APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Deborah S. Hunt
Clerk

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: April 21, 2020

Mr. Okwudili Francis Chukwuani
7309 Winchester Drive
Solon, OH 44139

Ms. Sara Ravas Cooper
Ms. Maria Pearlmutter
Ms. Kathryn I. Perrico
Walter Haverfield
1301 E. Ninth Street
Suite 3500
Cleveland, OH 44114

Re: Case No. 19-3574, *Okwudili Chukwuani v. Solon City School District*
Originating Case No. : 1:19-cv-00492

Dear Mr. Chukwuani and Counsel,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Sharday S. Swain
Case Manager
Direct Dial No. 513-564-7027

cc: Ms. Sandy Opacich

Enclosure

Mandate to issue

EXHIBIT
A1

NOT RECOMMENDED FOR PUBLICATION

No. 19-3574

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

OKWUDILI FRANCIS CHUKWUANI, M.D.,	)	
	)	
Plaintiff-Appellant,	)	
	)	ON APPEAL FROM THE UNITED
v.	)	STATES DISTRICT COURT FOR
	)	THE NORTHERN DISTRICT OF
SOLON CITY SCHOOL DISTRICT,	)	OHIO
	)	
Defendant-Appellee.	)	
	)	

ORDER

Before: NORRIS, SUTTON, and BUSH, Circuit Judges.

Okwudili Francis Chukwuani, M.D., an Ohio resident proceeding pro se, appeals the district court's judgment dismissing his complaint brought under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §§ 1400, *et seq.*, pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

During the 2017-2018 school year, Chukwuani's son, U.C., was a second grader at Parkside Elementary School in Solon, Ohio. Throughout the school year, U.C. exhibited aggressive behavior towards other students and adults that required repeated intervention. Ultimately, with U.C.'s mother's involvement and consent, Defendant Solon City School District ("District") evaluated U.C. and determined that he has an emotional disability, thus qualifying him for special-education services. The District, at its own expense, placed U.C. in a special-education school.

Chukwuani, who was engaged in a custody dispute with U.C.'s mother, was displeased with the District's evaluation of U.C. In April 2018, he filed a due-process complaint with the Ohio Department of Education, alleging that the District had inappropriately identified U.C. as a child with a disability. *See* 20 U.S.C. § 1415(b)(6). Following an administrative hearing on the matter, *see id.* § 1415(f), the hearing officer determined that Chukwuani had failed to meet his burden of proving that U.C. was inappropriately identified as a child with a disability. Chukwuani appealed, *see id.* § 1415(g), but the State Level Review Officer affirmed the state hearing officer's decision.

On May 18, 2018—while Chukwuani's administrative proceedings were pending—the Cuyahoga County Court of Common Pleas, Domestic Relations Division ("Domestic Relations Court") granted U.C.'s mother exclusive educational authority over U.C. during the pendency of her custody dispute with Chukwuani in an ex parte order. After unsuccessfully moving to vacate that order, Chukwuani moved the Domestic Relations Court to reconsider its denial of his motion to vacate. A magistrate denied Chukwuani's reconsideration motion following a hearing on the matter, and the Domestic Relations Court judge approved and adopted the magistrate's decision.

In March 2019, Chukwuani filed this federal lawsuit on U.C.'s behalf, seeking to challenge the final administrative determination. *See* 20 U.S.C. § 1415(i)(2)(A). He alleged that the state administrative proceedings were procedurally defective, and that U.C. does not have a disability. The District moved to dismiss the complaint for lack of subject-matter jurisdiction under Rule 12(b)(1), arguing that Chukwuani lacked standing to assert IDEA claims on U.C.'s behalf. The district court granted the District's motion to dismiss under Rules 12(b)(1) and 12(b)(6), agreeing that Chukwuani lacked standing to assert IDEA claims on behalf of U.C. The district court further concluded that Chukwuani could not assert his IDEA claims on his own behalf because those claims fell outside the right of action granted by the IDEA.

On appeal, Chukwuani challenges the district court's dismissal of his complaint.

