

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 05970-14

AGENCY DKT. NO. 2009-14115

A.K. AND D.K. ON BEHALF OF B.K.,

Petitioners,

v.

SPRINGFIELD TOWNSHIP BOARD

OF EDUCATION,

Respondent.

Beth A. Callahan, Esq., for petitioners (Callahan & Fusco, attorneys)

Kerri Wright, Esq., for respondent (Porzio, Bromberg & Newman, attorneys)

Record Closed: October 1, 2015

Decided: October 2, 2015

BEFORE **CARIDAD F. RIGO**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioners, A.K., and D.K., on behalf of their son B.K., filed a petition for a due process hearing against the Springfield Board of Education, the respondent. Petitioners allege respondent failed to have their son evaluated in all areas of suspected disability. B.K. was eleven years old at the initiation of this matter. He was in the sixth grade and attending school in the respondent's district school.

On or about February 26, 2014, petitioner filed a petition with the Office of Special Education (OSEP). OSEP transmitted the matter to the Office of Administrative

Law (OAL) on May 16, 2014. The parties and this ALJ had a prehearing telephone conference on June 27, 2014, at which time hearing dates were scheduled. The matter was heard on November 3, 10, 12, 2014, December 3, 5, 10, 17, 2014, March 16, 2015, and April 27, 2015. The parties requested time to submit closing briefs, upon receipt of those briefs the record closed on July 20, 2015.

ISSUES

Should B.K. have been evaluated, classified, and offered special education services in the 2013-2014 academic year? Did the services offered and received by B.K. under Section 504 during the 2013-2014 academic year provide him with a Free and Appropriate Public Education (FAPE)?

SUMMARY OF TESTIMONIAL EVIDENCE

Respondent's Witnesses

Bonnie Loew

The district's first witness was Bonnie Loew. At the time of her testimony Loew had been employed by the district seven years as a school counselor at Sandmeyer Elementary School. She has a Master's degree in education and school counseling and is certified in N.J. as a school counselor. She was responsible for counseling students in grades three, four and five. Loew chaired the Intervention and Referral Services Committee (I&RS Committee) that assisted teachers with strategies, modifications, and interventions so they in turn could help students achieve greater academic, social, emotional, and behavioral success. She also chaired the 504 Team. Both the 504 Team and the I&RS Committee include the principal, a special education teacher, a member of the Child Study Team (CST), an academic intervention specialist, classroom teachers, and the school nurse. The 504 Team and the I&RS Committee work in conjunction with each other. B.K. was referred to the 504 Team. Loew's job as a chairperson of the 504 Team was to coordinate the meetings, chair the meetings, and

distribute the plans. She is a member of the CST but she does not do evaluations nor does she case manage.

The purpose of I&RS Committee or Team is to assist teachers with strategies for working with students with learning and/or behavioral problems. (See Exhibit R-6.)

Loew first met B.K. in December 2012, when he was in the fourth grade; he was about nine years old. She was familiar with his records and student files. In the 2012-2013 school year B.K., had been diagnosed with Obsessive Compulsive Disorder (OCD) and he had a 504 Plan. She had B.K. in her character education class and she has observed him. B.K. had been referred to the I&RS Committee before entering the fourth grade.

Loew describes B.K. as quiet, a bit on the introverted side, kind and funny, with a good sense of humor. During the 2012-2013 school year, his fourth grade, B.K. had Rebecca Solomon as his teacher for his core curriculum subjects; he would transition out of that class for physical education and music.

B.K. was referred to the I&RS Team when he was in the second grade in the 2010-2011 school year. In the fall of 2012 B.K. was still involved with the Team. He needed help with reading comprehension, communicating, math word problems, being independent and organizing his homework, and transitioning. (See Exhibit R-5.)

Exhibit R-6 introduced through this witness describes B.K. as a fourth-grade student that loves to read and excels in math computation. B.K. is slow to start classroom tasks and assignments, easily distracted, and has a tendency to stop working and stare off midway during a task. He was below grade level in reading and struggles with reading comprehension and transitioning despite the use of various interventions and strategies.

Pursuant to this witness's testimony and exhibit R-11, by June 2013 B.K. continued to struggle with starting assignments, transitions, reading comprehension,

and communicating in class. B.K. was very quiet and did not speak out loud in class. Loew thought that B.K. was shy but he interacted well with his peers.

She never saw B.K. uncomfortable. B.K. was also involved in a social skills group, the goal of which was to have B.K. build social relationships on a one-to-one level.

Loew testified that B.K. had a 504 Plan in the fourth and fifth grades. She explained that B.K.'s 504 Plan stated that B.K. was to have extended time for standardized testing, classroom assessments, and for transitioning. Also, he was to take tests in a small group. (See R-12.)

On June 19, 2013, the parents were sent a letter advising of B.K.'s 504 Plan for the 2013-2014 school year, the letter sought their signature. The parents did not respond. Second and third follow-up letters were sent. The parents did sign the 504 Plan in November 2013. (See Exhibits R-13, R-15, and R-17.) The teachers were told to follow the plan although the parents had not signed it.

B.K. participated in the Friendship Group that met once a week for six weeks in the fifth grade. According to Loew, B.K. enjoyed the opportunity to socialize with peers. He was also a part of the Changing Families Group. This group was geared more towards students to discuss their home life, their families, and what was going on at home. B.K. participated in both groups.

Under cross-examination Loew testified that she knew B.K. had obsessive compulsive disorder (OCD). She thought B.K. was age appropriate with his peers in the Friendship Group.

She opined that B.K.'s 504 Accommodation Plan accommodated his learning that was impacted by his OCD.

A major life activity that affects B.K. is his reading comprehension, which was below grade level.

The 504 Accommodation Plan for the 2013-2014 was composed for B.K. without any consultation from the parents.

Loew never witnessed B.K. having social anxiety problems.

Maura Disko

Maura Disko is an Academic Intervention Services (AIS) teacher for grades 3, 4, and 5. She has taught at the respondent school board three years. She has a Bachelor's degree and is in the process of completing her Master's in special education. She has focused on students with OCD. Her role as the AIS teacher is to "push in" to a regular education classroom and work with students that do not have IEPs, students that need special assistance within the classroom. She works closely with the classroom teacher. B.K.'s classroom was a mix of average to above average students.

Disko first met B.K. in the fourth grade. She described B.K. as cute, pleasant, well liked, and quiet. She worked with him in the fourth and fifth grades. She is familiar with his academic progress. She has observed B.K. on numerous occasions and in different scenarios. She has observed B.K. in his fourth-grade class that had twenty-one students and noted that B.K. interacted with his fellow students. She worked with B.K. in language arts and math. B.K. had a 504 Plan in the fourth grade.

Disko stated that she has never seen B.K. having difficulty with understanding text and recording answers. She noted that it does take B.K. longer to complete tasks, for example to pack his things at the end of the day.

According to Disko B.K. was an average student in fourth grade. And, he did well in N.J. Ask. (See Exhibit R-3, p. 4.) She said B.K. would not be considered an

ASK student because of his high test scores in N.J. ASK. He does not need help with his basic skills.

