State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION
OAL DKT. NO. EDS 05385-22
AGENCY DKT. NO. 2022-34559

G.A. AND C.A. ON BEHALF OF Z.A.,
Petitioners,
v.
BRIDGEWATER-RARITAN REGIONAL BOARD OF EDUCATION AND MONTGOMERY ACADEMY,[1]
Respondents.

G.A. and C.A., petitioners, pro se, on behalf of Z.A.

Thomas Licata, Esq., and **Melanie Rowan Quinn,** Esq., for respondent Montgomery Academy (Malapero, Prisco, Klauber & Licata, LLP, attorneys)

Record Closed: September 9, 2025 Decided: October 7, 2025

BEFORE **TRICIA M. CALIGUIRE,** ALJ:

STATEMENT OF THE CASE

This case arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 to 1482, and 34 C.F.R. §§ 300.500 et seq (2025). Petitioners G.A. and

[1] By order dated July 13, 2023, the claims against respondent Bridgewater-Raritan Regional Board of Education were dismissed.

C.A. on behalf of Z.A. sought an order directing respondents Bridgewater-Raritan Regional Board of Education (Board) and Montgomery Academy to provide certain student records of Z.A., to correct such records, to provide Z.A. with access to Naviance[2], and to provide Z.A. with compensatory education in the form of transition services and/or career planning assistance and speech and language therapy for sessions missed between January 20, 2020, and June 23, 2020.

Respondents moved to dismiss all claims; by order dated July 13, 2023, all claims in the due process petition against the Board and a portion of those claims against Montgomery Academy motion were dismissed. Here, petitioners seek a finding that he respondent Montgomery Academy denied Z.A. a free appropriate public education (FAPE) in the form of missed transition services and/or career planning assistance and speech and language therapy services between March 18, 2020, and June 19, 2020.

PROCEDURAL HISTORY

On June 23, 2022, G.A. and C.A. filed a due process petition with the New Jersey Department of Education (NJDOE), Office of Special Education (OSE) on behalf of their adult son Z.A. At the time of filing, Z.A. was twenty-two years old and had not attended school for two years. The thirteen-count petition listed the Bridgewater-Raritan Regional School District (District) as the district of residence and Montgomery Academy as the school that Z.A. last attended.

The petition generally described the "nature of the problem" as "failure to provide outlined [Individualized Education Program (IEP)] services" under a May 6, 2019, settlement agreement (2019 settlement agreement) entered by petitioners and respondent Board to resolve the matter covered by OAL Docket No. EDS 14777-18; failure to provide post-secondary career transition services between January 10, 2020, and June 2020; denial of access to student records from as early as 2019; failure to correct transcripts; failure to cooperate with investigations conducted by the U.S.

[2] Naviance is a college and career readiness software used primarily by high schools to assist students with college and career planning. "Naviance" refers both to the software and the company that sells the software.

Department of Education (USDOE), the Office of Civil Rights (OCR), and pursuant to the Family and Educational Rights Protection Act (FERPA)[3]; improper interference with the investigation conducted by the Bernards Township Police Department of a crime in which Z.A. was the alleged victim; failure to provide transportation and/or to reimburse transportation costs; loss of speech therapy services between January 10, 2020, and June 2020; theft; libel; and violations of Section 504 of the Rehabilitation Act of 1973[4].

On or about June 30, 2022, OSE transmitted this matter to the Office of Administrative Law (OAL) for hearing as a contested case. N.J.S.A. 52:14F-1 to -13, and N.J.S.A. 52:14B-1 to -15. The Board was the only respondent on the service list. The matter was assigned to the Honorable Susan A. Olgiati, ALJ. On June 30, 2022, the Board filed a motion to dismiss, and on July 6, 2022, petitioners filed their opposition to the motion. An initial pre-hearing conference scheduled for July 21, 2022, was adjourned at petitioners' request so they could seek assistance from counsel.

On July 28, 2022, OSE reissued a corrected copy of the transmittal, adding Montgomery Academy as a respondent, and on August 8, 2022, Montgomery Academy filed its response to the petition. Under the IDEA, the final decision in this matter was due on or before September 10, 2022, forty-five days after the corrected petition was filed. N.J.A.C. 1:6A-18.1; 34 C.F.R. § 300.510(b)(c) (2025). **The final decision will be issued more than three years after September 10, 2022, and therefore, the procedural history of this matter is recounted in full detail to illustrate how action by the parents often served to delay these proceedings and frustrate the policy of the IDEA.**

On August 28, 2022, Montgomery Academy filed a motion for summary dismissal of the petition. On August 22, September 22, and October 13, 2022, Judge Olgiati conducted pre-hearing/case management conferences but did not issue a briefing schedule on the motions to dismiss as petitioners continued to seek counsel.

[3] 20 U.S.C. § 1232g.
[4] 29 U.S.C. §§ 701 et seq.

By letter dated November 4, 2022, Denise Lanchantin Dwyer, Esq., notified Judge Olgiati that she had been retained by the petitioners for settlement purposes but could not commit to representing petitioners in a plenary hearing. On November 30, 2022, the parties told Judge Olgiati that they continued to discuss settlement and agreed to a further adjournment of the motion schedule.

On January 11, 2023, petitioners appeared for a telephone status conference without counsel and requested permission to update their petition because at the time the petition was filed, they were unaware of a new statute extending the statute of limitations.[5] The Board opposed petitioners' attempt to add any new claims to the petition. To better understand the existing claims alleged and the relief sought, Judge Olgiati allowed petitioners to clarify in writing which records allegedly had yet to be provided, the nature and status of their OCR and FERPA filings with USDOE, and an explanation of the proposed updated claims. Petitioners were directed to provide this information by February 2, 2023. A conference to discuss the information to be provided and respondents' proposed response was scheduled for February 22, 2023.

Between February 2 and 3, 2023, petitioners submitted to the OAL a series of five emails, including: a January 30, 2023, letter to Judge Olgiati regarding an overview of the FERPA claims and referencing several attachments, including a March 2021 "FERPA Complaint for Z.A. Denial of Access to School Records and Access to Correction of Records"; two emails sent on February 3, 2023, referencing and attaching a January 29, 2023, letter to Judge Olgiati "on DOE" and multiple additional attachments, including and relating to a 2016, thirty-six-count due process petition; a twenty-five page 2016 request for emergent relief (which was withdrawn in January 2017); a January 29, 2023 letter to Judge Olgiati[6] regarding an overview of the OCR matter with multiple additional attachments, including a December 2020 OCR Discrimination Complaint alleging multiple acts of alleged discrimination against Z.A. by the District, Montgomery Academy, and Rutgers Adolescent Therapeutic Day School on the basis of sex, disability, and retaliation, including but not limited to, denial of access to records for the "last 10 years," the District's

[5] P.L. 2022, c. 2, codified at N.J.S.A. 18A:46-1.3(a).

[6] The three letters to Judge Olgiati dated January 29 (two letters) and 30, 2023, were not provided to her prior to being included with the February 2–3, 2023, email submissions.

refusal to provide documentation to the NJDOE, failure to provide transportation services in the 2019–2020 school year, denial of speech therapy, removal of transition services, threatened legal action for filing a due process request, and failure to fulfill settlement obligations; a February 2, 2023, eleven-page letter, entitled "Amendment to Due Process"; and a five-page letter titled "Request for Missing Documents," which listed twenty-two categories of documents allegedly withheld by the District and multiple categories of documents allegedly withheld by Montgomery Academy.

On February 22, 2023, the briefing schedule on respondents' motions to dismiss was reinstated, and oral argument was scheduled for April 13, 2023. On March 9, 2023, in response to the numerous additional submissions filed by the petitioners, the Board filed a supplemental letter brief in support of its motion to dismiss. On March 10, 2023, Montgomery Academy filed a supplemental letter brief in support of its motion.

By letter dated March 20, 2023, petitioners advised Judge Olgiati (for the first time) that they needed Americans with Disabilities Act (ADA)[7] accommodations to access the court process and requested additional time to respond to the respondents' supplemental filings in support of their pending motions to dismiss. Accordingly, petitioners were granted an extension until April 14, 2023, to file their response, and respondents were given additional time to file their replies; as a result, the oral argument scheduled for April 13, 2023, was cancelled. On April 6, 2023, petitioners requested and were granted an extension until May 12, 2023, to file their response.

On May 5, 2023, petitioners sent an email to the OAL seeking guidance on how to proceed in amending the current due process petition as they contended that newly obtained information required them to file a new due process petition. Petitioners were directed, with copy to respondents, to complete and file their responses to the pending motions and that the pending motions to dismiss and the motion to amend the petition would be decided simultaneously.

[7] 42 U.S.C. §§ 12101 et seq. (1990).

