



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 03651-19

AGENCY DKT. NO. 2019/29401

D.P. AND C.P. ON BEHALF OF O.P.,

Petitioner,

v.

ALPHA BOARD OF EDUCATION,

Respondents

Michael I. Inzelbuch, Esq., for Petitioners

Robert J. Merryman, Esq., for Respondents (Apruzzese, McDermott, Mastro & Murphy, attorneys)

Record Closed: November 30, 2021

Decided: January 10, 2022

BEFORE **THOMAS R. BETANCOURT, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner filed a due process petition dated February 12, 2019, with the Office of Special Education Policy and Dispute Resolution in the Department of Education.

The matter was transferred to the Office of Administrative Law (OAL) as a contested matter on March 5, 2019.

Pursuant to N.J.A.C. 1:1-13.1 et seq., a telephone prehearing conference was held in the above-entitled matters on May 31, 2019, and a prehearing Order was issued the same date.

The hearing was held on January 29, 2020; December 7, 2020; December 8, 2020; December 9, 2020; April 23, 2021; April 27, 2021; May 5, 2021; June 4, 2021; and July 14, 2021.

The record remained open to permit the parties to submit closing briefs. Petitioners submitted their brief on October 28, 2021. Respondent filed their brief on October 29, 2021. Petitioners filed their reply brief on November 30, 2021. Respondent filed their reply brief the same date. The record closed on November 30, 2021.

SUMMARY OF RELEVANT TESTIMONY

Karin Helwig-Crotts

Karin Helwig-Crotts, who testified as a fact witness and expert learning consultant in special education, testified as follows:

She is a learning consultant employed by the Phillipsburg Board of Education. She became involved with O.P. in September 2018 as O.P.'s Case Manager.

O.P. had a full-scale IQ of 96. O.P. had difficulty with language and reading comprehension, as well as vocabulary. O.P. did not meet standardized test expectations in math while in grades three, four, and five. O.P.'s standardized test results in language arts dropped one level between fourth and fifth grade, indicating that a child is not meeting grade-level expectations. O.P.'s grades were above average, earning honor roll recognition on numerous occasions.

She administered numerous learning evaluations to O.P. in October and November 2018 including a classroom observation. O.P. did not show any signs of

concern in general education classroom settings. A special education teacher was present in each of the classes observed by Crotts. O.P. did not regularly receive aid from the special education teacher during the observations.

She concluded that O.P. had difficulty with language and reading comprehension. She was aware that O.P. exhibited signs of anxiety.

An IEP meeting was held on November 29, 2018. The November 2018 IEP proposed that O.P. be eligible for special education under the category of communication impaired. The November 2018 IEP recommended in-class support services, speech therapy services, and classroom modifications such as supplementary aids and technological services to assist with reading. The November 2018 IEP proposed a before-school reading program. The November 2018 IEP was not implemented over petitioner's objections.

The November 2018 IEP would not have changed O.P.'s classroom environment. O.P. was in a classroom that received in-class support prior to the initial November 2018 IEP.

A second IEP was proposed in February 2019. Additional speech and therapy services were added following a Central Auditory Processing Evaluation. At the time of this meeting, O.P. was already unilaterally placed at the Cambridge School in Pennington, New Jersey by Petitioners.

She opined that O.P. had a disability related to reading comprehension. She does not agree with Karen Kimberlin's conclusion that O.P. should be classified with a significant learning disability in reading comprehension and listening comprehension. She does not agree with Susan Kaplan's conclusion that O.P. should be classified as multiply disabled. She opined that private school placement would not be appropriate for O.P. because O.P.'s needs could be met at Alpha through in-class support.

No other options, including private school placement, were considered in either IEP.

Michelle Stanbro

Michelle Stanbro, who testified as a fact witness and expert as a school psychologist, testified as follows:

She is a state-certified school psychologist employed by the Phillipsburg School District. She became involved with O.P. in November 2018 as part of the child study team.

Stanbro administered several behavioral assessments to O.P. Stanbro concluded that O.P. had reading and language deficiencies. She concluded that O.P. had difficulties with math questions involving reading.

She attended the November 2018 IEP meeting. She recommended that O.P. continue to meet with the school guidance counselor when necessary. She did not recommend any formal counseling.

Kalyn Kolb

Kalyn Kolb, who testified as a fact witness and expert in Speech and Language Therapy, testified as follows:

She is a certified speech and language therapist employed by the Phillipsburg School District. She holds a master's degree in speech communications.

She evaluated O.P. on November 2, 2018. O.P. scored very low on several subtests. O.P. scored in the first percentile in receptive language, fifth percentile in expressive language, first percentile in language context, and second percentile in language memory.

She observed O.P. in a classroom setting for forty-five minutes. O.P. was attentive in class and appeared comfortable in a classroom setting.

She noticed a discrepancy between O.P.'s classroom performance and her performance on speech assessments. O.P.'s assessment scores revealed a need for speech and language services. She did not speak with O.P.'s teachers about speech and language concerns noted by O.P.'s teachers, which included auditory processing, linguistic organization, and decoding.

She identified O.P. as communication impaired and recommended speech therapy twice a week, with goals relating to decoding and speech and noise training. She agreed with Karen Kimberlin's July 2018 report and assessment scores, which diagnosed O.P. with dyslexia. Her own assessments performed in October 2018 revealed a drop in scores from Kimberlin's July 2018 assessments. She does not believe this drop in scores developed over the few months between the two assessments. She was surprised by the assessment results.

