

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

STATE OF SOUTH CAROLINA	)	
	)	
	)	
G.C. (Foster Parent) on behalf of	)	
Minor Child J.G. (Student)	)	
	)	
Petitioners,	)	
v.	)	MITCHELL YELL
	)	STATE-LEVEL REVIEW OFFICER
	)	
Florence County School District 1,	)	
	)	
District/Respondent	)	DECISION
	)	
	)	
	)	
	)	

This matter is before me pursuant to an appeal of the Local Due Process Hearing Officer (“LHO”), Douglas R. Dent’s Final Order dated November 18, 2024. The South Carolina Department of Education (“SCDE”) received the initial request to appeal the LHO’s decision on November 25, 2024, from Foster Parent although she had not yet received the LHO’s decision. The SCDE, however, was closed for the Thanksgiving holiday and notified Foster Parent that she would have ten calendar days from the receipt of the decision to file her request for an appeal. Foster Parent subsequently refiled her request for appeal on December 1, 2024.

On December 6, 2024, I was appointed the state-level review officer (“SRO”) in the appeal. Foster Parent and District were notified of my agreement to serve as SRO on the same day. Petitioners were represented by Foster Parent (“Petitioner”) on behalf of her minor foster child, Student, (“Student”) and Florence County School District 1 (“FCSD”) 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. The due date for the request for the state level review was December 2, 2024. Based on the date of December 2, the due date for the final decision on appeal was established as January 1, 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 May 19, 2023, I emailed the District and Petitioner (copied to the SCDE) a request that the parties adhere to the following schedule in submitting briefs to me: Foster Parent's brief due December 20, 2024, District brief due December 22, 2024, Foster Parent's reply brief due, if needed, December 23, 2024. I received the Petitioner's and District's briefs and the Petitioner's reply brief 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

September 11, 2024	Petitioner filed due process hearing request.
September 20, 2024	Petitioner and FCSD participated in a resolution session, which did not result in an agreement.

¹ 34 C.F.R. § 300.515(b).

² 34 C.F.R. § 300.514.

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

November 12 and 13, 2024	A due process hearing was held. Petitioner requested that the hearing be open to the public. ⁴
November 18, 2024	LHO issued his final order.
December 2, 2024	Petitioner filed a notice of appeal with SCDE.
December 6, 2024	SCDE notified Foster Parent and District 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 due dates of briefs and that January 1, 2025, was the deadline for issuance of the SRO's decision.

BACKGROUND

Student is a student with autism and attention deficit hyperactivity disorder (ADHD) who attended the School in the Florence 1 School District. Student was educated in a self-contained program designed specifically for students with autism. The program, which was taught by Student's special education teacher, was highly structured and used guided curriculum in reading and math, which was applied in whole group instruction, small group instruction, and independent learning stations.⁵ Behavior support programming and token systems were used in the classroom. Student also has a paraprofessional assigned to him. Moreover, an autism consultant provided support to Student's special education teacher, as did the autism coordinator for the district. The autism consultant, the autism coordinator for the district, and the special education coordinator for the district, testified as to the excellence of Student's special education teacher's teaching abilities. According to the autism consultant "[Student's special education teacher] is an amazing educator...She's one of the best teachers I probably have ever worked with, for sure."⁶ Clearly, Student had a dedicated group of school-based professionals working to meet student's unique educational needs.

In addition to student's academic difficulties, Student also exhibited problem behaviors of concern. These problem behaviors could escalate into destructive behavior such as hitting,

⁴ Question by LHO to Foster Parent, hearing day 1, page 12, line 4.

⁵ See Student's special education teacher's description of the program, pages 162 through 165 of Day 1 hearing testimony.

⁶ The autism consultant's description of the teacher's teaching abilities, page 316 and 317, lines 25 (page 315), 11, and 12 (page 317).

kicking, scratching, and throwing things. Occasionally, Student's special education teacher would need to have her students removed from her classroom because of the intensity of Student's behaviors.

