

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**

Open Hearing¹

ODR No. 32263-25-26

Child's Name:

C.B.

Date of Birth:

[redacted]

Parent(s):

[redacted]

Counsel for Parent(s):

David Arnold, Esq.
Robson & Robson PC
2200 Renaissance Blvd., Suite 270
King of Prussia, PA 19406

Local Education Agency:

Philadelphia City School District
Office of General Counsel, 440 N Broad Street, Suite 313
Philadelphia, PA 19130

Counsel for LEA:

Jenna Oberlander, Esq.
Office of General Counsel
440 N. Broad St., Suite 313
Philadelphia, PA 19130

Hearing Officer:

Joy Waters Fleming, Esq.

Date of Decision:

August 7, 2026

¹ (N.T. 9)

INFORMATION AND PROCEDURAL HISTORY

The Student (Student)² recently completed the [redacted] grade in the District. The Student is eligible for special education programming as a child with Autism and a Speech or Language impairment and is entitled to procedural protections under the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act (Section 504), and the regulations implementing those statutes.³

Parents were initially *pro se*, but after the first hearing session, they retained legal counsel.⁴ Their due process complaint alleged that from December 2023 through December 2025 of the 2025-2026 school year, the District failed to provide the Student with a free appropriate public education (FAPE) and challenged the design and implementation of Student's educational programming, including speech-language and occupational therapy services, behavioral supports, one-to-one assistance, and transportation. They seek compensatory education and consideration for a

² 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 the details on the cover page, will be redacted before the decision's posting on the website of the Office for Dispute Resolution in compliance with its obligation to make special education hearing officer decisions available to the public pursuant to 20 U.S.C. § 1415(h)(4)(A) and 34 C.F.R. § 300.513(d)(2).

³ 20 U.S.C. §§ 1400-1482. The federal regulations implementing the IDEA are codified in 34 C.F.R. §§ 300.1 – 300.818. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14). Section 504 is found at 29 U.S.C. § 794. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 15.1 – 15.11.

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

⁴ Although both parents are advocates for this child and participated in the hearing, one parent appeared to take the lead in decision-making. References to "Parent" include both parents.

change in placement. In response, the District denied that it failed to offer or provide a FAPE and that the Student made meaningful educational progress.

For the reasons that follow, the Parents' claims are mostly granted.

ISSUES

- 1) Did the District deny Student a free appropriate public education (FAPE) from December 2023 through December 2025 of the 2025-2026 school year by failing to adequately design and consistently implement Student's IEP, including but not limited to speech-language services, occupational therapy, behavioral supports/therapy, and provision of a consistent and appropriately trained one-to-one assistant and transportation supports?
- 2) If the District denied the Student a FAPE, what, if any, remedy is appropriate?

FACT FINDINGS

1. The Student is eligible for special education as a child with Autism and a Speech or Language Impairment. (S-2, S-12)

2023-2024 School Year-[redacted]

2. During the 2023-2024 school year, the Student attended [redacted] in the District. (S-2; N.T. 140, 292-293)

3. In November 2023, the District issued a reevaluation report (RR) concerning Student. For inclusion in the report, the District attempted but did not complete cognitive testing. Although the RR identified speech-language needs, the District did not have a speech-language therapist assigned to complete a speech-language evaluation. (S-2; N.T. 208-209, 212, 214, 218-219, 239)
4. The RR determined that Student was eligible under the disability category of Autism based on behavioral observations and prior reports. (S-2; N.T. 219-220, 226-227)
5. On November 28, 2023, Student's IEP team developed an IEP that identified needs in communication, behavior, transportation, and adult assistance. The present levels described Student as nonverbal and gaining an adult's attention by pulling the hand. The RR noted Student's interest in puzzles, blocks, and outdoor activities. (S-3)
6. The November 2023 IEP indicated the District had not updated Student's prior speech-language goals because of staffing shortages. (S-3, p. 8)
7. The November 2023 IEP offered fourteen goals intended to address behavior, interpersonal communication, functional academics, personal maintenance, domestic maintenance, and recreation and leisure. Specially designed instruction included extended time, simple directions, response manipulatives, verbal cues, and frequent breaks. (S-3)

