State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION
OAL DKT. NO. EDS 05388-22
AGENCY DKT. NO. 2022-34398

Y.P. AND T.P. ON BEHALF OF C.P.,
Petitioners,
v.
TOMS RIVER REGIONAL BOARD OF EDUCATION,
Respondent.

Sarah E. Zuba, Esq., appearing for petitioners (Reisman Carolla Gran, attorneys)

R. Taylor Ruilova, Esq., appearing for respondent (Comegno Law Group, attorneys)

Record Closed: May 6, 2025 Decided: June 23, 2025

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

STATEMENT OF THE CASE

Petitioners, Y.P. and T.P. (petitioners), filed a petition for due process on behalf of their daughter, a minor student, C.P., alleging that the respondent, the Toms River Regional Board of Education (respondent or Board), failed to provide C.P. with a free appropriate public education (FAPE). Petitioners seek reimbursement for the costs

associated with unilateral placement at the School for Children with Hidden Intelligence (SCHI), including tuition reimbursement, transportation, compensatory education from September 1, 2021, through April 6, 2022, continued placement at the SCHI, and attorneys' fees and costs, including expert fees. The inquiry is, did Toms River provide C.P. with an appropriate IEP for the 2021-22 school year? Yes. An IEP must be reasonably calculated to provide significant learning and meaningful educational benefit, not maximize the potential of each child.

PROCEDURAL HISTORY

On or about March 18, 2022, the respondent sent a notice to petitioners purporting to remove C.P. from the register of enrolled students. On March 21, 2022, petitioners notified the respondent that they intended to seek reimbursement for the cost of C.P.'s placement at the SCHI if the Board failed to provide an appropriate program and placement for C.P. On June 1, 2022, petitioners filed a petition of appeal challenging the appropriateness of the program and placement proposed by the Board, and whether reasonable accommodations were available for C.P. On June 20, 2022, the Commissioner of Education transmitted this matter as a contested case to the Office of Administrative Law (OAL) under N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -23.

Respondent filed a Motion for Summary Decision (MSD) dated June 10, 2022, and petitioners filed their opposition on June 16, 2022, asserting that the respondent's MSD was premature and not permitted under the Individuals with Disabilities Education Act (IDEA) 42 U.S.C. § 1400 et seq. The Board filed a response on August 25, 2022. In a letter order dated September 27, 2022, the undersigned determined that the Board could submit a MSD because the IDEA did not mandate consent of all parties to use the summary decision process. Counsel agreed to stipulate that the Board's MSD was filed on October 3, 2022. Petitioners' response was submitted on November 11, 2022, and respondent submitted a reply letter dated November 21, 2022. In an order dated January 5, 2023, the undersigned granted in part and denied in part the Board's MSD and scheduled an evidentiary hearing on whether the Board provided a FAPE to C.P. and

whether the petitioners acted unreasonably in providing the ten-day notice as required by N.J.A.C. 6A:14-2.10(c)(2).

Hearings were held December 4, 2024, December 17, 2024, December 19, 2024, January 28, 2025,[1] and February 27, 2025. After post-hearing briefs were submitted, the record closed on May 5, 2025.

FACTUAL DISCUSSION

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

1. C.P. is a thirteen-year-old student who moved with her parents into the Toms River School District near the end of the 2020–2021 school year and registered to attend school in the school district on July 13, 2021. (J-1; J-2; J-25.)

2. The Board's registration form dated July 13, 2021, identified that C.P.'s last school of attendance was the SCHI. (J-25.)

3. C.P. was found eligible for special education and related services under the category of "moderate intellectual disability" in her prior district of Lakewood. (J-15.)

4. The respondent received a copy of Lakewood's IEP for C.P. on August 12, 2021, which identified C.P.'s placement at the SCHI. (J-26 at 0272.)

5. The respondent invited the petitioners to an IEP meeting on August 16, 2021. (J-29.)

6. The respondent and petitioners held an IEP meeting on August 16, 2021, to review the Lakewood IEP. (J-2 at 0033.)

[1] No testimony was taken at this hearing because the sole witness had laryngitis.

7. As a result of the IEP meeting, the respondent and petitioners developed an IEP that offered C.P. a program within the Toms River School District. (Ibid.; J-27.)

8. The draft IEP was sent to the petitioners on August 17, 2021. (J-29 at 0338.)

9. Petitioners did not challenge the IEP, which went into effect on September 1, 2021, however, C.P. did not attend the program. (J-2 at 0034.)

10. In an email dated October 7, 2021, T.P., the mother of C.P., contacted the respondent requesting that the respondent consider placing C.P. in her previous school placement because the respondent's program consisted of students "on a much higher mental and intellectual level." (J-29 at 0342.)

11. By letter dated October 8, 2021, the respondent denied T.P.'s request because C.P. had not attended the proposed in-district program to determine whether it was appropriate. (Id. at 0344.)

12. The respondent and petitioners held a meeting on October 20, 2021, to discuss petitioners' concerns with the in-district program. (J-27; J-29 at 0346.)

13. In a memorandum dated October 28, 2021, Kevin Huff, the case manager and school psychologist, addressed the petitioners' concerns raised at the October 20, 2021 meeting. (J-29 at 0350.) T.P. responded on November 17, 2021. (Id. at 0351.)

14. The Supervisor of Special Education, Kelly Umbach, responded to T.P. in a memorandum dated November 19, 2021, to further explain the respondent's proposed program and IEP. (Id. at 0353.)

