



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

**FINAL DECISION**

OAL DKT. NO. EDS 09256-23

AGENCY DKT. NO. 2024-36485

**A.F. AND A.F. ON BEHALF OF S.F.,**

Petitioner,

v.

**TEANECK TOWNSHIP BORO BOARD**

**OF EDUCATION,**

Respondent.

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**A.F. and A.F.**, petitioners, pro se

**Jodi S. Howlett**, Esq., and **Frances Febres**, Esq. (on the brief), for respondent  
(Cleary, Giacobbe, Alfieri & Jacoby, attorneys)

Record Closed: April 12, 2024

Decided: May 29, 2024

BEFORE **SUSANA E. GUERRERO**, ALJ:

**STATEMENT OF THE CASE**

Petitioners A.F. and A.F. filed a due process petition (Petition) on behalf of their daughter, S.F., seeking an out-of-District placement and reimbursement for their unilateral placement of S.F. at an out-of-State private school. Petitioners assert that the Individualized Educational Plan (IEP) proposed by the Teaneck Township Board of

Education (Respondent or the Board), does not confer S.F. a free and appropriate public education (FAPE), and that the Board also failed to meet its obligation under a prior settlement agreement to place S.F. in an appropriate out-of-District placement. The Board asserts that the proposed IEP does confer S.F. with a FAPE and that S.F. is not entitled to reimbursement or continued placement at the current out-of-District placement.

### **PROCEDURAL HISTORY**

The parents filed a request for due process on or around September 1, 2023. The contested case was transmitted to the Office of Administrative Law (OAL), where it was filed on September 18, 2023. A prehearing conference was held on October 2, 2023, and a hearing took place on February 5, 2024, and February 7, 2024. The parties requested an opportunity to obtain transcripts of the hearing and to file post-hearing briefs. The record closed on April 12, 2024, upon receipt of the post-hearing briefs.

### **FACTUAL DISCUSSION**

Based on the testimony the parties provided, and my assessment of its credibility, together with the documents submitted by the parties, and my assessment of their sufficiency, I **FIND** the following as **FACT**:

At the time this Petition was filed, S.F. was nine years old and attending the fourth grade at The Shefa School (Shefa), a private school in Manhattan that serves students with language-based learning disabilities. S.F. resides in Teaneck with her parents and siblings.

In 2021, S.F.'s parents had her evaluated by the Teaneck Public Schools Child Study Team, and she was subsequently classified as a student eligible for special education with a classification of Other Health Impairment (OHI). At the time, the Child Study Team (CST) recommended a self-contained Learning and Language Disability (LLD) classroom at Whittier Elementary School in Teaneck. S.F. had been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), Anxiety Disorder with Separation Anxiety, and Specific Learning Disability in the Language Arts area. S.F. never attended

school in the District. The parents rejected the IEP and enrolled her in Shefa for the 2021–2022 and 2022–2023 school years.

Petitioners previously filed a Petition for due process in 2022, seeking reimbursement for the unilateral placement of S.F. at Shefa, which resulted in a settlement with the Board. In or around May 2022, the petitioners and the Board entered into a settlement agreement whereby the Board agreed to make a monetary contribution towards S.F.'s out-of-District placement at Shefa for the 2021–2022 and 2022–2023 school years. (J-6.) Petitioners were represented by counsel at the time. Pursuant to the settlement agreement, the parties also agree that the District would conduct evaluations of S.F. in the spring of 2023 that the Board deemed necessary to determine S.F.'s present levels of performance and her continued eligibility for special education. Pursuant to the settlement agreement, the Board was then to develop an IEP for S.F. and convene an IEP meeting by June 1, 2023.

As the parties had agreed, a re-evaluation planning meeting was held in the spring of 2023 and the District conducted several evaluations in April and May 2023. These include a Psychological Evaluation (J-7), the results of which reflect that S.F. function within the average range of cognitive ability. An Occupational Therapy (OT) Evaluation (J-9 and J-10) recommended group OT once per week. An Education Assessment (J-8) found that S.F.'s overall academic achievement, as measured by the WJ-IV Broad Achievement Standard Score, was in the low-average range; with low-range cluster scores for Reading, Broad Reading and Reading Fluency; low-average scores for Basic Reading Skills, Reading Comprehension, Academic Skills and Academic Fluency; high-average range scores in Writing Samples; and average-range scores in seven clusters (including math). A Social History (J-11) was conducted by Amy Morik, LCSW, (Morik) which included a review of S.F.'s educational service file, parent interview, interview with the Shefa school psychologist, and an observation of S.F. at Shefa. Rather than conducting its own psychiatric evaluation, the parties agreed that Dr. Jonathan Wachtel, S.F.'s treating psychiatrist, would prepare a report to be considered by the CST. In his report of May 2023, Dr. Wachtel notes that he treats S.F. for her ADHD, and Obsessive Compulsive Disorder (OCD). In an earlier iteration of his letter, Dr. Wachtel opined that S.F. "will benefit from educational support including enrollment at the Shefa School to

support her language-based learning disability, as well as her ADHD and OCD.” (P-5) The District asked Dr. Wachtel to edit the letter to include his diagnosis and treatment only, as the District had requested. I gave no consideration to any opinion or recommendation by Dr. Wachtel concerning placement in part because he did not testify at the hearing.

