



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

R.T. AND N.T. ON BEHALF OF R.T.,

Petitioner,

v.

DELRAN TOWNSHIP

BOARD OF EDUCATION,

Respondent.

OAL DKT. NO. EDS 03081-20

AGENCY DKT. NO. 2020-31334

R.T. and N.T., for petitioner, pro se

Caitlin W. Lundquist, Esq., for respondent (Busch Law Group, attorneys)

Record Closed: June 14, 2021

Decided: July 20, 2021

BEFORE **JUDITH LIEBERMAN**, ALJ:

STATEMENT OF THE CASE

Petitioners challenge the IEP proposed by the Delran High School (“DHS” or “Board”). The Board previously placed the student in an out-of-district high school, which provided him with an appropriate program. The IEP at issue proposed placement at the in-district high school, which is now able to offer the requisite program.

PROCEDURAL HISTORY

On February 13, 2020, R.T. filed a due process petition in which he contested the determination that he return to Delran High School. The matter was transmitted by the Department of Education, Office of Special Education Programs (OSEP), to the Office of Administrative Law (OAL), where it was filed on March 4, 2020, as a contested case. N.J.S.A. 52:14B-1 to B-15; N.J.S.A. 52:14F-1 to F-13. A hearing was conducted on September 9, 2020, January 11, 2021, and January 13, 2021, via Zoom video technology, due to the COVID-19 pandemic. Petitioner's parents, R.T. and N.T., testified with the aid of an interpreter. On a final hearing date of June 14, 2021, no further testimony or oral argument was needed. The record closed that day.

FACTUAL DISCUSSION AND FINDINGS

The following is undisputed and, therefore, I **FIND** the following as **FACT**:

1. R.T. and his parents R.T. and N.T. are residents of Delran Township.
2. R.T.'s birthday is May 14, 2001. He is currently twenty years old.
3. R.T. is eligible continue in high school through the 2021-2022 school year.
4. R.T. is eligible for special education and related services due to the classification of autistic. J-5, J-7, J-10, R-2.
5. Pursuant to petitioner's individualized education plans (IEPs) developed by Delran's CST, he was placed in an out-of-district program at MHS. His program is a multiply disabled (MD) self-contained program "so that his needs may be better

met in a self-contained class within a regular high school, with opportunities for mainstreaming.” J-5 at 2. R.T.’s parents agreed with the placement.

6. Had petitioner not been placed in an out-of-district placement, he would have attended DHS, given his residence.
7. Petitioner attended MHS and participated in this program during his ninth, tenth, eleventh, and twelfth-grade school years.
8. The program and placement provided to M.T. at MHS was appropriate to meet his special education needs.
9. On February 7, 2020, when petitioner was eighteen years old and in the twelfth grade, his CST proposed continuation of the MD special class within the Delran School District. The CST wrote in R.T.’s February 7, 2020, IEP that “Delran High School now has a similar program and is recommending this student attend DHS’ program for the upcoming school year. An IEP meeting was held to discuss this transition. Staff are available for a tour, and support staff are also available next year to help with a smooth transition.” R-2 at 16. The IEP explained the recommendation as follows:

DHS “will now have a 18-21 Transitional Self-Contained program starting in September of 2020, which mimics [MHS’] program that [R.T.] is currently in. It is recommended that [R.T.] continue his education at DHS’ new program, however, the student also has the option to graduate this year, or mediation can be filed for the student to continue their education at MHS. Dr. Della Vecchia was also present to further discuss DHS’ program with the parents and answer any questions they may have. [New Jersey Division of Vocational Rehabilitation] staff was present at the meeting as well to discuss and support this student to find a meaningful career.

[R-2 at 17.]

10. R.T. is eligible for special education and related services until the end of the 2021-2022 school year, which is the year during which he will turn twenty-one years of age.
11. R.T. has remained enrolled in MHS pending the outcome of his due process petitioner.

Testimony

For respondent:

Dr. Lisa Della Vecchia has been the director of student services for Delran Township Public Schools since July 2017. As director of student services, she oversees and supervises the CST and the District's special education department. She holds Master of Arts and Doctorate degrees in educational leadership. She is certified as a school administrator and school principal. She testified as an expert in the areas of public education, special education, special education and school administration and as a school principal.

Dr. Della Vecchia learned of R.T. on or about October 2017, when she conducted a review of the students who were in out-of-district placements. R.T. was in the tenth grade at that time. His program at MHS was "a multiple disabilities class, which is a self-contained class at the high school[.]" T1¹ 48:12-13. R.T. was "taking educational classes to fulfill his graduation requirements" as well as life skill classes and community-based instruction. T1 48:14-15. Prior to the placement at MHS, R.T. attended elementary school in the Delran Township School District, through the end of eighth grade. His placement involved a self-contained classroom and speech and language therapy services. This program was determined to be necessary based on his diagnoses of autism; he also had

¹ T1, T2 and T3 refer to the transcripts of the September 9, 2020, January 11, 2021, and January 13, 2021, hearings in this matter. The citations are followed by the referenced page and line numbers.

an anxiety disorder, ADD, static encephalopathy and a relatively low IQ. He required support to develop academic and functional life skills.

In preparation for his transition to high school, R.T.'s IEP team determined that DHS did not have a program that could appropriately meet his needs. While DHS had a special education program, it did not have a self-contained program or classroom. DHS did not consider a program other than a self-contained program because, based on "both his diagnoses and cognitive ability, it would only make sense to keep him in a self-contained environment on the life skills track. And we did not offer that at that time." T1 51:22 – 52:1. Because MHS offered the desired program, R.T.'s IEP placed him there.

On February 7, 2020, during an annual IEP review meeting, it was proposed to R.T.'s mother, N.T., that DHS had a program that was identical to that offered by MHS. Dr. Della Vecchia and Lauren Hood, R.T.'s case manager, explained that the program "basically . . . mirrors [MHS]; it's the exact same program just at DHS." T1 58:3-5. "Other than the location, there is no difference." T1 66:18. Dr. Della Vecchia explained that the program, the "18 to 21 transitions program," is a "structured learning experience" ("SLE"). T1 53:23. It is a five-day per week program; four days are devoted to transition services, in which the students work in the community. Community instruction is provided one day per week. The instructors are certified as SLE instructors. With respect to the student's job activities, they may change every few weeks depending upon the student's profile and interests. The students are provided job coaches who go with the students to their employment activities. The students also help with the school store, a roof garden, a café and a STEM lab. The students spend approximately 40 percent of their school day in the classroom receiving transition classes, workplace readiness classes, and health and physical education instruction. They spent about 60percent of the school day in the community, participating in job training and community-based instruction.

The teacher in the proposed program is a certified special education and general education teacher, with over twenty-five years of experience. A behaviorist, who worked with the District for over ten years and specialized in working with students with autism, is also a member of the staff. Paraprofessionals who work with the students in the program classroom are certified registered behavioral technicians. Certified speech

therapists also work with the students. Dr. Della Vecchia highlighted the importance of these professionals' participation in the program and noted that this is different from what is offered at MHS. She explained:

[F]or Delran specifically, they are really the most important people to the program, in my opinion. The classroom teacher is with the students every single day, as well as the paraprofessional that's [registered behavior] certified. They're with the students every day, all day, and are the leaders of implementing the IEP, as well as success for the students. And the behaviorist is available and consulted checks in, does observations. She . . . and our speech therapist go out anywhere from one to two times a week with the students, to observe how they're doing in their placement. And our behaviorist does a lot of the assessments lets related to where we place them in jobs.

