State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION
OAL DKT. NO. EDS 15122-24
AGENCY DKT. NO. 2025-38165

E.A. AND A.R. ON BEHALF OF E.A.,
Petitioners,
v.
BRIDGEWATER-RARITAN REGIONAL BOARD OF EDUCATION,
Respondent.

E.A. and **A.R.,** petitioners, pro se

David B. Rubin, Esq., for respondent (David B. Rubin, P.C., attorney)

Record Closed: September 2, 2025 Decided: October 1, 2025

BEFORE **JUDITH LIEBERMAN**, ALJ:

STATEMENT OF THE CASE

Petitioners E.A. and A.R. are the parents of E.M.,[1] a seven-year-old boy who is eligible for special education and related services. They object to an out-of-district placement that was proposed by his school district, respondent Bridgewater-Raritan

[1] Petitioners and some witnesses referred to E.A. as E.M., because his middle name begins with M. Because he and his father have the same initials, he is referred to as E.M. here.

Regional Board of Education (District), and seek his continued placement in a classroom within the school district. They also seek independent evaluations. Did the District's proposed program provide E.M.. a FAPE in the least restrictive environment? Yes. The program was designed based upon the then-available data and information obtained via assessments, observations, and discussions with petitioners and educators and was reasonably calculated to provide significant learning and meaningful educational benefit. Are petitioners entitled to independent evaluations? Yes. Petitioners are entitled to an independent psychiatric evaluation because they expressed concern about the psychiatric evaluation that was obtained by respondent, and respondent did not file a due process petition to demonstrate that its evaluation was appropriate. Petitioners are not entitled to other independent evaluations.

PROCEDURAL HISTORY

Petitioners filed a request for due process against the District with the Office of Special Education Programs, New Jersey Department of Education, on or about September 13, 2024.

The parties participated in mediation on October 17, 2024. Because the matter did not settle during mediation, the due process petition was transmitted by the Department of Education, Office of Special Education, to the Office of Administrative Law (OAL), where on October 28, 2024, it was filed as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. After an unsuccessful settlement conference was conducted, the matter was assigned to me on November 18, 2024.

An initial prehearing conference was scheduled to be held on November 21, 2024; however, during the conference, A.R. advised that she required a Spanish language interpreter. The conference was rescheduled to November 22, 2024, during which the hearing was scheduled to be held on December 13, 2024, and January 6, 2025. It was agreed that petitioner E.A. would appear virtually, and this was recorded in a prehearing order.

On December 9, 2024, respondent moved to exclude the testimony of witnesses who were not disclosed by petitioner by the deadline for the exchange of discovery. Petitioners subsequently submitted a letter in which they identified potential witnesses and offered an explanation for the late submission. On December 11, 2024, a prehearing conference was held to discuss petitioners' late submission and respondent's motion. After discussing the merits of the motion, the parties requested an adjournment of the December 13, 2024, hearing to permit petitioners to fully provide discovery. The hearing was to commence on January 6, 2025, and a second hearing date was scheduled for January 9, 2025. The parties were directed to exchange all discovery by December 27, 2024, which is five business days prior to the first hearing date.

On December 30, 2024, respondent again filed a motion to exclude evidence because petitioners submitted new evidence on December 29, 2024, at 10:54 p.m. Petitioners submitted a response to the motion on December 31, 2024. On January 2, 2025, respondent's motion was granted, and petitioners were barred from offering specific evidence.

The January 6, 2025, hearing was cancelled as state offices were closed due to inclement weather. During the January 9, 2025, hearing, the parties engaged in preliminary settlement discussions and agreed to adjourn the hearing to permit further negotiations. The hearing was adjourned to February 10, 2025.

A status conference was held on February 6, 2025, to discuss the status of the settlement discussions. The parties requested an adjournment of the February 10, 2025, hearing to continue their settlement discussions. A settlement conference was held on February 10, 2025. Because the parties did not settle, the hearing was rescheduled to February 27, 2025, and March 12, 2025.

The hearing commenced on February 27, 2025. On March 11, 2025, E.A. advised that petitioners would not attend the March 12, 2025, hearing if he could not appear in

person.[2] E.A.'s concern was discussed on March 12, 2025. A.R. testified that she was willing to be in the same room as E.A.; that the restraining order permits them to be in the same room for matters involving their son; and that they appear together in family court. It was thus agreed that E.A. would attend the remaining hearing days in person. Given the parties' availability, the hearing was scheduled to resume on April 22, 2025. E.A. was unable to appear on April 22, 2025, due to an unanticipated problem with childcare.[3] Given the parties' availability, the hearing was rescheduled to May 30, 2025.

The hearing concluded on May 30, 2025. The parties requested leave to file post-hearing briefs within twenty days of their receipt of the hearing transcripts. Respondent received copies of the transcripts on June 24, 2025. That day, my legal assistant asked petitioners if they received copies of the transcripts. On July 14, 2025, they advised that they had not yet received them. My legal assistant confirmed that petitioners requested the transcripts from the Department of Education on July 7, 2025. During a July 25, 2025, conference call, petitioners asked if they may file their post-hearing brief thirty days from the day they receive the transcripts. Their request was granted. In line with this request, the parties jointly requested a sixty-day extension of the deadline for the filing of the final decision. On July 31, 2025, petitioners advised that they received their copies of the transcripts. Respondent submitted its brief on August 20, 2025; petitioners submitted their brief on September 3, 2025, one day after the September 2, 2025, deadline. The record closed on September 3, 2025.

FACTUAL DISCUSSION AND FINDINGS

During the hearing, the District offered testimony by E.M.'s case manager, Dr. Kristina Ferro, and E.A. and A.R. testified on their own behalf. The facts are largely undisputed. Based upon a review of the testimony and the documentary evidence presented, and having had the opportunity to observe the demeanor of the witnesses and

[2] During the first prehearing conference, it was agreed that E.A. would appear virtually because A.R. represented that there was a history of domestic violence between them.

[3] Because it appeared that E.A. was willing to appear virtually, he was sent a Zoom link, which he accessed. During the proceeding, he explained that he was unable to appear given his childcare needs and ultimately requested an adjournment of the hearing.

assess their credibility, I **FIND** the following **FACTS** and accept as **FACT** the testimony set forth below.[4]

E.M. was born on August 1, 2018. During the times at issue, he was five years old. On November 16, 2023, he transferred from the South Bound Brook School District to the Bridgewater-Raritan School District. While at South Bound Brook, he was eligible for special education under the classification of autism and had an individualized education plan ("IEP"). R-5 at 1. Prior to enrolling at the District, his eligibility was last reevaluated on May 18, 2023,[5] and his next triennial reevaluation was to be conducted on May 17, 2026. Ibid.

While in the District, E.M. lived part-time with his mother, A.R., and part-time with his father, E.A. His mother resided outside the District. He transitioned between his mother's and father's homes multiple times each week.

Dr. Kristina Ferro is a Doctor of Psychology, has been certified as a school psychologist since approximately 2015 and has been employed by the District for approximately nine years. She became E.M.'s case manager in March 2024, replacing former case manager Dr. Laura Morana, and participated in the preparation of his June 19, 2024, IEP. She frequently observed E.M. in his classroom, conducted weekly team meetings and was a member of the school's Crisis Response Team ("CRT"). As a member of the CRT, she responded to almost every crisis that involved E.M.

At the District, during the 2023−2024 school year, E.M. was in kindergarten and was eligible for special education under the category of autism. He was in teacher Katie Navarro's autism program classroom with five other children who were in kindergarten

[4] This is not a recitation of the entirety of the testimonial and documentary evidence. It is a summary of the evidence that is relevant to the issue presented. Tr.1 and Tr.2 refer to the transcripts of the February 27, 2025, and May 30, 2025, hearings, respectively. They are followed by the referenced page and line numbers.

[5] Prior to enrolling in the District, a speech language evaluation was conducted on March 31, 2023, an occupational therapy evaluation was conducted on March 28, 2023, an educational evaluation was conducted on March 15, 2023, a neurological evaluation was conducted on January 11, 2023, and a psychological evaluation was conducted on June 8, 2022. R-1 at 6–8.

and first grade. He had a personal aide and received speech therapy, occupational therapy, physical therapy and consultation with the behavior specialist. Dr. Ferro explained that most of the other students needed some degree of assistance to communicate using language. Although they had a range of abilities, they were E.M.'s peers, as they were learning similar academic skills.

Staffing was at a one-to-one ratio, as there were five teaching assistants and one classroom teacher, all of whom were full-time employees and in the classroom at the same time. All of the staff members in the classroom worked with E.M. The teachers were certified to teach E.M.'s class, and the teaching assistants had several years of experience in either the autism program or the behavior disabilities program. The teachers were certified to train the teaching assistants. The training included applied behavior analysis and the "Handle With Care Crisis De-Escalation and Physical Restraint Program." Tr.1 26:19−20. Training was also provided by the District's behavior analyst, BCBA David Eynisfeld, who was at the school two or three times per week, and speech and occupational therapy staff.

Dr. Ferro explained that although E.M. was diagnosed with high-functioning autism, "the combination of his autism and psychiatric conditions significantly impacted his functioning at school and in the community." Tr.1 68:4−69:6. He had difficulty with language and communicating his needs, which "often resulted in pretty severe behavioral outbursts." Tr.1 21:24−25. His behavior was "aggressive" and included kicking, biting, scratching, running towards people and striking them. Tr.1 67:18−20. While he did not always require special instruction to help him understand verbal instructions, he required an "applied behavior analysis approach and very strong behavioral support within his day to engage appropriately." Tr.1 21:25−22:5. This involved "very structured behavior support and frequent review of his behavioral data to function appropriately at school." Tr.1 23:3−5.

