



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

R.M. AND T.M. ON BEHALF OF A.M.,

Petitioners,

v.

**HARRISON TOWNSHIP BOARD OF
EDUCATION,**

Respondent,

AND

**HARRISON TOWNSHIP BOARD
OF EDUCATION,**

Petitioner,

v.

R.M. AND T.M. ON BEHALF OF A.M.,

Respondents.

OAL DKT. NO. EDS 09271-23

AGENCY DKT. NO. 2024-36247

OAL DKT. NO. EDS 11500-23

AGENCY DKT. NO. 2024-36661

(CONSOLIDATED)

Seth N. Broder, Esq., for petitioners/respondents R.M. and T.M. on behalf of A.M.
(Broder Law Group, P.C., attorneys)

Brett E. J. Gorman, Esq., for respondent/petitioner Harrison Township Board of
Education (Gorman, D'Anella and Morlock, LLC, attorneys)

Record closed: December 18, 2024

Decided: June 30, 2025

BEFORE **CARL V. BUCK III**, ALJ:

STATEMENT OF THE CASE

Petitioners, R.M. and T.M.¹ (petitioners or parents), on behalf of their minor child, A.M. (student), submitted a due-process petition (petition) seeking relief under the Individuals with Disabilities Education Act (IDEA), asserting that respondent, Harrison Township Board of Education² (Harrison, Board, BOE, or District), failed to provide a free and appropriate public education (FAPE) to A.M. during the 2022–2023, 2023–2024 and 2024–2025 school years by failing to provide appropriate support and technology to allow the student to maximize his use of audiological support tailored to his individual strengths and challenges through utilization of Listening and Spoken Language Specialist (LSLS) Certified Auditory-Verbal Therapy (AVT) (collectively, LSLS/AVT), as a special education-based related service or by use of comparable post-cochlear implant therapy and failing to objectively evaluate how A.M. responds in his school environment through a Functional Listening Evaluation (FLE).

The District opposes the parents' petition, asserting it has provided a FAPE in the least restrictive environment through utilization of support and technology that satisfies the District's requirements to provide FAPE. Further, the District asserts that petitioners' action constitutes a request for the District to provide medical, rather than academic, support and therefore is beyond the purview of the requirements of the IDEA.

PROCEDURAL HISTORY

R.M. and T.M. on behalf of A.M. filed a petition for due process against the Harrison Township Board of Education on July 24, 2023, seeking, among other things, a Functional Listening Evaluation and an Independent Educational Evaluation (IEE). The initial matter was transmitted to the Office of Administrative Law (OAL), where it was filed as a contested case under N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13 as EDS 09271-23 on or about September 18, 2023. On October 30, 2024, the Board filed a petition seeking to deny the parents' request for the FLE and an IEE, with a request that it be consolidated with the initial matter. The second matter was transmitted to the OAL,

¹ Also respondents in the subsequent action.

² Also petitioner in the subsequent action.

where it was filed as a contested case under N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13 as EDS 11500-23 on October 27, 2023. The matters were consolidated by Order dated November 30, 2023.

Thereafter, the District filed a motion to dismiss (taken as a motion for summary decision) on November 13, 2023, stating that, among other things, the District is providing A.M. a FAPE through his Individual Education Program (IEP), which provides modifications and accommodations designed by educators that specialize in teaching students with hearing loss and cochlear implants. The District also specified that petitioners' request was medical, not educational, in nature. Petitioners filed a motion for summary decision on January 19, 2024, stating, among other things, that petitioners concede that the District is providing auditory services to petitioners—but that these are not the appropriate services.

Oral arguments on motion and cross-motion were heard; submissions were made; and the record on the motion and cross-motion was closed on April 26, 2024. An Order denying the motion for summary decision was issued on June 10, 2024.

The hearing was conducted in a hybrid format using the Zoom communications platform on September 9, 16, and 19, 2024. The parties confirmed they would submit written summations. The parties' summations were submitted, and subsequent letter briefs addressing each opposing party's summation were received. The record closed on December 18, 2024.

BACKGROUND

A.M. is the nine-year-old son of petitioners (J-20) and is a student classified as eligible to receive a special education programming and related services under a classification of Other Health Impairment (OHI) from the respondent. J-1. His sole disability relates to hearing loss. A.M. attended in-district at Harrison Township Elementary School (School) for the 2020–2021 (preschool), 2021–2022 (kindergarten), 2022–2023 (first grade), 2023–2024 (second grade), and 2024–2025 (third grade) school years. J-20; J-49. A.M. had been a student in the general education setting while

receiving supplemental education services related to his hearing loss. J-1. He has a complex medical history, consisting of hearing loss secondary to a diagnosis of bilateral enlarged endolymphatic ducts and sacs, and a diagnosis of enlarged vestibular aqueduct. J-1.

In 2020, A.M. was identified as having moderate sensorineural hearing loss in the left ear and fitted with a Phonak Marval 90-PR hearing aid with full shell earmold (Hearing aid). J-18. A.M.'s hearing loss is a slight conductive hearing loss with hearing within normal limits in the right ear and a profound sensorineural hearing loss in the left ear. J-1. His hearing loss is presently considered sufficient to interfere with his ability to hear and understand speech, as well as his ability to progress in a general education setting without appropriate supports and services. J-1; J-20.

Petitioners are seeking adherence to the IEP, appropriate support services, reimbursement for privately paid services, and compensatory education related to A.M.'s cochlear implant (Implant).

2022–2023 School Year

In October 2022, the student incurred a drastic diminishment in hearing in his left ear as a result of traumatic contact to the left orbital area with a metal baseball bat. J-1; J-20. Prior to this injury, he was doing well at school using the hearing aid combined with the services he was receiving. After the October 2022 injury to his left ear, there was a drastic diminishment in his ability to hear in the left ear. His parents reported having to repeat themselves and having to go to his right ear to talk to him since he was not hearing anything on his left side. In October 2022, the District's education consultants reported "no current concerns about [A.M.]'s hearing."

On or about December 8, 2022, A.M. was evaluated by specialists at Children's Hospital of Philadelphia (CHOP), who reported that A.M. had "zero percent word recognition in the left ear," and recommended that he undergo left-side cochlear implant surgery. J-18. Petitioners initially considered CHOP for the cochlear implant surgery. On December 9, 2022, petitioners notified the District that they were early in the cochlear

implant decision-making process. J-53. On December 15, 2022, petitioners notified the District that they were proceeding with second and third medical opinions before making a final decision on A.M.'s cochlear implant surgery. J-53.

On January 23, 2023, A.M. was evaluated at University Hospital in Newark, New Jersey, by Nicole Raia, Sc.D., CCC-A, FAAA, (Dr. Raia), a licensed and board-certified pediatric audiologist with expertise in the diagnosis and management of pediatric hearing loss, including ear-specific behavioral audiometry and electrophysiologic testing. J-18. After subsequently receiving differing reports from Nemours Children's Health and Children's Hospital of Philadelphia, petitioners consulted with Dr. Raia regarding the differing reports. In her January 23, 2023, report, Dr. Raia noted that A.M.'s hearing loss had progressed to profound loss "with no word recognition ability." Testing reported profound sensorineural hearing loss in A.M.'s left ear between 250–8000 Hz, while his right ear was marked as having slight conductive hearing loss at 250 Hz and hearing within normal limits between 500–8000 Hz.

