

STATE OF SOUTH	)	
CAROLINA HORRY	)	
COUNTY	)	
In the Matter of:	)	LOCAL DUE PROCESS HEARING
	)	HEARING OFFICER BRUCE J. SMITH
	)	
	)	
J.R. on behalf minor child M.R.,)	)	
Petitioner	)	
v.	)	FINAL ORDER
	)	
Horry County School District,	)	
<u>Respondent.</u>	)	

PROCEDURAL HISTORY

This Due Process Hearing is before me pursuant to a request, initially received via email on June 26, 2025, that I serve as the Local Due Process Hearing Officer (LHO). As a result of the parties' failure to fully resolve this dispute during the resolution period, a pre-hearing conference call was conducted on July 25, 2025, with two follow-up calls and emails to address "legal representation at the hearing", "the role of an advocate during a hearing" and "the process and order of calling witness." Both parties participated in the conference calls at the request of the hearing officer to verify the exchange of documentation and logistics for the hearing. The time and date for the hearing was set for August 27 and 28, 2025, at 9:30 a.m. at a Horry County Schools District (District) meeting room located at 335 Four Miles Road, Conway, SC. The date of the hearing was subsequently changed to September 3rd and 4th due to a scheduling conflict for a District witness. The hearing was completed on September 3, 2025.

SUMMARY

The Petitioner/Parent filed this action on the basis that the District violated the Individuals with Disabilities Education Act (IDEA) by failing to appropriately identify the Student's category of disability and placing the Student in a self-contained setting.

PROCESS

This hearing was conducted according to a preset format that was presented to both parties and reviewed at the outset of the hearing. The hearing began at approximately 9:30 a.m. and was completed at approximately 3:30 p.m. on September 3, 2025. Both parties were offered the opportunity and began the hearing with an opening statement. (Exhibits P-1 & D-22) This was followed by the presentation of the Petitioner's case and the calling of three witnesses, followed by calling of five witnesses by the District. Both parties had an opportunity to cross-examine the witnesses and offer rebuttal witnesses.

Afterwards, each party offered and presented the hearing officer with written closing statements which are now part of the record.

ISSUES

The Petitioner contends that the District failed to provide the Student a Free Appropriate Education (FAPE) under the IDEA by:

1. Failing to appropriately identify the Student's category of disability.
2. Placing the Student in a self-contained setting and not allowing the Student to attend any general education classes, thus denying her access to the least restrictive environment.

FINDINGS

Testimony, supporting evidence, and arguments presented at the hearing were all considered in my findings as they related to the issues set forth above.

- L. The M.R. is a 13 year, 1-month-old female student who is currently identified as a student with a disability under the category of Multiple Disabilities (MD) including Specific Learning Disability (SLD) and Other Health impairment (OHI), with a secondary disability in the category of Speech-Language Impairment (SLI).
2. M.R. is a 6th grade middle school student in the Horry County School District.
3. A brief summary of M.R.'s history offered by the Respondent in its opening

statement was found to be credible after hearing testimony in the hearing.

When the [Student] transferred to Horry County Schools in September of 2020, she came with an IEP. . . identifying her as a student with a speech-language disability, but also providing special services in English Language Arts, Mathematics, Speech and Occupational Therapy in February 2021, team conducted a reevaluation review. The team reviewed multiple sources of information, including outside evaluations from MUSC and Greenwood Genetic Testing Center, prior district evaluations and the Student's present levels of academic and functional performance. Based on that review, the team appropriately determined the Student qualified under Other Health Impairment as primary disability with a secondary Special -Language Impairment, and continued to provide special education services across academic and related service areas.

Over the years that followed, the district repeatedly convened IEP meetings - with appropriate notice, full team participation, and parental involvement- to review the Student's progress, consider the parent's concerns, and adjust services as necessary. . . . The parent's request for general education participation was discussed, documented, and considered, but the team concluded that such a placement would not meet the Student's needs.

Following that meeting, the team reconvened multiple times - in August, September, and October of 23 - each time with parent present and fully participating. The records from those meetings reflect that the parent's concerns were documented, considered, and responded to through Prior Written Notices. (During the hearing the Parent disputed receiving all of the Prior Written Notices) The district also reviewed and incorporated outside evaluations and provider notes submitted by the parent.

