

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 10256-15

AGENCY DKT. NO. 2015 22956

K.K. AND R.K. ON BEHALF OF D.K.,

Petitioner,

v.

**WATCHUNG HILLS REGIONAL
HIGH SCHOOL DISTRICT,**

Respondent.

Tama Vail Baran, Esq., for petitioners

Eric Harrison, Esq., for Respondent, Watchung Hills Regional High School
District (Methfessel & Werbel)

Record Closed: June 14, 2017

Decided: June 26, 2017

BEFORE **KIMBERLY A. MOSS, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

R.K and K.K. on behalf of their daughter D.K. (petitioners) requested a due process hearing alleging that, the March 27, 2015 IEP of Warren Board of Education (Warren)/ Watchung Hills Board of Education (Watchung Hills) did not provide FATE to D.K. and Purnell School is an appropriate placement for D.K.

The matter was transferred to the Office of Administrative Law (OAL) as a contested matter on July 14, 2015. A settlement conference was held on September

24, 2015. On November 16, 2015, Watchung filed a motion to dismiss the petition. That motion was denied. The hearings were held on April 13, 2016, May 10, 2016, May 23, 2016, October 3, 2016, October 4, 2016, December 21, 2016, January 31, 2017 and June 14, 2017, on which date the record closed.

TESTIMONY

Theresa Godfrey

Theresa Godfrey (Godfrey) has a Supervisor's Certificate and a Master's Degree in learning disabilities. She has a New York certification as a special education teacher. She has been a special education teacher in Warren for twenty-six years; most of that time she worked in the middle school.

Godfrey was the case manager of D.K. for three years in Warren. She oversaw the creation of D.K.'s IEP's for sixth, seventh, and eighth grades. She met frequently with D.K.'s parents. D.K. has deficiencies in pragmatic language, expressive language, receptive language, and reading comprehension. When D.K. arrived at middle school, she was resistant to teachers working with her. Eventually, D.K. became more receptive to teachers working with her. D.K. is classified as autistic.

D.K. had in class support in middle school. Her parents did not want her to have her pull out of speech services. D.K. had in class support for Language Arts and resource room for Math. D.K. had a one-to-one aid that her parents requested be discontinued.

A neuropsychiatric evaluation of D.K. was done by Dr. O'Desky at the request of the parents and paid for by the district in the summer of 2012. The report showed that D.K. had an IQ of seventy-five, a verbal comprehension index of eighty-nine, and a perceptual reasoning index of eighty-two. Her IQ is in the low-average range. She tested average to superior in most areas. Dr. O'Desky felt that D.K. may need social skills training.

The December 20, 2012, IEP called for among other things integrated speech and integrated speech and language in the resource room and individual speech therapy out of the district. D.K. was in the seventh grade at that time. The progress notes show if a student is making progress or limited progress. IEP's can have the same goals and objectives in consecutive years. In the spring of 2014, D.K. was making progress although it was inconsistent.

D.K. was scheduled to go to Watchung Hills Regional High School. Godfrey was kept up to date on any changes at Watchung Hills by Sara Bilotti, the director. D.K.'s mother visited Watchung Hills with Godfrey and Bilotti present.

D.K. progressed at Warren. She needs to re-read with reading recall. She needs things broken down into smaller segments. She can read and answer questions on more than a fifth-grade level depending on the questions being asked and the length of the questions. Godfrey monitors students' progress by meeting with teachers and grades. She did not regularly review progress reports but she reviewed D.K.'s in the spring of 2015. The goals and objectives in the IEP are used to measure progress by the teacher.

In January 2015, petitioners advised the District they were considering sending D.K. to a private school. In March 2015, petitioners sent a letter to Godfrey stating that they would only consider Language Arts resource room for D.K in high school. In March 2015, an Educational Evaluation was done on D.K. There was a reevaluation meeting. The Woodcock Johnson test showed that D.K. was in the average range on many areas but had significant deficits with passage comprehension, which is reading a section and answering multiple choice questions and reading recall. Reading comprehension is a major skill area that impacts all academic areas.

There was a March 27, 2015 IEP meeting. In that IEP Language Arts, Reading, English, and Biology were in the resource room and Social Studies, Science, Algebra, and World History were in general education classes with in class supports. The district wanted Algebra and World History classes in the resource room, but agreed to the parents' desire for D.K. to be in general education classes with supports for Social

Studies, Science, Algebra and World History. The finalized IEP was sent to petitioners on April 13, 2015. There was communication between petitioners and the District after the letter. Godfrey and Candie Hengemuhle, Warren Director of Special Services, decide the finalized IEP would be a draft and they would continue to work on it with the parents. An IEP meeting was again held on April 23, 2015. Bilotti and Hengemuhle were present at the petitioners' request. The IEP was changed to include additional support services, counseling, speech and language small group, social skills; small group annotated notes, and scheduled one-to-one time with the teacher. The one-to-one with the teacher would occur before or after school. Recording devices for the students are not allowed at Watchung Hills. Godfrey does not have evidence that D.K. would benefit from using a recording device. Willis Godfrey wanted D.K. to have speech in school while she was at Warren, but the parents refused. D.K. was not offered before or after school speech services at Watchung Hills.

At the April 23, 2016, meeting the petitioners presented a letter stating that they wanted D.K. to go to private school Purnell, which was to be paid for by respondent. Watchung would not pay for an out-of-district placement for D.K. Bilotti believed that Watchung would be an appropriate placement for D.K. At the March 27, 2015, IEP meeting, Godfrey knew that petitioners were considering private high school for D.K. She did not know, at that time, that petitioners wanted Watchung to pay for the private school.

The final IEP was dated March 27, 2015. Godfrey was in possession of the speech and language evaluation and the education evaluation when the IEP was prepared. The results of the evaluations were reviewed in depth at the IEP meeting. The related services were individual speech out of district once a week, integrated speech once a week, occupational therapy (OT) consultative, speech and language small group once a week, speech and language small group social skills once a week, and speech and language small group counseling once a week. The goals and objectives in the IEP were appropriate for D.K. Godfrey relied upon the teachers and work samples to create the goals and objectives for D.K. Small group classes have greater opportunity for modifications.

Progress reports need to be supplied quarterly. The progress reports track how close the student is to reaching the goals of the IEP. Prior to the April 2015 IEP meeting, Godfrey reviewed D.K.'s progress notes online. Exhibit R-51 are progress notes of D.K. for the 2014-2015 school year for the second and third marking periods; Exhibit R-52 are D.K.'s progress reports for the 2014-2015 school year for the fourth marking period. Some of the pages in R-51 are identical to pages in R-52.

D.K. did not have counseling in Warren at her parent's request. D.K.'s eighth grade scores were based on modified work. D.K. progressed significantly in all areas and did not need an out-of-district placement. D.K. seemed comfortable with her friends at school.

Godfrey did not notice that D.K. only mastered two skills in the eighth grade. She did not master any of the reading goals or benchmarks. Progress reports list if the student has mastered progressed or had limited progress. Mastery means that the student has correctly completed the task eighty percent of the time on a consistent basis. The amount of progress D.K. made cannot be determined from the Warren fourth period of the 2014-2015 school year progress report. It is not unusual for goals and objectives that were mastered to be repeated. If a goal is mastered, new goals would be created. The 2012 and 2015 IEP's have similar, and at times, identical language. D.K.'s Social Studies goals were the same in the 2014 and March 27, 2015, IEP's. To determine the percentage of accuracy of her work, Godfrey would have to look at D.K.'s work samples and talk to teachers. In special education testing the emphasis is on content. The test can be open book and the questions can be read to the students.

Godfrey reviewed O'Desky's neuropsychological report. D.K.'s test results were average or superior to her age in all areas except reading comprehension. D.K. was reading at a sixth-grade level in the eighth grade. Reading comprehension is a weakness for D.K. When she was in the sixth grade, D.K.'s reading comprehension level was at a first- or second-grade level. The reading goals in the March 27, 2015, IEP cover many important skills in the core curriculum standards which were chosen specifically for D.K.

Daily reading comprehension was done in class. Many of D.K.'s seventh-grade reading goals and objectives were carried over to the eighth grade. D.K. was making progress toward her goals. If a goal that was not mastered was carried over, the teacher would focus on what was most important.

D.K.'s baseline was determined by how she performed at the beginning of the school year. By March 2015 the CST had enough information about D.K. to develop her goals and objectives. Behavioral intervention was not contemplated in the March 2015 IEP because O'Desky did not recommend behavioral strategies. Petitioners did not ask about why D.K. was not mastering her goals or how close she was to mastering her goals.

In the March 27, 2015, IEP the appropriate measurable post-secondary goals and related strategies are not completed. Related strategies section is not ordinarily completed in IEP's.

D.K. made the honor roll in November 2013. This had nothing to do with mastering goals but was based on grades. D.K. was making progress in the eighth grade. The March 27, 2015, IEP was finalized on April 23, 2015. D.K. was not offered OT at Watchung Hills.

Petitioners wanted D.K. to have more mainstreaming and did not want resource room. The Purnell School is a more restrictive environment for D.K. The March 27, 2015, IEP is appropriate for D.K. and in the least restrictive environment. Teachers at Warren wrote recommendations to Purnell for D.K.

