



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 08941-19

AGENCY DKT. NO. 2019-30045

T.L. AND A.L. ON BEHALF OF S.L.,

Petitioners,

v.

**NORTH HUNTERDON/ VOORHEES
REGIONAL BOARD OF EDUCATION,**

Respondent.

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

Teresa L. Moore, Esq., for respondent (Riker, Danzig, Scherer, Hyland & Perretti, LLP, attorneys)

Record closed: April 1, 2021

Decided: May 14, 2021

BEFORE **JOHN S. KENNEDY**, ALJ:

STATEMENT OF THE CASE

On June 5, 2019, petitioners, filed for due process seeking an out of district placement, extended school year (ESY), and transportation.

PROCEDURAL HISTORY

The matter was transmitted to the Office of Administrative Law (OAL), where it was filed on July 3, 2019, as a contested case. N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. The hearing dates that were originally scheduled in this matter had to be adjourned due to the COVID-19 pandemic. During the COVID-19 shutdown, the district held an Individualized Education Program (IEP) meeting to propose a program for S.L. for the 2020-2021 school year. The petitioners filed an amended petition on July 29, 2020. It was agreed between the parties that the 2020 IEP would not be included in this litigation, but the Final Order would apply to 2019-2020 and the 2020-2021 school years. A hearing was conducted in this matter on August 25, 2020, August 26, 2020, September 8, 2020, October 16, 2020, and November 19, 2020. The record remained open to allow closing briefs to be submitted and additional testimony if necessary, until April 1, 2021.

FACTUAL BACKGROUND

The following facts were agreed upon have been submitted by both parties as factual findings pursuant to N.J.A.C. 1:1-15.11. Therefore, I **FIND** the following as **FACT**:

1. S.L. was born on December 18, 2003.
2. S.L. and his family live in the town of Clinton, New Jersey.
3. S.L. attended elementary school at Clinton Public School through sixth grade and received special education and related services under the disability category “autistic.”
4. On July 7, 2015, petitioners filed a petition for due process against the Clinton Public School District (“Clinton”).

5. After several days of hearing, petitioners and Clinton executed a Stipulation of Settlement that was incorporated in a final order entered by the Honorable Joan Bedrin Murray, A.L.J. on February 26, 2016.
6. In the summer of 2016, S.L. started attending Princeton Child Development Institute ("PCDI") during the ESY as placed by Clinton.
7. S.L. attended seventh and eighth grades at PCDI as placed by Clinton.
8. After eighth grade, effective July 1, 2018, S.L. became eligible to attend high school in respondent's regional high school district.
9. In high school S.L. has continued to be eligible to receive special education and related services under the disability category "autistic".
10. For the 2018-2019 school year, respondent offered S.L. an IEP, dated May 23, 2018, that included an in-district placement. (J-3.)
11. Petitioners rejected the May 23, 2018, IEP. On June 6, 2018, they filed a petition for due process against respondent. A hearing occurred on December 3, 2018, and December 4, 2018.
12. On May 2, 2019, petitioners and respondent entered into a Stipulation of Settlement that was incorporated in a final order entered by the Honorable Patricia M. Kerins, A.L.J. on May 9, 2019. (J-5.)
13. On May 20, 2019, respondent offered S.L. an IEP that offered an in-district placement. (J-2.)
14. Petitioners rejected the May 20, 2019, IEP. On June 4, 2019, they filed a petition for due process against respondent.

15. The case was scheduled for a hearing on December 16, 2019. That day the parties discussed and agreed to settlement terms subject to approval of the Board of Education, and the Board did not approve the settlement.

TESTIMONY

Jennifer Komoroski

Ms. Komoroski is a school psychologist employed by North Hunterdon-Voorhees Regional High School. She case manages approximately fifty students between the ages of fourteen and twenty-one. She has a degree in psychology and a master's degree in educational and school psychology. Ms. Komoroski was admitted by the court as an expert in school psychology and an expert in educating students with autism. It was Ms. Komoroski's opinion that the placement offered by the district in May 2019, at Voorhees High School Adult Transition Community (ATC) program would be the least restrictive placement for S.L. since educating students in their public high school allows access to specialized programming and typically developing peers. Komoroski first observed S.L. at PCDI when he was in eighth grade. Based on this observation, she felt that the district could appropriately educate him. The ATC program at Voorhees is an autism program which is broken up into a variety of classrooms, based on grade level, as well as needs of students. The program was developed in coordination with the districts Board Certified Behavior Analyst (BCBA), occupational and physical therapists as well as nursing staff so that it is accessible to all students and provides opportunities for students to take sensory breaks during the day. All ATC students have IEPs, and each student is monitored by the teacher and other staff in the classroom. IEP goals are updated at least annually. The program was developed to help prepare students transition into their adult lives.

Komoroski assisted in the development of S.L.'s IEP. The May 2019, IEP listed S.L.'s classes as special class, Autism, English, Math Science, Social Studies, Employment Orientation 1 and Physical Education (PE). (J-2.) All classes except PE were intended to be taught by a certified special education teacher. S.L.'s IEP included a personal aide to help facilitate the transition into the program and behavioral

intervention services and consultation. All aides receive crisis prevention and intervention (CPI) training which is a de-escalation strategy for students. Classroom teachers use applied behavior analysis (ABA) principles in their instruction including discrete trial training. They utilize whole group instruction and the program includes two monthly community-based trips which have included trips to the grocery store and local restaurants. These trips are important to familiarize students with their community.

An ESY program was offered for S.L. His parents visited the ESY program in the summer of 2019 and met the teacher who would have been teaching S.L. in the fall of 2019. No behavior plan was included in the May 2019, IEP as Komoroski did not see any difficult behaviors when she observed S.L. at PCDI nor were any difficult behaviors reported to her. The IEP did not include what supports were available to families and parents of students in the program. Komoroski believes that S.L. has unique needs, but those needs can be met in the district's program. It is her opinion that the community experience and interacting with same-aged general education neurotypical peers are valuable for S.L.

