

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. 31598-25-26

Child's Name:

M.Z.

Date of Birth:

[redacted]

Parents:

[redacted]

Counsel for Parents:

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Hearing Officer:

Brian Jason Ford

Date of Decision:

09/29/2025

Introduction and Procedural History

This special education due process hearing concerns the educational rights of a child with disabilities (the Student). The Student's parents (the Parents) requested this hearing, alleging that the Student's public school district (the District) violated the Student's rights under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq.

More specifically, the Parents claim that the District failed to offer an Individualized Education Program (IEP) for the 2023-24 and 2024-25 school years that appropriately addressed the Student's reading needs. The Parents also claim that the District failed to implement key reading components of the Student's IEP for a portion of the 2024-25 school year. The Parents argue that these failures constitute a substantive violation of the Student's IDEA right to a free appropriate public education (FAPE) and demand compensatory education as a remedy.¹

The District argues that the Student's reading program, as specified in the Student's IEP, was reasonably calculated to provide a FAPE. The District further argues that the Student made good progress in the District's program, and so its maintenance of the same program for several school years was appropriate. The District admits, however, that the Student's reading program was not delivered in strict compliance with the publisher's guidelines for a portion of the 2024-25 school year. The District offered 55 hours of compensatory education and services to the Student through a Notice of Recommended Educational Placement (NOREP) to remediate any harm caused by the implementation failure. The Parent rejected that offer, finding the proposed remedy to be insufficient.

The Parents filed their due process complaint on July 16, 2025. The hearing convened in one efficient session on August 18, 2025. The parties filed closing briefs on September 5, 2025. Having considered the evidence and the parties' arguments, I now find that the Student is owed compensatory education for the District's failure to implement the Student's reading program with fidelity, but that the amount of compensatory education that the District offered is sufficient to remedy the violation. I also find that the Student's IEPs were reasonably calculated to provide a FAPE when they were offered, and so no additional remedy is owed.

¹ There is no dispute that the Parents demand compensatory education. See, e.g. NT at 22, 29. However, it is noteworthy that the Parents do not demand compensatory education – or any other remedy – in their due process complaint. It is also noteworthy that I have no authority to award prevailing party fees. Substantial portions of the Parents' closing argument concerns a demand for fees.

Issues

Two issues were presented for adjudication:

1. Did the District violate the Student's right to a FAPE from July 16, 2023, through the end of the 2024-25 school year by failing to offer IEPs that were reasonably calculated to provide a meaningful educational benefit in reading?
2. Is the Student owed more than 55 hours of compensatory education for the District's failure to implement the Student's reading program in conformity with the reading program publisher's guidelines?²

The Parents demand compensatory education for each of these alleged violations. Notably, prior to the hearing, the parties resolved all disputes concerning the Student's ongoing right to a FAPE from the District. No issues concerning the appropriateness of the Student's current program and placement are presented.

Findings of Fact

I reviewed the record in its entirety. I make findings only as necessary to resolve the issues presented. I find as follows:

Background

1. During the 2021-22 school year, the Student received speech and language services. S-1.
2. During the 2021-22 school year, the Parent became concerned about the Student's reading and writing abilities. The Parent asked the District to evaluate the Student. S-1.
3. On April 22, 2022, the District issued an evaluation consent form in response to the Parent's request for an evaluation. The Parent

² It is not necessary to determine if the District owes the Student compensatory education for not implementing the reading program with fidelity. The District concedes the point and has offered compensatory education. The Parent presses a claim about IEP implementation on the theory that the District's offer is insufficient. The sufficiency of offers to settle IDEA due process claims is not within my jurisdiction. However, the NOREP through which the District offered compensatory education in this case is not a "written settlement agreement" contemplated at 20 U.S.C. § 1415. Rather, it is a special education offer that includes a calculation to remediate any harm caused by the District's implementation failure. The appropriateness of special education offered by schools through NOREPs falls within my jurisdiction.

provided consent on April 25, 2022, and the District received the form back on April 26, 2022. S-1.

