



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

**FINAL DECISION**

**N.M. AND K.B. ON BEHALF OF K.M.,**

Petitioners,

v.

**ELIZABETH BOARD OF EDUCATION,**

Respondent.

OAL DKT. NO. EDS 09808-18

AGENCY DKT. NO. 2018 28237

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**N.M. AND K.B. ON BEHALF OF K.M.,**

Petitioners,

v.

**ELIZABETH BOARD OF EDUCATION,**

Respondent.

OAL DKT. No. EDS 15392-18

AGENCY DKT. NO. 2019-28935

**Jennifer Rosen Valverde**, Esq., for petitioners (Rutgers Law School Education and Health Law Clinic, attorneys)

**Richard Flaum**, Esq., for respondent (DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, attorneys)

Record Closed: November 26, 2019

Decided: December 19, 2019

**BEFORE ELISSA MIZZONE TESTA, ALJ:**

**STATEMENT OF THE CASE**

Petitioners, N.M. and K.B. on behalf of K.M., filed a Due Process Petition on June 6, 2018, with the Office of Special Education Policy and Procedure (OSEP), under the

Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400 to 1482, alleging that the termination of K.M.'s individualized and specialized reading and writing services by the Elizabeth Board of Education ("Respondent" or "District") deprived K.M. of a free and appropriate public education ("FAPE").

### **PROCEDURAL HISTORY**

The matter was transferred to the Office of Administrative Law ("OAL") on July 11, 2018. A second Due Process Petition filed by Petitioners was transferred to the OAL on October 26, 2018, under Docket No. 15392-18. An Order of Consolidation was entered on November 1, 2018. Hearings were conducted on November 27, 2018, April 10, 2019, April 26, 2019 and May 20, 2019. Counsel was permitted to obtain transcripts and file written summations. The record was closed after a telephone conference with the parties on November 27, 2019.

It should be noted that on June 6, 2018, petitioners had filed an initial Request for Emergent Relief seeking an Order that the District continue implementing K.M.'s September 13, 2017 Individualized Education Program (IEP) as the stay put placement. The June 6, 2018 Emergent Relief Request was returned to petitioners by the Office of Special Education Policy and Procedure ("OSEP") due to issues with the timing of the request. A second Emergent Relief Request was filed with OSEP on July 6, 2018 and forwarded to the OAL on July 11, 2018. Petitioners withdrew same without prejudice due to timing issues with the request. On August 20, 2018, petitioners filed a new Emergent Relief Request directly with the OAL, as instructed, and the matter was heard on August 27, 2018. An Order was entered on September 4, 2019 granting Petitioners' Emergent Relief Request. More specifically, the individualized and specialized reading and writing services being provided by the District to K.M. as per the September 13, 2017 IEP, were to continue pending Petitioners' Due Process Petitions.

### **STATEMENT OF FACTS**

The parties to this action stipulated to the following facts identified below as points 1-10:

1. K.M. attends Alexander Hamilton Preparatory Academy High School (“AHPAHS”) in Elizabeth, New Jersey;
2. K.M. began attending AHPAHS in Elizabeth, New Jersey in the fall of 2017;
3. K.M. was classified as a student who was eligible for special education and related services on or about 9/13/2017;
4. K.M. was classified as a student with a specific learning disability on or about 9/13/17
5. During the Academic year 2017-2018, K.M. received in-class support in Math, Science, English/Language Arts, and History from a Certified Special Education Teacher;
6. K.M. made meaningful educational progress during the 2017-2018 academic year;
7. K.M. was provided with FAPE during the 2017-2018 academic year at AHPAHS;
8. K.M. was provided with an IEP on or about 9/13/2017 (J-1);
9. K.B. and N.M. on behalf of K.M. did not file a petition for due process challenging the program offered to K.M. in the IEP dated 9/13/2017 (J-1);
10. K.B. and N.M. on behalf of K.M. did not file a petition for due process challenging the IEP dated 1/17/2018 (J-2).

K.M. was born on February 18, 2003, and at the time of the 2018-2019 school year, was a rising tenth grade student at AHPAHS and has at all relevant times been a student of the District. K.M. is diagnosed with Dyslexia. She is classified as having a specific learning disability and receives special education and related services from the District.

The IEP for the 2017–2018 school year, dated September 13, 2017, affords K.M. services, including but not limited to, in-class resource support for one full class period per day for English, Math, History and Science; individualized and specialized Orton-

Gillingham reading instruction for one full class period five days per week, provided by a Certified Orton-Gillingham Reading Specialist; and individualized and specialized direct instruction in language structure and written expression for 45 minutes per day, two days per week after school, provided by a Certified Special Education High English/Language Arts Teacher. The District provides and pays for all of the educational programs and services in K.M.'s September 13, 2017 IEP. (J-1)

Also, on September 13, 2017, petitioners and respondent entered into a Settlement Agreement wherein the above referenced reading and writing instruction were limited in duration to the 2017–2018 school year. The relevant portions of the Agreement state:

"The District shall provide and pay for individualized and specialized direct reading instruction for K.M. at a rate of 47 minutes (one class period) per day, five days per week, during the school day (last period) for the 2017-2018 school year. K.M. shall be exempt from her World Language requirement in order to receive this instruction during the academic year. The reading instruction shall be provided by either a certified special education teacher or reading specialist, provided such person is both certified and an education teacher or reading specialist, provided such person is both certified and experienced in teaching students using the Wilson Reading Program and/or the Orton Gillingham Reading Program. The reading instruction shall include, but not be limited to, instruction in phonics and decoding using the Wilson or Orton-Gillingham Reading Programs, reading comprehension and reading fluency;

The District shall provide and pay for individualized and specialized direct instruction in language structure and written expression for K.M. at a rate of 45 minutes per day, two days per week, during after school hours for the 2017-2018 school year. Said instruction shall be provided by certified English/Language Arts special education high school teacher. This instruction shall focus on improving K.M.'s syntax, morphology, grammar, sentence and paragraph structure, writing mechanics and composition, skills, among other areas."

On May 24, 2018, Mr. Flaum, counsel for the District, sent an email with a letter attached to petitioners' counsel which stated that the District would not continue providing

K.M.'s specialized Orton-Gillingham reading instruction or her specialized writing instruction during the 2018–2019 school year, and that these services would end on the last day of school in June 2018, regardless of reevaluation.

On or about June 6, 2018, within fifteen days of receiving written notice of the District's decision to not continue the reading and writing services, petitioners filed for due process against the District on the grounds that termination of these services would deprive K.M. of FAPE. Petitioners also filed a Request for Emergent Relief seeking an order that the District continue implementing K.M.'s September 13, 2017 "Individualized Education Program ("IEP") as the stay put placement. This request along with a subsequent filing on July 6, 2018 were returned and/or withdrawn by petitioners due to timing issues. The request was refiled on August 20, 2018, due to the imminent start of the new school year in September 2018. As stated earlier, the Request for Emergent Relief was granted on September 4, 2018, and it was ordered that the District continue implementing K.M.'s September 13, 2017 Individualized Education Program as the Stay Put placement.

The District argues that the Orton-Gilligham and specialized language instruction were related services that were not otherwise part of the in-class support program set for in the September 13, 2017 IEP and it was determined by all relevant instructors, study teams, etc., that these services should no longer continue because K.M. had made significant progress and was reading at grade level. Further, the District argues that they never proposed removing K.M. from in-class services and at all times acknowledged that these services run through September 13, 2018. The only services which were being discontinued were the reading and writing instruction. Respondent argues that the May 24, 2018 letter clearly acknowledges that only the in-class services would continue through September 13, 2018 and that the writing and reading services were to be discontinued at the end of the 2017–2018 school year in June 2018. The May 24, 2018 correspondence was sent in response to counsel for petitioners' correspondence dated May 15, 2018. Respondent argues that in that correspondence there was an acknowledgment and admission by the petitioners that the two related services would expire at the end of the school year.

## **TESTIMONY**

### **Mary Beth Berry**

Mary Beth Berry testified on behalf of the District. She is a Learning Disabilities Teacher Consultant (“LDTC”) and Special Education Teacher. In addition to her Certification as a Learning Consultant and Teacher of the Handicapped, Berry also holds a master’s degree in Special Education. (J-34).

Berry has been providing K.M.’s writing instruction twice a week, after school since September of 2017, pursuant to K.M.’s September 13, 2017 IEP. (J-1). Berry testified that after an initial assessment at the beginning of K.M.’s ninth grade school year, she believed K.M. was writing at about an 8th grade level. She further testified that K.M.’s writing had improved after just three months of writing instruction. Berry explained that K.M.’s technological support assisted her with spelling and writing, as it allowed her to view the writing on a different shade of paper with a blue background. She also testified that the Free Dictionary and Thesaurus programs were helpful with K.M.’s writing.

With respect to K.M.’s progress throughout the ninth grade, Berry testified that K.M. did very well and that her writing was brought up to the 9th grade level by the end of December 2017. She further explained that by January 2018, K.M. was again “at level” and on track with the District’s ninth grade English curriculum for the rest of the school year. As to K.M.’s May 2018 essay, Berry testified that she believed the essay demonstrated grade level work as demonstrated by her May 14, 2018 Progress Report. (J-4).

When asked about her recommendation with respect to K.M.’s writing services for the 2018-2019 school year, Berry testified that in the start of the new school year, K.M. would have two different teachers that would be able to support her with her writing in the main Hamilton School; her In-Class Support Teacher and her English Teacher. She also understood that the school had an after-school program that would be available to assist if needed.

Berry further explained that if K.M. had the after-school program available to her five days a week, she could benefit more from that than the two hours a week that she was spending with her. Berry ultimately testified that she did not think the writing services needed to continue in the fall of 2018 because K.M. was at grade level and she understood what she was doing. She was also capable of doing the work, and at that point, she was just editing, revising and helping K.M. pick out the little mistakes she was making; but basically K.M. was writing on her own. Notably, when asked about K.M.'s current status as of the November 27, 2018 hearing date, Berry testified that K.M. was on the 10th grade curriculum, writing at a 10<sup>th</sup> grade level, and could continue to do so without her writing services.

