

*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  
Final Decision and Order**

**CLOSED HEARING**

**ODR No. 32283-25-26 and 32378-25-26**

**Child's Name:**

T.B.

**Date of Birth:**

[redacted]

**Parent:**

[redacted]

**Counsel for Parents:**

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**Local Education Agency:**

Wilkinsburg School District  
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**Hearing Officer:**

Cathy A. Skidmore, Esquire

**Date of Decision:**

01/26/2026

## **INTRODUCTION AND PROCEDURAL HISTORY**

The student, T.B. (Student),<sup>1</sup> is an [redacted] teenaged student residing with the Parent and attending school in Wilkinsburg School District (District). Student has been identified as eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA)<sup>2</sup> with an emotional disturbance and a speech/language impairment. Accordingly, Student also has a disability entitling Student to protections under Section 504 of the Rehabilitation Act of 1973.<sup>3</sup>

In December 2025, both the District and Parent filed expedited disciplinary due process complaints along with other, non-expedited claims. The expedited issues involved a District request for permission to remove Student to an interim alternative education setting (IAES), while the Parent sought to reverse a manifestation determination. These issues were heard together in a single efficient hearing session on January 15, 2026.<sup>4</sup>

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<sup>1</sup> In the interest of confidentiality and privacy, Student's name, gender, and other potentially identifiable information are not used in the body of this decision. All personally identifiable information, including details appearing on the cover page of this decision, will be redacted prior to its posting on the website of the Office for Dispute Resolution in compliance with its obligation to make special education hearing officer decisions available to the public pursuant to 20 U.S.C. § 1415(h)(4)(A) and 34 C.F.R. § 300.513(d)(2).

<sup>2</sup> 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).

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

<sup>4</sup> References to the record throughout the findings and discussion in this decision will be to the Notes of Testimony (N.T.), Parent Exhibits (P-) followed by the exhibit number, and School District Exhibits (S-) followed by the exhibit number. Citations to duplicative exhibits and testimony generally are not exhaustive. This decision is issued well within 10 school days after the hearing; January 19, 2026 was a holiday for the District (P-64). The non-expedited issues were bifurcated and assigned new ODR File Numbers.

Following review of the record and for all of the reasons set forth below, the District's claim cannot be sustained and the Parent's claim must be granted.

### **ISSUES**

1. Whether the District should be permitted to remove Student to an Interim Alternative Educational Setting; and
2. Whether the manifestation determination reached in early December 2025 should be reversed?

### **FINDINGS OF FACT**

1. Student is an [redacted] teenaged child residing with the Parent in the District. (P-46.)
2. Student frequently engages in [redacted], which may be a source of Student's emotional dysregulation at school (as well as that of peers). (N.T. 35, 47, 105-06, 192-93.)

### **Relevant Evaluations and Programming**

3. A Functional Behavior Assessment (FBA) completed in June 2025 identified several problem behaviors: defiance, elopement, and verbal and physical aggression. Although no observations were conducted, based on a review of data, the hypothesis on the function of the behaviors was determined to be avoidance/escape, with attention from peers/adults another consequence. (P-43; S-7.)
4. The District last evaluated Student in the fall of 2025 with a Reevaluation Report issued in October. (P-46; S-4.)

5. Cognitive assessment for the October 2025 RR reflected low Composite scores and below average subtest scores. On a measurement of academic achievement, Student earned scores that were generally consistent with Student's aptitude, although Student did not complete all tasks for that instrument. (P-46 at 11-13; S-4.)
6. Results of a Behavior Rating System for Children – Third Edition rating scale completed by the teacher indicated that Student exhibited a number of areas of clinically significant concerns: hyperactivity, aggression, conduct problems, and functional communication. At-risk concerns requiring monitoring were identified with respect to depression, attention and learning problems, atypicality, withdrawal, adaptability, social skills, leadership, and study skills. Student's self-report reflected fewer areas of concern but significant for attitude toward teachers, and at-risk with attitude toward school, social stress, depression, interpersonal relations, and self-reliance. The Parent reportedly did not return her rating scale by the time this RR was issued. (P-46 at 13-19; S-4.)
7. On a separate measure of emotional functioning, rating scales again completed by the teacher were indicative of an emotional disturbance. Adaptive behavior was also assessed as below expectations except for daily living skills. (P-46 at 19-21; S-4.)
8. Strengths in the October 2025 RR included creativity, curiosity for learning, self-awareness, and verbal reasoning skills. Needs mirrored the weaknesses identified by the assessment tools as well as coping strategies, academic skills (reading, written expression, and mathematics), and chronic absenteeism. (P-46; S-4.)
9. The October 2025 RR identified Student as eligible for special education as a child with Emotional Disturbance and a

