



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 04776-24

AGENCY DKT. NO. 2024-36921

R.A. AND K.A. ON BEHALF OF S.T.,

Petitioners,

v.

WILLINGBORO TOWNSHIP BOARD OF EDUCATION,

Respondent.

Bradley Flynn, Esq., for petitioners (Montgomery Law, LLC, attorneys)

Lester Taylor, Esq., for respondent (Taylor Law Group, attorneys)

Record Closed: September 16, 2024

Decided: September 23, 2024

BEFORE **JOAN M. BURKE**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

In accordance with the provisions of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1415, R.A. and K.A. have requested a due-process hearing on behalf of their daughter, S.T.A.,¹ who is classified as eligible for special education and related services. On October 19, 2023, the petitioners requested homebound instruction for S.T.A. based on a letter from her health provider. The Willingboro Township Board of Education (the Board), through its child study team (CST), recommended homebound instruction

¹ In the submission documents the student is listed as S.T.; however, at the hearing it was clarified that the initials to be used are S.T.A.

pending placement at an out-of-district school program in November 2023 through a modified IEP. Petitioners agree to the modified IEP, and agree that an out-of-district placement was appropriate to their daughter's needs. The Board identified several State-approved non-public special education programs that it asserts will deliver a free appropriate public education to S.T.A. The petitioners rejected the placements recommended by the CST, and, instead, seek to have their daughter placed at the Orchard Friends School, which is an unapproved private school.

Petitioners filed their request for emergent relief and due process with the Office of Special Education Programs on January 9, 2024. The contested case was transmitted to the Office of Administrative Law, where it was filed on April 15, 2024. A settlement conference was held on April 16, 2024, with Hon. Joseph Ascione. A status conference was held with Hon. Barry Moscovitz on May 13, 2024. I was assigned this matter on May 13, 2024. A conference call was held with the parties on May 20, 2024.

Hearings were conducted on July 22, 2024, and July 24, 2024. The parties requested an extension of time to submit their summation briefs. The tribunal granted the extension to September 23, 2024. The parties submitted their briefs on September 16, 2024, at which time the record closed.

Subsequent to the closing of the record, petitioners sent a letter on September 17, 2024, requesting that the tribunal disregard the respondent's summation brief because it was submitted at 9:40 p.m. on September 16, 2024. Respondent submitted a response to the petitioners' letter on September 18, 2024. Since the record was closed on September 16, 2024, I will not entertain petitioners' quarrel as it is not of any merit.

FACTUAL DISCUSSION

Based upon due consideration of the testimonial and documentary evidence presented at the hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following **FACTS**:

S.T.A. is a rising seventh-grade student. She is diagnosed with attention deficit hyperactivity disorder (ADHD), oppositional defiant disorder, anxiety disorder, autism

disorder, and kleptomania. She was deemed eligible for special services under the “other health impaired” classification.

Testimony

Keenan Riley is the senior lead educator from pre-K to sixth grade at the Willingboro public schools. Ms. Riley’s duties include overseeing the preschool through sixth-grade special services classes, programming, and case management for the district. Ms. Riley also supervises teachers, works with case managers, and helps to facilitate student needs in special services. She testified in a sincere and professional manner, and her answers to the questions posed of her consistently reflected a genuine desire to assist S.T.A. in experiencing academic success.

Ms. Riley is part of the CST and was involved with the preparation of the 2023–2024 individualized education program (IEP) and the 2024–2025 program-year IEP. Ms. Riley pointed out that the parents are members of the CST and were present at meetings convened by the CST. She pointed out that no changes were made to the 2023–2024 or 2024–2025 IEP without the petitioners’ knowledge or consent. Prior to the 2023–2024 IEP, S.T.A. was at an in-district placement pursuant to an IEP. In September 2023 at the beginning of the school year there were meetings held and revisions to ensure correct programming for the student. In October 2023 a doctor’s note was received from the parent suggesting that S.T.A. was not “faring well” in the academic setting that she was currently in. This resulted in a meetings with the petitioners. In November the CST agreed with R.A., S.T.A.’s mother, that homebound instruction would be proper, and the IEP was amended on November 30, 2023. They also began looking into out-of-district placement.

