

New Jersey Commissioner of Education
Final Decision

Egenolf Early Childhood Center,

Petitioner,

v.

Board of Education of the City of Elizabeth,
Union County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by petitioner Egenolf Early Childhood Center (Egenolf) pursuant to *N.J.A.C.* 1:1-18.4, and the reply thereto filed by respondent Elizabeth Board of Education (Board) have been reviewed and considered.¹

Egenolf challenges (1) the Board's policy that permits private providers to deliver preschool programming to three-year-olds but not four-year-olds, and (2) the Board's preschool recruitment efforts and enrollment process.² It is undisputed that Elizabeth is a former Abbott district, and as such, is required to offer preschool programs to all three and four-year-old

¹ Following the filing of petitioner's exceptions and the Board's reply thereto, the parties submitted additional correspondence. These submissions are improper per *N.J.A.C.* 1:1-18.4. Therefore, this material was not considered.

² The allegations contained in paragraphs ii and iv under "Relief Requested" in the Petition have been resolved through settlement by the parties. Paragraphs i and iii remain and are the subject of this matter. Petition at 8.

children living in the school district. *N.J.A.C. 6A:13a-2.1(a)*. The preschool program may be provided by the district itself, through Head Start, and/or through a licensed private provider. *N.J.A.C. 6A:13A-1.1(a)*. Elizabeth utilizes a mixed-delivery model to implement its preschool program.

Egenolf is a private state-licensed daycare center providing preschool services in Elizabeth. In 2002, the Board decided to limit private preschool providers to serve only three-year-olds.³ In accordance with the Board's policy, Egenolf's preschool program includes only three-year-old children. Egenolf argues that the New Jersey Preschool Program Implementation Guidelines⁴ and early childhood research agree that mixed-age groupings in preschools (classrooms with both three- and four-year-olds) are the best practice. Egenolf further argues that the Board's policy defies best practices and creates unnecessary stress and harm for students and families who, after one school year, must transition from a private provider to the Board's preschool program for four-year-olds. Egenolf seeks an update to the Board's policy, permitting it to serve both three- and four-year-olds.

As a former Abbott district, the Board is required to participate in continuous quality improvement through the self-assessment and validation system (SAVS), which reviews certain policies to validate if school districts are in compliance with applicable regulations. SAVS includes a validation visit by the State every three years and a NJDOE-required improvement plan that

³ Elizabeth does not have a written policy regarding its decision to limit private preschool providers to serving only three-year-olds.

⁴ The New Jersey Preschool Program Implementation Guidelines is a document from the New Jersey Department of Education (NJDOE) that provides guidance to school districts, local Head Start agencies, and contracted providers in planning and implementing high-quality preschool programs.

identifies the program areas in need of improvement, detailed steps to be taken by the district, and a timeline for implementation. *N.J.A.C. 13A-8.1(a)*. Annually, the SAVS program requires the Board to collect data, self-evaluate, and submit said data to the NJDOE for review.

The NJDOE monitors the Board's recruitment efforts for preschool enrollment under the SAVs program and in the Board's annual operational plan. The Board is required to demonstrate to the NJDOE its efforts to enroll at least 90 percent of the universe of eligible preschool children in the district. *N.J.A.C. 6A:13A-2.3*. The universe is calculated by multiplying the number of first graders reported on the Application for State School Aid by two. *N.J.A.C. 6A:13A-2.3(d)*. If a district does not meet the 90% eligible universe enrollment, it may be required to submit to the State a corrective plan. *N.J.A.C. 6A:13A-2.3(c)*. To reach the eligible universe, a district is required to establish procedures for the recruitment, enrollment, and placement of children into the preschool program. *N.J.A.C. 6A:13A-2.3(g)*. Egenolf argues that the Board's outreach efforts to eligible families are insufficient, and that the Board has failed to appropriate the proper resources to enroll 90% of the universe of eligible preschool children, resulting in Egenolf not filling its classes.

At the OAL hearing, Egenolf called the following witnesses: the Director of the Office of Preschool Education (OPE) at the NJDOE, Kimberly Friddell; Superintendent Olga Hugelmeyer; Director of Early Childhood Programs for the Board, Tracy Crosby; and Executive Director of Egenolf, Dr. Lorraine Cooke. Cooke testified as both a fact and expert witness. The Board did not call any witnesses. The Administrative Law Judge (ALJ) found the testimony of Friddell "credible inasmuch as the same is supported by the NDOE regulations she recited." Initial Decision at 13. The ALJ also found Hugelmeyer's, Crosby's, and Cooke's fact testimony to be credible.

In contrast, the ALJ rejected Dr. Cooke's testimony as an expert in best practices in early childhood education, deeming it inadmissible net opinion. Specifically, the ALJ found Dr. Cooke's testimony to be devoid of empirical analysis to support Egenolf's claim that the Board's decision to limit private providers to preschool programming for three-year-olds exclusively is harmful to the education or psychological makeup of children. The ALJ further found that Dr. Cooke's testimony failed to establish within a reasonable degree of educational certainty that the Board's decision to retain four-year-olds poses transitional problems for four-year-olds in Elizabeth.

As to the first issue raised in the petition, the ALJ determined that Egenolf had not presented evidence establishing that the Board's policy of limiting private providers exclusively to three-year-olds was in violation of NJDOE regulations. The ALJ concluded that the testimony of Friddell, Crosby, and Hugelmeyer all revealed that the Board has ultimate authority on how it will execute its state-funded preschool program, called "local rule." The ALJ further concluded that the regulations governing the implementation of free high-quality preschool, codified at *N.J.A.C. 6A:13A-1* and *N.J.A.C. 6A:13A-1.2*, do not prohibit the Board's policy of limiting private providers to three-year-olds. Citing to *N.J.A.C. 6A:13A-1.2*, the ALJ agreed with the Board that the State guidelines are not mandatory, but rather are guidance to school districts and contracted private providers in planning and implementing high-quality preschool programs for children. Lastly, the ALJ concluded that Egenolf had failed to demonstrate by a preponderance of the evidence that the Board is required to place four-year-olds with private providers, or that the Board's policy has resulted in problems for children transitioning from the three-year-old to four-year-old program, or from the kindergarten program to grade three.

As to the second issue raised in the petition regarding recruiting and enrollment, the ALJ determined that Egenolf failed to present any evidence to establish that the Board conducts inadequate outreach to enroll the requisite percentage of eligible preschool children. The ALJ reasoned that the testimony of Crosby and Hugelmeyer demonstrated that the Board was in compliance with SAVs for recruitment and outreach. Furthermore, the ALJ pointed to Elizabeth's 2021-2022 SAVS (R-10), and concluded that the record establishes that the NJDOE found that the Board had programs including child find, recruitment and outreach, and a plan for chronic absenteeism, and that the Board maintained accurate enrollment data that was frequently updated.

