

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. 32843-25-26

Child's Name:

K.S.

Date of Birth:

[redacted]

Parent(s):

[redacted]

Local Education Agency:

ELWYN, Inc. EI Program for Philadelphia School District
111 Elwyn Road
Elwyn, PA 19063

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Hearing Officer:

Savannah L. Murphy, Esq.

Date of Decision:

06/09/2026

Procedural Background

The present matter concerns K.S. (hereinafter referred to as “Student¹”), a [redacted] child who is not yet school-aged, but participates in pre-school. This action was brought against ELWYN, Inc, an Early Intervention Program for the Philadelphia School District (hereinafter referred to as “LEA”). Student resides within the LEA’s jurisdiction and is a resident of the Philadelphia School District. Student has been evaluated by the LEA on two separate occasions, but has been found to be ineligible for early intervention pursuant to the Individuals with Disabilities Education Act² (IDEA). Student is thought to be eligible for early intervention, by Parents, under the disability category of Speech and Language Impairment³.

On March 26, 2026, Parents filed a Due Process Complaint after Student was found to be ineligible for special education early intervention (EI) services in a Reevaluation Report issued by LEA on March 2, 2026. In their Complaint, Parents assert that Student requires Speech and Language Support, that Student’s speech is unintelligible at least 50% of the time, and that Student becomes frustrated with individuals fail to understand Student.

District filed an Answer to Due Process Complaint on April 3, 2026 arguing that LEA’s Evaluation Reports and conclusions of Student were appropriate, that Parent was provided a meaningful opportunity to participate in the evaluation process, that Student has no educational impact requiring specially designed instruction, and that all relief should be denied.

Following a full hearing session, complete review of the record, and for all reasons set forth below, I find in favor of Parents.

¹ This Decision will be made available to the public. Therefore, the final published version of this decision has been redacted for the purpose of concealing the Student’s personally identifiable information. 34 C.F.R § 1513(d). 20 U.S.C. § 1415 (h)(4)(A); 34 C.F.R § 300.513(d)(2).

² 20 U.S.C. §§ 1400-1482, implementing federal regulations 34 C.F.R. §§ 300.1-300.818, and applicable Pennsylvania regulations in 22 Pa. Code §§14.101-14.163.

³ Parents briefly mentioned concerns regarding Autism in their testimony. (N.T at 27). However, no other evidence was provided regarding an Autism diagnosis or suspected disability in the category of Autism. Therefore, this decision only considers Speech and Language Impairment.

Issues Presented

1. Whether Student is eligible for early intervention special education services under the IDEA.

Findings of Fact

I have reviewed the record in its entirety. The below Findings of Fact and subsequent Discussion and Application of Law and Fact only address that which is relevant to the instant matter.

Background Facts

1. Student was initially evaluated in a report dated March 31, 2023 as part of the Early Intervention process by ChildLink-EI (ChildLink ER). (E-01). At the time, Parent expressed concerns regarding Student's speech delay and lack of eye-contact. (E-01 at 4; N.T. at 26).
2. Student is described as happy, loving, shy and empathetic. (E-01 at 9; E-04 at 5; N.T. at 43, 121).
3. According to the ChildLink ER, there were no medical, hearing or vision concerns reported for Student except for [redacted]. (E-01 at 6-7).
4. The ChildLink ER utilized data from an Ages and Stages Questionnaire – Social Emotional (ASQ-SE) from Parent and one virtual testing session. (E-01 at 9, 21; N.T. at 38).
5. According to the ChildLink ER, Student had limited verbal language, but demonstrated understanding in basic concepts, attempted to speak words, engaged in play, and expressed interest in communicating and imitating family members. (E-01 at 9-17).