S.T.A. became eligible for special services in 2020 based on psychological, educational, and speech and language evaluations. Prior to the current due-process petition, the petitioners had no objections to the prior IEPs. In November or December 2023 the parents informed the district that they were interested in Orchard Friends School. Riley said that the parents were notified that Orchard Friends was not a State-approved facility and they need to move forward with State-approved schools that the CST felt met S.T.A.’s programming needs.

Thus the team looked at the State-approved list of schools to identify programs that would meet S.T.A.'s needs. In order to send information to the State-approved schools identified, consent from the parents was needed. Ms. Riley noted that they discussed it with R.A. and obtained her consent to release the records to the out-of-district schools. The application process began in November 2023. The parents consented to the district's application to Y.A.L.E. School, Brookfield Academy, Hampton Academy, the Mercer County Special Services School District, The Bancroft School, Mary A. Dobbins School, and the Delaware Valley School for Exceptional Children.

Ms. Riley stated that when looking for out-of-district placement they looked for a school environment that supports trauma, oppositional defiance, therapy, and anxiety and has a smaller setting. S.T.A. had some behavior concerns such as work avoidance, oppositional defiance, not taking lead or instructions from adults, walking out of class, and stealing things. A behavior improvement plan (BIP) was put in place for those targeted behaviors. A functional behavioral assessment (FBA) was done on August 11, 2023. (J-5.) Ms. Riley admitted that the district was not made aware that S.T.A. had an autism diagnosis until December 2023, when they received the doctor's note from R.A. Prior to the FBA, interventions were in place to address some of the concerns noted. Some of those interventions included a pass system and the use of fidget tools.

The petitioners declined counseling services from First Children Services² for S.T.A. At the time of the FBA, the noted behaviors were managed. In the finding section of the FBA, its author, Dr. Jamie L. Hirsh, concluded that "the strategies previously identified in the above sections or on prior interventions, pass system etcetera, can also be continued to be utilized in the '23-'24 school year as well." (J-5.) Ms. Riley confirmed that the IEP for the 2023–2024 school year was created in May 2023 and was modified in November 2023 for homebound-instruction purposes. (J-6.) On November 20, 2023, the parents requested homebound instruction. This time frame was during or close to the Thanksgiving holiday. Prior to the request, the CST had considered homebound instruction, and identified a teacher to instruct S.T.A. However, before home instruction was to begin, the identified teacher became unable to fulfill that commitment, and so the district had to find another teacher.

² First Children Services is contracted by the district to provide counseling to students.

The district has a list of teachers who signed up to do home instruction. Emails were sent out to the teachers to find a match for S.T.A. Unfortunately, home instruction did not begin until approximate mid-January 2024. Ms. Riley noted that on November 27, 2023, R.A. sent a request withdrawing her signature granting consent to forward records to out-of-district schools. However the district continued in good faith to identify a suitable out-of-district placement. Ms. Riley reiterate that the parents consented to the IEP's amendment for home instruction pending out-of-district placement on November 30, 2023. (J-6.)

On December 21, 2023, the administrative assistant at the Special Services office sent an email to a home-instruction teacher to check his availability to teach. Between the request date for homebound instruction and when it began, a six-week gap, there were approximately twelve days when school was not in session to allow for Thanksgiving, Christmas break, and New Year's.

S.T.A. was admitted to some of the out-of-district schools identified by the district. Ms. Riley was not aware of Dr. Breslin, a psychologist and board-certified behavior analyst, until May 10, 2024, when she requested documents from the Board. (R-1.) Dr. Breslin also requested to interview some individuals that worked for the district. Ms. Riley and another staff member, Desiree Thomas, met with Dr. Breslin. Ms. Riley, Dr. Breslin, S.T.A., and R.A visited Brookfield Academy and Hampton Academy together. There is no requirement for Ms. Riley to attend those meetings with Dr. Breslin. However, the schools requested that a district representative attend. On January 1, 2024, the district was willing and able to place S.T.A. in a State-approved out-of-district school in furtherance of the IEP that was consented to and mutually agreed upon by and between the district and the parents on or about November 30, 2023.

