



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 03910-20

AGENCY DKT. NO. 2020-31277

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

Petitioner,

v.

**PARSIPPANY-TROY HILLS TOWNSHIP
BOARD OF EDUCATION,**

Respondent.

D.K., Petitioner, pro se

Katherine A. Gilfillan, Esq., for Respondent (Schenck, Price, Smith & King,
LLP, attorneys)

Record Closed: October 22, 2020

Decided: November 6, 2020

BEFORE **THOMAS R. BETANCOURT, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner filed a due process petition dated February 18, 2020, with the Office of Special Education Policy and Dispute Resolution in the Department of Education.

The matter was transferred to the Office of Administrative Law (OAL) as a contested matter on March 20, 2020.

Pursuant to N.J.A.C. 1:1-13.1 et seq., a telephone prehearing conference was held in the above-entitled matters on May 18, 2020. A prehearing order was entered by the undersigned on the same date.

Before the commencement of the hearing, prior counsel, Joan Thomas, Esq., (Susan, Greenwald & Wesler) filed a Substitution of Attorney, dated July 6, 2020, wherein Ms. Thomas withdrew as counsel and Petitioner, D.K., substituted in as pro se. Respondent, through counsel, objected to the substitution of counsel and a brief hearing on the same was held prior to the commencement of the hearing on July 13, 2020. The undersigned permitted the substitution and so stated on the record.

The hearing was held on July 13, 28 and 29 and August 21, 2020. The parties were afforded the opportunity to submit closing briefs after the receipt of the hearing transcripts. The record closed on October 5, 2020.

Respondent, by letter dated October 6, 2020, objected to the post hearing submission by Petitioner as Petitioner's submission included evidence not introduced at trial, as well as evidence and an audio recording that mentioned by full name other students. Petitioner submitted a response thereto on October 7, 2020. Respondent submitted a reply thereto. Petitioner then submitted a reply.

The objection shall be treated as a motion to exclude the post hearing submission of Petitioner. That motion to exclude was granted by Order dated October 13, 2020.

Thereafter, on October 14, 2020, Petitioner submitted a letter objecting to the Order of October 13, 2020, and moved to re-open the record to submit the evidence excluded by said Order. Respondent submitted their response thereto on October 20, 2020. The motion to reopen the record was denied by Order dated October 22, 2020.

As the matter has been extended by two post hearing motions, the record close date shall be the date of the last Order: October 22, 2020.

SUMMARY OF RELEVANT TESTIMONY

Respondent's Case

Jillian Riedel testified as an expert in eligibility determinations, special educational planning and programming under the IDEA, without objection, as follows:

She is employed as a school Social Worker and Case Manager for the District and has been for eight years. She is familiar with D.K., having attended his fifth grade IEP meeting. She became his case manager in 6th grade. She was asked to attend the 5th grade IEP meeting by D.K.'s then case manager who thought Ms. Riedel should be aware of D.K.

Ms. Riedel has been involved with the development of D.K.'s IEPs for the last three years. She wrote those IEPs.

The CST recommended D.K. be placed in resource room for all core academic subjects for sixth grade. This was at the IEP meeting February 2017 IEP meeting. That IEP was amended by Petitioners and the then director of special education to place D.K. in all ICS classes for sixth grade. D.K. attended no resource room classes in sixth grade.

During the past three years as D.K.'s case manager the CST has recommended D.K. be place in resource room. Each year Petitioner's have objected to the same.

The IEP team, in 2019, recommended that D.K. be place in resource room for English and Language Arts (ELA) for the balance of seventh grade. For eighth grade it was recommended that D.K. be place in resource room for ELA, science and social studies. Petitioners filed a due process petitioner challenging that IEP. Petitioners sought a decision that D.K. be placed in ICS for science and social studies. That due

process petitioner resulted in a Final Decision by the Honorable Julio Morejon, ALJ, that the 2019 IEP was appropriate.

