

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 02614-16

AGENCY DKT. NO. 2016-23862

D.A. AND P.A. ON BEHALF OF D.A.,

Petitioners,

v.

LIVINGSTON BOARD OF EDUCATION,

Respondent.

Beth A. Callahan, Esq., for petitioners (Callahan and Fusco, attorneys)

Isabel Machado, Esq., for respondent (Machado Law Group, attorneys)

Record Closed: March 31, 2017

Decided: July 25, 2017

BEFORE **CARIDAD F. RIGO**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

D.A. and P.A., on behalf of their son D.A. (herein after petitioners), filed a petition alleging their son, D.A. who was enrolled in the Livingston High School was not provided a free and appropriate public education (FAPE). Petitioners contend that because of Respondent's failure to provide FAPE for D.A. they had to unilaterally place their child in an out-of-district school.

Respondent presents that it designed and provided D.A. with an Individual Education Plan (IEP) tailored to meet D.A.'s needs and that it provided him with FAPE in the least restrictive environment.

The petition was filed on December 28, 2015, with the New Jersey Department of Special Education. The case was then transmitted to the Office of Administrative Law (OAL) as a contested case. The case was heard before the undersigned Administrative Law Judge (ALJ) on: October 5, 24, 2016, January 3, 11, 23 and 25, 2017.

ISSUES

Did the Respondent District offer D.A. a free and appropriate public school education in 2015-2016 Individual Education Plan (IEP)?

Was the unilateral placement of D.A. at the Craig School reasonable under the circumstances?

SUMMARY OF TESTIMONY

District's Witnesses

Lisa Capone-Steiger

Lisa Capone-Steiger (Steiger) is the Superintendent of Student Services for the Respondent school district. She is a learning-disabled teacher consultant and she makes sure that the student IEPs are being implemented. She stated that the Respondent district has over 6,000 students in 9 schools, 6 elementary schools, 2 middle schools and 1 high school. Of the 6,000 students 1,000 are classified. With respect to the instant matter she has observed D.A. and attended his IEP meetings in December 2015.

Steiger testified that Monmouth Court Campus is a small program designed for students that have problems with large-school settings; the curriculum is taught by a general education teacher but the class has a special education teacher providing in-class support if the students require it. Instruction can be 1:1, students can go at their own pace and grow according to their abilities within a college preparatory course.

Steiger described the school as a warm small place where there are forty-five students in the building. She said Monmouth Court offers the same curriculum as Livingston High School for core subjects but with smaller class sizes. A Monmouth Court student can mainstream back into the high school if the student, parents, and teachers agree. A Monmouth Court student can participate in the extracurricular activities with the regular Livingston H.S.

Steiger testified as to the Learning Strategies program that was recommended for D.A. Learning Strategies provides instruction on executive functioning, study skills, problem solving, planning, and organization. The program is administered through an outside teaching consultant called Effective School Solutions (ESS). The Learning Strategies group has one to eight students and they are taught by one special education teacher. ESS also would provide intensive counseling for D.A. At Monmouth Court, there are minimal noises and distractions, there is therapeutic input, and the schedule is highly structured; students cannot drop in or out as they are monitored. At Monmouth Court, there is a school psychologist on staff, a clinical social worker, and school counselors. D.A. would have received daily therapy at Monmouth Court and he would have been assigned a psychotherapist.

Steiger furthered that D.A.'s prior classification was Specific Learning Disability but it was changed to Other Health Impaired in December 2015 IEP.

According to Steiger, all of Dr. Platt's recommendations were included in the IEP of December 2015.

Steiger acknowledged that the parents in August and December of 2015 talked about an out-of-district placement for D.A.

Steiger went to the Craig School and observed D.A. in class on April 25, 2016, she was in the classroom forty minutes. Diagram R-91 is her drawing of the classroom as she observed it on that day. She stated that the class consisted of ninth and tenth graders in World History. She noted that the students did not take notes and that the

class did not have an FM system in use. The students worked independently and were doing very low-level work. D.A. did not speak during the time she observed that class.

