

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. 30755-24-25

Child's Name:

N.S.

Date of Birth:

[redacted]

Parents:

[redacted]

Local Educational Agency:

Seven Generations Charter School
154 East Minor Street
Emmaus, PA 18049

Counsel for Parents:

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Hearing Officer:

Michael J. McElligott, Esquire

Date of Decision:

06/30/2025

Introduction

This special education due process hearing concerns the educational rights of [redacted] (“student”), a student who attends the Seven Generations Charter School (“Charter School”).¹ The student currently qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEA”)² as a student with multiple disabilities, including intellectual disability, and speech/language (“S&L”) impairment.

The student has attended the Charter School for the past three school years (2022-2023, 2023-2024, and 2024-2025). After some months of dialogue between the parties in the 2024-2025 school year, the Charter School sought to change the student’s placement to an educational placement outside of the Charter School. Parents disagreed with the proposed change in placement, and, in January 2025, the Charter School filed the complaint which led to these proceedings, seeking a special education due process ruling to effectuate the change in placement.³

¹ The generic use of “student”, and avoidance of personal pronouns, are employed to protect the confidentiality of the student.

² It is this hearing officer’s preference to cite to the pertinent federal implementing regulations of the IDEA at 34 C.F.R. §§300.1-300.818. *See also* 22 PA Code §§711.1-711.62 (“Chapter 711”).

³ Subsequent to the Charter School’s January 2025 complaint, parents filed a special education due process complaint in March 2025, with retrospective claims for alleged denial of a free appropriate public education (“FAPE”) for the school years where the student attended the Charter School. The parents’ complaint proceeds in a separate process at a different ODR file number.

For reasons set forth below, I find in favor of the parents, namely that a placement within the Charter School must continue, albeit with changes to the special education services, prior to any out-of-Charter-School placement.

Issue

What is the appropriate placement for the student
in the 2025-2026 school year?

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.

Prior Educational Programming

1. The student attended [redacted] programming and, in the 2019-2020 school year, transitioned to the family's school district of residence as a [redacted] student. (Charter School Exhibit ["S"]-2; Notes of Testimony ["NT"] at 238-309).
2. In June 2019, the school district issued an evaluation report ("ER"). (S-2).
3. In the June 2019 ER, the evaluator noted the student's prior medical diagnoses, including, among others, cerebral palsy, global

developmental delay, apraxia of speech, and expressive language disorder. (S-2).

4. The June 2019 ER identified the student as a student with a primary identification of multiple disabilities, as a result of an intellectual disability and an orthopedic impairment, and a secondary identification of S&L impairment. (S-2).
5. The student's needs, as identified in the June 2019 ER, were as follows: functional academics (identifying letters, numbers, shapes, and colors), adaptive functioning across conceptual, practical, and social domains, S&L needs (expressive and receptive language skills), occupational needs (visual motor skills, visual spatial skills, fine motor skills, visual attention and focus, prewriting/handwriting, use of school tools), and physical therapy needs. (S-2).
6. The student attended [redacted] at the school district in the 2019-2020 school year, repeating [redacted] in the 2020-2021 school year. (NT at 238-309).⁴
7. The student attended [redacted] grade at the school district in the 2021-2022 school year. (S-4; NT at 238-309).

⁴ The student repeated [redacted] as a result of the interruption of the first [redacted] year by the COVID-19 pandemic. (NT at 238-309).

8. In May 2022, at the end of the student's [redacted] grade year, the school district re-evaluated the student. (S-4).
9. The student's needs, as identified in the June 2022 re-evaluation report ("RR"), were as follows: academic needs (receptive and expressive language skills, reading readiness skills, math readiness skills), S&L needs (receptive and expressive language skills), physical therapy needs (stairs/steps, balance skills, ball skills, jump rope skills, jumping jacks, galloping and skipping), occupational therapy needs (writing needs, fine motor needs). (S-4, S-6).
10. By the end of the student's [redacted] grade year, the student's parents were dissatisfied with the student's programming at the school district. Especially distressing to the parents was the student's refusal to communicate verbally with individuals at the school district. (S-4, S-6; NT at 238-309).

2022-2023 / [redacted] Grade

11. The student's siblings attended the Charter School. Parents investigated the Charter School as a potential placement for the student and enrolled the student at the Charter School for the student's [redacted] grade year. (NT at 9-151, 238-309).
12. In September 2022, the student's individualized education program ("IEP") team developed an IEP. (S-8).