Speech/Language Impairment. Recommendations included consideration of a more restrictive placement as well as services and supports for Student's areas of need. (P-46; S-4.)

10. Student's Individualized Education Program (IEP) was last revised in late November 2025 after the recent RR. At that time, the team agreed that Student would be provided with a dedicated paraprofessional throughout the school day. (P-50.)
11. The November 2025 IEP included annual goals addressing reading and mathematics, speech/language, and behavior. The behavioral goal targeted academic task completion and a Positive Behavior Support Plan (PBSP) was part of that IEP. No progress toward the behavior goal was provided in this IEP or October 2025 RR. (P-46; P-50; S-4.)

### **Relevant Facts 2025-26 School Year**

12. Since early 2024, Student has been placed in an emotional support classroom with approximately five other students, four of whom are full-time; the grades range from [redacted]. The teacher and two other adult paraprofessionals are present in that classroom. (N.T. 27-30, 36, 44, 48-49; P-46 at 7.)
13. Student's relationship with the emotional support teacher is not a positive one, possibly as a result of the demands of that setting. (N.T. 58-59.)
14. Student receives social/emotional regulation support three days each week and counseling twice each week. Student is able to meet with the counselor and other trusted adults as needed. (N.T. 44-45, 56-57, 72-73, 190-91; P-46 at 8.)
15. Student's behaviors that led to the emotional support placement ranged from physical aggression toward peers and adults; verbal outbursts; elopement within the building; and work refusal. A number

of major disciplinary incidents over the 2025-26 school year were reported for these behaviors. (N.T. 30-32, 36-38; 40-42, 68-69, 101-02, 106-13; P-52.)

16. A paraprofessional intervenes when Student begins to engage in disruptive or aggressive behavior or requires redirection. Shortly before the expedited hearing, Student had the dedicated paraprofessional throughout the school day. [redacted]. (N.T. 39-41, 44, 84-85, 99-103, 119-20, 127-34.)
17. At the time of the expedited due process hearing, Student's physical aggression (resulting in scratches, bumps, and bruises treated by the school nurse) was exhibited approximately [redacted][redacted]. (N.T. 111-12, 123-25.)
18. When Student leaves the emotional support classroom, a paraprofessional follows Student until Student reaches a safe destination. Security personnel also monitor Student throughout the school building. (N.T. 38-39, 103-04.)
19. When Student becomes upset at school, Student typically calls the Parent using Student's cell phone. The Parent is generally successful in calming Student at those times. (N.T. 34-35, 100-01, 192.)
20. District staff genuinely have fear for the safety of Student, peers, and adults at school; they also believe that Student requires a higher, more intensive level of support. The Parent does not agree. (N.T. 42-43, 155-57, 172,198-99, 229-30; P-50 at 9.)
21. One behavior incident involving Student in mid-November of the 2025-26 school year related to a peer with whom Student had previously had difficulty. The District scheduled a mediation between the two students and arranged to keep them separated. However, the two students later met in a hallway and had a verbal exchange that led to

brief physical aggression between Student and an administrator that was not severe. (N.T. 144-53, 157-59; S-11a; S-11b.)

