

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. 31568-25-26

Child's Name:

R.W.

Date of Birth:

[redacted]

Parent:

[redacted]

Counsel for Parent:

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Hearing Officer:

Michael J. McElligott, Esquire

Date of Decision:

08/18/2025

Introduction

This special education due process hearing concerns the educational rights of [redacted] (“student”), a student who resides in the West Mifflin Area 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 specific learning disabilities in reading, mathematics, and written expression and an other health impairment (coping skills, escalation when angry/upset, staying seated during, and seeking to leave, class).³

As a result of a physical altercation on November 20, 2024, the District sought to implement discipline which would result in an exclusion from school in excess of ten consecutive school days. The manifestation determination (“MD”) process yielded a conclusion that the behaviors were not a manifestation of the student’s disability, which would allow the District to implement discipline as it might for a regular education student.

In December 2024, the District held a formal disciplinary hearing and, in January 2025, the District school board voted to permanently expel the student from the District. The parties attempted to arrange an educational placement for the continuation of the student’s education, and a placement

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 Parent Exhibit (“P”)-26 at pages 18-19.

was eventually located, and enrollment secured, in early May 2025 at an out-of-District placement.

At that time, in early May 2025, the parent, through counsel, filed the complaint which led to these proceedings. The parent seeks certain determinations related to the MD process and the MD result, as well as having the student returned to the District.⁴

The District stands by the result of the MD process and seeks to maintain an out-of-District placement.

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

Issues

1. Was the behavior incident on November 19, 2024 a manifestation of the student's disability?
2. If so, what is the appropriate educational placement for the student?

⁴ Parent had secured counsel in January 2025, but a complaint regarding the MD result and the student's exclusion from school was not filed until early May 2025. Parent's counsel was granted leave to amend the complaint, and an amended complaint was filed in mid-June 2025. These proceedings unfolded on an expedited timeline. The amended complaint contains additional allegations, including past denial of a free appropriate public education ("FAPE") and various claims for compensatory education related to past programming, the MD process, and the exclusion from the District. All claims except for those specifically addressed through this decision, including all compensatory education claims, are unfolding through a separate process at a different ODR file number.

3. Did the District interfere with the parent's participation in the MD process and/or the placement decision which unfolded in the spring of 2025?

Credibility of Witnesses

All witnesses testified credibly and a degree of weight was accorded to each witness's testimony. No one witness's testimony was accorded materially more weight than the testimony of any other witness. In that way, the documentary evidence was generally more persuasive in understanding the factual mosaic of the evidence.

While not impacting the weight accorded to their testimony, the testimonies of the parent (Notes of Testimony ["NT"] at 36-125) and the District special education administrator (NT at 396-508) were viewed as detailed and authentic. As a witness without any connection to either party, the testimony of the administrator of the out-of-District placement was considered to be highly reliable (NT at 357-394).

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.

Education Prior to [redacted] Grade

1. In June 2017, at the end of the student's [redacted] grade year, the student was evaluated by another school district ("school district #1) for academic difficulties and behavior concerns. (Parent Exhibit ["P"]-1 at page 2).
2. The student was well below grade level in reading and mathematics. The student had difficulty paying attention, staying in one spot, and exhibited problematic behaviors, including yelling at students in classrooms and hallways, altercations on the bus, and work refusal. (P-1 at page 3).
3. The June 2017 evaluation report ("ER") contained cognitive testing. The student's full-scale IQ was 82. (P-1 at pages 5-6).
4. The June 2017 ER contained an academic achievement assessment. The student's academic achievement scores were uniformly at the 4th percentile or lower, except for numerical operations, which was in the 9th percentile. (P-1 at pages 6-7).
5. The June 2017 ER contained behavior rating scales completed by the student's parent and two teachers. (P-1 at pages 9-10).
6. The behavior ratings were not reported in detail, or broken down by sub-scale or composite scales.⁵ Instead, the evaluator generally

⁵ The evaluator noted that the mother's ratings should be interpreted with caution; the consistency index for the mother's ratings indicated inconsistency in the answering style. Given the lack of detailed score reporting in the ER, however, it is impossible to determine the results of the mother's specific ratings on the instrument.

summarized results, indicating that the “teachers and mother report overall behavioral symptoms to be within the at-risk to clinically significant range....” and that “teachers report that (the student) has difficulty maintaining self-control at times and is sometimes aggressive, argumentative, and defiant....”, impacting “(the student’s) ability to get along with and relate to [peers]”. (P-1 at page 10).