6. The ChildLink ER concluded that Student was ineligible to receive EI services because Student demonstrated age-appropriate developmental skills. (E-01 at 22-23; N.T. at 39).
7. When Student entered day-care, it was shared with Parent that Student displayed attention and communication deficits. Student was understood 50% of the time, and Student would become frustrated if requested to repeat phrases. (N.T. at 27). Parent requested that Student be evaluated again due to concerns of Student's communication deficits. (N.T. at 28, 40, 80).
8. Student also demonstrates frustration in the home when Student fails to successfully communicate. (N.T. at 33, 62) Student will attempt to communicate, and when unsuccessful, Student will become frustrated, walk away, and come back to attempt communication again. (N.T. at 43-44). When Student becomes frustrated, Student will scream or hit Student's legs. (N.T. at 44, 49).
9. Student does not articulate [student's] words. For example, Student's "c"s sounds like "t"s, and [student's] words blend together. (N.T. at 57-58).

September 19, 2025 Evaluation Report

10. On March 14, 2025, the LEA issued a Permission to Evaluate (PTE) for Student to include a Parent interview, sensory history checklist, standardized tests of development, and a record review. (E-02 at 1-2). The PTE was reissued on June 26, 2026, which added direct observation of the Student. (E-02 at 4-5).
11. Parent signed the June 26, 2025 PTE providing consent for the initial multi-disciplinary evaluation on the July 25, 2025⁴. (E-02 at 7; E-04 at 1; N.T. at 49).

⁴ The signature page is dated for July 25, 2024. However, was signed on July 25, 2025. (E-24 at 1; N.T. at 49).

12. On September 19, 2025, the LEA issued the Evaluation Report (ER) for Student. (See E-04; N.T. at 79).
13. The ER contained Student's basic daily routine and health summary. Parent reported delayed communication development. Student attended an early education program three days a week. (E-04 at 5-7; N.T. at 82).
14. Student's cognitive, communication, social-emotional, physical, and adaptive development, was assessed using direct observation during assessments, administration of the Battelle Developmental Inventory, Third Edition (BDI-3), the Preschool Language Scale-5: Articulation Screener, and Parent and teacher input. (E-04 at 9-14).
15. Student's prior ChildLink ER was also reviewed. (N.T. at 80, 89).
16. The BDI-3 cognitive, motor, communication, social-emotional, and adaptive skill milestones are assessed from age 2 to age 7 years, and 11 months. (E-06 at 16-20; N.T. at 82, 91).
17. Overall, Students cognitive functioning was determined to be age-appropriate. Student received a standard score of 100 on the BDI-3. Student demonstrated ability to attend to task, locate objects, utilize critical thinking skills, and conceptualize and discriminate object features similar to other children the Student's age. (E-04 at 9; E-06 at 2, 13-15, 20; N.T at 92).
18. Regarding communication development, according to the BDI-3, Student received a standard score of 91. Student displayed receptive language skills by following directions, identifying objects by their use of function, and demonstrating understanding of questions by providing verbal or nonverbal responses. (E-04 at 10; E-06 at 2, 8-9).
19. According to the ER, Student displayed age-appropriate expressive communication skills by using three to four word utterances, using words to label what was seen, state wants and

needs, and Student answered preferential yes/no questions. Student also was observed to enjoy social communication and made eye-contact. However, Student demonstrated difficulty with use of pronouns, identifying use of everyday objects, and asking why and how questions. (E-04 at 10; E-06 at 2, 9-10;).

20. Student was able to produce single words, and up to five-word utterances. Student also used pleasantries and manners. (N.T. at 93-94).
21. A Speech and Language Sample included Student's quoted language during the evaluation. Speech samples of Student were dictated exactly as it was said. This includes documentation of speech errors. (E-04 at 10-11; N.T. at 97).
22. Not one sample included indicated that Student displayed accurate articulation of words used. For example, Student said "Tat" (sic) for "cat"; "Dod dughty" (sic) for "dog dirty" and; "Ewfant weight de out doow" (sic) for "elephant righ (sic) there; door". (E-04 at 10-11).
23. Student's speech sound development was assessed through direct observations during the assessment, Parent and teacher input, the BDI-3, and Preschool Language Scale-5: Articulation Screener. (E-04 at 11 N.T. at 97-98).
24. Parent and teacher noted concerns regarding Student's speech articulation. Specifically, Parent noted that Student's speech is intelligible 50% of the time. Student often had to repeat words and phrases or use gestures to communicate. Student will give up communicating and become frustrated when Parent fails to understand. (E-04 at 11).
25. According to the ER, the evaluator was able to understand 60% of Student's utterances. However, Student was able to produce age-

appropriate sounds. (E-04 at 11). Student had the cognitive and motor ability to produce speech, but sometimes was not understood. (N.T. at 95-96).

