



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 13736-25

AGENCY DKT. NO. 2026-39560

D.B. AND A.L. ON BEHALF OF S.B.,

Petitioners,

v.

MONTCLAIR TOWN BOARD OF EDUCATION,

Respondent.

Andrew I. Meltzer, Esq. and **Hannah Argul**, Esq., for petitioners (Sussan. Greenwald & Wesler, attorneys)

Katherine A. Gilfillan, Esq., for respondent (Schenck, Price, Smith & King, L.L.P., attorneys)

Record Closed: June 26, 2026

Decided: July 2, 2026

BEFORE **MATTHEW G. MILLER**, ALJ:

STATEMENT OF THE CASE

This matter arises under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq., and the implementing federal and state regulations. Petitioners D.B. and A.L., on behalf of their minor child, S.B., seek an order compelling the Montclair Town

Board of Education (the “District”) to cooperate with them in order to determine and fund an appropriate out-of-district placement.

PROCEDURAL HISTORY

On July 31, 2025, the petitioners filed a Request for Due Process seeking an out-of-district placement and all related costs to be funded by the District, reformation of the applicable IEP and compensatory education. N.J.A.C. 6A:14-2.7(b). The matter was transmitted to the Office of Administrative Law (OAL), where it was filed on September 2, 2025, for hearing. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. An initial telephone conference call took place on September 10, 2025. That was followed by a conference call on October 14, 2025, during which scheduled hearing dates of November 17, 20, and 21, 2025 were cancelled and new hearing dates of December 12, 2025 and January 9, 2026, were set.

Following a November 21, 2025, telephone conference, the December 15 and January 9 dates were adjourned and the hearing was rescheduled for February 13, February 20 and March 9, 2026. Due to counsel’s calendar conflict and following a telephone conference on February 11, 2026, the February 13 hearing date was cancelled.

Ultimately, testimony was taken on February 20, March 9 and March 11, 2026. Following a telephone conference on April 13, 2026, the record was held open for summations and formally closed on June 26, 2026.

FACTUAL DISCUSSION

Based upon a review of the testimony and the documentary evidence presented and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following pertinent, basic **FACTS**:

1. S.B., who turned twelve years old in September 2025, recently finished his sixth-grade year at the Buzz Aldrin Middle School in Montclair, New Jersey.

2. S.B. was diagnosed with Autism Spectrum Disorder (“ASD” or “autism”) shortly after he turned two years old and began receiving early intervention services shortly thereafter.
3. His initial IEP was formulated at the Central Park Early Learning Center in New York City in January 2017 before the family moved to Montclair in 2018.
4. He was initially referred to the District for potential eligibility for special education services on July 12, 2018. The District accepted S.B.’s IEP the next day and he began attending the preschool program at the Nishuane School. There was then an initial IEP meeting with the members of the District’s Child Study Team on October 16, 2018 and he was found to be eligible for special education services under the classification of autism. He thereafter attended Bradford Elementary School from kindergarten through fifth grade in a self-contained autism classroom.
5. In September 2025, S.B. began attending the Buzz Aldrin Middle School, also in a self-contained autism classroom.
6. S.B.’s parents are now seeking an out-of-district placement for S.B., claiming that the current IEP/special education program in the District is inadequate and does not provide him with a free and appropriate public education (“FAPE”). They are also seeking compensatory services, although those services were not specifically delineated.

TESTIMONY

For Respondent:

Alexandra Catalano, Social Worker/Case Manager, Montclair Board of Education¹

Ms. Catalano has an undergraduate degree in rehabilitation and human services from East Stroudsburg University (B.S. '20) and a master's degree in social work from Kean University (M.S.W. '24). She is a New Jersey certified school social worker. (R-25.) She testified that she first became a school social worker in 2023 and was S.B.'s case manager at the Buzz Aldrin from September through December 2025 before changing positions due to the District's budgetary issues. Over the years, she has written approximately 100 IEPs and also works as an in-home Advanced Behavioral Analyst ("ABA").

As a case manager, she has responsibility for anywhere from forty to sixty children per year, overseeing their IEPs, working with their teachers and counseling. Programming determinations are made based upon student needs, strengths and weaknesses. There is one ABA classroom at Buzz Aldrin with eight students.

As for S.B., she testified that he is "an amazing kid. . . such a joy to have worked with him, made progress the school year." (T1 at 17:20-22.) He does have autism and his education is impacted by some behaviors and dysregulation. However, she felt that he was making both academic and behavioral progress.

Turning to his current IEP (which she did not author but did review over the summer), Ms. Catalano noted that S.B. attended the Extended School Year ("ESY") session over the summer. In the ABA/self-contained classroom, all of the children have a one-to-one paraprofessional ("para"), and S.B. receives instruction in both core academic subjects and daily living skills (which includes things such as sweeping,

¹ Please note that the parties stipulated Ms. Catalano's expertise in the areas of social work and special education programming.

cleaning, toileting and hygiene). He is learning “functional academics,” including math, English Language Arts (“ELA”), science and social studies. He is also receiving direct speech services with a consultation and occupational therapy (“OT”) consultation.² His classmates are all near his functional level.

He is currently classified as being in sixth grade, but he is not at the academic skill level of a mainstreamed sixth grader. Ms. Catalano testified that he is verbal but needs to be prompted to talk in complete sentences, particularly for issues such as wants and desires. As an example, he is able to know that he wants a cookie and can intelligibly ask for it, though not consistently.

S.B.’s current teacher is Sharon Chambers, and in an ABA classroom, there are behavioral interventions and discrete trials, where tasks are broken down into small steps that work towards an end goal. The goals are reported on a datasheet and entered into the ReThink program/app.³

For the time that she was his case manager, Ms. Catalano saw S.B. and communicated with Ms. Chambers on a daily basis. For this year, S.B. was moving up from Bradford Elementary School to Buzz Aldrin, so she reviewed his file, including his IEP and most recent evaluations, including speech and language and occupational therapy from spring 2025. She noted that direct OT services had terminated because he had met his goals and no longer needed that level of service. The OT consultation services would focus on his sensory diet and dysregulation.

S.B.’s behaviors clearly interfere with his learning; he makes high-pitched vocalizations, will elope from his seat and sometimes scratch, squeeze and pinch his para. When he is dysregulated, “he’s not in control of himself for an internal reason.” (T1 at 28:22–24.) This occurs “(o)ften, but inconsistently.” (T1 at 29:3.) Effectively, he would have good days and bad days.

² Direct services are provided by the specialist to the student. A consultation involves the specialist working with the teacher to impart those skills to the student.

³ <https://www.rethinkd.com/k-12-academic-curriculum/> (last accessed June 4, 2026)

She also reviewed the functional behavioral analyses that were performed in August 2022. Concerning the pinching, Ms. Catalano opined that this is a manifestation of sensory issues. . . he never means to hurt anyone. S.B. needs a lot of pressure or squeezes to calm his body down. Walking and running also helped, as did sitting on a big, bouncy ball. Fidgets also help.

Sometimes he would come into school dysregulated and sometimes it happened during the day. Obviously, when he's dysregulated, his academics suffer. This occurs a few times per week.

Ms. Catalano then reviewed S.B.'s identified needs in the classroom (per the IEP). This included all aspects of ELA, including social and pragmatic language, as well as regulation, toileting and social skills. His language also helps him communicate his physical needs better so he can avoid or limit his dysregulation. The goal of the IEP was to increase articulation, particularly the "th" sound, and increase his expressive language skills, as well as follow a group plan in a structured activity and improve his ability to answer questions. He possesses an Augmentative Alternative Communication ("AAC") device, which is essentially an iPad with applications "where he can see icons and express whatever he needs to verbally say through different icons." (T1 at 40:4-11.) He does not need it to communicate, and she did not see him use it this school year.

As for math, he can add but is still working on subtraction. In an October 2025 conversation/meeting with S.B.'s mother (A.L.), she claimed that he can perform multiplication, which is "inconsistent" with what she has seen in her in-school observations. During that meeting, which also included the family's behaviorist, Ms. Chambers and Sharon Balsalmo (the District behaviorist), there were discussions concerning S.B.'s progress. They presented data to A.L. demonstrating his English and math skills and talked about the behaviors that they were working on. At that point, his behaviors at home and at school were fairly consistent and A.L. wanted to emphasize anti-elopement⁴ and finding a way for him to be "independent with taking care of himself." (T1 at 44:9-15.) Toileting was also discussed.

⁴ Elopement in terms of special education means leaving the area that he is currently in. It does not necessarily mean leaving the room or building.

At the time of the meeting, his behaviors were minimal, with no biting or pinching, and A.L. was happy with his progress. She also noted that the family was looking to change their in-home behaviorist to find a better fit. S.B. was getting better at school with eloping, knowing where to go without active direction or handholding, etc., although he would still elope in the classroom. He does suffer from PICA,⁵ but was also putting fewer inedible objects in his mouth.

In October, S.B. was making “great progress” in toileting. (T1 at 44:18–19). However, he is “(n)ot completely” toilet trained. (T1 at 36:21–23.) The District keeps a log of his bathroom habits, and a toileting consultant has also been hired. He tends to be fine when he is regulated, but when he is dysregulated, toileting is a challenge, although he has shown progress this year. Still, he is unable to independently say that he needs to go, and he has to be taken proactively to avoid accidents. He was being treated for constipation with MiraLAX,⁶ but she did not have much information regarding that.

Ms. Catalano expanded on the toileting issue, noting that he has accidents both when he is dysregulated and when he simply forgets. They do use an alarm, but when he is regulated, he can tell his para that he needs to go. He needs to be directed to the bathroom and reminded to wash his hands, but he does not need assistance using the toilet; the para stays outside.

Reading and math are taught using the discrete trial method, but there was also small group instruction with other students in the classroom. Social skills are worked on through speech and language, as well as through game playing and during gym. With prompting, he can greet a peer or ask them a basic question. He knows his classmates’ names but needs prompting to really communicate with them in short sentences.

Per the psychological evaluation, S.B.’s IQ is fifty-seven, which is “very low.” Ms. Catalano testified that this indicates that he can make progress, but not at the rate of a neurotypical peer.

⁵ <https://my.clevelandclinic.org/health/diseases/22944-pica> (last accessed June 4, 2026)

⁶ <https://www.drugs.com/miralax.html> (last accessed June 4, 2026)

During her time with S.B., she saw clear behavioral progress: navigating the school, going to and opening his locker, knowing where things are and where to go, etc. His PICA was reduced, and he was able to follow one- and two-step directions from his para and teacher. His spontaneous language also improved; he would ask to do something instead of just doing it and he would respond appropriately to a simple question. He is self-aware as to feelings and, sometimes, his physical state.

Progress is reported to the parents periodically throughout the year and can encompass more than one IEP and set of goals. She testified that the June 2025 IEP offered S.B. “the opportunity to make meaningful educational progress.” (T1 at 60:15–18.) She felt that he was achieving those goals.

She also maintained a behavioral log beginning in October 2025 because they started seeing a change. This was about the time that the custody agreement between his parents had changed. S.B. does well with routine, and this interrupted that; she felt it increased his dysregulation.

In the self-contained classroom, students receive pass-fail grades. They’re graded on whether they are making progress towards their goal in their IEP.

Ms. Catalano is aware that S.B. takes medication but is unaware of the details, except that there was a lack of consistency in its administration at home.

