



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 08175-2023

AGENCY DKT. NO. 2023-36155

E.R. AND S.R. ON BEHALF OF L.R.,

Petitioner,

v.

WEST WINDSOR-PLAINSBORO REGIONAL

BOARD OF EDUCATION,

Respondent.

Lori Gaines, Esq., appearing for petitioner (Barger & Gaines, attorneys)

Eric Harrison, Esq., appearing for respondent (Methfessel & Werbel,
attorneys)

Record Closed: March 11, 2024

Decided: April 11, 2024

BEFORE **KIM C. BELIN**, ALJ:

STATEMENT OF THE CASE

This matter arises under the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. §§ 1400 to 1482. Petitioners, E.R. and S.R., (petitioners) filed a petition for due process, on behalf of their daughter, a minor student, L.R., seeking reimbursement for the costs associated with unilateral placement at the Cambridge School, including tuition,

transportation, and continued placement at the Cambridge School, reimbursement for expert's fees and compensatory education. The petitioners allege that the respondent, West Windsor-Plainsboro Regional Board of Education (respondent or Board) failed to provide L.R. with a free appropriate public education (FAPE) by not providing the specialized instruction she required. The issues are whether the Individualized Education Program (IEP) proposed by the respondent for 2023-2024 school year is appropriate and if not, is L.R. entitled to compensatory education, and continued placement at Cambridge School.

PROCEDURAL HISTORY

The petitioners, on behalf of their daughter, L.R, filed a petition of appeal dated June 27, 2023. The respondent filed its answer dated August 21, 2023. On August 28, 2023, the Commissioner of Education transmitted this matter as a contested case to the Office of Administrative Law (OAL) pursuant to N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23. Hearings were held over a three-day period starting on February 20, 2024, and ending on February 22, 2024. After post-hearing briefs were submitted, the record closed on March 11, 2024.

FACTUAL DISCUSSION

The following **FACTS** are undisputed and I, therefore **FIND**:

L.R. is a fourteen-year-old eighth-grade student who resides with S.R., her mother, within the boundaries of the West Windsor-Plainsboro Regional School District. L.R. was deemed eligible for special education and related services under the category of Specific Learning Disability (SLD). (Petition, ¶¶ 1-3.) L.R. struggles in the areas of reading fluency, comprehension, decoding and math calculations. She also has a history of anxiety related to her disabilities.

L.R. started her education with the respondent in the first grade in 2016-2017. (ibid., ¶4.) From the first through the sixth grades, L.R. was in general education classes. When L.R. was in the second grade, her parents expressed concerns to the teacher about

L.R.'s basic reading skills, concerned that she might be dyslexic, however her teacher did not believe L.R. was dyslexic. (ibid., ¶5.) L.R.'s third-grade teacher expressed concerns about L.R.'s academic struggles and as a result the respondent provided supplemental reading instruction in the form of pull-out classes. (ibid., ¶7.) L.R. was not referred to the child study team (CST).

In the fourth grade, L.R.'s general education teacher expressed concerns about L.R.'s academic challenges but did not refer L.R. to the CST. In the fifth grade, (2020-2021 school year) L.R. received Basic Skills support three times per week as a general education student and was tutored in math once a week outside of school. (ibid., ¶¶ 14-15; J-20.) Due to her continued struggles in math, her teacher recommended L.R. to the respondent's Intervention and Referral Services (I&RS) team. (ibid., ¶18.) The I&RS Meeting Summary dated March 22, 2021 states:

[L.R.'s] primary struggle is in math. She has not progressed in her MAP scores for math since the end of 2nd grade. On a day-to-day basis, her number sense is poor. She has trouble retaining information from one math lesson to the next. She will also mix up her numbers when reading math problems. Her reading comprehension is strong, but when reading orally, she will sometimes mix up her words. Her spelling is relatively weak. At home, she frequently cries about hating school and homework does not get completed; she does not show this resistance at school. She creates tools and structures to increase organization, but struggles to use them.

[J-19.]

The I&RS team referred L.R. to the CST. (J-18.)

Three evaluations were conducted: educational, psychological, and social history. (J-20.) Based upon the evaluations, the CST determined that L.R. had learning disabilities in basic reading, reading fluency, and math calculations. An IEP was developed to address these areas in sixth grade. (J-27.) Her initial IEP dated September 9, 2021, assigned L.R. to pull out resource center replacement instruction in language arts, math, and study skills, and in class resource (ICR) in science and social studies once per week daily for fifty-two minutes; however, she remained in a general education

classroom. (Ibid.) Under “How the student’s disability affects his or her involvement and progress in the General Education Curriculum” the CST wrote: “[L.R.’s] low academic skills, particularly in the areas of reading and math, compromises her ability to access the curriculum and perform within grade level expectations across all academics [sic] areas.” (J-27, *6.) Decoding and reading fluency were listed in the section of the IEP entitled “Needs-Academic, Developmental, Functional, and any other Needs that result from the Students’ Disability and Special Considerations.” (Needs section) (Id., *7.) Structured Literacy Approach in reading and language arts instruction was included in the Modifications and Supplementary Aids and Services section of the IEP. The CST’s rationale for pulling L.R. out of the general education classroom for reading/language arts and math daily was:

[L.R.’s] needs could not be appropriately addressed in the general education classroom due to the severity of her disability. [L.R.] has learning needs that can only be appropriately addressed in a special education setting. The above supports [inclusion teacher or 1:1 aide] would not change the large size of the group, the pace of instruction, and the complex language environment of the general education classroom. [L.R.] requires slower pacing, greater scaffolding, opportunities for repetition, instruction geared to her learning style, and a specialized multisensory teaching approach found in the special education classroom in order to make meaningful progress in reading/language arts and math. [L.R.] demonstrated low average abilities in Basic Reading Skills, (SS=84), and low abilities and [m]ath [c]alculation (SS=72); she also received a scaled score of a 73 on the GORT¹; these scores are a comprehension of her full scale IQ of 105.

