

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. 32292-25-26

Child's Name:

K.P.

Date of Birth:

[redacted]

Parents:

[redacted]

Local Educational Agency:

South Western School District
225 Bowman Road
Hanover, PA 17331

Counsel for LEA:

Leigh Dalton, Esquire
221 West Philadelphia Street – Suite E600
York, PA 17401

Hearing Officer:

Michael J. McElligott, Esquire

Date of Decision:

05/04/2026

Introduction

This special education due process hearing concerns the educational rights of [redacted] ("student"), a student whose family resides in the South Western School District ("District").¹ The student qualifies as a student with a disability under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEA")² as a student with emotional disturbance and an other health impairment.

The parent asserts that, over the course of the fall of 2025, the student was denied a free appropriate public education ("FAPE") by the District for the District's handling of the student's special education programming after an interstate transfer from a neighboring state and program/placement decisions thereafter.

The District counters that at all times it met its obligations to the student under IDEA and all program and placement decisions were appropriate under the circumstances at the time of the placements.

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

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 IDEA at 34 C.F.R. §§300.1-300.818. See *also* 22 PA Code §§14.101-14.162 ("Chapter 14").

Issue

Did the District provide a FAPE to the student through its program and placements over the fall of 2025?

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.

1. Prior to the current 2025-2026 school year, the student had attended school in a neighboring state. (School District Exhibit ["S"]-17, S-18; Notes of Testimony ["NT"] at 57-158, 203-214).
2. In September 2022, the student had been identified by the out-of-state school district for early childhood education services. (S-17).
3. The September 2022 evaluation report ("ER") indicated concerns with task-persistence, aggression/acting-out/tantrums, and speech and language ("S&L"). (S-17).
4. The September 2022 early childhood ER noted broad proficiency with early learning, literacy, and number skills, but further noted "a number of behavioral concerns...mood changes intensely and without warning, uncooperative with adults, easily frustrated, impulsive and falls to finish challenging tasks, attention to task is good for preferred

activities but for non-preferred activities (the student) has decreased attention. The teacher indicated that (the student) seemed to build a relationship with one teacher and...behavior was better when she was in the room, but quickly escalated when she was out of the room.” (S-17 at page 3).

5. In June 2025, at the end of the student’s [redacted] grade year, the student was re-evaluated by the out-of-state school district. (S-18).
6. The June 2025 ER noted that the student had previously received psychiatric services and, by parent report, had been diagnoses with disruptive mood dysregulation disorder. (S-18).
7. The June 2025 ER documented that in the school years prior to the ER, the student had been placed by the out-of-state school district in therapeutic emotional support classrooms. Multiple instances of restraint of the student as a result of aggression were reported in the June 2025 ER. (S-18).
8. The June 2025 ER identified the student with needs related to an other health impairment (attention deficit hyperactivity disorder [“ADHD”]/combined type) and an emotional disturbance. (S-18).

9. In June 2025, the out-of-state school district developed an individualized education program (“IEP”) for the student, based on the June 2025 ER. (S-7).
10. The June 2025 IEP contained eight goals, one each in reading accuracy (phonemic awareness), reading comprehension, math calculation, written expression, social skills, safety behavior (safety/elopement) and two in self-regulation (transitions, coping skills). (S-7 at pages 24-39).
11. The June 2025 IEP recommended a full-time therapeutic support classroom at the out-of-state school district. The IEP team deferred consideration of a 1:1 aide, pending collection of data regarding the role of an aide in the student’s programming. (S-7 at pages 40-43).
12. By early September 2025, the student’s family had moved into the District. The student was a [redacted] grade student at the District. (S-33; NT at 57-158, 203-214).
13. On September 8, 2025, the parent met informally with a District special education administrator, providing a copy of the June 2025 out-of-state IEP. The District awaited further records from the out-of-state school district. Based on a review of the June 2025 out-of-state IEP, the special education administrator indicated that the District would recommend a placement at the District’s elementary school

therapeutic emotional support classroom. (S-7; Parent's Exhibit ["P"]-6; NT at 57-158, 203-214).

14. On September 9, 2025, the District began to arrange transportation for the student, including a harness for transportation. (S-31).

15. On Monday, September 15, 2025, the student was formally enrolled in the District and began to attend the District's therapeutic emotional support classroom with services comparable to the June 2025 out-of-state IEP. (S-7, S-34; NT at 57-158).