Dr. Raia advised that A.M. is at risk for progressive hearing loss in the right ear due to an enlarged vestibular aqueduct and that any potential change cannot be predicted, including the amount of change that can occur. A.M. also has a history of transient, yet chronic, right conductive hearing loss, and he cannot localize sound as a "one-eared" listener. Based on Dr. Raia's evaluation of A.M., Dr. Raia strongly recommended A.M. undergo left cochlear implantation surgery. Dr. Raia further recommended A.M.'s educational programming to include, in part:

2. . . . Continued services of an Educational Audiologist perform an annual acoustic evaluation of all classrooms, and set up DM system.
3. A [LSLS] classroom where expressive language can be expanded upon and reinforced throughout the day.
4. A Speech-Language Pathologist who is [AVT] certified in [LSLS] and has experience in performing individual and group therapy with a child with cochlear implants and progressive, post-lingual hearing loss.

On February 3, 2023, petitioners submitted a copy of Dr. Raia's January 23, 2023, report to the District. On March 28, 2023, an annual IEP review meeting (March 28, 2023, IEP Meeting) was held to review A.M.'s IEP, in anticipation of his upcoming cochlear implantation surgery, for the remainder of the 2022–2023 school year and upcoming 2023–2024 school year. J-20. Dr. Brittany Liskey (Dr. Liskey) and Courtney Schoettle (Ms. Schoettle) of the Gloucester County Special Services School District's Center for Regional Educational Support Services, Deaf and Hard of Hearing Services Team (CRESS or CRESS Team), attended the March 28, 2023, IEP Meeting as members of the IEP team. J-20. The CRESS Team has provided A.M. with consultation services since the 2020–2021 school year, when A.M. was enrolled as a preschooler in the District.

A copy of Dr. Raia's evaluation report and accompanying recommendations was provided to the District's IEP team. At the March 28, 2023, IEP Meeting, it was reported that, "with a recent change in his hearing ability[,] A.M. has struggled to hear if he is not facing the speaker. At times[,] A.M. tends to be very loud when speaking." J-20. A.M. also reportedly complained for a month prior about experiencing vertigo symptoms.

At the March 28, 2023, IEP Meeting, the IEP team adopted the CRESS Team's recommendations in a review of the accommodations and modifications in the March 28, 2023, IEP. J-20. According to Ms. Schoettle, the CRESS team did not recommend any changes to A.M.'s IEP and kept the same accommodations from the prior school year's IEP (i.e., 2021–2022) since "[A.M.] was excelling with the modifications that were already in place in the classroom." Dr. Liskey testified that the IEP team made "recommendations that were already in place for A.M." The recommendations from Dr. Raia regarding LSLS/AVT services were not adopted in the March 28, 2023, IEP. J-18; J-20. However, a tentative plan was set forth to reconvene after the District received an anticipated report from Johns Hopkins Cochlear Implant Center.

On March 29, 2023, A.M. was evaluated at Johns Hopkins Cochlear Implant Center (formerly The Listening Center at Johns Hopkins), by Kathleen Lehnert, M.S. CCC-SLP/LSLS Cert AVT, (Ms. Lehnert), a licensed LSLS/AVT speech-language pathologist, for a pre-cochlear-implant speech and language assessment. J-23. A copy of Ms. Lehnert's March 29, 2023, report was provided to the District by petitioners.

Based on her evaluation of A.M., Ms. Lehnert summarized that A.M.'s hearing loss would negatively impact his ability to accurately perceive messages and respond appropriately, and that A.M. would struggle "as his learning environment places more demands on focused auditory learning and reduced visuals with the increased complexity of vocabulary and language." J-23. Ms. Lehnert further stated that although A.M. was then-presently meeting with success, with increased demands on listening (i.e., interpreting messages), in conjunction with speech perception challenges inherent to his hearing loss, "A.M. is at risk socially and academically."

In her report, Ms. Lehnert stated, "continued support and accommodations are warranted after cochlear implantation," and recommended, in part, the following education-based services:

2. It is important to closely monitor A.M.'s auditory, speech, and language gains to ensure he is meeting expected developmental targets and achieving uniform progress in his auditory, speech, and spoken language skills; necessities for both becoming an effective communicator and for academic success.

It is recommended that A.M. receive yearly evaluations to monitor his auditory, speech, and language skills, and review for effective academic service delivery model, by a Certified and Licensed Speech-Language Pathologist/Aural Habilitation Specialist[,] or LSLS Certified Auditory Therapy (Cert. AVT)[,] or Auditory-Verbal Educator (AVEd).

3. After activation of his left cochlear implant, it is recommended that A.M. establish a baseline of his auditory abilities. It is also recommended that he receive weekly listening intervention with goals following the auditory hierarchy (detection, discrimination, identification, and comprehension). The intervention should be provided by a Listening and Spoken Language Specialist (LSLS) Cert. AVT/AVEd, or by a speech-language pathologist who has extensive knowledge of auditory development.

(J-23.)

The District and the CRESS Team received a copy of Ms. Lehnert's report on April 3, 2023. J-25; J-53.

On April 4, 2023, after reviewing Ms. Lehnert's March 29, 2023, report, Dr. Liskey responded to an email from the District's school social worker and IEP team member, Tina Heil (Ms. Heil), regarding Ms. Lehnert's third recommendation, stating:

It appeared to me that the recommendation for the speech is limited to certain individuals with that specific background so since none of us have that training, it would have to be elsewhere. Unless someone wants to get us trained.

(J-53.)

On April 11, 2023, A.M. underwent left-side cochlear implantation surgery at Johns Hopkins University to address the increased loss of hearing on his left side and returned to school the week following his surgery.

On April 18, 2023, Mr. M. emailed Ms. Heil his first request for the District to consider providing LSLS/AVT services to A.M. J-72. Mr. M. stated that A.M. would begin LSLS/AVT outpatient services on May 9, 2023, and advised the District what Ms. Lehnert was recommending for the District:

. . . at the beginning to have LSLS/AVT consultation in the classroom to educate the teachers . . . and evaluate the classroom, acoustically and work with the school['s] audiologist at [Teacher of the Deaf], and be a part of a quarterly consultation or at least A.M.'s annual IEP meeting.

On April 19, 2023, Ms. Heil responded to Mr. M.'s email, stating that Ms. Heil would like for Dr. Liskey and Ms. Schoettle to speak with Ms. Lehnert and Dr. Carver "to discuss the recommendations and A.M.'s school-based needs . . ." and provided a release form for Mr. M.'s signature. Ms. Heil also represented to Ms. Lehnert as follows:

I shared [Ms. Lehnert]'s report dated [March 29, 2023] and highlighted all of the recommends, and we are able to implement the recommendations that pertain to the educational environment; however, [Ms. Lehnert] did not put

anything her recommendations about a school-based LSLS/AVT. We need clarification from her on that since it is not in her report. I'd like [Dr. Liskey] to specifically gain clarification on school-based recommendations vs. home-based/clinical recommendations. We will provide A.M. anything that needs within his educational environment but we need to have a complete understanding as to what that is.

(J-53.)