On cross-examination, Berry testified as to how she worked with K.M. to create outlines and drafts for her 10<sup>th</sup> grade curriculum writing assignments. She indicated that she never worked with K.M. on Benchmark assignments, as those were completed independently in class. When questioned about which essay drafts are eventually graded, Berry explained that she would work on multiple drafts with K.M. and the final draft would be turned in for a grade. Berry further explained that it is typical for 9<sup>th</sup> graders to prepare multiple drafts of essays for assignments in English. She further testified that she did not only work with K.M. on revising essays but also on the sentences of the essay, putting the verbs and subjects together. (J-43, 44, & 46). Berry was present and participated in the IEP meetings for K.M. dated November 7, 2018, March 28, 2018 and October 11, 2018. (J-15).

### **Nancy Zimmerman**

Nancy Zimmerman testified on behalf of the District. Zimmerman was K.M.'s 10<sup>th</sup> grade English II Honors teacher. Zimmerman testified that she teaches three sections of 10<sup>th</sup> Grade English II Honors. She explained that students in Honors classes are expected to perform at a higher level and understand and comprehend the material faster than a regular level English class. (J-35).

When asked of K.M.'s classification, Zimmerman testified that she did not even know K.M. was classified at first. Based on K.M.'s writing capabilities, had K.M. not been

identified as having an IEP, she would not have deduced that K.M. was classified. With respect to any deficits in K.M.'s comprehension, Zimmerman testified that she would not classify K.M. as having any deficits in her comprehension. Zimmerman further testified as to her impression of how K.M. was performing and believed K.M. was doing well in class. When K.M. was uncertain about something, she would seek out assistance either from herself or Michelle McAteer, K.M.'s in-class support teacher. K.M. also gets assistance from her peers through in class group activities. Zimmerman went on to explain that K.M. does very well and frequently gets answers correct on the "Do Now" assignments which are part of the 10<sup>th</sup> Grade Honor English Curriculum. Zimmerman also noted that K.M. had done a good job on her essay writing; being very descriptive and captivating.

As for book comprehension, K.M. did very well in class discussions, often participating in same. Zimmerman testified in detail about how well K.M. performed on the Pearl writing assignments. When questioned on cross-examination about K.M.'s performance on another assignment titled the "Screams", Zimmerman explained that she was aware that Berry reviewed and assisted K.M. with her writing assignments. When asked about the "Songs" Do Now assignment, which K.M. received a B- on, Zimmerman testified that Do Now assignments are mostly graded for content and structure. According to Zimmerman, K.M. achieving high marks on the Do Now's demonstrated meaningful educational progress without any assistance from Berry. In addition, in the event K.M. struggled with essays, she had two other options, her in-class support teacher or after school tutoring.

### **Michelle McAteer**

Michelle McAteer testified on behalf of the District. McAteer has worked for the Elizabeth School District for twenty years and has a master's degree in Special Education with extensive experience in providing in-class support for students with disabilities. (J-32, 33). McAteer was K.M.'s in-class support teacher for English, Math, Social Studies, and Science for the 2018-2019 school year. McAteer testfied that, as an In-Class Support Teacher, her goal is to help her students develop confidence and feel like part of the community. When asked if K.M. has any

difficulty reading her assignments, McAteer testified that K.M. is able to read her assignments without assistance but is reassured that she is always available if K.M. needs help.

McAteer further testified that her approach with K.M. was guided by her IEP, which provided that she should read, restate, and rephrase the directions for K.M. and ask K.M. questions to check for understanding. (J-1). When asked of K.M.'s development, McAteer explained that when K.M. needs help, she follows all of the suggestions from the teachers. She has become determined to succeed and she will take risks and participate. K.M. has become a collaborator in the groups in that she takes the lead and she can teach what she has learned. McAteer feels these are K.M.'s strengths. With respect to K.M.'s deficiencies in comprehension, McAteer testified that K.M. does not have comprehension issues very often and explained that when K.M. is having problems she comes to her with specific questions about the composition, the issues are discussed, then she reaffirms with K.M. that she understands what has been explained to her.

McAteer testified that K.M. primarily only asks for extra time for assignments, which is always provided to her. With the extra time, K.M. is able to do well because she's not tense and she has the opportunity to really take her time and complete her compositions. Further, K.M. is not nervous, is not afraid to ask questions and she is not afraid of failure because she is given the opportunity to take her time and produce her work. K.M. cannot produce as well under a time constraint. McAteer testified that K.M. was meeting grade level expectations for all subject matters whenever she received the modification of extra time. The extra time for all assignments and tests is provided for in the September 13, 2017 IEP and the proposed draft IEP dated October 11, 2018. (J-1, 3).

McAteer then testified as to K.M.'s grade modifications pursuant to her IEP. (J-1). She explained that if K.M. receives a grade over 85%, the grade is left unmodified; however, if she receives a grade under 85%, or 80% for Math, the grade is adjusted according to the District's grade adjustment chart. (J-16). She further explained that with respect to specific assignments, modifications are entered into the District's grading

system and when grades were not accompanied with comments, those grades were not modified. On cross-examination, McAteer was questioned on the grade modifications, mastery levels, and goals and objectives listed in K.M.s 9<sup>th</sup> grade IEP. (J-1) There was also an inquiry about specific grades where K.M. received low scores, for example. As to K.M.'s IEP objective to accurately read 30+ multi syllabic words, McAteer believed K.M. met the goal based on her assessments and that K.M. could sound out multi syllabic words and read them in context. McAteer testified that K.M. was meeting grade level expectations for all subject matters whenever she received extra time.

When McAteer was asked McAteer if she believed that the after-school writing instruction and daily OG contributed to K.M.s progress, she replied that K.M. would have made progress regardless of these programs. She further explained that when the students do comprehension in class, K.M. has a computer with programs to help her with the composition, however she does not use it for homework or in class. K.M. has demonstrated that she can read out loud in class when she does vocabulary, she is able to figure out synonyms, antonyms, vocabulary and what the words mean.

### **Kathleen Kranick**

Kathleen Kranick, a Reading Specialist with several certifications including Teacher of the Handicapped, Orton-Gillingham Teacher, and Dyslexia Therapist, testified on behalf of the District. (J-41). Kranick was permitted to testify as an expert in the areas of Orton Gillingham, Reading, Language Disabilities, and Dyslexia.

Kranick provided K.M. with OG Instruction for the 2018-2019 school year in a one-on-one setting, five times per week, 45 minutes per day in accordance with the Stay Put Order dated September 4, 2019. Kranick used the Sonday System method. Kranick testified that Fairleigh Dickinson University where she received her training is one of just twenty-three universities that certify Dyslexia Teachers in the country, and the program offered by Fairleigh Dickinson recommends a maximum of two sessions of Orton Gillingham per week for students with either dyslexia or reading language disabilities.

Kranick explained that two days a week is a typical amount of OG Instruction for a student. When asked why that was the recommended number, Kranick testified that it is because you introduce a new concept then you review a new concept. It would be "insane" to try to introduce a new concept for five days in a row and expect the child to retain everything. (Emphasis added). Kranick further testified that you would introduce a concept, then review the concept for three sessions. Then introduce another concept, and then continue to review previously mastered concepts to make sure that the student continues to retain the information.

On November 18, 2018, Kranick prepared a report detailing K.M.'s progress throughout the Fall semester 2018. (J-42). Kranick testified that prior to preparing the report, she tested K.M.'s reading levels and did not believe K.M. was reading below grade level. It should be noted that Kranick had only been K.M.'s OG Instructor for a few weeks before preparing her report. She went on to explain that the District has gone above and beyond the Orton scope and sequence to make sure that K.M. had skills that would benefit her spelling and reading. Further, K.M. needs to be able to come close enough to writing words that are difficult for her where spell check will identify the word and would be able to know that it's an error. Kranick believes the District has done all of what was required of them.

Kranick described the four levels of Orton-Gillingham and indicated that K.M. was at the highest level and thus "well beyond" phonics and basic reading difficulties.

When asked of K.M.'s fluency issues, Kranick testified:

Her ability -- and fluency, there is six dimensions of fluency. The only dimension that she really has difficulty with is the speed of which she reads. She's just -- she reads around 110 to 115 words per minute, which is low for her age, but it's not - it doesn't inhibit her comprehension, and the whole [point] of reading is to be able to comprehend what we read.

T2 at 45:14-24.

When asked if her fluency issues indicate that K.M. is reading below grade level,

Kranick responded on the negative and that K.M. just requires extra time, which she has received per her IEP. (J-1). Kranick further explained the importance of K.M. having extra time and being able to re-read sentences because dyslexia is neuro biological in its origin, and it would never be cured. K.M. is always going to have to double check words and always going to come across words that are difficult for her. Thus, Kranick stressed the importance of teaching K.M. context, such as utilizing context clues in sentences which will help her derive meaning if it is an unknown word or it does not sound right in a sentence. K.M. would be able to use that information to get to the meaning of the sentence. Kranick believes the goal of reading is comprehension.

Kranick testified as to the specific mistakes K.M. has made during her testing and Kranick found those errors were common for 10<sup>th</sup> grade students in general and something that she sees on a regular basis in the District. Kranick testified that working on these errors would not have required the District to provide OG five days a week, 45 minutes each session, but rather two days a week would have been the most she would have initially recommended.

