



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 07564-23

AGENCY DKT. NO. 2024-36181

O.M. AND D.F. ON BEHALF OF T.M.,

Petitioner,

v.

PRINCETON PUBLIC SCHOOLS

BOARD OF EDUCATION,

Respondent.

O.M. and D.F., pro se

Brett Gorman, Esq., for the respondent (Gorman, D'Anella & Morlok, attorneys)

Record Closed: May 21, 2024

Decided: June 25, 2024

BEFORE **JUDITH LIEBERMAN, ALJ:**

STATEMENT OF THE CASE

T.M., a rising ninth-grade student, attended Princeton Middle School until his parents, petitioners O.M. and Dr. D.F., unilaterally placed him at the Lewis School (Lewis), a private school. Petitioners assert that respondent Princeton School District (Princeton or District) denied T.M. a free and appropriate public education (FAPE) during the 2021–2022 school year in violation of the Individuals With Disabilities Act (IDEA). They seek

revision of T.M.'s individualized education plan (IEP) to place him at Lewis through the 2023–2024 school year and reimbursement of the cost of the unilateral placement and transportation for the 2021–2022, 2022–2023, and 2023–2024 school years.

PROCEDURAL HISTORY

Petitioners filed a due-process petition on behalf of their son T.M. on July 3, 2023. The matter was transmitted by the Department of Education, Office of Special Education, to the Office of Administrative Law, where it was filed on August 17, 2023, as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23. An unsuccessful settlement conference was conducted on August 22, 2023, and the matter was assigned to me that day. The first proceeding, scheduled for August 25, 2023, was adjourned to September 5, 2023, in response to respondent's request, with petitioner's consent. On September 5, 2023, the hearing was scheduled to be conducted on October 30, November 16, and November 30, 2023. On October 11, 2023, a prehearing conference was convened in response to respondent's concerns about petitioners' discovery responses. In response to petitioners' request, with respondent's consent, the October 30, 2023, hearing date was converted to a status conference and the parties agreed to a new discovery deadline of October 23, 2023. Petitioners were directed to permit respondent to conduct an in-person observation at the Lewis School prior to the close of discovery. Petitioners agreed to attempt to facilitate the observation the following week. The hearing was to be held on November 16, 2023, and November 30, 2023. Additional dates would be permitted upon a showing of good cause by the requesting party.

On October 24, 2023, respondent filed a motion to exclude evidence and dismiss the petition for failure to comply with discovery. Petitioners requested an extension of the new discovery deadline. A status conference was conducted on October 26, 2023, to address the motions and petitioners' request. It was agreed that all discovery and the school observation would be completed by November 6, 2023, and the October 30, 2023, status conference was adjourned to November 8, 2023.

On November 8, 2023, petitioners submitted a response to respondent's motions to exclude evidence and dismiss the petition. During a status conference that day, the

motions were denied; however, petitioners were prohibited from offering evidence that had not been disclosed to respondent by the November 6, 2023, discovery deadline.

The hearing was conducted on November 16, 2023, January 19, 2024, and January 26, 2024. The parties requested an opportunity to submit post-hearing briefs after they received the hearing transcripts. They advised that they received the transcripts on December 29, 2023, and April 10, 2024, was set as the due date for their briefs.

On April 1, 2024, petitioners' counsel advised that she sought to be relieved as counsel pursuant to RPC 1.16. On April 2, 2024, petitioners advised that they intended to proceed pro se and requested an extension of the deadline for submission of their brief to May 10, 2024. Respondent did not object to the extension. The request was granted and both parties' briefs were received on May 10, 2024. A final proceeding was conducted on May 21, 2024, and the record closed that day.

FACTUAL DISCUSSION AND FINDINGS

The following, taken from testimony and documentary evidence in the record, is undisputed. I therefore **FIND** the following as **FACT**.¹

T.M. is a fourteen-year-old boy who is eligible for special education and related services pursuant to the IDEA under the autism classification. His cognitive abilities are "solidly within the average range." R-3 at 9. T.M.'s father, O.M., and mother, Dr. D.F., moved to Princeton in 2014, when T.M. was approaching five years old. He was enrolled in the District for the 2014–2015 school year and was eligible for special education that year. He attended Littlebrook Elementary School from first through fifth grade, during which he remained eligible for special education and related services. During the 2021–2022 school year, when T.M. was in sixth grade, his parents unilaterally placed him at Lewis.

¹ The following is not a verbatim recitation of the testimony but a summary of the testimonial and documentary evidence that I found relevant to the issues presented.

In October 2017, when T.M. was eight years old and in second grade, his parents obtained a private neuropsychological evaluation by David H. Salsberg, Psy.D., DABPS. R-3. Dr. Salsberg observed T.M. in school and met with staff. He administered the Wechsler Intelligence Scale for Children – Fifth Edition (WISC-V), Woodcock Johnson IV Tests of Achievement – Fourth Edition (WJ-IV), Wechsler Individual Achievement Test – Third Edition (WIAT-III), Conners' Continuous Performance Test – Third Edition (CPT-III), NEPSY-II Developmental Neuropsychological Assessment – Second Edition (NEPSY-II), Behavior Assessment Scale for Children – Third Edition (BASC-3) Parent Form, and Adaptive Behavior Assessment System – Third Edition (ABAS-3) Parent Form.

The WISC-V tests intellectual ability. T.M. scored in the average range for verbal comprehension and fluid reasoning, low average range for processing speed, and extremely low range for working memory. His limitations with attention and processing speed “likely impact his ability to encode and retrieve newly acquired concepts in a classroom setting.” R-3 at 9.

T.M. performed in the high average range on the visual spatial index, which measures non-verbal abilities including visual perception and organization, visual-spatial problem solving, and visual-motor coordination. His ability to evaluate and manipulate visual displays in order to complete puzzles in his mind was also in the high average range, and his ability to employ visual-spatial reasoning and construction skills was within the average range. Ibid. “However, on tasks that assessed the ability to correlate physical movements with visual information, the introduction of graphomotor demands and time constraints resulted in a significant decline in performance.” Id. at 9.

A General Abilities Index (GAI) was calculated using select subtests of the verbal comprehension, visual spatial and fluid reasoning indices. It did not include working memory and processing speed indices because they are highly influenced by fatigue and inattention. T.M.'s GAI was in the average range. Id. at 4.

The CPT-III assessment found that T.M. did not have an attention deficit. However, he had “some problems” when there were longer intervals between stimuli. His

response speed was slightly slower than average and he had “some difficulty differentiating targets from non-targets.” Ibid.

T.M. functioned below grade level in reading, writing and mathematics. He “especially struggled on tasks that relied heavily on verbally presented questions/directions and reading comprehension.” Ibid. He was “better able to respond to straightforward questions than complex, inferential questions.” Ibid.

The BASC-3 is a “general rating scale that assesses social, emotional, and behavioral functioning.” Id. at 8. T.M.’s parents reported “at-risk levels of atypicality, attention problems, adaptability, social skills, leadership, and activities of daily living.” Ibid. He had difficulty maintaining attention at school, adapting to changing situations, interacting with others in a socially appropriate manner, and performing simple daily tasks safely and efficiently. His parents reported “clinically significant levels of withdrawal and functional communication.” Ibid. He had difficulty making friends and finding information on his own.

The ABAS-3 assesses functional and daily living. Ibid. T.M.’s “overall adaptive functioning” fell within the very low range, indicating that he had not mastered many of the skills expected at his age. Ibid. He was in the very low range for performance in the communication, functional academics and self-direction skill areas. This included speech, listening, conversation and nonverbal communication skills. He was in the low average range for the “pre-academic skills that form the foundations of reading, writing and mathematics.” Ibid. “His ability to make independent choices, exhibit self-control, and take responsibility when appropriate” was also in the very low range. Ibid. He was in the low average range for functioning in the classroom setting. Id. at 9.

T.M. performed in the very low range in the social domain. This included “leisure skills needed for engaging in play and recreational activities” as well as his ability to “interact socially, initiate and maintain friendships, and express and recognize emotions.” Ibid.

T.M. met the DSM-5 diagnostic criteria for ADS, specific learning disorder with impairment in reading (dyslexia), written expression and mathematics. Ibid.

Dr. Salsberg found that, given T.M.'s average range cognitive skills, he was not performing at his potential. He recommended the following:

1. For reading, writing and other language-based academic tasks, a "specialized and intense" multisensory program "such as Lindamood Bell." Ibid.
2. Educators should "speak in a clear, animated, and audible tone of voice. Instructors should be aware that listening in a busy environment can be taxing for [T.M.'s] attention and instructions should be broken down into small sections, and he should be given ample time to process and respond." Ibid. Material should be repeated when necessary.
3. Preferential seating, away from noise and distractions, to optimize auditory and visual stimuli. He should be placed in an area where the "visual field contains the instructional material." Id. at 11.
4. Use of visual and auditory aids, particularly when new concepts are introduced. "Increased structure and organization" when he is learning new information or completing work on his own. Ibid.
5. Frequent support, guidance and positive feedback. Gentle encouragement to participate in class discussions and group activities. Solicitation of his input.
6. Speech and language therapy "with format and frequency as recommended by his providers with a focus on pragmatic language and social skills." Ibid.
7. Continued counseling "with format and frequency as recommended by his providers with a focus on self-regulation and social skills." Id. at 12.
8. Continued occupational therapy "with format and frequency as recommended by his providers with a focus on fine motor/graphomotor skills, visual motor skills, and self-regulation skills." Ibid.
9. Related service providers should focus on daily living skills such as self-care, health and safety.
10. Continuation of 1:1 paraprofessional five days per week, to aid with his attending and focus.
11. Consideration by parents and/or educators, of:

- a. Generally previewing new information and guiding T.M.'s attention to listen for important points.
- b. Alerts prior to essential instructions or new material to "ensure that he is ready to listen carefully or that there is a change or routine." Id. at 11.
- c. Provide breaks, physical activity or jobs that allow him to walk around, to help him stay focused in the classroom.

Dr. Salsberg did not make recommendations specific to math instruction.

Sara E. Leta, MSW, LCSW, a school social worker and case manager for the District from July 2012, through September 2022, was T.M.'s case manager from kindergarten through sixth grade. She participated in the drafting and development of over 1,000 IEPs and conducted over 1,000 social evaluations of students. She was admitted as an expert in school social work and the case management of disabled students.

Leta received Dr. Salsberg's 2017 evaluation. She testified that it confirmed the District's understanding that T.M. had difficulty with working memory, processing speed and the need to build comprehension, particularly with respect to reading. Working memory related to attention and concentration; processing speed related to "moving accurately and quickly while acquiring information." T1² 36:25 to 37:1. It also confirmed the District's understanding that T.M.'s strengths were in the "visual spatial" area. T1 36:16. He "loved visuals" which were used to "support his learning and help him develop both socially and academically." T1 36:18-21. Leta agreed that T.M. has particular difficulty with tasks that rely heavily on verbally presented questions, directions and reading comprehension. Because listening in a busy environment could be difficult for T.M., he needed instructors to speak in a clear, animated and audible tone of voice. He also needed instructions to be broken down into small sections, ample time to process and respond, and repetition. Leta also agreed that T.M. required an immersive

² T1, T2 and T3 refer to the transcripts of the November 16, 2023, January 19, 2024, and January 26, 2024, hearings, respectively. They are followed by the referenced page and line numbers.

“specialized and intense program such as LindaMood Bell,” or Wilson, which are multi-sensory approaches to reading instruction. R-3 at 10.

A March 10, 2018, (second grade) speech-language evaluation found that T.M. had difficulty describing events accurately, demonstrating appropriate listening habits, listening to directions before beginning assignments, and obeying school rules due to impulsivity. P-1 at 1. His scores ranged from average to low average.

The IEP team met with Dr. Salsberg and implemented his recommended accommodations and modifications in T.M.’s IEP. Extra time was provided to permit him “to sit with information” that was broken down into smaller subsets to help him learn. T1 37:19-20. All concepts were pre-taught and re-taught; different cues were used to redirect his attention and ensure he was focusing appropriately; and planned breaks and different cues were used to help him refocus and sustain his attention. After breaks, T.M. was able to attend to instruction and, over time, the length of the breaks decreased “because his stamina for learning and his attention became stronger.” T1 47:7-8.

When T.M. was in third grade, his mother advised that he increasingly expressing “distress” about going to school. R-4 at 6. School personnel and T.M.’s mother discussed this but were unable to determine why he expressed reluctance to go to school. Staff recorded that did not display distress while at school. T.M.’s mother advised that they were to visit Lewis because of T.M.’s “distress signals.” Ibid. She expressed her “appreciation of the amazing work” District staff did with T.M. Ibid.

T.M.’s March 13, 2019, IEP for third and fourth grade followed this exchange. Petitioners agreed to the IEP, which provided for pull-out resource replacement classes (POR)³ for math and language arts. The POR teacher was skilled with working with students who required extra time, redirection, and information-retention strategies. The

³ Smaller classes taught by a special education teacher. T1 151:23-24 They utilize a “hybrid” curriculum that introduces the general education curriculum while filling the “gaps of the learner.” T1 152:10. Students are able to learn skills before moving on to the “next level,” which is “scaffolding and building as opposed” to addressing multiple subjects but spending less time on each of them. T1 152:23-25. Most special education students require repetition to master a skill. T1 152:25-153:2.

IEP also provided thirty-minute individual speech-language therapy once per week, thirty-minute group speech-language therapy twice per week, thirty-minute social skills group twice per week, an instructional paraprofessional, and an extended school year with pull-out resource support for reading/language arts and a paraprofessional. R-4 at 1–2. T.M. also participated in the Rambling Pines program, a summer program that offered socialization with general education peers and reading instruction from a special education teacher and aide. Id. at 18.

The IEP explained that T.M. “benefitted from targeted instruction in a small group as it allows him to access a modified curriculum more readily. In the larger group setting his attention to task can be fleeting, as such, he can miss significant instruction which leads to difficulty keeping pace with the class and leads to gaps in learning. To ensure focus and attention to task in the large group setting, an aide is required. The aide will help prompt [T.] back to task or provide needed breaks.” R-4 at 9.

T.M. also required assistance developing social skills. While, at the time of the IEP, he “demonstrated growth in this area, at times he continues to struggle with perspective taking, and could further develop his flexibility skills. Both have been supported through speech/language as well as social skills counseling.” Ibid.

Among other modifications, the IEP provided for the use of visuals to support auditory information and multimodal presentation of materials. R-4 at 15. This included use of Story Grammar Markers, a multi-sensory program that helped T.M. to sequence stories and provide appropriate verbal and written responses. Id. at 8. This was used in speech-language and resource classes. Leta notes that, in conjunction with other methodologies, such as graphic organizers, this helped T.M. develop writing skills and increase reading comprehension. Many of the modifications in the IEP tracked Dr. Salsberg’s recommendations. R-4 at 15–16.

Leta wrote in the March 13, 2019, IEP that T.M. grew “in his student behaviors and independency this school year.” Id. at 6. For example, he followed the morning routine with limited prompts and transitioned between classrooms with limited reminders. He knew the “classroom expectations and structures.” T1 155:24-25. He was “back and

forth between the general education setting and the special education setting.” T1 157:17-19. His schedule was posted, and he could also use his peers as a resource and transition with them. Because he was very good with time, he often knew when it was time to move to another class. He was not prompted by an alarm or bell; however, a teacher might have prompted him with a physical tap or other method. Leta observed, he was “like a rock star . . . he really did know how to negotiate Littlebrook and get from class to class and he knew where the different locations of the specials were.” T1 159:11-14.

His language arts teacher reported that he had become “a more independent student” and he required “less prompting to get started with work and complete activities.” R-4 at 7. He had general education peer models and the social skills group and speech and language therapy helped him to develop social language and reinforced learning strategies.

