



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

D.M. ON BEHALF OF A.M.,

OAL DKT. NO. EDS 04792-25

AGENCY DKT. NO. 2025-38457

v.

**SAYREVILLE BOROUGH
BOARD OF EDUCATION,**

Respondent.

D.M., petitioner-respondent, pro se

Douglas M. Silvestro, Esq., for respondent-petitioner, Sayreville Borough Board
of Education (The Busch Law Group, LLC, attorneys)

Record Closed: June 12, 2025

Decided: July 29, 2025

BEFORE **KIM C. BELIN**, ALJ:

STATEMENT OF THE CASE

This matter arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 to 1482. In this request for due process hearing, D.M., on behalf of A.M., seeks an out-of-district (OOD) placement at a therapeutic school. Is the current in-district placement appropriate for A.M.? Yes, the law requires that an individualized education program (IEP) be reasonably calculated to provide significant learning and meaningful benefit in the least restrictive environment.

PROCEDURAL HISTORY

The petitioner, on behalf of her grandson, A.M., filed a petition of appeal dated September 27, 2024. On March 12, 2025, the Office of Special Education transmitted this matter as a contested case to the Office of Administrative Law (OAL) pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -23. On March 24, 2025, the Sayreville Board of Education (respondent/Board) filed a petition for due process with a docked number of EDS 05111-25, denying D.M.'s request for independent education evaluations (IEE) at the Board's expense. On March 25, 2025, the Office of Special Education transmitted this matter as a contested case to the OAL pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -23. The Board requested that the two matters be consolidated. The petitioner objected. By order dated April 9, 2025, the undersigned consolidated the two matters.

A hearing was held on June 11, 2025, during which D.M. withdrew her request for the IEEs, and the Board withdrew its petition (EDS 05111-25) on June 12, 2025¹, and the record closed on June 12, 2025.

DISCUSSION AND FINDINGS OF FACT

The following **FACTS** are undisputed, and I therefore **FIND**:

A.M. was born on February 3, 2011. For the 2024-25 school year, he attended Sayreville Middle School, completing the eighth grade. He was evaluated and deemed eligible for special education and related services under the classification of Other Health Impaired (OHI). (R-1.) He lives with his grandmother, D.M., in Parlin, New Jersey. D.M. asserts that A.M. does well academically but does not receive the emotional support he needs from the respondent. His current IEP, dated May 30, 2024, assigned him to an in-class resource (ICR) setting for all academic subjects once a day for eighty minutes, except for science and social studies, which are each forty minutes per day. (*Ibid.*) The

¹By Order dated July 23, 2025, EDS 05111-25 was severed from the instant matter.

IEP also provides special transportation. (Ibid.) He is with general education students 80 percent of the school day. (Ibid.)

In a letter dated April 2, 2025, Dr. Sherie Novotny, A.M.'s psychiatrist, recommended that A.M. be placed in an OOD placement. She diagnosed him with attention-deficit/hyperactivity disorder (ADHD), bipolar disorder, and post traumatic stress disorder (PTSD). (P-3.) His IEP also identified mixed anxiety and depression disorder as disabilities. (R-1.) Staff also has consults with the child study team (CST), related-services providers, the behavior specialist, and the guidance counselor as needed. (Ibid.)

His grades show that A.M.'s lowest grade was a B in the 2022-23 school year, a C+ in the 2023-24 school year, and a C- in the 2024-25 school year. (R-2.) His disciplinary record shows that he had two administrative detentions in the 2021-22 school year, an administrative conference in the 2022-23 school year, a three-day out-of-school suspension for fighting and an administrative conference in the 2023-24 school year, and an administrative detention and a one-day in-school suspension in the 2024-25 school year. (Ibid.)

Testimony

For the Petitioner:

D.M. testified that she wanted an OOD placement to support A.M.'s mental health and social/emotional needs. A.M. was smart, but he suffered from mental health issues. Over the past three years, his therapists had recommended a therapeutic school for him. He has been bullied since sixth grade, and nothing was done to resolve the issues. He did not feel safe and did not feel that anyone understood him. On or about the first week of June or the last week of May, marinara sauce was thrown in his face. In response, he met with the vice principal. Educational, psychological, and psychiatric evaluations were done.

She stated on cross-examination that A.M. met with a private psychiatrist once per month and had intensive in-home therapy twice per week. He did not receive counseling

in school. She believed there was a conflict of interest with Effective School Solutions (ESS) and A.M.'s private therapists.

For the Respondent:

David Knaster (Knaster), is employed by the respondent as a school psychologist. He has worked in the Sayreville school district for thirty years. He has been the school psychologist for seventeen years. He also served as the supervisor of special education for four years, the director of pupil-special services for six years, and assistant superintendent for three years. In his current position, he reviews and provides feedback on IEPs.