She is aware that the parents want an out-of-district placement for S.B. However, she does not feel that this would be appropriate because she “know(s) that he can make progress and learn in the environment he’s in currently.” (T1 at 66:15–16.) He is exposed to general education peers in his specials, such as gym and lunch, chorus and art. He loves music and singing and he loves it when you sing with him.

On cross-examination, Ms. Catalano confirmed that S.B.’s behaviors were sensory-based. However, she acknowledged Ms. Balsalmo’s FBA, which noted that his pinching, grabbing, etc. was not sensorily based but rather attention-seeking or a signal

to access something he wants. She also noted the observations in the VB-MAPP that S.B. “often engages in severe negative behavior that is a danger to himself or others” while he was in elementary school. (T1 at 74:16–22.)

During her time as S.B.’s case manager, she was in his classroom for about twenty minutes a day and would specifically observe him daily, along with four other students that she managed who were in his class. S.B. was inconsistently non-compliant, which obviously impacted his ability to learn. She was in his classroom most often because five of the forty-seven children that she managed were there and that group had the most needs.

Ms. Catalano reiterated that they created the behavior log when they noticed an increase in issues in October. While they were still seeing the same issues that were identified in the 2022 FBA, they were occurring “not as often,” and they were manageable. (T1 at 82:6–12.) She did acknowledge that the June 2, 2025 classroom-based assessment noted that S.B. “is adaptable to change and handles changes in routine well.” (T1 at 84:3–4.)

The behavior log noted issues in November and increased issues from December through February, including elopement, scratching, grabbing, urinating in his pants and ingesting hand sanitizer. She is also aware of the collection of toileting data. Referring back to the 2022 VB-MAPP, it is noted that he “initiates to use the bathroom and completes all steps of a toileting routine.” (T1 at 95:4–5.)

Ms. Catalano agreed that the purpose of an IEP “is to formulate goals for the student for the coming academic year” that the student can be expected to meet. (T1 at 99:18–100:1.) Those goals are based on the student’s present levels.

There was also a discussion of his math skills, including subtraction, which he was working on in 2023 and is still working on now. The daily living skills goals are also similar. As for his IQ, that score (of fifty-seven) could vary depending on a variety of factors. He does understand words, can verbalize his wants and needs and is capable of learning;

just because he does not meet a goal does not mean that he is not making progress towards it.

She also agreed that Ms. Balsalmo's second FBA noted that the reason for his PICA is often a self-stimulatory need.

Sharon Balsalmo, Behavioral Specialist, Montclair Board of Education⁷

Ms. Balsalmo graduated from Seton Hall University in 1996 with a B.A. in communications and obtained her master's in special education from Long Island University in 2023. She also completed an applied behavioral analysis(ABA) certification program at Penn State in 2006. (R-26.) She testified that she has been employed by the Montclair School District for twenty-one years, the last twenty as a behaviorist throughout the District. In the other year, she was a teacher in the ABA autism classroom.

In the autism classroom, Montclair uses applied behavior analysis, which is "the evidence-based science utilizing the principles of learning to teach a socially significant behavior." (T1 at 117:13–17.) They use "discrete trial training," which breaks down skills into smaller units to simplify them. She has worked in the ABA classrooms in both the middle school and at Buzz Aldrin. She has worked with S.B. since he entered the District, with a hiatus from 2023 through 2025 when they were assigned to different schools. She worked with him from September through December 2025, when she was reassigned within the District. She last attended one of his IEP meetings in 2023 and has also authored his 2022 FBAs.

She affectionately referred to S.B. as a "cute little guy" with a diagnosis of autism. (T1 at 120:6–9.) He has difficulty with interactions, engages in maladaptive behaviors and can be dysregulated. In the six-plus years she has known him, S.B. has engaged in scratching, grabbing other people, and eloping as well as stereotypy, which is repetitive behavior for the purpose of self-soothing/regulation, such as flicking objects with his fingers.

⁷ Please note that the parties stipulated to Ms. Balsalmo's expertise in the areas of autism and special education programming.

Ms. Balsalmo then turned to the FBAs she performed in 2022. One was for pinching and grabbing and the other was for the mouthing of objects. She determined that the pinching and grabbing was being utilized for both escape from unwanted tasks and access to tangibles. To counteract that, the teachers would emphasize functional communication so he could vocalize his desires instead of using other methods. They would also use alternatives, such as a chewy tube or “chewelry,”⁸ although she did not see him using that in 2025.

There was a concern about whether his PICA was nutritionally or medically based, particularly since it is unlikely that they would be able to change or reduce behavior with a medical component.

Regulation continues to be a major learning impediment for S.B. and his constipation has been a problem. She also feels that he needs a consistent schedule to maintain his regulation. They also use different sensory tools to help him, with a cozy corner, beanbag chair, blanket, etc.

She performed a VB-MAPP, which is a verbal behavior, milestones and placement program, at the end of the 2022 school year. It’s not a standardized test, but rather an assessment. . . standardized testing would not work with S.B., because he wouldn’t be able to follow the instructions. The VB-MAPP is used to assess skill levels, determine appropriate placement and develop IEPs. It could take a few days to a few weeks to administer. His dysregulation and hyperactivity interfere with his ability to learn.

Based on the FBAs, a Behavior Intervention Plan (“BIP”) was incorporated into his IEP and Ms. Balsalmo helped train S.B.’s teacher and para for the 2023–24 school year. They implemented a token or point system and gave the professionals flexibility in how to address his dysregulation, because some days one thing may work and on another, it wouldn’t. They would also try to teach him how to ask for a break without engaging in the maladaptive behaviors first. Consistency at home is also important, “because behaviors

⁸ <https://www.arktherapeutic.com/chewelry/> (last accessed June 4, 2026)

can be intermittently reinforced.” (T1 at 20–23.) She knew that the parents were undergoing training and were being given coping strategies, and they were specifically working on functional communication training to reduce the scratching, grabbing and placing items in his mouth.

She testified that they were also working on having him sleep in his own bed, stay seated for meals and not elope from the house. She went to the home on multiple occasions during the 2022–23 school year and there were virtual sessions (due to COVID) as well. There was an in-home therapist and she attempted to collaborate with that person.

S.B. was toilet-trained for urine as far back as kindergarten, but when he returned to in-person learning following the pandemic, that was no longer true. Currently, he does ask to use the bathroom, although he doesn’t always “go” when he asks to. He wears regular underwear in school. There was some discussion with the parents concerning his constipation, including his diet and medication.

Ms. Balsalmo was unclear as to what medications S.B. takes but knows that one is for “attention” and that there were some laxatives as well.

She recalls being involved in the meeting with Ms. Catalano, Ms. Chambers and S.B.’s mother. Mom had wanted to provide the at-home behaviorist with some programming.

During summer 2025, the District hired a toileting consultant and that program is ongoing. She reviewed the data collected in conjunction with his toileting and felt that it showed improvement since he was asking to use the bathroom more often. She believed that he “has had a lot of successes, still some accidents and. . . a little bit of an increase towards the end.” (T1 at 153:18–20.) February 2026 showed increasing significant issues. The toileting schedule is modified based on his successes and struggles.

As for academics, Ms. Balsalmo felt that S.B.’s progress was “slow and steady,” and his skills are reinforced through maintenance. She believes that “his rate of progress

is. . . consistent with his potential.” (T1 at 156:17–19.) He was at a first-grade level for math. He can read simple sentences and paragraphs, but he cannot open a book and read independently and can only comprehend simple directions. He reads at approximately a second-grade level, but Ms. Balsalmo clarified that:

Q. Is that reading or is that including reading comprehension, because there’s a difference as you noted between reading a paragraph and understanding what you read, which many people have taken the SAT find that there’s a significant difference in that. Is he second grade level for actually saying the words, or is he second grade level for comprehending the words that he’s reading?

A. Saying the words.

Q. Does she have an opinion as to where he is with regards to understanding the words that he’s reading?

A. No.

[T1 at 164:3–15.]

S.B. has difficulty in stringing sentences or concepts together, particularly without pictures:

Q. So let me ask you this then. If you put three of those sentences together. Mr. Smith walking the dog. Jimmy is picking up the garbage and Jane is playing soccer. If you ask him who’s picking up the garbage, would he be able to get that question right without a picture?

A. I don’t think so.

[T1 at 167:2–8.]

Ms. Balsalmo was aware that the family moved to Montclair from New York, and at that time, he had “splinter skills,” where he could “read” words but might struggle with letter sounds. He would more memorize books than comprehend them. She did have discussions concerning academic expectations with S.B.’s parents, but she did not recall specifics. She also recalled reviewing the evaluations and reports supplied by the parents

and accepting them, but not the recommendation for an out-of-district placement, as it was felt that “he was making progress in the public school.” (T1 at 169:5–9.)

She was not involved in the creation of S.B.’s current IEP but knew that there was a behaviorist involved as well as Rebecca O’Sullivan, his fifth-grade teacher. She noted that Ms. O’Sullivan had indicated that S.B. was communicating more about his internal state, such as asking for breaks or some sort of sensory input, which indicated self-recognition of the need to stay regulated.

She concluded that the IEP provides S.B. with the opportunity to make meaningful educational progress in the District, since it addresses his dysregulation and his academic needs.

On cross-examination, Ms. Balsalmo reiterated that S.B. needs repetition and maintenance to keep skills, which contradicts a statement made in the 2022 VB-MAPP, where it states that he “maintains new skills without maintenance.” (T1 at 175:12–13.) However, she further testified that the way the assessment is worded, his score was justified.

The toileting chart was again reviewed, with Ms. Balsalmo confirming that S.B.’s habits in February were worsening. As for BIPs, the goal is always to eliminate negative behaviors, but that’s not always possible. She acknowledged that some of his specific behaviors, such as pinching, grabbing, putting his fingers in his nose and then his mouth, and putting inedible items in his mouth, were continuing. His most recent IEP also noted elopement, aggression, throwing items and biting and she was unaware why a new FBA had not been performed, even though these behaviors were being tracked. She personally, however, did not feel it was necessary, since “the frequency and severity. . . didn’t warrant it.” (T1 at 192:22–24.)

The District was aware of the new custody schedule, if only because it required some changes in transportation. Mom had also called for help for the, per Mom, ineffective home BCBA, although there was never any personal contact with that person. Ms. Balsalmo testified that Dad was the more present parent and was more receptive to

feedback and attempting to implement strategies. Mom's household was "less structured," and the implementation was not as consistent. Dad "followed through more than mom on (her) suggestions." (T1 at 197:16–198:2.)

S.B. was not aggressive per the standard definition of the same, which is why she listed specific behaviors. The greater the demands on S.B., the greater the maladaptive behaviors. She does not believe those behaviors will ever fully disappear.

Ms. Balsalmo confirmed that S.B.'s age and while she is unclear whether he has hit puberty yet, he does masturbate in the bathroom, which they are trying to discourage. She also noted that he is small for his age and that due to her body habitus, the home BCBA was unable to physically handle him.

Megan Randall, Social Worker/Case Manager, Montclair Board of Education⁹

Ms. Randall graduated from Loyola (Md.) University (B.A. in speech pathology and audiology '01) and received a master's in speech-language pathology from San Diego State University ('03). She is certified by New Jersey in speech-language pathology and also holds her PROMPT¹⁰ certification, which is a tactile approach in speech-language pathology. She has also received the Clinically Competent Clinician designation from the American Speech and Hearing Association.