13. Having just begun to educate the student, the present levels of educational and functional performance in the September 2022 IEP were largely from the May 2022 RR and June 2022 IEP issued by the school district. (S-4, S-6, S-8).
14. Parent input in the September 2022 IEP regarding the early experience of the student in the [redacted] grade year indicated that the student's mother felt "(the student) is much happier at (the Charter School) than at (the) previous school. She is happy to hear that (the student) is communicating with teachers and staff, even if it is only a few words at this time.... the team is eager to see (the student) communicate more as mom reports (the student) communicates frequently at home." (S-8 at page 35).
15. The student's needs as identified by the Charter School in the September 2022 IEP included the following: S&L needs (expressive language and social pragmatic skills), academic needs (number identification, math computation/addition, letter sounds, letter identification, reading fluency -CVC and sight words), occupational therapy needs (writing skills, fine motor skills), and physical therapy needs (coordination, visual coordination, dexterity). (S-8).
16. The September 2022 IEP included ten goals addressing the various needs of the student's needs. (S-8).⁵

⁵ Detailed findings of fact related to student progress in this IEP or any of the student's IEPs, as will be seen below, will not be part of this decision. The provision of FAPE under the terms of the student's IEPs is at issue in the process engendered by the parents' complaint; progress, or lack of progress, under the terms of those IEPs will be made part of more detailed fact-finding in that matter.

17. The educational placement outlined in the September 2022 IEP was itinerant learning support, with the student spending 95% of the school day in regular education (i.e., 5% of the school day in special education). (S-8, S-9).
18. Parents approved the program and placement outlined in the September 2022 IEP. (S-9; NT at 9-151, 238-309).

2023-2024 / [redacted] Grade

19. In September 2023, the student's IEP team developed an IEP. (S-14).
20. In the September 2023 IEP, the student's [redacted] grade teacher generally reported, as of May 2023:

"(The student) is a very sweet student, but tends to be a little shy in class. (The student) needs encouragement to participate during instructional time, however (the student) does like to participate in morning meeting. (The student) has come a long way since the beginning of the school year in terms of vocalizing and socializing with peers. (The student) completes...class work with teacher support. (The student) is also supported by teacher assisting...with taking out materials and turning to different pages in order to follow along with the instruction. (The student) is working towards organizing [work] space and may benefit from

utilizing a colored cart to more easily find...materials. (The student) does a great job completing homework some of the time and benefits from a teacher reminder to hand it in. (The student) does well on tests that are modified and given...with teacher support.” (S-14 at page 6; parenthetical material edited for stylistic consistency; bracketed material edited for clarity).

21. The present levels of educational performance in the September 2023 IEP indicated that the student was performing at the 1st percentile in a curriculum-based literacy assessment and at the very beginning level of reading instruction. (S-14 at pages 6-7).
22. The [redacted] grade teacher noted that the student did not exhibit any behaviors that interfere with learning and recommended continued support for socialization with peers. (S-14 at page 7).
23. The student required teacher support for “all academic tasks in the classroom” and for tests/quizzes. (S-14 at pages 7-8).
24. Parent input in the September 2023 IEP focused on increasing the amount and volume of vocalized speech, occupational therapy support, reading instruction, and social skills. (S-14 at page 37).
25. The student’s needs as identified by the Charter School in the September 2023 IEP remained largely the same: S&L needs

(expressive language), academic needs (number identification, math computation/addition, letter sounds, letter identification, reading fluency - CVC and sight words), occupational therapy needs (writing skills, fine motor skills), and physical therapy needs (coordination, visual coordination, dexterity). (S-14).

26. The September 2023 IEP included nine goals addressing the various needs of the student's needs. (S-14).
27. The educational placement outlined in the September 2023 IEP was itinerant learning support, with the student spending 95% of the school day in regular education (i.e., 5% of the school day in special education). (S-14, S-15).
28. The notice of recommended educational placement ("NOREP") issued by the Charter School in September 2023 indicated that a supplemental level of supports (21-79% of the school day in special education) or a full-time level of supports (80% or more of the school day in special education) "would not fulfill the (Charter School's) obligation to program for (the student) in (the) least restrictive environment". (S-15 at page 2).
29. The September 2023 IEP was implemented for the student's [redacted] grade year. (NT at 199-236).
30. In [redacted] grade, the student received one-to-one instruction in mathematics from a special education teacher. The student received small group instruction in reading with a special education teacher. The instruction was within the Charter School's regular curriculum and took place in the regular education classroom. (NT at 199-236).