4. On June 21, 2022, the District issued a report card indicating that the Student was "Proficient" in all areas assessed except for Reading. In Reading, the report card indicated that the Student was reading at grade level. Reading sub-domains on the report card said that the Student was Proficient in grade-level foundational skills and language, but "Basic" in grade-level literature and informational text, and Basic in writing as well. S-3.
5. The 2022-23 school year was the Student's [redacted] Grade year.
6. On September 9, 2022, the District completed a Reevaluation Report (the 2022 RR). S-3.
7. The 2022 RR noted that, since February 2022, the Student had been receiving Tier 2 reading interventions four days per week, 30 minutes per session. S-3. Tier 2 reading interventions are part of the District's response to intervention reading program and are not considered special education within the District. *Passim*.
8. The 2022 RR included developmental history and background information provided by the Parent. S-3.
9. The 2022 RR included the evaluator's observations of the Student during testing. S-3.
10. The 2022 RR included the Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V), which is a standardized, normative test of cognitive functioning.
11. According to the WISC-V, the Student's Verbal Comprehension Index, Visual Spatial Index, and Fluid Reasoning Index were all in the High Average range.³ The Student's Working Memory Index and Processing Speed Index were in the Average range. The Student's Full Scale IQ score was in the High Average range. S-3.
12. The 2022 RR included the Wechsler Individual Achievement Test, Fourth Edition (WIAT-4). S-3. The WIAT-4 is a standardized, normative

³ WISC-V index scores are comprised of at least two sub-test scores. In this case, there was a small amount of variability in the Student's sub-tests within any given index, but all ranged from Average to High Average. S-3.

test of academic achievement that can be compared to the WISC-V for a discrepancy analysis. *Passim*.

13. According to the WIAT-4, the Student's Reading Composite and Written Expression Composite were in the Average range, and the Student's Mathematics Composite was in the High Average range. S-3.
14. The 2022 RR included a detailed analysis of the Student's reading sub-test scores on the WIAT-4. This revealed that the Student's Pseudoword Decoding (a measure of the Student's ability to read a nonsense word aloud) and Word Reading (a measure of the Student's ability to read real words in isolation) were in the Low Average range. The Student's Phonemic Proficiency (a measure of the Student's ability to manipulate sounds) was in the Average range. The Student's Oral Reading Fluency (a timed measure of the Student's ability to read a fixed number of words) was found to be in the Very Low range. The Student's Reading Comprehension (a measure of the Student's understanding of written materials) was found to be in the Very High range. S-3
15. The WIAT-4 in the 2022 RR was also used to assess the Student's writing. The Student's Spelling and Sentence Composition abilities were found to be in the Average range. S-3.
16. In the 2022 RR, the evaluator noted the Student's variable reading performance across the different WIAT-4 tests. The Student's reading comprehension was found to be consistent with curriculum-based assessments (classroom assignments and tests) and teacher observations. The Student's oral reading was found to be significantly weaker. However, the Student's inability to read aloud quickly did not impair the Student's ability to understand what the Student was reading. S-3.
17. In the 2022 RR, the evaluator concluded that there was a significant discrepancy between the Student's basic reading, oral reading, and written expression skills, and the Student's overall cognitive functioning. On that basis, the evaluator concluded that the Student qualified for special education as a child with a Specific Learning Disability (SLD). S-3.⁴
18. The Student's IEP team convened on October 7, 2022. S-4, S-5.

⁴ The 2022 RR evaluated other domains as well. However, the issues presented in this matter exclusively concern the District's response to the Student's reading needs.

19. During the IEP team meeting, the Student's IEP team added a reading goal to the Student's IEP. The goal called for the Student to read ten out of ten sight words with increasing difficulty upon mastery. This means that each time the Student demonstrated an ability to read ten out of ten sight words, more words of higher difficulty would be added, but the Student was required to demonstrate mastery of previous words as well. S-5.⁵
20. The 2022 IEP included modifications and Specially Designed Instruction (SDI) related to reading. The 2022 IEP included a special education reading program to be delivered four times per week, 30 minutes per session, in a special education classroom. The 2022 IEP also included "guided repeated readings for fluency" although there was no reading fluency goal. S-5.
21. The reading program in the 2022 IEP was described as a "direct, explicit scientifically research-based reading program that systematically addresses the five essential components of reading instruction (phonemic awareness, phonics fluency, vocabulary and comprehension) through a multisensory approach. S-5. The record reveals that this is a published reading program called Sonday, which relies upon Orton-Gillingham methodologies. *Passim* (see, e.g. NT 162-163).
22. The Parent approved the 2022 IEP via a Notice of Recommended Educational Placement (NOREP) on October 7, 2022. S-6.
23. On June 19, 2023, the District issued a report card for the Student. According to the report card, the Student's reading instructional level was below grade level in all four marking periods. The Student's informational text abilities were "not yet" at grade level in the first three marking periods and was not assessed in the fourth marking period. The Student's foundational grade level reading skills were "not yet" in the first three marking periods but increased to "proficient" by the end of the school year. The Student's grade level instructional skills in reading were "proficient" in the first three marking periods but were not assessed in the fourth marking period. The Student's writing skills were "basic" and the Student's language skills were "proficient." S-7.