26. Regarding Student's Social and Emotional Development, Student scored an 88 on the BDI-3. Student demonstrated age-appropriate social interaction with adults, responds positively to adult encouragement, and initiates social contact with familiar individuals. (E-04 at 12; N.T. at 92).
27. Student was social and enjoyed to play with peers. However, Student sometimes initiated social contact, but typically required encouragement. Student did not always play cooperatively with peers or show sympathy of concerns for peers. Student often kept to their self. (E-04 at 12; E-06 at 2, 5-8).
28. No concerns were reported regarding Student's physical development. Student scored 100 on the BDI evidencing age-appropriate gross motor, fine motor and perceptual motor skills. (E-04 at 13; E-06 at 2; 10-12; N.T. at 92).
29. Student demonstrated age-appropriate adaptive development and received a standard score of 94 on the BDI. (E-04 at 14; E-06 at 2, 4-5; N.T. at 92).
30. Data for the ER was primarily collected over one testing session lasting about two hours. (E-04 at 17; E-06 at 1; N.T. at 106). Teacher input was subsequently provided via a phone call and written input. (E-04 at 17; E-06 at 1; N.T. at 28, 31). The evaluators both interviewed Parent and worked with Student during one session while administering the BDI-3. (N.T. at 84, 86-87).
31. Observational data was contained to LEA's office at the time of the evaluation. (N.T. at 87).

32. The ER determined that Student was ineligible for EI services because Student demonstrated age-appropriate skills in all areas of development and there were no deficits impacting Student from accessing the classroom. (E-04 at 18; N.T. at 102).
33. Recommendations were offered as part of the ER including, gaining Student's attention before speaking, getting down to Student's level to speak, modeling appropriate speech at an understandable rate, providing advanced notice for transitions, and social play. (E-04 at 19; N.T. at 103-04).
34. On September 19, 2025, the LEA issued a Notice of Recommended Educational Placement / Prior Written Notice (NOREP) determining that Student was not eligible for EI services because Student demonstrated age-appropriate skills in all areas of development. (E-02 at 8-9, 12-13, 16-18).
35. Student continued to display communication deficits in the early education/day-care program. (N.T. at 28-29). Student transferred to a head start program within Student's district of residence. (E-05 at 2; N.T. at 29). Parent was immediately notified that Student displayed communication deficits in the classroom. (*Id.*). Student would attempt to communicate with the teacher, and when Student was not understood, Student would continue to try and communicate. Failure to communicate led to frustration. (*Id.*).
36. Due to Student's continued struggles in the head start program, Parent rejected the NOREP on December 11, 2025. (E-02 at 14,18; N.T. at 30, 50). Parent elected to engage in an informal meeting to further discuss concerns. (N.T. at 147).

March 2, 2026 Reevaluation Report

37. On December 19, 2025, the LEA issued another PTE and NOREP proposing to complete additional testing for Student using a parental

interview, observation, standardized tests of development, and a record review. (E-02 at 20-24; 27, 30-31; N.T. at 150-51). Specific testing proposed included the Goldman Fristoe Test of Articulation- Third Edition (GFTA-3). (E-02 at 24; N.T. at 116-17; 150-51).

