attacks against Respondent's counsel and staff who were present and had to be admonished. At one point, Dad began railing on the Undersigned judge and only stopped when the Sheriff's deputy began moving toward him.

169. The fact that Dad immediately stopped his profane and abusive language and behavior almost instantly whenever the deputy moved toward him, proves Dad clearly knows better and has the ability to control his poor behavior but *chooses* to behave badly, believing there can be no consequence. His braggadocios emails to Respondent about the settlement Petitioners reached with their former state of Pennsylvania tend to show Dad's behavior with the school district there was equally as poor and offensive. T241:16-24.

170. Between October 2021 and November 2023, Dad sent 4500 separate emails to various staff members (individually or collectively), contractors and board members of Respondent, often copying spouses of those individuals or other members of the community at large. Many of the emails recounted events that did not happen and, even regarding events that did occur, the emails regurgitated details that were inaccurate and misleading.

171. During that same period, Dad sent many text messages to the personal cellphones of, and social media messages to, multiple employees of the District and/or their family members. These messages and posts were highly inappropriate, factually inaccurate, often profane and threatening. As an example, Christine Hogan received a text message on her personal cellphone on March 10, 2022, at 11:29 p.m., which read: "I am hearing you were involved with tricking [Andy] into the room just to lock the door behind her. I don't want you near her. It is recorded. I will total [sic] use this to get ur license suspended. I know what was done, just want to know why. Were you two going to hold her hostage and not even allow her to eat lunch. You disrespected [Andy] and you fucked with the wrong person." T105:17-24; Resp. Ex.1, pp.1, 3. Yet, Ms. Hogan had never even met Andy. T103:25 - 104:5, 109:9.

172. The vast majority of those emails sent for no reason but to **taunt, threaten, bully, harass, embarrass, intimidate and/or spread untruths** about individual staff [redacted] of the emails had the intent of defaming Respondent and certain of its staff members and, in at least the one email sent to Officer Williams and copied to the Sheriff, the intent was clearly to cause harm to Officer Williams' career. The untrue allegation Dad listed on the National Provider Identification website, against Ms. Hogan's speech therapy license, still remains.

173. Most of the people Dad attacked had absolutely no contact with or responsibility for Andy's education. Many of them had never met Andy, Dad or Mom. Some had nothing to do with Respondent except that they were married to one of Respondent's staff members or attorney. When questioned by this Tribunal as to whether he wrote the communications presented during the course of the hearing, Dad became evasive and ultimately testified that he does not recall whether he sent any of the messages. T267:21 - 268:20. This statement was not credible.

174. Each of Respondent's witnesses testified that they felt targeted and threatened (either for themselves or for their family members) by Dad's emails, posts and texts.

175. Dad admitted in several emails that Petitioners had gotten everything they wanted from the Stay Put Order such that thereafter, the litigation was simply a "horse and pony show" Dad was engaging in for his own entertainment. Even more, Dad asserted more than once that

he and his family would not even been in the State of North Carolina when the hearing on the merits would be held. Thus, a preponderance of the evidence reveals that, in *continuing* this litigation after the Tribunal issued the Consent Order for Stay Put on October 12, 2023, Dad's motives were not about Andy's education but instead were corrupt—intended to continue attacking, taunting, threatening, bullying, harassing, intimidating and being burdensome to Respondent's staff.

176. Dad's behavior during the hearing shocked the conscience of this Tribunal. The Undersigned has never before in her courtroom experienced such inappropriate and aggressive conduct as Dad exhibited during the hearing.

177. Early in the hearing, during his own testimony, Dad threatened staff for the Board:

> **DAD:** "…they can wait for me in the parking lot…I'm going to defend my daughter."
>
> **COURT:** "What exactly are they waiting for, sir?"
>
> **DAD:** "What? I'm going to defend my daughter."
>
> **COURT:** "Okay, but it strikes me that comment you just made, that they could wait for you in the parking lot…"
>
> **DAD** (interrupting): "Yeah, if they got a problem with my daughter, you know…"
>
> **COURT:** "Was that supposed to be a threat?
>
> **DAD:** "(Inaudible) defending my daughter."

T50:20 - 51:12.

178. Dad was disruptive to the proceedings, exhibited minimal decorum, and disrespected the Tribunal. He argued with, interrupted, and raised his voice at the Undersigned. *See* T32:23-24; 52:11-24. In fact, due to Dad's behaviors, the Undersigned dismissed the parties for a break early in the hearing. T32:20.

179. Later, when it became clear that the hearing was running long, the Tribunal offered to continue the matter into the next day but Dad adamantly refused. Then when there was no more time, he ranted that the Tribunal would not allow him to put on witnesses. However, the only witness Dad offered was Andy who could offer no testimony relevant to the sanctions hearing. T267:16-19. The Undersigned did not permit Dad to present a video of Andy because it, too, was not relevant to the issues before the Tribunal. T50.

180. During the course of the hearing, Dad continued to use profanity in numerous instances, despite direction from this Tribunal to cease. At the last, the Undersigned did not permit Dad to continue cross-examining Dr. Barnes after he ignored the multiple warnings that he must refrain from the use of profanity.

181. During Dad's testimony, he got out of the witness chair and attempted to leave the courtroom multiple times, despite the Undersigned's orders that he remain seated. T48:4-20; 50:11-16; 52:25 – 53:12. Dad disregarded the Undersigned's multiple orders that he not discuss certain issues that were outside the scope of the hearing, to the point that the Undersigned had to admonish Dad several [redacted] T48:4-9; 49:2-21; 50:5-13, 17-22; 54:5-5-11; 55:7-21; 183:25 – 18:22; . On multiple occasions, one or two bailiffs were needed to intervene when Dad's behaviors became concerning. As a result of Dad's behaviors, tension was palpable, with individuals in the courtroom on edge anticipating Dad's next outburst.

BASED ON the foregoing Findings of Fact, the Undersigned makes the following

CONCLUSIONS OF LAW

1. The Parties are properly before the Office of Administrative Hearings in that the Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case, and the parties received proper notice of the hearing in this matter.

2. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels. *Charlotte v. Heath*, 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946); *Peters v. Pennington*, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011). *Warren v. Dep't of Crime Control*, 221 N.C. App. 376, 377, 726 S.E.2d 920, 923, *disc. review denied*, 366 N.C. 408, 735 S.E.2d 175 (2012).

3. This Order incorporates and reaffirms the Conclusions of Law contained in the previous Orders entered in this litigation.

RE: Petitioners' Motion to Compel FERPA Records

4. Dad acknowledged receiving records from Respondent in April, 2023 and October, 19, 2023. T28:12-14, 20-24. Yet he did not *read* the records he received. Therefore, knowing he received records from Respondent which he did not read, Dad made intentional misrepresentations to this Tribunal when he asserted that Respondent had not produced the requested educational records and that he did not have the requested records. Dad does not know *what* records he received or failed to receive.

5. As such, Dad failed to meet his burden of showing he is entitled to an order compelling Andy's educational records. Petitioners' Motion to Compel should be DENIED.

RE: Petitioners' Motion to Dismiss Petition Without Prejudice

6. In their filed Motion to Dismiss, Dad asked that Petitioners' case be dismissed without prejudice asserting, in pertinent part, that: a) Petitioners were "relocating in the next 60 days, give or take a few days[,]" and; b) "Parents will accept any future litigation will be through legal counsel." Motion to Dismiss, ¶3 and 14. In addition to allowing the dismissal without prejudice, Dad asked the Tribunal to order Respondent to give back Andy's mental health records which it subpoenaed and with which this Tribunal ordered the providers to comply.

7. However, at hearing, Dad asked that Petitioners' case be dismissed without prejudice so he would simply re-file again in the next few days. T9:1-21.

