

STATE OF SOUTH CAROLINA	)	BEFORE THE STATE LEVEL
	)	HEARING OFFICER MITCHELL
	)	YELL, PH.D.
G.J. on behalf of Z.B.,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	STATE-LEVEL HEARING OFFICER
Florence County School District,	)	DECISION
	)	
One	)	
Respondent.	)	
	)	

This matter is before me pursuant to an appeal of a due process hearing in which G.J. (“Parent”) on behalf of Z.B. (“Student”), appeal the decision and final order of the Local Due Process Hearing Officer, Brian P. Murphy (“LHO”). Parent represented herself and Student pro se, without representation by legal counsel. Florence County School District One (“District”) was represented by Brian Denny, the District Assistant Superintendent, Exceptional Children.

The hearing was regarding a manifestation determination review (MDR) conducted by the District on February 27, 2026. On March 30, 2026, the LHO issued his final order finding that “Parent has failed to carry her burden of proof of showing that the IEP team erred when it determined that Student’s conduct on February 11 was not a manifestation of any disability known to the team.”¹ 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.

¹ LHO final Order, March 30, 2026, p. 16.

On March 31, Parent notified SCDE and District of her appeal of the LHO's decision in this matter. On April 1, 2026, the SCDE sent a letter and email indicating that I (Mitchell Yell) would serve as the State Review Officer ("SRO") in this matter. The state-level appeal is due no later than April 30, 2026. The Question before me is as follows: Was the LHO correct in his ruling that the Parent did not sustain her burden of proof that the IEP team erred when it determined that the Student's conduct of February 11, 2026, was not a manifestation of the Student's disability.

PROCEDURAL BACKGROUND

The dates pertinent to this appeal are as follows:

- February 11, 2026. Student's special education teacher locked Student out of his Chromebook for failing to follow directions. Student then used his phone to watch or listen to non-school work, whereupon his special education teacher referred Student for a disciplinary infraction.
- February 27, 2026. District held an MDR. Although Parent did not attend the meeting, she sent an email that was read to the team. The team determined that Student's conduct was not a manifestation of his disability.
- March 23 & 25, 2026, Due Process hearing held in Florence, SC.
- March 30, 2026, LHO issued ruling.
- March 31, 2026. Parent appealed ruling of LHO.
- April 1, 2026. SCDE emailed Parent and District that Mitchell Yell would serve as the SRO.
- April 1, 2026. The SRO sent an email to Parent and District requesting that briefs be submitted to him on the following dates: April. 15 for the Parent brief, April 19 for the District brief, and, if needed, Parent's reply brief on April 22.
- April 1, 2026. District replied via email that the schedule was acceptable.
- April 2, 2026. Parent replied via email that the schedule was acceptable.
- April 6, 2026. Parent made a motion to admit additional evidence.
- April 8, 2026. SRO granted the motion.
- April 13, 2026. Parent submitted additional evidence.
- April 15, 2026. Parent submitted brief to SRO.

- April 19, 2026. District submitted brief to SRO.
- April 20, 2026. Parent submitted reply brief to SRO.

REVIEW

In the two-tier due process system used in South Carolina, the SRO's (Tier Two) review of an LHO's (Tier One) ruling is limited to the issues appealed. 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.²

As the SRO, it is my task to examine the entire hearing record and arrive at an independent decision.³ 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.⁴ It is important to note that Supreme Court also ruled the party seeking relief bears the burden of proof.⁵ Thus, the Parent assumes the burden of proof in this matter.

I reviewed the transcripts, briefs, exhibits, recording of MDR, and LHO's final order.

BACKGROUND ON STUDENT

Student is an 11th grade high school student in the District. He receives special education services. His primary category of disability is specific learning disability (SLD) and his secondary category is other health impairment (OHI) under the Individuals with Disabilities Education Act (IDEA).⁶ He is also diagnosed with attention deficit hyperactivity disorder (ADHD) and Idiopathic Hypersomnia.⁷

Student exhibited challenging behavior throughout the year.⁸ His behaviors included arriving to class late, being off task, failing to take notes, not beginning assignments when

² Springer v. Fairfax County School Board, 134 F.3d 659, 663, 4th Cir. 1998

³ 34 C.F.R. § 514 (b)(2).

