

*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. 31372-24-25**

**Child's Name:**

A.C.

**Date of Birth:**

[redacted]

**Parent:**

[redacted]

**Counsel for Parent:**

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**Hearing Officer:**

Joy Waters Fleming, Esq.

**Date of Decision:**

October 22, 2025

## **INFORMATION AND PROCEDURAL HISTORY**

The Student is a high school student who recently completed [redacted] grade at the Charter School (Charter). Under the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973, the Student is eligible for special education services due to disabilities of Intellectual Disability (ID), Autism, Speech/Language Impairment (SLI), and Other Health Impairment (OHI). The Student also had a diagnosis of a social anxiety disorder and a social communication disorder, which manifest as selective mutism.<sup>1</sup>

Before this current matter was adjudicated, the Charter filed a due process complaint seeking to change the Student's placement to an outside therapeutic program and sought to defend its reevaluation report after the Parent requested an independent educational evaluation (IEE). Days before that issue was scheduled for a due process hearing, the Parent filed an Answer with allegations that the Charter denied the Student a FAPE over multiple school years.

The Charter requested bifurcation of the matters on the grounds that its due process request affected the Student's placement for the 2025-2026 school year. Although the Parent opposed that request, the Hearing Officer agreed with the Charter and resolved that matter under ODR file no. AC-31161-24-25, granting the relief requested by the Charter.

With respect to this pending claim, based on the evidence of this hearing record, the Parent has failed to establish by a preponderance of the evidence that the Charter School denied the Student a FAPE during the

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<sup>1</sup> Although two very brief psychiatric reports were introduced during the due process hearing. No accompanying medical testimony occurred. The reports were taken at face value and speak for themselves. (P-3, P-31)

2023-2024 and 2024-2025 school years. The claims of the Parent are denied.

## **ISSUES**

1. Did the Charter deny the student a FAPE during the 2023-2024 and 2024-2025 school years through its failure to develop and/or implement appropriate special education programming?
2. If the District denied the Student a FAPE, what, if any, remedy is appropriate?

## **FINDINGS OF FACT**

1. The Student is eligible for special education services under the classifications of Intellectual Disability, Autism, Speech/Language Impairment, and Other Health Impairment (OHI). The Student also had a diagnosis of a social anxiety disorder and a social communication disorder, which manifested as selective mutism (P-3, P-22, P-31, S-2)

### **Early Educational History (2021-2023)**

2. In the 2021-2022 school year, the Student entered [redacted] grade as a new enrollee at the Charter. The Student received special

education and related services under an IEP identifying eligibility as OHI, SLD and speech or language impairment (SLI). (S-2, p. 7)

3. A November 2021 IEP implemented at the Charter provided the Student with itinerant support with resource room assistance for testing and organization, and emotional support access for coping and problem-solving skills. (S-2)
4. In February 2022, the Charter conducted a reevaluation. Testing was complicated by the Student's refusal to speak or write. The Test of Nonverbal Intelligence -Third Edition (TONI-4) was administered to measure cognitive ability. To assess social-emotion functioning, BASC-3, SAED-2, and Vineland-3 rating scale data were collected. (P-1)
5. During a Speech assessment, the SLP noted initially that the Student did not speak to the clinician. However, after the second session, the Student spoke more, expanding upon one to two-word utterances. The Student also exhibited moderate [disfluency] characteristics. (P-1, p. 25)
6. The RR concluded that the Student required specially designed instruction under the classifications of (OHI), (SLD), and (SLI). (P-1, p, 25, S-7)
7. On February 23, 2022, following an IEP meeting, the Parent, through a NOREP, approved the implementation of supplemental learning and speech-language support for the Student as well as a reevaluation (psychiatric evaluation). (P-2; N.T. 170)
8. On April 8, 2022, the Charter coordinated a psychiatric evaluation of the Student. The evaluation determined the Student's diagnoses as

social anxiety disorder and attention deficit hyperactivity disorder (ADHD). (P-3)

9. On May 12, 2022, the Student was evaluated to determine if symptoms of Autism were displayed. Results from the ADOS-2 suggested the Student's selective mutism stemmed from a speech impediment ([disfluency]) that caused embarrassment and speaking avoidance. (P-4, S-7)
10. After administration of the ADOS-2, the evaluator recommended speech therapy, social skills groups, social stories, and seating with peers. (P-4, p. 4, S-7)
11. An RR completed in May 2022 by the Charter concluded that the Student needed specially designed instruction on the grounds of an ID, Autism, SLI and OHI. (S-7, p. 44)
12. For the 2022–2023 school year, Charter's IEP team recommended and the Parent accepted placement of the Student in a life-skills program in the District, which included enrollment in two general education courses. (S-16 p. 7; N.T. 61-63, 181-183)