The district court properly determined that Chukwuani lacked standing to sue on U.C.'s behalf. Statute 28 U.S.C. § 1654 provides that "[i]n all courts of the United States the parties may plead and conduct their own cases personally or by counsel." But it is well-established that

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"plaintiffs in federal court may not 'appear pro se where interests other than their own are at stake,'" *Olagues v. Timken*, 908 F.3d 200, 203 (6th Cir. 2018) (quoting *Shepard v. Wellman*, 313 F.3d 963, 970 (6th Cir. 2002)). Consistent with other circuits, "we have consistently interpreted § 1654 as prohibiting pro se litigants from trying to assert the rights of others." *Id.* (collecting cases). This includes prohibiting parents from appearing pro se on behalf of their minor child. *Sheperd*, 313 F.3d at 970-71 (citing *Cheung v. Youth Orchestra Found. of Buffalo, Inc.*, 906 F.2d 59, 61 (2d Cir. 1990)). Indeed, we have explicitly held that non-lawyer parents may not represent their child in an action brought under the IDEA. *Cavanaugh ex rel. Cavanaugh v. Cardinal Local Sch. Dist.*, 409 F.3d 753, 756 (6th Cir. 2005), *abrogated on other grounds by Winkelman ex rel. Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516 (2007).

The district court also determined that Chukwuani was unable to assert his IDEA claims on his own behalf. The Supreme Court has held that "[p]arents enjoy rights under IDEA; and they are, as a result, entitled to prosecute IDEA claims on their own behalf." *Winkelman*, 550 U.S. at 535. The IDEA authorizes only "parents" to sue, *see* §§ 1415(f)(1)(A), (i)(2)(A), and the statute defines the term "parent," in part, as "a natural, adoptive, or foster parent of a child," 20 U.S.C. § 1401(23). But the Department of Education enacted the following regulation pursuant to the IDEA:

> (b)(1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section *unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.*
>
> (2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this section.

34 C.F.R. § 300.30(b) (emphasis added). Accordingly, where a plaintiff who otherwise satisfies § 1401(23)'s definition of "parent" "does not have the authority to make educational decisions on behalf of [a child]," that plaintiff cannot bring a claim under the IDEA. *Fuentes v. Bd. of Educ. of*

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N.Y., 569 F.3d 46, 47 (2d Cir. 2009) (per curiam) (alteration in original) (quoting *Taylor v. Vt. Dep't of Educ.*, 313 F.3d 768, 782 (2d Cir. 2002)); *see also Driessen v. Lockman*, 518 F. App'x 809, 812 (11th Cir. 2013) (per curiam).

As noted above, the Domestic Relations Court issued an order in May 2018 granting U.C.'s mother exclusive educational authority over U.C. Chukwuani's subsequent attempts to vacate that order were unsuccessful. It is undisputed that Chukwuani lacked educational authority over U.C. when he filed his federal complaint in March 2019, and nothing in the record suggests that Chukwuani ever reacquired such authority during the pendency of this lawsuit. Considering the foregoing, the district court properly determined that Chukwuani could not assert IDEA claims on his own behalf. *See Fuentes*, 569 F.3d at 47; *see also Driessen*, 518 F. App'x at 812.

Accordingly, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

EXHIBIT
A5

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

OKWUDILI CHUKWUANI, Plaintiff, vs. SOLON CITY SCHOOL DISTRICT, Defendant.	:	CASE NO. 1:19-CV-492 OPINION & ORDER [Resolving Doc. 8]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Pro se Plaintiff Okwudili Chukwuani brings this action under the Individuals with Disabilities Education Act ("IDEA") challenging Defendant Solon School District's (the "District") decision classifying his child as disabled. He alleges that the due process hearing reviewing his child's placement was procedurally defective and substantively wrong.

Defendant moves to dismiss for lack of jurisdiction and for failure to state a claim, arguing that Plaintiff lacks standing.[1]

Because Plaintiff lacks standing to bring these claims, the Court **GRANTS** Defendant's motion to dismiss.

