



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**FINAL DECISION**

OAL DKT. NO. EDS 06753-25

AGENCY DKT. NO. 2025-38976

**E.N. AND S.N. ON BEHALF OF D.N.,**

Petitioners,

v.

**CINNAMINSON TOWNSHIP**

**BOARD OF EDUCATION,**

Respondent.

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**Sarah E. Zuba, Esq.,** for petitioners (Reisman Carolla Gran, LLP, attorneys)

**Danielle Pantaleo, Esq.,** for respondent (The Busch Law Group, LLC, attorneys)

Record Closed: August 21, 2025

Decided: September 10, 2025

BEFORE **JUDITH LIEBERMAN, ALJ:**

**STATEMENT OF THE CASE**

Petitioners S.N. and E.N. are the parents of D.N., a six-year-old boy who was diagnosed with autism and is eligible for special education and related services. His parents sought to enroll him in kindergarten in Cinnaminson Township School District ("District"), his home district, for the 2024–2025 school year. The District proposed placement in the multiple disabilities ("MD") classroom, while petitioners believe D.N.

should be in a general education setting to maximize his interactions with typically-developing peers. Petitioners seek a finding that, based upon the information the parties knew or should have known through January 27, 2025, the District failed to provide a free appropriate public education (FAPE) in the least restrictive environment in violation of the Individuals with Disabilities Education Act (IDEA); a finding that the proposed placement resulted in a discriminatory denial of access to services and programs; an order directing the District to place D.N. in the general education setting “to the maximum extent possible”; and compensatory education equivalent to the total number of education hours D.N. was denied during the 2024–2025 school year through the resolution of this matter. Did the District’s proposed program provide D.N. a FAPE in the least restrictive environment? Yes. The program was designed based upon the then-available data and information obtained via assessments, observations, and discussions with petitioners and educators and was reasonably calculated to provide significant learning and meaningful educational benefit.

### **PROCEDURAL HISTORY**

Petitioners filed a request for due process against the District with the Office of Special Education Programs, New Jersey Department of Education, on or about April 17, 2025.

The parties participated in mediation on May 21, 2025. Because the matter did not settle during mediation, the due process petition was transmitted by the Department of Education, Office of Special Education, to the Office of Administrative Law (OAL), where on May 28, 2025, it was filed as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

A status conference was held on May 30, 2025, during which the hearing was scheduled for June 9, 2025. The parties jointly requested an adjournment of the hearing date and an extension of the final decision filing date. Petitioners requested an adjournment of the next hearing date, June 16, 2025, to allow their expert witness to observe the District’s programs and prepare a report. The hearing was rescheduled to July 8, 2025, and July 14, 2025. The parties requested an adjournment of the July 8,

2025, hearing date so they could complete discovery. The hearing was held on July 14, 2025, and July 18, 2025. Respondent requested an extension of the final decision filing date to permit time to receive hearing transcripts and prepare post-hearing briefs. Petitioners consented. Closing briefs were due on August 1, 2025, with a potential extension until August 8, 2025. Due to delays arising from the production of an incomplete transcript, respondent requested an extension of the final decision filing date to permit it to file a brief by August 14, 2025. Petitioners requested an additional extension until August 20, 2025, and again to August 21, 2025. Both parties' briefs were received on August 21, 2025. Although the record closed that day, the parties' joint statement of facts was received on August 26, 2025.

### **FACTUAL DISCUSSION AND FINDINGS**

The following<sup>1</sup> is undisputed, and therefore, I **FIND** the following as **FACT**:

D.N. was diagnosed with autism in August 2020. In December 2021, when he was almost three years old, the District determined he was eligible for special education and related services, and his parents, petitioners S.N. and E.N., agreed. Petitioners declined the proposed individualized education program ("IEP") and continued his enrollment at Connect Plus Therapy, a private program where he received applied behavioral analysis ("ABA") services.

Prior to determining D.N.'s eligibility, the District conducted psychological, social, and speech and language evaluations. For the psychological assessment, his teacher and mother completed the Adaptive Behavior Assessment System, 3d edition ("ABAS-3") assessment, which measured his adaptive behaviors in multiple settings. He scored in the extremely low range overall<sup>2</sup> as well as in the conceptual, social, and practical domains. J-4. The social assessment showed that his developmental history was below

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<sup>1</sup> This is not a recitation of the entirety of the testimonial and documentary evidence. It is a summary of the evidence that is relevant to the issue presented. "T1" and "T2" refer to the transcripts of the July 14, 2025, and July 18, 2025, hearings, respectively. They are followed by the referenced page and line numbers.

<sup>2</sup> General adaptive composite score of 64; a score between 90–109 is average.

age expectations; his adaptive behaviors were developing; and he did not have an understanding of basic safety rules. J-5.

For the speech and language evaluation, a formal articulation assessment was not performed because D.N. had limited expressive vocabulary. The evaluator relied upon an informal assessment, observation, and parental reports. The Preschool Language Scale, 5th edition (“PLS-5”) was administered to assess his ability to understand language (auditory comprehension) and communicate with others (expressive communication). His scores were at the first and second percentile rank, respectively, which were below average. His total score was also below average. J-7. The Receptive-Expressive Emergent Language Test, 3d edition (“REEL-3”) was administered to determine if D.N. had a language impairment or other disability that affected his language development. Based upon information provided by his mother, he scored at the first percentile rank for receptive language and less than one percent for expressive language. His composite language ability score was less than one percent. All scores fell within the “very poor” range. Ibid.

In February 2024, when D.N. was five years old and due to enter kindergarten, his parents asked the District to conduct a comprehensive evaluation to determine the accommodations needed for him to transition to kindergarten. J-9. An evaluation planning meeting was held on March 12, 2024. **Angela Jack**, D.N.’s case manager, attended the meeting. She has a master’s degree in social work; has served as a case manager for students in the multiple disabilities and integrated<sup>3</sup> kindergarten classes; and was qualified as an expert in school social work. D.N.’s parents, regular education teacher Michele Montrose, certified school psychologist Kristy DeSanto, and speech language pathologist Chelsea Derry also attended the meeting. J-9. S.N. and E.N. consented to learning disabilities teacher-consultant (“LDTC”) Gabriela Roach not attending the meeting.

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<sup>3</sup> The integrated kindergarten has a general and a special education teacher and can have up to eight special education students. Both teachers work with the special education students. The number of aides depends upon the students’ needs.

The Brigance/Vineland assessment was administered to identify areas of difficulty and where testing was needed. The psychologist reported that D.N. had “no awareness” of environmental dangers. Id. at 20. Jack recalled that this included his leaving an area when he was unattended and that he previously knocked over large furniture. He was nonverbal but used intense eye gazing to communicate, which was a strength. He also used an augmentative and alternative communication (“AAC”) application on his iPad. The LDTC reported that his knowledge of colors and shapes was inconsistent, as were his quantitative skills (e.g., fast versus slow). He inconsistently counted five objects but knew all body parts. His parents reported that gross motor skills were a strength. He struggled with fine motor skills, for which he received occupational therapy. It was determined that cognitive functioning, psychological, occupational therapy, and speech-language assessments were needed, and petitioners consented. J-9 at 55 - 56.

DeSanto conducted the psychological evaluation on March 27, 2024. A standardized evaluation was not performed due to D.N.’s “limited interest level in the tasks and his limited communication skills[.]” J-15 at 110. Instead, a functional evaluation, observation, and parent interview were conducted. D.N.’s mother completed the ABAS-3. D.N. scored in the extremely low range overall as well as in the conceptual and practical domains. He scored in the low range in the social domain.<sup>4</sup> Id. at 111–112.

**LDTC Gabriela Roach, M.Sp. Ed.**, conducted the learning evaluation on March 27, 2024. She holds LDTC, Teacher of Students with Disabilities, Supervisor, and Elementary School Teacher and Kindergarten through Fifth Grade certifications. She was qualified as an expert in general education and special education with a concentration in autism. She is not a board-certified behavior analyst (“BCBA”) or certified in ABA but has general knowledge of these areas.

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<sup>4</sup> Communication included speech, language, and listening skills needed for communication with other people, including vocabulary, responding to questions, and conversation skills. Functional academics included basic reading, writing, mathematics, and other academic skills needed for daily independent functioning including telling time, measurement, and writing notes and letters. Self-direction included skills needed for independence, responsibility, and self-control including starting and competing tasks, keeping a schedule, following time limits, following directions, and making choices. J-15 at 111.

Roach interviewed Christie Micsko, a Connect Plus BCBA who worked with D.N. Micsko reported that he is a “lover” who enjoys physical play and deep pressure. His strengths are eye gazing, sorting items, and trying to high-five friends. Areas of weaknesses were communication, sharing, and cooperative play. J-16 at 115. She also reported that a [m]otivator must be present” for him to attend to tasks; he is easily distracted and requires frequent redirection; he “does not voluntarily participate” in the classroom and “must be coaxed or highly motivated;” and he “[m]ust be very motivated to follow directions.” J-17. He is easily distracted from assignments and is motivated by food, electronics, and items that can be flapped. Ibid. In response to an inquiry about “organization,” she wrote “none.” Ibid. With respect to “social/emotional behavior,” she wrote, “He will stare and smile at you[.]” Ibid.

Roach observed that D.N. was a very happy boy; he made eye contact and smiled frequently; was easily distracted; needed frequent prompting to return to his tasks; and was easily motivated by edibles. He was prompted to use his AAC device to provide answers but did not always want to use it. Instead, he wanted to point or play with toys. His parents reported that he can identify colors, numbers one through five, and, inconsistently, some letters. He “does better with matching rather than just pointing to an answer” and was observed matching some colors. Id. at 116.

A standardized assessment was attempted to obtain a standardized school readiness composite score, which measures understanding of “concepts children traditionally need to know to be prepared for early formal education.” J-16 at 116. However, it could not be utilized because the required question protocol could not be followed. Thus, a standardized school readiness composite could not be obtained. Instead, a functional assessment was used.

Because D.N. required motivators, DeSanto assisted Roach, and D.N.’s parent assisted with prompting and by asking questions. D.N. did not use his AAC device despite having been prompted multiple times.

The Bracken Basic Concept Scale, Fourth Edition—Receptive (“BBCS—4:R”) was used to assess D.N.’s readiness for kindergarten. It measures basic concept acquisition

and receptive language skills (colors, letters, numbers, shape, and social and emotional concepts). Because it does not require verbal responses, instructions were given verbally and D.N. was to point to indicate his responses. D.N. “quickly” pointed to six different colors. Ibid.; T1 200:3. After that, “it seemed as though his attention to task quickly drifted” and the session was converted to a “play session to see if he’s able to build some stuff” with DeSanto. T1 200:8. They “went back and forth between both of [their] assessments to see if [they] were able to get some functional data[.]” T1 200:9–11. In addition to the earlier identification of colors, D.N. “match[ed] some other colors.” T1 200:14. He did not recognize letters.

As part of the eligibility determination process, the Educational Services Unit of the Burlington County Special Services School District conducted an occupational therapy initial evaluation on May 17, 2024. Based upon information from D.N.’s parents and his Connect Plus occupational therapist, he needed to improve play skills, regulation/self-soothing, attention, self-help, and functional routine-based activities to be ready for school. He also needed support in generalizing skills he learned in occupational therapy. P-6 at 9. He scored well below average on all aspects the Bruininks-Oseretsky Test of Motor Proficiency standardized test—Second Edition (“BOT-2”), which evaluated motor proficiency. However, because the test procedures could not be followed, the evaluator noted that the scores may not accurately represent D.N.’s skills and abilities.

D.N.’s parents completed the Sensory Processing Measure—2 (“SPM-2”). Their responses indicated “moderate to severe difficulties within all areas of sensory processing<sup>5</sup> issues, praxis, and social participation.” Ibid. He “show[ed] emergent developmental skills and problem-solving skills which present[ed] good potential for direct occupational therapy services.” Id. at 10. The assessor concluded that D.N.’s “difficulty with fine motor control, coordination, and sensory processing including fine motor precision and integration skills and bilateral and manual coordination” could impact his ability to function in school. She recommended individual occupational therapy services, integrated in class, a minimum of six times per month and indirect occupational therapy

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<sup>5</sup> “Sensory processing or integration is the effective registration and accurate interpretation of sensory input from the environment as well as one’s body.” Id. at 143.

services once per month “to provide consultation to the teachers” to address “fine motor strengthening and sensory diet integration.” Id. at 12.