[T 69:22 - 70:11.]

Dr. Della Vecchia discussed how these staff members would support R.T.'s specific academic and social and emotional needs. She explained that DHS' IEP involved assignment of a two-to-one paraprofessional who would serve as R.T.'s job coach when he interacted in the community. The paraprofessional would be assigned to only one other student. He or she "would be able to give R.T. breaks when needed, whether that sensory breaks or just breaks from the classroom and general; as well as support him in his workplace readiness, in his job placement skills because he or she would physically be with R.T. when he's out in the community." T1 76:12-18. The behaviorist would conduct many of R.T.'s assessments and work with his behavior plan. The assessments would "relate to [R.T.'s] job placements and [his] satisfaction in those placements." T1 76:24-25. With respect to other personnel, Dr. Della Vecchia explained:

The school social worker is also a licensed professional counselor. The school psychologist would support R.T. with his mental health needs. What that means is, they check-in on the class daily. So they will walk in. They will consult with either the paraprofessional or the teacher, just to see how the students are going and see if they need anything. Lastly, both myself and the supervisor of special education or their several

times a week doing the same, just as a consultant, to check-in and see if there's needs to be addressed.

[T1 76:25-77:10.]

Dr. Della Vecchia acknowledged that R.T.'s parents explained that his anxiety is a significant problem for him. To address this, Dr. Della Vecchia and Hood explained that R.T.'s transition from MHS to DHS would begin before the program was scheduled to commence. R.T.'s parents were invited to visit DHS's ESY² program as many days as they wanted. The February 7, 2020, IEP provided for ESY for R.T. from July 1, 2020, to July 28, 2020. The IEP proposed that R.T. would continue at MHS for ESY, with transportation provided to MHS, and he would visit DHS and engage in transition services during the summer. While R.T. continued to attend MHS during the ESY term, DHS staff would work with him to help orient him to the DHS. They would, thus, "take those four to five weeks for him to be able to transition over the summer to [DHS.] So he would be kept in an environment in which he has been, and felt safe in, and be introduced to the new environment at [DHS.] T1 85:2-7. Dr. Della Vecchia further explained the transition process:

[W]hat this means is getting to know the high school, getting to know the staff members that he would see daily. We also have a school psychologist and a school social worker on staff at all times in the high school. Therefore, we had offered Mom for daily check-ins for transition, as well both for ESY and for when he would return to Delran. So that could just be mental health check-ins. . . . Lastly . . . obviously we would monitor this the entire time and see how he was doing. We lastly said that if there was any concern for his anxiety or any of his transition, as far as it relates to their mental health, we would provide additional evaluations if needed. It was our intention to effectively transition him slowly over to the program; make and feel comfortable, regain his trust. And understanding that this was a wonderful program for him. We would never want to just drop them into a brand-new program and expect him to do well. So we just wanted to do a slow introduction. Mom described his anxiety being pretty bad, which I can

² ESY stands for extended school year. It is a "service that's provided in the summer to students that are eligible under special education code for regression and recoupment of skills." T1 83:5-7. The February 7, 2020, IEP provided for ESY for R.T. from July 1, 2020, to July 28, 2020. The IEP proposed that R.T. would continue at MHS for ESY, with transportation provided to MHS, and he would visit DHS and engage in transition services during the summer.

understand. So therefore, understanding a child with high anxiety level is just being able to piecemeal, you know, trust and security. So we wanted to just be able to do this with the parents' support in a slow transition.

[T1 71:11- 72:11.]

Dr. Della Vecchia explained that R.T. could visit DHS' program as often as he wanted. She elaborated:

During the month of July our ESY program went for four weeks. Therefore, we encouraged mom – because she was at the [IEP] meeting – if R.T. could come anywhere from one to three times a week to spend time in the new setting. He would be able to interface with the entire school, to be able to see physically the school and feel comfortable there. He would meet his teacher, paraprofessional, behaviorist, and the school psychologist. We explained to mom that he could come for an hour, he could stay two hours, whatever he was comfortable with, and then we could build up as he felt more comfortable transitioning to the new environment. I think the most critical part for R.T. is not so much the summer; the summer would make him feel comfortable with the people that they would be with every day. My concern is when all of the students come back in September, how he would kind of interface, both in the hallways and transitioning to classes; therefore, we offered a lot of mental health check-ins with the school psychologist.

[T1 73:15 – 74:9.]

R.T.'s parents were also invited to visit and observe the program. They could bring R.T. with them when they visited, if they wanted. They were also advised that door-to-door transportation would be provided.

N.T. appeared pleased with the IEP with the exception of the proposed placement at DHS. She did not ask questions about the program during the IEP meeting. Instead, she wanted to discuss the matter with her husband. N.T. explained that R.T. was successful and happy at MHS. He also was involved in the unified sports program, which he enjoyed. She neither agreed nor disagreed to the invitation to visit and tour the program at DHS. Ultimately, neither parent responded to the invitation or contacted Dr.

Della Vecchia or anyone else at the District to discuss it. They did not otherwise request to observe the program or meet with administrators, teachers or other staff. N.T. supplied documentation of R.T.'s diagnosis and a letter in which he expressed concern about the move from MHS to DHS. She also requested mediation.

Dr. Della Vecchia testified that she observed the program at MHS three times to observe DHS's students. This occurred two years prior. Based upon her observations, she determined there were no differences between the two programs with respect to facilities, the educational environment, or the nature of the academic instruction and programming. DHS students have the same programs as MHS students. With respect to structured learning experiences and job training, the range of experiences are the same. Although the schools work with different employers and businesses, this does not adversely impact the student's education. Also, R.T.'s extracurricular activities and the manner in which he participated in them would not be different and he would be able to participate in the unified sports program at DHS as he did at MHS.

Dr. Della Vecchia acknowledged that the program at MHS was appropriate for R.T. and that he made meaningful progress there. She also concluded that the proposed programming at services at DHS, as delineated in the February 7, 2020 IEP, were reasonably calculated to offer him an appropriate education and that the IEP was appropriately ambitious in light of his individual circumstances. She reiterated that, at both schools, "he will be afforded an IEP where he will be able to work in the community and trial different workplace environments. Educationally, when he's in school, he will be afforded with health and PE classes, as well as vocational transition classes, where they will help with resume writing, workplace readiness, and job skills." T1 93:11-18. She explained that the proposed program at DHS involved the least restrictive environment for R.T., as he would be at school in his home school district. He would have regular access to typically developing, nondisabled peers who live in his community. This would allow for social interaction with typically developing peers in and out of school, in an inclusive environment. This is not available to him at MHS.

On cross-examination, Dr. Della Vecchia was asked why a change would be proposed when R.T. had made progress with the help of therapists at MHS. She replied

that she understood the concern but stressed that R.T. would receive all of the supports that he received at MHS because it was the “same exact program.” T1 100:6. He would attend school and work in his home community and he would find employment there. She further explained that it was required that R.T. be placed in the least restrictive environment which, here, is his home school district with the same exact program.

