

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

STATE OF SOUTH CAROLINA)

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A.J. White, V. White, and/on)

Behalf of their minor child A.W.)

Petitioner(Parent))

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David Bateman

v.)

STATE-LEVEL REVIEW OFFICER

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Fort Mill School District/York 4,)

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District/Respondent)

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DECISION

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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 Final Order dated October 25, 2024. The South Carolina

Department of Education (“SCDE”) received Parent’s appeal of the LHO’s orders on November 7, 2024.

On November 7, 2024, 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. Petitioners were A.J.W. and V.W. (“Parent”) on behalf of their minor daughter, A.W., (“Student”) and Fort Mill School District (“District”) was represented by Meredith L. Seibert, Esq. and David T. Duff, 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 in the review and a copy of the decision is mailed to each of the parties. Based on the SCDE’s receipt of the request for appeal on November 7, 2024, the due date for the final decision on appeal was established as December 7, 2024.

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 11, 2024, 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 22, 2024, District brief due November 26, 2024, Parent's reply brief due, if needed, November 29, 2024. The District Brief was late, therefore, I extended the time for the Parents reply brief to November 30, 2024.

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

¹ 34 C.F.R. § 300.515(b).

² 34 C.F.R. § 300.514.

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

1. Parents filed for a due process hearing on August 19, 2024.
2. An Order on Parents' Objection and Motion for Recusal (Sept. 11).
3. Order on District's Motion to Dismiss (Sept. 17).
4. Order on subpoena requests (Sept. 17).
5. Order on Parents' Motion for Continuance and for a Pretrial Conference (Sept. 23).
6. Preliminary Order regarding Witnesses (Sept. 30).
7. Order on Motions to Bifurcate, to Compel, and for Reconsideration regarding Copies (Sept. 30).
8. Preliminary Order on Amended DPR submitted by Parents (Oct. 1).
9. The Hearing was conducted on October 2-4, 7, and 23rd, 2024.
10. The Local Hearing Officer issued his decision on October 25, 2024.
11. The Parents filed their appeal on November 7, 2024.

BACKGROUND

This matter arises under the Individuals with Disabilities Education Act (IDEA) and concerns A.W., an 11-year-old student eligible for special education services under the classifications of Autism and Other Health Impairment (OHI). A.W.'s Parents, filed a due process complaint alleging the Fort Mill School District (District) failed to provide A.W. with a free appropriate public education (FAPE) for the 2022-2023 school year. The Parents contend the District's proposed Individualized Education Program (IEP) was inadequate and, as a result, unilaterally removed A.W. from the District and

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

enrolled her in the John Crosland School, a private institution specializing in educating children with disabilities.

The Parents seek reimbursement for tuition and related expenses, asserting the District's failure to provide FAPE necessitated the unilateral placement. The issues presented for determination are:

1. Whether the District failed to offer a FAPE to A.W. for the 2022-2023 school year.
2. If the District denied FAPE, whether the Parents' unilateral private placement at the John Crosland School was appropriate.
3. Whether equitable considerations warrant a reduction or denial of tuition reimbursement.

Following a review of the evidence, testimony, and applicable legal standards, I affirm the hearing officers decision that tuition reimbursement is not warranted.

Findings of Fact

1. A.W. is an 11-year-old student diagnosed with Autism and Other Health Impairment (OHI), with eligibility for special education services under IDEA.
2. Autism affects A.W.'s communication, social-emotional regulation, executive functioning, and adaptive skills. She experiences anxiety, particularly in new or unstructured environments.
3. A.W. has been receiving special education services since kindergarten, with academic, social, and behavioral deficits documented throughout her educational history.
4. By the start of the 2022-2023 school year, A.W. functioned at a first- or second-grade level in reading and math. District personnel testified to her limited academic progress despite years of intervention.
5. The District's evaluations noted A.W.'s strengths in memory and work ethic.
6. Testimony revealed A.W. required multisensory, structured interventions to make meaningful progress in literacy.

7. Over multiple years, the Parents expressed concerns about A.W.'s lack of progress. They requested changes to her educational programming.
8. The Parents provided independent evaluations recommending intensive, individualized interventions, including occupational therapy, speech therapy, and Orton-Gillingham-based reading programs.
9. The Parents raised concerns about A.W.'s social and emotional well-being.
10. The District proposed moving A.W. to a self-contained classroom for core academics.
11. The Parents enrolled A.W. in the John Crosland School in September 2022.

The hearing, held in October 2024, ended with a decision denying tuition reimbursement. This ruling was primarily due to insufficient evidence proving the District had failed to offer a FAPE and the private placement was suitable or necessary under IDEA standards.

1. Background and Pre-Hearing Issues

The procedural timeline of this case reveals the complexities surrounding compliance with IDEA's statute of limitations, which became a significant point of contention. The Parents' Due Process Request (DPR) was filed on August 19, 2024, alleging violations dating back to the 2016-17 school year. However, IDEA's statute of limitations restricts claims to events occurring within two years of the filing date unless certain exceptions apply. The Hearing Officer ruled violations prior to August 19, 2022, were time-barred, meaning any allegations before that date could not be remedied or considered unless explicitly tied to issues that were ongoing or recurrent and fell within the two-year period.

The Hearing Officer issued several pre-hearing orders to clarify evidentiary rules and procedural scope, including:

- **Objection Orders:** These orders handled various challenges, including requests for the Hearing Officer's recusal and motions for continuance.
- **Evidentiary Orders:** A preliminary ruling addressed the type of evidence permissible under IDEA's statute, allowing evidence older than two years to be considered if it related to issues within the two-year window.

