



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 17157-24

AGENCY DKT. NO. 2025-38332

D.C. AND J.C. ON BEHALF OF C.C.,

Petitioners,

v.

BERNARDS TOWNSHIP BOARD

OF EDUCATION,

Respondent.

Andrew I. Meltzer, Esq., for petitioners D.C. and J.C. on behalf of C.C. (Sussan, Greenwald & Wesler, attorneys)

Robin S. Ballard, Esq., for respondent Bernards Township Board of Education (Schenck, Price, Smith & King, LLP, attorneys)

Record Closed: September 12, 2025

Decided: October 28, 2025

BEFORE **JACOB S. GERTSMAN**, ALJ t/a:

STATEMENT OF THE CASE

Petitioners D.C. and J.C. filed a Due Process Petition (Petition) on behalf of their son C.C. asserting that the May 22, 2024, individualized educational program (IEP)

offered by respondent Bernards Township Board of Education (District or Board) failed to offer C.C. a free and appropriate public education (FAPE). Petitioners seek placement and reimbursement for their unilateral placement of C.C. at the SEARCH Learning Group (SEARCH), and compensatory education for November 7, 2022, to June 14, 2024, the time period that they contend C.C. was denied a FAPE. The District contends that C.C. was provided, and the proposed IEP offers, a FAPE in the least restrictive environment (LRE), and that C.C. is not entitled to reimbursement or continued placement at SEARCH.

PROCEDURAL HISTORY

On November 7, 2024, the parents filed their petition, which was transmitted to the Office of Administrative Law (OAL) and filed as a contested case on December 4, 2024. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. On December 20, 2024, I held a prehearing conference, and following multiple adjournments requested by the parties I held the hearing on May 19, 21, and 22, 2025, and June 9, 2025. The District moved for a directed verdict at the conclusion of its case in chief, and I denied the motion. (T2 at 40:9–17). The parties requested an opportunity to obtain transcripts of the hearing and to file post-hearing briefs. Upon receipt of the post-hearing briefs, and following a telephone conference on September 12, 2025, I closed the record.

DISCUSSION AND FINDINGS OF FACT

The following stipulated facts are hereby **FOUND** as **FACT**:¹

1. C.C. was born on March 8, 2017.
2. C.C. is currently in the second grade.²
3. C.C. had a neurodevelopmental evaluation conducted by Dr. Hugh Bases on May 24, 2019, that resulted in him being diagnosed with autism spectrum disorder.
4. C.C. received services through Early Intervention prior to the age of three.

¹ The Joint Stipulation of Facts was modified by the undersigned for stylistic, grammatical, and consistency purposes.

² C.C. was in the second grade when the joint stipulation was submitted and during the hearing.

5. From September 2019 through September 2021 (other than March through June 2020) petitioners arranged for C.C. to receive services at The Uncommon Thread.
6. In June 2021 petitioners referred C.C. to the child study team (CST) of the Board.
7. The CST conducted an initial evaluation of C.C. consisting of:
 - a. Occupational Therapy Evaluation—prepared by Maria Elina Santisteban-Armanini, MS, OTR/L, resulting in a report dated July 20, 2017 (sic).
 - b. Educational Evaluation—conducted by Debbie Bune, M.A., LDT-C, with a report dated August 16, 2021.
 - c. Speech/Language Evaluation—conducted by Caitlin Celebre, M.A., CCC-SLP, with a report dated August 27, 2021.
 - d. Psychological Evaluation—conducted by Karen Martin, with a report dated August 29, 2021.
 - e. Social History compiled by Meredith Kurland-Ross, with a report dated August 30, 2021.
8. On September 13, 2021, C.C. was found eligible for special education and related services under the category of “preschool child with a disability.”
9. An IEP was prepared for C.C. on September 13, 2021, providing for him to be placed in a full-day program for preschool students with disabilities in the Bernards Township Public School District with 1:1 and/or small-group instruction, individual speech/language therapy four times a week for thirty minutes, and individual occupational therapy twice a week for thirty minutes. Petitioners signed and consented to its implementation.
10. C.C. began attending the programming in that IEP at the Mount Prospect Elementary School on or about September 21, 2021, at the age of four years, six months.
11. In the 2021–2022 school year IEP meetings were held for C.C. on October 3, 2021, and June 8, 2022.
12. When C.C. was aging out of preschool eligibility at the end of the 2021–2022 school year, the parties agreed that no additional testing was needed, as he had been evaluated less than a year prior. The parties agreed he would

continue to be eligible for special education and related services under the category of autism.

13. In the 2022–2023 school year, C.C. attended Oak Street School. Through his IEP he was placed in the Comprehensive Behavior Analytic Program (CBAP) operated by the District, with 1:1 and/or small-group instruction. He also received related services of individual speech/language therapy three times a week for thirty minutes and one thirty-minute-per-week integrated individual session, individual occupational therapy twice a week for thirty minutes, and adaptive physical education four times a week for thirty minutes.
14. During the 2022–2023 school year, three progress reports were prepared for C.C.
15. On April 11, 2023, an IEP amendment was prepared to update C.C.'s goals and objectives.
16. On June 8, 2023, a report was prepared of a Functional Behavior Assessment (FBA) of C.C. conducted by Michele Lenzi, MA, BCBA. The non-productive behaviors targeted by this assessment were: self-injurious behaviors (SIBs), tantrum behaviors, aggression, and throwing/swiping objects.
17. The Verbal Behavior Milestones Assessment and Placement Program (VB-MAPP) was administered to C.C. on June 9, 2023. A graph and report of that assessment were prepared.
18. On June 14, 2023, an IEP meeting was conducted for C.C. that continued his placement in CBAP with 1:1 and/or small-group instruction for the 2023–2024 school year with related services of occupational therapy twice a week individually for thirty minutes, speech/language therapy four times a week individually for thirty minutes, and adaptive physical education four times a week for thirty minutes. C.C. also was offered four hours a week of home programming and one hour a week of parent training from July 5, 2023–August 8, 2023, and September 11, 2023–June 14, 2024. Additional hours of home programming/parent training, coordinated between parents and provider, were made available in the month of August 2023.
19. In October 2023 the District prepared a report of a functional analysis of C.C.
20. A behavior intervention plan was proposed for C.C. in October 2023.
21. In November 2023, goals and objectives were prepared for parent

- training/home programming for C.C.
22. On November 28, 2023, an IEP meeting was held for C.C. that continued his placement in the CBAP program with 1:1 and/or small-group instruction, speech/language therapy four times a week individually, occupational therapy twice a week individually, and adaptive physical education five times a week for thirty minutes. A behavior intervention plan for C.C. was included. C.C. also was offered four hours of direct instruction at home with an additional hour of parent training per week through January 1, 2024. From January 2, 2023–June 14, 2024, C.C. was offered eight hours per week of direct instruction and an additional two hours a week of parent training. The home programming/parent training was provided during extended breaks from school as well.
23. On May 15, 2024, the VB-MAPP was administered to C.C.
24. On May 22, 2024, an IEP meeting was held for C.C. that continued his placement in the CBAP program with individual speech/language therapy four times a week, individual occupational therapy twice a week, and adaptive physical education five times a week for thirty minutes. ESY programming was offered from July 2, 2024–August 6, 2024, consisting of CBAP four hours a day, four days a week, with individual occupational therapy once a week for thirty minutes and individual speech/language therapy twice a week for thirty minutes. The IEP included a behavior intervention plan for C.C. He also was offered ten hours of home program/parent training per week, with 50 percent of the time being devoted to parent training. The home programming/parent training was provided during extended breaks from school as well.
25. The District maintained data on C.C.'s progress toward his IEP goals and objectives and on his behaviors. Graphs of his acquisition of skills and levels of C.C.'s behaviors were prepared to monitor his progress.
26. Each IEP prepared for C.C. offered him participation in the District's peer mentor program and provided parent-training opportunities from October to May that could be prearranged with the teacher on a monthly basis.
27. After the conclusion of the 2024–2025 school year, C.C. transferred from the District to SEARCH Learning Group, a learning center located in Warren, New Jersey.

