



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 07715-22

AGENCY DKT. NO. 2023-34766

P.G., ON BEHALF OF B.C.,

Petitioner,

v.

ELIZABETH CITY BOARD OF EDUCATION,

Respondent.

Hillary D. Freeman, Esq., (Freeman Law Offices) for petitioners

Richard P. Flaum Esq., (DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, Attorneys) for respondent

Record Closed: March 1, 2024

Decided: April 15, 2024

BEFORE ERNEST BONGIOVANNI, ALJ

STATEMENT OF THE CASE

In accordance with the Individuals with Disabilities Education Act, 20 U.S.C. § 1415, P.G., (parent/mother/petitioner) requested a due process hearing on behalf of her son, B.C., claiming that respondent, the Elizabeth City Board of Education, (respondent/district/Board) failed to provide a Free and Appropriate Public Education (FAPE) by not sending B.C., (now age 17) to an out of District school for Autism and by

failing to provide an occupational therapy evaluation, an ACC evaluation and functional behavioral assessment. The Board responds that a May 2022 IEP provided FAPE, that it was fairly implemented, and was also modified, with P.G.'s signed consent, in an amended IEP in January 2023, which continued to provide FAPE for B.C.

PROCEDURAL HISTORY

On or about August 1, 2022, Petitioner filed for Mediation/Due Process. Efforts to Mediate failed and on September 9, 2022, the matter was transmitted to the Office of Administrative Law. A Settlement conference with the Honorable Dean Buono did not lead to resolution and the matter was initially assigned to the Honorable Andrew Baron. At his request, he was recused from presiding over the matter and In January 2023 the matter was reassigned to me. An initial conference was held on February 28, 2023, and was continued until March 6, 2023, so that the attorneys could attempt to settle Discovery issues which would delay a hearing. After holding a status conference on April 18, 2023, a Prehearing Order, which scheduled hearing dates for July 7, July 10, July 11 and July 12, all in 2023. With both parties' consent, to accommodate the attorneys' schedules, and to allow each side to thoroughly present their respective positions, five hearings via Zoom video conferences were held on July 10, 2023, July 12, 2023, July 20, 2023, August 8, 2023, and October 4, 2023. At each hearing, a Spanish Interpreter was provided for P.G. Transcripts were ordered and after their receipt each side submitted post hearing briefs, responses and rebuttal briefs, the last one being received January 16, 2024. A conference was held on March 1, 2024, to stipulate to which exhibits were entered of record and admitted into evidence, at which time the record closed.

TESTIMONY

Respondent presented as witnesses, Dr. Nalin Beaumont, the Board's Child Study Team (CST) school psychologist, Christina Celona, a speech pathologist for students with language disorders, articulation disorders, apraxia, speech and pragmatic disorders, Anabela Carter, a Special Education teacher and learning disabilities teaching Consultant for the Board's CST, and Sandra Stewart, a social worker for the Board's CST.

Petitioner's witnesses were P.G., who is B.C.'s mother, A.C., a son of P.G. and brother to B.C., and Dr. Bobbie Gallagher, an expert witness in the field of behavioral analysis.

FACTUAL DISCUSSION AND FINDINGS

1. Preliminary discussion and Findings regarding the January 2023 Amended IEP

Due Process was filed on July 25, 2022 (received by OSEP August 1, 2022) which challenged the IEP from May or 2022, and alleged the District failed to provide FAPE during 2022-2023, for which an out of district program that specializes in autism, an occupational therapy evaluation, an AAC evaluation and a functional behavior assessment were sought. The IEP was amended in January 2023. (R-28). The preliminary issue is what, if anything, is the effect of the amended IEP on the issues challenged in the Due Process Petition of July 2022, concerning the 2022-2023 school year.

It is not disputed that the Due Process Petition was not amended in January 2023, and that no new demand for a Due Process Fair Hearing was made regarding the amended IEP. The District argues that real changes were implemented, and because P.G. agreed to the amended IEP, there can be no issue but that the amended IEP provided FAPE at least as of January 2023, for the balance of academic year. In contrast, P.G. argues that no real changes were made in the amended IEP beyond providing for technical equipment, not previously given to B.C.

More significantly, P.G. argues that because she doesn't speak English, and although a Spanish interpreter was used at the January 2023 IEP meeting, P.G. didn't agree to it, notwithstanding her signature on the agreement. Further she "revoked" agreement to the IEP. That is the preliminary issue to be decided, since if no Due Process was filed to contest the Amended IEP, it is argued, no issues are contested except B.C.'s educational program up to the date of the amended IEP.

P.G. testified she "does not speak any English at all" and can't read English. She claimed none of the evaluations she received, nor any IEPs were provided in Spanish.

A.C., her other son and brother to B.C., testified that soon after the January 25, 2023 IEP meeting when his mother signed the amended IEP, she had A.C. hand write a letter to the District explaining that she did not agree to the amended IEP because it was not written in Spanish. Further that this letter revoking her consent was delivered to the District by placing it in B.C.'s backpack, and was brought to school by B.C. This was, she claimed, this was a common method of communication between P.G. and the district. In rebuttal, Dr. Nalin Beaumont testified to a number of email communications (R-43 through R-56) made between him and P.G. that occurred between January 4, 2022, and December 23, 2022. Dr Beaumont said the Spanish communications made by him were accomplished by use of Google Translate. In rebuttal, P.G. testified that she can understand some words in English without a translator but "not very much." She agreed that she received responses from all of the emails she sent to B.C.'s case manager. However, she then limited her answer by saying she referred only to emails sent from her phone as she knows they were responded to, but she couldn't verify that all the emails that were sent by A.C. to the District on B.C.'s computer were responded to by the District and that she recalled A.C. saying "No" the District wasn't responding.

After reviewing the testimony of P.G., A.C., and Dr. Beaumont who directly testified to this issue, and comments in testimony of other witnesses for the District, the facts and circumstances surrounding that testimony, the demeanor of the witnesses, and the likelihood and probability that the facts are as testified to by them, I find it not credible that P.G. objected to her signature being on the Amended IEP agreement of January 2023, or "revoked" her agreement, by having her son write a note and having it placed in B.C.'s back pack. A.C. admitted that he believed the letter to be "important." He claimed the Board and his family developed the use of this kind of communication (notes in B.C.'s backpack) "before" they (the school and his mom) started using email to communicate, yet he had no reasonable explanation as to why he didn't keep a copy of this important document. More importantly, in answer to why he and his mother started using emails he stated, "I started using it because nobody gave a response." That would indicate he meant he started using email because no one was responding to the notes, not the other way around, as implied by P.G.'s argument on this point. Further there was absolutely no basis to believe any school representative received the alleged letter left in the student's backpack. There was no testimony that even if notes for occasional