On May 12, 2023, petitioners requested a further extension of time to file their response. The request was granted, and petitioners were permitted to file their response by May 19, 2023. On May 19, 2023, petitioners filed a sixteen-page letter brief in response to the motions to dismiss, followed on Sunday, May 21, 2023, by a series of emails with thirty-two attachments (labeled A–AE) in support of their letter brief.

Due to the extensive nature of petitioners' response, respondents requested and were granted additional time to file their replies. The Board filed its reply on June 5, 2023, and on June 6, 2023, Montgomery Academy filed its reply.

On June 13, 2023, Judge Olgiati was nominated to the Superior Court of New Jersey, and this matter was reassigned to me. Given the extensive procedural history and documentary record, I elected to decide all pending motions on the papers without oral argument. On July 13, 2023, I issued an order denying petitioners' motion to amend their petition, granting the motion of the Board to dismiss all claims against it, and granting in part the motion of Montgomery Academy to dismiss all claims.

On July 17, and November 14, 2023, petitioners and Montgomery Academy participated in prehearing conferences by Zoom, with Communication Access Realtime Translation (CART) services,[8] provided to ensure that petitioners could fully participate in the proceedings despite their disabilities. By November 14, 2023, petitioners had filed another due process petition on behalf of Z.A., which was assigned to the Honorable Mary Ann Bogan, ALJ. During the November 14, 2023, status conference, the parties agreed to focus on the settlement of both cases and to set aside their discovery obligations for two months.

A status conference was scheduled for January 19, 2024, but not held because on January 17, 2024, petitioners submitted the first of a series of six requests for accommodation under the ADA in the form of adjournments or extensions of the procedural schedule. These requests were made directly to Candice Hendricks, OAL

[8] Similar accommodations were provided to petitioners while Judge Olgiati presided over this matter.

ADA Coordinator, and supported by letters from medical professionals treating first C.A., and later, G.A.

By letter dated July 17, 2024, the parties were notified that their last request for ADA accommodation in the form of an extension of the procedural schedule had been granted through August 30, 2024, and the hearing was rescheduled for September 9, 2024. On August 21, 2024, a prehearing order was issued, in which the parties were reminded that all documents intended to be introduced at the hearing were to be provided to the other party no later than five business days before the hearing (unless such documents had been exchanged previously).

On August 22, 2024, Montgomery Academy filed a motion to dismiss on the grounds that petitioners failed to respond to the discovery requests that respondents served on September 15, 2023. On September 10, 2024, petitioner C.A. requested an immediate adjournment of the procedural schedule due to unspecified medical and technical issues, which was denied, and submitted a copy of her hand-written responses to discovery. Montgomery Academy's motion to dismiss was denied by order dated October 16, 2024. The hearing was scheduled for October 23, 2024, by Zoom (as accommodation to petitioners).

On October 23, 2024, the parties appeared for the hearing and agreed to participate first in settlement discussions with the Honorable Susan Scarola, ALJ. The parties agreed to a second settlement conference on November 25, 2024, but they were unable to settle. The hearing was rescheduled for January 27, 2025.

On January 17, 2025, petitioners submitted a list of witnesses not previously disclosed, stating that since neither petitioners nor Z.A. were able for health reasons to testify, they sought to substitute four new witnesses. By letter of January 23, 2025, I permitted this substitution of witnesses over respondent's objections.[9]

[9] Only one of the four witnesses substituted by petitioners on January 17, 2025, appeared at the hearing, and that one witness had no relevant information.

On January 24, 2025, petitioners submitted a request for additional ADA accommodations "due to new onset disabilities covered under Title II/ADA for petitioners GA and CA." Specifically, for G.A., petitioners requested, verbatim:

1. permitted time to read the CART written services,

2. a slowed rate presentation of information with provision of repetition when requested, information presented in written format,

3. extra time to process presented information, and

4. limitation of activities to a maximum time of 60 minutes consecutively with a cognitive break for GA is needed on the day of the EDS hearing,

5. communication to the court hearing process may also require the need to adjourn a hearing for completion to a different day based on the communication needs of petitioner[s] GA and CA, if they should arise.

6. petitioner GA's increased Title II needs now increased the Title II communication access needs for Petitioner CA due to CA's previously Title II disclosed disability needs and due to CA serving as the primary provider of Title II access for GA before the Office of Administrative Law.

With respect to C.A., petitioners requested, verbatim:

1. a slowed rate of presentation and additional time to visually review and read evidence for her ADA effective communication access allowed for herself to understand the information being presented during the hearing for cognitive comprehension and

2. permitted time to read the CART written services written provision and rereading for comprehension for herself and

3. time during the hearing for her need to be the auxiliary aide companion for GA to communicate on behalf of ZA to the OAL court.

4. Permission from the court to request 5 to 30-minute breaks to think through what is being communicated and to care for GA if he has a physical symptom requiring assistance.

5. Permission to request a repeat of questions given to CA during the hearing.

6. *Use of GA as a communication auxiliary aide/companion for effective communication for CA.*

On January 27, 2025, just prior to the commencement of the hearing, petitioners filed a motion for my recusal on the following grounds:

> [D]ue to prejudicial statements, public acts in writing and verbally of [sic] bias in violation of New Jersey Law Against Discrimination, ignoring evidence, prejudice against petitioners due to reported request for Title II accommodations due to disability that occurred to date in the OAL cases [brought by petitioners to date].

On January 27, 2025, I opened the hearing and stated that all accommodations requested by petitioners (except for an adjournment and an advance written copy of the questions prepared by respondent) would be honored.[10] Respondent stated that it opposed the recusal motion, and the following order denying the motion was placed on the record:

> Under the New Jersey Uniform Administrative Procedure Rules, a judge shall be disqualified from participation in any proceeding in which the judge's ability to provide a fair and impartial hearing may reasonably be questioned under one or more of seven discreet grounds. Specifically, N.J.A.C. 1:1-14.12, provides:
>
> (a) A judge shall, on his or her own motion, withdraw from participation in any proceeding if the judge:
>
> 1. Is by blood or marriage the second cousin of or is more closely related to any party to the proceeding.
>
> 2. Is by blood or marriage the first cousin of or is more closely related to any attorney in the case. This proscription shall

[10] During the course of the hearing, I permitted petitioners to defer objections to exhibits introduced by respondent as petitioners stated they needed additional time to read and consider each exhibit. Respondent objected on the grounds that it would be prejudiced in presenting its case without immediate objections and rulings. Given that almost all exhibits offered by respondent were joint exhibits (and therefore, should not have been objectionable), this delay did not interfere with the presentation of either party's case.

extend to partners, employers, employees, or office associates of any such attorney;

3. Has been attorney of record or counsel in the action;

4. Has given an opinion upon a matter in question in the action;

5. Is interested in the event of the action;

6. Has discussed or negotiated his or her post-retirement employment with any party, attorney, or law firm involved in the matter; or

7. When there is any other reason which might preclude a fair and unbiased hearing and decision, or which might reasonably lead the parties or their representatives to believe so.

The New Jersey Code of Judicial Conduct and the New Jersey Court Rules mirror these requirements. In this regard, Canon 2 of the Code of Judicial Conduct states that "[a] judge shall avoid impropriety and the appearance of impropriety in all activities [and] shall act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary[.]" In addition, Canon 3.17(B) provides that a judge should disqualify herself in a proceeding in which the judge's impartiality might reasonably be questioned, including when the judge has "personal bias or prejudice toward a party," a financial interest, and/or specific personal, social, or professional relationships.

Rule 1:12-1(g) directs that judges shall not sit in any matter "when there is any other reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so." Pressler & Veniero, Current New Jersey Court Rules, R. 1:12-1(g) (2019). The rule addresses actual conflicts and bias as well as the appearance of impropriety. State v. Dalal, 221 N.J. 601, 606 (2015) (citation omitted).

The standard for evaluating a request for recusal is whether a "reasonable, fully informed person [would] have doubts about the judge's impartiality." DeNike v. Cupo, 196 N.J. 502, 517 (2008) (retrial ordered in case where judge negotiated post-retirement employment with a party after issuing decision but prior to execution of final judgement). In DeNike, the Court explained that if the judge's conduct gives the public "reason to lack confidence in the integrity of the process and its outcome," then absent disqualification or recusal, "a full retrial

is required to restore public confidence in the integrity and impartiality of the proceedings." Id. at 517, 519. In Kane Properties, LLC v. City of Hoboken, 214 N.J. 199, 221, 224 (2013), the Court noted that the objective standard applies to judges and quasi-judicial officials and remanded to the trial court because the municipal attorney had a conflict of interest yet still participated in a quasi-judicial process before the city council, which raised the appearance of improper influence.