Lauren Hood is the school psychologist for the Delran School District. She primarily works in the middle school. She serves as a member of the CST and as a case manager for special education students. She has a Master of Science degree in psychology and a school psychologist/educational specialist degree. She is certified by the New Jersey Department of Education as a school psychologist. She has evaluated over 100 students who were diagnosed with anxiety. She testified as an expert in the areas of special education and as a school psychologist.

Hood served as R.T.’s case manager from the 2018-2019 school year through the beginning of the 2020-2021 school year. As case manager, she is a member of the CST; oversees her sign students’ IEPs; ensures that they are provided all of the services and programs enumerated in the IEP; arranges for collaborations, including between teachers and parents; runs IEP meetings; and conducts evaluations under certain circumstances. She routinely serves as the case manager for those students who were placed in special education programs outside the Delran School District. She observes those students in their out-of-district placements at least once, but usually more than once each school year. She observed R.T. in his placement at MHS approximately five times while she served as his case manager. She observed him performing tasks, interacting with his peers in the classroom and in the school store. The tasks included reading by himself; trying to teach a peer the materials that he read; preparing to transition between classes; and working in the school store.

Hood was aware that, when R. T. transitioned from Delran middle school to MHS, he suffered from extreme anxiety. She was also aware that N.T. reported that he did not want to go to school due to the anxiety. He successfully completed ninth through twelfth grade at MHS. She explained that the program proposed for R.T. in the February 7, 2020, IEP was the same program as MHS’ program. The only slight difference might be with

respect to the actual jobs that are available to the students. Although DHS' program was not operational at the time the IEP was issued, it commenced operations at the start of the 2020-2021 school year.

On October 11, 2019, Hood conducted a psychological reevaluation of R. T. She used the Wechsler Adult Intelligence Scale ("WAIS"), Fourth Edition, which is a "standardized, individually administered measure of cognitive functioning that provides an overall general intellectual ability score (Full Scale IQ) as well as composite and subtest scores that assess ability in specific areas." J-9 at 3. The Behavioral Assessment for Children ("BASC"), Third Edition, was also administered by R.T.'s MHS teacher. The BASC is:

comprised of two scales to assess the frequency of significant behaviors related to emotional and adaptive functioning. The Clinical Scales measure levels of negative behaviors, while the Adaptive Scales measure levels of positive behaviors as compared to same-aged peers. Scaled scores in the Clinically Significant range suggest a high level of maladjustment. Scores in the At-Risk range may identify a significant problem that may have the potential of developing into a problem that needs careful monitoring. which assesses emotional behavior difficulties.

[J-9 at 7.]

Hood described R.T. as a "sweet and kind student" who "tried his best throughout the assessment." T3 41:12-13. During the WAIS test, R.T. stammered a bit, which was a sign of anxiety; however, it did not prevent him from completing the assessment. On the BASC, R.T. was rated "within the average range for the behavioral systems index along with the adaptive skills index." T3 46:9-11. Hood reported that R.T. scored within the average range for all behavioral "clusters involving externalizing problems, internalizing problems, school problems and additional behavioral symptoms involving atypicality and withdrawal. All [behavioral systems index] clusters, along with their respective scale score areas, were rated within the average range at this time." J-9 at 8. R.T.'s rating indicated that he demonstrated "average Adaptive Skills overall. The Adaptive Skills cluster consists of adaptability, social skills, leadership, study skills and

functional communication. All adaptive skills areas were rated in the average range at this time.” Ibid.

R. T.’s parents were provided a copy of the psychological evaluation report and a learning evaluation during a November 18, 2019, eligibility meeting. The learning evaluation was conducted by the District learning consultant, Suzanne Sedarat, LDt-C, on October 3, 2019. J-8. The evaluation utilized the Wechsler Individual Achievement Test, Third Edition (“WIAT-3”). It was used to assess RT’s academic abilities, develop goals and determine the type of special education programming, services and placement he required.

An IEP was developed during the meeting. It proposed continued special education placement at MHS that would focus on life and vocational skills. J-10. Hood explained that R.T. was doing well at MHS and that DHS did not have a similar or otherwise appropriate program. The CST thus recommended that he continue at MHS through the end of the 2019-2020 school year.

DHS subsequently developed a program that is appropriate for R.T. It is a “transitional vocational program for the self-contained students with severe cognitive disabilities between the ages of eighteen and twenty-one.” T3 53:11-13. The academic instruction is the same at DHS as at MHS. It includes functional academic and life skills instruction. DHS’ programming and services are also the same with respect to work readiness. Work readiness involves the students working at different jobs such as convenience stores, pet stores and restaurants, where they have different responsibilities that they need to learn. They rotate amongst the different jobs and responsibilities. While at MHS, R.T. worked at, among other locations, Virtual Health and Fitness, Wawa and Panera Bread. The only difference between the schools’ programs is they may involve slightly different jobs. Community-based instruction is also incorporated. This would involve, for students with anxiety, provision of information about what to expect when they are preparing to change work assignments or duties and support as they change work assignments, among other supports. It also involves teaching the student how to

determine who they can ask for help when they have a problem or feel anxious; learning how to try to prevent problems; and how to handle problems when they occur.

The students at DHS work with job coaches and the State Division of Vocational Rehabilitation Services (“DVR”). DVR provides assistance with job placement after graduation. DVR representatives attend annual review meetings and get to know the students and their wants and needs. The representatives review the IEPs to see what type of supports each student needs and to try to find jobs best suited for them.

The program had been developed, but had not yet been operational, when the CST conducted RT’s annual review on February 7, 2020. N.T. was present at the meeting and she was upset because she and her husband wanted R.T. to remain at MHS. She explained that R.T. had a significantly difficult time transitioning to MHS and she feared that he would have an equally difficult time transitioning from MHS to DHS. Her focus was on R.T.’s anxiety.

The CST attempted to address N.T.’s concerns “because she is an important part of the IEP team and we understand that this was a very difficult situation[.]” T3 55:20-23. She acknowledged that, because the program was not yet operational, the parents could not come to the school to observe it as it functioned. She advised N.T. that R.T. could begin his transition to DHS during the summer, while he continued to attend MHS. N.T. could tour also DHS and observe the transition process. The IEP addressed how this would be conducted, including by way of assistance from support staff, and this was discussed with N.T during the meeting. In the alternative, R.T. was eligible to graduate that year or N.T. could file a due process position if she wanted him to remain at MHS.

N.T. spoke with Hood within a month of the February 2020 annual review meeting. She expressed her concerns about the proposed move to DHS and wanted to discuss whether there was a way RT could remain at MHS. After then, neither parent contacted Hood or anyone else in the District to discuss the proposed placement.

Hood opined that the proposed placement at DHS was designed to offer R.T. a free and appropriate public education in the least restrictive environment because it would

provide the same type of education and program as at MHS. Also, it was located in his hometown and he would attend school with students from his town. It was the least restrictive appropriate placement for R.T. It was appropriately ambitious for him based upon his special education needs and his circumstances. Also, it would “challenge him in the way of having him transition, and, I know that he does have anxiety, but I think that that’s going to also prepare him for the future because . . . that’s life . . . all types of changes and all types of things are going to pop up in life and we need to be able to support him through that and I think this is a good opportunity to do that.” T3 74:11-17. The program would appropriately prepare R.T. for his life post-graduation because it would enable him to try working at different jobs in the community, and he would receive work readiness and community-based instruction. Also, his IEP was a “fluid document” such that if they determined that he needed anything additional or different, the IEP could be amended with respect to the supports he needed to help him build necessary skills. T3 74:24.

