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| STATE OF SOUTH CAROLINA       | ) |                                |
|                               | ) | BEFORE THE STATE LEVEL HEARING |
|                               | ) | OFFICER MITCHELL YELL, PH.D.   |
| J. R. on behalf of M.R.,      | ) |                                |
| Parent/Petitioner,            | ) |                                |
|                               | ) |                                |
| v.                            | ) |                                |
|                               | ) | STATE-LEVEL HEARING OFFICER    |
| Horry County School District, | ) | DECISION                       |
| District/Respondent.          | ) |                                |
|                               | ) |                                |
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This matter is before me pursuant to an appeal of a due process hearing decision in which Parent on behalf of Student, appealed the decision and final order of the Local Due Process Hearing Officer, Bruce J. Smith (“LHO”). Parent represented herself and Student pro se, without representation by legal counsel. Horry County School District (“District”) was represented by Kenneth S. Generette, Esq., the attorney for the District.

On September 12, 2025, the LHO issued a final order finding Parent’s contention the District failed to (a) correctly identify Student’s category of disability and (b) provide a free appropriate public education (“FAPE”) in the least restrictive environment (“LRE”) was not substantiated through testimony and evidence. The LHO also notified the Parent and the District that if either party wished to appeal the decision, they could do so by notifying the South Carolina Department of Education (“SCDE”), Office of General Counsel of their intent within ten days. On, September 23, 2025, the SCDE notified parties of the receipt of Parent’s request for a review of the LHO’s final order late in the afternoon on September 22, 2025, and of my agreement to serve as the state-level review officer (“SRO”).

## **PROCEDURAL BACKGROUND**

The dates pertinent to this appeal are as follows:

- June 25, 2025-Parent files due process complaint with SCDE, Office of General Counsel
- September 3, 2025-Due Process hearing held
- September 12, 2025-LHO issues order
- September 17, 2025-SCDE, Office of General Counsel receives Parent's notice of appeal of due process hearing by certified mail

## **REVIEW**

On September 24, 2025, I notified the Parent/Petitioner, District, and SCDE that I would serve as the SRO in this matter and asked that Parent and District submit their final arguments to me on the following dates: Parent's brief on October 6, 2025; District's brief on October 8, 2025, and Parent's reply brief (if needed) on October 10, 2025. The briefs from Parent and District, which were received in a timely manner.<sup>1</sup> On September 25, 2025, the Executive Director of Federal Programs emailed me a link to the transcript of the hearing of September 3, 2025, which included 21 District exhibits, 9 Parent exhibits, and 2 LHO exhibits. The ruling of the SRO in this matter was due on October 22, 2025.

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.<sup>2</sup> 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.<sup>3</sup>

As the SRO, it is my task to examine the entire hearing record and arrive at an independent decision.<sup>4</sup> 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.<sup>5</sup> It is important to note that Supreme Court also ruled

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<sup>1</sup> I allowed the Parent to submit her reply brief on October 11 because she was not emailed the District brief until October 9.

<sup>2</sup> 34 C.F.R. § 300.514.

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

<sup>4</sup> 34 C.F.R. § 514 (b)(2).

<sup>5</sup> Doyle v. Arlington County School Board, 953 F.2d 105 (4<sup>th</sup> Cir. 1998).

the party seeking relief bears the burden of proof.<sup>6</sup> Thus, Parent assumes the burden of proof in this matter.