communication between P.G. and the school ever happened, that P.G.'s backpack was inspected every school day for such notes. Further, the rest of the record and testimony showed that there were frequent emails, exchange and/or responses to/between A.C. (for his mom, P.G.) and Dr. Beaumont between March 2022 and December 2022. Accordingly, the explanation for putting a note in the backpack in January 2023 soon after the IEP meeting "revoking" the IEP, was confused, contradictory and just not credible. I find it also not credible that if P.G. was not getting responses by sending emails, she would not email a simple statement, e.g. "I revoke the permission I gave you at the January 2023 IEP meeting." Also, P.G. had retained her current attorney, Ms. Freman by November 2022, and I find it not credible that she would not have asked Ms. Freeman about it, if she had any questions regarding her permission granted for the amended IEP. Moreover, the major change in the January, 2023 IEP was the issuance of the IPAD to B.C., but the evidence was that P.G. never returned the IPAD to school and, to the contrary, B.C. continued to use it throughout the remainder of the school year. This is completely at odds with an IEP that has been "revoked." Still further, there was no evidence offered that either P.G. or A.C. ever followed up, via email, notes, phone calls or other communication on this non-response to the note left in the backpack in January 2023, although P.G. apparently thought the note left in the backpack was "important", to have her son testify to it. It was also unrefuted that a translator was at the IEP meeting at all times and that P.G. physically affixed her signature to the "Consent to Implement revised IEP within 15 days form prior to 15 days" form. (R-42). That form states, in pertinent part, "You have the right to consider the proposed IEP for up to 15 calendar days. To have the IEP services start before the 15 days expire, you must sign below." The form goes on to state what will happen if you do not request mediation or Due Process, the IEP will be implemented without your signature after the 15 days have expired. Most significantly the final line of the form is "I have received a copy of the proposed IEP and agree to have the IEP services start before the 15 calendar days" with a signature line following to which P.G. signed as B.C.'s "Madre." Further, credible testimony established that P.G. was given a Spanish language draft copy of the IEP at the meeting. Accordingly, I **FIND** that P.G. knowingly agreed to the amended IEP in January 2023 and did not "revoke" her agreement. As stated earlier, it is not disputed that no Due Process demand contested the amended IEP. Therefore, I agree with the Board's contention and **CONCLUDE** as to this preliminary issue that the amended IEP

and whether the Board failed to provide FAPE for the balance of the 2022-2023 school year following the amended IEP is not contested.

2. Other Facts and contentions

Dr. Nailin Beaumont (Dr. Beaumont)

Dr Nailin Beaumont is the Elizabeth Child Study Team School Psychologist. She has a PHD in Psychology. Her daily responsibilities include facilitating IEP meetings, developing IEPs and implementing them. She also does cognitive testing, social emotional testing and behavioral testing as part of counseling services per individual IEPs. She has done evaluations for over 200 students. Between 2019 and May 2022, she provided direct services or case management services for over 500 students. Of an annual caseload of 180 students, approximately 40 to 50 have multiple disabilities. Dr. Beaumont qualified as an expert in school psychology, IEP development, and over objection from petitioner, in behavioral intervention and educational programming.

Dr. Beaumont testified about B.C. and his attendance, performance, and progress at the Admiral William F. Halsey Jr. Leadership Academy (Halsey). She testified that the typical student in the multiple disabilities program at Halsey has moderate to severe cognitive I.Q. as well various other “medical challenges” such as autism, Downs Syndrome, seizure disorders or simple intellectual disability. She stated that because behavioral interventions for Halsey students are embedded in the multiple disabilities program, there are not many students who have formal behavioral intervention plans.

Regarding B.C., he was 15 years, 8 months old in May 2022, and attending 10th grade at Halsey. He had previously been found eligible, and was receiving services for special education, under the character of Multiple Disabilities. As noted in the May 2022 IEP, (R-17) B.C, since birth has had a “significant medical history...which has negatively contributed to his learning, behavioral, social and emotional development” (Page 5). A Neurological/Neurodevelopmental evaluation of June 8, 2019, showed “clinical impressions of autism spectrum disorder-DSM V, with impairment in language, and Impairment in Intellect, Impulse Control Disorder (on Medication) attention deficit

hyperactivity disorder (Combined type) with obsessive compulsive tendencies, Seizure Disorder -controlled with medication Hydrocephalous controlled with VP shunt.” The May 2022 IEP determined that B.C. should now be categorized under “the federal category of autism due to the IEP team determination that this is the superseding disability impacting his overall progress (page 10).” As further explained by Dr. Beaumont, B.C. hadn’t had a seizure in years and his ADHD was being managed by medication. His autism was currently “playing the highest role in his ability to make progress,” and led to the autism classification as “a better descriptor of his needs in terms of special education.”

In May of 2022, there were two other students in B.C.’s core classes, although part of B.C.’s school day includes a few electives, such as Physical Education, which could have a class size of approximately 12. That month and year, Dr. Beaumont made a psychological evaluation of B.C. Part of the evaluation was to determine his intellectual function and measure his overall general cognitive ability. She also provided a rating scale for his adaptive functioning. The evaluation was in written form admitted into evidence (R-18). The evaluation was used to develop the May 2022 IEP or the 2022-2023 school year. It encompassed progress information shared by teachers. Because, as testified to by Dr. Beaumont, B.C. was meeting progress goals, and other reasons, it was determined to keep the educational program implemented at that time in place for 2022-2023. Dr. Beaumont’s recollection was that B.C. had made “quite a bit of progress” in math and “a lot of progress” in reading. However, the highlight of the IEP meeting regarded B.C.’s progress in “increased independence, his reduction of problematic behaviors that were described in his previous school setting.” He decreased demonstration of undesirable behavior such as elopement and aggression acts. That was “progress” for B.C. as discussed at the IEP meeting.

Dr. Beaumont’s contributed a psychological evaluation that was shared with those at the IEP meeting. His Full-Scale Intelligence Quotient (FSIQ) was 55, qualifying him in the Extremely low range. Noted areas of weakness were verbal comprehension, Working Memory and Processing Speed Indices, and all indications point to “overall difficulty in cognitive ability or natural reasoning ability.” Dr. Beaumont also referenced B.C.’s adaptive functioning, daily life skills, ability to take care of himself, communicate effectively” etc. Here again, Dr. Beaumont found B.C. to be in the extremely low range.

All this information suggests, according to her, that B.C. would have “great difficulty across all academic subjects, as well as his overall reasoning ability in and outside of the school setting.”

Dr. Beaumont was questioned as to whether a 2019 IEP’s recommendation regarding Issuing B.C. an IPAD with a Touch Chat with Word Power was implemented. She stated that while the IPAD was trialed, the primary teacher, an English teacher at Halsey, stated that B.C. was not actually benefitting from it, he preferred not to use it, and there was distraction from the use of computers and a tablet. B.C., she said, was working effectively enough in his current setting and that the program planned to start working on his communication skills in transition and finding more practical needs post high school. To address P.G.’s concerns that B.C. continues to elope from home and exhibit aggressive behavior, the IEP also called for use of Perform Care to assist P.G. with structured and more behavioral opportunities at home. However at the present time, B.C. was “safe in the school building, [not] running out of the building or anything like that, aggression.” To manage other problematic behavior, B.C. continues to need redirection, primarily by his aide. His teachers also use a sticker chart and praise to reinforce good behavior. The IEP found that B.C. seems to “benefit significantly from the role modeling of positive peers around him.” As explained by Dr. Beaumont, that meant “B.C. benefits highly from the exposure to higher functioning peers or a wide variety of peers. Further as he is in a general education setting, he has the benefit “of seeing...students that don’t even have EPS and he can model his behavior after that...seeing the higher functioning person engaging in those behaviors...that’s helping a lot with B.C.’s progress and his ability to show desirable school behaviors.” She continued that if placed in an out of District school, (such as a school for only autistic students), there could be “regression” by his adopting behaviors seen by all students in specialized schools. She concluded, on this point “That’s why we think our program is the least restrictive environment for him to make progress.”

Dr. Beaumont also noted the IEP contained a behavioral intervention plan. She described it as a modification of the past behavioral plan, based on his most recent functional behavior assessment, in order to address that certain negative behaviors were no longer being observed in the school setting, namely elopement and aggressive

behaviors in the school building. Perform Care and the creation of a charted schedule and routine for B.C. at would was created by a Speech therapist to address those behaviors P.G. complained were still happening at home. Among the goals and objectives developed were reduce or eliminate his OCD like behaviors, his perseveration on time, the calendar clocks and increase his “time on the seat” to allow greater focus and staying on task. The teachers reported and the IEP agreed that that B.C. could be well managed and redirected. Academically, the goals have to recognize B.C. is for example reading on kindergarten, first grade level and recognize that reasonable progress across time is dependent on his ability level.

