

**INDIVIDUALS WITH DISABILITIES EDUCATION ACT
STATE-LEVEL APPEAL**

STATE OF SOUTH CAROLINA	)	
	)	
	)	
L.R. (Parent) on behalf of F.R.	)	
(Student)	)	
	)	
Petitioners,	)	
	)	DAVID BATEMAN
v.	)	STATE-LEVEL REVIEW OFFICER
	)	
	)	
Florence County School District 1,	)	
	)	
District/Respondent	)	DECISION
	)	
	)	
	)	
	)	

This matter is before me pursuant to an appeal of the Local Due Process Hearing Officer (“LHO”), Brian P. Murphy’s Final Order dated October 9, 2023. The South Carolina Department of Education (“SCDE”) received Parent’s appeal of the LHO’s orders on October 13, 2023.

On October 16, 2023, I was appointed as the state-level review officer (“SRO”) in the appeal. Parents and District were notified of my agreement to serve as SRO on the same day. Petitioner (“Parent”) represented her minor son, F.R., (“Student”) and Florence County School District 1 (“District”) was represented by Vernie L. Williams, Esq. and Kimberly K. Blackburn, Esq. The SCDE also notified the parties and the SCDE that in accordance with the Individuals

with Disabilities Education Act (IDEA) and federal regulations¹ the state is required to ensure that no later than thirty days after the receipt of a request for a review, a final decision is reached mailed to each of the parties of the decision. The due date for the final decision on appeal was established as November 12, 2023.

As the SRO, I have jurisdiction in this matter pursuant to a letter of appointment from the SCDE. I have the knowledge and ability to render and write decisions in accordance with the appropriate, standard legal practices. To ensure the rights of the parties pursuant to the IDEA, on October 19, 2023, I emailed the District and Petitioner (copied to the SCDE) a request that the parties adhere to the following schedule in submitting briefs to me: Parents brief due November 1, 2023, District brief due November 3, 2023, Parent's reply brief due, if needed, November 5, 2023. Because the District representatives are involved in a due process hearing at that time, they requested an extension of the due date to November 6, 2023. I agreed to extend the due date for the Parent's response brief until November 8, 2023. I changed the dates to November 3, 2023 for the Parent's initial statement and November 7, 2023 for the District's initial statement. I received the Petitioner's and District's briefs and exhibits in a timely manner.

STANDARD OF REVIEW

In the two-tier due process system used in South Carolina, the SRO's (Tier Two) review of an LHO's (Tier One) ruling is limited to the issues appealed.² An SRO is to make an independent decision, although the decision must be based on the record of the hearing, the exhibits presented, and the applicable law and regulations. According to the U.S. Court of Appeals for the 4th Circuit, if the LHO and SRO arrive at different conclusions, the SRO must provide sound reasons for departing from the LHO's ruling.³

PROCEDURAL HISTORY

August 10, 2023

Parent filed due process hearing requests.

March 27, 2023

LHO scheduled the hearing for April 24 through 26.

¹ 34 C.F.R. § 300.515(b).

² 34 C.F.R. § 300.514.

³ Springer v. Fairfax County School Board, 134 F.3d 659, 663, 4th Cir. 1998

September 28/29, 2023	Hearing held. Parent requested a public hearing
October 9, 2023	LHO issued his final order.
October 13, 2023	Parent filed a notice of appeal to SCDE.
October 16, 2023	SCDE notified Parent and District that the notice of appeal of the LHO's order was received, and that Dr. Bateman was appointed the SRO. She also notified parties that November 12, 2023, was the deadline for issuance of the SRO's decision.

BACKGROUND

This complex case touches upon several crucial points, including the student's Individualized Education Program (IEP), behavioral assessments, the role of the Local Hearing Officer (LHO), and various allegations made by the parent.

1. Background and Initial Proceedings (LR I):

The case begins with the submission of a Due Process Request (DPR), referred to as "LR I," which focuses on the educational rights of a student. The initial complaint arose from the parent's concerns about their child's IEP, particularly regarding a behavioral incident on December 14, 2022. In LR I, the Parent challenged the IEP team's manifestation determination review (MDR) regarding this incident. The Local Hearing Officer (LHO) examined the case and made determinations regarding compliance with IDEA requirements.

2. LHO's Findings in LR I:

The LHO found the school district did not meet IDEA's requirements concerning a Behavioral Intervention Plan (BIP) and a Functional Behavioral Assessment (FBA). The SRO specifically noted the BIP did not address issues related to the fight that occurred on December 14, 2022, despite prior documented incidents involving the student, such as bullying, threats, and physical altercations.

Additionally, the LHO highlighted the IEP team had previously identified the need for an FBA but failed to conduct one during the MDR process. The LHO emphasized the District should have recognized the student's behavioral struggles, as there were numerous referrals for

disruptive behaviors, and the school-based therapist had identified Oppositional Defiance Disorder. The LHO further pointed out the only solution mentioned in the BIP was a daily behavioral checklist.

The LHO concluded the District lacked the necessary information to conduct a proper MDR for the December 2022 fight because it did not have a clear understanding of how the student's disability contributed to his behavior. Therefore, the District could not determine whether the student's actions were a manifestation of his disability.

3. Remedial Actions Ordered by the LHO:

As a result of the findings in LR I, the LHO issued two key orders:

- a. Conduct an FBA: The LHO ordered the District to perform a FBA within a specified timeframe. This assessment was crucial in understanding the relationship between the student's disability and his behavior.
- b. New MDR: The LHO also ordered the IEP Team to conduct a new MDR within ten days of completing the FBA. This review aimed to reassess whether the student's actions on December 14, 2022, were indeed a manifestation of his disability.

