

This is a redacted version of the original decision. Select details have been removed from the decision to preserve the anonymity of the student. The redactions do not affect the substance of the document.

**Pennsylvania Special Education Due Process Hearing Officer
Final Decision and Order**

Closed Hearing

ODR No. 32024-25-26

Child's Name:

R.D.

Date of Birth:

[redacted]

Parent:

[redacted]

Local Education Agency:

Lakeview School District
2842 Mercer Street
Stoneboro, PA 16153-2799

Counsel for LEA:

Patricia Andrews, Esq.
Salvatore Bittneser, Esq.
Andrews & Price, LLC
1500 Ardmore Blvd., Suite 506
Pittsburgh, PA 15221

Hearing Officer:

Joy Waters Fleming, Esq.

Date of Decision:

January 12, 2026

INFORMATION AND PROCEDURAL HISTORY

The Student¹ is a middle school student enrolled in the [redacted] grade in the District. The Student is eligible for and receives special education pursuant to the Individuals with Disabilities Education Act (IDEA) as a child with an emotional disturbance.² The Student also has a disability conferring protections under Section 504 of the Rehabilitation Act of 1973.³

The District filed a due process complaint seeking to change the Student's placement to a more restrictive educational placement, asserting that it can no longer meet the Student's needs within the current setting. The Parent opposed the proposed change in placement, arguing that the Student should remain in the current placement at the District's middle school.

After reviewing the record, and for the reasons detailed below, it is determined that the District has met its burden of proof by a preponderance of evidence. Therefore, the District's request to change the Student's placement is granted.

¹ To protect confidentiality and privacy, the Student's name, gender, and other potentially identifiable information are not included in the main body of this decision. All personally identifiable information, including details on the cover page, will be redacted before posting on the Office for Dispute Resolution's website, in accordance with its obligation to publicly share special education hearing officer decisions under 20 U.S.C. § 1415(h)(4)(A) and 34 C.F.R. § 300.513(d)(2).

² 20 U.S.C. §§ 1400-1482. The federal regulations implementing the IDEA are codified in 34 C.F.R. §§ 300.1 – 300. 818. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14).

³ 29 U.S.C. § 794. The federal regulations implementing Section 504 are set forth in 34 C.F.R. §§ 104.1 – 104.61. 29 U.S.C. § 794. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 15.1 – 15.11 (Chapter 15).

ISSUE

1. Is the District's recommendation to change the Student's placement to a more restrictive educational setting an offer of a free appropriate public education (FAPE)?

FINDINGS OF FACT

1. The Student is eligible for special education as a child with an emotional disturbance. (S-1; N.T. 16)

2. In September 2022, during [redacted] grade, the Parent placed the Student in a mental-health partial-day program to address escalating negative behaviors. (S-1; N.T. 16)

2023-2024 School Year-[redacted] Grade

3. In March 2024, in [redacted] grade, the Student returned to the District with a transition plan that included [an alternative schedule for] attendance [redacted] (S-1; N.T. 17)
4. The Student initially demonstrated some stability but soon exhibited escalating behaviors, including frustration with academic difficulty, sensitivity to peer perception, and intense reactions to perceived unfairness. (S-1, p. 12; N.T. 19-22)
5. During periods of escalation, the Student engaged in loud outbursts,
6. refusal to work with staff, swearing, derogatory statements to staff, and disruptive hallway behavior requiring rerouting or clearing classrooms. (S-1; N.T. 19-22)

7. The Student also engaged in self-injurious behavior, which included [redacted], throwing objects, and negative self-talk cycles.
8. (S-1; N.T.19-22)

