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. 30620-24-25

Student:
C.M.

Date of Birth:
[redacted]

Parent:
[redacted]

Local Education Agency:
West Chester Area School District
782 Springdale Drive,
Exton, PA 19341

Counsel for the LEA:
Jason Fortenberry, Esq.
Sweet, Stevens, Katz & Williams,
331 E. Butler Avenue, New Britain, PA 18901

Hearing Officer:
Charles W. Jelley Esq.

Decision Date:
July 2, 2025

Jurisdiction and Procedural Background

This matter arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.,* its implementing regulations at 34 C.F.R. Part 300, and Pennsylvania's Special Education Regulations at 22 Pa. Code Chapter 14 *et seq.*, which require school districts to provide a free appropriate public education (FAPE) in the least restrictive environment (LRE) to all eligible students. In particular the Parents allege that the District failed to comply with its procedural and substantive obligations including but not limited to appropriately transitioning the Student from preschool to school age services, denied them meaningful participation in the FAPE process, removed the Student unnecessarily from general education in violation of the IDEA's least restrictive environment (LRE) mandate, and failed to deliver an appropriate individual education program (IEP) and related services consistent with *Endrew F.* and *Rowley* and their progeny. The Parties agree that the Student is a person with autism and is IDEA eligible.

The record includes testimony from Parents and District staff, multiple exhibits, pleadings, and closing statements. After a complete and impartial review of each exhibit and multiple readings of the transcripts, I now find in favor of the Parents. A comprehensive Order granting prospective and retrospective appropriate relief is attached.[1]

[1] The following Findings of Fact were made as necessary to resolve the material issues in dispute; thus, not all of the testimony and exhibits were explicitly cited or given equal weight. However, in reviewing the record, while the testimony of all witnesses and the content of each admitted exhibit were thoroughly considered, as were the parties' closing statements not all testimony or exhibits were given proper weight. 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 USC § 1415(h) (4) (A); 34 CFR § 300.513(d)(2; 34 CFR § 104.1- 104.36) and 22 Pa Code § Chapter 14 *et.seq*. References to the record throughout this decision will be to the Notes of Testimony (N.T)., School District /LEA Exhibits (S-) followed by the exhibit number, and Parent Exhibits (P-) followed by the exhibit number.

Issue

1. Did the District offer and provide the Student with a free and appropriate education, in the least restrictive environment, during the 2024-2025 school year? If not, what relief, if any, is appropriate?[2]

Detailed Findings of Fact

1. On January 9, 2024, staff at the Student's [redacted] documented the Student's academic and social performance, highlighting [redacted] engagement with peers and progress toward general education readiness. This documentation reflected the baseline strengths that shaped later placement discussions. (P-13)

2. On January 25, 2024, the Chester County Intermediate Unit (CCIU) transmitted the Parents' Intent to Register form to the West Chester Area School District, activating the District's Child Find obligations under 34 C.F.R. §§ 300.111 and 300.124. Thereafter, the District was on notice to begin the evaluation and transition planning process promptly. (P-3)

3. On January 28, 2024, the Parents submitted the Student's official Student Registration Form, confirming [redacted] eligibility for special education supports under IDEA. This triggered the District's duty to convene a timely IEP meeting. (P-4)

4. On January 30, 2024, the District acknowledged receipt of the Student's registration and [redacted]records, starting the evaluation timeline under 34 C.F.R. § 300.301(c). The District's Child Find obligation was active at this point. (P-5)

5. On February 5, 2024, the Parents emailed the intermediate unit and the District expressing concern about delayed transition planning and advocating for a placement in a regular education classroom with necessary supports in

[2] The District's closing statement parsed the issue into multiple subparts. Any claims, counterclaims or affirmative defenses not specifically mentioned herein are denied and are otherwise exhausted. The following Findings of Fact, Conclusions of Law and Analysis resolve all IDEA and Chapter 14 FAPE and LRE issues. The District issued a NOREP in January 2025, that otherwise mooted several of the mentioned subparts. Therefore, those provisions referenced in S-11 page 2 Box 2, under the "description of the action proposed or refused by the LEA" are incorporated by reference hearing as a resolution of the Parents' claims for relief.

a general education classroom. This email reinforced the Parents' clear preference for LRE compliance to the maximum extent appropriate. (P-14)

6. On March 5, 2024, the Parents formally requested a full psychoeducational evaluation and placement review to ensure proper IEP supports in a general education setting. This written request triggered IDEA evaluation deadlines. (NT p. 45)

7. On March 6, 2024, District internal emails confirmed receipt of the evaluation request, but no Permission to Reevaluate (PTRE) was issued immediately. The record shows this delay violated 34 C.F.R. § 300.503(a). (NT p. 47)

8. On April 3, 2024, the Parents sent a follow-up email to the District, restating their request for evaluation and raising concerns about compliance. This showed diligence in enforcing procedural rights. (P-15)

9. District internal emails from April 2024 confirm that staff recognized the delay but failed to issue the PTRE in a timely manner. This contributed to unnecessary delay contrary to 20 U.S.C. § 1414(a). (NT p. 52)

10. On April 24, 2024, the Student's [redacted] teacher completed an input form indicating the Student was ready for general education with supports. This information further confirmed that removal to a separate setting was unwarranted. (P-16)

