

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. 31751-25-26

Child's Name:

T.K.

Date of Birth:

[redacted]

Parent:

[redacted]

Local Educational Agency:

West Perry School District
2606 Shermans Valley Road
Elliottsburg, PA 17024

Counsel for LEA:

Shawn Lochinger, Esquire
331 East Butler Avenue
New Britain, PA 18901

Hearing Officer:

Michael J. McElligott, Esquire

Date of Decision:

02/16/2026

Introduction

This special education due process hearing concerns the educational rights of [redacted] ("student"), a student who attends school in the West Perry School District ("District").¹ The student currently qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEA")² as a student with an emotional disturbance and a speech and language ("S&L") impairment.

The student's mother filed the complaint which led to these proceedings.³ The parent claims that the District's programming in the current 2025-2026 school year is inappropriate, denying the student a free, appropriate public education ("FAPE").

The District counters that at all times it has met its obligations to the student under IDEA.

For reasons set forth below, I find in favor of the parent in part and in favor of the District in part. The order below will provide certain directives to the student's individualized education program ("IEP") team.

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").

³ The student's mother filed the complaint which led to this matter. (School District Exhibit ["S"]-1, S-3). The student's mother and father disagree about the appropriateness of the student's programming and the degree of the student's educational progress. The student's mother feels that the student's program is inappropriate and that the student has not made progress; the student's father holds an opposite view, that the student's program is appropriate and that the student has made progress. (Notes of Testimony ["NT"] at 249-252, 254-265).

Issue

Is the student's special education programming
in the 2025-2026 school year appropriate?

Findings of Fact

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

1. Prior to attending the District in the current 2025-2026 school year, the student attended another Pennsylvania school district. (S-6, S-7).
2. In March 2024, in the spring of the student's [redacted] grade year, the other Pennsylvania school district re-evaluated the student, identifying the student with an emotional disturbance and S&L impairment. (S-6).
3. The March 2024 re-evaluation report ("RR") indicated that the student's most significant needs were related to behavior, including the need for a structured environment, self-advocacy, coping skills for de-escalation and accepting redirection. (S-6).

4. The March 2024 RR identified weaknesses in reading and written expression but did not identify the student with specific learning disabilities in either area. (S-6).
5. The March 2024 RR contained statistically significant discrepancies between the student's cognitive ability (full-scale IQ = 103; general ability index = 111) and the student's academic achievement testing in reading, across all sub-tests (pseudoword decoding = 81, oral reading fluency = 68, word reading = 76, reading comprehension = 77) and on the core reading composite (75). (S-6).
6. The student's academic achievement in all other areas align with the student's cognitive ability. Indeed, mathematics is an explicit and concrete strength of the student, both in the March 2024 RR and across the record as a whole. (S-6, S-7, S-13; NT at 161-204).
7. The March 2024 RR included a functional behavior assessment ("FBA"), completed by a community-based mental health agency that worked with the student in the school setting. (S-6).
8. The FBA in the March 2024 RR identified the behavior of concerns as disrespect to staff and peers, struggles with communicating feeling and self-regulation, struggles with accountability, struggles with perceptions of unfairness, and attempted manipulation of situations. (S-6).

9. At the outset of the 2024-2025 school year, the student's [redacted] grade year, the student was largely in the regular education environment, receiving itinerant special education services in S&L along with daily support in reading. (S-7).
10. Since the "late winter" of the [redacted] grade year, the student's program was being staffed by educators from the community-based mental health agency. (S-7; Parent's Exhibit ["P"]-1).
11. In March 2025, a positive behavior support plan ("PBSP") was developed for the student, based on the March 2024 FBA. (S-5).
12. In March 2025, the spring of the student's [redacted] grade year, the IEP team at the other Pennsylvania school district developed an IEP for the student. (S-7).
13. The March 2025 IEP identified programming needs in coping and self-regulation, S&L (articulation), reading, and written expression. (S-7).
14. The March 2025 IEP contained seven goals, two in reading accuracy, one in reading comprehension, one in written expression, two in S&L (expression/articulation), and one in behavior (affect/response with non-preferred task). (S-7).

15. The reading goals in the March 2025 IEP were written for implementation with 2nd grade reading material. (S-7).
16. The March 2025 IEP was revised in May 2025, calling for the student to receive increased special education services at the outset of the following school year, 2025-2026, the student's [redacted] grade year, namely a supplemental level of special education services in an emotional support classroom at the school district. (S-7, S-8).
17. Prior to the 2025-2026 school year, the student began to attend [redacted] grade at the District. (S-9; NT at 18-96, 249-252, 254-265).
18. In late August 2025, the student's IEP team at the District met to develop a comparable-services IEP. The student's mother did not approve the comparable-services IEP; the student's father approved the IEP. (S-9; S-10; NT at 249-252, 254-265).
19. The August 2025 comparable-services IEP maintained the student's goals and specially-designed instruction, slightly restructured the student's S&L services (revising the delivery of services from a monthly characterization of services to a weekly characterization), and maintained a supplemental level of emotional support services (indicated for the 2025-2026 school year by the May 2025 IEP

revisions from the other Pennsylvania school district). (S-9; NT at 18-96).