Student first attended student's special education teacher's class in January 2024. During Day 1 of the hearing, Student's special education teacher was asked if Student engaged in similar behaviors the previous year. She responded, "Last year we saw some of the same behaviors, not to the same degree as what we were seeing this year" and "we were seeing some new behaviors that weren't outlined in student's BIP" (Behavior Intervention Plan).⁷

On August 13, 2024, Student engaged in serious problem behaviors that required a two-hour intervention from the school's safety care team, school personnel, who had been trained in student escalation and de-escalation of student problem behavior. An autism consultant for the District and one of the safety care trainers for District was on site and witnessed the episode.⁸ The autism consultant noted the traumatic nature of the incidence when she referred to the occurrence as "probably the worst day of my career..."⁹ In testimony of Day 2 of the hearing, the special education coordinator for the district asserted that during the incident one of the staff members was "pretty severely injured and sent to occupational health."¹⁰

Another serious behavioral episode occurred on September 3, 2024. During this incident, Student's behavior escalated to violence toward students and staff, and included hitting, kicking, hair pulling, and spitting on teachers and staff. Student also attacked another student with a broom. When Petitioner was unable to pick Student up from school, an ambulance was called and student was transported to a local hospital.

The incidences of September 3, 2024, lead to a disciplinary removal of Student from school, which in turn triggered a manifestation determination review (MDR). The MDR was conducted on September 10, 2024. Attendees at the MDR included school-based and district-based personnel (e.g., the principal and Local Educational Agency ("LEA") representative, the autism coordinator for the district, the special education teacher, the autism consultant, and the special education

⁷ Testimony of Student's special education teacher, Day 1 of hearing, page 166, lines 7-9 and page 167, lines 304.

⁸ Testimony of the autism consultant, Day 2 of hearing, page 317, lines 16-17.

⁹ Testimony of the autism consultant, Day 2 of hearing, page 330, lines 23-24.

¹⁰ Testimony of, Day 2 of hearing, page 386, lines 9 and 10.

supervisor, Petitioner, and personnel from other agencies (e.g., the case worker for the Department of Social Services). On the basis of the review, the team determined that the conduct that resulted in the Student's disciplinary removal was "caused by or had a direct substantial relationship"¹¹ to student's disability.

Additional discussion by the team members questioned student's eligibility in the category of autism and recommended a reevaluation of Student be conducted. Team members believed student's behaviors "appeared to be manipulative."¹² At the MDR, the team also discussed Student's placement, which was "for [student] to be served at home for 45 days." The team reasoned that "we definitely needed to do something different. Student wasn't being successful and really having any learning opportunities"¹³ and that "the home-based placement offered [student] an opportunity to be educated in a setting where [student] had shown some success, and it allowed us to maintain a safe environment for both [student] and the other students in the classroom."¹⁴

On September 13, 2024, The District issued a Prior Written Notice ("PWN"), requiring that Student be assessed "to determine if [student] meets the criteria for any of the following disabilities: Autism Spectrum Disorder, Emotional Disability, Intellectual Disability, Other Health Impairment. The district will once again contract with an outside provider to complete an updated Functional Behavioral Assessment."("FBA")¹⁵In the District PWN, it was noted that Student was currently being provided special education services in the home environment and that student had been accepted at a Residential Treatment Facility (RTF).¹⁶

Student's IEP team had developed the following two-hour instructional program to continue student's special education while on homebased instruction: 30 minutes per day of reading, 30 minutes a day on math, 15 minutes per day of writing, 15 minutes day of communication, 15 minutes a day of behavior, 15 minutes per day of social emotional, and 15 minutes per day of daily living. Services were to be delivered by a speech pathologist (live or

¹¹ Language from the District Manifestation Review Form, Petitioner's Exhibit 3.

¹² Petitioner's Exhibit 3, MDR.

¹³ Testimony of District's autism coordinator, Day 2 of hearing, pages 371 and 372, line 22 (371) and lines 3-5 (372).

¹⁴ Testimony of the special education coordinator, Day 2 of hearing, page 397, lines 18-22.

¹⁵ Respondent's Exhibit 5, PWN.

