

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. 33022-25-26

Child's Name:

C.J.

Date of Birth:

[redacted]

Parent(s):

[redacted]

Local Educational Agency:

Downingtown Area School District
540 Trestle Place
Downingtown, PA 19335

Counsel for LEA:

Rose McHugh, Esquire
331 East Butler Avenue
New Britain, PA 18901

Hearing Officer:

Michael J. McElligott, Esquire

Date of Decision

06/03/2026

Introduction

This special education due process hearing concerns the educational placement for C.J.("student"), a student who resides in the Downingtown Area School District ("District").¹ The student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEA")² as a student who requires special education.

In the current 2025-2026 school year, the student attends an emotional support classroom for [redacted] grade at the District.

In late April 2026, the student's parent filed a special education due process complaint regarding her disagreement with the District's position that the student should attend a different emotional classroom in the District. Parent's complaint proceeds on a regular resolution timeline at a separate ODR file number.

Shortly after parent filed her complaint, the District filed a special education due process complaint at the instant file number, seeking hearing officer authority to change the student's placement to the emotional support classroom it had proposed, believing that maintaining the student's placement in the current District placement is substantially likely to result in

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

injury to the student or to others. (34 C.F.R. §300.532(a),(b)(2)(ii)). The District's complaint at this file number proceeds on an expedited timeline.

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

Issue

Is maintaining the student's current placement
substantially likely to result
in injury to the student or to others?

Findings of Fact

All evidence in the record, both exhibits and testimony, was considered. Specific evidentiary artifacts in findings of fact, however, are cited only as necessary to resolve the issue(s) presented. Consequently, all exhibits and all aspects of each witness's testimony are not explicitly referenced below.

1. In the 2024-2025 school year, the student moved into the District.
(School District Exhibit ["S"]-1).
2. In November 2024, the student was referred to a student support program at the elementary school which the student attended "due to behavior/social-emotional concerns including: shutting down, work

refusal, defiance, and difficulty managing emotions”. More specific recitation of the student’s behaviors included refusal to complete academic tasks, refusal to transition, being out of assigned area, vocal protest, and yelling. (S-1).

3. The student began to receive regular education multi-tiered system of support (“MTSS”) for behavior support. (S-1).
4. In December 2024, the MTSS interventions were not providing the support that the District had hoped for. Student behavior included yelling, refusal to complete academic tasks, refusal to transition, being out of area, vocal protest, physical aggression, property misuse, and elopement from the classroom. (S-1).
5. Behavior incidents documented in December 2024 included the following:
6. (The student) was yelling at (the) teacher, kicked an [item] across the room, and refused to complete...academic work. (The student) eloped from the classroom throughout the day and refused to get packed up at the end of the day, saying, “If I don’t get my reward, I’m not packing up.”
7. (The student) appeared upset and did not complete work throughout the morning. After (a) scheduled break, (the student) appeared to be upset and indicated (a preference to) complete a desired task instead of the current academic task. (The student) forcefully pushed the door

open and left the room without permission. Staff attempted to redirect (the student), but (the student) continued to walk down the hallway away from staff.” (S-1).

8. In January 2025, the MTSS interventions were revised. Student behavior included yelling, refusal to complete academic tasks, refusal to transition, being out of area, vocal protest, physical aggression, property misuse, and elopement from the classroom. (S-1).
9. Behavior incidents documented in January 2025 included the following:
 10. (The student) was walking through the hallways after leaving Gym class without permission. A staff member met (the student) in the hallway and began walking with (the student), reminding (the student) of calming spaces and calming strategies. While walking with staff, (the student) attempted to jump off the stairs. (The student) was blocked. (The student) said, “If I can’t jump off these stairs I’ll jump off the others.” The school counselor came to assist. The school counselor was able to de-escalate (the student) and debrief.... (The student) shared...(wanting) to jump to break (a) leg so (that the student) could stay home from school and play [games]. (The student) and the counselor talked about positive aspects of school and (the student) expressed a desire to have a good rest of the day.

