

INDIVIDUALS WITH DISABILITIES EDUCATION ACT STATE-LEVEL APPEAL

STATE OF SOUTH CAROLINA	)	
	)	
	)	
G.J., on behalf of Z.B.	)	
(Petitioner/Parent)	)	
	)	
v.	)	MITCHELL YELL
	)	STATE-LEVEL REVIEW OFFICER
	)	
Florence County School District One,	)	
(District/Respondent)	)	
	)	
Appeal of Local Due Process Hearing	)	
Officer's Order	)	

DECISION

This matter is before me pursuant to an appeal of the Local Due Process Hearing Officer (“LHO”), Brian P. Murphy’s Final Order dated January 28, 2025. The South Carolina Department of Education (“SCDE”) received the initial request to appeal the LHO’s decision on February 4, 2025, from (“Parent”). On February 4, 202, I was appointed the state- level review officer (“SRO”) in the appeal. Petitioner and District were notified of my agreement to serve as SRO on the same day. Petitioners were represented by Parent on behalf of her minor child (Student), and Florence County School District One (“District”) was represented by Kimberly K. Blackburn, Esq and Vernie L. Williams, Esq. The SCDE also notified the parties 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 date of filing (February 4, 2025), the due date for the final decision on appeal was established as March 6, 2025.

¹ 34 C.F.R. § 300.515(b).

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 February 9, 2025, I emailed the District and Parent (copied to the SCDE) a request that the parties adhere to the following schedule in submitting briefs to me: Parent brief due February 21, 2025, District brief due February 27, 2025, and Parent's reply brief due, if needed, March 1, 2025. I received the Parent's and District's briefs and the Petitioner's reply brief in a timely manner. On March 1, 2025, I emailed Petition and District to regarding the resolution meeting that was to be held no later than November 15, 2024, to inquire if the resolution meeting had been convened and when.² Answers were received 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.³ 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. If the LHO and SRO arrive at different conclusions, the SRO must provide sound reasons for departing from the LHO's ruling.⁴

PROCEDURAL HISTORY

October 31, 2024	Petitioner filed due process hearing request.
October 31, 2024	The SCDE notified FCSD of the due process hearing request and the date by which a resolution meeting must be convened.
January 9,10, and 24 2025	A due process hearing was held. Because of inclement weather, the hearing concluded on January 24, 2025.
January 25, 2025	LHO issued his final order.
February 4, 2025	Petitioner filed a notice of appeal with SCDE.

² See letter of October 31, 2024, from the SCDE to the District.

³ 34 C.F.R. § 300.514.

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

February 5, 2025	SCDE notified Petitioner and FCSD that the notice of appeal of the LHO's order was received and that Dr. Yell was appointed the SRO.
December 8, 2024	SRO notified parties of the final due dates of briefs and that March 6, 2025, was the deadline for issuance of the SRO's decision.

BACKGROUND

This hearing is the 8th hearing in four years between Petition and District. The previous hearings were as follows:

- Initial Elementary School (1 hearing). Student was in 4th grade.
- Second Elementary School (3 hearings). Student was in 5th grade for the second hearing, 5th and 6th grade for the third hearing, and the end of 6th grade for the fourth hearing
- Middle School (3 hearings). Student was in 7th grade for the fifth hearing, and 8th grade for the sixth and seventh hearings.
- High School (Current hearing). Student was a 9th grade student when the current hearing was requested.

According to the LHO, Parent was involved in individualized education program (“IEP”) disputes in four schools, every year from 4th grade to 9th grade and still Parent and District “remain embroiled in never-ending email exchanges, long and unproductive IEP meetings, and biannual due process hearings.”⁵ LHO provided an extensive review of the background information prior to the current hearing. I will not repeat this information here.

DISCUSSION

As the SRO, it is my task to examine the entire hearing record and arrive at an independent decision.⁶ Although the SRO must exercise plenary review and make an independent decision due deference must be given to the LHO's findings unless the evidence in the record justifies a contrary conclusion.⁷ It is important to note that Supreme Court also ruled

⁵ Final Order of LHO, Brian Murphy, on January 28, 2025.