Kranick testified that she believed that K.M. would continue to receive a meaningful educational benefit from her program and placement if OG was eliminated from her day to day education. Moreover, Kranick testified that she did not agree with Alison Pankowski who issued the recommendation that OG should be provided five days a week, 60 minutes per sessions. Such an assessment was "excessive" particularly due to K.M.'s success and comfort level in the classroom. (Emphasis added). As to her recommendation that K.M. no longer needed daily OG reading services, Kranick testified that based on her assessments, and her review of the records, K.M. was a functioning student receiving an appropriate education with plenty of supports in hand which would make five days a week unnecessary. Kranick participated in the October 11, 2018 IEP meeting and provided her recommendation to K.M.'s CST only having had worked with K.M. since mid-September 2018. (P-15).

It is important to highlight the following contradictory testimony of Kranick:

- Q: In your expert opinion and with your contact with K.M., do you believe she requires continued OG services?
- A: There are still a few areas that –
- Q: Does she require, regardless of how much time, does she still require continued services?
- A: Yes.
- Q: How much time do you believe she still requires?
- A: I would personally see her once a week and fill in the remaining voids that are there because there are not that many more remaining.
- Q: How long do you believe this once a week should continue in your expert opinion?
- A: Until – I guess until every last concept has been uncovered and taught explicitly and then I would – my personal recommendation and I haven't voiced this to the District or anything. I would always want to stay in consult with her so if she ever fell apart or started to have difficulty in the classroom or something was impeding that instruction that I would be able to jump in and be able to assist her at all times.
- Q: But you don't disagree that this child is reading and writing at significant grade levels below where she should be?
- A: The reason why –
- Q: I don't want to know the reason why.
- A: Say it again.
- Q: She's reading and writing at grade levels below where she should be?
- A: She is according to the testing.

T2, at 166:23 to 168:3.<sup>1</sup>

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<sup>1</sup> Kranick, is the District's expert and her testimony was given on April 4, 2019, almost ten (10) months after the District determined the reading (OG) and writing services were no longer needed and terminated same.

In one breath Kranick states that OG should be terminated in its entirety and in the next breath states that OG should continue, but less frequently.

As to the District providing assistive technology programs, Kranick testified that she does not see K.M. using the technology but that such programs will be crucial for her for the future; to assist in life and more importantly, college. One of the programs that are currently available to K.M. is "Learning Ally" and those that would be beneficial to her going forward are Immersive reader and Outlook emails. Kranick further elaborated on assistive technology and testified that if K.M. utilizes the tools that are available to her, they could be used for her lifetime. Kranick testified that many dyslexic adults that she consults with, she trained in those programs to make sure that they can utilize them to be successful in college.

When asked if any amount of OG or other one to one service is going to change anything relative to K.M.'s fluency issues, Kranick stated that she did not believe it would. Kranick believes fluency is affecting K.M.'s comprehension, which according to Kranick is the purpose of education.

Kranick disputed Pankowski's report concerning K.M.'s reading level. Pankowski's report based on testing of K.M., indicated that she was still scoring between five and seven grade levels behind in reading and writing and Kranick pointed out that this was true in some assessment. However, assessments do not take into consideration anxiety.

When questioned as to K.M.'s test results in Pankowski's report, Ms. Kranick testified:

OG is based on the acquisition of learning, of learning how to read and that's why I think there's some differences in what the National Reading Panel is talking about, what the New Jersey Handbook, they're talking about young children that are learning how to read. They don't necessarily address the older child who already has -- who is already a reader. I'm telling you when I came to assess [K.M.] based on Allison's reports, I did not

expect the student that I saw in front of me. No way on earth I expected - I had very, very low level things to bring to her and I was shocked and amazed at what she was able to produce for me, so there's something that's getting in her way when she's testing.

It could be many, many things what a child has done in testing. Why did her listening comprehension go down after all of this instruction? Why did it go down a year? There's many things that you have to look at. There's no consistency through these tests. You know, phonemic isolation should go way up after - that's a huge part of what we're doing here. Why did it go down? She's not demonstrating- her tests are not always consistent, so there's something else that's interfering with her when she's in the testing situation.

T2 at 168:13 to 169:11.

On re-direct, Kranick explained how several portions of Pankowski's testing were timed and continued to emphasize the impact of timed conditions on K.M.'s performance:

Once you put a time to her, she actually gets into a panic and I've witnessed it on a one to one basis...We work well together and the minute Thiring in anything timed, she freezes. You know, as soon as we do the small paragraphs when I'm timing words per minute. As soon as she sees me take out my phone to do the thing and I try to hide it from her because... she goes into a panic. If she does it without being timed, she does much better.

Id. at 171:14to 173:12.

### **Carolyn Rosenfeld**

Carolyn Rosenfeld testified on behalf of the District. Rosenfeld has been employed by the District for 27 years as a Special Education teacher. She was K.M.'s in-class support teacher for the 2017-18 school year. Rosenfeld testified that K.M. was an above typical student who worked very hard, turned in her assignments, sometimes a little bit late because she needed extended time and that K.M. made Principal Scholar all four marking periods. She generally met her mastery level and she had all As and Bs.

Rosenfeld further testified as to the assistive technology that K.M. was provided and explained that K.M. often opted not to use the technology. She testified that with respect to K.M.'s progress, K.M.'s grades improved and she became more secure as a student, voluntarily asking and answering questions and taking on leadership roles in group work. Rosenfeld testified that she believed K.M. read at grade level, citing to K.M.'s excellent DRA test performance as support. (J-8). Rosenfeld elaborated on K.M.'s proficient PARC scores for the 2017-2018 school year and how the only accommodations provided to K.M. were extra time and "contrast"- the ability to make the screen black and the words white. Rosenfeld specifically described K.M.'s Language Arts score of 757 as above the School Average, District Average, the State average, and the Cross-State average. (J-10).

Rosenfeld participated in all of the IEP meetings from September 13, 2017 through October 11, 2018. (J-15). With respect to the OG services provided to K.M. daily, Rosenfeld testified that at the May 14, 2018 IEP meeting she recommended the services be discontinued at the end of the 2017-2018 school year because she believed she could read but that it took K.M. more time and nothing would speed up her processing. It simply takes K.M. more time to get through it and she reads at grade level and above. OG would not speed up K.M.'s processing. Rather, K.M. merely needed the extra time which was already being afforded to her through the September 13, 2017 IEP. (J-1). Rosenfeld admitted that she never spoke with K.M.'s OG Instructor, Messer, prior to recommending discontinuation of the services to the CST. She further testified that Messer was not present at the May 14, 2018 IEP meeting.

### **Alison Pankowski**

Pankowski was admitted as an expert in Learning Language Based Disabilities, and Structured Literacy Programs for Students with Language based Disabilities on behalf of the petitioners. Pankowski is a Certified Special Education Teacher, IDA-Certified Dyslexia Therapist<sup>2</sup>, Reading Intervention Specialist K-12, credentialed Wilson

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<sup>2</sup> The IDA Certification as a Dyslexia Specialist has now been changed to IDA-Certified Structured Literacy/Dyslexia Specialist.

Reading Teacher and Trainer, and the Education Director Learning Disabilities Teacher-Consultant (LDT/C) for Beyond Communication, which is a private practice that provides Diagnostic Educational and Speech/Language testing and services. Her education and training focused predominantly on students with language-based learning disabilities such as dyslexia, including evaluation of students with reading and writing disabilities, interpretation of evaluation results, development of educational -- programs (IEPs) for students, reviewing and assessing student progress, teaching and remediation. (P-5).

Pankowski described "structured literacy" as, "an explicit, direct multi-sensory approach to reading and spelling that is sequential and systematic starting with the most basic concepts of our language and building to master through diagnostic teaching, and added that it is, "structured, systematic, multi-sensory, [with] explicit diagnostic teaching to mastery." (Emphasis added). She testified that every structured literacy program has specific mastery criteria the student must achieve to move on to the next concept, and that data must be collected for purpose of tracking mastery and progress. The principles underlying structured literacy programs are rooted in OG methodology. Pankowski testified that Wilson reading and Alphabetic Phonics are two examples of a structured literacy program that is based on OG principles.

... individuals that struggle to learn to read and write, so it could be students with learning disabilities, it could be students that have been specifically diagnosed with dyslexia, it can also be appropriate for students who are just considered struggling readers and have not learned to read and spell based on the curriculum that was provided in the classroom. It could be appropriate for English language learners and adults who have not learned to read...:

T3:27/25-11. She testified that it is appropriate for all age groups.

Pankowski evaluated K.M. in 2017 and 2018 and had commenced one classroom observation in November of 2018 after the hearings had commenced. She did not notice K.M. experiencing any anxiety in her testing. Pankowski followed all test protocols when administering the standardized evaluations to K.M. (e.g. no extra time provided) so that she could compare the two sets of objectives, standardized testing to measure K.M.'s

progress. Pankowski testified that this was consistent with evaluations performed by District personnel, Pankowski performed her first Educational Evaluation of K.M. on May 20, 2017. (P-9).

Pankowski testified that in 2017, she performed the Comprehensive Tests of Phonological Processing or CTOPP-2 on KM which she explained is, "a gold standard test in determining dyslexia because it really looks at that phonological component of language since it tests Phonological Awareness, Phonological Memory and Rapid Naming." (Emphasis added). Pankowski also gave the Wechsler Individual Achievement Test (WIAT), what is an achievement battery of reading, writing, mathematics and oral language; the Test of Word Reading Efficiency (TOWRE), which is looking at a student's automaticity in recognition of both real and nonsense or non-words, pseudo words; the Grey Oral Reading Test (GORT), which is a test of reading connected passages that increase in difficulty and assesses the rate, the time and the accuracy combines to get a fluency score and then assesses the comprehension of those passages read; and an informal writing sample. Pankowski testified that these are the standard tests one would perform on a student who presents with reading and writing difficulties.

