

*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. 29967-2425**

**Child's Name:**

J.N.

**Date of Birth:**

[redacted]

**Parents:**

[redacted]

**Counsel for Parent:**

Pro Se

**Local Educational Agency:**

Warwick School District  
301 West Orange Street  
Lititz, PA 17543

**Counsel for LEA:**

Philip Michael, Esquire  
33 North Duke Street  
Lancaster, PA 17602

**Hearing Officer:**

Michael J. McElligott, Esquire

**Date of Decision:**

10/18/2024

## Introduction

This special education due process hearing concerns the educational rights of [redacted] ("student"), a student whose family resides in the Warwick School District ("District").<sup>1</sup> The student qualifies as a student with a disability under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEA")<sup>2</sup> as a student with a specific learning disability in written expression.

The parents assert that the student was denied a free appropriate public education ("FAPE") for three phases of special education placement decisions over the period December 2022 through June 2024: (1) the placement of the student in an alternative educational placement for disruptive youth (AEDY); (2) the student's lack of access to a school-building placement; and (3) the use of online schooling as a disciplinary measure.

The District counters that any placement decision was appropriate on its face, or appropriate under the circumstances at the time of the placement.

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

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

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

## **Issues**

1. Was the student appropriately placed in an AEDY in December 2022?
2. Was the student appropriately placed in online learning over the periods March – June 2023 and late May/early June 2024?
3. Was online learning used by the District as a disciplinary measure?

## **Findings of Fact**

All evidence of record was reviewed. The citation to any exhibit or testimony is to be viewed as the necessary and probative evidence in the mind of the hearing officer.

### 2021-2022 / [redacted] Grade

1. In September 2021, in the fall of the student's [redacted] grade year, based on a Section 504 plan from an out-of-state school district which the student attended, the District provided the student with a Section 504 plan based on diagnoses of autism spectrum disorder (high-functioning), attention deficit hyperactivity disorder ("ADHD"), clinical depression, and clinical anxiety. (School District ["S"]-33; Notes of Testimony ["NT"] at 357-416, 757-794).
2. In April 2022, in the spring of the student's [redacted] grade year, the District evaluated the student at parents' request. (S-32).
3. The April 2022 evaluation report ("ER") identified the student as a student with specific learning disability in written expression, with needs in sentence composition and spelling. (S-32).

4. The April 2022 ER included multiple assessments for potential needs related to autism. Parent ratings/report were uniformly more elevated than teachers' or the student's self-report. (S-32).

2022-2023 / [redacted] Grade

5. In August 2022, at the outset of the student's [redacted] grade year, the District re-evaluated the student as the result of problematic behaviors in the prior school year. (S-3).
6. The August 2022 re-evaluation report ("RR") contained a functional behavior assessment ("FBA"). The RR indicated the following: "(The student) had 10 documented office referrals during the 2021-2022 school year....[Infractions included] disrespect/defiance, aggression-physical, horseplay, disruptive behavior, cell phone infraction (2), possession/use/transfer of look-alike substance, and [redacted] threat. The infraction that necessitated this behavioral assessment was the item coded '[redacted] threat' as the IEP [individualized education program] team determined this was a manifestation of (the student's) identified exceptionalities." (S-3 at page 9; parentheses added to protect student confidentiality, brackets added for stylistic consistency).
7. Four of these incidents (disrespect/defiance, aggression-physical, horseplay, and disruptive behavior) occurred prior to the issuance of

the April 2022 ER. The record is not clear as to why this information was not included in the ER. (S-3).

8. The August 2022 RR continued to identify the student with a specific learning disability in written expression. No additional identifications were added, although social skills support was added as an area of need. (S-3).
9. In August 2022, the student's IEP team developed the student's IEP, with assessments in October and November 2022. (S-31).
10. The student's IEP included three goals, one for social skills, one for spelling, and one for sentence structure, with direct specially-designed instruction delivered in all three goal areas. (S-31).
11. The August 2022 IEP contained a positive behavior support plan ("PBSP") based on the FBA in the August 2022 RR. The PBSP indicated that the behavior of concern was that the student "will make inappropriate comments to peers"; the consequence of maintaining the behavior was that the student could "gain access to peer attention"; and the perceived function of the behavior was "to gain access to peer attention". (S-3, S-31 at pages 34-35).
12. The student had an "anytime pass" for access to school counseling whenever the student needed a short break. (S-31).
13. In October 2022, supports were added in mathematics. (S-31).

14. In November 2022, the student's social skills instruction was increased from 40 minutes per month to 120 minutes per month. (S-31).
15. In early December 2022, the student made a threat in a social media exchange, indicating "[redacted]". (S-4, S-5; NT at 192-356).
16. The student was suspended for making the threat. (S-6, S-8).
17. Based on the threat, the District held a manifestation determination. The behavior was determined not to have a direct and substantial relationship to the student's disability. (S-7, S-27; NT at 192-356).
18. The District referred the student to an AEDY program for threatening behavior, misconduct that merits suspension or expulsion (under the District disciplinary behavior of "terroristic threat"). (S-7 at page 1, S-9).
19. The student was placed in an AEDY placement outside of the District. (S-10, S-27).
20. In March 2023, as a result of a behavior incident at the AEDY placement, the placement communicated to the District that the student could no longer continue in the AEDY placement. (S-14; NT at 192-356, 586-710).
21. The District felt the student would be better-served in a therapeutic, emotional-support placement, not an AEDY. The student

briefly remained in AEDY online programming while the District attempted to make arrangements for an out-of-District placement. (S-14; NT at 192-356, 586-710).

22. Over March and April 2023, the District transitioned the student to the District's online learning platform as it continued attempts to secure a different placement. (NT at 192-356, 416-500, 586-710).