Ms. Riedel testified as to her extensive familiarity with D.K. and his progress. She had reviewed all relevant information prior to the January 30, 2020 IEP meeting. At that meeting it was proposed that D.K. be placed in resource room for ELA, science and social studies. It was also proposed that D.K. be placed in ICS for math as this is a relative strength of his, though still difficult.

Ms. Riedel reviewed D.K.'s progress reports for sixth, seventh and eighth grade. She opined as an expert that D.K.'s progress reports do not reflect meaningful educational progress.

Ms. Riedel further opined that the report cards do not accurately reflect D.K.'s progress. This is due to the ICS classes being modified.

Ms. Riedel testified, in her expert opinion, that resource room placement for science and social studies are appropriate for D.K.

Dr. Tarah Santaniello testified as an expert in psychological assessments, learning disabilities, special education programming and social emotional learning without objection, as follows:

She is the Coordinating Supervisor of Special Education for grades six through twelve.

Dr. Santaniello was a silent observer at the January 2020 IEP meeting, but did not participate in the decision. Prior to her testimony she reviewed D.K.'s records.

In her expert opinion, placing D.K. in resource room for science and social studies is appropriate given his profile. He would struggle in ICS. He does better in small groups.

She reviewed D.K.'s classification in the prior IEP of Communication Impaired and went on to describe the same.

Dr. Santaniello reviewed the December 2019 Educational Evaluation for D.K. and noted he has a weakness in reading and a strength in math. His reading compares with his full scale IQ results. She noted that education scores can change, unlike IQ scores. Education scores can improve given proper intervention. She opined that D.K. had not made meaningful educational progress.

The current placement of D.K. in the latest IEP in resource room for science and social studies is based upon his current needs. D.K. cannot access a general education without significant supports. She thought it not right and unethical to expect D.K. to make progress in a general education environment.

In reviewing D.K.'s progress reports she opined that they show "moments of achievement". She further opined that D.K. is not on track to achieve goals set for him.

Dr. Santaniello spoke with D.K.'s teachers for seventh and eighth grade. D.K. struggles with the curriculum free from substantial modifications.

She stated the IEP was not intended for distance learning. It is also not appropriate for a parent to fill out a progress report during remote learning.

She does not think Petitioners' concern over D.K.'s social and emotional welfare if placed in a resource room is valid.

Dr. Santaniello opined that the IEP for eighth grade and ninth grade provided the opportunity to make educational progress in the least restrictive environment. She also stated that as a general rule borderline IQ would do better in a resource room.

Erica Fertig testified as an expert in speech and language pathology without objection, as follows:

Ms. Fertig has known D.K. since 2013 when he was in the first grade. She performed two speech and language evaluations of D.K. in 2014 and 2017. She has provided speech and language therapy for D.K. since 2013.

At the IEP meeting for sixth grade it was proposed that D.K. be placed in resource room for all classes, with the possible exception of math. She was not sure about math.

D.K. still struggles with inferential comprehension today. This impacts D.K. across all subjects. D.K. has significant deficits in articulation: the ability to express and use language. D.K. has significant deficit in all areas of language.

Ms. Fertig stated that D.K. is significantly below expectations for a child his age. He has a limited understanding of spoken vocabulary. In the classroom D.K. presents with significant language impairment.

She opined that in small groups the material is brought to D.K.'s level. He cannot generalize those skills in large groups. D.K. still struggles academically in resource class, but is able to use his skills more readily.

She provided input at the January 30, 2020 IEP meeting. She agreed that D.K. should be in resource room for science and social studies. He appears to perform better in small groups. She opined that D.K. would not make meaningful progress if not in the right setting, which would be a resource room.

Rachel Villanova testified as an expert in science curriculum, instruction and assessment, as follows:

Her responsibilities are the development of curriculum for the District's science classes. She does not know D.K. She had no role on the IEP team.

Ms. Villanova opined that a student with deficits in reading would affect a student's ability to do the work. If reading at a second or third grade level it would be difficult for a student to achieve the requirements in science class.

Petitioners' Case

Jennifer Hakim testified as follows:

She is a special education teacher for the District in the START program. The START program is for multiply disabled students between the ages of eighteen and twenty-one.