2024-2025 School Year – [redacted] Grade

9. Due to escalating behavior and Parent’s request for full inclusion in general education, the District commenced a reevaluation (RR) of the Student. (S-1; N.T. 24)
10. The September 2024 RR concluded that the Student continued to qualify and demonstrated the need for specially designed instruction as a student with emotional disturbance. In addition to numerous strategies, the preliminary RR recommended a formal positive behavior support plan, counseling, and direct instruction in emotional regulation and coping skills. (S-1)
11. Before the reevaluation process was completed, the Parent withdrew the Student from the District and, in [redacted] 2024, enrolled the Student in a cyber charter school. (S-2, S-4; N.T. 25)
12. While attending the cyber charter school, the Student received truancy charges. In [redacted] 2025, the Parent requested the Student's reenrollment in the District. (S-4; N.T. 26)

13. Upon returning to the District, the IEP team met. The District attempted a gradual reentry that included after-school math/reading instruction, relationship-building efforts, and preferred classes. (S-5; N.T. 27-28)

14. After reentry to full-day attendance, the Student's behaviors escalated in intensity and frequency, including verbal aggression, work refusal, and self-injury. Multiple staff attempted support, but these efforts were unsuccessful. (N.T. 28-29)

15. On February 26, 2025, the District recommended private placement of the Student to address academic and behavioral needs. The Parent did not approve the recommendation. (S-6; N.T. 30)

16. On March 3, 2025, the IEP team met to discuss the Student's full time schedule and needed social/emotional/behavioral needs supports. (S-5, p. 24-25)

17. The offered IEP included three behavioral goals, a PBSP, and SDIs, including headphones, the ability to stand and sit in the hallway as a calming space, a statement of clear expectations, frequent checks, positive reinforcements, frequent breaks, the use of behavioral charts, and access to fidgets. (S-5, p. 84-86)

18. The Student's behaviors briefly improved but then regressed into previous patterns of hostility, refusal, and emotional overload. (N.T. 32)

2025-2026 School Year – [redacted] Grade

19. During the 2025-2026 school year, the Student was enrolled in the [redacted] grade in the District. (S-5)

20. During the [redacted] grade, the Student engaged in defiant, aggressive, self-injurious and disruptive behaviors that included attempts to [redacted], threats to students and staff, cursing, and refusal to leave school areas, requiring frequent staff intervention and removal from instruction. (S-14; N.T. 33-36, 66-70)

21. On September 2, 3, and 9, 2025, the IEP team met to develop additional behavioral supports for the Student. (S-5, p. 23-24)

22. On September 12, 2025, the Student [redacted] in front of peers and told the teacher, "[offensive language]", and left the classroom. This outburst required significant redirection of peers and interrupted instructional time for the entire class. (S-14)

23. On September 12, 2025, the District issued a NOREP recommending that the Student receive supplemental services to meet academic and social/emotional needs. The Parent did not return the NOREP (S-7; N.T. 38)

24. On October 2, 2025, the Student utilized an offered break time but refused to leave at the designated time. That same day, while

sitting in a hallway, the Student [redacted]. When a safety escalation occurred, the Student [redacted] a staff member. (S-14, p. 6)

25. On October 8, 2025, the Student threw [redacted], was verbally abusive to staff, sat in the [redacted], screamed, and called a staff member a [offensive language]. When notified that a suspension would occur, the Student went to the cafeteria during a lunch period, sat in the lobby and [offensive language], , [redacted]. (S-14)
26. On October 14, 2025, the IEP team, through a NOREP, recommended placement of the Student at a private school to address the Student's academic and behavioral goals. The District indicated it was unable to meet the severity of the Student's needs. The Parent did not approve the change of placement. (S-8)
27. The recommended placement is a licensed private educational program, with two locations serving students in kindergarten through twelfth grade with academic, behavioral, emotional, physical, and autism-related needs. (S-26)
28. The proposed placement offers tiered academic and emotional supports and maintains an instructional model with low student-to-teacher ratios. (S-26)

29. The placement incorporates therapeutic animal programming to support social skills development, responsibility, and self-confidence, and therapeutic horticulture programming is utilized for experiential instruction in science, mathematics, vocational skills, and job readiness. (S-26)

