



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

**FINAL DECISION**

OAL DKT. NO. EDS 02464-20

AGENCY DKT. NO. 2020 31173

**E.M. AND J.M. ON BEHALF OF C.M.,**

Petitioners,

v.

**SCHOOL DISTRICT OF CHATHAMS**

**BOARD OF EDUCATION,**

Respondent.

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**Sandra Lascari, Esq.** for petitioners,

**Danielle Panizzi, Esq.** for respondent (Cleary Giacobbe Alfieri Jacobs)

Record Closed: June 24, 2021

Decided: June 30, 2021

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

**STATEMENT OF THE CASE**

Petitioners, E.M. and J.M. on behalf of C.M., requested a due process hearing on behalf of C.M. because they allege the School District of the Chatham's (District) did not provide C.M. with a free and appropriate education (FAPE) failed to develop an appropriate placement and program for C.M. and failed to classify and develop an appropriate IEP for C.M.

## **PROCEDURAL HISTORY**

The matter was transferred to the Office of Administrative Law (OAL) as a contested matter on February 21, 2020. Hearings were conducted on October 28, November 16, December 10, and 16, 2020, January 21, and June 24, 2021, after which I closed the record.

## **FACTUAL DISCUSSION**

### **Testimony**

#### **Jill Gihourski**

Jill Gihourski (Gihourski) has been the principal of Chatham Middle School for the past eight years. She taught for twenty-two years but not as a special education teacher. She is not an expert in dyslexia. She chairs the intervention and referral services program (I&RS) and is on the 504-plan team. I&RS is state mandated to meet the needs of students with difficulties in the general education setting. The I&RS policy describes the role of the I&RS team and I&RS program.

Gihourski became familiar with C.M. through emails with the Superintendent, Dr. Lasusa in August 2019. Petitioners wanted C.M. to be considered for a 504-plan or an Individualized Education Plan (IEP). They provided two evaluations with their request. One evaluation was an auditory report, which says that C.M. has Central Auditory Processing Disorder. The second evaluation was from the Linda Mood Bell program (LMB), which addressed C.M.'s reading. It recommended continuation of the LMB program.

An initial identification and evaluation planning meeting between petitioners and the District on September 5, 2019. Gihourski reached out to the principal of Lafayette School, which was the fourth and fifth grade school that C.M. attended. C.M. was entering the sixth grade at that time. Petitioners did not request a 504-plan for C.M. while she was at Lafayette School. The teachers at Lafayette School indicated that they

had no concerns about C.M., she did well there according to the principal. Petitioners received the 504-plan parental rights documents on September 5, 2019.

Gihourski, the guidance counselor, Dave Fowler, the sixth-grade team leader, and petitioner were at the initial identification and evaluation planning meeting. At the meeting petitioner stated that C.M. had trouble completing her assignments and that they provided her with outside help. C.M. was tutored frequently. A 504-plan was discussed, but Gihourski could not see an impact on C.M.'s learning because school had not started, and her prior school saw no impact on her education. C.M. was offered an I&RS program incorporating suggestions from the auditory report.

I&RS meeting was September 13, 2019. The I&RS plan was being written for C.M. from the auditory report and petitioner's concerns. The next I&RS meeting date which addressed C.M.'s plan was October 22, 2019. On September 19, 2020, there was an I&RS meeting where the I&RS plan was formulated. The plan lists C.M.'s strengths and areas of concern. The concerns included C.M. not being quick to ask if she was unsure and at times needing redirection. The teachers felt that she was doing well.

The I&RS plan included preferential seating, copies of classroom notes, use of FM system and extra time to respond to verbal or written questions. Many of the recommendations in the I&RS plan came from the auditory report submitted by petitioners. The school did not use the LMB report because it was specific to that program which the school does not use. The LMB report stated that C.M. would benefit from instruction of its program four days a week for three to four hours a day. According to the LMB report, C.M. had problems with spelling, contextual conventions, story composition and word attack. The district did not have a LMB Program. The district did not contest the findings of the LMB report.

At the October 22, 2019, I&RS meeting, C.M. was discussed. She had done well in September 2019. She was doing well in her classes. The I&RS plan was continued for eight weeks.

On October 30, 2019, Gihourski received an email from petitioners regarding C.M. not having extra time in math class. The teacher stated that the entire class had extra time and C.M. was not entitled to extra time. The I&RS plan did not provide for extra time for students with difficulty completing tests. C.M.'s I&RS plan was discussed at the December 2019 meeting. C.M. was doing well. Her accommodations did not change. Petitioners did not provide her with any further reports but contacted the child study team (CST). C.M.'s December 2019 report card was A's and A+.

A Confidential Behavioral Assessment of C.M. was done by Marissa Palma. Palma is C.M.'s English/Language Arts teacher. She noted that C.M. completed her work, participated in class, and completed her homework. C.M. had preferential seating, copies of class notes and extra time for verbal or written responses. Gihourski does not know if Palma tested C.M.'s rate of reading, writing, or spelling. A Confidential Behavioral Assessment of C.M. was also done by Amanda Novick, C.M.'s math teacher, which stated C.M. participates in class, is easily distracted but gets her work done. Both teachers state that extra time on tests and quizzes are beneficial to C.M. Novick does not state why C.M. needs the extra time. After reviewing the feedback on C.M. and the report of Doctor Palmer, petitioners were contacted to discuss a 504-plan for C.M.

The District received a report of Dr. Laura Palmer, a neuropsychologist, from petitioners. Upon reviewing the report an initial identification and evaluation planning meeting held. As a result of the report of Dr. Palmer, a C.M. was given a 504-plan. Her disabilities were: dyslexia, Orthographic Based Learning Disorder, Central Auditory Processing Disorder, ADHD, and Generalized Anxiety Disorder. A common concern from teachers was that C.M. had difficulty finishing assignments timely. The accommodations in the 504- plan are preferential seating, teacher will check comprehension of instruction and directions, additional time to respond to verbal and written questions, FM system, fifty percent extended time on in class assignments take notes on a Chromebook and copies of class notes, outlines, and study guides. C.M. did not require a behavioral plan. Petitioners signed the 504- plan.

In January 2020, petitioners felt that C.M. needed more support. Gihourski suggested that parents pull back from the private tutoring to determine how she did

without tutoring. Petitioners did not agree with this suggestion. Petitioners did not believe that the 504-plan was appropriate. They wanted an IEP for C.M. They believed that C.M. would do better in smaller classes. Gihourski suggested C.M. enroll in the maximum education class, which helps students with executive functions and organizational skills in a smaller group. C.M. was enrolled in the maximum education program. They met every other day.

On C.M.'s final report card for sixth grade, her grades were A's except a B in math. In March 2020, the District went to a virtual learning model. The grading system was changed to pass/fail. She had no conversations with teachers regarding C.M. needing extra services.

The I&RS plan and 504-plan for C.M. did not address her reading. The functional assessment did not show C.M. had a reading problem. Petitioners believe that C.M. has an inability to organize and trouble understanding what she was supposed to do. That is why they hired tutors for her. Petitioners believed the tutoring was the reason for C.M.'s success. The I&RS plan had accommodations but no remediation.

The district incorporated some of Dr. Palmer's recommendations into the 504-plan. Dr. Palmer's report stated that some of C.M.'s difficulties are due to her rate of reading and fluency difficulties. Dr. Palmer also diagnosed C.M. with dyslexia. None of C.M.'s teachers found that she had difficulty with reading, rate of reading or reading fluency.

**Frank Benimeo**

Frank Benimeo has been a school counselor at Chatham Middle School for the past six years. At Chatham Middle School, the students are grouped into various houses. He is a counselor in House C. He counsels one third of the sixth, seventh and eighth grade students.

Benimeo is a member of the I&RS team. He manages forty-five I&RS students. He helps create the plan for the student which he shares with the team and family. Teachers refer students that they are concerned about to I&RS. An I&RS form is sent to the teachers for update of the student's strengths and weaknesses. If the I&RS team concurs there is a meeting to discuss the formulation of the I&RS plan. The I&RS plan can change with time.

The 504-plan committee works with the principal. They meet with the parents when a 504-plan is requested. Once there is a 504-plan, it is shared with the parent and the student. The eligibility for a student to have a 504-plan is that the student has a disability that disrupts major life activities. When a 504-plan is considered, a functional assessment is sent to the teachers to be completed. Outside reports are also considered.

Benimeo became familiar with C.M. in September 2019, when Gihourski received the 504-plan request. He met with petitioners at the 504-plan meeting. Petitioners were concerned with the amount of time it took C.M. to complete assignments. Private evaluations, the central auditory processing report and LMB report were provided to the I&RS team. In September 2019, it was decided that C.M. would be in the I&RS program. Forms were sent to her teachers to get feedback about C.M. The feedback was discussed at the September 13, 2019, I&RS meeting. C.M. had a positive attitude and completed her work but there was concern because she did not answer questions in class. The concern at this time was auditory processing. A copy of the I&RS action plan was sent to petitioners.

The October 2019 I&RS meeting reviewed C.M.'s plan. The teachers felt that she was doing well but benefitted from extra time. C.M.'s reading rate and processing speed was not discussed.

Petitioners had concerns after the October 2019 meeting that C.M. was not getting preferential seating in all her classes as well as other accommodations in the I&RS plan. Benimeo responded that preferential seating was different in different classes. Additional time was not part of the I&RS plan. Teachers can decide to give a student extra time. He followed up with the teachers about the use of the FM system.

Dr Palmer's report was sent to Melissa Varcadiponi of the Child Study Team (CST). The December 2019 I&RS meeting continued the same strategies for C.M. Benimeo was aware of Dr. Palmer's report in December 2019, but he did not see it. There were no social or emotional concerns for C.M.