Staff members collected partial interval data that showed how often E.M. engaged in problematic behaviors each day and prepared incident reports when he injured a staff member. Incident reports were not prepared when his behavior did not cause injuries, which was the majority of the time. An example of a "more severe behavioral incident"

was when he ran around the classroom "destroying items" by trying to dismantle classroom dividers and eat them, disrobing and urinating in the classroom. He urinated several times, and he sometimes rolled on the wet areas. Tr.1 36:2−24; R-15 at 1.

A "de-escalation approach" was utilized during these incidents. This required the other students to be removed from the classroom. The BCBA or principal was called in to help calm him, and efforts were made to not physically restrain E.M. and to "give him space[.]" Tr.1 36:14. However, when he was given space "he would do something so unsafe that someone would have to go towards him." Tr.1 36:14−16. For example, he has eaten non-food items that caused him to vomit, he spit at staff, and he had a bowel movement and tried to touch or eat it. He "typically" laughed "hysterically . . . during these episodes." Tr.1 36:24. District staff stopped using this de-escalation method, except in extreme circumstances, because it appeared that E.M. had more frequent aggressive and destructive tantrums in order to have the BCBA or principal called in to respond.

A behavior intervention plan ("BIP") was developed and added to his IEP, as one was not included in his Bound Brook IEP. Eynisfeld completed a functional analysis screening tool and "hypothesized" that E.M. engaged in "problem behaviors[6] to acquire adult attention or to escape/avoid non-preferred tasks and to obtain items or activities which he prefers." R-3 at 8. The BIP listed supports and interventions that were to be used to address the behaviors, including a token system to reinforce appropriate behavior, differential reinforcement of alternative behavior, in which "varied and behavior-specific praise" is given when behavior is appropriate, allowing E.M. to choose between activities and demands and to change the orders of activities and demands if he

[6] Aggression means "any instance of contact or attempt towards someone else with any part of the body." R-3 at 11.
Non-compliance means "any response that does not match the delivered instruction after three prompts of the instruction are delivered." This includes verbal and nonverbal refusals. Ibid.
Elopement means "being more than five feet away from a designated area (seat or rug) without adult permission for any duration of time and does not return when prompted to do so." Ibid.
Property destruction means "any response that could cause damage to materials or any other objects or surfaces" such as "throwing objects, kicking/hitting objects, over-turning furniture, and swiping objects from a table or other surface." Id. at 11−12.
Dropping means "any instance of the student forcefully falling to the floor with no visible cause to fall (i.e. tripping)." Id. at 12.
Biting means "any occurrence (completed, attempted or blocked) of opening and closing of the jaw with upper and/or lower teeth making contact with any part of another person's body." Ibid.

asks without problem behavior, provision of clear and concise expectations, use of a timer to alert him to when a transition is about to occur, with an explanation of what is expected when time is up, use of "if/then" statements, functional communication instruction, prompts to use words to express what is bothering him when he engages in problem behavior, planned ignoring, use of a neutral tone, "least to most prompting to gain compliance," maintenance of demands, blocking and physical redirection in response to elopement, blocking behavior and moving objects out of reach, instruction to clean after he "dumps or destroys materials," and return of materials when he is calm and safe. Id. at 13−14.

E.M.'s problem behaviors were discussed during a thirty-day review meeting that petitioners attended. It was agreed that the results of a functional behavioral assessment and a neurological assessment would be used to guide his school programming for the remainder of the school year. Id. at 9.

Navarro went on maternity leave in January 2024. A substitute teacher was assigned for approximately two weeks, and then Katie Gray was E.M.'s teacher for the remainder of the year. E.M. had a "noticeable increase in all behaviors after [Navarro] left for maternity leave[.]" R-9 at 2.

A neurology evaluation was conducted on January 24, 2024. During the evaluation, E.M. "exhibited some hyperactive behaviors. He put inappropriate items in mouth, requiring constant redirection for safety. He showed a lack of boundaries, impulse control and explosive outbursts when redirected or faced with transitions." R-8 at 3. "Although his interpersonal relationships, play and coping skills and receptive and expressive language are below average, [he] could be considered in the 'high functioning' end of the spectrum." Ibid. The neurologist recommended occupational and speech therapy, behavioral therapy "instead of ABA to treat behavioral dysregulation," one-to-one support in the classroom, "possibly" placement with typical peers, and a psychiatric evaluation. Id. at 4.

Case Manager Morana reported to the supervisor of special services and assistant supervisor for special services that E.M.'s behaviors were unpredictable and disrupted

the rest of the class when they needed to be removed from the classroom. She and Eynisfeld wrote in a February 1, 2024, "Informational Brief" that Eynisfeld "has been assisting staff as they respond to the disruptive, aggressive, and defiant behavior demonstrated by [E.M.] in the classroom, in the hallways, during specials, and during lunch. Arrival is marked by unpredictable dropping on the hallway floor, and dismissal is challenging because [E. M.] expresses, verbally and physically, that he does not want to go [sic] either his father's or mother's home." R-14 at 1. They continued, "[E.M.'s] aggressive behaviors as outlined below have continued to escalate in frequency and intensity. Furthermore, 'wetting his pants' has surfaced as another behavior that commands immediate attention, particularly because this behavior is accompanied by crying, laughing, rolling on the wet floor, chair, and carpeted area." Ibid. The other behaviors included dropping, aggression, noncompliance, elopement, property destruction, biting, urination, and "putting anything he comes across into his mouth, including a plastic bag, Styrofoam particles, markers, uninflated balloons, and paper clips [.]" Id. at 2.

Eynisfeld was assigned to support the class four days during the week of January 22, 2024. He helped with responses to "the emerging aggressive behaviors, modeling de-escalation for the substitute teacher, the school principal and the teacher assistants in the classroom." Ibid. However, "While [E.M.'s] behavior is addressed through a de-escalation approach, the remaining students' learning is interrupted as they need to be removed from the classroom and/or are subjected to his continuous loud screaming and laughing, and throwing of objects across the classroom. Furthermore, custodial staff must intervene to disinfect the affected areas in a timely manner." Ibid.

Noting that the neurologist recommended reassessment of E.M.'s classroom placement as he "may not be a candidate for instruction that is based on ABA principles," Dr. Morana and Eynisfeld recommended assignment of a dedicated teaching assistant to E.M. to "promote consistency with the support services [E.M.'s] behaviors warrant[;]" implementation of a regular bathroom break schedule; and assignment of a registered behavior technician to support E.M. and the autism program. Id. at 2.

In February 2024, Eynisfeld conducted a functional behavior assessment ("FBA") to learn what motivated or "triggered" E.M.'s behavior and to create a behavioral plan to be implemented in school. Tr.1 28:15, R-9. He interviewed staff and petitioners and observed E.M. in February 2024. It was reported to Eynisfeld that E.M.'s behaviors started occurring at home and school in April 2022. This was after E.A. and A.R. separated. A.R. noticed a personality change, "particularly that he became defiant and aggressive towards peers and adults." R-9 at 3. A.R. reported that E.M. "does not know how to calm down and he frequently gets agitated when he does not get his way[.]" Ibid. This involves throwing items, kicking, trying to bite, dropping to the floor, and hitting his head on the floor or with his hands. A.R. reported that the latter occurred when he was angry and happy. To get attention, he most often hit his head on the floor. He also urinated at home or in the car to get attention or when he wanted an activity to continue. At the time of the interview, a BCBA was working with E.M. to address management of problem behaviors with effective communication strategies.

E.A. reported that, at home, E.M. listens to directions, and his problem behaviors are "limited to crying and dropping when he is told no or when he is transitioning off of preferred activities." Id. at 2. He did not intentionally urinate in his clothes at home. He started having tantrums and behaved aggressively starting on October 2023, when he returned to school after having been away for approximately one month. E.A. was awarded partial custody of E.M. on December 15, 2023. E.M.'s problem behaviors increased in the middle of December 2023. At that time, behaviors involving urination, aggression and biting started.

Eynisfeld observed E.M. and reviewed Antecedent, Behavior, Consequence ("ABC") data concerning "all problem behaviors" and events that immediately preceded and followed each event. R-9 at 6. During a two-and one-half hour observation, E.M. dropped to the ground five times, was noncompliant four times, screamed four times and eloped twice. He did not engage in aggressive behavior, bite or urinate. Id. at 3. Forty-four percent of the non-compliance incidents were preceded by a "diverted attention antecedent, when adults were not interacting directly with him[.]" Id. at 7. Thirty-three percent of the non-compliance incidents occurred after demands were "presented to him," and twenty-two percent occurred during transitions. Ibid. All of the incidents that involved

elopement and property destruction followed "diverted attention," as did forty-five percent of the dropping incidents. Thirty-three percent of the dropping incidents followed demands, and twenty-two percent occurred during transitions. Ibid. Fifty percent of the incidents involving screaming followed diverted attention; thirty-three percent occurred during transitions; and seventeen percent occurred when demands were presented to him. There were insufficient incidents involving aggression, biting and urination such that the antecedents to these behaviors could not be "effectively analyzed." Ibid.