...in April of 2024, the IEP team again conducted a reevaluation review. After reviewing updated outside evaluation reports and the Student's progress, the

team determined that the Student's profile was best described by eligibility in the category of Multiple Disabilities, including Specific Learning Disability and Other Health Impairment. with a secondary Speech-Language Impairment.

4. In presenting a brief summary of issues, Petitioner was also found to be credible and sincere after hearing testimony and contention offered in her opening statement, "I do not believe that [Student] is currently being educated in the least restrictive environment ... the classification was changed to speech, from speech to OHI without anyone explaining this to me or why it was changedthe current placement has been detrimental to her growth, and she is now behind in her academics."

DISCUSSION

The hearing officer led off the hearing with a summary of pre-hearing due process activity prior to the hearing. He also introduced into the record the hearing officers' exhibits:

HO-1 Follow-up report on the pre-hearing conference calls (3)

HO-2 Emails responding to the delay in scheduling the due process hearing

Neither the summary nor the introduction of the Hearing Officer's exhibits were challenged or expanded on by either party. During the two-day due process hearing, the LHO heard testimony from eight witnesses, the Parent/Petitioner introduced nine exhibits and the District/Respondent introduced 22.

Both parties were offered the opportunity to make opening statements with the parent presenting her statement.

In the Parent's opening statement, she laid out her major concerns and reason for filing this Due Process Hearing request. She stated, "I do not believe that [Student] is currently being educated in the least restrictive environment, the current placement has been detrimental to her growth, and she is now behind in her academics. I have asked several times this past year to allow [Student] to attend general education in science and social studies. These requests have

been ignored with no explanations. We feel that our due process rights have been ignored and that the school has neglected to live up to their responsibilities under IDEA to ensure and deliver a free and appropriate education in the least restrictive environment"

The Parent called three witnesses and cross examined the five District employees that were called to witness.

The private Speech Language Pathologist (SLP), who provided the Student one hour per week of private therapy, testified that she worked with M.R. since the age of three. She voiced concern that M.R. may have dyslexia but then stated "I did an informal test of letter recognition, letter naming, and word recognition and word reading. And I'm not seeing that anymore. But it's taken until 8th grade to see that." She also stated that she felt that M.R. would benefit from more social interaction in a general classroom. However, the SLP did not observe M.R. in her classroom setting or present any supporting evidence to support her opinion.

The Parent's friend and retired special education teacher testified that

This (quarterly report card 2022-2023) is from Horry County Schools. The 5th grade at the end of the year that she completed before she went into 6th grade stating that the science and the social studies that she was in regular gen. ed. classes and had made -- in science, she made all three A's and one B. And then in social studies, she made two A's and two B's through the whole time. ---so my thing is what's happening is not working And this child deserves a chance to at least take social studies and science or take some regular academic classes to see if she can succeed. Her report card reflects that she could earlier on before she was removed." "Then my other problem is, is like with inclusion. We know that -- all of the research with inclusion. We know it works. . . . It benefits her with -- makes it equal for her. There's collaboration. Her social skills. Enhanced academics.

In a closing statement she stated. "So my thing is what's happening is not working. And this child deserves a chance to at least take social studies and science or take some regular

academic classes to see if she can succeed. Her report card reflects that she could earlier on before she was removed."

In cross examination the District asked "with your years of experience, does this show levels of progress from the different years that she's been in Horry County Schools with the progress report that you've read from D6 to D7 to D14 to D20? She responded, "It shows going from 1st grade to 2nd grade, yes. The District followed with the question, "Does it show progress?" to which her response was "It does."

M.R.s' grandmother, retired schoolteacher and counselor, served as the Parent's advocate for this hearing. She testified that she has been working with M.R. on the weekends from the fall of 2024 to help her learn reading and math and felt that she was having success as "I had a couple of her teachers come up to me saying, I am amazed at how well she is reading now. What in the world are you doing?" And I just looked at them and I said, "Well, we're practicing some reading at home."

The District's School Psychologist testified

So when [the Student] enrolled with us at Horry County Schools, she was receiving services far outside of what a student with a speech-language impairment would receive. She was receiving occupational therapy, speech-language, as well as intense reading and math instruction. Just to demonstrate that Madison's needs were significant, that she truly needed and required direct specialized instruction to help support her deficits with retention of skills, memory, and processing. And that was evident in her present levels where I think at that time, she was in the 1st percentile kindergarten level.