During cross-examination Steiger acknowledged that D.A.'s home instruction should not be longer than sixty days. The school doctor found that D.A. was eligible for home instruction, which is the most restrictive environment. Steiger also acknowledged that they sent D.A.'s records to the Sage and Homestead schools and that those schools were appropriate for D.A.; however, Respondent never shared that information with the parents.

Steiger furthered during cross-examination that the Monmouth Court staff was not involved in D.A.'s IEP and that D.A.'s application to Monmouth Court was never processed.

Kristin Pannorfi, Ph.D.

Kristin Pannorfi, Ph.D. (Pannorfi), testified on behalf of the Respondent, she is the school's psychologist. She performed a psychological evaluation on D.A. on May 28, 2015. She is a member of Respondent's child study team (CST).

According to the results of the evaluation she did on D.A., D.A. was proficient on the New Jersey Assessment of Skills and Knowledge (NJ ASK) and his grades were consistent with his Intelligence Quotient (IQ). D.A. was performing in the B to C range. D.A. was weak in his processing speed and visual spatial relationships. He needed less information on a page or have the information bolded or highlighted, and given additional time.

Pannorfi furthered that D.A. described himself as shy, nervous, and unhappy with his school work. D.A.'s teachers agreed that D.A. was shy and did not speak up in class. She confirmed that D.A. was anxious in class and that his anxiety was affecting his school performance. D.A. needed more time to do his work with supports and special education services. Pannorfi acknowledged that D.A. suffered from significant school anxiety. She did not make any recommendations for D.A. in her report.

Under cross-examination she acknowledged that D.A. found school stressful and that he hated school. She further acknowledged that D.A.'s teachers noted that D.A. was withdrawing and not engaging or interacting with peers or anyone at school. She said that in spite of these issues with D.A. she recommended that he attend Livingston High School with in class supports and a math lab. She testified that D.A. is not emotionally disturbed.

Krystie Loeuis

Krystie Loeuis (Loeuis) is employed by the Livingston Board of Education as a transition coordinator and facilitator at Monmouth Court. She was a school counselor at Livingston High School for nine years.

Loeuis explained that Effective School Solutions (ESS) is an in-school therapeutic program that provides intervention, individual counseling study skills, and school avoidance counseling at Monmouth Court. Loeuis stated that Monmouth Court has four core teachers, two instructional aides, one Phys Ed teacher, one driver education teacher, one health teacher, one special education teacher, one school psychologist, and two clinical social workers. There are forty-five students attending the school and forty of them have IEPs. There are six students maximum in a class and the student to teacher ratio is 4:1. All after-school activities are done at the main campus of Livingston High School. If a student needs a special education teacher that student is provided with one. Monmouth Court services grades 9 through 12. Loeuis furthered that teachers and case managers work closely together.

Under cross-examination Loeuis testified that forty-three students at Monmouth Court have a split day; that is they go back and forth between the Monmouth Court campus and the main campus. Loeuis further explained that each class may have six students but that one class may be teaching different subjects. For example, the class may be a history class but within that history class different types of history may be taught such as world history, U.S. history etc.

Ellen Platt, D.O.

Dr. Ellen Platt (Platt) is a psychiatrist who testified on behalf of the Respondent, she was qualified as an expert in child and adolescent psychiatry.

Dr. Platt evaluated D.A. on July 21, 2015, she determined that he was anxious, restless, moving continuously, easily distracted, constant eye blinking, and his shoulders were shrugged—all of which manifested anxiety. She reviewed the documents provided by the child study team. Dr. Platt opined that D.A.'s emotional and cognitive problems interfered with his academics and his emotional stability. She indicated that D.A. would need therapeutic support and special education input to help him with cognitive issues. She recommended that D.A. be in a small class of about five to six students. The class must have reduced stimulation because D.A. gets nervous in large environments. She said D.A. needs effective psychotherapy input throughout the school day. She said D.A. needs to be challenged academically. D.S.'s emotional issues were very much intertwined with his academic issues so he needed to separate the two.