I reviewed the transcripts, briefs, exhibits, and LHO's final order of September 12, 2025. During the hearing, the LHO provided the Parent and District an opportunity to make opening statements, present their cases, examine and cross-examine witnesses, introduce evidence, and provide closing statements. **I find that the hearing was regularly conducted by LHO, Bruce Smith, in accordance with the requirements of the IDEA.**<sup>7</sup>

## BACKGROUND

In September 2020, the Student transferred to the Horry County School District from the Marion County School District ("MCSD"). On March 6, 2020, MCSD completed an evaluation of Student.<sup>8</sup> At the time, the Wechsler Intelligence Scale for Children (WISC V) showed a full scale intelligent quotient of 74, which the MCSD reported as being in the "Very Low range when compared to other children her age."<sup>9</sup> MCSD also reported that "(W)orking memory was one of (Student's) weakest areas of performance, with scores that were significantly lower than other children her age (WMI=67, 3R=1, Extremely Low range). MCSD also administered the Wechsler Individual Achievement Test-Third Edition (WIAT-III), an individually administered diagnostic achievement test, which indicated low scores in reading, mathematics and written expression. In summarizing the evaluation, MCSD wrote that "(D)espite receiving special education services (Student) continues to experience academic difficulties"... (Student's) reading, written expression, and math skills are limited...(Student) continues to meet eligibility criteria as a student with a speech-language impairment.<sup>10</sup> When Student came to the District, she had received special education services in the category of Speech and Language Impaired, but she also was receiving special education services in English/language arts and mathematics and related services in speech and occupational therapy.

When Student was in the 3<sup>rd</sup> grade, she enrolled at Green Sea Floyds Elementary School, District conducted a 3-year reevaluation meeting on Feb. 8, 2021.<sup>11</sup> During this meeting, the District team reviewed existing data and data from MCSD from assessments conducted in 2019.

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<sup>6</sup> Schaffer v. Weast, 546 U.S. 49 (2005).

<sup>7</sup> 34 C.F.R. § 514 (b)(2)(ii).

<sup>8</sup> See District Exhibit #1.

<sup>9</sup> District Exhibit #1, page 5.

<sup>10</sup> District Exhibit #1, page 20.

<sup>11</sup> See District Exhibit #2.

The report also included the Measures of Academic Progress (“MAP”) scores. MAP assessments are computerized tests that measure what a student knows and needs to learn relative to state standards. According to the evaluation report, Student was in the 1<sup>st</sup> percentile<sup>12</sup> when the MAP was administered in 2020-2021. This means that if 100 students took the same reading test, a percentile rank of 1 means the Student’s score is near the bottom and is higher than only 1 student (or less), and lower than about 99 students. Also, in the Cognitive Abilities Test (CogAT) administered in 2019, Student was reported as being in the 1<sup>st</sup> percentile. The evaluation report also listed additional results from the MCSD. At this time, Student was receiving District services for English/language arts, math, speech, and teacher training from an occupational therapist. In a prior written notice (“PWN”) on February 8, 2021, District reported that “it was determined that additional assessments did not need to be administered to your child to determine whether she continues to have a disability and her educational needs...the existing information available to the IEP team is sufficient to determine continuing eligibility and to develop an IEP for your child.”<sup>13</sup> In a PWN on February 8, 2021, the District proposed that Student’s IDEA category of disability be changed from Speech/Language Impairment (SLI) to Other Health Impairment (OHI) with SLI as a secondary disability.<sup>14</sup> The change was based on a review of reports provided by the Parent of evaluations conducted on the Student from the Medical University of South Carolina, the Greenwood Genetic Center, and MCSD. In an amendment to the IEP, it was noted that Student’s IDEA category would be changed but that no changes were made to Student’s IEP.<sup>15</sup>

In a reevaluation review in September 2023, when Student was a 6<sup>th</sup> grade student at Green Sea Floyds Middle School, the District concluded that Student still qualified for special education services under the category of OHI. At that time, Student was receiving services in English/language arts (300 minutes per week), math (300 minutes per week), speech (210 minutes quarterly, and social studies and math (300 minutes per week for each subject).<sup>16</sup> In the report, Student progress was listed for 2 goals in reading, 1 goal in math, and 4 goals in

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<sup>12</sup> Percentile ranks are measures of relative standing. They compare a student with same-aged students in the norming sample, either in a state, the nation, or both. Because Student scored in the 1<sup>st</sup> percentile, the Student scored as well or better on the test than 1% of the students tested and 99% percent of the students who took this test scored higher than the Student.