20. In late September 2025, the student's IEP team considered a draft IEP. (S-11).
21. In late October 2025, a board-certified behavior analyst conducted an observation of the student. (S-12).
22. Following the October 2025 behavior observation, the student's IEP team met to develop a finalized IEP for implementation at the District. (S-13).
23. The October 2025 IEP contains updated present-levels information from the District's work with the student over the approximately two school months from late August – late October 2025. (S-13).
24. The October 2025 IEP contains a PBSP. (S-13).
25. The October 2025 IEP contains six goals, one in social skills (affect/interaction with adults and peers), one in reading fluency, one in comprehension, two in S&L (expression and articulation), and one in written expression. (S-13).

26. The reading goals in the October 2025 IEP were written for implementation with 2nd grade reading material. (S-13).
27. The baseline for the reading fluency goal in the October 2025 IEP was 42 words current per minute with 91% accuracy. The annual goal looked for the student to read 42 words correct per minute with 97% accuracy across three consecutive probes. (S-13).
28. The baseline for the reading comprehension goal in the October 2025 IEP was retell of 24 words with a quality rating of 2. The annual goal was for the student to retell 27 words with a retell quality rating of 2 across three consecutive probes.
29. The student's placement in the October 2025 IEP called for the student to spend 25% of the school day in special education settings. (S-13).
30. At the hearing, there was understandable confusion on the part of the student's mother over the reporting of the student's grades. In the first quarter of the school year, the standards reporting (an internal achievement measure) did not record any teacher of record for reading and did not report any reading grades; the student's report card (the academic achievement document of record) did not report any grades in reading or approaches-to-learning skills. (P-2; Hearing Officer Exhibit ["HO"]-1; NT at 254-265).

31. At the hearing session, the hearing officer requested that the student's report card for the second quarter be made part of the record. The second quarter report noted that technical difficulty led to delayed reporting of grades for the first quarter, with full grades reported for the second quarter. The second quarter report card contained full grades for both quarters. (HO-3).
32. Over the period September – December 2025, the student was involved in eight behavior incidents that resulted in documentation. All of the incidents took place in unstructured, or less-structured, settings (gym, art, transition, arrival, or assembly). (S-22).
33. The District witnesses uniformly testified that the student responds to re-direction and other PBSP interventions. (P-3; NT at 100-157, 161-204, 208-244).
34. The District witnesses also uniformly held the view that each felt the student would progress in less restrictive regular education settings, with supports. (NT at 100-157, 161-204, 208-244).
35. The October 2025 IEP re-dated the annual IEP implementation period from November 2025 through October 2026. (S-13).

Legal Framework

To ensure that a child eligible under IDEA receives a FAPE (34 C.F.R. §300.17; 22 PA Code §14.102(a)(2)(iv)), the child's special education program 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', educational progress. The child's special education program must be appropriately ambitious in light of the child's strengths and needs, current levels of programming, and educational goals. (Andrew F. ex rel. Joseph F. v. Douglas County School District, 580 U.S. 386, 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

Appropriateness of Programming. The student's programming, as documented in the October 2025 IEP, is largely appropriate. Most encouraging is the fact that the student's behavior, which presented the largest impediment to learning at the prior Pennsylvania school district, has

improved at the District. The PBSP and other modifications/programming in the October 2025 IEP are appropriately supporting the student, and progress monitoring shows that the student is making progress on the goal for appropriate affect/interaction with peers and adults. The record consistently shows that, at the District, the student's behavior can become more problematic in unstructured and less-structured settings. But, on this record, the District has approaches and modifications in place to address those episodic moments. Taken all together, the programming to address the student's behavior is reasonably calculated to yield meaningful education benefit in the form of significant impact on the student's behavior in educational settings.

The student's S&L programming, as documented in the October 2025 IEP, is largely appropriate. The goals for expression and articulation are reasonably calculated to yield meaningful education benefit in the form of significant progress with expressive language and articulation. Here, the progress monitoring supports this conclusion, but it is not reported as clearly or concretely as it might be. Reading the progress monitoring for the S&L goals, one can see that the student is making progress. As a matter of dicta, the District may wish to consider reporting the probe data in a more precise way. But this is only noted for increasing a sense of clarity in the progress monitoring, not as a denial-of-FAPE conclusion.

The student's programming in written expression, as documented in the October 2025 IEP, is inappropriate. The baseline for the goal for written expression is a score of 12/20 on a Commonwealth or District writing rubric. But the goal is written as follows: "Given a quarterly district writing prompt, graphic organizer and brainstorming opportunity, (the student) will write [with assessment of focus, content, organization, style, and conventions] scoring in the 'Approaching Expectations' range (...10/20)...on 3 out of 4 occasions". (S-13 at page 36; student's name redacted for confidentiality, bracketed material edited for clarity). The four probes on the written expression goal over the first and second quarter indicate rubric scores of 12, 12, 13, and 12. (HO-4 at page 13). There are two flaws here: One, the goal has no achievement level; the goal describes the assessment process, but the achievement level toward which the student is working is not present. Two, notwithstanding this omission, the baseline achievement level (12/20) is higher than the generalized the rubric-generated assessment of 'approaching expectations' (10/20). And, in fact, the student has maintained that achievement level. The order below will direct the IEP team to meet to revise this goal so that it is appropriately ambitious, with an explicit achievement level beyond the consistent baseline scoring which the student has exhibited on multiple probes.