The following questions and answers are also from the school psychologist's testimony:

Q. Why did the team reclassify her in 2024 as multiple disabilities?

A..... So in -- for this April 2024 meeting, [the Parent] provided a parentally -- a parental outside evaluation report from MUSC an updated evaluation report from MUSC. So the

team met to take this data into consideration. And this data along with the data that we had already reviewed to classify [the Student] as a student with an Other Health Impairment indicated that there were . . . more significant difficulties and delays for [Student] as far as a learning disability. Her verbal deficits continued to be an issue for her. So that was taken into consideration. And again, just the fact that her levels of need were more significant than what could be classified as simply a student with another health impairment or a speech-language impairment. So we added on Specific Learning Disability at that time.

Q. And again, it says multiple disabilities. So there were multiple -

A. Yes. The other health impairment and specific learning disability [the Student] has had significant verbal cognitive delays. So that has been consistent with the updated report from MUSC as well as significant deficits in academics. All of her academics are in the significantly below average range. So all of these documents indicate that [the Student] has significant deficits in multiple areas. And those are cognitive delays. She has deficits in learning. She has academic, reading and math deficits. She also has some health issues that have attributed to develop -- global developmental delays, which is documented throughout these years of reports that just impact her so significantly that she performs at a rate that is very different. and well below her same-aged peers. [The Student] requires direct, intense specialized instruction.

Q. Let's skip to Least Restrictive Environment. Which factors were considered in determining the Least Restrictive Environment for [the Student]?

A. All of this information, of course, goes into that determination for Least Restrictive Environment as well as goal progress, teacher input, parental input, observations, teacher observations, those scores that we've talked about, her district assessments, her state assessments, IEP goals, progress reports. All of that is considered whenever we're considering a student's Least Restrictive Environment . . . the risk would be great for [the Student] and multifaceted. I mean. I think that first of all she would fall behind, because there wouldn't be that opportunity for small group instruction, repeated instruction, teaching her in multiple and various ways. Like that opportunity would not exist, because

they are moving through the standards. And they're moving through those standards and expecting children to meet those standards at mastery; whereas, for Madison, it would just be about her skill level and needing to be able to address her skill level and those – those needs.

The District's SLP testified as follows when asked: "Based on your review, what speech and language needs does [Student] demonstrate?"

She presents with a couple of different things going on. So she has some remaining speech sound disorder with a few articulation phonemes that are not quite corrected yet that affect her speech intelligibility. Additionally, she presents with expressive and receptive language difficulties, including difficulty with some of the -- understanding semantics, vocabulary, asking questions, answering questions appropriately, using and understanding appropriate grammatical structures.

In the record, it's documented that she has significant difficulties with reading and with math as well as deficits in short-term memory.

She is operating in the 1 percentile. The 1st percentile is significantly challenging for a student. It is far below expectations for a student, and it would be indicative of something that would require specially designed instruction and intervention by professionals to help someone at the 1st percentile gain access to the curriculum.

The Principal testified as follows when asked "Why did the team conclude that accommodations in the general education classroom alone would not provide a free and appropriate public education or what we call FAPE?"

Due to the intensity of her abilities in class, she just requires very intense instruction to be able to access the general education curriculum. And it's really a lot more support than can be provided in general ed. like I said, it provides -- she needs a lot of scaffolds.

She needs everything read aloud, individual administration. She just needs a modified pace to be able to access the curriculum.

When the Principal was asked how the IEP team ensured compliance with the least restrictive environment requirement, he stated, "We just made sure that we were setting [Student] up for success by making sure that she was going to receive the specialized instruction that she needed to be able to access the content for the grade level." When asked about "letting that child fail?" the Principal responded, "[The Student] wasn't failing. [The Student] was performing on her IEP goals. [The Student] made -- she was making progress towards her goals. As a matter of fact, we updated her goals. But those goals are written specifically for [the Student]."

A Special Education Teacher was asked, "Given that [the Student] consistently performs at the 1st percentile in reading and in math, what are the implications for her placement in general education versus a special education classroom?" She testified, "In a special education classroom, there's more one-on-one. So it's more direct. And there's more -- I can change the pace; whereas, in a general education classroom, they're not going to change the pace just because 25 Clark Bolen, Inc. 1 she's falling behind."

A second Special Education Teacher was asked, "From a curriculum standpoint, how does your instruction ensure that [the Student] receives a . . . free and appropriate public education?" She testified, "Well, in order for it to be appropriate, I use her data. I go by what her data is. And it -- everything is data driven. The curriculum is data driven in my classroom. I look at how she scores, how well she does. And that gives me -- I make decisions based on that data on where to go next and where to go back ... and do again. And ... I just want to make sure that she is able to make progress, meaningful progress to her."