⁵ The 2022 IEP also included two speech articulation goals. Those, and the reading goal described above were the only goals in the 2022 IEP. S-5.

The 2023-24 School Year

24. The 2023-24 school year was the Student's [redacted] grade year.
25. On October 4, 2023, the Student's IEP team reconvened to draft a new, annual IEP for the Student (the 2023 IEP). S-8, S-9.
26. The 2023 IEP reports the Student's performance on benchmark DRA reading assessments, which were administered on September 15, 2023. According to this testing, at the start of the Student's [redacted] grade year, the Student could read independently at the mid-third grade level and was instructional at the end of third grade level. S-9.
27. A different reading benchmark test called Acadience was also administered in September 2023 and reported on the 2023 IEP. This test was used to assess the Student's reading norms for the start of [redacted] grade, with a focus on fluency. The Student scored in the "well below" range in Words Correct Per Minute and Story Retell. The Student scored in the "below" range in Accuracy, Quality of Response, and Maze. S-9.
28. The District also administered a Reading Growth Measure and a Reading Inventory (other benchmark tests) and reported the results in the 2023 IEP. These both indicated that the Student was reading at the third grade level. S-9.
29. The 2023 IEP reported progress on the Student's prior reading goal. Broadly speaking, the Student mastered easier sight words and was working to master more difficult sight words. S-9.
30. The 2023 IEP included an oral reading fluency goal. At the time the goal was written, the Student could read 77 words correct per minute (WCPM) at the third grade level. The goal called for the Student to read 115 WCPM at the fourth grade level. S-9.
31. The 2023 IEP included an updated version of the Student's sight word decoding goal. The updates were to account for the Student's progress during the prior school year. S-9.
32. The 2023 IEP continued the Sondy program, but increased from four to five times per week. S-9.
33. The Parent approved the 2023 IEP via a NOREP on October 5, 2023. S-10.

34. On February 15, 2024, the Parent and District agreed to update the 2023 IEP without an IEP team meeting. Specifically, the parties agreed that the Student was not eligible for Extended School Year (ESY) services and edited the IEP to reflect that decision. S-11
35. The parties also updated the 2023 IEP to reflect the Student's progress towards IEP goals. S-11, S-12.
36. At the time of the update, the Student demonstrated progress towards sight word reading, but the District was still using third grade materials to assess the Student's reading fluency. In January 2024, the Student's WCPM at the third grade level varied between 55 and 81. However, the Student's accuracy scores (correct words per total words) was high. The Student's baseline accuracy at the third grade level was 97%. In January 2024, the Student's accuracy varied between 93% and 100%. S-11. This tends to suggest that, during assessments of reading fluency, the Student sacrificed speed for accuracy. *Passim*.
37. On the spring 2024 PSSAs, the Student earned a Basic score in ELA and Science, and a Proficient score in Mathematics. P-1.
38. On June 12, 2024, the Student's IEP team reconvened to draft an annual IEP (the 2024 IEP). S-13, S-14.
39. The 2024 included reports of updated reading benchmark testing from December 2023, April 2024, and May 2024. By May 2024, according to the DRA assessment, the Student had reached the Independent level for fourth grade reading fluency and comprehension. Acadience benchmark testing, however, showed that the Student was "well below benchmark" for "end of [redacted] grade" reading fluency. Comparing the Student's Acadience scores throughout the 2023-24 school year show considerable growth from the first baseline test, but not progress towards grade level performance. The Reading Growth Measure test (a test specifically designed to measure reading growth over time) showed considerable progress between the fall of 2023 and winter of 2024. A spring 2024 growth measure showed shocking regression, but came with a cautionary note that the Student rushed through the test. That administration was reported but is not considered a valid measure of the Student's performance. S-14.
40. The Student's classroom performance on reading assignments highly variable. S-14.