## **2022–2023 School Year**

13. During the 2022-2023 school year, the Student was enrolled in the [redacted] grade in a District high school in a life skills program. (S-16)
14. The Student was determined eligible for special education under the classifications of Intellectual Disability, Autism, Speech/Language Disability, and OHI. During the first semester of the 2022-2023 school year, the Student attended [redacted] Focus class and an Exploring

Mindful Art class with support in the general education environment. The Student also received functional community instruction in Life Skills, English, and Math. (S-16, p. 7)

15. On mid-year AIMSweb testing, the Student performed at the 35<sup>th</sup> percentile on the reading composite and at the 3<sup>rd</sup> percentile on the Math composite. (P-15, p. 9)
16. During the school year, the family expressed concern to the Charter that the District's life skills placement was emotionally harmful and academically inappropriate for the Student. (N.T. 327–334, 353–356)
17. On May 4, 2023, the Parent requested a meeting to discuss the transition of the Student back to the Charter. The Charter requested an IEP facilitation to discuss the Parent's request for general education placement. The IEP facilitation was unsuccessful. (P-9, P-10, P-11; N.T. 180-187)

## **2023–2024 School Year**

18. The Student reenrolled at the Charter for the 2023-2024 school year and repeated [redacted] grade. (P-15)

19. The student's courses included Math and English, Civics/Economics, Applied Chemistry, Spanish I, Art, Theater, and Physical Education. Math and English were taught in small group learning environments by certified special education teachers who were familiar with the Student's needs. (P-15; N.T. 470–474, 498–505)

20. The regular education Civics/Economics class was a small group setting, and the regular education Chemistry class was taught by a special education teacher with both regular and special education students. For Spanish class, the Student received push-in support from a special education teacher. (P-15; N.T. 396–397, 399, 408–412, 470–474)
21. In early September 2023, the IEP team met to develop programming. The IEP noted the Student had communication needs. The previous placement, at the District high school, listed the Student’s exceptionalities as Intellectual Disability, Autism, Speech/Language Disability, and OHI.<sup>2</sup> (P-15, S-16, p. 7)
22. Teacher comments from the previous school year referenced the Student's refusal to speak, but also noted instances of answering questions, compliance with rules and routines, and the ability to speak clearly when isolated with the teacher. (S-16, p. 11)
23. The team determined the student had needs in math, reading comprehension, written expression, and speech/language. (S-16, p. 21)
24. The September IEP included measurable annual goals to address Math (computation, problem solving), Language Arts (reading comprehension, written expression) and Speech (fluency, pragmatics). Specially designed instruction included extended time, guided notes,

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<sup>2</sup> The September IEP was marked as a “DRAFT” and the summary information contained incorrect information. (S-16, p. 7)

task chunking, visual supports, graphic organizers, and modified assignments. Related services included thirty minutes a week of speech/language therapy. (P-15, S-15, S-16)

25. The September IEP recommended supplemental learning support and speech-language support with 79% of the day in regular education. Through a NOREP, the Parent approved the implementation of the offered programming. (P-15, p. 36, S-15)
26. On November 3, 2023, the Charter advised the Parent of the Student's failing grade in Spanish, attributed to missing assignments. The Parent questioned IEP implementation, and the teacher advised that the Student refused to speak in class, refused oral presentation, and would only nod when asked questions. (P-16; N.T. 511, 517)
27. In January 2024, the IEP team reconvened and determined the Student eligible for extended school year (ESY). (S-18, p. 5)
28. In February 2024, the team reconvened to revise the IEP and added push-in speech and language services in general-education classes to help the Student generalize communication gains from small-group and one-to-one sessions. (S-20; N.T. 487-488)
29. During the 2023-2024 school year, the family participated in all IEP meetings and communicated regularly with the Charter School



regarding the Student's progress and needs. (P-15, P-16, P-18, P-19, S-18, S-20)

30. During the 2023-2024 school year, the Student received forty-five minutes a day of small-group Math instruction and forty-five minutes a day of small-group English instruction. The Student's teachers implemented accommodations as written, including guided notes, chunking, study guides, extended time, small-group work, and modified tests and assignments. (S-18, p. 5; N.T. 479-482, 520-534)