Regarding the school year 2022-2023, Dr. Beaumont stated that starting in September 2022 and continuing until January 25, 2023 (when the IEP was modified) B.C. was “generally making progress”, and specifically in math or speech and behaviorally. Further, in her opinion, B.C. made meaningful progress during that time frame. All of his goals showed gradual to satisfactory progress, his behavior was improving and his independence in the school setting was increasing.

A new IEP meeting had been planned for January in order to take into account an updated AAC evaluation which had been completed in November 2022. The goal of the update was to consider Dr. Haven’s findings and address P.G.’s questions raised at the May 2022 meeting. By this time B.C. was participating in outside services at Children’s Specialized and was using an IPAD with high tech AAC technology, so the new IEP meeting “seemed like a good opportunity to explore is this was he could again make even more progress with.”

At the January 2023 meeting, P.G. shared a concern with B.C. getting off the bus toward the end of the day because B.C. wanted to stop and say hello to all the people at a nearby school during his drop off and it was difficult for his family to control him. She asked if the school would administer his medication up to just before dismissal and it was agreed to seek the school psychiatrist’s permission for this. Overall, the IEP was explained to P.G. as continuing the multiple disabilities program with related services for speech and a personal aide as well as the new inclusion of the AAC devise the use of more high-tech devises. The iPad has high-tech apps such as Proloquo which B.C. was

already using at the Children's Specialized, along with a revision of B.C.'s access to AAC strategies on his current computer, which he preferred to use in the school building. P.G. expressed no other concerns and signed off on the IEP agreement. Dr. Beaumont noted the amended IEP had an end date of May 15, 2023, and it was contemplated another IEP meeting for 2023-2024 would take place that May. Based on Dr. Beaumont's frequent interactions with B.C.'s teachers, she recounted that B.C. continued to make progress throughout the remaining time period of the amended IEP.

During cross examination, Dr. Beaumont testified that she sees B.C. in classrooms "frequently" possibly 20 times a year although did less so in the pandemic year. Outside of specific classrooms and including social situations, she saw B.C. typically every day. She admitted she is not trained in behavioral analysis, however she appeared knowledgeable of Applied Behavioral Analysis (ABA) programs. She testified that behavioral data was collected on B.C. for the time frame that he was part of her caseload beginning in May of 2020, to manage and track B.C.'s behaviors and to determine if modifications needed to be made. B.C.'s current behavior plan was first implemented in 2019 at his old school and was updated in the May 2022 IEP. The collected data provided "concrete information on how many elopements and aggressive behaviors occurred". It was "very evident to us" that B.C. was no longer demonstrating those behaviors. Further, while some insight from teachers on B.C.'s OCD like behaviors might be "subjective," progress was reported there as well. She stated that B.C.'s behavioral progress "extends outside of the interventions listed in [the May 2022 IEP]...I'm referring to his overall adaptive skills that have improved in the school setting..." For example, he had less need for redirection back to his seat, remaining on task, and he made progress navigating hallways of the school independently. She denied the contentious questions which asserted there was no objective data that B.C. made progress. To the contrary, "We have objective data in the form of...his discipline records. We see his grades. We see his incidence logs..." She denied the implication that there had been a lack of progress because B.C. was reading on a kindergarten to first grade level. "We have to understand the ability level that B.C. is on, and his cognitive capabilities and determine what that meaningful progress would look like...[with B.C.'s IQ] and "his various other limitations would be, his progress is going to be very very slow..." Although the Halsey school autism program may not utilize ABA, she maintained that "we are very confident in the facts that

we're offering B.C. is his least restrictive environment that allows him to make progress. So that's why we feel its appropriate at this time especially since we feel like his progress...is demonstrated."

Christina Celona (Celona)

Christina Celona holds a master's degree in Speech-Language Pathology and is a contract employee of the Steppings Stones Group for the Elizabeth Public Schools and testified as an expert in Speech Pathology. As part of her clinical training, she worked with a mixed caseload of students (about 15 students per year in 2019 and 2020), with language disorders, articulation disorders, apraxia, speech and pragmatic disorders. In 2020-2021 her caseload of students increased to about 60 a year. She utilized language testing to determine expressive and receptive language skills for children in the elementary middle and high school levels and with more emphasis in high school students with life skills and pragmatic language testing. In 2021-2022 she worked in Elizabeth Schools providing primarily articulation and language services to 65 students. Part of her work with the students was to conduct comprehensive language assessment, using standardized scores in expressive receptive language areas, comprehension, vocabulary and word meaning, then creating a composite score to reflect the student's language ability. For the school year 2021-2022, she attended 75 IEP meetings, about 15 for speech only.

She did not work with B.C. until the school year 2022-2023. She worked with him in a small group, no more than five students, and also provided "push in services" to assist him in the classroom. The goal for B.C. was to help him to communicate better with his peers to work functionally in the classroom setting to help him succeed in class and carry over these skills outside the classroom. She described in detail the program and progress B.C. made.

In the classroom a lot of the time they'd be working on a lot of skills that reflected his IEP goals, so for example, his English teacher would have exercises on the computer screen where they could go up to the board, each student would take turns, and they would have a situation presented, and they would ask a W-H question and he would choose from a field of three or four meaning like a multiple

choice, and he would have to choose the correct answer and by the end of the year he really gained more accuracy instead of just selecting, you know instead of just fixating on one or the other answer he would actually take a moment and pause, and then choose the answer, which marked a lot of progress in his life skills class, they focused a lot on body parts, and I would model using the AAC device, I would help him to form a response and he would either read it from the iPad or would point to his body part that was being identified showing his receptive language skills. If you said 'point to heart' he would be able to internalize that message and point.

In sum, while progress was "definitely slow" there was "some progress" in language skills throughout the year, more so in the second semester but throughout the year.

Regarding the January, 2023 IEP meeting, it was determined that the AAC high tech device would be reinstated but this time supplemented with other forms of unaided AAD that doesn't involve technology, that "includes gestures, pointing, sign language" all forms of AAC communications that B.C. is familiar with. Issued in January 2023, B.C. was working on the Proloquo2GO App and was shown another app called GoTalkNOW. She found B.C. to be generally receptive to using this tool, e.g. using symbols or the icons to tap and then put together to make phrases. Ms. Celona believed P.G. at the January meeting was receptive to the iPad going forward. In sum, in her opinion "meaningful" progress was made. "[T]he conjunction of the AAC device just overall...intelligibility with the pacing board, alongside his increasing comprehension, abilities, I think he made progress." Further,

There was definitely an increase in his ability to focus in the classroom, an increase in his ability to communicate with others without sometimes...fixating on a conversational topic, he'd be able to kind of relate more to his peers through his own way of communicating, not always just verbally but through gestures, his nonverbal language skills with those gestures really did increase.

On cross, Ms. Celona conceded that B.C. likely would have made even more progress during 2022-2023 if there had been greater frequency in individualized speech therapy sessions, but it would have been addressed at the next annual IEP (which didn't occur

because of the present litigation). She also conceded that because of the recent findings that B.C. not only has apraxia but also dysarthria, the IPAD might have been used earlier.

Anabela Carter (Carter)

Anabela Carter has 20 years' experience as a teacher, first in general education then as a special education teacher, and is currently a licensed Learning-Disabled Teacher Consultant (LDTC) for the Child Study Team. While case management is a large component of her job as an LDTC, she also holds IEP meetings collaborates with parents, teachers and students, does student observations, classroom observations and writes IEPs. For the past 8 years, her focus has been on high school age students and during that time she has been part of IEP teams or Child Study teams for several hundred students and took part in close to 1000 IEP meetings. She regularly evaluates high school students typically using the Woodcock Johnson Achievement and Oral Language tests, which give a range of where the student is performing in reading writing math and language compared to their grade level peers, or age level peers. After conducting such tests, she regularly makes recommendations on educational programming. Including interventions and strategies, i.e. recommendations for specific instructions for the classroom. She testified as an expert in LDTC and in educational programming for learning disabled students.