8. Through the November 2023 IEP, the Student was offered supplemental autistic support, 360 minutes per month of speech-language therapy, 120 minutes per month of occupational therapy, a school-day one-to-one assistant, extended school year services, and specialized transportation consisting of curb-to-curb service, a harness or belt, and a one-to-one bus aide. (S-3)
9. In February 2024, the team revised Student's IEP and added goals and corresponding specially designed instruction to address needs in functional academics, recreation and leisure, personal maintenance, and interpersonal communication. (P-5, S-8; N.T. 41-42)
10. In February, the District completed a functional behavior assessment (FBA) of the Student. The resultant positive behavior support plan (PBSP) identified behaviors of concern that included tantrums and refusal to complete assigned work. (S-8, S-9)
11. The February 2024 present levels reported that Student had mastered a matching skill within Level One of the STAR program but continued to require support to respond to the direction "come here" and continued to demonstrate expressive communication needs. The IEP indicated the District did not update the Student's speech-language goals because of staffing shortages. (P-5, p. 7)

Transfer to new District elementary school

12. In late March 2024, the District transferred Student to a different elementary school purportedly to provide programming more closely aligned with Student's educational and behavioral needs. (N.T. 113-116, 291-294)

13. At the new elementary school, the Student continued to demonstrate significant communication, behavioral, and safety needs that required intensive support, including one-to-one adult assistance during the school day and on District transportation. (N.T. 22-24, 116)
14. An experienced autistic support teacher became Student's [redacted] teacher at the new school. The teacher assessed Student's verbal behavior, barriers to learning, transition, self-care, and personal skills. The teacher also obtained milestone and placement scores and collected daily cold-probe data for progress monitoring. (N.T. 14-17)
15. In April 2024, a speech-language pathologist and an occupational therapist began providing services to the Student. In May 2024, the District assigned a one-to-one aide to the Student. (S-15, p. 43; N.T. 96-98, 106-107, 116, 182-183)
16. The District did not assign a behavior specialist to oversee Student's behavioral programming, data analysis, or interventions. The [redacted] teacher made behavioral programming decisions for Student. (N.T. 27, 30, 36, 117)
17. In May 2024, the District completed a speech-language evaluation that concluded eligibility of the Student based on speech or language impairment. The Parent reported a regression in behaviors, increased anger and frustration, and a decrease in word use when upset. (S-12, p. 3. S-23)

18. On May 31, 2024, Student's IEP team revised Student's educational program. The IEP offered nineteen goals to address verbal behavior, interpersonal communication, functional academics, personal maintenance, recreation and leisure, and other life-skills needs. (S-14; N.T. 18)
19. SDI included frequent breaks, hands-on activities, verbal-behavior instruction in a one-to-one setting, access to an augmentative and alternative communication device, a positive behavior support plan, and behavioral supports with daily behavioral data collection and progress monitoring. (S-14; N.T. 16-18, 53-56)
20. Offered related services included a reduction to 90 minutes per month of individual occupational therapy, 120 minutes per month of individual speech-language therapy, a school-day one-to-one assistant, and specialized transportation consisting of curb-to-curb service, appropriate belting, and a one-to-one adult seated with Student. (S-14, p. 50-51)
21. From November 2023 until the end of the school year, progress reporting indicated the Student mastered or made satisfactory progress toward some IEP goals but needed improvement with others. (S-14, S-16)
22. From December 2023 through May 2024, Student's IEPs required the District to provide 2.0 hours of occupational therapy per month. May 2024 IEP revision required 1.5 hours per month. The District provided 10.5 hours, resulting in a shortfall of 3.0 hours. (S-14, S-15)

