



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 16148-24
AGENCY DKT. NO. 2021-31854
(ON REMAND)
OAL DKT. NO. EDS 07421-20
AGENCY DKT. NO. 2021-31854

M.T. AND I.T. ON BEHALF OF M.T.,

Petitioners,

v.

**RANDOLPH TOWNSHIP BOARD OF
EDUCATION,**

Respondent.

Julie Warshaw, Esq., for M.T. and I.T. on behalf of M.T. (Warshaw Law Firm,
attorneys)

Robin S. Ballard, Esq., for Randolph Township Board of Education (Schenck,
Price, Smith & King, attorneys)

Record Closed: February 25, 2025

Decided: April 10, 2025

BEFORE **ANDREW M. BARON**, ALJ:

STATEMENT OF THE CASE

Petitioners, M.T. and I.T. (the parents) on behalf of M.T., filed a Petition for Due Process against the Randolph Township Board of Education (the Board or District), alleging that the District's proposed in-District program for M.T. for the 2019-20, and 2020-21 school year was not appropriate, and that an out-of-district placement at the Hampshire Country School (Hampshire) was appropriate.

Petitioners seek multiple forms of relief, including but not limited to a finding that the District failed to meet its educational obligations to M.T. under FAPE and IDEA for the 2019-2020 school years, and that the Hampshire School was an appropriate unilateral placement for M.T. as of June 2020 to meet his special educational needs; that petitioners are the prevailing party in this action; that petitioners are entitled to full reimbursement for said placement; that the IEP be revised to reflect the placement; that petitioners be reimbursed for all expert fees and costs, including but not limited to reimbursement for the Morris Psychological threat assessment, and that compensatory education be awarded to remedy the denial of FAPE, since January 14, 2020 through the end of the 2019-20 school year, for all out of pocket expenses incurred by petitioners, past, present and future, including but not limited to evaluations, counseling, enrollment in Stepping Forward, litigation costs and counsel fees, as well as punitive and other damages should petitioners be determined to be the prevailing party.

PROCEDURAL HISTORY

On or about July 14, 2020, the parents filed a Petition for Due Process against the District, seeking placement at Hampshire, reimbursement for all fees associated with the matter, and compensatory education. With the case still within the Department of Education, the parties participated in a resolution meeting which was unsuccessful.

On July 18, 2020, the matter was transmitted to the Office of Administrative Law (OAL), and a settlement conference was scheduled for August 20, 2020, September 17, 2020, October 15, 2020, and November 12, 2020, each time the matter was postponed

due to the pandemic. At this point, both parties and counsel agreed to waive the mediation and proceed directly to a contested hearing.

Hearing dates were conducted on February 10, 2021, March 2, 2021, and March 3, 2021. The hearings resumed on April 28 and 30, 2021, May 3, 2021, and were completed on July 19 and 21, 2021. The final transcript for the hearing was received on December 13, 2021. Post hearings submissions were simultaneously filed on January 14, 2022. Oral argument was waived by both sides.

I issued a Final Decision on February 22, 2022, finding that the District denied M.T. FAPE in the least restrictive environment from January 2020 through June 2020 and for the 2020-2021 school year. M.T. and I.T. o/b/o M.T. v. Randolph Twp. Bd. of Educ., EDS 07421-2020, Final Decision, (Feb. 22, 2022), https://njlaw.rutgers.edu/collections/oal/html/initial/eds07421-20_1.html. I also found petitioners' unilateral placement of M.T. at Hampshire School to be appropriate and proper. I concluded that FAPE had not been denied prior to the January 2020 IEP.

I ordered: (1) the District to reimburse petitioners for the cost of tuition and related expenses for M.T.'s enrollment at Hampshire commencing in August 2020; (2) the District to reimburse petitioners for the costs of Dr. Zeisz and Dr. Katz's services, including but not limited to their testing, reports, and testimony; (3) the District to reimburse petitioners for expenses related to Dr. Leeds; and (4) that parties should meet within thirty days of the decision to create an updated IEP for M.T. to reflect his continued placement with an independent autism and behavior evaluation.

I denied petitioners' request for: (1) compensatory education for the three school years prior to the January 2020 elopement; (2) compensatory education for March 13, 2020, through June 2020; and (3) an order requiring M.T. continued placement at Hampshire.

The District sought review of the decision in Federal District Court. The District challenged the decision and moved for a stay of judgment pending the outcome of that challenge. Randolph Bd. of Educ. v. M.T., Civil Action No. 22-1762 (ES) (CLW), 2022

U.S. Dist. LEXIS 129771, at *1 (D.N.J. July 21, 2022). The parents moved to enforce the judgment and to hold the District in contempt. Ibid. The Federal District judge denied the District's motion to stay the judgment and ordered immediate compliance. Id. at *11. The parents' motions to enforce the judgment and hold the District in contempt was deemed moot. Ibid. The denial of the motion for a stay was affirmed by the Third Circuit Court of Appeals. Randolph Twp. Bd. of Educ. v. M.T., No. 22-2540, 2023 U.S. App. LEXIS 16477, at *8 (3d Cir. June 29, 2023). On November 30, 2022, both parties filed motions for summary judgment. Randolph Twp. Bd. of Educ. v. M.T., Civil Action No. 22-01762 (JKS)(CLW), 2024 U.S. Dist. LEXIS 85780, at *17 (D.N.J. May 13, 2024).

On May 13, 2024, the Federal District Court remanded the matter back to the OAL for further clarification on why FAPE was denied and why unilateral placement at Hampshire was appropriate, as well as clarification of testimony, further credibility assessments, and more specific references to evidence. Randolph, LEXIS 85780 at *32. Additionally, the federal judge requested a separate least restricted environment (LRE) and Section 504 analysis. Id. at *28-29.

TESTIMONY AND DISCUSSION

Four witnesses testified for the District, including Cosette Sabota, a school psychologist and member of the child study team, Dara Patel, M.T.'s classroom teacher, Linda McGovern, who serves as clinical director of the District's Sage/Thrive program, and Walter Curioni, Director of Special Services for the District.

Ms. Sobota has been employed by Randolph for the last six years as a school psychologist. She testified that she was trained to administer and interpret cognitive assessments and functional behavioral assessments, as well as occupational, speech/language psychiatric and neuro developmental evaluations. She was admitted as an expert in school psychology. (Feb. 10, 2021 Hearing at 38:9-20).

At the time of her involvement with M.T., Ms. Sobota indicated she had responsibility for approximately thirty students, and she has case managed over 200

students during her career. She also indicated she has conducted approximately 300 IEP meetings as a case manager during her time in this position.

In 2015, Ms. Sobota said she first became familiar with M.T. while serving as a member of the Intervention and Referral Services Committee. She further indicated that M.T. was first classified in May 2016 as 'other health impaired,' based in part on a 2013 diagnosis by Dr. Kathleen Salvaggi-Fadden, and ever since she has served as his case manager.

According to Ms. Sobota, in third grade, with the support that was put in place, M.T.'s teachers found that M.T. was making nice progress. However, at the beginning of 4th grade, M.T.'s teachers and his parents had some concerns about his academic performance, particularly in math. The IEP that year was delayed so psychological, educational, and speech re-evaluations could be conducted, and the parties could come together to address any concerns.

The IEP meeting during 4th grade was held on October 25, 2018. As a result of these considerations, Ms. Sobota indicated that supplemental math instruction was added two times a week.

Evaluations continued throughout the fall of 2018. Ms. Sobota testified that an educational evaluation was conducted by Linda Consales on November 30, 2018. The results of this evaluation showed that M.T. demonstrated low-average scores with a particular weakness in reading passage comprehension.

Continuing the re-evaluations during 4th grade, Ms. Sobota did her own psychological evaluation on December 12, 2018. Among her findings were that M.T.'s cognitive ability fell within the low-average range, as was his I.Q. and non-verbal ability.

What stood out though during Ms. Sobota's testimony was for the first time, during 4th grade, the teachers agreed with concerns expressed by M.T.'s parents that he was rated as "high risk" for anxiety, depression and attention deficit in the clinically significant range, as well as "at risk" for atypicality, withdrawal, behavior symptoms, social skills,

leadership, functional communication and adaptive skills. (Mar. 3, 2021 Hearing at 58:6-7).

The parties met again on December 17, 2018, for an IEP Revision meeting. According to Ms. Sobota, as a result of the recent educational and psychological testing, recommendations were made to M.T.'s programming.

Among other things, M.T. would now attend resource replacement classroom for reading, language arts, and math. In addition, weekly counseling was added because he was not producing work in the classroom, and the parents were reporting negative behavior at home in addition to the risks observed at school. As such, the consensus of the child study team during mid-year 4th grade was that it was in M.T.'s best interests to transition to a smaller class size, with a lower student teacher ratio that moves at a slower pace, sooner rather than later to be more responsive to M.T.'s needs.

Initially, Ms. Sobota said that even though the mid-year change meant less mainstream involvement for M.T., his performance improved, and he was engaged in the work. Ms. Sobota concluded that it was appropriate to maintain M.T. with services, and that his classification should remain "other health impaired—primarily tied to his ADHD."

As a result, for the rest of fourth grade and beginning of fifth, resource replacement classroom was recommended for reading, language arts, math and in class supports for science and social studies. It was determined that M.T. needed a smaller class size with individualized academics "in a slower pace to meet his academic needs."

Also added at this time was counseling once a week, speech and language twice a week, and Extended School Year, (ESY) which was offered when the school year ended in June. The next witness to testify was M.T.'s teacher Ms. Patel. Ms. Patel indicated this was her third year as a special education teacher in Randolph. She has a Master's Degree from N.Y.U. and has K-6 general education certification teaching students with disabilities, as well as a certification teaching students using the Wilson reading program.

Ms. Patel stated that she uses a multi-sensory approach when teaching, does project-based learning with her students and she modifies curriculum and assessment to meet individual student needs.

In 2018, Ms. Patel was contacted by the child study team and advised that a new student, M.T., would be entering her classroom based on the belief that he would benefit from small group instruction. M.T. entered her classroom in 4th grade in the middle of the 2017-18 school year. On a typical day, Ms. Patel stated that she would start the day with a mini lesson, then assign the students independent study work so students could use a skill taught during the mini lesson. She had seven students in the class, including M.T., who entered in the middle of the marking period.

After M.T. entered her class, Ms. Patel stated she was in regular communication with his parents and received multiple emails from them listing concerns they had about challenges he was having with writing. She did not recall receiving emails that M.T. refused to get up, seemed upset about going to school, and that he was upset about not being able to do his homework.

Ms. Patel had a different view of M.T.'s progress than his parents. While acknowledging that he was easily distracted, he was given a phone device to read aloud so he could hear himself. She also said he was frequently engaged in classroom discussions, and that his transition into the class went well.