In January 2020, a 504-plan meeting was scheduled for C.M. The teachers prepared functional assessments of C.M. for the meeting. The teachers gave the assessments to him, and he gave them to the 504-plan team. The 504 meeting was held on January 17, 2020. A 504-plan was developed for C.M. The diagnosis came from the auditory processing report and the report of Dr. Palmer. The accommodations in the 504-plan were the same as the accommodations in the I&RS except the 504-plan had fifty percent extra time for tests. Petitioner signed the 504-plan.

Benimeo met with C.M. twice. He feels that he has a good rapport with her. C.M. became upset in Social Studies class. She went to speak to Benimeo. C.M. had no history of meltdowns in class. C.M. was eleven when she started the sixth grade. At that age students do not like to have attention drawn to them.

He was present at the 504-plan meeting where Gihourski put the diagnosis in the 504-plan. She discussed the Palmer report with the team. He is not a reading or dyslexia specialist. He is not aware of a policy for students with dyslexia. He did not observe C.M. in class or see one of her writing samples. The LMB report was not shared with the I&RS team. The diagnosis in Dr. Palmer's report was accepted by the

I&RS team. He does not evaluate the doctor's reports. He is not trained to interpret educational reports. Benimeo went by Gihourski's interpretation of Dr. Palmer's report.

Functional assessment is used interchangeably with Confidential Behavioral Assessment. It does not address specifics like rate of reading, writing skills and spelling. The teacher lists their concerns on the functional assessment. The teachers stated that C.M. gave detailed answers and that is why she needed extra time. It is possible that C.M. needed extra time because she has a slow reading rate. The Functional Assessments allow the teacher a place to write feedback. The teachers did not express concern with C.M.'s ability to read or write.

Benimeo's role in the 504-plan committee is to develop a 504-plan with Gihourski and share that plan with the parents and teachers.

Benimeo was given the auditory processing report and LMB report by petitioners. It shows C.M.'s word attack is ten percent. Her contextual conventions level was third grade. Her story composition was in the second percentile. The recommendation was for a four-hour LMB bell program five days a week.

### **Marisa Palma**

Marisa Palma (Palma) is a seventh-grade teacher at Chatham Middle School. She has certifications in teacher of English and General Education teacher. She met C.M. on the first day of class for the sixth grade. The class had twenty-three students. Palma had a co-teacher, Gina Preaso Kaiser, who provided one to one and small group instruction. The English class meets four to five times a week. C.M. was detail oriented and wanted to do well. She was a great student, who did well in class.

She received an email from Dave Fowler, the team leader, to send him information regarding C.M. performance in class. C.M. kept up with minimal assistance. If Palma had concerns about a student, she would forward concerns about a student to the CST.



On the I&RS forms teachers fill out a student's strengths and areas of concern. She was given the I&RS for C.M. at the end of September 2019. She had previously provided feedback to the I&RS team. C.M.'s strengths were positive attitude and being well behaved. She did not have any concerns about C.M.'s reading, rate of reading or word recognition. C.M.'s areas of concern were that she did not ask questions and lack of motivation with writing that requires sustained focus. She took a while to get started working. Most students took a while to get started in the beginning of the sixth grade. The interventions that Palma recommended were check-ins during class, reminders, graphic organizer, extra time, use of FM system, preferential seating and copy of notes, rubrics and materials. The interventions that she recommended were put into the I&RS plan and implemented in the class. The outcome of the interventions was that C.M. was doing well, focused, and motivated to do well and good at self-advocating. Palma believes C.M. would have done well without the interventions.

C.M. needed extra time to check over her work. Palma did not have a parent teacher conference with petitioners. Petitioners did not ask for a parent teacher conference. C.M. would email her to tell her when C.M. would not be in school and ask for the work.

Palma was aware that C.M. had tutors. One tutor of C.M., Christina Russell, was a friend of Palma's. Russell would reach out to Palma for directions to the work for C.M. The tutor was used to keep C.M. on track and organized. She forwarded C.M.'s assignments to Russell to make sure they were on the same page. Russell worked on instructions, organization and directions with C.M. Russell said that C.M. cannot understand directions. Palma was not concerned that C.M. worked with Russell four times a week.

C.M. occasionally had anxiety with bigger assignments, but she completes the assignments on time. Confidential Behavioral Assessments are done when students need accommodations or have an I&RS plan.

In December 2019, C.M.'s grades improved, she participated in class and did her homework. Reading and writing conferences and small groups helped C.M. If she was

concerned about C.M.'s academics or behavior, she would have included that on the Confidential Behavioral Assessment. Palma did not have concerns for C.M.

A formal 504- plan was put in place for C.M. She had preferential seating, extra time, and FM system. Benimeo reached out to her regarding C.M.'s progress and which accommodations worked best for her. C.M. benefited from the 504-plan. She is a good reader if she is interested in the topic. C.M. is a very methodical writer. Her final grade in the sixth grade was A-. She was on the honor roll. The majority of a student's grade is determined by reading, writing, homework, conferences, and notes.

There is a book club in class. The students choose from a group of books. There are in groups. There is a schedule and tests. Larger writing assignments gave C.M. difficulty. She does not recall giving an assignment to C.M where C.M. cried.

The classes are forty minutes, ten minutes of independent reading, then transition into the lesson or mini lessons. Sometimes she gives homework. Some assignments are handwritten, and some are typed. Palma keeps the student's assignments at the end of the school year.

Class instructions were virtual from March 2020 through June 2020. She had conferences on google classroom. C.M. did not sign up to meet with her. C.M. could have received the assignment, met with the tutor, and turned the assignment in after March 2020.

Palma was surprised that C.M. had ADHD, Central Processing Disorder, and dyslexia. Palma always provided extra time for C.M. Palma is not a reading specialist. Palma did not notice any spelling challenge for C.M.

Students normally received hard copies of the reading assignments. They could receive audio copies as well. C.M. did not use the audio copies. The independent reading was a book the student liked. She would discuss plot points in the book and have conferences. C.M. was in the middle of the group in her book club. The book club books were read in class and assignments were done later.

C.M. did not get re-tests because she had extended time. She read on grade level with her peers. C.M. did not attend office hours with Palma. Palma does not think C.M. needs remediation.

### **Elizabeth Gaynor**

Elizabeth Gaynor (Gaynor) is a school psychologist with the district. School psychologists on the CST identify students who have disabilities that would make them eligible for special education services. Gaynor is on the CST, where she does assessments, case manages and speaks to parents. She can request a release from the parents to speak to third party providers for the students.

In September 2019, Gaynor became aware of C.M. because her parents referred her to CST. The CST consists of the school psychologist, the learning-disabled teacher consultant (LDTC) and the social worker. At that time C.M. was entering the sixth grade. Gaynor spoke to petitioners who were concerned with C.M. not doing well academically and stress. The meeting with the parents was a nature and scope meeting. The meeting was to determine if evaluations would be done. Petitioners provided the Central Auditory Report and the LBM evaluation. Prior to the meeting, the team looks at the student's grades, report cards, standardized tests, concerns of teachers and how the student is functioning in school. C.M.'s standardized test scores for the fourth and fifth grade were proficient with one advanced proficient. C.M.'s fourth and fifth grade report cards showed no area for significant concern. C.M.'s self-esteem was discussed at the meeting. She believed that C.M.'s self-esteem could be affected by the amount of tutoring that she received.

Gaynor reviewed the central auditory evaluation to get an understanding of C.M.'s strengths and weaknesses. C.M. had an auditory processing weakness. C.M. had difficulty with decoding and needed time to process speech. This can affect reading, writing, and spelling. The auditory processing report recommended C.M. use the Wilson reading program at school and instead of taking a foreign language, she takes American sign language. The report stated that C.M. needed remediation.

She reviewed the LMB evaluation to see if there was evidence that C.M. had a disability. The LMB program is intensive and costly. It seeks to remediate students reading challenges. It is not offered in public schools. This report showed the C.M. had a word attack score in the fourteenth percentile. Her spelling was in the twenty-three percentiles. The CST did not evaluate C.M.'s reading.

Gaynor administers tests to determine cognitive abilities. The LDTC administers academic evaluations.

The teacher feedback regarding C.M. was positive. She was a typical sixth grader. She turned in the assignments on time and the teachers had no significant concerns about C.M. At the meeting, parents stated that they were seeking to have C.M. evaluated by a neuropsychologist. The CST did not feel that this was warranted.

The CST determined that additional evaluations were not warranted, since C.M. had no area of suspected disability. C.M. was to be monitored by the I&RS team. Gaynor did not participate in the I&RS meetings regarding C.M. Gaynor did not meet C.M. Petitioners informed her that C.M. was tutored four times a week for two hours each session.

The CST received the neuropsychological report of Dr. Palmer on December 11, 2019. Dr. Palmer tested C.M. for ten hours. CST did not review this report to determine eligibility. The Wexler intelligence scale or children's standardized IQ scale showed C.M.'s IQ was 101. C.M. was also administered the WISC 5 test. All these scores were in the average range. C.M.'s ancillary scores were normal. Her scores on the Connors test were generally normal but showed difficulty with sustained attention. Dr. Palmer diagnosed C.M. with ADHD. The BRIEF measure of executive function was completed by two teachers, parent and C.M. The only elevated score is self-monitoring, which was sixty-five. The average range is forty to sixty. Palmer's report was done early in C.M.'s sixth grade year. In her self-report C.M. states that she struggles with planning, organization and working memory. Her self-report contrasts with the teachers report.

In the BASC assessment C.M. had feelings of depression, sadness, and self-doubt. The average T-scores for the is test is between forty and sixty. Scores above

sixty- five to seventy are clinically significant scores on depression. A score of sixty-five is not a red sign for depression. C.M. showed no agitation in class. Dr. Palmer tested C.M. for ten hours over three days.

Dr. Palmer's diagnosis also included major depressive disorder and generalized depressive disorder. This surprised Gaynor because she did not see data to back this up. Dr. Palmer recommended an IEP or 504-plan for C.M. A 504 plan was developed for C.M. The 504-plan had accommodations but it had no remediation. There was no reading support for C.M. in the 504-plan.