Dr. Breslin was able to observe a class at Brookfield, but not for as long as she requested. Brookfield had accepted S.T.A. Ms. Riley subsequently received an email from Brookfield which declined accepting S.T.A. Based on the interactions with Dr. Breslin, the Brookfield representative did not feel the partnership would be positive. Ms. Riley noted that the State-approved schools were furnished to the district by the New Jersey Department of Education (NJDOE). She said that there are fifty out-of-district providers in Burlington County, of which half a dozen met the needs of S.T.A. pursuant to the CST. Ms.

Riley noted that they originally received consent to apply to those schools, and then the petitioners did not consent for S.T.A. to attend the schools that accepted her.

Ms. Riley stated that between January 2024 and June 2024, Richard Sable provided home instruction to S.T.A. This was substantially in compliance with the allotted time of ten hours per week in accordance with the law and the IEP. Sometimes due to scheduling conflicts the scheduled hours were not possible (at most, fifteen minutes less time was given). According to Ms. Riley, the district was willing and still is ready to accommodate S.T.A. with compensatory education, absent any due-process petition being filed or order of this tribunal. Ms. Riley stated that there was no medical observation or evaluation that S.T.A. underwent between October 19, 2023, and December 31, 2023, that supported the parents' request for out-of-district placement at Orchard Friends. Ms. Riley noted that prior to Dr. Breslin being retained and issuing a report on or about July 15, 2024, she was not aware of any medical or educational basis to support Orchard Friends over any identified State-approved out-of-district placement.

S.T.A.'s suspected areas of disability were "emotionally disturbed" and "other health impaired." (R-8.) There was no concern at the time that S.T.A. had autism. The initial identification was based on an educational evaluation, a psychological evaluation, a social history, and a speech and language evaluation. (R-9.) Every three years there is a re-evaluation planning meeting for students with an IEP. S.T.A. had received evaluation testing in 2020 and it was determined that a re-evaluation was necessary in 2023. (R-11.) Updated educational and psychological evaluations were done, and the new tests were an FBA and a psychiatric evaluation.

Ms. Riley stated that there was also correspondence on May 3, 2024, representing efforts for placement at the Mercer County Special Services School District. There was continuous dialog and effort between the parents and the district to get a solution for the student. Ms. Riley reiterated that Brookfield had accepted S.T.A. R.A. responded in an email on February 1, 2024, and did not want S.T.A. to go to this placement. On December 11, 2023, Hampton Academy accepted S.T.A. On January 11, 2024, the representative from Hampton Academy reached out to Ms. Thomas asking if they were going to accept the placement. Ms. Thomas, S.T.A.'s case manager, responded that the parents had declined. Ms. Riley noted that in an email dated November 12, 2023, the petitioners wanted out-of-

district placement at Orchard Friends School. Ms. Riley responded to the petitioner's response by stating: "I hope this email finds you well. The New Jersey Department of Education mandates their approval list for out-of-district private schools. The district is currently following the guidelines that are mandated by the State. Please find the information below for the specific department that oversees out-of-district private special education schools at the New Jersey Department, NJDOE." (1T 132:4–11.)

Ms. Riley agreed that if there were no State-approved schools that in the team's estimation fit S.T.A.'s needs, the district would consider Orchards Friends as a potential "Naples placement."

Desiree Thomas is S.T.A.'s case manager. Ms. Thomas recalled that R.A. signed the IEP in the fall consenting to home instruction. The start date for placement on home instruction was November 27, 2023. (P-21.) Ms. Thomas is familiar with S.T.A., as she came to her office almost every day. While she was there, she discussed her anxiety and peer relations, sometimes would color. Ms. Thomas agreed that an FBA was conducted and a BIP was developed. However, she did not recall being compliant with collecting data or reaching out to S.T.A.'s teacher to collect data. Ms. Thomas toured Brookfield Academy and the Mercer County Special Services School District with Dr. Breslin. Usually the protocol for out-of-district placement is to consider State-approved schools for placement of students, and not to conduct a "Naples placement" first. Ms. Thomas stated that she has been a case manager for approximately three years in the district. She admitted that home instruction is like a moving target; it is not always easy to find a person to provide a service. Ms. Thomas has no objection to providing compensatory education.

