



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

**FINAL DECISION**

OAL DKT. NO. EDS 05889-2024

AGENCY DKT. NO. 2024-37230

**N.H. ON BEHALF OF M.E.,**

Petitioner,

v.

**EAST BRUNSWICK TOWNSHIP**

**BOARD OF EDUCATION,**

Respondent.

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**N.H.**, pro se, appearing for petitioner

**Mark Wenczel**, Esq., appearing for respondent, Clearly, Giacobbe, Alfieri, Jacobs  
LLC (attorneys)

Record Closed: December 12, 2024

Decided: January 10, 2025<sup>1</sup>

BEFORE **KIM C. BELIN**, ALJ:

**STATEMENT OF THE CASE**

This matter arises under the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. §§ 1400 to 1482. In this request for due process hearing, the petitioner, N.H., challenges the appropriateness of her son's Individualized Education Program (IEP) and

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<sup>1</sup> The record was reopened on December 11, 2024.

seeks an out-of-district placement. Is the current in-district placement appropriate for M.E.? Yes, the law requires that an IEP be reasonably calculated to provide significant learning and meaningful benefit in the least restrictive environment.

### **PROCEDURAL HISTORY**

The petitioner, on behalf of her son, M.E., filed a petition of appeal dated January 26, 2024. On May 3, 2024, the Office of Special Education transmitted this matter as a contested case to the Office of Administrative Law (OAL) pursuant to N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23. Hearings were held on August 15, 2024, and September 20, 2024. Post-hearing briefs were submitted on November 14, 2024, and the record closed on that date. In the respondent's post-hearing letter brief, counsel requested that the record be reopened to admit an additional document. The parties discussed the request in a conference call held on December 11, 2024, and this tribunal agreed to admit the document into evidence. The record closed on December 12, 2024.

### **FACTUAL DISCUSSION**

The following **FACTS** are undisputed, and I therefore **FIND**:

M.E. is an eighteen-year-old eleventh-grade student who resides with N.H., his mother, within the boundaries of the East Brunswick Township School District. He was diagnosed with autism spectrum disorder, attention deficit disorder, receptive and expressive language disorder, generalized anxiety disorder, and PICA.<sup>2</sup> (J-3.) M.E. was deemed eligible for special education and related services under the category of Autism.

For the 2021–22 school year, the IEP developed by the child study team (CST) and dated January 14, 2022, placed M.E. in the multiple disabled (MD) class with related services such as group speech-language twice a week for twenty-three minutes, an individual occupational therapy (OT) consultation once a year, a community-based instruction class, a classroom aide once on alternating days, and a shared aide once daily

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<sup>2</sup> Pica is a mental health condition where a person compulsively eats things that aren't food and don't have any nutritional value or purpose. <https://my.clevelandclinic.org/health/diseases/22944-pica>.

for twenty-five minutes. (J-5.) He was to be in the presence of general education students for less than 40 percent of the school day. (Id.) The present levels of academic achievement and functional performance (PLAAFP) state that M.E. had “delayed expressive and receptive language, poor executive functioning skills, sensory concerns, and delayed social skills with peers and adults.” (Id. at EEBOE 0174.) These deficits impacted his reading comprehension, fluency, communication, math, written language, and adaptive behavior, “adversely affecting his involvement and progress in the general education curriculum. He benefits from frequent redirection and refocusing, and organizational assistance to maintain the pace in the classroom and additional time to process information and to express his ideas verbally and in writing.” (Id.) M.E. “also benefits from positive behavioral supports in the classroom.” (Id.) “The teachers feel that he has a great work ethic and always tries his best.” (Id.) The CST recommended that M.E. move to the Limited Language Disabled (LLD) classroom for English, social studies, and science, however, N.H. did not agree, believing that M.E. needed the additional supports provided in the MD classroom. Accordingly, the CST agreed to keep M.E. in the MD classes for the 2022–23 school year. The CST recommended a “highly structured, self-contained, language-infused instructional setting designed for children on the autism spectrum with applied behavioral techniques and a low student to teacher/adult ratio.” (Id. at EBBOE 0177.) The CST did not find that M.E.’s behaviors impeded his or his classmates’ learning. The CST did not recommend any behavioral interventions. M.E. was also deemed eligible for extended school year services.

Prior to the development of this 2021–22 IEP, the following evaluations were completed: speech-language on April 16, 2021, educational on June 11, 2015, and March 26, 2021, OT on March 16, 2021, psychological on June 16, 2015, and social history on June 1, 2015.

At the reevaluation eligibility determination and annual review, the CST developed an IEP dated January 6, 2023, in which M.E. was to remain in the MD classroom. His IEP was modified to allow for a 2:1 aide each school day and include an individual behavioral consultation once a week for twenty-three minutes. (J-4.) Based upon the concerns raised by N.H. about M.E.’s behaviors, the CST conducted a cognitive assessment and an Adaptive Behavior Evaluation. N.H. and M.E.’s teacher, Stephanie

McQuade, completed the Wechsler Adult Intelligence Scale—Fourth Edition (WAIS-IV) and Vineland Adaptive Behavior Scale, Third Edition. (Id. at EBBOE 0134.)

N.H. expressed concerns that M.E. had regressed and begun acting differently after the family trip to Egypt where the family had to stay in a different house. (Id.) The staff noted new behaviors at the start of the 2022 school year that included drooling/spitting, banging his hand on the desk, and removing his shirt and shoes. In response, the respondent assigned an aide to support M.E. (Id.) The Board-Certified Behavioral Analyst (BCBA) was consulted to observe M.E. After a few weeks, the CST reported that these behaviors decreased. (Id.)

Dr. Wun Jung Kim conducted a psychiatric evaluation of M.E. and stated in a report dated October 11, 2022, that difficulties in adjusting to new situations or a change in routines was common to children with autism and intellectual disability. (J-30 at EBBOE 0467.) Dr. Kim recommended that N.H. connect with PerformCare and “continue [c]urrent [a]cademic [p]lan. Discuss IEP with [s]chool (for modification for his academic and behavioral difficulties). Occupational [t]herapy, [s]ocial [s]kills [g]roup, [and] [s]peech [t]herapy.” (Id. at EEBOE 0475.)

A neuropsychiatric evaluation was completed by Dr. Kavita Sinha on November 14, 2022, in which M.E. was diagnosed with autism with “significant impairment in language and cognition, attention deficit hyperactivity disorder – combined type and global developmental delay with new onset of drooling.” (Id. at EBBOE 0141.) In addition, Dr. Sinha noted “clinical deterioration and impulse control symptoms likely due to transitions and changes.” (J-19 at EBBOE 0425.) The report recommended: “1. [e]ducational placement and related services as per CST. 2. Behavioral modification as needed. 3. Advise continuing to follow up with his current set of doctors. Cuvposa medication was suggested for his excessive drooling and to discuss with his doctors.” (Id. at EBBOE 0426.)

In response to N.H.’s concerns and the evaluations, the CST increased OT to once monthly. (Id.) “Follow the BIP” was added to the list of modifications recommended for M.E. (Id. at EBBOE 0157.)

