

STATE OF SOUTH CAROLINA	)	
	)	IN AN IDEA LOCAL DUE PROCESS HEARING
COUNTY OF LEXINGTON	)	
J.S. And R.S. On behalf of minor child	)	
W.S.	)	
Petitions	)	
	)	
v.	)	DECISION
	)	
Lexington County School District One	)	
Respondent	)	

This matter is before me pursuant to a request that I serve as an independent Hearing Officer in the above captioned case. An expedited Due Process Hearing Request (DPHR) was filed on October 1, 2025. The Respondent filed its Response on October 10, 2025. The Resolution Period was concluded on October 16, 2025 and on October 13, 2025 the parties held a teleconference to set a Hearing. That Hearing was scheduled for October 29 and 30, 2025 with the exchange of Documents held on October 22, 2025.

All scheduled events were accomplished on time and the Hearing was convened on October 29, 2025. An on the record pre-hearing conference was held. During that conference the Petitioner's made a Motion to exclude any evidence or testimony relating to prior disciplinary actions against the subject child, citing *Rule 401, 402, and 403* South Carolina Rules of Evidence. That motion was taken under advisement. After a review of the Rules cited and listening to the Parties' arguments and opening statements, the Petitioner's Motion was granted.

BACKGROUND

The subject child in this case is a 13 year old male student who attends school in the eighth grade at Pleasant Hill Middle School. He has been diagnosed to be experiencing Autism Spectrum Disorder, Attention Deficit Hyperactivity Disorder, unspecified anxiety disorder, unspecified depressive disorder, Obsessive Compulsive Disorder, intermittent explosive disorder, and Childhood onset Fluency Disorder. He previously received his education in a Special Education Class in the

6th Grade, but is currently receiving his education in a general education classroom with the assistance of a full time one-on-one instructional assistant. He is mainstreamed for all of his core academic classes.

The child is apparently very intelligent and is making good progress academically with his primary individualized education program (IEP) support geared towards his behavioral issues. He has a behavioral intervention plan (BIP) and receives specialized transportation support.

This incident which engendered this DPHR occurred on September 18, 2025, and involved an emotional explosion which resulted in a removal from his science class, walking period in the school hallway with attempted destructive behavior towards property and the child's assistant. The incident ended in an empty special education learning lab with the throwing of furniture, other items, physical assaults on individuals attempting to calm him ultimately concluding in the smashing of two plastic storage bins with plastic shard from those bins being brandished in a threatening manner before he was subdued and taken home by his father.

The District held a Manifestation Determination Review (MDR) on September 24, 2025, and it was determined that the child's behavior was the result of or influenced by his disabilities. However, the Respondent determined that the child's use of the plastic shards constituted the use of a "weapon" and under the District's policy on Weapons at School, removed the child administratively to an interim alternative educational placement for 45 school days which will end in December. The offered placement was at the District's Alternative School which the Parents rejected, opting for a Homebound placement with continued help from the child's instructional assistant (IA) instead. The Parents then appealed the District's actions by filing the instant expedited DPHR.

FINDINGS OF FACT

The following are statements of facts determined from the testimony of witnesses or the review of documents during the hearing:

1. The child is fortunate to have involved, intelligent, capable and loving parents to advocate for him and his education.
2. The child's educational and emotional needs are guided by an IEP, a Functional Behavioral Assessment (FBA) and a Behavioral Intervention Plan (BIP).
3. When not in crisis, the child is intelligent, friendly, loving, and has a sweet nature. When in crisis the child becomes out of control in a trance like demeanor, physically violent and then remorseful.
4. In the 6th grade the child received his education through a self-contained service delivery model. Since 7th Grade the child participates in the regular education setting with an assigned an Instructional Assistant who is specially trained in Crisis Prevention Intervention (CPI) techniques and enjoys a very good relationship with the child, his parents and the school personnel.
5. On September 18, 2025, the child had an emotional breakdown that triggered an explosive, dangerous and unexpected episode causing harm to others, himself and to property.
6. While the child has experienced escalated emotional incidents in the past, the one discussed here seemed to be the more involved and destructive than prior episodes.
7. The quick action and training of staff prevented serious injury to the child and others.
8. As a result of the incident, the child was administratively removed from school and placed in an IAES for 45 school days and was charged criminally with Assault and Battery Third Degree by the Sheriff's Department.