15. In an email dated December 21, 2021, Mr. Huff requested that T.P. provide C.P.'s enrollment status because she was not attending the respondent's program. (Id. at 0355.)

16. T.P. responded in a memorandum dated January 19, 2022, reiterating that she was not convinced that the respondent's program was appropriate for C.P. (Id. at 0356.)

17. Ms. Umbach sent an email dated January 21, 2022, to T.P. requesting confirmation if C.P. attended any school since September, and, if so, where. (Id. at 0358.)

18. T.P. responded on February 14, 2022, stating that none of her concerns had been adequately addressed and, therefore, she was prepared to take legal action. (Id. at 0359.)

19. Ms. Umbach responded on February 22, 2022, outlining the respondent's responses to the petitioners' concerns. Ms. Umbach also requested information on where C.P. was attending school and notified petitioners of the possibility that the Board may remove her from its rolls if the information was not provided and/or file truancy or educational neglect charges. (Id. at 0360.)

20. On March 18, 2022, the respondent notified the petitioners that C.P. was being removed from the attendance rolls. (Id. at 0364.)

21. In a letter dated March 23, 2022, the petitioners notified the respondent of their intent to seek reimbursement for their unilateral placement of C.P. at the SCHI. (J-2 at 0035.)

Testimony

For the petitioners:

T.P., C.P.'s mother, stated that C.P. was sixteen years old and had special needs. C.P. likes attention and could be aggressive in the form of grabbing or gagging. C.P. has seven siblings, four of whom live at home. There is another sibling with the same diagnosis as C.P. and one sibling with educational challenges. Her siblings range in age from twelve to twenty-eight. The SCHI was the only school that addressed C.P.'s specific needs.

T.P. visited the Board's Multiple Disabilities (MD) program along with Mr. Huff. She thought it was a great program, but not for C.P. She thought the students were functioning at a higher level than C.P. In addition, the program did not have a social integration component, which was critical. C.P. would not have benefitted from the program because she grabs at everything. T.P. shared these concerns with Mr. Huff on or about October 7, 2021. She asked for an out-of-district placement (OOD). The Board did not agree with the OOD.

No one from the Board asked to visit C.P. at the SCHI. The SCHI IEP includes the services of a board-certified behavior analyst (BCBA) who consults with the teachers. The Board's IEP does not.

On cross-examination, T.P. stated that she did not mention the SCHI at the August meeting, however, she informed the SCHI that C.P. would be attending that school in September 2021. She did not think the Board expected to see C.P. in September 2021 because she told them that she could not enroll C.P. in the school district without seeing the program. A meeting was held with the Board staff, during which her concerns were discussed. The Lakewood IEP did not require a BCBA.

Miriam Hirsch (Hirsch), has worked at the SCHI for eight years as a special education teacher. She holds a bachelor of arts from Touro College and a master of arts in special education also from Touro College. She holds a master's in psychology and

education. She also attended FIT College. She has completed 1,500 hours of fieldwork. At the SCHI she works with students individually, meets with the child study team (CST), writes goals, monitors students' progress, and prepares progress reports. Her co-teacher is a BCBA. She implements behavior plans designed by the BCBA, and develops and implements IEPs as a special education teacher for students with intellectual and developmental disabilities. She has never worked in a public school. She was accepted as an expert in implementing behavioral plans designed by the BCBA.

Hirsch has been C.P.'s teacher for three years. She currently has four students in her classroom and each student has a paraprofessional. She wrote C.P.'s February 2023 IEP that included classroom modifications, a 1:1 aide, physical therapy (PT), occupational therapy (OT), and speech-language services. There are eight BCBAs at the SCHI. There is a quiet room connected to her classroom where C.P. spends twenty minutes each day with her 1:1 aide. Safety is a big concern and, thus, all the cabinets are locked because C.P. will take things off the walls and pull things out of drawers. C.P. is very active; she does not like to sit. She does not interact with the other students. She has been known to take a student's glasses off the student's face. Meals are eaten in the classroom. Hirsch had no interaction with the respondent.

On cross-examination, Hirsch stated that she drafted goals for C.P., however, C.P. did not master any of them. C.P. functions at a higher level than the other students who have multiple disabilities. C.P. does not have a behavior improvement plan because it is not needed. The BCBA does not work directly with students other than students with autism, but shares techniques with the staff. Community outings are not part of the IEP. C.P. has made progress but has not mastered any of the goals.

Penina Pflaster (Pflaster) is the educational coordinator for the middle school at the SCHI. She helps determine which students work well together, selects staff for each classroom, handles pupil intake, and coordinates with the staff, administrators, parents, and professionals. She started working at the SCHI in March 2021. She has a bachelor of arts in psychology from Herbert H. Lehman College (CUNY) and a master of arts in curriculum and instruction from California State University, Bakersfield.

Pflaster does observations of students and provides feedback to the staff in her group. Teachers are certified by the State of New Jersey. Pflaster is certified as a special education teacher. She prepares IEPs, creates schedules, and communicates with parents. The SCHI provides annual training for the staff at the start of each school year on academic and other topics.

Pflaster said that C.P. needs constant supervision because she puts things in her mouth. Pflaster sees C.P. daily by visiting her classroom. Items are locked up because C.P. will put things in her mouth. C.P. is in the lower range cognitively. She cannot take care of herself; she cannot take off her coat without assistance. C.P. has a special education teacher, a co-teacher, and a 1:1 aide to ensure C.P.'s safety and help with transitions and tasks. C.P. gets one and a half hours of academic instruction that is adjusted to meet her cognitive level, not the regular high school curriculum.

