



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

**FINAL DECISION**

OAL DKT. NO. EDS 14787-25

AGENCY DKT. NO. 2026-39675

**M.H. and C.H. ON BEHALF OF S.H.,**

Petitioners,

v.

**FREEHOLD REGIONAL BOARD OF  
EDUCATION,**

Respondent.

---

**M.H. and C.H.**, petitioners, pro se

**John Comegno II**, Esq., appearing for respondent (Comegno Law Group,  
attorneys)

Record Closed: March 13, 2026

Decided: April 24, 2026

BEFORE **MARY ANN BOGAN**, ALJ:

**STATEMENT OF THE CASE**

This case arises under the Individuals with Disabilities Act, 20 U.S.C. 1400 to 1482 (IDEA). Petitioners M.H. and C.H., on behalf of minor child S.H., seek a finding that the special education and related services for S.H. in the individualized education program (IEP) proposed by the District of Freehold Regional High School (District) for the

2025–2026 school year are inappropriate, do not provide S.H. with any educational benefit, fail to confer a free, appropriate public education (FAPE), and do not comply with the requirements of the IDEA. S.H. is diagnosed with Autism and sensory integration disorder. He is nonverbal and uses augmentative and alternative communication (AAC). For S.H.’s eighth-grade school year, he was placed at the Futures Foundations Academy (FFA), an out-of-district placement, through his IEP. The proposed IEP looks to return S.H. to the District in the Autism program at Howell High School.

### **PROCEDURAL HISTORY**

The petitioners filed a petition for a due-process hearing<sup>1</sup> with the Department of Education, Office of Special Education. The matter was transmitted to the Office of Administrative Law (OAL), where it was filed on or about September 19, 2025. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

The hearing was scheduled for December 18, 2025. On December 15, 2025, petitioners requested an adjournment of the December 18, 2025, hearing because it was necessary to extend their family trip<sup>2</sup> due to illness. The petitioners also requested additional time to submit evidence under the five-day rule. The adjournment request was granted over the District’s objection, and the petitioners were granted additional time through December 26, 2025, to answer the discovery requests and produce evidence under the five-day rule. The petitioners did not respond. On January 6, 2026, the District filed a motion to dismiss for the petitioners’ failure to provide discovery in a timely manner. The parties were notified in correspondence dated January 9, 2026, that the motion to dismiss would not be considered since it had been filed beyond the thirty days before the scheduled hearing date. The hearing was conducted on January 28, 2026. Prior to the start of testimony, the District moved to bar all of petitioners’ case for failure to provide discovery and evidence. I determined that since the petitioners did not intend to produce

---

<sup>1</sup> The Due Process petition also included an emergent petition for a stay put at FFA, which was previously heard.

<sup>2</sup> The District pointed out in its motion that petitioners notified FFA on November 23, 2025, that “. . . we are going to Bangladesh for two weeks for a family emergency and that the student would be absent from Dec 1st to December 16th.”

evidence during the hearing, a decision under the five-day rule was moot. The record closed on March 13, 2026.

### **FACTUAL DISCUSSION**

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

S.H. is a thirteen-year-old, ninth-grade student eligible for special education and related services under the classification of Pervasive Developmental Disorder/Childhood Autism (Autism) with a full-scale IQ of forty, in the moderately delayed range. (R-4.) He attended Marlboro Public School District from kindergarten through seventh grade and received special education services in an in-district Applied Behavior Analysis (ABA) program. (R-5.) For his eighth-grade year, S.H. was placed in Middlesex County Education School FFA, an out-of-district school. (R-20.) Marlboro Public School District high school students attend the Freehold Regional School District, composed of eight surrounding communities. S.H. is nonverbal and is able to communicate successfully through augmentative and alternative communication applications like TouchChat with Word Power installed on an iPad.

In preparation for ninth grade, the District conducted a child study team (CST) meeting and developed a draft individualized education program (IEP) dated June 19, 2025, recommending that he be placed in the Autism program in S.H.'s home school district at Howell High School. (R-16.) The District believes the program provides FAPE in the least restrictive environment (LRE) for S.H., while addressing all of his needs. The petitioner parents disagree with the placement.

