



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

**FINAL DECISION**

OAL DKT. NO. EDS 12122-17

AGENCY DKT. NO. 2017-26531

**K.O. AND D.O. ON BEHALF OF G.O.,**

Petitioners,

v.

**WESTWOOD REGIONAL BOARD**

**OF EDUCATION,**

Respondent.

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**Donald A. Soutar**, Esq. for petitioners (John Rue and Associates, attorneys)

**Isabel Machado**, Esq., for respondent (Machado Law Group, attorneys)

Record Closed: October 27, 2022,

Decided: November 2, 2022

BEFORE **DANIELLE PASQUALE**, ALJ:

**STATEMENT OF THE CASE**

This matter arose with the June 28, 2017, filing of a due process petition in accordance with the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1415, by K.O. and D.O. on behalf of their son, G.O. ("K.O. and D.O., or Petitioner(s) or mom"), who is classified as eligible for special education and related services. Petitioners assert that the Westwood Regional Board of Education ("Westwood", the "Board", or the

“District”) failed to offer G.O. an Individualized Education Program (IEP) that delivered a Free and Appropriate Education (“FAPE”) for the 2015-2016 and 2016-2017 school years. They have unilaterally placed him at York Preparatory School (“York”), a New York City non-special education school; seek reimbursement for the expenses there; and ask for compensatory education.

### **PROCEDURAL HISTORY**

The petitioner’ request for due process was received by the Office of Special Education Programs on June 26, 2017. The District filed an Answer on July 7, 2017. The contested case was transmitted to the Office of Administrative Law (“OAL”), where it was filed on August 21, 2017. That same day, an OAL Notice of Hearing was issued for a hearing date of September 7, 2017, with the Honorable Robert Giordano. What follows is a long procedural history that must be outlined in detail to explain the age of this case.<sup>1</sup>

Following the resolution period and settlement conference, the matter was assigned to the Honorable Joan Bedrin-Murray and a pre-hearing telephone conference was scheduled for September 14, 2017. The first hearing date in this matter was scheduled to take place before Judge Murray on January 24, 2018.

On November 16, 2017, through petitioner’s prior counsel, Staci J. Greenwald, Esq. requested that the January 24, 2018, hearing date be adjourned until after April 2018 due to medical issues involving the petitioners. A telephone conference to discuss the issue was held on November 22, 2017. At the conclusion of the call, a follow up telephone conference was scheduled for February 20, 2018. Thereafter, the matter was transferred from Judge Bedrin-Murray to me.

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<sup>1</sup> Please refer to C-1 which is my Order Directing a Video hearing dated August 12, 2020. In the interest of brevity and completeness, it sets out the entire procedural history up until that date. Many adjournments came before the case was assigned to me which comprehensively lays out the age of the case. Some is outlined above, and after the date of my order (C-1), the Procedural History is summarized above.

On February 19, 2018, Ms. Machado, on behalf of both parties, requested a two-week adjournment to engage in settlement discussions. On March 6, 2018, a hearing was scheduled in this matter for October 15, 2018, due to the availability of the parties.

On August 17, 2018, the petitioner, through Ms. Greenwald, requested an adjournment of the October 2018 hearing date until after February of 2019. A new hearing date was scheduled for February 25, 2019.

On October 15, 2018, I conducted my first the telephone conference where Petitioner again requested an adjournment of the February 25, 2019, hearing date due to additional medical issues. The February 25, 2019, hearing date was then converted into a telephonic status conference.

On June 24, 2019, John Rue, Esq., of John Rue & Associates, substituted into the matter as counsel for the petitioners. A telephone conference to select new dates was held on June 26, 2019. On July 2, 2019, the matter was scheduled for a hearing on October 9, 2019.

Additional pre-hearing telephone conferences were held August 27 and 28, 2019 during which hearing procedures were discussed. On August 27, 2019, I issued a Pre-Hearing Order, setting down hearing dates on October 9, October 29, and August 30, 2019, before me.

On October 21, 2019, Ms. Haley, on behalf of both parties, requested an adjournment of the October 29, 2019, hearing date. On October 30, 2019, the matter was then re-scheduled for hearing dates on December 10 and December 17, 2019. The December 10, 2019, hearing date was again adjourned due to objections over discovery disclosures.

Evidentiary hearings were finally heard in person on December 17, 2019, and February 28, 2020. A few weeks later, the COVID-19 Public Health Crisis Hit. I sought to have the hearing via Zoom. The District moved to bar the Zoom hearing due to perceived inequities since their witnesses appeared in person and I had already denied

a Skype request from York Preparatory School (prior to the Covid crisis). I heard the motion to bar the Zoom hearing on June 30, 2020 and denied same in an effort to keep the case moving fairly and expeditiously (See C-1). As a result, I heard the balance of the case via Zoom on November 2, 2020, and April 28, 2021.

Subsequently, the parties sought a settlement Judge and were again unsuccessful in settling the matter. As a result, we resumed. As another adjournment request was made by the parties, and we did not utilize the hearing date of June 29, 2021. Next, there were objections to testimony via Certification and July 29, 2021 was set as the next hearing date and subsequently cancelled by the parties.. For a period of time the parties were deciding whether we needed another date. At that point, the parties ordered transcripts, submitted briefs, got extensions for replies on or about May 16, 2022, and I scheduled oral argument, which was scheduled first on August 2, 2022, and then adjourned twice by the parties due to illness and conflicts. On October 27, 2022, I heard oral argument via Zoom at which point the record was closed accordingly.

## **DISCUSSION AND FINDINGS OF FACT**

### **Ray Renshaw, M.Ed., Director of Special Services**

#### **Development of IEPs and Degree of Parental Cooperation**

Mr. Renshaw is the Director of Special Services (“DOSS”), more importantly, he was directly involved with the drafting of the IEP and the program offered to G.O for eleventh grade (2015-16) (J5), as well as the subsequent IEP, for twelfth grade (2016-17) (J8). Renshaw has served as the Director of Special Services at Westwood Regional Board of Education since 2016. He became a special education teacher at Administrator Westwood starting in 2000 and later became a Special Services in 2013. He oversees the programming, ensures that the Child Study Teams (“CST”) are compliant with rules and procedures, and creates specialized programs for students with special needs. Renshaw holds a Bachelor of Arts in special education from William Paterson University and a master’s from Saint Peter’s College in educational leadership, administration, and supervision. He also holds a teacher of students with disabilities and principal’s

certifications, as well as a supervisor's certificate. Renshaw was directly involved in preparing G.O.'s IEP for the 2015-2016 (J5) and 2016-2017 (J8) school years and was very involved in corresponding with the parents to schedule their involvement for meetings and relevant evaluations and observations. Specifically, he encouraged their involvement in the process, especially given the fact that G.O. had not been in-district for so many years. (first grade). While he was not offered as an expert, **I FIND** that he is a professional with expertise and experience in special education, the testing and the surrounding procedures necessary for the compilation of an IEP.

Renshaw outlined the continuum of special education services available at Westwood Regional High School noting a variety of language and/or learning disabilities program. The most restrictive being a language learning-delayed ("LLD") program, and the TEAM ("Targeting Emotional Aptitude Mindfully") program, for kids that are struggling with anxiety, depression, and school refusal. This program has two (2) clinicians in the classroom and allows for students to start their day a little bit later and leave a little bit earlier. The next least restrictive There is a Pull-Out Resource Program, which is considered a special education class. This program has the same content as general education but includes accommodations as to pacing and content. As there was no dispute as to the content of these programs, and Mr. Renshaw testified credibly, dispassionately, and unrehearsed, **I FIND** them as **FACT** in this matter.

Renshaw continued directly and reliably that, based on G.O.'s needs, he would thrive in Westwood's In-Class Resource Program which he noted was the least restrictive option on the continuum of special education services that Westwood offers. He explained that in this program, there are two (2) teachers in each class – one (1) general education content-area certified teacher, and one (1) special education teacher. In many cases, they are dual certified, which was the case "for many of the special ed teachers that we were proposed for G.O." Because it is considered a general education class, he noted, the special education teacher's role is to level the playing field so that the kids that have IEPs can be successful. He continued that special education teacher, is "responsible for modifying instruction, maybe pulling small groups, supporting those students within the general education classroom and meeting their goals and objectives and putting forth the modifications in the IEP." Renshaw was aware that due to the prior

settlement agreement (the “2013 Settlement Agreement”), G.O. was placed at the Mary McDowell Friends Upper School for his 9<sup>th</sup> and 10<sup>th</sup> grades, the 2013-2014 and 2014-2015 school years.<sup>2</sup> The 2013 Settlement Agreement provided that Mary McDowell was to remain the “stay put” placement unless the parties agreed otherwise. He was also aware of his prior IEP and classification and became familiar with G.O.’s case as the information was amassed.

Renshaw continued that the proposed in-class resource program is appropriate for students with “really good skills like G.O., they’re able to handle the content, the rigor with just some support and modifications from the special ed teachers”. Each class has approximately fifteen (15) to twenty-two (22) students. Of those students, five (5) to seven (7) students on average have IEPs, but they like to keep it at about six (6) in the event that if during the year somebody is evaluated and qualifies, they have room and do not go over the cap of ten (10) classified students. Westwood also offered G.O. speech therapy and school-based counseling. Renshaw testified that G.O.’s CST Team determined that this program was appropriate for G.O.’s eleventh grade (2015-2016 school year) and twelfth grade (2016-2017 school year).

In order to reach this conclusion, Renshaw testified that during G.O.’s tenth grade at Mary McDowell, an evaluation planning meeting was scheduled for April 8, 2015, and is held to determine whether a student still qualifies for special education and related services and to determine which evaluations the District is going to conduct. Renshaw testified that these meetings are held every three (3) years by law unless the parties agree to waive it. He testified that Danielle Blakely, L.D.T.C., the district case manager, signed a request for records on April 8, 2015, from Mary McDowell, but the request was denied by the school, noting that they would only provide copies of G.O.’s records upon consent of the parents. Renshaw explained convincingly that this was “very” unusual because, as the LEA (“Local Education Agency”), the District is entitled to those records and usually

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<sup>2</sup> G.O.’s June 9, 2014, IEP for his 2014-2015 school year at Mary McDowell provided in relevant part that G.O. would be provided with:

- a) Integrated counseling once per month
- b) Integrated speech/language therapy twice per week for 40 minutes
- c) Small group and individual speech/language therapy once per week for 30 minutes
- d) Counseling once per month for 30 minutes.

out-of-district placements simply turn them over upon request. The only thing Westwood received from Mary McDowell was report cards, without any other information. As Renshaw was clear on this point, and it was not disputed, **I FIND it as FACT.**

Renshaw continued that the April 8, 2015, meeting was cancelled by G.O.'s parents and rescheduled for April 14, 2015. He candidly did not recall the reason. Then G.O.'s parents cancelled again, and the meeting was rescheduled for May 5, 2015. He continued credibly that the parents subsequently cancelled *this* meeting through their lawyer because they alleged, "as part of the reevaluation, the case manager does an observation." This observation, in which the case manager observes the student in the school program, is included within the IEP in the Present Levels of Academic Achievement and Functional Performance ("PLAAF") that the Districts prepare. Renshaw recalled, G.O.'s parents wanted to cancel that meeting because they wanted a copy of an observation report "that did not exist." Renshaw testified that the District would never provide a parent with an observation report – rather, the observation is included within the IEP, when the case manager writes a PLAAF. Renshaw continued that Ms. Blakely, an LDTC (Learning Disabled Teacher's Consultant), did, in fact, observe G.O. at Mary McDowell. This testimony is consistent with the law, was straightforward and consistent, corroborated by the documentary evidence, highly credible and as such and **I FIND it as fact** in this matter.

Consistent with the on-going pattern of delays, the May 5, 2015, meeting also did not take place, and the reevaluation meeting was again rescheduled by the parents for May 28, 2015. Renshaw stated that his position at that time – May 2015 – was the Supervisor of Special Services for the District. At that point, G.O. had not been in District since first grade. As such, making these requests for records, evaluations, and meetings were critical to develop an appropriate IEP.

