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. 31248-24-25

Child's Name:
M.W.

Date of Birth:
[redacted]

Parent:
[redacted]

Local Education Agency:
Reading School District
800 Penn Street
Reading, PA 19601

Counsel for the LEA:
Heather Matejik, Esquire
980 Jolly Road, Suite 110
Blue Bell, PA 19422

Hearing Officer:
Brian Jason Ford

Date of Decision:
06/17/2025

Introduction

This special education due process hearing concerns the educational rights of a child with disabilities (the Student). The Student's parent (the Parent) requested this hearing, and alleges that the Student's public school district (the District) violated both her rights and the Student's rights under the Individuals with Disabilities Education Act (IDEA).[1] The Parent claims that the Student's current placement is not appropriate, that the Parent was excluded from the IEP development process, and that some of the Student's educational records are inaccurate and harmful.

There is no dispute that the Student is a child with disabilities who requires a high level of special education supports and services, beyond what is typically available in most public school settings. That high level of support is necessary for the Student to receive a free, appropriate public education (FAPE). There is no dispute that the District is the Student's local educational agency (LEA) and, under the IDEA, is obligated to provide a FAPE for the Student. Similarly, there is no dispute that an Individualized Education Program (IEP) must function as the blueprint for the Student's special education, or that the Parent is a necessary member of the Student's IEP team (the group of people who develop the Student's IEP).

Unfortunately, beyond those broad points of agreement, the parties hotly dispute the appropriateness of the Student's placement. The Student attends a specialized private school (the Private School). The District placed the Student at the Private School through the Student's IEP and funds the Student's placement there. The Parent claims that the Private School is not appropriate for the Student and demands an order requiring the District to change the Student's placement. While there is a different private school that the Parent prefers, the Parent would accept any other placement that is educationally appropriate for the Student.[2] The District takes the position that the Private School is appropriate for the Student but is willing to consider other placements that may also be appropriate. For purposes of this hearing, the District does not take a position as to the appropriateness of the Parent's preferred private school but notes that the Student has been waitlisted there.

The Parent's due process complaint is fairly read to include claims not only about the Private School's appropriateness for the Student but also claims that the Parent was excluded from the IEP development process and several procedural violations as well. The procedural violations relate to statements

[1] 20 U.S.C. § 1400 *et seq*.
[2] *See, e.g.* NT 15-18.

from the Private School in the Student's educational record that the Parent disagrees with. For all these claims, the only relief that the Parent demands is an order requiring the District to change the Student's placement.

As discussed below, I find that the Parent ended her participation in this hearing without presenting a preponderance of evidence in support of her claims. Consequently, I cannot award the relief that the Parent demands.

Procedural History

The procedural history of this matter is challenging. The procedural history recounted here does not detail every pre-hearing communication, of which there were many. Rather, the focus here is on significant procedural events over the course of this hearing.

On March 3, 2025, the Parent filed a due process complaint to initiate these proceedings. The Office for Dispute Resolution (ODR) assigned the matter to me and designated the complaint as ODR 30966-2425-.

On March 12, 2025, the District filed a combined sufficiency challenge and motion to dismiss on jurisdictional grounds. I denied the District's sufficiency challenge on March 17, 2025, but did not address the District's jurisdictional challenge at that time.[3]

After the sufficiency determination, the Parent expressed a desire to add issues to the due process complaint. I explained that the Parent could either amend the complaint or file a separate due process complaint which would be consolidated with ODR 30966-2425-.

On May 1, 2025, the Parent filed a second due process compliant. In function, the second due process complaint is more akin to an amendment than a new matter. Regardless, ODR assigned the second complaint to me and designated the second complaint as ODR 31248-2425-.