The Education Evaluation showed that D.K. made progress in math. Her reading fluidity and reading orally also increased. Small group sessions were strength for D.K.

Suzanne Aldrich

Suzanne Aldrich (Aldrich) is a speech language pathologist at Warren Middle School. She is certified by the State of New Jersey in speech pathology. She also has a teacher of the handicapped certification. Aldrich met D.K. in September 2014 while providing integrated speech therapy in the classroom. She worked with D.K. and three other students in a self-contained classroom. D.K. was resistant at the first but toward the end of the school year she would seek out help. D.K. improved in speech. This was determined by assessments and Aldrich's knowledge of D.K.

Aldrich was present at the March 27, 2015, IEP meeting. She recommended that D.K. participate in weekly integrated speech therapy and small group speech therapy which she had received in Warren. Aldrich made this recommendation after she evaluated D.K. and taught her speech for three months. For D.K.'s ninth-grade year, Aldrich recommended small group speech language of less than five students once a week, speech language small group less than five for social skills and counseling. Small group speech language would target figurative language, inferencing and things that are more language based. D.K. would have been more receptive to small group therapy than one-to-one therapy. Speech language small group social skills therapy works specifically with social pragmatic language skills. The IEP of March 27, 2015, was appropriate for D.K. She should be in a resource room and in small groups which are more conducive to her learning.

Some of the traditional speech goals were carried over from the prior IEP. Aldrich determined that those goals needed to remain. The progress reports for 2013-2014 marking periods three and four and the progress reports for 2014-2015 for the fourth marking period are very similar.

Aldrich is not aware of any relationship with the speech language teacher at Watchung Hills, Jill Pila, and petitioners. She does not know how D.K. is progressing at Purnell.

There are triannual evaluations done to determine if changes need to be made to the IEP. The parents can decline these evaluations. Aldrich had done between two and ten reevaluations before she did D.K.'s. She does not recall if she looked at D.K.'s prior speech evaluation, but she believes that she did. The test she used during the evaluation was appropriate for D.K. at her age. Aldrich's evaluation reflects that D.K. made improvements in expressive and receptive language. Aldrich has no knowledge of D.K.'s levels of stress or disorganization after she was removed from a class. Speech therapy is not normally done outside of school hours. A student can make progress in speech and pragmatic language development in the least restrictive environment. At Watchung Hills, D.K would have received one hour of speech therapy weekly, thirty minutes for speech and thirty minutes for social skills.

Catherine Lazas

Catherine Lazas (Lazas) is a special education teacher in Warren. She has a teacher of the handicapped ages three to twenty-one certificate. Lazas has taught since 2001. She has taught at Warren in the middle school since 2009 and co-taught eighth-grade language arts, replacement classes, and small group. D.K. was taught in resource room for language arts and reading in the eighth grade. Lazas recalled that D.K. participated and did her assignments. She would pre-read novels at home which helped her. D.K. would get anxious if her grades were not good. When she was not graded, she would focus better. In high school D.K. would need to be in a resource room in a smaller group with modified curriculum.

The goals and objectives in the March 27, 2015, IEP were appropriate for D.K. They incorporated the goals and objectives of the prior year which D.K. was progressing with. The reading goals and objectives in the IEP are appropriate for D.K. she needs help with reading. They reflect the common core and reflect the areas of difficulty for D.K. D.K.'s grade in reading was based partially on class participation. She did not give D.K. grades in reading comprehension because if she did not get good grades, she would shut down. D.K.'s classwork was sent to her parents at the end of the school year.

Petitioners asked Lazas to write a recommendation for D.K. to a private school in February 2015, which she did. Her recommendation does not reflect that she thinks that Watchung Hills would not be appropriate for D.K. Lazas does not know about the Purnell program.

Lazas has observed the resource room and in class support at Watchung Hills. Petitioners wanted D.K. in bigger classes. Resource room in biology, reading, and English was appropriate for D.K. because she needed a modified curriculum. The IEP was appropriate for D.K. and the least restrictive. Lazas was not at the March 27, 2015, IEP meeting. She prepared the goal and objectives for language arts and reading for the March 27, 2015, IEP. D.K.'s seventh-grade fourth marking period and eighth-grade fourth marking period grades were identical. This does not mean that the IEP is inaccurate.

Peter Kassalow

Peter Kassalow (Kassalow) is a special education math teacher in Warren Middle School. He has certificates in elementary education and teacher of students with disabilities. He has a master's degree in elementary education and special education.

D.K. was a student in his class. She was in a small group replacement math class with six boys. Petitioners wanted D.K. moved to a general education class. He was against this change. She had a strong year and was very receptive to feedback. He recommended replacement Algebra for D.K. in high school. Although she was a good student there were routines and fitting in with a larger class that she was still working on. The district offered general education algebra for D.K., which Kassalow was against.

Kassalow does not think in class support is best for D.K. because she has anxiety, gets upset about bad grades, and would be upset about the homework load. D.K. has specific physical things that she does to cope with anxiety and stress.

The math being done in the resource room may not be done on the same day as the in-class support math. There may be a few lesson days behind where the in-class support was. There was a conversation at the IEP meeting regarding D.K. being in a general education setting in math in high school because math was not as language based as the other subjects. D.K. benefits from working with a partner that she is comfortable with which she would have in the replacement algebra class at Watchung Hills. The IEP was appropriate for D.K. in the least restrictive environment.

Kassalow is familiar with Watchung Hills. He has contact with the math and special education departments of the high school. He has visited the in-class support algebra and geometry classes. Replacement math at Watchung Hills was appropriate for D.K.

Kassalow wrote the math goals and objectives for the March 27, 2015, IEP. They were based on the Algebra common core standards that would be taught in replacement math class but they would be applicable in any algebra class. The goals are weighed more heavily on the numerical side because D.K. functioned better on the numerical side. The visual side was more difficult for her. These goals are appropriate and measurable for D.K.

Kassalow wrote a recommendation for D.K. to Purnell at the request of petitioners. Although D.K. would benefit from a small school setting, she would also benefit from small group classes at Watchung Hills. Watchung Hills is not a small school, it has approximately 1800 students, but it has small classes. Warren currently has approximately 220 students in the eighth grade and approximately 600-700 students. Kassalow stated that D.K. was appropriately placed at Watchung Hills. The IEP was appropriate and would benefit D.K.

Sarah Bilotti

Sarah Bilotti (Bilotti) was employed by Watchung Hills from July 2012 through June 2015 as Director of Special Services. She left to become superintendent in the North Warren School District. She has a certificate in teacher of the handicapped. She

worked as a special education teacher in Pohatcong School and as Director of Special Services in Greenwich School district. The least restrictive environment for a student is for the student to be with same age peers in the home community school. It must also be what is appropriate for the student.

Bilotti attended the March 27, 2015, IEP meeting. The teachers were concerned that D.K. would not be able to keep pace using in class supports. D.K.'s low IQ impedes her learning and comprehension. The teachers wanted D.K. to stay in resource room and if she was successful go to in-class supports. It was agreed that D.K. would have Algebra and World History as in class resource classes because it is what the petitioners wanted.

D.K.'s first high school IEP would substantially expand upon the statement of transition. In high school if the IEP appears not to be working an IEP meeting would be scheduled prior to the annual review. It was projected that D.K. would take novice Spanish but it would not be known until June 2015 if Spanish would fit her schedule. Bilotti does not typically review progress notes but she does review report cards. Report cards do not show a student's goals and objectives. She relies on the case manager to pull out the goals and objectives.

At the follow-up meeting on April 23, 2015, petitioners requested D.K. be allowed to bring a recording device to tape lectures at Watchung Hills. It was determined in December 2014 that D.K. did not need assistive technology such as a tape recorder in class. The teachers at Watchung Hills do not lecture, learning is project based and recording in class would violate other student's privacy rights. Bilotti suggested D.K. receive annotated notes from the teacher where the teacher would give her notes and schedule a time to go over the notes. At the end of this meeting she learned that petitioners wanted D.K. in an out-of-district school.

At Watchung Hills, the speech language therapist had different types of small groups. One focused on instruction, the other focused on pragmatic language. There was also a counseling group for making friends. This was done at lunch time. A guided study hall consists of one to four students with a certified teacher with tutoring. It is

short term and based on the student's schedule. Guided study hall is not a related service. Watchung Hills has approximately one hundred clubs for students. Petitioners were concerned about D.K in relation to the clubs. The case manager in consultation with the parents can assist a student getting into a club. There are students with similar proficiency to D.K. who succeed at Watchung Hills. All classes at Watchung Hills are college prep.

D.K.'s goals and objectives focused on reading comprehension, math computation, and relational weakness. D.K. learns better auditorily.

D.K. would have been in small group classes and speech small group at Watchung Hills. The IEP addresses D.K.'s individual needs, social skills, and her transition. It is a solid IEP. The IEP was revised for D.K.'s lunch time to be a social skills group with all girls.

D.K. was given an appropriate education at Warren. If her education at Warren was not appropriate or she made no meaningful progress, Watchung Hills would have placed her in a program with adequate supports.