EXHIBIT
B1

[1] Doc. 8. Plaintiff opposes. Doc. 14. Defendant replies. Doc. 17.

I. Background

During the 2017-18 school year, Plaintiff's son U.C. was a second grader in a Solon District elementary school.[2] U.C. began to exhibit aggressive and violent behavior towards other students and adults that required repeated intervention.

After various measures failed to alleviate these behavioral problems, the District—with the consent of U.C.'s mother[3]—evaluated U.C. and determined that he qualified for special education. The District, at its own expense, placed him in a special education school and put him in a program designed to help him control impulsive behaviors.[4]

Plaintiff, who is engaged in an ongoing custody dispute with U.C.'s mother, disapproved of his son's classification. He filed a due process complaint with the Ohio Department of Education on April 23, 2018, disputing U.C.'s special education placement.[5] After a September 27, 2018 hearing, the state hearing officer overruled Plaintiff's objection.[6] On January 18, 2019, a State Level Review Officer upheld the hearing officer's decision.[7]

While Plaintiff's administrative challenge to U.C.'s classification was pending, the domestic relations court overseeing the couple's custody dispute made a December 21,

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[2] Doc. 8-1 at 76. These facts are drawn from proceedings in the Cuyahoga Court of Common Pleas, Division of Domestic relations. When a defendant makes a factual standing challenge, a court has broad discretion to consider materials outside the complaint. *See Cartwright v. Garner*, 751 F.3d 752, 759 (6th Cir. 2014). Further, a court ruling on a motion to dismiss for failure to state a claim may take judicial notice of records that are generally known within the trial court's territorial jurisdiction and are not subject to reasonable dispute, such as court documents. *See In re Omnicare, Inc. Sec. Litig.*, 769 F.3d 455, 466 (6th Cir. 2014).
[3] Doc. 8-1 at 283.
[4] Doc. 8-1 at 164.
[5] Doc. 8-7 at 3.
[6] *Id.* at 12.
[7] Doc. 8-8 at 4.

EXHIBIT
B2

2018, ruling that gave U.C.'s mother sole authority to make U.C.'s educational decisions pending resolution of the custody dispute.[8]

Plaintiff then brought this suit, seeking judicial review of the State Level Review Officer's decision.[9] Plaintiff alleges that the due process hearing and subsequent review were procedurally defective, and that his son is not emotionally disturbed.[10] Defendant moves to dismiss the case for lack of standing or, in the alternative, for failure to state a claim.

II. Discussion

When a defendant makes a Federal Rule of Civil Procedure 12(b)(1) factual standing challenge,[11] a court "has broad discretion with respect to what evidence to consider in deciding whether subject matter jurisdiction exists, including evidence outside the pleadings."[12] Plaintiff bears the burden of showing that subject-matter jurisdiction exists.[13]

The school district argues that Plaintiff lacks standing to pursue any claim on behalf of his minor son because a *pro se* litigant cannot bring claims on behalf of third parties. Defendant is correct. Under Federal Judiciary Act of 1789,[14] *pro se* plaintiffs cannot assert

[8] Doc. 8-5 at 2.
[9] Doc. 1.
[10] Doc. 1 at 1-3. Because, as detailed below, Plaintiff lacks standing to bring these claims, the Court will not recite the alleged deficiencies in detail.
[11] Fed. R. Civ. P. 12(b)(1).
[12] *Cartwright*, 751 F.3d at 759.
[13] *Id.*
[14] *Codified as* 28 U.S.C. § 1654 ("In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.").

EXHIBIT
B3

interests other than their own.[15] Thus, *pro se* parents like Plaintiff cannot make IDEA claims on behalf of their minor children.[16]

Although Plaintiff cannot make claims on behalf of his son, he might potentially have standing to assert his own rights under the IDEA. Construed liberally, his *pro se* complaint lays out procedural defects in the due process hearing that resulted in his son's alleged misclassification. These allegations suggest that the IDEA procedural right violations harmed his *own* parental interest having his child receive an appropriate education. In *Winkelman ex rel. Winkelman v. Parma City School District*, the Supreme Court held that Plaintiff parents may proceed *pro se* to vindicate such IDEA rights.[17]

However, Plaintiff lacks zone-of-interest standing to bring these claims. Article III of the United States Constitution requires that a federal Plaintiff allege a concrete and particularized injury-in-fact that is traceable to the Defendant's conduct and is redressable by a favorable decision.[18] In addition to this constitutional standing requirement, the Supreme Court has also recognized a "prudential" zone-of-interest standing requirement.

