

*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. 31309-24-25**

**Child's Name:**

C.S.

**Date of Birth:**

[redacted]

**Parent:**

[redacted]

**Local Educational Agency:**

Boyertown Area School District  
911 Montgomery Avenue  
Boyertown, PA 19512

**Counsel for LEA:**

Shannon Pierce, Esquire  
980 Jolly Road – Suite 110  
Blue Bell, PA 19422

**Hearing Officer:**

Michael J. McElligott, Esquire

**Date of Decision:**

05/28/2025

## **Introduction**

This special education due process hearing concerns the educational rights of [redacted] ("student"), a student who attends school in the Boyertown 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 a specific learning disability.

The student's parent filed a complaint which led to these proceedings.<sup>3</sup> The issue for the hearing at the instant file number is the parent's claim that the District erred in not finding the student eligible for extended school year ("ESY") services in the summer of 2025.

The District stands by its determination that the student does not qualify for ESY services in the summer of 2025.

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

## **Issue**

Is the student eligible for ESY services in the summer of 2025?

---

<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").

<sup>3</sup> Parent's complaint contains claims as to multiple issues related to the provision of a free appropriate public education ("FAPE") to the student. Most of those claims are broad-ranging regarding various aspects of the student's individual education program ("IEP"). Those claims are proceeding at a separate Office for Dispute Resolution file number.

## **Procedural History**

Hearings involving a claim related to ESY eligibility or programming proceed on an expedited timeline. The hearing must be concluded, and the decision issued, within thirty calendar days from the filing date of the complaint asserting the ESY claim. (34 C.F.R. §300.106; 22 PA Code §14.132). With the parent's amended complaint filed on April 28, 2025, the decision on the ESY-2025 claim is due on or before May 28, 2025.

The hearing session was held on May 21, 2025. On the evening prior to the hearing, in the 11 o'clock hour, parent emailed to request a postponement of the hearing due to her unavailability. Given the expedited timeline and the efforts made by attendees to be in attendance at the hearing the next day, the undersigned hearing officer declined to postpone the hearing. Knowing that the parent would not attend, however, the hearing officer informed the District that the decision would be based solely on documentary evidence and would not include witness testimony. (Transcript at 1-29).

## **Findings of Fact**

All evidence of record was reviewed. The citation to any exhibit is to be viewed as the necessary and probative evidence in the mind of the hearing officer.

### Evaluation

1. In the current 2024-2025 school year, the student attends [redacted] grade at the District. (School District Exhibit ["S"]-11).
2. In February 2025, the District most recently re-evaluated the student. (S-11).
3. The February 2025 re-evaluation report ("RR") contained a summary of the student's evaluation history. (S-11).
4. The record, both in terms of the February 2025 RR and the student's IEPs, indicates that the student has uniformly been viewed as a well-mannered, engaged, and conscientious learner. (S-1, S-2, S-11).
5. In early intervention programming at the local intermediate unit, the student was identified with "provisional identification of specific learning disability....the (IEP) team should consider re-evaluation in the future to determine if oral language and comprehension problems persist and if written language problems become evident." (S-11 at page 2).

6. In the District, as a student identified with specific learning disabilities, the student received support for reading and mathematics. The student received weekly support in social skills and coping strategies. The student was also identified with a speech and language ("S&L") impairment, and received direct S&L services. (S-11).
7. In April 2021, a private evaluation yielded psychological diagnoses for deficits in reading and mathematics. (S-11).
8. After the 2023-2024 school year, the student's [redacted] grade year, the student no longer received S&L services. (S-11).
9. In September 2024, an independent educational evaluation ("IEE")<sup>4</sup> indicated the following: Notwithstanding prior identifications and diagnoses, "(the student) does not display severe discrepancies between ability and achievement and is generally testing at or above expectation academically in comparison to (the student's) ability. Although (the student) was previously diagnosed as dyslexic, this examiner finds little evidence of academic underachievement in basic reading skills, reading fluency, or spelling. (The student) does have some residual weaknesses in phonological and orthographic processing but (the student's) ability to phonetically decode unknown words with

---

<sup>4</sup> In the February 2025 RR, the exact date of the IEE is not listed. The student's IEP was revised in December 2024, where the IEE was referenced as having been issued in September 2024. See P-2 at page 5.

accuracy is above average for...age and grade and...spelling (encoding) skills are solidly developed into the average range. (The student), therefore, no longer requires specially designed instruction to improve essential literacy skills....(The student) should no longer be classified as a student with learning disabilities, other health impairments, or (S&L) impairments." (S-11 at page 3).