### **Manifestation Determination**

22. Another behavior incident involving Student and a peer occurred at school in early December 2024 during an unstructured setting. (N.T. 86-87; P-55 at 7-8; P-65.)
23. A manifestation review team meeting convened on December 4, 2025 after that incident, at which District participants considered a variety of Student's behaviors. They called the Parent by telephone and left a message; the Parent later that day was reached and informed of another suspension for Student. (N.T. 85-86, 93, 205-08, 214; P-55 at 7-8.)
24. A District representative spoke with the Parent approximately one week after the manifestation review to explain that she would convene a meeting with the Parent to review that paperwork. (N.T. 211-214, 219-20.)
25. The manifestation determination worksheet completed by the District indicates that a number of behaviors in question were considered because of the cumulative suspensions totaling 11-15 days. (P-51.)
26. The team conducting the manifestation determination review concluded that, "[T]he student is capable of following classroom rules and has used coping strategies successfully in other situations," (P-51 at 2), and consequently that the behavior was not related to Student's emotional disturbance disability. (P-51.)

## **DISCUSSION AND APPLICATION OF LAW**

### **General Legal Principles**

In general, the burden of proof consists of two elements: the burden of production and the burden of persuasion. The latter, of course, 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). Accordingly, the burden of persuasion in this case must rest with both parties since each filed an expedited disciplinary complaint. Nevertheless, application of this principle determines which party prevails only in those rare cases where the evidence is evenly balanced or in " equipoise." *Schaffer, supra*, 546 U.S. at 58. The outcome is much more frequently determined by the preponderance of the evidence.

Special education hearing officers, in the role of fact-finders, are given the responsibility of making credibility determinations of the witnesses who testify before them. *See J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); *see also 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). This hearing officer found each of the witnesses who testified to be credible as to the facts as they recalled them. The testimony was essentially quite consistent where it overlapped, and any contradictions are attributed to lapse in memory or recall rather than an intention to mislead. The documentary and video evidence<sup>5</sup> was accorded significant weight, particularly where vivid recall was absent.

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<sup>5</sup> The following exhibits were offered and are hereby admitted: P-20, P-34, P-35, P-38, P-41, P-42, P-43, P-46, P-49, P-50, P-51, P-52, P-53, P-54; S-4, S-5, S-6, S-7, S-8, S-9, S-10, S-11a, and S-11b. On this hearing officer's own Motion, P-64 is also hereby admitted.

The findings of fact were made as necessary to resolve the issues; thus, not all of the testimony and exhibits were explicitly cited. However, in reviewing the record, the testimony of all witnesses and the content of each admitted exhibit were thoroughly considered, as were the parties' closing statements.

### **IDEA Disciplinary Principles**

The IDEA and its implementing regulations contain explicit provisions that "strip schools of the unilateral authority ... to exclude disabled students from school." *Honig v. Doe*, 484 U.S. 305, 323 (1988) (emphasis in original). Disciplinary changes in placement accordingly require adherence to the legal requirements for such exclusions. The first issue of an IAES falls under one set of provisions, while the manifestation determination review is subject to others.

### **IDEA Disciplinary Principles**

#### **Placement in alternative educational setting**

(1) Authority of school personnel

(A) Case-by-case determination

School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

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(2) Determination of setting

The interim alternative educational setting in subparagraphs (C) and (G) of paragraph (1) shall be determined by the IEP Team.

(3) Appeal

(A) In general

The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.

(B) Authority of hearing officer

(i) In general

A hearing officer shall hear, and make a determination regarding, an appeal requested under subparagraph (A).

(ii) Change of placement order

In making the determination under clause (i), the hearing officer may order a change in placement of a child with a disability. In such situations, the hearing officer may—

- (I) return a child with a disability to the placement from which the child was removed; or
- (II) order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

20 U.S.C. § 1415(k); *see also* 34 C.F.R. §§ 300.530 – 300-533.

## **Manifestation Determination**

Pursuant to the IDEA and its applicable regulations, a parent making such an allegation has the right to challenge any District decision regarding a change in placement for disciplinary reasons in an expedited due process hearing. 20 U.S.C. § 1415(k)(3); 34 C.F.R. §§ 300.532(a) and (c). When such an appeal is filed, the child remains in the current alternative education setting unless the parties agree otherwise. 20 U.S.C. § 1415(k)(4); 34 C.F.R. § 300.533. A local education agency (LEA), including a school district, is permitted to remove a child with a disability from his or her current educational setting for violation of the code of student conduct for a period of no more than ten consecutive school days within the same school year, provided that the same discipline would be imposed on non-disabled students. 20 U.S.C. § 1415(k)(1)(B); 34 C.F.R. §300.530(b). An LEA is also permitted to impose additional disciplinary removals for separate incidents of misconduct for fewer than ten consecutive school days, provided that such removals do not constitute a “change of placement.” 20 U.S.C. § 1415(k)(1)(B); 34 C.F.R. §300.530(b).