She has worked for Montclair for eight years as a speech and language pathologist, evaluating and treating students in those areas. She provides consultative as well as direct services. Ms. Randall also has "vast" experience in the implementation of applied behavior analysis, including verbal behavior (i.e., expressive and receptive language skills). She is familiar with Montclair's autism program, which takes place in three self-contained classrooms at the Bradford School and utilizes the principles of applied behavioral analysis to shape and condition behaviors. The District utilizes an ABA therapist, an occupational therapist and a speech language pathologist, and

⁹ Ms. Randall was deemed to be an expert in the area of speech and language without objection.

¹⁰ Prompts for Restructuring Oral Muscular Phonetic Targets.

provides an integrated approach to the student's education. They then track the data, which drives them to develop programs to build their skills.

Ms. Randall worked with S.B. for six years through Spring 2025, when he was still at Bradford. She utilized the principles of ABA to establish regulation, which then allowed her to address his speech–language issues. They start with a “visual schedule where each activity was represented by a picture and put together on a schedule so that the student understands what’s coming first, next and last.” (T2 at 12:16–20.) They utilized tokens that he would pre-select as “reinforcers” to try to garner compliance with learning activities. The ability to request items plays a “significant role” in his ability to acquire academic skills; it is his “functional communication,” which “is essential to provide regulation for a child. . . to allow for that child to have a voice.” (T2 at 14:18–22.)

She performed evaluations on S.B. in 2019 and 2025. In 2019, she performed a receptive one-word vocabulary test, the expressive one-word picture vocabulary test, the preschool language scale, the Arizona articulation proficiency scale test and “informal measures.” Three of those were standardized tests, with scoring based on neurotypical norms. She performed those three standardized tests (receptive, expressive and Arizona) again in 2025 and emphasized that the results only reflect a snapshot in time and do not provide a “total compilation as to his receptive and expressive language abilities.” (T2 at 17:15–18:2.) This is particularly true given his diagnosis and day-to-day, hour-to-hour differences in regulation.

However, since S.B. was able to sit for the testing, Ms. Randall thought that it would be able to provide them with some objective indication of where he was academically. The Arizona test also provided some real-life examples of where S.B. struggled with phonetics. For him, it was substituting the “f” sound for the “th” sound. The testing demonstrated a “moderate delay” in expressive and receptive language as well as his pragmatic (social language) skills, all of which were secondary to his diagnosis of ASD.

Her colleague performed a speech-language evaluation in 2022, which utilized more informal measures. She also reviewed the July 2022 evaluation performed by Ms.

Rubin, petitioner's expert, who performed the receptive and expressive one-word vocabulary tests. Ms. Randall testified that her colleague would not have been able to use those specific tests because protocols dictate that they cannot be given twice within a year because the student would be familiar with them, which could skew the results.

As for the substance of Ms. Rubin's report, she felt that it was comprehensive and something she should consider. It was notable that she found S.B. to be a Gestalt language learner, where he learns language holistically first, then breaks it down. For instance, he learns entire song lyrics or dialogue from videos and doesn't piece them together word by word. They then build on that language strength and make the content functional.

She testified, essentially, that regulation is the key to his learning, because when he is regulated, he can focus on the academic nature of school (i.e., be "accessible for instruction"). They would do things like give him squeezes and eliminate background noise to get him to comply behaviorally. She noted his gastrointestinal ("g.i.") issues, which could be problematic, particularly since the source of his maladaptive behavior could be difficult to determine. She disagreed with Ms. Rubin's characterization of his repeat phraseology as "verbal stimming," particularly since "so much of what he had to share was actually meaningful," especially given his background interests. There is generally context to his verbalizations. (T2 at 30:4–18.)

Ms. Randall emphasized S.B.'s love of music and his ability to hit high notes and repeat lyrics, and she incorporated that into his program. His vocals are vibratory, and it seems to be a feeling that he really loves and it helps to regulate him.

Discussion then turned to S.B.'s AAC device and his use of the Proloquo2Go¹¹ application, which is a communication software that "accurately reflected the depth of what (he) understood in terms of receptive language." (T2 at 35:4–6.) For non-verbal students, this would be their primary form of communication, but for S.B., it augments his

¹¹ <https://www.assistiveware.com/products/proloquo2go> (last accessed June 4, 2026)

communication and helps during moments of dysregulation because he can use it to effectively communicate for himself or to assist him in doing so.

As for his overall state of regulation, Ms. Randall felt that there were ebbs and flows with multiple variables and they have found strategies to help regulate him, including sips of water, taking walking breaks, squeezes and massages, intonation therapy, etc. He is allowed to take the AAC device home and his parents were supportive of its use.

Ms. Randall testified that S.B. has more receptive language than expressive; in simpler terms, he understands more than he can express. She is not concerned that S.B. might become reliant on the AAC and testified that the evidence shows that “it augments and primes the pump for communication” and does not stifle it. (T2 at 40:11–12.) She agreed with Ms. Konik’s August 2023 report that S.B. was making steady progress; he was more able to put sentences together, improve his overall functional communication skills and start to advocate for himself. That also helped him with his social and pragmatic skills, including cooperative play, board games, etc., which helped his relationships with other students and his teachers.

As for Ms. Rubin’s report, that was discussed at the September 2023 IEP meeting and she agreed with a good portion of it, particularly the focus on language skills, functional communication, etc. The short-term objective was to have him be able to gain attention by using his name, while in the long-term, improving social communication was the goal. She disagreed with Ms. Rubin’s conclusion that S.B. “lacked the immersive language and peer role models” that he requires. (T2 at 47:18–21.) She pointed out that at Bradford, students in a self-contained classroom have exposure to neurotypical peers, particularly during recess and lunch, but also incidentally during the day in the hallway, etc. That interaction would be facilitated by the para, with a lunch group or buddy system. Some of this is pre-organized and some is organic.

Ms. Randall testified that she was present during Ms. Rubin’s 2024 observation and disagreed with her conclusion that S.B. had regressed in speech and language since her last observation. She felt that single observations are simply a snapshot of a student’s

ability and in a student like S.B., regulation is such a key to performance that a single day's observation may not be illustrative of the full picture.

Ms. Randall was involved in the IEP meeting that preceded the 2023–24 school year, and she noted his improvement in communication and engagement, particularly in functional communication. There were still issues with functional communication as well as expressive and receptive language, and his articulation clearly needed improvement, particularly with the “th” sound. Intelligibility is an extremely significant issue, so he can have some level of conversational speech. There was also a goal to answer questions with 80% success. To address these goals, S.B. originally had speech and language sessions twice a week for thirty minutes, but that was amended to thrice weekly. There was also an integrated group session in the classroom.

For the 2025–26 school year, it was recommended that he have two individual sessions, one integrated group session and a consultation, where the group comes together as an interdisciplinary team (PT, OT, speech therapist, teacher, consultant). She testified that the goals for this school year were meaningful as they were derived from data from the prior year, as well as their day-to-day knowledge of who S.B. is. She does not feel that he requires an out-of-district placement. He is receiving FAPE and is “honored as a whole child with an interdisciplinary approach and a research and evidence-based practice of (ABA) as well as typically developing peers so that he could go ahead and access typically developing role models in those various aspects with which he presents with weaknesses.” (T2 at 61:23–62:3.)

On cross-examination, Ms. Randall first testified that she worked with S.B. as a speech-language therapist during the 2024–25 school year and that his exposure to neurotypical peers was almost exclusively incidental and most often during recess or in the hallway. Oftentimes, children would know S.B. and would approach him to say “hi.” These interactions were not documented, however.

Ms. Randall only works at Bradford and she is currently responsible for thirty-six students for whom she performs evaluations and provides therapy as well as input towards their IEPs. She has been on S.B.’s Child Study Team since 2019. She confirmed

that she observed him in the classroom during both fourth and fifth grades at least once per month for thirty minutes. She would also communicate with his parents, and she specifically recalled discussing the AAC device (which was always charged and ready to go).

Ms. Randall testified that S.B. is verbal and can articulate in sentences and he can improve both receptive and expressive language, including longer sentences and more detailed conversations. She would look for data scores to improve, which would be a clear sign of progress. She was referred back to her 2019 evaluation, where it was noted that he had demonstrated “improved imitation skills and produces. . . four to five word(s). . . utterances.” (T2 at 75:15–18.) She then reviewed the 2022 VB-MAPP, which demonstrated that he was able to speak in three-word sentences. The 2022 District evaluations, however, revealed that he was using five- to six-word sentences. She confirmed that she believed that S.B. has made steady and consistent progress.

Attention was then turned to the 2022–23 IEP, where it was noted that S.B. can reply to demands for twenty to thirty minutes and uses sentences with a mean length of five to six words. She also explained the “gum chewing” program, so he would be redirected from his PICA-related issues and appropriately regulated.

She also recalled Ms. Rubin’s 2024 observation, which she did not document because she was the one being observed. She spoke with Ms. Rubin both before and after her session with S.B. and reviewed the report, including where it was noted that S.B. “needed hand over hand assistance and he hit and grabbed the teacher’s arm.” (T2 at 85:3–4.) He also struggled to reply to demands over a one- to two-minute period. He was also not responding in five- to six-word utterances and it was more often one or two words or he was non-responsive.

There was some disagreement about whether S.B. had his AAC device available on the day of the observation or whether it was just unavailable during the ABA session, because Ms. Randall testified that he always had it available for her own sessions.

In the 2025–26 IEP, it was noted that S.B.’s father had advised that he had undergone an X-ray and CT scan, both of which were unremarkable.

Ms. Randall performed that speech-language evaluation in 2025 but confirmed that she is not his pathologist for this school year. She conceded that the evaluation noted that he was using two- to three-word sentences, which was admittedly less than in years past. However, she testified that this was just a snapshot and later in the evaluation, she noted that he was using three- to four-word utterances.

Referring back to the current IEP, she testified that these goals are based on multiple factors, but she conceded that present levels are used to assess his strengths and weaknesses and to guide goal creation. Here, those goals were to increase the mean length of utterance to four to five words, which he could do at age five. However, Ms. Randall testified that this was not a sign of regression, but rather, in students with autism, there are periods of both progression and regression, particularly with the various types of dysregulation that can be experienced by them.

The VB-MAPP from 2022 also noted S.B. had no issue with skill maintenance and only required about a week of instruction to acquire new skills. However, in her role as a speech-language pathologist, she has her own methodology to determine those abilities and goals. When confronted with the fact that he has similar goals now as he did in the 2023 IEP, she noted that there is “continued maturation and age of the child, the level of sophistication of the questions that he’s both asking and answering would change as well.” (T2 at 101:6–8.)

Ms. Randall mentioned the book “Charlotte’s Web” as one that S.B. was now “reading.”

Q. Is he reading, reading Charlotte’s Web, is he comprehending Charlotte’s Web from what you can tell?

A. . . . So although he had literacy skills, I don’t believe he was at the level where he was comprehending – or independently reading and comprehending, but he was

being read to and when written words is being read too, that turns into receptive language, how we're hearing that language and understanding it, so taking passages and modifying passages and then asking him questions related to those passages.

[T2 at 9:21.]

She testified that, particularly with the assistance of the AAC device, he would be able to identify the characters and answer some basic questions about them. Back in kindergarten, he would be "reading" board books such as "Goodnight, Moon," and this demonstrates the progression of his skill level.