7. The evaluator indicated that “slightly elevated scores on the adaptive skills composite were reported”. There was no indication whether this was across all raters, or only by some raters. (P-1 at page 1).
8. The June 2017 ER contained attention rating scales completed by the student’s teacher. (P-1 at pages 10-11).
9. All ratings were in the very elevated range, with comments including, in part, “ high activity levels and diminished self-regulation”, “difficulty learning and remembering concepts”, “can be very argumentative and demonstrates poor control of...anger”, and has “difficulty with friendships and...poor social skills”. (P-1 at pages 10-11).
10. During the evaluation, the student’s mother shared that the student had been clinically diagnosed with attention-deficit hyperactivity disorder (“ADHD”) and opposition defiance disorder (“ODD”). (P-1 at page 11).
11. School absence and behavioral difficulty led the evaluator to defer any identification of specific learning disability. Based on the

evaluation results and the clinical diagnoses, the evaluator identified the student with an other health impairment. (P-1 at pages 11-12).

12. In the 2022-2023 school year, the student's [redacted] grade year, the student enrolled in the District. In January 2023, the District re-evaluated the student at the mother's request. (P-13).
13. The January 2023 re-evaluation report ("RR") contained content from a re-evaluation process at another school district ("school district #2), a school district different from school district #1 which had issued the initial June 2017 ER. (P-13).
14. While at school district #2, the student was placed in a life skills classroom. Upon enrollment at the District, the student was placed in an inclusive regular education setting. The student was "extremely overwhelmed" in the regular education setting, and the District placed the student in a life skills setting. The student did not react well to the life skills placement, and the District placed the student back into inclusive learning support settings. The District clarified with an evaluator from school district #2 that the student did not receive a life-skills curriculum but was reading at such a low achievement level that school district #2 grouped the student with classmates who were at a similar reading level for reading instruction. (P-13 at pages 2-3).
15. Parent's concerns in the January 2023 RR were primarily academic, with the parent focused primarily on the student's reading

ability. Behavior concerns were noted as being less prevalent, but the mother reported that the student takes along time to calm after becoming upset. (P-13 at page 3).

16. The January 2023 RR contained assessment data from a February 2020 RR issued by school district #2. Cognitive testing indicated that the student's full-scale IQ was 71. Academic achievement testing indicated reading achievement scores at the 1st percentile or less, mathematics achievement scores at the 5th percentile or less, and written expression achievement scores at the 8th percentile or less. Oral expression achievement, at the 30th percentile, was in the average range. (P-13 at page 4).
17. Teacher input in the January 2023 RR indicated that the student significantly struggled academically. The student's mathematics teacher reported that the student exhibited inappropriate classroom behavior with inattentiveness and talking out and noting "if something or someone makes (the student) mad, (the student) will yell, and/or curse, and have difficulty calming down". The student's science teacher reported witnessing "anger issues, defiance, and disrespect with peers and other adults outside of class". (P-13 at page 5).
18. The January 2023 RR included the specially-designed instruction ("SDI") from the student's then-current individualized education program ("IEP") at the District. The SDI was geared to academic and

classroom supports and did not include any behavioral supports. (P-13 at page 6).

19. The January 2023 RR contained an updated cognitive assessment, yielding a full-scale IQ of 73. The student's general ability index, which accounts for relative strength or weakness in working memory and processing speed, yielded a general ability index score of 77. (P-13 at pages 7-10).
20. The January 2023 RR contained updated academic achievement testing. The student scored at the 1st percentile or less across all measures of reading and in spelling. The student's written expression score was at the 2nd percentile. The student's math problem-solving was below the 1st percentile and math calculation was the 2nd percentile. (P-13 at pages 10-12).
21. The January 2023 RR contained an adaptive behaviors assessment completed by the student's mother. (P-13 at pages 12-13).
22. The adaptive assessment in the January 2023 RR contained an extremely-low score in the conceptual domain (67) and below-average scores in the social (84) and practical (83) domains. The general adaptive composite (76) was in the low range. (P-13 at pages 12-13).
23. The January 2023 RR contained a functional behavior assessment ("FBA"). The FBA did not include data collected by an

assessor but was based on the input of the teachers in the RR. (P-13 at pages 13-14).