B.C., she said, as a student of the multiple disabilities program functions well in a highly structured classroom program with a variety of different developmental disabilities. His cohort class in 11th grade consisted on three students. He and they have a full day of classes just as students in general education. It is departmentalized with a different teacher for every subject and all their teachers are certified special education teachers. Ms. Carter conducted an educational assessment (R-20) for the May 2022 IEP meeting.

Compared to all age/grade peers, including those with no disabilities, his reading comprehension is "below the first percentile." However, when not using strict protocols and giving B.C. options of words, he exhibits a higher level of comprehension. In oral reading he was functioning at 1.5 grade level. He is in an extremely limited range, less

than one percentile in writing orally presented words. He was at the 1.6 grade level in Math.

As a student overall, he “completes his class work,” but can easily lose attention. However, he is easily redirectable throughout the class period and benefits from having his one-to-one assistant as well to get him back on task and keep him on task.” Her assessment was that B.C. requires “a lot of individualization-a lot of modified curriculum in a highly structured environment” which is as addressed by his current program. Her opinion was that his current program provides B.C. the opportunity to make meaningful educational progress in his program.

In cross examination, she disputed the implication that the IEP would not be appropriate simply by not each and every recommendation from her evaluation. In any event, she stated that B.C.’s use of an AAC device was “imbedded” in the programming as referenced in IEP “Speech” section under “Assistive technology devices and services.”

Sandra Stewart (Stewart)

Sandra Stewart is a licensed clinical social worker and the Social Worker for Elizabeth’s Child Study Team. She has a master’s degree in social work. She testified as an expert in social work. She did social evaluation (R-21) of B.C. for a reevaluation meeting held on January 18, 2022. This consisted of a parent interview and discussions with teachers and review of school records of B.C. She also reviewed the then current IEP, log entries, grades, attendance records, and any available medical records. She found that outside the dynamics of school “mom still has a very challenging time with B. at home.” She had a therapist called a “FACT” worker who was having some success providing home services to P.. but she left in December 2021. The IEP recommended P.G. reengage with FACT or a similar service called Perform Care. As a result they were reengaged and their service was incorporated in the IEP for the 2022-2023 school year.

While P.G. needs a lot of support with B.C. at home, Ms. Stewart observed that B.C. is a “great student...well favored in his class.” Elopement had become less of a problem. B.C.’s teacher reported that, for example, one of B.C.’s tasks is to take out

garbage which he does “without capitalizing on the opportunities to elope.” Overall, she found that the “social emotional competencies” which are “embedded in the curriculum” are addressed in the classroom to B.C.’s benefit and there were “no concerns.” Her opinion was that B.C. was in the right program because “B. is in the least restrictive environment, because he’s making meaningful progress. B.C. is “externally happy. He’s so confident. He likes being there...he’s...socially engaging.” B.C. speaks to the adults, peers and everyone. Based mostly on teacher feedback, she concluded that “B. is a rising senior ...and he’s closer to that threshold where he will be in the community, so I think an inclusive environment like Halsey, with ...a variety of students...is a good learning ground for him.”

In cross examination, regarding the January 2023 IEP meeting she felt “mom” did not as she did in May of 2022 come with two representatives but rather independently, and when asked by her if she had any concerns said she had none. She said that the IEP’s transition statement-plans for B.C. post-graduation, are to develop his independence skills. His living skills, with referrals to agencies like the Division of Developmental Disabilities (DDD) to support post-secondary. The plan calls for him to use Access Link to support with specific training, and to consider formal guardianship. Complete independent living is not part of the current goals. The Life Skills curriculum at Halsey is designed to help students like B.C. to cope with “what happens in real life, money management, purchasing, how to do, what laundry...some of it lands in the competencies of social emotional learning, self-awareness, social awareness....certainly try to teach them the skills so that they can be as independent as they possibly can.”

For Petitioner

Dr. Bobbi Gallagher (Dr. Gallagher)

Doctor Bobbi Gallagher, a board-certified behavior analyst, earned her Doctorate in Applied Behavior Analysis which she earned at the Chicago School of Professional Psychology, an ABA Online Campus. She was previously a Senior Case Manager of the Autism Services Group and then A Clinical Health Supervisor at Epic Health Services. After earning her master’s in special education at the New Jersey City University in 2006,

she started her own business, where she continues as Owner and Director, the Autism Center for Educational Services (ACES) She was retained by Petitioner as an Expert Witness in Applied Behavioral Analysis after an appointment in May 2023. Until that time, Dr. Gallagher had no experience with B.C. or his mother, P.G. She never took part in any IEP meeting for B.C. and gave no consulting advise to the Elizabeth Public Schools regarding same. She testified that most of her practice is devoted to people, who like B.C. are “severely impacted by their autism spectrum disorder.” Behavioral analysis, in educating individuals with autism, analyze how these individuals would learn and what might be interfering with their ability to learn. A science utilized for 60 years, its goal, as applied to humans, is to “make progress and implement strategies to improve” learning.

She does evaluations of students with autism and “different types of evaluations on students,” totaling at least 2 a month. She has attended hundreds of IEP meetings. She was qualified to testify as an expert in special education as it relates to autism and behavioral analysis.

She identified three main points regarding B.C. and his current education programming, being 1) “his lack of academic progress”, 2) lack of a behavior intervention plan, and 3) the lack of “appropriate strategies being utilized...including lack of data collection for monitoring and analyzing in order to...move forward or to progress.” Although unable when first she was contacted to see B.C., she first met him in May, 2023. In preparation of her report (P-3) she first observed B.C. and then reviewed records, all collected from B.C.’s attorney. In her opinion, most of the past evaluations of B.C. noted “a long history of having sort of off task behaviors.” While he also has a history of elopement dating to 2016, which seems to have abated but would, in her opinion, “come back” without staff and still occurs sometimes at home. She did not say elopement was a problem at school in 2022-2023 although she recalled an incident where an aide had to block a door to keep B.C. from leaving. She noted that while such a problem might be avoided by the use of an aide, you wouldn’t “want B to have a one-on-one aide the rest of his life.” Regarding her own observations she saw no attempt by elopement to leave class, but she did see him leave his seat (although she also said this does not qualify as elopement, but rather “off task behavior”). She observed that B.C. has anxiety by being obsessed with the calendar, e.g. “where he’s going next, whether he’s going home.” The

biggest problem for B.C. is his lack of being able to focus on his work. Yet she observed that staff tolerated B.C.'s behaviors such as repeating inappropriate answers, e.g. "saying Tuesday to the question of what month." B.C., she said, needs a functional behavioral assessment, to determine why he engages in these behaviors. Functional behavior assessments are common in school districts, she said. Such assessments which could take a day or two to write, and a week to develop an implementation plan, may have to be done more than once, although she noted she is not recommending they be performed by her, just to hire some behavioral analyst to do them.

She stated that the District's behavior plan was not in her opinion "researched based to teach [B.C.] to stay on task." A functional behavioral assessment would address, e.g. why a student would get out of his seat to implement strategies to help him stay in his seat.

Dr. Gallagher criticized the lack of duration data collected in the district's reports concerning B.C. She recommended using a timer and starting it and stopping it every time B.C. gets up or leaves the environment for off task behavior and collect "how much time in the day B. spends off task."

