



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 13169-24

AGENCY DKT. NO. 2025-37965

C.B. and A.B. o/b/o A.B.,

Petitioners,

v.

**HOWELL TOWNSHIP BOARD OF
EDUCATION,**

Respondent.

Andrew I. Meltzer, Esq., appearing for petitioners (Sussan, Greenwald & Wesler,
attorneys)

Jodi Howlett, Esq., appearing for respondent (Machado Law Group, attorneys)

Record Closed: April 8, 2025

Decided: April 15, 2025

BEFORE **SARAH G. CROWLEY**, ALJ:

STATEMENT OF THE CASE

This matter arises under the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. §§ 1400 to 1482. Petitioners, C.B. and As.B. o/b/o A.B., (parents or petitioners) filed a petition for due process, on behalf of their daughter, a minor student, seeking reimbursement for the costs associated with unilateral placement at the Center School,

including tuition, transportation, and continued placement at the Center School, counsel fees and compensatory education. The petitioners allege that the respondent, Howell Township Board of Education (respondent, District or Board) failed to provide A.B. with a free appropriate public education (FAPE) in the least restrictive environment (LRE). They allege the District failed to provide an IEP with appropriate goals and objectives and A.B. failed to demonstrate any meaningful progress. The issues are whether the Individualized Education Program (IEP) proposed by the respondent was appropriate and if not, was A.B. entitled to a unilateral placement, continued placement at Center School, along with counsel fees and other expenses associated with the within litigation.

PROCEDURAL HISTORY

The petitioners, on behalf of their daughter, A.B., filed a due process petition, dated July 16, 2024, alleging that the respondent failed to provide A.B. with a free appropriate public education (FAPE) in the least restrictive environment (LRE). The petitioners also seek reimbursement for the costs of their unilateral placement at the Center School. The respondent filed an answer, and the Commissioner of Education transmitted this matter as a contested case to the Office of Administrative Law (OAL) pursuant to N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23 on September 20, 2024. Hearings were held over a five-day period starting on January 27, 2025, and concluding on January 31, 2025. After post-hearing briefs were submitted, and a conference concerning the admitted exhibits, the record closed after submission of agreed upon exhibit list on April 8, 2025.

TESTIMONY AND FINDINGS OF FACT

For respondent:

Kristen Kadir is the supervisor of pupil services at the Board. She has held this position since June of 2021. Prior to that she was a language and learning disabilities teacher in the District and has held various positions in the District since 2004. She participated in the IEP meeting for the 2021-2022 school year for A.B. It was the year following COVID and they were back in school full time. At that time, A.B. was receiving supplement support in the general education classroom in sciences and social studies

and was in the general education setting for any specials. She was in the multiple disabled (MD) classroom for math and language arts with support. In addition, she was receiving speech and language pull-out therapy. A.B. had a one-on-one paraprofessional assigned to her at all times.

Ms. Kadir went through a series of tests scores and progress reports maintained for A.B. The reports consist of a record of the maladaptive behavior. The behavior is better on some days than others, but no consistent pattern or record of any improvement was demonstrated. Ms. Kadir also identified records of academic testing and daily reports relating to academic tasks. Overall, very little progress, if any, was demonstrated by the records produced and identified by Ms. Kadar. Ms. Kadir acknowledged the regression in academic progress but indicated that regression in testing can sometimes be the result of the state of mind of the individual at the time of the testing. Ms. Kadir discussed the maladaptive behavior that was exhibited by A.B. and the records that were kept of the time of the behaviors as well as the time for work and breaks.

Ms. Kadir testified that that District sought to move A.B. into the MD classroom full-time due to the lack of progress and the increase in maladaptive behaviors in April of 2022. Although there were similar maladaptive behaviors, including cursing, self-harm and eloping in the MD classroom, they hoped that removing the transition from the general education to the MD setting may help. She testified that the parents were opposed to moving A.B. into a MD classroom full time, so they agreed to leave her there following mediation. She explained that the parents wanted A.B. to remain with neurotypical peers for part of the day. The records from the remainder of 2022 did not indicate any substantial improvements in behavior or academic performance.

In November of 2022, the District again proposed an IEP which placed A.B. in the MD classroom for all subjects. After the parents filed for due process and invoked stay put, A.B. remained on the hybrid schedule. In February of 2023, the parents agreed to have A.B. placed in the MD classroom for all subjects. She was moved to the MD classroom full time in February of 2023, and remained there until February of 2024 when the parents unilaterally placed her out of District in February of 2024. Ms. Kadir identified and discussed the records following A.B. placement in the MD class full time. She

identified the records which indicated several weeks when the staff was told not to introduce any new academics. She explained that they had hoped to see improved behavior if no academic demands were made on A.B. Ms. Kadir conceded that notwithstanding the absence of any academic demands, the maladaptive behaviors, including cursing, self-harm and eloping, continued in the MD classroom. She testified that although there were some periods of time where the behaviors were less significant, overall, the behaviors continued, and the records did not demonstrate any academic progress. In fact, the records of testing indicated a regression in academic subjects.

Ms. Kadir identified that last IEP which was completed for A.B. was from November of 2022, and there had been no annual review and no revisions to her IEP since that time. The behavior component of the IEP provided that they are going to seek to work on behavior and teach replacement behaviors. However, there was no testimony of how they were to accomplish this, or any evidence of efforts being made to work on or teach replacement behaviors. She indicated that there were some good days but overall, the behavior was consistently interfering with the ability of A.B. to learn. Ms. Kadir did not identify any techniques employed to address A.B.'s emotional and social needs that were impeding her ability to make any meaningful progress.

