



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

**FINAL DECISION**

OAL DKT. NO. EDS 17343-18

AGENCY DKT. NO. 2019-29096

**C.H. ON BEHALF OF S.H.,**

Petitioners,

v.

**ALLOWAY TOWNSHIP**

**BOARD OF EDUCATION,**

Respondent.

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**C.H. on behalf of S.H.**, petitioners, pro se

**William C. Morlock**, Esq., for respondent (Parker McCay, P.A., attorneys)

Record closed: March 18, 2020

Decided: June 18, 2020

BEFORE **JOHN S. KENNEDY**, ALJ:

**STATEMENT OF THE CASE**

On December 5, 2018, petitioners, filed for due process seeking implementation of a 504 Plan and compensatory services.

## **PROCEDURAL HISTORY**

The matter was transmitted to the Office of Administrative Law (OAL), where it was filed on December 5, 2018, as a contested case. N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. The respondent, Alloway Township Board of Education (District), filed a Motion for Summary Decision asserting that petitioner's claims are moot. Petitioners filed an opposition to the motion on May 29, 2019. On June 7, 2019, the District filed a reply brief in support of their motion. On June 24, 2019, petitioners submitted correspondence advising that they would be out of the country until July 31, 2019, and unable to receive communications. Based on this correspondence, this tribunal stayed consideration of the motion until after July 31, 2019. The Motion for Summary Decision was denied on August 16, 2019, and the matter was scheduled for hearing. Hearings were conducted in this matter on October 22, 2019, and November 14, 2019. The record remained open to allow additional testimony if necessary, until March 18, 2020. Pursuant to Executive Order 127 signed by Governor Murphy on April 14, 2020, any decision that was due anytime from March 9, 2020, (when the Governor declared a State of Emergency) until thirty days after the emergency ends, was given an automatic ninety-day extension because of the Covid-19 pandemic.

## **FACTUAL BACKGROUND**

The following facts are undisputed unless stated otherwise. During the 2018/2019 school year, S.H. was an eight-grade student of the District who was receiving accommodations under a 504 Plan. The District is a K-8 district and S.H. is no longer attending school in the District. Petitioners demanded that S.H. be placed in the District's Basic Skill Instruction (BSI) program which is designed to close achievement gaps. Students must qualify each year for BSI. In 2017/2018 S.H. received Title 1 services. The District asserts that S.H. did not qualify for BSI based on the criteria set by the District for the 2018/2019 school year. Petitioners also seek that S.H.'s medical diagnosis be removed from his 504 Plan. The District asserts that the decision to place his diagnosis in the 504 Plan lies with the District.

**Testimony:**

**Melissa Strawderman**

Ms. Strawderman is a Language Arts Teacher and Title 1 Instructor. She was called by the District to explain the administration and implementation of the Title 1 program and was a part of the team that reviewed the data to make Title 1 determinations. She was admitted as an expert in Title 1.

When Ms. Strawderman started with the District more than six-years-ago, the Districts Title 1 determinations were made by teacher opinions, not benchmark scoring from standardized testing. The District now uses objective benchmark testing to decide which student receives Title 1. For purposes of this decision, the terms BSI, students in need of in-class support, and Title 1 are synonymous. When students start the school year in September, no one receives BSI. That time is used for evaluation. S.H. did not take the Partnership for Assessment of Readiness for College and Careers (PARCC) testing and his Fountas and Pinnell (F&P) score was below the benchmark from the prior school year. (J-8.). He scored above the benchmark on the MAP test in June of the prior year.

In the 2017/2018 school year, a student receiving BSI for language arts would have received either push-in or pull-out resources. S.H. only ever received push-in services based on his scoring. S.H. was offered and provided push-in services in language arts in 2017/2018. Math was not discussed before this tribunal.

In the fall of 2018, the District utilized all three tests (PARCC, F&P and MAP) to determine which student qualified for Title 1. If a student did not take the PARCC, they utilized the prior spring's MAP score. Both MAP and PARCC are computer based standardized tests while the F&P is a comprehension test taken 1:1 with an instructor. Only students with all three scores below the designated cut off received BSI services. (J-12.) . Since S.H. did not take the PARCC, the District utilized his scores from the F&P, the spring MAP and the fall MAP which were the three most recent tests. Because S.H.'s spring MAP score was above the cut off, he did not receive BSI.