11. (The student) was attempting to leave the classroom without permission. (The student) pushed two different staff members. This happened two separate times within a short period of time.
12. (The student) appeared to be angry and was throwing, [items], and slamming...body into the doors. (The student) broke a [item] in half.
13. In March 2025, the student was receiving 30 minutes daily of MTSS emotional support services. The District sought permission to evaluate the student for potential eligibility for special education. Student behavior included yelling, refusal to complete academic tasks, refusal to transition, being out of area, vocal protest, physical aggression, property misuse, elopement from the classroom, elopement from school grounds, and property damage. (S-1; Notes of Testimony ["NT"] at 67-103).
14. Behavior incidents documented in March 2025 included the following:
15. At the end of recess, (the student) attempted to elope from school grounds.
16. (The student) was stopped by a teacher on (a local road). The emotional support teacher intervened and was able to help (the student to) maintain safety and finish the day.

17. (The student) appeared to be upset when playing a game in the regular education classroom. (The student) refused to transition to (the) desk for (reading instruction) and yelled at a classmate. (The student) eloped to the hallway and began banging the door, kicking the door, and banging...body against the door and wall. (The student) was pushing against staff to try to get them to move.
18. (The student) was fighting with (a classmate) during recess. The students pushed each other several times. Once (the student) returned inside the building, (the student) expressed (an urge) to punch the (classmate). (The student) went into the (classmate's) classroom to try to find (the classmate) to punch (the classmate). The (classmate) was not present in the
19. classroom at that time. Several staff members had to work with (the student) to de-escalate (the student) and keep (the student) safe.
20. (The student) appeared to be angry because (the student) could not play [sports] during recess. (The student) attempted to elope from the playground area. Staff was able to transition (the student) inside of the building. While in the office, (the student) escalated and attempted to leave the building through multiple exits.
21. In March 2025, the student was suspended for one day. (S-1, S-5).

22. In April 2025, as the student's multi-disciplinary team awaited the results of the evaluation process, the MTSS interventions were revised. Student behavior included yelling, refusal to complete academic tasks, refusal to transition, being out of area, vocal protest, physical aggression, property misuse, elopement from the classroom, and property damage. (S-1).
23. Behavior incidents documented in April 2025 included the following:
24. (The student) was playing [sports] and began yelling at classmates. (The student) walked off the playground to the front of the school building. (The student) was prompted to stop walking and return to the playground or go inside the building. (The student) walked into the office. (The student) refused to return to class for 55 minutes.
25. (The student) went to the emotional support classroom for a reward break. (The student) asked (to) cash out...points and the regular education teacher informed (the student) that (shopping could take place) the following
26. day because (the student) wasn't eligible to shop that day due to unsafe behaviors. (The student) began screaming, "All I wanted was some (snacks)" and began climbing on the counter. (The student) opened the cabinets and took a bag of (snacks). The regular education

teacher retrieved the (snacks) and gave (the snacks) to another staff member in the library. (The student) went into the library and began jumping to take the (snacks) from the staff member. The (snacks) were placed back in the emotional support classroom and the door was shut. (The student) reached for the door handle. Staff blocked the door. (The student) pushed staff several times in order to access the door handle. (The student) was unsuccessful. (The student) took staff's cell phone out of their pocket and held it up, saying, "Ha ha ha I have your phone." Staff approached (the student) and prompted (the student) to return the phone. (The student) ran across the library and refused to return the phone. The regular education teacher prompted (the student) to put the phone on the table. (The student) complied, but picked the phone back up when staff approached to retrieve it. The principal was called to assist and was able to retrieve the phone and de-escalate (the student). (S-1).

27. In April 2025, the student was suspended for a half-day and served one day of in-school suspension. (S-1, S-5).

28. Behavior incidents documented in May 2025, prior to the issuance of the May 2025 evaluation report ("ER") included the following:

29. (The student) was playing [sports] at recess. (The student) engaged in an argument with (a classmate) and hit the (classmate

two) times. A (third classmate) approached and (the student) hit (the third classmate) two times. At least three of the hits made contact with the other students' faces. (The student) then refused to come in from recess. The emotional support

30. teacher was able to transition (the student) back inside and de-escalate....