An analysis of variables that may have reinforced or maintained E.M.'s problem behaviors showed that attention was the "most frequent consequence" of noncompliance, elopement, property destruction, dropping and screaming. Id. at 8 This included physical guidance and intervention like blocking as well as reprimands. Noncompliance, dropping and screaming were "partially reinforced by escape from demands." Ibid.

Between November 2023 and February 2024, E.M. dropped to the ground eighty-one times; engaged in forty-six "instances of aggression;" screamed forty-one times; was non-compliant thirty-nine times; destroyed property thirty-five times; urinated eight times; bit someone three times; and eloped forty-six times. Ibid. Data collected by classroom staff since December 8, 2023, showed that his "behavior increased over time, with more noticeable increases occurring after long breaks and changes in the classroom dynamic." Ibid. The FBA report recommended that the District train staff who worked outside E.M.'s classroom, including lunch and recess staff, on autism and ABA.

On March 5, 2024, a staff member reported that, while E.M. "was having behaviors," she tried to calm him so he would not get hurt and he could change his clothes. R-12 at 1. He pinched her "in between trying to bite" her. Ibid. On March 6, 2025, he kicked a staff member "hard in the right side of the head" while she attempted to assist him while he "was having a behavior." Id. at 2. The staff member went to the emergency room for a concussion evaluation. Also on March 6, 2024, he threw an item and "attack[ed] teachers" after he was told to clean up lunch. He bit the teacher, leaving a mark. Id. at 3.

On March 5, 2024, and March 6, 2024, District staff spoke with petitioners and advised them about the above incidents. Dr. Morana advised them that the District implemented a policy requiring staff to wear an "arm guard/protector" when they work with E.M. R-13 at 1. Petitioners and staff discussed the neurological evaluation and its recommendation for a pediatric psychiatric evaluation "to better understand the cause of [E.M.'s] ongoing attention-getting, impulsive, and unprovoked behavior." Ibid. Dr. Morana advised that, due to a cancellation, the psychiatrist had an available appointment on March 6, 2024, at 6:30 p.m. and confirmed that A.R. was available then.

They also discussed that, "[b]ased on [E.M.'s] behavior, the current autism class is not equipped to address [his] behavior that interferes with his own learning and that of his classmates." Ibid. Dr. Morana discussed the need to "explore public schools and private schools for students with disabilities" and that the IEP would research this and provide information to petitioners as soon as it is available. Id. at 2. E.A. stated that he believed the pediatric psychiatric evaluation should guide the manner in which they proceed, and thus, they should discuss private schools after that report is received.

The psychiatric assessment was conducted on March 7, 2025, by Rajeswari Muthuswamy, M.D., who met with and observed E.M., spoke with his parents, and reviewed information provided by the District. Reviewing his history, the doctor noted that Perform Care[7] and mobile response services assisted E.M. R-7 at 2. While attending school in Bound Brook, E.M. had "behavioral challenges" and was referred to an out-of-district placement. Ibid. However, E.A. reported that he did not consent to an out-of-district placement, and he obtained custody so he could enroll E.M. in the Bridgewater School District.

Dr. Muthuswamy interviewed E.M. in the presence of his parents and grandmother. E.M. had "[s]ignificant challenges with anger, aggression, poor frustration, and oppositional behaviors" and "was unable to follow" the doctor's directions or those of his family. Id. at 1−2. He had "significant meltdown behaviors in the office and was unable to answer questions about his wishes." Id. at 2. He was "extremely oppositional,

[7] A behavioral health care service provider. https://www.performcare.org/

aggressive during the session . . . and refused to follow any directions. He presented with good eye contact and no stimming behaviors were noticeable, however, he answered some of the questions with no and refused to follow directions presented by [Dr. Muthuswamy,] his mother, as well as his grandmother. He was alert and awake. His insight regarding his difficulties and his judgment appeared to be limited. His impulse control during the session was variable." Id. at 3.

E.A. reported the E.M. has "challenges with meltdown behaviors and behavioral issues and regarding the recent episode, reported that the teacher was probably close to him and tried to lift him up, which has resulted in [E.M.] kicking the teacher." Id. at 2. E.M. suggested to Dr. Muthuswamy that the teacher would not have been hurt had E.M. had "been allowed to calm down by himself[.]" Ibid. A.R. "described his challenges as 'when he does not want to do something, then he gets into temper tantrums. When someone gets close to him, then he tends to grab and kick.'" Ibid. She did not understand why the school could not manage his behavior, noting that the day before the evaluation, she was asked to take E.M. home from school because he had a "bad day[.]" Tr.2 33:17. While she was told that he bit and kicked staff members, she did not confirm this.

Dr. Muthuswamy observed that it "appears [E.M.'s] current challenges are stemming from his disruptive behaviors, and they negatively impact his learning." Id. at 3. She diagnosed oppositional defiant disorder, impulse control disorder and autism spectrum disorder. She recommended that E.M.'s parents continue therapeutic services and school- and home-based behavioral modification therapy with rewards for positive behaviors and consistent consequences for negative behaviors. She endorsed the child study team's recommended accommodations.

A.R. did not understand why the evaluation was necessary. Although she believed the evaluation was intended to determine whether he could return to school, it was clarified that Dr. Muthuswamy was asked to determine whether E.M. required additional services. P-7 at 9−10. Dr. Ferro noted that there may have been confusion because Dr. Muthuswamy was "concerned about E.M. returning to school because of how unstable he appeared during the visit[.]" Tr.1 66:18−21.

A.R. noted that the appointment was short in duration, approximately twenty minutes, and the doctor focused on asking petitioners how E.M. manages different situations or his emotions. Petitioners highlighted that there were changes in E.M.'s teachers and case management staff and that E.M. did not always have an aide.

On March 8, 2024, E.A. wrote to Dr. Morana, "[W]e have some reservations based on our perception of the quality of attention received from Dr. Muthuswamy yesterday, particularly regarding the promptness and shortness of the appointment, which commenced half an hour after the scheduled time." Id. at 5. Dr. Muthuswamy had not yet issued her report.[8] Id. at 6.

Dr. Ferro explained that a psychiatric evaluation is typically performed to identify diagnoses, not to develop treatment plans or perform other post-evaluation roles. The District requested the psychiatric evaluation to ensure that it was informed of all of E.M.'s diagnoses. Dr. Ferro explained further that the psychiatrist's evaluation involved a direct assessment of E.M., a review of his records, and a discussion with his case manager, which is the typical process. The time, place and length of the evaluation were appropriate, notwithstanding E.A.'s assertion that it was in the evening and E.M. tends to have outbursts when he is anxious. Dr. Ferro added that E.M. engaged in "quite significant disruptive behaviors during the evaluation," but she did not know if Dr. Muthuswamy needed to shorten her meeting with E.M. and his parents as a result of the behaviors. Tr.1 59:17−20.

On March 12, 2024, after E.M. eloped from his classroom and "dropp[ed] in the hall," he kicked a staff member several times, causing two "large black and red bruises on [her] upper thigh." R-12 at 4. The same day, he scratched a teacher on her hands, chest and neck. Id. at 5. "Throughout the day [he] continued to attack[,] scratching, neck and face and pulling hair." Id. at 6.

[8] On March 25, 2024, Dr. Ferro advised petitioners that the District received the psychiatric evaluation report and forwarded it to them. R-6 at 12.

Dr. Morano, a supervisor and Principal Matt Lembo met with petitioners that day and advised that the District did not have a class that could address E.M.'s behaviors. They recommended evaluating public and private schools that could meet his needs. During the meeting, E.A. recommended to Principal Lembo that E.M.'s school schedule should be changed based upon data that Eynisfeld shared with petitioners. E.A. noted that "partial interval data from February and March show a strong occurrence pattern of emotional meltdown and behaviors at the beginning and middle of the week, with minimal to no occurrence on Fridays." P-11 at 1. Given this, he proposed that E.M.'s shortened school days should be Tuesdays, Wednesdays and Thursdays. The schedule was revised accordingly. Principal Lembo also stated that he wanted to discuss out-of-district placements and sharing E.M.'s records with prospective schools. Id. at 2.

Dr. Ferro acknowledged that consistency is important for E.M., and the District seeks this in his school program. To minimize any disruption in January and February, when his teachers changed, a consistent schedule was maintained; staff were to "implement the plans with fidelity[;]" and the assistants, related service providers and behaviorist remained the same. Tr.1 74:8−11. There were "some short term spikes" in E.M.'s behavior "around transition times," including routine holiday breaks. Tr.1 75:1−3. However, data showed "that after the transition to the last teacher" there was "a nice behavior reduction" until April, but it did not continue. Tr.1 75:4−7. Other than spring break, there were no changes to his "class dynamics" in March and April. Tr.1 75:21. Thus, the "transitions had some short term impact but that was not . . . the primary factor in his disruptive behaviors." Tr.1 75:8−10.

Dr. Ferro noted that due to E.M.'s dual households, there were "several transitions within a week so it was hard to pinpoint" the impact of each transition. However, she observed that he was often adversely impacted by his transportation. When transported to school from his mother's home, which was outside the District, there was an intermediate stop at a police station due to prior discord between his parents. This resulted in a longer trip than when he was transported by the District from his father's house. The transportation schedule alternated on Fridays, and there was at least one additional transition during the week. School personnel would "have to regulate [him] again after he got off the van." Tr.1 101: 24−25.