31. The student did not receive social skills instruction or programming. The Charter School has a schoolwide social/emotional curriculum which it delivers to all students. The Charter School supported the student's needs for peer socialization within this curriculum. (NT at 199-236).

2024-2025 / [redacted] Grade

32. In September 2024, the student's IEP team met to craft the student's IEP. (NT at 9-151, 238-309).
33. The September 2024 IEP contained parent's input, indicating continued satisfaction with the student's programming and progress at the Charter School. (NT at 9-151, 238-309).
34. Classmates with whom the student was receiving reading instruction would no longer be part of the small group in the regular education classroom. The Charter School was also concerned that the student's achievement levels were falling farther behind the achievement of grade-level peers. (NT at 9-151).
35. In September 2024, the District requested permission to re-evaluate the student, permission which the parents provided. (S-24).
36. In November 2024, the District issued its RR. (S-25; NT at 158-194).

37. The November 2024 RR identified the student as a student with multiple disabilities and S&L impairment. (S-25).
38. The November 2024 RR identified the student's needs as follows: S&L (expressive and receptive language), academic (basic reading, reading comprehension, oral reading fluency, math problem-solving, math calculation, written expression). The RR also contained content from occupational therapy and physical therapy evaluations, where the continuation of services was recommended. (S-25).
39. The November 2024 RR contained a list of recommendations for the educational setting. None of the recommendations involve instruction or modification for adaptive settings or content. (S-25).
40. Teacher input from the student's [redacted] grade teachers in the November 2024 RR indicated that the student was engaged in academic learning and, generally, made progress in reading and mathematics. Results of S&L, occupational therapy, and physical therapy evaluations in the RR show areas of strength and areas of need. (S-25).⁶

⁶ As indicated in footnote 5, general findings of fact as to progress are made in this matter, deferring to the affiliated special education hearing on parents' complaint for more detailed fact-finding as to progress, or lack of progress, in the student's programming.

41. In November 2024, the student's IEP team met to discuss the student's programming. The Charter School shared its view that a change in placement to an educational setting outside of the Charter School would be appropriate. (S-26 at pages 28-31; NT at 9-151).
42. The student's needs identified in the November 2024 IEP did not include any identified needs in reading, although the IEP contained a reading goal. (S-26 at pages 33-34, 54-55).
43. The November 2024 IEP included nine goals addressing the various needs of the student's needs. (S-26).
44. The educational placement outlined in the November 2024 IEP was itinerant learning support, with the student spending 95% of the school day in regular education (i.e., 5% of the school day in special education). (S-26).
45. In December 2024, the student's IEP team met again, with parents sharing their view that they did not feel a placement outside of the Charter School was appropriate. They sought to have the student remain at the Charter School with changes to the student's programming, including the addition of a 1:1 aide for the student. (S-26 at pages 28-31; NT at 238-309).

46. In December 2024, the Charter School formally recommended a placement outside of the Charter School, issuing a NOREP recommending a full-time life skills placement with less than 20% of the school day in regular education (i.e., 80% or more of the school day in special education). (S-27).
47. In light of the issuance of the NOREP and ongoing discussions between parents and educators, in mid-January 2025 the student's IEP team met to consider the student's programming. (S-29).
48. The Charter School identified, in rough terms, potential outside placements for a full-time life skills setting, focusing particularly on an intermediate unit ("IU") life skills classroom housed at an elementary school in the student's school district of residence, the elementary school the student attended for [redacted] grade. This elementary school is also the student's neighborhood school. (S-29 at page 30, S-30, S-35, S-36).
49. In late January 2025, the Charter School filed the complaint that led to these proceedings, seeking a special education due process ruling to effectuate the change in placement.
50. In February 2025, a special education administrator from the Charter School visited the IU life skills classroom, and the visit reinforced the Charter School's view that a life skills placement was

appropriate for the student and that the IU classroom, particularly, was the Charter School's preferred option. Parent declined to participate in the visit. (S-30, S-34; NT at 9-151, 238-309).

51. The student's need which impacts the student most comprehensively is expressive S&L. The student exhibits a lack of verbal engagement with most adults and peers. The student has the ability for verbal expression, evidenced at home and with one particular Charter School educator but consistently does not engage in expressive verbal communication with others. (S-4, S-8, S-14, S-25, S-26, S-29; NT at 9-151, 158-194, 199-236, 238-309).

52. The student's special education teacher testified that, generally, the student made progress in programming over [redacted] grades. (NT at 199-236).