31. (The student) and (a classmate) were running around the emotional support classroom throwing a ball and yelling. This included jumping over chairs and crawling under tables. Staff prompted (both) students to stop running and offered to take (the student) for a walk or a break. (Both) students continued to run and did not respond to staff prompts to stop. The ball that (both) students were throwing was retrieved by a staff member. (The student) quickly approached the staff while yelling, "Give it back!". (The student) put...hands on the (staff member's) hand and attempted to pry her fingers open to retrieve the ball. The staff (member) attempted to disengage from the grab while prompting (the student) for safe behaviors. (The student) continued grabbing the staff's forearm, twisting the staff's arm,

32. and pulling down. The staff member moved to exit the classroom while (the student) continued to scream and hold on to the staff's arm. The staff opened her hand to reveal that the ball was gone, which prompted (the student) to lessen (the) grip. The staff member was

able to release her hand/arm and move out of the classroom. The door was closed. (The student) began to destroy property in the classroom, including ripping a [item] off the wall, throwing... [objects] forcefully against the wall, and forcefully throwing various other objects within the classroom, resulting in marks and dents on the wall. This escalation resulted in injury to a staff member's [body].

33. (The student) threw [object[] at the principal's [vehicle] in the parking lot, tipped and threw chairs and other furniture in the emotional support classroom, tipped and threw a chair in the main office, tipped and threw chairs in the
34. principal's office, and ripped up papers in the emotional support classroom then threw them on the floor. (S-1).
35. In May 2025, the student was suspended for one day. (S-1, S-5).
36. After the January 2025 and May 2025 incidents where the student threatened self-harm, the District performed a risk assessment. (S-1).
37. In May 2025, the District issued its ER. (S-1).
38. After prompting, the parent provided input for the May 2025 ER. The parent indicated that she had no concerns for the student's behavior at home. (S-1).

39. The May 2025 ER contained input from the student's regular education teacher. The teacher indicated that the student's behavior patterns are inconsistent. For stretches of time, the student does not exhibit problematic behaviors. That can change quickly, with the student exhibiting anger, outbursts, yelling, eloping, and throwing objects. The teacher indicated that the student is academically strong but that the problematic behavior often interferes with the student's ability to attend and to learn. (S-1).
40. The teacher's behavior reporting indicates that over the course of the 2024-2025 school year, the student's behavior consistently escalated over the three trimesters of the school year. (S-1).
41. The student's emotional support teacher provided input for the May 2025 ER, including two outsized behavior incidents in the emotional support classroom in May 2025. (S-1).
42. The May 2025 ER contained data reporting from the MTSS program for unsafe behaviors, inappropriate vocalizations, and disengagement. (S-1).
43. The academic data in the May 2025 ER, along with cognitive assessment and achievement testing, confirmed the regular education teacher's input regarding the student's strong academic profile. (S-1).
44. The May 2025 ER contained behavior rating scales completed by the student's mother, the student's teacher, and the student. The

student's mother rated the student in the average range across all sub-tests and composites. The student's teacher rated the student as at-risk or clinically-significant in almost every sub-test and composite. On the student's self-report, the student rated self as at-risk or clinically-significant in almost all sub-tests and composites. (S-1).

45. On a second measure of behavior rating, the student's parent did not return the instrument. The teacher rated the student as clinically-significant in the emotional dysregulation content scale and the peer-interaction impairment/functional outcome. (S-1).

46. In the May 2025 ER, the parent and teacher completed an executive functioning assessment. Consistent with other results, the student's mother rated the student in the average range in all areas of assessment. The student's teacher rated the student in the at-risk or clinically-significant range in almost all areas. (S-1).

47. The May 2025 ER contained a functional behavior assessment. (S-1, S-3)).

48. The May 2025 ER identified the student as a student with an emotional disturbance. (S-1).

49. In June 2025, the District proposed an individualized education program ("IEP"). (S-2).

50. The District recommended a placement in its specialized emotional support classroom. The parent declined to consider the

placement, and the District acquiesced in the parent's view. The student's placement for the 2025-2026 school year at an emotional support classroom in the District but not its most specialized emotional support classroom. (S-2).

51. For the 2025-2026 school year, the student attends the District's emotional support classroom with a lower level of emotional support services. (NT at 67-103).

52. The June 2025 IEP was revised in July 2025, September 2025, three times in October 2025, January 2026, twice in February 2026, and twice in March 2026. (S-2).

53. The student engaged in progressively more aggressive behavior in school in the 2025-2026 school year. (NT at 24-63, 67-103).

