State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

(CONSOLIDATED)

D.G. AND J.G. ON BEHALF OF V.G.,	OAL DKT. NO. EDS 05136-26
Petitioners,	AGENCY DKT. NO. 2026-40705
v.	
MORRIS SCHOOL DISTRICT BOARD OF EDUCATION,	
Respondent.	
and	
MORRIS SCHOOL DISTRICT BOARD OF EDUCATION,	OAL DKT. NO. EDS 05665-26
	AGENCY DKT. NO. 2026-40763
Petitioner,	
v.	
D.G. AND J.G. ON BEHALF OF V.G.,	
Respondents.	

D.G. and J.G., petitioners-respondents, pro se

David B. Rubin, Esq., for respondent-petitioner Morris School District Board of Education (Busch Law Group, LLC, attorneys)

Record Closed: April 20, 2026 Decided: April 30, 2026

BEFORE **ADVIA KNIGHT FOSTER**, ALJ:

STATEMENT OF THE CASE

During the 2025–26 school year, V.G., a sophomore at Morristown High School, exhibited escalating and aggressive behaviors, which the Morris School District Board of Education cannot reasonably accommodate in district. Must V.G. be placed out of district in a placement that can? Yes. An individualized education program (IEP) must be reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances. Endrew F. v. Douglas Cnty. Sch. Dist., 580 U.S. 386, 399 (2017).

PROCEDURAL HISTORY

On March 27, 2026, D.G. and J.G., on behalf of their son V.G., filed a request for due process hearing, together with an application for emergent relief, with the Office of Special Education (OSE). In their request for a due process hearing, the family asks for a stay put, return to last-agreed-upon in-school placement, implementation of appropriate in-school supports, and compensatory education. In their application for emergent relief, the family asks for a return to school with appropriate supports pending resolution of the due process petition. On April 6, 2026, the OSE transmitted the case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to –15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the Special Education Program, N.J.A.C. 1:6A-1.1 to -18.4. The case was docketed under OAL docket number EDS 05136-26.

On April 8, 2026, the Morris School District Board of Education (the District) filed a request for an expedited due process hearing together with an application for emergent relief. In its request, the District asks for home instruction pending resolution of the expedited due process case. On April 9, 2026, the OSE transmitted the case to the OAL under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the Special Education Program, N.J.A.C. 1:6A-1.1 to -18.4. The case was docketed under OAL docket number EDS 05665-26.

On April 15, 2026, I consolidated the cases, and the parties appeared for oral argument on their applications for emergent relief.

On April 16, 2026, I denied the family's application for emergent relief, granted the District's application for emergent relief, and allowed the District to amend its petition to reflect that the IEP dated April 7, 2026, is superseded by the IEP dated April 8, 2026.

On April 17, 2026, I held the hearing, and on April 20, 2026, I closed the record after the parties submitted their closing statements.

DISCUSSION AND FINDINGS OF FACT

V.G. is a sixteen-year-old special education student classified as eligible for special education and related services under the disability category "other health impairment."

Over the years he has been diagnosed with attention deficit/hyperactivity disorder, oppositional defiant disorder, unspecified anxiety disorder, and disruptive behavior disorder.

Chronology of Behavior and Discipline for 2025–26 School Year

(a) May 6, 2025

- V.G. refused to pick up a plastic bag that he was throwing in class.
- While picking it up, he intentionally bumped into a teacher.
- Security was called, and he pushed through the teacher a second time.
- Parents were called, and his father came to pick him up. V.G. slammed the door as they exited the building aggressively.
- Consequence: two-day out-of-school suspension.

(b) October 3, 2025

- While in art class, V.G. threw his chair under his table.
- He ignored the art teacher and left the room when she asked him to put the chair back correctly.

- He punched a table in the hall and cursed.
- Consequence: Saturday detention.

D.G. testified that V.G. informed him that he forcibly pushed the chair in and it hit the table and that he did not intentionally bump into the teacher. D.G. also testified that subsequent emails from assistant principal Matthew Fabricant state that V.G. did not throw the chair.

