

*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. 31987-25-26**

**Child's Name:**

H.K.

**Date of Birth:**

[redacted]

**Parents:**

[redacted]

**Local Educational Agency:**

Brownsville Area School District  
5 Falcon Drive  
Brownsville, PA 15417

**Counsel for LEA:**

Rachel Lozosky, Esquire  
Peacock Keller, LLP  
70 East Beau Street – Suite 600  
Washington, PA 15301

**Hearing Officer:**

Michael J. McElligott, Esquire

**Date of Decision:**

11/07/2025

## **Introduction**

This special education due process hearing concerns the educational rights of H.K. ("student"), a student who resides in the Brownsville Area School District ("District").<sup>1</sup> The student currently qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEA")<sup>2</sup> as a student with an emotional disturbance and speech and language ("S&L") impairment.

This special education due process hearing was initiated with a complaint filed by the District when the parties could not agree on an educational placement for the student, and the District felt, based on the student's behavior in educational settings, that maintaining the then-current educational placement presented a substantial likelihood of injury to the student and/or others. After the filing of the complaint, a fluid procedural history followed (set forth below), which ultimately placed at issue both the location of the student's educational placement and issues related to transportation of the student.

In defense against the District's complaint, the parents claim that the out-of-District placement of the student proposed by the District, and ultimately agreed-to by the parents, is not appropriate. Parents also claim,

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<sup>1</sup> The generic use of "student", and avoidance of personal pronouns, are employed to protect the confidentiality of the student.

<sup>2</sup> 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").

in a more determined way, that the transportation arrangements envisioned by the District are not appropriate for the student.

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

## **Issues**

1. Is the out-of-District placement proposed by the District, and last agreed-to by the parties, appropriate?
2. To the extent that the student requires transportation to that placement, what are the appropriate transportation arrangements?

## **Procedural History**

- A. The District filed its complaint on October 8, 2025.
- B. Given the expedited nature of the complaint, with the District seeking to change the student's placement as a result of alleged likelihood of injury to the student or to others, the matter proceeded on an expedited timeline. (34 C.F.R. §§300.532(c); 22 PA Code §14.102(a)(2)(xxxii)).
- C. Under this expedited timeline, the hearing must be concluded within 20 school days. The twentieth school day after October 8th was November 6, 2025.

- D. The decision is due on or before the tenth school day after the hearing concludes. With the hearing having concluded on October 27, 2025 (see below), the tenth school day after the conclusion of the hearing is Monday, November 10, 2025.
- E. Initially, this matter was assigned to a different hearing officer. That hearing officer discovered a conflict and was unable to conduct the hearing. On October 15, 2025, the undersigned hearing officer asserted jurisdiction.
- F. Parents were unable to participate in any hearing session during the week of November 3, 2025, so the window for available hearing dates was approximately ten school days, the weeks of Monday, October 20th and Monday, October 27th.
- G. The undersigned hearing officer scheduled a hearing session for Monday, October 27th.
- H. On Thursday, October 16th, the undersigned hearing officer held a conference call with the student's father and District counsel to provide an overview of the hearing process, to discuss the nature and preparation of evidence, to answer anyone's questions, and to provide certain directives.
- I. The location of the hearing was set at the District's administrative offices. The student's father shared that he preferred not to be present on District property. The undersigned hearing officer wished to conduct the hearing in person but arranged for the parents to participate by

telephone. The start-time of the hearing was also moved to the late afternoon to accommodate the father's work day.

- J. On Tuesday, October 21st, the parents approved and returned a notice of recommended educational placement ("NOREP"), issued by the District on September 19, 2025, agreeing to an out-of-District placement.
- K. On Wednesday, October 22nd, however, the parents filed a complaint, contesting the transportation of the student to that placement. Given the fact that the undersigned hearing officer was already presiding over a different matter at issue between the parties, parents' complaint was assigned to the undersigned hearing officer. That matter is active on the docket of the undersigned hearing officer and proceeds on a regular resolution timeline.<sup>3</sup>
- L. On Thursday, October 23rd, in light of the approval of the NOREP, the District sought to withdraw its complaint in the instant matter.
- M. That same day, the hearing officer emailed the parties to confirm whether or not the District was aware of the filing of parents' complaint the day before. District counsel indicated that the District was aware of the filing, felt the transportation issue could be resolved at a later point, and reiterated its request to withdraw the complaint.