[Id., *12.]

The CST also acknowledged the petitioners’ concerns about L.R.’s possible dyslexia stating:

The team discussed the implications of testing, in which [L.R.] demonstrated features of Dyslexia in the areas of basic reading skills (decoding), reading fluency, and spelling that were unexpected in relation to her cognitive abilities. Accommodations and modifications to address [L.R.’s] needs

¹ Gray Oral Reading Test, Fifth Edition.

in these areas include a structured literacy approach to reading and writing instruction, access to audiobooks, and the provision of speech-to-text for written assignments. Additionally, targeted goals and objectives are included within this IEP to address these skills.

[Id.], *15.]

In seventh grade, L.R. remained in a general education classroom and her IEP was revised to change to her reading/language arts, science, and social studies classes to ICR, however she continued to receive pull out resource center instruction in math once on alternate days for eighty-five minutes. (J-39.) In this IEP, her language arts teacher wrote:

Her Orton-Gillingham testing reveals that she struggles to decode a wide-range of words using a variety of vowel combinations (78% total score). An area of concern is her ability to decode multisyllabic words (40%).

[Ibid.]

In addition, the CST stated that “[L.R.] would benefit from a smaller class size in the special education class and a lower student teacher ratio.” (J-39, *15.] Despite removing L.R. from the pull out resource center for language arts, the IEP stated: “[L.R.’s] low academic skills, particularly in the area of reading and math, compromise her ability to access the curriculum and perform within grade level expectations across all academics [sic] areas.” (Id., *9.) This IEP also listed “Structured Literacy Approach in reading and language arts instruction” as a modification. (Id., *14.)

In December 2022, petitioners scheduled L.R. for a psycho-educational evaluation with Dr. Cara Laitusis who concluded that L.R. had dyslexia and required a structured literacy program such as Orton-Gillingham or the Wilson Reading System. (Ibid., ¶37; J-46.) Petitioners shared their concerns with the respondent regarding the removal of the resource center instruction in reading/language arts because L.R. was not reading on grade level. (Ibid., ¶39.)

Petitioners arranged for L.R. to have a language evaluation done by Dr. Jeanne Tighe. (Ibid., ¶41.) Dr. Tighe reviewed L.R.'s educational records, interviewed L.R., assessed L.R.'s oral language and reading skills, orthographic knowledge, word identification and spelling skills, and diagnosed L.R. with double-deficit dyslexia. (Ibid., ¶¶43-52, 58; J-55.) Dr. Tighe issued a report dated March 30, 2023, describing L.R.'s situation as "urgent" and recommending an out-of-district placement "designed to meet the needs of students with dyslexia." (J-55, at 34.)

Prior to receipt of Dr. Tighe's report, the respondent convened an IEP meeting to plan for L.R.'s eighth-grade year (2023-2024). The IEP dated September 7, 2023, proposed to remove L.R. from the resource room for instruction in math and place her in all ICR classes once on alternate days for eighty-five minutes. (Ibid., ¶62; J-62.) The reading specialist stated that although L.R. did not enjoy reading, she was reading independently at a 99% rate. (J-56.) In addition, despite changing to all ICR classes, the IEP continued to state that L.R.'s low academic skills in reading and math compromised her ability to access the curriculum and perform within grade level expectations. (J-62, *10.) There were no decoding, reading fluency, or reading comprehension goals. There were no math calculation goals. Reading is not mentioned in the Needs section of the IEP. Structured Literacy Approach in reading and language arts instruction remained on the modifications list. (Id., *15.)

After reviewing Dr. Tighe's report, the petitioners rejected the proposed IEP. (Ibid., ¶65.) On May 31, 2023, counsel for the petitioners sent copies of Drs. Tighe and Laitusis' evaluations and requested an out-of-district placement at Cambridge School, and informed the respondent that petitioners would start the admission process to unilaterally place L.R. at the Cambridge School and seek reimbursement. (Ibid., ¶¶72-74; J-66.) Counsel for the petitioners sent a second letter dated June 20, 2023, to the respondent requesting placement at the Cambridge School. (J-71.)

By email dated June 20, 2023, the respondent denied the petitioners' request for the out-of-district placement. (J-73.) After receiving the evaluations from Drs. Tighe and Laitusis, L.R.'s IEP for the 2023-2024 school year was not revised. (Ibid., ¶74.)

The petitioners unilaterally placed L.R. at the Cambridge School for the 2023-2024 school year.

Testimony

For the petitioners:

S.R. is L.R.'s mother, who testified that L.R. has struggled in reading and math since first grade. L.R.'s second grade teacher expressed concerns with L.R.'s reading. S.R. asked the teacher if L.R. was dyslexic, but the teacher said that L.R. would outgrow it. No one referred L.R. for special education services despite low reading scores in second and third grade. In fourth grade, L.R. began to call herself "stupid." A teacher alerted S.R. to gaps in L.R.'s reading from first through third grade and gave S.R. tips. L.R. was not referred to the CST until the end of fifth grade. The family hired a private math tutor, however L.R. continued to struggle.

The CST proposed three evaluations. The behavioral assessment showed that L.R.'s anxiety level was high. S.R. was not surprised by Dr. Tighe's psycho-educational evaluation findings that L.R. had significant weaknesses in reading. S.R. agreed with the SLD classification and pull-out instruction but believed that L.R. needed stronger support in reading comprehension and math. S.R. did not agree with the IEP developed for seventh grade which placed L.R. in general education classes with pull-out sessions for math and ICR for language arts, science and social studies. S.R. believed L.R. needed smaller classrooms and specialized instruction. S.R. was unsure if L.R. was receiving Orton-Gillingham instruction; she knew the teacher was using computer-based instruction in seventh grade. L.R. had panic attacks three times per week.