8. Dad filed the Motion to Dismiss *after* the Board filed both its Motion for Sanctions and its Amended Motion for Sanctions, clearly in an effort to avoid sanctions. However, Dad's decision to dismiss the Petition does not remove the Tribunal's subject matter jurisdiction over the issues addressed herein. Our appellate courts have long held that "a voluntary dismissal pursuant to Rule 41(a) 'does not deprive the court of jurisdiction to consider collateral issues such as sanctions that require consideration after the action has been terminated.'" *Ayers v. Patz*, 152 N.C. App. 477, 567 S.E.2d 840 (2002) (quoting *Bryson v. Sullivan*, 330 N.C. 644, 653, 412 S.E.2d 327, 331 (1992)). Thus, Petitioners cannot avoid consideration of a motion for sanctions through dismissal of the Petition. *See Ayers v. Patz*, 152 N.C. App. 477. 567 S.E.2d 840 (2002); *see also* T10:22 - 11:10.

9. Petitioner's Motion to Dismiss <u>without</u> prejudice should be DENIED.

Respondent's Motion for Sanctions & Amended Motion for Sanctions

10. Dad argued that the Tribunal does not have authority to entertain Respondent's Motions for Sanctions and the requested relief. However, the North Carolina Administrative Procedure Act ("APA") reads, in pertinent part:

> "An administrative law judge may: …
>
> (8) Enter an order returnable in the General Court of Justice, Superior Court Division, to show cause why the person should not be held in contempt. The Court shall have the power to impose punishment as for contempt for any act which would constitute direct or indirect contempt if the act occurred in an action pending in Superior Court[, and;]
>
> . . .
>
> (10) Impose the sanctions provided for in G.S. 1A-1 or Chapter 3 of Title 26 of the North Carolina Administrative Code for noncompliance with applicable procedural rules."
>
> N.C.G.S. § 150B-33(b)(8) and (10).

11. Rule 11 of the North Carolina Rules of Civil Procedure provides:

"Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. **If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee**.

N.C.G.S. § 1A-1, Rule 11(a)(emphasis added).

12. Additionally, North Carolina Administrative Code provides:

(a) **If a party** fails to appear at a hearing or **fails to comply with an interlocutory order of an administrative law judge**, the administrative law judge may:

> (1) Find that the allegations of or the issues set out in the notice of hearing or other pleading may be taken as true or deemed proved without further evidence;
> (2) Dismiss or grant the motion or petition;
> (3) Suppress a claim or defense; or
> (4) Exclude evidence.

(b) In the event that any party or attorney at law or other representative of a party engages in behavior that obstructs the orderly conduct of proceedings or would constitute contempt if done in the General Court of Justice, the administrative law judge presiding may enter a show cause order returnable in Superior Court for contempt proceedings in accordance with G.S. 150B-33(b)(8).

26 NCAC 03 .0114 (emphasis added).

13. The undisputed evidence of record reveals that:

a) After Dad argued Petitioners' Motion for Stay Put on October 6, 2023 and, the Tribunal issued its Order regarding such—to which Petitioner consented—on October 12, 2023, the only other thing Dad wanted was to prevent Respondent from obtaining Andy's mental health records (or, as it is now, to obtain an order requiring Respondent return the mental health records in its possession and not retain a copy). Yet, instead of dismissing their Petition, Dad continued to pepper the Tribunal's docket with many unnecessary, inadmissible, irrelevant and, often, untrue motions and emails for months thereafter. As examples:

i) Stay Put was ordered on October 12, 2023. On October 17, 2023, Dad filed a "Status Update" in which he requested compensatory services to be awarded because he claimed to have received an email that same morning of the 17th, stating Andy's "Math Services ha[ve] been cancelled." Pet's Status Update, ¶¶5-6.

ii) Although Dad was ordered previously (on more than one occasion) that he was to only file pertinent information in the record and only in an acceptable form.[27] Still Dad filed two (2) emails in the docket on 10/19/23 and 10/20/23, neither of which have anything to do with the allegations in the Petition.

iii) On 10/22/23, Dad filed an IEP with no explanation as to why he was filing it.

iv) Dad filed several motions to strike asking the Tribunal to strike Respondent's Motions for Sanctions and Responses to Dad's filings—**which filings would have been unnecessary had Dad ceased to taunt, threaten, bully, harass, embarrass, and intimidate Respondent's staff and legal counsel.**

v) Dad submitted three (3) different requests for FERPA records, in addition to at least two (2) FOIA requests to Respondent. After his third request FERPA request, Dad filed a Motion to Compel FOIA Responses on 10/24/23 and, a Motion to Compel FERPA records on 11/27/23 and 11/28/23. Yet, at hearing, the evidence revealed Respondent provided the requested records (both FERPA and FOIA) to Dad on at least two (2) occasions, and; Dad admitted to having received the provided records but made no effort to read them to know what was contained therein.

[27] On March 28, 2022, in the matter of 22 EDC 832 between the parties, Dad was again "directed to communicate with this Tribunal through formal motions and shall not attempt to amend or supplement their Petition by way of informal email correspondence[]" in violation of 26 NCAC 03 .0101. Order Granting Respondent's Motion to Strike & Motion for Amended Notice Setting Hearing, decretal 1-2, filed 3.28.22.

vi) In his last filing, Dad asserted that he had contacted the Federal Bureau of Investigation to report that Respondent's counsel violated Andy's civil rights by issuing subpoenas "without a judge's order." Pet's Response to Respondent's Motion for Attorney's Fees; Motion to Supply Supplemental Evidence; Motion to Stay; [and] Motion to Reopen, ¶3, filed March 15, 2024. Dad continued "As of this filing[,] the Department of Justice assigned case #420392-LSJ. The FBI is also investigating the complete history of the respondent's actions towards A[ndy] and [Dad]." *Id*. at ¶¶3-4. Since North Carolina law permits attorneys to issue subpoenas, Dad's assertion is untenable. "Any judge of the superior court, judge of the district court, magistrate, or attorney, as officer of the court, may also issue and sign a subpoena." N.C.G.S. § 1A-1, Rule 45(b)(1).

vii) None of Dad's arguments in the combined Motion to Quash are either "well grounded in fact, …warranted by existing law, …or based on a good faith argument for extension, modification or reversal of existing law…." N.C.G.S. § 1A-1, Rule 11(a).

b) In violation of N.C.G.S. § 1A-1, Rule 37 and 26 NCAC 03 .0112, Dad refused to respond to Respondent's discovery requests, hence Respondent filed a Motion to Compel Production of Audio Recording on 10/24/23 and, a Motion to Compel Responses to Interrogatories, also on 10/24/23. At no time did Petitioners file an objection to the requested discovery seeking the Tribunal's intervention.

c) Dad has engaged in continued and unrelenting threatening, bullying, harassment and intimidation of Respondent's employees, agents, witnesses, attorneys and family members related to said employees, agents, witnesses and attorneys.

d) Moreover, **Dad continued to taunt, threaten, bully, harass, embarrass, intimidate and even stalk Respondent's staff and legal counsel for a full 2½ years**—from October 2021 (even before he moved his family into the District) through his last filing of March, 2024.

e) There is no lawful reason for Dad to take such actions or to utilize such language against Respondent's employees, agents, witnesses, attorneys and family members related to said employees, agents, witnesses and attorneys.

f) These unlawful actions of Dad have nothing to do with his desire or attempt to gain FAPE for [redacted] or better [redacted] educational experience with Respondent.

g) Dad admitted in several emails that the continuation of the lawsuit (after the Stay Put Order was issued) was simply his way of increasing Respondent's legal expenses and satisfying his desire to have Respondent's staff and

> counsel continue to jump through hoops. In other words, Dad's intent was **in fact,** to harass Respondent and cause Respondent harm for his own nefarious reasons. These are improper purposes for pursuing and/or continuing in litigation. Additionally, Dad *knew* many of his filings were frivolous and filed solely for the purpose of being antagonistic, malicious and, spiteful.