C.M.'s disability was recognized by the 504-plan team. The accommodations of the 504-plan that addressed ADHD and anxiety were preferential seating, teacher check in, extra time for assignments and class notes and outlines. The 504-plan meeting was held in January 2020. At that meeting, C.M.'s functioning in class was discussed. Petitioners agreed to the 504-plan. There was discussion about dyslexia remediation, however, the CST determined it was not necessary because C.M. compensates and functions with dyslexia.

The CST reviewed Dr. Palmer's report. They also looked at the supports that were in place to help C.M. She was doing well in class and her grades were good.

C.M.'s report card showed her grades to be one B and the rest were A's. Gaynor reviewed the psychiatric report of Dr. Nickolae, who diagnosed C.M. as having ADHD predominate inattentive type, with no depression or anxiety. C.M. does not need special education services. Her ADHD does not require her to have special education services. It does not significantly impact her ability to access education. She has good grades and is a good student. A 504-plan is appropriate for C.M. C.M. functions in class. It is not necessary for Gaynor to meet the student before eligibility is determined. C.M. did not have any behavioral difficulties.

**Lauren McKenna**

Lauren McKenna is a LDTC. She is a case manager, does evaluations and works with the student, parents, and staff. She works with all the special education students. She does assessments to determine academic ability.

Petitioners sent a letter to the district expressing concern regarding C.M.'s progress. McKenna is not C.M.'s case manager. She is a member of the CST and I&RS. There was a CST meeting on September 27, 2019, to address the petitioner's concerns. McKenna reviewed the documents that petitioners provided as well as C.M.'s report cards, standardized test scores and current grades. Her PARCC scores for the third to fifth grade were meeting expectations. Her fourth and fifth grade report cards showed C.M. was approaching or meeting expectations. C.M.'s auditory processing report showed that she had deficiencies in decoding. McKenna looked at the clinical impressions and recommendations in the report. The recommendation from the auditory processing report was a 504-plan with preferential seating, extra time, an FM system, and copies of notes. These could all be done in a general education class.

McKenna looked at the LMB report. LBM is not offered in school settings. She reviewed the LMB report which showed C.M. had scores that were mostly average with areas of weakness. C.M. was reading at a lower rate but understood what she was reading. The CST determined that evaluations were not warranted for C.M. because she had no areas of suspected disability. Her teachers said that C.M. transitioned well into the sixth grade.

McKenna participated in the I&RS meeting. There was an I&RS accommodation plan for C.M. C.M. did well with the I&RS interventions, especially the extra time. The I&RS plan remained in place for October 2019.

In December 2019, the CST received the report of Dr. Palmer. The Kaufman and WAIT tests were administered to C.M. The WIAT is a standardized test that looks at educational advancement. C.M.'s scores on the WAIT test were all in the average range. C.M.'s IQ is 101. The Kaufman test showed her reading composite score was 93 which is average. Her reading understanding score was 111 which is in the average range. Her reading fluency score was 91. All her scores were in the average range except two were above average. There was no area of discrepancy to warrant evaluations. McKenna performed the Kaufman Test on C.M.

Dyslexia symptoms are a weakness in decoding, spelling, and phonic processing. The Kaufman test assesses these areas. C.M. performed in the average range in three areas except for spelling, which is a relative weakness. For a discrepancy to be seen C.M. would have had to score less than 80 on any of the tests. She did not score less than 80 on any of the tests.

Students can have dyslexia and not need remediation services. They compensate for the difference. Dr. Palmer recommended C.M. have an IEP and a 504 plan. C.M. does not need special education services based on her performance in class.

There was an identification and planning meeting on January 13, 2020. Dr. Palmer's evaluation of C.M. was discussed at that meeting. The CST did not believe special education was warranted for C.M. due to her performance in class. All of C.M.'s grades were A's. The teachers said that she was hard working and self-advocated. The petitioner's concerns for C.M. were in the areas of reading, writing and organization. C.M. was tutored four times a week. Each session was two hours. Eight hours a week is a significant amount of tutoring. The 504-plan was put in place after the January 13, 2020, meeting. The 504-plan is appropriate for C.M. She did not review in depth the report of Dr. Nicolae. The report of Dr. Palmer does not change her opinion that C.M. does not need special education services.

McKenna did not ask petitioner for permission to speak to Dr. Nicolae, or Dr. Palmer. The central auditory report had recommendations for accommodations in school. She is not familiar with the therapy programs listed in the auditory processing report. Some of the recommendations are products that you would not find in public schools.

LMB did not use Woodcock tests in its evaluation of C.M. That report states that C.M. had difficulty reading. The report of Dr. Palmer diagnosed C.M. with dyslexia, ADHD, anxiety, and executive function issues. A student cannot be classified based on an auditory processing disorder. A student can be classified as other health impaired based on ADHD, but the ADHD would have to have a significant educational impact.

Based on her classroom performance teachers would not recommend additional supports. An initial meeting with the student is not necessary to determine eligibility. She used data from the outside evaluations and school performance to determine that evaluations were not warranted.

**Dr. Laura Palmer**

Dr. Laura Palmer is a psychologist with a specialty in neuropsychology. She evaluated C.M. She used the following evaluation methods with C.M. including the Behavior Assessment System for Children (BASC) 3<sup>rd</sup> edition which is an objective rating. This test was administered to C.M., her parents and two of her teachers. She also administered the Parent Rating Scales- Child, third edition, Self-Report scale-Child third edition, Teacher Rating Scales-Child, Behavior Rating Inventory of Executive Function second edition (BRIED-2) Parent Form, Teacher Rating Form, Self-Report Form, Brown ADD Scale, Self-Report-Child, Child Neurobehavioral Signs and Symptoms, Connor's Continuous performance test, Child development history questionnaire, Kaufman test of Educational Achievement -third edition (KTEA), NEPSY II, Rey Complex Figure Test (REY) Wechsler Intelligence Scales for Children-fifth edition (WISC-V) Wechsler Individual Achievement Test second edition and third edition (WIAT) and the Wide Range Assessment of Visual Motor Abilities (WRAVMA).

The WISC-V measures cognitive ability to establish intellectual ability, IQ as well as verbal, fluid, and special areas. C.M.'s composite show that verbal comprehension was her strongest area. The composite scores were in the area of Verbal Comprehension, Visual Spatial, Fluid Reasoning, Working Memory, Process Speed and Full IQ. Her composite scores in those areas do not differ significantly except her fluid reasoning was lower. Her ability in each area was average to above average. Her capacity or learning is average to above average.

The KTEA measures current level of academic achievement in reading, writing, language, math, oral language and academic fluency, The KTEA composite scores have a predicted score based on the WISC, then it shows C.M.'s actual score. If the difference between the predicted score and the actual score is more than eleven points,



there is a significant difference. The KTEA composite scores were in reading, math, written language, academic skills battery, sound symbol, decoding, reading fluency, reading understanding, oral fluency, orthographic processing, and academic fluency. C.M. scored in the average range on all of the KTEA composite scores. C.M. had a significant difference in all areas except academic fluency. KTEA subtests are done to determine the composite scores.

Dr. Palmer 's evaluation of C.M. began on September 19, 2019. C.M. was in the sixth grade at that time. Dr. Palmer recommended C.M. be seen by a LMB program and have an auditory processing evaluation. C.M. had chronic ear infections. She had tubes put in her ear to Drain the fluid. A residual effect of chronic ear infections is auditory processing disorder. This also correlates with reading difficulty from kindergarten through third grade. People with an auditory processing disorder can have difficulty with decoding, listening comprehension and discrimination of information.

Dr. Palmer determined that C.M. had multiple areas of learning disability in math, written language academic fluency and dyslexia. The recommendation for C.M.'s dyslexia was to follow the recommendations in the auditory processing report and remediation in decoding.

Dr. Palmer reviewed the 504-plan. Her diagnosis including dyslexia are included in the 504-plan as C.M.'s diagnosis but it is not addressed further in the 504- plan. The 504-plan does not contain remediation. C.M. is very bright but her skill deficits will hold her back as length of texts increase and there is more use of unfamiliar words.

Decoding is limited for C.M. She decodes letter by letter and sound by sound which slows down her reading fluency. The decoding issues begin to impact working memory.

C.M. does well in school because she has tutoring two hours a day. Her depression and anxiety escalated due to feelings of inadequacy. C.M.'s score in working memory was average. On the Connors test C.M. had difficulty with sustained attention. Her teachers and parents did not view her as inattentive, but C.M. viewed

herself as inattentive. C.M. has ADHD. Working memory goes into an ADHD diagnosis. It is caused by cognitive fatigue, cognitive disorder, and attention disorder.

Dr. Palmer's recommendation was that her evaluation should be shared with the CST for an appropriate IEP or 504-plan. The IEP for goals and objectives and the 504-plan for extended in class support. A 504-plan alone is not sufficient.

Dr. Palmer did a reevaluation of C.M. in October 2020 to measure academic achievement and anxiety. C.M. was being treated with medication for ADHD. Dr. Palmer administered the KTEA test again. C.M.'s math score was equal to fifth grade fourth month. Her word and letter recognition scores were the equivalent to fifth grade fourth month. Her reading comprehension was equivalent to a tenth grade fourth month. Dr. Palmer was concerned that the requisite skills were not progressing.

C.M. needs remediation in the areas of reading and dyslexia. She made no progress in basic academic skills. Her anxiety is raised. C.M. did not receive evidence-based interventions with dyslexia. All dyslexia programs must be instructed by a specialist. The Feifer Assessment of Reading test indicates limited silent and oral reading fluency. Dyslexia is an eligibility category for special education. C.M. has surface, visual based dyslexia because of her decoding deficits. She has a reading disability. However, Dr. Palmer is not sure if dyslexia qualifies a student for a 504-plan.

Dr. Palmer did not observe C.M. at school. She did not speak to C.M.'s case manager. She reviewed C.M.'s standard testing and grades. She does not know if she saw the I&RS report. C.M.'s standardized test scores in reading were higher than the school and district average. Her writing score was above the district and school average. Her math score was slightly below the school and District average. C.M.'s IQ is 102.

