

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. 32408-25-26

Child's Name:

J.W.

Date of Birth:

[redacted]

Parent:

[redacted]

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Hearing Officer:

Cathy A. Skidmore, Esquire

Date of Decision:

02/18/2026

INTRODUCTION AND PROCEDURAL HISTORY

The student, J.W. (Student),¹ is a [redacted] teenaged student residing with the Parent and formerly enrolled in Propel Charter Schools (School or local education agency (LEA)). Student has never been identified as eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA)² or having a disability under Section 504 of the Rehabilitation Act of 1973.³

In early January 2026, the Parent filed a Due Process Complaint under the IDEA and Section 504, challenging disciplinary action imposed on Student that resulted in expulsion. More specifically, she raised both expedited disciplinary and non-expedited issues; in this expedited case, she contended that the School improperly treated Student as a regular education student because the School had reason to believe that Student was eligible under the IDEA and Section 504. The narrow discipline issue was heard in a single efficient hearing session with closing statements provided several days later by agreement of counsel.⁴

¹ In the interest of confidentiality and privacy, Student's name, gender, and other potentially identifiable information are not used in the body of this decision. All personally identifiable information, including details appearing on the cover page of this decision, will be redacted prior to its posting on the website of the Office for Dispute Resolution in compliance with its obligation to make special education hearing officer decisions available to the public pursuant to 20 U.S.C. § 1415(h)(4)(A) and 34 C.F.R. § 300.513(d)(2).

² 20 U.S.C. §§ 1400-1482. The federal regulations implementing the IDEA are codified in 34 C.F.R. §§ 300.1 – 300.818. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 22.711.1 – 22.711.62.

³ 29 U.S.C. § 794. The federal regulations implementing Section 504 are codified in 34 C.F.R. §§ 104.1 – 104.61.

⁴ References to the record throughout the findings and discussion in this decision will be to the Notes of Testimony (N.T.), Parent Exhibits (P-) followed by the exhibit number, and School District Exhibits (S-) followed by the exhibit number. Citations to duplicative exhibits and testimony generally are not exhaustive. This decision is issued well within 10 school days after the hearing with February 16, 2026 a federal holiday. The non-expedited issues have been bifurcated and will proceed under the standard IDEA timelines.

Following review of the record and for all of the reasons set forth below, the claims of the Parent must be granted and appropriate relief ordered.

ISSUES

1. Whether the School had reason to suspect that Student was a child with a disability and entitled to protections from disciplinary action; and
2. If the School did have such knowledge, whether the discipline imposed entitles Student to relief?

FINDINGS OF FACT

1. Student is a [redacted] teenaged child residing with the Parent, formerly enrolled in and attending School. Student currently attends a local school district's online learning academy. (N.T. 24-25; N.T. 171, 255.)
2. The School provides longer school days and a slightly longer school year than the local school district, with smaller classroom sizes. (N.T. 131, 222-23.)
3. Student did well in earlier school years until reaching middle school, when Student began to make poor choices and experience social anxiety. Student [redacted]. (N.T. 221-24, 227-28.)
4. Student was privately evaluated by a psychologist in the fall of 2021 after having several months of behavioral health services. Student reportedly had a history of emotional dysregulation, social anxiety, and sensory aversions. Perseverative speech, repetitive behaviors,

and sensory sensitivity were also of concern to the Parent. (N.T. 224; P-1.)

5. The private psychologist administered the Autism Diagnostic Observation Schedule, Second Edition (ADOS-2) for the evaluation; he also obtained rating scales relating to behavior assessment, autism characteristics, and adaptive behavior at that time that the Parent completed. The results indicated impairment of both social affect and restrictive/repetitive behavior. This evaluation identified Autism, Depressive Disorder, and Social Anxiety Disorder for Student. (P-1.)

2024-25 School Year

6. Student's behavior continued to decline upon entering [redacted] school. Student began the 2024-25 school year with an incident of physical aggression toward a peer. Student was suspended for a period of three days, and the team recommended an out-of-district alternative placement where Student ultimately remained until the end of that school year. (N.T. 182, 190-91, 228-30; S-1 at 4.)
7. Around the same time as the fall 2024 incident, Student began receiving in-home behavioral health services. Student also had a therapist at the alternative placement that school year. (N.T. 230-31, 233-34.)
8. In April 2024, Student was referred to an Alternative Educational for Disruptive Youth placement through the local Intermediate Unit for a period of 45 days. At the conclusion of the school year, the team reviewed readiness for, and recommended that Student, return to School for the 2024-25 school year. (N.T. 171-73, 176, 183-85; P-5; S-3.)

