

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. 31733.25-26

Student's Name:

A.P.

Date of Birth:

[redacted]

Parents:

[redacted]

Counsel for Parent:

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Hearing Officer:

Joy Waters Fleming, Esq.

Date of Decision:

April 12, 2026

INFORMATION AND PROCEDURAL HISTORY

The Student (Student)¹ is currently [redacted] years of age and qualifies for and receives early intervention services through ELWYN, Inc., EI Program (LEA). The Student is eligible for services pursuant to the Individuals with Disabilities Education Act (IDEA).² The Parent, who filed the due process complaint as a pro se litigant, later retained legal counsel. The complaint alleged that the LEA failed to provide Student with a free appropriate public education (FAPE) beginning in the 2024-2025 school year by failing to fully provide IEP services and later discontinuing services through an amended IEP without obtaining parental consent.³ The LEA denied each of those allegations, contending that the Student has achieved mastery of goals, services are not needed and no relief is due.

Following review of the record and for all of the reasons set forth below, the Parent's claims must be granted in part and denied in part.

ISSUES

¹ To protect confidentiality and privacy, the Student's name, gender, and other potentially identifiable information are not included in the main body of this decision. All personally identifiable information, including details on the cover page, will be redacted before posting on the Office for Dispute Resolution's website, in accordance with its obligation to publicly share special education hearing officer decisions under 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 implementing federal regulations are found at 34 C.F.R. §§ 300.1 – 300.818, and the state regulations are found at 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14).

³ The parties requested an extension of the decision due date (DDD) for good cause, which was granted.

1. Since August 2024. Has the LEA denied the Student a free appropriate public education (FAPE) by failing to provide speech therapy, occupational therapy, physical therapy, and specialized instruction?
2. Was the LEA able to change the Student's (IEP) in August 2025 substantively or procedurally?
3. If the LEA denied FAPE, what remedy is appropriate?
4. If compensatory education is appropriate, how much should be awarded?

FACT FINDINGS

1. The Student is currently [redacted] years of age and receives early intervention services for a developmental delay. (P-3)

2024-2025

2. In July 2024, the LEA evaluated the Student and determined eligibility for early intervention services for a developmental delay. (P-3, p.22)
3. The evaluation recommended interventions targeting strength, balance, and coordination; communication across functional contexts; and development of attention, initiation, and persistence for play and learning. (P-3)

4. On August 16, 2024, the team developed an IEP for the Student. The IEP offered goals to address developmental concerns and included speech therapy (45 minutes/two times a week), PT (45 minutes/1 time a week), OT (45 minutes/1 time a week), and specialized instruction (45 minutes/two times a week). (P-4, P-5)
5. The Parent approved the program, and the LEA assumed responsibility for implementing it beginning on the Student's [redacted] birthday. (P-5; P-4, p.16)
6. In November 2024, the IEP was revised to increase the Student's OT services from 1 to 2 times a week. (P-6)
7. On November 15, 2024, through a NOREP, the LEA offered compensatory education to the Student. The Student was offered 6.75 speech hours, 9.0 specialized instruction hours, and 1.50 OT hours. The Parent approved the offer. (P-7, P-24)
8. In December 2024, the team reviewed the Student's progress and reported improvements in participation, attention, and engagement. The Parent reported progress in physical development. (S-7)
9. The Parent agreed with the team's recommendation to reduce special instruction and OT to one time a week for 45 minutes, speech therapy was to remain twice a week for 45 minutes, and PT would remain at one time a week for 45 minutes. (P-8, P-9, S-7)

10. On February 25, 2025, the Parent consented to only a physical therapy reevaluation of the Student. (P-10)
11. In March 2025, a physical therapist evaluated the Student using standardized measures, observation, and interviews. The Student demonstrated age-appropriate gross motor skills, including strength, balance, coordination, and participation in classroom and play activities. The Student's score on standardized assessment fell within the average range. The Parent and teacher reported no concerns regarding gross motor functioning. (P-12, p. 12; N.T. 77-78, 95-101)
12. On April 22, 2025, the LEA issued a reevaluation report concluding that the Student did not require physical therapy services. (P-12; N.T. 87,97)
13. On April 23, 2025, the team met to review the reevaluation and discuss compensatory education for missed services. The Parent opted not to review the PT evaluation and declined the offered virtual OT. The Parent declined the LEA's offer for a full evaluation of the Student. (P-13, S-8; N.T. 150)
14. On May 27, 2025, the Parent agreed to compensatory occupational therapy services of 7.50 hours. (P-25)
15. Service providers reported that the Student made meaningful progress across domains, including communication, attention, and peer interaction, and achieved age-appropriate functioning in multiple areas. (P-17; N.T. 121, 150, 168, 170, 197-198, 201)