24. The January 2023 RR identified the student with specific learning disabilities in basic reading, reading fluency, reading comprehension, and mathematics problem-solving. The RR also continued to identify the student with an other health impairment. (P-13 at pages 14-16).
25. In March, April, and May 2023, in the spring of [redacted] grade, the student was involved in various disciplinary incidents including classroom disruption, ignoring teacher directives, inappropriate peer interactions, and throwing objects at peers. (P-18).

2023-2024 School Year / [redacted] Grade

26. In the 2023-2024 school year, the student attended [redacted] grade at the District middle school. (P-23; School District Exhibit ["S"] – 15).⁶
27. A January 2023 IEP from the student's [redacted] grade year was in effect at the outset of the [redacted] grade year. (S-15).
28. In October 2023, the student was involved in a fight at the afternoon bus stop. The student was suspended from school for three school days. (P-23 at page 25; S-31 at page 4).

⁶ P-23 and S-15 are party exhibits for a January 2023 IEP, a January 2024 IEP, with March 2024 revisions as to both IEPs.

29. In December 2023, the student was involved in an attempted hallway altercation with other students. A teacher was present when the student engaged in a verbal altercation with classmates and lunged at them. The teacher needed to employ a one-arm stability hold which necessitated taking the student to the ground. The incident resulted in a restraint report being filed with the Pennsylvania Department of Education, but there was no discipline implemented as a result of the incident. (P-18; S-15 at pages 9-11; S-31 at page 4).
30. In January 2024, the student's IEP team met for the student's annual IEP revision. (P-23).
31. In the special considerations section of the January 2024 IEP, the student's behavior was indicated as not impeding the learning or that of others, but noted "a FBA was completed for the (the student) in 2023 but a (positive behavior support plan) was never implemented. The IEP team is suggesting a new FBA be conducted this school year to reinstate the (positive behavior support plan)". (P-23 at page 7).
32. In parental input in the January 2024 IEP, the parent indicated that the student was receiving private behavioral/mental-health services. (P-23 at page 27).
33. The January 2024 IEP indicated student needs in academic areas and the need to "decrease negative behaviors during frustrating moments". (P-23 at pages 28, 39).

34. In early February 2024, the student was suspended for one day. There is no indication in the record regarding the basis of the suspension. (S-31 at page 4).
35. In late February 2024, the student was suspended for three days. There is no indication in the record regarding the basis of the suspension. (S-31 at page 4).
36. Following the February 2024 incident, the District held a MD meeting. (P-21).
37. The MD team listed the behaviors which led to the MD meeting, including the December 2023 hallway incident. The MD worksheet did not include details of the October 2023 bus incident or the February 2024 incident. (P-21).
38. The MD team determined that the behaviors and incidents as the basis of the MD process were not manifestations of the student's disability or due to the lack of implementation of the student's IEP. (P-21).
39. Following the three-day suspension, the student was out of school with unexcused absences for eleven consecutive school days from February 28th through March 13th. It is unclear whether the student's family chose to have the student out of school or whether the student was instructed not to return to school. (S-31 at pages 4-5).

40. On March 13, 2024, the student's IEP was revised. (P-23 at pages 2, 8; S-15 at pages 2, 6).
41. The March 2024 IEP revisions were discussed at an IEP meeting including parents, a family advocate, the middle school principal, the director of special education, the student's special education teacher, and a regular education teacher. The meeting was held to "to talk about (the student's) suspension and potential expulsion". (P-23 at page 2; S-15 at page 2).
42. The March 13th IEP was revised to include the following as part of the present levels of academic achievement. The bulleted format is replicated as it appears in the IEP:
- "Discussed the behaviors, the upcoming Functional Behavior Assessment, high school transitions, and planning for in-between classes.
 - (The student) will return to school 3/14/24.
 - (The student) will transition to each class AFTER the late bell rings from the previous class to help mitigate...transitions in the hallway with other students.
 - (The student) will only be given 1 minute from the time the late bell rings to get to [the student's]next class. If (the student) is more than 1 minute late, contact [a named educator].