A “change of placement” based on disciplinary removals is defined as (1) removal for more than ten consecutive school days; or (2) a series of removals during the same school year that constitutes a “pattern”. 34 C.F.R. § 300.536(a). The relevant Pennsylvania regulations explicitly provide that disciplinary exclusion of a child with a disability that exceeds fifteen days in the same school year is deemed a pattern and, thus, a change in placement. 22 Pa. Code § 14.143(a). “Any unique circumstances” of a particular case may be considered by the LEA when determining whether a change in placement is appropriate for a child with a disability who violates a student code of conduct. 20 U.S.C. § 1414(k)(1)(A); 34 C.F.R. § 300.530(a).

Once a decision is made to change the placement of a child with a disability for violating the code of student conduct, the LEA must conduct a

manifestation determination review to determine whether the conduct “was caused by, or had a direct and substantial relationship to, the child’s disability; or ... was the direct result of” the LEA’s failure to implement the child’s IEP. 20 U.S.C. § 1415(k)(E)(i); *see also* 34 C.F.R. § 300.530(e). The manifestation determination must be made within ten school days of any decision to change the eligible child’s placement, and must be made by “the LEA, the parent, and relevant members of the child’s IEP team (as determined by the parent and the LEA).” 34 C.F.R. § 300.530(e); *see also* 20 U.S.C. § 1415(k)(1)(E). The team must consider “all relevant information in the student’s file...including any relevant information provided by the parents[.]” 20 U.S.C. § 1415(k)(1)(E); *see also* 34 C.F.R. § 300.530(e).

If the team determines that the behavior was a manifestation of the child’s disability, the IEP team must return the child to the placement from which the child was removed unless the parent and LEA agree otherwise; and the team must also either conduct an FBA and implement a behavior intervention plan, or review and modify an existing behavior plan. 20 U.S.C. § 1415(k)(1)(F); 34 C.F.R. § 300.530(f). If the team determines that the behavior was not a manifestation of the child’s disability, the LEA may take disciplinary action that would be applied to children without disabilities, except that the child with a disability is entitled to special education services. 20 U.S.C. §§ 1415(k)(1)(C) and (k)(1)(D); 34 C.F.R. §§ 300.101(a), 300.530(c) and (d). A parent who disagrees with a manifestation determination may appeal that decision. 20 U.S.C. § 1415(k)(3); 34 C.F.R. §§ 300.532(a).

### **Application to the Discipline Imposed**

The first issue is whether the District has established by a preponderance of the evidence that it should be permitted to place student in an IAES for a 45-day period. As discussed above, such relief is available

when the record is persuasive that maintaining the current placement of the child is substantially likely to result in injury to the child or to others. The answer to this question ultimately must be in the negative.

District witnesses convincingly testified that they believe that Student requires a more restrictive setting, and it is patently clear that District staff are required to provide a significant degree of support for Student's behaviors. Their assessment of Student's placement may well be correct; nevertheless, any effort to effectuate such a change in this case must follow traditional, non-expedited IDEA processes.<sup>6</sup> Notably, the candid testimony of the dedicated paraprofessional was that Student's aggression is short in duration, and that the majority of incidents are verbal in nature. While it is true that the one incident that ultimately led to the District's Complaint involved some physical aggression against District professionals, the injuries were not significant. As such, the facts in this case do not support an IAES placement following review of the administrative decisions cited by the District. See *S.S. v. Pittsburgh Public Schools*, ODR File No. 18270-1617 (Skidmore, October 25, 2016) (finding that where an administrator suffered "severe" pain to the head caused by the student repeatedly striking her there, there was no substantial risk of bodily injury); *C.R. v. Bensalem Township School District*, ODR File No. 26436-2122 and 26467-2122 (concluding that experiencing pain along with concussion symptoms for at least twenty days *after* the incident did justify IAES placement). These conclusions are also consistent with those in other jurisdictions, *see, e.g., In*