It is not unusual for goals and objectives to be repeated in IEP's because those goals and objectives are usually a problem area for the student. Typically, a student does not reach mastery of all the goals and objectives in one year. When the goals and objectives are not mastered, she will consider teacher input. Teacher input is more heavily relied on than progress notes. Goals and objectives need to be objectively measurable and specific to the student.

Bilotti does not know Warren's practice regarding progress reports. Some students may be at the same level in a goal from one year to the next but the student is progressing in that level. Progress reports should be accurate. Bilotti does not know Warren's definition of mastery of a goal. There are ways to objectively measure. If D.K. did not master a goal in eighth grade those same goals would have a different level of content in high school even though they were not mastered.

Students' present levels are more important than progress reports. The present levels cover everything and show a broader understanding of the student.

Modifications and supplementary aides would be appropriate to ensure the student is supported at the high school level. The IEP for D.K. was appropriate and in the least restrictive environment. It could have been properly implemented at Watchung Hills. Bilotti did not do any data analysis on D.K. because she was not a student at Watchung Hills. It was not her role to rely on the educational evaluations from 2012 to 2015. Sometimes there is a decrease in subsequent education evaluations of a student because a different test is used. If the case manager and teacher are concerned about a decrease in the Educational Evaluation, it would be brought up in the IEP meeting.

Bilotti has worked previously with Godfrey regarding fifteen eighth graders. She relied upon Godfrey and teachers impute on IEP's. She did not evaluate the Warren teachers. Bilotti knows Kassalow from being in meetings together. She does not know D.K. She does not recall seeing Kassalow's recommendation letter for D.K. to Purcell or talking to Kassalow regarding Purcell.

Bilotti read over D.K.'s NJASK scores. Some students perform differently on standardized tests than they do in class. The NJASK test can change from year to year; in addition D.K. could have test anxiety. The test results do not correlate to actual performance. The NJASK test can be unreliable. Bilotti reviewed D.K.'s file the day of the IEP meeting prior to the meeting.

D.K.'s parents input were substantially valued. Two classes were changed from resource room to in class support on the IEP at the parent's request.

D.K.'s psychological evaluation was still timely because the IEP meeting was held before the psychological evaluation was three years old. Bilotti does not necessarily agree that the social assessment was out of date. She does not remember discussing D.K.'s social assessment, speech evaluation, or occupational therapy evaluation at the IEP meeting. There is no common core for speech. She remembers discussing the Educational and Psychological Evaluations.

A Neuropsychological Evaluation is more specific than a Psychological Evaluation. Bilotti does not know if D.K. mastered her reading goals at Warren. She does not remember D.K.'s reading level. D.K.'s strengths and weaknesses were used to create an academic course of study. The IEP called for D.K. have speech language/small group. This would occur once a week. She would be pulled out. Watchung Hills would try to pull her out during study hall or lunch. Counseling would also require D.K. to be pulled out. Counseling that is pulled out at lunch is not one-to-one counseling. D.K. did not have counseling at Warren. Petitioners did not want D.K. to be pulled out. D.K.'s schedule at Watchung Hills would not be finalized until July 2015. One-to-one time with a teacher is not a related service. It is available with all classes. Watchung Hills would have facilitated D.K.'s social interactions and petitioners were told this.

At the April 23, 2015, IEP meeting there was no case manager from Watchung Hills. The parents are informed in June 2015 who is their child's case manager. From April 2015 until the start of school there are activities for incoming freshman. Parents are invited to come to the school. Petitioners were advised that if D.K. had anxiety or confusion, she could go to the case manager.

Bilotti had a phone conference with Godfrey and Hengemuhle prior to petitioners requesting D.K. be placed out of district. It is completely appropriate for professionals to discuss students.

The March 27, 2015, was the finalized the IEP. They met again because the parents requested additional supports. Additional accommodations were made on April 23, 2015, which is more than fifteen days after the finalized IEP. On April 23, 2015, Bilotti became aware that petitioners wanted D.K. placed at Purcell. At that meeting Bilotti stated that Watchung Hills was an appropriate placement. She was surprised when the parents asked for an out-of-district placement for D.K., although petitioners had previously talked about a private placement for D.K.

Bilotti had concerns about a Purcell placement. Purcell is not an approved out-of-district placement. The class size at Purcell is typically less than at Watchung Hills. Purcell is smaller than Watchung Hills. Bilotti does not have detailed knowledge of Purcell. The college acceptance rate for special education students at Watchung Hills is ninety percent. Bilotti's May 1, 2015, letter to petitioner included things that were available to all students at Watchung Hills. Once petitioners stated that they were sending D.K. to Purcell, Bilotti asked them about it and showed them the services that were available at Watchung Hills. The IEP tried to create a small-school feel for D.K. by having her in social skills groups with similar students and offering small class sizes.

Re-evaluation meetings are done every three years. At the meetings re-evaluations are discussed with the parents. Evaluations that are over three years old are not void. The student's IQ does not change over time. She was not concerned that the data on the IEP of D.K. was outdated.

Michelle Barbagallo

Michelle Barbagallo (Barbagallo) is a pediatric occupational therapist at Warren. She has a New Jersey School certification. Barbagallo did an evaluation including a sensory profile of D.K. on April 26, 2013, at the request of the child study team. The results of a sensory profile would not necessarily be the same in 2015 as it was in 2013. She would look at the student in school to determine improvements as well as talk to teachers and parents. She did not repeat the sensory profile on D.K. because she worked with D.K. once a week through January 2014. D.K. gets overloaded which interferes with her ability to get instruction and complete work independently. D.K. also may require more input to know what is going on. D.K. has deficits that impact her learning.

Barbagallo testified that D.K. is sensitive to a variety of sensory inputs. She needs strategies for coping. The results of the sensory input are used for interventions and strategies. D.K. would benefit from small classes. D.K.'s OT strategies were written into the IEP. The strategies would be the same for middle school and high school. The IEP for D.K. was appropriate.

D.K.'s OT was discontinued in December 2014. She transitioned to consultative OT in January 2015. She understood her strategies and coping mechanisms. She no longer needed one-to-one OT therapy. Her teachers stated that she was handling stress and constructive criticism better. Barbagallo did not visit Purcell.

R.K.

R.K. is the mother of D.K. She relied on the school to guide her through the education process. After six months of preschool, D.K. went to the Douglass Developmental Disability program (DDD). She was there for two years. She started kindergarten at Warren. R.K. believes that D.K. had an IEP in kindergarten but knows that D.K. had an IEP in the first grade. R.K. had considered an out-of-district placement for D.K. prior to D.K. being in the eighth grade. In 2012, R.K. felt that D.K. was behind in class. She was approached with the idea of D.K. going into LLD program in middle school, which she rejected. In fifth grade D.K. was pulled out of class and that upset her and caused her to have anxiety about what she had missed. R.K. only denied pull out services for D.K. if she would miss class, lunch, or gym.

In 2012, she considered out of district placement at Craig School and Newmark for D.K. At that time Warren was willing to consider an out-of-district placement. Newmark was not appropriate because it was behavior focused and the Craig school was too far away. R.K. also considered Winston Elementary School for D.K. but D.K. was not accepted. At that time Warren was the most appropriate placement for D.K. D.K. had speech and language at home provided by the district. R.K. felt that Warren could have offered D.K. more. D.K. had OT before school. All other services were only offered during school hours. R.K. did not want D.K. to have counseling because she would miss time in class.

During the fifth through eighth grade D.K. was involved in clubs and academics. She made sure that D.K. had the correct homework. R.K. realized that D.K. was having difficulty at home answering questions. She researched and developed specific goals for D.K. most of which were related to writing and oral. She wrote an email to Godfrey

because the IEP goals were vague. R.K. considered Watchung Hills as a high school for D.K. but she questioned whether it was right.

In December 2014, R.K. along with Godfrey went to Watchung Hills to observe the classes and resources. R.K. testified that the Watchung Hills resource room was overwhelming and noisy as compared to the resource room at Warren which was watered down and simplified. She did not see a teacher in guided study hall. At that time R.K. thought D.K. would go to Watchung Hills. D.K. was adamant that she did not want resource room classes at Watchung Hills.

R.K. was concerned that D.K. was the only girl in her eight-grade math class. She was lead to believe by Kassalow that D.K. would be moved up after the December 2014 winter break but this did not happen. R.K. recalled that Kassalow told her that it was an option to change D.K. to the general education math class. On February 9, 2015, R.K. reinstated her request that D.K. be moved to the general education math class with supports. D.K. made progress in the math class. D.K. remained in the resource room math class. This effected R.K.'s ability to trust the teachers. She believes that Kassalow is sincere and truthful unless he is pushed by his superior. R.K. believes that Warren needed a certain amount of special education students to maintain funding. She does not believe that D.K. does better in small groups and she does not know if Kassalow believes that D.K. does better in small groups. R.K. believes that Kassalow was pushed by a supervisor to not move D.K. to the general education math class.

In January 2015 R.K. asked Kassalow and Lazas to write recommendations for D.K. Kassalow and Lazas sent the recommendations directly to the school. R.K. looked at Purnell and Winston High School, in New York, to see if either was appropriate for D.K. D.K. was accepted into Purnell on March 9, 2015. She had not decided that D.K. would go to Purnell in March 2015. She was concerned with the cost of Purnell.