9. A psychiatric evaluation conducted by the alternative placement for the 2024-25 school year was completed in February 2025 following School's referral. (P-14.)
10. Student reported symptoms of anxiety and depression for the 2025 psychiatric evaluation, as well as difficulty with focus, anger management, and effects of an unknown trauma in Student's past. (P-14.)
11. Diagnoses following completion of the 2025 psychiatric evaluation were Major Depressive Disorder, Generalized Anxiety Disorder, Autism, and Obsessive-Compulsive Disorder. (P-14.)

School Evaluation

12. In March 2025, the School conducted an evaluation of Student at the request of the Parent for eligibility as a student with a disability. An Evaluation Report (ER) was issued after its completion. (N.T. 29-30, 235; P-8; S-6.)
13. The LEA school psychologist who conducted Student's 2025 evaluation has clinical experience with diagnosing children with autism, and recognizes hallmark characteristics of the disorder. She summarized, and identified several errors in score calculations in, the 2021 psychiatric evaluation. (N.T. 42-51; P-8; S-6.)
14. A summary of a series of observations of Student at school were included in the 2025 ER, although it is unclear who conducted those.⁵ Teacher input reflected benefit to pre-teaching of core curriculum content with recommendations including multi-tiered instruction and multiple modalities of presentation of instruction. Student reportedly exhibited difficulty with peer interactions, work completion, and

⁵ The observations span the period between October 2024 and February 2025 and appear to be taken from Student's disciplinary record.

following directions. There was no parent input gathered or reported. (N.T. 31; S-6 at 3, 8; P-8.)

15. Cognitive assessment for the March 2025 ER (Wechsler Intelligence Scale for Children – Fifth Edition) yielded a full scale IQ in the very low range and a commensurate score on the Global Ability Index. Index scores were somewhat variable. (S-6 at 4-6.)
16. On an assessment of achievement for the 2025 ER, Student earned Composite scores in the average range in the area of reading and variable scores in mathematics. (S-6 at 6; P-8.)
17. The March 2025 ER also reported on some results of a single teacher completing the Behavior Assessment System for Children (BASC) rating scales. Parent forms were not returned. The scores are not included in the ER other than those related to possible emotional disturbance. Because the school psychologist concluded that Student manifested social maladjustment, she determined that Student did not meet criteria for an emotional disturbance. (N.T. 33-40; S-6 at 9; P-8)
18. The school psychologist who completed the ER provided it to the Parent and stated in the transmission message that Student did not qualify for special education. The School proposed that Student remain in regular education. (N.T. 57, 226; P-9; S-5.)

Fall 2025

19. Student was involved in several related incidents at school on a day during the first two weeks of September 2025. On that date, Student was experiencing difficulty in a class and was provided support outside of the classroom by an administrator. On the way back to class, Student made a verbal threat to a different administrator. (N.T. 112, 115-16; S-1 at 3-4.)

20. After Student returned to class on that same fall day, Student engaged in a verbal disagreement with a peer that briefly became very mildly physical in nature. Student was again removed from class and once more made verbal threats toward another administrator. Student was suspended for the rest of the school day and escorted out of the building so that a family member could return Student home, during which time Student continued to make verbal threats toward adults. The Parent was contacted and Student left the school grounds. (N.T. 118-21, 153--57; S-1 at 4.)
21. A three-day suspension was imposed following the early fall incident. After an informal hearing, the School conducted a formal hearing and determined that Student should be expelled. (N.T. 122-23.)
22. A hearing examiner held a hearing on the proposed expulsion and determined that Student's conduct did rise to the level of serious acts of misconduct and disobedience in violation of the Public School Code and the School's code of conduct. The hearing examiner issued an order for permanent expulsion of Student from the School. (S-10.)
23. The School's Board of Directors adopted the hearing officer's conclusion and passed a resolution consistent therewith in late October 2025. (S-10 at 9-10.)
24. No manifestation determination review occurred after the fall 2025 incident leading to Student's expulsion. (N.T. 211.)