At the January 24, 2020, IEP meeting, she indicated she felt M.T. would benefit from the Oasis program due to its small class size and therapeutic component. Following Ms. Patel, the District produced Mr. Walter Curioni as its next witness.

For six years, Mr. Curioni has served as the Director of Special Services for the District. Prior to moving into an administrative position, Mr. Curioni, was a History and English teacher certified in special education. He also has a master's degree in programming and IEP development. Previously, he served as Assistant Superintendent for Curriculum with the North Arlington school district. His first involvement with M.T. and his family was in 2015, which was the year he joined the District. Much of Mr. Curioni's

testimony focused on the incident which occurred on January 14, 2020, and the events that followed through the onset of the Pandemic through the end of the school year in June.

On the day of the incident, he received a call from the secretary to the principal of the Center Grove school, alerting him that a student had eloped (left) the building. Arriving a few minutes later, he observed M.T. close to Schoolhouse Road outside the school. Both Mr. Curioni and the principal found it necessary to restrain M.T. as a safety precaution, and M.T. was returned to a vacant classroom in the building until his parents could be contacted.

The events that followed are somewhat unclear. Even though M.T. was observed waving pencils, overturning a desk and throwing a stapler, Ms. Sabota indicated in her opinion the elopement and M.T.'s behavior was not severe enough to constitute a suicide threat. In fact, no written report of the incident was filed, even though M.T. was not allowed to return to school until he received medical clearance, which had to be approved by the District physician Dr. Ciufalo.

According to Mr. Curioni, the family was offered the opportunity to take M.T. to the District designated St. Clares Behavioral Health Center, which would be paid for by the District. The alternative was for the parents to take M.T. to their own mental health professional, which is the avenue they chose, and so they took M.T. to Dr. Stuart Leeds.

At first, Dr. Leeds said M.T. could return, on the condition the District would provide a 1:1 aide for M.T. When that option was rejected by the District, he revised his report to remove that recommendation, but did not specify a date for M.T. to return.

Mr. Curioni indicated that in the eyes of the District, and particularly its own medical physician, Dr. Leeds' findings were not sufficient for M.T. to gain clearance to return. The school physician, Dr. Ciufalo, tried but was not able to communicate with Dr. Leeds, so it was determined that for the time being M.T. would be placed on home instruction of ten hours a week, which is the statutory minimum. It is unclear why there were no further attempts by Dr. Ciufalo or the District to clear M.T. to return to school prior to the onset of

the Pandemic sixty days later when all schools were closed. Although the word suspension was not used, Mr. Curioni admitted while preparing for his testimony that M.T. was listed as suspended, but because the District did not consider M.T.'s removal to be a suspension, it did not follow the process which calls for a manifestation determination/hearing after ten days away from school.

Under District policy 5450, there are sequential steps to secure medical clearance to return to school, including the option for parents to seek an evaluation from their own psychologist, which in this case petitioners did. Mr. Curioni indicated that the District told petitioners if St. Clare's was not used, the District would not reimburse the parents for the evaluation.

What happened next is also somewhat confusing as to why M.T. was never cleared to return to school during the sixty days leading up to the Pandemic if in the eyes of the District the elopement behavior was an isolated incident, which Mr. Curioni emphasized throughout his testimony.

Mr. Curioni testified that neither of Dr. Leeds' reports were sufficient to give M.T. medical clearance to return to school. He indicated that the second letter from Dr. Leeds, (which removed the recommendation for a 1:1 aide) was turned over to the Randolph counseling department, which led to the development of a home instruction program.

Although there was conversation about the District having a relationship with Stepping Forward, which petitioners chose to work with M.T., there was no explanation about why there were no further efforts by the District during this time for M.T. to return to school, even though his removal was not deemed a suspension. Recognizing the need for some form of counseling combined with education and home instruction without a path to return to school, M.T.'s parents enrolled him in Stepping Forward.

I found parts of Mr. Curioni's testimony lacking in credibility because while he is experienced and professional, he seemed more concerned about defending the position of the District than on looking more closely at what might be in M.T.'s best interest. If the District was not concerned about M.T. being a long-term behavior problem in school, and

did not deem a full behavioral assessment necessary following the January 2020 elopement, then at a minimum, the District's physician should have been required to collaborate with Dr. Leeds for a faster return to school.

Mr. Curioni provided his recollection of what occurred following the determination to place M.T. on home instruction. He indicated that any further medical treatment would be up to the family, and by choosing Stepping Forward, they had assumed responsibility for the educational component as well.

He further indicated that placement at Stepping Forward does not indicate that a student's educational program is not appropriate since it is usually temporary and because most students return to the District. He and other District staff were in contact with Stepping Forward at the beginning of the placement, but he admitted there was no follow up thereafter to determine M.T.'s progress. There was also no discussion between the District and Stepping Forward as to a timeline for M.T. to get clearance to return to the District, even though sometimes Stepping Forward provides medical clearance in its discharge paperwork. In fact, Mr. Curioni's next communication with Stepping Forward was not until he was preparing to testify at this hearing.

When the last IEP meeting was scheduled for January 24th, ten days after the elopement, Mr. Curioni indicated that it wasn't necessary to change M.T.'s current IEP, since his current situation was temporary. Thus, the primary focus of the meeting was to discuss what program the District would provide for M.T. in 6th grade, as he transitioned to middle school.

He strongly believed that the District's Oasis program could meet all of M.T.'s needs. He also concurred with the child study team's rejection of Dr. Zeisz's autism diagnosis, which was not incorporated into the IEP. The District declined to conduct its own evaluation as to whether M.T. was on the spectrum. And because the January 2020 elopement was considered an isolated incident, Mr. Curioni testified that a behavior plan was not necessary, nor was a safety and elopement plan required. Still, there was no discussion about a timeframe for M.T. to return to school.

Mr. Curioni's testimony then shifted to the onset of the pandemic and the closure of schools as of March 13, 2020. Like most Districts throughout the State, initially there was confusion about how to continue offering education from a completely virtual platform. At first, the District obtained materials and resources and deployed them to students' homes. Thereafter, it shifted to a combination of live meetings using Microsoft Teams software in an effort to mirror a typical day, albeit without anyone physically being in school.

Students like M.T. who were receiving home instruction were required to shift to the virtual platform everyone else was using. To maintain some level of consistency, the District was able to add an additional two hours a week of instruction from Ms. Mott and Ms. Dawson, teachers that M.T. had a rapport with, but when the parents asked for more hours from these two educators, the District was unable to accommodate M.T. because they also had a full virtual schedule for a different grade level of students. In an effort to increase the level of educational support for M.T., the District also added a paraprofessional, Ms. Hodi to his teaching team.

Mr. Curioni was aware that M.T. had great difficulty adjusting to a fully virtual platform. The District experienced an uptick of absences during this time, with many students like M.T. not signing onto their computers. Even for students who were not participating, Mr. Curioni explained that an internal decision was made within the District not to file truancy charges, and not to refer cases to DCF for neglect investigations. The combination of the elopement in January 2020, home instruction, and the switch to virtual instruction in March 2020, made it challenging for M.T.'s teachers to assign him grades for the 2nd and 3rd marking periods.

Throughout this time, the members of the child study team were in agreement that there was no need to change anything about M.T.'s IEP, since they felt all of the goals and objectives were still attainable. Meanwhile, Mr. Curioni was aware that M.T.'s parents continued to maintain that following the removal from school in January 2020, they did not believe he was making meaningful progress with the combination of home instruction and Stepping Forward, and believed he had regressed during that time, and certainly from March 13, 2020, through the end of the school year with virtual instruction due to the

Pandemic. As far as Mr. Curioni knew, M.T.'s parents did not avail themselves of virtually every service the District offered during the pandemic. These services included personal calls to help access all live classes, speech therapy and telehealth counseling services.

He indicated that the State encouraged Districts to provide compensatory education to its special education students, for which he set aside extra money, but there is no indication that such services were offered to the family once they initiated requests to look at alternate placements.

In fact, once the parents sent the required ten-day notice of their decision to place M.T in a residential setting outside the District, the District did not engage in any talks or fact finding with them. Instead, Mr. Curioni responded by saying: "we will vigorously defend the District's position in litigation." He also conveyed to the parents that an out-of-district placement or residential placement was not needed.

There was no further dialogue between the parents and Mr. Curioni on this issue, either during the ten-day notice period, or throughout the rest of the summer of 2020. His testimony was silent on the issue of whether or not he or any member of the behavioral services team and/or child study team ever put together a re-entry plan for M.T. following the January 14th elopement after M.T. was placed on home instruction. The District prepared to physically re-open its schools in September 2020.

Also testifying for the District was Linda McGovern. Ms. McGovern has worked for the District for seven years and is employed by the Thrive Alliance Group as a clinical supervisor of the in-district program.

Ms. McGovern said her job includes collaborating with child study teams, guidance and teaching staff to assist students with mental health needs. She provides talk therapy to children with autism and has had great success with some of the students on the autism spectrum over the years. She also sees some students through her private practice that she has operated for six years. Her testimony did not include a discussion about whether she agreed with Dr. Zeisz's evaluation that M.T. was on the autism spectrum, which was rejected by the District outright.

Ms. McGovern testified that when she is able, she includes family therapy with children she is servicing because she believes it is integral to a child's success. Ms. McGovern has a BA in Psychology, a Master's of Education in counseling services, and is a licensed professional counselor.

She described Sage/Oasis, which was the IEP recommended program had M.T. remained in the District for 6th grade. According to Ms. McGovern, the program is a small, structured-learning-environment classroom for emotionally fragile students. The program model is set up with one main teacher, another language arts teacher for English, a one-to-one aide together with a Thrive clinician.

She also said the program has resulted in a significant decrease in hospitalizations for students who have returned from hospitalizations at places like St. Clare's, and a major decline in these students' needs for partial hospitalizations. Although she felt M.T. would benefit from Oasis/Thrive, Ms. McGovern did not explain why he made a good candidate for the program, since he was never hospitalized, and the District downplayed the elopement as an isolated behavioral incident.

Though it is unusual to offer these counseling services mid-year to 5th grade students, Ms. McGovern indicated that after she heard from Mr. Curioni, both she and Ms. Malatesta contacted petitioners to introduce some services to M.T. Although M.T.'s mother did come to school in late February 2020 to observe Oasis, petitioners did not follow up on Ms. McGovern's offer to participate in family counseling, or counseling for M.T.

Testifying first for petitioners was Dr. Jennifer Zeisz. Dr. Zeisz is a licensed clinical psychologist with expertise in autism and developmental trauma. She earned her Ph D. in clinical psychology from DePaul University in 1997. I found Dr. Zeisz very credible and her report on M.T. thorough. (P-60, 61.) She was candid about what credentials she did, and didn't, have.