On the CTOPP, Pankowski found that K.M. has significant weaknesses in phonological memory and rapid naming, as well as gaps in phonological awareness. (P-9). She noted a deficit in one or more aspects of phonological processing is the primary cause of the majority of cases of individuals with learning disabilities and a key component in the definition of dyslexia. (P-9). Pankowski testified that K.M.'s very poor score in rapid naming i.e., the ability to match verbal labels to a visual symbol quickly, impacts her reading fluency, or how quickly she is able to retrieve the sounds to put together the words when reading.

According to Pankowski, K.M. performed poorly on the TOWRE testing as well. Per Pankowski, K.M. does not have an automatic bank of real words that she recognizes automatically and she is not automatic in her application of her understanding of phonics rules to read words quickly. Pankowski described the effects on K.M.'s reading ability in that she is not instantly recognizing words has to go through the process of decoding each word to read which is going to impact her

understanding because all of her cognitive resources are going to be toward reading the words on the page rather [than] understanding the meaning of the message. Thus, having to spend additional time rereading to really understand the meaning.

Pankowski also testified that K.M. had significant difficulty with oral reading fluency on the WIAT, where she was asked to read passages (connected text) out loud and the amount of time it took was recorded, but with no time limit. According to oral reading fluency norms, K.M.'s reading rate of 82 Words Correct Per Minute scored at less than the 10th percentile and is extremely low for someone who had just finished eighth grade. Pankowski believes K.M.'s WIAT Spelling score supported findings of weaknesses in phonology and orthography. (P-9).

Pankowski described fluency as the "bridge to comprehension":

"If you are a fluent reader and able to recognize the words automatically you have more cognitive resources to devote to understanding what you read and creating a mental model, a visualization, of what the message of the intended passage is. When you're a disfluent reader that hinders comprehension and that's the ultimate goal of reading, is to understand what you read and when you are focusing so much effort and cognitive resources in decoding the words laboriously you have nothing left to really understand what it is that you have read." (T3:86/9-20).

She testified that expecting a student to read material multiple times in order to gain meaning from it is non-functional, especially considering the voluminous amounts of reading one has in high school. Notably, in reading comprehension testing, K.M. performed better (30th percentile) when permitted on the WIAT to refer back to the text to find the answers, which Pankowski testified she did a lot. In contrast, on the GORT, where K.M. was not permitted to reread portions of the text before answering, K.M. scored at the 9th percentile. Pankowski opined that K.M.'s poor performance on the GORT, indicates difficulty in all of the areas, rate, accuracy, understanding what she read, and will impact K.M.'s, "ability to read, access text, understand it and be able to output her understanding.

As to the area of Writing on the WIAT, there was a significant difference in K.M.'s

sentence writing scores. When given sentences to combine, she formed complete and meaningful new sentences (50th percentile), but when given only a target word and asked to write a full sentence using the word, she scored poorly (4th percentile). (P-9): Her oral expression skills fell at the 12th percentile because K.M. often could not come up with the word needed for the response. Pankowski explained how K.M.'s word retrieval difficulties can impact her ability to express herself.

On the WIAT timed essay test, K.M.'s essay scored at the 30th percentile, at an early 6th grade equivalent; Pankowski described her sentences as, simple; and they are not typical of what someone going into high school would be writing. She used words that she can spell or that are on the page like, 'reasons' for her to copy. Her word choice is very limited. (P-9). Pankowski found that K.M. used fragments and was not able to complete the writing sample in the allotted time. (P-9). Pankowski also had K.M. do an informal writing sample without time limits; K.M. chose from a list of prompts, finished writing in 20 minutes; used simple sentence structure; and misspelled the word "goes". (P-9). From both the timed and untimed writing samples, Pankowski opined that K.M.'s writing skills were, significantly below what would be expected of a rising 9th grader; and more typical of what an elementary student would write. (P-9)

Based on educational testing results, Pankowski opined that K.M. has Dyslexia. (P-9). She testified that, in 2017, the Dyslexia was affecting K.M. in the areas of phonological memory, phonological awareness, automatic word recognition, oral reading fluency, spelling, comprehension and written language.

She concluded that K.M.'s inefficient orthographic mapping process (Kilpatrick, 2015), which is the process efficient readers use to turn unfamiliar written words into instantly accessible sight words, will significantly impact K.M.'s ability to meet the academic demands of both literature and expository text presented at the high school level. These areas, as well as, weaknesses in written language should be a focus of the remediation provided well beyond the provision of extended time. (P-9).

Pankowski recommended that the District find K.M. eligible for Special Education and Related Services as Specific Learning Disabled. She further recommended that K.M. receive a minimum of 45 minutes per day, five days per week, of a "research-based, structured, sequential, multisensory decoding and encoding program, i.e. a structured literacy program, such as Orton-Gillingham or the Wilson Reading Program. Pankowski recommended that the Instructor be certified in the chosen OG methodology, meaning the teacher needed to be certified in whatever OG based program was chosen for K.M. and this could have been the Wilson Reading program. She also recommended that K.M. receive reading fluency intervention; reading comprehension instruction that includes, but is not limited to, direct instruction in language structure and comprehensive vocabulary study; very explicit, systematic instruction in written expression skills using the Framing Yom- Thoughts or Judith Hochman's Teaching Basic Writing Skills programs to address K.M.'s writing deficits caused by the dyslexia; and assistive technology. (P-9).

Pankowski testified that she recommended five days per week, 45 minutes per session of the specialized reading instruction for K.M. because of her age, late identification as a dyslexic student, lack of prior interventions, and the significant time it would take to improve her skills and this is on the lower end of the spectrum of what K.M. should be receiving. She testified that there are no limits on the provision of structured literacy programs to students with dyslexia based on the student's age and the programs can be used all the way through adulthood.

Pankowski reevaluated K.M. in July 2018 to assess her progress since her last evaluation. (P-II). She repeated the CTOPP, TOWRE and GORT, and incorporated the WIAT reassessment results from the Academic Evaluation that was performed by District Learning Consultant, Brian Geisler. During the student interview, K.M. shared that the 2017-2018 school year had been great, she was listening to books on Bookshelf, and the specialized reading and writing services were very helpful.

Pankowski found that on the CTOPP, K.M.'s phonological memory had improved from poor to below average and her rapid naming score had increased from very poor to poor. (P-11). However, she testified that K.M.'s reading continues to be affected by below average phonological memory and poor rapid naming, which hinder her retention of

information and reading fluency respectively. On the TOWRE, Pankowski found that K.M.'s sight word efficiency had improved to the poor range in real words and to the below average range for phonemic decoding. On the GORT, K.M.'s accuracy improved from below average to the bottom end of the average range. (P-11). Although KM.'s accuracy improved on the GORT, her rate and fluency scores remained the same. (P-11). Pankowski opined that K.M. still did not possess the skills of an independent, fluent reader and, if she is not fluent, her comprehension can break. Rereading of a text multiple times is not appropriate. Pankowski opined that any progress K.M. had made in these areas was attributable to the structured literacy instruction K.M. had received in ninth grade, specifically the OG based Alphabetic Phonics program provided by her 2017-2018 OG instructor, Messer. However, she concluded that despite K.M.'s improvements, she continues to need a structured literacy, Orton-Gillingham-based program. (P-11).

Pankowski also compared her 2017 WIAT testing with that of Brain Geisler from 2018. (P-11). K.M. improved in oral expression, though it was not clear whether the improvement was in sentence repetition, oral word fluency or expressive vocabulary because Geisler did not specify this in his report. Although K.M. dropped from average to below average in the WIAT listening comprehension subtest, on the Woodcock-Johnson instrument administered by Geisler, K.M.'s listening comprehension score fell in the average range, leading Pankowksi to conclude the WIAT listening comprehension score appears to be an outlier. K.M. did not show improvement in her oral reading fluency scores on the two WIAT administrations; Pankowski opined that this means that K.M. is still a disfluent reader and requires specialized reading services to help her. In writing, K.M. showed some improvements as well. On the WIAT test of writing sentences, K.M. improved, but Pankowski could not tell from Geisler's testing in which area, sentence combining or sentence building. However, on the WIAT essay composition testing, K.M. was unable to complete her essay in the allotted time, evidenced by the last sentence of the essay which stops mid-sentence and scored at the 19 percentiles (5.0 grade equivalent). (J-17). According to Pankowski, K.M.'s essay continues to show very simple sentence structure and is not reflective of a high school student.

Pankowski concluded that K.M. had made modest progress and needs to continue in a structured literacy program for reading and writing. She recommended that K.M. receive daily structured literacy instruction, 60 minutes per day, in an OG based program, and that K.M. should continue the program she had started with since she was accustomed to the program, the terminology and the teacher, i.e. the Alphabetic Phonics program. (P-11). Pankowski testified that she reviewed Messer's Progress Reports from March and May 2018, and Messer's reports confirmed that K.M. required continued OG based reading instruction. Pankowski also recommended explicit systematic instruction in written expression using one of the two writing programs she had recommended previously because, in her expert opinion, K.M. continued to need direct specialized writing instruction.

In addition, Pankowski performed a classroom observation of K.M. in her 10th grade Honor English class on January 8, 2019 to see if structured literacy could be delivered to K.M. in that setting. (P-11A). Based on her observation Pankowski opined that the class did not run at the expected pace and content for an Honors tenth grade English class. (P-11). She concluded that a structured literacy program could not be delivered in this setting, because there was no discussion of syllable types, what affect the syllable type had on the sound of the vowel or the sounds of the words. There was no explicit instruction in how to break down those words, the teacher pronounced it and that was how they learned what the word was but added that one would not expect to spend time on these types of tasks in a tenth grade Honors English class. (P-11).