Dr. Palmer believes the BCI is a stronger indicator of cognitive ability than IQ. Spelling is a significant weakness for C.M., her KTEA score was 83. C.M.'s math fluency score of eighty-five was low. The discrepancy in KTEA predictive scores and actual scores is the basis for C.M. to need special education. C.M. needs remediation

in decoding, reading fluency and orthographic processing. She has been able to function because of her ability and the support of her parents. Her grades are all A's.

A reading program like LMB is necessary to remediate her reading difficulty. It is difficult to parse out how ADHD affects C.M. in the classroom C.M.'s ADHD inattentive type is secondary to cognitive fatigue. As the day goes on C.M. will have more difficulty getting back on track. She must read and re-read passages. She is not likely to retain what she read. Dr. Palmer does not have evidence of this other than C.M.'s experience of it. During the 2020 evaluation, C.M.'s jump in reading comprehension is due to her taking medication.

Auditory processing disorder can be considered under the classification of communication impaired or other health impaired. ADHD can be considered under the classification of other health impaired. There is no documentation that ADHD impacts C.M. in school. ADHD must be shown in two settings at home and school.

Dr. Palmer diagnosed C.M. with major depressive disorder based on C.M.'s responses in the BASC-3. In 2020 C.M.'s anxiety increased. C.M. stated that she feels disconnected from school in 2020. The auditory processing report lists programs that can be helpful to C.M. including the Wilson Learning Program. C.M. needs remediations to go along with the accommodations in the 504-plan. She needs remediation with decoding and reading fluency or she will fall further behind which will cause anxiety and depression. C.M. may not qualify for special education according to the code. Difficulty with time management is a hallmark of ADHD and executive function issues.

### **J.M.**

J.M. is the mother of C.M. C.M. had bilateral tympanostomy tubes placed in her ears in 2009 due to multiple ear infections. She had three months of speech therapy in 2012. In 2015, when C.M. was in the first grade she was having difficulty with reading. She was placed in Basic Skills Instruction (BSI), where she remained for the remainder of the first grade and the second grade. At the end of the second grade, J.M. was told that C.M. no longer needed BSI. She attempted to have C.M. remain in BSI but was told that she did not qualify. J.M. did not dispute C.M. no longer being eligible for BSI.

J.M. met with the CST in the spring of C.M.'s third grade year. She was told that C.M. did not need additional support. No testing of C.M. was done. C.M. continued to have reading difficulty. She reached out to the principal, Mr. Gardella, who told her that she would have to get private assistance for C.M. because the school would not aid. Gardella gave her recommendations for private assistance for C.M. Petitioner hired an Orton Gillingham (OG) trained teacher, Diana Knight, to tutor C.M. who was tutored twice a week for third and fourth grade. C.M. also was tutored in math by Christina Russell.

During C.M.'s third grade year, Russell tutored her four times a week one a half to two hours each session. The worked-on reading, math, science, and homework. Russell retaught all the assignments to C.M. for written assignments, C.M would dictate the work and Russell would type it. C.M. had difficulty retaining the information that she learned in class.

C.M. had challenges being late to class, organization and completing assignments timely. At the end of the fourth grade C.M. was not keeping up with assignments. J.M. discussed this with C.M.'s teacher Killea. Her fourth-grade report card was graded by numbers two meant, approaching grade level and three meant meeting grade level. In English Language Arts (ELA) C.M. did not progress. She was tardy eighteen times and J.M. does not know why C.M. was tardy because she was dropped off at school on time. The teachers said that C.M. was not organized and not turning in work on time.

When C.M. was in the fifth grade Russell was her only tutor. Russell tutored her in various subjects. J.M. received an email that C.M. had missing assignments. C.M had signed her father's name on the missed assignments. C.M. misspelled her last name when signing her father's name. C.M. was embarrassed for her parents to know she missed the assignments. On her fifth-grade report card, C.M. was again tardy eighteen times. She did not progress in ELA literary reading; her grade was 2 in the first and third marking periods. In two of the reading strategies her grade went down. In all areas, J.M. was concerned that there was no improvement did not expect C.M to get 3's. The teacher's comments did not address her lack of progress or her missing

assignments, lack of organization or not keeping up with the book. The report card comments do not address what was discussed at the parent teacher meetings. C.M. was not keeping up with assignments and her assignments were late when she was in the fourth and fifth grade.

J.M. contacted Dr. Palmer for an evaluation of C.M, after C.M.'s fifth grade year. Dr. Palmer could not see C.M. until the fall of 2019. Dr. Palmer recommended C.M. have an auditory processing evaluation and LMB evaluation. J.M. did not speak to the person who did the central auditory processing report. LMB evaluated C.M.s reading fluency, comprehension, and phonetics, LMB representatives told J.M. that C.M. was struggling with phonetics, dyslexia, and comprehension fluency. They recommended a four-week intensive program for C.M. C.M. did a summer LMB program for five weeks for five days a week four hours each day. The cost was \$3,000 per week. The auditory processing report and the LMB report were sent to the district which forwarded it to the CST. Dr. Palmer completed the evaluation of C.M. in the fall of 2019. She did not observe C.M. in the classroom. J.M. does not recall if she gave Dr. Palmer consent to speak to the district regarding C.M.

On August 19, 2019, J.M. contacted the district stating that she wanted additional services for C.M. She wanted to know if C.M. was eligible for an IEP or 504-plan. J.M. met with the CST on September 27, 2019, for an initial identification and evaluation planning meeting. She wanted evaluations for C.M. but the district did not offer evaluations. She told the CST that C.M. was being evaluated by Dr. Palmer. They wanted to review Dr. Palmer's report. She then met with Gihourski to discuss the 504-plan. At that time J.M. did not know the difference between a 504-plan and an IEP.

J.M. received the I&RS plan for C.M. but does not recall when. In October 2019, she was informed that C.M. was doing well with the changes. C.M. stated that she was not getting the accommodations of the study guides, preferential seating, or extra time in some classes.

J.M. met with the CST a second time in January 2020. She had provided the CST with Dr. Palmer's report, which diagnosed C.M. with dyslexia, ADHD inattentive type and auditory processing disorder. The CST stated that C.M. would be monitored in class and they would speak with her teachers. C.M. was doing well in school. They

would not do evaluations or provide an IEP for C.M. because the CST felt that she did not meet the criteria for an IEP. After seeing Dr. Palmer's report, J.M. wanted an IEP for C.M.

On January 13, 2020, there was a 504-plan meeting. The 504-team read Dr. Palmer's report. J.M. was not pleased with the 504-plan because it did not have reading remediation for C.M. The 504-plan incorporated the disabilities Dr. Palmer listed in her report. Gihourski told J.M. she might want to ease up on the tutoring to see how C.M. would do without the tutoring. C.M. did not want to stop the tutoring.

There was a February 19, 2020, meeting, where the district again stated that evaluations were not warranted for C.M. J.M. notified the District on January 27, 2020, that she was filing a due process petition. Prior to the due process being filed J.M. did not know the difference between an I&RS plan a 504-plan and an IEP.

In March 2020, class became virtual due to the pandemic. Initially C.M was excited about virtual classes, but she became afraid that she could not finish the work. When C.M. has a reading assignment, petitioner reads it with her and will get an audio book of the material. Any reading assignment requires extra time for C.M.

C.M. participates in dancing and gymnastics as extra circular activities. She has a dog that is in dog shows. C.M. was on the honor roll in the sixth grade. She had all A's on her final report card for the sixth grade. J.M. believes that C.M. needs an IEP because the work will be getting more difficult and C.M. was struggling with the work in the sixth grade. The 504- plan does not fix the problem. C.M. reads books on a fourth-grade level and could not read the books on the sixth-grade level.

J.M. was concerned with C.M.'s tardiness in the fourth and fifth grade because C.M. was dropped off at school in a timely manner. When she questioned C.M., C.M. stated that she did not know that she was late. C.M. takes a long time to get ready for school. Executive functions and time management are issues for C.M.

**Donna Geffner**

Donna Geffner is a speech pathologist. Auditory processing is the ability of the auditory system to take in verbalization and interpret, discriminate recognize and review it timely and understand it. Fluid in the ears is a sign of an auditory processing disorder. Tympanostomy tubes are inserted in the ear to release fluid from children's ears. Once fluid in the ears is corrected, the child can have residual problems. Cognitive ability plays a role in a child's speech. Cognitive ability tells how a child can learn. Reading disorders correlate with speech difficulty. A child with auditory processing disorder can have problems in decoding. Auditory processing disorder can impact listening, attention, social functioning and reading.

LMB provides a methodology for teaching children phonological processing, using a multi-sensory approach. An interactive metronome is a body integration skill that occupational therapist use.

Geffner wrote a textbook on the comorbidity of ADHA and auditory processing disorder. ADHD is difficulty with the ability to attend, time manage, organize, and prioritize. There are three types of ADHA, hyperactive, inattentive, and combined. Inattentive ADHD is not paying attention. ADHA can be treated with medication, community support or therapy.

Baseline establishes the level at which the child is performing before intervention. Students with deficient skills need remediation and training. Students with auditory processing disorder can have sound symbol problems. The child can misread words and not understand what they are reading. Auditory processing disorder can affect reading comprehension. Auditory processing disorder can be classified as other health impaired for classification for special education.

Phonemic Synthesis is the inability to blend sounds to get words. Binaural separation is the inability to synthesize what you hear from both ears. The use of direct instruction is helpful with students with auditory processing disorder. 504-plan accommodations are not direct instruction or remediation. A person with auditory processing disorder needs a remediation program. There is a comorbidity with dyslexia and ADHD. When they are combined the child has more frustration, less self-esteem, and feelings of inadequacy.

Geffner has never met C.M. or spoken to the District.