Ms. Randall was not present during Ms. Rubin's 2026 observation. She reiterated that while some real scores/percentages dropped from 2019 to 2025, there was a continuum, with the questions and expectations becoming more sophisticated as the student ages up. She also noted that the test results are not standard for students on the autism spectrum, but rather for neurotypical students and it would be expected that those skill gaps would continue to grow. While the numbers can be useful, they are only a piece of a larger picture.

She testified that S.B. is utilizing his language more now than in the past but reiterated that there are multiple factors that dictate skill acquisition rates, including toileting. Concerning the mean length of utterance issue, they use the mean because there are times when using short bursts is simply more convenient, but there are also times when he is excited by a topic and uses longer sentences.

Ms. Randall does not believe that S.B. is aggressive and that his physical outbursts are more communicative than anything else.

Brittany Chiasson, ABA Therapist/Toileting Expert¹²

Ms. Chiasson graduated from Nicholls State University (B.A. Psychology '14) and received her master's from Columbia University in Teaching and Applied Behavior Analysis in 2020. She is currently a Ph.D. candidate at Columbia. (R-31.) While employed by Kit Consulting, she began working with Montclair in the summer of 2025, and she is currently a Board-certified Behavior Analyst. She also works with Gotham Children as an in-home ABA.

She testified that ABA is "applied behavior analysis," which is the application of behavioral sciences to students. For her, this is for students with disabilities, primarily those with autism. She had worked as a fifth-grade general education teacher in an inclusion classroom for about four years, as well as an ABA in several New Jersey schools.

She was hired specifically to work with S.B. and another child in the same classroom in the summer of 2025 (at the end of the Extended School Year). As for S.B., she spent a few days familiarizing herself with him and his needs, his teachers and paraprofessionals, and the classroom in general. Her role was limited to toileting.

When she started, they were doing "interval training," which involved taking him to the toilet on a regular schedule and providing reinforcement when he would actually utilize it. She observed that he was capable of using the toilet but was unable to recognize when he needed to go. He was put on a fifteen-minute interval schedule, with the challenge to keep him dry. He would get a prize/incentive with the emphasis on staying dry, not necessarily utilizing the bathroom. If he does have an accident, he is made to assist, at least in some way, with the clean-up.

¹² Ms. Chiasson was deemed to be an expert in the area of BCBA analysis without objection.

She called S.B.'s parents separately at the onset and was advised of his digestive and medication issues that may be contributing to the toileting problems, including constipation.

He is currently on a twenty-minute interval schedule, and the para performs a wet-dry check at fifteen to seventeen minutes. He is incentivized to stay dry and if he "uses" the toilet, he receives verbal praise. There is a toilet icon on his desk that he can point to, and he can also signal with his AAC device and verbally. There was steady progress through December, with the interval gradually increasing to forty-five minutes. However, since then, "we started seeing a little bit of variability in his progress," and they are now back to fifteen minutes. (T2 at 130:13–15.) One of the tenets of ABA therapy is to reinforce successes and at that point, they just weren't seeing many to reinforce.

She confirmed that he started having more issues in December, with more frequent accidents, despite his seeking to use the toilet. Ms. Chiasson was concerned about consistency and started a home-school communication binder. She has observed dysregulation, including elopement, grabbing and signs of PICA. The more dysregulated he is, the more toileting problems he has. Also, the more dysregulated or inconsistent his home life is, the worse he is at school.

Referring to S.B.'s toileting chart, Ms. Chiasson testified that he is requesting to use the bathroom much more now, which is very important for his autonomy. She is not in the classroom every day, but the chart is updated by the teachers so she can see his progress and provide advice to the paras who are with him. The decrease in his interval "doesn't mean he's not progressing, like we see that he has the capability, but the decreasing it just allows us to figure out what other variables might be at play. . ." (T2 at 141:10–13.)

Ms. Chiasson agreed that it has been "a struggle from the beginning of December through the middle of February," but in the last few weeks, there has been a decrease in accidents. (T2 at 142:17–22.) There is some correlation between requests and outcome, because she doesn't "think he fully releases every time he goes to the bathroom." (T2 at 143:17–24). She also believes that he is not always aware of what he is asking or that

he can use the request as a technique to avoid a non-favored activity or to gain a favored activity or toy. If he has an accident, he doesn't demonstrate any shame or embarrassment and oftentimes doesn't indicate if he has soiled himself.

Ms. Chiasson testified that if a child is unable to physically or medically prevent himself from voiding, ABA therapy would be ineffective; that would be a medical issue that a behaviorist could not resolve. The constipation/laxative issue can be a problem because it does not appear as if they receive consistent information from home.

On cross-examination, Ms. Chiasson confirmed that she believes that S.B. is very smart and has the ability to use the bathroom, although he is not always aware of whether he actually needs to use it when he asks to. When she started working with him, she reviewed his IEPs, but not his evaluations. She also spoke to Ms. Balsalmo, who briefed her on his toileting issues, which were similar to what she testified to on direct.

Next, she reviewed the VB-MAPP that had been prepared by Ms. Balsalmo, which noted that S.B. "initiates to use the bathroom and completes all steps of the toileting procedure." She interpreted that as him "requesting," but was not entirely sure, since she wasn't there. There was a discussion about visiting S.B. at home, but for reasons that she is unclear about, that never came to fruition.

She has communicated with Dad about three times and Mom about twice since she started with him. Currently, she believes that they are using twenty-five-minute intervals. With the increasing issues in 2026, there was a thought of setting up a meeting, but at this point, the communication log was helping, since it provides more detail than a brief conversation.

Ms. Chiasson reiterated that there are clearly times when S.B. is requesting to use the bathroom as part of task avoidance, and they are working on having him ask for a break if he needs one, as opposed to asking to go to the bathroom. She testified that in general, he stays on the toilet for three to five minutes at a time, although there are times when that is significantly longer.

Ms. Chiasson was made aware by Mom that they were having issues with the home ABA therapist and believed that a toileting plan had not been implemented.

For Petitioner:

Jodi F. Huntington, Ph.D.¹³

Dr. Huntington is currently in private practice and conducts neuropsychological, occupational and integrated assessments of children from eighteen months through college age. A neuropsychological assessment looks at various domains of cognitive functioning, including verbal and non-verbal skills, language skills, sensory processing, as well as emotional and adaptive functioning and behavioral assessments. She is usually retained by parents, but she has conducted independent evaluations for school districts.

She will often attend IEP meetings and will have input into IEP programming and goals and objectives. She has reviewed many hundreds of IEPs and this is the second time that she has testified in court.

Dr. Huntington first met S.B. in the summer of 2022 and performed a neuropsychological evaluation, which involves a review of medical and educational records as well as previous evaluations. She then conducts an evaluation, including formal and informal assessments, standardized and functional assessments and then authors a report. The entire process takes between twenty and thirty hours, ten hours of which would be spent with the student.

S.B. was entering third grade and his parents were concerned about his progress and programming. She was directed to the 2022 VB-MAPP, where it was noted that he can maintain new skills without maintenance trials, can adapt to change quickly, and is able to complete all steps of a toileting routine. She observed him in school in June 2022, and he required multiple breaks and movement and exhibited maladaptive and stimming

¹³ The parties stipulated that Dr. Huntington is an expert in psychology, pediatric neuropsychology and occupational therapy.

behaviors. His learning was very rote in nature, and he had difficulty answering questions independently. He wiped his nose on his shirt before using a tissue and needed prompting to wash his hands. He also hit the teacher and was pounding on the keyboard.

This was problematic, since there was no real internal drive to facilitate or make the learning meaningful. There seemed to be a lack of engagement or scaffolding of interactions with social, emotional and communication components.

During her testing, S.B. was anxious and dysregulated and demonstrated some aggressive behavior. She used non-standardized testing because the standardized test just wasn't accessible to him and the standardized assessment scores are compared to those of neurotypical students. In assessing his cognitive functioning, Dr. Huntington utilized the TONI-4 test on non-verbal intelligence, which looks at the student's ability to solve non-verbal abstract reasoning problems. She confirmed that autism is a neurodevelopmental disorder that shows an individual's deficiency in communication and social skills. S.B. scored in the ninth percentile.¹⁴ That demonstrates that he has the ability to learn, reason and problem-solve novel non-verbal information.

Dr. Huntington testified that S.B. has the ability to become more independent and learn daily living skills, despite a lower cognitive ability. On the Woodcock-Johnson test of academic achievement, S.B. had difficulty in adhering to the task demands, but it did show that some reading skills were evolving and he was able to do so "when motivated." (T2 at 194:12-13.9.) However, his adaptive functions and activities of daily living skills were very poor, although there were times of regulation and connection. She testified that self-regulation is not a behavior and cannot be fixed or controlled by behavioral intervention alone.

Based on her evaluation, she felt:

That S.B. needed a placement in a highly specialized setting that can address all of the areas that he was presenting with

¹⁴ Although the ninth percentile of what population was never really adequately explained.

challenge and that it really needed to be a very comprehensive and integrative approach.

[T2 at 196:8–11.]

She also made recommendations for improvement in his then-current educational program, which was not meeting his needs. It was not addressing his pragmatic and receptive language needs or his attentional and sensory regulation difficulties. There were also a lack of parental training and a lack of multi-sensory instruction, including the use of manipulatives, like sand tables, objects, Play-Doh, etc.

She authored an addendum to her report because she was provided with a copy of S.B.'s draft IEP, which she felt included goals that had not been introduced or towards which there had been minimal progress. In response, she made recommendations that he needed a more intensive and comprehensive program as well as an out-of-district placement because:

He was not moving in a productive way towards the goals that were set forth and then there was the reduction of services, so I did not feel that the programming was meeting his needs.

[T2 at 208:11–14.]

S.B.'s parents reached out to her again in 2024 and she authored an observation update on February 6, 2024. She didn't perform any testing because he was so limited in accessing same. Both she and S.B.'s parents were concerned that his IEPs were largely unchanged and they all wanted to observe what was going on in the classroom.

She was concerned that he was working on skills that he already had since he was much younger, such as the alphabet and basic writing, "which was well below what he was doing even when I first met him in 2022." (T2 at 212:7–9.) He was also demonstrating a lot of maladaptive behaviors and just a little bit of work with activities of daily living, such as folding clothes. He also spent significant time with handwashing, which required a lot of prompting, more than the visual cues he needed in 2022 and she felt he was clearly not progressing and was actually regressing.

Overall, she felt that it was a “dry meaningless lesson for him” and felt that the programming failed to demonstrate any scaffolding or social engagement, no facilitation of independence and no progression in learning. Rather than folding clothes, she would have liked to have seen him brought into the library or do a sample meal prep, like making a sandwich. As a result of this observation, she felt even more strongly that S.B. needed an out-of-district placement to address the complex nature of his needs. She also reviewed his most recent IEP, which she feels is similar to the prior IEPs and fails to appropriately meet S.B.’s needs. Her opinion of the need for out-of-district placement is maintained.

Dr. Huntington was unclear how the family was referred to him but conceded that the only other time that she testified in court was for a client of Mr. Meltzer’s firm.

Concerning the testing that she performed in 2022, she did not necessarily agree that they should only be given once a year, but that would depend on the circumstances. She did not administer the teacher portion of the BASC assessment or the Vineland adaptive behavior test. She did not recall if she was aware that S.B. was undergoing other evaluations at the time, including those by Ms. Rubin. She was not particularly concerned about Ms. Rubin’s verbal and communication testing because she was trying to get a full picture of S.B. and his capabilities in those areas were so limited that it wasn’t going to be an issue.