On May 13, 2015, with a reevaluation planning meeting already scheduled for May 28, 2015, in Westwood, G.O.'s parents wrote to the interim Director of Special Services, Barbara Gemza, that G.O. had been accepted into York Prep's Jumpstart program, a general education school "with special education support." They requested that the District agree to place him there for the 2015-2016 school year and that they needed an

answer about this out-of-district placement by May 19, 2015, six (6) days later. Renshaw convincingly conveyed that he felt that G.O.'s parents were trying to "pigeonhole the District" into the placement without reevaluating G.O. Renshaw opined that he "should be fired" for trying to place someone before doing evaluations, since G.O. had not be reevaluated in "about five years" and they needed to get updated information. He emphasized logically that the District needed to complete the reevaluations before they could change his placement since G.O. had not been in District since 2007, his first-grade year. Renshaw testified that, regarding the previous reevaluation meetings that had been cancelled by G.O.'s parents, were usually cancelled through their attorney, Ms. Spar, or D.O. (mom) would reach out to him directly. As this is largely uncontested and corroborated by the documentary evidence and testimonial evidence of D.O. later on, **I FIND it as FACT.**

The parents finally attended the re-evaluation and planning meeting on May 28, 2015, where G.O.'s CST determined Psychological and Speech evaluations were appropriate based on G.O.'s needs. Renshaw testified that D.O. wanted to do private testing in addition to what the school was offering. On June 2, 2015, G.O.'s parents informed Westwood that they "reluctantly" consented to these in-district evaluations. Renshaw said that the District scheduled an annual review of the IEP meeting for June 9, 2015, where they would propose a program and placement for G.O. Renshaw noted that K.O. and D.O. were insistent about finding G.O. a new placement from Mary McDowell Friends School (Mary McDowell), which G.O. had attended since his ninth-grade year. Renshaw made it clear that the District needed to conduct their evaluations before they could find a new program and placement for G.O. in accordance with his training, experience, and legal requirements. He again emphasized that this is critical to determine the needs of the student before determining an appropriate placement. As Renshaw testified in an unrehearsed and professional fashion, and his testimony was consistent with the documentary evidence and the District's obligations in IEP preparation, **I FIND it as fact in this matter.**

He further noted that pursuant to a prior settlement agreement between K.O. and D.O. and the District, Mary McDowell was the stay-put placement if the parties did not agree on G.O.'s placement at the most-recent meeting. This fact is not disputed. On

June 18, 2015, about three (3) weeks after the reevaluation meeting, G.O.'s parents expressed concerns about G.O.'s enrollment at Mary McDowell. Renshaw noted that Mary McDowell reached out to the District about one (1) incident, but other than that he had not heard of any other issues with the school.<sup>3</sup> Despite this one (1) reported incident, Westwood continued to recommend Mary McDowell for G.O.'s placement, as they had not yet completed the evaluations, and this was the stay-put placement, as it is undisputed, **I FIND** it as **FACT**.

On June 4, 2015, Westwood finally received consent from G.O.'s parents to conduct the discussed evaluations. Renshaw testified that between June 9 and July 24, 2015, Westwood conducted the evaluations – well within the required sixty-day timeframe. Renshaw testified directly that G.O.'s educational evaluation revealed that his overall academic achievement was average. His skills tested between low-average and high-average. G.O. demonstrated superior range for writing skills. G.O.'s psychological evaluation revealed average cognitive functioning. G.O.'s behavioral assessment revealed low functioning in his attitude toward school, and a high level of social stress. Westwood conducted an educational, psychological and speech and language evaluations. [J-4]

Ms. Blakely conducted the educational evaluation. She is a Learning-Disabled Teacher's Consultant ("LDTC") and administered the Woodcock-Johnson IV Test of Achievement with selected sub-tests, Key Math 3, Test of Written Language IV, reviewed G.O.'s records, conducted an interview of G.O., observed G.O. in the classroom and did a Functional Observation. Ms. Blakely spoke to G.O. who stated that his goal was to go to college such as Boston University, Northeastern, Brown or Tufts and that he would like to go into consulting with Price Waterhouse Cooper in Corporate Support Services. [J-4 at p.2 Bates Stamp R0141.] Her scores reflect, as Renshaw described them above, and they are summarized in J-5 the initial IEP for 2015-16 (11<sup>th</sup> grade). Renshaw noted that she was in full agreement with the appropriateness of IEP as the Case Manager and the

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<sup>3</sup> On April 20, 2015, one of G.O.'s teachers notified the parents that G.O. had been the target of an incident by two classmates. G.O. later told his advisor at MMF that he was "sick and tired of being mistreated and ostracized by kids" at Mary McDowell. After this incident, the parents contacted York Preparatory School after learning of it from G.O.'s former classmates at Gateway. The parents then unilaterally placed G.O. at York for G.O.'s 11<sup>th</sup> grade (2015-2016) and 12<sup>th</sup> grade (2016-2017) school years.

individual who conducted the educational evaluation, as reflected in her evaluation and report (J4) and her comments listed in the IEP (J-5), as such I so **FIND**.

As an LDTC, Ms. Blakely confirmed the testing, as highlighted by Mr. Renshaw, that “when compared to others at his age level, G.O.’s standard scores are high average in phoneme-grapheme knowledge (115). G.O.’s Standard Scores are average in broad reading (93), basic reading skills (106), reading comprehension (96), reading fluency (90), broad mathematics (95), math calculation skills (96), math problem solving (99), and broad written language (92). G.O.’s Standard Scores are low average (compared to age peers) in written expression.” (J-5 at pg. 3 of 18 Bates Stamp R0260).

She highlighted that testing in Key Math 3 “G.O. came willingly to the testing sessions. He was conscientious during the evaluation and paid attention well. His effort was excellent. His confidence was good. G.O.’s overall Standard Score was a 97. According to Key Math, this score lies in the Average range. His standard score for Basic Concepts (98), Operations (105), were Average and Applications (85) fell on the Low Average Range. G.O. has a solid age and grade appropriate understanding of mathematical concepts and applications.” (Id.)

Lastly, Ms. Blakely’s testing revealed that “G.O.’s writing composite index was 125 in the Superior range. Combined with his Spontaneous Writing Score, his Overall Writing, composite Index was 126. This score is in the Superior range. There was no statistical difference between the two Composite Indices, meaning that his Spontaneous and Contrived Writing Skills are aligned in the Superior range.” (Id. At 4 of 18, Bates Stamp R0261.)

As for the Psychological Evaluation, in addition to what was noted above, another member of the CST, the Certified School Psychologist, Ms. Kristen Pahlow, M.S., EdM, NCSP, noted “G.O.’s psychological testing was completed in 1 session that was approximately 2 hours. G.O. came willingly with the examiner and appeared to work to the best of his abilities. Throughout testing, G.O. was observed to persevere and continue working when items became difficult for him. G.O. easily engaged in casual conversation with the examiner. He did not require prompting or redirection to remain on task

throughout testing. During the verbal tasks, G.O. was observed to initially provide more concrete responses and required prompting to expand on his ideas and provide more details, which he was often able to do. G.O. was observed to work at a slow pace and often stated he was still thinking when asked if he had an answer.” (J-5 pages 2-3 Bates Stamp R0259-60).

Again, her testing showed that his overall level of cognitive functioning pursuant to the Weschsler Adult Intelligence Scale-Fourth Edition (WAIS-IV) fell in the average range when compared with this same-aged peers. His verbal comprehension, short-term working memory as well as his visual processing abilities also fell in the average range. His processing speed abilities fell in the borderline range and are an area of weakness when compared to his cognitive abilities. (J-4 pg. 7 of 8, Bates Stamp R0161).

As for the Speech and Language Evaluation, in addition to what was noted above, Ms. Irene Zito, the speech and language pathologist, reviewed his current IEP and administered the CELF 5 and TAPS-3 tests. Her report is extremely comprehensive and included parental input. Notably, G.O.’s mom emphasized that she G.O. experienced “great anxiety and stress during the evaluation process” and thus questioned it’s “necessity.” Further, mom did convey to Ms. Zito that he has “no connection to peers outside of school” and did note that at his current placement at MMF they “do not teach students how to get along and treat people.” Her report detailed the parents’ concerns that G.O. “cannot be put in another isolating situation with few opportunities to develop friendships” and could not experience more “social/emotional setbacks.” There was no further detail offered. (J-4 page 2 Bates Stamp R0165). Ms. Zito included detailed comments from the MMF speech therapist, teacher comments, her behavioral and clinical observation and a summary of his pragmatic and interactional skills in addition to the test scores which all fell within the average range. She noted that “the tests administered are closely related and include reasoning skills that require G.O. to listen, prioritize what he hears, identify relationships and similarities, draw conclusions, problem solve and analyze information. Language reasoning necessitates an integration of communication skills including vocabulary semantics, syntax, and thinking. G.O. demonstrates a stable and adequately developed language profile. Average achievements are measured in

expressive and receptive language, language memory, and working knowledge.” (J-5 page 3 of 18, Bates Stamp R0260).

After the re-evaluations, the District scheduled an IEP meeting with G.O.’s parents and the entire CST for July 24, 2015 but the parents again cancelled. By then, G.O.’s parents had picked up the evaluations but did not attend the meeting. They rescheduled yet again for August 24, 2015, which G.O.’s parents again cancelled. Renshaw testified that the District then proposed August 31, 2015, which G.O.’s parents said did not work for them. Finally, they rescheduled for September 9, 2015. As Mr. Renshaw’s timeline matches that in the documentary evidence and is largely undisputed, **I FIND** it as FACT.

Renshaw identified the first IEP at issue (J5) which was dated final on September 9, 2015 and noted that G.O.’s parents did not consent to its implementation and rather unilaterally placed G.O. at York Preparatory School for the 2015-16 school year. It provided that G.O. was still eligible for special education services because he had a Specific Learning Disability (“SLD”) – and he was no longer classified under the category of communication impaired. The CST determined his new eligibility based on the discrepancy between G.O.’s general index and listening comprehension skills. The CST proposed Westwood Regional High School as his placement, with in-class resources for G.O.’s core classes. J-5 reveals the District also wanted to revisit the IEP in three (3) months because G.O. was transitioning back into the school district after so many years. Renshaw explained that this was their practice for any child coming back into the district, to make sure the child is well-supported and to make any changes or adjustments. He testified directly and credibly and exhibited an authentic desire to help G.O. find an appropriate placement wherever that might be, and thus **I so FIND**. He was prepared but unrehearsed and had what I noted as a “hands-on” understanding of this student and the chronology of this case, as a result, I gave his testimony enormous weight.

Renshaw noted that the IEP for 2015-16 (J-5) detailed that G.O. would have benefitted from an in-class resource (ICR) program for English, Math, Social Studies, and Science. He noted as the IEP did, that those ICR classes would have a content-area specialist general education certified teacher as well as a special-education certified co-teacher. It further detailed that his classes, which would have two (2) teachers would

have approximately fifteen (15) to twenty-two or twenty-three (22 or 23) students with approximately five (5) to seven (7) students with IEPs. This ICR classroom was recommended by the CST after his evaluations because “G.O. demonstrated great skills, an average range good solid IQ and had received As in his report cards from his previous schools.”