Pankowski identified several concerns in Kranick's report, which she had reviewed. In Pankowski's expert opinion, it is not appropriate to rely solely on K.M.'s grades in English when assessing K.M.'s progress because she is in an in-class resource setting, receiving modifications and has modified grading. (J-42). Pankowski testified that K.M.'s errors in reading and spelling as identified in Kranick's report are not typical for a 10<sup>th</sup> grade student and that all of the skills identified as K.M.'s weaknesses by Kranick are typically learned by students by no later than the sixth grade and for some, much earlier. (J-42). Pankowski opined that, based on her experience in dyslexia and teaching reading to students with dyslexia, it would not

have been possible to address all of K.M.'s weaknesses identified in Kranick's report within a seven-week period. because it can take two to three years for some students who are dyslexic and more dyslexic students even longer; four to five years. (J-42).

In Pankowski's expert opinion, the 2018-2019 IEP proposed in October 2018 by the District for K.M. is not appropriate because it does not include the structured literacy instruction for reading and writing. She opined that K.M. does not presently have enough phonetic skills to be able to read and write on grade level based on her modest progress overall and is not reading and writing on grade level. She added that K.M. needs the individualized and specialized structured literacy programs for reading and writing to receive a FAPE, at a rate of 60 minutes per day five days per week for reading, and 45 minutes per day twice per week for writing.

Pankowski testified that K.M. should continue to receive this instruction until K.M.'s test scores show adequate progress, based on objective, standardized testing of K.M., and based on assessment data collected by the reading teacher on K.M.'s progress and mastery of the skills and concepts, of which there currently is none. She reiterated that structured literacy programs are based on data and decisions to reduce or terminate these services are made based on data.

Finally, Pankowski warned that accommodations, modifications and assistive technology alone are not enough. Simply allotting K.M. more time to do her assignments and tests will not give her what she needs educationally to make appropriate progress because that does not teach K.M. the skills that she is still lacking.

Notably, when asked as to transitioning or lowering the amount of OG hours provided, Pankowski testified that it would depend on the progress of the student. If the student is making great progress then the five days a week is not necessary anymore. K.M. did not show leaps and bounds of progress, she showed modest progress and that progress would need to be shown through Pankowski's own testing, not OG testing. The OG testing would not be used as a progress indicator by Pankowski because she does not have OG training and is not an OG instructor.

She also testified that she has no experience in providing OG instruction to students-including high school students- and that she's never taught high school.

When asked what records she reviewed in preparing her 2017 recommendation, Ms. Pankowski testified that she did not review K.M.'s grades in eighth grade- which she knew were not modified- or speak to any of K.M.'s teachers to find out how she was progressing. As to K.M.'s honor roll grades in 9<sup>th</sup> grade, the 2017-2018 school year Pankowski did not take into consideration grades as a measure of progress. She did acknowledge that they were an excellent accomplishment and demonstrated modest progress. Pankowski also acknowledged that when K.M. was afforded the extra time, as per her IEP, she would do better on her testing and assignments. This is reflected on her PARCC test scores; where K.M. was afforded extra time. (J-10). It should be noted that while Pankowski was discussing K.M.'s testing, Pankowski testified that some of the tests had timed sections and that she did not allow K.M. any extra time even though that's one of her accommodations. Pankowski further elaborated that the tests allow for certain accommodations for students already classified, but that she did not allow such accommodations for K.M. because then she could not make a comparison to her 2017 results.

### **Donna Messer**

Donna Messer testified on behalf of the Petitioner. She is a Certified teacher of the Handicapped, Certified Academic Language Teacher (CALT), and IDA-Certified Dyslexia Therapist.<sup>3</sup> She has worked for the Elizabeth Board of Education since 1999. The District first hired Messer to provide an Orton-Gillingham reading program for students and she has years of experience teaching students to read using OG methodology both in District and privately. Messer received her training in multi-sensory teaching of basic language skills for students with dyslexia or learning disabilities at Columbia University Teacher's

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<sup>3</sup> Now known as an IDA-Certified Structured Literacy/Dyslexia Specialist.

College and was trained in Alphabetic Phonics, which is an OG based program and she uses this program with the children in the District, including K.M. (J-40).

According to Messer, the OG based Alphabetic Phonics reading program is very structured, sequential and cumulative, where each lesson is a foundation for what is coming next. Each lesson is based on what has been learned before. Messer testified that she is not a certified OG teacher, but the District has had Messer deliver the OG reading instruction to students since 1999. Messer testified that even if a person is not diagnosed with dyslexia until older, they can still benefit from OG instruction, and there is no age cutoff to provide OG to a student. For the OG based Alphabetic Phonics program provided to K.M., Messer testified that a child should be seen at least three times per week privately, and, if in school, four or five times per week. If a student is older, the student should be seen for one hour per session or longer. Messer testified that OG based services can improve a student's accuracy in reading and fluency and thus can improve comprehension. Students are assessed on basic skills in the areas of reading, writing, language and speaking to get a baseline, and then reassesses them after teaching for a period of time to make comparisons and monitor their progress.

The District assigned Messer to be K.M.'s OG Reading Teacher for the 9<sup>th</sup> grade, K.M.'s 2017-2018 school year, and began working with K.M. upon the implementation of the September 13, 2017 IEP. Messer had attended K.M.'s IEP meeting on November 7, 2017 having had worked with K.M. for approximately six weeks, and shared her concern, both verbally and by a letter, that K.M. needed more time for her OG instruction, specifically one hour per lesson, instead of 47 minutes, in order to cover the 11-12 parts of each lesson and have enough time to work on fluency. (P-16). Messer was granted an additional twenty minutes of lesson twice per week.

Messer did not attend any other IEP meetings regarding K.M. (J-15). She testified that she had become aware there were IEP meetings to which she had not been invited and the meetings took place without her. There was even a

meeting that she attended without invitation from the District and was asked to leave because they said they had her report and that was enough. Messer testified that it was not normal that she not be invited to attend IEP meetings of her students. Regarding Messer's March 27, 2018 Progress Report, she explained that she commented on K.M.'s progress in relation to her IEP reading goals and objectives. (J-12). Messer testified that she tried to keep careful data on her work with K.M. She made lesson plans and took notes on how K.M. performed, and each time K.M. completed a Schedule, a post-test was performed and compared to the pre-test results in the areas of alphabet knowledge, reading, writing and spelling. K.M. had to achieve a certain level of mastery of skills that had been taught in order to advance in the program.

According to Messer, by May 2018, K.M. had not learned the whole alphabet systematically with the phonological elements, and still had phonological work to do. K.M. could code and read one syllable words with 98% accuracy, but Messer explained that they had not worked on more than one-syllable words by that time. (J-12). Messer had worked for many months with K.M. on fluency using the poem, "Casey at the Bat," and while K.M. could read it fluently by the end of their work together, this did not mean K.M. could pick up any 9th grade reading material and read it fluently. Messer included this information in a Progress Report, dated May 10, 2019, per District request. (J12). The District did not invite Messer to K.M.'s May 14, 2018 IEP meeting and she did not attend. Messer testified that she also provided to the District, "Options to Consider for Reading Instruction for K.M." at or around the time of the May 2018 Progress Report. In it, she presented two options of reading programs for K.M. for 2018-2019 without saying which one she personally recommended; however, she did recommend that K.M. continue the OG instruction.

Messer testified that at the end of ninth grade, K.M. had completed Schedule 1 and was in the middle of Schedule 2. The following Schedules remained to be completed: 2A, 2B, 2C, 3A, 3B and 3C. Messer testified that K.M. still presented with some phonetic and phonics issues, accuracy issues

and fluency issues and could make meaningful progress in those areas with the right type of direct instruction. As far as Messer knew, she was the only one versed in OG who was working with K.M. when the District decided to terminate K.M.'s reading and writing services. According to Messer, it takes years to finish the OG Alphabetic Phonics program.

The District did not assign Messer to continue tutoring K.M. in the tenth grade (2018-2019). The District did not tell Messer who K.M.'s new tutor was, and Kranick, K.M.'s tenth grade reading tutor, never contacted Messer for information about K.M.'s progress of the OG Alphabetic Phonics program. Messer testified that she would have shared this information if asked.

When Messer was informed during testimony that Kranick testified she uses Orton-Gillingham "straight up" in her work with K.M., Messer responded that she has never heard this expression used as it relates to OG. (Emphasis added). When told that Kranick testified that she "references" the Sonday System and fills in different holes she identifies in K.M.'s reading, Messer responded: "... if you're doing, you know, just checking how somebody's doing and you identify holes you can fill them in but the – if you're not working systematically you don't know what other what other concepts and skills a child is missing." (Emphasis added). With respect to whether modifications and accommodations can replace the OG instruction, Messer testified that having K.M. reread everything several times, listen to audio-recordings, or get extra time does not develop the concepts and skills she need. She went on to explain that extra time does not address developing concepts and skills and that it would be like having a child repeat the year which was not successful the first time.

Messer was not K.M.'s OG instructor for the 2018-19 school year. The District felt her attendance was thus unnecessary for IEP meetings that took place during that school year. As for the Spring 2018 IEP meetings, the District already had Messer's progress report on March 27, 2018 and May 10, 2018, which were provided to the CST. Thus, according to the District, the reports of Messer were all that were needed to conduct the IEP meeting, not the actual OG instructor, Messer, who taught K.M. throughout the 2017-

2018 school year.

As to K.M.'s OG instruction for the 2018-19 school year with Kranick, Messer testified that she could not judge Kranick's work as she is not familiar with the Sonday System and the OG methods used by Kranick. Messer explained that her knowledge of the Sonday System is minimal. On cross-examination, Messer testified that when she worked with K.M., she never reviewed K.M.'s grades or spoke with any of K.M.'s teachers to see how she was doing. She testified that she only ever spoke to Rosenfeld, K.M.'s in class support teacher, who told her that K.M. was doing just fine. Messer further testified that she never asked Rosenfeld if her instruction was helpful to K.M. in the classroom or if K.M.'s reading level was ever tested.

