



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**FINAL DECISION**

OAL DKT. NO. EDS 08681-17

AGENCY DKT. NO. 2017-26195

**J.B. ON BEHALF OF M.B.,**

Petitioners,

v.

**ROCKAWAY TOWNSHIP BOARD OF  
EDUCATION,**

Respondent.

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**Beth A. Callahan**, Esq., for petitioners J.B. on behalf of M.B. (Callahan & Fusco, attorneys)

**Carolyn R. Chaudry**, Esq., for respondent Rockaway Township Board of Education (Scarinci Hollenbeck, attorneys)

Record Closed: May 30, 2018

Decided: June 6, 2018

BEFORE **GAIL M. COOKSON**, ALJ:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

On or about May 12, 2017, J.B. (petitioner) filed this petition on behalf of her then five-year-old son M.B. and requested a due process hearing on the issue of whether respondent Rockaway Township Board of Education (District) had failed to provide him with a Free Appropriate Public Education (FAPE) since July 2016 under the Individuals

with Disabilities Education Act (IDEA), 20 U.S.C.A. §§ 1400 to 1419. The petition sought a twelve-month, forty-hours weekly Applied Behavioral Analysis (ABA) 1:1 program, with related services of transportation, speech therapy and occupational therapy.

The Office of Special Education Programs (OSEP) transmitted the petition to the Office of Administrative Law (OAL) on or about June 20, 2017. A prior due process petition with the same parties had previously been filed with the OAL (Dkt. EDS 01335-17), so this new matter was assigned to me for consolidation with the earlier filing. Several case management telephone conferences had already been held, and all parties and the OAL already knew that a new petition was forthcoming. My chambers had already advised counsel of my mandatory protocols as set forth in my Standing Case Management Order for Special Education Cases.

In accordance with that Standing Case Management Order, on which there were no objections or exceptions filed, direct testimonies of witnesses were proffered through pre-filed written submissions and the witnesses were then presented for oral cross-examination and re-direct examination, as needed. Pre-filed direct testimonial certifications were made part of the record herein. In addition, hearing dates had been scheduled on the earlier petition. Accordingly, counsel agreed to focus on the newer issues and the relief requested in the second petition on the hearing dates previously scheduled.<sup>1</sup> In addition, the requirement for pre-filed testimony was waived for some witnesses in order to move forward.

The plenary hearings were held on June 26, 27, July 18, September 12, 20, and 27, 2017. After the final post-hearing written briefs were received this winter<sup>2</sup>, I allowed an additional date for oral argument on May 30, 2018, should same be needed, but I ultimately found I did not require same. The matter is now ripe for determination.

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<sup>1</sup> OAL Dkt. EDS 01335-17 was withdrawn thereafter by counsel, and closed at the OAL.

<sup>2</sup> At the time of the receipt of the briefs, I was involved in a highly complex public utilities case which kept me from turning my attention to writing this decision.

## **SUMMARY OF TESTIMONY**

M.B. is a young boy, now approaching age seven, who attends Rockaway Township schools. There is no dispute among the parties hereto that M.B. has been classified as Other Health Impaired (OHI). M.B. was enrolled in the District's full-day "Special Class Behavior Disabilities" class (BD) kindergarten at the Stony Brook School facility for the 2016-2017 school year. During this litigation, M.B. was placed in a home program due to an allegation of overwhelming anxiety related to school.

Samantha Evans testified that she is the school psychologist with Rockaway Township. She has held this position since September 2016. Evans obtained an undergraduate degree in psychology from St. Joseph's University in 2012. She then received a Master's Degree from University of Connecticut in Educational Psychology in 2016, along with an extra year to complete the national and state "six-year certificate" required for a position in school psychology. Evans had only worked one half-year for another New Jersey district prior to commencing employment with Rockaway. I qualified Evans as an expert in School Psychology and Counseling, but declined to qualify her as an expert in Special Education.

Evans testified that she first became familiar with M.B. in September of 2016 when she reviewed his April 2016 IEP and other records as his new case manager. Prior to entering kindergarten, M.B. was reevaluated with parental consent in the areas of Education, Psychology, and Speech in order to adjust his classification from the more generic preschool disabled. Evans was in M.B.'s classroom several times a week for group counseling and to conduct informal observations. There were eight students in the classroom that year. The purpose of group counseling is to teach coping strategies and social skills. Evans testified that she did not collect behavior data.

Evans described the process undertaken by herself and others to prepare for the IEP meeting in the fall of 2016 that would take into consideration the new evaluations and the student's much improved behavior from the prior school year. Evans found that he was like a different child after the summer. M.B.'s evaluations showed that he was

of average to high average educational levels in the math problems, and average to low average in a few of the sub-tests. His cognitive ability was also average with a full-scale IQ of 101. The speech evaluation demonstrated that M.B. does not have a communication impairment although the testing session also was an example of his ability to get distracted and be strong-willed. While Evans was not with Rockaway for the prior school year, and was not qualified to present a special education evaluation herself, she summarized what had been contained in that IEP. M.B. had a one-to-one (1:1) aide to assist with social skills and self-regulation. He also had a Behavior Intervention Plan (BIP) in that April 2016 IEP, which had been prepared in November 2015.

As the case manager for M.B., Evans stated that she received data sheets on a regular basis and graphs that plotted the data. Those would be emailed to her and the parent. From her personal observation and work with M.B., she was of the opinion that the child had made social skill improvements with the group counseling sessions. Evans also reviewed other information in M.B.'s case file and noted that it appeared from the "five-minute interval" charts his behaviors were improving.

At an October meeting with the Child Study Team (CST) and the parent, the independent evaluation she had obtained was discussed. Concerns were raised by members of the CST that this evaluation had some flaws because it was based on an observation during the Extended School Year (ESY) summer program that is different than the regular classroom. There was also a concern that the neuropsychological evaluation included some lengthy testing sessions, which could lead a student who has ADHD like M.B. to testing fatigue. Accordingly, the CST did not accept the recommendations of that evaluator but noted that the BD class would have similar structure build into the program. The CST ran out of time at that IEP meeting and they decided to schedule another one.

It took some time to find a date, but when the CST selected one in December, the parent was unable to attend. They met in her absence, finalized an IEP, sent it to her home, from which the first due process petition (now withdrawn) was filed. Thus,

that IEP never went into effect. Evans described some components of that IEP to include additional academic goals and objectives, and added counseling as a related service as M.B. seemed to benefit from it.

The May 2017 IEP, at issue herein, proposed a gradual mainstreaming for M.B. for first grade. Evans testified that his teacher recommended that math be the first transitioned subject because the child is good at it and it has a lot of inherent structure. The BD classroom would remain his home base. Evans stated that mainstreaming in this manner would be the least-restrictive environment for M.B. and allow him to have more peer interaction.

On cross-examination, Evans admitted that she relied upon the subjective opinions of the teacher and the aide in drafting the social emotional goals of the May 2017 IEP. She was unable to correlate the language allowed in the IEP software program the District utilizes with the legal requirements of the IDEA. Evans also admitted that she knew that M.B. was defecating in his pants during the course of the year. She did not keep a record but stated that it happened more often than a typical kindergarten student. Evans stated she did not speak personally to the parent about it even though she was the school psychologist. Further, there were no goals in the May 2017 IEP for toileting issues and it was not addressed at all in it.