38. Parent provided consent to start the initial multi-disciplinary evaluation on January 6, 2026. (E-02 at 29, 32; E-05 at 1).
39. LEA issued the Reevaluation Report (RR) on March 2, 2026. (E-05 at 1). To prepare for the RR, the evaluator completed a full record review, and considered Parent and teacher input. (N.T. at 119).
40. Parent noted continued concerns regarding Student's speech and sound development. Student's [redacted] teacher noted concerns regarding Student's inattention and speech development. Both Parent and teacher input stated that Student is intelligible about 50% of the time in conversation, but is understood when using 3-4-word sentences Further, the teacher reported that Student interacts with peers, who appear to understand Student. (E-05 at 5, 12; N.T. at 47-48, 53-54, 120, 138).
41. Student may be asked to repeat the sentence three or four times before the teacher will move on to another topic. (E-05 at 12).
42. The RR included and incorporated information collected in the ER. (E-05). Specifically, no further information was collected regarding Student's health history, cognitive, social and emotional, physical, and adaptive development. (E-05 at 6-7, 8, 13-15).
43. The Goldman Fristoe Test of Articulation- Third Edition (GFTA-3) was used to assess Student's articulation and phonological development. (E-05 at 10; N.T. at 118). The GFTA-3 assesses consonant sounds through pictures. (N.T. at 131).
44. Student obtained a standard score of 74 on the GTFA-3, demonstrating a delay in articulation and phonological development.

However, it was concluded that these deficits did not impact Student's ability to access their education. (E-05 at 10; N.T. at 123).

45. The GFTA-3 determined that Student was eligible but the evaluator determined that Student did not require an IEP because Student was young, had time to develop articulation skills, and otherwise produced age-appropriate sounds. (N.T. at 122-23; 131-32).
46. According to the RR, when Student communicated in the classroom, Student attempted to repeat themselves when not understood. Eventually, Student walked away and did not display frustration. Student displayed frustration when not understood in the beginning of the year, but has improved. Further, Student can communicate with [student's] peers. (E-05 at 10; N.T. at 121, 129).
47. Student's speech errors included fronting, weak syllable deletion, cluster reduction, medial word position substitutions, final word position substitutions, and consonant blends substitutions. (E-05 at 10).
48. Student was understood by evaluator 60% of the time for longer word utterances and 90% of the time for shorter word utterances. (E-05 at 10-11).
49. It is expected that a student who is [redacted] years old should be 80% intelligible. (N.T. at 122).
50. During a direct observation in the classroom, Student was observed coming in from the playground. Student participated in the assessment with the evaluator and transitioned to story time. Student's response to a question regarding the story was intelligible but off-topic. During snack time, Student asked for help, which was understood. However, as Student began to speak further, it was "hard

to understand the message [Student] was trying to convey.” (E-05 at 10-11; N.T. at 122).

51. The direct observation lasted for about an hour and a half in duration. (N.T. at 124).
52. Additional data collected for the RR primarily occurred during one session which included Parent and teacher input, classroom observation, and administration of the GFTA-3. (E-05 at 17; N.T. at 31, 116).
53. In an additional interview, the teacher indicated that Student is sometimes unintelligible, but Student displayed appropriate social interactions and had many friends. However, Student did struggle on some assignments that required expressive language. (N.T. at 152). Again, the teacher noted that Student would continuously repeat phrases in search for understanding, but was easily redirected when unsuccessful. (N.T. at 153).
54. The RR concluded that Student is not eligible for EI services. (E-05 at 18).
55. On March 2, 2026, the LEA issued a NOREP concluding that Student is not eligible for EI services because whereas Student demonstrated articulation and phonological development delays through the GFTA-3, Student deficits did not impact Student’s access to Student’s education. (E-02 at 36-37; N.T. at 130, 133-34). However, the LEA proposed that additional observations be completed to determine prong 2 of eligibility. (E-02 at 34-37; N.T. at 157). Specifically, it was proposed that a school psychologist observe Student for two hours to get additional data on how Student’s communication delays impact Student’s access to education. (N.T. at 157, 161).

56. Parent rejected LEA's proposal for additional observation because Parent did not want to continue the evaluation process when two have already been recently completed. (N.T. at 34-35, 51, 160).