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[15] *Shepherd v. Wellman*, 313 F.3d 963, 970 (6th Cir. 2002) (federal judiciary act does not authorize "plaintiffs to appear *pro se* where interests other then their own are at stake" (citing *Iannaccone v. Law*, 142 F.3d 553, 558 (2d Cir. 1998)).

[16] *See Smith v. Indian Hill Exempted Vill. Sch. Dist.*, No. 1:10-CV-718, 2011 WL 4348101, at *7 (S.D. Ohio May 5, 2011), *report and recommendation adopted*, No. 1:10CV718, 2011 WL 4352010 (S.D. Ohio Sept. 16, 2011) ("Nothing in the IDEA suggests a departure from the general rule that prohibits pro se litigants from litigating the interests of another.").

[17] 550 U.S. 516, 534 (2007) (holding that *pro se* parent plaintiffs could assert their "independent, enforceable rights" under the IDEA in federal court). Justice Scalia's concurrence in *Winkleman* commented that a parent's interest "in having their child receive an appropriate education" was a concrete (that is, Article III) interest, and that a *pro se* parent would have standing to bring an action on their own behalf if the violation of IDEA procedural rights impaired this interest. *See id.* at 537 n. 3 (Scalia, J., concurring in the judgment and dissenting in part).

[18] *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)

EXHIBIT
B4

Under this rule, a plaintiff must show that they "fall[] within the class of plaintiffs whom Congress has authorized to sue" under the statute providing the cause of action.[19]

The IDEA only authorizes "parents" to sue, and Plaintiff is not a "parent" under the statute. 20 U.S.C. § 1415(f)(1)(A) provides that "*parents* . . . shall have an opportunity for an impartial due process hearing." Section 1415(i)(2), in turn, provides that "a party aggrieved by findings and decision made under subsection (f) . . . can seek review in federal court." Read together, these provisions dictate that only a "parent" is a "person aggrieved" capable of invoking judicial review of due process hearings under the IDEA.

Department of Education IDEA regulations defining "parent" state that when a judicial decree has designated a specific person to make educational decisions for the child, that person is the "parent" of the child for IDEA purposes.[20] Because the Ohio domestic relations court determined that U.C.'s mother—not Plaintiff—has the right to make educational decisions for the child, Plaintiff is not a "parent" under IDEA. Thus, he lacks zone-of-interest standing.

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[19] *Id.* at 127. Because the Supreme Court labeled this requirement as "standing," there is significant confusion whether a Plaintiff's failure to demonstrate prudential zone-of-interest standing goes to the federal court's federal jurisdiction or merely constitutes failure to state a claim under the statutory cause of action. In *Bank of Am. Corp. v. City of Miami, Fla.*, 137 S. Ct. 1296, 1302 (2017), the Supreme Court suggested that "prudential standing" was something of a misnomer, because the inquiry was really whether "the statute grants the plaintiff the cause of action that he asserts." Because Defendant has moved to dismiss for both lack of subject-matter jurisdiction and failure to state a claim, the Court need not resolve this vexing issue here.

[20] 34 C.F.R. § 300.30(b)(1)-(2) ("(b)(1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child. (2) If a judicial decree or order identifies a specific person or persons . . . to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the 'parent' for purposes of this section.").

EXHIBIT
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Case No. 1:19-cv-492
Gwin, J.

III.Conclusion

For the foregoing reasons, the Court **GRANTS** Defendant's motion to dismiss.

IT IS SO ORDERED.