<sup>13</sup> Prior Written Notice of Feb. 8, 2021, p. 1 of 2, District Exhibit #2

<sup>14</sup> Prior Written Notice of Feb. 8, 2021, p. 1 of 1, District Exhibit #2

<sup>15</sup> Amendment to the Individualized Education Program of Feb. 8, 2021, District Exhibit #2.

<sup>16</sup> Reevaluation Review of October, 3, 2025, District Exhibit #3,

speech/language. Progress monitoring data was provided for the reading and math goals, but no data was provided on speech goals. The section of the report titled “Remarks” for each quarter of the year was not completed. On the page titled “Evaluation Planning Team Members,” it is reported that the Parent “Refused consent to sign.”

In a PWN completed on October 3, 2023, it is noted that the Parent “expressed discontent with (Student’s) primary disability being Other Health Impaired and requested the IEP team remove the designation. She has also requested a change of (Student’s) placement to all general education classes. The Parent refused to allow cognitive and academic evaluations to be conducted by the District.<sup>17</sup>

A reevaluation review on April 16, 2024, indicated that Student received services under the category of OHI in speech (210 minutes quarterly), English/language arts (300 minutes weekly), math (300 minutes weekly), and science and social studies in the special education classroom (600 minutes per week). MAP scores from the 2020 to 2021 school year to Spring, 2003 were provided. Scores indicated that Student was in the 1<sup>st</sup> percentile when compared to same age peers in math, reading, and in language.<sup>18</sup>

The report included academic information from the evaluation conducted at Medical University of South Carolina on January 18 and February 14 of 2024.<sup>19</sup> After this very thorough evaluation of the Student, the assessors at the Medical University found:

- Wechsler Intelligence Scale for Children: Fifth edition (administered by MUSC in 2024)- Full Scale IQ-68, 2<sup>nd</sup> percentile rank
- Woodcock-Johnson Tests of Achievement: Fourth edition (administered by MUSC in 2024)-Basic Reading Skills, less than 1<sup>st</sup> percentile rank-Broad Reading skills, less than 1<sup>st</sup> percentile rank-Academic skills, less than 1<sup>st</sup> percentile rank-Academic Applications, less than 1<sup>st</sup> percentile
- SC Ready English/Language art assessment (administered on Spring, 2023)-“Does not meet expectations,” 8<sup>th</sup> percentile rank for the SC & 5<sup>th</sup> percentile rank for the nation.
- Measures of Academic Progress-Reading (administered on Spring, 2023)-1<sup>st</sup> percentile
- iReady assessment-Reading (administered on Spring, 2023)-2<sup>nd</sup> percentile

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<sup>17</sup> Reevaluation Report of April 16, 2024, p. 6 & 7, District Exhibit #4.

<sup>18</sup> Language scores on the MAP are reported for Fall, 2022 only.

<sup>19</sup> See Parent Exhibit #7, Psychoeducational Evaluation of Student conducted on Jan. 18 and Feb. 14, 2024. Quotations used are taken from this report.

- SCReady Math assessment (administered on Spring, 2023)-“Does not meet expectations,” 24<sup>th</sup> percentile rank for the SC & 10<sup>th</sup> percentile rank for the nation.
- Measures of Academic Progress-Math (administered on Spring, 2023)-1<sup>st</sup> percentile
- iReady assessment-Math (administered on Spring, 2023)-1<sup>st</sup> percentile
- Comprehensive Test of Phonological Processing (CTOPP) (administered by MUSC in 2024)-“(Student) obtained a standard score of 52 on this composite (Phonological Awareness), indicating her phonological awareness skills were in the Extremely Low range, which was significantly below normal limits.” Student’s “phonological memory skills were within the Borderline range and significantly below normal limits for her age.” (Student) “obtained a standard score of 64 on this composite (Rapid Naming), indicating performance in the Extremely Low range and revealing another area of phonological processing weakness.”