On May 4, 2023, A.M.'s cochlear implant was activated. J-25. On May 9, 2023, A.M. began receiving LSLS/AVT services with petitioners paying for the services. On the morning of May 8, 2023, Mr. M. emailed Ms. Heil, stating that A.M. "is already struggling in school[,] and requested that Ms. Heil "[c]ontact [Dr. Liskey] from A.M.'s school as soon as possible regarding the changes we immediately need to make to A.M.'s IEP." J-72. Ms. Heil responded, asking for clarification, since Ms. Heil and A.M.'s teachers reportedly "[had] not seen A.M. struggling with anything academic, social/emotional, or behavioral." J-72. Mr. M. replied, stating that A.M. "has had 2 challenging/difficult days in the classroom, listening to his teachers and classmates with the good ear competing with the noise from the left sided cochlear implant."

That same day, on May 8, 2023, the CRESS Team held an educational consultation for A.M. in his classroom. J-22. Ms. Schoettle's formal educational consultation report states that she had checked in with A.M. and noted there were no concerns. J-22. However, later that same evening, Ms. Schoettle emailed Ms. Heil, stating that she ". . . checked in with A.M. about how he was doing and he gave me the 'meh' signal."

On May 8, 2023, Dr. Liskey and Ms. Schoettle spoke with Ms. Lehnert via telephone, wherein Ms. Lehnert affirmed A.M.'s "need for an [LSLS/AVT] to be a part of A.M.'s educational programming." Dr. Liskey initially testified that Ms. Lehnert's recommendation on May 8, 2023, was for consultative services, not direct services, despite no record communication point to services only on a consultation-basis. On May 17, 2023, A.M. attended a second activation appointment with Dr. Courtney Carver, AUD, (Dr. Carver) at Johns Hopkins Cochlear Implant Center. Dr. Carver stated to Mr. M. that Dr. Liskey had informed Dr. Carver that there were no available LSLS/AVT providers in

the area. J-53. This concerned Mr. M. since he already knew that there were LSLS/AVT providers in New Jersey given that he just recently privately hired an LSLS/AVT provider.

Mr. M. also emailed Ms. Heil on May 17, 2023, to follow up regarding Ms. Lehnert's recommendation for LSLS/AVT services, stating that Ms. Schoettle and Dr. Liskey gave Ms. Lehnert the impression that, "there was not a local LSLS/AVT who can come to the school." J-72. Ms. Heil responded and confirmed that, in fact, "one of the things that [Ms. Schoettle] and [Dr. Liskey] were going to be getting clarification on from [Ms. Lehnert]" was about Ms. Lehnert's recommendation for "weekly listening intervention . . . provided by [an LSLS/AVT provider] or by a speech-language pathologist who has extensive knowledge of auditory development." J-72.

Mr. M. responded with a request for an IEP meeting to discuss the issues regarding the LSLS/AVT services. J-72. Mr. M. and Mrs. M. also researched and found eight to ten LSLS/AVT-certified speech pathologists in the local area, which they presented to the IEP team. J-20. Ms. Heil reported that she was researching LSLS/AVT-certified individuals on the Alexander Graham Bell registry and came across some names and stated that she was going to narrow it down to three people and follow up with the parents.

FACTUAL DISCUSSION

Stipulated Facts

The petitioners and the District have stipulated the following and so I find as **FACT**:

1. A.M. is a student in the District, who entered third grade in September 2024, with a classification of Other Health Impaired, who is entitled to a free and appropriate education from the District.
2. A.M. has always been placed in the general education program with supplemental education services related to his hearing loss.

3. A.M. has a complex medical history, which consists of hearing loss secondary to a diagnosis of Bilateral Enlarged Endolymphatic Ducts and Sacs and a diagnosis of Enlarged Vestibular Aqueduct. His hearing loss is a slight conductive hearing loss with hearing within normal limits in the right ear and a profound sensorineural hearing loss in the left ear.
4. In October 2022, A.M. incurred a drastic diminishment in hearing in his left ear as a result of traumatic contact to the left orbital area with a metal baseball bat. This injury did not occur at school.
5. A.M. received a cochlear implant on April 11, 2023.
6. A.M.'s hearing loss is sufficient to justify supports and services to help A.M. access his education.
7. The parties agree that A.M.'s placement is appropriate, with one exception.
8. The parties disagree as to the appropriateness of the audiological support provided after A.M.'s cochlear implants were activated on May 4, 2023, through the current date. There are no disputes at issue prior to that date, and it is understood that there is a dispute regarding the program set forth in the March 28, 2023, IEP from May 4, 2023, through today. Nothing in this paragraph precludes either party from presenting evidence that supports its claims as to appropriateness of the IEP after May 4, 2023, or presenting evidence, ie. reports and communications between the parties, regarding the audiological support prior to May 4, 2023.
9. The District is providing audiological services, including consultation with the CRESS³ Deaf and Hard of Hearing Services Team at least twice a month. The CRESS Team includes an Educational Audiologist, a Teacher of the Deaf (TOD), and a Speech and Language Pathologist.

³ Gloucester County Special Services School District, Center for Regional Education Support Services (CRESS)

10. Petitioners do not agree that A.M.'s 2023–2024 and 2024–2025 IEPs provide appropriate audiological services and are seeking an order that the District hire a Listening and Spoken Language Specialist Certified Auditory-Verbal Clinician (LSLS) to work with A.M. Petitioners are further seeking for the LSLS to go into A.M.'s classroom and perform a Functional Listening Evaluation (FLE) and provide A.M. with Auditory Verbal Therapy (AVT).
11. The parties disagree about AVT services. The parties disagree as to whether AVT services are educational in nature as pursuant to the Individuals with Disabilities Education Act (IDEA). In addition, the parties disagree as to the appropriateness of A.M. receiving AVT services in the school setting.
12. The parties further disagree over whether the District should be providing an FLE. Petitioners do not believe that the District is performing FLEs sufficiently to meet A.M.'s needs. The District contends that, based on the consultations with the CRESS experts, performing an FLE is not necessary or useful to meet A.M.'s educational needs as A.M. is already receiving all available supports that an FLE would evaluate and, possibly, recommend. J-1.

Testimony

Dr. Brittany Liskey (Liskey) testified on behalf of the District. She is a doctor of audiology—the science of hearing and balance. J-56. Her expertise is in the educational setting. She also has clinical experience in the field and has extensive experience conducting and reviewing the different types of hearing tests available for assessing auditory capabilities. She is employed by the Gloucester County Special Services School District under CRESS. She is the audiologist on the CRESS Deaf and Hard of Hearing Services Team and works with teachers of the deaf, interpreters, speech language pathologists, behaviorists, and other professionals. The team's goal is for students with hearing loss to access their education, understand what the teacher is saying, and hear and engage with their peers. To that end, she analyzes testing and gets to know the child and their educational environment to make device recommendations, set up devices, train

the student's teachers and other school staff how to use the devices, and makes sure that the classrooms are set up acoustically for the students.

In her role with CRESS, Dr. Liskey testified she works with over 150 students with hearing loss in over 50 school districts and has worked with hundreds of students with cochlear implants. Many of the students have a single-sided cochlear implant. Her role involves attending many IEP meetings to ensure that proper accommodations are in place to meet the audiological needs of students who are hard of hearing. Over her career, Dr. Liskey has attended hundreds of IEP meetings. She was admitted as an expert in audiology with specificity in educational opportunities and circumstances based on her extensive experience.