She stated she would not utilize IQ to measure B.C.'s ability to learn, and that his intelligence compared to his peers is not really relevant. Regarding the District's Behavioral plan as summarized in the IEPs, she believed the behaviors noted and targeted were the same in the May 2022 IEP and the January 2023 IEP. She recommended utilization of the strategy of "peak curriculum" as used in private schools and in at least one public school she knew of, in Jackson, NJ, and as written about in a scholarly article (P-7). She disagreed with the goals as set forth in B.C.'s IEPs, e.g. to meet a level of satisfactory behavior 75% of the time "because there's not an assessment conducted of B. that would show us his present levels." She continued "Behavior analysts there is research to support that criterion levels at 75% will not allow the student to make the amount of progress to maintain the skill at a level necessary to be a pre-requisite for the next skill."

She criticized the lack of mastery of goals in Progress reports in his IEP, e.g. certain communication skills, noting instead that while “he’s still progressing now satisfactorily after four marking periods,” B.C. is not making meaningful progress because since 2016 he’s still learning at kindergarten to first grade level. Use of the Peak as an assessment tool “would allow us to understand his present levels of performance more accurately. And then what is the next building block to get him where he needs to go as opposed to comparing him to...the rest of the population.” Even where B.C. made progress on goals, Dr. Gallagher was critical at times of the goals, e.g. the fact that B.C. could tell time from an analog clock because “in this day and age nobody uses analog clocks.”

In cross examination, Dr. Gallagher acknowledged that contrary to her report and testimony which recommended use of Edmark as a reading program, in fact the District is using the Edmark as a reading program for B.C., “it doesn’t mean necessarily that’s an effective one because I also recommended direct instruction.” She stated she had been part of 15 IEPs in the last ten years and wrote an entire IEP for a student aged 19 or 20 about ten years ago. She did not conduct her own assessments of B.C. Although she explained she was only given 40 minutes to observe B.C. in school, she had to concede she could have done e.g. a Peak assessment of B.C. outside the school setting. However, she would have recommended another behavioral analyst who lives closer to B. to perform such assessments.

Dr. Gallagher would not concede that B.C. is cognitively impaired, specifically that “I would disagree that B. has a cognitive impairment that impairs him from learning because we have not conducted the appropriate assessment tool necessary to see where he fails.” Yet she also had to concede she saw no report used by the school which claimed that B.C. is incapable of learning. She agreed with Dr. Haven’s report in the Doctor’s statement that:

There B. has a diagnosis of autism spectrum disorder, language and cognitive impairment compulsive disorder, attention deficit hyperactivity disorder combined with OCD tendencies, seizures and a sensory disorder. His health status includes a diagnosis of hydrocephaly at birth and a shunt placement and developmental

delays across all domains. B. currently has a heart condition and high blood pressure which restrict the medication he can take.

However, Dr. Gallagher clarified that she agreed that was the diagnosis of B.C.- cognitive impairment- but that was not *her own* diagnosis. For the same reason she agreed that B.C. has low adaptive functioning but she disagrees with the use of the term because it is “used from a psychological standpoint ...so its not language that we in the behavior analyst field generally use in order to identify someone.” She conceded she is not a school psychologist, an LDTC, a social worker or a speech pathologist. She also had to concede that someone with low adaptive functioning would have difficulty eating, dressing themselves, using a telephone, managing their day-to-day affairs.” She agreed that B.C. needs a specific program for his lack of skills.

Dr. Gallagher was unaware of B.C.’s specific curriculum nor of what the multiple disabilities program provides for in the Elizabeth public schools. She noted that while there were three cohorts in B.C.’s classrooms there would be six cohorts in the schools she recommended in her report. She would not agree that it’s “a given” that B.C. would necessarily emulate the behavior of his peers if placed in a school or all classrooms consisting entirely of students with autism or other disabilities. She would concede schools she recommended are a more restrictive environment than Elizabeth public schools.

While presently B.C. is in a school of 1500 students many of whom are general education students, Dr. Gallagher, who did not observe the fact that B.C. uses the restroom independently and goes to the cafeteria and has lunch with those students, opined those facts do not mean he is learning from those students, but rather its just “an indication that’s he in an environment with them.” She would not agree that being in an environment with general education students would help B.C. later in life.

Dr. Gallagher had been critical that as of the May 2022, the behavioral intervention plan as stated in the IEP had not been updated since 2019, and deemed it irrelevant that the public schools were closed for an extended period of time beginning March 15, 2020. Dr. Gallagher would not agree that it is “unlikely” that B.C.’s OCD behaviors would be

extinguished completely at any time, believing instead they could be completely extinguished. She would not accept B.C. (or possibly any student with his problems) being on task 70% to 80% of the time, maintaining it should be “at least 90% on task.” She would agree ADHD impacts B.C.’s off task behaviors but ADHD is “treatable.” Her opinion as to why and when B.C. goes off task was also limited by her only observing B.C. in class for 40 minutes. She stated that homeschool reinforcement is again not research based and “would not be an effective strategy.” She also conceded many elements of the behavioral intervention plan e.g. positive praise, and the use of token economy are appropriate, but were simply “not witnessed” by her. Likewise, structured observation of targeted behaviors, regular teacher feedback and consultation with the Child Study Team and charting of targeted behaviors could not be determined by the 40-minute observation alone. She conceded that by January 2023, an iPad was being utilized and has since and that it was an appropriate augmentative communication device for B.C. to use. She conceded there is no evidence of elopement in 2022-2023 and that B.C. is asking for permission to go to the bathroom and independently go there and come back, but maintained that the school hadn’t proved this improved behavior was because of anything that B.C. had learned.

Dr. Gallagher conceded that Peak assessments “correlate strongly with the following wrote assessments of language cognitive or adaptive functioning ...similarly to what a WISC or a WIATT or one of the standardized tests would show relative to the student.”

P.G.

P.G., B.C.’s mother testified very briefly that she can understand some words in English without a translator but “not very much.” She agreed that she received responses from all of the emails she sent to B.C.’s case manager. However, she then limited her answer by saying she referred only to emails sent from her phone as she knows they were responded to but she couldn’t verify that all the emails sent to the District on her B-c computer, that were sent by her son A.C. were responded to and she recalled A.C. saying “No” they weren’t responding.

ALL OTHER FACTUAL DISCUSSION AND FINDINGS

Based on the testimony provided and my assessment of its credibility, together with the documents submitted and my assessment of their sufficiency, I **FIND** the following as **FACTS**:

Prior to May 2022, when a disputed IEP was developed for B.C. a child born September 12, 2006, and Elizabeth resident, for special education services for 2022-2023, B.C. had received special education from respondent at least since 2014 (R-2 IEP for school years 2014-2015 and 2015-2016). In the school years of 2021-2022 and 2022-2023, he was in the special ed. multiple disabilities program. The typical student in the multiple disabilities program at Halsey has moderate to severe cognitive I.Q. as well various other “medical challenges” such as autism, Downs Syndrome, seizure disorders or simple intellectual disability. B.C. since birth has had a significant medical history which has negatively contributed to his learning, behavioral, social and emotional development. That medical history was essentially undisputed, and I so **FIND** that, at a neurological, neurodevelopmental level, B.C. is strongly affected by autism spectrum disorder-DSM V, with impairment in language, and Impairment in Intellect, Impulse Control Disorder (on Medication) attention deficit hyperactivity disorder (Combined type) with obsessive compulsive tendencies, Seizure Disorder, which is controlled with medication, and Hydrocephalous controlled with VP shunt. B.C.’s FSIQ was 55 qualifying him in the Extremely low range. Because of his developmental disabilities B.C. has overall difficulty in cognitive ability/natural reasoning ability, and will have great difficulty in all academic subjects. Another limitation in possible treatment for some of B.C.’s disorders through drug therapy owe to his inability to take those drugs due to high blood pressure and heart conditions.