She opined that O.P. has a language-based learning disability, a receptive expressive language disorder, and dyslexia.

Sara Payne

Sara Payne, who testified as a fact witness and expert in special education, testified as follows:

She is a special education certified teacher at the Alpha Public School. She works in a co-teacher classroom environment in conjunction with a general education teacher to provide in-class support to students who require special education.

She became familiar with O.P. in September 2018 as a teacher in O.P.'s sixth-grade classroom. O.P. was organized and attentive in class.

She was familiar with O.P.'s grades and standardized test scores. In third grade, O.P. scored above the school average on the PARCC standardized test. In fourth grade, O.P. scored twenty-two points above the school average on the language arts portion of PARCC, while she scored two points below the school average on the math portion. The math score is not enough to warrant referral for services. In fifth grade, O.P.'s PARCC scores dropped in language arts indicating that there could be a need for remediation. Based on the fifth-grade scores, O.P. qualified for basic skills going into her sixth-grade year. O.P. did not receive basic skills.

O.P.'s grades were above average during Fall 2018 without receiving any special education services. She was not aware of any faltering grades in December 2018. In December 2018 O.P. exhibited signs of anxiety in the classroom. She opined that O.P. appeared to not want to enter the classroom and would ask to leave from time to time. On more than one occasion, O.P. cried in the classroom.

She assisted in developing the February 2019 IEP. She recommended pre-teach vocabulary, providing O.P. with verbal written direction, providing O.P. study guides in all subject areas, modifying tests and quizzes, and implementing a visualizing and verbalizing program.

Megan Mason

Megan Mason testified as follows:

She is a licensed special education teacher. She was O.P.'s sixth grade math teacher. She first became familiar with O.P. in September 2018.

She was aware of petitioner's concerns regarding O.P.'s performance in school beginning in September 2018. Petitioners also expressed concerns about O.P.'s performance in math in a December 2018 email. Petitioners also informed Mason that O.P. felt anxious in math class. She exchanged emails with Mr. Cohen regarding petitioner's concerns. She could not recall if she met in person with Mr. Cohen to discuss

petitioner's concerns. Mason could not recall if the child study team was informed of her communication with Mr. Cohen.

She allowed O.P. to re-take tests if O.P. failed a test or received a poor grade. The results of the first test would not be reported. Instead, she would average the two test scores and report the average as the final grade. She did not recall whether she informed the child study team of this practice. She was not involved in the IEP process.

She opined that the modifications set forth in the November 2018 IEP were appropriate.

Seth Cohen

Seth Cohen testified as followed:

He is the Chief School Administrator at Alpha. He holds a K-8 teaching certificate, a K-12 certificate, a supervisor certificate, a principal certificate, and a chief school administrator certificate. He is not certified in special education.

He is not part of the child study team. He receives invitations to all IEP meetings but does not regularly participate. However, he did participate in O.P.'s IEP process.

He became familiar with O.P. in November 2017, her fifth-grade year. He was in communication with O.P.'s fifth-grade teacher after Petitioners contacted the teacher with concerns about O.P.'s performance and the fifth-grade curriculum. O.P.'s teachers informed him that O.P. was doing well in class despite Petitioners' concerns.

O.P. was moved to a different fifth-grade class in January 2018. He was aware that O.P. visited the guidance counselor frequently in fifth grade. He was aware that O.P. received weekly tutoring. He was familiar with O.P.'s quarterly grades, which he opined did not warrant concern.

Prior to O.P.'s sixth-grade year, Petitioners contacted Mr. Cohen and provided him with private evaluations of O.P. He did not read the evaluations. Instead, he completed a new parent referral and turned the evaluations over to the Child Study Team.

O.P. was referred for basic skills in both language arts and math in the sixth grade. He testified that this referral was not a result of a teacher recommendation or standardized test results, but rather a result of petitioner's concerns about O.P.'s classroom performance. The basic skills instruction form for O.P. indicated that teacher recommendation and both informal and formal assessment data were factors for providing O.P. with basic skills instruction. He testified that this form was in error.

Petitioners never signed off on O.P.'s basic instruction form. He was not aware of why Petitioners did not approve basic skills instruction.

Kimberley Gilles

Kimberley Gilles testified as follows:

She is a certified school guidance counselor. She also holds a school social worker certification and is a licensed play therapist and clinical social worker.

Between 2017 and 2019, she worked at Alpha two and a half days per week. Her primary job was to counsel students. She also served as the anti-bullying specialist.

She recalls meeting frequently with O.P. in fifth grade. O.P. exhibited signs of anxiety. O.P. was part of a social lunch group orchestrated by Gilles. The purpose was to promote social skills among the girls in the fifth-grade class. She does not recall meeting with O.P. in sixth grade.

She was not involved in O.P.'s IEP process. She was not invited to the IEP meetings. The first time she became aware of O.P.'s evaluations was December 2020. She did not review O.P.'s evaluations before the start of this trial.

Dr. Karen Kimberlin

Dr. Karen Kimberlin, who testified as a fact witness and expert in speech and language, special education, and dyslexia, testified as follows:

She is a licensed speech language pathologist. She received a clinical doctorate degree in speech language pathology. She was a part of the New Jersey Dyslexia Handbook Committee, which published the Dyslexia Handbook in September 2017.

She became involved with O.P. in July 2018, following O.P.'s fifth grade year. Petitioners contacted her to administer a comprehensive language and literacy evaluation.