Dr. Ferro met petitioners on March 14, 2024. Having reviewed the evaluations that were conducted during the 2023−2024 school year, she found that they were sufficient to assess the scope of E.M.'s disability, identify any other diagnoses and confirm the optimal method to address his behavior. Petitioners did not request additional evaluations.

Based upon Dr. Morana's notes, Dr. Ferro noted that petitioners and Dr. Morana previously agreed to explore other schools for E.M. As Dr. Morana thought the Developmental Learning Center ("DLC") might be appropriate for him, Dr. Ferro asked if petitioners would consent to sending his records there. She noted that consent to send his records did not constitute consent to a change in his school placement. P-9. Petitioners authorized the District to send E.M.'s school records to out-of-district schools. The records were sent to eight or nine other schools that had autism, therapeutic or multiply disabled programs, which included two public school districts that his parents requested. A.R. agreed to send records to DLC because Farro told her that the District was unable to manage his behavior and that, if he were not placed at an out-of-district school, he would receive home instruction, which would have prevented her from working.

E.M., his parents and Dr. Ferro visited DLC for over two hours. They met the director and toured the building and classrooms. A.R. believed the school was inappropriate because E.M. would have been the youngest in his class, which had approximately ten students between eight and ten years old. Further, the director told them that DLC focused on behavior more than on learning materials. While the students had multiple disabilities and there was very little interaction between them, E.M. was very active and cooperative. A.R. advised Dr. Ferro that she and E.A. did not want all of his classmates to have special needs.

On April 8, 2024, petitioners were given Eynisfeld's FBA report. On April 16, 2024, E.M. scratched a staff member and broke the skin on her arm. Id. at 7.

Dr. Ferro explained that behavior data showed staff "were implementing a substantial amount of interventions well," and E.M. had a good connection with his classroom teacher. Tr.1 34:13−14. Although his behaviors peaked when his first teacher

left, they "returned to a really good baseline" in April. Tr.1 34:21. However, they increased in frequency during the remaining months of the school year. The increased rate developed notwithstanding the one-on-one staff-to-student ratio in his class, the Crisis Response Team and other measures used to address the behaviors. All of the services and resources that were available in the District were utilized for E.M. Despite this, staff were "not seeing a response to [their] intervention," and they thus concluded that they "needed to have a more specialized program for him." Tr.1 35:4−6. Also, Dr. Ferro explained that while autism and ABA training for classroom staff was feasible, it was not feasible for non-classroom staff, including lunch and recess staff throughout the school. This militated in favor of a private school.

On May 9, 2024, E.M. had a "longer behavior incident" that lasted approximately one hour during his speech session. R-6 at 15. Although E.M. knew the answer to a question, "he began shouting 'no'" and engaged in "more significant behaviors like rolling on the floor, throwing items, climbing furniture, ripping up or chewing class materials and trying to undress himself. He was mostly laughing and smiling during this time, especially if [staff] went closer to him or tried to clean something up." Ibid. The class left the room for approximately forty-five minutes, during which Dr. Ferro observed his behavior. The staff endeavored to keep him safe "while also maintaining enough distance to avoid being kicked." Ibid. Dr. Ferro believed he would have continued to behave in this manner but for the bell that rang at the end of the day. Two staff members were needed to support him as he walked to the bus. He was calmer when he got to the bus.

On May 13, 2024, petitioners explained that E.M.'s behavior can be improved when he is told what will happen next, by offering rewards and reminding him that he will not be able to engage in favored activities if he engages in inappropriate behaviors. They asked the IEP team to consider several out-of-district school options; highlighted that E.M. should be in class with peers who have sufficient verbal skills and can "engage" with him; and noted that he should continue to be challenged academically. R-1 at 10.

On May 16, 2024, A.R. told Dr. Ferro that she and E.A. believed DLC was inappropriate for E.M. because they did not want him in a class with only children who had special needs, and they understood that DLC focused on behavioral management.

Petitioners asked the District to locate a "public or private school with general education that can provide . . . the [ ]special program" and suggested the Somerville and Manville public school districts. R-6 at 28. Dr. Ferro replied that the District was unable to provide the "level of support" that was required to "reduce[ ] E.M.'s problem behaviors" and later advised that it would consider other public schools if they could implement E.M.'s IEP. Id. at 27. She said she would send his records to Somerville and Manville and proposed four private schools in addition to DLC. Id. at 26.

Dr. Ferro reported to petitioners that, on May 21, 2024, E.M. engaged in "significant behaviors" such as dropping, running into another classroom and urinating in his clothes several times. He laughed "throughout these behaviors." R-6 at 29. This lasted almost an hour and began when he was told to do something that previously did not upset him. Before then, he "had a great day." Ibid. Ms. Gray was absent, but there were no other schedule changes.

On May 22, 2024, Principal Lembo wrote that staff continued to gather data about E.M.'s "needs/crises" and added that when E.M. had a crisis and "David [Eynisfeld] is present, we all work together and have learned to manage the crisis, keep him/everyone safe, and get him back on Track." R-18 at 1. However, on May 21, 2024, Eynisfeld was not present, and the "crisis lasted up to an hour with the child and faculty at risk" even though Lembo and Dr. Ferro attempted to "help manage the crisis." Ibid. He added that they would "develop a threshold for what we can safely manage" and that E.M.'s parents would be notified if the threshold is crossed and they need to pick him up from school "for his safety and the safety of others." Ibid. Lembo reiterated that "on 'extreme crisis days' we cannot sustain him here while keeping everyone safe." Ibid.

On May 22, 2024, Dr. Ferro sent a draft IEP to petitioners that reported that the District was pursuing public and private out of district schools in addition to DLC. The IEP, which would go into effect on June 6, 2024, would be revised after a school was selected.

On May 29, 2024, Dr. Ferro wrote to Principal Lembo and others that there was another "crisis" and staff "needed support from the behaviorist" when she, the teacher

and Lembo were unavailable. Ibid. She added, "We're noticing an increase in behaviors now and they begin almost daily at 12:20 (coming back inside from lunch)." Ibid. She noted that not all of the incidents turn into crises, "but the data is trending upwards again." Ibid. She expressed concern about the pattern and questioned what the "threshold" would be "in terms of what behaviors we can safely maintain here." Ibid.

On May 31, 2024, Dr. Ferro advised petitioners that The Center School reported that it did not have the behavioral supports "necessary to support [E.M.'s] behavioral program" or an opening for a child his age. R-6 at 33. DLC had an opening for E.M. in its "more academically oriented classroom, starting Extended School Year (June 26th)." Ibid. She also advised that the Rock Brook School reviewed E.M.'s records and invited petitioners and Dr. Ferro to an intake appointment. Ibid. A.R. replied that she was willing to visit the school.

On June 6, 2024, E.M. had "a more significant behavior episode" that lasted approximately forty-five minutes. R-6 at 36. After transitioning from recess, his behaviors "escalated to him dropping and urinating. He hit and kicked teachers if they went near him or attempted to block him from doing something, like using the phone." Ibid. Dr. Ferro and Gray changed him, and Gray "was able to appropriately engage him in activities at his desk." Ibid.

On June 17, 2024, E.M. peeled paint off the wall and put a paint chip in his mouth. The school nurse was unable to assess him because he was "having a behavior in the classroom" and was not cooperative. R-6 at 37.

Of the private and public schools that were considered, only DLC, Rock Brook and Montgomery Academy had programs that were appropriate for E.M. After touring DLC and an intake meeting with E.A. and the vice principal, District staff believed DLC offered nearly everything E.M. required, including a specialized disruptive behavior disorders program and staff who were experienced with autism and "disruptive behavior disabilities." Tr.1 38:9. Also, behaviorists were present at DLC every day as opposed to only a few times a week at the District. It also offered regular community-based instruction, which District staff thought would enable E.M. to "practice skills." Tr.1

38:15−16. Importantly, there were other students who communicated verbally, which meant E.M. would have "more appropriate peers[,]" which was important for his academic classes. Tr.1 38:20–21. Furthermore, DLC was the only school that had the express goal of returning its students to their public schools. When the students developed the necessary skills, DLC would facilitate their participation in lunch and recess at their public schools on a monthly basis, including transportation to and from the public school. Unlike at the District, E.M. would not need to transition to special classes such as music and art, as those subjects were "more integrated and therapeutic." Tr.1 38:13. DLC is twenty-five to thirty minutes from E.M.'s school. This was a "reasonable" distance to travel to an out of district school. Tr.1 39:17.

Rock Brook remained a viable option; however, its intake process lasted through the summer. The District was amenable to proceeding with Rock Brook if the parties wished to pursue it when intake was complete. R-1 at 1. Montgomery Academy was ruled out because E.A. did not like the classroom arrangement and "the response to the behaviors[.]" Tr.1 41:5. Also, its students were not an appropriate match for E.M.

An IEP meeting was held on June 19, 2024. Under the IEP, E.M. would attend the Developmental Learning Center ("DLC"), and his program would include a special autism class, individual speech-language therapy and integrated speech-language therapy, individual occupational therapy and integrated occupational therapy, a personal aide, adaptive physical education, and door-to-door transpiration. R-1 at 1. The IEP also provided that E.M. would attend the District's extended school year ("ESY") program over the summer. R-1 at 26.

On July 2, 2024, E.M.'s father advised that he disagreed with the program proposed by the IEP. He wrote that, because E.M. was high functioning, he did not belong at a school for multiply disabled children such as DLC or Rock Brook. P-19 at 3. He wrote that while E.M. "has some behavioral challenges not related to his autism condition," they are "more related to conduct at school" that could be better managed with a personal aide. This would permit him to interact with "peers who have typical social skills[.]" Ibid.

