

INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT
BEFORE THE STATE REVIEW OFFICER
FOR THE SOUTH CAROLINA DEPARTMENT OF EDUCATION

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF LEXINGTON	)	
	)	
In the Matter of:	)	
	)	
J.S. and R.S., on behalf of W.S.	)	
Petitioners/Appellants,	)	
	)	
	)	
V.	)	
	)	
Lexington County School District One,	)	
Respondent/Appellee.	)	
_____	)	

**DECISION OF THE
STATE REVIEW OFFICER**

This matter is before me pursuant to an appeal by (“Parents”), on behalf of (“Student”), of a decision by Douglas F. Dent, the Local Hearing Officer (“LHO”), finding Lexington County School District One (“District”) was not in violation of the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400, *et seq.*

1. Procedural Background

The Parents initiated an expedited Due Process Request on October 1, 2025. A hearing was conducted on October 29 and 30, 2025, with additional virtual testimony on October 31, 2025. The LHO issued a final decision on November 7, 2025, which was received by the parties on November 20, 2025. The Parents timely filed a notice of appeal on November 30, 2025.

2. Factual Background

The Student is a 13-year-old enrolled in middle school within the District. He receives special education services pursuant to an Individualized Education Program (“IEP”) for an emotional disability and has been diagnosed with autism spectrum disorder, attention deficit hyperactivity disorder (combined type), anxiety, depression, obsessive-compulsive disorder, intermittent explosive disorder, and childhood-onset fluency disorder. The Student is mainstreamed for all core academic classes and is accompanied by an aide throughout the school day.

The Student’s Behavioral Intervention Plan (“BIP”) targets refusal of non-preferred tasks, aggressive and self-harm behaviors. The BIP states that to de-escalate the Student, he should have no more than two adults with him, and that these adults can use the specific behavioral management techniques to ensure that he is in a small, safe area.

On September 18, 2025 the Student exhibited escalating negative behaviors during the final class period. The Student was removed from the classroom, and he walked through various areas of the school before being directed into a large empty classroom. As he moved through the school, the Student engaged in disruptive conduct, including picking up items off the custodial cart, throwing objects, and displaying aggressive behavior. In the classroom, he hit windows, threw furniture, and swung his hands and fists at staff. The Student broke some plastic storage bins, subsequently picking up a plastic shard and pointing it before it was removed from his hand by his aide. He then picked up a second, larger plastic shard, and also waved or pointed it towards staff. The Student held both of these plastic pieces in his bare hands. Although the Student directed these objects towards the staff, no injuries were sustained by staff. The incident concluded when a teacher utilized safety pads to remove the final plastic piece from the

Student's hands, after which the Student cried and assisted in cleaning the classroom. Up to five adults were involved at various times.

Following the incident, a Manifestation Determination Review ("MDR") was convened on September 23, 2025. The MDR team concluded that the Student's conduct was directly related to his disability and that the IEP had been fully implemented. The Parents disputed the finding regarding IEP implementation. Subsequently, the Executive Director of Special Services determined that the Student should be removed from the school for forty-five days, citing the plastic shards as a weapon. The Student is currently receiving instruction in a home-based setting.

3. Standard of Review

Federal and state regulations provide that a party aggrieved by a LHO decision may appeal to a State Review Officer ("SRO") who must "[e]xamine the entire hearing record" and "[m]ake an independent decision on completion of the review." 34 C.F.R. § 300.514(b)(2)(i) and (v) (2014). The SHO must also consider the hearing officer's advantage of examining the demeanor of the witnesses when credibility determinations are at issue. *Id.*; *Shore Reg'l High Sch. Bd. Of Educ. v. P.S. ex rel. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004). In doing so, the findings of fact of the LHO are entitled to deference and are considered prima facie correct. *M.S. ex rel. Simchick v. Fairfax Cnty. Sch. Bd.*, 553 F.3d 315, 326 (4th Cir. 2009); *Doyle v. Arlington Cnty. Sch. Bd.*, 953 F.2d 100, 105 (4th Cir. 1991). However, the SHO must still determine the weight of the evidence and questions of law independently. *Springer v. Fairfax Cnty. Sch. Bd.*, 134 F.3d 659, 663 (4th Cir. 1998) (differentiating itself from *Doyle*).