- **Amendment and Clarification Orders:** The Hearing Officer denied last-minute amendments that would have expanded the claims beyond what was outlined in the initial complaint, adhering strictly to IDEA’s procedural safeguards.

By limiting allegations to post-August 2022, the Hearing Officer sought to streamline the hearing process while allowing for a “fine-grained” analysis of each claim.

2. IEP Development and Dispute

Central to the hearing was the dispute over A.W.’s Individualized Education Program (IEP) for the 2022-23 school year. This IEP was designed to address A.W.’s specific learning and socialization needs, which were identified through evaluations and extensive data collection. A.W.’s educational trajectory had included general education placements with supplemental pull-out services, which provided support for her academic and social skills development. However, by the 2022-23 school year, both parties noted A.W.’s progress in her IEP goals was insufficient to meet grade-level expectations. As a result, the District proposed a more structured learning environment within a special education classroom.

District’s Proposal for a Special Classroom Setting

The District’s IEP team members argued a self-contained setting was necessary to offer more targeted instruction in math, reading, and writing. The reasoning was multi-layered:

- **Specialized Instruction:** A.W.’s academic needs, especially her difficulties with focus and comprehension in a busy classroom, indicated she required intensive instruction delivered by special education teachers, who could adapt content more dynamically.
- **Transition Reduction:** A.W.’s constant movement between general and special education settings was reportedly disruptive to her focus and learning process. The District emphasized a more consistent learning environment would enable A.W. to focus better without the challenges of frequent transitions.

Parental Preference for General Education Inclusion

In contrast, the Parents expressed a preference for maintaining her in a general education classroom with embedded supports, including the assistance of a paraprofessional. They argued

A.W.'s needs could be met with supplementary aids without isolating her from general education peers, aligning with the IDEA mandate to prioritize the LRE.

3. Private Placement and Least Restrictive Environment (LRE) Considerations

When A.W.'s Parents chose to enroll her at the John Crosland School, they initiated a shift to a setting entirely populated by students with disabilities, eliminating interaction with general education peers. This setting's restrictive nature became a focal point of the hearing. Crosland, as a specialized private institution, provided A.W. with a smaller student-teacher ratio but removed her from an inclusive setting.

The Burlington-Carter Test for Tuition Reimbursement

Tuition reimbursement under IDEA relies on a two-part test established in *School Committee of Burlington v. Department of Ed. of Mass.*⁴ and *Florence County School District Four v. Carter*:⁵

1. **First Prong:** Did the district deny a FAPE in the public placement?
2. **Second Prong:** Was the private placement appropriate under IDEA standards?

In this case, the Hearing Officer found A.W.'s Parents did not meet the burden of proving either prong. While the IEP proposed by the District may not have fully aligned with the Parents' vision for A.W.'s education, it was deemed sufficient under IDEA's FAPE standard. Furthermore, the appropriateness of Crosland was questionable due to its restrictive nature, which isolated A.W. from interactions with non-disabled peers, a vital element of LRE.

4. Parental Participation and Statutory Considerations

IDEA grants parents the right to participate actively in developing their child's IEP. The Parents argued the District did not adequately consider their input, especially concerning independent evaluations and placement preferences. However, the record of multiple IEP

⁴ 471 U.S. 359 (1985) (setting forth the three-part test for tuition reimbursement—appropriateness of district's proposed placement, appropriateness of the parent's unilateral placement, and application of the equities).

⁵ 510 U.S. 7 (1993) (ruling that parents are not held to the same standards as districts, thus making the second step of the test relatively relaxed).

meetings with prolonged discussions, delays to accommodate Parent observations, and the hiring of a state facilitator by the District indicate the District's effort to foster parental involvement.

Independent Evaluations

The Parents submitted two independent evaluations: a speech and language assessment and an audiology report. They alleged that the District ignored these evaluations. The Hearing Officer, however, found evidence to the contrary:

- The IEP team incorporated recommendations from these evaluations, including goals related to auditory processing and speech objectives, adapting the IEP to include these findings where appropriate.
- Meetings were held specifically to review these reports, and adjustments to A.W.'s services and accommodations were considered in light of the evaluations.

5. Substantive and Procedural Violations

The distinction between procedural and substantive violations is critical in IDEA cases. A procedural violation alone does not constitute a FAPE denial unless it significantly impedes the parents' ability to participate in decision-making or deprives the child of educational benefits. The Hearing Officer found while there were areas of disagreement, no procedural missteps by the District rose to the level of denying a FAPE. Key points include:

- **Consideration of Developmental Needs:** A.W.'s IEP team discussed and included various evaluations and present-level data. The Parents argued additional evaluations, such as a Functional Behavioral Assessment (FBA) or occupational therapy assessment, were necessary. However, these assessments were not raised as concerns by the Parents during the relevant IEP discussions, and the District found no behavioral concerns requiring an FBA.
- **Speech, Occupational Therapy, and Behavioral Interventions:** The Parents contended A.W.'s developmental needs in these areas were unmet. Yet, evidence showed speech therapy was provided in a group setting to facilitate peer interaction, and occupational therapy was deemed unnecessary at the time based on A.W.'s needs.

6. Final Decision and Legal Implications

The Hearing Officer concluded the District’s proposed IEP, despite not fully aligning with the Parents’ vision, met IDEA’s standard of a FAPE. Furthermore, the private placement at John Crosland, while beneficial to A.W.’s learning environment, was deemed too restrictive under IDEA’s LRE standard. Therefore, the Parents did not meet the requirements of the *Burlington-Carter* test for tuition reimbursement.