Title 1 is a federally funded program with limited resources. If the District only utilized two benchmarks to determine what student qualifies, there would be many more students that qualify which would burden the program funds. The goal of Title 1 is to serve approximately fifteen percent of the students in the District.

**Kristen Schell**

Ms. Schell has been the Superintendent and Child Study Team Director for the District since 2017. Prior to 2017, Schell was Assistant Principal at the Clearview school district and was in charge of Title 1 implementation at that District. Prior to 2014, Schell provided Title 1 instruction in the Penns Grove district. In her current position, she is directly responsible for overseeing Title 1 compliance. Ms. Schell was admitted as an expert in the identification and evaluation of students in need of Title 1 programming.

Schell was present for the testimony of Ms. Strawderman and agreed with her testimony relating to how the District handles Title 1 evaluations and how they evaluated S.H. When Schell came to the District, she incorporated the Title 1 evaluation model that Clearview utilized. Prior to that, the District relied on teacher opinions for BSI eligibility which resulted in too many students receiving services. Schell indicated that the District provided S.H. with an appropriate 504 Plan, as well as a Free Appropriate Public Education (FAPE) in the least restrictive environment.

S.H. received mostly B's and C's in grade six, seventh and eighth. (J-28.). His attendance in 2018/2019 included thirty-one tardies and nineteen and a half absences. (J-29.) Schell indicated that missing that amount of school impeded instruction. She also indicated that if the District utilized only two benchmarks to qualify students for Title 1, an additional eight students, including S.H. would have been eligible in the eighth grade for the 2018/2019 school year. C.H. took issue to the fact that there was no 504 Plan meeting in the fall of 2018, but Schell explained that the District had requested updated medical records and there was an ongoing discussion between Schell and C.H.

(J-27.) Schell stated that she communicated with C.H. more than any other parent in the District.

**Claire Gechter**

Ms. Gechter is a Middle School Language Arts Teacher with the District. She taught S.H. for two years. Alloway is a small district with approximately twenty children in S.H.'s eight grade language arts class. The class also contained two in class support aides that helped S.H. on a daily basis. S.H. was an average student who was very respectful and capable of doing a little more than he did from an education perspective. Gechter reviewed S.H.'s MAP score that was well below grade level, however, she indicated that he was able to do reading and comprehension questions and quizzes in class on normal grade level. She never had concerns that S.H. was regressing to a lower grade level. In the eighth grade he was able to read "To Kill a Mockingbird" and "Outsiders". If she saw regression, she would have notified the child study team. She has done that in the past but did not feel the need to do so for S.H. because he was not regressing.

**C.H.**

C.H. is S.H.'s mother and testified on his behalf. It should be noted that certain evidence and witnesses were excluded consistent with N.J.A.C. 1:6A-10.1. C.H. stated that other parents would have testified on her behalf, but they were afraid to in fear that the District would retaliate against their children. S.H. had been receiving BSI since the second grade. He struggled with homework which lead to behavior issues. Over the last two years in the District, C.H. contends that assistance for S.H. declined and then ceased. She testified that she received a letter in late August indicating that S.H. would receive BSI for the 2018/2019 school year. It was not until she received an email on September 26, 2018, that she discovered that S.H. was not getting BSI. No one would tell her how BSI was determined. S.H. is in another school district now and does not receive BSI. C.H. feels that the District deliberately changed the Title 1 evaluation criteria to exclude S.H.

## FINDINGS OF FACT

In order to assess credibility, the witness' interest in the outcome, motive or bias should be considered. Furthermore, a trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

Having considered the testimonial and documentary evidence offered by the parties, the testimony of the petitioner appeared on its face to be incredible or inherently unbelievable. All three witnesses for the District presented similar testimony regarding S.H.'s progress and the criteria utilized to determine eligibility in Title 1. It was clear that the District changed the criteria when Ms. Schell came to the District. This change was District wide and there has been no evidence presented to support petitioner's position that the criteria was changed to specifically exclude S.H. from Title 1 services. While it is clear there exists animosity between Ms. Schell and C.H., this animosity is displayed equally if not more so on the part of C.H. I deem the testimony of all witnesses from the District to be credible. Particularly the testimony of Ms. Gechter and Ms. Strawderman who clearly had only the best interest of S.H. in mind. This is not to say that Ms. Schell was not a credible witness as I deem that she was. However, based on the history between her and C.H., I give more weight to the testimony of Ms. Gechter and Ms. Strawderman.

