



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

**FINAL DECISION**

OAL DKT. NO. EDS 03181-24

AGENCY DKT NO. 2024-37018

**M.S. and C.S. ON BEHALF OF M.J.S.,**

Petitioners,

v.

**WASHINGTON TOWNSHIP BOARD  
OF EDUCATION,**

Respondent.

---

**Denise Gackenhimer Verzella, Esq., and Jessica Weinberg, Esq.,** for  
petitioners (Manes & Weinberg, LLC, attorneys)

**Stacey T. Cherry, Esq.,** for respondent (Fogarty & Hara, attorneys)

Record Closed: September 3, 2024

Decided: September 20, 2024

BEFORE **PATRICE E. HOBBS, ALJ:**

**STATEMENT OF THE CASE**

M.S. and C.S. (petitioners) filed a due process petition on behalf of M.J.S., seeking reimbursement for unilateral out-of-district placement, asserting that the Washington Township Board of Education (respondent) failed to identify M.J.S. as a student who qualifies for special education and related services. Did respondent provide M.J.S. with a free and appropriate public education (FAPE) during the 2023–2024 school year? Yes.

A district provides FAPE when it confers a significant learning and meaningful educational benefit considering a student's individual needs and potential. Endrew F. v. Douglas Cnty. Sch. Dist., 580 U.S. 386 (2017).

### **PROCEDURAL HISTORY**

On February 1, 2024, petitioners filed a petition for due process. On March 8, 2024, the case was transmitted to the Office of Administrative Law (OAL) under N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the Special Education Program, N.J.A.C. 1:6A-1.1 to -18.5. On March 12, 2024, a settlement conference was held and was unsuccessful. On March 24, 2024, a prehearing conference was held. The issues were limited to the following:

1. Did the District deprive M.J.S. of a FAPE for the 2023/2024 school year?
2. Is M.J.S. entitled to compensatory education for the 2023/2024 school year?
3. Is placement at the Winston School an appropriate, out-of-district school for M.J.S. and would it provide M.J.S. with FAPE for the 2023/2024 school year?

Hearings were conducted on May 16, 2024, May 20, 2024, May 23, 2024, June 3, 2024, June 13, 2024, and July 1, 2024. Post-hearing summation briefs were submitted by the parties, and the record was closed based on the last submission date of September 3, 2024.

### **DISCUSSION AND FINDINGS OF FACT**

Based upon the testimony the parties provided and my assessment of its credibility, together with the documents the parties submitted and my assessment of their sufficiency, I **FIND** the following **FACTS**:

#### **Pre-Kindergarten**

M.J.S. had multiple ear infections as an infant which impacted his hearing. (J-1.) When M.J.S. was eighteen months old, he spoke only one or two words and received

early intervention services until age three, when he aged out of the program. (J-1.) In 2018, M.J.S. was evaluated by Kid Therapy and found to be below average for receptive language and expressive language. (J-1.) On May 4, 2018, petitioners met with the respondent, and respondent agreed to conduct a Child Study Team (CST) evaluation for M.J.S. to determine whether he was eligible for special education and related services. (J-2, J-3.)

Nicole Drury has been the respondent's school psychologist since 2015. She received her bachelor's degree in psychology from Seton Hall University in 2011 and her Master of Science in Education in Therapeutic Interventions and School Psychology from Fordham University in 2014. Drury was submitted as the respondent's expert in the assessment of students with disabilities and eligibility determinations for special education and related services. Drury is a part of the CST. In May 2018, M.J.S. did not have a delay in motor concepts, language self-help or social /emotional skills. (J-6.)

On May 11, 2018, Kellianne Baumann ("Baumann"), who is also a part of the CST, conducted a speech and language evaluation. In the Clinical Evaluation of Language Fundamentals (CELF) Preschool-4 test, M.J.S. demonstrated age-appropriate skills, which were equal across all subtests. (J-4.) In the Receptive One-Word Picture Vocabulary Test-4 (ROWPVT-4), M.J.S. was in the high average range. In the Expressive One-Word Picture Vocabulary Test-4 (EOWPVT-4), M.J.S. scored in the average range. (J-4.)

