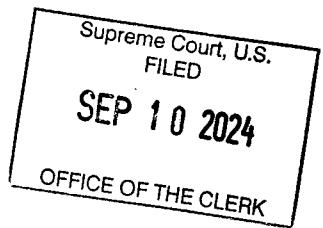


24-6139 **ORIGINAL**

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**IN THE SUPREME COURT  
OF THE UNITED STATES OF AMERICA**

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Alexis Carberry at 235 Straightaway Lane, Fort Mill, SC 29707  
732-547-7370, and Kevin Carberry at 4517 Kaylled Lane Fort Mill, SC 29707,  
973-224-3954 and/on Behalf of their son KJC., a minor.

Pro Se'

**Plaintiffs**

Lancaster County School District represented by and individually Jonathan Phipps, Lindsay Marino & Nicole Lee; The South Carolina Department of Education represented by and individually, Barbara Drayton & Kimberly Blackburn, Vernie Williams, David Duff, Meredith Seibert, Brian P. Murphy, Monica Bohlen, Perry Zirkel and Mitchell Yell.

**Defendants**

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**WRIT OF CERTIORARI**

**Special Education**

The District Court of South Carolina Case No: 0:23-cv-01488-SVH-JDA Dismissal 3/12/24  
4th Circuit Appeal Court Case Number No. 24-1232 Dismissal 6/27/24

**Related Cases:**

District Court of SC case no: 0:22-614-SAL-SVH Combined Benson I and Benson II  
FOURTH Circuit of Appeals Case NO. 22-2104 and 22-2310  
SCOTUS No. 23-5007

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## I. Questions Presented

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### **Denial of IFP without cause, Right to Due Process, Denial of Appointment of Counsel.**

#### **Severe Potential for Injustice:**

Proceeding in forma pauperis is not a right, and it is subject to the discretion of the court, however when it comes to IDEA, parents are able to bring claims as the parent. Denying that right to due process, especially after the parent was victorious pro se in the administrative process, is nothing more than obstruction of justice. Certainly when the same courts and the higher court already GRANTED IFP status for related and concurrent cases.

Setting a precedent denying parents IFP, who are in financial hardship because of the SCDOE failure to provide a FAPE and asserted their child's civil right to access to a Free and Appropriate Public Education is contributing to our nation's educational infrastructure to crumble. To make matters more concerning is then denying the Motion for the Court to appoint counsel! This severe lack of ethics and constitutional law is dangerous for this country.

If we can not protect our weakest and more vulnerable, then what does that say about US? Plaintiffs believe that this is a question that has national importance for the access of low income families and/or families in financial hardship, to be able to access equal justice for their children's civil rights to access an FAPE.

#### **Question #1**

- A. Can and should a Court deny IFP status after granting IFP in related concurrent cases without cause, when Parents file a Federal Complaint through IDEA, Section 504 or ADA pro se'? ( after the exhaustion of Administrative remedies)
- B. Should they be accorded the right to appointed counsel when filing pro se' and/or in forma pauperis in order to have equal access to justice if the alternative is dismissal?

### **Parental Rights Pro Se' :**

In the Wilkerman Vs Parma Supreme Court decision in 2007, the court came to a decision that the IDEA law states , “ ANY party aggrieved” included the parents being able to bring a complaint for their child, as well as having claims for themselves.

Further, New SC law states:

Section 63-23-20. (A) The State, any political subdivision of the State, or any other governmental entity shall not substantially burden the fundamental right of a parent to direct the upbringing, education, health care, and mental health of that parent's child without demonstrating that the burden is required by a compelling governmental interest of the highest order as applied to the parent and the child and is the least restrictive means of furthering that compelling governmental interest.

### **Question #2**

1. Can plaintiffs/parents per IDEA law and/or SC state law use “ borrowed doctrine” from Section 504 and ADA for FAPE, as well as any other related claims, to file a civil complaint on behalf of their child and themselves?

## **Civil Rules of Procedures, “Liberal construction”**

In order to uphold The Constitution of the United States of America as well as 4th circuit caselaw, and what our founding fathers created for “ We the People”, by “we the people”, Courts are mandated to give **equal access** to Justice for Pro- se litigants. Judges Share their oath to the Constitution and any betrayal of that is unacceptable. Courts are to give “ reasonable liberal Construction” of the complaint in Favor of the Persons, not the “rules”. This understanding was also explained in the Federalist Papers and numerous other addresses. Without Truth, Freedom and Justice **FOR ALL**, we have no county.

### **Question #3**

- A. Can a Civil case be dismissed claiming that the pro se’ liberal construction of the complaint is not compliant with civil rules of procedure, alleging/ ruling , “failure to state claim”?
- B. Do the Civil Rules of Procedures take precedence over the Constitution Of the United States of America and “ we the people” rights to due process? ( not we the attorney’s )

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## II. Related Proceedings & Appendices

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United States District Court of South Carolina

Benson I and II Combined Case No: 0:22-00614-sal-svh

FOURTH Circuit of Appeals Case NO. 22-2104 and 22-2310

FOURTH Circuit of Appeal Judicial Misconduct complaint ( never docketed) Exhibit F

SCOTUS No. 23-5007

Exhibit A1+A2 - State Review Officer 12/8/21 and 3/1/22 decision.....

Exhibit B- SCDOE Due Process Hearing Data.....

Exhibit C- Independent Educational Evaluation, Dr. Laurie Gillespie.....

Exhibit D- Petition and Demand Letter to Superintendent Ellen Weaver against LHO Brian P. Murphy.

Exhibit E- Motion for Emergency Injunction against LHO Murphy

Exhibit F- Judicial Misconduct Complaint Magistrate Shiva Hodges and Judge Sheri Lydon, Fourth Circuit of Appeals.

Exhibit G- Most recent DPH Procedural Violations by LHO Murphy, prejudice against pro se litigants.