In its exceptions,⁵ Egenolf contends that typographical errors in the Initial Decision indicate a lack of attention to the issues raised in this matter that supports a reversal of the ALJ's decision.⁶ Egenolf further contends that the Initial Decision omitted the following portions of Ms. Friddell's testimony: "looping," which is when a teacher of three-year-olds stays with them as they move to four-year-old preschool, which Ms. Friddell testified is a best practice; the NJDOE Preschool Program Implementation Guidelines from 2015 (P-5), which states that mixed-age classes are a best practice, unnecessary transitions are harmful, and includes research references; that the NJDOE provides a contract between districts and private providers that refers to offering preschool services to three- and four-year-olds, and the Board has not sought

⁵ Petitioner's inclusion of a weblink to the Early Education Research website is improper per *N.J.A.C. 1:1-18.4(c)*. Therefore, this material was not considered.

⁶ Petitioner also contends that the issuance of the Initial Decision in this matter was delayed in violation of *N.J.A.C. 1:1-18.1(e)* and, as such, warrants dismissal. Petitioner also suggests that the ALJ's delay has caused harm to children attending Egenolf. Petitioner has provided no evidence to support this claim, and has failed to identify any impropriety on the part of the ALJ.

permission from the NJDOE to modify that contract; and that the NJDOE has not been asked to approve the Board's policy of restricting private providers to only three-year-olds.

Egenolf takes exception to the ALJ's rejection of Dr. Cooke's expert testimony, particularly Dr. Cooke's opinion that the Board's decision to limit private providers to educating only three-year-olds is harmful to the psychological and educational make-up of said children. Egenolf argues that Dr. Cooke's expert witness testimony was within "the scope of the special knowledge, skill, experience or training possessed by the witness" and therefore admissible under *N.J.A.C. 1:1-15.9*, the regulation governing expert testimony in matters at the OAL. In addition, Egenolf contends that the New Jersey Preschool Program Implementation Guidelines iterate that mixed-age groups are optimal and serve to minimize unnecessary transitions. Egenolf argues that absent good reason, the guidelines should be implemented.

Regarding the second issue, Egenolf takes exception to the ALJ's conclusion that Egenolf has not presented any evidence to establish that the Board conducts inadequate outreach to enroll the required percentage of students. Egenolf reiterates its contention that the Board's outreach practices are outdated and requests that the Commissioner reject the Initial Decision, direct the Board to update its procedures, and oversee the updating process.

In response, the Board argues that there exists no mandate in the New Jersey Administrative Code, the Commissioner's directives, New Jersey statutes, or case law, that requires the Board to assign four-year-old preschool students to private providers. Turning to the witness testimony, the Board emphasizes that Dr. Cooke acknowledged that the guidelines are recommendations, not mandates, and that through SAVS, the State validated and determined that the Board met the requirements of the preschool program. Regarding Dr.

Cooke's expert witness testimony, the Board asserts that Dr. Cooke admitted that she had no evidence of any student being harmed by the Board's policies or procedures regarding its preschool program. Furthermore, the Board contends that Dr. Cooke did not present research to the ALJ for his review. Lastly, the Board argues that its preschool program results in the successful transition of students, as evidenced by the district receiving the highest rating of fully meeting the standards set forth by the State on all three criteria examining student transitions in the SAVS.

Regarding the second issue, the Board contends that Egenolf has not presented any evidence that the Board's recruitment method for preschool is inefficient or not in accordance with the NJDOE's recommendations or guidelines. It further contends that the Board's recruitment process for preschool has resulted in the district exceeding the 90% eligible universe goal. Ultimately, the Board requests that the Commissioner uphold the Initial Decision.

Upon review, the Commissioner concurs with the ALJ – for the reasons stated in the Initial Decision – that the NJDOE regulations regarding state-funded preschool programs do not prohibit the Board's policy of limiting private provider preschools to three-year-olds. The Commissioner further concurs with the ALJ that Egenolf has not presented evidence establishing that the Board's current policy violates NJDOE regulations.

The Commissioner is not persuaded by petitioner's exceptions. Egenolf argues that the ALJ erred in rejecting Dr. Cooke's opinions that (1) the Board's policy of limiting private providers to educating only three-year-olds is harmful to the educational and psychological makeup of said children in Elizabeth and (2) that the Board's policy causes transitional problems in four-year-olds in Elizabeth. *N.J.A.C. 1:1-15.9* provides that expert testimony is admissible if such testimony will

assist the fact-finder to understand the evidence or determine a fact in issue, and the fact-finder determines whether the expert opinion or inferences are based “on facts and data perceived by or made known to the witness at or before the hearing; and within the scope of the special knowledge, skill, experience or training possessed by the witness.” The net opinion rule allows exclusion of expert opinion if it is not based on “facts or data.” See *N.J.R.E.* 702. An expert’s opinion is construed as net opinion and therefore inadmissible when the expert makes bare conclusions, unsupported by factual evidence. *Creanga v. Jardal*, 185 N.J. 345, 360 (2005).

Here, the ALJ correctly deemed Dr. Cooke’s conclusions to be net opinion. While Dr. Cooke testified as an expert in best practices in early childhood education, her testimony failed to include any evidence or data supporting Egenolf’s claim that children in Elizabeth have experienced harm due to the Board’s policy. Furthermore, Dr. Cooke acknowledged that she did not have statistical data regarding any student facing problems due to the Board’s policy. Egenolf did not present any evidence or witnesses to substantiate Dr. Cooke’s conclusions that the policy causes harm to and transition problems for children in Elizabeth.

Moreover, the record does not support Dr. Cooke’s expert testimony or the conclusion that the Board’s policy violates NJDOE regulations. Section 7 of the Board’s SAVs for 2021-2022 is titled “Transition” and analyzes the Board’s efforts to prepare children and their families for transition between educational programs. (R-10). The evaluation focuses on three criteria. The Board received the highest rating of “fully met” in each category, including Criterion 3 which deals with transition of children from preschool to grades K-3. Also, the Board was validated in each criterion, meaning that the Board and the NJDOE agreed regarding the rating of each criterion. In her testimony, Crosby acknowledged that if the NJDOE had concerns regarding a three-year-

old's transition from a private provider to a district school, that would have been addressed in Criterion 3. Crosby further acknowledged that the Board received no criticism from the NJDOE concerning this criterion. She also acknowledged that the Board had received no criticism from the State regarding their policy of limiting private providers to educating exclusively three-year-olds.