A functional behavior assessment (FBA) was completed on December 15, 2022, by Ms. Troy, the BCBA, who developed a behavioral intervention plan (BIP). The BIP outlined nine antecedent strategies such as: frequent behavior—specific praise, frequent check-ins and praise/reinforcement, build rapport and find out what he likes to do, non-contingent attention<sup>3</sup>, fidget objects, structured/unstructured breaks, functional communication training<sup>4</sup>, use the Premack Principle<sup>5</sup>, and redirection.<sup>6</sup>

At the annual review, the IEP for the 2022–23 school year, dated May 31, 2023, was modified to have M.E. alternate between autism and MD classes on alternating days. (J-3.) He was also given a 1:1 aide in the classroom “for re-direction and prompting, in the hallways, during lunch, to/from the van and when going to the bathroom to ensure he safely arrives to his destination.” (Id.) Individual speech-language was added once per week for twenty-three minutes, and OT was increased to twice per week for twenty-three minutes. (Id. at EBBOE 0091.) This IEP noted several evaluations, including a psychiatric dated May 24, 2023, a FBA dated March 28, 2023, a speech-language dated December 2, 2022, and multidisciplinary dated February 22, 2022. (Id. at EBBOE 0092.) All teachers interviewed reported witnessing M.E. exhibit the maladaptive behaviors often to get attention or avoid working. (Id.) The teachers also described M.E. as “polite,” “inquisitive,” and “friendly.” (Id.) N.H. expressed concern that her son’s current program was not meeting his needs. (Id. at EBBOE 0104.) In response, the respondent invited N.H. to observe the autism program. This was done on May 19, 2023. (Id. at EBBOE 0105.) However, N.H. was not convinced there was any difference from the MD class. (Id.)

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<sup>3</sup> “This is presentation of a reinforcer(attention), independent of the presence of a specific behavior, [M.E.] will receive attention in the form of positive praise or in person check in on a set schedule while he is engaging in a task.” (J-4, at EBBOE 0152.)

<sup>4</sup> Break cards can be “an effective tool to allow the students a 2-5 minute pause from work where they can stretch, get a drink, take a movement break, or put their head down before resuming the same task as prior to the break request.” (Id.)

<sup>5</sup> This is “first/then to gain motivation. Have [M.E.] do tasks that are less enjoyable before the more enjoyable tasks.” (Id.)

<sup>6</sup> This includes when M.E. is engaging in out-of-seat behavior without permission, spitting behavior, slapping/hitting the table, disrobing, and/or slouching at the desk. (Id.)

The IEP proposed for the 2023–24 school year, dated May 14, 2024, identified M.E. as being placed in autism classes. (J-2.) The BCBA noted that M.E. started the school year with zero occurrences of the targeted behavior; however, the behaviors increased at the end of November 2023 and into December but decreased to four occurrences by May 2024. (Id. at EBBOE 0066.) Other teachers noted the targeted behaviors but also the ability to redirect him. (Id.)

The IEP proposed for the 2024–25 school year, dated July 11, 2024, states that M.E. was to be in the presence of general education students for 80 percent or more of the school day. (J-1.) M.E. remains in the self-contained classroom for students with autism with the same related services in the same frequency, duration, and ratio as in the previous school year. (Id. at EBBOE 0022.)

At N.H.’s request, a psychological evaluation was completed on June 27, 2024, along with the following reevaluations: educational, dated June 21, 2024, speech-language, dated June 3, 2024, FBA, dated June 1, 2024, and psychiatric, dated May 25, 2024. (Id. at EBBOE 0018.) “Many findings were consistent with past evaluation results.” (Id. at EBBOE 0022.)

The CST referred M.E. for a psychiatric evaluation to assess “possible thought challenges negatively impacting [M.E.’s] learning experience.” (J-9 at EBBOE 0240). In a report dated May 25, 2024, Dr. Muthuswamy wrote that M.E. “presented with fleeting eye contact. In addition, significant child-like behaviors were noted. As soon as he entered the office, he gravitated towards the toy cars in the room and started playing with [them]. Significant challenges with communication and socialization were noted and he also presented with anxiety.” (Id.) After reviewing information provided by the respondent, and interviews with N.H. and M.E., Dr. Muthuswamy affirmed M.E.’s autism and anxiety diagnoses and recommended:

. . . the family to continue to pursue therapeutic services and medications to address his challenges. Improvement in socialization, thought challenges and anxiety might translate to better academic and social performance. Academically, [M.E.] is currently classified. Accommodations as suggested

by the Child Study Team are recommended for the overall improvement in [M.E.'s] functioning.

[Id. at 0242.]

The BCBA and M.E.'s case manager attempted to help N.H. schedule an appointment with PerformCare. (R-1.)

Dr. Sherie Novotny, Assistant Professor of Psychiatry at Rutgers United Behavioral Health Care, examined M.E. on July 1, 2024, and noted that M.E. “likes to avoid things. He wants to be in the hospital and avoid school. Mother would like him to be transferred to a specialized school.” (J-28). Dr. Novotny determined that M.E. had a “new onset of schizophrenia since the age of 16 with regression and delusional behavior – disorganized type.” She recommended increasing olanzapine to 7.5 mg. from 5 mg. (Id. at EBBOE 0457.) Dr. Novotny issued a letter dated July 2, 2024, stating that M.E. needed a smaller classroom setting with more individual instruction and a therapeutic environment and would benefit from an out-of-district (OOD) placement. (J-28.)

Dr. Novotny examined M.E. again on August 8, 2024, and noted that his behaviors were not much improved with the increased olanzapine. She noted that M.E. was now trying to make himself throw up, did not like getting out of bed, and would sometimes freeze and not move. (P-1.) She also noted that he was irritable and had decreased functioning and speech. (Id.) She proposed changing this medication to clonazepam and decreasing olanzapine back to 5 mg. In a letter dated August 8, 2024, Dr. Novotny revised her previous letter to include that M.E. was being evaluated for catatonia. She reiterated her recommendation for an OOD placement. (Id.)

In a letter dated August 27, 2024, Dr. Novotny revised her previous letter to recommend home instruction until an OOD placement was found or until the fair hearing scheduled for September 20, 2025.<sup>7</sup> (P-10.)

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<sup>7</sup> The year should be 2024.

On or about September 10, 2024, N.H. requested home instruction. (P-2.) This request was approved on or about September 12, 2024. (Id.)

### **Testimony**

#### **For the petitioner:**

**N.H.** testified that she contacted PerformCare and was assigned a CMO worker. She also requested Applied Behavioral Analysis (ABA) services from Medicaid, however there was no service that would send someone at 6:00 a.m. to get M.E. out of bed for school or to help after school. M.E. did not want to go to school. Dr. Novotny spoke with Mr. Zaza on August 8, 2024. Dr. Novotny recommended that N.H. request medical home instruction until after the hearing, and that was what she did. Since January 2022, M.E. has acted aggressively when he was stressed. He has injured himself and has hit N.H. two or three times. M.E. used to love school but has regressed to child-like behavior. He was taking two medications, but they were not working.

