



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

**FINAL DECISION**

OAL DKT. NO. EDS 05808-21

AGENCY DKT. NO. 2021-32940

**R.R. AND L.R ON BEHALF OF G.R.,**

Petitioners,

v.

**WEST ORANGE TOWN BOARD**

**OF EDUCATION,**

Respondent.

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**Julie Warshaw**, Esq. for petitioners (Warshaw Law Firm LLC, attorneys)

**Marc Mucciolo**, Esq., for respondent (Methfessel & Werbel, attorneys)

Record Closed: March 14, 2023

Decided: March 22, 2023

BEFORE **DANIELLE PASQUALE**, ALJ:

**STATEMENT OF THE CASE**

This matter arose with the June 10, 2021, filing of a due process petition in accordance with the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1415, by R.R. and L.R. on behalf of their son, G.R. ("R.R. and L.R.", or "Petitioner(s)" or "mom"), who is classified as eligible for special education and related services. Petitioners assert that the West Orange Board of Education ("West Orange", the "Board",

or the “District”) failed to offer G.R. an Individualized Education Program (IEP) that delivered a Free and Appropriate Education (“FAPE”) for the 2021-2022 school year. They have placed him at Winston Preparatory School (“Winston” or “Winston Prep”) in New Jersey upon the family moving to New Jersey, on notice to West Orange prior to the move. Further, the petitioners sought permission for that placement and subsequently had to file an Emergent Application at the OAL for placement at Winston. An Order was issued by Judge Thomas Betancourt, A.L.J. placing G.R. there in June 2021,<sup>1</sup> which was on appeal to the Federal District Court when I started the due process hearing. As a result, the parties asked for as early a date as possible as Winston Preparatory became the “stay put” pursuant to Judge Betancourt’s order which has since been upheld by the District Court. (See footnote 1, Court’s Exhibit C-1). The parents seek reimbursement for the tuition and expenses at Winston Preparatory and ask for the Individualized Education Program (“IEP”) to reflect Winston Preparatory for G.R.’s placement and reimbursement.

### **PROCEDURAL HISTORY**

The petitioner’s request for due process was received by the Office of Special Education on June 10, 2021. The contested case was transmitted to the Office of Administrative Law (“OAL”), where it was filed on July 12, 2021. Ms. Staci Greenwald initially represented the Petitioner. Subsequently Ms. Warshaw substituted in for Petitioner.

Following the resolution period and settlement conference, the matter was assigned to me, and a pre-hearing telephone conference was scheduled almost immediately. To expedite the process and at the request of the parties, they stipulated as to the issues as outlined above and asked for it to be heard as soon as practicable, as a result I set down hearing dates and I heard the matter on March 31, April 5, and May 25, 2022 and March 14, 2023 on which date the record closed.

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<sup>1</sup> C-1 Judge Clair C. Cecchi, U.S.D.J.’s Order dated July 22, 2022, denying the District’s Motion for Summary Judgment and affirming Judge Tom Betancourt, A.L.J.’s decision to make Winston Preparatory the stay-put at the Board’s cost, pending the outcome of the due process petitions. I have G.R., and the older brother is being handled by Judge Kim Moss, A.L.J.

The parties agreed the issues presented are whether the proposed IEP dated June 4, 2021 provided FAPE in the LRE and if not, whether Winston Prep is the appropriate placement. It was stipulated and later confirmed at oral argument that there are no procedural FAPE issues before me even though they are argued in their post-submission briefs. This case analyzes a substantive FAPE analysis as agreed before the case was heard.

## **DISCUSSION AND FINDINGS OF FACT**

### **District's Expert Witness Susan Maughan, L.D.T.C. and Case Manager:**

#### **Development of IEPs and Degree of Parental Cooperation**

Ms. Susan Maughan, L.D.T.C. ("Maughan") on G.R.'s Child Study Team ("CST") and Case Manager testified that she was employed by the West Orange Board of Education as a Learning Disabilities Teacher Consultant ("LDTC"). She has been an LDTC for seventeen (17) years with two (2) years at Rahway BOE and fifteen (15) in West Orange. She handled the K-6 student population. She identified her Curriculum Vitae as R-11 which lists her name as Susan Jankowski which she testified she recently changed to Maughan. She has a B.A. as a teacher of the handicapped and a master's degree in learning disabilities. She holds Supervisor's and LDTC Certifications since May of 2000. (R-11)

Her professional work experience started in 1991 in Rahway as a special education teacher where she taught in the second, third, fourth and fifth grades in what were called "the neurologically and perceptually impaired classes." She then became the resource center teacher in grades 1-5 and served as an in-class resource teacher for 4<sup>th</sup> grade. She was also an LDTC on a CST for two (2) years in Rahway before coming to West Orange. In short, she served as a special education teacher for fifteen (15) years prior to becoming an LDTC. Her continuing education includes twenty (20) hours of continuing education yearly, as a result she attends CST meetings with the Director of Special Services ("DOSS") and every other month she attends meetings with the LDTCs in the district and attends yearly conferences for exceptional children.