23. From December 2023 through June 2024, Student's IEPs required the District to provide 38 hours of speech-language therapy. The District provided 1.5 hours, resulting in a shortfall of 36.5 hours. (S-14, S-15)
24. Student's 2024 extended school year program was scheduled from June 25 through July 25, 2024. During ESY, the Student was entitled to receive 60 minutes per month of occupational therapy, 120 minutes per month of speech-language therapy, a school-day one-to-one assistant, and transportation with a one-to-one bus aide. (S-14)
25. The District failed to provide Student with any occupational therapy or speech-language services during the 2024 extended school year program. (S-14, S-15)

2024-2025 School Year- [redacted]Grade

26. During the 2024-2025 school year, the Student was enrolled in the [redacted] grade in the District and continued to receive a supplemental level of autistic support. The Student's IEP team updated programming in January, February and March 2025. (S-14, S-20, S-21; N.T. 249-251, 294)
27. During the 2024-2025 school year, as noted in the IEPs, the Student continued to have communication needs, required one-to-one adult support during the school day and on District transportation because behaviors affected safety and access to educational programming. (S-14, S-20, S-21)

28. Student's autistic support teacher and special education assistants provided Student daily instruction and behavioral support. Classroom staff rotated with Student to generalize skills. (N.T. 34-35)
29. The teacher collected and regularly reviewed daily data, conducted biweekly progress monitoring for Student throughout the school year. and transferred the information into Excel spreadsheets. The teacher managed Student's behavioral programming and decided whether interventions were effective. (N.T. 16-17, 26-31, 53-56)
30. A one-to-one, assigned to the Student, assisted with the generalization of skills within the classroom. (N.T. 46-47, 191-195)
31. When the Student's assigned one-to-one support staff was absent, the District generally provided replacement coverage through other trained staff members. (N.T. 28, 31-37)
32. In January 2025, the team revised the Student's IEP with specialized transportation that included the use of a five-point harness and seatbelt. (S-21, p. 51)
33. The Student's one-to-one bus aide met at the Parent's residence, walked the Student onto the bus, sat beside the Student, and strapped

the Student into a harness. The aide rode with the Student in the morning and afternoon and walked the Student off the bus at school and at drop-off. The aide did not receive training in harness use. During bus transportation, the Student did not use a seat belt with the harness. (S-21, S-25; N.T. 269-271, 275, 277, 278)

34. In March 2025, the team met to discuss parental concerns and revise the Student's IEP to reflect progress, mastery of multiple goals, and programming that reflected a need for higher-level skills. (S-24, S-25, S-26; N.T. 16-19, 60-67, 75-76, 141)

35. During the 2024-2025 school year, through the implemented IEPs, the Student was entitled to 90 minutes per month of OT services and 120 minutes per month of speech services. (S-14, S-15, S-21, S-25)

36. During the 2024-2025 school year, the Student was entitled to receive 15 hours of OT; however, the District failed to provide the Student with 4.5 hours of those services. (S-14, S-21, S-22, S-25; N.T. 98-103)

37. During the 2024-2025 school year, the Student was entitled to receive 20 hours of speech-language therapy; however, the District failed to provide the Student with 12.7 hours of those services. (S-14, S-21, S-22, S-25; N.T. 107-110)

38. Although the Student was entitled to receive 60 minutes of OT and 120 minutes of speech therapy during ESY summer 2025, the Student received 0 hours of OT and speech services. (S-22, S-25)

39. Student demonstrated academic, communication, and behavioral progress during the 2024-2025 school year, in decoding, blending words, use of the AAC device, reading and communication skills. (S-26, S-27, S-36, N.T. 60-65, 68-73)

2025-2026 School Year - [redacted]Grade

40. During the 2025-2026 school year, the Student was enrolled in the [redacted] grade in the District. (S-36)

41. Student continued to receive verbal behavior programming, intensive instructional trials, and one-to-one support services during the 2025-2026 school year. (N.T. 89-90)