¹⁶ According to Respondent's Exhibit 2, Student was subsequently admitted to RTF on September 13, 2024, and discharged against medical advice on November 8, 2024.

¹⁷ Testimony of district special education coordinator, Day 2 of hearing, page 425,426, and 427.

virtually) and a special education teacher ¹⁷These services were not in fact delivered because a bed opened up at RFT. Once Student was at RFT, student became a student at Williamsburg School District and was no longer a student of FCSD. Student was discharged from RTF on November, 8, 2024, against medical advice.

On September 24, 2024, Petitioner filed for a due process hearing. FCSD personnel and Petitioner engaged in a resolution session, which did not succeed. A two-day hearing was held on November 12 and 13, 2024.

FINAL ORDER OF THE LHO

In his opinion, the LHO noted that “it is not clear which party has the final authority to make decisions regarding the child’s care and education. While it was determined that the Petitioner had the right to request a Due Process Hearing, several actions by DSS (Department of Social Services) blurs the line of authority.”¹⁸

The LHO identified and addressed the following eleven allegations in his order:

1. The Petitioner alleged FCSD denied her meaningful participation in the IEP process and other meetings. The LHO noted that the Petitioner and her Advocate were present at each IEP meeting, the MDR, and other meetings. In many meetings, Petitioner would also be represented by personnel from various support agencies. Moreover, Petitioner had frequent and regular contact with Student’s special education teacher regarding Student¹⁹ According to the LHO, clearly, the petitioner fully participated in all major decisions regarding Student’s education. **I affirm the LHO’s decision that Petitioner participated in all major decisions and meetings regarding Student’s special education program.**
2. The Petitioner alleged that the MDR decision and results were incorrect. The MDR team determined that Student’s problem behaviors were a manifestation of student’s disability, which the LHO noted was the correct decision. **I affirm the LHO’s decision that the results of the MDR were appropriate.**
3. The Petitioner alleged that the change of placement to home-based instruction was incorrect. The LHO found, however, that home-based placement change would give FCSD personnel an opportunity to re-evaluate Student **I find that the decision to change Student’s placement change from special class to homebased placement may not have been made in accordance with the requirements of the IDEA. I**

address this issue in the following section and in my final order.

The Petitioner alleged that FCSD failed to place Student in the least restrictive environment (LRE) because homebased placement was more restrictive than the self-contained classroom at Student's school. The LHO found that "the decision to place the child in a homebased placement was the least restrictive environment at the time."²⁰ I find that the decision to change Student's placement change from special class to homebased placement may not have been made in accordance with the requirements of the IDEA. I address this issue in the following section and in my final order.

4. The Petitioner alleged that FCSD failed to follow and update Student's FBA. According to the LHO, an FBA had been conducted in the prior year and the behaviors were essentially the same, although they were more intense. Thus, he found that "any update would be redundant."²¹ However, on September 13, 2024, FCSD issued a prior written notice that "the district will once again contract with an outside provider to complete an updated Functional Behavior Assessment."²² **I affirm the LHO's decision that at the time, FCSD did not need to conduct an FBA. I also note that FCSD committed to contract with an outside provider to complete an updated FBA.**
5. The Petitioner alleged that FCSD failed to implement Student's BIP. A BIP was developed for Student on March 28, 2024, which identified strategies, interventions, and a crisis plan.²³ During Student's behavior incidences many of these procedures were used. The LHO wrote that "the testimony from those who were present when the child erupted makes it clear that any attempt to educate the child when [student] was engaging in these aggressive behaviors was futile...the BIP was not only followed but it was fully utilized."²⁴ **I affirm the LHO's decision that FCSD developed and implemented Student's BIP.**

¹⁸ Final Order of LHO, Douglas Dent, on November 18, 2024, page 4.

¹⁹ See testimony of Student's special education teacher, Day 1 of hearing.

²⁰ LHO Final Order, November 18, 2024, page 7.

²¹ LHO Final Order, November 18, 2024, page 7.

²² Prior Written Notice, September 13, 2024, Respondent's Exhibit 5.