DISCUSSION AND APPLICATION OF LAW

General Legal Principles

In general, the burden of proof consists of two elements: the burden of production and the burden of persuasion. The latter, of course, lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v.*

Ramsey Board of Education, 435 F.3d 384, 392 (3d Cir. 2006). Accordingly, the burden of persuasion in this case must rest with the Parent who filed the expedited disciplinary complaint. Nevertheless, application of this principle determines which party prevails only in those rare cases where the evidence is evenly balanced or in “equipoise.” *Schaffer, supra*, 546 U.S. at 58.

Special education hearing officers, in the role of fact-finders, have the responsibility of making credibility determinations of the witnesses who testify before them. See *J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); see also *T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 *11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014). This hearing officer found each of the witnesses who testified to be credible as to the facts as they recalled them. The testimony was overall consistent where it overlapped; any contradictions are attributed to lapse in memory or recall rather than an intention to mislead. The documentary evidence⁶ was accorded significant weight, particularly where vivid recall was absent.

The findings of fact were made as necessary to resolve the issues; thus, not all of the testimony and exhibits were explicitly cited. However, in reviewing the record, the testimony of all witnesses and the content of each admitted exhibit were reviewed and considered, as were the parties’ closing statements.

IDEA Disciplinary Principles

The IDEA and its implementing regulations contain explicit provisions that “strip schools of the unilateral authority ... to exclude disabled students from school.” *Honig v. Doe*, 484 U.S. 305, 323 (1988) (emphasis in

⁶ The following exhibits were offered and are hereby admitted: P-1, P-3, P-5, P-6, P-8, P-9, P-13, P-14, P-17, P-32, P-33, P-34, P-40, P-41; S-1 through S-7 and S-9 through S-11.

original). Disciplinary changes in placement accordingly require adherence to the legal requirements for such exclusions. The first issue of a disciplinary change in placement falls under one set of provisions, while the manifestation determination review is subject to others.

For purposes of this decision, the Parent's Due Process Complaint challenges the District's imposition of discipline through the expulsion based on the District's asserted knowledge that Student had a disability before the discipline was imposed. Pursuant to the IDEA and its applicable regulations, a parent making such an allegation had the right to challenge any District decision regarding a change in placement for disciplinary reasons in an expedited due process hearing. 20 U.S.C. § 1415(k)(3); 34 C.F.R. §§ 300.532(a) and (c), 300.534(a). When such an appeal is filed, the child remains in the current alternative education setting unless the parties agree otherwise. 20 U.S.C. § 1415(k)(4); 34 C.F.R. § 300.533.

An LEA is permitted to remove a child with a disability from his or her current educational setting for violation of the code of student conduct for a period of no more than ten consecutive school days within the same school year, provided that the same discipline would be imposed on non-disabled students. 20 U.S.C. § 1415(k)(1)(B); 34 C.F.R. §300.530(b). An LEA is also permitted to impose additional disciplinary removals for separate incidents of misconduct for fewer than ten consecutive school days, provided that such removals do not constitute a "change of placement." 20 U.S.C. § 1415(k)(1)(B); 34 C.F.R. §300.530(b). A "change of placement" based on disciplinary removals is defined as (1) removal for more than ten consecutive school days; or (2) a series of removals during the same school year that constitutes a "pattern". 34 C.F.R. § 300.536(a); see also 22 Pa. Code § 14.143(a). "Any unique circumstances" of a particular case may be considered by the LEA when determining whether a change in placement is

appropriate for a child with a disability who violates a student code of conduct. 20 U.S.C. § 1414(k)(1)(A); 34 C.F.R. § 300.530(a).

A child who has not been identified as eligible for special education qualifies for the same protections as a child with a disability if the LEA had “knowledge (as determined in accordance with this paragraph)” of a disability before the behavior that led to the discipline. 20 U.S.C. § 1415(k)(5)(A). This instance is commonly termed “thought to be eligible.” The basis of knowledge, as delineated by the IDEA, exists when:

- i. the parent of the child has expressed concern in writing [to the LEA] that the child is in need of special education and related services;
- ii. the parent of the child has requested an evaluation of the child [under the IDEA]; or
- iii. the teacher of the child, or other personnel of the [LEA], has expressed specific concerns about a pattern of behavior demonstrated by the child to the director of special education or to other supervisory personnel of the agency.