On October 10, 2025, the District's board-certified behavior analyst, Stephanie Corona; V.G.'s case manager, Kristen Rudiger; the supervisor of special education, Carina Navarro; and Fabricant met to develop a behavior intervention plan (BIP) and implemented additional counseling support for V.G. through the TRAIL Intern program that was approved by V.G.'s mother, with counseling twice per month.

(c) November 3, 2025

- V.G. was written up for arriving late to the first block for the fifth time for history class.
- Consequence: conversation and parent communication.

(d) November 17, 2025

- V.G. went into a class that was not his and confronted a student, saying, "You want to talk shit, say it to my face."
- Consequence: lunch detentions.

(e) December 12, 2025

- In Spanish class, V.G. refused to do an assignment and said, "F**k."
- Security was called, and V.G. threw papers at the teacher.
- V.G. eloped from school and left the building without permission.
- Consequence: two-day out-of-school suspension.

D.G. testified that the District was exaggerating V.G.'s behavior to remove him from school, and stated that on December 12, 2025, V.G. threw the papers on the floor, objecting to doing the work. D.G. further testified that he received emails from Fabricant

that contradict Fabricant's assertions regarding V.G.'s behavior during the 2025–26 school year.

On December 18, 2025, Fabricant and Kate Weisenseel, the guidance counselor, and a new case manager and learning disabilities teacher-consultant (LDTC), Paola Marino, who had worked with V.G. in middle school and had a good rapport with him and the family, met with mom and reviewed the BIP with updates from counseling. Mom gave consent to implement the BIP and V.G. was given a special pass to see his case manager or guidance counselor at any time to de-escalate when triggered. D.G. felt the plan was primarily for de-escalation, but Marino testified that it was a supportive plan designed to get V.G. back on track. Marino described one of the supports the District had in place, which was reinforcement of expectation of appropriate behavior under the school code of conduct in situations where V.G.'s disability might be triggered.

(f) January 6, 2026

- V.G. opened an exterior door to allow a student access to the building, causing a security concern.
- Consequence: Saturday detention.

On January 8, 2026, Fabricant and Marino met with V.G. to review a behavior chart, which included his targeted behaviors and consequences to provide clarity about consequences and prevent future incidents.

(g) March 5, 2026

- In math class, the teacher changed the seating chart for the class. V.G. refused to move.
- The teacher reminded him to go to his assigned seat.
- V.G. went to a different seat, but not the assigned one.
- The teacher redirected V.G. to the correct seat.
- V.G. left class without permission.
- Consequence: Saturday detention.

D.G. testified that the punishment was excessive for the behavior of leaving the classroom.

(h) March 12, 2026

- In art class, V.G. entered class and placed his phone case in the phone caddy.
- He was later caught using his phone in class. The teacher asked for it, and he refused.
- When the teacher said she would call security, V.G. grabbed the case from the teacher's hands and left class without permission.
- V.G. went to his case manager's office, where he punched the table and started screaming.
- He then left the office without permission in search of his girlfriend, G.R. He went through her bag, attempting to take her phone.
- Marino was able to take V.G. back to the office.
- Due to his yelling and physically aggressive behavior, LDTC Tom Tufaro showed up to assist Marino. Assistant Principal Fabricant and school security monitor Beverly Bell also arrived on scene.
- V.G. became upset, pushed through Tufaro and Marino using his shoulder, and tried to push through Bell.
- Bell calmed V.G. and took him back to Marino's office.
- A few moments later, V.G. left the office without Marino's permission to confront G.R. again.
- Bell was able to take V.G. back to Marino's office. School resource officer Christopher Little and Fabricant were also called to the scene.
- V.G. came to the main office conference room, where he remained until his mother picked him up.
- Little reported that when he followed V.G. out, V.G. was kicking and punching the car window and punching it.
- Later, G.R.'s father called to report that V.G. showed up at his residence to confront G.R.
- Consequence: four-day out-of-school suspension.