Testimony

For the District:

Dr. Allison Read is the supervisor of Special Education for the District and was qualified as an expert in educating students with autism; behavior; and applied behavior analysis (ABA). Dr. Read is familiar with C.C. and described him as having significant needs including language, communication, social skills, play skills, independent skills, leisure, toileting, and behavior. She described the CBAP program, the training for staff, and how C.C. progressed in the program. (J-25.) The staff that were assigned to C.C.'s CBAP class, which included C.C. and four other students, included four instructional aides and a classroom teacher. Additionally, a District behaviorist, speech therapist, occupational therapist, and case manager all work on his team.

Dr. Read testified that in her expert opinion, the District's CBAP program exceeds the standards of the Autism Program Quality Indicators (T1 11–17). Additionally, C.C. derived meaningful benefit from the CBAP program in the 2022–2023 and 2023–2024 school years. This was based on C.C.'s progress and his responses to the behavior interventions. Dr. Read cited the cumulative progress reports for C.C. during his time in the District (R-1), which “involve all of the skill domain areas that were being addressed within his IEP goals and objectives as well as where he was and how we broke down each of those skills.” (T1 34:24–25, 35:1–2). The data indicates that the District was able to address all areas of educational need and that the cumulative progress reports show that C.C. requires specific procedures, but made slow progress, including through sets and learning and building skills. (R-1.) Additionally, C.C.'s progress over his years in the District was demonstrated by the results of the VB-MAPP. (T1 27:17–25, 28:1–18; J-1; J-2; J-10.)

The behavioral data graphs (R-9) indicate that C.C.'s most significant behavioral issue, self-injury, was at very low levels due to the District's behavior interventions. Dr. Read added that the data was collected on fifteen-second partial-interval recording, which means that “if a behavior happened within 15 seconds, we were documenting that it occurred or it didn't occur, and so it's a very precise, you know, measure, and so his

behaviors were very low.” (T1 28:21–25.) Dr. Read noted that the District’s definition included self-injury attempts, which does not mean that C.C. made contact with himself, and they were able to block or redirect the behavior before it occurred.

In Dr. Read’s expert opinion, the appropriate supports were offered to C.C.’s family, as demonstrated by the home visits and in-school parent training. The parents were having difficulties with C.C.’s behaviors in the home, and the District made recommendations for additional hours of support. “We wanted more to provide them with more parent training hours on a consistent basis, as well as home programming hours where someone would also be working with C.C. to establish those skills within the home and then transfer them to the parents.” (T1 40:2–6.) The progress summaries from the home program (J-9) indicated that C.C. had difficulty generalizing skills and they were working on the expectation that the speech generating device used in school would be used in the home. She added that there were times that the parents came into school for training offered by the District, but staff went to the home more frequently than the parents came to the school.

It is Dr. Read’s expert opinion that if C.C. had not enrolled in SEARCH for the 2024–2025 school year, C.C. would have continued to benefit from participation in the CBAP program because he was doing well. His behaviors decreased to a very low level, and they increased the number of demands. Dr. Read concluded, following her observation of C.C. at SEARCH, that he is not demonstrating the same skills, and there was a variability in his behavior. C.C. missed out by not being a part of the District’s classroom community, which included the buddy program, where fourth and fifth graders come into the classroom to get to know the kids, and by participating in the activities of a normal school day, including art and music. She did not believe that SEARCH was an appropriate placement because C.C. is not making progress there. There were higher levels of behavior, and there are no instructional programs in place.

On cross-examination, Dr. Read stated that she understood the parents’ concern with the scale of C.C.’s behaviors. She acknowledged that the functional analysis (J-5) took longer to complete than the sixty days set forth in the IEP, but noted that the District worked as diligently as possible and there was a functional behavioral plan in place.

When questioned about the incident that took place at the home on March 15, 2024, (J-8) she agreed that C.C. demonstrated aggression. However, she added that she cannot make an assumption on whether there is behavioral progress based on one incident. She would look at the graphs and see how he was doing. Dr. Read also agreed that the VB-MAPP is a non-standardized assessment.

Michelle Lenzi, M.A., B.C.B.A., was the District behaviorist for C.C.'s classroom, and was admitted as an expert in educating students with autism, behavior, and applied behavior analysis. She was in frequent contact with C.C.'s teacher and spoke daily about him and the classroom. Lenzi noted that the VB-MAPP, which helps identify areas of strength and areas of deficit across a wide variety of domains, is an example of a classroom-based assessment used to guide the development of goals and objectives. In her expert opinion, between April 2022 and May 2024 the "VB-MAPP identified that there was growth with his performance within the milestone assessment across a variety of domains." (T1 106:3–5.) Further, C.C. did not regress on the VB-MAPP during his time in the District. (J-1; J-2; J-10.) She added that the classroom assessments such as the VB-MAPP showed growth during each annual administration.

Lenzi noted that C.C. exhibited behavioral challenges, including aggression, SIBs, tantrums and throwing and swiping items. Other behaviors, including mouthing and spitting, had been reduced and were no longer interfering. Strategies, including modifications, were in place to support C.C. in the classroom in the fall of 2022 (J-20); however, the data collected on each of the behaviors demonstrated that the strategies were not successful. The District then conducted a functional behavioral assessment (J-25), which determined that "the functions of the non-productive behaviors of aggression, self-injurious behavior, tantrum behavior, and throwing or swiping items were serving the functions to escape from demands to gain access to attention as well as to gain access to tangible item." (T1 110:4–9.) As a result of the FBA, a behavior intervention plan (J-28) was implemented for C.C. during the extended school year of 2023.

A functional analysis was conducted to "more precisely pinpoint the function of the behavior." (T1 111:7–8.) The data from the functional analysis "showed support that the behaviors were maintained by access to attention and to receive access to tangible item."

(T1 112:11–12.) Revisions were made to C.C.’s program as a result of the functional analysis, including data collection on the behaviors using a partial-interval recording system. The data, previously collected using three-minute intervals, was reduced to fifteen-second intervals. (J-6.) In her expert opinion, the behavior intervention plan effectively addressed C.C.’s behavioral difficulties, as he was able to make progress. Lenzi testified that the skill-acquisition graphs (R-9) demonstrated that there was a reduction in the occurrence of behaviors. She added that the behavior does not need to go away for the behavior intervention plan to be appropriate.

Lenzi provided home parent-training visits to provide strategies on addressing behaviors, including SIBs and aggression, along with providing skills to become more independent at home with toileting and dressing. She followed up on these strategies with the parents (J-34) and found that they were not being consistently implemented by C.C.’s parents. The parents also reported to her that C.C.’s home behavior was “more intense and occurred for longer durations than we had observed in school.” (T1 123:4–5.) The parental involvement during the home sessions was limited, as C.C.’s mother was caring for his younger brother and his father was at work. (J-9.) In Lenzi’s expert opinion, the appropriate supports were offered for C.C. for the home setting. (J-38.) Lenzi also provided the parents with community supports, but to the best of her knowledge they did not follow through. In her expert opinion, C.C. does not require an out-of-district placement. C.C. was “gaining skills within the District. He was functional as a learner within the District, and we had seen a reduction in the occurrence of the behaviors.” (T1 126:9–10.)

On cross-examination, Lenzi conceded that the behavioral data was not collected during breaks. However, she added that when C.C. engaged in behavior, the break ended, and he was returned to work. She reiterated that it was always her belief that C.C. needed behavioral supports.