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<sup>3</sup> At the hearing session, the parties were informed that, because transportation of the student is at issue in the instant matter, fact-finding and determinations in the instant matter might impact the claims asserted in parents' complaint. (Notes of Testimony ["NT"] at 20).

- N. Later that same day, parents emailed to say that they were 'revoking' the NOREP, disagreeing as to both the out-of-District placement and transportation.
- O. Given this clear dis-connect between the parties' view of the student's placement and the adversarial stance of the parties, exhibited most concretely in the hearing-planning conference call, the undersigned hearing officer declined to accept the withdrawal of the complaint. It was the opinion of the hearing officer that special education due process needed to provide clarity for the parties on the contested issues regarding the student's placement.
- P. The hearing proceeded with an evidentiary session on October 27th. This decision follows.

## **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.

1. Parents are the adoptive parents of the student. (School District Exhibit ["S"]-26 at page 3; NT at 5).

2. The student's background includes incidents of abuse and trauma while the student was residing with biological family members. (S-26 at page 3, S-55 at pages 2-3; NT at 5, 130, 211).

#### Schooling Outside of the District

3. Prior to enrolling in the District, the student attended a different school district within the Commonwealth. (S-54, S-55).
4. On this record, parents served as the student's foster parents at the time the student attended the other school district. (S-55 at page 2).
5. In December 2021, in the student's [redacted] year at the other school district, the student was evaluated and identified as a student with an emotional disturbance. (S-55).
6. The December 2021 evaluation report ("ER") from the other school district indicated that the student had psychological diagnoses of global developmental delay, reactive attachment disorder, post-traumatic stress disorder, and anxiety. (S-55 at pages 2,3).
7. The student's behavior, as noted by parents and teachers in the December 2021 ER, included aggression toward peers (hitting, kicking, biting, flipping tables), impatience, resistance to/avoidance of non-preferred tasks, yelling, outbursts, crying/tantruming, and property destruction. (S-55 at pages 2,3,6-9,13).

8. The student also eloped from assigned areas and rooms. (S-55 at pages 7, 14).
9. In December 2021, the student's IEP team at the other school district drafted an IEP for the student. The IEP was revised in February, April, and May of 2022. (S-54).

#### Schooling at the District

10. The student began to attend the District in September 2022, in a repeat of the student's [redacted] year. (S-26 at page 2).
11. In December 2022, the District had previously identified the student as a student with an emotional disturbance and S&L impairment. (S-26 at page 2).
12. Over the period of the [redacted]—the 2022-2023, 2023-2024, and 2024-2025 school years— at the District, the student attended a therapeutic emotional support classroom, run the by local intermediate unit, in a nearby school district. (S-26 at page 2).

#### 2024-2025 School Year

13. In November 2024, in the fall of the student's [redacted] grade year, the student was re-evaluated by the District. (S-26).

14. Parents did not provide input for the November 2024 re-evaluation report ("RR"). (S-26 at page 3).
15. The November 2024 RR contained cognitive assessment results from the December 2022 re-evaluation. The student's composite intelligence index was 77. (S-26 at page 4).
16. The November 2024 RR contained data on the disciplinary incidents through the end of October 2024. (S-26 at pages 8-9).
17. The student had engaged in 28 instances of physical aggression (hitting, kicking, punching, biting, pinching, pushing, chasing), 19 instances of verbal aggression (name-calling, swearing, telling others to 'shut up', threatening), 9 instances of property destruction (desks, iPads, copiers, throwing objects, attempted destruction), 7 instances of eloping from spaces, rooms, or buildings), 5 instances of fighting with peers, and one instance of threatened self-harm. (S-26 at page 8).
18. Over September and October 2024, educators engaged in three instances of restraint (two restraints to return the student from elopement, one supine floor restraint due to aggression). (S-26 at page 8).
19. The November 2024 RR contained a list of goals developed in October 2024 by the student's individualized education program

("IEP") team. The goals included coping skills, self-monitoring and reporting of potential emotional escalation, emotional regulation with prompting, letter-sound identification, and reading accuracy with consonant-vowel-consonant (CVC) words. (S-26 at page 9).

20. A classroom observation undertaken as part of the November 2024 RR documented refusal of directives by staff, yelling, elopement from spaces within the classroom, repeatedly pushing into a peer, punching a peer, verbally escalating with the peer ('shut up'), threatening the peer with threats of continued punching, brief elopement from the classroom, [redacted], physically engaging the 1:1 paraprofessional assigned to the student, physically engaging with a peer, [redacted], and inappropriate language referring to others private areas. (S-26 at pages 10-11).

