

**INDIVIDUALS WITH DISABILITIES EDUCATION ACT**  
**BEFORE THE REVIEW OFFICER**  
**FOR THE SOUTH CAROLINA DEPARTMENT OF EDUCATION**

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|-------------------------------------------------|---|-----------------------------|
| STATE OF SOUTH CAROLINA                         | ) |                             |
|                                                 | ) |                             |
| COUNTY OF RICHLAND                              | ) |                             |
|                                                 | ) |                             |
| In the Matter of:                               | ) |                             |
|                                                 | ) | <b>DECISION OF THE</b>      |
| C.B. on behalf of C.H., <sup>1</sup>            | ) | <b>STATE REVIEW OFFICER</b> |
| Appellant                                       | ) |                             |
|                                                 | ) |                             |
| v.                                              | ) |                             |
|                                                 | ) |                             |
| Richland County School District 2, <sup>2</sup> | ) |                             |
| Appellee                                        | ) |                             |

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This matter is before me as the State Review Officer (SRO) pursuant to an appeal by the Parent of a decision by Bruce J. Smith, the Local Hearing Officer (LHO). As explained in specific detail *infra*, the LHO ruled that the District’s reevaluation and eligibility classification for the Student did not deny free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA). As similarly specified *infra*, the Parent timely appealed the LHO’s decision.

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<sup>1</sup> This decision will generically use “Parent” (without differentiation as to father and/or mother) and “Student” (without name or other personally identifying information). The rest of the decision will also use general roles, such as “designated legal representative” (without names), and “he” or “his” (without differentiation as to actual gender) for the same purpose. Moreover, cross references within this decision are, per legal citation style, via “*supra*” (above), “*infra*” (below), and “*id.*” (same as immediately preceding identified source).

<sup>2</sup> Similarly, for overall consistency, the rest of this decision will generically refer to “District.” As a result of this generic label, the references herein to its exhibits use “D” rather than “R” (for respondent).

## I. PROCEDURAL BACKGROUND<sup>3</sup>

On October 21, 2024, the Parent filed the complaint in this matter, which was a broad-based, 33-page set of grievances including but extending well beyond the IDEA. SRO-1. The parts of the complaint within the coverage of the IDEA appeared to hinge on the Student's reevaluation resulting in the additional eligibility classification of specific learning disability (SLD).

On January 4, 2025, after conducting prehearing conference calls starting on November 24, 2024 and hearing sessions on December 19 and 20, 2024, the LHO issued a final decision. SRO-2.<sup>4</sup> For each of the two identified issues, identified as whether the District failed "to make the proper disability classification" and "us[e] the proper process make the disability classification" (*id.* at 2),<sup>5</sup> the LHO ruled that the Parent did not meet the burden of proof to show any denial of FAPE" (*id.* at 7 & 9–10). Additionally, in response to the Parent's closing statement (SRO-3), the LHO rejected the claim of bias or unfairness in the prehearing and hearing process. (*Id.* at 8).<sup>6</sup>

On January 14, 2025, the Parent timely appealed the LHO's decision. SRO-5.

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<sup>3</sup> The record in this matter includes two volumes of exhibits (designated herein as "P" and "D" for those of the Parent and District, respectively) along other documents, such as the local hearing officer's decision (designated as "SRO-2"). The record also includes a transcript consisting of two volumes corresponding to the hearing sessions but numbered separately rather than consecutively (designated generically as "Tr." with the vol. and page number).

<sup>4</sup> Among the various communications during the prehearing period, on December 15, 2024, in response to the District's challenge, the LHO found the Parent's complaint to meet the applicable standard for sufficiency. LHO-4, at 1–2

<sup>5</sup> The basis for this formulation was the following summary confirmation that the LHO sent to the parties directly after the prehearing meetings: "Main issue is the student's classification and the process the district used to make the determination, leading allegedly to violation of IDEA and failure to provide a free and appropriate public education." LHO Exhibit 1, at 1.