Dated: May 13, 2019

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

EXHIBIT
B6

Motion No. _____

NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Domestic Relations

MOTION FOR TEMPORARY RESTRAINING ORDER
March 27, 2018 19:33

By: SARAH THOMAS KOVOOR 0069223

Confirmation Nbr. 1338935

OKWUDILI CHUKWUANI

vs.

VIVIAN CHUKWUANI, ET AL

DR 18 371176

Judge: FRANCINE B. GOLDBERG

Pages Filed: 4

EXHIBIT
C1

IN THE COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
CUYAHOGA COUNTY, OHIO

OKWUDILI CHUKWUANI, Plaintiff, *vs.* VIVIAN CHUKWUANI, Defendant, *and* SOLON CITY SCHOOL DISTRICT BOARD OF EDUCATION Defendant.	)	CASE NO.: DR 18-371176 JUDGE FRANCINE GOLDBERG **EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER**

Plaintiff Okwudili Chukwuani, M.D. ("Father"), pursuant to Rule 75(I), Ohio Rules of Civil Procedure, moves this Honorable Court for an emergency order temporarily restraining Defendant Vivian Chukwuani, M.D. ("Mother") and new-party Defendant Solon City School District ("Solon") from taking any actions in furtherance of testing seven year old Usochukwu Chukwuani ("Son"), the seven year old son of father and mother for disability. Father states that (1) subject to the terms of the shared parenting plan entered in this case his consent is necessary for such testing of the son to take place; (2) the decision to pursue the testing of son was made by Solon without seeking, much less obtaining, the Father's consent; and (3) such testing is unnecessary and has the potential to cause the son to suffer mental and psychological injury.

An affidavit from the Father is attached hereto which more fully explains the reasons for this request.

Respectfully submitted,

/s/ Sarah Thomas Kovoor
Sarah Thomas Kovoor, Esq. (0069223)
FORD, GOLD, KOVOOR & SIMON, Ltd.
8872 East Market Street
Warren, OH 44484
P: (330) 856-6888 F: (330) 856-7550
Counsel for Plaintiff Okwudili Chukwuani

CERTIFICATE OF SERVICE

A copy of the foregoing Emergency Motion for a Temporary Restraining Order was sent U.S. Mail on the day this document was filed to:

KEVIN STARRETT, ESQ.
160 East Washington Street
Chagrin Falls, OH 44022
Counsel for Defendant Vivian Chukwuani

And

SOLON CITY SCHOOL DISTRICT
BOARD OF EDUCATION
33800 Inwood Road
Solon, OH 44139

/s/ Sarah Thomas Kovoor
Sarah Thomas Kovoor, Esq.
FORD, GOLD, KOVOOR & SIMON, Ltd.
Counsel for Plaintiff Okwudili Chukwuani

IN THE COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
CUYAHOGA COUNTY, OHIO

OKWUDILI CHUKWUANI,	)	CASE NO.:
	)	
Plaintiff,	)	JUDGE
vs.	)	
	)	
VIVIAN CHUKWUANI,	)	
	)	
Defendant,	)	**AFFIDAVIT OF**
	)	**OKWUDILI CHUKWUANI, M.D.**
and	)	
	)	
SOLON CITY SCHOOL DISTRICT BOARD OF EDUCATION	)	
	)	
Defendant.	)	
STATE OF OHIO	)	
	)	SS
COUNTY OF TRUMBULL	)	

EXHIBIT C4

Okwudili Chukwuani, M.D., being first duly sworn, deposes and states as follows:

1. I make all of the statements contained in this affidavit based on my own personal knowledge.
2. I am the father of a seven-year-old Usochukwu Chukwuani (d.o.b. 5/28/10) ("son"). My son is a student at Parkside Elementary School in Solon, Ohio. Parkside Elementary School is part of the Solon City School District ("Solon").
3. In September 2017, my son was identified as a gifted child in the area of creative ability in a nationwide evaluation of seven-year-old children. I have attached a copy of this evaluation herein marked as Exhibit A
4. Usochukwu's mother, Vivian Chukwuani, M.D., from whom I am legally separated, has been unable to provide a disciplined structured home environment for my son, she has

agreed with Solon, to place my son in a program that is not in his best interest, by conducting a test to determine whether he is disabled. Solon failed to realize that lack of a consistent and appropriate parental care was responsible for my son's conduct in school. Solon and Usochukwu's mother are currently using a plan that has continued to systematically decondition my son in school in order to generate data in support of their proposed testing for disability instead of focusing on developing his special talent in creative ability. The outcome of such testing giving the current setting and presumptions will be detrimental to my son. Solon did not obtain my consent to test my son for disability. Solon has not paid attention to my objections to the testing and has continued to use a plan that systematically deconditions my son in school.