I also **FIND** B.C.’s multiple disabilities program is highly structured; classes are very small (just three cohorts) presenting opportunities for needed individualization for B.C. He has a full day of classes as do the general education students. The classes are departmentalized with different teachers, each of them being certified in Special Education. He has daily instruction 90 minutes in English, 90 minutes in math, 47 minutes in science, 47 minutes in history with a projection for the following year that each class

be 47 minutes. He also receives speech services twice a week and life skills courses, physical education, and oral languages classes with general education students, usually 12 in number. Although B.C. has been developing more independence skills such as getting to the cafeteria and bathroom independently, and navigating school grounds with little assistance, he has a one-on-one aid available for all classes and assisting during transitioning, arrival and departure time, and is under close supervision at all times.

The May 2022 IEP for B.C. recategorized him from “Multiple disabilities” to “Autism” because autism was by then the superseding disability impacting his overall progress. The IEP incorporated the facts, with which I agree, and I **FIND**, that B.C. was, nonetheless making progress in subjects such as math and reading, and in reducing undesirable behaviors such as elopement and aggression. The IEP also addressed P.G.’s stated concern of her reports of B.C. continuing to elope from home and exhibiting aggressive behavior by the use of Perform Care, and the creation of a charted schedule and routine for B.C. created by a Speech therapist. I agree with School Psychologist Beaumont that academic goals for B.C. must recognize that despite being in 10th grade, B.C. reads at a kindergarten -first grade level and that reasonable progress across time is dependent on his ability level. From the preponderate evidence, I disagree with expert witness Dr. Gallagher that IQ is not relevant to understanding problems in making progress for students with autism. I also agree with Dr. Beaumont’s assessment that in 2022-2023, and I so **FIND**, that up until the modified IEP of January 2023, B.C. made general and meaningful progress in the aforementioned categories. That is not measured simply by better scores or higher grade level achievements by the student. Contrary to petitioner’s contention that B.C.’s continuing at kindergarten and first grade level at all subjects is proof that his program fails to provide FAPE, “the IDEA does not promise any particular educational outcome.” Endrew v. Douglas County School District, 137 S.Ct. 988, 989 (2017).

Because behavioral interventions for Halsey students are embedded in the multiple disabilities program, there are not many students who have formal behavioral intervention plans. However, B.C. had written Behavioral Intervention plans, one reported on April 2, 2019 (R-7) and another updated plan in May 2022 (R-37). There was concrete evidence that elopement at school and aggressive behaviors had been extinguished. On

this point, I disagree with the contention of P.G. and her expert witness, that there was no objective data to map B.C.'s progress as there were discipline records, grades and incidence logs to demonstrate same, and I so **FIND**. I also **FIND** that the testimony of Speech Pathologist Celona that prior to the amended IEP in January 2023, there was persuasive demonstration of progress in B.C.'s ability to communicate, which would help him in the classroom and that he could carry those skills to help outside the classroom. I **FIND** that the modification in the January 2023, IEP to reinstate an AAC high tech device that had been previously trialed and the formal adoption in the plan of B.C.'s use of an iPad issued by the District, which B.C. had begun to use, together with his use of the Proloquo2GO and GoTalkNOW apps, which B.C. was beginning to use, and P.G.'s acceptance of same meant "meaningful progress" was being made in increasing comprehension abilities, notwithstanding Petitioner's contention that B.C. might be making greater progress if the iPad and apps had been issued and learned earlier.

I also **FIND** that there may have been greater progress through greater frequency in individualized speech therapy had the scheduled May 2023 IEP had taken place so address those issues. Further the testimony of the District's Social Worker Ms. Stewart convincingly demonstrated there was greater independence shown by B.C. in doing tasks independently and without elopement, and that as a rising senior student at Halsey, with the inclusive environment there, and with a variety of students (1500 of them) his current school is a good learning ground for B.C. I also **FIND** that the IEP and modified IEP support the transition statement plans for B.C. post-graduation for independence and learning additional living skills. Significantly, B.C.'s May 2022 IEP indicates that the highly sociable and friendly young man benefits greatly from a role modeling of positive peers around him and the "positive scripts in mirroring desirable behavior." R-28.

In sum, as to the education B.C. received, for the time period covered by the IEPs of May 2022, and January, 2023, that despite the allegation that the IEPS and the implementation of same denied B.C. FAPE, I find the testimony of Dr. Beaumont, Speech Pathologist Christina Celona, Special Ed teacher Annabela Carter, and Social Worker for the CST, Sandra Stewart to be credible and persuasive. Also in sum, I find the alternative recommended for B.C. by P,G,'s expert witness, Dr. Bobbie Gallagher was not the least restrictive environment (LRE) as required by the IDEA. See N.J.A.C. 6A:14-1.2 (B)(5).

Finally, I **FIND**, that Elizabeth BOE demonstrated their evidence offered a “cogent and reasonable explanation for [its] decisions that show the IEP is reasonably calculated to enable the child to make progress appropriate in light of the circumstances.” Andrew F. v. Douglas County School District, 137 S.Ct. 988, 1002 (2017)

LEGAL ANALYSIS AND CONCLUSIONS

This case arises under the Individual with Disabilities Education Act (IDEA), 20 U.S.C. § 1401 et seq., which makes available federal funds to assist states in providing an education for children with disabilities. Receipt of those funds is contingent upon a state’s compliance with the goals and requirements of the IDEA. Lascari v. Bd. of Educ. of Ramapo-Indian Hills Reg. Sch. Dist., 116 N.J. 30, 33 (1989). As a recipient of Federal funds under the IDEA, the State of New Jersey must have a policy that assures that all children with disabilities will receive FAPE. 20 U.S.C. §1412. FAPE includes Special Education and Related Services. 20 U.S.C. §1401(9); N.J.A.C. 6A:14-1.1 et seq. The responsibility to deliver these services rests with the local public-school district. N.J.A.C. 6A:14-1.1(d). To meet its obligation to deliver FAPE, the school district must offer B.C.. “an educational program reasonably calculated to enable him to make progress appropriate in light of his circumstances.” Andrew F. v. Douglas Cnty. Sch. Dist., 137 S. Ct. 988 (2017)

The primary issues in this case are whether the District failed to provide or offer B.C. with FAPE for the 2022-2023 school year, for which an out of district program that specializes in Autism, an occupational therapy evaluation, an AAC evaluation, and a functional behavioral assessment were sought.

IDEA ensures that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and ensures that the rights of children with disabilities and parents of such children are protected. 20 U.S.C. § 1400(d)(1)(A), (B); N.J.A.C. 6A:14-1.1. A “child with a disability” means a child with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including

blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities, and who, by reason thereof, needs special education and related services. 20 U.S.C. § 1401(3)(A). B.C has been diagnosed with autism and such described disabilities per the statute.

States qualifying for federal funds under the IDEA must assure all children with disabilities the right to a free “appropriate public education.” 20 U.S.C. § 1412(a)(1); Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176 (1982). Each district board of education is responsible for providing a system of free, appropriate special education and related services. N.J.A.C. 6A:14-1.1(d). A “free appropriate public education” (FAPE) means special education and related services that (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under 20 U.S.C. § 1414(d). 20 U.S.C. § 1401(9); Rowley, 458 U.S. 176. Subject to certain limitations, FAPE is available to all children with disabilities residing in the State between the ages of three and twenty-one, inclusive. 20 U.S.C. § 1412(a)(1)(A), (B).