14. Thus, the record is replete with evidence—on which the preponderance thereof undoubtedly supports—that Dad **repeatedly** (and knowingly[28]) violated Rule 11:

> "**The signature of…a party constitutes a certificate by him** that he has read the pleading, motion, or other paper; **that to the best of his knowledge, information, and belief** formed after reasonable inquiry **it is well grounded in fact and is warranted by existing law** or a good faith argument for the extension, modification, or reversal of existing law, **and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.**"

N.C.G.S. § 1A-1, Rule 11(a)(emphasis added).

15. Respondent is entitled to Rule 11 sanctions. "If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative **shall impose upon the person who signed it…an appropriate sanction**, which may include an order to pay the other party…the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee." *Id.* (emphasis added).

16. Moreover, as the record is also abounding with Dad's obscene profanity and angry and bullying outbursts throughout his written contact with Respondent as well as during the various times Dad has come before the Undersigned in this matter, which behavior is not only unacceptable but also had been ordered several times to cease, a preponderance of the evidence supports that Dad violated 26 NCAC 03 .0114. Dad's actions are actions "which would constitute direct or indirect contempt if the act occurred in an action pending in Superior Court" and for which this Tribunal has the authority and power to issue sanctions, including but not limited to, "[e]nter[ing] an order returnable in the General Court of Justice, Superior Court Division, to show cause why [Dad] should not be held in contempt. N.C.G.S. § 150B-33(b)(8) and (10).

17. The Tribunal concludes that a show cause order may be necessary if, and only if, Dad fails to abide by this Order.

18. In the discretion of the Tribunal, there is necessity and good cause for this Order to issue.

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[28] As a non-attorney, Dad may not have known that his actions violated Rule 11 directly but there is no doubt Dad knew that his evasive and often fabricated filings were in violation of the requirement that litigants are required to truthful and forthcoming to the Tribunal. Moreover, by many of Dad's emails to Respondent, it is clear Dad continued to pursue this litigation for the sole purpose of harassing the Respondent.

19. Petitioner-Dad's repeated conduct of filing petitions and dismissing them without prejudice when discovery is requested does nothing to assist Andy with obtaining a FAPE or proper educational services and it does not serve the best interests of Andy.

20. Dad's repeated conduct of filing petitions and dismissing them without prejudice when records are subpoenaed is likely to cause health and mental healthcare providers not to want to serve Andy because Dad wastes their time and resources in that while in process of complying with subpoenas, the providers are later noticed the matter has been dismissed days later.

21. Further, although Dad asserts that he and his family (including Andy) are "moving" out of Onslow County, so long as Andy resides in the State of North Carolina and must be provided a FAPE by *any* Board of Education located in North Carolina, this Order is necessary and appropriate for future contested cases filed in NC OAH concerning Andy.

22. Dad's conduct causes witnesses to be uneasy and prefer not to be involved in matters concerning Andy which is extremely prejudicial to Respondent and very likely prejudicial to Andy in that it may limit the Tribunal's ability to make a full and complete record of Andy's educational needs if appropriate witnesses do not testify.

23. Dad's conduct is not conducive to assisting in obtaining a FAPE and proper educational services for Andy but is, in fact, a huge hindrance thereto as it can most plainly be defined as a personal attack against Respondent's agents and employees. Not only that, Dad's dealings with Respondent: a) act as a deterrent to teachers to want be involved in providing a FAPE to Andy; b) is a deterrent to teachers remaining in the profession once they have had to deal with Dad; c) steal Respondent's time from doing more academically for Andy and other children in the District because Dad continues to badger and harass Respondent's agents and employees with things that are unnecessary and/or irrelevant.

24. Dad's conduct is extremely prejudicial to Respondent's ability to fairly respond to Petitioners' filings and to defend itself against Petitioners' varied, vast, and often changing allegations against it.

25. Moreover, Dad's conduct is extremely prejudicial to Respondent in that it may deter attorneys from desiring to represent Respondent in actions brought by Petitioners.

Attorney's Fees

26. Respondent having—through extensive evidence—established Dad has consistently, repeatedly and, egregiously violated Rule 11's requirement to only file documents that "to the best of [his] knowledge, information, and belief…[were] well grounded in fact and…warranted by existing law…and…not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation[;]" Rule 11 *mandates* that an appropriate sanction be imposed upon Dad. N.C.G.S. § 1A-1, Rule 11(a).

"Under Rule 11, a court may impose sanctions on a party that files a motion that is factually insufficient, legally insufficient, or filed for an improper purpose. N.C. Gen. Stat. § 1A-1, Rule 11; *see also Bryson v. Sullivan*, 330 N.C. 644, 655, 412 S.E.2d 327, 332 (1992). 'A violation of any part of the rule mandates sanctions.' *Peters v. Pennington*, 210 N.C. App. 1, 27, 707 S.E.2d 724, 742 (2011)(citing *Dodd v. Steele*, 114 N.C. App. 632, 635, 442 S.E.2d 363, 365 (1994)).

When a North Carolina appellate court reviews a trial court's grant or denial of Rule 11 sanctions,

> '[t]he trial court's decision to impose or not to impose mandatory sanctions under [N.C. Gen. Stat.] § 1A-1, Rule 11(a) is reviewable *de novo* as a legal issue. In the *de novo* review, the appellate court will determine (1) whether the trial court's conclusions of law support its judgment or determination, (2) whether the trial court's conclusions of law are supported by its findings of fact, and (3) whether the findings of fact are supported by a sufficiency of the evidence. If the appellate court makes these three determinations in the affirmative, it must uphold the trial court's decision to impose or deny the imposition of mandatory sanctions under [N.C. Gen. Stat.] § 1A-1, Rule 11(a). *Turner v. Duke University*, 325 N.C. 152, 165, 381 S.E.2d 706, 714 (1989).'

Adams Creek Assocs. v. Davis, 227 N.C. App. 457, 472, 746 S.E.2d 1, 11 (2013).

27. In the case at bar,

a) Although having been ordered more than once not to, Dad filed unrelated, irrelevant and inappropriate emails and documents into the record on 8/31/23, 10/19/23, 10/20/23, and 10/22/23, in violation of 26 NCAC 03 .0115;

b) Although Dad has admitted several times that Petitioners obtained everything they wanted from the Stay Put Order, issued October 12, 2023, Petitioners did not dismiss their petition nor did they work to get to hearing on the merits. Instead, **Dad filed dozens of motions and documents with the sole intent of taunting, bullying, and harassing Respondent, and to cause Respondent to continue spending money on legal fees which would never have been incurred but for Dad's ongoing egregious behavior and filings.**

c) Over the course of the nine (9) petitions filed by Dad, if the matter did not settle quickly, Dad consistently took (or attempted to take) voluntarily dismissals pursuant to N.C.G.S. § 1A-1, Rule 41(a), on the eve of Respondent's entitlement to discovery. Then, Dad would start the process all over again.

28. Dad's confession that Petitioners "got everything [they] wanted" from the Stay Put Order is "factually and legally irreconcilable with" his continued actions and filings thereafter as he continued to ask for things that were neither obtainable nor relevant to Andy's education. Even more, Dad's continued drive to keep Respondent from having access to Andy's mental health records—when all the while Dad argued Respondent's staff and agents were causing Andy debilitating anxiety and/or panic attacks, is also "factually and legally irreconcilable with the law of the case[. Dad's…] improper purpose[] to harass [Respondent], increase the cost of litigation[29] for [Respondent], and delay and deny [Respondent]'s" ability to defend itself, is clear support for the imposition of sanctions, including attorneys' fees. *Adams Creek Assocs.* at 473, 746 S.E.2d 12.

