

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. 32935-25-26

Child's Name:

A.B.

Date of Birth:

[redacted]

Parent(s):

[redacted]

Local Education Agency:

Canon-McMillan School District
200 Big Mac Blvd.
Canonsburg, PA 15317

Counsel for LEA:

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Hearing Officer:

Joy Waters Fleming, Esq.

Date of Decision:

May 12, 2026

INFORMATION AND PROCEDURAL HISTORY

The Student¹ is currently [redacted] years old and enrolled in the [redacted] grade in a District elementary school. The Student is eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA) as a child with an intellectual disability.²

The Parents³ filed this due process complaint and requested an expedited hearing, challenging the appropriateness of the proposed extended school year (ESY) programming offered to the Student for implementation during the summer of 2026. The Parents sought additional weeks of specific summer programming and other relief. In response, the District contended the offered ESY programming was responsive to the Student's needs and an appropriate offer of FAPE.

Based on the evidence presented and for the following reasons, the Parents have not established by a preponderance of the evidence that the District's proposed programming for ESY summer 2026 failed to offer a FAPE. As such, no relief is due.

¹ 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). 2 20 U.S.C. §§ 1400-1482.

² 20 U.S.C. §§ 1400-1482. The federal regulations implementing the IDEA are codified at 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).

³ Although a reference is made to one Parent throughout this decision, both parents filed the due process Complaint. References to one Parent are attributed to the Parent that advocated for the Student during this due process hearing.

ISSUES

- 1) Is the District's current ESY programming an offer of FAPE?
- 2) If the District has not offered the Student a FAPE, what remedy is appropriate?

FINDINGS OF FACTS

1. The Student is [redacted] years old, enrolled in the [redacted] grade in the District and eligible for special education services under the classification of intellectual disability. (P-4, P-6)
2. The Student is in the Armstrong target group for ESY consideration. (P-4, P-6)
3. During the summers of 2023 and 2024, Student attended District ESY programming consisting of three weeks of programming, five days per week, for five hours per day. During the summer of 2025, Student received three weeks of ESY programming, five days per week for three hours per day, along with an additional nine hours of one-to-one tutoring divided between math and reading instruction. (P-4)

2025-2026 School Year

4. At the beginning of the 2025-2026 school year, Student exhibited significant behavioral challenges, including three incidents of elopement from the building, the last occurring on September 19,

2025. These behaviors initially interfered with instruction and data collection. (N.T. 75, 79-81, 104)

5. After the first several weeks of school, Student's behavior improved, and no further significant behavioral incidents, including elopement, occurred. Student demonstrated improvement in remaining within designated areas and complying with directives. District staff reported that Student's behavioral functioning no longer substantially interfered with access to instruction. (N.T. 90, 104-106, 138-139)
6. During the current school year, the Student receives full-time life skills support in a small-group setting with paraprofessional support. In addition to academic instruction, the Student receives weekly speech, physical, and occupational therapy. (P-4; N.T. 51-56)
7. The Student's current IEP includes related services, academic and behavioral goals, an embedded PBSP and extensive SDI. (P-4, S-1, p. 63-91, S-6, p. 57-79)
8. The District compiled data that analyzed the Students' performance before and after Thanksgiving and Winter breaks. (P-13)
9. Following Thanksgiving break, Student's participation remained high, math performance improved, letters-and-sounds performance remained consistent, and Student's sight-word performance improved. (P-13)

10. Following winter break, Student's participation remained high, with minor decreases and frequent returns to high levels, including multiple instances of 100% participation. Student's math performance remained consistent; letters-and-sounds performance demonstrated modest improvement; and sight-word performance remained consistent with pre-break levels. (P-13)
11. On February 5, 2026, the IEP team convened to discuss ESY eligibility and programming. The team reviewed Student's progress-monitoring data, observations, educator input, parent concerns, and data across instructional periods. The ESY eligibility considerations discussed by the team included regression and recoupment, academic performance, skill maintenance over breaks, behavioral functioning, and the Student's progress toward IEP goals. (S-4; N.T. 121-122, 143)
12. The team recommended that ESY programming occur through its FUNdamentals Program which would utilize the same curriculum Student accessed during the regular school year. The District's programming was slated to target academic IEP goals, implement SDIs, and offered related services. The program offered included behavioral support, paraprofessional assistance and staff to address behavioral needs and implement Student's PBSP. (P-22, S-4, N.T. 126-131, 147, 151-153)
13. During the meeting, Parents requested that Student attend a specific summer camp with paraprofessional support in order to reduce

regression and maintain behavioral functioning during the interruption in instruction. (S-4; N.T. 13-15, 48-49)