D.K. would say that her writing and book reports were not her grades. She could correct wrong answers in math. D.K. passed health class but did not know the material.

R.K. was not sure how Warren arrived at D.K.'s report card grades. The Education Evaluation was inconsistent with the grades that D.K. received. No one explained to her how D.K.'s progress was measured. The progress reports were confusing. The dates did not match up. She did not know how modifications were made at Watchung Hills would affect D.K.'s grades. R.K. is not sure that she asked Godfrey how the goals and objectives are measured. R.K. had to give D.K. background to help her with assignments.

At the March 27, 2015, IEP meeting she had not decided that D.K. would go to Purnell. The Educational Evaluation was not discussed and D.K.'s grades were not discussed. D.K.'s goals and objectives were not discussed. Progress reports and NJASK results were not discussed. The difference between the test scores and D.K.'s grades was not discussed. D.K. receiving a score of one percent in passage comprehension was discussed. Before and after school help was not discussed. R.K. does not remember which company did the test three years earlier. R.K. saw the IEP and D.K.'s evaluations at the March 27, 2015, IEP meeting. At that meeting the IEP stated that all of D.K.'s classes were in resource room, which D.K. did not want. She would not thrive in resource room. Speech language and social language were written into the IEP at the March 2015 meeting. Petitioners did not accept speech language small group and social services because they would be done during lunch and D.K. would be pushed out of lunch. One of the speech therapists at Watchung Hills is a friend of the family.

R.K. wanted to know what was going to be done for D.K. to improve on the score of her Educational Evaluation. She wanted D.K. to have support in order to catch up. After R.K. gave the letter for an out of district placement to the CST, she waited for them to offer her a plan that was helpful to D.K. R.K. was under the impression on March 27, 2015, that the IEP was not finalized, that they would meet again and attempt to come to a consensus and an agreement would be reached. R.K. was not happy with the IEP. D.K.'s scores had declined. D.K. did not want to be in all resource room classes as outlined in the March 27, 2015, IEP. D.K. was devastated by the March 27, 2015, IEP. R.K. was concerned that the goals were not being met. IEP did not show how progress was measured.

D.K.'s progress reports came home randomly. She was not progressing in most things. R.K. could not determine how much progress D.K. was making. She could not tell how it would be determined when D.K. reached eighty percent mastery of a subject. From January 2015 through April 2015, R.K. had conversations with Godfrey regarding placement for D.K.

The next meeting was on April 23, 2015. It lasted an hour and a half. R.K. expected that at the April 23, 2015, meeting that CST would understand that D.K. had regressed and that the resource room was not good for her. She thought that there would be a summer program to help D.K. to catch up, but later stated that D.K. works on social issues in the summer. Nothing was offered for D.K. to improve in reading. After the April 23, 2015, meeting R.K. was convinced that the IEP was not appropriate for D.K. R.K. presented the letter for D.K.'s placement at Purcell in this meeting. Hand written changes were made to the IEP (R-67) after R.K presented the Purcell letter at the meeting. R.K. believes that speech changes to the IEP were offered in the March 27, 2015, IEP meeting. R.K. did not agree to the speech recommendations at the March 27, 2015, IEP. Bilotti told R.K. that there are teachers available before and after school, but R.K. spoke to parents who told her that the teachers were not available.

The speech therapist at Watchung Hills is a family friend. OT was not in the March 2015 IEP. The program that was offered to D.K. was not appropriate. After R.K. gave the Purcell letter to Bilotti, Bilotti said that the IEP was appropriate. R.K. initially wanted D.K. to go to Watchung Hills because it was in the community and D.K. knew many people who would be there. R.K. was not asked about Purnell at the meeting.

After R.K. submitted the Purcell letter at the meeting of April 23, 2015, the small group social skills was added to the IEP, which would take place at lunch. This would be difficult for D.K. because she would feel different from the other students. R.K. asked about D.K. using a recording device at Watchung Hills. She was told D.K. could not use a recording device but she would have access to guided study halls, annotated notes a para-professional small group social skills and one-to-one time with a teacher. The goals were changed in the classes where D.K. would not be in the resource room

class. Certain modifications could not be accommodated in college prep classes. After the April 23, 2015, meeting R.K. was still not sure if D.K. would go to Purcell.

R.K. received a letter from Bilotti and Hangenmuller stating no additional changes would be made to the IEP on May 1, 2015, and May 4, 2015. After receiving these letters, she and K.K. decided to enroll D.K. in Purcell. R.K. applied to Purnell for D.K. on February 9, 2015. This was prior to R.K. having been shown the IEP. R.K. helped D.K. write the student essay. D.K. can write well, but she did not get that writing skill at Warren. She developed her writing skills from books, tutors, and speech therapist.

R.K. further testified that D.K is presently a sophomore at Purnell. D.K. receives a \$10,000 tuition discount at Purnell. She is not a boarding student, but does have a room there with a bed and a desk. It is an all-girls school in a quiet setting. She has seventy-five minutes one-on-one with a learning consultant from one to three times a week. She has an advisor to determine if D.K. is progressing academically and socially. The advisor lives at Purnell and is always on duty. Her school day ends at approximately 5:30 p.m. She can stay for dinner at 6:00 p.m. and monitored study hall from 7:00 p.m. to 8:30 p.m. When she was a freshman, D.K. stayed at Purnell until 8:30 p.m. most days. She saw the advisor five times per week. Now she sees the advisor twice a week. D.K. now meets with a learning consultant every other day for seventy-five minutes, who finds weaknesses and interventions for reading comprehension.

R.K. stated that D.K. is now confident and can do homework on her own. Purnell has a social worker that D.K. sees once a week. She is in college prep general education classes. English at Purnell has six levels; D.K. is in the middle level. D.K. did well at Purnell in the ninth grade although she had trouble in history. When she has a problem she will talk to an advisor or teacher because everyone at Purnell gets help. D.K. is functioning at a higher level at Purnell.

D.K. is doing well in the tenth grade. The math teacher post a video online of what was taught in class. She has English every other day and English Foundations classes. IEP's are not used at Purnell. R.K. accepts report cards as indications of

D.K.'s progress. A reader is available to D.K. to read questions out loud to her. There is also a scribe available to help her write answers.

K.K.

K.K. is the father of D.K. He has no background in education or medicine. K.K. recalled that prior to the December 2014, IEP there were discussions regarding changing D.K.'s math class. In the fall of 2014, he was vocal about D.K. being in general education classes. He spoke to Godfrey and the CST. He was told to wait until after the winter break. After the winter break he was told that D.K. should be kept in the resource room. He did not agree with this.

In the fall of 2014 they decided to explore options in case D.K. regressed. The Education Evaluation was an eye opener. They explored language-based schools.

K.K. was present at the March 27, 2015, IEP meeting. He does not recall goals and objectives being discussed. He and R.K. wanted extended school day support and the use of a recording device in class for D.K. which was declined. They believed that the IEP was a continuation of the previous IEP, which was failing D.K. He and R.K. did not agree to pull out speech once a week. He was not told by a speech therapist that pull-out classes would deny FAPE to D.K. No education expert told him if his requests were granted that it would provide FAPE to D.K.

K.K. believes that the bar was lowered for D.K. and she was being taught to the tests. D.K. was continuing to fall behind. D.K.'s ninth-grade schedule was all resource room classes, which D.K. would have had a problem with. There was no talk of D.K. transitioning out of the resource room. Supports and accommodations were not offered. He and R.K. wanted D.K. to be in general education classes, have extended school days, one-to-one support and bring a recording device to class. There was no discussion of a summer reading or reading comprehension program. The goals were not explained and sensory issues were not discussed. At the end of the meeting another meeting was scheduled.

K.K. called into the April 23, 2015, meeting. At that meeting if D.K. was not offered a program that they wanted, they would place her at Purnell. The only difference to the IEP was that D.K. would be in general education classes for Math and another class. He again asked about extended school hours and the use of a recording device which was rejected. Annotated notes were discussed but he does not think it would help D.K. One to one time was not offered in the IEP.

D.K. is embarrassed to be pulled out of class and when pulled out she is missing material from the class. He was not told that D.K. being pulled out denied her FAPE. If she is pulled out at lunch, she misses opportunities to socialize. He did not feel that he was part of the CST.

At the end of the April 23, 2015, meeting R.K. gave the district the letter stating they were placing D.K. at Purnell. Bilotti stated district would not agree to Purnell. He believes that prior to the meeting the district decided that D.K. would not be placed out of district. He does not recall a discussion of an out-of-district placement.

Jessica Eckert

Jessica Eckert (Eckert) is the Associate Head of School for Purnell. She was the Head of Academic Affairs in 2014. There is a staff of twelve to thirteen. Eckert has a Masters' Degree in Education with a focus on Reading and Language. She is an expert in reading and language. She does not have a New Jersey teaching certificate. She has not been trained by a learning disability teacher consultant. She is currently enrolled in a doctoral program.

At Purnell during the school day there is one block of classes when the student either meets with her advisor or has free time. The class size ranges from eight to sixteen students. The usual class size is eight. None of her classes had more than twelve students. Purcell tries to individualize each student's assignments as much as possible. Purcell has licensed counselors.