As to the second issue, the Commissioner concurs with the ALJ that Egenolf has not demonstrated by a preponderance of the evidence that the Board was not in compliance with *N.J.A.C. 6A:13A-2.3(b)* concerning a plan for outreach and recruitment of children ages three and four. Egenolf argues that the Board's recruitment strategies are insufficient and unreasonably difficult, thereby hindering the Board from serving the requisite universe of eligible preschool children. The Commissioner is not persuaded by Egenolf's arguments. The record indicates that the Board is in compliance with the regulations. Section I of the Board's SAVS for 2021-2022 analyzes the Board's recruitment and outreach efforts in two criteria: 1) multiple recruitment strategies are being used, and 2) accurate enrollment data is collected, maintained, and updated frequently (R-10). The Board received the highest rating of "fully met" in both criteria and was validated. Specifically, the NJDOE found that the Board had programs including child find, recruitment and outreach, and a plan for chronic absenteeism, and that the Board maintained accurate enrollment data that was frequently updated. Furthermore, Crosby testified that the Board's total universe of preschool students to be served for the 2021- 2022 school year was 94.1%, and for the 2022-2023 school year was 93.4%, both of which exceeded the regulatory minimum of 90%.

To support its claim that the Board is not compliant with outreach and enrollment requirements, Egenolf references the 2019-2020 school year, where the projected universe of preschool students in Elizabeth was 84%. However, petitioner's argument overlooks Crosby's and Hugelmeyer's testimony that all preschool seats were full. Crosby further explained that the 90% goal is based on general education students alone. Special education preschool students are removed from the calculation, even though they are in the classrooms. Crosby testified that the reason for the exclusion is due to funding; the preschool budget funds general education students, whereas the Office of Special Services funds inclusion students.

Crosby testified to the recruitment efforts that the Board implements for its preschool program. She noted that preschool registration is ongoing throughout the school year, but February marks the registration kickoff, when the Board begins registration for the following school year. Crosby testified that the Board creates brochures and mails them out to every resident in the district. The Board also posts its registration information on its website, as well as information on when the registration kickoff will begin. Crosby testified that the Board includes in the local newspaper an ad listing registration information, including registration dates. She also stated that preschool providers from the Early Childhood Advisory Council pass out flyers throughout the community in areas like doctors' offices and stores. She further testified that the Board utilizes flexible hours for a four-to-five-week period which includes evening hours for registration twice a week, registration on Saturdays, and registration Monday through Friday from 8:30am – 3pm. In light of this information, the Commissioner finds that Egenolf has not presented any evidence establishing that the Board is in violation of N.J.A.C. 6A:13A-2.3(b) in its outreach and recruitment of preschool children.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.⁷



COMMISSIONER OF EDUCATION

Date of Decision: May 30, 2025
Date of Mailing: June 2, 2025

⁷ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 08889-21

AGENCY DKT NO. 190-10/21

EGENOLF EARLY CHILDHOOD CENTER,

Petitioner,

v.

**BOARD OF EDUCATION OF THE CITY
OF ELIZABETH, UNION COUNTY,**

Respondent.

Denise Lanchantin Dwyer, Esq., for petitioner (Law Office of Denise Lanchantin
Dwyer, LLC, attorneys)

Robert F. Varady, Esq., for respondent (La Corte, Bundy, Varady & Kinsella,
attorneys)

Record Closed: March 3, 2025

Decided: March 11, 2025

BEFORE **JULIO C. MOREJON**, ALJ:

STATEMENT OF THE CASE

Petitioner, Egenolf Early Childhood Learning Center challenges the respondent, Board of Education of the City of Elizabeth's decision to end preschool enrollment of three- and four-year-old students; failure to provide timely notice of contract renewal;

failure to have an appropriate enrollment system, and failure to review quarterly expenditure reports.

PROCEDURAL HISTORY

On October 11, 2021, petitioner, Egenolf Early Childhood Center (Egenolf) filed a verified petitioner (Petition) with the New Jersey Department of Education's Office of Controversies and Disputes (the Department). On October 22, 2021, respondent, Board of Education of the City of Elizabeth the Board (the Board) files its answer. The Petition contained the following allegations:

- i. the District's refusal to allow EECC [the Board] to provide preschool programming to both three and four-year-old children living in the district by limiting EECC's classes to three-year-olds, thereby unreasonably requiring its students to change schools in order to continue attending preschool as a four-year-old;
- ii. the District's failure to comply timely with the provisions of N.J.A.C. 6A:13A-9.3 and the state-approved form contract between EECC and the District (hereinafter collectively "the Parties" which requires the District to notify EECC in writing, on or before May 1 of each contract year, of its intent to renew the preschool program contract, or to proffer a renewal contract in a timely fashion;
- iii. the District consistently fails to do sufficient outreach to enroll the percentage of eligible preschool students required of a former Abbott district and does not provide enough resources or staff to register students that EECC refers to the District resulting in EECC not filling its classes; and
- iv. the District consistently fails to review in a timely manner the quarterly expenditure reports EECC is required to submit to it and has improperly withheld payments from EECC without justification for years.

[Petition, ¶3]

The case was referred to the Office of Administrative Law (OAL), as a contested matter where it was filed on October 27, 2021. After the Petition was filed and the matter transferred to the OAL, on or about May 3, 2023, the parties resolved by settlement paragraph 3, subsections ii and iv of the Petition. Subsections i and iii of the Petition remained the subject of this case.

This matter was heard at the OAL on June 20, 21 and October 2, 2023. Post hearing briefs were submitted by January 24, 2024. After a thorough review of the exhibits, hearing transcripts and post hearing briefs, I closed the record on March 3, 2025, following the parties confirmation of exhibits admitted in evidence.

FINDINGS OF FACT

The following are not in dispute, and I **FIND** the same as **FACT** herein:

1. The Board is one of the original “Abbott Districts”. The Abbott Districts are school districts in New Jersey that are required to have high quality preschool programs for the entire eligible universe of three-year-old and four-year-old children in their district. Abbott Districts are required to provide high quality preschool programs in accordance with the New Jersey Administrative Code 6A:13A, (see generally, N.J.A.C. 6A:13A Subchapters 1 and 2), but can choose how to implement those requirements on a local basis. Implementation of high-quality preschool programs may be in-district, through Head Start programs, and/or through licensed private providers. N.J.A.C. 6A:13A-1.1(a).
2. The New Jersey Department of Education (NJDOE) Office of Preschool Education (OPE) issues guidelines for best practices implementation of the programs. N.J.A.C. 6A:13A-1.2.
3. OPE also issues a template for school districts to contract with private providers for these programs. N.J.A.C. 6A:13A-9.1. That contract requires private providers to “offer a Program that shall meet the educational needs of the eligible three-and four-year-old preschool children of the District as set forth in this agreement....” (P-25).
4. Egenolf is a private state licensed daycare center providing preschool service that has no age restrictions in its daycare program, while preschool starts with age three.
5. Egenolf has contracted with the Board from the inception of the Abbott program and provides a preschool program to approximately 150 children.