⁶ 34 C.F.R. § 514 (b)(2).

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

the party seeking relief bears the burden of proof.⁸ Thus, in this hearing Parent assumed the burden of proof.

I reviewed the transcripts, briefs, exhibits, videos of two facilitated IEP meetings conducted in August and October, 2024, and LHO's final order of January 28, 2025. Prior to turning to the ruling, I will comment on a few issues of importance brought up in Petitioner's brief on February 21, 2025, District brief of February 27, 2025, and Petitioner's reply brief of March 1, 2025.

Issue #1: In the Petitioner's brief of February 21, 2025, including the following sentences regarding the conduct of the hearing by LHO Murphy:

"I feel Brian Murphy abusing his authority to intimate me to confuse me throughout the due process hearing,"

"I would make complaints of Brian Murphy being biased and not allowing me to proceed with my case the best I could."

"I feel his decision-making is discrimination and retaliation toward me as a parent for filing grievance and discrimination towards my [child's] disability."

In all the hearings brought by Parent in which Brian Murphy served as LHO and I served as the SRO, I have found LHO Murphy to be exceedingly fair and not biased toward any party. In all these hearings, LHO Murphy has conducted an exemplary hearing process and has reached his conclusions based on the evidence. The Parent and District were allowed to examine and cross-examine witnesses and to present evidence. Whereas pro se parties are held to less stringent standards they, nonetheless, must still comply with the rules.⁹ In numerous incidences throughout this and previous hearing, LHO Murphy explained issues to Parent in a nonlegal manner. **LHO Murphy's conduct of the hearing and his final decision were fair, nonbiased, and regularly conducted.**

Issue #2: Parent raised the issue of STUDENT being on the football team and that participation should be part of the IEP and providing transportation to and from football practice to home should be an accommodation in the IEP and she should be reimbursed for providing this

⁸ Schaffer v. Weast, 546 U.S. 49 (2005).

⁹ See Card ex rel JD v. Citrus County School Board (MD FL 2015); Aaron v. Gwinnett County School District (ND GA 2014).

transportation.¹⁰ According to Parent's reply brief submitted on March 1, 2025,

As a student with a disability, playing sports is encouraged for social skills, behavior, and more. Requesting transportation to transport my child home to receive tutoring in the evenings still supports transportation being appropriate to assist with student's IEP goals and opportunity to receive FAPE... Individuals with Disabilities Education Act does require a school to provide transportation for a student with a disability to participate in sports and other activities. This transportation is considered a "related service" and is provided at no cost to the student's family and this is why I requested the school provide transportation or reimburse me for transportation for transporting my child from sports related events and activities.

Playing football is not in Student's IEP as a special education service, related service, or accommodation because it was the consensus of the IEP team that football was not necessary to provide Student with a free appropriate public education (FAPE). Clearly, participation in extracurricular activities is an important activity for Student but it is student's and Parent's choice to participate and the costs of this activity should be borne solely by them. It is notable that Parent was concerned how she was going to pay for football, so the IEP team arranged for financial support through the booster club.¹¹

I agree with the LHO's finding that although "Parent is arguing that football should be part of Student's IEP, there is nothing to support such a claim. **Parent offered no evidence that football is necessary to provide FAPE. And nothing in the IDEA suggests that sports are a related service.**"¹² Extracurricular or nonacademic activities could be a related service when a student with disabilities requires such services only when necessary to benefit from their special education.¹³ Although football is an activity that Student chooses to participate in, student does not need football to receive FAPE.

Issue #3: Although Parent was not specific as to why she was appealing the LHO's ruling (i.e., "I disagree with many things in the final order for my [child] ..." ¹⁴), an issue brought up in the

¹⁰ ZB Appeal Closing Brief by Parent 02/21/2025, p. 9.