ISSUES

1. Was the child's IEP, FBA and BIP followed by the District during the incident?
2. Were the plastic shards waived in a threatening manner at District personnel weapons under the definitions of the United States Criminal Code, the Individuals with Disabilities Education Act (IDEA) and School District Policy?
3. Was the 45 day Administrative Removal valid under IDEA?
4. Is the child entitled to compensatory education for the time away from school?
5. Are the Petitioners entitled to Attorney's fees and costs in this case?

WERE THE CHILD'S IEP AND BIP FOLLOWED DURING THE INCIDENT

The Petitioners allege that the child's IEP and BIP were not followed during the incident, not using the strategy in his BIP for handling highly escalated behavior as follows:

“Crisis Plan:

If [Student] is engaging in behaviors that pose a risk to himself or others and de-escalation /redirection techniques have been attempted without success, other students will be removed from the classroom or [Child] will be escorted to an alternative location. Administration will be called, two adults will remain with [Student] to aid with de-escalation. While the adults will be present to assist with de-escalation, the adults will provide [Student] with space to help him self-regulate and process his feelings.

Update 11/15/2024

If [Student's] behavior continues to escalate and poses a risk to himself or others, the Crisis Prevention Intervention (CPI) technique will be employed. Trained staff will safely assist [Child] using CPI technique to guide him to a smaller, secure area.”

In this incident, the child's behavior had escalated to the point of triggering the Crisis Plan.

He was removed from science class after twice attempting to choke himself with his hoodie drawstrings. On his second attempt, the science teacher was sufficiently concerned for his safety that she found scissors, and cut the drawstrings while she and the IA tried to pry the child's hands from the strings. Once that attempt was stopped, the IA was able to move the child out of the classroom to the hallway and the science teacher called the Principal.

From there, IA and the child traveled down the hallway with the child attempting to break windows and pulling a long handled floor scraper from a maintenance cart jabbing it at the IA. The IA was able to take it away from the child. The IA then maneuvered the child into a vacant, special education learning lab, Room 504. He was joined there by the Vice Principal. The resource officer stayed in the hallway. All during this process, the IA was attempting to talk the child down.

While in the room, the child was throwing furniture and anything he could find at the IA and Vice Principal. The Principal arrived and Vice Principal withdrew helping the resource officer and a maintenance worker who had arrived on the scene to remove furniture and other items from the room so the child would not have anything to throw.

Eventually, the child found some plastic storage boxes described as possibly 6 to 8 inches by 12 to 18 inches, stomped on them and picked up a shard that was approximately shaped like a knife and waived it at the IA. The IA was able to get it away from the child but he then picked up a second shard which was a little bigger, again knife like with a pointed tip, sharp edge and a handle like area. He waived it threateningly at the IA and the Principal.

The Principal asked that a second CPI trained person, be called and told to bring a pad that is used to help control an individual who is out of control. The second CPI trained person arrived and he and the IA were able to get the shard away from the child and calm him down. The child then sat down, cried, and eventually attempted to help cleanup the mess he created. His father arrived and took the child home.

When situations occur, particularly a crisis as dangerous and fast developing as this one, the participants do not have time to reflect on the terms of a predetermined plan and insure that all elements are followed. In this case, IA did exactly what he was supposed to do and was extremely successful at preventing harm to the child and others. Clearly, the participants were mindful of the strategy to be employed and did what they could to bring the event to a positive conclusion. The IA testified that he chose room 504 because he knew it was empty, readily available and had less furniture than a classroom. The Petitioners have made a point that it was not “small” as suggested by the BIP. The anticipated small safe room was not nearby. Under the circumstances, it was the right choice.

The Petitioners have raised concerns about the number of people in the room, suggesting that having only “2 adults” as set forth in the BIP was purposeful because the more people that are involved when [Student] escalates, the more he reacts. In this case, only the Vice Principal and the IA were in the room initially. The resource officer and the maintenance employee were in the hall. When the Principal arrived, the Vice Principal withdrew. When the second CPI training person arrived, the Principal withdrew. It would seem that the school personnel reacted remarkably well given the chaos being caused by [Student].