- If (the student) needs to use the restroom, (the student) needs to report to class first, then ask [the] teacher for a hall pass.
- If (the student) encounters a potential negative peer interaction, (the student) has been directed to come directly to [assorted educators] to use the sensory room, calm down, and/or to (leave) the situation.
- (The student) will continue to attend monthly high school transition days....
- (The student) will be allowed to join the [athletic] team pending a physical and coaches' approval.
- (The student) will leave...period 9 at 2:50 to get...items from (the) locker and report IMMEDIATELY to [the bus or [athletic] practice]. The student can check out [with assorted educators]. It is imperative (the student) is out of the building/hallways before the dismissal bell rings.
- (The student) is starting fresh tomorrow and very excited to be back in school."

(P-23 at page 8; S-15 at page 6; parenthetical material for stylistic consistency for student confidentiality, bracketed material edited for clarity).

43. In April 2024, the District issued a RR. (P-26).
44. The April 2024 RR contained behavior rating scales completed by the student's parent and a teacher. (P-26 at pages 8-11).
45. Parent's ratings indicated a clinically-significant rating on the attention sub-scale, with all other sub-scales and composites in the average range; and at-risk ratings in four of the five sub-scales in adaptive functioning, leading to an at-risk score on the adaptive composite.⁷ (P-26 at pages 8-10).
46. The teacher's ratings indicated an at-risk rating on the hyperactivity sub-scale and a clinically-significant rating on the learning problems sub-scale, along with an at-risk rating on the school problems composite. All other sub-scales and composites were in the average range. On adaptive functioning ratings, the teacher rated the student as at-risk in the study skills sub-scale. (P-26 at pages 10-11).
47. The April 2024 RR contained a FBA. (P-26 at pages 11-18).
48. The student was interviewed as part of the FBA. The student reported:
- "When asked about...behavior and what (the student) feels is of most concern..., (the student) reported that arguing and getting in fights with other students is what (the student)

⁷ The parent's rating on the social skills sub-scale was in the average range. (P-26 at page 9).

feels (the student) could work on. (The student) acknowledged..."anger issues" and would like to work on managing...anger. (The student) identified [past] arguments with peers about once a week and these arguments typically last about a minute, but have not been occurring lately. (The student) does not feel that the arguments are serious and do not typically lead to anybody getting hurt. Arguments are most likely to occur...in the hallway when peers approach [the student]. (The student) feels they provoke (the student) by looking...or saying rude comments and does not feel that (the student) is the one who initiates the arguments. In the classroom, (the student) feels more supported with a teacher nearby and is able to ignore peers when...frustrated". (P-26 at page 12).

49. The student indicated that the hallway modifications in the March 2024 IEP revisions— leaving class early thereby limiting interactions with preferred peers— did not suit the student. (P-26 at page 12).
50. A paraprofessional was interviewed as part of the FBA. The paraprofessional reported: "(The student) has been involved in three confrontations with peers in the hallway so far this year that have become escalated. If (the student) is confronted with insults from peers, (the student) will jump right to fighting, or move aggressively.

If one of (the student's) friends is in a conflict, (the student) also will become involved." (P-26 at page 12).

51. Teachers were interviewed as part of the FBA. One teacher reported that the student exhibited slightly disruptive behavior in class, rooted in academic frustration: "While the work is extremely adapted, and (the student) has one on one assistance, (the student) may become overwhelmed in class". In terms of behavior, the teacher observed: "Hallways are the biggest trigger for (the student). (The student) can become highly agitated. (The student) has been observed to throw [redacted], throw a [redacted], yell, and become angry. (The student is) easily angered and when someone tells (the student) another person is talking about (the student), (the student) does not appear to have any ability to control (the) reaction". (P-26 at page 13).

52. A second teacher reported that the student's in-class behavior was largely acceptable but that "in the halls and in the cafeteria and unstructured areas, (the student's) behaviors can become a concern". (P-26 at page 13).

53. The student's special education teacher reported that "(the student) can have trouble when [the student](leaving) the classroom. Interacting with peers appropriately during unstructured times is the biggest behavior of concern". Additionally, "(the student) has been in

several fights during the school year. Some have erupted during class that were a carryover from the hallway, bus or a home/weekend situation. At the beginning of the year, I attempted to intercept a verbal altercation I could hear occurring in class and (the student) threw a [redacted] over my head at another student". Finally, the teacher reported "a lot of times, it seems (the student) is not able to keep pace with conversations.... Either peer vocabulary is too high or (the student) is unable to focus on the content of conversation. This leads to misunderstandings and the behaviors". (P-26 at page 13).

