

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. 32285-25-26

Child's Name:

A.C.

Date of Birth:

[redacted]

Parent:

[redacted]

Local Education Agency:

Universal Institute Charter School
801 South 15th Street and 1415 Catherine Street
Philadelphia, PA 19146

Counsel for LEA:

Dana Y. King, Esq.
1515 Market St., Suite 1200
Philadelphia, PA 19102

Hearing Officer:

Joy Waters Fleming, Esq.

Date of Decision:

January 16, 2026

INFORMATION AND PROCEDURAL HISTORY

The Student¹ is in [redacted] and enrolled in a Charter school (Charter). The Student is eligible for special education under the Individuals with Disabilities Education Act (IDEA)² as a child with Other Health Impairment (OHI) (ADHD) and is entitled to protections under Section 504 of the Rehabilitation Act of 1973³. The Charter filed a due process complaint seeking an expedited hearing and Order to change the Student's placement to an interim alternative educational setting (IAES) for 45 days pursuant to 20 U.S.C. 1415(k)(3)(A) and (B); and 34 CFR 300.532(a) and (b)(2)(ii) on grounds that the Student is substantially likely to injure self or others if maintained in the current placement. The *pro se* Parent (Parent) disagreed with the Charter's conclusion that a change in the Student's placement to an IAES is necessary.

After reviewing the record, and for the reasons detailed below, the relief requested by the Charter is denied.

¹ To protect confidentiality and privacy, the Student's name, gender, and other potentially identifiable information are not included in the main body of this decision. All personally identifiable information, including details on the cover page, will be redacted before posting on the Office for Dispute Resolution's website, in accordance with its obligation to publicly share special education hearing officer decisions under 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 implementing federal regulations are found at 34 C.F.R. §§ 300.1 – 300.818, and the state regulations are found at 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14).

³ 29 U.S.C. § 794. The federal regulations implementing Section 504 are set forth in 34 C.F.R. §§ 104.1 – 104.61. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 15.1 – 15.11 (Chapter 15).

ISSUE

- 1) Should the Student's placement be changed to an interim alternative education setting (IAES) for up to 45 school days on the basis that maintaining the current placement is substantially likely to result in injury either to the student or to others?

FINDINGS OF FACT

1. The Student is [redacted] years old and enrolled in [redacted] at the Charter School for the 2025–2026 school year. The Student is eligible for special education and related services as a child with an Other Health Impairment (OHI) due to ADHD. (S-1, S-2)
2. Before [redacted], the Student received early intervention services for developmental delay. While enrolled in an early intervention preschool program, the Student made progress but exhibited difficulty with physical aggression. (S-6)
3. After enrollment in the Charter, on August 21, 2025, through a Notice of Recommended Educational Placement (NOREP), the Parent agreed to the Student's placement at the itinerant learning/emotional support level. (S-1, S-5; N.T. 77)
4. The Student began attending the Charter School on September 5, 2025. On October 1, 2025, the Student was reportedly assigned a one-to-one aide.⁴ (S-5; N.T. 79, 87)
5. On October 20, 2025, the Charter completed an Evaluation Report (ER) of the Student. The ER included parent and educator input,

⁴ During testimony, the Parent disputed that an aide was assigned on that day. The District introduced no corroborating evidence to substantiate the purported assignment of an aide to the Student on October 1.

- assessments of cognitive, academic, and social-emotional functioning, and speech and occupational therapy evaluations. (S-1, S-2)
6. On measures of intellectual ability, the Student's scores fell within the average range. (S-2 at p. 5)
 7. The [redacted] teacher reported in the ER that the Student hits others, does not acknowledge personal space, and throws objects at peers. Most of the Student's interactions were not positive, although at times they were able to sit with peers and engage in brief positive interactions. The teacher identified the Student's needs as including support with focusing, sitting, refraining from hitting, staying on task, peer interaction, anger management, and impulse control. (S-2)
 8. Academically, the Student demonstrated low-range skills in decoding, spelling, and alphabet writing fluency. In mathematics, the Student's numerical operations performance fell within the low-average range, and math problem-solving performance was within the average range. (S-2 at p. 17)
 9. As part of the ER, the Parent completed BASC-3 rating scales. The Parent rated the Student as exhibiting at-risk behaviors in the areas of aggression, adaptability, and activities of daily living, and clinically significant behaviors in the areas of hyperactivity, depression, and attention problems. (S-2 at p. 21)
 10. The [redacted] teacher completed BASC-3 rating scales and rated the Student as exhibiting at-risk behaviors in the areas of learning problems, leadership, and functional communication, and clinically significant behaviors in the areas of hyperactivity, aggression, conduct problems, depression, attention problems, atypicality, withdrawal, adaptability, social skills, and study skills. (S-2)
 11. The ER identified the Student's needs as including letter identification and sound recognition; identifying and writing numbers; one-to-one