Kelly Flannigan is a case manager in the District, and was admitted as an expert in learning, educating students with autism, and special education programming and placement of students with disabilities. C.C. was assigned to her caseload. Her review of C.C.’s educational records indicated that he was making academic, behavioral, and

functional progress on the goals and objectives in his IEP for the 2022–2023 school year. She had no concerns with C.C.’s programming when she became his case manager in September 2023.

While the parents did not report issues directly to her, she was aware of them because the functional analysis was underway, and was aware that the parents had concerns regarding his SIBs. The parents’ perception of C.C.’s behavior was not consistent with his behavior in school. She noted that while there was some tantruming, aggression, and SIBs in school, C.C. could be redirected. Flanigan added, “[it was my understanding from the parents that, you know, the duration and the intensity of the behaviors that were occurring at home were on a much greater level than what we were seeing in school.” (T2 13:19–22.)

The November 2023 IEP meeting (J-6) discussed the functional analysis and made modifications to the behavior intervention plan and increasing home-program training hours from five to ten. In her expert opinion, the November 2023 IEP (J-6) offered C.C. an opportunity to make meaningful progress by providing academic instructional goals and objectives, addressing his social and behavioral needs, providing him with the opportunity to be exposed to peers and general education opportunities, and providing the right supports for him.

During the May 22, 2024, IEP meeting (J-11), the teachers provided feedback that C.C. was making progress on his goals and objectives. There was also behavioral progress, and he was making progress in related services including occupational therapy and speech and language therapy. The revisions proposed that the behavior plan stay in place since progress had been made and modified the home-program hours to increase parent training withing the ten hours. In her expert opinion, the May 22, 2024, IEP (J-11) offered the opportunity for C.C. to make meaningful progress because the behavior intervention plan was successful for him, he had made progress, “so with that reduced behavioral component we have the availability for opportunity for learning.” (T2 21:1-3) In her expert opinion, C.C. does not require an out-of-district placement because he was making meaningful progress academically, behaviorally, and functionally.

On cross-examination, Flanigan noted that the functional analysis (J-5) was not done as a part of a re-evaluation, rather, it was conducted to assist in determining what additional supports C.C. needed, and to reduce the behaviors at home and school.

For the Parents

Dr. Carole Fiorile is a professor of graduate instruction at Long Island University and a behavioral analyst and behavioral consultant. She was admitted as an expert in applied behavioral analysis and developing programs for students with autism. Dr. Fiorile became familiar with C.C. in January 2023 when she observed him at school and at home, and prepared a report dated March 2, 2003. (P-51.) C.C. is diagnosed with “autism with a childhood apraxia of speech, receptive and expressive language disorder, low muscle—muscle tone, and fine motor delays as well.” (T2 60:19–22.) He is functionally non-verbal.

She described her observation of C.C. in his program, where he was prompted for 85 to 90 percent of his responses, so she believed he was not independently responsive. C.C. eloped approximately three times, emitted self-injurious behavior including pressing underneath his chin and a punch to the ear, never transitioned without the teacher holding his hand, and emitted aggression toward the teacher. The teacher did not record data during her observation, and she noted that without blocking C.C. from these behaviors, along with holding the teacher’s hand, there would have been higher numbers. The answers to her written follow-up questions confirmed that she had observed a typical day.

She also conducted a virtual home observation, where C.C. dumped laundry, climbed on the roof of a playhouse, hit himself, eloped, and pulled a knife out of the drawer. The parents said this was typical behavior. The parents told her that they had to lock all cabinets and drawers so C.C. would not pull things out, and had to keep the doors locked so he did not elope from the home. She also noted that home programming was not provided by the District on a regular basis.

Dr. Fiorile concluded that C.C. did not receive an effective program of education in the District, which was surprising to her “because they do have a long history of having this very positive kind of ‘gold standard’ of reputation.” (T2 75:12–13.) She was also

surprised at C.C.'s prompt dependency, his limited capacity in terms of communication development, lack of training for the parents, and implementation of a home program. "The parents were requesting assistance because they were having a lot of trouble in the home as well and it—it was surprising I have to say." (T2 75:20–23.) She recommended placement in a center-based ABA school program. If he were not able to get into a program, she recommended SEARCH, which she knows is a clinical setting, as a "bridge" until a spot in one of the other approved school programs is available. She also recommended two hours a week of parent counseling and training and a home-based program of interventions.

Dr. Fiorile also wrote a report in November 2023 in which she reviewed updated documents provided by the parents, including the FBA and functional analysis. (P-1.) She noted that in her expert opinion, four months is a "long time" to do a functional analysis. This was not mentioned in her report. Her conclusions in this report repeated her conclusions in her first report and made recommendations, which included: using "Greg Hanley's protocol of My Way because it's a great way of getting rid of self-injurious behavior for kids" (T2 92:1–3); "if his treatment is not working that a behavior analyst is required to connect with someone who does have expertise in that area of self-injurious behavior and that they can more effectively treat that behavior" (T2 92:11–15); and the parents should have specific strategies because they are having so many problems at home.

On cross-examination, Dr. Fiorile confirmed that she has not observed C.C. before or after January 2023 and that she observed him for less than two hours total. She added that elopement means you leave the area, so leaving the room is considered elopement. She conceded that there was no operational definition of elopement in her report and added that C.C. required continuous oversight. When C.C. eloped in school he just left the instructional area, but the teacher held his hand to prevent elopement. Dr. Fiorile was not aware that the District started an elopement plan for C.C. at the time and was not aware that the parents did not return information that the District needed to complete the elopement plan. She also conceded that she did not do an assessment of C.C. and is not trained in prompt.

In her March 2023 report Dr. Fiorile recommended that an FBA be completed, and she is aware that it was done soon after. She agreed that the District created a behavior intervention plan from the FBA and included it in the June 2023 IEP, and a month later the District began the functional analysis. She also agreed that the functional analysis was put in place because the treatment plan was not addressing the behaviors in a way the District wanted to see. Dr. Fiorile also conceded that the fifteen-second interval for taking behavioral data is within the range she recommended. She was not aware that the parents had only accepted two visits to their home, that they had come into the school one time for training, or that the District had offered ten hours a week of home programming. (J-11.) She conceded that the VB-MAPP scores going up indicated “a little bit of progress.” (T2 124:10.)

D.C. is C.C.’s father.³ He stated that C.C. is functionally non-verbal and that his behaviors happen in school, at home, and in the community. D.C. added that parent training at school did not help and that the teacher change in November 2022 was a problem for C.C. The SIBs issue was consistently the parent’s primary concern (P-25; J-26), and they were concerned during the wait for the functional analysis that the SIBs continued. There was repeated hitting and trauma to the head and the parents were concerned about C.C.’s hearing. He added that C.C. was coming home with a red, bruised area on his ears and other visible SIB marks.

He had concerns with the home-based programs due to the inconsistent schedule and various individuals coming to the home. The videos documenting C.C.’s behavior from February 28, 2024, and March 14, 2024, that were played at the hearing showed behavior that happened weekly in the 2023–2024 school year. (P-47.)

On cross-examination, D.C. conceded that he did not observe C.C. in school. While parent training was offered in the IEP, he was not surprised to learn that at the time of Dr. Fiorile’s January 2023 observance of C.C. he had gone into the school once and accepted two visits to his home. He added that intermittent visits were offered by the District, and he participated in training five to six times.

³ D.C.’s testimony at T2 182:1–11 and the colloquy from 182:12 to 185:7, have been stricken from the record.

Alexandra Boulanger, Ed.M, BCBA, was qualified as an expert in applied behavior analysis and developing programs for students with autism. She observed C.C. at home and at school, collected data, spoke with the parents, and prepared a report dated August 28, 2024. (P-4.) Among the parents' concerns were SIBs and elopement. She had concerns about the frequency and intensity of those behaviors, and upon review of the functional analysis and proposed behavior plan she believed that the plans did not address the functions-based issues.