Ms. Thomas knew that S.T.A. had some behaviors that triggered her coming to her office. Ms. Thomas agreed that Dr. Hirsch's report noted that they collected inconsistent data, and not that they collected no data. (P-18.) Ms. Thomas noted that she was not sent any email about inappropriate touching. Ms. Thomas stated that the parents did not ask for any data regarding notations on progress; furthermore, the areas of assessment and/or monitoring refer to in-class observations and data collection, not home instruction. Ms. Thomas confirmed that S.T.A. was approved to attend a State-approved out-of-district placement identified by the CST. Ms. Thomas was not familiar with the Naples Act prior to October 2023.

Elizabeth DiPerna is the head of Orchard Friends School. She supervises the faculty and works directly with the students. Orchard Friends is a “Naples placement.” The goal of Orchard Friends is to build the kids up and return them back to their public-school program by providing instructional-level academics while teaching social-competency skills. Ms. DiPerna reviewed S.T.A.’s IEP and felt that Orchard Friends could meet S.T.A.’s academic and social needs. S.T.A. and her mom both toured Orchard Friends. S.T.A. had three full trial days at the school. They had a schedule for her and she operated as a student for those three days. According to Ms. DiPerna, S.T.A. was very talkative, was interested in other students, engaged with students in group academics, and sat with a teacher to do evaluation. Ms. DiPerna felt that Orchard Friends was a good fit for S.T.A. On January 5, 2024, Ms. DiPerna sent a letter to R.A. offering an acceptance of S.T.A. into the Orchard Friends program. (P-23.)

R.A. was informed about Orchard Friends by Mona Mills, a private home-bound therapist. (1T 128:14-16.) R.A.’s concern for her daughter’s well-being resonated in her testimony. She felt that S.T.A. was falling behind and was not “learning much.” She spent a lot of time out of the classroom or trying to get out of the classroom; she reads on a second-grade level. R.A. offered several appealing features of the Orchard Friends program, including small class size, individualized attention, and a nurturing environment. R.A. was also influenced by S.T.A.’s apparent preference for Orchard Friends. In this regard, she pointed out that S.T.A. thought the people and kids were nice; she got to go outside at the school, which she rarely did at her current school; she liked to cook; and S.T.A. made a friend while she was there.

R.A. admitted to visiting the placements that the district recommended. She specifically toured Brookfield, Hampton, and Y.A.L.E., all three of which accepted S.T.A. The Brookfield program included trauma-focused counseling, emotional learning, parental consultation, individualized counseling, and a trauma-sensitive and trauma-informed approach ideology. (P-18.) The Y.A.L.E. program included services for anxiety, attention deficit disorder, mood and oppositional defiant disorder, specific learning disability, small-group instruction, counseling, a strong therapeutic approach, extensive parent training and support, and frequent communication among the school, the home, and the referring district. (P-19.) Hampton also included, among other services, psychiatric and medication

management. (P-20.) R.A. admitted that these schools provide the services that S.T.A. needs and what she found at Orchard Friends. However, she contends that these schools were “scary.” For example, the guard at Brookfield carried a 9 millimeter gun, which made her uncomfortable; the kids at the Y.A.L.E. School were really angry; and at Hampton, she heard cursing and arguments. (2T 143:1–18.) Therefore, R.A. rejected these schools, as she deemed them not safe for S.T.A. The Y.A.L.E. School and Hampton Academy are within twenty minutes of home, similar to Orchard Friends.

R.A. admitted writing a letter asking that S.T.A. be placed on home instruction in October 2023 pending out-of-district placement. The CST agreed with her request. On November 20, 2023, at an IEP meeting she met with the CST. She granted consent to implement the modification of the IEP on November 22, 2023. The IEP had a projected start date of November 27, 2023. (P-21.)

