

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. 32958-25-26

Child's Name:

B.C.

Date of Birth:

[redacted]

Parent(s):

[redacted]

Local Education Agency:

Freire Charter School
1026 Market Street
Philadelphia, PA 19107

Counsel for the LEA:

Jeffrey Stacey, Esq.
925 Harvest Drive
Blue Bell, PA 19422

Hearing Officer:

James Gerl, CHO

Date of Decision:

June 25, 2026

BACKGROUND

The charter school filed a due process complaint seeking to override parental refusal to consent to place the student in a full-time special education program in an approved private school. The parent's position is unknown because the parent failed to appear at the due process hearing or otherwise participate in this proceeding.

I find that the charter school failed to meet its burden of persuasion. I find in favor of the parent on this issue.

PROCEDURAL HISTORY

This case has an unusual procedural history. The unrepresented parent refused to participate in this hearing or in any pre-hearing processes.

The hearing got off to a bad start. The attorney for the charter school was five minutes late for the hearing. (NT 3-8) The parent did not show up for the hearing at all. When the parent did not show up at the due process hearing after a reasonable time, I placed telephone calls to the parent. The parent returned my call and stated that she did not wish to appear at the due process hearing or otherwise participate in the hearing. I explained the nature of the proceedings. I also asked if she had any questions, and she stated that she did not. (NT 9-15) Because the charter school as the filing party had the burden of persuasion, we proceeded with the hearing in the absence of the parent.

The hearing was convened in one in-person session. Two witnesses testified at the hearing. Charter school exhibits S-1 through S-20 were admitted into evidence. The parent offered no exhibits or testimony because the parent did participate in the hearing.

After the hearing, counsel for the charter school was directed to, and the unrepresented parent was invited to submit closing arguments/post-hearing briefs and proposed findings of fact. Counsel for the charter school filed a written brief. All arguments submitted by the parties have been considered. To the extent that the arguments advanced by the parties are in accordance with the findings, conclusions and views stated below, they have been accepted, and to the extent that they are inconsistent therewith, they have been rejected. Certain arguments and proposed findings have been omitted as not relevant or not necessary to a proper determination of the material issues as presented. To the extent that the testimony of various witnesses is not in accordance with the findings as stated below, it is not credited.

To the extent possible, personally identifiable information, including the names of the parties and similar information, has been omitted from the text of the decision that follows. FERPA 20 U.S.C. § 1232(g); and IDEA § 617(c).

Because the parent did not appear at the hearing, a copy of this decision will be sent to the parent by both email and U.S. mail.

ISSUE PRESENTED

The due process complaint presents the following single issue:

Whether the charter school has proven that the parent's lack of consent must be overridden and that the student should be placed in a full-time special education program at an approved private school?

FINDINGS OF FACT

Based upon the evidence in the record compiled at the due process hearing, I make the following findings of fact: ¹

1. The student's date of birth is [redacted]. (S-1)
2. The student is very [redacted] and enjoys being around the student's peers. (NT 50 – 51)
3. The student is a [redacted] grade student at the charter school. The student was enrolled at the beginning of the 2025 – 2026 school year. The student is eligible for special education and related services under the disability category of intellectual disability. (NT 25 – 27)
4. The charter school developed an IEP for the student on October 17, 2025. An IEP revision meeting occurred on January 22, 2026. The IEP for the student includes goals for math, word differentiation, sight words, reading comprehension, answering WH questions, speech therapy, and behavior. Numerous specially designed instruction and accommodations are provided. Related services include speech therapy 90 minutes per month, counseling 90 minutes per month, paraprofessional services 1,600 minutes per week and transportation. The IEP notes that the student is eligible for extended school year services. The IEP places the student in the regular

¹ (Exhibits shall hereafter be referred to as "S-1," etc. for the charter school's exhibits; references to page numbers of the transcript of testimony taken at the hearing is hereafter designated as "NT____").

education classroom approximately 79% of the school day. (S-8; NT 53 – 56, 28 – 29).