On May 6, 2025, the District filed a motion to dismiss the new claims that the Parent raised in the second due process complaint. The District argued that the new claims fell outside of the IDEA's statute of limitations and related to a period when the Parent homeschooled the Student. The District was also concerned that the second due process complaint could be read as a demand for money damages related to that time. However, even with the

[3] The statutory basis of the District's sufficiency challenge, and my determination that the Parent's complaint comports with the IDEA's pleading requirements, are set forth in the March 17, 2025, Sufficiency Determination, which speaks for itself.

generous interpretations that unrepresented parents are rightly owed, nothing in the Parent's second due process complaint changed the Parent's only demand: an order requiring the District to change the Student's placement.

On May 8, 2025, I convened a pre-hearing conference to discuss the logistics of the hearing, answer procedural questions, and confirm the issues presented. At that time, the hearing was scheduled for May 15, 2025, but there was some uncertainty as to whether the matter could proceed on that day. The two complaints had not yet been consolidated, and the Parent was reluctant to consent to procedures that would enable consolidation. After the call, I wrote to the parties by email explaining how the cases would proceed, either together or separately, depending on the parties' actions. Shortly thereafter, the Parent agreed to consolidation procedures so that both matters could proceed together. I consolidated the first due process hearing into the second due process hearing, and the entire matter proceeded as ODR 31248-2425-.

On May 13, 2025, I granted the Parent's request for a subpoena for third party witness who observed the Student in the Private School. This witness works for an agency that coordinates community-based supports for the Student.

On May 15, 2025, the hearing convened as scheduled, remotely via video conference. During the hearing, the Parent testified first, presenting a direct examination in the form of a narrative. The District then cross examined the Parent, and the Parent presented a redirect examination in the form of a narrative.[4] The Parent then called the witness under subpoena and elicited testimony from that witness through direct examination. The District then cross examined the witness and the Parent asked more questions on re-direct examination.

After the Parent testified, the District suggested that the Private School's Director of School and Services (the Director) testify next because that testimony would establish facts necessary for a complete record and because the Director had time constraints. The Parent confirmed that she intended to call the Director as well, and then called the Director to testify.

As the Director testified, the Parent became visibly and audibly frustrated and upset. The Parent's demeanor changed significantly when the Director's answers to the Parent's questions differed from the Parent's expectations of

[4] The District declined to re-cross examine the Parent.

what the Director would say.[5] That situation was worsened by the formation of the Parent's questions, many of which were compound and lacked foundation. To assist the Parent, I asked the Director a few foundational questions and then asked the Director some of the same questions that the Parent asked, but one at a time.[6] The Director's answers to my questions were favorable to the Parent. Yet, before the Director could say anything that could be taken as conclusive or preponderant evidence, the Parent expressed outrage and left the hearing by exiting the video conference.[7]

When the Parent left the hearing, I instructed the Director to not discuss the case or her testimony while still on the stand and then called a recess. During the recess, I contacted the parties by email. I set a time for the hearing to reconvene and explained that the Parent could choose to rejoin the proceedings. I also said that I would decide the matter on the record before me if the Parent did not rejoin the proceedings. I also explained that the District would have an opportunity to cross examine the Director no matter what the Parent chose.[8] Just a few minutes after sending that email, the Parent replied and said that she would not rejoin the hearing.[9]

The hearing then resumed, the District briefly cross-examined the Director, and then the District rested. I closed the evidentiary record at that point.

Issue

Only one issue was presented for adjudication: must the District change the Student's placement from the Private School to a different, appropriate, specialized school?

The Parent asserts multiple bases in support of her position. Those include claims that the Private School is not appropriate, that the Private School's educational records are inaccurate, that the Parent was excluded from the IEP development process, and that the District (either directly or through the Private School) committed multiple procedural violations. As noted above,

---

[5] The Parent's demeanor also changed, but to a lesser degree, when I sustained an objection from the District and did not allow the Parent to present demonstrative evidence. *See* NT 55-57.

[6] The District's non-objection to my helping the Parent should be taken as a matter of courtesy and professionalism, but not as a waiver.

[7] In the moment, I was confused by the Parent's reaction to the Director's testimony. The Director was saying things that could help the Parent's case when the Parent left the hearing. The Parent more clearly stated her reasons for leaving the hearing in subsequent emails.