16. At an August 6, 2025, meeting, the team recommended discontinuation of physical therapy, occupational therapy, and specialized instruction and a reduction of speech therapy, to one time a week, based on the Student's progress and goal mastery. At the meeting, the Parent objected to the proposed changes to the Student's programming. (P-17, p.21; N.T. 170, 190; N.T. 31)
17. The LEA sent a NOREP dated August 12, 2025, a Tuesday, to the Parent documenting the recommended discharge and reduction of service. The Parent received the NOREP on Wednesday, August 13, 2025. (P-18)
18. On Sunday, August 24, 2025, the Parent, through the NOREP, rejected the team's recommendation to discharge the Student's services. The Parent subsequently filed a due process complaint. (P-1, P-18; N.T. 209)
19. At the time of the August 2025 team meeting, the LEA owed the Student 4.25 hours of OT, 2.75 hours of speech, and 9.0 hours of specialized instruction, and 33.75 hours of physical therapy. (N.T. 122, 125-126, 145-146, 188-189, 192-194)
20. Following the request for a due process hearing, the LEA provided only speech therapy and no other services. (S-12; S-19; N.T. 114-115)
21. Although speech services are being implemented, the Student needs a speech reevaluation to gain specific information about

articulation needs and for new goal development. (N.T. 122, 125-126, 237-238)

22. Between September 2024 and August 2025, the Student received no physical therapy services from the LEA. (P-20; N.T. 218)

DISCUSSION AND CONCLUSIONS OF LAW

General Legal Principles

The burden of proof consists of two elements: the burden of production and 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 their 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). In this case, the Parent is the party seeking relief and bears the burden of proof.

During a due process hearing, the hearing officer is also 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 LEA's credibility determinations unless the non-testimonial extrinsic evidence in the record would justify a contrary conclusion.”). 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).

In addition to the Parent, the treating SLP, OT, PT, special instruction teacher and an early intervention coordinator testified during the due process hearings. I find that all witnesses testified credibly in that all witnesses candidly shared their recollection of facts and their opinions, making no effort to withhold information or deceive me. To the extent that witnesses recall events differently or draw different conclusions from the same information, genuine differences in recollection or opinion explain the difference.

General IDEA Principles: Substantive FAPE

The IDEA requires each of the states to provide a “free appropriate public education” (FAPE) to children who are eligible for special education services. 20 U.S.C. § 1412. FAPE consists of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. 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 Student to benefit educationally from the program

and also comply with the procedural obligations in the Act. The various states, through local educational agencies (LEAs), meet the obligation of providing FAPE to an eligible student through development and implementation of an IEP which is “‘reasonably calculated’ to enable the Student 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 IEP “is constructed only after careful consideration of the Student’s present levels of achievement, disability, and potential for growth.” *Endrew F. v. Douglas County School District RE-1*, ___ U.S. ___, ___, 137 S. Ct. 988, 999, 197 L.Ed.2d 335, 350 (2017)

Individualization is, accordingly, the fundamental consideration for purposes of the IDEA. Nevertheless, an LEA is not obligated to “provide ‘the optimal level of services,’ or incorporate every program requested by the Student’s parents.” *Ridley School District v. M.R.*, 680 F.3d 260, 269 (3d Cir. 2012). 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 Student to make progress.” *Dunn v. Downingtown Area School District*, 904 F.3d 248, 255 (3d Cir. 2018) (emphasis in original). IEP development, of course, must follow and be based on an evaluation as monitored and updated by changes in the interim. 20 U.S.C. § 1414(d); 34 C.F.R. §§ 300.320-300.324.

General IDEA Principles: Procedural FAPE

From a procedural standpoint, the family plays “a significant role in the IEP process.” Schaffer, *supra*, at 53. This critical concept extends to placement decisions. 20 U.S.C. § 1414(e); 34 C.F.R. §§ 300.116(b), 300.501(b); see also *Letter to Veazey*, 37 IDELR 10 OSEP 2001 (confirming the position of OSEP that LEAs cannot unilaterally make placement decisions about eligible Studentren to the exclusion of their parents). Consistent with these principles, a denial of FAPE may be found to exist if there has been a significant impediment to meaningful decision-making by parents. 20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(2).

The IEP proceedings entitle parents to participate not only in the implementation of IDEA's procedures but also in the substantive formulation of their Student's educational program. Among other things, IDEA requires the IEP Team, which includes the parents as members, to consider any “concerns” parents have “for enhancing the education of their Student” when it formulates the IEP. *Winkelman v. Parma City School District*, 550 U.S. 516, 530 (2007).