Laura Flood is a special education teacher in the MD classroom in Howell the District. She has worked for the District for seven years. A.B. was in her classroom in fourth grade for part of the day and then in February of 2023, she was moved into her class for all subjects. She first met A.B. on her first day of fourth grade in September of 2022. She remained in her class for the entire 2022-2023 school year, and for the start of the 2023-2024 school year. She attended the IEP meeting in April of 2022, when the child study team (CST) was recommended that A.B. be placed in the MD classroom for the whole day. There were a lot of behavior issues, and they thought that transitions were difficult so placing her in the MD classroom full time would help with some of the maladaptive behaviors. She concurred with this decision, but the parents objected to this and filed for mediation and stay put was invoked.

A.B. remained in her classroom for math and language arts and transitioned to the general education setting for the other subject and specials. Ms. Flood identified a

number of reports addressing behaviors as well as academic issues. A.B. was approved for an extended school year (ESY), but she did not attend. Ms. Flood testified that ESY is important for children with learning differences to prevent regression. She indicated that A.B. had a lot of absences both years, often due to extracurricular activities. She was aware through communications with the parents that she did receive tutoring over the summer as well as various counseling.

Ms. Flood went through a number of records which recorded the time on task, time for breaks and time for maladaptive behaviors. A.B. had a one-on-one aide with her at all times consistent with her IEP. Ms. Flood identified and discussed records which demonstrated A.B.'s history of yelling, screaming and self-injurious behavior. The IEP in November 2022 recommended that A.B. be moved to the MD classroom full time, but she was not moved until February of 2023, when the parent agreed to the change. The District had agreed to keep her there for the preceding year when the parents expressed concern with A.B. remaining with neurotypical peers for part of the day. However, the maladaptive behavior was present in her MD classroom and continued to occur her move to the classroom full time in February 2023. Although there were spikes up and down, the records indicated that this behavior continued through February 2024, when the parents removed her from the District.

Ms. Flood identified the reading assessments that were conducted for A.B. In January of 2023 she tested a 1.7, meaning the middle of first grade. In May 2023 after she had been in the MD class for several months she was tested again and received a 1.3, which was down three months from the 1.7. Ms. Flood discussed her time on task in the records, which indicated they would do one minute on and one minute off. She acknowledged that this was a very limited demand, but they were hoping to curb the maladaptive behaviors. She identified the records which indicated that they did not introduce any academic demands for several weeks to try to get the maladaptive behaviors under control. Ms. Flood testified that after being in the MD class full time for a year, she was still experiencing maladaptive behaviors and the academic records did not demonstrate much progress.

Ms. Flood testified about A.B.'s use of excessive profanity in class and the protocol to address this behavior. She testified that the District's protocol was to ignore the behavior as they thought addressing it would only draw attention to it and not result in a reduction of the behavior. There were other students in the classroom and Ms. Flood conceded that this type of language was not good for the other children. However, they felt that acknowledging it would not help curb the behavior, and drawing attention to it may encourage it. Their response was to give her a break from whatever academic activity they thought may have been triggering the behavior. The elopements, expletives and self-injurious behaviors continued following the move to the MD class full time. The records indicated that when the behaviors were persistent, they would reduce academic demands and give A.B. additional breaks. She was aware that the parents were experiencing some school refusal issues based on emails they received.

Peter Gencarelli is a board certified behavior analyst and is the BCBA in the District. He is a member of the Child Study Team for A.B. and became familiar with A.B. when she was in the fourth grade at Memorial. He has been working in the District for three years. He works with staff and administration and drafts behavior intervention plans for students. He took over for the prior BCBA when she left the District. He also works with Kelly McCarthy who is a consultant that works for the Districts on behavior plans.

He reviewed the daily summaries from April of 2023 after A.B. had been moved full time to the MD classroom in February of 2023. He notes her refusal to do work, cursing, yelling, as well as destructive and self-injurious behavior. He indicated that some of the behaviors decreased after she was moved to the full-time MD program, but the academic demands decreased. They were trying to focus on the behaviors before academics. This was her fifth-grade year, the 2023-2024 school year. He mentioned that there may have been some issues with her medications, but he was not privy to the information and had no details as to any changes in medications or changes at home during this time.

Mr. Gencarelli noted that there were some improvements in the behavior on some days, but not consistently. He discussed some recommendations such as redirection following bad behavior and how they often ignored the behavior. The removal of

academic demands did not seem to help and added that sometimes just ignoring the behavior is better. It was unclear if the plan was to ignore or address the behaviors, and the witness did not identify a clear behavior plan. He testified that A.B.'s bad behaviors were recorded, and indicated that the results of their responses to the bad behavior were mixed, as were the academic demands that were placed on A.B. when she exhibited bad behavior. He identified the records that included a period of three-full weeks where they placed no new academic demands on her. He did not observe her at the Center School or speak to anyone there.

