

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. 31351-24-25

Child's Name:
S.G.

Date of Birth:
[redacted]

Pro Se Parent:
[redacted]

Local Education Agency:
Philadelphia City School District
440 N. Broad Street
Philadelphia, PA 19130

Counsel for the LEA:
Alaina Sullivan, Esq.
Office of General Counsel
440 N. Broad Street
Philadelphia, PA 19130

Hearing Officer:
James Gerl, CHO

Date of Decision:
September 3, 2025

BACKGROUND

The parent filed a due process complaint alleging that the school district wrongfully failed to fund an independent educational evaluation of the student and that the school district committed substantive and procedural denials of a free and appropriate public education. I find that the independent educational evaluation issue is moot. Further, I find in favor of the school district with regard to the parent's allegations of a denial of free and appropriate public education.

PROCEDURAL HISTORY

The due process complaint was filed on behalf of the parent by an attorney. The attorney moved to withdraw for professional reasons before the hearing. The request to withdraw was granted. Thereafter, the parent requested reconsideration of the ruling on the withdrawal. The request to reconsider the withdrawal ruling was denied. Because of the relatively short time available before the hearing at the time of the withdrawal, I offered the parent, both at the prehearing conference and on the record at the hearing, the opportunity for a continuance of the hearing and an extension of the decision due date. The parent declined the offer and decided that she preferred to go forward with the hearing on the date scheduled.

At the prehearing conference, hearing procedures were described and explained in detail. Both the unrepresented parent and counsel for the school district provided input and asked questions about the hearing and the applicable procedures.

The parties failed to agree to any stipulations of fact in this case. The failure to agree to stipulations elongated the hearing process and delayed the decision in this case.

The hearing was conducted in one virtual session. Only one witness testified at the due process hearing, the student's mother. The parent offered no exhibits into evidence at the hearing. School district exhibits S-1 through S-59 were admitted into evidence, with the exception that the following exhibits were withdrawn by the school district: S-19, S-46 through 50 and S-52 through S-55.

At the hearing, the student's mother stated that she did not have copies of the school district exhibits. The parent stated that there was an apparent communication problem between the parent and the parent's former lawyer, and the parent stated that she did not receive the school district exhibits that were disclosed to the parent's lawyer. The school district's exhibits were also placed in the dropbox exhibit folder prior to the hearing, and the parent was provided access to the dropbox folders. The parent stated at the hearing that she had had difficulty opening the folders. As a result, I offered to share exhibits on my screen during the virtual hearing, and I directed the school district to send copies of all school district exhibits to the mother by U.S. mail by the close of business on the day after the hearing.

On the record at the hearing, the parent requested that this decision be sent to her both by email and by U. S. mail. I granted that request and the decision is being sent to the parent at both email addresses that the parent used in this proceeding as well as via U. S. mail.

At the prehearing conference, after some discussion, both parties opted to present written arguments/post-hearing briefs after the hearing, instead of

oral closing arguments at the end of the hearing. The parties agreed to a page limit of 15 pages for the written closings. At the hearing, the parent changed her mind and determined that she preferred to do an oral closing argument. At the end of the due process hearing, however, the parent was not prepared to present an oral closing argument. Accordingly, the school district was ordered to file a written closing/post-hearing brief and the parent was invited, but not ordered, to file a written closing/post-hearing brief. Counsel for the school district filed a written closing argument/post-hearing brief. The parent did not file a written closing/post-hearing brief.

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 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).

ISSUES PRESENTED

At the prehearing conference the issues raised by the parent's complaint were clarified and discussed in detail. It should be noted that both at the prehearing conference and on the record during the due process hearing, the parent attempted to raise issues that were not presented by the complaint, including for example, bullying and the student's fighting incidents. Because those issues were not alleged in the due process complaint, they are not

properly before me and were not considered in this decision. 34 C.F.R. § 300.511(d). The issues raised by the complaint that are properly before me are the following:

1. Whether the parent has proven that the school district wrongfully failed to fund an independent educational evaluation at public expense? and
2. Whether the parent has proven that the school district denied a free and appropriate public education to the student?

FINDINGS OF FACT

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

1. The student is a people person. (S-43)
2. The student's date of birth is [redacted]. The student is a [redacted]-year-old high school student in the school district who transferred to the school district from another state on approximately [redacted] (S-56, S-57)
3. On April 4, 2024, the school district issued a Notice of Recommended Educational Placement (hereafter sometimes referred to as "NOREP") reflecting that the student would be given services comparable to those provided in the student's prior IEP from another state. (S-45)

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

4. The student was found to be eligible for special education under the primary eligibility category of specific learning disability with a secondary category of other health impairment. The student has an ADHD diagnosis. The student's full-scale IQ is 71; the student's overall intellectual ability is the borderline range. Memory development is an area of relative strength for the student. The student's needs include small group instruction, frequent breaks and a behavior plan. (S-32)