30. The proposed placement maintains designated sanctuary rooms, sensory rooms, and a sensory playground to support students' emotional regulation and processing. Weekly guidance and social skills instruction are provided to promote emotional expression, social development, and anti-bullying initiatives. (S-26)

31. At the proposed placement, students develop individualized safety plans that include coping strategies to manage difficult emotions in the school setting. The school utilizes school-wide positive behavior interventions and supports, therapeutic crisis intervention, and a model to promote safety, nonviolence, shared governance, emotional intelligence, social learning, and growth. (S-26)

32. On November 3, 2025, the Student called a teacher an [offensive language], and expressed [redacted] for him. (S-20).

33. The current case manager has observed that, despite the interventions in place, the Student exhibits significant emotional and behavioral dysregulation, characterized by refusal to attend and return to classes after breaks, failure to complete assigned schoolwork, and engagement in self-injury. (S-10, S-11, S-15; N.T. 103-105, 107-109)

34. The Student's refusals and avoidance patterns result in substantial missed instruction daily. (N.T. 68)
35. During the 2025-2026 school year, the IEP team met numerous times to adjust Student's schedule and supports because of ongoing behavioral concerns. Additional supports included breaks with the counselor or school psychologist, weekly behavior charts, staff training on ODD and noise sensitivity, choice of seating, additional staff during math and ELA classes, alternative environments for completing work, and adjustments to break locations. (S-5, p. 11-24, 36, S-8; N.T. 34, 67-68)
36. Despite these interventions, the Student continues to refuse support, avoid class, and demonstrate escalating behavior. (N.T. 52-55, 65-66, 102-103, 108-109)
37. Student is not making academic progress during the 2025-2026 school year because persistent refusal, avoidance and behavioral crises have resulted in inconsistent participation and loss of instructional time. (N.T. 40)

DISCUSSION AND APPLICATION OF LAW

General Legal Principles

The Burden of Proof

The burden of proof consists of two elements: the burden of production and the burden of persuasion. In special education due process hearings, the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). The party seeking relief must prove entitlement to their demand by preponderant evidence and cannot prevail if the evidence rests in equipoise. See *N.M., ex rel. M.M. v. The School Dist. of Philadelphia*, 394 Fed.Appx. 920, 922 (3rd Cir. 2010), citing *Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004). In this case, the District, as the party seeking relief, bears the burden of proof.

Witness Credibility

During a due process hearing, the hearing officer is charged with the responsibility of judging the credibility of witnesses, and must make “express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses.” *Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 LEXIS 21639 at *28 (2003). One purpose of an explicit credibility determination is to provide courts with the information they need in the event of judicial review. See, *D.K. v. Abington School District*, 696 F.3d 233, 243 (3d Cir. 2014) Courts]must accept the state agency's credibility determinations unless the non-testimonial extrinsic evidence in the record would justify a contrary conclusion. See also, generally *David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009); *T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 *11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014); *Rylan M. v. Dover Area Sch. Dist.*, No. 1:16-CV-1260, 2017 U.S. Dist. LEXIS 70265 (M.D. Pa. May 9, 2017).

During this hearing, the Parent, the Student’s former and current case managers, the middle school Principal, and the director of special education

provided testimony. This hearing officer found each of the witnesses who testified to be credible as to the facts. In the relatively few instances that there were contradictions, those are attributed to variations in memory or to differing perspectives, rather than any intention to deceive. The findings of fact were made only as necessary to resolve the issues; thus, not all of the testimony and exhibits were explicitly cited. The testimony of all witnesses and the content of each admitted exhibit were thoroughly considered, as were the parties' closing statements.