Based on their evaluations, the assessors at the Medical University concluded that:

- The Student’s “cognitive performance remains significantly varied, with significant weakness in verbal cognitive skills (Extremely Low range) and stronger nonverbal cognitive skills.”
- The Student’s “visual processing speed skills, or her ability to learn and process rote visual information, remains a strength for her (Average range).”
- The Student’s “language skills continue to be in the Extremely Low range, with both receptive and expressive language skills being significantly below normal limits for her age.”
- The Student’s visual motor skills were in the Borderline range, which was below normal limits for her age.”
- The Student’s “academic achievement was in the Extremely Low range in reading, math, and written expression skills. She also demonstrated significant weakness (Extremely Low to Borderline ranges) in her phonological processing skills, which are important foundational skills in learning to read and spell.”
- The Student has a “Receptive/Expressive Language Disorder.”
- The Student has “Specific learning disabilities in reading, math, and written expression. Her learning disabilities are ‘language-based,’ which can be particularly challenging as the child progresses through school.”

Based on the assessment of January 18 and February 14, 2004, the assessors at the Medical University of South Carolina made over 75 recommendations. The most pertinent recommendations to this matter are the following:

- “Continue speech/language and occupational therapies.”
- “Continue her IEP.”
- “The IEP team is encouraged to add the classification of Specific Learning Disability; that addition, along with maintain the secondary area of Speech/Language Impairment provides the most accurate description of “Student’s) unique learning needs.”
- “Transition services should start to be discussed at her annual IEP meeting next year.”

In Student’s time at District, IEPs were reviewed and amended, systematic progress reports were issued, and PWNs were issued. Parent was fully involved and when there was a disagreement a PWN was issued. In a meeting in May 2023 the IEP team proposed placement in a special education setting for core content areas (e.g., science, social studies). The team used information gathered during assessments to determine that accommodations in general education classrooms would not meet Student’s needs. The principal of Green Sea Floyds Elementary School testified that Parent participated virtually and that the team reviewed the data and “(W)e were always very, very intentional about how we placed her as far as her programming. Every year we made sure that we gave her a placement test just to make sure we had her in the right program” and that “due to the intensity of her needs 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.<sup>20</sup>” When the principal was asked how the team would address Parent’s request that Student be placed in general education science and special studies classes, he responded “Well, we considered her request. And we reviewed the data that was presented earlier in the meeting. And at that time, the team didn’t feel like that was the most appropriate thing for (Student) to be successful.<sup>21</sup>”

Testimony that Student’s needs required such intense instruction that general education would be an inappropriate placement were brought up by a District psychologist. According to

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<sup>20</sup> Transcript (LE) of hearing, p. 154, lines 13-18.

<sup>21</sup> Transcript (LE) of hearing, p. 155, lines 6-10.

the school psychologist, “I think these deficits speak to that, in the fact that (Student) truly does require such level of intense instruction that—it just wouldn’t be fair to sit her in a general education classroom and give her accommodation and expect that she would be able to have meaningful progress....”<sup>22</sup> She also addressed how the team considered Parent’s input and concerns. “We have meetings, multiple meetings. We’ve heard her/ We hear her requests. We hear her reasons why she feels that it’s important for (Student) to be in these general education classes. And then whenever (Parent) was displeased with the decision, then we’ve documented that in our prior written notice to say that (Parent) did not agree. But just based on the data—the team’s consensus is that this is the most appropriate setting for (student).”<sup>23</sup>