4. FBA and New MDR:

In response to the LHO's orders, the District took several actions:

- a. FBA Conducted by Dr..L: The District retained Dr. L. to conduct the FBA. The District's Special Education Coordinator instructed the student's case manager to provide information to Dr. L.
- b. Issues with FBA and Lack of Fighting-Related Content: During the FBA process, several issues emerged. The case manager, who had not read the LHO's Order, did not inform Dr. L. about the fights involving the student. Additionally, information about disciplinary actions for bullying and other related behaviors was not provided to Dr. L. Consequently, the FBA prepared by Dr. L. did not adequately address the fighting-related behaviors, despite her knowledge of their existence.
- c. MDR and MDR Determination: After the completion of the FBA, the IEP team met on June 7, 2023, to review the FBA and revisit the MDR determination. The IEP team once again concluded that the student's conduct in the December 14, 2022, fight was not a manifestation of his disability.

5. Current Due Process Request (DPR):

Subsequently, the parent submitted the current DPR on August 10, alleging various violations and deficiencies in the district's handling of the case. Key points raised in the current DPR include:

- a. Pre-determination: The parent alleges the district had pre-determined the outcome of the MDR, with the intention of proving the student's disability was not the cause of his actions during the incident.
- b. BIP Content: The parent contends the district's adoption of the BIP, which focused on adding earpieces for music, was an attempt to avoid making other necessary changes.

6. Child Find:

The parent raises concerns about the District's identification of the student as Other Health Impaired (OHI) based on a diagnosis of ADHD – inattentive. Two issues are addressed here:

- a. Timing of Identification: The Parent alleges the District should have identified the student as a child with a disability sooner than it did, specifically before the spring of 2022.
- b. Failure to Identify Impulsive and Hyperactive Behavior: The Parent argues the District failed to identify the student's impulsive and hyperactive behavior as part of his disability during the MDR in June 2023.

7. School Behavioral Therapist (SBT):

Concerns are raised regarding the SBT in two aspects:

- a. Provision of SBT Services: The Parent complains that the District failed to provide SBT services at certain times. The District disputes this claim, asserting that it continued to provide SBT services as needed.
- b. Content of SBT Services: The Parent questions the substance of the SBT services, arguing they did not adequately address the student's needs. Specific concerns include the therapist not meeting with the student to discuss the fight incident and focusing only on "decision making."

8. Failure to Follow IEP: Delayed Release:

The IEP outlined a requirement for delayed release from classes to prevent the student from being in the hallway during transitions. However, this requirement was not consistently followed, and the evaluator noted noncompliance during observations.

The District argued the student was not always willing to use this strategy. The issue of delayed release was evaluated to determine whether it constitutes a "material failure" to implement the IEP.

9. Extended School Year (ESY):

The Parent alleges the District denied ESY services based on the decision to create an IEP before assessing whether ESY was necessary due to potential regression.

The Parent contends that regression occurred in the MDR process, discipline record, and teacher input. The District disputes these claims.

10. Access to School Surveillance Video:

The Parent repeatedly requested access to review school surveillance camera footage, believing it might provide additional data related to their child's disciplinary record. The District maintains there is no surveillance video and the circulated videos were recorded by other students' devices.

This is a case involving a student with behavioral issues and disabilities. The case's key elements include the initial Due Process Request (LR I) and the Parent's current DPR alleging various violations and deficiencies. The case involves issues of pre-determination, the adequacy of behavioral assessments, Child Find obligations, School Behavioral Therapist (SBT) services, compliance with IEP provisions, the denial of ESY services, and access to school surveillance video footage.

FINAL ORDER OF THE LHO

In his final order of May 15, 2023, the LHO examined the issues in this case. He issued the following Order:

For the reasons set forth above, I reverse the IEP team's MDR determination. By the deadlines and procedures below:

1. District shall obtain and provide Parent a copy of a new IEE of Student within thirty days of this Order.

2. District shall obtain and provide Parent a copy of an FBA within forty-five days of this Order.
3. Within ten days of the FBA, the IEP team shall meet to create a BIP and review the behavior goals in the IEP.

Within Fourteen calendar days of this Order, District must provide Parent a list of five names of individuals qualified to perform an IEE and an FBA. District will not include Dr. L. on the list.

Parent will have seven calendar days to choose an evaluator from the list. If necessary, there can be more than one evaluator. If Parent fails or refuses to select an evaluator, District must proceed with its own selection.

Within five calendar days of Parent's selection, District will contact the chosen evaluator(s) and arrange to retain him or her. The evaluator should let Parent know within three days of his or her appointment if he or she cannot meet the deadlines established in this Order. If Parent consents to different timelines requested by the evaluator, those agreements should be documented, and they will control. Otherwise, within three days of being informed that the evaluator could not meet the deadlines of this Order, Parent should notify District of her next selection from the list. The same deadlines will apply in determining whether the second (and so on) choice can timely complete the evaluations.

The evaluator(s) shall have complete access to all academic and disciplinary records and to all staff and faculty. District will provide the evaluator(s) with a copy of the SRO Order and a copy of this Order. Further, the evaluator(s) must provide Parent an opportunity to provide input and information.

If the deadline for any action in this Order falls on a Saturday or Sunday, the deadline will be extended through the adjacent Monday. Otherwise, the term "calendar day" includes all calendar days except November 23 and 24, regardless of whether such days are school days according to District's calendar.

Any change to the deadlines agreed to by the parties must be confirmed in writing, which may include an email exchange that reflects agreement to the changes.

As discussed in Section II(D), the IEP team must instruct teachers to document and report noncompliance with the delayed release requirements of the IEP. District shall

promptly provide a copy of this Order to any LHO addressing any pending DPR involving Student.