5. Through approximately mid-October 2024, the district provided the student with 450 minutes of learning support per week inside the regular education classroom. The student also received counseling as a related service. (S-35)

6. The student's IEP team convened on approximately October 24, 2024 to revise the student's educational program and to discuss whether the student needed a higher level of support. Through the end of the 2024 – 2025 school year, the student received 720 minutes of emotional support services per week inside the regular education classroom (push-in), as well as 90 minutes per week of emotional support outside the regular education classroom (pull-out). The student continued to receive counseling as a related service. (S-29, S-14)

7. On May 1, 2025, the IEP team developed an IEP for the student that provides for 720 minutes per week of emotional support in the regular education classroom and 90 minutes per week in the special education classroom. The IEP includes the related service of counseling. (S-14)

8. In a NOREP dated May 22, 2025, the school district agreed to the parent's request and granted an independent educational evaluation of the student to be provided at public expense. (S-7)

9. On June 9, 2025, the school district issued a NOREP for a change of placement of the student for disciplinary reasons. The NOREP notes that the school district had previously agreed to provide an independent educational evaluation of the student at public expense. (S-6)

10. The student's needs became greater in the second half of the 2024 – 2025 school year, including numerous fights,[redacted] and eloping from class. Many of the student's fights involved multiple other students and non-students. School district staff attempted to call and email the student's mother about the student being absent and about the fighting incidents. The student's mother did not respond to the attempts to contact her. On June 13, 2025, the school district proposed a full-time emotional support program for the student with referrals to private schools. The June 13, 2025 IEP calls for 2105 minutes per week of full-time emotional support outside of the regular education classroom. The IEP includes the related services of school-based counseling and special transportation. The IEP includes a post-secondary transition goal. (S-1, S-3, S-56, S-51, S-59)

11. The student's IEP team attempted to convene a meeting with the parent on June 13, 2025 and on July 11, 2025 to discuss a full-time program for the student. In response to the IEP team meeting invitations, the parent e-mailed the school district on July 10, 2025, rejecting the full-time program. (S-2, S-4, S-58)

12. The student was frequently absent from school and tardy to class. In [redacted] grade, the student was absent 56 times and tardy 27 times. (S-56, S-24, S-17, S-56, S-51)

13. From October 24, 2024 through the end of the 2024 – 2025 school year, the school district implemented a positive behavior support plan for the student based upon a functional behavioral analysis. The student's behavior

plans included a self-regulation goal to address the student's frequent fighting incidents. (S-8, S-39, S-24, S-25)

14. During the relevant timeframe, the student's IEPs contained academic goals in the areas of reading comprehension, math and post-secondary transition goals as well as behavioral goals. The IEPs also included numerous specially designed instruction, including small group instruction, repeated directions, extended time and frequent breaks. (S-15, S-28, S-31, S-8, S-39, record evidence as a whole)

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 the 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. The United States Supreme Court has developed a two-part test for determining whether a local education agency 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 (hereafter sometimes referred to as “IEP”) is reasonably calculated to enable the child to make meaningful progress in light of the child’s unique circumstances. Endrew F by Joseph F v. Douglass County School District RE-1, 580 U.S. 386, 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).

4. The appropriateness of an IEP in terms of whether it has provided FAPE must be determined at the time that it was made. The law does not require a school district to maximize the potential of a student with a disability or to provide the best possible education; instead, it requires an educational plan that provides the basic floor of educational opportunity. Ridley School District v. MR and JR ex rel. ER, 680 F.3d 260, 58 IDELR 271 (3d Cir. 2012); DS v. Bayonne Board of Education, 602 F.3d 553, 54 IDELR 141 (3d Cir. 2010); Mary Courtney T. v. School District of Philadelphia 575 F.3d 235, 251, 52 IDELR 211 (3d Cir. 2009).

5. For a procedural violation to be actionable under IDEA, the parent must show that the violation results in a loss of educational opportunity for the student, seriously deprives the parents of their participation rights, or causes a deprivation of educational benefit. Ridley School District v. MR and JR ex rel. ER, supra; IDEA § 615(f)(3)(E); 34 C.F.R. § 300.513(a).

6. If a parent disagrees with a school district evaluation, the parent may request an independent educational evaluation at public expense. IDEA § 615(d)(2)(A); 34 C.F.R. § 300.502(b)(1); PP by Michael P and Rita P v. West Chester Area School District, 585 F.3d 727, 53 IDELR 109 (3d Cir. 2009).

When a parent requests an independent educational evaluation at public expense, the school district must, without unnecessary delay, either pay for the evaluation or else request a due process hearing to show that its evaluation is appropriate. 34 C.F.R. § 300.502(b)(2); JH v West Chester Area School District, 121 LRP 13514 (SEA Penna 2019); 22 Pa. Code § 14-102(a)(2)(xxix).

7. The independent educational evaluation at public expense issue in this case is moot because the school district has already provided the relief requested.