The speech and language evaluation was conducted on May 22, 2024. The PLS-5 was administered to assess D.N.’s ability to understand language (auditory comprehension) and communicate with others (expressive communication). His scores for each, and his total language score, were at the first percentile rank, which is significantly below average. J-21. The Communication Matrix was used to determine how D.N. communicated, including via his ACC. He mastered pre-intentional behavior, intentional behaviors, and unconventional communication, which involve body movements, facial expressions, sounds, eye gaze, or simple gestures such as tapping. He achieved 43 percent mastery of conventional communication, which involves simple gestures such as pointing, nodding, and looking from a person to a desired object. He neither mastered nor inconsistently used concrete symbols, abstract symbols, or language. He inconsistently communicated to refuse things, to obtain things he wanted, or to engage in social interaction. He did not communicate to provide or seek information. Ibid.

On May 28, 2024<sup>6</sup>, Jack observed D.N. in his Connect Plus classroom, which was an “ABA preschool simulated classroom” with five other students, one teacher, one BCBA, and six aides. T1 164:21. He received occupational and speech therapy and AAC consultations once weekly at school and monthly at home. He was observed during whole group, work centers, and sensory time. He was pulled out of his classroom with his BCBA and personal aide for individual instruction.<sup>7</sup> One gave instructions while the other used a motivating item.

Jack observed that D.N. was a sweet little boy who appeared to be familiar with the setting and enjoyed being at school. He did not use his AAC even though it was next

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<sup>6</sup> Although Jack’s “Student Informal Observation” report is dated May 28, 2024, on its first page, the date on the signature page is March 27, 2024. R-9. The October 22, 2024, IEP includes summaries of observations at Connect Plus on March 27, 2024, and October 7, 2024. J-40 at 331. Petitioners did not receive a copy of Jack’s report until July 2025.

<sup>7</sup> Petitioners assert in their post-hearing brief that two staff members were involved only because one of them was being trained. Pet. Br. at 25. The referenced testimony does not support this contention.

to him during the entire observation. He required hand-over-hand support for hands-on activities; readily held out his hand when asked to move to a new center; and moved well when his hand was held. He benefitted from repetition of things said to him and motivators such as food or a song he liked. He responded to cues to relinquish an item (“my turn”) or to complete a task (“your turn”). He initially complied with every task but became disinterested after a short period of time. J-40 at 331. He often flapped his hands and “continuously rocked back and forth in his chair while his feet remained tucked in a TheraBand resistance band hooked onto the metal chair.” Id. at 59. He often stood and sat down, extracting his feet from the band, and would rock while standing.

His instructor, a BCBA, reported that he worked for up to ten seconds with motivators such as snacks or videos. He required assistance—usually hand-holding—to move between activities. He did well with multi-sensory directions and physical manipulatives; however, “[a]ll data is reportedly inconsistent.” R-9 at 58. He used his AAC “only for protest” and often “whisper[ed] word approximations” that “familiar listeners” could understand. Ibid. His ABA therapist reported that he requires many sensory breaks and rocks consistently throughout the day. He always had something to chew on and hold in his hand, but he would “not comply with directives if he has a toy in his hand or his mouth.” Ibid.

The BCBA reported that D.N. was always accompanied by an adult due to “elopement, lack of safety awareness, and overturning heavy furniture when left unassisted,” none of which was motivated by “negative intent.” Ibid. He liked “watching things fall”; would “push things down”; and “the teacher explained that the furniture around the room [was] designed for [D.] due to some concerns about knocking over large items.” Ibid. He would “often throw heavy items on the floor if unattended.” Ibid.

Petitioners did not request additional observations or request independent evaluations.

Roach, DeSanto, Jack, Derry, and a general and special education teacher attended the June 3, 2024, eligibility and classification conference meeting with S.N. and

E.N.<sup>8</sup> J-27 at 208. The IEP team did not meet prior to that day to discuss D.N. Roach explained that she and DeSanto discussed their evaluations, which they did for all students, to identify discrepancies between learning and achievement and whether there is a learning disability. They discussed D.N.'s classification but did not discuss his placement. Roach did not meet with anyone else about D.N. prior to the June 3, 2024, meeting. A draft IEP was not provided in advance of the meeting. Jack explained that she was "unable to send out the IEP since this is an initial eligibility meeting and the determination has to be made at the eligibility meeting." J-24 at 178.

D.N. was found eligible for special education and related services as a preschooler with a disability for the remainder of the 2023–2024 school year and as a student with autism for the 2024–2025 school year.<sup>9</sup>

Because he was still preschool-aged, the District's IEP team proposed in a draft IEP a half-day special preschool disability class with six individual speech and occupational therapy sessions per month and a personal aide. This was for the remainder of the school year, which was to end June 18, 2024. R-23 at 62. It also proposed enrollment in the extended school year ("ESY") program.

For kindergarten, which was to begin in September 2024, they proposed in a draft IEP placement in the MD class for all core subjects (math, language arts, science, social studies, and writing) for the 2024–2025 school year, with speech and occupational therapy six times per month and a personal aide.<sup>10</sup> J-29<sup>11</sup> at 229–230. The IEP provided

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<sup>8</sup> The meeting was audio-recorded. R-22.

<sup>9</sup> He remains eligible for special education and related services under the autism classification for the 2025–2026 school year.

<sup>10</sup> The District also proposed the MD class with speech and occupational therapy for the ESY. Petitioners did not consent to special education services during the ESY session.

<sup>11</sup> R-24 is a prior version of the IEP.

that behavioral interventions were not needed.<sup>12</sup> Id. at 235. Jack believed the two draft IEPs were likely prepared before the meeting.

The draft IEP reported that D.N.'s disability affects his involvement and progress in the general education curriculum because his "expressive and receptive language skills and adaptive behavior . . . fell significantly below the average range of children his age." J-29 at 233. The general education class was not appropriate for D.N. at that time because it moved "significantly faster" than the MD class. R-22. The impact of the quick pace of the general education class would be compounded by D.N.'s routine need for motivators to "do any task" and that he "could only attend a task for no more than ten seconds." T1 227:23 to 228:1. Moreover, general education students routinely have the essential skills necessary to start school as they know letters and numbers and begin reading in December. The evaluations and observations showed that D.N. lacked requisite skills with respect to letters, numbers, and colors and was unable to verbally answer questions. Thus, while he was able to learn, he "did not have the school readiness ability" at the time he was entering school. T1 227:17–20.

The aides in the MD classroom are registered behavior technicians ("RBTs") or are working towards that position. The MD class had eight to ten students while the inclusion kindergarten had twenty to twenty-five students. The students in the MD class were verbal and nonverbal; some had aides. The District asserted that D.N. would not be isolated as he would have peer models in the MD class.

D.N. would have also been with other same-aged peers every day because the entire MD kindergarten class integrates with the general education kindergarten classes for lunch, recess, and special classes such as computers, art, gym, and STEM. The District would consider integration into other classes after D.N. was in the MD class and the staff could assess and "get to know" him there. T1 212:23–24. They would then evaluate the other classes that would be appropriate for D.N. to "push out to be with his other peers[.]" T1 212:25.

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<sup>12</sup> If a student's behavior impedes their "learning or the learning of others, the IEP must consider, when appropriate, strategies, including positive behavioral interventions and supports to address that behavior." Id. at 235.

The IEP provided for supplementary aides and services of “behavior consultation, as needed,” AAC consultation services, and the modification of individualized instruction. J-29 at 237–238. It also listed the following accommodations:

1. Break down tasks into manageable units
2. Provide a highly structured, predictable learning environment
3. Emphasize use of visual aids
4. Provide hands-on learning activities
5. Provide small group instruction
6. Give direct and uncomplicated directions
7. Monitor on-task performance
8. Stand in proximity to student to focus attention
9. Use of token board
10. Use of visual schedule
11. Provide modeling
12. Provide guided instruction
13. Reinforce visual directions with verbal cues

[Ibid.]

The IEP explained why D.N. was not placed in the general education class, including why supplementary aids and services were not appropriate to meet his needs in that class. While the general education class would “provide social interaction with typical peers and opportunities to interact with cooperative academic activities/tasks with typical peers,” it “does not address the challenges [D.N.] faces in attaining and retaining the information to succeed within a preschool learning environment as it provides limited access to time, aid, and material presentation.” Id. at 240. The general education class does not “provide individual instructional support enough times a day to support special education students.” Ibid. Thus, the accommodations and modifications were insufficient to enable him “to participate within the regular education environment successfully.” Id. at 239. With respect to placement in the least restrictive environment, the IEP explained, “it was determined that additional aids and services in a general education setting might

be considered restrictive to the child's learning environment and therefore deemed inappropriate at this time."<sup>13</sup> Ibid. Instead, the special education classroom would offer "a low pupil/teacher ratio, immediate feedback, and instruction consistent with [his] learning needs." Ibid.

Roach explained that modifications and accommodations can be so pervasive as to essentially become a "separate" or "replacement" curriculum. T1 248:20–22. In that case, the placement is inappropriate. At the start of kindergarten, D.N. was unable to participate in lessons on comprehension and sight words and, unlike general education students, he was unable to decode. He would have needed to be separated from his peers and would have "essentially be[en] taught one on one in the corner" due to "the pace and rigor of that curriculum[.]" T2 214:14–18. The placement would have been inappropriate because the entire curriculum would have been modified such that D.N. would not have learned "anything that is being taught." T1 227:6–13.

Jack agreed with Roach. Noting that D.N. already had to be pulled out of the Connect Plus classroom with his personal aide and BCBA, she explained:

I would imagine . . . he would need to be pulled to the side for specific instruction. He would not be able to – not that he wouldn't be able to, but through testing and observations it was deemed that in order for him to obtain to a task for longer than a few seconds he required to be pulled out of a room completely and to be given private instruction with a one to one aide as well as that BCBA, so if he was in a general education setting in order to get him to attain to that task from observations, it was shown that he needed to be pulled to a private room and I figured that that would be pretty restrictive in that gen ed setting.

[T1 139:12–24.]

Roach added that it would be "socially detrimental" for D.N. to be "constantly . . . isolated and pulled away . . . from his peers . . . when the biggest concern is exposure and

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<sup>13</sup> This language was pre-populated into an online IEP form, and it was selected from among the options that are available on the form. This language "most align[ed] with what [Jack] was seeing within the documentation at that time," that is, the evaluations and observations. T1 137:21–23; T1 138:10–11. Other entries on the IEP form were selected in the same manner.

you want him to hear everything and be exposed to the curriculum[.]” T1 246:23–247:3. Roach opined that this could “increase academic frustration” and behaviors in the classroom. T1 247:8–25. Consequently, the general education classroom would have been more restrictive for him than the MD class. Conversely, he could learn and socially interact with his peers in the smaller MD class and with his general education peers during lunch, recess, gym, and special classes.

Petitioners rejected the proposed placements and stated that they knew D.N. better than school personnel did and thus had more information that would justify his placement in a general education inclusion classroom. They stressed the importance of his interacting with and modeling typical same-age peers.

The IEP team then discussed a potential hybrid program with inclusion science and social studies in addition to specials, lunch, and recess, which would enable D.N. (with his aide) to be with typical same-aged peers “during more of a cooperative play type of setting . . . where they do more hands on and group work, rather than core academic subjects.” T1 216:13–16. He would move from the MD class (“push in”) to integrated general education science and social studies classes. T1 124:10. The IEP team was “in agreement that that could happen.” T1 94:12. S.N. said that he did not see the point of sending D.N. to school in the District if he would be placed in the MD class. R-22. District staff also explained that they could quickly—within a week or two—change the classroom setting when appropriate.

Jack explained that the draft IEP was not the final version. Had petitioners agreed, the IEP would have been revised to provide for a hybrid program. A revised IEP was not sent to petitioners because they wanted another meeting to be convened. A meeting thirty days after D.N. started school in September was proposed to discuss his progress, review data, and revisit his IEP.

Jack noted that, if D.N. were to begin school in September 2024, the Verbal Behavior Milestones Assessment Placement Program (“VB-MAPP”) assessment would have been administered to assess his abilities at that time. It measures language and social skills that are prerequisites for kindergarten, including milestones that have been

achieved, barriers to skill acquisition, and transitions that are used to support educational planning. It is used when other assessments are unavailable or not useful, usually for early learners, and is based on typical development behaviors of children zero to forty-eight months old. The child study team would have also conducted “benchmark assessments” of his reading and math skills to get “a base line.” T1 172:12–18.