## **IEP**

Once the evaluations were completed, and the District received Dr. Wachtel's letter, records from Shefa, and information from the parents, a Re-evaluation Eligibility Determination and IEP meeting was scheduled. This meeting was held on May 17, 2023, and an IEP was prepared for the 2023–2024 school year. (J-13.)

The proposed IEP recommends a self-contained program in Teaneck or in a New Jersey state-approved private school for students with disabilities, “including but not limited to The Community School in Teaneck, NJ and Banyan School in Fairfield, NJ.” The IEP states that the Board “is open to additional state-approved private schools for students with disabilities, as well as NAPLES approved programs.”

The IEP classifies S.F. as “Other Health Impairment,” given her diagnosis of ADHD and OCD. The IEP team recognized that S.F.’s condition negatively impacts her attending skills, class participation and work completion in the school setting; and that she also exhibits difficulties with visual-motor integration skills, basic reading skills and spelling; and that symptoms of hyperactivity and anxiety impede upon her participation in the progress with the general education curriculum. The IEP notes that she responds well to small group instruction, re-teaching opportunities and multi-sensory instructional approach.

The District proposed a “Special class mild/moderate learning or language disabilities” program with specialized reading and math (once daily for 80 minutes each), writing (once daily for 40 minutes), and science and social studies (once each on alternate days for 40 minutes each). It provides for group OT; individual counseling; speech -

language small group therapy; and social skills group (all once weekly for 30 minutes each).

The proposed IEP contains Present Levels of Academic Achievement and Functional Performance in the areas of reading, math, writing, speech/language, OT, and social/emotional/behavioral, based on the information obtained through the most recent evaluations. Goals and Objectives in the areas of reading, writing, math, speech/language, social/emotional/behavioral, and OT are also included in the IEP, and Morik testified credibly that these were largely developed from the information obtained from the evaluations, and that they would be revisited about thirty days after starting the program.

Several modifications and accommodations are also included in the IEP, including providing “a highly structured, predictable learning environment,” placing student “in cooperative learning groups,” providing small group instruction; multi-sensory presentation of data; and several accommodations that specifically address S.F.’s ADHD.

When asked about how the District would address the parents’ concerns with S.F.’s anxiety in transferring to a new school, Morik testified that the IEP provides for counseling, which would help with transition, and social skills groups.

The CST agreed that S.F. would benefit from a full-day self-contained program, and that this constituted the least restrictive environment. The IEP team agreed that due to S.F.’s needs in the areas of behavioral and academic functioning, she requires a small, structured class setting with a smaller student-to-teacher ratio to allow for direct instruction, repetition, re-teaching, cueing, modeling, and immediate feedback in reading, language arts and math.

Morik, who conducted the Social History Evaluation, and was also S.F.’s case manager who drafted the IEP, testified on behalf of the District. She confirmed that the results of the evaluations and testing, records received from Shefa, and Dr. Wachtel’s report were all considered in drafting the IEP. She testified that the parents expressed concerns about S.F.’s Obsessive Compulsive Disorder (OCD) and anxiety, and that a

transition to a new school would “really set her back.” Morik recognized that with S.F.’s anxiety, which manifests itself as OCD, her inattention and hyperactivity, she necessitates a small self-contained classroom. She testified that the District’s Whittier School has an appropriate LLD classroom for S.F., and that the private Banyan School was also an appropriate placement for S.F.

### **Post-IEP Meetings and Observations**

Following the IEP meeting, the parents and Morik agreed to look at three out-of-District placement options for S.F., consistent with the parties’ prior settlement agreement. Two days after the IEP meeting, Morik sent the petitioners the proposed IEP and three forms to release records to three private schools in New Jersey.

The parents had independently heard about the Craig School, and S.F.’s mother reached out to them for information. The District agreed to consider the Craig School as a potential placement, but after receiving S.F.’s records, the Craig School determined that she was not a good fit for their school.

The parents and the District agreed to send S.F.’s records to the Community School, one of the two schools identified in the IEP as a potential placement. Morik and the parents visited the Community School in early June, and all agreed that it would not be an appropriate placement for S.F. because the school could not provide the needed support to address S.F.’s mental health needs.