Most of her testimony focused on her autism diagnosis. Dr. Zeisz indicated that she has been involved with approximately sixty students a year for the past ten years that fall into this category. She was aware that M.T. was not diagnosed as being on the spectrum at an earlier age, but that did not influence her opinion as many adolescents do not start to show signs of autism until they develop and grow, and parents of children with autism frequently ignore the signs or do not know where to go for an appropriate diagnosis. Her diagnosis was based on a number of factors, including but not limited to poor communications skills and difficulty in expressing thoughts. In her opinion, M.T. does not have the ability to socialize with his peers and does not appear to engage in activities and maintain peer relationships. She also noted that he struggles to interact appropriately with adults.

Dr. Zeisz further found that M.T. had a full-scale IQ only in the 80's and level 1 social communication deficits and Level 1 restrictive repetitive behaviors. She found that M.T. has difficulty in social-emotional reciprocity, non-verbal communication (empathy and understanding tone and facial expressions) development of friendships and expresses a lack of behavioral flexibility. Dr. Zeisz also found that M.T. has sensory processing challenges. She confirmed that M.T. meets the criteria for attention deficit disorder and anxiety disorder, but not OCD. At the time of her evaluation, she was of the opinion that the parents still wanted to work with the District, and at the time she did not recommend a residential placement.

A couple of months later Dr. Zeisz revised her report to recommend that M.T. should enter a residential placement. Although it is not exactly clear why she changed her opinion, she indicated that she was influenced by the fact that in traditional academic settings, children still have to navigate a much larger environment, and M.T. was increasingly aware that he was being treated differently and had low self-esteem. After learning more about Hampshire, she was comfortable stating that she believed M.T. would benefit from such a residential setting. No one from the child study team contacted Dr. Zeisz after receiving her report to ask for more information about her autism diagnosis, nor did the team consider doing its own independent evaluation on this issue to consider or rule out how this might factor into M.T.'s IEP which was still being formulated.

Also testifying as a witness for petitioners was Dr. Barry Katz. Dr. Katz is a clinical forensic psychologist at the West Essex Psychology Centers since 1993. He is the director of the practice and conducts evaluations of adults and children. He has a Ph.D. in psychology and is licensed to practice in New Jersey. After voir dire, Dr. Katz was admitted as an expert witness in forensic psychology, clinical psychology, psychological evaluation diagnosis, and treatment of children and adults with developmental disorders and autism spectrum disorder. I found Dr. Katz qualified and highly credible. In preparing his report on M.T., among other things, Dr. Katz reviewed the District's evaluations of M.T. from 2016-2019. He confirmed that M.T.'s I.Q. was in the low average range. He confirmed that he agreed with the ASD diagnosis. (April 28, 2021 Hearing at 208:14).

When looking at the BASC scores, he found multiple problems evident beyond ADHD, which could have also been consistent with M.T. being on the autism spectrum. Dr. Katz expressed concerns about certain aspects of the District's Functional Behavioral Assessment which were indicative of M.T. not being able to hold himself together for situational demands, as well as losing focus and emotional control.

Dr. Katz concurred with Dr. Zeisz that it was unlikely that M.T. would respond to talk therapy, (which was an essential component on the District placement which was proposed for the next school year).

Dr. Katz spent a great deal of time testifying about why he believed the District had failed to recognize over time M.T.'s level of distress, which culminated in the January 2020 elopement from school. And after home instruction was put in place, he indicated that the notes from the Stepping Forward counseling sessions for the less than two months M.T. was in that program showed the treatment and intervention from January 2020 through March 13, 2020 had little success, thus corroborating his belief as well as Dr. Zeisz that M.T. did not benefit from talk therapy, which again is an essential element of the program proposed by the District for 6th grade.

Dr. Katz emphasized that M.T. showed evidence through the Stepping Forward counseling notes of multiple challenges, including but not limited to disruptive mood regulation disorder, oppositional defiant disorder, generalized anxiety, obsessive

compulsive disorder, autism spectrum disorder, in addition to ADHD and social communication disorder.

In Dr. Katz's opinion, the interventions that had been implemented previously by the District were not appropriate and led to a downward spiral which culminated in the elopement from school. He concluded his testimony with the opinion that M.T. needs a higher level of care which could be provided by a residential placement geared towards children with developmental disorders, including but not limited to autism.

Elizabeth Bruno, who serves as principal of the Hampshire School where petitioners placed M.T., testified. Though called as an expert, she was not admitted in such a capacity and her testimony was limited to being a fact witness. She does not have a degree in special education.

Ms. Bruno gave some background on Hampshire. She indicated that Hampshire serves students who she described as "Neurotypical." She said the school population is small, with fifteen students enrolled in various age groups. The philosophy of the school in educating students with autism is to avoid labeling those students. At Hampshire, the school relies on four pillars of learning, to be, to do, to know and to live well with others. According to Ms. Bruno, M.T. started his journey at Hampshire in late August 2020.

After an initial challenging transition period which is normal for new enrollees living away from home, the staff started to see big changes in his behavior in late October/early November. He carried a full schedule of reading writing, math history and science as well as two electives. She indicated that the staff had reported improvement in academics though M.T. continues to struggle in certain areas. However, what impressed her was that M.T. was playing an active role as a member of the Hampshire community and was showing signs of less avoidance. She said at all times the staff tries to avoid putting M.T. in positions that would lead to "sensory overload."

Mrs. T., M.T.'s mother testified. She indicated that as early as pre-school, she and her husband sought professional help for M.T. on their own, which involved several therapists. They consulted with Harmony Pediatric Therapy. Throughout the years, talk

therapy did not work with several therapists, a conclusion that was corroborated by both Dr Zeisz and Dr. Katz. One therapist, Dt. Thom discharged M.T. due to the severity of his behavior, which she believed was better suited to an intensive outpatient program. Other therapists he saw were Dr. Gates, Kelly McLaughlin, Warren Ververs, and Dr. Bell. Mrs. T. did not understand why the District did not reach out to any of the other therapists, at least two of whom, Dr. Ververs and Dr. Bell thought M.T. was best suited for a residential placement.

Following the elopement in January 2020, she and her husband selected Stepping Forward to work with M.T. after he was placed on home instruction and unable to get clearance to return to school. She indicated that Stepping Forward also recommended a residential program would be appropriate for M.T., which Dr. Katz had testified to from his review of their clinical notes. Mrs. T. indicated that this recommendation came from Dr. Nouri Ghahary, Stepping Forward's clinical psychologist and their therapist Sarah Green.

Mr. T. advised that these Stepping Forward staff members believed M.T. would be most successful in an out-of-home placement where his individual needs could be targeted and reinforced in order for more significant change to occur, and this information had been conveyed to the District. According to Mrs. T., another letter from M.T.'s neurologist, Dr. Cargan, was also ignored by the District regarding M.T.'s educational and psychological needs. Mrs. T. stated that with the onset of the pandemic in March 2020, Stepping Forward closed, and M.T. essentially shut down as he was unwilling to convert to the new virtual method of learning that had been set up by Randolph.

Mrs. T. further indicated that she was troubled by the fact that the District refused to pay the transportation costs associated with Stepping Forward, which was recommending ten hours of academic instruction. As M.T. continued to struggle after Stepping Forward closed, and M.T. essentially shut down and declined to sign on, she expressed her frustration that the District and particularly Mr. Curioni refused to even consider an out of district placement and continued to close the door on considering this option even during the ten-day notice period in June 2020. The only response she got was that the District would "vigorously defend the District's position in litigation."

M.T.'s father, Mr. T., also testified. He indicated that in October 2019, he and his wife decided they had to do something further for M.T., so they consulted with an educational consultant Lucy Pritzker. Initially, Mr. T. indicated they did not go this route for the purpose of seeking a residential placement for M.T. According to Mr. T., they were simply trying to get additional information about alternative ways to address his needs. As the situation evolved and all schools closed, he said they considered Cherokee Creek and Hampshire. He was aware Ms. Pritzker is a board member at Hampshire. According to Mr. T., he and his wife settled on Hampshire because they wanted a program for him that functioned 24 hours a day, and since his enrollment there, even through Covid, they have noticed a marked improvement in their son.

The final witness called was Mr. Curioni for rebuttal. He indicated again that from January 2020 through March 13, 2020, M.T. was not medically cleared to return to school, but after the school went entirely virtual, he was again allowed to participate. He emphasized that a referral to Sage counseling was made within 24 hours of the elopement incident, but the parents did not follow up. He never answered questions about why the District and/or the school physician did not make more of an effort to help secure medical clearance for M.T. to return to the District during the sixty days he was on home instruction before the onset of the pandemic. He did not dispute his comments in June 2020 about defending the District's position in litigation during the ten-day notice period, and did not deny that the District was not open to other alternatives as he remained of the opinion that the in-district, Oasis/Sage program which was proposed for sixth grade was appropriate for M.T.

In general, I found all witnesses to be professional and honest. However, there was a stark difference between how each side discussed M.T. The parents and their witnesses credibly testified that before going to Hampshire M.T. was struggling emotionally and academically, lashing out at home and at other non-school locations, that he hated school, and that the January 2020 elopement did not feel like a one-off incident. The District's witnesses, however, testified that M.T. liked school, did not have any significant behavior problems, and that the elopement was a one-off incident that did not require a significant change in his IEP beyond recommending him to the Sage/Oasis program.

I don't doubt that M.T. behaved differently at home and at school, but I find these two narratives to be incompatible. So while I find the District's witnesses professional and truthful, I also find that their credibility is lessened by the testimony put forth by petitioners' witnesses. Specifically, I find it incredible that Mr. Curioni and the other District witnesses continually downplayed the severity of the January 2020 elopement and the decision not to take M.T.'s autism diagnosis into consideration.

Having had an opportunity to consider the evidence and to observe the witnesses and make credibility determinations based on the witnesses' testimony, I **FIND** the following **FACTS** in this case:

FINDINGS OF FACT

1. At the time of the February 22, 2022, Initial Decision, M.T. was a sixth-grade student at The Hampshire School, a private residential school which specializes in meeting the educational and behavioral needs of students with learning disabilities.
2. While in pre-school, M.T. showed early signs of learning disabilities.
3. In 2013, petitioners brought M.T. to Dr. Tara Gleason, a Neurodevelopmental Pediatrician and Dr. Kathleen Selvaggi Fadden.
4. Dr. Gleason and Dr. Selvaggi diagnosed M.T. as having ADHD, and the diagnosis was shared with the District.
5. Almost three years went by before in 2016, the District was referred to the child study team for evaluation and classification for eligibility to receive special education services.
6. Petitioners were advised in 2016 that M.T. would receive services under the classification "Other Health Impaired," and an I.E.P. was prepared to reflect these findings.
7. In third grade, M.T. participated in general education subjects, reading, language arts, math, science and social studies which were co-taught by general education and special education teachers.