At the time the IEP team offered the program, Ms. Komoroski had only observed S.L. at PCDI for two hours. An IEP was offered for S.L. when he was in eighth grade for his ninth-grade year. Ms. Komoroski had information from the district, including what was his, at the time, current IEP that his previous case manager provided to her as well. Ms. Komoroski agreed that the amount of time a student is going to receive for each service should be in the IEP. Home programming was not offered in S.L.'s May 2019, IEP. (J-2.) Ms. Komoroski agreed since S.L. started at PCDI, he received intensive parent training and home programming. At the May 2019, IEP meeting, no one from PCDI felt it was a good idea to transition S.L. to the district. No one from PCDI was invited to the district to visit their program.

The only interfering behavior reported to Komoroski by PCDI was vocal stereotypy. She had all the documents she needed to develop S.L.'s IEP and agreed that PCDI provided her with the information she requested. S.L. has made progress in all the areas that his goals and objectives address and has made meaningful progress at PCDI. PCDI documented that progress through data collection, and they have shared

that progress with the district. S.L.'s IEP, J-2, includes one hour a week, with the BCBA working directly with S.L., which is a twenty-nine-hour reduction in BCBA services. According to Ms. Komoroski, the two hours of BCBA services that are in the IEP was the initial proposal for his transition.

The PE classes proposed in S.L.'s IEP could have between six to eight students, or up to sixteen students. This a combination of regular and special education students. There are no goals or objectives for S.L. in the electives and areas of interest section although the district was suggesting piano class. The maximum number of students that would be in the English, Math, Science, Social Studies and Employment classes proposed would be nine. Those courses are not taught in an ABA format. S.L.'s IEP does not indicate what type of ABA instruction he would receive nor how it would be taught. There is no behavior-modification plan or specific reinforcement system outlined in S.L.'s IEP. Ms. Komoroski recommended transitioning S.L. by attending PCDI three days a week, and the district two days a week. There are no goals and objectives regarding his transition in the IEP.

Carolyn Baumann, BCBA

Ms. Bauman is the district behaviorist. (R-2.) She has held that position for three years and has been with the district for eight years. She became a BCA in 2014 and her responsibilities include managing, creating, updating, changing as necessary, all the behavior intervention plans, to the student's specific plans in their IEP. She is also responsible to help teachers create skill acquisition programs for the students. Bauman trains any staff that must work with a student with a very specific behavior intervention plan. The PE teachers receive more training because of the level of students in the class. Ms. Baumann uses principals of ABA when training others and working with students with autism. Ms. Bauman was admitted by the court as an expert in ABA and working with students with autism.

Ms. Baumann has served on S.L.'s IEP team since May 2019, and was involved in developing his May 2019, IEP. (J-2.) She helped develop goals and objectives which were based off the progress reports from PCDI at the time. All the goals are

customized for S.L. Ms. Baumann observed S.L. at PCDI three times. Her April 2019, observation involved observing S.L. in the classroom and his schedules of reinforcement. (R-6.) It gave her a better understanding of what supports he was utilizing. Ms. Baumann observed S.L. on July 29, 2019, and her observation report is labeled. (R-7.) This observation was after the IEP was drafted in May to ensure the information, she had was still accurate. Ms. Baumann observed him a third time on September 25, 2019. (R-8.) The IEP offers sixty minutes per week of direct service from a BCBA. Ms. Baumann based this amount of direct service and consultative services from her observations and how S.L. worked and responded to the systems in place at PCDI.

Ms. Baumann intended to have a consult with S.L.'s teacher in the classroom whenever a new program is introduced, with S.L. present. Every teacher in the ATC program uses ABA techniques, and S.L.'s IEP references ABA techniques. (J-2.) ABA instruction was recommended for S.L. because it is proven to be the most socially significant and effective treatment for individuals with autism.

It is Ms. Baumann's opinion that the district could have provided S.L. with a free appropriate public education (FAPE) because "based off of students' programs that we've -- that we've had in place and that we currently have in place, and the individual skill acquisition programs that we have, and the level of support." (Tr. August 25, 2020, Page 210, line 24 – Page 215, Line 25).

The total time Ms. Baumann observed S.L. before the IEP was drafted on May 20, 2019, was approximately an hour and fifteen minutes. During that time, S.L. did not have any interfering behaviors. Ms. Baumann observed they were targeting social graces and task completion. PCDI informed her about vocal stereotypy, but she did not observe that behavior. PCDI gave her everything she asked for and Ms. Baumann agreed PCDI is a high-quality ABA program that follows the science and principals, and S.L. has made meaningful progress with the program. Ms. Baumann agreed that S.L. needed an aide to come to the district's program.

At PCDI, S.L., had a contract expectation, of what was expected of him, which are social graces, and that he answers politely, and he was reinforced based on his program completion. Ms. Baumann did not recommend that for his IEP. She agreed that during her April 2019, observation, the contract expectation was working for S.L.

Dr. Lisa Spano, BCBA

Dr. Spano is currently self-employed, and her company is called MG Behavioral Consulting. (R-9.) MG Behavioral Consulting conducts evaluations and functional behavior assessments, mostly in home and in school evaluations. Dr. Spano completes approximately forty-fifty program evaluations per year, and approximately ninety percent of those program evaluations are for students with autism. She has a bachelor's in psychology, a master's degree in educational psychology with a concentration in clinical children and adolescents, a master's in applied psychology, and a doctorate in clinical psychology with a concentration in developmental disabilities. (R-9.) Dr. Spano is a board-certified behavior analyst and obtained that certification in 2005. She was admitted by the court as an expert in ABA, as a BCBA-D and evaluating adolescent students with autism. Dr. Spano was also deemed an expert in the area of clinical psychology.