During the escalating events on March 12, 2026, when the LDTCs, Marino and Tufar, tried to calm V.G., he approached them with his fists clenched and his arms at a 90-degree angle and spoke to them through clenched teeth and shook his fists with each word he spoke. (P-11.)

D.G. testified that V.G. was searching for G.R. to get his phone back and that he went through G.R.'s bag to get his phone. D.G. testified that the behavior V.G. displayed was out of the ordinary and that G.R. was his first girlfriend and he loved her, and the breakup was difficult and complicated by his emotional dysregulation and disability. D.G.

testified that he believed the suspension was appropriate but felt that his son should have returned to school on the fifth day. D.G. believed that the District exaggerated his son's behavior with the goal of removing V.G. from school. D.G. testified that V.G. never physically attacked anyone, and when he is in an escalated state it is best to give him space, but during the incident on March 12, 2026, school staff blocked the door. D.G. also testified that he never received the BIP until March 13, 2026.

On March 12, 2026, after the breakup with his girlfriend, G.R., V.G. sent her persistent text messages, even after she requested space. In those text messages, V.G. asks G.R. to get back together, or he insults her. In one text he states that she should never interact with his family again or else he would go to her house. On March 13, 2026, V.G. went to her home and threw rocks at her window. (P-7; P-11; P-12.) The police were called and a restraining order was placed. (Ibid.)

D.G. testified that his son did go to G.R.'s house to retrieve his phone and had to jump up to knock on her window because it is elevated, but he did not throw rocks.

The District instituted a "harassment, intimidation, or bullying" investigation because G.R. reported that V.G. was controlling and that he said, "you look like a slut/whore if you wear that outfit." (P-1.) There were also reports of V.G. grabbing G.R. G.R. expressed fear regarding V.G.'s return to school. (P-1; P-11.)

The parents testified that G.R. is not a credible witness, citing her background and instances when she engaged in "promiscuous behavior," referencing a video of G.R. and her friends moving provocatively.

Testimony of LDTC Marino

Paolo Marino worked for the Morris School District for seven years. She holds a master's degree in special education, LDTC certification, certified special education teacher K–6 and a supervisor. She was V.G.'s case manager in 2022–23 while he was in middle school and she developed a close relationship with him and his family. When V.G. went to high school in 2024, his case manager was switched to Kristen Rudiger.

In October 2025, V.G. did not want Rudiger as his case manager and he asked for Marino, and the District obliged. Once assigned, Marino reviewed V.G.'s file. Marino had already been at the high school.

Marino stated that V.G.'s behavior was escalating throughout the 2025–26 school year, as evidenced by one incident per month. When given a directive by a teacher, V.G. often responded by saying, "Fuck off!"

Marino acknowledged that between May 2025 and March 12, 2026, no formal IEP meeting was conducted in response to the escalating aggressive behaviors during that time, but she said that she likes to give time to determine whether the supports need to be adjusted. Marino also acknowledged that some of the supports implemented may not have been in the April 22, 2025, IEP nonetheless the District utilized several supports to address V.G.'s behavior. Marino described one of the supports the District had in place, which was reinforcement of expectation of appropriate behavior under the school code of conduct in situations where V.G.'s disability might be triggered. She also testified that V.G. was allowed to go for a walk to de-escalate, and he would seek out Bev, one of the security guards he liked, to accompany him. Marino testified that the walks did not help. V.G. was given a special pass if he needed to leave a class to de-escalate and seek out Marino or his counselor.

Marino also used a behavioral agreement she had with V.G., which was a visual chart with his targeted behaviors, the school code of conduct, and consequences, to prevent future incidents.

During the escalation periods, Marino intervened to help V.G. "cool off." On March 12, 2026, when trying to calm V.G. in a separate room, V.G. left the room in a fit of anger in search of G.R. and declared that if G.R. is not going to talk to him then he will not allow G.R. to talk to his family, and he ran off to search for G.R. in another room. Marino grew concerned about V.G. behavior and followed him, but G.R. was not in the other room. Ultimately security was called and Fabricant assisted and called J.G. to pick V.G. up. V.G. received a four-day out-of-school suspension.