On June 15, 2018, the CST met with petitioners and notified them that the Individualized Education Program (IEP) team determined that M.J.S. was not eligible for special education and related services. (J-5, J-6.) Respondent notified petitioners that M.J.S. did not qualify because he did not have a disability that corresponds to one or more of the disabilities defined in N.J.A.C. 6A:14-3.5(c)(1)–(14), and the disability does not adversely affect his classroom performance. (J-7.) In addition, Drury confirmed that to qualify for special education and related services in preschool, M.J.S. must have a twenty-five percent delay in two areas or a thirty-three percent delay in any one area. M.J.S. did not have such a delay, and petitioners did not object to the findings.

## **Kindergarten**

In September 2019, M.J.S. started kindergarten at the Benedict A. Cucinella Elementary School (BAC) in Washington Township. His teacher was Taylor Tedona. On December 11, 2019, Tedona referred M.J.S. to the Intervention and Referral Services (I&RS) for an evaluation because M.J.S. had difficulty processing information, verbalizing thoughts, and understanding directions. Drury stated that a child referred to I&RS needs to have interventions in place. (J-8.) At that time, M.J.S. was reading at a beginning kindergarten level. I&RS provided M.J.S. with additional kindergarten support, which included extra time to formulate his thoughts, sentence starters, repeating and clarifying directions, and preferential seating. (J-9.)

On February 5, 2020, the I&RS team met with petitioners to discuss M.J.S.'s progress. Even though M.J.S. had shown improvement in his reading level, the I&RS team still had concerns about his processing speed, expressive language, and ability to convey his knowledge. The I&RS team referred M.J.S. to the CST for an evaluation. At that time, the CST proposed interventions for M.J.S. Drury stated that when I&RS refers a child for an evaluation, the CST reviews the interventions that were in place, whether they were successful, and whether there would be an evaluation for special education and related services. (J-10.)

The CST was supposed to conduct an educational assessment, psychological assessment, social assessment, speech and language assessment, classroom observation, teacher interviews and a records review. (J-12.) However, the COVID-19 pandemic shutdown in-person teaching for all schools for the remainder of the 2019-2020 school year. Even though M.J.S. had remote learning for the last half of kindergarten, he was meeting expectations in most areas and was approaching expectations in three areas: language arts, math, and writing. (J-13.) Drury testified that this was typical of most kindergarten students.

The CST completed their assessment of M.J.S. in August 2020. They administered the Woodcock-Johnson IV (WJ-IV) test. M.J.S. scored in the average range in reading and writing but had a low average score of 86 in spelling. All his scores ranged from 92 to 99. The CST also administered the Test of Early Reading Ability-3 (TERA-3).

M.J.S. had difficulty with the rules of punctuation and was unable to decode words in isolation. In math, M.J.S. scored in the average to high-average range, with scores ranging from 105 to 114. Drury administered the Wechsler Intelligence Scale for Children (WISC). This test includes a full-scale IQ test as well as verbal comprehension, visual, fluid reasoning, working memory, and processing speed tests. M.J.S. had an IQ of 106. However, M.J.S. had a discrepancy in the subtest that included the ability to organize visual information and integrate visual and motor functions. The IQ test was deemed unreliable because of the discrepancies. Overall, M.J.S. was in the high-average range. The CELF test and the Comprehensive Assessment of Spoken Language (CASL) test were also administered, and M.J.S. scored within the average range. (J-14.)

### **First Grade**

In September 2020, M.J.S. was prescribed reading glasses by Dr. Sinoway. (J-15.) On October 5, 2020, the CST notified petitioners that M.J.S. was not eligible for special education and related studies because he did not have a severe discrepancy between his IQ and his educational assessments. In addition, M.J.S. did not have an educational impact because he had scored in the average range on assessments, and he met expectations in the classroom. (J-16, J-17.) M.J.S. did not qualify under the response to intervention because he was not receiving general education interventions at the time.

On October 12, 2020, petitioners requested that Briana Rosato, M.J.S.'s first-grade teacher, refer M.J.S. for a speech evaluation. The CST administered the Phonological Awareness Test (PAT), the Test of Auditory Perceptual Skills (TAPS), and the Test of Childhood Stuttering (TOCS). M.J.S. was within the average range for all three and ineligible to receive speech services. (J-29.)

On November 18, 2020, the I&RS team met with petitioners and advised them that respondent would be continuing with the I&RS plan. (J-28.) On December 7, 2020, respondent notified petitioners that M.J.S. did not qualify for speech and language services because he did not have a speech-language disability as defined in N.J.A.C.