The ICR setting was the least restrictive environment. There were two teachers in the general education classroom with special education programming. Class size was approximately eighteen to twenty-four students.

He recalled that D.M. requested an OOD placement in August 2020, however, the IEP team did not believe an OOD placement was needed. A.M. had been an excellent student since fifth grade. A.M. met expectations and was on grade level for language arts but was below grade level in math.

The respondent contracted with ESS, a third-party vendor, which provided services to students and their families similar to a partial hospital program. For example, there were two licensed counselors on site that provided individual and family counseling, coaching, and psychiatry access. D.M. completed an intake form in September 2024; however, she stopped the process because she refused to give consent for ESS to share information about the family with the school staff. The bullying allegations were investigated and determined to be unfounded.

On cross-examination, he stated that the ICR setting allowed special education students to be in a general education class. The ICR teacher supported the students who had IEPs. He did not believe there was a conflict of interest in having ESS and private psychiatric services. He called this a "linkage" that allowed the professionals to

communicate with each other. Knaster did not believe an OOD placement was appropriate because it would provide the same counseling and communication with the parents as the district was providing. He believed A.M. could succeed in the district even with his mental issues. There were staff trained in mental health. A.M. was in the top 10 percent of the special education students in the district, and his prognosis for success was excellent.

ADDITIONAL FINDINGS OF FACT

In order to assess credibility, the witness's interest in the outcome, motive, or bias should be considered. Furthermore, 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). In addition, the fact finder should consider the witness's ability to know what s/he is talking about, the reasonableness of the testimony, the witness's demeanor when testifying, the witness's candor or evasion, and the presence of inconsistent or contradictory statements.

In determining credibility, I am aware that a District employee would want to support the program District staff developed for the child and would believe that the District's program would provide the child with a free appropriate public education. I am also aware that the petitioner would want the best program for her grandchild. Nevertheless, the documentary evidence presented supports the testimony of Mr. Knaster, and thus, I **FIND** that Mr. Knaster's testimony was more credible. He testified credibly about his interactions and genuine concern for A.M.'s success in school. The evidence presented showed an IEP that contained modifications and supports requested by D.M. to support A.M. and placement in the least restrictive environment. His grades reflect that he is making meaningful progress. He has a few disciplinary infractions; however, there is no evidence of behavioral concerns in school. Indeed, the 2024–25 IEP contains comments from his teachers stating that A.M. is motivated, on time for class, organized, and retains information. (R-1 at 5.)

Conversely, D.M. testified that A.M. no longer wants to attend school and has emotional “melt-downs” when he gets home. To support D.M.’s claim that an OOD placement is needed, she relies upon the letter from Dr. Novotny dated April 2, 2025, which states that A.M. is struggling in the public school setting and would benefit from an OOD placement. However, there is no proof that Dr. Novotny observed A.M. in the public school, private school, or home environments.

Having considered the testimonial and documentary evidence presented, I **FIND** the following additional **FACTS**:

A.M. was a student at the Sayreville Middle School, where he completed the eighth grade, and he is scheduled to attend high school in the 2025–26 school year. The respondent developed an IEP that included numerous modifications to address his OHI classification. These modifications include: communication between D.M. and the case manager when A.M. is experiencing an emotional crisis that renders him unable to complete his homework, preferential seating, tests and quizzes announced one week prior to assessment, review of missed material after a break is taken, when needed, up to an additional 50 percent of the time provided to other students to complete classwork and tests/quizzes, as needed, providing a private warning prior to imposing discipline (i.e. saying the word “warning” or “reset”), breaking down tasks into manageable units, discussion of behavior issues privately with A.M., an electronic communication log that goes home daily, access to fidgets throughout the day, providing frequent verbal and/or non-verbal cues to assist with transitions in the classroom schedule, review of his schedule daily at the beginning of the school year to prepare him and set expectations and continue as needed for the final thirty days of the school year, allowing A.M. to chew gum in the classroom to assist with self-calming and the ability to remain focused, as needed, allowing A.M. to wear noise-canceling headphones during work in the classroom or in the lunchroom, as needed, frequent breaks throughout the school day as needed, allowing A.M. to read and draw, which helps A.M.’s anxiety, providing a space in the classroom where A.M. can take breaks, as needed, small group testing, as needed, access to a “calm down box” when requested, providing a hard copy of study guides three days in advance, answer verification two days in advance, weekly check-ins with the case manager, privately check for understanding, not counting the study guide as a homework

grade if A.M. is the only student being given a study guide, and allowing A.M. to see the counselor as requested.