5. Throughout the 2025 – 2026 school year, the student has exhibited numerous problem behaviors, including aggression, profanity, verbal threats, elopement and refusal to complete non-preferred tasks. (NT 29 – 30)

6. The charter school created a positive behavior support plan for the student on October 16, 2025. The behavior plan identifies three behaviors of concern: elopement, disruptive/aggressive behavior, and refusal/noncompliance. The behavior plan was drafted by the charter school's behavior support specialist, who is not a board-certified behavior analyst. The behavior plan provides for check-in and check-out procedures for the student using the positive behavior support system rewards that are applicable to all students in the charter school. (S-6; NT 27 – 28, 59 – 60, 62 – 63)

7. The progress monitoring report for January 16, 2026 shows that the student is not making sufficient progress towards the student's IEP goals. (S-17; NT 48)

8. The student's attendance record reflects 32 absences or early pickups during the 2025 – 2026 school year. (S-19; NT 41 – 42)

9. The student is receiving failing grades at the charter school. (S-20, S-17; NT 44 – 48)

10. The charter school has modified certain academic assignments for the student. A modified curriculum has not been provided to the student at the charter school. (NT 45, 55)

11. On January 9, 2026, the charter school issued a NOREP proposing that the student's placement be changed to a full-time special education program at an approved private school. The NOREP identified three potential

approved private schools. The NOREP states that the two placements considered by the team were regular education at the charter school or full-time special education program at a separate approved private school. The parent did not approve the NOREP because the charter school had not offered enough supports for the student. (S-11; NT 32 – 34)

12. An IEP meeting was held on April 17, 2026. The resulting IEP designates a specific approved private school and provides for a full-time special education program for the student at the approved private school. The parent refused to sign the IEP or the resulting NOREP. (S-17, S-16; NT 41)

13. The charter school does not have a self-contained classroom. The current placement of the student at the charter school, which is a 79% regular education setting, is the most restrictive special education placement that the charter school offers. (NT 53 – 56)

CONCLUSIONS OF LAW

Based upon the arguments of the parties, all of the evidence in the record, as well as my own legal research, I have made the following conclusions of law:

1. A parent or a local education agency may file a due process complaint alleging one or more of following four types of violations of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq, (hereafter sometimes referred to as “IDEA”): an identification violation, an evaluation violation, a placement violation or a failure to provide a free and appropriate public education. IDEA §615(f)(A); 34 C.F.R. § 300.507(a); 22 Pa. Code § 14.162.

2. In an IDEA hearing, the party filing the due process complaint bears the burden of persuasion. The filing party must prove its case. Schaffer

v. Weast, 546 U.S. 49, 44 IDELR 150 (2005); LE and ES ex rel. MS v. Ramsey Bd. of Educ., 435 F. 3d 384, 44 IDELR 269 (3d Cir. 2006).

3. Charter schools that are local education agencies are responsible for compliance with IDEA and its implementing regulations. Children with disabilities receiving their education in such charter schools are entitled to the same substantive and procedural protections as their counterparts in other public schools. 34 C.F.R. § 300.209; 22 Pa. Code § 711; Frequently Asked Questions About the Rights of Students with Disabilities in Public Charter Schools Under the Individuals With Disabilities Education Act, 69 IDELR 78 (OSERS 2016). See, Weber, Mark C., "Special Education from the (Damp) Ground Up: Children With Disabilities in a Charter School – Dependent Educational System," 11 Loyola J. of Pub Interest Law 217, 246 and n.137 (Spring 2010).

4. A school district must "...to the maximum extent appropriate (ensure that) children with disabilities... are educated with children who are non-disabled and that special classes, separate schooling, or other removal of children with disabilities from the regular education environment occurs only if the nature or severity of the disability is such that education in the regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily." 34 C.F.R. § 300.114(a)(2); IDEA § 612(a)(5)(A); 22 Pa. Code § 14.145.