She explained that her duties in West Orange as a case manager include working with students, parents, teachers, and administrators. She also administers educational assessments, writes reports, IEPs and observes students in class to “help the students have a good experience in school.” Her responsibilities as an LDTC are essentially the same with the basic difference being administering student evaluations and assessments. She has been trained to administer the Woodcock Johnson IV Test of Achievement, The Test of Oral Language, The Gray Oral Reading Test, and the Wechsler Individual Achievement Test, noting that the main two (2) tests used in the District are the Woodcock Johnson IV and the Test of Oral Language and rarely administers the Wechsler.

Ms. Maughan estimated that she has participated in the eligibility determinations for hundreds of students and the same amount relative to program and placement. As a result, she has been a part of writing hundreds of IEPs. She explained that while she is not a certified speech language therapist or occupational therapist, she does frequently discuss the results of their evaluations for children she case manages. As a result of her extensive experience and training, I qualified her as an expert in special education and as an LDTC, and thus I so **FIND**.

On Direct Examination Ms. Maughan recalled that she first became familiar with G.R. in March of 2021 when she received information from the DOSS via an attorney letter that this student was coming to their District. She identified R-1 as the March 2, 2021, letter from prior counsel, Ms. Greenwald noting that G.R. (a then rising 6<sup>th</sup> grader) would be residing in West Orange, that he was a classified student already attending an out-of-district special education school and that they would like to place him in Winston Prep NJ. (R-1)

She recalled, as the letter states, that “G.R. is a student with significant language needs.” She was then assigned as his case manager. In the normal course, she reviewed the records provided, contacted the parents, and got as much information as possible to develop a new IEP for the District.

She reviewed his IEP from New York and the parents' Neuropsychological report from Dr. Zoe Cuddy. She also reviewed some information from the NYC BOE from Parkside, his then current school as well as Parkside's teachers' reports. She testified that she had no prior familiarity with Parkside. She identified the annual review IEP and the Parkside IEP at R-2. She testified directly and credibly that she reviewed the Parkside IEP for May 2021 (R-2). She noted that he was in fifth grade as the document reflects and noted the "present levels of performance and individual needs" section noted that for reading he was functioning on a 5<sup>th</sup> grade level. As for writing, she noted he was on a 3<sup>rd</sup> grade level. For spelling he was at early 5<sup>th</sup> grade and 4<sup>th</sup> grade for math. On Page 17 of R-2 she noted that as to "social development" the IEP revealed that he was struggling at the previous district, partly due to the on-line learning piece due to the COVID-19 pandemic. On page 17, the "management needs" of G.R. revealed modifications and accommodations he was getting in the school setting through Parkside. She reviewed all this and opined that he did not need a behavior plan at Parkside.

She outlined Parkside's IEP further, noting that on pages 10 and 11, his program and related services revealed that he was in a New York State Approved School for students in a non-public setting. (R-2) He received counseling individually one (1) time per week for thirty (30) minutes. Counseling in a group one (1) time a week for thirty (30) minutes. Occupational Therapy ("OT") one (1) time a week in a group for thirty (30) minutes. Additionally, he received individual speech and language therapy in a group of two, one time a week for thirty (30) minutes. Additionally, he received speech and language, in a group of three, one time a week for thirty (30) minutes. (R-2, pages 10-11).

Ms. Maughan continued that the Parkside IEP listed as part of special education and related services that "service delivery recommendations" noted "8:1+1" which she explained meant that should be the student-to-teacher ratio in that program. In other words, that ratio represents eight (8) students, one (1) teacher, and (1) aide. (R-2 page 10). As the facts surrounding the content of the Parkside IEP are largely undisputed and Ms. Maughan testified professionally and credibly, I **FIND** them as **FACT**. (R-2).

As Case Manager and the LDTC, Ms. Maughan observed G.R. on May 5, 2021, while he was attending Parkside and identified her classroom observation report. (R-7, dated May 10, 2021). She observed via Zoom that G.R. was present in the classroom but some students were virtual. There was one (1) teacher and one (1) instructional assistant. The first part she observed was during writing, so the students were instructed to come into the room, take out their Chrome Books or paper and noted that G.R. was working on a Chrome Book. Ms. Maughan explained that the teacher “modeled” how the students were going to write their stories and the topic was to be about memories of Parkside since they were graduating. For example, she called on G.R. and she said what one of her own experiences was at Parkside as a model. She asked G.R. if her sentence was a complete one, or if he thought it was a “good sentence”. G.R. was observed raising his hand in response and noting that he thought she should have more details... stating “I want to know more”. The teacher indicated that he was correct.