41. The 2024 IEP reported the Student's progress through the Sonday program, as measured by Sonday itself. S-14. Sonday is broken into two parts: Sonday 1 and Sonday 2. Each part includes multiple levels, and a student passes from level to level only after passing a mastery check. *Passim*. The Student successfully completed Sonday 1 in January 2024, and progressed through several levels of Sonday 2 by the end of the 2023-24 school year. S-14.
42. The 2024 IEP repeated the reading fluency goal from the 2023 IEP, but set a higher level of mastery. This time, the goal called for the Student to read 111 WCPM at the fifth grade level with 98% accuracy. The Student's baseline score at the time was 75 WCPM at the fourth grade level with 97% accuracy. S-14.
43. The 2024 IEP repeated the sight word goal from the 2023 IEP, but with a higher level of mastery and updated baselines. S-14.
44. The 2024 IEP maintained the Student's participation in the Sonday program at the same level as in the 2023 IEP. The 2024 IEP also included reading support for the Student during a flexible period of the school day to make sure that the Student would not fall behind in reading assignments. S-14.
45. On June 13, 2024, the Parent approved the 2024 IEP via a NOREP. S-15.
46. On July 15, 2024, the District issued a report card for the Student. In Reading and Language Arts, the Student earned proficient marks in every domain. In other classes that required the Student to read to learn substantive content, like Science and Social Studies, the Student earned proficient or "commendable" scores. S-16.

The 2024-25 School Year

47. On December 11, 2024, the Student's IEP team reconvened to discuss the Parent's concerns about the Student's reading comprehension, discuss the transition to middle school, and determine whether a new evaluation was needed. The IEP team also updated the present

education levels and made a small change to the Student's SDI.⁶ S-17, S-18.

48. The updated present education levels in the 2024 IEP reflected that the Student was well below beginning of [redacted] grade benchmarks according to Acadience testing. Classroom performance on first marking period report cards showed a basic score in grade-level foundational skills, "not yet" in grade-level reading comprehension skills and a proficient score in writing skills. The Student's reading grades, however, were highly variable, ranging from 80% to 45% on various assignments. S-18.
49. The updated present education levels in the 2024 IEP showed that the District was using fourth grade material to test the Student's oral reading fluency. The Student's WCPM was variable across probes, ranging from 63 WCPM to 90 WCPM. The Student's accuracy on those probes remained high (90% to 97%). S-18.
50. Although the 2024 IEP update indicated that the District would seek the Parent's consent to reevaluate, that did not happen until January 8, 2025, when the District issued a Permission to Reevaluate Form. S-19.
51. The Parent provided consent, and the District reevaluated the Student, completing a Reevaluation Report on March 6, 2025 (the 2025 RR). S-22.⁷
52. The 2025 RR included a review of all prior testing and grades to date. S-22.
53. The 2025 RR included an administration of the Feifer Assessment of Reading (FAR). As described in the 2025 RR, the FAR is a "The FAR is a comprehensive, grade-based, norm-referenced reading test designed to examine the underlying cognitive and linguistic processes that support proficient reading skills for students in preschool through college." S-22. The description goes on:

The FAR is unique in that it helps users determine not only the presence of a reading disorder, but also the specific dyslexia subtype. The FAR is based on a

⁶ The updated SDI explained that "cold reads" should be read aloud to the Student. See S-18.

⁷ As with the prior RR, fact finding is limited to the issues presented in this dispute. The 2025 RR is broader than the facts reported here may otherwise suggest. See S-22.

neuropsychological approach to reading, which suggests that multiple neural pathways underscore various aspects of the reading process such as phonemic awareness, fluency, decoding, and comprehension. The FAR better assists practitioners in determining why an individual student is struggling in reading and to inform intervention based on a neuroscientific learning paradigm.