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

⁵ Schaffer v. Weast, 546 U.S. 49 (2005).

⁶ Parent Exhibit #1-Prior Written Notice of 2/27/2026.

⁷ Parent Exhibit #3-Behavioral Intervention Plan of 5/20/2025 and Parent Exhibit #4-Behavioral Intervention Plan of 3/3/2026.

⁸ Parent Exhibit #16-Student referrals showed that student has 15 office referrals, which resulted in 9 days of out of school suspension and 4 days on in school suspension.

requested to do so, not completing assignments, skipping class, being disrespectful, having his phone out, violating classroom rules, being tardy to class, refusing to obey, defiance, cheating, and not complying with teacher directions.⁹ These behaviors seem to be exacerbated in the special education class¹⁰ where Student would be on his device and attempt to hide his cell phone while viewing it.¹¹ He has also been heard to say to the special education teacher, the following: “I don’t need you to explain things to me, why are you even around me, I don’t want your help, you can get out of my face, and you can get gone.

Notably, these behaviors were not as much a problem in his English class.¹² In one situation in this other class, the English teacher noticed the Student was on his cell phone, whereupon the Student apologized and put his device away.¹³

On February 27, 2026, an MDR was held regarding the Student’s repeated violations of the District’s cell phone policy.¹⁴ The specific incident of cell phone use was on February 11, 2026. Parent was notified of the incident on the same day. On February 13, 2026, Parent was provided with a procedural safeguards notice.

Information reviewed during the MDR included Student’s individualized education program (IEP), behavioral intervention plan (BIP), discipline records, teacher observations, and the Parent’s input. The Student and the Parent chose not to attend the meeting, but the Parent sent an email which was read to the MDR team by the special education teacher. In this letter, Parent noted that neither Student nor Parent would attend the MDR because the District’s Exceptional Education supervisor, would be at the meeting.¹⁵ The special education teacher reported that Student’s cell phone is not an accommodation in Student’s IEP.¹⁶

DECISION OF THE LOCAL HEARING OFFICER

In the final order, the LHO ruled that the Parent failed to carry her burden of proof that the team incorrectly determined Student’s Behavior on February 11 was not a manifestation of his disability.

⁹ See Parent Exhibit #1-Prior Written Notice of 2/27/2026, Parent Exhibit #3-BIP of 5/20/2025, and Parent Exhibit #4-BIP of 3/3/2026, Parent Exhibit #15-Minor Incident Report, 2025-2026.

¹⁰ Parent Exhibit #16-Student office referrals.

¹¹ Parent Exhibit #15-Minor Incident Report of special education teacher on October 23, 2025.

¹² Parent Exhibit #8, email from Parent to the principal on 1/7/2026.

¹³ Parent Exhibit #15-Minor incident report for 2025-2026.

¹⁴ Parent Exhibit # 17-Manifestation Determination Review on 2/27/2027.

¹⁵ Parent Exhibit # 17-Manifestation Determination Review on 2/27/2027, page 2 of 5.

¹⁶ Parent Exhibit # 17-Manifestation Determination Review on 2/27/2027, page 3 of 5.

DISCUSSION

There are four issues that I examined prior to reading the briefs and making my decision: the burden of proof, IDEA's requirements regarding the MDR process, the conduct of the MDR, and the conduct of the hearing.

Issue #1: The Burden of Persuasion in a Due Process Hearing

If parents and officials in a school district cannot agree about a child's special education services, either side can ask for a due process hearing. This is the formal meeting held before the LHO where both the parents and the District shared their evidence with a neutral decision-maker, in this case LHO Murphy. An important concept in these hearings was the "burden of persuasion." This simply means: Who has to prove their case?

In a hearing, the side with the burden of persuasion must show that their position is correct. If the hearing officer is unsure or thinks both sides are equally convincing, the side with this responsibility will lose. The IDEA does not clearly specify who has this responsibility. However, the U.S. Supreme Court addressed this in a 2005 case, *Shaffer v. Weast*.¹⁷ The Court decided that, in most cases, the person who files for the hearing has the burden of persuasion.