8. At the beginning of fourth grade, M.T. started to exhibit signs of difficulty in the general education classroom, even with the supports in place from the prior academic year.
9. As a result, another I.E.P. meeting was held on October 25, 2018, which led to the addition of supplemental support for math two times a week.
10. The parties met on November 20, 2018, to plan M.T.'s reevaluation.
11. Linda Consales, M.Ed. conducted educational testing of M.T. on November 30, 2018.
12. The outcome of the educational evaluation showed that he had difficulty with comprehension, his writing skills fell in the low average range, and that M.T. appeared in the evaluator's words, "anxious and angry," when called upon to do a timed writing task.
13. The educational evaluation was followed by a psychological evaluation, which was conducted by Cosette Sobota on December 12, 2018.
14. Ms. Sobota, a psychologist and member of the child study team found that M.T. was a student of low average intelligence as shown on the Wechsler Intelligence Scale.
15. Ms. Sobota's evaluation also supported specific behavioral concerns as reflected on the Behavioral Assessment Scale for Children.
16. After continued advocacy by petitioners, while M.T. was in 4th grade, based on a combination of factors, another IEP meeting was scheduled on December 17, 2018, before M.T.'s reevaluation was completed to review MT's placements for reading, language arts, and math.
17. A speech and language evaluation were conducted by Kristen Halikias, M.S. CCC-SLP and a report of the same were provided on January 7, 2019. The testing revealed that M.T.'s core language abilities fell at the 7th percentile, and his listening comprehension skills were at the 12th percentile on the Clinical Evaluation of Language Fundamentals. His score on the Oral Passage Understanding Scale was also at the lower end at the 12th percentile.
18. The outcome of this meeting was to place M.T. back into a pull-out resource class for reading, language arts, math and to add in-class support for science, social studies individual speech and language therapy twice a month, and counseling services once a week.

19. Although counseling services were added, there was no formal Behavioral Intervention Plan as part of this revised IEP.
20. On January 17, 2019, the parties met again as part of M.T.'s annual reevaluation in order to determine M.T.'s continued eligibility for special education services. The meeting took place during mid-year 4th grade and looked ahead to 5th grade for M.T.
21. As she had several times before, M.T.'s mother continued to express concerns about his speech, his lack of performance in reading, and his lack of social skills.
22. Prior to the January 19th, 2019, reevaluation, a psychological assessment conducted by Ms. Sobota showed that a majority of M.T.'s scores were in the clinically significant range, including some areas which were deemed "at risk." M.T.'s teachers, who were consulted in connection with this evaluation concurred that M.T.'s behavior was in the "clinically significant" range.
23. Although the Team did not see negative behaviors by M.T. in school, a Functional Behavioral Assessment was conducted by Barbara Gontarski, M.A.T. BCBA.
24. A month before the January 2019 reevaluation, M.T.'s mother expressed concern to the District that he was "melting down while trying to do assignments and keep up with his work.
25. When M.T.'s mother raised the possibility of alternative settings for M.T., she was told that the District needed to try "every avenue possible" before considering such a move, and she was further told by Mr. Curioni "there was no need for it" because the District could properly take care of M.T.'s needs.
26. A week before the January 2019 reevaluation meeting, M.T.'s mother wrote to the team that M.T. was hysterical in the morning because he refused to do his homework and didn't want to go to school.
27. On February 27, 2019, she again wrote to the team, this time to Ms. Webster and the case manager indicating that M.T. is increasingly agitated, is sad, and is not understanding/growing with the material being presented in school.
28. This was followed up with another communication in mid-March 2019 that a pattern was developing with M.T. who continues to get upset and frustrated by his inability to complete the work and is worried about getting in trouble at school for not finishing his assignments.

29. The dialogue between M.T.'s mother and the District continued over the same areas of concern in May 2019 because M.T. was having difficulty with executive functioning and unable to comprehend the materials in the packets that were coming home with him.
30. On May 17, 2019, M.T.'s IEP was amended to change his supports for science and social studies because Ms. Sobota and petitioners agreed that the teacher who was scheduled to provide the in class supports would not be a good fit for M.T.
31. M.T. was offered admission to the District's Summer 2019 ESY Program, but petitioners determined that M.T. would benefit more from social encounters at summer camp, so they did not enroll him in ESY.
32. Additional communications expressing continued escalation of M.T.'s anxiety and challenges with schoolwork were sent in November 2019 and early January 2020.
33. When M.T. started the 2019-20 school year, his poor behavior at home accelerated, and petitioners enrolled him in counseling with Perform Care after he went after his father with a knife.
34. In November 2019, there was a bullying incident against M.T. on the bus, which was handled internally by the District with assistance from the school psychologist.
35. Although the situation was resolved, it left a lasting impact on M.T.
36. In January 2020, M.T.'s behavior at home declined further and he became verbally abusive to members of the family, would not complete routine household chores, and did not focus on his work for school.
37. On January 14, 2020, after giving his parents a hard time about going to school, M.T. left (eloped) from the school building and ran towards a busy street.
38. M.T. had to be restrained by the school principal Mr. Rodas, and Mr. Curioni who arrived shortly thereafter.
39. After he was returned to a nearby classroom, the District invoked a series of protocols it was required to follow when such situations occur.
40. Petitioners were contacted and asked to pick up M.T. from school.
41. Because the incident involved threats by M.T. to do harm to himself and others, the parents were given a choice of having him evaluated by the designated school mental health facility at St. Clare's, or in the alternative by their own psychologist.

It would require clearance by one of these medical officials before M.T. would be allowed to return to school.

42. Not trusting of the District's preferred evaluation is a hospital setting, petitioners took M.T. for an evaluation by their own physician, Dr. Leeds. (July 19, 2021 238:22-25 to 239:1-4).

43. Dr. Leeds determined that M.T. could return to school, but only if the District added a 1:1 aide, which the District rejected. (R-19).

44. Although Dr. Leeds prepared a second report which was amended to remove the 1:1 aide recommendation, the school physician, Dr. Ciufalo, who is required to be involved before M.T. could return to school was not satisfied and did not sign off on M.T. being cleared to return.

45. Dr. Ciufalo attempted to reach Dr. Leeds to seek clarification on some of the information in his reports, but the two never connected.

46. During this time, the District did not conduct a manifestation determination hearing, although the District argued M.T. was not suspended, so this type of hearing was not necessary. (Feb. 10, 2021 Hearing at 123:14-15).

47. Although the District argued that the elopement incident on January 14th was an isolated situation and M.T. that had not often exhibited behavioral challenges while in school, the District made no further attempts to have him return to school instead of home instruction which continued for a period of sixty (60) days up to the onset of the Pandemic.

48. It was petitioners, not the District, who enrolled M.T. in Stepping Forward, after it became apparent that the District was not taking further steps to secure medical clearance for M.T. to return to the classroom, even though they represented that the elopement was an isolated incident.

49. Without medical clearance to return, on January 29, 2020, two weeks after the incident giving rise to M.T.'s removal from school, the school implemented a home instruction program for M.T. with a minimum of ten hours of instruction per week.

50. M.T. was also enrolled by petitioners at this time in a program known as Stepping Forward, but the District never inquired of Stepping Forward about M.T.'s progress while enrolled in the program. (Mar. 3, 2021 Hearing at 113:15-18).

51. In fact, from January 14, 2020, through the onset of the Pandemic in mid-March 2020 when all schools were shutdown for in person learning, there were no further

attempts by the District to engage with Dr. Leeds and/or petitioners to determine if there was a way M.T. could be medically cleared to return to school.

52. On January 24, 2020, ten days after M.T.'s removal from school, the parties met for the next IEP meeting.

53. The District did not ask the school physician, and/or Dr. Leeds for input on what circumstances M.T. could return to the classroom, which would have been the Least Restrictive Environment, instead of home instruction.

54. The District never proposed a re-entry plan for the remainder of the 2020 school year in the two months while M.T. was on home instruction before the onset of the Pandemic. (Feb. 10, 2021 Hearing at 91:18-21).

55. It is undisputed that although the District would not allow M.T. to return to school because there was no medical clearance, (R-21), the District did not believe that a Functional Behavioral Assessment was necessary for this IEP, since they believed that M.T.'s elopement was an isolated incident and had only occurred once before.

56. The District did not make an effort at the January 2020 IEP meeting to develop a method for M.T. to return to school in the short term, and no timeline was discussed for a physical return to school.

57. Instead, most of the meeting focused on the expectations and program for middle school, through the Oasis program, which M.T. would be entering in September 2020.

58. The 6th grade program proposed by the District was identified as the Oasis program, which consisted of a classroom with a student-teacher ratio small, complemented by counseling through the SAGE therapeutic program, in the form of what is commonly referred to as "talk therapy."

59. This program was recommended due to the recognized need for higher clinician care after the January incident, as well as the small student-teacher ratio for math and language arts. Still, the District continued to refer to the January 14th elopement as an "isolated incident," which did not require a full Functional Behavioral Assessment. There was no discussion of a route to return to the classroom for the remainder of the 2020 school year, even before the onset of the Pandemic.

60. In the interim, even though M.T. was on home instruction, SAGE counseling services were offered, and Linda McGovern, the director of the program, was introduced. Family counseling is a prerequisite to SAGE, and it is unclear if the family ever engaged in such counseling. (Mar. 3, 2021 Hearing at 15:17).
61. For its participants, SAGE staff develops a plan based on identified problem areas, but it requires a level of cooperation with the family. The primary component of this form of counseling is “talk therapy.” (Mar. 3, 2021 Hearing at 11:9).
62. Petitioners did not avail themselves of what SAGE was offering while M.T. was on home instruction and instead relied on whatever services were being provided through Stepping Forward.
63. Prior to the IEP meeting, petitioners had M.T. evaluated by a psychologist Dr. Jennifer Zeisz. (P-48).
64. Among other things, Dr. Zeisz determined that part of M.T.’s behavior issues, and his challenges in school could be explained because she was of the belief that he was on the autism spectrum. (April 28, 2021 Hearing at 115:1-6).
65. Dr. Zeisz did not believe that M.T. would benefit from “talk therapy” which is an essential element of the Sage/Thrive program that was being recommended for M.T.’s sixth grade placement in the District. (April 28, 2021 Hearing at 162: 18-24; April 30, 2021 Hearing at 34:1-15).
66. Although Dr. Zeisz’s report was provided to the IEP team in advance of the meeting, the District did not accept the finding that M.T. was on the autism spectrum and refused to include it in the IEP. (Feb. 10, 2021 Hearing at 189:3-6).
67. In so doing, the District relied on a pediatrician’s determination from years earlier that M.T. did not have autism.
68. Part of the district’s concern about the autism diagnosis was that Dr. Zeisz is not a medical doctor, and its belief that only a medical doctor can diagnose autism. (Mar. 3, 2021 Hearing at 137:14-17).
69. There are several professionals who have training to diagnose autism, including but not limited to medical doctors, developmental pediatricians, psychiatrists, neurologists and counseling psychologists, school psychologists and clinical psychologists. (Apr. 28, 2021 Hearing at 70:24-25).
70. Dr. Zeisz has a Ph.D. in clinical psychology, thus giving her the background to diagnose autism.