6A:14-3.5(C)1–14, and his issues did not adversely affect his classroom performance. (J-31.)

### **Referral for a 504 Plan**

On December 7, 2020, M.J.S. was referred for a 504 evaluation. The evaluation was completed on March 25, 2021, as this was the first time that the students returned to in-person instruction because of the COVID-19 pandemic. It was determined that M.J.S. would receive occupational therapy one time per week for six weeks while he was at school. At the conclusion of first grade, respondent administered the NWEA MAP testing, which is a nationally normed standardized achievement test. M.J.S. scored above the mean for Math and below the mean for reading. (J-37, J-36.) In writing, M.J.S. was approaching expectations. (J-38.) Overall, Drury confirmed that M.J.S. performed at the average level and was meeting expectations as a first-grade student.

Kimberly Wallace administered occupational therapy to M.J.S. at the end of his first-grade year and recommended that these services be discontinued because M.J.S. exhibited fine motor skills for academics and that his reversals and letter-size writing were normal for his age group.

Petitioners noted that while M.J.S. has low average growth in reading, they would prefer that M.J.S.'s skills be above average. (J-41.)

### **Second Grade**

On November 10, 2021, petitioners met with the I&RS team and advised Virginia Plumbo (Plumbo), M.J.S.'s second-grade teacher, that M.J.S. had glasses and that he paused to gather his thoughts. Plumbo noted that she had never seen M.J.S. with glasses and that his pauses did not impact his academic performance, which was in the average range. (J-41.)

In January 2022, M.J.S.'s reading and math scores on MAP testing showed that he was in the average range. M.J.S. was meeting all expectations in school. On April 2,

2022, petitioners met with the I&RS team. M.J.S. was performing well academically and on grade level with reading. (J-45.) Plumbo noted that M.J.S. made significant growth academically and socially and was on grade-level expectation. (J-48.) The I&RS team continued with his action plan for the second grade. Petitioners felt that M.J.S. should be performing above average in reading. (J-41.)

### **Third Grade**

At the start of the third-grade year, M.J.S.'s math and reading scores were within the normal range. (J-49, J-50.) Because M.J.S. was performing well on the MAP testing and was in the average range for most of his classes, he was not referred to the I&RS team. In fact, M.J.S. was meeting expectations in English, language arts, writing, and math. His teacher had no concerns regarding his report card. (J-58.)

On January 19, 2023, petitioners met with the I&RS team. At this time, M.J.S. had a private tutor, Beth Perry, outside of school. Perry began Orton-Gillingham (OG) instruction with M.J.S. Perry testified that he started doing better in school with her assistance.

Respondent had no interaction with petitioners from the end of second grade, June 2022, until the end of third grade, April 2023. On March 27, 2023, petitioners already applied for admission to the Winston School, a private school. On April 6, 2023, petitioners provided the respondent with a report from Dr. Paul Yellin, which was dated four months earlier, November 29, 2022. At that point, in April 2023, petitioners requested that another CST evaluation be conducted, to which respondent agreed.

The CST reported that M.J.S. scored 102 on the IQ test, which was in the average range. Respondent conducted the WJ-IV test, and M.J.S. had average scores in all areas except for spelling, which did not concern the CST. (J-51.) The CST also administered the WIAT-4, and M.J.S. scored in the average range in all but sentence composition, where he scored in the low-average range.

**Petitioners' Expert, Dr. Paul Yellin**

Yellin conducted the Gray Oral Reading Test (GORT) and the Test of Word Reading Efficiency (TOWRE). M.J.S. scored average in the GORT except for oral reading and average on reading sight words. M.J.S. had difficulty with nonsense words. (J-51.) As a result, Yellin diagnosed M.J.S. with dyslexia, expressive language disorder, disorder of written expression and dysgraphia. (J-51.) Yellin also performed a WISC V, which M.J.S. scored in the average range, except for processing speed, which was a low average score. M.J.S. also scored average or above average on the speech and language assessments, CELF-5 and the TEXTL. Dr. Yellin agreed that M.J.S. scored in the average range in expressive language.

All the assessments combined show that M.J.S. could read real words, sound out non-words that cannot be memorized, answer comprehension questions, manipulate sounds, and read fluently orally under timed conditions in the average range. His math scores were in the high average to average range. Wallace again assessed M.J.S. on motor skills. She noted that M.J.S. had difficulty with fatigue, hand manipulation and coordination. As a result, the CST recommended occupational therapy services for hand coordination. (J-60.) Perry also conducted additional assessments at the end of third grade. Her testing also revealed that M.J.S. was reading at an average level.