### **Testimony**

**Beth Shapiro** is the school social worker and case manager for special education students. As part of her duties, Ms. Shapiro monitors the achievement of student goals and objectives in the Autism program and reports her findings to special and general education faculty and providers who service students who require special education and

related services. She has worked in the District since September 2023. Ms. Shapiro was accepted as an expert in her field of school social work and special education without objection.

The in-district Autism program recommended for S.H. is centrally located at the Howell High School in a single building. It serves the regional school district from eight communities. The Autism program currently has forty-five students. The ninth through twelfth grades are comprised of twenty-seven students with an average class size of no more than nine students in four teaching groups. Each class is taught by a special education teacher, with paraprofessional support to address the needs of the students. Some classes have a one-to-one ratio, and other classes have a three-to-five ratio. After completion of twelfth grade, students attend the transition program until age twenty-one. Seven of the forty-five students in the Autism program are nonverbal, and ten to fifteen students have limited verbal skills. The Autism program has a behavioral therapist (BCBA) and a speech therapist who work exclusively with the students in the Autism program. The students are also accompanied by an occupational therapist and physical therapist on weekly Community-Based Instruction (CBI) trips. The speech therapist also joins the CBI trips. CBI trips provides the students with time spent in the community to utilize the skills developed in the classroom with an opportunity to “generalized out into the community setting.” There is also a transitional program for eighteen- to twenty-one-year-olds. These students participate in a workplace training program four days a week, and work in a community setting in a variety of occupational settings to prepare for occupations. This program would allow S.H. to participate in workplace training to learn job skills in preparation for placement in occupational settings.

In order to place S.H. into a high school program, Ms. Shapiro, along with the BCBA Julie Wolfe, observed S.H. at FFA during the fall of his eighth-grade school year, the program that the parents sought continued placement in. The program’s entire student population consists of autistic children. FFA is not within S.H.’s home district and requires him to travel about an hour each day on a school bus to attend the program. During the observation, it became clear to Ms. Shapiro that the FFA program was not an appropriate program for S.H. Specifically, she found that S.H. was placed in a classroom with younger students; she observed S.H. participating in “tickle time,” an inappropriate

educational tool, with a paraprofessional; and observed S.H. wearing a diaper and not utilizing proper toileting procedures. Ms. Shapiro also observed a lack of food reinforcement protocols. After the observation, the District provided FFA with recommended protocols to put in place for the remainder of the school year. (R-23.) Ms. Shapiro made clear to the FFA that S.H. had made sufficient progress and demonstrated a readiness for the Howell Autism Program. (R-23, 24.)

By February 2026, the District conducted an IEP meeting with the CST to address S.H.'s ninth-grade year and to provide the petitioners with information about the Autism program the District recommended for S.H. At the CST meeting, the parents objected to the placement after reading a news story about a student with Autism who was beaten on the playground at a school named Howell in Michigan and not at the Autism program in Howell, New Jersey which does not have a playground.

The District conducted a psychological evaluation, a speech and language evaluation and a neurodevelopment evaluation to assess S.H.'s needs. Ms. Shapiro reviewed all of S.H.'s evaluations and found that the proposed IEP, which is dated June 19, 2025, is appropriate because the programming accommodates S.H.'s language-based needs for instruction in communication and daily living skills through the daily living skills program, which also addresses adaptive behaviors, and the social and conversational skills class with a specific curriculum. (R-16.) This type of program is consistent with the recommendations in his psychological evaluation conducted on January 24, 2025, for instruction in communication and daily living, and the results of his speech/language evaluation of February 5, 2025. (R-4; R-5.) Moreover, Ms. Shapiro also found that the program addresses S.H.'s neurodevelopmental needs as set forth in the evaluation because the program incorporates functionality so that S.H. will consistently learn skills that will enable him to be successful when he is no longer in the school. In addition, the recommended modifications and supplementary aids and services incorporated into the draft IEP are included in the Autism program. In order to address the parents' safety concerns, Ms. Shapiro made clear that the students in the Autism program are supervised on campus at all times and are never without a certified staff member. Consistent with the recommendations in the neurological evaluation, the

Autism program also provides opportunities for S.H. to interact with general education students in gym class and the after-school program.