71. Everything changed with the onset of the Pandemic on March 13, 2020.
72. An Executive Order signed by the Governor prohibited in person instruction, and all school statewide including Randolph were closed.
73. With no precedent for how to deal with this situation, Randolph procured materials and resources and deployed them to students' homes and then set up a virtual schedule for students using Microsoft Teams software. (July 19, 2021 Hearing at 98:9-18).
74. M.T. hardly participated in the online learning which was implemented by the District after March 13, 2020.
75. Under this learning method, the District did its best to mirror a typical day, as if the students and staff were physically in the building.
76. Although a directive dated March 23, 2020, was issued requiring districts to offer special education services to the "most appropriate extent possible," very little guidance was offered about how to achieve this goal. (Mar. 2, 2021 Hearing at 40:19).
77. Upon learning that Stepping Forward was fully closed, the District stepped in to offer remote learning to M.T. (July 19, 2021 Hearing at 98:9-18).
78. M.T. hardly ever willfully participated in the online learning that was provided by the District through the end of the 2020 school year.
79. There is no indication that after Stepping Forward ceased operations, the District ever attempted to learn if M.T. had made any progress as a participant in that program.
80. There was no request by the District for petitioners to sign a release to get the Stepping Forward records, or to speak with his counselors.
81. Thus, at the start of all remote learning in March 2020, there was no basis for District and school officials to determine M.T.'s educational, and/or psychological status for the remainder of the school year. (July 19, 2021 Hearing at 98:9-18).
82. As the online instruction ensued after Stepping Forward closed and the schools closed, M.T. had a hard time transitioning back to the class he had not been a part of for two months. (Mar. 2, 2021 Hearing at 94:6).
83. He essentially refused to sign on and participate, and his mother felt he was "embarrassed" to rejoin his peers. He also refused to participate in speech services which the District offered to resume in accordance with his IEP.

84. Before the pandemic, M.T. preferred working with his home instruction teachers, Ms. Dawson and Ms. Mott. (Feb. 10, 2021 Hearing at 130:14-24).
85. Once the pandemic ensued, home instruction in person was no longer an option, and M.T. fell even more behind, and could not handle the large packets of material that were being sent home.
86. There were several communications by M.T.'s mother to the District in March and April seeking additional help and guidance. The communications continued into May 2020, as M.T. became more and more disengaged and essentially "shut down." He would not meet with his teachers on camera, and no alternate means of teaching was offered.
87. Frustrated with M.T.'s lack of progress and concerned about his future education, in April 2020, M.T.'s mother reached out to the case manager requested that the District consider out of district placements, including four specific schools. (July 19, 2021 Hearing at 154:21-25 to 155:1-5).
88. On April 17, 2020, Mr. Curioni, the Director of Special Services responded that M.T.'s mother would first have to ask the four schools to document in writing the items they would need to review for the placement process and a release would need to be signed. The District took no further action with regard to considering alternative out-of-district placements, either day or residential. (July 19, 2021 Hearing at 160:16-24).
89. Among the four schools on under consideration for M.T. by his parents, Cherokee Creek and other out-of-district placements requested more specific information from the District, but nothing else other than the latest IEP from 1-24-20 was provided. (July 19, 2021 Hearing at 159:22-25 to 160:1).

Findings of Fact Regarding the Appropriateness of Hampshire

90. Mrs. T. believed that M.T. would be most successful in an out-of-home placement where his individual needs could be targeted in an intense and consistent manner. When she approached Mr. Curioni about this decision, he said there was no need for such a placement because the District could address his needs. (July 19, 2021 Hearing at 86:1-16).

91. With nothing else transpiring between the District and M.T.'s parents, his parents made a decision to leave a deposit with the Hampshire School, an out-of-state residential placement.
92. On June 23, 2020, seeing no further alternative, M.T.'s parents sent the required ten-day notice to the District that they were enrolling M.T. at Hampshire. (P-57).
93. Instead of considering alternatives or engaging in a dialogue with petitioners about what might work for M.T. within the ten-day period after receipt of the notice, Mr. Curioni wrote back on June 24, 2020, saying that the proposed IEP for M.T. to switch to Oasis will "absolutely meet his needs", and for reasons unknown added that the District would "zealously defend the program." (May 3, 2021 Hearing at 210:8-13). There was no effort to address the lack of educational participation from January 14th through the end of the school year in June, nor was any effort made during the ten-day statutory period to engage in a dialogue with petitioners about alternative day programs outside the District.
94. Approximately thirty days later, petitioners filed their due process petition.
95. Hampshire philosophy in educating students with autism is to not label the students as such and to focus on building neural pathways. (May 3, 2021 Hearing at 61:16-25).
96. Hampshire relies on four pillars of learning: learning to be, learning to do, learning to know, and learning to live well with others. (May 3, 2021 Hearing at 62:8-14).
97. Hampshire students coming in with very small learning zones, and Hampshire's goal is to work on "whole-student learning," which is very different for each student depending on their needs. The focus is on learning to live well with others and learning to regulate. (May 3, 2021 Hearing at 63:4-9).
98. Ms. Bruno received Dr. Zeisz's information and documentations listing M.T.'s primary diagnosis as ASD and secondary diagnoses as ADHD and anxiety. Unlike Randolph officials, Ms. Bruno and Hampshire accepted and incorporated the ASD diagnosis into their plan for educating M.T. (May 3, 2021 Hearing at 74:15-24).
99. While at Hampshire, M.T.'s behaviors started to change in a positive direction towards the end of October and November. For example, as witnessed by Ms. Bruno, M.T. no longer needed personal accompaniment during recreational times. (May 3, 2021 Hearing at 92:3-15).

100. M.T.'s classes at Hampshire included reading, writing, math, history, and science. (May 3, 2021 Hearing at 93:4-8).
101. M.T.'s first trimester report, dated January 2021 and written by Thomas Ciglar, Dean of Academics, showed clear academic progress in areas such as, but not limited to, reading, writing, and researching.
102. As to M.T.'s behavior, both Dean Ciglar and Ms. Bruno noted growth and development in managing his own behavior, which was reflected in his academic success. The was, in part, a result of Hampshire's small class size. (May 3, 2021 Hearing at 101:23-102:5).

Based on a series of actions by the District following M.T.'s elopement on January 14, 2020, I **FIND** that the District did not provide FAPE to M.T. in the least restrictive environment following the incident, which the District itself deemed isolated. I **FIND** that the once the District's physician indicated that Dr. Leeds' report was not sufficient for M.T. to return to school, placing M.T. on home instruction for an indefinite period, without a re-entry plan, put him in a more restrictive environment than the IEP which was in place at the time, and I **FIND** it denied M.T. FAPE. I **FURTHER FIND** that the District's unwillingness to consider a diagnosis of Autism for M.T., and/or the failure to seek an independent evaluation on this diagnosis also constitutes a violation of FAPE, as it may have changed the IEP which was proposed on January 24, 2020, and I **FURTHER FIND**, that since talk therapy was a key component of the Oasis/Sage program being offered by the District for sixth grade, and with evidence throughout that M.T. did not benefit over the years from talk therapy that this program did not meet the District's obligations to M.T. under FAPE.

I **FURTHER FIND** that the District failed to meet its FAPE obligations to M.T. following the January 14th elopement, by virtue of its failure to make additional attempts to have the school physician communicate with Dr. Leeds and petitioners, so that clearance could be obtained leading towards re-entry to the school before the onset of the pandemic on March 13, 2020.

And, while the District did not identify M.T.'s time away from school as a suspension, once the initial ten-day period passed after the elopement, no hearing, formal

or informal was offered to determine if M.T. could return to school, instead of remaining on home instruction, which constitutes a violation of his due process rights, and the District's obligations under FAPE.

I FURTHER FIND that during the "ten-day window" after proper notice was given by petitioners to the District in June 2020 about the placement, the District took no actions to learn more about the placement, and/or to propose an alternative either within or outside the District. **I FIND** that the only action the District took during this statutory mandated period was to prepare itself to defend its position in litigation instead of entertaining an open dialogue with petitioners about other placement options that might be less costly and would have allowed M.T. to remain closer to home. Again here, **I FIND** that M.T.'s due process rights were violated and the District ignored its obligations under FAPE, by virtue of its failure to discuss options with the family during the ten-day notice period.

Having heard the combined testimony of Dr. Zeisz, Dr. Katz, Ms. Bruno, Mrs. T., and Mr. T., and when compared to the testimony of Mr. Curioni and other District officials, **I FIND** that, having considered all the evidence and testimony under the totality of the circumstances, M.T.'s parents exhausted all efforts to work with the District. Therefore, **I FIND** that unilateral placement at Hampshire was appropriate.

As such, **I FIND** petitioners are entitled to full reimbursement of their placement cost at Hampshire commencing August 2020, including but not limited to tuition and travel expenses. **I also FIND** petitioners are entitled to reimbursement for travel and any related expenses while M.T. was enrolled in Stepping Forward, from January 2020 through March 13, 2020. It is unknown and not part of the submissions as to whether M.T. continued his enrollment at Hampshire for the 2021-21 school year, and whether or not the District convened another meeting with the parties during this time, and whether another due process petition was filed. As such, the finding applies to the 2020-21 school year placement, subject to further review in another forum if appropriate.

I further FIND that the District violated FAPE under IDEA. Having reviewed the federal court's remand and the submissions of both parties, a 504 analysis is not needed

or applicable. Therefore, petitioners are entitled to reimbursement of all cost related to the private evaluations and expert witnesses identified herein. As such, I further **ORDER** that petitioners be reimbursed for these expenses.

I **DO NOT FIND** that petitioners and M.T. are entitled to compensatory education for the period of March 13 2020 through June 2020 when schools were closed as the Department of Education created uniform instructions to districts on how to handle virtual instruction, and both M.T. and petitioners did not avail themselves of the services and education that was being offered by the District in this three month period after schools were closed.

LEGAL ANALYSIS AND CONCLUSIONS

The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400–1482, ensures that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and ensures that the rights of children with disabilities and parents of such children are protected. 20 U.S.C. § 1400(d)(1)(A), (B); N.J.A.C. 6A:14-1.1. A “child with a disability” means a child with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities, and who, by reason thereof, needs special education and related services. 20 U.S.C. § 1401(3)(A). M.T. has been diagnosed with ADHD and autism, but the District contested the autism diagnosis.

States qualifying for federal funds under the IDEA must assure all children with disabilities the right to a free “appropriate public education.” 20 U.S.C. § 1412(a)(1); Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176 (1982). Each district board of education is responsible for providing a system of free, appropriate special education and related services. N.J.A.C. 6A:14-1.1(d). A “free appropriate public education” (FAPE) means special education and related services that (A) have been provided at public expense, under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under 20 U.S.C. § 1414(d). 20 U.S.C. § 1401(9); Rowley, 458 U.S. 176. Subject to certain limitations, FAPE is available to all children with disabilities residing in the State between the ages of three and twenty-one, inclusive. 20 U.S.C. § 1412(a)(1)(A), (B).