54. The April 2024 FBA included the following as "slow triggers" for the student: "(The student) has ADHD, which can make it difficult to control...impulses. (The student) has difficulty with reading and math, and may be sensitive about (these) learning difficulties. This may contribute to (the student) being defensive. (The student) may sometimes misunderstand [overheard] conversations.... This can lead to...becoming needlessly defensive or angry due to a misunderstanding. Sometimes incidents seem to be a carryover from a peer conflict that has happened outside of school." (P-26 at page 14).

55. The April FBA included the following as "fast triggers" for the student:

"(The student) can become escalated when (the student) thinks non-preferred peers are talking about (the student) in

a negative way, when (the student) thinks they are calling...names or [being] insulting {real or perceived/misunderstanding}, laughing [or [pointing] at (the student). When...friends are in conflict with peers, (the student) can also become escalated quickly. This tends to happen in the hallway where there is less structure and routine, and more opportunity for peer interactions. When (the student) is angry, feels threatened or embarrassed, this is trigger for (the student). If (the student) feels that...friends are being threatened, (the student) will also join in the conflict. When a peer tells (the student) that someone else is talking about (the student), (the student) can escalate quickly". (P-26 at pages 14-15).

56. The hypothesis of the April 2024 FBA was as follows: "When (the student) perceives that non-preferred peers are talking about,...laughing at...or pointing to (the student), (the student) may throw an object, yell, or move toward a physical altercation, in order to stop the peer behavior, gain peer attention, and gain adult attention". (P-26 at page 18).

57. In May 2024, the student's IEP was revised to include the FBA and a positive behavior support plan ("PBSP"). The May 2024 IEP indicated the special consideration that the student's behavior impeded

the student's learning or that of others and included a behavior goal to avoid physical aggression. (P-27; S-9).

2024-2025 School Year / [redacted] Grade

58. The May 2024 IEP was in place as the student transitioned to the District high school for [redacted] grade. (P-27; S-9).
59. As the 2024-2025 school year began, the student's mother contacted the District about revisions to the student's IEP. (NT at 36-125, 240-345, 396-508).
60. In early September 2024, the student's IEP was revised. In pertinent part, the hallway and dismissal-time modifications instituted at the middle school as of March 2024 were removed from the student's IEP. (P-27 at page 2; S-9 at page 2; NT at 36-125, 128-185, 240-345, 396-508).
61. The student's special education teacher indicated that the hallway and dismissal-time modifications were that the student would be accompanied by an adult during these times. The modifications, however, did not include anyone accompanying the student; instead, the modification related to the timing of the student being in the hallway to minimize contact with classmates. (P-27 at page 2; S-9 at page 2, S-17 at page 8; NT at 240-345).

62. Through November 19, 2025, the student was not the subject of discipline. Through November 19th, there was contact between the high school and the student's parents regarding academic concerns and one incident of minor classroom behavior. (S-17 at pages 5-8; S-31 at page 1).
63. On November 20, 2025, the student was involved in a physical altercation in a hallway as students passed between classes. (S-5; P-38).⁸
64. As a matter of fact-finding, undertaken later by the expulsion hearing examiner, "(the student) and another student [appear] to exchange words in the hallway....It is unknown what the students were saying to each other. After words continued to be exchanged (the student) can be seen aggressively approaching the other student and initiating the fight. Almost immediately after the fight began, a teacher arrived at the scene and attempted to stop the fight by placing himself between the two students. Despite this, the students continued to engage in a lengthy fight throwing several round house punches at each other. It is unclear in the video whether or not either of the

⁸ As will be seen below, as a result of the altercation the District sought the permanent expulsion of the student. An evidentiary hearing was held on December 18, 2024 which served as the basis, on January 16, 2025, of the student's permanent expulsion from the District by the District school board. (P-31; S-5). The January 16th adjudication included evidentiary fact-finding by the hearing examiner. The undersigned hearing officer indicated to the parties that, as to the November 20th altercation, the undersigned hearing officer would adopt the hearing examiner's fact-finding as to the incident itself. (NT at 131-142).

students struck the teacher, however the teacher did not sustain any injuries. Ultimately, the students were separated by school security. Neither student sustained any injuries.” Furthermore, the hearing examiner determined as a matter of fact-finding that “it is unclear...whether or not a teacher was struck at all let alone by (the student)”. This description of the altercation is adopted here as a finding of fact for this decision. (S-5 at page 2; P-38).