On June 6, 2024, S.N. requested an electronic version of the documents from the June 3, 2024, meeting. Jack provided them the same day and requested the release of “Connect Plus Therapy data for the district to help assist the [IEP] Team in making the most appropriate placement decision for [D.] Once we review the data, we will reconvene the IEP meeting to discuss placement for [D.]” J-23 at 166. S.N. replied, “I do not think sharing the raw data would be helpful at this point. Instead, I have copied Keysha Henley who is the Early Childhood Program director at Connect Plus. Please reach out to her to discuss which placement options she thinks would be most appropriate for [D.] She can provide the context I think would be lacking from the raw data and any evaluations performed by the [District’s child study team.]” Ibid.

On June 11, 2024, S.N. contacted District Board of Education members to address his concerns about the IEP process. He spoke with Director of Special Education Darlene Llewellyn on June 13, 2024, and met with the superintendent on June 20, 2024.

On June 11, 2024, Jack sent an email to petitioners and Henley, in which she discussed the proposed program of MD class for math, language arts, science, social studies, and writing, with integrated specials, lunch, and recess. The “placement would have a lower classroom size and material given at a pace tailored to [D.’s] needs and strengths.” J-23 at 164. He would have a personal aide, individual instruction, and enumerated accommodations.<sup>14</sup>

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<sup>14</sup> Highly structured, predictable learning environment; break down tasks into manageable units; emphasize the use of visual aids; provide hands-on learning activities; provide small group instruction; give direct and uncomplicated directions; monitor on-task performance; stand in proximity to students to focus their attention; use of token board; use of visual schedule; provide modeling; provide guided instruction; reinforce visual direction with verbal cues. Id. at 164–165.

Jack wrote in a subsequent email that the inclusion classroom could have twenty to twenty-five students, with one special and one general education teacher. In response to Henley's question whether the placement was final, Jack wrote that they asked for data from Connect Plus "to review and discuss the possibility of other options. The placement offered to [D.] currently, draws from the standardized testing from evaluations as well as the current placement, and support at Connect Plus Therapy." Id. at 164.

On June 14, 2024, and June 18, 2024, Jack sent petitioners record release forms for them to sign. On June 24, 2024, S.N. provided a signed copy of the consent form authorizing Henley to share data. On June 27, 2024, Henley provided D.N.'s then-current goals.

Jack received data from Connect Plus on July 15, 2024, and she shared it with DeSanto, Roach, another LDTC, and Llewellyn, advising, "Once we review this data we will reconnect with the parents to discuss placement considerations based on the data. . . . Once everyone agrees on a date I will reach out to the parent to set something up." P-5 at 30; R-6.

**S.N.** and E.N. believed the MD classroom was inappropriate. S.N. explained that D.N. is motivated by preferred play, being around people he knows, and verbal praise. He understands everything that is said, as a child his age would, but struggles with expressive communication of the things that he knows. Because he does not respond and answering is difficult for him, people expect less from him and establish lesser goals for him. Those who know him understand his communication. He communicates at home by looking at his parents and pulling or pushing them to the things he wants and using a "high-five" hand motion to say goodbye. He uses his AAC device at school by hitting preset buttons. The consultant who helped them when they procured the device explained that it helps D.N. learn language, not delay his speech. The consultant helped Connect Plus staff understand the device, and by the fall or winter of 2024, it was his primary communication tool. D.N. also imitates S.N.'s communication and has tried to play in the same manner as his sisters.

S.N. asserted that Roach's testimony during the hearing was inconsistent with what she said during the June IEP meeting. During the meeting, she stated that D.N. identified colors the first time he was asked and he seemed to know more than he showed, perhaps due to a lack of motivation. R-22.

S.N. believes that play-based learning is most effective for all children. He therefore preferred the model of ABA training that employs all play-based approaches to goals. S.N. believed that there was no evidence "that one to one discrete trial training was the best way for D. to learn." T2 138:19–21. Based upon his observations of the classrooms where D.N. might be placed, he determined that they would not allow for play-based learning. That is, he saw children at centers and his "assumption [was] that they were doing discrete trials similar to what a lot of ABA is based on." T2 134:10–11.

Moreover, S.N. and E.N. were advised by an ABA specialist with whom they consulted that most children learn language through immersion. S.N. analogized this to adults immersing themselves in a foreign language. He believed that the most effective and quickest way D.N. could do this was by being in an integrated classroom with peers who speak. In a class like that, he would be immersed in the language that the other students use and the other students and teacher would model how they speak with each other. S.N. reasoned that, because D.N. loves being with the children in his family, he would similarly love being with the children in his classroom and that this would serve as motivation for him. Importantly, although he acknowledged that some students in the MD classroom used "oral expressive language," it "seemed like most had communication issues." T2 141:3 – 7.

S.N. further explained why he believed D.N. should be in an integrated classroom by analogizing to himself and his neurotypical daughter. He found high school to be slow and boring, and his daughter had a similar experience in kindergarten and first and second grades. He tried to explain to District personnel that D.N. "could be the same way" because while his expressive language "is way behind . . . his receptive language could be right on par[.]" T2 164:3–5. Since District staff recognized that he listens and knows more than he can communicate, they should "push him and put him into a[n]

[integrated class] so he's at least exposed to that material and that part of the curriculum" to avoid causing frustration and any resultant behaviors. T2 164:12–14.

S.N. expressed concern that it would be more difficult to move D.N. from the MD class to the integrated kindergarten class than District personnel represented. He based this on the experience of a person he knew whose child was not moved out of MD until after they filed a due process petition against the District. He cited the District's reluctance to pursue a hybrid approach based upon the fact that an IEP allowing a hybrid program was not presented to him. Although Jack said that she would send a revised draft IEP that proposed a hybrid program, on June 11, 2025, she sent a draft IEP that proposed only the MD setting. For gym, lunch, recess, and specials, the students from the MD class and their aides would join the approximately twenty general education kindergarten students. The proposal did not address a hybrid program. Jack detailed the accommodations<sup>15</sup> and wrote that this would provide a "lower classroom size and material given at a pace tailored to [D.'s] needs and strengths." J-26 at 196.

However, at the end of the June 3, 2024, IEP meeting, there was discussion about likely not starting D.N. in school until after his birthday in December or in January 2024. It was agreed that S.N. and E.N. would contact the District in November, when they would reconvene and revisit the proposed program. S.N. acknowledged that he did not ask for the revised IEP.

It seemed to S.N. that, prior to the June 2024 IEP meeting, District personnel determined D.N.'s placement without his and E.N.'s input. The IEP team proposed only the MD class and did not discuss placement options with him and E.N. They also did not discuss data or goals, accommodations, or modifications "in any type of important way." T2 138:16. S.N. spoke with Director Llewelyn on June 13, 2024. He told her that the

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<sup>15</sup> A one-to-one aide and individual instruction and accommodations: highly structured, predictable learning environment; break down tasks into manageable units, emphasize visual aids; hands-on learning activities; small group instruction; direct and uncomplicated directions; monitor on-task performance; stand in proximity to students to focus their attention; use of token board; use of a visual schedule; modeling; guided instruction; reinforcement of visual directions with verbal cues. Ibid.

hybrid program that he and E.N. would have considered involved D.N. being placed in the integrated kindergarten and pulled out for certain instruction. This would have enabled D.N. to build his social skills via exposure to the general education students. He distinguished this from the integration offered by the MD program (specials, gym, lunch, recess) because non-disabled peers see the MD students as different and segregated. S.N. developed this understanding based upon what his other children told him. Regardless, while integration into the science and social studies classes would offer “meaningful participation,” this was not offered in written form for D.N. T2 184:9.

S.N. also told Llewelyn that he and E.N. believed they were not permitted to meaningfully participate in the IEP development process and that staff did not listen to them. He also said that there seemed to be a preoccupation “with getting data from Connect Plus.” T2 147:3. He believed there should first be a discussion with Henley to provide context, especially for those not familiar with ABA. Llewelyn said that she would ensure that there would be a conversation with Henley. S.N. stated that he was willing to compromise and accept the hybrid program.

On July 18, 2024, Jack contacted petitioners to reconvene the eligibility meeting, offering to meet on July 30, 2024, or August 8, 2024. She and petitioners communicated about their availability through July 26, 2024.

When the IEP was developed, the District did not have an April 3, 2024, memorandum and report from Connect Plus that recommended thirty hours per week of direct intervention by a behavior technician, six hours per week of treatment with protocol modification by a certified BCBA, one hour per week of parent training by a certified BCBA, and twelve hours of reassessment by a certified BCBA.<sup>16</sup> R-6 at 23. The report highlighted that D.N. communicated “some of his wants and needs using vocal approximations or his AAC device[.]” Id. at 24. “[H]owever, his communication skill still requires repeated and frequent repetition and is primarily prompted. This impacts his ability to expand his communication and social interactions with others.” Ibid. It also

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<sup>16</sup> The report listed the following assessments that were relied upon: parent interview, direct observation, ABAS-3 and VB-MAPP. Id. at 24.

highlighted the need for “frequent reinforcers” for “goal implementation and progress.” Ibid. He had difficulty attending to the task during the observation; “edible reinforcers” helped “at time[s] with him attending and responding.”

The report also addressed D.N.’s behaviors. By March 2024, he had not mastered the goals of reducing the number of incidents of flopping, darting, and aggression.<sup>17</sup> Although the frequency of these behaviors decreased over time<sup>18</sup> to zero incidents of flopping and one incident of darting<sup>19</sup> and aggression in March 2024, the goal was amended by Connect Plus to “at least two consecutive months.” Ibid. at 30–31. With respect to “disruption,”<sup>20</sup> although there were zero incidents in February and March 2024, a “goal was added due to an increase in knocking over larger objects posing a safety risk.” Id. at 32.

D.N. was not assessed by a BCBA prior to the initial IEP, and the IEPs included neither the above behavioral services nor call for a reassessment by a certified BCBA. Rather, the IEPs provided for a behavior consultation as needed. When asked if D.N.’s aide would have been a behavior technician, Jack replied that there was a strong likelihood that they would have been.

On August 12, 2024, petitioners confirmed that they discussed with District personnel on March 12, 2024, and June 3, 2024, that they intended to enroll D.N. in kindergarten at the District in January 2025. They asked to continue D.N.’s eligibility meeting in September. Jack advised that the start date could not be changed, and petitioners would thus need to withdraw D.N. from the District. They withdrew him. On September 24, 2024, the parties agreed to reconvene the eligibility meeting on October 22,

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<sup>17</sup> “Any instance of [D.] pushing others, pulling hair or hitting,” including attempts. Id. at 31.

<sup>18</sup> Ranging from six months to over two years.

<sup>19</sup> The reporter noted that D.N. darted during her observation and he was quickly blocked and redirected. R-6 at 25.

<sup>20</sup> “Any occurrence of [D.] knocking items over (not part of a game),” including attempts. Id. at 31.

2024.<sup>21</sup> Petitioners toured the self-contained and inclusion classrooms on September 24, 2024.

On October 7, 2024, **Julia Zimecki** and Jack conducted an informal observation of D.N. Zimecki is a BCBA and has been employed by the District since September 2014. She has a master's degree in special education, a post-baccalaureate certificate in ABA, and a bachelor's degree in psychology. As the District's BCBA, she supervises and oversees the District's ABA program. She testified as an expert in ABA and BCBA in the special education context.

Zimecki and Jack prepared reports of their observations. R-13; R-14. They observed D.N. in Henley's Connect Plus classroom during the morning meeting and snack time and while he received one-to-one discrete trial instruction in another classroom. His personal aide was with him during the observation, as were Henley, another BCBA, and other aides.

Although Henley previously administered a VB-MAPP assessment, she did not share its results. Henley said that D.N. scored 37 out of a total of 170 milestones, which Henley described as "low." R-14 at 125. This equates to the typical development of a child between zero and eighteen months. Henley also reported that D.N. scored 68 out of 96 on the barrier portion of the assessment, which indicated significant barriers.

During the morning meeting, D.N.'s aide modeled responses on his AAC device. He sat on the floor ("flopped") after he returned to the classroom from the bathroom and did not stand up until after he was repeatedly directed to "get up." Ibid. He was then given an "oral motor tool" that was called a "chewy" and sat in his rocking chair with his aide alongside him. Ibid.

He attended to a color song on a smart board by looking at the board for less than thirty seconds. He did not pay attention to another song, instead rocking and using the

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<sup>21</sup> After multiple communications, including from Jack proposing July 30, 2024, and August 8, 2024, the parties eventually agreed to meet on October 22, 2024.

“chewy.” R-14 at 123. During a third song, he rocked forcefully such that he nearly hit his face on the floor. Henley reported that he required a rocking chair to remain seated and attend to tasks.

D.N. complied when directed to clean up, and he transitioned to snack time. He found his seat independently, and his aide prompted him to use his AAC device to make requests. He asked for yogurt but did not receive it because it was unavailable. He accepted the response.