11. On May 1, 2024, the District issued the Permission to Reevaluate (PTRE) 58 days after the Parents' formal request, exceeding the reasonable timeframe under 34 C.F.R. § 300.503(a). This delay unnecessarily postponed the Student's eligibility determination. (P-17; NT p. 56)

12. On May 5, 2024, the Parents signed and returned the PTRE the same day to prevent further delay. The record confirms the Parents' full cooperation with the evaluation process. (NT p. 58)

13. Between May 15 and June 30, 2024, the District conducted portions of the evaluation but did not complete all required assessments within the 60-day timeline, extending the process well into summer. (P-18; NT p. 62)

14. On July 14, 2024, the assigned autistic support teacher notified the Parents that key sections of the Student's reevaluation report were still incomplete. This message confirmed the ongoing delay in finalizing an IEP that complied with 20 U.S.C. § 1414(b). (P-19; NT p. 64)

15. On July 23, 2024, the Parents emailed the District, citing procedural violations due to the delay, and requested an immediate meeting to discuss compensatory supports for lost time. (NT p. 68)

16. On July 29, 2024, the District produced the final reevaluation report, totaling 146 days after the original request. The record shows this delay

significantly shortened the time for parents and staff to review findings before the IEP meeting. (P-20; NT p. 71)

17. On August 1, 2024, the District emailed that the speech-language pathologist would not attend the IEP meeting despite open speech needs noted in prior preschool records. This decision violated best practices for required IEP team members. (P-21; NT p. 73)

18. On August 14, 2024, internal District emails showed that staff received only 24 hours to review the completed reevaluation report before the scheduled IEP meeting. This severely limited meaningful preparation for data-driven goal development. (NT p. 75)

19. On August 15, 2024, the IEP meeting convened with insufficient notice, resulting in goals based on outdated data and removal from general education contrary to the Student's demonstrated strengths. (P-22; NT p. 77)

20. On October 23, 2024, the Student's daily schedule confirmed removal from general education phonics and math, evidencing the unilateral placement decision that the Parents consistently opposed in writing. (P-23; NT p. 81)

21. On October 24, 2024, emails between District staff confirmed that the Student's daily schedule had been adjusted to remove phonics and math from the general education classroom without prior consensus from the IEP team. This unilateral change disregarded the Parents' repeated requests to keep core academics mainstreamed. (P-23; NT p. 82)

22. On November 1, 2024, the Parents emailed the District objecting to any pull-out plan for reading and math, explicitly stating that removal from general education violated the Student's current IEP placement. This message clearly indicates that the Parents did not consent to the proposed removal. (P-24; NT p. 85)

23. On November 13, 2024, the District convened an IEP meeting at which the Student's Mother confirmed on the record that the family opposed removal from the general education classroom. She testified at the hearing: "I told them directly that we did not agree to the pull-out. We wanted supports in the regular room, not removal." (NT p. 1130)

24. On November 20, 2024, internal District communications indicate that staff anticipated parent resistance to the proposed November NOREP but proceeded without reconvening the full IEP team for consensus. (NT p. 1142)

25. On or about November 25, 2024, the District issued the NOREP proposing to shift the Student's phonics and math instruction to a supplemental autistic support classroom, with a standard 10-day response

window spanning the Thanksgiving break. The NOREP did not include written parental agreement to waive a team meeting as required by 34 C.F.R. § 300.324(a)(4). (S-8 NOREP)

26. On November 27, 2024, the Parents emailed the District requesting a follow-up meeting to resolve the dispute, but the District did not respond before schools closed for the holiday. This email supports the finding that the Parents never agreed to the November changes. (NT p. 1150)

27. On December 1, 2024, the Parents returned the NOREP marked 'Disapprove' and notified the District of their intent to file for due process if the changes were implemented without resolution. This action preserved their pendency rights under 20 U.S.C. § 1415(j). (NT p. 1155)

28. On December 6, 2024, the District nonetheless implemented the revised IEP, removing the Student from general education phonics and math based solely on the NOREP's calendar, despite documented parental objection. (S-8; NT p. 1160)

29. On December 10, 2024, internal emails confirmed that District staff were instructed to proceed with the schedule change even though the Parents had not agreed. This shows the District knowingly bypassed the required team consensus and parental consent. (NT p. 1165)

30. On December 16, 2024, the Parents filed their formal Due Process Complaint Notice challenging the November NOREP, the unilateral placement change, and asserting their stay-put rights under 20 U.S.C. § 1415(j). (NT p. 1170)

31. On December 20, 2024, the District responded with a resolution proposal that did not address the Parents' demand to restore the general education placement. The Parents rejected this proposal as inadequate to resolve the violation. (P-27; NT p. 1175)

32. On January 3, 2025, the Parents reiterated in writing that they did not consent to the November pull-out or any 'no-meet' revision, restating their procedural objections and asking for compensatory education. (NT p. 1180)

33. On January 5, 2025, staff emails show the District planned to proceed with a 'no-meet' revision to finalize the disputed placement change administratively. This plan directly violated the mutual consent requirement under 34 C.F.R. § 300.324(a)(4). (NT p. 1184)

34. On January 8, 2025, the District issued a unilateral 'no-meet' IEP revision with another NOREP, further reducing general education time without convening the full IEP team or obtaining parental agreement. (P-28; NT p. 1187)

35. On January 9, 2025, the Parents returned the "no-meet" NOREP marked "Disapproved" and restated that they did not agree to any reduction of

regular education access. They again asserted the Student's right to stay-put under the last agreed-upon IEP/placement. (NT p. 1190)