31. In math class, the Student was not observed to communicate with peers verbally, but smiled or nodded their head to communicate with the teacher. (N.T. 484, 532)

32. During the 2023-2024 school year, the Speech-Language Pathologist (SLP) provided the student with therapy addressing expressive communication, pragmatics, and anxiety related to speech. The SLP regarded the Student as pleasant, cooperative, with stronger receptive than expressive language skills. (N.T. 586-614)

33. During the 2023-2024 school year, the Charter implemented the Student's IEPs, as written. The Student made inconsistent progress and did not meet the second-grade math computation or third-grade math problem-solving goals. The Student did not meet the fifth-grade reading comprehension or writing goals. The Student made some progress toward the speech goals. (P-15, P-20, S-20)

34. In the classroom, the Student was generally non-verbal, occasionally producing one-word answers and communicating through nodding, smiling, and facial expressions; behavior was polite, compliant and receptive to feedback. (S-27; N.T. 536-544)

35. Although eligible for ESY, the Parent declined due to Student's planned participation in an Office of Vocational Rehabilitation (OVR) summer work program. The Student completed the summer OVR program, reportedly engaging with patrons at an amusement park. (P-32, P-33, S-27, p. 6; N.T. 202-204)

36. Before the 2024–2025 school year, the assistant principal and supervisor of special education met with the Parent to develop the Student's class schedule for [redacted] grade. (N.T. 490-493)

### **2024–2025 School Year**

37. During the 2024–2025 school year, the Student attended the Charter, enrolled in the [redacted] grade. (S-27)

38. The Student's 2024–2025 schedule included MATH 11, English, Biomedical Science, Psychology, Spanish II, Film, Personal and Professional Skills, and Health/Physical Education. The selected classes were intended to provide functional, hands-on, or scenario-based

learning opportunities to accommodate the Students' learning style.  
(N.T. 407-408, 497-500)

39.The regular education English class was co-taught with the Student's case manager, a special education teacher. The English teacher also taught the Film class. The Student's former case manager supported the Film class. In Psychology and Spanish classes, the Student was supported by a special education teacher. (N.T. 496-497, 500, 529, 578)

40.For group presentations during Science class, the SLP pushed in to assist the Student. (N.T. 498-499)

41.On September 30, 2024, the Charter completed a reevaluation of the Student due to concerns related to the Student's academic, functional, and social-emotional levels. The Student engaged verbally, allowing for full testing. The RR included a review of prior evaluations, cognitive, academic, social-emotional, and language assessments, family and teacher input, a summary of a 2022 psychiatric evaluation, and a fifteen-minute physical education class observation. (P-22, S-24; N.T. 534)

42.On the WAIS-IV, the Student's Full Scale IQ was 69, placing overall cognitive functioning in the extremely low range. (P-22)

43.On the WIAT-4, the Student showed strengths in oral reading fluency and word reading but had significant weaknesses in math problem-solving, numerical operations, and reading comprehension. (P-22)

44.Results from language testing from the SLP administered CELF-5, TOPL-2, PPVT-5, and EVT-3 indicated an overall below-average

language ability with relative strengths in syntax/morphology, semantic relationships, pragmatic language, and expressive vocabulary. The Student's expressive vocabulary was stronger than their receptive vocabulary. The Student's difficulties on the CELF-5 indicated a need for information to be presented multiple times and in more than one way (auditory, visually, written). (P-22)

45.The SLP observed that the Student consistently responded and had appropriate conversations with the SLP only in the speech setting, but not in the general education setting. The Student was noted to verbally respond to the SLP at a typical volume in Film class, but not Science. (P-22)

46.Behavior rating scales completed by the Parent and teachers reflected notable discrepancies. The Parent's ratings were in the adequate range, while teachers reported clinically significant concerns in areas such as withdrawal and adaptive functioning. Similarly, results on the Vineland-3 revealed stronger adaptive behavior ratings at home compared to school. (P-22)

47.Teachers described the Student as cooperative and pleasant, preferring to sit alone, nodding/shaking their head when addressed, and not participating in group activities except in Film class. (S-24)

48.Speech recommendations included direct instruction by the SLP from the point of view of the communication partner, continued support by the SLP in the general education setting to facilitate and assess growth, chunking of auditory input, wait time to respond, simplified verbal requests for information, repetition, and multimodal presentation of content. (P-22, p. 34-35)