## **Mona Nicola**

Mona Nicola is a licensed psychiatrist who is treating C.M. She began treating C.M. in March 2020. At the initial evaluation C.M. had difficulty with concentration in school, sustaining attention and was easily distracted. Her diagnosis of C.M. was ADHD -inattentive type. Dr. Nicola did not have C.M.'s auditory processing report. C.M.'s level of functioning was fifty-five on a scale of zero to one hundred. She was able to function well. She prescribed Vyvanse for C.M.'s ADHD. It helps increase concentration. She was originally given ten milligrams; this was increased to twenty milligrams due to C.M.'s decreases concentration during the pandemic. Vyvanse can increase anxiety in children with ADHD. Vyvanse did not increase ADHD. This medication causes the least amount of anxiety. Dr. Nicola followed up with C.M. between March 2020 to July 2020.

Dr. Nicola reviewed Dr. Palmer's report and the 504- report. She spoke to C.M.'s parents and tutor. C.M. experienced anxiety from schoolwork. C.M. imposed pressure on herself. C.M. spoke about it taking long for her to do her schoolwork. Dr. Nicola believes that C.M.'s anxiety is only related to school, but it became pervasive to the point that she could not sleep. Dr. Nicola has consulted with CST. C.M. was eager for extra help and extra work. She reviewed C.M.'s 504 plan which did not touch on remediation. C.M. needs remediation especially with reading. She needs support with working memory, organization, and study skills. C.M. needs remediation with organization skills.

Dr. Nicola spoke to the tutor, who stated that C.M. was forgetful, easily distracted needed help to follow through and prioritize things. C.M.'s report card shows her to be a good student. She was tutored two hours a day four days a week. The tutoring is helpful for C.M. C.M. thinks that she is not smart enough. The tutoring alleviates her anxiety. If she did not have a tutor, C.M. would spend four to six hours on homework. It is possible that she needs special education. Dr. Nicola recommends speech language evaluation for C.M.

Dr. Nicola reviewed the auditory processing report and the report of Dr. Palmer. She did not review the Chatham school records. She believes that C.M. has a speech

language disorder, ADHD inattentive type and generalized anxiety disorder. She did not consider anti-anxiety medication for C.M.

An IEP is more appropriate for C.M. than 504-plan. She is eligible for an IEP under the classification of other health impaired. She had huge difficulties related to schoolwork. C.M. felt inadequate because it took her longer to read, do schoolwork and take tests. An educational impact is needed for a student to qualify for an IEP along with a disability. C.M.'s anxiety has not improved. C.M.'s anxiety impacts her education. Supportive therapy helped C.M.'s anxiety to some extent.

### **Christina Russell**

Christina Russell is a certified teacher in Chatham. She was on maternity leave from 2019-2020. She is a fifth-grade math and science teacher. In the spring of 2017 Russell worked as a tutor for C.M. At that time C.M. was finishing the third grade. In 2017-2018, while C.M. was in the fourth grade, Russell tutored C.M. in basic math two to three times a week for one hour at that time. C.M. had another tutor that taught her English based OG.

When C.M. was in the sixth grade, Russell tutored her four times a week for an hour each time. In March 2020, the tutoring increased to Monday to Friday one to two hours a day. At that time, Russell would look at C.M.'s work and prioritize the assignments. She would write a list of what would be worked on. Russell tutored all subjects when C.M. was in the sixth grade. Russell would speak to C.M.'s teachers if she had any questions. C.M. received google classroom assignments.

Writing was an area of weakness for C.M. It was difficult for her to translate her ideas to paper. She worked on grammar and fluidity with C.M. to make her work more coherent. C.M. never told her that she did not complete her reading assignments. C.M. would be overwhelmed with her assignments in the sixth grade on occasion. There were times where she re-taught C.M. math. Russell would help her study for tests and with organization. Russell does not recall speaking with Dr. Nicola. C.M. benefitted with assistance in executive functioning and organization. C.M. 's parents do not put

more pressure on her than she puts on herself. Russell tutored C.M. until October 28, 2020.

Russell has not seen C.M.'s 504-plan. She knows that petitioners want an IEP for C.M. She is not a special education teacher. Russell does not recall speaking with C.M.'s fourth grade teacher. When C.M. was in the fifth grade, Russell retaught some math concepts to her. The fifth-grade concepts and skills of ELA were also retaught. Russell received no feedback from C.M.'s fifth grade teacher.

Russell and Palma had previously co-taught. Palma was C.M.'s sixth grade ELA teacher. If she wanted to clarify an ELA assignment of C.M. she would email Palma.

C.M. was overwhelmed with the transition from fifth grade to sixth grade. There were more subjects and tests in every area. C.M. was more hesitant with sixth grade math. C.M. benefits from breaking down assignments and organization of assignments. Russell used a graphic organizer at times with her. C.M. benefits from using a graphic organizer.

### **Nancy Mather**

Nancy Mather has a PHD in special education learning disabilities. She has never met C.M. She reviewed the report of Dr. Palmer, the Feiffer Assessment of Reading, and the 504-plan for C.M. In the first and second grade C.M. needed reading help. She had ear infections. Central auditory processing disorder affects dyslexia. She has trouble discerning speech sounds. Orthography is written recall associated with reading and spelling. C.M. reads slowly. Her silent reading rate is average. Her oral reading fluency is in the lower average range at 86. C.M. speech sounds problem manifests in difficulty writing her thoughts. C.M. needs to increase her reading speed. There are many techniques to increase reading speed.

ADHD and dyslexia can affect reading. Slow word perception is a part of dyslexia. Spelling difficulty is a hallmark of dyslexia. C.M.'s average scores in reading can be attributed to help she received in school in the first and second grade. The Wilson reading program was recommended in the central auditory processing report. It

is an intensive program where teachers teach students with dyslexia how to read and spell. O.G. is a method of teaching reading to students with dyslexia. The Wilson reading program uses the O.G. principals. O.G. and Wilson are reading remediation program., When a student has a diagnosis of dyslexia, they need special instruction to build reading skills and reading rate.

C.M.'s 504-plan does not provide for remediation. It does not solve the problem of C.M.'s slow reading rate. C.M. needs an IEP to address her reading rate and reading speed. She also needs help with written language. The 504-plan does not address dyslexia. C.M. can be classified specific learning disabilities or other health impaired to be eligible for special education services. C.M. needs goals and objectives for reading fluency and reading rate. She made no significant progress in those areas. C.M.'s reading comprehension score is above average. Her decoding score is in the low average range. Mather did not speak to anyone at the district. She accepted Dr. Palmer's diagnosis of dyslexia. She reviewed the KLEA test of C.M. and her educational history. All were consistent with Dr. Palmer's report.

C.M.'s auditory processing disorder can affect her reading rate. Her ADHD can affect her performance at school. Students with dyslexia typically have low self-esteem and reading difficulty. There are areas in the KLEA composite scores that can make a student eligible for special education services including reading skill, math, written language and written expression. C.M.'s IQ is 101. Her reading score of 83 is not a sever discrepancy from her I.Q. The measure that the District uses to show a severe discrepancy is a 1.5 standard deviation or twenty-two points, C.M.'s overall language score was 114. There is no discrepancy with her I.Q. Mather did not review C.M.'s report cards. If a student receives straight A's the student is above average.

Dyslexia alone does not qualify a student for an IEP. ADHD has a significant impact on education. All students with dyslexia who need help with reading need an IEP.

C.M. has a deficit in reading. Her oral language is above average. C.M. needs remediation with her reading rate and written language. The KLEA scores is a more in-depth interpretation. It is not consistent with the district's criteria. Dr. Palmer's

diagnosis of C.M. was an accurate diagnosis. C.M. needs an IEP for reading rate, spelling, written language and organizational skills. She also has difficulty with executive skills. When doing homework with C.M., she had to make a list of what to do.

### **E.M.**

E.M. is the father of C.M. He took her to school every day. She would arrive at school early. In the fifth grade C.M. would go to homeroom class first. In the sixth grade, she would go straight to class. When she was late in the sixth grade she was not usually marked as tardy. C.M. has difficulty with organizational skills. It takes her longer to get ready than other people.

### **Diana Knight**

Diana Knight is a teacher of the handicapped in Millburn. She has certificates in teacher of students with disabilities from K-8, elementary school teacher. She is trained in OG reading methodology. OG is an approach to teach reading to students with dyslexia. It is a multi-sensory approach. There is an OG program. There are other programs that use OG methodology.

Knight was hired by petitioners to tutor C.M. with the use of OG methodology when C.M. was in the fourth grade. She saw C.M. three times a week. O.G. is best administered with high frequency. Data is collected to target skills. There is checking and monitoring. Knight gave C.M. a baseline assessment to target her areas of weakness. C.M. had a deficiency in spelling and decoding multi syllabic words.

Knight would have C.M. look at the sound in isolation, show C.M. the letters read words, give her sentences with the words in them. If there was an error, she would correct it and move forward. In OG you do not move forward until you have mastered the level. She did not do schoolwork with C.M. only reading remediation.

C.M. responded well. She was very cooperative. Knight stopped tutoring C.M. when Knight was offered a full-time position. C.M. did not complete the OG program with Knight. C.M. would benefit from OG instruction because she exhibited qualities of

a dyslexic student. Knight did not have the 504-plan when she was working with C.M., but the 504-plan does not address C.M.'s reading. Multi-sensory instruction benefits students with dyslexia and orthograph issues.

Knight saw marked improvement in C.M. through assessments. C.M.'s strengths were memory, focus and verbal ability. Her reading was not far below reading level when she was asked to read easy text. By looking at C.M.'s writing samples or her reading grade level test, Knight determined C.M. needed OG instruction. She did not review evaluations of C.M.

O.G. instruction has three levels each level has units in it. Knight does not have C.M.'s OG data. She did not review C.M.'s school records. She did not communicate with the district regarding C.M. If C.M. does not get reading support, it will be more difficult for her when the work gets more challenging. C.M. mastered the second level of O.G. instruction. She retained the material that she learned.

