



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

**FINAL DECISION**

OAL DKT. NO. EDS 03894-22

AGENCY DKT. NO. 2022-34154

**G.F. AND M.F. ON BEHALF OF M.F.,**

Petitioners,

v.

**SOUTH BRUNSWICK TOWNSHIP BOARD OF  
EDUCATION,**

Respondent.

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**Hillary D. Freeman, Esq.**, for petitioners (Freeman Law Offices, LLC, attorneys)

**R. Taylor Ruilova, Esq.**, for respondent (Comegno Law Group, PC, attorneys)

Record Closed: July 24, 2023

Decided: August 25, 2023

BEFORE **MARY ANN BOGAN, ALJ:**

**STATEMENT OF THE CASE**

Petitioners G.F. and M.F. on behalf of their son M.<sup>1</sup> requested a due-process hearing on the issue of whether the individualized education program (IEP) proposed by respondent South Brunswick Township Board of Education (“the District”) for M., for the 2022-23 school year, is reasonably calculated to provide significant learning and

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<sup>1</sup> The student M.F. will be referred to as M. to avoid any confusion with the parent M.F.

meaningful benefit in light of the student's needs and in the least restrictive environment (LRE). The petition seeks reimbursement for the unilateral placement of the student in an out-of-district placement, Rutgers Preparatory School, development of an IEP reflecting such program and placement, and reimbursement of all costs. The District contends that the IEP proposed for the 2022-23 school year provides M. with appropriate supports and accommodations at the District high school and provides M. with a free appropriate public education (FAPE).

### **PROCEDURAL HISTORY**

The Department of Education, Office of Special Education, transmitted this matter to the Office of Administrative Law (OAL), where it was filed on May 13, 2022. The case was scheduled for a settlement conference on May 25, 2022, and then adjourned by the parties. The settlement conference was rescheduled for June 21, 2022. Thereafter, the case was assigned to the undersigned for a plenary hearing. Telephone conferences were held on July 21, 2022, and at that conference, the plenary hearing was originally scheduled for October 12 and 13, 2022, and then adjourned by the parties. Telephone conferences also took place on September 29, 2022, and October 25, 2022. The plenary hearing was rescheduled for November 1, 2022, and then adjourned at the joint request of counsel due to unresolved discovery issues between them. The hearing was rescheduled for December 1, and 7, 2022. Counsel declined further hearing dates in December 2022 or in the first three weeks of January 2023, and the hearing resumed on January 23, 2023, and continued on March 24, 2023, May 2, 2023, June 19, 2023, and July 20, 2023. The record closed on July 24, 2023.

### **FACTUAL DISCUSSION**

By way of background, this case is about a student, M., who was fourteen years old when the petition was filed and in ninth grade at Rutgers Preparatory School, Somerset, New Jersey. The student's parents maintain that M. struggles with mental-health challenges that interfere with his ability to receive a meaningful educational benefit in the public school for the 2022–23 school year. The petitioners acknowledge that M. did not require special education for success academically. Rather, the petitioners seek

special education to address his oppositional behavior that they believe interferes with his education in a public school system. M. is diagnosed with attention deficit hyperactivity disorder (ADHD), combined (severe), oppositional defiant disorder (ODD), and disruptive mood dysregulation disorder. Moreover, petitioners state that in certain environments M. exhibits anxiety, depression, and withdrawal. From kindergarten to fourth grade M. attended Cambridge Elementary School, the public school in South Brunswick. The District evaluated M. in third grade when he was found eligible for special education and related services under the classification of "Other Health Impaired". M. was then placed by the parents at Princeton Montessori School for the balance of fourth grade and for his fifth-grade year. The parents enrolled M. at Princeton Friends School (Princeton Friends) for sixth through eighth grade. During M.'s fourth-grade year, the parents and the District reached a Settlement Agreement covering this time period. M. remained out of district from February 2018 to June 30, 2022. (J-6.) While at Princeton Friends, M. attended supplemental non-school-based services at Princeton Speech-Language & Learning Center (Princeton Speech). Thereafter, the District proposed an IEP that returned M. to the District. The petitioners maintain that both the January 31, 2022, proposed IEP and the IEP dated February 23, 2022, were not appropriate, or, in the alternative, that the IEPs proposed by the District were not designed to confer a meaningful benefit upon M. as the IEP does not place M. in a "small structured educational program where his goals can be appropriately ambitious for his specific needs with the appropriate language and executive functioning supports". In that regard, petitioners placed M. at Rutgers Preparatory School in September 2022 for his ninth-grade school year, and M. continues to attend supplemental non-school-based services at Princeton Speech. (J-18; J-22.)

Petitioners maintained that there was a procedural violation by the District when it failed to properly notify the petitioners of decisions affecting their child and provide them the opportunity to make objections during the evaluation and IEP drafting process. The District contends that the 2018 Settlement Agreement between the parties provided for a modified procedural process to evaluate and propose an IEP for M. It maintains that the petitioners had knowledge of the District's intention to evaluate M. and draft an IEP and that G.F. attended M.'s evaluations and was interviewed by the evaluators. Petitioners also were provided with the opportunity to participate in the IEP drafting process. An

Invitation for Initial Eligibility Determination and IEP Development Notice was sent to the parents and as a result of that meeting the District made changes to the IEP, as reflected in the February 23, 2022, IEP. (J-19, 22.) In addition, the District points out that the proposed program would have started seven months after the IEP was proposed, giving petitioners plenty of time to make any objections known.

The District argues that the placements selected by the parents, which are non-special-education schools, were never approved by the District. Rather, the 2018 Settlement Agreement resolved the issues that existed between the parties up to M.'s fourth-grade year, and the parents disenrolled M. from the District. Under its terms, the subsequent out-of-district placements were selected entirely by the family. Furthermore, the 2018 Settlement Agreement also provided that the District would no longer be financially obligated after the 2021–22 school year, unless the District did not propose an IEP for M. by February 1, 2022, which it did.<sup>2</sup> (J-6.)

The petitioners acknowledged viewing out-of-district schools prior to the completion of the District's proposed IEP, but said they did not commit or sign a contract.