[8] For ease of reference, my email to the parties sent after the Parent left the hearing is entered into the record as exhibit H-1.

[9] For ease of reference, the Parent's email is entered into the record as exhibit H-2.

however, all those clams come down to a single demand for an order requiring the District to change the Student's placement.[10]

Findings of Fact

My fact-finding is substantially limited and hindered by the Parent's premature termination of these proceedings. I have reviewed the small record of this case in its entirety. I find as follows:

1. There is no dispute that, at all times pertinent, the Student is a child with disabilities as defined by the IDEA.

2. There is no dispute that, at all times pertinent, the District is the Student's LEA as defined by the IDEA.

3. On August 8, 2024, the District sought the Parent's consent to send information about the Student to several private schools. Those included the Private School that the Student currently attends, the private school that the parent prefers, and another private school as well. S-11.

4. On August 30, 2024, the Parent provided consent for the District to send information to the private schools. S-11.

5. On September 19, 2024, the District issued an IEP, placing the Student at a private school (not the Private School that the Student currently attends or the Parent's preferred private school). S-13.

6. The Student was restrained at the private school listed on the September 2024 IEP. This prompted an IEP team meeting and significant revisions to the IEP on October 10, 2024. S-13.

7. On October 17, 2024, the Student was accepted to the Parent's preferred private school, but there was no space open for the Student at that time. The Student was placed on a wait list there. S-14.

8. There is no dispute that the Student began attending the Private School in November 2024. *Passim*. The record of this case does not reveal the exact date that the Student began attending the Private School.

[10] *Passim. See, e.g.* NT 18.

9. On February 19, 2025, the Student's IEP team reconvened and drafted an annual IEP for the Student's placement at the Private School. During the meeting, the Parent became upset and left the meeting early. S-20, S-21; NT 114.

10. While attending the Private School, personnel employed by the Private School created operational definitions of the Student's behaviors and tracked those behaviors. *See* S-29, S-30.

11. While the Student attended the Private School, the Parent was frequently at odds with Private School personnel, occasionally sending strongly worded communications and taking issue with the way that the Private School defined and tracked the Student's behaviors. *See* S-25, S-34.

12. The concerns with the Private School's behavioral definitions and tracking that the Parent expressed contemporaneously are consistent with the Parent's testimony. *C/f* S-24, S-24; NT 29-74.

13. The Student receives support from community-based agencies. One such agency assigned a case manager to the Student in January or February of 2025 (the Case Manager).[11] *See* NT 91-92.

14. The Case Manager observed the Student in the Private School one time for roughly 45 minutes in February 2025. That observation was part of a monitoring visit to check the Student's wellbeing. The Case Manager saw nothing inappropriate during the observation. The Student's behavior was appropriate and well-managed during that time. NT 92-98, 100-106.

15. One term that the Private Placement uses in monitoring the Student's behavior is "property destruction." That term has a special definition that applies when the Private School uses that term to describe the Student's behavior. That definition, established by the Private School and included in its documentation is, "using a closed or open hand to strike a hard surface, on a desk, wall, item that results in a noise." *See e.g.* S-21, NT 120-122, 144. The term does not include anything that could be considered "property destruction" in a legal or colloquial sense, and no evidence presented during the hearing could support a finding that the Student ever destroyed property under more common definitions of that term.

[11] The Case Manager was the witness under subpoena referenced in the procedural history section of this decision.

Witness Credibility

During a due process hearing, the hearing officer is charged with the responsibility of judging the credibility of witnesses, and must make "express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses."[12] One purpose of an explicit credibility determination is to give courts the information that they need in the event of judicial review.[13]

I find that all witnesses, including the Parent, testified credibly. The Parent's abrupt departure from these proceedings came after the Parent's testimony, and so I find that behavior does not diminish the credibility of the Parent's testimony. That behavior does, however, lend credence to testimony concerning the Parent's similar behavior during the February 2025 IEP team meeting. The Parent's actions during the hearing closely match descriptions of the Parent's actions during the IEP team meeting.