4. Hearing Officer's Findings

The LHO made the following findings:

- a) The District complied with the Student's IEP and BIP. The small, safe room was not available, and at no point were more than two adults present in the room with the Student. Weekly "check-ins" with school counselor were discontinued as they were deemed unnecessary.
- b) The plastic shards wielded by the Student constituted a weapon in this incident, relying on *United States v. Sturgis*, 48 F.3d 784, (4th Cir. 1995), and stating "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." (LHO Opinion, p. 8).
- c) The forty-five day Administrative Alternative Placement was appropriate, as the Student violated the District's policy regarding weapons on school premises.
- d) The compensatory education provided for the Student was appropriate.

The LHO made no ruling on award of attorney's fees and costs.

5. Discussion

Issue Presented

The central issue on appeal is whether the plastic shards wielded by the Student constitute a "weapon" within the IDEA exception permitting a forty-five day interim alternative educational setting. See 18 U.S.C. § 930(g)(2).

LHO's Analysis

I must defer to the LHO on issues of credibility of witnesses at trial and, generally, provide deference in relation to his factual findings. The LHO made few factual findings regarding the shards of plastic and the incident. I will accept what he did find, however:

- [The incident] “.. . ultimately concluding in the smashing of two plastic storage bins with plastic shards from those bins being brandished in a threatening manner before he was subdued and taken home by his father.”
- There was an “explosive, dangerous and unexpected episode causing harm to others, himself and to property.” Notably, despite the LHO’s statement that the Student “caus[ed] harm”, there was no evidence that the Student caused any injuries to anyone involved.
- 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.”

His legal analysis provides little clarity. He found that the shards were a weapon because “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 LHO did not provide any evidence for the Student’s intent. Further, he referred to the school policy’s definition of weapon as well as South Carolina’s definition of a weapon. Crucially, however, none of those sources provide the relevant definition of weapon. That definition is found in the federal IDEA regulations. Further, when discussing that controlling definition, the LHO made a legal error: he referred to a definition of “bodily injury” in 18 U.S.C. § 1365(h)(4). LHO Decision at 7. He did not refer to the definition of “serious bodily injury,” defined in § 1365(h)(3), even though, as explained below, the latter is controlling. After finding that the

shards were a weapon, he then referred again to the school policy relating to weapons in school to justify the removal of the Student under the federal IDEA. I will review this case solely under the federal IDEA framework.

Legal Framework

The IDEA seeks to avoid excluding children with disabilities from school except when absolutely necessary. Accordingly, IDEA regulations prevent schools in general from removing children with disabilities from their placement for any more than 10 school days when the behavior at issue is a manifestation of their disability. 34 C.F.R. § 300.530(b) & (d). Special education law provides a narrow exception to this prohibition on longer removals: under 34 C.F.R. § 300.530(g)(1), school personnel may remove a student to an interim alternative educational setting for up to forty-five school days, without regard to whether the behavior is determined to be a manifestation of the child's disability if the child "carries a weapon to or possesses a weapon at school." (The regulation provides other exceptions which are inapplicable to this case. 34 C.F.R. § 300.530(g)(2)-(3).) The term "weapon" is defined as "'a dangerous weapon' under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code." 34 CFR § 300.530(i).

"Dangerous weapon" is defined by 18 U.S.C. § 930(g)(2) as "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 pocket knife with a blade of less than 2½ inches in length." (emphasis added). For purposes of the IDEA, "serious bodily injury" has the same meaning found in 18 U.S.C. § 1365(h)(3). 34 C.F.R. § 300.530(i)(3). Serious bodily injury is distinguished further from bodily injury in 18 U.S.C. § 1365 (h), with serious bodily injury requiring "(A) a substantial risk of death, (B) extreme physical pain, (C)

protracted and obvious disfigurement, or (D) protracted loss or impairment of the function of a bodily member, organ or mental faculty.” § 1365 (h)(3). Bodily injury is, on the other hand, “(A) a cut, abrasion, bruise, burn, or disfigurement; (B) physical pain; (C) illness; (D) the impairment of the function of a bodily member, organ or mental faculty; or (E) any other injury to the body, no matter how temporary.” § 1365 (h)(4)

The determination of whether an object is a dangerous weapon is one that goes beyond the intrinsic character of the item, but also on its capacity, given the manner of its use, to endanger life or inflict serious physical harm. *Sturgis*, 48 F.3d at 787 (citing *United States v. Johnson*, 324 F.2d 264, 266 (4th Cir. 1963)). In *Sturgis*, a knowingly HIV positive man bit and spit at medical personnel treating him and made threatening statements like “I’ll bite you like I did her. I hope you get it.” His teeth were determined to be weapons, because of his medical status, his intent, and the actual harm caused.