36. On January 15, 2025, the Parents' counsel submitted additional documentation to ODR, clarifying the dispute timeline and procedural violations, and requesting immediate pendency enforcement. (P-29; NT p. 1193)

37. On January 20, 2025, internal District emails confirmed staff confusion about the enforceability of the NOREP's 10-day window when parents do not agree in writing. These emails demonstrate that the District understood the pendency dispute/obligation but failed to honor it. (NT p. 1197)

38. On January 23, 2025, the Parents submitted a follow-up brief reinforcing that the last agreed-upon IEP kept the Student in general education phonics and math with appropriate supports. They attached prior team meeting notes showing no agreement to removal. (P-30; NT p. 1200)

39. On January 27, 2025, the hearing record includes testimony from both parents confirming they never signed any written waiver or agreement to amend the IEP without a full team meeting. (NT p. 1205)

40. On January 30, 2025, the record shows the District maintained the revised pull-out placement despite the pending due process complaint. (District Closing; 20 U.S.C. § 1415(j).

Credibility Determinations

Hearing officers, as designated fact-finders, bear the primary responsibility for determining the credibility and weight of witness testimony. See *J.P. v. County Sch. Bd*., 516 F.3d 254, 261 (4th Cir. 2008); *T.E. v. Cumberland Valley Sch. Dist*., 2014 U.S. Dist. LEXIS 1471, at 11–12 (M.D. Pa. 2014). The resolution of this matter primarily turns on well-established legal principles that define the respective responsibilities of the District and the Parents in developing and delivering a free and appropriate public education (FAPE) under the IDEA. The record reflects both procedural and substantive violations, including documented delays and improper removals from the regular education setting, as well as multiple programmatic and placement failures. Although the District argues that I must defer to its staff's professional judgment when interpreting IDEA procedural safeguards, prior written notice, and parental participation rights, I disagree. Where disputes turn on core IDEA procedural and substantive guarantees — not classroom instructional methods — I can decide the dispute as a matter of law. To the extent required to resolve this dispute, I give limited or no weight to staff's lay opinions about the application of federal and state law.

While staff testimony can be informative regarding the day-to-day delivery of services, the procedural and substantive violations established here arise not from how instruction was delivered but from errors, omissions, and failures to comply with the IDEA's statutory and regulatory framework and Pennsylvania Chapter 14 requirements.

Accordingly, in reaching these intertwined legal conclusions, I have balanced all testimony and documentary evidence. To the extent witness credibility affected my findings, I weighed the testimony of District staff and Parents equally, except where documentary exhibits or undisputed facts corroborated specific testimony in the record.

Conclusions of Law

1. The IDEA guarantees each eligible child a Free Appropriate Public Education (FAPE) delivered through an IEP that is reasonably calculated to enable progress appropriate in light of the child's circumstances. (Rowley, 458 U.S. 176 (1982); *Endrew F.*, 580 U.S. 386 (2017); 20 U.S.C. § 1412(a)(1); 34 C.F.R. § 300.101).

2. The District failed to comply with the procedural safeguards requiring meaningful parent participation. Under 34 C.F.R. § 300.322, parents must be full, equal members of the IEP team. Proceeding with a "no-meeting" IEP amendment violated this right. *(Doug C. v. Hawaii Dep't of Educ.*, 61 IDELR 91 (9th Cir. 2013)).

3. An IEP may be amended without a meeting only if the Parent and District mutually agree in writing. (34 C.F.R. § 300.324(a)(4). The record shows that there was no mutual written agreement; therefore, the November NOREP was procedurally defective and void from the outset. (*Letter to Chandler*, 59 IDELR 110 (OSEP 2012)).

4. A NOREP/PWN under 34 C.F.R. § 300.503 is a notice of proposed action only — it cannot override the stay-put rule, which protects the child's last agreed-upon placement during disputes. (*Drinker v. Colonial Sch. Dist.*, 78 F.3d 859 (3d Cir. 1996); *Ridley Sch. Dist. v. M.R.*, 744 F.3d 112 (3d Cir. 2014); *Susquenita Sch. Dist. v. Raelee S.*, 96 F.3d 78 (3d Cir. 1996).

5. The District's use of a NOREP during a holiday break, knowing Parents objected, deprived the Parents of a fair chance to respond, violating the procedural reasonableness standard under the IDEA. *(Rowley*, supra).

6. The IDEA's stay-put provision, 20 U.S.C. § 1415(j) and 34 C.F.R. § 300.518(a), attaches by operation of law when a dispute arises and bars any unilateral change. (*Drinker*; *Ridley*).

7. The last agreed-upon placement was the August-September 2024 IEP, which placed the Student in general education for reading, phonics, and

math with one-on-one supports. The November 2024 pull-out plan was a forced placement without mutual consent, and cannot override the pendency. (*Susquenita, Drinker, Ridley*).

8. *H.W. v. Mechanicsburg* confirmed that elevating a local form (like a NOREP 10-day to file deadline) above federal stay-put protections "does violence to the stay-put guarantee." (unpublished *Judge Jones*, slip op. at 12–13).

9. The District's unilateral removal to a VB-MAPP replacement class was a substantive change in placement, not merely a location change. Such a change always requires an IEP meeting. (*Letter to Lott*, 213 IDELR 274; *Letter to Fisher*, 21 IDELR 992).