At that time, E.M. was enrolled in the District's ESY program. The District employed the same BIP that it used during the school year. Records documented that he engaged in the same behaviors as before, even though the school day was shorter, there were fewer transitions between activities, and he had a personal aide. R-20; R-1 at 26. A chart of his daily behaviors between July 7, 2024, and July 28, 2024, showed that he continued to have episodes of elopement, tantrums, biting and urination. While the frequency of each type of behavior varied over time, each increased significantly at various times, and all increased dramatically at the end of the reporting period. R-20. Daily logs recorded each incident.[9] On the days listed below, E.M. engaged in the following behaviors[10] during the four-hour school day:[11]

Date	Elopement	Tantrum Episode	Biting	Urination
July 3, 2024	4	5	4	0
July 8, 2024	4	4	3	2
July 9, 2024	1	3	0	0
July 10, 2025	3	3	2	1
July 12, 2024	4	5	0	0
July 17, 2024	3	4	2	0
July 18, 2024	0	2	0	0
July 24, 2024	6	5	1	0
July 25, 2024	7	7	7	0

[9] Staff maintained data of E.M.'s behavior by circling "yes" on a prepared sheet that listed each category of behavior during fifteen minute intervals. "Yes" indicated that the behavior occurred at least once during an interval. The numbers in the above chart correspond to the number of times "yes" was circled for each type of behavior.

[10] Elopement occurred when E.M. was "more than five feet away from a designated area (seat or rug) without adult permission for any duration of time and does not return when prompted to do so."
A tantrum episode included aggression ("any instance of contact or attempt towards someone else with any part of the body. Includes: using the hands, either open or closed fist, to strike, pinch, choke or scratch someone else, or kicking with legs or feet"); property destruction ("any response that could cause damage to materials or any other objects or surfaces" such as "throwing objects, kicking/hitting objects, over-turning furniture, and swiping objects from a table or other surface"); dropping ("forcefully falling to the floor with no visible cause"); and screaming.
Biting included attempting to bite someone.

[11] The June 19, 2024, IEP recorded that the ESY program was four days per week, 240 minutes per day. R-1 at 26.

July 29, 2024	5	6	2	0
July 30, 2024	8	10	3	1

[R-22.]

Dr. Ferro concluded that, even without the evaluations, the "overwhelming" data showed "significant safety concerns" that compelled an out of district placement. Tr.1 85:19–22. However, the evaluations identified strategies and needs that informed the selection of other schools.

Because petitioners did not file a due process petition until July 10, 2024, DLC became E.M.'s "stay put" placement.

On July 30, 2024, petitioners were advised that Rock Brook accepted E.M. The District would amend the IEP's placement to Rock Brook if petitioners agreed. R-6 at 48. Petitioners opposed an out of district placement, and on August 16, 2024, E.A. wrote that E.M. "successfully attended summer school . . . without any issues." R-6 at 47.

A.R., noting that she is a doctor, queried how a five-year-old child could kick an adult in the head. It appeared to her that the staff was unable to address E.M.'s needs. Rather than try to grab him, they should have "offer[ed] him things or chang[ed] the environment[.]" Tr.2 43:9. They should not position themselves in a manner that would enable the child to kick them. She surmised that staff exaggerated facts to justify moving him out of the school.

E.A. noted that when E.M. was first enrolled in the District, staff reported that he was doing well, although "[s]ome days, he has some difficulties." Tr.2 49:19−20. He largely had "small tantrums" that were related to autism but did not involve aggressive behavior. Tr.2 50:4−7. After Katie Navarro left, E.A. started to receive reports that E.M. engaged in inappropriate behaviors such as hitting another child in gym class. E.A. did not see this type of behavior at home. It was clear to E.A. that something changed at school after Navarro left, although he was "not sure what happened." Tr.2 52:11. He

surmised that E.M. and the other students were not properly managed. And because there was a substitute teacher before Ms. Gray became the teacher, he "made assumptions that . . . when the person in charge is changed . . . this affects the behavior" of all of the children in the class. Tr.2 53:19−54:2. He did not know how long the substitute was assigned to the class, but Ms. Gray was introduced to petitioners in the middle or end of February 2024. E.A. also observed that this was the first year that E.M. did not have a midday break and opined that "there was a lot of improvisation going on regarding how to manage" E.M. Tr.2 59:20−21.

E.A. believed that the District sought to remove E.M. from the District, regardless of the rationale. He cited a question about his residency within the District as evidence of this, even though the residency issue was resolved in his favor.[12] He noted that this occurred at the same time that he and A.R. were asked to consent to sharing E.M.'s records with other schools. P-12. There was a "lot of friction" at that time between the principal and petitioners. Tr.2 64:24.

With respect to the proposed out of district schools, E.A. explained that E.M. was high functioning because he is able to talk, engage in social interactions and ask for what he wants and needs. After observing a class, E.A. noted that E.M. functioned at a higher level than all of the other students. E.M. would be limited if he were in the same class all day with lower-functioning students. It would be as if he were "in a wheelchair for a whole day" when he did not require the assistance, which would make him "anxious." Tr.2 73:6−8.

LEGAL ANALYSIS AND CONCLUSIONS

Does the District's Proposed Placement Provide a FAPE?

The IDEA requires that a state receiving federal education funding provide a FAPE to disabled children. 20 U.S.C. § 1412(a)(1). School districts provide a FAPE by designing and administering a program of individualized instruction that is set forth in an

[12] The District's Special Education Department was not involved with this matter.

IEP. 20 U.S.C. § 1414(d). In order 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 consisting of special education and related services provided in conformity with an IEP. 20 U.S.C. §§ 1401(9), 1412(a)(1). The responsibility to provide a FAPE rests with the local public school district. 20 U.S.C. § 1401(9); N.J.A.C. 6A:14-1.1(d). The district bears the burden of proving that a FAPE has been offered. N.J.S.A. 18A:46-1.1.

The United States Supreme Court held that the IDEA "requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." Endrew F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 1001 (2017). The Third Circuit determined that Endrew F.'s language "mirrors [its] longstanding formulation [that] the educational program 'must be 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., 904 F.3d 248, 254 (3d Cir. 2018) (quoting Ridley Sch. Dist. v. M.R., 680 F.3d 260, 269 (3d Cir. 2012))(emphasis added). In addressing the quantum of educational benefit required, 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. T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000); Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999); Oberti v. Bd. of Educ. of Boro. of Clementon Sch. Dist., 995 F.2d 1204**,** 1213 (3d Cir. 1993); Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180, 182–84 (3d Cir. 1988), cert. den. sub. nom., Cent. Columbia Sch. Dist. v. Polk, 488 U.S. 1030 (1989).

Case law recognizes that "[w]hat the [IDEA] guarantees is an 'appropriate' education, 'not one that provides everything that might be thought desirable by loving parents.'" Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119, 132 (2d Cir. 1998) (citation omitted). Indeed, "meaningful participation does not require deferral to parent choice." S.K. ex rel. N.K. v. Parsippany-Troy Hills Bd. of Educ., 2008 U.S. Dist. LEXIS

80616, at *34–35 (D.N.J. October 9, 2008) (citation omitted).[13] Nor does the IDEA require that the Board maximize E.M.'s potential or provide him the best education possible. Instead, the law requires a school district to provide a basic floor of opportunity. Carlisle Area Sch. v. Scott P., 62 F.3d 520, 533–34 (3d Cir. 1995). The District will have satisfied the requirements of law by providing E.M. with "personalized instruction and sufficient support services" as are necessary "to permit [him] 'to benefit' from the instruction." G.B. v. Bridgewater-Raritan Reg'l Bd. of Educ., 2009 U.S. Dist. LEXIS 15671, *5 (D.N.J. Feb. 27, 2009) (citing Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 189 (1982)).

An IEP "turns on the unique circumstances of the child for whom it is created." Endrew F. at 1001. It is usually "reasonably calculated to enable the child to achieve passing marks and advance from grade to grade." Id. at 999 (quoting Bd. of Ed. of Hendrick Hudson Ctr. Sch. Dist., Westchester Cty. v. Rowley, 458 U.S. 176, 203−4 (1982)). "And while parents often play a role in the development of an IEP, they do not have a right to compel a school district to provide a specific program or employ specific methodology in educating a student." E.E. v. Ridgefield Park Bd. of Educ., 2020 U.S. Dist. LEXIS 102249, *8 (June 11, 2020) (quoting Ridley Sch. Dist., 680 F.3d at 269, 278).

The appropriateness of an IEP must be determined as of the time it is made, and the reasonableness of the school district's proposed program should be judged only on the basis of the evidence known to the school district at the time at which the offer was made. D.S. v. Bayonne Bd. of Educ., 602 F.3d 553, 564–65 (3d. Cir. 2010). When determining the appropriateness of any given IEP, a court's focus should be on the IEP actually offered by the board and not upon an IEP that it could have offered. Lascari v. Bd. of Educ. of Ramapo Indian Hills Reg'l High Sch. Dist., 116 N.J. 30, 47 (1989).

Any plan must involve the least restrictive environment ("LRE"). That is, to the maximum extent appropriate, students are to be educated with children who do not have a disability, in the same school the disabled student would attend if he were not disabled.

[13] Unpublished court decisions and administrative decisions are not binding here. They are referenced here because they provide relevant guidance.