Transcripts of the Hearing

The transcripts document a complex due process hearing. This hearing, held in October 2024, centers on the Parent’s allegations the District failed to meet their obligations to provide their child with a Free Appropriate Public Education. The transcripts reveal procedural disputes, substantive disagreements, emotional undertones, and the challenges of implementing IDEA’s mandates.

Overview of the Issues

The Parents’ case alleges the District failed to meet its legal obligations under IDEA. Specifically, the Parents contended the District:

1. Failed to Develop and Implement an Appropriate IEP

One Parent asserted, “The District did not revise the IEP to reflect our child’s unique needs, even after multiple meetings and independent evaluations.”

2. Ignored Parental Input

A.W.’s mother emphasized this, stating, “The team disregarded our input during placement discussions and made decisions without fully explaining the rationale.”

3. Did Not Provide Education in the Least Restrictive Environment (LRE)

The Parents argued the District failed to consider appropriate accommodations to support LRE placement. The father asked K.R. during cross-examination, “Were supplementary aids or services ever proposed to keep [our child] in the general education classroom?”

K.R.’s response—“Not to my knowledge.”

4. Neglected Developmental and Functional Needs

The Parents claimed the District's approach failed to address their child's functional and developmental skills. The mother stated, "We brought concerns about functional skills repeatedly, yet the team focused narrowly on academic benchmarks."

5. Did Not Adequately Address Related Services

The Parents also highlighted gaps in the provision of speech therapy, occupational therapy, and behavioral supports. The mother argued, "The behavioral plan was generic and did not include strategies tailored to [our child's] specific needs."

Procedural Objections

The District's counsel frequently objected to the admissibility of evidence. One contentious issue was the petitioners' attempt to introduce an audio recording of an IEP meeting. Counsel for the District, argued, "The recording lacks foundational testimony and does not represent a complete account of the meeting." However, Mr. Murphy overruled the objection, stating, "While the procedure for admitting it may be unusual, the recording's potential relevance outweighs the procedural concerns."

Witness testimonies provided crucial insights into the case. Key witnesses included:

1. K.R.

A District staff member, K.R.'s testimony offered insights into the District's implementation of the IEP. When asked about data collection practices, she acknowledged, "The tracking sheets were incomplete and did not reflect the full picture of [the student's] progress." She also described the District's efforts to tailor the educational program to the student's needs, including setting specific goals and monitoring progress. She noted, "The IEP team met multiple times to revise and adjust the goals based on the student's progress data and teacher input." She also highlighted the District's use of data collection tools to track A.W.'s academic and behavioral progress. She testified, "Paraprofessionals documented daily behaviors and task completion, which were reviewed regularly to inform instructional decisions."

2. H.R.

The head of the John Crosland School, where the student was later enrolled, provided a comparative perspective. She emphasized the individualized nature of her school's approach, stating, "We meet each student where they are, using research-based methods to support their unique needs."

3. L.S. and S.H.

These District witnesses provided additional details about the decision-making process.

4. V and A.J.W.

The Parents' testimonies were deeply personal and highlighted their frustrations. One Parent stated, "This process has been exhausting, but we will not stop advocating for what our child deserves." A Parent question sought to expose inconsistencies in the District's practices, such as when he asked, "Why were behavioral supports not documented in the IEP despite repeated discussions about their importance?"

5. Provision of Related Services:

The District provided related services, such as speech and occupational therapy, which were documented in the student's IEP. L.S. testified that these services were aligned with the recommendations of school-based evaluations and delivered consistently during the school year.

6. Behavioral Interventions and Supports:

The District developed a behavior support plan as part of the IEP to address the student's behavioral needs. While the Parents argued the plan was insufficient, District witnesses emphasized the plan included measurable goals and strategies for managing behavior in the classroom.

7. Use of Alternative Instructional Strategies:

Witnesses testified about the use of evidence-based instructional strategies tailored to the student's learning needs. Teachers provided differentiated instruction, and specific accommodations, such as extended time for assignments, were included in the IEP to support the student in accessing the curriculum.

8. Collaboration with Parents:

The District made documented efforts to involve the Parents in the IEP process, sending meeting invitations and seeking their input during discussions. However, the District also noted it faced challenges in achieving full agreement with the Parents on certain decisions.

Exhibits and Evidence

The hearing featured an extensive list of exhibits, including IEPs, reevaluation reports, communication logs, and progress tracking sheets. Notably, the Parents introduced an audio recording of an IEP meeting, which became a focal point of procedural debate. The hearing officer allowed the recording, noting its relevance to the claims of procedural violations.

The Parents also presented independent educational evaluations (IEEs) to support their argument the District's assessments were inadequate. The Parent referenced one such evaluation, stating, "The independent evaluation identified needs that the District completely overlooked, such as sensory integration issues."

1. Procedural Background and Overview of Disputes

The procedural background is marked by a series of denied motions and objections, reflecting significant friction between the parties regarding the fairness, transparency, and scope of the hearing process. The Parents raised multiple procedural and substantive concerns, underscoring their dissatisfaction with how the case has been managed. Key motions and objections include:

Motion to Recuse/Objection to Initial Order (Filed September 9, 2024):

This motion challenged the impartiality of the presiding officer, citing concerns over bias or conflict of interest.

Subpoena Requests (Filed September 16, 2024):

The Parents requested subpoenas to compel the production of documents or testimony deemed critical to their case. The denial of this request limited their ability to present additional evidence or call key witnesses.

Discovery and Access Rights Requests (Filed September 18, 2024):

A central issue in the case, this motion highlights the Parents' struggle to access documentation, including school records and communications, which they argue are necessary to substantiate their claims.

Motion for Pre-Hearing Conference and Continuance (Denied):

This motion reflects the Parents' concerns about inadequate preparation time and the need for clarity on procedural matters.