The objective standard is applicable to ALJs when determining whether a conflict of interest exists. See, Sheeran v. Progressive Life Ins. Co., 182 N.J. Super. 237, 243 (App. Div. 1981) (ALJ previously employed by agency not required to recuse himself without some other evidence of bias or undue influence). Further illustration is provided by the matter In re Williams, CSV 11366-10, Initial Decision (July 7, 2011), adopted, CSC (September 7, 2011), <http://njlaw.rutgers.edu/ collections/oal/>, reversed and remanded, No. A-0837-11 (App. Div. Aug. 6, 2013), <http://njlaw.rutgers.edu/collections/courts/>, certif. denied, *217 N.J. 53 (*2014). Here, the Civil Service Commission (CSC) adopted the ALJ's Initial Decision and removed Williams from employment as a firefighter in Atlantic City for numerous infractions, including sexual misconduct. In his exceptions to the Initial Decision, Williams argued that the ALJ should have recused himself from the case because the ALJ's son's law firm represented one of William's victims in a civil suit against the City. The CSC determined that the ALJ did not have a conflict because it was not clear from the record whether the ALJ knew about the potential conflict, and, in any case, there was no proof that the ALJ's son was involved in the civil lawsuit. The Appellate Division reversed, noting that under the objective standard, a "reasonable, fully informed member of the public would perceive that participation by the ALJ in these proceedings calls into question his impartiality and the impartiality of the Commission's decision, as well as the integrity of the proceedings." In re Williams, No. A-0837-11 (App. Div. Aug. 6, 2013), <http://njlaw.rutgers.edu/collections/courts/>.

The rules and case law establish that an actual conflict need not exist—the appearance of a conflict is enough to warrant an ALJ's recusal. Here, however, there is no basis for a reasonable person to conclude that a conflict exists. I have never met petitioners or respondent's counsel in person. Since being assigned this matter in the late spring of 2023, my dealings with both parties have been limited to meetings by Zoom, review of correspondence and motions, and drafting orders. Prior to becoming an ALJ, I did not appear in cases

> on behalf of or adverse to either party and never had any dealings with the school district or the private school involved in this matter.
>
> I have no personal or pecuniary interest in this matter. Most important, since the date of my assignment, I have expressed no views on the merits of the issues as to which this hearing is limited.
>
> With respect to appellant's specific allegations, I believe that petitioners are mischaracterizing the confusion that occurred during an earlier Zoom proceeding over the use of CART services. At that time, **no one** claimed to have an understanding of how CART works, and petitioner C.A. stated that CART was not necessary as the running transcript provided through the Zoom platform would be satisfactory. To claim that I was critical of petitioners for not having expertise in CART – when I admitted to not having such expertise – is inappropriate, unreasonable, and not borne by the transcript. With respect to the ongoing requests of petitioners to adjourn these proceedings, I have been guided by the IDEA and have complied with the directions given me by the Acting Chief Judge of the OAL, which are supported by statute, regulations, and case law. At no time did I or my assistant share with respondents what petitioners claim is confidential medical information or letters from their doctors.
>
> For the above reasons, I **CONCLUDE** that no basis exists for a reasonable person to find that I am unable to preside over this matter in a fair and unbiased manner, and, as such, my recusal is not warranted under N.J.A.C. 1:1-14.12.

On January 27, 2025, the hearing commenced with respondent's case and first witness, but due to technical issues with Zoom, the hearing was adjourned early. The CART provider agreed to provide the transcript to petitioners but notified the OAL the next day that he was not able to do so without specific authorization from OSE. The parties appeared on January 29, 2025, by Zoom, but given that the transcript had not yet been provided to petitioners, an explanation of these issues was provided to both parties, and the remaining hearings were adjourned and rescheduled.

The hearing resumed on February 11, 2025. Due to technical problems experienced at the first hearing date, respondent recalled its first witness.[11] During the hearing, respondent offered most of the same documents it introduced on January 27, 2025, at which time petitioners had no objections. Further, almost all those documents were included in the joint exhibits binder, submitted on October 18, 2024. However, on February 11, 2025, petitioners stated that they never agreed to joint exhibits, despite having already waived objections to the same documents. Nevertheless, I gave petitioners one week from their receipt of the transcript (due to their needed accommodation) to lodge any objections, noting, however, that hearsay is admissible in administrative proceedings. Most joint exhibits were admitted and used by both parties.

On February 11, 2025, after the hearing concluded for the day, petitioners submitted a letter stating that three of their four witnesses were no longer available, and they therefore sought to substitute witnesses named by respondent. This request was denied, though new hearing dates were offered to accommodate petitioners' witnesses.

The hearing resumed on March 12 and 24, May 12,[12] and June 10, 2025. The parties requested to submit post-hearing briefs after the receipt of transcripts. Briefs were filed on September 9, 2025, and the record closed.

FACTUAL DISCUSSION AND FINDINGS

Background

Based on the documents filed in this matter, I **FIND** the following **FACTS** by way of background:

[11] In their brief, petitioners claim—for the first time—that testimony of respondent's initial witness was "dismissed" and that, when the witness was recalled in February, she "changed" her testimony, showing that on January 27, 2025, she perjured herself. Pet'rs' Post-Hearing Br. (September 9, 2025) at 13. I disagree with, and disregard, petitioners' allegations.

[12] Petitioners contend that, essentially, I denied them the time needed to properly present their evidence and witnesses. See Pet'rs' Br. at 13. While I declined to qualify C.A. as an expert witness, the transcript makes clear that I provided petitioners ample time to present their case.

Z.A. is a twenty-five-year-old male who was identified as requiring special education (SE) and related services under the classification of emotionally disturbed. J-1 at 0001.

Montgomery Academy is a private school in Basking Ridge, New Jersey, serving students with disabilities aged five through twenty-one.

In 2018, petitioners requested a due process hearing to appeal the program and placement for Z.A. proposed by Bridgewater-Raritan, his home district. In 2019, the parties reached settlement, agreeing that Z.A. would remain at Montgomery Academy for the duration of the 2018–2019 school year, the summer 2019 extended school year, and for the 2019–2020 regular school year ending in June 2020, with transportation, at District expense. The parties further agreed that "all services provided by or through Montgomery Academy shall cease as of the end of the 2019-2020 regular school year in June 2020." See Motion to Dismiss of Respondent Bridgewater-Raritan Regional Board of Education (June 30, 2022), Ex. A.

Z.A. was enrolled for the 2019–2020 school year at Montgomery Academy in the Make it Real (MIR) program, which provides SE students aged eighteen through twenty-one with career planning and transition (school to work) services, local internships, job skills training, and college preparation services.

On November 25, 2025, petitioners met with Bruce Vakiener, Z.A.'s case manager,[13] to assess Z.A.'s progress and review or revise his IEP. P-44. Though there was little testimony regarding this meeting, on December 16, 2019, G.A. signed each page of the IEP and the consent to implement the IEP. Ibid. By the terms of the IEP, between November 25, 2019, and June 16, 2020, Z.A. was placed in a special class for students with behavioral disabilities, participated in on-site job training (referred to by both parties as an "internship"), received individual speech and language therapy (once/week for thirty minutes), received individual and group counseling services (once/week each for thirty minutes), and was transported to and from his placement by small bus or vehicle.

[13] Neither party stated whether Vakiener was an employee of the District or of Montgomery Academy.

Testimony[14]

Ellen Sumliner was one of Z.A.'s teachers at Montgomery Academy. She has been certified in SE since 1977, and has worked at Montgomery Academy for twenty-eight years, always with the eighteen to twenty-one year old age group. Together with Joe Leone, the transition coordinator, Sumliner taught the Structured Learning Experiences program on- and off-campus.

During the 2019–2020 school year, Z.A. was in Sumliner's homeroom, a self-contained classroom where she taught MIR program classes.

On March 9, 2020, New Jersey Governor Phil Murphy declared a public health emergency due to COVID-19 (COVID). Exec. Order 103 (Mar. 9, 2020). On March 16, 2020, Gov. Murphy closed all schools to in-person instruction from March 18, 2020, for an indefinite period. Exec. Order 104 (Mar. 16, 2020). Further, all non-essential retail, recreational, and entertainment businesses were directed to cease operations, meaning that the MIR students were no longer able to participate in on-the-job training and/or internships.

Sumliner stated that despite COVID restrictions, she continued to provide instruction and career planning and transition services. Her students, including Z.A., were required to sign on each day through Google Classroom; when they signed on, Sumliner logged their attendance. Coursework was sent to the students by email, covering topics such as current events, journaling, budgeting, use of transportation options, career planning, resume and cover letter writing, music, and physical education, and the class would meet each day using Google Classroom. Sumliner stated that she chose assignments based on the work the students would have been doing in the classroom and on the skills students would have been using in their internships; each task involved

[14] The transcripts of the hearing were not ordered by respondent; petitioners requested transcripts from the NJDOE, which determined that the unofficial transcripts provided throughout the hearing by Transperfect, the CART provider, were acceptable. All references below to transcripts are to those unofficial transcripts.

career planning and transition skills, as well as social studies, math, reading, art, and independent living.