### **FACTUAL DISCUSSION**

Having reviewed the testimony and the evidence, I **FIND** the Following **FACTS**:

J.M and E.M. are the parents of C.M. C.M. had multiple ear infections which resulted in her having bilateral tympanostomy tubes placed in her ears in 2009. C.M. received BSI services in the first and second grade. The district determined that C.M. did not need BSI services after the end of the second grade. Petitioners hired Knight, an OG trained teacher, to tutor C.M. twice a week for the fourth grade. C.M. was also tutored by Russell in the third through sixth grades.

C.M.'s PARCC scores for the third to fifth grade were meeting expectations. Her fourth and fifth grade report cards showed C.M. was approaching or meeting expectations. C.M. attended Lafayette School in the fourth and fifth grades. Her teachers at Lafayette School indicated that they had no concerns about C.M., she did well there according to the principal. C.M.'s fifth grade English Language Arts score on her report card were either approaching grade level or meeting grade level.

During the summer of 2019, C.M. took a four-week LMB course - five days a week, which was paid for by petitioners. On August 19, 2019, J.M contacted the district to request additional services for C.M. She wanted to know if C.M. was eligible for an IEP or 504-plan. Petitioners provided the District with a Central Auditory Processing report that stated that C.M. had Central Auditory Processing Disorder it stated that she should have a Wilson reading program. An evaluation by LMB recommended C.M. continue in the LMB program. LMB is not offered in school settings. An initial identification and evaluation planning meeting was held with District and petitioners on September 5, 2019, where C.M. was given an I&RS plan.

I&RS is for general education students with academic, social, behavioral or health issues. Teachers tell the I&RS team which students need support. I&RS team meets twice a week with students to discuss issues. A guidance counselor is present. The I&RS team meets once a month to discuss what is and is not working for the students. Students in I&RS must have a written plan with interventions. The team oversee the people implementing the plan. Once the plan is implemented the I&RS team checks eight weeks later to see how the plan is working.

The interventions in C.M.'s I&RS plan of September 2019 were:

- preferential seating,
- additional time to respond to verbal or written questions, use of FM system,
- teachers check for understanding of directions,
- take classroom notes on Chromebook and
- copies of class notes, outlines and/or study guides.

The I&RS was based on C.M.'s processing disorder and concerns including C.M. not being quick to ask if she was unsure and at times needing redirection. C.M. had anxiety with larger assignments at this time but completed them on time. At the October 22, 2019, I&RS meeting, C.M. was discussed. She had done well in September 2019. She was doing well in her classes. The I&RS plan was continued for eight weeks. In December 2019, C.M.'s grades improved, she participated in class and did her homework. C.M. needed extra time to check over her work.

In December 2019, petitioners provided Dr. Palmer's report to the district. Dr. Palmer diagnosed C.M. as having: disorder of written expression, dyslexia, developmental reading disorder due to limited decoding and fluency, developmental disorder of scholastic skills specifically in the areas of basic math, written language, decoding, orthographic processes and academic fluency skills., disorder of written expression in the area of writing mechanics, graphomotor skills and orthographic skills , auditory processing disorder, ADHA predominantly inattentive type, generalized anxiety disorder and major depressive disorder. C.M.'s IQ is 101. Dr. Palmer administered the WIC -5 test and all of C.M.'s scores were in the average range. Her scores on the Connors test were normal but showed that she had difficulty with sustained attention. C.M. self-reports that she struggles with planning, organization and working memory, but her teachers do not agree.

Petitioners in January 2020 contacted the district because they believed C.M. needed additional services. An initial identification and evaluation planning meeting was held 504-plan meeting was held on or around January 17, 2020. A 504-plan was developed for C.M. on January 17, 2020.

A 504-plan coordinator works with the 504-plan team to determine if a student is eligible for a 504-plan. If the student is eligible a plan is written. The plan is to be implemented. For a student to be eligible for a 504 plan, they must have a diagnosis and evidence that the diagnosis impacts major life activities. Major life activities include learning.

504--plan are required to provide FAPE. FAPE in the context of 504 programs is defined as meeting the needs of the student with a disability to the same extent as meeting the needs of a non-disabled student. Parents provide documents or evaluations that show the student's disability. Once these evaluations are received a functional assessment is done. I&RS and 504-plans are similar but students with a 504-plan have accommodations in state testing where students with an I&RS do not.

The 504-plan lists C.M.'s disabilities as dyslexia, orthographic based learning disorder, central auditory processing disorder, ADHA and generalized anxiety disorder. It states that her disabilities affect her learning. Teachers wrote functional assessments



for the 504-plan. They stated that C.M. gave detailed answers and needed extra time. The accommodations in the 504-plan are:

- preferential seating to allow teacher check-ins,
- teacher will check for comprehension of instructions and directions,
- allow additional time to respond to verbal and/or written questions, use of FM system,
- provide 50% extended time on in class assignments,
- allow C.M. to take class notes on her Chromebook and
- provide C.M. with copies of classroom notes, outlines and or study guides.

For statewide testing, C.M. would have fifty percent extended time and a small group setting.

There was no behavior modification plan. C.M. did not exhibit any behavior problems. Nothing in the 504-plan directly addressed reading or dyslexia. The District policy on Special Education has provisions regarding dyslexia, which states the District must ensure that students who are diagnosed with dyslexia receive appropriate evidence-based interventions. C.M.'s 504-plan had accommodations but not remediation for her dyslexia. There is no one to one teaching in a 504 plan. In February 2020, the District stated that evaluations were not warranted for C.M. In March 2020 classes became virtual due to the pandemic.

Palma, C.M.'s sixth grade teacher stated that C.M.'s areas of concern were not asking questions, a lack of motivation for writing which requires sustained focus. C.M. was on the honor role in the sixth grade. Books were read in class and the assignments were done later.

C.M.'s capacity for learning was average or above average. Dr. Palmer administered the KLEA test to C.M. Her composite scores were in the average range. Chronic ear infections, which C.M. had, can have a residual effect of auditory processing disorder, which correlates with reading difficulty as well as difficulty with decoding, listening comprehension and discrimination of information. C.M. decodes letter by letter and sound which slows down her reading fluency. C.M. has not received

any evidence-based intervention for dyslexia. C.M. had difficulty with sustained attention on the Connors test.

C.M.'s IQ is 101. The District CST adopted a formula to determine whether a student has a severe disability based on current achievement and intellectual ability. The formula is one and a half standard deviation or twenty-two points differences from the students IQ. C.M.'s VCI scores did not indicate a severe discrepancy under the district's formula. Dr Palmer and Dr Mather agreed that based upon the district's formula C.M. would not qualify under specific learning disability. C.M.'s KTEA and WISC-V scores were in the average range.

Dr. Palmer reevaluated C.M. in October 2020. At that time C.M. was being treated with medication for ADHD. Dr. Palmer administered the KTEA test again. C.M.'s math score was equal to fifth grade fourth month. Word and letter recognition score was the equivalent to fifth grade fourth month. Her reading comprehension was equivalent to a tenth grade fourth month. The Feifer Assessment of Reading test showed that C.M. had limited silent and oral reading fluency. C.M. has surface visual based dyslexia. She has an auditory processing disorder. C.M. was also diagnosed with major depressive disorder.

Auditory processing is the ability of the auditory system to take in verbalization and interpret, discriminate, recognize, and review it timely and understand it. LMB provides a methodology for teaching children phonological processing using a multi-sensory approach. People with ADHD have difficulty with time management, attending, organization and prioritizing. Orthography is written recall associated with reading and spelling.

C.M.'s standardized test scores in reading and writing were above the school and district average. There is no documentation that ADHD impacts C.M. in school. C.M. was on the honor roll in the sixth grade. She had A's and on B on her final report card for the sixth grade.

Dr. Nicola diagnosed C.M. with ADHD inattentive type. She prescribed Vyvanse for C.M.'s ADHD. Vyvanse can cause increased anxiety in children with ADHD. C.M.

needs help with working memory, organization, and study skills. C.M.'s anxiety is school related.

Russell tutored C.M. in the fifth grade two to three times a week for one hour each time. When C.M. was in the sixth grade, Russell tutored C.M. four times a week for one hour a day. At that time Russell would look at C.M.'s work and prioritize the assignments. Writing was a weakness for C.M. She had difficulty translating her ideas to paper's. She would be overwhelmed with her assignments on occasion. C.M. needed assistance with executive function and organization. C.M. benefits from breaking down assignments and organization of assignments. Russell would occasionally reteach C.M. in Math and English Language Arts. Beginning in March 2020, Russell tutored C.M. four days a week for two hours. This coincides with C.M. beginning virtual learning.

C.M.'s oral reading fluency is in the low average range. C.M.'s dyslexia, ADHD and auditory processing disorder, can affect her reading rate. When classes became virtual in March 2020, Russell would tutor C.M. four days a week for two hours a day.

When C.M. was in the fourth grade Knight tutored her using an OG method. In OG you do not move forward until you have mastered a level. C.M. had a deficit in spelling and decoding multi-syllabic words. C.M. did not complete the OG program with Knight.

The 504-plan does not address C.M.'s reading rate or her dyslexia.

The district's special education regarding dyslexia states that the District "Ensures that students who are diagnosed with dyslexia or other reading disability receive appropriate evidence-based interventions." The district's 504 policy does not address dyslexia. It does state that the plan should directly relate to a student's identified needs.

Dr Palmer is an expert in neuropsychology and psychotherapy. Geffner is an expert in auditory processing disorders and speech and language pathology. Dr. Nicola

is an expert in psychiatry. Dr. Mather is an expert in reading, special education, learning disabilities and dyslexia.

Petitioners did not request an IEP, or 504-plan for C.M. in the fifth-grade.