Disko opines that B.K. understands what he reads, both surface questions and most sub-surface questions. She noted that B.K. did not speak in front of the class but she does not think that is unusual.

Disko furthered that the Homework Club is open to all students three times a week. Students come in and do their homework. She noted that B.K. generally finished his homework ahead of time and then sat reading.

B.K.'s grades were average at the end of the fourth grade, although no letter grades are given. There are no number or letter grades but there are indicators as to how a student is progressing. B.K. meets the standards. (Exhibit R-42.)

B.K.'s fifth-grade teacher was Ms. Di Carlo. That fifth-grade class was composed of regular and AIS students. She continued to work with B.K. in the fifth grade. B.K. was an average student in the fifth grade.

Socially, she said she knows B.K. has one friend and that he gets along with other students. She has observed B.K. in the playground and at lunch time, she has observed that he is quietly socializing with peers.

She thinks B.K. can advocate for himself.

One of the things that she made sure the teachers did for B.K. was that they put in his folder exactly what is going to be on a test. This was done only for B.K.

She gave B.K. a reading comprehension test and he tested on an average level. In grade five he was tested only on English and Math. Science is not tested in the fifth grade. B.K. generally scored within the average and above-average levels. (Exhibit R-40.)

Disko stated that she has no trouble understanding B.K.'s speech. She has not observed B.K. to be clumsy. She believes he does not lack self-confidence. He needs to be re-directed at times but he is not easily distracted.

She opines that B.K.'s OCD has no impact on his academic performance.

Under cross-examination Disko re-iterated that she thinks B.K. does not have any significant disability. She thinks his needs can and are being met in a 504 Accommodation Plan.

She related that she was in B.K.'s class for eighty minutes a week when he was in the fourth grade. In the fifth grade she was in his class for 240 minutes a week. She explained that although B.K. met the required basic skills he still received AIS assistance. She reiterated that B.K.'s disability did not affect his educational abilities. With a 504 in place B.K. is successful in the classroom.

She observed some of B.K.'s manifestations of his OCD, for example, B.K. would wash his hands and then uses hand lotion. However, she did not think it was excessive.

She tested B.K.'s reading level in the fifth grade and the results were that B.K. was reading at level. She noted that B.K. received accommodations as the requirements arose. Specifically, she was referring to exhibits R-17, R-2, and R-26 - these exhibits showed a progression of accommodations. She noted that B.K.'s social studies guide and mathematics guide were specifically designed for him. Disko also stated that B.K. needed and received advanced preparation for his oral participation in class from her and Mrs. Di Carlo.

Disko recalled that B.K.'s mother complained to them that homework was difficult for B.K. and that it took a long time causing him stress. She said B.K. did not like to

see things crossed out on his homework papers. Mrs. Di Carlo modified or reduced his homework.

Writing was difficult for B.K. in the beginning of fifth grade but by the end of the fifth grade he was writing at grade level. B.K. did not like sentence starters and he refused to use them, so they would talk about those sentence starters with him and he was then able to use them.

B.K. was recommended for NJ ASK preparation class because she knew his parents had concerns about how well B.K. would do. Disko stated that she gave B.K. accommodations that were not in his 504 Plan. For example, small-group work and she would check on him.

B.K. was recommended for summer school after the fifth grade. It was offered to B.K. because his parents had concerns and if a teacher recommended summer school, his parents would not have to pay for it. But, she did not think B.K. needed summer school.

With respect to B.K.'s social anxiety issue, she stated B.K. did not like to speak in class. She did not think B.K. had an auditory processing disorder.

Disko opined that B.K.'s distractibility was not any different than any other fourth or fifth grader. She saw B.K. stare out into space but not often enough to consider it a problem.

She opined that B.K. made progress in the fifth grade. She saw B.K. raise his hand in class and participated more often as he became more comfortable.

Marjorie Murray

Marjorie Murray is a Learning Disabilities Teacher Consultant for the respondent school district. She qualified to testify as an expert in eligibility determinations and determining the need for special education services.

Murray testified that B.K. was referred to the Child Study Team (CST) by his parents in the beginning of his fifth grade. The CST had a planning meeting that was attended by the parents, Ms. DiCarlo, Ms. Disko, John Campbell (B.K.'s case manager), Rene Altman (psychologist), Ms. Loew, and herself. At that meeting the parents expressed their concerns in that B.K. would have a meltdown when he got home after school, he had problems going to school in the morning, and that he was not progressing.

Murray stated that during the meeting they also discussed B.K.'s suspected areas of disability: processing disorder or issues, his social anxiety, and his OCD. They concluded to do a comprehensive evaluation. The evaluations included a social assessment that would address his social anxiety, psychological assessment, language processing (educational assessment), occupational therapy, and a neurological evaluation. According to Murray, B.K. was assessed in every area that is school based. The parents did not request any additional evaluations.

Murray said B.K.'s IQ of 96 is a very average IQ. Murray testified as to B.K.'s educational assessment or report. She said this report determines if there is a learning disability. In assessing B.K. she observed and interviewed him, she did a Woodcock Johnson test, reviewed his school files and his NJ ASK scores.

Murray described B.K. as quiet and easy to talk to and easy to build a rapport with. She said B.K. told her he liked math and that he thought he was doing well in school, he did not like sports but he liked to draw. She furthered that B.K. was a polite

and sweet persona, with a good sense of humor who is socially well-liked by his peers in school.

Murray said she did an educational report on B.K. on or about January 16, 2014. (Exhibit R-30.) This report determines if there is a learning disability. She assessed B.K. by doing a Woodcock Johnson III Test of Achievement, Form A. In summary B.K.'s academic achievements scored in the average to low-average range. Specifically, B.K. scored average in the areas of reading. He was average in oral expressive language. He was low-average in math calculations and fluency, average in applied problems, and he had high-average scores in his writing abilities.

She said B.K. was slower to process but able to articulate his responses.

She testified that B.K. is actually performing to his best and above. His scores were solid across the board showing he has a good foundation.

She saw none of the behaviors the parents complained about.

B.K. had a speech-articulation problem that the district addressed in speech therapy. She stated language processing hinders learning but speech articulation does not. B.K. has mastered his articulation issues.

Murray concluded that B.K. was succeeding academically that he did not need special education services and his current 504 Plan was sufficient and meeting his academic needs.

Under cross-examination Murray was questioned about B.K.'s low-average scores such as in his low-processing speed that was in the low-average/borderline range. She testified that low average means just that—it is average but within the lower range of average. She furthered that she was looking for a learning disability but B.K. did not have one. B.K. was meeting baseline standards in the classroom.

Traci Glazner

Traci Glazner is a speech and language therapist for the Springfield Board of Education for approximately eleven years. She has a Master's degree and is certified in speech and language therapy. She also has a certificate in clinical competence. She works with students that have IEPs and with students that are not classified.

Glazner met B.K. when he was in the third grade. He came to her for speech therapy because at that time B.K.'s speech had a negative impact on his education. By the end of January when B.K. was in the fifth grade he was no longer eligible to receive speech and language therapy because the teacher's input, tests results, and general academic performance indicated that his speech issues no longer affected his education. B.K. was dismissed from speech and language therapy in February 2014.