General IDEA Principles: Substantive FAPE

The IDEA requires each of the states to provide a "free appropriate public education" (FAPE) to children who are eligible for special education services. 20 U.S.C. § 1412. FAPE consists of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. In *Board of Education v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court addressed these statutory requirements, holding that the FAPE mandates are met by providing personalized instruction and support services that are designed to permit the child to benefit educationally from the program and also comply with the procedural obligations in the Act. The various states, through local educational agencies (LEAs), meet the obligation of providing FAPE to an eligible student through the development and implementation of an IEP, which is "reasonably calculated" to enable the child to receive "meaningful educational benefits" in light of the student's "intellectual potential." " *P.P. v. West Chester Area School District*, 585 F.3d 727, 729-30 (3d Cir. 2009)(citations omitted). As the U.S. Supreme Court has confirmed, an IEP "is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth." *Endrew F. v.*

Douglas County School District RE-1, ___ U.S. ___, ___, 137 S. Ct. 988, 999, 197 L.Ed.2d 335, 350 (2017)

Individualization is accordingly the fundamental consideration under the IDEA. Nevertheless, an LEA is not obligated to "provide 'the optimal level of services,' or incorporate every program requested by the child's parents." *Ridley School District v. M.R.*, 680 F.3d 260, 269 (3d Cir. 2012).

Additionally, a proper assessment of whether a proposed IEP meets the above standard must be based on information "as of the time it was made." *D.S. v. Bayonne Board of Education*, 602 F.3d 553, 564-65 (3d Cir. 2010); see also *Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1040 (3d Cir. 1993)(same). "The IEP must aim to enable the child to make progress." *Dunn v. Downingtown Area School District*, 904 F.3d 248, 255 (3d Cir. 2018)(emphasis in original). IEP development, of course, must follow and be based on an evaluation, as monitored and updated by interim changes. 20 U.S.C. § 1414(d); 34 C.F.R. §§ 300.320-300.324.

Least Restrictive Environment

The IDEA contains a crucial mandate that eligible students be educated in the "least restrictive environment" (LRE) that also meets meaningful educational benefit standards. The IDEA requires states to ensure that children with disabilities will be educated with children who are not disabled, "to the maximum extent appropriate ..." 20 U.S.C. § 1412(a)(5)(A). The Third Circuit has construed this language to prohibit local educational agencies from placing a child with disabilities outside of a regular classroom, if educating the child in the regular education classroom, with supplementary aids and support services, can be achieved "satisfactorily." *Oberti v. Board of Ed. of Board of Education*, 995 F.2d 1204, 1207 (3d Cir.

1993). The law requires that children with disabilities may not be removed from the regular educational environment unless "the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 20 U.S.C. § 1412(a)(5)(A).

Also crucial to the LRE analysis is a recognition that its principles "do not contemplate an all-or-nothing educational system" of regular education versus special education. *Oberti, supra*, 995 F.2d at 1218 (quoting *Daniel R.R. v. State Board of Education*, 874 F.2d 1036, 1050 (5th Cir. 1989)). Rather, LEAs are required to have available a "continuum of alternative placements" to meet the educational and related service needs of IDEA-eligible children. 34 C.F.R. §300.115(a); 22 Pa. Code § 14.145. Furthermore, the "continuum" of placements in the law encompasses settings that grow progressively more restrictive, beginning with regular education classes, then moving first toward special classes and subsequently toward special schools and beyond. 34 C.F.R. § 300.115.

DISCUSSION

The pending question is whether the District's recommendation to change the Student's placement to a more restrictive setting constituted an offer of a free appropriate public education, in the least restrictive environment. The relevant evidence has preponderantly established that the Student has demonstrated longstanding and current significant emotional and behavioral needs that interfere with the ability to access education in the current educational placement and that a change in placement is needed.

The Student is eligible for special education as a child with an emotional disturbance. This hearing record reflected a longstanding pattern of emotional and behavioral dysregulation that historically and currently has interfered with access to instruction. Beginning in [redacted] grade, the Parent placed the Student in a mental-health partial-day program due to escalating behaviors. When the Student returned to the District in [redacted] grade with a reduced attendance schedule, there was an initial period of stability, but this quickly deteriorated into repeated episodes of verbal aggression, work refusal, disruptive conduct, and self-injurious behavior that required removal from instructional settings and disruption of other students' learning. These behaviors continued across school years despite changes in schedule, setting, and supports.