Having considered the testimonial and documentary evidence presented I **FIND** the following additional **FACTS**:

Title 1 is a federally funded program with limited resources. If the District only utilized two benchmarks to determine what student qualifies, there would be many more students that qualify which would burden the program funds. The goal of Title 1 is to serve approximately fifteen percent of the students in the District.

In the fall of 2018, the District utilized three tests (PARCC, F&P and MAP) to determine which student qualified for Title 1. If a student did not take the PARCC, they utilized the prior spring's MAP score. Both MAP and PARCC are computer based standardized tests while the F&P is a comprehension test taken 1:1 with an instructor. Only students with all three scores below the designated cut off received BSI services. (J-12.) Since S.H. did not take the PARCC, the District utilized his scores from the F&P, the spring MAP and the fall MAP which were the three most recent tests. Because S.H.'s spring MAP score was above the cut off, he did not receive BSI.

If the District utilized only two benchmarks to qualify students for Title 1, an additional eight students, including S.H. would have been eligible in the eighth grade for the 2018/2019 school year.

Alloway is a small district with approximately twenty children in S.H.'s eight grade language arts class. The class also contained two in class support aides that helped S.H. on a daily basis. S.H. was an average student who was very respectful and capable of doing a little more than he did from an education perspective. Gechter never had concerns that S.H. was regressing to a lower grade level. If she saw regression, she would have notified the child study team.

### **LEGAL ANALYSIS AND CONCLUSIONS OF LAW**

The Individuals with Disabilities Act (IDEA) was enacted to assist states in educating disabled children. It requires states receiving federal funding under the Act, such as New Jersey, to have a policy in place that ensures that local school districts provide disabled students with FAPE designed to meet their unique needs. See 20 U.S.C. § 1412; N.J. Const. art. VIII, IV, 1; N.J.S.A. 18A:46-8; N.J.A.C. 6A:14-1.1 et seq., Hendrick Hudson Cent. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982). State regulations track this requirement that a local school district must provide FAPE as that standard is set under the IDEA. N.J.A.C. 6A:14-1.1. A FAPE and related services must be provided to all students with disabilities from age three through twenty-one. N.J.A.C. 6A:14-1.1(d). A FAPE means special education and related services that: a) have been provided at public expense, under public

supervision and direction, and without charge; b) meet the standards of the State educational agency; c) include an appropriate preschool, elementary, or secondary school education in the State involved; and d) are provided in conformity with the individualized education program (IEP) required under sec. 614(d). 20 U.S.C. § 1401(9).

School districts are responsible to provide students with services in order to access their education in accordance with Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. 794. In order to be liable under section 504 a school district must have deprived a student “of meaningful access to a benefit which he is entitled.” C.G. v. Penn. Dep’t of Educ., 734 F.3d 229, 235 (3d Cir. 2013). (Failure to establish claims under section 504 and ADA in a class action when plaintiffs could not demonstrate that “the funding formula deprived the class members a program, benefit, or services that was provided to disabled students in non-class districts.”). Additionally, a district that receives federal funds violates section 504 if it denies a qualified individual with a disability a reasonable accommodation that the individual needs in order to enjoy meaningful access to the benefits of public service. Alexander v. Choate, 469 U.S. 287 (1985). “Meaningful access” means “evenhanded treatment and the opportunity for handicapped individuals to participate in and benefit from programs receiving federal assistance.” Id.

S.H. was provided a 504 Plan each year while he was in the District. The testimony of both Ms. Schell and Ms. Getcher makes it clear that S.H.’s 504 Plan was appropriate, and he was receiving a FAPE. Getcher indicated that S.H. was receiving additional help from the two aides in her classroom and she signed off on the 504 Plan at issue. Petitioner provided no evidence that S.H.’s 504 Plan did not provide him meaningful assess of FAPE.

Under Title 1, a “ targeted assistance program is where the school must identify students who are failing, or most at risk of failing, to meet the state’s standards, and then create an instructional program to address the needs of those students. 20 U.S.C. 6315. Cheyenne River Sioux Tribe v. Kempthorne, 496 F. Supp. 2d 1059, 1063 (D.S.D. 2007). Pursuant to the above statute, local education agencies are responsible to



determine which students will be served. “Eligible children are children identified by the school on the basis of multiple, educationally related, objective criteria established by the local educational agency and supplemented by the school.” 20 U.S.C. 6315(c)(1)(B).