Courtney Schoettle (Schoettle) testified on behalf of the District. She works with Dr. Liskey at CRESS as program manager, sign language interpreter, and teacher of the deaf (TOD). As a program manager, Schoettle manages student cases for 50 to 60 school districts, and as a TOD, she provides direct and consultation services to students with hearing loss. This includes training teachers and supporting the students' achievement of their IEP goals. A TOD can also provide direct instruction, supplement the curriculum, and recommend accommodations and strategies for the classroom. She has been working with students with hearing loss at CRESS for nineteen years and has her master's degree and her teaching certificate and has oral and aural endorsements as well as the sign language communication endorsement. These endorsements deal with listening and spoken language teaching as well as teaching with sign language. She has worked with hundreds of students in her capacity as a TOD and has worked with students who have bilateral hearing loss, unilateral hearing loss, and students with a range of hearing losses, many of which have cochlear implants. She currently has five students with unilateral hearing loss and a cochlear implant. She attends IEP meetings and interprets educational evaluations as a TOD. She uses the student's audiogram results to make recommendations specific to each student's unique listening and speaking needs. She emphasized that each child is affected in different ways, explaining that she always says "when you've met one deaf or hard of hearing student, you've met one deaf or hard of hearing student. . . . it depends on their specific type of hearing loss and we really . . . pride ourselves in making sure . . . the students get what they need within the

classroom.” Schoettle also was involved with the drafting of the State of New Jersey Department of Education’s (DOE) “Education Planning Guide for Students who are Deaf or Hard of Hearing,” determining what category of support a student with hearing loss should be receiving. J-65. Schoettle was admitted as an expert based on her experience and education. Schoettle testified that after a year of being educated in the District without LSLS/AVT services, A.M. is “still doing well, he’s excelling.”

Wendy Eufemia (Eufemia) testified on behalf of the petitioners. She is the Coordinator for Deaf Education at the New Jersey DOE. Eufemia testified that she is only aware of AVT being provided at some of the schools in Northern New Jersey that specialize in educating students who have hearing loss. She clarified that she was referring to AVT and she was not aware of whether the therapy was being performed by an LSLS/AVT-certified provider. She stated that there are very few LSLS/AVTs in New Jersey and of those that are in New Jersey, they are mostly in North Jersey. Eufemia also clarified that she was not aware of the circumstances of the provision of AVT and whether it was part of a settlement agreement. She agreed that she had never met A.M. and had never seen any documentation on him, so she could not provide any information on what services A.M. should be receiving. She does work with Dr. Liskey and Schoettle and trusts their recommendations with respect to the needs of the students on their case list.

Melanie Abramowitz (Abramowitz) testified on behalf of the petitioners. She was admitted as an expert Speech Language Pathologist and Certified Listening and Spoken Language Specialist in Auditory Verbal Therapy. J-60. She has been working with A.M. since October 2023 but has not observed him in a school setting. She testified that AVT therapy could be both educational and medical, but definitely educational, and that it should be provided in both settings. She works with another student receiving AVT in Edison and another in Woodbury. She testified that A.M. “really struggles with his auditory memory, his word discrimination skills, his listening comprehension, his self advocacy . . . listening in noise, these are all areas that we determine were areas of weakness for him based on a formal evaluation.”

She discussed the program necessary to become an LSLS with certification through the Alexander Graham Bell Academy (Bell or AG Bell), which she stated was an international organization and a part of the Alexander Graham Bell Organization.

She testified that A.M. is not receiving any AVT therapy and did not have an FLE after his implant surgery. During direct examination, Abramowitz stated she worked with a student in a public school in Gloucester County but did not state that she was contracted to provide a single evaluation and not direct services to that student. She stated that the school refused to provide her with educational records but then stated she did not ask petitioners for educational records and typically only focuses on medical records. She then stated she did have access to A.M.'s IEP but could not recall if she reviewed it when making her recommendations. She stated that she spoke with Tina Heil from the District to obtain information before conducting A.M.'s evaluation but then stated that it was Tina Heil who reached out to her to ask about what services she provides. She could not recall if she ever asked petitioners for a release to be able to speak with the District. She contradicted her own report when she stated that more testing on A.M.'s expressive and receptive language skills was worth doing when her report stated "[o]nly one sub-test was chosen for this evaluation as [A.M.]'s receptive and expressive language skills are not an area of concern at this time and are judged to be within the average range." J-48.

Abramowitz's testing that did not rely on information provided by the petitioners relied almost exclusively on testing that sent signals only to A.M.'s cochlear implant. J-44; J-48. She stated that the testing was solely for the purposes of auditory skill development of A.M.'s left cochlear implant and not to test his ability to access his education. J-44. For the test that did allow A.M. to use both ears, he was able to identify every sound correctly. J-44. Abramowitz testified that A.M. had weaknesses in word memory, sentence memory, auditory comprehension, and listening comprehension based on tests performed with A.M.'s right ear muffled and sounds being sent to his cochlear-implanted ear alone six months after it was activated. These weaknesses do not reflect what A.M. can do with both ears. Abramowitz used one standardized assessment in the fall of 2023 and two in the spring of 2024, for which the results are not normed to be performed over Zoom. J-44; J-48.

Abramowitz's report states that "[A.M.] is performing well academically and is at or above grade level expectations in all subject areas" (J-44) and noted that "[t]here are no concerns regarding articulation, receptive expressive language development, voice or fluency."

She testified to an initial evaluation over three dates, October 4, 2023, October 11, 2023, and October 18, 2023, and a report issued October 23, 2023. She also testified to a re-evaluation completed over April 17, 2024, and May 1, 2024, compiled in a report dated May 2, 2024. Over objection, she testified to a number of issues on which I reserved. Because of this, a portion of her testimony was not supported by her written report and was therefore not considered.

On cross examination, she stated that testing for the October 2023 report was conducted via telehealth, not in person. She clarified that she has not worked in a school district in New Jersey and she is not currently providing services in Woodbury. She also did not consult with the District regarding her recommendations. She also testified that the answers to a number of questions were provided by a parent, and in providing those answers, the results may have been artificially lowered.

She stated that the school refused to provide her with educational records but then stated she did not ask petitioners for educational records and typically only focuses on medical records. She then stated she did have access to A.M.'s IEP, but she could not recall if she reviewed it when making her recommendations. She stated that she spoke with Tina Heil from the District to obtain information before conducting A.M.'s evaluation, but then she stated that it was Tina Heil who reached out to her to ask about what services she provides. She could not recall if she ever asked petitioners for a release to be able to speak with the District. She contradicted her own report when she stated that more testing on A.M.'s expressive and receptive language skills was worth doing when her report stated "[o]nly one sub-test was chosen for this evaluation as [A.M.]'s receptive and expressive language skills are not an area of concern at this time and are judged to be within the average range." J-48.

The LSLS/AVT strategies described by Abramowitz were designed to train A.M.'s brain to interpret signals from his medical device. They would require that A.M.'s right ear be muffled and the therapy be directed only at his left ear to train his brain to better interpret the signals from the cochlear implant. The AVT provided by Abramowitz is billed to petitioners' medical insurance.

Abramowitz stated that medical insurance companies are not going to pay for services that are not medical in nature and that petitioners' provider determined that her services were medical in nature.