D.N. “flopped” again after returning to the classroom following discrete trial teaching in another room. Id. at 124. He appeared upset and whined. He independently transitioned to his seat that he rocked in. He next worked on receptive emotions, matching tasks with candy provided as reinforcement. He responded correctly four out of eight times. Although his AAC device was on the table next to him, he did not use it, and Zimecki and Jack did not observe him being prompted to use it.

Another initial eligibility and IEP development meeting was held on October 22, 2024, due to scheduling issues. Prior to the meeting, S.N. provided an October 21, 2024, AAC Annual Report Summary prepared by D.N.’s AAC consultant, Kaitlyn Conners, M.S., CCC-SLP. R-17. The meeting was attended by S.N., E.N., a general education inclusion teacher, the MD class teacher, an LDTC, Director Llewellyn, the speech therapist, a family support partner, Jack, Zimecki, and DeSanto. The District found D.N. eligible under the multiply disabled category. J-39.<sup>22</sup>

Petitioners asked Zimecki to speak with Henley about Henley’s placement recommendations, and Jack agreed to facilitate their discussion. On October 23, 2024, Jack asked petitioners for permission to request “VB-MAPP, progress reports and summaries” from Connect Plus. Petitioners consented. Henley provided VB-MAPP scores and “graphs and progress” on October 28, 2024. On October 30, 2024, Jack asked petitioners to authorize the District to speak with Henley. They did so on November 1, 2024.

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<sup>22</sup> The IEP meeting was audio-recorded. J-41.

The IEP that was proposed after the October meeting (“October 22, 2024, IEP”) was sent to petitioners on November 11, 2024. The IEP again proposed the MD class for all core subjects, with the same speech and occupational therapy and personal aide as in the prior IEP. Jack explained that D.N. would have several opportunities to be with typically-developing peers. In response to petitioners’ concerns, the IEP also provided that, six weeks after D.N. starts school, the team would assess his progress and review his programming. J-40. In so doing, the District would be able to evaluate D.N. in an educational setting—unlike Connect Plus, which was not an educational setting—and best assess the least restrictive appropriate setting for him.

Zimecki explained that the MD class is organized like the general education class in that the students unpack in the morning; participate in a morning meeting; break out into centers, which include supplemental and individual instruction and play; and engage in snack time, lunch, recess, and special classes. Because the students in the MD class are not necessarily in the same grade, D.N. would go to special classes with other kindergarten students.

The MD class is highly structured and organized such that play and peer interaction skills are taught even during lunch and recess and “downtime” is avoided. T2 16:21. The students have a range of skills, from nonverbal to needing just “a little bit more academic or behavioral support.” T2 17:11–12. Unlike in the integrated kindergarten classroom, the MD class usually has four to six paraprofessional aides for the six to eight students. In the integrated class, there is one general and one special education teacher and one aide for eighteen to twenty-two students. The smaller classroom permits individualization of each student’s goals. By observing D.N. in the MD class, District personnel would be able to compare his skills with those in the integrated kindergarten and determine the accommodations needed for him in that setting. Zimecki acknowledged that D.N. would be able to use the rocking chair for sensory and self-soothing in the integrated kindergarten and special classes, including art, science, social studies, and gym. The accommodation could “follow him” throughout the school day. T2 25:3. Jack acknowledged that the modifications, accommodations, supplementary aids

and services, and assistive technology devices listed in D.N.'s IEP could be offered in the integrated kindergarten setting.

During the October IEP meeting, the District represented that it could amend the IEP to propose the hybrid model; it was "open for discussion." T1 148:4. If they were to pursue this, they would have needed to first address the availability of classes; when D.N. could be pulled out of the MD classroom; and what subjects he might miss. For instance, an integrated science class would not be feasible if it conflicted with his language arts class. However, petitioners were "adamant" about the integrated setting and did not want hybrid because it involved the MD class. T1 147:11.

Jack acknowledged that there was some confusion about the manner in which they addressed the hybrid program. "[A]t the conclusion of the meeting it was determined that [petitioners] still wanted him in an inclusion setting and they also wanted to reconvene the meeting, so I guess there was a little bit on non-clarity there because . . . I guess the programming wasn't changing." T1 146:9–14.

Zimecki reached out to Henley on November 13, 2024, and November 22, 2024, and they ultimately spoke on November 25, 2024. Henley provided a written report of the VB-MAPP that day. Zimecki and District BCBA Katie Neely prepared written summaries of the telephone conversation with Henley. R-14 at 126; R-18.

The VB-MAPP assessment, which was administered on September 23, 2024, showed that D.N. mastered most of the level one skills (those that typically develop within the zero to eighteen month range), although there were some gaps in achievement R-14 at 127. For the level two skills (those that typically develop between eighteen and thirty months), D.N. demonstrated skills only in the play and group areas. Ibid. For the level three skills (those that typically develop between thirty and forty-eight months), he mastered one listening skill, one match to sample skill, and two reading skills. Ibid.

Pursuant to the VB-MAPP report, D.N. required:

- Substantial support “within the adaptive skills domain[.]” He demonstrated that he engaged in “tantrum, flop or dart behaviors” if he was “unable to communicate his needs or wants on his [AAC] device.” Id. at 128.
- Support “within the Cognition and Visual Performance Domain.” Ibid. He understood “simple one step requests and tasks” and was “able to use a visual cue when placed in front of him.” Ibid.
- Substantial support “within the Communication Skills domain” and often needed “help finding the right [AAC] screen or a gesture prompt to touch the correct picture.” Ibid.
- “Very substantial support within the Imitation Skills domain.” Ibid. While he could imitate simple instructions such as “clap” or “do this,” any instructions needed to be “basic” and “one step.” Ibid.
- “Very substantial support within the Independent Play, Social Play, Social and Group Skills domain.” Ibid. He was able to sit in a group activity but required prompting and a “high MO” to participate in activities with peers. Ibid.

In summary, although he “continue[d] to make progress with communication, [activities of daily living] and play skills[.]” the VB-MAPP showed that D.N. required a “significant amount of prompting and redirection in all areas.” Ibid. While he was able to “imitate simple instructions, such as ‘clap’ or ‘do this’, . . . they must be basic and one step.” Id. at 129. Henley stated that he enjoyed being around his peers and was able to sit in a small group for ten to fifteen minutes, but he required one-to-one adult support, redirection, and sensory breaks to regulate, focus, follow instructions, and complete tasks.

Henley did not observe the MD or integrated kindergarten classes, and she did not attend the October 22, 2024, IEP meeting. She told Zimecki that D.N. participated in

natural environment teaching (“NET”) and discrete trial teaching (“DTT”) but did “better with NET.” R-14 at 130. He also participated in centers and morning meetings. He required “high motivating operation which includes praise, physical touch, laughs, tickles, M&Ms (used only for [DTT]) to complete tasks.” Ibid.

Henley recommended giving him breaks; moving him to a quiet area, such as a space “right outside the classroom” when he worked on individual goals; and that he “would benefit from being in a room with peers he can imitate and work with.” Id. at 128. “The goal during next reauthorization” was to reduce the need for prompting and “to allow for more independence.” Id. at 128. Henley stated that D.N. was “good with transitions” and opined that he should not be in a class with “low level children.” Id. at 130–131. Rather, he should be in a “placement where learning is happening but pull out occurs for small group/Discrete Trial teaching with students with different diagnoses.” Id. at 131.

Henley also reported that D.N. engaged in the “self-injurious” behavior of “head hitting,” which occurs more often when he is ill, and elopement “which is prevented by the addition of baby gates at all interior doors and the use of specific locks on the exterior push bar doors.” R-14 at 123–124. These behaviors occurred more frequently if he was getting sick or returning from having been sick. Staff referred to acts of refusal as “flopping” and reported that while recovery could be quick, the events could also last ten to fifteen minutes. Id. at 129. However, this did not occur frequently. D.N. also engaged in aggression, which is “pulling hair, crying and pushing adults away.” Ibid. Connect Plus staff used his AAC device, a safety protocol, and instruction concerning “emotions during discrete trial teaching” to address these events. Ibid.

Henley also reported that D.N. “has to have” an “outlet to climb so the center allows him access to their climber (replacement behavior).” Id. at 203. The rocking chair also helps him self-regulate. With respect to social skills with peers, Henley reported that he was “making progress, looks at peers, laughs at peers, waits for peers; he will take their hand and walk to the room together.” Ibid. With respect to play skills, “he will engage in parallel play with toys, however, this is adult led and prompted by adults.” R-18 at 202. His retention rate depended upon the “skills, reinforcement” and motivators. Ibid. “If you ask him to give you the red card, he may or may not give it to you.” Ibid.

Zimecki advised S.N. and E.N. that her recommendation concerning D.N.'s placement did not change after her conversation with Henley because he required "intensive environmental accommodations to maintain his safety" and intensive academic support and a separate space for discrete trial teaching. J-46 at 403. A child who is ready for general education kindergarten would have independent skills such as the capacity to unpack a backpack; D.N. did not demonstrate this during his observation. The student should be able to sit with a large group of peers for a comparable amount of time; independently exit the bus; and be able to indicate that they want to give an answer.

Further, the VB-MAPP transition assessment, which examines skills including toilet training, self-directed play, spontaneous behaviors, rate and retention of new skills, and general self-help skills, was not administered. Zimecki advised that the District would administer the entire VB-MAPP assessment after D.N. starts kindergarten there. Using its information, the District would develop "appropriate programming addressing skill deficits in all areas." Ibid. Until then, the MD classroom could "best accommodate his current safety and academic needs." Ibid.

S.N. responded to specific assertions about D.N.'s understanding and behaviors. Although Jack wrote on October 7, 2024, that it was unclear whether D.N. understood matching, he performed matching exercises at home. With respect to head-hitting, D.N. did this when he had ear infections and could not express what was wrong. This did not cause injuries and resolved when ear tubes were inserted, which helped with the infections. With respect to the purported need for baby gates at Connect Plus, S.N. did not believe that they were utilized specifically for D.N. because he had a personal aide. S.N. did not recall stating that D.N. does not show awareness of environmental dangers. He learns about risks from experience in the same manner as other children. He does not elope from the backyard at their home.

Further, when D.N. is upset at home, he can calm down after one to two minutes with the assistance of his parents. At most, he needs twenty minutes to calm down. S.N. surmised that school personnel do not know how to comfort him. He may need to take a break when he becomes overly stimulated, and he uses the rocking chair to self-soothe,

which enables him to participate in the full morning meeting and attend for long periods of time. S.N. was not aware that D.N. sustained injuries while using the chair.

S.N. asserted D.N. must become comfortable in new environments and with new people before he will trust and work with them. He highlighted that no one at the initial evaluation planning meeting knew him and only the speech-language therapist looked at or spoke with him. Thus, D.N. was uncomfortable and reticent during the meeting.

Also, contrary to the information written on the Brigance/Vineland questionnaire, D.N. was not regularly spoon-fed. This was more common when he was younger. S.N. and E.N. may have reported that they used to spoon-feed him. Further, although, D.N. did not like to clean up, like other children, he could do so without reinforcers or motivators, if asked.

S.N. noted that during the October 22, 2024, IEP meeting, there was discussion of an MD program that was comparable to that offered by Connect Plus. However, he and E.N. were not seeking ABA therapy from the public school. They “were going to a public school for D. to have an opportunity to be with his non-disabled peers to the greatest extent appropriate for him.” T2 134:20–22. S.N. was not concerned about D.N. moving from a very small sized class to a larger integrated kindergarten. Noting that his daughter is moving from a ten-student preschool class to a kindergarten class with up to twenty-five students, he asserted that “kids are resilient” and that D.N. is “especially resilient.” T2 142:6–8. After he has time to acclimate, he “adapts to his environment very well.” T2 142:8. S.N. asserted that they did not discuss the hybrid program and the District proposed only MD with integrated specials, recess, and lunch.

However, the recording of the meeting contains a reference to the hybrid program being appropriate after D.N. mastered pre-academic skills and any self-injurious behaviors that Henley identified were addressed. E.N. explained that what appeared as self-injurious was really D.N.’s response to discomfort from ear infections, which have passed, and allergies. District personnel stated that they would revisit this, as there may have been a miscommunication about these behaviors. J-41. However, on October 28, 2024, Henley forwarded a report of D.N.’s goals in which she noted that when he “is

unable to communicate his needs and wants on his device he may engage in tantrum, flop or dart behaviors.” J-45 at 367. S.N. acknowledged that it “seemed” that flopping “was his way of protesting because he could not communicate that verbally.” T2 155: 11–12. S.N. believed an “elopement” was really D.N. taking advantage of opportunities to run, because he enjoys the sensation of wind on his face while running, or an attempt to play. He acknowledged that he did not know with certainty whether D.N. wanted to run or play or instead leave the Connect Plus classroom or building. He also acknowledged that Connect Plus occasionally reported that D.N. left through a door and tried to run and that his behavioral technician would get him to come inside. However, he did not believe this occurred regularly. S.N. also acknowledged that due to D.N.’s difficulties with sleep, he could be sad and less likely to comply.