There is no cause of action contemplated by 20 U.S.C. 6315 for a student not receiving Title 1 services, though the parent is free to argue that their child did not receive FAPE.

**The Burden of Proof Rests with the School District:**

As a recipient of federal funds under the IDEA, 20 U.S.C. § 1400 et seq., the State of New Jersey has a policy that assures all children with disabilities the right to a FAPE. 20 U.S.C. § 1412. The responsibility to provide FAPE, including special education and related services, rests with the local public-school district. 20 U.S.C. § 1401(9); N.J.A.C. 6A:14-1.1 et seq.; N.J.A.C. 6A:14-1.1(d). In accordance with N.J.S.A. 18A:46-1.1, the burden of proving that FAPE has been offered likewise rests with the school personnel. On January 14, 2008, New Jersey adopted legislation that placed the burden of proof and the burden of production in special education matters with the respective school district, regardless of which party seeks relief. N.J.S.A. 18A:46-1.1. This statute has not been revoked, modified, or found to be preempted by federal law. Accordingly, I **CONCLUDE** that the District has the burden of proof regarding the petition at issue.

Based on the foregoing facts and the applicable law, I **CONCLUDE** that the District implemented and provided 504 Plan accommodations and administered Title 1 services consistent with 20 U.S.C. 6315. I further **CONCLUDE** that the District met their burden of proof regarding the petition. I further **CONCLUDE** that petitioner has failed to provide any evidence to support her argument that the District modified its Title 1 qualifications in order to specifically exclude S.H.

**ORDER**

It is **ORDERED** that the relief requested by petitioner as set forth above, is **DENIED** and the petition is **DISMISSED**.

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 Policy and Dispute Resolution.

June 18, 2020  
\_\_\_\_\_  
DATE



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**JOHN S. KENNEDY, ALJ**

Date Received at Agency

\_\_\_\_\_

Date Mailed to Parties:

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JSK/dm

**APPENDIX**

**WITNESSES**

**For petitioner:**

C.H., mother of S.H.

**For respondent:**

Melissa Strawderman – Language Arts Teacher and Title 1 Instructor

Kristen Schell – Superintendent and Child Study Team Director

Claire Gechter – Language Arts teacher

**EXHIBITS**

**Joint Exhibits:**

- J-1 Petition
- J-2 Answer
- J-3 Order Denying Summary Decision
- J-4 Not Admitted
- J-5 Not Admitted
- J-6 Not Admitted
- J-7 Title 1 Information: Portions from Website
- J-8 Title 1 Eligibility Sheet, dated September 20, 2017
- J-9 Recommended for BSI Letter 2017/2018
- J-10 BSI S.H. Intervention log for 2017
- J-11 MAP Scoring Guidelines
- J-12 Mid-Year Title 1 Indicators 2018/2019
- J-13 Title 1 Eligibility sheet 9/2018
- J-14 F&P testing paperwork 1/2019

- J-15 S.H. MAP Progress Report, March 13, 2019
- J-16 Title 1 Eligibility sheet 1/2019
- J-17 2013 evaluations
- J-18 Evaluation Request Planning Meeting emails for Fall, 2017
- J-19 Assessment email 11/17
- J-20 Initial Planning meeting and email, Fall 2017
- J-21 Collaborative Evaluation 12/17
- J-22 Eligibility Evaluation Conference, January 9, 2018
- J-23 Various Doctors notes
- J-24 504 plans 2013 to 2019
- J-25 Schell Notes regarding 504
- J-26 Audio transcript, January 3, 2019
- J-27 Emails
- J-28 Grades
- J-29 Attendance Summary for S.H. 2018/2019

**For respondent:**

- R-1 Resume of Melissa Strawderman
- R-2 Resume of Kristen Schell
- R-3 Not Admitted
- R-4 Not Admitted
- R-5 Not Admitted
- R-6 Not Admitted
- R-7 Resume of Claire Gechter
- R-8 Not Admitted
- R-9 Not Admitted
- R-10 Not Admitted
- R-11 List of Certificates held by Kristen Schell