29. Additionally, Dad's "conduct was willful and…[his] refusal to settle the dispute was unwarranted." *Cotton v. Stanley*, 94 N.C. App. 367, 369, 380 S.E.2d 419, 421 (1989).

30. Rule 11 prohibits parties from filing any pleading for "any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." N.C.G.S. § 1A-1, Rule 11. "An improper purpose is any purpose other than one to vindicate rights ... or to put claims of right to a proper test." *Brown v. Hurley*, 124 N.C. App. 377, 382, 477 S.E.2d 234, 238 (1996)(internal quotations omitted).

31. This Tribunal has the authority to impose Rule 11 sanctions under N.C.G.S. § 150B-33(b)(10) ("for noncompliance with applicable procedural rules") and, 26 NCAC 03.0101(a) ("The Rules of Civil Procedure as contained in G.S. 1A-1 and the General Rules of Practice for the Superior and District Courts . . . shall apply in contested cases in the Office of Administrative Hearings (OAH) unless another specific statute or rule of the Office of Administrative Hearings provides otherwise.").

32. Furthermore, in line with our State's Rule 11, the IDEA and its accompanying regulations authorize a court to award reasonable attorneys' fees **as a sanction** to a prevailing LEA "against the parent, **if the parent's request for a due process hearing 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**." 34 CFR § 300.517(a)(1)(iii); *see also* 20 U.S.C. § 1415(i)(3)(B); and, *Wesco Insurance Co., v. Roderick Linton Belfance, LLP, et al.*, 39 F.4th 326, 337-38 (6th Cir. 2022) (holding that any fees awarded against a party who pursued an action under the IDEA that was "frivolous" or for an "improper purpose" "would constitute a 'sanction' under the ordinary meaning of that term").

33. Due to the enormous volume of communications from Dad that formed the basis of the Motion (and Amended Motion) for Sanctions, the Board's attorneys spent significant time crafting the 199-page Motion and 20-page Amended Motion, preparing nine witnesses and over 200 pages of exhibits for hearing, defending the Board at the hearing on November 30, 2023 at the New Hanover County Courthouse, and crafting a proposed decision.

[29] *See* Second Amended Motion for Sanctions, Exh 1-001, wherein Dad admits he intended to increase the cost of litigation for Respondent.

STANDARD GOVERNING AWARD OF ATTORNEYS' FEES

34. It is well-established that the correct standard for awarding attorneys' fees is as follows:

> "A court's decision to grant attorneys' fees is discretionary. *Stilwell v. Gust*, 148 N.C. App. 128, 130, 557 S.E.2d 627, 629 (2001). However, if attorneys' fees are awarded, the court 'must make findings of fact to support the award. These findings must include the time and labor expended, the skill required, the customary fee for like work, and the experience or ability of the attorney.' *Id.* at 131, 557 S.E.2d at 629 (citations and internal quotation marks omitted).

Hunt v. N.C. Dep't of Pub. Safety, 266 N.C. App. 24, 32, 830 S.E.2d 865, 871 (2019). Costs may be awarded at the discretion of the judge. *Stillwell, supra,* at 132. Additionally,

> "The amount of attorneys' fees a trial judge awards is not controlled by…the attorney's assessment of the value of his services but, as the General Assembly has provided, is an amount to be determined by the trial judge in his discretion based upon the '*reasonable*' value of the services rendered. *See Bandy v. City of Charlotte*, 72 N.C. App. 604, 325 S.E. 2d 17, *disc. rev. denied*, 313 N.C. 596, 330 S.E. 2d 605 (1985). Two of the numerous factors for consideration in fixing reasonable attorneys' fees are the kind of case or motion for which the fees are sought and the result obtained. …[Furthermore, a] trial judge, acting within his discretion, may consider and include in the sum he awards as attorney's fees the services expended by paralegals and secretaries acting as paralegals if, in his opinion, it is reasonable to do so."

Lea Co. v. North Carolina Bd. of Transp., 323 N.C. 691, 695, 374 S.E.2d 868, 871 (1989).

35. With respect to the first factor of consideration under *Lea, supra,* special education cases are especially difficult from other cases due to the broad intersection of federal code and regulations with State statutes and the State's Memorandum of Understanding with the Office of Administrative Hearings. In many respects, the timelines and rules are vastly different from other cases, and; unlike many areas of law that allow a respondent to cease actions being litigated, respondent-boards must continue to provide a FAPE to children within its purview so long as the child is registered for school in that board's district.

36. Dad's behavior toward the present Respondent along with the many voluminous, antagonistic and, harassing filings intentionally and continually made Respondent's job of providing a FAPE to Andy unnecessarily more and more difficult.

37. As for factor two (2) under *Lea, supra,* the Findings of Fact and Conclusions of Law herein support that Respondent has overwhelming met its burden and proven that it is entitled to an award of attorney's fees.

38. On March 8, 2024, Respondent (by and through its counsel, Carolyn Murchison) filed a verified Updated Motion for Attorneys' Fees & Supplemental Filing in Support of the Board's Motion for Sanctions and Amended Motion for Sanctions.

39. In support of her Petition for Attorneys' Fees and Costs, Ms. Murchison submitted her own Affidavit in which she states, in pertinent part, that:

a) She is a partner at Tharrington Smith, LLC and has worked there practicing in the specific area of special education law since February of 2000.

b) "Since joining Tharrington Smith in February of 2000, [she] ha[s] represented well over four dozen local boards of education, and…ha[s] consistently provided guidance and support to Boards in the specific area of special education throughout this time."

c) She has "represented [Respondent] in special education matters for the past twelve years…."

d) Her rate for this work (as reflected in her thereto attached billing statements) is $275/hour. Her paralegal, Trish Crabtree (reflected in billing statements as TLC), has time billed at the rate of $120/hour, and; an associate attorney on the matter, Maya Weinstein is shown in billing statements to have the rate of $225/hour.

e) Ms. Murchison is not seeking reimbursement for any time spent by legal assistants.

40. The Undersigned takes official notice that most of the special education parent attorneys who come before this Tribunal charge between $300 and $375/hour for this work. Thus, Ms. Murchison's and Ms. Weinstein's hourly rates are more than reasonable and less than is customary for this area of law, especially in light of her more than twenty-four (24) years of experience and expertise.

41. An award of attorneys' fees is based upon rates prevailing in the community where the action takes place. Based on Ms. Murchison's affidavit and other information provided, the Undersigned's own knowledge of and experience with prevailing rates charged in the relevant community, the Undersigned concludes the requested hourly fees are reasonable.

42. Dad filed a Response to Respondent's Petition for Attorneys' Fees in which he asserted:

a) he no longer lives in the district;

b) he wants Andy's mental health records returned;

c) Respondent "is creating 'high stress' on A[ndy]" (Response, ¶6);

d) issues unrelated to sanctions;

e) Respondent's various witnesses at hearing had nothing to do with Andy's education or Respondent's provision of FAPE to her—despite the fact Dad has been attacking them via emails, social media posts and telephone calls for almost 2 years;

f) "Over $40,000 in attorney fees is excessive for these sanctions.[30] A simple low cost 'do not contact' letter would have been sufficient[] (Response, ¶1Q)—although the evidence reveals nothing had been sufficient to stop Dad from his harassing behavior;

g) The Tribunal "did not allow [Dad to] provide evidence or witnesses as the Court was 'closing for the day'" (Response, ¶2)—yet the record reflects Dad refused to continue his cross-examination of Dr. Barnes, preferring to go off in a tirade of profanity *and*, Dad declined the Tribunal's offer to continue hearing the matter on the following day;

h) the Tribunal is "barred from awarding attorney fees." (Response, p.10).

43. The evidence does not support and the Tribunal is not convinced by any argument made by Dad in his Response to sanctions and attorneys' fees.

44. The starting point for determining the amount of a reasonable fee is the calculation of "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.Ct. 1933 (1983).