Dr. Tighe diagnosed L.R. with dyslexia and dyscalculia. Dr. Tighe recommended a phonics-based intensive reading instruction and recommended that S.R. consult with the CST, but she did not.

For eighth grade, the draft IEP did not propose resource center instruction for language arts, math, social studies or science. There were no writing or spelling goals

and no mention of reading in the Needs section of the IEP. There was only one reading goal, but it was related to comprehension, not decoding. Petitioners objected to this IEP.

Petitioners investigated the Cambridge School recommended by L.R.'s evaluators and initiated the admission process. They notified the respondent and shared the evaluator's reports on May 31, 2023. Petitioners asked the respondent to revise the IEP to an out-of-district placement. The respondent did not respond. Petitioners' counsel sent a second letter dated June 20, 2023, to the respondent requesting a meeting.

L.R. now attends the Cambridge School where she is doing well. Her attendance has improved, and she has had no panic attacks. Dr. Tina Snider evaluated L.R. at the Cambridge School and confirmed the diagnosis of dyslexia.

Jeanne Tighe, (Tighe) is a speech-language pathologist and teacher of the deaf and hard of hearing. She is a board-certified speech-language specialist and is the Clinical Director for Beyond Communication, LLC. She has been in private practice since 2004, and is an adjunct professor at Kean University. She was accepted as an expert in speech-language pathology including assessments, diagnoses, treatment, intervention and program analysis for students with dyslexia.

She stated that with dyslexia, the brain does not pick up patterns of letters. Structured literacy is teaching a person how to decode words. She issued a report dated March 30, 2023. Her findings were that L.R.'s reading scores and listening comprehension scores were poor. She stated that the iReady test was computer based and she could not rely on the test scores because she did not know what questions were asked. She also found L.R. had limited phonic skills; there was no progress in two years from fifth to seventh grade. L.R.'s reading score of 2.7 meant that she could read seventh-grade material as well as a second grader. If L.R. had services in decoding and language fluency, she could be in general education classes.

Double-deficit dyslexia occurs when there are two areas of deficiency: phonological processing and rapid naming, in L.R.'s case. Tighe concluded that L.R.

needed an out-of-district placement with specialized instruction every day for forty to forty-five minutes.

Tighe observed L.R. in the respondent's seventh-grade language arts class and stated that the services that L.R. needed were not provided nor should those services be provided in a general education classroom because most seventh-grade students have already mastered decoding and phonological processing skills. Tighe believed that Cambridge was a good fit for L.R. She had daily decoding, writing, comprehension and fluency classes.

The respondent's draft IEP for 2023-2024 did not mention decoding, writing or fluency. It also did not address word identification, phonological skills or rapid naming. Tighe also believed L.R. needed compensatory education.

On cross-examination, Tighe said that compensatory education could be provided during the summer until L.R. reached twelfth grade but not as part of an extended day. Tighe urged the petitioners to seek an out-of-district placement because L.R. was in crisis and having panic attacks, however, Tighe would also sanction an in-district class with a Wilson Reading-certified teacher and forty-five minutes of daily instruction in reading in a small group setting.

Tina Snider, (Snider) Ph.D., is a licensed psychologist and Director at the Chatham Mental Health Center. She was accepted as an expert in psychology and the psychology of students. She evaluated L.R. at Cambridge School and issued a report dated October 5, 2023. Cambridge allowed for single-sound instruction and writing and every teacher was trained in Wilson reading instruction. L.R.'s general cognitive ability score was 103, which was average; she was capable of learning and had no intellectual impairments.

She stated that dyslexia and dyscalculia were a challenging combination because they both involved processing letters, sounds and numbers. Work math problems were the worst for someone challenged with these issues. Snider said that L.R. could not participate in general education classes; she needed intensive special education. Snider

agreed with Dr. Tighe's urgency. L.R.'s reading was at two percent while her general education peers were at ninety-eight percent. Snider diagnosed L.R. with generalized anxiety disorder, attention deficit hypertension disorder (inattention), social anxiety disorder, and SLD in reading, writing and math. She recommended that L.R. remain at Cambridge. Snider observed the respondent's general education class and said it was too fast paced for L.R. A second teacher in the classroom would not be helpful because L.R. needed granular instruction; L.R. needed basic letter sound instruction.

The iReady test was computer based and required the student to push a button which triggered the computer to read to the student. But, L.R. had listening challenges and thus, Snider did not believe the results were reliable for L.R. Snider did not agree with the respondent's education plan for L.R. and did not agree that the 2023-2024 IEP met L.R.'s needs. L.R. needed Wilson Reading System all day, every day.

On cross-examination, Snider stated that she never taught special education students in a public school setting but taught teachers how to teach. She did not explore what the respondent might do to meet L.R.'s needs. She did not discuss structured literacy with respondent's staff because she thought if that were available, the respondent would be using it, given L.R.'s severity. She did not know if the respondent could provide the intensive support L.R. needed.

L.R. testified that in fifth grade, writing and reading were hard; she was taken out of class for certain subjects. She gave up easily and had low confidence. She had trouble turning in assignments and did not get help from her teachers. Math homework was hard to understand. In sixth grade, formatting for assignments was difficult. Science was the hardest because there were lots of articles to read. She had a "side teacher"² who read to her, but L.R. did not always understand. She had panic attacks because she was anxious about not doing assignments and she would go to the bathroom to call her Mom. She was absent frequently because of her anxiety.