Ms. Hakim tutors D.K. after school in reading and writing skills and has done so for five or six years. D.K. has made significant progress. Ms. Hakim agreed that a resource room is appropriate for D.K. as his reading comprehension and overall writing skills prevent him from accessing grade level curriculum in English. She did not comment on the appropriate placement for science or social studies as she does not work with him in these areas.

She stated D.K.'s reads at a fifth grade level. She noted that he still struggles. He struggles with grammar, spelling and diction.

She did not speak with D.K.'s teachers. She did not observe him in the classroom. She did not attend any IEP meetings.

Sandra Bimbi testified as follows:

She has been a special education teacher for nineteen years. She has taught sixth, seventh and eighth grade for sixteen years.

Ms. Bimbi tutors D.K. in the Corrective Reading Program after school once per week for two hours. She started tutoring D.K. in the sixth grade.

Ms. Bimbi puts D.K.'s reading level at sixth grade, but did not perform any assessments in reaching this conclusion.

She is aware D.K. attends resource room for English. She has not spoken with his English teacher. She has not reviewed any evaluations regarding D.K. She has not reviewed any of the IEPs.

Ms. Bimbi stated if D.K. is improperly placed it can hinder his development and growth.

E.K., Petitioner, testified as follows:

She is the mother of D.K.

E.K. reviewed D.K.'s report cards for sixth, seventh and eighth grade and stated that the report cards contradicted the Board's position. She noted that science and social studies for sixth, seventh and eighth grade were co-taught classes. She also reviewed his PARCC for fifth grade.

She stated that science class works in small groups and she believes D.K. can function in a co-taught class.

D.K. need the social part of school. She is not trying to hurt D.K.'s education.

She does not think resource room is best for D.K. It puts a child in a cocoon. He needs to be in the "big world".

E.K. then reviewed D.K.'s class work during the remote learning due to the COVID-19 pandemic. She is concerned about resource room base upon what she saw during the pandemic. She thought assignments were too easy.

She was offended that Ms. Vertig thought D.K. needs more, not less, intervention. She thinks D.K. is making strides. She complained that Ms. Vertig did not do her job during the pandemic.

E.K. admitted that D.K. struggles with speech and language.

E.K. understands that evaluations are important. They are not more important than report cards from teachers.

She stated that parents are not equal part of IEP team. She stated she knows what is best for D.K.

Rebuttal

Heather Martinez testified as a rebuttal witness for the District as an expert in reading, as follows:

Ms. Martinez is a special education teacher and was D.K.'s resource room ELA teacher in eighth grade. She was at the IEP meeting of January 30, 2020 and agrees that D.K. should be placed in resource room for science and social studies.

She worked with D.K. daily during the 2019/2020 school years. She disagrees that D.K. reads at grade level. She administered reading assessments in eighth grade to D.K. His reading level per assessment varied somewhat, but did not rise above third grade.

Dr. Tarah Santaniello was recalled as a rebuttal witness for the District and testified as follows:

Dr. Santiello explained how goals and objectives are used in an IEP. She further explained that teachers teach students using the curriculum for a particular grade. Report cards reflect the level a student is at when learning a subject. When a report

card states a student is working up to his ability the student is working to his skill deficit. The curriculum is modified to reflect the skill deficit of the student.