She was aware that O.P. was evaluated by two other professionals – Dr. Francie Mathews in 2015 and Susan Miller in 2018. She reviewed those reports before evaluating O.P. She was familiar that Dr. Matthews' identified weaknesses in reading comprehension. She was aware that Susan Miller also identified weaknesses in reading comprehension.

She evaluated O.P. on July 30, 2018. The evaluation consisted of fourteen sub-tests. She reported reading and listening comprehension deficiencies. O.P. scored in the thirteenth percentile on the language ability index, considered below-average. O.P. scored in the second percentile in the Oral Passage Understanding Test, indicating a significant weakness in the reading and language comprehension. O.P. scored in the first percentile on the Gray Oral Reading Test. O.P. scored in the ninth percentile in the Word Identification and Spelling Test, which indicated that O.P. was reading at a second-grade level.

She concluded that O.P. had oral language weaknesses. She agreed with Mathews and Miller that O.P. had weaknesses in reading and listening comprehension. She agreed with Dr. Elliott Koffler's findings that O.P. was below-average in vocabulary.

She concluded that O.P. has a language-based learning disability and a developmental reading disability. She concluded that this disability has existed for several years. She also concluded that O.P. has dyslexia. She recommended Petitioners share her report with the district.

She was not contacted by the district. She reviewed the November 2018 IEP and did not agree with the classification of communication impaired. She opined that a better classification would be a significant learning disability in reading and listening comprehension. She did not agree with the communication impaired classification because she did not believe it appropriately addressed O.P.'s disabilities. She opined that listening and reading comprehension is O.P.'s primary area of disability, contrary to both the November 2018 and February 2019 IEP.

She found the November 2018 IEP goals and objectives inappropriate because they did not specifically address O.P.'s disabilities. A classification for reading and listening comprehension would warrant more intensive goals and objective in the IEP.

She is familiar with the Visualizing and Verbalizing program. In order to receive an appropriate Visualizing and Verbalizing program, measurable goals and objectives would need to be formulated in an IEP. Specific, measurable Visualizing and Verbalizing goals and objectives were not present in the November 2018 IEP. She opined that in order to obtain a free appropriate public education, there must be specific and measurable goals and objectives related to Visualizing and Verbalizing in an IEP.

She opined that O.P. required extended school year to make up for several years of not receiving related services for her weaknesses.

She was aware of the Cambridge School in Pennington, New Jersey. She observed O.P. at the Cambridge School. She opined that Cambridge was an appropriate school for O.P. because it offered small classes categorized by a student's ability. Cambridge is a school that specializes in language-based learning disabilities. Every teacher at Cambridge is trained and certified in speech pathology. Not every teacher in

public school is trained in speech pathology. O.P. also received support from a speech pathologist on Cambridge's staff. She opined this was an appropriate setting to address O.P.'s needs.

She opined that the district did not offer O.P. a free appropriate public education.

Renee Smith

Renee Smith testified as follows:

She is a certified K-5 general education teacher. She was O.P.'s second grade teacher.

She could not recall O.P.'s experience in her second-grade class. She administered three Developmental Reading Assessments to O.P. over the course of the 2015-2016 school year. O.P. received a 16 on the first DRA of second grade. O.P. received a 20 on the second DRA of second grade. O.P. received a 24 out of 28 on the third DRA of second grade. These scores indicated that O.P. was reading at a second-grade level. She opined that O.P.'s DRA scores were not an area of concern.

She did not recall any specific concerns with O.P.'s academic performance in second grade. She did not recall meeting with Petitioners at any point.

Susan Caplan

Susan Caplan, who appeared as a fact witness and expert in special education, testified as follows:

She is a certified learning consultant and licensed speech pathologist. She worked in public education for over thirty years and has ample experience with IEPs.

She evaluated O.P. on May 6, 2018. Prior to her evaluation, she reviewed Elliott Koffler's report from November 2017. She also reviewed O.P.'s grades and PARCC scores from third and fourth grade. She acknowledged that she erred in her report when concluding that O.P.'s overall PARCC scores declined between third and fourth-grade. While O.P.'s PARCC scores in fact increased, O.P. remained in Level Three, which indicates a child is approaching grade-level expectations.

She identified O.P.'s listening and reading comprehension, math application, and word identification skills as weak and inconsistent. She agreed that communication impaired is an appropriate classification for O.P. However, she opined that O.P. should be classified as multiply disabled under communication impaired and specific learning disability. She opined that O.P. has anxiety and that it was a factor in O.P.'s weaknesses. When someone is anxious, their ability to process auditorily and listen becomes compromised.

She opined that the November 2018 IEP, which identified O.P. as communication impaired only, is not fully descriptive of O.P.'s disability. She would have classified O.P. as multiply disabled under communication impaired and significant learning disability. She opined that in-class support for O.P. was not appropriate because it would not remediate O.P.'s weaknesses. She opined that it would not be appropriate to administer a sixth-grade general education curriculum to a student who tested at a first-grade level in reading comprehension. In-class support in a general education curriculum does not permit a student to receive remediation and work on individualized skills they may need. O.P. would not be able to go back and learn skills she didn't learn in younger grades while receiving a sixth-grade general education curriculum. O.P. requires consistent remediation throughout the day, which is not possible in a general education class.

The goals and objectives written in the November 2018 IEP include mastering second-grade skills for reading. There were no goals and objections in the November 2018 IEP targeted toward writing, social studies, math, or science, despite indicating a class resource is required in these areas. She opined that there should have been goals

and objectives identified for writing, social studies, math, and science in the November 2018 IEP.