² This refers to the second teacher in the classroom.

In seventh grade, she was in a small class for math but general education classes for language arts and science. She found this to be stressful. She used Audible to help with reading; the side teacher did not help her. Social science was the hardest class because of the amount of reading. The class was fast-paced, and the homework was confusing. She had more frequent panic attacks. She felt stressed to return to school.

She was initially overwhelmed attending the Cambridge School, but she now really likes it. She understands things better. She does all her homework and does not miss assignments. There are seven students in her classes. She has not had any panic attacks and has good attendance. She is excited to go to school. She volunteers to read aloud in school.

For the respondent:

Erica Marett, (Marett), was employed as a school social worker for seventeen years. She knew how to determine if a student had an SLD. She knew how to establish goals and determine if a student was making meaningful progress. She had a caseload of thirty to forty-five students; seventy-five percent of them were classified as SLD students. There was no pressure to keep students in the district if the student needed additional services. She was accepted as an expert in special education.

Marett was L.R.'s case manager in 2021 when L.R. was in the sixth grade. Marett reviewed L.R.'s early educational records. Students were referred to the CST when there was no evidence of progress on the NWEA MAP test³ and based upon how the student was functioning in the classroom. Based upon L.R.'s records, there was no progress in math since second grade and thus on March 22, 2021, L.R. was referred to the CST. Educational, psychological and social history evaluations were conducted. L.R. did not do well on the Gray Oral Reading Test,⁴ (GORT) where she had to read paragraphs, but

³ Northwest Evaluation Association. This is a standardized math test. <https://www.nwea.org/our-mission/> Last accessed on April 9, 2024,

⁴ This test measures oral reading fluency and comprehension. "Rate, Accuracy, Fluency, and Comprehension scores are reported as scaled scored and have a mean of 10 and standard deviation of 3." (J-26.)

performed better reading words on the Woodcock Johnson test.⁵ Marett did not think L.R.'s scores on these tests were alarming because her scores were within the range of the other SLD students. L.R. was deemed eligible for special education services in July of fifth grade.

Marett did not disagree with Dr. Laitusis' conclusion that L.R. had dyslexia and dyscalculia.

The 2023-2024 draft IEP recommended ICR math because L.R. had made significant progress. Her grades were lower because the expectations were higher and there were fewer modifications. The progress report for the IEP goals and objectives showed that L.R. had achieved all her math goals. (J-72.)

The IEP did not contain any fluency goals because L.R. was reading at grade level and there were no changes because she was making meaningful progress.

On cross-examination, Marett testified that L.R.'s processing speed was in the sixth percentile, the Behavior Assessment showed that L.R. had significant levels of anxiety, L.R. had low scores in the Woodcock Johnson tests compared to her peers,⁶ and scored much lower than her peers in the GORT. She did not suggest changing L.R.'s educational program despite the parents' concerns. There were no decoding goals in the 2023-2024 draft IEP, although L.R.'s sixth-grade teacher noted that L.R. stumbled over words and had decoding issues. Reading was not listed as a "need" in the IEP despite L.R.'s low reading scores. The IEP was drafted before the CST received Dr. Tighe's report. She did not request a new CST meeting after she received Dr. Tighe's report or issue an addendum to the IEP because L.R. left the district. Marett believed the respondent's recommended placement was correct.

⁵ The Woodcock-Johnson® IV (WJ IV™) suite of assessments offers a comprehensive, easy-to-use method of evaluating academic and academic-related abilities for the purposes of determining special education eligibility and informing instruction. <https://blog.riversideinsights.com/wjiv-achievement-oral-language-special-ed-teacher> Last visited on April 11, 2024.

⁶ L.R.'s scores were 57, 50 and 33% out of 90%.

ADDITIONAL FINDINGS OF FACT

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

In determining credibility, I am aware that the District employees would want to support the program they developed for the child and would believe that the District's program would provide the child with a FAPE. I am also aware that the petitioners would want the best program for their child. Nevertheless, the documentary evidence presented supports the testimony that each witness provided to the best of his or her abilities. Indeed, it is not so much the facts that are in dispute, as the 2023-2024 IEP speaks for itself, but rather the inferences that can be made from the evidence and testimony provided by the witnesses in concluding whether the IEP prepared by the District offered FAPE to L.R.

Accordingly, having considered the testimonial and documentary evidence offered by the parties, the testimonies of Drs. Tighe and Snider appeared to be the most credible. They were both unbiased witnesses who reviewed all the relevant assessments produced by the respondent and conducted their own assessments of L.R. They both provided specific recommendations to help L.R. be successful in the classroom environment.

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

Petitioners shared their concerns about L.R.'s reading as early as the first grade but to no avail. The respondent failed to refer L.R for special education services despite the concerns expressed by her second-, third-, and fourth-grade teachers. The data

compiled by the respondent including the MAP scores, Start Strong⁷, Woodcock Johnson, Wechsler Intelligence Scale for Children (WISC-IV) and other assessments all showed that L.R. was performing below her peers. Indeed, it is uncontested that her math MAP scores had not changed in two years. In addition, the WISC-IV assessment conducted by the respondent on June 2021 and Dr. Laitusis on November 2022, found L.R. in the “low average” range for processing speed.⁸ In her report, Dr. Laitusis included a comparison of the results from the Woodcock Johnson tests L.R. took in June 2021 and December 2022. The results showed that L.R.’s scores in reading, broad reading, basic reading skills, broad mathematics, math calculation skills, academic skill, and math facts fluency were all lower in December 2022. (J-46.)