The parties also agreed to look at the Banyan School. While the parties planned to visit the school, the Banyan School requested that S.F. also attend the visit. It is not unusual for private schools for students with disabilities to require the student’s attendance at an in-take meeting. The parents here declined to take S.F. to the Banyan School because she was in her final days of the school year and they did not want her to miss school or become upset. Morik and S.F.’s father visited the Banyan School in early June. Ultimately, the parents reported that they did not feel that the Banyan School was appropriate because the fourth-grade class was very small and because the students had various disabilities that would make it difficult for S.F. to connect with her peers. The

parents also expressed concern about her ability to transition. Morik testified that this was an appropriate placement for S.F., however no application was sent to the Banyan School because the parents did not agree to this potential placement. Morik testified that the Banyan School was an appropriate placement for S.F. She testified that they offered small classes, supports that S.F. needs a small setting to help with academics and emotional support. However, her testimony lacked more specificity concerning the Banyan School, the type of program it offers, or whether, or how, it could meet S.F.'s needs. There is no evidence that an application to Banyan School was ever submitted.

Morik also suggested the Winston School. The parent(s) and Morik participated in a virtual information session with Winston representatives, and while Morik considered this school another "viable option" for S.F., S.F.'s father stated that he did not have enough information about the school to agree to go through the intake process. There is no evidence that he ever requested additional information about the Winston School, and the parents never agreed to apply to that school.

Morik asked the parents if they had any other schools in mind, as they indicated that they were researching a few schools, and the parents only suggested the Shalsholet School, which is not an New Jersey-approved school for students with disabilities.

### **Proposed in-District Program**

The parents also observed the District's proposed self-contained LLD classroom in the Whittier School.

The parents maintained to Morik that S.F. is doing well at Shefa and that with her OCD and anxiety, a transition to a new school would set her back. Morik maintained that it would be inconsistent with their settlement agreement to keep S.F. at Shefa, and that S.F.'s needs could be met within a self-contained LLD program in New Jersey.

Shellian Mirander, the Director of Special Education and Nursing Services in the District, testified concerning the proposed in-District program at the Whittier School. She testified that the District's LLD program is designed for students with either receptive,

processing or expressive language delays, and that it provides individualized instruction for each student. Mirander confirmed that this year, there were less than ten students in the class, although the program can accept up to sixteen students. It includes both third and fourth grades, with two adults, including one special education teacher. They use a multi-sensory approach, typically based on Orton-Gillingham, and the Wilson Reading Program. She testified that Shefa uses the PAF methodology, which is a multi-sensory program similar to Wilson. She testified that she did not foresee a problem transitioning from the PAF program to Wilson.

Mirander testified that there are components of the LLD program that include small group instruction, and that there are opportunities to address the student's goals in individual, small group, or whole group settings. Mirander testified that they work with students on specific skills through one-one-one instruction, especially around multi-sensory reading. She confirmed that the District's LLD teacher is trained in Orton-Gillingham. Both Morik and Mirander testified that they believe the classroom at Whittier is appropriate for S.F. based on her profile and the program.

### **Rejection of the IEP and Unilateral Placement**

On June 16, 2023, Morik's last day in the District before her summer break, S.F.'s father sent Morik an email rejecting the proposed placements and the draft IEP. In the email, he notes that they reviewed three schools and the LLD classroom at Whittier and that "any change of schools would have to deal with the fact that [S.F.] has tremendous anxiety and OCD and would not be helped by a change in schools, when she is thriving at Shefa and is extremely happy there." He noted that the program at Whittier was insufficient to meet S.F.'s needs. He specifically noted that the class was "too big a group with insufficient differentiation to account for each child's needs"; it was a problem that two grades were being taught together in the classroom; and that the overall class seems "way behind" where S.F. is in reading; the class was chaotic and had too much sensory overload; and the teacher was mean. S.F.'s mother also expressed concerns about the Banyan School, and noted that the Winston School may have been appropriate but still expresses concerns with transition and the application process. In that email, the parents reject the proposed placements and the IEP and state that they will be continuing S.F. in



Shefa unless the District finds “another appropriate placement and deal with the issues that will arise with any transition within the next ten days.” (J-56.)

### **Petitioners’ Witnesses**

S.F.’s mother observed the District’s program and described it as a “disaster” and chaotic, with “stuff everywhere” that would not allow her daughter to stay focused. She also testified that she did not find the teacher to be nice or incentivizing, and that her daughter is “uber sensitive.” She opined that her daughter did well at Shefa but acknowledged that she had a more difficult time this year. S.F.’s mother testified about her daughter’s dyslexia, attention issues, OCD and skin picking. She did not observe the Banyan School and did not want S.F. to see the school because it would upset her. I did not find her credible when she testified as to her surprise to learn from Winston School in August that Teaneck stopped processing anything on S.F.’s behalf. I have no reason to believe that the parents expected the District to submit an application to Winston when they were not receptive to applying to that school, and never followed up with the District about that school. They rejected all proposed options when they sent the letter to the District in early June.