6. Egenolf has been providing preschool and childcare services to the City of Elizabeth community for over 100 years.
7. Egenolf contracts with the Board using the OPE template (P-25).
8. The Board has never requested a modification to OPE's form contract to limit private providers to having only three-year-olds. Instead, it puts the limitation in in a letter notifying Egenolf that it intends to renew the contract for the following school year. (P-10).
9. Sometime in 2002 the Board decided to limit private daycare providers to serve only three-year-old children in the Board's state-funded preschool program. The Board does not have a written policy regarding its decision limiting private daycare providers to serve only three-year-old children.
10. The Board and the private preschool provider are jointly responsible for recruitment of children. All public schools receiving Abbot funding must demonstrate to the State their efforts to enroll the "eligible universe", which is required to be 90% of the eligible 3- and 4-year-olds within the public school district.
11. The eligible universe is calculated by a formula (in the regulations): enrollment of first grade students x 2 = eligible universe. N.J.A.C. 6A:13A-2.3(d)(1).
12. If the Board does not meet the 90% eligible universe enrollment, it is required to develop a new recruitment/outreach plan.
13. During the 2018-19 and 2019-2020 school years, the Board received letters from NJDOE that it was not meeting 90% of its projected universe and had to implement a corrective action plan for each of those years. (P-11 and P-12).
14. As part of its recruitment of the eligible universe of preschool students, the Board sends out a brochure to every resident in the City of Elizabeth. Information is also posted on the Board's website and in an ad in La Voz, a Spanish-language newspaper. A majority of parents registering their children for preschool come to Board's offices to complete registration by appointment. However, the ad in *La Voz* for 2022 and 2023 was in English and was the only advertisement in the paper that was not in Spanish.
15. Egenolf advertises on its website, Facebook and by posting on its front door.

16. Egenolf does not participate in the Board's preschool enrollment process.

TESTIMONY AND ADDITIONAL FINDINGS

In the evidentiary hearing Egenolf called the following witnesses to testify; Kimberly Ridell, Director of Preschool Education at the New Jersey Department of Education, Olga Hugelmeyer, Superintendent of Schools for the Board, Tracy Crosby, Director of Early Childhood for the Elizabeth Public Schools and Dr. Lorraine Cooke, the Director of Egenolf.

The Board did not present any witnesses and was given the opportunity to question Egenolf's four witnesses during the presentation of Egenolf's case and relied on that cross examination to rebut Egenolf's arguments.

Kimberly Ridell

Kimberly Ridell (Ridell) is the current Director of the Office Preschool Education (OPE) at the New Jersey Department of Education (NJDOE). Ridell testified that her department is responsible for developing the regulatory requirements for the high-quality preschool program, specifically N.J.A.C. 6A:13A. She confirmed that the NJDOE expects local school districts develop their own policies to comply with the state regulations. Ridell testified that OEP does not review local policies, but they do provide the school districts with a Self-Assessment Validation System (SAVS) which reviews certain policies to validate if school districts are in compliance during site visits. She stated that if a school district is not in accordance with the regulations, then her department would discuss that with the district to address the discrepancies.

Ridell stated that she is familiar with Egenolf from her time in the Division from 1998-2001. Most of the rest of her testimony dealt with explaining the program, the regulations, and the Preschool Implementation Guidelines which are issued by the OPE. Ridell testified as to the term "Looping", which is when a teacher of a group of three-year-olds stays with them as they move to the four-year-old program.

Ridell testified that the relationship between a local school district and private preschool provider is contractual. She stated that OPE provides a template for the contract that districts can use with private providers. Ridell testified that the reason the template is offered by OPE is because there is funding related to the contract and the contract language used in the template tracks the language in the regulations. Ridell testified that any changes or modifications to the OEP contract template must be submitted to the OPE for approval before implementation of the same. OPE does receive modifications from some districts, but not the majority.

Ridell identified the school year 2021-2022 OPE contract template (P-25), but she was not sure if the Board submitted modifications of the same to her department. Ridell testified that she was not aware if the Board had asked to modify its contract with private providers to limit the program to only 3-year-olds. She stated that the OPE contract only asks for how many children are served, not ages, and that public schools are required to offer the program free to both 3- and 4-year-olds. However, Ridell affirmed how the school districts implement said programs is up to them so long as they are in compliance with the state requirements.

On cross examination, Ridell stressed that there exists no statute, administrative regulation or Abbott decision that would require public school districts place three and four-year old preschoolers in a private provider setting. Specifically, Ridell testified that that in New Jersey, school districts have local control or local rule, in other words, the local district decides how to implement the guidelines set forth in N.J.A.C. 6A: 13-A, (

Olga Hugelmeyer

Olga Hugelmeyer (Hugelmeyer) has been the Superintendent of the Board, which serves the Elizabeth City school district since 2013. Hugelmeyer has been employed by the Board for over twenty-eight years. Hugelmeyer testified that the Board has preschool programs in its elementary schools, private providers, and Head Start. She stated the Board has two-hundred twenty-seven (227) classrooms total for preschool including three early childhood centers. Hugelmeyer stated early childhood centers are standalone

buildings that house twenty early childhood classrooms serving three- and four-year-old children, totaling sixty (60) classrooms.

Hugelmeyer testified that since 2005, the Board had seven or eight private preschool providers. Hugelmeyer testified that in 2005, she was Supervisor of Early Childhood and was responsible to monitor all classrooms and provide support to ensure proper implementation of the curriculum. Hugelmeyer stated that her job also involved collaboration (communication) with the private provider directors to ensure they were being properly run in accordance with the regulations and the requirements of the NJDOE.

Hugelmeyer testified that in 2002-2003, former Superintendent Dunn made the decision on behalf of Board that private providers would only serve three-year-old students and that the same was communicated to the NJDOE, and that has been Board's policy ever since and she supports that decision.

Hugelmeyer testified that the Board has a central registration process and places the students in the school district first, and then once that is at capacity, they place them with private providers. She testified that she was unable to provide any documents that the NJDOE approved the Board's decision restricting private providers to only three-year-old students. Hugelmeyer also explained that all children (three and four-year-olds) are placed in district and then the overflow of three-year-olds are placed with private providers. She also stated that the reason for this policy is to ensure continuity for the four-year-old children, as this allows for "vertical articulation" meetings where preschool teachers are working collaboratively with the kindergarten teachers, ensuring an alignment between the Pre-K Program and the district's Kindergarten Program. Hugelmeyer stated that this approach has for the past twenty years resulted in a very successful high quality early childhood program and a very positive experience where children transition.

