

*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. 31696-25-26**

**Child's Name:**

A.R.

**Date of Birth:**

[redacted]

**Parent:**

[redacted]

**Counsel for Parent:**

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**Local Education Agency:**

Cornwall-Lebanon School District  
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**Hearing Officer:**

Joy Waters Fleming, Esq.

**Date of Decision:**

December 15, 2025

## **INFORMATION AND PROCEDURAL HISTORY**

The Student<sup>1</sup> is currently [redacted] years of age, a resident of the District, and enrolled in the [redacted] grade in the District. The Student is eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA) as a child with Autism and a Speech or Language Impairment.<sup>2</sup> The Student has a disability conferring protections under Section 504 of the Rehabilitation Act of 1973.<sup>3</sup>

The Parent filed a Due Process Complaint with allegations that the District denied the Student a FAPE because a special education placement was not available until late October. In response, the District asserted that it made FAPE temporarily available at alternate locations.

For the following reasons, the Parent's claims are granted.

### **ISSUES**

1) Did the District deny the Student a FAPE in violation of the IDEA and Section 504 during the 2024-2025 school year by failing to offer appropriate special education programming and placement until October 23, 2024?

2) If the District denied the Student a FAPE, what, if any, remedy is appropriate?

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

<sup>2</sup> 20 U.S.C. §§ 1400-1482. The federal regulations implementing the IDEA are codified in 34 C.F.R. §§ 300.1 – 300. 818. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14).

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

## **FINDINGS OF FACT**

1. The Student is currently [redacted] years old and enrolled in a District elementary school. The Student is currently eligible for special education as a child with Autism and a speech or language impairment. (P-1, P-2, P-4, P-7)

### **[redacted]-2023-2024 School Year**

2. Before moving into the District, the Student resided in another school district and received [redacted] intervention [redacted] services under a primary eligibility category of Autism. (P-1, P-2; P-4; N.T. 25, 27)
3. In the fall of 2023, the IU completed an evaluation that determined that the Student needed specially designed intervention/instruction as a child with a primary disability of Autism. (P-1)
4. Following the evaluation, the IU developed an IEP that provided the Student with specialized instruction from an autistic support teacher in a [redacted] elementary school classroom. (P-2)
5. During [redacted], the Student initially attended school for two hours per day and exhibited significant communication deficits, limited academic skills, and was not [redacted]. (P-2, p. 7; N.T. 27)

6. By mid-November of the [redacted] year, the Student demonstrated progress in communication, eye contact, letters, and numbers, and became [redacted]; the school day was extended to four hours, with paraprofessional support from two to four hours a day. The Student's classroom had twenty-eight children. (P-2, p. 5, P-3, P-4; N.T. 27-28)

### **[redacted] 2024-2025 School Year**

7. The District's 2024-2025 school year began on August 26, 2024. (S-6; N.T. 59, 78)

8. On August 27, 2024, the family moved into the District. (S-6; N.T. 30-31)

9. On August 29, 2024, the Parent contacted the District to enroll the Student in [redacted]. The District approved the enrollment on September 4, 2024. (P-5, S-3, p.3, S-4; N.T. 32-33, 79)

10. At the time of enrollment, the District advised the Parent that it did not have placement for the Student because its autism support classroom was at capacity with eight students. <sup>4</sup> (N.T. 81)

11. In early September, the District contacted the County consortium of school districts, the IU, and a diagnostic [redacted] to identify a placement for the Student. The District also contacted two out-of-district approved private schools (APS).<sup>5</sup> (S-4, S-5, p-4; N.T. 36-37, 42-43, 82, 85-86)

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<sup>4</sup> 22 Pa. Code §14.105

<sup>5</sup> The Parent remembered meeting at a District elementary school but could not recall it being the diagnostic [redacted]. (N.T. 56)

12. The IU diagnostic [redacted] determined it could not meet the Student's needs. (N.T. 85)
13. The Parent expressed concerns about the restrictiveness and distance of the out-of-district APS placements and preferred an in-district placement close to home. (N.T. 37, 58, 96)
14. On October 7, 2024, the District communicated to the family that it had two viable placement options for the Student (an APS or homeschooling). The Parent regarded homeschooling as a last resort. (S-4, p.3; N.T. 44-45)
15. On October 10, the District sent homeschooling information and paperwork to the family, but it was not returned. (S-4, p. 4; N.T. 87-88, 96, 119-120)
16. On October 11, 2024, the District informed the parents of the opening in its full-day [redacted] autistic support classroom. (S-4; N.T. 88, 99)
17. Following the Parents' October 15 tour of the District placement, an October 21 planning meeting occurred with the family to arrange the Student's plan and transportation. (S-4)
18. On October 22, 2024, the Student started [redacted] in the District. (S-4, p. 4; N.T. 46)
19. Between September 4, 2024, and October 22, 2024, the Student did not receive special education programming or any educational services from the District. During this time, the Student experienced skill regression. (N.T. 38, 50-54, 91-94, 115-116, 131-132)