Kathleen Lehnert (Lehnert) testified for the petitioners. She is an LSLS/AVT at Johns Hopkins and performed a pre-cochlear implant speech and language evaluation on A.M. J-23. Her conclusion was that the "language test results and language testing . . . show that [A.M.] demonstrates expected norms in receptive and expressive word knowledge and his overall listening and spoken language when compared with hearing peers." J-23. She made several recommendations for accommodations for A.M. J-23. First, she recommended access to a teacher of the deaf and close monitoring of A.M.'s speech and language gains, which has been in place since A.M. was in preschool through CRESS services. Also, A.M. does not qualify for school-based speech and language services because he has average to above average speech and language skills. J-25. The District added Dawn Meyrick, a speech and language pathologist, to A.M.'s CRESS and IEP teams to accommodate Lehnert's recommendation for that expertise to be represented. J-23. The District reached out to Lehnert but was not provided clarity as far as the nature, frequency, or duration of school-based services. J-25. As of May 25, 2023, petitioners were still deciding whether they wanted to ask for consultative or direct LSLS/AVT services for the 2024–2025 school year, and no LSLS/AVT services were requested for the end of 2023–2024. J-25.

Lehnert advised the IEP team to reconvene after A.M.'s cochlear implant activation to update his present level of performance and the IEP as a whole, which they did in May and June of 2023. J-23, J-25. The District also added daily LING checks⁴ at three feet

⁴ Ling Sounds can be used as a quick check of a child's everyday functional access to speech sounds across the spectrum from low to high frequency. Clear and consistent access to sound is critical for spoken language development. [Everyday evaluation of a child's functional access to sound | Audiology Blog](#),

away based on Lehnert's recommendations. J-23; J-40. Lehnert's other recommendations for classroom modifications were already in place and listed in A.M.'s IEP. J-20.

On June 20, 2023, Lehnert had been seeing A.M. for LSLS/AVT therapy for five sessions post activation. She sent a letter to the District describing possible impacts of unilateral hearing loss but did not state that A.M. presented any of these issues. She had worked with A.M. for several weeks but did not provide specific examples for the foundation of recommendations she made. She stated that of a limited number of professionals with extensive training in speech acoustics, speech perception, and auditory verbal therapy, one such professional is an LSLS/AVT. These recommendations did not state that intervention by an LSLS/AVT was necessary. Lehnert's recommendation for intervention could also be accomplished by a speech language pathologist who has the same knowledge of speech acoustics, speech perception, and auditory therapy. This knowledge component was possessed by Dawn Meyrick. The intention of the letter was to express that without an LSLS/AVT, A.M. will not be able to access his education.

Francis Creighton, MD (Creighton) testified for the petitioners. He is A.M.'s cochlear implant surgeon. On June 6, 2023, he wrote to the District to state that it was imperative that the District add LSLS/AVT education support in the classroom, stating that "[t]he services will optimize [A.M.'s] ability to hear, learn and succeed at school." J-27.

Cynthia Robinson (Robinson) testified for the petitioners. She is the founder of a business that provides AVT services and is a TOD. She has never worked with A.M. or met A.M. in person, evaluated him, provided direct services to him, or had a conversation with him. Her only exposure to this matter was reading A.M.'s IEP and participating in an IEP meeting. Robinson classified AVT as "training the brain to listen." Robinson's testimony and letter to the District were based on her review of his 2022–2023 IEP and attendance at the 2023–2024 IEP meeting. J-25. Despite this, Robinson demonstrated

<https://audiologyblog.phonakpro.com/everyday-evaluation-of-a-childs-functional-access-to-sound/> (last visited June 26, 2025)

a lack of familiarity with A.M.'s IEPs, testifying that an FLE would help establish a baseline for his goals even though A.M.'s only goals in both his 2022–2023 and 2023–2024 IEPs were self-advocacy goals. She stated that the FLE was used to see and learn how a child is functioning in an actual classroom environment to get a picture of what a child needs to support learning in the classroom and did not seem to know that A.M. was functioning successfully in the classroom and did not have speech and language or listening and hearing goals.

Jane Madell (Madell) testified for the petitioners. She was admitted as an expert in audiology and speech language pathology and as an LSLS/AVT. On March 20, 2024, she observed A.M. in his classroom for about two and a half hours. J-46. Madell has never evaluated or provided direct services to A.M. and met him only once on the day of her school observation. Her testimony and report were based on this observation, a review of his records sent by petitioners, and conversation with petitioners. She stated that A.M. attended well to his teachers and participated during her observation. J-46. Madell then made recommendations regarding what “most children with hearing loss” need. Madell also used the results from Abramowitz’s testing in October 2023, which tested A.M.’s left ear and was performed a few months after the activation of his implant, to explain her recommendation for speech and language services. She also stated in her report that “[t]here are no concerns regarding articulation, receptive/expressive language development, voice, or fluency,” and the follow-up report stated that “[A.M.]’s receptive and expressive language skills are not an area of concern at this time and are judged to be within the average range.” J-44, J-48. Madell stated that the goal of AVT is that “with the two ears together, [A.M.] will be able to hear in the classroom and learn with his peers.” Madell also commented on A.M.’s fatigue when he gets home from school and his socialization without any foundation or relation to her expertise. When asked to explain the basis of her opinion, Madell stated that listening fatigue is a problem pediatric audiologists are familiar with. Petitioners reported that A.M. comes home from school tired, so they concluded that A.M. is struggling to hear in the classroom.

Madell has never worked for a public school district and could not detail the goals of special education in relation to goals of medical providers. She stated that a student on grade level who is participating and doing well in class does not have appropriate

accommodations in place in her estimation. She disagreed with the statement that it is a school district's obligation to provide an appropriate education, claiming that there were other critical factors that a school district should be providing.

Madell testified regarding the Bell and LSLS/AVT services. She stated that her LSLS/AVT certification was not part of any state licensing and was instead only provided through Bell. She also stated she has been on the Board of Bell since 2010 as well as its Audiology Task Force. Madell denied that AG Bell makes money from cochlear implants and hearing aids. On redirect, Madell said that a combination of speech and language therapy with listening therapy was AVT therapy if it was being done by a certified AVT, but if it is not being done by a certified AVT then it is not AVT. She stated that every single child with hearing loss must receive AVT unless there are no signs of weakness. J-46. This is her position even though CHOP does not employ an LSLS/AVT and does not recommend LSLS/AVT services to their cochlear implant patients. J-74.

Madell observed that A.M. was speaking softly and recommended that the speech and language pathologist work on his volume. She pointed out that on the day of the observation, several people were in the room and that A.M. knew that they were there for him.

Madell's report recommendations were general and mostly did not apply to A.M. as a student with average and above average speech and language development. Madell admitted that the testing by Abramowitz that she relied on to make this recommendation found A.M.'s receptive and expressive language skills to be average. Her recommendation that A.M. have preferential seating is in A.M.'s IEP, and the CRESS team and his teachers work with him to choose the best seating in all settings, including in the classroom, in small group settings, and in the cafeteria. J-46. LING sound checks, appropriate microphone use, and use of open-ended questions were all accommodations that were in A.M.'s IEP. J-46.

Madell recommended that a TOD and audiologist work with A.M. despite that Courtney Schoettle and Dr. Liskey have worked with A.M. and his teachers twice a week for years. A.M. demonstrated no academic need for direct TOD services. J-46. Madell's

final recommendation is that the service providers all believe that A.M. can do very well in school.