45. Looking to her billing statements: Ms. Murchison has split her billings into categories making it quite simple for the Tribunal to see exactly where the work was applied:

a) Between October 11, 2023 and November 3, 2023, 29.8 hours were required to prepare Respondent's first Motion for Sanctions, totaling attorney's fees in the amount of $6,847.00. The Undersigned concludes that the last entry which included "conference with Murchison, Barnes and Williams re settlement, motion for sanctions, and next steps" was more of a strategy session and, as such, the Tribunal will disallow recovery of that 1.9/hours' time, totaling $427.50. (Respondent's Motion for Sanctions was filed on November 3, 2023.) Thus, with the exception of the 1.9 hours ($427.50), the Tribunal finds these fees to be reasonable and appropriate for reimbursement through sanctions.

b) Between the filing of their original Motion for Sanctions and the Amended Motion for Sanctions, Dad showered Respondent's various staff and attorneys with nasty, threatening, harassing, and profane emails, making it necessary for Respondent to amend its original motion so the Tribunal could get an accurate understanding of the depth of depravity Dad would go to taunt, harass and threaten Respondent. To that end, Ms. Murchison's billing statement for the Amended Motion for Sanctions reflects another 26.10 hours of time spent between November 5, 2023 and November 8, 2023, when the Amended Motion was filed. That 26.10 hours resulted in fees in

[30] Yet, as noted in COL#28, *fn29*, Dad was happy Respondent had to keep spending money to defend itself against his unnecessary and improper filings.

the amount of $6,370.50. The Tribunal finds these fees reasonable and appropriate for reimbursement through sanctions.

c) On November 9, 2023, Dad filed a Motion to Dismiss Respondent's Motions for Sanctions. In responding to his Motion, Ms. Murchison's third billing statement shows a total of 2.3 hours of attorney time totaling $600.50. The Tribunal finds this amount reasonable and appropriate for reimbursement through sanctions.

d) The next billing statement shows the work done in preparation and execution of Respondent's defense at the November 30, 2023 hearing in New Hanover County. From November 21-30, 2023, Ms. Murchison and her team spent 58.8 hours for this task, totaling $15,095.00. The Tribunal finds these fees reasonable and appropriate for reimbursement through sanctions.

e) Next, Ms. Murchison has attached a billing statement for the work necessary to prepare and file the exhibits admitted into evidence at the November hearing, as ordered by the Tribunal. That work of 7.2 hours occurred from December 8, 2023 through December 15, 2023 and the record shows the 220 pages of verified exhibits were filed on December 15, 2023. The time expended resulted in the fee amount of $1,604.50. The Tribunal finds this fee reasonable and appropriate for reimbursement through sanctions.

f) Ms. Murchison's final billing statement is that for preparing a proposed decision, as ordered by the Tribunal and as is the usual practice here in OAH. Because a proposed decision is expected in most every special education case, the Tribunal considered whether it is appropriate to sanction Dad with fees therefore. However, as the record is replete with evidence that this matter could have been settled long ago and should have been settled *or* voluntarily dismissed by Dad immediately after the Stay Put Order was issued and Dad was no longer seeking any redress for Andy, the Tribunal concludes that Dad should be held responsible for Respondent's expense in having to draft the proposed decision—which addresses *only* sanctions as the sole result of Dad's inappropriate and unlawful behavior. Ms. Murchison's billing statement therefore shows 41.9 hours of time expended thereon, totaling a billing amount of $10,070.50. The Tribunal, having spent triple that time drafting this Order, finds the time expended by Respondent's counsel to be reasonable and, the amount of the fee therefore appropriate for reimbursement through sanctions.

46. Therefore, the Tribunal concludes that Respondent is entitled to reimbursement of attorneys' fees in the amount of $40,160.50 via sanctions assessed to Petitioner-Dad.

Gatekeeper Order

47. Dad has weaponized the judicial process and wasted precious judicial and school system resources in his meritless vendetta against the Board, thereby impeding the ability of this Tribunal and the Board to perform their duties. Thus, a gatekeeper order is appropriate and necessary to prevent further abuses.

48. As described in the findings of fact, this is the ninth Petition filed by Petitioners in just 1.5 years, all of which have arisen out of or related to the same underlying claims involving [redacted] and contain repetitive allegations. In pleadings from all nine petitions filed by [redacted] he asserts the rights of himself and [redacted] but [redacted] is the only parent pursuing the case.

49. It has long been the law in North Carolina that

> "When necessary to prevent abuse of the judicial process and to protect other parties, courts have the inherent authority to enter pre-filing injunctions, or 'gatekeeping orders,' restricting individuals from filing new lawsuits or other papers without approval of the court. *See Lee v. O'Brien*, NO. COA01-1231 (N.C. App. Aug. 6, 2002); *Wendt v. Tolson*, No. COA03-1680 (N.C. App. August 16, 2005); *Estate of Dalenko v. Monroe*, NO. COA08-844 (N.C. App. May 19, 2009). In *Lee*, the North Carolina Court of Appeals upheld a gatekeeping order requiring a *pro se* plaintiff to receive written approval from the district court prior to filing any new documents with the clerk of court. In upholding the injunction, the Court of Appeals specifically noted the plaintiff's history of repeatedly filing frivolous lawsuits and noted, 'Plaintiff will continue to engage in such actions and that the ends of justice will not be served by the unfettered filing of such actions by plaintiff.' *Lee*, slip op. at 13 (N.C. App. Aug. 6, 2002)."

2015 NC Wrk. Comp. LEXIS 256, *12-13.

50. This Tribunal has "inherent judicial power" to enter a "gatekeeper order," when necessary to prevent abuse of the judicial [redacted] *Beard v. N.C. State Bar*, 320 N.C. 126, 129-30, 357 S.E.2d 694, 695-67 (1987). "The Court has the inherent authority to do what is reasonably necessary to effectuate its constitutional duty: the administration of justice." *Id.* at 130, 357 S.E.2d at 696.

51. In determining whether a gatekeeper order is warranted, a court weighs the following factors: (1) the party's history of litigation, in particular whether he has filed vexatious, harassing, or duplicative lawsuits; (2) whether the party had a good faith basis for pursuing the litigation, or simply intended to harass; (3) the extent of the burden on the courts and other parties resulting from the party's filings; and (4) the adequacy of alternative [redacted] *Cromer v. Kraft Foods N. Am., Inc.*, 390 F.3d 812, 818 (4th Cir. 2004).

52. Gatekeeper orders are appropriate where "the nature of Plaintiff's conduct and extraordinary circumstances of this matter require that the Court place special limitations on Plaintiff's access to the [court]." *See Fatta v. M&M Properties Mgmt., Inc.,* 224 N.C. App. 18, 30-31, 735 S.E.2d 836, 844 (2021) (internal quotations omitted).

53. Respondent's request for pre-filing injunctive relief is narrowly tailored to the circumstances while including a means for Dad to file legitimate pleadings and filings with certification from a licensed attorney or prior approval of an Administrative Law Judge. *See*

Fatta, 224 N.C. at 30-31, 735 S.E.2d at 844 (affirming a gatekeeper order that allowed future filings when reviewed by a licensed North Carolina attorney); *In re Vicks*, 240 N.C. App. 293, 772 S.E.2d 265 (2015) (unpublished) (affirming a gatekeeper order that allowed future filings upon review by a licensed North Carolina attorney); *Johnson v. Bank of America, N.A.*, 225 N.C. App. 265, 736 S.E.2d 648 (2013) (unpublished) (affirming a gatekeeper order that allowed future filings when certified by a superior court judge of the county); *Lee v. O'Brian*, 151 N.C. App. 748, 567 S.E.2d 468 (2002) (unpublished) (affirming a gatekeeper order allowing future filings only upon approval of a district court judge of the county).