Consistent with *Oberti*, the District made sustained and escalating efforts to educate the Student in general education with supplementary aids and services before recommending a more restrictive placement. After the 2024 reevaluation confirmed ongoing eligibility and the need for specially designed instruction, the District attempted gradual reentry, relationship building, preferred classes, after-school instruction, and a combination of inclusion and emotional support programming. The District developed and offered IEPs that included behavioral goals, a positive behavior support plan, counseling-related supports, emotional regulation strategies, frequent breaks, alternative calming spaces, staff check-ins, and positive reinforcement.

During the 2025–2026 school year, the IEP team met numerous times to revise supports, add staff, adjust environments, provide counseling breaks, and modify schedules in response to the Student's escalating behavior. Despite these efforts, the Student's behavior continued to escalate in intensity and frequency. The record documents serious incidents involving

threats, physical aggression toward staff, attempts to damage school property, severe verbal outbursts in front of peers, and ongoing self-injurious behavior. The Student repeatedly refused to engage in instruction, refused support, avoided classes, and missed substantial portions of the school day. As a result, the Student is not making academic progress and lacks consistent access to instruction. The evidence of this hearing record established that the Student cannot receive meaningful educational benefit in the general education setting, even with supplementary aids and services, due to the severity and persistence of emotional and behavioral dysregulation.

Under *Oberti*, a district is not required to maintain a student in a less restrictive environment when the student's behavior is so severe that education in that setting cannot be achieved satisfactorily, particularly where the district has made reasonable efforts to accommodate the student. Here, the District's repeated interventions, escalating levels of support, and ongoing IEP team meetings demonstrate sustained efforts to provide the Student with less restrictive placements. The record further shows that the Student's behaviors significantly disrupted instruction and posed safety concerns, undermining both the Student's learning and the learning of others.

The District's recommendation of a licensed private educational program is aligned with the Student's documented academic, emotional and behavioral needs. The proposed placement offers low student-to-teacher ratios, tiered academic and emotional supports, therapeutic programming, designated sensory and sanctuary spaces, individualized safety plans, and school-wide positive behavioral frameworks aligned with the Student's emotional disturbance and history of self-injury and aggression. The District explicitly indicated that it could no longer meet the severity of the Student's

needs within its own programs, a conclusion supported by the Student's lack of progress and escalating behaviors despite extensive interventions.

After reviewing the entire record, the preponderance of the evidence established that the Student cannot receive a FAPE in the current placement, and that the proposed placement is appropriate and necessary. The proposed outside emotional support placement is appropriate, reasonably calculated to confer benefit, and offers necessary therapeutic and behavioral supports unavailable in the District. It constitutes the least restrictive environment appropriate to meet the Student's needs.

ORDER

AND NOW, this 12th day of January, 2026, based upon the findings and discussion above, it is hereby ORDERED:

1. The District is authorized to implement the proposed change of placement for the Student as set forth in the most recent NOREP, consistent with the emotional support program identified therein.
2. The District shall convene an IEP team meeting within ten (10) school days of this Order to revise the Student's IEP to reflect the new placement and develop a coordinated transition plan.
3. The Parent shall make the Student available for enrollment and transition activities as required by the receiving program.

4. The District shall provide transportation, as required by law, for the Student to access the new placement.

5. At least thirty (30) days before the end of the 2025-2026 school year, the IEP teams shall meet to review the Student's programming and progress and to determine the appropriate placement for the 2026-2027 school year.

6. Nothing in this Order prevents the parties from mutually agreeing to further evaluations, revisions, or alternative placements that are consistent with the Student's needs.

IT IS SO ORDERED.

It is FURTHER ORDERED that any claims not specifically addressed herein are denied and dismissed.

/s/ Joy Waters Fleming, Esquire

Joy Waters Fleming

HEARING OFFICER

ODR File No. 32024-2526

January 12, 2026