### **For respondent<sup>3</sup>**

**Carla Garcia** is the District child study team (CST) social worker. She oversees the implementation of IEPs and special-education programs. Ms. Garcia writes IEPs and consults with teachers about the implementation of the IEP before the school year begins. She also consults with parents, and interacts with and provides counseling sessions to students. In addition to earning her social-work license, Ms. Garcia is certified in social work by the State of New Jersey. (J-34.)

Ms. Garcia began working for the District in 2002. She has drafted about 45–50 IEPs each school year, or 800 to 900 total, and each year she completes about 30 social

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<sup>2</sup> If the Board proposes an IEP by February 1, 2022, and the parties disagree on that IEP or program/placement, that IEP shall be considered to be M.'s stay put, in the event a Due Process or other action is filed by petitioners to challenge the IEP or proposed program/placement. If no IEP is proposed by February 1, 2022, then the financial terms of this Agreement shall continue.

<sup>3</sup> Counsel jointly agreed to accept the District witnesses as experts in their fields.

assessments. This school year she has thirty-five special-education students on her case load. As case manager, she initiates the reevaluation process for students every three years. Throughout the year she reviews IEPs to see if any revisions are necessary, helps teachers develop goals and strategies to help implement those goals, and meets with students to help them solve issues that may arise during the school day. Ms. Garcia also connects families with outside services when appropriate. The District, she explained, considers an IEP to be a “working document.” In that regard, the District is “constantly looking at IEPs” to see “if anything needs to be revised or changed, added [or] updated.”

The 2018 Settlement Agreement stipulated that the Board “shall have the option to conduct evaluations and observe M.” The 2018 Settlement Agreement did not include terms that required an evaluation planning meeting with the parents before the evaluations took place, and it did not require specific types of evaluations. The 2018 Settlement Agreement also did not require an IEP meeting. Ms. Garcia acknowledged that the 2018 Settlement Agreement did not preclude the District from holding either an evaluation planning meeting or an IEP meeting. The 2018 Settlement Agreement required the District to propose an IEP on or before February 1, 2022, and permitted the District to observe M. during his eighth-grade school year (2021–22) in his out-of-district placement.

The CST determined that it was important to gather as much information on M.’s “current functioning as possible”, since he had not been a student in the District for four years. The District gathered information by conducting an educational evaluation, a social assessment, a neurological evaluation, psychiatric evaluation and a psychological evaluation so that the CST would have “a really complete picture of where M. was at the moment”. (J-9) (J-14 a,b,c,d,e) When this determination was made, the District had not yet received the educational records requested from M.’s private schools. When the evaluation process started, Ms. Garcia reached out to G.F. to let him know about the evaluations. She also sent releases. (J-10.) On December 1, 2021, Ms. Garcia and Ms. Setts, the learning consultant, observed M. in class at Princeton Friends. During M.’s general-education math class, Ms. Garcia observed M. arrive to class prepared with his materials and participate in the instruction. At one point M. put his head down, but he did not display any off-task behavior, nor conduct himself in an oppositional, defiant, or

impulsive manner. He stayed in his seat even when other students were walking around during class. M. chatted with a student near him but did not need redirection. He completed all of his work. When the observation concluded, his teacher explained that M. put his head down after he finished the assignment in advance of the other students. The teacher gave M. a harder problem to work on, which he accepted and did. His teacher conveyed that he is eager to learn, and picks up on topics easily. Ms. Garcia and Ms. Setts also observed M. during his outdoor general-education science class, which consisted of about fourteen or fifteen students. He collaborated with a partner even before the teacher arrived and engaged in building a rollercoaster. No off-task behaviors were observed, including oppositional, defiant, or impulsive behaviors. Next, they attended the school's community meeting. M. was the first to arrive. He independently started to set up chairs for his classmates to sit in. During the observation M. did not receive special-education services, including any accommodations or modifications and there was no report from the private school that M. displayed any type of oppositional behavior.

On January 25, 2022, Ms. Garcia provided petitioners with a Collaborative Child Study Team Report. (J-14.)

By this time, Ms. Garcia had received the neurological and psychiatric releases from G.F. but she had not received the signed Princeton Friend's release.<sup>4</sup> When Ms. Garcia reached out to G.F. on January 20, 2022, by email, G.F. said he would send it over. On January 27, 2022, Ms. Garcia received the release signed by the parents for the Princeton Friends School records in an email sent by petitioners' attorney. (J-16.) Ms. Garcia immediately sent the release to Princeton Friends. Transcripts and progress notes were sent on January 31, 2022. The February 1, 2022, IEP did not incorporate these records because the District did not have an opportunity to review them since they were not sent in time to adhere to the terms of the Settlement Agreement that required the District to propose an IEP by February 1, 2022. When the District met with G.F. regarding the January 31, 2022, draft IEP he did not report that his son received school-

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<sup>4</sup> Ms. Garcia requested a search of her emails from the District's IT department to determine whether the release had been sent from G. F. IT did not locate the release in G. F.'s initial email, nor was it found in any follow-up emails.

based counseling at Princeton Friends and there were no notes in the progress report or other related documents that indicated that he was receiving this type of counseling.

Ms. Garcia drafted the social evaluation included in the comprehensive Collaborative Child Study Team Report. (J-14.) As previously stated, at the time this report was written Princeton Friends had not sent M.'s records. Ms. Garcia interviewed G.F., who did not report any concerns for oppositional behavior at school, even though M. still has a diagnosis of attention deficit disorder and oppositional defiant disorder. He only observed this type of behavior at home which he reported as "pervasive". In addition, G.F. reported that changes in M.'s schedule or large crowds tended to trigger the behavior. G.F. found that the "size, space, and ratio" at Princeton Friends kept M.'s behavior intact. In particular, G.F. reported, the smaller class size, relaxed rules about sitting at the desk, and outdoor classrooms contributed to his improved behavior. He also felt that the Princeton Friends decision to allow M. to call his teachers by their first names helped to diminish the authoritative figure, which was helpful. It was reported that M. attended Princeton Speech for weekly cognitive behavioral therapy and executive functioning, a clinical service that was not school based. G.F. did not state how the size, space, and ratio related to his four-member family at home, nor did G.F. report any need for special education.