The District's proposed IEP offers fifteen special education and related services, while the FFA IEP offered five. (R-16; R-20.) The CBI in the District program would offer weekly CBI in the community that correlates with skills learned in the classroom, including interaction with classmates. The FFA IEP provides CBI in personal hygiene, kitchen and laundry skills, operating a copy machine and interaction in the community twice a month. As previously noted, the proposed Autism program in-district offers weekly CBI in the community that correlates with skills learned in the classroom, including interaction with his classmates and the opportunity to communicate with peers.

Ms. Shapiro also testified that when she asked the Marlboro case manager for the reasons S.H. was placed at FFA, the case manager responded that she did not know the reasons and believed that S.H. did not require an out-of-district program.

**Petitioner** M.H., the father of S.H., testified that for S.H.'s eighth grade year, Marlboro School District sent S.H. to FFA because he was not making progress in the District. M.H. believes that S.H. is making progress at FFA based on his observations of S.H. at home, such as S.H.'s willingness to go to school and his recall of the resistance S.H. showed when he attended school in the Marlboro School District. M.H. also believes S.H. has had sufficient exposure to general education students from the time he started school to seventh grade. M.H. viewed the "tickling time" program at FFA as a "happy time"; the snacks were offered as a motivation to do his work.

M.H. acknowledged that he did not bring an emergent relief action against the Marlboro School District or any other action against the Marlboro School District.

M.H. believes that he and his wife did not get an opportunity to visit the in-district Autism program because there was some kind of misunderstanding when they met with the CST. M.H. also stated that a high school environment such as Howell High School, creates a safety risk for S.H., especially because he cannot verbalize his concerns.

The petitioners also believe that the District never collaborated with them or fully investigated S.H.'s placement at FFA but predetermined his placement instead.

## **Findings**

It is my obligation and responsibility to weigh the credibility of witnesses in order to make a determination. Credibility is the value that the factfinder gives to a witness's testimony. It is my obligation and responsibility to weigh the credibility of the witnesses in order to make a determination. The word contemplates an overall assessment of the witness's story in light of its rationality, internal consistency, and the manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Credible testimony has been defined as testimony that must proceed from the mouth of a credible witness and must be such as common experience, knowledge, and common observation can accept as probable under the circumstances. State v. Taylor, 38 N.J. Super. 6, 24 (App. Div. 1955) (quoting In re Perrone's Estate, 5 N.J. 514, 522 (1950)). In assessing credibility, the interest, motives, or bias of a witness is relevant, and a factfinder is expected to base decisions of credibility on his or her common sense, intuition, or experience. Barnes v. United States, 412 U.S. 837 (1973). Credibility does not depend on the number of witnesses, and the finder of fact is not bound to believe the testimony of any witness. In re Perrone's Estate, 5 N.J. 514.

The witness from the District testified credibly in a direct and articulate manner as to her first-hand knowledge of the Freehold Regional School District and the educational plans established for S.H. as set forth in the draft IEP and consistent with school records. The petitioners did not discredit the District's witness. The District provided testimony and evidence to prove that S.H.'s proposed program at the in-district Autism program at Howell High School provides him with an appropriate education in a fully developed "specialized and centralized" in district Autism program. The program provides him with the opportunity to interact with peers, both verbal and nonverbal; educators who specialize in this field; a BCBA; a speech therapist, an occupational and physical therapist; along with special education teacher and paraprofessional support in each class, specialized in the needs of the student. The District witness clearly articulated the risks the current placement may create to S.H.'s education and development, which is in

direct contradiction to the goals set forth in the Individuals with Disabilities Education Act to educate students with disabilities. The District also referenced documentary evidence, such as current evaluations, and demonstrated with specificity how S.H.'s needs will be met, including the parents' concern for his safety in high school. I accept the District's testimony and **FIND** the testimony as fact.