In compiling J-5, the CST considered G.O.’s strengths from his then current stay-put placement because he had not been in District for so many years. J-5 took into consideration his performance as noted by his MMF teachers as follows: (“Good work ethic and determination, kindness and concern for others, attention to details. Interests-plays basketball, soccer, bike riding, watches sports, member of a 4-wheeler club, interested in foreign cars. Career interest-consulting for PWC”). Conversely, K.O. and D.O.’s noted concerns include that York Prep School located in New York is the proper placement for G.O. for the 15-16 school year and have already unilaterally placed him there. In addition, D.O.’s concerns listed in J-5 also include (“G.O. remains an emotionally sensitive adolescent and as noted in his past evaluations and teachers’ reports, he is anxious-prone and highly sensitive to his language difficulties and their effect on his social communication skills.”) Additional strengths were listed by his teachers from Mary McDowell in all subject matters listed in detail under “Strengths of the Student” section of the IEP at J-5, page 4 of 18, Bates Stamp R0261. In their summaries, all subject-matter teachers were complimentary, and it should be noted he received straight A’s. All teachers reported progress. None reported that his disability affected his ability to participate in any of his classes, and none reported regression in any subject matter. His English teacher was especially detailed and complimentary noting his Points of Strength as follows:

G.O. had a very successful sophomore year in English. G.O. arrived to class on time and was well prepared each day, and he was a dependable contributor to class discussions. He was always quick to volunteer when I asked for students to read aloud, and he was thoughtful and considerate of his classmates. G.O.’s homework was always turned in on time, and it consistently reflected effort and attention to detail. Pretest and posttest data showed that G.O. was consistently able to learn new and unfamiliar vocabulary words throughout

the year. Even more impressive was his knack for incorporating these words into writing and conversation. As the year went on, G.O. grew more comfortable taking risks by offering answers even when he was unsure whether or not he was correct. By taking these risks, G.O. inspired his classmates to do the same, which helped to elevate the overall level of academic pursuit in the classroom. During class discussions and activities that required close readings of important lines or scenes from the novels we read this year, G.O. was an active participant and learned a great deal. He began to develop a real understanding of how paying close attention to literary elements like narrative voice, point of view, and symbolism can unlock deeper and more thought-provoking levels of meaning in a novel. A real highlight for G.O. in English this year was the level of effort he put into his second semester Independent Reading Projects. To begin with, he did two projects rather than just doing the one which was required. When he completed a first draft of a slideshow for his second project, focused on *To Kill a Mockingbird* by Harper Lee, G.O. asked if I could review it for him. Instead of saying yes, I took the opportunity to issue him a challenge. I asked G.O. if he felt comfortable taking a risk and working on this project and presentation with total independence, that way he could get a better sense of the level of work he could accomplish without receiving feedback and support in advance. G.O. considered it for a little while and then said he was ready for the challenge. On the day of his presentation, he did very well and showed that he has taken big strides toward becoming a more independent student.

[J-5, page 4 of 18, Bates Stamp R0261.]

Post-secondary education was expressly noted in J-5, with instruction for post-secondary education/training to be implemented by Westwood's guidance department during the 2015-16 school year. This included obtaining information regarding appropriate college programs and/or vocational training with visits and continuing adult education. It specifically stated that following graduation from high school G.O. would enter a college program. It continued that G.O. would also explore career options and programs leading to careers of interest. "G.O. will work part time during the school year and/or summers to gain work experience. (J-5 pg. 10 of 18 Bates Stamp 0267).

The IEP (J-5) also contained goals and objectives in all subjects and listed modifications for success in each of those core classes as well as age-appropriate goals and objectives in the areas of reading, writing, speaking, and listening. The stated intent was to provide G.O. with “an appropriate public education in the least restrictive environment.” The curriculum was to be modified and the instruction reinforced, which could be accommodated in this special-education setting. All of this is reflected in the “Rationale for Removal from the General Education Setting” section on the IEP. (J-5 page 15 of 18, Bates Stamp R0272). In addition, G.O. was also offered many modifications including but not limited to: extended time as needed (up to 100%), reading directions aloud, using visuals, graphic organizers and templates, verbal prompts, visual cues and guided questions for comprehension, a Multi-sensory approach where information is given verbally, visually kinestically (using manipulatives), to give him multiple experiences, etc. These are all included in the IEP at J-5, page 13 of 18 Bates Stamp R0270. As such, Renshaw was certain that the IEP was reasonably calculated to provide G.O. with meaningful educational benefit in light of his needs and potential.

Renshaw continued that the IEP (J-5) proposed that extended school year services were to be determined in Spring of 2016 based on G.O.’s transition into the District and expectation of retention of skills throughout the year. The IEP included a special alert stating due to G.O. being previously out-of-district, an IEP meeting was recommended within three (3) months of transition to the District to review the appropriateness of his goals.

Renshaw opined that because G.O. had very “solid skills”, and this proposed placement was more than appropriate. Westwood’s placement would also provide G.O. with study hall, which provides additional support and time to check-in with teachers to make sure that the student is on track. Renshaw noted that study hall was not included specifically in G.O.’s IEP because it is offered to all students. Renshaw also explained that G.O. would have been provided a laptop pursuant to his IEP. The CST put together a transition plan for coming back to the District – after G.O. enrolled in Westwood Regional High School, he would regularly go to special services with his case manager, Ms. Blakely, and would be encouraged to stop in at special services throughout day as

needed. Ms. Blakely an LDTC would be available at lunchtime to assist if needed, and staff would be available to help G.O. navigate the hallways between classes.

Renshaw concluded that the members of the CST incorporated their test scores and thorough evaluations into the IEP (J-5). It further reflects accurately, how and why the IEP was compiled to include in-class resource for his major subjects with the assistance of the special education co-teacher in the general education class as well as all of the other modifications, transition planning, and goals and objectives highlighted above. All of the evaluators, the parents, their attorney, Mr. Renshaw, their expert Lydia Soifer, Ph. D, and the entire CST discussed everything at the re-evaluation eligibility meeting and subsequently the IEP meeting. In short, he was certain that the IEP was reasonably calculated to provide G.O. with meaningful educational benefit in light of his needs and potential. Mr. Renshaw's expertise and experience in his roles as an educator and administrator as well as his personal observations and communications with G.O. and his family amounted to highly credible testimony as to FAPE and the parent's reluctant role in the scheduling of said evaluations and meetings, and I so **FIND**.

In short, Renshaw testified that he was confident that this placement based upon the new evaluations, a review of the records from the private school(s), and collaboration with the CST, this IEP would be a great fit for G.O. and would have provided him with FAPE, as G.O. had solid academic skills and A's on his report cards. [J-5 at page 15 of 18, Bates Stamp R0272.]

On October 1, 2015, Renshaw testified that the District sent a letter to G.O.'s parents to plan an observation of the District's proposed program for October 7th. In response, G.O.'s parents conditioned said observation on their request of the special education profile of the children in the class. Renshaw replied that they would never provide such profiles pursuant to privacy rights of those students. He testified that he did send G.O.'s parents course descriptions of a sample schedule, as G.O. was not a student at Westwood Regional High School. Renshaw testified, that G.O.'s parents subsequently cancelled the October 7, 2015, observation.

Proposed IEP for 2016-2017 School Year

Renshaw continued, that even though G.O. was not in the District and the petitioners had not signed off on G.O.'s 11<sup>th</sup> grade IEP (J-5), the parties convened again on August 19, 2016, to propose a program for G.O.'s twelfth grade (2016-2017) (J-8) school year. The District noted in the IEP that York had not provided information about G.O.'s academic performance other than a Report Card and Language Progress Report. Therefore, there were no progress reports on Goals and Objectives, nor was a PLAAF developed to determine G.O.'s present levels.

The District again proposed placing G.O. at Westwood Regional High School, and continuing G.O. with in-class resource for G.O.'s core classes, English and Math. At the meeting, Petitioners expressed concern regarding G.O.'s reading and writing skills, so the District added consultation with the District's reading specialist two (2) times a week. The District included the same transition plan for G.O. as the District had proposed in the previous IEP. The IEP also included Goals and Objectives for G.O. (J8)

However, in August of 2016, G.O. was already unilaterally enrolled for the 12<sup>th</sup> grade year at York Preparatory School., which the petitioners had committed to G.O. staying at as of March or April 2016. However, the District was again not notified of the petitioners' decision until August 23, 2016, after the IEP meeting. As the aforementioned facts regarding the events leading up to and including the IEP for the 12<sup>th</sup> grade (J-8) are corroborated by the documentary evidence and is largely not in dispute, **I FIND** them as **FACT**.

Renshaw's Testimony regarding the Out-of-District Placement at York Prep

On Oct 22, 2015, the District sent a letter to G.O.'s parents to visit York which went unanswered. On November 2, 2015, the District sent another letter to set up a time to observe G.O. at York Prep. G.O.'s parents said they would let them observe only after they got information about the proposed program (which Renshaw noted the District

already provided). Renshaw testified that G.O.'s parents finally said they could observe G.O. at York on December 3, 2015.

Renshaw observed G.O. at York, unaccompanied by any York staff. Renshaw explained that the first thing he noticed was that the school had very crowded and narrow halls. He then observed York's Jump Start program, which he noted was equivalent to a support study hall at Westwood Regional High School. He observed five (5) minutes of interaction between the teacher and each student. The teacher briefly checked-in with G.O. about a study guide.

Renshaw then observed York's Fundamentals of Writing class. He noticed that it was in the chapel, and that students took notes while the teacher did most of the talking. He counted thirty-five (35) students in the class and observed G.O. participate on eleven (11) occasions, correctly answering each time. Renshaw noticed that students shouted out the answers, and that kids who were raising their hands expressed frustration.

In G.O.'s English class, Renshaw counted thirteen (13) students and one (1) teacher. In this class, G.O. worked alone and did not have any peer interactions. In G.O.'s Algebra 2 class there were fifteen (15) students. Renshaw noticed that the teacher was quick, but G.O. kept up while other students did not. G.O. did not require extra time for a quiz that they were taking that day and finished before anyone else in the class.

Renshaw's general observations were that York was a physically small school and students struggled to get comfortable in their desks. He noted that all the classes had only one (1) teacher; comparatively – Westwood has better student-to-teacher ratio with twenty (20) students to two (2) teachers (one special education and one general education). He noted that G.O. was doing well, even though York did not offer any special education services.

Renshaw opined that the York placement, a prep school in New York City was not the least restrictive and thus inappropriate. Specifically, he found as noted above, there were no special education teachers, no special education program, no IEPs and inadequate supports. He added that Westwood offered more supportive services in the

least restrictive environment. Specifically, Westwood offered a better student-to-teacher ratio. Overall, Renshaw concluded that G.O. could have thrived and been successful at Westwood.

Finally, Renshaw testified that G.O.'s mother ultimately observed Westwood in November 2015, but he never heard back from the parents about that observation. The District met with the parents on August 19, 2016, to discuss the draft IEP (J8) for G.O.'s senior year (2016-2017 school year). Westwood recommended the same placement for G.O.'s twelfth grade, except English and Social Studies dropped off because he had met those requirements. Additionally, the District was willing to provide reading support, even though Renshaw did not think that G.O. needed it but was willing to do it because he was coming from out of District.

Renshaw was a knowledgeable, and highly credible witness who provided careful testimony and thoughtful responses on behalf of Westwood. He showed great patience in attempting to get information and reluctant cooperation from G.O.'s parents and conveyed that information as corroborated by the documentary evidence. **I FIND** he is a professional with expertise specific to the area of educational programming given his multiple roles prior to and including DOSS. As such, I gave his testimony enormous weight.

### **Dr. Ian Pervil, Fact Witness from York Preparatory School**

Dr. Pervil is a clinical psychologist in the upper division at Horace Mann School another private preparatory school in New York City. He testified as a fact witness in this matter and admitted he has no special education experience. Previously, he was a teacher and head of the English program at York for several years. He taught G.O.'s Psychology elective class in eleventh grade, and a Monsters and Superheroes in Literature elective in his twelfth grade. He is licensed as a Clinical Psychologist by the New York Department of Education but is not a licensed School Psychologist.