Dr. Anita Breslin is a psychologist and a board-certified behavior analyst at the doctoral level. Dr. Breslin was admitted as an expert. She completed an assessment of S.T.A. in May 2024. She noted that home instruction was supposed to start in November 2023 but did not start until January 2024. She conducted a formal interview with the parent to obtain estimates of the student’s adaptive functioning. Dr. Breslin administer the Vineland Adaptive Behavior Scales to assess S.T.A.’s adaptive functioning across the various domains. In order to conduct her assessment, she requested the student’s record from the district. Dr. Breslin noted that she received two sets of records, but did not believe those records to be S.T.A.’s file in its entirety. Dr. Breslin interviewed R.A. and S.T.A.’s therapist, Michelle Garnezo, as well as members of the child study team, and conducted a direct observation at Orchard Friends. She interviewed the classroom teacher at Orchard Friends. Dr. Breslin visited the Y.A.L.E. School. Dr. Breslin would not opine on whether the Y.A.L.E. School was an appropriate placement for S.T.A. According to Dr. Breslin, she never makes a determination about a particular program on whether it meets the needs of a particular student unless she conducts a direct observation of the classroom that has the opening, to see the instructional process. Dr. Breslin toured Brookfield Academy, the Mercer County Special Services School District, and Hampton Academy, but was unable to opine about the appropriateness of the placement because she was not able to observe direct instruction.

Dr. Breslin was provided with unfettered access to the Orchard Friends program; she had the opportunity to see the students that were actually enrolled and would be S.T.A.'s peers. Based on her observation, as well as the information she collected, she made the determination that programming at Orchard Friends appropriately matched S.T.A.'s needs.

Additional Findings

Based upon the testimonial and documentary evidence, I **FIND** the following additional **FACTS**:

1. The Board identified appropriate State-approved academic placements for S.T.A., specifically, Hampton Academy and the Y.A.L.E. School, that currently have openings for the student.
2. The Orchard Friends program is likewise appropriate for S.T.A. I base this finding on the facts presented by R.A., Elizabeth DiPerna, and Dr. Breslin about the program, and on the fact that Ms. Riley agreed that if there were no State-approved schools that in the team's estimation fit S.T.A. needs, the district would consider Orchard Friends as a potential Naples placement.
3. The District was unable to find instructors who could provide S.T.A. with education at the library. This was not an intentional failing on its part, but a combination of staff shortages and school closures for the Thanksgiving and Christmas holidays and school break.
4. S.T.A. is entitled to compensatory education for the period between November 27, 2023, and January 18, 2024, less twelve days of school closure. Additional compensatory education should be awarded for the period between January 18, 2024, and June 7, 2024.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

The issues are whether S.T.A. is entitled to out-of-district placement at the Orchard

Friends School, compensatory education, and reformation of the IEP.

As a recipient of federal funds under the IDEA, 20 U.S.C. § 1400 et seq., the State of New Jersey has a policy that assures all children with disabilities the right to a free appropriate public education (FAPE). 20 U.S.C. § 1412. The responsibility to provide FAPE, including special education and related services, rests with the local public school district. 20 U.S.C. § 1401(9); N.J.A.C. 6A:14-1.1 et seq. In accordance with N.J.S.A. 18A:46-1.1, the burden of proving that FAPE has been offered likewise rests with school personnel.

The Board will have satisfied the requirements of law by providing S.T.A. with personalized instruction and sufficient support services “as are necessary to permit [her] ‘to benefit’ from the instruction.” G.B. v. Bridgewater-Raritan Reg’l Bd. of Educ., 2009 U.S. Dist. LEXIS 15671, *5 (D.N.J. Feb. 27, 2009) (citing Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 189 (1982)). The IDEA does not require that the Board maximize S.T.A.’s potential or provide her the best education possible. Instead, the IDEA requires a school district to provide a basic floor of opportunity. Carlisle Area Sch. v. Scott P., 62 F.3d 520, 533–34 (3d Cir. 1995). While our courts have consistently held that the IDEA does not mandate the provision of an optimal level of services, an IEP must provide meaningful access to education, and confer some educational benefit upon the child. Rowley, 458 U.S. at 192. In order to be appropriate, the educational benefit conferred must be more than trivial. Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238 (3d Cir. 1999).