She had concerns about goals with prompts and considered C.C. prompt dependent and had concerns about the accuracy of collection of the behavioral data, which was collected in such short intervals. Boulanger also noted escalating aggression with the teacher and noted that the behavioral plan was not always implemented due to C.C.'s behavior and aggression. C.C.'s teacher did not have instructional control over him. During the home observation she "saw less aggression, but I did see self-injury at home, which I didn't observe in the school program." (T3 43:10–12.) C.C. ran out of the house while she was having a conversation with the parents. Boulanger agreed with Dr. Fiorile's report and believed that the IEP and behavior intervention plan were effective at reducing C.C.'s behaviors.

Boulanger recommended a center-based program that offered one-to-one instruction utilizing the principles of ABA and that had a full-day program throughout the summer. She also recommended an immediate new placement made after the observation but before the report was issued. Boulanger also observed C.C. at SEARCH and prepared a report. (P-52.) The parents were happy with his progress, as the behaviors at home and school decreased, and she also believed that the goals were appropriate. Describing her observation of C.C. at SEARCH, she stated, "[h]onestly, if I were going in to observe him without any context, I probably would have described what I saw as protest." (T3 60:19–21.) She also noted times where he engaged in aggression, but did not define them as SIBs "without context." The intensity of the aggression was different than what she observed in the District. She added that behaviors like C.C.'s take some time to change, but the change was meaningful and significant.

On cross-examination, Boulanger conceded that she is not a teacher and did not recall if she asked if it was a typical day when she observed C.C. in district. She could not recall ever failing to recommend an out-of-district placement when she was hired by parents. She did not do an evaluation or formalized testing or skills assessment tools like the VB-MAPP, rather, she analyzed data. Boulanger also conceded that the VB-MAPP scores for C.C. in district showed consistent growth between 2022 and May 2024 for milestone development.

Boulanger was unaware that the District started an elopement plan and that the only reason that it was not completed was that the parents did not send in additional needed information. She was aware that C.C. was toilet-trained in urination at school while in the District, and that C.C. did not have bowel movements at school while in district. She was also unaware that the District had created a toileting protocol for C.C. in the home. Boulanger noted that while she agreed with Dr. Fiorile's recommendations, she did not agree with the fifteen-second intervals for data collection. However, she conceded that she did not state any reservations in her approval of those recommendations in her direct testimony. Finally, she acknowledged that no data was taken on the intensity of the behaviors at school in the District or at SEARCH, and her testimony about the intensity is based on her limited observations of C.C. and what the parents told her about the behaviors in the home, which was accompanied by photographs.

Nicole Journe is the clinical director at SEARCH and she was qualified as an expert in applied behavior analysis. She described SEARCH as a clinical-based program that provides behavior analytic intervention for students with autism spectrum disorder ranging from eighteen months to twelve years old. Journe noted that C.C. is fully independent in toileting, which is progress. Additionally, he has increased independence and there has been a reduction in the intensity of SIBs. Journe believes that SEARCH is providing an appropriate program addressing his needs.

On cross-examination, Journe noted that C.C.'s academic goals were on hold. (T3 197:22–24.) She added, "we're targeting pre-academic goals as C.C. was not

demonstrating a strong enough foundation to work on higher academic areas.” (T3 198:4–7.) There is no home programming provided at SEARCH.

Rebuttal Testimony

Dr. Read provided rebuttal testimony on behalf of the District. She spoke to the classroom teacher, Allysa Berado, regarding the March 14, 2024, incident at C.C.’s home. In that incident she was trying to re-direct C.C. back to appropriate behavior, she engaged in blocking to prevent SIBs, and no one was covered in blood in the video. This was not a situation where staff were unable to direct C.C. because it was a unique situation. The teacher was able to work through it, block the SIB, and return to work with C.C., and they ended the session on a good note. C.C. was not restrained.

She disagrees with Dr. Fiorile’s testimony that C.C.’s VB-MAPP scores went up from spring 2023 to spring 2024 as a result of C.C. using a speech-generating device because he had one at the District that was constant. It was not something different added. Verbal speech was difficult for C.C., but they were able to increase his expressive communication. He was not regressing.

Prompting was not a problem for C.C., as stated by Dr. Fiorile and Boulanger, because they were teaching him. He was not prompt dependent, and his level of functioning impacted his need for prompting. She also disagrees with Boulanger that goals should not include prompts because while independence is the goal, it may not be reasonably achievable in one year. They work towards independence. Dr. Read noted that prompting is not the same as prompt therapy. She disagrees with Dr. Fiorile that C.C. needs prompt therapy. There has not been a research study that has the evidence to support its effectiveness for children with autism or children with autism and childhood apraxia of speech. C.C. has a diagnosis of apraxia. She disagrees with Boulanger that it would have been impossible for staff to record behavioral data every fifteen seconds because they did it and had a system in place.

On cross-examination she explained that her testimony regarding the March 24, 2024, incident was based on her consultation with the teacher at the time of the incident,

not between the original hearing dates and the date of her rebuttal testimony. The Buddy Builders program involved neurotypical peers interacting with C.C. and his classmates approximately twice per week.

Credibility Analysis and Additional Findings of Fact

It is the obligation of the fact finder to weigh the credibility of the witnesses before making a decision. To assess credibility, the fact finder should consider the witness's interest in the outcome, motive, or bias. A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

D.C. is a dedicated parent, and based on his testimony I have no doubt that **J.C.** is the same. His testimony about the struggles his family was enduring with C.C.'s behaviors and his desire for C.C. to make progress was both credible and compelling. However, while the record is replete with examples that the parents' primary concern understandably was C.C.'s behaviors, specifically SIBs, **D.C.** acknowledged that he did not observe C.C. in school. Further, in January 2023 he had only gone into school on one occasion and had accepted two visits to his home. He stated that he participated in training five to six times. It must be noted that as a fact witness, his credible testimony is limited solely to the facts presented in his testimony, not his opinion.

After having the opportunity to review the evidence and observe the witnesses, I found **Dr. Read, Lenzi, Flannigan, Dr. Fiorile, Boulanger, and Journe** all to be knowledgeable, impressive, and professional. However, while I am aware that District employees would want to support the program they developed for C.C., a review of the record leaves no doubt that the expert opinions of Dr. Read, Lenzi, and Flannigan are fully supported by the record and thus more credible and persuasive than those of Dr. Fiorile, Boulanger, and Journe on behalf of the parents.

First, Dr. Read credibly described the District's thorough and impressive CBAP program, which exceeds the standards of the Autism Program Quality Indicators. Even

Dr. Fiorile noted that the District has a “gold standard” reputation. Dr. Read’s expert opinion that C.C. derived meaningful benefit from the CBAP program in the 2022–2023 and 2023–2024 school years was based on C.C.’s progress and his responses to the behavior interventions. The data indicate that the District was able to address all areas of educational need, and that the cumulative progress reports showed that C.C. requires specific procedures, but made slow progress, including through sets and learning and building skills. (R-1.) C. C.’s progress was further demonstrated by the VB-MAPP results (J-1; J-2; J-10.) Lenzi agreed, noting that the VB-MAPP identified the growth in his performance, and he did not regress on the VB-MAPP.

Lenzi added that following the functional analysis further revisions were made to the behavior intervention plan, including reducing the data collection on the behaviors to fifteen-second intervals (J-6), which Dr. Fiorile conceded is within the range she recommended. Dr. Read persuasively testified that the behavioral data graphs (R-9) indicate that C.C.’s SIBs were at very low levels due to the District’s behavior interventions. Lenzi concurred, citing the skill-acquisition graphs (R-9) to demonstrate that there was a reduction in the occurrence of behaviors. Flannigan noted that the parents’ perception of C.C.’s behavior was not consistent with his behavior in school.