Danielle Wall is a social worker and was the case manager and a member of A.B.'s CST in the District. She discussed her involvement in the case and the development of the IEPs for A.B. She described her as a creative, smart and amazing child and her parents were very involved in her life. She testified that her behavior was impeding her ability to learn, and they were trying to figure out what her triggers were to curb the maladaptive behaviors. She had a lot of bad behavior in the third grade such as kicking, elopement, cursing, head banging, and other self-injurious behavior. She testified that they were unable to work on those problem behaviors in the general education setting which is why they recommended she be in the MD class full time. However, she conceded that these behaviors continued to occur when she was moved to the MD classroom full time.

She reviewed the evaluations from Ms. Edwab and Dr. Morrison and responded to their comments about the District not doing anything to curb maladaptive behaviors. She stated that they were trying to wait until the behaviors calmed down to introduce new academic material. She testified that she did not think that a more restrictive environment such as an out-of-district placement was the answer to the behavior issues that were impeding her ability to learn. However, she conceded that A.B. had been in the MD classroom for a year full time, and the behaviors were still interfering with her ability to learn. She testified that they had hoped to see more of an improvement in behavior after the move to the MD class full-time. However, whenever they introduced her to a new subject, the behavior spiked. Ms. Wall identified several reports and evaluations that were done which indicated no significant improvement in her behavior. She testified that she believed that A.B. was making meaningful progress but the documents that she

identified did not support this statement. A.B.'s maladaptive behaviors continued with little to no academic progress and some records indicated a regression in academic progress, and that you should send a kid out of district because they cursed in class.

For the petitioners:

Allie Edwab, M.Ed. is a private BCBA retained by the parents of A.B. to conduct an independent education evaluation. Ms. Edwab was accepted as an expert in ABA, Special Education, developing programs for students with autism and school based programming for students with disabilities. Ms. Edwab prepared a report in 2022 and an updated report in May of 2023, following her observation of A.B. in her placement in the District, as well as her current placement at the Center School. She reviewed records and was aware of her diagnosis and history. In addition to the regular course schedule, A.B. received one hour of speech therapy and one hour of occupational therapy. She was aware that the parents had agreed to move A.B. to the MD classroom for all subjects as opposed to just math and language arts.

After her observation, she prepared a report that was entered into evidence. She opined that the District was avoiding anything that created bad behavior by A.B. They were not teaching her tolerance, and they were not introducing new academics to her as this resulted in bad behavior. In many situations, they were simply ignoring bad behavior. She noted the time periods for breaks in between the introduction of academic subjects. Ms. Edwab noted that A.B. has private tutors at home, and they are able to engage her in academics for much longer periods of time. She testified that the District was simply trying to avoid any bad behavior and did not seem interested in introducing new subject or teaching her any tolerance for attention to lessons and learning.

In her expert opinion, they were placating her to avoid bad behaviors, and A.B. was not making any meaningful progress. They were not teaching her about academic endurance and resilience, which were important skills for A.B. in order to make any meaningful progress. She noted that the goals and objective from each year had not changed, had not been updated and she was not achieving any of her goals. Her recommendations included a learning environment where they addressed her behavior

issues, as opposed to ignoring them, and thereafter, she would be in a position to learn. She was not in an environment that was conducive to learning as evidenced by the reports and the lack of any meaningful progress. Her current placement had appropriate goals and objective and an appropriate behavior plan which was critical to the learning component of any plan for A.B. She observed A.B. in her current placement at the Center School and opined that she was happy, regulated and receiving the appropriate counseling and social skills which enable her to learn and make meaningful progress.

Dr. Tina Snyder is a neuropsychologist who testified on behalf of the petitioners. Dr. Snyder was accepted as an expert in pediatric psychology, special education and in the development of IEPs. Dr. Snyder conducted an evaluation of A.B. which included observation of her in the district as well as a review of all her records. She discussed her abilities in various subjects and the behavior issue that she exhibited. She testified that A.B. was not being challenged academically and was not making any academic progress in her program in the district. The district failed to make any academic demands of A.B. as they often caused her to exhibit bad behavior such as cursing, kicking, and eloping. As a result, there were very few academic demands made of her, despite her abilities. She testified that in her expert opinion that A.B. needed a program that addressed the behaviors such as counseling that would allow her to learn.

The District's program which ignored bad behaviors and did not have a plan to address the bad behaviors had been ineffective. A.B. needed a program that had appropriate goals and objectives and a program to address, not to ignore bad behaviors. Dr. Snyder had very specific recommendations to address A.B.'s specific learning disabilities as well as the behaviors. The program in the district did not focus on her behavioral needs and had inadequate emotional support for A.B. In her expert opinion, the program in the District did not address her behavior issues and therefore she was not making any meaningful progress emotionally or academically. She observed A.B. in her current placement at the Center School and reviewed the goals and objectives they had for her. She testified that the goals and objectives were appropriate and addressed the behavior issues, which allowed her to make meaningful progress in the least restrictive environment.

Steven Barosi works at the Center School and testified regarding the admission process and developing A.B.'s IEP at the Center School. They reviewed all her records and the expert reports in developing a plan to address her needs emotionally in order for her to learn. He acknowledged behavior issues, but testified that after she adjusted and with the help of the behavior plan they had in place, she had made significant progress both socially and academically. He testified about the size of the classrooms and the size of the school as well as the make-up of the student body. He testified that A.B. is making progress academically as well as socially. She has made friends and has adapted well to the new school environment. There is a therapeutic component of the school which is important to student with a diagnosis like A.B. Being happy and socially adjusted is critical to learning. The multisensory curriculum and the therapeutic counseling component of their program are critical to meet the needs of A.B. and she has responded well and has made tremendous progress at the Center School.