10. The independent evaluator recommended that the student continue to receive supports in mathematics and recommended regular education support in auditory overload.
11. The IEE diagnosed the student with residual phonological processing disorder. (S-11).
12. In prior evaluations, the student's full-scale IQ scores were 81 (May 2020 RR) and 75 (summer 2024 IEE ). Updated cognitive testing in the February 2025 RR yielded a full-scale IQ of 79. (S-11).
13. Academic achievement testing in the summer 2024 IEE did not indicate any statistically-significant discrepancies between academic achievement and either IQ score. Updated achievement testing in the February 2025 RR did not indicate any statistically-significant discrepancies between academic achievement and the updated cognitive testing. (S-11).

14. Input from teachers in the February 2025 RR indicated student's academic needs in mathematics (including word problems), reading comprehension, and written expression. Teachers indicated additional needs in listening comprehension. (S-11).
15. Special education teachers recommended removing certain goals, specially-designed instruction ("SDI"), and supports given the student's success in regular education settings and assessments. (S-11).
16. The February 2025 RR included social/emotional/behavioral assessment. The student's mother did not complete the rating scales. Two teachers completed the rating scales. The student's math teacher rated the student consistently at the at-risk and clinically-significant levels across most sub-scales and composites. The student's English and language arts teacher did not rate the student as clinically-significant in any sub-scale or composite but rated the student as at-risk in certain sub-scales and composites. (S-11).
17. Both teachers rated the student as at-risk or clinically-significant in the following sub-scales: learning problems, attention problems, adaptability, social skills, leadership, study skills, functional communication, executive functioning, and resiliency. Based on these ratings, the teachers rated the student as at-risk or clinically-

significant in the following composites: school problems and adaptive skills. (S-11).

18. The February 2025 RR contained an extensive auditory processing evaluation. (S-11).
19. The student was identified with age-appropriate auditory skills in most areas. The student exhibited mild auditory processing needs related to speech-in-noise (difficulty ignoring background noise and focusing on primary message) and tolerance-fading-memory (difficulty memorizing or retaining information due to background noise). (S-11).
20. The February 2025 RR identified the student as a student with a specific learning disability in listening comprehension, with a needs for support in auditory processing, executive functioning and memory, and math calculation. (S-11).

#### IEP

21. The student's most recent IEP, dated in March 2024, was developed in the spring of 2024. (S-1).
22. The present levels of educational performance in the March 2024 IEP (through the spring of 2024) indicated that the student was making progress in curriculum-based assessments and IEP goals. (S-1).



23. The March 2024 IEP included goals in reading fluency, reading comprehension, written expression, math computation, and math applications. (S-1).
24. The March 2024 IEP indicated that, after review of the criteria for qualifying for ESY programming, the student did not qualify for ESY programming in the summer of 2024. (S-1).
25. The March 2024 IEP indicated the student would receive specialized instruction in reading for 30 minutes daily, math tutoring 20 minutes daily, social skills instruction 20 minutes twice weekly, and co-taught special education support in the regular education setting for math and writing. (S-1).
26. In December 2024, the student's IEP was revised. (S-2).
27. The December 2024 IEP revisions included updated grade performance and curriculum-based academic assessment, as well as updated goal progress. (S-2).
28. The student was maintaining goal performance in reading comprehension at the 7<sup>th</sup> grade level. Goal progress in reading fluency was updated to a higher level of proficiency at the 6<sup>th</sup> grade level instead of the 5<sup>th</sup> grade level. (S-2).

29. The December 2024 IEP revisions included re-wording certain SDI, removing one SDI, and adding a new SDI. (S-2).
30. The March 2024 IEP, with the December 2024 revisions, is the student's pendent programming. (S-1, S-2).

2023-2024 / [redacted] Grade

31. In [redacted] grade, the student was absent 48 instructional days and tardy 144 days. Almost all of the tardy notations were in the morning, being tardy for homeroom, 1<sup>st</sup>, or 2<sup>nd</sup> periods. (S-9).
32. In [redacted] grade, over the winter break and most instructional days in January 2024, the student had an extended series of days where school was not in session or the student had excused absences. (S-9).
33. In [redacted] grade, the student's grades in classes that were part of the student's program in all three trimesters were consistent (Cs in English/language arts, Bs in mathematics, As in physical education). (S-6).
34. In [redacted] grade, the student generally showed progress on IEP goals. (S-4).