Between March 20 and 31, 2020, at the request of petitioners, Sumliner sent them copies of all emails that she sent to Z.A. On March 24, 2020 Sumliner sent a separate email to G.A. to alert him that Z.A. had not logged into Google Classroom. J-3 at 0059. On April 1, 2020, approximately two weeks after COVID restrictions began, petitioners sent an email to Sumliner and other Montgomery Academy staff, which stated in pertinent part:

> We found out during [Z.A.'s] clinical counseling meeting that he is now completely overwhelmed with the volume of emails he is receiving from Montgomery Academy as he has never used emails with school since his psychotic break in 2016.
>
> [G.A.] and I and his treatment providers[15] are concerned for the level of distress he is experiencing with the assignments and level of functioning that is expected of him in use of the goggle [sic] classroom. It is imperative that his workload/assignments meet his current level of psychiatric Iadl's and ADL's.
>
> [J-6 at 0123.]

In light of the above, petitioners asked that only assignments from Leone[16] and Laura Crawford, the speech therapist, be sent to Z.A. directly. J-6 at 0123. Although Z.A. would continue to sign in daily to record his attendance, petitioners asked that Sumliner send all other assignments to petitioners only as Z.A. was "significantly overwhelmed with the list of assignments[.]" J-6 at 0123.

Sumliner expects that the content of this email would have been discussed by Montgomery Academy staff but has no current recall of such discussions. She complied with all of petitioners' requests and sent all emails to them instead of to Z.A. The principal of Montgomery Academy, Thomas Nolan, reviewed petitioners' requests and agreed, asking petitioners to be sure to return Z.A.'s completed assignments so he would get

[15] Z.A. did not receive mental health or psychiatric care from Montgomery Academy.
[16] At all relevant times, Leone was a certified teacher of students with disabilities.

credit. J-6 at 0122. Sumliner continued to give Z.A. the same assignments she gave all other students, though no longer directly to Z.A., but via his parents. Sumliner stated that Z.A. received credit for classes taken between March 20, and June 19, 2020.

On April 8, 2020, approximately three weeks after COVID restrictions began, C.A. sent an email to Montgomery Academy staff stating that Z.A. was uncomfortable sending his schoolwork to Sumliner but that Leone and Crawford should continue to send information. J-6 at 0116. Sumliner continued to send assignments to petitioners. She tracked Z.A.'s progress but no longer has the daily records. She identified Z.A.'s 2019–2020 progress report, which shows he made progress between March 18, and June 19, 2020. J-2 at 0054.

Sumliner identified Z.A.'s resume, J-8 at 0137–38, a cover letter Z.A. wrote, J-8 at 0139, and a letter of recommendation written for Z.A. by Leone. J-8 at 0149. Development of these documents was part of the career planning curriculum, which also included career planning, job-related research, interview skills, and internships. While Sumliner has no current recall of working with Z.A. on these materials, she stated that someone on staff would have helped him as that was part of their jobs. She also did not recall helping Z.A. with job or college applications during COVID restrictions but would have done so if requested as she helped all students as part of her job.

Sumliner had no recollection of dates on which Z.A. failed to log in and/or to attend the virtual instruction offered by Montgomery Academy. She does not have a record of his attendance and does not know if the records still exist. If he had had technical trouble logging on, Sumliner stated that technical staff would have helped him, but she has no knowledge of such discussions.

Dr. Anthony Ingenito served as Z.A.'s social worker during the 2019–2020 school year, including from March 20, 2020, through June 19, 2020. The purpose of the individual and group sessions Dr. Ingenito held with Z.A. was to develop a relationship, work on social skills, work skills, and relationship building, and if necessary, to identify the need for therapeutic intervention. He did not, however, provide mental health treatment.

Dr. Ingenito and Z.A. had only intermittent interaction during the COVID break. While Z.A. joined virtual instruction at the beginning, he quickly stopped signing on. This was not unusual among students; as he did with other students, Dr. Ingenito contacted G.A. and C.A. by telephone to ask about Z.A., but the parents were inconsistently available by telephone, and he also had trouble connecting with them virtually. This, Dr. Ingenito said, was unusual.

At the hearing, Dr. Ingenito recalled that technical problems with the phone and computer connections affected both Z.A. and his parents. Dr. Ingenito alerted the principal and the Montgomery Academy technical staff. While he recalled that the telephone or internet carrier was the source of the problem, he has no recollection of whether and how the technical problems were resolved.

Z.A.'s 2019–2020 IEP called for group counseling sessions with Dr. Ingenito, thirty minutes per session, once per week, and individual counseling sessions, thirty minutes per session, once per week. J-1 at 0026. Goals and objectives for counseling were established for Z.A. See J-2 at 0056. Between March 18, and June 19, 2020, the goals were for students to maintain a stable emotional state, to self-monitor, maintain self-discipline (such as logging into the school website daily to obtain assignments, completing assignments, and participating in team meetings), and handle the COVID crisis. While he took notes during each group and individual session with all his students, Dr. Ingenito could not recall if those notes were maintained. He recalled the main problem with Z.A. was his lack of connectivity, literally and figuratively, and for this reason, he could not state whether Z.A. made progress during the time period on any of his IEP goals.

Dr. Ingenito confirmed that Naviance, a software program used by public schools to assist their students in the college search and application process, is not available through Montgomery Academy. He recalled speaking with Z.A. about Naviance and told him that access (and a password) should have been given to him by the public school he attended before enrolling in Montgomery Academy. Dr. Ingenito understands that Naviance is provided to students without cost, and typically, they sign on from home, as Z.A. could have done. Dr. Ingenito did not assist any students with Naviance.

Laura Crawford is a speech and language pathologist; she has worked at Montgomery Academy since completing her clinical competency in 2015. She knows Z.A. from working with him when he was enrolled at Montogomery Academy. Crawford developed programming for Z.A. using his IEP; objective worksheets were used to document each therapy session. J-1 at 0014, 0015. Z.A. was scheduled for individual speech therapy sessions of thirty to forty minutes each, once each week.

The goals and objectives for speech therapy were drafted by Montgomery Academy staff and discussed with the District CST, which finalized the IEP and returned it to Montgomery Academy for implementation. Crawford used progress reports to document Z.A.'s progress and communicate with his parents as to the level of progress he was making toward his IEP goals.

During COVID, the students' assignments were posted on Google Classroom, and Crawford met with students for scheduled teletherapy sessions and informal chats using Google Hangouts. She recalls that Z.A. missed therapy sessions and that she was able to reschedule some of the missed sessions. She recalled reaching out to C.A. and G.A. but could not recall the reason for the outreach.

Crawford identified the attendance sheet for Z.A. that she created. J-6 at 0127. Between March 18 and 26, 2020, Z.A. did not log in or participate in sessions with Crawford. Ibid. She tried to engage him through email or chats, but he failed to respond. On April 7, 2020, Crawford emailed C.A. to let her know Z.A. was able to complete his assignments and to ensure that he had her correct email address. J-6 at 0125.

In April and May of 2020, Z.A. attended tele-therapy sessions by phone or video call. In June 2020, Crawford recalled that one day, Z.A. overslept and missed a session, another time, he had the days wrong. Tr. of Mar. 24, 2025 (Tr. 5), at 11. On June 17, 2020, Crawford said that Z.A. simply forgot to log on, but she was able to make that session up the next day. J-6 at 0128. Crawford stressed that she provided work for Z.A. and was available through Google Hangouts to work with him. "Beyond that, it had to also come from [Z.A.]. There had to be a little bit of engagement on his side also. Because the work was provided." Tr. 5 at 28-29.

C.A. testified on behalf of herself and her husband. She offered herself as an expert in mental health issues, developmental disabilities in children and adults, psychiatric issues, and safety protocols for people with psychiatric issues. Respondent objected to her qualification as C.A. had not submitted her resume and/or a report. Rather than limit C.A.'s testimony, I deferred a ruling on respondent's objection and on C.A.'s expert qualifications and permitted her to testify.

Prior to the final hearing date, C.A. provided her resume, P-71; she did not prepare an expert report. During voir dire, C.A. stated that her expertise is relevant to Z.A.'s safety in school and in the community, and current use of safety protocols and how such have changed. Her expertise in psychiatric issues is relevant to address the incidents in which Z.A. was involved while attending Montgomery Academy, presumably while attending in person. C.A.'s only teaching experience is as a preschool teacher approximately forty years ago; she has no experience in career planning, transition services, or speech and language therapy.