After this decision, the U.S. Department of Education¹⁸ chose not to add new rules because the Supreme Court's decision already serves as the guiding standard. This means that if a parent requests a due process hearing, as was done in this case, the parent needs to prove their case. In this matter, the LHO determined the Parent did not meet this burden.

Issue #2-Manifestation Determinations Under the IDEA

An MDR is a legal process used in special education under the IDEA. The purpose of the MDR is to decide whether a student's misbehavior is connected to their disability. The theory behind the MDR is when inappropriate behavior is caused by the disability, the response of school officials must be different than when the behavior is not related to a student's disability.¹⁹

¹⁷ *Shaffer v. Weast*, 546 U.S. 49 (2005).

¹⁸ 71 Federal Register, 46,540, August 14, 2006.

¹⁹ Congressional Research Service (2004, August 3). Individuals with Disabilities Education Act (IDEA): Discipline provisions in P.L. 105-17. Library of Congress, p. 11.

The MDR language was codified in the IDEA 1997 Amendments and changed in the Individuals with Disabilities Education Improvement Act of 2004. These additions to the IDEA require a school team, comprised of the local educational agency (LEA) representative, a student's parents, and relevant members of the student's IEP team conduct the MDR.²⁰

This section of the IDEA also requires when conducting the MDR, the team must consider all relevant in a student's file, including the student's IEP, any teacher observations, and any relevant information provided by a student's parents to answer the following two questions:

- 1- If the conduct in question was caused by, or had a direct and substantial relationship to the student's disability,²¹ or
- 2- If the conduct in question was the direct result of the LEAs failure to implement the student's IEP.²²

If the MDR committee answers yes to either of these questions, there is a manifestation between the student's misbehavior, and school personnel must take certain actions. If, however, the MDR committee answers no to both questions, there is no manifestation and a student may be disciplined in the same manner as their nondisabled peers except that school officials must continue to ensure the provision of a free appropriate public education (FAPE).

Unfortunately, the definition of manifestation in the IDEA is somewhat vague and other than requiring these two questions, the IDEA does not provide MDR committees with much guidance on conducting the MDR. Some guidance was provided by the U.S. Court of Appeals for the Ninth Circuit in *Doe v. Maher*.²³ In this case, the circuit court held that the relationship between the disability must be direct and causal and that the student's disability must significantly impair a student's behavioral controls. Moreover, the term manifestation does not include conduct that bears only an attenuated relationship to a student's disability.

²⁰ IDEA, 20 U.S.C. § 1415(k)(1)(E)(i) and IDEA Regulations, 34 C.F.R. § 300.530(e)(1).

²¹ IDEA, 20 U.S.C. § 1415(k)(1)(E)(i)(I) and IDEA Regulations, 34 C.F.R. § 300.530(e)(1)(i).

²² IDEA, 20 U.S.C. § 1415(k)(1)(E)(i)(II) and IDEA Regulations, 34 C.F.R. § 300.530(e)(1)(ii).

²³ *Doe v. Maher*, 793 F.2d. 1470 (9th Cir. 1986).

Although there have not been subsequent changes to the IDEA, courts have ruled on MDRs. For example, important issues when determining manifestation include, a student's ability to understand school rules,²⁴ preplanning problem behavior,²⁵ understanding the consequences of the misbehavior,²⁶ and concealing an illegal activity²⁷

As is the case with other programming decisions in special education, parents must be invited to the MDR and the decision made by the committee must be individualized. The final decision does not require unanimity. The parent of a child with a disability who has been through the MDR process has the right to exercise their procedural safeguards, including requesting an expedited due process hearing to resolve disagreements about the MDR process.