<sup>6</sup> The LHO concluded that most of the Parent's identified items under this claim were attributable to "[the Parent's] misunderstanding of the hearing process." SRO-2, at 8. For example, with regard to the role of the Parent's lay advocate, the LHO reported that he patiently allowed the advocate to spontaneously write the questions that the Parent asked during each witness's testimony, which "became a source of frustration to the point of fending off objections to the process by the District." *Id.*

On January 16, 2025, the state superintendent of education appointed me as the SRO in this case, specifying February 14, 2025 as the due date for my decision. SRO-6.

On January 17, 2025, I emailed the parties, offering several alternative dates for a Zoom status conference meeting. SRO-7, at 4–6.

On January 21, 2025, I conducted the status conference, following up the next day with a summary of the results, including a deadline of February 3, 2025, for the parties’ written arguments. *Id.* at 1.

On February 3, 2025, both the Parent and the District timely submitted their appeals briefs. SRO-8; SRO-9.

## II. STANDARD OF REVIEW

The standard of review for an SRO under the IDEA is for an “independent decision” after examining the entire record. 34 C.F.R. §§ 300.514(b)(2). The SRO finds persuasive the interpretation of the Third Circuit in *Carlisle Area School District v. Scott P.*, 62 F.3d 520, 529 (3d Cir. 1995), requiring “plenary review” with one narrow exception: “[the SRO] should defer to the hearing officer’s findings based on credibility judgments unless the non-testimonial, extrinsic evidence in the record would justify a contrary conclusion or unless the record read in its entirety would compel a contrary conclusion.”<sup>7</sup>

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<sup>7</sup> The Third Circuit explained that “beyond this rather narrow class of record-supported, credibility-based factual findings, we think that, to give the statute’s language about ‘independent’ decisions effect, the [SRO] must have much more leeway in reviewing other non-credibility based findings of the hearing officer.” *Id.* at 528–29 (citing Perry A. Zirkel, *The Standard of Review Applicable to Pennsylvania’s Special Education Appeal Panel*, 3 WIDENER J. PUB. L. 871, 892 (1994)). At least one other Circuit that includes one of the approximately eight states that have opted for a review officer tier, has at least indirectly approved this approach. *Amanda J. v. Clark Cnty. Sch. Dist.*, 267 F.3d 877, 888–89 (9th Cir. 2001); *accord* *HPB v. Washoe Cnty. Sch. Dist.*, 2024 WL 4368227 (D. Nev. Sept. 30, 2024). The Fourth Circuit has only partially addressed this issue, finding that LHO’s credibility findings are entitled to deference at the SRO level. *Doyle v. Arlington Cnty. Sch. Bd.*, 953 F.2d 100, 104 (4th Cir. 1991). Contrary to the District’s written arguments in this case (SRO-9, at 4), the rest of the review-standard ruling in *Doyle* and its subsequent line of decisions in the Fourth Circuit address the similar but separable issue of *judicial*

### III. FINDINGS OF FACT

Before starting kindergarten in 2023–24, the Student attended preschool in the District. During this period, the initial evaluation on January 19, 2021, determined that the Student was eligible under the transitional classification of Developmental Delay (DD). D-15, at 3.<sup>8</sup> At the annual review on May 21, 2022, the IEP team determined that Student no longer qualified as DD but was eligible under the classification speech/language impairment (SLI). The Student’s last preschool IEP, dated May 28, 2023, contained goals and speech/language services under this revised classification. D-2/D-10.

For the 2023–24 school year, based on a lottery process, the Student attended kindergarten in a school in the District that provided an accelerated curriculum. *E.g.*, Tr. at I-23 & II-33. This process included a parent commitment meeting, in which the school’s administrative representative explained the curriculum and the Parent confirmed the choice. Tr. at II-114–15.

On September 21, 2023, the IEP team met for an early reevaluation review and determined to allow more time to collect progress data on the Student’s classroom performance, including the Student’s response to multi-tiered interventions. D-13; D-14; Tr. at 1-70.<sup>9</sup> The kindergarten teacher used the multi-tiered process with the Student in addition to the IEP accommodation of preferential seating, but the Student’s difficulties with early reading skills continued. *E.g.*, Tr. at I-189 & I-206.

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review of LHO decisions. *See, e.g., id.* at 104–05; *M.S. v. Fairfax Cnty. Sch. Bd.*, 553 F.3d 315, 326 (4th Cir. 2009).