The applicable regulation, N.J.A.C. 1:1-15.9(b), provides that "if a witness is testifying as an expert, testimony of that witness in the form of opinions or inferences is admissible if such testimony will assist the judge to . . . determine a fact in issue" in the case. The issues here, whether Z.A. was denied FAPE due to missed transition and/or career planning services and missed speech and language therapy sessions, are not within the subject matter areas covered by C.A.'s education and experience. Although her testimony as a fact witness was permitted, C.A. was not qualified as an expert.

C.A. began her testimony, which was presented mainly as a narrative, by stating that Z.A.'s "significant mental health needs" led to challenges between March and June 2020, and are "critical to understanding his loss of FAPE." Tr. of May 12, 2025 (Tr. 6), at 14. Z.A. allegedly did not feel safe with staff because of events occurring outside the time period covered by this matter. Respondent's objection to this line of testimony was sustained, but G.A. interceded to say—essentially—that Z.A. could not participate in online learning for reasons other than technological challenges. See Tr. 6 at 15–16.

C.A. disputed the testimony of respondent's witnesses regarding the difficulty they had during the time period connecting with the A. family, first Z.A. and then his parents. Although they did not get the emails sent by Montgomery Academy staff, they had no internet connection issues and checked with their internet provider, Optimum. The A. family had no problems connecting with their other children's schools at the same time that Montgomery Academy claimed they did not respond to emails

Not only did C.A. not see emails from Montgomery Academy, neither she nor G.A. and Z.A. received a phone call from anyone at the school. Later, she amended this statement, saying that she only received one call from Dr. Ingenito at a time when she was not busy with her own clinical practice and was therefore able to speak with him. Dr. Ingenito did not leave messages. When they did speak, C.A. told Dr. Ingenito that Z.A. was overwhelmed with the technology and asked that everyone at Montgomery Academy send emails to her and G.A.

C.A. also said she was unaware of the extent of Z.A.'s connectivity trouble until 2022, when she received correspondence through discovery in this matter.

C.A. identified an email Sumliner sent petitioners on March 24, 2020, in which Sumliner stated that Z.A. was not signing on. J-3 at 0059. C.A. said she tried to help her son sign on but there was a questionnaire on the initial sign-in screen that asked about the user's mental health. It was necessary to answer the questions to sign on. Z.A., however, was paranoid about revealing mental health data to people who were not mental health providers. Tr. 6 at 39.

C.A. was critical of the work assigned to Z.A. during the COVID period, complaining that the writing assignments were far below his "level of college aptitude." Tr. 6 at 47. She suggested he be seen "live" for speech, after which Crawford conducted sessions over Google meetings with him. More significant is that the assignments given to Z.A., mostly by Sumliner, were so below his educational level that they contributed to his anxiety. His assignments before COVID were appropriate and more difficult.

C.A. introduced the final IEP, P-44, which included copies of additional documents and evaluations of Z.A. not found in the draft version marked as a joint exhibit. See J-1. Each page of the final IEP bears the initials of G.A., and his signature appears on the last page. C.A. made frequent references to the final IEP but also stated that it was "faulty" because it lacked a page showing the signatures of all CST members.

C.A. identified the Student Data Report on Z.A. provided to Montgomery Academy by Bridgewater-Raritan Regional School District, the sending district. P-19. She stated that this information was inaccurate and, therefore, the Montgomery Academy program for Z.A. was improper. Further, C.A. identified a reference in the IEP to the standardized tests that Z.A. took in 2016. He did well enough to put Montgomery Academy on notice that he could do college-level work, and the assignments he was given did not address his needs. See also J-3 at 0061, 63, 66, and 69 (daily assignments which C.A. stated were "too easy" for Z.A.); J-3 at 0091 (writing assignment which C.A. stated was "not consistent" with the IEP). Tr. 6 at 46, 48.

C.A. pointed out that Z.A.'s IEP provided for speech and language therapy in individual sessions, once per week, for thirty minutes. J-1; P-44. Therefore, between March 18, and June 19, 2020, he missed fourteen weeks of speech and language therapy. Further, C.A. stated that the IEP provided for the speech therapist to use instructional materials and strategies, and there was no evidence that she did so. See J-1 at 0047. Finally, petitioners learned from Crawford's hearing testimony that she kept notes on her sessions with Z.A., and these notes were never provided to petitioners.

C.A. identified the May 2020 progress report on Z.A. and showed that the goals for speech therapy in the progress report are different from the goals listed in the IEP. J-2 at 0055. C.A. concludes that the IEP was changed without approval; petitioners asked for an IEP meeting to update Z.A.'s IEP, but none was scheduled. (Petitioners did not provide a copy of such a request.)

C.A. compared the speech worksheets prepared by Crawford, J-6 at 0113, and the attendance records for Z.A., J-6 at 0127.[17] C.A. stated that by this comparison, she concludes that Z.A. did not receive speech and language therapy on ten dates, for which he must be provided compensatory education. C.A. also noted that Crawford did not sign her worksheets, which C.A. contends is a New Jersey State requirement for licensed therapists.

C.A. pointed out that Z.A.'s IEP provided for group counseling (with Dr. Ingenito) once per week, for thirty minutes and individual counseling once per week for thirty minutes. J-1; P-44. Z.A. said he never got links for counseling sessions. Therefore, between March 18, and June 19, 2020, he missed fourteen sessions of group counseling and fourteen sessions of individual counseling. Further, C.A. stated that petitioners received no group notes, assessments, or reports from the counselor during this time.

C.A. identified Z.A.'s May 2020 Progress Report, P-23, and compared it to the 2019–2020 school calendar, which showed that the fourth marking period ended on May 13, 2020. P-63. C.A. claimed that the Progress Report only included information through May 13, 2020, and petitioners had no information on Z.A.'s progress after that date.

Z.A. told his parents that his access to Montgomery Academy classes (presumably through Googe Classroom) was discontinued before June 19, 2020, the last full day of school. His email was removed by the internet provider, and he could not access his resume and/or teacher recommendations. Petitioners asked Leone for help getting Z.A.'s resume, but despite requests and Leone's response that he would help, petitioners did not get a copy of Z.A.'s resume until 2022, when respondent provided it during discovery in this matter.

According to C.A., petitioners asked for help for Z.A. with transitioning to college, but none was forthcoming. His portfolio was not completed. Strategies listed in the IEP,

[17] C.A. stated that petitioners were unaware of Z.A.'s absences as no notices were sent to them by Montgomery Academy between March 18, and June 19, 2020.

see P-44 at 5/13, were not completed, and Z.A. said he did not receive training in the use of technology, as required in the IEP. P-44 at 9/13.

The second week of June 2020, petitioners gave Montgomery Academy a flash drive and asked that Z.A.'s work be downloaded onto the flash drive. Nolan said he would send everything to petitioners via certified mail, but they did not receive any documents until 2022, when respondent provided them during discovery in this matter.

With respect to the specific relief petitioners are seeking, C.A. stated that petitioners seek financial reimbursement to access the services that Z.A. missed during COVID but presented no evidence at the hearing to support this request. In petitioners' post-hearing brief, they request $112,125[18] to cover the following services missed by Z.A. between March and June 2020:

- $92,000 for transitional services (generally, the MIR program and internship)
- $4,855 for fourteen individual counseling sessions
- $5,400 for fourteen group counseling sessions
- $2,370 for ten speech and language therapy sessions
- $9,885 for attorney's fees[19]
- $7,500 in transportation costs between Montgomery Academy and the outside internship

  [Post-Hearing Br. of Pet'rs (Sept. 9, 2025), at 17-18.]

Discussion

Respondent's witnesses were professional in demeanor and shared specific knowledge regarding operations at Montgomery Academy during the first few months of COVID restrictions, and regarding Z.A., as they were able to recall. A common thread among them was their inability to recall much about Z.A. and/or their specific work with

[18] Our math shows a total request of $122,010.

[19] While attorneys' fees are not recoverable in an OAL proceeding, I note that for most of the current proceeding, petitioners were pro se, and some of the charges cited in their brief are for work performed by counsel apparently unrelated to this matter.

him. This, however, is not unreasonable or surprising given that they last met with him in person five years before the hearing began. Petitioners waited more than two years after Z.A. left Montgomery Academy to bring this case; the IDEA's two-year statute of limitations and guarantee of a final decision no more than forty-five days after the end of the resolution period safeguards the interests of the student and helps to ensure that memories are still fresh and documents that may be needed will be preserved. In this regard, Crawford, who maintained records from 2020, was able to rely on that information to answer questions about Z.A., where Sumliner and Dr. Ingenito did not have such documents. Here, petitioners waited more than two years to file (aided only by the COVID filing extension) and—as is detailed in the procedural history above and in other orders in this matter—are responsible for numerous delays in the prosecution of this matter, only some of which delays relate to their medical issues.