Every IEP since sixth grade has provided for a modification that allowed a structured literacy approach in reading and language arts, but there is no evidence that the respondent ever implemented this modification. The respondent failed to include reading goals in the IEP despite a reading score of 2.7 and teacher comments about L.R.’s academic challenges. The respondent removed pull-out resource supports for L.R. in language arts and math and placed her in the general education classroom, but continued to state in the IEP that she needed smaller class sizes and was compromised from performing within grade level expectations because of her low academic skills in reading and math.

The petitioners did not release the reports prepared by Drs. Laitusis and Tighe until the end of L.R.’s seventh-grade school year, which was well after the time the CST prepared the IEP for L.R.’s eighth-grade school year. In addition, Dr. Tighe recommended that S.R. contact the CST about amending the IEP, but S.R. did not do so.

LEGAL ANALYSIS AND CONCLUSIONS

IEP and FAPE

⁷ This assessment was discontinued by the New Jersey Department of Education in the fall 2023. See, <https://www.njsba.org/news-publications/school-board-notes/march-28-2023-vol-xlvi-no-32/njdoe-to-discontinue-start-strong-assessments/> Last visited on April 11, 2024

⁸ This measured L.R.’s ability to learn and complete relatively simple visual-motor tasks in a timed environment. (J-46.)

The petitioners present the following issues, specifically with regard to L.R.'s fifth-, sixth-, seventh-, and eighth-grade IEPs:

1. The respondent did not provide appropriately ambitious programming in light of L.R.'s circumstances.
2. The respondent failed to provide an IEP that was calculated to provide a FAPE and did not produce an IEP that met L.R.'s academic needs in math and language arts literacy despite proof of L.R.'s struggles in these areas.
3. The respondent unreasonably delayed evaluating L.R. after the parents requested concerns about her reading and the possibility that she was dyslexic.
4. The respondent's deficient programming and lack of meaningful instruction caused L.R. to regress.
5. The respondent's arguments that L.R. received good grades do not show that she made progress.

The petitioners seek: a finding that the Board denied a FAPE to L.R.; a finding that the 2023-2024 IEP was insufficient to provide L.R. with a FAPE; reimbursement for the costs to attend the Cambridge School; revision of the 2023-2024 IEP to place L.R. at the Cambridge School for as long as that placement remains appropriate, including tuition and transportation and experts' fees, and compensatory education for the respondent's failure to identify L.R. as a student eligible for special education until after years of struggling.

The respondent contends that it provided L.R. with a FAPE in the least restrictive environment appropriate for her needs with all appropriate related services and supports; she has made meaningful progress and received a meaningful benefit while in the school.

This case arises under the IDEA, 20 U.S.C. §§ 1400 to 1482. One purpose of the IDEA, among others, is to ensure that all children with disabilities have available to them a “free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A). In short, the IDEA defines “free appropriate public education” (FAPE) as special education and related services provided in conformity with the IEP. See 20 U.S.C. § 1401(9). A FAPE and related services must be provided to all students with disabilities from age three through twenty-one. N.J.A.C. 6A:14-1.1(d). A FAPE means special education and related services that: a) have been provided at public expense, under public supervision and direction, and without charge; b) meet the standards of the State educational agency; c) include an appropriate preschool, elementary, or secondary school education in the State involved; and d) are provided in conformity with the IEP required under §614(d). 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 provide a FAPE, a school district must develop and implement an IEP. N.J.A.C. 6A:14-3.7. An IEP is “a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” Sch. Comm. of Burlington v. Dep’t of Educ. of Mass., 471 U.S. 359, 368 (1985). An IEP should be developed with the participation of parents and members of a district board of education’s CST who have participated in the evaluation of the child’s eligibility for special education and related services. N.J.A.C. 6A:14-3.7(b). The IEP team should consider the strengths of the student and the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluations of the student; the student’s language and communications needs; and the student’s need for assistive technology devices and services. The IEP establishes the rationale for the pupil’s educational placement, serves as the basis for program implementation, and complies with the mandates set forth in N.J.A.C. 6A:14-1.1 to -10.2. The IEP must be reasonably calculated to confer some educational benefit. Hendrick Hudson Dist. Bd. of Educ. v. Rowley, 458 U.S. 176 (1982).

The Third Circuit Court of Appeals has clarified the meaning of this “educational benefit.” It must be “more than trivial,” significant, and “meaningful.” Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180 (3rd Cir. 1988), cert. denied, 488 U.S. 1030 (1989); Ridgewood Bd. of Educ. v. N.E. for M.E., 172 F.3d 238, 247-48 (3rd Cir. 1999). In evaluating whether a FAPE was furnished, an individual inquiry into the student’s potential and educational needs must be made. Ridgewood, 172 F.3d at 247. In providing a student with a FAPE, a school district must provide such related services and support as are necessary to enable the disabled child to benefit from the education. Rowley, 458 U.S. at 188-89.

Parents who are dissatisfied with an IEP may seek an administrative due process hearing. 20 U.S.C. § 1415(f). The burden of proof is placed on the school district. N.J.S.A. 18A:46-1.1. The Board will satisfy the requirement that a child with disabilities receive a FAPE by providing personalized instruction with sufficient support services to permit that child to benefit educationally from instruction. Rowley, 458 U.S. 176, 203 (1982). To meet its obligation to deliver a FAPE, a school district must offer an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. Andrew F. v. Douglas Cnty. Sch. Dist. RE-1, 580 U.S. 386 (2017). In Andrew, the District Court for the District of Colorado initially upheld the school denial of a reimbursement for an out-of-district placement. However, the Supreme Court reversed the finding that an IEP should be appropriately ambitious in light of the child’s circumstances, and “tailored to the unique needs of a particular child.”