After a review of the report from Dr. Yellin, including all his testing, the prior testing performed by the CST, the current evaluations performed by the CST, classroom observation and review of records, the CST concluded that M.J.S. was not eligible for special education and related services. The CST concluded that M.J.S. did not have a disability as defined by the IDEA. Even Dr. Yellin agreed that dyslexia alone is not sufficient to qualify for special education and related services. The CST also concluded that M.J.S. did not suffer an educational impact as he scored within the average range on every standardized assessment. Finally, the CST determined that M.J.S. did not require special education services as he was either meeting expectations or approaching expectations for his age and grade level. (J-60.)



### **Unilateral Placement at the Winston School, September 2023**

Respondent referred M.J.S. to the 504 Team for occupational therapy and to the I&RS team to continue to monitor his progress. They also offered a referral for literacy support, which petitioners declined. On July 26, 2023, while the CST was still conducting its evaluation of M.J.S., petitioners enrolled M.J.S. in the Winston School and requested reimbursement.

The Winston School assessed M.J.S. in September 2023, the start of fourth grade, and determined that M.J.S. read at a third-grade level. M.J.S. tested in the average range for written language and used adequate vocabulary for his age group. In fact, his scores at the Winston School for the fourth grade were average. (J-68.)

M.S. wants the best possible education for M.J.S. It is her belief that the respondent has never been able to provide the best education for M.J.S., and it will never be able to provide the best education for M.J.S. M.S. ardently believes that the only school that can provide the best education for M.J.S. is the Winston School.

Based on the discussion above, I **FIND** as fact that respondent utilizes the severe discrepancy calculation for all their special education determinations. Respondent did not rely solely on the severe discrepancy calculation to determine whether M.J.S. has an SLD. Respondent used the lack of a severe discrepancy in conjunction with M.J.S.'s grades, teacher input, parental input and classroom observations. M.J.S.'s grades were average, meeting expectations, approaching expectations, and above average. M.J.S.'s grades were typical for a child of that age in that grade. M.J.S. was receiving I&RS support. Even with a diagnosis of dyslexia, M.J.S. was not a student with an SLD. M.J.S. did not suffer an educational impact. M.J.S. did not qualify for special education and related services.

### **CONCLUSIONS OF LAW**

The Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 et seq., requires New Jersey to effectuate procedures that ensure that all children with disabilities

residing in the State have available to them a free appropriate public education (“FAPE”) consisting of special education and related services. The IDEA “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).

States are obligated to identify, classify, and provide a FAPE to all children with disabilities between the ages of three and twenty-one. 20 U.S.C. § 1412; N.J.S.A. 18A:46-8; N.J.A.C. 6A:14-1.1. This responsibility rests with the local public school district. N.J.A.C. 6A:14-1.1(d). School districts have an affirmative and continuing obligation to identify and evaluate students reasonably suspected of a disability under the IDEA and Section 504 of the Rehabilitation Act. This responsibility is known as a district’s “child find” obligation. See D.K. v. Abington Sch. Dist., 696 F. 3d. 233, 249 (3d. Cir. 2012); 20 U.S.C. § 1412(a)(3). Each district must develop written procedures to identify students within the location of the district who may have a disability due to “physical, sensory, emotional, communication, cognitive, or social difficulties.” N.J.A.C. 6A:14-3.3(a). These procedures must include evaluation measures to determine a student’s eligibility for special education and related services. N.J.A.C. 6A:14-3.3(a)(3)(iii.).

An “individual with a disability” is defined under Section 504 as any person who “has a physical or mental impairment which substantially limits one or more of such person’s major life activities, has a record of such impairment, or is regarded as having such an impairment.” 29 U.S.C. 705(20)(B). Section 504 defines a disability as a physical or mental impairment that substantially limits a person’s ability to participate in a major life activity, such as learning. Section 504 has a broad definition of “disability.” By contrast, the IDEA defines a “child with a disability” more narrowly to include individuals with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance . . . orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities.” 20 U.S.C. § 1401(3)(A). Children who are not eligible for an IEP may, therefore, be eligible for a 504 Plan.