54. As assessed by the FAR, the Student's Phonological Index was in the Average range, the Student's Fluency Index was in the Below Average range. Those two indexes together form a "Mixed Index" that was in the Average range. The Student's Comprehension Index was in the Below Average range. The Phonological, Fluency, and Comprehension indexes combine to form a Total Index in the Average range. S-22.
55. As with other tests, the index scores are comprised of sub-test scores. The Student's performance on various sub-tests was a little variable. Notably, a sub-test of the Phonological Index that measures Isolated Word Reading was found to be in the "Moderately Below Average" range. That was the Student's lowest score in that index. In the same index, the Student's Nonsense Word Decoding was found to be in the Above Average range. S-22.
56. The evaluator provided a detailed analysis of the Student's performance on the FAR. The evaluator concluded that the Student's performance on the FAR was not consistent with a dyslexia diagnosis. The Student's many reading strengths contributed to an overall FAR score in the Average range. However, the FAR revealed important weaknesses with reading fluency, and that may impair comprehension. S-22.
57. Teachers had noted that the Student's reading fluency was impairing the Student's reading comprehension at least sometimes. For example, the Student would sometimes struggle with questions that called for the Student to refer back to written materials. See S-22 at 26.
58. The 2025 RR included a new administration of the WIAT-4. Regarding reading, the Student's reading and written expression index scores were found to be in the Average range, while the Student's oral reading fluency was found to be in the low average range. S-22

59. The 2025 RR's conclusion concerning reading was that the Student continued to qualify as a child with an SLD in reading fluency and comprehension. S-22.
60. On April 1, 2025, the Student's IEP team reconvened to draft a new IEP for the Student (the 2025 IEP). S-23, S-24.
61. The 2025 IEP reported the Student's present levels of achievement in reading. In ELA, the Student was using the general education curriculum with grade-level texts. The Student's most recent scores on classroom modules were 71% and 78%. The Student's progress through the Sondag program, however, was exemplary. The Student scored between 95% and 100% on Sondag tests. S-24.
62. The 2025 IEP also reported the Student's progress towards IEP goals. For sight word reading, the Student continued to meet short term objectives towards the larger goal. For the fluency goal, the District was still using fourth grade materials, and the Student still had not met the objectives to progress. The latest probe showed that the Student reached 87 WCPM with 97% accuracy at the fourth-grade level. S-24.
63. The 2025 IEP continued the goals from the 2024 IEP, but with updated baselines. S-24.
64. The 2025 IEP continued the Sondag program but also added an oral reading fluency program delivered three times per week, 20 minutes per session. S-24. While prior IEPs called for the Student to participate in reading fluency practice, this was the first time that a "research-based oral reading fluency program" was explicitly added to the Student's IEP. C/f S-18 at 28, S-24 at 28.
65. Around the same time that the District began to develop the 2025 IEP, certain District personnel discovered a discrepancy in the Student's records for the Sondag program. A staffing change resulted in a different teacher administering the Sondag program to the Student from October 2024 through February 2025. During that time, the District could not confirm that the Sondag program was administered in strict adherence with the publisher's requirements, particularly regarding mastery checks before level advancement. See, e.g. NT 104-106.
66. The District offered compensatory education to the Student to remediate any harm that may have been caused by improper

implementation of the Sondag program. The Student's IEP called for the Student to receive 30 minutes of Sondag, five times per week, which is 2.5 hours per week. The period of time for which the District could not verify that Sondag was implemented with strict fidelity was about 20 weeks. That comes to 50 hours, although the actual time was less because the District was closed for holidays during the period in question. See NT 106.

67. While the actual time that the Student spent in Sondag came to less than 50 hours, the District offered 55 hours of compensatory education via a NOREP on April 7, 2025. S-26.
68. The District placed no restrictions on the compensatory education that it offered in the NOREP. While the NOREP is linked to the 2025 IEP, the compensatory education offered through the NOREP includes no restrictions whatsoever and, therefore, can be applied to compensatory services and products in ways that far exceed the typical formulation of a hearing officer's order. See S-26.
69. On April 9, 2025, the District offered the 2025 IEP via a NOREP. S-27.⁸

Witness Credibility

During a due process hearing, the hearing officer is charged with the responsibility of 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.").⁹

I find that all witnesses testified credibly. The outcome of this matter in no way depends on the credibility of any witness.

⁸ It is worth noting, again, that all issues about the Student's current program and placement have been resolved.

⁹ See also, generally *David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009); *T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 *11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014); *Rylan M. v Dover Area Sch. Dist.*, No. 1:16-CV-1260, 2017 U.S. Dist. LEXIS 70265 (M.D. Pa. May 9, 2017).

Applicable Legal Principles

The 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 preponderant evidence and cannot prevail if the evidence rests in equipoise. See *N.M., ex rel. M.M. v. The School Dist. of Philadelphia*, 394 Fed.Appx. 920, 922 (3rd Cir. 2010), citing *Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004). The parties' burdens for each of the issues presented is noted above.