Henley did not observe the MD or integrated kindergarten classes. She did not attend the October 22, 2024, IEP meeting. On December 17, 2024, she stated that there were no recent elopements and D.N. had not turned over furniture since March 27, 2024. She also wrote that during the preceding six and one-half months, D.N. made “notable progress” in manding, echoic skills, participation in group activities with peers for up to fifteen minutes, taking turns with peers, identifying and expressing feelings/emotions, sorting and matching, toileting, and hand washing. J-46 at 403. She posited that he will further develop his socialization and communication skills in a less restrictive environment “that fosters peer interaction, imitation, and growth,” with implementation of his behavior intervention plan and “targeted pull-out services and opportunities for sensory support.” Ibid. She acknowledged, however, that “children entering school programs often undergo reassessment due to the impact of environmental factors” and that the VB-MAPP transition assessment “may need to be revisited.” Ibid.

On December 19, 2024, petitioners requested to reconvene the IEP meeting. On January 2, 2025, Jack replied that the District still recommended the MD class. On January 24, 2025, S.N. informed the District that they would consider further proposals from the District in writing. Llewellyn responded acknowledging this communication on January 27, 2025. After November 11, 2024, petitioners did not request additional versions of the IEP, and the District did not prepare or send additional versions.

Petitioners did not accept or sign the October 22, 2024, IEP and have not consented to the implementation of any initial IEP in the District for D.N.

**Carol Quirk, Ed.D.** testified on behalf of petitioners as an expert in special education, inclusive education, and applied behavior analysis in the special education setting. She earned a doctorate in severe disabilities and communication disorders and founded the Maryland Coalition for Inclusive Education, Inc. to advance the goal of integrating students with complex needs in their neighborhood schools. She has served as its Director of Professional Development Services, Co-Executive Director, and Chief Executive Officer and is currently its Director of Special Projects. She held several positions in her field, including behavior support specialist and special education teacher; has conducted approximately twenty to twenty-five functional behavior assessments; has served as a trainer and independent consultant to state agencies; and has published numerous articles, most of which address inclusion but not specifically in the context of autism. She is not an expert in BCBA or RBT services; is not a certified special education teacher; and is not qualified to interpret VB-MAPP assessments. She last conducted a psychiatric assessment of a student over ten years ago. She has not served as a behavioral analyst in a school setting and has not evaluated students with disabilities in several years, although she regularly engages in planning for students with disabilities.

Dr. Quirk endorses the principle that all students who are not medically fragile or have severe behavioral issues should be in general education classes. She cited numerous articles that reported that “students with disabilities who are educated in general education classes do better both academically and socially than comparable students educated in non-inclusive settings, regardless of the type of disability or grade level.” Pet. Br. at 44–45. Thus, the general education curriculum, instruction methods, and goals should be adapted as necessary for students like D.N. If he does not progress in the general education setting, an analysis should be conducted to identify what was and was not working.

This includes kindergarteners with complex needs, even if the school district does not have enough data about the student’s capacity and needs. With respect to D.N., “he needs to learn the skills in the environment he has to exhibit them in. He hasn’t been to

school, so he initially needs to know how to do school, how to be a student and if it was me I wouldn't even worry about what he's learning so much as making sure he learns how to be a student and incorporate the accommodations and modifications as possible." T2 274:7-13.

In this regard, Dr. Quirk highlighted the following priorities:

1. Based upon research, a "sense of belonging" is important to "foster learning and positive social relationships." P-4 at 17. D.N. "could have this opportunity if he is educated with peers in his neighborhood and community where he is likely to find interaction opportunities in and outside of school." Ibid. She explained that this was not available to D.N. in the MD class because "all [MD] students" have limited to no communication and are not accessing kindergarten activities." While she agreed that the students in MD classes have a wide range of abilities and some could communicate better than D.N., she concluded, based upon her single observation of the District's MD class, that none of the students engaged in "age appropriate communication that a non-disabled peer would engage in." T2 267:3-5.
2. Access to typically-developing peers who will model age-appropriate language and adults who will model "how to best interact" with him and "make other children comfortable and understanding of [his] differences." P-4 at 17.
3. Communication skills, because autism is a communication disorder, not a speech/language disorder. AAC is a "method of communicating using symbols, signs, gestures, body language, and speech-generating devices (SGDs)." Id. at 18. Research shows that the "communication skills of partners influence the success of the communicative interactions of the AAC users" and the "importance of observing typical peer communication and using that to guide the communication interventions designed for the students." Ibid. This requires general and special education teachers and paraprofessionals serving as communication partners; assignment of "reading buddies;" modeling the use of the AAC by adults and peers; and identification of verbal and nonverbal means

to “communicate to expand the variety of communication methods available to [D.N.].” Ibid. Consequently, D.N.’s IEP should have included stronger communication goals that are observable and measurable. Id. at 20.

4. Academic goals should be embedded within everyday class activities and in school settings, including speech/language and occupational therapy.

To achieve this, Dr. Quirk advances a “person-centered planning method” that she has used for approximately 200 students with complex needs. Id. at 26. Because it is more challenging to determine what a student with complex needs knows and does not know, reliance must be placed on the student’s “desires as told by the person and/or understood by those who knew their strengths and communications.” Ibid. To do this, the following people must meet to identify the expectations for how the student learns; the student’s goals, fears, and needs; and what has worked and what does not work for the student: the student’s family, the student, staff from the current or recent placement who know the student well, staff from the receiving facility, including administrators, general and special education teachers, and support personnel who provide supports and services, the student’s friends, and two facilitators familiar with this process. Through their discussions, they will identify methods that will enable the student to participate in general education classes because the teacher there will know what the expectations are as well as the necessary supports.

Dr. Quirk evaluated D.N. and opined about the appropriate placement for him in a July 7, 2025, report.<sup>23</sup> She observed D.N. in June 2025 and spoke with the Connect Plus BCBA. She did not conduct a formal or informal evaluation of D.N. She observed the general education, integrated, and MD kindergarten classes. The latter observation was twenty minutes. She did not speak with child study team members. Her discussion in her report about his academic and functional strengths was based upon information obtained from the District’s reports and his family and from her observations.

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<sup>23</sup> The parties stipulated that the report would not be relied upon for any facts related to D.N.’s functioning after January 27, 2025, or any conclusions she reached explicitly based on that level of functioning.

Dr. Quirk did not consider the VB-MAPP scores because she did not understand all of them. She also did not review materials generated during a March 12, 2024, evaluation planning meeting, as she was not aware of them. She did not review data summaries, progress reports, including from June and September 2024, plans, or goals from Connect Plus. She did not request D.N.'s school records or communications between petitioners and the child study team because she relied upon the materials that petitioners' counsel sent to her. She relayed that counsel determined what is most relevant.

Dr. Quirk acknowledged that, based upon the ABAS-3, which measures adaptive behaviors at home and elsewhere, his overall scores (general adaptive composite, conceptual, social, practical<sup>24</sup>) fell between the extremely low and low ranges. J-15 at 110–111. Dr. Quirk did not know if the health and safety score of three fell within the extremely low range, and she did not ask about it because kindergarten-aged students would not need the listed skills (“skills needed for protection of health and to respond to illness and injury including following safety rules, using medicines, showing caution, etc.”). Id. at 111. She opined that this was not a meaningful consideration with respect to his education. Regardless, she reported that “problematic behavior was not observed or noted by any evaluator” including at Connect Plus. P-4 at 8. She dismissed the single report about D.N. requiring an adult at all times because of “elopement, lack of safety awareness, and overturning heavy furniture” as hearsay and challenged the veracity of the staff member who made the report because there was not a record of this behavior.<sup>25</sup> Ibid. Moreover, kindergarten students should always be accompanied by an adult, and preventative measures could be utilized if there were safety concerns.

Dr. Quirk observed that D.N. communicated most frequently via eye contact as well as physical manipulation, such as leading a person to an item or activity, proximity to a person, affection, “vocalizations word approximations,” facial expressions, and a

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<sup>24</sup> General adaptive composite represents overall adaptive functioning; conceptual addresses communication, functional academics, and self-direction skills; social addresses performance across leisure and social skills areas; and practical concerns community use, home living health and safety, and self-care. Id. at 111.

<sup>25</sup> Dr. Quirk could not speak with the staff member because they were no longer employed by Connect Plus.

speech output device. Together, these are his “augmentative and alternative communication (AAC) system.” P-4 at 2. Eye contact and facial expression “may be his most effective consistent communication methods.” Id. at 3.

Using the speech output device, he scans and selects icons to communicate but often needs help finding the correct screen or is prompted to touch the correct icon. With this assistance, he uses single words or prestored phrases/audio recordings to communicate when he does not want to do something; wants to request something; wants to “engage socially”; wants to name or greet people; or wants to direct actions and engage in activities. Ibid. Dr. Quirk noted that it is important that peers become familiar with the device and use it as a “normalized communication option,” as she expects it will facilitate more complex communication in the future, in conjunction with “gestures and other social conventions that are quick to understand and can be easily used with peers.” Id. at 3. For this to happen, there must be “competently trained adult communication partners, as consistency in use of communication methods are [sic] critical to language acquisition and sustained use of language skills.” Ibid.

D.N. requires prompts to transition between activities; is motivated by sensory input; and is “more likely to engage and honor request[s] when his body is regulated” by way of self-stimulating behavior such as rocking in a rocking chair. Id. at 4.

The District erred when it determined that “additional aids and services in a general education setting might be considered restrictive to [D.N.’s] learning environment and therefore [were] deemed inappropriate[.]” P-4 at 15 (quoting J-29 at 11 and J-40 at 11). For this reason, it proposed that they start “slow” and require D.N. to develop his “pre-academic” skills before he can be part of an integrated class. Moreover, its proposed program permitted D.N. to be with non-disabled peers only during lunch, recess, and special classes like art and music. Rather than begin its analysis by considering the least restrictive environment, the District “placed the burden of readiness on the student, rather than the adults who are required to make the adaptations and modifications to the kindergarten lessons so that [D.] can learn there.” Id. at 16. Dr. Quirk opined, “This is backwards.” Ibid. It is contrary to the IDEA and New Jersey’s administrative code

because least restrictive is “the extent to which the student is with or is not with their non-disabled [peers] in general education.” T2 276:12–14.

D.N. should have opportunities with non-disabled, same age peers in “regular kindergarten learning activities.” Id. at 4. If the special and general education instructors and speech therapist collaborate, “classroom instructional methods can be adapted, materials can be modified, and content can be programmed into his AAC device for meaningful participation in class and school activities.” Ibid. To approach his placement otherwise would risk lowering expectations that lead to “decreased learning opportunities and isolation” and “giv[ing] up on teaching them.” Id. at 19. Rather, competence should be presumed such that the parties believe “a child can learn and understand, even if they can’t show it in typical ways.” Id. at 19. Research and real-life examples show that many children with significant disabilities understand far more than they can express.” Ibid. Based upon these theories, D.N. “deserves the opportunity to learn in the general education setting.” Ibid. While there, the educators will develop a better understanding of the needed accommodations.

Dr. Quirk reviewed the June 3, 2024, and October 22, 2024, IEPs and most of the transcripts of the IEP meetings, although she could not regularly identify the participants. She also reviewed evaluations that were conducted before petitioners sought to enroll D.N. in kindergarten as well as the March 27, 2024, psychological assessment, March 27, 2024, learning evaluation, May 17, 2024, occupational therapy evaluation, and May 22, 2024, speech/language evaluation.

All but the occupational therapy evaluation were too short and relied upon standardized evaluations that were inappropriate for a nonverbal autistic child. His “early numeracy skills” were not assessed, and there was “no information on early reading skills” including his use of “the AAC devise [sic] to answer simple questions about a story.” P-4 at 4. The assessments did not address who he was as a person; how he could be communicated with; or how he could be taught. “Reports that simply provided labels or a numeric calculation of where [D.] performed relative to nondisabled peers does [sic] nothing to help a teacher know what and how to teach.” Id. at 5.