On cross-examination, Hood acknowledged that N.T. and her husband attempted to speak with her. N.T. asked how she could have made a decision concerning the IEP within fifteen days of the IEP meeting when the program was not yet operational, and she could not visit it until the summer. Noting that the program was not yet in place, Hood replied that N.T. could have “sign[ed] that she was in agreement with that, as long as she gets to tour the program in the summer.” T3 82:24-83:1.

Hood was asked if she believed that it was appropriate to change the program for a student who, like R.T., had severe anxiety. She was also asked how long she believed it would take for a student with severe anxiety to adapt to the change in placement. Hood replied:

[W]ith R.T. I understand that he had in the past severe anxiety transitioning to [MHS] and I understand, respectfully speaking, that that’s how mom thinks it’s going to be if he transitions back to [DHS.] I completely empathize with mom and I understand where mom is coming from, but we do have a program here at Delran, the same program that mirrors [MHS] and I think it’s worth giving it a try because, you know, having that change, like I mentioned before, life is filled with

tons of changes that R. and everyone will have to deal with and, you know, it's better to have that change now as he's younger and we have the supports here to support him and we could help him through that change and do whatever needs to be done to help him get through that difficult time. We're not saying that it won't be difficult for him, but we don't know necessarily how it's going to be when he does transition.

[T3 86:25-87:18.]

Hood was asked about the impact of causing R.T. to leave his sports and Special Olympics programs, given that he very much enjoys sports, as well as the sports trips and the camaraderie associated with the activities. Hood replied that DHS offers the same unified sports program and, moreover, R.T. would be able to participate with students from his home community. Hood was also asked whether it would be detrimental to R.T. to be forced to return to a situation in which he was dependent upon school staff, when he is now more independent and not in need of psychiatric evaluation. Hood replied that, while the transition may not necessarily be easy, and she cannot predict how long the transition process may take, he may not struggle as he did in the past. She noted that "he has grown and he has matured and I think this time will be easier because he is also familiar with those students because he is going to school with those students that he will be in the program with." T3 89:5-8.

On redirect examination, Hood clarified that neither of R.T.'s parents told her or anyone else in the District that they wanted to visit the proposed program at Delran when it was available for observation. Because a due process petition was filed on behalf of R.T., he remained at MHS during the 2020-2021 school year, including the summer 2020 ESY program.

For petitioners:

N.T., R.T.'s mother, explained how R.T. came to attend high school at MHS. At the end of his eighth-grade year, they were advised by his Delran case manager that DHS did not have an appropriate program for him but that MHS had an appropriate program. R.T. suffered during his transition from the Delran School District to MHS. It took about one year for him to become acclimated to MHS. Until then, he suffered a great deal of

anxiety. His teachers told N.T. that she needed to work with him on special assignments to help him acclimate and diminish his anxiety. Ultimately, it required “a few years of thirty minute, thirty-five minutes of therapy to help him acclimate and get used to the school.” T2 9:18-20.

Noting that R.T. currently had only one more year of school left, N.T. believed “there is no more time for him to go through this[.]” T2 9:22-23. Furthermore, he was benefiting from MHS’ program, while DHS’ program was only just starting. The newness of DHS’ program complicated matters further because the other students there would also have to adapt to the new program and to the addition of R.T. to the program. She explained:

[A]ll this needs to work parallel or together in order for it to work for him and R. does not have time to go through this anymore, and I feel that it’s not fair to take this opportunity from him because I do feel that Delran has a program that can be very, very good, but they’re initiating the program now. I’m here for my son as a mom. And my worry he has to do with his mind or state of mind, he has worked to be independent in work and if he goes to Delran, he might have to work again to have independence. If he goes to Delran, that he will be dependent upon the therapy and dependent on the system, and to me that’s going back, that’s regressing.

[T2 10:6-18.]

N.T. explained that when DHS’ program was proposed, or in the alternative R.T. could graduate, she did not know what to do. She sought counsel from a friend who is a psychologist and discussed the matter with her husband. She added that her “desire is not necessarily for a particular school because I do have two kids in the Delran school, my worry is about R. alone. And my worry is that what I want is for him to continue to progress, he only has this one year left and . . . It can be really good for him in this last year. And he’s progressing a lot, they are preparing him for the work force, and that makes me very happy, and I don’t want that the change.” T to 12:1-9.

N.T. discussed her concern about the opportunities that R.T. would lose if he were to leave MHS. She feared he would lose the job opportunities that he developed through

his MHS work activities. She submitted a list of jobs available to R.T. through the MHS program, which included approximately forty different stores and service providers. P-5. Appended to the list were photographs of R.T. in various work and activity settings including but not limited to food service convenience stores and facility maintenance work.

Petitioners also produced a September 18, 2017, letter to R.T. from the President and CEO of Special Olympics New Jersey, concerning participation by MHS in the 2018 USA games in the sport of interscholastic unified basketball. P-6. Appended to the letter were multiple certificates acknowledging R.T.'s success in several different sports activities and excerpts of news reports concerning his performance at the unified basketball championship. Also included was a July 23, 2018, proclamation from the Mayor of Moorestown, New Jersey to the MHS unified basketball team, recognizing the members as "outstanding role models." P-6. With MHS, R.T. travelled outside New Jersey to participate in sporting events. N.T. believed DHS' sports program did not involve travel to events out of state.

On cross-examination, N.T., acknowledged that she does not have training, education or experience working as a teacher or in the fields of education or special education. She asserted that, as a mother of three, she has very good experience. With respect to experience of the health care or medical fields, she testified that she was a pharmacy technician when she lived in Brazil; is trained to administer injections; and is certified in the Temple Grandin program for treatment of people with autism. Although she has not worked with students who have autism in an educational setting, or had employment experience with autistic children, she "had a lot of help and therapists that came to our home to help me be capable to do the same." T2 15:19-20. She and her children "have the assistance of many professionals from the school setting that help [her] and train [her]." T2 16:3-5.

N.T. explained that she did not visit the proposed DHS program and classroom because she did not agree to the proposal. Although they did not consult with an educational or medical expert from DHS, she and her husband spoke with case manager Hood. N.T. noted that she had only fifteen days to decide about the proposal. She did not have time to request additional information from anyone in the Delran School District

about the proposed program or the IEP because, after the IEP meeting, she had only two options: graduate R.T. or pursue mediation. When asked if she was told that she would not be permitted to ask questions of District staff members, even if she requested mediation, she acknowledged that she was not told that she could not ask questions. Although she was told during the IEP meeting that she could visit and tour the program and that she did not have to approve the IEP the same day as the meeting, she believed she only had fifteen days to decide whether her son should attend the program. However, she felt pressured with respect to having to make this decision and she did not have the time to contact anyone else in the District to arrange for a visit.