20 U.S.C. § 1412(a)(5)(A); N.J.A.C. 6A:14-4.2(a). N.J.A.C. 6A:14-4.2(a)(2) requires a school district to ensure that "[s]pecial classes, separate schooling or other removal of a student with a disability from the student's general education class occurs only when the nature or severity of the educational disability is such that education in the student's general education class with the use of appropriate supplementary aids and services cannot be achieved satisfactorily."

In addressing the LRE, school districts must ensure that:

- A student with a disability is not removed from the age-appropriate general education classroom solely based on needed modifications to the general education curriculum;
- Placement in a program option is based on the individual needs of the student; and
- Determinations regarding the restrictiveness of a particular program option are based solely on the amount of time a student with disabilities is educated outside the general education setting.

[N.J.A.C. 6A:14-4.2(a)(9)−(11).]

The Third Circuit applies a two-part test to assessing LRE compliance: (i) whether education in the regular classroom, with the use of supplementary aids and services, can be achieved satisfactorily; and (ii) if placement outside of a regular classroom is necessary, whether the school has mainstreamed the child to the maximum extent appropriate, i.e., whether the school has made efforts to include the child in school programs with non-disabled children whenever possible. Oberti v. Bd. of Educ. of Clementon Sch. Dist., 995 F.2d 1204, 1215–17 (3d Cir. 1993) (adopting the test established in Daniel R.R. v. State Bd. of Educ., 874 F.2d 1036 (5th Cir. 1989)). The District's effort in this regard must be significant:

> If the school has given no serious consideration to including the child in a regular class with such supplementary aids and services and to modifying the regular curriculum to

> accommodate the child, then it has most likely violated the Act's mainstreaming directive. The Act does not permit states to make mere token gestures to accommodate handicapped students; its requirement for modifying and supplementing regular education is broad.
>
> [Id. at 1216 (citations omitted)].

When comparing the educational benefits the child will receive in the regular classroom, with supplementary aids and services, with the benefits they will receive in the segregated classroom, "special attention" must be paid "to those unique benefits the child may obtain from integration in a regular classroom which cannot be achieved in a segregated environment, i.e., the development of social and communication skills from interaction with nondisabled peers." Ibid.; See also Daniel R.R., 874 F.2d at 1049 ("a child may be able to absorb only a minimal amount of the regular education program, but may benefit enormously from the language models that his nonhandicapped peers provide" such that mainstreaming is beneficial "even if the child cannot flourish academically").

"The regulations specifically require school districts to provide "a continuum of placements . . . to meet the needs of handicapped children." 34 C.F.R. § 300.551(a). The continuum must "make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement." 34 C.F.R. § 300.551(b); Oberti, 995 F.2d at 1216. Indeed, "children with disabilities who are placed in regular classrooms will most likely receive some special education and related services outside of the regular classroom, such as speech and language therapy or use of a resource room[.]" Id. at 1215, n. 21; See also Daniel R.R., 874 F.2d at 1050 (5th Cir. 1989) ("EHA and its regulations do not contemplate an all-or-nothing educational system in which handicapped children attend either regular or special education.")

However, education in the regular classroom is not suitable for every student. Rowley, 458 U.S. at 181, n. 4 (1982). For example:

> [T]he Act does not require regular education instructors to devote all or most of their time to one handicapped child or to modify the regular education program beyond recognition. If

> a regular education instructor must devote all of her time to one handicapped child, she will be acting as a special education teacher in a regular education classroom. Moreover, she will be focusing her attentions on one child to the detriment of her entire class, including, perhaps, other, equally deserving, handicapped children who also may require extra attention. Likewise, mainstreaming would be pointless if we forced instructors to modify the regular education curriculum to the extent that the handicapped child is not required to learn any of the skills normally taught in regular education. The child would be receiving special education instruction in the regular education classroom; the only advantage to such an arrangement would be that the child is sitting next to a nonhandicapped student.
>
> [Daniel R.R., 874 F.2d at 1048−1049 (5th Cir. 1989).]

In Daniel R.R., the court found that the school district made appropriate efforts to educate the student in the regular classroom but found that these efforts were unsuccessful. The teacher "made genuine and creative efforts to reach Daniel, devoting a substantial − indeed, a disproportionate – amount of her time to him and modifying the class curriculum to meet his abilities." Daniel R.R., 874 F.2d at 1050. However, his needs "commanded most" of the teacher's time; "diverted much of her attention away from the rest of her students[;]" and "produced few benefits to" him. Ibid. The court observed that the teacher needed to alter nearly all of the curriculum to tailor it to his abilities and that this would result in modification of the curriculum "beyond recognition." Ibid. It held that this is "an effort which we will not require in the name of mainstreaming." Ibid. Moreover, Daniel was unable to learn the skills that were taught in his class, did not participate in class activities and was unable to master most or all of the class's lessons. Thus, the class "offer[ed] Daniel nothing but an opportunity to associate with nonhandicapped students." Ibid. There was also evidence that the regular classroom was detrimental to Daniel, as he was exhausted and fell asleep at school, and the stress of the regular education program seemed to cause him to stutter. Conversely, there was evidence that he made progress in the special education class. The court held, "[b]alancing the benefits of a program that is only marginally beneficial and is somewhat detrimental against the benefits of a program that is clearly beneficial, we must agree that the beneficial program provides the more appropriate placement." Id. at 1051. Although the court acknowledged

the potential importance of interaction with typically developing peers, it held in this case that this on its own was insufficient to justify placement in the regular classroom.

In New Jersey, the District bears the burden of proof in a due process hearing to show, by a preponderance of the credible evidence, that it has met its legal obligation to provide a FAPE. Lascari v. Bd. of Educ. of the Ramapo-Indian Hills Reg'l High Sch. Dist., 116 N.J. 30, 46 (1989) N.J.S.A. 18A:46-1.1. In resolving factual disputes to determine whether, by the preponderance of credible evidence, an IEP is reasonably calculated to provide FAPE, judges must rely upon the determinations of experts in the field of special education. Bd. of Educ. v. Rowley, 458 U.S. 176, 206−8, 102 S. Ct. 3034, 3051, 73 L. Ed. 2d 690, 712−13 (1982).

There is a two-part inquiry when reviewing alleged violations of the IDEA: whether the district "complied with the procedures set forth in the Act" and whether the IEP "developed through the Act's procedures [is] reasonably calculated to enable the child to receive educational benefits." Rowley, 458 U.S. 176 at 206−7. Not all procedural violations will rise to a substantive deprivation of FAPE. Rather, this forum may find that a child did not receive a FAPE "only if the procedural inadequacies . . . impeded the child's right to a free appropriate public education"; "significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parents' child"; or "caused a deprivation of educational benefits." 20 U.S.C. 1415(f)(3)(E)(ii); see N.J.A.C. 6A:14-2.7(k).

Before addressing the propriety of the District's program, petitioner's critique of Dr. Muthuswamy's psychiatric evaluation must be addressed. They argue that the psychiatric evaluation that was conducted by the District was flawed because "it relied predominately on school documentation and the input of [Dr.] Ferro and Ms. Morana . . . rather than on a full, objective, and individualized assessment of E.M." Pet'r's Br. at 7. They argue further that the evaluation was inappropriate because it was conducted during a single appointment; was shortened due to E.M.'s disruptive behaviors; was "conducted during behavioral incidents"; and excluded their input. Id. at 7−8.

As support for their position that the appointment was shortened, they rely upon Dr. Ferro's testimony that she was not sure if the doctor needed to shorten the appointment due to E.M.'s behavior. However, she did not state that the evaluation was abbreviated or inappropriately short. Petitioners also argue that the psychiatrist did not consider the impact of classroom staffing changes on E.M., referencing Dr. Ferro's acknowledgement that he had "good connections with the classroom teacher[.]" Id. at 8. They suggest that the "emotional fallout and instability caused by classroom staffing changes . . . distort[ed] the child's presentation during the evaluation." Pet'r's Br. at 9. However, E.M. had the same teacher from mid-February 2024 through the end of the school year, and he had the same aide, related service providers and behaviorist during the year. Dr. Ferro explained and the data demonstrates that his behaviors increased in frequency even though the staffing was stable and notwithstanding the implementation of behavior supports and intervention by the Crisis Response Team. Thus, the reported acts of physical aggression against staff occurred while the staffing was consistent. Similarly, E.M. regularly engaged in problematic behaviors during the ESY session, notwithstanding that the same BIP was utilized, the school day was shorter, there were fewer transitions, and he had a personal aide. The daily logs show that the number of incidents of elopement, tantrum, biting and urination continued throughout the summer session.