When B.K. was receiving speech therapy she met with him for one hour a week at 30 minute intervals. B.K. had a speech and language IEP in the fourth grade, at that time he received speech and language once a week in small groups.

When asked what was B.K.'s diagnosis she responded that he did not have one. B.K. had problems pronouncing the letter "R."

In speech therapy B.K. was a good student, he was an active participant, and gave no problems. He participated in group sessions well with another student. She said other students understood what B.K. said. B.K. appeared to be comfortable in the class and had no language-based disabilities.

Glazner furthered that she was in B.K.'s regular class every week because she had to observe another student in that class. She did not observe B.K. being anxious or nervous. She saw him interacting with his peers. B.K.'s teacher never told her about any concerns she had regarding B.K.

B.K. finished his speech and language therapy in late January early February of his fifth grade because he had met all of his speech and language goals and his speech no longer impacted his academic performance.

Glazner provided a report which outlined a summary of B.K.'s speech and language evaluation. (See Exhibit R-33.) According to this report B.K. scored well within the average range. Glazner specifically stated that B.K.'s expressive language score was high average and his receptive language score was also high average. She noted that she tested his auditory processing skills although, the test is not a diagnostic test for auditory processing disorder, it does provide a good indication if there are any auditory processing weaknesses. B.K. scored in the average to high average range.

Glazner stated that she informally assessed B.K.'s articulation skills and they are within normal limits. He only had slight distortion in pronouncing the letter "R" but it was not impacting on the intelligibility of his speech. Voice and fluency were within normal limits. B.K. tends to speak in a low volume.

In speech class B.K. never needed prodding or modeling; he knew what to do and did so when it was his turn. She never had to redirect B.K. B.K. was always organized when conversing with her.

Glazner pointed out that she gives teachers a checklist for articulation and phonology to complete for their students. She noted that the one for B.K. showed no negative impact of any speech and language problems on his education. (See Exhibit R-31.)

Glazner said B.K. was not eligible for special services because he was not communication impaired. In fact, she recommended B.K. be dismissed from speech and language services.

B.K.'s soft or low speaking tone did not concern her because there was no reason for it and when asked to speak louder B.K. would comply.

Under cross-examination she re-iterated that she only worked with B.K. when he was in the third and fifth grade. She knew he had a speech and language IEP in the fourth grade but she did not work with him in the fourth grade because she was out on maternity leave at that time.

Glazner admitted that she had no documentation to support whether or not B.K. met his goals and objectives.

Glazner explained that she did not do a formal articulation assessment because she had been working with B.K. And, also at that time she knew his speech articulation issue was no longer impacting his academics.

Glazner acknowledged that a full and complete language-skills test should have been given but she did not do so in this case.

Frances DiCarlo

Frances DiCarlo was B.K.'s fifth-grade teacher. She met B.K. in September 2013. B.K. was eleven years old. She has been working for the respondent nine years all teaching the fifth grade. She has a Bachelor's degree in elementary education and is certified to teach K through eighth grade. She has a total of thirty years of teaching experience. She has worked with students that have social anxiety. She habitually tries to make her class conducive to learning. She follows a curriculum, tracks students' progress by observation, assessment and class room performance. She starts fresh with all students does not like to hear history with other teachers.

She arranges the student desks in clusters of four or five. B.K. sat in the front of the class. She teaches language arts, math, social studies, and science. She had twenty-three students in her class the year she taught B.K. She had students whose academic abilities ranged from low to high ability. About 50 percent of the time there

was another teacher in the classroom with her. She had an AIS teacher to assist her in teaching the students that scored low in the NJ ASK test.

DiCarlo described B.K. as quiet, polite, and a bit withdrawn. She knew he had social anxiety and had obsessive compulsive disorder (OCD). She saw his 504 Plan and his NJ ASK scores. B.K. had a slow start in the beginning of the year. He had difficulty focusing in the beginning but towards mid-year he was better. He came into his own in the middle of the year.

His handwriting was difficult to read in the beginning but towards the end it got better and was acceptable. The content of his writing was sparse, he would put the minimum down but towards the end that too got better. B.K. needed sentence starters but he did not like them so she prompted him verbally.

B.K.'s reading comprehension in the beginning was weak but he was given remediation in that she helped him and a tutor helped him as well. His skill was strengthened as the year went on. She used the following strategies to help him with his comprehension: Questions and answers, underlining difficult words (vocabulary), pinpointing out the problems, and helping him on a step-by-step basis to resolve the problem.

She said B.K. loved to read because every spare moment he had he would get a book. The class had a reading log and B.K. had a lot of time logged. He also had to read twenty minutes every night for a total of 140 minutes a week. B.K. read the required time each week. At one point B.K. read 829 minutes in two weeks. She knew B.K. knew what he was reading by seeing his responses to the questions.

Exhibit R-41 was introduced through this witness. R-41 is B.K.'s progress reports. The progress reports indicate B.K. is meeting expectations and standards.

B.K. did not want to participate verbally in class. He never wanted to raise his hand. She would prepare him before she called upon him to respond verbally.

Students were required to produce two writings per marking period. She said B.K. struggled with creative writing otherwise he was ok. In language B.K. did very well. He was weak in math skills but he met the standards. He met standards in social studies, reading, writing, and science.

B.K. did not interact very much with other students. He had one good friend. She said she would see B.K. talk with this one boy; that they would eat lunch together; and that she would see them in the playground. DiCarlo did not think that was unusual because some students only want one friend.

DiCarlo opined that B.K. behaved in a socially appropriate manner for a fifth grader. She thought he was better in the classroom. In class he was not reluctant to work with others.

DiCarlo testified that she did everything that was required in B.K.'s 504 Plan. She stated that as time went on B.K. did not need extended time for class tests/assessments but he still got it. Although he did not need extra time for transitions and to repeat directions she continued to do so. She continued to provide him with all accommodations throughout the year although he may not have needed them.

DiCarlo noted that his 504 Plan was revised in December 2013. She participated in that meeting. She recalled that the parents wanted B.K. to have more accommodations. She opined that B.K. was doing fine—he was holding his own, he was struggling a bit, but basically he was doing OK.

She said science and social studies had a study guide because of the volume of information. She said all students received study guides in her class. She modified B.K.'s study guide by eliminating certain problems. She re-typed the paper because B.K. did not like cross-outs on paper. She would also circle items that he needed to know.

B.K. had free range of the classroom. He could move around the class room as he wanted—so did all of the students, so B.K. never stood out.

In B.K.'s 504 Plan of December 2013, the parents required that B.K. be provided with study guides in preparation for tests, that they be provided with duplicate copies of homework worksheets, and that he be prepared in advance to participating orally in class. She felt that B.K. did not need those accommodations but she later found that it helped. She said it did make B.K. more comfortable speaking in class.