21. The student's teachers provided input for the November 2024 RR. In terms of behavior, the student's math teacher reported the need for support using redirection and small group work but did not report any outsized behaviors as documented elsewhere in the RR. In terms of behavior, the student's special education teacher reported that the student needed to decrease physical and verbal aggression, noted additional concerns with non-compliance and elopement, and at times quickly escalated to aggression with peers. (S-26 at pages 11-12).

22. The November 2024 RR included updated academic achievement testing. (S-26 at pages 18-21).
23. The November 2024 RR included assessments in social/emotional functioning. (S-26 at pages 21-24).
24. Behavior rating scales completed by the student's father rated the student in the clinically-significant range across nine of fourteen sub-scales and two of three indices. The father rated the student in the at-risk range in two of the sub-scales and the third index. On the instrument, the father noted that the student 'almost always' loses control when angry, threatens to hurt others, and says "I hate myself"; the father noted that the student 'often' hurts others on purpose. (S-26 at page 21).
25. Behavior rating scales completed by the student's special education teacher rated the student in the clinically-significant range across five of fifteen sub-scales and three of five indices. The teacher rated the student in the at-risk range in five of the sub-scales and the third index. On the instrument, the teacher noted that the student 'almost always' loses control when angry, threatens to hurt others, hits peers, is distracted, picks on others, hurts others on purpose, and gets

back at others; the teacher noted that the student 'often' bullies others. (S-26 at page 21).<sup>4</sup>

26. The November 2024 RR contained a functional behavior assessment ("FBA"). (S-26 at pages 24-26).
27. The FBA in the November 2024 RR identified four behaviors of concern, ordered in terms of documented incidents during the assessment: physical aggression, unsafe behaviors (including elopement), non-compliance, and verbal aggression. The FBA identified six antecedents to the behaviors of concern, ordered in terms of documented antecedents during the assessment: attention of/re-direction by school staff, presentation of non-preferred task, peer interaction, denial of access to preferred tangibles, lack of adult attention, and during transitions.<sup>5</sup> (S-26 at pages 24-26).
28. The FBA in the November 2024 RR identified four consequences resulting from the behaviors of concern, ordered in terms of documented consequences during the assessment: adult attention/re-direction, escape from/postponement of task, no adult attention given, peer attention.<sup>6</sup> (S-26 at pages 24-26).

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<sup>4</sup> The evaluator for the November 2024 RR indicated that the teacher's responses needed to be viewed with extreme caution, given internal reliability measures. S-26 at pages 23-24.

<sup>5</sup> The last two—lack of adult attention and transitions—were noted as antecedents only once each. S-26 at page 24.

<sup>6</sup> There was only one instance of peer attention as a consequence. S-26 at page 25.

29. The November 2024 RR identified the student with an emotional disturbance and S&L impairment. (S-26 at pages 26-33).
30. In approximately December 2024, the classroom which the student attended was discontinued by the intermediate unit, and the student began to attend a District school. (S-36 at page 2; Hearing Officer Exhibit – School District Complaint, paragraphs 11, 14 at pages 2-3; NT at 106).
31. Over the period December 2024 – May 2025, the student was involved in numerous, at times almost daily, problematic behavior, including work refusal, non-compliance, defiance, yelling, profanity, throwing objects, vandalism, property destruction, elopement, pushing, hitting, punching, kicking, biting, [redacted], self-injurious behavior, threatening self-harm, profanity. At certain points, restraints were employed for the safety of the students and others. (S-1, S-2, S-3, S-4, S-5, S-6, S-7, S-8, S-11, S-12, S-13, S-14, S-15, S-16, S-17, S-20, S-21, S-36).<sup>7</sup>
32. At times, employees were injured by the student. (S-12, S-13, S-14, S-15, S-16, S-17).

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<sup>7</sup> The exhibits which document the behavior incidents over these months are voluminous. The exhibits include incident reports, written statements, emails, behavior logs, behavior data, and employee-injury documentation over hundreds of pages. Rather than detail each incident, or group incidents chronologically by week or month, this finding of fact simply captures the entirety of the problematic behaviors in a comprehensive way.