Leta noted, however, that lunch was “a more difficult time” for T.M., particularly at the beginning of the school year, because it was a louder and larger space. T1 167:1-2. His parents reported his difficulty with loud noise. This could have been an auditory processing issue. Although the District proposed an audiological evaluation, petitioners did not consent to it. To address this, his aide remained with him during lunch and, over time, “he always got better and more independent with these tasks.” T1 167:12-13. Also, due to his difficulty with noise, he was given advance notice of fire drills and he could wear headphones. On one occasion, he did not receive advance notice and he still “negotiated it really well.” T1 167:25 to 168:1. By the end of his time at the District, he did not use the headphones during fire drills as he had become accustomed to the sound.

Because T.M. demonstrated “some nice strengths and growth in the area of writing,” the District proposed “bring[ing] him back to the general education setting during specific writing pieces.” T1 49:22-50:1. Thus, he “pushed in to the general education for writing for the later part of the school year.” R-6 at 21. This “greatly benefitted him socially and helped to expand his academic skills.” Ibid. He was exposed to the same instruction as his general education peers. While he was not expected to produce the same quantity of writing, he achieved a “strong quality” of writing by starting with pictures that he would

“translate” to writings that were “very applicable in the general education setting.” T1 50:10-19. With modifications and an aide, he performed well and he was very good at writing non-fiction and persuasive essays.

At the end of third grade, an IEP meeting was conducted to assess and review T.M.’s progress since the March 2019, IEP meeting. The June 19, 2019, IEP (for fourth grade) provided that T.M. would remain in POR for language arts and math, speech and language therapy and counseling would continue, and he would have one-to-one aide support in the general education setting and two-to-one aide support in the POR setting. R-6 at 20. The smaller POR classes allowed “for a slower pace of instruction and repetition of information to help [T.] grasp presented concepts. The assistance of an aide this year has been most beneficial to [T.] in generalizing developed social skills in the small group or through counseling, to the larger classroom setting as well as lunch and recess. The aide has since been able to allow [T.] more independency within both the resource, pull-out setting and general education setting.” Id. at 7. While he had “difficulty holding on to newly taught skills from day to day,” “reinforcement through the one-on-one aide helped him to participate[] in the general education setting in writing. . . . [O]verall, he seemed to benefit from being part of the classroom community.” Ibid. The IEP further provided, “As transitions are difficult for [T.M.,] once he is acclimated to the resource setting, the IEP can revisit increasing the aide support ratio in both settings. [T.M.] will require one-to-one aide support when he transitions back to the general education and participates in language arts.” R-6 at 20.

It was agreed that, in fourth grade, T.M. would participate in the general education class for writing. The general education class offered a social benefit because T.M. and the other students shared and edited each other’s work. Leta explained that social interaction with peer models is very important for students with autism. Even when they’re good at a skill on their own, it is difficult for them to perform the skill in a group or with a different group of peers. The social interaction helps with generalization of skills and “shows that he can negotiate a different environment.” T1 52:24-25. In the social skills group, T.M. interacted with one or two general education peers. This exposed him to interactions that were similar to those he would have in the “real world” and he improved over time. T1 54:3.

The IEP also addressed “chunking,” a modification that was used in T.M.’s special and general education classrooms. R-6 at 16. By breaking information into smaller sections, such as one paragraph in an essay rather than all ten paragraphs, he could apply the strategies he learned to the smaller section without becoming overwhelmed. Leta explained that this helps with retention of information.

These methodologies continued during the following years while Leta worked with T.M.

After third grade was over, Dr. Salsberg conducted an updated neuropsychological evaluation and issued a July 2, 2019, report. He administered WIAT-III and WJ-IV tests. Compared to the prior testing (October 2017), T.M.’s reading and math skills “across all tasks significantly regressed or remained comparable despite ongoing specialized interventions.” R-7 at 4. Passage comprehension decreased from the 28th to the 5th percentile—a full standard deviation. Applied math problem skills decreased from the 6th to the 2nd percentile rank and calculation skills decreased from the 24th to the 5th percentile. R-7 at 7. Spelling was the only area in which he improved.

Leta acknowledged that the decreased scores were concerning. However, they were not reflective of his classroom performance. His rate of progression decreased as he was exposed to more advanced curriculum. For example, in third grade he worked on higher order math problems.

Dr. Salsberg recommended “increased specialization and more intensive language-based, individualized instruction,” including with a special educator “on a daily basis to provide remediation of skills. This should be in addition to his current level of special education support.” Id. at 6. He also recommended multi-sensory instruction such as Orton-Gillingham and that “[c]onsideration should also be” given to increasing speech-language therapy from three to five times per week. He noted that T.M. required “specialized support to improve his social and functional communication skills (e.g., helping him practice turn-taking, introducing and ending topics, staying on topic, using social gestures, talking about feelings, and other conversational skills).” Ibid. Dr.

Salsberg recommended that “[i]f appropriate progress is not made, placement in a full-time special education environment for children with learning differences that includes a strong language-based curriculum and highly specialized instructional methodologies must be considered.” Ibid.

After Dr. Salsberg’s July 2, 2019, report, Leta proposed to petitioners that they examine other programs, in particular the self-contained learning and language disabilities program (LLD) at a different elementary school. R-8 at 20. That program would not have offered the same exposure to general education peers. Petitioner and Leta observed the program and determined that the LLD program was not appropriate.

An IEP meeting was conducted on August 27, 2019, to discuss Dr. Salsberg’s report. Leta acknowledged that the report suggested T.M. was struggling to generalize the skills he demonstrated in school. The IEP noted that Dr. Salsberg’s test results were surprising because T.M. “demonstrated academic progress on District assessments and socially seemed to develop many skills over the last school year.” R-8 at 21. Also, his behavior at school was different than at home, as reported by his parents. The IEP further noted that, while Dr. Salsberg opined that T.M.

should have shown progress between evaluations, he did not consider [T.M.’s] low processing speed and working memory. Both would impact his comprehension, especially now that [T.] is older, he is being asked to comprehend more information at a quicker pace. As such, additional speech will help to build working memory skills with the hopes of sustaining attention to text to increase comprehension. Speech was also added to support [T.] in the classroom setting, as he has demonstrated many skills within the individual and small group speech/language therapy sessions, but requires support to generalize them to the classroom which is often characteristic of a child who meet a criteria for Autism.

[R-8 at 21.]

Individual speech-language therapy for fifteen minutes twice per week was included in addition to group speech-language therapy twice per week for thirty minutes. R-8 at 1, 5; T1 189:1-7. While T.M. demonstrated “really good growth” in individual

sessions, they believed he struggled with generalization. Thus, the therapist would also “push in” the classroom “to see how those skills were being utilized in the classroom.” T1 59:22-23.

In response to T.M.’s “lack of progress and regression,” pull-out supplemental reading comprehension instruction with a special education teacher was added twice per week, for thirty minutes. The supplemental instruction was one-on-one and targeted his weaknesses through repetition.

Although Dr. Salsberg recommended Orton-Gillingham, the District noted that “such an approach does not target comprehension. Dr. Salsberg explained that it should be used to address [T.M.’s] fundamentals of reading fluency; yet it does not appear that fluency was measured during Dr. Salsberg’s evaluations.” R-8 at 21. The District offered to reevaluate T.M.’s educational profile, comprehension, executive functioning and auditory processing, as Dr. Salsberg’s testing was not “extensive enough.” Ibid. Also, an auditory processing evaluation would have helped determine if T.M. struggled to obtain information or instructions that are offered verbally. However, petitioners did not consent to additional evaluations. Id. at 5.

Although T.M. had not generalized math skills that he demonstrated in the classroom, the August 2019, IEP did not amend his math program or math goals and objectives.

The District reported on T.M.’s progress in the fourth grade toward grade-level content and performance standards.⁴ R-9. He met grade-level standards in some areas, including some aspects of social studies and science. Id. at 2. He did not achieve grade-level standards in several areas during the first reporting period of fourth grade because, “[t]ypically if you were on grade level you would be in the general education setting” T1 195:4-5. Indeed, in response to petitioners’ concern about T.M.’s report card, staff explained that it did not “capture the progress [T.] has made against himself” because “it

⁴ There were two reporting periods for fourth grade: near the end of the calendar year (“period one”) and in June (“period three”). T1 193:13-18.

looks at fourth grade standards” that he was not meeting at that time. R-12 at 6. A goal listed on the IEP may not have been fully achieved until all of the subsidiary objectives have been met.

The March 23, 2020, IEP (fourth and fifth grade) retained the program from the prior IEP, including supplemental instruction, individual and group speech therapy, and modifications and accommodations that T.M. needed “to fully access the curriculum” such as chunking and manipulatives, particularly during math. R-12 at 6, 15. The IEP also provided that, to increase T.M.’s independence, the use of an aide would decrease in certain settings. The aide was to “shadow and provide assistance after allowing [T.] to attempt tasks and social interactions independently.” Id. at 15. They would “provide clarification of instruction and scaffold when needed” and accompany T.M. to “therapies to help learned skills transition to the larger class setting.” Ibid. The degree of support he received from an aide would be adjusted based upon his progress.

Leta observed that T.M. developed a good relationship with a typically developing student and engaged in age appropriate conversations. He was aware of his school routines, negotiated the building “with ease,” and “took great pride in accomplishing tasks without assistance.” R-12 at 6. Leta was aware of his parents’ report of sadness and she sometimes observed T.M. in a somber mood. While this was not observed frequently, staff worked with him and he improved his ability to handle disappointment or mistakes. Although there were times when T.M. struggled, over the eight years that Leta observed him, he always seemed happy to be at school. He did not fall outside the norm of children his age in this regard.

Petitioners reported T.M.’s reluctance to go to school when math testing was underway. However, they did not observe him struggle or display distress during the testing. His teacher reported that T.M. worked hard on math and was “eager and engaged during math instruction.” R-12 at 8. She reported that, while math was challenging for T.M., he saw “himself as a capable math student. [T.] has participated in the iReady Math Program in the Resource Center and the routine structure continues to be a good experience for him.” Ibid. He scored within third-grade level norms in multiple areas and improved in geometry, which was an area of weakness. He benefitted from “chunking” of

the curriculum and, while he worked closely with the teacher on new areas, he preferred to work independently after he developed “some confidence.” Ibid. On a March 10, 2020, math engagement survey, his ratings were positive or “mid-range” and he did not rate himself negatively in any area, thus demonstrating “a continued awareness that he is a capable math student.” Ibid. Leta highlighted that T.M. was doing third-grade math and that it was expected that he would not perform at grade level, as he was in special education classes. However, performing within one year of grade level is “really exciting.” T1 243:25. She explained that his skills did not transfer to standardized testing because the learning strategies that are employed in school are not used during standardized testing. Thus, T.M. could not avail himself of these strategies during Dr. Salsberg’s testing.

Due to the COVID-19 pandemic, T.M. attended school remotely from March 13, 2020, through the end of the 2020–2021 (fifth grade) school year. It was frustrating for him. Multi-sensory instruction was difficult in the remote format because he needed to physically engage and have interpersonal interaction to learn. Thus, skills he may have developed or mastered in person were difficult to achieve remotely. Leta sought to include T.M. in remote social groups with peers and help him prepare for the upcoming transition to middle school. R-16. For example, she sent a combination lock to his house (in preparation for a middle school locker) and, over Zoom, worked with him until he became comfortable with it. He learned via hands-on interaction and became familiar with the new aspects of school. She also contacted the middle school (sixth grade) counselor to inquire about the drama and art programs, as T.M. enjoyed and did well in them in elementary school. R-19. “We all felt, parents too[,] that it was something he could really feel comfortable and successful in when he went into middle school.” T1 88:7-9.

When school reopened in October 2021, the District wanted T.M. to return to school. Because he was “especially vulnerable [with respect to] attention, processing, [and] comprehension . . . [he] needed to be in person and receiving direct instruction.” T1 78:19-25. However, T.M. continued to attend school remotely due to health concerns.

On February 4, 2021, petitioners told Leta that T.M. needed to return to school because he was “struggling too much” and needed the “structure and social interaction

that school provides.” R-20 at 1. T.M.’s service providers and teachers observed this and expected that he regressed in skill areas due to his remote instruction. Although Leta advised that he could attend four days per week, petitioners proposed he begin by attending twice per week, to reduce possible exposure to the COVID-19 virus. He returned to school that month. Leta helped facilitate his return by coordinating T.M. and his sister’s schedule.

While he attended school remotely, Leta and staff, including T.M.’s middle school case manager, **Michelle C. Smith**, discussed his learning profile, social and emotional needs, and how to facilitate his transition to middle school. Smith is a case manager and learning disabilities teacher consultant (LDTC) and was T.M.’s case manager at Princeton Middle School. She sits on the child study team, is responsible for administering educational evaluations, develops goals and objectives in the IEP, and consults with teachers. She has conducted hundreds of learning evaluations, participated in hundreds of IEP meetings as an LDTC and, as case manager, has participated in the preparation of hundreds of IEPs. She previously worked as a teacher, and was a reading specialist, reading recovery teacher and academic interventionist for grades K through 8. She testified about her involvement with T.M. and offered her opinion based upon her expertise in case management and as an LDTC with a focus as a reading specialist.

Leta and Smith discussed petitioners’ and their concerns about the impact of remote instruction on T.M. and his upcoming transition to middle school. Aware that T.M.’s transition to Littlebrook was “really difficult,” they “talked about the best way to set him up socially and academically for this transition.” T1 82:6-13. Leta proposed a self-contained (MD) program for middle school. The self-contained classroom would serve as his “anchor or home base.” T1 82:23-24. It was intended to be a safe space for T.M. and he could return to it as he needed. Typically, middle school students were not offered the opportunity to return to homeroom. From there, he would have the opportunity to “branch out” to other classes such as social studies or specials and he would be able to learn and socialize with general education peers. T1 83:8.

Smith explained that the MD class would address his social, emotional and academic needs and presented the best opportunity for him to rebuild skills he had before

remote instruction. It was more individualized for the students' needs than the pull-out resource class, as MD used part of the curriculum and modified it based upon the students' needs, while POR classes presented the curriculum more slowly.

Leta knew the children who would be in the MD class. While they were "cognitively below in some areas," they had very strong social skills and Leta believed T.M. would feel very comfortable there. T1 83:3. Smith also knew that the students in T.M.'s MD class had social and emotional skills comparable to T.M. Smith acknowledged that, academically, they functioned at lower level than students in a resource class.

There were approximately 200–300 students per grade in the middle school, while there was a total of 300 students at Littlebrook. None of T.M.'s elementary school classmates were assigned to his middle school MD class. The majority of those students were in POR math and literacy classes; however, they could have also been in T.M.'s POR science and general education social studies classes.

A bell sounded twice to alert students when they had to change classes, which occurred eight times during the day. Also, unlike elementary school, his daily schedule varied. These new aspects of school were discussed with T.M. prior to his attending middle school so he would be prepared for them. Leta used visuals to help him understand and prepare.

Because middle school would be significantly different than elementary school, and there would be new teachers, the District endeavored to "make [T.M.] feel comfortable and safe" ahead of the new school year. T1 82:21. Leta knew that it was important that he and his parents meet his middle school teacher before school started and familiarize themselves with the new setting. Leta introduced the middle school special education teacher to petitioners. The teacher extended an invitation to observe the middle school math and language arts programs. R-16. The teacher was invited to T.M.'s IEP meeting, and she met with him and other students who would be in his middle school class. Leta also arranged for in-person Extended School Year services and an aide.

Smith assisted in procuring the correct extracurricular classes for T.M. and attended at least one IEP meeting so petitioners could meet her. She also met T.M. when he visited the middle school. She and Leta discussed modifications for his extracurricular classes, including art as it was “very language-based.” R-19 at 8.

Smith, like Leta, was concerned about T.M.’s learning and socialization losses that were due to the extended period of remote learning. She explained that he was especially vulnerable to learning loss and had difficulty with emotional regulation and establishing relationships with peers as well as with maintaining conversation due to his processing speed and inattention. He required a multi-sensory approach in a structured and controlled environment. However, while learning remotely from home, he did not have the benefit of certified professionals who could employ appropriate strategies such as redirection; did not have the structure that is provided by in-person school; did not have to use or develop conflict resolution strategies because he was not exposed to peers, whether typical or not typical; and did not have a social skills group.