B.K. began washing his hands frequently towards the end of November beginning of December 2013. She said she was told it was because of a change in his medications. She said he did this for about two to three weeks, but it diminished when his medications were changed. B.K. would get up two or three times in the morning and two or three times in the afternoon to wash his hands. She said it never impacted on his learning because when he returned to his desk he picked up where he left off. It was not distracting to other students because everyone was moving around.

DiCarlo gave an example of B.K.'s OCD behaviors. For example, he would pick up a tissue to take another tissue. He would then go to the sink and wash his hands. She said there was no reaction from other students. There was a sink and a bathroom in the back of the room.

B.K. would need to use hand lotion because his hand washing dried his hands. This hand washing/lotion behavior was magnified over a one to two week period. She observed no other OCD tendencies.

DiCarlo communicated with parents via email. Friday folders would contain papers with scores. The homework was posted online; the parents could also see all tests scores, report cards, and reading logs online. She stated she made herself available to the parents before school, during recess time, and after school.

She said at one time parents wanted B.K.'s reading work reduced. (See Exhibit R-24.)

DiCarlo said the homework she assigned should take about twenty minutes per night per subject the total homework time did not exceed sixty minutes (estimated). She modified B.K.'s homework at his mother's request but she did not modify his reading work because she felt B.K. kept up with his reading.

DiCarlo testified that she recommended B.K. for summer school because she did not want his parents to have to pay for it. She felt that B.K. did not need summer school but that it would not hurt him.

In the beginning of the school year she had to prompt B.K. to get him on task.

Under cross-examination she agreed that in the beginning B.K. had problems with reading comprehension. But, B.K. was on grade level with reading comprehension but he had not mastered the skill. He improved as class proceeded.

In the beginning B.K. never volunteered to speak in class but by the end of the year he was doing better and volunteered to speak out in class. He volunteered by raising his hand without being prompted to do so.

She opined that B.K. did not need all of the accommodations he was given in his 504 Plan. She opined that B.K. did not need to get duplicate copies of homework worksheets, be given extra time to transition, and be provided with study guides prior to testing because all of her students were given those accommodations.

She recalls B.K.'s mother telling her that B.K. did not get his homework done on time because he had too much homework. She said it was his mother that modified his reading down to ten minutes from twenty minutes and she went along with it.

With respect to the grades, DiCarlo explained that the school does not follow a traditional grading system; students are given numbers such as 1, 2 or 3. A grade of 2 means a student is on grade level. When a skill is introduced the student is given a 2. A 2 means the student has the foundation of the skill but has not mastered the skill—yet they have not met grade level standards.

Melissa Guerrizio

Melissa Guerrizio is a pediatric occupational therapist. She was qualified as an expert in occupational therapy (OT). She was hired by the respondent school to be their occupational therapist.

Guerrizio first met B.K. when he was in the second grade and worked with him twice a week in the second and third grades. B.K. received OT services once a week in the fourth grade. All sessions were for thirty minutes. She described B.K. as kind, talkative, and interactive. She said B.K. went to her room independently and he was happy and smiling when he entered and left her class. He followed instructions and engaged in conversations with her. When he was with other students he would interact with them. A typical session with B.K. included activity coordination such as handwriting activities like copying and typing skills. She also worked on his gross motor skills. She observed B.K. when he was in his regular fourth-grade class at least once a marking period. She observed him outside of the classroom for example, during lunch and he was always participating with his fellow students. B.K.'s goals for the fourth grade were to enhance his handwriting and keyboarding skills, to learn to put his thoughts on paper, and his copying skills.

She gave B.K. fidgets, for example, a band to wear on his wrist. B.K. would always ask her for a fidget.

Guerrizio stated that B.K. developed his own strategies to keep himself on task, focused and to arrange his thoughts by tapping an eraser on the desk. (See Exhibit R-8.)

She considered releasing B.K. from her class because he had met his goals but she reconsidered and put him on as a consult OT for the fifth grade. Consult OT means meeting with his teachers once a week to discuss any issues with B.K. She said in fifth grade B.K. was basically maintaining. She pulled him out of class once a marking period to assess him and to see how he was doing. Whenever she observed him in the fifth grade he was doing fine. She saw him in the lunchroom about once a week and each time he was doing OK and participating with his classmates.

Guerrizio opined that none of B.K.'s issues had an impact on his ability to function academically. She further opined that B.K. met all of his goals and was able to handle fifth grade and beyond. In reviewing exhibit R-46, a medical report, she opined that nothing in that report would have an impact on B.K.'s educational performance within the classroom and his ability to learn. If B.K. had such bad muscle problems his trunk would be unstable and he would not have been able to control his hands. She specifically stated that B.K. was not falling out of a chair. She specifically recalls B.K. because she remembers questioning his need of her special services.

Under cross-examination Guerrizio stated that although she worked with B.K. on his muscle tone and he was still able to function academically. She recommended an OT consult in the fifth grade because she wanted to make sure B.K. continued making progress.

Kathleen Rotter, Ph.D.

Dr. Kathleen Rotter was respondent district's special education expert. She was qualified in special education programming, classification and eligibility determinations, interpreting evaluations for the purpose of determining eligibility and programmatic decision making, as well as 504 accommodation eligibility. Dr. Rotter's resume is marked R-44.

Dr. Rotter's report on this matter is exhibit R-45.

Dr. Rotter began by explaining the difference between a 504 Accommodation Plan and a Special Education Plan through IDEA. Rotter explained that we should imagine that 504 and IDEA are two rooms, one room is large and it has another room attached to it that is smaller. The larger room is called 504 of the Rehabilitation Act, which is a Civil Rights Law. 504 under Civil Rights is about access to education to all children. IDEA is the Special Education Law that requires a disability that adversely affects a student's ability to learn. IDEA requires that a student receive special services so that student can learn. IDEA is an offshoot of 504, it is a specialized 504. (See diagram R-48.)

A 504 Accommodation Plan spells out the things (plan) that will allow the student access to the curriculum. Accommodations can include more time on a test and the use of different instruments such as a laptop. An accommodation does not change the actual curriculum demand, it changes the way a student gets to that curriculum. For example, a student gets a laptop; that student is still writing but the writing is done via a laptop.

Rotter explained that in order to move from 504 into IDEA there has to be a disability that has an adverse effect and that adverse effect means that after all accommodations are provided the student is still not able to perform at an average or above-average level.

She said a 504 Accommodation Plan provides access. IDEA is Special Education and it provides remedial education. The standard under IDEA is much higher and much harder to meet. Both 504 and IDEA are to provide FAPE.

Rotter further explained that a student can struggle in class but that struggle or difficulty may not necessarily have an adverse effect. An adverse effect is an outcome shown in poor grades, low test scores. A child having a difficulty does not automatically mean that the child moves from 504 to IDEA.

She furthered that in order to determine when and if a child moves from a 504 to IDEA one must look at the student's ongoing grades and performance over time. One must look at the grades for a pattern and generally how that student is performing in view of the student's IQ and performance on standardized tests and standard scores.

B.K.'s educational ability is in the average range. His IQ is 96, which is a standard/average IQ score.