Dr. Read testified that the home visits and school parent training demonstrated that the District offered appropriate supports to C.C.’s family, and Lenzi concurred that the appropriate supports were offered for C.C. for the home setting. (J-38.)

Conversely, the expert opinions of Dr. Fiorile and Boulanger were unsupported by the record. Both Dr. Fiorile and Boulanger were unaware that the District started an elopement plan for C.C. at the time and were not aware that the parents did not return information that the District needed to complete the elopement plan. Additionally, neither Dr. Fiorile nor Boulanger did an assessment of C.C. Boulanger conceded that the VB-MAPP scores for C.C. in district showed consistent growth between 2022 and May 2024 for milestone development. Dr. Fiorile similarly conceded that the VB-MAPP scores going up indicated “a little bit of progress.” She was also not aware that the parents had only accepted two visits to their home and had come into the school only once for training, or that the District had offered ten hours a week of home programming. (J-11.) Boulanger

also acknowledged that no data was taken on the intensity of SIBs at school, in the District, or at SEARCH, and her testimony about the intensity is based on her limited observations of C.C. and what the parents told her, along with photographs. Finally, Journe's testimony was unpersuasive since C.C.'s academic goals were on hold and there is no home programming at SEARCH.

Dr. Read persuasively rebutted the testimony and expert opinions of Dr. Fiorile and Boulanger regarding prompting. She persuasively testified that C.C. was not prompt dependent, and that there was no need for prompt therapy since there has not been a research study that supports its effectiveness for children with autism or children with autism and childhood apraxia of speech.

Accordingly, I find the testimony and expert opinions of **Dr. Read, Lenzi, and Flannigan** to be more credible and more persuasive.

Based upon due consideration of the testimonial and documentary evidence presented at the hearing and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I also **FIND** as **FACT** the following:

1. The District's CBAP program is an ABA-based program that exceeds the standards of the Autism Program Quality Indicators (T1:11–17). During C.C.'s last year in the District, his classroom had a total of five students, one teacher, and four instructional staff members. (J-6; J-28.)
2. The District employs eight behaviorists, who are all BCBAs. One was assigned to C.C.'s class, and the behaviorists have an ongoing consultation with the teachers and Dr. Read. They are based within the building and are immediately available to respond to an issue in the classroom or an escalated behavior. (T1 24:12–25, 25:1–20.)
3. Related-services providers are in the classroom to ensure that skills including language and fine motor and daily living skills take place throughout the day. (T1 21:20–25, 22:1–6.)

4. The program also provided C.C. with interaction with the District's classroom community through the buddy program, where fourth and fifth graders come into the classroom to get to know the kids, and by participation in the activities of a normal school day, including art and music.

5. The behaviorists developed a comprehensive training program for CBAP staff. (R-11.)

6. The VB-MAPP, which helps identify areas of strength and areas of deficit across a wide variety of domains, is among the assessments used by the District to guide the development of the IEP goals and objectives.

7. C.C.'s VB-MAPP scores during his enrollment in the District for the 2022–2023 and 2023–2024 school years identified growth in his performance and demonstrated the progress he made in the CBAP program. C.C. did not regress on the VB-MAPP. (J-1; J-2; J-10.)

8. C.C.'s progress scores during his time in the District (R-1) "involve all of the skill domain areas that were being addressed within his IEP goals and objectives, as well as where he was and how we broke down each of those skills." (T1 34:24–25, 35:1–2.) The data indicates that the District was able to address all areas of educational need and that the cumulative progress reports show that C.C. requires specific procedures, but made slow progress, including through sets and learning and building skills. (R-1.)

9. In order to address C.C.'s behavioral challenges in the fall of 2022, interventions including a token motivational system, visual schedule, and blocking behavior and redirection were implemented. (J-20; T1 107:5–25, 108:1–12.)

10. While initially successful, by March 2023 the data collected on the behaviors in the classroom on aggression, SIBs, tantrums, and throwing indicated that the behaviors continued to occur and began to increase. (T1 108:13–23.) The District

then conducted an FBA with the parents' consent. (J-25.) The recommendations from the FBA were incorporated into the June 14, 2023, IEP as a part of the behavior intervention plan. (J-25; J-26; see also Joint Stipulation of Facts at ¶ 18.)

11. The analysis of the antecedent-behavior-consequence (A-B-C) data in the FBA suggested that aggression, SIBs, and tantrum behavior were likely maintained by multiple functions. (J-25 at 474.)

12. As a result of the FBA, a behavior intervention plan (J-28) was implemented for C.C. during the extended school year of 2023.

13. A functional analysis was completed to more precisely determine the function of the behavior in order to develop strategies to address the function of the behavior.

14. Based on the results of the functional analysis, the length of data collection for C.C.'s behaviors was modified and reduced to fifteen-second intervals from three-minute intervals. (J-6.) Lenzi credibly and persuasively testified that "the smaller the interval, the more sensitive measure you have of how frequently the behavior is occurring throughout the day." (T1 113:16–19.)

15. The behavioral data (R-9) establishes that through the end of the 2023–2024 school year the behavior intervention plan utilized by the District led to decreased behaviors by C.C. This data further demonstrates that the behavior intervention plan implemented by the District addressed C.C.'s behavioral needs to the level that it was not interfering with C.C.'s availability for learning. (T1 118:7–11.) The "most significant behaviors that we were looking at, the self injury, the aggression, were at very low levels" (T1 38:18–20), in a range from 0 to 3 percent. (R-9.)

16. The CBAP program additionally provides parent training and home visits to ensure school-to-home consistency. (T1 29:25, 30:1–16.)

17. The parents' primary concern was C.C.'s behaviors, specifically, SIBs. They reported to the District that C.C.'s behaviors at home were more intense and occurred for longer durations than observed in the school setting. D.C. testified that he did not observe C.C. in school and no data was taken on the intensity of the behaviors at either the school in the District or at SEARCH. The parents' reports of C.C.'s behaviors in the home were not consistent with his behavior in school. Flannigan credibly testified that while there was some tantruming, aggression, and SIBs in school, C.C. could be redirected.

18. D.C. conceded that by January 2023 he had gone into the school once and had accepted two visits to his home. Intermittent visits were offered by the District, and he participated in training five to six times. During the 2022–2023 school year J.C. went into the school two times, while D.C. never did. The District doubled the home programming from five to ten hours total beginning on January 2, 2024. (J-6; see also Joint Stipulation of Facts at ¶ 22.)

19. The home training contained specific goals (J-3; J-38) and the parents were provided with suggested strategies for toileting and addressing behaviors in the home setting. (J-34.) These strategies were not consistently implemented. Additionally, the District started an elopement plan for C.C.; however, it was not completed because the parents did not return additional necessary information.

20. The home parent-training program progress summary for the spring of the 2023–2024 school year stated the following regarding parent involvement:

Parent Involvement—C.C. is often home with his mother, J.C., when support staff works with him. J.C. is open to sharing about his school day as well as activities on the weekends and other time off from school, i.e., vacations and holiday breaks. J.C. cares for the youngest brother, T.C., during C.C.'s sessions. C.C.'s father is often working during C.C.'s sessions. When the father is not at work, C.C. engages with him and follows his instructions to use the bathroom and take medications.

[J-9 at 69.]

DISCUSSION AND CONCLUSIONS OF LAW

This case arises under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 to 1482. One purpose of the Act is to ensure that all children with disabilities have available to them a “free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A). In New Jersey, the district bears the burden of proof at 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.