The child study team also reviewed and considered the report from Dr. Shirley Rajan, an outside psychiatrist with the Rajan Center for Family Wellness, who evaluated M. Dr. Rajan diagnosed M. with attention deficit disorder combined, type severe, and oppositional defiant disorder, and she wanted to rule out autism spectrum disorder. The CST found that the Diagnostic and Statistical Manual of Mental Disorders diagnosis was based solely on the interview with M. and his parents. No other sources of information relating to this diagnosis were considered when Dr. Rajan made this determination. Dr. Rajan reported that M. denies oppositional at school and that G.F. reported there is no oppositional behavior at home. Dr. Rajan concluded that there is a "large probability that M. would decompensate if re-integrated into the public school system The District did not speak with Dr. Rajan or share any records, since the records were not provided. It appears from the report that Dr. Rajan did not have any communication with Princeton

Friends or receive records from them or from Princeton Montessori (J-14.<sup>5</sup>) In addition the CST reviewed and considered the report from Indira Kumar, MD, pediatric neurologist with NeurAbilities. (J-14.) Dr. Kumar also based her recommendations on an interview and an examination of M. input from G.F. who accompanied M. to the evaluation, and CST records dating back from 2017.

After review of the programming at the high school and M.'s performance on the evaluations, the CST "reluctantly" determined that M. qualified for special education and developed a proposed draft IEP dated January 31, 2022. After conducting an IEP meeting on February 14, 2022, the IEP was revised and incorporated additional parent input February 23, 2022, under the category of "other health impaired." (J-18, 22.) Even though the CST did not receive teacher reports in enough time from his out-of-district school, the CST decided that since he was reintegrating into the least restrictive environment by returning to the District, the CST wanted to ensure that he had a "go to" person. M. did not require academic interventions. The IEP did incorporate executive-functioning therapy, and social skills. The IEP noted that G.F. reported that M.'s oppositional behavior is persuasive at home. The specialized instruction included a study skills class with six to eight students in the presence of a special-education teacher. Additionally, his behavioral support included provided check-ins for M. This would allow him to "bring social stressors to the case-manager counseling sessions." The IEP also provided for a doctoral-level behavioral specialist to meet with M. once a week from the beginning of school to mid-November, and then two times each month. The behaviorist would address the parents' concern for the larger environment and support M.'s ability to manage that change. The CST did not see the need to implement any specific behavioral services since at that time there was no documentation regarding M.'s behavior in school. The IEP set goals for attention and interaction with peers, and management for any stressors. The parents reported that inattention was not a concern; the goals were streamlined to eliminate that concern, or an ADHD-type concern. Academically, M. was recommended for advanced general-education classes.

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<sup>5</sup> It was agreed that J-14 is supplemented with J-14a recommendations.



**Elaina Isoldi** is a certified school psychologist and M.'s case manager. She is a member of the CST. Ms. Isoldi provides school-based counseling supports through the IEP. She also consults with staff regarding any behavioral concerns, including social-emotional, and works to ensure that the student's needs are being met, including counseling services that are mandated in the IEPs.

Ms. Isoldi monitors the student's progress, and the implementation of their IEP. She has been working in special education for fourteen years, and has drafted over 700 IEPs. She has performed over 350 student evaluations throughout her career.

Ms. Isoldi conducted the psychological evaluation, She performed a classroom observation of M. at Princeton Friends School, worked one-on-one with M., and completed a student interview, a comprehensive cognitive assessment, and a behavior rating scale. During the classroom observation, Ms. Isoldi observed M. to be engaged and motivated.

Ms. Isoldi administered the Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V), a nationally normed standardized test that tests cognitive functioning compared with same-aged peers. She found M. engaged and articulate. M.'s scores indicated strong cognitive functioning. In some areas he scored in the 96th percentile, an extremely high range. She also administered the Behavior Assessment System for Children, Third Edition (BASC-3), which tests social, emotional, and behavioral functioning, which is a self-report measure. None of M.'s scores fell within the clinically significant range. M. did report some worrying, nervousness, and inability to relax, placing his anxiety scale in the at-risk range. His English teacher found nothing in the clinically significant range. She also reported that M. is a hard worker, focused, wants to do well, and he is kind and considerate. At times he has difficulty with his temper. M.'s social-studies teacher completed the second BASC rating scale. The social-studies teacher found clinically significant range for depression, difficulty adapting to new situations or changing situations, anger control, emotional self-control, and negative emotionality. This teacher also reported several at-risk-range scales for aggression, withdrawal, social skills, and resiliency. There were no supports at Princeton Friends in place for these potential concerns.

Ms. Isoldi explained that the counselors provided in the public schools are school-based counselors that support problem-solving strategies. This type of counseling is not specific, like therapy performed in a private setting or in a therapeutic special-education school,

Ms. Isoldi interpreted Dr. Rajan's report saying that M. would decompensate if he is placed back into public school to mean that M. would need support when he reenters the District school. She explained that the CST discussed the consideration for least restrictive environment and keeping M. in his home school before considering any sort of outside out-of-district specialized special-education program. She noted that evaluators are not in the school system and not always familiar with what the school can offer.

Based on the information, the District was being "cautious" and "proactive" in making sure that supports were in place for M. to make the transition, and if he did not need them, they could be scaled back. In an effort to address any potential risk for transitioning to high school, the CST included a behaviorist, and supports such as school-based counseling support weekly, behavioral consultation with the behaviorist weekly, and the executive-functioning study-skills class.

There was no information provided by Princeton Friends that M. was receiving any sort of regular counseling or behavioral supports at school and there were no reportable behaviors like kicking, hitting, or destruction of school property. Ms. Isoldi explained that M. would receive counseling or other supports if he displayed problematic behaviors in school. The initial IEP offered counseling services, and when the team met with the parents in February 2022 the parents did not express any concerns regarding the frequency or duration of those services. During the social-assessment interview and also during the IEP meeting the parents did not report any behavior like throwing, kicking, or property destruction and Princeton Friends did not provide any information to indicate that there was a behavior plan in place. Furthermore, Princeton Friends did not report any kind of behavioral issues when M. was in eighth grade.