I **CONCLUDE** that the programs proposed by the Board and the November 30, 2023, IEP constituted FAPE as that term is defined by law. Keenan Riley testified credibly that the CST reviewed the list of State-approved out-of-district placements and identified six placements that would offer highly structured programs that would support S.T.A.’s needs. S.T.A. was accepted at the Y.A.L.E. School and Hampton Academy, which are close to home. The programs they provide would allow her to receive appropriate academic instruction in an environment that will accommodate and be sensitive to her complex emotional needs.

While R.A.’s feeling that Orchard Friends would be a better choice was clearly heartfelt, the Board has correctly urged that in determining where to deliver instruction, it must be guided by the strong statutory preference for educating children in the “least

restrictive environment.” 20 U.S.C. § 1412(a)(5) mandates that

[t]o the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

The law describes a continuum of placement options, ranging from mainstreaming in a regular public school as least restrictive to enrollment in a non-approved residential private school as most restrictive. 34 C.F.R. § 300.115 (2024); N.J.A.C. 6A:14-4.3. Federal regulations require that placement must be “as close as possible to the child’s home.” 34 C.F.R. § 300.116(b)(3) (2024); see also N.J.A.C. 6A:14-4.2. I **CONCLUDE** that the proposed placements at the identified State-approved out-of-district placements are furthermore consistent with the Board’s obligations under 34 C.F.R. § 300.115 (2024) and N.J.A.C. 6A:14-4.3.

Orchard Friends is a non-approved private school. As such, it is a placement option available only in accordance with the requirements of the “Naples Act,” N.J.S.A. 18A:46-14, which provides, in pertinent part:

The facilities and programs of education required under this chapter shall be provided by one or more of the following:

- a. A special class or classes in the district, including a class or classes in hospitals, convalescent homes, or other institutions;
- b. A special class in the public schools of another district in this State or any other state in the United States;
- c. Joint facilities including a class or classes in hospitals, convalescent homes or other institutions to be provided by agreement between one or more school districts;
- d. A jointure commission program;
- e. A State of New Jersey operated program;

f. Instruction at school supplementary to the other programs in the school, whenever, in the judgment of the board of education with the consent of the commissioner, the handicapped pupil will be best served thereby;

g. Sending children capable of benefiting from a day school instructional program to privately operated day classes, in New Jersey or, with the approval of the commissioner to meet particular circumstances, in any other state in the United States, the services of which are nonsectarian whenever in the judgment of the board of education with the consent of the commissioner it is impractical to provide services pursuant to subsection a., b., c., d., e. or f. otherwise;

h. Individual instruction at home or in school whenever in the judgment of the board of education with the consent of the commissioner it is impracticable to provide a suitable special education program for a child pursuant to subsection a., b., c., d., e., f. or g. otherwise.

Whenever a child study team determines that a suitable special education program for a child cannot be provided pursuant to subsection a., b., c., d., e., f., g. or h. of this section, and that the most appropriate placement for that child is in an academic program in an accredited nonpublic school within the State or, to meet particular circumstances, in any other state in the United States, the services of which are nonsectarian, and which is not specifically approved for the education of handicapped pupils, that child may be placed in that academic program by the board of education, with the consent of the commissioner, or by order of a court of competent jurisdiction.

[Emphasis added.]

Consistent with this statutory provision, the regulations governing special-education placement require that a child may be placed in a non-approved school only if the local board certifies that a suitable special-education program cannot be provided to the student in an approved public or private setting. N.J.A.C. 6A:14-6.5(b)(2). In a due-process hearing such as this one, a placement can be effectuated in a non-approved setting only when “[t]he administrative law judge makes a factual determination that the certifications in [N.J.A.C. 6A:14-6.5(b)] are met.” N.J.A.C. 6A:14-6.5(c)(1). The Board asserts that it cannot certify that a suitable approved placement could not be provided to S.T.A. or that Orchard Friends is the most appropriate placement because the Board has identified

several appropriate State-approved academic placements for S.T.A., specifically, Y.A.L.E. and Hampton Academy, each of which currently have an opening and has accepted S.T.A. as a student. For the same reason, I likewise am unable to make the factual determinations needed to support ordering a placement at Orchard Friends.