She opined that there should have been specific, measurable goals and objectives identified for Visualizing and Verbalizing in the November 2018 IEP. O.P. requires explicit instruction to monitor her comprehension abilities. The November 2018 IEP did not provide specific information regarding the Visualizing and Verbalizing program, such as how much time is to be dedicated to this program or when it would be administered.

She disagreed with the determination in the February 2019 IEP that significant learning disability in learning and reading comprehension is not O.P.'s primary area of disability. She opined that O.P. should be classified as multiply disabled.

She is familiar with the Cambridge School. She observed O.P. at the Cambridge School. She opined that the Cambridge School is appropriate for O.P. because they have the appropriate programs to address O.P.'s learning disabilities. Cambridge uses structured literacy programs, such as the Orton-Gillingham program, and all teachers are certified to use such programs. Students at Cambridge do not progress in the curriculum until the student can master specific skills, allowing students to progress individually as necessary. She opined that O.P. requires consistent remediation throughout the school day and Cambridge provides such services.

She opined that the Cambridge School is the least restrictive environment for O.P. because O.P. would be among students with similar learning disabilities and of similar intelligence. O.P. would still be able to explore non-academic activities such as music. She opined that Alpha is not appropriate for O.P. because Alpha did not have any teachers certified in Orton-Gillingham reading programs, did not offer individualized instruction in small groups, and did not materially change O.P.'s educational program with specific programs after administering an IEP. Alpha did not offer the consistent remediation O.P. required.

C.P.

C.P. testified as follows:

She is O.P.'s mother. She is also a special education teacher.

While at Alpha, O.P. attended weekly private tutoring, beginning in the third grade, for reading comprehension, vocabulary, spelling, and written expression. She testified that she informed O.P.'s third-grade teacher that O.P. received tutoring.

While O.P. was at Alpha, C.P. often struggled to get O.P. to school. O.P. expressed anxiety about school and did not want to go.

On August 23, 2018, she provided Seth Cohen with Susan Miller's Reading Evaluation from November 2017, Elliott Koffler's Psychological Evaluation from November 2017, and Susan Caplan's Educational Evaluation from May 2018. After Cohen offered to place O.P. in a class with in-class support, she agreed. O.P. was not yet found eligible for special education.

An initial evaluation meeting was held on September 10, 2018, to discuss Petitioners concerns regarding O.P. C.P. agreed to a psychological evaluation, speech and language evaluation, and pediatric neurodevelopment evaluation.

An initial IEP meeting was held on November 29, 2018. She agreed with the district that O.P. had a specific learning disability. She agreed that O.P. is communication impaired. She agreed that O.P. suffers from anxiety. O.P. often did not want to go to school in the mornings.

C.P. rejected the initial November 2018 IEP because O.P. was already in classes with in-class support. She was aware that rejecting the IEP would prevent Alpha from providing O.P. with special education services. C.P. asked for a placement at the

Cambridge School a few weeks after the initial November 2018 IEP but Alpha declined. O.P. never received special education services at Alpha.

She unilaterally placed O.P. at Cambridge beginning January 24, 2019. O.P. was initially placed in a fifth-grade level class at Cambridge to address her weak skills. By the end of June 2019, O.P. was able to move up a class due to her progress. C.P. hired a woman to drive O.P. to and from Cambridge during the traditional school year, while C.P. provides transportation in the summer. C.P. asked Alpha to provide transportation but Alpha declined. O.P. spends fifty minutes commuting to Cambridge each way.

O.P. made significant progress in her sixth-grade year at Cambridge. O.P.'s anxiety level decreased as a result of being able to meet with a full-time counselor at Alpha as needed.

O.P. remained at Cambridge for her seventh and eighth grade years. O.P. is now in ninth grade at Cambridge.

Respondent's Case

Respondent argues that they provided O.P. a free appropriate public education. They maintain that O.P.'s classification as communication impaired is appropriate. They maintain that the proposed IEPs was reasonably calculated to afford O.P. some educational benefit. Respondent argues that the IEP provided goals that specifically address O.P.'s listening and reading comprehension weaknesses through language-based programming and in-class support. They maintain that they proposed special education services in the least restrictive environment for O.P. They argue that Alpha is the least restrictive environment because O.P. has attended Alpha since kindergarten and would be educated with both disabled and non-disabled children from the local community. Finally, Respondent argues that Petitioners have not met their burden of demonstrating that unilateral placement at Cambridge was appropriate. They argue that there is little evidence in the record showing that Cambridge is an appropriate placement to address O.P.'s needs.

Petitioners' Case

Petitioners seek a determination that Respondent denied O.P. a free appropriate public education. They argue that the communication impaired classification is inappropriate, the goals and objectives contained in the IEPs are not specific or capable of meaningful review, and the proposed programming from the district does not adequately address O.P.'s weaknesses. Petitioners argue that O.P. requires individualized programming, which they maintain is not provided in the IEP. They are seeking an out-of-district placement at the Cambridge School in Pennington, New Jersey, where O.P. was unilaterally placed in January 2019. Petitioners further argue that they are entitled to compensatory education for the period between second and sixth grade. They argue that Respondent should have known that O.P. was disabled in the second grade.

FINDINGS OF FACT

Based on the evidence presented at the hearing as well as on the opportunity to observe the witnesses and assess their credibility, I **FIND** the following **FACTS**:

1. O.P. is the child of Petitioners, C.P and D.P.
2. Respondent Alpha School District is the local education agency charged with providing O.P. with a free appropriate public education.
3. O.P. attended the Alpha Public School as a general education student from kindergarten through sixth grade, the 2018-2019 school year.
4. Petitioner commissioned several private evaluations of O.P. between June 2015 and September 2018.
5. A Reading Evaluation was conducted by Dr. Francie Mathews on June 13, 2015, while O.P. was in second grade. Dr. Mathews did not find clear evidence of a reading disability. J-1.