54. A gatekeeper order is a prefiling injunction. Our 4th Circuit Court of Appeals long ago held that:

> "The imposition of the prefiling injunction, which we review for abuse of discretion, *De Long v. Hennessey*, 912 F.2d 1144, 1146 (9th Cir. 1990), presents…difficult questions. …
>
> Such a drastic remedy must be used sparingly, however, consistent with constitutional guarantees of due process of law and access to the courts. U.S. Const. amend. XIV, § 1. These rights are long-standing and of fundamental importance in our legal system. 'The due process clause requires that every man shall have the protection of his day in court.' *Truax v. Corrigan*, 257 U.S. 312, 332, 66 L. Ed. 254, 42 S. Ct. 124 (1921). And, the Supreme Court has explained that the particular constitutional protection afforded by access to the courts is 'the right conservative of all other rights, and lies at the foundation of orderly government.' *Chambers v. Baltimore & Ohio R.R. Co.*, 207 U.S. 142, 148, 52 L. Ed. 143, 28 S. Ct. 34, 6 Ohio L. Rep. 498 (1907).
>
> Thus, a judge should not in any way limit a litigant's access to the courts absent 'exigent circumstances, **such as a litigant's continuous abuse of the judicial process by filing meritless and repetitive actions**.' *Brow v. Farrelly*, 28 V.I. 345, 994 F.2d 1027, 1038 (3d Cir. 1993). Indeed, 'use of such measures against a *pro se* plaintiff should be approached with particular caution' and should 'remain very much the exception to the general rule of free access to the courts.' *Pavilonis v. King*, 626 F.2d 1075, 1079 (1st Cir. 1980).
>
> **In determining whether a prefiling injunction is substantively warranted, a court must weigh all the relevant circumstances, including (1) the party's history of litigation, in particular whether he has filed vexatious, harassing, or duplicative lawsuits; (2) whether the party had a good faith basis for pursuing the litigation, or simply intended to harass; (3) the extent of the burden on the courts and other parties resulting from the party's filings; and (4) the adequacy of alternative** [redacted] *e.g., Safir v. United States Lines, Inc.*, 792 F.2d 19, 24 (2d Cir. 1986); *Green v. Warden, United States Penitentiary*, 699 F.2d 364, 368-69, 370 n.8 (7th Cir. 1983); *Pavilonis*, 626 F.2d at 1078-79.

Cromer v. Kraft Foods N. Am., Inc., 390 F.3d 812, 817-18 (4th Cir. 2004)(emphasis added).

55. Importantly, our North Carolina Court of Appeals has adopted the *Cromer* test for determining whether a prelitigation injunction is appropriate for State law cases, adding that "a trial court must also narrowly tailor a pre-filing injunction 'to fit the specific circumstances at issue.'" *Barrington v. Dyer*, 282 N.C. App. 404, 409, 872 S.E.2d 88, 93 (2022).

56. Thus, the Tribunal has inherent judicial power to enter a gatekeeper order when necessary to prevent abuse of the judicial process. *Id. See also, Beard v. N.C. State Bar*, 320 N.C. 126, 129-30, 357 S.E.2d 694, 695-67 (1987).

57. As in the matter of *Fatta v. M & M Props. Mgmt.*, 224 N.C. App. 18, 30, 735 S.E.2d 836, 844 (2012), in the case at bar, the Tribunal finds and concludes that had Dad been an attorney, his conduct throughout this litigation (and the many lawsuits he has filed here in OAH) would require and demand reporting him to the North Carolina State Bar questioning his ethics, professionalism and fitness to practice. Dad

> "has exhibited conduct in this matter showing such a [complete] disregard for the rules of law and procedure…. . . . This Court has the inherent power to impose special limitations as are reasonably necessary for the proper administration of justice, including the authority to regulate and discipline persons who appear before the Court to prevent impropriety and to provide an appropriate remedy to meet the circumstances of the case. The nature of P[etitioner-Dad]'s conduct and the extraordinary circumstances of this matter require that the Court place special limitations on [Dad]'s access to the Iredell County Superior Court and enter a gatekeeper order."

Id. at 30, 735 S.E.2d at 844.

58. Likewise, based on the evidence of record, including Dad's own admission that he had similar legal trouble with Andy's last school district in [redacted], it is apparent that Dad's continued taunting, threatening, bullying, harassing, embarrassing and intimidating of Respondent's staff, contractors, and legal counsel, as well as his voluminous, frivolous and unfounded filings will not cease unless a gatekeeper order is entered. Thus, this Tribunal concludes that Dad's behavior, both toward Respondent-Board, its staff, contractors, and agents, as well as toward the Tribunal itself, requires that the Tribunal place special limitations on Dad's access to OAH by entering a gatekeeper order.

59. The Undersigned further concludes that without intervention by this Tribunal, Respondent will continue to be harmed by Petitioner-Dad's ongoing interference with their operations and individual staff members' lives and the associated attorney fees that result from [redacted] unfettered access to the Tribunal—as will any other North Carolina county Board of Education into whose school Dad enrolls Andy). Furthermore, this Tribunal has been subjected to Dad's abuse of the judicial process and finds that Dad's waste of judicial resources that must be inhibited.

60. The evidence shows that Dad's many recent filings were not designed to effectuate any change in his daughter's educational program, but instead—based on his own

comments—Dad has used these proceedings and this judicial process to expand his harassment of Respondent's staff, from which he admits he derives enjoyment and pleasure. (FOFs #39, 169). It is apparent, based on Petitioner Dad's conduct and communications described above, that Dad does not have a good faith interest in resolving this matter through litigation. Dad has admitted as much in his emails where he informed the Board that he had already received what he wanted. Instead, Dad's primary objective is to cause needless expense to the Board and impose an unnecessary burden on both the Board and the Tribunal.

61. Given the extensive history of litigation and Petitioner's flagrant disregard for the judicial system and its processes, a gatekeeper order is warranted in part because alternative sanctions would be inadequate to alter Dad's behavior toward the District, the District's staff, or this Tribunal.

62. Additionally, Respondent's request for prefiling injunctive relief, as requested herein, is narrowly tailored to the circumstances while including a means for Dad to file legitimate pleadings and filings with certification from a licensed attorney or prior approval of an Administrative Law Judge. *See Fatta*, 224 N.C. at 30-31, 735 S.E.2d at 844 (affirming a gatekeeper order that allowed future filings when reviewed by a licensed North Carolina attorney); *In re Vicks*, 240 N.C. App. 293, 772 S.E.2d 265 (2015) (unpublished) (affirming a gatekeeper order that allowed future filings upon review by a licensed North Carolina attorney); *Johnson v. Bank of America, N.A.*, 225 N.C. App. 265, 736 S.E.2d 648 (2013) (unpublished) (affirming a gatekeeper order that allowed future filings when certified by a superior court judge of the county); *Lee v. O'Brian*, 151 N.C. App. 748, 567 S.E.2d 468 (2002) (unpublished) (affirming a gatekeeper order allowing future filings only upon approval of a district court judge of the county). This remedy is "reasonably necessary for the order and efficient exercise of the administration of justice." *Matter of Alamance Cty. Court Facilities*, 329 N.C. 84, 99, 405 S.E.2d 125, 132 (1991) (internal quotations omitted).

63. Dad has filed multiple actions against Respondent—many of which contained voluminous and frivolous filings (including knowingly untrue filings) and then taken voluntarily dismissals without prejudice just when Respondent is entitled to discovery to defend itself. The record is replete with emails and other documents revealing that Dad's main motivation in filing the lawsuits has been to harass, annoy, and taunt Respondent and not for the purpose of enhancing Andy's education. Moreover, the Tribunal has been subjected to Dad's abuse of the judicial process. His waste of judicial resources must be inhibited.