Petitioners also contend that Dr. Muthuswamy improperly "relied almost exclusively on school records and the case manager's opinions." Pet'r's Br. at 8. This is contradicted by the report, which details that the doctor also observed E.M., attempted to interview him, spoke with his parents, recorded E.M.'s relevant history, and reviewed his records. Dr. Muthuswamy cited in detail her observations of E.M. and reports of his behavior in school and his parents' reports, upon which she relied in reaching her diagnoses. There is no evidence in the record that supports the assertion that the psychiatric evaluation was not a thorough, objective and individualized assessment of E.M. or that it was conducted improperly. Dr. Ferro, a Doctor of Psychology, credibly testified that the evaluation was conducted in the typical fashion. There is no evidence in the record that calls into question Dr. Muthuswamy's observations or the school's data concerning E.M.'s behaviors. Finally, neither E.A. nor A.R. is an expert in psychology or

special education. Their opinions concerning the propriety of the evaluation process or Dr. Muthuswamy's diagnoses are therefore not authoritative.[14]

Here, the District has documented, through data and observations, that E.M. engaged in serious, problematic behavior throughout the school year despite its employment of a BIP and interventions by teaching staff, case managers, the BCBA and principal. These behaviors continued and increased in frequency in some respects even when there were no changes in the teaching staff or other aspects of E.M.'s educational program. Indeed, at the end of the school year, he engaged in numerous behaviors that involved dropping, urination, and hitting and kicking teachers. During the ESY session, while the BIP continued to be utilized, he engaged in multiple acts of elopement, tantrum, biting and urination. This included scratching, hitting, throwing items in class and putting inappropriate items in his mouth. Often, there were multiple incidents in a single day. The data demonstrated that E.M.'s behavior continued despite the District's efforts and presented significant safety concerns for E.M. and others. The District thus demonstrated by a preponderance of the credible evidence that it could not adequately address these significant and disruptive behaviors and that an out of district placement was warranted.

The District also demonstrated that DLC was properly equipped to address E.M.'s needs. DLC offered a specialized disruptive behavior disorders program and staff who were experienced with autism and disruptive behavior disabilities. Unlike at the District, behaviorists were present at DLC every day, and E.M. would not be required to transition to special classes, which were integrated and therapeutic. E.M. was to be in the more academically oriented classroom and there were other students who communicated verbally which meant he would have appropriate peers in his academic classes. He would also have individual speech-language therapy, integrated speech-language therapy, individual occupational therapy, integrated occupational therapy, a personal aide, adaptive physical education, and door-to-door transportation. DLC also offered regular community-based instruction which District staff thought would enable E.M. to practice

[14] Petitioners also assert that Dr. Muthuswamy improperly relied upon Dr. Ferro's account because Dr. Ferro previously denied E.M. "support services, include a 1:1 aide[.]" Pet'r's Br. at 8. There is no evidence of bias, and as noted above, Dr. Ferro testified credibly. However, the December 19, 2023, IEP, which petitioners reference in making this argument, provided E.M. a personal aide for the school year. R-3 at 2.

his skills. The District highlighted that DLC's goal is to return its students to their public schools and its program involved active reintegration of E.M. into the public school.

Although the out of district program is more restrictive than the public school program, the District has demonstrated by a preponderance of the credible evidence that, as in Daniel R.R., it made robust efforts to address E.M.'s significant behavioral issues but was unsuccessful. His behaviors increased despite interventions by the BCBA, principal and daily classroom staff. Even the school nurse was unable to examine him after he engaged in potentially self-injurious behavior. E.M.'s ability to access his education was adversely impacted, and his behavior and the responses were disruptive to the other students. A desire to have him in class with more communicative students, assuming this were available to him at the District, does not outweigh the need to thoroughly address his serious behavioral needs.

For the foregoing reasons, I **CONCLUDE** that the District demonstrated by a preponderance of the evidence that it crafted a program and provided a placement for E.M. that was reasonably calculated at that time to provide him with significant learning and meaningful educational benefit in light of his individual needs and potential, and the District's IEP offered this in the least restrictive environment. I, thus, also **CONCLUDE** that the District provided E.M. a FAPE under the IDEA.

Are Petitioners Entitled to an Independent Psychiatric Evaluation?

Petitioners contend that they requested and were denied an independent educational evaluation ("IEE") despite having requested one. They assert that they "expressed disagreement" with the psychiatric evaluation and reference their March 7, 2024, email to Dr. Morana. Petitioners did not express concern about the evaluation on March 7, 2024. On March 8, 2024, E.A. wrote that they had "reservations based on our perception of the quality of attention received from Dr. Muthuswamy yesterday, particularly regarding the promptness and shortness of the appointment, which commences half an hour after the scheduled time." The psychiatric evaluation report had not yet been issued when E.A. sent the email. Petitioners did not specifically reference

other times that they expressed concern about the psychiatric or other evaluations to District staff.[15]

Under N.J.A.C. 6A:14-2.5(c), "a parent may request an independent evaluation if there is disagreement with the initial evaluation or a reevaluation provided by a district board of education. A parent shall be entitled to only one independent evaluation at the district board of education's expense each time the district board of education conducts an initial evaluation or reevaluation with which the parent disagrees. The request shall specify the assessment(s) the parent is seeking as part of the independent evaluation." An IEE "shall be provided at no cost to the parent, unless the district board of education initiates a due process hearing to show that its evaluation is appropriate and, following the hearing, a final determination to that effect is made." N.J.A.C. 6A:14-2.5(c)(1). The request for a due process hearing must be made within twenty calendar days of the parents' request for an IEE. N.J.A.C. 6A:14-2.5(c)(1)(ii). When a school district receives a request for an IEE, it "shall provide the parent with information about where an independent evaluation may be obtained and the criteria for independent evaluations" that are enumerated in the regulation. N.J.A.C. 6A:14-2.5(c)(1)(i); See also 34 C.F.R. 300.502(b).[16]

Although petitioners did not expressly request an IEE and expressed concern about the psychiatric evaluation before the report was issued, the District does not argue that they failed to request an IEE. However, even if this issue were in dispute, guidance from the federal court and the United States Department of Education is instructive. In

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[15] Although petitioners represented at the start of the hearing that they sought independent psychological, social skills and neuropsychological evaluations and functional behavioral and speech-language assessments, the record does not demonstrate that they expressed concern about the substance or process of any evaluations other than the psychiatric evaluation.

[16] (b) Parent right to evaluation at public expense.

(1)(b)(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.

(2)(b) 2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either—

(i)(b)(2)(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(ii)(b)(2)(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

Genn v. New Haven Bd. of Educ., 219 F. Supp. 3d 296 (D. Conn. 2016), the court rejected the proposition that a "parent must announce in a formalistic manner, 'I, Parent, disagree with this assessment!' to be found to have disagreed in substance with an assessment." Genn, 219 F. Supp. at 317. In that case, the "parent sought [a] more in-depth analysis because she felt the assessment was not sufficient to identify the Student's reading difficulties." Ibid. The court found that it was satisfactory that the parent explained why she disagreed with the propriety of the school's evaluation. Petitioner was thus entitled to reimbursement for the independent evaluation that they procured because the school district failed to grant the request or deny it and file a due process petition within twenty days. In Letter to Thorne, 16 IDELR 606 (February 5, 1990), the United States Office of Special Education Programs ("OSEP") advised, "While it is reasonable for a public agency to require that it be notified prior to the parent's obtaining an IEE at public expense, a public agency may not fail to pay for an IEE if a parent does not notify the public agency that an IEE is being sought." Thorne, 16 IDELR 606 at *2. Under 34 CFR §300.503(b), to avoid being required to pay for the IEE, the agency was required to initiate a hearing to show that its evaluation was appropriate. Also, "a public agency may not deny IEE reimbursement when a parent has not specified the basis" for their disagreement with the evaluation.[17] Ibid. While neither of these authorities is binding here, they suggest that petitioners' expression of concern constituted a request for an IEE, which, as noted above, the District did not contest.

With respect to the District's obligation in response to petitioners' request, it argues that petitioners were not entitled to an IEE because the psychological evaluation was not conducted as part of an initial or re-evaluation of E.M. That is because N.J.A.C. 6A:14-2.5(c) provides that an IEE may be requested only "[u]pon completion of an initial evaluation or reevaluation[.]" Respondent asserts that E.M. "was initially evaluated and found eligible for special education by the Bound Brook child study team before he was transferred to the District" and that the District's triennial reevaluation is to be conducted in 2026. Resp't's Br. at 15. Thus, the psychiatric evaluation was one of "several isolated

[17] Although this letter addresses the IEE requirements found in the Education of the Handicapped Act (EHA), a precursor to the IDEA, the controlling regulation, 34 C.F.R. 300.503(b), was identical to that of the current regulation, 34 C.F.R. 300.502(b), in relevant part.

off-cycle assessments intended to address a specific behavioral concern arising during the 2023−2024 school year." Ibid.

Respondent relies upon D.S. by and through M.S. v. Trumbull Bd. of Educ., 975 F.3d 152 (2d Cir. 2020) to support its argument. In that case, the Second Circuit held that under 34 C.F.R. 300.502, a parent is entitled to an IEE at public expense only when they object to an initial evaluation or re-evaluation, which are comprehensive assessments. that follow "the mandatory procedures outlined in Section 1414 of the IDEA, including assessing the child in **all** areas of their disability." D.S., 975 F.3d at 163.

The court held that an FBA did not constitute an evaluation for purposes of an IEE request because it was neither an initial evaluation, which is a comprehensive evaluation conducted to determine a student's eligibility for special education and related services, nor a re-evaluation, which is also a comprehensive evaluation that is conducted every three years. Stand-alone assessments conducted in the interim, which focus on one aspect of a student's disabilities like an FBA, do not trigger entitlement to an IEE.

