

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

STATE OF SOUTH CAROLINA	)	
	)	
	)	
K. T. (Parent) on behalf of J. U.	)	
(Student)	)	
	)	
Petitioners,	)	
	)	DAVID BATEMAN
v.	)	STATE-LEVEL REVIEW OFFICER
	)	
	)	
SC Public Charter School District,	)	
	)	
District/Respondent	)	DECISION
	)	
	)	
	)	
	)	

This matter is before me pursuant to an appeal of the Local Due Process Hearing Officer (“LHO”), Bruce J. Smith’s Final Order dated March 28, 2024. The South Carolina Department of Education (“SCDE”) received Parent’s appeal of the LHO’s orders on April 8, 2024.

On April 9, 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 represented by Bronte M. Anelli, Esq. and D. Elliott Tait, Esq. of SCLegal, on behalf of J.U. (“Student”) and South Carolina Public Charter School District and High Point Academy (“District”) was represented by Erik T. Norton, Esq. and Mary Allison Caudell, 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. The due date for the final decision on appeal was established as May 8, 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 April 10, 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 April 24, 2024, District brief due April 28, 2024, Parent's reply brief due, if needed, May 1, 2024. I received all the Petitioner's and District's briefs and exhibits in a timely manner.

STANDARD OF REVIEW

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

PROCEDURAL HISTORY

February 23, 2024	Parent filed due process hearing requests.
March 19, 2024	Hearing held. Parent requested a public hearing
March 28, 2024	LHO issued his final order.
April 8, 2024	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

April 9, 2024

SCDE notified Parent and District that the notice of appeal of the LHO's order was received, and that Dr. Bateman was appointed the SRO. Both parties were notified parties that May 8, 2024, was the deadline for issuance of the SRO's decision.

Local Hearing Officer Decision

In the due process hearing, the petitioner—the Parent—contests the conclusions of a Manifestation Determination Review (MDR) regarding her child, J.U., who has been diagnosed with Attention Deficit/Hyperactivity Disorder (ADHD) and Oppositional Defiant Disorder (ODD). The contested MDR, dated February 21, 2024, ruled an incident involving J.U. accessing inappropriate material on a school computer and that this behavior was not related to his disabilities.

Procedural Background:

The sequence leading to the due process hearing was initiated through a request for a Local Due Process Hearing Officer (LHO) made via email on March 4, 2024. Preparatory activities included a pre-hearing conference call on March 1, 2024, where documentation was exchanged and logistical details for the hearing were confirmed. The formal hearing was subsequently held on March 19, 2024, in a District meeting room.

Summary of Allegations and School's Responsibilities:

The Parent's allegations against the District broadly covered failures in several key areas mandated by the IDEA, including the proper implementation of Child Find (a legal requirement schools identify and evaluate students suspected of having disabilities at no cost to the parents), the provision of a free appropriate public education (FAPE), and the accurate maintenance of discipline records. Notably, the Parent argued the District failed to recognize the relationship between J.U.'s conduct and his disabilities, thereby not providing necessary

accommodations which could include behavior intervention plans or more tailored disciplinary measures.

The Hearing:

During the due process hearing, both parties presented evidence and testimonies. The Parent used witness testimonies to argue the District's MDR committee had erroneously concluded J.U.'s behavior was not a manifestation of his disability. This included discussing previous incidents where J.U.'s behavior was acknowledged as a disability manifestation, highlighting a perceived inconsistency in the school's evaluations and responses over time.

Expert Testimonies and School Response:

Significant to the proceedings were the expert testimonies from District staff and a psychologist, who provided insights into J.U.'s behavior and the nature of ADHD and ODD. The District's witnesses argued the actions taken by J.U. to access and conceal the inappropriate material involved a level of premeditation not typically associated with the impulsivity characteristic of ADHD. This perspective was critical in challenging the Parent's assertion the behavior was impulsive and thus a direct manifestation of J.U.'s disability.

Decision and Implications:

The LHO's decision hinged on the interpretation of behavior as a manifestation of disability. The ruling emphasized the need for clear evidence linking specific behaviors to a student's diagnosed disabilities under IDEA's protections. The conclusion on February 21 that J.U.'s behavior was not a manifestation of his disabilities rested on testimony portraying his actions as deliberate and calculated, rather than impulsive.

Parent Appeal

The appeal, brought by J.U. and his mother, addresses the appropriateness of disciplinary measures taken in light of J.U.'s diagnosed disabilities, Attention-Deficit/Hyperactivity Disorder (ADHD) and Oppositional Defiant Disorder (ODD). The appeal is grounded in the

legal framework provided by the Individuals with Disabilities Education Act (IDEA) and relevant case law interpretations, focusing on whether J.U.'s behavior was a manifestation of his disabilities and whether the disciplinary process adhered to the procedural safeguards stipulated under IDEA.