Parent also obtained a report from Seasons Psychological Associates in Florence, SC.  
<sup>24</sup>There was no date on this report, however, the assessment was completed when Student was 13 years and 11 months.<sup>25</sup> The assessment was conducted on the Student’s social skills as measured by the third edition of the Vineland Adaptive Behavior Scales, using only the parent/caregiver form. The Vineland is a standardized assessment instrument used to measure adaptive behavior, which are the practical, everyday skills people need to function and meet environmental demands. The Vineland assesses several domains, including socialization, which addresses a person’s interpersonal and coping skills and includes the checklist filled out by the parent or caregiver and the teacher or educator and an interview form. The Seasons report found the Student’s standard score on the Vineland was 120, placing her in the 91<sup>st</sup> percentile when compared to same-aged peers. According to the report, the Student’s score reflected a moderately high level of functioning in social situations, including (a) having strong abilities to recognize and respond to other’s emotions, (b) engaging in age-appropriate friendships, (c) shows empathy and politeness towards others, (d) exhibiting emotional regulation, (e) adapting well to changes in routine, and (f) responding appropriately in social situations. In the summary of the report, the assessor concluded that the Student’s “social skills are a clear strength in her overall adaptive profile. She consistently demonstrates age appropriate and, in many cases, above-average

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<sup>22</sup> Transcript (LE) of hearing, p. 102, lines 4-10.

<sup>23</sup> Transcript (LE) of hearing, p. 105, lines 15-24.

<sup>24</sup> See Parent Exhibit #9, Assessment report of Seasons Psychological Associates, LLC.

<sup>25</sup> The document was not seen by the District attorney prior to the hearing, but part of the document was accepted into evidence, see pages 119 to 123 of the hearing transcript (LE). Testimony during the hearing indicated the assessment in this report may have been conducted during the summer or late summer of 2025.

abilities in interpersonal, leisure activities, and coping strategies. These skills should be considered when developing IEP goals, particularly in areas that support peer interactions, emotional regulation, and community engagement.<sup>26</sup> This report was addressed in the hearing. Although the report was not available to the IEP team, the school psychologist for District responded in the hearing that “absolutely we would take this into consideration. And we will, because you have now presented a report. So, we will hold a meeting to do that. But again, it’s a parent report. It’s not teacher input.”<sup>27</sup> When responding to a question from Parent, the school psychologist stated “Absolutely. And your input is always valued. I mean, like I said, we will hold a meeting and review this information as a team, because it is valuable to the team to have access to this information.”<sup>28</sup>

## ISSUES

Parent alleged that the school district failed to provide Student with a FAPE by (a) incorrectly identifying Student’s category of disability and (b) placing Student in a self-contained setting and not allowing Student to attend any general education classes, thus denying her access to the LRE.<sup>29</sup> Specifically, Parent contended that District changed Student’s classification without notifying her and that being taught in a self-contained classroom has led to Students academic and social regression. Parent asked that Student be allowed to attend general education science and social studies classes. Parent is concerned that Student will not receive a diploma because she is in a self-contained setting.

## DISCUSSION

### **Issue 1: District failed to provide a FAPE by incorrectly identifying Student’s category of disability**

The IDEA provides a number of procedural and substantive protections for eligible students with disabilities and their parents. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982),<sup>30</sup> the U.S Supreme Court recognized the division of the IDEA into procedural and substantive dimensions and provided a legal framework for analyzing denial of FAPE lawsuits under the IDEA. The legal framework consisted of a two-part

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<sup>26</sup> Assessment report of Seasons Psychological Associates, LLC, p. 2.

<sup>27</sup> Transcript (LE) of hearing, p. 124, lines 19-20.

<sup>28</sup> Transcript (LE) of hearing, p. 125 and 126, lines 23-25 and lines 1 and 2.

<sup>29</sup> LHO Final Order of Sept. 12, 2025, p. 2.

<sup>30</sup> 458 U.S. 176 (1982)

inquiry. First, a court must consider whether a school district has satisfied the IDEA's procedural requirements and second, a court must consider whether a school district's education program was reasonably calculated to enable the child to receive educational benefit.