The other point raised by the parents had to do with a provision in the BIP which indicated that the child should check in with the school counselor every other week. Testimony from the Vice Principal indicated that while that process was available and utilized in the 6th and 7th grade, the child was doing better and he and the IA chose not to continue that procedure.

I find that the school personnel, by accident or choice, followed almost exactly the procedure in the “Crisis Plan” and because of their quick and appropriate action, they prevented the child from harming himself and others.

There was no real testimony or exhibits offered regarding any specific violations of the child's IEP or FUBA.

DID THE CHILD HAVE A WEAPON

The crucial argument in this case is whether or not the plastic shards created by the Child and brandished during his behavioral escalation were weapons. Several definitions of what constitutes a weapon have been offered and the Petitioners presented an expert witness in the person of Director of Graduate Programs and Professor of Practice, University of South Carolina School of Law, to testify as to his understanding of what the word “weapon” means. The Respondent District's Weapons in School Policy states:

“While on school grounds, in school buildings, on buses or at school-related functions, students will not possess any item capable of inflicting injury or harm (herein referred to as a weapon) to persons or property when that item is not used in relation to a normal school activity at a

scheduled time for the student....” (Hearing Officer Exhibit 1).

IDEA regulations define a “weapon” as:

“(4) *Weapon* has the meaning given the term “dangerous *weapon*” under paragraph (2) of the first subsection (g) of of section 930 of Title 18, United States Code.” 34 CFR 300.530(i)(4).

The US code definition of “dangerous *weapon*” is:

“(2) the term “dangerous *weapon*” means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pock knife with a blade of less than 21/2 inches in length.” 18 USC 930(g)(2).

The South Carolina Code of Laws defines “*weapon*” in the criminal law section as:

“(A) Except for the provisions relating to rifles and shotguns in Section 16-23-460, as used in this chapter, “weapon” means firearm (rifle, shotgun, pistol, or similar device that propels a projectile through the energy of an explosive), a blackjack, a metal pipe or pole, or any other type of device, or object which may be used to inflict bodily injury or death.” Section 16-23-405, South Carolina Code of Laws.

The testified that it was his belief that the definitions found in the US Code of Laws excluded scissors and objects not knives, guns and shanks (homemade weapons). The resource officer in his testimony and his Investigative Report described the plastic shards as a “shank”.

The Petitioners have adopted the expert witnesses's position regarding the plastic shards and have also taken the position that the shards were not capable of causing serious bodily injury, referring to the definition of bodily injury found in Title 18 USC 1365(h)(4):

“(4) the term “*bodily injury*” means-
(A) a cut, abrasion, bruise, burn, or disfigurement;”

Here, we don't have the shards to view. The Principal explained that the maintenance staff in an effort to clean up the mess created during the incident, swept up the plastic, put it in a bag and threw it in the trash. It was trash pick up day so by the time she went to the trash bin to look for the shards, the trash had been picked up and taken away. The description of the shards by the IA, second CPI trained personnel, Principal, and resource officer vary slightly but all agree that there

were two shards with the first one smaller than the second one and the second one probably 6-8 inches long with a point, sharp edges and an area similar to a handle.

Regardless of the item's makeup, size and source, it appears that the child was intending to use it as a weapon to inflict bodily injury. The fact that he was apparently unsuccessful in bringing about serious bodily harm is not the standard for determining if he has a dangerous weapon. The U.S. Fourth Circuit of Appeals, citing other Federal cases as authority has ruled that:

“An object need not be inherently dangerous to be a dangerous weapon under federal statute prohibiting assault with a dangerous weapon and District of Columbia statute prohibiting assault with a dangerous weapon upon a correctional officer; rather, innocuous objects or instruments may become capable of inflicting serious injury when put to assaultive use.” (*U.S. v. Sturgis*, 48 F.3d 784, Fourth Circuit Court of Appeals (1995).

Based on these definitions and the Court's ruling on this issue, it is clear that the plastic shards brandished by the child were used as a weapon in this incident.