His behavior changed in September 2022, but it was not because of the trip to Egypt. The family traveled to Egypt every two years and he loved to go there. Moving to a new apartment was not a problem. The family used to live in Spotswood and moved to East Brunswick, and M.E. was happy; there were no changes in his behavior.

When M.E. was in the ninth grade, he was moved from Churchill Junior High School (Churchill) to the high school at N.H.'s request. His friends were still at Churchill, and he did not understand why he was not with his friends. N.H. did not like his teacher at Churchill because N.H. believed the teacher was mistreating, ignoring and neglecting M.E. The only option given to N.H. by the respondent was to keep M.E. in the ninth grade but move him to the high school. The drooling started in September 2022, when M.E. was in the tenth grade. The following school year, his friends joined him at the high school, and he became confused thinking he was back in Churchill. In his mind there was a gap, and this represented a major change. He was stressed starting the second day of school.



She called the psychiatrist to send a letter requesting home instruction, however, N.H. did not like M.E. being home all day and would rather have M.E. attend school and have a normal life. However, his present program was not working. He had regressed in everything. He is overwhelmed by the number of classes, teachers, and students.

N.H. was concerned that the most recent IEP (J-1) required M.E. to be in the presence of general education students for 80 percent of the school day. She did not believe M.E. could handle that. M.E. was confused that when he asked for a break, which he was permitted to do, he was told “not yet, do this first.” N.H. wanted him to be in an OOD placement that would allow him to achieve his functioning level. He needed a 1:1 aide, and to remain in one class without transitions.

When M.E. was in the ninth grade, N.H. observed his virtual class for two weeks during Covid and saw he was frustrated because the MD class was too high functioning for him. He was moved to the autism class, but there were too many transitions.

On January 12, 2024, N.H. received a telephone call from Jill Brown saying that M.E. was acting out. He was using a high-pitched voice saying repeatedly that he did not like school and wanted to go home. When he got home from school, he was biting and scratching himself. She did not know what to do so she called his psychiatrist, but it was late in the day. On January 15, 2024, the nurse advised her to take M.E. to the psychiatric emergency room in Piscataway, which she did on January 16, 2024. The doctor on duty recommended M.E. be admitted into the hospital, but N.H. declined because she was afraid of what might happen to him.

She observed M.E. in the classroom on April 19, 2024, and he was distracted and disruptive. He kept asking for a break and to go for a walk. She also went to see him in the first week of June 2024 for the end of the school year festivities, and he sat with his eyes closed, his pants rolled up and did not participate in anything for the full hour she was there.

On cross-examination, N.H. stated that some of the problems she experienced with M.E. in the last two years could be because he was becoming more mature and that the new apartment in Egypt could have contributed to M.E.'s problematic behavior.

For the respondent:

**Jill Brown** (Brown) was employed by the East Brunswick School District on October 3, 2022, as a social worker. She provided counseling services and worked with families, students, and staff. She developed IEPs. She received her certification as a school social worker in 2001. She had a case load of fifty to eighty students and had handled hundreds of students since 2001. She has experience as a social worker for autistic children and has case managed up to six classrooms. She has been the case manager for children with multiple disabilities like M.E. She was qualified as an expert in school social work and case management. M.E. was assigned to her in October 2022.

Prior to Brown's arrival, M.E. was classified as autistic and was enrolled in the MD classroom in the ninth grade. Prior to M.E.'s assignment to Brown, the following evaluations were completed: psychological, occupational therapy, educational, social history, and speech-language. After M.E. was assigned to Brown, additional evaluations were completed, namely: FBA, neuropsychiatric, and Vineland rating scale. The FBA was conducted due to problematic behavior identified by the teachers and N.H. such as drooling, closing his eyes when walking in the hallways, banging on the table, and disrobing. Brown was involved in having the Vineland rating scale completed and reporting those findings in November 2022. The results were that M.E. was in the low range for socialization and daily living skills. His skills were stronger in communication, but still in the low range.

Based upon these evaluations and her own assessment, Brown drafted the IEP for M.E dated January 6, 2023. M.E.'s autism classification was affirmed, and he continued in the MD class. This IEP required that M.E. have a 2:1 aide to assist with transitions in the hallways and safety with putting objects in his mouth. In addition, OT was increased from consultative to one session per week, a BIP was developed to

address the targeted behaviors, and a weekly behavioral consult was added. N.H. approved this IEP.

At the annual review meeting held on May 31, 2023, the IEP was revised to include a 1:1 aide, OT was increased to two times per week, speech-language was revised to one individual, one group, and one integrated session, and behavior consult monitoring of the BIP was increased to twice monthly. The CST offered to place M.E. in the autism program based upon reports received from an outside provider and because N.H. was unhappy with the MD class and the number of class transitions. The autism class had fewer transitions. However, Brown was concerned about regression because M.E. communicated at a higher level than the students in the autism class.

Brown said she had a great rapport with M.E. and saw him four to five times per week. They played such card games as Uno. Brown said M.E. was always cordial and cooperative. Brown did not agree with N.H.'s request for an OOD placement because M.E.'s maladaptive behaviors had decreased. N.H. did not agree with the autism program placement because she believed M.E. was at a higher functioning level than the students in the autism program. N.H. did not sign that IEP, however, it went into effect after fifteen days, and he was placed in the autism program. Brown said the respondent's program was therapeutic and appropriate.

Brown spoke to N.H. about her concerns with M.E.'s self-injurious behavior at home, such as banging into a wall, hurting his hand, or showing anxiety about attending school. Brown recommended in-home services and PerformCare. N.H. was not receptive to PerformCare at that time and instead sought assistance from Children's Specialized Hospital. Brown transitioned out as being M.E.'s case manager in May 2024. She agreed with the placement and programming proposed in the IEP dated May 14, 2024.

In response to this tribunal's questions, Brown stated that the IEPs dated January 6, 2023, and July 11, 2024, incorrectly stated the amount of time M.E. was to spend with general education students. The former stated that M.E. would spend 40 to 79 percent of the day with general education students for the 2023–24 school year. The IEP dated

July 11, 2024, incorrectly stated that M.E. would spend 80 percent of the day with general education students for the 2024–25 school year. Brown stated this was incorrect because in the autism class, M.E. would not spend any time with general education students.

Brown preferred the MD class for M.E. because the students were more verbal and there were more opportunities for him to transition to other classes. Brown believed that the movement (i.e. walking in the hallways) kept M.E. more engaged and on task. Conversely, the autism class kept M.E. with the same population of students and staff throughout the school day, and because he was more high functioning, he would be the only student with multiplication skills. The schedule for the current school year placed M.E. with the same teacher for five periods, thus minimizing transitions. In addition, M.E. was familiar with all the teachers on his roster. Brown stated that all the behaviors that N.H. expressed concerns about were manageable and not extraordinary.