Dr. Platt stated that an appropriate program for D.A. would be one that consisted of an academic cognitive component where he would be challenged and would want to do more difficult things. And, a therapeutic program with comprehensive emotional support. She said making things easy for D.A. academically is not good for him. She opined that D.A. was not college bound material. D.A. has a high level of emotional difficulties therefore he needs constant monitoring by staff. He needs someone around him all of the time asking him if he needs help. D.A. needs help with organizational skills. He needs to be helped in a subtle manner to avoid being identified as someone that needs help all the time. D.A.'s anxiety is so high that things have to be presented in a subtle way. He needs a mentor preferably a male and that mentor should be a person with high mental health training. D.A. has very low self-esteem.

A self-paced program is not appropriate for D.A. D.A.'s emotional problems are more than his academic problems and his emotional problems affect his academic

functioning. D.A.'s anxiety is related to school. A regular class at Livingston High School with in class support would not be appropriate for D.A.

Under cross-examination Dr. Platt testified that D.A. was not oppositional during the interview. She did not think that the large Livingston High School was appropriate for D.A.

Gerald Barone

Gerald Barone (Barone) is the executive director at Effective School Solutions (ESS). He is the supervisor of the individuals that work at Monmouth Court. ESS is an independent contractor contracted to provide group therapy, individual therapy, family therapy, parent support group, and psycho education in Monmouth Court. ESS serves about twenty students both in the main high school and in Monmouth Court. The students at Monmouth Court are made up of students with anxiety and depression.

Under cross-examination Barone acknowledged that the ESS program is not right for every student. He never met D.A. only knows him by reference. He doesn't know much about D.A. He said ESS generally does an intake and decides whether a student is appropriate match for ESS. Barone admitted that he does not know if ESS was asked to look at D.A.'s records before the IEP was developed. He said the ESS program must comply with the student's IEP. ESS staff are not educators they are not teachers they are clinicians there to help with the therapeutic components of the program. ESS staff would not be able to provide educational strategies.

In response to this ALJ's questions Barone stated that ESS does not get involved in the education plan of a student and they do not evaluate. He said ESS work with students so they can manage themselves.

Dr. Eric Caparulo

Dr. Eric Caparulo (Caparulo) is the Director of Craig High School in Boonton, New Jersey. He has a Master's degree in psychology and teaching, he has spent

twenty-three years in Special Education all with the Craig School. He has a doctorate in educational leadership. He is also certified in New Jersey as a teacher of students with disabilities and as a teacher of psychology. The Craig School is an accredited school. He said he is directly involved in program development, admissions and the faculty at the Craig School. At the time of his testimony he said the Craig High School had thirty-two students. The sophomore class had six students and D.A. was one of those six. At no time are there any more than seven students in a class.

Caparulo testified that he knew D.A. very well. He found D.A. to be a very anxious young man. D.A. speaks in a whisper and stammers. D.A. was reactive to questions before the questions were asked. D.A. lacked a skill set that allowed independent learning. He found D.A. to be uncomfortable in his own skin. D.A. started at the Craig School in December 2015.

Caparulo stated that the Craig School offered D.A. a program that had strategic approaches and cross curriculum integration, their program structure had support systems, their program addressed both the academics and the emotional issues specific to D.A.

Caparulo testified that he and D.A. struck up a friendship and they spent a lot of time together in different situations beyond the academic, they would meet at lunchtimes and played backgammon. D.A. joined the soccer and basketball teams. Slowly D.A. came out of his shell. It was a process for D.A. to socialize with other students. He describes D.A. as the “energizer bunny.” Boonton High School is next door to the Craig High School building so Craig students can join certain Boonton clubs. They have a class called Group and Life Dynamics where they learn to define and learn about their weaknesses and strengths.