14. The Parents described the camp as operating with a structured daily schedule similar to a school day. They asserted that the program would permit implementation and reinforcement of Student's behavioral goals and PBSP supports. Parents also asserted that a portion of the camp day could be used for direct academic instruction and progress monitoring. (N.T. 14-15, 43-44, 57)
15. The District rejected the Parents' proposed camp placement because it did not provide specially designed instruction, instruction by certified teachers, or the staffing and structure the District believed necessary to implement Student's IEP and PBSP appropriately. The camp offered recreational and enrichment activities. (S-4, S-16; N.T. 14-15, 144-146, 162, 171)
16. On February 6, 2026, the District issued a NOREP offering the Student placement in the District's FUNdamentals ESY Program, consisting of three weeks of programming, five days per week, for three hours per day. The NOREP noted the collected data did not support qualification for ESY based on regression and recoupment, but on the nature and severity of the Student's disability. (S-4, p. 2; N.T. 20-21, 32-33, 94-95)

17. After receiving the NOREP, the Parent requested an informal meeting. (P-6; S-4; N.T. 22, 129)
18. The IEP team reconvened on February 20, 2026, and March 5, 2026, to discuss ESY programming and review data with the Parents. (P-26; N.T. 24, 32-34, 196-198)
19. During those meetings, the District reviewed academic, behavioral, OT, PT, and speech data with Parents, and related service providers presented input regarding Student's needs. Related service providers reported that available data did not support the need for related services during ESY. (P-13, S-11, S-15; N.T. 32-34, 91-92, 154-155, 164-165, 179, 186, 196-198)
20. The District tracked Student's progress on IEP goals through graphed progress-monitoring data that reflected academic and behavioral performance across quarter four of the 2024-2025 school year, summer 2025 ESY programming, and quarters one and two of the 2025-2026 school year. (P-13; N.T. 115-117, 123, 163)
21. Student's academic progress during the 2025-2026 school year remained gradual, and Student's rate of skill acquisition required repetition, consistency, and structured support. Behavioral data generally reflected performance at or above 80% accuracy. (N.T. 71-73, 90-91, 122-123, 188)

22. On March 5, 2026, the District issued a NOREP that offered an additional 2.5 hours of supplemental instruction (a total of 7.5 hours) to the proposed ESY program. The additional 2.5 instructional hours were intended to target academic goals. The Parents disagreed with the proposed services and maintained that the offer remained insufficient based upon Student's demonstrated needs. (P-7, S-5; N.T. 16-21, 131-133)
23. Parent compiled data of the Student's academic and behavioral performance reflected improvement in math performance over time, fluctuations in sight word acquisition and academic performance, and a significant decrease in elopement behaviors by quarter two of the 2025-2026 school year. (P-13, P-20; N.T. 25-26, 30-32, 116-117)⁴
24. The Parents returned the March 5, 2026, NOREP, indicating disagreement with the proposed plan, and later participated in mediation, which did not result in an agreement. (N.T. 36)
25. On March 30, 2026, through a NOREP, the District offered a total of nine additional instructional hours, matching the amount from the summer of 2025. Parents declined the March 30, 2026, NOREP. (P-9, S-8; N.T. 105-106, 161)

⁴ The District objected to P-20, compiled by the Parent ostensibly from data obtained from the District. During the hearing, it was provisionally admitted. It is now admitted into evidence. (P-20; N.T. 20)

26. On April 13, 2026, Parents filed a due process complaint.

DISCUSSION AND CONCLUSIONS OF LAW

General Legal Principles

In general, the burden of proof may be viewed as consisting of two elements: the burden of production and the burden of persuasion. 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). Accordingly, the burden of persuasion, in this case, must rest with the Parents who filed for this administrative hearing. Nevertheless, the application of this principle determines which party prevails only in rare cases where the evidence is evenly balanced, or in "equipoise." *Schaffer*, *supra*, 546 U.S. at 58.