6. A Reading Evaluation was conducted by Susan Miller on November 17, 2017, while O.P. was in fifth grade. Miller identified weaknesses in reading and listening comprehension. O.P. scored below average in word identification, word comprehension, oral comprehension, listening comprehension, oral reading fluency, and oral expression. J-12.
7. A Psychological Evaluation was conducted by Elliott Koffler on November 26, 2017. Koffler identified weaknesses in vocabulary and verbal comprehension. J-14.
8. An Educational Evaluation was conducted by Susan Caplan on May 6, 2018, while O.P. was in fifth grade. She identified primary weaknesses in reading comprehension, listening comprehensions, and math applications. O.P. scored below average in reading comprehension, math concepts and application, listening comprehension, and oral expression. J-16.
9. O.P.'s standardized test scores in language arts increased between third and fourth grade. O.P. was approaching grade level expectations based on these scores. J-9.
10. O.P.'s standardized test scores in language arts decreased between fourth and fifth grade, from 747 to 716 respectively. O.P. partially met grade level expectations in fifth grade. J-9 and J-19.
11. In the 2018-2019 school year, O.P. attended sixth grade as a general education student at Alpha Public School.
12. Chief School Administrator Seth Cohen received a new parent referral from Petitioners on August 23, 2018. Petitioners provided Seth Cohen, Chief School Administrator, private evaluations commissioned by Petitioners. Dr. Francie Mathews' Reading Evaluation from 2015 was not given to Cohen. Cohen did not read the evaluations and passed them to the Child Study Team. J-21.
13. Case Manager Karin Crotts received the parent referral on August 27, 2018. J-21.
14. O.P. was assigned to a sixth-grade class that received in-class support from a special education teacher.

15. A private Language and Literacy Evaluation was conducted by Dr. Karen Kimberlin on September 6, 2018. Dr. Kimberlin identified weaknesses in vocabulary awareness, phonemic awareness, non-word reading, non-word spelling, written word expression, listening comprehension, following directions, story retelling, and sentence expression. She concluded that O.P. exhibited signs of a language-based learning disability, written expression disorder, and dyslexia. J-22.

16. An Initial Evaluation Meeting was held on September 10, 2018, in which Petitioners attended.

17. The Child Study Team accepted the evaluations of Susan Miller, Elliott Koffler, Susan Caplan, and Dr. Karen Kimberlin. Dr. Francie Mathews' report was not provided to the Child Study Team.

18. Petitioners consented to further evaluations conducted by the district.

19. Kalyn Kolb, a speech language therapist employed by Respondent, conducted a Speech & Language Evaluation on November 2, 2018. J-24.

20. Karen Helwig-Crotts, O.P.'s case manager, completed an Educational Evaluation on November 14, 2018. Crotts concluded that O.P. had difficulty with language and reading comprehension, as well as vocabulary. J-25.

21. Dr. Tosan Livingstone completed a Pediatric Neurodevelopment Evaluation on November 8, 2018. Dr. Livingstone identified reading comprehension difficulty, math difficulty, and anxiety. J-27.

22. Michelle Stanbro, the district's school psychologist, completed a Psychological Evaluation dated November 12, 2018. Stanbro concluded that O.P. expressed signs of anxiety. Stanbro recommended O.P. receive counseling services for her anxiety. J-28.

23. An initial IEP meeting was held on November 29, 2018, in which Petitioners were in attendance. J-31.

24. The November 2018 IEP proposed that O.P. was eligible for special education services under the category of communication impaired. The November 2018 IEP recommended in-class support services, before-school reading

intervention, speech services, and classroom modifications consisting of supplementary study aids and technological reading programs. The November 2018 IEP also recommended a Visualizing and Verbalizing program but did not offer any specific goals or objectives pertaining to the program's implementation. J-31.

25. Petitioners did not consent to implement the November IEP. J-31.

26. A Central Auditory Processing Evaluation was conducted by Jennifer Titus on December 3, 2018. J-33.

27. On December 13, 2018, Petitioners requested that the IEP be amended to reflect placement at the Cambridge School and that O.P.'s academic records be sent to Cambridge. J-35.

28. On December 18, 2018, Petitioners were notified that O.P.'s records would be sent to the Cambridge School, but the Child Study Team did not agree with placement at Cambridge. J-36.

29. On December 21, 2018, Seth Cohen forwarded O.P.'s record to Cambridge. J-37.

30. Petitioners unilaterally removed O.P. from Alpha and enrolled O.P. at the Cambridge School in Pennington, New Jersey beginning January 24, 2019. J-38.

31. On January 30, 2019, Petitioners received an invitation to a second IEP meeting on February 1, 2019. J-39.

32. A second IEP meeting was held on February 1, 2019, in which Petitioners attended. J-40.

33. A second IEP was proposed on February 1, 2019, after O.P. was enrolled at Cambridge. The February IEP included Jennifer Titus' Central Auditory Processing Evaluation. The February 2019 IEP determined O.P. was eligible for special education services as communication impaired. The February 2019 IEP indicated that O.P. had a significant learning disability in listening and reading comprehension, but it was not O.P.'s primary area of disability. J-40.