### **Eligibility for Special Education and Related Services**

The IDEA sets up a three-part test to determine eligibility for special education and related services: (1) the student must have one or more of the disabilities defined in N.J.A.C. 6A:14-3.5(c)1-14; (2) the disability must adversely affect the student's educational performance; and (3) the student must need special education and related services. H.M. v. Haddon Heights Bd. of Educ., 822 F. Supp.2d 439, 450 (D. N.J. 2011).

All three criteria must be met to be eligible for an IEP. Here, petitioners assert that M.J.S. is eligible for special education due to his dyslexia. Respondent argues that a diagnosis of dyslexia alone does not define a student with a specific learning disability (SLD) because an SLD can only be found when there is a severe discrepancy between the student's achievement and intellectual ability in one of the eight enumerated areas or through a response to intervention. N.J.A.C. 6A:14-3.5(c)(12). Even petitioners' expert, Yellin, agrees with this. Moreover, in this case, M.J.S.'s academic report cards show that he was performing just below or at the level for his age group and that he was progressing just below or at the level for his age group.

To determine whether a severe discrepancy exists, N.J.A.C. 6A:14-3.5(c)(12) requires the use of one of two methods: the severe discrepancy approach or the response to scientifically based interventions methodology. Choosing one or the other does not result in an incorrect determination of eligibility. A district can use either method. V.M. ex rel. B.M. v. Sparta Twp. Bd. of Educ., 12-892, 2014 U.S. Dist. Lexis 91254 at \*4, (D.N.J. July 3, 2014). However, if the district chooses to use the severe discrepancy method, it must adopt a statistical formula and criteria to determine the severe discrepancy and have a current assessment of intellectual ability. The model must compare the student's intellectual ability to academic achievement in eight areas: basic reading, reading comprehension, oral expression, listening comprehension, mathematics, mathematical problem solving, written expression and reading fluency. N.J.A.C. 6A:14-3.5(c)(12)(i)-(iv).

However, if a school district uses a severe discrepancy approach to determine whether a child has an SLD and employs a statistical formula to calculate if a child has a severe discrepancy between aptitude and actual achievement, the district must also

consider all other assessments of the child. The district should consider parent input, teacher input, test results, and information concerning the child's health and background. V.M. ex rel B.M. v. Sparta Twp. Bd. of Educ., 12-892, 2014 U.S. Dist. Lexis 91254, \*56, (D.N.J. July 3, 2014).

Respondent used the severe discrepancy model. They compared M.J.S.'s intellectual ability to his academic achievement. In 2020, the respondent administered the WJ-IV test, and M.J.S.'s scores ranged from 92 to 96. They also administered the TERA-3, and M.J.S. had difficulty with the rules of punctuation and was unable to decode words in isolation. He also had a low average score of 86 in spelling. In math, his scores ranged from 105 to 114. M.J.S. had an IQ of 106. Overall, M.J.S. was in the high average range, and none of his scores were more than fifteen points below his IQ. A score that is more than fifteen points below the IQ demonstrates a severe discrepancy. The only score that was more than fifteen points below his IQ was spelling, which is not one of the eight areas identified in N.J.A.C. 6A:14-3.5(c)(12)(i.)–(iv.).

In 2023, M.J.S. had an average IQ of 102; his WJ-IV test was average in all areas except for spelling, and his WIAT-4 was also in the average range in all areas but sentence composition, where he scored in the low average range. Yellin conducted GORT, and M.J.S. was average except for oral reading. M.J.S. had difficulty with nonsense words. On the WISC, M.J.S. scored in the average range except for processing speed, which was a low average score. M.J.S. also scored average or above average on the speech and language assessments, CELF-5 and the TEXTL. Given the test results, M.J.S. did not have an SLD and did not qualify for special education and related services. M.J.S. did qualify for occupational therapy, monitoring by I&RS and literacy support.

Respondent also considered M.J.S.'s report card. He was meeting expectations in almost all areas, and this was typical for a child his age when compared to other students. Respondent also considered work samples, teacher input and parental input, and as a result, the CST determined that M.J.S. was not qualified for special education and related services.

Respondent did not have a written policy that established the use of the severe discrepancy model. Petitioners state that even if they did have a written policy establishing the severe discrepancy model, it fails because Drury and Swain testified that the IQ was unreliable due to scattered scores. As a result, the severe discrepancy calculation is also unreliable. Therefore, respondent failed to identify M.J.S. as a student with an SLD. Petitioners conclude that since the respondent failed in its child find, it did not provide M.J.S. with a FAPE, cannot provide M.J.S. with a FAPE, and they are entitled to compensatory education and placement at the Winston School.