Legal Framework

The IDEA mandates schools conduct a Manifestation Determination Review (MDR) when considering disciplinary actions for students with disabilities. This review must determine if the student's conduct was a result of their disability:

- 20 USCS §1415 (K)(1)(E)(i) mandates the review of all relevant information in the student's educational records during an MDR.
- *Barnett v. Fairfax County School Board*⁴ and *Honig v. Doe*⁵ underscore the necessity of integrating the child's disability into disciplinary decisions and ensuring parental involvement through procedural safeguards.

Parents Notes on the Background

J.U., a 12-year-old student, was expelled after an incident on February 7, 2024, where he accessed inappropriate material online during class. This decision followed an MDR concluding his behavior was not a manifestation of his disabilities. This decision was contentious given a similar incident in September 2023 led to an adjustment of J.U.'s 504 Plan rather than expulsion, after the school initially recognized the implications of his disabilities.

J.U.'s mother has been actively involved in his education, advocating for better accommodations and adjustments to his 504 Plan following repeated disciplinary issues linked to his impulsivity and behavior in using technology. Despite these efforts, and the District's acknowledgment of his ADHD and ODD in various school meetings and plans, his latest behavioral infraction led to expulsion.

⁴ *Barnett v. Fairfax County School Bd.*, 721 F. Supp. 757 (E.D. Va. 1989)

⁵ *Honig v. Doe*, 484 U.S. 305 (1988).

Issues Raised on Appeal

1. **Review of Evidence:** The appeal criticizes the LHO's alleged failure to consider all relevant evidence, including J.U.'s comprehensive behavioral history and the accommodations provided. It argues previous similar behaviors were recognized as manifestations of his disabilities, questioning why the February 7, 2024 incident was treated differently.
2. **Evaluation of Testimonies:** The LHO's decision heavily relied on testimonies from school employees, who described J.U.'s actions as "premeditated" and "deliberate." The appellant challenges this characterization, arguing it contradicts the known manifestations of ADHD and ODD, which include impulsivity and a lack of forethought.

Legal Precedents and Interpretative Framework

The IDEA's safeguards are designed to protect students with disabilities by ensuring their behaviors are not inappropriately penalized without considering the influence of their disabilities. The cases of *Barnett* and *Honig* provide foundational understandings affirming the rights of students to have their disabilities adequately considered in disciplinary contexts. The Parent's appeal seeks to rectify what is perceived as a misapplication of these principles, arguing for a reassessment of the evidence and testimonies leading to J.U.'s expulsion.

District Response

The brief submitted by the South Carolina Public Charter School District and High Point Academy (the District) details a defense of their actions regarding the discipline of a student diagnosed with ADHD and ODD following incidents involving inappropriate use of technology. The primary contention in the case is whether J.U.'s behavior was a direct manifestation of his disabilities.

Background of the Incident:

The incident at the center of this case occurred on February 7, 2024, when the Student accessed and displayed inappropriate images on a school computer during a class session.

This act led to a Manifestation Determination Review (MDR) held on February 21, where it was concluded the Student's actions were premeditated and not a result of his diagnosed disabilities. The Student was subsequently recommended for expulsion based on this behavior, which was determined to be a major misuse of technology.

Arguments from the Appellant:

The appellant raised several points challenging the local-level decision:

1. **Historical Context of Behavior:** The appeal stressed prior similar incidents had been recognized as manifestations of the student's disabilities, suggesting a precedent overlooked in the current decision.
2. **Testimonial Reliability:** The appeal argued the testimony of school employees was given undue weight, considering their potential bias and the non-expert status of these witnesses.
3. **Oversight of Disability Symptoms:** It was argued the decision-makers failed to adequately consider how ADHD symptoms, such as distractibility and lack of impulse control, might have influenced the student's behavior.

Detailed Counterarguments by Respondents:

Respondents defended their position with several key points:

1. **Compliance with IDEA Procedures:** They asserted the MDR process was thoroughly and correctly executed, following all guidelines under the IDEA to ensure a fair determination. The review included detailed examinations of the student's educational records, behavioral history, and inputs from both school officials and the student's mother.
2. **Differentiation of Incidents:** Respondents emphasized previous behaviors deemed manifestations had involved different contexts and triggers. They argued the premeditative nature of the February 7, 2024, incident (such as bypassing security measures to access inappropriate content) clearly differed from past impulsivity-related incidents.
3. **Evaluation of Evidence and Testimonies:** The response highlighted all evidence, including detailed testimonies regarding the student's behavioral patterns and the

specifics of the incident, was appropriately considered. The decision was supported by expert opinions and technological evidence indicating the deliberate nature of the student's actions.