### **Kristy Martinez-Kumar**

Kristy Martinez-Kumar testified on behalf of the Petitioners. Kumar has a master's degree in Education and Science and a Professional Diploma in School Psychology. Kumar is employed at the District as a school psychologist and case manager on the CST and has held such positions since 2008. Kumar testified that as a case manager, she typically manages students' IEPs, collaborates with teachers, meets with students, and holds IEP or eligibility meetings. Kumar testified that she served as K.M.'s case manager for the 2017-18 and 2018-19 school years. Kumar testified that as a case manager she generally organizes CST and IEP meetings for students. For CST and IEP meetings, Kumar invites the child's parents, any service providers, including reading and writing tutors if a student is receiving those services, and a general and special education teacher. She is responsible for ensuring that everyone who attends a meeting for a student signs the attendance sheet. Kumar confirmed that the attendance sheets at the meetings regarding K.M. that occurred on September 13, 2017, November 7, 2017, March 28, 2018, May 14, 2018 and October 11, 2018 include everyone who attended. (P-15).

According to Kumar, K.M.'s Writing Teacher, Berry, and K.M.'s OG Reading

Teacher, Messer, first attended a meeting for K.M. on November 7, 2017. Kumar testified that she knew that Petitioners wanted both Berry and Messer to attend K.M.'s next meeting on March 28, 2018. However Kumar could only recall inviting Berry; not Messer and only Berry attended.

According to Kumar, at the May 14, 2018 meeting the District informed Petitioners that it would terminate K.M.'s specialized reading and writing services at the end of her 9<sup>th</sup> grade year. Neither Messer nor Berry was present at the meeting. District staff who participated include: Kumar; Emily Buffa, K.M.'s 9<sup>th</sup> grade regular education English teacher; Rosenfeld, K.M.'s 9<sup>th</sup> grade in-class resource teacher; and Ali Malik, Special Education Supervisor.

Kumar stated that Messer's Progress Report was discussed at the May 2018, but she could not recall if Messer's document, "Options to Consider for Reading Instruction for K.M." was given to Petitioners at or around the time of the meeting, even though Kumar received both the Progress Report and the Options to Consider for Reading Instruction from Messer at the same time. Kumar stated that she asked Messer what her recommendation was regarding reading services for K.M. prior to the May 14, 2018 meeting and Messer informed her that she wanted the services continued, however, Kumar could not recall if she shared this recommendation with K.M.'s parents. Kumar testified that she thinks that other options to termination were discussed at the May 2018 meeting but confirmed that the District's main proposal was to terminate the services. According to Kumar, between the May 2018 meeting and the end of the school year, the District did not change its decision to terminate K.M.'s reading and writing services.

Kumar admitted that she invited Berry but not Messer to K.M.'s October 11, 2018 IEP meeting. She confirmed that Kranick, McAteer and Zimmerman, all of whom participated in K.M.'s October 2018 IEP meeting, did not know K.M. before the start of the 2018-2019 school year. Kumar wrote the draft IEP for K.M., dated October 11, 2018, and confirmed that it does not include any specialized reading and writing services for K.M. Kumar testified that the results of two new evaluations of K.M. one by Pankowski and one by Brian Geisler, were discussed at the October 2018 meeting,

but the District did not change its position regarding the termination of K.M.'s reading and writing services. Kumar admitted that although she was aware that K.M.'s parents wanted the reading and writing services to continue, she did not include this information in the parental concerns section of the draft IEP. She also confirmed that the draft IEP does not include any progress reports of Berry or Messer as to how K.M. was doing in her reading and writing at that time or as of the end of the prior school year. Kumar testified that the draft IEP does not state anywhere Messer's recommendation that K.M.'s OG Reading services continue.

Kumar developed the draft IEP for K.M. approximately 1.5 to 2 weeks prior to the October 11, 2018 meeting. Per Kumar, K.M. had been in Zimmerman's Honors English class for only two weeks when Zimmerman wrote her English/Language Arts summary for the IEP. According to Kumar, every one of the ELA classes at AHPAHS is in Honors classes and every student at AHPAHS is in Honors English. Therefore, there is no distinction between a general English class and an Honors English class. Kumar added that after working with K.M. for just two weeks, Zimmerman concluded she did not need any sort of specialized reading and writing services. Kumar stated that K.M.'s other tenth grade teachers had worked with K.M. for at most four weeks when they wrote their IEP summaries. Kumar confirmed that no new IEP was produced after the October 11, 2018 meeting to reflect any changes on the part of the District regarding the termination of K.M.'s reading and writing services, and that the District did not change its mind about terminating K.M.'s services after the October 2018 meeting. On cross-examination, Kumar testified that no new IEP put in place after the October meeting due to stay put.

Kumar testified that she has read K.M.'s school records dating back to seventh or eighth grade. She confirmed that prior to K.M.'s classification in September 2017, in accordance with her Section 504 plans, K.M. received accommodations for New Jersey state and district testing, class assignments, homework and test taking, including extra time, text to speech, visual clues and resubmission of assignments, homework and test taking, including extra time, text to speech, visual clues and resubmission of assignments. Kumar also confirmed that even with these accommodations and modifications, K.M. still had difficulties in reading and writing. Kumar stated that based on her conversation with K.M.'s teachers, K.M. was on par with her grade level peers.

However, after reviewing K.M.'s grades in evidence from her midterms, finals, benchmarks and SGOs during testimony, Kumar testified that she was not talking about K.M.'s scores when referencing her performance but rather her day-to-day functioning. (J14).

Notably, when asked of the October 2018 IEP meeting, Kumar testified that the IEP was to see if everyone could come to an agreement which is why the IEP she wrote was a draft and the proposal was to keep it as is. With respect to reducing the OG services, Kumar testified that K.M.'s parents were against it and refused any offer less than 5 days a week, 47 minutes per day of OG. She further explained that K.M.'s parents were not willing to discuss any modification to OG at all- "they wanted the services." (Emphasis added). Ultimately, Kumar testified that no additional IEP was implemented because of stay put and since the parents refused to consider anything less than 5 days a week, 47 minutes per day of OG.

## **DISCUSSION**

It is within an Administrative Law Judge's "province to determine the credibility, weight, and probative value of the expert testimony." State v. Frost, 242 N.J. Super. 601, 615 (App. Div.), certif. denied. 127 N.J. 321 (1990). The weight to be given to an expert's testimony depends upon "[sic] candor, intelligence, knowledge, and especially upon the facts and reasoning which are offered as foundation of [their] [sic] opinion." County of Ocean v. Landolfo, 132 N.J. Super. 523, 528 (App. Div. 1975). Further, "the weight to which an expert opinion is entitled can rise no higher than the facts and reasoning upon which that opinion is predicated." Johnson v. Salem Corp., 97 N.J. 78, 91 (1984).

A trier of fact may reject testimony as "inherently incredible," and may also reject testimony when "it is inconsistent with other testimony or with common experience" or it is "overborne" by the testimony of other witnesses. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958). Similarly, "[t]he interest, motive, bias or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his

testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

Petitioners argue that each and every witness presented by the District – including Kathleen Kranick, who was accepted by the Court as an expert – is biased and/or not credible because the District's witnesses are interested witnesses, prone to bias in favor of their employer, the District. Under Petitioners' theory, due process proceedings would bar any and all witnesses who work at school districts. Notably, Petitioners also ignore the fact that they called two District employees as witnesses and of course did not claim they had a bias. Petitioners cannot have their cake and eat it too. On the one hand claiming the District witnesses suffer from bias, but when District employees are their witnesses, there is no bias. Conversely, Petitioners' "expert" witness was paid for the sole purpose of providing a recommendation for the parents and for testifying in court.

I found all the witnesses to be credible. However, I feel it necessary to expand on the credibility of two witnesses in particular; Messer and Kranick. As to Messer, I found that despite still being an employee of the District, she testified on behalf of K.M. openly and honestly. It is very telling that the District did not call Messer to testify on its behalf. It was not until I requested Messer appear to testify that she was produced at hearing. I explained to counsel the importance of hearing testimony from K.M.'s OG instructor for the 2017-2018 school year and her recommendation as to the continuation of the OG instruction. As an OG teacher for the District for 20 years, and K.M.'s individualized, daily OG reading teacher for the entire school year, Messer's opinion was significant and essential. Messer not being presented at hearing on behalf of the District bolsters Messer's testimony that she was deliberately excluded from participating in K.M.'s IEP meetings, especially the IEP meeting which determined the OG instruction and language and writings services were no longer needed. Kranick, who was called to testify on behalf of the District and was K.M.'s OG instructor beginning the 2018 school year, was emphatic in her testimony that K.M. no longer required OG services. However, when I asked the very poignant question of whether K.M. required continued OG services for the 2018 school year, Berry replied that the continued services were needed but for a reduced

amount of time. Therefore, I afford greater weight to Messer's testimony. Further, I found the testimony of Kumar, a district employee who testified on behalf of the petitioners, to be brutally honest. Her testimony only bolstered Messer's testimony that she was purposely excluded from participating in any IEP meetings for K.M. post the November 7, 2017 meeting.

Based on the evidence produced and my observations of the demeanor and credibility of the testimony I **FIND** the following facts:

There was no evidence presented that the individualized and specialized OG reading instruction and the language and writing instruction do not go hand in hand. I **FIND** that the two services work in conjunction with one another and any recommendation for the continuation of the OG reading instruction would mean that the language and writing instruction would need to continue as well. I **FIND** that the individualized and specialized OG reading and language and writing services were to be terminated by the District at the end of the 2017-2018 school year and that these services were not included in the proposed IEP dated October 11, 2018. Both the District and the Petitioners' experts, Kranick and Pankowski, as well as K.M.'s 2017-2018 OG instructor, Messer, testified that K.M. required continued OG services for the 2018-2019 school year, thus, I **FIND** the services should have continued for the 2018-2019 school year. I **FIND** that K.M. had made meaningful progress during the 2017-2018 school year, particularly due to K.M. receiving not only the modifications, testing accommodations, in-class support and Assistive Technology, but in conjunction with the individualized and specialized OG reading instruction and language and writing services provided for in the September 13, 2017 IEP. I **FIND** that as of the end of the 2017-2018 school year when Messer stopped being K.M.'s OG instructor and as of April 4, 2019 when K.M.'s current OG instructor testified, K.M. had not yet completed all stages of each of the OG methodologies having been taught to K.M. by Messer and Kranick. I further **FIND** that Messer, K.M.'s 2017-2018 OG instructor was intentionally excluded by the District from participating in K.M.'s CST and IEP meetings as they pertained to the continuation of the individualized and specialized OG reading instruction and the language and writing services and I **FIND** Messer should have been deemed by the District a crucial element of the CST.