Full participation in the IEP process does not mean, however, that LEAs must defer to parents’ wishes. See, e.g., *Blackmon v. Springfield R-XII School District*, 198 F.3d 648, 657-58 (8th Cir.1999)(noting that IDEA “does not require school districts simply to accede to parents' demands without considering any suitable alternatives,” and that failure to agree on placement does not constitute a procedural violation of the IDEA). As has previously been explained by the U.S. Department of Education:

The IEP team should work towards a general agreement, but the public LEA is ultimately responsible for ensuring the IEP includes the services that the Student needs in order to receive a free appropriate

public education (FAPE. If the team cannot reach an agreement, the public LEA must determine the appropriate services and provide the parents with prior written notice of the LEA's determinations regarding the Student's educational program and of the parents' right to seek resolution of any disagreements by initiating an impartial due process hearing or filing a State complaint. *Letter to Richards*, 55 IDELR 107 (OSEP 2010); see also 64 Fed. Reg. 12406, 12597 (1999).

Parent's Claims

The Parent contends that the LEA denied the Student a FAPE by failing to provide all IEP-mandated services from September 2024 through August 2025. Based on this hearing record, the Parent has established by a preponderance of evidence that the Student was denied a FAPE during the 2024-2025 school year.

This hearing record establishes that the IEP team developed an individualized program that addressed all identified areas of need and offered goals to address developmental concerns. Promised services included consistent speech, physical and occupational therapy, along with specialized instruction. The Parent approved implementation of that programming and undoubtedly believed those services, as recommended by the team, would be delivered. The Student received some services and reportedly made meaningful progress across developmental domains. By August 2025, providers reported that the Student achieved age-appropriate functioning in several areas and had mastered multiple goals.

However, the issue is not whether the program was appropriate on paper or whether the Student made progress in general terms. The issue in this matter is whether the LEA implemented the program as written. The evidence demonstrates that the LEA did not do so. Most significantly, the

LEA failed to provide any physical therapy services during the entire period in which that service remained part of the individualized program, despite the fact that it was incorporated through multiple IEP revisions, with removal not recommended until the end of the programming year. The complete absence of that service constitutes a material failure to implement the Student's program.

The LEA argues that the Student did not require physical therapy and that a later reevaluation confirmed age-appropriate functioning. The LEA's post-hoc justification that physical therapy was unnecessary is irrelevant to their legal obligation to implement the IEP as written. The LEA had two options: deliver the services specified in the IEP or convene the IEP team to revise the program through appropriate procedures. The LEA did neither, which constitutes a material failure to implement the Student's program regardless of subsequent evaluations or the child's eventual functioning level.

The record established that the LEA did not consistently provide occupational therapy, speech therapy, and specialized instruction at the levels required by the program. The LEA acknowledged these lapses by issuing compensatory education. Service delivery records confirm that the Student received fewer hours than required. At the same time, the Student made measurable and, in several areas, significant progress. The Student achieved age-appropriate functioning in occupational therapy and specialized instruction and made substantial gains in speech. The Student's progress demonstrates that the program, when implemented, was capable of conferring meaningful educational benefit.

However, this progress does not eliminate the LEA's obligation to implement the program, and it does not negate the finding of a denial of a free appropriate public education. However, it is highly relevant to the

question of remedy. Where a Student has achieved the intended outcomes of a program and reached age-appropriate functioning, the purpose of compensatory education is not to provide additional or duplicative services but to remedy any actual deprivation. Accordingly, the failures in occupational therapy, speech therapy, and specialized instruction constitute partial implementation failures that warrant a limited remedy rather than a full make-whole award.

Next, the Parent contends that the LEA, in violation of stay put mandates, improperly ceased, or reduced providing programming to the Student, after the August 2025 due process complaint was filed. For these violations, the Parent also seeks compensatory education. The LEA countered that it implemented the changed programming because, after ten days, it received no response to the NOREP issued to the Parent. On August 6, 2025, at the IEP meeting, the LEA proposed terminating physical therapy, occupational therapy, and specialized instruction, and reducing speech therapy services, all of which the Parent expressed disagreement. The LEA ostensibly based these recommendations on reports of progress and goal attainment, although only a PT reevaluation was conducted, with no additional evaluative data addressing other domains.