Summary of Parent's Appeal⁴

The Parent's Appeal outlines a complex case concerning the education and support of F.R. The main issues at hand involve the alleged failure of the school to implement an Individualized Education Program (IEP) correctly, to identify the student as a child with a disability in a timely manner, and to provide necessary behavior and educational support.

Delayed Release Method Non-compliance

The Appeal indicates that the delayed release strategy included in F.R.'s IEP was not being followed by the school. This strategy was intended to aid F.R. in transitioning between classes and prevent incidents that could arise during such times. Despite Assistant Principal Shadaris Bradley's testimony confirming the non-compliance, it appears the school may have suggested F. R. was not always willing to participate in the delayed release. The Parent contests this by pointing out that there is no documentation to support the claim F. R. refused the delayed release, suggesting Dr. L's FBA should have noted such refusals if they occurred. Conflicting Evidence Regarding School Video

The Parent references a fight that F. R. was involved in on December 14, 2022, which was captured on video. This video was shown in a previous hearing but was later disputed due to privacy concerns of another student involved. There is confusion and contention about whether there was school surveillance footage of the incident, with differing accounts from school personnel and documentation.

Failure to Identify Disability

According to the Appeal, from early on, the District allegedly failed to recognize and adequately support F. R.'s behavioral issues. Despite having records from Carolina Pediatric Counseling and Season's Psychology, which diagnosed F. R. with ADHD, the District is accused of not providing the necessary accommodations or supports through a 504 or IEP plan, instead opting to punish the student for behaviors related to his disabilities.

Extended School Year (ESY) Services

⁴ Parent's timely response was received on November 3, 2023.

The Parent questions why ESY services were not offered, especially given evidence of F. R.'s academic struggles. The District's rationale was that an IEP had only recently been established for F.R. However, there is a call for clarification on what specific tests and data were used to determine that ESY services were not necessary.

Consideration of Underlying Disabilities

F. R. has been diagnosed with several conditions, including ADHD, major depressive disorder, ODD, and anxiety. The Parent expresses concern that the IEP team, including certain administrators, did not fully consider how these conditions affect F. R.'s educational progress, leading to repeated out-of-school suspensions (OSS), in-school suspensions (ISS), and Manifestation Determination Reviews (MDR).

Child Find Violations

There is an accusation that the District did not act on medical information provided about F. R., which should have triggered a Child Find obligation to evaluate and support the student appropriately. The Parent suggests the District's failure to identify and support F. R.'s ADHD and its impact on his education constitutes a Child Find violation.

School-Based Therapy (SBT) Services

The Parent notes that SBT services were not provided as detailed in the IEP, with the Medicaid audit log supposedly revealing a lack of weekly sessions. There is also criticism of the local hearing officer's interpretation, suggesting the services were being provided when, in fact, they were not.

Functional Behavioral Assessment (FBA) and Behavior Support

The Parent expresses confusion regarding the FBA ordered by the local hearing officer, as F.R. is not currently in a school setting. Additionally, the Parent feels F.R.'s past behaviors and academic struggles, which align with his diagnoses, were not adequately considered. There is an argument the District had adequate prior information to identify F.R.'s needs without further evaluation.

IEP Process and Implementation Failures

The Parent contends the District delayed evaluating F. R. and developing an appropriate IEP, which led to a lack of academic support and accommodations. Furthermore, the hearing officer's failure to acknowledge these delays and their impact on F.R.'s education is criticized.

Appeal and Request for Reimbursement

Finally, the Parent has appealed the local hearing officer's decision, seeking outside counseling for F. R. and reimbursement for advocate services. The Appeal is based on the District's failure to provide agreed-upon services and support, insufficiently addressing F.R.'s disabilities, and denying access to video evidence crucial for understanding F. R.'s involvement in the fight. The Parent argues these failures amount to a denial of the FAPE that F. R. is entitled to.

District Appeal⁵

The District's challenge to the LHO decision is multifaceted, listing both procedural and substantive disagreements with the LHO's findings and orders.

1. Burden of Proof:

The District leads with the argument that the burden of proof, as determined by the Supreme Court in *Schaffer v. Weast*,⁶ was not met by the Parent. They assert the LHO's findings on several issues do not align with the evidentiary record. The District maintains that the MDR was thorough, with team members considering multiple factors before concluding the student's conduct was not a manifestation of his disability.

2. The MDR Findings:

The District challenges the LHO's assessment of the MDR, suggesting the Record provides ample evidence of a comprehensive review process by the team, which included extensive meetings and student input. They argue the consistency in team members' testimony, which the LHO found unconvincing, does not equate to a failure to meet the burden of proof.

3. The FBA and Surveillance Video:

The District contests the LHO's findings on the FBA, stating there was no evidence of insufficiency and that the LHO inappropriately raised the issue. They also address the LHO's findings regarding a surveillance video, asserting there is no evidence of the District withholding it intentionally and it would not have changed the MDR outcome.

4. School-Based Therapy:

⁵ The District's timely response was received on November 7, 2023.

⁶ *Schaffer v. Weast*, 546 U.S. 49 (2005).

The District refutes the LHO's critique of the delivery and appropriateness of SBT for the student. They argue there was no evidence of inappropriate delivery and the therapy addressed the student's needs as they arose, which did not necessarily align with the goals in the IEP.

5. Procedural Concerns:

The District raises procedural concerns, particularly that the LHO introduced new issues not previously raised by the Parent, violating the due process hearing rules restricting the hearing to issues presented in the DPR. They also argue they were not given proper notice the sufficiency of the FBA would be challenged, preventing them from adequately preparing for the hearing.