I disagree. Drury and Swain testified that the respondent has always used the severe discrepancy calculation for all their special education determinations. In addition, respondent did not rely solely on the severe discrepancy calculation. The CST team used the lack of a severe discrepancy in conjunction with M.J.S.'s grades in school, which were average, meeting expectations, approaching expectations, and above average. M.J.S.'s grades were typical for a child of that age in that grade. Finally, M.J.S. was receiving I&RS support. Even with a diagnosis of dyslexia, M.J.S. was not a student with an SLD, and M.J.S. did not suffer an educational impact. Simply put, taking all the testing, grades, teacher and parent input, M.J.S. was a candidate for occupational therapy, I&RS to monitor academic progress, and possible literacy support. However, M.J.S. did not have an SLD, M.J.S. did not suffer an educational impact, and therefore, M.J.S. did not qualify for special education and related services.

### **Unilateral Placement**

Case law recognizes that the IDEA does not require the respondent to provide M.J.S. with the best possible education. S.H. v. State-Operated Sch. Dist. of Newark, 336 F.3d 260, 271 (3d Cir. 2003). It also does not require the respondent to ensure that the student receives what his 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. M.A. ex rel. G.A. v. Vorhees Twp. Bd. Of Educ., 202 F.Supp. 2d 345, 364 (D.N.J. 2002). Rather, when a court must determine whether a district has provided FAPE, the pertinent inquiry is whether the IEP proposed by the district offered FAPE with the opportunity for significant learning and meaningful education benefits within the LRE.

G.B. & D.B. ex rel. J.B. v. Bridgewater-Raritan Reg'l Bd. of Educ., EDS 4075-06, Final Decision (June 13, 2007). If it is found that the district provided FAPE, the appropriateness of another program is irrelevant. See H.W. & J.W. ex rel. A.W. v. Highland Park Bd. of Educ., 108 Fed. Appx. 731, 734 (3d Cir. 2004). Simply put, even if the Winston School provides M.J.S. with an appropriate or even superior program, the issue to be decided is whether the respondent offered M.J.S. a FAPE in the least restrictive environment. I believe that it did.

Petitioners want the best possible education for M.J.S. and fervently believe that he can only obtain this education from the Winston School. I disagree. Respondent is capable and has been providing M.J.S. with an opportunity for significant learning and meaningful education. After two semesters at the Winston School, M.J.S. was still performing in the average range. Respondent argues that petitioners persuaded Yellin to change his recommendations to ensure that placement at the Winston School was the only option. Whether or not Yellin changed any of his recommendations is of no moment. His recommendations are just that: recommendations. The relevant facts are the test scores, teacher input, parent input, and grades. All things considered, M.J.S. performed at the same level at both schools. Respondent can provide M.J.S. with a FAPE in the least restrictive environment. Petitioners can place M.J.S. in the school of their choosing, but the respondent does not have to reimburse them.

I **CONCLUDE** that the respondent met its burden to establish that M.J.S. was not eligible for special education and related services because M.J.S. did not have an SLD and did not suffer an educational impact. I also **CONCLUDE** that the unilateral placement by petitioners at the Winston School was unwarranted, and petitioners' demand for reimbursement for the Winston School is **DENIED**.

**ORDER**

Based upon the foregoing, it is **ORDERED** that petitioners' due process petition is **DISMISSED**.

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.



September 20, 2024  
DATE

\_\_\_\_\_  
**PATRICE E. HOBBS, ALJ**

Date Received at Agency:

September 20, 2024

Date Mailed to Parties:

September 20, 2024

Isr

## **APPENDIX**

### **WITNESSES**

#### **For Petitioner:**

M.S.

Paul Yellin, M.D.