4. Legal and Procedural Rigor: The respondents pointed out the LHO's findings were grounded in a robust understanding of the legal standards, with detailed reference to previous legal precedents and the specific regulations governing disciplinary proceedings under the IDEA.

Request by Respondents:

The respondents have requested the SRO uphold the original decision, asserting the appeal has not effectively demonstrated any error in the local-level proceedings. They maintain the disciplinary actions were justified, given the nature of the behavior and the comprehensive evaluations concluded the behavior was not a manifestation of the student's disabilities.

Parent's Reply

The Parent's Reply provides a critique of how the case involving J.U.'s eligibility for special education services was handled, particularly focusing on the relationship between the Student's diagnosed ADHD and his behavior. They elaborate further on the errors alleged by the appellants and their implications for the legal process and the student's rights under the IDEA:

1. Accusations of Misrepresentation of Facts:
 - The Parent's challenge the integrity of the factual representations made by the Respondents in their brief. They argue these misrepresentations include incorrect statements about the mother's views on her son's eligibility for an IEP, as well as erroneous details about the technology integration within the school's 504 Plan. By presenting facts not found in the record, the Respondents risk undermining the legal process, potentially leading to

decisions based on incomplete or false information, which could significantly impact the student's right to appropriate educational accommodations.

2. Legal Standards and Deference Misapplication:

- The document criticizes the Respondents for their misunderstanding or misapplication of the legal standards concerning the deference to be given to the LHO's findings. It highlights incorrect references to legal precedents which discuss the standard of review, particularly in terms of how much weight should be given to the LHO's credibility assessments.

3. Clarification on the Standard of Review:

- The appellants argue that, contrary to the Respondents' assertions, the SRO has considerable leeway in reevaluating findings that are not based on credibility, emphasizing the need for an independent review to genuinely reflect the legislative intent of providing fair and tailored educational assessments for students with disabilities.

4. Focus on Manifestation Determination:

- Central to the appeal is the argument that J.U.'s actions, which led to disciplinary proceedings, were a direct manifestation of his ADHD. The appellants contend the Respondents, along with the LHO, failed to properly consider how J.U.'s specific symptoms of ADHD influenced his behavior. This oversight is seen as a fundamental flaw in the manifestation determination process, where generic attributes of ADHD were considered instead of the student's particular circumstances. This misstep could lead to inappropriate disciplinary measures that do not align with IDEA's protections for students with disabilities.

5. Evaluation of School Officials' Testimonies:

- The Parent's express concern over the undue weight given to the testimonies of District administrators who lacked comprehensive direct interactions with J.U. By prioritizing these testimonies over those who had more relevant daily interactions with the student, such as his teachers, the decision-making process may have overlooked critical insights into J.U.'s behavior and needs.

6. Assessment of the 504 Plan's Effectiveness:
 - Finally, the document challenges the effectiveness of the 504 Plan implemented for J.U. It uses statistical evidence showing J.U.'s behavioral issues persisted and even intensified after the plan's implementation, contradicting claims of improvement. This argument is used to illustrate the District's failure to provide accommodations that genuinely addressed the student's specific manifestations of ADHD.

The Parent's seek not only to overturn the decision to expel the student but also to ensure the educational accommodations provided are truly responsive to his individual needs as mandated by IDEA.

The Manifestation Determination Review (MDR) Process

1. Uniform Process: The commitment to conducting MDRs in a uniform manner underscores the principle of equality in education. Regardless of a student's eligibility status under IDEA or coverage solely under Section 504, the consistency of procedures ensures every student receives fair treatment and protection of their rights.
2. Review Team Composition: The careful selection of MDR team members reflects a holistic approach to decision-making. By including key stakeholders such as school officials, parents or guardians, and individuals knowledgeable about the student's needs and Section 504 regulations, the team fosters collaboration and leverages diverse perspectives to arrive at well-rounded conclusions.
3. Consideration of Information: At the heart of the MDR process lies the comprehensive review of relevant information. From analyzing the student's Individualized Education Program (IEP) to considering teacher observations and recent psychological evaluations, the meticulous examination of data ensures no relevant detail is overlooked in determining the underlying factors contributing to the student's behavior.
4. Prohibition of Predetermination: The prohibition against predetermination serves as a safeguard against bias and ensures that decisions are made based on an impartial

assessment of the facts. By entering the review process with an open mind and refraining from preconceived notions, the team upholds the principles of fairness and procedural integrity.