As.B. is A.B.'s mother. As.B. gave some background on A.B. She was eligible and did receive preschool intervention and had been in the District since preschool. She is diagnosed with autism spectrum disorder, attention deficit/hyperactivity (ADHD), generalized anxiety disorder and a tic disorder. In addition to the services provided in the District, she and her husband have employed a team of professionals to assist in her education, including a behaviorist to work with her on maladaptive behaviors. She testified that things had been bad the last few years in the District and they saw very little progress in her academics, as her behavior as well as school refusal had increased. She testified that they felt strongly about keeping her with her neurotypical peers for part of the day when the district proposed moving her to the MD full time. It was also clear to her that the maladaptive behavior was occurring in both the MD classroom and the general education setting.

As.B. testified that they have a team of professionals that they employ to help with A.B.'s behavior and multiple disabilities. Petitioners have engaged in several at-home tutors and have her involved in several outside activities. This is the reason why A.B. did not attend ESY. The petitioner testified that A.B. had tutors that came all summer. In addition, A.B. went to various camps, had a dance class and enjoyed their pool during her time off from school in the summer. School had become quite a struggle, and A.B.

has a great deal of school-related anxiety on top of all her other issues, so petitioners felt it was best for her to be home during the summer.

A.B. had been in the District since preschool and had always had struggles with her behavior but it had become increasingly difficult. When the District initially suggested moving her into the MD class full time, petitioners were reluctant as they wanted her to remain with her neurotypical peers for part of the day and they believed that she could handle it academically. In addition, she was in the MD classroom for part of the day, and the records indicated that the behavior was no better in those classes. When the District again suggested moving her full time to the MD class, they reluctantly agreed to allow the move in February of 2023. At this point they had retained a lawyer, and he was dealing with the District directly.

After moving A.B. into the full-time MD class in February of 2023, petitioners continued to see reports of terrible behavior and saw her anxiety related to school escalating. Petitioners had their own team of professionals that they retained to assist with A.B.'s care. Petitioners wanted their team to observe A.B. in the classroom and see if they could make any recommendations as she was not improving. A.B. was beginning to regress and did not want to go to school. Petitioners got very little feedback from the District. A.B.'s behaviors in school and at home were not improving and the reports demonstrated very little academic progress, and showed regression in her academic progress. There had been no changes in her goals and objective or in a behavior plan to address her maladaptive behaviors.

Petitioners began to explore alternatives out of district based on recommendations from their professionals. Their professionals both observed A.B. in her classroom setting in District and prepared reports and made recommendations. They were both concerned with how the district responded to behaviors and the absence of any academic progress. They both opined that the District was not addressing the behavior issues and was in most cases simply ignoring the behavior and making no academic demands of A.B. Petitioners knew that they needed to do something, so we went to visit the Center School, since there was no indication that anything was going to improve in District. She had been in the MD class full-time for a year and the behaviors continued and increased at

times. There was little or no academic progress, and in addition, A.B. was anxious about school all the time. She testified that the improvement in A.B. at the Center School is remarkable. Her behaviors are under control, and she is making progress academically. She testified that there are still bad behaviors, but they are not ignoring it and she is getting counseling to address the behavior issues. She is much happier and does not fight going to school, she is making friends and has adjusted emotionally.

FINDINGS OF FACT

The resolution of the claims made by the petitioners requires that I make a credibility determination regarding the critical facts. The choice of accepting or rejecting the witnesses' testimony or credibility rests with the finder of fact. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). In addition, for testimony to be believed, it must not only come from the mouth of a credible witness, but it also must be credible. It must elicit evidence that is from such common experiences and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witnesses' story considering its rationality, internal consistency and the way it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (1963). A fact finder is free to weigh the evidence and to reject the testimony of a witness, even though not directly contradicted, when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone, or in connection with other circumstances in evidence, excite suspicion as to its truth. In re Perrone, 5 N.J. 514. 521-22 (1950). See D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997).

Having had an opportunity to carefully observe the demeanor of the witnesses, it is my view that the testimony from the witnesses for the District was not credible and their testimony that A.B. was making meaningful progress in the least restrictive environment was not supported by the significant documentation produced by the District. Ms. Kadir, Ms. Flood and Ms. Wall repeatedly stated that they thought A.B. was making meaningful progress, yet the records that they identified did not support these statements. I found the testimony from Allie Edwab, Steven Barosi, Dr. Snyder and As.B. sincere, credible

and supported by the documentation produced by the District as well their independent assessments of A.B.

Accordingly, I **FIND** the following as **FACT**:

1. A.B. is a fifth-grade student who resides with her parents, C.B. and As.B. in Howell Township.
2. A.B. was deemed eligible for special education and related services under the category of autism spectrum disorder. In addition to autism, A.B. has been diagnosed with dyslexia, specific learning disorder in math and written expression, attention deficit hyperactivity, anxiety, development delays and motor tics.
3. A.B. has a history of maladaptive behavior which have impacted on her ability to learn.
4. She has been in the District since she was two years old.
5. Pursuant to her IEP, dated 9/17/21, A.B. was in general education classes for all subject and in a multiply disabled (MD) class for math and language arts.
6. In February 2022, the new IEP proposed to move her to the MD classroom full time. The parents invoked stay put and requested mediation.
7. An agreement that was reached during mediation and the District agreed to keep A.B. in the existing program and placement. No other changes were made to the IEP at that time.
8. On November 1, 2022, the District's new IEP again proposed moving her to the MD class full time. The parents objected and filed for due process and invoked stay put.
9. In February 2023, the parents consented to moving A.B. to the MD class full-time, where she remained until February of 2024.
11. Following the change in placement to the MD class full-time, A.B. continued to experience significant maladaptive behaviors.