An individualized education program (IEP) is a written statement for each child with a disability that is developed, reviewed and revised in accordance with 20 U.S.C. § 1414(d); 20 U.S.C. § 1401(14); 20 U.S.C. § 1412(a)(4). When a student is determined to be eligible for special education, an IEP must be developed to establish the rationale for the student’s educational placement and to serve as a basis for program implementation. N.J.A.C. 6A:14-1.3, -3.7. At the beginning of each school year, the District must have an IEP in effect for every student who is receiving special education and related services from the District. N.J.A.C. 6A:14-3.7(a)(1). Annually, or more often, if necessary, the IEP team shall meet to review and revise the IEP and determine placement. N.J.A.C. 6A:14-3.7(i). FAPE requires that the education offered to the child must be sufficient to “confer some educational benefit upon the handicapped child,” but it does not require that the school district maximize the potential of disabled students commensurate with the opportunity provided to non-disabled students. Rowley, 458 U.S. at 200. Hence, a satisfactory IEP must provide “significant learning” and confer “meaningful benefit.” T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577-78 (3d Cir. 2000).

The Supreme Court discussed Rowley in Endrew F. v. Douglas County School District RE-1, _ U.S. __, 137 S. Ct. 988 (2017), noting that Rowley did not “establish any one test for determining the adequacy of educational benefits” and concluding that the “adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” Id. at 996, 1001. Endrew F. warns against courts substituting their own notions of sound education policy for those of school authorities and notes that deference is based upon application of expertise and the exercise of judgment by those authorities. Id. at 1001. However, the school authorities are expected to offer “a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” Id. at 1002.

In Lascari v. Ramapo Indian Hills Reg’l Sch. Dist., 116 N.J. 30, 46 (1989), the New Jersey Supreme Court concluded that “in determining whether an IEP was appropriate, the focus should be on the IEP actually offered and not on one that the school board could have provided if it had been so inclined.” Further, the New Jersey Supreme Court stated:

As previously indicated, the purpose of the IEP is to guide teachers and to insure that the child receives the necessary education. Without an adequately drafted IEP, it would be difficult, if not impossible, to measure a child's progress, a measurement that is necessary to determine changes to be made in the next IEP. Furthermore, an IEP that is incapable of review denies parents the opportunity to help shape their child's education and hinders their ability to assure that their child will receive the education to which he or she is entitled.

[Id. at 48-9. (citations omitted).]

In accordance with the IDEA, children with disabilities are to be educated in the least restrictive environment (LRE). 20 U.S.C. § 1412(a)(5); N.J.A.C. 6A:14-1.1(b)(5). To that end, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are to be educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment should occur only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 20 U.S.C. § 1412(a)(5)(A); N.J.A.C. 6A:14-4.2. The Third Circuit has interpreted this to

require that a disabled child be placed in the LRE that will provide the child with a “meaningful educational benefit.” T.R., 205 F.3d at 578. Consideration is given to whether the student can be educated in a regular classroom with supplementary aids and services, a comparison of benefits provided in a regular education class versus a special education class, and the potentially beneficial or harmful effects which placement may have on the student with disabilities or other students in the class. N.J.A.C. 6A:14-4.2(a)(8).

The primary issues in this case are whether the District failed to provide or offer B.C. with FAPE for the 2022-2023 school year, for which an out of district program that specializes in Autism, an occupational therapy evaluation, an AAC evaluation, and a functional behavioral assessment were sought.

I believe that clear and convincing proof established that that the District did offer a FAPE in that the IEPs on which they based the education plan did offer an individualized program addressing B.C.’s multiple disabilities, that the IEPs provided appropriate goals and objectives in most areas, and placed B.C. in the least restrictive environment. Contrary to the professional opinion of P.G.’s expert witness, Dr. Gallagher, the May, 2022 IEP, the consequent education and attention that B.C. receives and the amended IEP are calculated to offer, and do offer, a meaningful educational benefit, not necessarily the ideal education. T.R. v. Kingwood Twp. Bd. Of Educ., 205 F.3d 572, 577 (3rd Cir. 2000). Further, and contrary to petitioner’s contention that B.C.’s continuing at kindergarten and first grade level at all subjects is proof that his program fails to provide FAPE, “the IDEA does not promise any particular educational outcome.” Endrew v. Douglas County School District, 137 S.Ct. 988, 989 (2017). The test in this case is whether B.C.’s educational program was “reasonably calculated to enable him to make progress appropriate in light of the circumstances.” Endrew F., 137 S.Ct. at 1001. Put another way, the educational program must be “reasonably calculated to enable the child to receive meaningful educational benefits in light of the student’s intellectual potential.” Shore Reg’l High Sch. Bd. Of Educ., 381 F.3d 194, 198(3rd Cir. 2004).

Here, the evidence is clear that B.C. because of his multiple learning disabilities the most significant now being autism spectrum disorder, but also, impulse control

Disorder ADHD with compulsive tendencies and health issues is still making slow, perhaps very slow, but meaningful progress, most recently in reading and math and at managing and extinguishing negative behaviors affecting his ability to learn. This is being accomplished in the least restrictive environment. There was very little proof offered to indicate that B.C. would learn more or faster in the school setting proposed by the petitioner. At best it can be said that what was offered, after a behavioral analyst expert witness who viewed B.C. in school for 40 minutes and made no other assessment of her own, is that *theoretically, or speculatively*, B.C. might make more progress in a school solely devoted to students with disabilities.

I strongly disagree with petitioner's statement (Rebuttal Brief, page 13) that professional through their witness's opinion might be, Dr. Gallagher was "the only witness with no such interest, motive or bias. Unlike the District's witnesses, Dr. Gallagher has nothing to lose or gain." Dr. Gallagher, to her credit, went out of her way to note her opinion was solely based on theories and practices in behavioral analysis. She also conceded in the testimony she is not a school psychologist, an LDTC, a social worker or a speech pathologist. It is clear she is committed to the theory and practice of behavioral analysis, and that kind of commitment, even passion can be commendable.

However, that commitment, may also account for her making at times comments either unrealistic or apparently farfetched, and certainly very much not in sync with the clear weight of the evidence presented such as her saying "I would disagree that B. has a cognitive impairment that impairs him from learning because we have not conducted the appropriate assessment tool necessary to see where he fails." Such disagreement with a proven reality was incredible. Similarly her disparagement of the relevancy of IQ tests in designing programs for students with autism, her claim that 70% to 80% reaching certain goals of an academic plan would never be acceptable progress and that only 90% or better is acceptable, her dismissal of any progress that was documented showing B.C.'s behaviors had improved, because one doesn't know why his behaviors have improved, and her statement that she thought it insignificant that B.C. can now tell time from a clock because "no one uses analog clocks" anymore, greatly undercut her credibility.

Further, it is completely untrue that Dr. Gallagher was the only disinterested witness. Quite apart from whatever fee she has received for working (however briefly) with B.C., for her report or her testimony, she has since 2006 been the owner and operator for the type of school she recommends for B.C. a school exclusively for students with disabilities such as autism. And while she said she would not do a behavioral analysis for B.C. because it was too far from her office (which makes little sense) she didn't say she wouldn't enroll B.C. in her school if it could be paid for. Conversely, to compare professional witnesses' general integrity as being higher to that of school employees is not only insulting to professional education, implying they only give sworn testimony helpful to their employers for fear of less reward or retribution, is not realistic given the well-known job protection that most school employees and particularly public-school employees enjoy. Yet petitioner would have us discount the sworn and documented evidence offered by those professionals, simply because they work for the District.

I do not discount Dr. Gallagher's opinion simply because she may have an interest in the outcome, but I give it less weight than the District's witnesses simply because it was mostly theoretical, consisting mostly of nitpicking of every possible imperfection in B.C.'s education plan, was against the clear weight of the evidence, and therefore not convincing, and not particularly credible.