# **DISCUSSION AND APPLICATION OF LAW**

## **General Legal Principles**

### **The Burden of Proof**

The burden of proof 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 entitlement to their demand 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 Parent is the party seeking relief and bears the burden of proof.

### **Witness Credibility**

During a due process hearing, the hearing officer is charged with judging the credibility of witnesses and must make "express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses." *Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 LEXIS 21639 at \*28 (2003). One purpose of an explicit credibility determination is to provide courts with the information they need in the event of judicial review. See, *D.K. v. Abington School District*, 696 F.3d 233, 243 (3d Cir. 2014) ("[Courts] must accept the state agency's credibility determinations unless the non-testimonial extrinsic evidence in the record would justify a contrary conclusion."). See also, generally *David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009); *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); *Rylan M. v. Dover Area Sch. Dist.*, No. 1:16-CV-1260, 2017 U.S. Dist. LEXIS 70265 (M.D. Pa. May 9, 2017).

The Parent, the District Director of Pupil Services and a District special education administrator testified at this due process hearing. All witnesses testified credibly, candidly sharing their recollections of the facts and their opinions, making no effort to withhold information or deceive me. To the extent that witnesses recall events differently or draw different conclusions from the same information, genuine differences in recollection or opinion explain the difference.

## **DISCUSSION**

There is no dispute that the Student officially enrolled in the District on September 4, 2024. As of that date, the District's duty to provide FAPE became immediate and unconditional. Despite this obligation, the record is clear that the Student did not receive educational services between September 4, 2024, and October 21, 2024. Although the District attributed the absence of services to the fact that its full-time autistic support classroom had reached the state-imposed class-size limit before the Student enrolled, classroom capacity constraints do not relieve the District of its statutory duty to provide FAPE. A district must continue to provide an appropriate program even when a preferred instructional setting is unavailable and must offer interim services while placement issues are resolved. The District did offer temporary or alternative approaches, such as itinerant support, partial-day instruction, in-home instruction, virtual instruction, related services delivered at home, or any hybrid model, that could have enabled the Student to receive an educational benefit during the period at issue.

The record also established that the District did not convene an IEP team to develop an individualized program for the Student before investigating out-of-district placements. Instead, District personnel testified that the full-time autistic support classroom was the only in-district program for students with Autism and that this placement would have been automatically recommended had space been available. That testimony reflects a non-individualized decision-making process contemplated by the IDEA. Moreover, the District unilaterally contacted outside schools without first holding

an IEP meeting or obtaining parental consent to explore those programs. The IDEA expressly requires that an IEP team meet and develop a program before a district may consider or refer a child to a private school or more restrictive setting. 34 C.F.R. § 300.325. The District acknowledged that no IEP meeting occurred during this two-month period, and that informal communications with parents cannot substitute for the formal team procedures required by law. The absence of an IEP meeting prevented the parents from meaningfully participating in decisions regarding their child's education and placement and constituted a procedural violation that impeded parental participation.

The District argued that the absence of services was caused by parental refusal to accept the alternative out-of-district placements offered. The evidence does not support this conclusion. The District never developed or proposed an IEP for any of those programs. Without an IEP and a Notice of Recommended Educational Placement (NOREP), the District cannot establish that it ever made FAPE available. A parent's reluctance to accept highly restrictive placements proposed outside of the formal IEP process does not negate the District's duty to develop an individualized program before recommending placement, nor does such reluctance convert the complete absence of services into a parent-caused denial of FAPE. Even if the parents had rejected certain placements, the District remained obligated to provide interim education and related services, which it did not.

The record also demonstrated that the Student regressed during the period in question in communication, behavior, and motor skills. This regression is consistent with the complete lack of services and strongly indicates a substantive deprivation of educational benefit. Under *M.C. v. Central Regional School District*, 81 F.3d 389 (3d Cir. 1996), the failure to provide any educational program for an extended period constituted a deprivation warranting compensatory education.