STIPULATED FACTS

1. D.K. is a minor whose date of birth is January 20, 2006. At the time of the commencement of this hearing, he is a 9th grader who will be attending Parsippany High School in the Fall of 2020.
2. D.K. was initially classified by the Parsippany-Troy Hills School District's ("District") Child Study Team ("CST") as eligible for special education and related services under the Individuals with Disabilities Education Act on or about January 13, 2009. D.K. has remained continuously classified since that date.
3. D.K.'s classification, until January 30, 2020, was Communication Impaired at which time his classification was changed to Multiply Disabled.
4. D.K. was re-evaluated in December of 2019 as part of his triennial evaluation to determine whether he continued to a student with a disability who required specialized instruction and related services.
5. The parties agreed that the District would conduct psychological (J-1), educational (J-2) and speech and language assessments (J-3) which were conducted in December 2019 and January 2020. There is no dispute relative to the appropriateness of these evaluations.
6. Prior to the December 2019 evaluation plan, D.K. was last evaluated by the District in December 2016 and January 2017 which evaluation consisted of a Psychological Evaluation (J-4), an Educational Evaluation (J-5) and a Speech-Language Evaluation (J-7). There is no dispute relative to the appropriateness of these evaluations.
7. D.K. attended Central Middle School for his 6th grade year (2017/2018) and attended his core academic subjects of Math, Social Studies, Science and English/Language Arts ("ELA") in a general education, In-Class Resource setting ("ICRS"), otherwise known as a co-taught model.

8. In addition to the foregoing, during the first half of his 6th grade year, D.K. received a supplemental reading program known as the Corrective Reading Program (“Reading Program”) from the District, after school hours, for six (6) hours per week. D.K. received the Reading Program from the District in this model since December 2014. This after school Reading Program ended in April 2019 pursuant to a Settlement Agreement between the parties.

9. On or about February 5, 2018, half-way through D.K.’s 6th grade year, an IEP meeting was held and the CST proposed D.K. complete the 2017-2018 school year (6th grade) in his ICRS classes but attend a pull out resource placement (“RR”) class for ELA during his 7th grade year (2018-2019). (See J-8: IEP dated February 5, 2018)

10. The February 5, 2018 IEP also proposed that Reading Program be provided during D.K.’s RR/ELA class time.

11. On or about February 26, 2018, Petitioners filed a request for due process challenging D.K.’s change to resource room for English and Reading/Language Arts as well as the transfer of the Reading Program hours into the school day. That due process matter was docketed under Agency Dkt. No.: 2018-27645 and OAL Dkt. No.: EDS 05480-18.

12. On or about February 22, 2019, (while D.K. was in the 7th grade) the parties settled the aforementioned petition which settlement was incorporated into a Decision Approving Settlement by the Honorable Barry E. Moscowitz, ALJ on March 4, 2019. (J-9)

13. Pursuant to the February 22, 2019 settlement agreement, D.K. completed his 7th grade year (2018-2019 school year) core academic subjects in all ICRS classes and after school Reading Program was discontinued although the direct instruction itself was to be provided during the school day.

14. On or about February 4, 2019, the CST again proposed D.K.’s annual IEP which called for D.K. to attend RR classes for ELA, Science and Social Studies but that D.K. remain in the ICRS classroom for math. (See J-10: IEP dated February 4, 2019)

15. On or about February 15, 2019, Petitioners filed a second Petition for Due Process challenging the February 4, 2019 IEP; that due process matter was docketed under Agency Dkt. No.: 2019-29422 and OAL Dkt. No.: EDS 03928-19.
16. On or about July 9, 2019, the first scheduled day of hearing, Petitioners had a medical emergency which prevented them from appearing.
17. Upon the District's application, the ALJ assigned to the matter, Hon. Julio Morejon, allowed the District to submit their motion for summary decision but required the hearing to continue as scheduled.
18. On August 21, 2019, the parties agreed that, in light of the settlement and the allegations of the Due Process Petition, the only issue in contention for the hearing was whether the proposed IEP placing D.K. in the RR for Science and Social Studies offered a free and appropriate public education ("FAPE" in the Least Restrictive Environment ("LRE").
19. Testimony in the prior matter was heard on August 21, 2019, September 25, 2019, October 2, 2019 and November 6, 2019.
20. On December 4, 2019, ALJ Morejon issued his Decision and Order on the District's Motion for Summary Decision, without oral argument, finding the proposed IEP placing D.K. in the RR setting for Science and Social Studies offered D.K. FAPE in the LRE. (J-11)
21. On December 16, 2019, Petitioners appealed Judge Morejon's decision to the United States District Court for the District of New Jersey where it is currently pending under docket number 2:19-cv-21399.
22. Due to the invocation of "stay put", D.K. completed his 8th grade year (2019/2020) in ICR settings for science, social studies and math.
23. On January 30, 2020, the CST proposed an IEP for D.K. for the remainder of his 8th grade year and the beginning of his 9th grade year (2020/2021) which, among other supports and services, placed D.K. in RR for ELA, science and social studies. (J-12)
24. The present Petition for Due Process is a challenge to the January 30, 2020 IEP.