N.T. testified that, during the IEP meeting, “they showed that he would have proper therapy at the new program to address his concerns, but to me it goes back to having therapy which he doesn’t require now, by the way, that he will again be dependent on therapy and as a mother, that will be going back, regressing.” T2 26:10-15. She acknowledged that the IEP contained information explaining how the transition to the new program would occur; that Delran staff members would be available to give her a tour of the program and assist her and R.T. with their transition; that she had an opportunity to speak with R.T.’s DHS teachers; that she met with Hood after requesting a meeting two or three days after the IEP was proposed; and that no one told her that she could not visit the new program prior to the expiration of the fifteen-day approval period. She further explained, “I did not even consider going to visit because I believe that the program is not going to be good for him.” T to 30:10-12. Based upon her experience, given that two of her children attend DHS, and her understanding of the IEP, she believed the proposed program did not offer what was being provided at MHS. DHS’ program was just beginning and R.T. “cannot go back and begin a program again, that would be detrimental to him.” T2 34:3-4.

Documentary Evidence

N.T. submitted a written statement in which she reiterated her concerns. She wrote:

[R.T.] only has one year left for the program and he is had many opportunities from the school, and still does. He is learning how to work at a job, which also involved learning and talking with others such as friends. They work together and communicate a lot. He also participated in the Special Olympics program and has a team that he has been in for his years at MHS. This change of him going to Delran high school will cause harmful anxieties for him and I would rather him be able to finish off his school years, happy, and with opportunity. I respect everything that has been said in court but after the many hardships my son and I have gone through to get where he is now, just to change it all at the very end is very harmful. DHS is not prepared to take [R.T.] into their program because he is in his last year of an advanced and fully developed program while DHS just started in their new program.

...

Delran needs to work on inclusion and acceptance for students with special needs. It is not just the teachers that need to work more with kids with special needs. It is the environment and other students too. At MHS, everyone is communicating together and inclusive. I am saying this because I have a son currently in DHS. And he has Asperger's. He has a 504 program. Sometimes, it can be hard for him and other students do not understand. And I do not want [R.T.] to undergo massive changes[.]

...

[R.T.] is very happy in Moorestown high school. He has one more year left and can finish with his teachers and friends, and everyone else that has helped him to get where he is now. The school year is hard for him, seeing as he attends school 4 days a week, working with his job program outside the school, and Friday at home with remote learning. Moorestown is doing as much as they can to help students with their anxieties and worries with Covid 19. A change now would be very bad also for Covid 19 related reasons. Which is why I believe it is not right taken from this. He has a voice. Kids with special needs have a voice, a heart, and love.

[Pet. January 24, 2021, letter.]

Petitioners also provided medical records dated March 30, 2020 and January 10, 2020, that document neurological diagnoses including static encephalopathy,

developmental delays, borderline IQ-76, ADHD, anxiety, autism spectrum disorder-level I language in intellectual impairment. P-6.

Petitioners produced a written statement prepared by R.T.'s MHS case manager, Marie Doman, who did not testify during the hearing. P-8. Doman is currently retired and was R.T.'s case manager from ninth grade through the date of her written statement, June 30, 2020. She wrote:

[R.T.] entered [MHS] as a very fragile child with severe anxiety offering little or no eye contact and very soft spoken. [R.T.'s] diagnosis of anxiety and autism stood out prominently with his weak social skills and distain for transition. I met with [R.T.] over the course of the first year several times a week to help decrease anxieties in his new program. It was not until [R.T.] began with his in-school jobs and community-based outings that [R.T.] began to open up with his peers and actually smile and laugh. Overall, [R.T.] gained much confidence in his placement once he was familiar with the people around him. His experiences he began in the vocational program provided him more transitions to get used to through changing his jobs every 8-12 weeks. He attended two placements each time. It was because of his teacher, Mr. Roth, and his familiarity of his peers, [R.T.] continued to grow socially and emotionally. [R.T.] has had several experiences already such as Zoo Program (starting at 16), Dunkin Donuts, Wawa, Panera, Posh Mart, and culinary classes. With over 40 different relationships with outside business relationships, [R.T.] has an opportunity to have a full-time job in the community after 21. [R.T.] has been in the program for so long and he is now in the thick of his job sampling with new skills clearly known due to his past experiences. I feel it would be in his best interest to remain in the Moorestown Program with the expert teachers and job coaches that already know him.

[P-8.]

R.T.'s IEP for the 2018-2019 school year, prepared March 20, 2018, referenced his 2016 Education Evaluation, when he was in the ninth grade. The evaluation reported that he "attends school in Moorestown, although he still resides in Delran, so that his needs may be better met in a self-contained class within a regular high school, with opportunities for mainstreaming. He receives speech and counseling as related services.

He is reportedly doing well in his current placement and anxiety has lessened.” J-5 at 2. The 2016 Psychological Evaluation, referenced in the IEP, noted that he “was placed in the Moorestown transition program to assist with functional/vocational skills.” Id. at 3. A behavioral assessment indicated his “overall behavioral adjustment in school is within the ‘average’ range . . . He was in the ‘at-risk’ range for one area: anxiety.” Id. at 4. R.T. reported that he made a good transition to MHS; he enjoyed his classes; “he liked doing different jobs around the school and that he was on the soccer team after school.” Ibid. He “stated he made new friends this year but also had friends from his old school.” Ibid.

The October 3, 2019, learning evaluation assessed R.T.’s “achievement in reading, written expression and math.” During the testing, R.T “appeared comfortable” and he “attempted each task presented. As tasks became more difficult, [R.T.] preserved and attempted to provide a response. He did not appear to frustrate easily. [He] did not appear impulsive in his responses, [and] appeared to put forth good effort[.] . . . [He] appeared to put forth good effort, and he was cooperative during the testing[.]” J-8. The test indicated that R.T. performed within the average range for his age.

The October 17, 2019, psychological evaluation “was deemed necessary to determine [R.T.’s] current levels of cognitive, social/emotional, and adaptive functioning for special education services[.]” J-9 at 1. It referenced a 2017 report from Cooper Neurology that enumerated diagnoses of borderline intellect, ADHD, anxiety disorder, PDD-suspected autism spectrum disorder (ASD) and static encephalopathy. It also referenced a 2018 neurological report that “indicated that [R.T.] met the criteria of ASD-Level 1, with language and intellectual impairment, along with ADHD and anxiety.” Ibid. The behavioral assessment listed a score of fifty-five for anxiety, which placed R.T. in the seventy-eighth percentile. J-9 at 8.

R.T.’s IEP for the 2020-2021 school year, prepared February 7, 2020, noted that R.T.’s “anxiety and perception of social situations can impede his ability to be successful in the general education setting. He performs better in a small group, where he is comfortable and there can be immediate direct assistance if required. [R.T.] can, at times, become overwhelmed and needs assistance dealing with stressful situations.” R-2 at 8. The IEP also discussed R.T.’s strengths. It reported that he “made great progress and

matured this year. He is more confident with less anxiety and has made many special friends through Unified Sports.” R-2 at 6. The IEP recorded that his parents “worry about [his] severe anxiety and having him transition to another program. They worry that he will regress and his anxiety will worsen.” Ibid.

The IEP reported R.T.’s present levels of academic achievement and functional performance (PLAAFP):

[R.T.] joined our SLE program in September of 2019 and has had the opportunity to job sample at three different worksites thus far, which include Virtual Health and Fitness, Wawa and Panera Bread. Additionally [R.T.] has physical education twice a week, a culinary elective, every other day, and workplace readiness three times a week, where he works in various building-based enterprise such as the school store, common ground, and Poshmark and ends his day with an English class. Once a week, on Fridays, [R.T.] participates in community-based instruction and seems to genuinely enjoy accessing all aspects of his community (community-based instruction 1x a week).