Evans explained on further cross-examination that M.B. was progressing “satisfactorily” in the speech therapy progress reports but that that means that he did not achieve those goals. Evans admitted that the CST did not have behavioral data on cooperative play or M.B.’s ability to take turns but they still determined that he had not achieve his goal. Similarly, Evans agreed that there is no documentation showing that M.B. is able to correctly follow daily classroom routines. Evans understood that the BIP was being implemented in the classroom although she had no direct knowledge of that. She admitted that the only data collection relating to his behaviors was the five-minute chart. Evans described one behavioral tool they have been using with M.B. that has helped de-escalate any outbursts. She referred to the “safety room” where the strategies of relax, exercise, soothe and talk (REST) are utilized with the children.

Evans was unaware, however, of what behavioral methods were used with M.B. prior to resort to the safety room. She also confirmed that the BIP was not being followed but it had been modified informally to be more age-appropriate for M.B., using points instead of smiley faces. Despite the removal of the BIP for the 2017-2018 school year, Evans stated that classroom strategies will still be in place to reinforce behaviors, such as raising a hand to be called on. She insisted that the strategies will work; that M.B. will succeed; and that new approaches were not needed. On re-direct examination, Evans described again the basic structure of the BD classroom and of group counseling.

Cassie M. Perinotti is M.B.'s teacher in the BD classroom and was a witness for the District. She has a Teacher of the Handicap certificate as well as the elementary (K-6<sup>th</sup>) certificate. Prior to becoming the BD teacher for the District in September 2014, Perinotti taught at the Reed Academy for one year and Kinnelon public school for one year. During voir dire of her credentials, Perinotti stated that she worked with ABA techniques at Reed but not at Kinnelon, where she was a resource room teacher. The Rockaway BD classroom is not an ABA-based program. I qualified Perinotti as an expert in Special Education but not on ABA practices.

Perinotti described M.B., who entered her classroom for the 2016-2017 school year. She found M.B. to be an energetic child, eager to learn, and with some peer relationships. He could be impulsive socially but seemed eager to play with others. Perinotti had to redirect him from fidgeting and some lack of impulse control at the beginning of the school year but he was not an aggressive child. He also was at an age appropriate level academically upon entering kindergarten. M.B. had a 1:1 aide but he was fairly independent so the aide functioned more as a shadow.

Perinotti testified that she explained the BD classroom utilizing a PowerPoint for parents at the beginning of September. She explained that all the students in her class were higher functioning cognitively and were expected to mainstream. A reward program called "Dolphin Dollars" was being used school-wide. When a student earns enough points, they get to select a reward from their personalized and prioritized preference list. Perinotti explained the target behaviors and how they are adjusted from

time to time. She also described how data is collected by the aides overseen by her and reviewed by her several times a day. Perinotti is the arbiter of any ambiguity in recording data. M.B.'s targeting behaviors of noncompliant and disruption were charted on the five-minute interval chart, and then recorded on a bi-weekly spreadsheet. She stated that those negative behaviors had decreased during the course of the school year. Reward time comes at the end of the day but there are some small reward opportunities, such as watching a one-to-two-minute video, throughout the day.

Perinotti explained that the point system was appropriate for M.B. even if not literally in the BIP because he is maturing and preparing for mainstreaming. M.B. has some discretion on his own compliance strategies. He is amenable to the coping skills presented in REST. It has helped his self-regulation. When M.B. chooses to go to the safety room because he discerns that he needs it, an incident report is not generated. That only occurs if he is required to go because of some behaviors. Perinotti recalled that the parent was concerned about her son's peer interaction outside of the classroom. There were also some issues on the bus which Perinotti addressed by providing some strategies and a behavior chart to the bus driver. It appears, however, that the charts were not completed or returned.

Perinotti was asked about M.B.'s toileting issues during the school year. She recalled that it occurred mostly during a one-month span and not all year. Perinotti also elaborated on the child's interactions with peers. While he was not in an inclusion class for kindergarten, the BD classroom still participated in assemblies, trips, lunch, and outside recess. She noted that on rainy days, the children prefer to stay in their own classroom.

With respect to Perinotti's review of the report from petitioner's expert Carol Fiorile, she thought that Fiorile was complimentary of the program. Perinotti tried to explain about what might appear as discrepancies and gaps in the data collection. She noted that articulation is not a strength for M.B. but he likes to engage and share what he knows, preferably in small groups. The May IEP did remove the BIP but Perinotti stated that it had behavioral strategies interwoven in the document. Gradual

mainstreaming was inserted by the CST into the IEP for first grade. Math was selected as an appropriate place to start based on M.B.'s strengths and weaknesses. It would be a general education math class with a 1:1 aide, a Teacher of the Handicapped and regular classroom teacher. It was set up with a thirty-day review period after the start of the year. Other classes might be gradually incorporated. Specials and lunch or recess inclusion was rejected for now as unacademic and contrary to his strengths. Perinotti concluded her direct testimony with her opinion that the May IEP provided FAPE to M.B.

On cross-examination, Perinotti set forth that she is trained by the Behaviorist who is a BCBA, and then she trains the aides to collect data. There is a total of four adults who would be gathering data but not at the same time. She admitted that there has been no functional assessment of M.B. since before November 2015. Perinotti also conceded that there are no frequency tallies for his behaviors, or data on when he asks for REST or its preceding triggers although three-part prompts would be used before resort to REST. A sensory integrative diet was not required under the BIP and is never scheduled just for M.B.; nevertheless, Perinotti could not point to any objective evidence that behavior strategies are working with the exception that the five-minute disruptive notations decreased.

Similarly, Perinotti stated that improvements in M.B.'s social interactions, which at times could be impacted by disruptive behaviors, were noted by the aides and herself on the basis of subjective observations but not data entry. Aides were also present during recess and social stories were used to help him focus on avoiding negative behaviors. Perinotti recalled that J.B. seemed satisfied with her son's program in the fall but not by the May IEP meeting. J.B. said to Perinotti that she "typically makes teachers cry. Don't take it personally." Perinotti got that reaction apparently during the discussion on mainstreaming when she stated it would be her decision and discretion that would determine how to initiate it for M.B. The parent agreed and insisted on inclusion for her son. Perinotti admitted that she raised her voice but denied that it could be construed as screaming. She felt that the parent was accusing her of things that were not true. Perinotti noted that M.B. would remain in the K-1 BD classroom as



his home base but that, due to staff restructuring, she would not be his teacher for that year.

Perinotti was questioned on the accuracy of the five-minute data that was available in light of a mis-match with an incident report. [J-43, J-31.] She acknowledged they appeared inconsistent, unless the incident occurred after 2:40 p.m., but that it was consistent with the Daily Behavior Chart. [J-30.] Perinotti detailed that the BCBA graphs the five-minute data monthly, but she maintains her own biweekly average. She utilizes that information to adjust his rewards or interventions. She agreed that the parent would not be able to discern which strategies were effective, and that perhaps more objective options could be included.