10. OSEP has confirmed that any substantive or material change must be made by convening the IEP team. (*Letter to Green*, 22 IDELR 639). Courts also uniformly agree with OSEP. *Rose v. Chester* County IU, 24 IDELR 61 (E.D. Pa. 1996), *aff'd*, 114 F.3d 1173 (3d Cir. 1997).

11. Double-scheduling the Student to participate in art, music, physical education, adaptive physical education, speech, OT, caused the Student to miss core reading and math lessons and further caused the Student to be segregated, which also further violates the IDEA's FAPE requirement that services be designed to confer a meaningful educational benefit. (*Rowley*; *Endrew F*.).

12. The District failed to meet its transition obligations under 34 C.F.R. § 300.124 and Pennsylvania's BEC: Early Intervention to School Age Transition for Children with Disabilities, which requires timely and coordinated planning to prevent gaps. (*Downingtown Area Sch. Dist*., 110 LRP 70033 (SEA PA); *T.R. vs. Kingwood Twp. Bd. of Educ*., 39 IDELR 251 (SEA NJ 2003).

13. The District's procedural and substantive failures described herein deprived the Student of the right to placement in the Least Restrictive Environment (LRE) alongside non-disabled peers to the maximum extent appropriate. (*Oberti v. Board of Educ*., 995 F.2d 1204 (3d Cir. 1993)).

14. The record is preponderant that the Parents clearly objected in writing and on the record to the proposed IEP and placement changes. I now conclude that the failure to file a due process complaint within 10 days of receipt of the NOREP does not support a finding that the Student's Parents knowingly, voluntarily, or intelligently waived their child's "stay-put" rights. A NOREP cannot serve as an implied waiver of pendency under the IDEA. *H.W. v. Mechanicsburg Area Sch. Dist.*, Civ.-No. 1:18-CV-00147, _____ F.Supp.3d _____, (M.D. Pa. March 20, 2018)(unpublished).

15. Appropriate relief in the form of compensatory education is warranted to make the Student whole for the loss of a chance to participate in core

academics, to remedy the lingering effects caused by the Student's inappropriate segregation, the stay-put breach, and the transition errors. (*M.C. v. Central Reg'l Sch. Dist*., 81 F.3d 389 (3d Cir. 1996); *G.L. v. Ligonier Valley Sch. Dist. Auth*., 802 F.3d 601 (3d Cir. 2015).

16. Appropriate relief also includes reimbursement for prospective out-of-pocket related service costs and expenses, associated with the transportation costs to access compensatory services. (34 C.F.R. § 300.34; G.L.; *Rowley*, *M.C*.; *Endrew*; *Ridley*).

17. Appropriate relief also requires prospective corrective staff training and necessary continuing professional development for all staff on this Student's IEP team regarding the proper use of NOREPs, procedural safeguards, stay-put, transition planning (BEC), *LRE* practices, and the *Oberti* inclusion mandate to prevent repeat violations.

Analysis and Application of Applicable IDEA Requirements

The PDE EI Transition Mandate and IDEA Legal Duties

The record in this matter overwhelmingly demonstrates that the District failed to comply with clear, binding supervisory directives from the Pennsylvania Department of Education (PDE) implementing the Individuals with Disabilities Education Act (IDEA) when transitioning the Student from Preschool Early Intervention (EI) services to school-age special education. The transition from EI to school-age services is a critical juncture under the IDEA. It is not merely an administrative formality, but rather a legally mandated sequence of procedural and substantive actions designed to ensure the continuity of a FAPE in the LRE.

The controlling general supervision authority includes the PDE's Bureau of Special Education, the "Early Intervention to School-Age Transition" Basic Education Circular (BEC), revised in April 2025, 22 Pa. Code § 14.154, and federal IDEA transition regulations at 34 C.F.R. §§ 300.124(c) and 303.209(c).[3] These widely published directives obligate the District to accept Local Education Agency (LEA) responsibility once a Parent submits an Intent to Register form. Here, the Parent submitted the required forms in January 2024, thereby triggering the District's mandatory obligation to locate, identify, evaluate, educate, and provide procedural safeguards, ensuring a

[3] Date of Issuance: July 1, 2003, Date of Review: April 4, 2025, October 19, 2009, June 30, 2006 Replaces: Early Intervention Transition: Preschool Programs to School-Aged Programs, 11 P.S. §875-304, issued July 1, 2003, https://www.pa.gov/agencies/education/resources/policies-acts-and-laws/basic-education-circulars-becs/purdons-statutes/early-intervention-transition-preschool-programs-to-school-aged-programs.html

fully developed IEP was in place by the first day of school. These well-defined requirements were not met.

Yet, contrary to the PDE IDEA general supervision directives, the District did not issue any timely procedural safeguard notices acknowledging LEA status by April 15, nor did it convene a timely and valid IEP team meeting with EI staff to evaluate the Student's needs and offer a FAPE in the LRE. The testimony of the school psychologist confirmed that the District falsely stated in its reevaluation report that a June 2024 IEP meeting occurred to discuss the Student's reevaluation; it did not. This omission alone constitutes a material procedural violation that interfered with and prejudiced parental participation, in direct contravention of 34 C.F.R. § 300.322 and 22 Pa. Code § 14.102**.** (NT p.143-144).

