

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. 32951-25-26

Child's Name:

E.S.

Date of Birth:

[redacted]

Parent(s):

[redacted]

Local Education Agency:

Pittsburgh Public Schools
341 South Bellefield Avenue
Pittsburgh, PA 15213

Counsel for the LEA:

Lynne Sherry, Esquire
445 Fort Pitt Boulevard, Suite 503
Pittsburgh, PA 15219

Hearing Officer:

Cathy A. Skidmore, Esquire

Date of Decision:

05/17/2026

INTRODUCTION AND PROCEDURAL HISTORY

The student, E.S. (Student),¹ is a [redacted]-teenaged student residing with the Parents and enrolled in Pittsburgh Public School District (District or local education agency (LEA)). Student has been identified as eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA)² under the disability categories of Autism and Speech/Language Impairment, and accordingly has a disability under Section 504 of the Rehabilitation Act of 1973.³

In April, 2026, the Parents filed a Due Process Complaint under the IDEA challenging the District's proposal for Student's Extended School Year services in 2026, with the matter proceeding to an efficient hearing session.⁴ Following review of the record and for all of the reasons set forth below, the claims of the Parent must be denied in part with specific directives made to Student's educational team.

¹ In the interest of confidentiality and privacy, Student's name, gender, and other potentially identifiable information are not used in the body of this decision. All personally identifiable information, including details appearing on the cover page of this decision, will be redacted prior to its posting on the website of the Office for Dispute Resolution in compliance with its obligation to make special education hearing officer decisions available to the public pursuant to 20 U.S.C. § 1415(h)(4)(A) and 34 C.F.R. § 300.513(d)(2).

² 20 U.S.C. §§ 1400-1482. 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).

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

⁴ References to the record throughout the findings and discussion in this decision will be to the Notes of Testimony (N.T.), Parent Exhibits (P-) followed by the exhibit number, Joint Exhibits (J-) followed by the exhibit number, and School District Exhibits (S-) followed by the exhibit number. Citations to duplicative exhibits and testimony generally are not exhaustive. The term Parents is used in the plural where it appears that one was acting on behalf of both. A companion case with non-expedited issues is also pending before the undersigned hearing officer.

ISSUE

Whether the District's proposed program for Student for extended school year services in 2026 is appropriate?

FINDINGS OF FACT

1. Student is a [redacted] elementary school-aged child residing with the Parents within the boundaries of the District and enrolled there. Student is eligible for special education based on Autism and a Speech/Language Impairment. (J-6.)
2. Student attends a private school (Private School) fulltime by agreement of the parties. Generalization of skills throughout the school day are an essential component of its programming. (N.T. 21, 103, 159-61, 177-78; J-6 at 8, 70-71.)
3. In its Autism Support program that Student attends, Private School provides Applied Behavior Analysis with highly structured individual and small group instruction. Occupational, physical, and speech/language therapy services are available for students with needs in those areas. (J-5 at 3.)
4. Student was reevaluated in the areas of occupational and speech/language therapy in the fall of 2025, with a Reevaluation Report (RR) issued in December. Parent input into this RR reflected strengths with problem solving, sports, and helping others; their concerns were with the level of occupational and speech/language therapy services as well as Student's reading, spelling, and mathematics skills. (J-5 at 3-4.)
5. The RR also reported on two recent administrations of the Verbal Behavior Milestones and Placement Program. Student demonstrated

skills across all three levels including the highest at 36 to 48 months, and had acquired nearly all of the milestones. (J-5 at 5-6.)

6. Teacher input into the RR described Student's typical school day. Classroom observation by a school psychologist were also summarized. (J-5 at 19-20.)
7. Occupational therapy assessment reported in the RR included the Beery-Buktenica Developmental Test of Visual-Motor Integration in April 2025. On that instrument, Student's scores were extremely delayed (0.1 percentile). A more recent administration of this assessment were similar with a more than 25% delay (0.06 percentile); however, a portion could not be completed because Student appeared not to understand the standardized directions. (N.T. 140; J-5 at 12-13, 20-21.)
8. Assessment of sensory processing by the occupational therapist for the RR through a Parent questionnaire from the spring of 2025 revealed few areas of concern. By contrast, Student's teacher's responses reflected that Student exhibited sensory processing difficulties across all domains. On a more recent administration, the classroom teacher endorsed definite differences in the areas of social participation and hearing. (J-5 at 10-15, 21-22.)
9. Speech/language assessment for the RR included informal and formal measures. A report of a spring administration of a measure on basic concept knowledge revealed areas of strength in receptive language (quantity/completeness, sensation/emotion/evaluation, and weight/volume); and areas of relative weaknesses (distance/speed/time, location/direction, and condition/quality). More recent speech/language assessment of receptive language for the RR

could not be completed because Student did not identify a sufficient number of targets. (J-5 at 6-7, 21-23.)