WAS THE ADMINISTRATIVE 45 DAY ALTERNATIVE PLACEMENT APPROPRIATE

The Petitioners have relied largely on their position that the shards were not weapons to challenge the imposition of the 45-day Administrative IAFS. Dr. Adams testified that she reviewed the incident reports, the IDEA Statute and Regulations and the School District's policy on having weapons on campus and determined that the facts fit the criteria for such an action. The parents were notified of this action at the MDR hearing. 34 CFR 530(a) states:

“(a) *Case-by-case determination.* School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.”

and:

“(g) *Special circumstances.* School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child--

(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;...

(h) *Notification.* On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of code of student conduct, the LEA must notify the parents of that decision, and provide the parents of the

procedural safeguards notice described in Sec. 300.504.” 34 CFR 530(a), (g)(1) and (h).”

It is clear that the child violated the School Policy relating to “Weapons in School”(Hearing Officer 1) and were properly notified at the MDR. The implementing of the 45 Day Administrative Alternative Placement was appropriate.

Following the incident ,the School Resource Officer gathered statements from various participants, reviewed them with the Solicitor and charged the child with Assault and Battery Third Degree, which is a Misdemeanor. That action was not instigated by the School and may or may not have been necessary given the child's disability but that will be determined in another tribunal.

COMPENSATORY EDUCATION

The Respondent initially offered a placement in the District's Alternative School. That placement was rejected by the parents who sought a Homebased placement with the assistance of the child's IA. The structure of that placement included two hours with the IA in the morning to assist the child catch up on missed assignments, and virtual attendance in his classes in the afternoon. During the virtual attendance time, the child was able to interact with the teachers and the IA, ask questions, and work on current assignments with IA in attendance in person in the class or with the child.

The child was initially suspended for three days and the alternative placement scheduled and services took about a week to set up. Clearly, there was some loss of classroom time and some missed assignments. However, the child's teachers have developed a schedule to hopefully catch him up on missed assignments and have forgiven some.eeeee

We know from our experiences during the Covid 19 outbreak that virtual school is not as effective as in person class time. Although the child continues to have the benefit of the IA, is very intelligent, is only in the early stages of the school year and has access to his classes

virtually, there has to be some lost momentum in his education.

His alternative placement is only about half over. There is time to bring the child up to speed and start the new year with renewed purpose if the Respondent will help. From the testimony the parents and the District have a good rapport and can work together which is a major plus for the child. Thus finding a way to make up for any lost time and school work should be something that they cooperatively can achieve. I believe such an effort is important in this case.

AWARD OF ATTORNEY'S FEES AND COSTS

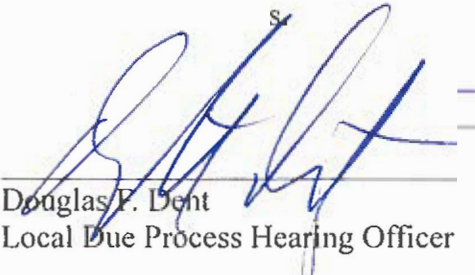
Under the Law, the award of attorney's fees is left to the discretion of the Courts and as a Local Hearing Officer I have no authority to decide that issue. The award of costs is within my preview but in this case no costs were offered. Thus, no decision is rendered on either issue.

THEREFORE, IT IS HEREBY ORDERED that:

1. The child's IEP and BIP were properly followed and executed during the incident described herein.
2. The child in question did possess a weapon capable of inflicting bodily injury on school property.
3. The 45 day Administrative Alternative Placement was appropriate and properly instituted.
4. The child has and will require assistance from the Respondent to ensure that he is current on his assignments and has an opportunity to achieve according to his abilities. To that end, the Parties will mutually develop a compensatory education plan which is in addition to his current educational services and is designed to complete all missed assignments and bring him current by the end of his 45 day removal. Said plan should include additional school personnel if necessary.
5. No ruling is made on the issue of Attorney's fees and costs.

IT IS SO ORDERED.

November 7, 2025
Greenville, South Carolina



Douglas F. Dent
Local Due Process Hearing Officer

APPEAL

Should either party wish to appeal this Decision, such an appeal may be initiated by contacting the Office of General Counsel, South Carolina Department of Education, 849 Learning Lane, West Columbia, South Carolina 29172, (803) 734-3393 within then (10) days of receipt of this Order.