

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

Open Hearing

ODR No. 33016-25-26

Child's Name:

J.I.

Date of Birth:

[redacted]

Parent(s):

[redacted]

Local Educational Agency:

Garnet Valley School District
80 Station Road
Glen Mills, PA 19342

Counsel for LEA:

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Hearing Officer:

Michael J. McElligott, Esquire

Date of Decision

05/27/2026

Introduction

This special education due process hearing concerns the educational placement for J.I. ("student"), a student who resides in the Garnet Valley School District ("District").¹ The student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEA")² as a student who requires special education.

In the current 2025-2026 school year, the student attends [redacted] grade. As of November 2026, the student had been placed in a specialized autism support program run by the local intermediate unit ("IU").

In early April 2026, parents filed a special education due process complaint regarding multiple issues, including retrospective and ongoing claims of denial of a free appropriate public education ("FAPE"). Among the issues was also a disagreement regarding the student's placement; parents sought to have the student cease attending the IU placement and return to a District-based placement. Parents' complaint proceeds on a regular resolution timeline at a separate ODR file number.

In late April 2026, the District filed a special education due process complaint at the instant file number, seeking hearing officer authority to

¹ The generic use of "student", and avoidance of personal pronouns, are employed to protect the confidentiality of the student.

² It is this hearing officer's preference to cite to the pertinent federal implementing regulations of the IDEIA at 34 C.F.R. §§300.1-300.818. See *also* 22 PA Code §§14.101-14.162 ("Chapter 14").

maintain the IU placement or, alternatively, to change the student's program to another specialized out-of-District placement, because the District believes that not maintaining a specialized out-of-District placement is substantially likely to result in injury to the student or to others. (34 C.F.R. §300.532(a),(b)(2)(ii)). The District's complaint proceeds on an expedited timeline.

For the reasons set forth below, I find in favor of the District.

Issue

Is maintaining a specialized
out-of-District placement necessary because
changing that placement is substantially likely to result
in injury to the student or to others?

Findings of Fact

All evidence in the record, both exhibits and testimony, was considered. Specific evidentiary artifacts in findings of fact, however, are cited only as necessary to resolve the issue(s) presented. Consequently, all exhibits and all aspects of each witness's testimony are not explicitly referenced below.

1. In the 2022-2023 school year, the student attended [redacted] at the District. (Notes of Testimony [“NT”] at 149-194).
2. In the 2023-2024 and 2024-2025 school years, the student’s [redacted] grade years, the student attended school in another state. (NT at 149-194).
3. For the current 2025-2026 school year, the student returned to the District, attending [redacted] grade at a District elementary school. (Hearing Officer Exhibit [“HO”]-1, HO-2, HO-3; NT at 149-194).³
4. The student has been identified as a student with autism, with needs identified in behavior, speech and language (“S&L”), and occupational therapy. (Parent Exhibit [“P”]-3; School District Exhibit [“S”]-5).
5. In early October 2025, as a result of behavior in September 2025 which the District asserts involved injury to two staff members, the student began to attend the IU placement. (HO-2).

³ HO-1 is the parents’ complaint, filed in early April 2026 at ODR file number 32883-25-26-. For reasons unrelated to the instant matter, this exhibit is a redacted copy of that complaint, with redactions undertaken by the undersigned hearing officer. The need for redaction, and the redactions themselves, are both procedural necessities unrelated to the instant matter; the redactions do not material alter the findings of fact in the instant decision. HO-2 is the District’s complaint, filed in late April 2026, at the instant ODR file number. HO-3 is the parents’ response to the District’s complaint.

6. In mid-November 2025, the student's individualized education program ("IEP") team met to draft an IEP for the student for implementation at the IU. (P-3; S-5).⁴
7. The November 2025 IEP documented various problematic behaviors between the period October 2025 through January 2026, when the student's IEP was revised. (P-3; S-5).
8. In mid-October 2025, during a S&L observation at the IU placement, the evaluator observed the following: "Throughout the evaluation, (the student) participated in tasks with the use of frequent breaks and a reward system. (The student) frequently stood, walked around the classroom, and received sensory input from staff members in the form of hugs/squeezes. After one of these breaks, (the student) walked back to the carpet space where the evaluation was taking place. When told 'first sit, then skittle', (the student) sat down, but quickly stood back up before receiving the reinforcer. Almost immediately after standing back up, (the student) hit one of the RBTs [registered behavior technicians], turned around, and kicked one of the clinicians in the chest. The RBTs immediately responded." (P-3 at page 25;

⁴ The November 2025 IEP, with January 2026 revisions, are in the record at P-3 and S-5. Where identical content can be cited across either document, only one exhibit will be cited. March 2026 and April 2026 revisions are contained only in S-5. That content will obviously be only cited in S-5.

parenthetical material edited for stylistic consistency, bracketed material added for clarity).