Dr. Pervil testified credibly to the typical class size and structure at York. He testified that York is not specifically a special education school and has both general

education and special education students in every class. He testified that he believed around 50% of the students at York received special education services, and that a large aim of the school was to get students admitted to a four-year college. He testified that students with special needs were candidates for a host of York's services, which consisted of preferential seating, laptop use, extra time on tests, and the Jump Start program. Dr. Pervil testified that the Jump Start program consisted of students being paired one-on-one and in small groups with a special education instructor that meets with the students before, during and after school. The instructor serves as a mentor to help problem solve and guide them through the educational program (including organizational skills, executive functioning skills, focus skills, and reading skills). Dr. Pervil testified that these meetings do not happen in the classroom. He testified that classes were divided by ability level – there were different tracks based on general ability, regardless of special needs. He testified that he vaguely remembers that G.O. might have been somewhere in the mid- to lower- track, but doesn't remember exactly, and noted that some of the students were not "universally" tracked – they could be honors in one class, and something else in another.

Dr. Pervil stated that there was one (1) teacher per class and that it was very rare to have a co-teaching class. In fact, there were no special education teachers in the classroom. He noted that the class sizes averaged anywhere between fifteen (15) and seventeen (17) students. He testified that the lower-level classes typically had somewhere from ten (10) to twelve (12) students. He testified that while York does not provide traditional psychological services, as a teacher and psychologist he acted as an informal counselor for kids who are in distress and helped them function in classes. While he did not have regular weekly sessions with the students, he would check in with them on an as needed basis to make sure that they were supported. He testified that if a student needed structured, outside therapy, York would make a recommendation to the parents to do that on their own, as it was not a service that York provided unless the school needed to do it to keep a child out of danger.

Dr. Pervil testified that he first met G.O. in 2015, when G.O. was a junior, and a student in his Psychology class. York does not provide what he would call "traditional" psychology services. Rather, the psychologists served more as counselors to provide

services for students in distress and help connect them to the appropriate psychological services to help them function in the classroom when problems or challenges arise. He also taught G.O.'s English elective when he was a senior, a class on Monsters and Superheroes. As G.O.'s teacher, he found G.O. to be earnest, hardworking, sincere, and dedicated. He testified that he remembers G.O. "exceptionally" because he did well in his classes, excelled at turning in assignments on time, doing all his reading, and asking questions. G.O. exhibited a genuine interest in the material and challenged himself. He testified credibly, that academically, G.O. did not need more help or support than his peers.

He did note that in his opinion, G.O. had trouble with communication – G.O. was limited in cues and perceptions but was also very precise. He testified that G.O. needed "very specific concrete language and prompting and direction in order to make sure he understood things." Dr. Pervil saw G.O.'s same communication difficulties in his class and noticed that they temporarily interfered with his ability to excel if he was upset or overwhelmed. He also testified that G.O. was not the only student that experienced that frustration. He testified that when G.O. was challenged, getting a bad grade, or upset, he could lose focus, but noted that this also happens to many of his peers.

He also described G.O.'s challenges in quickly sizing up new situations and understanding when information was presented in new ways. He noted that G.O. struggled with communication, particularly in understanding verbal cues. He opined that G.O. needed specific language and prompting to ensure that he understood things. He testified that G.O. had a laptop accommodation in his class because he had difficulty writing things down and wanted seating at the front desk closest to his, although he was unclear if this seating arrangement was a formal accommodation. He testified that many of the students had extra time accommodations on tests and quizzes and thinks that G.O. did too. He also read G.O. directions out loud, repeated directions, used graphic organizers, broke down information for him and engaged in frequent check-ins that G.O. would often initiate. He testified that these were all appropriate accommodations for G.O. and that there were no accommodations that he needed that were not being offered by York. He testified, however, that it might have been helpful for him to meet with a reading

specialist. Dr. Pervil also noted that accommodations for students were written down in a book that the head Psychologist in his department compiled and was used internally.

During his informal counseling with G.O., he saw extensions of some of his academic challenges, including his difficulties understanding the cues of teachers and student and social difficulties with other classmates and friends stemming from miscommunications and misunderstandings. He testified that he saw students on an “as needed” basis, and he would see G.O. on and off but never as a weekly appointment. He testified that if he felt a student needed outside, structured therapy, York would make that recommendation to the parents to obtain that on their own. Despite his challenges, Dr. Pervil testified that G.O. made academic and social progress through eleventh and twelfth grade and learned to work through difficult situations. He also testified that while G.O. made progress at York, he never observed any of G.O.s home programs and could not testify to whether the District offered to provide him with an appropriate education or not.

Dr. Pervil testified that he prepared progress reports for students in his classes at York. He testified that parents were kept informed of student’s progress at York through parent-teacher conferences, phone calls, emails, and traditional forms of communication rather than a formal report. Narrative report cards regarding a student’s academic progress went out to parents twice a year, in addition to report cards and parent teacher conferences. Dr. Pervil testified that there were no regular, formal progress reports that captured social progress unless it was germane to the academic reports, and that there was no formal social skills program.

Dr. Pervil testified that York does not develop IEPs – the only IEPs that the school used were from a student’s home school district. He does not know if G.O.’s IEP was used at York and testified that he had probably not seen it because it was usually the head psychologist that saw it when a new student came to York. He stated candidly that he did not know what G.O.’s special education classification was and that he did not have any specialized training reviewing IEPs.

Dr. Pervil further testified that he did not know if there was a goals and objectives document and that, while he had not seen one, it may have existed informally as part of

the Jump Start program. He noted that he did not feel that it was within his purview and that, while it would have been useful information about G.O., it would not have been important to have a formal accounting of each student because teachers got that information in other ways.

Finally, Dr. Pervil testified that he communicated regularly with G.O.'s parents and that his primary communication was with his mom. Dr. Pervil noted that D.O. (mom) returned calls promptly, was pleasant, was readily available for meetings, there were no issues with scheduling, and she worked collaboratively with York to address G.O.'s needs. He testified that D.O. was a memorable partner in G.O.'s education because she went above and beyond. Dr. Pervil was straightforward, honest and did have an independent recollection of G.O. and his strengths and challenges. His testimony confirmed that York Preparatory is not a special education school, confirmed he had no familiarity with IEPs and that the FAPE construct was unfamiliar to him, and thus I so **FIND**. As such, I cannot give his testimony as to G.O.'s special education needs much weight. However, I did find him forthcoming and honest with an independent recollection of G.O. and his parents. As a result, I did believe him when he stated emphatically that D.O. (mom) was cooperative with York and he did not experience any scheduling differences or any difficulty communicating with her or dad in a collaborative way, and thus I so **FIND**.

### **Heather Ironside, Expert for Petitioners**

Heather Ironside served as a language and literary expert for the petitioners. She holds an M.S. in Speech-Language Pathology from Emerson College and has a Certificate of Clinical Competence in Speech-Language Pathology (CCC-SLP). She previously worked as a speech language pathologist for school-aged children at the Soifer Center beginning in 2007 where she later became associate director and supervised other speech language pathologists until the Center closed in 2016. She currently works as the Director of Language and Literacy at the Gateway School, a private K-8 school for students with language-based disabilities. She oversees the Reading and Writing instruction and curriculum for all students across kindergarten through eighth grade, as well as the language curriculum. She is also in charge of the Teacher Training Program

to ensure that teachers are trained in the programs that the school uses and in understanding the language and literacy needs of the students.

Ironside has experience administering tests to students and evaluating students for strengths and weaknesses to identify suitable programs for a student's education. Ironside first met G.O. when he was in fourth grade, when she accompanied Dr. Soifer to an observation of his classroom at the Parkside School. Ironside testified that her initial impression was that G.O. had language processing issues and was slow to respond to his class teacher and to questions. She also noticed that he spoke with little inflection or intonation.

Ironside was qualified as an expert witness in Language and Literacy.

After that initial meeting, she testified that she also evaluated G.O. at the Soifer Center in 2015. She saw him for four (4) sessions, consisting of two-and-a-half hours per session. During the initial meeting, she reviewed his history and previous evaluations conducted by the District, which included a Psychological Evaluation, the Educational Evaluation, and the Speech-Language Evaluation. She also testified that she spoke with the speech-language pathologist who treated him at Mary McDowell and reviewed other evaluations that had been completed in 2015. She testified that she administered numerous tests during the evaluation sessions because she wanted to look at every aspect of his language system. She prepared a report about G.O. after these sessions were complete. (P-7- Ironside Report dated June 30, 2015)

Ironside testified that she ultimately determined that G.O. had a disability. Specifically, she found that he has a language disorder, which are disruptions that manifest differently in all components of his language system – sentence, grammar, and phonological systems, as well as content (word knowledge, use of language). Ironside testified that her findings were reviewed by a team at the Soifer Center, which consisted of psychologists, a learning specialist, and other speech language pathologists. Ironside testified that Dr. Soifer also reviewed her report, and that no one disagreed with her findings.

She testified that, based on her findings, she recommended that G.O. receive special education programs and services. Ironside testified that, while she routinely reviews educational evaluations, she had concerns about the District's results. She noticed that some scores were low and indicated some difficulties in his language system. She took issue with G.O.'s scaled score of 95 in Oral Language, which is in the "average" range, which she did not agree with based on the discrepancies in the two (2) subtests beneath it.

She recalled that his listening comprehension was below average, which is a precursor of reading comprehension and indicated how well he could follow directions and keep up with classroom discourse. Ironside testified that the District's evaluator for the Educational Evaluation did not identify the discrepancy issues between the scores that she identified or identify any red flags. She concluded that G.O.'s scores were not indicative of a student who has "great skills." She also concluded that he was not someone who could thrive in a general education class. She also reviewed the District's speech-language evaluation, which concluded that G.O. did not have a speech-language disorder. She testified that that conclusion surprised her. She testified that she performed a Metalinguistics tests for G.O., which showed that when things were more than a single-word response or was something that he could recognize, he did much better than when he had to do his own thinking about it. It also showed that he has higher-level semantic needs and struggled to interpret multiple-meaning words and ambiguous sentences. She also found that he had a really hard time interpreting and using figurative language in social contexts and in classroom environments. She testified that these distinctions would be important for developing an educational program for G.O. Ironside testified that, based on the results of her testing and review of the District's evaluations, she recommended that G.O. continue in a specialized special education program. Specifically, she recommended that G.O. be in small classes grouped by skill and learning style because she found that based on "his ability to process language that isn't presented to him – in a particular way by a – by a teacher who is trained to present information in a slow and parsed way and being able to sort of break up the content so that the student can process the information on a . . . more regular basis rather than sort of being able to sort of sit through a lecture and be able to process that information." She testified that she was also concerned about his literacy skills and what that would mean if he were not receiving

“instruction embedded within his class in order to access his curriculum.” She also believed he needed support at the beginning of the day and end of the day to prepare and process. Finally, she recommended that G.O. should have individualized instruction in specific skills and strategies at least twice a week with special education, because it would “enhance his ability to be able to be in the classroom.”

She candidly admitted that she saw the District’s IEPs only a few days prior to the hearing. She noted that she had concerns about G.O. being placed in an inclusive classroom where there was a special educator present but that would be taught by a general educator. Ironside testified on Direct Examination that she believed that the services the District offered through the IEP were not enough for him to succeed. She testified that G.O. needed more individualized support and smaller class sizes, all relating to his ability to process language, because that took time away from him to participate in class. She noted that G.O. not receiving support in his non-core classes concerned her because he would have the same difficulties in following class discourse and directions and being able to process what other people have to say. She emphasized that her evaluation had included the recommendation that G.O. be in small classes grouped by learning style, where the teacher presented information in a slow way and so students could process the information.

She testified that she was surprised that no speech therapy was offered to G.O. given the results of her evaluation, in which she concluded that he had a language disorder and that his language is what affects his ability to access his academic classes. She thought it would be “necessary” for G.O. to receive speech services, and it would be necessary for him to have an IEP in place, as well as specific goals and objectives, and that it would be critical for all of his teachers and educators to review the IEP.

She concluded for the first time at the hearing, that the District’s program would not have offered FAPE for G.O.’s eleventh and twelfth grades. However, she also, testified that because the first time she reviewed G.O.’s IEP was a few days prior to her conclusion that the District’s program did not provide FAPE that it was not addressed in her 2015 report for the Soifer Center. She further testified that, while she was critical of the school’s evaluation, she also did not address this concern in her 2015 report.