[R-2 at 6.]

The PLAAFP further addressed R.T.’s work experiences: “While completing work-related tasks, [R.T.] has done well with following directions from his supervisor and paraprofessional/job coach, both in writing and verbally. [He] is eager to be connected to his community and derives great enjoyment from working.” R-2 at 6. It was noted that, due to his “desire to do an assigned task correctly, he can—at times, persevere on an idea/concept until he believes he has answered correctly. On a job site, this can result in a loss of productivity.” R-2 at 7. He initially worked at a Wawa store in Delran. However, “due to store renovations, he was moved to the Main Street Moorestown location, which has offered greater natural support, therefore, he has remained at this location since the move[.]” R-2 at 7. While working at Panera Bread, R.T. “found a wonderful support system with his worksite mentors and is confidently able to complete the daily assigned tasks with their support, including his job coach and classmate who is also working at Panera.” R-2 at 7.

The PLAAFP also addressed R.T.'s participation in his English class: "Life Skills English 2019-2020 . . . [R.T.] is a pleasure to have in our end of day session. He is willing to discuss the social and functional parts of his day with prompting. This course focuses on students' ability to set up appropriate short and long-term goals and communicate details of daily activities. [R.T.] is able to participate in these conversations with reminders and prompts from his job coach." R-2 at 8.

FACTUAL FINDINGS

It is the obligation of the fact finder to weigh the credibility of the witnesses before making a decision. Credibility is the value that a fact finder gives to a witness' testimony. Credibility is best described as that quality of testimony or evidence that makes it worthy of belief. "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." In re Estate of Perrone, 5 N.J. 514, 522 (1950). To assess credibility, the fact finder should consider the witness' interest in the outcome, motive, or bias. A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

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In determining credibility, I am aware that respondent's employees would want to support the program they developed for R.T. and would believe that program would provide him with FAPE. I am also aware that petitioners believes that what they seek is in the best interest of R.T. In addition to considering each witness' interest in the outcome of the matter, I observed their demeanor, tone, and physical actions. I also considered the accuracy of their recollection; their ability to know and recall relevant facts and information; the reasonableness of their testimony; their demeanor, willingness, or reluctance to testify; their candor or evasiveness; any inconsistent or contradictory statements; and the inherent believability of their testimony.

As the fact finder, I had the ability to observe the demeanor, tone, and physical actions of N.T., Della Vecchia and Hood during the hearing. Della Vecchia and Hood both testified and answered all questions clearly, directly and thoroughly. They explained their understanding of R.T.'s educational needs; referenced the appropriate data and records; and thoroughly explained why the Board proposed that R.T. be placed in a program at DHS. Della Vecchia testified earnestly concerning the school's understanding of the magnitude of the proposed change. She and her colleagues did not take lightly the fact that they were asking a student with documented anxiety to leave a school where he has developed relationships that have helped him work past his anxiety in many way in order to attend a new, unknown school. She explained the multiple measures DHS offered to R.T. and his parents that were intended to address this significant issue. Hood provided a thorough and understandable explanation of the testing that was conducted prior to the IEP at issue. I find their testimony to be credible.

I also find N.T.'s testimony to be credible. She was clear, direct and forthright in her testimony. Her testimony was consistent and she candidly acknowledged when she was unable to answer a question. She demonstrated her commitment to her son's educational and post-graduation success, which included consideration of his emotional needs.

Case Manager Doman's written statement is hearsay. Hearsay evidence is admissible in the trial of contested cases and shall be accorded whatever weight the judge deems appropriate taking into account the nature, character and scope of the evidence,

the circumstances of its creation and production, and, generally, its reliability. N.J.A.C. 1:1-15.5(a). However, while hearsay evidence is admissible, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness. N.J.A.C. 1:1-15.5(b). Hearsay may be employed to corroborate competent proof, or competent proof may be supported or given added probative force by hearsay testimony, when there is a residuum of legal and competent evidence in the record. Weston v. State, 60 N.J. 36, 51 (1971). Doman's assertions about R.T.'s initial anxiety and his growth and success during his years with MHS are not disputed. I, therefore, accept her statements in this regard. However, to the extent she offered her opinion that R.T. would be best served by remaining at MHS, which is the issue presented here, I cannot give her statement full weight because she did not testify and was not subject to cross-examination.

Based upon the testimonial and documentary evidence and having had the opportunity to observe the appearance and demeanor of the witnesses, I **FIND** as **FACT** that R.T.'s parents, N.T. and R.T., are loving parents who support their son and seek to maximize his opportunities, potential and success. They understand his history of anxiety, which was difficult. His transition to MHS was fraught and he did not acclimate in a meaningful way for approximately one year. Understandably, his parents do not want to risk a change in his educational program that may cause him new or worsened anxiety and jeopardize whatever progress he has achieved. They endorse MHS' implementation of R.T.'s IEP and do not want to disrupt what has proven to be a positive and beneficial experience for him.

I also **FIND** the following as **FACT**:

All of the IEPs prepared for R.T. while he was in high school were prepared by his home school district. At the time R.T. was to enter ninth grade, DHS did not offer the MD self-contained, eighteen- to twenty-one transitions program that R.T. required. Because MHS offered the recommended program, DHS' IEPs for R.T. provided for his placement at MHS. R.T. participated in this program, through his IEPs, from ninth grade through twelfth grade and it is undisputed that R.T. succeeded in this program. His instructors

reported that he performed well at his assigned worksites and in the classroom. He responded well to and benefitted from the supports provided by his program, including from his work supervisors, job coaches and paraprofessionals. Indeed, he was able to perform well even after he was required to transfer from one workplace to another, due to the closure of the first workplace.

A psychological reevaluation of R.T. was conducted in October 2019. Although R.T. exhibited some signs of anxiety, he completed the assessment. He performed in the average range for the behavioral systems index, which measured emotional and adaptive skills, which included adaptability, social skills, leadership, study skills, functional communication and internalizing or externalizing problems. During the learning evaluation, he did not appear to frustrate easily and was not impulsive when responding and was cooperative.

On or about February 7, 2020, the Board designed a program within DHS that is intended to function in the same manner as MHS' program. It was intended to provide the same special education and related services as were provided to R.T. while he attended MHS. DHS' proposed program is comprised of the same components as MHS' program: vocational skills instruction and training with the support of a job coach in an on-the-job context; community-based instruction; functional academic instruction designed to increase independence, workplace readiness and adult life skills; assignment of a two-to-one paraprofessional aide; and door-to-door transportation. The DHS' teacher was certified in special and general education and had over twenty-five years of experience. The behaviorist specialized in working with students with autism. The paraprofessionals were certified registered behavioral technicians.

Although the specific job placements at DHS may differ from those that were available to R.T. at MHS, the range of job training experiences will be similar and his exposure to work opportunities will not be limited. Although petitioners asserted that DHS' sports program is significantly different from that of MHS, and that it does not offer out-of-state travel opportunities, there is no evidence in the record to support this assertion.