Tracy Crosby

Tracy Crosby, (Crosby) is the present Director of Early Childhood Programs for the Board. Crosby testified that she is responsible for creating the preschool budget, providing oversight for monitoring the budget, oversight for the implementation of the preschool curriculum and the New Jersey Preschool Teaching and Learning Standards, and oversight of the support services that are provided through Preschool Intervention and Referral teams working with the preschool providers and Head Start directors.

Crosby testified as to the recruitment issue and the state recommendation that the school district's projected universe of registered preschool students should be ninety percent (90%). Crosby stated that using statistics from 2018, it showed that the projected universe of registered students was at 84% and it did not reach the State recommendation of 90%, and showed the Board was short in recruitment for school year 2018-2019. Crosby testified that the projected number is calculated by the Board but there is a discrepancy [i.e. the formula wasn't used properly, which is 2x times actual enrollment.]

Crosby testified as to the recruitment and the registration of students within the school district. She stated that in February of the preceding school year, registration starts for the next school year. Crosby testified that prior to registration, the Board distributes a brochure about preschool registration that is mailed out to every resident in the City of Elizabeth. Crosby stated that information is also posted on the Board's website and an ad placed in the local newspaper. Crosby testified that a majority of parents registering come personally to the Board's offices to complete the registration by appointment.

Crosby testified that all public schools receiving Abbott funding must demonstrate to the NJDOE their efforts to enroll the "eligible universe", of students in their school district, which is required to be ninety percent (90%) of the eligible universe of three- and four-year-old students. Crosby testified that the Board did not recruit the 90% eligible universe in the 2018-2019 school year. Crosby testified that when the NJBOE was predicting that the Board would not meet its 90% eligible universe, it was using the October 15, 2018 data.

Crosby recalled that on February 10, 2020, “Dr. Rodney”, a member of OPE’s and Ridell wanted to speak with her about the issue of Egenolf wanting to serve four-year-old students and to discuss the Board’s pre-school outreach. Crosby testified that the Board sends out brochures to families residing in the Elizabeth school district and they place an ad in La Voz, a Spanish-language newspaper, the only newspaper that the Board uses for this purpose. Crosby testified that the information provided to parents is the dates and times of registration for free preschool; parents make an appointment to come in and register. Crosby stated that parents are seen by one of Board’s early childhood staff (social worker, master teacher, school psychologist, or secretary). Crosby described the procedures and documentation parents must present in order to register their child in the pre-school program.

Crosby then testified as to a “lottery school process” where parents choose a preschool program location, selecting 1st through 4th choices. The 4 lottery schools have themes, e.g. leadership, science, and technology, etc. Crosby stated that only entering three-year-old students can register for lottery schools, i.e. not if they enter as a four-year-old. Crosby explained how the Board runs the lottery, and that the first sixty (60) students are randomly selected within the lottery to go to a particular school. The remaining students are on the wait list and will be placed in another school, a provider site, or elsewhere in the program. Crosby testified that some parent input helps decide placement, e.g. where the parent or babysitter lives.

Crosby stated that during registration process is when the parents learn about lottery schools and their choices, and parents can voice their preference. Crosby stated that parents have requested Egenolf, and if the student is three years old, they will be placed at Egenolf. Crosby testified that new families that move into the Elizabeth school with a four-year-old are assigned a preschool that is closest to their neighborhood school that has a preschool classroom. She stated that if their neighborhood school does not have a preschool classroom, they will be placed at the next closest school, which may not be the school they go to from K-8, which they will have to transition.

Crosby testified that the transition of the three-year-old from the private provider to the Board program is the responsibility of the private provider. She stated that the Board

provides an orientation for the parents after the four-year-old is placed in the Board's program.

Crosby testified that the Board has placed four-year-old students at one out of district facility in Union, New Jersey, and that the Board has had to place pre-school students in temporary classroom units because they did not have capacity in a school building. Crosby testified that she has never received any directive or communication from the NJDOE requiring the Board to place four-year-olds in private provider schools and that no other private provider ever complained to the Board about not having four-year-olds.

Dr. Lorraine Cooke

Dr. Lorraine Cooke (Dr. Cooke) is the Executive Director of Egenolf and has been at Egenolf for 30 years. Dr. Cooke was admitted as a fact and expert witness in the field of best practices of Early Childhood Education, specifically the education of preschool students in low-income communities. Dr. Cooke testified that Egenolf has provided preschool services in the community of Elizabeth for over one hundred years. Dr. Cooke discussed Egenolf's philosophy in helping children "transition" from home to a day-care setting, and that Egenolf focus is to help both the parent and child to understand of about the experience and process of the early childcare setting.

Dr. Cooke testified that prior to Abbot, Egenolf provided early education study for mixed age groupings of three- and four-year-old students but is now limited to three-year-old students because of the Board's policy that it only allows community providers to have three-year-olds.

Dr. Cooke then testified that she was chosen to work on the state committee that drafted an initial report on Early Childhood Education, policy and law and that Tom Dunn Jr., (Dunn) then the Superintendent of the Board was also an integral part of that committee which implemented the Abbott in the Elizabeth City school district. Dr. Cooke stated that Dunn was part of the decision on behalf of the Board in the early 2000's to only allow private providers to have three-year-old students. Dr. Cooke stated that the

NJDOE Abbot Preschool Program Implementation Guidelines (the Guidelines) dated February 2003, (P-3), provided a bibliography containing the research references that the committees relied upon to develop the guidelines. “It was our charge to make sure that the recommendations that we were making were based in research.” (Tr. 10/2/23, 52:9-11: P-3).

Dr. Cook testified that private providers had a meeting with Dunn and wanted to present Dunn with studies as to why such limitation was a bad idea, but Dunn rejected the idea. Dr. Cooke testified that the group of private providers disbanded, but parents raised the issue with Board and at one point picketed outside the Board offices to voice their objection to the Board’s decision.