<sup>8</sup> The IDEA provides for this temporary classification starting at age 3 and ending at age 9 or an earlier point, such as age 5. 34 C.F.R. § 300.8(b). For the corresponding state regulation, see S.C. CODE ANN. REGS. 43-243.1(E). This initial evaluation was less than optimal, because it was during the COVID-19 period when masks were the norm. *E.g.*, Tr. at I-177.

<sup>9</sup> South Carolina law generally provides for multi-tiered system of supports (MTSS) and response to intervention (RTI). S.C. CODE ANN. §§ 59-33-510 & 53-33-520. This provision is in addition to the option that is limited to SLD identification. *Infra* note 11.

On November 28, 2023, based on the Student’s regular progress reports,<sup>10</sup> the IEP team met, amending the May 28, 2023, IEP to add 90 minutes/week of special education resource services and goals for reading. D-3; D-4. The team also decided to not start the formal reevaluation until after the end-of-year’s holidays to allow for further progress monitoring based on the amended IEP. *E.g.*, Tr. at I-76 & I-106. The District continued to provide the Parent with regular progress reports, which revealed that the Student was making good progress but not fully meeting the reading goals. (*e.g.*, Tr. at I-38).

On February 21, 2024, the school psychologist and speech language pathologist issued a reevaluation report, recommending that the Student qualified as SLD in addition to SLI. D-15. The SLD recommendation was based on a variety of sources, including Student’s educational records, standardized tests for cognitive processing and academic achievement, classroom observation, and progress monitoring based on “multiple assessments/classroom performance/curriculum linked assessments.” *Id.* at 4–9, 13–14. The school psychologist used both approaches for the SLD determination authorized under the South Carolina regulations corollary to the IDEA. Tr. at I-107–09 & Tr. at I-133–34.<sup>11</sup>

On March 19, 2024, the IEP team met and, after reviewing the reevaluation and considering additional sources, including “Easy CBM [and] school grades” (D-18),<sup>12</sup> amended the IEP to designate the additional classification of SLD and increase the reading services to

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<sup>10</sup> The progress reports showed below average scores in all assessed areas of early reading skills—letter sounds, letter identification, and segmenting. *E.g.*, Tr. at I-32.

<sup>11</sup> In addition to the third option of “alternative research-based procedures” (34 C.F.R. § 300.307(a)(3), which is not applicable in this case, the IDEA regulations permit states to choose an approach based on RTI in relation to age or state-approved grade level standards or pattern of strengths and weaknesses (PSW) in relation to intellectual development or state-approved grade level standards (*id.* § 300.309(a)(2)). The corresponding state policies authorize districts to use the RTI and MTSS approaches. SPECIAL EDUC. PROCESS GUIDE SEPG-2013, at 37 (Mar. 2013), <https://ed.sc.gov/districts-schools/special-education-services/state-regulations/policies-and-guidance/>.

<sup>12</sup> Easy CBM is a norm-referenced assessment that the Student’s special education teacher used as a baseline for monthly progress monitoring. Tr. at I-14. The team also considered teacher input. *Id.* at I-138.

150 minutes/week. D-6; D-7; D-8.

On October 21, 2024, when the Student was in first grade, the Parent filed for a due process hearing, which led to the sequential events summarized above under “Procedural Background.”

#### IV. CONCLUSIONS OF LAW

The first part of this section addresses the procedural fairness at the LHO level based on the Parent’s notice of appeal and the SRO’s regulatory remit. 34 C.F.R. § 300.514(b)(2)(ii). The next part addresses the merits of the case in relation to the two issues identified by the LHO. The last part addresses the merits of the Parent’s remaining claims identified as a result of the status conference in this appeal. SRO-7, at 2–3.

##### **Procedural Fairness**

The Parent’s notice of appeal and written arguments allege procedural deficiencies in the prehearing instructions and in the admission of exhibits. Examination of the record reveals that these allegations stem from the Parent’s lack of familiarity with, and resulting misunderstandings of, the applicable procedures for impartial hearings under the IDEA. These misunderstandings are likely attributable to the Parent’s pro se status and the circumscribed role of the Parent’s lay advocate under the IDEA (*id.* at § 300.512(a)(1)).

