



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 01739-23

AGENCY DKT. NO. 2023-35047

W.N. ON BEHALF OF M.M.,

Petitioner,

v.

JERSEY CITY BOARD OF EDUCATION,

Respondent.

Frederick R. Dunne, Jr., Esq., for petitioner (Dunne, Dunne & Cohen, attorneys)

Jessika Kleen, Esq., for respondent (Machado Law Group, attorneys)

Record Closed: August 7, 2023

Decided: September 8, 2023

BEFORE **KELLY J. KIRK**, ALJ:

STATEMENT OF THE CASE

Petitioner, W.N. (Mom), on behalf of M.M., filed a petition for due process against respondent, Jersey City Board of Education (Board or District), alleging that the District denied M.M. a free, appropriate public education (FAPE) since 2021 and seeking, inter alia, an out-of-district placement with therapeutic wrap-around services; compensatory education and services related to the alleged loss of education from January 2022 to

present; modification of M.M.'s classification from other health impairment to multiply disabled; and reimbursement for the cost of the Neuropsychological Evaluation.

PROCEDURAL HISTORY

On or about October 7, 2022, Mom filed a request for emergent relief and a petition for due process against the Board seeking, inter alia, the following: an out-of-district placement with therapeutic wrap-around services; compensatory education and services related to the alleged loss of education from January 2022 to present; access to the child's entire school file; modification of M.M.'s classification from other health impairment to multiply disabled; and reimbursement for the cost of the Neuropsychological Evaluation. The matter was transmitted by the New Jersey Department of Education (the Department), Office of Special Education, to the Office of Administrative Law (OAL), where it was filed on March 1, 2023.

Hearing dates were scheduled for May 3, 2023, May 5, 2023, and May 8, 2023. Said hearing dates were adjourned at the petitioner's request because petitioner retained a new attorney. The hearing was rescheduled for June 5, 2023, June 7, 2023, and June 8, 2023, but the hearing dates were adjourned at the petitioner's request because petitioner again retained a new attorney. The hearing was held on June 27, 2023, and June 28, 2023, and written summations were submitted on a final date, July 7, 2023, at which time the record closed.

FACTUAL DISCUSSION

Findings of Fact

Karen Gullace (supervisor of special education) testified on behalf of the Board. Beata Geyer (clinical neuropsychologist), Michael Cocuzza (licensed professional counselor), Edward Longe (licensed clinical social worker), and Ria Smith (non-attorney special education advocate) testified on behalf of petitioner.

Having had an opportunity to consider the evidence and to observe the witnesses and make credibility determinations based on the witnesses' testimony, I **FIND** the following **FACTS** in this case:

M.M. was born in August 2008. For kindergarten through fourth grade, M.M. attended Dr. Lena Edwards Academic Charter School. For fifth grade (2018–2019 school year), M.M. was enrolled by his parents at St. Joseph's School in Jersey City. On December 10, 2018, he was referred to the child study team (CST) "by his mother and his teachers at school who are concerned about [his] academic progress" for an initial evaluation. (R-2.) He "had previously been referred for a CST evaluation at his former school, but determined not to meet eligibility criteria at that time." (R-2.) The initial consent to evaluation was December 19, 2018. Evaluations were conducted, and an initial service plan (ISP) conference was held on March 1, 2019, at which time an ISP was implemented. (R-2.) The meeting was attended by the parents, the parent advocate, the learning disabilities teacher-consultant, the psychologist, the school social worker, the general-education teacher, the special-education teacher, and the District representative. (R-2.)

The ISP reflects that the "[r]esults of current CST testing determined that M.M. met eligibility for classification with a Specific Learning Disability as a severe discrepancy exists between intellectual ability and academic achievement in the following areas:" Listening Comprehension (SS: 87 -1.5 G.E.); Mathematical Computation (SS: 82 -1.6 G.E.); and Mathematical Reasoning (SS: 84 -1.6 G.E.). Additionally, the ISP reflects the following: M.M.'s "attention and focus in class is limited"; he "may struggle to stay on task during writing time and needs refocusing during reading"; he was "respectful towards teachers and the principal, but seems to struggle with peer relationships" and "can become defensive when interacting with classmates, especially if someone disagrees with him"; "[c]oncern was expressed about frequent tardiness to school and alternating overactive behavior with sleeping during class"; "[W.N.] reported that [M.M.] had a difficult time at his prior school and experienced bullying"; "[s]ocially, [W.N.] reported that [M.M.] has always had difficulty maintaining friendships" but "now has three friends at school"; and "[w]hile his behavior is reported to have improved at his new school, there are still concerns about his interactions with peers, and alternating lethargic or overactive

behavior.” (R-2.) M.M. was determined eligible for special education under the category “other health impaired.” (R-2.) M.M.’s recommended program at St. Joseph’s School was the general-education classroom with supplementary instruction consisting of pullout mathematics once per week for forty-five minutes and pullout language arts once per week for forty-five minutes. The ISP reflects related services as “integrated therapy services.” (R-2.) On March 4, 2019, Mom signed an acknowledgment that she participated in the development of the ISP and agreed to the recommendation of program and services. (R-2.)

M.M. attended St. Joseph’s School for sixth grade (2019–2020 school year) and seventh grade (2020-2021 school year). (R-9.)

Discharge instructions from Children’s Specialized Hospital, dated July 8, 2020, reflect the following: a recommendation of individual psychology; “Other (Mom really needs help with finding a safe and appropriate school for [S]eptember)”; and M.M. was to follow up with Katlyne Lubin, M.D., in two months. (R-5.) The hospital record reflects “new medication added” and that M.M. was prescribed methylphenidate hydrochloride (Concerta). (R-5.)

M.M. virtually attended St. Joseph’s School for seventh grade (2020–2021 school year).

On October 16, 2020, M.M. began psychotherapy (talk therapy) with Michael Cocuzza, licensed professional counselor, from Wayfare Counseling, LLC, consisting mainly of cognitive behavioral therapy to address irrational thoughts and to work on calming skills and emotional regulation. (R-6.) Initially sessions were one hour weekly, but at some point after March 2021 sessions became forty-five minutes biweekly. Sessions sometimes included family-therapy interventions wherein Mom participated. (R-6.)

A November 30, 2020, medical record, from developmental and behavioral pediatrician Katlyne Lubin, M.D., reflects the following: (1) ADHD (attention deficit hyperactivity disorder), combined type—Status: Chronic; (2) Victim of bullying—Status:

Chronic; (3) Learning disability—Status: Chronic; and (4) Sleep difficulties. (R-5.) Dr. Lubin’s record further reflects that behavioral therapy was considered as part of management and that she recommended the following: Therapeutic Services: Individual Psychology; Educational Services: Discuss IEP with School; Social Work Request: Educational Services. (R-5.) Additional comments were “[s]chedule in person visit for further testing” and “[r]ecommend that mom pursue complete interdisciplinary reevaluation to update his academic profile.” (R-5.)

A memorandum dated March 18, 2021, from Cocuzza reflects the following:

Subjective Evaluation:

. . . The client’s presenting problem at admission was anxiety and distress associated with bullying that he experienced in the 4th and 5th grades. He reported that as many as three other classmates were physically abusing him, resulting in medical injuries, was perpetuated and otherwise ignored by authorities within [M.M.’s] school. Additionally, [M.M.] reported physical and verbal abuse from his teacher in the 4th grade, stating that his teacher grabbed him by the arm roughly enough to hurt him and referring to him as a “demon.”

The client reports that he gets along with his mother and feels that she is generally supportive of him. However, he doesn’t feel as though she was supportive of him when he was experiencing the trauma, ongoing, for those (approximately) two years. [M.M.’s] mother reported that she regrets not believing [M.M.] sooner regarding the abuse and found out through a friend that the teacher was acting unethically. Furthermore, the ongoing incident resulted in usurping [M.M.’s] academic career and switching schools.

Currently, [M.M.] largely complains of nightmares that was [sic] also accompanied with enuresis. He reports that he finds himself thinking about his past trauma, even when he doesn’t want to and that he is becoming more and more afraid to leave his home, particularly since the pandemic began last year. Furthermore, he states that he rather consistently feels anxiety in the form of restlessness and agitation, specifically when he is idle. [M.M.] reports that these symptoms impair his family and academic functioning to this day.

The client qualifies for post-traumatic stress disorder due to directly experiencing the traumatic events and due to

recurrent, involuntary, and intrusive distressing memories related to the events as well as recurrent dreams related to the trauma. The client states that he suffers physiological reactions inasmuch that he feels that he gets “shaky” when he notices that he has dissociated in the form of thinking about the bullying that he suffered. The client also qualifies for this diagnosis due to avoidant behaviors including avoiding overt discussion of the trauma in session and with other supportive family members.

Furthermore, the client reported symptoms of exaggerated negative beliefs in the form of believing that the world is dangerous (as evidenced by some agoraphobia exacerbated by the pandemic) and speculation that he was specifically targeted among all other of his classmates. This also includes diminished interest in his normal recreational activities as well as a persistent negative emotional state of fear. Finally, [M.M.] reports an overall estrangement from his peer group.

Finally, [M.M.] and his mother’s observations include reactivity including irritable behavior since the onset of the trauma, hypervigilance, exaggerated startle response, problems with concentration, and overall sleep disturbance. [M.M.] and his mother both report potential dissociative symptoms that they describe as him “zoning out” indicating the possibility for depersonalization.

There are no medical concerns potentially impacting his psychological functioning and he is maintaining a prescription medication of Methylphenidate HCL to address concerns regarding ADHD. There is no current evidence or history of a psychotic disorder, no auditory or visual hallucinations, nor is there current or history of suicidal or homicidal ideations.