Multiple necessary components of the assessment were omitted. His family should have been interviewed; his interactions with his family should have been observed; his family should have had an opportunity to observe the evaluators as they interacted with D.N. and provide feedback; D.N. should have been observed in many school locations; and the evaluators should have also met with D.N. on their own. Evaluators should have created situations for D.N. to become familiar with them, and they should have interacted with and observed him multiple times. The observation reports merely stated that he did not provide much in the way of responses. However, he was not in a familiar environment.

The learning assessment did not take place in a classroom setting with D.N.'s peers and did not include multiple activities. The cognitive evaluation addressed only his compliance with directions and interactions with toys. "[O]ther descriptions" would have helped with understanding his responses to prompting, influences on attention, and successful completion of familiar tasks. Ibid.

In sum, the assessments largely addressed what D.N. could not do. This is contrary to state regulations that require that assessments and tests determine the student's educational needs and abilities rather than impairment, "unless that is the intended purpose of the testing." Id. at 6. Dr. Quirk acknowledged, however, that the protocols for standardized assessments require evaluators to stop when certain questions are not answered. Moreover, she acknowledged that because there was limited data, she did not know what D.N. knew.

The IEPs were drafted in a manner that demonstrated a "deficit mindset" that denied D.N. his right to make progress toward general education standards and to learn alongside his non-disabled peers. Id. at 5. "Delays in responding or initiating can be mistaken for lack of comprehension, leading to lower expectations." Id. at 8. "Limited or unconventional communication can lead to misunderstanding of abilities" and "teachers may underestimate [D.'s] knowledge or potential." Ibid.

The IEP's goals are inappropriate because the "conditions under which the goals will be achieved is [sic] unclear." Id. at 9. For example, "minimal assistance" is not

defined, and when D.N. is expected to “attend to language,” there is not an “objective definition of the language behavior to be exhibited.” Id. at 9. “Attending” is also unclear. “If the intent is to look at the speaker, [D.] can already do that.” Ibid.

The District cited “nonexistent” behaviors as a rationale for excluding D.N. from the general education classroom. Id. at 16. Although the IEP recorded that D.N.’s behavior impedes his learning and that of others, none of the evaluators observed such behavior. Rather, the IEP stated that behavioral interventions were not needed, and no such accommodations were included. Dr. Quirk opined that “behavior consultation as needed” is not a “sufficient supplementary service and does not lead to enabling [D.] to be educated with his peers.” Id. at 14.

There was no consideration whether the accommodations could have been implemented in the general education kindergarten class, and the IEPs provided limited supplementary aids and services or modifications. Dr. Quirk has observed that these services are routinely implemented in general education classes. Further, although the IEP referenced modifications, none were listed.

Moreover, when Dr. Quirk observed the MD class, she did not observe implementation of most of the accommodations. Also, its activities were different than those in the general education class because students were in centers, not with the whole group, and they were not required to raise their hands. It appeared that the class was overwhelming and chaotic because the teacher spoke loudly; students made noises, dropped their notebooks, and required redirection; and videos were loud. Dr. Quirk concluded that most of the students were “minimally engaged and did not engage with each other.” Id. at 13. Based upon the description of the class, it “appear[ed]” that the students “may” work individually with an adult for much of the day . . . without access to the rich content covered in the general education curriculum.” Id. at 16. In contrast, the general and integrated classes were great; the teachers were excellent, and the students were engaged.

Dr. Quirk opined that “there is no evidence or truth that the general education classroom cannot address” D.N.’s learning needs. Id. at 16. Also, there “is no evidence

of what actual instruction could be offered in [the special education] setting that cannot be offered in the general or inclusive Kindergarten class. In either case, he will have access to a 1:1 paraprofessional.” Ibid.

Dr. Quirk took issue with the “discrete trial format” manner of teaching that the District proposed. An alternative approach, naturalistic instruction, involves “teaching skills within naturally occurring activities in the place in which the skill will actually be used[,]” which is “more effective than teaching in a separate setting using repeated trials, such as discrete trial training.” Id. at 25. This is because “skills taught in isolated environments often don’t carry over to real-life situations.” Ibid. For example, a student who practices a skill at recess rather than in speech therapy is “more likely to use it socially.” Ibid. Also, skills become “more meaningful when tied to real activities and environments”; students “gain competence when practicing skills in the settings where they’re expected to use them”; “isolated teaching often involves heavy prompting by adults, which can prevent independent skill use”; learning alongside peers “promotes modeling, communication, and belonging” and is “more authentic than role play with adults”; and when “skills are embedded into classroom routines, general and special educators can collaborate effectively.” Ibid. D.N.’s “natural setting” is kindergarten classes and “other school settings where all peers participate.” Ibid.

In sum, since school personnel do not know what D.N. knows, he should be exposed to everything in the general education setting. While he may not learn it all, the governing law requires that he have such access. The converse, starting in the MD class, will not prepare him for kindergarten. When asked if D.N. could have a sense of belonging in the MD classroom, Dr. Quirk opined that this was impossible because “he will not have a peer group that can be age appropriate role models for him and help support him to be a member of kindergarten.” T2 265:22–266:3. Although the students in the MD class may have a wide range of abilities, none engaged in “the kind of age appropriate communication that a non-disabled peer would engage in.” T2 266:20–267:5.

Integration into special classes would be insufficient because D.N. would be isolated in a “pod” with adults and would be viewed as an unworthy visitor, not a peer who is a welcome member of the kindergarten class. T2 267:19. The other students will never

see him as belonging to their class and will not interact with him in the same way they interact with their peers. Dr. Quirk’s opinion in this regard is based upon her experience “in schools in different districts all the time” and from what she was told by students. T2 268:8–9. She cited anecdotal evidence of high school students who were treated differently and stigmatized. Even though there would be appropriate role models in the special classes, STEM, gym, and other activities, Dr. Quirk “doubts very much that he will be . . . considered a member of that group” and she “challenge[s] whether other kids would interact with him to the extent that they interact with each other.” T2 269:6–11. While she acknowledged that it is possible that D.N. could develop genuine friendships and have genuine interactions with his general education peers, she believes this is “much less likely” to occur. T2 269:16.

When asked how he will be received in the general education class when he sits in a rocking chair, Dr. Quirk replied that if he is not separated from the other students and the teacher models acceptance, there will be a greater likelihood of acceptance by the other students. Dr. Quirk acknowledged, however, that the teachers of the special classes, gym, and other push-in classes could model the same behavior and D.N. could be a “valued member of that class” even if he is in the MD class. T2 270:25. Similarly, if the hybrid model were utilized, if D.N. “is situated in the class like other kids and not grouped over on the side with other students . . . with complex disabilities and all of those adults,” he could be included as a member of his classes, such as science and social studies.

Dr. Quirk acknowledged that she did not know if D.N. would be seated separately from the students in the special classes or, if a hybrid model were adopted, in the science and social studies classes. She underscored that there was insufficient data available to her about his academic, social, and emotional functioning in June and October 2024.

### **Additional Factual Findings**

In determining credibility, I am aware that the District employees would want to support the program they developed for D.N. and believe that its program would provide him with a FAPE in the least restrictive environment. I am also aware that petitioners

believe that what they seek is in D.N.'s best interest. In addition to considering each witness's interest in the outcome of the matter, I observed their demeanor, tone, and physical actions. I also considered the accuracy of their recollection; their ability to know and recall relevant facts and information; the reasonableness of their testimony; their demeanor, willingness, or reluctance to testify; their candor or evasiveness; any inconsistent or contradictory statements; and the inherent believability of their testimony.

All of the witnesses largely testified clearly and candidly, seemingly not embellishing and acknowledging when they did not possess information.

While I accept each witness's testimony as largely credible, there are some facts about which there is disagreement. First is whether D.N. engaged in behaviors that could have proved to be dangerous or harmful. While S.N. largely dismissed concerns about D.N.'s behavior or awareness of environmental dangers, on October 28, 2024, Henley forwarded a report of D.N.'s goals in which she noted that when he "is unable to communicate his needs and wants on his device he may engage in tantrum, flop or dart behaviors." Additionally, S.N. acknowledged that it "seemed" that flopping "was his way of protesting because he could not communicate that verbally." He acknowledged that he did not know with certainty whether D.N. wanted to run or play or instead leave the Connect Plus classroom or building. He also acknowledged that Connect Plus occasionally reported that D.N. left through a door and tried to run and that his behavioral technician would get him to come inside. However, he did not believe this occurred regularly. S.N. also acknowledged that due to D.N.'s difficulties with sleep, he could be sad and less likely to comply.

Furthermore, on October 7, 2024, Henley told Zimecki that D.N. "engaged in elopement behavior which is prevented by the addition of baby gates at all interior doors and the use of specific locks on the exterior push bar doors." Also, the April 2024 Connect Plus report documented that, by March 2024, D.N. had not mastered the goals of reducing the number of incidents of flopping, darting, and aggression. Although the frequency of these behaviors decreased over time to zero incidents of flopping and one incident of darting and aggression in March 2024, the goal was amended by Connect Plus to "at least two consecutive months." With respect to disruption, although there were zero

incidents in February and March 2024, a goal concerning disruptive behavior was added due to an increase in knocking over larger objects, which Connect Plus reported posed a safety risk. Thus, contrary to Dr. Quirk's understanding, there was evidence of behavioral issues close in time to when D.N.'s placement was being determined. Accordingly, I **FIND** as **FACT** that the District was presented with evidence of D.N.'s behavior that continued during the relevant time and needed to be considered when fashioning his IEP.

With regard to S.N.'s contention that the District did not discuss a hybrid program and that it was reluctant to offer the program, the evidence in the record demonstrates that the program was discussed. The recording of the October meeting contains a reference to the hybrid program being appropriate after D.N. mastered pre-academic skills and any self-injurious behaviors that Henley reported were addressed. It is also clear that District personnel represented that they could amend the IEP to provide for a hybrid program quickly. Ultimately, the evidence in the record demonstrates that S.N. insisted that D.N. must be in the integrated classroom and petitioners did not request an IEP with that provision. Accordingly, I **FIND** as **FACT** that the parties discussed the possibility of a hybrid program but did not agree to it.

With respect to the experts' testimony, the "weight to which an expert opinion is entitled can rise no higher than the facts and reasoning upon which that opinion is predicated." Johnson v. Salem Corp., 97 N.J. 78, 91 (1984) (citation omitted). Accordingly, the finder of facts must determine the credibility, weight, and probative value of the expert testimony. State v. Frost, 242 N.J. Super. 601, 615 (App. Div.), certif. denied, 127 N.J. 321 (1990); Rubanick v. Witco Chem. Corp., 242 N.J. Super. 36, 48 (App. Div. 1990), modified on other grounds and remanded, 125 N.J. 421 (1991). 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).

A factfinder is not "obligated to accept any expert's opinion, even if the expert was 'impressive,' and may accept some of the expert's testimony and reject the rest, even if that testimony is unrebutted by any other evidence, particularly 'when, as here, the

factfinder is confronted with directly divergent opinions expressed by the experts.” Prendeville v. Bd. of Trs., 2020 N.J. Super. Unpub. LEXIS 298, \*11 (App. Div. February 11, 2020) (quoting State v. Carpenter, 268 N.J. Super. 378, 383 (App. Div. 1993); State v. M.J.K., 369 N.J. Super. 532, 549 (App. Div. 2004)) (other citations omitted). The weight to be given to expert testimony depends upon the “testimonial and experiential weaknesses of the witness, such as (1) his status as a general practitioner, testifying as to a specialty, or (2) the fact that his conclusions are based largely on the subjective complaints of the patient or on a cursory examination[.]” Angel v. Rand Express Lines, Inc., 66 N.J. Super. 77, 86 (App. Div. 1961). Other factors to consider include the information upon which the expert has based his conclusions and whether the expert’s opinion finds support in the records from other physicians.<sup>26</sup> Ibid.

S.N. testified emphatically about his and E.N.’s understanding of D.N.’s abilities and needs. It is abundantly clear that they want only what is best for their son, and their strenuous efforts on his behalf are commendable. However, notwithstanding their understanding of the controlling law, they are not experts in special education or relevant related subjects. Also, S.N. analogized to his and his other children’s school experiences when he contended that D.N. would be bored in the MD class and would adapt well to the integrated kindergarten class. He acknowledged that he assumed that the MD class would not permit play-based learning and made assumptions about the capacity of the other students in the MD class based upon his observation and without evidence to support his contention.

Furthermore, although petitioners assert that “modeling is a strength” of D.N., the evidence does not clearly support this. Pet. Br. at 44. While S.N. testified that D.N. plays well with family members and has interacted in other settings—which is not contested—the evidence in the record clearly shows that he requires a great amount of prompting and motivation to respond in class. Even accepting that he may be capable of modeling, the evidence does not support a finding that it is an area of strength. For these reasons, while S.N. provided useful information about D.N., I cannot defer to his opinion about the appropriate educational placement.