Dr. Cooke testified that there were “intensive study” showing the consensus that children staying together for two years in three- and four-year-old early learning is better because it supports secure attachments with the adults in their school and with their school. The effect of transitions, multiple transitions, is, as I said before, children experience distress, insecurity that parents (10/2/23, T43:24–44:10)

When cross-examined about the Guidelines report from February 2003 and the updates of July 20025 (P-4) and 2015 (P-5), Dr. Cooke made the following admissions:

- The Guidelines are only recommendations and not mandates (
- What is contained in the Guidelines isn’t required.
- The NJDOE regulations do not require that three and four-year olds be together
- No mandates or orders from the Department of Education that require three and four-year-olds be placed together
- The NJDOE has validated, and the Board has satisfied the requirements of the preschool Guidelines
- In her expert opinion, the placement of three and four-year-olds together is not required by the NJDOE
- Ellen Frede, from NJDOE, told her before the year 2010 that the decision as to placement of three and four-year-olds was a district decision and the NJDOE would not interfere
- Dr. Cooke is not aware of any other private providers making complaints about the Board’s policy

Credibility Determination

I must weigh the credibility of the witnesses to determine the ultimate issues. Credibility is the value that a factfinder gives to a witness's testimony. An ALJ's findings of fact as to issues of credibility of lay witness testimony may not be rejected or modified unless the record demonstrates that the findings are arbitrary, capricious or unreasonable, or not supported by sufficient, competent, credible evidence in the record. N.J.S.A. 52:14B-10(c).

"Credibility involves more than demeanor. It [contemplates] the over-all evaluation of testimony in the light of its rationality or internal consistency and the manner in which it hangs together with other evidence." Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances." State v. Taylor, 38 N.J. Super. 6, 24 (App. Div. 1955) (quoting In re Perrone's Estate, 5 N.J. 514, 522 (1950)).

A fact finder is expected to base credibility decisions on their common sense and life experiences. State v. Daniels, 182 N.J. 80, 99 (2004). Credibility is not dependent on the number of witnesses who appeared, State v. Thompson, 59 N.J. 396, 411 (1971), and a fact finder "is not bound to believe the testimony of any witness, in whole or in part," State v. Muhammad, 182 N.J. 551, 577 (2005) (internal quotation marks omitted). Rather, they "may reject what in their conscientious judgment ought to be rejected and accept that which they believe to be credible." Ibid. "The interest, motive, bias, or prejudice of a witness may affect [their] credibility and justify the [trier of fact] . . . in disbelieving [their] testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div. 1952) (internal quotation marks omitted).

Ridell, Hugelmeyer, and Crosby, have appeared and provided testimony concerning the requirements of the NJDOE regarding the program requirements for pre-school students, and how the same has been implemented by the Board since 2002

I **FIND** that Ridell has provided testimony concerning the NJDOE requirements concerning preschool education and specifically, the requirements of Preschool Implementation Guidelines, which is credible inasmuch as the same is supported by the NDOE regulations she recited.

As to Hugelmeyer, I **FIND** that she has provided credible testimony concerning the Board's history of the preschool programs dating back to 2002-2003 where the decision to have private providers serve only three-year-old children was communicated to the NJDOE. I **FIND** that Hugelmeyer's testimony was consistent with the information provided by Ridell in her testimony, and the record herein, concerning petitioner's challenges to the Board's private preschool programs, and I therefore **FIND** Hugelmeyer's testimony as **FACT** herein.

As to Crosby I **FIND** her testimony credible as well, in providing testimony concerning the Board's preschool budget, providing oversight for monitoring the budget, oversight for the implementation of the preschool curriculum and the New Jersey Preschool Teaching and Learning Standards, oversight of the support services that are provided through Preschool Intervention and Referral teams working with the preschool providers and Head Start directors.

I **FIND** that Crosby, like Hugelmeyer, has provided testimony that was consistent with the information provided by Ridell concerning petitioner's challenges to the Board's private preschool programs. I **FIND** Crosby's testimony to be **FACT** herein.

Dr. Cooke has testified as both a fact and expert witness in this matter. With regard to her expert testimony, it is necessary to be mindful of the net opinion rule. An expert's conclusion is considered to be a "net opinion," and therefore inadmissible, when it is a bare conclusion unsupported by factual evidence. Creanga v. Jarda, 185 N.J. 345, 360 (2005). The expert must give the "why and wherefore" of his opinion rather than a mere conclusion. Ibid. Another aspect of the net opinion rule is that the expert must articulate an appropriate standard, e.g., Kaplan v. Skoloff & Wolfe, P.C., 339 N.J. Super. 97, 102-103 (App. Div. 2001) (finding net opinion where expert failed to reference any written

document in support of duty of care in legal malpractice action). An expert opinion that is not based on reliable facts and data reasonably relied on by experts in the field is an inadmissible “net opinion.” The net opinion rule has its genesis in the failure of a medical expert to provide testimony regarding causation between an act of negligence and a plaintiff’s injuries or damages. Parker v. Goldstein, 78 N.J. Super. 472 (App. Div. 1963) (failure of plaintiff’s expert to explain how defendant physician’s delay in ordering cesarean section for decedent caused pulmonary embolism that resulted in death was net opinion).

The concerns related to the net opinion rule are addressed in N.J.A.C. 1:1-15.9(b). The net opinion rule currently derives from the requirement of N.J.R.E. 702 that expert opinions be based upon facts and opinions reasonably relied upon by experts in a particular field. Therefore, an expert’s failure to provide any facts or basis for an opinion will result in finding an inadmissible net opinion. Nolan v. First Colony Life Ins., 345 N.J. Super. 142 (App. Div. 2001) (doctor’s certification on motion for summary judgment that stated opinion based upon reasonable medical probability was net opinion as no facts or basis for opinion were provided, only conclusory statements).

As a fact witness, I **FIND** Dr. Cooke’s testimony to be credible and as **FACT** herein concerning Egenolf’s procedures in soliciting parents and their children to enroll at their facility and Egenolf’s philosophy in early learning programs, and the Board’s current policy limiting Egenolf’s preschool programming to three-year-olds. I **FIND** Dr. Cooke’s fact testimony is corroborated by the record and by the testimony of Ridell, Hugelmeyer, and Crosby. We now turn to Dr. Cooke’s expert testimony.

I **FIND** Dr. Cooke’s testimony as expert witness in the area of Best Practices in Early Childhood Education is devoid of empirical analysis to substantiate Egenolf’s claim that the Board’s decision limiting private providers, such as Egenolf, to provide preschool programming to three-year-olds exclusively is harmful to the psychological or educational make up of said children. Moreover, I **FIND** that Dr. Cooke’s testimony fails to establish within a reasonable degree of educational certainty the Board’s decision to retain four-year-old preschoolers exclusively, poses any “transitional problems” for said four-year-olds in the Elizabeth school district.

Moreover, I **FIND** that Dr. Cooke's expert testimony fails to establish within a reasonable degree of educational certainty that the laws and regulations implemented by the NJSBOE that allows the Board to implement its current preschool program to four-year-old students results in said preschoolers having any psychological, educational and transitional problems as students. Therefore, I **FIND** that Dr. Cooke's expert testimony has no bearing on the merits of this case.