5. The Third Circuit has stated that the least restrictive environment provision sets forth a "strong congressional preference" for integrating children with disabilities in regular classrooms. Oberti v. Board of Education, 995 F.2d 1204, 19 IDELR 908 (3d Cir. 1993). The court adopted a two-part test for determining whether a district is in compliance with IDEA's mainstreaming requirement. First, the court must determine whether education in a regular classroom with the use of supplementary aids and

services can be achieved satisfactorily. Second, if the court finds that placement outside a regular classroom is necessary for the child to benefit educationally, then the court must decide whether the school has “mainstreamed the child to the maximum extent appropriate,” that is, whether the school has made efforts to include the child in school programs with nondisabled children whenever possible. In determining the first prong of the two-part test, the court set forth three factors to be determined: First, the court should look at the steps that the school has taken to try to include the child in a regular classroom. Second, the court should consider in determining whether a child with a disability can be included in the regular classroom, comparing the educational benefits the child will receive in a regular classroom with supplementary aids and services versus the benefits the child will receive in a segregated special education classroom. Third, the court should consider the possible negative effects of the child’s inclusion on the education of other children in a regular classroom. When considering negative effects, the court must keep in mind the school’s obligation to provide supplementary aids and services to accommodate the child’s disabilities. Oberti, supra.

6. Supplementary aids and services are defined as “...aids, services, and other supports that are provided in regular education classes, other education-related settings and in extracurricular and non-academic settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with...” the least restrictive environment requirements. 34 C.F.R. § 300.42.

7. IDEA requires that a local education agency must ensure that a continuum of alternative placements is available to meet the needs of a student with a disability for special education and related services. The continuum must include regular education, and special classes and must provide services, such as resource room and itinerant instruction. 34 C.F.R.

§ 300.115, 22 Pa. Code § 711.3(b)(12); Oberti, supra; See, NT and PT ex rel. CT v. Galesburg Comm. Unit School District No. 205, 126 L.R.P. 12580 (7th Cir. 2026); Frequently Asked Questions About the Rights of Students with Disabilities in Public Charter Schools Under the Individuals With Disabilities Education Act, 69 IDELR 78 (OSERS 2016) Seven Generations Charter School, 125 L.R.P. 29329 (SEA Penna. 2025).

8. The least restrictive environment mandate is a substantive requirement of IDEA. Oberti, supra, at n.18; See TM by AM and RM v. Cornwall Central School District, 752 F.3d 145, 63 IDELR 31 (2d Cir. 2014).

9. Placement decisions under IDEA must be made on an individualized basis. Jacobs ex rel. E.J. v. Salt Lake City Sch. Dist., 154 F.4th 790, 125 LRP 29753 (10th Cir. 2025); 34 C.F.R. § 300.116; 22 Pa. Code § 711.3(b)(12).

10. The United States Supreme Court has developed a two-part test for determining whether a school district has provided a free appropriate public education (hereafter sometimes referred to as “FAPE”) to a student with a disability. There must be: (1) a determination as to whether a school district has complied with the procedural safeguards as set forth in IDEA, and (2) an analysis of whether the individualized educational program is reasonably calculated to enable the child to make progress in light of the child’s circumstances. Endrew F by Joseph F v. Douglass County School District RE-1, 580 U.S. ___, 137 S. Ct. 988, 69 IDELR 174 (2017); Board of Educ., etc. v. Rowley, 458 U.S. 178, 553 IDELR 656 (1982); KD by Theresa Dunn and Jonathan Dunn v. Downingtown Area School District, 904 F.3d 248, 72 IDELR 261 (3d Cir. 2018).

11. Where a student with a disability has behaviors that impede the student’s learning or the learning of others, the student’s IEP team must consider the use of positive behavioral interventions and supports and other

strategies to address those behaviors. IDEA § 614(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i); Sean C by Helen C v. Oxford Area Sch. Dist., 70 IDELR 146 (E.D. Penna. 2017); See, Lathrop R-II Sch. Dist. v. Gray ex rel. DG, 611 F. 3d 419, 54 IDELR 276 (8th Cir. 2010).

12. The charter school has not proven that the parent's lack of consent should be overridden and that the student should be placed in a full-time special education program in an approved private school.

DISCUSSION

Whether the charter school has proven that the parent's lack of consent to place the student in a full-time special education program at an approved private school should be overridden?