On cross-examination, when asked whether the District monitored and tracked V.G.'s behavior and collected data and addressed it accordingly with supports, Marino testified that the District does not track, monitor, or collect data, as those are things done in an emotional regulation impairment (ERI) program, which is not offered by the District. Moreover, Marino emphasized the ERI program requires specially trained staff, extensive data review and staff coordination that the District was incapable of implementing.

On March 13, 2026, due to V.G.'s behavior the day before, the child study team (CST) convened a meeting and amended his IEP and placed him on home instruction pending a psychiatric evaluation. (P-2 at A.)

On March 13, 2026, the CST team met with D.G. and J.G. and reviewed and discussed the IEP with them, noting that V.G. had seven behavioral referrals, four of which were infractions involving aggressive physical behavior, resulting in three Saturday detentions and six out-of-school suspension days and recommended home instruction pending a psychiatric evaluation. (Ibid.)

D.G. and J.G. made a timely objection to the proposed IEP and filed an emergent relief application and due process petition.

On April 7, 2026, the CST met and held another IEP meeting, which would have occurred anyway because V.G. was due for his annual IEP review, as the current IEP was set to expire on April 22, 2026. That morning, the District received the psychiatric evaluation from Dr. Rathna Mallela and was going to discuss it at the IEP meeting, but the parents requested additional time to review it, and the meeting was rescheduled to April 8, 2026.

The CST recommended an out-of-district (OOD) placement with home instruction that would have been recommended regardless of the psychiatric evaluation. (P-2 at C.)

The CST notified D.G. and J.G. of its recommendation for OOD placement, citing a need for therapeutic and behavioral supports for V.G.'s escalating behaviors throughout

the 2025–26 school year and seven behavioral referrals resulting in three Saturday detentions and six out-of-school suspension days, with four of the seven referrals involving aggressive physical behavior. (Ibid.) After the meeting, the District provided written notice and sent an IEP proposing an ERI program in an OOD placement. (P-3; P-4 at 19–20.)

Review of Psychiatric Recommendations

Marino reviewed the psychiatric report of Dr. Mallela but did not give it much weight and questioned its validity, since V.G. was only interviewed with D.G. present. (P-2, Ex. B.) D.G. testified that the psychiatrist interviewed V.G. with him present and never asked him to leave.

Marino stated that Dr. Mallela did not elicit any information from her or the District regarding whether the District could implement her recommendations or whether the District tried unsuccessfully to implement any of the recommendations the doctor labeled "School-Based Intervention Plan." (P-2 at B.) The plan mirrored an ERI program, which the Morris School District does not provide.

Marino testified that the District was already implementing thirty-five out of the forty-one recommendations under Dr. Mallela's plan, the school could not implement six, which were the hallmarks of an ERI program.

Under the first section of the plan, titled Reintegration Plan, the District could not implement a gradual reintegration schedule with selected classes or provide "enhanced" supervision during transitions and unstructured periods.

Under the second section, titled Targeted Peer Interaction Risk Mitigation, Marino stated that it was virtually impossible for the District to schedule transitions so that V.G. "did not encounter the peer with whom there is a history of conflict," given the layout of the building and the common lunch hour. During the intake meeting with the psychiatrist, D.G. told the doctor about a physical confrontation V.G. had with a few male students in the fall of 2025 where he was trying to defend G.R., and after reviewing the report, D.G.

inferred that the doctor was talking about one of these students when the doctor recommended scheduling transitions.

Regarding the second point under Targeted Peer Interaction Risk Mitigation, point 2, a 1:1 aide supervision during transitions is inappropriate and stigmatizing, and the parents also objected to that support.