D.K. was in English and Math Foundation classes in the ninth grade. In the tenth grade, she was still in English Foundation class but no longer in math foundation class. D.K. is not in honors or A.P. classes. D.K. has Pervasive Developmental Disorder. She has problems with social situations, reading comprehension, and executive functions.

Student reports are done every quarter; however, the student's advisor reports to the family at least once every two weeks. D.K. was immediately accepted into Purnell. She was not a typical Purnell freshman but she could be served by Purnell's small classes and learning consultant.

Purnell offers accommodations to students that match their IEP and exceed the IEP. It does not create IEP's. There are readers and scribes for students with reading and writing issues. Purnell is an all-girls school. Purnell uses a traffic system with the students. Green means good, amber means there may be a problem, and red means that student has a problem that must be addressed. In the ninth grade, there were more concerns for D.K. She was more in the red area. Now she is in the amber area. Eckert does not know if D.K. would have needed a similar adjustment period at Watchung Hills.

Purnell's math teacher, Jeffrey Stark creates videos of his lectures that the students can take home. All math classes are available on video. In the ninth grade when D.K. read a sentence she had seven to nine mistakes, now she has one to two mistakes. D.K. is strong in math; she did not need one-to-one in math. She is now more aware of the accommodations that she needs and is receptive to the accommodations.

The teachers arrive at grades by breaking down percentages to get to the actual grade. D.K. advanced in all her classes. She struggled with social cues and body language. She had setbacks which she copes with. Her recovery time from a setback is shorter. She can leave class if she senses an overload. She can step out or use noise cancellation headphones. D.K. has English every day. She has one-to-one sessions with Jodi Klue, her learning consultant, two hours a week. Purnell has three study halls. Level one is the smallest and quietest. D.K. is in study hall one.

Purnell is not a New Jersey State-approved school. It is accredited by NJAIS and Middle State Association. Purcell follows the New Jersey education requirements for its classes. The teachers are not required to have New Jersey teaching certificates or prior teaching experience. Purnell is a nonsectarian school. Purnell does not follow the New Jersey Core Curriculum. Its curriculum is self-created. It is not a New Jersey approved Special Education school. It has no by-law that requires it to comply with IDEA. It is not part of Purnell's mission to return students to their home school district when appropriate. When a student starts at Purnell they will be with the school until graduation. Purnell does not have a speech language therapist although D.K.'s IEP required speech and language therapy. Purnell does not have an occupational therapist. Purnell wants to optimize the educational experience for the student, not provide the bare minimum.

D.K.'s classroom performance is better than her evaluation scores. Klue administered a Woodcock-Johnson test to D.K. at the time of her admission. It showed that she was reading at 5.8 grade level and she remained in the inclusive ninth-grade class with intervention to help her with reading comprehension skills.

Eckert believes that an IEP determines what a school can provide for a student. It does not give room for options. D.K.'s IEP falls short of what Purcell can give her. She cannot determine if the IEP would have worked for D.K. at Watchung Hills. Eckert believes that D.K. might have difficulty navigating a school the size of Watchung Hills. She bases this opinion on her going to high school with some autistic students in the 1990's. There are always students that will progress far slower than others but they have a greater chance of at decreasing the gaps at Purcell. Students taught with their typical peers are the least restrictive environment, which D.K. has at Purnell. Not all the students at Purnell have diagnosed learning disabilities. At Purcell the majority of ninth-grade students are diagnosed with learning disabilities. When D.K. was in the ninth grade most of her classmates were diagnosed with learning disabilities, one or two students were not diagnosed with learning disabilities. When D.K. was in the tenth grade four or five of her classmates were not diagnosed with learning disabilities. Eckert is unfamiliar with the program at Watchung Hills.

FINDINGS OF FACT

After carefully considering the testimonial and documentary evidence presented, and having had the opportunity to listen to the testimony and observe the demeanor of the witnesses, I **FIND** the following critical **FACTS**:

D.K. was a student in Warren. She began receiving special education services in the 2004-2005 school year under the classification of autistic. During the 2014-2015 school year D.K. was in the eighth grade. Petitioners wanted her to be taken from resource room math and put into general education math with supports. They discussed this with Kassalow who ultimately decided that D.K. should stay in resource room for math. D.K. had previously had OT as a related service. In 2013 it was determined that D.K. had difficulty using both hands in a coordinated way.

D.K.'s IEP's for the school year were done in December in 2012, 2013, and 2014. D.K.'s eighth-grade progress reports show the following:

Social Studies- for the goal of improving work habits and organizational skills, for the second, third marking period and one of the fourth marking periods reported June 8, 2015, showed D.K. progressing with five of the benchmarks and had limited progress with two of the benchmarks. There was a second fourth marking period report with a report dated November 20, 2013, where D.K. was progressing on three benchmarks and had progressed in the first quarter on three benchmarks but had limited progress on those benchmarks in the third quarter. The social studies goal in study skills for the second marking period showed her results that she was progressing in three benchmarks and making limited progress in one benchmark. The fourth marking period had the same data as the second marking period report.

Language Arts- progress notes for the second marking period in the goal of improving composition, D.K. was progressing with all of the benchmarks. On the fourth marking period report dated December 9, 2014, D.K. was progressing in three of her benchmarks. In the benchmark of write a paragraph that has a topic and a detailed

sentence D.K. had limited progress in two of the quarters but was progressing in the other quarters. In the benchmark of write a paragraph that is time order sequence D.K. had limited progress on three quarters and was progressing on one quarter. On the fourth marking period progress report dated February 3, 2015; D.K. was progressing in all the benchmarks. In the goal of demonstrating proficiency in production and distribution of writing D.K. was progressing in all the benchmarks for the second marking period report. The same benchmarks for the report listed as third marking period is blank. For the reports listed as fourth marking period D.K. was progressing on all of her benchmarks.

Reading progress- notes for the goal of improve comprehension, improve inferential comprehension/vocabulary shows in the second marking periods, D.K. progressed in all but one of her benchmarks for this period. D.K. progressed on the infer main idea benchmark in the first quarter but had limited progress in the second quarter. In the fourth marking period there are two progress reports both with a reporting date of June 8, 2015, for this goal that have conflicting information. One of the reports has the same results as the second marking period progress report. The other progress report has D.K. progressing in identifying cause and effect relationships. In five of the benchmarks D.K. is progressing in the first quarter and making limited progress in the other three quarters. In three benchmarks D.K. is progressing in the first, third, and fourth quarter and making limited progress in the second quarter. In the goal to improve comprehension for the second and fourth marking periods D.K. was progressing in all of the benchmarks and mastered the benchmark of connect information from a text that is heard/read to prior knowledge and experience. The goal of demonstration proficiency in key ideas and details third marking period is blank.

Speech and Language- progress reports in the goal of improve receptive and expressive language skills and improve pragmatic skills. There are three reports for the second marking period. Two state that she is progressing in all of her benchmarks, and one reported December 9, 2014, states that she is progressing in four of the benchmarks but she had limited progress in correctly explaining two to three different meanings for fifteen new multiple meaning words in the third quarter but was progressing in the fourth quarter. The third marking period progress report states that

D.K. is progressing in all her benchmarks. The correctly explaining two to three different meanings for fifteen new multiple meaning words benchmark was not included in the third marking period progress report.

There are four fourth marking period progress reports which included correctly explaining two to three different meanings for fifteen new multiple meaning words benchmark. In one of the fourth marking period progress reports D.K. is progressing in all her benchmarks but had limited progress in the correctly explaining two to three different meanings for fifteen new multiple meaning words benchmark. This report was recorded on June 8, 2015, and grades are in the third and fourth quarter boxes. A second fourth marking period report has D.K. progressing in all the benchmarks. The second and third quarter boxes are graded. This was reported on April 6, 2016. A third fourth quarter progress report shows D.K. progressing on all her benchmarks. This was reported on June 8, 2015, and the first quarter box was filled in. In the fourth marking period progress report there are two benchmarks being re-introduced in the first quarter and D.K. progressing on those benchmarks in the second third and fourth quarter. One benchmark is not introduced until the fourth quarter. One benchmark she has limited progress in the first and second quarter, and one benchmark she is progressing in the first, second, and fourth quarter and had limited progress in the third quarter. This was reported on June 8, 2015. On the goal of improving pragmatic language skills in the fourth marking period, D.K. was progressing on two benchmarks and had limited progress on two benchmarks.

Math- progress reports for the goals of: improve math goals and consistent, improve computation with fractions, improve computation with decimals, and improve pre-algebra skills; D.K. was progressing in all her benchmarks in the second marking period report. On one benchmark, solve equation using multiple operations D.K. mastered the benchmark in the second period, but was progressing in the third and fourth period. In the fourth marking period report, D.K.'s results were the same for that goal. In the goal of demonstrating proficiency in creating equations that describe numbers or relationships, D.K. was progressing on four benchmarks, one benchmark had not been introduced and she had limited progress in the benchmark of demonstrating proficiency in solve system equations for the third marking period. D.K.

had the same results in the progress report marked fourth marking period. In the goal of following Algebra CCCS benchmarks, D.K. was progressing on six benchmarks, three benchmarks had not been introduced and she had limited progress with demonstrating proficiency with solve equations and inequalities in one variable and demonstrating proficiency in represent and solve equations and inequalities graphically for the third marking period. In the goal of math word problem solving for the fourth marking period, D.K. was progressing on nine benchmarks, one was being introduced and she had limited progress for two quarters and progress for two quarters in solving one and two step equations and inequalities.