**Roseann Cetta** is a learning disabilities teacher and case manager. She manages approximately sixty IEPs each year. She also conducts educational evaluations. Ms. Cetta conducted M.'s educational evaluation and performed two observations. (J-14.) Ms. Cetta's overall impression was that M. "is a very capable student who likes to learn." Ms. Cetta is trained to identify a student's deficiencies. She observed that M. continued to work well even when the questions he worked on became more difficult. She did not observe any behavioral concerns or issues related to distractibility.

**Dr. Rebecca Hye, Psy.D.**, is a licensed clinical psychologist. She started working at the District in 2010 as a school psychologist and case manager.

Dr. Hye testified that the District did not have information that would lead to the conclusion that M.'s needs could not be programmed at the District based upon the evaluations that were conducted by the CST. The reports revealed that M. did not easily acquire play dates, and that he would become frustrated with kids in the class that did not have the same opinion or agree with him. It was also reported that M. displayed angry outbursts at home, although she did not recall receiving a description from the parents about what that looked like or what the triggers were. There were no records about significant behaviors, outbursts, or oppositional behavior occurring at school that required intervention and there were no disciplinary records. Due to the parents' concern, the District responded proactively. The IEP included provisions for communication between the behavioral consultant and M.'s teachers and with M., to identify and address any concerns, and working with the case manager. The IEP provided sufficient behavioral support to identify and ensure that if problematic behaviors were noted, there would be an opportunity to add supports to the IEP when necessary. (J-18,22.)

Dr. Hye determined after reviewing the data and conferring with the CST that M. did not require additional supports. The two BASC forms that the English and social-studies teacher from Princeton Friends completed and on which they reported an at-risk level for some negative emotionality or shutting down, in her view, did not require strategies unless that behavior was observed in the classroom. Dr. Hye confirmed that Princeton Friends did not provide formal supports for M. to address any of the reported

behaviors in the BASC and the parent did not report this type of behavior at the IEP meeting.

Dr. Hye testified that the IEP proposed by the District provided M. with sufficient behavioral supports, with an opportunity to observe any concerning behaviors if they arose, and that the proposed behavioral supports that the District offered M. were appropriate. These behavioral supports included “alternate passing time” so that M. would be allowed to leave class early to get to his next class on time without being overwhelmed, and a smaller lunch time so as to avoid a loud crowd environment.

The District witnesses each opined that the IEP the District offered provided M. with FAPE and was reasonably calculated to confer a meaningful educational benefit on him, in the least restrictive environment.

### **For petitioners**

**Mark Cooperberg, Ph.D.**, a psychologist, is the director of psychological services at Princeton Speech-Language & Learning Center, a private clinical practice where he has been treating M. since January 2019. Dr. Cooperberg has been in practice for thirty years and has extensive experience working with students with ADHD and ODD diagnoses. Dr. Cooperman is licensed in New Jersey, was offered as an expert on behalf of the petitioners in behavioral programming and social-skills programming and psychology.<sup>6</sup>

His practice is primarily based on the cognitive behavioral model. This model works through how social-emotional needs impact behaviors, which may impact educational performance. Dr. Cooperberg previously served as a behavioral consultant in a school district.

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<sup>6</sup> Petitioners’ request for Dr. Cooperman to be accepted as an expert in special education or as a special education educator was denied.

Dr. Cooperberg looks at the antecedent behavior consequences when designing a behavior intervention plan. This plan can contain preventative measures, which include building a student's awareness of their difficulties, improving their skill set, behavior interventions for improving desired behavior, and replacement behavior, which is "what should a student be doing instead of what they are currently doing." Consequential interventions are what occurs after the child engages in certain behavior.

Dr. Cooperberg testified that M.'s social-emotional needs indicated that for success at Princeton Friends, the plan was to improve his emotional regulation skills, including coping strategies, inner-personal problem solving, and improved communication with staff and students. Dr. Cooperberg testified that M. has significant social needs that are not addressed in the IEP, and these social needs impact his educational performance. Dr. Cooperberg's view is that the conflict M. has with his peers creates a difficult learning environment. Dr. Cooperberg found that the District's proposed IEP did not address social-skills training. He has never made contact with the District, has never observed the program, and does not have firsthand knowledge of the program

Dr. Cooperberg testified that he has been successfully treating M.'s classroom oppositional behavior since January 2019. Dr. Cooperberg agrees with the concern set forth in Dr. Rajan's report, and agrees that M. would revert to "behaviors that have caused an unsafe learning environment for himself, peers and teachers" if M. were reintegrated into the public school. Dr. Cooperberg did not observe M. at any of his schools, and he also did not have any communication with staff at the District school at any time, and his psychological evaluation report was not provided to the District when the District was developing the IEPs for M. He understood that M. did not receive special-education programming at his previous schools or currently at Rutgers Preparatory. Dr. Cooperberg explained that the components of the programming at Rutgers Preparatory, like small-class time with more opportunity to participate, community time, and an advisory period, have been critical to his success in school. Dr. Cooperberg agreed that any significant behaviors that M. displayed in his early years at the District school and while at Princeton Montessori decreased during his time at Princeton Friends, and there are no reported behavioral issues at Rutgers Preparatory.

**G.F.** is M.'s father. At the time of his testimony, M. was fifteen years old and diagnosed with ADHD/ODD and social challenges. M. had been finishing ninth grade at Rutgers Preparatory School.