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<sup>26</sup> These principles apply equally to experts who are not physicians.

The District's witnesses who were admitted as experts and Dr. Quirk testified clearly, directly, and professionally. I do not question their credentials or capacity to offer an opinion here.

Dr. Quirk's opinion concerning the appropriate placement is based upon her contention that all students, with few exceptions, should be in general education classes. This is because, in a general education class, students can learn how to be a student and develop a sense of belonging and positive social relationships and model their typically-developing peers. What they learn in the general education class is of secondary importance. Also important is the concept that "many children with significant disabilities understand far more than they can express." She thus opines generally that a student who is eligible for special education services may be separated from their general education peers only if they have severe behavioral issues or are medically fragile. All other students should be in the general education classroom, with modifications to the curriculum, instruction methods, and student's goals as dictated by the student's specific needs.

In addition to opining that the District failed to appreciate these concepts, Dr. Quirk found that it did not consider whether the accommodations provided in D.N.'s IEPs could have been implemented in the general education classroom. Rather, she found that there is no proof that the general education classroom could not address his needs. Also, the District's evaluations tested his impairments and did not adequately test his abilities and needs. Among other failures, the evaluations did not address D.N. "as a person" or how he communicated or could be taught. His interactions with his family should have been more closely examined and considered, and he should have been observed in multiple locations after he became comfortable with the evaluators.

It should be noted, though, that Dr. Quirk did not conduct a formal or informal evaluation of D.N. or speak with the child study team. She did not review D.N.'s school records or communications between the child study team and his parents because she relied upon only the materials that the parents' counsel provided. Also, she observed D.N. in June 2025, well over one year after the relevant time period, and she discounted

the report about problem behaviors without speaking with the Connect Plus staff member who wrote it.

Dr. Quirk also concluded that the MD class was inappropriate for D.N. because the other students in the class had limited to no communication skills and were not accessing kindergarten activities. Thus, they did not offer appropriate peer interaction for D.N. It “appeared” to D.N. that the MD students “may” work individually with an adult for much of the day “without access to . . . the general education curriculum.” However, Dr. Quirk reached her conclusion about the propriety of the MD class after her single, twenty-minute observation of the MD class, and she acknowledged that students in MD classes generally have a wide range of abilities and some may communicate better than D.N. Moreover, mere integration into some general education classes, such as art, gym, or STEM, would be inadequate because general education students will not interact with them in the same way as they do each other. That is because special education students are necessarily seen as outsiders and are treated differently, as they are seated separately. While she acknowledged that D.N. could develop “genuine friendships” and have genuine “interactions with his general education peers” when he joined the general education classes, she believed it was less likely to occur if he were to do so while he was in the MD class.

In reaching this conclusion, she relied upon anecdotal evidence—what she observed at other schools and was told by other students. However, she acknowledged that D.N. could be a “valued member” of those classes if the teachers model acceptance behavior and physically integrate him into the classes. She further acknowledged she did not know if he would be seated separately from the general education students. Moreover, there is no evidence in the record concerning whether and how teachers in the integrated kindergarten would model acceptance and integrate D.N. into that class.

Dr. Quirk also critiqued the District’s consideration of D.N.’s behaviors. She noted that while the IEP<sup>27</sup> indicated that his behaviors interfered with his learning, it also stated

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<sup>27</sup> Dr. Quirk referred to one IEP; however, the June and October 2024 IEPs contain the language that she referenced.

that interventions were not required. She believed that concerns about problematic behavior were unfounded given the absence of reports by evaluators. While there was a report about elopement, lack of safety awareness and overturning furniture, she dismissed it because it was not recorded. However, as noted above, there was evidence of behavioral concerns.

Also as noted above, there are other relevant omissions. Dr. Quirk relied upon only what petitioners' counsel sent to her, and she reviewed neither the VB-MAPP assessment nor D.N.'s school records. Also, she relied in large part upon assumptions and unrelated anecdotal evidence to support her conclusion that the District's MD classroom is inappropriate for him and that he would not be accepted into the integrated general education classes, lunch, recess, and gym. While she critiqued the alleged failure of the evaluators to interview D.N.'s family, this was in fact done. Similarly, D.N. was observed during observations and in his Connect Plus setting. Further, she did not address how D.N. would use his AAC device in the general education setting when it was reported that he did not readily use it in his then-current placement. Moreover, she relied heavily upon her philosophy that all students who are eligible for special education services must be in general education classes, barring a very limited set of exceptions. This theme seemed to dictate her result in large part. For all of these reasons, I am unable to rely on the opinions of petitioners' expert concerning the propriety of the District's program and placement for D.N.

Jack, Roach, and Zimecki each testified in a cautious, clear, and certain manner and demonstrated their knowledge of their professional responsibilities. They relied upon the data and observations that were available to them when they recommended D.N.'s placement. His auditory comprehension, expressive communication, and total language scores on the speech and language evaluation were in the first percentile rank. He achieved only 43 percent mastery of conventional communication, which involves simple gestures, and neither mastered nor inconsistently used concrete symbols, abstract symbols, or language. He inconsistently communicated to refuse or obtain things or engage in social interaction and did not communicate to provide or seek information. On the ABAS-3, he scored in the extremely low range overall and in the conceptual and practical domains, and in the low range in the social domain.

While at Connect Plus, D.N. scored 37 out of 170 on the VB-MAPP assessment. This indicated development at the level of a child between zero and eighteen months of age. He also scored 68 out of 96 on the barrier assessment, which indicated significant barriers. The VB-MAPP showed that D.N. required a “significant amount of prompting and redirection in all areas.” While he was able to “imitate simple instructions, such as ‘clap’ or ‘do this,’” his instructions needed to be “basic and one step.” Although Henley stated that he enjoyed being around his peers and was able to sit in a small group for ten to fifteen minutes, she also said he required one to one adult support, redirection, and sensory breaks to regulate, focus, follow instructions, and complete tasks. The assessment concluded that he needed substantial support with adaptive skills as he engaged in tantrum, flop, or dart behaviors if he could not communicate via his AAC device; support with cognition and visual performance; substantial support with communication skills; and very substantial support with imitation skills and independent play, social play, and social and group skills. Consequently, in addition to other recommendations, Henley recommended moving him to a quiet area, such as a space outside the classroom, when he worked on individual goals. While she recommended he should not be in a class with low level children and would benefit from being in a room with peers he could imitate and work with, she also recommended he should be pulled out of that class for “teaching with students with different diagnoses.”

Jack observed that this was implemented at Connect Plus, as he was removed from the classroom for individual instruction with his BCBA and aide. During the observation, he became disinterested after a short period of time, despite repetition and use of motivators. He did not use his AAC device, and his Connect Plus BCBA reported that he worked for up to ten seconds with motivators and used his AAC device only for protest. Additionally, as noted above, the District was advised by Connect Plus about elopement, safety awareness, and pushing over heavy items. While these behaviors may have decreased in frequency, Henley reiterated a concern about elopement in October 2024.

Petitioners argue that it is significant that the District’s witnesses cited different discrete examples of skills that D.N. required but lacked. The evidence does not suggest

that they referenced only these examples. Rather, District personnel found that D.N.'s needs were too significant to permit him to achieve meaningful progress primarily in the general education setting. The class moved at a significantly faster pace than the MD class, as general education students routinely have the skills that are essential to start school. They know letters and numbers, can decode, and begin reading in December. Although D.N. was able to learn, he lacked the requisite skills as he could not participate in lessons on comprehension and sight words, nor could he decode. This was compounded by his need for motivators to complete tasks, his limited attention span, and the larger number of students and the smaller number of adult staff in the general education class. He would be unable to participate in the general education curriculum or work alongside his peers, as he would largely need to be removed or separated from the class. Indeed, Connect Plus reported that "his communication skill still requires repeated and frequent repetition and is primarily prompted. This impacts his ability to expand his communication and social interactions with others." In addition, District personnel cited the fact that he needed to be removed from his Connect Plus classroom for individual instruction, significantly reducing social interaction and modeling opportunities. However, he would integrate with his general education peers during lunch, recess, gym, and special classes. Accordingly, I **FIND** that the data and information relied upon by the District, taken together, corroborates the testimony of Jack, Roach, and Zimecki and their determination that the MD class was the appropriate primary placement for D.N.

I also **FIND** as **FACT** that the District's employees and petitioners engaged in an ongoing dialogue and exchange of information in an effort to reach a consensus concerning D.N.'s placement. It was complicated to some extent by the delayed provision of information from Connect Plus. There is no evidence in the record that suggests that Connect Plus sought to delay the sharing of information. However, there is evidence that S.N. did not immediately authorize Connect Plus to share certain data and that he preferred the District first speak with Henley. Nonetheless, the parties' dialogue extended over six months, and both parties expended significant time and effort in this regard.

With respect to petitioners' contention that "District staff lack the training and professional development that would enable them to educate D.N. in general education

classes with appropriate modifications and support” (Pet. Br. at 40), I **FIND** as **FACT** that there is no evidence in the record concerning the degree and appropriateness of the staff’s training.

### **LEGAL ANALYSIS AND CONCLUSIONS**

The IDEA requires that a state receiving federal education funding provide a FAPE to disabled children. 20 U.S.C. § 1412(a)(1). School districts provide a FAPE by designing and administering a program of individualized instruction that is set forth in an IEP. 20 U.S.C. § 1414(d). In order to qualify for this financial assistance, New Jersey must effectuate procedures that ensure that all children with disabilities residing in the State have available to them a FAPE consisting of special education and related services provided in conformity with an IEP. 20 U.S.C. §§ 1401(9), 1412(a)(1). The responsibility to provide a FAPE rests with the local public school district. 20 U.S.C. § 1401(9); N.J.A.C. 6A:14-1.1(d). The district bears the burden of proving that a FAPE has been offered. N.J.S.A. 18A:46-1.1.

The United States Supreme Court held that the IDEA “requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 137 S. Ct. 988, 1001 (2017). The Third Circuit determined that Endrew F.’s language “mirrors [its] longstanding formulation [that] the educational program ‘must be reasonably calculated to enable the child to receive meaningful educational benefits in light of the student’s intellectual potential and individual abilities.’” Dunn v. Downingtown Area Sch. Dist., 904 F.3d 248, 254 (3d Cir. 2018) (quoting Ridley Sch. Dist. v. M.R., 680 F.3d 260, 269 (3d Cir. 2012)) (emphasis added). In addressing the quantum of educational benefit required, the Third Circuit has made clear that more than a “trivial” or “de minimis” educational benefit is required, and the appropriate standard is whether the IEP provides for “significant learning” and confers “meaningful benefit” to the child. T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000); Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999); Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180, 182–84 (3d Cir. 1988), cert. den. sub. nom., Cent. Columbia Sch. Dist. v. Polk, 488 U.S. 1030 (1989).

Case law recognizes that “[w]hat the [IDEA] guarantees is an ‘appropriate’ education, ‘not one that provides everything that might be thought desirable by loving parents.’” Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119, 132 (2d Cir. 1998) (citation omitted). Indeed, “meaningful participation does not require deferral to parent choice.” S.K. ex rel. N.K. v. Parsippany-Troy Hills Bd. of Educ., 2008 U.S. Dist. LEXIS 80616, at \*\*34–35 (D.N.J. October 9, 2008) (citation omitted). Nor does the IDEA require that the Board maximize D.N.’s potential or provide him the best education possible. Instead, the law requires a school district to provide a basic floor of opportunity. Carlisle Area Sch. v. Scott P., 62 F.3d 520, 533–34 (3d Cir. 1995). The District will have satisfied the requirements of law by providing D.N. with personalized instruction and sufficient support services “as are necessary to permit [him] ‘to benefit’ from the instruction.” G.B. v. Bridgewater-Raritan Reg’l Bd. of Educ., 2009 U.S. Dist. LEXIS 15671, \*5 (D.N.J. Feb. 27, 2009) (citing Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 189 (1982)).

An IEP “turns on the unique circumstances of the child for whom it is created.” Endrew F., 137 S. Ct. at 1001. It is usually “reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” Id. at 999 (quoting Rowley, 458 U.S. at 203–04 ). “And while parents often play a role in the development of an IEP, they do not have a right to compel a school district to provide a specific program or employ specific methodology in educating a student.” E.E. v. Ridgefield Park Bd. of Educ., 2020 U.S. Dist. LEXIS 102249, \*8 (June 11, 2020) (quoting Ridley Sch. Dist., 680 F.3d at 269, 278).