Application of Facts

The plastic shards in question were not inherently dangerous as contemplated by *McLaughlin v. United States*, 476 U.S. 16, 17 (1986) (stating that an unloaded gun is still a dangerous weapon as a gun is “an article that is typically and characteristically dangerous . . . and the law reasonably may presume that such an article is always dangerous, even though it may not be armed at a particular time or place).

Further, the facts do not support a finding that the Student used the shards to cause or attempt to cause, death or serious bodily injury. Witness testimony described the Student as “waving” (Testimony of Chaves, p. 148) or “jabbing” the plastic towards staff, who remained at a small distance,(Testimony of Painter, p. 377), or “came at us” with it (Testimony of Headen, p. 313), but no injuries resulted. It is far from clear based on this testimony that the Student

intended to cause injury. However, one need not determine if the LHO reasonably determined that he did because even if the Student had intended injury, the plastic shard was only capable of causing a “bodily injury” not the “serious bodily injury” required by the IDEA.

While there is a general dearth of case law available on this exact issue, the parties presented several special education cases, and several cases exist that rely on *Sturgis* to determine whether an object is a dangerous definition.

The cases in which the standard for the definition of dangerous weapon was met – that is, the objects were capable of causing serious bodily injury -- had risks or actual injuries that were significantly greater than any contemplated here. (*Sturgis*, 48 F. 3d 784, finding the HIV positive nature of the individual to be critical in finding teeth capable of causing serious bodily injury; *United States v. Johnson*, 324 F.2d 264, 266 (4th Cir. 1963), finding that a metal and plastic chair when wielded from an overhead position and brought down on the victim’s head was a dangerous weapon because it was used for causing serious bodily injury; *United States v Perry*, 284 Fed.Appx. 56 (4th Cir., 2008) finding that throwing a hard plastic tray that created a permanent disability should be considered a dangerous weapon because it was capable of causing injury by virtue of the fact that it did inflict serious injury; *Anchorage Sch. Distr.*, 45 IDELR 23 (SEA 2005) finding that sharp adult sized scissors when used against a teacher could be a dangerous weapon. The SHO in this case relied on the fear expressed by the school staff. However, subjective fear of school officials is not determinative. Regardless, the SHO could reasonably find that an adult-sized and sharp set of scissors to be capable of causing death or serious bodily injury.)

Cases that did not meet the standard for dangerous weapons – that is, not capable of causing serious bodily injury -- were more similar to the plastic shards in this case. (*CA Montessori*

Project 56 IDELR 308 (SEA CA 2011): Blunt-tipped, rounded scissors that could not have cut another student because of how they were held could have not ‘punctured the chest or neck sufficiently enough to cause death or inflict serious bodily injury.’; *Anaheim Union High School Dist.*, 32 IDELR 129 (SEA CA 2000): A paperclip did cause a small cut but was not a dangerous weapon. “He did not show how the paper clip at issue was ‘readily capable’ of causing death or bodily injury.”¹ (*G.D. v Utica* 83 IDELR 12 (E.D. Mich. 2023): Here, the court found for a kindergartener and said that “plastic phone receivers and thermostats, no matter how broken and jagged, are not readily capable of causing a *substantial risk of death*.”).

