



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 15034-24

AGENCY DKT. NO. 2025-38183

C.S. ON BEHALF OF Z.M.,

Petitioner,

v.

CAMDEN CITY

BOARD OF EDUCATION,

Respondent.

C.S., petitioner, pro se

Robert K. Devaney, Esquire (Florio Perrucci Steinhardt, Cappelli & Tipton, LLC,
attorneys)

Record Closed: August 26, 2025

Decided: October 1, 2025

BEFORE **ROBERT D. HERMAN**, ALJ:

STATEMENT OF THE CASE

Petitioner, C.S., is concerned that as Z.M., C.S.'s minor daughter, matures, as a child with special needs, she will be subject to bullying and intimidation in respondent's, Camden City Board of Education's, school district. Further, petitioner asserts respondent is unable to provide Z.M. with a Free and Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE), especially when contrasted with an out-of-district school that specializes in educating children with autism. Is petitioner entitled to out-of-

district placement for Z.M.? No. Even if accurate that Z.M. would receive a “better” education and scholastic experience at a school that specializes in educating autistic students, where respondent provides a FAPE in the LRE, and where there was no evidence of bullying and intimidation adduced, petitioner’s requested out-of-district placement should be denied.

PROCEDURAL HISTORY

On September 23, 2024, petitioner submitted a due process petition to the Office of Special Education, New Jersey Department of Education (OSE). At the conclusion of the thirty-day resolution period, OSE transmitted this matter to the New Jersey Office of Administrative Law (OAL) for a hearing.

On November 26, 2024, an in-person hearing was conducted in the above referenced matter. At the conclusion of the in-person hearing, the respondent requested, and petitioner acquiesced, to an extended period of time to obtain transcripts and provide closing submissions. By March 18, 2025, petitioner provided the last of the closing submissions and the record was initially closed. Intermittent emails from petitioner raised new questions regarding a key aspect of the fact-finding, concerns which may permit the amendment of the due process petitioner pursuant to N.J.A.C. 6A:14.2.7(i). More specifically, these concerns involved whether Z.M. was, in fact, subject to bullying and intimidation, and last, whether the failure to provide a longer extended school year otherwise denied Z.M. FAPE. Upon the last of these, August 26, 2025, with the absence of sufficient evidence justifying the amendment of a due process petition—should one have been filed—the record was closed.

FACTUAL DISCUSSION AND FINDINGS

As of December 2024, Z.M. presents as a twelve-year-old female who was diagnosed with autism. Z.M. is a student in the Camden City school district, and more specifically, in the Veteran’s Memorial Family School (VMFS). In school and pursuant to her Individualized Education Program (IEP), Z.M. receives the assistance of a one-to-one personal aid, group occupational therapy, speech language therapy, assistive technology

services, behavioral intervention services, and daily curb-to-curb transportation in a bus with an attendant. (R-1 at 1.) During the extended school year, Z.M. receives the assistance of a personal aid, group occupational therapy, group speech language therapy, special classes in math and English/Language Arts, as well as curb-to-curb transportation in a bus with an attendant. (Ibid.)

Dr. Michael Lee, the chair of the IEP Team and who I accepted as a qualified expert in Psychology and Education, testified that an IEP is a “recipe for an effective program” for the student. It sets forth the goals and objectives for the student, knowing what is necessary to succeed to the following grade, and also speaks to present levels of achievement. As it relates to Z.M., the current goals and objectives of her IEP are appropriate considering her current needs as well as potential. Further, Dr. Lee is of the opinion that socialization for individuals such as Z.M. is a necessary component of their education and future ability to function in non-scholastic settings. Dr. Lee opined that, taking into consideration Z.M.'s particular circumstances, the IEP and her current placement within the school district is appropriate. Dr. Lee made specific note that the District has the responsibility to consider out-of-district placements as “part of the continuum[.]” with approximately ten percent of his special education students receiving an out-of-district placement. Here, however, it was considered by the IEP team, and they concluded it was not warranted in this circumstance. Further, any specific safety concerns, raised by petitioner and should they occur, could likely be addressed with Z.M.'s one-to-one aide.