For the respondent:

Kevin Huff, (Huff) has been employed by the respondent as a school psychologist since 2013. He is a member of the CST and is the case manager for approximately seventy-five to one hundred students. He has evaluated approximately 500 students and helped to develop approximately 1,000 IEPs. He has a bachelor of arts in psychology, and a master of arts in educational psychology and educational leadership. He is working on acquiring his principal's certification. He currently works in the intermediate school. He was accepted as an expert in school psychology and special education case management.

He became aware of C.P. in August 2021. The IEP from the Lakewood School District, C.P.'s former school district, was received on August 12, 2021. The Board developed a draft IEP that was identical to the Lakewood IEP. This draft IEP became final after fifteen days. C.P. was classified as having "moderate intellectual disability" and placed in the MD class. Huff believed that C.P.'s needs could be met in the MD program proposed. The Board's IEP had the same components as the Lakewood IEP. There were multiple MD classes in district, but only one that was appropriate for C.P.

Huff was present when T.P. came to observe the MD program. T.P. was concerned that the children were functioning at a higher level than C.P. In addition, T.P. expressed concerns that C.P. would be unable to maintain her kosher diet.

In October 2021, T.P. notified the Board that she wanted C.P. to remain at the SCHI; however, the Board declined the out-of-district placement. Huff contacted the petitioners on December 21, 2021, to schedule the triennial evaluations for C.P. However, the parents were not responsive. Huff did not know where C.P. was attending school in August 2021 and the SCHI was not open. The Board repeatedly asked the petitioner before March 2022 where C.P. was attending school.

On cross-examination, Huff stated that he met C.P. once while observing her at the SCHI in spring 2024. He never spoke to anyone at the Lakewood school district about C.P.'s programming, and he was not familiar with Lakewood's special education program. He did not call the SCHI to see if C.P. was enrolled there. The Board's IEP recommended a 1:1 aide, five times per week for 210 minutes. The Lakewood IEP recommended a 1:1 aide five times per week for 330 minutes. The Board's IEP did not include the parents' input.

On rebuttal, Huff stated that the August 2021 IEP contained a typo. The 1:1 aide was intended to be assigned daily for the full school day for the school year and the extended school year for C.P. He observed the SCHI classroom along with T.P. and did not see anything done there that the respondent could not replicate.

Jennifer Viola, (Viola) is employed by Invo-Healthcare and has been assigned to the Board since 2009 as an occupational therapist. In this role she evaluates students for OT services, creates IEPs, provides in-house services, and works with teachers. She evaluates ten to twenty students per year and has a case load of sixty-five to ninety students per year. She has a bachelor of arts and master's in science from Stockton University and was licensed by the State of New Jersey as an occupational therapist in 2009. She was accepted as an expert in OT and the development and implementation of OT IEPs.

She never met C.P. but reviewed her records, which included the Lakewood IEP, the Board's proposed IEP, the SCHI IEP, and Lakewood's OT evaluation. She believed that the MD class proposed in the Board's IEP provided the supports C.P. needed. The Board's IEP proposed the same OT services as in the Lakewood IEP. She was not aware of the petitioners expressing any concerns with the OT services proposed. The Board's IEP proposed one additional goal of multisensory movement, which Viola found acceptable. She believed the Board's IEP was consistent with Lakewood's IEP.

On cross-examination, Viola stated that she was not involved in the creation of the Board's IEP for C.P. Therefore, she was not aware if the parents objected to or expressed concerns about the IEP.

Emily Kopin, (Kopin) is employed by the respondent as a speech-language specialist. She conducts evaluations and provides treatment in accordance with the student's IEP. She has a case load of eighty to eighty-five students and conducts approximately fifteen to thirty evaluations per year. She has a bachelor of arts in speech and hearing science from Kean University and a master of science in speech-language pathology from Towson University, and is enrolled in a master's program in special education at Fitchburg State University, where she specializes in dyslexia. She was accepted as an expert in speech-language pathology and implementation of speech-related services for students with IEPs.

She never met C.P., but reviewed her records, which included the Lakewood IEP, speech-language evaluations from the SCHI and Lakewood, and the Board's proposed IEP. The speech-language services and goals proposed in the Board's IEP were identical to the services provided by Lakewood. Speech was proposed three times per week for twenty-five minutes individually and the same for the extended school year (ESY) program. Lakewood's IEP did not contain any parental concerns regarding speech-language services. The speech-language present levels of academic achievement and functional performance (PLAAFP) were the same as in Lakewood's IEP.

On cross-examination, Kopin stated that she was not involved in creating C.P.'s IEP.

Sarah Allen (Dr. Allen) is a pediatric neuropsychologist who holds a bachelor of science in psychology and Doctor of Philosophy in clinical psychology from Drexel University. She has a New Jersey professional psychology license and New Jersey psychology certificate. She is also certified as a brain injury specialist. She was accepted as an expert in neuropsychology, program development and design, and special education program evaluations.

Dr. Allen was asked by the petitioners to conduct an evaluation of C.P.; however, she did not prepare a report because her services were terminated. She visited C.P. at home and at the SCHI in fall 2023. At home, Dr. Allen observed C.P. struggle with communication, but she was very active. Dr. Allen reviewed the Lakewood IEP and the respondent's IEP and determined that they were similar. She agreed with the classification of moderate intellectual disability contained in both IEPs. She thought that the supports offered by the respondent's IEP were adequate and the special education class was similar to what the SCHI offered. She visited the respondent's MD classroom in January 2024. She saw a low student-teacher ratio, a cabinet for food, and a kitchen. She had no concerns with the respondent's IEP. She believed that the food restrictions would be a challenge, however, there was no indication that the respondent was unable to address it.