More to the point, Ironside admitted that, at the time she wrote the report, she had not seen the District's program, nor had she observed G.O. in the District program. In addition, she was not aware of whether York is an approved school for students with disabilities. She testified that she had that never observed the York program and had never observed G.O. at York, rather she has only had conversations with the York admissions director while she has been at Gateway. She testified that she believed that at York there are a variety of special education and general education programs, but that she does not know the classifications that they provided. She admitted that York only offered general education teachers for G.O., and as such she would have the same concerns about York that she testified to about the District's program. She also testified that she could not have had an opinion on whether the District program was appropriate because she had never seen it aside from reviewing the 2015 IEP (J-5) three (3) days prior to this testimony. She conceded she was not aware of whether or not there were other programs in New Jersey that might meet his needs, because she had never viewed programs in New Jersey.

She testified that reading directions out loud would not support G.O.'s ability to comprehend. Rather, it would be necessary to have a reading specialist work with G.O. twice a week. While she was not aware of whether he was receiving speech services at York, it is her opinion that it would be necessary. She also testified that it would be necessary for G.O. to have an IEP, goals and objectives, and regular progress reporting that was shared with G.O.'s parents. Finally, she testified that it was important for all of G.O.'s teachers and educators to review his IEP.

In light of the above, Ms. Ironside testified forthrightly and candidly admitted that she was not aware of anything the District had offered and thus could not truly opine on whether it would qualify as FAPE. She also testified that she felt more special education features, supports and services would be necessary in her expert opinion. At such time she admitted that she never observed York Preparatory either and knew it was not a special education school. Ms. Ironside confirmed that any opinions she formed about the District's program were based solely on her review of G.O.'s IEP for the 11<sup>th</sup> grade (2015-2016) (J-5), which she saw for the first time just days before testifying. In fact, she did

not testify that she reviewed the proposed IEP (J-8) for twelfth grade. As such, I **FIND I CANNOT** give her ultimate expert opinion much weight with regard to the appropriateness of G.O.'s proposed program and placement for 2015-16 (J5) as she also did not observe him at either school. Further, I **FIND** her criticisms regarding the District's insufficient testing were not supported by her testimony. Again, it appears that she did not even look at J-8 and thus I **FIND I CANNOT** give her opinion regarding the offer of FAPE for 2016-17 any weight.

**D.O.**

D.O., Petitioner's mother who was present for all of the in person and remote testimony, testified to G.O.'s extensive educational history, and the parents' initial contact with the District.

D.O. testified that G.O. was first diagnosed with a disability in pre-school. She began to have concerns when G.O. was two (2) or three (3) when "he had difficulty expressing his thoughts and his language was not developing." She noticed that he was learning a lot of words but was not using connected speech or meeting milestones.

She testified that she contacted the District's Director of Special Services in June 2003, when G.O. was three (3) years old, and G.O. was subsequently evaluated on September 24, 2002, and diagnosed with mixed receptive-expressive language disorder, fine motor and gross motor delays, and anxiety. D.O. also testified that there were concerns about "attention issues." D.O. testified that the evaluating doctor prepared a report, which she provided to the District. She added that the District determined that G.O. was eligible and offered him a spot in the District's preschool disabled program.

D.O. testified that G.O. attended school in the District for four (4) years. She testified that the District held an IEP meeting for G.O. in June after his first grade and a decision was reached that he needed an out-of-district placement. D.O. testified that G.O.'s case manager in the District was the one that suggested that they look at out-of-district placements for second grade but that they "really didn't want to." D.O. noted that, leading up to this, G.O.'s language disability and anxiety were getting worse, which was

“evident in all [his] evaluations prior to first grade.” D.O. testified that G.O. stayed in the District through first grade and that, despite being pulled out for multiple therapy and instruction, “was not making progress.” D.O. testified that the District also recommended that he have an auditory processing disability evaluation, which confirmed the mixed receptive and phonological processing disorders. D.O. testified that the District wanted G.O. to stay in the District, but that she believed it was “detrimental” to him and that he even had to repeat kindergarten.

D.O. testified that during that early time period, the only recommendation the District made was the Banyan School. She testified that she was the one to request that G.O. be placed at the Parkside School, a school specifically for children with language development delays and that she visited the Parkside School. She testified that Dr. Markott was the one that first suggested the Parkside School. G.O. enrolled in Parkside, which he attended until he aged out for middle school in fifth grade and attended the Gateway School until eighth grade. She also noted that G.O. was placed at the Gateway School at her request.

D.O. continued that during G.O.’s IEP meeting at the end of his eighth grade, they needed to find a placement for him because while he had made “significant social and emotional progress,” he still had “severe language deficits.” D.O. testified that the Gateway Team recommended Mary McDowell Friends School and that she let the District know that prior to the IEP meeting. She testified that she asked G.O.’s case manager to visit Mary McDowell and on June 4, 2018, G.O.’s CST reported that they had visited Mary McDowell and “expressed concerns about student behaviors at the school.” Specifically, D.O. testified that the CST reported that there were unruly students who were not speaking appropriately to the teachers when they visited classes and that this was “very different than Gateway.” The CST, D.O. testified, proposed the Community School High School although “no one from CST [had] visited the Community School.”

D.O. testified that she observed the “Community High School” during the last week of classes, where she observed a pull-out speech language therapy group. She testified that the needs of the students, however, “sounded different than what G.O. needed.” She chose Mary McDowell because it seemed like the better of the two options and because

Mary McDowell infuses speech-language therapy. She noted that there was a settlement with the District for G.O.'s placement at Mary McDowell, which was just for the ninth-grade year. She testified that the settlement stipulated that Mary McDowell would remain G.O.'s stay-put placement in the event of a dispute. She testified that the CST supervisor at the time, Ms. McQuade, who Ray Renshaw replaced, said that he might need a new placement after 9<sup>th</sup> grade.

D.O. testified that there was an IEP meeting to plan for G.O.'s sophomore year held on June 9, 2014, while G.O. was in ninth grade at Mary McDowell. D.O. testified that Danielle Blakely, G.O.'s case manager, was the only staff from Westwood that was present and that this was the first time D.O. met her because she became his Case Manager after September 2013. D.O. testified that there were no other representatives from the District present at that IEP meeting. She testified that her husband was conferenced in, and that two staff from Mary McDowell – G.O.'s advisor and speech therapist – were there. She testified that she received a draft IEP at this meeting but that she and her husband “wanted a new placement” for G.O. She testified that Ms. Blakely said she would never recommend the Community School for G.O. but that they could find new schools in September 2014.

D.O. testified that Ms. Blakely never reached out to her about new placements for G.O. in September 2014. She testified that she emailed Ms. Blakely on December 4, 2014 (while G.O. was in tenth grade) and that Ms. Blakely called her the first week of January 2015 to set up a meeting but told her that they could not meet to discuss placements for 11<sup>th</sup> grade because her supervisors wanted to reevaluate him first, “even though his reevaluation date [wasn't] until 2016.” D.O. testified that she had concerns about G.O. being reevaluated because he “had been evaluated so many times” and “was in a serious psychological state at Mary McDowell and was under a lot of stress.” She testified that she was comfortable, however, with speech and language evaluations. She testified that G.O. had experiences while being evaluated by CST members “where insensitive things were said about him.” D.O. did not get into further detail about this, as such I CANNOT make any findings about these allegations.

Next, D.O. testified that she wanted to speak with Ms. Blakely about placements because she needed time to visit and figure out if the schools have spots. D.O. testified that Ms. Blakely said she needed a week and a half to talk to her supervisor. D.O. testified that the next time she heard from Ms. Blakely was when she got notice on March 16, 2015, through regular mail for reevaluation planning meeting scheduled for April 8, 2015. She testified that she was surprised that Ms. Blakely had not reached out to her directly because in previous years, previous case managers would schedule IEP team meetings would reach out to the school G.O. attended to get dates to make sure teachers and school psychologists could attend - once they agreed on dates, then she would get notice. D.O. continued that she spoke to Ms. Blakely to find out if G.O.'s teachers or speech language therapists could participate as part of his IEP team.

D.O. confirmed that Ms. Blakely visited Mary McDowell on April 8, 2015, and as a result, she asked that the re-evaluation planning meeting scheduled for that day could be a week later so they could discuss what was going on in his current program. D.O. testified that Mary McDowell had concerns about this observation because it was not the school's policy to have minors meeting with the Board of Education at the school and it required parental consent. She testified that the school told her that Ms. Blakely wanted to review his school file and she had not asked in advance, so it was their understanding that they needed parental consent to review the school file, which she never gave. Ms. Blakely left after lunch and D.O. said the principal perceived it to be a hostile meeting. She also testified that Ms. Blakely never contacted her to discuss the visit. D.O. alleged that she asked for a report from the visit and never got it – according to Mary McDowell there was some hostility. D.O. only alluded to this in her testimony, it was not clear who from Mary McDowell expressed this or why, as such **I FIND** I cannot make any findings as to these additional allegations.

D.O. then noted that April 14, 2015, was the next time District contacted her, letting her know that a reevaluation planning meeting was rescheduled for April 20, 2015. She testified that she thought it would be good to have her counsel, Ms. Spar, at the meeting, and asked that the meeting be rescheduled. She admitted that she asked that the meeting be subsequently rescheduled to May 5, 2015. She then admitted that she cancelled the May 5, 2015, meeting because she wanted to make sure members of his

IEP team could be there, including teachers and his speech-language pathologist from Mary McDowell because “she wanted to be sure that the whole IEP team considered input from the people who had worked with G.O.” She also testified that the meeting did not take place because it was hard for her husband to attend because he had a construction project going on and it was very stressful. D.O. noted that while he had participated by conference call in other meetings, based on what people had told her about Ms. Blakely and her hostility it would be helpful to have her husband there. She testified that the reevaluation planning meeting was again rescheduled to May 28, 2015. As to these latest characterizations, about what other people said it is clear hearsay, not supported by any additional evidence and as such **I CANNOT FIND** that there is any merit to any alleged hostility on the part of Ms. Blakely.

She testified that there were also incidents with G.O. at Mary McDowell. She received an email from a Mary McDowell teacher notifying them that there was an incident where the students in class were “cruel and harsh” to G.O. during the week of April 19, 2015. G.O.’s teacher the parents that G.O. got upset and left the room, and that G.O. had acknowledged that he was sick of being mistreated and ostracized at Mary McDowell.

In April 2015, D.O. heard about York Preparatory School from another parent at Mary McDowell whose son had gone to Parkside and Gateway and had many similar issues. She testified that this parent also told her about the supports at York Prep and that she was “surprised” that her child was receiving more special education services than G.O. She testified that she had a first phone call with York Prep on April 21, 2015, and submitted Dr. Brown’s report and G.O.’s grades. After that, she went to a York open house and was “pleasantly surprised” by all the programs – the school that had a large percentage of students with language-based learning disabilities and Attention Deficit Hyperactivity Disorder “ADHD”. She spoke to G.O. about applying there and then sent in an application.

She testified that she wrote a letter to Ms. Gemza on May 13, 2015, to let the District know that G.O. had been accepted to York the day prior. She noted that she needed to let York know by May 19, 2015, so time was of the essence. She testified that if she did not accept by May 19, 2015, they could offer the spot to another student. She

testified that she was told that request would be discussed at the May 28, 2015, re-evaluation planning meeting.

D.O. testified that at the May 28, 2015, re-evaluation meeting, there was no conversation about their request to place G.O. at York, which she found “disconcerting.” Teachers from Mary McDowell were conferenced in, and they discussed his performance and how he was affected by his difficulties concisely expressing his ideas. They also discussed how G.O.’s participation and comfort level depend on who he is with. D.O. testified that she did not mention the York acceptance at the meeting because the district made clear that he had to be re-evaluated first before they discussed placement for the 11<sup>th</sup> grade. D.O. testified that she also discussed having the Soifer Center do an evaluation, which the District did not agree to. D.O. testified that she did not know what G.O.’s placement would be for 11th grade after this meeting, but that after the meeting, she wrote a letter to the District that she was consenting to the evaluations.