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

The Supreme Court discussed Rowley in Endrew F. v. Douglas County School District RE-1, 580 U.S. 386, 137 S. Ct. 988 (2017), noting that Rowley did not "establish any one test for determining the adequacy of educational benefits" and concluding that the "adequacy of a given IEP turns on the unique circumstances of the child for whom it was created." Id. at 996, 1001. Endrew F. warns against courts substituting their own notions of sound education policy for those of school authorities and notes that deference is based upon application of expertise and the exercise of judgment by those authorities. Id. at 1001. However, the school authorities are expected to offer "a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances." Id. at 1002.

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

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

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

In accordance with the IDEA, children with disabilities are to be educated in the least restrictive environment (LRE). 20 U.S.C. § 1412(a)(5); N.J.A.C. 6A:14-1.1(b)(5). To that end, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are to be educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environments should occur only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 20 U.S.C. § 1412(a)(5)(A); N.J.A.C. 6A:14-4.2. The Third Circuit has interpreted this to require that a disabled child be placed in the LRE that will provide the child with a "meaningful educational benefit." T.R., 205 F.3d at 578. Consideration is given to whether the student can be educated in a regular classroom with supplementary aids and services, a comparison of benefits provided in a regular education class versus a special education class, and the potentially beneficial or harmful effects which placement may have on the student with disabilities or other students in the class. N.J.A.C. 6A:14-4.2(a)(8).

The Third Circuit has adopted a two-part test to determine whether a child has been placed in the least restrictive environment under IDEA. First, a court must determine “whether education in the regular classroom, with the use of supplementary aids and services, can be achieved satisfactorily.” See Daniel R.R. v. State Bd. of Educ. 874 F.2d. 1036, 1044 (5th Cir. 1989). Second, if the court finds that placement outside of a regular classroom is necessary for the child to benefit educationally, then the court must decide “whether the school has mainstreamed the child to the extent appropriate,” such as whether the school has made efforts to include the child in school programs with nondisabled children wherever possible. Id. at 1048. In considering whether a child with a disability can be satisfactorily educated in the regular classroom, a court should consider: 1) the steps the school district has taken to accommodate the child in the regular classroom; 2) the child’s ability to receive an educational benefit from regular education; and 3) the effect the disabled child’s presence has on the regular classroom. N.J.A.C.6A:14-4.2 (a)(8).

The IDEA and its related New Jersey regulations describe a continuum of placement options. 34 C.F.R. 300.115 (2009); N.J.A.C. 6A:14-4.3.

Along the continuum of placements, from least restrictive to most restrictive, home instruction is one of the most restrictive. In New Jersey, home instruction should only be the designated placement “when it can be documented that all less restrictive options have been considered and have been deemed inappropriate.” N.J.A.C. 6A:14-4.8(a). A school district is required to provide the N.J. Department of Education with prior written notification before placing a child on home instruction and such notice is effective for a maximum of 60 days, at which time renewal of the notification may be made. In accordance with the regulations, instruction must be provided for at least ten hours a week by certified teachers on at least three separate days. N.J.A.C. 6A:14-4.8(a)(5). The District contends that it provided FAPE to M.T. in the least restrictive environment. But when a student who is already receiving special services in school is switched to home instruction, the District is obligated to make sure at least the same level of services is being provided. And home instruction, (in this case for two months) which was followed by another three months due to the State shutdown, can result in social isolation of a most restrictive environment. See M.S. o/b/o K.E. v. Camden Bd. of Educ., EDS 00698-

07, Final Decision (Aug. 3, 2007). Although the pandemic was unforeseen at the time of the switch to home instruction, the District made little, if any effort to determine if medical clearance could be secured for M.T. to return to school during the sixty days from January 14th to the start of the pandemic on March 13th.

Petitioners contend that the District's proposed program was not appropriate to meet M.T.'s individualized needs and would not provide M.T. with FAPE. The District bears the burden of proof and the burden of production whenever a due process hearing is held pursuant to the provisions of the IDEA. N.J.S.A. 18A:46-1.1.

There are several overriding factors that M.T. did not receive FAPE, and would not have done so had he returned to school in September 2020 and enrolled in Oasis.

Unlike the District, Dr. Zeisz diagnosed M.T. with Autism Spectrum Disorder (ASD). (P-60; April 28, 2021 Hearing at 115:1-6). Yet, the January 2020 IEP did not consider M.T.'s ASD diagnosis or call for further testing by the District. (Feb. 10, 2021 Hearing at 189:15). The District's witnesses stated no further testing was contemplated because "he did not present as a child with autism," (Feb. 10, 2021 Hearing at 75:3, 189:5) "[w]e didn't see sensory overload," (Feb. 10, 2021 Hearing at 164:4) and "[w]e did not suspect that he was a student with autism, and he did not present that way." (Mar. 2, 2021 Hearing at 85:9-10). Additionally, Mr. Curioni said there was "concern" about Dr. Zeisz's diagnosis because under New Jersey law only a physician trained in neurodevelopment assessment can diagnose autism. (Mar. 3, 2021 Hearing at 137:14-17). I, however, found Dr. Zeisz very credible and highly experienced in diagnosing ASD. (April 28, 2021 Hearing at 54:23 to 58:13). So, while the District may be correct in arguing that it could not have accepted the report out right, it should have taken it into consideration and conducted its own testing.

When asked about the ASD diagnosis on the stand, Ms. Sabota said that M.T. "did not present as a student with significant behavior or emotional challenges in the classroom and the teachers aside from their concern that he was not producing work . . . in the math time frame," and "did not express concerns that reflect" the ASD diagnosis. (Mar. 2, 2021 Hearing at 85:19-23).

Dr. Zeisz testified that just because M.T. had not been diagnosed with ASD prior to her testing does not mean that it's not an accurate diagnosis. She credibly explained at length that the ASD diagnosis is "missed continuously" by doctors and professionals because "symptoms may manifest differently depending upon the setting." (April 28, 2021 Hearing at 68:6-7; April 30, 2021 Hearing at 42:22-24). She further explained that teachers often do not recognize symptoms from ASD as distinct diagnostically from other issues but that a lot of what M.T.'s teachers observed over the years was consistent with an ASD diagnosis. (April 30, 2021 Hearing at 72:7-9, 82:2-22).

Dr. Katz agreed that the ASD diagnosis is "unfortunately complex" and that M.T.'s symptoms through the years were consistent with an ASD diagnosis. (April 30, 2021 Hearing at 179:2 to 182:25, 133:15-24, referencing P-33). Dr. Katz credibly testified that there were red flags of ASD through the years that the school should have considered. (April 30, 2021 Hearing at 181:2-23).

Notably, Mr. Curioni admitted on cross-examination that in or about June 2020 the District became aware that Dr. Eida, M.T.'s pediatrician, confirmed a diagnosis of ASD but that the District still did not investigate or evaluate M.T. regarding the diagnosis. (Mar. 3, 2021 Hearing at 149:23-150:8; P-26).

Ms. McGovern testified that Oasis was a good fit for M.T. because it provides "talk therapy" which in her view "can be beneficial for children on the spectrum." (Mar. 3, 2021 Hearing at 11:9-16). However, both Dr. Zietz and Dr. Katz credibly testified that talk therapy is not always successful for children with ASD. (April 28, 2021 Hearing at 162:18-24; April 30, 2021 Hearing at 34:1-5, 172:23-25, 190:1-15, and 191:19-22).

The January 2020 IEP that was offered did not include a Behavioral Assessment, and the District never offered to modify it after the elopement. (P-11). This IEP did not properly consider M.T.'s behavioral issues and did not address his maladaptive escape behaviors at all. (Feb. 10, 2021 Hearing at 154:12). There is no doubt, and the District does not dispute, that the January 2020 elopement was a high-stress event for M.T. He was able to get all the way to the road. (Mar. 2, 2021 Hearing at 26:11). Restraints were

used. (R-18.) Ms. Sobota testified that M.T. had arrived at school upset and that at one point he made “statements about self-harm and not wanting to live and not wanting to go to school.” (Feb. 10, 2021 Hearing at 88:15-19). Mr. Curioni stated that once M.T. was back inside he was in “in an elevated state.” “knocked a few things over,” “wanted to hurt himself,” and threatened to stab himself with a pencil. (Mar. 3, 2021 Hearing at 75:11-22, 76:11-18).

The record is replete with evidence that the District’s position starting in January 2020 was at best inconsistent, even before the end of the 2020 school year while he was on home instruction before the Pandemic ensued. At the IEP meeting which took place ten days after the elopement incident, no re-entry program for a return date to school was proposed by the District and M.T. and home instruction is more restrictive than being in school. Under “concerns of the parents” the January 2020 IEP said “no.” (R-20 at p. 7). Ms. Sabota said this was because the issues that the parents were concerned about were “mostly seen in the home.” (Feb. 10, 2021 Hearing at 149:12-13). M.T. remained under home instruction without a path to physically return to his school for sixty days, until the onset of the pandemic, when all learning went virtual.

I **CONCLUDE** that home instruction for M.T. was not the least restrictive environment (LRE). The District put M.T. into home instruction knowing that his behavior was significantly different at home than at school. (Feb. 10, 2021 Hearing at 64:16; 88:16-19; Mar. 2, 2021 Hearing at 7:6-8; Mar. 3, 2021 Hearing at 91:2-5; Mar. 3, 2021 Hearing at 119:12-16). While on home instruction, the District admitted that M.T. “was not engaging in the instruction.” (Mar. 2, 2021 Hearing at 94:6). Even Stepping Forward was unable to get M.T. to do any of his work. (Apr. 30, 2021 Hearing at 213:1-17). M.T.’s father testified that home instruction, even prior to the pandemic shutdown, was “a disaster.” (July 21, 2021 Hearing at 7:10). Mr. Curioni admitted to receiving an email from the petitioners that said home instruction was a disaster. (Mar. 3, 2021 Hearing at 205:23). This is inconsistent with his testimony that the expectation was that M.T. would receive clearance through Stepping Forward and transition back to school in April or May 2020. (July 21, 2021 Hearing at 104:25 to 105:11). This is also inconsistent with the District’s position that the January 2020 IEP was never updated because even in June 2020 the team still deemed the IEP to be “appropriate,” and “at no point did the team

determine that home instruction was the least restrictive placement for M.T.” (Mar. 2, 2021 Hearing at 46:8-11; Mar. 3, 2021 Hearing at 86:22-25).