Similarly, as it relates to safety, **Principal Dinette Sapowsky** testified that she is responsible for student safety, student code of conduct violations, student suspensions, and allegations of improper activities on school grounds and during transportation to and from school. While she has limited familiarity with Z.M., over the last five years at VMES, there have been no incidents where autistic students were bullied by one of their peers, nonetheless Z.M. Principal Sapowsky explained that conduct modulation within the student body is based upon “restorative justice” and “peer mediation.” In greater detail, VMES students are trained in “mindfulness,” concepts of self-awareness, self-regulation, and self-control. More specifically, students—even at this young age—are taught to understand personal triggers and to deescalate stress-inducing situations. Metrics

demonstrate the effectiveness of this methodology in increasing school safety, with behavior-related out-of-school suspensions decreasing sixteen percent and in-school suspensions at or below two percent.

Ms. Lisa Colon, Z.M.'s teacher, stated that, in Z.M.'s class, there are seven students, three one-to-one aides, one paraprofessional, and the teacher. Ms. Colon explained that special education is a collaborative process, and she has received information and assistance from Z.M.'s prior teacher, Ms. Gross. Where needed, studies are modified to meet Z.M.'s specific needs. Ms. Colon noted that Z.M. is currently responding well socially and educationally, that Z.M. has friends in the classroom, Z.M. is properly progressing towards the goals set forth in her most recent IEP, and that by year's end, Ms. Colon expects they will be met. (R-1.) Regarding safety, Ms. Colon testified that when Z.M. walks the school hallways or goes to the cafeteria, she commonly interacts in a friendly manner with other students. At no time has Ms. Colon witnessed Z.M. in danger or in a situation which raised concerns regarding Z.M.'s safety.¹

Petitioner, **C.S.**, testified on behalf of her daughter, Z.M. Interestingly, C.S. stated that respondent was actually meeting Z.M.'s educational needs. There were prior issues with transportation; however, these issues appeared resolved by the initial date of the hearing. C.S. was steadfast, though, that she would like the respondent to be more like Durand Academy (Durand) and that Z.M. would be better served among a student body comprised solely of other disabled children. C.S. further expressed future concerns—that the “middle school environment”—can be particularly difficult, especially as Z.M. becomes a young adult, and that she would be subjected to harassment and bullying. Moreover, C.S. wishes there would be greater community experiences (extracurricular activities), such as those done by Durand. She explained that, while the school district is meeting Z.M.'s current needs, the educational experience is not “optimized.”²

¹ Perhaps just as important, Ms. Colon testified that there were/are “no behavioral problems with [Z.M.]” Over the course of her tenure, Ms. Colon stated she can recall seeing only one “tantrum.”

² C.S. went on to state (as to educational needs) that, “not that they’re not being met . . . [Z.M.] needs to be in a place similar to Durand because of what I’ve seen there as far as the activities, the consistency, the communication and all . . . and that’s what they do there. That is their expertise.”

As to credibility, I had the opportunity to observe all testifying witnesses closely, which includes noting their mannerisms, body positions, language use, tone, and physical responses to specific questions. Here, I **FIND** that all testifying witnesses are credible. By way of further comment, testifying may be an encumbering, discomforting, and at times, disconcerting process, one where the individual witness feels isolated and without full control. I did observe certain witnesses to have initial discomfort, but nothing out of the ordinary or for which concern may be generated as to the witness's veracity. Further and to underscore my credibility determination as to C.S.'s testimony, in particular, the substance of her testimony bolstered this finding. More specifically, she did not hesitate to state that she was "not concerned" with the education Z.M. was receiving at VMES; that the gravamen of her apprehension were the differences between the activities provided at Durand as against those at VMES and her concerns with harassment and bullying.