Clinical Course:

Initial treatment objectives addressed the client’s capacity for mindfulness coping skills to reduce dissociative patterns or “flashbacks.” Behavioral interventions included using tactile sensations or labeling objects in his surrounding, immediate area to reduce the emotional impact of his recollections. [M.M.] also reviewed deep breathing exercises to reduce distress in the moment.

[M.M.] indicated that he was also tired of talking about the past events of trauma, sometimes resenting having to reiterate what happened at first. He furthermore wished to discuss why certain people would want to hurt others and speculated what it would take for someone like a bully to apologize to him. He

reported that an apology was more important to him than money and that he wished he could use money that he gains from the civil lawsuit to protect others that were victimized like himself. Sessions enabled him to process new meanings and this sense of purpose from the traumatic event and was characterized for the client and his mother as a healthy part of the grieving process.

Family therapy interventions were important as well as [M.M.'s] mother felt guilt and shame for not initially believing her son when he made attempts to tell her that he felt that he was being bullied and discriminated against by his teacher. [M.M.] admitted to feeling some level of anger but also expressed that he wanted to protect his mother from vicarious anxiety that she was feeling as a result of what happened. [M.M.] was confronted with the concept of ambivalent thoughts and feelings that create conflict between himself and his mother and how he can best resolve this. The pair were encouraged to express themselves appropriately between mother and son by identifying their thoughts and associated emotions in the style of cognitive therapy. [M.M.'s] mother was encouraged to also seek therapy for herself and to make sure that her self-care practices did not become her son's responsibility to reduce [M.M.'s] feelings that he had to care for her.

Throughout sessions, [M.M.] also reported that he felt that some of his current teachers were being unfair. Though he didn't say that they were abusive like they were in the past, he felt that the mixed messages he was receiving were similar to prior, traumatic events. [M.M.] was encouraged to advocate for himself by evidencing to his teacher where he was confused and ask for help where appropriate.

[R-6.]

A Letter of Medical Necessity from Katlyne Lubin, M.D., at Children's Specialized Hospital, dated July 19, 2021, but noted to be electronically signed on July 13, 2021, states as follows:

[M.M.], date of birth [2008] is currently a patient at Children [sic] Specialized Hospital. He is diagnosed as having the following diagnoses:

[(1) ADHD (attention deficit hyperactivity disorder), combined type

- (4) Specific learning disorder, with impairment in mathematics, severe
- (5) Victim of bullying
- (6) Post traumatic stress disorder (PTSD)
- (7) Suspected high functioning autism spectrum disorder [ASD].

Mother reports that [M.M.] continues to display significant symptoms of posttraumatic stress, he has nightmares, has difficulty focusing and continues to struggle with peer interactions. Although he is receiving psychotherapy once a week privately, mom does not feel that this is enough to address his mental health needs. In addition, although he does well academically in the areas of reading and sentence comprehension and spelling, he has significant deficits in mathematics and visual motor integration deficits.

I have scheduled an autism psychology test to further clarify the diagnosis of autism spectrum disorder. Given his severe difficulty with socialization, he is [sic] recurrent reliving of his bullying, he is in need of intense psychotherapy in a specialized setting for children who are suspected to be on the spectrum.

[R-5.]

An Addendum to the Letter of Medical Necessity, noted to be electronically signed on July 19, 2021, states: “In addition, aside from the accommodations to address his attention deficit, he will require special education setting specifically to address his impairments in mathematics.” (R-5.)

In September 2021, M.M. was enrolled in the District, started school at PS #24, and “was referred to the [CST] for a re-evaluation in preparation for high school.” (R-3.) Karen Gullace has been employed by the District as a special-education supervisor for more than fourteen years. She has master’s degrees in urban education and special education, as well as teacher-of-the-handicapped, principal, and supervisor certifications. She has more than twenty years’ experience in special education, having previously worked in the District as a special-education teacher and in a non-public school for

students with multiple disabilities, including autism, learning disabilities, and behavioral disabilities.

On September 22, 2021, M.M. was evaluated by learning disabilities teacher-consultant Ruth Perez, who prepared a Confidential Education Assessment Report. (R-3.) Perez's methods of assessment were review of M.M.'s school records, the Woodcock Johnson Psycho-Educational, WJ-IV/Standard and Extended Batteries, and Tests of Achievement (Selected Subtests). (R-3.) The Confidential Education Assessment Report summarizes the evaluation as follows:

[M.M.] presented himself as a friendly 13 year old student who transferred into 24 School in Jersey City via the Intake Center. He was referred to the Child Study Team for a re-evaluation in preparation for high school. Performance in Written Expression presented skills within the average range gaining a standard score of 116, an age equivalent of 12.2, and a grade equivalent of 17-7.¹ Scores in Basic Reading revealed skills within the very superior range gaining a standard score of 144, an age equivalent >30, and a grade equivalent of >17.9 in this area.² Passage Comprehension revealed skills within the average range gaining a standard score of 103, an age equivalent of 14-0, and a grade equivalent of 8.6 in this area. The test of Reading Fluency revealed a standard score of 137, an age equivalent of >30, and a grade equivalent of >17.9 indicating skills within the very superior range of functioning. In Math Calculation, [M.M.] reflected skills in the average range gaining a standard score of 92, an age equivalent of 11-6, and a grade equivalent of 6.1 in this area. In Mathematical Problem Solving his scores fell within the average range gaining a standard score of 101, an age equivalent of 13-7, a grade equivalent of 8.2 in this area. Academic Skills demonstrated skills within the high average range with a standard score of 120, an age equivalent of >30, and a grade equivalent of 14.8 respectively.

[R-3.]

¹ The numbers appear to have been transposed, as the Written Expression portion of the Education Assessment Report reflects "an age equivalent of 17-7, and a grade equivalent of 12.2."

² The Reading portion of the Education Assessment Report reflects a grade equivalent of 17.1.

In September 2021, M.M. was evaluated by school psychologist Tara Hanley, who prepared a Psychological Assessment Report. (R-4.) Her methods of assessment were the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V), and a functional assessment consisting of a student interview, classroom observations, and a review of records. The Psychological Assessment Report reflects, in part, the following:

[M.M.] was observed in Ms. Sierpowski's and Ms. Tarantula's ICS class on September 22nd, 2021 from 9:00 am until 9:30 am. There were 24 students in the class at the time of observation. Ms. Sierpowski was teaching a math lesson on bar graphs. [M.M.] sat in the front of the room at a round table with four other students. He was sitting quietly during the lesson. Occasionally, [M.M.] would look down and fidget with his calculator. [M.M.] paid attention throughout the lesson. He would respond to checks for understanding from the teacher, and raised his hand to answer questions that were posed. [M.M.] put his head down during an instructional video. After the students were directed to begin working independently, [M.M.] hesitated for approximately 45 seconds before beginning to work. After the initial hesitation, he worked diligently. His handwriting was neat. [M.M.] was not distracted by his classmates and did not participate in any off-task behaviors.

BEHAVIORAL OBSERVATIONS

[M.M.] presented as a 13 year, one month old boy whose appearance is consistent with his chronological age. He willingly went with the evaluator for testing and easily engaged in conversation. [M.M.] was eager to speak about books he was reading and astrology. He was a cooperative test-taker. After the fourth subtest, [M.M.] asked for a break. His eye contact was good and he sustained a high-level of effort throughout the testing session.

[R-4.]

The Psychological Assessment Report notes that “[M.M.] presented as friendly and cooperative during one-on-one interactions with adults,” but “he has been having difficulties with his classmates during lunch and recess.” (R-4.) He described his relationship with classmates as “so-so”—he has made a few friends but struggles with a

few classmates. The Psychological Assessment Report summarizes the evaluation as follows:

[M.M.] is an 8th grade student who attends an ICS class. He was cooperative and friendly during testing. He maintained a high level of effort throughout testing and was persistent on difficult tasks. On the WISC-V, [M.M.'s] Full Scale IQ of 79 is in the Very Low range of intellectual functioning. The chance that his true Full Scale IQ would fall within the range of 74 to 85 is 95%. His score is lower than most other children his same age with a percentile rank of eight. The WISC-V consists of five primary index scores, which represent intellectual functioning in five cognitive areas: Verbal Comprehension Index (VCI), Visual Spatial Index (VSI), Fluid Reasoning Index (FRI), Working Memory Index (WMI), and the Processing Speed Index (PSI). The Full Scale IQ score is typically considered to be the most representative of overall intellectual functioning. [M.M.'s] Verbal Comprehension Index score of 116 is in the High Average range. His Processing Index Score of 80 is in the Low Average Range. His Fluid Reasoning Index score of 76 is in the Very Low range. His Visual Spatial Index score of 64, and his Working Memory Index score of 69 are in the Extremely Low Range. His performance on five indexes indicate[s] unevenly developed cognitive abilities at a level that is below age expectations with a strength in Verbal Comprehension and weaknesses in Visual Spatial and Working Memory abilities. He follows classroom and school rules and is well-liked by teachers. Based on his performance during the Visual Spatial Subtests, and his comments during Matrix Reasoning, the Child Study Team has requested a vision and hearing screener [sic] from the school nurse.

[R-4.]

A notice of eligibility meeting and the Confidential Education Assessment Report and Psychological Assessment Report were sent to the parents on September 28, 2021.

M.M. alleged that numerous harassment, intimidation, and bullying incidents occurred at PS #24, almost immediately upon his enrollment, and on October 5, 2021, he alleged that a female student had hit in him in the face with a pile of books and a male student choked him. He did not return to school thereafter, and pursuant to a note from his physician, M.M. was placed on medical home instruction in October 2021. (R-8.)