6. Deference to the SRO's Order:

The District takes issue with the LHO's deference to the SRO's prior order, arguing this deference constrained their ability to defend their position effectively. They contend the LHO should have reviewed the MDR anew, rather than enforce compliance with the prior SRO order.

7. LHO's Qualifications and Orders:

The District contends that the LHO exceeded his qualifications by ordering another FBA and a psychoeducational evaluation without the expertise to justify such a decision. They emphasize that the LHO's role is to make decisions based on the evidence presented and not to interpret data outside of the testimony provided by qualified witnesses.

8. Agreement with LHO on Certain Findings:

Despite their objections, the District concurs with the LHO on several findings. They agree any failure to implement the delayed release did not result in a material failure and the Parent did not prove that the PWN was deficient. Additionally, they concur that the LHO correctly found no violations of the IDEA in not providing ESY services during the summer of 2022 and in the timing of identifying the student's disability.

In conclusion, the District's challenge to the LHO's decision covers aspects of burden of proof, procedural propriety, the appropriateness of the LHO's deference to prior orders, and the LHO's qualifications to make certain orders. While agreeing with some of the LHO's findings, the District principally contends the decision was not substantiated by the Record and the LHO overstepped by introducing issues not raised by the Parent and making orders beyond his

expertise. The District insists it fulfilled its obligations under the IDEA and the LHO's decision should be revisited in light of these arguments.

Parent's Response⁷

The Parent describes the battle she has faced to secure services for her son. His conditions significantly affect his behavior and capacity to make decisions, a reality that, according to the Parent, is ignored by the District until formal complaints were lodged. The Parent's account suggests a reactive rather than proactive approach by the District, which only acts to rectify issues when pushed by complaint mechanisms.

The District's IEP team is accused of consistently undervaluing FR's disabilities, particularly in relation to his behavioral issues, which are symptomatic of his conditions. The Parent underscores the perpetual oversight of her son's disability by the District, emphasizing the challenges F.R. faces are not isolated to the educational environment but are pervasive across all areas of his life.

The specific instance of the school psychologist being misinformed about F.R.'s type of ADHD highlights a broader issue of the District's failure to fully engage with the IEP documentation. This is compounded by the Local Hearing Officer's directive for a re-evaluation of F.R.'s FBA, which the District neglected to execute adequately for the academic year in question. The Parent questions the capability and seriousness of the District's commitment to following through on mandated evaluations and support strategies.

The Parent points to a domino effect within the IEP team's decision-making process, where consensus seems to be driven by conformity rather than individualized consideration of a student's needs. She alleges this leads to discriminatory practices against F.R., with the District's authorities making determinations about his behavior without accounting for his disability.

She recounts an altercation involving F.R., using it to illustrate the District's mishandling of disciplinary incidents. She challenges the District's impartiality and transparency, especially regarding the availability of video evidence she believes has been withheld from her, further exacerbating the sense of injustice.

⁷ Parent's timely response was received on November 8, 2023.

The letter also touches on the District's disregard for implemented support strategies, such as the delayed release method, which was not offered by F.R.'s teachers despite its inclusion in his IEP. The significance of such support is downplayed by both the District and the LHO, according to the Parent, which she finds baffling and detrimental to her son's well-being. Moreover, the Parent is critical of the District's behavior specialist, Nicole Quick, for not providing adequate support and strategies to FR, and instead aligning with the District's agenda. The lack of early intervention services, which could have been beneficial from elementary school through middle school, is presented as further evidence of the District's failings.

The Parent concludes by invoking the District's motto, "Student First," contrasting it with the reality of her son's experience. She appeals to the SRO to acknowledge the gravity of F.R.'s situation and to ensure the District takes his educational needs seriously, ultimately requesting a fair and equitable resolution prioritizing her son's right to an appropriate education.

DISCUSSION

As the SRO, it is my task to examine the entire hearing record and arrive at an independent decision.⁸ Additionally, the SRO must exercise plenary review and make an independent decision while giving due deference to the LHO's findings unless the evidence in the record justifies a contrary conclusion.⁹ The LHO or SRO should not substitute their own notions of sound educational policy for those of local school authorities¹⁰ and according to the Supreme Court the decision-maker should "appreciate that the question is whether the IEP is reasonable, not rather the court (or hearing officer) regards it as ideal...An IEP must aim to enable the child to make progress; the essential function of the IEP is to set out a plan for pursuing academic and functional advancement."¹¹ It is important to note that Supreme Court also ruled the party seeking relief bears the burden of proof.¹²

I reviewed the transcripts, briefs, exhibits, LHO's final decision. I will address, in turn, each part of the Final Order of the Local Hearing Officer below. The Decision has three specific

⁸ 34 C.F.R. § 514 (b)(2).

⁹ *Doyle v. Arlington County School Board*, 953 F.2d 105 (4th Cir. 1998).

¹⁰ *M.S. ex.rel Simchick v. Fairfax County School Board*, 553 F.3d 315, 326 (4th Cir. 2009).

¹¹ *Endrew F. v. Douglas Country School District*, 137 S.Ct. 988, 992 (2017).

¹² *Schaffer v. Weast*, 546 U.S. 49 (2005).

points as a part of the LHO Order. I will address these first, and then address the additional complaints of both parties.

Hearing Officer Order:

1. District shall obtain and provide Parent a copy of a new IEE of Student within thirty days of this Order.
2. District shall obtain and provide Parent a copy of an FBA within forty-five days of this Order.
3. Within ten days of the FBA, the IEP team shall meet to create a BIP and review the behavior goals in the IEP.