The Act defines FAPE as special education and related services provided in conformity with the IEP. 20 U.S.C. § 1401(9). The Act, however, leaves the interpretation of FAPE to the courts. See Ridgewood Bd. of Educ. v. N.E. ex rel. M.E., 172 F.3d 238, 247 (3d Cir. 1999). In Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 203 (1982), the United States Supreme Court held that a state provides a handicapped child with FAPE if it provides personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. The Court reasoned that the Act was intended to bring previously excluded handicapped children into the public education systems of the states and to require the states to adopt procedures that would result in individualized consideration of and instruction for each child. Rowley, 458 U.S. at 189.

The Act did not impose upon the states any greater substantive educational standard than would be necessary to make such access to public education meaningful. Id. at 192. In support of this limitation, the Court quoted Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania, 334 F. Supp. 1257 (E.D. Pa. 1971) and 343 F. Supp. 279 (1972), and Mills v. Board of Education of the District of Columbia, 348 F. Supp. 866, 876 (D.D.C. 1972). Ibid. The Court reasoned that these two cases were the impetus of the Act; that these two cases held that handicapped children must be given access to an adequate education; and that neither of these two cases purported

any substantive standard. Id. at 192–93. The Court also wrote that available funds need only be expended “equitably” so that no child is entirely excluded. Id. at 193, n.15. Indeed, the Court commented that “the furnishing of every special service necessary to maximize each handicapped child’s potential is . . . further than Congress intended to go.” Id. at 199. Thus, the inquiry is whether the IEP is “reasonably calculated” to enable the child to receive educational benefits. Id. at 207.

The Third Circuit later held that this educational benefit must be more than “trivial.” See Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180 (3d Cir. 1988). Stated otherwise, it must be “meaningful.” Id. at 184. Relying on the phrase “full educational opportunity” contained in the Act, and the emphasis on “self-sufficiency” contained in its legislative history, the Third Circuit inferred that Congress must have envisioned that “significant learning” would occur. Id. at 181–82. The Third Circuit also relied on the use of the term “meaningful” contained in Rowley, as well as its own interpretation of the benefit the handicapped child was receiving in that case, to reason that the Court in Rowley expected the benefit to be more than “de minimis,” noting that the benefit the child was receiving from her educational program was “substantial” and meant a great deal more than a “negligible amount.” Id. at 182. Nevertheless, the Third Circuit recognized the difficulty of measuring this benefit and concluded that the question of whether the benefit is de minimis must be answered in relation to the child’s potential. Id. at 185. As such, the Third Circuit has written that the standard set forth in Polk requires “significant learning” and “meaningful benefit”; that the provision of “more than a trivial educational benefit” does not meet that standard; and that an analysis of “the type and amount of learning” of which a student is capable is required. Ridgewood, 172 F.3d at 247–48. Thus, the IEP must confer a meaningful educational benefit in light of a student’s individual needs and potential. See T.R. ex rel. N.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 578 (3d Cir. 2000).

In Endrew F. v. Douglas County School District, 580 U.S. 386 (2017), the United States Supreme Court clarified that while it had declined to establish any one test in Rowley for determining the adequacy of the educational benefits conferred upon all children covered by the Act, the statute and the decision point to a general approach: “To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably

calculated to enable a child to make progress appropriate in light of the child's circumstances." Endrew F., 580 U.S. at 399. Toward this end, the IEP must be "appropriately ambitious" in light of those circumstances. Id. at 402.

The Court continued that a student offered an educational program providing merely more than de minimis progress from year to year could hardly be said to have been offered an education at all, and that it would be tantamount to sitting idly until they were old enough to drop out. Id. at 402–03. The Act demands more, the Court asserted. "It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." Ibid.

Thus, in writing that the IEP must be "appropriately ambitious in light of the child's circumstances," the Court sanctioned what has already been the standard in New Jersey: the IEP must be reasonably calculated to provide significant learning and meaningful benefit in light of a student's individual needs and potential.

An IEP must not only be reasonably calculated to provide significant learning and meaningful benefit in light of a student's needs and potential, but also be provided in the least-restrictive environment. See 20 U.S.C. § 1412(a)(5)(A). To the maximum extent appropriate, children with disabilities are to be educated with children without disabilities. Ibid. Thus, removal of children with disabilities from the regular-education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. Ibid. Indeed, this provision evidences a "strong congressional preference" for integrating children with disabilities in regular classrooms. Oberti v. Bd. of Educ. of Clementon Sch. Dist., 995 F.2d 1204, 1214 (3d Cir. 1993).

The "measure and adequacy of an IEP can only be determined as of the time it is offered to the student, and not at some later date. . . . Neither the statute nor reason countenance 'Monday Morning Quarterbacking' in evaluating the appropriateness of a child's placement." Carlisle Area Sch. v. Scott P., 62 F.3d 520, 534 (3d Cir. 1995). However, a procedural violation with respect to the implementation of the IEP may rise to a substantive violation justifying compensatory education or tuition reimbursement, but

only where the procedural defects caused such substantial harm that a FAPE was denied. C.H. v. Cape Henlopen Sch. Dist., 606 F.3d 59, 66–67 (3d Cir. 2010). Substantive harm is demonstrated when “procedural inadequacies (i) [i]mpeded the child’s right to a FAPE, (ii) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or (iii) caused a deprivation of the educational benefit.” Coleman v. Pottstown Sch. Dist., 983 F. Supp. 2d 543, 564 (E.D. Pa. 2013), aff’d, 581 F. Appx. 141 (3d Cir. 2014);⁴ see also Rodrigues v. Fort Lee Bd. of Educ., 458 Fed. Appx. 124, 127 (3d Cir. 2011) (finding that a lack of measurable goals in an IEP was a procedural error but did not affect a student’s substantive rights or deny a FAPE where student was mainstreamed and progress was measured by grades and state proficiency assessments); N.M. ex rel. M.M. v. Sch. Dist. of Philadelphia, 394 Fed. Appx. 920, 923 (3d Cir. 2010) (finding that IEP lacking annual goals relating to some of a student’s needs stemming from his disability was not a procedural flaw rising to a substantive harm because the IEP still provided a FAPE); Schoenbach v. Dist. of Columbia, 309 F.Supp.2d 71, 83 n.10 (D.D.C. 2004) (“failure to implement all services outlined in an IEP does not constitute a per se violation”); Melissa S. v. Sch. Dist. of Pittsburgh, 183 Fed. Appx. 184, 187–88 (3d Cir. 2006) (assuming the student was impermissibly left alone several times, “this is not the kind of substantial or significant failure to implement an IEP that constitutes a violation of the IDEA”).

The issues in this matter, as set forth in the March 12, 2025, prehearing order, are: whether the District’s IEP for C.C. dated May 22, 2024, offered him a FAPE; whether the May 22, 2024, IEP denied C.C. a FAPE; whether SEARCH Learning Group is an appropriate educational placement for C.C.; whether SEARCH Learning Group is the least restrictive environment for C.C.; whether the parents are entitled to reimbursement for the costs of C.C.’s programming at SEARCH Learning Group; whether C.C. was deprived of a FAPE between November 7, 2022, and June 14, 2024; and whether C.C. is entitled to compensatory education.

⁴ Unpublished federal court decisions and administrative decisions are not precedential. They are referenced here because they provide relevant guidance.

The May 22, 2024, IEP continued C.C.'s placement in CBAP program with speech/language therapy four times a week individually, occupational therapy twice a week individually, and adaptive physical education five times a week for thirty minutes. ESY programming was offered from July 2, 2024–August 6, 2024, consisting of CBAP four hours a day, four days a week, with individual occupational therapy once a week for thirty minutes and individual speech/language therapy twice a week for thirty minutes. The IEP included a behavior intervention plan for C.C. He also was offered ten hours of home program/parent training per week, with 50 percent of the time being devoted to parent training. The home programming/parent training was provided during extended breaks from school as well. (J-11; Joint Stipulation of Facts at ¶ 24.)