LEGAL ANALYSIS AND CONCLUSIONS

New Jersey has a long history of supporting early learning through New Jersey Supreme Court decisions, legal regulations, financial investment, and state leadership. However, that support was greatly expanded by a landmark legal decision that initiated major changes and provided a foundation for progress over the past twenty (20) years.

In 1981, New Jersey Supreme Court filings initiated the landmark Abbott v. Burke litigation. 100 N.J. 269 (July 1985). The Abbott case may be the most educationally significant litigation for low-income and minority children since Brown v. Board of Education. The Abbott remedies were strikingly detailed and comprehensive, and the mandates broke new ground in school finance and education policy in the United States.

After several iterations, in 1998, groundbreaking New Jersey Supreme Court rulings ordered a set of entitlements for children in 28 (later expanded to 31) of the state's school districts with the highest concentrations of poverty, including a high-quality preschool program for all 3- and 4-year-olds. (Abbott V, 153 N.J. 480 (May 1998)). In 1999, the first Division of Early Childhood Education (Office of Early Childhood) in the New Jersey Department of Education was created and charged with designing and implementing the court-ordered New Jersey preschool program in the 31 Abbott school districts and overseeing kindergarten in said districts.

Under the Abbott rulings and regulations, the Office of Early Childhood established a comprehensive full-day preschool system with an age-appropriate curriculum based on student learning standards, a maximum class size of fifteen (15), certified teachers,

assistant teachers, support services, and enrollment levels of at least 90 percent of the universe of all age-eligible children in the community. Several state Supreme Court rulings were required to secure full implementation of the Court's intent in 1998's Abbott V ruling, including Abbott VI, 163 N.J. 95 (Mar. 2000); Abbott VIII, 164 N.J. 84 (May 2000) and Abbott XII, 180 N.J. 444 (June 2004).

In addition to fully funding preschool education in the Abbott districts, the state provided partial funding, programmatic support, and guidance to 96 non-Abbott Early Childhood Program Aid districts (ECPA) where 20-to-40 percent of children qualified for free or reduced-price lunch. A new Early Launch to Learning Initiative (ELLI) added 24 districts to the total number of districts funded by the state to provide preschool education to children in low-income families. Both ECPA and ELLI programs allowed non-Abbott districts to apply for state funds to expand enrollment, extend program hours, and improve quality.

The Abbott "model" that developed through this series of Abbott Supreme Court decision and legislative initiatives arguably has resulted in the setting of high standards for preschool education. Those standards include; licensed teachers with a four-year degree and certification in early childhood, pay parity with public K-12 personnel, maximum class size of 15, a research-based curriculum, a full 6-hour day, two years beginning at age 3, specialized personnel to support parents and teachers, and a continuous improvement system. The program is delivered in a mixed delivery system—in public schools, Head Start, and private child-care centers. Head Start and private programs are funded through contracts with districts that ensure all providers meet the same rigorous standards.

N.J.A.C. 6A:13A-1, concerning the applicability of the rules regulating Abbott districts provides:

(a) State-funded preschool programs in each school district shall include the elements established in this chapter as essential for the implementation of a high-quality preschool program as a condition of receipt of Preschool Education Aid, which shall include, but not be limited to, all positions,

supports, services, materials, and supplies. The school district shall ensure that preschool programs offered in-district and by contracted private providers and local Head Start agencies receiving preschool funding meet all applicable requirements.

(b) The purpose of this chapter is to implement high-quality preschool programs pursuant to P.L. 2007, c. 260.

(c) The district board of education shall ensure the inclusion of preschool children with disabilities in general education settings to the maximum extent possible, as set forth at N.J.A.C. 6A:14-2(A)1.

N.J.A.C. 6A:13A-1.2, provides the following definitions applicable herein:

The following words and terms shall have the following meanings when used in this chapter, unless the context clearly indicates otherwise:

"Age-eligible" means a child who turns three or four years old by the enrollment date determined by the district board of education pursuant to N.J.S.A. 18A:38-5 and 6 and 18A:44-1.

"Comprehensive curriculum" means a preschool curriculum that addresses all domains of learning and is aligned to the New Jersey Preschool Teaching and Learning Standards of Quality. The comprehensive curriculum is articulated in the Department-approved three-year preschool program plan and is implemented within the school day.

"Comprehensive preschool educational program" means the delivery of the school district's comprehensive curriculum articulated in the Department-approved three-year preschool program plan that occurs within the school day and that provides the comparable teacher/child contact time in contracted private provider and local Head Start agencies as is provided in-district.

"Districtwide" means the school district's entire preschool program as implemented across all in-district, contracted private provider, and local Head Start agency settings.

"Early childhood advisory council" or "ECAC" means an advisory group of community stakeholders interested in the education and welfare of children in preschool through grade three that is convened by the school district.

"Early Childhood Program Aid" or "ECPA" means State aid that was authorized pursuant to repealed N.J.S.A. 18A:7F-16 and was distributed to all school districts with high concentrations of low-income students for the purpose of providing preschool, full-day kindergarten, and other early childhood programs and services.

"Improvement plans" means the school district's plans for improvement in areas of relative weakness within its preschool programs as identified through the self-assessment and validation system.

"New Jersey Preschool Program Implementation Guidelines" means a Department document that provides guidance to school districts, contracted private providers, and local Head Start agencies in planning and implementing high-quality pre School programs for age-eligible children.

"Preschool Education Aid" means State aid provided to district boards of education to implement preschool programs for age-eligible general education students.

"Private provider" means a childcare center licensed by the Department of Children and Families pursuant to N.J.S.A. 30:5B-1 et seq.

"Self-assessment and validation system" or "SAVS" means an annual assessment process conducted districtwide by school districts to provide the Department with an analysis of the school district's strengths and weaknesses relative to preschool program implementation and the school district's plans for continuous quality improvement.

"Transition" means an organized system of interactions and transactions that takes into account the relationships among home, school, and community as the child moves from preschool to kindergarten through grade three.

"Universal preschool" means a specialized preschool program for all age-eligible resident three- and four-year-old children.

"Universe of eligible preschool children" means all three- and four-year-old general education children eligible for preschool in a public school district that receives Preschool Education Aid.

For school districts receiving state funding as a former “Abbott District”, “the district board of education shall provide free access to full-day preschool for all three- and four-year-old children.” N.J.A.C. 6A:13A-2.1(a).

N.J.A.C. 6A:13A-6.1(a)] provides that school districts participating in the program must provide an annual update of “transition initiatives from [preschool] program entry to kindergarten through grade three” that describe:

1. The process for collaborating with other preschool through grade three administrators in the school district;
2. Implementation of a comprehensive, developmentally appropriate kindergarten entry assessment within the first six to eight weeks of school to measure children's knowledge, skills, and behaviors at the beginning of kindergarten;
3. Methods for communicating to a child's new kindergarten and elementary teachers information about the child, including the results of the kindergarten entry assessment;
4. The process for identifying the curriculum and pedagogical information about the preschool program and communicating it to the kindergarten and elementary teachers; and
5. The process for providing information to parents about the kindergarten program and the transition plan from preschool through grade three.