Dr. Allen also visited the SCHI classroom, which was beautiful but there was no opportunity for C.P. to interact with non-disabled students and there was a larger student-teacher ratio. She shared her concerns and observations with the family. It would be inappropriate to recommend an out-of-district placement if the respondent had an appropriate program in the district. The in-district placement would be the least restrictive because C.P. could interact with non-disabled peers, which the SCHI cannot afford to her.

Dr. Allen could not say if the respondent's program was appropriate because she did not see the program that was offered in August 2021. However, she believed the respondent's IEP was appropriate.

On cross examination, Dr. Allen said that the IEP would not be appropriate if it did not include BCBA services for a student who needed those services.

Additional Findings of Fact

In order to assess credibility, the witness's interest in the outcome, motive, or bias should be considered. Furthermore, a trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

In determining credibility, I am aware that the Board employees would want to support the program they developed for the child and would believe that the Board's program would provide the child with a FAPE. I am also aware that the petitioners would want the best program for their child. Nevertheless, the documentary evidence presented supports the testimony that each witness provided to the best of his or her abilities. Indeed, it is not so much the facts that are in dispute, as the 2021-2022 IEP speaks for itself, but rather the inferences that can be made from the evidence and testimony provided by the witnesses in concluding whether the IEP prepared by the Board offered FAPE to C.P.

Accordingly, having considered the testimonial and documentary evidence offered by the parties, the testimonies of the Board's witnesses appeared to be the most credible. They each reviewed all the relevant records and assessments produced by the respondent and found no issues with the proposed IEP that would impede C.P.'s opportunity to be successful in the MD classroom. Dr. Allen, in particular, was an unbiased witness who observed C.P, in both school environments and at home and found no deficiencies in the respondent's IEP. Having considered the testimonial and documentary evidence presented, I **FIND** the following additional **FACTS**:

C.P. never attended the program proposed by the Board and thus there is no empirical data to determine whether the Board's program is inappropriate. The Board's proposed IEP dated August 16, 2021, had the same critical components, with one minor

exception, as the Lakewood IEP dated February 24, 2021, which the petitioners did not oppose. Specifically, both IEPs classify C.P. as having "moderate intellectual disability." Both IEPs offered an ESY, speech three times per week for twenty-five minutes, individual OT two times per week for twenty-five minutes and a group consult once per week for twenty-five minutes, an individual PT consult once per marking quarter for twenty-five minutes, a 1:1 aide for 330 minutes,[2] transportation, and assignment of C.P. to a self-contained classroom. Classroom modifications offered by both IEPs include a quiet room to reduce distractions, frequent breaks, extra repetition by the teacher, redirection, integrated therapies, consultation services, a communication board, and a consistent routine. The Lakewood IEP does not require BCBA services.

Mr. Huff attempted on numerous occasions to determine where C.P. was enrolled and informed T.P. about the need for triennial evaluations for C.P.

Dr. Allen had no concerns with the respondent's IEP. The SCHI placement did not allow C.P. to interact with her non-disabled peers.

LEGAL ANALYSIS AND CONCLUSIONS

IEP and FAPE

The petitioners contend that the respondent's IEP failed to provide the appropriate program and placement for C.P. The petitioners seek: a finding that the Board denied a FAPE to C.P. for the 2021-22 school year; a finding that the Board's actions have resulted in a discriminatory denial of access to education and effective communication prohibited by Section 504 of Title II of the Americans with Disabilities Act (ADA) and the New Jersey Law Against Discrimination (NJLAD); a finding that the Board's actions constituted deliberate indifference to a known federal right under Section 504 and the ADA; compensatory education from September 1, 2021, through April 6, 2022; reimbursement for private program and placement costs at the SCHI, including tuition, fees, related

[2] The Board's IEP states twenty minutes, however, Mr. Huff testified on rebuttal this was a typographical error and should have reflected a full school day.

services costs, and transportation; reimbursement for tuition from April 7, 2022, to the present; and reimbursement for attorneys' fees and expert witness fees.

The respondent contends that it was not obligated to place C.P. at the SCHI because it had an appropriate program in district. The IEP proposed by the respondent provided C.P. with a FAPE in the least restrictive environment appropriate for her needs with all appropriate related services and supports. C.P. never attended the respondent's program and therefore there is no data to determine whether she has made meaningful progress and received a meaningful benefit while in the school. However, the IEP proposed by the respondent was identical to the IEP from Lakewood, her former district, and thus there is every reason to believe C.P. would make meaningful progress.

This case arises under the IDEA, 20 U.S.C. §§ 1400 to 1482. One purpose of the IDEA, among others, is to ensure that all children with disabilities have available to them a "free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). In short, the IDEA defines "free appropriate public education" (FAPE) as special education and related services provided in conformity with the IEP. See 20 U.S.C. § 1401(9). A FAPE and related services must be provided to all students with disabilities from age three through twenty-one. N.J.A.C. 6A:14-1.1(d). A FAPE means special education and related services that: a) have been provided at public expense, under public supervision and direction, and without charge; b) meet the standards of the State educational agency; c) include an appropriate preschool, elementary, or secondary school education in the State involved; and d) are provided in conformity with the IEP required under § 614(d). 20 U.S.C. § 1401(9); N.J.A.C. 6A:14-1.1 et seq. The responsibility to deliver these services rests with the local public school district. N.J.A.C. 6A:14-1.1(d).