An eligibility meeting was held on November 16, 2021. Mom had an attorney and efforts to hold the meeting in October 2021 were unsuccessful due to the attorneys' schedules. At the eligibility meeting, the CST considered the Confidential Education Assessment Report, the Psychological Assessment Report, the ISP, the reports from Cocuzza and Dr. Lubin, teacher input, and parent input. A Parental Notice of Eligibility, dated November 16, 2021, notified Mom that the District completed the evaluation of M.M. and determined that he was eligible for special education and related services, and that M.M. "has a disability that corresponds with one or more of the disabilities defined in N.J.A.C. 6A:14-3.5(c)1-14 sic as indicated by: Other Health Impairment." (R-7.) The Parental Notice of Eligibility also reflects that M.M. "remains eligible for Special Education and related services under the category of having a Specific Learning Disability as defined in N.J.A.C. 6A:14." (R-7.) Additionally, the Parental Notice of Eligibility references the various evaluations and reports, including Dr. Lubin's diagnostic impressions of ADHD and PTSD and sleeping difficulties, and reflects, in part, that "review of [M.M.'s] evaluations reveals a disability characterized by having limited strength, vitality or alertness, including a heightened alertness with respect to the educational environment," and that the "impairment may be due to chronic or acute health problems such as: attention deficit disorder." (R-7.) Although M.M. was determined eligible for special education, the eligibility meeting did not move directly into an IEP meeting because Mom wanted to review the reports and wait for a pending private evaluation. The District agreed to reconvene at a later date.

M.M.'s medical-based home instruction expired in December 2021. Due to a COVID outbreak in January 2022, the District was on virtual instruction for two weeks. M.M. attended school virtually for the two weeks. Mom requested that home instruction continue pending an alternate placement for M.M but home instruction was determined by the District's doctor to not be medically necessary and the request was denied. M.M. did not return to school.

An IEP meeting was held on February 3, 2022. Efforts to schedule the meeting earlier were unsuccessful due to the holiday break and Mom's change in attorney. At the IEP meeting, the CST again considered the Confidential Education Assessment Report,

the Psychological Assessment Report, the ISP, reports from Cocuzza and Dr. Lubin, teacher input and parent input, as well as a new report from Children's Specialized Hospital—a psychological evaluation diagnosing M.M. with autism. Specifically,

Mom provided an Autism Psychology Only Evaluation³ from Rachel Kisver, PsyD, from Children's Specialized Hospital which was conducted in October 2021. The report consisted of a parent interview, child interview CBCL, Youth Self Report, DAS, Conners 3 Parent form, Adaptive Behavior Assessment parent form, Autism Diagnostic Interview and Childhood Autism Scale. The assessment concluded a diagnosis of Autism Spectrum Disorder, Attention Deficit Hyperactivity Disorder, and PTSD.

[R-8.]

The February 3, 2022, Individualized Education Program (February IEP) reflects that for eighth grade (2021–2022 school year) M.M.'s daily program would be in the general-education classroom as follows: language arts—in-class resource; mathematics—in-class support; science—in-class resource; and social studies—in-class support. (R-8.) He would also receive group counseling services, once a week for thirty minutes. (R-8.) The February IEP reflects his primary disability as other health impairment and that he would have a behavior intervention plan (BIP), testing and classroom modifications, and supplementary aids and services. (R-8.) The BIP noted that the CST proposed a conference with M.M. and his teachers prior to his return date to discuss school anxiety and fears, and to explore ways to make him become more comfortable in school. Additionally, the February IEP reflects academic (English/language arts, mathematics, science, and social studies) and counseling/social goals. Specifically, with respect to counseling, the February IEP reflects that his counseling goals were to be able to interact socially for twenty minutes in small-group activities and be able to respond to social initiations from others in unstructured time. (R-8.)

³ The Autism Psychology Only Evaluation was not introduced at the hearing.

The February IEP noted that M.M. refuses to return to PS #24, and that during a previous IEP meeting a plan was developed with M.M., Mom, and a therapist on ways to get him back to school. (R-8.) The CST proposed PS #37 because it was in a completely different neighborhood, on the opposite side of Jersey City from PS #24, and it had self-contained and inclusion autism programs. Mom was offered the opportunity to observe PS #37. All the staff at PS #37 is crisis prevention intervention trained and applied behavior analysis trained. PS #37 also has a board-certified behavior analyst, mathematics coach, and full-time nurse, as well as two licensed clinical social workers (LCSWs), a school psychologist, and school counselors trained in handling PTSD, anxiety, and school avoidance. M.M. would also have a point person—typically an LCSW—who, based on M.M.'s changing needs, would meet him outside the school, bring him into the school, check in with his teacher and with him throughout the day, and be available if he were in crisis or needed to talk. M.M. took two tours of PS #37 with Mom.

Mom rejected the February 3, 2022, IEP and filed a petition for due process. Mom subsequently withdrew the due-process petition.

It was determined that additional evaluations (social, speech-language, and functional behavioral assessment (FBA)) were needed based upon the ASD diagnosis. On March 1, 2022, school social worker Christine Hippe-Ribaudo, LCSW, evaluated M.M. and prepared a Social Assessment. (R-9.) The Social Assessment reflects, in part, the following educational history:

According to [W.N.], [M.M.] began having difficulty in 1st grade when teachers would express concern that he had difficulty sitting still and completing his work. [W.N.] stated that the school had reached out in 2nd grade regarding a referral for a Child Study Team evaluation but the family declined due to concerns that they did not want [M.M.] “labeled.” The family met with the Child Study Team in 3rd grade and consent was given to conduct psychological, social, academic and neurological evaluations for [M.M.].

According to [W.N.], [M.M.] was found “Not Eligible” for special education services. He was diagnosed with ADHD and it was decided that [M.M.] could be provided with a 504 plan to assist him in the classroom. [W.N.] stated that [M.M.’s] 504 plan

included a warning for transitions, visual timers, schedule of activities, active praise, a home/school notebook and would include a functional behavioral assessment.

Although [W.N.] stated that she was in support of the plan, she reported that she felt it was not implemented consistently in the classroom. [W.N.] reported that the school continued to call her with concerns that [M.M.] was not sitting still, was rushing through his work, was constantly moving and could not focus. [W.N.] stated that she followed up with recommendations for therapy and he was also prescribed Concerta to treat symptoms of ADHD however, there were no changes in [M.M.'s] functioning in the classroom. She also reported that it was at this time that [M.M.] began to experience bullying at Dr. Lena Edwards. [W.N.] stated that [M.M.] was “made fun of because of his glasses . . . called a nerd . . . students tossed his lunch” and called him offensive names. [W.N.] stated that [M.M.] reached [sic] out to the principal of the school to report that he was not receiving the appropriate 504 support in the classroom. [W.N.] stated that she eventually contacted the “disability judge” who developed a plan for the family and school to work together to support [M.M.]. [W.N.] stated that she felt the school retaliated against the family after the judgment. She stated that [M.M.] continued to feel bullied at school and stated that other students were attacking him, throwing his food in the garbage at lunch. [W.N.] stated that [M.M.] was choked by another student on one occasion. She also stated that a teacher locked him alone in a classroom because he was “too slow.” [W.N.] stated that she felt [M.M.] was mistreated by both students and staff. Initially she stated that she would “punish” [M.M.] because of his reported behaviors but the punishment was not successful. She stated that a family friend whose child also attended Dr. Lena Edwards later confirmed the bullying to her.

[W.N.] stated she reached out to Performcare for services for [M.M.] when he was in 4th grade as he began to report nightmares due to incidents at school. [W.N.] stated that [M.M.] also had incidents where he would wet himself. She stated that he was seen by Dr. Naeem at JCMC and prescribed Concerta at the time. [W.N.] stated that she began to be aware that [M.M.]’s behaviors were part of his disability which resulted in children “picking on him.” She stated that she began to work with an attorney to obtain a settlement with the school.

[W.N.] stated that [M.M.] transferred to St. Joseph’s School in September 2018 when he was in 5th grade. It was at that time

that [M.M.] was found eligible for special education services and obtained an ISP. According to [W.N.], [M.M.] was not bullied at St. Joseph's which she described as a "different atmosphere" due to the "religious curriculum." [W.N.] stated that she received progress reports from the teachers indicating that [M.M.] got along well with peers but would sometimes "not bother" with others. [W.N.] stated that she felt [M.M.] had symptoms of PTSD and had difficulty trusting other students. She stated that he initially did not want to go but eventually began to enjoy the school. [W.N.] stated that [M.M.] was not bullied at school but had one incident where another student "slammed him against the wall by accident . . . (and stated) these things seem to happen to him."

[M.M.] attended all of 5th grade at St. Joseph's School and most of 6th grade until the school transitioned to remote learning in March 2020 due to the COVID 19 pandemic. [M.M.] attended all of 7th grade online. According to [W.N.], [M.M.] struggled with focus at times during virtual instruction. [W.N.] stated that she had to make a schedule and provide reminders and reinforcement during instruction.

[W.N.] stated that [M.M.] transferred to PS #24 in 8th at the advice of the "child study team at the Board of Education." [W.N.] stated that she was advised that [M.M.] needed more resources than could be provided in a private school. [M.M.] transitioned to PS #24 in September 2021. Once his ISP was reviewed, he was placed in an 8th grade ICS classroom. According to his teacher, [M.M.] initially performed well in the classroom. He obtained an academic and psychological assessment as part of the re-evaluation process. It was later reported that [M.M.] and other students engaged in verbal and physical conflicts in the classroom which resulted in [M.M.'s] absences from school. A Harassment, Intimidation and Bullying investigation was conducted as well as an additional IEP meeting to address concerns and help facilitate [M.M.'s] return to school.

[R-9.]