12. No annual review was conducted this year.

13. The records from February 2023 to February of 2024 demonstrate significant maladaptive behaviors and no meaningful progress academically. The records reflect regression in several academic subjects.

14. The IEP for A.B. from the District did not provide an appropriate education in the least restrictive environment and A.B. had not made any meaningful progress in the last year in the District.

15. Following the unilateral placement in an out-of-district placement at the Center School, A.B. has been making meaningful progress academically and in behavior modification.

16. The program and placement at the Center School are appropriate and provide A.B. with a FAPE in the Least Restrictive Environment.

Accordingly, I **FIND** as follows:

The IEP from the respondent District did not provide any meaningful educational benefit to A.B., did not have appropriate goals and objectives for A.B. and did not provide FAPE in the LRE. I further FIND that the out of district placement at the Center School has provided A.B. with a meaningful educational benefit and is providing FAPE in the LRE.

LEGAL ANALYSIS AND CONCLUSIONS

The petitioners seek determination that A.B. was denied FAPE in the LRE. Specifically, they allege that the IEP was insufficient to provide A.B. with a FAPE in the LRE as a result of maladaptive behaviors which they failed to address. In addition, they seek reimbursement for the cost of their unilateral placement at the Center School; and continued placement at the Center School for as long as that placement remains appropriate, including tuition and transportation. They also seek attorney fees and costs in connection with their due process action as a result of the respondent's failure to provide FAPE in the LRE to A.B.

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

To provide a FAPE, a school district must develop and implement an IEP. N.J.A.C. 6A:14-3.7. An IEP is “a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” Sch. Comm. of Burlington v. Dep’t of Educ. of Mass., 471 U.S. 359, 368 (1985). An IEP should be developed with the participation of parents and members of a district board of education’s CST who have participated in the evaluation of the child’s eligibility for special education and related services. N.J.A.C. 6A:14-3.7(b). The IEP team should consider the strengths of the student and the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluations of the student; the student’s language and communications needs; and the student’s need for assistive technology devices and services. The IEP establishes the rationale for the pupil’s educational placement, serves as the basis for program implementation, and complies with the mandates set forth in N.J.A.C. 6A:14-1.1 to -10.2. The IEP must be reasonably calculated to confer some educational benefit. Hendrick Hudson Dist. Bd. of Educ. v. Rowley, 458 U.S. 176 (1982).

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

Parents who are dissatisfied with an IEP may seek administrative due process hearing. 20 U.S.C. § 1415(f). The burden of proof is placed on the school district. N.J.S.A. 18A:46-1.1. The Board will satisfy the requirement that a child with disabilities receive a FAPE by providing personalized instruction with sufficient support services to permit that child to benefit educationally from instruction. Rowley, 458 U.S. 176, 203 (1982). To meet its obligation to deliver a FAPE, a school district must offer an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 580 U.S. 386 (2017). In Endrew, the District Court for the District of Colorado initially upheld the school denial of a reimbursement for an out-of-district placement. However, the Supreme Court reversed the finding that an IEP should be appropriately ambitious in light of the child’s circumstances, and “tailored to the unique needs of a particular child.”

The appropriateness of an IEP is not determined by a comparison of the private school and the program proposed by the district. S.H. v. State-Operated Sch. Dist. of Newark, 336 F.3d 260, 271 (3d Cir. 2003). Rather, the pertinent inquiry is whether the IEP offered a FAPE and the opportunity for significant learning and meaningful educational benefit within the least restrictive environment. Toward this end, an IEP must be in effect at the beginning of each school year and be reviewed at least annually. 20 U.S.C. § 1414(d)(2) and (4); N.J.A.C. 6A:14-3.7. A complete IEP must contain a detailed statement of annual goals and objectives. N.J.A.C. 6A:14-3.7(e)(2). It must contain both academic and functional goals that are, as appropriate, related to the New Jersey Student Learning Standards of the general-education curriculum and “be measurable,” so both

parents and educational personnel can be apprised of “the expected level of achievement attendant to each goal.” Ibid. Further, such “measurable annual goals shall include benchmarks or short-term objectives” related to meeting the student’s needs. N.J.A.C. 6A:14-3.7(e)(3).

Here, the IEP from November 2022, was not sufficiently individualized to A.B. to permit any meaningful progress, considering her learning deficits in addition to her significant maladaptive behavior issues. The IEP did not propose realistic goals and objectives, and failed to provide an appropriate behavior intervention plan. A.B. was not making any meaningful progress and the records demonstrate that she was continuing to regress, and the behavior intervention plan was inadequate and not being consistently implemented. The evidence demonstrated that the behaviors were escalating due to a policy of ignoring these behaviors and removing any academic demands when the behaviors occurred. Moreover, the District failed to provide any social or emotional therapy to address these maladaptive behaviors which were preventing A.B. from making any meaningful progress.