5. To proceed with such a crucial decision relating to my son without my consent, violates my right as a father to protect my son from harm and provide what is in his best interest; it also violates the shared parenting agreement between his parents. My son's mother's present and past conduct calls her maternal abilities into question and raises serious doubts about her judgment regarding so important an issue as testing my son for disability.
6. For the reasons, I have stated in this affidavit I request that Vivian Chukwuani and Solon be ordered to stop all efforts to have my son tested for disability.

EXHIBIT
C5

FURTHER AFFIANT SAYETH NAUGHT.

Okwudili Chukwuani

Signed and sworn to before me on this 12th day of March 2018.

Notary Public

SARAH THOMAS KOVOOR, Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration Date
Section 147.03 O.R.C.

ORIGINAL
COURT USE ONLY

MAY 18 2018

CUYAHOGA COUNTY
CLERK OF COURTS

18

DR11338367 103898876

IN THE COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
CUYAHOGA COUNTY, OHIO

VIVIAN CHUKWUANI	)	**CASE NO. DR 11 338367**
	)	
Plaintiff,	)	**JUDGE: FRANCINE E. GOLDBERG**
	)	**Magistrate: Colleen A. Reali**
vs.	)	
	)	**JUDGMENT ENTRY**
OKWUDILI CHUKWUANI	)	
	)	
	)	
Defendant.	)	

This matter came on for hearing upon plaintiff Vivian Chukwuani's *Ex Parte* Motion to Designate Plaintiff as Residential Parent for School Purposes and Grant Plaintiff Authority to Make School Decision regarding the minor child, Usochukwu, age 7 (d.o.b. 5-28-10) [Motion # 411757].

Upon due consideration thereof, the Court finds as follows:

X Plaintiff Vivian Chukwuani's *Ex Parte* Motion to Designate Plaintiff as Residential Parent for School Purposes and Grant Plaintiff Authority to Make School Decisions regarding the minor child, Usochukwu is well taken.

IT IS THEREFORE ORDERED that plaintiff Vivian Chukwuani is hereby designated the Residential Parent of the minor child, Usochukwu for School Purposes and further granted the authority to make school decisions including school placement regarding the minor child, Usochukwu.

IT IS FURTHER ORDERED that the minor child, Usochukwu, age 7 (d.o.b. 5-28-

EXHIBIT
D1

10) shall be permitted to complete the school year, 2017-2018 at the Re-Education Services Center, Bedford, and each party shall cooperate to facilitate Usochukwu's attendance at such school through the last day of school on or about May 31, 2018.

☐ Plaintiff Vivian Chukwuani's *Ex Parte* Motion to Designate Plaintiff as Residential Parent for School Purposes and Grant Plaintiff Authority to Make School Decision regarding the minor child, Usochukwu is not well taken, and is denied. This motion shall set for full hearing at the convenience of the Court. 5/10/18 FDG

☒ This case shall be set for pretrial before [illegible] on [illegible], 2018.

☐ [illegible]

IT IS SO ORDERED.