LEGAL ANALYSIS

As defined in 34 C.F.R. § 300.8(c)(10), an IEP team may determine that a child has a specific learning disability (SLD) if:

1. The child does not achieve adequately for the child's age or meet state-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or state-approved grade-level standards; oral expression; listening comprehension; written expression; basic reading skill; reading fluency skills; reading comprehension; mathematics calculation; and mathematics problem-solving.
2. The child does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the areas identified in 34 C.F.R. § 300.309(a)(1) when using a process based on the child's response to scientific, research-based intervention; or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age; state-approved grade-level standards; or intellectual development that is determined by the group to be relevant to the identification of SLD. using appropriate assessments consistent with 34 C.F.R. § 300.304 and 34 C.F.R. § 300.305 ; and
3. The evaluation team determines that its findings under 34 C.F.R. § 300.309 (a)(1) and 34 C.F.R. § 300.309 (a)(2) of this section are not primarily the result of: a visual, hearing, or motor disability; an intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency.

The general requirements for evaluating students suspected of having a disability, at 34 C.F.R. § 300.301 through 34 C.F.R. § 300.305, also govern the evaluation of students suspected of having SLD. Districts conducting an evaluation for suspected SLD must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability under 34 C.F.R. § 300.8. 34 C.F.R. § 300.304. The District appears to have followed appropriate guidance in making their determination.

As defined in 34 C.F.R. § 300.8(c)(9), an IEP team may determine that a child has an OHI if the Student has a condition that causes limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

1. Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette Syndrome; and
2. Adversely affects a child's educational performance.

The chronic or acute health problem that adversely affects the child's educational performance can be in one or more of the following areas:

- academic achievement;
- behavior;
- communication;
- social/emotional functioning;
- adaptive behavior;
- classroom performance;
- motor skills;
- vocational skills;
- executive functioning.

School districts must use the criteria adopted by the state in determining whether a student has SLD. 34 C.F.R. § 300.307(b). South Carolina's definition and eligibility criteria for the category of SLD and OHI are included in S.C. Code Ann. Regs. 43-243.1 *Criteria for Entry into Programs of Special Education for Children with Disabilities* mirrors the definition and criteria included in the IDEA. South Carolina has also adopted guidelines set forth in the *Standards for Evaluation and Eligibility Determination (SEED)* document which is designed to be a companion to State Regulation 43-243.1.

To be eligible under the category of Multiple Disabilities means concomitant impairments (such as SLD and OHI or intellectual disabilities-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated

in special education programs solely for one of the impairments. Multiple disabilities do not include deaf blindness.

To qualify under the category of MD, there must be evidence that the child meets all eligibility requirements for two or more of the following disability categories set forth in S.C. Code Ann. Regs. 43-241.1(H)(2)(a). The list includes SLD and OHI.

In reviewing the Parent's Due Process Hearing Request, testimony given at the hearing, and the Parent's closing statement, I found no evidence was presented to refute the evaluation procedures or eligibility criteria used by the District to identify M.R. as a student who qualifies for special education and related services under the category of SLD. While there was little reasoning beyond a statement that "The team reviewed multiple sources of information, including outside evaluations from MUSC and Greenwood Genetic Testing Center, prior district evaluations" presented by the District relative to how and why the Student qualifies as having a disability under the category of OHI, the burden of proof in this matter lies with the filing party, which is the Parent. Therefore, the burden of proof is on the Parent to prove what the District did was wrong.

At most, the Parent provided testimony that she did not understand why the change occurred with the Student's category of disability. The Parent, however, did not provide evidence of why the Student does not meet the eligibility criteria under either the category of SLD or OHI which cause the Student to qualify as a student with MD. The Parent did not dispute eligibility as a student with a disability in the area of SLI.

The due process complaint (DPR) is also about services being provided only in a self-contained setting without any exposure to the general education curriculum with nondisabled peers, and therefore not a least restrictive environment. This was reflected in the Petitioner's opening statement saying "What's happening is not working. And this child deserves a chance to at least take social studies and science or take some regular academic classes to see if she can succeed."

An IEP must include an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class. 34 C.F.R. § 300.320(a). Additionally, the IDEA requires each IEP to include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child or on behalf of the child. 34 C.F.R. § 300.320(a)(4).