9. The November 2025 IEP documented the frequency of aggression in November 2025 and early December 2025. Aggression was defined in the IEP as “any direct or attempt to contact aggressively with staff/students”. (S-5 at pages 12-13).
10. On November 11th, 36 aggressions were documented by the student’s educators; on November 12th, 51 aggressions; on November 13th, 66 aggressions; on November 14th, 76 aggressions; on November 17th, 174 aggressions; on November 18th, 100 aggressions; on November 24th, 31 aggressions; on November 25th, 10 aggressions; and on December 1st, 128 aggressions. (P-3 at page 11).
11. These were not the only instances of aggressions. The student experienced multiple, at times multiple dozens, of daily aggressions through the period of November 2025 – January 2026. (NT at 73-144).
12. Over the period of the November/December 2025 aggressions, the November 2025 IEP documented that “(the student) has made physical contact with multiple students/staff, such as:

[multiple aggressive incidents and injuries to staff and students].(S-5 at pages 13-14).⁵

13. Over the period of the November/December 2025 aggressions, the November 2025 IEP documented nineteen various instances of restraint, including supportive guide, stability hold, vertical lift, forward transport, SPV, and resort to the IU de-escalation room. (P-3 at pages 12-16).
14. In November 2025, due to the length and severity of a significant behavior incident, the IU summoned an ambulance for transport to a local hospital emergency room. (NT at 73-144, 149-194).
15. Over the period December 2025 through mid-January 2026, January 2026 IEP revisions documented thirteen various instances of restraint, including supportive guide, stability hold, vertical lift, forward transport, SPV, and resort to the IU de-escalation room. (S-5 at pages 10-12; P-10).
16. Over the period mid-January 2026 through mid-March 2026, the student's behavior markedly improved. (S-5 at page 9; NT at 73-144, 149-194).

⁵ Content replicated exactly as it appears in the IEP.

17. Parents filed a special education due process complaint in early April 2026, seeking, among other things, to have the student cease attending the IU program and return to a District-based placement. (HO-1).
18. Over the course of April 2026, the student's problematic behaviors began to recur. (S-4, S-5 at pages 8-9; NT at 73-144).
19. While the student had days in April 2026 without aggression, the student engaged in multiple instances of aggression toward peers and staff that resulted in restraint, including stability holds, vertical transport, forward transport, and resort to the IU de-escalation room. (S-4, S-5 at pages 8-9; NT at 73-144).
20. In late April 2026, the student exhibited self-injurious behavior in the form of [redacted]/manipulation, leading to bleeding and monitoring by the IU nurse (S-4).
21. By early May, at the time an administrator at the IU testified at the hearing, the student's behavior had improved to a degree. (NT at 73-144).
22. In late April 2026, the District filed the complaint which led to these proceedings, seeking to maintain the student's IU placement. (HO-2).

23. The IU placement is a specialized program of approximately 75 students, ages six through twenty-one. The placement involves approximately 45 minutes, one way, from the student's home. (NT at 73-144).
24. The student is placed in a [redacted] grade classroom with seven other students. The IU classroom includes the teacher, four personal care assistants, and four RBTs. The student has a dedicated RBT. (NT at 73-144).
25. The classroom is supported by four itinerant behavior specialists and an itinerant board-certified behavior analyst. (NT at 73-144).
26. The student's IEP includes a positive behavior support plan. The student also receives S&L services and occupational therapy. (NT at 73-144).
27. The student's education team tracks daily instances of aggression and meticulously documents any restraint. IU staff are in near-daily email communication with parents, including a live shared document, to which parents have access, which provides daily data and input for the student's behaviors. (P-3; S-4, S-5; NT at 73-144).
28. The student cannot independently engage with peers. With highly structured engagement involving adult presence and support,

and adult prompting, peers will engage with the student; in less structured environments, peers avoid interaction and exhibit nervousness or even fear. (NT at 73-144).

29. The student has injured every classmate, and various adult staff, including personal care aides, RBTs, and behavior specialists. (NT at 73-144).