Special education hearing officers, in the role of factfinders, are also charged with making credibility determinations about 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). This hearing officer found each witness to be generally credible as to the facts. In the relatively few instances of contradiction, they are attributed to lapses in memory or recall, or to differing perspectives, rather than to an intention to mislead. In any event, credibility was not determinative on any issue.

The weight accorded to the evidence, however, was not equally placed. The documentary evidence was persuasive, particularly where memories

were not definitive, except as otherwise noted. The findings of fact were made as necessary to resolve the issues; thus, not all of the testimony and exhibits were explicitly cited. However, in reviewing the record, the testimony of all witnesses and the content of each admitted exhibit were thoroughly considered, as were the parties' closing statements.

Substantive FAPE

The IDEA requires states to provide "free appropriate public education" (FAPE) to children who are eligible for special education services. 20 U.S.C. § 1412. FAPE consists of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. In *Board of Education v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court addressed these statutory requirements, holding that the FAPE mandates are met by providing personalized instruction and support services that are designed to permit the child to benefit educationally from the program and also comply with procedural obligations in the Act.

States, through local educational agencies (LEAs), meet the obligation to provide a FAPE to eligible students by developing and implementing an IEP that is "reasonably calculated" to enable the child to receive "meaningful educational benefits" in light of the student's "intellectual potential." *P.P. v. West Chester Area School District*, 585 F.3d 727, 729-30 (3d Cir. 2009) (citations omitted). The U.S. Supreme Court has confirmed that an IEP "is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth." *Endrew F. v. Douglas County School District RE-1*, 580 U.S. 386, 400 (2017). Individualization is thus the central consideration under the IDEA. Moreover, while an LEA is not obligated to "provide 'the optimal level of services,' or incorporate every program requested by the child's parents," *Ridley School District v. M.R.*, 680 F.3d 260, 269 (3d Cir. 2012), the law demands services are reasonable

and appropriate in light of a child's unique circumstances. *See Endrew F.* at 400-401; *Ridley* at 269. *See also Tucker v. Bay Shore Union Free Sch. Dist.*, 873 F.2d 563, 567 (2d Cir. 1989). A proper assessment of whether a proposed IEP meets the above standard must be based on information "as of the time it was made." *D.S. v. Bayonne Board of Education*, 602 F.3d 553, 564-65 (3d Cir. 2010).

Procedural FAPE

From a procedural standpoint, the family plays a meaningful role in special education. *Schaffer, supra*, 546 U.S. at 53. Consistent with these principles, a denial of a FAPE may be found if there has been a significant impediment to meaningful decision-making by parents. 20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(2). Procedural deficiencies may warrant a remedy if they result in "significant impediment" to parental participation or a substantive denial of FAPE. 20 U.S.C. § 1415(f)(3)(E).

Extended School Year (ESY)

The FAPE requirement extends to the provision of ESY services as necessary for the child. 34 C.F.R. § 300.106(a)(1). Pennsylvania sets forth several criteria that IEP teams must consider to determine whether a student is eligible for ESY; in essence, the determination is whether ESY services are "required as part of a Student's program." 22 Pa. Code § 14.132(a). The criteria are:

(i) Whether the student reverts to a lower level of functioning as evidenced by a measurable decrease in skills or behaviors which occur 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 mental retardation, degenerative impairments with mental involvement and severe multiple disabilities. 22 Pa. Code § 14.132(a)(2). Reliable sources of information on the student's needs, progress, test results, and recoupment potential should be considered in making the ESY determination. 22 Pa. Code § 14.132(b). Eligibility is established if the factors in Section 14.132(a)(2) "make it unlikely that the student will maintain skills and behaviors relevant to IEP goals and objectives." Pennsylvania Department of Education, Basic Education Circular, Extended School Year Eligibility (April 15, 2013). If the student is eligible, the team must also determine the services to be provided. 22 Pa. Code § 14.132(a)(1).