G.F. explained that by the end of fifth grade, M.'s physical aggression and property destruction that he had displayed in fourth grade at the District school had stopped. M. also made progress in his ability to comfortably approach a teacher and seek help. (J-7.) Towards the end of fifth grade, G.F. sought assistance from Princeton Speech's Social Thinking program, based upon the recommendation from Princeton Montessori. This is where they met Dr. Cooperman. G.F. found that M. made progress and was able to control his impulsivity. Princeton Friends School worked with Dr. Cooperman. G.F. remarked that Princeton Friends was preferred because they approach behaviors proactively in a restorative manner rather than implementing punishment. Also, they provided M. with a class schedule that allowed for flexibility and movement, which G.F. found to be a "key component." M. also attended an advisory period during the school day. This class helped M. form friendships at school and helped him plan his work with the help of an advisor. The school counselor also facilitated a group counseling session called "Talk Show." This group discussed topics recommended by the facilitator and students. (J-25.) Although the description of the program does not mention counseling, G.F. stated that M. received counseling, skills in social thinking, and social and emotional support. Also, there were no written goals associated with this program, although G.F. believed that the goals were discussed, and looked to improve executive functioning and identify stressors that may occur during the day.

G.F. found Princeton Friends and Rutgers Preparatory School to be appropriate placements for M. The outside supplemental services were provided on a weekly basis.

G.F. acknowledged that he signed three releases, two for the outside evaluators and one for Princeton Friends, but felt it more urgent to provide the District with the releases for the two evaluators, since they were timely. He was not aware that he received several follow-up requests from Ms. Garcia asking about the Princeton Friends release.

G.F. did not necessarily reject the District's proposed IEP because it did not provide a behavioral plan. Rather, he rejected the IEP because it did not offer programs similar to Talk Show or an advisory period. He understood that the IEP included a study-skills class, but did not feel it was a good fit based on his prior experience with his older child who was in that class at the District school. He found it to be "more academic than anything else," and he presumed it was the same class that was proposed for M. It was his understanding that goals such as transitioning from one class to another and understanding the expectation of the academic classes would be addressed in the study-skills class. G.F. was aware that M. would have a guidance counselor, a case manager, and other supports at the District school, but he did not believe that the District's program provided sufficient support like the advisory periods that met daily at M.'s private-school placement. G.F. found Rutgers Preparatory School to be appropriate because he felt that opportunities like "peer group," held at the beginning of the school year, helped M. become oriented to the school. M. never previously participated in any type of District-offered preschool program. G.F. also liked the flexible period that Rutgers Preparatory School provided to students, that lasted one hour and ten minutes. During that time, students were able to engage in various activities with or without faculty support.

G.F. admitted that M. does not need academic interventions, and he acknowledged that M.'s oppositional behavior is not displayed at school, only at home, where M.'s anger is pervasive and manifests in yelling and screaming. G.F. testified that this oppositional behavior was not displayed in school because of the structure of the private-school setting. G.F. found that M.'s enrollment in outside services and activities, such as weekly cognitive behavior therapy in a 1:1 setting that focuses on behavioral and emotional regulation, and weekly Social Thinking, both at Princeton Speech, along with community activities such as Tae Kwon Do, weekly, Heroes Academy, a math-skills class on Sundays, and soccer during soccer season, have been helpful to M.'s progress.

G.F. testified that M. struggles with social interactions when interacting with his peers outside of school. G.F. reported that M. grows frustrated when things do not go his way, and then his frustration turns to anger.

G.F.'s concern for M. while he is in school is difficulty with transitions, strict adherence to routines, inability to focus and complete a task, respecting personal space, inability to pick up on social cues, and making friends.

### **FINDINGS OF FACT**

It is my obligation and responsibility to weigh the credibility of the witnesses in order to make a determination. Credibility is the value that a factfinder gives to a witness's testimony. The word contemplates an overall assessment of a witness's story in light of its rationality, internal consistency, and manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Credible testimony has been defined as testimony that must proceed from the mouth of a credible witness, and must be such as common experience, knowledge, and common observation can accept as probable under the circumstances. State v. Taylor, 38 N.J. Super. 6, 24 (App. Div. 1955) (quoting In re Perrone's Estate, 5 N.J. 514, 522 (1950)). In assessing credibility, the interests, motives, or bias of a witness is relevant, and a factfinder is expected to base decisions of credibility on his or her common sense, intuition, or experience. Barnes v. United States, 412 U.S. 837 (1973). Credibility does not depend on the number of witnesses, and the finder of fact is not bound to believe the testimony of any witness. In re Perrone's Estate, 5 N.J. 514.

In determining credibility, it is clear that the District employees support the program they developed, and have determined that it will provide M. with appropriate supports to reach his goals, which are behavioral. The parties agree that M. does not need academic support. Carla Garcia, the school social worker, Elaina Isoldi, a certified school psychologist and case manager, Roseann Cetta, the learning disabilities teacher, and Dr. Rebecca Hye, a licensed clinical psychologist and school psychologist, testified credibly and knowingly about the District programs and the supports proposed for M. as he transitions from private school to the District. The IEP provided M. with a doctoral-level behavioral specialist to meet with M. once a week from the beginning of school to mid-November, and then two times each month. The behaviorist would also address the parents' concern with the larger environment and M.'s ability to manage that change. It was reasonable that the CST did not see the need to implement any specific behavioral



services at this time, since there was no documentation regarding difficulty with M.'s behavior in school. The IEP set goals for attention, interaction with peers, and management of any stressors. The parents reported that inattention was not a concern; the goals were streamlined to eliminate that concern or an ADHD-type concern. Academically, M. was recommended for advanced general-education classes.

The CST reviewed teacher feedback, along with evaluation reports. The CST did not have a report from Dr. Cooperberg, the petitioner's expert, to review when the team assessed M.'s needs to support his education. The District considered the psychiatric evaluation performed by Dr. Rajan. (J-14e.) In particular, the CST discussed the concern that M. would "decompensate if re-integrated in the public school system. He is at risk to reverting back to behaviors that have caused an unsafe learning environment for himself, peers and teachers." Dr. Rajan based her recommendation primarily on feedback from M.'s parents and the concern about M.'s past behaviors in public school in fourth grade when M. was hitting teachers and peers and engaged in property destruction. She also adopted feedback from G.F., who expressed his belief that smaller class size—fifteen peers in his class at Princeton Friends School—helped him maintain behavior-free since he enrolled in this school, because he benefits from decreased external stimulation. Dr. Rajan also relied upon an interview with M., a patient Health Questionnaire, a Strengths and Difficulties Questionnaire, a Child Behavior Checklist, and collateral information from Carla Garcia, LSW. Dr. Rajan did not provide any other information in her report to explain the sources of information that she relied on to make her determination, other than the summary from her interview with M.'s father and with M.<sup>7</sup>