42. In December 2025, the IEP team met to address parental concerns regarding the need for additional speech and OT minutes and their request for placement of the Student in an alternative private school (APS). (P-14)

43. Through a NOREP, the District offered continued placement of the Student at an autistic level of supplemental support, speech and OT, special transportation, a classroom one-to-one and eligibility for ESY. (P-15, S-37)
44. On December 4, 2025, the Parent did not approve the District's recommendation, citing the offered programming was insufficient. The Parent requested a due process hearing. (P-15, S-37)
45. During fall 2025, the Student experienced some behavioral regression but also demonstrated satisfactory progress and mastery of some goals. (N.T. 30-31, 36-37, 66-67, 89-90)
46. When the transportation aide was absent, the District attempted to find a substitute or the bus attendant performed the duties. (N.T. 256, 278)
47. Under the implemented IEP, the Student was entitled to 90 minutes per month of OT services, 120 minutes per month of speech services, a school-day one-to-one, a bus aide, transportation using a seatbelt and five-point harness. (S-36)
48. From the start of the 2025-2026 school year through December 2025, the Student was entitled to receive 6.0 hours of OT; however,

the District failed to provide the Student with 1.5 hours of those services. (S-25, S-36, S-40)

49. By December of the 2025-2026 school year, the Student was entitled to receive 8.0 hours of speech-language therapy; however, the District failed to provide the Student with 6.0 hours of those services. (S-25, S-36, S-40)

DISCUSSION AND CONCLUSIONS OF LAW

General Legal Principles

Burden of Proof

The burden of proof, generally, consists of two elements: the burden of production and the burden of persuasion. In special education due process hearings, the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). The party seeking relief must prove entitlement to its demand by a preponderance of the evidence and cannot prevail if the evidence rests in equipoise. See *N.M., ex rel. M.M. v. Sch. 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 Parents have 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"). I find that all witnesses testified credibly. To the extent that testimony from different witnesses is contradictory, that is a function of genuine differences in recall or understanding. More importantly, the outcome of this matter in no way depended on the credibility of any witness.

General IDEA Principles: Substantive FAPE

The IDEA requires each state to provide a "free appropriate public education" (FAPE) to all students who qualify for special education services. 20 U.S.C. §1412. Special education is comprised of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. 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 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.*

An LEA is not obligated, however, 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); see also *El Paso Independent School District v. Robert W.*, 898 F. Supp. 442, 449 (W.D. Tex. 1995) (quoting *Rowley*, *supra*, 458 U.S. at 186) (holding that an LEA "is not required to maximize a handicapped child's potential 'commensurate with the opportunity provided to other children.'"). 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 an IDEA procedural standpoint, the child's family, including his or her parents, must have "a significant role in the IEP process." *Schaffer*, *supra*, 546 U.S. at 53. This fundamental concept extends to placement decisions for the child. 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, supra*, 602 F.3d at 565. The procedural requirements must, however, be viewed within the context of the above substantive standards.

The Parents' Claims

The Parents contend the District denied the Student a FAPE from December 2023 through December 2025 by failing to provide appropriate placement, safe transportation and faithful implementation of the IEP. Based on the evidence of this hearing record, the Parents have established by a preponderance of evidence that flawed implementation of the operative IEPs resulted in a FAPE denial to this Student.

The record established that the Student has an autism spectrum disorder and a speech or language disability and in early elementary school presented significant communication, behavioral, safety, and transportation-related needs. In November 2023, during [redacted], the District ostensibly completed a reevaluation of the Student. A team developed IEP followed. The reevaluation was incomplete. It lacked cognitive testing and a critical speech-language evaluation component. Those omissions were educationally significant. Contemporaneous information from Student's team reflected persistent concerns involving attention, behavior, safety and functional communication.