LEGAL ANALYSIS AND CONCLUSIONS

This matter arises under the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. §§ 1400 to 1482. The underlying intent of the IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs[.]" 20 U.S.C. § 1400(d)(1)(A).³ As Congress explained in the IDEA:

Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or

³ "Related Services" means:

[T]ransportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

[20 U.S.C. § 1401(26)(A).]

contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

[20 U.S.C. § 1400(c)(1).]

In this vein, states which receive federal education funding must provide children with disabilities a FAPE. 20 U.S.C. § 1412(a)(1).

Pursuant to 20 U.S.C. § 1401(3)(A), children with a disability (“child with a disability”) are defined as children:

- (i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this chapter as “emotional disturbance”), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and
- (ii) who, by reason thereof, needs special education and related services.

[20 U.S.C. § 1401(3)(A).]

New Jersey expands this list to include fourteen categories where children may be eligible for special education and related services:

1. Auditory Impairment;
2. Autism;
3. Intellectual Disability;
4. Communication Impairment;
5. Emotional Regulation Impairment;
6. Multiple Disabilities;
7. Deaf and Blind (concomitantly);
8. Orthopedic Impairment;
9. Other Health Impairment;

- 10. Preschool Child with a Disability;
- 11. Social Maladjustment;
- 12. Specific Learning Disability;
- 13. Traumatic Brain Injury; and
- 14. Visual Impairment.

See N.J.A.C. 6A:14-3.5(c)(1) to (14) (providing specifications for each category).⁴ See also N.J.A.C. 6A:14-3.9 (nonexhaustive list of related services).

⁴ See, e.g., N.J.A.C. 6A:14-3.5(c)(12) (Specific Learning Disability):

"Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions, such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

i. A specific learning disability can be determined when a severe discrepancy is found between the student's current achievement and intellectual ability in one or more of the following areas:

- (1) Basic reading skills;
- (2) Reading comprehension;
- (3) Oral expression;
- (4) Listening comprehension;
- (5) Mathematical calculation;
- (6) Mathematical problem solving;
- (7) Written expression; and
- (8) Reading fluency.

ii. A specific learning disability may also be determined by utilizing a response to scientifically based interventions methodology as described in N.J.A.C. 6A:14-3.4(h)6.

iii. The term "severe discrepancy" does not apply to students who have learning problems that are primarily the result of visual, hearing, or motor disabilities, general intellectual deficits, emotional regulation impairment, or environmental, cultural, or economic disadvantage.

iv. If the district board of education utilizes the severe discrepancy methodology, the district board of education shall adopt procedures that utilize a statistical formula and criteria for determining severe discrepancy. Evaluation shall include assessment of current academic achievement and intellectual ability.

N.J.A.C. 6A:14-3.5.

Once qualified for special education and related services following initial evaluation, an “Individualized Education Program” (IEP) is created. 20 U.S.C. § 1414(a) to (c); 20 U.S.C. § 1414(d). See N.J.A.C. 6A:14-3.4 (Evaluation); and N.J.A.C. 6A:14-3.7 (IEP). Special education and related services are required to fit each child’s specific need(s) in order to provide a FAPE. 20 U.S.C. § 1414 (d)(3); N.J.A.C. 6A:14-3.7(c). Notably, the IEP is required to “turn[] on the unique circumstances of the child for whom it is created” [Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 1001 (2017)], and it must be “reasonably calculated to enable the child to receive meaningful educational benefits in light of the student’s intellectual potential and individual abilities.” K.D. ex rel. Dunn v. Downingtown Area Sch. Dist., 904 F.3d 248, 254 (3d Cir. 2018).

In order to provide a FAPE, the local school district is required to provide an “educational benefit.” It calls for an education which is more than “trivial;” one that “requires ‘significant learning’ and ‘meaningful benefit.’” Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180 (3d Cir. 1988), cert. denied, 488 U.S. 1030 (1989); Ridgewood Bd. of Educ. v. N.E. for M.E., 172 F.3d 238, 247–48 (3d Cir. 1999) (citing Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d at 182, 184).

