

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

STATE OF SOUTH CAROLINA	)	
	)	
	)	
G.J. (Parent) on behalf of Z.B.	)	
(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 November 10, 2023. The South Carolina Department of Education (“SCDE”) received Parent’s appeal of the LHO’s orders on November 14, 2023.

On November 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 the SRO on the same day. Petitioners were represented by G.J. (“Parent”) on behalf of her minor son, Z. B., (“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 regulations,¹ 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 in the review and a copy of the decision is mailed to each of the parties. The due date for the final decision on appeal was established as December 14, 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 November 16, 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 December 1, 2023; District brief due December 5, 2023; and Parent's reply brief due, if needed, December 7, 2023. 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 The 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

September 1, 2023	Parent filed due process hearing requests.
October 19, 2023	Hearing held. Parent requested a public hearing.
November 10, 2023	LHO issued his final order.
November 14, 2023	Parent filed a notice of appeal to SCDE.

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

November 16, 2023

SCDE notified Parent and District the notice of appeal of the LHO's order was received, and that Dr. Bateman was appointed the SRO. The SCDE also notified parties that December 14, 2023, was the deadline for issuance of the SRO's decision.

BACKGROUND

Overview

The LHO in this case brings attention to the legal risks the parent is facing due to their approach, specifically at it relates to the award of attorney fees. The LHO stops short of finding the Parent's actions in bad faith but indicates it's a close call. The implication is the Parent's ongoing behavior could potentially lead to legal consequences, including being held liable for the District's attorney fees.

The Parent is challenging the school district's actions regarding Z.B.'s education. This includes demanding information and asserting rights and failures on the part of the District.

Student's Situation and Future

While the prospect of graduation is mentioned, there's a concern that Z.B. is not receiving the necessary preparation for high school and adulthood. The LHO highlights a crucial aspect of education - the development of skills to navigate authority and interpersonal relationships, particularly in the workplace.

The Real World and Post-School Challenges

The LHO provides a reality check regarding the post-school world, where there are no administrative hearings to resolve workplace disputes and where parental involvement in an adult's professional life is generally not entertained. This point serves as a warning the skills needed to navigate these adult situations are not being adequately developed in the Student.

Potential for Constructive Collaboration

Despite the conflict, the LHO sees an opportunity for collaboration, rooted in the mutual concern both parties have for the Student's welfare. The suggestion is to shift the focus from conflict to constructive dialogue about the Student's real needs. This is a call for a more cooperative approach, moving away from an adversarial stance. Parents and school districts often find themselves in conflict over the interpretation and implementation of FAPE. The LHO's remarks point towards a more collaborative approach, emphasizing the need for balanced advocacy supporting the student's overall development and preparation for life beyond school. His comments underscore the necessity for both parties to engage in meaningful dialogue and work towards solutions that truly benefit the student, rather than getting entangled in prolonged legal battles.

Current Due Process Request (DPR):

The due process hearing complaint filed on September 1, 2023, by the Parent of Z.B., a 13-year-old student in the District, raises multiple concerns regarding the District's adherence to the Student's Individualized Education Program (IEP) and broader legal obligations. Z.B. is identified as having attention deficit hyperactivity disorder (ADHD), Idiopathic Hypersomnia, and a Specific Learning Disability.

Key Issues Outlined in the Complaint:

Non-Disclosure of Educational Records: The Parent alleges the District has consistently failed to provide her with records detailing changes to Z.B.'s grades for the first three quarters of the 2022-2023 school year. She suspects the District has created fraudulent data in these records to cover up its failure to comply with Z.B.'s IEP and to deny him a Free Appropriate Public Education (FAPE). This lack of access to records, according to the Parent, prevents proper evaluation and updating of Z.B.'s IEP services and accommodations.

Dispute Over Disciplinary Record: The complaint includes a dispute over a write-up Z.B. received related to an incident in a bathroom. The Parent contests the accuracy of this write-up, citing the absence of evidence to prove her son's involvement in the alleged incident. Despite her repeated requests, she has not been allowed to view the video footage that purportedly implicates her son.

Rejected Requests for Additional Support: The Parent notes her repeated requests for outside behavioral counseling services for Z.B. have been denied by the District. This rejection is particularly concerning to the Parent as she has learned similar services were provided to another student, leading her to allege discrimination.

Non-Compliance with IEP Requirements: The complaint further alleges the District has not met its obligations under Z.B.'s IEP. This includes failing to provide the agreed-upon amount of time with a school behavior therapist and not completing a Functional Behavioral Assessment (FBA) as required by the IEP. These lapses, according to the Parent, deny Z.B. essential support services.

Allegations of Discrimination and Fraud: The Parent accuses the District of discriminatory practices in the provision of services and of fraudulent activities concerning her son's educational records. She highlights the disparity in treatment between her son and other students, specifically citing the provision of additional services to a white student at a different school, which were denied to her son.