Objection to Inclusion of Individuals Without Parental Consent (Filed October 1, 2024):

This objection specifically challenged the involvement of Local Hearing Officer (LHO) Cassandra Hutchins and other individuals without explicit parental consent, raising questions about parental rights and procedural propriety.

The consistent denial of these motions underscores a recurring theme of procedural conflict, which is central to understanding the broader disputes and the evidence presented in the exhibits.

Core Themes and Issues in the Exhibits

The exhibits reveal several recurring themes that define the contentious nature of the case:

Procedural Challenges and Transparency:

A significant portion of the case revolves around procedural disputes. The denial of motions related to recusal, subpoenas, discovery, and continuances reflects ongoing challenges in achieving procedural fairness and equity. These disputes are further compounded by the perceived lack of transparency in decision-making processes.

Parental Rights and Consent:

The objection to the inclusion of individuals without parental consent highlights a key issue regarding the role of parents in the decision-making process. The Parents argue

their rights were undermined by the involvement of individuals not approved by them, raising concerns about procedural authority and parental agency.

Discovery and Evidence Access:

The denied motions for access to records and evidence reveal one of the core disputes in the case. The Parents contend their inability to obtain critical information hindered their ability to advocate effectively for their child and challenge the school district's programming.

Legal Strategy and Advocacy:

The Parents' approach reflects a strategic effort to document and challenge every perceived irregularity in the procedural and substantive handling of the case. This strategy is evident in their detailed objections.

3. Review of IEPs, Progress Reports, and Other Exhibits

A substantial portion of the exhibits focuses on the student's educational programming, specifically:

IEPs:

The exhibits include multiple IEPs spanning several school years. These documents provide insights into the student's goals, accommodations, services, and the school's approach to addressing their unique needs. However, the Parents have raised concerns about the appropriateness of the goals, the lack of measurable progress, and inconsistencies in service delivery.

Progress Reports:

Progress reports offered as exhibits highlight the student's academic and functional progress over time. The Parents argue these reports demonstrate insufficient growth, suggesting the school's programming was inadequate in meeting the student's needs.

Additional Educational Documentation:

Other exhibits include records of communication between the school and the Parents, data tracking sheets, and reports from related service providers. These documents provide a broader context for understanding the Parents' concerns about the quality and implementation of the student's programming.

Emotional Undertones

The transcripts capture the emotional intensity of the hearing. The Parents' passion for advocating for their child was evident throughout. A Parent stated, "We're not just fighting for procedural compliance; we're fighting for our child's future."

The hearing also revealed the emotional toll on District staff, with K.R. becoming visibly upset during her testimony. The hearing officer intervened to ensure the proceedings remained focused on the facts, stating, "We need to keep our focus on the issues and not let emotions cloud the evidence."

Hearing Dynamics and Procedures

The hearing officer should be commended for his effort to maintain procedural integrity while balancing the petitioners' pro se representation and the District's legal defense.

Parent's Closing Brief

The following is a summary of the statements made by the Parents as a part of their closing brief.

The inadequacy of the IEPs provided by the Fort Mill School District (FMSD) for A.W. was a central issue in the dispute.

1. Lack of Individualization (p.1)

The IEPs for A.W. were generic and failed to reflect her unique needs as required under IDEA. Specific shortcomings include:

- Broad and Undefined Goals:

- The IEPs included goals such as “improve social skills” and “increase reading comprehension” without specifying measurable outcomes or criteria for success. For instance, there was no data-driven baseline to determine A.W.’s starting point or to assess progress effectively.
- Goals failed to address A.W.’s executive functioning challenges, such as task initiation, organization, and self-regulation, which were critical barriers to her learning.
- Failure to Address Social-Emotional Needs:
 - Despite documented evidence of A.W.’s deficits in emotional regulation and social interaction, the IEPs lacked targeted interventions.
 - The District dismissed the Parents’ requests for Applied Behavior Analysis (ABA) therapy, which could have provided systematic and individualized support for these areas.

2. Inadequate Specially Designed Instruction (SDI) (p.2)

Specially Designed Instruction (SDI) was neither adapted to A.W.’s needs nor supported by research-based practices. Examples of deficiencies include:

- Unqualified Personnel:
 - K.R., A.W.’s special education teacher, admitted under questioning she lacked knowledge of Orton-Gillingham methods, despite these being foundational to the SPIRE program used for reading instruction in A.W.’s IEP.
 - The teacher was unable to articulate key aspects of the SPIRE program, raising serious concerns about her ability to deliver effective SDI.
- Lack of Methodology:
 - The District did not specify the instructional methods to be used in the IEPs. Parents repeatedly requested methodologies aligned with A.W.’s needs, such as explicit phonics-based reading instruction, but the District refused to include these details in the IEP.
- Failure to Incorporate Functional Skills:
 - A.W.’s deficits in adaptive and executive functioning were left unaddressed. The IEPs lacked any SDI focused on teaching daily living skills, self-management strategies, or coping mechanisms.

3. Missing Related Services (p.3)

The absence of necessary related services in A.W.'s IEPs significantly hindered her ability to make progress. Examples include:

- Speech-Language Therapy:
 - An Independent Educational Evaluation (IEE) recommended individualized speech-language therapy, but the District refused to include it in A.W.'s IEP. Instead, the District offered only generalized classroom-based support, which was insufficient for addressing her specific needs in pragmatic language and auditory processing.
- Occupational Therapy:
 - Despite evidence that A.W. struggled with fine motor skills and sensory integration, occupational therapy was not included as a related service in the IEP. This omission left significant barriers to learning unaddressed.
- Behavioral Support:
 - ABA therapy was requested as a related service to address A.W.'s behavioral and functional needs. The District offered only 30 minutes per week of general behavioral support in the classroom, far below the 30 hours per week recommended by experts for students with autism.