number correspondence; distractibility; aggressive behavior toward peers; remaining seated; anger control; impulsivity; work completion; and the need for significant adult attention. (S-2 at p. 18)

12. The ER concluded that the Student met the eligibility criteria for special education as a child with an Other Health Impairment (OHI) due to ADHD. The ER also noted significant discrepancies between the Student's cognitive abilities and reading, decoding, spelling, writing fluency, and numerical operations skills, but deferred consideration of a specific learning disability until at least [redacted] grade. (S-2)
13. The ER concluded that, due to ADHD and academic delays, the Student required specially designed instruction in order to make sufficient academic and behavioral progress. (S-2 at p. 16)
14. The Student did not meet the criteria for a speech or language impairment but was found eligible for occupational therapy services. (S-2 at p. 16)
15. A Functional Behavioral Assessment (FBA) completed on October 20, 2025, identified behaviors of concern, including off-task behavior, elopement from seat, low frustration tolerance, and physical aggression, including hitting, striking an adult, scratching, kicking, and biting. (S-9; N.T. 48)
16. The FBA included six direct observations of the Student conducted in September and October 2025. The FBA indicated that the behaviors occurred throughout the school day, lasted from ten minutes to an entire class period, and ranged in intensity from moderate to severe. Based on the assessment data, a formal positive behavior support plan was recommended. (S-9)
17. When the Student's behavior escalates and cannot be neutralized, the Student is removed from the classroom to a secluded area with the

- behavior specialist and assigned a one-to-one aide. These behavioral incidents occur three to five days per week. (N.T. 49–50)
18. Behavioral interventions utilized with the Student include constant verbal praise, chunking of demands, participation in a social skills group, use of a break card, requesting feedback, and close proximity of the assigned one-to-one aide. (N.T. 52–53)
 19. On November 10, 2025, the IEP team convened to develop an Individualized Education Program (IEP) for the Student. The IEP included a special consideration that the Student’s behavior impeded learning or that of others. (S-4)
 20. The present levels section of the IEP summarized data from the October 2025 FBA, noting that many behavior management strategies had been ineffective, while a self-tracking system with rewards, behavioral support consultation, and consistent parent communication were partially effective. (S-4)
 21. The IEP summarized five disciplinary referrals involving the Student, including inappropriate contact with staff, physical aggression toward staff, and significant classroom disruption such as [redacted](S-4; N.T. 146)
 22. The IEP included goals addressing literacy, mathematics, writing, behavior, and occupational therapy. Specially designed instruction related to behavior included predictable routines, coping strategies, firm limits, rewards, shortened instruction, and positive reinforcement. (S-4)
 23. The IEP provided for forty-five minutes per day of research-based reading and math intervention, forty-five minutes per day of social-emotional learning, forty-five minutes per week of social skills instruction, and thirty minutes per week of occupational therapy. (S-4)

24. Related services listed in the IEP included group occupational therapy, a daily individual personal care assistant (PCA), and group social skills instruction. (S-4; N.T. 65, 70)
25. The November 2025 IEP offered the Student an educational placement at the supplemental level. (S-4)
26. In addition to the teacher, the Student's [redacted] classroom is staffed with an assistant. The classroom assistant observed the Student becoming frustrated, picking up and throwing objects, [redacted]. When these behaviors occur, the Student is escorted to the Principal. (N.T. 28-29, 35)
27. Although the Student was assigned a one-to-one aide, testimony established that behavioral incidents occurred when the aide was absent. (N.T. 33, 40)
28. On November 20, 2025, the Charter issued a NOREP proposing consideration of an alternative placement setting for the Student. Although the Parent indicated agreement to the recommendation, a change of mind occurred. (S-10; N.T. 90-91, 101)
29. On December 11, 2025, the Charter filed a due-process complaint regarding the Student.