Remedies Sought in the Complaint:

1. Access to all relevant records and videos to review the changes made to Z.B.'s grades and the evidence for the bathroom incident write-up.
2. An investigation into the actions staff of the District, regarding the alleged fraudulent activities.
3. Provision of compensatory behavior counseling services from A New You Counseling Center.
4. Correction of Z.B.'s academic grades to reflect accurate data and support the services provided and requested.
5. Completion of the FBA and updating of the BIP (Behavior Intervention Plan) to include daily visits from a behavior interventionist.
6. Reimbursement for the expenses incurred by the Parent in the process of addressing these issues.

Parent's Statement⁴

The Parent's appeal of the LHO order concerning her son's education, particularly focusing on the execution of his IEP. Her arguments revolve around several key issues:

1. Accuracy of Grades and Data Transparency:

- **Disputed Grade Changes:** The Parent highlights a significant concern regarding the accuracy of her son's grades. She disputes the changes made to her son's grades, emphasizing she was not provided with sufficient data or documentation to justify these alterations.
- **Impact on IEP:** The Parent states the accuracy of the grades is crucial for her son's IEP, as they directly influence the assessment of his educational needs and the appropriateness of the goals and services outlined in the IEP.

2. Implementation of the IEP:

- **Lack of Support Services:** The Parent stated her son is not receiving the necessary support in key areas such as math, reading, and behavior management, which are supposed to be part of his IEP.
- **Role of Behavior Interventionists:** The Parent states the ineffectiveness or absence of interventions by behavior specialists, which she stated is critical given her son's specific educational needs.

3. Communication and Parental Participation:

- **Inadequate Communication:** The Parent expressed frustration over the lack of clear and transparent communication from the District, stating this has impeded her ability to participate effectively in her son's education.
- **Parental Rights:** The Parent emphasized her right to be fully informed and involved in decisions regarding her son's education, which she feels has been denied due to the lack of comprehensive information and documentation.

4. Specific Incidents and School's Response:

- **Bathroom Incident:** The Parent mentions a specific incident in the bathroom, arguing it is indicative of the broader issue of insufficient behavioral support and supervision for her son.

⁴ Parent's statement was received in a timely manner.

- **Behavioral Support:** The Parent underscores the necessity for consistent and appropriate behavioral support in the classroom, which she states is not being adequately provided as per the IEP.

5. Critique of the LHO Order:

- **Disagreement with Conclusions:** The Parent challenges the LHO's interpretations and conclusions in the LHO Order. She believes the Order fails to acknowledge the full extent of the District's shortcomings and their impact on her son's education.
- **Need for Unbiased Treatment:** The Parent questions the impartiality of the due process system, expressing concern over what she perceives as bias in the LHO's approach.

6. Requests and Remedies:

- **Outside Counseling:** The Parent requests her son receive outside counseling services to address the unmet needs in his IEP.
- **Reimbursement of Expenses:** The Parent seeks compensation for the costs incurred during the due process hearing.
- **Review of Documentation:** The Parent asks for a thorough review of the materials and rationale used for changing her son's grades, emphasizing the need for transparency and accuracy.
- **Compensatory Services:** The Parent insists on the provision of compensatory services for the support that was outlined in the IEP but not provided.

7. Commitment to Collaborative Solutions:

- **Emphasis on Collaboration:** While the Parent is critical of the District's actions, she expresses a willingness to work collaboratively with the District to improve her son's educational experience.

In her appeal of the LHO's Order regarding her son's IEP, the Parent disputes the accuracy of her son's grade changes and highlights insufficient support services, inadequate communication from the District, and ineffective behavior interventionists. She cites specific incidents to emphasize the lack of behavioral support and questions the impartiality of the LHO's decisions. The Parent requests outside counseling, reimbursement for expenses, a review of grade change documentation, and compensatory services. Despite these concerns, she expresses

a willingness to collaborate with the District to improve her son's educational experience, seeking transparency and adherence to the IEP.

District Response⁵

Here is a detailed breakdown of the District's response:

1. **Background:** This appeal is part of a series of due process hearings initiated by the Parent since 2020. This specific appeal challenges the LHO's decision, which found no violation of the FAPE requirements under IDEA.
2. **Procedural History:** The District filed a partial motion to dismiss due to the overlap of issues with previous cases. The LHO limited certain issues but permitted the hearing to proceed.
3. **Issues Reviewed:** The LHO examined issues such as denial of access to information, IEP development and review, provision of outside behavioral counseling services, completion of a functional behavior assessment, and provision of behavior support services.
4. **Findings of the LHO:** The LHO concluded there was no IDEA violation. It was determined the Parent had adequate information and the communication issues did not constitute a violation. Additionally, the LHO found no evidence the therapy provided was insufficient or the District failed to schedule or offer appropriate behavior therapy.
5. **Parent's Motion for Recusal:** The Parent filed a motion for the LHO's recusal, alleging bias in his decision-making. This motion was denied.
6. **District's Position:** The District argues it fulfilled its obligations under the IDEA, providing appropriate educational programs and services to Z.B. The District stresses the importance of respecting the professional judgment of educators and contends that the LHO's decision was based on a thorough review of evidence.
7. **Specific Allegations and Responses:**
 - **Grade Changes:** The District contends grade changes were made to accommodate Z.B.'s late submissions, and sufficient explanations were provided.
 - **Bathroom Incident:** The District argues there was no violation related to a bathroom incident involving Z.B. and the matter was adequately addressed.

⁵ The District's response was received in a timely manner.

- **School-Based Therapy:** The District refutes the claim of insufficient therapy, noting Z.B. received consistent and appropriate therapy.
- **Functional Behavioral Assessment:** The District asserts the assessment was completed in a timely manner and provided to the parent.
- **Behavior Support Services:** The District maintains Z.B. received comprehensive support, including special education, counseling, and behavior intervention.

District Summary

The District asserts it has complied with the IDEA requirements and provided appropriate support. The appeal is part of ongoing hearings since 2020. The LHO, after reviewing issues like access to information and IEP development, found no FAPE violations under IDEA. The District's partial motion to dismiss due to overlapping issues was partially granted. The District contends grade changes were justified, a bathroom incident was adequately addressed, and Z.B. received consistent therapy and behavioral support. The District emphasizes respecting educators' judgments and refutes allegations of insufficient therapy and behavioral assessment delays.

FINAL ORDER OF THE LHO

In his final order of November 10, 2023, the LHO examined the issues in this case. He issued the following Order:
Parent has not established an IDEA violation.

DISCUSSION

As the SRO, it is my task to examine the entire hearing record and arrive at an independent decision.⁶ 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.⁷ The LHO or SRO should not substitute their own

⁶ 34 C.F.R. § 514 (b)(2).

⁷ Doyle v. Arlington County School Board, 953 F.2d 105 (4th Cir. 1998).

notions of sound educational policy for those of local school authorities⁸ 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.”⁹ It is important to note that Supreme Court also ruled the party seeking relief bears the burden of proof.¹⁰

I reviewed the transcripts, briefs, exhibits, and LHO’s final decision. I will address, in turn, each part of the Final Order of the Local Hearing Officer below. The Parent has requested the following:

- **Outside Counseling:** The Parent requests her son receive outside counseling services to address the unmet needs in his IEP.
- **Reimbursement of Expenses:** The Parent seeks compensation for the costs incurred during the due process hearing.
- **Review of Documentation:** The Parent asks for a thorough review of the materials and rationale used for changing her son's grades, emphasizing the need for transparency and accuracy.
- **Compensatory Services:** The Parent insists on the provision of compensatory services for the support that was outlined in the IEP but not provided.

Outside Counseling

The LHO decision and comments regarding counseling include:

1. **Outside Behavior Counseling Services:** The Parent requested external behavior counseling services throughout the 2022-2023 school year, specifying a preference for "A New You Counseling Center" to provide counseling at the school. However, the LHO noted the Parent did not provide sufficient evidence to demonstrate the therapy provided by the district was inadequate or that the services from "A New You" were necessary for Z.B. to access educational services.

⁸ M.S. ex.rel Simchick v. Fairfax County School Board, 553 F.3d 315, 326 (4th Circ. 2009).

⁹ Endrew F. v. Douglas Country School District, 137 S.Ct. 988, 992 (2017).

¹⁰ Schaffer v. Weast, 546 U.S. 49 (2005).

2. **School-Based Therapy (SBT):** The Parent contended the district failed to provide the stipulated amount of School Behavior Therapy (SBT). However, the evidence presented did not support this claim. It showed the district had scheduled SBT sessions, but there were instances where Z.B. was either absent or refused services.
3. **Role of Male Role Models in Counseling:** The Parent expressed a desire for more services to be provided by male role models, arguing this at the hearing. The LHO recognized the merit in having positive male influences but noted this desire was not part of the formal Due Process Request and thus was not directly addressed in the ruling. The LHO suggested this issue should be discussed at an IEP meeting.
4. **General Observation on Counseling Services:** The LHO raised a concern about the process of approving outside counselors, stating decisions about the necessity of services and the choice of providers should be made by the IEP team, not by a staff member alone.

Z.B. needs appropriate services and the Parent plays an important role in the input in determining those services. However, there was no evidence or testimony submitted indicating the LHO erred in his Decision. Therefore, the ruling of the LHO in this area is affirmed.