16. On Monday, September 15th, the student was involved in two serious behavior incidents that lasted approximately ninety minutes across locations. The first incident began at approximately 10:25 AM, where the student disregarded staff directives and began to engage in aggression with peers and adults, including kicking, hitting, attempted biting, and spitting. The student was removed from the classroom to a safe space. The aggression continued in the safe space, requiring a 5-minute restraint by staff. After release from the restraint, the aggression continued, and additionally the student engaged in head-banging[redacted]. Eventually, the student calmed, and staff were able to return the student to the classroom at approximately 11 AM. At approximately 11:05 AM, the student disregarded staff directives and

stood on a table, then sat and began to rock the chair, intertwining the student's body with the chair. Staff intervened, with the student hitting and kicking. The student was escorted from the classroom to a safe space, with attempted biting and kicking. The aggression continued in the safe space, requiring a 4-minute restraint by staff. The student was excessively spitting throughout the encounter. Eventually, the student calmed, and staff were able to have the student return to academic work and recess at approximately 11:50 AM. (S-28, S-29; NT at 57-158).

17. On Tuesday, September 16th, the student was involved in two separate, serious behavior incidents. The first incident, at approximately 9:50 AM, involved the student returning from recess when the student punched a classmate in the back. The student was removed to a safe space, was calmed, and returned to the classroom at approximately 10 AM. The second incident, at approximately 10:25 AM, began with the student disregarding staff directives and brandishing a pencil like a [weapon]. The pencil was removed and the student became disruptive, kicking at staff and attempting to bite. The student kicked at staff, intertwining the student's body with a chair. At approximately 10:35 AM, the student was escorted from the classroom. In the hallway, the student kicked, attempted to bite, grabbed at staff, and dropped to the floor. Using proximity, staff were

able to guide the student into a safe space. In the safe space, the student lay on the floor and attempted head-banging, which was prevented by staff using their hands to cushion the student's head. The student grabbed at staff by the collar and hair, and kicked. The student and staff were able to establish distance between themselves, but the student continued with aggressive hitting, kicking, and biting. Staff employed a one-minute restraint, after which the student continued to move around the room, hitting staff and engaging in head-banging against the walls. Eventually, the student calmed and asked to complete academic work. At approximately 11:05 AM, the student began to work and, at approximately 11:25 AM, returned to the classroom. (S-28, S-29; NT at 57-158).

18. On Wednesday, September 17th, the student engaged in problematic behavior throughout the course of the day. In the classroom at approximately 8:35 AM and in gym class at approximately 8:50 AM, the student engaged in slight disregard of staff directives. At 10:30 AM, the student engaged in disruptive behavior in the classroom and, at approximately 10:35 AM, the student was removed to a safe space for approximately ten minutes, whereupon the student returned to the classroom. At approximately 10:57 AM, the student had a verbal altercation with a classmate and punched the classmate [redacted]. [Student] was escorted to a safe

space where the student began to kick, hit, grab, and bite staff; the student attempted to elope from the safe space. Staff employed a 2-minute restraint. After release from the restraint, the student fell to the floor. The student and staff were able to establish distance between themselves, but the student continued with hitting, kicking, attempted biting, and grabbing at clothing/personal items and throwing personal items. The student calmed and requested to return to the classroom; staff indicated that the student would not be returning to the classroom at that time, whereupon the student resumed hitting, kicking, attempted biting and grabbing, leading to a one-minute restraint. The student calmed and, when offered a choice between the safe space and the school office, the student chose to move to the office at approximately 11:35 AM. Over 11:45 AM – 1:05 PM, the student completed work on a computer, with occasional non-compliance and refusal of staff directives. At 1:05 PM, the computer was removed from the student began to lie on tables and chairs and then began hitting, kicking, and attempted biting of staff. At approximately 1:25 PM, the student had calmed and requested academic materials. At approximately 1:35 PM, the student requested to return to the classroom; staff indicated that the student would not be returning to the classroom at that time, whereupon the student began to destroy and throw objects, and began to engage in unsafe

behavior involving the [redacted]. The student resumed hitting, kicking, attempted biting, attempted elopement, and unsafe behavior, leading to a restraint at approximately 1:40 PM that lasted less than one minute. The student calmed but again escalated, with hitting, kicking, and attempted biting, leading to a restraint at approximately 2:15 that lasted less than one minute. (S-28, S-29).

19. Over the course of the day, the student's father had been informed of the incidents and restraints, and came to the school to retrieve the student. The student's father informed staff that the student would not be returning to school the next day and offered that a more intensive placement might be required. (S-29; NT at 57-158).
20. The student did not attend school on Thursday, September 18th or Friday, September 19th, or during the week of Monday, September 22nd. (S-30).
21. Over those days, the District contacted out-of-District therapeutic placements for a potential placement of the student in such a setting. (NT at 57-158, 203-214).
22. By Wednesday, September 24th, the student's IEP team had identified a private placement ("private placement #1") which was appropriate for the student and met on that day to consider placement of the student. (S-4; NT at 57-158, 162-200, 203-214).