Additionally, the Social Assessment reflects Hippe-Ribaudo's interviews, in part, as follows:

Parent Interview

[W.N.] reported that [M.M.] was in a "good state of mind" about beginning school in September 2021. She stated that he was looking forward to making new friends and liked his teachers. [W.N.] stated that [M.M.] came home and reported that he was "hit in the head and jumped." [W.N.] discussed the alternate placement at PS #37 that was offered to [M.M.]. She stated that although it was reported that [M.M.] seemed to like the school and classrooms that he visited, he "checked the school rating online and did not like the score." [W.N.] reported that she would like [M.M.] to go to an out of district school where he would get more therapeutic support.

[W.N.] states that she uses a schedule and chart at home as [M.M.] needs constant reminders. He completes chores at home such as taking out the garbage and cleaning his room. He likes to play with Legos. [W.N.] described [M.M.] as "depressed" and stated that he is not as active as he used to be and is often in his room and on the computer. She described [M.M.] as "loving and caring." She stated he wanted to adopt an animal but is allergic to cats and dogs. He had a pet rabbit who recently passed away.

When asked about what concerns her most about [M.M.], [W.N.] stated that she feels the majority of children have "not suffered like him." She stated that she wants him to [sic] more self sufficient. When asked to describe the best things about [M.M.] she stated that he has a mind of his own, is articulate and wants to advocate for animals.

[W.N.] reported that [M.M.] meets virtually with his therapist Michael Cocuzza once every other week. He also had a therapist through Performcare, Sheila Colon, who no longer works with the family. [W.N.] stated that the family is now working with Sara Parente and Nora from Mill Hill Outpatient Services twice a week. [W.N.] stated that she chose Mill Hill because they can help her advocate within the school system for [M.M.].

Teacher Interview

. . . Ms. Tarantula noted that [M.M.] participated in virtual learning for two weeks after winter break. She noted that

[M.M.] did not have any notable interactions with his peers in a whole group or small group breakout room. When asked to describe her concerns for [M.M.], Ms. Tarantula stated that she is most “concerned about [M.M.’s] ability to interact with peers in a prosocial manner.” . . .

Student Interview/Observation

Several attempts were made to observe [M.M.] in a classroom setting, however, [M.M.] has not attended in person learning at PS #24 since October 2021. Efforts were made to interview [M.M.] at PS #37 after [M.M.] visited the self contained and 8th grade classes but attempts to schedule with [W.N.] were unsuccessful. In an effort to complete the social assessment in a timely manner, it was decided to interview [M.M.] after his speech assessment at the Board of Education’s Central Office on 4/11/22.

[M.M.] willingly met with the social worker in a small room on the first floor of Central Office. [M.M.] reported that he has not been attending school since October 2021 because of a “bullying incident” and stated that he did “not feel safe” at PS #24. [M.M.] stated that [sic] misses attending school in person and would like to return “if it’s safe.” He stated “I would like to go back to school but just not at 24 . . . MS 4 seems ok because I have friends (from St. Joseph’s) who go there.” When asked about his visit to PS #37, [M.M.] stated that “I felt so-so . . . a couple of classes seemed cool and it felt new but the same at the same time . . . I liked the science classes.” [M.M.] stated that he felt that PS #37 “had kids with the same issues. I just want to be in a normal class with help.” [M.M.] stated that he was working with his therapist Julie and case manager Sara to work on his anxiety about school. [M.M.] stated “If it was MS 4 I would go. I’m ready. I just need to get used to it again.” [M.M.] stated that he completed his high school application and wanted to attend Dickenson [sic] High School in the fall. He stated that his favorite subject is Science and he would like to work as a Chemist or Engineer as an adult. [M.M.] stated that his favorite school was St. Joseph’s and he has 2 or 3 friends that he continues to stay in touch with. He reported that he does not often see other children outside but stays connected via gaming and social media.

When asked about his concerns about school [M.M.] stated that he is concerned “Maybe I won’t fit in . . . (there is) a lot of bullying . . . (previous school) is very unsanitary. The playground was dirty and lunchroom floors were sticky.” When asked about his strengths [M.M.] stated “My confidence. I can hold a conversation and I am good at

Science.” [M.M.] asked questions about graduation and a desire to purchase a graduation ring. He stated that he was looking forward to joining an engineering or robotics club in high school.

[R-9.]

The Social Assessment summarizes the evaluation as follows:

. . . [M.M.] and his mother [W.N.] completed the Achenbach assessments. [W.N.] completed the Child Behavior Checklist. [M.M.’s] scores on the DSM Oriented scales indicated scores on the Oppositional Defiant and Conduct Problems in the normal range. His scores on the Anxiety and Somatic Problems were in the clinical range while scores on the Depressive Problems and Attention Deficit/Hyperactivity Problems were in the borderline clinical range. [M.M.’s] scores on the Youth Self Report DSM Oriented scales indicated that [M.M.’s] scores on the Attention Deficit/Hyperactivity, Oppositional and Conduct problem scales were in the normal range. His Somatic scores on somatic problems were in the clinical range and depressive and anxiety problems were in the borderline clinical range.

[R-9.]

On April 11, 2022, speech-language pathologist Kathryn Boruta, CCC-SLP, evaluated M.M. and prepared a Speech-Language Assessment Report. (R-10.) The Speech-Language Assessment Report, in part, reflects the following:

Student Interview

[M.M.] was interviewed prior to the administration of formal evaluations on April 11, 2022. . . . When probed about his time in school this year, [M.M.] stated that he is not in school right now because he had been choked by a peer. When asked about his plans for high school, he said that he would like to consider Dickenson High School [sic], McNair Academic High School, and High Tech High School; he also was aware that the application deadlines had passed. [M.M.] stated that he enjoys science, and would like to possibly be a chemist or engineer.

Parental Interview

[M.M.'s] mother, [W.N.], was interviewed in person on April 11, 2022. [W.N.] reported that she has concerns relating to [M.M.'s] social skills. She feels as though other children are not able to respond appropriately to his social interactions within the classroom. [W.N.] reported that [M.M.] has asked her why kids have difficulty reacting to his approaches. She also reported that he takes rules very literally. For example, when he was in Catholic school, one of his teachers would tell him that he did not have to instruct the students in the class regarding their behaviors (e.g., telling them when they should be working and not playing around, etc.). When asked if [M.M.] has opportunities to socially interact with other peers, [W.N.] said he had some cousins that he interacts with; however, two of the cousins live in New England, and the third who lives closer is about two years younger than [M.M.]. [W.N.] also reported that in a previous meeting with a school principal, it was described that [M.M.] "mumbles." [W.N.] also expressed that when [M.M.] was younger, she tried to prevent him from receiving any labels that may affect his academic progress; however, now that he has a diagnosis of autism, she wants to make sure he gets all the services to which he is entitled.

The Speech-Language Assessment Report summarized the evaluation as follows:

The CELF-5 was administered to determine [M.M.'s] comprehensive receptive and expressive language skills in comparison to age-related expectations. His overall performance indicates that he is presenting with communication skills within the average range compared to same-aged peers. There was some discrepancy between his receptive and expressive scores; however, there is a chance that his receptive language scores may have been affected by his previously diagnosed ADHD. The Pragmatic Language section of the CASL-2 was administered to assess [M.M.'s] social skills given various verbally presented contexts. His performance indicates that he has a general understanding of the rules which govern various social situations. Additionally, outside of the standardized testing items, [M.M.] engaged in conversation with the examiner. He answered questions appropriately and on-topic, moved between topics without difficulty, and elaborated on information as required. Conversational initiation and reciprocal communication was limited in the testing setting. It is difficult to judge [M.M.'s] social communication skills in the academic setting, as he is

presently participating in a home instruction program. Informally, [M.M.'s] special education teacher reported that he did not demonstrate receptive or expressive language difficulties in the classroom; however, his time in that environment was limited. His mother, [W.N.], reported that she is concerned with [M.M.'s] social skills in the classroom. She reported that [M.M.] does not know why other children have difficulty engaging with him. It was also reported that [M.M.] does not have many opportunities to engage or interact with peers. [M.M.] would likely benefit from being provided with the opportunity to participate in activities that peak [sic] his interest and would also provide occasions to be around other peers who share those similar interests.

[R-10.]

An FBA could not be conducted because M.M. had not been physically present in school since October 5, 2021.

On June 21, 2022, and June 23, 2022, M.M. was evaluated by Beata Geyer, Ph.D. (formerly known as Beata Bedouin, Ph.D.), after referral by Mom's attorney and non-attorney parent educational advocate. Dr. Geyer has a Ph.D. in clinical psychology and specializes in neuropsychology and pediatric neuropsychology. Dr. Geyer reviewed M.M.'s school and evaluation records, briefly interviewed M.M. and Mom, and performed an evaluation of M.M.'s cognitive, neuropsychological, and psychological functioning. Among the procedures/tests administered by Dr. Geyer were the Wechsler Intelligence Scale for Children—Fifth Edition (WISC-V), Delis-Kaplan Executive Functioning System (D-KEFS), Wechsler Individual Achievement Test—Fourth Edition (WIAT-4), Personality Assessment Inventory—Adolescent (PAI-A), and Behavior Assessment System for Children—Third Edition (BASC-3). Dr. Geyer prepared a Neuropsychological Evaluation that reflects, in part, that “[M.M.] was given the ‘gold standard’ for autism assessment, the Autism Diagnostic Observation Schedule (ADOS-2), and this did not provide sufficient evidence for diagnosing [M.M.] with Autism-Spectrum Disorder; this was also consistent with his mother’s report that he is only slightly atypical” The Neuropsychological Evaluation reflects, in part, the following conclusion and recommendations:

[M.M.] has been diagnosed with Autism Spectrum Disorder in the past. However, the present evaluation did not find

sufficient evidence for this. and I respectfully disagree with the past diagnosis, which was chiefly made on the basis of others' reports of his symptoms and behaviors, rather than direct assessment (other than intellectual functioning and general emotional self-report). However, [M.M.] does have significant social challenges, which cause him to be rejected and bullied. For example, he comes across in ways that make him appear as arrogant since he "tells" on others or shares his own views more than typical. However, he has very good communication with adults including good eye contact and reciprocity. He has a desire for close connections with others and fears losing his family.