Rotter testified that she reviewed approximately 125-130 documents and school records about B.K. and she observed him once. Rotter noted that B.K. was not eligible to receive special education services because his performance scores were within the average range and he showed no adverse educational effect. B.K. was consistent in everything; he was consistently performing average work.

Rotter noted that B.K.'s processing speed was slower—he does everything at a slower pace but he gets it. She said that time is an issue that can be handled through an accommodation by giving him more time.

Rotter said the Woodcock Johnson test is an achievement test and gives a clear picture if there is an adverse effect of B.K.'s disability on his education. She said B.K.'s scores on this test are very average. (See Exhibit R-45 page 12.) She noted that all of B.K.'s scores fell between average to low average. She explained that low average range means low on the average range.

Rotter furthered that B.K.'s academic achievement scores exactly match his scores on the Woodcock Johnson Achievement test. He performed exactly where his IQ says he is to perform. That is, his IQ and achievement scores match.

Rotter further noted that B.K.'s CogAt scores, which are measures of a student's reasoning abilities, are solidly in the average range as was his composite score. (See Exhibit R-45, p. 10.) She said B.K. has a disability but that disability is not adversely impacting on his ability to learn. Because his disability does not impact his ability to

learn, B.K. is not qualified to receive special education services. In spite of his disability he is learning.

Rotter said that NJ ASK is a general education test that determines if the student has acquired the skills necessary, basically it tests proficiency. She said B.K. did fine in the NJ ASK test scores. B.K. got scores of proficiency or advanced proficiency, which means B.K. is within normal range. (See Exhibit R-43.)

Because B.K. needs extra time he was allowed the time to say what he knew or did not know, so the 504 Accommodation was appropriate.

When she reviewed B.K.'s report cards for the fourth and fifth grade she noted that he was performing on the average level.

Rotter explained "difficult" in the education world. She said "difficult" must be so difficult that a student must be unable to perform even with the accommodations. And, this was not the case with B.K.

She explained that although B.K. was diagnosed in the fourth and fifth grade with OCD, social anxiety, and global coordination disorder (apraxia), it does not lead B.K. into the IDEA room. (See diagram R-48.) Providing B.K. with a 504 accommodation has allowed him to show what he has learned.

Rotter described B.K. as a quiet shy, socially awkward, friendly boy. She said the fact that he only has one friend and even if he had no friends, he still would not be qualified to receive special education under IDEA.

A child with OCD can be classified but it is when that OCD impacts on his ability to learn from a general education teacher that IDEA may come into play. In this case B.K. was learning and achieving average results from a general education teacher in a general education class, therefore IDEA need not be involved.

Rotter stated that B.K. was achieving without the need of special education services. B.K. is at level so he needs no remediation instruction—he is at level in his academic performance. B.K. is able to generalize his learning. B.K.'s 504 plan in fourth and fifth grade were adequate and appropriate.

Rotter did not disagree with B.K.'s diagnosis that he has an auditory processing disorder. However, the fact that he has it has not adversely impacted on his ability to learn.

B.K. received speech therapy to address his articulation problem. According to Rotter, an articulation problem can be handled in a 504. B.K. has a problem articulating the letters L and R. B.K. had no expressive and receptive language disorders that would make him eligible for special education.

Under cross-examination Rotter testified that there are different standards between 504 Accommodation Plan and IDEA but one standard is not lower than the other, they are just different.

Rotter reiterated that the fact that B.K. was performing at an average level indicated to her that he was making progress. And, since he was progressing there was nothing else to do. She reiterated that although B.K. had a handicap, his OCD, said handicap in B.K. did not have an adverse effect on his ability to learn.

Rotter explained that a score of 85 and above on the Woodcock Johnson test is within the average range and a score of 84 or less is considered below average; however, both scores fall within the average range.

A.K.

A.K. is B.K.'s mother. She has a Bachelors' degree in marketing and international business. She has a teaching background in that she is certified to teach elementary and high school. She has taught high school and middle school marketing,

computers, and business ethics. She is currently a sales director for Mary Kay Cosmetics.

With respect to B.K. she said he received early-intervention services as early as fourteen months. He attended a regular kindergarten and he received OT and PT. He had an IEP in kindergarten but in first grade he was moved to a 504 Plan. She said B.K. had a hard time in first grade. He had a 504 Plan in the second grade. She said the fourth grade was a rough year for B.K. She said she worked with B.K. at home three to four hours a day. B.K. was not independent in the fourth grade in terms of doing his school work on his own at home.

In fifth grade she was doing homework with B.K. from the moment he got home until he was actually in bed. She had to be consistently on him to get his work done.

In fifth grade B.K.'s OCD symptoms were intermittent. Some of his OCD symptoms were that he needed to touch things like door knobs and table tops; he needed to sit on every chair; frequent hand washing, leaving soap on his hands and putting soap on door knobs. He does not like to be touched. When getting ready for school in the morning he needs her support all of the time and all of the way to school. He cannot dress by himself. There were many times when he did not want to go to school.

She retained a tutor to help B.K. with his homework. The tutor was there Monday through Friday for two to four hours each day.

B.K. does not socialize with his peers. He does not respond to his peers when they approach him. B.K. did not want to socialize with his peers because his friends did not wash their hands after they used the bathroom.

B.K.'s handwriting is illegible and his ability to produce creative written work is below standard. B.K. cannot generate his own ideas, she has to help him. B.K. does nothing in a timely manner it takes him forever to do anything.

B.K. did not master the times table because he could not do thirty in one minute. B.K. knows the times table but cannot do it within the time permitted. B.K. was not given additional time for the times table because giving him additional time would defeat the purpose.

A.K. stated that B.K. is not capable of self-regulating. B.K. does not want to do anything, all he wants to do is to sit and lay in bed. She does not see B.K. using any coping strategies at home.

B.K. does not report accurately. A.K. stated that she wants B.K. to be evaluated by the child study team, classified, and ultimately be provided with the special education services he needs. She said she was the one to put into the 504 what she wanted and thought B.K. needed.

B.K.'s fifth-grade teacher never provided a study guide as was required in his 504.

She has a hard time understanding B.K. because of his articulation. B.K. has conversations with family members but does not converse with his peers.

Under cross-examination A.K. acknowledged that she did not personally observe B.K. in OT or speech classes in the fourth and fifth grade. She never observed him in class.

In fifth grade she modified B.K.'s reading and writing assignments by cutting them in half.

B.K. got preferential seating at her request. She hired a tutor for B.K. in October 2013, to work with him every day after school.

B.K. read and liked the Harry Potter series. B.K. attends Boy Scouts.

D.K.

D.K. is B.K.'s father.

D.K. says B.K. is not able to socialize, he withdraws from social settings. B.K. speaks in a very low tone and is difficult to hear and difficult to understand.

D.K. said he is an assistant Boy Scout leader and he did it because B.K. showed an interest in Boy Scouts. B.K. earned a citizenship badge.

D.K. said B.K. has to be prompted on daily activities. He said he thinks that B.K. does not know what to do when it comes to homework.