33. Some of the behavior incidents resulted in the student's suspension from school. (S-10).
34. In April 2025, the student's placement at the District was a 1:2 educational setting, with the student being the only student in the class with a teacher and a paraprofessional. (S-44 at pages 1, 23, 90-92).
35. The District anticipated that when "the current will conclude,...an alternative placement will be identified to best support the student's educational needs". (S-44 at pages 1, 93).
36. In May 2025, the District re-evaluated the student. (S-36).
37. The May 2025 RR contained information from the previous re-evaluations, both from the other school district and previous District re-evaluations. (S-36).
38. The May 2025 RR contained updated academic and IEP goal progress. (S-36 at pages 12-17).
39. In the May 2025 RR, the parents provided contextual information for a FBA in home and community settings. (S-36 at pages 4-5, 37-38).
40. The May 2025 RR contained a crisis/de-escalation plan. (S-36 at pages 26-30, 47-49).

41. The May 2025 RR contained an updated FBA, including teacher input. The RR made recommendations for a positive behavior support plan ("PBSP") for the student. (S-36 at pages 32-46, 55-56).
42. In May 2025, the District held a manifestation determination because the student had been excluded from school for more than 15 cumulative school days in the 2024-2025 school year. (S-36 at pages 46-47).
43. The May 2025 RR continued to identify the student with an emotional disturbance and S&L impairment. (S-36 at page 52).
44. Shortly after the issuance of the May 2025 RR, the District developed a PBSP as part of the student's special education programming. (S-38).
45. In mid-May 2025, again shortly after issuance of the May 2025 RR, the student was involved in a wide-ranging spate of problematic behaviors, including climbing on objects, defiance, profanity, property destruction, throwing and slamming objects, [redacted]. The student eloped barefoot from the school, trailed by educators, school security, and [redacted]; the student engaged in problematic behavior in the community, including [redacted], throwing rocks, damaging and/or raiding private property. The student was retrieved by community [redacted] and brought back to school. Thereafter, the student showed

aggression, engaged an [redacted], engaged in climbing behavior, threatened self-harm, used profanity, and damaged property. The student eloped from the building for a second time and was retrieved by community [redacted]. (S-36 at page 50, S-44 at page 50; NT at 110-111).

46. In the summer of 2025, the student received extended school year ("ESY") services through an intermediate unit program. The student engaged in similar behaviors in the ESY program, including defiance, disruption, throwing objects, property destruction, elopement, hitting, kicking, pinching, biting, and punching. At one point, a restraint was employed for the safety of the student and others. Employees were injured by the student. (S-18, S-19, S-44 at pages 8-19).

47. In fairness to the student, many of the behavioral incidents over the course of the 2024-2025 school year were quickly resolved by de-escalation and [redacted].

#### Placement Outside of the District

48. In August and September 2025, the District attempted to schedule IEP meetings to discuss programming/placement for the 2025-2026 school year. (S-41, S-43).

49. In September 2025, the District developed and formally offered an IEP for the student's education in a placement outside of the District. (S-44; Hearing Officer Exhibit – NOREP – September 19, 2025).
50. The September 2025 IEP indicated that the District sought to pursue a partial hospitalization program. Parents were resistant, so the District pursued a full-time emotional support program outside of the District. (S-44 at pages 8, 93-95).
51. The September 2025 IEP included information from the May 2025 FBA. (S-44 at pages 19-22, 31-51).
52. The September 2025 IEP included the crisis/de-escalation plan from the May 2025 RR. (S-44 at pages 52-56).
53. The student's behavioral needs as updated in the September 2025 IEP included following directions (compliance), self-regulation, coping skills, completion of non-preferred tasks (avoidance), appropriate expression of wants/needs, and verbal/physical aggression. (S-44 at page 71).
54. The September 2025 IEP included a behavior goal (coping), a reading goal, two S&L goals, and three occupational therapy goals (handwriting, fine motor skills). (S-44 at pages 79-85).

55. Related services in the September 2025 IEP included S&L services, social work services, OT services, and a 1:1 paraprofessional. Transportation to the out-of-District placement was also included in the IEP as a related service. (S-44 at page 88).
56. The proposed placement in the September 2025 IEP is a full-time emotional support setting outside of the District. (S-44 at pages 93-95; Hearing Officer Exhibit – NOREP – September 19, 2025).
57. On September 19, 2025, the District formally recommended implementation of the September 2025 IEP at a full-time emotional support placement outside of the District. (Hearing Officer Exhibit – NOREP – September 19, 2025).

#### Out-of-District Placement

58. The out-of-District placement is a licensed private school specializing in educating students with social, emotional, and behavioral needs. It offers a full-time therapeutic emotional support program, which is the program/placement where the student would be educated. (NT at 23-28).
59. The placement has approximately 75 students, nine classrooms, and 35 full-time staff. (NT at 56-59).