Furthermore, [M.M.'s] intelligence was average overall, but his profile was not at all uniform. He had strengths in his High Average verbal reasoning ability, which drives his strong reading and writing skills. However, he has severe visual-spatial reasoning weaknesses and a math disability. Together with his social struggles, this suggests a Learning Disorder, Not Elsewhere Classified, and consistent with a Nonverbal Learning Disability.

There is some evidence for continuing symptoms of Attention-Deficit Hyperactivity Disorder, but it was difficult to evaluate fully due to his tendency to disengage over time in challenging situations. [M.M.] clearly had a very low frustration tolerance for challenging tasks, which caused him to give up and exert suboptimal effort, which resulted in the loss of attention and memory. It is unclear whether or not he has true deficits in this area, as his low effort is masking his true performance.

[M.M.] has been severely bullied over time, which has resulted in Post-Traumatic Stress Disorder. He has flashbacks and chronic nightmares, and it causes him to be avoidant of school. He is easily startled and very vigilant. He is suspicious of others and their motives, and thus tries to preempt their attacks by being overly watchful, which in turn provokes them to be aggressive towards him. This will make it very difficult for him to remain in a mixed special-needs setting, as there will be individuals with other acting-out behaviors who will be naturally reactive towards him. Thus, a regular non-therapeutic inclusion classroom is not a good fit, and will likely serve to re-traumatize him.

Furthermore, an Autism-Spectrum classroom will also be a poor fit, since [M.M.] does not meet criteria for this diagnosis at this time, and he requires peers who can engage in intelligent, higher-level, analytical conversation with him. He will socially regress in an Autism-only environment.

Furthermore, a general Learning Disabilities classroom is also not a good fit, since he only has a math disability, and he excels in his other academic skills. Therefore, only an out-of-district special needs setting can possibly meet his needs, since it needs to be therapeutic to sufficiently manage his Post-Traumatic Stress symptoms and hypervigilance, while also offering him tailored instruction to meet his needs in his visual-spatial and math areas of deficit. He will need counseling and social skills instruction to more effectively interact with peers in a non-hypervigilant and humble fashion. So far, keeping him in the public schools has served to exacerbate [M.M.'s] mental health problems, as he has been assaulted repeatedly by other students. It is clear that he has been victimized by other students as they have been misreading his hypervigilance as threatening. Furthermore, this conflict prevents him from concentrating. He is so overanxious that he cannot concentrate adequately on the academic material. Therefore, it is strongly recommended that he be placed in an environment that is sensitive to his disorders and previous experiences, with a small class setting and individual attention from teachers. He has responded well to psychotherapy, but the school district has not given him sufficient emotional support, nor clear pursuits of the harassment, intimidation, and bullying investigation to help him feel protected. Therefore, he requires a setting in which [M.M.] feels safe and supported, so that he can learn in his very significant areas of deficit.

Socially, [M.M.] is very isolated at this time, and he longs for friends and family. He feels that he has been marginalized for being "different," as he acts and dresses in a very high-class manner which reflects his values but which others often reject. He is hypervigilant for these harassing and bullying reactions, which creates a self-protective shield and evokes a sense in others that he is provoking them. He continues to be picked on and needs considerable social guidance and protection. His feelings of stress and pressure are very real and are resulting in an additional depression.

Diagnostic Impressions:

Learning Disorder Not Elsewhere Classified (Nonverbal Learning Disorder F8 1.9)

including:

Mathematics Disability F81.2

Post-Traumatic Stress Disorder F43.1

Major depressive disorder, single episode F32.9

Attention-Deficit Hyperactivity Disorder, predominantly inattentive type, by history F90.9

Based on these results, the following recommendations are warranted:

1. Special education placement to continue under the classification Multiply Disabled to capture his Specific Learning Disability (Nonverbal Learning Disability) which is primary, and his Post-Traumatic Stress Disorder.

2. Out of district placement in a therapeutic school setting is warranted. He would likely do best in a learning-disabled placement that has a good social-emotional component.

a. The social emotional component should include individual counseling at least once a week, as well as a potential "lunch bunch" type of group to facilitate social communication. Each of these should emphasize problem-solving to identify problems with greater elaboration and generate good solutions.

b. The social emotional component should also include emphasis on building frustration tolerance to handle challenging tasks without losing effort. Forming coping skills and exposing him to gradually more frustrating situations in which to apply them may help.

c. Frequent redirection to exert maximal effort when [M.M.] encounters challenging tasks.

d. An Autism Spectrum setting is not appropriate since the students are generally lower functioning and typically have different learning needs.

e. A behaviorally-disturbed type of setting is also inadequate because the children will often have mixed behavioral disabilities which will likely re-create the bullying scenario. At this point, it is critical to avoid any more harassment in someone already so traumatized.

f. It would be most beneficial for [M.M.] to advance to the 9th grade given his reading and writing grade levels, though getting significant remedial instruction in math.

3. On both homework and schoolwork in math,
 - a. [M.M.] needs to more consistently check his work, and praise or reward himself for catching errors, which is far more important than avoiding errors altogether.
 - b. [M.M.] should write down all math problems, with all intermediary steps, as he has a tendency to make mental calculation errors. He overlooks small aspects that could be avoided with writing down the “translation” from the problem to the calculation piece.
 - c. He still may benefit from greater practice in memorizing basic automatic math facts for low numbers. If he learns foundational number facts, his efficiency and accuracy for higher-level operations will also increase. A program like “Reflex Math” may help with this.
 - d. Geometry will be expected to be very difficult. Support him through this by talking through the procedures since he is more verbally adept.
 - e. Putting facts to rhyme or song would help, as well as for algebraic rules, such as signs for factoring equations.
 - f. For any math classes, [M.M.] would benefit from practice in strategies to break up numbers into smaller components that are easier to manipulate. A base-ten system where tens and ones are calculated separately might be of benefit.
4. [M.M.] would benefit from implementing more active study strategies to improve his learning outcomes.
 - a. Study skills instruction may be helpful for a period of time.
 - b. Study groups will be helpful, particularly when he is explaining material to others.
 - c. He should also outline, create mnemonics, develop visual aids, flashcards, grouping concepts, and other tools in order to more actively rephrase information for the maximal benefit rather than more passively re-reading information.

d. Proceeding with a study plan slowly *in advance* of learning will allow him to pace to form the best strategies.

5. Manipulatives and visual number representations will continue to be essential in remediating his deficits in whole/part relationships and visualization, as he doesn't yet have internal imagery of the quantity of numbers. Thus, he must use external devices to help him practice and develop this sense. This will help him move between different "quantity groupings."

a. Add manipulative money and time in hands on ways.

b. Practice visual pattern recognition.

c. Teach [M.M.] to pick out visual relationships and other organizational elements within diagrams. This will be essential as he approaches more geometric activities.

d. Keep math as meaningful as possible, using money, measurement, and statistics of interest, such as within games.

6. Articulate sequential reasoning strategies:

a. Have him articulate a plan or procedure to solve his problem aloud before he begins. Correct any misconceptions before execution. Have him talk through his approach as he goes, with the hope that this talking will become internalized guiding speech long-term and allowing him to get feedback to expand problem-solving options.

b. Graph paper, 100-chart, and calculators are also helpful to compensate given his math LD, as far as permitted by standardized exams. These should not take the place of learning these independently and be tested on his independent completion periodically. However, his disability puts him at a significant disadvantage compared with peers.

7. Continued psychotherapy and medication management of his symptoms.

[R-10.]

An IEP meeting was held on September 21, 2022. At the IEP meeting, the CST considered the Confidential Education Assessment Report, the Psychological Assessment Report, the Social Assessment, the Speech-Language Assessment Report, the reports from his counselor, Cocuzza, Dr. Lubin, Children's Specialized Hospital, and Dr. Geyer, as well as teacher input and parent input. The September 21, 2022, draft IEP (September 2022 IEP) reflects that for the 2022–2023 school year, M.M.'s daily program would be in the general-education classroom as follows: language arts—in-class support (90 minutes); math—pull-out resource (45 minutes); science—in-class support (45 minutes); and social studies—in-class support (45 minutes). (R-11.) In-class consisted of fifteen students, pull-out resource consisted of five students. The September 2022 IEP also reflects group (2–5 students) counseling services twice weekly for thirty minutes and individual counseling services twice weekly for thirty minutes. Additionally, the September 2022 IEP noted that M.M. refuses to return to school, so a behavioral intervention plan included a transition plan for re-entry back to school, including (1) a point person for daily check-ins, (2) cool-down/safe-space procedures, and (3) a modified schedule—could start late and leave early each day as he transitions back to school. (R-11.) Additionally, the BIP noted that the CST proposed a conference with M.M. and his teachers prior to his return date to discuss school anxiety and fears, and explore ways to make him become more comfortable in school.