Few New Jersey cases have addressed this holding. However, in Pequannock Twp. Bd. of Educ. v. K.K. o/b/o G.R., an ALJ addressed whether the petitioners' request for three independent evaluations of their child at the district's expense should have been granted. 2021 N.J. AGEN LEXIS 730 (July 12, 2021). There, numerous evaluations had been performed as part of the child's triennial reevaluation, after which the petitioners requested three IEEs: an educational evaluation, an OT evaluation, and an FBA. The district filed a due process petition within the required twenty-day window and argues that, under Trumbull, the FBA did not qualify as an evaluation for which an IEE may be requested. The ALJ wrote, "While neither the IDEA nor our implementing regulations articulate precisely what constitutes an 'evaluation' for which an IEE may be requested by a parent, neither the Third Circuit, nor any New Jersey court, has concluded that an FBA is not an evaluation." Id, at *18 (emphasis added). "In fact, the U.S. Department of Education has issued at least two policy letters in which it endorses the conclusion that FBAs are evaluations for purposes of triggering the right to an IEE, and the [OAL] has

historically viewed FBAs as one type of evaluation for which a parent may request an IEE." Id. at *18−19.[18]

Also, in Haddon Twp. Sch. Dist. v. N.J. Dep't of Educ., 2016 N.J. Super. Unpub. LEXIS 235 (Feb. 4, 2016), the court highlighted the difference in language between the federal regulation (34 C.F.R. 300.502(b)) and the state regulation (N.J.A.C. 6A:14-2.5(c)). While the state regulation stated that an IEE can be publicly funded when a parent disagrees with an initial evaluation or reevaluation done by the district, the federal regulation merely uses the term "evaluation." When federal and state law are inconsistent, "the state law must yield." Id. at *7. Noting that "[e]valuations are defined as procedures used 'to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs[,]'" the court found that even a "review of existing data" qualified as an evaluation for IEE purposes. Id. at *8 (citing 34 CFR §300.15 (2016)). In so holding, it noted, "[i]n providing parents with a right to an independent educational evaluation, Congress intended that they 'be given expanded opportunities to resolve their disagreements [with schools] in positive and constructive ways[,]'" Id. at *7 (citing 20 U.S.C. 1400(c)(8); 20 U.S.C. 1415(b)(1)); See also S.S. and M.S. o/b/o H.S. v. Hillsborough Twp. Pub. Sch. Dist., 2018 N.J. AGEN LEXIS 704, *15−16 (Jan. 19, 2018) (IEE paid for by the school district was required where "parent had placed the request for assessment of the child's progress in the context of whether the educational plan might not be exactly as it should be" and district did not file a due process petition within twenty days; the ALJ noted that "the leading federal case directly discussing independent evaluations also suggests a broad interpretation of a parent's right to seek independent evaluations.")

Other OAL cases, however, have stated that the language in N.J.A.C. 6A:14-2.5(c) regarding initial evaluations and reevaluations should be strictly applied in determining whether something counts for IEE reimbursement purposes. See Oakland Boro Bd. of Educ. v. C.G. and R.G. o/b/o A.G., 2025 N.J. AGEN LEXIS *31 (explaining that only initial

[18] The ALJ further distinguished Trumbull, noting that the FBA in the Pequannock Twp. case was conducted as a part of the student's triennial evaluation, whereas the FBA in Trumbull was a "standalone assessment" that was routinely performed each year in between the child's initial evaluation and his scheduled triennial reevaluation. Ibid.

evaluations and reevaluations trigger the district's obligations under the regulation to either grant the request or deny it and request a hearing); Holmdel Twp. Bd. of Educ. v. K.C. and M.C. o/b/o C.C., 2025 N.J. AGEN LEXIS 345 (June 23, 2025) (stating that once a school district has completed an initial evaluation, a parent can request an IEE at public expense if there is disagreement with the initial evaluation).

Nonetheless, the psychiatric evaluation that is at issue here was utilized by the District to evaluate E.M.'s needs and ultimately to recommend an out-of-district placement. When E.M.'s behavior escalated, his case manager requested petitioners' consent to conduct a psychiatric evaluation. While Dr. Ferro testified that, in retrospect, there was sufficient data to lead the District to determine that an out of district placement was necessary, it still procured the evaluation to address E.M.'s problem behaviors and address his placement and program, and there is no evidence suggesting that it did not rely upon Dr. Muthuswamy's report. While the evaluation may not have been done either at the same time as the evaluations that were first done by E.M.'s prior school for his first IEP or during a formal, triennial reevaluation, the apparent importance of this psychiatric evaluation to the District in formulating a new IEP suggests that it was more than a "standalone assessment." An evaluation of this type, intended to determine whether the District could meet E.M.'s needs, is more akin to a reevaluation and thus should be treated as such for purposes of N.J.A.C. 6A:14-2.5(c).

As noted above, an IEE "shall be provided at no cost to the parent unless the district board of education initiates a due process hearing to show that its evaluation is appropriate and, following the hearing, a final determination to that effect is made." N.J.A.C. 6A:14-2.5(c)(1). The request for a due process hearing must be made within twenty calendar days of the parents' request for an IEE. N.J.A.C. 6A:14-2.5(c)(1)(ii). When a school district receives a request for an IEE, it "shall provide the parent with information about where an independent evaluation may be obtained and the criteria for independent evaluations" that are enumerated in the regulation. N.J.S.A. 6AL14-2.5(c)(1)(i).

The District did not file for a due process hearing to show the psychiatric evaluation was appropriately performed. Instead, it attempted to address the propriety of the

evaluation in its post-hearing brief, rather than following the proper procedure under New Jersey law. The failure to file a due process petition is dispositive. In C.B. o/b/o C.B. v. Hopewell Twp. Bd. of Educ., 2018 N.J. AGEN LEXIS 645 (Nov. 13, 2018), the parent requested an independent evaluation to be performed at the district's expense on May 31, 2018. The district neither accepted the neuropsychologist the petitioner requested to perform the evaluation nor filed a request for a due process hearing within twenty days. Although the district did express to the parents their reasoning for rejecting the proposed evaluator (hourly rate was too high), it was undisputed that it never filed for a hearing within the twenty-day timeline. Thus, the parent was entitled to the IEE they requested, at public expense. The ALJ explained, "With regards to the firmness of the twenty-day deadline" for filing a due process petition, "the case law is clear that where a due process petition is filed late, the parent is entitled to reimbursement." Id. at *10–11. See also Haddonfield Bd. of Educ. v. S.R. ex rel. P.R., OAL Dkt. No. EDS 05392, Final Decision (June 24, 2016) (explaining that a petition filed seven days late due to a holiday school closure was still a violation of the regulation); Northern Highlands Reg'l Bd. of Educ. v. C.E. and A.E. ex rel. C.E., EDS 10891-16, Final Decision (January 19, 2017) (holding that a due process petition filed one day late was still beyond the time limit).

Here, because the District did not file a due process petition to prove that its psychiatric evaluation was appropriately performed, I **CONCLUDE** that petitioners are entitled to an independent psychiatric evaluation, to be paid for by the District. The District shall advise petitioners of the manner in which it may be obtained in accord with N.J.A.C. 6A:14-2.5(c)(1)(i).[19]

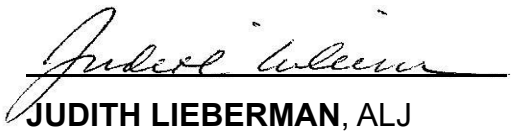
Finally, I further **CONCLUDE** that, to the extent there were any other procedural shortcomings on the part of the District, the evidence fails to establish that any such procedural violation impeded E.M.'s right to a FAPE; significantly impeded the parents' opportunity to participate in the decision-making process; or caused a deprivation of educational benefits. Rather, the District and petitioners engaged in a lengthy exchange over several months, which included but was not limited to regular communication with

[19] Although petitioners represented that they sought other independent evaluations, they did not present evidence that they requested anything other than an independent psychiatric evaluation.

petitioners, status reports concerning E.M.'s behavior, the exchange and sharing of data, and consideration of petitioners' suggestions about E.M.'s schedule and out of district placement options.

ORDER

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2025) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516 (2025). If the parents feel 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.

October 1, 2025 

DATE **JUDITH LIEBERMAN**, ALJ

Date Received at Agency: October 1, 2025

Date Mailed to Parties:

JL/mg

APPENDIX

Witnesses

For petitioners:

E.A.

A.R.

For respondent:

Dr. Kristina Ferro

Interpreter:

Marisol Fahnert

Exhibits

For petitioners:

P-1 Emails predating January 12, 2024

P-6 Email with neurological evaluation report, March 5, 2024

P-7 Emails, March 7, 2024

P-9 Email, March 14, 2024

P-10 Email, March 18, 2024

P-11 Emails, March 19, 2024

P-12 Letter, March 20, 2024

P-13 Psychiatric evaluation report

P-18 Emails and IEP, July 2, 2024

P-19 Emails, July 10, 2024

For respondent:

R-1 IEP, June 19, 2024

R-2 IEP, May 13, 2024

R-3 IEP, December 19, 2023

R-4 IEP, November 13, 2023

R-5 IEP, September 15, 2023

R-6 Emails to and from petitioners

R-7 Psychiatric evaluation report

R-8 Neurological evaluation report

R-9 Functional behavioral assessment

R-10 Behavior graph

R-11 IEP, June 19, 2024

R-12 Incident reports

R-13 Memorandum, March 6, 2024

R-14 Memorandum, February 1, 2024

R-15 Case history

R-16 Protective Order

R-18 Emails to and from Principal Lembo, May 2024

R-19 Emails, re: ESY, July 2024

R-20 2024 ESY behavior chart

R-21 Behavior strategies

R-22 2024 ESY behavior data

The nonsequential numbering of exhibits reflects the fact that numerous pre-marked exhibits were neither identified nor offered into evidence.