DISCUSSION AND CONCLUSIONS OF LAW

GENERAL LEGAL PRINCIPLES

Witness Credibility

Hearing officers, as factfinders, are charged with the responsibility of making credibility determinations of the witnesses who testify. *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).

The Charter offered testimony from a [redacted] classroom assistant, the school-wide behavior specialist, and the Principal. The Parent testified in support of their case. The limited testimony was reviewed and weighed in light of the witnesses' participation in the hearing. However, all testimony was reviewed and weighed in light of the witnesses' participation in the hearing. I found the testimony from the witnesses who experienced the Student's school behavior, particularly the behavior specialist, to be most credible and reliable, as their testimony was consistent with the documentary evidence.

Burden of Proof

The burden of proof, generally, consists of two elements: the burden of production and the burden of persuasion. In special education due process hearings, the burden of persuasion 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). The party seeking relief must prove its entitlement to the relief demanded by preponderant evidence and cannot prevail if the evidence rests in equipoise. See *N.M., ex rel. M.M. v. The School Dist. of Philadelphia*, 394 Fed.Appx. 920, 922 (3rd Cir. 2010), citing *Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir.2004). In this case, the burden of proof rests with the Charter school.

Discipline Procedures

The IDEA grants significant disciplinary protection to children with disabilities. See generally, 20 U.S.C. § 1415(k). Those protections include

several exceptions, most designed to enable schools to protect the safety of those who learn and work within their walls. The question posed in this case comes directly from one of the exceptions found at 20 U.S.C. § 1415(k)(3)(A):

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.** (emphasis added)

In this case, the Charter requested this expedited hearing because it believed that maintaining the Student in the pendent placement, the Charter's [redacted], is substantially likely to result in injury to the Student or to others. 34 CFR 300.532(a). After a decision on whether the LEA has met its burden, a Hearing Officer may maintain the child in the current placement or order a change to an appropriate interim alternative educational setting (IAES) for not more than forty-five (45) school days. 34 C.F.R. 300.532(b)

The Charter's Claims

The Charter seeks a change in the Student's placement to a forty-five (45) day interim alternative educational setting (IAES) pursuant to 34 C.F.R. § 300.532(a), asserting that maintaining the Student's current placement is substantially likely to result in injury to the Student or others. Based upon the evidence of record, the Charter has not met its burden.

The Student is a [redacted]-year-old child enrolled in [redacted] and is eligible for special education as a child with an other health impairment

(OHI)(ADHD). Prior to [redacted], the Student received early interventionservices and demonstrated difficulty with physical aggression, though progress occurred. Upon entering [redacted] at the Charter, the Student was placed at an itinerant learning/emotional support level and later assigned a one-to-one aide.

The October 20, 2025, evaluation report (ER) and accompanying functional behavioral assessment (FBA) document significant behavioral concerns, including off-task behavior, elopement from seat, low frustration tolerance, and physical aggression such as [redacted]. The FBA noted that these behaviors occurred throughout the day, with moderate to severe intensity, and recommended the development of a formal positive behavior support plan. The Student's [redacted] teacher and Parent both reported clinically significant levels of hyperactivity, aggression, attention problems, and related social-emotional concerns.

The evidence further shows that the Student's behaviors interfered with learning and that of others. Disciplinary referrals summarized in the November 2025 IEP included incidents of physical aggression toward staff, inappropriate contact, and significant classroom disruption, such as [redacted]. When the Student's behavior escalates and cannot be neutralized, they are removed from the classroom to a secluded area with the behavior specialist and one-to-one support. These incidents reportedly occurred three to five days per week.

Although this [redacted] behaviors are serious and concerning, on this hearing record, the Charter has failed to establish by a preponderance of evidence that maintaining the current placement is *substantially likely* to result in injury to the Student or others. The evidence does not reflect that the Student caused injuries requiring medical attention, that the behaviors

escalated in severity over time, or that staff were unable to manage the Student safely with adult intervention. The behaviors described, while disruptive and aggressive, are consistent with the Student's documented disability-related needs as identified in the ER and FBA.