The District was already implementing the third section of the plan, titled Crisis De-escalation and Safety Supports. Marino testified that the District allowed V.G. to go for a walk to de-escalate, and that security guard "Bev" would often accompany him. Marino said that the walks did not help on March 12, 2026. The District also gave V.G. a pass to use in case he needed to leave the classroom to see Marino or his counselor. The District also communicated with the parents regarding V.G.'s behaviors and the supports implemented.

Under the fourth section, titled Therapeutic and Emotional Supports, the District could not implement the fourth point—participation in a social-skills group and conflict resolution—since the District does not offer it.

Under the fifth section, titled Behavioral and Academic Interventions, those supports were available, but for the first point, a functional behavior assessment (FBA) was not conducted; the District requested an FBA in 2023 and the parents declined.

Under the sixth section titled Environmental and Social Supports, the District has no program for the first point—connect student with a peer mentor or supportive peer group for modeling of appropriate behaviors—or the last point—implement regular progress monitoring and review data in team meetings to adjust proactively—as both are a part of an ERI program. Regarding the second point—consider a modified school day—Marino testified that it would not help V.G. and the District should not consider it.

Finally, the plan provided an alternate placement if the District could not manage V.G.'s symptoms or ensure safety despite implementation of the plan, but Marino testified

that the psychiatrist did not contact the District to determine if it had already implemented the supports or whether they were feasible.

The April 22, 2025, IEP

The IEP provided the following behavioral supports:

If V.G. appears to shut down (not disruptive) the teacher should give him five minutes to reset, and if he is still not able to rejoin, the teacher should give him the option of seeing his case manager.

The April 8, 2026 IEP Meeting

On April 8, 2026, V.G. was found eligible for special education services under the Individuals with Disabilities Education Act (IDEA) classification of "other health impairment." D.G. and J.G., along with Marino and members of the CST team, attended the IEP meeting. The prior written notice indicates that the IEP team proposed an out-of-district placement due to the need for therapeutic and behavioral supports integrated into the academic environment. The IEP team also considered the most recent escalation in behavior on March 12, 2026. The team recommended home instruction while they were searching for the appropriate placement. Marino testified that the District provided notice to the parents of the OOD placement under the "Notice Requirements for the IEP and Placement" section. (P-4 at 19–20.) Marino testified that despite receiving counseling services and a behavior plan, V.G. continued to struggle with regulation of his behavior, and the District does not have the resources, team, or trained staff for V.G. to make progress, adding that once "they see regression they have to waive the white flag and seek help from another school with the appropriate program."

The IEP included the following among the supports proposed for V.G. (P-4 at 19):

Provide positive feedback and positive reinforcement;
Ensure clear understanding of the classroom routines and rules;
Provide consistent reward system for the student; and

Provide a safe space for the student to calm down and/or take a walk.

The parents expressed their disagreement with the IEP and they wanted the supports increased, as recommended by the psychiatric evaluation, specifically, a reward system implemented, a safe space to calm down, the ability to take a supervised walk, and having the staff address V.G. privately. (P-4 at 5.)

Marino testified that the accommodations section was a snapshot of the recommendations of the psychiatrist.

The IEP also included behavioral interventions and strategies for target behavior that included a written warning; a visual cue to leave the class to de-escalate for five minutes; and contacting Marino, then Weisenseel, and, third, TRAIL for removal from class. (Id. at 12.)

The IEP team reviewed the recommendations of the psychiatrist and noted that they mirror an ERI program designed for the emotional dysregulation that V.G. exhibits, and the program is not available in the Morris School District. The IEP team agreed with the psychiatrist that an ERI program was appropriate. (Id. at 19.)

The IEP team proposed an OOD placement due to the need for therapeutic and behavioral supports in the academic environment and recommended home instruction while they were searching for an appropriate placement. The District provided prior written notice to the parents before implementing a change in the student's eligibility, program, or placement on page 19 of the IEP; the prior written notice is modeled verbatim on the New Jersey Department of Education's Model IEP and intended to fulfill the notice requirement. (Ibid.)