¹¹ See testimony of Principal (Full Hearing Transcript Vol. 1, p. 176 & 177) and special education supervisor (Full Hearing Transcript Vol. 2, pp. 347 & 348).

¹² LHO's Final Order, January 28, 2025, p. 37.

¹³ 34 C.F.R. § 300.34.

¹⁴ Parent's email to the SCDE on February 4, 2025, appealing the LHO's final decision.

Parent's Brief of February 21, 2025, and Parent's Reply Brief of March 1, 2025, was Parent's concerns regarding Student's sleeping problems. The following sentences from the Parent' briefs of February 21 and March 1 are examples of such concerns:

- "I requested instructions provide through my [child's] IEP plan or outside the IEP because student missed instructions due to sleeping in class or absences related to sleeping at home and unable to wake up. The district is aware of my [child's] sleeping concerns affecting him in the school setting."¹⁵
- "The data (from Student's pediatrician and from the physician who examined [Student] and [student's] sleep patterns) would help teachers understand the need to accommodate my [child] as it relates to [student's] sleeping in class. The data would support absences related to sleeping concerns are medically related to [student's] sleeping disability per IEP."¹⁶
- "Medical documentation supports that when I indicate my [child's] sleeping concerns are related to [student's] sleeping disability should be acknowledged and accepted as being related to [student's] sleeping diagnosis that is a part of [student's] other health impairment disability that qualifies [student] for having an IEP."¹⁷
- "My [child's] sleeping disability is an issue that has been documented in [student's] IEP and determined eligibility for other health impairment."¹⁸

Clearly Parent is concerned that Student's sleeping issues are having a negative effect on [student's] education and these problems are not being addressed appropriately in his IEP.¹⁹ Additionally, the answers from Student's physician regarding his sleep problems pointed to actions that should be taken at home, which District had no control over.²⁰

As LHO noted, the video of the October 29 annual review included an in-depth discussion of present levels of student performance, including the sleeping problems.²¹ In my reading of the transcripts of the hearing and perusal of the Parent's and District's exhibits, I find that not only were District personnel on the IEP teams aware of Student's sleeping problems

¹⁵ Parent's Brief to SRO on February 21, 2025, p. 1.

¹⁶ Parent's Brief to SRO on February 21, 2025, p. 2.

¹⁷ Parent's Reply Brief to SRO on March 1, 2025, p. 1.

¹⁸ Parent's Reply Brief to SRO on March 1, 2025, p. 4.

¹⁹ Full Hearing Transcript, Vol. 1, testimony of Parent, pp. 21, 22., 112

²⁰ Parent Exhibit 8, Answers from Doctor.

²¹ LHO's Final Oder, January 28, 2025, p. 24.

but crafted and implemented accommodations to address these problems in Student's programming. In the May 16 IEP amendment²² accommodations that Student received included (a) chunking assignments, test, and quizzes; (b) multiple or frequent breaks; (c) extended time for quizzes and tests; (d) up to 70 additional minutes to complete class work; (e) classroom assignments abbreviated (at teacher discretion); (f) ten days to make up work when absent; (g) use daily communication logs; (g) up to one additional day to complete unit tests; (h) when Student was given an assignment for class or homework student was required to complete ½ of the assignment; (h) a one day grace period to complete projects, and (i) transportation. Additionally, Student was determined eligible for extended school year services.

In the video recording of the facilitated IEP meetings, held on August 6, 2024 and October 29, 2024, Z.B's. sleep problems were discussed. At these meetings, a decision was made to provide Student with 15 hours of tutoring a month. **In these meetings, teachers on Student's IEP team were well aware of the sleeping issues and were doing their best to address it. Moreover, they were doing so appropriately.**

Issue #4: An issue that has run through a number of hearings between Parent and FCSD, including the current hearing, is the perception that Student needs to be held accountable for his behaviors and that the best route to assisting him is for Parent and FCSD to work together in a cooperative manner. These issues have been brought up by LHOs and SROs in previous hearings as well as members of Student's IEP teams.