DHS was mindful of the need to help R.T. and his parents become familiar and comfortable with the program. Its personnel were available throughout the remainder of the 2019-2020 school year and during the summer months to answer questions and provide for a gradual and thorough transition to the school. DHS wanted R.T. and his parents to get to know R.T.'s teachers and the other staff members, including the school psychologist and social worker before he started school. While R.T. attended an ESY program at MHS, he and his parents could visit DHS as many times as they wanted. Over the summer, they could tour the facility; speak with personnel; and ask questions and discuss the future program on an ongoing basis.

DHS was also mindful of R.T.'s anxiety and anticipated that its staff may need to address and react to it while he attended the school. In addition to ongoing monitoring of R.T.'s transition and performance; he and his parents could have daily "check-ins," and they would conduct additional evaluations as needed. His paraprofessional would provide regular support to R.T. and would give him breaks as needed; the social worker and psychologist would monitor his needs by way of daily contact with R.T.'s paraprofessional or teacher; Della Vecchia and the supervisor of special education would also discuss any needs with R.T.'s teacher and paraprofessional.

R.T.'s post-graduation transition will be aided by the State Division of Vocational Rehabilitation Services. The agency will assist R.T. whether he graduates from DHS or MHS.

LEGAL ANALYSIS AND CONCLUSIONS

The issue presented is whether the Board's proposed IEP, which would require R.T. to attend school in his home district, provides R.T. with FAPE in the least restrictive environment.

The IDEA requires that a state receiving federal education funding provide a FAPE to disabled children. 20 U.S.C. § 1412(a)(1). School districts provide a FAPE by designing and administering a program of individualized instruction that is set forth in an IEP. 20 U.S.C. § 1414(d). In order to qualify for this financial assistance, New Jersey

must effectuate procedures that ensure that all children with disabilities residing in the State have available to them a FAPE consisting of special education and related services provided in conformity with an IEP. 20 U.S.C. §§ 1401(9), 1412(a)(1). The responsibility to provide a FAPE rests with the local public school district. 20 U.S.C. § 1401(9); N.J.A.C. 6A:14-1.1(d). The district bears the burden of proving that a FAPE has been offered. N.J.S.A. 18A:46-1.1.

The United States Supreme Court held that the IDEA “requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Endrew F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 1001 (2017). The Third Circuit determined that Endrew F.’s language “mirrors [its] longstanding formulation [that] the educational program ‘must be reasonably calculated to enable the child to receive meaningful educational benefits in light of the student’s intellectual potential and individual abilities.” Dunn v. Downingtown Area Sch. Dist., 904 F.3d 248, 254 (3d Cir. 2018) (quoting Ridley Sch. Dist. v. M.R., 680 F.3d 260, 269 (3d Cir. 2012))(emphasis added). In addressing the quantum of educational benefit required, the Third Circuit has made clear that more than a “trivial” or “de minimis” educational benefit is required, and the appropriate standard is whether the IEP provides for “significant learning” and confers “meaningful benefit” to the child. T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000); Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999); Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180, 182–84 (3d Cir. 1988), cert. den. sub. nom., Cent. Columbia Sch. Dist. v. Polk, 488 U.S. 1030 (1989).

Case law recognizes that “[w]hat the [IDEA] guarantees is an ‘appropriate’ education, ‘not one that provides everything that might be thought desirable by loving parents.’” Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119, 132 (2d Cir. 1998) (citation omitted). Indeed, “meaningful participation does not require deferral to parent choice.” S.K. ex rel. N.K. v. Parsippany-Troy Hills Bd. of Educ., 2008 U.S. Dist. LEXIS 80616, at *34–35 (D.N.J. October 9, 2008) (citation omitted). Nor does the IDEA require that the Board maximize R.T.’s potential or provide him the best education possible. Instead, the law 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). The District will have satisfied

the requirements of law by providing R.T. with personalized instruction and sufficient support services “as are necessary to permit [him] ‘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 (1982)).

An IEP “turns on the unique circumstances of the child for whom it is created.” Andrew F., at 1001. It is usually “reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” Id. at 999 (quoting Bd. of Ed. of Hendrick Hudson Ctr. Sch. Dist., Westchester Cty. v. Rowley, 458 U.S. 176, 203-04 (1982)). “And while parents often play a role in the development of an IEP, they do not have a right to compel a school district to provide a specific program or employ specific methodology in educating a student.” E.E. v. Ridgefield Park Bd. of Educ., 2020 U.S. Dist. LEXIS 102249, *8 (June 11, 2020)(quoting Ridley Sch. Dist., 680 F.3d at 269, 278).

The appropriateness of an IEP must be determined as of the time it is made, and the reasonableness of the school district’s proposed program should be judged only on the basis of the evidence known to the school district at the time at which the offer was made. D.S. v. Bayonne Bd. of Educ., 602 F.3d 553, 564–65 (3d. Cir. 2010). When determining the appropriateness of any given IEP, a court’s focus should be on the IEP actually offered by the board and not upon an IEP that it could have offered. Lascari v. Bd. of Educ. of Ramapo Indian Hills Reg’l High Sch. Dist., 116 N.J. 30, 47 (1989).

A complete IEP must contain a detailed statement of annual goals and objectives. N.J.A.C. 6A:14-3.7(e)(2). It must contain both academic and functional goals that are, as appropriate, related to the Core Curriculum Content Standards of the general-education curriculum and “be measurable,” so both parents and educational personnel can be apprised of “the expected level of achievement attendant to each goal.” Ibid. Such “measurable annual goals shall include benchmarks or short-term objectives” related to meeting the student’s needs. N.J.A.C. 6A:14-3.7(e)(3).

Any plan must involve the least restrictive environment (LRE). To the maximum extent appropriate, students are to be educated with children who do not have a disability,

in the same school the disabled student would attend if he were not disabled. 20 U.S.C. § 1412(a)(5)(A); N.J.A.C. 6A:14-4.2(a); J.T. v. Dumont Public Schools, 438 N.J. Super 241, 278 (2014). The Third Circuit applies a two-part test to assessing LRE compliance: (i) whether education in the regular classroom, with the use of supplementary aids and services, can be achieved satisfactorily; and (ii) if placement outside of a regular classroom is necessary, whether the school has mainstreamed the child to the maximum extent appropriate, i.e., whether the school has made efforts to include the child in school programs with non-disabled children whenever possible. Oberti v. Bd. of Educ. of Clementon Sch. Dist., 995 F.2d 1204, 1215–17 (3d Cir. 1993) The District’s effort in this regard must be significant:

If the school has given no serious consideration to including the child in a regular class with such supplementary aids and services and to modifying the regular curriculum to accommodate the child, then it has most likely violated the Act’s mainstreaming directive. The Act does not permit states to make mere token gestures to accommodate handicapped students; its requirement for modifying and supplementing regular education is broad.

[Id. at 1216 (citations omitted)].