65. Over the course of November 25th through December 2nd, the student’s special education teacher and the high school principal made several attempts, including attempts over the Thanksgiving holiday when the District was not in session, to arrange a MD meeting to review the incident. The District was willing to offer multiple dates based on the parents’ availability but parents never responded to the District’s outreach. (S-17 at pages 5-6; NT at 36-125, 187-238, 240-345, 396-508).

66. On December 2, 2024, the District held the MD meeting, contemplating a 5-day suspension. Parents did not attend. (P-29; S-6; NT at 36-125, 240-345, 396-508).

67. The MD meeting found that the November 20th hallway altercation was not a manifestation of the student’s disability, did not have a direct and substantial, and was not the result of the District’s failure to implement the student’s IEP. (P-29; S-6).

68. Coming out of the MD process, and contemplating a 5-day suspension, the District recommended that the student's special education placement be changed to a self-contained, District-based placement where specialized instruction and behavior intervention can be provided to students with those needs. (S-7; Joint Exhibit ("J") – 1; NT at 396-508).
69. At some point after the MD meeting, the District administration decided to elevate the disciplinary consequence from an extended suspension, and change in the special education placement, to a permanent expulsion. (S-5; NT at 187-238, 396-508).
70. On December 18, 2025, an evidentiary hearing was held on December 18, 2024 regarding the potential expulsion of the student. (P-31; S-5).
71. On January 16, 2025, the District school board permanently expelled the student. (S-5).
72. Following the student's expulsion, both the District and the parents engaged in a process—some outreach coordinated by the District, some outreach independently undertaken by the parents—to find an educational placement for the student. (S-17 at pages 2-3; NT at 36-125, 187-238, 396-508).
73. The parties agreed informally regarding an out-of-District placement. Initially, the parent did not complete the application/review

materials for the out-of-District placement. On May 1, 2025, the District issued a notice of recommended educational placement (“NOREP”) at the out-of-District placement. (S-4; NT at 36-125; 396-508).

74. The student was suspended for ten school days from November 21st through December 6th. Thereafter, the student did not attend school at the District for the remainder of the 2024-2025 school year. (S-31 at pages 1-3).

75. On May 5, 2025, the parent filed the complaint that led to these proceedings, a complaint amended on June 23, 2025. (Hearing Officer Exhibit [“HO”]-1, HO-4).

76. On May 9, 2025, the student began to attend the out-of-District placement. (S-1; NT at 357-394).

77. The student’s attendance at the out-of-District placement was initially consistent. Over the school days flanking the Memorial Day holiday and most of the early June school days at the out-of-District placement, the student did not attend. (S-1).

78. For the first thirty days of the student’s attendance at the out-of-District placement, the placement implemented a comparable services IEP. On June 3, 2025, the out-of-District placement implemented an IEP designed for implementation at the placement. (P-36; NT at 357-394).

79. The self-contained, District-based placement with specialized instruction and behavior intervention anticipates having fourteen high school students attending over 7:30 – 11:00 AM (middle-school student attending the placement attend from 11:00 AM – 2:30 PM). Approximately 70% of the students have IEPs (although it is not clear whether this is only for high school students or includes middle school students as well). (J-1).
80. The placement utilizes District curriculum with computer-based instruction. Students are supported in the placement by a special education teacher, a behavior specialist, a District administrator, and regular education teachers in the four core regular education subjects who rotate through the placement. (J-1).

Legal Framework

The provision of special education to students with disabilities is governed by federal and Pennsylvania law. (34 C.F.R. §§300.1-300.818; 22 PA Code §§14.101-14.163)). In pertinent part, where a school district seeks to remove a student identified as a child with a disability under IDEA for more than 10 consecutive school days due to a disciplinary matter, such a removal is considered a disciplinary change in the student's educational placement. (34 C.F.R. §300.536(a)(1); 22 PA Code §14.102(a)(2)(xxxii)).

Within 10 school days of the decision to implement a disciplinary change-in-placement, “(the school district), the parent, and relevant members of the child's IEP Team (as determined by the parent and the [school district]) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents” to determine if the behavior underlying the disciplinary action was “caused by, or had a direct and substantial relationship to, the child’s disability”, or was the direct result of the school district’s failure to implement the IEP. (34 C.F.R. §300.530(e); 22 PA Code §14.102(a)(2)(xxxii)). This review is the MD process.