During the September 21, 2022, IEP meeting, Mom expressed concerns about the current placement recommendation and wanted M.M. to attend an out-of-district therapeutic program. (R-11.) The September 2022 IEP reflects the following: M.M. “would work on social emotional skills including social skills, coping mechanisms, conflict resolution, self-esteem, mindfulness/relaxation, stress management, and peer relationships”; the “social emotional component should also include emphasis on building frustration tolerance to handle challenging tasks without losing effort”; and “forming coping skills and exposing him to gradually more frustrating situations in which to apply them may help.” The September 2022 IEP lists numerous modifications for M.M. to be involved and progress in his program. (R-11.) Additionally, the September 2022 IEP reflects both academic (English/language arts, mathematics, science, and social studies) and counseling/social goals. M.M.'s counseling goals were to be able to interact socially

for twenty minutes in small-group activities; to be able to respond to social initiations from others in unstructured time; and social-emotional learning to provide M.M. with the knowledge, skills, and attitude to develop healthy identities, in order to maintain supportive relationships. (R-11.)

Mom rejected the September 21, 2022, IEP and filed petitions for emergent relief and for due process.

Testimony

Karen Gullace

The two CST evaluations were reviewed and discussed at the November 16, 2021, eligibility meeting and discussed at the February 3, 2022, IEP meeting, and Mom had the opportunity to review and ask questions. Mom focused on peer conflict and not really M.M.'s educational plans. The CST reviewed all evaluations and reports and was aware of his issues with peer interactions, anxiety, and school avoidance. The CST knew that despite preexisting diagnoses of PTSD and anxiety and school avoidance, M.M. had successfully attended the general-education program at St. Joseph's for three years prior to enrolling in JCPS. Mom said M.M. had been doing well at St. Joseph's School, and she really liked St. Joseph's School, and the only reason he transferred back to Jersey City public schools was because St. Joseph's School could not support M.M.'s academic needs.

The February 2022 IEP offered M.M. a FAPE. The CST felt the inclusive setting was least restrictive and would help with his mathematics disability and academic struggles, and also provide an opportunity for social-skills growth. In-school counseling was offered to work on social skills, PTSD, and school avoidance. The transition back to school had been discussed previously. A point person—an LCSW—would meet M.M. outside of school and help M.M. get into the school building. M.M. was offered the opportunity to arrive either earlier than or later than other students so he would not be in the rush of students entering the building. The LCSW would also be available to M.M. if he ever felt overwhelmed, needed a safe space or downtime, or needed to discuss

anything. The February 2022 IEP did not propose a therapeutic program for M.M., so when Smith observed PS #37 she was not shown therapeutic programming—she was shown autism programs, because at that time Mom’s expert was recommending an autism program.

The November 2022 IEP reflects that the CST accepted and included most of Dr. Geyer’s recommendations for modifications and accommodations, but the CST determined that the recommendations could be implemented in-district. The CST wanted to do an FBA once M.M. started school and then implement a BIP, but there were social and emotional supports provided throughout the day at PS #37. PS #37 is a therapeutic setting. Every teacher at PS #37 is trained to teach students in a therapeutic manner. No matter where M.M. went or whom he talked to in administration or teaching staff, he would be talking with someone trained to deal with him in a therapeutic setting. Mom observed PS #37 but did not report back much, other than that it was not appropriate. M.M. accompanied Mom to PS #37. There are over forty schools in-district and he was offered more than one school and he was also offered modified day. Mom rejected the placement at PS #37 and stated that M.M. would not attend any Jersey City public school—no matter what building or where in Jersey City.

PS #37 is a completely different environment than PS #24—in a completely different neighborhood, with a completely different peer group. Not all school buildings in Jersey City look the same—some are very old and some are brand new. The private schools Mom selected were not appropriate for M.M. because they are very restrictive—most are behavioral disability schools for students with significant behavior issues and/or autism and Dr. Geyer noted in her report that such programs would not be appropriate. The private schools selected by Mom also look like typical schools and do not differ significantly in appearance from PS #37. PS #37 offers small classes and individual attention from teachers. M.M. would have a special-education teacher and a general-education teacher with about fifteen students, and for mathematics he would have one teacher with a maximum of five students. Fifteen students is a small class size, considering that most out-of-district schools are around ten to twelve students per class.

Dr. Geyer never asked to observe PS #37 and did not submit a list of questions regarding the kinds of programs and placements Jersey City has available. Dr. Geyer never reached out to her or to any District personnel. She disagrees with Dr. Geyer that M.M. needs a placement somewhere outside Jersey City to receive a FAPE. His therapist stated that immersion to overcome his fears was a treatment plan, so there would be no better place to do that than the environment in which he lives and where he can build a social network. She disagrees with the idea that M.M. could successfully go to New York or Hoboken but could not successfully go to PS #37.

Michael Cocuzza

M.M. and Mom told him that teachers were treating M.M. inappropriately and unfairly and he was discriminated against by the teachers, including during the time he attended school virtually. They also told him that M.M. was harassed and bullied by his peers. M.M. also felt targeted by a child he was playing a video game with, unrelated to school. M.M. has developed a fear of schools—he generally believes that it is the Jersey City public schools district as a whole. When working on walking past a school in his neighborhood, just seeing the school caused M.M. distress, so Cocuzza would apply calming skills and cognitive behavioral therapy to assist M.M. in regulating. M.M. fears that students who live in that area would be able to find him even outside the school. There has been a pervasive history of fear, including different teachers from different schools, and sometimes even other counselors that he has been exposed to. He diagnosed M.M. with PTSD based on his symptoms. He is worried about some emerging depressive symptoms in M.M. as a result of this situation, especially due to the isolation from M.M. being kind of sequestered for so long.

M.M. became aware of this legal case mostly through his mother. Both M.M. and Mom have an exaggerated negative world view. It is possible that M.M. was vicariously experiencing anxiety through Mom. He recommended that Mom seek therapy to reduce her impact on M.M. and to reduce her reliance on M.M. to help her with her problems. Mom's emotional state was overly affecting her decision-making regarding M.M. and Mom's anxiety continued to create a source of ongoing vicarious distress for M.M. M.M. is by proxy absorbing Mom's fears and anxiety. When asked if it is safe to say M.M.'s

fear is just of Jersey City schools, Cocuzza's response was, "I would say yes based on the fact that we—I have discussed with him. He kind of fantasizes. I don't know if it's a fantasy or not, but he imagines going to other school districts like New York, L.A.—not L.A.—Virginia." M.M. has talked to him about going back to school in Jersey City and M.M. has speculated about what it would be like in both a good way and a bad way. M.M. is afraid of Jersey City schools. At different points M.M. has expressed a desire to go back to school in a place other than Jersey City. When asked if M.M. needs a therapeutic setting, Cocuzza's response was "that would be ideal," and when asked if that setting should be Jersey City, Cocuzza's response was, "that would be the path of least resistance." When asked what would be best for M.M., Cocuzza's opinion was "[u]ltimately to collaborate with him in terms of what school that he would like to go to. Right now his fear is localized to the Jersey City School District. He knows details about the case and everything that's kind of going on, so as a result of that, you know, he feels targeted. It feels like a conspiracy to him." He further opined that, "The best course of action would definitely be to collaborate with him and involve him, because a lot of this stuff feels like it's being done to him as opposed to allowing him choice and autonomy."

Edward Longe

Longe is an LCSW and is M.M.'s in-home therapist. He meets with M.M. weekly. He was referred by the Hudson County Care Management Organization for behavioral, coping, and transition issues. M.M. is diagnosed with ADHD, combined presentation, ASD, and PTSD. When Longe started treating M.M., he had already been pulled out of school, supposedly because he experienced fear of going to school related to school trauma that he reported, and Mom was pushing for an out-of-district transfer. When Longe started with M.M., M.M. had a fear of leaving his apartment, and there were some behavior issues related to what he believed he had experienced over time in school that caused him to not want to go to school. M.M. believed he suffered a traumatic experience and did not want to return to school. It was a challenge to get M.M. to go for a walk, because he did not want to go in the direction where the school was located. So, Longe began trying to work on exposure therapy. Longe has no way to verify whether M.M. suffered a traumatic experience and has to go with the narrative Mom provided as justification for wanting to push for an out-of-district placement because M.M. was not

going to school and home instruction had not been implemented at that time. So, M.M. was just basically staying at home, not going anywhere, and not receiving any instruction. Something must have happened for M.M. to have this reaction. Longe works with M.M. on coping skills—he does not challenge whether something happened or did not. M.M. expressed that he had fears of going into the school buildings in Jersey City. M.M. was afraid to even leave the apartment. Longe believes it will not be good for M.M.'s emotional stability if he attends Jersey City, where M.M. says he is afraid because of what he experienced, and Longe does not think M.M.'s state of mind will do well if he is compelled to go back. Whatever school M.M. goes to, he is going to need support in terms of his limitations and diagnoses of ADHD and ASD. So, he is going to need maybe a therapeutic environment with a lot of support.

Beata Geyer

Dr. Geyer performed several “gold standard” ASD assessments and did not find evidence of ASD. Mom asked Dr. Geyer to change that part of her report, but she did not change it. She found M.M. to have a non-verbal learning disorder with a particular learning disability in math. She also found M.M. to have significant symptoms of PTSD and diagnosed him with depression. Given his trauma and PTSD history and that he blamed peer conflict in school, she recommended an out-of-district placement where M.M. could feel comfortable, supported and safe. She did not recommend a specific school. The school must meet his educational needs because he is quite a bright child, especially with his verbal reasoning ability, and needs to remediate his learning disability. The school also must provide a safe space that M.M. feels will have appropriate and cooperative relationships with peers and have faculty that will understand his vulnerabilities, mental-health diagnosis, PTSD, and depression and be able to support him and counsel him through the emotional challenges. She does not believe the District can meet his needs.