### **III. TABLE OF AUTHORITIES**

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1. Schaffer v. Weast (2005): Fourth Circuit
2. Doe v. Arlington County School Board (1994): Fourth Circuit
3. E.S. v. Katonah-Lewisboro School District (2012): Fourth Circuit
4. T.B. v. Prince George's County Board of Education (2010): Fourth Circuit
5. Board of Education of Hendrick Hudson Central School District v. Rowley (1982): Supreme Court
6. Cedar Rapids Community School District v. Garret F. (1999): Supreme Court
7. Fry v. Napoleon Community Schools (2017): Supreme Court
8. Hartzell v. Connell (2003): Fourth Circuit
9. Swann v. Charlotte-Mecklenburg Board of Education (1971): Fourth Circuit
10. Long v. Murray County Board of Education (2003): Fourth Circuit
11. Wright v. Roanoke City School Board (2012): Fourth Circuit
12. Board of Education of Oklahoma City v. Dowell (1991): Supreme Court
13. Goss v. Lopez (1975): Supreme Court
14. Doe v. Taylor Independent School District (2001): Fifth Circuit
15. Nelson v. Adams County Board of Education (2007): Eleventh Circuit
16. Doe v. Withers (2006): District Court for the Eastern District of Virginia
17. J.C. v. Beverly Hills Unified School District (2013): The United States District Court for the Central District of California
18. Pachlhofer v. Board of Education of the City of Chicago (2015): The United States District Court for the Northern District of Illinois
19. John Doe v. Indiana Department of Education (2018)
20. Winkelman v. Parma City School District (2007) Supreme Court

21. Perez v. Sturgis Public School ( 2023) Supreme Court
22. Porter v. Bd of Trustees of Manhattan Beach USD ( 2002) 9th Cir.
23. Marbury v. Madison, 5 U.S. 137 (1803)
24. Ex parte Siebold, 100 U.S. 371 (1879)
25. Norton v. Shelby County, 118 U.S. 425 (1886)
26. Miranda v. Arizona, 384 U.S. 436 (1966)

#### **IV. INTEREST OF THE UNITED STATES**

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IT IS THE INTEREST OF THE UNITED STATES that the Justices grant this Writ of Certiorari because it has a direct interest which serves a vulnerable population of **CHILDREN** with disabilities., “WE THE PEOPLE” trust our elected officials to provide equal justice. Public interest is served when it carries out the intent of Congress in adopting the IDEA, Section 504 and ADA, section 1983 et al.

There is no doubt that protecting against violations of federal laws serves to keep the scales of Justice balanced and society functioning at an optimal level. When justice is not served there is trauma, individually and collectively. This will manifest itself outwardly in our physical reality such as war, just look around. Additionally, the purpose of the Section 504 and ADA, 1983 is served and aimed to prevent further discrimination and civil rights violations against, specifically, an individual with a disability. Individual accountability AND governmental responsibility and enforcement are essential in keeping Liberty, Freedom and Justice for all.

Plaintiffs ask the Justices of the Supreme court to uphold the responsibility of individual government employees or officials. No one is above the law certainly when these

actions are wilful and intentional. These actions and behaviors without consequences offer nothing to deter these employees, officers and officials, from continuing and with other students. This is a widespread systemic issue in South Carolina and in the entire country.

#### **V. JURISDICTION Rule 10, 12, 14.1**

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Rule 10 (b) a state and appellate court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort. (c) a state court has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. The District Court of South Carolina Case No: 0:23-cv-01488-SVH-JDA Dismissal 3/12/24 4th Circuit Appeal Court Case Number No. 24-1232 Dismissal 6/27/24

The District Court of South Carolina has erred, veered and departed so drastically away from the accepted and usual course of CONSTITUTIONAL judicial proceedings, that Plaintiffs call for an exercise of this Court's supervisory power. The District Court of S.C errors by not granting the Plaintiffs IFP, not providing service through US Marshall, the appointment of council, emergency relief (despite 2 administrative orders in favor of the plaintiffs), PACER account access, and change of venue. The court also erred by not allowing for the opportunity for discovery Under Federal Rule of Civil Procedure 11, prior to making claims of insufficient evidence.

The District Court of SC has also held the pro se litigants to stringent standards as that of licensed attorneys, and not allowed liberal construction as the 4th circuit case law states. The District court of South Carolina Hodges and Lydon and the SCDOE the LHO Murphy,

Murphy, SRO Zirkel and Yell and District Attorneys participated in Ex -Parte communications colluding and conspiring to obstruct Justice, which is also a violation of retaliation through ADA. Additionally Plaintiff claims, Legal Malpractice by Duff, Seibert, Blackburn and Williams as well as a lack of oversight by Barbara Drayton at SCDOE.

The District Court of South Carolina has also specifically decided important federal questions in a way that conflicts with the decision of the United States Supreme Court in Wilkerman VS. Parma. and Perez Vs Sturgis. The Court errors by denying the Parent Plaintiffs to proceed Pro se on behalf of their Minor Child and has dismissed all other claims with exception of IDEA, despite policy letters from the OSEP which state the interconnection of IDEA, ADA and Section 504.

## **VI. STATEMENT OF CASE**

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### **Case Background**

1. KJC is an 13 year old boy with a diagnosis of Autism or ASD (level 2), officially diagnosed at 6 years old and most recently evaluated in 2022. He is currently on 3 daily medications for ASD. From 18 months until 2 and ½ years, he qualified for ‘Early Intervention’, in New Jersey. At 4, he was diagnosed with General and Social Anxiety, ADD, Central Auditory Processing Disorder, and Sensory Processing Disorder. He has had documented ‘on and off’ , psycho induced gastro-intestinal deficit for approximately 5+ years.

2. Once schools closed to COVID in March of 2020, Ms. Benson and Mr. Carberry requested that their son repeat the 3rd grade. The amount of trauma he endured in connection with the lack of education he received during closure and “ virtual” learning and the denial of Extended school year or ESY in 2020, caused him to regress in many ways.