In contrast to the District's testimony, the testimony from the parent was less than direct and did not specifically address the District's fact-driven testimony and the exhibits that support the District's conclusions. It is clear that the parents believe that they are seeking in their view to keep S.H. in the best program and placement for their child. However, their conclusions that S.H. is appropriately placed at FFA and is making progress were not supported by credible documentary evidence, and their testimony contradicts the educational records and credible testimony of the District witness. Furthermore, the petitioners did not present a scintilla of evidence that the District failed to confer with them or properly review how S.H.'s needs would be met at the in-district placement. I **FIND** that the parents' testimony was not credible.

### **LEGAL ANALYSIS AND CONCLUSION**

The Individuals with Disabilities Education Act (IDEA) provides federal funds to assist participating states in educating disabled children. Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 179 (1982). One of the purposes of the IDEA is "to ensure that all children with disabilities have available to them a [FAPE] 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 order to qualify for this financial assistance, New Jersey must effectuate procedures that ensure that all children with disabilities residing in the state have available to them a FAPE consisting of special education and related services provided in conformity with an IEP. 20 U.S.C. §§ 1401(9); 20 U.S.C. §§ 1412(a)(1). The responsibility to provide a FAPE rests with the local public-school district. 20 U.S.C. § 1401(9); N.J.A.C. 6A:14-1.1(d). The district bears the burden of proving that a FAPE has been offered. N.J.S.A. 18A:46-1.1.

The United States Supreme Court has construed the FAPE mandate to require the provision of “personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” Rowley, 458 U.S. at 203. The Rowley standard was recently questioned by the United States Supreme Court in Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 580 U.S. 386 (2017). The Supreme Court determined that to meet its obligation to deliver FAPE, a school district must show a cogent and responsive explanation for its decisions that shows that the IEP is reasonably calculated to enable the child to make progress that is appropriate considering the particular student’s circumstances. The Court declined to devise a “bright-line rule” for “what ‘appropriate’ progress will look like from case to case,” because “[t]he adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” Endrew F., 580 U.S. at 404.

In addressing the quantum of educational benefit required, the Third Circuit has always made clear that more than a “trivial” or “de minimis” educational benefit is required, and the appropriate standard is whether the IEP provides for “significant learning” and confers “meaningful benefit” to the child. T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000); Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999); Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180, 182–84 (3d Cir. 1988), cert. den. sub. nom. Cent. Columbia Sch. Dist. v. Polk, 488 U.S. 1030 (1989); see also M.A. v. Voorhees Twp. Bd. of Educ., 202 F. Supp. 2d 345, 361 (D. N.J. 2002), aff’d, 65 Fed. Appx. 303 (3d Cir. 2003), (stating, “[t]he law requires that the proposed IEP provide a FAPE in the LRE—it does not and cannot require that the district provide the best education in exactly the manner dictated by parents.”)

In other words, the school district must show that the IEP will provide the student with “a meaningful educational benefit.” S.H. v. State-Operated Sch. Dist. of Newark, 336 F.3d 260, 271 (3d Cir. 2003). This determination must be made in light of the individual potential and educational needs of the student. T.R., 205 F.3d at 578; Ridgewood, 172 F.3d at 247–48. “When students display considerable intellectual potential, IDEA requires ‘a great deal more than a negligible [benefit].’” Ridgewood, 172 F.3d at 247 (quoting Polk, 853 F.2d at 182). The pertinent inquiry is whether the IEP

offered a FAPE and the opportunity for significant learning and meaningful educational benefit within the LRE.

The IDEA describes education in the “least restrictive environment” as follows:

[t]o the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

[20 U.S.C. § 1412(a)(5).]

The law describes a continuum of placement options, ranging from mainstreaming in a regular public-school setting as the least restrictive to enrollment in a residential private school as the most restrictive. 34 C.F.R. § 300.115 (2026); N.J.A.C. 6A:14-4.3.

Courts in this circuit have interpreted this mainstreaming requirement as mandating education in the LRE that will provide meaningful educational benefit. “The least restrictive environment is the one that, to the greatest extent possible, satisfactorily educates disabled children together with children who are not disabled, in the same school the disabled child would attend if the child were not disabled.” Carlisle Area Sch. v. Scott P., 62 F.3d 520, 535 (3d Cir. 1995), cert. den. sub. nom., Scott P. v. Carlisle Area Sch. Dist., 517 U.S. 1135 (1996).

