

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

<b>STATE OF SOUTH CAROLINA</b>	)	
	)	
	)	
<b>A.C.B. (“Parent”) on behalf of</b>	)	
<b>K.C. (“Student”)</b>	)	
	)	
<b>Petitioners,</b>	)	
	)	<b>BEFORE MITCHELL YELL</b>
<b>v.</b>	)	<b>STATE-LEVEL REVIEW OFFICER</b>
	)	
	)	
<b>Lancaster County School District,</b>	)	
	)	
<b>Respondent.</b>	)	<b>DECISION</b>
	)	
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This matter is before me pursuant to an appeal of the Local Due Process Hearing Officer (“LHO”), Brian P. Murphy’s Order on Motion to Consolidate, Order on Motion for Recusal, Order on Motion to Dismiss, and Final Order dated March 13, 2023. The South Carolina Department of Education (“SCDE”) received the Parent’s appeal of the LHO’s orders on March 13, 2023.

On March 15, 2023, I was appointed as the state-level review officer (“SRO”) in the appeal. Parent and District were notified of my agreement to serve as SRO on March 15, 2023. Petitioners were represented by Parent on behalf of her minor son, and the Lancaster School

District (“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’s (IDEA’s) federal regulations at 34 C.F.R. § 300.515(b), the state is required to ensure that not later than thirty days after the receipt of a request for a review, a final decision is reached in the review and a copy of the decision is mailed to each of the parties. Based on the South Carolina Department of Education's ("SCDE's") receipt of the request for appeal on March 13, 2023, the due date for the final decision on appeal was established as April 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 March 18, 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: Parent’s brief due April 1, 2023, School district’s brief due April 3, 2023, Parent's reply brief due, if needed, due April 5, 2023. I received the Parent’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 (34 CFR §300.514). 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 4<sup>th</sup> Circuit, if the LHO and SRO arrive at different conclusions, the SRO must provide sound reasons for departing from the LHO’s ruling (*Springer v. Fairfax County School Board*, 1998).

### **PROCEDURAL HISTORY**

February 22, 2023	Parent filed two due process hearing requests.
March 2, 2023	Parent submitted objection to LHO’s appointment and motion to recuse.
March 2, 2023	Parent agreed to the consolidation of the two due process hearing requests.

March 6, 2023	LHO issued order regarding response to pending motions. The LHO also posed 6 questions to the Parent and warned “that more of the same arguments attacking individuals, making insulting comments, and arguing about the SCDOE or political matter...and could lead to dismissal of these matters with prejudice” (LHO order regarding responses to pending motions, page 4).
March 8, 2023	Parent submitted response to LHO’s order of March 6 <sup>th</sup> and order to dismiss.
March 10, 2023	School district filed brief in opposition to Parent’s motion to recuse.
March 13, 2023	LHO issued orders on the motion to recuse, motion to consolidate, motion to dismiss, and his final order. Student’s father was dismissed as a Petitioner.
March 13, 2023	Parent sent an email stating her notice of appeal.
March 15, 2023	SCDE notified Parent that her notice of appeal of the LHO’s order had been received and that Dr. Yell was the appointed SRO. SCDE also notified parties that April 12, 2023 was the deadline for issuance of the SRO’s decision.
March 16, 2023	Parent filed motion for proof of competency and motion for recusal.
March 21, 2023	SCDE issued a response denying the Parent’s motion for proof of competency and motion for recusal and notifying Parent that issues could be raised with SRO. Parent submitted appeal brief number 1 and exhibits in this
March 27, 2023	matter to the SRO. The brief was dated April 1, 2023. The attorneys for the Lancaster School District submitted
April 3, 2023	their brief in this matter to the SRO.
April 4, 2023	Parent submitted appeal brief number 2 in this matter to the SRO. The brief was not dated.

## **FINAL ORDER OF THE LHO**

In his final order of March 13, 2023, the LHO carefully examined the issues at hand.