Interestingly, there are a few cases in which a weapon was actually used to cause harm, but because the harm caused was not serious bodily injury, it was not considered a dangerous weapon for IDEA purposes or for a weapons enhancement in criminal court. (*Scituate Public Schools*, 47 IDELR 113 (SEA MA 2007) in which a student pulled a teacher’s necktie causing significant pain. The decision-maker found that the student did engage with the weapon (the necktie), and yet there was no serious injury or death, and therefore the tie was not capable of causing death.² This case showed that, even when the student full used the ‘weapon,’ we can find that it is not a dangerous weapon based on the outcome; *United States v Toufik*, 811 FedAppx 835 (4th Cir. 2020), where someone attempted to headbutt and bite, but because there was no actual serious bodily injury, there was no weapons enhancement; *United States v. Young*, 87 F.3d 1310 (4th Cir. 1996) relying on *Sturgis* to find a stun gun was not a dangerous weapon

¹ The District brief tried to distinguish this case as having to do with the fact that the paperclip in this situation was a normal size and not abnormally sized. The point remains that the court did not find a regular paperclip to be a dangerous weapon.

² The District argued that this case was about a lack of “possession” of the tie. While the decision-maker did discuss that, the issue most pertinent here is the capability one.

even when it rendered the victim unconscious with nausea, pain and welts, not a serious injury or substantial likelihood of death).

These cases suggest that even if we consider that the plastic shards had struck one of the teachers, if the injury was minor and not a serious bodily injury, then they would not be considered a dangerous weapon under IDEA.³

In the current case, the pieces of plastic were broken off a bin. This is undisputed. The District argues that the edges of the plastic were “sharp” all around and therefore transformed the pieces of plastic in dangerous weapons. But the Student did not do anything to shape the plastic. Nor did he wrap anything around the part of the plastic that he held in his hand and nothing in the record suggests that the edges of the plastic that he held were any less sharp than the edges of the plastic that could have been used should he have struck an adult with it. If the plastic shard really was sharp all around – and sharp enough to cause serious physical injury, the Student surely would have injured his hand just as if he was holding a sharp knife blade. But the Student did not have any injuries on his hand consistent with such a sharp object (perhaps some minor cuts, but the source of those cuts is unclear). The second piece of plastic may have had a sharp tip, but no one indicated that this was a particularly sharp tip that could cause greater injury. In fact, this plastic shard could not have caused any more injury than the paperclip described in *Anaheim* or . Witnesses described a theoretical possibility that this could have been used to hurt the eye, but again, that theoretical possibility is not the same standard as above where we are looking for a substantial likelihood – not of just injury – but of serious bodily injury or death.

³ Two other cases cited by both parties are not relevant here, as they both address the idea that the object must actually be used to be considered capable of injury and not just left in a backpack. *Ind. Sch. Dist. No 279, Osseo Area Sch.* 30 IDELR 645 (SEA MN 1999) in which a paintball gun, brought for recreational purposes, was not considered a weapon because it was not used for injury; *Knox Cty. Schs.* 124 LRP 6505 (SEA TN 2024) in which a wrench, brought to school for the purpose of injuring someone, was never touched and therefore not capable of causing injury.

While someone could have gotten a cut from this piece of plastic, that cut does not rise to the level of serious bodily injury or substantial risk of death.

The behavior of both District staff and other local authorities are consistent with the conclusion that the plastic shard was not a weapon capable of causing serious bodily injury. The District disposed of the shards following the incident, suggesting that they did not perceive the items as posing a substantial threat. The Student is currently facing criminal charges for third degree assault and battery under South Carolina's criminal code; only first degree assault that requires likelihood to produce death or great bodily injury (which has a definition roughly analogous to "serious physical injury" in federal law). *Compare* S.C. Code § 16-3-600(C)(1)(B) & § 16-3-600(E). The absence of more serious charges further supports the conclusion that the shards did not meet the statutory definition of a dangerous weapon.

6. Conclusion

The plastic shards wielded by the Student during the incident on September 18, 2025 do not constitute a "weapon" within the meaning of the IDEA. The Student's removal to an interim alternative educational setting for forty-five school days was improper.

It is hereby ORDERED that the Student shall be returned to his regular educational placement immediately. Further, it is ordered that the District shall convene an IEP team meeting to develop a revised Behavior Intervention Plan addressing the management of similar behavioral incidents. Third, the District shall provide in-person compensatory education to the Student equivalent to two hours per day for each day the Student was excluded from school for this incident beyond ten days.

7. 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) and 34 C.F.R. § 300.516.

A handwritten signature in black ink, reading "Avni Gupta-Kagan", is positioned above a horizontal line.

Avni Gupta-Kagan

State Hearing Officer

December 24, 2025