D.A. does not have individual counseling because he responded so well to the coaching program. The coaching program is more than academics, in this program they work 1:1 with students, they set daily goals and take actions steps. D.A. has two coaches one works with him on his organization skills and the other on work planning.

Caparulo testified that initially D.A. presented with speed processing and executive-function capabilities and at first D.A.'s scores did not match his learning. Craig adopted the Cornell system of note taking, it is cross-curriculum in that all classes follow the Cornell system.

D.A. was disorganized so at Craig he meets with his coach every day before he leaves school. Craig has two support periods a day one in the morning the other in the afternoon.

Craig has seven full-time educators and three part-time teachers, a reading specialist that provides 1:1 assistance with the Orton-Gilliam system. All teachers are certified in Special Education and 85% of their graduates go to college.

D.A.'s processing speed improved once his anxiety decreased. Teachers wear microphones so all students get to hear. In group classes, all the students learn the same content. The methodology used is the code approach system, which provides the student with a concept first then they build from there. D.A. has become a more active participant in school. They use a color-coded system of gathering information. They give about 45-60 minutes of homework. Craig's philosophy is quality over quantity.

Craig addressed D.A.'s communication issues by making him feel supported. Dr. Caparulo stated that it was as if a layer of stress was taken off his ability to articulate.

Caparulo recalled his first interview with D.A. when D.A. was stammering, nodding, and had difficulty following along with the conversation. Now D.A. is a different person: he is articulate, clear, he engages in the conversation, and his voice volume has gradually increased. D.A. has joined a screen writer's club.

Caparulo further testified that he did not know anything about D.A.'s diagnosis; he reviewed Dr. Platt's report but could not remember when or the fine points of her report. He said the Craig School does not have formal written goals and there are no ways of measuring goals. The Craig School never did an assessment on D.A.

Joseph Galasso, Psychologist

Joseph Galasso (Galasso) is a licensed psychologist in New Jersey for approximately ten years. His resume is Exhibit P-5. He testified on behalf of the petitioners. Galasso is in private practice and does not work for schools. However, he has 10-12 formal contracts with schools working with students with IEPs, 75% of his work is with children with disabilities. He treats children with learning issues and anxiety issues. He has written goals and objects in IEPs. Galasso was qualified as an expert in psychology, the treatment of students with executive function issues, anxiety and ADHD.

Galasso stated that 100% of children with learning disabilities exhibit anxiety. He explained that executive functioning is the inability to organize materials, information, and to sequence.

Galasso said he met D.A. after he observed him at the Monmouth Court school on December 16, 2015, and at Craig School. He reviewed D.A.'s IEPs, Dr. Platt's report and his psychological and educational evaluations.

At Monmouth, he saw two classrooms he described the classrooms as very large rooms with two classes going on simultaneously. He drew a diagram of the classroom and it was marked Exhibit P-14. He noted that a teacher was teaching one student and the other students were working individually on their own. He stated that you could hear everything that was being said by the two classes. There was numerous course work going on with each student. He opined that that was an inappropriate set up for D.A. He furthered that D.A. would have been marginalized in that kind of a classroom set up because D.A. needed help with processing, speed, and his anxiety, things that a special education teacher can provide. He stated that D.A. needs a teacher to teach him how to learn.

Galasso noted that Exhibits R-13 and R-39, which are IEPs note that D.A. should not participate in a large classroom and he noted that the classroom he observed at Monmouth Court was indeed a large classroom. He said he observed five different

programs being taught at the Monmouth Court classroom table. He stated that what D.A. needs was contrary to what was offered.