The charter school, the local education agency that filed the complaint in this matter, contends that the parent should be forced to accept a full-time special education placement for the student at an approved private school. The parent failed to appear at the hearing or otherwise participate in this proceeding, so the parent's position with regard to the matter is not known.

The charter school has not met its burden of persuasion in this case.

The record evidence makes it clear that the student was struggling with academics and with the student's IEP goals. The evidence further shows that the student was continuing to have issues with problem behaviors. The charter school simply has not proven that the drastic change to a full-time special education program at a private school from the student's current

placement, which is in the regular education classroom 79% of the time, is warranted.

The charter school has not demonstrated that it has sufficiently explored utilizing supplemental aids and services in order to maintain the student's current placement. The record does reveal that the charter school assigned a full-time 1:1 aide to the student. However, the record evidence indicates that although there have been some minor modifications to the student's academics, a modified curriculum has not been provided to the student.

The charter school has developed a positive behavior support plan for the student. The behavior plan, however, is a bare bones behavior plan. The only component of the behavior plan is a check-in and check-out system, using the positive behavior support reward system that is applicable to all students in charter school. The behavior plan is not individualized to this student. It is evident that the behavior plan was not developed by a board-certified behavior analyst. It should be noted that the charter school is not required to utilize a BCBA, but the charter school is required to develop appropriate behavioral strategies. The bare bones behavior plan developed by the charter school in this case does not appropriately address this student's problem behaviors.

Thus, as the Third Circuit explained in Oberti, the next step for the charter school would be to convene the IEP team to determine whether it might be able to keep the student in the current placement with appropriate supplementary aids and services, such as a modified curriculum or a more robust behavior plan.

In its post-hearing brief, the charter school argues that it does not have alternative placements available between the student's current 79% regular education placement and a full-time special education placement at an

approved private school. This is not an acceptable excuse. The charter school's argument is not consistent with the least restrictive environment requirements of IDEA. The charter school, as the student's local education agency, must have available the full continuum of alternative placements. It should be noted that a local education agency, like the charter school in this case, is not required to have every point along the continuum of alternative placements even if there are no students to fit the placements. However, if a student, such as the student in the instant case, might require a more restrictive placement than 79% regular education, then the charter school must provide that placement. This is required by the LRE requirements of IDEA itself. In addition, one of the key concepts underlying IDEA is that placement decisions must be determined on an individualized basis. A one size fits all, or in this case two sizes fit all, approach is not consistent the individualization necessary under IDEA.

If the current placement with supplementary aids and services is not appropriate, alternative placements short of a full-time special education program must first be explored by the team. The IEP team clearly must consider more placement options between the two extremes considered in this case. It is possible that a full-time special education placement may eventually be appropriate for the student, but only after less restrictive options have been exhausted.

In its post-hearing brief, the charter school cites a hearing officer decision in support of its argument. That decision is distinguishable, however, because in that case, the student clearly needed a full-time special education placement. That is not the case here. Instead, the hearing officer decision in Seven Generations Charter School, 125 LRP 29329, (#30755-24-25) (SEA Penna. 2025) is instructive. There the hearing officer correctly observed that

the practice of a charter school in defaulting to placements outside of the school whenever it does not have a placement available is "exactly backwards." The argument of the charter school is rejected.

It is concluded that the charter school has not proven that the parental refusal to consent to place the student in a full-time special education program in an approved private school should be overridden.

A credibility determination is not necessary in this case because the parent has presented no evidence. However, to the extent that a credibility determination may be required, the testimony of the charter school witnesses with regard to whether the student required a full-time special educational program was not credible or persuasive. This determination is made because of the demeanor of the witnesses, as well as the fact the charter school witnesses conceded that the charter school has no alternative placements between the two extremes discussed herein.

ORDER

Based upon the foregoing, it is HEREBY ORDERED that all relief requested by the due process complaint is hereby denied. The complaint is dismissed.

IT IS SO ORDERED.

ENTERED: June 25, 2026

James Gerl

James Gerl, CHO
Hearing Officer