Dr. Spano is familiar with the program that S.L.'s local high school district offered to him for the 2019-2020 school year. (J-2.) She observed the classroom, interviewed the staff, specifically the behaviorist, the case manager and the teacher that was part of S.L.'s program. Dr. Spano specifically observed the high school classroom in the ATC program. In assessing that program for S.L., Dr. Spano interviewed the staff, observed the classroom, and reviewed his IEP. (R-10, R-11.) Dr. Spano opined that Voorhees High School can provide S.L. with a FAPE. She based this opinion off the assessment procedures that she completed, specifically, the vocational program they offer, called the employment opportunity program, the unified peer program they offer, and the community-based instruction offered. (R-10, R-11.) The vocational aspect of the ATC program assesses student interests, and they have a variety of employment opportunities. The peer program would allow S.L. to generalize the social skills he has learned at PCDI in a more natural setting and allow him to engage in real world

interactions. Dr. Spano feels S.L. needs more opportunities to engage in interactions with his typical developing peers. The community-based program would allow S.L. to have an opportunity to practice skills they have learned in school in a community setting. Dr. Spano observed S.L. at PCDI with his peers that have autism, and she thinks he needs to expand his access to additional peers. (R-10, R-11.)

Dr. Spano observed the ATC program at Voorhees two times, approximately in October 2018, and October 2019. She wrote reports each time. (R-10, R-11.) The techniques that the district was using included discreet trial instruction, visual cues, token economies and rewards, which are “all characteristics of an Applied Behavior Analysis Program.”

Dr. Spano believes the IEP offered to S.L. in May 2019, is individualized for him. (J-2.) She observed a program that could meet S.L.’s needs. She observed S.L. in the home and at the grocery store in 2018, and again in the home in 2019, while he was completing his visual checklists. (R-10, R-11.) S.L. had a contract which listed basic behavioral goals for when he was at the grocery store. S.L.’s mother reviewed the goals on the contract before entering the grocery store. They were basic goals such as use a friendly voice and be polite. During the parent interview, S.L.’s parents expressed that he was engaging in more unpredictable behavior in the summer months of 2019 and that his behavior became more stable as he started back with his school schedule. S.L.’s parents communicated to Dr. Spano that they required training for S.L. to learn. S.L.’s May 2019, IEP did not include parent training, and Dr. Spano testified that ideally the parents should receive “some kind of support.” (J-2.)

Dr. Spano observed S.L. at PCDI two times, once in 2018 and once in 2019. (R-10, R-11.) PCDI has a more restrictive setting for S.L. because there are no neuro-typical peers, there is no formal vocational program, there is no community-based instruction with his peers, and there is also the issue of no related services at PCDI. Dr. Spano believes that PCDI’s services are very limiting and she deems PCDI inappropriate for S.L.

Dr. Spano admitted that an IEP should contain all the services a student would receive, as well as the frequency and duration of those services. Dr. Spano was not aware that speech, occupational therapy and physical therapy were not offered services in S.L.'s May 2019, IEP. (J-2.)

Dr. Carol Fiorile, BCBA-D

Dr. Fiorile has an undergraduate degree from St. John's University in general education in math, grades seven through twelve. (P-33.) She has a masters from Adelphi University in special. education with an area of concentration in learning disabilities, and a PhD from Teachers College, Columbia University, in special education with an area of concentration in ABA. Dr. Fiorile is a doctorate-level BCBA. (P-33.) Dr. Fiorile is currently licensed in New York State as a special education teacher and a general education teacher. Dr. Fiorile has her supervisory and administrative license and she is a New York State licensed behavior analyst. (P- 33.) Dr. Fiorile had prior experience working in New Jersey public school districts. She conducts evaluations for parents who seek her services to make determinations as to the appropriateness of programming for their child. Dr. Fiorile has approximately four clients that she works with on a monthly/weekly basis conducting evaluations or providing direct instruction. Dr. Fiorile uses ABA when she is working with those students and has been involved in transitioning students from a private ABA school into a public-school program. (Tr. September 8, 2020, Page 27, line 10 – Page 32, Line 8). Dr. Fiorile has evaluated approximately 300 programs on behalf of a combination of school districts and parents.

Dr. Fiorile was first involved with S.L. during fall of 2018, when she observed him in his program at PCDI. (P-34.) After her observation of S.L. at PCDI, she had the opportunity to meet with Dr. Freeman, the educational. director at PCDI to ask questions. She then went to the high school with Dr. Spano that was recommended for S.L., which was followed by a visit to S.L.'s home. Dr. Fiorile went to a supermarket to observe S.L. (P-34.) Dr. Fiorile observed the class taught by Ms. Cummins and concluded that most of the instruction would be taught in small groups rather than individual instruction. She also observed the children in the class were being prompted

significantly, whereas when she observed S.L. at PCDI, the focus is developing his level of independence in terms of completing tasks or responding to instructional demands. She also observed that there were no behavior intervention plans in place and there was a lack of direct data collection occurring during the district's observation. Dr. Fiorile based her opinion off both of her observations; she testified there were many similarities between both observations, and she would have to see if changes in the classroom in 2019 were different than those in 2018. (P-34.) (Tr. September 8, 2020, Page 39, Line 13 – Page 45, Line 25.)

From Dr. Fiorile's November 2019, report, she found that S.L. has a lot of residual deficits that are consistent with children with autism. (P-36.) S.L. gets agitated and will have loud vocal protests. S.L. also engages in "property destruction" where he will swipe things off the table and toss things around the room. (P-36.) S.L. will jump up and down on his seat a lot and will repetitively obsess about different topics. Unless you treat those specific obsessions effectively, the student will be limited in their ability to appropriately engage with instructional opportunities and therefore their progress toward goals is limited. S.L. is very impacted by his autism, as he is functioning at about a second-grade level. (P-36.) He is working at an instructional level at second grade for math and around the same for reading. (P-36.) Dr. Fiorile also conducted observations of videos that were taped by PCDI in November 2019, that totaled sixty-five minutes. (Tr. September 8, 2020, Page 46, Line 1 – Page 51, Line 4.)