In 2004, Congress amended the IDEA by requiring due process hearing officers base their rulings “on substantive grounds based on a determination of whether the child received a free appropriate public education...and in matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies—(I) Impeded the child’s right to a (FAPE), (II) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of (FAPE)...or (III) caused a deprivation of educational benefits.”<sup>31</sup> The statutory language codified a distinction that courts prior to the 2004 amendments had drawn regarding procedural and substantive requirements under the IDEA.<sup>32</sup>

In *Endrew F. v. Douglas County School District RE-1* (2017),<sup>33</sup> the U.S. Supreme Court provided an updated definition of the substantive requirements of FAPE. In this case, the Court held that “(T)o meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”<sup>34</sup>

To determine whether a school district’s possible procedural violation denied a student a FAPE a hearing officer must ask (a) if the school actually committed a procedural violation, and (b) if the procedural violation result in substantive harm. My task, therefore, is to determine if the LHO decided these issues correctly.

An incorrect identification of a student’s disability category by a school district is a procedural error and involves classification rather than educational services. Under the IDEA what matters most is that an IDEA-eligible student with disabilities is provided a FAPE — not whether the disability category label was technically correct. A number of courts have found that if the needs of a student are met, misclassification of the student does not violate the IDEA.<sup>35</sup>

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<sup>31</sup> 20 U.S.C. § 1415(f)(3)(E)(i).

<sup>32</sup> Berney, T.J., & Gilsbach, T. (2018). Substantive v. procedural violations of the IDEA. Available at <https://www.berneylaw.com/2017/11/12/substantive-vs-procedural-violations-idea/>.

<sup>33</sup> 580 U.S. 386 (2017).

<sup>34</sup> 580 U.S. 386, 399 (2017).

<sup>35</sup> *Heather S. v. State of Wisconsin*, 125 F.3d 1045 (7<sup>th</sup> Cir. 1997); *D.B. v. Esposito*, 675 F.3d 26 (1<sup>st</sup> Cir. 2012); *Alvin Independent School District v. A.D.*, 503 F.3d 378 (5<sup>th</sup> Cir. 2007); *R.E. v. N.Y.C. Department of Education*, 694 F.3d 167 (2<sup>nd</sup> Cir. 2012), *C.G. v. Five County Community School District*, 513 F.3d 279 (1<sup>st</sup> Cir. 2008); *M.M.*

Thus, these rulings have essentially found that misclassification does not equal an automatic denial of FAPE as long as the education appropriately addresses a student's needs

LHO's ruling addressed the federal and state definitions of specific learning disabilities and multiple disabilities. LHO concluded that "at most the parent provided testimony that she did not understand why the change occurred with the Student's category of disability"<sup>36</sup> and found no evidence of misclassification. The Student entered the District receiving special education services far in excess of the services typically provided to students with speech/language impairments. The change to the classification of Other Health Impaired and then to Multiple Disabilities was based on data regarding the Student's needs. Additionally, in neither the testimony nor the submitted briefs did I find any possible misclassification resulted in Student's needs not being met. Misclassifying a student under the wrong IDEA category only becomes a violation of FAPE, if the misclassification results in a loss of educational benefit or impedes parental participation. This did not occur in this matter. Therefore, I agree with the LHO's finding that Student was not misclassified, and even if she was misclassified—which she was not—it did not result in substantive harm. **I find that the LHO fully considered and correctly found that District did not fail to provide FAPE in the identification of Student's category of disability.**

## **Issue 2: District failed to provide FAPE by not placing Student in the LRE**

Parent contends that District failed to provide Student a FAPE because she was not placed in the LRE. To address this issue, it is necessary to examine the LRE test used by hearing officers and lower courts in the fourth circuit: DeVries by Deblaay v. Fairfax County School Board<sup>37</sup> (1989), and later Hartmann v. Loudoun County<sup>38</sup> (1997), which were decided by the U.S. Court of Appeals for the Fourth Circuit. The DeVries ruling is the leading case on LRE in our circuit and is controlling precedent for interpreting the LRE requirement under the IDEA.

In DeVries, the circuit court adopted the LRE test used by the U.S. Court of Appeals for the Sixth Circuit in Roncker v. Walter<sup>39</sup> (1983), citing the analysis used by the Sixth circuit to determine whether a school district has complied with the IDEA's mandate to educate a student

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v. School Board of Miami-Dade County, 437 F.3d 1085 (11<sup>th</sup> Cir. 2006), M.M. v. Lafayette School District, 767 F.3d 842 (9<sup>th</sup> Cir. 2014).