20 U.S.C. § 1415(k)(5)(B); *see also* 34 C.F.R. § 300.534(b). The LEA is not deemed to have such knowledge under certain circumstances, including when the child has been evaluated in accordance with the provisions regarding evaluations, and determined to not be a child with a disability. 20 U.S.C. §§ 1415(k)(5)(C), (D); *see also* 34 C.F.R. § 300.534(c).

Manifestation Determination

Once a decision is made to change the placement of a child with a disability for violating the code of student conduct, the LEA must conduct a manifestation determination review to determine whether the conduct “was caused by, or had a direct and substantial relationship to, the child’s

disability; or ... was the direct result of" the LEA's failure to implement the child's IEP. 20 U.S.C. § 1415(k)(1)(E); *see also* 34 C.F.R. § 300.530(e). The team must consider "all relevant information in the student's file...including any relevant information provided by the parents[.]" 20 U.S.C. § 1415(k)(1)(E); *see also* 34 C.F.R. § 300.530(e). This same procedure applies to a child whom the LEA had knowledge may have a disability even without a prior identification. 20 U.S.C. § 1415(k)(5); 34 C.F.R. § 300.534(a). The manifestation determination must be made within ten school days of any decision to change the eligible child's placement, and must be made by "the LEA, the parent, and relevant members of the child's IEP team (as determined by the parent and the LEA)." 34 C.F.R. § 300.530(e); *see also* 20 U.S.C. § 1415(k)(1)(E).

Placement in alternative educational setting

(1) Authority of school personnel

(A) Case-by-case determination

School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

* * *

(2) Determination of setting

The interim alternative educational setting in subparagraphs (C) and (G) of paragraph (1) shall be determined by the IEP Team.

(3) Appeal

(A) In general

The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation

determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.

(B) Authority of hearing officer

(i) In general

A hearing officer shall hear, and make a determination regarding, an appeal requested under subparagraph (A).

(ii) Change of placement order

In making the determination under clause (i), the hearing officer may order a change in placement of a child with a disability. In such situations, the hearing officer may—

return a child with a disability to the placement from which the child was removed; or

order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

20 U.S.C. § 1415(k); *see also* 34 C.F.R. §§ 300.530 – 300-533.

Eligibility

The IDEA and state and federal regulations obligate each LEA to locate, identify, and evaluate children with disabilities who need special education and related services. 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a); *see also* 22 Pa. Code §§ 14.121-14.125. This mandate is commonly referred to as “Child Find.”

Evaluation Requirements

Substantively, the IDEA sets forth two purposes of a special education evaluation: to determine whether or not a child is a child with a disability as defined in the law, and to “determine the educational needs of such child[.]” 20 U.S.C. §1414(a)(1)(C)(i). The IDEA explicitly identifies the following qualifying disabilities: “intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance[], orthopedic impairments, autism, traumatic brain injury, other health impairments, [and] specific learning disabilities.” 20 U.S.C. § 1401(3); see also 34 C.F.R. § 300.8(a).

Certain procedural requirements are set forth in the IDEA and its implementing regulations that are designed to ensure that all of the child’s individual needs are appropriately examined:

Conduct of evaluation. In conducting the evaluation, the local educational agency shall—

(A) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining—

(i) whether the child is a child with a disability; and

(ii) the content of the child’s individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum, or, for preschool children, to participate in appropriate activities;

(B) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a

disability or determining an appropriate educational program for the child; and

(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

20 U.S.C. § 1414(b)(2); see also 34 C.F.R. §§ 300.303(a), 304(b).

The evaluation must assess the child “in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities[.]” 34 C.F.R. § 304(c)(4); see also 20 U.S.C. § 1414(b)(3)(B). Additionally, the evaluation must be “sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified,” and utilize “[a]ssessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child[.]” 34 C.F.R. §§ 304(c)(6) and (c)(7); see also 20 U.S.C. § 1414(b)(3). Any evaluation or reevaluation must also involve a review of existing data including that provided by the parents in addition to available assessments and observations. 34 C.F.R. § 300.305(a).