According to Dr. Fiorile, the IEP that was proposed for S.L. from the district is not a sufficient program. (J-2). She disagrees with Ms. Bauman's statement in the IEP that S.L. does not need a behavior intervention plan because one was not provided to her by PCDI. The IEP also has no mention of parent training or counseling which has been an integral component of S.L.'s program at PCDI according to Dr. Fiorile. S.L.'s IEP was also missing a transition plan. (J-2.) There was a schedule incorporated which stated S.L. was to attend PCDI either two or three days a week, and Voorhees High School either two or three days a week, but no plan on how S.L. was to transition into his new school. (J-2.)

Dr. Fiorile opined that S.L. was not ready for a less restrictive environment based on her observations, as he did not have the prerequisite skills for such. Dr. Fiorile had concerns about the size of the high school he was transitioning to, as he was coming from a very small setting, to a very large one. (J-2.) (Tr. September 8, 2020, Page 52, Line 2 – Page 57, Line 25.)

Dr. Fiorile observed the district program in September 2019. (P-36.) She observed the teacher and the five students that were present. Dr. Fiorile was informed that the lesson was going on for a month and a half and most of the students were not able to answer the questions. Therefore, it is Dr. Fiorile's opinion that the students are not learning to a mastery level of criterion which is extremely important in an ABA program. (P-36.) Dr. Fiorile observed Ms. Baumann having trouble getting a student to make eye contact with her. She also observed a boy who was emitting "motor stereotypies" such as wiggling his fingers and things under his desk; however, the teachers could not see that.

At PCDI, a BCBA is always in the room with S.L. Dr. Fiorile feels that is necessary because his problem behaviors, and the protocols at PCDI are extremely systematic in terms of their behavior intervention techniques. (Tr. September 8, 2020, Page 64, Line 9 – Page 70, Line 19.)

S.L.'s IEP designated a personal aide. (J-2.) The individual aide would require training and expertise to get S.L. around the building and responding appropriately to his behaviors. Dr. Fiorile was concerned after her observations because there were inappropriate behaviors that were not being addressed in the district. (P-36.) Dr. Fiorile testified that the student should receive one hour of supervision by a BCBA for every five hours of instruction. (P-36.)(J-2.) S.L.'s IEP included that he would receive one hour per week with BCBA supervision specifically for him. (J-2.) Dr. Fiorile opined that what was offered to S.L. was not an intensive ABA program, therefore, it is inappropriate for S.L. (P-36.) (Tr. September 8, 2020, Page 64, Line 9 – Page 70, Line 19.)

At PCDI, S.L. has a reinforcement system that travels around with him the entire day, and he gets clicks for appropriate behaviors. There was no reinforcement system

set forth in S.L.'s IEP. (J-2.) Dr. Fiorile found it concerning that a reinforcement system was not in the IEP because a reinforcement system is usually written in a behavior intervention plan. S.L.'s IEP did not contain a sufficient transition plan. (J-2.) The IEP contained that the district would conduct baseline assessments once S.L. transitions into the district.

Dr. Fiorile did not recommend for S.L. to be exposed to neurotypical peers. During Dr. Fiorile's visit to ATC, she saw the staff sitting with the students helping them with their work. Dr. Fiorile testified she observed one of the teachers in the ATC program using a tally counter. (P-34.) (Tr. September 8, 2020, Page 95, Line 1 – Page 103, Line 4)

S.L.'s mom has a lot of good skills; however, she does not think she knows how to implement new programs. Therefore, she needs to continue to work on new skills that S.L. needs to work towards in establishing independence in the home and community. Dr. Fiorile observed S.L.'s mom implementing specific programs that she had been trained to implement. Dr. Fiorile does not know, at this point in time, when it would be appropriate for S.L.'s parents to stop parent training. (Tr. September 8, 2020, Page 127, line 4 – Page 134, Line 23.) Dr. Fiorile does not feel the goals in the IEP will be implemented because these goals are meant for a very small group instruction or one-to-one instruction. (J-2.) She opines that the only effective way, for some of the goals in J-2 to be delivered is through one-on-one teaching. If the teacher does not know how to run discrete trial instruction, these goal's will likely not be implemented. (Tr. September 8, 2020, Page 145, Line 3 – Page 150, Line 25.)

A.L.

A.L. is S.L.'s mother, and S.L. is her biological child. She first noticed developmental issues with S.L. when he was a baby. S.L. was diagnosed with autism in early 2007, he was three years old at the time.

Before PCDI, A.L. could not teach S.L. anything and she did not know how to make him quiet and attentive. S.L. had a lot of interfering behaviors which caused a

disconnect with A.L. When S.L. would get upset, he would take his nails and scratch his face or rake his nails across his arm. S.L. started PCDI the summer of 2016, and he was going into seventh grade. (Tr. September 8, 2020, Page 179, Line 1 - Page 184, Line 6.) Within the first few months at PCDI, S.L. was quiet at a desk and following directions. A.L. was able to go into the school once a week and watch S.L. with his teachers for parent training. The teachers would teach A.L. about his program. The teachers would also do home visits. A.L. would watch the teachers talk to S.L. and how they use his motivational system. During a home visit, if A.L. was having trouble with S.L. during dinner, the teachers would observe S.L. at dinner and come back and implement a system and teach A.L. how to do it. A.L. signs off on all of S.L.'s programs at PCDI and she gets a copy of the program. (Tr. September 8, 2020, Page 184, line 9 – Page 187, Line 25.)

A.L. was first contacted by North Hunterdon-Voorhees in approximately December 2017, about S.L. becoming a part of the school district. She and her husband visited Voorhees in December and met with the assistant principal and observed two different classrooms. A.L. asked to see each student's motivational systems and they all had the same system at their desk, which is not individualized. A.L. did not see a lot of data being taken. A.L. witnessed a lot of verbal prompting which is something S.L. became dependent on in his elementary years. She did not see any behavior-specific praise. PCDI taught A.L. to give behavior-specific praise to S.L., as it was something he needed. A.L. also witnessed the unified peers in the classrooms, where they would sit next to the students and prompt them. A.L. does not feel this would benefit S.L. (Tr. September 8, 2020, Page 188, line 1 – Page 195, Line 1.)