Perinotti disagreed with the parent's assessment that M.B. needed a full-time ABA program with shadow, preferably in the Morris District program for which she advocated. Social and emotional goals and objectives are worked on with M.B. during counseling sessions, which Perinotti then reinforces in the classroom. It was her opinion that she appropriately interpreted and applied the BIP to M.B. She would refer any questions or concerns she had to the case manager or the behaviorist. Lastly, Perinotti detailed her perspective on the specificity of the child's goals and whether they had been mastered, which might or might not be the same as being able to generalize the skill in a new setting.

Scott D. Buckley is the District's BCBA Behaviorist, and was so qualified without objection. He received his credential in 2007 and earlier graduated from an undergraduate program in psychology. Buckley lay the foundations of ABA theory and discussed how the field has grown to new applications. Different techniques and strategies must be applied depending on the ability level of a child who is on the spectrum. For example, discrete trial is used for a child who has greater challenges; and mending (ability to ask) is more important for those with limited verbal and language skills. Education must be geared to each child's abilities and disabilities. The goal is always to be able to fade away from those supports as the child demonstrates success. One hopes to be able to make the supports more abstract and socially

acceptable as a child advances.

Buckley described the progression of M.B. in the District since preschool age and how token board and discrete trial was faded. It was his recollection that the BIP was undertaken by a non-District professional because the parent did not trust him. Buckley implemented the BIP from January 2016 until the end of the school year through consultation with the teacher and regular visits to the classroom. It was his opinion that M.B. was too advanced for discrete trial so a “natural environment” was utilized with differential treatment to provide positive reinforcement. Buckley described the two priority negative behaviors that the BIP was geared to correct in M.B.: (1) non-compliances that meant refusing to follow through with a given request from an adult within five seconds; and (2) disruption that meant any instance when M.B. hit, kicked, threw an object, pushed, ripped, spit, dumps objects, or defaces objects. Data was collected on these two negative behaviors with the five-minute charts.

Buckley went on to describe the positive academic and social skills that were part of the ABLES curriculum, how they were broken down, how acquisition of the skill was measured, and how it was maintained. He stated that maintenance of skills was more of a focus than the acquisition of new skills in order to make sure the child did not lose the acquired skill and, more importantly, to give each child a sense of accomplishment so that s/he would be confident and enthusiastic for learning. Data was not collected on each of those skills.

Buckley testified that there was a discussion of how to tailor the BIP from the ABA pre-school to the BD kindergarten classroom at the May 2016 IEP meeting. The whole structure of the delivery of instruction between the two settings was very different. It was important to recognize that discrete trial was replaced with group instruction. In addition, M.B. would be earning points as rewards and much less frequently than in the full-day ABA class. Buckley agreed with the placement decision for M.B. for kindergarten because his growth and maturity had surpassed the ABA setting and was no longer an appropriate teaching environment for him. M.B. was already at the point where he can learn in a group setting and through imitation. With

respect to his BIP, the BD teacher Perinotti had the primary input into tailoring the reinforcement system within her classroom.

The BIP and its application to the BD classroom did become a topic of discussion at the October 24 meeting with J.B. Buckley recalled that the parent got very upset during the meeting because it was not being followed. Due to the contentious nature of the discussion, no progress was made at the meeting concerning a formal modification to the BIP. Buckley was unsure if the parent was also upset about the lack of continuation of the ABA discrete trial methodology. During the next CST meeting in December, when the parent was not in attendance, a modification to the BIP was proposed, discussed and agreed upon. Again, the teacher took the lead in drafting the changes. The elements that were carried over included the three-part prompt for compliance, and the count and mend. However, the data collection was modified to just tallying when they occurred because M.B.'s instances of disruptive behavior and noncompliance were already at very low levels.

The CST also incorporated the Safety Room into M.B.'s plan, which was only available at the Stoney Brook School. Buckley also explained that M.B. was ready for less intrusive strategies for countering the minimal amount of behaviors that required intervention. While M.B.'s mother did not consent to the CST recommendations, some of the modifications were just part of the BD classroom landscape. Buckley summarized that he had observed M.B. at least five times and found he is able to remain in the group setting, to follow teacher instructions, and to interact with his peers. Buckley also noticed that M.B. was eager to participate, giving the examples of a "Jar of Compliments" project that Perinotti had the class undertake and M.B.'s intelligent participation in story analysis.

Buckley was present during the observation of petitioner's expert Carol Fiorile. He noted of his own observations that M.B. was mostly compliant with the group dynamics, although he spoke out at times and once got out of his seat to throw out some trash without getting the teacher's permission. M.B. did not seem to enjoy the music lesson and the transition to OT was a little rough. Appropriate redirection was

needed and worked. M.B. did not elope or need restraining. His review of Fiorile's observations and comments led him to opine that she was overly focused on data collection and understated the integrated use of ABA strategies in the BD classroom.

During the May 2017 IEP meeting, J.B. questioned why her son was remaining in the BD classroom as his home base if he had near zero disruptive incidents and was academically above his average peers. He recalled that Perinotti had other reasons for her recommendation to gradually transition M.B. into a general education or resource room setting. Buckley was not recommending any continuation of his BIP because it had been unnecessary for quite a while. In fact, he was not in agreement with the forty-hour, twelve-month ABA program that the parent was advocating.

On cross-examination, Buckley confirmed that he has known M.B. since the fall of 2014. He was hesitant but believed that the parent had wanted inclusive and typical peer settings for M.B. He also agreed that the parent was pushing for a new FBA to be undertaken before any new BIP was proposed, and that she disagreed with the removal of the token economy reward system. Buckley noted that M.B. was not ready for inclusion at the start of kindergarten and so at that time, it was not advisable to try that even with BIP supports. The BD classroom offered him appropriate socialization opportunities with high-functioning peers. Buckley admitted that the decision on future inclusion will be subjective based on the teacher's observations of his compliance abilities rather than data on, for example, raising his hand to speak. Buckley also conceded that there were few objective measures being utilized to measure how M.B. was doing and whether he was generalizing the acquired skills.

Buckley was questioned on the IEP meeting at issue herein. J.B. was concerned about these aspects but her input was respected if not always accepted. Further, the May 2017 IEP meeting was described as tense. It was clear to Buckley and others on the CST that J.B. and Perinotti did not have a good relationship by then. From the perspective of the CST, Perinotti was one of the best teachers in the school and her judgment as to when M.B. would be ready for mainstream classes was given great weight by them. Buckley had reviewed the five-minute charts and the incidents of

bowel accidents but saw no pattern that concerned him and did not see the need for further analysis. His opinion of M.B. was also based on his own regular observations of him daily. On re-direct examination, Buckley noted that an earlier independent expert hired by petitioner had also recommended gradual transition to inclusion for M.B. By coupling the child with a 1:1 aide, there will be data recorded during the math inclusion class. Buckley expressed regret that the parent did not trust the CST or their plan for M.B.