To provide a FAPE, a school district must develop and implement an IEP. N.J.A.C. 6A:14-3.7. An IEP is "a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs." Sch. Comm. of Burlington v. Dep't of Educ. of Mass., 471 U.S. 359, 368 (1985). An IEP should be developed with the participation of parents

and members of a district board of education's CST who have participated in the evaluation of the child's eligibility for special education and related services. N.J.A.C. 6A:14-3.7(b). The IEP team should consider the strengths of the student and the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluations of the student; the student's language and communications needs; and the student's need for assistive technology devices and services. The IEP establishes the rationale for the pupil's educational placement, serves as the basis for program implementation, and complies with the mandates set forth in N.J.A.C. 6A:14-1.1 to -10.2. The IEP must be reasonably calculated to confer some educational benefit. Hendrick Hudson Dist. Bd. of Educ. v. Rowley, 458 U.S. 176 (1982).

The Third Circuit Court of Appeals has clarified the meaning of this "educational benefit." It must be "more than trivial," significant, and "meaningful." Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180 (3d Cir. 1988), cert. denied, 488 U.S. 1030 (1989); Ridgewood Bd. of Educ. v. N.E. for M.E., 172 F.3d 238, 247–48 (3d Cir. 1999). In evaluating whether a FAPE was furnished, an individual inquiry into the student's potential and educational needs must be made. Ridgewood, 172 F.3d at 247. In providing a student with a FAPE, a school district must provide such related services and support as are necessary to enable the disabled child to benefit from the education. Rowley, 458 U.S. at 188–89.

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

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

A complete IEP must contain a detailed statement of annual goals and objectives. N.J.A.C. 6A:14-3.7(e)(2). It must contain both academic and functional goals that are, as appropriate, related to the New Jersey Student Learning Standards of the general-education curriculum and "be measurable," so both parents and educational personnel can be apprised of "the expected level of achievement attendant to each goal." Ibid. Further, such "measurable annual goals shall include benchmarks or short-term objectives" related to meeting the student's needs. N.J.A.C. 6A:14-3.7(e)(3). The New Jersey Supreme Court has recognized that "[w]ithout an adequately drafted IEP, it would be difficult, if not impossible, to measure a child's progress, a measurement that is necessary to determine changes to be made in the next IEP." Lascari v. Bd. of Educ. of Ramapo Indian Hills Reg'l Sch. Dist., 116 N.J. 30, 48 (1989).

It is undisputed that C.P. moved with her family from Lakewood to Toms River and, accordingly, changed schools. N.J.A.C. 6A:14-4.1(g) addresses the process when a student with an IEP transfers to another school district and mandates:

> When a student with a disability transfers from one New Jersey school district to another, . . . the child study team of the school district into which the student has transferred shall conduct an immediate review of the evaluation information and the IEP and, without delay, in consultation with the student's parents, provide a program comparable to that set forth in the student's current IEP until a new IEP is implemented . . . .

Petitioners fault the respondent for relying on old evaluations and failing to observe or meet C.P. prior to proposing the IEP. However, the evidence shows that the respondent complied with the requirements of this regulation. Specifically, the

respondent received the Lakewood IEP on or about August 12, 2021, and an IEP meeting was held with the respondent and the parents on August 16, 2021, where a new IEP was proposed. Except for the typographical error in the amount of time the 1:1 aide was assigned to C.P., it is undisputed that the proposed 2021–2022 IEP drafted by the respondent was comparable to the IEP from Lakewood. The respondent's IEP was sufficiently individualized to C.P. to permit continuing meaningful progress, considering her deficits. The IEP contained the critical components, such as a self-contained classroom with a 1:1 aide; related services such as PT, OT, and speech-language; and classroom modifications designed to address the complexity of C.P.'s learning disabilities. I therefore **CONCLUDE** that a preponderance of the evidence exists that the Board offered C.P. a FAPE as that term is defined by law. The IEP was a fully developed education program, and included critical components needed for C.P. to make meaningful progress.

Unilateral Placement and Reimbursement

Parents who withdraw their child from public school and unilaterally place the child in a private placement while challenging the IEP may be entitled to reimbursement if the administrative law judge (ALJ) finds that the school district's proposed IEP was inappropriate, and that the parents' unilateral placement was appropriate under the IDEA. 20 U.S.C. § 1412(a)(10)(C)(ii); N.J.A.C. 6A:14-2.10(c). Florence Cnty. Sch. Dist. Four v. Carter, 510 U.S. 7, 12 (1993); Burlington, 471 U.S. at 370. More particularly, an ALJ may require the district to reimburse the parents for the cost of that enrollment if "the district had not made a free, appropriate public education available to the student in a timely manner prior to enrollment and . . . the private placement is appropriate." N.J.A.C. 6A:14-2.10(b); see 20 U.S.C. § 1412(a)(10)(C)(ii). However, parents who unilaterally withdraw their child from public school and place the child in a private school without consent from the school district "do so at their own financial risk." Burlington, 471 U.S. at 374. If it is ultimately determined that the program proposed by the district affords the child a FAPE, then the parents are barred from recovering reimbursement of tuition and related expenses.