D.O. testified that she signed a contract for G.O. to attend York for the following school year, G.O.’s junior year, on June 3, 2015, because York would not extend the deadline to hold a spot for G.O. any longer than they already had.

D.O. testified that at the June 9, 2015, annual review IEP meeting, the District proposed to conduct educational, psychological, and speech-language evaluations. She claimed she was “surprised” because she attempted to ask the District about the timing and set a tentative date because the parents wanted to bring in Dr. Soifer. D.O. testified that the evaluations took place the week of June 22, 2015, at the District’s offices over the course of five (5) days. She testified that she wanted Dr. Soifer to do a speech-language evaluation because G.O. was comfortable with the doctor doing the evaluations. She testified that G.O. was expressing “hopelessness” doing all these evaluations and was having panic attacks, but that she did not know if it was the testing or something else that was bothering him.

She testified that the District’s secretary gave her the reports on July 14, 2015, and that she ran into Mr. Renshaw at that time, who told her that they were scheduling the IEP re-evaluation meeting for July 24, 2015. She testified that she had immediate

concerns with the educational evaluation, particularly that a couple of scores were “strikingly low” at the first percentile, which was not mentioned at all in the report. She also testified that she was surprised to see that there were several tests and clusters, including the reading rate cluster and word reading fluency, which were not mentioned in the report. It should be noted that D.O. did not testify to having any expertise with regard to special education, testing, evaluations, or the like.

D.O. also expressed concerns that the District’s psychologist just reported on G.O.’s full-scale IQ as calculated, but not his general ability index. She had further concerns about the speech-language report because it stated that G.O. had long-standing communication difficulties since 2005, because it was actually since 2002, when the District’s evaluation diagnosed him with expressive receptive language disorder. She noted that there was very little discussion of his previous history. She testified that she brought these concerns to the attention of Ms. Blakely and Mr. Renshaw. She admitted that the District subsequently addressed all of her concerns in updated reports, with the exception of two (2) requests, and mailed out the amended reports on August 6, 2015, which she received on August 10, 2015. She testified that she informed the District of G.O.’s unilateral placement at York on August 19, 2015.

D.O. testified that the IEP meeting was scheduled for August 24, 2015, but that she did not want to have the meeting on that date because Dr. Soifer, was not available. She testified that she wanted Dr. Soifer there to present her findings from the speech-language, language, and literacy re-evaluations she had performed to have a collaborative conversation with the team about G.O.’s needs. She noted, however, that she did provide the District with the Soifer Center’s evaluations.

She testified that the District did not contact her about G.O. starting at Mary McDowell on the first day in September 2015. She was under the impression that they would have sent home his class schedule for the year in August if he was going to start on the first day. She testified that she had dropped off a letter with the secretary in the Special Services Department on August 19, 2015, informing the District that they were going to place G.O. at York Prep for the following school year. She testified that between August 19, 2015, and September 2, 2015, the District did not reach out to discuss the

letter, and that a meeting was not scheduled until after September 2, 2015. She testified that if she had not placed G.O. at York, the only other option would have been to keep him at Mary McDowell, which “wasn’t possible, given the state that G.O. was in, and the experiences he had there the first two years.” Again, none of this was reported to the District or memorialized save the one (1) incident in April of 2015. (See footnote 3)

D.O. testified that the IEP meeting took place on September 9, 2015, where she received a draft IEP. She testified that the District informed her counsel that they were going to reclassify G.O. to Specific Learning Disability, and that they were proposing to bring him back in District and place him at Westwood Regional High School. While she thought that his disability was broader, she admitted that they accepted the reclassification. D.O. testified that, based on the draft IEP, the District was offering G.O. four (4) classes (English, Math, Social Studies, Science) with an in-class resource teacher in a general education class, and that the rest would be general education. She was surprised to see that the District was not offering speech-language therapy, which he had received since he was in preschool. She testified that the District removed speech from his IEP because they conducted their own speech-language evaluation, and made a decision based on that, and she did not request an independent speech-language evaluation. She acknowledged the District’s offer of G.O. a transition program for G.O. to return to the high school, which provided support for him from school staff and Special Services during this transition period.

D.O. testified that Dr. Soifer spoke at length at the IEP meeting, specifically discussing how G.O.’s language impairments affected him in classes. She testified that in response, the guidance counselor, Ms. Gadaleta, noted that perhaps a better placement would be a resource class, but that whether G.O. should be placed in a resource room or continue with proposed in-class resource program remained an open issue after the meeting because G.O. “wouldn’t be exposed to college prep, general ed curriculum” in the resource room. She testified that the case manager told her she would update the IEP to include her concerns and recommendations.

D.O. stated that she received the final IEP on September 28, 2015 (J5), in which the District had corrected G.O.’s school and placement. She testified that she did not

agree with the IEP (J-5) because she did not think that G.O. would be successful in any respect based on this IEP. She did not immediately file for due process because her “first order of concern was being able to pay for G.O. to . . . attend a school where he could be safe, be included, and have a, you know, possibility of getting – kind of getting himself back on track.” She testified unconvincingly that she tried to maintain a dialogue with the District and observed G.O.’s entire proposed schedule at Westwood High School with Mr. Renshaw in November 2015. After this observation, she testified that she decided to keep G.O. at his current placement, York Prep because G.O. would not have gotten anything out of the classes that she observed at the District.

D.O. testified that Mr. Renshaw went to York for an observation, but that as a result of his visit, did not agree to place G.O. at York. She testified that the District denied her request to have Dr. Soifer observe Westwood High School, and that G.O. remained at York for the entirety of his junior year. She testified that she paid \$68,800 for G.O.’s junior year at York, 2015-2016.

D.O. testified that the District proactively scheduled an IEP meeting for August 2016 to plan for G.O.’s senior year, which she and her husband attended. She noted that the District started by telling her that they only offer in-class-resource support in the classes that a student has to take to meet the minimum New Jersey high school graduation requirements. For G.O.’s senior year, she testified that the District proposed in-class resource in only English, but not his science class, Biology, and the rest of his classes would be general education. She testified that for G.O.’s senior year IEP (J-8), the District added in a consultation with a District reading specialist two (2) times per week. She further confirmed that this IEP proposed the same transition plan for G.O. that had been offered for his junior year.

D.O. testified that at these meeting, there was discussion about the reports prepared by Dr. Brown and the Soifer Center, but no discussion about placements for G.O. other than Westwood. She testified that Ms. Blakely incorporated D.O.’s concerns into this IEP, which included the fact that the District’s program would not provide supports, remediation, and speech-language therapy that her and her husband believed G.O. needed. She testified that she did not agree with this IEP based on G.O.’s language

impairment that affects his comprehension and expression, and because of his low processing speed, and that he would not be able to keep up in a general education program. She expressed this in a letter to the District and informed them that G.O. would return to York for his senior year – she advised the District that she intended to seek reimbursement from the District for York’s tuition. She testified that she paid \$63,755 for G.O.’s senior year at York.

D.O. testified that in his junior and senior years at York, G.O. was in classes with students that had similar language-learning and processing disabilities, but that G.O. was in classes with both general education and special education students. She also testified that he received speech-language therapy once a week at York, which was included in York’s tuition. She confirmed that York did not develop an IEP or speech-language goals. G.O. also received one-on-one time with his Jumpstart learning specialist twice per week for one class period often on reading comprehension or a writing assignment.

D.O. testified that she filed for due process the summer after G.O. graduated from York, in June 2017. She testified that G.O. was currently a first-semester senior at Emerson College in Boston, where he is majoring in Communication Studies and was slated to graduate in May of 2021. She testified that he has been on the Dean’s List nearly every semester.

**All witnesses:**

**DISCUSSION**

It is within an Administrative Law Judge's "province to determine the credibility, weight, and probative value of the expert testimony." State v. Frost, 242 N.J. Super. 601, 615 (App. Div.), certif. denied. 127 N.J. 321 (1990). The weight to be given to an expert's testimony depends upon "[sic] candor, intelligence, knowledge, and especially upon the facts and reasoning which are offered as foundation of [their] [sic] opinion." County of Ocean v. Landolfo, 132 N.J. Super. 523, 528 (App. Div. 1975). Further, "the weight to which an expert opinion is entitled can rise no higher than the facts and

reasoning upon which that opinion is predicated." Johnson v. Salem Corp., 97 N.J. 78, 91 (1984).

A trier of fact may reject testimony as "inherently incredible," and may also reject testimony when "it is inconsistent with other testimony or with common experience" or it is "overborne" by the testimony of other witnesses. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958). Similarly, "[t]he interests, motive, bias or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

Having had an opportunity to hear the testimony in conjunction with a thorough review of the stipulated documentary evidence, **I FIND** that Mr. Renshaw was a highly qualified and credible witness, with specialized experience in the area of programming that is germane to this case, who provided reliable testimony that the IEP for the 2015-16 and 2017-18 were reasonably calculated to provide G.O. with significant learning and meaningful educational benefit in light of G.O.'s individual needs and potential, that is, the IEPs were appropriately ambitious in light of those circumstances, and that they did so in the least-restrictive environment. As Renshaw testified, G.O. and his parents unilaterally placed him from his stay-put at Mary McDowell School to York Preparatory to graduate and move onto college. His subject-matter teachers from McDowell all reported progress, and plans for college contemporaneous with work and internships for a career path. Undoubtedly, G.O.'s IEPs contained goals and objectives in all subjects with attendant modifications for success in those classes, and G.O. ultimately would have likely achieved success in those classes had he decided to enroll in District, as he was able to meet all graduation requirements at York Prep which was not a special education placement, had no special education teachers, and no noted goals or objectives upon which to chart progress in terms of individual needs.

Likewise, as Renshaw, Pervil and D.O. testified, at York and previously at his stay-put placement at McDowell, G.O. attended class regularly, participated fully, and

completed tasks timely. In addition, Ms. Blakely, L.D.T.C. reported and Mr. Renshaw testified that G.O. met the goals and objectives of those classes with his stay-put IEP, and at York even though goals and objectives were a subjective component to their process as their witness Dr. Ian Pervil who taught G.O. was not aware if he had an IEP and did not know how to truly utilize one. Additionally, he was not certified in special education, nor did he have any specific experience regarding same. I do **FIND** that Dr. Pervil was honest, forthright and candid about those admissions and detailed about G.O.'s performance in his classes, as such I **FIND** his testimony regarding G.O.'s performance in his class as **FACT**, from his perceptions as a general educational teacher and a clinical psychologist.

As for Ironside, Petitioner's expert; I **FIND** that I **CANNOT** give the ultimate opinion as memorialized in her report much weight. (P-7) As noted above, she did not review the IEP for 2015-16 (J-5) before authoring her report and it appears she never reviewed (J8), the draft IEP for 2016-17. In addition, she never visited either program. Thus, she could not address the alleged inappropriateness of the IEPs. It bears mentioning that G.O. was already attending York prior to her writing her evaluation and she is paid \$300 per hour for her expert services. However, I **FIND** that she was forthright on cross examination when she admitted that G.O. would need two (2) teachers, one (1) special education teacher and one (1) general education teacher, instead of just one (1) general education teacher. She also admitted that G.O. did not need special education with supports and that York was a general education school without supports. With regard to the District's testing being inadequate because of the omission of two (2) subtests; she backed off that position during her trial testimony. In fact, I **FIND** that her testimony did NOT support Petitioners' argument that the District's testing was "shoddy" as described in their post-hearing brief.