Ivan Kaltman has been the Occupational Therapist for over twenty years for the District. He has worked with the behavior disabilities population for the approximately seventeen years. Kaltman is a licensed and certified occupational therapist in New Jersey, and he was so qualified at the hearing. He is also a coach in the PBSIS program. At the start of the 2016-2017 school year, he reviewed M.B.'s IEP and some of his school records, including a sensory diet, with his teacher and case manager to familiarize himself with the child. For example, the information reviewed stated that M.B. had graduated from using adaptive scissors. M.B.'s April 2016 IEP included one individual and one group Occupational Therapy (OT) session per week, each for thirty minutes.

Kaltman communicated weekly with M.B.'s parent through email regarding sessions and suggestions for at-home carry-over. When M.B. first started receiving occupational therapy from him, the boy said he hated handwriting and he had difficulty sitting still and staying at the desk. He would only write three letters before losing focus and would require either redirection or a break. Kaltman worked on M.B.'s sensory processing skills by using the sensory motor equipment within the therapy room. M.B. would be given a wide variety of choices. Kaltman noted that M.B. prefers movement and vestibular equipment, such as the suspended equipment to regulate his sensory processing. He developed learning activities to address his sensory processing needs. For example, M.B. might be instructed to use the various suspended equipment to collect objects to complete a puzzle. The sensory diet incorporated into the April 2016 IEP recommended a minimum of two to three times per day vestibular, proprioceptive, and oral motor input but specifically prescribed specific sensory strategies to be applied to

specific observed behaviors.

In kindergarten, Kaltman testified that M.B. has learned to recognize and communicate his wants and needs. For example, he now requests to go to the REST stop. He is also able to make appropriate choices of equipment and toys in the OT therapy room to help him self-regulate. When sensory strategies become a natural response, they become more meaningful and not just a strict routine. Accordingly, Kaltman explained that the effective strategies from the sensory integration diet were incorporated into the draft December 2016 IEP and May 2017 IEP without a strict regulated schedule.

Kaltman generally set forth that the goals and objectives to be accomplished in OT involve helping M.B. obtain sufficient visual-perceptual-motor skills to succeed in school and become effective in written communication. During the 2016-2017 school year, M.B. was paired with a general education student for the weekly group OT. During certain group sessions, M.B. and the other student practiced fine motor skills together by playing two player games. Fiorile happened to be there when they were being given a break time to play with a toy of their choosing. Kaltman does not facilitate social interactions during break time because the students chose to parallel play with different toys during that break. Both students made appropriate choices. Social interactions are an indirect benefit of group occupational therapy and not an occupational therapy goal or objective.

At the May 2017 IEP meeting, Kaltman recommended two individual sessions of Occupational Therapy for M.B. However, the parent felt that a group occupational therapy session was imperative. The CST accommodated that concern and for the May 2017 IEP, OT remained one individual and one group session.

Kaltman stated that while he emailed the parent weekly, he rarely received a response after the end of October. The parent stated in an October 10, 2016, email that she felt that choosing his hand dominance was more important than grip as “he [was] so discouraged already in writing.” Kaltman acknowledged that M.B. came into

his therapy sessions in the beginning of kindergarten hating handwriting. He explained to the parent that it is important to make handwriting a positive experience. Accordingly, he recommended that J.B. not work on tripod grasp during writing instruction but to work on “fine-motor manipulatives/activities that will increase finger strength, dexterity, and proprioceptive awareness.” In November, Kaltman noted that M.B. had five more capital letters to master but variability in his writing correlated to his focus and attention. By November 23, 2016, M.B. began to show more of a genuine interest in handwriting and not just something to complete to earn his break time. This resulted in Kaltman emailing the parent enthusiastically reporting that M.B. “was offered a break from his handwriting and he wanted to continue!”

By the end of November, M.B. was able to copy capital letters using the Handwriting Without Tears worksheets, at which time he progressed to forming capital letters on regular K-2 paper within the lines. When a student is able to use paper that typical peers use, there is no reason to continue to use adaptive paper. Kaltman sent K-2 lined paper home for J.B. to use with him. He attached drawing samples from a computer program that M.B. uses in OT sessions to improve visual-perceptual-motor skills. M.B.’s drawings show that M.B. has progressed and is capable of drawing or tracing curved lines and making shapes using a virtual piece of paper in a computer program. M.B. also drew a picture of buildings on the chalkboard with windows and window panes in January 2017.

Kaltman set forth that M.B. can draw age appropriate grade level objects. M.B. can color in pictures at grade level when he chooses to do so. He also can use basic cutting skills to complete class room activities and cut basic shapes, again when interested in doing so. M.B.’s writing samples show that he is capable of aligning his letters at baseline. This shows that he has grade-level visual motor skills. His handwriting samples demonstrate that he can write all of his upper case and lower-case letters. By February 2017, M.B. was writing sentences. Writing legible sentences is evidence of progression in written communication abilities and good visual-perceptual-motor skills. Kaltman determined that he can communicate in writing at grade level.

It is the opinion of Kaltman that M.B. is sensory seeking, meaning that he seeks out movement. M.B.'s behaviors may be exacerbated by his sensory processing deficits. M.B. may respond with more intensity or frequency than other typical peers when experiencing emotional dysregulation. Kaltman plans to work with M.B. on a program called the Emotional ABCs to help him further recognize his own feelings and the feelings of other students and provide him with techniques to help him calm himself.

With respect to the issue of his grip on a pencil, Kaltman testified that M.B. prefers to use a fist grip to provide a greater sense of stability in his hand. This is common in students who have difficulty processing sensory information from the proprioceptors in the muscles and joints. Kaltman introduced a variety of pencil grippers and that the child can use successfully but he prefers not to use them. Kaltman allows him to choose and does not insist on using grippers during writing instruction; however, using a tripod grasp remains an objective and it will continue to be addressed in the future. He stated that the fist grip is providing M.B. with what feels to him to be the right amount of force. In his experience, to push a student to use a grasp they are uncomfortable with will cause that child to frequently resist writing altogether and dislike writing. Since M.B. is capable of writing legibly and at an appropriate speed for his age, the tripod grip remains a goal but is secondary to the goal of enjoying writing and being a functional writer.

After M.B.'s occupational therapy sessions, Kaltman would report to the classroom teacher any behaviors that occurred that would have caused M.B. to lose points. It was his recollection that M.B. rarely lost points during occupational therapy. The final progress report indicated that M.B. achieved the ability to use basic cutting skills holding the scissors in the dominant or preferred hand to complete classroom activities across academic settings; achieved the ability to draw shapes, numbers, and letters with minimal verbal cues across a variety of academic settings; and achieved coloring in a designated area within a quarter-inch of the border. He is able to copy and write upper and lower case letters of the alphabet but has not mastered using the



appropriate top/bottom formation consistently. In Kaltman's professional opinion, M.B. has made significant progress in regulating his behavior and expressing himself through written communication in the 2016-2017 school year and that the May 2017 occupational therapy goals and objectives offered were individualized to address M.B.'s occupational therapy needs.

On cross-examination, Kaltman explained that his role in M.B.'s class as a coach in the PBSIS program is some small team building. His larger role is in the universal tier which encompasses the whole school. With respect to the issue of the child's pencil grip, Kaltman reiterated that it should not matter so long as his handwriting is legible and fast enough. For M.B., he needs the proprioceptive input he receives from his grip; however, strength and dexterity are still goals. Furthermore, he seems to enjoy writing a lot better since he started occupational therapy.