Free Appropriate Public Education (FAPE)

The IDEA requires the states to provide a "free appropriate public education" to all students who qualify for special education services. 20 U.S.C. §1412. Local education agencies, including school districts, meet the obligation of providing a FAPE to eligible students through development and implementation of IEPs, which must be "reasonably calculated" to enable the child to receive "meaningful educational benefits" in light of the student's "intellectual potential." *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 240 (3d Cir. 2009) (citations omitted). Substantively, the IEP must be responsive to each child's individual educational needs. 20 U.S.C. § 1414(d); 34 C.F.R. § 300.324.

This long-standing Third Circuit standard was confirmed by the United States Supreme Court in *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017). The *Endrew* case was the Court's first consideration of the substantive FAPE standard since *Board of Educ. of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 206-07, 102 S.Ct. 3034 (1982).

In *Rowley*, the Court found that a LEA satisfies its FAPE obligation to a child with a disability when "the individualized educational program developed through the Act's procedures is reasonably calculated to enable the child to receive educational benefits." *Id* at 3015.

Third Circuit consistently interpreted *Rowley* to mean that the "benefits" to the child must be meaningful, and the meaningfulness of the educational benefit is relative to the child's potential. See *T.R. v. Kingwood Township Board of Education*, 205 F.3d 572 (3d Cir 2000); *Ridgewood Bd. of*

Education v. N.E., 172 F.3d 238 (3rd Cir. 1999); *S.H. v. Newark*, 336 F.3d 260 (3rd Cir. 2003). In substance, the *Endrew* decision is no different.

A school district is not required to maximize a child's opportunity; it must provide a basic floor of opportunity. See, *Lachman v. Illinois State Bd. of Educ.*, 852 F.2d 290 (7th Cir.), *cert. denied*, 488 U.S. 925 (1988). However, the meaningful benefit standard required LEAs to provide more than "trivial" or "de minimis" benefit. See *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171, 1179 (3d Cir. 1998), *cert. denied* 488 U.S. 1030 (1989). See also *Carlisle Area School v. Scott P.*, 62 F.3d 520, 533-34 (3d Cir. 1995). It is well-established that an eligible student is not entitled to the best possible program, to the type of program preferred by a parent, or to a guaranteed outcome in terms of a specific level of achievement. See, e.g., *J.L. v. North Penn School District*, 2011 WL 601621 (E.D. Pa. 2011). Thus, what the statute guarantees is an "appropriate" education, "not one that provides everything that might be thought desirable by 'loving parents.'" *Tucker v. Bayshore Union Free School District*, 873 F.2d 563, 567 (2d Cir. 1989).

In *Endrew*, the Supreme Court effectively agreed with the Third Circuit by rejecting a "merely more than de minimis" standard, holding instead that the "IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew*, 137 S. Ct. 988, 1001 (2017). Appropriate progress, in turn, must be "appropriately ambitious in light of [the child's] circumstances." *Id.* at 1000. In terms of academic progress, grade-to-grade advancement may be "appropriately ambitious" for students capable of grade-level work. *Id.* Education, however, encompasses much more than academics. Grade-to-grade progression, therefore, is not an absolute indication of progress even for an academically strong child, depending on the child's circumstances.

In sum, the essence of the standard is that IDEA-eligible students must receive specially designed instruction and related services, by and through an IEP that is reasonably calculated at the time it is issued to offer an appropriately ambitious education in light of the Student's circumstances.

Compensatory Education

Compensatory education is an appropriate remedy where a LEA knows, or should know, that a child's educational program is not appropriate or that he or she is receiving only a trivial educational benefit, and the LEA fails to remedy the problem. *M.C. v. Central Regional Sch. District*, 81 F.3d 389 (3d

Cir. 1996). Compensatory education is an equitable remedy. *Lester H. v. Gilhool*, 916 F.2d 865 (3d Cir. 1990).

Courts in Pennsylvania have recognized two methods for calculating the amount of compensatory education that should be awarded to remedy substantive denials of FAPE. The first method is called the “hour-for-hour” method. Under this method, students receive one hour of compensatory education for each hour that FAPE was denied. *M.C. v. Central Regional*, arguably, endorses this method.