T.M. progressed gradually after he returned to in-person classes. He did not exhibit the same independence or have the same social connections as in fourth grade. With respect to academics, he struggled and progressed more slowly than before he left school due to the pandemic. He needed to re-learn how to utilize the strategies he previously used to “best show his knowledge.” T1 102:16-17. Leta explained that he “needed those strategies to learn. Again, given his profile he really needed to embrace them and learn how to use them independently, so that wasn’t happening, it wasn’t coming as we had seen in the fourth grade.” T1 102:24 - 103:3. With “a lot of reteaching,” he regained skills. T1 102:8-11.

An IEP and reevaluation meeting was held March 31, 2021, to address T.M.’s IEP for the remainder of fifth grade and prepare for middle school the following school year. Because he was good at social studies, the IEP team was “confident” that he would do well in the general education social studies class with in-class resource support from a special education teacher. He would also have group speech-language therapy twice per week. R-22 at 1. It was determined that T.M. would be in the MD class for the extended summer session so he could meet some of the students he would be with in middle school

and because there was concern about the skills he lost while he was away from school. Id. at 2. Because the IEP team wanted to see how the rest of fifth grade went for him before it made other changes, and petitioners consented to evaluations, the team did not determine his middle school placement at that time.

Another IEP meeting was held on June 7, 2021, to prepare for middle school. All participants, including petitioners, agreed that T.M. should be in the smaller, self-contained MD class for language arts and math, the in-class resource support class for social studies, and receive pull-out resource support for science. R-23 at 1. The consensus was that this presented T.M. with the best opportunity for social interactions, regaining skills lost during home instruction, and academic success. The IEP noted, “While [T.M.’s] programming is more restrictive next year, given regression this school year due to the pandemic and remote learning along with social concerns, the recommended program supports his academic needs as well as his social/emotional development.” Id. at 19.

Leta explained why all parties agreed to this program:

[I]t was my understanding everybody felt that this gave him the best opportunities for the socialization plus the academics. We also felt that once he settled, because we were concerned about the transition, but just like in first grade, once he settled that he could then move out . . . but he always had the home base to come back to in the MD program if needed, but we really felt that once he had the safe, secure transition, then we would see him start to flourish and move out to larger settings. It was really just making sure he got through the door of middle school.

[T1 104:1-12.]

By June 2021, T.M. met some of the students from his middle school MD class and his parents met his teacher and a special education supervisor. The special education teacher prepared a progress report after T.M. attended the extended summer session. She reported that he transitioned into the middle school program well; responded well to redirection when he was off task; was able to advocate for himself; and utilized and

benefitted from strategies such as scaffolded lessons and the use of checklists and manipulatives. Id. at 2–3. He required redirection when he became “negative or overly emotional” or had problems with sportsmanship. R-25 at 3. He was “introduced to the flexible mindset theory to help with his behaviors and he displayed the learned skills” and was “able to talk through most problems with his instructional assistant.” Ibid. He “show[ed] a conscientious effort to learn but [gave] up when lessons [were] challenging to him.” Id. at 2. He was also “easily off track.” Id. at 3. However, he responded well to redirection. Ibid. He enjoyed “spending time with peers and has shown a lot of emotional growth in the past [five] weeks.” Ibid.

The teacher reported that T.M. either progressed toward his goals or “he was really moving toward [the goals] quite well.” T1 106:6. He “practice[d] and worked on IEP goals which focused on his learning needs.” R-25 at 2. He benefitted from “scaffolded lessons and when [he was] given reasons, examples, and details.” Ibid. Pre-reading questions, use of a highlighter and a writing review checklist, and support with providing direct responses helped him with reading. He was able to “verbally think through implicit questioning with support.” Ibid. He used multiple strategies during math, including using checklists, a highlighter, visual models, and manipulatives with prompting. He “made progress with all his math goals and performs well with support, structure, and routine. He seems to perform better when the class schedule is posted on the board and assignments are scaffolded.” Id. at 3. The teacher recommended he continue to work on his math skills by using the math games he was introduced to during the summer session. Leta noted that the strategies used during the summer school session were the same as those used during the regular session.

In July 2021, Meredith Butler, the school psychologist, conducted a psychological evaluation so the District could “establish a base line” after T.M. had been away from school and assess how he was “approaching different standardized tests.” T1 112: 23 - 113:2, R-28. With an expectation that he regressed while learning remotely, the District wanted to learn, among other things, how or when he became tired during tests and where supports were needed. This information could not be obtained while he was learning from home or when standardized tests are administered by people outside the District, as all the strategies that T.M. required could not be used during standardized tests.

The WISC-V documented again that visual-spatial reasoning is one of T.M.'s strengths and "lot of pictures, lots of hands on" should be utilized to help him learn. R-28 at 7, T1:115. The testing also showed that his working memory significantly improved to the 21st percentile, from the 1st or 2nd percentile; however, it was in the low average range, as was his processing speed. Verbal comprehension, fluid reasoning, full scale IQ, general abilities index (GAI), and the nonverbal index were all average. R-28 at 7. His processing speed and working memory were, however, still low and for this he required redirection and repetition. Ibid.

A speech-language evaluation was conducted on August 2, 2021. His performance was rated as average in several areas, including receptive vocabulary and sentence expression. R-29 at 3. However, he performed below average with respect to non-literal language, which includes similes and metaphors. Ibid. Leta explained that this is typical of students with autism spectrum disorder.

Julie Belviso, a learning disabilities teacher-consultant (LDT-C) for the District, conducted an educational evaluation in July 2021. R-30. She administered the WJ-IV Tests of Achievement and Tests of Oral Language. Id. at 3. Basic reading skills and broad written language were an area of strength, as were the subtests for letter word identification, spelling and word attack. Basic reading skills includes phonics, which is "being able to pair letters with sounds," identification of heard letters and sounds, and the application and writing of what was heard, which is encoding and spelling. T2 23:16-17. It also involves "being able to identify sight words or high frequency words" that are used regularly as well as "reading readiness skills . . . knowing the directionality of reading is left to right, things of that nature." T2 23:21-24:4.

Reading comprehension, which was comprised of passage comprehension and reading recall, was in the low range. Reading recall was in the low average range. R-30

at 8. T.M. scored in the low average range for reading fluency,⁵ broad reading⁶ and academic skills.⁷

T.M. performed in the very low range for listening comprehension, which included subtests for oral comprehension and understanding directions, which were in the low range. R-30 at 6. Listening comprehension is a “combination of skills assessing [T.’s] listening ability and verbal comprehension.” Id. at 7. His poor scores indicate that “when he’s hearing information it’s very difficult for him to understand it independently without strategies and scaffolding and accommodations.” T2 24:25-25:3.

His scores were in the very low range for math problem solving, math calculation skills, academic applications⁸ and broad mathematics. Subtest weaknesses were noted in applied math problems and math facts fluency. Id. at 15. Thus, he had “difficulties with practical problems, analyzing the language within the math tests. These are typical observations of students who under perform on these particular assessments and of course calculation and the math facts fluency . . . is also directly related to processing speed which in conversations with Sara Leta we knew were one of his vulnerabilities.” T2 26:17-24.

Smith explained that these scores showed that T.M. had “significant deficits in analyzing, in comprehending language, whether it’s orally or in written text and it’s across all content” T2 27:3-5. While he was able to read, or “encode,” he had difficulty with “inferencing, drawing conclusions, thinking about information that should be typically scored [sic] in your schema and then using that information. Schema is like your background knowledge and using that information to help you make intelligent conclusions or inferences of a text when you’re reading it” T2 27:19-28:2. In short, he “struggles with understanding.” T2 29:2.

⁵ Measures “several aspects of reading fluency, automaticity, and accuracy.” Id. at 10.

⁶ A “comprehensive measure of decoding, fluency and comprehension of text.” Id. at 9.

⁷ The academic skills cluster “looks generally at how well as student has learned core skills.” Id. at 14.

⁸ The academic applications cluster is comprised of the applied problems, passage comprehension and writing samples sub scores.

Smith further explained that T.M. required a program that offered a low student to teacher ratio, direct instruction, scaffolding, chunking, repetition of directions and a focus on high order comprehension skills. He also required a multi-sensory approach to learning and a structured and controlled learning environment. She noted, “Being home and learning through a camera doesn’t provide him with that tactile kinesthetic learning that he would need, so it’s significant for students like him.” T2 34:15-18.

A reevaluation meeting was held on August 24, 2021, before T.M. entered middle school (sixth grade). The IEP continued placement in the MD class for language arts and math. However, the goal was for him to transition out of the MD class. The IEP also provided for an individual instructional paraprofessional who was T.M.’s elementary school aide. R-31 at 1. This was a further tailoring of the program to serve T.M. because aides are usually not in MD classes. The aide would “shadow and provide assistance after allowing [T.] to attempt tasks and social interactions independently. The aide was to “provide clarification of instruction and scaffold when needed”; “accompany [T.] to therapies to help learned skills transition to the larger class setting”; “provide breaks when needed”; and “help facilitate social language” during recess and lunch. Id. at 17. “Aide support has been instrumental in helping [T.] generalize learned skills to larger settings throughout his day.” R-31 at 10.

The aide to student ratio would change depending upon the setting. In the MD class and POR classes, the aide would be “in a group ratio which will allow [T.] to further develop his independency.” Ibid. The aide would work with only T.M. during lunch and recess and in the general education classes, as he required “repeated instruction and reinforcement of learned skills.” Ibid. The degree of support provided by the aide was to be decreased or increased depending upon his progression during sixth grade.

Smith explained that the District wants students to “generalize their relationships with different staff members, but in this particular case because of the year of learning loss and the concerns with the social, emotional piece and we wanted him to build academic confidence as well as social emotional confidence, we did bring the aide . . . everything was thought out and intentional.” T2 35:10-24. T.M. was also placed in the in-class resource support class for social studies, for which there were two teachers, and

received pull-out resource support for science. He had group speech-language therapy twice per week for twenty-five minutes and social skills group once per week for twenty-five minutes. R-31 at 1. Speech-language therapy would “help build social and pragmatic language skills” and “focus on sequencing information and sentence and story level comprehension.” Id. at 10. In the classroom, it would “help to generalize skills.” Ibid.

Leta explained that district staff understood that “when T. felt good socially and emotionally the academic began to move.” T1 123:8-9. Thus, to help ensure he felt comfortable, he remained in a self-contained classroom while being in a larger class for science and social studies. This would “best meet his social and emotional needs as he transitions to the middle school.” R-31 at 21. It was important for him to engage with typically developing peers in his classes, therapy, and social skills group, as it offers modeling and social opportunities that prepare T.M. for “real world interaction with peers.”⁹ T1 53:25-54:1. Indeed, Leta observed that typically developing peers “always provided models for [T.M.] to grow and” the general education students learned from him as well. T1 123:17-23.

The IEP explained, “It should be noted that [T.’s] recent evaluations, as was the case in the past, do not reflect [his] performance in the classroom. Given modifications and accommodations, as outlined in his IEP, [T.] demonstrates stronger academic skills than [sic] reflected in the recent testing.” R-31 at 21. The IEP listed accommodations and modifications:

- Modification of general education curriculum for social studies and specials
- Highly structured, predictable learning environment
- Modeling
- Placement in cooperative learning groups
- Educators shall speak in a clear, animated, and audible tone of voice
- Instructors shall be aware that listening in a busy environment can be taxing for T.M.’s attention and instructions should be broken down into small sections.

⁹ For example, in elementary school social skills group, T.M. engaged with two general education peers, with whom he learned a game. It was difficult for T.M. “because winning and losing was difficult,” but he “work[ed] through it” and experienced winning and losing, which was “really positive.” T1 54:3-13.

- Provision of ample time to process and respond.
- Repetition of material, when needed.
- Preferential seating, where auditory and visual stimuli are optimally received; away from noise and external distractions.
- Multimodal presentation of material: increased structure and organization; visual and auditory aids.
- Prompts to help with focus on tasks; verbally mediated strategies with visual aids and verbal cues; frequent teacher support, guidance, and positive feedback.
- Gentle encouragement to participate in class discussions and group activities; solicitation of T.M.'s input to facilitate attention.
- Previewing new information and guiding attention to listen for important points; extra attention at the outset of each task requiring independent work or sustained attention.
- Alerts before instructions or new material.
- Changing tasks to restore focus, to help sustain attention.
- Breaks or different, engaging tasks, during longer tasks.
- Breaks and physical activity to help sustain attention.
- Use of visuals to support auditory information
- Chunking of material to help gain comprehension.
- Frequent checks of comprehension.
- Use of manipulatives, especially during math.
- Colorized school schedule to help with transitions between classes.
- Re-teaching at the end of the day, when T.M.'s attention and ability to learn new material may wane.
- Use of highlighters to help with comprehension of text.
- Use of an access to a calculator unless being tested for fluency.
- Use of humor, once T.M. has become comfortable with a staff member and the environment, because he loves jokes.

[Id. at 16–17.]

Smith explained that the modifications provided by the August 24, 2021, IEP offered a multi-sensory presentation of material that was responsive to T.M.'s difficulty with processing information. They included “pre-teaching, making sure that he has multiple opportunities to be exposed to text or concept”; “this helps with the retention with the processing of information and storing it, so it can help him with his comprehension, so it’s repetition, repetition, repetition, repetition.” R-31 at 16, T2 36:22-39:6. Preferential

seating was provided to T.M. to address his distractibility. Ibid. Petitioners approved the IEP.

Smith reported that, by November, T.M. had improved academically and socially. His confidence had grown, and he was a leader in his class. He was a “different child.” T2 39:20. She believed that, through the MD class, he “rebuil[t] those skills that were lost after a year of not being in a structured learning environment.” T2 40:6-42:15. The IEP team thus recommended POR classes for English and math.

T.M.’s progress report showed that he progressed satisfactorily with respect to the speaking and listening objectives, which included “providing supporting evidence for his conclusion based on information in the written text or other format” and identification of “the kick-off event, as well as how the characters thought and feelings change, as well as developing a plan in the story presented.” R-33 at 1. He progressed gradually and then satisfactorily with respect to identification of “the most salient details of the story and recall[ing] the store in the appropriate sequence.” Ibid. He progressed satisfactorily with respect to all but two reported social/emotional/behavioral goals including identification of “peers with whom he has a positive relationship,” listing “characteristics of a friend and identify[ing] those in his grade who treat him as a friend,” and verbalizing “how the actions of peers impact him.” Id. at 2. While he initially struggled with “perspective taking” and “understanding other viewpoints in order to assist with problem solving,” by January he had progressed satisfactorily. Id. at 3. In reading, he progressed gradually and then satisfactorily with respect to all reported objectives, with success rates ranging from 85% to 95%. Id. at 5–6. Similarly, in mathematics, he improved from gradual to satisfactory progression in all reported objectives. Id. at 8–9.

T.M.’s report card for the first quarter reported A grades for all classes (including an A- in social studies). R-34. His social studies and science teachers wrote that he displayed a “positive, constructive attitude in class,” “[d]emonstrated learned skills,” and “[d]emonstrated good effort.” Ibid. T.M. was not absent or late during the first quarter. Ibid. Smith noted that absences are often indicative of emotional struggles.

Smith testified that petitioners were pleasantly surprised by this information and, on November 15, 2021, they agreed to move T.M. to a POR math class with a one-to-one aide, on a trial basis. They did not agree to move him to the POR language arts class because two transitions would be too much for him. The IEP team agreed. The IEP would not be revised until T.M. was observed in his new class and a meeting was conducted with petitioners. R-37 at 29–30.

However, petitioners later reported that T.M. did not want to come to school because of the POR math class. They reported that he exhibited an “increase of ‘sadness and anxiety’ at home due to multiple factors within the middle school, concerns regarding socialization, and vocalizations of school refusal.” R-37 at 30. Petitioners reported that T.M.’s “observed behavior at home is a direct response to ‘the moving parts’ of the middle school which include the rotating schedule, the bell which signals class transition, the bells utilized during school safety drills, and the academic demands of math and language arts.” Ibid. In December 2021, petitioners advised the District that they intended to place T.M. in a private school, and the District asked petitioners to attend a January 7, 2022, IEP meeting. R-35. At that time, T.M. had been in the POR math class only a few weeks.