²³ Behavioral Intervention Plan, Petitioner's Exhibit 4.

²⁴ LHO Final Order, November 18, 2024, page 8.

6. The Petitioner alleged that FCSD failed to provide the Petitioner with records. The LHO noted, however that “the Petitioner received all appropriate records and utilized them liberally in the hearing.”²⁵ **I affirm the LHO’s decision that the petitioner was provided with all necessary records.**

The Petitioner alleged that FCSD failed to provide extended school year (ESY) services because. Student’s IEP team did not provide ESY service to him between school years 2023- 2024 and 2024-2025. The LHO noted, however, that at the time Student’s special education teacher indicated that student was making progress and there were no signs of regression during extended break from school. The LHO ruled that “the failure to provided ESY services was not a violation of IDEA.”²⁶ **I affirm the LHO’s decision that FCSD did not violate the IDEA by failing to provide ESY services because evidence considered by Student’s IEP team indicated that student was making progress and did not require ESY services to receive a free appropriate public education (FAPE) at that time.**

7. The Petitioner alleged that FCSD failed to provide school-based therapy or placement at the new School-2. The LHO found that the failure of FCSD to provide a “school-based therapy program for the child did not violate IDEA.”²⁷ He also cited the testimony of Student’s school-based behavior therapist, the special education coordinator for the district, and the District that School-2 would not be meet the needs of Student. It is also important to note that FCSD did offer to pay for Student to receive outside therapy at Wellspring, however, Petitioner declined to pursue these services. **I find that FCSD may not have properly considered school based therapy and the School-2 when determining programming for Student. I address this issue in the following section and in my final order.**
8. The Petitioner alleged that FCSD failed to provide Student a FAPE as required by the IDEA.

According to the LHO, evidence showed that Student did receive a FAPE. Student’s education was provided in a self-contained classroom taught by Student's

²⁵ LHO Final Order, November 18, 2024, page 8.

²⁶ LHO Final Order, November 18, 2024, page 9.

²⁷ LHO Final Order, November 18, 2024, page 10.

special education teacher, a teacher with expertise in working with students diagnosed as having autism. The classroom was highly structured, paraprofessionals were present (including a full-time shadow to help directly with Student), and curriculum and programming were designed specifically to meet student's educational needs. The LHO concluded that "[student] was given an IEP which offered [student] an opportunity to obtain meaningful educational progress...."²⁸. Unfortunately, Student's increasing problem behaviors and violence toward staff and others led to the MDR and the due process hearing. From September 13, 2024, to November 8, 2024, student was placed in the RTF facility,²⁹ in the Williamsburg County School District. On November 8, Student was removed from the facility. According to the RTF Discharge Packet, "This discharge was not planned and therefore considered an AMA (Against Medical Advice) as (Student) was not ready for discharge due to the continuation of student's inappropriate behavior."³⁰ **I affirm the LHO's finding that when student was under the auspices of FCSD, Student did receive a FAPE.**

9. The petitioner sought payment for her advocate's fees and costs in this matter. LHO responded that "This is not within my power to grant and if it were, it would require a ruling in the Petitioner's behalf. Such a ruling is not the case in this instance."³¹ Although, the IDEA does not address whether parents who prevail can recover fees for services performed by lay advocates, official in the U.S. Department of Education (ED) noted that a parent's right to be accompanied and advised by a lay advocate does not translate in the right to receive fees for such work. According to the ED, "consistent with the Supreme Court's recent decision in *Arlington Central School District v. Murphy* (2006), if Congress wishes to allow recovery of expert's fees by prevailing parents, it must include explicit language authorizing that recovery, which was not done in the (IDEA). This would apply whether the expert was seeking payment for testifying or advocating."³² **I affirm the LHO's decision not to grant the fees and costs of the lay advocate to Petitioner.**

²⁸ LHO Final Order, November 18, 2024, page 10.

²⁹ See Respondent's Exhibit 2, RTF Discharge Packet.

³⁰ Respondent's Exhibit 2, RTF Discharge Packet, page 4.

³¹ LHO Final Order, November 18, 2024, page 12.