FINDINGS OF FACT

1. The only issue in the present matter is whether the placement of D.K. in resource room for science and social studies in the January 30, 2020 IEP is the appropriate placement and affords D.K. FAPE.
2. Petitioners do not contest the remainder of the IEP.
3. D.K.'s reading level as of the dates of the hearing is no higher than third grade.
4. D.K. is a ninth grade student in the District for the 2020/2021 school year.
5. Prior to the IEP meeting of January 30, 2020, the District performed reevaluations, which consisted of psychological, educational, and speech and language assessments. These were completed in December 2019 and January 2020.
6. D.K.'s disability classification category was changed to Multiply Disabled in the January 30, 2020 IEP.
7. D.K. has a significant reading disability.
8. D.K. is communication impaired and has diagnoses of autism and attention deficit hyperactivity disorder (ADHD).
9. During D.K.'s sixth and seventh grade years he was placed in ICS classes for ELS, science and social studies at the insistence of Petitioners.
10. D.K.'s PARRC score in reading for fifth grade indicated he was below average.
11. D.K.'s PARRC score in reading for sixth grade was worse than his fifth grade score.
12. D.K.'s PARRC score in reading for seventh grade was worse than his sixth grade score.
13. The IEP of January 30, 2020 proposed that D.K. continue in resource room for science and social studies.

14. Because of D.K.'s significant reading disability, his placement in resource room for science and social studies is appropriate and affords FAPE in the least restrictive environment.

15. Placing D.K. in ICS for science and social studies is not the appropriate placement.

LEGAL ANALYSIS AND CONCLUSION

Individual With Disabilities Act

Federal funding of state special education programs is contingent upon the states providing a "free and appropriate education" (FAPE) to all disabled children. 20 U.S.C.A. § 1412. The Individuals with Disabilities Act (IDEA) is the vehicle Congress has chosen to ensure that states follow this mandate. 20 U.S.C.A. §§ 1400 *et seq.* "[T]he IDEA specifies that the education the states provide to these children 'specially [be] designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction.'" D.S. v. Bayonne Bd. of Educ., 602 F.3d 553, 556 (3d Cir. 2010) (citations omitted). The responsibility to provide a FAPE rests with the local public school district. 20 U.S.C.A. § 1401(9); N.J.A.C. 6A:14-1.1(d). Subject to certain limitations, FAPE is available to all children with disabilities residing in the State between the ages of three and twenty-one, inclusive. 20 U.S.C.A. § 1412(a)(1)(A), (B). The district bears the burden of proving that a FAPE has been offered. N.J.S.A. 18A:46-1.1.

New Jersey follows the federal standard that the education offered "must be 'sufficient to confer some educational benefit' upon the child." Lascari v. Bd. of Educ. of Ramapo Indian Hills Reg'l High Sch. Dist., 116 N.J. 30, 47 (1989) (citations omitted). The IDEA does not require that a school district "maximize the potential" of the student but requires a school district to provide a "basic floor of opportunity". Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 200, 102 S. Ct. 3034, 3047, 73 L. Ed. 2d 690, 708 (1982). In addressing the quantum of educational benefit required, the Third Circuit has made clear that more than a "trivial" or "de minimis" educational benefit is required, and the appropriate standard is whether the child's

education plan provides for “significant learning” and confers “meaningful benefit” to the child. T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000) (internal citations omitted).