In general, Kaltman has observed that focus and dysregulation impact M.B. more than the actual formation of letters. There are some behavior issues that come with him into the therapy session, such as days he is just less attentive. M.B.'s behavior improved as the year progressed. If Kaltman saw him running in the hallways, he would report it to his teacher and he would lose a point. Occupational therapy does not set the behavioral goals and objectives for M.B. Kaltman also did not write the occupational therapy goals in the May 2016 IEP. For the next IEP, he did not re-write them if M.B. had not mastered them yet. Kaltman felt that he had lost contact with the parent as a result of this litigation.

On continued cross-examination, Kaltman could not recall how many of M.B.'s occupational therapy worksheets were shared with his mother. He also did not produce every piece of documentation during the prehearing discovery. Nevertheless, he communicated regularly with the parent by way of emails. The District sought clarification from Kaltman on re-direct examination with respect to the mastered goals, the pencil gripper, and his communications with J.B. Kaltman stated that he sent weekly emails along with attaching photos of projects done in therapy. He also discussed some guidance for therapy work that could be done at home. In sum,

Kaltman maintained that M.B. writes and uses scissors on grade level, except when his behavior or lack of attention interferes.

Kaltman had not yet started to work with the Emotional ABCs with M.B. during kindergarten but was planning on incorporating it. He did work with M.B. on not running in the halls and other dysregulating behavior such as resisting or balking. Kaltman was rarely seeing those behaviors by the end of the school year. While he works on M.B.'s behaviors that occur in OT sessions, Kaltman is not a behaviorist and did not write those goals and objectives in the IEP.

Susan Fabiano has been a Speech and Language Therapist for the District for fifteen years. She holds a Masters of Arts in Speech Pathology and have a Certificate of Clinical Competence and a license in New Jersey in the area of Speech Language Pathology. Fabiano was not cross-examined by petitioner and her pre-filed testimony was accepted as her direct testimony.

At the start of the 2016-2017 school year, which was the first year working with M.B., Fabiano reviewed his IEP and his most recent speech evaluation from April 2016. The evaluator noted that M.B. refused to participate in doing the sentence imitation subtest and quit part-way through his oral vocabulary test by stating he did not want to do it and refused to respond to any more items. It also set forth that M.B. has average expressive and receptive skills for his age.

Fabiano described that she communicates with the parent through a speech book which is sent home weekly. The parent was asked to practice articulation with M.B. and was provided with worksheets. M.B.'s parent rarely made check marks or signed the worksheets so it was difficult for Fabiano to know whether they were practicing the skills at home. In her experience, children who have parents that practice articulation skills at home progress through the program more rapidly and generalize faster.

Fabiano also communicated with M.B.'s classroom teacher on a weekly basis. She would be advised as to which words and sounds were being worked on and would prompt M.B. to correct his pronunciation in class. M.B. had group speech therapy and was paired with a general education student who has speech-only needs for the 2016-2017 school year. M.B. worked on both articulation and pragmatic language skills during speech therapy sessions.

In the April 2016 IEP, M.B. had two articulation goals, which were not written by Fabiano. Both were written as one goal to correctly produce the "l" and "r" sounds in conversational speech with intensive assistance at 60%. In articulation, M.B. has carried over production of "l" sounds into spontaneous speech. M.B. achieved an appropriate placement of the tongue for the lingual "l" in conversational speech. The "r" sound was still being worked on in words and sentences at the time of Fabiano's testimony. She noted that the "r" sound occurs later developmentally in children and does not always mature until eight years old. There is no way to determine when a student will be developmentally ready to produce the "r" sound, so it is worked on at earlier ages as well. Fabiano disagreed with the Fiorile evaluation in which she stated that M.B. has difficulty with "clear articulation". Fabiano explained that clear articulation is not a definable speech term and the concept of clear articulation is an over-generalization. M.B.'s speech is intelligible and people can understand what he is saying. However, M.B. qualified for speech due to certain specific articulation needs. M.B. still needs to work on producing the "r" sound. For example, when referring to his sister he may say "my sist-ah".

Fabiano also works with M.B. on pragmatic language to develop social skills. One goal was to work on greetings. When M.B. enters the speech therapy room, she waits for the appropriate greeting. If he did not initiate a greeting, she marked it down for that day and prompted M.B. to greet me and the other student. By the end of the year, M.B. consistently entered the speech therapy room and provided an appropriate introduction.

Fabiano also described working with M.B. in problem-solving both through picture card prompts and in social context of group interactions. She stated that he needed direct correction on this skill and took most of the year to fade out his habit of more aggressive or inappropriate interaction. This also went hand-in-hand with instruction in pragmatic language skills such as turn-taking. M.B.'s social skills were also deliberately tested by Fabiano by setting up some situations that were typically tough for him, such as not being allowed the choice of the game piece unless he asked politely. By April, M.B. was coping in a more appropriate manner when given the opportunity to discuss the given situation, to choose alternative appropriate responses and solutions, and to respond to verbal cues during speech therapy sessions. By the end of the 2016-2017 school year he was expressing, "That's not fair" and "I wanted to win" with minimal verbal cues and he is able to come to reasonable conclusions, such as sometimes you win and sometimes you do not.

Fabiano maintained data on M.B.'s on inappropriate responses as well as progress in the speech skills. She also stated that she set forth his then-present levels of performance in the May 2017 IEP. At the May IEP meeting the parent expressed concern with M.B.'s oral motor tone. She stated that he sticks his tongue out when resting. The parent wanted oral motor therapy. Fabiano responded that she had never observed M.B. sticking his tongue out during speech therapy or in his classroom. She agreed to keep an eye out for this. After the May IEP meeting, Fabiano testified that she had still never seen M.B. stick his tongue out. In her professional opinion, M.B.'s oral motor skills are fine but in response to the parent's request, she added an oral motor movement goal to support articulation of sounds.

In conclusion, Fabiano testified that M.B. had made tremendous progress in speech during the 2016-2017 school year. He seemed to like coming to class; he is allowed to move about the classroom; and she has not had many problems with him as a student.

J.B. also testified in these proceedings in support of her due process petition on behalf of her son. J.B. is a single parent, having been widowed in 2015. She stated

that she noticed some developmental issues with M.B. as early as six months old. Prior to entering the district, M.B. attended a regular preschool and received supports through Early Intervention including Speech, O.T., P.T., ABA and Developmental Intervention. Early Intervention determined global delays and speech delays. M.B. was initially diagnosed with Autism Spectrum Disorder in April 2014 by Dr. Marilyn Ruiz at the Center for Child and Family Development in Morristown, New Jersey.

J.B. reviewed the educational history of her child. M.B. started in the District's preschool integrated regular education classroom in September 2014. By the end of that school year, he was spending a half day in both a self-contained classroom and an inclusion preschool. J.B. sought to obtain an independent Functional Behavior Assessment. Melissa Donofrio, BCBA, conducted the evaluation, wrote a report, and prepared the FBA in November 2015, discussed above.