Elizabeth Perry, Teacher

Sharon Hudzik, Teacher

Nadine Sciancalepore, Teacher

#### **For Respondent:**

Nicole Drury, School Psychologist

Tracy Swain, LDT-C

### **EXHIBITS**

#### **Joint:**

- J-1 Letter from Parents to District regarding referral and enclosing Kid Therapy Screening by Shelley Chilton, M.A., CCC-SLP, dated March 14, 2018
- J-2 Invitation to an Initial Eligibility Meeting, dated April 23, 2018
- J-3 Written Notice/Evaluation Plan, dated May 4, 2018
- J-4 Speech and Language Assessment by Kellianne Baumann, M.S., CCC-SLP, dated May 15, 2018
- J-5 Invitation to a Meeting, dated June 14, 2018
- J-6 Child Study Team Evaluation by Gina Blockus, MSW, LCSW; Nicole Drury, M.S. Ed., PD; Kathryn Warlick, LDT-C; Kellianne Baumann, M.S., CCC-SLP, dated June 15, 2018
- J-7 Evaluation Sequence/Eligibility Determination Report, dated June 15, 2018
- J-8 Intervention and Referral Services Action Plan, dated December 11, 2019
- J-9 Intervention and Referral Services Action Plan, dated February 5, 2020



- J-10 Washington Township Schools Child Study Team Referral Form, dated February 17, 2020 – February 20, 2020
- J-11 Invitation to a Meeting, dated March 4, 2020
- J-12 Written Notice/Evaluation Plan, dated March 12, 2020
- J-13 Kindergarten Report Card (2019–2020), dated June 20, 2020
- J-14 Child Study Team Evaluation by Nicole Mack, MSW, LSW; Nicole Drury, M.S. Ed., PD; Patricia Metz, MA; Kristen Olsen, LDT-C/M.Ed., dated September 5, 2020
- J-15 Neuro-Optometric Evaluation by Stephen Sinoway, O.D., dated September 15, 2020
- J-16 Invitation to a Meeting, dated September 16, 2020
- J-17 Evaluation Sequence/Eligibility Determination Report, dated October 5, 2020
- J-18 Letter from Parents to Child Study Team regarding referral, dated October 5, 2020
- J-19 Email from Melissa Sgambati to Parents regarding vision and hearing, dated October 13, 2020
- J-20 Washington Township Schools Child Study Team Referral Form, dated October 12, 2020 – October 13, 2020
- J-21 Speech/Language: Invitation to a Meeting, dated October 15, 2020
- J-22 NWEA MAP Mathematics Report, dated October 16, 2020
- J-23 NWEA Map Reading Report, dated October 16, 2020
- J-24 Written Notice/Evaluation Plan-Speech, dated October 19, 2020
- J-25 Neuro-Optometric Evaluation by Stephen Sinoway, O.D., dated October 20, 2020
- J-26 Emails from Melissa Keiser to Parents regarding I&RS, dated October 28, 2020 – October 29, 2020
- J-27 Literacy Intervention Google Form, dated November 2, 2020
- J-28 Intervention and Referral Services Action Plan, dated November 18, 2020
- J-29 Child Study Team Evaluation by Ellen Mazzei, SLP, dated November 20, 2020
- J-30 Speech/Language: Invitation to a Meeting, dated December 7, 2020
- J-31 Speech Evaluation Report/Eligibility Determination, dated December 7, 2020
- J-32 Section 504 Handbook, including Parent Referral and Consent for Student Evaluation, dated December 7, 2020
- J-33 Intervention and Referral Services Action Plan, dated January 20, 2021

- J-34 Intervention and Referral Services Action Plan, dated March 24, 2021
- J-35 Section 504 Accommodation Plan, dated March 25, 2021
- J-36 NWEA MAP Reading Report, dated May 17, 2021
- J-37 NWEA MAP Mathematics Report, dated May 18, 2021
- J-38 First Grade Report Card (2020–2021)
- J-39 NWEA MAP Reading Report, dated September 27, 2021
- J-40 NWEA MAP Mathematics Report, dated September 28, 2021
- J-41 Intervention and Referral Services Action Plan, dated November 10, 2021
- J-42 Intervention and Referral Services Action Plan, dated January 19, 2022
- J-43 NWEA MAP Reading Report, dated January 20, 2022
- J-44 NWEA MAP Mathematics Report, dated January 21, 2022
- J-45 Intervention and Referral Services Action Plan, dated April 6, 2022
- J-46 NWEA MAP Reading Report, dated June 1, 2022
- J-47 NWEA MAP Mathematics Report, dated June 2, 2022
- J-48 Second Grade Report Card (2021–2022)
- J-49 NWEA MAP Mathematics Report, dated September 13, 2022
- J-50 NWEA MAP Reading Report, dated September 14, 2022
- J-51 Letter from Parents to Child Study Team, re: referral and enclosing  
Neurodevelopmental Evaluation by Paul B. Yellen, M.D., F.A.A.P. and Sara F.  
Douglas, Psy.D., NCSP, dated November 28, 2022 – November 29, 2022
- J-52 Invitation to a Meeting, dated April 12, 2023
- J-53 Evaluation Plan, dated April 26, 2023
- J-54 2020–2023 Assessment Data
- J-55 DIBELS, dated May 11, 2023
- J-56 NWEA MAP Reading Report, dated May 30, 2023
- J-57 NWEA MAP Mathematics Report, dated May 31, 2023
- J-58 Third Grade Report Card (2022–2023)
- J-59 Invitation to a Meeting, dated July 10, 2023
- J-60 Child Study Team Evaluation by Nicole Drury, MS Ed., PD; Jana Rojas, MSW,  
LSW; Tracy Swain, LDT-C; Kim Wallace, MS, OTRL; Ellen Mazzei, SLS, dated  
July 20, 2023
- J-61 Eligibility Conference Report, dated July 20, 2023
- J-62 Letter from Parents to District, re: unilateral placement, dated July 26, 2023