Discussion and Application of Law

Burden of Proof and Witness Credibility

In an administrative due process hearing, the burden of proof encompasses the burden of production and the burden of persuasion. The party seeking relief bears the burden of persuasion. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Bd. of Educ*, 435 F.3d, 384, 392 (3rd Cir. 2006). Accordingly, the burden of persuasion rests with the filing party, in this case the Parent. For reasons set forth below, I find that Parent has met their burden of persuasion, and that Student is eligible for EI services under the disability category of Speech or Language Impairment.

Special education hearing officers must also make credibility determinations of witnesses called to testify before them. I find that all witnesses called to testify did so credibly. Specifically, I find that Parent provided a sincere and honest account of Student's current and past communication deficits. Parent did not hyperbolize or sugar-coat Student's strengths or deficits. They expressed their concerns clearly and efficiently based on their understanding of the circumstances. Further, the LEA's witnesses presented testimony in a truthful, and thorough manner demonstrating knowledge in their area of expertise and in their specific experience working with Student.

Child Find and Eligibility

The LEA's child find obligation requires that all children in need of special education and related services must be "identified, located, and

evaluated". 20 U.S.C. §1412(a)(3). The IDEA's child find provision delineates the responsibility of the LEA to evaluate and identify students who are "reasonably suspected of having a disability". See. §1412(a)(3); *D.K. v. Abington Sch. Dist.* 696 F.3d 233, 249 (3rd Cir. 2012). A child find violation can occur when the student is not evaluated or identified within a reasonable time after the LEA is on notice of deficits that indicate a disability or when "a poorly designed and ineffective round of testing" inhibits appropriate identification of the student. *D.K.*, 696 F.3d at 249 (see also, *W.B v. Matula*, 67 F.3d 484, 501 (3rd Cir. 1995)). However, child find does not require the LEA to evaluate "every struggling student" or require the LEA to evaluate a student "at the earliest possible moment". *D.K.*, 696 F.3d at 249.

A "child with a disability" is defined as a child "with intellectual disabilities, hearing impairments... speech or language impairments, visual impairments... serious emotional disturbance... orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities and who by reason thereof needs special education related services." 20 U.S.C. § 1401(3)(A); 34 C.F.R 300.8(a). Specifically, a child with a disability, aged 3 through 9, may include a child "experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures" in one or more areas (including physical cognitive, communication, social or emotional or adaptive development), and "who, by reason thereof, needs special education and related services." §1401(3)(B); §300.8(b).

As it specifically pertains to the instant matter, "speech or language impairment" is a communication disorder meaning "stuttering, impaired articulation, a language impairment, or a voice impairment that adversely affects a child's educational performance." §300.8(c)(11).

Early Intervention Programs must adhere to the IDEA's procedures and provisions, implementing "a comprehensive child find system" that

makes referrals to lead agencies, and allows for participation of the referral source. § 300.302(a). Specifically, Early Intervention Programs must ensure “rigorous standards for appropriately identifying infants and toddlers with disabilities for early intervention... that will reduce the need for future services.” §300.302(a)(3).

Evaluation Reports

To be appropriate, the evaluation must assess the student in “all areas of suspected disability.” §1414(b)(1)(3)(C). In assessing the student’s areas of suspected need, the evaluation report must contain

- (A) a variety of assessment tools and strategies to gather relevant functional and developmental information, including information provided by the parent that may assist in determining (i) whether the child is a child with a disability, and (ii) the content of the child’s [IEP], including information related to enabling the child to be involved and progress in the general education curriculum...
- (B) not a single procedure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and
- (C) Use of technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.” § 1414(b)(2).

The assessments and evaluation materials must be administered by trained and knowledgeable personnel who administer the materials in accordance with instructions provided, must address all areas of suspected disability in a student, and must provide relevant information that directly contributes to the determination of the student’s educational need. § 1414(b)(3).

A reevaluation report must also include existing data of the student, present levels of academic performance, identify additional data, if needed,

and must assess whether the student continues to qualify for special education services, and whether the student's special education services require additions or modifications. §1414(c)(1). In cases where additional data is not required, the reevaluation must identify the reason and the right of the parent to request an assessment. §1414(c)(4).