On cross-examination, S.F.’s mother agreed that the “Parental Concerns” section of the IEP accurately reflect her concerns. She testified that a transition to a new school would set S.F. back because her mental state is “very fragile,” she is very sensitive, she is impulsive and anxious, and she does not deal well with change. She described her daughter as “complex.” She testified that Shefa is addressing skin picking with a chart system and ace bandage, but that S.F. does not receive one-on-one counseling at Shefa, only group-based counseling.

S.F.’s mother testified that the Whittier School has too many students and too much chaos. She testified that, based on her observation of the Whittier School, S.F. would not be getting educational support and would regress educationally. She testified that S.F.’s old and new psychiatrists stated that they did not feel that switching schools would be a good thing for S.F., and she referenced the letter from Dr. Wachtel (P-5). She concedes that there was no documentation from any medical provider that was provided

to the District indicating that S.F. was unable to go to a different school besides Shefa. She testified that while she was concerned with transition, “if there was a great school out there for her, I would love to switch her to it,” and “if it’s for an amazing program that will help her,” she will switch schools. The parents never followed up with Dr. Theilman or the District when they returned from vacation that summer.

Avi-Yonah Schwab is the assistant head of Shefa, and he has a Ph.D. in psychology. He described Shefa as a school serving students with language-based learning disabilities, which encompasses dyslexia. He testified that Shefa provide a multi-sensory research-based comprehensive program to remediate difficulties, and that the students have average to above-average IQ, but struggle with reading and writing, and interpreting the language of the classroom. Shefa, like the District, uses Orton-Gillingham, but a reading program different than the one used by the District. He described S.F. as the “poster child” Shefa student in that she has significant language-based learning disabilities. He noted that she also has anxiety and significant ADHD, which impacts her executive functioning.

Dr. Schwab described S.F.’s program and testified that she is now at grade-level in math, but is not at grade level in her language arts, writing, and “emotional stuff” that they are addressing. At Shefa, S.F. gets support with pragmatic language, and receives social/emotional learning group once a week and in morning meetings.

Dr. Schwab testified that S.F.’s reading and math instruction is in a small group setting. S.F. has eleven students in her class, with two to three adults in the classroom at all times. There is an occupational therapist on staff who works with teachers, but Dr. Schwab did not believe that S.F. received any formal OT sessions this year. S.F. also received no formal counseling sessions with a counselor. Regarding her anxiety and skin picking, Shefa has a psychologist on staff who works with outside providers who develop strategies that are implemented throughout the day. She currently has a behavior chart that is maintained by the school psychologist. Dr. Schwab was a credible witness, and I accept as fact his testimony concerning the supports that S.F. receives at Shefa, and her overall progress there.

Camilla Zoe Cuddy, Psy.D. was admitted as an expert in clinical psychology and as a BCBA. She has conducted neuropsychological assessments for about twenty-five years. She prepared a report (P-15) after administering assessments, including the BASC, and observing S.F. at Shefa. She was retained by the petitioners in November or December 2023, after the filing of this Petition.

Dr. Cuddy recognized that S.F. manifests the symptoms of ADHD and OCD. She testified that S.F. was observed to be anxious and hyperactive, needing a lot of prompting and redirection, and that she was easily distracted. She opined that S.F. should be in a small group language-based classroom and in a small school. Dr. Cuddy observed S.F. in a small classroom at Shefa, where she was in a reading group with two other students. She considered a “small classroom” to be one that has up to ten students.

While Dr. Cuddy agrees that S.F. has anxiety, she did not agree that this was her overarching issue as she is also hyperactive, impulsive, and has learning challenges. While she recognized that Shefa does not have a BCBA on staff and does not provide S.F. with cognitive behavioral therapy, she believes that Shefa meets S.F.’s needs and that the plan developed by the school psychologist appropriately addresses her skin picking behavior.

Dr. Cuddy also criticized the proposed IEP, noting that counseling once a week for 30 minutes is insufficient to address the ongoing needs that S.F. has throughout the day (anxiety, depression, aggression, transition), and that the IEP should include a behavioral intervention plan to address skin picking. While Dr. Cuddy first testified that she did not believe that counseling services would assist S.F. in a meaningful way, she later conceded that school-based counseling might be beneficial. Given the results of the assessments and evaluations that were conducted, I found Dr. Cuddy credible in arriving at her opinion that S.F. requires a small language-based classroom. The District does not disagree, as it proposed a small LLD classroom. I was not persuaded, however, that S.F. requires a “small school” or that her current placement, a private out-of-State school, is the least restrictive environment. I also give no weight to her criticisms of the proposed District program as she never observed the program herself nor spoke to the District about

the program, and her opinions in that regard are largely based on information and opinions provided to her by the petitioners.

Dr. Cuddy testified that transition to another school would be very difficult for S.F. and sees no reason to remove her from Shefa. While transition to a new school—any new school—would likely be upsetting to S.F. given her profile, the IEP offers support that could assist S.F. in the transition, and there is no reliable expert testimony to suggest that either she cannot make this transition, or that Shefa is the only appropriate placement.