Brown stated that M.E. was highly capable and that his ability to navigate in the community-based instruction class was impressive. In addition, she believed that being in the East Brunswick community was important for M.E. because he was frequenting places where he lived in contrast to taking a similar class in an OOD placement in a community with which he was unfamiliar.

**Philip Zaza** (Zaza) was employed by the respondent as a school psychologist and was M.E.'s case manager after Brown left. He had worked in this capacity for four months. He had approximately sixty to sixty-eight cases at the high school. He performed psychological testing and estimated that he conducted over three hundred evaluations in eight years. He was accepted as an expert in school psychology.

Zaza helped draft the IEP for M.E. dated July 11, 2024, when Brown was transitioning out. He was aware that N.H. wanted an OOD placement, however, Zaza said the data showed that M.E.'s maladaptive behaviors had declined in the last two years. Zaza saw M.E. three or four times. He agreed with the placement in the autism program. He believed M.E.'s behaviors could be addressed in his current school environment.

He contacted Dr. Novotny to ask what specific therapeutic strategies she would recommend. However, Dr. Novotny did not provide any. Zaza attempted to help N.H. schedule an appointment with PerformCare, however, N.H. preferred to handle it on her own. (R-1.)

**Michelle Cieslak** (Cieslak) was employed by the respondent as a speech and language pathologist beginning in 2016. She received her certification in 2008. She was accepted as an expert in speech pathology. She has known M.E. since he was in middle school and also when he was at the high school for the 2022–23 school year. Cieslak saw M.E. twice a week in a group setting and noticed increased targeted behavior, such as drooling and banging during science and history classes, in January 2024. Cieslak saw a decrease in these behaviors when she was able to get M.E. to communicate.

Cieslak did not think the independent speech and language evaluation done on December 2, 2022, was valid; it reflected poorly on the school staff. However, Cieslak agreed to the recommendations contained in the evaluation to increase services because that could not hurt. Cieslak performed her own evaluation of M.E. in May 2024, finding that he scored low in standardized testing. Cieslak said that M.E. did well with structured tasks, he could be redirected, and he was more comfortable with adults than his peers. She added M.E.'s social skills to the IEP. Cieslak thought M.E. enjoyed coming to school. Cieslak did not see M.E. frustrated, or acting silly. She decreased speech-language services to three times per week instead of four.

On the IEP dated July 11, 2024, no changes were made to the goals. Cieslak believed M.E. was making progress.

On cross-examination, Cieslak said that she did not witness M.E. drooling during the extended school year program. Cieslak believed that the plan was working; redirection was working effectively.

**Stephanie McQuade** (McQuade) was a special program teacher for the respondent for twenty years and was a special education teacher for seven years prior with the Woodbridge Township school district. She taught the respondent's autism class

for eight years and was M.E.'s teacher for three years. M.E. was in the MD classroom for English in the 2021–22 school year and was doing well enough that McQuade recommended that M.E. join the LLD class for the 2022–23 school year however, N.H. declined.

M.E. performed well in the Community Based Instruction class, where he went grocery shopping in the community, baked various food items that were sold to the students, and read menus at restaurants. In the classroom store, M.E. managed the register, where he counted money and made change. His behavior changed after a family trip to Egypt. During the 2022–23 school year, he started to close his eyes while walking or freeze his body, drool, and put objects into his mouth. McQuade spoke to N.H. about these behavioral changes, and N.H. said that the family had to stay at a different location during the most recent trip to Egypt and that the roads and the house were different. N.H. shared that M.E. did not like the changes. In response to this behavior, the CST recommended a 1:1 aide, and the behaviorist recommended strategies and techniques that were effective.

There were times when his class was permitted to go to the lunchroom a few minutes earlier than the general high school student population to allow them to get their food first and settle down. There was a designated area in the lunchroom for the autistic students along with eight to ten aides to monitor their section. M.E.'s classes were eighty-two minutes in duration whereas the regular classroom periods were forty-five minutes. Thus, he had fewer transitions.

M.E. needs to be challenged; he may need to be prompted to do things, however, he will comply. His behaviors were manageable at school, and some of the behaviors (i.e. freezing, imagining) decreased as he was given positive reinforcement.

**Shivonne Troy** (Troy) has been employed as a BCBA with the East Brunswick School District for three years. She was hired in October 2022. She serviced students in grades five through twelve. She was board-certified in 2018. Prior to 2018, she served as a behaviorist starting in 2013. She currently completes FBAs and BIPs, and trains teachers and other staff on behavior strategies, interventions, and behavior management.

She participates in IEP meetings and does professional development. She uses applied behavior analysis when developing strategies. Before East Brunswick, she had a case load of up to fifteen home clients and ten or twelve students in public school. In East Brunswick, she has eight to ten students who are severe. She has a master's degree in psychology (Applied Behavior Analysis) and a second master's in education leadership. She was accepted as an expert BCBA. Troy was on maternity leave from December 22, 2023 to May 6, 2024.

Troy conducted the FBA on M.E. because of reported problematic behaviors in the classroom by the teacher. Troy observed M.E. several times, interviewed teachers and staff, and reviewed M.E.'s history, psychological, and other reports. Troy noted several problem behaviors such as drooling and/or spitting, closing his eyes while walking in the hallways or when it was time to participate in table work, banging on the table, and removing his shirt or sweater, socks, and shoes. Sometimes the behavior was the result of seeking attention, escaping or boredom. Troy gave M.E. fidgets, such as little puppets, squeeze balls, and kinetic sand, which seemed to help him self-regulate. Troy collected antecedent behavior consequence (ABC) data and determined that if the staff ignored some of M.E.'s behaviors, the behaviors decreased. Escape behavior is characterized by doing an activity that allows the student to avoid what is going on or a demand placed on the student by the teacher. Sometimes the behavior is silly or dangerous. Troy initially thought the drooling was a sensory need, but she later realized that it served a secondary function: seeking attention. She modified her interventions to address these two issues. M.E. was allowed to pick a fidget item out of a bag, which kept him busy and less likely to play with his saliva. He also had structured and unstructured breaks where he could go on walks. He could ask for breaks when he felt uncomfortable. M.E. loved to talk to people and knew how to ask for a break.

Troy developed antecedent strategies, which are things that are done all day to try to minimize the occurrences of problematic behaviors. Examples were specific praise and frequent check-ins to see if he was ok or needed anything; all were done to build a rapport with M.E. Troy also taught the staff redirection strategies to address when the problem behavior was happening. She was in M.E.'s classroom once a week for four to six weeks showing the staff what to do, and de-escalating behaviors. None of M.E.'s

behaviors were dangerous; all his behaviors could be handled in the classroom. Troy never saw any self-injurious behavior from M.E. but rather found that M.E. was a pleasure work with.

Troy started observing M.E. in the 2022–23 school year, including the extended school year (ESY) program. She saw frequent banging on the table in November 2022; drooling/spitting in February 2023; disrobing in November and December 2022; closing his eyes in April 2023, and few to none in May 2023. (J-40.) In the 2023–24 school year, he was stable, with banging peaking in December 2023 but tapering off for the remainder of the year. (Id. at EBBOE 0589.) Drooling/spitting occurred most frequently in December 2023 and March and April 2024. (Id. at EBBOE 0590.) Disrobing peaked in March and April 2024. (Id. at EBBOE 0591.) Closing his eyes occurred most frequently in January and February 2024. (Id. at EBBOE 0592.)