Moreover, instead of coordinating with the Intermediate Unit to conduct timely transition planning, as required under PDE policy and 34 C.F.R. § 303.209, the District delayed responding to the Parent's March 5, 2024, reevaluation request until May 1, 2024. It then took an additional 146 days to complete the reevaluation, which was significantly longer than the timeframe required to ensure seamless FAPE continuity. The District's inaction interfered with the Parents' participation and ignored the Student's demonstrated success in a typical [redacted]classroom, with supports, and refusal to consider placement in the general education setting with supplementary aids and services, as required by Oberti v. Board of Educ., 995 F.2d 1204 (3d Cir. 1993). The record is preponderant that the IEPs failed to include modifications, adjustments, or changes to the content provided in the LRE.

The BEC and the federal IDEA provisions are explicit: once the Parent provided notice of intent to enroll, the District was jointly responsible for transition planning with the Intermediate Unit. Its failure to do so created significant disruption in services and deprived Connor of a meaningful opportunity to receive specially designed instruction aligned with his needs, in violation of *Rowley* and *Endrew F*.

In sum, the District's failure to comply with PDE's published transition framework and its misapplication of shared LEA responsibility resulted in both procedural and substantive IDEA violations. These errors denied the Student the FAPE. This hearing officer, therefore, concludes that the District's actions constitute a fundamental failure to honor its legal duty under federal and state special education laws.

The Goals, SDIs, LRE Analysis, and the *Oberti* Factors

The Supreme Court in *Rowley* (458 U.S. 176 (1982)) and *Endrew F*. (580 U.S. 386 (2017)) clarified that an IEP must be "reasonably calculated to

enable a child to make progress appropriate in light of the child's circumstances." This means goals must be measurable, include clear baselines, and be capable of producing progress data that is meaningful and actionable. The Third Circuit, in Oberti (995 F.2d 1204 (3d Cir. 1993)), requires that placement decisions start with the maximum extent appropriate, including education in the regular education setting with the regular education curriculum, with removal only justified when supplementary aids/services are demonstrably inadequate to support learning in the regular education setting. The guiding principles control the analysis.

The Third Circuit's decision in *Oberti v. Board of Education of the Borough of Clementon School District*, 995 F.2d 1204 (3d Cir. 1993), sets out the controlling test for compliance with the dual FAPE LRE mandate. Applying *Oberti*, courts and hearing officers must review the IEP team's decision-making in applying two central mandates: First, can the Student be satisfactorily educated in the regular classroom with the help of supplementary aids and services? To answer this, the IEP Team and the decision maker must analyze: Steps the school district has taken to support the child in the general education setting.

1. The child's ability to receive educational benefits from regular education, given the proposed supports.

2. The likely effect of the child's presence on the classroom environment, including whether the child's needs can be met without unduly disrupting the education of others. See *T.R. v. Kingwood Township Board of Education*, 205 F.3d 572, 579 (3d Cir. 2000) (summarizing *Oberti* test).

Second, if education in the regular classroom is not appropriate, has the District provided services to the maximum extent appropriate? Here, the IEP Team must consider whether the child will have meaningful opportunities for inclusion — such as lunch, recess, extracurricular, and specials — and whether the District has explored a full continuum of placements and supports short of full-time removal. See *Oberti*, 995 F.2d at 1216–21. The *Oberti* Court emphasized that educational benefits include more than academics alone; social and communicative growth, peer interaction, language modeling, and self-esteem are all essential benefits. Removal from the regular classroom is not justified solely because a child requires curriculum modifications — the IDEA requires districts to modify the curriculum if appropriate. 34 C.F.R. § 300.116 (e). The District bears the burden of production to demonstrate that it genuinely considered and attempted supplementary aids and services before opting for a segregated classroom. See *Oberti*, 995 F.2d at 1220–21; *Daniel R.R. v. State Board of Education*, 874 F.2d 1036, 1048–50 (5th Cir. 1989). Failure to follow this sequence — or deciding placement first — is a procedural violation that

undercuts the Parent's right to participate and can result in a denial of FAPE. *Deal v. Hamilton County Bd. of Educ.*, 392 F.3d 840, 857–58 (6th Cir. 2004). The record is overwhelming that the District did not complete a comprehensive IDEA LRE or *Oberti* analysis.

Classroom Scheduling Practices Isolated the Student

The record shows the Student was scheduled for two physical education classes, two music classes, and two art classes each week, with no pedagogical justification. One class consisted of peers from the VB-MAPP class, while the other included peers from the regular education program. This dual scheduling resulted in the Student being removed from the core regular education math and reading classes, as well as other classes, in violation of the IDEA LRE requirements and *Oberti*. (NT pp. 350–355). At one point, the staff decided to limit regular education math and reading instruction, further restricting access to the regular education curriculum with SDI and participation in the LRE. This flawed decision-making increased the Student's time in the isolated VB-MAPP class. When asked if the dual scheduling impacted learning, the staff brushed off the Parents' request and denied "make-up" instruction.

The IEP documents further demonstrate that, after calculating the length of the Student's removal, the staff declined to provide make-up time or to adjust academic expectations to account for the loss of instructional opportunity in the regular education environment. Such rigid, inflexible reasoning finds no support in the IDEA, its implementing regulations, or established case law. The teacher's unilateral scheduling decisions deprived the Student of critical instruction in reading, math, and numeracy. The staff improperly restricted the Student's access to the regular education classroom, directly undermining the IEP's least restrictive environment (LRE) mandate and academic goals. These actions and inactions constitute both procedural and substantive violations of the Student's right to a FAPE. When asked about the dual scheduling arrangement at the hearing, the staff were unable to provide a cogent explanation of the decision-making process. Therefore, I now conclude that the dual scheduling was done for administrative convenience.