Issue #3-The conduct of the MDR

As the audio/video tape of the MDR shows, the MDR the meeting was run by the school psychologist in a commendable manner.²⁸ Attendants included the school psychologist; the assistant principal, who served as the LEA representative; the case manager and special education teacher of Student; the secondary Administrator of Exceptional Children; two general education teachers of Student. The school psychologist took thorough notes of the meeting.²⁹ Neither the Parent nor Student attended the MDR, although the Parent did send a letter. After reviewing the information, including the teacher's observations and Parent's letter, the MDR committee determined that the conduct in question was (a) not caused by nor did have a direct and substantial relationship to the Student's disability, and (b) not the direct result of the district's failure to implement the Student's IEP. The results of the committee's deliberation was that the Student's conduct in question was not a manifestation of the Student's disability. It was further decided that the Student would remain at Rush Academy, the District's alternative school and Student's interim alternative educational setting (IAES) until April 2, 2026.

The Parent notified the SCDE and District of intent to file for an expedited due process hearing, which was held on March 23 and 25, 2026, in Florence, SC. The Parent

²⁴ Farrin v. Maine School Administrative District No 59, 165 F. Supp. 2d. 37 (D. ME 2001).

²⁵ Fitzgerald v. Fairfax County School Board, 556 F. Supp. 2d (E.D. VA 2008).

²⁶ A.W. ex rel. Wilson v. Fairfax County School Board, 372 F.3d 674 (4th Cir. 2004).

²⁷ In re: Student with a Disability, 62 IDELR 217 (SEA KS 2013).

²⁸ See video of MDR and testimony of Mr. McElveen, Day 2 of testimony transcript.

²⁹ Parent Exhibit #17-MDR meeting on 2/27/2026.

submitted a written post hearing brief on March 27, 2026. The District did not submit a post-hearing brief.³⁰

Issue #4-The conduct of the hearing

The hearing was conducted in an exemplary manner by LHO Murphy. The LHO was very fair to both sides and explained important issues to all parties. **I have determined the hearing procedures were consistent with the IDEA's requirements regarding due process.**

ISSUES RAISED BY PARENT AND REPLY BY DISTRICT IN BRIEFS TO SRO

Both parties obviously put a great deal of thought into their briefs to the SRO. They were well-written and easy to follow. As the SRO in a two-tier system, my administrative review is a limited review is of the issues appealed by the petitioner. However, I may request additional evidence if necessary.³¹

Parent brief received on April 15, 2026

Parent submitted her brief in a timely manner. The Parent made the following points challenging the LHO's conclusion that the Student's conduct was not a manifestation of his disability:

- **LHO used an incorrect legal standard that Student's anxiety was not a part of his disability.** The Parent wrote that the correct legal standard was not whether the condition was listed in the IEP but whether the misconduct was caused by or had a direct and substantial relationship to the disability. Parent maintained that Student's category of OHI included anxiety, depression, and emotional regulation needs, which also affected his ability to manage stress, regulate behavior, and to respond appropriately in the classroom.
- **The record demonstrates a direct and substantial relationship to the disability.** The record shows that Student had (a) emotional regulation needs, (b) behavioral needs and his IEP goals included goals related to behavior, task completion, and following instructions. The Student had a history of avoidance and disengagement, which could occur in response to emotional distress. Moreover, Parent wrote that the

³⁰ LHO Final Order, p. 1.

³¹ 34 C.F.R. § 300.514.

use of his phone was a coping or escape behavior for Student. Parent cited testimony as proof of the direct and substantial relationship to his disability.³²

- **Failure to implement Student's BIP contributed to the incident.** According to Parent, the record demonstrated that Student's BIP was not totally implemented on the day of the incident. Parent cited testimony of Student's case manager that "key behavioral supports were not provided" and that the "teacher acknowledged that she did not offer the student a break."³³
- **The LHO relied on facts not supported by the record.** According to the Parent, the LHO characterized the Student's behavior as bullying, however, the testimony reflected that that Student felt uncomfortable in the classroom and that the teacher was "bothering him"³⁴ and repeatedly prompting him." Parent cited day 1 testimony on page 88.
- **The MDR team failed to consider all relevant information.** The Parent wrote that the Student's IEP and BIP directly addressed the behavior cited in the incident and that the MDR team failed to "meaningfully account for this connection."
- **The MDR team improperly relied on policy violation rather than conducting a proper disability analysis.** According to the Parent, the MDR team was improperly influenced by the belief that the Student's conduct violated policy regarding phone use. The Parent writes that the use of the phone by the student represented a coping and avoidance mechanism and this behavior was consistent with his disability related needs.