4. Failure to Use Data to Drive Decisions (p.4)

The District's decisions regarding A.W.'s programming were not informed by data, violating IDEA's requirement for evidence-based practices. Examples include:

- Lack of Progress Monitoring:
 - The IEPs failed to include adequate systems for tracking A.W.'s progress. For instance, there were no measurable benchmarks for determining whether she was achieving her reading and math goals.
- Unsupported Removal of Services:
 - The District prematurely discontinued 1:1 paraprofessional support for A.W. after only four weeks, claiming it was ineffective. However, no data was collected to justify this

decision, and the paraprofessional was primarily used to collect observational data rather than provide direct support.

5. Placement in a Self-Contained Classroom (p.5)

The District's decision to place A.W. in a self-contained classroom was not justified by her needs and did not comply with IDEA's Least Restrictive Environment (LRE) mandate. Examples include:

- **Predetermination of Placement:**
 - Meeting notes and testimony revealed the District made placement decisions before IEP meetings, excluding meaningful parental input. The April 21, 2022, meeting confirmed the District had already decided on a self-contained placement without exploring inclusion options supported by supplementary aids and services.
- **Lack of Supports in General Education:**
 - The District failed to provide supports, such as a 1:1 paraprofessional or assistive technology, that could have enabled A.W. to succeed in a general education setting.
- **Misuse of Accommodations:**
 - The District relied on generic accommodations like "chunking" and "peer buddies" in the general education classroom, placing undue responsibility on classroom teachers to manage A.W.'s needs without adequate training or resources.

6. Failure to Conduct Necessary Evaluations (p.6)

The District's refusal to conduct comprehensive evaluations for A.W. significantly undermined the development of appropriate IEPs:

- **Lack of Triennial Re-Evaluation:**
 - The District failed to complete a triennial evaluation, leaving outdated data as the basis for A.W.'s programming.
- **No Functional Behavioral Assessment (FBA):**

- Despite A.W.'s significant behavioral challenges, the District did not conduct an FBA to identify the root causes of her behaviors or develop an effective Behavior Intervention Plan (BIP).

7. Lack of Parental Involvement (p.7)

Parental input was consistently disregarded throughout the IEP development process, in violation of IDEA's procedural safeguards:

- Dismissal of Parent Requests:
 - The Parents requested several modifications to the IEP, including the addition of ABA therapy, occupational therapy, and assistive technology for A.W.'s Central Auditory Processing Disorder (CAPD). These requests were either ignored or summarily rejected without discussion.
- Pre-Meeting IEP Drafts:
 - The District presented pre-written IEP drafts at meetings, leaving no room for collaborative development. For instance, the Parents' suggestions for specific reading interventions were excluded from the final draft.

8. Lack of Measurable Progress (p.8)

Over four years, A.W. demonstrated minimal progress under the District's IEPs:

- Reading and Math:
 - A.W. remained in the first percentile for reading and math, with no significant gains despite receiving instruction through district-approved programs like SPIRE. Work samples presented by the Parents highlighted persistent struggles with basic phonics and computation skills.
- Functional Skills:
 - A.W.'s executive functioning and social-emotional skills showed no improvement. Observational data from her private placement at JCS indicated that she began making progress only after transitioning out of FMSSD.

Conclusion

The deficiencies in A.W.'s IEPs highlight systemic failures in FMSD's approach to individualized education. The District's refusal to include necessary services, reliance on generic goals, and lack of data-driven decision-making denied A.W. a meaningful opportunity to achieve academic and functional progress. These failures not only violated IDEA but also underscored the need for private placement at JCS, where A.W. finally began to thrive.

The District Response

The Fort Mill School District (York 4) presented a response to the appeal by the Parents of A.W. The case revolves around the critical questions of whether the District denied A.W. a Free Appropriate Public Education (FAPE) and whether her private placement at the John Crosland School was appropriate and eligible for reimbursement under the Carter-Burlington standard. In their comprehensive filing, the District discusses the Parent's claims while underscoring its compliance with both the procedural and substantive requirements of IDEA.

Background

The case began on August 19, 2024, when A.W.'s Parents filed a due process complaint, alleging the District failed to provide FAPE. The due process hearing was conducted across five days: October 2–4, October 7, and October 23, 2024. Following a comprehensive review, the Local Hearing Officer (LHO) issued a Final Order on November 1, 2024, concluding:

1. The District provided A.W. with FAPE in the Least Restrictive Environment (LRE).
2. The Parents failed to prove the appropriateness of the private placement under the Burlington-Carter analysis, which requires proof that the private school met A.W.'s unique educational needs and that public placement was inadequate.

The Parents appealed, but the District contends their appeal is procedurally deficient and substantively unsupported. The District's response emphasizes the appropriateness of its educational services and the lack of compelling evidence supporting the Parent's claims.

Parents' Claims on Appeal

The Parent's appeal raised several allegations, which the District comprehensively addressed:

1. Bias and Procedural Errors by the LHO (p. 2-3, 7-9)

The Parents alleged the LHO was biased, behaved unprofessionally, and improperly restricted their ability to present evidence. They also argued the LHO violated their procedural rights by limiting the role of their educational advocate.

2. Statute of Limitations (p. 14-15)

The Parents contended the timeline for filing under IDEA began in August 2024, when their educational advocate identified violations, rather than in August 2022, when they were aware of the alleged issues.