10. An assistive technology consultation for the RR described Student's skills using an Assistive and Augmentative Communication (AAC) device with a need for ongoing practice, and access to a touchscreen laptop. (J-5 at 22-23; P-14.)
11. The speech/language therapist who conducted the assessments for the RR identified wh-questions, motor imitations, and listener response picture identification as classroom-based needs. (J-5 at 7-9.)
12. The RR reported on Student's early literacy and mathematics skills as continued areas of weakness. Student remained eligible for special education based on Autism, and both occupational and speech/language therapy remained recommendations (once and twice per week, respectively). (J-5.)

Extended School Year Services

13. In the summer 2025, Student's extended school year (ESY) services included one hour of consultative occupational therapy. During the prior summer, Student had no related services. (N.T. 62-66; J-1 at 62-64; J-3.)
14. In January 2026, Student's Individualized Education Program (IEP) team met to develop a new program for Student. Shortly after that meeting, via email by agreement of the parties, the team determined that Student was eligible for ESY services in 2026, with District team members recommending ESY only for academic goals in 2026. The

January 2026 IEP memorialized Student's eligibility on a timely basis. (N.T. 48-49, 63-65, 94-95, 111-12, 130. 161-63; J-6 at 2, 67-69.)

15. A Notice of Recommended Educational Placement (NOREP) issued in early March 2026 confirmed Student's ESY eligibility, and the Parents approved that recommendation. (N.T. 66-67; J-12.)
16. The ESY program at Private School for 2026 consists of 11 full-day sessions of 6 hours each for students, essentially mirroring the typical school day during the school year. Parents of its students were notified of this schedule in October 2025. (N.T. 83-84, 99-101, 112; P-7; P-8.)
17. Private School also notified parents of other available programs over the summer of 2026, many of which required fees. (N.T. 17-18, 85; P-8.)
18. The Parents are concerned with the absence of provision of direct related services, specifically speech/language and occupational therapy, during ESY in 2026 because of regression over breaks in services. (N.T. 20-23, 44.)
19. Student exhibits emerging skills in the areas of speech/language and occupational therapy, and performance on those IEP goals is generally variable. Student demonstrates use of the AAC device independently at school. (N.T. 32-37, 96-98;)
20. Another meeting of Student's IEP team convened in April 2026 to discuss ESY services. The occupational and speech/language therapists explained their recommendation for not providing direct services in the summer based on their collected data, but noted that

the skills that therapy addressed would be generalized within the classroom. (N.T. 49-50, 68-69, 103-08, 121, 159-61; P-11.)

21. Student's occupational and speech/language therapists did not find regression for Student after breaks based on the data they collected. Both reported variability with Student's performance. (N.T. 123-25, 141.)
22. Both of Student's related service providers push into the classroom as well as consult with the classroom teacher regularly, including providing resources. (N.T. 127-29, 157-58.)
23. The Parents did not approve the NOREP that followed the April 2026 meeting, wherein no related services were to be provided. (N.T. 70-71; J-8.)
24. The parties participated in an unsuccessful mediation session to resolve the ESY dispute. (N.T. 50-51.)

DISCUSSION AND APPLICATION OF LAW

General Legal Principles

In general, the burden of proof is viewed as consisting of two elements: the burden of production and the burden of persuasion. The burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). Accordingly, the burden of persuasion in this case must rest with the Parents who filed the Complaint leading to this administrative hearing. Nevertheless, application of this principle determines which party prevails only in those rare cases where the evidence is evenly balanced or in "equipoise." *Schaffer, supra*, 546 U.S. at 58.

Special education hearing officers, who assume the role of fact-finders, are also charged with the responsibility of making credibility determinations

of the witnesses who testify. *See J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); *see also T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 *11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014). This hearing officer found each of the witnesses who testified to be credible as to the facts. Their testimony was essentially quite consistent where it overlapped. In the relatively few instances that there were contradictions such as the extent to which ESY was discussed at the January meeting, those are attributed to lapse in memory or recall, or to differing perspectives, rather than any intention to mislead. Both Parents testified genuinely and clearly conveyed their reasons for filing the Complaint; they together were effective advocates for Student. The testimony of Student's occupational and speech/language therapists was cogent and persuasive on their recommendations for ESY services (*see, e.g., N.T. 132-34, 163-64*). The weight accorded the evidence, however, was not equally placed because some was more relevant to the narrow issue and more convincing.

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

DISCUSSION AND APPLICATION OF LAW

General IDEA Principles: Substantive FAPE

The IDEA broadly mandates that each of the states provide a "free appropriate public education" (FAPE) to children who are eligible 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. Several 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 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). 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.