The District asked behavioral specialist Diane Van Driesen, BCBA, to observe T.M. in class. She met him in the hallway as he transitioned to math class with his aide. He greeted her and said he was early for math and that he preferred to be early “because the hallways can be very crowded when the bell sounds.” R-36 at 1. He waited in the hall until his classmates arrived. In class, his aide assisted him with how to approach the class math assignment and he “was able to solve the problem independently and moved onto [sic] the next problem. He continued to work with [his aide] to solve each problem and she provided positive reinforcement for his work. [T.] was engaged in active interaction with [the aide] and sustained attention to the lesson.” Ibid. When asked by the teacher, T.M. described how he solved a problem, but was unable to answer another question. He needed prompting or reassurance from the aide for aspects of his work and she used redirection to prompt him to solve a problem.

T.M. transitioned back to his MD class when the math class was over. While there, he said that he was auditioning for the spring musical. When asked what the musical

was, and the aide rephrased the question, he stated the name of the musical and said that he was nervous and was looking for a quiet place to record his audition. “When he returned to the room, he told the adults in the room that he felt that his video was OK, and [the aide] reinforced that he did well with the taping.” Id. at 2.

Van Driesen wrote that during her observation, T.M. “was engaged and interactive with his teachers and support staff. Visual and [v]erbal prompting were used effectively with [T.], and he responded to positive praise and encouragement.” Ibid. He “consistently responded to re-direction to maintain attention and focus.” Ibid. Van Driesen recommended additional behavior supports such as “behavior-specific praise” at a ratio of four positive remarks for every one corrective statement, task modifications in conjunction with task demands, and consultation with an occupational therapist “to assess the need for sensory supports during transitions and changes in routines/schedules.” Ibid.

Based upon this report, Smith noted that T.M. was “engaged, he was appropriately responding to questions, he even volunteered an answer. His one-to-one aide was allowing him opportunities to lead . . . as opposed to the one to one having to prompt him initially.” T2 49:9-13. Van Driesen did not report having observed the types of problems reported by petitioners and Smith also did not observe them. Smith acknowledged, though, that there was an incident during which T.M. missed lunch due to confusion about an announced schedule change.

With respect to Van Driesen’s recommendations, those that were not already in the IEP were added to the January 21, 2022, IEP. R-37 at 23. This included specific praise throughout the day, at a ratio of at least four positive remarks for every one corrective feedback statement, and incorporation of choices into tasks. Smith explained that T.M. “does very well with choices, as much as possible when appropriate, an example, seating preferences, writing utensils, when transitioning.” T2 51:10-17. She explained that positive praise builds academic and social confidence, which enables “him to feel like he can take risks, academically or socially.” T2 51:20-23.

The IEP also permitted T.M. to leave class three to five minutes before the end of class so he could avoid “hallway traffic.” R-37 at 29. His teachers would give him assignments prior to his departure. The MD class teacher would “continue desensitization of transitioning bell and fire alarm to decrease response to stimulus”; T.M. would receive advance notice of fire drills; and morning mindfulness exercises were recommended to “reduce anxiety regarding school.” Ibid. The MD class teacher stated that T.M. enjoyed their classroom yoga, which occurred at the end of the day. Petitioners expressed concern about his missing parts of his classes and O.M. stated that they were familiar with yoga and he did not believe it would be helpful to add it to T.M.’s morning routine.

The District also offered “[h]ome programming [by a certified professional] to assist with school refusal reported by” petitioners and “[r]ecomended therapeutic services outside of school to address [T.’s] reported anxiety parents are experiencing at home.” R-37 at 29. Petitioners reported that T.M. “typically was emotionally dysregulated in the morning prior to coming to school” and that it was “very difficult for them to get him to come to school.” T2 53:8-10. They also reported that he felt overwhelmed and experienced increased anxiety. Smith noted that these services were offered even though District personnel did not observe the behaviors that petitioners reported. In response to the offers, petitioners expressed their “preference for the us to focus on what was going on inside the school.” T2 54:2-6.

The January 21, 2022, IEP recorded T.M.’s extracurricular activities: running, art, Do Something Now and yearbook clubs. He also attended meetings of other clubs to see if they might be interesting to him. Thus, he was “taking risks in socialization and building a flexible mindset.” R-37 at 9. Smith acknowledged that there were times when an aide was unavailable to attend extracurricular activities with T.M.; however, this occurred occasionally and not the majority of the time.

Also, “with minimal prompting,” T.M. auditioned for the school musical and was observed waiting in the hallways with his peers before school rather than waiting in the quiet classroom with his aide. Ibid. Smith emphasized the importance of his engaging in these ways, which exposed him to neurotypical peers and helped “promote . . . social

emotional confidence.” T2 57:19-20. She highlighted that auditioning for a school play is very stressful for all students and yet he took a risk and created his own audition video. His willingness to do this, and to perform for an audience, was “huge” and showed that he was “coming out of his shell” and “feeling more comfortable at the middle school and he wants to be part of the middle school community.” T2 58:6-12. He got a part in the play, which neurotypical students participated in. However, petitioners removed T.M. from the middle school before he could perform in the school play.

Leta was dismayed to learn that T.M. was removed from the middle school. She understood that he did well during the extended summer session before middle school and, significantly, he tried out for and was cast in the middle school musical. While she “thought that the transition [to middle school] . . . was going to be tough, because transitions were not his thing, he had really come to a good spot . . . and now was really acclimating and ready to move forward. So I think in that theater program he would have even flourished more socially and emotionally, what he offered the students and what they offered him.” T1 124:6-13. She believed the middle school and the IEP developed for his first year there were appropriate for him.

The District’s occupational therapist, Katherin Yeh, evaluated T.M. on January 21, 2022, and January 24, 2022. The District requested the evaluation due to concerns expressed about T.M.’s reaction to school bells, fire alarms, visual stimulation and other stimuli. Yeh wrote that, based upon T.M. and his teacher’s reports, his “visual processing challenges, including over- and under-reactivity to visual stimulation, excessive seeking of visual input, problems with perception and ocular-motor difficulties” indicate “a moderate to high level of difficulty with visual processing.” R-38 at 1–2. Yeh noted that “while [T.] feels that he . . . has a high level of difficulty, he is displaying behaviors related to these difficulties only occasionally within the school environment.” Id. at 2.

With respect to hearing, T.M. and his teacher reported a “moderate level of difficulty.” Ibid. He startled easily at loud or unexpected sounds and “will at times avoid places or situations that have loud sounds or noises or will try to mute the sound.” Ibid. Both “indicated a level of over-reaction and sensitivity to some types of auditory input such as shrill sounds, as well as an increased distractibility to auditory input.” Ibid.

With respect to social participation, the teacher reported “some difficulty with joining group activities without disrupting them as well as with speaking too softly or loudly.” Id. at 3. However, she also “reported that he frequently gets along with classmates easily, demonstrates respect and courtesy toward teachers and staff, participates in social activities at school, works well as a part of a team and shows caring toward other students.” Ibid. T.M. reported he that “only occasionally enjoys being with friends and that it is difficult for him to make eye contact with people when he is talking to them. He agreed that he gets along easily with his classmates and the adults in his life.” Yeh wrote, “Overall, it appears that [T.’s] participation in social activities is fairly typical at school.” Ibid.

Yeh concluded, “While [T.] did appear to demonstrate some sensitivities related to auditory processing and visual input . . . overall, his sensory processing skills do not appear to be significantly impacting his ability to participate in the school environment.” Id. at 4. She noted that classroom strategies were utilized to address his difficulty with auditory hyper-sensitivity: “limiting visual stimuli where possible and offering the use of headphones in response to announcement or alarms as well as the ability to transition between classes during less crowded times,” in addition to other accommodations. Ibid. Yeh recommended continued use of these strategies. She noted that other areas in which T. mentioned some difficulties were “related to tasks or items which do not often occur within the classroom environment.” Ibid.

Smith noted that Yeh did not identify any new issues that the District was not addressing. It confirmed that the District’s accommodations were appropriate.

On January 21, 2022, petitioners enrolled T.M. at the Lewis School. P-16. Smith stated, “When T. left the middle school, he was on a trajectory where we were building way post basic, you know, focusing on basic skills, we were building on reading comprehension skills.” T2 65:7-13.

On June 7, 2022, an independent audiological evaluator diagnosed auditory processing disorder. R-39. The evaluator recommended conducting another evaluation

in a year to monitor changes “secondary to maturation and/or intervention,” incorporation of listening skills into his educational programming, and a speech and language evaluation if one had not been conducted. Id. at 4. The following was also recommended:

- Provide strategic classroom seating close to the teacher and away from sources of potential auditory distraction (pencil sharpeners, doorways, drinking fountains).
- Summarize old material before presenting new information.
- Be sure to gain [T.’s] attention prior to giving directions or instructions. Ask questions to check [T.’s] comprehension. Repeat responses to questions as necessary or rephrase.
- Use visual supplements to enhance classroom lessons.
- Provide sound field amplification in the classroom to increase signal to noise ratios making the teacher’s voice the loudest in the room.
- Provide extended time in a minimally distractive environment for examination and evaluations.

[Ibid.]

Petitioners asked the District how the recommendations in the audiological evaluation could be implemented in T.M.’s IEP. The District replied that a full educational reevaluation, which included the audiological evaluation and a review of his performance at the Lewis School, was necessary. Smith conducted the reevaluation. She administered the WJ-IV Tests of Achievement and Gray Silent Reading Test (GSRT) on December 22, 2022. She also observed T.M. in his classes, interviewed teachers, and conducted an informal learning inventory. She observed that the school environment was much quieter because it had fewer students.

Testing revealed the following:

- Basic reading skills: high average range, which was above neuro-typical peers. This included word attack, which was in the superior range. R-40 at 7. These were “always a strength.” T2 63:11.
- Written language: average. This included spelling and writing samples. R-40 at 10.

- Phoneme-grapheme knowledge:¹⁰ superior. This included word attack and spelling of sounds,¹¹ which was in the high average range. R-40 at 11.
- Spelling: average range. The score increased from the 41st percentile in 2021 to the 71st percentile. R-40 at 10, R-30 at 13.
- Writing samples: 33rd percentile, average range. In 2021, he was in the 15th percentile, low average range. R-40 at 10, R-30 at 13.
- Reading comprehension skills: very low range. This was comprised of reading recall (low range) and passage comprehension (very low range). R-40 at 8. Smith noted that T.M.'s 2021 passage comprehension score was two percentages higher, and in the low range, and the score decreased since 2019. This was "very concerning because when T. left the middle school, he was on a trajectory where we were building way past basic, you know, focusing on basic skills, we were building on reading comprehension skills, so after a year of being away from the middle school . . . not to see any type of movement, any positive movement it's concerning." T2 65:5-13.
- Mathematics: low range. This included applied problems (low average) and calculation (very low range). R-40 at 9. Applied problems increased from the 2021 score, which was less than the 1st percentile, very low average. In 2021, math calculation was one percentage lower, also in the very low average range. R-30 at 11.
- Gray Silent Reading Test:¹² age equivalent 8.6; grade equivalent 2.8; poor range. R-40 at 11.

Smith interviewed T.M.'s English, speech, math, science and music instructors. The English teacher reported fewer "miscues" when T.M. read orally and "improvement" in word retrieval. R-40 at 2. He "collaborate[d] positively within groups." Ibid. The instructor reported that higher order comprehension was an "area continuing to require development." Ibid.

¹⁰ This "cluster provides a measure of proficiency with phonologic generalizations, common orthographic patterns, decoding and encoding." R-40 at 10.

¹¹ A "measure of phonological/orthographic coding." Id. at 11.

¹² Measures whether the student developed or is developing the ability to read silently with comprehension. R-40 at 11.

The math teacher reported T.M.'s strengths in "identifying patterns, skip counting, solving simple unknowns, and carrying items with minimum prompting." Ibid. While he was "able to accurately talk through [sic] subtraction algorithms," he "struggle[d] with accurately and independently solving subtraction problems on paper." Ibid.

The speech therapist described T.M. as "eager to participate." Ibid. His vocabulary and identification of synonyms and antonyms "continue[d] to strengthen." Ibid. "However, problem solving, regulation of blurts, automaticity, an [sic] inflection with volume require development. It was noted that inattentive behaviors significantly impacted [his] progress during pull out group sessions. As a result, pull out services have been temporarily modified to individual sessions." Id. at 2–3. Smith described the speech therapist as akin to an individual aide when she pushed into class to address T.M.'s impulsivity. She compared this to the District's goal of fading out the use of an individual aide during middle school.

The science teacher reported improvement from September 2022. However, because the class was during the last block of the day, there was an increase in off-task behaviors and "self-regulation may be a challenge for [T.] due to fatigue." Id. at 3. "Difficulty with attending, retention of information, and inferencing/comprehension are exhibited. Additionally, inappropriate giggling and prompts for redirection and scaffolding increase." Ibid.

The music teacher noted T.M.'s enthusiasm about learning to sing and play guitar and that his "[g]eneral confidence also continues to improve through the medium of music." Ibid. The teacher noted that T.M. is sensitive and may "interpret tone differently than meant. He may then feel triggered and overreact verbally." Ibid.

Smith noted, "[T]he Lewis School team believes [T.] is a capable and able learner. He continues to work on echolalia, perseveration, self-regulation, attending, interpersonal skills, and building comprehension." Ibid.

Smith observed T.M. in his English and math classes on December 14, 2022. She did so virtually, as the Lewis School did not permit in person observations at that time. T.M. transitioned between classes five times. Each core class had no more than thirteen students. Pull-out and push-in speech services were provided weekly, in thirty minute intervals.

English class was during the morning and there were eight students. Smith was unable to see T.M. via the camera for fourteen minutes because the camera was directed away from him. The day's goal was to read informational text about Kwanzaa as a class and answer eight displayed "who, what, where, why, when type of questions" in complete sentences. T2 66:12-13, R-40 at 3–4. Smith noted that although T.M. was in seventh grade, these types of questions are appropriate for second grade. She also observed "echo reading" and some writing. T2 66:24. The teacher needed to prompt T.M. because he was unable to finish what appeared to be a writing task. Smith reported that T.M. "participated positively in discussions and was receptive to redirection and teacher feedback." R-40 at 4.

When directed to prepare for math class, T.M. did so appropriately. Smith was unable to view T.M. while he physically transitioned to the math classroom. Two teachers and seven students were in the room. T.M. demonstrated a "positive rapport" with a teacher, participated positively in class discussions, and demonstrated knowledge of the two times table. R-40 at 4. During the "multiplication warm up," T.M. appeared to be attentive and "successfully provide[d] a response through teacher scaffolding." Id. at 5. Smith considered the work on multiplication facts to be "frustrating" because "when T. left middle school the resource class that he was in [was] going over prime factorization. He was learning about greatest common factors, least common multiplies" T2 67:16-20. Multiplication, division and fractions were "prerequisite skills" for those problems. T2 67:21-24. Thus, at Lewis, "he was working on a skill that we already know that he had intact, it was disheartening and it was very frustrating." T2 68:25 – 68:2.

Smith observed "an increase in difficulty with managing impulse control, off task behaviors and attending" in math as compared to his behavior in the English class. R-40 at 4–5. While he followed directions appropriately during independent group work, he

demonstrated off-task behavior for approximately one minute but responded when redirected. He also “politely declined” to work with another student when asked to do so. Ibid. He attempted to solve problems without self-monitoring and he was encouraged to take his time. His behaviors while at Lewis were not worse than what Smith observed while he was at the District middle school. However, she had not observed those behaviors while he was in his District math classes (MD or POR).

Smith noted that there was “a lot” of independent work at Lewis. Direct instruction, rather, “gives more opportunities . . . for that repetition call and answer, so the engagement level is increased.” T2 69:11-14.