During the 2022 evaluation (which lasted approximately three days), she did not have a formal discussion with S.B.’s teacher but was advised of his medications by his parents. She observed that when he was taking medication, it positively impacted his regulation. His regulation also depended on his fatigue, hunger and anxiety, all of which he has more trouble communicating about than his neurotypical peers.

While she has never taught him, there was nothing in his profile that would explain his apparent regression in skills. She did not review his program books, but the programs were very clearly ABA programs. While she certainly would have reviewed them, the IEPs gave her a picture of his progress and the programs themselves. She reiterated that his IEPs and their goals were stagnant.

Dr. Huntington testified that the TONI is used as an intelligence test and more closely correlates to intelligence than the level of his verbal skills. The TONI does not penalize for a lack of verbal or communication skills, “so his disability is not getting in the way of his performance.” (T2 at 239:1–3.) When she reviewed the 2025 IEP, she also reviewed the updated psychological evaluation, which included the performance of the Universal Nonverbal Intelligence Test, which is broader than the TONI. This test indicated an IQ of fifty-seven, which is in the “intellectually impaired” range.

During her assessments of S.B., he did not utilize the AAC device and she confirmed that she never observed him in the home or during private therapy, nor did she discuss anything with his home ABA therapists. He was not regulated during the three evaluation sessions when he was evaluated. When he is dysregulated, he “needs to be taught skills for his regulation and compensatory strategies that over time he will internalize.” (T2 at 242:8–10.) This would be more along the lines of learning to combat the underlying cause of that dysregulation as opposed to self-regulating.

She agreed that “the behavior is a result of the dysregulation. The dysregulation itself isn’t the behavior.” (T2 at 243:18–21.) The ABA classroom works on the behavior, not the dysregulation. S.B. needs a “relationship-based program” that would “build() the developmental individualized relationship and working on co-regulation.” (T2 at 245:19–21.) The problem isn’t the ABA classroom; rather, it’s what is done in that classroom.

However, she conceded that the District does utilize “zones of regulation,” where students are taught to go if they feel dysregulation coming on. She is also aware that S.B. has received occupational therapy relative to his regulatory state for the past five years. She also conceded that she did not reference the O.T.’s most recent findings in conjunction with her 2024 observation. She also reviewed the 2025–26 IEP and noted that multiple sensory strategies were being utilized and integrated into the classroom.

She further testified that while S.B. did read books during her 2022 evaluation, his comprehension was “limited.” Toileting was not as much of an issue back then and has clearly become more problematic.

Finally, she testified that she didn’t “feel that standardized assessments will ever fully capture (S.B.’s) capability.” (T2 at 260:8–10.)

Arlene F. Rubin, Speech-Language Pathologist¹⁵

Ms. Rubin testified that she is licensed in both New Jersey and Florida in speech-language pathology and holds multiple certifications, including a Certificate of Clinical Competence, which is awarded by the American Speech-Language-Hearing Association. She has worked in New Jersey public schools, has been on child study teams and delivered services as well. She is currently working as an independent contractor at Englewood at the Palisades Charter School. She is also the director and founder of a private practice (Good Talking People) that specializes in speech-language pathology and provides therapy for children from age two through young adulthood.

Her primary clients are children who have language, social, cognitive and executive function issues, primarily related to AD/HD, autism spectrum disorder, non-verbal language disorder and other learning disabilities. She regularly performs evaluations on behalf of students and schools and conducts independent evaluations as well and makes recommendations and goals for IEPs. She has reviewed hundreds of IEPs over her forty-five-year career. She has only testified in court once, in a case similar to this one.

She first came to know S.B. in 2022 when his parents reached out because they were concerned about his lack of progress academically, specifically in the area of communication and language development. He has been diagnosed with ASD and that is about 50% of her practice. When she wrote her report, S.B. was going into third grade.

¹⁵ The parties stipulated to Ms. Rubin’s expertise in speech-language pathology.

She saw him over three sessions in July for testing and an informal assessment and then again in November for a school observation. She also interviewed both parents.

Of significance, she learned that he had a limited diet, was sensitive to noise and sensations and also had PICA. She reviewed multiple records, including his evaluations, in preparation for her own evaluation. She described S.B. as “adorable and very friendly,” but he presented with “a lot of verbal stimming,” and he was very dysregulated. (T3 at 11:3–5.) Eye contact was variable; there were no back-and-forth verbal exchanges and he needed sensory-type behaviors.

At that time, he was “able to produce four-to-five-word utterances,” and she felt that he had the potential to use these types of sentences if they were elicited and he had more support. He tends to skip prepositions, but “(h)e’s good with pronouns.” (T3 at 113:19–25.) Testing demonstrated a problem with the “th” sound, for which he tends to substitute an “f” sound. His vocabulary was “quite below his age expectancy,” which is unusual for children with ASD and that was concerning.

She testified that generally, testing should not be given more than every six to twelve months, depending on the test. Those where feedback is given should be offered less frequently. One of the tests that she administered was the Receptive, Expressive and Social Communication Assessment (“RESCA”) and S.B. performed at or below the four-and-a-half-year-old level. He was in the second percentile in comprehensive vocabulary, which was “quite alarming,” because if he doesn’t understand what the teacher is saying (receptive language), he obviously won’t understand the lesson and won’t respond (expressive) appropriately. He also won’t be able to interact with his peers. He fared somewhat better in other areas of the testing, like auditory comprehension, which indicated to her that he has the capability of learning and using language. Receptive language testing was below the first percentile and non-language-based testing also showed severe deficits.

Ms. Rubin’s school observation occurred on November 15, 2022, which was, to her knowledge, a typical day. Of significance is that he did not recognize her when she walked in. She walked in with Ms. Randall and spoke with her (pleasantly) during the

observation. She was advised that the class used Zones of Regulation and the Alert Program to help students learn to self-regulate. Ms. Randall explained how the speech therapy program works, as well as his IEP goals and that she felt that both his language processing and receptive vocabulary were progressing.

Ms. Rubin testified that while an IEP can certainly have goals and strategies identified, if they're not implemented, they're not doing much good.

As for the AAC device, he should be using it in all of his educational settings.

Continuing with the observations, during the time in the classroom, S.B. did not interact with his classmates and often looked dazed. He would fidget and squirm and needed constant redirection. Overall, during the 2022 observation, she felt the atmosphere was very isolating and the instruction was rather rote. That is normal for an ABA classroom, but the problem comes when there aren't any other components to the class; i.e., everything was ABA. There should be a speech-language component over and above any individual pull-out speech therapy.

Overall, Ms. Rubin determined that the program was "very limiting and isolating" for S.B. and failed to provide socialization opportunities. While she felt that some of the ABA aspects of the program are necessary, "he really needs more of a multi-modality program where it's going to allow him to. . . get more active learning. . ." (T3 at 137:17-24.) There was too much "prompt dependency" and a failure to "spontaneously interact." As a result of this evaluation, Ms. Rubin recommended that, given S.B.'s "very complex and complicated" needs, an out-of-district placement was necessary.

S.B.'s parents reached out again in 2024, and she observed him in the classroom on May 21, 2024. His parents were concerned about his alleged lack of progress and unsure of his whether his current placement should continue. At this point, he was nearing the conclusion of his fourth-grade year. She was again accompanied by Ms. Randall. During the entire forty-five-minute observation period, S.B. sat at a table in the front of the classroom and was given tasks to complete a DLM assessment.

Ms. Rubin did not know what DLM is,¹⁶ but noted that S.B. was doing a lot of verbal stimming and was unresponsive to the questions being posed by the teacher. He actually hit the teacher and grabbed her arm. That was concerning because he was unable to verbalize what he wanted and had to resort to aggression. He was also concerned because the classroom teacher seemed to accept simple, one-word answers and failed to try to scaffold that word into a multi-word reply. She felt that activities were kind of thrown at S.B. randomly, with no real purpose. Similar to 2022, the AAC device was not being used. Ultimately, she felt like nothing had changed since that initial observation.

Her recommendations following this observation, were essentially unchanged from 2022. Ms. Rubin felt that his speech and language goals should be expanded and written in a way that was consistent with a natural language approach, using echolalia and the gestalt method. She was also concerned about the manner in which he was eating and felt that “an oral motor feeding evaluation” should be considered. He also needed O.T., and she further felt that he should continue in an ABA classroom.

Ms. Rubin then observed S.B. again on January 27, 2026, essentially in the middle of his sixth-grade year. There was a delayed opening, but she did get to speak briefly with the speech-language pathologist and his new case manager. When she arrived, S.B. was just coming back from O.T., and she thought he might be regulated. However, he immediately started picking his nose and was, on multiple occasions, step-by-step redirected to stop and then go wash his hands. This was concerning because he should have been able to do that himself.

He was also wandering around the room while the class was watching a video, and he disregarded personal boundaries by sitting on an aide’s lap. He then watched and followed a participatory video and then went to the toilet based on his schedule. He did request a book to read by its title only instead of saying, for instance, “I’d like to read

¹⁶ DLM assessments are computer-based and accessible to students with significant cognitive disabilities for whom general state assessments are not appropriate, even with accommodations. DLM assessments offer students in grades three through high school a way to show what they know and can do. <https://dynamiclearningmaps.org/consortium> (last accessed June 4, 2026)

(book title).” They started reading it together, but then he became dysregulated. There was no discussion about the story or building on it; it was just read in isolation.

S.B. also returned to her office, and again, there was no recognition. While she didn’t perform formal testing because the school had just done that, she did informal assessments. He wandered around her room, looking at the variety of items she had in there. She was able to draw out sentences from him. He showed regression in areas of her informal testing in 2026, and his vocabulary testing was notably weaker than it was in 2019 and the same as it was in 2022. She concluded that:

S. is losing critical time to develop skills and it is imperative that he be placed in an appropriate educational program without reservation as he is not making meaningful progress and is demonstrating regression.

[T3 at 171:22–172:1.]

When asked about a potential trade-off between attending an autism-based program and a lack of interaction with neurotypical peers, Ms. Rubin testified that the peers don’t necessarily have to be neurotypical, just more verbal than him and that the teachers emphasize peer interaction, even in strict ABA classrooms.

On cross-examination, Ms. Rubin acknowledged that she had never provided services to S.B. and did not recall if his parents had told her that he was receiving private speech-language therapy in addition to the school-based services. Subsequent to the 2022 assessment, she did learn that fact. If she had known, she would have requested any paperwork concerning the same.

Ms. Rubin confirmed that she is aware that DLM is a state test, but she has never given it and is unaware of what the initials stand for. She assumed (correctly) that it is a test given to students who are incapable of taking state standardized tests. She is unaware of the protocols for its provision, and she was unaware whether any or all of the interactions with the teacher during her second observation were part of the test.

She further did not observe Ms. Randall's therapy during either observation. She agreed that standardized testing does not give a full portrait of S.B.'s potential or abilities, but it is a useful snapshot. She agreed that while the various tests have different testing populations, many of her score comparisons were against neurotypical peers, not similarly situated ones.

Speaking about potential, Ms. Rubin noted that his behaviors and dysregulation demonstrate that S.B. has feelings and emotions that he doesn't have words for but has awareness of. She doesn't "put a ceiling on any student regardless of whether they have a diagnosis or not," and she doesn't have a baseline either. (T3 at 182:24-25.) She then clarified that he doesn't use the language, not that he doesn't have it. There is a difference between cognitive capacity and cognitive function. In other words, you can have the ability to learn, but at the same time, not actually learn or perform.