D.K. stated that when he takes B.K. to friends' houses B.K. plays by himself and plays with the younger kids' toys. He is very concerned about B.K.'s inability to converse, socialize with his peers, engage in society, and conversations.

D.K. characterized B.K.'s behavior as odd because of B.K.'s excessive handwashing and use of soap; he puts soap on his clothes. B.K. would walk into a room sit on every chair then walk out of the room.

B.K. cannot zip his jacket.

D.K. said that if B.K. was left on his own he would sit and watch TV and not move for many hours. At times it takes B.K. all afternoon, evening, and sometimes the next morning to do homework assignments.

D.K. relayed that he worked with B.K. an entire weekend studying for a social studies test when B.K. realized that he had already taken the test.

Lara Elizabeth Morse, M.D.

Dr. Lara Elizabeth Morse is a board certified psychiatrist and neurologist with a specialty in child neurology. Her resume is Exhibit P-26. Dr. Morse was qualified as an expert in child neurology, in evaluating neurological issues for children, and in child psychiatry. She testified on behalf of the petitioner.

Dr. Morse testified that she first met B.K. in February 10, 2014. She received most of B.K.'s history from his mother. She spent about one hour with him. During her interview with B.K. he seemed sad and tearful. There was not a lot of conversation with B.K. He had a speech impediment that she considered significant. She could not understand him completely. Yet her report in exhibit P-16 does not point that out. He had low muscle tone. Because of this low muscle tone he would have problems navigating through hallways, handwriting, and with his posture. He could not skip or do jumping jacks. Because of this she opined that B.K. is not able to play.

Dr. Morse reviewed his standard test results of his processing speed score of 78. She opined that his processing is borderline. His slow processing could negatively impact him in class because he could fall behind.

Dr. Morse testified that there are supports available to help students with auditory issues. She said speech and language services are supports provided specifically for auditory processing issues.

She opined that his IQ was high average.

She did not recommend medication she believes medications should be used after all else fails, support services first.

Dr. Morse opined that B.K. had speech difficulties, gross-motor difficulties, low muscle tone, and OCD.

Dr. Morse stated that she believed B.K. had attention deficit disorder but not hyperactivity.

Dr. Morse testified that if B.K.'s specific learning issues and auditory processing disorder are not addressed that it would make his OCD and other issues worse. She said one cannot separate the impact of these issues on his life because these problems impact on everything, his academic and social development and his gross and fine motor skills.

According to Dr. Morse one cannot separate out with a student like B.K. the medical issues from the academic issues because they are all connected. She said B.K.'s OCD is connected to his education. If he cannot focus and cannot attend and is having obsessive compulsive thoughts he cannot succeed in school.

Under cross-examination it was brought out that Dr. Morse did not know what accommodations or teaching strategies were being implemented at school for B.K. She did not know how or if B.K.'s OCD impacted him at school. She had no knowledge of how B.K.'s low motor tone and ADD impacted him at school.

She knew B.K. had a 504 Plan but she did not know what was included in that plan.

She recommended to the parents to ask the school for accommodations to meet B.K.'s needs.

She did not know that B.K. was performing at grade level and was proficient at NJ ASK.

She made the diagnosis of OCD because of what the parents told her. She did not observe any OCD type of behaviors during her examinations of B.K. She

diagnosed B.K.'s ADD based only from the parents reporting and his tutor, not any of his teachers.

Dr. Morse stated that B.K. can hold it together in school and then fall apart when he gets home.

Dr. Morse opines that 504 Plans are not worth the paper they are written on because they are too summary and not tailored to a student's need.

Terence Kears, Ph.D.

Terence Kears, Ph.D., is an educational psychologist who has a focus on cognitive development. He was qualified as an expert in psychology, in the treatment of children with OCD, anxiety-based disorders, and ADD. He is in private practice and frequently attends CST meetings and is involved in the development of IEPs. Dr. Kears explained that he came to know B.K. because his parents brought him. When B.K. came he already had the diagnosis of OCD. The parents were concerned about the effect OCD had on B.K.'s educational, social, and emotional development.

Dr. Kears testified that B.K. was difficult to get to know. He said on the outside B.K. appears to be well but on the inside he is troubled. He gave B.K. the House-Tree-Person Test and the Thematic Aperception Test, these tests are projective tests used as standard diagnostic tools.

Dr. Kears testified that from these tests and his interview with B.K. he gleaned that B.K. was very vulnerable, fragile, and that he feels susceptible to criticism—he expects criticism. He said B.K.'s obsessive thinking is very evident and is non-stop. He noted that B.K.'s obsessive thinking was noted in erasers. The interview with B.K. was very difficult because B.K. gave short answers and was difficult to engage in conversation.

Dr. Kearse said that B.K. cognitively knows what to do socially. He is clear on what he needs to do. But, he expects not to do it because of the anxiety it causes in him. He said B.K. is very clear about wanting to get somewhere or do something but his anxiety and lack of self-confidence is so strong that he cannot get himself moving to get to where he wants to go or do what he wants or needs to do.

Dr. Kearse stated that he did not see any examples of B.K.'s OCD. However, he explained that many OCD children use an enormous amount of energy to contain the OCD. He said treatment is two-fold. One is to give him individual one-on-one therapy. The second way is to give him separate treatment in school. The individual treatment is to help him learn the skills to cope with his OCD behaviors and thoughts. In school the teaching staff would have to be aware of his needs so they are aware of what is going on with B.K. so they can reinforce his coping skills established in the individual treatment.

Dr. Kearse does not think B.K. is shy he just isolates himself. He is anxious about not being successful socially. He said that if his OCD is untreated B.K. will be in trouble because he will become depressed.

Dr. Kearse recommends a small-group teaching setting with a teacher that can address his OCD. He said B.K. needs treatment for his OCD first. He said large settings increase his anxiety.

Dr. Kearse stated that he reviewed B.K.'s 504 Plan and that it does not address his OCD nor does it address his social and emotional issues. He feels B.K.'s probability of success is very low.

Dr. Kearse furthered that after reviewing B.K.'s evaluations he finds B.K. to be constantly OCDing and in a state of anxiety all of the time. B.K. needs social skills in school without it B.K. will fall behind. He said B.K. internalizes too much so he is unable to focus on the outside and be able to learn.

Under cross-examination Dr. Kearse stated that he saw B.K. in total four times each time for about forty-five to fifty-five minutes, the first time was on October 15, 2014, and the last time was on November 12, 2014. He spoke with B.K.'s parents and coaches but not with his teachers or tutor.

He opined that B.K. needs treatment for his OCD but outside of a school setting. He said B.K. can develop depression even without a school therapeutic setting.

Dr. Kearse had no knowledge of what strategies the respondent district was using to deal with B.K.'s OCD; he never saw any of B.K.'s OCD behaviors; and he never reviewed any educational evaluations.

Kelly Kitzman

Kelly Kitzman is a certified teacher that tutors B.K. every day after school from 3:30-5:30 or 6:30 p.m. She is privately retained by the parents. She began tutoring him in October 2013. Kitzman stated that B.K.'s mother told her B.K. had special needs and he needed assistance with homework. She worked with him the 2013-2014 school year. She said initially B.K. appeared happy but then she realized that he was confused.