Galasso observed that D.A. did not speak out, his voice was very low. He noted that D.A.'s anxiety was palpable. D.A. was non-verbal in trying to get a peer's attention. D.A. has a lot of non-verbal communications. D.A. had difficulty engaging with peers. D.A. is a learning disabled child first and his anxiety is second. D.A. is a withdrawer. He said D.A. can take information in but that it is what he does with that information is the problem. He also said D.A. knows what he is supposed to do the problem he has is that he can't do it in time.

Galasso furthered that D.A. needs a structured small environment self-contained that encourages involvement in the community.

Galasso opines that educational intervention will reduce his anxiety so you can concentrate on correcting his learning disabilities; once that is done his anxiety will reduce. D.A.'s major academic or learning problem is his slow processing speed. Galasso further opined that the classroom at Monmouth Court had too much going on. Galasso does not think D.A. can return to Livingston High School.

According to Galasso, the profiles of students at Craig School is of learning disabled students. The profile of students at Monmouth Court is more psychopathological and the students are expected to return to the major high school.

Galasso testified that D.A. told him he was happier, less stressed, and less anxious at Craig School. Galasso does not recommend group counseling for D.A. stating that it would only add to his anxiety. And, that the district should have had a neuro-psychological evaluation done when D.A. was in second grade.

During cross-examination Galasso testified that he was retained by the parents in December 2015. A point was made that his report was prepared in February 2016, he was retained in December 2015 yet there is a reference in his report to June 2016.

Todd Mitchell

Todd Mitchell (Mitchell) testified on behalf of the District specifically to discredit Galasso's testimony with respect to what Galasso said he observed at the Monmouth Court classroom.

Mitchell stated that on December 16, 2015, he accompanied Galasso during the observation at the Monmouth Court classroom. During that observation there were four students in the classroom. He said Galasso's observation was brief and when they left the classroom they went to the community room and after that they went to the science lab. There were three students in the lab. He furthered that the general education classroom had one teacher and half of the room was being taught math and the other half was being taught social studies.

Mitchell stated he observed a class at the Craig School on April 25, 2016. He observed a class that was teaching the students executive functioning and organization. He was there forty-three minutes. He observed D.A. to participate verbally four times during the class. He said D.A. was audible, did not appear to be uncomfortable, and was doing his work. He also noted that D.A. responded correctly to questions when called upon.

Under cross-examination Mitchell testified that Monmouth Court is a step-down school and the goal is to transfer students back to the main high school. He said 1,800 students attend Livingston High School and that forty or so students attend Monmouth Court. He also said that most Monmouth Court students attend the high school for electives such as fine arts, TV, radio etc.

D.A., Parent-Petitioner

D.A. is the mother of the subject child. She said her son has been in the Livingston School system since pre-school. He was held back from kindergarten. He was classified as Specific Learning Disorder in second grade. He was always behind the other students and it got worse from year to year. He received Occupational

Therapy (OT) along with other accommodations in third grade. He was taught reading and math in a resource group. She noted that many times D.A. did not know what to do. She stated that she had an excellent relationship with the Child Study Team (CST) over the years and the CST always accepted parental input.

The mother explained that in the 2014-2015 school year, eighth grade, at a CST meeting her son's case manager and teachers talked about her son becoming more withdrawn. She told them that school was stressing him out. She stated that homework was taking him 4-5 hours and that was with a lot of support. She stated that it was after this meeting and noting the teachers' reactions that she became more concerned about D.A.'s performance in school. D.A. also attended this meeting and he sat in the meeting in the fetal position. It was at this time that she and her husband started inquiring and looking at out-of-district schools. In April 2015, she told the case manager that that she was looking at Winston and Craig Schools.

The petitioner furthered that in June 2015, another IEP meeting was held a draft IEP was prepared and she received it in August. Another IEP meeting took place in August 2015, at that meeting D.A. was also in attendance appearing very anxious about attending the main high school. It was planned that D.A. would attend the main high school and be in mainstream classes with supports.

Petitioner testified that the district made no changes to D.A.'s IEP based upon Dr. Platt's report.