Ms. Rubin recently reviewed Dr. Huntington's report as well as some of S.B.'s past cognitive testing. As for testing scores, she would expect a student such as S.B. to make "meaningful progress," even if that progress does not meet grade level or the expected progression of a neurotypical student. She agreed that as far back as the 2017-18 school year, there were marked delays in all areas of speech and language.

Ms. Rubin was unclear as to some aspects of the scoring of the standardized tests and was unable to answer, for example, the following question:

Q. Alright. So, a student who received a standard score of 81 in 2020, and that same student receives a standard score of 81 in 2022 ha(ve they) actually progressed with the expectations of the standardized assessment?

A. I'll be honest with you I'm not a hundred percent sure so I don't want to answer one way or another.

[T3 at 194:6-13.]

S.B.'s full-scale IQ of fifty-seven would impact his acquisition skills and it would take longer for him to do so and he may be incapable of learning more complex concepts.

Mr. B. was the primary informant at the time of the initial evaluation and most of the contact concerning the second school visit was with him, but Ms. L. brought him to the office this third time. She could not recall, however, any specific discussions about, for instance, S.B.'s reading abilities, although it was inferred that he was able to comprehend more than he was able to demonstrate. She found that he was able to pick up on verbal cues, stopping to watch her when she became more expressive in the office.

Ms. Rubin reviewed S.B.'s most recent IEP but was unaware of the speech-language consultation aspect of the same, although she knew that there was a pullout with Ms. Randall. During her three-day initial evaluation, S.B. was more regulated on some days than others, and during the 2026 meeting, he struggled to focus. She also effectively conceded that the 2026 observation was limited (including by the District time limit of forty-five minutes).

While private speech-language therapy is important, Ms. Rubin testified that if it doesn't translate to the classroom, its utility is limited.

D.B., father of S.B.

Mr. B. testified that he is S.B.'s father and that S.B. has been diagnosed with autism spectrum disorder, PICA, attention-deficit hyperactivity disorder ("ADHD"), PICA and some elements of obsessive-compulsive disorder ("OCD"). He struggles with impulse control and body control and while he is verbal, it is a struggle to have a substantive conversation with him. Toileting is also an issue.

He testified that S.B. generally speaks in terms of wants and needs. Since he was two years old, he has been able to identify objects and he can tell you the basics, that he's hungry or doesn't feel well, but no more. He attended Bradford from K through fifth grade and since coming out of COVID in approximately 2023, he has had concerns about his lack of progress at school. There was an open line of communication with the school and there were discussions concerning both his behavior and academics. He felt that S.B. wasn't being pushed enough beyond his already obtained abilities.

Outside of school, S.B. has always had home therapy, although they found that strict ABA therapy really doesn't work for him. He feels that once S.B. feels that he has mastered something, he shuts down on that topic. They then switched over to a hybrid model of therapy, with some elements of ABA, but also social skills and play-based therapy as well.

He confirmed that the family retained Dr. Huntington and Ms. Klein and has reviewed their reports and knows that they have recommended an out-of-district placement. This was not something that they had been looking to do, and he testified that the family had moved to Montclair in 2018 largely because of the schools.

They provided the reports to the District and while it did not accept the out-of-district recommendation, the family wanted to give the District a chance to implement some of the reports' other recommendations. However, he felt that S.B. regressed in all aspects (behaviorally, academically, toileting, etc.) in both the third and fourth grades.

As for the toileting issues, Mr. B. testified that S.B.'s abilities have ebbed and flowed, but they started noticing regression in 2022–2023, well before he and his ex-wife separated. This was discussed with Ms. Balsalmo and they met with her both at school and in the home, which ultimately led to the use of a timer. They are also aware of Ms. Chiasson being retained and he spoke with her in the summer to develop strategies moving forward. There was a discussion of her doing a home observation, but that never materialized. The current home toileting interval is thirty minutes, and that has been in effect since December. He has been doing well since then (at least at home). However, he is still having frequent issues at school. The regression noted by the school in February 2026 has not been their experience at home, and he had not discussed this with the school, although he has been utilizing the toileting logs.

S.B. had been seen by a pediatric urologist to rule out a medical issue for his accidents and everything was within normal limits.

Concerning his separation and ultimate divorce from Ms. L., Mr. B. testified that while children with autism often struggle with change, S.B. is the opposite and seems to adapt well to new things and those marital issues and changes didn't seem to impact him. He testified that despite their personal differences, he and Ms. L. have always agreed on what's best for S.B.

Mr. B. testified that he feels that there has been a continued lack of progress during the 2025–26 school year and while he “feel(s) like they’re all doing the best they can, as I’ve always felt, I . . . felt that. . . he’s not being challenged.” (T3 at 24:2–4.) He is concerned that S.B. is in a large class and that he is advanced past what he is doing academically. Then he checks out, and that leads to behavioral issues. He is looking for something that is “more intensive” than what Montclair offers, with more structure where S.B. would thrive.

On cross-examination, Mr. B. testified that he separated from Ms. L. in 2022, but they only began to live separately in March 2024. He testified that they had difficulty obtaining ABA therapy during the COVID time period because of the restrictions. Since March 2024, they have had a therapist in the home and have alerted the District to the same. Returning from COVID, the District offered in-home compensatory programming and he did not recall Ms. L. ever cancelling or refusing that. When confronted with a July 15, 2024 email from the District reflecting that in-home services had been discontinued by the family as of May 14, 2024, he testified that he did not recall discontinuing anything, but he also noted that he and Ms. L. were living separately at that point.

There is no home behaviorist currently, but they are attempting to find a new one who can work in both homes. A therapist had started in January 2026, but she only lasted about two weeks before she “disappeared.” They had been working on play-based therapy with a focus on following commands. The prior therapist left in the fall of 2025.

S.B. has a sixteen-year-old sister who attends school in the District and she splits time between Mom and Dad. The custody arrangement is Monday – Tuesday with Mr. B., Wednesday – Thursday with Ms. L. and they alternate weekends. The District was made aware of this arrangement because it impacted S.B.’s transportation; he takes a

bus when he's with him, but Mom drives him. He testified that S.B. never exhibited any negative behaviors as a result of the changed custody arrangements. In mid-October 2025, the schedule changed days.

Mr. B. believes that S.B. can communicate when he is anxious and state things like "happy" or "sad" and sometimes there are physical manifestations, like when his eczema flares up or he'll ask for pressure or squeezes. He can also demonstrate aggressive behaviors like pinching, but he is not an aggressive child but is actually a sweetheart. Those behaviors are attention-getting and sensory-based with no ill will. He uses zones of regulation at home as well.

The urologist speculated that his constipation issues were a combination of actual constipation along with sensory issues, but this has improved recently, although it was clearly a problem in the past and as late as this school year.

Mr. B. testified that S.B. loves music and has weekly music therapy, which may have started as far back as 2022. He also received weekly speech and occupational therapy from the end of COVID through late 2024 with Montclair Speech Therapy. He did not recall being sent a release to allow the District to speak with the therapist but did remember meeting with Ms. Balsalmo on at least four or five occasions and reviewing toileting data with her. These meetings continued from 2022 through at least 2023 and they have remained in contact with his BCBA and teachers throughout his years in Montclair.

He again testified that S.B. does not respond well to strict ABA therapy or discrete trials because he gets bored or disinterested once he feels that he has mastered a task. He disagrees with the District's assertion that S.B. has been making slow but steady progress. . . at best, he has been stagnating, but at worst, he has been regressing.

Mr. B. is convinced that S.B. has a lot more potential than he is showing now. He remembers specific instances that demonstrated his intelligence and noted that he was able to read at a very young age. He also traced S.B.'s diagnosis, testifying that shortly after he turned two, he began having issues with language. He had been hitting all his

benchmarks, but when he began struggling, they had him evaluated. If you saw a video of him at twenty-four months and then at thirty-six months, you would notice a distinct difference.

A.L., mother of S.B.

A.L., S.B.'s mother, testified that he struggles with communication and behaviors and often becomes frustrated in expressing himself. He also struggles with self-regulation and needs sensory input. She believes that he is "incredibly aware of everything that's going on around him, but in terms of expressing himself, that's – that's a challenge." (T3 at 58:23–25.)

There are times when he can self-regulate with direction and redirection, including by using breathing techniques. That will calm him down, and then he's able to respond to a question as to what he needs.

She testified that during COVID, his abilities became evident to her as well as virtually to his teachers. She was, in essence, his in-home paraprofessional. When he returned to school, she became concerned that he was not progressing and regressing from things he had learned during the pandemic.

She claimed that he had mastered addition, his address, his parents' names and jobs, how to identify money, etc. She reviewed the reports from Dr. Huntington and Ms. Kaplan and confirmed that the family had moved to Montclair because of the schools and were not looking for an out-of-district placement from the beginning. Even after receiving the reports, they didn't look to move him because they wanted to give the District a chance to get it right.

However, as S.B. proceeded from third to fifth grades, he simply was not progressing and he seemed to be struggling in all areas. His behaviors became problematic with repeatedly touching his nose, putting his hands in his mouth and his backside, and then touching other people. He was running around the classroom, eating ink out of classroom markers, eating chalk, etc.

She was concerned that he had very little interaction with neurotypical peers and that a random meeting in a hallway was not what had been discussed. She was given the excuse that it was his behavior that prevented this from happening. She testified that he does well with modeling and provided an example with a local pool where he can interact with the snack bar workers, who are all teenagers. He was also able to use the diving board.

As for toileting, there have often been inconsistencies with urination and defecation, as well as handwashing and wiping. Essentially, he has never put it all together. During this year's winter break, he was toileting independently and washing his hands fifty percent of the time and even in the last month, he has done very well at home, completing the entire process himself about seventy percent of the time.

As to the dichotomy between his home and school toileting, A.L. theorized that he may have an accident as a way to avoid unwanted activities or if he's bored/uninterested.

Regarding their separation and divorce, she felt that S.B. had "handled it very well." (T3 at 67:6-12.) She claims that he "loves" having separate residences, since it gives him more room and he has no issue with the changing day-on/day-off schedule. He loves going on vacation and flying and as long as he's primed for the event, he does well.

When questioned as to the termination of outside therapy, A.L. testified that they had utilized almost all of the hours offered when their agency was able to place a new in-home therapist, and the hours were conflicting.

She then testified about the meeting in October 2025, which she claimed that she had been trying to arrange for about six weeks. The meeting included Ms. Catalano, Ms. Chambers and Ms. Balsalmo and focused on plans for S.B.'s academic year. She advised them that he could multiply numbers and they were still working on addition and that one of his greatest strengths was memorization. She also met with Ms. Chiasson via ZOOM in September 2025. She did not agree with the notation that she was pleased with S.B.'s toileting progress and felt that this was a "miscommunication." (T3 at 79:18.)

A.L. believes that S.B. “could do anything, anything and I truly believe that.” (T3 at 82:11–12.) His toileting has been really good, and he has been engaged in incidental learning at home. He currently takes Vyvanse every morning for AD/HD and Clonidine at night (also for AD/HD).