In determining whether a proposed ESY program is appropriate, the general principles applicable to special education must be applied, since ESY services must be provided in accordance with the child's IEP. 34 C.F.R. § 106(b). In addition, "a public agency may not ... [u]nilaterally limit the type, amount, or duration of [ESY] services." 34 C.F.R. § 106(a)(3).

Although not binding, the Bureau of Special Education and the Pennsylvania Training and Technical Assistance Network explain the ESY determination process this way:

The IEP team will determine which services and how much of these services will be provided during the extended school year. The team may decide that the student will continue all services received during the regular school year, or that the student will only receive a portion of services or one specific service. This decision is based on the needs of each student.⁵

A fundamental premise of ESY services has generally been described as serving as a vehicle for preserving skills the child has gained over the school year rather than as a means of maximizing growth. "An ESY program continues the goals and objectives of the IEP during the summer months after the school year has concluded, so the student does not regress from one school year to the next." *L.G. v. Wissahickon School District*, 2011 U.S. Dist. LEXIS 476 *16 n.3, 2011 WL 13572 (E.D. Pa. 2011).

The Parents' Claims

The parties do not dispute that Student is eligible for ESY services. Rather, the dispute concerns the nature, intensity, and duration of the ESY services necessary for Student to receive FAPE during the summer 2026.

⁵ Pennsylvania Bureau of Special Education, Extended School Year in Pennsylvania, available at <https://www.pattan.net/Publications/Extended-School-Year-Services-in-Pennsylvania>

Parents contend that the District's proposed ESY program was insufficient because it failed to adequately address Student's academic and behavioral needs, relied on inadequate data, and improperly limited the duration and type of services offered. They seek a more intensive ESY program that includes the Student's attendance at a summer camp accompanied by a paraprofessional. The Parents also raised procedural concerns. Based on this hearing record, the Parents have not established, by a preponderance of the evidence, that the District's ESY offer was legally insufficient and that a FAPE denial occurred.

Parents' concerns are reasonably grounded in the Student's significant educational and behavioral needs. The record established that Student requires substantial adult prompting, structured instruction, repetition, behavioral support, and a highly consistent routine in order to make progress. At the beginning of the 2025-2026 school year, the Student exhibited significant behavioral dysregulation, including incidents of elopement, and Parents credibly expressed concern that interruptions in programming negatively affect functioning and progress.

The hearing record demonstrated that the District conducted an appropriate analysis to determine the Student's ESY programming needs. The District addressed those concerns through the ESY planning process and through revisions to its proposed program. During multiple meetings, the team reviewed the Student's educational and behavioral data, considered concerns regarding regression and recoupment, skill and goal maintenance and mastery, self-sufficiency, independence, successive interruptions, and the severity of the Student's disability.

Ultimately, the District's proposed placement of the Student in its summer ESY program for five days per week, three hours per day, with an additional 7.5 hours of supplemental individualized instruction. The proposed program utilized the same curriculum Student accessed during the regular school year, delivered by certified teachers, slated to target Student's academic IEP goals, incorporated Student's SDIs, and included opportunities for IEP goal instruction, related services and progress monitoring. The District also proposed continuation of Student's behavioral support during ESY, including implementation of Student's PBSP, paraprofessional support, and behavioral assistance designed to support Student's access to instruction.

The Parents contend the District's ESY offer is insufficient and instead seek support from the District for the Student's participation in a summer camp they believe will provide structure, routine, behavioral expectations, and opportunities to reinforce behavioral skills.⁶ Although the camp environment described and preferred by the Parents may be beneficial, it lacks many vital components necessary for this Student to receive FAPE, including specially designed academic instruction delivered by certified educational personnel. However, the ultimate issue is not whether additional programming or the Parents' preferred program might benefit the Student; instead, the IDEA requires the District to offer a FAPE. In this case, the District's summer ESY programming offer was legally compliant.