64. Dad's filings and harassing behaviors constitute extraordinary circumstances which, unless enjoined, will continue, and; the ends of justice will not be served the unfettered filing of such lawsuits by Dad. Thus, this remedy is "reasonably necessary for the order and efficient exercise of the administration of justice." *Matter of Alamance Cty. Court Facilities*, 329 N.C. 84, 99, 405 S.E.2d 125, 132 (1991).

65. Given the extensive history of litigation and Petitioner's flagrant disregard for the judicial system and processes, the undersigned finds that a gatekeeper order is warranted in part because alternative sanctions would be inadequate to alter Dad's behavior toward the District, the District's staff and attorneys, and/or this Tribunal.

66. Thus, a preponderance of the evidence reveals Dad has weaponized the judicial process and wasted precious judicial and school system resources in his unwarranted vendetta against the Board, thus impeding the ability of this Tribunal and the Board to perform their duties. A gatekeeper order is appropriate and necessary to prevent further abuses.

67. As described in the findings of fact, this is the **ninth** Petition filed by Petitioners in under two (2) years[i], all of which have arisen out of or related to the same underlying claims involving Andy and contain repetitive allegations. In pleadings from all nine petitions filed by Dad, he asserts the rights of himself and Mom but, Dad is the only parent to pursuing the cases.

68. Based on the findings of fact and conclusions of law, Respondent has met its burden in establishing that a gatekeeper order is appropriate and necessary.

Dismissal With Prejudice

69. The Rules applicable to OAH authorize Administrative Law Judges to impose sanctions upon a party or representative, up to and including dismissal of a Petition. 26 NCAC 03.0114(a).

70. Additionally, "[t]he Rules of Civil Procedure as contained in G.S. 1A-1 and the General Rules of Practice for the Superior and District Courts . . . shall apply in contested cases in the Office of Administrative Hearings (OAH) unless another specific statute or rule of the Office of Administrative Hearings provides otherwise." 26 NCAC 03.0101(a).

71. Dad argued he should be allowed to take a voluntary dismissal without prejudice, pursuant to N.C.G.S § 1A-1, Rule 41(a), so he could just refile shortly thereafter. However, Dad's intent to dismiss was simply to stop any review of his bad acts and Respondent's motion for sanctions. Moreover, the evidence supports a conclusion that, had Dad's motion been allowed, Dad would start over arguing the same things all over—again looking for no substantive remedy required for Andy's educational needs. Our Supreme Court long ago held that:

> "**A voluntary dismissal may not be taken in bad faith**, *Brisson v. Kathy A. Santoriello, M.D., P.A.*, 351 N.C. 589, 597, 528 S.E.2d 568, 573 (2000), nor will '[d]ismissal . . . deprive the [trial] court of jurisdiction to consider collateral issues such as sanctions that require consideration after the action has been terminated.' *Bryson v. Sullivan*, 330 N.C. 644, 653, 412 S.E.2d 327, 331 (1992); *see also Renner v. Hawk*, 125 N.C. App. 483, 481 S.E.2d 370, *disc. review denied*, 346 N.C. 283, 487 S.E.2d 553 (1997)."

Stocum v. Oakley, 185 N.C. App. 56, 62-63, 648 S.E.2d 227, 233 (2007)(emphasis added).

72. Contrarily, Rule 41(b) of the Rules of Civil Procedure allows a court to dismiss an action **"[f]or failure of the plaintiff** to prosecute or **to comply with these rules or any order of court[.]**" *Lisa Lincoln & Honeybees Creative Ctr. v. N. Carolina Dep't of Health & Hum.*

Servs., Nutrition Branch, 172 N.C. App. 567, 572–73, 616 S.E.2d 622, 625–26 (2005)(*citing* N.C.G.S. § 1A–1, Rule 41(b))(emphasis added). However, a Rule 41(b) dismissal must be based on the facts that Dad's failure to comply with the Tribunal's interlocutory orders was deliberate and there is no less drastic sanction available to remedy the problem. *Id.*

73. As discussed earlier, the Rules of Civil Procedure require that litigants—even those that are *pro se*—not file documents that are "interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation." N.C.G.S. § 1A-1, Rule 11.

74. "There are three parts to a Rule 11 analysis: (1) factual sufficiency, (2) legal sufficiency, and (3) improper purpose. A violation of any one of these requirements mandates the imposition of sanctions under Rule 11." *Persis Nova Constr. v. Edwards,* 195 N.C. App. 55, 60, 671 S.E.2d 23, 27 (2009) (emphasis added). "[U]pon a finding of a violation of Rule 11(a), some degree of **sanction is mandatory**." *Stocum v. Oakley*, 185 N.C. App. 56, 64, 648 S.E.2d 227, 234 (2007).

75. "Under Rule 11, an objective standard is used to determine whether a paper has been interposed for an improper purpose, with the burden on the movant to prove such improper purpose. Because an objective standard is employed, an improper purpose may be inferred from the alleged offender's objective behavior. In assessing that behavior, we look at the totality of the circumstances." *Johns v. Johns*, 195 N.C. App. 201, 212, 672 S.E.2d 34, 42 (2009).

76. When Dad emailed Respondent (more than once) that he had gotten everything he wanted from the Stay Put order and, that the rest of this lawsuit was simply to watch Respondent's "horse and pony show," Dad is admitting everything he filed thereafter was simply to taunt, threaten, bully, harass, embarrass, and intimidate Respondent. At the same time, Dad wasted the Tribunal's time with sheer disregard.

77. Based on the above findings of fact and conclusions of law, the Undersigned further concludes that Dad clearly indicated that he does not intend to actually pursue this matter to a hearing to determine his child's rights under the IDEA, but has already received from Respondent all of the relief he seeks for his child. Dad's communications have made clear that he views the use of petitions and filings in OAH as a method of harassment and intimidation of school system employees. He has stated clearly that he is pursuing this litigation for an improper purpose and not to vindicate any rights of his daughter, and; the Undersigned concludes that Dad has pursued this litigation solely for the improper purposes of harassment, delay, and trying to pressure Respondent into providing him a cash settlement to leave the district.

78. Dad has persistently failed to comply with the Rules of Civil Procedure and the General Rules of Practice.

79. Dad's behavior has been extremely prejudicial to Respondent's ability to fairly respond to Dad's filings and present a factual defense. In response to a single motion filed by Respondent, Dad unleashed personal threats against the EC Director's spouse and children. As described in the findings of fact above, Dad's long history of threats and abuse have led school

system staff to take measures to protect the safety of their families, including, for the past year and a half, having a family member – who lives 20 minutes away – drive a witness's child to and from school each day, despite the student living within two short blocks from the school, out of concern for their child's safety. Witnesses for Respondent were justifiably very concerned about testifying in a hearing, including being in the same room as Dad, being cross-examined by him, having to leave the courtroom safely and return to their cars, and then waiting for the inevitable onslaught of abuse that they are fair to assume will be forthcoming either directed at them or at their loved ones.

80. Moreover, Dad's extreme behavior has been prejudicial to Respondent's ability to serve the other students within its district by requiring such an inordinate amount of time to respond thereto.

81. Additionally, Dad's extreme behavior has been prejudicial to the Tribunal with his onslaught of irrelevant and inappropriate motions and emails to which the Tribunal has had to attend.

82. While a finding of prejudice to the other party is not required for the imposition of Rule 11 sanctions, the presence of prejudice is relevant to the determination of an appropriate sanction. *See, e.g.*, *Stocum v. Oakley*, 185 N.C. App. 56, 64, 648 S.E.2d 227, 233 (2007) (finding of prejudice not required for imposition of Rule 11 sanctions).

83. As a final consideration regarding dismissal with prejudice, Dad has already made clear that it is his intent to re-file this Petition if it is dismissed without prejudice—despite the fact he has already received all the desired benefit that Petitioners originally sought here from. Allowing such refiling would simply grant Dad license to continue to violate Rule 11.