D.A. started to receive home instruction in the Fall of 2015, mother denied that he was receiving ten hours per week. She said D.A. was miserable getting home instruction but he was very anxious about being at the big high school. D.A. received home instruction from September to December 2015.

D.A.'s mother denies ever receiving an IEP with a Monmouth Court placement. According to petitioner the District said nothing about Monmouth Court before December 7, 2015.

They applied to the Craig School in October 2015 and he was placed there on December 7, 2015.

The mother stated that she went to Monmouth Court to observe its programs. She noted that it was a general education program, there were two courses being taught in one class. She thought the classroom set up would be too distracting for D.A. She noted that there were no special education classes. She did not think D.A.'s slow processing, slow reading speed, and speech issues would be addressed and if he had an aide or some sort of assistance it would stigmatize him further. D.A.'s learning and academic issues increased his anxiety. Another concern that she had about Monmouth Court was that D.A. would not get any stimulation because D.A. did not speak in class. She explained that she wrote down all of her concerns and sent them to Respondent.

Petitioner testified that they had no input in the goals and objectives of the December 2015 IEP. And, the IEP did not address how D.A.'s problem with speaking in class was going to be addressed.

Petitioner furthered that the Craig School was good for D.A. because it was a school for students with learning disabilities. D.A. told her he could really learn there, he could keep up with his peers in the classroom.

Petitioner brought out that Dr. Platt's report issued in August 2015, recommended a small program for D.A. yet in the District's draft IEP they recommended that D.A. attend the regular high school.

At Craig School D.A. is not getting 1:1 counseling but a school psychologist is available to him. There are six students in his class and all six students are learning together. She said all strategies are integrated throughout the classes. D.A. has two coaches, an academic one and one for social and emotional issues. The academic coach works on D.A.'s organization and integration skills. The social coach works with D.A. on his interests such as basketball, cross country and other school activities.

Since attending Craig D.A. does not need emotional counseling as much as he did before, he is no longer anxious about school, he is no longer withdrawn is happier and more relaxed. D.A. can now do his homework by himself.

Under cross-examination, Petitioner acknowledged that in February and March of 2015, they did not request that D.A. be evaluated, that they consented to the implementation of the February 2015, IEP. She admitted that she never told the District that as early as March 2015 she had toured Craig. She told the District at an April 2015 meeting that she had toured the Craig School. She also acknowledged that D.A. attended summer camp the summer of 2015 and that all was well yet September came along and D.A. was unable to attend school and had to be home schooled.

FINDINGS OF FACT

Based upon a 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:

1. D.A. has attended the Respondent schools up to the 8th grade including kindergarten.
2. D.A. has significant learning and processing issues that affect his ability to learn, socialize, both of which cause him to take an extraordinary long time to complete school assigned tasks. These difficulties worsened as time went on.
3. D.A. suffers from school related anxiety, which worsened over the 2014-2015 academic year, his eighth-grade year. D.A. was on home instruction by a regular education teacher for ten hours a week in the fall of 2015. D.A.'s anxiety rendered home instruction necessary. This IEP placed D.A. at Livingston High School.
4. The Respondent District offered D.A. an inadequate IEP for D.A.'s eighth- and ninth-grade school years, it did not meet D.A.'s unique needs.
5. D.A.'s unilateral placement at the Craig School was appropriate under the circumstances. D.A. started at the Craig School on December 7, 2015.