J.B. stated that M.B.'s behaviors and social skills had actually gotten worse in the District preschool compared to Early Intervention. She felt that she had no choice but to place him in the self-contained ABA program for the 2015-2016 school year to address his skill decline. She and Kristin Novembre, M.B.'s teacher in the ABA classroom in November of 2015, adjusted the FBA. The staff, with whom J.B. felt she had a good working relationship, allowed her to come to the classroom, show them strategies that she found worked with M.B., and share her conversations from Donofrio. While she noted that M.B.'s social skills were not specifically addressed, she thought his behavior improved because of the individualized BIP which included token economy, positive reinforcement from staff and specific programming for skill acquisition.

At the spring 2016 IEP meeting, Buckley informed J.B. that even though M.B. needed an inclusive kindergarten with ABA supports, the District did not have such a program. Therefore, they were recommending the BD class with OT and Speech related services at the Stoney Brook School. J.B. recalled being told not to worry because M.B.'s IEP required the continuation of his BIP, Sensory Diet, as well as a continuation of his ABA program. J.B. agreed but insisted on an independent

Psychoeducational and Neuropsychological Evaluation, ultimately undertaken by Dr. Catherine O'Sullivan, Psy.D., and an observation of the proposed placement.

The District received Dr. O'Sullivan's report on September 9, 2016, and sent it to the mother on or about September 30, 2016. A CST meeting was convened on October 24, 2016, to discuss Dr. O'Sullivan's report. J.B. felt that instead of reviewing the report, the District essentially rejected it and proposed to do away with the BIP. J.B. did not agree with eliminating the BIP and requested an updated Functional Behavior Assessment.

J.B. testified that M.B.'s behaviors got worse that year, that the BD teacher was a bully and was not following the BIP, and that the staff were using their own strategies to control his behaviors. She commented that M.B. soiled himself dozens of times and that the issue was never addressed. M.B. engaged in disturbing behaviors at home including self-injury and calling himself stupid. On many occasions, he told his mom that his teacher was a bully.

After several scheduling attempts failed to reach consensus or accommodate the parent's schedule, the District conducted another meeting on December 8, 2016, without her present. It again recommended doing away with the BIP. Due to the previously mentioned due process petition, those proposed changes were not allowed to go into effect. J.B. retained counsel and hired Dr. Carol Fiorile, BCBA-D, to conduct an evaluation. Her evaluation was produced to the District on or about June 9, 2017.

On May 3, 2017, an IEP meeting was held for the 2017-2018 school year. J.B. requested at the IEP meeting that M.B. be placed in a small class -- no more than twelve students -- in a structured but typical first grade with a trained ABA shadow. She also requested that an outside BCBA be hired. The parent requested an in-class support class with additional services. If the first suggestion for an in-district ABA program was not feasible then the mother specifically asked that the District refer and place M.B. at the Morristown CABAS Program. The parent made it clear that she felt that Perinotti was a bully, that she ignored M.B.'s needs, and that M.B. felt she was a

bully. She also conveyed to the CST that MB is significantly stressed out and that she saw no improvement in his social skills. She stated that she wanted him to be in an inclusion setting next year and out of the BD program. J.B. testified that at the meeting, M.B.'s teacher raised her voice at the parent and said: "I will decide when he's ready for inclusion" and "I'm the best teacher in the district and I will decide when he is ready." The team ignored her and offered the BD class for first grade with inclusion.

J.B. never saw any transition or data-based plan to help M.B. learn in inclusion. She believed that the issues raised by Perinotti, like M.B. not raising his hand, being disruptive and not paying attention were not being addressed in the IEP at all. Further, she stated that the IEP does not address M.B.'s main area of deficits in social and communication skills, which that concluding school year was worked on in a group one time a week for thirty minutes. J.B. expressed concern that Evans' report showed no progress and had no measurable goals or data. She also commented that the IEP does not inform her as to what they are doing to address his deficits and how they intend to measure his progress in an objective measurable way. J.B. supplemented her testimony by stating that M.B. flourished in the ABA classroom and that she thought the BD classroom would just be a buffer year. She wants inclusion for him so long as the BIP and Sensory Diet follow him there.

On cross-examination, J.B. reiterated that M.B. has been diagnosed with ADHD, Autism Spectrum Disorder, and Sensory Processing Disorder. Her son did not begin speaking until he had tubes inserted into his ears. She was asked to review the history of the FBA and BIP during 2015. Initially, she did not consent to the BIP in the summer when it was issued to the District because she had not been given a copy until the last minute and did not have time to review it. J.B. did consent to the revised BIP dated November 25, 2015. There were no revisions to it for the 2016-2017 school year, although Perinotti admitted that she did not follow it.

J.B. explained that she felt deliberately left out of the CST process in the fall of 2016 when they scheduled the subsequent meeting specifically for a time that they knew she could not attend. She even paid to have Dr. O'Sullivan available for it. J.B.

maintained that the experts have recommended an ABA program for M.B., even though he is higher functioning.<sup>3</sup> She acknowledged that this is not equivalent to discrete trial ABA. J.B. would be in favor of an inclusion class with ABA and Sensory Diet components, but the District does not have such a setting. She was adamant against M.B. returning to the BD classroom for first grade but the District has no other ABA classrooms that are appropriate for him. Accordingly, she was advocating for M.B. to be placed in the Morris CABAS program.

J.B. was asked to clarify her testimony on M.B.'s use of foul language. She stated that he sometimes used negative or bad words such as "stupid," "dumb," or "retard." He also sometimes used profanity. The latter was admittedly not observed by anyone other than herself. J.B. tried to bring it to the teacher's attention by email early in the school year but she received no response. On redirect examination, J.B. reiterated her frustration that the District would never agree to a new FBA before modifying the BIP, and that his skills were not being objectively measured. She also felt that parents were not taken seriously or their input genuinely considered by the District.

Carol A. Fiorile was presented as an expert witness by petitioner. Dr. Fiorile is certified in the field of Applied Behavioral Analysis as a BCBA-D. She has served as a consultant for over ten years and has worked with children on the autism spectrum for twenty-three years. She has been qualified in numerous court proceedings and I also qualified her as an expert in Applied Behavioral Analysis without objection. Dr. Fiorile first met M.B. in January 2017 when she was retained to conduct an evaluation and undertake an observation.

Dr. Fiorile summarized her findings. She described M.B. as bright and cute but also impulsive. He has some difficulty with staying focused or sitting without a preferred reward. In general, Dr. Fiorile was recommending inclusion for M.B. for both academic and behavioral reasons but considered general education math to be the wrong starting

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<sup>3</sup> I note that Catherine O'Sullivan, Psy.D., who undertook an independent Psychoeducational and Neuropsychological Evaluation of M.B. in the summer of 2016 at the request of the parent and District, questioned the diagnoses of Autism Spectrum Disorder and ADHD, and suggested that M.B. might no longer qualify under those classifications.



point because it would require too much numerical handwriting. Reading would be a better choice for a starting point for M.B. Dr. Fiorile also believed the child should still be on a token reward system, and might benefit from shadowing by a Registered Behavior Technician.