Science- progress report in the goal of improve work habits and organizational skills D.K. was progressing in all of the benchmarks in the second, third, and fourth all marking periods except in classroom participation, she was progressing the first period but had limited progress for the other three periods. An additional fourth marking period progress report on the above goal but with different benchmarks, D.K. was progressing on all of her benchmarks. In the goal of study skills for the third and fourth marking periods report D.K. was progressing in all benchmarks.

OT- progress reports in the goal of improve responses to sensations to enhance interaction with objects and people in school environment for the second and fourth marking periods D.K. was progressing on three of the benchmarks, had limited progress on one of the benchmarks and went from limited progress to progressing on self-initiate, self-regulate techniques in the classroom to improve overall participation and performance. She mastered identifying two to three strategies that can be utilized in the classroom setting to improve overall participation and performance. In third marking period report D.K. mastered two benchmarks in the last two periods of the 2014 a school year. She had limited progress in one of the benchmarks as well as limited progress in one of the benchmarks for the last two periods of 2014 for the third marking period. The progress report for the fourth marking period had the same results as the third marking period. For goal of improve responses to sensations as a means to enhance interaction with objects and people in school environment: improve work behaviors as needed for the classroom environment for the second and fourth marking periods, D.K. was progressing on all of her benchmarks.

Many of D.K.'s goals and benchmarks in all of her subjects in the eighth grade were similar or identical to goals or benchmarks in the seventh grade. She was progressing with most goals and benchmarks, with limited progression in some and very few goals mastered. The amount of progress D.K. was making was not given a numerical value. The reports did not state for example that she had progressed a certain percent per marking period or quarter.

The IEP meeting on March 27, 2015, was to discuss D.K.'s ninth-grade IEP. The IEP was done by Warren but Watchung Hills was present at the IEP meeting because D.K. was supposed to attend Watchung Hills. It was initially recommended that all of D.K.'s classes be in resource room for the ninth grade.

In 2015 D.K. was administered the Woodcock Johnson IV test. She had previously been administered the Woodcock Johnson III test in 2012. The results for D.K. in the Woodcock Johnson III in 2012 showed her passing comprehension was twenty-four percent, in 2015 her results on the Woodcock Johnson IV in her passing comprehension was one percent. Her broad reading in 2012 was sixty percent. Her broad reading in 2015 was seventeen percent. Her Broad math was seventy eight percent in 2012, in 2015 her broad math was fifty-five percent. Her broad written language score in 2012 was sixty-four percent. Her broad written language score in 2015 was fifty-five percent. The 2012 Woodcock Johnson III test was not the same test as the Woodcock Johnson IV test of 2015. The 2012 Woodcock Johnson III test was a brief battery of test. It did not have as many tests as the Woodcock Johnson IV test, which had a full battery of tests. The 2012 Education Evaluation did not include a reading comprehension cluster but the 2015 education evaluation did. There was no substantial increase in D.K.'s NJASK scores from 2012-2014. Her results were partially proficient. She received modifications for the NJASK.

The speech and language evaluation of February 26, 2015, stated that D.K. was not receptive to help in class. D.K.'s responsiveness in class varied. D.K.'s grades were based on her performance, IEP and modifications. The modifications were individualized for D.K. for each class.

In 2015 it was decided by the teachers, psychologist, therapist, and D.K.'s mother that there would not be a Neuropsychological reevaluation. D.K. has a weakness in visual processing. She was offered a homework help program, which was declined. She did participate in the buddy-to-buddy program. There was no Psychological evaluation done for D.K. in 2015. The previous Psychological and Neurological Evaluations of D.K. was done in 2012. Every three years they determine if updated evaluations are necessary. Petitioners were not told that new Psychological or Neurological evaluations were necessary. It was decided to focus on Speech and Education reevaluations. Godfrey does not do the Wechsler Intelligence Scale for Children test, although D.K. was given this test in the 2012 psychological evaluation. Godfrey reviewed the 2012 psychological evaluation which showed that D.K. has social and emotional issues. Her anxiety was clinically significant. She had a high level of maladjustment and she was at risk with depression, because of this D.K.'s anxiety was closely monitored at Warren.

D.K. has difficulty with reading comprehension. Reading material on the ninth-grade level will be difficult for D.K. In the resource room, she would be reading at sixth-grade level. When she was in the fifth grade her reading comprehension was at the first-grade level. Her reading comprehension was at a fifth-grade level when she was in the eighth grade. D.K. needs oral discussion and guidance with reading comprehension which is more available in resource room than in general education class with in class supports. Pragmatic language is also difficult for D.K. Inferential language processing and reasoning skills are difficult for D.K. based on her intellectual level, pervasive developmental disorder and speech and language deficits, does not come up to her grade level in every area. D.K. is an audio-visual learner and does not like being singled out. She has improved in comprehension but still has a long way to go. She has difficulty applying information to solve problems.

D.K.'s parents did not want her to have individual pull out speech services, which were recommended. D.K. had speech services outside of the school. D.K. has difficulty with language skills and pragmatic language. D.K. was not pulled out for individual or small group speech. Her score in pragmatic language was low.

D.K. was given the CLEF-5 mental linguistics and pragmatic profile. The CLEF-5 is a full battery of tests. D.K.'s results were borderline or marginal or at risk in every area except multiple meanings which was average and figurative language where she was very below average. Her combined score was very below average. She was in the .4 percentile.

Watchung Hills has a speech pathologist on staff. It also has social skills groups. D.K. has significant deficits in expressive and receptive language and has significant pragmatic communication impairment. D.K.'s Speech and Language evaluation done by Aldrich was appropriate for D.K. at her age. Aldrich's evaluation reflects that D.K. made improvements in expressive and receptive language.

D.K.'s strength was writing. D.K. made progress over the school year but she did not like getting help or being treated differently. She became more receptive to receiving help. Her work was modified and her writing improved. She had difficulty making inferences and predictions.

D.K. was in a small group replacement math class with six boys in the eighth grade. Petitioners wanted D.K. moved to a general education math class with in class supports. Kassalow did not believe that the change was best for D.K. She had a strong year and was very receptive to feedback. All the students were in special education. When D.K. is preoccupied she has difficulty staying on task. This improved over time. Her grades were all A's and B's. They were modified grades but not modified beyond the replacement level. Her NJASK score indicated that she should be in replacement algebra. There was no indication that Kassalow was pressured by anyone to keep D.K. in the resource room math class.

When an eighth-grade special education student from Warren is going to Watchung Hills High School, the case manager tells the parents that a representative from the high school, in this case Bilotti, will be at the IEP meeting. Bilotti assisted in making the IEP describing programs, classes and supports at Watchung Hills. Warren creates the IEP and is responsible for providing FAPE with the IEP. Bilotti does not know the Warren IEP process.

Bilotti was part of the process of D.K.'s IEP. She began receiving information about D.K. in December 2014. Bilotti subsequently met with petitioners and showed them the resource room and in class supports at Watchung Hills. Petitioners wanted D.K. to have in class supports as opposed to resource room, although Godfrey did not recommend this. A freshman day was scheduled for D.K. where she would follow a student at Watchung Hills for a day.

D.K. has sensory integrative dysfunction. Sensory processing is taking in information and organizing it. D.K. struggles with sensory regulation. There are times where she improves and times where the problem persists. Barbagallo did an evaluation of D.K. on April 26, 2013, at the request of the child study team to determine if D.K. needed OT. The evaluation included many tests and interviews of her parents and teachers. At the time of the evaluation D.K. was eleven years old. D.K. was given the Wide Range Assessment of Visual Motor Abilities (WRAVMA) test. Her visual skills were at age level. She scored below age level in matching and pegboard. In the Bruininks-Osteretsky Test of Motor Proficiency, D.K. showed a bilateral integration delay. She had difficulty using both hands in a coordinated way. The results of a sensory profile are used to determine a sensory delay. The results of a sensory profile would not necessarily be the same in 2015 as it was in 2013. Barbagallo would look at the student in school to determine improvements as well as talk to teachers and parents. She did not repeat the sensory profile on D.K. because she worked with D.K. once a week through January 2014. D.K. gets overloaded which interferes with her ability to get instruction and complete work independently. D.K. also may require more input to know what is going on. D.K. has deficits that impact her learning.

D.K. is resistant to change. Going to high school is a change. D.K. was making progress with her OT goals. She was doing well one on one but had difficulty putting information into action. She progressed in using strategies but had not mastered it. Her strategies included muscle relaxation and other ways to relieve stress. She had to be reminded to use coping strategies.

D.K.'s OT was discontinued in December 2014. She transitioned to consultative OT in January 2015. At Watchung Hills D.K. would have started with modifications, if OT was needed it would be addressed. The modifications would include: visual cues, highlighter, copied notes, and explaining maps reducing anxiety prior to assignments, and repeating words and rewording instructions.