All school districts shall participate in a process of continuous quality improvement either through the annual self-assessment and validation system (SAVS) or site visits. N.J.A.C. 6A:13A-8.1(a).

The SAVS shall include the following:

1. A validation visit by a State team at least once every three years;
and
2. A Department-required improvement plan in a Department-provided format that shall include:

- i. Identification of the program area(s) in need of improvement;
- ii. A detailed explanation of the steps to be taken by the district board of education; and
- iii. A timeline for implementation.
- iv.

[N.J.A.C. 6A:13A-8.1(a)]

All private providers must have “appropriate licensure pursuant to N.J.A.C. 10:122 and adhere[] to the requirements of this chapter for programmatic and fiscal accountability to provide preschool children with services that meet the elements of a high-quality preschool program.” N.J.A.C. 6A:13A-9.1(b).

There remain two issues that must be addressed in this matter:

1. Whether the Board should be allowed to limit private providers to having only three-year-old children enroll in their state-funded preschool programs; and
2. Whether the Board does an adequate job of outreach to enroll the required percentage of students.

As to the first issue, I **CONCLUDE** that Egenolf has not presented any evidence to establish that the Board’s current policy of limiting enrollment of three-year-olds in private provider state funded preschool programs is in violation of NJDE regulations, and their guidelines therein. The testimony of Kimberly Ridell, Director of Preschool Education at the New Jersey Department of Education, Olga Hugelmeyer, Superintendent of Schools for the Board, and Tracy Crosby, Director of Early Childhood for the Elizabeth Public Schools, all confirm that the New Jersey Department of Education do not mandate that the Board must enroll four year olds in private providers state-funded preschool programs. The testimony of said witnesses all reveal that the Board has ultimate authority on how it will implement its state funded preschool program, called “local rule.”

In addition, to the testimony of Ridell, Hugelmeyer and Crosby, I **CONCLUDE** that the NJDE regulations regarding State-funded preschool programs do not provide for a

prohibition of the Board's current policy of limiting private providers to three-year olds. (N.J.A.C. 6A:13A-1; N.J.A.C. 6A:13A-1.2).

The testimony of Egenolf's expert witness, Dr. Cooke, also failed to establish that the Board's preschool policy at issue was in contravention of NJDE regulations. Dr. Cooke testified that the Board's preschool program is not the "best practices" as it is not in compliance with the NJDE guidelines (P-3), regarding the transitioning of children from preschool. However, I **CONCLUDE** that it is undisputed that the state guidelines are not mandatory but "guidance to school districts, contracted private providers, and local Head Start agencies in planning and implementing high-quality pre-School programs for age-eligible children." (N.J.A.C. 6A:13A-1.2). Moreover, I have already determined that Dr. Cooke's expert testimony failed to establish within a reasonable degree of educational certainty the Board's decision to retain four-year-old preschoolers exclusively, poses any "transitional problems" for said four-year-olds in the Elizabeth school district.

I **CONCLUDE** that Egenolf has failed to establish by a preponderance of the evidence that the Board is required to place four-year-olds with private providers. It is also just as clear that Petitioner has failed to prove that the EBOE preschool program has resulted in any problem with its preschool students in transitioning either from three-year-old to four-year-old programs or from kindergarten to grade three.

Regarding the second issue, I **CONCLUDE** that Egenolf has not presented any evidence to establish that the Board does not conduct an adequate outreach to enroll the required percentage of students.

Egenolf states that as part of the state-funded high quality preschool programs, school districts must have a plan for outreach to the community and recruitment of children ages three and four. Said plan shall document the school district's strategies to serve at least 90 percent of the universe of eligible_preschool children in the three-year preschool program plan and/or annual update. The plan shall include annual preschool enrollment targets that coincide with the school district's projected initiation and/or expansion of preschool. N.J.A.C. 6A:13A-2.3(b). If a school district doesn't meet its

projected enrollment targets, it “may be required to submit a corrective action plan to the Department.” N.J.A.C. 6A:13A-2.3(c).

Egenolf takes the position that the Board has not appropriated the proper resources and services to enroll the proper percentage of universe of students. I **CONCLUDE** that the testimony of Crosby and Hugelmeyer establishes that the Board was in compliance with SAVS (R-10). The evidence presented herein establishes that the NJDE found the Board had met its criterion for recruitment and outreach. Specifically, the record establishes that NJDE found there existed Board programs including child find, recruitment and outreach and that it had a chronic absenteeism plan, and the Board maintained accurate enrollment data and updated it frequently.

I **CONCLUDE** that the Egenolf has failed to establish by a preponderance of the evidence that the Board was not in compliance with the requirements of N.J.A.C. 6A:13A-2.3(b), concerning a plan for outreach to the community and recruitment of children ages three and four.

ORDER

It is therefore **ORDERED** that the relief sought by Egenolf in the Petition filed herein is **DENIED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify, or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

March 11, 2025
DATE

Julio Morejon
JULIO C. MOREJON, ALJ

Date Received at Agency:

March 11, 2025

Date Mailed to Parties:

March 11, 2025

lr

APPENDIX

WITNESSES

For Petitioner:

Kimberly Ridell
Olga Hugelmeyer
Tracy Crosby
Dr. Lorraine Cooke

For Respondent:

None

EXHIBITS

For Petitioner:

- P-2 2023-04-12 OAL subpoena - NJDOE DECS for May 2, 2023
- P-3 2003 NJDOE Preschool Program Implementation Guidelines
- P-4 2005 Update NJDOE Implementation Guidelines-Continuity & Transition
- P-5 2015 NJDOE Preschool Program Implementation Guidelines
- P-6 2018-2019 preschool provider contract-Elizabeth – Approved
- P-7 2021-01-14 & 02-07 & 02-10 email correspondence NJDOE & T. Crosby re: call about EECC
- P-10 2018-2021 Letters of intent to renew contract
- P-11 2019-04-01 NJDOE letter to EBOE re: CAP for underserving universe of eligible children & absenteeism
- P-12 2020-04-01 NJDOE letter to EBOE re: CAP for underserving universe of eligible children
- P-14 2020-11-02 email correspondence NJDOE & T. Crosby re: universe of eligible children
- P-25 2021-2022 SY Contract to L. Cooke re: final quarterly

For Respondent:

R-7 Preschool Universe Documents (Bate Stamped 000296-000323)

R-10 Registration Staff Docu