49. The RR concluded the Student had needs related to reading comprehension, math problem solving, math calculation, written expression, self-advocacy, verbal response, and verbal requesting. (P-22, p. 35)
50. The RR recommended the IEP team consider SDI that included an alternative augmentative communicator (AAC) device/system, modified material, preferential seating, check-ins, chunking, 1:1 paraprofessional support in all academic settings, a modified curriculum, small group instruction, and direct instruction by the SLP. (P-22, p. 35-36)
51. The RR concluded the Student needed specially designed instruction as a child with an intellectual disability, Autism, speech-language impairment and OHI. (P-22)
52. On October 23, 2024, the IEP team met to develop updated programming. The October IEP included measurable goals to address Math (computation, problem-solving), reading comprehension, Writing, and Speech (verbal response, logical answer). (S-27, p. 20-25)
53. Specially designed instruction included preferential seating, one-on-one check-ins, modified assessments, extended time, guided notes, chunking of material, auditory repetition, visual guides, multimodal presentation, and clearly defined roles for group work. Related services included 90 minutes a month of speech-language services within the general education setting and 30 minutes a month outside the general education setting. (S-27, p. 26)
54. On October 25, 2024, the IEP team met again to revise the Student's program. The Parent requested the encouragement of verbal communication with peers and teachers and the removal of the AAC

device from the IEP. The team discussed challenges the Student experienced during oral presentations and group projects. (S-28, p.6; N.T. 510-511)

55. On October 28, 2024, the IEP team reconvened and added accommodations to support the Student during group projects. A special education teacher and the SLP pushed into specific classes to assist with the support of the Student. (S-27, S-28; N.T. 509, 548-551, 646-652)

56. On February 7, 2025, the IEP team met to discuss the Student's progress. The school counselor reported working on confidence, advocacy and peer interactions with the Student. The SLP discussed the Student's continued social anxiety. The Parent reported the Student's church presentations. The special education supervisor discussed the Charter's concerns about the inability to meet the Student's needs, selective mutism in group settings, and the potential for a change in placement. The meeting ended abruptly when the Parent left. No finalized IEP resulted. (S-28, p.6; 219-221, 512-513, 598)

57. The team did not regard the Student's selective mutism and social anxiety as behaviors warranting the administration of a functional behavioral assessment (FBA). (N.T. 221-222, 568)

58. On February 28, 2025, the Charter conveyed its concerns to the Parent regarding the Student's significant needs related to academic, adaptive and social functioning, despite intensive support and interventions, an increase in social anxiety, and the Parent's disagreement with some of the methods introduced to support the

Student. The Charter advised that a change in placement would likely be necessary. (P-26, S-29; N.T. 223-224, 236-237)

59. In March 2025, to address increased anxiety, the Charter requested consent to reevaluate the Student using updated classroom observations, a psychiatric evaluation/report, and rating scales. The Parent did not grant or deny consent but requested an independent educational evaluation (IEE), citing that no full evaluation had occurred since 2020. (S-31)

60. On March 12, 2025, the IEP team reconvened. The School IEP team again recommended an updated psychiatric evaluation due to observable school anxiety related to speaking. The family requested paraprofessional support. The Charter advocated for a more supportive special education placement and presented two NOREPS to the Parent, one for a life skills placement and one for placement at a learning academy. The Parent rejected both options. (S-32, S-33, S-34, p. 7, S-36; N.T. 517)

61. On March 21, 2025, the Charter again requested consent from the Parent to arrange for an updated psychiatric evaluation of the Student. (S-37)

62. On April 2, 2025, the Charter reiterated in writing its position that the Student required a more supportive special education placement to make meaningful educational progress. The letter also denied the request for an IEE and acknowledged the Parent's rejection of the recommended evaluations and the proposed placement and indicated it would file for due process. (P-29; N.T. 114)