A new IEP was prepared on January 25, 2023, approximately one year after T.M. started at Lewis. R-41. The “parental concern” section of the document noted that a form was sent to petitioners on January 18, 2023, in which they were to detail their concerns and issues. The IEP stated that the document was not received by the time of the IEP meeting; however, the document would be updated when the information was received. Id. at 8. The only change to T.M.’s proposed placement was MD math because, if T.M. were to return to the middle school, the transition would be difficult for him. Smith explained:

He spent maybe four months during the tail end of fifth grade then transitioned to middle school and only spent maybe about four months in middle school, then transitioned again to another school, so there’s a lot of transitioning going on, a lot of opportunities for regression, so we wanted to start off with the same program that . . . the IEP team initially proposed because it worked, so of course it wouldn’t have been something that we would place him in for the entire year, but it would have been a temporary placement as part of the transition.

[T2 70:12-24.]

On November 2, 2023, Smith conducted a final observation of T.M. at Lewis. She observed an English lesson and a poetry reading but was not able to observe a math class. Smith did not observe lessons that addressed comprehension skills. Rather, they focused on phonological skills, which are basic reading skills that are taught in first grade

at the District. This was inappropriate for T.M. as the previous evaluations showed that “his basic reading skills have historically always been his strength and has always been intact, so again, it was frustrating seeing a skill that he already knows was being focused on.” T2 72:18-22. While at the District, T.M. worked on more than phonemes. In the general education setting for social studies, he wrote five paragraph essays. This required knowledge of “phonemes, decoding, phonological awareness, encoding . . . skills that were already intact.” T2 73:18-19. In his writing, he used transition words and focused on “higher order thinking skills, like making inferences, analyzing text, compare and contrasting, drawing conclusions.” T273:24-74:1. Smith did not observe this at the Lewis School. She also noted that cursive is no longer taught as “an independent session of instruction” and time is no longer devoted to it any public school. T2 74:14. She opined that, by focusing on T.M.’s strengths, his reading skills scores improved while his comprehension score decreased.

Smith interviewed the English teacher and asked about the specific curriculum. The teacher did not report one. Rather, she used “customized lessons and resources” to support T.M. Students “are given an assessment at the beginning of the school year and grouped homogeneously based on results.” R-43 at 2.

Smith referenced the District’s January 21, 2022, IEP in which T.M.’s MD language arts teacher reported that he already developed the skills that were being taught at the Lewis School:

Academically, [T.] is able to access the Language Arts curriculum with minimal assistance. In writing, his handwriting is legible and clear. He is able to write complete sentences with clear thoughts using appropriate punctuation. He is reminded to go back and edit. He used an editing checklist at the start of the year but is now able to catch simple mistakes when prompted to check his work. Given minimal prompting he is able to add details, make corrections, and clarify/expand his thoughts. [T.] is able to craft his writing using a graphic organizer. He is able to create a simple introduction, transition between paragraphs and write a conclusion in a sequentially cohesive writing piece. The writing process is highly modified and scaffolded to meet his needs as a writer. He receives one to one individualized support and assignments based on his

learning goals and needs. For example, [T.] is a visual learner and one strategy utilized when working on writing piece is that [T.] is given the opportunity to draw/sketch out his story before writing. This is a highly recommended teaching strategy for students with ASD and [T.] appears to benefit from the visualization before writing. From there he will verbalize what he would like to write before beginning his assignment. This aids in organizing his thoughts. From there [T.] will begin to sequentially write. Lastly is the revision phase. He accepts constructive feedback, can add details, and expand on meaning. [T.] also benefits from models, graphic organizers, peer review and rubrics. Each of these helps [T.] to draft and revise formal writing pieces. . . . During our unit on informative writing, on his first writing sample probe on 11/12/2021 he scored an 11 using the Reading Plus writing rubric to score Satisfactory. On his second writing probe 12/14/2021 he scored a 14 using the Reading Plus writing rubric demonstrating improvement within one month.

Pre-assessment tools such as the diagnostic assessment from Reading Plus Adaptive Literacy Program, Writing baseline assessment form the Common Lit program, two informal Reading Comprehension assessments, and functional observation within the Language Arts classroom were completed. Reading Comprehension Assessment: 67% when taken independently, 100% after review with prompting.

[R-37 at 11–12.]

Thus, T.M.'s strong visual skills were used to help him improve his writing skills. Smith referred to examples of T.M.'s writing that were developed by first employing his enjoyment and proficiency with visual work. By first sketching, the drawings "help[ed] to inform his details, it helped him in adding details to his paragraph." T2 81:11-12, R-42. He also used checklists to help him organize, revise and edit his writing. R-42. A comparison of his earlier writings from 2021 showed development with the organization of his sentences and use of details.

Smith did not observe this type of work and demonstration of these skills at the Lewis School. Rather, T.M. was working on early childhood reading skills, which he had already developed and were one of his strengths. His District progress reports, PLAAF statements and evaluations documented this.

The Lewis School English teacher reported that T.M. is the oldest student in his class. He needed prompting to “settle in” at the start of each day because he “paces back and forth.” R-43 at 2. “[O]nce he’s given that space to regulate then he’s able to sit and join the rest of the lesson.” He easily became frustrated, struggled with impulsivity and exhibited inappropriate laughter. This was observed at the District. In both schools, instructors redirected him. He also continued to have difficulty making friends at the new school. However, Lewis did not offer a social skills group and, because there was not a lot of students, there were few “opportunities for him to connect with other kids who need that social skills group.” T2 76:22-23. This “significantly impede[d] his socialization.” T2 76:25. Also, the absence of neurotypical students further diminished his social interactions.

The speech therapist, who worked with T.M. individually for thirty minutes once per week and with another student thirty minutes once per week, told Smith that T.M. was very aware of other students and how they perceive him. He became overwhelmed in small groups and class and could become defensive when classmates asked him to stop disruptive behavior. She pushed into the English class to assist with decreasing inappropriate laughter and impulsivity. While he can “discuss social pragmatics and conflict resolution in isolation,” he had difficulty applying these concepts. R-42 at 2. He continued to have difficulty making connections and friends.

O.M. and Dr. D.F. sought an evaluation when T.M. was in second grade because they observed a discrepancy between what they observed at home and the reports of T.M.’s teachers and case manager. T.M. was not interested in reading, did not seem to understand what he read, and did not seem to understand number concepts. When O.M. shared the evaluation results with Leta, she was “very open” to discussing it and was “extremely cooperative” as they discussed how to “improve his teaching methods and supports.” T2 229:4-10. They had an ongoing dialogue, as petitioners did not see improvement over a period of years.

In March and June 2019, when T.M. was in third grade, petitioners reported his “‘distress’ about coming to school.” R-4 at 6, R-6 at 6. Although T.M. cried and yelled about having to go to school, he did not provide a clear explanation about why he felt this

way. Nonetheless, he attended school because he is driven to succeed and do as well as his peers. When petitioners relayed this to Leta, she replied that T.M. was doing well and that school personnel did not observe the problems that petitioners reported at home.

Although petitioners considered moving T.M. to Lewis while he was in third grade, they believed that “despite all the difficulties, the setting of the elementary school was something that T. could navigate and could handle.” They trusted Leta and believed that she and the “entire team at the Littlebrook School were on his side.” T2 234:8-22. T.M. “did okay in that setting.” T2 236:17.

T.M.’s extreme sensitivity to loud noises, including the fire drill alarms, is a significant concern. The sounds scare him and cause “a high level of anxiety.” T2 235:8-9. Leta developed a “creative” way to address this by removing T.M. from the building before the fire drill alarm and giving him headphones. O.M. believed this helped him, over time, to “overcome that issue.” T2 236:1.

Petitioners sought an updated neuropsychological evaluation between third and fourth grade because, during the two years since the 2017 evaluation, T.M.’s teachers reported that he behaved differently at school than at home. T.M.’s scores on the updated evaluation were lower than his 2017 scores in important areas. Petitioners discussed this with Littlebrook personnel, including Leta. While the staff were cooperative and genuinely concerned, they reiterated that T.M. was progressing satisfactorily and was capable of more than was reflected by the objective testing. However, August 2021 testing showed that T.M. did not progress, and his scores remained very low in reading comprehension and math between the end of third grade and the end of fifth grade.

O.M. understood that the District offered the middle school MD class because it was small and self-contained. Because middle school is more challenging for all students, it was thought that this would help facilitate T.M.’s transition to his new school, which is a challenge for most students. O.M. also understood that the District recommended the MD class because it would be better equipped to help T.M. with his auditory sensitivities. The MD class would serve as T.M.’s homeroom—an “anchor.” T2 248:9. This was not ordinarily available in middle school and was more akin to elementary

school. To further help with the transition to middle school, the District discussed the rotating schedule, and T.M. attended the summer program, which was taught by his future MD teacher. It was expected that he would develop a relationship with the teacher before the school year started. Petitioners agreed with this plan.

T.M. was initially excited about attending middle school. However, he quickly appeared to be struggling and “exhausted” or “depleted.” T2 258:23. Petitioners soon realized he did not have the energy for after school activities such as his Hebrew or art classes. Over the first several weeks of school, “things got worse and worse.” T2 259:11. While petitioners did not immediately panic, because he also refused to go to elementary school, they realized his upset was of a different degree. There were “tears and . . . fits and not only every morning, but also every evening before it was bedtime and during the weekend especially Sunday nights. . . . It was nothing like we experienced in the elementary school and it got worse and worse” T2 260:2-7. T.M. said that he did not believe things were going to get better. This was unusual for T.M., who was a “very driven, very motivated kid” who “wants to be as good as everybody else.” T2 260:21-22. Concerned about the difference in T.M.’s behavior, which O.M. described as “crisis mode,” petitioners relayed their concerns to T.M.’s MD teacher and Smith. T2 260:10.

In response to the District’s recommendation that petitioners employ counseling and therapy outside of school, O.M. explained that, although they believe in therapy and T.M. has had therapy, the District fundamentally misunderstood the problem. T.M.’s “school refusal and his desperation are the normal reaction of a kid that has auditory processing disorder and autism in an environment” like the middle school. T2 262:16-18. The school’s setting was simply “inappropriate” for T.M. T2 261:6-9. O.M. described fundamental differences between middle and elementary school. Although T.M. had difficulty adjusting to change, he eventually acclimated to routine schedules such as that in elementary school. Middle school, however, was considerably different. O.M. estimated that it had quadruple the number of students, and the building is much bigger. It used a rotating schedule that does not permit a daily routine like in elementary school and, because each middle school student has their own schedule, they do not move together during their eight or nine transitions per day. The student traffic in the hallways is “chaotic.” T2 250:10. O.M. also observed that the setting is generally noisy. A bell

rings three times during each transition and O.M. heard an announcement over the PA system that caused the parents to “jump[] up because it was so loud.” T2 251:10. He also heard the loud fire alarm during a back to school night, which he described as considerably louder than at elementary school or “any fire alarm that I think any of us can imagine.” T2 251:16-17. In sum, multiple transitions and bells significantly impact T.M. and O.M. believed it contributed to his need for an aide. T2 251:24. None of the modifications helped because T.M. required a quieter environment, as Dr. Salsberg recommended, and fewer transitions. He could not learn and succeed in the middle school setting.

With respect to the District’s representations that O.M. did not appear to be in distress while in school, O.M. acknowledged that, because T.M. wants to be like everyone else and succeed, he would present himself in school in a manner that did not convey his upset. However, O.M. believed that the District had evidence of T.M.’s distress, as he often misunderstood expectations and became overwhelmed. O.M. referenced a school observation and program review conducted by educational consultant Janelle Amato, Ph.D. Petitioners retained Dr. Amato, who observed T.M. while he was in sixth grade at the middle school. She also interviewed T.M., met with Smith, and reviewed records including evaluations. P-5. O.M. specifically cited the section of the report in which Dr. Amato’s highlighted that T.M. ignored his aide while he watched the other students leave class and “multiple situations where he didn’t understand” what was expected of him. T2 266:22. He recounted an incident during which O.M. missed lunch because the students were called to the auditorium. He surmised that the other students knew that they needed to get food before or after the event. O.M. asserted that, had appropriate attention been paid, District staff would have noticed “that something was going on there.” T2 264:16.

Although the middle school offered many extracurricular activities, and T.M. was interested in many of the offerings, he could participate only when his speech therapist was available. Because she was unavailable at least thirteen days at the beginning of the year, T.M. did not fully participate in any activity, and there were too few staff members to permit the special education students to join in general education programs. When T.M. tried to join a group, such as running club, he did not “have any kind of sense of belonging to it” because he “was there only maybe a couple of times.” T2 255:24-256:2.

Petitioners were unaware that T.M. auditioned for and was cast in the school play. While they were fully aware when their daughter auditioned and was cast, neither T.M. nor school personnel told them about it at the time. O.M. believed T.M. was “completely depleted” and would not talk after school. T2 257:20. Leta told petitioner after the fact that T.M. received a part in the play. When they asked T.M. about it, he said he did not get a part but was not upset about it, although O.M. also described T.M. as having “experienced it as a failure.” T2 258:8.

By the December 21, 2021, IEP meeting, T.M.’s distress had escalated significantly. Petitioners explained this to District staff. The District did not offer meaningfully different solutions. The following day, petitioners’ counsel advised that they intended to enroll T.M. at the Lewis School and would seek reimbursement from the District. P-29.

Petitioners were particularly concerned about T.M.’s reliance upon his aide and the impact on his independence. T.M. was unable to navigate the school setting and thus relied upon his aide. Consequently, he did not have an opportunity to develop independence or socialize, as his interactions with peers were hampered when the aide was next to him. O.M. surmised that it was stigmatizing for T.M.

BCBA Van Driesen’s January 4, 2022, report confirmed petitioner’s understanding of T.M.’s reliance upon his aide, as the aide was mentioned several times in the report. R-36. Dr. Amato addressed this in her February 20, 2022, report of her middle school observation. She wrote:

An aide who is providing one-on-one support to a student often affects how the general education teacher views the student. It is possible that the general education teacher struggles to view the student as being a part of the whole class. A 1:1 aide can also impact the frequency and types of peer interactions that take place throughout the day. Unfortunately, [T.’s] reliance on his 1:1 aide has increased and has become overly restrictive since the beginning of middle school. The IEP team should examine [T.’s] specific needs, including the environment and schedule, and determine if it is

the proper setting to foster independent skills and fade his reliance on utilizing a 1:1 aide.

[P-5 at 11.]

Dr. Amato also wrote that, given T.M.'s unique profile and challenges, "he must receive opportunities for individualized instruction in a setting where educators acknowledge his strengths, maintain an awareness of his weaknesses, and are patient with his approach to learning." P-5 at 10. She observed that the "model of general education instruction with pull-out literacy support has not yielded satisfactory progress, and as a result, the gap between [T.'s] skills and those of his peers has widened over time." Ibid. She recommended a "cohesive program in which intensive, multisensory literacy instruction is the primary focus of the school day and is reinforced across the curriculum." Ibid. She also recommended social skills training, which she recommended could be "an extension of his current group work as outlined in his IEP," and allow "more opportunities for peer interactions." Id. at 11.

O.M. believed there was a disconnect between what the school reported about T.M.'s behavior and academic success and his actual performance. He opined that T.M.'s middle school report card, which reported all A grades, was really an attempt to provide positive reinforcement. However, T.M. was testing "two years under . . . academic levels of his peers, so . . . if he was put on par with the rest of the student population" he would not have achieved those grades. T2 242:24 to 243:2.

The Lewis School was preferable because its building and student population are considerably smaller than the District middle school. At the time of the hearing, there were eight students in T.M.'s class and there were eleven or twelve the prior year. There were fewer transitions between classes (five rather than ten at the middle school); the transitions were much shorter as most of T.M.'s classes were in the same areas; the students transitioned as a group; and the schedule was the same every day. T.M. knew what to expect and did not have to figure anything out. The consistency allowed him to develop a habit and thus navigate the school. O.M. opined, "In my experience kids with these profiles, that's extremely important . . . to know what to expect and not to have to

figure it out . . . every time.” T3 18:1-3. Consequently, T.M., like the other students at Lewis, did not require an aide. He was “equal among his peers in that respect.” T3 28:10.