Early intervention evaluations consist of similar requirements outlined in §1414. The evaluation may not use a single procedure "as a sole criterion for determining" the child's eligibility. §303.321(b). The evaluation must use an evaluation instrument, take the child's history into consideration, identify the child's level of functioning in all developmental areas, and gather information from sources such as family members and educators. *Id.* In addition, the evaluation must include a review of the conclusions, personal observations of the child, and identification of needs in each developmental area. §303.321(c). If a child is not eligible for early intervention services, the LEA must notify the parent with a prior written notice that includes information regarding the parent's right to dispute eligibility. 34 C.F.R. §300.322.

Provision of FAPE under the IDEA

Children with disabilities are entitled a free and appropriate public education which provides them with special education and related services "designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 USC § 1400(d)(1)(A). Generally, FAPE must be afforded to all children with disabilities "between the ages of 3 and 21 inclusive." 20 U.S.C. §1412(a)(1)(A).

The IDEA requires the state to provide FAPE "to all children residing in the State." 20 U.S.C. § 1412(a)(1)(A). FAPE requires an educational program that is "reasonably calculated to enable the child to receive educational benefits.'" *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.*, 137 S.Ct. 988, 995-96 (2017) (quoting *Bd. of Educ., Etc. v. Rowley*, 458 U.S. 176,

207). (1982). Further, a Student receives FAPE when “personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction” the student is receiving FAPE. *Rowley*, 458 U.S. at 189.

FAPE requires specially designed instruction (SDI) that will assist the child. *Id.* at 201. The student’s Individualized Education Program (IEP) must be designed to “enable the child to be involved in and make progress in the general education curriculum and meet each of the child’s other educational needs...” 20 U.S.C § 1414(d)(1)(A)(i)(II). *Endrew* emphasized that the IEP “must be ‘specially designed’ to meet a child’s ‘unique needs’ through an individualized education program.” 137 S.Ct. at 999. *Endrew* rejected the “more than de minimis” test and instead requires the student to “have the chance to meet challenging objectives.” *Id.* at 1000. Applying a “more than de minimis” standard to students with disabilities does not provide “education for all.” *Id.* at 1001.

Application of Law and Fact

A primary purpose of communication is to be understood. Functional communication fails when there is no basic understanding of verbal or non-verbal language. Speech or language skills provide a foundation that feeds almost every other functional daily living, academic, social-emotional and behavioral skill. In the instant matter, the general issue is whether Student qualifies for early intervention services. The record is rife with evidence regarding Student’s communication deficits. The adults who have worked with Student, including the evaluators who issued the assessments and authored the evaluations, consistently struggled to understand Student’s speech, wholly impacting Student’s ability to communicate or convey a message.

Further, according to the March 2026 RR, it was determined that Student demonstrated a communication delay in articulation and

phonological development. (E-05 at 10; N.T. at 122-23; 131-32). However, it was determined that Student did not require early intervention because Student otherwise produced age-appropriate sounds and these communication deficits did not impact Student's access to their current education. (N.T. at 130, 133-34). Parent disagreed with this conclusion and filed for due process. (E-02 at 34-37; E-07; N.T. at 34-35, 51, 160).

Parent provided brief testimony regarding whether Student is eligible for early intervention under the disability category of Autism. (N.T. at 26). However, the record is otherwise silent regarding Student's display of characteristics consistent with those diagnosed with Autism, absent communication deficits. Therefore, this application of law and fact, and subsequent conclusion and order will not address whether Student is eligible for special education under the disability category of Autism. The only specific and direct issue raised for disposition is whether Student's articulation and phonological communication delay impacts Student's ability to access a meaningful education. For the reasons set forth below, the record is preponderant that Student's communications delays impact both Student's education and general everyday life.

Student is eligible for early intervention under the disability category of Speech or Language Impairment

Parent contends that Student should be eligible for early intervention services to receive speech therapy to address communication deficits. The LEA contends that whereas Student has displayed communication deficits the areas of articulation and phonological development, Student is happy, incredibly social, effectively communicates with [student's] peers and teachers, and otherwise is able to complete tasks in an educational setting. Therefore, Student does not meet the second prong of eligibility.