<sup>36</sup> LHO Final Order of Sept. 12, 2025, p. 12.

<sup>37</sup> 882 F.2d 876 (4<sup>th</sup> Cir. 1989).

<sup>38</sup> 118 F.3d 996 (4<sup>th</sup> Cir. 1997)

<sup>39</sup> 700 F.2d 1058 (6<sup>th</sup> Cir. 1983).

in the LRE. In *Roncker*, the circuit court developed a practical framework—often called the “*Roncker* portability test”—for determining whether a school district is complying with the LRE requirement under the IDEA. The court recognized that while some students may require specialized programs, the key question is whether the benefits of those programs could feasibly be provided in a less restrictive (integrated) setting. Thus, a placement that removes a student from a general education setting is appropriate only if the services that make that placement superior cannot feasibly be provided in the regular classroom. The sixth circuit court developed a following three-part test to be used by lower courts to determine a school district’s compliance with the LRE requirement of the IDEA. First, a court must ask whether the services needed by the child to confer a FAPE be provided in a regular classroom? According to the *Roncker* court, if the special services offered in a segregated program can be delivered in a general education classroom with supplementary aids and services, the child should not be removed. Second, a court must determine if a student will receive educational benefit in the regular classroom? According to the *Roncker* court, a student must be able to achieve meaningful educational progress in that setting, even if not at the same level as nondisabled peers. Third, a court must determine the effect of the student in question on his or her general education peers. Thus, a court should consider whether the child’s presence in the general education classroom would significantly disrupt the learning environment or require so much teacher attention that it would detract from the education of others.

In the *DeVries* decision, the court emphasized appropriateness over absolute inclusion. Inclusion in general education is preferred, therefore, but not required if it fails to provide meaningful educational benefit. As noted by the *DeVries* court, “Mainstreaming may not be appropriate for every (student with a disability); it is only required to the extent that it does not prevent the child from receiving an appropriate education.” The *DeVries* court balanced two IDEA mandates: the right to a FAPE and the right to be educated in the LRE. In our fourth judicial circuit, therefore, appropriateness takes precedence over location, which means that a student may be placed in a more restrictive setting if that placement offers the best opportunity to make educational progress.

The U.S. Court of Appeals affirmed the *Roncker* test in *Hartmann v. Loudoun County* (1997). In this case the *Hartmann*’s challenged the school district’s decision to place their son, who was eligible under the IDEA in the category of autism, in a more restrictive setting. The

parents argued that the Loudoun school district had failed to educate their son to the maximum extent appropriate with nondisabled peers. The fourth circuit court affirmed that the district's placement was acceptable. The court relied on Roncker framework by emphasizing that (a) inclusion is not required when it would interfere with providing the student an appropriate education; (b) the school district had made substantial efforts (e.g., modifications, supports) to include the student, but those efforts had not yielded academic or behavioral progress in the general classroom; and (c) the student's disruptive behaviors and lack of progress justified a more restrictive placement.

I must determine if the LHO properly addressed the LRE issue. Although LHO cited the Hartmann ruling, there was no reference to DeVries or Roncker tests. Nonetheless, the first step in LHO's analysis was "determining whether the district can satisfactorily educate the child in the general education setting with the use of supplementary aids and services" and an acknowledgment that "IEP teams must consider...the possibility of having those supports provided in a general education classroom before placing the student" in a more restrictive setting.<sup>40</sup> LHO correctly noted that "the LRE mandate does not override the IDEA's FAPE requirement" and further held that "if a child's placement does not confer 'meaningful benefit' to a student and a more restrictive program is likely to provide such benefit, the child is entitled to be placed in that more restrictive program."<sup>41</sup> I am persuaded that the LHO properly addressed the LRE provision of the IDEA when concluding that Student could not be satisfactorily educated in the general education setting, even with the use of supplementary aids and services. I find evidence in the testimony and exhibits that Student has significant delays, especially in reading and written expression. Such problems if not addressed with intensive interventions will result in the Student falling further and further behinds her same age peers and schooling will become more difficult for her. As observed in the 2024 evaluation conducted by the Medical University of South Carolina"