O.M. addressed Smith’s assertion that Lewis’ speech-language therapist served as an aide. Petitioners understood, based upon their observations, conversations and conferences with Lewis staff and T.M.,¹³ that the therapist was with T.M. only one or two hours per week, including a group session with other students. She was not assigned to solely assist T.M. Moreover, based upon his observation of T.M. in school, O.M. believed he did not need that type of assistance. T.M.’s transitions were “typically . . . very organized” and T.M. chatted with his classmates “with ease.” T3 32:11-16. He contrasted this with his observation of the District MD class, when he made a presentation to the class via Zoom. He observed some of T.M.’s classmates and school staff in the classroom. He estimated that there were four to six students and four or five teachers and aides, although he did not know each person’s role. O.M. noted that Leta said that the students had cognitive impairments and he referred to one student who made “rocking motions” during his presentation. None of the students other than T.M. participated in a meaningful way. He described one student’s participation as a “grunt maybe, or a throaty kind of noise.” T3 34:19. O.M.’s assessment of the child was reinforced when he saw him during a District choir concert, where he was not following along or participating. O.M. concluded that T.M. was the only student in the class who was talkative and capable of answering questions and engaging in conversation. T.M. already struggled to make friends and these classmates did not foster relationships. Plus, the presence of his aide further restricted him. Thus, although O.M. agreed that the MD class would appropriately provide “an environment that’s more stable, more quiet, more protective,” the students in the class were inappropriate peers for T.M. T2 36:25.

O.M. did not know if T.M. made friends in middle school. He was not invited to parties or activities and T.M. did not request help with socializing, unlike in elementary school. It was easier for him in elementary school because the children were together all day and lived in the same neighborhood. He fared better socially at Lewis because it was more like elementary school, in that he spent most of his day with the same students.

¹³ O.M. also noted that he observed T.M.’s class when he made presentations to it.

O.M. observed that “over the months” T.M. developed what he described as more “typical . . . teenager middle schooler kind behavior and interactions” and he was invited to social events. T2 38:23-24. He was “one of the gang.” T2 39:11. O.M. noted that the Lewis students appeared, to him, to be a “regular typical group of teenagers . . . nothing like the MD class.” T2 40:6.

Also, because T.M. was not exhausted and shut down after school, he was able to participate in after school activities. He participated in the musical theater and fitness clubs and played basketball after school. Unlike while at the middle school, he returned home with “energy” and talked freely about school. T2 40:20.

O.M. opined that the instruction offered by the Lewis School was extremely challenging. He referenced, as an example, that T.M. did long division with decimals and was reading an “advanced” book. T3 153:22. The work was challenging but appropriate for T.M. and middle school students generally. He disputed Smith’s assessment that T.M.’s assignments were at the first- or second-grade level. If anything, the academic level was too high in some areas. However, he acknowledged that he is not an expert in this area.

The January 2023 proposed IEP offered the same setting that it offered in 2021–2022. This was inappropriate because T.M. was “unable to navigate” that setting and the IEP did not address “the root of his difficulty – which is sensory overload, the result of his auditory processing disorder and autism.” P-10 at 2. O.M. stressed that the issue was whether T.M. could access his education. He could not access the high level of academics offered by Princeton because he was overwhelmed, even though he “had a lot of scaffolding” and an aide. T3 156:20-21. O.M. analogized T.M.’s experience there to doing schoolwork at a construction site. Under such circumstances, T.M. would either withdraw and rely upon his aide or break down in tears.

Moreover, the proposed use of an aide would continue to make him feel inferior and cause him to lose self-confidence, independence and organizational skills. It would also reduce his social interaction with peers. This is what previously led to T.M.’s “confusion, anxiety, and more school refusal.” Ibid. Further, the MD class was

unnecessarily restrictive and it limited T.M. to being with students who required “the most intensive interventions.” Id. at 3. Even when T.M. had the opportunity to interact with others, he rarely did. Further, although the IEP referenced T.M.’s involvement in after school activities while at Princeton, he did not engage regularly as he was dependent on the “the special education support team,” who were often unavailable. Id. at 4. O.M. acknowledged, however, that, despite these problems, T.M. had perfect attendance while he attended the middle school.

Conversely, the Lewis School “figured out how to teach him” and he is able to access his education. T3 151:1. This was demonstrated by his improved testing scores as well as his energy level and demeanor at home. Nonetheless, Smith focused on the passage comprehension score, which was only two percentiles lower, and not T.M.’s improved scores while he was at Lewis. She also did not address the GSRT passage comprehension score, which increased from the 3rd to the 4th percentile. He further noted that the District did not place such weight on T.M.’s declining WJ-IV passage comprehension scores between 2017 and 2019 (a decrease from the 28th to the 5th percentile). This indicates that the decline was not recent. Ibid.

In a February 9, 2023, letter to Smith, petitioners highlighted the following improvements from 2021 to 2022:

- Spelling rank increased thirty percentiles; T.M. was at the 71st percentile rank, which is the highest rank he had achieved by then. P-10 at 3.
- Writing sample rank increased eighteen percentiles. Ibid.
- Math applied problems rank increased by thirteen percentiles, from less than the 1st percentile to the 13th percentile; he did not achieve above the 6th percentile while at the District. Ibid.
- Word attack rank increased twenty-five percentiles, to the superior level. Ibid.

While petitioner attempted to discuss these issues and their concerns during the January 2023, IEP meeting, “there was no interest in talking about this at all” on the part

of the District's representatives. T3 161:10-11. Both parties' attorneys were present and O.M. was able to express his concerns "only because [his counsel] insisted." T3 161:16-17. However, there was not "meaningful conversation about the significance of the improvements" in T.M.'s performance. T3 161:24-25.

O.M. also noted that his and Dr. D.F.'s concerns were not included in the IEP. They communicated their concerns in their February 9, 2023, letter. P-10. Although Smith confirmed that she received it, and promised to discuss it with petitioner, she did not. O.M.'s attempt to communicate with another member of the staff, without their attorneys present, was unsuccessful. He acknowledged, however, that the attorneys were, at that time, discussing how to resolve the matter. Nonetheless, he asserted that the District failed to properly communicate with petitioners by not acknowledging T.M.'s improvement while at Lewis.

Jasmine Ueng-McHale, Ph.D., holds a Doctorate in Clinical Psychology. She treated T.M. from May 2017 through March 2019, and March 2022 through at least November 5, 2023. P-15 at 1. She was retained by petitioners to write the report she prepared for this matter. She was aware that petitioners wanted him to remain at the Lewis School; however, they told her that they would accept an appropriate program at the middle school.

Dr. Ueng-McHale operates a private practice and treats, among other patients, children and adolescents with chronic illness or disabilities and neurodiverse individuals, including those with sensory processing disorder and autism spectrum disorder. P-14. As a clinical psychologist, she is qualified to administer psychoeducational testing. She worked with people with autism for thirty years, including assessing their needs, evaluating educational settings, reviewing reports and administering psychoeducational testing. While she was an adjunct professor at Montclair State University's Certificate Program in Infant and Early Childhood Mental Health, she taught about formal and informal assessments of sensory profiles and integration of assessments of multiple development domains. She administered between twenty and thirty neuropsychological evaluations during her career and interpreted evaluations administered by others. She administered eight such evaluations as a neuropsychological evaluator from 2002

through 2004. Ibid. Dr. Ueng-McHale was admitted as an expert in clinical psychology, administration and interpretation of psychoeducational testing, and treatment of individuals with chronic illnesses and disabilities including autism and sensory processing disorder.

T.M. has “a high sensitivity to sound” as well as difficulty with “regulation of attention.” T3 81:8-9. Children with sensory integration disorder experience “sensory stimuli” in a way that is “exhausting” for them. T3 81:1-7. She opined that desensitization to noise, sound and visual inputs would not be effective for T.M. She analogized to a routine stimulus that she finds bothersome, despite her efforts to calm herself.

T.M. also “can become perseverative on certain ideas” and “can be inflexible and rigid when plans change,” which can result in tantrums. P-15 at 1, T3 81:10-11. Furthermore, he can become “distracted in an environment where children are also not on task” and, “to support his learning, . . . he needs to have ample opportunity throughout the day for social interaction that is challenging and stimulating and verbal.” T3 87:21-88:5.

Petitioners reported that T.M. “experienced high anxiety, significant emotional distress, frequent tantrums, and returned home from school completely exhausted” when he returned to school after remote instruction. P-15 at 1–2. She noted that several “traumatic events and traumatic transitions” impacted him: “The pandemic shut-down, the shift to school on zoom (which was ineffective for [T.]), the overwhelming return to in-person education at Princeton Middle School, and his recent months of severe illness leading to the diagnosis of Chron’s disease” P-15 at 3. She stressed that remote learning is particularly bad for T.M. His “entire profile makes it so that he can be exhausted, and certain settings are just too much for him.” T3 81:13-14. He required a regular routine, a “stimulating social environment, and a sensory environment that won’t . . . to the degree possible not overload his nervous system.” T3 82:20-22.

Dr. Ueng-McHale did not administer tests. She observed T.M. at the Lewis School on October 30, 2023. The school building was small and T.M.’s class of eight students was quiet and organized. She described it as “not chaotic.” T3 78:12. At fourteen, T.M.

was the oldest student in the class, as the other students were eleven or twelve. She was told that he would eventually have opportunities to be with older students; however, she did not see older students in his class.

She observed that T.M. was physically smaller and closer to the younger children psychologically and socially. The students were “diagnosed primarily with reading disabilities” but were more advanced socially and did not have “significant behavioral challenges.” P-15 at 2–3. T.M. “fit in developmentally, physically and psychologically with his peers in the classroom.” T4 79:11-12. This was beneficial for T.M. as he “increased his participation as a member of his classes,” spoke about his interactions with his classmates during therapy sessions, and made “social emotional gains” such as “developing his humor” and “picking up more mature mannerisms.” P-15 at 2. His parents reported that “he was rising to the expectations of his teachers in a new way.” Ibid.

While Dr. Ueng-McHale observed T.M.’s class during a lesson and snack time, he did not have an aide, and she did not observe specific interactions between T.M. and the other students. She opined that he did not need an aide due to the school’s small size, the general quietness of the setting and the resultant lack of distractions. Lewis’ program was not “well below the level of middle school instruction.” T3 88:9-10. She cited a lesson that may have appeared odd (use of a clicker while the students thought of words that matched the number of clicks) but which was intended to help access long term memory, and sustain auditory attention, which are difficult for T.M. T.M. “function[ed]” like the other students in the class. T3 78:13. He was “engaged,” followed directions and accepted his teacher’s feedback well. P-15 at 2. “He appeared to be doing the tasks on par with his peers” and transitioned well, needing assistance once. Ibid.

T.M.’s teacher told Dr. Ueng-McHale that he did well during his first month of school but had “more difficulty recently” when he “seemed more irritable and sometimes more resistant to his reading work.” P-15 at 2. His speech-language therapist said that distractibility was a significant challenge. She was helping him to express his needs and with his “awareness and communication about things that distract him.” Ibid.

When asked about T.M.'s independence at the Lewis School, Dr. Ueng-McHale noted that he transitioned "pretty independently," although he needed to be prompted by the teacher on one occasion. T3 84:12-13. It was significant that he did not require a one-to-one aide. As he "is drawn to adults" and seeks direction from them, it is important that he not be reliant upon an adult being by his side at all times. T3 84:22. At Lewis, T.M. did not appear to have lost motivation or given up, as his parents said he did while at the Princeton middle school.

Dr. Ueng-McHale opined that the increase in T.M.'s word attack standard score was significant because it "contribute[s]" to his reading and writing. His applied math score also "dramatically improved." T3 73:22. She also highlighted his "significant progress" in math between 2021 and 2022, particularly his ability to solve applied math problems. P-15 at 2. His passage comprehension scores indicated continued difficulty with language processing and working memory, which made reading comprehension very difficult, with slow progression. However, his written expression "continue[d] to progress." T3 77:12-13. His written language skills "progressed with skills more solidly in the average range (54th percentile in Written Lang[uage], 71st percentile in Spelling)." P-15 at 2.

Although she noted that T.M.'s verbal language, reading comprehension, and retrieval of information from long-term memory "continue to be areas of significant challenge," Dr. Ueng-McHale opined that Lewis "seemed to be an appropriate placement" for T.M. because he was able to participate fully without an aide and he was "a full member of the class." P-15 at 3, T3 89:15. It is "easy for a kid like T. to become invisible in a . . . learning community and this is clearly not the case there." T3 89:15-18. She noted that the varied ages of the other students "will be helpful, particularly with [T.'s] uneven social and cognitive profile (some areas in average range and others in very low range)." P-15 at 3. "The overall size of the school, small classes, quiet environment, and the curriculum for the student body comprised of students diagnosed primarily with reading disabilities is an environment that enables [T.] to be more available for learning and one which targets his core deficits." P-15 at 3. She added that another school change would be unwise, given the "traumatic events and traumatic transitions" that occurred prior to his arrival at Lewis. Ibid.

Dr. Ueng-McHale acknowledged that she did not treat T.M. for three years. She surmised that, had she treated him during this time, he would not have remained at the middle school because he would have still been fatigued by the setting. However, she acknowledged that she does not know to what extent he was fatigued when she did not treat him. She also acknowledged that she relied upon petitioners' reports of T.M.'s status because T.M. did not report much in this regard. She further acknowledged that she observed T.M.'s newly developed humor and sarcasm during their therapy sessions, not while he was in class, as he was working while she observed him in class.

When asked to explain why Lewis' teachers reported that T.M. was distracted and had problems with attention in every class, and resisted reading books, she explained that this was his problem. She acknowledged that he was still tired at the end of the day while he attended Lewis. However, he was better.

Dr. Ueng-McHale believed the work at both schools was the same; however, she also stated that she needed to review the details of the schools' programs. She did not know whether Princeton incorporated auditory attention tasks. She also did not know whether an audiological evaluation would have generated useful additional information.

When asked if T.M. should be challenged by being with grade-level peers and neurotypical peers, she replied that he would be bullied. She cited his having been bullied in elementary school. It was more important that he be with students who matched him developmentally.

ADDITIONAL FACTUAL FINDINGS

A fact finder must weigh the credibility of witnesses in disputed matters. I am aware that the District employees, who testified as fact and expert witnesses, would want to support the program they developed for T.M. and would believe that the District's program would provide him with a FAPE. I am also aware that petitioners believe that what they seek is in the best interest of T.M. "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 observations of mankind can approve as probable in the circumstances.” In re Estate of Perrone, 5 N.J. 514, 522 (1950). The fact finder should consider the witness’ interest in the outcome, their motive, and any bias, when assessing the credibility of a witness. Credibility findings are “often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record.” State v. Locurto, 157 N.J. 463, 474 (1999). “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).

The District’s witnesses testified in a professional and direct manner. They responded to questions without hesitation; referenced their firsthand knowledge of T.M., cited their observations of him while at the District or Lewis; and relied upon objective test results. Their testimony was neither evasive nor exaggerated in an attempt to appear more favorable to themselves or the District. Leta was thoughtful and thorough, explained concepts and her thoughts very well, demonstrated a comprehensive understanding of relevant concepts, and clearly cared for and was enthusiastic about T.M. Her demeanor brightened when she discussed T.M.’s successes and she cried while discussing T.M.’s need to be with typically developing students and the mutually beneficial relationships they had while he attended school within the District. In response to cross-examination, she was very reasonable and pleasant. Smith, too, testified clearly, professionally and in a straightforward manner. Her testimony was consistent, and she relayed genuine care and concern for T.M. She did not embellish and she readily acknowledged when she did not know the answer to a question. Neither witness disparaged petitioners. I find their testimony to be reliable.