The appropriateness of an IEP is not determined by a comparison of the private school and the program proposed by the district. S.H. v. State-Operated Sch. Dist. of Newark, 336 F.3d 260, 271 (3d Cir. 2003). Rather, the pertinent inquiry is whether the IEP offered a FAPE and the opportunity for significant learning and meaningful educational benefit within the least restrictive environment.

Toward this end, an IEP must be in effect at the beginning of each school year and be reviewed at least annually. 20 U.S.C. § 1414(d)(2) and (4); N.J.A.C. 6A:14-3.7. A complete IEP must contain a detailed statement of annual goals and objectives. N.J.A.C. 6A:14-3.7(e)(2). It must contain both academic and functional goals that are, as

appropriate, related to the New Jersey Student Learning 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.” Ibid. 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 New Jersey Supreme Court has recognized that “[w]ithout an adequately drafted IEP, it would be difficult, if not impossible, to measure a child’s progress, a measurement that is necessary to determine changes to be made in the next IEP.” Lascari v. Bd. of Educ. of Ramapo Indian Hills Reg’l Sch. Dist., 116 N.J. 30, 48 (1989).

Here, the proposed 2023-2024 IEP was not sufficiently individualized to L.R. to permit continuing meaningful progress, considering her learning, math and language deficits. She required a structured literacy program that included decoding, writing, comprehension and fluency development with a methodology and curriculum such as Orton-Gillingham or Wilson Reading System. While L.R. appeared to have made some initial progress in the sixth grade when she received pull-out resource instruction at school, her progress was lagging as the work became more difficult and complex. She had not mastered the basics and was being called upon to do even more. She was not reading on grade level but was reading as much as a second grader could read a seventh-grade book. Her assignments were waived, or she was permitted to retake exams until she passed them. She experienced panic attacks and developed school anxiety.

I **CONCLUDE** that the Board failed to offer L.R. a FAPE as that term is defined by law, and did not confer a meaningful educational benefit on L.R. The IEP was not a fully developed education plan, and did not include critical components, such as reading, fluency, decoding, writing, and a methodology designed to address the complexity of L.R.’s SLD. Each IEP developed for L.R. identified structured literacy approach as an approved modification for L.R., however, there is no evidence that this approach was ever used. I therefore **CONCLUDE** that the IEP offered to L.R. for 2023-2024 school year did not offer a FAPE to her.

Placement

Parents who withdraw their child from public school and unilaterally place the child in a private placement while challenging the IEP may be entitled to reimbursement if the administrative law judge (ALJ) finds that the school district's proposed IEP was inappropriate, and that the parents' unilateral placement was appropriate under the IDEA. 20 U.S.C. § 1412(a)(10)(C)(ii); N.J.A.C. 6A:14-2.10(c). Florence Cnty. Sch. Dist. Four v. Carter, 510 U.S. 7, 12 (1993); Sch. Comm. of Burlington v. Dep't of Educ. of Mass., 471 U.S. 359, 370 (1985). More particularly, an ALJ may require the district to reimburse the parents for the cost of that enrollment if "the district had not made a free, appropriate public education available to the student in a timely manner prior to enrollment and . . . the private placement is appropriate." N.J.A.C. 6A:14-2.10(b); see 20 U.S.C. § 1412(a)(10)(C)(ii). However, parents who unilaterally withdraw their child from public school and place the child in a private school without consent from the school district "do so at their own financial risk." Burlington, 471 U.S. at 374. If it is ultimately determined that the program proposed by the district affords the child a FAPE, then the parents are barred from recovering reimbursement of tuition and related expenses.

Having found that the respondent failed to offer FAPE to L.R., it must now be determined whether the program devised for her during the 2023-24 school year at Cambridge School was an appropriate placement under the IDEA. During the hearing of this matter, the respondent stipulated on the record that it would not contest placement at Cambridge School if this tribunal found that the respondent failed to provide a FAPE. Accordingly, I **CONCLUDE** Cambridge School was an appropriate placement for L.R. for the 2023-2024 school.

N.J.A.C. 6A:14-2.10(c) requires parents to give the school district advance notice of their concerns and intention to remove a student unilaterally. It is axiomatic that "[t]his notice requirement gives the school an opportunity, before the child is removed, to assemble a team, evaluate the child, devise an appropriate IEP, and demonstrate whether or not a FAPE can be provided in the public schools." J.B. & D.B. v. Watchung Hills Reg'l Sch. Dist. Bd. of Educ., 2006 U.S. Dist. LEXIS 250, *23-24 (D.N.J. Jan. 5, 2006) (citing Greenland Sch. Dist. v. Amy N., 358 F.3d 150, 159-60 (1st Cir. 2004)). This

regulation also states that reimbursement may be reduced or denied if there is a judicial finding of unreasonableness with regard to the parents' actions. See N.J.A.C. 6A:14-2.10(c)(4).

The respondent herein drafted the 2023-2024 IEP without the benefit of the reports from Drs. Laitusis or Tighe. Ms. Marett testified that the respondent did not receive those reports until June 2023, which was the end of the school year. However, the petitioners had Dr. Laitusis' report as early as December 2022, and Dr. Tighe's report in March 2023. Petitioners did not provide any explanation for the delay. As the respondent states in its post-hearing brief, had the petitioners provided the reports promptly, the parties could have had a discussion and changed the programming to be more specific regarding the structured literacy that both evaluators recommended. S.R. testified that Dr. Tighe encouraged S.R. to speak with the CST but S.R. did not. Ms. Marett testified that the respondent had Orton-Gillingham-trained staff and resource room classes. Accordingly, I **CONCLUDE** that the petitioners acted unreasonably in not promptly providing the evaluators' reports to the respondent. I further **CONCLUDE** that as a result of this unreasonable behavior, the petitioners' reimbursement is reduced to fifty percent for tuition, transportation, and any related services' costs incurred for the Cambridge School for the 2023-2024 school year.