The issue of holding Student accountable was best summed up by Student's tutor during her testimony.²³ She explained how hard Student's teachers work so help student and how student is not being held responsible for student's behavior. "...the teachers are doing the best they absolutely can and they're going above and beyond to make sure—to ensure that ([Student]) gets what [student] needs. It's almost like everybody's in the fight but [student] but it's [student's] fight... Why doesn't [student] know where [student's] assignments are? What is the problem with [student] having to write down where [student's] assignments are? This is [student's]

²² District Exhibit 13, IEP Amendment, May 16, 2024,

²³ Full Transcript, Vol. 3, Testimony of Student's Tutor, pp. 560-566.

²⁴ Full Transcript, Vol. 3, Testimony of Student's Tutor, pp. 560-566.

work...You know, why is that not a piece of the puzzle so that [student] can have some accountability?”²⁴ The issues that Student’s tutor brings up perhaps best sums up the concepts of skill deficits and performance deficits. Skill deficits is when a student does not possess a particular skill whereas a performance deficit indicates a student possesses the skill but chooses not to perform it.²⁵ For example, math is an area in which Student has skill deficits; however often Student chooses not to accept accommodations attempted by student’s general education teachers,²⁶ plays on student’s cell phone rather than doing assignments,²⁷ or refuses to do an assignment when requested,²⁸ which may be examples of performance deficits. My review of the testimony and exhibits indicate that clearly Student has skill deficits, which the teachers of Student are doing their best to address, but student has also performance deficits which only Student can address. Failing to hold Student accountable and making excuses for student will not benefit Student in the long run.

Student is beginning student’s high school career. If student graduates with a diploma, as is the current plan²⁹, student will no longer be eligible for services under the IDEA. **It will benefit Student if Parent and FCSD cease bickering on issues and focus on Student’s educational progress over the next few years. I, like the LHO, do not expect that this will take place. Continuing on in this manner will only serve to hurt Student's education and likely his future.**

Issue #5: Parent expressed concerns regarding communications with District. In her appeal brief she noted “being ignored is frustrating and makes it difficult to handle and resolve issues as it relates to my [child’s] education.”³⁰ Parent testified in the present hearing about the problems getting records from District.³¹ This is not the first time that District has been accused of withholding information. In some of the earlier hearings this problem was borne out. In the hearing at the end of Student’s fifth grade and sixth grade, District refused to disclose

²⁵ See National Library of Medicine for an explanation of skill deficits versus performance deficits, <https://pmc.ncbi.nlm.nih.gov/articles/PMC6166657/>

²⁶ Full Transcript, Vol. 3, Testimony of special education teacher, p. 424.

²⁷ Full Transcript, Vol. 3, Student’s math teacher-pp. 494 & 499.

²⁸ Full Transcript, Vol. 3, Student’s math teacher -p. 500.

²⁹ Full Hearing Transcript Vol. 3, Testimony of special education teacher, p. 395.

³⁰ Parent’s Brief to SRO on February 21, 2025, p. 4.

³¹ See Full Transcript, Vol. 1, Testimony of Parent, p. 16.

³² LHO Decision, January 28, 2025, p. 6.

counseling records because officials maintained the records were personnel documents rather than educational records. The LHO found to be a procedural violation of IDEA.³² Similarly, in a hearing in the last few months of Student’s sixth grade, the LHO found that District failed to produce the tutoring records as ordered in the previous hearing. The LHO noted that “While those records reinforced the frivolity of the District’s claim that they were not education records,” they revealed that Parent may have known the contents of the documents about she complained were not available.³³ Again, in a hearing brought when Student was in eighth grade, FCSD denied access to a counseling record and again argued it was a personal record. The LHO found this to be a procedural error and ordered FCSD to product the information requested.³⁴ The LHO also “admonished parent for continuing to demand things for no apparent purpose and for continued efforts to play ‘gotcha’ over issues such as information Parent already had...”³⁵ As LHO wrote, “in the course of two cases, considerable time and money was spent about information Parent already had and that mattered little.”³⁶

In addition to the LHO’s finding in earlier hearings, a state complaint investigator also found that FCSD “did not make the records available to the Parent” and “SCDE finds the District violated the requirements set forth in 34 C.F.R. § 300.501 and 34 C.F.R. § 300.613 by not producing the records requested in a timely manner for the parent prior to the IEP meetings conducted after the records request and prior to the due process hearing.”³⁷ The complaint investigator ordered FCSD to develop internal procedures and practices that address the District’s response to parent request.