A.L. is not concerned that S.L. does not have exposure to typical peers at PCDI. S.L. has a typical brother, cousins, and other friends. S.L. had experience with typical peers in elementary and middle school and he did not learn any social skills from those experiences. S.L. does not gain any social skills from less structured interactions. S.L. learns by having things broken down and explicitly taught.

In 2019, A.L. was given an IEP proposal. (J-2.) Prior to the meeting, the district did not discuss a transition plan for S.L. with A.L. A.L. and T.L. went to observe the district program in the summer of 2019. A.L. did not feel confident in this program, as she described what she saw as terrifying. (Tr. September 8, 2020, Page 195, Line 7 – Page 206, Line 25.) A.L. feels parent training is important because S.L. is changing, and she does not know how to alter his programs or motivational systems.

S.L. recently had to get an electroencephalogram (EEG) and a Magnetic resonance imaging (MRI) because he started having seizures. The PCDI staff assisted her, over zoom, on how to practice sitting still and reward him for doing so, in preparation of his MRI. He also had to learn how to put a mask on. A.L. had a motivational system in place for S.L. to stay quiet and attend to a movie. The home programmer and the BCBA would come for home visits, but sometimes only the BCBA would come. (P-21, P-42, P- 43.) A.L. has been trained to use behavior contracts, which included a set of rules for S.L. to follow. (Tr. September 8, 2020, Page 207, Line 8 – Page 213, Line 11.)

A.L. feels she still needs training, as she does not know how to react to some of S.L.'s behaviors. The program that was offered for S.L. at PCDI this year included a BCBA being available to him all day. When the school went to remote learning, A.L. saw how fragile his progress is because of how he was learning on the computer versus how he was at PCDI. S.L. was slamming the monitor trying to get away from the computer. Overtime, S.L. has gotten better with virtual learning, and parent training continued throughout the lockdown. S.L. still gets very upset and does not necessarily know how to calm down. He will also hit and scratch. Without a plan, S.L. would not know how to fill his time. He would either pace around or rip apart leaves outside. (Tr. September 8, 2020, Page 213, Line 16 – Page 218, Line 5.)

Dr. Amanda Freeman, BCBA-D

Dr. Freeman has a Bachelor of Science degree from the University of Maryland, a master's degree in applied behavior analysis from Caldwell University, and a Ph.D. from Caldwell University. (P-27.) Dr. Freeman is a BCBA and has a certificate to

provide BCBA supervision. (P-27.) Her entire career has been devoted to using applied ABA with children with autism. (P-27.) From 2007 to 2021, she worked at PCDI as a home programmer data analyst and then moved on to a trainer position where she was responsible for training staff, developing goals and objectives for students, and training staff to provide home programming. (P-27.) In Dr. Freeman's current role, she is responsible for training staff in ABA. Dr. Freeman collaborates with trainers who are responsible for generating goals and objectives for the student's IEPs. Dr. Freeman helped develop goals for approximately twenty to thirty students per year for the past eight years. (Tr. October 16, 2020, Page 8, line 1 – Page 12, Line 15.) Dr. Freeman was determined by the court to be an expert in ABA, on the development of goals and objectives for students with autism using ABA, and on the evaluation of programming for students using ABA. (Tr. October 16, 2020, Page 12, Lines 17-21)(Tr. October 16, 2020, Page 17, Lines 15-16.)

Dr. Freeman first met S.L. when he arrived at PCDI in 2016. When S.L. first arrived to PCDI, he was disengaged, did not make eye contact, and had difficulty attending to tasks that were presented to him. Dr. Freeman also observed S.L. in his prior district program at Clinton Public Schools. There was no social interactions with peers (at Clinton), and he was very disengaged. When S.L. arrived to PCDI, they collected data in five-minute intervals and scored him on whether he was engaged in non-contextual vocalizations and that data was 100 percent initially, meaning there was at least one non-contextual vocalization every five minutes. It took approximately six months to get that number near zero by simultaneously teaching many pro-social responses to replace those behaviors. Those behaviors interfered with S.L.'s ability to learn. At PCDI, every student is assigned a data analyst and a home programmer. You must have a bachelor's degree to work at PCDI, but there is no specific educational background you must have to be a trainer at PCDI. In S.L.'s module, Ms. Lagatic Kassalow, BCBA, serves as the trainer and Dr. Freeman serves as the consultant. (Tr. October 16, 2020, Page 18, Line 19 – Page 21, Line 12.)

During the 2019/2020 school year, before COVID-19, S.L. required a one to one when he first started. Throughout the school year, S.L. improved where he did not always require a staff member to be standing next to him. They started to introduce

S.L. to some small group instruction within the last school year. S.L. has a history of displaying aggression, however, Dr. Freeman noted that they have been able to maintain that at relatively low levels using immediate feedback and designing an instructional program that suits his needs. S.L.'s curriculum needs to be highly individualized and tailored to him with a lot of opportunities for him to respond and stay engaged. PCDI has been involved in the transition of students from PCDI to less restrictive environments. Dr. Freeman opined that S.L. is not ready to transition to a less restrictive environment. No one spoke to her or anyone else at PCDI about whether S.L. was ready to transition. A few prerequisite skills Dr. Freeman finds are necessary for that transition are maintaining low levels of disruptive behavior, general direction following, and whether the student needs immediate feedback pertaining to responses. (Tr. October 16, 2020, Page 22, Line 10 – Page 25, Line 17.) In spring of 2019, S.L. did not display responses at the criterion level for him to transition into a less restrictive environment. They have seen more erratic behavior out of S.L. because of his recent seizure activity, so they redesigned some of the systems in place to address those behaviors. The IEP that was proposed to S.L. is not appropriate for him because there is only two hours of behavioral intervention services per week, and S.L.'s instructors need to be trained to deliver behavioral interventions for every portion of his school day and staff receive training on that daily. (J-2.) Dr. Freeman is not concerned that PCDI does not have typical developing peers because she believes S.L. does not have the prerequisite skills to learn from typical developing peers. For students to really learn from typically developing peers, there must be some level of observational learning and modeling. There is no data that suggests that this will be a beneficial teaching strategy for S.L. (Tr. October 16, 2020, Page 25, Line 18 - Page 30, Line 14.) Dr. Freeman asserts family training is extremely relevant to S.L.'s program and his progress. Parent training benefits S.L. at home, and it facilitates his learning at school. Dr. Freeman was present when the district's BCBA visited PCDI prior to the May 2019, IEP. She asked about whether disruptive behavior occurred, and she observed the motivational system they had in place. S.L.'s May 2019, IEP did not have a behavior intervention plan (J-2) or motivational system or list any specific behavioral supports. Dr. Freeman explained behavioral supports differ from behavioral interventional plans because behavioral interventional plans are specifically designed to reduce behaviors while behavioral supports work to maintain behaviors when they are in a low point. Dr.