Sumliner was, however, able to credibly describe the online program she offered her MIR students, created to replicate the subject matter that would have been covered in the classroom and to hone skills that the students would need as they transitioned from school to work (or higher education). While Z.A. had significant mental health challenges that, according to his parents, prevented him from fully accessing online instruction, it was reasonable for the MIR program to be online-dependent during COVID, given that facility with technology would be an important set of skills needed as the students moved into the job market.

Dr. Ingenito also did not have the benefit of written records but had substantial recall of the difficulty Z.A. had with connectivity and the difficulty the school had reaching C.A. and G.A. The goals and objectives Dr. Ingenito established during COVID for Z.A. were appropriate for his age, the limited time Z.A. had left in the MIR program, and when considering the goals and objectives in Z.A.' s IEP for the 2019–2020 school year.

Crawford was the most reliable witness for the reasons stated above. Though the use of online forums for group and individual speech therapy sessions is not as effective as in-person therapy would have been, it is not a significant failure to provide the therapy called for in Z.A.'s IEP. Crawford also provided some perspective: Z.A. was in a post-high school program to learn and develop the skills that would aid his transition to

employment or continued education. There is no evidence that anyone informed Crawford that Z.A.'s mental health issues precluded his effective participation in the services she provided. And, the only excuses she got from Z.A. when he did fail to show up were typical of his age group – oversleeping or mixing up dates.[20]

Despite Z.A.'s uneven attendance and participation in online learning between March 18, and June 19, 2020, Sumliner and Crawford stated they believed Z.A. made progress toward those IEP goals and objectives that could be measured during that period. (Dr. Ingenito could not remember Z.A. well enough to say one way or the other.)

Throughout these proceedings, petitioners have presented a convoluted and confusing case. They have insisted—verbally and in writing—that a successful conclusion of this litigation is necessary for Z.A. to move on with his life and future plans but did not present the testimony of medical professionals (or provide medical documentation) to support their apparent claim that the loss of services during four months of COVID has prevented Z.A. (in the intervening five years) from getting a job and/or pursuing trade school, vocational training, and/or community college. As a disabled adult, Z.A. may be eligible for services, including counseling, therapy, and/or classes, through other government agencies, including the New Jersey Department of Human Services, Division of Developmental Disabilities, but petitioners offered no evidence of efforts to secure alternate services for Z.A. during the five years between his graduation from Montgomery Academy and this decision.[21]

C.A.'s testimony was riddled with contradictions, especially when compared to the written record. Though C.A. said she never saw emails from Montgomery Academy, she introduced emails she sent and received from Montgomery Academy since the beginning of COVID. Though she said Dr. Ingenito never called her to inquire as to why Z.A. was not participating in counseling, she later said she was so busy with her own clinical practice that she only was able to take one of his calls. C.A. said she had no idea that

[20] Crawford certainly had reason not to be alarmed by Z.A.'s shoddy attendance as her records showed that prior to COVID, Z.A. was absent frequently, making far less than half his speech therapy sessions in January and February 2020. J-6 at 0127.

[21] While events occurring after June 19, 2020, are outside the period covered by this matter, such evidence from service providers could have supported petitioners' claim for compensatory education.

Z.A. was having trouble with the technology used by Montgomery Academy until 2022, and she also said that during COVID, she discussed potential internet problems with Montgomery Academy and concluded that the internet connection in her home was working.

Without meaning to, petitioners excused Montgomery Academy for Z.A.'s failure to participate in online learning, saying that it was because of incidents that allegedly occurred prior to COVID that Z.A. was reluctant to participate in school activities (and Crawford's attendance records show that Z.A. was frequently absent in the months before COVID). Tr. 6 at 14-15. Later in the hearing, C.A. defended Z.A.'s unwillingness to sign onto Google Classroom, which was needed to participate in online instruction, on his reluctance to share information about his mental health status. On April 1, 2020, two weeks into the COVID shutdown, C.A. wrote to Sumliner that the list of assignments being emailed to Z.A. each day was overwhelming. J-0068. C.A. did not say that Z.A. was having trouble signing in; C.A. actually wrote that Z.A. would sign in daily without mention of how the sign-in procedure was difficult for him. Further, she asked that Leone and Crawford continue to email assignments to Z.A. directly. Ibid.

One week later, on April 8, 2020, C.A. wrote to Montgomery Acadmey and explained that the first step in his online participation "reminded him of being hospitalized for his schizophrenia" and asked that his mental health issues be considered by the school. J-0075. Nolan agreed to limit direct contact from the school with Z.A. to Leone and Crawford, as requested by petitioners. Ibid.

By their testimony and in their brief, petitioners alleged procedural violations of the IDEA in the development of Z.A.'s IEP and the way his progress would be measured under the IEP. Petitioners complained of their dissatisfaction with the curriculum offered to Z.A. by Montgomery Academy. C.A. stated that "by [her] emails, she notified Montgomery Academy that Z.A. needed an update to his goals and objectives" in his IEP, but Montgomery Academy did not respond. Tr. 6 at 19. C.A. did not, however, provide copies of any of these emails. Contradicting herself, C.A. also stated that she did not learn until the exchange of discovery in this matter that the "education being provided" to Z.A. was inappropriate. Had they known, according to C.A., petitioners would have

"immediately removed [Z.A.] from Montgomery Academy." Ibid. She also claims, however, that as early as March 25, 2020, both she and Z.A. were very disappointed with the lack of academic rigor in his daily assignments. Tr. 6 at 47.

While it is plausible that petitioners had complaints regarding the content of the online classes offered to Z.A., there is no documentary evidence that they requested an IEP meeting to adjust his program, despite C.A.'s insistence otherwise. Given that both parties introduced many emails between them, and all evidence is that the parties communicated by email at least once each day, there were opportunities for petitioners to have input, but no evidence of any. The requests to Montgomery Academy that are documented (i.e., for emails to be sent to petitioners rather than Z.A.; that only Leone and Crawford continue to communicate by email with Z.A.) were honored.

Further, C.A. persisted with her claims that Z.A. was a victim of fraud, "graduated" without having met graduation requirements. These allegations were either raised in other petitions filed by C.A. and G.A. and dismissed or deemed outside the scope of this matter.

Petitioners also allege a denial of FAPE because Z.A. did not participate in an internship after March 18, 2020, and Montgomery Academy did not transport him to this internship. The first claim ignores that there was a public health emergency that closed the places of business that would have offered internships; further, once internships (and school) were canceled, Montgomery Academy could not be faulted for not spending money to transport students just for the sake of the drive, especially given the public health risk. Petitioners appear to claim that Montgomery Academy received a COVID windfall but there was no evidence that the District continued to pay for transportation that was not being used during COVID, or that the District was making such payments to Montgomery Academy, rather than to the transportation company.

Petitioners contend that Z.A.'s IEP included the goal of writing a resume and cover letter to potential employer(s) and because they did not obtain copies of the documents generated by Z.A., Montgomery Academy failed to meet its IEP-based obligation. The resume and cover letter were introduced at the hearing and appear to be well done. See

J-8. Failure to provide copies of documents to the author of the documents, who was ostensibly preparing to use those documents to enter the workforce at the time he wrote them, is not evidence of failure to provide FAPE. Z.A. did benefit from learning to write a resume and a cover letter.

Finally, even though there was credible testimony from the Montgomery Academy professionals that Z.A. did attend some online counseling, petitioners' claim includes payment for all therapy and counseling services that were scheduled between March and June 2020. With no evidence other than Z.A.'s alleged statement to his mother that he did not get the "links for group sessions," petitioners claim he missed and is therefore owed fourteen group counseling sessions. Tr. 6 at 28.

Based on the testimony and evidence presented at the hearing, I **FIND** the following additional **FACTS:**

1. The IEP developed for Z.A. by Montgomery Academy provided him with a FAPE; petitioners agreed to Z.A.'s placement and program at Montgomery Academy, and they signed the most recent IEP, dated December 16, 2019.

2. During the COVID emergency, when in-person learning was restricted by Exec. Order 104, Montgomery Academy offered online services to its students, including Z.A., without any loss of school days.

3. Montgomery Academy offered MIR coursework to students online, sending daily assignments to the students by email, covering topics like those which would have been covered in the MIR classroom.

4. Sumliner required her students to sign on each day to complete their daily assignments and to meet with her and the other students using Google Classroom to review the work.

5. Z.A. did not use the services offered by Sumliner every day. As of the hearing, five years after the COVID emergency, Sumliner did not have records of the

dates on which Z.A. participated in online learning or on which he failed to participate in online learning. Petitioners also had no records.