The District proposed a new placement in the MD classroom full time to address the maladaptive behaviors. The parents reluctantly agreed to this plan as it appeared to be a placement change with no change in the behavior plan, goals and objectives. After a full year in the MD class full-time, A.B.’s maladaptive behaviors continued. The records and the testimony demonstrate that A.B. continued to exhibit significant maladaptive behaviors in the MD classroom. As a result there were limited academic demands place on A.B. and there was a lack of any meaningful academic progress. A.B.’s test scores in all areas continued to show regression, and her anxiety related to school increased and maladaptive behaviors continued to escalate. The record of behaviors indicates very little improvement after the change in placement and no meaningful progress academically.

Accordingly, I **CONCLUDE** that the Board failed to offer A.B. a FAPE as that term is defined by law, in the LRE, and did not confer a meaningful educational benefit on A.B. The IEP did not provide an adequate behavior plan, nor did it provide appropriate goals and objectives. I therefore **CONCLUDE** that the IEP offered to A.B. by the Board did not offer a FAPE in the LRE.

Placement

Parents who withdraw their child from public school and unilaterally place the child in a private placement while challenging the IEP may be entitled to reimbursement if the administrative law judge (ALJ) finds that the school district's proposed IEP was inappropriate, and that the parents' unilateral placement was appropriate under the IDEA. 20 U.S.C. § 1412(a)(10)(C)(ii); N.J.A.C. 6A:14-2.10(c). Florence Cnty. Sch. Dist. Four v. Carter, 510 U.S. 7, 12 (1993); Sch. Comm. of Burlington v. Dep't of Educ. of Mass., 471 U.S. 359, 370 (1985). More particularly, an ALJ may require the district to reimburse the parents for the cost of that enrollment if "the district had not made a free, appropriate public education available to the student in a timely manner prior to enrollment and . . . the private placement is appropriate." N.J.A.C. 6A:14-2.10(b); see 20 U.S.C. § 1412(a)(10)(C)(ii). However, parents who unilaterally withdraw their child from public school and place the child in a private school without consent from the school district "do so at their own financial risk." Burlington, 471 U.S. at 374. If it is ultimately determined that the program proposed by the district affords the child a FAPE, then the parents are barred from recovering reimbursement of tuition and related expenses.

Having found that the respondent failed to offer FAPE to A.B., it must now be determined whether the program devised for her during the 2023-24 school year at the Center School was an appropriate placement under the IDEA. At the hearing, the petitioners provided testimony from their experts as well as Mr. Barosi from the Center School which demonstrated that the IEP developed there provided appropriate goals and objectives and that A.B. was indeed making meaningful progress, where the District had failed to do so. The program at the Center School had appropriate goals and objectives and a realistic plan to address the social and emotional components of learning for A.B. Accordingly, I **CONCLUDE** the Center School was an appropriate placement for A.B., and the parents were justified in making this unilateral placement.

N.J.A.C. 6A:14-2.10(c) requires parents to give the school district advance notice of their concerns and intention to remove a student unilaterally. It is axiomatic that "[t]his notice requirement gives the school an opportunity, before the child is removed, to

assemble a team, evaluate the child, devise an appropriate IEP, and demonstrate whether or not a FAPE can be provided in the public schools.” J.B. & D.B. v. Watchung Hills Reg’l Sch. Dist. Bd. of Educ., 2006 U.S. Dist. LEXIS 250, *23-24 (D.N.J. Jan. 5, 2006) (citing Greenland Sch. Dist. v. Amy N., 358 F.3d 150, 159-60 (1st Cir. 2004)). This regulation also states that reimbursement may be reduced or denied if there is a judicial finding of unreasonableness with regard to the parents’ actions. See N.J.A.C. 6A:14-2.10(c)(4). The parents gave the District an entire year in the MD full-time classroom. Moreover, if the District did not think they could provide FAPE in the LRE back in 2022, they should have proceeded to litigation over the April 2022 IEP. Notwithstanding, their concerns the parents agreed to the move to the MD class fulltime in February of 2023 and A.B. remained there until February 2024. A.B. continued to regress and did not make any meaningful progress in this program. She has shown remarkable progress and is making meaningful progress at the Center School, which I find to be an appropriate placement in the least restrictive environment. The parents, through counsel, gave appropriate notice pursuant to N.J.A.C. 6A:14-2.10. of the unilateral placement of A.B. at the Center School.

Accordingly, I **CONCLUDE** that the petitioners acted reasonably in allowing the District to try to provide FAPE in the LRE pursuant to their proposed IEP. They afforded the District several years with little to no progress. The petitioners reluctantly allowed the District to move A.B. into the MD classroom, where she remained for an entire year, with no meaningful progress. It is clear to the undersigned that A.B. was not making any meaningful progress and was not being provided a FAPE in the LRE, and accordingly the unilateral placement in February of 2024 at the Center School was appropriate and the District is obligated to reimburse the petitioners for the cost of tuition and shall be obligation to pay the cost of tuition, transportation, and any related services’ costs incurred for the Center School.

ORDER

For the reasons set for above, the reimbursement for the unilateral placement and continued placement at the Center School is **GRANTED**, including transportation, attorneys fees and costs.

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.