Having found that the Board offered C.P. a FAPE, I **CONCLUDE** that the petitioners are not entitled to reimbursement for unilaterally placing C.P. at the SCHI.

Petitioners rely upon the New Jersey District Court opinion in J.B. o/b/o M.B. v. Watchung Hills Regional School District, 2006 U.S. Dist. LEXIS 250 (D. N.J. January 5, 2006) in which the District Court reversed the ALJ's decision and determined that the plaintiffs were not barred from seeking reimbursement for their unilateral private placement of their child, M.B. Petitioners herein contend this decision supports their claim for reimbursement. The sole issue before the District Court was whether the parents were procedurally barred from seeking reimbursement. The issue of whether the new IEP developed and offered by the new high school provided M.B. with a FAPE was not addressed. Here, I have determined that the IEP developed and offered by the respondent offers C.P. with a FAPE and thus, the petitioners' reliance on Watchung Hills (citations omitted) is misplaced.

Advance Notice

N.J.A.C. 6A:14-2.10(c) requires parents to give the school district advance notice of their concerns and intention to remove a student unilaterally. It is axiomatic that "[t]his notice requirement gives the school an opportunity, before the child is removed, to assemble a team, evaluate the child, devise an appropriate IEP, and demonstrate whether or not a FAPE can be provided in the public schools." J.B. & D.B. v. Watchung Hills Reg'l Sch. Dist. Bd. of Educ., 2006 U.S. Dist. LEXIS 250, *23-24 (D.N.J. Jan. 5, 2006) (citing Greenland Sch. Dist. v. Amy N., 358 F.3d 150, 159-60 (1st Cir. 2004)). This regulation also states that reimbursement may be reduced or denied if there is a judicial finding of unreasonableness with regard to the parents' actions. See N.J.A.C. 6A:14-2.10(c)(4).

Here, the respondent and petitioners met on August 16, 2021, to develop an IEP. T.P. did not request an out-of-district placement until October 7, 2021. Yet, T.P. testified that she informed the SCHI that C.P. would be attending in September 2021. Accordingly, I **CONCLUDE** that a preponderance of the evidence exists that the petitioners acted unreasonably in not informing the respondent at the August 16, 2021, IEP meeting that

they wanted C.P. to be at the SCHI. However, failure to adhere to the notice requirement is not a wholesale bar to reimbursement. M.C.I. ex rel. M.I. v. N. Hunterdon-Voorhees, 2018 U.S. Dist. LEXIS 24902 (D.N.J. Feb. 15, 2018). This case stems from an ALJ decision, dated March 8, 2017, dismissing the petitioner's claim for tuition reimbursement determining that the parent's conduct in unilaterally placing her child in an out-of-district placement violated N.J.A.C. 6A:14-2.10(c), which requires timely notice of a unilateral placement. The parent appealed to the U.S. District Court, and in an order dated February 15, 2018, the Honorable Anne E. Thompson, U.S.D.J., remanded the case to the OAL for an evidentiary hearing. Judge Thompson affirmed that the parent's notice was untimely but remanded the case for the ALJ to "consider whether [the] late notice actually prejudiced the Board and whether the district was afforded adequate time to review and revise [the child's] IEP." Id. at *22.

On remand, the ALJ ruled that the district failed to provide a FAPE and the out-of-district placement was appropriate. However, the ALJ dismissed the appeal, ruling that not only was the notice late, but the parent's conduct was "so unreasonable as to serve as a bar to the relief she seeks." M.I. ex rel. M.I. v. N. Hunterdon-Voorhees, EDS 09957-18 and EDS 17034-18, Final Decision at *24 (Oct. 30, 2019), https://njlaw.rutgers.edu/collections/oal/html/initial/eds09957-18_1.html. The parent appealed again to the District Court, and, in an order dated April 30, 2021, the Honorable Michael Shipp, U.S.D.J., ruled that the parent's conduct was not so unreasonable as to warrant a complete denial of tuition reimbursement. Moreover, the District Judge affirmed that the notice was untimely but still adequate, and ordered that the parents were entitled to partial tuition reimbursement.

Accordingly, an equitable analysis is needed to determine whether the IEP proposed by the respondent made available a FAPE for C.P., and whether the parents acted unreasonably during the IEP process.

The parents in this case never gave the respondent an opportunity to implement the IEP that is identical to the former IEP, which they concede provides a FAPE in a different school environment. The main concern expressed by the petitioners is whether

the social supports and dietary restrictions of C.P. could be properly accommodated in district.

The issue of parents not giving the school district an opportunity to implement an IEP has been addressed in several New Jersey cases. In Y.B. v. Howell Twp. Bd. of Educ., 4 F.4th 196, 197 (3d Cir. 2021), a family moved from the Lakewood Township School District into the Howell School District after Lakewood had developed an IEP which placed the student at an out-of-district placement called the School for Children with Hidden Intelligence. The new school district, Howell, convened an IEP meeting and determined that the existing IEP could be implemented in an in-district classroom program. Ibid. In applying the "comparable services" test of the IDEA, the court held that "an IEP focuses on the services needed to provide a student with a FAPE, not on the brick-and-mortar location where those services are provided." Id. at 198. More importantly, the Third Circuit in Howell went on to analyze whether the new district had provided the student with a program offering comparable services to those set forth in the prior IEP. The court held in Howell:

> On the record before us, we cannot say the services were not comparable. Ample evidence shows Howell intended to provide "services comparable to those described in [S.B.'s] previously held IEP." 20 U.S.C. § 1414(d)(2)(C)(i)(I). After the Howell IEP Team met S.B. and reviewed his Lakewood IEP, it produced a memorandum listing these services S.B. would receive at Memorial Elementary: . . . That therapy schedule matches the one S.B. received under his Lakewood IEP. Howell also "arranged for the provision of related services for S.B. consistent with the Lakewood IEP and . . . made arrangements for transportation services for S.B. and his special need for a welcome on the school bus." Y.B., 2020 U.S. Dist. LEXIS 49244, 2020 WL 1320137, at *2.
>
> Rather than sending S.B. to Howell and then challenging the services as inadequate through a due process hearing—the procedure contemplated by the IDEA—Appellant eschewed the school district's offer, refused to send S.B. to Howell, and unilaterally continued his placement at SCHI. In doing so, Appellant prevented Howell from implementing its services at all, so there is no evidence the services offered were not "comparable." Because the record lacks evidence of non-comparable services, Howell did not violate the IDEA.

[Id. at 200–01.]

Similarly, in J.F. v. Byram Township Board of Education, 629 F. Appx. 235, 238 n.3 (3d Cir. 2015) (internal citation omitted), the Third Circuit found that "while the new district is required to provide services comparable to those described in the previously held IEP, the IDEA does not compel allowing a student to continue at the student's current brick-and-mortar placement." Thus, when a student with an IEP moves to a new school district, that district "meets its obligation" under the IDEA if the district provides the student "a free and appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents." Id. at 238.

Upon a move to a new school district, parents are not entitled to an alternative placement for their child if they have not "first given the public school a good faith opportunity to meet its obligations." K.G. v. Cinnaminson Twp. Bd. of Educ., 2018 U.S. Dist. LEXIS 159909, *24 (D.N.J. Sept 19, 2018) (quoting C.H. v. Cape Henlopen Sch. Dist., 606 F.3d 59, 72 (3d. Cir. 2010)). Indeed "the core of the [IDEA] is the cooperative process that it establishes between parents and schools." Schaffer ex. rel. Schaffer v. Weast, 546 U.S. 49, 53 (2005). In K.G., the District Court affirmed the ALJ's finding that the plaintiff failed to provide the defendant with a good-faith opportunity to comply with the IDEA where the petitioner moved to a new district (Cinnaminson) which proposed an IEP with an in-district placement, and the petitioner chose to keep the student in the private placement she attended prior. There, the ALJ found that the plaintiff deprived Cinnaminson of the opportunity to demonstrate that it could provide FAPE in the LRE to the student.

The ALJ noted that "[w]hen a parent does not cooperate in the process, 'it is not possible to know whether a district can provide FAPE for a student until it has had an opportunity to do so,' and '[d]eterminations regarding whether meaningful educational benefit can be achieved cannot be made without an educational experience with the Cinnaminson [district].'" K.G., 2018 U.S. Dist. LEXIS 15990 at *24.

Here, the petitioners failed to cooperate by repeatedly refusing to disclose where C.P. was attending school, and by failing to provide respondent with the opportunity to implement the IEP. Although I am sympathetic to the petitioners' desire to keep C.P. in a placement where she feels safe and has been for several years, the IDEA does not mandate school choice; it mandates an IEP that provides the student with a FAPE in the least restrictive environment. The petitioners did not give the respondent the opportunity to implement the identical IEP or an opportunity to comply with the IDEA. The IEP provides the exact same services, and there has been no evidence that the respondent is unable to implement the proposed IEP at the Toms River High School. Moreover, there was insufficient evidence that the placement would be unsafe or that the Board was unable to address the social support and dietary needs of C.P. See M.R. ex rel. D.P. v. Franklin Twp. Bd. of Educ., OAL Dkt. No. EDS 10460-23, Final Decision (May 28, 2024).

The petitioners' also allege that the Board's IEP is inappropriate because it does not include the services of a BCBA, the IEP denied C.P. autism-related services, the MD classroom proposed by the Board is a "busy environment filled with materials and various centers [that] were inappropriate for C.P.," there was no transition planning or meaningful community -based instruction, and the Board denied the petitioners' right to participate in developing the IEP. There is also a concern that C.P. will be exposed to non-kosher food. I have heard the testimony of the professionals at Toms River, and I have found their testimony credible and have found as fact that they have adequate professionals to meet the requirements of the IEP. There is a quiet space where C.P. can receive 1:1 instruction as she currently does at the SCHI. The services of a BCBA are a bonus but not specifically mandated in the Lakewood IEP, which the petitioners approved. In addition, the evidence and testimony demonstrated that the Board has full-time and adequate PT, OT, and speech-language staff to meet the needs of C.P. and to implement her IEP, which is identical to the IEP that was implemented at the SCHI.

Just because a child with disabilities might make greater academic progress in an out-of-district placement does not necessarily warrant excluding that child from an in-district program and placement. I, therefore, **CONCLUDE** that the respondent has demonstrated by a preponderance of the credible evidence that it can provide FAPE to C.P. in the LRE. There was no credible testimony that this IEP would not have been

successful, as the parents refused to consider placement within the district. While the parents' reservations about a change of placement are understandable, they have presented an insufficient legal basis upon which to direct the respondent to maintain C.P.'s program at the SCHI. The IEP provides FAPE in the LRE. I, therefore, **CONCLUDE** that the petitioners are not entitled to an out-of-district placement or reimbursement for unilaterally placing C.P. at the SCHI.