34. The Child Study Team forwarded Petitioners the second IEP on February 6, 2019. J-41.

35. Petitioners filed a Due Process petitioner on February 12, 2019.
36. Veronica Sydlowski conducted an Occupational Therapy Evaluation on March 11, 2019. She identified difficulty with visual perception and motor skills. J-42.
37. A third IEP meeting was held on April 15, 2019, in which Petitioners attended. J-43.
38. Petitioners did not consent to implement the April 2019 IEP. J-43.
39. O.P. never received special education services at Alpha.
40. O.P. remained at Cambridge for her seventh and eighth grade years. She is now in ninth grade at Cambridge.

LEGAL ANALYSIS AND CONCLUSION

Individual With Disabilities Act

Federal funding of state special education programs is contingent upon the states providing a “free and appropriate education” (FAPE) to all disabled children. 20 U.S.C.A. § 1412. The Individuals with Disabilities Act (IDEA) is the vehicle Congress has chosen to ensure that states follow this mandate. 20 U.S.C.A. §§ 1400 et seq. “[T]he IDEA specifies that the education the states provide to these children ‘specially [be] designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction.’” D.S. v. Bayonne Bd. of Educ., 602 F.3d 553, 556 (3d Cir. 2010) (citations omitted). The responsibility to provide a FAPE rests with the local public school district. 20 U.S.C.A. § 1401(9); N.J.A.C. 6A:14-1.1(d). Subject to certain limitations, FAPE is available to all children with disabilities residing in the State between the ages of three and twenty-one, inclusive. 20 U.S.C.A. § 1412(a)(1)(A), (B). The district bears the burden of proving that a FAPE has been offered. N.J.S.A. 18A:46-1.1.

New Jersey follows the federal standard that the education offered “must be ‘sufficient to confer some educational benefit’ upon the child.” Lascari v. Bd. of Educ. of Ramapo Indian Hills Reg’l High Sch. Dist., 116 N.J. 30, 47 (1989) (citations omitted). The

IDEA does not require that a school district “maximize the potential” of the student but requires a school district to provide a “basic floor of opportunity”. Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 200, 102 S. Ct. 3034, 3047, 73 L. Ed. 2d 690, 708 (1982). In addressing the quantum of educational benefit required, the Third Circuit has made clear that more than a “trivial” or “de minimis” educational benefit is required, and the appropriate standard is whether the child’s education plan provides for “significant learning” and confers “meaningful benefit” to the child. T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000) (internal citations omitted).

As noted in D.S., an individual education plan (IEP) is the primary vehicle for providing students with the required FAPE. D.S., supra, 602 F.3d at 557. An IEP is a written statement developed for each child that explains how FAPE will be provided to the child. 20 U.S.C.A. § 1414(d)(1)(A)(i). The IEP must contain such information as a specific statement of the student’s current performance levels, the student’s short-term and long-term goals, the proposed educational services, and criteria for evaluating the student’s progress. See 20 U.S.C.A. § 1414(d)(1)(A)(i)(I)-(VII). It must contain both academic and functional goals that are, as appropriate, related to the Core Curriculum Content Standards of the general education curriculum and “be measurable” so both parents and educational personnel can be apprised of “the expected level of achievement attendant to each goal.” N.J.A.C. 6A:14-3.7(e)(2). Further, such “measurable annual goals shall include benchmarks or short-term objectives” related to meeting the student’s needs. N.J.A.C. 6A:14-3.7(e)(3). The school district must then review the IEP on an annual basis to make necessary adjustments and revisions. 20 U.S.C.A. § 1414(d)(4)(A)(i).

A due process challenge can allege substantive and/or procedural violations of the IDEA. If a party files a petition on substantive grounds, the Administrative Law Judge (ALJ) must determine whether the student received a FAPE. N.J.A.C. 6A:14-2.7(k). If a party alleges a procedural violation, an ALJ may decide that a student did not receive a FAPE only if the procedural inadequacies: (1) impeded the child’s right to a FAPE; (2) significantly impeded the parents’ opportunity to participate in the decision-making process regarding the provision of FAPE to the child; or (3) caused a deprivation of

educational benefits. Ibid. In the instant matter Petitioners allege substantive violations of the IDEA.

This tribunal must determine if the November 29, 2019, February 1, 2019, and April 15, 2019 IEPs afforded FAPE to O.P. in the least restrictive environment. 20 U.S.C.A. § 1412(a)(1). J.T. v. Dumont Public Schools, 438 N.J. Super. 241, 257 (App. Div. 2014)(citing Lascari, supra, at 33).

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

The IDEA’s FAPE requirement also includes a mainstreaming component, requiring education in the least restrictive environment. S.H. v. State-Operated Sch. Dist., 336 F.3d 260, 265 (3d Cir. 2003); 20 U.S.C. §1412(a)(5)(A). “The least restrictive environment is the one that, to the greatest extent possible, satisfactorily educates disabled children together with children who are not disabled, in the same school the

disabled child would attend if the child were not disabled.” S.H., 336 F.3d at 265 (quoting Carlisle, 62 F.3d at 535). The school district bears the burden to establish that the district offered a FAPE in the least restrictive environment. N.J.S.A. 18A:46-1.1.

The District has failed to carry its burden of proof and burden of production in the instant matter. The competent, credible and relevant evidence in the instant matter abundantly demonstrates that the proposed IEP does not address the many and complex needs of O.P. Accordingly, the District failed to offer FAPE in the proposed IEP.