54. In February, March, and April 2026, the student was engaged in aggressive behavior incidents resulting in staff members seeking medical attention in school, out of school, filing workers compensation claims, and scheduling surgery as a result of interactions with the student. (S-6; NT at 24-63).

55. Injuries to staff included staff members being kicked in the chest (resulting in bruising), biting, prolonged bite, being kicked in the leg (resulting in bruising), being kicked and punched in the stomach, legs, shoulder, and knee (resulting in bruising), sprained shoulder, and torn rotator cuff. (S-6; NT at 24-63).

56. At least once, the student's classroom needed to be cleared. (S-7; NT at 24-63).
57. The student was restrained multiple times, resulting in restraint reports being filed with the Bureau of Special Education, in August 2025, September 2025, February 2026, and March 2026. (S-9).
58. In March 2026, the student's IEP team met to discuss the student's placement. The District was recommending a change in placement to a different emotional support classroom at the District, a classroom that provides more intensive emotional support. Parent was resistant to the change in placement. (S-4; NT at 67-103, 109-130).
59. In late April 2026, the student's parent filed a complaint regarding her disagreement with the District's view of the student's placement. (Hearing Officer Exhibit ["HO"]-1).
60. Shortly thereafter, the District filed a complaint, seeking hearing officer authority to change the student's placement because maintaining the current placement would be substantially likely to result in injury to the student or others. (HO-3).
61. Parent shared during her testimony at the hearing that she feels the incidents documented by the District are inaccurate or even fabricated. She testified that outside of school, behaviors documented by the District are not exhibited by the student. (NT at 109-130).

Witness Credibility

All witnesses testified credibly and a degree of weight was accorded to each witness's testimony. It must be made explicit that the testimony of the District administrators (NT at 24-63, 67-103) was heavily credited regarding the documentary evidence in this record about the student's behaviors in the current placement. Their testimony that the District's documentation of those behaviors was authentic and accurate, and was gathered in good faith, is entirely endorsed and accepted.

Legal Framework

The provisions of 34 C.F.R. §§300.532(b)(2)(ii) generally apply following a manifestation determination, where a student's behavior is found to be a manifestation of the student's disability, thus potentially limiting a school district's ability to pursue a change in placement.

Where the school district believes, however, that maintaining the current placement of the student is substantially likely to result in injury to the student or to others, the school district may utilize a special education due process hearing to seek an interim 45-school-day placement outside of the school district. (34 C.F.R. §§300.532(b)(2)(ii)).

This procedures under 34 C.F.R. §§300.532(b)(2)(ii), seeking an interim 45-school-day placement "may be repeated, if the (school district)

believes that returning the child to the original placement is substantially likely to result in injury to the child or to others". (34 C.F.R. §§300.532(b)(3)).

Discussion

Here, notwithstanding the authority of a hearing officer to order an out-of-District placement under the provisions of 34 C.F.R. §§300.532(b)(2)(ii), the District does not seek an out-of-District placement. Instead, the District seeks to place the student in another classroom, with higher levels of structure and support, in the District. The overall thrust of the District's position under 34 C.F.R. §§300.532(b)(2)(ii), however, still holds: It seeks hearing officer authority to change the student's placement because it feels that maintaining a placement in the current District emotional support classroom is substantially likely to result in injury to the student or others. The record supports a position that the student's placement should be changed, at least for a 45-school-day period to see if the student's behavior can be maintained in the new placement, blunting the substantial likelihood that maintaining the current placement will lead to injury to the student or to others.

Those injuries are well-documented on this record. In school settings, not only is there a substantial likelihood that maintaining the current placement—that is, the District emotional support classroom with a lower

level of support—may lead to an injury to the student or to others, but maintaining the current placement has, in fact, resulted in injury to others.

Accordingly, as detailed in the order below, the District is authorized to change the student’s placement for the next 45 school days.

•

ORDER

In accord with the findings of fact and conclusions of law as set forth above, the student’s placement over the next 45 school days (that is, “any day, including a partial day, that children are in attendance at school for instructional purposes”, 34 C.F.R. §300.11(c)), shall be at the District emotional support classroom with a higher level of services, support, and staffing

Any claim at this file number 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

06/03/2026