The education of a child with a disability must be tailored to the unique needs of the child through an IEP, and the provisions of the IEP must be reviewed and, if appropriate, revised periodically, but not less than annually. 20 U.S.C. § 1414(d)(4)(A). An IEP should be developed with the participation of parents and members of a district board of education’s child study team 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 CST 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 communication 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 parents here, who are dissatisfied with S.H.'s proposed IEP, participated in the CST meeting and then filed for due process when they became dissatisfied with the District's proposed IEP for an in-district placement. 20 U.S.C. § 1415(f). The burden of proof is placed on the school district. N.J.S.A. 18A:46-1.1.

This case presents an unusual dynamic between the District and the parents. On the one hand, the District provides a side-by-side list of comparisons between the current IEP placing S.H. out of district, which provides five special education and related services, and the proposed in district IEP that provides fifteen special education and related services in a "specialized and centralized" in-district Autism program, including the opportunity for socialization on a daily basis with both nonverbal and verbal peers. On the other hand, the parents present contrary testimony without any corroborating evidence, reject the District's proposed placement in the in-district Autism program, and resist the recommendations made by the District for his education based merely on their in-home observations of S.H.

Moreover, the District witness convincingly demonstrated that the FFA program does not deliver an appropriate education, and the District met its burden of proof that S.H.'s out-of-district placement at FFA did not provide programs that provide S.H. with sustained educational benefit in an appropriate classroom. Even more, FFA did not educate S.H. with tools appropriate for his learning, and the program lacked appropriate self-care procedures and food protocols.

Moreover, FFA does not provide the LRE since the entire school composition consists of autistic children, the classroom student size is not consistent with recommended student/ teacher ratios for special education classrooms, and FFA is not located in his home school district.

The parents, M.H. and C.H, participated in the CST along with the educators and experienced professionals who work with the child each day, to best determine S.H.'s educational placement. Here, the record is clear. The parents' input and desire to keep S.H. in the FFA out-of-district school is simply not reasonable or appropriate, and S.H. is currently at risk of a compromised education if he is not immediately advanced to the District's proposed Autism placement.

I **CONCLUDE** that the placement offered S.H. by the Board in the June 19, 2025, IEP constituted FAPE as that term is defined by law and is sufficiently individualized to meet S.H.'s needs. Moreover, the District's placement is less restrictive than the placement recommended by the parents and meets the requirement that students with disabilities shall be educated in the LRE.

Based on the foregoing, I **CONCLUDE**, by a preponderance of the credible evidence, that the June 19, 2025, IEP provides S.H. with a free and appropriate public education reasonably calculated to provide a meaningful educational benefit to him in the least restrictive environment. S.H.'s placement at FFA does not provide an appropriate education in the least restrictive environment.

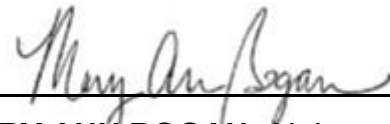
### **ORDER**

Based on the foregoing, it is hereby **ORDERED** that S.H. be placed in the Howell High School Autism program based on the June 19, 2025, IEP and the petition for due process be **DISMISSED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2026) 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 (2026). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education Programs.

April 24, 2026 \_\_\_\_\_

DATE



\_\_\_\_\_  
**MARY ANN BOGAN, ALJ**

Date Received at Agency

\_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

**APPENDIX**

**Witnesses**

**For petitioners:**

M.H.

**For respondent:**

Beth Shapiro

**Exhibits**

**For petitioners:**

None

**For respondent:**

- R-4 Psychological Examination mailed to parents February 6, 2025
- R-5 Speech and Language Evaluation mailed to parents February 6, 2025
- R-6 Neurodevelopmental Evaluation March 2019
- R-7 AAC – Augmentative Communication Evaluation Report February 2017
- R-8 Confidential Functional Behavior Assessment March 31, 2025
- R-16 IEP dated June 19, 2025
- R-20 IEP dated August 22, 2024
- R-23 Emails with FFA
- R-24 Emails from Nicole DeGironimo to father
- R-28 Curriculum Vitae of Beth Shapiro

The nonsequential numbering of respondent's exhibits reflects the specific exhibits referred to during testimony.