An additional requirement is that a FAPE is provided in the least restrictive environment/LRE. See 20 U.S.C. § 1416(a)(3)(A); see also Board of Educ. Tp. of Sparta v. M.N. on behalf of A.D., 258 N.J. 233; 318 A.3d 670, 677 (2024). The LRE is where:

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

[20 U.S.C. § 1412(a)(5)(A).]

It is with the above in mind that we turn to the matter at bar. The penultimate inquiry to address here is whether respondent is providing Z.M. with a FAPE in the LRE.

Of note, to square with the requirements of the IDEA, the education provided, or to be provided, by the local educational agency must be appropriate and must be meaningful and in the LRE; it is not required to be the “best” education possible. See Hendrick Hudson Cent. Sch. Dist. Bd. Of Educ. v. Rowley, 458 U.S. 176, 192-93, 195 (1982).

As it relates to Durand as a “preference” of petitioner, I tend to disagree with respondent’s position. It is somewhat clear to me that petitioner, the mother of Z.M., wants what she perceives is best for her child, both educationally and socially. There is a certain, basic level to which petitioner, like all IDEA petitioners, are entitled. Sometimes, though, perceived needs exceed that which is required under the IDEA. The stress readily observed between parental desire, differences of opinions between experts, differences of opinion between educators and parents, school budgetary concerns, and the incipient circumstances, often cause tension in fact-determinative matters such as the one at bar. That is not to say respondent is uncaring; quite the opposite. A school district’s decisions are often more difficult because of the competing and circumstance-dependent factors, considering as a whole what is best for a child, while also shepherding limited public resources. What may be “best,” particularly as perceived by the parent, as against what is “required,” may be noticeably different. Moreover, that is not to say I am in agreement regarding petitioner’s perception regarding the LRE, especially in consideration of Dr. Lee’s testimony; however, one can still appreciate petitioner’s sincere apprehension involving her child.

Moreover, there were previous issues, for example, problems with transportation needs, that fairly justifies at least some disquietude on petitioner’s part. It cannot be overstated that her concerns in this regard were factual and validated. But based upon the testimony presented before me, it appears respondent has sufficiently addressed and rectified the transportation issues.

Petitioner’s concern with the LRE is understandable. At its most basic, children all too fast become young adults and the ability to assimilate and function in such an environment is well understood, considered, and perhaps from one’s own experience, remembered. While perhaps it is an item or items which necessitate continue monitoring by petitioner, at present, based on the testimony and information received following the

hearing, it is insufficient to justify an out-of-district placement. I note that, if it were not rectified, there would be limited, if any, hesitation to elucidate further facts and perhaps result in a different determination. However, that is not what presented before me.

For example, in a matter cited by respondent in its brief, a blind student was allegedly subjected to torment by her fellow students, including being pushed from behind, pushed down stairs, and being taunted. B.R. on behalf of V.R. v. Edison Township Board of Education, OAL Docket No. EDS 02063-17 (Oct. 18, 2017) *2. The petitioner in that matter asserted the school was unable to keep V.R. safe, and, *inter alia*, sought security measures be emplaced, or in the alternative, out-of-district placement. Id. at *3. Determining that summary decision was appropriate pursuant to N.J.A.C. 1:1-12.5(b), the administrative law judge held that, while the complained of harassment and bullying arose out of and involved the child's disability, the petitioner failed to "allege any disagreement relative to any area specified by N.J.A.C. 6A:14-2.7(a)." Id. at *10.