Turning to the request for compensatory education, petitioners argue that S.T.A. is entitled to compensatory education because the Board failed to deliver home instruction between November 27, 2023, and January 18, 2024, resulting in a break in service. The Board, while not denying compensatory education, argues that it should be limited to the time frame between November 27, 2023, and January 18, 2024, less twelve days that encompasses the time that school was not in session. The Board further argues that it was difficult finding a teacher; they had a commitment, but it was later withdrawn as the individual was unable to fulfill his commitment. They were eventually able to obtain someone who began teaching on January 18, 2024. The petitioners also argue that compensatory education is owed for failing to provide adequate home instruction. The student only received 8.75 hours per week instead of the ten hours requested. (P-25.) The Board posits that at times, because of conflicts in schedules, the full two-hour day could not be accomplished. N.J.S.A. 6A:14-4.8(4) states: "Instruction shall be provided for at least 10 hours per week. The 10 hours of instruction per week shall be accomplished in at least three visits by a certified teacher or teachers on at least three separate days."

I concur that S.T.A. is entitled to some compensatory education, notwithstanding my conclusion that the November IEP provided FAPE. I therefore **CONCLUDE** that S.T.A. is entitled to compensatory education between November 27, 2023, and January 17, 2024, less twelve days when school was not in session. I also **CONCLUDE** that between January 18, 2024, and June 7, 2024, S.T.A. received approximately 8.75 hours of instruction weekly, and thus is entitled to additional compensatory education. I therefore **CONCLUDE** that she is to receive ninety hours³ in compensatory education, plus ongoing home instruction ; it

³ Hours were calculated as follows: Between November 27, 2023, and January 17, 2024, there were 48 days. Twelve days are deducted from the 48, resulting in 36 days. The 36 days is multiplied by 2 hours per day (36 x 2=72), which equals 72 hours of compensatory time owed for the period of November 27, 2023, through January 17, 2024.

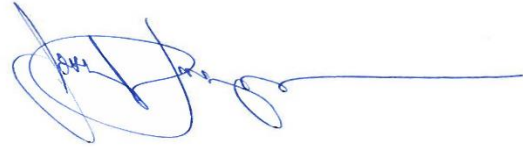
Between January 18, 2024, and June 7, 2024, there were 71 days where S.T.A. did not received 15 minutes of instruction. Thus, 71 times 15 (71x15) equals 1,065 minutes. The minutes are divided by 60 to convert to hours (1,065/60), which equals 17.75 hours. This added to the 72 hours totals 89.75 hours. I rounded it up to 90 hours.

should also be continued when out-of-district placement is effectuated until the allotted hours are completed. Parents of Student W. ex rel. Student W. v. Puyallup Schl. Dist., No. 3, 31 F.3d 1489 (9th Cir. 1994) (there is no obligation to provide day-for-day compensation for time missed when compensatory education is awarded). I also **CONCLUDE** that the parties are directed to schedule the hours as appropriate with S.T.A.'s current schedule. If Saturdays are feasible, the hours can be made up then. Just like with any regular school day, if S.T.A. is ill, refuses to attend, or walks out, she is deemed absent and the hours are not to be rescheduled. If the district cannot obtain sufficient instructors within fifteen (15) school days from the date of this Decision, it is required to provide payment at regular market rates to instructors obtained by petitioners, upon direct proof of instruction by those instructors plus proof of billing by the parents. Again, if S.T.A. is scheduled for instruction and does not appear or does not cooperate, those hours will not be made up and will be deducted from the total set forth herein, and the instructors should certify to same.

ORDER

Based on the foregoing, it is **ORDERED** that the request for due process be dismissed. The Board is directed to immediately effectuate a placement for S.T.A. at the Y.A.L.E. School or Hampton Academy. Her parents retain the option to educate her privately and at their own expense, subject to the district's obligation to ensure that S.T.A. is receiving an education, per N.J.S.A. 18A:38-27. It is further **ORDERED** that the Willingboro School District provide S.T.A. with 90 hours of compensatory education.