Before Troy went on maternity leave, she trained every teacher and aide who interacted with M.E. on interventions and how to collect data. She found M.E. to be a joy. She was very surprised that N.H. was having concerns at home. At school, he was thoughtful, friendly, and helpful; “he has so much potential.” She believed that the IEPs developed for the 2022–23, 2023–24, and 2024–25 school years proposed a free, appropriate, public education (FAPE) for M.E. and that the current interventions were appropriate.

The independent FBA conducted by Delta T Group contained many of the same interventions already contained in M.E.’s IEP. (J-8.) Troy was not persuaded by Dr. Novotny’s recommendation for an out-of-district placement because Dr. Novotny had not observed M.E. in the classroom. Prior to conducting her FBA, Troy collected frequency data and established protocols. Troy started collecting ABC data in January 2023 at N.H.’s request.

### **ADDITIONAL FINDINGS OF FACT**

In order to assess credibility, the witness’ interest in the outcome, motive, or bias should be considered. Furthermore, 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).

In determining credibility, I am aware that the District employees would want to support the program they developed for the child and would believe that the District's program would provide the child with a FAPE. I am also aware that the petitioner would want the best program for her child. Nevertheless, the documentary evidence presented supports the testimony that each witness provided to the best of his or her abilities. Indeed, it is not so much the facts that are in dispute, as all the IEPs speak for themselves, but rather it is the inferences that can be made from the evidence and testimony provided by the witnesses in concluding whether the IEPs prepared by the District offered FAPE to M.E.

Accordingly, having considered the testimonial and documentary evidence offered by the parties, the testimonies of the teachers and the BCBA appeared to be the most credible. They each testified credibly about their interactions and genuine concern for M.E.'s success in school. The evidence presented showed each staff person was consistently responsive to N.H.'s concerns. The IEPs were revised annually to incorporate additional strategies or increase the frequency of services in response to N.H.'s concerns. The BCBA provided specific recommendations to help M.E. be successful in the classroom environment. Having considered the testimonial and documentary evidence presented, I **FIND** the following additional **FACTS**:

N.H. repeatedly expressed concerns to the staff of East Brunswick High School and other medical professionals about the change in M.E.'s behavior after the family Egypt trip. In response to N.H.'s concerns about M.E.'s maladaptive behavior, the respondent assigned him a 1:1 aide and consulted with the BCBA for assistance. The BCBA observed M.E. in four classes and developed a FBA and a BIP.

Everyone who testified about M.E. testified that he was friendly, polite, caring, and that he was a joy to have in class. Indeed, everyone who testified about M.E. had nothing but superlatives to say about him and his caring personality. The witnesses from East

Brunswick were uniformly disappointed that N.H. wanted to remove him to an OOD placement because they testified that M.E.'s drooling and other behaviors had decreased.

Three FBAs were completed. The respondent's BCBA completed the first FBA, dated December 15, 2022, and amended it on January 6, 2023. (J-15.) The amended FBA was based upon four observations of several classes spanning two days: December 5, 2022, and December 6, 2022. The FBA was amended to include ABC data as requested by N.H. In response to the problematic behaviors, the BCBA recommended nine behavioral interventions, including: frequent behavior-specific praise, frequent check-ins and praise reinforcement, build rapport, non-contingent attention, fidget objects, breaks, Premack Principle, functional communication training, and redirection for out-of-seat behavior, spitting, slapping/hitting table, disrobing and slouching at his desk. (Id. at EBBOE 0347–48.)

A second FBA dated March 28, 2023, was completed by Esther Weisner of the Learning Curve. (J-13.) This evaluation was based upon one observation on December 20, 2022, and the evaluator reported that she observed M.E. put a piece of putty into his mouth for at least seventeen minutes and later wads of paper without intervention from the staff. She wrote: "It is deplorable that for at least 17 minutes of class time [M.E.] was engaged in active dangerous behavior, and none of the staff members in the room took any notice despite both the putty and paper clearly hanging outside of his lips and [M.E.'s] obvious chewing and fingering his mouth." (Id. at EBBOE 0300.) This evaluator chided the respondent's FBA for not including other problem behaviors observed such as "out of seat without permission, slouching, and disruption." (Id. at EBBOE 0303). Disruption included "vocalization, laughing or banging." (Id.) Ms. Weisner concluded that "an improved intervention plan with targeted differential reinforcement and identification of direct replacement behaviors was needed". (Id.) For behavioral modification, Ms. Weisner recommended a 1:1 aide and weekly BCBA support. (Id. at EBBOE 0315–16.) In addition, the evaluator did not think the MD placement was suitable and recommended that M.E. be in the autism class with more of a focus on daily living activities than academics.

The third FBA completed by the Delta T Group, dated June 1, 2024, recommended many of the same interventions as were already included in M.E.'s IEP, such as positive reinforcement (praise), limit attention when M.E. exhibits targeted behavior, allow M.E. to take breaks, the Premack Principle (first/then), redirection and fidgets. (J-8 at EBBOE 0238.)

Dr. Amanda Spinner conducted a pediatric neurology follow up with M.E. on January 10, 2023. (P-3.) Dr. Spinner's progress notes stated that M.E. was alert and interactive, spoke in full sentences, "perseverate[d] and [would] get off topic frequently, sometimes not making sense. Follow[ed] simple commands though difficulty with some parts of exam such as formal strength testing . . . Drool[ed] seemingly purposefully." (Id. at EBBOE 0483.) Dr. Spinner recommended that a FBA and a BIP be developed for M.E. This was done and identified in the IEP dated January 6, 2023.

On January 16, 2024, N.H. took M.E. to Rutgers University Behavioral Health on an emergency basis. The treating physician recommended hospitalization, but N.H. refused. (P-5; P-11.)

M.E. saw Dr. Kim on April 9, 2024, where Dr. Kim recommended a behavioral consultation, OT, speech therapy, school counseling, and "[d]iscuss IEP with [s]chool." (J-38 at EBBOE 0536.)

The progress reports for the 2022–23 school year are only for his attendance in the ESY program. (J-36.) The report showed that he was rated as progressing satisfactorily in science, history, reading, math, speaking/listening, and community-based instruction, speech, and daily living skills in August. (Id. at EBBOE 0505-0507, 0510, 0512). He was rated as progressing gradually in the reading goal of "describ[ing] the connection among individuals, events or pieces of information" in a narrative or text. (Id. at EBBOE 0507.) For writing, M.E. was rated as progressing gradually in "increas[ing] his functional writing skills." (Id. at EBBOE 0509). For speech, M.E. was rated as progressing gradually in the objective of "identify[ing] the antecedent to a feeling state," "improv[ing] verbal reasoning skills," and "answer[ing] abstract questions (when, why, how) based on information provided in a text." (Id. at EBBOE 0512-0513.)