3. KJC did not receive any of his IEP nor his related services during this time.
4. Covid “Policies/ Mandates” (not law) of masks/shields etc. were unconstitutional and caused mental, social, and psychological damage to KJ. Published studies were brought up at the FMSD board meeting and with the Child study team, more than once, the first time being September of 2020. The district then retaliated.
5. Emma Sheppard, Amy Maziarz, Jennifer Grant, Brittney Koback, Lavonda Williams and Savannah Stager all gave testimony that is contradictory to the video documentation. They either perjure or impeach themselves. Please see State review officer Avni Gupta Kagan Decisions, [Exhibit A1](#)
6. The LHO’s were Doug Dent and Brian P Murphy who have heard and decided ( by ex parte communications signing proposed orders from district council), almost all DPH’s the entire state of SC for the past 30 years. From 1996-2021 almost 95% of all DPC in the state of south carolina in the past 35 years were in favor of the district, [Exhibit B](#).
7. There were impartiality concerns and ex parte communication concerns with the district attorney David Duff and Meredith Seibert, legal malpractice. A complaint was filed against Duff with the SC Bar, for a line of questioning where he referred to the student as “the boy from the 6th sense”.
8. Mr. Duff and FMSD discriminated against the Carberry Benson family also because of their religion. Under oath they expressed and spoke about the mothers belief in reincarnation and that not being “normal or appropriate.” A constitutional violation of freedom of religion. This is Legal Malpractice.
9. On Appeal the SRO Avni Gupta Kagan found severe credibility concerns with FMSD

staff, in particular the Director of SPED Amy Maziarz.

10. The SRO revered the LHO decision and gave a denial of FAPE to the parents and the child for lack of parental participation, Exhibit A1. She ordered the district to a Neuropsych eval with a IEE.

11. Prior to the SRO decision and before the October hearing, the parents had already requested an IEE. We were denied and the district filed a due process complaint against the parents to refuse the IEE under IDEA law. The district had to withdraw the denial as it was ordered by the SRO.

12. 2/23/22 Parents file MOTION to Enforce #1 Collusion and Conspiracy, professional concerns with IEE provider Jeffery Ewert and FMSD, Jennifer Grant.

13. 3/1/22 ORDER on Motion to Enforce found the Fort Mill School District in Violation of providing an IEE within the guidelines given. “Deeply Flawed” IEE - SRO Avni Gupta-Kagan. Offers 2 other providers to contact and the IEE to be performed within 30 days. Orders IEP meeting to be performed BY APRIL 15, 2022, EXHIBIT A2.

14. 3/2/22 MOTION by Fort Mill School District to remove SRO Avni Gupta Kagan from the case and objected to her authority to Enforce her own orders. He demands that she redact her orders and step down.

15. 3/3/22 SCDOE “takes over enforcement” with lead counsel of SCDOE Barbara Drayton, without allowing the parents the opportunity to respond to the district's motion.

16. 3/7/22 Motion to Enforce. Drayton’s “Order” to use Dr. Grier is Conflict of Interest. At the time there was an open lawsuit for malpractice with another local SPED parent. That case has since been settled out of court.

17. 3/23/22 B.Drayton states that she had contacted Dr. Grier to discuss the possibility of developing a contract with her Legal team to perform the IEE without the parents permission. **This is a procedural violation by SCDOE.** Dr. Grier declines after parents object. SCDOE gives no other viable options for alternative providers. SCDOE fails to Enforce or facilitate the student getting a FAPE or an evaluation. **STILL til this day.**

18. 2nd Civil Action, BENSON II Filed April, 2022 to Enforce the SRO decision. This has also been dismissed by the District Court of South Carolina.

19. The Student was never able to return to the classroom for the 2021-2022 school year.

20. Because neither the SCDOE or FMSD were able to provide an alternate IEE provider after extensive Motion to enforce the Order, parents facilitated finding their own provider, Dr. Laurie Gillespie, **Exhibit C.**

21. Plaintiff alleges that attorney Meredith Seibert using ex-parte communications sent a proposed Order for LHO Bohlen to sign. It did not reflect the transcript. A simple IP/ VPN address can confirm where the Decision was created for each of the 3 hearing officers as well as the 2 SRO decisions.

22. Plaintiff filed for 2 Appeals to the same SRO, Mitchell Yell. Plaintiffs did not write the Decisions. They were proposed orders provided from the SCDOE and/or District Attorneys. Each decision did not consider any of the evidence, exhibits, petitioner briefs or actual IDEA law, nor did it reflect the Transcript itself.

23. Petitioners Claim and have valid reason to believe the SRO Yell was having medical procedures done at the time and that his decision was certainly not impartial. This, because of an email sent by Barbara Drayton letting the parties know that SRO Mr Yell did not have

access to his emails/computer. If this is accurate, who then wrote the order and how did he access documents to be able to view?

24. Parents Also have a documented email from another parent in another district in SC where Yell shares his health concerns and surgeries taking place, and asks both parties to push back the deadline for the decision.

25. Parents were forced to leave the FMSD, as Mr. Carberry had to sell his home because he was unable to work the entire 2021-2022 school year because of the homebound “stay put” order. This, after significant hardship the school year prior because of closures and partial schedules from Covid.

26. In August of 2022, the student began at Lancaster County school District which are named defendants in this case.

27. After the IEE was Completed by Dr. Gillespie in June of 2022, it was presented to LCSD in July, prior to the first IEP meeting on August 10, 2022.

28. LCSD failed to develop, review and revise the student IEP properly by neglecting to give “meaningful consideration” to its results from the Independent evaluation Ordered by the SRO.

29. The District did not give equal consideration to all of the IEP team members. Other Members included at IEP meetings include, the mother Ms Benson , a former educator, the grandfather of the student, who has 42+ years in special education, the students Grandmother a licensed School Social worker with 20 years as a case manager in public schools, and the Special Education Advocate, Ms Barnes. **RECORDED**

30. Dr. Gillespie attended a meeting in September 2022, sharing her findings and going

into great detail as to the services the student required to receive a FAPE. RECORDED

31. The Parents Special Educational Advocate, Beckye Barnes, was also ignored despite sharing precedence of horseback riding as therapeutic recreation under non academic or related services, with the students former school district FMSD. RECORDED.