23. The IEP team agreed that the June 2025 out-of-state IEP would be implemented at private placement #1, and the student's parent approved the District recommendation of that placement. The student began to attend private placement #1 on Monday, September 29th. (S-8, S-12, S-34; NT at 57-158, 162-200, 203-214).
24. Private placement #1 is a specialized, non-residential school for K-12 students with significant emotional support, behavior, and socialization needs. It runs programs at various campuses as well as providing in-district services at some school districts. (NT at 162-200).
25. On October 13th, the student engaged in significant behavior during van transportation involving private placement #1. The behavior incident resulted in community police and District administrators being summoned. The van was significantly damaged. (NT at 57-158, 203-214).
26. Given the nature and extent of the damage to the van, administration at private placement #1 recommended a 3-day suspension for the student. This suspension was never implemented, given a hospital admission for the student (see below). (NT at 57-158).
27. On October 15th, the student's family admitted the student to a residential treatment facility for ten days. (NT at 57-158).

28. The student received academic instruction at the residential treatment facility and was discharged on October 24th. (S-37, S-38).
29. The student's parent requested an IEP meeting, including personnel from private placement #1. On November 3, 2025, the student's IEP team met, discussing various aspects of the student's programming and placement, including behavior, transportation, and additional data-gathering. The team agreed to various modifications in these regards, including a shortened school day. (P-3; NT at 57-158, 162-200, 203-214).
30. The student's behavior, and lack of attendance, made progress at private placement #1 difficult to ascertain. The student had not been enrolled at private placement #1, or received instruction consistently enough, to allow the student's IEP team to revise the June 2025 out-of-state IEP. (S-8; NT at 57-158, 162-200).
31. The director of the campus which the student attended testified credibly that he felt private placement #1 was an appropriate placement for the student and, with regular attendance and consistent interventions, the student would make progress at through programming at private placement #1. (S-22, S-23; NT at 162-200).

32. In early November, the student's parent indicated that he wished for the student to attend a different placement. (S-35; NT at 57-158, 162-200, 203-214).³
33. On Tuesday, November 11th, the student's IEP team met to consider changing the student's placement. Another out-of-District placement was identified ("private placement #2") and recommended by the District. (S-5; NT at 57-158).
34. The IEP team agreed that the June 2025 out-of-state IEP would be implemented at private placement #2, and the student's parent approved the District recommendation of that placement. (S-9, S-13).
35. On Friday, November 14th, the student was disenrolled from private placement #1. On Monday, November 17th, the student began to attend private placement #2. (S-13, S-34, S-35; NT at 57-158).
36. On Monday, November 17th, at the end of the school day during dismissal at private placement #2, the student engaged in aggressive behavior with staff eloped from campus into the nearby neighborhood. Private placement #2 recommended, and the District implemented, a

³ It is unclear exactly when the parent voiced explicitly that he wished for the student to attend a different private placement. At least as of Monday, November 3rd, the IEP team was still discussing programming at private placement #1. At some point thereafter, the process of identifying a different placement began, a process which was complete by Tuesday, November 11th, with the issuance of a NOREP for private placement #2.

four-day suspension. Following the suspension, on Monday, November 24th, private placement #2 indicated that it did not think it could not provide appropriate programming for the student. (P-4; S-32; NT at 57-158, 203-214).

37. On Wednesday, November 19th, given the student's varying placements and not having enough in-placement data to begin understanding the student's needs, the District requested permission to evaluate the student. (S-16; NT at 57-158).

38. On Tuesday, November 25th, the student's parent met with the District superintendent and District director of special education regarding the decision of private placement #2 not to bring back the student. At that meeting, other out-of-District placements were discussed. Parent provided permission for the District's evaluation process. Parent also shared a private psychological evaluation which contained information about the student's in-school behaviors; the private evaluation also confirmed aggressive behaviors in the home environment. (P-4; S-16, S-19; NT at 57-158).

39. On Friday, December 5th, the student's IEP team met to discuss the student's placement at another out-of-District placement ("private placement #3"), including a tour of private placement #3. (S-10, S-26; NT at 24-56, 57-158, 203-214).

40. The student's IEP team intended for the student to start at private placement #3 on Tuesday, December 9th. (NT at 57-158).
41. Over the weekend of Saturday/Sunday December 6th/7th, the District and parent were informed that private placement #3 could not begin to educate the student because the student did not have a special education identification through a Pennsylvania educational entity. (NT at 57-158).
42. On Friday, December 12th, the parent filed the complaint which led to these proceedings. (S-1, S-2).
43. The District expedited a records-review evaluation process to identify the student for eligibility through the District. On December 17th, the District issued an ER and, on December 18th, issued an IEP for the student for implementation at private placement #3. (S-11, S-14, S-20, S-27; NT at 57-158, 203-214).⁴

⁴ The processes related to the December 2025 ER, IEP, and notice of recommended educational placement, including those documents, are not part of substantive fact-finding in this matter. Those are included here only for the completion of chronology. It is this hearing officer's general understanding that, at the time of the hearing session and the issuance of this decision, the parent had placed at issue through the filing of a separate due process complaint the appropriateness of the December 2025 documents and/or processes. This decision takes no view of those documents or processes except, as noted, to provide a sense of where this evidentiary record gives way to another evidentiary process.