The credible and persuasive evidence makes me agree with School Psychologist Beaumont that academic goals for B.C. must recognize that despite being in 10th grade, B.C. reads at a kindergarten -first grade level and that reasonable progress across time is dependent on his ability level. I disagree with expert witness Dr. Gallagher that IQ is not relevant to understanding problems in making progress for students with autism. I also agree with Dr. Beaumont's assessment that in 2022-2023, and up until the modified IEP of January 2023, and I so **FIND**, that B.C. made general and meaningful progress in the aforementioned categories. That is not measured simply by better scores or higher grade level achievements by the student. Contrary to petitioner's contention that B.C.'s continuing at kindergarten and first grade level at all subjects is proof that his program fails to provide FAPE, "the IDEA does not promise any particular educational outcome." Endrew v. Douglas County School District, 137 S.Ct. 988, 989 (2017).

In sum, as to the education B.C. received, for the time period covered by the IEPs of May 2022, and January, 2023, and the allegation that the IEPs and the implementation of same denied B.C. FAPE, I find the testimony of Dr. Beaumont, Speech Pathologist Christina Celona, Special Ed teacher Annabela Carter, and Social Worker for the CST, Sandra Stewart to be credible and persuasive, so that I **CONCLUDE** that both the May 2022 IEP for which petitioner sought Due Process, and the January amended IEP from which petitioner did not seek Due Process, provided a FAPE for B.S. Likewise, I **CONCLUDE** for the same reasons and owing to a lack of credible convincing evidence to the contrary that an occupational therapy evaluation, ACC evaluation, and functional behavioral assessments beyond those B.C. received in the school year 2022-2023 were not required by FAPE. Also in sum, I find the alternative recommended for B.C. by P.G.'s expert witness, Dr. Bobbie Gallagher, not required by FAPE and was not the least restrictive environment (LRE) as required by the IDEA. See N.J.A.C. 6A:14-1.2 (B)(5) Finally, I **CONCLUDE** that Elizabeth BOE demonstrated that their evidence offered a "cogent and reasonable explanation for [its] decisions that show the IEP is reasonably calculated to enable the child to make progress appropriate in light of the circumstances." Andrew F. v. Douglas County School District, 137 S.Ct. 988, 1002 (2017).

ORDER

Based on the foregoing, it is hereby **ORDERED** that petitioner's request for Due Process concerning the May 2022 IEP is **DISMISSED** and relief requested is **DENIED**. It is also **ORDERED** that although P.G.'s request for Due Process did not address the revised January 2023 IEP, and that P.G. in fact agreed to and authorized the January 2023 IEP and its implementation, that to any extent the present controversy contests same, it is for the above stated reasons also **DISMISSED**. Any other relief sought by the petitioner not specifically mentioned is also **DENIED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2024) 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 (2024). 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.

April 15, 2024
DATE


ERNEST BONGIOVANNI, ALJ

Date Received at Agency: 4/15/24

Date Mailed to Parties: 4/15/24

id

APPENDIX

LIST OF WITNESSES

For Petitioner:

P.G.
A.C.
Dr. Bobbie Gallagher

For Respondent:

Dr. Nalin Beaumont,
Christina Solana,
Anabela Carter
Sandra Stewart

LIST OF EXHIBITS IN EVIDENCE**

For Petitioner

- P-1 Observations report, dated April 22, 2022 of B.C. by Michele Havens, Educational Consultant
- P-2 School Calendar for 2021-2022 and 2022-2023 School years
- P-3 Dr. Bobbie Gallagher, Observation report, dated June 18, 2023
- P-4 Article “Self and Match System Suppresses Vocal Stereotypy During Independent Work” by Andrew J. Bulla and Jessica Frieder
- P-5 Article “Further Analysis of the Immediate and Subsequent Effect of RIRD on Vocal Stereotypy” by Maithri Sivaraman and John T. Rapp
- P-6 Article, “Functional Analysis and Chained Schedule Treatment of Elopement in Teens with Autism Spectrum Disorder” by Thomas, Nasca, Cohen and Strohmeier
- P-7 Article, “Derived Relational Responding and Intelligence: Assessing the Relationship Between the PEAK-E and Pre-assessment and IQ with Individuals with Autism and Related Disabilities” by M.R. Dixon, J. Belisle and C.R. Stanley

- P-8 Article, "The effects of different mastery criteria on the skill maintenance of children with developmental disabilities" by S. Richling, W. Williams and J. Carr
- P-9 Article, "Effects of Reading Mastery as a Small Group Intervention for Young Children with ASD" by Kamps, Heitzman-Powell, Rosenberg, Mason Schwartz and Romine
- P-10 Article, "The Edmark Reading Program: A Comparison of Computerized and Table Top Presentation in Reading Outcomes in Students with Autism Spectrum Disorder" by Nally, Holloway, Lyndon and Healy
- P-11 Research Report, "The test-retest and inter-rater reliability of the PEAK-direct training assessment for use with individuals with autism and related disabilities" by Dixon, Stanley, Belisle and Rowsey
- P-12 Report, " Clinical Outcomes of behavioral treatments for elopement in individuals with autism spectrum disorder and other developmental disabilities" by Call, Alvarez, Simons, Lomas Meyers, and Scheithauer
- P-13 C.V. of Dr. Bobbie J. Gallagher
- P-14 Record of Medical Appointments, between Feb 1, 2021 and January 5, 2024 from Children's Specialized Hospital,

For Respondent:

- R-9 AAC Assessment, dated April 3, 2019
- R-14 Amended IEP, 2019-2020 School Year
- R-16 IEP, 2021-2022 School Year
- R-17 IEP 2022-2023 School Year
- R-18 Psychological Evaluation, dated April 3, 2019
- R-19 Speech Evaluation dated March 10, 2022
- R-20 Educational Evaluation dated March 11, 2022
- R-21 Social Evaluation dated March 11, 2022
- R-22 AAC Assessment, dated November 1, 2022
- R-23 Progress Report for 2020-2021
- R-24 Progress Report for 2021-2022

- R-25 Progress Report for June 2022
- R-26 Progress Report for 2022-2023
- R-27 Behavioral Chart for 9/21/2022 to 1/04/2023
- R-28 Amended IEP for 2023 School year
- R-30 Christina Celona Resume
- R-31 Sandra Smart Resume
- R-32 Dr. Nalin Baumont Resume
- R-33 Anabela Carter Resume
- R-34 Behavior Charts from 10/08/21 to 10/26/21
- R-35 Behavior Charts from 03/21/22 to 05/11/23
- R-36 Behavior Charts from 11/09/22 to 11/06/23
- R-41 Behavior Charts from 9/21/22 to 11/08/22
- R-42 Revised 2023 IEP with attendance sheets and signatures
- R-43 January 4, 2022, email of Dr. Beaumont
- R-44 March 18, 2022, Email A.C. to Dr. Beaumont
- R-45 April 29, 2022, Email A.C. to Dr. Beaumont
- R-46 May 1, 2022, Email Cheryl Martinez to Dr. Beaumont
- R-48 May 16-17, 2022, Emails between Parent and Dr. Beaumont
- R-49 May 18, 2022, email, Dr. Beaumont to C. Martinez
- R-50 June 2, 2022, Emails between Parent and Dr. Beaumont
- R-51 June 8, 2022, Emails between Parent and Dr. Beaumont
- R-52 August 1, 2022, Email Dr. Beaumont to Parent
- R-53 September 22, 2022, Email Dr. Beaumont to Parent
- R-54 November 22, 2022, first Email Dr. Beaumont to Parent

OAL DKT. NOs: EDS 07715-22

R-55 November 22,2022 second Email Dr. Beaumont to Parent

R-56 December 23, 2022, Email Dr. Beaumont to Parent

** The nonsequential numbering of exhibits reflects the fact that other pre-marked exhibits were not identified or not entered into evidence.