It would seem that regarding the issue of communication, both sides were at fault. I advise District personnel to take seriously U.S. Court of Appeals for the Ninth Circuit’s admonition that “Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA.”³⁸

³³ LHO Decision, January 28, 2025, p. 9.

³⁴ LHO Decision, January 28, 2025, p. 15 & 16.

³⁵ LHO Decision, January 28, 2025, p. 17.

³⁶ LHO Decision, January 28, 2025, p. 10.

³⁷ Parent Exhibit #28, State Complaint Resolution Letter, January 28, 2023, pp. 8-9.

³⁸ *Amanda J. v. Clark County School District*, 267 F.3d 877 9th Cir. 2001), p. 892.

³⁹ Due Process Hearing Complaint, October 31, 2024.

⁴⁰ See ZB Appeal Closing Brief by Parent 02/21 2025, pp. 3, 5, 9, 12, 13; Parent Reply Brief _3-1, pp. 3 &4.

Issue #6: Parent alleged two issues regarding Student’s IEP in the original due process complaint.³⁹ First, parent alleged that the IEP was not implemented as agreed upon. Second, Parent alleged that she was excluded from meaningful participation in the IEP process. Both are serious allegations. Parent also raised the issue of tutoring and requesting reimbursement for paying for tutoring services.⁴⁰ In the original due process hearing complaint, Parent addressed tutoring vis-à-vis her exclusion from meaningful participation in IEP development, so I will discuss this issue in a later section.

With respect to the first assertion regarding failure to implement, the U.S. Court of Appeals for the Fourth Circuit has noted that as other courts have recognized, the failure to implement a material or significant portion of the IEP can amount to a denial of FAPE...Accordingly we conclude that a material failure to implement an IEP, or put another way, a failure to implement a material portion of the IEP, violated the IDEA.⁴¹

The pertinent issues in an allegation of IEP implementation failure is whether the school district effectuated an important part of the student’s IEP. In the due process complaint, Parent asserted that the school district failed to implement Student’s IEP for the 2024-2025 school year in the following areas: (a) daily bus transportation, (b) transportation reimbursement, (c) providing a Chromebook and charger, (d) abbreviation of classroom assignments, (e) communication log, and (f) teacher training and/or consultation.⁴² There is evidence in the hearing transcripts that Student did have two Chromebooks,⁴³ although Parent did not address this failure in her appeal of the LHO’s decision. There is also evidence that classroom assignments were abbreviated and often chunked⁴⁴ (i.e., breaking assignments into smaller, more manageable parts) and that student received transportation or student’s mother was reimbursed for bringing him to school.⁴⁵ There was a question of whether Parent received one or more of the checks. That can easily be addressed by school district officials checking to see if the checks had been issued and cleared the district’s bank. Testimony indicated that teacher training and consultation were provided by the special education teacher.⁴⁶

⁴¹ Sumter County 17 v. Heffernan, 642 F.3d 478, 484 (4th Cir. 2011).

⁴² Due Process Hearing Complaint, October 31, 2024, Letter to SCDE titled “DPR 10.30.24.”

⁴³ Full Hearing Transcript Vol. 2, Testimony of special education supervisor, p. 363; Full Hearing Transcript Vol 3, Testimony of Student’s math teacher, p. 493.

⁴⁴ See Full Hearing Transcript Vol. 2, Testimony of special education supervisor, p. 362; Full Hearing Transcript Vol 3, Testimony of assistant principal, pp. 440 & 454; Testimony of Student’s math teacher, p. 500.