While all testimony was credible, it does not all merit equal weight. For example, the Case Manager's testimony concerning her observation of the Student in the Private School was candid. That brief observation – and the Case Manger's background, training, and experience – did not enable the Case Manager to form an opinion about the Private School's educational appropriateness for the Student.[14] Conversely, testimony from the Private School's Director, a person with a high level of familiarity with the Private School's program, is given considerable weight. The Director's testimony explains how the Student does not engage in anything that a reasonable person would call "property destruction."[15]

Applicable Legal Principles

The Burden of Proof

The burden of proof, generally, consists of two elements: the burden of production and the burden of persuasion. In special education due process

---

[12] *Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 LEXIS 21639 at *28 (2003).
[13] *See, D.K. v. Abington School District*, 696 F.3d 233, 243 (3d Cir. 2014) ("[Courts] must accept the state agency's credibility determinations unless the non-testimonial extrinsic evidence in the record would justify a contrary conclusion.").
[14] This not commentary on the Case Manager's abilities in her profession, which is adjacent to but not part of the field of special education.
[15] Again, the testimony that upset the Parent is the only evidence that favors the Parent's case. Explained herein, that evidence does not constitute a preponderance.

hearings, the burden of persuasion lies with the party seeking relief.[16] The party seeking relief must prove entitlement to its demand by preponderant evidence and cannot prevail if the evidence rests in equipoise.[17] In this case, the Parent is the party seeking relief and must bear the burden of persuasion.

Free Appropriate Public Education (FAPE)

The IDEA requires the states to provide a "free appropriate public education" to all students who qualify for special education services.[18] LEAs meet this obligation to eligible students through development and implementation of IEPs, which must be "'reasonably calculated' to enable the child to receive 'meaningful educational benefits' in light of the student's 'intellectual potential.'"[19] Substantively, the IEP must be responsive to each child's individual educational needs.[20]

Those educational benefits must be meaningful; they must be more than trivial or de minimis.[21] Compared to trivial benefits, the "IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."[22] At the same time, it is well-established that an eligible student is not entitled to the best possible program, to the type of program preferred by a parent, or to a guaranteed outcome in terms of a specific level of achievement.[23] Thus, what the statute guarantees is an "appropriate" education, "not one that provides everything that might be thought desirable by 'loving parents.'"[24]

---

[16] *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006).
[17] *See N.M., ex rel. M.M. v. The School Dist. of Philadelphia*, 394 Fed.Appx. 920, 922 (3rd Cir. 2010), *citing Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004).
[18] 20 U.S.C. §1412.
[19] *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 240 (3d Cir. 2009) (citations omitted).
[20] 20 U.S.C. § 1414(d); 34 C.F.R. § 300.324.
[21] *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017). *See also Carlisle Area School v. Scott P.*, 62 F.3d 520, 533-34 (3d Cir. 1995); *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171, 1179 (3d Cir. 1998), *cert. denied* 488 U.S. 1030; *Ridgewood Bd. of Education v. N.E.*, 172 F.3d 238 (3rd Cir. 1999); *T.R. v. Kingwood Township Board of Education*, 205 F.3d 572 (3rd Cir 2000); *S.H. v. Newark,* 336 F.3d 260 (3rd Cir. 2003).
[22] *Endrew F.*, 137 S. Ct. 988, 1001 (2017).
[23] *See, e.g., J.L. v. North Penn School District*, 2011 WL 601621 (E.D. Pa. 2011).
[24] *Tucker v. Bayshore Union Free School District*, 873 F.2d 563, 567 (2d Cir. 1989).

Appropriate progress, in turn, must be "appropriately ambitious in light of [the child's] circumstances."[25] In terms of academic progress, grade-to-grade advancement may be "appropriately ambitious" for students capable of grade-level work.[26] Education, however, encompasses much more than academics. Grade-to-grade progression, therefore, is not an absolute indication of progress even for an academically strong child, depending on the child's circumstances.