LEGAL ANALYSIS AND CONCLUSIONS

State and federal laws require local public school districts to identify, classify and provide a free and appropriate public education (FAPE) to children with disabilities. 20 U.S.C.A. § 1412; N.J.S.A. 18A:46-8 *et seq.* As a recipient of federal funds under the Individual with Disabilities Education Act (IDEA), the State of New Jersey has a policy that assures all children with disabilities the right to FAPE. The responsibility to provide FAPE, including special education and related services, rests with the local public school district. *See* 20 U.S.C.A. § 1401(9); N.J.A.C. 6A:14-1.1(d). In accordance with N.J.S.A. 18A:46-1.1, the burden of proving that FAPE has been offered rests with the school personnel. FAPE is an education that is “specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction. G.B. v. Bridgewater-Raritan Reg’l Bd. of Educ., 2009 U.S. Dist. Lexis 15671 (citing Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 189, 102 S. Ct. 3034, 3034, 3052, 73 L. Ed. 2d 690, 701 (1982)). FAPE includes special education and related services that are provided at public expense under public supervision and direction and without charge; that meet the standards of the State Educational Agency; that include an appropriate preschool, elementary and secondary school education; that are provided in conformity with an Individual Education Plan (IEP) as required under 20 U.S.C.A. § 1414(d).

Federal law is complied with when a local school board provides a handicapped child with a personalized education program and sufficient support services to confer some educational benefits on the child. In Rowley, *supra*, the Court determined that although IDEA mandates that states provide a certain level of education, it does not require states to provide services that necessarily maximize a disabled child’s potential. Instead, the IDEA requires a school district to provide a basic floor of opportunity, Carlisle Area School v. Scott P., 62 F.3d 520, 533-34 (3d Cir. 1995). While courts have consistently held that the IDEA does not mandate an optimal level of services, an IEP must provide meaningful access to education, and confer some educational benefit upon the child. Rowley, *supra*, 458 U.S. at 192, 102 S. Ct. at 3043, 73 L. Ed. 2d at 703. 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). The educational opportunities provided by a public school system will differ from student to student, based upon the “myriad of factors that might affect a particular student’s ability to assimilate information presented in the classroom.” Rowley, supra, 458 U.S. at 198, 102 S.Ct. at 3046, 73 L. Ed. 2d at 706.

In determining where to deliver instruction, the district must be guided by the strong statutory preference of educating children in the “least restrictive environment.” 20 U.S.C.A. § 1412(a)(5) requires that children with disabilities be educated with children that are not disabled. However, before placing a child outside the district, “the school must consider the whole range of supplemental aids and services, including resource room and itinerant instruction, speech and language therapy, special education training for the regular teacher, behavior modification programs, or any other available aids or services appropriate to the child’s particular disabilities.” Oberti v. Bd. of Educ., 995 F.2d 1204 (3rd Cir. 1993).

In this matter, I **CONCLUDE** that the weight of the competent evidence shows that D.A. is a child that has been significantly impacted by anxiety in attending school, the intermittent and inconsistent access to special education teachers to assist him in dealing with his learning challenges made it difficult if not impossible for him to make any meaningful educational progress while attending the Livingston Township schools.

I **CONCLUDE** that D.A. did not make educational progress particularly in the 8th grade. D.A. was anxious while attending Livingston and said anxiety negatively impacted his ability to learn and socialize with his peers. It is well-established law that the appropriateness of an IEP is not determined by a comparison of the petitioner’s desired placement and the program proposed by the District. But, rather the pertinent inquiry is whether the district’s IEP offered FAPE and the opportunity for a meaningful educational benefit within the least restrictive environment. I **CONCLUDE** that it was inappropriate for D.A. to remain in the district school for the district was offering more of the same and that same was not providing D.A. with a meaningful educational benefit.

ORDER

For the reasons set forth above, it is **ORDERED** that the petitioners:

- a) be reimbursed for D.A.'s tuition at Craig High School starting December 7, 2015; and
- b) District develop an IEP for D.A. at the Craig School for the 2017-2018 school year;
- c) Respondent to provide D.A. with transportation to and from Craig School for the 2017-2018 school year.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2016) 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.A. § 1415(i)(2); 34 C.F.R. § 300.516 (2016). 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 Programs.