- On the Motion to Consolidate, the LHO consolidated the hearings. The Parent reported consenting to this consolidation in the brief submitted to the SRO on April 1, 2023 (Parent, 1<sup>st</sup> Appeal Brief, page 2). I affirm the LHO's consolidation of the hearings.
- On the Motion for Recusal, the LHO noted that the Parent added the LHO as a defendant in the U.S. Court of Appeals for the Fourth Circuit and then sent an email on March 2, 2023, in which she claimed that the LHO had a conflict of interest and should recuse himself. I agree with the LHO that to allow a recusal would reward the Parent for improperly hearing officer shopping (LHO final order, page 7). The LHO rightly concluded that the "Parent cannot create a conflict by besmirching and assailing everyone with whom she disagrees" (LHO final order, page 22). Additionally, the LHO noted that the Parent provided no evidence of the bias she accused the LHO of holding against her. I affirm the LHO's denial of the motion to recuse.
- On the Motion to Dismiss, the LHO addressed the two following issues raised by the District: (1) that the Parent's efforts to amend the education records must be pursued through the Family Educational Rights and Privacy Act (FERPA), and (2) that the Parent is seeking to get a second bite at the *AB I* apple. Parent contended that (1) she could seek amendment of records through due process, and (2) she is complaining about different violations than those raised in *AB I*. In LHO's final order, he thoroughly examined each issue. The LHO first rejected the Parent's conclusion that records could be amended through IDEA and noted that the Parent's efforts to amend the records must be made through FERPA. Thus, the LHO dismissed the allegations regarding the amendment of educational records because the allegations were not properly brought in the due process hearing. Second, the LHO dismissed the remaining allegations in *AB II* and noted that they must be pursued in *AB I* as described by the SRO in *AB I*. I affirm the LHO's Motion to Dismiss.

## DISCUSSION

I affirm all the LHO's orders in this matter. Nonetheless, I believe a few comments are in order.

First, when she does not prevail in a hearing, Parent resorts to accusing the LHOs of manipulating facts, conspiring against her, and sometimes having rulings written for him or her. In the cases in which I have served as the SRO, I have found the LHO's rulings to be based on evidence, the law, and to show no bias. There is no evidence to support Parent's repeated baseless claims. As LHO wrote "Parent again shows that she feels no need to support scurrilous allegations with fact" (LHO final order, page 12).

Second, Parent has engaged in intimidation and threats against school district employees. According to the LHO "Parent recently threatened one of the District's employee with personal financial ruin that Parent says may result to the individual from another threatened lawsuit (LHO final order, page 19). The LHO quoted from a letter sent by Parent in a previous case (*AB 11* DPR Exh. A at 35):

I can give you Grace only up to a point but after that, you two will have to receive consequences for deciding to renege your responsibilities of your actions. It will not just be scdoe, [ ], Brian Murphy, and Lancaster county School District. Faculty and staff do not have immunity in federal court.

Please remember that I have 11 staff and faculty from Fort Mill School District on the federal complaint which include Amy Maziarz. Each and everyone will have to hire an attorney to represent themselves...Please check in on your federal case law on how teacher principals etc can be sued as individuals, lose their licenses and have to pay reparations to the parents and the child on top of the school district and the State Department of Education.

As the LHO wrote "Parent intentionally provokes and threatens others, possibly to the detriment of her own son. To date, Parent has devoted almost all of her time and effort to engaging in provocation and threats, rather than seizing opportunities to show a violation of the IDEA by District. She then blames everyone else for the consequences of her actions" (LHO final order, page 20). It should be noted that prior to receiving this email, the LHO dismissed *AB 1* with prejudice, on the grounds of Parent's uncivil and threatening communications.

Third, Parent sees a cabal in league against her. For example, in her brief submitted to me on March 27 (dated April 1), Parent concluded:

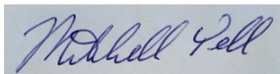
Petitioner claims there was and still is a significant amount of Educational funds, including from IDEA, which is being deliberately stolen; washed and laundered within the South Carolina Department of Education, many of its Local Hearing Officers, State Review Officers and District Attorneys including but not limited too (*sic*), Kim Blackburn, Vernie Williams, David Duff, Meredith Seibert, Douglas Dent, Monica Bohlen, Brain P. Murphy, Mitchell Yell, Perry Zirkel and the puppet master/ring leader, []” (Parent, April 2023 1<sup>st</sup> appeal brief *DPC 11 & 111*).

Evidently, the cabal has been expanded to include a Magistrate Judge, a District Court Judge, superintendents, and state universities. No further comment is necessary; the quotation speaks for itself.

In footnote 16 to his final order, the LHO writes “Once again, Parent is focusing on *her* rights to file actions in court, rather than having a hearing on the merits regarding *student’s* rights. In crafting the due process provisions of the IDEA, Congress created a powerful and swift process to address right of children with disabilities. Congress never intended to create a playground for litigious adults” (LHO final order, page 20).

### 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).



Mitchell L. Yell, Ph.D.  
State-Level Hearing Review Officer  
April 12, 2023