The IEP also provides prompting, queuing, and redirecting student participation as supplementary aids and services. School staff are permitted to consult with the CST, related-services providers, behavioral specialist, and the guidance counselor if needed.

At the IEP meeting held on July 23, 2024, the petitioner submitted recommendations from Dr. Novotny and Mr. Devin White, A.M.'s in-home therapist. These recommendations included longer test times, preferential seating, turning in homework late, and seeing the counselor as requested. All these recommendations were already listed in the IEP. Dr. Novotny also recommended in-school counseling; however, D.M. requested ESS services.

D.M. completed the ESS intake process in September 2024, but refused to give consent for ESS to share information with school staff, and thus, her application was not processed.

There are clearly defined academic goals with benchmarks, and there are no behavioral interventions included in the IEP.

LEGAL ANALYSIS AND CONCLUSIONS

This case arises under the IDEA, 20 U.S.C. §§ 1400 to 1482. One purpose of the IDEA, among others, is to ensure that all children with disabilities have available to them a “free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A). In short, the IDEA defines “free appropriate public education” (FAPE) as special education and related services provided in conformity with the IEP. See 20 U.S.C. § 1401(9). A FAPE and related services must be provided to all students with disabilities from age three through twenty-one. N.J.A.C. 6A:14-1.1(d). A FAPE means special education and related services that: a) have been provided at public expense, under public supervision and

direction, and without charge; b) meet the standards of the state educational agency; c) include an appropriate preschool, elementary, or secondary school education in the state involved; and d) are provided in conformity with the IEP required under § 614(d) of the IDEA (20 U.S.C. § 1414(d)). 20 U.S.C. § 1401(9); N.J.A.C. 6A:14-1.1 et seq. The responsibility to deliver these services rests with the local public school district. N.J.A.C. 6A:14-1.1(d).

To provide a FAPE, a school district must develop and implement an IEP. N.J.A.C. 6A:14-3.7. An IEP is “a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” Sch. Comm. of Burlington v. Dep’t of Educ. of Mass., 471 U.S. 359, 368 (1985). An IEP should be developed with the participation of parents and members of a district board of education’s CST who have participated in the evaluation of the child’s eligibility for special education and related services. N.J.A.C. 6A:14-3.7(b). A complete IEP must contain a detailed statement of annual goals and objectives. N.J.A.C. 6A:14-3.7(e)(2). It must contain both academic and functional goals that are, as appropriate, related to the New Jersey Student Learning Standards of the general education curriculum and “be measurable,” so both parents and educational personnel can be apprised of “the expected level of achievement attendant to each goal.” Ibid. Further, such “measurable annual goals shall include benchmarks or short-term objectives” related to meeting the student’s needs. N.J.A.C. 6A:14-3.7(e)(3). The New Jersey Supreme Court has recognized that “[w]ithout an adequately drafted IEP, it would be difficult, if not impossible, to measure a child’s progress, a measurement that is necessary to determine changes to be made in the next IEP.” Lascari v. Bd. of Educ. of Ramapo Indian Hills Reg’l Sch. Dist., 116 N.J. 30, 48 (1989).

The IEP team should consider the strengths of the student and the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluations of the student; the student’s language and communication needs; and the student’s need for assistive technology devices and services. The IEP establishes the rationale for the pupil’s educational placement, serves as the basis for program implementation, and complies with the mandates set forth in N.J.A.C. 6A:14-1.1 to -10.2.

The IEP must be reasonably calculated to confer some educational benefit. Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176 (1982).

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

Not only must an IEP be reasonably calculated to provide significant learning and meaningful educational benefit, but it must 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 the Borough of Clementon Sch. Dist., 995 F.2d 1204, 1214 (3d Cir. 1993).

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

placement. However, the Supreme Court reversed, finding that an IEP need not aim for grade level achievement but should be appropriately ambitious in light of the child's circumstances and "tailored to the unique needs of" a particular child." Id. at 401–02 (citation omitted).

Neither parents nor courts, however, have a right to compel a specific methodology in educating a student:

However, as has been established, "once a court determines that the requirements of the Act have been met" neither parents nor courts have a right to compel a school district to employ a specific methodology in educating a student.

[W.R. v. Union Beach Bd. of Educ., 2011 U.S. App. LEXIS 3131 (Feb. 17, 2011) (quoting Rowley, 458 U.S. at 208).]

The appropriateness of an IEP is not determined by a comparison of a private school and the program proposed by the district. S.H. v. State-Operated Sch. Dist. of Newark, 336 F.3d 260, 271 (3d Cir. 2003). Rather, the pertinent inquiry is whether the IEP offered a FAPE and the opportunity for significant learning and meaningful educational benefit within the least restrictive environment.