As for D.O., I **FIND** that she was a caring and zealous advocate for her son who knows his entire educational history. However, on the whole with regard to the issues before me I **FIND** she was not credible. She has an obvious self-interest in the outcome of this matter as there is a large financial cost associated with the York placement. Further, and more importantly, she and her husband were wholly uncooperative with the District. It was clear through her testimony and corresponding documentary evidence

that D.O. had made up her mind that she wanted to place G.O. at York and did so before even giving the District the chance to get current evaluations. Petitioners' assertion that they wanted to be collaborative partners with the District strains credulity. In fact, they were completely cooperative with the unilateral placement but instead resisted G.O. even being assessed by the District based upon unsupported allegations about hostile employees and unpleasant evaluations as friends had conveyed. Again, none of this testimony was supported by testimonial or documentary evidence and as such, **I FIND I cannot give her testimony any weight in this regard.** Conversely, Mr. Renshaw exhibited patience on the stand in explaining how many times he attempted to reschedule these evaluations and meetings and how the petitioners found an excuse NOT to comply at every turn.

#### York and Petitioners' Engagement with York

G.O. attended York during the 2015-2016 and 2016-2017 school years. York is an independent college preparatory school in New York City. Its program is not approved by the New Jersey Department of Education as a clinic or as a private school for students with disabilities, and it does not offer related services, such as speech therapy, Occupational Therapy and/or Physical Therapy.

The parents first met with York in May 2015. On May 13, 2015, D.O. sent a letter to Ms. Barbara Gemza, Interim Director of Special Services, informing the District that G.O. had been accepted into York. On June 3, 2015, the parents enrolled G.O. at York.

**I FIND** that, unbeknownst to the District even at the June 9, 2015, Annual Review 2015 meeting, the parents had signed a contract with York on June 3, 2015, enrolling G.O. for the 2015-2016 school year. **I also FIND** that the parents did not provide the District with any written notice of their concerns regarding G.O.'s program or progress prior to unilaterally placing him at York. To be sure, **I FIND** G.O.'s parents were cooperating and responsive to York while contemporaneously stonewalling the scheduling of the District's evaluations and meetings. **I FIND** they were unwilling to meet with the District as evidenced by their chronic rescheduling, preconditions for meetings as outlined above and as corroborated by the stipulated documentary evidence. As a

result, **I FIND** the parents were deliberately uncooperative with the District and had preconceived notions about “hostility” and anticipated problems with members of the District based upon pure hearsay.

### **LEGAL ANALYSIS AND CONCLUSIONS OF LAW**

This case arises under the Individual with Disabilities Education Act (IDEA), 20 U.S.C. § 1401 et seq., which makes available federal funds to assist states in providing an education for children with disabilities. Receipt of those funds is contingent upon a state’s compliance with the goals and requirements of the IDEA. Lascari v. Bd. of Educ. of Ramapo-Indian Hills Reg. Sch. Dist., 116 N.J. 30, 33 (1989). As a recipient of Federal funds under the IDEA, the State of New Jersey must have a policy that assures that all children with disabilities will receive FAPE. 20 U.S.C. §1412. FAPE includes Special Education and Related Services. 20 U.S.C. §1401(9); N.J.A.C. 6A:14-1.1 et seq. The responsibility to deliver these services rests with the local public-school district. N.J.A.C. 6A:14-1.1(d). To meet its obligation to deliver FAPE, the school district must offer G.O. “an educational program reasonably calculated to enable him to make progress appropriate in light of his circumstances.” Andrew F. v. Douglas Cnty. Sch. Dist., 137 S. Ct. 988 (2017)

The primary issues in this case are whether the District failed to provide G.O. with FAPE for the 2015-16 and 2016-17 school years. And if not, whether the unilateral placement at York was appropriate. Lastly, if FAPE was not offered, whether the parents are entitled to any reimbursement.

#### **Did the 2015-2016 and 2016-2017 IEPs Offer G.O. with a FAPE?**

The petitioners argue that the District’s 2015-2016 IEP (J5) and the 2016-2017 proposed program (J8) did not provide G.O. with a FAPE. The petitioners claim the District’s determination that G.O.’s classification would be changed from Communication Impaired to Specific Learning Disability (“SLD”) amounted to the District’s predetermination that G.O. would no longer receive speech-language therapy or counseling as related services. However, G.O.’s classification and eligibility are not at

issue in this matter. The petitioners also object to the fact that the final IEP (J-5) did not incorporate any of the recommendations from G.O.'s private evaluations. The petitioners note that it did not include any information from the Soifer Center evaluation report or any of the recommendations for programming or goals and objectives that Dr. Soifer had discussed at the September 9, 2015, IEP meeting. Finally, petitioners objected to the fact that IEP did not mention that G.O. had been diagnosed with ADHD. However, Petitioners fail to cite any portion of the transcript in support of this allegation, and fail to identify any evaluation or other "information" provided by the parents that was not considered by the District. Further, they argue broadly that due to Ms. Blakely's testing using composite scores that, it itself, amounts to a denial of FAPE. I **FIND** this argument to be wholly unsupported by the credible testimony in this case.

In considering the appropriateness of an IEP, case law instructs that actions of the school district cannot be judged exclusively in hindsight. The appropriateness of an IEP must be determined as of the time it is made, and the reasonableness of the school district's proposed program should be judged only on the basis of the evidence known to the school district at the time at which the offer was made. D.S. v. Bayonne Bd. of Educ., 602 F.3d 553, 564–65 (3d Cir. 2010) citing Susan N. v. Wilson Sch. Dist., 70 F. 3d 751, 762 (3rd Cir. 1995). An IEP is "based on an evaluation done by a team of experts prior to the student's placement." Fuhrmann v East Hanover Bd. of Educ., 993 F.2d 1031, 1041 (3rd Cir. 1993) (emphasis in original). Thus, "in striving for 'appropriateness,' an IEP must take into account what was, and was not, objectively reasonable [when] the IEP was drafted." Ibid. Our courts have confirmed that "neither the statute nor reason countenance 'Monday morning quarterbacking' in evaluating a child's placement." Susan N., 70 F.3d at 762, citing Fuhrmann, 993 F.2d at 1040.

The Third Circuit in Ridgewood Bd. of Educ. v. N.E. for M.E., 172 F.3d 238, 247 (3d Cir. 1999) stated that the appropriate standard is whether the IEP offers the opportunity for "significant learning and confers meaningful educational benefit." The benefit must be meaningful in light of the student's potential; the student's capabilities as to both "type and amount of learning" must be analyzed. Id. at 248. When analyzing whether an IEP confers a meaningful benefit, "adequate consideration [must be given] to . . . [the] intellectual potential" of the individual student to determine if that child is receiving

a FAPE. Ibid. The IDEA requires an IEP based on the student's needs and "so long as the IEP responds to the needs, its ultimate success or failure cannot retroactively render it inappropriate." Scott P., 62 F. 3d at 534.

First, with respect to both the proposed 2015-2016 and 2016-2017 IEPs, I do not agree with petitioners that these IEPs were not reasonably calculated to address G.O.'s needs. The IEPs identify and address G.O.'s educational, behavioral, social, emotional, and therapeutic needs. They explicitly include in-class resource program for G.O. in all of his core classes, which included access to both a special education and general education teacher; an extensive transition plan to ensure a smooth transition for G.O. back into the District; myriad and extensive modifications, appropriate goals and objectives and meetings with a reading specialist to address the petitioners' concerns. The IEP for the following year (J8) also provided for monthly individual counseling, group counseling, group speech therapy, and a group speech and language consultation twice per week. The District was also thoughtful in developing G.O.'s schedule for the year so that he could spend all or most of his time in the mainstream setting while also receiving the necessary educational and support services. Further, the District sought to have another IEP meeting in three (3) months after he enrolled in District to see if any further adjustments should be made pursuant to his CSTs progress reports. As a result, **I CONCLUDE** that the 2015-2016 and 2016-2017 IEPs are both reasonably calculated to address G.O.'s needs as they were known to the District at the time even given the parents' failure to cooperate in a timely manner with preparing same.

Petitioners assert that the 2015-2016 IEP improperly failed to provide G.O. with counseling and speech language therapy. **I CONCLUDE** that the absence of these services in the IEP did not deny G.O. a FAPE. In the context of implementation the Third Circuit found that even assuming the allegations of a one-day failure of a one-to-one aide, homework deficiencies, and other omission of services were true, "such de minimus failures to implement an IEP do not constitute violations of the IDEA." Melissa S. v. Sch. Dist. Of Pittsburgh, 183 F. App'x 184, 187 (3d Cir. 2006) (citing Houston Indep. Sch. Dist. V. Bobby R., 200 F.3d 341, 349 (5<sup>th</sup> Cir. 2000)). In G.O.'s case, he never even attended the District's program or placement. Thus, logic dictates that if an implementation failure

is not considered a denial of FAPE, neither should a single service not listed in the initial IEP (J5) without parental cooperation, be deemed as such.

**I CONCLUDE** that the 2015-2016 IEP offered G.O. a FAPE in the least restrictive environment and allowed him an opportunity to make meaningful progress

Case law recognizes that the IDEA does not require the Board to provide G.O. with the best possible education, S.H. v. State Operated Sch. Dist. of Newark, 336 F. 3d 260, 271 (3d Cir. 2003), or one that provides “everything that might be thought desired by loving parents,” Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119, 132 (2d Cir. 1998) (citation omitted). Nor does the IDEA require that the Board maximize G.O.’s potential or provide him the best education possible. Instead, the law requires a school district to provide a basic floor of opportunity. Carlisle Area Sch. v. Scott P., 62 F.3d 520, 533-34 (3d Cir. 1995). The district must provide personalized instruction with sufficient support services to permit G.O. 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 (1982). Noting that Rowley involved a student who, though disabled, was fully integrated in a general education classroom, the United States Supreme Court explained that while “a child’s IEP need not aim for grade-level advancement if that is not a reasonable prospect, [the IEP] must be appropriately ambitious in light of his circumstances[.]” Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 137 S.Ct. 988, 992 (2017). The Third Circuit found the directions of the Supreme Court in Endrew to treat “a child’s intellectual abilities and potential as among the most important circumstances to consider” to be consistent with its standard that an “IEP must provide significant learning and confer meaningful benefit.” Dunn v. Dowlingtown Area Sch. Dist., 904 F.3d 248, 254 (3rd Cir. 2018). “IEPs must be reasonable, not ideal [and] slow progress does not prove” the deficiency of an IEP. Ibid. Here, the IEPs in question were akin to the prior placement and program when G.O.’s demonstrated impressive progress. In addition, they were in keeping with that progress and the updated evaluations and noted areas of improvement and areas of continued weakness.

The IDEA also requires states to educate disabled children in the LRE to the maximum extent appropriate, with children without disabilities. See 20 U.S.C.

§1412(a)(5)(A). Thus, removal of children with disabilities from the general education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. Ibid. “This provision evidences a ‘strong congressional preference’ for integrating children with disabilities in regular classrooms.” Oberti v. Bd. of Educ. of Clementon Sch. Dist., 995 F.2d 1204, 1214 (3d Cir. 1993) (citations omitted).

To determine whether a school follows the Act's mainstreaming requirement, a court must first determine whether education in the regular classroom with the use of supplementary aids and services can be achieved satisfactorily. Id. at 1215. If such education cannot be achieved satisfactorily, and placement outside of the regular classroom is necessary, then the court must determine “whether the school has made efforts to include the child in school programs with nondisabled children whenever possible.” Ibid. This two-part test is faithful to the Act's directive that children with disabilities be educated with nondisabled children to the maximum extent appropriate. Ibid.

Did the proposed IEP for the 2016–2017 School Year offer G.O. a FAPE?

The IEP proposed for the 2016-2017 school year provides G.O. with provided G.O. with in-class resource for G.O.'s core classes, English and Math, which included a general education teacher co-teaching with a special education teacher. The District also added in the IEP consultations with a reading specialist two (2) times a week in response to the petitioners' expressed concerns about G.O.'s reading and writing skills.

Considering G.O.'s needs and progress at McDowell as well as during the 2015-2016 school year (as best I could surmise based upon the lack of goals and objectives or any testimony from York as to that issue), and for the reasons stated above, I **FURTHER CONCLUDE** that the proposed IEP for the 2016-2017 school year offered G.O. a FAPE in the least restrictive environment and provided G.O. an opportunity to make meaningful progress.