35. The IEP goal progress-monitoring for [redacted] grade noted the student's series of absences in late-December 2023/January 2024 (where probes could not be administered). (S-4).
36. IEP goal progress-monitoring indicated that the student's progress-monitoring did not reflect a decline in scores from the probe prior to the student's extended absence (approximately mid-December 2023) until the probe after the student's return (approximately late January or February 2024). (S-4).

2024-2025 / [redacted] Grade

37. In [redacted] grade, through mid-May 2025, the student was absent 28 instructional days and tardy 38 days. Most of the tardy notations were for homeroom, with a consistent number of tardy notations for periods 1<sup>st</sup> through 7<sup>th</sup> . (S-10).
38. In [redacted] grade, through mid-May 2025, almost all of the student's classes were graded across the first two trimesters. Grades in those classes were consistent (Cs in English/language arts, Cs in mathematics, B-/C+ in science, B-/C+ in social studies, and As in physical education). (S-7).
39. In [redacted] grade, the student generally showed progress on IEP goals. (S-5).

40. IEP goal progress-monitoring in [redacted] grade indicated that the student's progress-monitoring did not reflect a decline in scores from the probes at the end of [redacted] grade and the probes at the outset of [redacted] grade, nor was there a decline in scores for probes administered before the winter break in December 2024 and the probes administered after the winter break in January 2025. (S-5).

## **Legal Framework**

A child eligible under IDEA receives a FAPE (34 C.F.R. §300.17) through the delivery of special education and related services in an IEP. (34 C.F.R. §300.320-300.324). Under certain circumstances, as part of a student's IEP, a student may qualify for ESY services in the summers between school years. (34 C.F.R. §300.106; 22 PA Code §14.132).

In considering whether a student is eligible for ESY services, the IEP team shall consider the following factors:

(i) Whether the student reverts to a lower level of functioning as evidenced by a measurable decrease in skills or behaviors which occurs as a result of an interruption in educational programming (Regression);

(ii) Whether the student has the capacity to recover the skills or behavior patterns in which regression occurred to a level demonstrated prior to the interruption of educational programming (Recoupment);

(iii) Whether the student's difficulties with regression and recoupment make it unlikely that the student will maintain the skills and behaviors relevant to IEP goals and objectives;

(iv) The extent to which the student has mastered and consolidated an important skill or behavior at the point when educational programming would be interrupted;

(v) The extent to which a skill or behavior is particularly crucial for the student to meet the IEP goals of self-sufficiency and independence from caretakers;

(vi) The extent to which successive interruptions in educational programming result in a student's withdrawal from the learning process;

(vii) Whether the student's disability is severe, such as autism/pervasive developmental disorder, serious emotional disturbance, severe intellectual disability, degenerative impairments with mental involvement and severe multiple disabilities. (22 PA Code §14.132(a)(2)(i-vii)).<sup>5</sup>

## **Discussion & Conclusions**

Here, an examination of the criteria for qualifying for ESY programming leads to a conclusion that the student does not qualify for ESY programming in the summer of 2025.

---

<sup>5</sup> The ESY regulation mandates that "no single factor (should) be considered determinative". (22 PA Code §14.132(a)(2)).

As an initial matter, two of the criteria do not apply by their very nature. Namely, the student's IEP goals are not centered on self-sufficiency and independence from caretakers nor has the student been identified with a severe disability profile which would, by its very nature and attendant needs, qualify a student for ESY programming. (22 PA Code §14.132(a)(2)(v, vii)).

As for the remaining five criteria, the student has not exhibited reversion to a lower level of functioning in, or a lack of capacity to recover, skills or behavior patterns as a result of an interruption in educational programming. Therefore, regression and/or recoupment is/are not part of the student's mosaic of needs. (22 PA Code §14.132(a)(2)(i-iii)). And the record cannot support a conclusion that the student has not consolidated goal-progress within and between school years or that a lack of ESY programming will cause the student to withdraw from the learning process. (22 PA Code §14.132(a)(2)(iv, vi)).

Importantly, these conclusions can be drawn in light of the record because there is clear evidence that none of the instruction-based criteria (22 PA Code §14.132(a)(2)(i-iv, vi)) are present after breaks in instruction in the period December 2023/January 2024, the summer of 2024, or the winter break in the 2024-2025 school year. Indeed, the student shows remarkable consistency in picking up where the student left off after breaks in instruction.

Accordingly, the student does not qualify for ESY programming in the summer of 2025.

•

## **ORDER**

In accord with the findings of fact and conclusions of law as set forth above, the student does not qualify for extended school year programming in the summer of 2025.

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

05/28/2025