Petitioners asked Kassalow and Lazas to write recommendations for D.K. to Purnell, which they did. D.K. did not believe her writing and book report grades were her grades because the modifications allowed her to correct wrong answers. Petitioners found the progress reports confusing. They could not determine how much progress D.K. was making.

There was an IEP meeting on March 27, 2015. The IEP was for March 27, 2015, to March 27, 2016. The goals and benchmarks of the IEP were from designed by the staff members of the CST and individualized for D.K. This included D.K. beginning the ninth grade. In the IEP draft Warren wanted D.K. to have resource room for all her classes except Social Studies and Science. Petitioners objected to this. Warren changed its position and Algebra and World History were made general education classes with in-class supports in the IEP to appease petitioners. The related services for D.K. for the ninth grade include:

Speech Language Small Group <5 once a week out of class
30 minutes
Speech Language Small Group <5 Social Skills once a week
out of lunch 30 minutes
Counseling Small Group <5 Once a week out of lunch 30
minutes

Petitioners did not want D.K. to be pulled out at lunch. In addition, one of the speech therapists at Watchung Hills is a family friend.

The Evaluations that were considered in the IEP were the Psychological Evaluation of Michele Stein dated April 25, 2012, the Learning Evaluation of Terry Godfrey dated March 10, 2015, the Social Assessment of Faye Brady dated July 17, 2008, Speech and Language Evaluation of Suzanne Aldrich dated February 26, 2015,

Neuropsychological Evaluation dated Ilyse O'Desky dated August 14, 2012 and the OT evaluation by Barbagello dated June 1, 2013.

Petitioners requested D.K. use a recording device in her classes. Watchung Hills does not allow recording devices and offered the alternative of annotated notes and one to one time with the teacher.

The IEP included various modifications for D.K., which included modifying tests and quizzes, extended time, modify research paper, ensure student hears and understands directions, as well as other modifications, such as supplementary aides and services including graph organizer, study guides, copies of notes, visual cues as well as others. Her grades in mainstream classes will be modified in the following ways: progress will be considered when determining grades; spelling will be de-emphasized when determining grades for written assignments and grades in content areas will be computed with an emphasis on content rather than writing mechanics.

Lazas wrote the reading and language arts goals for March 27, 2016, IEP which go along with the high school curriculum and encompass the goals and objectives in her prior IEP's. The reading goals and benchmarks are not identical in the December 2014 IEP and the March 27, 2015, IEP. D.K. did not master the reading goals in the December 2014 IEP. The goal of annual measurable academic and/or functional goal to improve comprehension in the December 2014 IEP is encompassed in the March 2015 goal of annual measurable academic and/or functional goal proficiency in key ideas and details. The reading benchmarks of the December 2014 IEP are encompassed in the March 2016 IEP reading benchmarks.

There was a follow up meeting on April 23, 2015, wherein petitioner wanted to know what was going to be done to improve D.K.'s score on the Education Evaluation. They also wanted extended school year for D.K. but R.K. also stated that D.K. works on social issues in the summer. Petitioners were told that teachers would be available to D.K. before and after school at Watchung Hills. Petitioners did not believe this. At the conclusion of April 23, 2015, meeting petitioners presented a letter stating that they wanted D.K. placed in Purnell. Warren and Watchung Hills sent petitioners letters

dating May 1, 2015, and May 4, 2015, stating that there would be no additional changes to the IEP. Petitioners then committed to enrolling D.K. unilaterally at Purnell.

Petitioners were considering placing D.K. out of district in the fall of 2014. In January 2015, R.K. asked Kassalow and Lazas to write recommendations for D.K. to Purnell, which they both did. D.K. was accepted into Purnell on March 9, 2015. Petitioners were concerned with the cost of Purnell. They receive a \$10,000 tuition discount at Purnell.

Purnell is an out-of-district school which has a total of fifty-one students. Fourteen are seniors or post graduate, ten are in the ninth grade, and the rest are sophomores and juniors. Most of the students are diagnosed with attention deficit hyperactivity disorder (ADHD). It is a college prep school and all the classes are general education classes. Purnell has thirteen day students who receive a dorm room and can stay overnight. The class sizes range from eight to sixteen students. A typical day for D.K. would be checking in before 8:00 a.m. Then there would be the morning meeting and breakfast. Her first class would begin at 8:45 a.m. The school day has four periods. There are office hours at the end of the day. D.K. would either do athletic activity from 4:00-6:00 p.m. or non-competitive athletics from 4:00-5:30 p.m. During lunch the teachers are at the tables with the students.

D.K.'s advisor in ninth grade was Amy Wood. D.K. also has a one-to-one teacher. Her learning consultant is Jodi Klue. Klue has a Master's degree in Education. Klue worked with D.K. on executive function, reading comprehension, and fluency. D.K. still struggles with reading comprehension. She has one-to-one in reading comprehension and fluency. D.K. sees a counselor one to one on a weekly basis. D.K.'s parents come to the school every two week to speak with her advisors and counselors. The parents can contact the school as often as they wish.

Purnell does not create IEP's. Purnell is not a New Jersey State-approved school. It is accredited by NJAIS and Middle State Association. Purnell does not follow the New Jersey Core Curriculum. It is not a New Jersey approved special education school. The teachers are not required to have New Jersey teaching certificates or any

prior teaching experience. It has no bylaw requiring it to comply with IDEA. Purnell does not have a speech language therapist or occupational therapist. Eckert, the Associate Head of School for Purnell does not have a New Jersey teaching certificate. She has not been trained by a learning disability teacher consultant.

When a school district places a student at Purnell, Purnell monitors the goals and objectives in the IEP. Purnell currently has three to five students that were placed by a school district. Since D.K. was placed in Purnell by her parents Purnell does not monitor the goals and objectives of her IEP. Purnell does not implement standardized testing. Eckert believes that D.K. might have difficulty navigating a school the size of Watchung Hills. She bases this opinion on her going to high school with some autistic students in the 1990's.

Aldrich is an expert in Speech and Language. Kassalow is an expert math teacher. Eckert is an expert in Reading and Language. Lazas is an expert special education teacher. Godfrey is an expert in learning disabilities and Special Education. Aldrich, Lazas, and Kassalow testified that D.K. was progressing in their classes.

LEGAL ARGUMENT

The IDEA provides federal funds to assist participating states in educating disabled children. Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 179, 102 S. Ct. 3034, 3037, 73 L. Ed. 2d 690, 695 (1982). One of purposes of the IDEA is “to ensure that all children with disabilities have available to them a [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C.A. § 1400(d)(1)(A). In order to qualify for this financial assistance, New Jersey must effectuate procedures that ensure that all children with disabilities residing in the state have available to them a FAPE consisting of special education and related services provided in conformity with an IEP. 20 U.S.C.A. §§ 1401(9), 1412(a)(1). The responsibility to provide a FAPE rests with the local public school district. 20 U.S.C.A. § 1401(9); N.J.A.C. 6A:14-1.1(d). The district bears the burden of proving that a FAPE has been offered. N.J.S.A. 18A:46-1.1.

The United States Supreme Court has construed the FAPE mandate to require the provision of “personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” Rowley, supra, 458 U.S. at 203, 102 S. Ct. at 3049, 73 L. Ed. 2d at 710. New Jersey follows the federal standard that the education offered “must be ‘sufficient to confer some educational benefit’ upon the child.” Lascari v. Bd. of Educ. of Ramapo Indian Hills Reg’l High Sch. Dist., 116 N.J. 30, 47 (1989) (citing Rowley, supra, 458 U.S. at 200, 102 S. Ct. at 3048, 73 L. Ed. 2d at 708). The IDEA does not require that a school district “maximize the potential” of the student, Rowley, supra, 458 U.S. at 200, 102 S. Ct. at 3048, 73 L. Ed. 2d at 708, but 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). In addressing the quantum of educational benefit required, the Third Circuit has made clear that more than a “trivial” or “de minimis” educational benefit is required, and the appropriate standard is whether the IEP provides for “significant learning” and confers “meaningful benefit” to the child. T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000); Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999); Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180, 182-84 (3d Cir. 1988), cert. den. sub. nom., Cent. Columbia Sch. Dist. v. Polk, 488 U.S. 1030, 109 S. Ct. 838, 102 L. Ed. 2d 970 (1989). In other words, the school district must show that the IEP will provide the student with “a meaningful educational benefit.” S.H. v. State-Operated Sch. Dist. of Newark, 336 F.3d 260, 271 (3d Cir. 2003). This determination must be assessed in light of the individual potential and educational needs of the student. T.R., supra, 205 F.3d at 578; Ridgewood, supra, 172 F.3d at 247-48. The appropriateness of an IEP is not determined by a comparison of the private school and the program proposed by the district. S.H., supra, 336 F.3d at 271. Rather, the pertinent inquiry is whether the IEP offered a FAPE and the opportunity for significant learning and meaningful educational benefit within the least restrictive environment.

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

as appropriate, related to the Core Curriculum Content Standards of the general education curriculum and “be measurable” so both parents and educational personnel can be apprised of “the expected level of achievement attendant to each goal.” Ibid. Further, such “measurable annual goals shall include benchmarks or short-term objectives” related to meeting the student’s needs. N.J.A.C. 6A:14-3.7(e)(3). The New Jersey Supreme Court has recognized that “[w]ithout an adequately drafted IEP, it would be difficult, if not impossible, to measure a child’s progress, a measurement that is necessary to determine changes to be made in the next IEP.” Lascari, supra, 116 N.J. at 48.