Failure to Apply IDEA LRE Standards and the *Oberti* Factors

The administrative record contains no documentation that the IEP team conducted an appropriate *Oberti* analysis. Namely, whether supplementary aids/services were considered, offered, and exhausted before removal to the VB-MAPP room. Witnesses (NT pp. 310–320, 355–365) confirmed that no trial supports, aids, or strategies to support placement, positive behavior support to improve learning, co-teaching trials, modified or adjusted content

or materials, or supported student-teacher coaching strategies were attempted. By failing to undertake an individualized effort, including a fact-specific inquiry to determine the extent of participation in regular education, in real time, the staff relied on categorical, canned VB-MAPP programming. In doing so, the District violated the IDEA's core principle that placement must be based on the child's unique needs, not on administrative convenience, building preferences, scheduling routines, or the failure to provide supplemental aids and services or unilateral teacher action.

Whether these errors, omissions, and ongoing decision-making failures are considered together or as standalone acts, the IEP, as offered and implemented, included noncompliant goal statements and lacked individualized SDIs to support participation in the LRE. The IEP team failed to consider or apply the long-held *Oberti* analysis factors to improve learning. Therefore, the only possible conclusion is that the IEP, when offered, implemented, and revised, systematically denied the Student a FAPE in the LRE. The Student's placement decision-making was driven by program convenience, staff availability, and administrative fiat, rather than individualized need, personalized instruction, or data that was reasonably likely to indicate or confirm the educational benefit.

The District's approach, in this instance, contradicts *Rowley*, *Endrew F.*, and *Oberti*. I now conclude that the District must take corrective action and develop an IEP with robust SDIs supporting general education participation and placement decision making that genuinely follows the IDEA's sequential FAPE–LRE analysis. Furthermore, I now conclude that the Student is entitled to retrospective compensatory education.

The NO Meeting IEP Revisions and NOREP Violations

This final topic in the dispute presents a core question under the IDEA: whether a local procedural notice — here, a Pennsylvania NOREP form stating that the District will implement a proposed placement change after ten days if the parents do not file a due process complaint — is sufficient. The second question is whether the NOREP filing deadline can override the federal statute's unequivocal "stay-put" protection when parents object to the proposed actions and do not file a complaint within 10 days of receipt of the NOREP. For the reasons that follow, I find that the District application, in this instance, misunderstands the applicable "stay put" rule and the IDEA filing deadline. The District's reliance on the NOREP's ten-day language to alter the Student's placement, under these circumstances, in light of the documented parental objection, directly conflicts with the IDEA, well-settled Third Circuit precedent, and the statute's precise procedural safeguards and notice requirements. Therefore, I now find that the District violated the IDEA's "stay put" provision. I further find that a comprehensive, equitable make-whole remedy is necessary.

On November 25, 2024 — during the week of Thanksgiving — the District issued a Notice of Recommended Educational Placement/Prior Written Notice (NOREP/PWN) proposing to revise the Student's IEP by removing phonics and math instruction from the general education setting and moving it to a supplemental autistic support classroom. (S-8 NOREP)

The NOREP invoked Pennsylvania's standard ten-day response window for parents to approve or disapprove of the proposed action. The District knew the ten-day window spanned the Thanksgiving holiday break, when schools were closed and the Parents' ability to access staff and legal resources was reduced. Under 34 C.F.R. § 300.324(a)(4), an IEP may be amended without reconvening the whole team only if both the Parent and the District mutually agree in writing. Here, there is no evidence — and the District does not contend otherwise — that any such written mutual agreement existed. (S-8 NOREP). Therefore, as a matter of law, the District's actions were prohibited.

The Parents consistently and unequivocally opposed the removal from general education. The Mother testified: "We did not agree to the November revisions because they removed [redacted] from [redacted's] general education reading and math. We told the District repeatedly we would not approve this plan." (ODR FILE #30620-24-25 Vol V, p. 1104, lines 2–5)

The Father further stated: "We asked for a team meeting to resolve these issues. Instead, the District did a no-meet change and issued a NOREP. We objected in writing and asked for compensatory education for what was missed." (ODR FILE #30620-24-25 Vol V, p. 1112, lines 10–15)

The Mother confirmed on cross-examination: "I told them directly at the November 13 IEP meeting that we did not agree to the pull-out. We wanted supports in the regular education room, not removal." (ODR FILE #_30620-24-25 Vol IV, p. 1130, lines 14–18). Despite this unambiguous opposition, the District implemented the revised IEP on or about December 6, 2024, relying solely on the NOREP's ten-day calendar. (S-8 NOREP). The record confirms that the last agreed-upon placement was the IEP in place prior to the November meeting, which kept the Student in the general education classroom for phonics and math with supports. (P-30 IEP)

On December 16, 2024, just days after the District's unilateral implementation decision, the Parents filed for due process, expressly asserting their rights under 20 U.S.C. § 1415(j) — the IDEA's "stay-put" protection. The IDEA's "stay-put" provision is unequivocal: "During the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child." 20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a).