Freeman feels that taking away the behavior systems that are in place would likely result in an increase in disruptive behaviors. S.L.'s autism still significantly impacts every area of his life. (Tr. October 16, 2020, Page 36, Line 5 – Page 42, Line 14.)

Dr. Freeman was concerned about the district's plan to essentially remove S.L. from activities he did not understand. In a group, S.L. can learn basic and rote concepts, but what he can do effectively in a group setting is limited. Ms. Lagatic Kassalow, the BCBA, spends approximately eighty percent of her day in S.L.'s module. There are five students within the module, and three to four additional staff members, one of whom is also a BCBA. Dr. Freeman was concerned that S.L.'s IEP included English, Geometry, Chemistry, American History and unified PE, but there were no goals that corresponded to each of those areas. (J-2.)

Dr. Freeman believes S.L. has appropriate peers to learn from at PCDI. S.L. has made the most progress with the use of language. Dr. Freeman has seen S.L. walk through the hallway independently to go complete his self-care routine without a teacher right behind him. The peers in S.L.'s module typically all have stronger vocal repertoires than he does and tend to learn academic content quicker than he does. (Tr. October 16, 2020, Page 53, Line 23 – Page 60, Line 23.)

Dr. Freeman attended S.L.'s May 2020, IEP meeting via Zoom, and S.L.'s May 2019, IEP meeting at PCDI. S.L.'s progress reports are sent to the district, and during their observations, PCDI thoroughly discusses all procedures in place, as well as motivational systems. PCDI supplied its written programs for S.L. to the school district. When S.L. has incidents of aggressive behavior or tantrums, it is maintained within certain programs, which is then summarized within the progress reports sent to the school district. S.L. had a serious incident of aggression in August 2019. S.L. was throwing materials and there was aggression towards a peer. The incident did not result in an injury and they do not feel the need to alert the district each time this occurs. There was an observation by the district soon after the incident. PCDI documents incidents of aggression, however, not all incidents are documented in the reports which are sent to the school district. (Tr. October 16, 2020, Page 73, Line 8 – Page 78, Line 12.)

Christa Lagatic Kassalow, BCBA

Ms. Lagatic Kassalow has a bachelor's degree in sociology from Douglass College at Rutgers University, and a master's in education through Rutgers University. (P-29.) Her BCBA coursework was completed through Florida Institute of Technology and the coursework related to her standard supervisor, New Jersey supervisor certificate, New Jersey school principal certificate, was completed through New Jersey EXCEL. (P-29.) Ms. Lagatic Kassalow is a BCBA and obtained that certification in May 2014. (P-29.) Ms. Lagatic Kassalow's first job specializing in working with people with autism in the field of ABA was in 2007. (P-29.) She started at PCDI in July 2011. (P-29.) She was hired as a data analyst and home programmer, working with students in the early intervention or preschool module. Over the course of her career at PCDI, she has since moved into the role of a trainer, which began in July 2017. She has also obtained responsibilities as the assistant principal to PCDI. Ms. Lagatic Kassalow spends approximately thirty to forty percent of her day in the classroom either observing students and teachers working together, providing feedback about programs that are implemented, teaching strategies that are in place, or otherwise working directly with students and providing direct service on their educational programs. She also meets regularly with her consultant to discuss matters where additional observation is warranted. Christa Lagatic Kassalow was determined by the court to be an expert in the development of programs for students using ABA and ABA programming for students with autism. (Tr. October 16, 2020)(Page 139, Lines 21-25 – Page 140, Lines 1-5.)

The testimony by this witness reiterated the complex needs of S.L. and the significant level of training and expertise needed to run an appropriate ABA program for him. S.L.'s program is supervised by Ms. Lagatic Kassalow, Dr. Freeman, and another BCBA who is full time in the classroom. She testified that the parent training component is necessary for S.L. to make meaningful educational social and behavioral progress. Ms. Lagatic Kassalow has worked with S.L. every day. She is aware of his strengths, weaknesses, and his areas of deepest need. Not a single witness from the District chose to talk about S.L., only their program.

FINDINGS OF FACT

In order to assess credibility, the witness' interest in the outcome, motive or bias should be considered. Furthermore, a trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

Having considered the testimonial and documentary evidence offered by the parties, the testimony of Dr. Freeman appeared on its face to be the most credible. She has worked the most with S.L. as opposed to the limited observations of the district's experts. She has the most data to assess S.L.'s individual needs. I also deem Dr. Fiorile to be a credible witness. She has been working with students with autism since the mid-1990s and has been involved with S.L. since 2018. All three witnesses for the district presented similar testimony regarding S.L.'s proposed program and all three of the witnesses felt the district program was adequate to meet S.L.'s specific needs. Dr. Spano gave cursory approval of a program while simultaneously agreeing that it lacked critical aspects. Based on the levels of interaction each witness has had with S.L., I give more weight to the expert testimony of Dr. Fiorile and Dr. Freeman.