The New Jersey Supreme Court stated the following in Liscari v. Board of Education, supra at 46: “We also conclude that in determining whether an IEP was appropriate, the focus should be on the IEP actually offered and not on one that the school board could have provided if it had been so inclined.” The IEP offered by the District failed to address O.P.’s individualized needs and create an appropriate system of goals and objectives to measure O.P.’s progress in both short and long-term goals. The IEP failed to include specific, measurable goals pertaining to specific skills and remedial reading and language programming, such as the Visualizing and Verbalizing program. The inclusion of generalized instructional techniques – such as added time for tests, assistance with directions, and general in-class support – is alone not enough to carry the district’s burden of proof that FAPE was offered. See D.S. v. Bayonne Bd. of Educ., 602 F.3d 553, 567 (3d Cir. 2010). The generic nature of the IEP is not reasonably calculated to meet O.P.’s individualized needs and confer upon her a meaningful educational benefit in the least restrictive environment.

The District failed to meet the standard prescribed by the IDEA. The District did not address the Petitioners concerns that were raised after the IEP meeting. O.P.’s specific needs are not addressed in the IEP. It is clear to the undersigned that the IEP was not designed to meet her needs. Again, it seems rather generic in nature. It does not seem to the undersigned, based upon the District’s own witnesses, that they would be able to meet the needs of O.P. at the present time.

The appropriate placement for O.P. presently would be in Cambridge School. Cambridge offers the individualized instruction and structured programming necessary to afford O.P. a meaningful educational benefit. Cambridge is also the least restrictive environment for O.P. as it allows her to receive an appropriate education in a small class setting, at her own pace of progress, with peers who possess similar disabilities and are of similar intelligence. Again, it is clear from the District's own witness that they cannot accomplish this.

Petitioners argue they should be awarded compensatory education relief for the period between second and sixth grade in which O.P. did not receive special education services. Compensatory education is a judicially created remedy that may be awarded to account for the period in which a disabled student was deprived of their right to FAPE. Sch. Comm. Of Burlington v. Dep't of Educ., 471 U.S. 359, 369, 105 S. Ct. 1996, 85 L. Ed. 2d 385 (1985) (finding that tuition reimbursement was an appropriate remedy under the Education of the Handicapped Act, predecessor to the IDEA); Coleman v. Pottstown Sch. Dist., 983 F. Supp. 2d 543, 566 (3d. Cir. 2013).

Compensatory education may be awarded if it is determined that a school district failed to provide FAPE to a disabled student and the district knew or should have known that FAPE was not provided. M.C. ex rel. J.C. v. Central Regional Sch. Dist., 81 F.3d 389, 396 (3d Cir. 1996). A finding for compensatory education does not require bad faith or egregious circumstances, it only requires a finding that a disabled child was receiving less than a "de minimis" education. Id. at 397.

A finding of compensatory education does not require that there be an IEP first; a disabled child's right to compensatory education "accrues when the school knows or should have knows that the child is receiving an inappropriate education." Ridgewood 172 F.3d at 249. The appropriate calculation for compensatory education relief should be the period of deprivation, minus the time reasonably required for the district to correct the problem. Mary Courtney T. v. Sch. Dist., 575 F.3d 235, 249 (3d Cir. 2009). Compensatory education relief is appropriate if it furthers the purposes of the IDEA. Ferren C. v. Sch. Dist. of Philadelphia, 612 F.3d 712, 719 (3d Cir. 2010) (citing Burlington,

471 U.S. at 369). However, the Supreme Court has declined to limit a court's discretion in granting equitable relief under the IDEA. See Burlington, 471 U.S. at 369; see also Forest Grove School District v. T.A., 557 U.S. 230 (2009).

Petitioners argue that the district should have known O.P. was disabled in the second grade and failed to provide O.P. an appropriate education between second and sixth grade. This claim must fail. Petitioners failed to provide Respondent with relevant information they possessed that may have led to a special education classification for O.P., particularly Dr. Francie Mathews' report from June 13, 2015. Dr. Mathews' report was not part of the record reviewed by the Child Study Team in November 2018, and it was not produced until after petitioner's due process petition was filed. While Petitioners claim that Dr. Mathews' report was provided to O.P.'s third grade teacher, they have not provided evidence in the record to support that claim. Petitioners provided the District with the remaining private evaluations in August 2018 and the District acted promptly to address the findings and begin the IEP referral process. Based on these events, petitioner's claim for compensatory education is denied.

Based upon the foregoing, I **CONCLUDE** that Petitioners' due process petition should be **GRANTED** in part, and that O.P. be placed at Cambridge School at the expense of the District. I further **CONCLUDE** that Petitioners' claim for compensatory education be **DENIED**, as Petitioners had relevant information that they failed to provide Respondent.

ORDER

It is hereby **ORDERED** that Petitioners' due process petition is **GRANTED**, as follows:

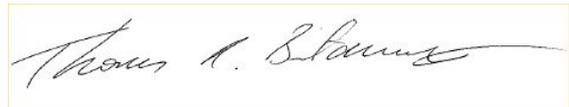
1. Respondent failed to offer FAPE in the LRE;
2. O.P. be placed at the Cambridge School;
3. The District shall amend the IEP to provide for placement at Cambridge School and to provide for transportation to and from the same.

4. The District shall reimburse Petitioners for the cost of O.P.'s attendance at Cambridge School from January 2019 through June 2020, to include tuition and transportation costs. This shall be subject to proof of payment as to the same.