- J-63 Letter from District to Parents, re: responding to unilateral placement letter, dated August 3, 2023
- J-64 Letter from Parents to District enclosing New Jersey Student Learning Assessments for Spring 2023, English Language Arts (2022–2023) and Mathematics (2022–2023), dated September 20, 2023
- J-65 N/A Reading Level Conversion Chart
- J-66 Emails between Parents and Winston School, dated March 27, 2023 – August 16, 2023
- J-67 Winston School Contract 2023–2024 and Tuition Payments from August 14, 2023 to April 12, 2024
- J-68 Speech and Language Evaluation by Karen Pazdera, M.S., CCCSLP, dated August 31, 2023 – September 6, 2023
- J-69 Fall/Winter 2023 Winston School Academic Testing Summary
- J-70 Email from Melissa Keiser to Debbie Russo, dated December 23, 2020
- J-71 Emails between Melissa Keiser and Parents, dated October 28, 2020 – November 10, 2020

For Petitioners:

- P-1 Tedona Emails
- P-2 Email from K. Spano to Parents—bathroom and  
Email from K. Spano to Parents—academic concerns
- P-3 Email from K. Spano to Parents—Mrs. Davies
- P-4 Vanderbilt and BASC Assessment—Parents
- P-5 Parent Questionnaire—Yellin Assessment
- P-6 Teacher Questionnaire—Yellin Assessment
- P-7 Teacher BASC—Yellin Assessment
- P-8 Teacher Vanderbilt Scale—Yellin Assessment
- P-9 M.J.S. Writing Sample
- P-10 Email between K. Spano and Parents, Re: OG
- P-11 Initial Assessment including PAST by E. Perry
- P-12 Home Writing Sample
- P-13 Updated Assessment including PAST by E. Perry
- P-14 OT Evaluation – Winston School

- P-15 M.J.S. School Schedule—Winston
- P-16 Winston Fall Goals
- P-17 Back to School Writing Sample
- P-18 Winston Academic Plan
- P-19 PAST Assessment—Winston
- P-20 PAST Progress Report—Winston
- P-21 Winston Report Card
- P-22 Hearing Builder Letter
- P-23 Yellin Updated Report
- P-24 Board Policy
- P-25 Tedona Payments
- P-26 Washington Township Multi-Tier Support Services Handbook
- P-27 NJ Dyslexia Handbook
- P-28 Yellin Proof of Payment
- P-29 CV for Paul Yellin
- P-30 CV for Ryan Standler
- P-31 CV for Elizabeth Perry
- P-32 CV for Sharon Hudzik
- P-33 MJS OG Notebook with B. Perry

For Respondent:

- R-1 CV for Denise Scairpon
- R-2 CV for Hilary S. Harvey
- R-3 CV for Nicole Drury (Ricca)
- R-4 CV for Tanya Leonhardt
- R-5 CV for Ellen Mazzei
- R-6 CV for Jana Rojas (Ercolano)
- R-7 CV for Patricia Metz
- R-8 CV for Nicole Mack (Paladino)
- R-9 Certification/License for Tara Giuliano
- R-10 Certification for Kimberly Wallace (Bosco)
- R-11 CV for Kristen Olsen
- R-12 CV for Tracy M. Swain