For example, the Parent’s notice of appeal cites the far larger number of District than Parent exhibits as proof of the alleged LHO inequitable scrutiny and admission of evidence. SRO-5, at 3. Yet, the Parent submitted far few exhibits for admission, and the LHO rather liberally admitted them although they did not strictly conform to the generally applicable standards rules for authentication. E.g., Tr. at I-88, I-98–100 & Tr. at II-88.

Similarly, the corresponding pages in the Parent’s written arguments reflect the same

misunderstandings. SRO-8, at 4-10. Indeed, the Parent's selected excerpts from the transcript confirm that the LHO made reasonable efforts, within the discretionary range for proper practice in relation to pro se representation, to explain and apply the applicable evidentiary procedures. These excerpts and the accompanying case citations show what an impartial review of the record otherwise reveals. Specifically, despite the reciprocally good faith efforts by the Parent and the lay advocate, they did not meet their burden of proof for this claim. For example, none of the five cited decisions specifically address the procedural requirements for due process hearings, much less their application to pro se parents.<sup>13</sup>

Given the broad regulatory framework for impartial hearings under the IDEA<sup>14</sup> and the ample discretion for hearing officers,<sup>15</sup> which includes reasonable latitude for pro se parents,<sup>16</sup> the record is clear in this case that the hearing procedures met the requisite requirement of being consistent with the requirements of due process. 34 C.F.R. § 300.514(b)(2)(ii).

### **The Merits: Reevaluation**

In this case the reevaluation report appeared to meet the applicable requirements for evaluations, including reevaluations. More specifically, the Parent did not identify, much less preponderantly prove, any specific violation of the applicable standards, which include the use of a variety of assessment tools and strategies and administration by trained, knowledgeable personnel. 34 C.F.R. § 300.304(b)–(c).<sup>17</sup>

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<sup>13</sup> The only one of the decisions specific to pro se parents concerns their right to represent *themselves* under the IDEA *in federal court*. *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516 (2007). Here instead, it is undisputed that the Parent was granted the opportunity proceed pro se *at the hearing and review levels* to represent *the child* under the IDEA.

<sup>14</sup> See, e.g., 34 C.F.R. § 300.512.

<sup>15</sup> See, e.g., Letter to Anonymous, 23 IDELR 1073, 1075 (OSEP 1995).

<sup>16</sup> See, e.g., 71 Fed. Reg. 46,699 (Aug. 14, 2006).

<sup>17</sup> The Parent's written arguments alleged that the District relied on only one measure or assessment in violation of 34 C.F.R. § 300.304(b)(2). However, the accompanying transcript excerpts narrow this claim to RTI/MTSS. SRO-8, at 10–13. The evidence was preponderant that the District did not rely solely on RTI/MTSS even if it is considered a measure or assessment. *Supra* text accompanying note 11.

The IEP team’s resulting review similarly appeared to meet the applicable requirements, with a limited possible exception. *Id.* § 300.305. Specifically, the record in this case, including the contents of the reevaluation report, does not show whether the team’s review included information from the Parent. *Id.* § 300.305(a)(1)(i).<sup>18</sup> However, assuming *arguendo* that the team did not collect and consider parental information,<sup>19</sup> this procedural violation did not result in the requisite harm to the Student or the Parent for a denial of FAPE. *Id.* § 300.513(a)(2).<sup>20</sup> More specifically, based on the Student’s continuing difficulties with reading, the increase in the latest IEP from 90 to 150 minutes of specialized instruction in reading accorded with the applicable substantive standard of being “reasonably calculated to enable [the] child to make progress in light of the child’s circumstances” (*Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017)), and (b) the Parent clearly, in the receipt of the quarterly progress reports and participation in the September 2023, November 2023, and March 2024 IEP meetings clearly had the “opportunity to participate in the decision-making process regarding the provision of a FAPE to the ... child” without any, much less significant, District impediment (34 C.F.R. § 300.513(a)(2)(iii)).

### **The Merits: SLD Eligibility**

Similarly, for the regulatory requirements for the additional classification of SLD (34 C.F.R. §§ 300.307–300.311),<sup>21</sup> the only specific violation that the Parent asserted was that the Student’s lack of achievement in reading was attributable to lack of instruction by qualified

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<sup>18</sup> For this specific requirement in the corresponding regulations in South Carolina, see S.C. CODE ANN. REGS. 43-243.1(A)(3).