Kitzman said B.K. does not like his things touched, he has had meltdowns because she touched his papers. There were times when she worked with B.K. up until 6:30 p.m., left, and B.K. still had not completed his homework. Written homework took him about two to three hours to do.

She said that every day she would go into B.K.'s book bag, which was very disorganized, and try to organize his homework in order to get things done. She said B.K. was not able to do his homework on his own. He could not relay what he learned in class that day.

She would take B.K. to music classes transitioning was always a struggle.

Kitzman testified that B.K.'s OCD was extreme in that he would wash his hands constantly and leave soap on his hands. He always needed to be re-directed because he was easily distracted.

Kitzman said B.K.'s 504 Plan required that a copy of the homework be sent home but it was not.

B.K. does not press hard on the pencil making it difficult to see. Kitman has taken B.K. to Boy Scouts and to summer camp and has observed him at those places and she never saw him socialize with other kids. He is always alone.

Kitzman said she has had to re-teach B.K. concepts. His academic grades were up and down. She testified that B.K. survived the 2013-2014 school year.

Under cross-examination Kitman stated that she does not have a certificate to teach special education. She had no prior experience in working with OCD or anxiety students. She did not tutor B.K. on a specific subject but she did help him with homework and at times re-taught him certain things.

Kitzman never reviewed any evaluations from the district. She never spoke to any of B.K.'s teachers and although she had concerns she never asked the parents for permission to speak to his teachers. She never reviewed B.K.'s curriculum. However, she does think it is important to know the child's curriculum in order to tutor him.

Kitzman stated that B.K. likes to read. B.K. read the Harry Potter books and could recall what he read about Harry Potter. From October to June B.K. was involved in perhaps two or three activities, for example, swimming, music, and Boy Scouts.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Effective January 13, 2008, the New Jersey legislature promulgated N.J.S.A. 18A:46-1.1 placing the burden on school districts to prove by a preponderance of the credible evidence that it is providing FAPE. Therefore the respondent district has the burden of proof.

It is undisputed that B.K. has a disability.

Having considered the testimony provided by the witnesses and the documentary evidence I **FIND** that the respondent school district proved by a preponderance of the credible evidence, that B.K. was not eligible for special education services for the 2012-2013 and 2013-2014 school years.

The New Jersey Administrative Code states that a student may only be eligible for special education and related services when it is determined that the student has one or more of the disabilities defined in the code and listed in N.J.A.C. 6A:14-3.5(c)(1) through (14). And, that that disability adversely affects the student's education performance and the student is in need of special education and related services. Ibid.

I **FIND** that B.K.'s disability did not adversely affect his educational performance. All of respondent's witnesses were educators who were involved in B.K.'s education and who had reviewed his school records, evaluations, assessments, and tests results. They all testified credibly and based on their own hands on experiences with B.K. that B.K. was performing commensurate with his cognitive abilities.

Of particular significance was the testimony of Kathleen Rotter, Ph.D., who was qualified as an expert in several areas of special education eligibility and interpreting evaluations. Dr. Rotter testified that B.K. had a full-scale IQ of 96, which is an average range IQ. She said that B.K. was learning and retaining the necessary skills and was

performing on par with his ability and with his peers. An average educational performance is expected of B.K. and that was exactly how B.K. was performing.

I also **FIND** of significance is Dr. Rotter's explanation and definition of when a student should be classified and provided with an IEP and special services and when a student should have a 504 Plan. She explained why the district provided B.K. with a 504 Plan and why that 504 Plan was adequate. Dr. Rotter's explanations were illustrative, clear concise and to the point.

I compared Dr. Rotter's expert testimony with that of petitioner's experts Lara Elizabeth Morse, M.D., and Terence Kearse, Ph.D., and I give more credit to Dr. Rotter's testimony. Credibility is the value that a fact finder gives to a witness's testimony. A credibility determination requires an overall assessment of the witness's statements in light of its rationality, internal consistency, and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718 (1963), cert. denied, Palermo v. United States, 377 U.S. 953, 84 S. Ct. 1625, 12 L. Ed. 2d 498 (1964).

The teachers and school staff that actually worked with B.K., such as Ms. DiCarlo, Ms. Disko, Ms. Guerrizio, and Ms. Glazner, all testified that B.K. was an average student doing average work and doing all he needed to do. They all acknowledged that he was quiet or shy, that he had OCD, was easily distracted, had difficulty transitioning, and at times needed extra time and direction to complete tasks. Even with these shortcomings they all agreed that B.K. understood the work he was doing, and was learning the skills he was being taught. They all testified that B.K. loved to read and was getting passing grades and was making academic progress. They all testified that although he was quiet and shy and not very socially active those things did not affect him in school either academically or socially and he was not failing any subject.

On the other hand, petitioner's witnesses testified that he was not learning and that he was not making academic progress because he had borderline auditory

processing disorder, OCD, articulation problems, social dysfunction, and ADD. However, I **FIND** nothing in the record or in B.K.'s academic records and documents to sustain those arguments. I **FIND** that these issues were not hampering his ability to make academic progress. I **FIND** the 504 Plan addresses B.K.'s deficits and accommodate his deficiencies to the point where he makes educational progress. He is not failing any subject and is overcoming his difficulties with the assistance of the 504 Accommodation Plan.

I **FIND** that B.K.'s disability did not adversely impact on his ability to learn and make educational progress he was not in need of special education services and the 504 Plan provided him the ability to access his education and make academic progress. B.K.'s 504 Plan provided him with OT, speech, extra time during testing, additional study guides, movement breaks, seating preferences, the use of fidgets, privacy folders, color coding, and the ability to socialize and have contact with his peers through the Lunch Club, I&RS group and the Friendship Club. He also was provided with assistance through the Homework Club. All of these things were employed not only to assist B.K. in achieving academically but socially as well. I **CONCLUDE** that the respondent district proved that it provided B.K. with what he needed to make academic progress in the fourth and fifth grades.

The purpose of Section 504 and its implementing regulations is to prohibit discrimination against disabled individuals. A review of the Act and its implementing regulations reveals that it provides a broader range of coverage than does the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. §§ 1400-1487. Like IDEA, Section 504 and its implementing regulations guarantee school age pupils who meet the eligibility criteria the right to a free, appropriate public education (FAPE) that is comparable to that required under the IDEA. 34 C.F.R. § 104.33.

In Hendrick Hudson District Board of Education v. Rowley, 458 U.S. 176, 203, 102 S. Ct. 3034, 3039, 73 L. Ed. 2d 690, 709 (1982), the Supreme Court stated that a school district satisfies the requirement to provide a FAPE to a disabled child "by providing personalized instruction with sufficient support services to permit the child to

benefit educationally from that instruction.” Neither the IDEA nor 504 require a school district to maximize a student’s potential or provide the best possible education at public expense.

In evaluating whether an FAPE was furnished one must make an inquiry into the individual student’s potential and educational needs. Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238 (3d Cir. 1999).