Petitioners contend that the “District’s proposed program fails to meet the standards required by law and denies [C.C.] the free, appropriate public education to which he is entitled,” and “not only failed to provide [C.C.] with a program in which significant and meaningful progress could occur, but also shows that [C.C.] did not make meaningful progress in light of his circumstances; in fact he regressed.” (Pet’r’s Br. at 8.) Additionally, “[f]or [C.C.] developing an educational program to enable remediation of his serious and concerning self-injurious behaviors is paramount.” (*Id.* at 9.) These arguments are unsupported by the record. Conversely, the District persuasively argues that the “evidence presented at the hearing overwhelmingly indicates that the District provided C.C. with individualized instruction based upon his specific needs and areas of deficit, as identified on the VB-MAPP and based upon input from the parents.” (Resp’t’s Br. at 22.) Additionally, the in-district program “provided C.C. with the opportunity to make appropriately ambitious educational progress in his areas of disability in light of his circumstances. This fulfills the requirements for the Board to offer him a free appropriate public education.” (*Ibid.*)

The District’s CBAP program is an ABA-based program that exceeds the standards of the Autism Program Quality Indicators and contains a comprehensive training program for CBAP staff developed by the behaviorists. (T1:11–17; R-11.) Related-services providers are also in the classroom to ensure that skills including language and fine motor and daily living skills take place throughout the day. (T1 21:20–25, 22:1–6.) Petitioner’s own expert witness, Dr. Fiorile, noted that the District has a “gold standard” reputation.

Dr. Read persuasively testified that C.C. derived meaningful benefit from the CBAP program in the 2022–2023 and 2023–2024 school years. C.C.’s progress scores during his time in the District (R-1) “involve all of the skill domain areas that were being addressed within his IEP goals and objectives as well as where he was and how we broke down each of those skills.” (T1: 34:24–25, 35:1–2.) The data indicates that the District was able to address all areas of educational need and that the cumulative progress reports show that C.C. requires specific procedures, but made slow progress, including through sets and learning and building skills. (R-1.) C.C.’s progress was also demonstrated by his VB-MAPP scores during his enrollment in the District for the 2022–2023 and 2023–2024 school years, which identified growth in his performance and demonstrated the progress he made in the CBAP program. C.C. did not regress on the VB-MAPP. (J-1; J-2; J-10.) The petitioner’s expert witness, Dr. Fiorile, conceded that the VB-MAPP scores going up indicated “a little bit of progress.”

The primary concern of the parents, as noted by D.C. in his testimony and in documentary evidence in the record, was C.C.’s behaviors, most importantly, SIBs. Beginning in the fall of 2022, C.C.’s behavioral challenges were addressed by interventions. While initially successful, by March 2023 the data collected on the behaviors in the classroom on aggression, SIBs, tantrums, and throwing indicated that the behaviors continued to occur and began to increase. An FBA was then conducted by the District, with the recommendations incorporated into the June 14, 2023, IEP as a part of the behavior intervention plan. (J-25; J-26; Joint Stipulation of Facts at ¶ 18.) Additionally, as a result of the FBA a behavior intervention plan (J-28) was implemented for C.C. during the extended school year of 2023. Based on the results of the functional analysis, which was completed to more precisely determine the function of the behavior in order to develop strategies to address the function of the behavior, the length of data collection for C.C.’s behaviors was modified and reduced to fifteen-second intervals from three-minute intervals. (J-6.) Dr. Fiorile conceded that this is within the range she recommended. As Lenzi testified, “the smaller the interval, the more sensitive measure you have of how frequently the behavior is occurring throughout the day.” (T1 113:16–19.) Through the end of the 2023–2024 school year, the behavioral data demonstrated that the District’s behavior intervention plan decreased behaviors by C.C. to very low

levels, in a range of 0 to 3 percent. (R-9.) This data further demonstrates that the behavior intervention plan implemented by the District addressed C.C.'s behavioral needs to the level that it was not interfering with C.C.'s availability for learning. (T1 118:7–11.)

Accordingly, I **CONCLUDE** that C.C. derived a meaningful educational benefit from the CBAP program during the 2022–2023 and 2023–2024 school years as demonstrated by his progress in all areas of educational need and that the behavior intervention plan effectively addressed C.C.'s behavioral difficulties. I **FURTHER CONCLUDE** that C.C. would have continued to derive a meaningful educational benefit from participation in the CBAP program had he not been enrolled in SEARCH for the 2024–2025 school year.

The parents reported to the District that C.C.'s behaviors at home were more intense and occurred for longer durations than observed in the school setting. However, no data was taken on the intensity of SIBs either at the school in the District or at SEARCH, and the parents' reports of C.C.'s behaviors in the home were not consistent with his behavior in school. Flannigan credibly testified that while there was some tantruming, aggression, and SIBs in school, C.C. could be redirected.

The CBAP program additionally provides parent training and home visits to ensure school-to-home consistency. (T1 29:25, 30:1–16.) By January 2023, D.C. had only come into the school once and had accepted two visits to his home. Intermittent visits were offered by the District, and he participated in training five to six times. During the 2022–2023 school year J.C. came into school two times, while D.C. never did. The parents also did not return the additional necessary information for the completion of an elopement plan. The home training contained specific goals (J-3; J-38), and the parents were provided with suggested strategies for toileting and addressing behaviors in the home setting. (J-34.) These strategies were not consistently implemented. Finally, the District doubled the home programming from five to ten hours total beginning on January 2, 2024. (J-6; Joint Stipulation of Facts at ¶ 22.) In sum, the record demonstrates that the parents did not fully avail themselves of the training and supports offered in the home. (J-9 at 69.) I therefore **CONCLUDE** that the District offered appropriate supports to C.C.'s family.

Finally, the CBAP program offers C.C. the opportunity to interact with the District's classroom community through the buddy program and by participation in the activities of a normal school day, including art and music. I therefore **CONCLUDE** that the CBAP program was the least restrictive environment for C.C. for the 2022–2023, 2023–2024, and 2024–2025 school years.

Based on the foregoing, I **CONCLUDE** that the IEP proposed by the District on May 22, 2024, offered a free and appropriate public education in the least restrictive environment to C.C. I **FURTHER CONCLUDE** that C.C. was provided a free and appropriate public education in the least restrictive environment in the 2022–2023 and 2023–2024 school years. Having reached these conclusions, it is not necessary to address whether placement at SEARCH is appropriate, and whether petitioners are entitled to reimbursement and compensatory education.

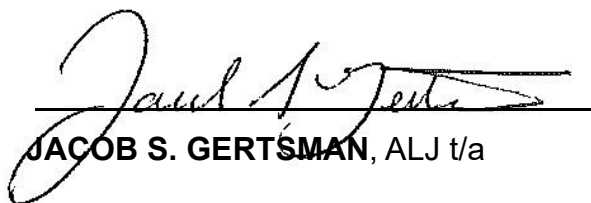
ORDER

Based on the foregoing, I hereby **ORDER** that the due process petition is **DISMISSED**.