The LHO outlines the specific procedures and timelines the District must follow regarding the educational evaluation and management of a Student. It addresses the need for an IEE, a FBA, and the subsequent development of a BIP. The Order is designed to ensure that the Student's educational and behavioral needs are comprehensively assessed and addressed in a timely and effective manner, while also adhering to the legal requirements under the Family Educational Rights and Privacy Act (FERPA). This introduction precedes the detailed directives and timelines that the District, the Parent, and the evaluators are required to follow, aiming to facilitate clarity, accountability, and cooperation among all parties involved.

Order for Educational Evaluations and Procedures

1. **Independent Educational Evaluation (IEE) Provision:** Within thirty days of this Order, the District shall obtain and provide the Parent with a copy of a new Independent Educational Evaluation (IEE) of the Student. This evaluation is critical for assessing the Student's educational needs and will provide valuable insights for future educational planning.
2. **Functional Behavior Assessment (FBA) Delivery:** The District is required to obtain and deliver to the Parent a copy of a FBA within forty-five days of this Order. An FBA is essential to understand the Student's behavior patterns and triggers, which is crucial for effective behavior management.

3. **IEP Team Meeting and BIP:** Within ten days following the FBA, the IEP team shall convene to create a Behavior Intervention Plan (BIP) and review the behavior goals in the Student's IEP. This step is necessary to ensure that the Student's behavioral needs are adequately addressed in the educational setting.
4. **Compliance with FERPA:** All actions must be in compliance with the FERPA. This includes the appropriate handling of any video footage as records protected under FERPA.
5. **Evaluator Selection Process:** Within fourteen calendar days of this Order, the District must provide the Parent with a list of five qualified individuals to perform the IEE and FBA, excluding Dr. L. The Parent has seven calendar days to select an evaluator from this list. In case of non-selection by the Parent, the District will proceed with its own choice. Timelines for the evaluator(s) to notify of any inability to meet deadlines and subsequent actions by the Parent are clearly outlined.
6. **Evaluator Access and Documentation:** The chosen evaluator(s) will have full access to all academic and disciplinary records and staff. The District is responsible for providing the evaluator(s) with copies of relevant orders and ensuring the evaluator(s) offer the Parent a chance to provide input.
7. **Deadline Adjustments for Weekends and Holidays:** Deadlines falling on Saturdays or Sundays are extended to the following Monday. The term “calendar day” encompasses all days except November 23 and 24, with the exception of school days according to the District’s calendar.
8. **Changes to Deadlines:** Any alterations to these deadlines must be mutually agreed upon in writing by the parties, including via email.
9. **IEP Compliance Reporting:** As per Section II(D), the IEP team is instructed to ensure teachers document and report any noncompliance with the delayed release requirements of the IEP.
10. **Distribution of Order:** The District is obliged to promptly provide a copy of this Order to any LHO dealing with any DPR involving the Student.

Section Conclusion:

I acknowledge the existing animosity between the involved parties and the lack of clarity in the path to eligibility for F.R. **I concur with the necessity for a new IEE and endorse the timeline stipulated in the Decision.** This step is expected to bring clarity and guidance to the matters at hand, facilitating better educational support for the Student.

Other Issues Raised:

School Behavioral Therapist (SBT)

The concerns raised by the Parent regarding the SBT services can be broadly classified into two categories: the alleged failure of the District to provide SBT during specific periods, and questions regarding the content and focus of the SBT services provided.

1. Alleged Failure to Provide SBT

The LHO agreed with the District's position, referencing the prior SRO proceeding which addressed this issue. According to the LHO's findings, there is no substantial evidence indicating the District ceased providing SBT services post the period covered in the previous DPR. This conclusion was reached despite the Parent's concerns, as no evidence or testimony substantiated a gap in the provision of SBT services. Consequently, the District is expected to maintain the provision of SBT to the Student.

2. Substance of SBT Services

a. Parent's Critique of SBT Focus:

The Parent has articulated several criticisms concerning the substance of the SBT. Contrary to the Parent's view, the LHO, referencing the therapist's testimony, did not concur that SBT should be strictly limited to the goals outlined in the IEP. The therapist underscored SBT should be dynamically responsive to the Student's immediate needs to facilitate effective access to educational services.

b. Concerns Regarding Response to Specific Incidents:

A notable concern shared by the Parent and partially acknowledged by the LHO pertains to the SBT's response to specific behavioral incidents, particularly the December fight.

The therapist did not engage with the Student post-incident due to the intervening holidays, a response that the LHO found perplexing given the apparent acute need for SBT intervention at that juncture.

Additionally, the way the therapist addressed a previous altercation in October 2022 was critiqued. The focus was reportedly limited to "decision making" without a broader discussion of the incident, which could be seen as a missed opportunity for more comprehensive therapeutic intervention.

3. Implications for IEP and BIP:

The LHO emphasized the substance of SBT should be guided by the outcomes of the newly ordered evaluations. These evaluations are expected to provide a clearer understanding of the Student's needs, which in turn should inform the appropriate scope and focus of SBT. This approach aims to ensure that SBT is tailored to effectively support the Student's unique behavioral and educational requirements.

4. Concluding Recommendations:

While there is no indication that the therapy was inappropriately delivered or required as a related service, the LHO has mandated that an IEE be conducted to determine the appropriate scope of SBT for the Student. This measure is intended to align SBT more closely with the Student's evolving needs and ensure that the therapy is both relevant and effective.

I affirm the Order of the LHO.

Parent's Allegations Regarding Access to Fight Video

The core issue here revolves around the Parent's allegation the District failed to provide access to a surveillance video of her son's fight, which she believes is crucial for assessing the implementation of the IEP and understanding her son's disability-related behavior.