84. Thus, the totality of the evidence supports that dismissal with prejudice is an appropriate remedy for Petitioner's repeated, flagrant violations of Rule 11, since sanctions short of dismissal would not suffice or be effective in this contested case as Dad has demonstrated a pattern of deliberate and abashedly violating the Rules of Civil Procedure, courtroom decorum and the orders of this Tribunal. *See, e.g.*, *Smith v. Quinn*, 324 N.C. 316, 318–19, 378 S.E.2d 28, 30 (1989) ("Where the rules of civil procedure are violated for the purpose of delay or gaining an unfair advantage, dismissal of the action is an appropriate remedy.").

85. The Undersigned has considered lesser sanctions against Petitioner, including those authorized in 26 NCAC 03 .0114.

86. However, the Undersigned concludes that this contested case is subject to involuntary dismissal under N.C.G.S. § 1A-1, Rule 41(b) and 26 NCAC 03 .0114 due to Petitioner's failure to comply with the Undersigned's prior interlocutory orders and flagrant violations of Rule 11.

BASED ON the Findings of Fact and Conclusions of Law herein (*including all footnotes and endnotes which are fully incorporated herein by reference*),

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

RE: Petitioners' Motion to Compel FERPA Records:

1. Having failed to show Respondent has not complied, Petitioner's Motion to Compel FERPA Records is **DENIED.**

RE: Petitioners' Motion to Dismiss Petition Without Prejudice:

2. Dad having admitted he will simply re-file the present petition again if it is dismissed without prejudice and, with the evidence clearly showing Dad has abused the judicial system and OAH's processes for his own nefarious reasons, Petitioners' Motion to Dismiss Petition Without Prejudice is **DENIED.**

RE: Respondent's Motion for Sanctions & Amended Motion for Sanctions:

3. Having found and concluded that no less severe measure is appropriate, all of Petitioners' claims are hereby **DISMISSED WITH PREJUDICE**, pursuant to N.C.G.S. § 1A-1, Rule 41(b).

Attorneys Fees:

4. The Undersigned hereby **AWARDS** Respondent Onslow County Board of Education its attorney's fees, and **ORDERS** Petitioner-Dad, [redacted] to pay Respondent's counsel, Carolyn Murchison and Tharrington Smith, LLP (as agent for Respondent) **$40,160.50** in attorneys' fees for her legal services as sanctions for Rule 11 violations in this contested case **on or before June 30, 2024.** Upon receipt of payment from Petitioner, Respondent's counsel shall reimburse to Respondent any portion of this award which Respondent has already paid counsel.

Gatekeeper Order:

To the extent that Andy remains enrolled in a school in North Carolina, the Undersigned enters the following GATEKEEPER ORDER:

5. The Undersigned orders that **any and all** future filings in OAH regarding the education of Andy shall not be brought by Petitioners acting *pro se* but shall *only* be filed with certification from a North Carolina licensed attorney or with prior approval of an Administrative Law Judge. *See Fatta*, 224 N.C. at 30-31, 735 S.E.2d at 844, and; *In re Vicks*, 240 N.C. App. 293, 772 S.E.2d 265 (2015).

6. Although presently applicable to Respondent-Onslow County Board of Education, Petitioner-Dad, [redacted] ordered conduct under this Gatekeeper Order shall be expected and applied to any and all Boards of Education in North Carolina

which have reason to come before the Office of Administrative Hearings regarding Andy, pursuant to N.C.G.S. Chapter 150B.

7. Petitioner-Dad, [redacted] shall **immediately cease and desist all acts of abuse, taunting, threatening, bullying, harassing, embarrassing and intimidating** toward any and all employees, agents, witnesses, and attorneys of Respondent, as well as their family members.

8. Petitioner-Dad, [redacted] shall not email, call, or visit *any* person who is not **directly** involved in the educational decisions of Andy. Dad shall not utilize any personal email addresses, personal cell phone numbers or personal social media cites to contact any staff member, contractor, lawyer, or family member thereof for *any* reason unless the person has personally given Dad the information with permission to utilize it for the purpose for which Dad uses it. Moreover, Petitioner-Dad shall limit his contact of every kind with persons directly involved in the educational decisions Andy to **not more than two (2) contacts per week**.

9. Petitioner-Dad, [redacted] shall not use abusive, profane, taunting, bullying, harassing, threatening or intimidating language in any future written or voice communication directed to, toward, or about any employee, agent, witness, and/or attorney of Respondent or any person related thereto.

10. Pursuant to N.C.G.S. § 150B-33(B)(8), any failure to comply with this Order may result in an order returnable to the Superior Court for Petitioner-Dad to show cause why he should not be held in contempt, on motion by Respondent therefore.

11. The Clerk of the Office of Administrative Hearings is hereby Ordered to **unseal** this Final Decision.

Endnote: Here are the nine (9) petitions filed by Petitioners between February 2022 and August 2023.

22 EDC 685	**Filing dates** 2/24/2022	[redacted] by parent [redacted] and [redacted]	Onslow County Schools BOEd	Pet took VD without prejudice after Tribunal issued Order of Insufficiency Granting Leave for Pets to Amend petition
22 EDC 832	3/7/2022	[redacted] by parent [redacted] & [redacted]	Onslow County Schools BOEd	Pet took VD without prejudice 3 days after Tribunal issued Order Granting Resp's Motion to Strike documents filed by Dad which did not meet the criteria of 26 NCAC 3 .0101 &

				issuing an Amended Notice of Hearing
22 EDC1567	4/22/2022	[redacted] by parents [redacted] & [redacted]	Onslow County Schools	Parties reached Resolution Agreement
22 EDC 3313	8/31/2022	[redacted] by parent [redacted] and [redacted]	Onslow County Schools BOEd	Pets took VD without prejudice day after Resp filed Motion to Compel Release of Andy's mental health records and compelling deposition
22 EDC 3797	10/7/2022	[redacted] minor by parents & [redacted]	Onslow County Schools BOEd	Parties reached Resolution Agreement
23 EDC 853 **23 EDC1319** **23 EDC 1320**	2/23/2023 3/20/2023 3/20/2023	[redacted] by parent [redacted] and [redacted] minor by parents & [redacted]	Onslow County Schools BOEd	Consolidated: Pets took VD as part of parties' settlement
23 EDC 3873	8/28/2023	[redacted] (minor) by parents & [redacted]	Onslow County Schools BOEd	Petitioner requested petition be dismissed without prejudice only after Motion for sanctions was filed & the Tribunal ordered the release of Andy's mental health records

NOTICE OF APPEAL RIGHTS

In accordance with the Individuals with Disabilities Education Act and North Carolina's Education of Children with Disabilities laws, the parties have appeal rights regarding this Final Decision.

Any party aggrieved by the findings and decision of an Administrative Law Judge may under N.C. Gen. Stat. § 115C-109.6 institute a civil action in State court within thirty (30) days after receipt of the notice of the decision or under 20 U.S.C. § 1415 a civil action in federal court within ninety (90) days after receipt of the notice of the decision.

Because the Office of Administrative Hearings may be required to file the official record in the contested case with the State or federal court, **a copy of the Petition for Judicial Review or Federal Complaint shall be sent to the Office of Administrative Hearings at the time the appeal is initiated** in order to ensure the timely preparation of the record.

This Final Decision is immediately enforceable by the State Board of Education unless and until the party aggrieved timely applies to a reviewing court, State or federal, and the reviewing court grants an order staying the enforcement of this Final Decision pending the outcome of the review. N.C. Gen. Stat. § 150B-48.

SO ORDERED. This the 17th day of May, 2024.

Hon. Karlene S. Turrentine
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service.

[redacted]spectrum.net
Parent

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Affiliated Agency

This the 17th day of May, 2024.

Chesseley A. Robinson III

Chesseley A Robinson
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