The IDEA defines speech or language impairment as a communication disorder meaning “stuttering, impaired articulation, a language impairment, or a voice impairment that adversely affects a child’s educational performance.” §300.8(c)(11). The LEA heavily relies on the last seven words of this definition to justify their conclusion finding Student ineligible for EI services twice. However, both the September 2025 ER and March 2026 RR contain input and data evidencing a significant language and articulation impairment.

During the September 2025 ER, Student was [redacted] old. (E-04 at 1). According to the BDI-3, Student displayed age-appropriate skills in cognitive, communication, social and emotional, physical and adaptive development. (E-04 at 9-14). However, Parent input, teacher input, evaluator observations, and a more thorough review of the BDI-3 results indicate a different conclusion. Parent and teacher input indicated that Student was intelligible 50% of the time. (E-04 at 11). The evaluator documented that Student was understood for 60% of utterances. (*Id.*). Further, teacher input suggested that Student is social and enjoys to play with peers. However, Student only sometimes initiated contact, did not always play cooperatively, and Student often kept to themselves. (E-04 at 12; E-06 at 2, 5-8).

In emphasizing the BDI-3 standard scores, and stressing Student’s communication strengths, the LEA completely ignored the consistent pattern of Student’s unintelligible language and the functional impact it had on Student’s socialization. The September 2025 ER was primarily completed in about a 2- hour time allotment. (E-04 at 17; E-06 at 1: N.T. at 28, 31, 84, 86-87, 106) The evaluator did not observe Student anywhere else. Yet, the evaluator admitted that it is important to assess a student as a whole because some students act differently in different environments. (N.T. at 83-84). The evaluator wholly failed to observe Student in the educational

environment. Therefore, Parent and teacher input should have been provided greater weight because these individuals worked with Student regularly.

Review of the Speech and Language Sample provided by Student was particularly telling. (E-04 at 10-11). Understanding that the Speech and Language sample included direct dictations of Student's speech using phonetic spelling, very little words were spoken accurately. (E-04 at 1-11; N.T. at 97). Without the translations provided, a neutral observer would be challenged to decipher Student's speech. It must be noted that Student's uttered a maximum of 5 phrases, and was not attempting speech beyond age-ability. This is consistent with the overall conclusion that Student's speech is primarily unintelligible.

The March 2026 RR, further highlighted Student's communication deficits. During completion of the March 2026 RR, Student had transferred from a day-care based educational program to a [redacted] program within Student's district of residence. (N.T. at 28-29). Yet, the same concerns were regarding Student's communication noted. Teacher input indicated that Student was unintelligible for about 50% of utterances. (E-05 at 5, N.T. at 47-48, 53-54, 120, 138). Consistent with Student's communication in the home, the teacher reported that Student would attempt to communicate, and when unable to convey the message, the teacher would request Student to repeat the phrase three or four times. (E-05 at 12, N.T. at 33, 62, 121, 129). When continuously unsuccessful, Student would move on to another topic. Student displayed frustration at the beginning of the year, but improved as the year progressed. (E-05 at 10; N.T. at 121, 129). The LEA heavily relied on these facts to support their conclusion that Student was ineligible for early intervention services. (N.T. at 130, 133-34).

Overall, the analysis is severely flawed because it ignored the results of the GFTA-3, devalued Parent and teacher input, and ignored the

evaluators own observations. First, according to the GFTA, Student's score of 74 met eligibility requirements evidencing Student's communication deficits in articulation and phonological development. (E-05 at 10; N.T. at 118, 122-23, 131-32). Student speech errors included fronting, weak syllable deletion, cluster reduction, medial word position substitutions, final word position substitutions, and consonant blends substitutions. (E-05 at 10).

The evaluator for the March 2026 RR also concluded that Student's speech was 60% intelligible when Student attempted longer word utterances. (E-05 at 10-11). When the evaluator had an opportunity to engage in a conversation with Student, it was noted that it was "hard to understand the message [Student] was trying to convey." (E-05 at 10-11). The evaluator further went to admit that a student at the age of [redacted] should be intelligible 80% of the time. (N.T. at 122). At the time of the March 2026 RR, Student very close to [redacted] years of age.