60. The classroom which the student would attend has six students.

The student would have a dedicated 1:1 paraprofessional. Another student in the class has a dedicated 1:1 paraprofessional. There is a classroom paraprofessional and a teacher. (NT at 29-30).

61. The placement has four crisis intervention specialists on duty in hallways, moving to assist where necessary. (NT at 30-33).

62. The placement has calming rooms and other areas where a student who needs a separate space for de-escalation. (NT at 33-34).

63. The student, like most students at the placement, would receive all instruction in the assigned classroom, although S&L and OT services would be provided as pullout services in another classroom. The S&L and OT services would be provided at the placement by intermediate unit providers. The social work services in the student's IEP would be provided through counseling at the placement. (NT at 34-37, 47-48, 68-72).

64. The administrator who testified at the hearing was familiar with the student's September 2025 IEP and testified credibly that the placement could implement the IEP and was an appropriate placement for the student. She testified that standard procedure at the placement is to work through a student's transition to the placement, with an IEP meeting held approximately 30 days after a student begins to discuss

potential revisions to a student's IEP. (NT at 37-39, 48-49, 59-60, 64-68).

65. The administrator testified that, in conjunction with the school psychologist at the placement, they were interested in updated cognitive ability and academic achievement testing. (NT at 39-40, 61-64).

66. As of the day of the hearing session, the student has attended four days at the placement and did not exhibit any problematic behaviors. (NT at 40-46).

67. Students arrive at the placement at approximately 8 AM for the start of the school day. (NT at 59).

#### Transportation

68. One of parents' primary concerns in objecting to a placement outside the District is the timing and drop-off involved in the student's transportation from the placement at the end of the school day. (See generally NT at 139-206, 208-239).

69. The school day at the out-of-District placement ends at approximately 2 PM. Students can be dismissed for transportation as late as 2:30 PM. (NT at 46-47).

70. Regardless of the timing and drop-off arrangement, the student would be transported from the out-of-District placement by van transportation where the student is the only rider. A 1:1 male paraprofessional would accompany the student. These arrangements were at the request of the parents. (NT at 139-140).
71. Both the van driver and the paraprofessional will have undergone training on positive behavior techniques and safety restraint. (S-56; NT at 141).
72. Since the outset of the current 2025-2026 school year, the District has made arrangements for daily transportation of the student to the out-of-District placement in the morning and from the placement in the afternoon. As of the date of the hearing, the student had not utilized this transportation. (S-56).
73. The District has offered three transportation options. (NT at 143-145).
74. One option would have the student departing the out-of-District placement at 2:15 and arriving at the student's residence at 3:00. After retrieving a sibling of the student after school, the earliest a parent is at home is approximately 3:50. (S-48 at page 1; NT at 144, 217-218).

75. A second option would have the student departing the placement at 2:30 and arriving at the student's residence at 3:15. Again, the earliest a parent is at home is approximately 3:50. (S-48 at page 1; NT at 144-145, 218).
76. A third option would have the student departing the placement at 2:30 and arriving at the District elementary school at 3:15. The student would remain on the van at the elementary school for approximately 25 minutes, departing for the student's home at 3:40, arriving at 3:50. The District arranged this arrival time at the student's home to accommodate the arrival time of the first parent, having retrieved the student's sibling. Parents are concerned about the length of the student's wait on the bus. (NT at 145-146, 198-199, 218-219).
77. The third option would include a District proposal for explicit modifications in the student's IEP during the 25-minute interval on the van, including access to comfort/sensory items, noise-cancelling headphones or access to calming audio (music, audiobooks, relaxation audio), books, and drawing materials. The IEP modifications would also include explicit structure and communication to help the student gauge the end of the waiting period. (S-48 at page 2).

78. Dismissal of District students from the elementary school begins at 3:05, with the final busses departing at 3:30. Teachers are released at 3:35. (NT at 204-205).
79. The parents have countered with drop-off options of their own. (NT at 149-161, 214-217).<sup>8</sup>
80. Parents' preferred option is to have the van transport the student to a specific intersection near the father's place of employment. The intersection is approximately 35-45 minutes from the out-of-District placement. With a 2:30 departure from the placement, the student would arrive at the intersection at approximately 3:05-3:15. The student's father leaves work at 3:05 and is approximately 5 minutes from the intersection. The parents' preferred option would have the student picked up at the intersection at approximately 3:10. (S- 46; NT at 155-161, 214-216).
81. Parents offered the intersection as a potential drop-off location because they assert that the intersection is utilized as a bus stop by the school district where the intersection is located. The District has been unable to confirm through that school district whether or not this is the case. (S-47, S-49; NT at 155-161).