O.M. testified in a calm and direct manner. It is abundantly clear that he cares deeply for T.M. and is motivated by his great concern for his academic and emotional welfare. Through his testimony, O.M. demonstrated that he is reasonable and thoughtful; he did not exaggerate or disparage and his testimony was careful and measured. He readily acknowledged Leta’s genuine interest in T.M. and her significant efforts on his behalf. He also acknowledged the positive aspects of the programs at Littlebrook and the

middle school. Fundamentally, however, O.M.'s assessment of the District's curriculum, its IEP, and T.M.'s classmates was informed, in many instances, by his personal opinion and impressions, even though he acknowledged that he is not an expert in the relevant areas of inquiry. While he cited T.M.'s standardized test scores, he also relied in large part upon anecdotal evidence derived from his occasional interactions with T.M.'s classes and classmates to conclude that the District's program was inappropriate. Although he agreed that the MD class would have appropriately provided a "more stable, more quiet, more protective environment" for T.M., he rejected it because he concluded that other students in the class were inappropriate peers for T.M. This was based on his anecdotal observations of the other students, without providing any meaningful evidence about those students. Similarly, he opined that the Lewis School classmates appeared to him to be "regular" teenagers who were "nothing like the MD class." Again, O.M. reached this conclusion without referencing objective facts about the students. He also opined that the Lewis instruction was more appropriate than that at the middle school, while acknowledging that he is not an expert in curriculum. While there is no basis for doubting O.M.'s personal observations, his conclusions are largely not supported by authoritative evidence in the record. I also note that, while petitioners contend that Lewis provided a physical setting that was most appropriate for T.M.'s sensory issues, they did not consent to the District's proposed audiological evaluation or other evaluations after Dr. Salsberg did not address fluency in 2019.

Dr. Ueng-McHale's opinion was, fundamentally, that Lewis was the better school for T.M. because it enabled him to be physically and emotionally comfortable and thus an equal member of the student body, without needing an aide. Her conclusion is, in several key areas, not fully supported by an explanation of her analysis. She did not administer tests and, while she may have done so while treating T.M, she did not cite test results. She did not address either school's curriculum with any specificity; she did not know whether the District incorporated auditory attention tasks; and she stated that she needed to review the details of the schools' programs. She opined, without explanation, that desensitization to noise, sound and visual stimuli would be ineffective for T.M. Rather, she merely analogized to her personal experience of being unable to block out bothersome stimuli. While she concluded that T.M. "fit in developmentally . . . and psychologically with his peers" in the Lewis classroom, she did not provide data or other

information to support this finding. In fact, there is no evidence in the record, other than general statements and O.M.'s observations, concerning the developmental and psychological profiles of T.M.'s classmates. Similarly, she stated that the other students did not have "significant behavioral challenges" without citing supporting data and wrote that T.M. transitioned "pretty independently" without explaining what this meant.

Moreover, while Dr. Ueng-McHale observed that T.M. made "social emotional gains" such as "developing his humor" and "picking up more mature mannerisms," she did not connect this to his time at Lewis, as opposed to his becoming a teenager or as a result of therapy. Indeed, she observed these behaviors during therapy sessions and not while she observed him at Lewis. In contrast, while she wrote that he "function[ed]" like other students in the class and was "engaged," she also wrote that T.M.'s Lewis School teacher reported that, around the time of the observation, he had more difficulty and he seemed more irritable and resistant to reading. Similarly, the Lewis speech-language therapist said that distractibility remained a significant challenge.

Furthermore, Dr. Ueng-McHale acknowledged that multiple significant events, not just T.M.'s IEP program, adversely impacted T.M.'s middle school experience and led to him being exhausted and frustrated. These included the difficult and long period of remote instruction and "several months of severe illness leading to the diagnosis of Chron's disease." This is noteworthy for two reasons: these are circumstances outside the District's middle school program—which is at issue here—and petitioners did not address T.M.'s illness when they discussed the circumstances that adversely impacted him.

Given a lack of data and explanation for Dr. Ueng-McHale's conclusion, I am constrained to find that it is a net opinion.¹⁴ All together, these omissions undermine the reliability of her conclusion that the District's middle school program was inappropriate and the Lewis School's program was appropriate.

¹⁴ See State v. Townsend, 186 N.J. 473, 494 (2006) (explaining the net opinion rule precludes expert testimony that is not supported by factual evidence or other data or based merely on unfounded speculation).

Accordingly, having considered the testimony and documentary evidence and having had an opportunity to observe the witnesses and to assess their credibility, I **FIND** the following as **FACT**:

The District's IEP for T.M.'s first year in middle school, the 2021–2022 school year, is at issue here. It is clear that petitioners are committed to their son's educational success and emotional wellbeing. They communicated and worked with the District in a good faith effort to address their concerns about T.M. and to develop a program that they believed he needed. The District's witnesses, Leta and Smith, explained how the IEP for the school year at issue was responsive to his needs, was informed by multiple evaluations, and that T.M. demonstrated, over time, that he is able to acclimate to new settings.

Leta and Smith consistently explained that T.M. was significantly impacted by the extended period of remote instruction and O.M. and Dr. Ueng-McHale recognized this as well. Given T.M.'s social and emotional needs, as well as his academic challenges, it was unreasonable to expect him to return to school without having lost skills and confidence. This was underscored by the fact that his transition to elementary school, which occurred in the normal course, was quite difficult for him.

Thus, the District proposed, and petitioners agreed, that the MD class would facilitate T.M.'s transition to middle school because it would provide the smaller, quieter, more customized setting that T.M. needed. At the same time, the IEP presented opportunities for T.M. to engage with students outside the MD class. The consensus was that this presented T.M. with the best opportunity for social interactions and regaining skills lost during remote instruction. He was not confined to the same classroom and the same small group of students for the entirety of the school year. Moreover, it was expressly determined that T.M. would move to other settings when he was ready, as evidenced by the move to POR math only three months into the school year.

Leta and Smith consistently and strenuously explained that exposure to and social interaction with general education students is essential to his skills development. It facilitates generalization of skills, which is particularly needed by special education

students, enables students to negotiate new and different environments, and provides for “real world” interactions.

In developing the middle school IEPs, the parties were informed by T.M.’s history. Leta credibly testified that T.M. initially had difficulty when he entered elementary school. However, he grew comfortable as time passed and eventually navigated the school well. Smith testified, for example, that, by the time he left the middle school, he no longer needed to wear headphones when alarm bells sounded and, by November 2021, he had become a “leader” in his class. Indeed, the summer instructor reported that he transitioned into the middle school summer program well; responded well to redirection when he was off task, negative or emotional; was able to advocate for himself; and utilized and benefitted from strategies such as scaffolded lessons, checklists and manipulatives. He enjoyed being with his peers and reportedly experienced emotional growth.

Moreover, the IEPs for the 2021–2022 school year appropriately incorporated the recommendations of the many experts who evaluated T.M., including Dr. Salsberg. This included, but was not limited to: educators speaking in a clear, animated, and audible tone of voice; repetition of material; preferential seating away from noise and external distractions; multimodal presentation of material with visual and auditory aids and manipulatives; prompts to help with focus on tasks; frequent teacher support, guidance, and positive feedback; gentle encouragement; previewing new information and guiding attention to listen for important points; extra attention at the outset of each task requiring independent work or sustained attention; alerts before instructions or new material; and breaks and physical activity to help sustain attention.

Smith highlighted, and the teacher’s reports and PLAAPF statements confirm, that T.M. was able to perform in class, notwithstanding some standardized test results. Leta and Smith credibly explained that, as the work became more advanced, the gap between T.M. and neurotypical students would grow. However, this did not mean that he did not learn and progress. Moreover, standardized tests that are administered by private individuals outside the school district do not employ the modifications and accommodations that are built into the IEP. The test results are, therefore, inaccurate representations of what T.M. was capable of in the classroom. In response to petitioners’

concerns about T.M. not performing at grade level, Leta and Smith explained that this is a common occurrence with students who are eligible for special education. If they performed at grade level, they would be in general education classes. The focus must instead be on individual progress, rather than a comparison to the progress of neurotypical students.

With respect to petitioners' concerns that T.M. was too reliant upon an aide and was stigmatized due to this reliance, the District did not simply assign an aide to T.M. at all times. The use of the aide was tailored to his needs and specific circumstances. The IEP team specifically sought to decrease the use of the aide as appropriate. However, Leta and Smith credibly testified that the aide was necessary as T.M. transitioned to middle school, particularly given the extended period of remote instruction, and was instrumental in helping T.M. generalize his skills.

BCBA Van Driesen observed at the end of 2021 that T.M. was "engaged and interactive with his teachers and support staff" and that learning strategies were used effectively. She did not observe the problematic behaviors reported by petitioners. Despite this, the District offered home-based assistance to address school refusal. Petitioners did not accept the offer. Van Driesen also noted that T.M.'s aide allowed him to take the lead while providing necessary prompting and reassurance. Her recommendations of a specific ratio of "behavior-specific praise" and task modifications were incorporated in the January 21, 2022, IEP and procedures to help T.M. acclimate to the sounds and movements of the middle school were to continue. Similarly, strategies recommended in June 2022 by an audiological evaluator were already in T.M.'s IEP.

In response to petitioners' reports of T.M.'s reaction to the stimuli of the middle school, occupational therapist Yeh conducted an evaluation and found that T.M. had a "moderate to high level of difficulty with visual processing" and was overly sensitive to sounds. However, she found that "his sensory processing skills do not appear to be significantly impacting his ability to participate in the school environment." Further, the classroom strategies were utilized effectively to address his difficulty with auditory hypersensitivity. She recommended continued use of these strategies. She noted that other

areas of concern were “related to tasks or items which do not often occur within the classroom environment.”

Smith credibly testified that Lewis focused on subject matter and skills that T.M. had already developed, such as phonological skills, which the District teaches in first grade. These skills were one of T.M.’s documented strengths and he was well beyond this at the District. In contrast, Smith did not observe lessons that addressed comprehension skills, where T.M. is weak. Smith explained that the decrease in his reading comprehension score occurred after a year away from the District, where T.M. was “building on reading comprehension skills” as opposed to focusing solely on basic skills. Similarly, in the Lewis math class, T.M. worked on skills that were much less advanced than those in his District class.

Smith also credibly explained that the small class at Lewis was unduly limiting for T.M. He was the oldest in his class and did not have the benefit of interacting with general education students. The Lewis School teacher reported that, despite the different school structure and class makeup, T.M. continued to be easily frustrated, struggled with impulsivity, became overwhelmed, exhibited inappropriate behaviors, and had difficulty making friends. These issues, which were present at the District, continued at Lewis. However, unlike at the District, Lewis did not offer a social skills group and, given the limited number of students there, he had fewer opportunities to interact with students who would also have benefited from the group.

No witnesses from Lewis testified. Thus, there is no evidence in the record that explains why the school approached T.M.’s education in the manner that it chose. Smith and Leta, however, strenuously underscored that T.M. was on the path to a successful transition to middle school. However, he attended the middle school for approximately four months before he was moved to Lewis. This followed other transitions: his return from remote instruction to elementary school, his attendance at the middle school’s summer session, and the start of middle school. This was a lot for a child with T.M.’s profile. After all this, four months was an insufficient period of time during which he could successfully transition to middle school.

LEGAL ANALYSIS AND CONCLUSION

This case arises under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 to 1482. One purpose of the Act is to ensure 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.” 20 U.S.C. § 1400(d)(1)(A). This “free appropriate public education” is known as FAPE.

A state is eligible for assistance if the state has in effect policies and procedures to ensure that it will meet the requirements of the Act. 20 U.S.C. § 1412(a). In New Jersey, such policies and procedures are set forth in the State statute, special schools, classes, and facilities for handicapped children, N.J.S.A. 18A:46-1 to N.J.S.A. 18A:46-55, and the implementing regulations, N.J.A.C. 6A:14-1.1 to N.J.A.C. 6A:14-10.2. See Lascari v. Bd. of Educ. of the Ramapo Indian Hills Reg’l High Sch. Dist., 116 N.J. 30, 34 (1989).

The primary issue in this case is whether respondent failed to provide S.K. with FAPE and, if it did not, whether it is obligated to reimburse petitioners for the cost of his placement at the Center School and continue his placement there.

The Act defines FAPE as special education and related services provided in conformity with the IEP. 20 U.S.C. § 1401(9). The Act, however, leaves the interpretation of FAPE to the courts. See Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999). In Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 203 (1982), the United States Supreme Court held that a state provides a handicapped child with FAPE if it provides personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. The Court reasoned that the Act was intended to bring previously excluded handicapped children into the public education systems of the states and to require the states to adopt procedures that would result in individualized consideration of and instruction for each child. Rowley, 458 U.S. at 189.

The Act did not impose upon the states any greater substantive educational standard than would be necessary to make such access to public education meaningful. Rowley, 458 U.S. at 192. In support of this limitation, the Court quoted Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania, 334 F. Supp. 1257 (E.D. Pa. 1971), and 343 F. Supp. 279 (1972), and Mills v. Board of Education of District of Columbia, 348 F. Supp. 866, 876 (D.D.C. 1972). Rowley, 458 U.S. at 192. The Court reasoned that these two cases were the impetus of the Act, that these two cases held that handicapped children must be given access to an adequate education, and that neither of these two cases purported any substantive standard. Rowley, 458 U.S. at 192–93. The Court also wrote that available funds need only be expended “equitably” so that no child is entirely excluded. Rowley, 458 U.S. at 193, n.15. Indeed, the Court commented that “the furnishing of every special service necessary to maximize each handicapped child’s potential is . . . further than Congress intended to go.” Rowley, 458 U.S. at 199. Thus, the inquiry is whether the IEP is “reasonably calculated” to enable the child to receive educational benefits. Rowley, 458 U.S. at 206–07.

The Third Circuit later held that this educational benefit must be more than “trivial.” See Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180 (3d Cir. 1988). Stated otherwise, it must be “meaningful.” Id. at 184. Relying on the phrase “full educational opportunity” contained in the Act, and the emphasis on “self-sufficiency” contained in its legislative history, the Third Circuit inferred that Congress must have envisioned that “significant learning” would occur. Id. at 181–82. The Third Circuit also relied on the use of the term “meaningful” contained in Rowley, as well as its own interpretation of the benefit the handicapped child was receiving in that case, to reason that the Court in Rowley expected the benefit to be more than “de minimis,” noting that the benefit the child was receiving from her educational program was “substantial” and meant a great deal more than a “negligible amount.” Id. at 182. Nevertheless, the Third Circuit recognized the difficulty of measuring this benefit and concluded that the question of whether the benefit is de minimis must be answered in relation to the child’s potential. Id. at 185. As such, the Third Circuit has written that the standard set forth in Polk requires “significant learning” and “meaningful benefit,” that the provision of “more than a trivial educational benefit” does not meet that standard, and that an analysis of “the type and amount of learning” of which a student is capable is required. Ridgewood, 172 F.3d at

247–48. In short, such an approach requires a student-by-student analysis that carefully considers the student’s individual abilities. Id. at 248. In other words, the IEP must confer a meaningful educational benefit in light of a student’s individual needs and potential. See T.R. ex rel. N.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 578 (3d Cir. 2000).

In Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 580 U.S. 386 (2017), the United States Supreme Court clarified that while it had declined to establish any one test in Rowley for determining the adequacy of the educational benefits conferred upon all children covered by the Act, the statute and the decision point to a general approach: “To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Endrew F., 580 U.S. at 399. Toward this end, the IEP must be “appropriately ambitious” in light of those circumstances. Id. at 402. The Court continued that a student offered an educational program providing merely more than de minimis progress from year to year could hardly be said to have been offered an education at all, and that it would be tantamount to sitting idly until they were old enough to drop out. Id. at 403. The Act demands more, the Court asserted. “It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Ibid. Thus, in writing that the IEP must be “appropriately ambitious in light of the child’s circumstances,” the Court sanctioned what has already been the standard in New Jersey: The IEP must be reasonably calculated to provide significant learning and meaningful benefit in light of a student’s individual needs and potential.