There is no bright-line rule for determining whether a particular student's behavior is dangerous to self or others. Although the IDEA and its implementing regulations do not include factors for deciding whether maintaining a child's current placement is "substantially likely to result in injury," a review of Pennsylvania administrative decisions illustrates the type of conduct decision-makers have found to meet this standard. *Upper Dublin School District*, 67 IDELR 252 (SEA PA 2/19/16); *Penn-Delco School District*, 20 IDELR 210 (SEA PA, 10/29/12)

However, I have concerns that the Student's IEP was newly developed and whether it was implemented with fidelity. Moreover, the record demonstrates that the Charter had not fully implemented or exhausted the behavioral supports identified as necessary to address the Student's needs prior to seeking a change in placement. The October 2025 FBA recommended a formal positive behavior support plan. Although a standalone behavior management or positive behavior support plan is not required where behavioral supports are appropriately embedded within an IEP, the November 2025 IEP does not reflect that sufficient, actionable behavioral supports were in place to constitute a comprehensive plan capable of addressing the Student's significant behavioral needs. The IEP included behavior goals and related specially designed instruction; however, the evidence does not establish that these supports were implemented with sufficient specificity, consistency, or duration to reduce the risk of harm in

the current placement. No data regarding the implementation of the behavioral strategies was introduced into the hearing record.

Despite the development of the IEP on November 10, 2025, the Charter issued a NOREP on November 20, 2025, to consider an alternative placement, and filed for due process on December 11, 2025. The short interval between the development of the IEP and the request for a change in placement does not demonstrate that the Student's current placement, with the newly identified supports and services, was implemented with sufficient fidelity or duration to determine whether the risk of harm could be reduced. Additionally, testimony established that several behavioral incidents occurred when the Student's assigned one-to-one support, who ostensibly was assigned in October, was not present, further undermining the conclusion that the Student could not be maintained safely in the current placement with appropriate supports.

Additionally, although the IEP summarized five disciplinary referrals involving the Student, no incident reports were submitted into evidence to document the circumstances, severity, or outcomes of the alleged incidents. The absence of such documentation further limits the ability to conclude that the Student's behaviors created a substantial likelihood of injury that could not be addressed through appropriate supports and services.

Finally, the record is also devoid of information regarding the proposed interim alternative educational setting. The Charter did not present evidence describing the location, programming, staffing, behavioral supports, or how the proposed IAES would enable the Student to continue receiving educational services and to progress toward meeting IEP goals during the requested removal period. Absent such information, it is not possible to

determine whether the proposed IAES would appropriately address the Student's needs or mitigate the behaviors at issue.

Under 34 C.F.R. § 300.532(a), a hearing officer may order a forty-five (45) day IAES only where the evidence shows that maintaining the current placement is substantially likely to result in injury and that the risk cannot be adequately mitigated through supplementary aids and services. While the Student clearly requires intensive behavioral and instructional support, the evidence does not establish that the Charter implemented all reasonable supports available within the Student's current placement or that such supports were ineffective in reducing the risk of harm.

This decision does not preclude the Charter from exploring a change in the Student's placement through the non-expedited due process hearing procedures should the Charter determine, following appropriate implementation of supports and services, that such a change is necessary to meet the Student's needs.

Accordingly, the Charter has not met its burden of proving that a 45-day IAES is warranted under 34 C.F.R. § 300.532(a), at this time.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows:

1. The Charter's request for a change in the Student's placement to a forty-five (45) day interim alternative educational setting (IAES) pursuant to 34 C.F.R. § 300.532(a) is DENIED.

2. The Student shall remain in the current Charter School educational placement as last agreed upon by the parties.
3. The Charter shall convene the Student's IEP team to review the Student's behavioral needs and to review, strengthen, and/or develop a positive behavior support plan (PBSP), if one does not already exist, consistent with the Student's identified needs and the data contained in the evaluation report and functional behavioral assessment.
4. Nothing in this Order shall be construed to preclude the Charter from:
 - a. continuing to implement the Student's current IEP, including behavioral supports and services;
 - b. exploring a change in the Student's placement through the non-expedited due process hearing procedures, should the Charter determine that such a change is necessary to meet the Student's educational needs; or
 - c. refiling a request for an expedited determination should new facts or circumstances arise that warrant such relief.

Nothing in this decision and Order shall be read to interfere with the parties' ability to modify any provision of this decision and Order to the extent the parties agree in writing.

FURTHER ORDERED that any claims not specifically addressed by this decision and Order are DENIED and DISMISSED.

Joy Waters Fleming, Esquire

Joy Waters Fleming, Esquire
Special Education Hearing Officer

January 16, 2026