The IEP team is seeking to partner with an out-of-district school with an ERI program to support V.G. emotionally and behaviorally. (Ibid.) Marino testified that no school was specified in the IEP because no school had accepted yet. Marino explained that once the release of records is executed and records are sent, the OOD school will review the proposed IEP of the sending school and will conduct an intake meeting, and

after accepting the student the OOD school will hold an IEP meeting to determine if the sending school's IEP needs revision and if additional supports are necessary.

ERI Program

Marino had prior experience working in an ERI program in the Clifton school district. She testified that it is an extensive program involving a compilation of data through tracking and monitoring of behavior daily with the use of a BCBA, social worker, principal, school psychologist, and other school personnel. There is also reflection time through group counseling or individual sessions. She testified that other area public high schools in the "least restrictive environment" have a general-education ERI program. She testified that Morristown High School did not have the trained staff or personnel to implement the ERI program. She also testified that the Morristown High School's labyrinth configuration is not designed for an ERI program because it is a large facility that houses 2,000 students.

Given my discussion of the facts, the testimony the parties provided, and my assessment of their credibility, together with the documents the parties submitted and my assessment of their sufficiency, I **FIND** the following as **FACT**:

V.G. is a sixteen-year-old special education student classified as eligible for special education and related services under the disability category "other health impairment." Over the course of the 2025–26 year, V.G. engaged in disruptive, aggressive behavior that came to a tumultuous end on March 12, 2026. I find D.G.'s testimony that Fabricant exaggerated V.G.'s behavior unpersuasive, as he had no personal knowledge of the incidents and based his testimony on information V.G. allegedly told him, and D.G. failed to provide the emails from Fabricant that he alleges support his argument. I further find D.G.'s testimony diminishing his son's behavior unpersuasive and hearsay, as he had no personal knowledge of the incidents and was merely recounting something his son supposedly told him, and there is no residuum of legally competent evidence in the record to support his testimony. I find D.G.'s and J.G.'s testimony regarding G.R.'s background and credibility unavailing, as there is no residuum of legally competent evidence in the record to support their testimony. N.J.A.C. 1:1-15.5(b).

On March 13, 2026, the next day, V.G. went to G.R.'s home to obtain his phone and threw rocks at the window. The District had supports in place to address V.G.'s emotional dysregulation, the other six being the hallmark of an ERI program or unworkable, including implementation of thirty-five out of forty-one of the Dr. Mallela's recommendations the other six being the hallmark of an ERI program or unworkable, the ability to go for a walk, use of a pass to see Marino or his counselor when triggered, and a visual chart to identify targeted behavior and consequences to prevent future incidents, along with reinforcement of expectation of appropriate behavior under the school code of conduct in situations where his disability might be triggered. V.G.'s aggressive and physical behavior continued to escalate after these additional supports. The District did not conduct a formal FBA but instituted several informal BIPs with the consent of J.G. On March 12, 2026, the District imposed a four-day suspension. On March 13, 2026, the IEP team met and placed V.G. on home instruction pending a psychiatric evaluation.

On April 7, 2026, The IEP team received the psychiatric evaluation and held an IEP meeting and recommended OOD placement and home instruction, but reconvened on April 8, 2026, and held another IEP meeting to allow the parents to review the psychiatric evaluation. After hearing Marino's testimony regarding regression and V.G.'s behavioral needs and the inability of the District to manage V.G.'s behavior after employing exhaustive measures, along with her vast knowledge of the ERI program and the CST's recommendation for an ERI program in the April 8 IEP, I **FIND** the April 8 IEP appropriate. The District provided prior written notice to the parents regarding its intention regarding V.G.'s placement. The psychiatrist did not contact the District to determine if the plan was feasible at the District or whether the District had already implemented any part of the plan. The psychiatrist's recommendations mirrored that of an ERI program, which is not available in the Morris School District. The IEP team added additional supports that were a snapshot of the recommendations of the psychiatrist and determined that an OOD placement to a school that has an ERI program is the appropriate placement for V.G. The ERI program is contingent upon the school's configuration and is an extensive program involving a compilation of data through tracking and monitoring of daily behavior with the use of a BCBA, social worker, principal, school psychologist, and other school personnel. The Morris School District does not have an ERI program and its

configuration is not conducive to an ERI program. I **FIND** that Marino is very knowledgeable in the requirements of an ERI program. I further find Marino's testimony persuasive and forthright as to the efforts made by Morris School District to offer educational services and supports to V.G. consistently during the 2025–26 school year.