However, “perfection is not required’ in an IEP.” Alexander G. v. Downingtown Area Sch. Dist., 2021 U.S. Dist. LEXIS 79244, *10 (E.D. Pa. Apr. 26, 2021)¹⁵(quoting Loren F. v. Atlanta Indep. Sch. Sys., 349 F.3d 1309, 1312 (11th Cir. 2003)). “Any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.’ ‘The IEP *must aim* to enable the child to make progress.’ We may not rely on hindsight to second-guess an educational program that was

¹⁵ This case is unpublished and, thus, not precedential. It is referenced here because it provides useful guidance.

reasonable at the time.” Dunn v. Downingtown Area Sch. Dist. (In re K.D.), 904 F.3d 248, 255 (3d Cir. 2018)(quoting Endrew F., 580 U.S. at 399)(emphasis in original).

A FAPE is not automatically denied if the student regresses or does not progress. Alexander G., 2021 U.S. Dist. LEXIS 79244, *37 (citing Dunn v. Downingtown Area Sch. Dist., 904 F.3d 248, 255 (3d Cir. 2018)).

While courts can expect fully integrated students to advance with their grades, they cannot necessarily expect the same of less-integrated students. As Endrew F. explained, “for a child fully integrated in the regular classroom, an IEP typically should . . . be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” 137 S. Ct. at 999 (internal quotation marks omitted). But the District Court found that K.D. was *not* fully integrated into the regular classroom. 2017 U.S. Dist. LEXIS 141428, 2017 WL 3838653, at *2-3, *12. Instead, she received supplemental learning support for much of the day. So there is no reason to presume that she should advance at the same pace as her grade-level peers.

[Dunn v. Downingtown Area Sch. Dist. (In re K.D.), 904 F.3d at 255 (emphasis in original).]

An IEP must also be provided in the least-restrictive environment. See 20 U.S.C. § 1412(a)(5)(A). To the maximum extent appropriate, children with disabilities are to be educated with children without disabilities. Ibid. Thus, removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. Ibid. Indeed, this provision evidences a “strong congressional preference” for integrating children with disabilities in regular classrooms. Oberti v. Bd. of Educ. of Clementon Sch. Dist., 995 F.2d 1204, 1214 (3d Cir. 1993).

To determine whether a school is compliant with this requirement, a court must first determine whether education in the regular classroom with the use of supplementary aids and services can be achieved satisfactorily. Id. at 1215. If such education cannot be achieved satisfactorily, and placement outside of the regular classroom is necessary,

then the court must determine whether the school has made efforts to include the child in school programs with nondisabled children whenever possible. Ibid. This two-part test is faithful to the Act's directive that children with disabilities be educated with nondisabled children to the maximum extent appropriate and closely tracks the language of the federal regulations. Ibid.

Accordingly, a school must consider, among other things, the whole range of supplemental aids and services, including resource rooms and itinerant instruction, speech and language therapy, special-education training for the regular teacher, or any other aid or service appropriate to the child's needs. Id. at 1216. "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." Ibid. Indeed, the Act does not permit states to make mere token gestures to accommodate handicapped children, and its requirement for modifying and supplementing regular education is broad. Ibid. The Third Circuit has emphasized that just because a child with disabilities might make greater academic progress in a segregated special-education classroom does not necessarily warrant excluding that child from a general-education classroom. Id. at 1217.

"[C]ourts must accord significant deference to the choices made by school officials as to what constitutes an appropriate program for each student." Ridley Sch. Dist. v. M.R., 680 F.3d 260, 277 (3d Cir. 2012). Damarcus S. v. District of Columbia, 190 F.Supp. 3d 35 (D.D.C. 2016), addressed a dispute concerning the appropriate educational program or method. In that case, the plaintiffs asserted that FAPE was denied because the school district utilized inappropriate educational programs. For example, they argued that the selected reading program taught the student to recognize pictures rather than to read. They contended that a program like Lindamood-Bell was the appropriate program for a student with his cognitive deficits. The court observed, "This is precisely the type of thorny educational policy question that courts are ill-suited to answer, and thus deference to both the Hearing Officer and [the student's] IEP team is appropriate." Damarcus S., 190 F.Supp. 3d at 56. The court cited to Rowley, which held that the "IDEA does not invite the courts 'to substitute their own notions of sound educational policy for those of the school authorities which they review.'" Ibid. (quoting Rowley, 458 U.S. at 206); see

also Esposito v. Ridgefield Park Bd. of Educ., 856 F. App'x 367, 370 (3d Cir. 2021)(“When evaluating an IEP, courts cannot ‘substitute their own notions of sound educational policy’ for that of school authorities. The question is not whether the IEP is ‘ideal’; it need only be ‘reasonable’”(citations omitted)(emphasis in original).¹⁶

Here, respondent has demonstrated, by a preponderance of the credible evidence, that it developed an educational program that was tailored to T.M.’s strengths and weaknesses. His teachers, case managers, and evaluators carefully evaluated T.M.’s needs, which were exacerbated by his extended period of remote education and multiple transitions. They documented his progress and the areas where further development and advancement were still required. They collaborated with petitioners and revised T.M.’s programming in response to petitioners’ and evaluators’ recommendations. Through this work, they crafted a program that was personal to T.M. and responsive to his needs. The program was flexible such that it would be amended as T.M.’s needs evolved. The District thoroughly explained why its middle school program was appropriate for T.M. and offered him the least restrictive environment: it provided him the safe, small setting he required; exposed him to general education students; provided substantial speech-language and social skills training; and incorporated the recommendations of independent and District-based evaluators.

T.M. quickly adjusted to the middle school and benefitted from his program such that all parties agreed that he should advance to a less restrictive math class, with an eye toward a less restrictive language arts class after that transition was complete. The BCBA found that the learning strategies in T.M.’s IEP were used effectively; he was engaged and interactive with teachers and staff; his aide allowed him to take the lead in interactions; and T.M. did not demonstrate the type of problematic behaviors that petitioners saw at home. She recommended that the District continue to employ the procedures it was using to help T.M. acclimate to the sounds and movement of the middle school. Similarly, the audiological evaluator’s recommended strategies were already in the IEP. Further, the occupational therapist found that T.M.’s sensory processing issue were not significantly impacting his learning. Although T.M.’s performance on

¹⁶ This case is not precedential. It is cited here because it provides relevant guidance.

standardized tests did not increase across all test subjects, this demonstrates, by a preponderance of the credible evidence, that he was learning and progressing. However, there remained room for further progress, and he still needed to generalize his skills in many areas.

I must stress that it is abundantly clear that petitioners acted in good faith, with no goal other than maximizing T.M.'s opportunities and progress. However, I must also note an apparent inconsistency in their argument. They assert that use of an aide was stigmatizing and adversely affected T.M.'s self-esteem and growth, and he should not have been treated differently from other students in this regard. However, they also contend that a highly restrictive school that separated him from typically developing students and did not expose him to class or schedule changes was appropriate. Remarkably similar facts were addressed in Alexander G.:

Plaintiffs cite a myriad of other facts—including Alec's decrease in self-esteem in sixth grade and his difficulty adjusting to a new building and schedule—to support their claim that the District was not appropriately meeting Alec's needs. Unfortunately, none of these are legally significant. Plaintiffs emphasize that in sixth grade Alec struggled with changes in his schedule and adjusting to a new building, and would continue to struggle if he remained in the District as he would need to change to "a *different* building for seventh and eighth grades, with yet *another* move on the horizon to the high school." However, it is unclear how this applies to the FAPE standards, how the Plaintiffs propose this be addressed, and how the District failed in any regard. It is especially confusing given that Plaintiffs then go on to claim that Alec was in fact given too much remedial instruction, such that it negatively impacted his self-esteem and made him feel different from his peers. Plaintiffs appear to be arguing both that Alec should have been placed in a hypothetical separate school for the entirety of his K-12 education that did not require building changes after fifth grade, sixth grade, or for high school, *and* that Alec needed to be treated more like other students without disabilities. Ultimately, neither of these contradictory points supports the claim that Alec was denied a FAPE.

[Alexander G. v. Downingtown Area Sch. Dist., 2021 U.S. Dist. LEXIS 79244, *30–31 (internal citations omitted)(emphasis in original).]

I agree that petitioners' arguments in this regard do not take away from the reasonableness of the program that the District prepared for T.M. It was reasonably calculated at that time to provide him with significant learning and meaningful educational benefit in light of his individual needs and potential, and it offered this in the least restrictive environment. I, thus, **CONCLUDE** that the District provided petitioners a FAPE under the IDEA. Petitioners are, therefore, not entitled to the relief they seek—placement at the Lewis School and reimbursement for the cost of enrollment at the school and transportation.

I note that, had the District not met its burden of demonstrating that it offered a FAPE, the evidence in the record is insufficient to show that the unilateral placement at Lewis was appropriate. The absence of testimony from individuals with firsthand knowledge about the school's program is significant. Furthermore, it is clear, based upon Leta and Smith's testimony, including Smith's observations of T.M. at Lewis, that Lewis was not the least restrictive appropriate environment. He was denied exposure to neurotypical students and was the oldest student in a small classroom. He also did not have access to social skills instruction. Based on these factors alone, I **CONCLUDE** that it is not possible to find that Lewis was an appropriate placement for T.M.

Petitioners assert that the District's failure, in January 2023, to participate in a meaningful exchange about T.M.'s scores, progress and needs since he attended Lewis constitutes a procedural violation of the IDEA. Specifically, they assert the District refused to address their observations and concerns and either shut them out of the IEP process or "significantly impeded" their ability to participate in the IEP process, thus "depriving T.M. completely of any education benefit that he could have had" in the District. Pet'rs' Br. at 52.

A procedural violation may rise to a substantive violation justifying compensatory education or tuition reimbursement, but only where the procedural defects caused such substantial harm that a FAPE was denied. C.H. v. Cape Henlopen Sch. Dist., 606 F.3d 59, 66–67 (3d Cir. 2010). Substantive harm is demonstrated when "procedural inadequacies (i) [i]mpeded the child's right to a FAPE, (ii) significantly impeded the


parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of the educational benefit." Coleman v. Pottstown Sch. Dist., 983 F. Supp. 2d 543, 564 (E.D. Pa. 2013), aff'd, 581 F. App'x 141 (3d Cir. 2014). See also Rodrigues v. Fort Lee Bd. of Educ., 458 F. App'x 124, 127 (3d Cir. 2011) (not precedential) (finding that a lack of measurable goals in an IEP was a procedural error but did not affect a student's substantive rights or deny a FAPE where student was mainstreamed and progress was measured by grades and state proficiency assessments); N.M. ex rel. M.M. v. Sch. Dist. of Philadelphia, 394 F. App'x 920, 923 (3d Cir. 2010) (not precedential) (finding that IEP lacking annual goals relating to some of a student's needs stemming from his disability was not a procedural flaw rising to a substantive harm because the IEP still provided a FAPE); Schoenbach v. District of Columbia, 309 F.Supp.2d 71, 83 n.10 (D.D.C. 2004) ("failure to implement all services outlined in an IEP does not constitute a per se violation"); Melissa S. v. Sch. Dist. of Pittsburgh, 183 F. App'x 184, 187–88 (3d Cir. 2006) (assuming the student was impermissibly left alone several times, "this is not the kind of substantial or significant failure to implement an IEP that constitutes a violation of the IDEA").

Here, accepting that the January 25, 2023, IEP did not include a statement of petitioner's concerns because, reportedly, their written statement had not yet been received, and that petitioners felt they were not heard during the IEP meeting, O.M. acknowledged that his attorney was present and participated during that meeting. Moreover, at that time, the parties' attorneys were engaged in ongoing discussions about how to resolve the matter. This was not a circumstance in which unrepresented parents were excluded; rather, the context had been altered by the inclusion of counsel, who engaged in a discussion on behalf of their clients. There is, therefore, insufficient evidence to support a finding of a procedural violation such that petitioners were prevented from participating and voicing their concerns. I thus **CONCLUDE** that there was not a procedural violation that constituted a deprivation of FAPE.

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.

June 25, 2024

DATE


JUDITH LIEBERMAN, ALJ

Date Received at Agency:

Date Mailed to Parties:

JL/mg

APPENDIX

WITNESSES

For petitioners

O.M.

Dr. Jasmine Ueng-McHale

For respondent

Sara Leta

Michelle Smith

EXHIBITS

For petitioners

- P-1 Speech-language reevaluation, March 10, 2018
- P-2 2021 Fall NJ Start Strong ELA
- P-3 2021 Fall NJ Start Strong Science
- P-4 Dr. Janelle Amato CV
- P-5 Dr. Amato observation and program review report, February 20, 2022
- P-6 Email, August 26, 2022
- P-7 Email, August 30, 2022
- P-8 Email, August 30, 2022
- P-9 Emails, September 6 and 8, 2022
- P-10 Email, February 9, 2023
- P-11 Email, February 9, 2023
- P-12 Email, February 16, 2023
- P-13 Email, March 13, 2023
- P-14 Dr. Jasmine Ueng-McHale CV
- P-15 Dr. Ueng-McHale observation and evaluation report, October 2023

- P-16 Lewis School enrollment contract, January 21, 2022
- P-17 Lewis School invoices
- P-18 Lewis School Being Social program registration and invoice
- P-19 Lewis School 2022 summer program flyer
- P-20 Lewis School invoice summer 2022
- P-21 Lewis School tuition invoices 2022-2023 school year
- P-22 Lewis School fall 2022 after school program forms and invoices
- P-23 Lewis School invoice 2023-2024 school year, March 14, 2023
- P-24 Lewis School invoice after school music program, May 10, 2023
- P-25 Lewis School Handbook 2022-2023
- P-26 Lewis School invoice after school sports and program description
- P-27 Lewis School invoice and contract, after school musical theater program
- P-28 Lewis School progress reports, October 2023
- P-29 Letter, December 21, 2022

For respondent

- R-1 Michelle Smith resume
- R-2 Sara Leta resume
- R-3 PALS report, January 16, 2018
- R-4 Annual IEP review, March 13, 2019
- R-5 March 2019 progress report and grade 3 report card
- R-6 Assess/review/revise IEP, June 19, 2019
- R-7 PALS update, July 2, 2019
- R-8 Assess/review/revise IEP, August 27, 2019
- R-9 Grade 4 progress report
- R-10 Progress report, October 29, 2019
- R-11 Progress report, February 25, 2020
- R-12 IEP, March 23, 2020
- R-13 Consent for related services, March 23, 2020
- R-14 Progress report, June 11, 2020
- R-15 Progress report, November 10, 2020

- R-16 Emails, January 2021 – June 2021
- R-17 Reevaluation eligibility determination, January 25, 2021
- R-18 Reevaluation planning, January 25, 2021
- R-19 Emails, February 2021 – May 2021
- R-20 Emails, February 4 – 28, 2021
- R-21 Progress report, March 9, 2021
- R-22 IEP, March 31, 2021
- R-23 IEP, June 7, 2021
- R-24 Grade 5 progress report, June 23, 2021
- R-25 ESY 2021 progress report, August 6, 2021
- R-26 Emails, March 4 – 31, 2021
- R-27 Reevaluation planning meeting sign-in, March 31, 2021
- R-28 Psychological reevaluation, July 13, 2021
- R-29 Speech and language reevaluation, August 2, 2021
- R-30 Educational report, August 5, 2021
- R-31 Eligibility determination and eligibility statement, August 24, 2021
- R-32 Amended IEP, September 28, 2021
- R-33 Progress report, January 2022
- R-34 6th grade report cards
- R-35 Emails, December 23, 2021
- R-36 Behavior observation consultation, January 4, 2022
- R-37 IEP, January 21, 2022
- R-38 Occupational therapy report, January 24, 2022
- R-39 CAPD evaluation, June 7, 2022
- R-40 Lewis School observation, December 22, 2022
- R-41 Emails, January 24, 2023
- R-42 Initial eligibility determination with IEP, January 25, 2023
- R-43 Writing samples