General Section 504 and ADA Principles

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of a handicap or disability. 29 U.S.C. § 794. A person has a handicap if he or she “has a physical or mental impairment which substantially limits one or more major life activities,” or has a record of such impairment or is regarded as having such impairment. 34 C.F.R. § 104.3(j)(1). “Major life activities” include learning. 34 C.F.R. §

104.3(j)(2)(ii). With respect to discipline, compliance with the IDEA is sufficient to establish 504 protections. 34 C.F.R. § 104.35.

Application to Discipline Imposed

The issues, though relatively narrow, involve the LEA's child find and evaluation obligations in order to resolve the discipline claim. Here, the Parent asserts that the School had reason to know that Student was a child with a disability, whereas the School contends that its responsibilities fall within an exception to that provision.

The LEA school psychologist has significant experience with children with autism and relied on that expertise to a significant degree in excluding autism from Student's profile. In this hearing officer's view, there are two concurrent flaws with the ultimate determination on eligibility.

First, the law requires that LEAs use assessment tools and measures in identifying disabilities in order to comply with evaluation requirements. Student entered the School with a previous diagnosis of autism, and that specific eligibility category was a suspected area for evaluation. Ultimately, and unfortunately, Student was not determined to have a disability under that eligibility category based on a single broad behavior rating scale completed by one individual along with the school psychologist's observations and experience. It is also unclear to what extent Student's mental health diagnoses were considered and evaluated, particularly without the full BASC score results. While the conclusion may well ultimately be correct, the absence of actual testing for autism in light of a previous evaluation in this case, which is compounded by her disagreement with certain prior test scores, must lead to a conclusion that the evaluation was not appropriate on this basis for purposes of the discipline in the fall of 2025 under the IDEA. The second clear shortcoming is that a team, including the parent, did not make a determination on eligibility as the relevant law. The

exclusion of the Parent from this process is clear and unaligned with the IDEA and Section 504. Taken together, this hearing officer must conclude that Student requires a new evaluation in order to determine eligibility and that the School's March 2025 ER does not satisfy the exception to the "thought to be eligible" provision in the IDEA; and, the same result is made under Section 504. The attached order granting an independent evaluation shall assess Student under both statutes and provide crucial information to the Parent and School moving forward.

CONCLUSIONS OF LAW

The School's evaluation of Student did not comport with the mandates in the IDEA, and Student must be evaluated again by an independent and qualified school psychologist.

ORDER

AND NOW, this 18th day of February, 2026, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. Within five (5) calendar days of the date of this Order, the School shall provide to the Parent not less than three (3) qualified individuals reasonably within its geographic area

to conduct an independent psychoeducational evaluation. Within five (5) calendar days of the date of receipt of those professionals, the Parent provide notice to the School of the selected individual. In the event that the Parent does not timely provide a timely selection, the School shall promptly choose the evaluator from the same list.

2. The chosen psychoeducational evaluator shall determine the scope of the IEE including all psychoeducational assessments and the involvement of any other necessary professionals for the IEE following review of the ER and the final report of the independent psychologist.
3. The School shall share any and all available information about Student that is requested by the evaluator chosen to conduct the IEE.
4. The IEE shall be completed on an expedited timeline as soon as possible.
5. Following completion of the ordered IEE and issuance of the report(s), which shall be provided as soon as practicable, the School shall convene a meeting with the Parent and the independent psychologist to review the results and determine whether Student is a child with a disability and in need of specially designed instruction. The participation by the independent psychologist at the meeting shall be at public expense.
6. If Student is determined to be eligible for special education, the School shall promptly convene a manifestation determination review meeting consistent with all applicable laws.
7. Nothing in this Order should be read to prevent the parties from mutually agreeing to alter any of its terms.

It is **FURTHER ORDERED** that any claims not specifically addressed by this decision and order are DENIED and DISMISSED. Jurisdiction is RELINQUISHED.

/s/ Cathy A. Skidmore
Cathy A. Skidmore, Esquire
HEARING OFFICER
ODR File No. 32408-25-26

Sent to counsel for both parties this date as required by 34 C.F.R. § 300.515 by electronic mail message as requested⁷ by counsel consistent with 22 Pa. Code § 14.162(n).

⁷ N.T. 259.