For these reasons, the Parent has established, by a preponderance of the evidence, that the District's actions and omissions between September 4, 2024, through October 21, 2024, constituted both procedural and substantive violations of the IDEA and Section 504. The combination of predetermination, failure to convene an IEP

meeting, absence of educational services, and impediment to parental participation resulted in a denial of a FAPE.

### **Compensatory education**

It is well settled that compensatory education may be an appropriate remedy where an LEA knows, or should know, that a child's special education program is not appropriate or that they are receiving only a trivial educational benefit, and the LEA fails to take steps to remedy deficiencies in the program. *Id.* This type of award is designed to compensate the child for the period of deprivation of appropriate educational services, as a quantitative award, after excluding the time reasonably required for a school district to correct the deficiency. *Id.* The Third Circuit has also endorsed an alternate approach, sometimes described as a "make whole" or qualitative remedy, where the award of compensatory education is crafted "to restore the child to the educational path he or she would have traveled" absent the denial of FAPE. *G.L. v. Ligonier Valley School District Authority*, 802 F.3d 601, 625 (3d Cir. 2015); *see also Reid v. District of Columbia Public Schools*, 401 F.3d 516 (D.C. Cir. 2005). Compensatory education is an equitable remedy. *Lester H. v. Gilhool*, 916 F.2d 865 (3d Cir. 1990).

There are cases in which a denial of FAPE creates a harm that permeates the entirety of a student's school day. In such cases, full days of compensatory education (meaning one hour of compensatory education for each hour that school was in session) are warranted. Such awards are appropriate if the LEA's "failure to provide specialized services permeated the student's education and resulted in a progressive and widespread decline in [the Student's] academic and emotional well-being" *Jana K. v. Annville Cleona Sch. Dist.*, 39 F. Supp. 3d 584, 609 (M.D. Pa. 2014). *See also Tyler W. ex rel. Daniel W. v. Upper Perkiomen Sch. Dist.*, 963 F. Supp. 2d 427, 438-39 (E.D. Pa. Aug. 6, 2013); *Damian J. v. School Dist. of Phila.*, Civ. No. 06- 3866, 2008 WL 191176, \*7 n.16 (E.D. Pa. Jan. 22, 2008); *Keystone Cent. Sch. Dist. v. E.E. ex rel. H.E.*, 438 F. Supp. 2d 519, 526 (M.D. Pa. 2006); *Penn Trafford Sch. Dist. v. C.F. ex rel. M.F.*, Civ. No. 04-1395, 2006 WL 840334, \*9 (W.D. Pa. Mar. 28, 2006); *M.L. v. Marple Newtown Sch. Dist.*, ODR No. 3225-11-12-KE, at 20 (Dec. 1, 2012); *L.B. v. Colonial Sch. Dist.*, ODR

No. 1631-1011AS, at 18-19 (Nov. 12, 2011). Accordingly, the Student shall receive full school days of compensatory education for each school day between September 4, 2024, and October 21, 2024.

## **ORDER**

AND NOW, this 15th day of December 2025, after careful consideration of the testimony, evidence, and arguments of the parties, it is hereby ORDERED as follows:

1. The District denied the Student a free appropriate public education under the IDEA and Section 504 from September 4, 2024, through October 21, 2024.
2. The District's failure to convene an IEP team, its predetermination of placement, and its failure to provide any educational or related services during this period constituted procedural and substantive violations of the IDEA and Section 504.
3. The District shall provide the Student with full school days of compensatory education for each school day between September 4, 2024, and October 21, 2024, inclusive. Each full school day shall be calculated at six (6) hours unless evidence establishes a different length of the District's standard instructional day.
4. The compensatory education awarded may be used for any service reasonably related to the Student's educational, social-emotional, behavioral, communication, or developmental needs, including but not limited to academic instruction, behavioral support, speech-language services, occupational therapy, and parent training. The Parents may select qualified providers of their choice. The District shall fund such compensatory services at market-reasonable rates.
5. Nothing in this Order shall be construed to restrict the parties from mutually agreeing to alternative services or settlement arrangements that satisfy the compensatory education award.

It is FURTHER ORDERED that any claims not specifically addressed herein are denied and dismissed.

/s/ Joy Waters Fleming, Esquire

*Joy Waters Fleming*

HEARING OFFICER

ODR File No. 31696-2526-

December 15, 2025