CONCLUSIONS OF LAW

The Individuals with Disabilities Education Act provides federal funds to help states educate disabled students. See 20 U.S.C. § 1411. A state receiving funds under the Act is required to provide a "free appropriate public education . . . to all children with disabilities residing in the State." 20 U.S.C. § 1412(a)(1). The IEP must state the student's educational status, the annual goals for the student's education, the special-education services and aids to be provided to meet those goals, and the extent to which the student will be mainstreamed, i.e., spend time in school environments with nondisabled students. 20 U.S.C. § 1414(d)(1)(A). The IEP must (1) comply with the procedures set forth in the IDEA and (2) be reasonably calculated to enable the student to receive educational benefits. The process of providing special education and related services to children with disabilities is not guaranteed to produce any particular outcome, and, therefore, the IEP's substantive educational benefits are best measured under the paradigm of appropriate progress based on the unique circumstances of the child for whom it was created. Endrew F. v. Douglas Cnty Sch. Dist., 580 U.S. 386 (2017). The essential function of an IEP is to set out a plan for pursuing academic and functional advancement. Ibid

There is a substantive requirement to a free appropriate public education (FAPE) under the IDEA. To meet its substantive requirement under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress in light of the child's circumstance. Ibid. The reasonably-calculated standard includes recognition that "crafting an appropriate program of education requires a prospective judgment by school officials." Id. at 399. However, "courts must accord significant deference to the choices made by school officials as to what constitutes an appropriate program for each student." Blunt v. Lower Merion Sch. Dist., 767 F.3d 247, 269 (3d Cir.2014) The IEP must be "likely

to produce progress, not regression or trivial advancement." Dunn v. Downingtown Area Sch. Dist., 904 F.3d 248 (3d Cir. 2018).

The IDEA contains a requirement that the IEP for a disabled child educate that child in the "least restrictive environment" (LRE):

> To 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)(A); see. Oberti v. Bd. of Educ. 995 F.2d 1204, 1214 (3d. Cir. 1993).]

The Third Circuit developed a two-part test for establishing LRE: (1) whether education in the regular classroom, with the use of supplementary aids and services, can be achieved satisfactorily, and, if not, (2) whether the school made efforts to include the child in school programs with nondisabled children whenever possible. Oberti, 995 F.2d at 1215.

To make this determination courts must consider, among other factors: (1) the efforts the district made to accommodate the child in a regular classroom; (2) whether any regular-class benefits would be far outweighed by the benefits of special education; or (3) whether the student would be a disruptive force in the regular class. Id. at 1217, 1218.

Before reaching the two-part test, the child must be educated in the LRE that will provide a meaningful educational benefit. See T.R., 205 F.3d at 578. The "IDEA requires that disabled students be educated in the least restrictive appropriate educational environment." Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 249 (3d Cir. 1999). "If the educational environment is not appropriate, then there is no need to consider whether it

is the least restrictive." S.H. v. State-Operated Sch. Dist., 336 F.3d 260, 272 (3d Cir. 2003).