April 15, 2025

DATE



SARAH G. CROWLEY, ALJ

Date Received at Agency:

Date Mailed to Parties:

SGC/lam

APPENDIX

WITNESSES

For petitioners:

Allie Edwab, M.Ed.,
Dr. Christina Snider
Steven Barosi
As.B., parent

For respondent:

Kristen Kadir
Laura Flood
Peter Gencarelli
Danielle Wall

EXHIBITS

Joint Exhibits

- J1 IEP dated September 17, 2021
- J-2 Report Card MP1 2021-2022 School Year
- J-3 SD Functional Behavior Assessment dated December 2021
- J-4 SD Social Assessment by Danielle Wall, MSW, LCSW January 17, 2022
- J-5 SD Educational Evaluation by Allison Hoffman, MA, LDT-C January 21, 2022
- J-6 SD Speech-Language Evaluation by Courtney Stapleton, MA, CCC-SLP January 28, 2022
- J-7 Grade 3 Standardized Testing Reports 2021-2022 School Year
- J-8 IEP April 4, 2022
- J-9 IEP Parental Concerns April 2022
- J-10 Follow-Up Report by Kelly McCarthy, MA, BCBA May 16, 2022
- J-11 E-Mail from AB to Allison Hoffman, LDT-C May 16, 2022
- J-12 Letter from Andrew I. Meltzer, Esq. to Jodi Howlett, Esq. May 24, 2025
- J-13 Letter from Jodi Howlett, Esq., to Andrew I. Meltzer, Esq. May 25, 2022

- J-14 Work Samples 2021-2022 School Year
- J-15 Behavior Data/Logs 2021-2022 School Year
- J-16 Letter from Andrew I. Meltzer, Esq. to Jodi Howlett, Esq. August 24, 2022
- J-17 Report by Kelly McCarthy, MA, BCBA October 12, 2022
- J-18 IEP November 1, 2022
- J-19 Rationale for the Need for a Personal Assistant November 1, 2022
- J-20 IEP Contact Log 2022-2023 School Year
- J-21 Letter from Andrew I. Meltzer, Esq. to Jodi Howlett, Esq. November 9, 2022
- J-22 IEP Progress Report 2022-2023 School Year
- J-23 Letter from Andrew I. Meltzer, Esq. to Jodi Howlett, Esq. December 22, 2022
- J-24 E-Mails 2022-2023 School Year
- J-25 E-Mail from Andrew I. Meltzer, Esq., to Jodi Howlett, Esq. February 16, 2023
- J-26 Letter from Andrew I. Meltzer, Esq. to Jodi Howlett, Esq. February 17, 2023
- J-27 Letter from Andrew I. Meltzer, Esq. to Jodi Howlett, Esq. February 27, 2023
- J-28 Work Samples – MD Class 2022-2023 School Year
- J-29 Grade 4 Standardized Testing Results 2022-2023 School Year
- J-30 Counseling Log 2022-2023 School Year
- J-31 Report Card MP-3 2022-2023 School Year
- J-32 Behavior Log/Data 2022-2023 School Year
- J-33 Behavior Data by Maureen Rubin, BCBA 2022-2023 School Year
- J-34 Letter from Andrew I. Meltzer, Esq. to Jodi Howlett, Esq. July 6, 2023
- J-35 Grade 5 Standardized Testing Results 2023-2024 School Year
- J-36 IEP Contact Log September 29, 2023
- J-37 Behavior Data/Log 2023-2024 School Year
- J-38 Counseling Log 2023-2024 School Year
- J-39 Letter from Andrew I. Meltzer, Esq. to Jodi Howlett, Esq. October 3, 2023
- J-40 E-Mails 2023-2024 School Year
- J-41 Letter from Andrew I. Meltzer, Esq. to Jodi Howlett, Esq. February 1, 2024
- J-42 Letter from Andrew I. Meltzer, Esq. to Jodi Howlett, Esq. April 4, 2024
- J-43 Communication Log 2023-2024 School Year
- J-44 Kelly McCarthy, MA, BCBA – Consulting Updates 2023-2024 School Year
- J-45 Letter from Andrew I. Meltzer, Esq. to Jodi Howlett, Esq. October 8, 2024
- J-46 Letter from AB to CST referring to Child Study Team November 2, 2015

- J-47 Transition Planning Form November 10, 2015
- J-48 Request for Pre School Evaluation November 15, 2015
- J-49 Initial Identification and Evaluation Planning Form November 18, 2015
- J-50 SD Speech & Language Evaluation by Teri Dowling, MA January 13, 2016
- J-51 SD Educational Evaluation by Nancy Kuhn, MS January 27, 2016
- J-52 SD Occupational Therapy Evaluation by Jennifer Pacchiano, OTR/L February 4, 2016
- J-53 Initial IEP February 10, 2016
- J-54 SD Memorandum re: placement decision February 19, 2016
- J-55 Progress Report dated June 9, 2016
- J-56 Progress Report December 15, 2016
- J-57 IEP January 20, 2017
- J-58 Progress Report June 21, 2017
- J-59 Re-Evaluation Plan January 16, 2018
- J-60 IEP January 16, 2018
- J-61 SD Occupational Therapy Evaluation by Courtney T. Rubino, MS, OTR/L
January 17, 2018
- J-62 SD Educational Evaluation by Nancy Kuhn, MS February 16, 2018
- J-63 SD Speech & Language PreSchool Exit Evaluation February 20, 2018
- J-64 IEP March 1, 2018
- J-65 Progress Report June 20, 2018
- J-66 IEP February 5, 2019
- J-67 IEP May 22, 2019
- J-68 Progress report February 11, 2019
- J-69 IEP April 29, 2020
- J-70 Progress Report June 15, 2020
- J-71 Re-Evaluation Planning – consent (signed) October 28, 2020
- J-72 SD Educational Evaluation by Mary Ellen Ferrentino, MA, LDT/C November 30, 2020
- J-73 SD Speech Language Re-Evaluation by Jessyca Di Leonardo, MA, CCC-SLP
December 1, 2020
- J-74 SD Occupational Therapy Re-Evaluation December 2020
- J-75 SD Psychological evaluation by Melissa Cohen, MA, NCSP December 9, 2020