### **LEGAL ANALYSIS AND CONCLUSIONS**

This case arises under the Individual with Disabilities Education Act (IDEA), 20 U.S.C. § 1401 et seq., which makes available federal funds to assist states in providing an education for children with disabilities. Receipt of those funds is contingent upon a state's compliance with the goals and requirements of the IDEA. Lascari v. Bd. of Educ. of Ramapo-Indian Hills Reg. Sch. Dist., 116 N.J. 30, 33 (1989). As a recipient of Federal funds under the IDEA, the State of New Jersey must have a policy that assures that all children with disabilities will receive FAPE. 20 U.S.C. §1412. FAPE includes Special Education and Related Services. 20 U.S.C. §1401(9); N.J.A.C. 6A:14-1.1 et seq. The responsibility to deliver these services rests with the local public school district. N.J.A.C. 6A:14-1.1(d). To meet its obligation to deliver FAPE, the school district must offer an IEP reasonably calculated to enable S.L. to make progress appropriate in light of his circumstances. Endrew F. v. Douglas Cnty. Sch. Dist., 580 U.S. 386 (2017).

The purpose of the IDEA is to ensure that all children with disabilities have access to FAPE 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). For a school district to provide FAPE to a disabled child under the IDEA they must develop and implement an Individualized Education Plan (“IEP”) — 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, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385, 394 (1985). An IEP is to be developed by a district’s

child study team in conjunction with the parents of the child. N.J.A.C. 6A:14-2.3; N.J.A.C. 6A:14-3.7(b).

The petitioner asserts that Teaneck failed to comply with their 2022 settlement agreement addressing placement and the development of the IEP, and that this made it necessary to unilaterally place S.F. in Shefa. Also, the District asserts that the settlement agreement prohibits S.F.'s placement at Shefa for the 2023–2024 school year at the Board's expense. Despite the parties' arguments, this tribunal does not have authority nor jurisdiction to enforce the terms of the settlement agreement that they entered into in 2022. Such enforcement is not within the purview and jurisdiction of the OAL, but of New Jersey's Superior Court or the United States District Court.<sup>1</sup> Therefore, while I recognize that the parties entered into a settlement agreement that may address S.F.'s placement for the 2023–2024 school year, I am without authority to interpret or enforce the agreement, including its terms concerning S.F.'s placement. Rather, as reflected in my Prehearing Order of October 4, 2023, the issue to be addressed here is whether the IEP proposed by the District for the 2023–2024 school year, including its proposed placement, offered S.F. a FAPE in the least restrictive environment. If it is determined that the District failed to offer S.F. a FAPE, the petitioners may be awarded reimbursement for the unilateral placement if it is determined that the placement selected was proper, and if the parties provided the District with adequate notice of their concerns and intent to enroll the child in that placement at public expense.<sup>2</sup>

Here, the District generally asserts that it timely made available a FAPE to S.F., thereby prohibiting petitioners' tuition reimbursement for the unilateral placement. It asserts that the petitioners never intended to remove S.F. from Shefa; that the IEP and proposed in-District program offers a FAPE; and that the petitioners did not adequately cooperate with the District or provide timely notice of their rejection of the IEP.

Pursuant to their Petition, and as reflected in the Prehearing Order entered on October 4, 2023, the parents allege that: (1) the IEP fails to properly classify S.F. as

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<sup>1</sup> Z.H. v. Cinnaminson Twp. Bd. of Educ., 2023 WL 4348551 (D.N.J. July 5, 2023), and A.P. v. Dennis Township Board of Education, 1998 N.J. AGEN LEXIS 346, \*14-15.

<sup>2</sup> See School Comm'n of Burlington v. Dep't of Educ. of Mass., 471 U.S. 356, 367-70 (1985); and N.J.A.C. 6A:14-2.10.

having a specific learning disability; (2) the Goals and Objectives are vague and inappropriate; (3) the IEP does not address transition; (4) the IEP does not provide support for S.F.'s mental health; and (5) the IEP does not provide an appropriate placement and program. The petitioners seek reimbursement for the unilateral placement for the 2023–2024 school year. In their post-hearing brief, the petitioners maintain that the proposed program at the Whittier School is inappropriate because: (1) the classroom of ten students has only one teacher and one aide; (2) the class is too large and disorganized; (3) the class contains students in two grade levels; (3) the classroom is “chaotic,” and the teacher is insensitive; (4) the program is educationally inappropriate, “as S.F. is an intelligent student who would not properly be held back in areas of mathematics, science and social studies with much younger students in a combined class”; (5) there are concerns with transitioning from one reading program (PAF) to another (Wilson); (6) S.F. would be deprived of a meaningful educational benefit by being educated in a class with students of “greatly varying levels of ability.” Specifically, regarding the proposed IEP, and in addition to the allegations contained in the Petition, the petitioners assert in their brief that the IEP improperly provides for only a half hour of counseling with a school counselor, it fails to address S.F.'s emotional needs, it should include a behavior plan; and the present levels of achievement do not reflect data from Shefa. Moreover, they maintain that the District did not treat the parents like a part of the child study team, and failed to include them in the process. The petitioners maintain that the IEP was properly and timely rejected, that Shefa is an appropriate placement, and that they are entitled to reimbursement for the unilateral placement.