The student's reading goals, as documented in the October 2025 IEP, are inappropriate. Here, the foundation of inappropriateness cannot be laid at the feet of the District. On this record, it appears that the student may qualify for special education for a specific learning disability basic reading, reading fluency, and reading comprehension. Evidence of this potential identification appears to be clearly supported in the March 2024 RR issued by the prior Pennsylvania school district, which did not draw that conclusion. From there, it appears that instruction was goal-driven but the lack of identifying these needs has left the student in a gray area where some instruction is specialized while other instruction is based in regular education.

More specifically, the student's reading goals at the prior Pennsylvania school district were written, in the spring of the 2024-2025 school year (March 2025) for implementation at the 2nd grade level, for a student who was, at that point, moving toward the end of the [redacted] grade year. In the current 2025-2026 school year, with the student moving toward the end of the [redacted] grade year, the student's reading goals are still being assessed at the 2nd grade level. This is an indication, perhaps one that was missed early on, that the student requires intensive, specialized curriculum and special education instruction across the various areas of reading. Granted, the student has continually received supports in reading, but at both the other Pennsylvania school district and this District, this support has

fallen short of the specialized, intensive instruction that this record indicates the student may need. An independent comprehensive reading evaluation will be ordered so that the IEP team can work with updated achievement levels and look to the recommendations of the evaluator.

Additionally, the two reading goals, as written, are not appropriately ambitious. In one year's time (November 2025 – October 2026), the District would have the student reading the same number of words, at the 2nd grade level, with only a 6% increase in accuracy. Over the same time, the District would require an increase of only three words on retell (words only), at the 2nd grade level, at the same quality level of retell. In October 2026, when the IEP goals would be revised, the student would be into the [redacted] grade year. These goals are not appropriately ambitious, and the order below will direct the IEP team to meet to revise these goals.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the West Perry School District ("District"), through the October 2025 IEP, has largely designed and implemented programming that affords the student a free appropriate public education. There are, however, two aspects

of the student's individualized education program ("IEP") that need to be revised by the student's IEP team.

On or before March 6, 2026, the student's IEP team shall meet to revise the written expression goal in the student's IEP in accord with the indications set forth above.

On or before March 13, 2026, the District shall identify an independent evaluator to conduct a comprehensive reading evaluation of the student. Once the District has identified the independent evaluator to conduct the independent reading evaluation, the resume or curriculum vita, of the evaluator shall be provided by the District to both parents. The District shall advise the evaluator that both parents are being provided with that document so that the parents know the background, training, certification(s), and experience of the evaluator.

By way of background, training, certification(s), and experience, the independent evaluator shall be qualified to conduct a comprehensive reading evaluation of the student with the explicit objective of indicating whether or not the student qualifies with a reading disability(-ies) and, if so, in assisting the student's IEP team to write appropriate, concrete, measurable goals and to recommend appropriate programming to help the student make progress toward those goals.

The independent reading evaluator shall be made to understand that it is hoped, but not required or ordered, that the independent evaluation report can be issued as soon as practicable, but if possible by May 12, 2026, approximately sixty calendar days beyond March 13th, the last day for the identification of an evaluator by the District.

The independent evaluator shall be informed of the nature of the evaluation that he/she is undertaking, namely a comprehensive reading evaluation of the student to fully inform the student's IEP team of the student's strengths and weaknesses, to include any formal identification of the student under the terms of the IDEA, if applicable, and any recommendations of the evaluator for the student's education with the explicit intention of assisting the student's IEP team to write appropriate, concrete, measurable goals and to recommend appropriate special education programming to help the student make progress toward those goals.

The record review, materials, artifacts, input, observations, assessments, testing, consultation, scope, details, findings, recommendations, and any other aspect of the independent evaluation, and independent report, shall be determined solely by the independent evaluator.

This order hereby explicitly provides permission for the evaluator to undertake any aspect of the evaluation process where parental consent may be required.

The cost of the independent evaluation, and issuance of the independent report, shall be at the independent evaluator's individual rate or fee and shall be borne by the District at public expense.

The independent evaluator shall issue the report to each parent and the District. Once the independent evaluator has issued the independent reading evaluation, the student's IEP team shall meet as soon as practicable for the attendance of team members, including both parents, to consider the report.

Finally, nothing in this order should be read to interfere with or limit the ability of the parents and District to agree otherwise as to any aspect of this order, so long as such agreement is agreed-to by both parents, is in writing, and specifically references this order.

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

02/16/2026