³² 71 Fed. Reg. 46,708(2006).

10. The LHO, thus found that when Student was in the school district's control, FCSD did offer him a FAPE within the requirements of the IDEA. The LHO dismissed the Petitioner's due process hearing request with prejudice.

DISCUSSION

As the SRO, it is my task to examine the entire hearing record and arrive at an independent decision.³³ 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.³⁴ It is important to note that Supreme Court also ruled the party seeking relief bears the burden of proof.³⁵ Thus, Petitioner assumed the burden of proof in this matter.

I reviewed the transcripts, briefs, exhibits, LHO's final order of November 18, 2024, **I find that the hearing was regularly conducted by LHO, Douglas Dent, in accordance with the requirements of the IDEA.**³⁶

Prior to turning to the ruling, I will comment on a few issues of importance brought up in the Petitioner's brief on December 20 and 23, 2024 and the Respondent's brief of December 22, 2024.

Issue 1: Petitioner brought procedural errors that she contends the LHO made during the hearing. Although there may have been a few inaccuracies, the factual and legal conclusions by the LHO were made in accordance with the testimony and exhibits provided during the hearing and were regularly made. As such, the LHO's findings and decisions are entitled to deference.

Three of the LHOs evidentiary rulings were questioned by Petitioner. The LHO excluded: (a) an audio recording of the MDR meeting, and (b) a "stack of documents."³⁷

Additionally, Petitioner believed it an error for the LHO to allow the admission of the RTF Discharge Packet after the 5-day evidence exchange. This was within the LHO's discretion and

³³ 34 C.F.R. § 514 (b)(2).

³⁴ Doyle v. Arlington County School Board, 953 F.2d 105 (4th Cir. 1998).

³⁵ Schaffer v. Weast, 546 U.S. 49 (2005).

³⁶ 34 C.F.R. § 514 (b)(2)(ii).

³⁷ Gloria Clarkson, Appeal Briefing JG 2024.12.20, page 1.

the topic was relevant to the LHO's decision making process. Whereas, I may have decided differently on a few issues or handled situations in a somewhat dissimilar manner, that is no reason to assume that the LHO's findings and rulings were not supported by the record, including these rulings on admission of evidence. Thus, I conclude the factual conclusions, legal conclusions, and evidentiary rulings reached by the LHO were regularly made.

Issue 2: Petitioner contended that FCSD failed to provide Student with a FAPE as required by the IDEA. In the two days of hearings, much of the testimony involved Student's behaviors, nonetheless, the evidence included Student's individualized education program (IEP), amendments to IEPs, FBA, BIP, prior written notices, and a progress report. A perusal of these documents show they are thorough and address Student's needs as expressed in the testimony and briefs, especially with respect to academics, speech and language, and daily living skills. Petitioner brought up the refusal of the IEP team to add the services of a school behavioral therapist to Student's program and the failure of the team to consider and discuss placement at School-2, FCSD's new program for students with serious emotional disturbances. In fact, testimony revealed problems in these areas. For example, during testimony when Student's special education teacher was asked if she referred Student to the school behavior therapist, she answered that she had a conversation with her "but I wasn't sure what the process was and what needed to occur for that to happen."³⁸ During her testimony regarding the IEP meeting of August 19, 2024, the special education coordinator for the district noted that "we (the IEP team) ultimately decided to pursue school- based therapy within the school and first collect data on if that was an appropriate intervention or therapy for [Student]"³⁹

Similarly, when Petitioner attempted to bring up placing Student at School-2, she was told that FCSD required three months of data before a student could be referred to School-2.⁴⁰ According to the PWN of August 19, 2024, "The SBT (school-based therapist) and the

³⁸ Testimony of Student's special education teacher, Day 1 of hearing, page 159, lines 16-18.

³⁹ Testimony of district special education coordinator, Day 2 of hearing, page 391, lines 19-22.