23. The August 2022 IEP, revised as of November 2022, was developed for implementation in a school environment and could not be entirely implemented in the online environment. (NT at 586-710, 757-794).

24. The student's interest in history led to engagement in social studies instruction. Otherwise, the student largely did not engage in the online learning environment. (S-26; 416-500, 586-710, 711-742).

25. In May 2023, the parties agreed to an out-of-District placement. (S-15, S-16; NT at 502-539, 586-710, 757-794).

26. Over May 2023, the student attended the out-of-District placement for only a handful of school days and, ultimately, was disenrolled from the placement. (S-16; NT at 502-539, 586-710, 757-794).

27. In late May 2023, parents requested that the student be exited from special education services. The District issued a notice of recommended educational placement ("NOREP") in response to

parents' request. In early June, the parents approved the NOREP, and the student was exited from special education. (S-19; NT 502-539, 586-710, 757-794).

2023-2024 / [redacted] Grade

28. The student did not receive special education services at the outset of the 2023-2024 school year.
29. The student remained on the District's online learning platform for regular education. (S-26).
30. In the spring of 2024, the parents requested that the student be evaluated for special education. (S-24; NT at 586-710).
31. In April 2024, the District issued a new ER. The student was found eligible under IDEA as a student with a specific learning disability in written expression and a health impairment (ADHD). The ER identified needs writing mechanics, social skills, self-regulation, and work completion. (S-24).
32. In May 2024, the student's IEP team developed an IEP for implementation at the District high school. (S-25).
33. With only a few weeks left in the school year, the District proposed that the student would not return from online learning to the District high school until the 2024-2025 school year so that the student could transition more regularly rather than re-entering the



physical environment just as the 2023-2024 school year was ending.  
(NT at 192-356).

### **Credibility of Witnesses**

All witnesses testified credibly. The testimony of each witness was accorded roughly the same degree of weight, with no one witness's testimony accorded more weight than any other.

### **Legal Framework**

To assure that a child eligible under IDEA receives a free appropriate public education ("FAPE") (34 C.F.R. §300.17), the child's special education programming must be reasonably calculated to yield meaningful educational benefit to the student. (Board of Education v. Rowley, 458 U.S. 176, 187-204 (1982)). 'Meaningful benefit' means that a student's program affords the student the opportunity for significant learning in light of his or her individual needs, not simply *de minimis*, or minimal, or 'some', education progress. The child's education programming must be appropriately ambitious in light of the child's strengths and needs, current levels of programming, and goals. (Andrew F. ex rel. Joseph F. v. Douglas County School District, 580 U.S. , 137 S. Ct. 988, 197 L. Ed. 2d 335, (2017); Dunn v. Downingtown Area School District, 904 F.3d 208 (3d Cir. 2018)).

## **Discussion & Conclusions**

Here, the three phases of placement decisions over the period December 2022 through June 2024 will be considered in turn.

*AEDY Placement Decision.* The AEDY placement was not inappropriate. Critical to this finding is the fact that the student's threat directed toward the District in December 2022 was not the first threat lodged by the student. In the prior school year, the student had directed a threat toward the District. With two threats of violence in the span of a few months, the District had a basis for seeking a referral to an AEDY. Therefore, the decision to seek the AEDY placement did not violate the District's obligations to the student under IDEA.

*Placement in Online Learning.* The student was placed in the District's online learning platform over two periods where special education due process has jurisdiction—March and April 2023, and late May 2024.<sup>3</sup> The placement in the spring of 2023 was necessitated by the inability of the District to secure an emotional support placement outside of the District. Communications between the parties over this period were strained, and the lack of communication/collaboration led the parties being unable to work toward an out-of-District placement, a placement which both parties agreed

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<sup>3</sup> The student was also placed in the District's online learning platform for the period from August 2023 – early May 2024. During this period, however, the student was not receiving special education services, having been exited at parents' request. Lacking jurisdiction, this decision does not address this period.

was preferable. Weighing the record in its entirety, the District did not deny the student FAPE over this period.

The family may be incredulous regarding this finding because the student's IEP in place at that time (the August 2022 IEP, revised through November 2022) could not be entirely implemented in the online platform. But under the circumstances here—a sudden departure from the AEDY and the lack of a concrete process to find an out-of-District, which both parties were working toward—the stopgap use of the online learning platform is not a denial of FAPE. Too, the equities of the situation, where the student did not engage in the online learning, must be taken into account. It is a difficult argument to make that the District denied the student FAPE when the student made little effort to enter the environment and engage in learning.

The placement in the online learning environment in May 2024 is also not a denial of FAPE. Indeed, the second half of the 2022-2023 school year was a rollercoaster for the student, with problematic behaviors, multiple placements in different environments, and ultimately an exit from special education. For most of the 2023-2024 school year, the student was not in special education and received regular education in an online environment. As of late May 2024, the student had not attended the District high school for approximately sixteen months, and new special education programming would be in place upon the student's return. The District's position that the student should return to the building at the beginning of the 2024-2025

school year (with a transition back to the high school environment as part of the May 2024 IEP) is a reasonable approach given these circumstances. Online schooling, then, for the latter half of May 2024 is not a denial of FAPE.

*Online Schooling as Discipline.* This issue is largely addressed in the section above, but to address it explicitly, the District's approach and reasoning for its use of online schooling was not the result of disciplining the student.

Accordingly, the District's special education placement decisions over the period December 2022 through June 2024 did not deny the student FAPE.

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## **ORDER**

In accord with the findings of fact and conclusions of law as set forth above, the Warwick School District did not deny the student a free appropriate public education in its handling of special education placement decisions over the period December 2022 – June 2024.

Any claim 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

10/18/2024