Her learning disabilities are 'language-based,' which can be particularly challenging as the child progresses through school...When she was evaluated at age 5, concern for the emergence the emergence of language-based learning disabilities was discussed. The

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<sup>40</sup> LHO Final Order of Sept. 12, 2025, p. 13

<sup>41</sup> LHO Final Order of Sept. 12, 2025, p. 13. The LHO cited a ruling out of the U.S. Court of Appeals for the Second Circuit (*P. v. Newington Board of Education*, 2008) and the Hartmann rulings.

negative impacts often become most apparent by third grade and can interfere more as the language nature of learning becomes more intense and abstract, almost creating a ‘snowball effect’ as language becomes more and more a part of her educational experience.<sup>42</sup>”

Student’s principal, special education teachers, and school psychologist provided testimony that the intensive nature of instruction needed by Student could not be provided in the general education classroom.<sup>43</sup>

I did not find as much evidence in the testimony and exhibits I reviewed regarding that attempts District undertook to ensure that Student is provided opportunities for interaction with her nondisabled same age peers. District’s brief addressed the two-part Daniel R.R. inquiry.<sup>44</sup> The second part of the inquiry asks “whether the school has mainstreamed the child to the maximum extent appropriate.”<sup>45</sup> Although, the 4<sup>th</sup> Circuit has relied on the Rocker ruling out of the U.S. Court of Appeals for the 6<sup>th</sup> Circuit in cases regarding the LRE provision of the IDEA, the test used by the Daniel court evinces the strong Congressional preference for integrating students with and without disabilities in educational settings whenever appropriate. The District’s commitment to this preference was expressed by the school psychologist in her testimony to consider new information in upcoming meetings.<sup>46</sup> I have confidence that the educators in the District will continue to fulfill this congressional preference.

The IDEA does not require that every child be educated in a general education classroom, only that the child be placed in the LRE appropriate to their needs. A placement in a special education setting is permissible when the child cannot be satisfactorily educated in a general education classroom even with supplementary aids and supports, so long as the school has made genuine efforts to integrate the child whenever possible. **I find the LHO fully considered the IDEA’s LRE requirement and correctly found that the District did not deny Student FAPE in the LRE.**

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<sup>42</sup> Report from the Medical University of South Carolina, Jan. 18 and Feb. 14, 2024, Parent Exhibit #7, p. 13.

<sup>43</sup> See transcript (LE) of hearing, p. 154 and 155 (Principal), p. 166 (Ms. Deweese), p. 175 (Special Education Teacher), p. 92 (School Psychologist).

<sup>44</sup> District Brief to SRO.

<sup>45</sup> Daniel R.R. v. State Board of Education, 874 F.2d 1036 (5<sup>th</sup> Cir. 1989), p. 1048.

<sup>46</sup> Transcript (LE) of hearing, p. 124, lines 19-20.

### **Conclusion**

Parent is a strong advocate for her child and the grandmother has made laudable efforts to teach Student to read. Although a due process hearing can be very adversarial, it is my hope that Parent and District will continue to work collaboratively in addressing the unique learning needs of Student. **The District has fulfilled its duties with respect to providing Student FAPE, correctly identifying Students category of services, and meeting the LRE requirement of the IDEA.**

### **ORDER**

The LHO's ruling that District did not violate the IDEA's FAPE requirement by failing to (a) correctly identify Student's category of disability and (b) provide education in the least restrictive environment is affirmed.

### **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 Yell*

Mitchell L. Yell, Ph.D.

State-Level Hearing Review Officer

Columbia, South Carolina

October 18, 2025