Mr. M. testified regarding petitioners' perspective on A.M.'s academic needs. He testified that CRESS never performed an in-service for the teachers to explain the features of A.M.'s cochlear implant. He later testified about the in-service provided to the teachers at which they explained the features of A.M.'s cochlear implant. On cross examination, Mr. M. stated that the CRESS team did perform an in-service, but he didn't think they did it correctly, but he also stated that he did not know what was done at the in-service. Importantly, A.M.'s IEP lists exactly what was presented in the in-service presentation provided by the CRESS team, including the educational impact of hearing loss, labeling the parts of the cochlear implant and other devices, their functions, and common troubleshooting. J-37, p. 349. He testified that the school was not properly cleaning the Roger Focus device based on it having ear wax on it after A.M. accidentally wore it home one day but also stated he didn't know whether it was being wiped down regularly. Mr. M. testified that although his medical insurance covers the weekly LSLS/AVT provided by Melanie Abramowitz, he is paying cash for a second weekly session. This is despite the fact that the recommendation from Abramowitz has consistently been for one sixty-minute session per week. J-44; J-48. He stated that as far back as October 23, 2023, Mr. M. expressed to the Johns Hopkins staff that he was considering reducing services because A.M. was receiving two hours of LSLS/AVT per week. J-24. Mr. M. stated that he proceeded with this litigation based on a misunderstanding of his conversation with the Coordinator for Deaf Education at the New Jersey Department of Education, which left him with the impression that Eufemia said that AVT was performed in public schools in New Jersey. However, as seen in her testimony, she is not aware of any non-specialized public school in New Jersey providing AVT, nor is she aware of the circumstances of the AVT that is being provided.

He stated that he placed all the blame for any difficulty A.M. faced adjusting to the cochlear implant on the District. His frustration at watching his son learn to adapt led to anger, threats, and withholding A.M.'s medical records. J-53. Petitioners told the District that many of the experts they consulted predicted that A.M. would struggle at first with adapting to the cochlear implant. When their predictions were realized, it was very

upsetting to petitioners. J-24; J-53. Mr. M.'s expectations of what the District was supposed to do included changing the settings on the cochlear implant based on A.M.'s instruction, which the CRESS team advised was not appropriate for the teachers to be doing. J-53.

Mr. M. did not believe the reports from A.M.'s teachers, the CRESS team, or A.M.'s academic progress that he was succeeding in the District. J-53. He completely discounted the email from A.M.'s teacher that "[i]t has been a successful three days of school for [A.M.] . . . [A.M.] has been telling us he could hear us during our daily check ins and throughout the day. He seems to be adapting well to the changes in the classroom. Today, he was all smiles." The teachers give detailed reports on how each student is doing on their report card, and A.M.'s report card from 2023–2024 states that A.M. "has been making great progress academically and is an active participant in class. He works very well independently." J-50, p. 490. His grades were all As, with Es in writing and visual arts. J-50, pp. 488–489. A.M.'s IEP Progress Report shows that A.M. "participates all day so we are able to observe that he is understanding and grasping the concepts being taught." J-50, p. 487. These reports were consistent with what the CRESS team was observing. For example, on November 21, 2023, "A.M. participated throughout the consultation. During snack, A.M. moved to the carpet to watch the story. While discussing math problems, A.M. volunteered answered aloud along with his peers, and raised his hand." J-39, p. 366. Mr. M. has decided that A.M. needs LSLS/AVT at school because he is not eating lunch despite the fact that "[A.M.] has been observed in the cafeteria . . . [A.M.] was fully engaged and conversing with his peers the entire time." J-49, p. 482.

Additional Findings of Fact

The following information was determined to be undisputed based upon the testimony of the witnesses and the documentary evidence. I **FIND** as **FACTS** the following:

A.M. is a nine-year-old student enrolled in third grade in the District for the 2024–2025 school year. A.M. is designated as OHI for audiologic issues. He has an IEP for

this only, with no other effect. A.M. had an IEP implemented May 11, 2023, and is placed in the general education classroom setting. He has been provided services by Harrison and has exhibited progress. His report card reflects “A” for “Achieving”—the highest grade—in all his courses.

LEGAL DISCUSSION

The Individuals with Disabilities Education Act (IDEA) provides federal funds to assist participating states in educating disabled children. Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 179 (1982). One of the purposes of the IDEA is “to ensure that all children with disabilities have available to them a 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). To qualify for this financial assistance, New Jersey must effectuate procedures that ensure that all children with disabilities residing in the state have available to them a FAPE through a uniquely tailored IEP in the least restrictive environment. 20 U.S.C. §§ 1401(9)(D), 1412(a)(1); Honig v. Doe, 484 U.S. 305, 338 (1988). The responsibility to provide a FAPE rests with the local public-school district, which bears the burden of proving that a FAPE has been offered. 20 U.S.C. § 1401(9); N.J.A.C. 6A:14-1.1(d); N.J.S.A. 18A:46-1.1; see also G.S. v. Cranbury Twp. Bd. of Educ., 2011 U.S. Dist. LEXIS 44933, *6 (D.N.J. 2011) (New Jersey uniquely places the burden of proof and production on the school district).

In Endrew F. v. Douglas County School District RE-1, 137 S. Ct. 988, 1001 (2017), the United States Supreme Court construed the FAPE mandate to require school districts to provide “an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” The Court’s holding in Endrew F. largely mirrored the Third Circuit’s long-established FAPE standard, which requires that school districts provide an educational program that is “reasonably calculated to enable the child to receive meaningful educational benefits in light of the student’s intellectual potential and individual abilities.” Dunn v. Downingtown Area Sch. Dist. (In re K.D.), 904 F.3d 248, 254 (3d Cir. 2018) (quoting Ridley Sch. Dist. v. M.R., 680 F.3d 260, 269 (3d Cir. 2012)). In addressing the quantum of educational benefit, the Third Circuit has made

clear that more than a “trivial” or “de minimis” educational benefit is required, and the appropriate standard is whether the IEP provides for “significant learning” and confers “meaningful benefit” to the child. Endrew F., 137 S. Ct. at 1000–01; T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000); Ridgewood Bd. of Educ. v. N.E. ex rel. M.E., 172 F.3d 238, 247 (3d Cir. 1999), superseded by statute on other grounds as recognized by P.P. v. W. Chester Area Sch. Dist., 585 F.3d 727 (3d Cir. 2009); Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180, 182–84 (3d Cir. 1988). Hence, an appropriate educational program will likely “produce progress, not regression or trivial educational advancement.” Dunn, 904 F.3d at 254 (quoting Ridley, 680 F.3d at 269).

The FAPE requirement is not “a bad faith or egregious circumstances standard,” Ridgewood, 172 F.3d at 249, and, therefore, is not “abridged because the [school] district’s behavior did not rise to the level of slothfulness or bad faith.” Ibid. (quoting M.C. ex rel. J.C. v. Cent. Reg’l Sch. Dist., 81 F.3d 389, 397 (3d Cir. 1996)). Nor is the child’s entitlement to special education dependent on the parents’ vigilance; rather, it is the school district’s responsibility “to ascertain the child’s educational needs, respond to deficiencies, and place him or her accordingly.” M.C., 81 F.3d at 397.