53. The school psychologist who conducted the November 2024 re-evaluation testified that the student's cognitive testing and academic achievement assessment, both of which yielded scores in very low percentiles, inter the student's inability to maintain progress through the Charter School's [redacted] grade curriculum. (NT at 158-194).

54. There were some indications in the record, through certain IEP content and the testimony of the student's special education teacher, that toileting may have been a concern for the student. The record,

taken in its entirety, supports a finding that toileting is not an issue that plays any outsized role in the student's adaptive needs. (S-29; NT at 199-236, 238-309).⁷

55. The Charter School apparently limits its special education services to itinerant-level learning support. The Charter School utilizes outside placements for students requiring other types of support, such as autism support or life skills, or higher levels of support, such as supplemental services (20-79% of the school day in special education) or full-time services (80% or more of the school day in special education). (NT at 9-151, 199-236).

56. The Charter School is concerned that more specialized instruction, delivered outside of the regular education classroom, would isolate the student or provide an overly restrictive placement. (NT at 9-151, 199-236).

Credibility of Witnesses

All witnesses testified credibly. No one witness's testimony was accorded materially more weight than any other witness.

⁷ There were three incidents over two school years. One involved the student having a stomach flu, with consequent urgency. The other two involved not elimination control but the student failing to request permission for use of the bathroom. These were isolated incidents and the mother's testimony was persuasive that the student does not present with toileting concerns on any level. (NT at 199-236, 238-309).

Legal Framework

To assure that a child eligible under IDEA receives a free appropriate public education ("FAPE") (34 C.F.R. §300.17; 22 PA Code §711.3(b)(3)), the child's 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. , 137 S. Ct. 988, 197 L. Ed. 2d 335, (2017); Dunn v. Downingtown Area School District, 904 F.3d 208 (3d Cir. 2018)).

A necessary aspect of the provision of FAPE requires that the placement of a student with a disability take into account the least restrictive environment ("LRE") for a student. Educating a student in the LRE requires that the placement of a student with disabilities be supported, to the maximum extent appropriate, in an educational setting as close as possible to regular education, especially affording exposure to non-disabled peers. (34 C.F.R. §300.114(a)(2); 22 PA Code §711.3(b)(11); Oberti v. Board of Education, 995 F.2d 1204 (3d Cir. 1993)).

Finally, both IDEA and Pennsylvania special education regulations for charter schools require that “a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services” including “alternative placements (such as) instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions”. The continuum must include provision for “services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement”. (34 C.F.R. §300.115; 22 PA Code §711.3(b)(12)).

Discussion & Conclusions

Here, the student’s placement should remain at the school which the student attended in the 2025-2026 school year.

First, as pointed out above, the fact-finding does not delve deeply into the student’s progress, as that fact-finding and determinations about progress, or lack of progress, are more properly taken up at the affiliated process involving parents’ denial-of-FAPE claims. But even on a surface level, even with a mosaic of complex needs the student’s experience at the Charter School has largely been successful, both in terms of academics and related-services therapies.

Second, over [redacted] grade, the Charter School’s programming and placement for the student was a standard general-education curriculum delivered almost entirely in regular education. This was the programming

and placement was proposed, at least initially, for the [redacted] grade year. This programming skewed heavily to one side of the continuum of special education services—in effect, nearly a regular education program, with 95% of the school day spent in regular education with the delivery of a regular education curriculum. Certainly, there were modifications to that general-education curriculum for the student. But when an IEP calls for 95% of a student’s time in regular education settings, it is firmly planted on one side of the continuum.

Shortly into the school year, the Charter School’s placement recommendation was revised to full-time life skills placement outside of the Charter School. This recommendation skewed deeply to the other side of the continuum—a full-time setting where instruction would be an alternative curriculum, with far less interaction with regular-education peers. This movement from one side of the continuum to the other is simply too stark and sudden to allow it to be supported. Below, it may be that an appropriate program/placement for the student might be quite different from what it has been at the Charter School over the past three school years, and even with adjustments to the programming/placement, the student might eventually be in more restrictive settings given the student’s needs. But the record cannot support such a drastic change in placement when more measured changes, calibrated along the continuum based on the student’s unique learning needs, are in order.

This brings up another facet to the Charter School's approach to the student's programming/placement. The record supports the notion that the Charter School approaches questions of special education programming as follows: 'This is how we organize our school and curriculum; outside placements are available for students, like Johnny, whose disability does not neatly fit into that organization and curriculum'. It appears that the Charter School provides support for students who can maintain engagement with, and the pace of, the Charter School's regular education curriculum with itinerant-level learning services. When that engagement or pace are impacted beyond a level where itinerant learning support can bridge the gap, the Charter School appears to default to placements outside of the school.