### **LEGAL ANALYSIS AND CONCLUSIONS**

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

The United States Supreme Court has construed the FAPE mandate to require the provision of “personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” Rowley, supra, 458 U.S. at 203, 102 S. Ct. at 3049, 73 L. Ed. 2d at 710. New Jersey follows the federal standard that the education offered “must be ‘sufficient to confer some educational benefit’ upon the child.” Lascari v. Bd. of Educ. of Ramapo Indian Hills Reg’l High Sch. Dist., 116 N.J. 30, 47 (1989) (citing Rowley, supra, 458 U.S. at 200, 102 S. Ct. at 3048, 73 L. Ed. 2d at 708). The IDEA does not require that a school district “maximize the potential” of the student, Rowley, supra, 458 U.S. at 200, 102 S. Ct. at 3048, 73 L. Ed. 2d at 708, but requires a school district to provide a basic floor of opportunity. Carlisle Area Sch. v. Scott P., 62 F.3d 520, 533–34 (3d Cir. 1995).

34 CFR 300.111 provides:

(a) General. (1) The State must have in effect policies and procedures to ensure that—

(i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and

(ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

(b) Use of term developmental delay. The following provisions apply with respect to implementing the child find requirements of this section:

(1) A State that adopts a definition of developmental delay under § 300.8(b) determines whether the term applies to children aged three through nine, or to a subset of that age range (e.g., ages three through five).

(2) A State may not require an LEA to adopt and use the term developmental delay for any children within its jurisdiction.

(3) If an LEA uses the term developmental delay for children described in § 300.8(b), the LEA must conform to both the State's definition of that term and to the age range that has been adopted by the State.

(4) If a State does not adopt the term developmental delay, an LEA may not independently use that term as a basis for establishing a child's eligibility under this part.

(c) Other children in child find. Child find also must include—

(1) Children who are suspected of being a child with a disability under § 300.8 and in need of special education, even though they are advancing from grade to grade; and

(2) Highly mobile children, including migrant children.

(d) Construction. Nothing in the Act requires that children be classified by their disability so long as each child who has a disability that is listed in § 300.8 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.

One issue in this matter involves whether C.M. was suspected of having a disability even though they are advancing from grade to grade. C.M. received good grades and advanced from grade to grade. In fifth grade C.M.'s final report card showed that her grades in English Language Arts were approaching grade level or meeting grade level. Her fifth-grade teachers felt that C.M. did well. The teachers did not have any concerns. Her PARCC scores in the fifth grade were meeting expectations. Petitioners brought their concerns and private evaluations for auditory processing disorder and LMB to the district. There was an initial identification and evaluation planning meeting on September 27, 2019. An I&RS plan based on the auditory processing disorder was implemented for C.M. Once the District received the private report of the private neuropsychologist, C.M. was given a 504plan. C.M. was a good student with no behavioral issues exhibited at school.

I **CONCLUDE** that the district did not violate child find.

34 C.F.R 104.33(a) provides:

General. A recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

N.J.S.A. 18A:40-5.3 provides:

a. A board of education shall ensure that each student enrolled in the school district who has exhibited one or more potential indicators of dyslexia or other reading disabilities is screened for dyslexia and other reading disabilities using a screening instrument selected pursuant to section 2 [C.18A:40-5.2] of this act no later than the student's completion of the first semester of the second grade.

b. In the event that a student who would have been enrolled in kindergarten or grade one or two during or after the 2014-2015 school year enrolls in the district in kindergarten or grades one through six during or after the 2015-2016 school year and has no record of being previously

screened for dyslexia or other reading disabilities pursuant to this act, the board of education shall ensure that the newly-enrolled student is screened for dyslexia and other reading disabilities using a screening instrument selected pursuant to section 2 of this act at the same time other students enrolled in the student's grade are screened for dyslexia and other reading disabilities or, if other students enrolled in the student's grade have previously been screened, within 90 calendar days of the date the student is enrolled in the district.

c. The screening shall be administered by a teacher or other teaching staff member properly trained in the screening process for dyslexia and other reading disabilities.

N.J.S.A. 18A: 40-5.4 provides:

In the event that a student is determined through the screening conducted pursuant to section 3 [C.18A:40-5.3] of this act to possess one or more potential indicators of dyslexia or other reading disabilities, the board of education shall ensure that the student receives a comprehensive assessment for the learning disorder. In the event that a diagnosis of dyslexia or other reading disability is confirmed by the comprehensive assessment, the board of education shall provide appropriate evidence-based intervention strategies to the student, including intense instruction on phonemic awareness, phonics and fluency, vocabulary, and reading comprehension.

The district's special education regulations regarding dyslexia states that the district "Ensures that students who are diagnosed with dyslexia or other reading disability receive appropriate evidence-based interventions." The district's 504 regulations do not address dyslexia.

In this matter, C.M. was diagnosed with dyslexia by Dr. Palmer. The district was provided with the report of Dr. Palmer. In the 504-plan, the district listed dyslexia as a diagnosis of C.M. but the 504-plan had no provision to address C.M. 's dyslexia. The district did not provide C.M. with appropriate evidence-based intervention strategies to the student, including intense instruction on phonemic awareness, phonics and fluency, vocabulary, and reading comprehension. By listing dyslexia as a diagnosis for C.M., the district acknowledged that she has dyslexia.

I **CONCLUDE** that the district did not provide FAPE to CM with the 504-plan because the 504-plan did not address her dyslexia.

N.J.A.C. 6A:14-3.5(c) provides:

A student shall be determined eligible and classified "eligible for special education and related services" under this chapter when it is determined that the student has one or more of the disabilities defined in (c)1 through 14 below, the disability adversely affects the student's educational performance, and the student is in need of special education and related services. Classification shall be based on all assessments conducted, including assessment by child study team members, and assessment by other specialists as specified below.

1. "Auditory impairment" corresponds to "auditorily handicapped" and further corresponds to the Federal eligibility categories of deafness or hearing impairment. "Auditory impairment" means an inability to hear within normal limits due to physical impairment or dysfunction of auditory mechanisms characterized by (c)1i or ii below. An audiological evaluation by a specialist qualified in the field of audiology and a speech and language evaluation by a certified speech-language specialist are required.

i. "Deafness"-The auditory impairment is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, and the student's educational performance is adversely affected.

ii. "Hearing impairment"-An impairment in hearing, whether permanent or fluctuating, that adversely affects the student's educational performance.

2. "Autism" means a pervasive developmental disability that significantly impacts verbal and nonverbal communication and social interaction that adversely affects a student's educational performance. Onset is generally evident before age three. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routine, unusual responses to sensory experiences, and lack of responsiveness to others. The term does not apply if the student's adverse educational performance is due to an emotional regulation impairment as defined in (c)5 below. A child who manifests the characteristics of autism after age three may be classified as autistic if the criteria in this paragraph are met. An assessment by a certified speech-language specialist and an assessment by a physician trained in neurodevelopmental assessment are required.

3. "Intellectual disability" means a disability that is characterized by significantly below average general cognitive functioning existing concurrently with deficits in adaptive behavior; manifested during the developmental period that adversely affects a student's educational performance and is characterized by one of the following:

i. "Mild intellectual disability" means a level of cognitive development and adaptive behavior in home, school, and community settings that are mildly below age expectations with respect to all of the following:



(1) The quality and rate of learning;

(2) The use of symbols for the interpretation of information and the solution of problems; and

(3) Performance on an individually administered test of intelligence that falls within a range of two to three standard deviations below the mean.

ii. "Moderate intellectual disability" means a level of cognitive development and adaptive behavior that is moderately below age expectations with respect to the following:

(1) The ability to use symbols in the solution of problems of low complexity;

(2) The ability to function socially without direct and close supervision in home, school, and community settings; and

(3) Performance on an individually administered test of intelligence that falls three standard deviations or more below the mean.

iii. "Severe intellectual disability" means a level of functioning severely below age expectations whereby, on a consistent basis, the student is incapable of giving evidence of understanding and responding in a positive manner to simple directions expressed in the child's primary mode of communication and cannot in some manner express basic wants and needs.

4. "Communication impairment" means a language disorder in the areas of morphology, syntax, semantics, and/or pragmatics/discourse that adversely affects a student's educational performance and is not due primarily to an auditory impairment. The problem shall be demonstrated through functional assessment of language in other than a testing situation and performance below 1.5 standard deviations, or the 10th percentile on at least two standardized language tests, where such tests are appropriate, one of which shall be a comprehensive test of both receptive and expressive language. When the area of suspected disability is language, assessment by a certified speech-language specialist and assessment to establish the educational impact are required. The speech-language specialist shall be considered a child study team member.

i. When it is determined that the student meets the eligibility criteria according to the definition in (c)4 above but requires instruction by a speech-language specialist only, the student shall be classified as eligible for speech-language services.

ii. When the area of suspected disability is a disorder of articulation, voice, or fluency, the student shall be evaluated pursuant to N.J.A.C. 6A:14-3.4(g) and, if eligible, classified as eligible for speech-language services pursuant to N.J.A.C. 6A:14-3.6(a).

5. "Emotional regulation impairment" means a condition exhibiting one or more of the following characteristics over a long period of time and

to a marked degree that adversely affects a student's educational performance due to:

i. An inability to learn that cannot be explained by intellectual, sensory, or health factors.

ii. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

iii. Inappropriate types of behaviors or feelings under normal circumstances;

iv. A general pervasive mood of unhappiness or depression; or

v. A tendency to develop physical symptoms or fears associated with personal or school problems.

6. "Multiple disabilities" means the presence of two or more disabling conditions, the combination of which causes such severe educational needs that they cannot be accommodated in a program designed solely to address one of the impairments. Multiple disabilities include intellectual disability-blindness and intellectual disability-orthopedic impairment. The existence of two disabling conditions alone shall not serve as a basis for a classification of multiple disabilities. Eligibility for speech-language services as defined in this section shall not be one of the disabling conditions for classification based on the definition of "multiple disabilities." Multiple disabilities does not include deaf-blindness.

7. "Deaf/blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for students with deafness or students with blindness.

8. "Orthopedic impairment" means a disability characterized by a severe orthopedic impairment that adversely affects a student's educational performance. The term includes malformation, malfunction, or loss of bones, muscle, or tissue. A medical assessment documenting the orthopedic condition is required.