Case law recognizes that the IDEA does not require the Board to provide S.F. with the best possible education.<sup>3</sup> It also does not require the Board to ensure that the student receives what her parents believe is the optimal (or adequate) educational benefit, nor must it create a “little Eden” within the District to meet the parents’ demands and preferences.<sup>4</sup> Even assuming that Shefa provides S.F. with an appropriate, or even a superior, program, the initial inquiry to be addressed here is whether the IEP offered S.F. a FAPE in the least restrictive environment. I believe that it did.

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<sup>3</sup> S.H. v. State Operated Sch. Dist. of Newark, 336 F. 3d 260, 271 (3d Cir. 2003).

<sup>4</sup> M.A. ex rel. G.A. v. Voorhees Twp. Bd. of Educ., 202 F. Supp. 2d 345, 364 (D.N.J. 2002), *aff’d*, 65 Fed. Appx. 404 (3d Cir. 2003).

No Procedural Violation

First, I disagree with the petitioners' assertion that the District failed to include the parents in the IEP process, or as part of the team. The District's case manager communicated with the parents promptly and regularly; the parents actively participated in the IEP meeting; their input was considered by the team; parental concerns were accurately reflected in the IEP; the District invited the parents to observe the proposed in-District program and other placement possibilities; and the District was open to considering other out-of-District placements proposed by the parents. As S.F. never attended school in the District, Teaneck appropriately held a meeting with the parents, conducted evaluations to assess S.F., observed S.F. at her current placement, and obtained information from the school and her provider. A preponderance of the evidence exists that the District appropriately relied on the results of current evaluations, including the Educational, Speech, and Psychological Evaluations, and information obtained from Shefa and the parents in drafting the IEP, including the Goals and Objectives and the Present Levels of Academic Achievement contained therein. The fact that the District may not have incorporated Shefa's end-of-year assessment results, which presumably would not have even been available until sometime in June, after the IEP was prepared, does not render the Present Levels inappropriate or outdated as the petitioners allege, particularly since the District relied on current and reliable information in drafting the IEP in May. Therefore, a preponderance of the evidence does not exist that there was any procedural violation on the part of the District that may have denied the petitioners a FAPE.

Classification

S.F. was deemed eligible for special education and related services under the classification of Other Health Impaired (OHI). The IEP references N.J.A.C. 6A:14-3.5(d)9 and states that OHI means "a disability characterized by having limited strength, vitality, or alertness, including a heightened alertness with respect to the educational environment, due to chronic or acute health problems, such as attention deficit hyperactivity disorder, . . . or any other medical condition . . . that adversely affects a student's educational performance." It is undisputed that S.F. has been diagnosed with

ADHD, OCD and anxiety, and that she has academic weaknesses, specifically in the areas of language and reading. The District's Psychological Evaluation, which was not contested, reports that S.F. functions within the average range of cognitive ability. The Educational Assessment shows that S.F.'s overall academic achievement, as measured by the WJ-IV Broad Achievement standard school was in the low-average range; with scores within the average range in seven clusters (math, broad math, math calculation skills, written language, broad written language, written expression, and academic applications); low-average range in four clusters (basic reading skills, reading comprehension, academic skills, and academic fluency); and low range in three (reading, broad reading, and reading fluency). The District's IEP appropriately recognizes that S.F.'s academic weaknesses are primarily in the areas of reading and language. Despite their challenge regarding the District's classification of S.F., petitioners provided no evidence at the hearing to suggest that S.F. would otherwise qualify for special education and related services under the classification of specific learning disabled (SLD). Moreover, even if S.F. did qualify for special education under this classification, there is no evidence in the record that a change in classification would have had any impact whatsoever on the proposed placement in the self-contained LLD program or in the supports or services already provided for in the IEP. A preponderance of the evidence does not exist that S.F. was misclassified by the District.

#### Counseling and Other Support for Emotional Needs

The petitioners assert that the IEP improperly provides for a half-hour of counseling with a school counselor once a week, and that the IEP, in general, fails to address S.F.'s emotional needs. The IEP, however, does address S.F.'s emotional needs through counseling services with a counselor trained in cognitive behavioral therapy, and a social skills group. The IEP contains goals and objectives to support her social/emotional/behavioral development. Accommodations include: providing "a highly structured, predictable learning environment"; discussing behavioral issues privately; providing opportunities for peer interactions; presenting alternatives to negative behavior; developing signal for when a break is needed; and providing positive reinforcement. It also provides for a consultation with a behavioral specialist.