63. On April 16, 2025, the Charter filed a due process complaint seeking to change the Student's placement to a more restrictive setting and to substantiate its denial of the Parent's request for an IEE. <sup>3</sup>(HO-1)
64. On May 22, 2025, the Parent filed an Answer to the Charter's due process complaint with allegations that the Charter denied the Student a FAPE during the 2023-2024 and 2024-2025 school years.<sup>4</sup>
65. On June 18, 2025, the Student received a psychiatric evaluation. The evaluation diagnoses included a social communication disorder, auditory process difficulties, and a rule out of intellectual disability disorder and learning disabilities. The evaluation recommended continued speech therapy, services to improve social and communication skills, and a repeat auditory process evaluation.<sup>5</sup> (P-31)
66. During the 2024-2025 school year, the Student received both individual and small group speech-language therapy focused on improving verbal communication and social interaction. The SLP used verbal and nonverbal prompts to encourage participation in group settings and supported the Student in engaging with peers in conversations about personal topics. The SLP collaborated with classroom teachers to address the Student's communication and social-emotional needs, providing push-in support as needed. (S-27, S-28, S-32, S-34; N.T. 458-551, 646-652)

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<sup>3</sup>Through due process at ODR file No. AC-31388-24-25, this Hearing Officer granted the Charter's request to change the Student's placement to a more restrictive setting and denied the Parent's request for an IEE.

<sup>4</sup> The Answer submitted on behalf of the Parent was treated as the due process Complaint slated for resolution through this current matter at AC. 31372.24-25.

<sup>5</sup> Over the objection of counsel, P-31 was provisionally admitted. (N.T. 563-565) P-31 is admitted into the hearing record.



67. During the 2024-2025 school year, the Student's special education/ case manager taught the math class and co-taught the English class. In film class, a special education teacher sat with the Student to provide assistance, and in psychology class, a special education teacher was present for support. Although the Student completed assignments with accommodations, social anxiety, and communication significantly impacted the ability to participate in collaborative activities and group projects. (S-27, S-34; N.T 214-216, 464, 495-496, 693)
68. Although the Charter's fall 2024 RR recommended that the Student receive 1:1 paraprofessional support in all academic settings, the team decided support from the embedded credentialed special education teachers in the classrooms would be more effective than assistance from an aide. (P-22; N.T. 214-217, 549-550, 597)
69. During the 2024-2025 school year, the Student received SDI and program modifications that included check-ins, wait time, small-group testing, extended time, modified tests and assignments, guided notes, graphic organizers, repeated directions, preferential seating, simplified verbal requests, and chunking of material. To address social skills and anxiety before group or partner projects, the school counselor collaborated with the classroom teacher and met with the Student to identify a comfortable peer and role-play conversations. (S-27, S-34; N.T. 500, 520-534, 538, 578, 594-596, 686-688)
70. During the 2024-2025 school year, the Student made limited progress in managing social anxiety and with verbal communication, particularly in group settings. Despite progress in small group speech therapy, skills did not consistently transfer to larger classroom

settings. The SLP incorporated visual supports, a self-monitoring checklist, and a role-play task to assist the Student in practicing verbal initiation and assertiveness in familiar settings. (N.T.475-485, 624-629)

71. During the 2024-2025 school year, the family participated in all IEP meetings and communicated regularly with the Charter School regarding the Student's progress and needs. (P-23, P-25, S-24, S-27, S-28, S-34; N.T. 566)

72. On July 25, 2025, at ODR-AC-31161-2425, this Hearing Officer denied the Parent's request for an independent educational evaluation, changed the Student's placement to a full-time, specialized educational setting with embedded therapeutic and speech-language support, and ordered the IEP team to reconvene within sixty days of the start of the 2025-2026 school year to review and adjust the Student's programming as needed. (AC-31161-2425)

## **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 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, as the party seeking relief bears the burden of proof.

### **Witness Credibility**

During a due process hearing, the hearing officer is responsible for 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 give courts the information that 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).

During this hearing, the Student's Parent, grandparent, the supervisor of special education, the Charter's chief operating officer, the former high school principal, regular and special education teachers, and the school counselor testified. This hearing officer found each of the witnesses who testified to be credible as to the facts. In the relatively few instances that there were contradictions, those are attributed to variations in memory or to differing perspectives, rather than any intention to deceive. The weight accorded the evidence, however, was not equally placed and is discussed

further below as necessary. The findings of fact were made only as needed to resolve the issues; thus, not all of the testimony and exhibits were explicitly cited. For example, testimony that merely reiterated the content of documents was not necessary and is generally not referenced. 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.

### **General IDEA Principles: Substantive FAPE**

In light of the mandate to provide FAPE, special education comprises both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. More than two decades ago, 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 the procedural obligations in the Act.