The District discussed Dr. Rajan's report during the CST meeting and considered her findings. Ms. Isoldi testified credibly and convincingly that the CST interpreted Dr. Rajan's report to mean that M. would need support when he reenters the District school, and did not disregard Dr. Rajan's statement. In an effort to address any potential risk for transitioning to high school, the CST added supports such as school-based counseling support weekly, behavioral consultation weekly, and the executive-functioning study-skills class. Moreover, the CST considered the least restrictive environment and

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<sup>7</sup> Shirley Rajan, M.D., did not appear and testify; accordingly, the content of her report is hearsay.

the need to keep M. in his home school before considering any sort of out-of-district specialized special-education program. Ms. Isoldi pointed out that evaluators are not always familiar with District programming because they are not in the school system and do not necessarily observe a program or the student in school.

Dr. Cooperberg determined that the conflict M. has with his peers creates a difficult learning environment and that M.'s significant social needs impact his educational performance and are not addressed in the IEP. Dr. Cooperberg did not particularize the manner in which M.'s oppositional behavior interfered with his education and how the District did not properly address these concerns in the IEP for the 2022-23 school year. Dr. Cooperman recommends the small-class time with more opportunity to participate. In his report, he described Rutgers Preparatory's "community time" as being more supportive than a "typical public high school's lunchtime." Community time is a seventy-minute period that allows for lunch with opportunities for socialization, teacher assistance, or participation in school clubs. Dr. Cooperberg noted in his report that M. made "remarkable growth" early on when he was a primary-school student at Princeton Montessori. He further noted that when M. arrived at Princeton Friends, the combination of a "structured environment, with small class sizes, and empathetic teachers and staff were an excellent fit for M."

Dr. Cooperberg did not explain how M.'s oppositional behavior occurring only in the home and not exhibited at school requires an out-of-district placement. Dr. Cooperberg does not have firsthand knowledge of District programming on which he could base conclusions about the manner in which M.'s oppositional behavior may interfere with his education and determine that the CST did not properly address this concern. In fact, the District witnesses testified convincingly that even though petitioners did not report these behaviors during the IEP process and records did not indicate this concern, the CST incorporated proposed supports into the IEP. Dr. Cooperberg's concern for the lack of clinical counseling in the IEP is inconsequential. M. did not receive in-school counseling as a private school student and as the District explained, a school offers school based counseling services not private counseling to those students who require such service. Dr. Cooperberg opined that M. is doing well and appears to be successful in his new private high school to access the IEP, and that any type of transition to a larger public

school district could be difficult for M. and cause regression, was not persuasive, especially here where his opinion is based on events that occurred after the due process petition was filed. In addition, the parties do not dispute that Dr. Cooperberg's opinions and recommendations, including his psychological report, which is undated, were not provided to the District when decisions regarding M.'s education were being made.

G.F. testified on behalf of his son, M. It was clear from his testimony that he wants to ensure that M.'s learning environment sufficiently responds to what he considers to be significant behavioral needs. G.F. testified that M.'s struggles occur outside of school when interacting with his peers. In fact, the parents concede that M.'s needs do not require special-education intervention for academic support in order to succeed.<sup>8</sup> He did not express specific concerns with the proposed IEP, other than to state that it did not provide non-specialized education-type clubs like the type M. participates in as a student at Rutgers Preparatory School, and he did not reject the IEP due to deficiencies with a behavioral plan or services. G.F. also did not testify with any specificity that the District did not inform him during the evaluation and IEP process or state that parts of the process were overlooked or skipped by the District. G.F. acknowledged that he felt it more urgent to provide the District with the releases for the two evaluators, since they were timely. He was not aware that he received several follow-up requests from Ms. Garcia asking about the Princeton Friends release. Rather, he accompanied M. every step of the way, was interviewed by the evaluators, and provided input for those evaluations that required information from a parent.

The District reviewed the BASC rating scales, which reflect the impressions of the individuals and found there are no specific behaviors reported. The IEP addresses a concern for at-risk level for some negative emotionality or shutting down, which did not require strategies unless that behavior was observed in the classroom, and here the report did not indicate that such clinically significant behavior had been observed.

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<sup>8</sup> Attorney Freeman stated, "I can concede that M.F. did not require special education for academics, specifically." (March 24, 2023, Tr. at 212:3-5.)

The parties agree that Rutgers Preparatory School is a private non-specialized preparatory school. Petitioners did not present testimony or evidence to demonstrate that Rutgers Preparatory School evaluated M. for special education and related services. Nor was there testimony from persons employed by Rutgers Preparatory School with direct knowledge of its programming.

It is also not in dispute that M. never received special education and related services while a student at Princeton Montessori School, at Princeton Friends School, or after he enrolled at Rutgers Preparatory School.

After listening to and reviewing the testimony and documentary evidence, including expert reports, I am not persuaded by the expert testimony petitioners provided. While both parties' witnesses were enthusiastic about M. and agreed that M. was a very bright student who was recommended for all general-education classes, with many being advanced classes, on balance, I found petitioners' witnesses to be less informed and prone to criticize the District's programming for the sake of proving that the proposed programming was deficient. Dr. Cooperberg did not communicate with the District, was unfamiliar with the proposed placement and supports in the District placement and did not have sufficient information to address deficiencies he may have perceived in the proposed placement. Moreover, the petitioners focus on M.'s third and fourth grade conduct while enrolled at a District elementary school to demonstrate that the proposed IEP was lacking, even when confronted with information that contradicted the information on which they relied, was less than complete and unreliable.