This is exactly backwards. Instead of setting the contours of a school structure and curriculum and peeling off students who do not work within those parameters, the Charter School must assess a student's unique needs and design/provide the individualized services and supports to meet those needs. In effect, the Charter School needs to ask of every special needs student: 'This is what Johnny educationally requires based on his unique needs; how can we appropriately program for him here at the school?'.

Granted, as those needs require more intensive supports in potentially specialized settings—as one moves along the continuum from a purely regular education setting to, say, full-time residential services where a

student might reside at a facility or school, outside of the family home—there may come a point where the local education agency needs to coordinate with outside providers. Nothing in this decision should be read to require this Charter School, or any local education agency, to provide at its facilities every level of support for every intensity of student need.

But providing schooling in the LRE requires that moving to outside providers should come at the end of a process working through as many individualized supports within the school as possible. That process did not happen in the instant case where, at least in the medium term, adjustments to curriculum, staff, and classrooms for this student are well within the control of the Charter School to implement.

Finally, one of parents' specific requests is for the student to have a 1:1 aide throughout the student's day. This will not be made part of the order below for two reasons. One, the parents feel an aide may allow for the student to advocate for needs or requests. It is the considered opinion of this hearing officer that the regular involvement of an aide might have the opposite effect, that the student might come to be overly reliant on having the aide be the conduit for communication rather than bolster the student's hoped-for increase in advocacy. Two, one of the student's most pressing needs is an increase in the use of verbal speech to communicate with others. Related to the first point, the accompaniment of an aide throughout the day might blunt the student's progress toward vocalizing speech when

interacting with others. However, the student likely requires assistance in regular-education academic settings. Thus, the order below will address the assistance of an aide in academic classes.

Accordingly, in the order below, the student's placement in the upcoming school year will remain at the Charter School, and the IEP team will be given certain concrete directives, or instructed to undertake deliberations, regarding revision of the student's IEP.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the student's placement shall remain at the Seven Generations Charter School ("Charter School") for the 2025-2026 school year.

The Charter School shall research and obtain both a specialized reading curriculum and a specialized mathematics curriculum for use in the student's educational programming, to be delivered by a special education teacher in a learning support setting.

The Charter School shall research and obtain specialized social skills curriculum for use in the student's educational programming, to be delivered by a special education teacher or school counselor in a setting within the protocols for the curriculum.

The selection of the specialized curricula in the preceding paragraphs shall not be an IEP team decision. The research and selection of those curricula are at the sole discretion of the Charter School.

The student's individualized education program ("IEP") shall be revised as follows:

- The student shall receive 30 minutes per day of direct instruction in the specialized reading curriculum.
- The student shall receive 30 minutes per day of direct instruction in the specialized mathematics curriculum.

- The student shall receive 30 minutes per week of direct instruction in the specialized social skills curriculum.
- The student's speech and language therapy shall be increased from four 30-minute sessions per month to eight 30-minute sessions per month.
- As a related service, the student shall have the assistance of a 1:1 aide in regular education academic classes (reading, mathematics, English & language arts, science, and social studies).

The IEP team shall determine how best to structure the student's daily/weekly schedule to accommodate the specialized instruction.

The student's IEP shall be revised to include the specially-designed instruction and related services outlined above. Furthermore, the student's annual IEP date shall remain in the month of September, the precise date to be determined as the directives and revisions indicated above shall be finalized by the IEP team, although the IEP shall be finalized for implementation no later than September 30, 2025. Once the student's IEP is revised accordingly, the IEP shall indicate the new implementation date and anticipated-duration date wherever those dates appear in the content of the IEP.

To the extent that the specialized reading and specialized mathematics curricula suggest or require that the student's reading and/or mathematics goals should be revised, the IEP team shall undertake that/those revision(s).

The IEP team shall craft an explicit social skills goal.

Nothing in this order shall limit the ability of the student's IEP team to amend the provisions of this order, provided that the amendments are in writing and the parties agree, in writing, as to those amendments.

It may be that some aspect(s) of the student's IEP is/are impacted procedurally or in terms of drafting, given the directives of this order, but is/are not addressed explicitly in this order. Any aspect of the IEP so impacted is left for the consideration of the IEP team to resolve in terms of the procedure or drafting of the IEP.

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

06/30/2025