Through LEAs, states meet the obligation of providing FAPE to an eligible student through the development and implementation of an IEP, which 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). As the U.S. Supreme Court has confirmed, "an educational program must be appropriately ambitious in light of [the child's] circumstances... [and] every child should have the chance to meet challenging objectives." *Endrew F. v. Douglas County School District RE-1*, 580 U.S. 386, 402 (2017). This standard is "markedly different" than de

minimis growth. *Id.* However, not every child should be aiming for grade level achievement if that is not a reasonable expectation for him or her. *Id.* Rather, an IEP "is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth." *Id.* Individualization is unmistakably the central consideration for purposes of the IDEA. Nevertheless, 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). Additionally, 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); see also *Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1040 (3d Cir. 1993) (same). "The IEP must aim to enable the child to make progress." *Dunn v. Downingtown Area School District*, 904 F.3d 248, 255 (3d Cir. 2018) (emphasis in original).

### **General IDEA Principles: Procedural FAPE**

From a procedural standpoint, the family, including parents, has "a significant role in the IEP process." Schaffer, *supra*, 546 U.S. at 53. This critical concept extends to placement decisions. 20 U.S.C. § 1414(e); 34 C.F.R. §§ 300.116(b), 300.501(b). Consistent with these principles, a denial of FAPE may be found to exist 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); *D.S. v. Bayonne Board of Education*, 602 F.3d 553, 565 (3d Cir. 2010). The IEP proceedings entitle parents to participate not only in the implementation of IDEA's procedures but also in the substantive formulation of their child's educational program. Among other things, IDEA requires the IEP Team, which includes the parents as members, to consider

any “concerns” parents have “for enhancing the education of their child” when formulating the IEP. *Winkelman v. Parma City School District*, 550 U.S. 516, 530 (2007).

Full participation in the IEP process does not mean, however, that parents are the sole decision-makers on the team. *See, e.g., Blackmon v. Springfield R-XII School District*, 198 F.3d 648, 657-58 (8th Cir. 1999) (noting that IDEA “does not require school districts simply to accede to parents’ demands without considering any suitable alternatives” and that failure to agree on placement does not constitute a procedural violation of the IDEA).

## **Least Restrictive Environment**

The IDEA contains a crucial mandate that eligible students are to be educated in the “least restrictive environment” (LRE) that also satisfies meaningful educational benefit standards.

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 20 U.S.C. § 1412(a)(5)(A); *see also T.R. v. Kingwood Township Board of Education*, 205 F.3d 572, 578 (3d Cir. 2000); *Oberti v. Board of Education of Clementon School District*, 995 F.2d 1204, 1215 (3d Cir. 1993).

## **DISCUSSION**

The issue in this matter is whether the Charter denied the Student a free appropriate public education (FAPE) during the 2023–2024 and 2024–2025 school years by failing to develop or implement an appropriate special education program. The Parent maintains that the Charter's programming did not adequately address the Student's anxiety, communication, and academic deficits, and that the school's refusal to provide behavioral support deprived the Student of meaningful educational benefit. The Charter asserts that it conducted timely evaluations, developed individualized programs based on reliable data, and consistently implemented the Student's IEPs with fidelity.

The Student, now a [redacted] grader, has a complex educational profile with disabilities and needs historically characterized as ID, Autism, SLD, SLI, OHI, selective mutism, and a social anxiety disorder. Educators and the family uniformly agree that this Student is typically pleasant, polite, creative, capable of speech and desirous of social connection with peers. However, over the years, the Student's lack of verbal communication and related challenges have complicated evaluative processes, classroom functioning and multiple changes to the educational setting and placement. Fortunately, this Student has a family with a Parent and a Grandparent who advocate tirelessly to ensure that educational needs are met.

The hearing record was extensive and included testimony from administrators, teachers, related service providers, and family members, as well as documentary evidence of evaluations, IEPs, progress reports, and correspondence. Considered as a whole, the Parent has failed to establish by a preponderance of the evidence that the Charter denied the Student a FAPE during the 2023-2024 and 2024-2025 school years. The evidence

established that the Charter accurately identified the Student's needs and provided an educational program reasonably calculated to enable progress, considering the Student's individual circumstances.

### **2023–2024 School Year**

In the fall of 2023, the family reenrolled the Student in the Charter after attending a life skills program in the District. The Charter promptly convened an IEP meeting in September 2023 and reviewed extensive background data from the District placement, including the Student's cognitive, language, and emotional-behavioral profiles. The resulting IEP addressed needs in math, reading comprehension, written expression, and speech/language. The developed programming included measurable annual goals and a comprehensive set of specially designed instruction such as guided notes, task chunking, visual support, extended time, modified assignments, and weekly speech/language therapy services.