She also noted that S.B. had been diagnosed with elevated blood levels of lead in 2021. She testified that lead had been found in the paint on the windowsills in the house, which he likely ingested due to his PICA. They were told by his doctors that his blood levels were “bordering on very dangerous” and how it affects the brain. (T3 at 89:24–90:1.) He was, however, in a house with unremediated lead from 2018–2022. She claimed, however, that no doctor has ever told them that the lead might have had an impact on his intellectual capacity.

Petitioner’s Position:

The petitioner first notes that the burden of proof in this case is on the District and argues that it has clearly not met that burden. More specifically, S.B.’s IEP does not offer him “the opportunity for significant learning and a meaningful education that is reasonably calculated to enable him to make progress in light of his individual circumstances.” Pet’r’s Br. at 3.

In reviewing the evidence and testimony, petitioner questioned the credibility and persuasiveness of the District’s witnesses, while noting that:

The testimony and evidence presented by Petitioners clearly shows that the District’s program not only failed to provide (S.B.) with a program in which significant and meaningful progress in light of his circumstances, in fact he regressed. While the District argues that its proposed program is appropriate...it falls short of the standards enumerated by the Third Circuit and Supreme Court in that it be reasonably calculated in light of (S.B.’s) unique circumstances.

[Pet’r’s Br. at 14.]

It was argued that the evidence is clear that not only is S.B. not progressing either academically or behaviorally, but he is actually regressing, pointing to his largely unchanged IEP goals in both math and language as well as his toileting (this in spite of the District's hiring of a toileting expert). Petitioner pointed specifically to its expert witnesses, noting their credible testimony as to the deficits in the District's programs and its failure to implement their recommendations.

It was further noted that S.B.'s parents had no desire to move him out-of-district and had given respondent every opportunity to devise a Plan that would meet his needs. However, at this point, those needs simply aren't being met and a change is necessary for S.B.'s overall educational growth.

Finally, it was argued that "a specialized out of district school is the appropriate program for (S.B.) and represents the least restrictive environment". Pointing in particular to Dr. Huntington's testimony, petitioner noted the need for that placement has only become greater as the years have progressed. This is critically important as S.B. ages up, with high school quickly approaching.

Respondent's Position:

The respondent focuses on the adequacy of the IEP as particularized to S.B. and his abilities, noting that same "will differ from student to student" and cannot be *de minimus*. Ridgewood Board of Educ. v. N.E. ex rel. M.E., 172 F.3d 238, 247-48 (3d Cir. 1999). Then, citing to Board of Educ. of Hendrick Hudson Central School Dist. v. Rowley, 458 U.S. 176 (1982), the District notes the following:

"Measuring educational benefit is a fact-sensitive, highly individualized inquiry, and . . . "[i]t is clear that the benefits obtainable by children at one end of the spectrum will differ dramatically from those obtainable by children at the other end, with infinite variation in-between.'" A.M. o/b/o I.S. v. Edison Twp. Bd. of Educ., OAL Dkt. No.: EDS 5183-14 (2014) (quoting Rowley, supra at 202.) The Supreme Court has utilized Congress' emphasis on a disabled child's achievement to a "reasonable degree of self-sufficiency" as a measure of whether an IEP offered an appropriate education.

Rowley, 458 U.S. 176, 201, Oberti v. Clementon Bd. of Educ., 995 F.2d 1204 (3d Cir. 1993) (stressing Congress' recognition of the importance of teaching skills that foster independence).

[Resp't.'s Br. at 16.]

Here, the District argues that there was direct evidence from its witnesses which demonstrated that not only was S.B.'s IEP reasonably calculated to allow him to make meaningful educational progress, but that he was indeed progressing, considering his limitations.

Absent his temporary physical disability (i.e., his ankle injury), there would be no need for transportation in order for him to benefit from special education. Therefore, the decision to deny the same is entirely appropriate.

LEGAL ANALYSIS AND CONCLUSIONS

Petitioners seek a determination that S.B. was denied FAPE in the least restrictive environment. Specifically, they allege that S.B.'s IEP is insufficient to provide FAPE in the LRE as a result of his disabilities, which has prevented him from making any meaningful progress. In addition, they seek an order compelling the District to cooperate with them in finding an appropriate out-of-district placement and continued placement at that facility as long as that placement remains appropriate, including tuition and transportation. They also seek attorney fees and costs.

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

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

To provide FAPE, a school district must develop and implement an IEP. N.J.A.C. 6A:14-3.7. An IEP is “a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” Sch. Comm. of Burlington v. Dep’t of Educ. of Mass., 471 U.S. 359, 368 (1985). An IEP should be developed with the participation of parents and members of a district board of education’s child study team who have participated in the evaluation of the child’s eligibility for special education and related services. N.J.A.C. 6A:14-3.7(b). The IEP team should consider the strengths of the student and the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluations of the student; the student’s language and communication needs; and the student’s need for assistive technology devices and services. The IEP establishes the rationale for the pupil’s educational placement, serves as the basis for program implementation, and complies with the mandates set forth in N.J.A.C. 6A:14-1.1 to -10.2. The IEP must be reasonably calculated to confer some educational benefit. Hendrick Hudson Dist. Bd. of Educ. v. Rowley, 458 U.S. 176 (1982).

The Third Circuit Court of Appeals has clarified the meaning of this “educational benefit.” It must be “more than trivial,” significant, and “meaningful.” Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180 (3d Cir. 1988), cert. denied, 488 U.S. 1030 (1989); Ridgewood Bd. of Educ. v. N.E. for M.E., 172 F.3d 238, 247–48 (3d Cir. 1999). In evaluating whether FAPE was furnished, an individual inquiry into the student’s potential and educational needs must be made. Ridgewood, 172 F.3d at 247. In providing a student with a FAPE, a school district must provide such related services and support as are necessary to enable the disabled child to benefit from the education. Rowley, 458 U.S. at 188–89. See, M.A. v. Voorhees Twp. Bd. of Educ., 202 F. Supp. 2d 345, 361 (D.N.J. 2002), aff’d, 65 Fed. Appx. 303 (3d Cir. 2003) (stating, “[t]he law requires

that the proposed IEP provide a FAPE in the LRE—it does not and cannot require that the district provide the best education in exactly the manner dictated by parents.”)

Parents who are dissatisfied with an IEP may seek an administrative due process hearing. 20 U.S.C. § 1415(f). The burden of proof is placed on the school district. N.J.S.A. 18A:46-1.1. The board will satisfy the requirement that a child with disabilities receives a FAPE by providing personalized instruction with sufficient support services to permit that child to benefit educationally from instruction. Rowley, 458 U.S. at 203. To meet its obligation to deliver a FAPE, a school district must offer an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 580 U.S. 386 (2017). In Endrew, the District Court for the District of Colorado initially upheld the school's denial of reimbursement for an out-of-district placement. However, the Supreme Court reversed the finding that an IEP should be appropriately ambitious in light of the child's circumstances and “tailored to the unique needs of a particular child.” Endrew, 580 U.S. at 391.

The appropriateness of an IEP is not determined by a comparison of a private school and the program proposed by the district. S.H. v. State-Operated Sch. Dist. of Newark, 336 F.3d 260, 271 (3d Cir. 2003). Rather, the pertinent inquiry is whether the IEP offered a FAPE and the opportunity for significant learning and meaningful educational benefit within the LRE. Toward this end, an IEP must be in effect at the beginning of each school year and be reviewed at least annually. 20 U.S.C. § 1414(d)(2) and (4); N.J.A.C. 6A:14-3.7. A complete IEP must contain a detailed statement of annual goals and objectives. N.J.A.C. 6A:14-3.7(e)(2). It must contain both academic and functional goals that are, as appropriate, related to the New Jersey Student Learning Standards of the general-education curriculum and “be measurable,” so both parents and educational personnel can be apprised of “the expected level of achievement attendant to each goal.” Ibid. Further, such “measurable annual goals shall include benchmarks or short-term objectives” related to meeting the student's needs. N.J.A.C. 6A:14-3.7(e)(3).

There are multiple issues in this case and many things that the parties disagreed about. However, during the hearing, it became very apparent that there were two key things that the parties agreed on:

1. That S.B. is a very sweet kid who everyone is genuinely very fond of.
2. That everyone involved has S.B.'s best interests at heart.

While, by the very nature of the request for out-of-district placement, there is obviously a serious disagreement about the efficacy/nature of S.B.'s educational program, there was a distinct lack of enmity during the hearing, with only very occasional moments of frustration.

In analyzing the evidence, one thing that this case exemplifies is the dynamic nature of special education cases, particularly involving those with diagnoses such as autism spectrum disorder. There are good months and bad months, good weeks and bad weeks, good days and bad days and good hours and bad hours. With so much testimony and the figurative mountain of documentary evidence, there are a few factual findings and observations that, perhaps while not determinative, helped narrow the focus of the hearing and further helped shape my decision. There were also some strengths and weaknesses in the testimony of most of the witnesses, which positively and negatively impacted both their credibility and their impact on the ultimate outcome of the case.

Another factor in many special education cases is that the trier of fact generally doesn't have the opportunity to observe the student. While I heard a lot about S.B., it is simply not the same as a personal observation. . . to actually get a first-hand peek at what the student does, how he talks, how he interacts with others, etc. While the witnesses here painted an impressively defined portrait of S.B., I wish it had been just a little more vivid.¹⁷

¹⁷ By no means is this a reflection on counsel, but it is merely the reality of this type of case.

Regardless, given the above, I **FIND** the following:

1. The emphasis by both parties on the 2022–2023 evaluations and observations was puzzling. In the world of a grade school student, these took place a lifetime ago. Obviously, they hold some importance given the progression/regression argument and by no means am I discounting them, but S.B. was eight years old then. He has now lived fifty percent more of his life. Are they important? Of course. Just not as important as the parties seemingly believe.
2. Ms. Rubin, while impressive in some areas of her testimony, struggled in others. However, the comment that was most troublesome was that she “does not put a ceiling on any student regardless of whether they have a diagnosis.” While in theory and perhaps in her private practice, that is a laudable statement, her role here was an expert, not a hopeful parent. A major part of this case is what S.B. is capable of. There was uncontradicted evidence that S.B. has an IQ of fifty-seven. While no one can predict exactly where his abilities will max out, I was relying on her forty-plus years of experience to provide me with some guideposts as to his realistic academic and life expectations and she did not do that.

Ms. Rubin’s persuasiveness was not enhanced by the fact that her second in-school observation was during a testing day (or, for that matter, that she was unaware of what the test was) or by her answer that S.B.’s interactions with neurotypical/more verbal peers would

somehow be enhanced by attending an autism-focused school.

Ms. Rubin's testimony on speech-language was persuasive and informative. The balance of her testimony was not.

3. A.L.'s testimony was generally unhelpful. Her belief that S.B. "could do anything and I truly believe that" is simply contrary to the facts. Further, her testimony concerning his alleged toileting success at home and his ability to perform multiplication was doubly negative. First, it lacked credibility. Second, however, even accepting that testimony as true, that success had to be learned somewhere. There are no on-off switches in her home and at Buzz Aldrin that allow him to do things in one place and not at the other.

A.L. clearly is looking out for S.B.'s best interests, and I truly appreciate her hope and optimism as the parent of a child with special needs. However, the more credible facts that I have in this matter the more it helps me make an informed decision.

4. Dr. Huntington was an effective witness for S.B., and while she did make a number of concessions concerning the specifics of S.B.'s ABA classroom, overall, her testimony was helpful.
5. As for the District, while I appreciate the earnestness of all of the witnesses, there is simply no way to look at the data and IEPs over the past few years and credibly testify that S.B. is making progress. He is not. He may

not be regressing, but the verbal gymnastics utilized to communicate that he is progressing with his current program were unconvincing.