However, **“although the IEP must provide the student with a ‘basic floor of opportunity,’ it does not have to provide ‘the optimal level of services,’ or incorporate every program requested by the child’s parents.”** Ridley, 680 F.3d at 269 (citation omitted; emphasis added). Hence, while the state must provide an education that offers significant learning, it need not “maximize the potential of every handicapped child.” Ibid. A court reviewing an IEP must determine whether it is “*reasonable*, not whether the court regards it as ideal.” Endrew F., 137 S. Ct. at 999. “A program need not and cannot guarantee a student’s academic progress.” S.C. v. Oxford Area Sch. Dist., 2018 U.S. App. LEXIS 31086, *6 (3d Cir. 2018) (citing Endrew F., 137 S. Ct. at 999). Hence, the IEP must be “judged prospectively so that any lack of progress under a particular IEP . . . does not render that IEP inappropriate.” Carlisle Area Sch. v. Scott P., 62 F.3d 520, 530 (3d Cir. 1995).

Is A.M.’s IEP developed by Harrison reasonably calculated to provide A.M. with a FAPE?

Petitioners assert that the District continues to reject petitioners' requests for LSLS/AVT services because its program in place does not have specialists certified or trained in LSLS/AVT and bringing in a provider may impart an additional cost on the District. The testimony established that there are, in fact, LSLS/AVT service providers available should the District wish to avail themselves of them. However, it cannot be refuted that A.M.'s grades are the highest achievable and that his teacher reports are positive. A.M. has an IEP due solely to his hearing issues, and there are sufficient goals and objectives contained therein that are being met.

Petitioners also object to the CRESS team's development of A.M.'s education program, accommodations, and annual goals and objectives, without any consideration or "justification" as to appropriateness or establishing a baseline against which to measure any progress. However, it cannot be refuted that their program is working.

Credibility Analysis

The fact finder in a contested proceeding must weigh the credibility of witnesses. Credibility is described as the quality of testimony or evidence that makes it worthy of belief. "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances." In re Estate of Perrone, 5 N.J. 514, 522 (1950). The fact finder should consider the witness' interest in the outcome, their motive, and any bias when assessing the credibility of a witness. Credibility findings are "often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463, 474 (1999). "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).

Here, the District's expert witnesses demonstrated familiarity with A.M., A.M.'s IEPs, and A.M.'s particular needs.

All District witnesses were perceived to be genuinely concerned for A.M. and his ability to access his education in a manner that will maximize his learning experience. Their testimony consistently aligned with one another. I thus deem their testimony credible and accept their testimony as to their observations and interactions with A.M. as accurate factual information. I deem Dr. Liskey's expert testimony to be persuasive and supported by other evidence in the record.

In contrast to Schoettle and Dr. Liskey, petitioners' witnesses demonstrated a lack of familiarity with A.M.'s IEPs and provided only general recommendations for "children with hearing loss," not A.M. specifically. For example, Lehnert recommended access to a TOD and close monitoring of A.M.'s speech and language gains, which has been in place since A.M. was in preschool through CRESS services. Also, A.M. does not qualify for school-based speech and language services because he has average to above average speech and language skills. J-25.

Madell's report similarly made recommendations based on generalized assumptions about students with hearing loss rather than based on the individual needs of A.M. J-46. The recommendations were in place already or did not apply to A.M. Most of the recommendations state that they are for "children with hearing loss" or "all children with hearing loss" and lack any tie to what was observed by Madell. J-46. Madell's report recommendations were general and mostly did not apply to A.M. as a student with average and above average speech and language development. J-46. Specifically, Madell admitted that the testing by Abramowitz that she relied on to make this recommendation found A.M.'s receptive and expressive language skills to be average. Her recommendation that A.M. have preferential seating is in A.M.'s IEP, and the CRESS team and his teachers work with him to choose the best seating in all settings, including in the classroom, in small group settings, and in the cafeteria. J-46. LING sound checks, appropriate microphone use, and use of open-ended questions were all accommodations that were in A.M.'s IEP. J-46. Dr. Liskey explained that A.M. would periodically decline the use of the mic in group mode because in some situations he hears better without it.

Madell's recommendation of putting tennis balls on the chair legs shows that these were generic recommendations entirely unconnected to her cursory observations of A.M. J-46. As Dr. Liskey explained, the classroom is carpeted so tennis balls on the chair legs would have no impact on the acoustics of the classroom. J-46. The acoustics in A.M.'s classroom are uniquely well-suited for students with hearing loss.

Even though it is clearly documented that Courtney Schoettle and Dr. Liskey have worked with A.M. and his teachers twice a week for years, Madell recommended that a TOD and audiologist work with A.M. Further, A.M. has demonstrated no academic need for direct TOD services. J-46. Madell's final recommendation is that the service providers all believe that A.M. can do very well in school. As Dr. Liskey says and has demonstrated consistently, "A.M. does well in school and he is at grade level or above and our whole team believes in his academic success. That's never been a doubt."

Madell observed that A.M. was speaking softly and recommended that the speech and language pathologist work on his volume. Dr. Liskey knows, from her years of working with A.M., that he speaks softly when he does not want to engage in conversation. She pointed out that on the day of the observation, several people were in the room and that A.M. knew that they were there for him. She also knows, again, from her long-term and consistent work with A.M., that he engages in normal-level conversations with his peers and with his teachers and that he responds in the classroom at a perfectly acceptable volume.

Madell's testimony regarding the Bell and LSLS/AVT services is also not credible. First, Madell denied that AG Bell (which she has been on since 2010) makes money from cochlear implants and hearing aids. As explained above, AG Bell lists many cochlear implant and hearing aid companies on its website as benefactors with several of them listed as donating between \$50,000 and \$99,999. See 2022 Annual Report, <https://agbell.org/wp-content/uploads/2024/05/AG-Bell-2022-Annual-Report-Final.pdf> at p. 12 (last visited June 26, 2025). Madell's bias was further demonstrated by her extreme resistance to admitting that A.M.'s math scores have consistently gone up and he remains above average in his math scores when compared to his peers across the nation. Madell also testified that every single child with hearing loss must receive AVT, unless there are

no signs of weakness, even though CHOP, which the court took judicial notice is one of the pre-eminent children's hospitals in the eastern seaboard, does not employ an LSLS/AVT and does not recommend LSLS/AVT services to their cochlear implant patients. J-74.

Finally, Robinson also demonstrated a lack of familiarity with A.M.'s IEPs, testifying that an FLE would help establish a baseline for his goals even though A.M.'s only goals in both his 2022–2023 and 2023–2024 IEPs were self-advocacy goals.

A.M.'s father testified passionately, and it cannot be disputed that he has the best interest of A.M. at heart. Nonetheless, Mr. M.'s expectations of what the District was supposed to do were unreasonable, including changing the settings on the cochlear implant based on A.M.'s instruction, which the CRESS team advised was not appropriate for the teachers to be doing. J-53. On cross examination, Mr. M. stated that the CRESS team did perform an in-service, but he didn't think they did it correctly, but he also stated that he did not know what was done at the in-service. Importantly, A.M.'s IEP lists exactly what was presented in the in-service presentation provided by the CRESS team, including the educational impact of hearing loss, labeling the parts of the cochlear implant and other devices, their functions, and common troubleshooting. J-37.