The record demonstrates that by the beginning of the 2023–2024 school year, the Charter was aware of the Student's complex profile. The Charter possessed multiple prior evaluations, including the May 2022 reevaluation and psychiatric assessment identifying Intellectual Disability, Autism, Speech/Language Impairment, and Other Health Impairment (OHI) associated with ADHD and social anxiety disorder. The team was also aware of the Student's long-standing selective mutism, limited verbal output, [disfluency], and anxiety-related avoidance of social interaction. The September 2023 IEP reflected these characteristics and carried forward relevant information from the prior district placement, documenting needs in reading comprehension, written expression, mathematics, and expressive/pragmatic communication. The evidence, therefore, establishes that the IEP team had an accurate and data-informed understanding of the Student's educational profile at the outset of the 2023–2024 school year.



The September 2023 IEP included measurable annual goals in reading comprehension, written expression, math computation/problem-solving, and speech/language fluency and pragmatics. The IEP provided specially designed instruction, including guided notes, extended time, task chunking, visual supports, and modified assignments, and incorporated 30 minutes per week of direct speech-language therapy. The program was designed for supplemental learning support with approximately 79% participation in regular education, reflecting an intent to balance access to peers with appropriate support.

In January 2024, the IEP team reconvened and determined the Student eligible for extended school year (ESY) services. In February 2024, the IEP was revised to add push-in speech and language services in general education settings to promote generalization of communication skills. These revisions reflect an ongoing, data-based responsiveness to the Student's progress and continued needs. The record further shows that the Charter maintained regular communication with the Parent and convened multiple IEP meetings during the school year to address concerns and adjust programming.

Although the Student did not master targeted academic goals, the programming was individualized and reasonably calculated to confer progress in light of the Student's cognitive and communication profile. The Charter's choice to embed speech and language services into general education settings was appropriate, given the goal of increasing verbal confidence and reducing anxiety across contexts.

The evidence supports a determination that the Charter implemented the IEP as written. The Student's teachers credibly testified that accommodations were delivered as written: the Student received daily small-group instruction in Math and English, push-in special education

support in Spanish and general education classes, and weekly speech therapy addressing fluency, pragmatics, and expressive language. Teachers provided modified assessments and assignments, chunked material, and reinforced social communication goals. The Speech-Language Pathologist collaborated with teachers to promote generalization of communication strategies.

Despite this implementation, the Student made inconsistent and limited progress toward academic and speech goals, remaining significantly below grade-level expectations. However, the IDEA does not guarantee a specific level of achievement; rather, it requires a program reasonably calculated to enable progress appropriate in light of the child's circumstances *Endrew F.*, supra. The Student's limited progress, viewed alongside evidence of participation in general education, consistent attendance, and successful completion of a summer OVR program, suggests that the programming provided an opportunity for meaningful, if modest, benefit.

The Parent failed to establish by a preponderance of evidence that the Charter School denied the Student a free appropriate public education (FAPE) during the 2023–2024 school year. The record shows that the Charter had a comprehensive understanding of the Student's intellectual, communicative, and emotional needs, as identified through prior evaluations and ongoing team discussions. The IEPs developed during the school year were reasonably calculated to enable progress considering the Student's circumstances. They addressed deficits in reading, writing, math, and speech through measurable goals, specially designed instruction, and related services.

The totality of this evidence supports a determination that during the 2023–2024 school year, the Charter implemented a program consistent with the Student's needs and IEP. Although progress was modest, the Student received educational benefit commensurate with their ability and disability profile. There is no indication of procedural or substantive failure that constituted a denial of FAPE during that period.

## **2024–2025 School Year**

At the start of the 2024–2025 school year, the Charter completed a comprehensive reevaluation of this [student] that included cognitive, academic and language assessments, teacher and parent input, and a classroom observation. The results reflected mild intellectual disability and academic deficits in reading comprehension, math reasoning, and written expression.

The RR recommended that the IEP team consider small-group instruction, direct speech-language support, and possible use of augmentative or alternative communication (AAC). The IEP team convened three meetings in October 2024 to review the data and revise the Student's programming. The October 2024 IEP was comprehensive. It included measurable goals for reading comprehension, math problem solving, written expression, and speech-language skills. Specially designed instruction included one-on-one check-ins, extended time, guided notes, visual supports, auditory repetition, and small-group instruction. Related services included 120 minutes of speech-language therapy per month.