⁴⁵ District exhibits 3, 4, & 5.

⁴⁶ Full Hearing Transcript Vol. 2, Testimony of special education supervisor, p. 341; special education teacher, p. 424.

An area that District did not implement as well as the implementation of other supplementary aids and services was in the filling out of the communication logs. Parent addressed this problem in her testimony,⁴⁷ both videos of the facilitated IEP meetings, and her brief and reply brief to the SRO. The failure to completely fill out the communication logs was also noted by the special education teacher.⁴⁸ Because these communication logs were accommodations required in Student's IEP, they should be completed correct by Student's teacher. However, **failure to fill out a few communication logs correctly does not constitute a material failure in IEP implementation. FCSD is encouraged to stress the importance of how general education administrators and teacher have a responsibility to implement all supplementary aids and services as agreed upon by the IEP team.**

Parent also alleged that she was excluded from meaningful participation in the IEP process. This assertion has been made in previous hearings as well. An examination of the transcripts, exhibits, and video recordings of the two IEP meetings show a Parent highly involved in the IEP process. For example, two IEP team members testified that Parent's advocacy for increased tutoring hours resulting in tutoring hours per month being nearly doubled, from 8 hours to 15 hours.⁴⁹ Because Parent disagreed with the consensus of Student's IEP team, which was to increase to 15 hours of tutoring, does not constitute a failure to include her in the IEP process. **I agree with LHO that "no fair review of the IEP meetings could suggest that District denied Parent the opportunity to provide input" into the IEP process.**⁵⁰

FINAL ORDER OF LHO

LHO divided Parent's allegations into (a) substantive claims, (b) implementation claims, and (c) procedural claims. I next review and comment on the aspect of LHO's ruling.

a) Substantive Claims⁵¹

⁴⁷ See Full Hearing Transcript Vol. 1, Testimony of Parent, pp. 22, 24, 73, & 240.

⁴⁸ Full Hearing Transcript Vol. 3, Testimony of special education teacher.

⁴⁹ Full Hearing Transcript Vol. 2, Testimony of special education supervisor, p. 338; Full Hearing Transcript Vol. 3, Testimony of assistant principal, p. 435.

⁵⁰ LHO Decision, January 28, 2025, p. 45.

⁵¹ LHO Decision, January 28, 2025, pp. 32-39.

1. “Denial of Compensatory Services for Documented Educational Gaps.”

According to LHO, “Parent seeks compensatory education, but she failed to identify the “documented educational gaps’ on which she relies. Nor does she point to any request for compensatory educational services that the IEP team denied.”

2. “Denial of ‘necessary support in math, ELA, and study skills class’. “According to LHO, “Parent offered no evidence of any failure to support ELA or Study Skills” and the “necessary support issues for math appears related solely to the amount of tutoring provided for math...Parent has not met her burden of showing that the amount of tutoring provided (as she requested) is insufficient based on the information available to the IEP team...thus, there is no basis in the Record to find that District denied a FAPE by not providing enough tutoring.”
3. Medical Accommodations and Related Services. LHO divided his discussion into the following sections: (a) Medical accommodations, which LHO noted appeared to primarily related to Parent’s request for medical homebound over which LHO had no jurisdiction to review or decide, a request regarding Student’s individual health plan (IHP) of which there was no mention in Parent’s original due process hearing request, and behavior support, which Parent offered no evidence of behavior supports that were already in place, (b) football, which LHO found that “Parent offered no evidence that football is necessary to provide FAPE,” (c) Counseling, the LHO found that the Parent offered no evidence and any counseling-related services that District refused to provide. LHO also found that the issue was not related to the current academic year, and even if it was, the evidence of noncompliance was lacking.

- b) Implementation Claims. Parent alleged that District failed to implement the corrective actions mandated by the SCDE in the complaint investigation of District. LHO noted that SCDE had issued a letter in which District resolved all problems in the complaint and closed the complaint⁵² five months before the due process hearing request was filed. LHO, therefore, dismissed these allegations.