32. LCSD failed to facilitate an annual IEP meeting and proper PWN documentation in all of its IEP meetings it performed.

33. Parents/ Plaintiffs filed a 5th DPC complaint within the state of SC, the first in LCSD on November 29, 2022 for the denial of supplementary aids and services, related services and non academic services.

34. Parents allege that the LHO Brian Murphy was not impartial AGAIN for many reasons, the main being he is one of the only 2 officers in the entire state of SC performing IDEA DPH's. This along with only 2 district attorney firms who represent each district in the state. Motions for his recusal were made and denied for all 3 DPC's filed November 29, 2022, February 21, 2023 and February 22, 2023. He dismisses the cases.

35. LHO and SRO claim that somehow the plaintiffs exercising their first amendment, sixth and fourteenth amendment rights were somehow "disruptive or inappropriate or attacking". LHO Murphy and SRO Zirkel and Yell defame the mother by attacking her and making false statements about remarks made to the defendants and/or their counsel.

36. These are false statements and made with retaliation to the assertive pleadings and emails made by the students mother, in response to the blatant injustice and prejudice against the pro se litigants. This defamation is performed through gaslighting, stonewalling and manipulative dark psychology. @ other advocates in the state have made the same claims

from different counties across the State.

37. Additionally there was a Petition Demand letter sent to the Superintendent of SC Dept. of Ed. Ellen Weaver, signed by over a dozen parents, from 4 counties, who have had to endure the same inappropriate behavior and lack of impartiality from LHO Brian P Murphy. .

Please see **Exhibit D.**

38. “ A democracy cannot thrive where power remains unchecked and justice is reserved for a select few” John Lewis

39. Injustice anywhere is a threat to justice everywhere, whatever affects one directly affects all indirectly” MLK jr. from Birmingham Jail

40. “Power tends to corrupt and absolute power corrupts absolutely” John Acton

41. The parents request a subpoena for correspondence between LHO Murphy and SEA Barbara Drayton as petitioners suspect collusion, prior to the dismissal. The LHO and SEA denied this request.

42. LHO Brian Murphy has made wilful and deliberate judgements, rulings and orders disregarding the petitioners and retaliating against the disabled child's rights under the Individuals with Disabilities Education Act and the constitution, causing delay, injury and damage to the parents and the student when he dismissed DPC # 4 with FMSD, and DPC #5, #6 and #7 with LCSD.

43. His Orders were irrational; dismissive at first and then passive- aggressively hostile, using psychological manipulation techniques such as gaslighting, stonewalling, ‘divide and conquer’, projection, deflection and fear mongering.

44. LHO Murphy and Barbara Drayton aimed consciously and with prejudice to formulate a plan to neglect the petitioner's rights in several ways which were documented. LHO Brian Murphy's focus was on his own authority and power rather than whether his orders were fair, impartial and within the Laws that Congress set forth through IDEA and the Constitution of the United States.

45. The Plaintiffs filed the Appeal. The SRO was not impartial nor did he write the Decision. This was ex parte communication between the SCDOE and or the District Council. The " Decision" consciously and deliberately ignored the petitioner's entire brief that documented the pattern of behavior by the SCDOE.

46. Plaintiffs are certain it will be confirmed during discovery, that the LHO and SRO colluded with Lead Council for the SCDOE , Barbara Drayton to formulate a plan to neglect the disabled child's rights under IDEA, Constitution of the United States, section 504 and ADA. ( This court has denied a subpoena)

47. SRO Mitchell Yell is appointed. He was MIA once again, this time not able to respond to a motion to recuse himself and motion to show proof of competency, since he has been very ill and in the hospital getting surgery.

48. Instead, Barbara Drayton responds for M. Yell in a letter stating that she was addressed in the motion. This is false. Ms Drayton also claimed the email was directed to her. This is also false.

49. Petitioners claim that all Orders by Mr Yell were written by the SCDOE and that Mitchell yell was not competent to perform this task.

50. There is documented physical abuse that occurred against the student on the school

bus by the bus aide at LCSD. She sprayed him continuously with a can of Aerosol Disinfectant in the child's face because he was coughing. He could not breathe. There is bus surveillance of the incident.

51. During the 2022-2023 school year, the plaintiff's child was dismissed from school to his special needs bus 20 min early every single day denying him equal access to his education, "Bell to Bell", the same way as the general education population. This is a systemic concern because of bus and bus driver shortages by the LEA and SEA, LCSD and SCDOE.

52. Lancaster County School District staff Lindsay Marino and Nicole Lee have documented credibility concerns. Parents had to file for an FERPA amendment hearing because the IEP document did not indicate what was agreed upon. Both Women continued to deny a paraprofessional for the student.

53. On April 14, 2023 during the Amendment of the records hearing, it was found that indeed Lindsay Marino and Nicole Lee did not construct the IEP document as agreed during the IEP, by failing to include a one to one paraprofessional and instead saying "additional adult support" as a related service. RECORDED.

54. Most recently the district has denied IDEA non-academic Services, and in opposition with OCR guidance and Section 504, for athletic participation on the school's middle school football team.