The District’s attempts to connect with M.T. during this time were lacking. Ms. Sobota testified that during home instruction “personalized calls were made from teachers and paraprofessionals daily” to M.T. but that he was not responding to the attempted engagement. (Mar. 2, 2021 Hearing at 43:19-20, 83:15-16). However, when pressed she admitted that these “calls” were through the Teams app, not the telephone. “We call it calling the student on Teams, because it kind of operates the way a phone does. So, there were daily invitations to connect, calling him, pinging him on the Teams platform, whether it was phone or chat and there were also emails from the staff to the family reflecting similar efforts.” (Mar. 2, 2021 Hearing at 93:18-24). I.T. confirmed that she never received a non-Teams check-in phone call. (July 19, 2021 Hearing at 232:10).

I find the lack of communication between Dr. Leeds and school personnel during the time of M.T.’s home instruction concerning. Dr. Leeds did not speak with District personnel while preparing M.T.’s risk assessment. Dr. Leeds’ “School-Based Threat Assessment” report, dated January 21, 2020, said that M.T. could only return to school with a one-to-one aid, but an aid was never offered or provided. (Feb. 10, 2021 Hearing at 97:23-89:9; R-19). Dr. Leeds wrote a second report which removed the one-to-one aid requirement and said that M.T. should be placed on home instruction pending an out-of-district placement. (Feb. 10, 2021 Hearing at 99:17; R-21). Ms. Sobota said that Dr. Leeds’ second report did not clear M.T. to return to school, but that the District still did not put any plan in place for reentry. (Feb. 10, 2021 Hearing at 82:11-13, 91:18-21).

Given the two reports authored by Dr. Leeds and the District and Stepping Forward’s awareness that home instruction was a disaster for M.T., there should have been more communication with Dr. Leeds and District personnel about a plan moving forward. It was not enough to, as Mr. Curioni testified, just rely on the expectation that Stepping Forward would clear M.T. to come back to school. (July 21, 2021 Hearing at 104:25-105:11).

I further **CONCLUDE** that with the District's refusal to engage in discussions about other out-of-district placement options after receipt of the ten-day notice, petitioners were well within their rights to make the determination that M.T. should be enrolled at the Hampshire School, effective September 2020.

The continuation of an out-of-school placement after determining a District did not provide a student with FAPE is well-established: see M.F. and L.F. o/b/o N.F. v. Secaucus Bd. of Educ., EDS 10762-06 (2007); D.B. and C.B. o/b/o D.B v Windsor Twp. Bd. of Educ., EDS 933-11 (2011). Each of these cases resulted in an award of reimbursement to petitioners for all charges and expenses related to the unilateral placement of a student in another school.

The process for parents who make a unilateral placement decision is codified at N.J.A.C. 6A:14-2.10 (c) providing for a ten-day written notice to the District, "to give the school district an opportunity, before the child is removed, to assemble a team, evaluate the child, devise an appropriate IEP, and demonstrate whether a FAPE can be provided in the public schools." (emphasis added). See: J.B. & D.B. v. Watchung Hills Reg'l Sch. Dist. Bd. of Educ. 2006 U.S. Dist. LEXIS 250 (D.N.J. January 5, 2006) (citing Greenland School District v. Amy N. 358 F.3d. 150,160 (1st Cir. 2004)). And see: H.L. o/b/o V.L. v. Marlboro Twp. Bd. of Educ. No. 16-9324, 2017 U.S. Dist. LEXIS 187828 2017 WL 5463347. I **CONCLUDE** the District failed to observe proper protocol and due process as required under N.J.A.C. 6A:14-2.10 (c), by virtue of its lack of action and statement that "...we will vigorously defend our position in litigation"

In sum, the IDEA "was not intended to fund private school tuition for the children of parents who have not first given the public school a good faith opportunity to meet its obligations." C.H. v. Cape Henlopen Sch. Dist., 606 F.3d. 59 (3d Cir. 2010).

Here, District officials, specifically the Director of Special Services were adamant that no other options needed to be explored, essentially waiving the intent of the ten-day rule. And the statement under oath, **"...that we will vigorously defend the District program offered through litigation..."**, without at least entertaining a review of the choices petitioner had already explored is indicative of a close-minded mindset that is not

consistent with the intent of the statutes and code regulations. (May 3, 2021 Hearing at 210:8-13). Here, instead of acting in good faith regardless of the District's belief that its own program was best for M.T., it "personalized" the ten-day window after receiving notice of petitioners' intentions. Therefore, **I CONCLUDE**, that the District disregarded its legal obligations during the ten-day notice period to at least explore other options in good faith with petitioners, and/or offering to revise the January 24th IEP, which was prepared before the State shutdown.

Several of the goals and objectives in the IEP were not appropriate because M.T. lacked the prerequisites for those goals and the criteria for mastery did not require independent mastery and therefore were not appropriate to establish meaningful progress. But after consideration of all the testimony and evidence, **I CONCLUDE** that the District did not sustain its burden that M.T. was receiving FAPE in the Least Restrictive Environment. I therefore **CONCLUDE** that petitioners, are the prevailing party in this matter.

Based upon the testimony and documentary evidence, **I CONCLUDE** that the District's IEP was not appropriate to meet M.T.'s educational needs for the 2020—2021 school year and did not provide him with a FAPE.

I DO NOT REACH THE SAME CONCLUSION that FAPE was denied for the school years prior to 2020, as there were IEPs in place for the preceding three years, and even though M.T.'s academic performance during those years was less than average, petitioners allowed for the implementation of those IEPs without objection.

Further, when the District offered M.T. enrollment in the Summer Extended School Year Program at the conclusion of the 2018-2019 school year to avoid regression at the start of the next school year, petitioners declined the offer and elected to send M.T. to summer camp instead.

As such, **I CONCLUDE** that M.T. is not entitled to compensatory services for the three years prior to the filing of the due process petition.

Finally, **I ALSO CONCLUDE**, that M.T. is not entitled to compensatory education from the onset of the pandemic, March 13, 2020 when schools first closed through June 2020, as the Department of Education sent out uniform protocols to districts throughout the State on virtual instruction, and M.T. and petitioners did not avail themselves of what was being offered, even if some of it did not meet M.T.'s needs during this time after home instruction was ended and he was allowed to return to the District as a virtual student.

Pursuant to 20 U.S.C. § 1412(a)(10)(C)(i), and subject to 20 U.S.C. § 1412(a)(10)(A), a local education agency is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in such private school or facility. See also N.J.A.C. 6A:14-2.10(a). However, if the parents enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency has not made FAPE available to the child in a timely manner prior to that enrollment. 20 U.S.C. § 1412(a)(10)(C)(ii); see also N.J.A.C. 6A:14-2.10(b). When a state fails to provide a free appropriate public education, it must reimburse parents for resulting private school costs. See T.R., 205 F.3d at 577 (citing Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 370 (1985)). Such reimbursement is subject to limitation as set forth in 20 U.S.C. § 1412(a)(10)(C)(iii).

A court may only grant tuition reimbursement when it finds that the school district failed to provide FAPE and that the alternative private placement was proper. Florence Cnty. Sch. Dist. Four v. Carter, 510 U.S. 7, 15 (1993) (quoting Burlington, 471 U.S. at 373-74). To be proper, a unilateral placement must “provide significant learning” and confer “meaningful benefit.” Mary Courtney T. v. Sch. Dist., 575 F.3d 235, 242 (3d Cir. 2009) (quoting Lauren W. v. DeFlaminis, 380 F.3d 259, 276 (3d Cir. 2007)). Courts have “broad discretion” and should look to “equitable considerations” when considering if unilateral placement was proper. Florence, 510 U.S. at 16 (quoting Burlington, 471 U.S. at 374, 369). Because the procedural requirements of FAPE do not apply to private placements, they are not held to the same standards as public schools. M.B. and S.B. o/b/o L.B. v. Cinnaminson Twp. Bd. of Educ., OAL Dkt. No. EDS 07848-17, Final Decision

(July 18, 2019) https://njlaw.rutgers.edu/collections/oal/html/initial/eds07848-17_1.html (citing Florence, 510 U.S. at 13).

The New Jersey Supreme Court has also addressed the issue of reimbursement in Lascari as follows:

We are sensitive to the possibility that parents may select a private school that affords their child an education that is more elaborate than is required. Conceivably, parents might select a boarding school even though a day program would furnish their child with an appropriate education. It would be anomalous, however, to recognize the parents' right to reimbursement, but to deny completely that right merely because they selected a school that furnished an education beyond that which the district is obliged to offer.

[Lascari, 116 N.J. at 37-38, citing See Alamo Heights Indep. School Dist. v. State Bd. of Educ., 790 F.2d 1153, 1161 (5th Cir. 1986)].

As set forth above, the District failed to provide M.T. with FAPE in the least restrictive environment for January 2020-June 2020 and for the 2020-2021 school year. I **CONCLUDE** that Petitioners' unilateral placement of M.T. was proper and appropriate.

The District's witnesses described M.T.'s behavior and academic success prior to the January 2020 elopement in a very positive light. Ms. Sabota testified that during an observation M.T. was in a "good mood, laughing with his teacher," "asking questions," and "asking for help." (Feb. 10, 2021 Hearing at 59:23-25, 60:1-2). She further testified that M.T. had no disciplinary incidents in fourth grade and "transitioned well" to the fifth grade. (Feb. 10, 2021 Hearing at 70:2-4, 71:21).

M.T.'s teacher, Ms. Patel, said that he was "well behaved," "an active member of the classroom," and that he "participated" during class. (Mar. 2, 2021 Hearing at 119:10-14.) She testified that he was a "motivated writer" who "loved writing." (March 2021 Hearing at 133:19.) She said that she had no feeling that he disliked school and that he was "totally fine" in the classroom. (Mar. 2, 2021 Hearing at 145:25-24, 146:1, 193-7-8). Mr. Curioni testified that nothing stood out about M.T.'s classroom performance, and that

he “performed commensurate with his peers during all of my visits.” (Mar. 3, 2021 Hearing at 70: 12-14).

However, the parents and their witnesses painted a very different picture of M.T.’s behavior during this time. I.T., M.T.’s mother, testified that during fourth grade he would “routinely keep it together during his school day and come home and take his frustration out on his family.” (July 19, 2021 Hearing at 26:14-17). She also testified that there had been other behavioral issues at school such as an incident in third grade where he was aggressive towards a teacher. (July 19, 2021 Hearing at 71:11-12). Additionally, as a fifth grader he would go to the school nurse a lot complaining of head and stomach aches. (July 19, 2021 Hearing at 71:11-12). I.T. said they tried one-on-one talk therapy but that it was “terrible” because M.T. refused to participate. (July 19, 2021 Hearing at 75:17-18). Sometimes, he would lock himself in the car and refuse to participate in therapy, and other times he would spin in the office chair and just not participate. (July 19, 2021 Hearing at 78:12-16).