## LEGAL ARGUMENT

New Jersey as a recipient of Federal funds under the Individual with Disabilities Education Act (IDEA) 20 U.S.C. §1400 et seq. must have a policy that assures all children with disabilities the right to a free appropriate public education (FAPE)., 20 U.S.C. §1412. IDEA defines FAPE as special education and related services that are provided at public expense, under public supervision and direction, without charge; that meet the standards of the state educational agency that include an appropriate preschool, elementary school or secondary school education in the state involved; and that it is provided in conformity with an IEP 34 C.F.R. § 300.17; 20 U.S.C. § 1401(9); N.J.A.C. 6A:14-1.1 et seq.

In a due process hearing in which the question is whether the District has fulfilled its statutory responsibility to provide a FAPE, the District bears the burden of proving, by a preponderance of the evidence, that it has met its legal obligation. Lascari v. Bd. of Ed. of the Ramapo-Indian Hills Regional School District, 116 N.J. 30, 45 (1989). In providing a student with a FAPE, a school district must provide such related services and supports that are necessary to enable the disabled child to benefit from the education. Hendrick Hudson District Board of Education v. Rowley, 458 U.S. 176, 188-89, 102 S. Ct. 3034 (1982). In fulfilling its FAPE obligation, the District must develop an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. Endrew v. Douglas County School District RE-1, 137 S. Ct. 988 (2017).

The Supreme Court noted in Rowley that judges have no expertise in the area of special education, and as such they must rely upon the determinations of special education experts. Rowley, 458 U.S. at 208. Of course, judges have expertise in resolving disputed questions of fact according to the preponderance of the evidence presented. Id. at 206-207. The Court should review such testimony and other relevant evidence and determine, according to the preponderance of the evidence standard, the appropriate placement of the child in light of the statutory indication in favor of "mainstreaming" and after appropriate consideration of the conclusion of those involved in the child's

placement.

In order to provide a FAPE, a school district must develop and implement an IEP. N.J.A.C. 6A:14-3.7. An IEP is “a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” Sch. Comm. Of Burlington v. Dept. of Education of Mass., 471 U.S. 359, 368, 105 S.Ct. 1996, 2002, 85 L.Ed. 2d 385, 394 (1985). 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, 458 U.S. at 198. The Rowley Court recognized that measuring educational benefit is a fact-sensitive, highly individualized inquiry.

In assessing whether the District offered a FAPE, the focus is on the IEP, which the Supreme Court has referred to as the “modus operandi of the Act.” Burlington Sch. Committee v. Dep’t of Education, 471 U.S. 359, 368 (1985). Again, in Honig v Doe, 484 U.S. 305 (1988), the Supreme Court stated that “[t]he IEP is the primary vehicle for delivering the appropriate educational services to each disabled child” and further described the IEP as the “centerpiece of the statute’s education delivery system for disabled children.” 484 U.S. at 311.

It is undisputed that the District provided K.M. with an IEP on September 13, 2017. The IEP provided K.M. with in-class support for English, Math, History, and Science, modifications, inclusive of extra time, testing accommodations, Assistive Technology, individualized and specialized OG, reading instruction, language and writing services. It is further undisputed that K.M. made meaningful educational progress during the 2017-2018 academic year and received FAPE for the 2017-2018 academic year. In addition, the individualized and specialized OG instruction and writing services were to be terminated at the end of the 2017-2018 school year. Thus, the legal issue in this case is whether the District’s termination of K.M.’s individualized and specialized OG reading instruction and language and writing services at the end of the 2017-2018 school year and the exclusion of these services in the proposed October

2018 IEP for the 2018-2019 school year, would deprive K.M. of FAPE.

The Court's analysis must focus on whether the supports and services offered in the District's September 13, 2017 IEP needed to continue to enable K.M. to make progress appropriate in light of her circumstances. See Endrew v. Douglas County School District RE-1, 137 S. Ct. 988 (2017). Additionally, the Court must determine whether the IEP complied with the least restrictive environment requirement of the IDEA. To determine whether a school is complying with the LRE requirement, the court must ask "whether education in the regular classroom, with the use of supplementary aids and services, can be achieved satisfactorily." Oberti v. Board of Education of the Borough of Clementon School District, 995 F.2d 1204, 1215 (3d Cir. 1993).

The District argues that given K.M.'s cognitive abilities, academic skills and special education needs at the time of the May 10, 2018 IEP review meeting, the CST appropriately recommended discontinuation of the OG and writing services and that the CST also appropriately recommended goals tailored to address K.M.'s slow processing speed and fluency issues. At the October 11, 2018 annual review meeting, the CST developed an IEP that properly recommended in-class support for English, Math, History, and Science, modifications, testing accommodations, and Assistive Technology and in addition to the continued in-class support, the District offers one-on-one tutoring services available every day after school for all subject matters. However, the decision to discontinue the Individualized and specialized OG reading instruction and the language and writing services was done without the crucial members of K.M.'s CST; or members who should have been deemed by the District to be crucial. Excluded from the decision-making process was K.M.'s OG instructor for the 2017-2018 school year, Messer. She was intentionally not invited to attend the following IEP meetings: March 28, 2018, May 14, 2018 and October 11, 2018. Messer only participated in the November 7, 2017 IEP meeting. Multiple District employees testified confirming the above. The most telling of the testimony was that of Kumar, the CST manager for K.M. Kumar testified that only Messer's March 27, 2018 and May 10, 2018 report would be required for the May 14, 2018 IEP meeting. Kumar could not even recall if these Reports and the Options to Consider for Reading Instruction provided at the same time were

ever provided to the Petitioners or even considered at the meeting. She could not even recall if Messer's recommendation to continue the OG services was ever discussed with the petitioners. Kumar further admitted that she did not invite Messer to the October 11, 2018 meeting. This is further evidenced by the attendance sheets. (P-15). She confirmed that Kranick, McAteer and Zimmerman, all of whom participated in K.M.'s October 2018 IEP meeting, did not know K.M. before the start of the 2018-2019 school year and all of whom had recommended discontinuation of the services. Interestingly enough, K.M.'s writing instructor for the 2017-2018 year, Berry, was invited to the October 11, 2018 IEP meeting. This was convenient for the District because she was recommending that the individualized and specialized writing services be discontinued.

A combination of services without the OG instruction and language and writing services will not provide K.M. with a FAPE in the least restrictive environment. The District argues that the program without the OG instruction and writing services was designed to foster independence and assist in K.M.'s successful integration and transition into college. K.M.'s placement allows her to interact with her peers in the general education curriculum, consistent with the LRE requirements. What the District fails to point out is that all the District employees, who designed this program, know about K.M. and what they deem to be meaningful progress, is what they have observed of K.M. and the tests they have administered on K.M. while she was receiving all of the services, inclusive of the OG reading instruction and the language and writing services. K.M. has continuously been receiving these services since September of 2017 to the present. Any meaningful progress demonstrated by the evidence and testimony has been due to the combined efforts of all of the services. Removal of just one of the services may have hindered any progress K.M. achieved or will achieve. However, any meaningful progress to be had for the 2018-2019 school year will need to include the OG instruction and language and writing services. This is evidenced by its success from the 2017-2018 school year for which, it is undisputed that K.M. made meaningful educational progress. While testimony of some of K.M.'s, CST members, and current specialized and individualized reading and writing service providers do not support the proposition that K.M.'s disabilities are of such a nature as to warrant the excessive services recommended by Pankowski, the two most critical providers, K.M.'s OG

instructors Messer and Kranick, admitted that the services needed to continue for the 2018-2019 school year. Termination of the services, in their entirety, at the end of the 2017-2018 school year and these services not being included in the proposed October 112, 2018 IEP would have denied K.M. of FAPE in the least restrictive environment.

The District offered extensive testimony from Berry, Zimmerman, McAteer, Rosenfeld and Kranick, who all combined to testify that the October 2018 IEP was appropriate for K.M. The witnesses described from their personal knowledge, information about the program services and K.M.'s progress in the classroom. However, the District has failed to demonstrate by way of testimony or documentary evidence that any of the progress would have occurred without the OG instruction and the writing services. Both of K.M.'s OG instructors, past and current, testified that K.M. has not yet completed all of the necessary steps of their OG methodology teachings. Messer taught the Alphabetic Phonic Program. As of the end of the 2018 school year K.M. had not completed Schedule 1 of the program and K.M. was in the middle of Schedule 2. The following Schedules remained to be completed: 2A, 2B, 2C, 3A, 3B and 3C. According to Messer, it takes years to finish the OG Alphabetic Phonic Program. Kranick used the Sonday System method. She testified that there were four levels of the OG method and indicated K.M. was at the highest level. This was at the time Kranick issued her report which encompassed K.M.'s progress through the Fall semester of 2018. However, Kranick contradicted herself by admitting there were remaining voids that needed to be filled and that every concept of the method used had not been uncovered and taught. Thus the OG instruction would need to be continued. This is a clear indication that the services were terminated prematurely before the full benefit of the OG program/method could be accomplished. Messer testified that K.M.'s OG instruction need to continue for the 2018-2019 school year. Further, both experts presented in this case, Pankowski and Kranick testified that OG services need to continue. Pankowski opined that the services should continue at the days and hours provided for in the September 13, 2017 IEP and Kranick at reduced hours. As for Kumar, she testified that the main purpose of the October 11, 2018 IEP meeting was to come to an agreement with the Petitioners on the services, but that the parents would not even consider anything less than the services K.M. was currently receiving.