Here, the 2024–25 IEP was sufficiently individualized for A.M. to permit continuing meaningful progress, considering his math and mental/emotional challenges. The IEP provides for A.M. to be in the ICR setting with clearly defined academic goals and benchmarks. Several teachers reported that A.M. was making meaningful progress. There are also extensive modifications and supplemental supports for A.M. and staff. The one service not included is in-school counseling. This was not an omission but the result of D.M.'s refusal to consent to allow communication between ESS staff and school staff. D.M. stated there is a conflict; however, it is unclear to this tribunal what the nature of the conflict is.

Decisions relating to the development and implementation of an IEP rest with the IEP team, which includes the CST and the parent(s)/guardian(s) of the student. A disagreement between the parent(s)/guardian(s) of the student and the CST, however,

does not mean that the parent(s)/guardian(s) were denied a meaningful opportunity to participate in the development of the IEP. Indeed, CSTs are obligated to recommend or continue only those programs they deem appropriate. Stated otherwise, the CST cannot recommend an IEP that is inappropriate. If the parent(s)/guardian(s) disagree with the proposed IEP, the recourse is to file a petition for due process. See L.G. v. Fair Lawn Bd. of Educ., 2011 U.S. Dist. LEXIS 69232 (June 27, 2011).

To be sure, a school district's proposed placement is considered appropriate if it meets the student's unique needs and benefits the student's educational progress, even if a parent disagrees. See D.Y. ex rel. M.Y. v. Hopewell Valley Reg'l Bd. of Educ., EDS 8203-04, Initial Decision (Oct. 18, 2005), <http://njlaw.rutgers.edu/collections/oal/>.

Significantly, "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." Fuhrmann v. E. Hanover Bd. of Educ., 993 F.2d 1031, 1040 (3d Cir. 1993); see also M.M. & A.M. ex rel. R.M. v. S. Brunswick Bd. of Educ., 2001 N.J. AGEN LEXIS 677 (Sept. 5, 2001) (where the tribunal noted that later factual developments are of little relevance when determining the appropriateness of an IEP).

D.M. maintains, however, that A.M. has emotional challenges that are not being addressed. Her proof is that he no longer wants to attend school and has "melt-downs" when he gets home from school. However, a preponderance of the evidence does not exist that the respondent failed to provide A.M. with a FAPE because he no longer wants to attend school and melts down when he gets home.

The weight of the evidence shows that A.M. is making progress in all areas academically and is not a behavioral problem at school. The recommendations from Dr. Novotny and Mr. White were included in the IEP. The in-school counseling was not implemented because of the petitioner's actions. Dr. Novotny's recommendation for an OOD placement lacks credibility because she did not observe A.M. in the school setting or at home but relied upon D.M.'s subjective reports.

Finally, the IEP for 2024–25 was not only reasonably calculated to provide significant learning and meaningful educational benefit but also in the least restrictive environment, as case law is clear that the 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. In this case, the least restrictive environment is the ICR setting, which allows A.M. to be with his general education peers 80 percent of the school day with the use of numerous modifications and supplemental supports. Although a child with disabilities might make greater academic progress in an OOD program, placement does not necessarily warrant excluding that child from an in-district program and placement.

Accordingly, I **CONCLUDE** that the Board met its obligation to offer A.M. a FAPE as that term is defined by law, and developed an IEP that was reasonably calculated to confer a meaningful educational benefit on A.M. The IEP was a fully developed education plan, containing critical modifications and interventions designed to address his specific learning needs, and the progress reports produced at the hearing showed evidence of progress.

ORDER

Based upon the foregoing, I **ORDER** that the petitioner's due process appeal is **DISMISSED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2024) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516 (2024). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education.

July 29, 2025

DATE

A handwritten signature in black ink that reads "Kim C. Belin". The signature is written in a cursive, flowing style. It is positioned above a solid horizontal line.

KIM C. BELIN, ALJ

Date Received at Agency:

Date Mailed to Parties:

KCB/sw/am

APPENDIX

Witnesses

For petitioner

D.M.

For respondent

David Knaster

Exhibits

For petitioner:

- P-1 Letter dated March 26, 2025
- P-2 Letter dated March 31, 2025
- P-3 Dr. Sherie Novotny letter dated April 2, 2025

For respondent:

- R-1 IEP dated May 30, 2024
- R-2 Grades and discipline reports
- R-3 Not admitted
- R-4 Not admitted
- R-5 Resume for David Knaster
- R-6 Letter to OSEP with petition