Almost by definition, a student such as S.B., given his place on the autism spectrum, is going to have some inconsistency in both his academic and behavioral results. This was generally, albeit sometimes tacitly, conceded by the witnesses. Regulation has always been an issue and as he enters puberty, this will not become any easier. Frankly, I did not find any of the testimony from anyone that S.B. adapts to change well to be particularly persuasive, but the vagaries of his ups and downs (including during the pendency of the hearing) could not be explained or even reasonably speculated about.

I'm also not sure what else the District could be doing that they are not doing already, which leads us into the heart of the discussion. This is not a case where S.B. is being ignored, mistreated or misdiagnosed. His placement, as far as what the District is capable of accomplishing, is "appropriate." He is in a relatively small autism-specific classroom (more on that below) and is receiving support services, including speech-language therapy. He has been provided with an AAC device. A toileting expert has been hired. There are, even in the face of this dispute, open lines of communication with his parents, even if follow-through may not be 100%.¹⁸ He is exposed, albeit without a great deal of depth or frequency, to neurotypical peers. He has a one-to-one aide.

I also **FIND**, as referenced above, that S.B. simply is not progressing. Every IEP, every evaluation, seems to contain the same statements. Further, any objective review of the data reflects that he was seemingly more verbal and had more toileting skills when he was five than he does now. He is not progressing with math and while I understand that he has "progressed" from, for instance, board books to "Charlotte's Web," I never got a sense that his functional language skills had improved.

¹⁸ I **FIND**, however, that despite differing parenting styles, any acts or omissions of the parents have not resulted in negative outcomes for S.B. In fact, the only issue that may be relevant is the provision of laxatives for his G.I. issues. Even then, however, I just do not see that as material to my decision.

Obviously, part of the mystery with a student in S.B.'s position is his inability to effectively communicate verbally. What does he comprehend versus what he visually scans? Does he genuinely like the music or does he just like the vibratory sensation (or both)? I couldn't even get anything more than a conjectural answer as to whether he purposely uses the toileting issue as a task avoidance strategy. It was also notable that he feels no sense of embarrassment when he does have an accident but is effectively matter of fact about it. Gratifying himself in the bathroom is another issue in and of itself.

Is the regression something the school is capable of changing? Honestly, I don't know. Is he capable of learning? Everyone agrees that he is. How much and what's his ceiling? I don't know, and neither seemingly, does anyone else.

This is an extraordinarily tough call and in order to make it, I have to explore the difference between a Free and Appropriate Public Education and a Free and Perfect Education. Dr. Huntington and Ms. Klein are advocating for what would be the ideal situation for S.B. and I appreciate that. Through their reports and testimony, they advocated for what would be the "textbook" educational program for him and I don't know that I disagree with their proposals. I agree that a strict ABA classroom would not be appropriate, but on cross-examination in particular, it became clear that with zones of regulation, etc., the District's program is not "strict" ABA either.

Could he use more reading/language arts help? Absolutely. Does he need more effective measures to help him self-regulate? Yes. Would a smaller class size (he currently has eight in his class, although absences from other students struck me as being frequent) be helpful? Yes. That would be a Free and Perfect Education.

So, is S.B. receiving a Free and Appropriate Public Education? After careful consideration, I **CONCLUDE** that he is not. There simply isn't evidence of any demonstrable improvement. While I understand the "sliding scale" aspect to some aspects of his achievement and, frankly, do not put all that much credence in the specific numbers or percentages from his testing, his baseline simply hasn't risen. His IEP goals are stagnant, as are his abilities.

As noted above, as much as the District tried to massage the fact that largely unchanged data over a three- to four-year period isn't evidence of stagnation or regression, you simply cannot ignore that, first and foremost, EVERYBODY agrees that S.B., even with an IQ of fifty-seven and with all of his other issues,¹⁹ is capable of learning. Given that concession, one has to look at the following:

- a. S.B.'s math goals have been stuck at addition for years.
- b. S.B.'s sentence structure goals have been stuck at effectively three to four words for years.
- c. S.B.'s stimming behaviors are essentially unimproved.
- d. S.B.'s regulatory issues have not improved and cause substantial disruption to his learning.
- e. S.B.'s toileting abilities have clearly regressed.

Or, to put it more simply, there is nothing in S.B.'s most recent IEP or its implementation that signals to me that another year of documenting unchanged abilities and unchanged goals and a "let's see if it works this year" approach is sufficient to find that the current District program is providing him with "the opportunity for significant learning and meaningful benefit within the least restrictive environment."

That is not to say that an out-of-district placement will be a guaranteed panacea for S.B.'s complex and fluctuating educational and behavioral issues. There may not be that "ideal" placement out there. This is also not a finding that Montclair's autism program in general is inadequate. However, for S.B., at least at this point, it simply is not working and has not been for the past few years.

Accordingly, I **CONCLUDE** that the District failed to offer S.B. FAPE as that term is defined by law, in the LRE and did not confer a meaningful educational benefit to S.B.

¹⁹ The lead paint issue, which was raised during A.L.'s testimony, was certainly a red flag and was not meaningfully addressed during the hearing. In the absence of any specific testimony concerning its potential impact (save for her testimony that no one has told her that it was impactful on S.B.'s learning), it remains, for the purposes of this decision, an unanswered question.

The IEP did not provide an adequate plan to address educational needs that directly affected his ability to make any meaningful progress. I therefore **CONCLUDE** that the IEP offered to S.B. by the District did not offer a FAPE in the LRE.

ORDER

I **ORDER** that the petitioner's due process petition be and is hereby **GRANTED**. It is **FURTHER ORDERED**:

1. That within fifteen days of the date of this decision or as soon thereafter as is practically possible, a meeting of S.B.'s IEP team be convened. This meeting may occur either virtually or in-person.
2. That S.B.'s IEP be amended to reflect the recommendation that he be placed in an appropriate out-of-district educational facility designed to meet his appropriate educational goals as detailed above.
3. That the parties cooperate in good faith to facilitate S.B.'s out-of-district placement.
4. That the District shall be responsible for all reasonable costs associated with said placement, including tuition, fees and transportation services.

Please note that no specifics were ever provided concerning the due process request for compensatory education. Therefore, no compensatory education will be ordered.

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

July 2, 2026

DATE



MATTHEW G. MILLER, ALJ

Date Received at Agency

July 2, 2026

Date Mailed to Parties:

July 2, 2026

sej

APPENDIX

WITNESSES

For Petitioner:

D.B., father
A.L., mother
Arlene F. Rubin, speech-language pathologist
Jodi F. Huntington, Ph.D.

For Respondent:

Alexandra Catalano, social worker/case manager, Montclair Board of Education
Sharon Balsalmo, behavior specialist, Montclair Board of Education
Brittany Chiasson, B.C.B.A.
Megan Randall, M.A.

EXHIBITS IN EVIDENCE

Joint:

- J-1 Second-grade report card (May 2022)
- J-2 Physical Therapy evaluation of Ericka Heggins, P.T. (July 12, 2022)
- J-3 Psychological evaluation of Victoria Petrovic (July 21, 2022)
- J-4 Occupational Therapy evaluation of Amy O. Smith, O.T.R./L. (July 28, 2022)
- J-5 VB-MAPP of Sharon Balsalmo, behaviorist (July 2022)
- J-6 Speech-Language evaluation by Ashley Garcia, M.S., CCC-SLP (August 17, 2022)
- J-7 Functional Behavioral Assessment for grabbing/scratching by Sharon Balsalmo (August 2, 2022)
- J-8 Functional Behavioral Assessment for mouthing objects (August 2, 2022)

- J-9 Individualized Education Plan (August 30, 2022)
- J-10 Individualized Education Plan (May 10, 2023)
- J-11 Progress Report for IEP Goals and Objectives (December 2022–March 2023)
- J-12 Progress Report for IEP Goals and Objectives (June 2023)
- J-13 Third-grade report card (June 2023)
- J-14 Report Acceptance/Rejection Form (Private Neuropsychological) (August 5, 2023)
- J-15 Report Acceptance/Rejection Form (Private Speech/Language) (August 7, 2023)
- J-16 Individualized Education Plan (September 27, 2023)
- J-17 Progress Report for IEP Goals and Objectives (December 2023–March 2024)
- J-18 Fourth-grade report card (June 2024)
- J-19 Individualized Education Plan (May 7, 2024)
- J-20 Progress Report for IEP Goals and Objectives (June 2024)
- J-21 Individualized Education Plan (April 8, 2025)
- J-22 Progress Report(s) - 2024–2025 (June 2024–May 2025)
- J-22 Progress Report(s) - 2024–2025 (June 2024–May 2025)
- J-23 Speech-Language Re-Evaluation by Megan Randall, M.A. S.L.P.-C.C.C. (April 2025)
- J-24 Occupational Therapy Re-Evaluation by Amy O. Smith, OTR/L (April–May, 2025)
- J-25 Psychological Re-Evaluation by Samatha Golland, M.A./SSP (May 2025)
- J-26 VB-MAPP by Rebecca O’Sullivan (June 2025)
- J-27 Individualized Education Plan (June 24, 2025)
- J-28 Fifth-grade report card (June 2025)

- J-29 Report card (sixth grade to date) (January 15, 2026)
- J-30 Progress reports (sixth grade to date) (November 2025–February 2026)
- J-29 Report card (sixth grade to date) (January 15, 2026)
- J-30 Progress reports (sixth grade to date) (November 2025–February 2026)
- J-31 Joint stipulation, re: Rubin observation of January 27, 2026 (March 9, 2026)

For Petitioner:²⁰

- P-1 Curriculum vitae of Arlene F. Rubin, M.A., CCC-SLP
- P-2 Comprehensive Speech & Language report of Arlene F. Rubin (2022)
- P-3 School Observation report of Arlene F. Rubin (2024)
- P-4 School Observation & Assessment update of Arlene F. Rubin (2026)
- P-5 Curriculum vitae of Jodi H. Huntington, Ph.D., O.T.R.
- P-6 Neuropsychological Evaluation report by Dr. Jodi H. Huntington (2022)
- P-7 Observation Update report by Dr. Jodi H. Huntington (2024)
- P-9 N.J.A.C. 6A:14

For Respondent:

- R-3 Program Book, 2023–2024 school year
- R-4 Maladaptive behavior data, 2024–2025 school year
- R-5 Toileting data, 2024–2025 school year
- R-8 English Language Arts data, 2024–2025 school year
- R-11 Parent meeting notes (October 22, 2025)
- R-12 Behavior data, 2025–2026 school year

²⁰ Missing exhibit numbers (for both petitioners and respondents) were not offered into evidence.

- R-15 Private observation notes with Good Talking People
- R-16 Toileting data, 2025 ESY and 2025–2026 school year
- R-17 VB-MAPP (June 2019)
- R-18 Speech and Language evaluation (May/June 2019)
- R-21 VB-MAPP Master Scoring Form (2019/2022)
- R-25 Curriculum vitae of Alexandra Catalano
- R-26 Curriculum vitae of Sharon Balsalmo
- R-29 Curriculum vitae of Megan Randall
- R-31 Curriculum vitae of Brittany Chiasson
- R-32 Home school daily report (December 16, 2025)
- R-33 Email exchange re: in-home ABA services (July 2024)