9. "Other health impairment" means a disability characterized by having limited strength, vitality, or alertness, including a heightened alertness with respect to the educational environment, due to chronic or acute health problems, such as attention deficit hyperactivity disorder, a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, diabetes, or any other medical condition, such as Tourette Syndrome, that adversely affects a student's educational performance. A medical assessment documenting the health problem is required.

10. "Preschool child with a disability" means a child between the ages of three and five who either:

i. Is experiencing developmental delay, as measured by appropriate diagnostic instruments and procedures, in one or more of the areas in (c)10i(1) through (5) below and requires special education and related services. As measured by a standardized assessment or criterion-referenced measure to determine eligibility, a developmental delay shall mean a 33 percent delay in one developmental area, or a 25 percent delay in two or more developmental areas.

(1) Physical, including gross motor, fine motor, and sensory (vision and hearing);

(2) Intellectual;

(3) Communication;

(4) Social and emotional; and

(5) Adaptive; or

ii. Has an identified disabling condition, including vision or hearing, that adversely affects learning or development and who requires special education and related services.

11. "Social maladjustment" means a consistent inability to conform to the standards for behavior established by the school. Such behavior is seriously disruptive to the education of the student or other students and is not due to an emotional regulation impairment as defined in (c)5 above.

12. "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken, or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions, such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

i. A specific learning disability can be determined when a severe discrepancy is found between the student's current achievement and intellectual ability in one or more of the following areas:

(1) Basic reading skills;

(2) Reading comprehension;

(3) Oral expression;

(4) Listening comprehension;

(5) Mathematical calculation;

(6) Mathematical problem solving;

(7) Written expression; and

(8) Reading fluency.

ii. A specific learning disability may also be determined by utilizing a response to scientifically based interventions methodology as described in N.J.A.C. 6A:14-3.4(h)6.

iii. The term "severe discrepancy" does not apply to students who have learning problems that are primarily the result of visual, hearing, or motor disabilities, general intellectual deficits, emotional regulation impairment, or environmental, cultural, or economic disadvantage.

iv. If the district board of education utilizes the severe discrepancy methodology, the district board of education shall adopt procedures that utilize a statistical formula and criteria for determining severe discrepancy. Evaluation shall include assessment of current academic achievement and intellectual ability.

13. "Traumatic brain injury" means an acquired injury to the brain caused by an external physical force or insult to the brain, resulting in total or partial functional disability or psychosocial impairment, or both. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech.

14. "Visual impairment" means an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness. An assessment by a specialist qualified to determine visual disability is required. Students with visual impairments shall be reported to the New Jersey Commission for the Blind and Visually Impaired.

N.J.A.C. 6A: 14-3.5(c ) (12) (iv) provides:

A student shall be determined eligible and classified "eligible for special education and related services" under this chapter when it is determined that the student has one or more of the disabilities defined in (c)1 through 14 below, the disability adversely affects the student's educational performance, and the student is in need of special education and related services. Classification shall be based on all assessments conducted, including assessment by child study team members, and assessment by other specialists as specified below.

12. "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions, such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

iv. If the district board of education utilizes the severe discrepancy methodology, the district board of education shall adopt procedures that utilize a statistical formula and criteria for determining severe discrepancy.

Evaluation shall include assessment of current academic achievement and intellectual ability.

In this matter, C.M. does have ADHD and dyslexia, however the evidence does not show that her disabilities adversely affect her educational performance. In the fifth grade C.M. was approaching or meeting expectations. C.M. received A's and one B in the sixth grade. She made the honor roll. Her standardized test scores in reading and writing were above the school and district average. C.M.'s scores did not indicate a severe discrepancy under the district's formula. There was no standard deviation of 1.5 or difference of twenty-two points. Dr. Palmer and Dr. Mather agreed that based upon the district's formula C.M. would not qualify under specific learning disability. C.M.'s KTEA and WISC-V scores were in the average range.

I **CONCLUDE** C.M. does not fit the criteria of other health impaired or specific learning disability to qualify for an IEP.

**ORDER**

Accordingly, it is **ORDERED** that the relief sought by petitioner regarding the 504-plan not providing FAPE is **GRANTED** and the relief sought by petitioners regarding child find and C.M. being entitled to special education services is **DENIED**.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2010) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C.A. § 1415(i)(2); 34 C.F.R. § 300.516 (2010). 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.

June 30, 2021



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DATE

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**KIMBERLY A. MOSS, ALJ**

ljb

## **WITNESSES**

### For Petitioner

Dr. Laura Palmer  
Donna Geffner  
Dr. Mona Nicola  
Christina Russell  
Nancy Mather  
Diana Knight

### For Respondent

Jill Gihourski  
Frank Benimeo  
Marisa Palma  
Elizabeth Gaynor  
Lauren McKenna.

## **EXHIBITS**

### Joint Exhibits

- J-1 Email from J.M. to M. Lasusa Re: Parental Request for 504 or IEP Plan
- J-2 Email from V. D'elia to J. Gihourski Re 504 Eligibility Plan
- J-3 Letter from V" Delia to Parents RE 504 Team and Child Study Team Referral
- J-4 Email from M. Kuntz to Child Study Team Re: Referral
- J-5 Section 504 Parental Rights Form
- J-6 Invitation for Initial Identification and Evaluation Plan
- J-7 I&RS Teacher Feedback- Specific Observable Behaviors
- J-8 I&RS Accommodation Plan
- J-9 Email from Benimeo to Parents Re: I&RS Plan
- J-10 Invitation for Initial Identification and Evaluation Planning Meeting Confirmation Form and Acknowledgement of PRISE

- J-11 Invitation for Initial Identification and Evaluation Planning Evaluation Not Warranted: Meeting Attendance Sign-in Sheet: Parental Acknowledgement of PRISE
- J-12 Email from Benimeo to Parents Re: October I&RS Team Meeting
- J-13 Emails from Parents to Benimeo and Gihourski re: Parents Concerns and math quiz.
- J-14 Not in Evidence
- J-15 Confidential Behavioral Assessment
- J-16 I&RS Accommodation Plan
- J-17 Email from Benimeo to Parents Re: December I&RS Meeting
- J-18 Invitation for Initial Identification and Evaluation Planning Meeting
- J-19 Invitation for Initial Identification and Evaluation Planning Meeting Confirmation Form; Parental Acknowledgement of PRISE
- J-20 Emails from Benimeo to Parents Re: 504 planning meeting
- J-21 Section 504 Signed Parental Rights
- J-22 Email from Benimeo including sixth Grade 504 Plan.
- J-23 Section 504 Accommodation Plan
- J-24 Invitation for Initial Identification and Evaluation Planning Meeting Evaluation Not warranted
- J-25 Grade 6 Report Card
- J-26 Grades 3-5 Standardized Test Scores
- J-27 Grade 4 Final Report Card
- J-28 Grade 5 Final Report Card
- J-29 Email from M. Palma to M. Varcadiponi Re; C.M. Progress
- J-30 Emails from C.M. to M. Palma Re: ELA Instructions
- J-31 Emails from C.M. to A. Novick Re: Math Instruction
- J-32 Email Correspondence from Parents and D. Fowler Re: Social Studies Assignment and Counselor Visit
- J-33 Not in Evidence
- J-34 Central Auditory Processing Evaluation Annalisa Cantore M.A. (Parent Private Report)
- J-35 Linda Mood Bell Learning Evaluation Summary- Gail Zuckerwise (Private Parent Report)
- J-36 Neuropsychological Report Dr. Laura Palmer
- J-37 Psychiatrist Report Dr. Mona Nicolae



For Petitioner

- P-1 Due Process Complaint Dated January 27, 2020
- P-2 Timeline
- P-3 Not in Evidence
- P-4 Not in Evidence
- P-5 Not in Evidence
- P-6 Not in Evidence
- P-7 Not in Evidence
- P-8 Not in Evidence
- P-9 Email Correspondence February 2018
- P-10 Not in Evidence
- P-11 Not in Evidence
- P-12 Not in Evidence
- P-13 Email Correspondence March 2018
- P-14 Not in Evidence
- P-15 Email Correspondence November 2018
- P-16 Not in Evidence
- P-17 Not in Evidence
- P-18 Not in Evidence
- P-19 Not in Evidence
- P-20 Not in Evidence
- P-21 Not in Evidence
- P-22 Not in Evidence
- P-23 Not in Evidence
- P-24 Not in Evidence
- P-25 Not in Evidence
- P-26 Dr. Laura Palmer C.V.
- P-27 Not in Evidence
- P-28 Dr. Palmer Report Dated October 2020
- P-29 Donna Geffner Ph. D C.V.
- P-30 Dr. Mona Nicolae C.V.

- P-31 Not in Evidence
- P-32 Nancy Mather Ph. D C.V.
- P-33 Nancy Mather Ph. D Report Dated October 2020
- P-34 Not in Evidence
- P-35 Not in Evidence
- P-34 Not in Evidence
- P-37 Christina Russell Resume
- P-38 Diana Knight Resume
- P-39 Palmer Preliminary Analysis
- P-40 Feifer Assessment of Reading

For Respondent

- R-1 McKenna Personal Note Re: Initial Planning Meetings
- R-2 Score Summary Kaufman Test of Educational Achievement
- R-3 Email from Gihourski to J.M. RE; 504 plan and C.M. excelling
- R-4 Jill Gihourski Resume
- R-5 Marisa Palmer Resume
- R-6 Not in Evidence
- R-7 Lauren McKenna Resume
- R-8 Frank Benimeo Resume
- R-9 Elizabeth Gaynor Resume
- R-10 2460 Chatham Special Education Policy and Regulation
- R-11 2417 Chatham I&RS Policy and Regulation
- R-12 2418 Chatham 504 Policy and Regulation
- R-13 3240 Chatham Professional Development for Teachers and Achool Leaders