<sup>19</sup> Such an ultimate conclusion is questionable in light of the reasonableness approach, which is imported from *Endrew F.* substantive FAPE standard, for determining compliance with the IDEA’s reevaluation requirements. *E.g.*, *Alex W. v. Poudre Sch. Dist. R-1*, 94 F.4th 1176 (10th Cir. 2024).

<sup>20</sup> For the IDEA’s statutory provision that has the same language, see 20 U.S.C. § 1415(f)(3)(E)(ii).

<sup>21</sup> The corresponding state regulations do not add any applicable requirements. S.C. CODE ANN. REGS. 43-243.1(K).

personnel, per the requirement of § 300.309(b). SRO-3, at 3. However, the Parent did not identify, and I do not know of, any specifically supporting case law.<sup>22</sup> Moreover, the record shows that the District reasonably met the IDEA's required reevaluation considerations of (a) data demonstrating such instruction and (b) regular progress reporting to the Parent. *Id.* § 300.309(b)(i)–(ii).

In the notice of appeal and their written arguments, the Parent repeated the claim, without specific applicable citation to the record, that District used a noncertified teacher assistant to provide the reading instruction. SRO-5, at 4; SRO-8, at 10. However, the evidence that the certified general education teacher provided the state-required instruction in reading (*e.g.*, Tr. at I-189) and that the well-qualified special education resource teacher provided the increasing additional specialized reading instruction (*e.g.*, *id.* at I-30 & I-155) clearly outweighed the school principal's incidental mention of the kindergarten teaching assistant providing the Student with additional interventions in the level literacy structured program in RTI (*id.* at I-150).

Nevertheless, given the pro se status of the Parent, careful independent review of the IDEA's regulatory requirements specific to this classification reveals that the documentation of the SLD determination seems to lack specification of the instructional strategies used with the Student in the RTI process and confirmation of parental notification of the applicable state policies and the specific strategies for increasing the Student's rate of learning. 34 C.F.R. 300.311(a)(7). Yet again, even if the District was in violation of these procedural requirement, the result has not been a denial of FAPE for two overlapping reasons. First, the record lacked preponderant proof of a resulting substantive loss to the Student or a corresponding significant

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<sup>22</sup> The various court decisions cited and partially cited in the Parent's written arguments concerned procedural and substantive FAPE generally but not the specific SLD eligibility requirement at issue here. SRO-8, at

impeding of parental participation.<sup>23</sup> Second, the case law has amply established that the classification label is not the critical consideration; instead, the ultimate matter of FAPE is whether the IEP is targeted to the child's individual needs.<sup>24</sup>

### **The Merits: Remaining Claims**

The Parent alleges that the District failed to meet the IDEA's requirements for prior written notice (PWN). Perhaps, as revealed in the District's written arguments, the District's submission of its previous PWNs with its response contributed to the confusion. SRO-9 at 9. However, as discussed in our status conference and confirmed in the Parent's written arguments in this appeal, the Parent was referring to the IDEA's requirements for the District's response to the Parent's complaint. SRO-8, at 2–3.<sup>25</sup> Yet, the Parent's written arguments fatally fail to cite the applicable requirements and show how the District's response violated these requirements so as to be result in requisite harm.<sup>26</sup>

The Parent also asserts a broad-based claim that the District violated their IDEA rights to meaningful participation. SRO-8, at 8–9. However, neither the cited references to the record nor those to the case law support any such violation. As revealed in the factual findings *supra*, the District provided the Parent with ample opportunity to participate in the reevaluation and IEP at issue in this case. Conversely, as also revealed in the legal conclusions for the two issues

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<sup>23</sup> The only decision I have been able to find on SLD identification in relation to this RTI documentation requirement is clearly distinguishable in more than one respect, including its proven effect on parental participation. *M.M. v. Lafayette Sch. Dist.*, 767 F.3d 842 (9th Cir 2014).

<sup>24</sup> *E.g.*, *Minnetonka Pub. Schs. v. M.L.K.*, 42 F.4th 847 (8th Cir. 2022); *Crofts v. Issaquah Sch. Dist.* No. 411, 22 F.4th 1048 (9th Cir. 2022).