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<sup>8</sup> The student's father testifies that other locations, in a community approximately an hour away, were offered by the parents. These options were testified to in passing and were not concrete options presented as part of this record. (NT at 208-209).

82. The parents' preferred drop-off is at the intersection of a residential road and a very busy main road in the area (Route 136). (S-46 at pages 1-2, S-47 at pages 5-6; NT at 158-159).
83. Another option offered by the parents was drop-off at the home of the student's grandparents. Their home is a community approximately one hour and 10 minutes away from the out-of-District placement. (S-50; NT at 153-155, 216-217).
84. In accord with Pennsylvania education statute and regulation, the District's transportation policy limits transportation beyond 10 miles from the nearest public highway outside the District's border. The policy recognizes, however, that transportation for students with disabilities shall be "without regard to distance...when required by the student's (IEP)....". (S-51 generally, quoted at page 2).

### **Credibility of Witnesses**

All witnesses testified credibly. No witness's testimony was accorded materially more or less weight than the testimony of any other witness.

### **Legal Framework**

A child eligible under IDEA receives a free appropriate public education ("FAPE") (34 C.F.R. §300.17; 22 PA Code §14.102(a)(2)(iv)) through the delivery of special education and related services in an individualized education program ("IEP"). Special education programming must be reasonably calculated to yield meaningful educational benefit to the student. (Board of Education v. Rowley, 458 U.S. 176, 187-204 (1982)). 'Meaningful benefit' means that a student's program affords the student the opportunity for significant learning in light of his or her individual needs, not simply *de minimis*, or minimal, or 'some', education progress. The child's education programming must be appropriately ambitious in light of the child's strengths and needs, current levels of programming, and goals. (Endrew F. ex rel. Joseph F. v. Douglas County School District, 580 U.S. 386, 137 S. Ct. 988, 197 L. Ed. 2d 335, (2017); Dunn v. Downingtown Area School District, 904 F.3d 208 (3d Cir. 2018)).

Although not strictly defined in IDEA, the 'placement' of a student is most commonly understood as a physical location where special education and related services will be delivered.<sup>9</sup> Where a school district feels that maintaining the educational placement of a student creates a substantial likelihood of injury to the student and/or others, the school district can

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<sup>9</sup> See, e.g., "placement" described in terms of "placement options", being "as close as possible to the child's home, being "educated in the school that he or she would attend if nondisabled", and not being "removed from education in age-appropriate regular classrooms solely because of needed modifications". (34 C.F.R. §300.116; 22 PA Code §14.102(a)(2)(xiii)).

initiate an expedited hearing process to seek a change in the student's placement. (34 C.F.R. §§300.532(a); 22 PA Code §§14.102(a)(2)(xxxii)).

Finally, where transportation of a student is necessary for the student to receive FAPE, that transportation must be made part of a student's IEP. (34 C.F.R. §§300.34(c)(16), 300.324; 22 PA Code §§14.102(a)(2)(vii), 14.102(a)(2)(xxvii)).

## **Discussion & Conclusions**

*Placement.* The record fully supports a finding that the student's behavior in an educational placement at the District presents a substantial likelihood of injury to the student or others. Indeed, there were multiple instances in the 2024-2025 school year, and in the ESY program in the summer of 2025, where injury to educators did, in fact, result from the student's behaviors. The consistent presence of physical aggression, with both peers and educators, in a placement at the District is indisputable. Added to this are multiple instances of elopement, not only from spaces within classrooms and within the school but from the school building as well. While none of those instances of elopement resulted in injury to the student, and the likelihood of potential injury from elopement is unknowable, multiple instances of elopement from school buildings presents an untenable situation.

Further, this record supports a finding that the student's needs cannot be met in a school district setting. Even a specialized classroom at any

school district, including the District, is likely to be inappropriate, as the student requires a therapeutic emotional support setting with intensive supports and specialized expertise working with students with significant social/emotional/behavioral needs. The question of whether the student requires a partial hospitalization program is not at issue in this matter, and the District has reasonably attempted the less restrictive environment of a specialized special education setting. But the student's social/emotional/behavioral needs clearly move the student on the placement spectrum toward specialized settings.