## Procedural Background

Date	Due Process IDEA	Federal Court
8/19/21	DPC#1 Filed- Douglas Dent is LHO Parent denied by SEA and LEA proper input on appointment of LHO by defendants Drayton, Duff and Seibert.  Ex parte communication Legal Malpractice	
12/8/21	ORDER- SHO Finds Fort Mill School District in Violation of IDEA, FAPE. Parental Participation	
12/10/21	ORDER- 1. to provide parents with 3 Neuro Psych Evaluators for parents to choose from 2. Provide 2 hours of tutoring in the interim, 30 min of counseling weekly	
2/22/22		Civil complaint Jury Trial Benson/Carberry vs FMSD , SCDOE et al. 0:22-614-SAL-SVH
2/23/22	MOTION to Enforce IEE #1 Conspiracy and Collusion with Dr. Jeffery Ewert, Jennifer Grant	
3/1/22	ORDER- on Motion to Enforce found the Fort Mill School District in 2nd Violation of providing an IEE “ <b><u>Deeply Flawed” IEE</u></b> - SRO Avni Gupta- Kagan.  IEP meeting must be held by April 15, 2021 (not held until May).	
3/2	MOTION by District to remove SRObAvni Gupta Kagan and objects to her authority to Enforce her orders and that she redact her orders.	

3/3	ORDER By Mrs. Gupka Kagan- SCDE takes over enforcement with lead counsel Barbara Drayton	
3/7	Motion to Enforce 3_7 Grier Conflict of Interest, open lawsuit for malpractice. ( since settled)  NEW additional IDEA due process claim filed #2	
3/14	District objects to added cost for New IEE	
4/8		Civil Action Benson II Enforcement of <b><u>SRO ORDER ( still outstanding )</u></b>
5/2	DPC #2 Hearing- LHO Monica Bohlen.  Ex Parte with Seibert Legal Malpractice Impartiality Concerns	
5/15 approx	Appeal filed for May hearing to SRO	
5/17	Due Process Complaint # 4 unlawfully dismissed LHO Murphy	
7/2022	Dr. Gillespie sends the final report of IEE on the student to parents.  <b>PARENTS ARE NEVER REIMBURSED by District</b>	
7/2022	-Mr Kevin Carberry sells his home as he can not afford to make mortgage payments.  -He was forced to stay home with child for the 'Stay put' home tutoring Order, until the student began school in the new district LCSD , August 15th 2022.	
7/2022	Parents transfer both children from FMSD to LCSD.	

	<p>Parents found improper IDEA transfer services and a lack of supervision and proper enforcement from SEA SCDOE</p> <p>Parents supply IEE provided by Dr. Gillespie to LCSD.</p>	
8/10/22	<p>First IEP meeting with LCSD, recorded. One to one paraprofessional agreed to by TEAM.</p>	
Aug-Oct.	<p>Series of IEP meetings in August, September and October.</p> <p>PWN's were not accurate and/or not written per IDEA.</p>	
11/29/22	<p>Marino denies agreeing to provide a paraprofessional despite recording.</p> <p>District denies FAPE by not giving meaningful consideration to the IEE and Parents</p> <p>Parents file 1st DPC in LCSD , the 5th within the SEA SCDOE</p> <p>Parents Request the Recusal of LHO Brian P Murphy. He denies it.</p> <p>Parent denied proper input on appointment</p> <p>SCDOE unresponsive to procedure and protocol concerns.</p>	
12/13/22	<p>Resolution meeting recorded. Ms Marino admits after reviewing the recording from Aug 10th, that indeed she agreed to a one to one paraprofessional. " I take responsibility"</p> <p>Later on she reneges on her response.</p>	
Dec-Jan	PWN and IEP amendment hearing	

	<p>requested by parents, blatant false information.</p> <ol style="list-style-type: none"> <li>1. LCSD denied the request for an Amendment hearing.</li> <li>2. Parents file new IDEA DPC</li> <li>3. LCSD then offers the amendment hearing.</li> </ol>	
1/31/23	Brian Murphy dismisses the 2nd DPC complaint of this student.	
2/3/23	Parents File for State Appeal with SRO	
2/2023	2nd and 3rd DPC Filed against LCSD again Unlawful dismissal by Brian Murphy	
2/23/23	Parents Submit Brief to SRO Zirkel. Parents File 2 more Complaints.	
3/2/23	<p>SRO Zirkel signed a proposed order from the district council and or from SCDOE. It does not reflect the record.</p> <p>This is ex-parte communication as the parent did not have the opportunity to submit a proposed order.</p> <p>The decision ignores petitioners' claims of non Impartiality, lack of standard practice per written IDEA law, collusion with Barbara Drayton, and the SEA pattern of behavior.</p> <p>- "SRO" instead focuses on the assertiveness and first, sixth and fourteenth amendment rights exercised by the parents.</p> <p>- "SRO" falsely accuses Ms Benson of abusing the system when in reality she is just exposing it. This is gaslighting.</p>	

	<p>- "SRO" illegally and unethically bars the mother from the hearing, solely because she has already been successful and to stop future evidence to be presented with SCDOE. The SRO makes slanderous remarks about the parent with absolutely no legal basis.</p> <p>-Parents Claim collusion with Barbara Drayton</p>	
3/1/23	<p>For DPC #2 and DPC #3, LCSD selected Brian Murphy for LHO again.</p> <p>Parents denied by SEA and LEA proper input on appointment of LHO by defendants Drayton, Murphy, Blackburn and Williams.</p> <p>Legal Malpractice Lack of oversight by SCDOE</p>	
3/3/23	<p>Student is sprayed with lysol spray on the Special needs school bus continuously. He couldn't breathe and asked the aid on the bus to stop, she continued and got closer to him. This was reported and handled with LCSD by the aid being fired.</p> <p>Parents reviewed the video of the incident and a police report was filed.</p>	
3/13/23	Murphy again dismisses both complaints.	
3/19/23	<p>Parents file an appeal and the SEA appoints Mitchell Yell for the 3rd time.</p> <p>Parent immediately requests for his recusal as he is not medically fit to perform the task. This is denied.</p> <p>Ex- parte communication. Yell</p>	