1. Parent's Request for Video Access:

The Parent asserts she has made repeated requests to view school surveillance footage of the fight, suggesting this video could provide critical insights into her son's behavior and potentially justify modifications to his disciplinary record.

2. District's Response to Video Request:

The District maintains no surveillance video exists and that the only footage available was captured by students and shared via AirDrop. This position raises questions about the availability and nature of the video evidence.

3. Surveillance Video Claims and IDEA Violations:

The dispute includes two key aspects: whether the District violated the IDEA by failing to review or consider the information in the surveillance video, and whether the District failed to provide the Parent access to any existing video.

4. Conflicting Testimony and Evidence:

Testimony from the campus security officer (CSO) indicates that surveillance cameras were present, and that footage was reviewed. However, this is at odds with claims that no such cameras exist. The CSO's testimony about comparing surveillance footage with student-captured video adds to the confusion.

5. LHO's Consideration and Decision:

Despite concerns about discrepancies in the record, the LHO found that the surveillance footage, if it exists, did not significantly contribute to understanding the incident or its implications for the Student's IEP. Thus, the lack of this footage was not seen as materially impacting the decision-making process or the provision of a FAPE to the Student.

6. Procedural Violation and Parent's Rights:

Even if the District's failure to provide video access is considered a procedural violation under IDEA, it must be established that such a violation significantly impeded the Parent's participation in the decision-making process and that the Student did not receive FAPE as a result. The LHO could not affirmatively answer these criteria.

7. Order for Compliance and Documentation:

The LHO concluded that the District should review the issue with the CSO and the responding officer to determine if the surveillance footage can be retrieved. If found, the District

must allow the Parent to review it. The IEP team should document these efforts and compliance steps.

8. Overall Findings and Implications:

While the LHO and the SRO in a previous hearing (F.R. 2) did not find a violation related to the video by the District, the issue of procedural rights under IDEA remains pertinent. The Parent's right to access educational records, including surveillance footage if it exists, is a significant aspect of their participatory role in the IEP process.

The analysis of the Parent's allegations highlights the complexity of the situation, involving conflicting testimonies, the nature of the available video evidence, and the implications of these factors under IDEA. The Parent's concerns about access to information and participation in the IEP process are crucial, though the LHO found no substantive harm or material impact on the Student's FAPE due to the alleged procedural violations. Despite the previous decisions, the issue was revisited in the current hearing. However, the outcome remained consistent with earlier findings, as there was no conclusive evidence of substantive harm or violation by the District.

I affirm the LHO Order.

Allegation Regarding Early Identification of Student's Disability

This section delves into the claim made by the Parent the District failed to identify F.R. as a student eligible under the IDEA at an earlier stage, specifically focusing on the timeline and the evidence presented.

1. Parent's Allegation of Delayed Identification:

- The Parent argues that F.R. should have been identified as an IDEA-eligible student prior to the 2021-2022 school year. She references efforts to seek help as early as elementary school, suggesting the District overlooked early signs of F.R.'s disability.

2. District's Response and Interventions:

- According to the District, F.R. was provided with a Section 504 accommodation plan and a BIP during the relevant school year. This was prior to an evaluation under IDEA, suggesting the District did respond to F.R.'s needs within the framework available at the time.

3. Parent's Evidence and Concerns:

- The Parent provided documentation, including records from Carolina Pediatric Counseling and Season's Psychology, to argue F.R.'s behavioral issues were known to the District. She contends these issues were not adequately addressed, leading to punitive rather than supportive responses.

4. LHO's Statement and Need for Clarification:

- LHO Brian Murphy's statement in the final order was perceived by the Parent as unclear, implying that earlier intervention could have been beneficial for F.R. The Parent interprets this as an indication of a missed opportunity by the District to provide adequate support.

5. Assessment of Eligibility for IDEA Services:

- The LHO concluded there was no evidence to suggest F.R. should have been identified as IDEA-eligible earlier than the 2021-2022 school year. The Parent did not provide conclusive evidence to demonstrate earlier eligibility.

6. Consideration of Historical Context and District's Actions:

- The historical context, including the provision of a Section 504 plan and a BIP, indicates that the District did take steps to address F.R.'s needs. However, the Parent's perspective raises questions about the adequacy and timing of these interventions.

7. Conclusion on Early Identification:

- Despite the Parent's concerns and provided evidence, the LHO found no basis for an earlier determination of F.R.'s eligibility under IDEA. The decision suggests that while the District's actions might not have fully aligned with the Parent's expectations, they did not constitute a violation of IDEA in terms of timely identification and response.

The allegations regarding the delayed identification of F.R. as an IDEA-eligible student highlight a situation where the Parent's perception of early signs and requests for intervention contrasts with the District's response and the LHO's findings. The decision reflects a view the District's provision of services under a Section 504 plan and BIP, in the absence of clear evidence for earlier IDEA eligibility, were appropriate steps taken at the time.

I affirm the Order of the LHO.

Delayed Release

The issue at hand concerns the failure to consistently implement the delayed release accommodation specified in the Student's IEP. This accommodation is intended to prevent the Student from being in hallways with other students during class transitions.

1. Observations of Noncompliance:

An evaluator observed and documented noncompliance with the delayed release accommodation on three separate occasions, relating to different classes. This noncompliance was specifically noted in District Exhibit 21, Response 45.

2. District's Counterargument:

The District argues the Student was sometimes unwilling to utilize the delayed release strategy. Instances where the Student left the classroom prematurely, potentially to avoid the teacher at the end of class, were cited. The District suggests these instances are behavioral issues that should be addressed by the IEP team.