The Third Circuit has described this mandate as "an absolute rule in favor of the status quo." *Drinker v. Colonial Sch. Dist*., 78 F.3d 859, 864 (3d Cir. 1996). Furthermore, the Third Circuit has repeatedly affirmed the controlling force of this protection. *M.R. v. Ridley Sch. Dist*., 744 F.3d 112, 124 (3d Cir. 2014) (quoting *Susquenita Sch. Dist. v. Raelee S*., 96 F.3d 78, 83 (3d Cir. 1996)). Courts hold that the dispositive question is always which IEP was actually in effect when stay-put is invoked. *Drinke*r, 78 F.3d at 867.

The IDEA's federal filing deadline is two years from the date the parents either knew or should have known of the alleged violation. 20 U.S.C. § 1415(b)(6)(B); § 1415(f)(3)(C). *G.L. v. Ligonier*, 802 F.3d 601 (3d Cir. 2015); *D.K.*, 696 F.3d 233. The NOREP's ten-day statement does not appear in federal statute or the Chapter 14 regulations. Pennsylvania has not enacted a shorter filing deadline. Prior written notice must be full, clear, and sufficient to explain all rights. 34 C.F.R. § 300.503(b). The procedural safeguards notice must also describe all timelines. 34 C.F.R. § 300.504(c). Courts do not enforce hidden local limitations that conflict with these requirements. The standard procedural safeguards notice does not recognize the NOREP 10-day filing deadline.

Judge Jones's decision in *H.W. v. Mechanicsburg Area Sch. Dist.*, Civ.-No. 1:18-CV-00147, _____ F.Supp.3d _____, (M.D. Pa. March 20, 2018)(unpublished) makes clear that elevating a local procedural form – a NOREP - over the IDEA's statutory safeguard "would elevate form over substance and do violence to the purpose of the stay-put provision." (*H.W.*, slip op. at 12–13.) This persuasive federal ruling, which overrides this Hearing Officer's earlier application of the 10-day NOREP statement in *H.W*., directly refutes any argument that the District makes here. The Court was decisive that Hearing Officer Jelley's prior analysis on this precise point was fundamentally flawed and no longer valid authority after *G.L*.. The District's contrary position here cannot defeat the application of the "stay-put" rule under these circumstances. Stated another way, the NOREP does not insulate a unilateral placement change that violates the controlling Third Circuit precedents in *G.L*., *Drinker*, *Ridley*, and *Susquenita*.

The record confirms that the Parents returned the November NOREP on December 2, 2024 — well within the ten-day period — and then filed a due process complaint some fourteen days later, on December 16, 2024, entirely within the IDEA's two-year federal timeline. The District knew as early as October 2024 that the Parents objected to the teacher's unilateral decision to reduce the Student's time in general education math and reading. The November IEP itself acknowledged this dispute by calculating the number of hours missed in each class. Despite knowing the Parents' position, the District waited eight days to issue the NOREP, then attempted to force the placement change while ignoring the Parents' clear opposition.

By operation of law, stay-put attaches to the last agreed-upon placement. Applying Third Circuit precedent, I now find that the last agreed-upon placement was the August-September 2024 IEP, not the contested November revision. Accordingly, the District erred as a matter of law when it unilaterally, with the benefit of an IEP meeting, removed the Student from general education reading and math and placed the Student in the VB-MAPP class.

Even assuming arguendo the NOREP was controlling, the VB-MAPP class did not provide either a lawful replacement curriculum or a reasonable opportunity to learn the grade-level content required under 22 Pa. Code Chapter 4. See, *Doug C. v. Hawaii Dep't of Educ.*, 61 IDELR 91 (9th Cir. 2013)(District violated the IDEA when it bypasses the Parent's right to participate in the IEP process when it refuse to reschedule an IEP meeting at the Parent's reasonable request and proceeds to modify an existing IEP); *Letter to Green*, 22 IDELR 639 (OSEP 1995)(material changes must be reviewed by the full IEP team including the parents); *Rose v. Chester County IU*, 24 IDELR 61 (E.D. Pa. 1996), aff'd 114 F.3d 1173 (3d Cir. 1997); *Lemoore Union Elem. Sch. Dist.*, 123 LRP 19847 (SEA CA 2023); *Washoe County Sch. Dist.*, 115 LRP 3790 (SEA NV 2015)(courts and state hearing officers consistently hold that a district cannot unilaterally amend an IEP outside a meeting); *Letter to Lott*, 213 IDELR 274 (OSERS 1989); *Letter to Fisher*, 21 IDELR 992 (OSEP 1994)(Any substantive change to a student's educational program requires the District to convene the full IEP team before implementation of any shift that alters services, supports, or placement). Therefore, the District's change in placement during these proceedings violated the "Student's stay put" rights.

Appropriate Relief Includes Both Retrospective and Prospective Relief

Applying controlling Third Circuit precedent, I conclude that the following make-whole relief package is necessary to provide the Student and Parents with appropriate redress under the IDEA. The complete record supports an award that includes both **r**etrospective and prospective components. Guided by the settled principle that compensatory education is intended to place the child in the position they would have occupied but for the violation. I further find that the following relief also addresses the Parent's IDEA-related claims regarding reevaluation, identification, delays, inappropriate educational services, and parent participation. See *G.L.*; *Boose v. District of Columbia*, 786 F.3d 1054, 2015 U.S. App. LEXIS 8599 (D.C. Cir. 2015).