The evidence reflected that Student experienced some regression following prior interruptions in instruction and benefits from consistency, reinforcement of behavioral expectations, and continued programming

⁶ The Parents did not introduce witness testimony from any of the summer camp programs under their consideration.

during breaks in instruction. In developing the ESY offer, the team reasonably relied on current-year progress-monitoring data, including data collected following the Thanksgiving and winter breaks during the 2025-2026 school year. That data demonstrated that Student generally maintained performance across academic and behavioral domains following the breaks, maintaining high levels of participation and task completion, while academic performance in math, sight words, and letter-and-sound identification remained stable or improved. Although the record reflects some fluctuations and some prior regression after interruptions in programming, the evidence does not establish prolonged recoupment difficulties or substantial loss of critical skills following the more recent instructional breaks.

The record also indicated behavioral improvement during the 2025-2026 school year. After the initial weeks of the school year, Student no longer engaged in significant elopement and demonstrated improved compliance with directives. These improvements occurred within the structured environment provided by Student's educational program and further supported the District's reliance on current-year data to determine the amount and type of ESY services required for FAPE.

Over the objection of the District, the Parents presented their compilation of multi-year historical data that appeared to demonstrate fluctuations in the Student's performance over time. That evidence was considered in conjunction with the District's data, underlying educational records and testimony; however, greater weight was afforded to the more recent and contemporaneous data concerning Student's functioning during the 2025-2026 school year. That data, primarily presented by the District,

more accurately reflected the Student's current educational and behavioral needs at the time the ESY determination was made.

Overall, the District's proposed ESY program was reasonably calculated to provide meaningful educational benefit in light of Student's circumstances. The District's proposed program addressed the Student's academic IEP goals, incorporated behavioral support and SDI, and offered targeted, supplemental individualized instruction.

Next, the Parents raise procedural concerns, including allegations of predetermination, inadequate prior written notice, failure to adequately consider necessary ESY factors and improper constitution of the IEP team. The record reflects some procedural irregularities. The record as a whole does not establish unlawful predetermination or a procedural denial of FAPE. The District convened multiple meetings, reviewed educational and behavioral data with Parents, discussed Parents' concerns and alternative proposals, reviewed related services information, and revised the ESY offer multiple times in response to those discussions. Parents had a meaningful opportunity to participate in the decision-making process, even though the District ultimately disagreed with Parents regarding the amount and type of ESY services required. The IDEA does not require a district to adopt Parents' preferred recommendations or placement proposals. Furthermore, the Parents did not establish that procedural deficiencies impeded Student's right to FAPE, significantly impeded Parents' opportunity to participate in the decision-making process, or deprived Student of educational benefit. See 20 U.S.C. § 1415(f)(3)(E)(ii). Based on the preponderance of the evidence, the Hearing Officer concludes that the District's proposed ESY program for summer 2026 was reasonably calculated to provide Student with FAPE.

The Parents are to be commended for their thoughtful, informed, and persistent advocacy on Student's behalf throughout the ESY process and these proceedings. The record reflects their deep understanding of Student's unique educational and behavioral needs, their careful review of data and progress, and their genuine commitment to maintaining growth, structure, and access to learning. They presented credible concerns regarding regression, continuity of programming, and behavioral support needs, and their advocacy plainly stems from a sincere desire to maximize Student's opportunity for continued success and independence. This hearing record ultimately concluded that the District's proposed ESY program satisfies the District's legal obligations under the IDEA, however the Parents' advocacy was both meaningful and beneficial to the collaborative process and contributed to the District's continued consideration and refinement of the Student's ESY programming.

ORDER

AND NOW, this 12th day of May 2026, upon consideration of the evidence presented, it is hereby ORDERED as follows:

1. The Parents' claims that the District denied Student a FAPE with respect to ESY programming for summer 2026 are DENIED.
2. The District's proposed ESY program, including placement in the FUNdamentals Program and supplemental instructional services previously offered by the District, is determined to be reasonably calculated to provide Student with a FAPE.

3. The parties may amend or adjust the terms of this order by mutual written agreement.

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

/s/ Joy Waters Fleming, Esquire

Joy Waters Fleming

HEARING OFFICER

ODR File No. 32935-25-26

May 12, 2026