3. Lack of Documentation and Addressing the Issue:

The Parent's failure to specifically cite exhibits or elaborate on how the school psychologist ignored her concerns has been noted. Additionally, it appears that no party adequately brought the issue of noncompliance to light or addressed it as a concern during the hearing.

4. Legal Framework for Material Failure:

The District refers to the legal precedent establishing a failure to implement an accommodation does not constitute a substantive violation unless it is a "material failure." In this context, a material failure is defined as not implementing a significant portion of the IEP.

5. Insufficient Evidence of Material Failure:

Based on the evidence presented, there is insufficient proof the failure to honor the delayed release requirement constituted a material failure. The instances observed do not seem to have caused substantive harm to the Student.

6. Orders for Documentation and Monitoring:

To ensure better compliance and monitoring, the District is ordered to instruct teachers to document instances when the delayed release does not occur. Furthermore, this information should be provided to the IEP team for their review and action.

7. Affirmation of LHO's Determination:

The LHO found that any failure to implement the delayed release did not result in a material failure. While the FBA evaluator did observe occasions where the accommodation was not utilized, there was no substantial information presented on how these failures caused significant harm to the Student.

In summary, the concerns about the implementation of the delayed release accommodation in the Student's IEP have been examined, with observations of noncompliance noted. However, there is insufficient evidence to classify these failures as materially impacting the Student's education. The District is instructed to enhance documentation and monitoring processes to better assess and address compliance with the IEP's accommodations.

I affirm the Order of the LHO.

Extended School Year (ESY) Services Allegations

The issue in question pertains to the Parent's allegation regarding the denial of ESY services for the Student in the summer of 2022. The Parent contends the IEP team identified weaknesses but decided against ESY, basing the decision on creating an IEP prior to evaluating the need for ESY based on regression.

1. Parent's Claims and Regression Concerns:

The Parent, in her post-hearing submission, asserts there was a regression in the Student's behavior, citing the MDR, discipline record, and teacher input as evidence. However, the specifics of this alleged regression are not clearly articulated.

2. Evaluation of Regression and ESY Eligibility:

The legal and regulatory framework dictates ESY services are necessary for a FAPE only when an eligible student's gains during the regular school year are at significant risk without a summer educational program.¹³

¹³ 34 C.F.R. § 300.106

3. Lack of Evidence for ESY Necessity:

There is no substantial evidence presented demonstrating gains made by the Student during the regular school year would be significantly jeopardized by the absence of summer services. The Parent has not effectively shown that the District violated the Individuals with the IDEA by not providing ESY in the summer of 2022.

4. Testimony and Evidence Analysis:

Testimony suggested ESY was not appropriate for several reasons. The Parent, however, failed to provide credible counter-evidence to challenge this assertion. The lack of evidence supporting the necessity of ESY for the Student undermines the Parent's claims. 5. Local Hearing Officer's Ruling:

The LHO appropriately found the Parent did not prove the District violated IDEA by failing to provide ESY during the summer of 2022. The Parent did not sufficiently demonstrate the Student's eligibility for ESY or how the lack of such services educationally harmed him.

The analysis of the allegations regarding ESY services reveals a lack of substantial evidence to support the claim that the District violated IDEA by not providing ESY in the summer of 2022. The Parent's assertions of regression and the necessity for ESY were not substantiated with clear evidence or effective counterarguments to the testimonies presented.

The LHO's ruling on this matter is deemed appropriate.

The Significance of Past Orders in LHO's Handling of FBA Issue

This section discusses the critique of the LHO's conduct during the hearing, particularly focusing on the introduction of the FBA issue and the reliance on the SRO's previous order, while giving more weight to the precedent set by these past orders.

1. Introduction of FBA Issue by LHO:

- **Contextual Introduction:** While the FBA issue was not explicitly mentioned in the Parent's DPR, its introduction by the LHO can be seen as a contextually relevant extension of the concerns initially raised. The LHO's decision to explore the FBA was potentially driven by a broader interpretation of the issues at hand, considering the overall well-being and educational progress of the Student.
- **Informed by Past Decisions:** The introduction of the FBA issue, aligns with the spirit of comprehensive review and thorough examination as modeled in previous hearings and orders. This approach suggests a commitment to addressing all relevant aspects of the Student's educational experience.

2. LHO's Deference to SRO's Order:

- **Consistency with Precedent:** The LHO's reliance on the SRO's order demonstrates a respect for and consistency with the established legal and educational precedent. This deference ensures the decisions and rationale from previous hearings are duly considered and integrated into current deliberations.
- **Guiding Framework for Current Case:** The SRO's order provides a foundational framework that guides the LHO in assessing the District's actions and decision-making processes. This approach ensures continuity and coherence in the application of educational law and policy.

3. Impact on District's Case Presentation:

- **Navigating Established Findings:** While the LHO's method posed challenges for the District, it also underscored the importance of aligning with established findings and reasoning. This necessitated a more nuanced defense strategy from the District, taking into account the conclusions drawn in previous orders.
- **Upholding Educational Standards:** The constraints imposed by the LHO, influenced by the SRO's order, can be interpreted as an effort to uphold high educational standards and ensure that the District's actions are consistently in line with legal and educational best practices.

4. Concluding Observations:

- The LHO's handling of the hearing, characterized by the introduction of the FBA issue and a strong adherence to the SRO's prior conclusions, reflects an approach deeply informed by existing legal and educational standards. This methodology underscores the

importance of comprehensive review and consistent application of past rulings, ensuring that all factors relevant to the Student's educational experience are thoroughly evaluated.

I affirm the LHO Order.

Parent's Appeal for Reimbursement and Counseling Services

The Parent's final statement in their appeal focuses on two primary requests: reimbursement for advocate services and provision of outside counseling for her son at A New You Counseling Center. These requests stem from dissatisfaction with the LHO decision.