The hour-for-hour method has come under considerable scrutiny. Some courts outside of Pennsylvania have rejected the hour-for-hour method outright. See *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 523 (D.D.C. 2005). In *Reid*, the court conclude that the amount and nature of a compensatory education award must be crafted to put the student in the position that she or he would be in, but for the denial of FAPE. *Reid* is the leading case on this method of calculating compensatory education, and the method has become known as the *Reid* standard or *Reid* method.

The more nuanced *Reid* method was endorsed by the Pennsylvania Commonwealth Court in *B.C. v. Penn Manor Sch. District*, 906 A.2d 642, 650-51 (Pa. Commw. 2006) and the United States District Court for the Middle District of Pennsylvania in *Jana K. v. Annville Cleona Sch. Dist.*, 2014 U.S. Dist. LEXIS 114414 (M.D. Pa. 2014). It is arguable that the Third Circuit also has embraced this approach in *Ferren C. v. Sch. District of Philadelphia*, 612 F.3d 712, 718 (3d Cir. 2010) (quoting *Reid* and explaining that compensatory education “should aim to place disabled children in the same position that the child would have occupied but for the school district’s violations of the IDEA.”).

Despite the clearly growing preference for the *Reid* method, that analysis poses significant practical problems. In administrative due process hearings, evidence is rarely presented to establish what position the student would be in but for the denial of FAPE – or what amount or what type of compensatory education is needed to put the student back into that position. Even cases that express a strong preference for the “same position” method recognize the importance of such evidence, and suggest that hour-for-hour is the default when no such evidence is presented:

“... the appropriate and reasonable level of reimbursement will match the quantity of services improperly withheld throughout that time period, unless the evidence shows that the child requires more or less education to be placed in the

position he or she would have occupied absent the school district's deficiencies."

Jana K. v. Annville Cleona Sch. Dist., 2014 U.S. Dist. LEXIS 114414 at 36-37.

Finally, there are cases in which a denial of FAPE creates a harm that permeates the entirety of a student's school day. In such cases, full days of compensatory education (meaning one hour of compensatory education for each hour that school was in session) are warranted. Such awards are fitting if the LEA's "failure to provide specialized services permeated the student's education and resulted in a progressive and widespread decline in [the Student's] academic and emotional well-being" *Jana K. v. Annville Cleona Sch. Dist.*, 2014 U.S. Dist. LEXIS 114414 at 39. See also *Tyler W. ex rel. Daniel W. v. Upper Merion Sch. Dist.*, 963 F. Supp. 2d 427, 438-39 (E.D. Pa. Aug. 6, 2013); *Damian J. v. School Dist. of Phila.*, Civ. No. 06-3866, 2008 WL 191176, *7 n.16 (E.D. Pa. Jan. 22, 2008); *Keystone Cent. Sch. Dist. v. E.E. ex rel. H.E.*, 438 F. Supp. 2d 519, 526 (M.D. Pa. 2006); *Penn Trafford Sch. Dist. v. C.F. ex rel. M.F.*, Civ. No. 04-1395, 2006 WL 840334, *9 (W.D. Pa. Mar. 28, 2006); *M.L. v. Marple Newtown Sch. Dist.*, ODR No. 3225-11-12-KE, at 20 (Dec. 1, 2012); *L.B. v. Colonial Sch. Dist.*, ODR No. 1631-1011AS, at 18-19 (Nov. 12, 2011).

Whatever the calculation, in all cases compensatory education begins to accrue not at the moment a child stopped receiving a FAPE, but at the moment that the LEA should have discovered the denial. *M.C. v. Central Regional Sch. District*, 81 F.3d 389 (3d Cir. 1996). Usually, this factor is stated in the negative – the time reasonably required for a LEA to rectify the problem is excluded from any compensatory education award. *M.C. ex rel. J.C. v. Central Regional Sch. Dist.*, 81 F.3d 389, 397 (3d Cir. N.J. 1996)

In sum, I subscribe to the logic articulated by Judge Rambo in *Jana K. v. Annville Cleona*. If a denial of FAPE resulted in substantive harm, the resulting compensatory education award must be crafted to place the student in the position that the student would be in but for the denial. However, in the absence of evidence to prove whether the type or amount of compensatory education is needed to put the student in the position that the student would be in but for the denial, the hour-for-hour approach is a necessary default. Full-day compensatory education can also be awarded if that standard is met. In any case, compensatory education is reduced by the amount of time that it should have taken for the LEA to find and correct the problem.