For the 2023–24 school year, Ms. Brown’s progress reports only reflect progress in June for the regular school year. Apart from two objectives in speech, where M.E. was rated as progressing inconsistently, M.E. received ratings of progressing gradually or satisfactorily. (J-37.) There was no rating for OT.

### **LEGAL ANALYSIS AND CONCLUSIONS**

Decisions relating to the development and implementation of an IEP rest with the IEP team, which includes the CST and the parents of the student. A disagreement between the parents of the student and the CST, however, does not mean that the parents were denied a meaningful opportunity to participate in the development of the IEP. Indeed, CSTs are obligated to recommend or continue only those programs they deem appropriate. Stated otherwise, the CST cannot recommend an IEP that is inappropriate. If the parents disagree with the proposed IEP, the recourse is to file a petition for due process. See L.G. v. Fair Lawn BOE, 2011 U.S. Dist. LEXIS 69232.

To be sure, a school district’s proposed placement is considered appropriate if it meets the student’s unique needs and benefits the student’s educational progress, even if a parent disagrees. See D.Y. ex rel. M.Y. v. Hopewell Valley Reg’l Bd. of Educ., EDS 8203-04, Initial Decision (Oct. 18, 2005), <http://njlaw.rutgers.edu/collections/oal/>.

Significantly, “the measure and adequacy of an IEP can only be determined as of the time it is offered to the student, and not at some later date.” Fuhrmann v. E. Hanover Bd. of Educ., 993 F.2d 1031, 1040 (3d Cir. 1993); see also M.M. and A.M. ex rel. R.M. v. S. Brunswick Bd. of Educ., EDS 6086-00, Initial Decision (Sept. 5, 2001), <http://njlaw.rutgers.edu/collections/oal/> (where the court noted that later factual developments are of little relevance when determining the appropriateness of an IEP).

## **IEP and FAPE**

The petitioners present the following issues, specifically regarding M.E.'s IEPs:

1. With regard to the IEP dated July 11, 2024, the respondent did not provide appropriate placement in the autism class because the IEP states that M.E. would be in the presence of general education students for 80 percent or more of the day for 2024–25. This IEP also provides for a 1:1 school aide who was not identified, and her son failed to receive the behavioral intervention consultation individual twice per month as indicated because the BCBA was on maternity leave and the respondent failed to provide a substitute BCBA.
2. The respondent failed to provide an IEP that was calculated to provide a FAPE and did not produce an IEP that met M.E.'s social and academic needs in math and communication despite proof of M.E.'s struggles in these areas.
3. M.E.'s class schedules for the 2023–24 and 2024–25 school years do not indicate that he is in classes for autistic students. The respondent's deficient programming and lack of meaningful instruction caused M.E. to regress.
4. The independent FBA conducted by Delta T Group failed to include an observation written by the evaluator as part of the report, rendering the report unacceptable.

The petitioners seek: a finding that the respondent denied a FAPE to M.E. and revision of the 2024–25 IEP to place M.E. in an OOD placement for as long as that placement remains appropriate, including tuition and transportation.

Conversely, the respondent contends that it provided M.E. with a FAPE in the least restrictive environment appropriate for his needs with all appropriate related services and supports; he has made meaningful progress and received a meaningful benefit while in the school.

This case arises under the IDEA, 20 U.S.C. §§ 1400 to 1482. One purpose of the IDEA, among others, 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). In short, the IDEA defines “free appropriate public education” (FAPE) as special education and related services provided in conformity with the IEP. See 20 U.S.C. § 1401(9). A FAPE and related services must be provided to all students with disabilities from age three through twenty-one. N.J.A.C. 6A:14-1.1(d). A FAPE means special education and related services that: a) have been provided at public expense, under public supervision and direction, and without charge; b) meet the standards of the State educational agency; c) include an appropriate preschool, elementary, or secondary school education in the State involved; and d) are provided in conformity with the IEP required under §614(d). 20 U.S.C. § 1401(9); N.J.A.C. 6A:14-1.1 et seq. The responsibility to deliver these services rests with the local public school district. N.J.A.C. 6A:14-1.1(d).

To provide a FAPE, a school district must develop and implement an IEP. N.J.A.C. 6A:14-3.7. An IEP is “a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” Sch. Comm. of Burlington v. Dep’t of Educ. of Mass., 471 U.S. 359, 368 (1985). An IEP should be developed with the participation of parents and members of a district board of education’s CST who have participated in the evaluation of the child’s eligibility for special education and related services. N.J.A.C. 6A:14-3.7(b). The IEP team should consider the strengths of the student and the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluations of the student; the student’s language and communications needs; and the student’s need for assistive technology devices and services. The IEP establishes the rationale for the pupil’s educational placement, serves as the basis for program implementation, and complies with the mandates set forth in N.J.A.C. 6A:14-1.1 to -10.2. The IEP must be reasonably calculated to confer some educational benefit. Hendrick Hudson Dist. Bd. of Educ. v. Rowley, 458 U.S. 176 (1982).

The Third Circuit Court of Appeals has clarified the meaning of this “educational benefit.” It must be “more than trivial,” significant, and “meaningful.” Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180 (3d Cir. 1988); Ridgewood Bd. of Educ. v. N.E. ex rel. M.E., 172 F.3d 238, 247–48 (3d Cir. 1999). In evaluating whether a FAPE was furnished, an individual inquiry into the student’s potential and educational needs must be made. Ridgewood, 172 F.3d at 247. In providing a student with a FAPE, a school district must provide such related services and supports as are necessary to enable the disabled child to benefit from the education. Rowley, 458 U.S. at 188–89.

Not only must an IEP be reasonably calculated to provide significant learning and meaningful educational benefit but it 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 education 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 the Borough of Clementon Sch. Dist., 995 F.2d 1204, 1214 (3d Cir. 1993).

Parents who are dissatisfied with an IEP may seek an administrative due process hearing. 20 U.S.C. § 1415(f). The burden of proof is placed on the school district. N.J.S.A. 18A:46-1.1. The burden is by a preponderance of the evidence. The Board will satisfy the requirement that a child with disabilities receive a FAPE by providing personalized instruction with sufficient support services to permit that child to benefit educationally from instruction. Rowley, 458 U.S. at 203. To meet its obligation to deliver a FAPE, a school district must offer an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 580 U.S. 386 (2017). In Endrew, the District Court for the District of Colorado initially upheld the school denial of a reimbursement for an out-of-district placement. However, the Supreme Court reversed the finding that an IEP should be appropriately ambitious in light of the child’s circumstances and “tailored to the unique needs of a particular child.”

Neither parents nor courts, however, have a right to compel a specific methodology in educating a student:

However, as has been established, “once a court determines that the requirements of the Act have been met” neither parents nor courts have a right to compel a school district to employ a specific methodology in educating a student.

[W.R. v. Union Beach Bd. of Educ., 2011 U.S. App. LEXIS 3131.]