M.M. believes that things happened to him in school that make it frightening for him to return. He feels he has been picked on significantly by his peers, and that school personnel were not sufficiently supportive. She does not know whether those things actually happened to M.M., but M.M. believes those things happened to him, and that is

the same as if it actually happened. His responses on the psychological measures were deemed to be valid—he was not amplifying his distress or minimizing his distress and his performance was at the level of his potential. When M.M. considers the “New Jersey” public schools he feels frightened and feels his PTSD is reactivated. He has flashbacks and nightmares. It is clearly interfering with his concentration, memory and learning, so it would be much more appropriate to start fresh in a new school setting and feel safe from the beginning.

She met with M.M. again in June 2023 and determined that his current symptom profile was consistent with last year. Children who feel unsafe in their school environment and who are suffering from severe PTSD, depression, or anxiety have disruptions in concentration and focus. M.M. has real fears in his mind as to what would happen to him in Jersey City schools, so if he went back to school in Jersey City, he would be hypervigilant and paranoid. M.M. has only said that he was refusing to go back to Jersey City public schools. This is because of fears he has that something will happen to him similar to what he believes happened before. He should go to a different school district where he could be supported and there should be counseling services there given his psychological distress overall and it should be specialized for learning disabilities, particularly in mathematics and nonverbal learning disorders. He needs something in the category of therapeutic education. It would be beneficial for the whole school to be therapeutic, otherwise he may be afraid to leave his classroom if he were to encounter children from a larger setting who might have different reactions and different needs.

She is not aware of whether Jersey City has any fully therapeutic schools. A fully therapeutic school that is not in Jersey City would be appropriate. He is a very bright, very verbal boy and would get information on whether his school was located in Jersey City or not. There is no way to address his fears about all schools within the Jersey City limits. He does not feel his peers or personnel in Jersey City will be supportive and it is blocking his learning. If he goes to school outside of Jersey City, he should not be moved even if he expresses that he feels like he is being bullied—and as long as it is clear that he is not being bullied and there are therapeutic staff trained and equipped to manage those emotions and help him problem solve through them and repair those relationships.

The school really should work with his fears to make sure that he is evaluating the environment more factually rather than on his own perception.

In most circumstances, if a patient is afraid to go to school the standard would be to get the student back within the school environment as soon as possible. She is a big proponent of exposure and response prevention. But in this case, it has just been so repeated, and he has reached such an intense level of PTSD that he needs to have a healing experience in a different setting before he could even consider going back to Jersey City in the future. When asked, "So it's your testimony that there would be no way to assist him in returning to any public or any school building within Jersey City, even though he wouldn't know perhaps, let's say, that it's even in Jersey City?" her response was, "I'm not saying there's no way to assist him because certainly there are possibilities of people who are extremely gifted but his distress is so intense that he would likely block most even attempts to engage in that therapeutic encounter in a meaningful way because of his intense fear and hypervigilance. So, I don't think he would be accessible for therapy if it is within the confines of Jersey City." Similarly, when asked, "It's your testimony that should this happen again in a different setting, as history has shown it will, your testimony is now so long as it's not in Jersey City, he should remain there?" her response was, "As long as it's truly a therapeutic setting and there is no actual trauma that is occurring at that school and that school is also equipped to deal with his perceptions, for example that some peer interactions aren't what they look to be on the surface." Finally, when asked, "And is it your opinion that given his history and what he has reported, what the parent has reported of his fear in Jersey City, is then the same logic would be every minute he lives in Jersey City he's being retraumatized?" her response was, "You could make that argument to some degree. I mean his home is considered relatively more or less a safe space for him, but he has gotten more irritable. I think he is uncomfortable, and he's becoming more uncomfortable over time, yeah, in living there. . . ."

Ria Smith

Smith is a non-attorney special-education advocate. Smith was present at the February 3, 2022, IEP continuation meeting. At that time, M.M. was in full school-avoidance mode and had not attended in person since October 5, 2021. The IEP did not

appear appropriate based on recommendations made by therapists that had been working with M.M. Ms. Tarantula said that M.M. was having difficulty with the stimuli in the classroom; it was overwhelming for him and there were too many children. Ms. Cologne was adamant that M.M. had worked incredibly hard to return to a public-school environment. But M.M.'s worst fear is that something would happen to him, and that was making it prohibitive for him to return to school. The District had no willingness to even look at out-of-district placements. The February 3, 2022, IEP meeting was almost hostile, and was not going to lead to a favorable result, and she filed a petition for due process shortly thereafter.

She went with Mom and observed the in-class support and self-contained autism programs at PS #37 after the February 3, 2022, IEP meeting. Neither was appropriate for M.M. She did not return to PS #37 to observe the program proposed in the September 2022 IEP. There were no therapeutic programs in the District and that was concerning because the longer M.M. went without services in a wrap-around model the greater the barrier to him being in school. The District had a behavioral based program but not in an immersive therapeutic milieu. A therapeutic program would require that every staff member he ever had access to be trained in trauma-informed care, and a level of expertise—not just a couple hours of training—in working with children with mental-health-related conditions specifically.

LEGAL ANALYSIS AND CONCLUSIONS

The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400–1482, ensures 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, and ensures that the rights of children with disabilities and parents of such children are protected. 20 U.S.C. § 1400(d)(1)(A), (B); N.J.A.C. 6A:14-1.1. A “child with a disability” means a child with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury,

other health impairments, or specific learning disabilities, and who, by reason thereof, needs special education and related services. 20 U.S.C. § 1401(3)(A).

States qualifying for federal funds under the IDEA must assure all children with disabilities the right to a free “appropriate public education.” 20 U.S.C. § 1412(a)(1); Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176 (1982). Each district board of education is responsible for providing a system of free, appropriate special education and related services. N.J.A.C. 6A:14-1.1(d). A “free appropriate public education” (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 individualized education program required under 20 U.S.C. § 1414(d). 20 U.S.C. § 1401(9); Rowley, 458 U.S. 176. Subject to certain limitations, a FAPE is available to all children with disabilities residing in the state between the ages of three and twenty-one, inclusive. 20 U.S.C. § 1412(a)(1)(A), (B).

An individualized education program (IEP) is a written statement for each child with a disability that is developed, reviewed, and revised in accordance with 20 U.S.C. § 1414(d); 20 U.S.C. § 1401(14); 20 U.S.C. § 1412(a)(4). When a student is determined to be eligible for special education, an IEP must be developed to establish the rationale for the student’s educational placement and to serve as a basis for program implementation. N.J.A.C. 6A:14-1.3, -3.7. At the beginning of each school year, the district must have an IEP in effect for every student who is receiving special education and related services from the district. N.J.A.C. 6A:14-3.7(a)(1). Annually, or more often, if necessary, the IEP team must meet to review and revise the IEP and determine placement. N.J.A.C. 6A:14-3.7(i). A FAPE requires that the education offered to the child must be sufficient to “confer some educational benefit upon the handicapped child,” but it does not require that the school district maximize the potential of disabled students commensurate with the opportunity provided to non-disabled students. Rowley, 458 U.S. at 200. Hence, a satisfactory IEP must provide “significant learning” and confer “meaningful benefit.” T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577–78 (3d Cir. 2000).

The Supreme Court discussed Rowley in Endrew F. v. Douglas County School District RE-1, 580 U.S. 386 (2017), noting that Rowley did not “establish any one test for determining the adequacy of educational benefits,” and concluding that the “adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” Id. at 394, 404. Endrew F. warns against courts substituting their own notions of sound education policy for those of school authorities, and notes that deference is based upon application of expertise and the exercise of judgment by those authorities. Id. at 404. However, the school authorities are expected to offer “a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” Ibid.

Additionally, in accordance with the IDEA, children with disabilities are to be educated in the least restrictive environment (LRE). 20 U.S.C. § 1412(a)(5); N.J.A.C. 6A:14-1.1(b)(5). To that end, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are to be educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment should occur only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 20 U.S.C. § 1412(a)(5)(A); N.J.A.C. 6A:14-4.2. The Third Circuit has interpreted this to require that a disabled child be placed in the LRE that will provide the child with a “meaningful educational benefit.” T.R., 205 F.3d at 578.

There is no dispute that M.M. has a mathematics learning disability, and the February 2022 IEP reflects “in-class support” for mathematics, and the September 2022 IEP reflects pull-out resource” for mathematics. There is likewise no dispute that M.M. has visual-spatial, fluid-reasoning, and working-memory deficiencies, and the February 2022 IEP reflects “in class resource” for language arts and science and “in class support” for social studies, and the September 2022 IEP reflects in-class support for language arts, science, and social studies. M.M.’s academic goals and objectives in the IEPs are consistent with the foregoing and with available evaluations. Although the petitioner alleges that the District denied M.M. a FAPE, the crux of this allegation is not academic.

In fact, there has been no challenge specifically to the academic (language arts, mathematics, science, social studies) programming in the IEPs. Rather, the dispute relates to M.M.'s social and medical diagnoses and the allegation that the IEPs denied M.M. a FAPE because they provided for an in-District, rather than out-of-Jersey-City, placement. Simply stated, petitioner's witnesses essentially testified that a FAPE for M.M. is dependent upon the geographical location of the school.

M.M. has a long and substantial history of peer and/or teacher conflict—whether perception, reality, or a combination of the two—at school. Petitioner's witnesses testified that because all the schools that he had attended were within Jersey City—the charter school (kindergarten through fourth grade), St. Joseph's School (fifth grade through seventh grade), and PS #24 (four weeks of eighth grade)—M.M. experiences fear, anxiety, and PTSD specific to the Jersey City public schools. However, the record reflects that there was little issue, if any, with fears, anxiety, or PTSD at St. Joseph's School. Mom reported to Dr. Geyer that the bullying decreased at St. Joseph's but St. Joseph's could not fully implement the ISP and was not strong with academics, so M.M.'s return to the District was a result of St. Joseph's School's inability to provide an appropriate program for M.M. Likewise, M.M. reported that the only incident at St. Joseph's School was that after school he got his shoes taken off and thrown into the street, and that he left St. Joseph's School “because they didn't have the services I needed, such as with a second teacher.” Additionally, Mom reported that M.M. started school at PS #24 “with a positive attitude,” that M.M. was in a “good state of mind” about beginning school in September 2021, and that he was looking forward to making new friends and liked his teachers.