3. Denial of FAPE (p. 15-22)

The Parents claimed:

- The Districts's IEPs failed to provide appropriate programming and methodologies.
- The IEPs lacked necessary related services, including occupational therapy.
- The District did not conduct a comprehensive triennial evaluation.
- A.W. was not educated in the least restrictive environment (LRE).
- The Parents were denied meaningful participation in the IEP process.

4. Appropriateness of Private Placement (p. 22-26)

The Parents argued the John Crosland School provided appropriate instruction and services, justifying reimbursement for their unilateral placement.

District's Response and Analysis

I. Procedural Deficiencies in the Appeal

The District argued the Parent's appeal was procedurally deficient on multiple grounds:

- **Untimely Filing:** The appeal was improperly focused on an October 25, 2024 procedural order rather than the November 1, 2024 Final Order. The Parents later attempted to retroactively expand the scope of their appeal in their November 22, 2024 brief, violating procedural timelines (p. 4-6).
- **Ambiguity of Issues:** The Parents' appeal notice failed to clearly identify the grounds for their appeal, despite repeated requests for clarification from the District and the SCDE. This omission hindered the District's ability to prepare a response and violated IDEA procedural rules (p. 5-6).

II. Fairness and Impartiality of the Hearing Process

The District defended the LHO's conduct, emphasizing the fairness and integrity of the hearing:

- **Management of Hearing Procedures:** The LHO acted within his authority to ensure the hearing was conducted efficiently and fairly. The Parents were given significant time and flexibility to present their case, including extensive opportunities to cross-examine witnesses (p. 13-14).
- **Advocate Participation:** South Carolina law prohibits non-attorneys from representing parties in legal proceedings. The LHO correctly limited the role of the Parents' educational advocate to providing advice and support, consistent with IDEA regulations and state law (p. 12-13).
- **No Evidence of Bias:** The LHO maintained professional decorum and balanced his responsibility to manage the hearing with ensuring procedural fairness. Claims of bias were unfounded, as the LHO provided substantial accommodations to the Parents, who were pro se litigants (p. 9-10).

III. Denial of FAPE

1. IEP Content and Methodology (p. 16-18)

The District argued the September 2022 IEP was tailored to A.W.'s unique needs and complied with IDEA requirements:

- Specialized Instruction: The IEP included the SPIRE reading program, a multisensory curriculum aligned with A.W.'s needs. Although the Parents argued the IEP should have specified Orton-Gillingham methodology, IDEA does not require that specific instructional methodologies be included unless deemed necessary by the IEP team (p. 17).
 - Teacher Qualifications: The Parents' claims A.W.'s teachers lacked appropriate training were unfounded. Both the third-grade and fourth-grade special education teachers were certified and trained to deliver A.W.'s IEP (p. 17-18).
2. Triennial Reevaluation (p. 18-20)
- The District conducted a reevaluation in February 2022, following IDEA guidelines. The IEP team reviewed existing data, sought parental input, and determined no additional evaluations were necessary. The Parents raised no concerns about occupational therapy during the reevaluation process (p. 19-20).
3. Least Restrictive Environment (LRE) (p. 20-22)
- A.W.'s placement in a special education classroom was necessary due to her limited progress in the general education setting, despite extensive supports such as paraprofessional assistance and accommodations. The IEP team ensured A.W. spent a majority of her day with nondisabled peers, meeting LRE requirements (p. 21-22).
4. Parental Participation (p. 23-24)
- The District provided ample opportunities for parental input, revising IEP goals, services, and accommodations based on their feedback. For example, the team incorporated their request for assistive technology and adjusted behavioral interventions to align with their concerns. Disagreement with the team's decisions does not constitute exclusion from the process (p. 24).

IV. Appropriateness of Private Placement

1. Lack of Supporting Evidence (p. 25-26)

- The Parents failed to provide credible evidence demonstrating that the John Crosland School met A.W.'s needs. The limited documentation, including grade reports and anecdotal testimony, lacked measurable data or evidence of progress. Key testimony from Crosland staff was found unreliable, as witnesses admitted minimal involvement in A.W.'s education (p. 25).
2. Missing Financial Documentation (p. 26-27)
- The Parents did not provide evidence of tuition costs or financial obligations, a critical requirement for reimbursement under IDEA. Their attempt to submit new financial records on appeal was procedurally improper (p. 27).

Legal Framework and Standards

The District highlighted key legal standards guiding the SRO's review:

1. Deference to LHO Findings: The SRO must defer to the LHO's credibility determinations unless compelling evidence suggests otherwise (p. 7-8).
2. Admission of Additional Evidence: New evidence may only be admitted on appeal under exceptional circumstances, which the Parents failed to demonstrate (p. 6-7).

Parent's Closing Brief

The following is a summary of the statements made by the Parents as a part of their closing brief.

1. Lack of Individualization (Pages 2-4)

The IEPs for A.W. were generic and failed to reflect her unique needs as required under IDEA. Specific shortcomings include:

- Broad and Undefined Goals:
 - The IEPs included goals such as "improve social skills" and "increase reading comprehension" without specifying measurable outcomes or criteria for success. For

instance, there was no data-driven baseline to determine A.W.'s starting point or to assess progress effectively.

- Goals failed to address A.W.'s executive functioning challenges, such as task initiation, organization, and self-regulation, which were critical barriers to her learning.
- Failure to Address Social-Emotional Needs:
 - Despite documented evidence of A.W.'s deficits in emotional regulation and social interaction, the IEPs lacked targeted interventions.
 - The District dismissed the Parents' requests for Applied Behavior Analysis (ABA) therapy, which could have provided systematic and individualized support for these areas.