The LEA argues that Student's communication deficits do not impact Student's meaningful access to education because Student successfully engages with peers who seem to understand them. (E-05 at 5, N.T. at 47-48, 53-54, 120, 138). The LEA confuses this as functional communication. Functional communication does not end in misunderstanding. Further, the record is rife with examples regarding how Student communicates. Student will approach Parent or teacher with a message, and 50% of the time, Student's speech is unintelligible. After repeating themselves 3 or 4 times, Student either becomes frustrated or will give up. Student's may have tried to ask for help or may have had an issue to resolve, but it was never received by the listener. It cannot be concluded that Student's deficits do not impact their education, if half of their statements, requests, or questions are not understood.

The LEA contends that Student's lack of frustration in the classroom is a positive indication that Student's communication does not impact

Student's access to a meaningful education. Whereas Student does display frustration after a failed communication attempt, Student's behaviors have improved. (N.T. at 32, 43-44, 62). Student's self-restraint should not diminish Student's communication deficits. If anything, it demonstrates Student's complacency with not being understood.

Rather than assessing and addressing Student's communication deficits, taking the time to support Student's needs and teaching skills to improve articulation and phonological development, the teacher has encouraged redirection, and moved on. This is the antithesis of the purpose of the IDEA. FAPE requires that Student receive an educational program that is "reasonably calculated" to enable Student to receive educational benefits." *Endrew*, 137 S.Ct. at 995-96 (quoting *Rowley*, 458 U.S. at 207). Student deficits should not be overshadowed by complacency and for being ignored. To provide FAPE, the LEA must appropriately assess and address Student's communication deficits and provide Student appropriate support to progress those skills.

After about a 90-minute observation that included formal testing, the LEA inappropriately concluded that Student does not qualify for early intervention. For the reasons discussed extensively above, the LEA erred in their child find obligation to Student, and Student must be found eligible for early intervention under the disability category of Speech or Language Impairment due to Student's communication deficits in articulation and phonological development.

Conclusion

For the reasons set forth in the above Discussion and Application of Law and Fact, the LEA's conclusion in the September 2025 ER and March 2026 RR, finding that Student is ineligible for early intervention services is inappropriate, and does not adequately assess and address all areas of Student's suspected disability. The record is rife with facts supporting

Student's communication deficits in articulation and phonological development. Student's communication skills result in primarily unintelligible phrases that are never fully deciphered. This deficit impacts Students everyday functioning, specifically access to meaningful education.

Therefore, Student qualifies for early intervention under the disability category of speech or language impairment. The LEA must issue an Evaluation Report remedying their conclusion, that finds Student eligible for early intervention. Further, to provide FAPE, the LEA must assemble an IEP team, including Parents, to develop an appropriate Early Intervention IEP addressing Student's articulation and phonological development, and develop annual measurable IEP goals designed to enable meaningful educational progress in these areas. Further, nothing in this decision terminates the LEA's ongoing obligation under the IDEA's FAPE requirements, nor the Parents right to request evaluations in response to Student's changing needs. See 34 C.F.R. § 300.321

An appropriate order follows.

Order

AND NOW, this 9th day of June, 2026 in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows:

1. Student is eligible for early intervention services as a student with speech or language impairment;
2. Within 15 days from the issuance of this Decision and Order, the LEA must issue an Evaluation Report finding Student eligible for early intervention services and;
3. Within 30 days from the issuance of the Evaluation Report, an IEP meeting must convene with Parent to develop an appropriate IEP that specifically provides speech and language support and annual measurable goals targeting articulation and phonological communication deficits.

It is FURTHER ORDERED that any claim not specifically addressed in this Order is **DENIED** and **DISMISSED**. With issuance of this final decision, jurisdiction over this matter is hereby **RELINQUISHED**.



Savannah L. Murphy, Esquire.
Special Education Hearing Officer
ODR File Number 32843-25-26