- J-76 Progress report December 9, 2020
- J-77 IEP December 22, 2020
- J-78 Letter from CB and AB to SD regarding IEP concerns January 11, 2021
- J-79 IEP May 7, 2021
- J-80 N.J.A.C. 6A:14
- J-81 Report by Tina H. Snider, Ph.D. June 16, 2023
- J-82 Independent Educational Review & Recommendations by Allie Edwab, MA, BCBA August 2022
- J-83 Neuropsychological Evaluation report by Priscilla Morrison, Psy.D. 2022
- J-84 Independent Educational Review & Recommendations by Allie Edwab, MA, BCBA May 30, 2023

Petitioner's Exhibits

- P-2 Report by Tina H. Snider, Ph.D. April 3, 2024
- P-3 Curriculum Vitae of Tina H. Snider, Ph.D.
- P-6 Independent Educational Review & Recommendations by Allie Edwab, MA, BCBA March 22, 2024
- P-7 Curriculum Vitae of Allie Edwab, MA, BCBA
- P-10 Center School Information
- P-15 Center School Behavior Update October 28, 2024
- P-16 Center School Behavioral Plan 2024-2025 School Year
- P-17 Report by Tina H. Snider, Ph.D. November 6, 2024
- P-18 Report by Allie Edwab, MA, BCBA November 6, 2024
- P-19 Center School Assessments & work samples
- P-22 Center School Attendance Report 2023-2024 School Year
- P-23 Center School Attendance Report 2024-2025 School Year
- P-24 Curriculum Vitae of Steven A. Barosi, M.A.
- P-25 Observation of AB by Eryn Porcelli, MS, BCBA of Center School
- P-26 Center School IEP 2024-2025 School Year
- P-27 IXL Diagnostic Action Plan January 16, 2025

Respondent's Exhibits

- R-1 IEP – Annual Review December 6, 2021
- R-2 IEP – Reevaluation Eligibility Determination February 1, 2022
- R-3 Calendar – April to June 2022 April 1, 2022 through June 30, 2022
- R-4 Reading Assessment – Level G & E April 4, 2022
- R-5 Daily Mand Summary April 4, 2022 through June 21, 2022
- R-6 Request for Mediation April 18, 2022
- R-12 Emails between L. Flood and A. Beiro re: absence September 7, 2022
- R-13 Emails between L. Flood and A. Beiro re: absence October 6, 2022
- R-15 Petition for Due Process November 14, 2022
- R-16 Emails between L. Flood and A. Beiro re: absence November 30, 2022
- R-18 Emails between D. Wall and A. Beiro re: absence December 22, 2022
- R-19 Reading Assessment – Level I June 3, 2022
- R-20 Email from A. Beiro to L. Flood re: absence September 8, 2022
- R-21 Emails between D. Wall and A. Beiro re: absence January 19, 2023
- R-22 Emails between L. Flood and A. Beiro re: absence January 23, 2023
- R-23 Emails between L. Flood and A. Beiro re: absence January 24, 2023
- R-25 Emails between L. Flood and A. Beiro re: absence March 3, 2023
- R-26 Emails between D. Wall and A. Beiro re: progress March 15, 2023
- R-29 Emails between D. Wall and A. Beiro re: absence April 5, 2023
- R-30 Emails between CST and Administration re: A.B. April 5, 2023
- R-31 Emails between L. Flood and A. Beiro re: absence May 8, 2023
- R-32 Emails between S. Taber and A. Beiro re: absence May 26, 2023
- R-34 Emails between L. Flood and A. Beiro re: absence June 12, 2023
- R-37 Emails between D. Wall and A. Beiro re: ESY July 2, 2023
- R-38 Email from A. Beiro re: absence September 8, 2023
- R-39 Emails between L. Flood and A. Beiro re: absence October 4, 2023
- R-40 Progress Report 2022-2023 October 5, 2023
- R-41 Emails between L. Flood and A. Beiro re: absence October 5, 2023
- R-42 Emails between L. Flood and A. Beiro re: absence October 6, 2023
- R-54 Email from D. Wall to Dr. Snider re: BASC February 4, 2024
- R-58 Peter Gencarelli Observation Notes

- R-59 Danielle Wall, Classroom Observation January 26, 2024
- R-60 Danielle Wall, Classroom Observation January 31, 2024
- R-61 Mediation Agreement May 12, 2022
- R-62 Behavioral Data Charts September 2022 through June 2023
- R-64 Classroom Observation of Center School January 7, 2025
- R-65 Observation Report January 7, 2025
- R-66 Center School IEP November 14, 2024