2. Inadequate Specially Designed Instruction (SDI) (Pages 5-7)

Specially Designed Instruction (SDI) was neither adapted to A.W.'s needs nor supported by research-based practices. Examples of deficiencies include:

- Unqualified Personnel:
 - K.R., A.W.'s special education teacher, admitted under questioning that she lacked knowledge of Orton-Gillingham methods, despite these being foundational to the SPIRE program used for reading instruction in A.W.'s IEP.
 - The teacher was unable to articulate key aspects of the SPIRE program, raising serious concerns about her ability to deliver effective SDI.
- Lack of Methodology:
 - The District did not specify the instructional methods to be used in the IEPs. Parents repeatedly requested methodologies aligned with A.W.'s needs, such as explicit phonics-based reading instruction, but the District refused to include these details in the IEP.
- Failure to Incorporate Functional Skills:
 - A.W.'s deficits in adaptive and executive functioning were left unaddressed. The IEPs lacked any SDI focused on teaching daily living skills, self-management strategies, or coping mechanisms.

3. Missing Related Services (Pages 8-10)

The absence of necessary related services in A.W.'s IEPs significantly hindered her ability to make progress. Examples include:

- Speech-Language Therapy:
 - An Independent Educational Evaluation (IEE) recommended individualized speech-language therapy, but the District refused to include it in A.W.'s IEP. Instead, the District offered only generalized classroom-based support, which was insufficient for addressing her specific needs in pragmatic language and auditory processing.
- Occupational Therapy:
 - Despite evidence that A.W. struggled with fine motor skills and sensory integration, occupational therapy was not included as a related service in the IEP. This omission left significant barriers to learning unaddressed.
- Behavioral Support:
 - ABA therapy was requested as a related service to address A.W.'s behavioral and functional needs. The District offered only 30 minutes per week of general behavioral support in the classroom, far below the 30 hours per week recommended by experts for students with autism.

4. Failure to Use Data to Drive Decisions (Pages 11-12)

The District's decisions regarding A.W.'s programming were not informed by data, violating IDEA's requirement for evidence-based practices. Examples include:

- Lack of Progress Monitoring:
 - The IEPs failed to include adequate systems for tracking A.W.'s progress. For instance, there were no measurable benchmarks for determining whether she was achieving her reading and math goals.
- Unsupported Removal of Services:
 - The District prematurely discontinued 1:1 paraprofessional support for A.W. after only four weeks, claiming it was ineffective. However, no data was collected to justify this

decision, and the paraprofessional was primarily used to collect observational data rather than provide direct support.

5. Placement in a Self-Contained Classroom (Pages 13-15)

The District's decision to place A.W. in a self-contained classroom was not justified by her needs and did not comply with IDEA's Least Restrictive Environment (LRE) mandate. Examples include:

- **Predetermination of Placement:**
 - Meeting notes and testimony revealed that the District made placement decisions before IEP meetings, excluding meaningful parental input. The April 21, 2022, meeting confirmed that the District had already decided on a self-contained placement without exploring inclusion options supported by supplementary aids and services.
- **Lack of Supports in General Education:**
 - The District failed to provide supports, such as a 1:1 paraprofessional or assistive technology, that could have enabled A.W. to succeed in a general education setting.
- **Misuse of Accommodations:**
 - The District relied on generic accommodations like "chunking" and "peer buddies" in the general education classroom, placing undue responsibility on classroom teachers to manage A.W.'s needs without adequate training or resources.

6. Failure to Conduct Necessary Evaluations (Pages 16-18)

The district's refusal to conduct comprehensive evaluations for A.W. significantly undermined the development of appropriate IEPs:

- **Lack of Triennial Re-Evaluation:**
 - The District failed to complete a triennial evaluation, leaving outdated data as the basis for A.W.'s programming.
- **No Functional Behavioral Assessment (FBA):**

- Despite A.W.'s significant behavioral challenges, the District did not conduct an FBA to identify the root causes of her behaviors or develop an effective Behavior Intervention Plan (BIP).

7. Lack of Parental Involvement (Pages 19-21)

Parental input was consistently disregarded throughout the IEP development process, in violation of IDEA's procedural safeguards:

- Dismissal of Parent Requests:
 - The Parents requested several modifications to the IEP, including the addition of ABA therapy, occupational therapy, and assistive technology for A.W.'s Central Auditory Processing Disorder (CAPD). These requests were either ignored or summarily rejected without discussion.
- Pre-Meeting IEP Drafts:
 - The District presented pre-written IEP drafts at meetings, leaving no room for collaborative development. For instance, the Parents' suggestions for specific reading interventions were excluded from the final draft.

8. Lack of Measurable Progress (Pages 22-24)

Over four years, A.W. demonstrated minimal progress under the District's IEPs:

- Reading and Math:
 - A.W. remained in the first percentile for reading and math, with no significant gains despite receiving instruction through District-approved programs like SPIRE. Work samples presented by the Parents highlighted persistent struggles with basic phonics and computation skills.
- Functional Skills:
 - A.W.'s executive functioning and social-emotional skills showed no improvement. Observational data from her private placement at JCS indicated she began making progress only after transitioning out of FMSSD.

Decision and Order

I. Introduction

This decision arises from the appeal of A.W.'s parents, challenging the Local Hearing Officer's (LHO) November 1, 2024, decision denying their request for tuition reimbursement for A.W.'s unilateral private school placement. After a multi-day hearing, the LHO concluded the Fort Mill School District (District) provided A.W. with a Free Appropriate Public Education (FAPE) and the private placement did not satisfy the requirements for tuition reimbursement under the Individuals with Disabilities Education Act (IDEA).