Indeed, a program and placement does not turn on the intensity of the services or the superiority of the program. Calisle Area Sch. v. Scott P., 62 F.3d 520, 535 (3d Cir. 1995). Despite a parent’s best intentions in attempting to seek the optimal placement of his or her child, the standard is not what is optimal but what is appropriate. Ibid. A program is appropriate if it confers some educational benefit; it need not be the superior alternative. Ibid. The Act does not require more. Ibid. In short, an IEP must be designed to confer some educational benefit in the least restrictive educational environment. Ibid.

Moreover, the appropriateness of an IEP is not determined by a comparison of the private school and the program proposed by the district. S.H. v. State-Operated Sch. Dist. of Newark, 336 F.3d 260, 271 (3d Cir. 2003). Rather, the pertinent inquiry is whether the IEP offered a FAPE and the opportunity for significant learning and meaningful educational benefit within the least restrictive environment.

Toward this end, an IEP must be in effect at the beginning of each school year and be reviewed at least annually. 20 U.S.C. § 1414(d)(2) and (4); N.J.A.C. 6A:14-3.7. A complete IEP must contain a detailed statement of annual goals and objectives. N.J.A.C. 6A:14-3.7(e)(2). It must contain both academic and functional goals that are, as appropriate, related to the New Jersey Student Learning Standards of the general-education curriculum and “be measurable,” so both parents and educational personnel can be apprised of “the expected level of achievement attendant to each goal.” Ibid. Further, such “measurable annual goals shall include benchmarks or short-term



objectives” related to meeting the student’s needs. N.J.A.C. 6A:14-3.7(e)(3). The New Jersey Supreme Court has recognized that “[w]ithout an adequately drafted IEP, it would be difficult, if not impossible, to measure a child’s progress, a measurement that is necessary to determine changes to be made in the next IEP.” Lascari v. Bd. of Educ. of Ramapo Indian Hills Reg’l Sch. Dist., 116 N.J. 30, 48 (1989).

Here, the 2024–25 IEP was sufficiently individualized to M.E. to permit continuing meaningful progress, considering his learning, math, and communication deficits. The IEP provides for M.E. to be in the special classes for autistic children in English and math. He is also enrolled in Community Based Instruction, which allows him to work on skills associated with daily life activities such as self-care, cooking, baking, grocery shopping, household chores, ordering from a restaurant, selling products, and making change. The unrefuted testimony from the teacher in charge of that class, Ms. McQuade, was that M.E. performed well and enjoyed this class. Ms. Jill Brown also testified to M.E.’s success in the community-based instruction class. There are clear goals contained in the IEP, and the teachers all reported that M.E. was making meaningful progress.

N.H. maintains, however, that M.E. has regressed in his emotions, behavior, and ability. Her proof is that he no longer wants to attend school and has child-like behavior. She also says that M.E. is not as self-sufficient as he used to be. However, a preponderance of the evidence does not exist that the respondent failed to provide M.E. with a FAPE because he no longer wants to attend school and has child-like behavior.

It is uncontested that M.E. exhibited maladaptive behaviors in September 2022. The origin of these behaviors unclear; however, both N.H. and the respondent acknowledged that these behaviors impeded his learning. Accordingly, the respondent acted immediately to engage the BCBA to determine behavioral strategies, interventions, and modifications to address M.E.’s behaviors. Observations by the BCBA followed, and a FBA and BIP were developed. The BCBA trained the staff on all the recommended strategies, interventions, and modifications before going on maternity leave, and there is uncontested testimony that the staff implemented them. OT and speech services were increased, and a 1:1 aide was assigned to ensure M.E.’s safety.

It is disconcerting that the FBA completed by the Learning Curve stated that M.E. was observed putting blue putty and wads of paper in his mouth without staff detection. Such a lapse cannot be condoned or minimized due to the potential danger to the student. Greater supervision must be exhibited by the staff. However, this oversight does not constitute a preponderance of the evidence that the respondent failed to provide M.E. with a FAPE.

A preponderance of the evidence does not exist that the respondent failed to provide M.E. with a FAPE because the IEP dated July 11, 2024, provides that M.E. would be in the presence of general education students for 80 percent or more of the day for 2024–25 or that the respondent failed to provide the name of the 1:1 aide or have a substitute BCBA when Ms. Troy was on maternity leave. Ms. Brown testified credibly that this was a mistake. She testified that because M.E. was in the autism class, he would not interact with general education students; rather, he would be with the same population of students with autism for most of the school day. There is no legal mandate to provide the name of the 1:1 aide within the IEP. Ms. Brown communicated this with N.H. Nor is there a legal mandate to provide for a substitute BCBA for a short-term leave. The respondent addressed Ms. Troy's absence by having her train the staff in advance.

A preponderance of the evidence does not exist that the respondent failed to provide M.E. with a FAPE because M.E. continues to struggle in math and communication. The respondent's evidence shows that M.E. was making consistent progress in math. While communication remains a struggle, Ms. McQuade testified credibly about the strides M.E. made in her class in communication.

A preponderance of the evidence does not exist that respondent failed to provide M.E. with a FAPE because his class schedules for 2023–24 and 2024–25 did not indicate that he was in classes for autistic students. Brown testified that the teachers identified on M.E.'s class schedule for 2023–24 and 2024–25 were all special education teachers who had taught M.E. in prior years.

A preponderance of the evidence does not exist that the respondent failed to provide M.E. with a FAPE because the FBA conducted by the Delta T Group failed to

include an observation written by the evaluator as part of the report. There was no testimony provided to explain why the evaluator did not include observation notes. However, the respondent provided observation notes from the case manager who accompanied the Delta T evaluator during the observation. (J-45.) Even if this FBA is discounted, there is still credible evidence in the record to support that the respondent provided a FAPE to M.E.

Two letters from Dr. Novotny recommend a smaller classroom setting and an OOD placement. However, Dr. Novotny never observed M.E. in the classroom, and Mr. Zaza testified credibly that during their telephone conversation, Dr. Novotny failed to provide any strategies for the respondent to consider. Conversely, reports from Drs. Kim, Sinha, Muthuswamy, and the Acute Psychiatric Services progress notes support following the recommendations of the CST and for the family to connect with PerformCare. Moreover, a recent report issued by Trinitas Regional Medical Center, where M.E. was hospitalized on September 25, 2024, recommended that M.E. return to the respondent's school with ABA services, frequent breaks, positive supports, and a daily structured routine. The report also recommended that the family follow up with PerformCare. (J-49.) None of these medical professionals observed M.E. in the classroom or were presented to provide testimony, and thus these reports constitute hearsay. However, hearsay is permissible if there is a residuum of competent proof. N.J.A.C. 1:1-15.5 provides:

- (a) Subject to the judge's discretion to exclude evidence under N.J.A.C. 1:1-15.1(c) or a valid claim of privilege, hearsay evidence shall be admissible in the trial of contested cases. Hearsay evidence which is admitted shall be accorded whatever weight the judge deems appropriate taking into account the nature, character and scope of the evidence, the circumstances of its creation and production, and, generally, its reliability.
- (b) Notwithstanding the admissibility of hearsay evidence, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness.