And the particular out-of-District placement identified by the District, offered through the September 2025 NOREP and approved by the parents, albeit with a quickly emergent sense that they wish to reverse that approval, is appropriate. The placement specializes in providing services to students with social/emotional/behavioral needs, services which the student clearly requires. The student would attend a classroom with a small number of students and full adult support. The testimony of the administrator from the placement is heavily credited—her sixteen years of experience leading the placement sets a foundation to provide services for the student which are not simply adequate but, on this record, are geared to allow the student to engage in significant learning/progress on the student's social/emotional/behavioral needs.

Accordingly, it is an explicit finding that the out-of-District placement is appropriate. On this record, the student would ostensibly be in the midst of the 30-day comparable-services IEP period for transition to the placement. Thus, the implementation of the IEP at the placement will be addressed in the order below.

*Transportation.* Having found that the out-of-District placement is appropriate, and that is the easier of the two issues to make an evidentiary determination, the question of transporting the student from the placement at the end of the school day is at the heart of the dispute between the parties. Any reader of this record would recognize that the transportation is the more pointed issue and is at the crux of the ongoing differences regarding the placement.

Eliminating certain transportation options is straightforward. Parents are unavailable to receive the student at the family home until 3:50. This eliminates the options for direct transportation from the out-of-District placement to the home. The length of the commute from the placement to the home of the student's grandparents, in excess of one hour, is too lengthy. That leaves only two workable options— drop-off at the family home with a 25-minute period where the student waits at the District elementary school, or an earlier drop-off at a roadway intersection in another school district.

Each party's preferred position is easy to understand. The District understandably seeks to balance the length of the commute against its obligation to make sure that transportation/drop-off are safe for the student, and, further, to account for the parents being available to receive the student at the family home. The parents understandably seek to minimize the amount of wait-time for the student on the van until they are in a position to receive the student at the family home.

The undersigned hearing officer recognizes that either option is sub-optimal. The pros and cons of each position— safety versus wait-time— can be presented in such a way that a certain option should be embraced, or rejected, depending on the party's position. The hearing officer himself has been of two minds, going back and forth, in weighing the positions of the parties as he has sorted through the evidence.

On balance, the potential safety concerns outweigh the issues related to wait-time. The paramount safety concern is that the roadway intersection is along a very heavily-traveled road. Where the student may potentially elope, having that potential elopement take place along a very heavily-traveled road is something that cannot be minimized.

The District is also tasked with making sure that the student is transported home. Even though parents' preferred option would have the student delivered in-person to the student's father, one can envision

scenarios where the van is at a roadway intersection away from the District, and away from the student's home, without the father being able, perhaps through no fault of his, to retrieve the student.<sup>10</sup> That is a difficult situation which, even if arguably rare, should be avoided.

Even in the District's consideration of the parents' preferred option, it sought to confirm that the roadway intersection was utilized as a school bus stop by the school district where the intersection is located. On this record, that confirmation was lacking. The safety concerns above are heightened if the parents have been mis-informed and that intersection is not a bus stop, or more concerning, perhaps been rejected by the school district as appropriate for a bus stop. This is conjecture because the record is silent on the parents' assertion (it is a bus stop). But the lack of certainty about how any school district views the viability of drop-off at that intersection certainly does not diminish the safety concerns; the lack of information may even deepen such concerns.

The District's preferred option, from a position of the student's safety, provides a measure of security in terms of the student's safety. The student's van would be on District property at the elementary school, a campus environment away from passing traffic. During the student's wait-time on the van, there would be teachers and administrators at the location

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<sup>10</sup> The testimony of the father was not persuasive or concrete, when asked by the undersigned hearing officer about contingencies where the father might not be able to retrieve the student. (NT at 227-229).

as the elementary school was dismissed. One cannot take potential elopement out of the equation, but having educators in and around an educational setting is surely more secure than a busy roadway intersection.

One pauses at the thought of the student being on the van for approximately 25 minutes before departing for the family home. But the student's IEP would be explicitly revised to afford concrete modifications to address the student's needs during that wait. And both the driver and aide will have the safety training necessary should the student's behavior needs require employment of that training. Again to be fair to the student, however, one should not assume that the student will automatically or consistently engage in problematic behavior. And where problematic behavior may emerge, one should not assume that behavior techniques will be unsuccessful or that the student will engage in behavior which, while perhaps not appropriate, is not outsized and is manageable within the confines of the student's behavior plan. All of this is to say that where the District's transportation option is utilized, there has been planning and programming to have it be successful as it can be. To repeat, it may be sub-optimal, but it is reasonably calculated to ensure the student's safety under the circumstances.<sup>11</sup>

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<sup>11</sup> There is always the chance, too, that parents' circumstances may change, or the family may make adjustments to its schedule, to allow for drop-off at the family home at some time earlier than 3:50. Any decrease in the student's wait-time during the student's custody and care by the District at the elementary school location

Accordingly, transportation of the student from the out-of-District placement at the end of the school day, as a related service in the IEP, shall be to the District's elementary school, awaiting the appropriate time for the student to be transported to the family's home at approximately 3:50.