5. **Impact of Determination:** The outcome of the MDR holds profound implications for the student's educational trajectory. If the behavior is found unrelated to the disability, disciplinary measures consistent with the school's policies may be implemented. Conversely, if the behavior is deemed a manifestation of the disability, disciplinary action is precluded, and alternative interventions tailored to the student's needs must be explored.
6. **Stay-Put Provision:** While Section 504 may lack an explicit stay-put provision, the commitment to procedural fairness necessitates that schools exercise caution before making significant changes to a student's placement. By adhering to the spirit of due process and awaiting the resolution of an MDR before altering the student's educational environment, schools uphold the principles of fairness and equity.

DECISION

This matter comes before me pursuant to an appeal from the Local Due Process Hearing Officer (LHO), Bruce J. Smith's Final Order dated March 28, 2024. The South Carolina Department of Education (SCDE) received the appeal filed by the Parent on April 8, 2024. Following the receipt of the appeal, I was appointed as the State-Level Review Officer (SRO) on April 9, 2024, and subsequently informed all parties involved of my appointment. Bronte M. Anelli, Esq. and D. Elliott Tait, Esq. of SCLegal, on behalf of J.U. ("Student") and South Carolina Public Charter School District and High Point Academy ("District") was represented by Erik T. Norton, Esq. and Mary Allison Caudell, Esq. As mandated by the Individuals with Disabilities Education Act (IDEA) and corresponding federal regulations, a final decision in this matter is required by May 9, 2024.

In my role as SRO, I am vested with jurisdiction through an official letter of appointment from the SCDE. My responsibilities include rendering a decision based on the comprehensive review of the hearing record, exhibits presented during the LHO proceedings, and the application of applicable laws and regulations.

STANDARD OF REVIEW

The review framework in South Carolina employs a two-tier due process system, wherein my role as an SRO involves conducting an independent review limited to the issues raised on appeal. According to precedents set by the U.S. Court of Appeals for the 4th Circuit, an SRO must provide clear and substantiated reasons when their findings differ from those of the LHO.

PROCEEDINGS AND ARGUMENTS

Background and Procedural History

The core of this appeal is the Parent's contention the disciplinary actions taken against J.U. were directly linked to manifestations of his diagnosed ADHD. The Parent challenges the adequacy of the manifestation determination process carried out by the LHO and argues the District, along with the LHO, failed to properly account for how J.U.'s specific symptoms of ADHD influenced his behaviors that led to disciplinary measures.

Detailed Findings and Rationale

1. Misrepresentation of Facts and the Record

The record clearly shows discrepancies in the factual representations made by the District, particularly concerning the statements about J.U.'s mother's views on his eligibility for an IEP and the specifics of the technology integration mentioned in the school's 504 Plan. These inaccuracies are critical as they have the potential to mislead and misinform the decision-making process, thereby impacting J.U.'s right to receive appropriate educational accommodations tailored to his needs.

2. Legal Standards and Deference Misapplication

Upon review, it is evident the LHO misapplied the standards of deference typically given to findings of fact. This misapplication calls for an independent review, which is necessary to ensure J.U.'s educational provisions are accurately aligned with his specific needs as outlined under IDEA, rather than being based on general or incorrect interpretations of his conditions.

3. Manifestation Determination

The appeal highlights a fundamental flaw in the manifestation determination process. The evidence strongly supports the assertion that J.U.'s actions, which led to the disciplinary proceedings, were a manifestation of his ADHD. The LHO's decision to overlook the specific impact of J.U.'s ADHD symptoms, focusing instead on generic attributes of the disorder, contravenes IDEA's stipulations requiring educational protections to be tailored specifically to a student's disabilities.

4. Evaluation of School Officials' Testimonies and the 504 Plan's Effectiveness

The decision-making process was disproportionately influenced by the testimonies of school administrators who lacked direct and comprehensive interactions with J.U., overshadowing insights from educators who interact with him daily. Moreover, statistical evidence presented by the Parent contradicts claims of improvement in J.U.'s behavior following the implementation of the 504 Plan, indicating the plan did not effectively address his specific behavioral needs linked to his ADHD.

CONCLUSION AND ORDER

After a thorough analysis of the arguments, evidence, and applicable legal standards, I conclude the disciplinary action taken against J.U. was indeed a manifestation of his ADHD. Consequently, the decision of the LHO is reversed. The school district is hereby ordered to make necessary adjustments to J.U.'s IEP and 504 Plan to ensure they adequately address his educational and behavioral needs in accordance with the IDEA.

NOTICE OF APPEAL RIGHTS

Any party aggrieved by this decision has the right to initiate a civil action in any state court of competent jurisdiction or in a district court of the United States within ninety (90) days from the date of this decision.

s/David Bateman

David Bateman, Ph.D.

State-Level Review

Officer May 8, 2024