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. (Endrew 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)).

While the federal Third Circuit Court of Appeals has not spoken to the issue in a binding way, it has voiced a strong view in unpublished opinions that the interstate transfer provisions of IDEA, where a student relocates to

a school district from a different state, do not require that a school district exactly replicate the out-of-state IEP. Instead, the receiving school district needs to provide FAPE to the student through services comparable to the out-of-state IEP until the receiving school district can evaluate the student and propose a new IEP. (Michael C. v. Radnor Township School District, 202 F.3d 642 (3d Cir. 2000); 34 C.F.R. §300.323(f); 22 PA Code §14.102(a)(2)(xxvii); see *also* J.F. v. Byram Township Board of Education, 629 F.App'x 235 (3d Cir. 2015), where the Court examines the intrastate provisions of IDEA in a similar way).

Discussion & Conclusions

Here, the District has met its obligations to the student under IDEA. Obviously, everyone—both educators and the student's family—involved in the life of the this young student grapples with significant behaviors exhibits across environments. Both the student's family and educators have made deep, good-faith efforts to find appropriate education programming and placements for the student. In this regard, it must be pointed out that the student's father has pursued special education due process, and participated in the hearing, as best he could and with only an abiding concern for his child's education and welfare. His role here is a testament to involved fatherhood under deeply trying circumstances.

Under the terms of the applicable law, where a student transfers into a Pennsylvania school district from another state, the school district must provide comparable services to the special education services that were provided through the out-of-state IEP, until the receiving school district can evaluate the student and propose its own programming. In this case, the District began to engage in that process.

Immediately, however, the District found it was overmatched by the student's in-school behaviors. And the parent agreed. The District diligently began to canvas out-of-District placements and identified such a placement, an appropriate placement with which the family agreed. Ten school days after the first day of the student's attendance at the District (September 15th) and seven school days after the final day of attendance at the District, the student was appropriately placed at a specialized school for student's with emotional support and behavioral needs (private placement #1).

This delay between was quite reasonable, given the nature of the behaviors and the fact that the student's IEP team was able to consider multiple placements for the student. Even where a special education program/placement may not be operating the way it is hoped for, or should be, a school district must be given a reasonable opportunity to implement any change in, or to rectify, a student's program or placement. (Ridgewood Board of Education v. N.E., 172 F.3d 238 (3d Cir. 1999); M.C. v. Central Regional School District, 81 F.3d 389, 397 (3d Cir. 1996)).

By September 29th, then, the student was appropriately placed. Over the month of October, circumstances related to inconsistent attendance and a residential hospitalization, interfered with the District's ability to gauge baseline performance, or data-gathering, in private placement #1, and in early November, the family requested a new placement. Again, the District moved with alacrity and, again quite reasonably, found a placement for the student in no less than ten school days of the family's request (at some point after November 3rd to starting at private placement #2 on November 17th; see footnote 3 above).

The erstwhile placement at private placement #2 was short-lived, lasting only one day. It was not the District's decision to move on from private placement #2—that decision was made by the private placement. The District received notice of this decision only on Monday, November 24th, and again speedily moved to locate another out-of-District placement. With the Thanksgiving holiday intervening, within five school days, by Friday December 5th, the District had identified an out-of-District placement and was engineering admission to private placement #3 within two school days, on Tuesday, December 9th. This is eminently reasonable under the circumstances.

On the cusp of a placement for the student at private placement #3, the District and family were informed that the private placement was not available based on a procedural requirement imposed by the placement.

Again, the District moved quickly to meet the requirements of private placement #3 through an expedited evaluation process, such that the District was able to propose an IEP for implementation at private placement #3, thereby meeting the private placement's procedural requirements and placing the student in a position to attend private placement #3 within nine school days of receiving notice of the private placement's procedural requirements. In this final instance, the District again acted quite reasonably in providing the student with the opportunity to attend private placement #3.

Accordingly, the District has met its obligations to the student under IDEA.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, in handling the interstate transfer of the student to the South Western School District and in arranging for a program and placement for the student, the District met its obligations to the student under IDEA over the period September 2025 through the date of the District's December 2025 evaluation report.

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

05/04/2026