Cocuzza testified that he utilized cognitive behavioral therapy in trying to get M.M. to walk past a school, but on March 1, 2022, Mom reported that M.M. meets “virtually” with Cocuzza every other week, which would limit the implementation of exposure therapy. Longe testified that he tried exposure therapy to get M.M. outside, but Longe only started treating M.M. after he was no longer attending school in-person. Dr. Geyer testified that she typically is a big proponent of exposure and response prevention, but she only evaluated M.M. and was not a treating therapist. Thus, from the reports and testimony it does not appear that any sustained effort was made to implement what

Dr. Geyer testified was “the standard” therapy—to get the student back within the school environment as soon as possible.

Although petitioner’s witnesses testified that M.M. requires a placement outside of the geographical boundaries of Jersey City because of significant fears, anxiety, and PTSD specific to Jersey City schools, and Dr. Geyer recommended an out-of-district placement, neither her report nor any other report in the record reflected that M.M. requires placement outside of the geographical boundaries of Jersey City. Dr. Geyer recommended an “out-of-district placement in a therapeutic school setting,” and specified that M.M. would “likely do best in a learning-disabled placement that has a good social-emotional component,” and that an ASD setting or behaviorally-disturbed setting would not be appropriate. However, Dr. Geyer did not similarly specify that a setting within the geographical limits of Jersey City would not be appropriate. Additionally, the testimony of petitioner’s witnesses that M.M.’s fears, anxiety, and PTSD are limited only to Jersey City schools, so schools outside the Jersey City geographical boundaries would be appropriate, is not consistent with Dr. Geyer’s report that M.M. also worries about issues like overpopulation and school shooters or Cocuzza’s report that M.M. has “symptoms of exaggerated negative beliefs in the form of believing that the world is dangerous (as evidenced by some agoraphobia exacerbated by the pandemic).”

It is evident from the due-process petition, evaluations, and testimony that Mom wants not just an out-of-district placement, but a placement out of Jersey City, and Cocuzza’s report and testimony reflect that M.M. knows details about the due-process hearing and everything going on from Mom, and that Mom has had considerable influence on M.M. and his opinion of the Jersey City schools. Mom’s statement that M.M. seemed to like PS #37, but he checked the school rating online and did not like the score, and M.M.’s statement that he felt that PS #37 “had kids with the same issues” and he just wants “to be in a normal class with help,” are consistent with personal preference—not with fear, anxiety, or PTSD. Moreover, Cocuzza testified that M.M. imagines going to other school districts and that it would be best to collaborate with him on what school he would like to go to and involve him and allow him choice and autonomy.

Dr. Geyer testified that once M.M. goes to a school outside of Jersey City, he should not be moved from there even if he expresses that he feels like he is being bullied—as long as it is clear that he is not being bullied and he is in a therapeutic placement with staff trained and equipped to manage his emotions and help him problem solve and repair those relationships. However, there was extensive testimony that the negative peer interactions and negative teacher/counselor interactions may be his perception. As such, it could continue—and based upon his history, likely would continue—in any setting, including a school outside the geographical boundaries of Jersey City. Further, there was no evidence that peer and/or teacher conflict could be resolved solely by virtue of geography.

Based upon statements to various evaluators, M.M. appears to have extensive knowledge from Mom about the pending due-process petition, and both have fixated on M.M. attending school outside of Jersey City. M.M. attended a District school—PS #24—in-person a total of four weeks. Of concern is that it does not appear that there has been any meaningful effort since October 2021, when he commenced home instruction, to date to address his school refusal and fears about returning to school in Jersey City—where he resides.

The District, by way of the evaluations, IEPs, and testimony, offered “a cogent and responsive explanation” and showed that the IEPs were reasonably calculated to enable M.M. to make progress appropriate in light of his circumstance. The majority of Dr. Geyer’s recommendations were incorporated into the September 2022 IEP and there was extensive testimony that PS #37 has the staff and resources to address all of M.M.’s needs—academic, social, and psychological. Specifically, Gullace consistently and credibly testified that all the staff at PS #37 is crisis prevention intervention trained and applied behavior analysis trained, and that PS #37 has on staff a board-certified behavior analyst, mathematics coach, and full-time nurse, two LCSWs, a school psychologist, and school counselors. The February 2022 IEP reflected weekly group counseling and counseling goals, and the September 2022 IEP reflected twice-weekly group counseling, twice-weekly individual counseling, and counseling goals. Moreover, the September 2022 IEP reflected that M.M. would work on social-emotional skills including social skills, coping mechanisms, conflict resolution, self-esteem, mindfulness/relaxation, stress

management, and peer relationships, and the social-emotional component would include emphasis on building frustration tolerance to handle challenging tasks without losing effort, and exposing M.M. to gradually more frustrating situations in which to apply coping skills.

Significantly, none of the petitioner's witnesses or evaluators observed the program proposed by the September 2022 IEP or discussed the program with any District personnel. Although Smith attended the February 3, 2022, IEP meeting and thereafter toured PS #37, Smith only observed the autism programs because the February 2022 IEP proposed an autism program based upon Dr. Kisver's diagnosis of ASD—which diagnosis was later rejected by Dr. Geyer. There was considerable testimony over what constitutes a "therapeutic" placement, including by Smith. However, Smith possesses no educator or psychology credentials, so her testimony that the placement offered by the District was not "therapeutic" was not persuasive. Therapeutic, by definition, is "of or relating to the treatment of disease or disorders by remedial agents or methods," "having a beneficial effect on the body or mind," or "producing a useful or favorable result or effect." Available at <https://www.merriam-webster.com/dictionary/therapeutic> (last visited September 7, 2023); see also <https://dictionary.apa.org/therapeutic> (last visited September 7, 2023). Accordingly, I am satisfied that the District's program at PS #37 is therapeutic.

While I would concur based on the record that a proposal to have M.M. return to any prior school where conflict—perceived or real—occurred might negatively impact M.M. and impede his ability to make meaningful progress, out-of-hand dismissal of schools based solely upon geography is neither reasonable nor supported by the evidence. PS #37 is miles away from PS #24, with different staff and different students, and thus would not re-expose M.M. to the same location, students, or teachers. M.M. still lives in Jersey City, and therefore remains otherwise exposed to Jersey City. Moreover, interviews with M.M. by various evaluators—after he attended PS #24—believe the testimony of petitioner's witnesses and petitioner's arguments that M.M.'s fear, anxiety, and PTSD require an out-of-Jersey-City geographical placement. Specifically, the Social Assessment reflects that M.M. stated he wanted to attend "Dickenson [sic] High School" and the Speech-Language Assessment Report reflects that he stated he would like to

consider “Dickenson [sic] High School, McNair Academic High School, and High Tech High School” for high school. It is noted that Dickinson High School and McNair Academic High School are both located in Jersey City. Additionally, the Social Assessment reflects that M.M. stated that he would like to go back to school, “but just not at 24 MS 4 seems ok because I have friends (from St. Joseph’s) who go there,” and stated, “If it was MS 4 I would go. I’m ready. I just need to get used to it again.”

What is preferred or “ideal” or the “path of least resistance” falls short of establishing that a school geographically located outside Jersey City is required for M.M. to receive a FAPE. In fact, Andrew F. warned against courts substituting their own notions of sound education policy for those of school authorities, and notes that deference is based upon application of expertise and the exercise of judgment by those authorities. Thus, in the absence of credible evidence that M.M.’s fears, anxiety, or PTSD require a school located outside of the geographical boundaries of Jersey City, deference to Mom’s or M.M.’s personal preferences, or collaborating with M.M. and allowing M.M. school choice and autonomy, improperly usurps the expertise and judgment of the CST in that regard.

In sum, I **CONCLUDE** that the February 3, 2022, and September 21, 2022, IEPs provided M.M. with a FAPE in the least restrictive environment. I further **CONCLUDE** that his classification did not result in a denial of FAPE and that the evidence failed to establish that a change in classification was required. I therefore **CONCLUDE** that the due-process petition should be dismissed.

ORDER

Based on the foregoing, it is hereby **ORDERED** that the relief sought by petitioner is **DENIED** and the due-process petition is **DISMISSED**.

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



September 8, 2023

DATE

KELLY J. KIRK, ALJ

Date Received at Agency

September 8, 2023

Date Mailed to Parties:
db

September 8, 2023

APPENDIX

Witnesses

For Petitioner:

Karen Gullace

For Respondent:

Ria Smith

Beata Geyer

Edward Longe

Michael Cocuzza

Exhibits

For Petitioner:

P-A Neuropsychological Evaluation, dated June 21, 2022, and June 23, 2022

For Respondent:

R-1 Resume of Karen Gullace

R-2 ISP

R-3 Confidential Educational Assessment Report, dated September 22, 2021

R-4 Psychological Assessment Report, dated September 2021

R-5 Dr. Lubin/Children's Specialized Hospital Records

R-6 Cocuzza/Wayfare Counseling, LCC Diagnostic Summary, dated March 8, 2021

R-7 Eligibility Notice

R-8 February 3, 2022, IEP

R-9 Social Assessment, dated March 1, 2022

R-10 Speech-Language Assessment Report, dated April 11, 2022

R-11 September 21, 2022, Draft IEP