Therefore, the CST did not feel it necessary to even propose in the IEP to keep the OG instruction and language and writing services but at reduced hours.

Multiple witnesses, i.e. Berry, McAteer, Zimmerman and Rosenfeld all testified that K.M. does not take advantage of the Assistive Technology Support (computer programs), or the after-school tutoring. It could very well be that the OG instruction and the writing services which have been in effect since September 2017, are a “crutch” for K.M. (Emphasis added). She may be relying too heavily on these services instead of the tutoring and the technical support which has been made available to K.M. through the 2017 and 2018 IEPs. If the OG reading and language and writing services were removed and K.M. utilized the other services, K.M. may be capable of having meaningful progress. However, this is speculative at best and the District has provided no evidence to prove this to be the case. There has been no evidence presented to demonstrate that K.M. would have had meaningful progress regardless of the OG instruction and writing services.

K.M. did well in her academic performance during her 9<sup>th</sup> and 10<sup>th</sup> grade years. Her teachers noted K.M.’s extraordinary academic commitment and hard work. Her test grades throughout the year were good and she performed above state averages on the DRA and PARCC exams. Closed book tests, in-class assignments and state standardized exams are clearly objective and further establish that K.M.’s grades were legitimately earned. This is not disputed however, this is not the only consideration when determining a student’s academic progress. Standardized test results may be considered as to the issue of student academic progress and should be considered even if they are deemed as no more than snapshots. It is also undisputed that that standardized tests are not always considered.

There was a lot of emphasis placed on K.M.’s standardized testing and the tests privately performed by Pankowski, as well as the modified grading system utilized for K.M. While one could view K.M.’s modified grades and test scores as making meaningful progress, they were achieved in conjunction with the continuous OG reading instruction and language writing services at the time and duration set forth in the September 13,

2017 IEP. (J-1). The District argues that one of the reasons standardized testing does not demonstrate academic progress for special education students is that the testing is often administered without any accommodations. Students take the test under precisely the same conditions – that is what makes the tests objective but is also the reason why standardized tests are poor gauges of what a special education student (who often needs accommodations to master material) has actually learned. Therefore, the testing is designed to identify disabilities, while academic instruction with accommodations is designed to allow the student to achieve progress in spite of the disabilities.

Here, Pankowski admitted that, although the standardized tests allow certain accommodations for students who are already classified, she chose not to allow K.M. any extra time. Pankowski also acknowledged that her standardized testing was merely a “one day snapshot” into K.M.’s educational progress. Pankowski was also unable to state whether K.M.’s testing anxiety impacted her test results. Kranick, however, explained that she personally observed K.M.’s tendencies to panic during timed tasks

Finally, Pankowski and Messer testified that accommodations, extra time, modifications and assistive technology are not enough. Simply allowing K.M. more time to do her assignments and tests will not give her what she needs educationally to make appropriate progress because that does not teach K.M. the skills that she is still lacking.

## **CONCLUSION**

By way of Petitioner’s Due Process Complaints, I have been asked to answer the important question of whether K.M. was denied FAPE when the District terminated K.M.’s Orton-Gilligan reading instruction and the language and writing instruction at the end of the 2017-2018 school year and when services were not included in the proposed October 2018 IEP for the 2018-2019 school year. I **CONCLUDE** that K.M. was denied FAPE when the District terminated K.M.’s Orton-Gilligan reading instruction and the language and writing instruction at the end of the 2017-2018 school year and not being including for the 2018-2019 school year. However, it should be noted that since the September 13, 2017 IEP to the present, K.M. has been receiving individualized and

specialized Orton-Gillingham reading instruction for one full class period five days per week and individualized and specialized direct instruction in language structure and written expression for 45 minutes per day, two days per week after school. The Orton-Gilligan reading instruction and the language and writing instruction as defined in the September 13, 2017 IEP were not meant to continue indefinitely at the hours and days proposed and implemented. Accordingly, it is appropriate for the parties to conduct and IEP meeting in order to evaluate the services and hours necessary in order to provide K.M. with FAPE going forward.

**ORDER**

For the reasons set forth above and the District's failure to satisfy its burden of proof, I **CONCLUDE** that the District's decision to terminate services at the end of K.M.'s 2017-2018 school year and the decision to deny K.M. these services for the 2018-2019 school year was against the manifest weight of the evidence and deprived K.M. of FAPE, thus it is **ORDERED** that Petitioner's petitions be **AFFIRMED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2019) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516 (2019). 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.

December 19, 2019



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DATE

**ELISSA MIZZONE TESTA, ALJ**

Date Received at Agency

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December 19, 2019

Date Mailed to Parties:

sej

## APPENDIX

### WITNESSES

#### For Petitioners

Donna Messer  
Kristy Maartinez-Kumar  
Alison Pankowski

#### For Respondent

Kathleen Kranick  
Carolyn Rosenfeld  
Mary Beth Berry  
Nancy Zimmerman  
Michelle McAteer

<u>EXHIBITS</u>	<u>I.D.</u>	<u>EVID.</u>
<u>Joint</u>		
J-1 October: Draft IEP (J-1 9/13/17 IEP)	x	x
J-2 Final Draft IEP: signed (9/13/17 IEP)	x	x
J-3 October 2018: IEP	x	x
J-4 5/14/18: Progress Report	x	x
J-5 Assistive Tech. Eval. 9/13, 19, 26, of 2017	x	x
J-6 Reading Eval. 9/29/17	x	x
J-7 Academic Eval. Report 7/23/18	x	x
J-8 DRA Scores 4/13/18	x	x
J-9 Student Assignment Report/ Physics9 Honors 2017-18	x	x
J-10 PARCC: Parent Guide to the Score Report	x	x
J-11 Alexander Hamilton Preparatory Academy (AHPA): Demographics, Grades, Test Scores, & Report Cards	x	x
J-12 Donna Messer Progress reports March-May2018	x	x
J-13 Progress Report Card for Quarter 3 (2017-2018 SY)	x	x
J-14 PowerSchool Student Access Benchmark & Classroom		

	Tests (2018-2019 SY)	x	x
J-15	PowerSchool Student Access Benchmark Tests (2018-2019 SY)	x	x
J-16	Grade Modification Equivalent Special Educ. Dept.	x	x
J-17	2018-2019: Assignments and Comments	x	x
J-18	K.M. AHPA, 10 <sup>th</sup> Grade Student Profile	x	x
J-19	Sept. & Oct. 2018:English/Reading Homework Assignments	x	x
J-20	Oct. 2018: Tutorial Request From A: Math Assignments	x	x
J-21	K.M. Work Samples 1	x	x
J-22	K.M. Work Samples 2	x	x
J-23	Nov. 2018: Chapter 4 Quiz & Homework	x	x
J-24	Policy: Accountability File Code: 6000.2	x	x
J-25	Policy: Graduation Requirements File Code: 6146	x	x
J-26	Policy: Theory of Action: Managed Instruction File Code: 6000a/6010a	x	x
J-27	Regulation: Promotion/Retention File Code: 6146.2	x	x
J-28	Policy: Special Education File Code: 6171.2	x	x
J-29	Exh.: High School Graduation Assessment Requests File Code: 6146(x)	x	x
J-30	Policy: Instructional Arrangements File Code: 6150	x	x
J-31	Regulation: Examinations/Grading/Rating/ Testing File Code 6147.1	x	x
J-32	Michelle McAteer Job Responsibilities	x	x
J-33	Michelle McAteer: Resume	x	x
J-34	Mary Beth Perry: Resume	x	x
J-35	Kristy Martinez-Kumar: Resume	x	x
J-36	Nancy Jean Zimmerman: Resume	x	x
J-37	2018-2019 Log Entries	x	x
J-38	Carolyn B. Rosenfeld Letter	x	x
J-39	Carolyn B. Rosenfeld Resume	x	x
J-40	Donna Messer: Resume	x	x
J-41	Kathleen Kranick CV and Certifications	x	x

J-42	2018-2019 Kathleen Kranick Report	x	x
J-43	My Access Portfolio: Romeo and Juliet Analysis, 1/18	x	x
J-44	Allowance Assignment Draft, dated 3/6/18	x	x
J-45	Benchmark MP3 on Robespierre, dated 3/28/18	x	x
J-46	Franklin Delano Roosevelt's Essay Draft & Final, 3/18	x	x

For Petitioner

P-5	CV of Alison D. Pankowski, MED, LDTC, CDT	x	x
P-8	Education Eval. by Frank Falcone, LDTC, 09/27/16	x	x
P-9	Education Eval. by Pankowski, dated 5/20/17	x	x
P-10	Speech & Language Eval. by Marissa Brunner, MS, CCC-SLP, dated 6/19/17	x	x
P-11	Educational Re-eval. by Pankowski dated 7/17/18	x	x
P-11A	Pankowski's Observation of K.M. 1/8/19		
P-13	Invitation to Access Progress & Review or Revise IEP, Dated 5/4/18	x	x
P-15	Meeting Attendance Sign in Sheets for IEP meetings Held on 9/13/17, 11/7/17, 3/28/18, 4/14/18, & 10/11/18	x	x
P-16	Letter from Messer, and K.M., to the District dated 11/3/17	x	x
P-18	K.M.'s Section 504 Plan, dated 12/15/16	x	x
P-37	Update on Dyslexia Legislation dated 4/15/14	x	
P-38	NJ Dyslexia Handbook	x	
P-39	IDA Dyslexia Handbook	x	
P-40	National Reading Panel Report	x	x

For Respondent

None