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

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 Core Curriculum Content 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. 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).

Any plan must involve the least restrictive environment (“LRE”). That is, to the maximum extent appropriate, students are to be educated with children who do not have a disability, in the same school the disabled student would attend if he were not disabled. 20 U.S.C. § 1412(a)(5)(A); N.J.A.C. 6A:14-4.2(a). N.J.A.C. 6A:14-4.2(a)(2) requires a school district to ensure that “[s]pecial classes, separate schooling, or other removal of a student with a disability from the student’s general education class occurs only when the nature or severity of the educational disability is such that education in the student’s general education class with the use of appropriate supplementary aids and services cannot be achieved satisfactorily.”

Supplementary aids and services are provided in the general education classroom to enable students with disabilities to be educated with non-disabled peers to the maximum extent appropriate. N.J.A.C. 6A:14-4.5. They include: curricular or instructional modifications or specialized instructional strategies; assistive technology devices and services; teacher aides; related services; integrated therapies; consultation services; and in-class resource programs. N.J.A.C. 6A:14-4.3.<sup>28</sup> Supplementary

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<sup>28</sup> (b) A teacher aide may provide supplementary support to a student(s) with disabilities when the IEP team has determined that the student requires assistance in areas including, but not limited to, the following:

1. Prompting, cueing and redirecting student participation;
2. Reinforcing of personal, social, behavioral, and academic learning goals;
3. Organizing and managing materials and activities; and
4. Implementation of teacher-designed follow-up and practice activities.

(c) Supplementary services as described in (b) above shall be provided individually or in groups according to the numbers for in-class resource programs.

[N.J.A.C. 6A:14-4.5(b), (c).]

instruction is provided to students with disabilities in addition to their primary instruction, individually or in groups. It may be in the general education class or in a pull-out classroom. N.J.A.C. 6A:14-4.6(a), (b). In-class resource programs can be provided for up to the full instructional day; modifications to instruction shall be utilized to permit access to the general education curriculum in accord with the IEP. N.J.A.C. 6A:14-4.6(h), (i).

In addressing the LRE, school districts must ensure that:

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

[N.J.A.C. 6A:14-4.2(a)(9)–(11).]

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

If the school has given no serious consideration to including the child in a regular class with such supplementary aids and services and to modifying the regular curriculum to accommodate the child, then it has most likely violated the Act's mainstreaming directive. The Act does not permit states to make mere token gestures to accommodate handicapped

students; its requirement for modifying and supplementing regular education is broad.

[Id. at 1216 (citations omitted)].

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

“The regulations specifically require school districts to provide “a continuum of placements . . . to meet the needs of handicapped children.” 34 C.F.R. § 300.115(a) (2025). The continuum must “make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.” Oberti, 995 F.2d at 1216. Indeed, “children with disabilities who are placed in regular classrooms will most likely receive some special education and related services outside of the regular classroom, such as speech and language therapy or use of a resource room[.]” Id. at 1215, n.21. See also Daniel R.R. 874 F.2d at 1050 (5th Cir. 1989) (“[The Education of the Handicapped Act] and its regulations do not contemplate an all-or-nothing educational system in which handicapped children attend either regular or special education”).

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

[T]he Act does not require regular education instructors to devote all or most of their time to one handicapped child or to modify the regular education program beyond recognition. If a regular education instructor must devote all of her time to one handicapped child, she will be acting as a special

education teacher in a regular education classroom. Moreover, she will be focusing her attentions on one child to the detriment of her entire class, including, perhaps, other, equally deserving, handicapped children who also may require extra attention. Likewise, mainstreaming would be pointless if we forced instructors to modify the regular education curriculum to the extent that the handicapped child is not required to learn any of the skills normally taught in regular education. The child would be receiving special education instruction in the regular education classroom; the only advantage to such an arrangement would be that the child is sitting next to a nonhandicapped student.

[Daniel R.R., 874 F.2d at 1048–49 (5th Cir. 1989).]

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

In New Jersey, the District bears the burden of proof 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. In resolving factual disputes to determine whether, by the preponderance of credible evidence, an IEP is reasonably calculated to provide FAPE, judges must rely upon the determinations of experts in the field of special education. Bd. of Educ. v. Rowley, 458 U.S. 176, 206–08 (1982).

There is a two-part inquiry when reviewing alleged violations of the IDEA: whether the district “complied with the procedures set forth in the Act” and whether the IEP “developed through the Act’s procedures [is] reasonably calculated to enable the child to receive educational benefits.” Rowley, 458 U.S. 206–07. Not all procedural violations will rise to a substantive deprivation of FAPE. Rather, this forum may find that a child did not receive a FAPE “only if the procedural inadequacies . . . impeded the child's right to a free appropriate public education”; “significantly impeded the parents’ opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents’ child”; or “caused a deprivation of educational benefits.” 20 U.S.C. 1415(f)(3)(E)(ii); see N.J.A.C. 6A:14-2.7(k).

Here, the District has demonstrated, by a preponderance of the credible evidence, that it relied upon data obtained from observations, assessments, and interviews and discussions with petitioners and Connect Plus personnel to determine that the MD classroom was the appropriate placement for D.N. Even if D.N.’s behavior in the classroom was no longer a concern, his academic needs were too significant to permit him to achieve meaningful progress in the general education setting. D.N. did not possess basic kindergarten-readiness skills; he could not participate in the class’s lessons; his attention span was especially limited; and he required motivators for many if not all tasks. These limitations or requirements were compounded by the fact that the integrated kindergarten class moved at a significantly faster pace than the MD class; it was considerably larger than the MD class; and it had fewer adult staff. Consequently and importantly, he would not be able to work alongside his peers, as he would largely

need to be removed or separated from the class, as he was at Connect Plus, a preschool program.

Although the MD class is more restrictive than the integrated class, D.N. would not be isolated from his typically-developing peers. Along with all of the MD students, he would integrate with his general education peers during lunch, recess, gym, and special classes. This would permit him to socialize, observe, and model the other students.

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

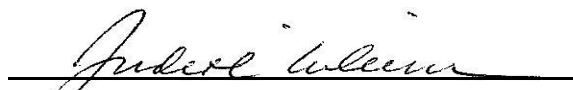
I further **CONCLUDE** that, to the extent there were any procedural shortcomings on the part of the District, the evidence fails to establish that any such procedural violation impeded D.N.'s right to a FAPE; significantly impeded the parents' opportunity to participate in the decision-making process; or caused a deprivation of educational benefits. Rather, the District and petitioners engaged in a lengthy exchange over several months, which included interviews and discussions with petitioners, the exchange and sharing of data, consideration of petitioners' requests concerning access to and review of Connect Plus data, and regular communication.

Petitioners also contend that District staff lack the training and professional development that would enable them to educate D.N. in general education classes with appropriate modifications and support. It appears that petitioners reason that, because the District determined that D.N. should not be in the general education class as his primary placement, this must mean the instructors in that class are ill equipped to teach him or develop his educational program. There is no evidence in the record concerning the degree and appropriateness of the staff's training. I therefore **CONCLUDE** that this has not been established.

Petitioners highlighted the absence of a provision in the IEP concerning integrated lunch, recess, gym, and special classes. It appears from the record that such integration is routinely provided for all students in the MD class. However, to provide petitioners the certainty they desire, the District should amend the IEP to expressly include this provision. I also encourage the IEP team, including petitioners, to revisit the hybrid concept—integration in general education social studies and science classes from the MD class—after D.N. has attended school for six weeks. If it is determined that this is not appropriate, the IEP team should revisit it at regular intervals throughout the school year.

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.

September 10, 2025  
DATE

  
JUDITH LIEBERMAN, ALJ

Date Received at Agency:

September 10, 2025

Date Mailed to Parties:

\_\_\_\_\_

JL/mg

## **APPENDIX**

### **Witnesses**

#### **For petitioners:**

S.N.

Dr. Carol Quirk

#### **For respondent:**

Angela Jack

Gabriela Roach

Julia Zimecki

### **Exhibits**

#### **Joint:**

##### Joint Statement of Facts

- J-1 Board Policy and Regulations—Special Education
- J-2 Early Intervention Referral—Burlington County Service Coordination Unit
- J-3 Intentionally Omitted
- J-4 Psychological Evaluation Report
- J-5 Initial Social Assessment
- J-6 Intentionally Omitted
- J-7 Speech Evaluation Report
- J-8 Eligibility Classification Conference Report, proposed initial IEP, attendance sheet and parental decline to implement initial IEP (dated 12/18/21)
- J-9 Parental request letter requesting CST evaluation
- J-10 Email correspondence from March 12, 2024, through May 16, 2024
- J-11 Intentionally Omitted
- J-12 Intentionally Omitted
- J-13 Parental Notice/Written Consent for Evaluations
- J-14 Intentionally Omitted
- J-15 Psychological Evaluation Report

- J-16 Educational Learning Evaluation Report
- J-17 Child Study Team—Teacher Input form completed by BCBA
- J-18 Email correspondence from March 12, 2024, through May 16, 2024
- J-19 Occupational Therapy Evaluation Report
- J-20 Occupational Therapy Evaluation Report Revised
- J-21 Speech Evaluation Report
- J-22 Email correspondence from May 24, 2024, through June 3, 2024
- J-23 Email correspondence from May 24, 2024, through June 18, 2024
- J-24 Email correspondence from May 24, 2024, through July 18, 2024
- J-25 Email correspondence from May 24, 2024, through September 11, 2024
- J-26 Email correspondence from May 24, 2024, through October 22, 2024
- J-27 Eligibility Classification Conference Report
- J-28 Draft IEP for 2023–2024 pre-K
- J-29 Draft IEP for 2024–2025 Kindergarten
- J-30 Intentionally Omitted
- J-31 Intentionally Omitted
- J-32 Intentionally Omitted
- J-33 Email correspondence from June 12, 2024, through September 6, 2024
- J-34 Email correspondence dated May 24, 2024, through July 18, 2024
- J-35 Intentionally Omitted
- J-36 Intentionally Omitted
- J-37 Intentionally Omitted
- J-38 Intentionally Omitted
- J-39 Eligibility Classification Conference Report and handwritten note from parent
- J-40 Proposed IEP for 2024–2025 Kindergarten dated October 22, 2024
- J-41 October 22, 2024, Eligibility and IEP meeting audio recording—provided electronically
- J-42 Intentionally Omitted
- J-43 Email correspondence from October 22, 2024, through November 22, 2024
- J-44 Email correspondence dated October 28, 2025
- J-45 Connect Plus Therapy data
- J-46 Email correspondence from October 28, 2024, through January 27, 2025
- J-47 District form for permission to discuss D.N. with Connect Plus

J-48 Email correspondence dated January 2, 2025

For respondent:

- R-1 Darlene Llewellyn resume
- R-2 Angela Jack resume
- R-3 Julia Zimecki resume
- R-4 Gabriella Roach resume
- R-5 Brigrance/Vineland Questions worksheet by Angela Jack
- R-6 Connect Plus Therapy data summary by De Vivo, BCBA
- R-7 Email from Angela Jack to D. Llewellyn re: parental request for half day kindergarten
- R-8 Intentionally Omitted
- R-9 Connect Plus Therapy observation by Angela Jack
- R-10 Intentionally Omitted
- R-11 Email communications from August 12, 2024, through August 13, 2024
- R-12 Intentionally Omitted
- R-13 Observation by Angela Jack
- R-14 Observation and Phone conference summary by Julie Zimecki
- R-15 Intentionally Omitted
- R-16 Intentionally Omitted
- R-17 AAC evaluation
- R-18 Katie Neely—Connect Plus Therapy BCBA—phone conference summary
- R-19 Intentionally Omitted
- R-20 Intentionally Omitted
- R-21 Intentionally Omitted
- R-22 June 3, 2024, IEP Meeting Audio Recording—admitted electronically
- R-23 6/3/24 IEP 2023–2024, School Year (Pre-K)—original copy
- R-24 6/3/24 IEP 2024–2025, School Year (Kindergarten)—original copy
- R-25 Email correspondence transmitting R-6

For petitioners:

- P-1 Intentionally Omitted
- P-2 Intentionally Omitted

- P-3 Carol A. Quirk CV
- P-4 MCIE IEP and Placement Report
- P-5 Email correspondence from May 3, 2024, through July 17, 2024
- P-6 Email correspondence from May 29, 2024, through June 17, 2024
- P-7 Email correspondence from August 22, 2024, through October 22, 2024
- P-8 Email correspondence from October 23, 2024, through March 6, 2025
- P-9 Email correspondence from June 11, 2024, through January 3, 2025