Teachers and therapists implemented the IEP with fidelity. The Student's case manager co-taught English and directly taught Math, and collaborated with general-education teachers to modify materials. The Speech-Language Pathologist provided both individual and push-in therapy,

modeling verbal responses and supporting the Student during presentations and group activities. The assigned school counselor provided pre-teaching and role-play sessions to manage anxiety. Although The Student made limited progress, concerns about functioning continued and IEP meetings were convened in February and March 2025 to review progress data and explore more supportive placement options.

With respect to the Parent's claims that the Charter should have initiated a functional behavior assessment (FBA) to understand the Student's anxiety and selective mutism and assign a 1:1 school day paraprofessional. Both contentions are unsupported by the evidence on this hearing record. In developing an IEP, the IDEA requires that IEP teams consider the child's need for the use of "positive behavioral interventions and supports" in the case of a student with a disability whose "behavior impedes his learning of that or of others." 22 PA Code §14.133; 34 C.F.R. § 300.324(a)(2)(i)

In this case, there was no indication that the Student engaged in disruptive, aggressive, or any behaviors that impeded access to instruction or required disciplinary action. A FBA is typically used to identify the causes of behaviors that impede learning and to develop positive behavioral interventions. However, conducting an FBA for a child with an anxiety-based disorder may be inappropriate and potentially counterproductive. Further, the evidence suggested that the Student's nonverbal communication and occasional refusal to speak were not instances of willful defiance or maladaptive behavior but manifestations of social anxiety as documented in prior evaluations. As a result, interventions derived from FBA data could lead to a plan with unintended consequences. The primary concern related to the Student's limited verbal output and speech anxiety was appropriately addressed through speech-language interventions, counseling support, and

instructional strategies. The Parent offered no persuasive evidence to refute that conclusion.

The Parent has failed to establish that the Charter's refusal to assign a one-to-one paraprofessional denied the Student a FAPE. The team discussed this recommendation from the RR but concluded that embedded support from certified special-education staff would better address the Student's needs than an individual aide. This determination was educationally and professionally justified. The Student's difficulties stemmed from selective mutism and anxiety, not from issues necessitating constant adult supervision. Teachers and therapists testified credibly that continuous one-to-one assistance might reinforce dependency and stigmatize this high school Student. The IDEA does not require the adoption of every recommendation made in an evaluation or by parents. Instead, the inquiry is whether the IEP was reasonably calculated to confer educational benefit. *Ridley Sch. Dist. v. M.R.*, 680 F.3d 260, 269 (3d Cir. 2012). The Charter's decision to rely on co-taught and push-in support from certified staff met this standard. There is no evidence that the absence of a 1:1 paraprofessional deprived the Student of educational benefit or impeded progress.

Moreover, the record reflects continuous parental involvement over both school years at issue. The Parent corresponded with staff, attended IEP meetings and was consistently informed of the Student's progress. The Charter responded to parental concerns, adding additional supports and removing interventions disagreeable to the family. No procedural irregularity significantly impeded the Parent's participation or the Student's right to FAPE. The Parent was fully involved in decision-making and implementation oversight. Therefore, no procedural violation occurred.

The Parent has failed to establish by a preponderance of the evidence that the Charter failed to comply with procedural and substantive requirements. The IDEA does not require a public school to eliminate the effects of a disability or to guarantee maximized outcomes. Instead, it mandates an educational program reasonably calculated to enable a child to make appropriate progress in light of the child's circumstances. *Endrew F.* Measured by that standard, the evidence demonstrates that the Charter provided the Student with individualized, data-informed programming, adjusted support as new information became available, and proposed a more supportive placement when school day anxiety intensified. The Parent's disagreement with that proposal, while understandable, does not convert the school's responsive efforts into a denial of FAPE.

The record established that the Charter revised programming in response to data, provided extensive adult support through certified staff, and maintained the Student in an inclusive environment to the maximum extent appropriate. The Parent did not prove, by a preponderance of the evidence, that the Charter denied the Student a FAPE during the 2024–2025 school year.

## **ORDER**

**AND NOW**, this 22<sup>nd</sup> day of October 2025, after careful consideration of the record and applicable law, it is hereby ORDERED as follows:

1. The Parent's claims that the Charter denied the Student a FAPE during the 2023–2024 and 2024–2025 school years are DENIED.

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. 31372-24-25

October 22, 2025