If the MD process determines that the behavior underlying the disciplinary action *is not* a manifestation of the student’s disability, or *does not* have a direct and substantial relationship to the student’s disability, or *is not* the result of the school district’s failure to implement appropriately the student’s IEP, the school district may take disciplinary action as it would with a student who does not qualify under IDEA (34 C.F.R. §300.530(c); 22 PA Code §14.102(a)(2)(xxxii)). If the MD process determines that the behavior underlying the disciplinary action *is* a manifestation of the student’s disability, or *does have* a direct and substantial relationship to the student’s disability, or *is* the result of the school district’s failure to implement appropriately the student’s IEP, the student must be returned to the then-current educational placement, and the student’s IEP team must seek to

understand how the behavior must be understood and addressed in the student's IEP. (34 C.F.R. §300.530(e)(f); 22 PA Code §14.102(a)(2)(xxxii)).

Additionally, where inadequacies are alleged in a school district's handling of its procedural obligations, a denial of FAPE must be grounded in a finding that the procedural inadequacies impeded a student's right to FAPE, or "significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of...FAPE", or caused a deprivation of educational benefit. (34 C.F.R. §300.513(a)(2)(i-iii); 22 PA Code §14.102(a)(2)(xxx)).

Discussion & Conclusions

MD Result. Here, the MD result was in error. Specifically, the November 20th altercation was a manifestation of the student's disability, or had a direct and substantial relationship to the student's disability. There are multiple facets to this determination.

First, the student has formal diagnoses related to attention, hyperactivity, impulse control, and defiance. Second, the student has had long-standing behavioral needs related to negative peer interactions, including altercations. Third, in [redacted] grade, these types of behaviors led to exclusions from school and a MD process. Fourth, the modifications implemented at the end of [redacted] grade—limiting the opportunity for negative hallway interactions/altercations—were designed to avoid exactly

the type of behavior that underpinned the November 20th incident. Fifth, the April 2024 FBA concretely identified the background, antecedents, and problematic behaviors which underpinned the November 20th incident. Indeed, almost as if scripted in advance, educators who provided input into the April 2024 FBA uniformly identified the context of the November 20th incident (negative peer interactions in an unstructured hallway setting resulting in aggression toward a peer). Sixth, the May 2024 IEP, drafted only two or three school weeks prior to the end of [redacted] grade and anticipating implementation in [redacted] grade, included a new goal to “refrain from physical aggression...across all environments in school...with all adults and peers....” (P-27 at page 42; S-9 at page 42).

Accordingly, the MD process should have found that the November 20th behavior incident was a manifestation determination of the student’s disability, or had a direct and substantial relationship to the student’s disability.

Placement. Having found that the MD result was in error, what is the appropriate placement for the student for the upcoming 2025-2026 school year? The out-of-District placement is overly restrictive and cannot continue, especially where the District has available— and briefly contemplated— a placement that seems to provide more structure and services for the student in the areas where the student most needs support, namely intensive academic instruction and behavior support. That placement is the specialized

self-contained, District-based placement offered as a half-day program where special education and specialized behavior support are available.

On this record, the student's achievement in reading and mathematics has been significantly below grade level for the entirety of the student's education both outside and within the District. The self-contained, District-based placement will provide for the specialized academic instruction, at an appropriate instructional level, which the student requires.

Another consistent hallmark over the entirety of the student's education is problematic behavior in both classroom and unstructured settings. The self-contained, District-based placement will also allow for specialized behavior support. The order below will also require IEP revisions for specially-designed instruction to support a coping-strategies goal, which can be part of the instruction in the placement.

There are also advantages to the placement in the form of access to regular education peers and a class size that will allow the special education teacher, especially, to focus on supporting the student's instructional needs. Additionally, the student will have that teacher for direct, in-person instruction should the student be unable to engage through online instruction in the classroom.

Having said that, the student can and should be afforded the opportunity for access to education outside of the self-contained, District-based placement. Said another way, that placement does not necessarily

exclude the student's ability to be part of the high school setting beyond the 11:00 AM. The order below will structure a placement where the student attends the specialized self-contained, District-based placement, with the remainder of the school day unfolding in the high school setting.