JUDGE FRANCINE E. GOLDBERG

Submitted and Agreed:

KEVIN L. STARRETT [#0028490]
Attorney for Plaintiff Vivian Chukwuani

RECEIVED FOR FILING

MAY 18 2018

CUYAHOGA COUNTY
CLERK OF COURTS
By [illegible] Deputy

EXHIBIT D2

STATE OF OHIO
DEPARTMENT OF EDUCATION
OFFICE FOR EXCEPTIONAL CHILDREN

Usochikwu Chukwuani, Student and Dr. Okwudili Chukwuani, Petitioners -and-	}	
Solon City School District, Respondent	}	SE-3597-2018

EXHIBIT E1

ORDER

On May 21, 2018, Respondent filed "District's Motion to Dismiss Due Process Complaint for Lack of Standing." On May 31, 2018, Respondent, by email, sent IHO and Petitioners a copy of a certified copy of a Judgment Entry from the Court of Common Pleas, Division of Domestic Relations, Cuyahoga County, Ohio, dated May 18, 2018 (Ex Parte Order). IHO received a certified copy of the Judgment Entry on June 4, 2018.

According to proposed exhibits,[1] on May 14, 2018, "Father withdrew *his consent* for Student's placement at the Re-Education Services Center." (Resp. proposed Ex. 58, p. 503, emphasis added). Father, in an email to IHO and the parties, on May 13, 2018, indicated that he was revoking "the consent for special education for my son and request that he be reinstated at Parkside Elementary School with immediate effect." (Resp. proposed Ex. 58, p. 534). Mother argued that "such Ex-Parte Order will not operate to prejudice Father rather it will simply maintain the status quo." (Resp. proposed Ex. 58, p. 504).

In this matter, Petitioners have argued that there is a shared parenting agreement, and that Mother agreed to an out-of-district placement without the consent of Petitioner Dr. Chukwuani. Such placement occurred during the pendency of this proceeding, which was filed

[1] IHO refers to PROPOSED, uncertified exhibits, only to explain the context of denying the Motion to Dismiss, and not as facts in this matter.

on April 23, 2018.[2] Then, Father revoked consent before May 18, 2018, but, Petitioners argue, Student continued to be placed at the out-of-district facility.

The May 18, 2018 Ex Parte Order states, in part:

> IT IS THEREFORE ORDERED that plaintiff Vivian Chukwuani is hereby designated the Residential Parent of the minor child, Usochukwu for School Purposes and further *granted the authority* to make school decisions including school placement regarding the minor child, Usochukwu. IT IS FURTHER ORDERED that the minor child....shall be *permitted* to complete the school year, 2017-2018 at the Re-Education Services Center, Bedford, *and* each party shall cooperate to facilitate Usochukwu's attendance at such school through the last day of school on or about May 31, 2018.
> [emphasis added].

A copy of a shared parenting agreement was provided to IHO and Respondent on May 2, 2018, at 1:44 PM, by email, by Petitioner. Such agreement provides: "Mother and Father agree that all provisions relating to their minor children's education shall remain modifiable by an Order of the Cuyahoga County Domestic Relations Court, or written agreement of the parties." (IV.D.)[3]

Respondent is essentially arguing that Petitioner, Dr. Chukwuani, is not an appropriate party to this action (that he lacks standing) because he is not, as of May 18, 2018, the "Residential Parent" with authority to decide where Student should attend school. Missing from Respondent's argument is an indication, based upon information before this IHO at the present time, that Mother exercised her authority, after May 18, 2018 as "Residential Parent" to have Student placed at an out-of-district facility, or a clear indication that the Ex Parte Order contemplates that the Mother is the sole decision making authority regarding education.

Issues of stay put may be part of the issues in this case, based upon the issues discussed at the Disclosure Conference, especially if Respondent is arguing that it was Father who originally requested Student's placement at an out-of-district facility. It appears from the allegations in the Complaint that Father had authority to make educational decisions for Student until at least May 18, 2018, and may still have some authority in that regard. Therefore, Respondent's Motion to Dismiss is DENIED.

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[2] Ms. Perrico, attorney for Respondent, at the Disclosure Conference, raised an issue regarding the filing date of this matter, which is an issue yet to be resolved for the due process. IHO has used the filing date referenced by the Ohio Department of Education in its appointment letter, dated April 23, 2018.

[3] Again, this document has not been admitted by this IHO in this proceeding.

EXHIBIT E2

Additional material from this filing is available in the Clerk's Office.