Thus; I **CONCLUDE** that the proposed IEP for 2016-17 offers a FAPE.

Is Placement at York Appropriate, and are  
the Parents Entitled to Reimbursement for their Unilateral Placement?

Having found that the Board offered a FAPE to G.O., it is not necessary for me to analyze whether placement at York is appropriate under the IDEA. It is well-established that the appropriateness of an IEP is not determined by a comparison of the private school and the program offered by the District. S.H. v. State Operated Sch. Dist. of Newark, 336 F. 3d at 271. Rather, the pertinent inquiry is whether the District's IEP offered FAPE and the opportunity for meaningful educational benefit in the LRE. G.B. and D.B. ex rel J.B. v. Bridgewater-Raritan Reg'l Bd. of Educ., EDS 4075-06, Final Decision (June 13, 2007), <http://njlaw.rutgers.edu/collections/oal/>. Upon a finding that the district provided FAPE, the appropriateness of the private placement is irrelevant. Ibid. (citation omitted); Scott P., 62 F. 3d at 533.

Even assuming that the IEPs somehow fell short, I **CONCLUDE** that the parents are not entitled to reimbursement for their expenses at York during the 2015-2016 and 2016-2017 school years. A court may reduce or deny reimbursement costs based on the parents' unreasonable behavior during the IEP process. 20 U.S.C. § 1412(a)(10)(C)(iii). New Jersey regulations specifically require that parents advise the district at the "most recent IEP meeting" that they were rejecting the IEP, and that they give written notice "of their concerns or intent to enroll their child in a nonpublic school" to the district at least ten business days' prior to removal. N.J.A.C. 6A:14-2.10(c)(1) and (2). The cost of reimbursement may be reduced or denied "[u]pon a judicial finding of unreasonableness with respect to actions taken by the parents." N.J.A.C. 6A:14-2.10(c)(4).

Here, unbeknownst to the district, the parents began exploring York and another out-of-district placement towards the end of the 2014-2015 school year, even before they met with the District to see what special education program the District was proposing for G.O. for the following year, and before they retained their expert, Ms. Ironside, who never even observed the District's program. Nor did she observe the unilateral placement at York. On April 21, 2015, the petitioners spoke to York regarding G.O.'s placement there, and even attended a York open house. G.O. was offered a spot at York for the 2015-2016 school year on May 11, 2015, before their scheduled May 28, 2015, evaluation planning meeting. The District was first made aware that the parents were seeking an out-of-district, unilateral

placement by letter dated May 13, 2015, when the petitioners informed the District that G.O. had been accepted at York and requested that District personnel visit York and agree to place him there for the 2015-2016 school year. The District requested to discuss the matter at the May 28, 2015, reevaluation planning meeting. At that meeting, the District emphasized that because G.O. had not been reevaluated in over five (5) years, they could not discuss a new placement until the evaluations were completed.

The petitioners enrolled G.O. at York on June 3, 2015, unbeknownst to the District. This was before the District received the petitioners' consent to conduct the necessary evaluations for G.O., before the District performed the evaluations for G.O. in order to determine his needs, and before the CST had met in order to propose an updated eligibility and IEP for G.O. After the evaluations were conducted, the District attempted to meet on July 24, 2015, to review the evaluations, develop an IEP, and discuss placement for the 2015-2016 school year. Petitioners did not attend that meeting, and the District proposed August 24, 2015, which the petitioners again cancelled. The District offered to meet on August 31, 2015, but the petitioners were likewise unavailable. Ultimately, the petitioners agreed to meet on September 9, 2015, at which point G.O. was already attending York. **I FIND** that since the parents had already signed the contract with York, and paid a substantial deposit, they had no intention at that time of discussing or considering the District's proposed program for the 2015-2016 school year. This is evidenced by the constant rescheduling of meetings, the lack of consent for records from York to send to Westwood and the difficulties the parents gave when Westwood attempted to do evaluations and their due diligence at observing York. For example, at the June 2015 meeting, the parents refused to discuss the proposed program and they did not inform the District that they had already signed a contract with York. The District was only informed that Petitioners had already made the decision to officially place G.O. at York on August 19, 2015. In contrast, the Petitioners were entirely cooperative with York. **I CONCLUDE** that not only were the parents not a collaborative part of the IEP process, but they attempted to obstruct the District's ability to do their job in developing an appropriate IEP.

Despite having regular meetings with McDowell staff throughout the year, and regular communications with G.O.'s teachers throughout the 2014-2015 school year, the petitioners never expressed any specific concerns to Westwood or McDowell that they may have had

concerning G.O.'s program or his progress, and it was not until May 13, 2015, that the District was first notified that the parents intended to place G.O. at York. Their expert, Ironside did not observe Westwood's program in person and did not review the IEP before authoring her expert report. The petitioners did not observe the District's proposed program until November 9, 2015, after cancelling a previously scheduled observation on October 7, 2015. According to Mr. Renshaw's entirely credible testimony, the petitioners did not provide any feedback to the District after their observation. The petitioners further did not consent to the District observing G.O. at York until November 24, 2015. In stark contrast to the petitioner's lack of communication with the District, Dr. Pervil testified that he communicated with D.O. on a regular basis, that she was responsive, and that she worked collaboratively with York. I **CONCLUDE** that the parents' failure to provide the District with any report, or any evaluations or any meaningful participation with the District to see what their program had to offer, report, or at least inform the District of specific concerns and recommendations, prior to the unilateral placement was unreasonable and denied the District any opportunity to address these concerns.

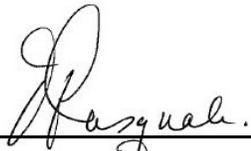
I **FURTHER CONCLUDE** that the petitioners acted unreasonably and denied the District any opportunity to address their concerns when they: cancelled the reevaluation planning meetings scheduled for April 8, 2015, April 20, 2015, and May 5, 2015; delayed consent for the District's proposed educational, psychological, and speech and language evaluations; met with and subsequently enrolling G.O. in York before the District could perform any of the proposed evaluations to determine his current needs; and not informing the District that they had already decided that G.O. would attend York Prep School until August 19, 2015.

### **ORDER**

Given my findings of fact and conclusions of law, I **ORDER** that the relief requested by petitioners as set forth above and in their due process petition be and hereby is **DENIED**, and that the petition of appeal be **DISMISSED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2022) 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 (2022). 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.

November 2, 2022  
DATE

  
DANIELLE PASQUALE, ALJ

Date Received at Agency

November 2, 2022

Date Mailed to Parties:  
lr

November 2, 2022

**APPENDIX**

**LIST OF WITNESSES**

**For Petitioner:**

D.O., Petitioner's Mother  
Dr. Ian Pervil, Petitioner's General Education teacher at York Prep  
Expert, Heather Ironside, Language and Speech Pathologist

**For Respondent:**

Ray Renshaw, Director of Special Services for District of Westwood BOE

**LIST OF EXHIBITS IN EVIDENCE**

**Joint Exhibits:**

- J-1 Settlement Agreement dated 7/23/13
- J-2 IEP revised/final dated 6/19/14
- J-3 Parental Concerns with IEP dated 6/18/15
- J-4 3 WWRS D Evaluations
- J-5 Final IEP dated 9/9/15
- J-6 Reevaluation Eligibility Determination dated 9/9/15
- J-7 Observation at York Prep dated 12/3/15
- J-8 DRAFT IEP (only version) dated 8/16/16
- J-9 Letter from Parent to District re: IEP Recommendations and placement, dated 8/23/2016
- J-10 Correspondence from D. Odell to R. Gonzalez date 4/22/19
- J-11 Letter from D. Blakely to D Odell re: Reevaluation Planning Mtg (updated) dated 5/2/15
- J-12 Letter from D. Odell to B. Gemza re: York Acceptance dated 5/4/15
- J-13 E-mail Correspondence between I. Machado and R. Spar dated 5/29/2015
- J-14 Correspondence from District responding to parent dated 8/6/15
- J-15 Email Correspondence between I. Machado and R. Spar re: assessments dated 6/19/15

J1-6 Letter from D. Odell to R. Renshaw re: IEP Meeting dated 8/21/15

J-17 Letter from D. Odell to R. Renshaw re: Observation at York and Release dated 11/24/15

For Petitioners:

P-6 G.O. Woodcock-Johnson IV Score Report dated 6/24/15

P-7 The Soifer Center Language and Literacy Evaluation Report dated 6/30/15  
(Ironsides's Expert Report)

P-8 Letter from D. Odell to R. Renshaw re: Notice of Unilateral Placement 8/19/15

P-9 DRAFT IEP reviewed at 9/9/15 IEP Mtg with meeting notes 9/9/15

P-20 Letter from D. Odell to D. Blakely dated 4/17/15

P-21 Letter from D. Odell to B. Gemza dated 5/1/15

P-25 Letter from D. Odell to R. Renshaw and G. Cush re: IEP Meeting dated 9/17/15

P-31 York Preparatory School Final Report Card with Attendance dated 5/17/17

P-33 York Preparatory School 2015-2017 – undated

P-34 York Preparatory School 2015-2017 – Technology Costs dated 9/20/15

P-41 Acceptance Letter from York 4/28/21

P-43 Dr. Ian Pervil Curriculum vitae

P-44 Ms. Heather Ironside Curriculum vitae

For Respondent:

R-5 Invitation for Reevaluation Mtg. dated 4/8/15

R-6 Request for Permanent Record dated 4/8/15

R-7 E-mail from Ms. Machado to Ms. Spar dated 4/19/15

R-8 Invitation to Re-evaluation dated 4/20/15

R-10 E-mail from Ms. Machado to Ms. Spar dated 5/4/15

R-11 Invitation to Re-evaluation dated 5/5/15

R-12 E-mail from Ms. Machado to Ms. Spar dated 5/7/15

R-14 Invitation to Re-evaluation dated 5/28/15

R-15 Meeting Confirmation Form dated 5/28/15

R-16 Re-evaluation Planning Meeting Proposed Action dated 5/25/15

R-18 Correspondence between parent and Ms. Gemza dated 6/2/15

- R-19 E-mail from Ms. Machado to Ms. Spar dated 6/3/15
- R-20 E-mail from Ms. Spar to Ms. Machado dated 6/4/15
- R-21 E-mail from Ms. Spar to Ms. Machado dated 6/9/15
- R-22 Invitation to Annual Review dated 6/9/15
- R-23 Invitation to Annual Review and Confirmation Form dated 6/9/15
- R-24 Draft IEP dated 6/9/15
- R-30 E-mail from Ms. Machado to Ms. Spar dated 7/13/15
- R-32 E-mail from Ms. Machado to Ms. Spar dated 7/14/15
- R-33 E-mail from Ms. Spar to Ms. Machado dated 7/14/15
- R-35 E-mail from Ms. Machado to Ms. Spar dated 8/11/15
- R-36 E-mail from Ms. Spar to Ms. Machado dated 8/18/15
- R-37 E-mail Correspondence between I. Machado, Esq. and R. Spar, Esq. Re: Proposed Dates dated 8/20/15
- R-38 E-mail from Ms. Spar to Ms. Machado dated 8/20/15
- R-41 E-mail from Ms. Machado to Ms. Spar dated 8/31/15
- R-42 E-mail from Ms. Spar to Ms. Machado dated 8/31/15
- R-46 Correspondence regarding scheduled 10/7/15 observation
- R-47 E-mail from Ms. Machado to Ms. Spar dated 10/12/15
- R-48 E-mail from Ms. Machado to Ms. Spar dated 10/22/15
- R-49 Proposed Class Curricula dated 10/28/15
- R-50 E-mail from Ms. Spar to Ms. Machado dated 11/2/15
- R-51 E-mail from Ms. Machado to Ms. Spar dated 11/2/15

The Court:

- C-1 Order Directing Video Hearing dated August 12, 2020, necessitated by COVID-19 shutdowns after the District put on their case in-chief in person.