³² Parent cited testimony from day 1 of the hearing, pages 71-76. However, transcript from day 1 that I received only went to page 52. Pages 71-76 of the transcripts I received were on day 2 of the hearing. Pages 71 to 74 of the hearing transcript involved discussions between the LHO and Mr. Denny and LHO and Parent, cross examination of the Parent by Mr. Denny, and the redirect by the Parent of herself. On. Page 74, The counselor and school-based therapist (SBT) , is sworn in and is questioned by the Parent. She testifies that her role is to help the student with emotional regulation (page 75 of Day 2), She also testified about the Student's IEP goals and that Student shared that "Depending on the situation, he didn't want to do it" and that "he didn't need help." (page 76 of Day 2 testimony).

³³ Parent cited testimony from day 1 of the hearing, page 118. However, in the transcripts I received this occurred on day 2 of the hearing. In the transcripts I received this is from the special education teacher's testimony regarding the events of the day. The special education teacher locked the Student's Chromebook and he was watching YouTube on his phone. She did not give the Student a break.

³⁴ In the transcripts I received, this exchange occurred on day 2 of the testimony of the SBT's direct examination by Mr. Denny. She noted that the Student did not like the environment of the special education teacher's classroom because she was "bothering him and trying to get him to do his work. So she wouldn't leave him alone as far as asking him if he needed help or trying to keep him on task" (Transcripts, day 2, page 88).

- **The MDR team failed to consider relevant information and inconsistent expectations.** According to the Parent, the MDR team did not consider (a) relevant emotional and counseling information; (b) the conflicting expectations on the same day because sometimes the Student was disciplined for behavior and sometimes the behavior was allowed, which demonstrated inconsistency; (c) lack of clarity in the IEP and BIP, and (d) the impact of the manifestation determination. The Parent wrote that the phone use was related to the Student’s emotional regulation, was affected by inconsistent expectations, and was not “willful misconduct.”
- **Conclusion.** Parent wrote that the case “was not about the phone” but was “about whether the District “followed the IDEA.” She asked that the SRO reverse the MDR finding and overturn the LHO’s ruling by finding that the Student’s misconduct was a manifestation to his disability and that the District did not provide a FAPE because it failed to follow Student’s IEP and BIP. For remedies, Parent asked for compensatory education, additional remedies as appropriate including the review of District practices and the “withholding of funding.”

District brief received on April 19, 2026

The District submitted the brief in a timely manner. The District made the following points in supporting the LHO’s conclusion that Student’s conduct was not a manifestation of his disability:

- **Parent bears the burden of proof.** The District cites Schaffer v. Weast (2005) as requiring the parent to prove either that there was a direct and substantial relationship to the child’s disability or that there was a direct relationship to the LEA’s failure to implement the IEP.
- **Parent failed to prove the conduct was a manifestation of a disability.** The district contended that the Parent failed to offer credible evidence that the Student’s disability caused the February 11 incident or was directly and substantially related to the disability. Although the Parent alleged that the misconduct of February 11 was related to depression and anxiety, the Parent provided no clinical evidence of such diagnosis to the IEP team. The District’s position is that the Student was selective in exhibiting the misbehavior, regulating the behavior and conduct with different teachers, which the District contends undercut the claim of disability-driven behavior. The District

cites the SBT as “indicating there was no objective evidence that the Student used his cell phone as a therapeutic coping mechanism for anxiety or depression.”

- **Parent failed to prove a failure to implement the IEP.** According to the District, the Parent failed to identify any aspect of the Student’s IEP or BIP that was not implemented by the District. The District contends that the MDR team reviewed all relevant information, including teacher observations and disciplinary information. The LEA used strategies and interventions to reduce that target behavior. The District also cited the BIP as requiring a break when requested by the Student. There is no evidence that the Student requested a break.
- **Conclusion.** The Parent failed to bear the burden of proof needed to overturn the determination of the MDR team. The District asserts that the evidence presented at the hearing neither shows that the problem behavior of February 11 did not have a direct and substantial relationship to Student’s disability and that the LEA implemented the Student’s IEP and BIP.