In sum, the essence of the standard is that IDEA-eligible students must receive specially designed instruction and related services, by and through an IEP that is reasonably calculated at the time it is issued to offer an appropriately ambitious education in light of the Student's circumstances.

Discussion

Explained above, the Parent is the party seeking relief and must prove her case with a preponderance of evidence. A preponderance of evidence is a comparatively low standard. In lay terms, and setting aside factors like credibility and weight, it means that there is more evidence on one side than the other.

In addition to this comparatively low standard, parents who participate in due process hearings without an attorney are afforded a high level of deference. Such deference is appropriate because it is unreasonable to expect individuals with no legal training to present a case the same way that a lawyer would present a case. Hearing officers must be careful to remain neutral and independent. Hearing officers cannot trample over the LEA's rights by assisting an unrepresented parent. Even so, it is fair, and often necessary, to provide extra help, support, and guidance to unrepresented parents so that they can present evidence to make a complete record.

In this case, the Parent stopped participating in the hearing without presenting a preponderance of evidence. I must find that the Parent did not satisfy her burden of proof. In reaching this determination, I have carefully reviewed the evidence presented. Some of that evidence supports the Parent's position. None of the evidence, either individually or taken as a whole, amount to a preponderance of evidence in the Parent's favor.

The scant evidence in this case establishes the parties' agreement that the Student should be placed in a specialized school, and not a less restrictive setting. Neither party advocates returning the Student to one of the District's

[25] *Endrew F., supra* at 1000.
[26] *Id*.

schools, and I see no reason to upend one of the few things upon which the parties see eye to eye. The parties' positions, however, are not identical. The Parent claims that the Private School is not appropriate and so the District must place the Student in a different specialized school. The District takes the position that the current Private School is one of several such schools that are appropriate for the Student.

Setting aside pragmatic and legal problems with any demand for a different but unspecified private placement, it was the Parent's obligation to present evidence that the Private School is educationally inappropriate for the Student. The Parent did not meet that burden because there is no evidence in the record that the Private School is educationally inappropriate for the Student. Instead, the only evidence that helps explain the Parent's position comes from the Director and concerns the Private School's use of the term "property destruction."

The Director's testimony about the Private School's use of the term "property destruction" is concerning. That testimony justifies some part of the Parent's frustration with the wording that the Private School uses to track the Student's behaviors. I have no authority to require the private school to use any specific verbiage in its documents, and I note that the Private School's definitions are included in the documents themselves. I encourage the Private School to consider what problems could have been solved by using more parent-friendly language. Nevertheless, even if I were to assume that the Private School's atypical terminology justifies the Parent's frustration, neither the terminology nor the Parent's frustration prove that the Private School is educationally inappropriate for the Student.

The Parent's discomfort with the Private School's language does not substantiate any of the Parent's claims. The Parent's claim that the Private School's language is incorrect and harmful is undercut by the Private School's inclusion of its definitions in those same documents. The record also establishes that the Parent was invited to IEP team meetings, participated in those meetings, and left those meetings when she became frustrated. The Parent cannot claim that the District violated her right to participate in meetings that the Parent ended.

Most importantly, the Parent presented no evidence at all about the Private School's substantive educational appropriateness for the Student. There is not enough evidence for an affirmative finding that the Private School is or is not educationally appropriate for the Student. Credible testimony from an independent observer suggests that the Student was doing well in the Private School, but that testimony comes from one brief observation for non-educational purposes.

Nearly 20 years ago, the Supreme Court held that the party seeking relief in a special education due process hearing must prove entitlement to that which they demand.[27] The record of this case does not include preponderant evidence that the Private School is inappropriate, and so I will not order the District to change the Student's placement.

Going forward, I urge the parties to consider the merits of ODR's free, voluntary IEP facilitation services.

ORDER

Now, June 17, 2025, it is hereby **ORDERED** that the Parent's claims are **DENIED** and **DISMISSED.**

/s/ Brian Jason Ford
HEARING OFFICER

[27] *Schaffer v. Weast*, 546 U.S. 49, *supra.* Some states passed burden shifting laws in response. Pennsylvania did not.