⁴⁰ Testimony of Student's school-based behavior therapist, Day 1 of hearing, page 20, lines 13-16.

special education coordinator for the district stated that there were three months of data needed to make that determination (i.e. admittance into School-2).⁴¹ However, when the FCSD special education coordinator was asked about the three months of data requirement for consideration for School-2, she answered “I’m not really sure where the phrase ‘three months of data’ came from.”⁴²

The LHO or SRO should not substitute their own notions of sound educational policy for those of local school authorities⁴³ and according to the Supreme Court, the decision-maker should “appreciate that the question is whether the IEP is reasonable, not rather the court (or hearing officer) regards it as ideal...An IEP must aim to enable the child to make progress; the essential function of the IEP is to set out a plan for pursuing academic and functional advancement.”⁴⁴ Student’s IEPs and amendments met those standards. However, it is not clear to me that FCSD fully considered the options of school-based therapy and the School-2 required by the IDEA. I address this issue in my final order.

Issue 3: Petitioner asserts the homebased placement is not the LRE for Student. The LRE mandate of the IDEA requires that:

to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.⁴⁵

This definition contains two parts. The first part details the presumptive right of all students with disabilities to be educated with students who are not disabled. This presumptive right means placement teams must make good faith efforts to place and maintain students with disabilities in less restrictive settings. The presumption in favor of placements in the regular class is highlighted in the regulations requiring that “a student with a disability may not be removed

⁴¹ Prior Written Notice, Petitioner’s Exhibit 2, page 1.

⁴² Testimony of district special education coordinator, Day 2 of hearing, page 416, lines 21-22.

⁴³ M.S. ex. rel Simchick v. Fairfax County School Board, 553 F.3d 315, 326 (4th Circ. 2009).

⁴⁴ Endrew F. v. Douglas Country School District RE-1, 580 U.S. 385, 137 S.Ct. 988, 992 (2017).

⁴⁵ IDEA, 20 U.S.C. § 1412.

from an age-appropriate general education classroom solely because of modifications needed to the general curriculum.”⁴⁶

The second part of the LRE definition sets the terms by which the presumption that all students with disabilities are to be educated in the general education classroom can be rebutted or overcome. This part of the LRE requirement allows for the education of some students with disabilities in more restrictive settings, when appropriate, but only in situations in which educating a student in general education classrooms with the use of supplementary aids and services will not result in the student receiving an appropriate education. The LRE is the placement in which the individual student may make progress toward their IEP goals through the use of special education and supported by related services and accommodations, while being educated in the LRE. This “provision establishes a presumption, not an inflexible mandate.”⁴⁷

The means by which Congress enabled school districts to determine a student’s placement that had the greatest degree of integration with students without disabilities while conferring a FAPE was the continuum of alternative placements requirement. Regulations to the IDEA require that “each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities...”⁴⁸ Moreover, this continuum was to include (a) instruction in regular classes, (b) special classes, (c) special schools, (d) home instruction, and (e) instruction in hospitals and institutions.⁴⁹ A placement is generally considered more restrictive the less it resembles the regular class environment.

The purpose of the continuum was to ensure that students with disabilities were educated in the LRE that was appropriate to their needs. The regulations to the IDEA required that all public school districts “shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.”⁵⁰ The purpose of the continuum was to allow school-based personnel in consultation with a student's

⁴⁶ 34 C.F.R. § 300.116(e).

⁴⁷ *Hartmann by Hartman v. Loudoun County Board of Education*, 118 F3d 399 (4th Cir, 1997).

⁴⁸ 34 C.F.R. § 300.115(a).

⁴⁹ 34 C.F.R. § 300.115(b)(1).

⁵⁰ 34 C.F.R. § 300.551.

parents to choose from a number of options in determining the LRE that was most appropriate for the student. The regulations to the law required the various alternative placements were to be made available so that the IEP teams or placement teams would have access to determine the setting in which a student's IEP could be appropriately implemented.

Such was the situation with Student. When school year began, Student was placed in the special classroom designed specifically for students with autism (i.e., step 2 of the IDEA's continuum of alternative placements). However, soon after the school year began, student had two long lasting and serious episodes of problem behavior that resulted in injuries to others, disruption of the school environment, and, on one occasion, an ambulance transporting Student to the hospital.