Having considered the testimonial and documentary evidence presented I **FIND** the following additional **FACTS**:

The district proposed that S.L. be transitioned from PCDI to Voorhees High School at the start of the 2019-2020 school year. (J-2.) The parents asked that S.L. remain at PCDI. The offered district program and services are not different than the one offered for the 2018-2019, J-4, besides adding a one-to-one aide. (J-2.) The program is not rooted in ABA, there is no transition plan, no parent training, no home program, no behavior plan, no behavioral interventions, and there is a reduction of the BCBA supervision of S.L.'s program by twenty-nine hours. (J-2.) The district failed to

give a data based or educational reason for this change in placement and reduction of services. (J-2.)(Tr. September 8, 2020, Page 195, Line 7 – Page 206, Line 25.)

S.L. requires a full day intensive educational program based on the science and principles of ABA. S.L. is acquiring skills that he did not acquire during his many years in public school. The IEP references the district's hired expert Dr. Lisa Spano, but fails to refer to Dr. Carol Fiorile's, BCBA-D, reports. (P-34, P-36.)(J-2.)

S.L. began to experience seizures and had to get an EEG and an MRI. S.L.'s first seizure was on April 22, 2020. The MRI was on May 8, 2020, the EEG was put on his head June 22, 2020, and taken off on June 25, 2020. He began medication in early May and the parents had to change it a month later because of behavioral reactions. PCDI staff assisted A.L., over Zoom, on how to practice sitting still and rewarding him in preparation of his MRI.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

The Individuals with Disabilities Education Act (IDEA), as amended by the Individuals with Disabilities Education Improvement Act (IDEIA), 20 U.S.C. §§ 1400-1482, provides the framework for special education in New Jersey. It is designed "to ensure that all children with disabilities have available to them free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living." 20 U.S.C. § 1400(d)(1)(A); see generally id. § 1400(c), (d) (describing need for, and purposes of, the IDEA). A state may qualify for federal funds under the IDEA by adopting "policies and procedures to ensure that it meets" several enumerated conditions.

This Act requires that boards of education provide students between the ages of three and twenty-one who suffer from a disability with a free appropriate public education, or FAPE. In fulfilling its FAPE obligation, the Board must develop an IEP for the student, and the IEP must be reasonably calculated to confer some educational benefit. Hendrick Hudson District Board of Education v. Rowley, 458 U.S. 176, 192, 73

L.Ed. 2d 690, 703, 102 S.Ct. 3034 (1982) (Rowley). The Third Circuit Court of Appeals has clarified the meaning of this "educational benefit." It must be "more than trivial and must be significant" and "meaningful." Polk v. Central Susquehanna Intermediate Unit 16, 853 F.2d 171, 180 (3rd Cir. 1988), cert. denied, 488 U.S. 1030 (1989) (Polk); Ridgewood Board of Education v. N.E., 172 F.3d 238, 247-48 (3rd Cir. 1999) (Ridgewood). In evaluating whether a FAPE was furnished, an individual inquiry into the student's potential and educational needs must be made. Ridgewood, supra, 172 F.3d at 247. In providing a student with a FAPE, a school district must provide such related services and supports as are necessary to enable the disabled child to benefit from the education. Rowley, 458 U.S. at 188-89. If an administrative law judge finds that a district has not made FAPE available to a student who previously received special education in a timely manner prior to his enrollment in a nonpublic school, the judge may require the district to reimburse the parents for the cost of that enrollment if the private placement is appropriate. N.J.A.C. 6A:14-2.10.

The Supreme Court also held that two factual findings must be made before awarding reimbursement for the costs of a unilateral placement: (1) the school district failed to provide a FAPE to the student, and (2) the placement selected by the parents was proper. School Comm'n of Burlington v. Dep't of Educ. of Mass., 471 U.S. 359, 369-70 (1985). Since the Burlington decision, its holding has been adopted by both Congress and the United States Department of Education. 20 U.S.C. §1412(a)(10)(C); 34 C.F.R. 300.403(c) (2005). It is also set forth at N.J.A.C. 6A:14-2.10(b) in that an ALJ may require the district to reimburse the parents for the cost of enrollment if the ALJ finds that the district had not made FAPE available to that student in a timely manner prior to that enrollment and that the private placement is appropriate. A placement may be found to be appropriate by an ALJ according to N.J.A.C. 6A:14-6.5 for placements in unapproved schools, even if it does not meet the standards that apply to the education provided by the district board of education.

Parents who are dissatisfied with an IEP may seek an administrative due-process hearing. 20 U.S.C.A. § 1415(f). The burden of proof is placed on the school district. N.J.S.A. 18A:46-1.1. The Board will satisfy the requirement that a child with disabilities receive a FAPE by providing personalized instruction with sufficient support

services to permit that child to benefit educationally from instruction. Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 203, 102 S. Ct. 3034, 3049, 73 L. Ed. 2d 690, 710 (1982). To meet its obligation to deliver a FAPE, a school district must offer an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. Andrew F. v. Douglas Cnty. Sch. Dist., 580 U.S. (2017); 137 S.Ct. 988; 197 LEd 2d 335. In Andrew, the District Court for the District of Colorado initially upheld the school denial of a reimbursement for an out of district placement. However, the Supreme Court reversed finding that an IEP should be appropriately ambitious in light of the child's circumstances, and "tailored to the unique needs of a particular child."

In Andrew F. v. Douglas County School District RE-1, 137 S. Ct. 988, 1001 (2017), the United States Supreme Court construed the FAPE mandate to require school districts to provide "an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." The Court's holding in Andrew F. largely mirrored the Third Circuit's long-established FAPE standard, which requires that school districts provide an educational program that is "reasonably calculated to enable the child to receive meaningful educational benefits in light of the student's intellectual potential and individual abilities." Dunn v. Downingtown Area Sch. Dist. (In re K.D.), 904 F.3d 248, 254 (3rd Cir. 2018) (quoting Ridley Sch. Dist. v. M.R., 680 F.3d 260, 269 (3rd Cir. 2012)). In addressing the quantum of educational benefit, the Third Circuit has made clear that more than a "trivial" or "de minimis" educational benefit is required, and the appropriate standard is whether the IEP provides for "significant learning" and confers "meaningful benefit" to the child. Andrew F., 137 S. Ct. at 1000–01; T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000); Ridgewood Bd. of Educ. v. N.E. ex rel. M.E., 172 F.3d 238, 247 (3d Cir. 1999), superseded by statute on other grounds as recognized by P.P. v. W. Chester Area Sch. Dist., 585 F.3d 727 (3d Cir. 2009); Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180, 182–84 (3d Cir. 1988). Hence, an appropriate educational program will likely "produce progress, not regression or trivial educational advancement." Dunn, 904 F.3d at 254 (quoting Ridley, 680 F.3d at 269).