Further I **FIND** that the District's child study team was not unwilling to accept the recommendation of Dr. Rajan, the psychiatrist whom they hired to conduct an evaluation of M. Rather, they disagreed with her recommendation that M. would deteriorate in a public school after limiting her scope of interviews to M.'s parents. The CST considered this concern and provided a level of support to address class size, and transitions after incorporating feedback from the parents. The District's decision was consistent with documentary evidence, such as teacher feedback, the available student records and grades, and petitioners' private evaluators' reports, and the District-incorporated supports to address Dr. Rajan's concerns, even though she was not present to testify. Furthermore, I **FIND** the District kept the petitioners informed about the IEP process. G.F. did not

provide testimony to demonstrate that he was unaware of the evaluation process or the development of the IEP. The only notable delay in the IEP process was when G.F. decided to delay the return of the Princeton Friends release to the District. Even though G.F. simultaneously signed three releases issued by the District for the release of records to enable the District to gather information on M.'s current functioning since M. had not been a student there since fourth grade, petitioner determined the Princeton Friends release, where M. was being educated since sixth grade, was information the District did not need in a timely manner. The record reflects that G.F. accompanied M. every step of the way during the IEP process, provided input, was interviewed by evaluators, and remained informed. I also **FIND** that the District utilized the information that was provided by the petitioner's private schools and non-school based services, and properly offered an IEP to the petitioners by February 1, 2022, consistent with the settlement agreement. Thereafter the District offered a revised IEP to the petitioner on February 23, 2022. Among other supports, the proposed IEP included school based counseling services, a doctorate level behaviorist who was available during the school week and who could help M. work towards his emotional and behavioral goals at the onset on a weekly basis.

### **LEGAL ANALYSIS AND CONCLUSIONS**

The primary issue in this case is whether respondent provided M. with FAPE for the 2022–23 school year, or does M. require an out-of-district placement in a non-specialized-education private school to realize a FAPE.

The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 to -1482, is designed to assure that disabled children may access a FAPE that is tailored to their specific needs. 20 U.S.C. § 1400(c). Under the New Jersey regulations implementing the IDEA, N.J.A.C. 6A:14-1.1 to -10.2, each district board of education is responsible for “the location, identification, evaluation, determination of eligibility, development of an Individualized Education Program [IEP] and the provision of a [FAPE] to students with disabilities” who reside in the district. N.J.A.C. 6A:14-1.1(d); N.J.A.C. 6A:14-1.3.

The FAPE requirement is satisfied through an IEP that is “reasonably calculated to enable the child to receive educational benefits.” Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 206-207 (1982). An IEP is “a written plan that sets forth a student’s present levels of academic achievement and functional performance, measurable annual goals, and short-term objectives or benchmarks and describes an integrated, sequential program of individually designed instructional activities and related services necessary to achieve the stated goals and objectives.” N.J.A.C. 6A:14-1.3. In developing an IEP, the IEP or child study team, which includes district staff members and the child’s parents, shall consider such factors as “the strengths of the student and the concerns of the parents for enhancing the education of their child,” “the academic, developmental and functional needs of the student,” “the results of the initial evaluation or most recent evaluation of the student,” and, “[i]n the case of a student whose behavior impedes his or her learning or that of others, consider, when appropriate, strategies, including positive behavioral interventions and supports to address that behavior.” N.J.A.C. 6A:14-3.7(c).

While “an IEP need not maximize the potential of a disabled student, it must provide ‘meaningful’ access to education and confer ‘some educational benefit’ upon the child for whom it is designed.” Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir.1999) (citing Rowley, 458 U.S. at 192, 200). In other words, “[t]o meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Andrew F. v. Douglas Cnty. Sch. Dist. RE-1, 580 U.S. 386, 399 (2017).

A school district must also educate disabled students in the “least restrictive environment,” or LRE. N.J.A.C. 6A:14-4.2. The LRE “is the one that, to the greatest extent possible, satisfactorily educates disabled children together with children who are not disabled, in the same school the disabled child would attend if the child were not disabled.” Carlisle Area Sch. v. Scott P., 62 F.3d 520, 535 (3d Cir. 1995). Thus, “[s]pecial classes, separate schooling or other removal of a student with a disability from the student’s general education class occurs only when the nature or severity of the educational disability is such that education in the student’s general education class with the use of appropriate supplementary aids and services cannot be achieved satisfactorily.” N.J.A.C. 6A:14-4.2(a)(2).

Parents may request a due process hearing before an Administrative Law Judge (ALJ) if they believe a school district has denied their child a FAPE. N.J.A.C. 6A:14-2.7(a). At a due process hearing, the school district bears the burden of proof and the burden of production regarding the provision of FAPE. N.J.S.A. 18A:46-1.1. After the hearing, the ALJ's decision "shall be made on substantive grounds based on a determination of whether the child received a [FAPE]." N.J.A.C. 6A:14-2.7(k). The ALJ's decision is final. N.J.A.C. 6A:14-2.7(l).

Under N.J.A.C. 6A:14-2.10, a school board "shall not be required to pay for the cost of education, including special education and related services, of a student with a disability if the district board of education made available a [FAPE] and the parents elected to enroll the student in a nonpublic school, an early childhood program, or an approved private school for students with disabilities." N.J.A.C. 6A:14-2.10(a)

But if parents enroll their disabled child "in a nonpublic school, an early childhood program, or approved private school for students with disabilities without the consent of, or referral by, the district board of education," also known as a unilateral or parental placement, "an [ALJ] may require the district board of education to reimburse the parents for the cost of enrollment if . . . the district board of education had not made a [FAPE] available to the student in a timely manner prior to enrollment and that the private placement is appropriate." N.J.A.C. 6A:14-2.10(b). However, tuition reimbursement may be reduced or denied if the parents failed to provide the school district with notice of their intent to enroll their child in a private school within at least ten business days or upon a finding by the ALJ that the parents otherwise acted unreasonably in unilaterally placing their child in a private school. N.J.A.C. 6A:14-2.10(c).

Petitioners claim that the Board failed to consider relevant information that would assist in determining M.'s education needs when it ignored the evaluation performed by Dr. Rajan and the opinions offered by Dr. Cooperberg, the petitioners' expert. The petitioners therefore claim that the District predetermined M.'s programming and placement, did not keep the petitioners informed during the IEP process, did not provide an appropriate IEP, and therefore the District failed to offer an IEP by February 1, 2022, in accordance with the Settlement Agreement that

the OAL approved on March 13, 2018. To show that the program was inappropriate, the petitioners stated that the proposed programming in the IEP was not individualized for M. and does not provide small, structured classes, like he receives in a private school setting. Also, the proposed IEP does not provide the level of outside clinical services that M. receives from a non-school related service during non-school hours.