Where a due process petition touches upon the health and safety of a classified child, I am not in accord with the conclusion in B.R. See, e.g., C.G. on behalf of N.H. v. New Brunswick City Bd. of Educ., OAL Docket No. EDS 01093-22 (Aug. 1, 2022) *48-49 (safety of child consideration under N.J.A.C. 6A:14-4.2(a)(5)); L.S. on behalf of C.S. v. Central Jersey Arts and Comm. Sch. Bd. of Educ., OAL Docket No. EDS 09573-07 (Oct. 11, 2007) *13-16 (discussing at length obligation of school board to address bullying which may impede child from receiving a FAPE); and A.B. on behalf of P.B. v. New Brunswick Twp. Bd. of Educ., OAL Docket No. EDS 02622-05 (Aug. 1, 2005) *23 (school districts have "clear affirmative legal responsibilities to address bullying conduct" and such issues are properly raised in a special education matter where bullying involves or flows from a student's classification or deficits). As observed in J.W. v. Contoocook Valley Sch. Dist., 154 F. Supp. 2d 217, 232 (D.N.H. 2001):

The IDEA requires state educational agencies to place children with disabilities in the least restrictive environment ("LRE"). See 20 U.S.C. § 1412(a)(5)(A). But, "unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled." 34 C.F.R. § 300.552(c) [citation omitted]. Preference is also given to placing disabled children in a

classroom with non-disabled children, often referred to as a "mainstream" classroom. See id. A child's fear or hostility towards a particular placement can render the placement inadequate if it is sufficiently severe to interfere with the child's ability to receive educational benefits. See, e.g., Greenbush Sch. Comm. v. Mr. and Mrs. K., 949 F. Supp. 934, 942-43 (D. Me. 1996). Moreover, "in selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs." 34 C.F.R. § 300.552(d) [citation omitted].

[J.W. v. Contoocook Valley Sch. Dist., 154 F. Supp. 2d 217, 232 (D.N.H. 2001). Emphasis added.]

Over the course of these many months, I have repeatedly asked petitioner about Z.M. and her treatment in the respondent school district. More specifically, I was looking for indicia that petitioner's prognostication regarding the actions of other children towards Z.M. had materialized. If such circumstance occurred, I would likely, upon application, permit petitioner to file a motion to amend her due process petition. However, based upon petitioner's own statements following her testimony, there appears to be nothing which would warrant such an amendment to the petition. I note as well that, at this juncture, in the unlikely event something untoward should occur or if Z.M. were not receiving a FAPE, petitioner is welcome to file a new due process petition.

Upon examination, respondent has established that the education it provided/provides to Z.M. is both meaningful and appropriate. And having reviewed Z.M.'s IEP and having listened to the testimony of her teacher, Ms. Colon, and respondent's expert, Dr. Lee, I have little question that Z.M.'s IEP is tailored to her specific needs and that the educational and service plan is reasonably calculated to provide meaningful educational benefits in light of Z.M.'s specific circumstances. Further, there is no evidence before me suggesting that Z.M. is in anything but the least restrictive environment, and more importantly, that she is safe and free from harassment and bullying.

For the reasons set forth above, I **CONCLUDE** that respondent has provided Z.M. with a Free and Appropriate Public Education under the Least Restrictive Environment. While I fully understand petitioner's goals and aspirations relating to Z.M., and though

Z.M. may have a greater educational experience with the requested out-of-district placement, I am constrained to determine that respondent met and meets the necessary requirements.

ORDER

I **ORDER** that petitioners' request for an out-of-district placement shall be and hereby is **DENIED**. It is further **ORDERED** that all other requests for relief as set forth in petitioners' due process petition, if not addressed above, are **DENIED**.

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



October 1, 2025

DATE

ROBERT D. HERMAN, ALJ

Date Received at Agency:

Date Mailed to Parties:

RDH/gd

APPENDIX

WITNESSES

For petitioner

C.S.

For respondent

Michael Lee

Dinette Sapowsky

Lisa Colon

EXHIBITS

For petitioner

P-1 June 12, 2024, Emails (two pages)

For respondent

R-1 March 22, 2024, IEP (twenty-two pages)