Also, 34 C.F.R. § 103.34 in relevant part states that qualified handicapped students are entitled to receive the same educational opportunities as other students within the district’s jurisdiction, and every school district is obligated to provide a FAPE to qualified handicapped students in the regular education environment. A school district shall place a student with a disability in the regular education environment unless it is demonstrated that the education of that student cannot be achieved satisfactorily, even with the use of support aids and services. This is clearly not the case with B.K. B.K. was working to his potential and making satisfactory progress.

I therefore **FIND** and **CONCLUDE** that B.K. did not need to be evaluated, classified and offered special education services through an IEP. I further **FIND** and **CONCLUDE** that the 504 Plan that was offered and implemented was sufficient and provided him with FAPE.

ORDER

For all of the foregoing reasons and authorities cited, it is **ORDERED** that petitioner's demand for a Special Education classification within the meaning of Individuals with Disabilities Education Act is hereby **DISMISSED**.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2014) 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.A. § 1415(i)(2); 34 C.F.R. § 300.516 (2014). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education.

October 2, 2015

DATE

CARIDAD F. RIGO, ALJ

Date Mailed to Agency

October 2, 2015

Date Mailed to Parties:

October 2, 2015

sej/lr

APPENDIX

WITNESSES

For Petitioner:

A.K.
D.K.
Lara Elizabeth Morse, M.D.
Terence Kearse, Ph.D.
Kelly Kitzman

For Respondent:

Bonnie Lowe
Maura Disko
Marjorie Murray
Traci Glazner
Frances Di Carlo
Melissa Guerrizio
Kathleen Rotter, Ph.D.

EXHIBITS

- P-1 IEP, Speech Language Services, Springfield Public Schools, Implementation Date: March 14, 2013
- P-2 Trinitas Children's Therapy Services, Occupational Therapy, Melissa Guerrizio, OTR, Date of report: 6/10/14
- P-4 Office Note, Abba L. Cargan, M.D. Pediatric Neurology, Date of Evaluation: November 15, 2013
- P-5 Letter from Dr. Meagan McGowan D.C., Dated: November 20, 2013
- P-11 CV for Dr. Lara E. Morse

- P-12 Letter, Institute of Neurology and Neurosurgery at Saint Barnabas, Lara E. Morse, Date of Evaluation: February 11, 2014.
- P-13 Pediatric Occupational Therapy Evaluation, Comprehensive Rehabilitation Center, Barnabas Health Ambulatory Care Center, Dated: February 14, 2014
- P-14 Pediatric Physical Therapy Evaluation, Comprehensive Rehabilitation Center, Barnabas Health Ambulatory Care Center, Dated: February 14, 2014
- P-16 Speech-Language Evaluation, Barnabas Health Ambulatory Care Center, Date of Evaluation: February 26, 2014
- P-20 Neurologist Test Summary, Saint Barnabas Institute of Neurology and Neurosurgery, Lara E. Morse, Date: May 22, 2014
- P-21 Letter from Timothy P. Kielty, Principal, to AK re: recommendation for summer school, Dated: May 2014
- P-25 Dr. Terry Kearse CV
- P-26 New Jersey Department of Education Title 34
- P-27 Dr. Kearse Report, March 2015

For Respondent:

- R-1 Occupational Therapy Present Levels of Academic Achievement and Functional Performance and Recommendations, dated June 10, 2012
- R-2 504 Plan, dated June 19, 2012
- R-3 Trinitas Change in Service, dated June 20, 2012
- R-4 I&RS Sign In Sheet, dated December 20, 2012
- R-5 Minutes from I&RS Meeting, dated December 20, 2012
- R-6 Summary of I&RS Committee Meeting, dated January 7, 2013
- R-7 Occupational Therapy Recommendations, dated May 31, 2013
- R-8 Occupational Therapy Present Levels of Academic Achievement and Functional Performance, dated June 10, 2013
- R-9 Occupational Therapy Progress Summary, dated June 2013
- R-10 Minutes from I&RS Committee Meeting, dated June 14, 2013
- R-11 Summary of I&RS Committee Meeting, dated June 19, 2013
- R-12 Emails between Bonnie Loew and Rebecca Salomon regarding 504 plan,

- dated June 19, 2013
- R-13 Correspondence to parent enclosing 504 plan, dated June 19, 2013
 - R-14 Correspondence to parent enclosing 504 plan, dated September 10, 2013
 - R-15 Correspondence to parent enclosing 504 plan, dated October 7, 2013
 - R-16 Occupational Therapy Consultation Report, dated October 30, 2013
 - R-17 504 Plan, dated November 4, 2013
 - R-18 Correspondence from parent to school requesting evaluation, dated November 4, 2013
 - R-19 Correspondence to parent regarding request for evaluation, dated November 5, 2013
 - R-20 Email from A.K. to F. DiCarlo, dated November 18, 2013
 - R-21 Child Study Team Evaluation Plan, Sign-In Sheet for Planning Meeting, and Parental Consent for Child Study Team, dated November 22, 2013
 - R-22 Summary of I&RS Committee Meeting, dated December 4, 2013
 - R-23 Maura Disko's handwritten and typed notes
 - R-24 Email regarding homework and folder, dated December 6, 2013
 - R-25 Email from A.K. to F.DiCarlo regarding medication, dated December 9, 2013
 - R-26 504 Plan, dated December 12, 2013
 - R-27 E-mails between A.K. and F. DiCarlo, dated December 16, 17, 2013
 - R-28 Psychological Evaluation conducted by Renee Altman, M.A., PD, NCSP, dated December 19, 2013
 - R-29 Email from A.K. to Ms. DiCarlo, dated January 6, 2014
 - R-30 Educational Evaluation conducted by Margie Murray, dated January 15, 2014
 - R-31 Teacher Input: Articulation and Phonology, dated January 17, 2014
 - R-32 Social Assessment conducted by John Campbell, dated January 27, 2014
 - R-33 Speech/Language Reevaluation conducted by Traci Glazner, MS, CCC-SLP, dated January 31, 2014
 - R-34 Invitation to Eligibility Conference, dated February 7, 2014
 - R-35 Classification Summary, dated February 11, 2014
 - R-36 Complete Audiological Evaluation and Auditory Processing Test Battery, conducted by Barnabas Health, dated February 21, 2014
 - R-37 Speech-Language Evaluation conducted by Barnabas Health, dated

February 26, 2014

- R-38 Neuropsychological Evaluation conducted by Lara E. Morse, MD, dated March 2014
- R-39 Occupational Therapy Services Re-Evaluation conducted by Melissa Vastola, OTR, dated May 9, 2014
- R-40 CogAT Scores
- R-41 2013-2014 Progress Report (Grade 5)
- R-42 Grade 4 and 5 Report Card
- R-43 NJASK Scores (2012, 2013, 2014)
- R-44 Curriculum Vitae of Kathleen M. Rotter, Ed.D.
- R-45 Expert Report authored by Kathleen M. Rotter, Ed.D.
- R-46 Pediatric Occupational Therapy Evaluation
- R-47 Pediatric Physical Therapy Evaluation
- R-48 Dr. Rotter's in-court diagram