In this case, the in-district placement does not confer a meaningful benefit to V.G. Marino, V.G.'s case manager in middle school from 2022 to 2024 and again upon the request of V.G. commencing in October 2025, testified that V.G.'s behavior escalated from May 2025 to March 12, 2026, despite the implementation of supports and creation of a behavior plan implemented on October 10, 2025; review of the behavior plan on December 18, 2025, with mom, along with updates from additional counseling services; a meeting between Marino and V.G. on January 8, 2026, to review a targeted-behavior chart with consequences; and the numerous measures the District used, including the thirty-five measures listed in the forty-one-point plan proposed by the psychiatrist while communicating the behavior changes and behavioral measures with the parents. Despite the added supports, V.G.'s behavior grew more aggressive, defiant, and disruptive towards students and staff, resulting in a tumultuous ending on March 12, 2026, and demonstration of escalating aggression the following day when V.G. went to his ex-girlfriend's house to confront her. Marino testified that V.G. was regressing despite the added supports. Since October 2025 there were seven behavioral referrals resulting in three Saturday detentions and six out-of-school suspension days, with four of the seven behavioral referrals involving aggressive and physical behavior. V.G.'s behavior started to impact his quality of work in Geometry starting in February when he refused to do work. (P-4 at 6–7.) Marino testified that the District had either attempted or already had in place thirty-five of the proposed measures in the psychiatrist's plan, except for those measures not offered by the District or those that were unworkable, such as scheduling transitions given the school's configuration and common lunch hour, or stigmatizing, such as the 1:1 aide. Dr. Mallela opined that consideration may be given to an alternate educational placement if the District could not manage the student's behavior with the plan. If the psychiatrist had contacted the District upon proposing her forty-nine-point plan that mirrored an ERI program she would have discovered that an ERI program is not offered by the District. Moreover, the CST team and Marino who had prior experience with V.G. as his case manager for over two years, and who previously participated in an ERI program, should be afforded deference regarding the appropriate program for V.G having the best vantage point. She testified that the psychiatrist's plan mirrored an ERI program,

which is not available in the Morris School District and the school's expansive labyrinth configuration does not lend itself to an ERI program, but she agreed that V.G. requires such a program. So, the District agreed with Dr. Mallela that V.G. required an ERI program. Further, Marino testified that despite receiving counseling services and a behavior plan, V.G. continued to struggle with regulation of his behavior, and the District does not have the resources, team, or trained staff for V.G. to make progress, adding that once "they see regression they have to waive the white flag and seek help from another school with the appropriate program." Marino testified that the District does not monitor, track, or collect data on behavior—this is the hallmark of an ERI program, which involves extensive data collection and staff interaction. The parents did not rebut Marino's testimony regarding the exhaustive measures the District implemented during the 2025–26 school year nor present an expert to support their argument for in-district placement with added supports. Therefore, I **CONCLUDE** that in-district placement is not appropriate for V.G.'s needs and an out-of-district placement offering an ERI program is appropriate. I **FURTHER CONCLUDE** that because the in-district plan is not appropriate, there is no need to address whether it is the least restrictive.

ORDER

I **ORDER** that the District's expedited petition seeking an ERI program in an out-of-district placement is **GRANTED** and **I FURTHER ORDER** that V.G. remain on home instruction pending placement at an out-of-district ERI program.

I **ORDER** that the District immediately contact schools offering the ERI program and meet and discuss the programs with the parents within fourteen days from the date of this decision.

I **FURTHER ORDER** that the parents are compelled to enable the District to obtain, release, and/or exchange V.G.'s student records and protected health information with the agencies or individuals in the prospective out-of-district schools.

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.

April 30 , 2026 _____

DATE

ADVIA KNIGHT FOSTER, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

AKF/tc

APPENDIX

Witnesses

For Morris School District Board of Education:

Paolo Marino

For D.G. and J.G.:

D.G.

J.G.

Exhibits

For Morris School District Board of Education:

P-1 Expedited Due Process Petition/Emergent Relief Application

P-2 Certification of Matthew Fabricant, dated April 8, 2026

P-3 Letter from P. Marino to parents, dated April 9, 2026

P-4 IEP dated April 8, 2026

P-5 PowerSchool Log Entries

P-6 P. Marino emails (2023)

P-7 HIB Investigation Witness Statements

P-8 Report of J. Minion, M.D., dated June 7, 2018

P-9 Psychological Evaluation of C. Navarro, dated March 2024

P-10 IEP, dated April 2025

P-11 HIB Investigation Report

P-12 Screenshots

For D.G. and J.G.:

None