	signed a proposed order from the district and or SCDOE.	
3/19/23	Parents also ask Drayton for proof of competency as Mr Yell is medically incapacitated. This goes ignored.  Legal Malpractice Lack of oversight by SEA	
3/21/23	Barbara Drayton responds to Motion instead of the SRO. Why?  Legal Malpractice/ Collusion	
4/1/23	Parents submit Appeal Brief	
4/13/23	SRO Mitchell Yell signs a proposed order from the LEA and/or SEA Council. Ex parte communications  Order in clear violation of being impartial.  Lack of oversight by SEA	
4/14/2023	LCSD found in violation of IDEA with regard to IEP FERPA amendment hearing.  Credibility concerns with Lindsay Marino and Nicole Lee	BENSON/ Carberry III Filed against LCSD/ SCDOE, This CASE.  Lydon and Hodges assigned again
6/2023	Plaintiff is advocate for Greenville Parent -  Murphy LHO again Parent denied by SEA and LEA proper input on appointment of LHO by defendants Drayton, Murphy, Blackburn and Williams  Legal Malpractice Lack of oversight by SEA Impartiality concerns	Federal Motion for Emergency Injunction against Brian P Murphy for him not to continue being appointed for every single DPH the plaintiff is involved in. No evidentiary hearing granted. <u>Exhibit E</u> .
6/2023	Plaintiff advocate for Darlington Parent- Murphy LHO Again	

	<p>Parent denied by SEA and LEA proper input on appointment of LHO by defendants Drayton, Murphy, Blackburn and Williams</p> <p>Legal Malpractice Lack of oversight by SEA Impartiality concerns</p>	
7/2023	<p>SRO vacates LHO decision/ Orders a Denial of FAPE/ Relief in Compensatory Education reimbursement at 42 hours \$150 per hour.</p> <p>Parent has not been reimbursed Blackburn and Williams, District Council has "Appealed" to the district court which does not exist in Civil Court through IDEA law.</p> <p>Legal Malpractice</p>	
8/2023	<p>Plaintiff is advocate for same Greenville Parent DPC #2 Amended- <b>Murphy LHO again-</b> Motion for Recusal denied. Parent denied by SEA and LEA proper input on appointment of LHO by defendants Drayton, Murphy, Blackburn and Williams</p> <p>Legal Malpractice Lack of oversight by SEA Impartiality concerns</p>	
2/22/24		<p>This Case "Benson III" Transferred from Hodges/ Lydon to Jacqueline Austin. She immediately dismisses it.</p>
May-August 2024	<p>IEP meeting. Parents request for non-academic services for participation in middle school football during IEP meeting and in emails. This goes ignored and after months of follow up is denied</p>	

	participation.	
August 19,2024	<p>Plaintiff is Advocate for FMSD parent</p> <p><b>Murphy is LHO <u>AGAIN</u></b></p> <p>LHO Murphy does not use standard legal practice and feels he is NOT a conflict of interest in this case despite being appointed for every single DPH that the Plaintiff has filed for her family and others she advocates for.</p> <p><b><u>Exhibit G</u></b> Most recent Murphy Order and Objection/ Motion to Recuse</p>	

## IX. Discussion

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*\*\*\*Please keep in mind that civilians do not have access to adequate Case law databases.*

*Most cited are from secondary websites.*

The United States Court of Appeals have rendered rulings of the intersection of the Individuals with Disabilities Education Act (IDEA), the Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act:

1. **Schaffer v. Weast (2005):** The Fourth Circuit held the intersection of IDEA, ADA and Section 504.
2. **Doe v. Arlington County School Board (1994):** In this case, the Fourth Circuit addressed the issue of whether a school district violated the IDEA, ADA, and Section 504. The court held that the school's actions violated the student's rights under all three statutes.

3. **E.S. v. Katonah-Lewisboro School District (2012):** This case involves the question of whether a student's IEP provided a free appropriate public education (FAPE) under the IDEA. The Fourth Circuit held that the IEP failed to provide a FAPE, and the school district was required to reimburse the parents for the cost of private school tuition.
4. **T.B. v. Prince George's County Board of Education (2010):** This case addresses the issue of retaliation against a student and her mother for asserting their rights under the IDEA, ADA, and Section 504. The Fourth Circuit held that the school district's actions constituted unlawful retaliation in violation of these statutes.
5. **Board of Education of Hendrick Hudson Central School District v. Rowley (1982):** In this case, the Supreme Court held that under the IDEA, schools must provide disabled students with an education that is "reasonably calculated to enable the child to receive educational benefits." The Court also recognized the relationship between the IDEA and Section 504, stating that Section 504 provides broader protection against discrimination for disabled individuals.
6. **Cedar Rapids Community School District v. Garret F. (1999):** In this case, the Supreme Court addressed the interaction between the IDEA and Section 504. The Court held that a school district was required to provide a ventilator-dependent student with nursing services under Section 504, even though it was not necessary for the student to receive educational benefits.
7. **Fry v. Napoleon Community Schools (2017):** In this case, the Supreme Court considered the relationship between the IDEA and the ADA. The Court clarified that when a lawsuit is based on the denial of a free appropriate public education (FAPE), it

must be exhausted through the administrative procedures of the IDEA. However, if the lawsuit is based on disability discrimination claims unrelated to the denial of a FAPE, it may proceed directly under the ADA and Section 504.

These are Cases involving Section 504 of the Rehabilitation Act or the Americans with Disabilities Act (ADA) with pro se litigants representing their child:

8. Doe v. Withers (2006): In this case, a pro se litigant filed a lawsuit on behalf of her child under Section 504 and the ADA. The United States District Court for the Eastern District of Virginia allowed the case to proceed and ultimately found that the school district failed to provide appropriate accommodations and services to the child as required by Section 504 and the ADA.
9. J.C. v. Beverly Hills Unified School District (2013): This case involved a pro se litigant who brought a lawsuit on behalf of his child under Section 504 and the ADA, alleging that the school district denied the child a free appropriate public education. The United States District Court for the Central District of California allowed the pro se litigant to proceed and ultimately ruled in favor of the parent, finding that the school district failed to provide the necessary accommodations to the child.
10. Pachlhofer v. Board of Education of the City of Chicago (2015): In this case, a pro se litigant brought a lawsuit on behalf of her child under Section 504 and the ADA, alleging that the school district failed to provide appropriate accommodations for the child's disability. The United States District Court for the Northern District of Illinois allowed the case to proceed, and the court ultimately ruled in favor of the parent, finding that the school district violated Section 504 and the ADA.