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## **ORDER**

In accord with the findings of fact and conclusions of law as set forth above, the student's special education programming shall be delivered at the placement ("out-of-District placement") identified on the September 19, 2025 notice of recommended educational placement ("NOREP") and made the subject of the evidence in this matter. With the issuance of this order, pendency is established at this placement unless the parties through the student's individualized education program ("IEP") team agree otherwise through an approved-NOREP process, or a subsequent due process or judicial determination, establish pendency in a different placement.

Transportation as a related service under the terms of the student's IEP shall take place as follows:

The Brownsville Area School District ("District") shall arrange for daily van transportation to/from the out-of-District placement where the student

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would obviously be helpful. It must suffice that the student is safe and programming is in place to help the student during the wait-time.

is the only passenger, where the student is accompanied by a male paraprofessional, and where the paraprofessional and van driver have both undergone safety training for safe and appropriate use of restraint.

Pick-up shall be at the student's family home at a time to allow the student to arrive at the out-of-District placement by 8 AM. The District shall arrange for the student be picked up at the out-of-District placement at 2:30 PM. The student shall be transported to the District elementary school, waiting there on the van until the time when van shall depart for the family home to arrive at the family home at 3:50 PM.

The student's current IEP shall be revised as a directive of this order to include as program modifications the list of environmental and sensory supports, structure and predictability supports, engagement and distraction supports, and safety and behavior management supports, present in the record at S-48, page 2.

Without knowing exactly how often the student may have attended the out-of-District placement after this record closed, and consequently the degree to which the out-of-District placement is comfortable suggesting revisions to the student's IEP based on its experience with the student, it is ordered that the student's IEP team shall meet no later than Wednesday, December 10, 2025 to revise the student's IEP for implementation of the student's IEP at the out-of-District placement. Attendees, including parents, District participants, educators from the out-of-District placement, intermediate unit providers, and other IEP team members invited by either

party, shall convene in person, by telephone, or via videoconference, as it may suit each attendee. The District shall host any attendee who wishes to participate in person and shall orchestrate the participation for all attendees given their preference for participation by telephone or via videoconference. Scheduling shall be on a day/time reasonable to as many attendees as possible, with priority given to the scheduling needs of parents and educators from the out-of-District placement. Accounting for flexibility and reasonableness regarding scheduling the IEP meeting, the student's IEP shall be formally proposed through a NOREP issued no later than December 17, 2025, for implementation no later than the first day of schooling at the out-of-District placement in January 2026. These deadline-dates are maximal; to the extent that the student's IEP team moves to convene the IEP team, finalize a proposed IEP, and/or the District moves to issue a NOREP at points earlier than those ordered above, nothing in this order should be read to prevent action by earlier dates.

With the issuance of this order, and controlled by the date of this order in terms of the 60 calendar-day timeline for the completion of a re-evaluation, the out-of-District placement is hereby provided with hearing officer authority to conduct updated cognitive and academic achievement assessments through a school psychologist possessing an active school psychology certification issued by the Pennsylvania Department of Education. The selection of the assessment instruments, and the location, timing, conditions, and other procedural elements related to administration

of the assessments, are all in the sole discretion of the evaluator. Once these assessments have been undertaken, the school psychologist shall issue a report with the results of the assessments and any analysis, summary and/or conclusions that the school psychologist feels it is necessary to include. The report shall be issued simultaneously to the parents and District. As soon as practicable, the District shall issue a re-evaluation report that includes the results of the evaluation, and the student's multi-disciplinary team ("MDT") shall meet to discuss the District's re-evaluation report, especially in light of the evaluator's report. The evaluator and other educators from the out-of-District placement which the placement feels should be members of the MDT, shall be invited by the District to the MDT meeting.

To the extent that the District has not yet made arrangements for speech and language, and occupational therapy, services through the intermediate unit to be provided at the out-of-District placement, the District shall arrange for the provision of those services forthwith.

Any claim 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

11/07/2025