30. Parents shared with IU staff, and during their testimony at the hearing, that they feel the incidents documented by the IU are inaccurate or even fabricated. (NT at 73-144, 149-194).

31. In its complaint, the District's request for remedy seeks that the student's IU placement be maintained for an additional 45-school-days, under a hearing officer's authority, given a substantial likelihood that not maintaining that placement may result in injury to the student or to others. In seeking that relief, however, the District is open to other potential specialized out-of-District placement, to the extent that parents might be more interested in similar placements that are not run by the IU. (HO-2).

32. Evidence developed by the District at the hearing, however, included a similar type of specialized program at a different nearby IU ("IU placement #2).

33. The District had contacted IU placement #2 in the fall of 2025 for a potential initial placement outside of the District and, more recently, as a potential placement resulting from its special education due process complaint. (HO-2; NT at 20-66).
34. IU placement #2 is a specialized program of approximately 300 students, ages six through twenty-two. The placement involves approximately 20 minutes, one way, from the student's home. (NT at 20-66).
35. At IU placement #2, the student would be placed in a [redacted] grade classroom with seven other students. The classroom at IU placement #2 includes the teacher, a teaching assistant, and approximately six adults. (NT at 20-66).
36. The classroom is supported by an itinerant crisis specialist and an itinerant board-certified behavior analyst. (NT at 20-66).
37. The administrator from IU placement #2 testified at the hearing that, having reviewed the student's IEP, the placement would be appropriate for the student and, at least as of the date of the hearing session, the placement could accept the student. (NT at 20-66).

Witness Credibility

All witnesses testified credibly and a degree of weight was accorded to each witness's testimony. It must be made explicit that the testimony of the administrator from the IU placement (NT at 73-144) was heavily credited regarding the documentary evidence in this record about the student's behaviors at the IU placement. Her testimony that the IU's documentation of those behaviors was authentic and accurate, and was gathered in good faith, is entirely endorsed and accepted.

Legal Framework

The provisions of 34 C.F.R. §§300.532(b)(2)(ii) generally apply following a manifestation determination, where a student's behavior is found to be a manifestation of the student's disability, thus potentially limiting a school district's ability to pursue a change in placement.

Where the school district believes, however, that maintaining the current placement of the student is substantially likely to result in injury to the student or to others, the school district may utilize a special education due process hearing to seek an interim 45-school-day placement outside of the school district. (34 C.F.R. §§300.532(b)(2)(ii)).

This procedures under 34 C.F.R. §§300.532(b)(2)(ii), seeking an interim 45-school-day placement "may be repeated, if the (school district)

believes that returning the child to the original placement is substantially likely to result in injury to the child or to others". (34 C.F.R. §§300.532(b)(3)).

Discussion

Here, the student's placement has unfolded at the IU since the fall of 2025. Over the period from the fall of 2025 through the date that the parents filed their complaint in early April 2026, the procedural history has been somewhat complex. This decision does not need to address that procedural history; the issue for this decision is simply whether, based on the District's complaint in late April 2026, maintaining a specialized out-of-District placement is necessary because changing that placement is substantially likely to result in injury to the student or to others. The evidence weighs decidedly in favor of finding that, for the next 45 school days, the student's placement must be maintained at a specialized out-of-District setting.

On balance, the evidence in the record fully supports a conclusion that the IU placement provides the structure and behavioral expertise which the student requires. Encouragingly, over time (from early October 2025 through early May 2026), the student has had periods of behavioral success. Whether or not this can continue remains to be seen. But removing the student from that placement and programming, at this time, would not be

appropriate because not maintaining the IU placement presents a substantial likelihood of injury to the student or others.

The one factor which gives this hearing officer slight pause is the comparison of transportation time. The student is transported approximately 45 minutes, one way, to the IU placement. The student would be transported approximately 20 minutes, one way, to IU placement #2. This is something to be considered. But disrupting the structure and programming which the student has experienced at the IU placement, especially with periods of significantly reduced aggression, is not outweighed by the evidence on this record regarding the length of transportation.

Accordingly, the student will remain at the IU placement for the next 45 school days.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the student's placement over the next 45 school days (that is, "any day, including a partial day, that children are in attendance at school for instructional purposes", 34 C.F.R. §300.11(c)), shall be at the intermediate unit placement where the student has attended for the majority of the current 2025-2026 school year.

Any claim at this file number not specifically addressed in this decision and order is denied and dismissed.

s/ Michael J. McElligott, Esquire

Michael J. McElligott, Esquire
Special Education Hearing Officer

05/27/2026