More specifically, Dr. Fiorile noted that M.B. needed redirection eleven (11) times during thirty-six (36) minute portion of her observation. He kept his feet and hands to himself but was not following directions and did not exhibit self-control. M.B. was not interacting with his peers and there was no social instruction being provided to improve those interactions. She also indicated that the BIP was not being used at all and there was no token economy in the classroom, which she indicated could be re-instituted just for him without stigma. To Dr. Fiorile, it did not appear that the BD classroom was based on ABA. While Perinotti seemed to have sound instincts, she would benefit from additional training to handle a child with M.B.'s behaviors. Dr. Fiorile also recommended inclusion for M.B. for both academic and behavioral reasons, and described a high-level ABA with a strong academic aspect. She also remarked that the presence of teacher or aide prompts means that he has not yet mastered that skill.

Dr. Fiorile testified with respect to the issue of M.B.'s pencil grip and handwriting efforts. She articulated that it can be difficult for a child to change from a fist grip and that M.B. might be teased for a "baby grip." Dr. Fiorile found an irreconcilable conflict in the objectives and goals of the IEP with the report of mastery at 80%. For example, M.B. cannot write all his numbers, which is why she did not recommend math as the first mainstreaming.

On cross-examination, Dr. Fiorile agreed that data collection on M.B.'s behavior of calling out during class had not been specified in the 2015 BIP. Nevertheless, she maintained that redirection without data collection is not an ABA strategy. It was clarified that Dr. Fiorile did not have all the available progress reports, data sheets, the FBA, or Buckley's report prior to the submission of her own. I find that Dr. Fiorile was inconsistent with her recommendations by stating both that a fist grip would open M.B. to teasing but not his reliance on a token reward system.

## FINDINGS OF FACT

Based upon due consideration of the testimonial and documentary evidence presented at the hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility and expertise, where applicable, I **FIND** the following **FACTS** by the preponderance of the credible evidence:

1. M.B. is a child with some behavioral and dysregulation issues that impact his ability to access education but they have been decreasing and were under better control during his kindergarten year.

2. M.B. has above-average intelligence and is able to access the academics of his typically developing peers if his behaviors remain regulated or self-regulated.

3. M.B. has improved the self-regulation of his previously disruptive behaviors and takes advantage of the REST and Safety Room resources.

4. M.B. has matured considerably since pre-school, and a full-day, full-year ABA program is no longer appropriate or necessary.

5. M.B. made genuine progress in speech and OT therapies during the 2016-2017 school year.

6. M.B. was ready at the end of kindergarten for gradual mainstreaming into general education or resource room academics for first grade, accompanied by a 1:1 aide and supports.

7. The BD classroom is appropriate as a home-base classroom for M.B. in first grade.

8. The BD teacher is in the best position to make the initial recommendation, subject to acceptance by the CST of which the parent is a member, the academic area for gradual mainstreaming. The parent's expert's recommendation should be

specifically considered, and there are sound reasons to consider reading.

9. There was near unanimity that M.B. would benefit from being in a more inclusive setting with typically developing peers, with structural supports.

### **LEGAL ANALYSIS AND CONCLUSIONS**

State and federal laws require local public school districts to identify, classify and provide a free and appropriate public education (FAPE) to children with disabilities. 20 U.S.C.A. § 1412; N.J.S.A. 18A:46-8, -9. As a recipient of federal funds under the IDEA, the State of New Jersey has a policy that assures all children with disabilities the right to FAPE. 20 U.S.C.A. § 1412. The responsibility to provide FAPE, including special education and related services, rests with the local public school district. 20 U.S.C.A. § 1401(9); N.J.A.C. 6A:14-1.1(d). In accordance with N.J.S.A. 18A:46-1.1, the burden of proving that FAPE has been offered likewise rests with school personnel. FAPE is an education that is “specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction. G.B. v. Bridgewater-Raritan Reg’l Bd. of Educ., 2009 U.S. Dist. LEXIS 15671, \*5 (D.N.J. Feb. 27, 2009) (citing Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 189, 102 S. Ct. 3034, 3042, 73 L. Ed. 2d 690, 701 (1982)). FAPE includes special education and related services that are provided at public expense under public supervision and direction and without charge; that meet the standards of the State Educational Agency; that include an appropriate preschool, elementary and secondary school education; and that are provided in conformity with an IEP as required under 20 U.S.C.A. § 1414(d).

Federal law is complied with when a local school board provides a handicapped child with a personalized education program and sufficient support services to confer some educational benefits on the child. Rowley. In Rowley the Court determined that although the Act mandates that states provide a certain level of education, it does not require states to provide services that necessarily maximize a disabled child’s potential. Instead, the IDEA requires a school district to provide a basic floor of opportunity. Carlisle Area Sch. v. Scott P., 62 F.3d 520, 533-34 (3d Cir. 1995). While our courts

have consistently held that the IDEA does not mandate an optimal level of services, an IEP must provide meaningful access to education, and confer some educational benefit upon the child. Rowley, 458 U.S. at 192. In order to be appropriate, the educational benefit conferred must be more than trivial. Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238 (3d Cir. 1999). The central legal issue is whether the educational services and program offered are sufficient to confer an educational benefit that is meaningful and significant and, therefore, not de minimus, in nature. Lascari v. Ramapo Indian Hills Regional Sch. Dist., 116 N.J. 30 (1989).

The educational opportunities provided by a public school system will differ from student to student, based upon the “myriad of factors that might affect a particular student’s ability to assimilate information presented in the classroom.” Rowley, 458 U.S. at 198. The Rowley Court recognized that measuring educational benefit is a fact-sensitive, highly individualized inquiry, and that “[i]t is clear that the benefits obtainable by children at one end of the spectrum will differ dramatically from those obtainable by children at the other end, with infinite variation in-between.” Id. at 202.

In this matter, petitioner has challenged whether her son’s placement under the May 2017 IEP for the (now almost concluded) 2017-2018 school year would provide him with FAPE, all other claims or potential past claims having been withdrawn. Claims as to what actually transpired during the period of these proceedings with a unilateral home placement are not cognizable either at this time. Accordingly, I agree with the District and **CONCLUDE** that petitioner cannot seek compensatory education for a year that was not legally encompassed within this proceeding; nor, at least at this juncture, for a year that had not yet occurred at the time of this proceeding.

As has been stated by others, the IEP is intended to be a framework and it is not necessary for every strategy detail to be mentioned in the IEP as said details and strategies are best left to the classroom teachers. See S.N. and G.N. o/b/o I.N. v. Washington Twp. Bd. of Educ., 2011 N.J. AGEN LEXIS 189 at \*10. Failure to conduct a new FBA and failure to utilize strict ABA methodology and its method of data collection does not result in a denial of a FAPE, especially for a child who is potentially

not on the spectrum anymore. Measurable progress toward achieving behavioral and academic goals has been adequately testified to by the District's professional staff. Even Dr. Fiorile was not opposed to a gradual mainstreaming approach for M.B. although she recommended that he start with reading rather than math.