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.

A handwritten signature in blue ink, appearing to read "Joan M. Burke", with a long horizontal line extending to the right.

September 23, 2024
DATE

JOAN M. BURKE, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

APPENDIX

Witnesses

For Petitioners:

R.A.
Desiree Thomas
Elizabeth DiPerna
Dr. Anita Breslin

For Respondent:

Keenan Riley

EXHIBITS

Joint:

- J-1 Case file with due process
- J-2 Education Evaluation, February 18, 2020
- J-3 Social History
- J-4 Psychological Evaluation, August 7, 2020
- J-5 Functional Behavior Assessment Report, August 11, 2023
- J-6 Individual Education Placement, November 30, 2023
- J-7 Homebound Timesheets
- J-8 Progress Report: 2023–2024 and 2022–2023 program years

For petitioners:

- P-1 Not in Evidence
- P-2 Not in Evidence
- P-3 Not in Evidence
- P-4 Not in Evidence
- P-5 Educational Evaluation, February 18, 2020

- P-6 Confidential Social Assessment
- P-7 Speech Language Assessment Report
- P-8 Psychological Evaluation, August 7, 2020
- P-9 IEP, August 19, 2020
- P-10 IEP, June 2, 2021
- P-11 Not in evidence
- P-12 Not in evidence
- P-13 Not in evidence
- P-14 IEP, March 23, 2023
- P-15 Reevaluation Planning, June 9, 2023
- P-16 Educational Evaluation, July 11, 2023
- P-17 Confidential Psychological Evaluation, July 13, 2023
- P-18 Functional Behavior Assessment
- P-19 IEP, September 27, 2023
- P-20 Matthew Minter, MSN, October 19, 2023
- P-21 IEP, November 20, 2023
- P-22 S.T.A. letter on Orchard Friends, December 13, 2023
- P-23 Orchard Friends School acceptance letter, January 5, 2024
- P-24 Not in evidence
- P-25 Not in evidence
- P-26 Not in evidence
- P-27 Insite Health, May 28, 2024
- P-28 Not in evidence
- P-29 Not in evidence
- P-30 Progress Report
- P-31 Not in evidence
- P-32 Not in evidence
- P-33 Orchard Friends School Web Page
- P-34 Diagnostic Growth
- P-35 Dr. Anita Breslin's curriculum vitae
- P-36 Dr. Anita Breslin's preliminary memorandum, June 14, 2024
- P-37 Report of Determinations
- P-38 Letter to the district from Dr. Anita Breslin
- P-39 Not in evidence

- P-40 Not in evidence
- P-41 Not in evidence
- P-42 Not in evidence
- P-43 Not in evidence
- P-44 Comprehensive Interview Report Form

For respondent:

- R-1 Notice of Hearing, July 17, 2024
- R-2 Emails—placements
- R-3 Natalia Diaz, resume
- R-4 Emails—Hampton Academy, Brookfield
- R-5 Emails—timesheets
- R-6 Individual Education Placements—September 8, 2020; December 1, 2022; January 29, 2024
- R-7 Medical reports—January 16, 2024; December 1, 2023; October 19, 2023; September 22, 2023; November 18, 2022
- R-8 Initial Identification and Evaluation Planning, January 2, 2020
- R-9 Consent for Initial Evaluation, January 2, 2020
- R-10 Request to Amend IEP without a meeting
- R-11 Invitation for Annual Review of IEP, March 6, 2022; Invitation for Eligibility Determination and IEP Development
- R-12 Emails between petitioners and district
- R-13 HIB—S.T.A. Complaints
- R-14 Hampton Academy Acceptance letter, June 26, 2024
- R-15 Student Daily Attendance—2023–2024 school year
- R-16 Reevaluation Planning-Additional Assessment Warranted, June 9, 2023
- R-17 Emails regarding Placement, June 13, 2024; June 14, 2024
- R-18 Brookfield Academy information
- R-19 Y.A.L.E. School information
- R-20 Hampton Academy information