Thus, the first issue is whether the district's proposed IEP provided FAPE. The testimony of petitioners' expert, whom I found credible, as well as S.L.'s mother demonstrates petitioners' argument that the significant needs of S.L. were not addressed in the proposed IEP and would not have been met in the proposed placement. S.L. had significant issues which led to his placement at PCDI. In addition to academic troubles, S.L. has severe autism and the IEP does not address his individualized educational needs. The IEP failed to provide specific goals and objectives on a social, emotional and academic level which would provide a significant and meaningful educational benefit to S.L. Moreover, the IEP did not provide any meaningful way to transition S.L. to the entirely new school environment, nor did it provide a behavior intervention plan or parental training which has been proven necessary at PCDI.

Although there should be a statement of measurable annual academic and functional goals with short-term objectives or benchmarks and the IEP should describe a program of individually designed instructional activities and related services necessary to achieve the stated goals and objectives (20 U.S.C. §1414(d)(1)(A)(i)(II)-(IV); N.J.A.C. 6A:14-3.7(e)(2)-(4)), those were not clear in the proposed IEP. Although the IEP should establish the rationale for the pupil's educational placement, the proposed IEP recommended S.L.'s placement in a school that was very large, with no meaningful way to acclimate him. Accordingly, I **CONCLUDE** that the proposed IEP would provide no meaningful educational benefit and is a denial of a FAPE.

CONCLUSION

Based on the evaluations and reports and based upon the past history of S.L., I **CONCLUDE** that the district's proposed IEP, did not provide S.L. with a FAPE. I further **CONCLUDE** that the IEP was not consistent with the observations of the petitioners' expert, the reports from the PDCI teachers, the parents' concerns and the recommendations of petitioners' experts. Further, I **CONCLUDE** that the IEP was not reasonably calculated to deliver a measure of progress deemed reasonable and beneficial given the special needs and specific requirements of S.L. Therefore, I

CONCLUDE that the petitioners met the standard in showing that the district's proposed IEP failed to provide FAPE.


ORDER

It is **ORDERED** that the relief requested by petitioner as set forth above, is **GRANTED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2019) 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 (2019). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education Policy and Dispute Resolution.

May 14, 2021

DATE



JOHN S. KENNEDY, ALJ

Date Received at Agency

Date Mailed to Parties:

JSK/dm

APPENDIX

WITNESSES

For petitioner:

Dr. Carol Fiorile
A.L.
Dr. Amanda Freeman
Christa Lagatic Kassalow

For respondent:

Jennifer Komoroski
Carolyn Baumann
Dr. Lisa Spano

EXHIBITS

Joint Exhibits:

J-1 Stipulation of Facts
J-2 May 20, 2019, IEP
J-3 May 23, 2018, IEP
J-4 May 23, 2018 draft IEP
J-5 Judge Kerins Final Decision Approving Settlement, dated May 9, 2019
J-6 December 3, 2018, Transcript for EDS 09665-18
J-7 December 4, 2018, Transcript for EDS 09665-18
J-8 2019-2020 PCDI Academic Calendar

For petitioner:

- P-1 Not Admitted
- P-2 Not Admitted
- P-3 Not Admitted
- P-4 Not Admitted
- P-5 Not Admitted
- P-6 Not Admitted
- P7 Not Admitted
- P8 Not Admitted
- P9 Not Admitted
- P10 Not Admitted
- P-11 Not Admitted
- P-12 Not Admitted
- P-13 Not Admitted
- P-14 Not Admitted
- P-15 Not Admitted
- P-16 Behavior contracts
- P-17 Not Admitted
- P-18 Progress Report, dated July 12, 2019
- P-19 Progress Report, dated March 21, 2019
- P-20 Not Admitted
- P-21 November 2019, Home Program
- P-22 November 2019, School Program
- P-23 PCDI Goal and Objectives, dated May 2019
- P-24 PCDI Home Programming Log for 2018-2019
- P-25 PCDI Home Programming Log for 209-2020
- P-26 Not Admitted
- P-27 Freeman CV
- P-28 Not Admitted
- P-29 Kassalow CV
- P-30 Not Admitted
- P-31 Not Admitted

- P-32 Not Admitted
- P-33 Fiorile CV
- P-34 Report of Fiorile, dated November 22, 2018
- P-35 Not Admitted
- P-36 Report of Fiorile, dated November 25, 2019
- P-37 Not Admitted
- P-38 Not Admitted
- P-39 Not Admitted
- P-40 Not Admitted
- P-41 Not Admitted
- P-42 PDCI Home Programming Summary for 2019-2020
- P-43 PDCI Home Programming Summary for 2020-2021
- P-44 Not Admitted
- P-45 Not Admitted
- P-46 Not Admitted
- P-47 Not Admitted
- P-48 Not Admitted
- P-49 Not Admitted
- P-50 Not Admitted
- P-51 Not Admitted
- P-52 PDCI Daily Schedules for 2019-2020

For respondent:

- R-1 Komoroski CV
- R-2 Bauman CV
- R-3 Not Admitted
- R-4 Photos of ATC wing
- R-5 Not Admitted
- R-6 Bauman Observation Report, dated April 12, 2019
- R-7 Bauman Observation Report, dated July 29, 2019
- R-8 Bauman Observation Report, dated September 25, 2019

- R-9 Spano CV
- R-10 Spano Observation Report, dated November 11, 2019
- R-11 Spano Observation Report, dated November 26, 2018
- R-12 Not Admitted
- R-13 Not Admitted
- R-14 Not Admitted
- R-15 Not Admitted