8. The parent has not proven that the school district denied a free and appropriate public education to the student.

DISCUSSION

1. Whether the parent has proven that the school district failed to provide an independent educational evaluation at public expense?

The due process complaint asserts that the school district failed to provide an independent educational evaluation at public expense in response to the parent's request. As counsel for the school district pointed out at the due process hearing and in the school district's written closing, however, this issue is moot because the school district agreed prior to the hearing to fund the independent educational evaluation of the student requested by the parent.

Because the relief requested has already been provided, there is no live controversy concerning this issue. The resolution of the issue by the school district's issuing a NOREP granting the relief of an independent educational

evaluation at public expense moots the issue. A claim is moot if no case or controversy exists. "[T]he requirement that an action involve a live case or controversy extends through all phases of ..." a proceeding. County of Morris v. Nationalist Movement, 273 F.3d 527, 533 (3d Cir. 2001). Where an issue in a due process complaint has been mooted, there is no reason to continue on with the hearing process. See, RF by Fernandez v Harrison Sch Dist. #2, 74 IDELR 122 (10th Cir. 2019); District of Columbia v. Strauss, 590 F.3d 898, 53 IDELR 250 (D.C. Cir. 2010); LB v West Contra Costa Unified Sch Dist., 69 IDELR 244 (ND Calif 2017); District of Columbia Public Schs, 111 LRP 75901 (SEA DC 2011). Accordingly, it is concluded that this issue has been resolved, and it is moot. There is no need for further analysis or discussion.

2. Whether the parent has proven that the school district denied a free and appropriate public education to the student?

The parent's due process complaint asserts that the school district denied a FAPE to the student. The complaint alleges both substantive and procedural violations of IDEA concerning FAPE. The substantive violation involves allegations that the student's IEPs did not address certain areas of need with goals and services.

The procedural denials of FAPE alleged by the due process complaint are the following: that the school district did not convene an attorney attended IEP team meeting; that the parent was not informed of attendance and fighting problems; and that the school district wrongfully failed to issue a NOREP with regard to the results of a manifestation determination review meeting.

It is not clear that the alleged procedural issues even constitute violations of IDEA. It is not necessary to analyze the alleged FAPE denials, however, because as the school district's written closing argument points out, the parent has offered no evidence concerning any of the alleged substantive or procedural denials of FAPE presented by the complaint. The testimony of the parent at the due process hearing concerned only other issues and concerns. (NT 55 – 90) No other witnesses testified. The parent offered no exhibits at the hearing. The parent has not carried her burden of persuasion because the parent provided no exhibits and offered no testimony concerning the issues presented by the complaint. It is concluded that the parent has not offered any evidence to prove any of the FAPE allegations in the complaint. The parent has not proven any substantive or procedural FAPE violations by the school district.

Although it does not affect the outcome, it is noted that many of the exhibits uploaded to the school district's dropbox exhibit folder contain large blank spaces where there should be information. The big blank spaces were not explained by the school district, through testimony or in the district's written closing, and in some cases, they make the school district exhibits very difficult to read and interpret. These blank spaces could well have been significant if the parent had put on any evidence. Because the parent offered no exhibits and provided no relevant witness testimony concerning the issues presented by the complaint, however, the blank spaces in the district exhibits do not affect the outcome of this case. It is nonetheless disturbing that a school district would, without explanation, offer documents with large blank spaces as exhibits in a due process hearing.

This case is unusual in that a credibility determination is not necessary. Neither party presented any testimony concerning the issues presented by the

complaint. There is no conflicting testimony in the record. Hence, there is no need to weigh the credibility of conflicting testimony in order to determine disputed facts in this case.

It is concluded that the parent has not proven a denial of a free and appropriate public education.

Although not an issue in the complaint, one additional point in the school district's written closing must be addressed. The school district requests that the hearing officer make a determination that its educational program for the student constitutes FAPE going forward. This request by the school district is not only unusual, it is improper. The school district has not filed a due process complaint. An IDEA hearing officer cannot rule upon issues that were not asserted in a due process complaint. See 34 C.F.R. § 300.511(d). It would be inappropriate to grant the relief requested by the school district. Moreover, even assuming *arguendo* that the hearing officer could rule upon the school district's request, it would be inappropriate to do so on this record where there was no testimony by any witness for either party relevant to any of the parent's allegations that the student was denied a FAPE. The school district has not proven that it is entitled to prospective relief in the form of a declaratory ruling that the school district's program is appropriate going forward. The relief requested by the school district is expressly denied.

ORDER

Based upon the foregoing, it is HEREBY ORDERED as follows:

1. The parent's request for an independent educational evaluation at public expense is moot because the school district has already agreed to provide the relief sought;

2. Any and all other relief requested in the parent's due process complaint is denied and the complaint is dismissed; and

3. The relief requested by the school district in its written closing argument is denied.

IT IS SO ORDERED.

ENTERED: September 3, 2025

James Gerl

James Gerl, CHO
Hearing Officer