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 28, 2025

DATE



JACOB S. GERTSMAN, ALJ t/a

Date Received at Agency:

Date Mailed to Parties:

JSG/cab

APPENDIX

Witnesses

For petitioners:

Dr. Carole Fiorile
D.C.
Alexandra Boulanger
Nicole Journe

For respondent:

Dr. Allyson Read
Michelle Lenzi
Kelly Flannigan

Exhibits

Joint:

- J-1 VB-MAPP Master Scoring Form,, dated April 15, 2022, Bates #4–6
- J-2 VB-MAPP Master Scoring Form dated June 9, 2023, Bates #7
- J-3 Home Program/Parent Training Goals and Objectives, dated November 28, 2023, Bates #8–11
- J-4 Proposed Behavior Intervention Plan October 2023, Bates #12–16
- J-5 Functional Analysis by Michele Lenzi, MA, BCBA, dated October 17, 2023, Bates #17–22
- J-6 IEP dated November 28, 2023, Bates #28–62, 541–44
- J-7 Notes from Home Parent Training Visit by Alyssa Barreto and Ms. Lenzi February 21, 2024, Bates #63–65
- J-8 Incident Report March 15, 2024, Bates #66
- J-9 Home Parent Training Program Progress Summary 2023–2024 school year, Bates #67–69
- J-10 VB-MAPP—Milestones, dated May 17, 2024, Bates #70–82

- J-11 IEP dated May 22, 2024, Bates #96–133, 85–95
- J-12 Progress Report—Spring 2023–2024 school year, Bates #134–57
- J-13 Occupational Therapy Report by Maria Santisteban-Armanini, MS, OTR/L, dated July 20, 2017, (sic) Bates #197–200
- J-14 Pediatric Neurodevelopmental Evaluation by Hugh Bases, M.D., dated May 24, 2019, Bates #201–02
- J-15 Educational Evaluation by Debbie Bune, MA, LDT-C, dated August 16, 2021, Bates #204–10
- J-16 Speech and Language Evaluation by Caitlin Celebre, MA, CCC-SLP, dated August 27, 2021, Bates #211–28
- J-17 Psychological Evaluation by Karen Martin, MA, dated August 29, 2021, Bates #221–28
- J-18 Social History prepared by Meredith Kurland-Ross, LSW, dated August 30, 2021, Bates #229–34
- J-19 Eligibility/Classification Conference Report, dated September 13, 2021, Bates #235–41
- J-20 IEP dated June 8, 2022, Bates #352–401
- J-21 Progress Report—Fall 2022–2023 school year, Bates # 402–18
- J-22 C.C. School Schedule 2022–2023 school year, Bates # 419
- J-23 Progress Report—Winter 2022–2023 school year, Bates # 420–38
- J-24 Progress Report—Spring 2022–2023 school year, Bates # 439–62
- J-25 Functional Behavioral Assessment by Ms. Lenzi, dated June 8, 2023, Bates #463–74
- J-26 Home Functional Behavioral Assessment by Ms. Lenzi, dated June 8, 2023, Bates #475–80
- J-27 VB-MAPP—Milestones dated June 9, 2023, Bates #481–93
- J-28 IEP dated June 14, 2023, Bates #494–540
- J-29 Progress Report—Winter 2023–2024 school year, Bates #545–67
- J-30 Skill Acquisition Graphs 2024, Bates #570–632
- J-31 Non-Productive Behavior Graphs, Bates #633–39
- J-32 E-mails—Michele Lenzi, Bates #640–48
- J-33 E-mails—Alyssa Barreto, Bates #649–62
- J-34 File—Michele Lenzi, Behaviorist, Bates #681–857, 866–79

- J-35 Parent correspondence, Bates #880–911
- J-36 Health file, Bates #912–29
- J-37 E-mails—Kelly Flannigan, Bates #930–48
- J-38 Home Program/Parent Training Goals and Objectives May 2024–May 2025, Bates #960–63
- J-39 Progress Report 2023–2024 school year, Bates #964–86
- J-40 VB-MAPP, dated May 15, 2024, Bates #987–89

For petitioners:

- P-1 Independent Educational Review by Carol A. Fiorile, Ph.D., BCBA-D, SAS, NYS LBA, Bates #1–8
- P-2 Curriculum Vitae of Carol A. Fiorile, Ph.D., BCBA-D, SAS, NYS LBA, Bates #9–17
- P-3 Independent Educational Review by Alexandra Boulanger, M.Ed., BCBA, dated August 28, 2024, Bates #18–54
- P-4 Curriculum Vitae of Alexandra Boulanger, M.Ed., BCBA, Bates #55–57
- P-5 Not admitted
- P-6 Left intentionally blank
- P-7 SEARCH—Demand Fading Graphs, August–December 2024, Bates #283–84
- P-8 SEARCH—Goals and Objectives, October 2024, Bates #285–310
- P-9 Not admitted
- P-10 SEARCH—Ongoing Data Summary dated November 27, 2024, Bates #319
- P-11 SEARCH—Skills Acquisition Graphs December 2024, Bates #320–41
- P-12 Not admitted
- P-13 SEARCH—VBMAPP Barriers, dated January 28, 2025, Bates #349
- P-14 SEARCH—VBMAPP Transitions, dated January 28, 2025, Bates #349
- P-15 SEARCH—VB-MAPP Milestones, dated January 28, 2025, Bates #350
- P-16 Not admitted
- P-17 Left intentionally blank
- P-18 SEARCH—Skills Acquisition Graphs 2025, Bates #442–61

- P-19 SEARCH—Learner Protocol, Bates #462–64
- P-20 SEARCH—Graphs 2025, Bates #465–75
- P-21 SEARCH—Interfering Behaviors, Bates #476
- P-22 SEARCH—Demand Fading Graphs 2025, Bates #477–78
- P-23 SEARCH Graphs, Bates # 479–89
- P-24 Curriculum Vitae of Nicole M. Journe, Bates #490–93
- P-25 Emails, Bates #494–552⁵
- P-26 Not admitted
- P-27 Not admitted
- P-28 Not admitted
- P-29 Not admitted
- P-30 Not admitted
- P-31 Letter from Andrew I. Meltzer, Esq., to Robin Ballard, Esq., dated July 1, 2024, Bates #559–60
- P-32 Not admitted
- P-33 SEARCH—Ongoing Data Summary, dated November 27, 2024, Bates #567–92
- P-34 Not admitted
- P-35 Not admitted
- P-36 Not admitted
- P-37 Not admitted
- P-38 Not admitted
- P-39 Not admitted
- P-40 Not admitted
- P-41 Not admitted
- P-42 Not admitted
- P-43 Annual Review Meeting Agenda dated May 22, 2024, Bates #709–10
- P-44 Not admitted
- P-45 SIBs—Graphs, Bates #715–16
- P-46 NPB—Aggression Graphs, Bates #717–28
- P-47 Videos of C.C.’s behavior, one dated February 28, 2024, and two dated

⁵ Page 539 was replaced, and page 539(a) was subsequently added.

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P-48 Not admitted

P-49 Not admitted

P-50 SEARCH—Spring 2025 data, Bates #884–930

P-51 Independent Educational Review by Carol Fiorile, Ph.D., BCBA-D, SAS, NYS LBA, dated March 2, 2023, Bates #931–49

P-52 Independent Educational Review by Alexandra Boulanger, M.Ed., BCBA, dated May 9, 2025, Bates #950–65

For respondent:

R-1 Skill Acquisition Data 2022–2024

R-2 Report prepared by Dr. Allyson Read and Michele Lenzi, dated January 17, 2025

R-3 Resume of Dr. Read

R-4 Resume of Ms. Lenzi

R-5 Programs observed/data taken by Ms. Lenzi during observation by A. Boulanger

R-6 Resume of Kelly Flannigan

R-7 E-mail correspondence between K. Flannigan and parents, March 2025

R-8 Resume of Alyssa Barreto

R-9 Skill Acquisition Graphs 2022–2024

R-10 Parent Involvement/Communication in CBAP

R-11 Staff Training for CBAP

R-12 Morning Meetings for CBAP

R-13 Classroom Procedures for CBAP

R-14 CBAP Behavior Data/Behavior Notebook Procedure

R-15 Consultants for CBAP

R-16 Information about Preference Assessments, Inclusion/Mainstreaming and Functional Assessment