<sup>25</sup> The Parent's supporting citation to the record refers to PWN. Tr. at I-66. However, their accompanying explanation targets the District's alleged failure to "address[] all issues raised in the due process complaint." SRO-8, at 2. Thus, the partially cited court decisions, which do not take into consideration the two-step denial-of-FAPE approach required for procedural violations (20 U.S.C. § 1415(f)(3)(E)(ii)), are off point. The Parent's interrelated claim about the timing of the response falls short for the same reasons. SRO-8, at 3.

<sup>26</sup> 34 C.F.R. § 300.508(e). The courts generally apply the same two-step, denial-of-FAPE analysis to alleged violations of this regulation. *See, e.g.*, *E.L. v. Bedford Cent. Sch. Dist.*, 81 IDELR ¶ 185 (S.D.N.Y. 2022); *R.B. v. Dep't of Educ. of N.Y.C.*, 57 IDELR ¶ 155 (S.D.N.Y. 2011); *Jalloh v. District of Columbia*, 535 F. Supp. 2d 13, 19–20 (D.D.C. 2008).

*supra*, the Parent failed to prove that the District significantly impeded their opportunity to participate in the decision-making process for these two issues. 20 U.S.C. § 1415(f)(3)(E)(ii). Again, regrettably, the problem appears to be one of reciprocal understanding and trust, to which the IDEA can only aspire.

Finally, the Parent's written arguments assert a stay-put violation, but their excerpts to the transcript and cited case law in no discernable way showed such a violation. SRO-8, at 14–15. For example, stay-put applies as of the date of filing for a hearing.<sup>27</sup> In this case, the Parent's filing was seven months after receiving the IEP, which they signed, and its accompanying PWN.<sup>28</sup> Thus, assuming *arguendo* that the SLD identification, apart from the added specially designed instruction in reading, was a change in placement, this added eligibility determination is part of the last agreed-upon (or operative) IEP and, thus, is the stay put. Finally, even if the stay-put provision were availing, it would have been only short-lived.<sup>29</sup>

It is regrettable that this case was not resolved via mutual trust and constructive collaboration between the parties. One can only rhetorically question why the parties did not resolve the matter by keeping the sole eligibility classification of SLI and amend the IEP with the additional specialized instruction in reading. Alternatively, if legal challenge was considered, the Parent might well have dissented to the IEP or revoked in writing the SLD eligibility designation. Finally, if the only alternative became the intrinsically adversarial

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<sup>27</sup> 34 C.F.R. § 300.518(a) (“during the pendency of any administrative or judicial proceeding”); Letter to Winston, 213 IDELR 102 (OSEP (1987) (“the pendency provisions of [the IDEA] do not begin to apply until a parent has made a request for a due process hearing”).

<sup>28</sup> Not meeting the regulatory requirement for a change in identification (34 C.F.R. § 300.503(a)) the PWN was not specific as to the SLD eligibility determination. D-8. However, the accompanying minutes of the meeting, which the did not timely challenge, clearly showed the Parent's participation in and agreement with this determination. D-7, at 2. Contrary to the Parent's written arguments, consent is only required for the initial IEP. 34 C.F.R. § 300.300(b). Thus, the requisite harm was lacking for denial of FAPE.

<sup>29</sup> Stay-put would only have applied to the few months between the late October filing and the present decision, unless the Parent would arrange for legal counsel and proceed to court action.

hearing and review process, arranging for legal representation or at least immediately filing for a hearing may have resulted in a different outcome. However, given the actions that each party took in this case, my authority in this matter is limited to deciding the appeal based on the preponderantly proven facts in the record and the applicable requirements in the IDEA and its related case law.

#### **IV. DECISION AND ORDER**

The LHO's decision is affirmed.

#### **V. NOTICE OF APPEAL RIGHTS**

The decision of this SRO is final unless an aggrieved party appeals the decision by commencing a civil action in any state court of competent jurisdiction or in the federal district court in South Carolina 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.

A handwritten signature in black ink, appearing to read "Perry Zirkel", with a stylized, cursive script.

February 7, 2025

Perry A. Zirkel  
State Review Officer