Although Dr. Cuddy opined that the counseling offered in the IEP is insufficient to address S.F.'s ongoing needs throughout the day, she later conceded that it could be beneficial. These ongoing needs, which include S.F.'s anxiety, aggression, ADHD, and issues with transition, are addressed in the numerous accommodations and modifications provided for in the IEP. A preponderance of the evidence exists that the IEP appropriately addressed S.F.'s emotional needs, and appropriately provides for counseling once a week.

### Behavioral Plan

Petitioners assert that the IEP should include a behavioral plan. Morik testified credibly that when she observed S.F. at Shefa, she witnessed S.F. exhibit behaviors that required addressing. However, she testified that those behaviors were not to the extent that they warranted a behavior intervention plan. When she observed S.F., the skin picking did not appear to interfere with her learning to the extent described by the petitioners at the hearing. Dr. Cuddy opined that a behavioral plan, specifically to address the skin picking, should have been included in the IEP, however, it is worth noting that Dr. Cuddy observed and evaluated S.F. at least six months after Morik observed S.F. at Shefa, and if that behavior worsened over time, there is no evidence that the District was even made aware of this. There is insufficient evidence in the record to conclude that S.F.'s IEP, which was prepared in May 2023, should have contained a behavioral plan at that time, particularly given the level of support already provided pursuant to the IEP, Morik's impression of S.F. at Shefa, and the fact that this was not an issue raised by the petitioners until after the filing of the Petition. There is also insufficient credible and reliable evidence in the record to conclude that the absence of a behavioral plan in the IEP denies S.F. a FAPE. Once S.F. were to join the District's school and the teacher had an opportunity to observe the extent of S.F.'s skin picking or other behaviors that might interfere with her learning, adjustments to the IEP could be made at the 30-day review.

### Transition Plan

The parents allege that the District failed to adequately provide support for S.F. to transition from Shefa to a new school environment. Petitioners offer no credible or reliable evidence to support this claim, and they offer no explanation as to what type of “transition plan” should be implemented. In fact, the District’s IEP offers counseling be provided by a cognitive behavioral therapist, and behavioral services to address her mental health and behavioral difficulties. A preponderance of the evidence exists that S.F.’s transition to the District program would be adequately supported.

### Goals and Objectives

The petitioners allege generally that the Goals and Objectives are vague and inappropriate, however, they offered no testimony or other evidence to support this allegation. Morik testified credibly that the Goals and Objectives were prepared using the current information obtained by the District. Goals and objectives are properly included in the areas of reading, writing, mathematics, speech/language, social/emotional/behavioral, and OT, as these are all areas that require addressing and monitoring, and there is no basis in the record to conclude that they are inappropriate.

### The in-District LLD Program

The petitioners assert that the in-District program at the Whittier School is inappropriate because the classroom of ten students has only one teacher and one aide; it contains two grade-levels and S.F. would be with students who are not as advanced in the areas of math, science and social studies; she would have to transition to a new reading program; and S.F. would be deprived of a meaningful educational benefit by being educated in a class with students of “greatly varying levels of ability.”

The proposed in-District program is for students with receptive, processing, or expressive language delays, and S.F. undisputedly has notable delays in language and reading. The results of the evaluations, and other information available to the District CST indicated that S.F. had an average FSIQ and low to low-average abilities in reading,

phonics, and academic skills and fluency, with average academic abilities in math and writing. The LLD program proposed by the District would appropriately provide S.F. with individualized, and multi-sensory, instruction. The reading instruction offered in the IEP is the same amount currently provided to S.F. at Shefa, 80 minutes. The IEP also provides for speech-language small group therapy. Instruction is provided by an Orton-Gillingham-trained teacher using the Wilson Reading Program. Although petitioners express concern about having S.F. switch from the PAF program used by Shefa to Wilson, I am unconvinced by the evidence presented that this change would significantly impact S.F. or set her back in any way. Mirander testified credibly that this was not a concern, particularly since the PAF program is a comparable multi-sensory program that uses the principles of Orton-Gillingham, and petitioners' expert did not even opine that a transition to the Wilson program would be problematic. There is simply no evidence in the record to conclude that the District's use of the Wilson Reading Program would deny S.F. a FAPE.

The petitioners assert that the proposed placement at Whittier is inappropriate because it contains only one teacher and one aide for ten students. The class, however, is "small," with small-group instruction provided by a special education teacher trained in Orton-Gillingham, and an aide. There is no credible evidence in the record that the class is too large for S.F. Petitioners' expert testified that a classroom with ten students is a small one, and it is worth noting that the class size at Whittier this year was comparable to S.F.'s class at Shefa. The class size and staffing level of the proposed in-District program does not deny S.F. a FAPE.