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<sup>6</sup> The IDEA demands that LEAs have available a "continuum of alternative placements" in order to meet the educational and related service needs of its IDEA-eligible children. 34 C.F.R. § 300.115(a); 22 Pa. Code § 14.145. That "continuum" of placements in the law describes and enumerates settings beginning with regular education classes with supplementary aids and services, and growing progressively more restrictive moving first toward special classes and then toward special schools, instruction in the home, and instruction in hospitals and similar facilities. 34 C.F.R. § 300.115. An LEA need not, however, create such a placement in order to provide an opportunity for a child in the LRE. *T.R. v. Kingwood Township Board of Education*, 205 F.3d 572, 579-80 (3d Cir. 2000).

*re Student with a Disability*, 123 LRP 18680 (SEA IL 2023) (determining that the student's unsafe behaviors increased in duration from approximately ten minutes to thirty or forty minutes and involved, *inter alia*, serious physical aggression that included biting staff to the point that blood was drawn, self-injurious behavior to Student's head, and multiple threats of violence including death to others). In this hearing officer's view, the District has failed to establish by a preponderance of the evidence that the facts of this case rise to the level of a 45-day IAES for Student. However, other options are available as discussed *infra*.

The next issue is the Parent's claim challenging the manifestation determination. There are two major flaws with the procedure used in this case on this issue that are fatal to the review conducted.

The first error is the substantive conclusion that Student's conduct in question was not a manifestation of Student's disability. Here, Student's obvious and well-documented deficits in emotional regulation. There is also a lack of evidence of progress exhibited by Student on the behavior goal in the current IEP that might support the conclusion reached; thus, the team considering this review failed to adequately consider all requisite elements. The second defect is procedural, namely the failure to include the Parent in the team discussion and conclusion as required by the IDEA. Tellingly, the manifestation determination review worksheet explicitly states that the Parent was notified of the imposed consequences, and lacks any indication that her input was sought or considered. These two errors, either singularly or together, require that the manifestation determination be reversed. The attached order shall also require a new FBA to be completed that includes sufficient observations to yield useful information for the IEP team, as well as a prompt IEP team meeting.

Finally, by way of dicta, it is encouraging and very important that the parties are planning the programming for Student with the anticipated move

to a new LEA in the fall of 2026. That transition is likely to be a complicated and challenging process and will almost certainly be impact by Student's disabilities. This hearing officer strongly suggests that the parties continue to work collaboratively together to prepare Student for that change in LEA, even in light of and despite this dispute.

## **CONCLUSIONS OF LAW**

The District may not remove Student to an interim alternative educational setting for an interim period.

The manifestation determination review of December 4, 2025 must be reversed.

## **ORDER**

AND NOW, this 26<sup>th</sup> day of January, 2026, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. The District has not established that it should be permitted to remove Student to an IAES for any interim period, and that remedy is DENIED.
2. The District's manifestation determination review dated December 4, 2025 did not comport with the IDEA procedural and substantive mandates and is REVERSED.
3. The District is ordered to arrange for a Functional Behavior Assessment to be conducted by an experienced FBA evaluator beginning no later than February 3, 2026. This FBA shall include

a number of observations sufficient to inform the IEP team of any potential changes to Student's behavior plan.

4. Within five school days of the date of this order, the District shall convene a meeting of Student's IEP team including the Parent to discuss and determine whether any revisions should be made to Student's IEP, including consideration of development of a safety or crisis plan for Student at school.
5. Nothing in this Order should be read to prevent the parties from mutually agreeing to alter any of its terms.

It is **FURTHER ORDERED** that any claims not specifically addressed by this decision and order are DENIED and DISMISSED. Jurisdiction is RELINQUISHED.

/s/ Cathy A. Skidmore

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Cathy A. Skidmore, Esquire  
HEARING OFFICER  
ODR File No. 32283-25-26  
32378-25-26

Sent to counsel for both parties this date as required by 34 C.F.R. § 300.515 by electronic mail message as requested by counsel<sup>7</sup> consistent with 22 Pa. Code § 14.162(n), and accompanied by appeal timelines.

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<sup>7</sup> N.T. 237-38.