ESY Services

This FAPE requirement extends to provision of ESY services as necessary for the child. 34 C.F.R. § 300.106(a)(1). Pennsylvania sets forth a number of criteria that IEP teams must consider to determine whether a student is eligible for ESY. 22 Pa. Code § 14.132(a)(2). The state regulations provide as follows:

In considering whether a student is eligible for ESY services, the IEP team shall consider the following factors; however, no single factor will be considered determinative:

- (i) Whether the student reverts to a lower level of functioning as evidenced by a measurable decrease in skills or behaviors which occurs as a result of an interruption in educational programming (Regression).
- (ii) Whether the student has the capacity to recover the skills or behavior patterns in which regression occurred to a level demonstrated prior to the interruption of educational programming (Recoupment).
- (iii) Whether the student's difficulties with regression and recoupment make it unlikely that the student will maintain the skills and behaviors relevant to IEP goals and objectives.

- (iv) The extent to which the student has mastered and consolidated an important skill or behavior at the point when educational programming would be interrupted.
 - (v) The extent to which a skill or behavior is particularly crucial for the student to meet the IEP goals of self-sufficiency and independence from caretakers.
 - (vi) The extent to which successive interruptions in educational programming result in a student's withdrawal from the learning process.
 - (vii) Whether the student's disability is severe, such as autism/pervasive developmental disorder, serious emotional disturbance, severe intellectual disability, degenerative impairments with mental involvement and severe multiple disabilities.
- (b) Reliable sources of information regarding a student's educational needs, propensity to progress, recoupment potential and year-to-year progress may include the following:
- (1) Progress on goals in consecutive IEPs.
 - (2) Progress reports maintained by educators, therapists and others having direct contact with the student before and after interruptions in the education program.
 - (3) Reports by parents of negative changes in adaptive behaviors or in other skill areas.
 - (4) Medical or other agency reports indicating degenerative-type difficulties, which become exacerbated during breaks in educational services.
 - (5) Observations and opinions by educators, parents and others.

(6) Results of tests, including criterion-referenced tests, curriculum-based assessments, ecological life skills assessments and other equivalent measures.

22 Pa. Code §§ 14.132(a)(2), 14.132(b).

If the student is eligible, the team must also determine the services to be provided. 22 Pa. Code § 14.132(a)(1). In evaluating whether a proposed ESY program is appropriate, the general principles applicable to special education must be applied. Public agencies may not unilaterally limit the type, amount, or duration of ESY services. 34 C.F.R. § 106(a)(3). Nevertheless, ESY services must not be based on a desire or need for a program that “may provide educational benefit, [but] are not required to ensure the provision of a free appropriate public education.” 22 Pa. Code § 14.132(c)(3). Additionally, ESY services must be provided in accordance with the child’s IEP. 34 C.F.R. § 106(b).

The Parents’ Claim

The Parents voiced unambiguous concerns with Student’s need for related services and the possibility of regression if those are not provided for Student during ESY this year. On the other hand, Student’s related service providers both presented contrary testimony with data to support their recommendation. The record is clear that Student would almost certainly benefit from related services over the summer of 2026. However, such is not a basis for requiring them during ESY.

Viewing the seven factors, the record evidence is preponderant that the District’s proposal is consistent with each: regression, recoupment, likelihood of maintenance of skills, the impact of interruption on important skills, behaviors and skills critical for independence, the effect of successive interruptions, and the severity of Student’s disability. The District together with Private School and the Parents considered reliable sources of

information including progress reports on Student's goals supported by data collection, parental input, observations of professionals working with Student, and evaluation information. With the offered consultative services of sixty minutes for both occupational and speech/language therapy over the duration of ESY, this hearing officer must conclude that the offer by the District meets the standards required for FAPE.

There must still be also consideration given to the right of the Parents to participate meaningfully in Student's special education programming. The parties have demonstrated that they have a collaborative relationship, a very important element of programming decisions for children. As a matter of equity, both related service professionals providing the consultative services shall be directed to administer probes on Student's current IEP goals at the start of ESY to share with the other members of the IEP team including the Parents. This additional component of Student's ESY program will permit the IEP team to convene promptly if necessary to reconsider whether direct services must be made part of Student's 2026 ESY program.

CONCLUSIONS OF LAW

The ESY programming recommended by the District is appropriate for Student under applicable law.

ORDER

AND NOW, this 17th day of May, 2026, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. The District's offer of ESY services for 2026 as supplemented by the sixty minutes of consultative occupational and speech/language therapy services is appropriate for Student.
2. No later than the third day of ESY, the assigned occupational and speech/language therapists shall administer probes on Student's related service goals in the current IEP for reporting to the IEP team including Parents. The team shall promptly determine whether an immediate team meeting or equivalent is necessary to modify Student's ESY programming based on those probes.
3. Nothing in this decision and order should be read to preclude the parties from mutually agreeing to alter any of its terms.

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

/s/ Cathy A. Skidmore

Cathy A. Skidmore, Esquire
HEARING OFFICER
ODR File No. 32951-25-26

Sent to both parties this date as required by 34 C.F.R. § 300.515
by electronic mail message as requested⁵ consistent with 22 Pa. Code §
14.162(n).

⁵ N.T. 180-81.