Special education means "specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability." 34 C.F.R. § 300.39(a) "Specially designed instruction" means adapting as appropriate to the needs of an eligible child the content, methodology, or delivery of instruction:

1. To address the unique needs of the child that result from the child's disability; and
2. To ensure access of the child to the general curriculum so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

The first step in the LRE analysis is determining whether the district can satisfactorily educate the child in the general education setting with the use of supplementary aids and services. An IEP team's consideration of a child's LRE should never focus on the child's category of disability but instead should focus on the depth and scope of his or her needs and the least restrictive setting in which those needs can be met. While some students with persistent and severe learning problems may require intensive individualized supports, IEP teams must consider, in light of the student's unique and individual circumstances, the possibility of having those supports provided in a general education classroom before placing the student in a resource, self-contained, or other restrictive setting.

When a student can make progress in a general education classroom, the district must provide all necessary services and supports in that setting -- even if doing so might require some creativity. *Knox County, Tenn. v. MQ.*, 62 F.4th 978 (6th Cir. 2023). However, the LRE mandate does not override the IDEA's FAPE requirement. If a child's placement does not confer a "meaningful benefit" to the student and a more restrictive program is likely to provide such benefit, the child is entitled to be placed in that more restrictive program. *P. v. Newington Bd. of*

Educ., 546 F.3d 111 (2d Cir. 2008). *See also Hartmann v. Loudoun County Bd. of Educ.*, 118 F.3d 996 (4th Cir. 1997).

While testimony of a student's academic deficits and performance in comparison to his or her same-age peers is important evidence in supporting placement decisions, it is also important to present evidence of the impact on a student's progress when additional supports, services, and aids are provided in a general education setting or exposure to the general curriculum.

From the Parent's DPR, testimony and closing statement the assumption is that the District failed to meet the Parent's expectations. The Parent alleges that having the Student receive services through a self-contained service delivery model and not allowing the Student to attend any general education classes, more specifically science and social studies, results in the denial of access to a least restrictive environment.

As to this assumption, I agree with District's position that "The IDEA is clear that the IEP meeting process is to be a collaborative process between the District and the parent; however, the District is not required to acquiesce to all parental demands. A student's IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988 (2017). This standard does not require that a school provide every special service necessary to maximize each disabled child's potential. *County Sch. Bd. of Henrico Cnty. v. Z.P.*, 399 F.3d 298, 300 (4th Cir. 2005). The District must develop an educational program to enable ... (the student) to be served appropriately and receive meaningful educational benefit. The school must then substantially implement the program in the least restrictive environment along the continuum of placement options that all school districts must offer. 34 C.F.R. § 300.551(b)(1). "The IDEA does not promise perfect solutions to the vexing problems posed by the existence of ... disabilities in children and adolescents." *Lenn v. Portland Sch. Comm.*, 998 F.2d 1083, 1086 (1st Cir. 1993).

CONCLUSION

From the evidence and testimony there is no evidence that the District/Respondent failed

to appropriately identify the Student's primary category of disability as SLI instead of SLD and OHI, which qualify the Student as having Multiple Disabilities. The Student's secondary category stands as being in the category of SLI.

The Parent also failed to carry the burden of proof in the presentation of evidence that the District failed to make a placement decision that does not comply with the IDEA's LRE requirement. However, there does appear to be a breakdown in the Parent's understanding and/or communication errors which may have averted the Due Process Request with better communication or additional efforts to ensure the Parent understands the IDEA process and requirements.

THEREFORE, IT IS ORDERED, that the Petitioner's contention that the District failed to correctly identify the Student's category of disability and provide the Student a FAPE in the LRE under the IDEA is not substantiated through the testimony and evidence presented by the Petitioner.

APPEAL PROCEDURE

Any party may appeal this ruling. A party seeking to appeal this ruling must do so in writing and within ten (10) days of receipt of this Order. The written appeal must be addressed to:

The South Carolina Department of Education,
Office of General Counsel
849 Learning Lane
Columbia, SC 29172

September 12, 2025


Bruce J. Smith,
Local Due Process Hearing Officer

Note: I will not accept, read, or consider any further argument about the merits of this matter unless it is remanded to me by the SRO or the District Court. No email, letter or other written communication will be construed or considered as either a Motion or Reconsider or as a Motion to Alter or amend this Order. Further, no such communications may toll or extend the time limit above for filing an appeal.