Although Congress preferred education in the regular classroom, it also recognized that such an environment is not suitable for every student. Rowley, 458 U.S. at 181, n.4 (1982) “The regulations specifically require school districts to provide “a continuum of placements . . . to meet the needs of handicapped children.” 34 C.F.R. § 300.551(a). The continuum must “make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.” 34 C.F.R. § 300.551(b).” Oberti, 995 F.2d at 1216. Indeed, “children with disabilities who are placed in regular classrooms will most likely receive some special education and related services outside of the regular classroom, such as speech and language therapy or use of a resource room[.]” Id. at 1215, n. 21. See also Daniel R.R. v. State Bd. of Educ., 874 F.2d 1036, 1050 (5th Cir. 1989)(“EHA and its regulations do not contemplate an all-or-nothing educational system in which handicapped children attend either regular or special education”). Furthermore, “the IDEA does not impose an absolute obligation

to place a child in his or her neighborhood school; rather, the school district is required to take into account the geographical proximity of placement.” J.T. v. Dumont Public Schools, 438 N.J. Super. at 258. Indeed, “the school district is not required to move a program or service to a child’s neighborhood school.” Ibid. (citing Kevin G. v. Cranston Sch. Comm., 130 F.3d 481, 482 (1st Cir. 1997)). In addressing a proposed placement, the IDEA “accords ‘significant deference to the choices made by school officials.’” Ibid. (quoting Ridley Sch. Dist. v. M.R., 680 F.3d at 277).

In New Jersey, the District bears the burden of proof at a due process hearing to show, by a preponderance of the credible evidence, that it has met its legal obligation to provide a FAPE. Lascari v. Bd. of Educ. of the Ramapo-Indian Hills Reg'l High Sch. Dist., 116 N.J. 30, 46 (1989) N.J.S.A. 18A:46-1.1. In resolving factual disputes to determine whether, by the preponderance of credible evidence, an IEP is reasonably calculated to provide FAPE, judges must rely upon the determinations of experts in the field of special education. Bd. of Educ. v. Rowley, 458 U.S. 176, 206--08, 102 S. Ct. 3034, 3051, 73 L. Ed. 2d 690, 712--13 (1982).

Here, from the start of R.T.’s relationship with the Board, it endeavored to be responsive to his needs. Indeed, it prepared and implemented IEPs that his parents agreed were appropriate. R.T.’s parents do not argue that the substance of the proposed program is problematic. Further, the preponderance of the evidence indicates that DHS staff is qualified and capable of implementing the IEP at issue.

Petitioners’ objection to the proposed IEP, instead, concerns where the IEP will be implemented. In support of their argument, they reference R.T.’s anxiety when he first transitioned to MHS and their concern about lost athletic and post-graduation work opportunities. It is entirely understandable that R.T.’s parents would want him to continue at the school where he has become comfortable, developed relationships, and demonstrated his skills to local business establishments. It seems reasonable that most parents would want their children to remain at the school where they have spent all of their high school years, regardless of whether special education programming was required.

To the extent petitioners argue that R.T. will be denied FAPE due to a change in sporting or future job opportunities, the IDEA does not require that the District maximize R.T.'s potential or provide him the best education possible. The District will have satisfied the requirements of law by providing R.T. with personalized instruction and sufficient support services "as are necessary to permit [him] '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 (1982)). Thus, the claim that R.T. may not achieve a desired outcome or may lose a certain degree of opportunity in this regard does not rise to the level of a denial of FAPE.

However, it is undisputed that R.T. suffered from significant anxiety. His parents argue that he will be unable to benefit from the instruction provided by DHS, given the likely resurgence of his anxiety that will be caused by the move to DHS. The Board responded to this concern by pointing out that petitioners will be able to avail themselves of transition services while R.T. participates in the ESY program at MHS. Indeed, DHS extended an open door to petitioners, offering opportunities for them to visit and tour the school and program. The testimony of DHS' representatives clearly demonstrates a recognition of the need to openly welcome R.T. and his parents and to facilitate a thorough and informative transition process. Nonetheless, the evidence in the record does not truly address the behavioral, emotional and social component of this transition. Is more than a transition program required for a student with R.T.'s needs? Has the impact of a transition *at this time* and given his multiple diagnoses, been evaluated? The record does not answer this question. The behavioral assessment, while informational, did not address this issue. It evaluated R.T. before the new IEP was proposed and does not discuss the impact such a move would have on him. Moreover, a review of the assessment report reveals that R.T. was assessed a rather high score with respect to anxiety. Furthermore, although it is clear that R.T. transitioned well to MHS—after considerable difficulty—the context of that transition was different than here. He moved to MHS at the start of high school, a natural transition period. Today, he is being directed to leave a program, with which he has been involved with for his entire high school career, prior to its natural conclusion. The IDEA requires that his program be designed so as to permit him to make meaningful educational progress in light of his particular circumstances. The Supreme Court highlighted this in Endrew F. when it stated that and

IEP “turns on the unique circumstances of the child for whom it is created.” 137 S.Ct. at 1001. Notwithstanding DHS’ genuine efforts to facilitate a smooth transition for R.T., without a clear understanding of the impact of the proposed transition upon R.T., the propriety of the IEP cannot be ascertained.

I recognize that the record demonstrates that, while R.T. suffered significant anxiety early in his educational career at MHS, he managed to do well in school. His parents’ desire for him to continue at MHS is evidence of this. Moreover, his 2018-2019 school year IEP confirmed his successful transition. I also recognize that the IDEA favors placement in the least restrictive environment, which, here, is DHS. Nonetheless, based on the precise facts of this case, I cannot conclude that the preponderance of the credible evidence permits a finding in favor of the Board. R.T. has been in the same school for four years; continues to require the assistance of job coaches, paraprofessionals and other supports; and has only one year left before he graduates. DHS’ program, while substantially similar to MHS’, is new and there is no evidence in the record concerning its operation. While DHS has endeavored to be fully prepared to respond to R.T.’s needs, the evidence in the record does not address what those needs will likely be and, in particular, what harm, if any, will occur as a result of the transition.

I respect the efforts made by DHS to develop a program that would be responsive to R.T.’s needs as well as facilitate his transition. Its witnesses demonstrated their professionalism and sincere belief that DHS’ program would be beneficial to hm. However, in the absence of adequate evidence concerning the impact of the move upon R.T., I **CONCLUDE** the District has not demonstrated by a preponderance of the credible evidence that the program it provided to R.T. was reasonably calculated to enable him to receive meaningful educational benefit given his potential and abilities at this time and in this context.


ORDER

For the foregoing reasons, it is **ORDERED** that petitioners’ petition for relief is **GRANTED**. R.T. shall remain enrolled as a student at Moorestown High School and his IEP shall be amended accordingly.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2019) 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 (2019). 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 Policy and Dispute Resolution.

July 20, 2021

DATE



JUDITH LIEBERMAN, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

JL/mph

APPENDIX

LIST OF WITNESSES

For petitioner:

N.T.

For respondent:

Dr. Lisa Della Vecchia

Lauren Hood

LIST OF EXHIBITS

Joint:

- J-1 Due Process Request, February 13, 2020, with conversion from mediation to due process, February 26, 2020
- J-2 Board's Answer to Due Process Request, April 16, 2020
- J-3 Speech and language evaluation, November 17, 2016
- J-4 Neurological report with diagnoses, December 19, 2017
- J-5 March 20, 2018, IEP
- J-6 Neurodevelopmental assessment report, April 18, 2018
- J-7 February 6, 2019, IEP
- J-8 Learning evaluation, October 15, 2019
- J-9 Psychological evaluation, October 17, 2019
- J-10 November 18, 2019, IEP

For petitioner:

- P-5 Jobs list and requirements, with SLE documentation
- P-6 Documents concerning sports activities

For respondent:

R-1 Della Vecchia and Hood curriculum vitae and certificates

R-2 February 7, 2020, IEP with sign-in sheet