Compensatory Education

Finally, petitioners seek compensatory education from September 1, 2021, through April 6, 2022. Our courts recognize compensatory education as a remedy under the IDEA and have held that "a school district that knows or should know that a child has an inappropriate IEP or is not receiving more than a *de minimis* educational benefit must correct the situation. If it fails to do so, a disabled child is entitled to compensatory education for a period equal to the period of deprivation, but excluding the time reasonably required for the school district to rectify the problem." M.C. ex rel. J.C. v. Cent. Reg'l Sch. Dist., 81 F.3d 389, 397 (3d Cir. 1996). Compensatory education requires school districts to "belatedly pay expenses that [they] should have paid all along." Id. at 395 (citations omitted).

My task is "to weigh the interests on both sides and determine the equitable outcome. This is not an easy task, [and I must] balance the interests of finality, efficiency, and use of the School District's resources with the compelling needs [of the student]." Ferren C. v. Sch. Dist. of Phila., 595 F. Supp. 2d 566, 578 (E.D. Pa. 2009), aff'd, 612 F. 3d 712 (3rd Cir. 2010). Some courts award by rote a block of compensatory education equal to time lost by a denial of FAPE, referred to as a "cookie-cutter approach." See Cent. Sch. Dist. v. K.C., 2013 U.S. Dist. LEXIS 94065, *32–33 (E.D. Pa. 2013) (citing Reid v. D.C., 401 F.3d 516, 523 (D.C. Cir. 2005)). The award "should aim to place disabled children in the same position they would have occupied but for the school district's violations" by "replacing educational services the child should have received in the first place." Reid v. D.C., 401 F.3d 516, 518 (D.C. Cir. 2005) (cited with approval by Ferren C., 612 F.3d at 717–18). An hour-for-hour replacement for the period of deprivation, however, is not the only appropriate method of calculating a compensatory

education award. Reid, 401 F.3d at 523 (finding that "this cookie-cutter approach runs counter to both the 'broad discretion' afforded by the IDEA's remedial provision and the substantive FAPE standard that provision is meant to enforce").

With this analysis in mind, in this case compensatory education is unwarranted. The petitioners have failed to demonstrate how C.P. was deprived of an education when she was attending the SCHI during the period for which compensatory education is requested. To suggest that her educational needs were not being met belies their claim that the SCHI placement is appropriate. Accordingly, I **CONCLUDE** that the petitioners are not entitled to compensatory education for the period from September 1, 2021, through April 6, 2022.

ORDER

Based on the foregoing, I **ORDER** that the petitioners' claim for private placement at the SCHI and reimbursement is **DENIED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2025) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516 (2024). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education.

June 23, 2025 Kim C. Belin

DATE **KIM C. BELIN**, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

KCB/sw

APPENDIX

Witnesses

For the petitioners

T.P.
Miriam Hirsh
Penina Pflaster

For the respondent

Kevin Huff
Jennifer Viola
Emily Kopin
Sarah Allen

Exhibits

Joint Exhibits

J-1 Petition for Due Process dated June 1, 2022
J-2 Respondent's Motion for Summary Decision dated June 10, 2022
J-3 Petitioners' Objection to Respondent's Motion for Summary Decision dated June 16, 2022
J-4 Petitioners' request for records dated August 11, 2022
J-5 Respondent's Reply to Petitioners' Objections dated August 25, 2022
J-6 Letter Order dated September 27, 2022
J-7 Petitioners' Opposition to Motion for Summary Decision dated November 11, 2022
J-8 Respondent's Reply Brief dated November 21, 2022
J-9 Petitioners' Sur-reply Brief dated November 30, 2021
J-10 Answer with Affirmative Defenses dated April 28, 2023
J-11 Not admitted
J-12 Lakewood Occupational Therapy Evaluation dated May 19, 2016

J-13 Lakewood Speech and Language Evaluation dated June 3, 2016
J-14 Lakewood Eligibility Conference Report dated February 21, 2019
J-15 Not admitted
J-16 Not admitted
J-17 Not admitted
J-18 Not admitted
J-19 Not admitted
J-20 Not admitted
J-21 Not admitted
J-22 Lakewood IEP dated February 24, 2021
J-23 SCHI 2020-2021 End-of-Year Summary
J-24 Not admitted
J-25 Toms River Registration Materials
J-26 Toms River Correspondence with Lakewood (emails)
J-27 Toms River draft IEP dated August 16, 2021
J-28 Toms River Final IEP dated August 16, 2021
J-29 Toms River Correspondence with petitioners (memoranda and emails)
J-30 Not admitted
J-31 SCHI IEP dated February 21, 2022
J-32 Petitioners' Unilateral Placement Notice dated March 23, 2022
J-33 SCHI 2022 Progress Report
J-34 Not admitted
J-35 Not admitted
J-36 SCHI 2022-2023 Daily Schedule
J-37 Not admitted
J-38 SCHI 2023 Progress Report
J-39 Not admitted
J-40 Not admitted
J-41 Not admitted
J-42 Not admitted
J-43 SCHI 2023-2024 Progress Report
J-45 Kevin Huff Curriculum Vitae
J-46 Jennifer Viola Curriculum Vitae

J-47 Emily Kopin Curriculum Vitae

J-48 Not admitted

J-49 Not admitted

J-50 Sarah Allen Curriculum Vitae

J-51 Miriam Hirsch Curriculum Vitae

J-52 Penina Pflaster Curriculum Vitae

J-53 Not admitted

For the petitioners

None

For the respondent

None