In February 2024, the District completed a functional behavioral assessment and in May 2024, a speech-language evaluation finally occurred. Despite these efforts, the incomplete reevaluation and delayed completion of the speech-language assessment negatively affected the development of Student's programming during the relevant portion of the 2023–2024 school

year and contributed to the denial of FAPE. The evidence did not, however, establish that every IEP developed during this period was wholly inappropriate as written. The implemented IEPs identified Student's principal communication, behavioral, adaptive, functional, and safety needs. They offered goals, specially designed instruction, related services, behavioral supports, adult assistance, specialized transportation, and progress monitoring responsive to those needs.

Although the IEPs appeared to offer responsive programming, the District's flawed implementation was deficient and resulted in a FAPE denial to this Student. From December 2023 through June 2024, the Student should have received 38 hours of speech-language therapy and 13.5 hours of occupational therapy. Instead, the Student received only 1.5 hours of speech-language therapy and 10.5 hours of occupational therapy, resulting in shortfalls of 36.5 hours and 3.0 hours, respectively. During the 2024 ESY program, the District provided none of the promised speech or occupational therapy services. Furthermore, a classroom one-to one was not assigned to the Student until nearly the end of [redacted].

These omissions were substantial. Student was nonverbal and had significant functional communication needs. Speech-language therapy and a classroom one-to-one were central to Student's ability to communicate, participate in instruction, and access the educational program. Occupational therapy was equally necessary to address identified disability-related needs and was expressly required by the IEPs. Staffing shortages do not excuse the failure to provide services. Additionally, the operative IEP required safety considerations, a harness, during bus transportation; however, the assigned aide did not receive training for its use.

No separate violation was established with respect to behavioral programming. The Student's programming consisted of positive behavior

support plan, verbal behavior programming, intensive teaching trials, daily data collection, and biweekly progress monitoring. The experienced autistic support teacher used information from the February 2024 FBA and added classroom strategies to the May 2024 behavior plan.

Despite the District's obvious implementation violations, the Student did make some progress in academic and behavioral areas. However, that progress must be considered in conjunction with the record evidence that the Student's programming was developed with incomplete key evaluative data. Progress in one area does not negate the loss of educational benefit caused by the omission of required services and supports in another. The near-total failure to provide speech-language therapy, missed occupational therapy, and delayed assignment of a classroom one-to-one deprived Student of material components of an appropriate educational program.

Accordingly, during the relevant portion of the 2023-2024 school year, the District denied Student a FAPE by its reliance on incomplete evaluative information and by materially failing to implement the Student's IEPs. Balancing the equities and the Student's receipt of some educational benefit, the Student will be awarded compensatory education for the established IEP deficiencies.

With respect to the 2024-2025 school year ([redacted] grade), the District's violations continued. Thus, the Parent has met their burden of proof that the District's failure to implement material provisions of Student's IEPs denied a FAPE.

During [redacted] grade, the Student continued to receive supplemental autistic support, with program revisions in January, February, and March of 2025. The IEPs addressed Student's communication, behavioral, safety, and adult-support needs and offered speech-language

and occupational therapy, a school-day one-to-one assistant, a bus aide, and transportation using both a seatbelt and five-point harness. The autistic-support teacher and special education assistants provided daily instruction and behavioral support. Staff rotated with Student to promote generalization of skills. The teacher collected daily data, conducted biweekly progress monitoring, reviewed Student's behavioral programming, and determined whether interventions were effective. A one-to-one worked with Student for most of the school day, and other trained staff provided coverage when the assigned assistant was absent. In March 2025, the IEP team revised Student's programming to reflect progress, mastery of multiple goals, and the need for higher-level skills.

Despite these positive aspects, again, the District nevertheless failed to provide a substantial amount of the related services required by the IEPs. The Student was entitled to 15 hours of occupational therapy during the school year, but 4.5 hours were not provided. Student was entitled to 20 hours of speech-language therapy but did not receive 12.7 hours. During the 2025 ESY program, the District provided none of the required occupational and speech-language therapies.