Parent Response brief received on April 20, 2026.

The Parent submitted the response brief in a timely manner. The Parent made the following points challenging the District’s brief that the Student’s conduct was not a manifestation of his disability:

- **The District applied an incorrect legal standard.** The Parent asserts that the District was incorrect in the argument that there was no “clinical diagnosis” of anxiety or depression and the proper inquiry under the IDEA is whether the misconduct in question had a direct and substantial relationship to the Student’s disability. According to Parent “by focusing on the absence of a diagnosis, the District applies an incorrect legal standard and avoids the required manifestation analysis.”
- **Additional evidence confirms anxiety and emotional needs.** The Parent submitted a motion to allow the submission of additional evidence of records from the School-based therapist. The Parent asserted that in the additional evidence submitted, the school-based therapist reported that the Student reported feeling overwhelmed in class and that he experienced anxiety and emotional concerns, which the Parent contended directly contradicted her testimony.

- **The District acknowledged the Student’s anxiety but improperly dismissed it.** The Parent contends that the District admitted the counselor’s notes reflected that the Student felt “overwhelmed” and experienced anxiety in academic settings but by minimizing these facts and claiming that the Student misbehavior was not a manifestation, the District incorrectly dismisses the Student’s anxiety. According to the Parent the evidence that the Student was anxious and emotionally distressed “directly supports a relationship between the Student’s disability and the behavior.”
- **The District improperly relied on “choice” rather than disability.** The Parent asserted that the District argued that the Student’s ability to behave differently in different settings demonstrates that the conduct was a matter of choice, which the Parent wrote was legally flawed. The Parent contended that variability in behavior across setting is consistent with disability-related needs, particularly those involving emotional regulation and environmental triggers.
- **District failed to implement the Student’s IEP.** The Parent noted that the District followed the BIP because the Student did not request a break. The Parent asserted that the BIP allows for teacher discretion and requires proactive intervention and that the record reflects that the teacher did not offer a break, did not implement additional interventions and the “response escalated to discipline rather than support.”
- **District failed to consider all relevant information.** Parent noted that the IDEA requires that the MDR team must consider all relevant evidence, including evidence provided by the Parent. However, the Parent contends that District failed to properly consider the Parent’s “communication regarding the Student’s “anxiety, counseling-related information, and evidence of emotional distress impacting behavior.”
- **District failed to address inconsistent expectations.** The Parent contended that the Parent exhibit #20 demonstrates that the Student was allowed to listen to music in one class whereas he was disciplined for similar behavior in another classroom, which reflects “inconsistent expectations and implementation.” Moreover, Parent wrote that “inconsistency like this undermined the District’s claim that the behavior represented willful misconduct and supports a finding that the behavior was related to the Student’s disability.

- **District improperly relied on policy violation.** The Parent wrote that the District by emphasizing policy violation rather than the “required disability analysis” failed to meet the legal requirements for MDRs.
- **Conclusion and request for relief.** According to the Parent the record demonstrates a direct and substantial relationship to the disability, failure to implement behavioral support, a failure of the MDR team to consider all relevant information, and reliance on an incorrect legal standard. Parent asks the SRO to (a) reverse the LHO’s ruling; (b) find the conduct was a manifestation of the student’s disability; (c) find that the school district denied a FAPE; (d) order compensatory services; (e) require that the District implement corrective procedures to ensure proper implementation of Student’s IEP and BIP; (f) require the Student’s IEP team to consider and adopt appropriate behavioral supports; and (g) grant any relief determined to be appropriate, including review of district practices and withholding or revocation of funds for noncompliance.

SRO ORDER

The issue before the LHO and, therefore, the issue before me is the following: Did the Parent sustain the burden of proving that the MDR team erred when they determined that Student’s behavior was not a manifestation of the Student’s disabilities.

On February 11 Student was caught using his phone, which was prohibited by District policy. During the incident, his special education teacher locked Student out of his Chromebook for failing to follow directions. Student then used his phone to watch or listen to non-school work. The special education teacher referred Student for a disciplinary infraction.