As noted in D.S., an individual education plan (IEP) is the primary vehicle for providing students with the required FAPE. D.S., supra, 602 F.3d at 557. An IEP is a written statement developed for each child that explains how FAPE will be provided to the child. 20 U.S.C.A. § 1414(d)(1)(A)(i). The IEP must contain such information as a specific statement of the student’s current performance levels, the student’s short-term and long-term goals, the proposed educational services, and criteria for evaluating the student’s progress. See 20 U.S.C.A. § 1414(d)(1)(A)(i)(I)-(VII). It must contain both academic and functional goals that are, as appropriate, related to the Core Curriculum Content Standards of the general education curriculum and “be measurable” so both parents and educational personnel can be apprised of “the expected level of achievement attendant to each goal.” N.J.A.C. 6A:14-3.7(e)(2). Further, such “measurable annual goals shall include benchmarks or short-term objectives” related to meeting the student’s needs. N.J.A.C. 6A:14-3.7(e)(3). The school district must then review the IEP on an annual basis to make necessary adjustments and revisions. 20 U.S.C.A. § 1414(d)(4)(A)(i).

A due process challenge can allege substantive and/or procedural violations of the IDEA. If a party files a petition on substantive grounds, the Administrative Law Judge (ALJ) must determine whether the student received a FAPE. N.J.A.C. 6A:14-2.7(k). If a party alleges a procedural violation, an ALJ may decide that a student did not receive a FAPE only if the procedural inadequacies: (1) impeded the child’s right to a FAPE; (2) significantly impeded the parents’ opportunity to participate in the decision-making process regarding the provision of FAPE to the child; or (3) caused a deprivation of educational benefits. Ibid. In the instant matter petitioners allege substantive violations of the IDEA.

This tribunal must determine if the January 30, 2020 IEP afforded FAPE to D.K. in the least restrictive environment. 20 U.S.C.A. § 1412(a)(1). J.T. v. Dumont Public Schools, 438 N.J. Super. 241, 257 (App. Div. 2014)(citing Lascari, supra, at 33).

In Endrew F. v. Douglas County School District RE-1, 137 S. Ct. 988, 1001 (2017), the United States Supreme Court construed the FAPE mandate to require school districts to provide “an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” The Court’s holding in Endrew F. largely mirrored the Third Circuit’s long-established FAPE standard, which requires that school districts provide an educational program that is “reasonably calculated to enable the child to receive meaningful educational benefits in light of the student’s intellectual potential and individual abilities.” Dunn v. Downingtown Area Sch. Dist. (In re K.D.), 904 F.3d 248, 254 (3rd Cir. 2018) (quoting Ridley Sch. Dist. v. M.R., 680 F.3d 260, 269 (3rd Cir. 2012)). In addressing the quantum of educational benefit, the Third Circuit has made clear that more than a “trivial” or “de minimis” educational benefit is required, and the appropriate standard is whether the IEP provides for “significant learning” and confers “meaningful benefit” to the child. Endrew F., 137 S. Ct. at 1000–01; T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000); Ridgewood Bd. of Educ. v. N.E. ex rel. M.E., 172 F.3d 238, 247 (3d Cir. 1999), superseded by statute on other grounds as recognized by P.P. v. W. Chester Area Sch. Dist., 585 F.3d 727 (3d Cir. 2009); Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180, 182–84 (3d Cir. 1988). Hence, an appropriate educational program will likely “produce progress, not regression or trivial educational advancement.” Dunn, 904 F.3d at 254 (quoting Ridley, 680 F.3d at 269).

The IDEA’s FAPE requirement also includes a mainstreaming component, requiring education in the least restrictive environment. S.H. v. State-Operated Sch. Dist., 336 F.3d 260, 265 (3rd Cir. 2003); 20 U.S.C. §1412(a)(5)(A). “The least restrictive environment is the one that, to the greatest extent possible, satisfactorily educates disabled children together with children who are not disabled, in the same school the disabled child would attend if the child were not disabled.” S.H., 336 F.3d at 265 (quoting Carlisle, 62 F.3d at 535).

Petitioners argue that a resource room placement in science and social studies is not the least restrictive environment and that D.K. should be placed in ICS for these classes. I disagree.