Compensatory Education

Finally, petitioners seek compensatory education. Our courts recognize compensatory education as a remedy under the IDEA and has held that "a school district that knows or should know that a child has an inappropriate IEP or is not receiving more than a *de minimis* educational benefit must correct the situation. If it fails to do so, a disabled child is entitled to compensatory education for a period equal to the period of deprivation, but excluding the time reasonably required for the school district to rectify the problem." M.C. ex rel. J.C. v. Central Regional Sch. Dist., 81 F.3d 389, 397 (3d Cir. 1996). Compensatory education requires school districts to "belatedly pay expenses that [they] should have paid all along." Id. at 395 (citations omitted).

My task is “to weigh the interests on both sides and determine the equitable outcome. This is not an easy task, [and I must] balance the interests of finality, efficiency, and use of the School District’s resources with the compelling needs [of the student].” Ferren C. v. Sch. Dist. of Phila., 595 F. Supp. 2d 566, 578 (E.D. Pa. 2009), *aff’d*, 612 F. 3d 712 (3rd Cir. 2010). Some courts award by rote a block of compensatory education equal to time lost by a denial of FAPE, referred to as a “cookie-cutter approach.” See Cent. Sch. Dist. v. K.C., 2013 U.S. Dist. LEXIS 94065, *32-33 (E.D. Pa. 2013) (citing Reid v. D.C., 401 F.3d 516, 523 (D.C. Cir. 2005)). The award “should aim to place disabled children in the same position they would have occupied but for the school district’s violations” by “replacing educational services the child should have received in the first place.” Reid v. D.C., 401 F.3d 516, 518, 365 U.S. App. D.C. 234 (D.C. Cir. 2005) (cited with approval by Ferren C., 612 F.3d at 717-18). An hour-for-hour replacement for the period of deprivation, however, is not the only appropriate method of calculating a compensatory education award. Reid, 401 F.3d at 523 (finding that “this cookie-cutter approach runs counter to both the ‘broad discretion’ afforded by the IDEA’s remedial provision and the substantive FAPE standard that provision is meant to enforce.”)

With this analysis in mind, in this case, both parties agree to instruction during the summer. However, the respondent argues for Dr. Tighe’s recommendation of forty-five minutes a day to the “maximum extent possible,”⁹ and the petitioners argue for ten hours per week in reading by a Wilson-trained instructor and five hours per week in math instruction in the 2024 and 2025 summers. The parties are urged to collaborate on an agreeable schedule and if that proves to be challenging, to follow the guidance of Dr. Tighe, the jointly recognized expert in this area.

ORDER

Based upon the foregoing, I **ORDER** that the petitioners’ appeal is **GRANTED** as follows:

⁹ Respondent’s post-hearing brief dated March 11, 2024, at 5.

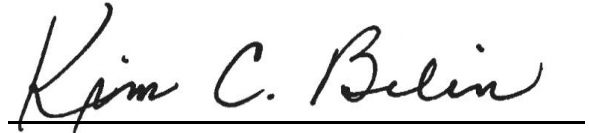
1. The respondent failed to provide a FAPE for the 2023-2024 school year. As such the petitioners are the prevailing party. The petitioners shall be reimbursed fifty percent of the cost of Cambridge School's tuition for the 2023-24 school year, including the costs of transportation, and other related educational services as they may have incurred to date.
2. The Cambridge School is deemed the most appropriate and least restrictive placement for L.R. for the 2023-2024 school year. She shall be enrolled in the Cambridge School for the school year 2023-2024 and for so long as the placement is appropriate. Prior to the end of the 2023-2024 school year, the respondent's CST and Cambridge School's CST shall arrange a meeting to evaluate L.R.'s progress to determine proper placement for the 2024-2025 school year.¹⁰
3. The petitioners shall be reimbursed fifty percent of the cost of the private experts which were obtained by the petitioners to assist in understanding L.R.'s disabilities and needs, in planning for her educational program and to testify in this matter: Drs. Laitusis, Tighe and Snider. Reimbursement is for out-of-pocket expenses only, and only upon presentation of proof in the form of invoices and cancelled checks/electronic payment that the claimed expenses were actually incurred.

¹⁰ Dr. Tighe suggests that only two years of intensive structured literacy may be necessary.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2024) 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 (2024). 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.

April 11, 2024

DATE



KIM C. BELIN, ALJ

Date Received at Agency:

Date Mailed to Parties:

KCB/sw

APPENDIX

EXHIBITS

Joint Exhibits

- J-1 2016-2017 Fall MAP Report
- J-2 2016-2017 Spring MAP Report
- J-3 1st grade report card MP3 16-17 SY dated June 2017
- J-4 2017-2018 Fall MAP Report
- J-5 2017-2018 Spring MAP Report
- J-6 2nd grade report card 17-18 SY dated June 2018
- J-7 2018-2019 Fall MAP Report
- J-8 2018-2019 Spring MAP Report
- J-9 2018-2019 ELA Assessment Report
- J-10 2018-2019 Math Assessment Report
- J-11 3rd grade report card MP3 18-19 SY dated June 2019
- J-12 2019-2020 Fall MAP Report
- J-13 2019-2020 Winter MAP Report
- J-14 4th grade report card MP3 19-20 SY dated June 2020
- J-15 2020-2021 Fall MAP Report
- J-16 2020-2021 Winter MAP Report
- J-17 2020-2021 Spring MAP Report
- J-18 I&RS form dated June 22, 2021
- J-19 Recommendation for Evaluation dated March 26, 2021
- J-20 Initial Planning Proposed Action dated April 15, 2021
- J-21 District Social History Evaluation dated May 24, 2021
- J-22 5th grade report card 20-21 SY dated June 2021
- J-23 BASC 3 Assessment Rater: Danielle DeLizzio dated June 3, 20 21
- J-24 BASC 3 Assessment Rater: Eric Richards dated June 4, 2021
- J-25 BASC 3 Assessment Rater: Shawneen Rowe dated June 7, 2021
- J-26 District Psychoeducational Assessment dated June 26, 2021
- J-27 Initial IEP dated July 6, 2021