M.T.’s father testified that in fifth grade M.T. started refusing to attend school. (July 21, 2021 Hearing at 41:11-13). During the summer of 2019, M.T. attacked his father with a knife, was aggressive toward his siblings and pet, bolted from the family at a gathering, and verbally lashed out at his family.

Dr. Katz, who admittedly had the benefit of hindsight, but who I found highly credible, said that based on all the District’s prior records on M.T., the January 2020 elopement was not an isolated incident, but “a catastrophe waiting to happen.” (April 30, 2021 Hearing at 302:22-23).

Dr. Zeisz’s November 4, 2019, report, which diagnoses M.T. with ASD, suggests placing him in either a therapeutic day school or therapeutic boarding school “specifically designed to work with children who have neurodevelopmental profiles similar to [M.T.].” (P-60 at p. 13). This report further states that M.T. should be in a “small, structured, nurturing academic program” and not in a “large public school” because he will “become overwhelmed resulting in increased behavior problems at school and at home.” (P-60 at p. 13-14). Dr. Zeisz concluded that it was “imperative” that M.T. be placed in an

environment alongside “similar peers.” (P-60 at p. 14). On the stand, Dr. Zeisz testified that this was important because children with ASD deal with daily transitions (such as “getting ready, getting out of the house,” and “getting to school”) differently than other children and a therapeutic environment would be an ideal place for M.T. (Apr. 28, 2021 Hearing at 137:14-25). She further testified that she did not recommend the large public-school environment because pull-out services require transitions which can be “quite overwhelming” to students with ASD. (Apr. 28, 2021 Hearing at 125:1-16, 163:17-25, 164:1-3). Residential schools are ideal for children with ASD because “there’s a strong sense of cohesion where the child’s day is very structured” and the same adults who are teaching them are also supporting their daily living skills. (Apr. 28, 2021 at 164:19-25, 165:1-6).

M.T.’s father testified that they felt he needed a school that operated “24 hours a day.” (July 21, 2021 Hearing at 28:1). Ms. Bruno testified that Hampshire is a “24/7 learning environment.” (May 3, 2021 Hearing at 62:2-3). Additionally, Hampshire took M.T.’s ASD diagnosis into account—a diagnosis which the District ignored. (May 3, 2021 Hearing at 74:18).

The appropriateness of the unilateral placement was made evident at the hearings by the testimony about M.T.’s growth and successes at Hampshire Country School.

Both of M.T.’s parents, who I found credible, testified that he had made great strides at Hampshire. M.T.’s mother said that while at Hampshire he “thrived,” had “grown to be able to advocate for himself,” “made honor roll for the first time,” and “can read a book.” (July 19, 2021 Hearing at 233:6-9). When asked how his son was doing at Hampshire, M.T.’s father testified that “[i]t’s amazing how he’s doing. He’s doing—socially he’s doing a lot better. I think he’s really trying to come out of his shell a little bit. I think being away has really helped him to, you know, reduce the stimulus around him.” (July 21, 2021 Hearing at 28: 8-12).

Ms. Bruno’s personal knowledge of M.T. at Hampshire supports a finding that this placement was appropriate. The testimony of petitioners and Dr. Zeisz was that M.T. struggled with daily transitions, and Ms. Bruno stated that a primary focus of Hampshire

was to focus on social-behavioral aspects such as getting M.T. from drop off to the classroom. (May 3, 2021 Hearing at 75:11-17). She testified that as of January 2021 M.T. was “engaged fully,” “making gains,” and has “been making increases steadily in reading and writing and research.” (May 3, 2021 Hearing at 100:4-6, 102:8-15). Additionally, he had become able to “verbalize when he’s uncomfortable as opposed to just physically removing himself.” (May 3, 2021 Hearing at 100:14-15).

Ms. Bruno stated that he was comfortable in his living situation and was even taking the initiative with his peers. (May 3, 2021 Hearing at 103:6-8). She explained that she started noticing “big changes” in him around October and November 2020, and that by the time he came back after break in January 2021 the changes were “positive.” (May 3, 2021 Hearing at 92:4-5, 152:5-10).

Dr. Katz’s testimony added to this finding. I found Dr. Katz to be experienced and qualified, and even though he did not meet M.T. until January 2021, I found his testimony to be highly credible and informative. He affirmed that he thought M.T. was having success at Hampshire. (April 30, 2021 Hearing at 375:20). Dr. Katz thoroughly reviewed M.T.’s history and testified that Hampshire was “having a positive impact upon his behaviors” and was the “first uptick in improvement from all the treatments” in school reports going back to 2018. (April 30, 2021 Hearing at 249:9-25). Looking at M.T.’s various test results, Dr. Katz said while at Hampshire M.T. showed “extraordinary improvement” but while at the District’s school he went from “tolerable to . . . really bad and then going off the rails right after that.” (April 30, 2021 Hearing at 251:1-6).

Having reviewed the criteria for reimbursement, I **CONCLUDE** that petitioners’ unilateral placement of M.T. at Hampshire Country School was proper and appropriate and that the District should reimburse petitioners for the cost of M.T.’s placement at the Hampshire School, together with reimbursement for the time and expense related to the retention of Dr. Zeisz, and Dr. Katz, and the costs associated with the Morris Psychological Group threat assessment, since the District took no steps thereafter to find a method of re-entry for M.T. up to the onset of the pandemic, almost sixty days after the initial incident.

I **DO NOT CONCLUDE** that compensatory education should be provided as there is no measure to reach an appropriate conclusion in this regard, and no proofs were offered as supplemental costs incurred for tutoring and other related services incurred by the parents.

However, I **DO CONCLUDE** the parents are entitled to reimbursement, including but not limited to transportation expenses related to any costs they incurred by enrolling M.T. in Stepping Forward.

ORDER

Based on the foregoing, it is hereby **ORDERED** that the relief sought by petitioners related to the cost of tuition and related expenses for M.T.'s enrollment at Hampshire commencing August 2020 is hereby **GRANTED**. The request for compensatory education reimbursement for the three school years prior to the elopement incident in January 2020 is **DENIED**, as is the request for compensatory education for the period March 13, 2020, through June 2020 when petitioners decided to send M.T. out of district. It is further **ORDERED** that petitioners are entitled to be reimbursed for the costs of Dr. Zeisz and Dr. Katz's services, including but not limited to their testing, reports and testimony, as well as reimbursement for the expenses related to Dr. Leeds.

As the prevailing party, counsel may apply for reasonable counsel fees and costs in the appropriate forum. Consideration of punitive damages, if any, are not the province of the Office of Administrative Law.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2021) 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 (2022). 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 10, 2025

DATE


ANDREW M. BARON, ALJ

Date Received at Agency

April 10, 2025

Date Mailed to Parties:
Ir

April 10, 2025

APPENDIX

Witnesses

For Petitioners:

Dr. Jennifer Zeisz

Dr. Barry Katz

Elizabeth Bruno

Mrs. T.

Mr. T.

For Respondent:

Cozet Sobota

Mrs. Patel

Linda McGovern

Walter Curioni

Exhibits

P-1 1/27/16 Referral

P-2 5/12/16 IEP

P-3 5/3/17 IEP

P-4 10/2/17 IEP

P-5 4/12/18 IEP

P-6 10/25/18 IEP

P-7 12/17/18 IEP

P-8 1/17/19 IEP

P-9 5/21/19 IEP

P-10 1/24/20 IEP (draft)

P-11 1/24/20 IEP

P-12 Progress reports

P-13 Speech evaluation 3/30/16

P-14 Questionnaire

P-15 4/18/18 Educ. Eval.
P-16 4/29/16 Psych eval.
P-17 4/14/16 Occ Eval.
P-18 3/9/17 Progress report
P-19 10/18/18 Progress report
P-20 12/17/18 Progress report
P-21 5/21/19 Progress report
P-22 2/10/20 Progress report
P-23 1/7/19 Psych evaluation
P-24 1/4/18 Ed. evaluation
P-25 Speech and language re-eval.1/7/19
P-26 PARCC results
P-27 Letter 2/29/29
P-28 Ms. Ervey virtual schedule
P-29 Incident report
P-30 Sage services
P-31 Exit info 9/4/20
P-32 9/13/13 letter
P-33 Referral letters
P-34 Harmony Pediatric report
P-35 Harmony Pediatric report
P-36 1/26/16 letter
P-37 Cywin notes
P-38 9/25/17 email
P-39 West Morris summary 8/2/18
P-40 Audiology report 8/29/19
P-41 Dr. Leeds assessment
P-42 Gates summary
P-43 Stepping Forward Summary
P-44 Stepping Forward letter
P-45 Dr. Cargan letters
P-46 Dr. Eida notes
P-47 McLaughlin summary

P-48 Dr. Zeisz report
P-49 Dr. Zeisz letter
P-50 Ververs letter
P-51 Dr. Bell letter
P-52 System of Care treatment plan
P-53 Hampshire agreement
P-54 Hampshire IEP
P-55 Hampshire mid-term report
P-56 BASC results
P-57 6/23/20 10-day notice
P-58 Dr. Katz report
P-59 Dr. Katz profile
P-60 Zeisz initial report
P-6 Zeisz file
P-62 West Morris summary 1/25/21
P-63 Hampshire trimester
P-64 Bruno report
P-65 BASC report
P-66 Leeds CV
P-67 Pritzker CV
P-68 Videos
P-69 Pritzker file
P-70 Leeds file
P-71 emails

RESPONDENT

R-1 Gleeson letter
R-2 4/12/18 IEP
R-3 10/25/18 IEP
R-4 Re-eval.
R-5 10/31/18 Educ. Assessment
R-6 12/12/18 Psych Assessment

R-7 12/17/18 IEP
R-8 12/18 Speech assessment
R-9 1/17/19 IEP
R-10 2/19/19 Sobota letter
R-11 2/21/19 Action plan
R-12 3/19 FBA
R-13 Metro West assessment
R-14 Request to amend 2017 IEP
R-15 5/21/19 IEP
R-16 Audiology report
R-17 1/8/21 Psych eval.
R-18 1/14/20 Incident report
R-19 Leeds report
R-20 1/24/20 IEP
R-21 Leeds revised report
R-22 Home instruction contract
R-23 Conduct incidents
R-24 9/4/20 exit information
R-25 Test scores
R-26 4th grade report
R-27 5th grade report
R-28 2/10/20 email
R-29 5/19/20 email
R-30 Sobota email
R-31 Curioni CV
R-32 Patel CV
R-33 Sobota CV
R-34 McGovern CV
R-35 Patel tools
R-36 Emails with petitioners 1/30/20-3/24/20
R-37 through R-65 Misc. emails between petitioners and District staff 1/7/20-6/27/20

Joint Exhibits:

U.S. Department of Education (March 2020)

New Jersey Department of Education (March 5, 2020)

New Jersey Department of Education Update (March 23 and 24, 2020)

Governor Murphy Press Release (May 4, 2020)