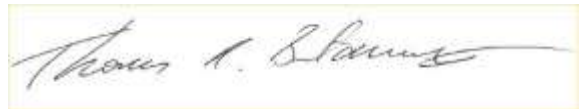
The District has carried its burden of proof and burden of production in the instant matter. The competent, credible and relevant evidence in the instant matter abundantly demonstrates that D.K. must be in resource room for both science and social studies. The District's various witnesses, all qualified as experts in the respective areas, opined convincingly that D.K.'s reading disability was significant enough that he must be in resource room for science and social studies. To place him in ICS would be to his detriment.

E.K., the Petitioner, is a most sincere and ardent advocate for her son. She sincerely believes that he should be in ICS for science and social studies. She believes this to her core. However, it is clear from both the testimony and documentary evidence, that D.K.'s placement in resource room for science and social studies affords him FAPE in the least restrictive environment.

Based upon the foregoing, I **CONCLUDE** that Petitioners' due process petition should be **DISMISSED**.

ORDER

It is hereby **ORDERED** that Petitioners' due process petition is **DISMISSED**, with prejudice.



November 6, 2020
DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

db

APPENDIX

Witnesses

For Petitioners:

Jennifer Hakim
Sandra Bimbi
Heather Martinez
E.K., Petitioner

For Respondent:

Jillian Riedel
Dr. Tarah Santaniello
Erica Fertig
Rachel Villanova

Exhibits

For Petitioners:

- P-1 MP4 Progress Report 2020 emails from E.K. to J.R.
- P-2 not in evidence
- P-3 not in evidence
- P-4 not in evidence
- P-5 not in evidence
- P-6 Social Studies emails from Fall 2019
- P-7 Social Studies work durth 8th grade 4th Qtr.
- P-8 English/Reading and Writing classwork 4th Qtr.
- P-9 Email communication between E.K. to H.M.
- P-10 not in evidence
- P-11 not in evidence
- P-12 not produced and not in evidence
- P-13 not produced and not in evidence

For Respondent:

- R-1 Settlement Agreement, Feb. 25, 2019
- R-2 Decision of ALJ Morejon, Dec. 4, 2029
- R-3 IEP, Feb. 5, 2018 (6th/7th grade)
- R-4 IEP, Feb. 1, 2019 (7th/8th grade)
- R-5 IEP, Jan. 30, 2020 (8th/9th grade)
- R-6 Psychological Evaluation, Dec. 6, 2019
- R-7 Speech/Language Evaluation, Dec. 6, 2019
- R-8 Education Evaluation, Dec. 16, 2019
- R-9 Social Assessment, Mar. 17, 2014
- R-10 Speech/Language Evaluation, jan. 10, 2017
- R-11 Educational Evaluation, Dec. 21, 2016
- R-12 Psychological Evaluation, Jan. 9, 2017
- R-13 Report Card, 6th grade
- R-14 Report Card, 7th grade
- R-15 Report Card, 8th grade
- R-16 not in evidence
- R-17 Progress Reports (2019/2020 MP1)
- R-18 Progress Reports (2019/2020 MP2)
- R-19 Progress Reports (2019/2020 MP3)
- R-20 Progress Reports (2019/2020 MP4)
- R-21 Progress Reports (2017/2018)
- R-22 Progress Reports (2018/2019)
- R-23 PARCC Grade 5
- R-24 PARCC Grade 6
- R-25 PARCC Grade 7
- R-26 Jan. 11, 2018 Notice to Amend IEP w/o meeting
- R-27 not in evidence
- R-28 not in evidence
- R-29 not in evidence
- R-30 J. Riedel, Resume
- R-31 T. Santaniello, Resume

R-32 E. Fertig, Resume

R-33 R. Villanova, Resume

R-34 not in evidence

R-35 Score Comparison Chart (Educ. Evals 2016 & 2019)

R-36 Score Comparison Chart (Speech Evals 2016 & 2019)

R-37 Emails Parent and Case Manager June 15, 2020

R-38 Stem Pathway Guidelines and Requirements

R-39 Hakim Cert July 22, 2019