- J-28 Fall Start Strong ELA Assessment Report dated November 23, 2021
- J-29 Fall Start Strong Math Assessment Report dated November 23, 2021
- J-30 Fall Start Strong Science Assessment Report dated November 23, 2021
- J-31 Progress Report 21-22 SY dated December 6, 2021
- J-32 2021-2022 Fall MAP Report
- J-33 2021-2022 Winter MAP Report
- J-34 2021-2022 Spring MAP Report
- J-35 IEP Progress Report 21-22 SY dated February 9, 2022
- J-36 IEP Progress Report 21-22 SY dated April 14, 2022
- J-37 NICHQ Vanderbilt Assessment Scale – Teacher dated April 22, 2022
- J-38 IEP Draft dated April 28, 2022
- J-39 IEP dated April 28, 2022
- J-40 2021-2022 Mathematics Assessment Report
- J-41 2021-2022 English Language Arts Assessment Report
- J-42 6th grade report card MP4 21-22 SY dated June 2022
- J-43 Progress Report 21-22 SY dated June 23, 2022
- J-44 2022-2023 Fall MAP Report
- J-45 iReady Lexile Diagnostic Results dated September 19, 2022
- J-46 Dr. Laitusis Psycho-Educational Evaluation dated December 29, 2022
- J-47 Winter Map Math Report dated January 2023
- J-48 Tighe’s Comprehensive SL Contract dated February 15, 2023
- J-49 Tighe Case History dated February 16, 2023
- J-50 Tighe Intake dated February 24, 2023
- J-51 Midyear Lexile dated February 27, 2023
- J-52 Email chain amongst teachers dated March 8, 2023
- J-53 Email chain between case manager and Dr. Tighe dated March 9, 2023
- J-54 Emails Between E.R. and District dated March 14, 2023
- J-55 Dr. Tighe Comprehensive Oral and Written Language Report dated March 20, 2023
- J-56 Reading Intervention dated March 21, 2023
- J-57 CTOPP-2 2023 Scored dated March 30, 2023
- J-58 GORT-5 Form B 2023 Scored dated March 30, 2023
- J-59 TILLS WE marked for scoring dated March 30, 2023

- J-60 WIST secondary dated March 30, 2023
- J-61 WIST Spelling Protocols dated March 30, 2023
- J-62 Draft IEP dated April 27, 2023
- J-63 Proposed IEP dated April 27, 2023
- J-64 Email chain between case manager and parents dated May 4, 2023
- J-65 Cambridge Admissions Screening dated May 31, 2023
- J-66 Gaines to Harrison Letter dated May 31, 2023
- J-67 7th Grade Report Card MP4 22-23 SY dated June 2023
- J-68 Email Parent and French teacher dated June 14, 2023
- J-69 Email Parent and teacher re documentary project dated June 14, 2023
- J-70 Email parent and science teacher dated June 16, 2023
- J-71 Gaines to Harrison letter dated June 20, 2023
- J-72 Progress report 22-23 SY dated June 20, 2023
- J-73 Email chain between counsel regarding unilateral placement dated June 21, 2023
- J-74 Petition for Due Process dated June 27, 2023
- J-75 Answer to Petition for Due Process dated August 21, 2023
- J-76 Dr. Snider Assessment, Info, Consents, HIPAA Acknowledgement Contract dated October 4, 2023
- J-77 Dr. Tighe Cambridge Observation dated October 5, 2023
- J-78 Dr. Snider Testing Woodcock Johnson Test of Achievement Protocol dated October 6, 2023
- J-79 Gaines to Harrison Letter dated October 6, 2023
- J-80 Dr. Snider Parent Questionnaire dated October 15, 2023
- J-81 Dr. Snider Gray Oral Reading Testing Protocols dated November 1, 2023
- J-82 Dr. Snider Email regarding observation of LR at Cambridge dated November 3, 2023
- J-83 Mom Email to Dr. Snider dated November 16, 2023
- J-84 Dr. Snider Comprehensive Psychological Evaluation dated November 16, 2023
- J-85 Gaines to Harrison Letter dated November 17, 2023
- J-86 Cambridge School Records 2023-2024
- J-87 Cambridge School Website Info Packet

- J-88 CV – Dr. Snider
- J-89 CV – Dr. Tighe
- J-90 Woodcock Johnson-IV Reports, Recommendations, and Strategies –
Excerpt pages 11-13 regarding Relative Proficiency Index Score
- J-91 Lexile Grade Level Charts
- J-92 Fountas & Pinnell Chart
- J-93 Dyslexia Handbook
- J-94 ASHA Scope of Practice in Speech-Language Pathology
- J-95 Snider email to Gaines dated February 1, 2024
- J-96 Tighe Letter to Parents dated February 2, 2024
- J-97 Wilson Reading Program 4th Addition Scope and Sequence Steps 1-12
- J-98 CV – Karen Abrams
- J-99 CV – Michelle Fisher
- J-100 CV – Elizabeth Keller
- J-101 CV – Erica Marett
- J-102 CV – Ashley Post

For petitioner

S.R.
L.R.
Jeanne Tighe
Tina Snider

For respondent

Erica Marett