Discussion

There are serious flaws in the Student's IEPs during the time in question. Understanding those flaws requires understanding of Orton Gillingham-based programs like Sonday. Orton Gillingham-based programs use multisensory techniques to teach children a phonics-based approach to reading. It is an oversimplification, but these programs help children learn how to read by sounding out words. This is why such programs often examine children's ability to read "nonsense words." The test is to see if a child deploys phonics skills, and not to see if the child is able to read the word by recognizing it. This is also why Orton Gillingham-based programs have levels that do not align with grade levels.

Orton Gillingham-based programs typically do not teach sight words and often reduce reading fluency (the speed at which a child reads). A child who slows down to use Orton Gillingham techniques to sound out words will read more slowly than a child who reads words on sight. When this happens, children in the midst of Orton Gillingham-based instruction purposefully sacrifice speed for accuracy. The Student in this case, time and time again, did just that.

It is bewildering, therefore, that the District chose goals for the Student that did not align with the program it was delivering. The District measured the Student's progress towards IEP mastery using sight words and reading fluency, the two domains that (for many children) Orton Gillingham programs work against. This was then paired with grade-level benchmark testing as the Student advanced through a program that does not align with grade levels. The District then compounded this error in two ways. First, tracking things that are not aligned to the Student's program is not harmful per se, but *not* tracking what the District *was* teaching was a significant unforced error. Second, the District did not address its actual concern – reading comprehension – though the Student's IEPs. The District and the Parents were both concerned about the Student's reading fluency because of the connection between fluency and comprehension. The Student's IEPs during the time in question did not monitor the Student's reading comprehension while the Student moved through a reading program that was likely to diminish (or at least not improve) reading fluency in the immediate term.

While these flaws are important, they result in a compensatory education award only if they yield substantive educational harm. I find no evidence of substantive educational harm in the record before me. Rather, the record illustrates that the Student's actual ability to read was steadily improving, even while the District was tracking the wrong metrics. For the entire time

that the Student participated in the Sondag program, the Student progressed through that program at the anticipated pace. For the majority of that time, mastery checks were embedded into the Sondag program to ensure the Student's progression represented actual skill development. The Student was able to successfully participate in grade level academics that required reading. The Student's reading fluency – the speed at which the Student could read – did create challenges in the Student's grade-level, general education ELA class during the 2024-25 school year. Nothing in the record establishes that those difficulties amount to a violation of the Student's substantive right to a FAPE. Further, the appropriateness of an IEP must be assessed at the time it is offered. Given the Student's progress, it was appropriate for the District to keep the Sondag program in place. I am required, therefore, to find that the violations are procedural in nature, excluding the period when the District did not deliver Sondag with fidelity. Simply put, the District was tracking the wrong things while the Student made meaningful progress.

For the period where the District cannot be sure that Sondag was delivered with fidelity, the situation is different. A failure to provide the special education that an IEP requires is inherently substantive. The District makes no argument to the contrary and offered compensatory education to remedy any harms. The District made this offer three months before the Parents filed their due process complaint and used a calculation that is more generous than what I would have used.¹⁰ I find that the District had voluntarily offered to remediate any harm caused by its failure to implement the Sondag program with fidelity. While the Parent has no obligation to accept the District's compensatory education NOREP, I decline to order the District to provide more than what it has already made available to redress its error.

ORDER

Now, September 29, 2025, it is hereby **ORDERED** as follows:

1. The District did not violate the Student's substantive right to a FAPE from July 16, 2023, through the end of the 2024-25 school year by failing to offer IEPs that were reasonably calculated to provide a meaningful educational benefit in reading.

¹⁰ Typical hour-for-hour calculations are just that: calculations of the number of hours that the Student should have received the program. The District made that calculation, and then added days that school was closed, and then added an extra five hours. And that is to say nothing of the absence of restrictions on uses of compensatory education that nearly all compensatory education orders include.

2. The District's voluntary offer of 55 hours of compensatory education, made through a NOREP, is sufficient to remediate any harms caused by an IEP implementation failure. The District is not ordered to provide additional compensatory education.

It is **FURTHER ORDERED** that any claim not specifically addressed in this order is **DENIED** and **DISMISSED**.

/s/ Brian Jason Ford
HEARING OFFICER