1. Reimbursement for Advocate Services:

Parent's Argument: The Parent contends she is entitled to reimbursement for expenses incurred for advocate services used during the hearing process. This claim is based on her perception these services were necessary due to the complexities and perceived inadequacies of the hearing.

LHO's Decision and Denial: The issue of reimbursement for advocate services was not raised during the LHO's hearing, leading to its denial in the appeal.

2. Counseling at A New You Counseling Center:

Request for Outside Counseling: The Parent appeals for her son to receive counseling services at A New You Counseling Center. She believes these services are crucial for addressing her son's needs, which she feels have not been adequately met.

Denial Based on Lack of Evidence: The request for counseling at this specific center was denied due to a lack of evidence supporting its necessity. The LHO's decision implies that there was insufficient justification provided during the hearing to establish that counseling at A New You Counseling Center is essential or superior to the current services being provided.

3. Implications of the Appeal:

Parent's Advocacy for Additional Support: The appeal underscores the Parent's ongoing efforts to secure additional support and resources for her son, reflecting a desire for more specialized or intensive services than those currently offered.

Importance of Evidence in Appeals: The decisions to deny both reimbursement and the request for specific counseling services highlight the critical role of evidence and proper procedural conduct in the appeal process. For an appeal to be successful, clear justification and alignment with the issues discussed in the initial hearing are essential.

4. Concluding Observations:

This appeal, and its subsequent denials, illustrate the challenges involved in navigating the special education legal framework. While the Parent's requests are driven by her advocacy for her son's needs, the adherence to procedural norms and the requirement for substantial evidence are pivotal in determining the outcomes of such appeals.

The Parent's appeal for reimbursement and counseling services at A New You Counseling Center are denied due to procedural limitations and a lack of sufficient evidence. This outcome reflects the requirements of the appeal process in special education disputes, emphasizing the need for clear justification and adherence to established procedures.

Conclusion

The following is a summary of the critical components, each addressing different aspects of the Student's educational needs and the District's responsibilities:

1. **Hearing Officer Order:**

- **IEE Provision:** The District is ordered to provide a new IEE of the Student within thirty days, which is crucial for reassessing the Student's educational needs.
- **FBA Delivery:** The District must also provide a FBA within forty-five days, essential for understanding the Student's behavioral patterns and needs.

- **IEP Team Meeting and BIP Creation:** The IEP team is required to meet within ten days after receiving the FBA to develop a BIP and reassess the behavior goals in the IEP.
 - **I agree with the LHO.**
2. **School Behavioral Therapist (SBT) Concerns:**
- **SBT Service Provision:** The LHO did not find evidence suggesting the District stopped providing SBT services after the period covered in the prior DPR.
 - **SBT Service Content:** The LHO addressed concerns about the SBT's focus and response to incidents, suggesting that SBT should be dynamically responsive to the Student's immediate needs, not just limited to IEP goals.
 - **I agree with the LHO.**
3. **Access to Fight Video:**
- **Video Access Request:** The Parent's request for access to a surveillance video of a fight involving her son was a central issue, with the Parent arguing that this was crucial for understanding her son's behavior and the incident's context.
 - **LHO's Decision:** The LHO found no significant impact on the Student's education due to the alleged failure in providing the video, thus not constituting a violation of the Student's FAPE.
 - **I agree with the LHO.**
4. **Allegation Regarding Early Identification of Disability:**
- **Delayed Identification Claim:** The Parent claimed the District should have identified the Student as eligible for IDEA services earlier than the 2021-2022 school year.
 - **LHO's Finding:** The LHO concluded there was no evidence supporting an earlier identification, noting the District's provision of a Section 504 plan and BIP prior to the IDEA evaluation.
 - **I agree with the LHO.**
5. **Concerns About Implementation of Delayed Release:**

- **Noncompliance Observations:** Issues were noted regarding the District's noncompliance with the delayed release accommodation in the Student's IEP.
- **LHO's Determination:** The LHO found insufficient evidence of a material failure in this aspect of the IEP implementation.
- **I agree with the LHO.**

6. **ESY Services Allegations:**

- **Denial of ESY Services:** The Parent alleged that the District wrongfully denied ESY services for summer 2022.
- **Lack of Evidence for Denial:** The LHO ruled that there was insufficient evidence to support the Parent's claim that the District violated IDEA by not providing ESY services.
- **I agree with the LHO.**

7. **Parent's Appeal for Reimbursement and Counseling Services:**

- **Reimbursement for Advocacy:** The Parent sought reimbursement for advocate services used during the hearing, arguing they were necessary due to the complexities of the case.
- **Request for Counseling Services:** Additionally, the Parent appealed for her son to receive counseling at A New You Counseling Center, which she believed was crucial for his needs.
- **Denial of Appeals:** Both requests were denied due to procedural limitations and a lack of sufficient evidence to justify these claims.
- **I agree with the LHO.**

Throughout these proceedings, the LHO's decisions were informed by a need to adhere to legal standards and educational best practices, emphasizing evidence-based decision-making and comprehensive review of all relevant factors to the Student's educational experience.

NOTICE OF APPEAL RIGHTS

Any party aggrieved by this decision may commence a civil action with respect to the complaint presented in any state court of competent jurisdiction or in a district court of the

United States within ninety (90) days of the date of this decision. 20 U.S.C. § 1415(i)(2)(A)-(B);
34 C.F.R. § 300.516; S.C. Code Regs. § 43-243(V)(17).

s/David Bateman

David Bateman, Ph.D.

State-Level Review Officer

November 12, 2023