6. While there is indirect evidence that Z.A. underwent psychiatric treatment between March 18, and June 19, 2020, there is also documented evidence that once petitioners made respondent aware of Z.A.'s mental health issues, that the school responded as requested.

7. Montgomery Academy knew by April 1, 2020, that Z.A. was unable to handle online assignments and participation in Google Classroom, but reasonably relied on petitioners' assurances that Z.A. would log his attendance daily, would perform the assignments sent to him by Leone and Crawford, and that petitioners would assist in modifying other online assignments for Z.A. to complete.

8. Montgomery Academy offered online counseling in individual and group sessions to its students, including Z.A.

9. Dr. Ingenito, the social worker who provided online counseling, recalled that Z.A. did not consistently use the counseling services offered.

10. Montgomery Academy offered online speech and language therapy to its students, including Z.A. He missed many therapy sessions, and Crawford rescheduled some of the missed sessions. She kept records that show that Z.A. missed nine of nineteen therapy sessions.[22]

11. Z.A.'s IEP called for him to continue with on-site job training, but Montgomery Academy could not provide this service due to COVID restrictions.

12. Petitioners provided no documentary evidence that they asked to meet with the IEP team to modify Z.A.'s IEP after March 18, 2020.

[22] Petitioners agreed with this calculation. See Tr. 6 at 20 (C.A. cites dates of ten missed speech therapy sessions, the last of which was made up.).

13. While the teachers and counselors from Montgomery Academy stated that Z.A. made progress in meeting the goals and objectives of his IEP during March 18, through June 19, 2020, petitioners offered no evidence of academic regression.

14. Petitioner did not provide proof of their calculations (bills, invoices, cost estimates) of over $100,000 to compensate Z.A. for missed SE classes and related services.

LEGAL ANALYSIS AND CONCLUSIONS

The IDEA was enacted "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] to ensure that the rights of children with disabilities and parents of such children are protected." 20 U.S.C. § 1400(d). Under the IDEA, public educational institutions must "identify and effectively educate" disabled students by providing FAPE, "or pay for their education elsewhere if they require specialized services that the public institution cannot provide." P.P. v. W. Chester Area Sch. Dist., 585 F.3d 727, 735 (3d Cir. 2009). A FAPE must consist of "educational instruction specially designed to meet the unique needs of the [disabled] child, supported by such services as are necessary to permit the child 'to benefit' from the instruction." Ridley Sch. Dist. v. M.R., 680 F.3d 260, 268–69 (3d Cir. 2012) (quoting Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 188–89 (1982)). Here, there is no dispute (despite petitioners' attempt at the hearing to raise one) that the IEP developed for Z.A. by Montgomery Academy provided him with a FAPE. There is also no dispute that Z.A. did not receive some of the career planning and transition services and related services called for in his IEP.

Compensatory education is a judicially created remedy that may be awarded to account for the period in which a disabled student was deprived of his or her right to FAPE. Sch. Comm. of Burlington v. Mass. Dep't of Educ., 471 U.S. 359, 369 (1985) (finding that tuition reimbursement was an appropriate remedy under the Education of the Handicapped Act, predecessor to the IDEA); Coleman v. Pottstown Sch. Dist., 983 F. Supp. 2d 543, 566 (E.D. Pa. 2013). Compensatory education may be awarded if it is

determined that a school failed to provide FAPE to a disabled student and the school knew or should have known that FAPE was not provided. M.C. ex rel. J.C. v. Cent. Reg'l Sch. Dist., 81 F.3d 389, 396 (3d Cir. 1996). A finding for compensatory education does not require bad faith or egregious circumstances; it only requires a finding that a disabled child was receiving less than a "de minimis" education. Id. at 397.

As stated above, in March 2020, Governor Phil Murphy declared a state of emergency due to the COVID public health crisis, and all schools in the state were closed for the remainder of the 2019–2020 school year. Exec. Orders 103, 104. Accordingly, schools "were left to develop alternate methods of teaching through virtual instruction[.]" F.V. and M.V. ex rel. B.V. v Cherry Hill Twp. Bd. of Educ., OAL Docket No. EDS 01556-21 (Apr. 6, 2022), at 10. The question then is whether the deviations from the IEP occurring during and because of COVID, fell "significantly short of the services required" by Z.A.'s IEP. Van Duyn v. Baker Sch. Dist. 5J, 481 F.3d 770, 780 (9th Cir. 2007). In ordinary times, when a school knows or should know that a child is not receiving more than de minimis educational benefit and/or has an inappropriate IEP, the school must correct the situation. "If it fails to do so, the 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., 81 F.3d at 397.

The time period at issue in this matter, March 18, through June 19, 2020, was no ordinary time. To determine whether the online services provided to Z.A. fell significantly short of the services required by his IEP such that he received less than a de minimis educational benefit, it is useful to review the information available to Montgomery Academy at that time.

In March 2020, the USDOE and the NJDOE issued guidance documents to assist schools in complying with the requirements of the IDEA. The USDOE explicitly stated that it did not intend to impose additional legally binding rules or requirements on local education agencies (LEAs), but rather to provide informal guidance of the department's interpretation of the IDEA and its implementing regulations in the specific context of the COVID-19 pandemic. US Dept. of Educ., Questions and Answers on Providing Services

to Children with Disabilities During the Coronavirus Disease 2019 Outbreak, (Mar. 2020) (USDOE Q/A), https://sites.ed.gov/idea/files/qa-covid-19-03-12-2020.pdf.

The USDOE stated that during this time schools were only required to ensure that "to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student's IEP." Ibid. IEP teams were encouraged (but not required) to develop contingency plans in the event their school closed due to the pandemic. Id. at 5. This could entail providing SE and related services at an alternate location or online, with virtual instructions or instructional telephone calls, and identifying what services, if any, could be provided at the child's home. Ibid.

The New Jersey State Board of Education adopted temporary rules permitting school districts and LEAs to deliver SE and related services to students through remote, virtual, or other online platforms.[23] The purpose of this change was to better ensure that students were able to receive the services called for in their IEPs. N.J. Dep't of Educ., Providing Special Ed. & Related Serv. at 1. The NJDOE also noted that this change to the rules alone did not guarantee that school districts and LEAs would meet their legal obligations to provide FAPE to students. Ibid. Rather, the modifications were intended to provide IEP teams with the flexibility needed to implement services during the unprecedented extended school closures. Ibid.

Based on the above federal and state directives and guidance, while schools were encouraged to be flexible in providing education and services required in students' IEPs and to continue providing FAPE, there was no requirement that IEPs be updated to address the lack of in-person opportunities. G.K. ex rel. A.M. v. Washington Twp. Bd. of Educ., 2022 N.J. AGEN LEXIS 784, *12 (Oct. 11, 2022) ("petitioner's claim that the District failed to implement A.M.'s IEP . . . solely because it switched to remote instruction in mid-March 2020, must fail"); see also Abigail P. v. Old Forge Sch. Dist., 105 F.4th 57, 66 (3d Cir. 2024) ("Remote instruction is not a per se violation of the IDEA.").

[23] N.J. Dept. of Educ., Providing Special Education and Related Services to Students with Disabilities During Extended School Closures as a Result of COVID-19, (April 3, 2020), https://www.nj.gov/education/broadcasts/2020 (modifying N.J.A.C. 6A:14-1.1(d); 14-3.9(a); and 14-5.2).

Further, though in retrospect, a school may have been able to provide more services, the issue is what the school reasonably believed was feasible at the time of the alleged denial of FAPE. See Lascari v. Bd. of Educ. of Ramapo Indian Hills Reg'l High Sch. Dist., 116 N.J. 30, 46–47 (N.J. 1989); Susan N. v. Wilson Sch. Dist., 70 F.3d 751, 762 (3d Cir. 1995); Carlisle Area Sch. v. Scott P., 62 F.3d 520, 534 (3d Cir. 1995) ("so long as the IEP responds to the [student's] needs, its ultimate success or failure cannot retroactively render it inappropriate").

Several recent cases involve claims for compensatory education due to alleged denial of FAPE during COVID-based remote instruction. In L.B. ex rel. J.B. v. Edison Township Board of Education, petitioner L.B. sought compensatory education for alleged loss of services for the period from March 17, 2020, to June 18, 2020. 2021 N.J. AGEN LEXIS 673, *1 (Aug. 25, 2021).

J.B. was classified as having autism and ADHD, and his IEP anticipated his graduation in June 2020. Id. at *1. He attended New Road School, an out-of-district placement, until it closed in March 2020 due to COVID. From then until June 2020, New Road provided only online services, which J.B. allegedly "did not take full advantage of," though he did receive some counseling. Id. at **2–3. After a virtual child study team meeting, J.B. was offered an extended school year for summer 2020, which he similarly did not take advantage of. Ibid. The Edison Board of Education thus graduated J.B. in June 2020. Id. at *3.