The school district's responsibility to provide FAPE does not encompass the sort of clinical treatment that M. is alleged to require to address his occasional oppositional behavior. Rather, the IDEA's statutory language requires a link between the supportive service or educational placement and the child's learning needs. Kruelle v. New Castle Cnty. Sch. Dist., 642 F.2d 687, 694 (3d Cir. 1981). As a result, "services [that] may be required to assist a handicapped child to benefit from special education . . . [are] not . . . a related service if it [does] not have to be provided during school hours, but instead could be performed at some other time." Ibid.

The parties agree that M. does not require specialized education to support his academics. The petitioners relied upon the expert testimony of Mark Cooperberg, Ph.D., who has been meeting with M. since January 2019 on a regular schedule. Dr. Cooperberg in his report relied on M.'s experience at his private schools most recently Rutgers Preparatory School, which began in September 2022, to determine that an out-of-district placement was appropriate. Also, Dr. Cooperberg was unfamiliar with the proposed placement or the supports available to M. in the public school setting. I **CONCLUDE** that the respondent has met its burden of showing by a preponderance of the credible evidence that it offered M. an IEP for the 2022–23 school year with appropriate placement in the LRE that was reasonably calculated to enable him to make progress in light of his circumstances. Accordingly, I **CONCLUDE** that the Board provided M. with a FAPE.

Having found that the Board offered a FAPE to M., it is not necessary to analyze whether placement at Rutgers Preparatory School is appropriate under the IDEA.

Accordingly, I **CONCLUDE** that the parents had a meaningful opportunity to participate in the evaluations and the IEP process, and did in fact participate in the evaluations and IEP process.



Having **CONCLUDED** that M. has been properly placed under the District's IEP, for the 2022-2023 school year; the IEP is reasonably calculated to provide M. with significant learning and meaningful educational benefits in light of M.'s individual needs and potential, that is, it is appropriately ambitious in light of those circumstances and in the least restrictive environment, warranting M.'s return to the District, the petitioners' request for reimbursement for their voluntary placement of M. at Rutgers Preparatory School shall be denied.

**ORDER**

I **ORDER** that the petitioners' complaint for due process be **DISMISSED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2023) 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 (2023). 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 Programs.

August 25, 2023  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
MARY ANN BOGAN, ALJ

Date Received at Agency \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

MAB/jm

## **APPENDIX**

### **WITNESSES**

#### **For petitioners**

G.F.

Mark Cooperberg, Ph.D.

#### **For respondent**

Carla Garcia, District Child Study Team Social Worker

Elaina Isoldi, School Psychologist

Roseann Cetta, Learning Disabilities Teacher and Case Manager

Dr. Rebecca Hye, Psy.D.

### **EXHIBITS**

#### **Joint**

- J-1 Petition for Mediation and Due Process, 4/13/22
- J-2 Answer to Petition for Mediation and Due Process
- J-3 Letter from South Brunswick re: suspending before and after care, 6/16/17
- J-4 Letters from Cambridge Principal to M.F.'s parents re: behavior and suspension, 10/3/17 & 10/11/17
- J-5 Communication Logs from Cambridge School re: incidents, 2017–2018
- J-6 Decision Approving Settlement, 3/14/18
- J-7 Emails from Princeton Montessori
- J-8 Emails from Princeton Friends School re: concerns and incidents
- J-9 Emails between District and parent re: scheduling evaluations/meeting, 11/17/21 & 11/22/21 & 11/23/21
- J-10 Email dated 12/2/21 from District to G. Finkelstein re: releases
- J-11 Email from District scheduling social assessment, 12/2/21
- J-12 Signed releases dated 12/10/21
- J-13 Email from parent to District re: scheduling neurological evaluation, 12/13/21

- J-14 Comprehensive Child Study Team Evaluation Report, 1/25/22 (contains the five evaluations directly below)
- J-14a Social Evaluation, 12/15/21
- J-14b Psychological Evaluation by Eleni Isoldi, school psychologist, 12/09/21
- J-14c Educational Evaluation by Roseann Cetta, LDT/C, 12/14/21
- J-14d Neurological Evaluation by Indira Kumar, M.D., pediatric neurologist at Neur Abilities, 12/30/21
- J-14e Psychiatric Evaluation by Shirley M. Rajan, M.D., adolescent and adult psychiatrist, 12/20/21
- J-15 Emails between counsel re: IEP and IEP meeting, 1/20/22 & 1/24/22 & 1/27/22 & 1/31/22 & 2/10/22
- J-16 Email from/to Comegno Law Group to Princeton Friends School dated 1/27/22 and 1/28/22 re: record request
- J-17 Email exchange between counsel dated 1/31/22
- J-18 Proposed Draft IEP dated January 31, 2022
- J-19 2-10-22 Meeting invitation
- J-20 2-10-22 Email exchange between counsel re: IEP
- J-21 2-14-22 IEP meeting Attendance
- J-22 IEP dated February 23, 2022
- J-23 Letter from H. Freeman, Esq., to T. Ruilova, Esq., re: 10-day notice, 3/11/22
- J-24 Response to 10-day Notice dated March 23, 2022
- J-25 PFS Progress Reports (2019–2022—PFS—Progress Reports)
- J-26 Rutgers Prep Progress (2022—Sept 26–Oct 17—Rutgers Preparatory School)
- J-27 Social Communication Progress Note from Princeton Speech-Language & Learning Center, 10/3/22 and SLP notes from 7-22 to 11-22
- J-28 Report, Dr. Mark Cooperberg
- J-29 CV—Disha Patel
- J-30 CV—Mark Cooperberg, Ph.D.
- J-31 CV—R. Morales
- J-32 CV—R. Cetta
- J-33 CV—E. Isoldi
- J-34 CV—J. Garcia

J-35 Subpoenas

J-36 Correspondence re: records releases