Parent Participation. To the extent that parent's amended complaint contains claims that the District interfered with the parents ability to participate fully in the educational decision-making as to the events that unfolded after the November 20th incident in late November and December 2024. The record fully supports a finding that District educators attempted to communicate with the parents, to include them in scheduling and planning, and to make sure parents were afforded an opportunity to participate in the student's education over those difficult weeks. There is no basis for finding a procedural denial-of-FAPE under IDEA over the period following the November 20th incident through the expulsion hearing on December 18th, or in the parties communications/planning for a placement for the student following the expulsion.

Potential Evaluation for Intellectual Disability. As the evidence was developed over the course of the hearing, certain aspects of that evidence triggered in the mind of the undersigned hearing officer whether or not the student might qualify under IDEA as a student with an intellectual disability. As the hearing concluded, the undersigned hearing officer indicated to the parties that a deeper consideration of the record might lead to an order for

an independent education evaluation with a view toward ruling in, or ruling out, such an identification. (NT at 508-510).

That consideration of the record weighs against such an order but only marginally so. The student's cognitive testing scores, especially those beyond the early childhood years, are in the low average range where cognitive ability might be called into question. That level is still low, but less stark, when working memory and processing speed are accounted for. But the student's cognitive profile is trending in a way where the deep, deep deficits in academic achievement do not allow for that profile to be easily dismissed. Likewise the student's adaptive abilities are not starkly low. But there is a theme running through the adaptive assessments of low adaptive skills, especially as viewed by the student's mother.

Coupled with these assessment results is the student's seeming misunderstanding, or misinterpretation, of social cues or pragmatic language. And the student's teacher in the out-of-District placement, even with only a brief experience with the student, observed that "(the student) struggles with peer interaction and refraining from peer influence; (the student) is very friendly but does not know how to refrain from over-sharing and giving out contact information. (The student) [attempts] to avoid peer conflict but does not understand what leads up to it." (P-36 at page 11).

As indicated, on balance this hearing officer does not feel the record taken in its entirety supports a formal order for an independent education

evaluation with a view to a potential identification as a student with an intellectual disability. But it is a close call. In the order below, the student's IEP team will be instructed to explicitly consider the question to see if the team feels an evaluation probing that question is in order.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the behavior underlying the November 20, 2024 disciplinary incident is a manifestation of the student's disability or has a direct and substantial relationship to the student's disability.

The West Mifflin Area School District ("District") shall arrange for the student's attendance at the out-of-District placement, which was undertaken as a result of a flawed manifestation determination process, to cease.

The student's placement going forward shall be at the specialized self-contained, District-based placement named in the District's December 5, 2024 NOREP. The student shall attend the placement, as scheduled, from 7:30 AM – 11:00 AM. Thereafter, the student shall transition to the high school setting. While not made an explicit part of this order, the student's IEP team shall consider the nature and structure of the student's schedule from 11:00 AM to regular dismissal. Consideration shall be given to including a lunch period, the schoolwide learning period which brackets the lunch

periods, a study hall period supported with special education, physical education, and/or elective course(s), all as the structure of the school day and the IEP team's deliberations dictate are most appropriate for the student.

The instruction in the specialized self-contained, District-based placement may utilize computer-based techniques, but the student's IEP shall be revised to include the need and opportunity for in-person instruction where the student is having difficulty with computer-based or online instruction.

Additionally, the student's IEP team is instructed to develop a goal, and specially-designed instruction, for coping strategies for the student to manage the precursors to aggressive behavior and de-escalation techniques when the student's behavior becomes elevated. During the school day beyond 11:00 AM, the student's IEP shall also be revised to account for dismissal from classes and hallway-access (whether prior to the period bell or beyond that late bell, at the discretion of the IEP team) which minimizes the student's interface with schoolmates during hallway time. This IEP modification shall not include any accompaniment by an adult during hallway transitions, unless all members of the IEP team agree unanimously to such a modification.

Finally, the student's IEP team shall explicitly consider the mosaic of the student's educational history in light of academic, behavioral, social, and

adaptive needs to see whether it feels an evaluation process is warranted to determine if the student should, or should not, be identified as a student with an intellectual disability.

Any claim not specifically addressed in this decision and order, where any such claim is not at issue in the affiliated ODR matter, is denied and dismissed.

s/ Michael J. McElligott, Esquire

Michael J. McElligott, Esquire
Special Education Hearing Officer

08/18/2025