To determine whether New Road provided J.B. with FAPE during COVID, the ALJ used the "greatest extent possible" standard found in the USDOE guidance with New Jersey's higher standard for FAPE. New Road had the burden of proving that any deviations from the student's IEP or loss of educational progress during remote instruction were not a "material failure." Id. at **9–10. The ALJ reasoned that J.B. had received what Edison/New Road could reasonably provide after in-person instruction ceased, "especially since J.B.'s schedule primarily consisted of out-of-school specialized internships." Id. at *11. The evidence demonstrated that J.B. was provided with special education and related services, and that he made some educational progress during the remote period from March until June 2020. Id. at *12.

The ALJ did acknowledge (1) that it was difficult to determine if this period of remote schooling was "as meaningful" to J.B.'s education as it otherwise would have been, and (2) that it was certain that he did not receive the full benefits during remote instruction that his IEP was meant to provide him. Ibid. Nonetheless, it was held that Edison had provided a FAPE to J.B. to the greatest extent possible at the time, and that any loss in services and opportunities was de minimis. Id. at **12–13. Thus, because there was no FAPE denial, the claim for compensatory education was denied. Id. at **13–14.

There was a similar outcome in J.T. & R.M. ex rel. N.M. v. Wayne Township Board of Education, in which the petitioners sought compensatory education to remedy a denial of FAPE for their preschooler son, N.M., between March 2020 and September 2021. 2023 N.J. AGEN LEXIS 74, *1 (Jan. 9, 2023). Here, virtual instruction was described as "challenging" for N.M., as he struggled to sit in front of a laptop. Id. at *3, *9. In contrast, he actively participated in in-person instruction, showing noticeable progress following the start of hybrid instruction in Fall 2020. Id. at *9. He also received new IEPs in April and October 2020. Id. at **23–24.

In the analysis, the ALJ explained that while N.M. had not participated in virtual instruction between March 2020 and September 2021, he made progress when he attended in-person instruction. Id. at *33. Moreover, he "mastered nine of his goals[,] and he was progressing in most of his goals and objectives." Ibid. Thus, the ALJ concluded that N.M. was provided with a FAPE. Ibid. Referencing the NJDOE guideline that compensatory education should be provided only when services missed due to COVID resulted in a denial of FAPE, the ALJ explained that there was no evidence N.M. had regressed. Id. at **35–36. Compensatory education was not warranted, and the claim was denied. Id. at *36.

In M.D. ex rel. R.B. v. East Orange Board of Education, the petitioner sought compensatory education on behalf of R.B. to remedy an alleged denial of FAPE during the 2019–2020 and 2020–2021 school years. 2022 N.J. AGEN LEXIS 773, *3 (Oct. 20, 2022). R.B. was classified as autistic in kindergarten and found eligible for special education. Id. at **4–5. However, when New Jersey schools went virtual in March 2020,

the petitioner repeatedly refused to cooperate and help make her son available for virtual instruction, as it was not mandatory for kindergartners. Id. at *6.

In April 2020, the petitioner was contacted several times about R.B.'s failure to attend online instruction with little or no response. Ibid. In May 2020, an IEP was made for R.B. based on prior evaluations and without the benefit of observing how R.B. performed in a virtual setting. Id. at **6–7. Then, in September 2020, the petitioner opted to homeschool R.B., as he was "not receiving an appropriate Education by means of Remote Learning." Id. at *6. R.B. was disenrolled but then re-enrolled in December 2020. Id. at **8–9. As instruction was still virtual at that point, the petitioner in January 2021 was told to come pick up a laptop from the district for R.B. to use, which she agreed to do, but never actually did. Id. at *9.

Then, despite the petitioner's concerns about the education R.B. could receive via virtual instruction, she refused the district's offer to have R.B. begin hybrid instruction in April 2021, opting instead to keep him fully virtual. Id. at *25. She testified that she was "never advised how remote learning would work for R.B.[,] and that no one responded to her requests for an explanation." Id. at *28. The ALJ denied her claim for compensatory education for R.B., however, as she "submitted very little evidence to support her allegations," instead relying solely on her own belief that the district's program was inappropriate for R.B., or that he failed to make progress. Id. at **33–35.

Ultimately, the ALJ explained that while there clearly was difficulty for the district in providing FAPE during remote instruction, this is not what prevented R.B. from accessing the curriculum fully. Id. at *35. Rather, "R.B.'s obstacles stemmed from petitioner's persistent refusal to collaborate with the [district] to provide R.B. with his program and services." Ibid.

Two things are true here: Montgomery Academy provided services to Z.A. to the greatest extent possible at the relevant time and Z.A. missed a portion of the educational services that should have been provided to him under his IEP. While Z.A. had significant mental health issues during the same time period that may have contributed to his inability to access online learning, there is no proof that specific modifications were requested by

petitioners and denied by Montgomery Academy. Moreover, Montgomery Academy reasonably relied on C.A. and G.A. to assist Z.A. in accessing his daily assignments, logging into Google Classroom, and participating in group discussions. His parents repeatedly told respondent that they would ensure that Z.A. received and completed his assignments.

In developing the online COVID program for the MIR students, Sumliner attempted through daily assignments and daily class meetings to cover topics similar to those the students would have covered in class, in person. She selected issues that the students would encounter in the workplace and assigned work to hone skills the students would need as they transitioned from school to work and/or to independent living. Counseling services offered by Dr. Ingenito were modified to cover issues the students could be experiencing due to COVID and the related restrictions. Finally, while Google Classroom cannot replace in-person speech and language therapy sessions, Montgomery Academy did provide that therapy to the greatest extent possible under the circumstances.

Much of the reason Z.A. did not benefit from the instruction offered to him is that he did not participate. The reasons offered by his parents for his reluctance to sign on—after they agreed to make sure he did so—ranged from privacy concerns to significant mental health issues to dissatisfaction with the lack of academic rigor of the assignments. There is no evidence though that even though Z.A. missed in-person classes and services, he regressed academically during his last few months at Montgomery Academy. Petitioners presented no expert testimony to show otherwise (and C.A.'s alleged expertise did not cover this issue). All credible evidence was that Z.A. continued to meet the goals and objectives of his IEP.

I **CONCLUDE** that Montgomery Academy provided a FAPE to Z.A. to the greatest extent possible between March 18, 2020, and June 19, 2020, and that any loss in services and opportunities was de minimis.

ORDER

For the reasons stated above, and respondent Montgomery Academy having met its burden of proof, **I CONCLUDE** that Montgomery Academy demonstrated that between March 18, 2020, and June 19, 2020, it provided a FAPE to Z.A. to the greatest extent possible and he received educational benefit from the services offered and, thus I **ORDER** that the petition of C.A. and G.A. on behalf of Z.A. is **DENIED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2019) 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 (2019). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education Programs.

October 7, 2025
DATE

TRICIA M. CALIGUIRE, ALJ

Date Received at Agency

Date Mailed to Parties:

TMC/kl

APPENDIX

Witnesses

Petitioners:

C.A.

Judy Micholowski

Respondent:

Ellen Sumliner

Anthony Ingenito

Laura Crawford

Exhibits

Joint:

J-1 Draft Individualized Education Program, dated November 25, 2019

J-2 Progress Report and Z.A.'s Schedule

J-3 Ellen Sumliner Assignments and Correspondence, dated March 23, 2020, through June 19, 2020

J-4 Correspondence dated March 23, 2020, through April 1, 2020

J-5 Not Introduced

J-6 Work Sheets, Notes and Correspondence from Laura Crawford

J-7 Z.A.'s Report Card, Graduation Documents, Transcripts

J-8 Z.A.'s Resume, Cover Letter, Reference Letter

J-9 Not Introduced

Petitioners:

P-4 Correspondence, dated June 5, 2020

P-6 Correspondence, dated April 1, 2020

P-16B Correspondence, dated July 1, 2020

P-19 Bridgewater-Raritan School District Student Data, 2019–2020

P-23 Progress Report, dated May 2020

P-38 Correspondence from Montgomery Academy, dated July 1, 2020

P-39 Correspondence from Z.A. to Montgomery Academy, dated June 26, 2020

P-40 Correspondence with Montgomery Academy, dated June 26, to July 1, 2020

P-44 Final Individualized Education Program, initialed and signed by petitioner G.A. on December 16, 2024

P-50 Z.A. Certification, dated May 12, 2023

P-63 Montgomery Academy 2019-2020 School Calendar

P-64 Letter from Petitioner Counsel, dated March 28, 2019

P-71 Curriculum Vitae of C.A.