Based on his testimony, Mr. M. appears to give no credence to the reports from A.M.'s teachers, the CRESS team, or A.M.'s academic progress that he is succeeding in the District. J-53. He completely discounted the email from A.M.'s teacher that "[i]t has been a successful three days of school for [A.M.] . . . [A.M.] has been telling us he could hear us during our daily check ins and throughout the day. He seems to be adapting well to the changes in the classroom. Today, he was all smiles." The teachers give detailed reports on how each student is doing on their report card, and A.M.'s report card from 2023–2024 states that A.M. "has been making great progress academically and is an active participant in class. He works very well independently." J-50. His grades were all As, with Es in writing and visual arts. J-50. A.M.'s IEP Progress Report shows that A.M. "participates all day so we are able to observe that he is understanding and grasping the concepts being taught." J-50. These reports were consistent with what the CRESS team was observing. For example, on November 21, 2023, "A.M. participated throughout the

consultation. During snack, A.M. moved to the carpet to watch the story. While discussing math problems, A.M. volunteered answers aloud along with his peers, and raised his hand.” J-39. Mr. M. has decided that A.M. needs LSLS/AVT at school because he is not eating lunch despite that fact that “[A.M.] has been observed in the cafeteria . . . [A.M.] was fully engaged and conversing with his peers the entire time.” J-49.

As to the LSLS/AVT, Mr. M. testified that although his medical insurance covers the weekly LSLS/AVT provided by Melanie Abramowitz, he is paying cash for a second weekly session. This is despite the fact that the recommendation from Abramowitz has consistently been for one sixty-minute session per week. J-44. Mr. M. stated that he proceeded with this litigation based on a misunderstanding of his conversation with the Coordinator for Deaf Education at the New Jersey Department of Education, which left him with the impression that Eufemia said that AVT was performed in public schools in New Jersey. However, as seen in her testimony, she is not aware of any non-specialized public school in New Jersey providing AVT, nor is she aware of the circumstances of the AVT that is being provided.

The LSLS/AVT strategies described by Abramowitz were designed to train A.M.’s brain to interpret signals from his medical device. They would require that A.M.’s right ear be muffled and the therapy be directed only at his left ear to train his brain to better interpret the signals from the cochlear implant. This is not a situation that A.M. would be in when he is in the classroom, lunchroom, or under any circumstances where he is accessing his education.

The District accentuated the position that the LSLS/AVT services are medical or educational. Abramowitz testified that petitioners’ provider determined that her services were medical for insurance purposes. The AVT provided by Abramowitz is billed to petitioners’ medical insurance. I take Judicial Notice that an insurance company will not pay for services that are not insurance-related.

A.M. has made academic progress at Harrison; both before and after his surgery. The methodology used by Harrison demonstrates progress and improvement in A.M. That his parents prefer another methodology for the education of their son is admirable;

however, as stated herein, their preference may be considered by Harrison, but the District is under no obligation to implement this preference—particularly in light of progress being made through the District’s efforts. Education is not an exact science, and unfortunately, parent’s desired methodology cannot always be accommodated. The existing IEP is reasonably calculated to enable A.M. to make meaningful progress in light of his circumstances.

I **CONCLUDE** that A.M.’s IEP as set out by Harrison is providing a meaningful educational benefit to him.

I **CONCLUDE** that A.M.’s 2020–2021, 2021–2022, and 2022–2023 IEPs offered by the District were not dealt with in testimony or documentation and will not be dealt with in this decision.

I **CONCLUDE** that A.M.’s 2023–2024 IEP offered by the District is reasonably calculated to provide A.M. with a FAPE.

ORDER

It is **ORDERED** that with the District’s demonstration that the IEP was appropriate and that it has provided a FAPE, the due-process petition is **DISMISSED** and any requested relief in the petition is **DENIED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2024) 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 30, 2024
DATE



CARL V. BUCK III, ALJ

Date Received at Agency

Date Mailed to Parties:

CVB/sm/tat

APPENDIX

Witnesses

For petitioner:

Wendy Eufemia
Melanie Abramowitz
Kathleen Lehnert
Francis Creighton
Cynthia Robinson
Jane Madell

For respondent:

Brittany Liskey
Courtney Schoettle

Exhibits

Joint:

- J-1 Joint Stipulation of Facts
- J-2 June 19, 2019, Glazier Preschool Observation
- J-3 November 14, 2019, CHOP Speech and Language Evaluation
- J-4 February 4, 2020, Auditory Brainstem Response Assessment Summary
- J-5 April 22, 2020, IEP Transfer
- J-6 July 22, 2020, Heil Social Assessment
- J-7 July 31, 2020, Piperno Speech and Language Evaluation
- J-8 August 4, 2020, Nemeth Psychological Evaluation
- J-9 August 17, 2020, Giuliano Educational Evaluation
- J-10 September 18, 2020, IEP Amendment
- J-11 April 16, 2021, Communication Plan
- J-12 2020–2021 CRESS Educational Consultation Notes
- J-13 April 19, 2021, IEP Annual Review
- J-14 2021–2022 CRESS Educational Consultation Notes

- J-15 July 12, 2021, IEP Progress Report
- J-16 April 5, 2022, IEP Annual Review
- J-17 December 15, 2022, CHOP Evaluation
- J-18 January 23, 2023, Raia Report
- J-19 June 14, 2022, IEP Progress Report
- J-20 March 28, 2023, IEP Annual Review
- J-21 March 28, 2023, Communication Plan
- J-22 2022–2023 CRESS Educational Consultation Notes
- J-23 March 29, 2023, Lehnert Pre-Cochlear Implant Speech and Language Evaluation; Cochlear Implant Surgery on April 11, 2023; Cochlear Activation on May 4, 2023
- J-24 2023–2024 Carver, Lehnert, and Lucas Follow-Up Appointment Notes
- J-25 2023–2024 May 25, 2023, IEP Meeting Notes
- J-26 May 26, 2023, Invitation to Re-evaluation Planning Meeting
- J-27 June 6, 2023, Letter from Creighton seeking LSLS/AVT
- J-28 June 8, 2023, IEP Progress Report
- J-29 June 9, 2023, Re-evaluation Plan
- J-30 June 16, 2023, Email to Parents regarding Lehnert report
- J-31 June 20, 2023, Letter from Lehnert seeking LSLS Cert. AVT with Parent Email
- J-32 July 10, 2023, DeVoe Speech and Language Re-evaluation
- J-33 July 11, 2023, Giuliano Educational Evaluation
- J-34 July 20, 2023, Invitation to Re-valuation Eligibility Meeting
- J-35 July 21, 2023, Nemeth Psychological Evaluation
- J-36 August 4, 2023, Letter to Parents regarding Re-evaluation Plan
- J-37 August 15, 2023, IEP Amendment
- J-38 August 15, 2023, Re-evaluation Conference Report
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- J-47 April 3, 2024, CRESS Response to Madell School Observation
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- J-64 NJ Office of Special Education “Supporting Students who are Deaf or Hard-of-Hearing”
- J-65 NJ Department of Education “Educational Planning Guide For Students Who Are Deaf Or Hard Of Hearing”
- J-66 NJ Department of Education Website “Programs and Services for Students who are Deaf/Hard of Hearing”
- J-67 Picture of dirty Roger Focus
- J-68 Ling-6 Sound—How to develop and chart
- J-69 NJ Department of Education “Select Assessments to Use with Children who are Deaf or Hard of Hearing”
- J-70 Roger Focus II Manual
- J-71 Email letter from R.M. to Wendy Eufemia
- J-72 Parent emails from April 18, 2023, to January 29, 2024

J-73 N.J.S.A. 18A:46-2.8 "Deaf Student's Bill of Rights"

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J-75 Kathleen Lenhert Resume