Parent also alleged failure to implement Student’s IEP. A failure to implement claim

⁵² District Exhibit 1.

requires that a school district has failed to implement material portions of the IEP. LHO divided these allegations into three areas: (a) Transportation reimbursement, which LHO dismissed without prejudice and suggested that the District check bank records to determine if the reimbursement check cleared and the IEP team develop a method to determine future compliance, (b) Abbreviation of assignments, in which the LHO found no evidence of noncompliance, and (c) Communication forms, an area in which the LHO found evidence that the District had provided communication.

- c) Procedural Claims. Again. The LHO divided Parent's procedural claims into the following areas: (a) Exclusion from meaningful participation in the development of Z.B's IEP and (b) Failure to provide timely access to records. In both of these areas, LHO found no evidence to support Parent's procedural claims.

SRO Ruling

Clearly, Parent is a forceful advocate for her child. An adjudicative setting, however, requires more than advocacy, it requires proof. As the U.S. Supreme Court held, "The burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief."⁵³ In the present hearing, the party seeking relief is Student, represented by Parent. I agree with the LHO that Parent has not met the burden of proof with respect to allegations that the District has committed procedural, substantive, and implementation errors and, thus has failed to provide a FAPE to Student. Thus, I affirm the LHO's ruling in all respects.

A Final Plea to the Parties

If all goes according to plan, Student will be graduating in a few years and no longer eligible for services under the IDEA. It is the hope of this SRO, and one expressed by LHO Murphy in this hearing and previous hearings, that the parties work together in the best interests of Student. For Parent that means abandoning efforts to seek due process to force District into complying with her beliefs regarding Student's education. Moreover, best results come from working cooperatively as an IEP team member and interjecting opinions and beliefs in a cooperative and not confrontational manner. Student's best allies are his teachers. As Student's tutor expressed in her testimony

⁵³ Schaffer v. Weast, 546 U.S. 49, 62 (2005).

Teachers are extending him grace, they're allowing him to do more than any other child I have seen be allowed to do as far as making up work, having access to assignments, you know, having to be retaught, and you know, instead of giving five days, he's been extended probably a couple of weeks of some of these assignments and stuff...So that's what I mean by extending grace. I mean, the teachers are doing the best they absolutely can and they're going above and beyond to make sure—to ensure that (Student) gets what student needs.⁵⁴

The calls from this and previous hearings to require Student to assume responsibility for his actions will also be increasingly important in future postsecondary education and work. Whereas, persons of all ages with disabilities have protections under laws such as Section 504 of the Rehabilitation Act and the American with Disabilities Act, failing to arrive at work or being late to university football practice because of over sleeping may not be an acceptable excuse.

At the same time, District officials are also at fault for these continued hearings. They have previously committed procedural and substantive errors in Student's special education. In his final decision, LHO Murphy pointed out these violations. It seems as if district officials sometimes find fighting an acceptable alternative to cooperation and discussion. Spending what the LHO referred to as "likely hundreds of thousands of dollars"⁵⁵ on hearings and being subject to state complaint investigations and adverse findings does not seem a good use of public funds. District officials would be well advised to remember the U.S. Supreme Court's statement that "the core of the statute...is the cooperative process that it established between parents and schools."⁵⁶

NOTICE OF APPEAL RIGHTS

Any party aggrieved by this decision may commence a civil action with respect to the complaint presented in any state court of competent jurisdiction or in a district court of the United States within ninety (90) days of the date of this decision. 20 U.S.C. § 1415(i)(2)(A)-(B); 34 C.F.R. § 300.516; S.C. Code Regs. § 43-243(V)(17).



Mitchell L. Yell, Ph.D.
State-Level Review Officer
March 6, 2025

⁵⁴ Full Hearing Transcript Vol. 3, Testimony of Student's Tutor, pp. 565-566.

⁵⁵ LHO Decision, January 28, 2025, p. 54.

⁵⁶ Schaffer v. Weast, 546 U.S. 49, 49 (2005).