It is further **ORDERED** that Petitioners' due process petition is **DENIED**, as follows:

1. Petitioners' request for compensatory education is denied; and,
2. Petitioners' request for reimbursement for private evaluations is denied.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2019) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516 (2019). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education Policy and Dispute Resolution.



January 10, 2022

DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency: _____

Date Mailed to Parties:
db _____

APPENDIX

List of Witnesses

For Petitioners:

Megan Mason
Seth Cohen
Kimberly Gilles
Dr. Karen T. Kimberlin
Renee Smith
Susan K. Caplan
C.P., Petitioner

For Respondent:

Karen L. Helwig-Crotts, M.Ed., LDT-C
Michelle Stanbro, Ed.S.
Kalyn Kolb, M.S., CCC-SLP
Sarah Payne

List of Exhibits

For Petitioners:

P-1 Renee Smith's email correspondent, DRA Scores, Report Cards (2nd Grade)
P-182 Curriculum Vitae of Susan K. Caplan, M.Ed., LDT-c
P-184 Curriculum Vitae of Dr. Karen T. Kimberlin, SLPD, CCC-SLP
P-250 February 24, 2020 – Alpha School District Response to OPRA Request ONLY
5757-5762
P-250(A) Exhibits Presented during Seth Cohen Testimony – April 23, 2021
(5 pages)
P-250(B) Exhibits Presented during Seth Cohen Testimony – April 23, 2021
(3 pages)
P-270 Exhibits Presented during Kimberly Gilles Testimony – April 27, 2021 (13 pages)

For Respondent:

R-5 Woodcock Johnson IV Teachers Checklist, 2/27/2018
R-6 Honor Roll Letter, 4/12/2018

- R-9 Initial Identification and Evaluation Planning – Proposed Action, 9/11/2018
- R-11 DRA Reading Assessment Folder – 6/2013 to 9/2018
- R-24 Speech and Language Recommendations, 11/27/2018
- R-25 Student Work – Reading
- R-28 Student Work – Math, 9/2018 to 1/2019
- R-29 Student Work – Science, 10/2018 to 12/2018
- R-45 Resume of Michelle Stanbro
- R-46 Resume of Karin Helwig-Crotts
- R-48 Resume of Kalyn Kolb, M.S., CCC-SLP
- R-51 Resume of Sarah Payne
- R-52 Resume of Megan Mason
- R-53 Pearson Reading Level Chart
- R-54 Evaluation Card for 2018-2019 MP2
- R-50(J) Emails re: Math Concerns, 12/3/2018
- R-57(O) Attachments re: Answers to your Questions, 12/10/2018

Joint Exhibits:

- J-1 Reading Evaluation – 6/13/2015
- J-2 2015-16 PARCC-ELA
- J-3 2015-16 PARCC-Math
- J-4 2016-17 Progress Report, 10/6/2016
- J-5 2016-17 Progress Report, 2/16/2017
- J-6 2016-17 Progress Report, 3/1/2017
- J-7 2016-17 Progress Report, 5/16/2017
- J-8 2016-17 Report Card, 6/14/2017
- J-9 2016-17 PARCC-ELA
- J-10 2016-17 PARCC- Math
- J-11 2017-18 Progress Report, 10/4/2017
- J-12 Education Evaluation, 11/17/2017, by Susan Miller, M.A., LDT/C
- J-13 2017-18 Progress Report, 12/5/2017
- J-14 School Psychology Evaluation, 12/23/2017 by Elliott Koffler, M.A.
- J-15 2017-18 Progress Report, 2/28/2018
- J-16 Educational Evaluation, 5/6/2018 by Susan Caplan, M.Ed.
- J-17 2017-18 Progress Report, 5/8/2018

- J-18 2017-18 Report Card, 6/11/2018
- J-19 2017-18 PARCC-ELA
- J-20 2017-18 PARCC-Math
- J-21 Emails re: "New Parent Referral", 8/28/2018
- J-22 Independent Language & Literacy Evaluation, 9/6/2018, by Karen Kimberlin, MS
- J-23 2018-2019 Progress Report, 10/4/2018
- J-24 Speech & Language Evaluation, 11/14/2018 by Kalyn Kolb, MS
- J-25 Educational Evaluation, 11/14/2018 by Karin Helwig-Crotts, M.Ed.
- J-26 2018-19 Report Card, 11/5/2018
- J-27 Pediatric Neurodevelopmental Evaluation, 11/8/2018 by Tosan Livingstone, M.D.
- J-28 Psychological Evaluation, 11/12/2018 by Michelle Stanbro, Ed.S
- J-29 Parent Interview, 11/13/2018 by Lynda Atkins, M.S.W.
- J-30 Child Study Team Folder Summary, 11/14/2018
- J-31 Initial IEP, 11/29/2018
- J-32 After Visit – Pediatric Neurodevelopmental Evaluation, 11/30/2017 by Tosan Livingston, M.D.
- J-33 Audiological & Auditory Processing Evaluation, 12/3/2018 by Jennifer Titus, Au.D.
- J-34 2018-19 Progress Report, 12/12/2018
- J-35 Letter from Parents to Cohen, 12/13/2018
- J-36 Letter to Parents from Deutsch, 12/18/2018
- J-37 Letter to Parents from Cohen, 12/1/2018
- J-38 Letter to Cohen from Cambridge School, 1/25/2019
- J-39 Invitation to IEP meeting, 1/30/2019
- J-40 IEP, 2/1/2019
- J-41 IEP Transmittal Letter, 2/6/2019
- J-42 Occupational Therapy Evaluation, 3/22/2019
- J-43 IEP, 4/15/2019