July 25, 2017

DATE

CARIDAD F. RIGO, ALJ

Date Mailed to Agency

July 25, 2017

Date Mailed to Parties:

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APPENDIX

WITNESSES

For Petitioner:

D.A.
Dr. Eric Caparulo
Dr. Joe Galasso

For Respondent:

Lisa Capone Steiger
Kristin Pannorfi
Krystie Loeuis
Dr. Ellen Platt
Gerald Barone
Todd Robert Mitchell

EXHIBITS

For Petitioner:

- P-1 The Craig School, Learning Profile for D.A
- P-2 Craig High School Report Card 2015-2016 School Year, Trimester 2 & 3
- P-3 Progress Report - The Craig School, Present Levels of Performance, Second Trimester for the 2015-2016 School Year
- P-4 Progress Report - The Craig School, Present Levels of Performance, Third Trimester for the 2015-2016 School Year
- P-5 Dr. Joseph Galasso CV Resume
- P-6 Dr. Joseph Galasso Report
- P-14 Diagram - Dr. Galasso - Drawing of Classroom

For Respondent:

- R 7 September 30, 2014: IEP Sign-In Sheet (D.A. 0021)
September 30, 2014: Written Notice (D.A. 0020)
- R13 February 12, 2015: IEP Program (D.A. 0466)

- R17 April 16, 2015: Consent for Additional Assessment (D.A. 0480)
- R18 April 16, 2015: Re-Evaluation Planning Meeting Sign-In Sheet (D.A. 0481)
- R19 April 16, 2015: Re-Evaluation Planning- Proposed Action (D.A. 0482)
- R21 May 29, 2015: Livingston Speech and Language Evaluation (D.A. 0092)
- R22 May 28, 2015: Livingston Education Evaluation (D.A. 0111)
- R23 May 28, 2015: Livingston Psychological Evaluation (D.A. 0100)
- R27 June 22, 2015: Re-Evaluation Eligibility Determination Sign-In Sheet (D.A. 0491)
- R28 June 22, 2015: Written Notice (D.A. 0492)
- R29 June 25, 2015: Email chain regarding Dr. Platt Evaluation (D.A. 0563)
- R30 August 25, 2015: Doctor's Note (D.A. 567)
- R31 August 31, 2015: June 2015 Draft Copy of IEP w/ home instruction (D.A. 0440)
- R32 August 31, 2015: Re-Evaluation Eligibility Meeting Sign-In Sheet (D.A. 0568)
- R33 August 31, 2015: Written Notice (D.A. 0569)
- R34 October 27, 2015 Email Chain (D.A. 0570)
- R35 November 3, 2015 Doctor's Note (D.A. 0571)
- R36 November 4, 2015 Letter from Beth Callahan, Esq. regarding IEP Meeting
- R37 November 19, 2015 Letter from Beth Callahan, Esq. regarding IEP Meeting
- R38 August 4, 2015: Platter Psychiatric Associates Report received November 2015 (D.A. 0119)
- R39 December 3, 2015: IEP Program (D.A. 0422)
- R40 December 3, 2015: Parental Input Regarding D.A. IEP (D.A. 0032)
- R41 December 3, 2015: Written Notice
- R42 December 3, 2015: IEP meeting Attendance Sheet (D.A. 0493)
- R47 April 25, 2016: Observation notes of Lisa Capone-Steiger (D.A. 0030)
- R49 NJASK Scores (D.A. 0497)
- R51 Undated: Effective School Solutions Handout (D.A. 0511)
- R52 Undated: Monmouth Court Information (D.A. 0513)
- R70 Barone Resume
- R71 Capone-Steiger Resume
- R73 Loeuis Resume
- R74 Pannorfi Resume
- R80 September 18, 2014 NJASK Student Essay
- R82 September 10, 2015 faxes to Holmstead School and Sage Day School

Diagrams drawn by witnesses during testimony:

R88- Mitchell M.C. pg. 1

R89- Mitchell M.C. pg. 2.

R90- Mitchell M.C. pg. 3

R91- Steiger Diagram of Craig School