On February 27, 2026. District held an MDR. Although the Parent did not attend, she sent an email that was read to the MDR team. The IDEA clearly defines that the MDR committee must gather and consider all relevant information including any observation of the student, the Student’s IEP, and any relevant information provided by the parent.³⁵ The team determined that Student’s conduct was not a manifestation of his disability and that the Student would be placed at Rush Academy until early April 2026.

Parent requested a due process hearing in which the LHO ruled that “Parent has failed to carry her burden of proof of showing that the IEP team erred when it determined

³⁵ IDEA Regulations, 34 C.F.R. § 300.530(e).

that Student's conduct on February 11 was not a manifestation of any disability known to the team." The Parent appealed the LHO's ruling.

I find that both the MDR and the hearing were conducted in accordance with the procedures set forth in the IDEA. Furthermore, I agree with the LHO's finding that the Parent failed to carry her burden of proof in this matter. As the LHO stated a number of times in the hearing, "The issue in this hearing is not whether you (Parent) believe that (Student) should have a phone or not. That's not the issue in this hearing. The issue in this hearing is whether (Student's) behavior in using a phone, which according to the policy you (Parent) produced is a violation of school policy, whether that is caused by or substantially related to (Student's) disability.³⁶ I also agree with the MDR team's finding that the conduct in question was (a) not caused by nor did have a direct and substantial relationship to the Student's disability, and (b) not the direct result of the district's failure to implement the Student's IEP.

The student engaged in behavior that was clearly against school rules. The Student understood this was a violation of school policy when Student apologized for this behavior in the incident described by his English teacher when the Student was using the phone and voluntarily put it away when he realized that she would see it, take the phone, and follow protocol.³⁷ This shows that the Student had knowledge of the rule the Student was violating and an understanding of the consequences of the misbehavior. Additionally, the English teacher noted that the Student disengaged whenever work was required.³⁸ Student also used his phone surreptitiously by hiding and watching YouTube videos on his phone when his special education teacher locked his Chromebook,³⁹ which suggests preplanning and that Student concealed an activity he knew to be prohibited by school rules. As the special education teacher noted in her testimony "In general (Student) has been completing less assignment than usual and that behaviors have gone up, including having his phone out and being more defiant in the classroom."⁴⁰ (Student) does like to be told what to do...On the date in question...(Student) sat down and started watching

³⁶ Day 2 transcript, statement by the LHO, p. 81.

³⁷ Day 2 transcript, testimony of the English teacher, p. 179.

³⁸ Day 2 transcript, testimony of the English teacher, p. 178.

³⁹ Day 2 transcript, testimony of the special education teacher, pp 117 and 118.

⁴⁰ Day 2 transcript, testimony of the special education teacher, p. 105.

YouTube videos (Student) did not have his head down. (Student) did not say he was overwhelmed. (Student) did not sigh or have any kind of outward expression of being overwhelmed. But avoided and ignored tasks that (Student) was asked to complete.”⁴¹

Whereas, Parent is a strong advocate for the Student, not every misbehavior is related directly and substantively to the Student’s disability. Such is the case here. The Student’s disability did not significantly impair his ability to control his behavior and the Student had the ability to understand school rules. Furthermore, the Student preplanned his problem behavior, understood the consequences of the misbehavior, and concealing his use of the cell phone. The Student’s use of the cell phone, therefore, was not a manifestation of his disability and Parent did not carry the burden of proof. I, therefore, affirm the ruling of the LHO.

NOTICE OF APPEAL RIGHTS

Any party aggrieved by this decision may commence a civil action with respect to the complaint presented in any state court of competent jurisdiction or in a district court of the United States within ninety (90) days of the date of this decision. 20 U.S.C. § 1415(i)(2)(A)-(B); 34 C.F.R. § 300.516; S.C. Code Regs. § 43-243(V)(17).



Mitchell L. Yell, Ph.D.
State-Level Hearing Review Officer
Columbia, South Carolina
April 22, 2026

⁴¹ Day 2 transcript, testimony of special education teacher, p. 107.