Upon independent review of the record, including the LHO's detailed Final Order, the Parent's appeal brief, the District's response brief, and the evidence and arguments presented during the due process hearing, I affirm the LHO's decision. My review is strictly limited to the evidence and arguments raised during the hearing, consistent with the procedural framework of IDEA (34 C.F.R. § 300.514).

II. Procedural History

The Parent's filed their due process complaint on August 19, 2024, alleging violations dating back to A.W.'s preschool years. These allegations were largely dismissed as time-barred under IDEA's two-year statute of limitations (20 U.S.C. § 1415(f)(3)(C)). The hearing, conducted over five days in October 2024, focused on whether the District denied A.W. FAPE during the 2021-2022 and 2022-2023 school years and whether the Parent's unilateral placement of A.W. at the private John Crosland School was appropriate.

The LHO denied reimbursement based on the following findings: (1) the District offered a program reasonably calculated to provide educational benefit, satisfying the standard set forth in *Andrew F. v. Douglas Cty. Sch. Dist. RE-1*;⁶ (2) the Parents failed to prove that the private

⁶ 137 S. Ct. 988 (2017).

placement was appropriate under *Burlington/Carter* criteria; and (3) no admissible evidence of tuition expenses was presented.

III. Standard of Review

As a reviewing officer, I am required to conduct an independent examination of the hearing record while granting deference to the LHO's credibility determinations (34 C.F.R. § 300.514(b); *Carlisle Area Sch. Dist. v. Scott P.*)⁷. Factual findings based on witness credibility are entitled to particular deference unless contradicted by non-testimonial, extrinsic evidence or compelling evidence in the record (*Doyle v. Arlington Cty. Sch. Bd.*)⁸. New evidence may only be admitted under exceptional circumstances, which the Parents did not establish in this case.

IV. Legal Analysis

A. Whether the District Provided FAPE

Under IDEA, a school District satisfies its FAPE obligations if it provides an IEP reasonably calculated to enable the child to make progress in light of their unique circumstances (*Andrew F.*)⁹. The LHO carefully reviewed A.W.'s IEPs for the relevant period, concluding that they met this standard despite the Parents' arguments to the contrary.

1. IEP Development and Content

The District developed A.W.'s 2022-2023 IEP after multiple meetings with the Parents, incorporating data from evaluations and recommendations from qualified professionals. The Parents argued the IEP lacked specific programming and methodologies, including training in Orton-Gillingham techniques. However, the LHO found the District's chosen instructional strategies, while not explicitly named, aligned with the student's needs and reflected input from the IEP team (Final Order, pp. 3-5; Post-Hearing Brief, pp. 2-4).

⁷ 62 F.3d 520, 529 (3d Cir. 1995).

⁸ 953 F.2d 100, 105 (4th Cir. 1991).

⁹ 137 S. Ct. at 999

2. Parental Participation

IDEA mandates meaningful parental participation in the IEP process (20 U.S.C. § 1414(d)(1)(B)(i)). The Parents alleged the District predetermined placement decisions, excluding their input. The LHO rejected this claim, citing extensive documentation of IEP team meetings where the Parents actively participated and provided input. The record also reflects the District addressed the Parents' concerns regarding A.W.'s social-emotional needs and academic goals.

3. LRE and Supplementary Aids

The Parents' preference for a full-time general education placement was not supported by evidence such an environment could meet A.W.'s needs. The LHO found the District reasonably determined that a more structured setting, with additional supports, was necessary to address A.W.'s academic and social challenges. The District's placement decision complied with IDEA's LRE mandate by balancing the benefits of mainstreaming with A.W.'s unique needs (*L.B. v. Nebo Sch. Dist.*)¹⁰.

B. Appropriateness of Private Placement

Reimbursement for unilateral private placements is subject to the two-pronged *Burlington/Carter* test: (1) the District must have denied FAPE; and (2) the private placement must be appropriate¹¹. The Parents failed to satisfy either prong.

1. Educational Programming

The John Crosland School, while specialized, did not provide opportunities for interaction with non-disabled peers, contrary to IDEA's preference for inclusive settings. Moreover, the Parents provided no evidence the school offered the individualized supports outlined in A.W.'s IEP, such as specific reading interventions.

¹⁰ 379 F.3d 966, 975 (10th Cir. 2004).

¹¹ 471 U.S. at 370.

2. Progress at Private School

The Parents claimed A.W. made significant progress at the private school, but the LHO found this evidence anecdotal and unsupported by objective data. Testimony from District witnesses further indicated that comparable progress could have been achieved in the District's programs.

C. Statute of Limitations

The Parents raised allegations dating back to A.W.'s preschool years, which were dismissed as time-barred under IDEA's two-year statute of limitations (20 U.S.C. § 1415(f)(3)(C)). The LHO correctly ruled claims arising before August 19, 2022, were untimely. Evidence from earlier periods was admissible only to the extent it informed the evaluation of timely claims (*McLean v. Eastampton Sch. Dist.*).¹²

D. Credibility and Evidence

The LHO's factual findings are supported by credible testimony and contemporaneous documentation from the District. No extrinsic evidence or procedural irregularities warrant overturning these findings (*Doyle*)¹³. The Parents' assertions of bias were unsubstantiated and are rejected as unsupported by the record.

Conclusion

The LHO's decision is affirmed. The District provided FAPE to A.W., and the Parents failed to demonstrate the appropriateness of the private placement. Consequently, the request for tuition reimbursement is denied.

In conclusion, LHO's rulings in all areas are affirmed, citing a lack of evidence to indicate any error in the LHO's decisions.

NOTICE OF APPEAL RIGHTS

¹² No. 19-11009, 2020 U.S. Dist. LEXIS 25345 (D.N.J. Feb. 11, 2020)

¹³ 953 F.2d at 105

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
December 7, 2024