Retrospective compensatory education will remedy the denial of FAPE from the first day of the 2024–2025 school year through its conclusion. To correct the dual scheduling error and the unjust loss of learning opportunities, the

District is directed to calculate all instructional time missed in either the general education or special education classroom. Once calculated, the District shall provide the Parents with a detailed, minute-for-minute, hour–for–hour accounting. The Parents, at their sole discretion, may select a qualified provider of their choice to provide all compensatory education. The selected provider shall submit monthly invoices to the District, detailing the hours provided and the applicable hourly rates. The District shall pay all submitted invoices within thirty (30) calendar days of receipt.

Additionally, within ten (10) days of this Order, the District is further directed to calculate the total number of days and instructional hours missed by the Student when they were improperly removed from general education reading and math classes. Once calculated, the District should provide the calculation to the Parents. The Parents may again select a qualified provider of their choice to deliver equivalent compensatory services, with monthly invoices processed and paid under the same terms.

As the Ninth Circuit made clear in *Doug C. v. Hawaii Dep't of Educ.,* "Procedural violations that result in a loss of educational opportunity or seriously infringe the parents' opportunity to participate in the IEP formulation process clearly result in the denial of a FAPE." 720 F.3d 1038, 1043 (9th Cir. 2013) (quoting *Amanda J*.). The IDEA's procedural requirements are "not mere procedural hoops through which Congress wanted state and local educational agencies to jump." Still, they are fundamental to safeguarding the rights of students and their parents. *Doug C.*, 720 F.3d at 1043; *Reid v. District of Columbia*, 401 F.3d 516 (D.C. Cir. 2005); *G.L. v. Ligonier Valley Sch. Dist. Auth*., 802 F.3d 601 (3d Cir. 2015)(where a procedural violation significantly impedes the parents' participation and results in a denial of FAPE equity compels a remedy). This logical conclusion follows the settled equitable maxim that for every right, there must be a remedy and reinforces another equitable maxim that equity abhors a forfeiture of statutory protections case law to date has not determined what remedies are available to parents when the District interferes with their substantive and procedural FAPE rights; therefore, not relief is directly awarded to the Parents. See *Winkelman v. Parma City School District*, 550 U.S. 516 (2007) (confirming that parents hold enforceable rights of their own to meaningfully participate in the development of their child's IEP and placement decisions). The limited tailored relief awarded here places the Student where they would have been but for the District's actions and reaffirms that the Parents' statutory rights must be protected in full going forward. Accordingly, it is therefore **ORDERED** that this relief shall be implemented without further delay to ensure the Student's educational recovery is quick and the Parents' meaningful participation is fully restored. The Parents are directed to use all

compensatory education hours to secure Student-specific, specially designed instruction, related services, or supplemental aids. Parent-specific action is necessary to address the District's procedural and substantive violations of the Parents' right to participate fully in the Student's reevaluation, IEP development, and receipt of FAPE.

While equity abhors a forfeiture, no parent-specific relief is now available to correct the District's failure to comply with the well-established legal requirements for transition from preschool to school-age services.

ORDER

And now the 2nd day of July 2025, the following relief and remedies are awarded to correct the procedural and substantive violations of the IDEA's LRE and FAPE mandates, the District is hereby **ORDERED** to do the following:

1. Compensatory Education: Within ten calendar days of this Order, the District shall provide the Parents with a detailed, day-by-day, minute-by-minute calculation of the total hours the Student missed due to the unlawful removals described herein. The Parents shall have five (5) calendar days to review the calculation and, if acceptable, notify the District of their approval. Within five (5) calendar days of receiving notice of the Parents' approval, the District shall then pay all invoices in full within thirty (30) calendar days of receipt. The Parents, in their sole discretion, shall select the provider or providers. The Parents shall use the award before the Student ages out of school. Any used hours remaining once the Student ages out are otherwise forfeited.

2. Related Services and Transportation: The District shall reimburse parents for any related services or transportation costs incurred in taking the Student to and from compensatory education sessions. Reimbursement shall be at the District's standard annual mileage reimbursement rate. The relief is independent of the District's duty to provide compensatory education.

3. Staff Training: The District shall arrange for in-service training for all staff involved in the decision to remove the Student from general education. Furthermore, the District shall arrange for in-service training for all staff members involved in the transition decision-making process. The professional development should cover the IDEA's LRE, FAPE, and transition from preschool to school-age services mandates, particularly the requirements clarified by *Oberti*. The District may retain an outside provider, such as the Intermediate Unit or a qualified college or university, to deliver this training.

4. Policy Review: The District shall review and, if necessary, revise its Special Education Plan to ensure that all staff are trained in the legal standards for IEP development, stay-put protections, and appropriate use of the NOREP/PWN process in accordance with state and federal regulations. All training and policy review should be completed by December 23, 2025.

5. **Use of Hours**: Compensatory education hours may be used for any developmental, corrective, remedial, or specially designed instruction, including related services and transition services as defined under IDEA or Section 504. The Parent is free to select the compensatory education provider.

6. **Expiration**: Compensatory education hours may be used until the Student ages out, after which unused hours shall revert to the District.

7. **Annual Reporting**: On or before January 15 of each year until the Student ages out of the District, the District shall provide a written accounting to the Parent of all unused compensatory education hours.

8. Finality of Order: The remedies ordered herein are final and binding, subject to any appeal rights provided under applicable federal or state law

Date July 2, 2025

/s/ Charles W. Jelley
Special Education Hearing Officer