It is axiomatic that in administrative hearings, all the reports are hearsay without competent proof. Under the residuum rule, an Administrative Law Judge cannot make a finding of fact or conclusion of law based on hearsay alone. Such determinations must be based on a residuum of competent proof. Hearsay may give probative force to competent proof, i.e., it may corroborate or support competent proof, but hearsay alone may not substitute for competent proof or serve as the sole basis for a finding of fact or conclusion of law. Here, there is consistent testimony by respondent's experts that M.E.'s behaviors were being effectively managed by frequent breaks, positive supports, and a daily structured routine. Thus, the Trinitas Regional Medical Center's treatment summary and the reports from Drs. Kim, Sinha, Muthuswamy, and the Acute Psychiatric Services progress notes corroborate the credible testimony of Zaza, Troy, Brown, Cieslak, and McQuade.

Finally, the IEP for 2024–25 was not only reasonably calculated to provide significant learning and meaningful educational benefit but also in the least restrictive environment as case law is clear that the removal of children with disabilities from the regular education 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. In this case, the least restrictive environment is the autism classes for English, mathematics, and community-based instruction with all the speech and language therapy, OT and social skills group, and the numerous aids and services appropriate to M.E.'s needs. Just because a child with disabilities might make greater academic progress in an out-of-district program, placement does not necessarily warrant excluding that child from an in-district program and placement.

Accordingly, I **CONCLUDE** that the Board met its obligation to offer M.E. a FAPE as that term is defined by law, and developed an IEP that was reasonably calculated to confer a meaningful educational benefit on M.E. The IEP was a fully developed education plan, containing critical modifications and interventions, such as the nine antecedent strategies to minimize the occurrences of M.E.'s targeted behavior. Each IEP developed for M.E. was specifically designed to address his specific learning needs, and the progress reports produced at the hearing showed evidence of progress.

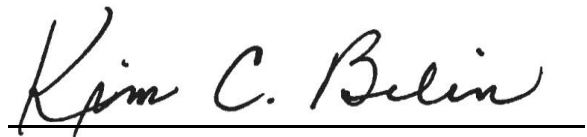
**ORDER**

Based upon the foregoing, I **ORDER** that the petitioner's due process appeal is **DISMISSED**.

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.

January 10, 2025

DATE

  
KIM C. BELIN, ALJ

Date Received at Agency:

\_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

KCB/sw

## **APPENDIX**

### **Witnesses**

#### **For Petitioner:**

N.H.

#### **For Respondent:**

Jill Brown

Philip Zaza

Michelle Cieslak

Stephanie McQuade

Shivonne Troy

### **Exhibits**

#### **Joint:**

- J-1 IEP dated July 11, 2024
- J-2 IEP dated May 14, 2024
- J-3 IEP dated May 31, 2023
- J-4 IEP dated January 6, 2023
- J-5 IEP dated January 14, 2022
- J-6 Not admitted.
- J-7 Zaza Psychological Evaluation dated June 27, 2024
- J-8 Delta T Group Functional Behavior Assessment dated June 1, 2024
- J-9 Muthuswamy Psychiatric Evaluation dated May 25, 2024
- J-10 Caruso Educational Evaluation dated May 24, 2024
- J-11 Cieslak Speech Language Evaluation dated June 3, 2024
- J-12 Not admitted.
- J-13 Weiser Functional Behavior Assessment dated March 28, 2023
- J-14 Not admitted.
- J-15 Troy Functional Behavior Assessment dated January 6, 2023
- J-16 O'Donnell and Brown Psychological Evaluation dated December 15, 2022

- J-17 Not admitted.
- J-18 Melamed Speech Language Evaluation dated December 2, 2022
- J-19 Sinha Neuropsychiatric Evaluation dated November 14, 2022
- J-20 Cleary Occupational Therapy Evaluation dated March 16, 2021
- J-21 Tiedemann Educational Evaluation dated March 29, 2021
- J-22 Heller-Ringer Speech Language Evaluation dated April 16, 2021
- J-23 Not admitted.
- J-24 Not admitted.
- J-25 Not admitted.
- J-26 Not admitted.
- J-27 Not admitted.
- J-28 Rutgers Behavioral Health Care Treatment Notes dated July 9, 2024
- J-29 Laveman Neurodevelopmental Evaluation dated August 11, 2011
- J-30 Wun Jung Kim Psychiatric Evaluation dated October 11, 2022
- J-31 Not admitted.
- J-32 Reevaluation Planning-Proposed Action Notice dated May 9, 2024 and parental consent for assessments dated May 14, 2024
- J-33 Parent Conference Note dated October 18, 2023
- J-34 Not admitted.
- J-35 Not admitted.
- J-36 Progress Report for IEP Goals and Objectives 2022–23
- J-37 Progress Report for IEP Goals and Objections 2023–24
- J-38 Wun Jung Kim Psychiatry Instructions dated April 9, 2024
- J-39 Emails dated May 10, 2023 through January 23, 2024
- J-40 Behavioral Data & Strategies 2022–24 School Years
- J-41 Not admitted.
- J-42 Photographs of M.E. in school program
- J-43 Resumes of respondent's witnesses
- J-44 Not admitted.
- J-45 Case Manager Notes dated May 29, 2024
- J-46 Reevaluation Planning—Proposed Action Notice and parent consent for additional assessment dated November 4, 2022
- J-47 2023–24 and 2024–25 Student Schedules

J-48 Not admitted.

J-49 Trinitas Regional Medical Center Treatment Summary dated October 7, 2024

For Petitioner:

P-1 Rutgers University Behavioral Health Care records

P-2 Dr. Sherie Novotny letter dated July 2, 2024, and progress notes dated July 1, 2024

P-3 Dr. Amanda Spinner progress notes dated January 10, 2023

P-4 Children's Specialized Hospital Psychiatric Evaluation dated October 11, 2022

P-5 Emails between petitioner and respondent

P-6 Children's Specialized Hospital Neurodevelopmental Initial Evaluation dated August 11, 2011

P-7 Children's Specialized Hospital Psychiatry DC Instructions dated April 9, 2024

P-8 Children's Specialized Hospital Psychology Discharge Summary dated February 8, 2024

P-9 M.E. worksheet dated December 19, 2023

P-10 Rutgers University Behavioral Health Care cover sheet and Dr. Novotny letter dated August 27, 2024

P-11 Acute Psychiatric Services Acute Services Brief Assessment dated January 16, 2024, and Evaluation Notes by Dr. Gwendolyn E. Roberson dated January 16, 2024

P-12 Dr. Wun Jung Kim letter dated July 2, 2024

P-13 Cover sheet and Individual Therapy Progress Notes dated August 26, 2024

P-14 Email dated May 16, 2024

For Respondent:

R-1 Emails dated August 18, 2024 through September 24, 2024

R-2 Not admitted.

R-3 Emails dated September 17, 2024 through September 18, 2024

R-4 Zaza notes on M.E. contact log dated August 13, 2024

R-5 Not admitted.