Attempts by school personnel to use the preventative and calming strategies in student's BIP and crises plan were ineffective.

In conjunction with an MDR, held on September 10, 2024, a team of school-based personnel, personnel from DSS, a Guardian Ad Litem, and Petitioner met. During the meeting the following actions were taken: "The team reviewed a disciplinary offense which occurred on 9-30-24...[Principal], recommended that (Student) be placed on homebased instruction for a period of 45 days and the school IEP team agrees. The homebased placement is not a disciplinary consequence or punishment to [Student]. Student is engaging in behavior that is dangerous to students and staff. Maintaining the current placement is substantially likely to result in injury to the child or others. When considering this data, the school team agrees that a homebased placement is (Student's) least restrictive environment."⁵¹ Foster Parent, the DSS case manager, and the Guardian Ad Litem disagreed and proposed that Student, continue in the school setting.

Clearly, the potential harmful effects student's behavior and disruption of learning services to self or others are legitimate considerations when determining placement.⁵² The U.S. Court of Appeals for the 4th Circuit has held that the "disruptive effects of student's behavior upon other students" are also proper considerations when determining programming and

⁵¹ See prior written notice, attached to Petitioner's Exhibit 3, page 5 of 6 total pages.

⁵² 34 C.F.R. § 300.116(d).

Court of Appeals for the 4th Circuit has held that the “disruptive effects of student’s behavior upon other students” are also proper considerations when determining programming and placement. These were considerations of Student’s placement team in deciding to move him to the homebased setting. However, I believe the error made by school-based personnel on the team was in failing to fully consider the full range of alternative placements. In meetings, Foster Parent repeatedly brought up School-2 as a possible placement for Student. This setting, which would be a special school (i.e., the third step on the continuum), would be a more restrictive placement than the special class, but less restrictive than homebased placement (i.e., the fourth step on the continuum). Unfortunately, the district personnel on the team first noted that School-2 placement was unavailable because data had to be collected for three months prior to considering admission and then failed to discuss the option. Later testimony during the hearing by FCSD personnel indicated that School-2 may not have been an appropriate placement, however, the error made by district personnel was in not fully considering this option. I address this issue in my final order.

Issue 4: When I first contacted the participants in this matter, the status of Student’s current educational programming and placement were unclear to me. Testimony of the District at the end of day two of the hearing indicated that an upcoming meeting on Student’s placements was to be held six or so days from the date of the hearing, which was November 13. On December 23, 2024, I sent an email to all participants in which I asked if the Petitioner if Student was being educated in FCSD. Petitioner replied via email:

Not currently. I have had 2 IEP meetings since this time. One on Thursday, November 21st then another on December 19th. The December 19th meeting was requested on December 4th but not granted until the 19th. This meeting was requested by myself after the District asked me to send my letter from the psychiatrist stating that [Student] was safe to return to school. I have been requesting an alternate in school placement for [Student] but continue to be denied...I have argued that the 2 hr a day homeschool being forced on [Student] is not appropriate due to [student’s] disability and that [student] will be unable to meet [student’s] IEP goals going into 6th grade.

If Student has been on homebased instruction since the MDR and placement meeting on September 10th, student would have been on homebased instruction for over 45 days.

FINAL ORDER

- If FCSD has not done so, I order the district to arrange for and conduct an outside FBA, as noted in Respondent's Exhibit 5, prior written notice, dated September 13, 2024.
- If FCSD has not done so, I order the district to arrange for and conduct an evaluation of Student's academic and functional needs (e.g., behavior, communication).
- I order FCSD to convene a meeting on Student's programming and placement that includes Petitioner and involved parties (e.g., DSS personnel) as soon as is feasible.
- I order that during this meeting, a new IEP and BIP be developed for Student.
- During the placement consideration section of the meeting, the full continuum of placements must be discussed and fully considered to ensure that Student receives a FAPE in the LRE.
- If Student is no longer a student in FCSD, but attends another district, the orders will not apply.

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
January 5, 2025