Reimbursement of Expenses

There was no discussion in the LHO Decision related to reimbursement of expenses. The focus of the hearing and his final order were on the provision of appropriate educational services under the IDEA, access to records, evaluation of the IEP, and concerns about communication and counseling services. The topic of reimbursement of expenses was not addressed.

There was no evidence or testimony submitted indicating the LHO erred in his Decision. Therefore, the ruling of the LHO in this area is affirmed.

Review of Documentation

The LHO addressed the review of documentation focused on several key areas:

1. **Access to Educational Records:** The Parent contended the District denied her access to information she was entitled to as a parent and member of the IEP team. She argued this limited her ability to participate in decision-making processes regarding her child's education.
2. **Grade Changes Documentation:** The Parent alleged she did not receive records showing how her child's grades were changed for a specific quarter and the District created fraudulent data in the educational records. However, the LHO found no evidence of a cover-up or fraudulent data. The process of grade changes was explained, and the LHO found the District used standard procedures for the review and grade changes.
3. **Provision of Grade Change Information:** The LHO noted the District provided the relevant information about grade changes on June 29, 2023; and during the five-day exchange prior to the hearing. Despite the imperfections in communication, there was no violation found in this respect.
4. **Bathroom Incident Video:** The Parent claimed the principal offered to let her review a video of a bathroom incident involving her child but failed to make it available. The District responded it did not retain the video. The LHO did not find sufficient evidence the District refused to provide necessary information, nor was there a demonstration of how this could affect the implementation of the IEP.
5. **Overall Impact of Documentation on Decision Making:** The LHO concluded while there may have been communication issues, the District's actions did not significantly impede the Parent's ability to participate in decision-making or lead to a denial of a FAPE.

Keeping parents informed of how their child is doing is paramount, and it is very important part of the special education process. It is necessary that parents are provided the documentation in special education processes to participate effectively in their child's education. However, the LHO was correct in that the District did what it was supposed to do.

There was no evidence or testimony submitted indicating the LHO erred in his Decision. Therefore, the ruling of the LHO in this area is affirmed.

Compensatory Services

There were no specific comments or discussions about compensatory services in the LHO Decision. The focus of the Hearing and the final Order was primarily on issues such as access to educational records, grade changes, the development and review of the IEP, and the provision of appropriate educational services under the IDEA. The topic of compensatory services was not addressed in the Decision.

Compensatory services can be an appropriate remedy when there has been a denial of FAPE. Given there is no evidence indicating the student has not received a FAPE, the request for compensatory services is denied.

There was no evidence or testimony submitted indicating the LHO erred in his Decision. Therefore, the ruling of the LHO in this area is affirmed.

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. Outside Counseling:

- There was a review of the LHO's decision regarding outside counseling. The LHO noted the Parent did not provide sufficient evidence the District's therapy was inadequate or that the services from "A New You Counseling Center" were necessary for Z.B.
- Concerning School-Based Therapy (SBT), the evidence did not support the parent's claim the District failed to provide the stipulated amount of SBT.
- The Parent's desire for more male role models in counseling was recognized but was not part of the formal Due Process Request.
- The LHO also commented on the process of approving outside counselors, emphasizing such decisions should be made by the IEP team.
- This review affirms the LHO's ruling in this area, as there was no evidence indicating an error in the decision.

2. Reimbursement of Expenses:

- This review observed there was no discussion in the LHO's decision related to reimbursement of expenses. The focus was instead on educational services, access to records, and evaluation of the IEP.
- This review affirmed the LHO's ruling in this area due to the lack of evidence or testimony indicating an error in the decision.

3. Review of Documentation:

- The LHO addressed issues such as access to educational records, grade changes documentation, and the provision of grade change information.
- The LHO found no evidence of a cover-up or fraudulent data regarding grade changes and noted the District followed standard procedures.
- The Parent's claim about a bathroom incident video was also addressed, with the LHO finding insufficient evidence of the District's refusal to provide necessary information.
- This review affirmed the LHO's ruling, emphasizing the importance of keeping parents informed and participating in their child's education but finding no error in the District's actions.

4. Compensatory Services:

- This review noted compensatory services were not discussed in the LHO's Decision. The primary focus was on educational records, grade changes, IEP development, and provision of educational services under IDEA.
- Given the lack of evidence of a denial of FAPE (Free Appropriate Public Education), this reviews denied the request for compensatory services.
- This review affirms the LHO's ruling in this area due to the absence of evidence indicating an error in the decision.

In conclusion, LHO's rulings in all areas are affirmed, including outside counseling, reimbursement of expenses, review of documentation, and compensatory services, citing a lack of evidence to indicate any error in the LHO's decisions.

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).

A handwritten signature in blue ink, appearing to read "David Bateman", with a long horizontal flourish extending to the right.

David Bateman, Ph.D.
State-Level Review Officer
December 13, 2023