After the August meeting, the LEA implemented the proposed changes to discontinue services, claiming it did so because the Parent did not respond within 10 days. The NOREP was dated August 12 and received by the Parent on August 13. The tenth day after the Parent received the NOREP was a Saturday. Because the tenth day fell on a non-business day, the Parent's rejection on the next business day, Monday, August 25, was effectively immediate. Even assuming the LEA acted within procedural timelines, the question remains whether the changes were appropriate. Given the absence of comprehensive evaluative data sufficient to support reductions across all

affected service areas, and in light of the LEA's prior failure to fully implement the existing program, the LEA did not establish a sufficient basis to support broad reductions in services at that time. On this hearing record, the LEA was not justified in unilaterally implementing the August 2025 changes across all domains, without updated evaluative data and over the Parent's expressed objection.

Compensatory education is an appropriate remedy that accrues from the time when 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 School District; Ridgewood Board of Education v. N.E.; P.P. v. West Chester Area School District (quoting Lauren W. v. DeFlaminis)*. A child is entitled to compensatory education for a period equal to the period of deprivation, excluding only the time reasonably required for the school district to rectify the problem. *M.C.; Ridgewood*. Compensatory education is an equitable remedy and may be appropriate for a procedural violation. *Lester H. v. Gilhool*.

There are two methods by which a compensatory education remedy may be calculated. One method is the quantitative, or hour-for-hour, calculation, where, having proven a denial of FAPE, the compensatory education remedy is based on the period of deprivation. The second method is the qualitative, or make-whole, calculation, which seeks to place the student in the position he or she would have occupied absent the denial of FAPE. Both methods are a matter of proof. In this case, Parent presented evidence regarding the calculation of compensatory education. As an equitable remedy, a quantitative calculation will be employed, while still considering the Student's actual progress and current functioning.

Having concluded that the LEA denied the Student a free appropriate public education, an appropriate remedy must follow. The purpose of compensatory education is to place the Student in the position the Student would have occupied but for the denial, not to provide additional or duplicative services beyond what is necessary to address the deprivation. The standard for determining whether an LEA may reduce or discontinue services is distinct from the standard for awarding compensatory education. Prospective program changes must be supported by sufficient current evaluative data at the time they are made. By contrast, compensatory education is an equitable remedy determined based on the entirety of the hearing record, including evidence of the Student's actual progress and current functioning. Accordingly, although the LEA lacked a sufficient evaluative basis to reduce services prospectively, the determination of an appropriate compensatory education award must consider whether, and to what extent, the Student was actually deprived of educational benefit.

With respect to physical therapy, the LEA provided no services during the 2024–2025 school year. Although the Student ultimately demonstrated age-appropriate gross motor skills, the complete absence of the service constitutes a material failure to implement the IEP and warrants compensatory education. Under these circumstances, an award of 33.75 hours of compensatory education for physical therapy is appropriate to remedy the educational deprivation established on this record.

With respect to occupational therapy, speech therapy, and specialized instruction, the Student made meaningful progress and achieved age-appropriate functioning in key domains. The LEA has already identified and provided compensatory education in these areas, and the record indicates that additional services would not provide a meaningful benefit beyond what

the Student has already achieved. Although there were lapses in the provision of these services, the evidence demonstrates that the Student nevertheless received meaningful educational benefit and achieved the intended outcomes of the program in these domains. Accordingly, the compensatory education previously identified by the LEA for occupational therapy, speech therapy, and specialized instruction remains due to the extent it has not yet been delivered, but no additional compensatory education is warranted beyond those amounts.

ORDER

AND NOW, this 12th day of April, 2026, upon consideration of the evidence of record and the foregoing findings of fact and conclusions of law, it is hereby ORDERED as follows:

1. The Local Educational Agency (LEA) denied the Student a free appropriate public education (FAPE) during the 2024–2025 school year by failing to materially implement the Student’s individualized education program (IEP), specifically by failing to provide physical therapy services and by inconsistently providing occupational therapy, speech therapy, and specialized instruction.
2. For the LEA’s failure to provide physical therapy services, the Student is awarded (33.75) hours of compensatory education services. These services:
 - a. Shall be provided by a qualified provider;
 - b. May be used at the Parent’s discretion; and
 - c. Shall be used for services reasonably related to the Student’s development or related needs.

3. The compensatory education previously identified and/or awarded by the LEA for occupational therapy, speech therapy, and specialized instruction remains due to the extent it has not yet been delivered. No additional compensatory education is awarded for those services.
4. Within thirty (30) days of the date of this Order, the LEA shall convene an IEP team meeting to:
 - a. Review the Student's current needs; and
 - b. Develop an appropriate program based on current and comprehensive evaluative information across all relevant domains.

/s/ Joy Waters Fleming, Esquire

Joy Waters Fleming

HEARING OFFICER
ODR File No. 31733-25-26

April 12, 2026