11. John Doe v. Indiana Department of Education (2018): This case involved a pro se litigant who sued the Indiana Department of Education under Section 504 and the ADA, alleging that the state violated his child's rights by failing to provide a free appropriate public education. The United States District Court for the Southern District of Indiana allowed the pro se litigant to proceed, and the court ultimately ruled in favor of the parent, finding that the state violated Section 504 and the ADA.

**Denial of IFP without cause, Denial of Appointment of Counsel.**

**Severe Potential for Injustice:**

Setting a precedent denying parents in financial Hardship, IFP status for asserting their child's civil right to access to a Free and Appropriate Public Education, then by denying the appointed counsel and finally dismissing the complaint is dangerous for this country. If we can not protect our weakest, our children, our children with special needs, then what does that say about the United States Judicial System? Plaintiffs believe that this is a question that has national importance for the access of low income families and/or families in financial hardship, to be able to access equal justice for their children's civil rights to access an FAPE.

A Court must use ETHICAL discretion when approving or denying IFP status. When a parent files a Federal Complaint after a DPH through IDEA they have the RIGHT to bring civil action Section 300.516 after the exhaustion of administrative remedies. This same doctrine is used for Section 504 or ADA for the Denial of FAPE. It is a constitutional violation to deny the parent access to due process. Especially after they were successful as a pro se' petitioner and/or have exhausted administrative remedies and have had their financial hardship due to the negligence by the SCDOE, FMSD, and LCSD.

Parent Plaintiffs should also be appointed counsel when filing pro se' and/or in forma pauperis in order to have equal access to justice if the alternative is dismissal. Certainly for a violation of a Civil Rights Violation. This is a basic common sense, and principle of our GENIUS founding fathers. Truth, Freedom, Justice for ALL. Without those, we do not have a country. Is this the U.S.A? Parents have also been "blackballed" from retaining counsel in the entire state for any reason again obstructing justice.

**Parental Rights Pro Se' and Borrowed Doctrine :**

In the Wilkerman Vs Parma Supreme Court decision in 2007, the court came to a decision that the IDEA law states , " ANY party aggrieved" included the parents being able to bring a complaint for their child, as well as having claims for themselves.

Further, New SC law states:

*Section 63-23-20. (A) The State, any political subdivision of the State, or any other governmental entity shall not substantially burden the fundamental right of a parent to direct the upbringing, education, health care, and mental health of that parent's child without demonstrating that the burden is required by a compelling governmental interest of the highest order as applied to the parent and the child and is the least restrictive means of furthering that compelling governmental interest.*

Plaintiffs/parents per case law can use " borrowed doctrine" from Section 504 and ADA for FAPE, as well as any other related claims, to file a civil complaint on behalf of their child and themselves. In conjunction with IDEA policy and the SCOTUS Wilkerman vs. Parma case, Parents should be able to bring all related claims for the denial of FAPE pro se for themselves and their child through Section 504 and ADA as well as IDEA.

### **Civil Rules of Procedures, “Liberal construction”, allege failure to state a claim**

In order to uphold The Constitution of the United States of America as well as 4th circuit caselaw, and what our founding fathers created for “ We the People”, by “we the people”, Courts are mandated to give equal access to Justice for Pro- se litigants. Judges Share their oath to the Constitution and any betrayal of that is unacceptable. Courts are to give “ reasonable liberal Construction” of the complaint in Favor of the Persons, not the “rules of civil procedure”. The Justice department was created to find the **TRUTH** and allow for consequences and relief for when the law is broken and harm is caused. It should not be about tedious construction of the document, and certainly not for a pro se litigant.

This understanding was also explained in the Federalist Papers and numerous other addresses. Without Truth, Freedom and Justice FOR ALL, we have no county. Courts can not dismiss a Civil Complaint Claiming that pro se construction of the complaint is not compliant with civil rules of procedure? Certainly not if the Statement of Claim is not using legal Jargon. If they wish a more professionally constructed complaint, the court can appoint an attorney. They can't have their cake and eat it too. This is nothing more than obstruction of Justice because of what the plaintiffs have been able to expose within the SCDOE. Nevertheless, the parent plaintiffs claim a “Statement of Claim” WAS MADE in all related complaints.

Plaintiffs wrote a Judicial misconduct complaint to the 4th circuit of appeals. They obstructed justice by not filing the complaint. The clerk also attempted to give me an “Order” dismissing the complaint, in which I then sent direct correspondence to the Chief Judge of the FOURTH circuit, Albert Diaz. I have still not received proper due correspondence or process regarding that complaint. Clerk claims the complaint is not written properly which is blatantly false. Please see **Exhibit F**.

These behaviors are truly alarming as a citizen of the United states. Judge Lydon and Magistrate Hodges were also assigned to this case for over 1 year before the case was transferred to a newly appointed District Judge Austin which immediately dismissed the case.

The second concern is who does the child belong to? If a child can not represent themselves, is the child not a direct extension of the parents until 18 years of age? If the child is not a ward of the state then how can a child file pro se" on his/her own behalf? This is a constitutional violation for the child's rights to be able to file pro se without council through the legal guardians or parents.

State law indicated that it is the Parents who reserve all rights and responsibilities for their child, thus being able to file a complaint on their behalf, certainly for the denial of FAPE and related violations of federal law.