These omissions were material. Speech-language and occupational therapy were services the IEP team had determined Student required to address identified disability-related needs. The speech-language shortfall was particularly significant given Student's continuing communication needs and use of an AAC device. The Parent has also established that the District failed to fully implement the needed transportation support for Student. As in the previous school year, Student was transported using only the harness, and the bus aide was untrained in its use. Although the team determined in January 2025 that both a seatbelt and harness were necessary while

transporting the Student, that safety precaution was not fully implemented. Thus, the failure to use the required seatbelt constituted an additional implementation failure.

The Student's [redacted] grade academic, communication, and behavioral progress does not eliminate these violations. The record reflects progress in decoding, word blending, reading, AAC use, and communication. However, that progress does not excuse the District's failure to provide required related services and transportation supports. Accordingly, the Parent has established by a preponderance of the evidence that the District denied Student a FAPE during the 2024–2025 school year and the 2025 ESY program by failing to implement Student's IEPs. The established deficiencies include 14.7 hours of missed speech-language therapy, 5.5 hours of missed occupational therapy, and the failure to provide transportation using both the required seatbelt and five-point harness.

During the [redacted] grade of the 2025-2026 school year, the evidence has established that the District continued to provide Student with verbal behavior programming, intensive instructional trials, one-to-one support, related services, specialized transportation, and eligibility for ESY. The December 2025 IEP team also considered Parent's request for increased speech-language and occupational therapy and for a placement change to a more restrictive setting. Instead, the District proposed continuation of the already introduced special education programming that included supplemental autistic support, speech-language and occupational therapy, a school-day one-to-one assistant, specialized transportation, and ESY.

Although the Student experienced some behavioral regression between fall 2025 and January 2026, Student also made satisfactory progress and

mastered some goals. The limited evidence presented regarding this school year did not establish that a more restrictive placement was required. However, the District again failed to fully provide the related services required by the Student's IEP.

From the beginning of the school year through December 2025, Student was entitled to 6.0 hours of occupational therapy but did not receive 1.5 hours. Student was also entitled to 8.0 hours of speech-language therapy but did not receive 6.0 hours. Student continued to have disability-related communication and occupational therapy needs, and the IEP expressly required both services. The speech-language shortfall was particularly substantial, as the District failed to provide most of the therapy due by December 2025. The evidence through December 2025 did not establish a separate violation regarding one-to-one assistance. Nor did the evidence establish a separate transportation violation for this time frame. When the transportation aide was absent, the District attempted to obtain a substitute or assigned the bus attendant to perform those required duties.

Overall, the Parents have met their burden proof that the District's failures to fully implement the Student's IEPs denied meaningful educational benefit. Accordingly, the District denied Student a FAPE from December 2023 through December of the 2025–2026 school year by failing to provide necessary special education programming. Compensatory education is the appropriate remedy.

Compensatory Education

The Student is owed compensatory education for the missed services. Compensatory education is an appropriate form of relief where an LEA knows, or should know, that a child's special education program is not

appropriate or that he or she is receiving only trivial educational benefit, and the LEA fails to take steps to remedy deficiencies in the program. *M.C. v. Central Regional School District*, 81 F.3d 389, 397 (3d Cir. 1996). This type of award is designed to compensate the child for the period of deprivation of appropriate educational services, while excluding the time reasonably required for an LEA to correct the deficiency. *Id.* The Third Circuit has also endorsed an alternate approach, sometimes described as a “make whole” remedy, where the award of compensatory education is crafted “to restore the child to the educational path he or she would have traveled” absent the denial of FAPE. *G.L. v. Ligonier Valley School District Authority*, 802 F.3d 601, 625 (3d Cir. 2015); *see also Reid v. District of Columbia Public Schools*, 401 F.3d 516 (D.C. Cir. 2005); *J.K. v. Annville Cleona School District*, 39 F.Supp.3d 584 (M.D. Pa. 2014). Compensatory education is an equitable remedy. *Lester H. v. Gilhool*, 916 F.2d 865 (3d Cir. 1990). After careful consideration, this hearing officer concludes that compensatory education is appropriate using the hour-for-hour approach because no substantive evidence of a “make whole” remedy was presented. Based on a complete review of the record with a balancing of the equities, Student shall be awarded one hour of compensatory education for every hour of missed related services as outlined in the foregoing decision.