Another concern raised by the petitioners concerning the Whittier program is that S.F.'s class would consist of students in two grade levels who would not be as advanced in the areas of math, science and social studies; and that she would be deprived of a meaningful educational benefit by being educated with students of "greatly varying level of ability." First, petitioners are speculating that S.F. would be receiving instruction with students whose abilities greatly vary. Second, Mirander explained that the special education teacher differentiates instruction to students on different grade levels, and that instruction is sometimes provided in a small group or even one-to-one. The IEP expressly provides for a "highly structured, predictable learning environment," in cooperative

learning groups, with small group instruction. It also allows for modifying curriculum content based on S.F.'s ability level. Finally, petitioners presented no expert testimony that S.F. would be deprived of any meaningful educational benefit by being educated in a classroom that contains students in two grade levels.

Apart from S.F.'s academic and language needs, she also requires supports to address her ADHD, OCD, and anxiety. The IEP appropriately provides for a smaller student-to-teacher ratio to allow for direct instruction, repetition, re-teaching, cueing, modeling, and immediate feedback. The IEP provides for several modifications and accommodations to support S.F.'s emotional and behavioral needs, such as allowing for extra time, assistance with organization, breaking down tasks into manageable units, emphasizing multi-sensory presentation of data, preferential seating, providing short breaks when refocusing is needed, and refocusing and redirection, just to name a few. It also appropriately provides for counseling, social skills group, and OT. Morik and Mirander both testified credibly that the District's LLD program is appropriate for S.F. due to her academic, language and emotional needs.

In light of my factual findings, and after considering the parties' legal arguments, I **CONCLUDE** that the IEP proposed by the District in May 2023 was reasonably calculated to confer a meaningful educational benefit, and that it was tailored to meet S.F.'s individual educational, emotional and behavioral needs. I also **CONCLUDE** that the in-District LLD program proposed by the District is an appropriate, and the least restrictive, placement, and that the petitioners are, therefore, not entitled to reimbursement for the unilateral placement. Having reached these conclusions, it is not necessary to address whether placement at Shefa was appropriate under the IDEA, or whether the petitioners acted (un)reasonably in placing S.F. there.

### **ORDER**

Based on the foregoing, I hereby **ORDER** that the Due Process Petition is **DISMISSED**, and that petitioners' request for reimbursement of the unilateral placement is **DENIED**.

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.

\_\_\_\_\_  
May 29, 2024  
DATE

\_\_\_\_\_  
  
**SUSANA E. GUERRERO, ALJ**

Date Received at Agency \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

jb

**APPENDIX**

**LIST OF WITNESSES**

**For Petitioner:**

A.F. (mom)  
Avi-Yonah Schwab  
Camilla Zoe Cuddy

**For Respondent:**

Amy Morik  
Shellian Mirander

**LIST OF EXHIBITS IN EVIDENCE**

**Joint:**

J-1	Not in Evidence
J-2	Educational Assessment Report, 2021
J-3	Social History Report, 2021
J-4	Not in Evidence
J-5	Not in Evidence
J-6	April 7, 2022 Settlement Agreement
J-7	Psychological Evaluation, April 2023
J-8	Educational Reevaluation with WJIV Score Report, April 2023
J-9	OT Recommendation, April 2023
J-10	OT Evaluation, April 2023
J-11	Social History, May 2023
J-12	Letter from Dr. Wachtel, May 2023
J-13	IEP, May 17, 2023
J-14	Email from A.F. February 19, 2023
J-15	Emails March 2023
J-16 to J-30	Not in Evidence
J-31	Emails May 2023

J-32	Not in Evidence
J-33	Not in Evidence
J-34	Not in Evidence
J-35	Email May 17, 2023
J-36	Not in Evidence
J-37	Not in Evidence
J-38	Not in Evidence
J-39	Email May 26, 2023
J-40	Emails May 19 to May 31, 2023
J-41	Not in Evidence
J-42	Not in Evidence
J-43	Emails June 1 to June 2, 2023
J-44	Not in Evidence
J-45	Emails June 2 to June 5, 2023
J-46	Not in Evidence
J-47	Not in Evidence
J-48	Not in Evidence
J-49	Emails June 6, 2023
J-50	Emails June 6 to June 7, 2023
J-51 to J-55	Not in Evidence
J-56	Email June 16, 2023
J-57	Emails June 15 to June 16, 2023
J-58	Emails July 7, 2023
J-59	Not in Evidence
J-60	Emails July 11, 14 and 17, 2023

For Petitioner:

P-1	Not in Evidence
P-2	Report (for identification only)
P-3	Not in Evidence
P-4	Not in Evidence
P-5	Letter from Dr. Wachtel
P-6	Email from Dr. Wachtel

P-7	Email from A.M. to Dr. Wachtel
P-8	Voicemail from Winston School
P-9	Shefa Progress Report
P-10	Shefa Data Sheets
P-11	S.F.'s schedule
P-12	BASC 3 Self report
P-13	BASC
P-14	Dr. Cuddy's CV
P-15	Dr. Cuddy's Report
P-16	Not in Evidence
P-17	Email to Craig School

For Respondent:

None