Petitioners have exhausted all administrative avenues, remand for a hearing is counterproductive, costly and not proper use of funds. The plaintiffs demand a Jury Trial. In Porter v. Bd of Trustees of Manhattan Beach USD (9th Cir. 2002), Parents of children for whom a special education program was ordered by a hearing officer were not required to seek new hearing nor comply with state's complaint procedure before suing. Additionally they found that Eleventh Amendment immunity does not bar a federal court from granting prospective injunctive relief:

*"Our statement in Hoeft that the CRP may serve as a substitute for due process system exhaustion is consistent with the traditional exception to exhaustion requirements based on futility or inadequacy. See Honig, 484 U.S. at 327. Where the challenge is to a facially invalid policy, and the state refuses to alter the policy after a CRP complaint, then further exhaustion may be excused because "the administrative body is shown to*

*be biased or has otherwise predetermined the issue before it.” McCarthy, 503 U.S. at 148. Exhaustion of a CRP may also render the due process hearing futile where all the educational issues are resolved, leaving only issues for which there is no adequate administrative remedy.”*

*Witte v. Clark County Sch. Dist., 197 F.3d 1271, 1275-76 (9th Cir. 1999).*

*“As we have gone to some length to explain, exhaustion of an administrative enforcement mechanism is not required because of its mere existence. Whether an existing procedure must be exhausted turns on an inquiry into congressional intent. We did not need to engage in that inquiry in Wyner.”*

*U.S.C. § 1415(f), (i). “Nothing in the IDEA or its legislative history requires a complainant to exhaust every procedure established by a state that is consistent with its supervision responsibilities under the IDEA. Only § 1415 procedures are required to be exhausted prior to suit. Because the Porters exhausted California’s procedures adopted pursuant to § 1415 to the point of their futility, they were authorized to bring their complaint alleging an IDEA violation directly to court.”*

*“We hold that the Porters were not required to exhaust California’s CRP before suit. We therefore reverse the decision of the district court, and remand for further proceedings consistent with this opinion.”*

### **VIII. Request and Prayer**

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The District Court of South Carolina has veered and departed drastically from the accepted and usual course of judicial proceedings that Plaintiffs call for an exercise of this

Court's supervisory power. The District Court of S.C errors additionally in the following ways:

1. Denying In forma pauperis to plaintiffs without cause and after related cases was approved for IFP status, obstructing justice
2. Denying the appointment of counsel for pro se /related cases IFP approved plaintiffs in the same court and circuit court.
3. Denies PACER account access and all electronic communication. " This is a privilege for Attorneys only" , Where does it say that in the constitution?
4. Denial to Transfer Case to another District Court as the complaint is against the State of South Carolina.
5. Dismisses the complaint because Plaintiffs could not afford service of the complaint and refused to utilize the US Marshals through IFP status.

The court has also held the pro se parent litigants to stringent standards as that of licensed attorneys. Plaintiffs claim obstruction of justice by the District Court of South Carolina with the South Carolina Department of Education

The District Court of South Carolina has decided important federal questions in a way that conflicts with the decision of the United States Supreme Court in Wilkerman VS. Parma, Perez Vs Sturgis and more.

The Court also errors by ignoring the VAST amount of evidence on the record that justify all other claims including but not limited to, negligence, collusion and conspiracy, and numerous constitutional violations. Finally, the Court errors by dismissing all individual defendants and does not allow plaintiffs to pursue claims through Section 1983.

It is because of these that the Plaintiffs, the parents of KJC, a 13 year old child with

Autism ( 7 at the time of the violations began), ask the Supreme Court to review this case as it holds tremendous national weight and significance for all persons school aged children with disabilities. If the Court decides to remand the case to a lower court, Plaintiffs request the following:

1. Remanded to District Court OUTSIDE of the FOURTH Circuit or SCOTUS hear the Case.
2. Remand entire complaint that has been dismissed or order a evidentiary hearing.
3. Remand the dismissal of individual defendants through section 1983
4. Allow parents to bring ALL IDEA and related claims for themselves and their child in this Case. Wilkerman vs parma.
5. Appoint counsel for pro se litigants still in financial hardship because proper relief/ justice has not been executed.
6. Allow Pacer Access to mitigate the cost of paper copies and ink costs as plaintiffs are in financial hardship
7. Emergency relief, At a minimum, equal to the amount spent by the SCDOE and FMSD in Attorneys fees as Plaintiffs were successful in Due process and are owed equal fees. Both parents were unable to work for almost 2 years due to the violations and have continued complaints for violations by the SCDOE and LCSD.
8. An Order for 3rd party and or out of state investigation and or audit to take place in for the following: FMSD Special Education Department Procedures and Practices and finances. South Carolina Department of Education Procedures and Practices and finances.

9. An Emergency Injunction against Brian P Murphy to not participate in any hearing with the plaintiff as a parent or advocate, until an investigation is complete.

10. Order all defendants to provide their public service insurance bond, private professional insurance and a copy of their signed oath of office should there be one.

It has been made clear to Plaintiffs over the course of 3+ years, increasingly since having already been successful pro se (despite ever having an impartial due process hearing), that the SEA, SCDOE, and the District Court of South Carolina has not and does not intend to offer equal access to due process, and have denied them their constitutional right.

If we all do the next right thing, and the next thing right, the world would have peace and harmony. This includes taking responsibility for our actions and justice to be served at every level of government including the classroom. When corruption, greed and love of power and money come before the love of people, We have chaos. Look around! Will humanity survive?

2 Chronicles 7:14 NKJV "If my people who are called according by My name will humble themselves, and pray and seek My face, and turn from their wicked ways, then I will hear from Heaven and I will forgive their sin (to miss the mark) and heal their land."

[www.The144Center.com](http://www.The144Center.com)

\*\*\*\*\*Signatures on Next Page\*\*\*\*\*

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**A LIE DOESN'T  
BECOME TRUTH,  
WRONG DOESN'T  
BECOME RIGHT,  
AND EVIL DOESN'T  
BECOME GOOD  
JUST BECAUSE  
IT'S ACCEPTED BY  
A MAJORITY.”**

*Booker T. Washington*



“

**THE CONSTITUTION  
IS NOT A LIVING  
ORGANISM, IT'S A  
LEGAL DOCUMENT, AND  
IT SAYS WHAT IT SAYS  
AND DOESN'T SAY  
WHAT IT DOESN'T SAY.**

ANTONIN SCALIA