Parents who withdraw their child from public school and unilaterally place the child in a private placement while challenging the IEP may be entitled to reimbursement if the administrative law judge (ALJ) finds that the school district’s proposed IEP was inappropriate and that the parents’ unilateral placement was proper. Florence County Sch. Dist. Four v. Carter, 510 U.S. 7, 12, 114 S. Ct. 361, 365, 126 L. Ed. 2d 284, 292 (1993); School Comm. of Burlington v. Mass. Dep’t of Educ., 471 U.S. 359, 370, 105 S. Ct. 1996, 2002-03, 85 L. Ed. 2d 385, 395 (1985.) More particularly, an ALJ may require the district to reimburse the parents for the cost of that enrollment if “the district had not made a free, appropriate public education available to that student in a timely manner prior to that enrollment and . . . the private placement is appropriate.” N.J.A.C. 6A:14-2.10(b); see 20 U.S.C.A. § 1412(a)(10)(C)(ii). However, parents who unilaterally withdraw their child from public school and place the child in a private school without consent from the school district “do so at their own financial risk.” Burlington, supra, 471 U.S. at 374, 105 S. Ct. at 2004, 85 L. Ed. 2d at 397. If it is ultimately determined that the program proposed by the district affords the child with a FAPE, then the parents are barred from recovering reimbursement of tuition and related expenses. Ibid. A court may reduce or deny reimbursement costs based on the parents’ unreasonable behavior during the IEP process. 20 U.S.C.A. § 1412(a)(10)(C)(iii). In this regard, the cost of reimbursement “may be reduced or denied” if, at the most recent IEP meeting the parents attended prior to the removal of the student from the public school, the parents did not inform the IEP team that they were rejecting the IEP proposed by the district; if the parents did not give written notice to the district of their concerns or intent to enroll their child in a non-public school at least ten business days prior to the removal

of the student from the public school; or upon a judicial finding of unreasonableness with respect to actions taken by the parents. N.J.A.C. 6A:14-2.10(c)(1), (2), (4).

As stated above, the main issue in this matter is would the IEP of March 27, 2015, that was amended on April 23, 2016, provide D.K. with FAPE and if not is Purnell an appropriate placement. D.K. made progress at Warren. Although the progress reports did not give numerical detail regarding her progress, they did show that she was making progress or limited progress in most of her goals and benchmarks.

The IEP originally had D.K. in resource room classes in all of her ninth grade except Social Studies and Science. D.K.'s difficulty with reading comprehension would make it difficult for her to work at a ninth-grade level. The number of resource classes were reduced at the request of petitioners, to be revisited if D.K. was having difficulties. The IEP allowed for D.K. to have annotated notes and scheduled one-to-one time with the teacher. D.K. would have had access to guided study hall at Watchung Hills. The goals and benchmarks of the IEP were from designed by the staff members of the CST and individualized for D.K. The fact that D.K. did not master goals of the December 2014 IEP does not mean that she was not progressing toward mastery in those goals. There was ample testimony that showed that D.K. was progressing at Warren and would have continued to progress at Watchung Hills.

Similarly, the fact that D.K. scored particularly proficient grade on the NJASK does not mean that she was not receiving FAPE. Her teacher's testimony clearly stated that she was progressing. Students that are autistic do not always preform on standard test consistent with their abilities. There was a difference in D.K.'s scores on the Woodcock Johnson III test in 2012 and the Woodcock Johnson IV test in 2015. This difference is explained by the fact that the tests are not the same and in fact the Woodcock Johnson IV test is a full battery of tests, whereas the Woodcock Johnson III is a brief battery of tests.

The reading goals and benchmarks of the March 27, 2015, IEP were not identical to the reading goals and benchmarks of the December 2014 IEP, they were a rewording of the goals and objectives in the December 2014 IEP.

Petitioners did not want D.K. pulled out of classes or lunch but there was no testimony that D.K. being pulled out of classes was denying FAPE. The petitioners were concerned that she would miss class work, socialization, or be embarrassed.

Further, the fact that Kassalow and Lazas signed recommendations to Purnell for D.K. does not mean that they did not believe D.K. was receiving FAPE. They in fact testified that they believed that the IEP provided FAPE to D.K. It is not unusual for eight grade students to go to a private high school.

I **CONCLUDE** that the March 27, 2015, IEP that was amended on April 23, 2016, would have provided D.K. with FAPE and a meaningful educational benefit.

I am going to address the issue of whether Purnell was an appropriate placement for D.K., even though I found the March 27, 2016, IEP was appropriate and would have provided a meaningful educational benefit and FAPE to D.K. Purnell is not a State-approved New Jersey school or an approved New Jersey special education school. It does not follow the New Jersey Core Curriculum. The teachers are not required to have teaching certificate or have prior teaching experience. Nor does it have speech or occupational therapists. The Associate Head of the school accredits her knowledge of students with autism from her attending high school with autistic students.

I **CONCLUDE** that Purnell is not an appropriate placement for D.K.

ORDER

Based on the foregoing it is hereby **ORDERED** that the petitioners' due process petition be and is hereby **DISMISSED**.

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.

June 26, 2017

DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency

June 26, 2017

Date Mailed to Parties:

ljb

APPENDIX

WITNESSES

For Petitioner:

D.K.

K.K.

Jessica Eckert

For Respondent:

Theresa Godfrey

Suzanne Aldrich

Catherine Lazas

Peter Kassalow

Sarah Bilotti

Michelle Barbagallo

EXHIBITS

For Petitioner:

- P-1 July 17, 2008, Warren Social History Update
- P-2 January 7, 2013, R.K. e-mail to Terry Godfrey
- P-3 January 24, 2013, R.K. e-mail
- P-4 September 16, 2014, R.K. e-mail
- P-5 April 15, 2015, photo of R.K. at WHRHS parent orientation
- P-6 January 2015 Winston Prep e-mails
- P-7 March 9, 2015, Purnell School offer of admission
- P-8 December 12, 2014, R.K. e-mails
- P-9 Petitioners' summary of annual expenses
- P-10 December 1, 2015, letter from Purnell School to Petitioners
- P-11 January 23, 2015, Child Study Team attendance record
- P-12 February 6, 2015, Parental Notice Following Reevaluation Meeting

P-13 February 6, 2015, Child Study Team Attendance Record

P-38 Daily Progress – Final Grades for ninth grade

P-39 Tenth Grade Interim Grade

P-40 D.K.'s tenth-grade class schedule

For Respondent

R-8 Neuropsychological Evaluation, August 2012

R-9 E-mail from Terry Godfrey to Ilyse O'Desky, September 19, 2012

R-10 E-mail from Terry Godfrey to petitioner regarding petitioners' opposition to District recommendations, October 10, 2012

R-11 IEP, December 20, 2012

R-12 Occupational Therapy Evaluation, April 26, 2013

R-16 IEP, December 11, 2013

R-18 2013-2014 progress reports, marking periods 3 and 4

R-19 Letter from petitioner to Purnell School, October 16, 2014

R-20 E-mail chain with Purnell School, October 2014

R-21 E-mail chain with petitioners, November 5 through 19, 2014

R-22 IEP, December 8, 2014

R-23 E-mail regarding petitioners' disagreement with District recommendations, December 9, 2014

R-24 E-mail chain with petitioners, December 18 through 19, 2014

R-25 E-mail regarding petitioners' request for reevaluations, January 23, 2015

R-26 Purnell School recommendation form, February 2015

R-27 E-mail chain with petitioners, February 9, 2015

R-29 E-mail chain with petitioners, March 1 through 3, 2015

R-30 Speech and Language Evaluation, March 9, 2015

R-32 Petitioners' financial information for Purnell School, submitted March 18, 2015

R-33 Financial aid letter from Purnell School, March 19, 2015

R-35 Educational Evaluation, March 26, 2015

R-37 IEP, March 27, 2015 (updated April 23, 2015)

R-38 E-mail chains between petitioners and Warren Township Schools, respondent, and petitioners regarding IEP meeting and IEP deadlines, February 4, 2015

R-39 Purnell School summary of charges, April 9, 2015

R-40 E-mail chain regarding petitioners' placement intentions, April 13, 2015

R-41 E-mail chain with petitioners, April 14 through 15, 2015

R-42 E-mail chain regarding D.K. in a freshman-for-a-day, April 15, 2015

R-43 Unilateral placement letter, April 23, 2015

R-44 Attendance Sheet for parent-requested meeting on April 27, 2015

R-45 Summary of D.K.'s programming and services, May 2015

R-46 Letter from respondent to petitioners regarding IEP and unilateral placement, May 1, 2015

R-47 Letter from Warren Township Schools to petitioners regarding unilateral placement, May 4, 2015

R-51 2014-2015 progress reports, marking periods 2 and 3

R-52 2014-2015 progress reports, marking period 4

R-57 CV of Suzanne Aldrich

R-59 CV of Peter Kassalow

R-65 CV of Sarah Bilotti

R-67 Drafts and revisions of March 27, 2015, IEP