The record does not provide a nonspeculative basis for calculating additional compensatory education attributable solely to the evaluation and transportation deficiencies. Accordingly, separate compensatory education hours will not be awarded for these established violations.

ORDER

AND NOW, this 7th day of August 2026, upon consideration of the evidentiary record and the foregoing findings of fact and discussion, is hereby ORDERED as follows:

1. The District denied Student a free appropriate public education by failing to fully implement Student's IEPs from December of the 2023–2024 school year through December of the 2025–2026 school year, including the applicable extended school year programs.
2. The District shall provide Student with **59.2 hours of compensatory speech-language therapy**, consisting of:
 - a. 38.5 hours for services missed during the 2023–2024 school year and the 2024 ESY program;
 - b. 14.7 hours for services missed during the 2024–2025 school year and the 2025 ESY program; and
 - c. 6 hours for services missed from the beginning of the 2025–2026 school year through December 2025.
3. The District shall provide Student with **11 hours of compensatory occupational therapy**, consisting of:
 - a. 4 hours for services missed during the 2023–2024 school year and the 2024 ESY program;
 - b. 5.5 hours for services missed during the 2024–2025 school year and the 2025 ESY program; and
 - c. 1.5 hours for services missed from the beginning of the 2025–2026 school year through December 2025.
4. The District shall provide Student with **1.5 hours of compensatory education** for each school day Student attended school from December

5, 2023, through the school day immediately preceding the date on which the District assigned Student a one-to-one assistant in May 2024.

- a. Within ten (10) calendar days of this Order, the District shall calculate the number of compensatory-education hours due using Student's attendance records and shall provide Parent with a written accounting identifying the dates included in the calculation.

5. All compensatory education services shall be supplemental to, and shall not replace, any services required under Student's current or future IEP.
6. Parent may select appropriately qualified and credentialed providers to deliver the compensatory services. The District shall reimburse the providers at their customary and reasonable rates, provided those rates do not exceed the prevailing market rate for comparable services in the geographic area.
7. The compensatory services may be provided after school, on weekends, during school breaks, or during the summer, at times reasonably selected by Parent that do not interfere with Student's current educational program.
8. The compensatory-education award shall remain available until Student reaches twenty-one years of age. Parent may determine the timing and manner in which the hours are used, subject to provider availability and the requirement that the services address Student's disability-related educational needs.

9. Within ten (10) calendar days of this Order, the District shall convene Student's IEP team to plan for the upcoming school year. The team shall specifically consider and document:

- a. Student's transportation needs, including the required use of a seatbelt and five-point harness, the assignment of a transportation aide, and appropriate training for personnel responsible for implementing those supports;
- b. The availability, continuity, and training of one-to-one support staff and related-service providers necessary to implement Student's IEP; and
- c. Whether Student's current placement is appropriate to meet Student's educational, communication, behavioral, functional, and safety needs.
- d. Whether the existing evaluation information is sufficient to identify the Student's current educational, communication, behavioral, adaptive, and functional needs or whether additional comprehensive evaluation is necessary.

It is FURTHER ORDERED that any claims not specifically addressed in this Order are DENIED and DISMISSED. Jurisdiction is relinquished.

Joy Waters Fleming
Joy Waters Fleming, Esq.
Hearing Officer
ODR File No. 32263-25-26