In sum, I **CONCLUDE** that the District has met its burden of proof that the May 2017 IEP proposed by the District for the 2017-2018 school year was designed to confer a meaningful educational benefit on M.B. in the least restrictive environment. As the Supreme Court in Rowley cautioned, courts lack the "specialized knowledge and experience" necessary to resolve "persistent and difficult questions of education policy." Id. at 713. Therefore, courts must avoid imposing their views of preferable educational methods upon the responsible authorities. Once it is shown that the Act's requirements have been met, questions of methodology are for resolution by the responsible authorities. Thus, while reasonable educators or experts might disagree, I **CONCLUDE** that an out-of-district placement is not necessary for M.B. to receive FAPE and that the 2017 plan for gradual mainstreaming inclusion provided him with meaningful educational opportunity in the least restrictive setting.

### **ORDER**

For the reasons set forth above, it is **ORDERED** that the relief sought in petitioners' due process petition is **DENIED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2017) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516 (2017). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education Programs.

June 6, 2018

\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
**GAIL M. COOKSON, ALJ**

Date Received at Agency

6/6/18

Date Mailed to Parties:  
id

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**APPENDIX**

**LIST OF WITNESSES**

**For Petitioners:**

J.B.

Carol Fiorile

**For Respondent:**

Samantha Evans

Cassie M. Perinotti

Scott D. Buckley

Ivan Kaltman

Susan Fabiano

**LIST OF EXHIBITS IN EVIDENCE**

**Joint**

J-1 Occupational Therapy Evaluation by Mary Ann Loreng, dated May 2, 2014

J-2 Functional Behavior Assessment by Melissa Donofrio, BCBA, dated June 29, 2015

J-3 Reevaluation Planning Notice, dated March 1, 2016

J-4 Educational Evaluation by Sharon Cohen, dated March 14, 2016

J-5 Psychological Assessment by Sarah Florio, dated April 11, 2016

J-6 Speech Language Evaluation by G. Falster, dated April 19, 2016

J-7 IEP, dated April 27, 2016

J-8 Sensory Strategies attached to the IEP, dated April 27, 2016

J-9 Behavior Improvement Plan Revised by Kristin Novembre, dated November 25, 2015

J-10 Independent Psychoeducational and Neuropsychological Evaluation by Catherine O'Sullivan, received September 9, 2016

J-11 Letter to Parent from Samantha Evans, enclosing Independent Evaluation, dated September 20, 2016

- J-12 Notice of Annual IEP Review, for October 21, 2016, dated September 30, 2016
- J-13 Notice of Annual IEP Review for October 24, 2016, dated October 17, 2016
- J-14 IEP sign-in sheet, dated October 24, 2016
- J-15 Proposed Behavior Intervention Plan discussed at IEP meeting, received by J.B. on October 24, 2016,
- J-16 Email from Samantha Evans to Parent, dated October 28, 2016
- J-17 Notice of Annual IEP Review for November 18, 2016, dated November 9, 2016
- J-18 Email dated November 3, 2016, from Samantha Evans to Parent proposing IEP meeting date
- J-19 Email dated November 4, 2016, from Samantha Evans to Parent proposing IEP meeting date
- J-20 Email dated November 9, 2016, from Samantha Evans to Parent confirming IEP meeting date
- J-21 Email dated November 17, 2016, from Samantha Evans to Parent proposing IEP meeting date
- J-22 Email dated November 28, 2016, from Samantha Evans to Parent proposing IEP meeting date
- J-23 Notice of Annual IEP Review for December 7, 2016, dated November 28, 2016
- J-24 Email from Parent to Samantha Evans Re Inability to Attend IEP meeting dated December 7, 2016
- J-25 IEP, dated December 8, 2016
- J-26 Progress Reports for 2016-2017 School Year
- J-27 Report Card for 2016-2017 School Year
- J-28 Group Counseling Notes and Sample Lesson Plans, Samantha Evans, from December 2016
- J-29 PowerPoint to Parents, Orientation September 2016
- J-30 Daily Behavior Charts for 2016-2017 School Year
- J-31 Five-Minute Interval Data for 2016-2017 School Year
- J-32 Sample of Social Stories
- J-33 Sample of Daily Schedules
- J-34 Sample of Levels of Preferences for M.B.
- J-35 Independent Reading Level Assessments, 2016-2017 School Year



- J-36 Envision Math Assessments, 2016-2017 School Year
- J-37 STAR Literary and Math Assessments, dated September 23, 2016, December 13, 2016, and May 22, 2017
- J-38 M.B. Writing Samples, 2016-2017 School Year
- J-39 M.B. Speech Book, 2016-2017 School Year
- J-40 Weekly Emails from Ivan Kaltman, O.T., to Parent, 2016-2017 School Year
- J-41 Monthly Emails from Scott Buckley to Parent Re: providing charts for non-compliance and disruptive behavior data, 2016-2017 School Year
- J-42 M.B. Behavioral Program Assessment, Scott Buckley
- J-43 Incident Notification Reports, 2016-2017 School Year
- J-44 School Bus Misconduct Reports, 2016-2017 School Year
- J-45 Assistive Seating
- J-46 IEP, dated May 4, 2017
- J-47 School Observation and Educational Evaluation, Carol Fiorile, dated February 9, 2017 and received by District June 9, 2017
- J-48 Board Policy 5561 – Use of Physical Restraints
- J-49 Autism Program Quality Indicators from the New Jersey Department of Education
- J-50 Carol Fiorile, BCBA-D, Curriculum Vitae
- J-51 Resume of William G. Shlala, Interim Director of Special Services
- J-52 Resume of Samantha Evans, School Psychologist and Case Manager
- J-53 Resume of Cassi M. Perinotti, Behavioral Disabilities Teacher
- J-54 Resume of Scott D. Buckley, MA, BCBA, District Behaviorist
- J-55A Resume of Susan Fabiano, Speech Language Specialist, Rockaway Township School District
- J-55B Pre-Filed Testimony of Susan Fabiano, Speech Language Specialist, Rockaway Township School District
- J-56A Resume of Ivan Kaltman, M.A., Occupational Therapist, Rockaway Township School District
- J-56B Pre-Filed Testimony of Ivan Kaltman, Occupational Therapist, Rockaway Township School District
- J-57 Article regarding hand grips from OT

J-58 Sample of M.B.'s handwriting with and without using gripper

For Petitioner:

- P-1 Pencil Grip
- P-2 Pre-Filed Testimony of J.B.
- P-3 [duplicate of J-49]
- P-4 [duplicative of J-2]
- P-5 Behavior Intervention Plan, Melissa Donofrio, BCBA, dated August 28, 2015
- P-6 [duplicate of J-15]
- P-7 [not in evidence]
- P-8 [not in evidence]
- P-9 Email from Parent to Samantha Evans, dated October 25, 2016
- P-10 Email from Samantha Evans to Parent, dated October 28, 2016
- P-11 Email from Parent, to Samantha Evans, dated November 1, 2016
- P-12 Email from Parent to Samantha Evans, dated November 3, 2016
- P-13 [not in evidence]
- P-14 [not in evidence]
- P-15 [not in evidence]

For Respondent:

None.