The Parkside teacher then moved on and asked the students to fill in their own graphic organizer and to begin writing independently. Mr. Maughan observed G.R. and while she could not see his screen, she could see that he was typing, and that the teacher went over to him twice to look over his shoulder and note that he was on track. In addition, she recalled one (1) instructional assistant doing the same. The writing observation lasted for about thirty (30) minutes.

Ms. Maughan then observed a drama class which she said was less structured. G.R. sat with his legs crossed and had to wait while other students said their lines for about ten (10) minutes. She said he was not distracted and was not redirected. When it was G.R.’s turn, he and his partner said their lines. G.R. memorized his lines but the teacher noted, as did Ms. Maughan that he needed to give more eye contact to his audience. Her testimony was credible and consistent with her report found at R7, and I so **FIND**.

Ms. Maughan’s opinion at the time she did her observations of G.R. at Parkside was that she did not see any deficits and did not see any evidence of Attention Deficit Hyperactivity Disorder (“ADHD”). In terms of impulsivity, she said there was a moment at the end of the drama lesson where the teacher was still giving instruction and G.R. got

up and had to be redirected to sit back down. She noted, however, that he was easily redirected and appeared to have his materials and be paying attention in his classes. This observation lasted thirty (30) minutes as well for a total of an hour-long observation of G.R. at Parkside. Ultimately based upon her observation she opined that she had no concerns about the District's ability to offer G.R. a program in district, because she felt he had his materials, was participating and "he was doing a great job in class". Ms. Maughan was candid, professional, and forthright in describing her observations of G.R. and I **FIND** them as **FACT** in this matter.

Next, Ms. Maughan noted the next step which was the re-evaluation plan which she is responsible for as the case manager. (R3, dated April 7, 2021). As a result of the discussion regarding re-evaluation, the District proposed speech and language, occupational therapy, and a classroom observation. She explained on Direct that there was no proposal for an educational or a psychological evaluation because it was already completed by Dr. Cuddy, the Petitioner's Neuropsychological expert which was dated on January of 2021 a few months before Ms. Maughan authored her report (R-3).

Ms. Maughan admitted on direct that the District accepted Dr. Cuddy's scores on the neuropsychological testing, but not her recommendations or conclusions. One major conclusion that was not accepted was that G.R. needed a small school, small classroom, highly-structured learning environment due to G.R.'s rigidity, attention and social issues stemming from his pragmatic language issues. She opined that in her professional opinion with the student coming into district for the first time, with educational testing done three (3) to four (4) months prior that it would NOT be appropriate to conduct testing in the same area. She testified consistent with her report that she came to this expert opinion as an LDTC upon "review of student records, current progress including neuropsychological, IEP, notes and additional records from Parkside School." (R-3) She also responded on Direct that the parents signed consent for the re-evaluation as proposed by the CST in April at that meeting.

Next, Ms. Maughan identified the occupational therapy evaluation. (R4). She reviewed this information with "Kristen" (Ms. Ralston) the Occupational Therapist from the District who completed the evaluation. She noted that her takeaways after discussing

G.R.'s results with Ms. Ralston were that his area of weakness was in motor, in that it affected his ability to form letters, his handwriting and letter formation. As a result, she noted that Ms. Ralston recommended Occupational Therapy (OT) for one (1) time a week for thirty (30) minutes in a group. Again, over counsel's objection I allowed the testimony even though she was not an OT expert. I admitted it to allow a recounting of Ms. Maughan's impressions of this one piece of G.R.'s profile as the case manager and an LDTC. Thus, it is admitted to show that Ms. Maughan reviewed the document, met with the OT and put the OT's conclusions in the IEP. That evaluation is a business record and I admitted same to show Ms. Maughan followed her normal procedure regarding her role as a case manager in the compilation of the IEPs, and thus I so **FIND**.

Next, Ms. Maughan noted that she similarly met with Kim Fields-Murphy who conducted the speech and language evaluations for the District. (R-5). She noted that the scores were in the average range for the most part except for pragmatic language. Again, over counsel's objection, I allowed the exhibit for the same reasons I allowed the OT evaluation above. I cannot give her opinions on the evaluations much weight as she is not an expert in this area. However, the document speaks for itself and Ms. Maughan's testimony is not being offered as an expert in speech therapy or speech pathology. Again, as with the Occupational Therapy evaluation, the Speech and Language evaluation is being admitted through Ms. Maughan in her role as a case manager and an expert in special education and an LDTC, who was given the information, discussed it and incorporated it into her IEP in the normal course as she had done many times in the past, and I so **FIND**.

Next, Ms. Maughan turned to Dr. Cuddy's neuropsychological report. (R6). Similar to the District's experts, she reviewed Dr. Cuddy's report but with the school psychologist, Jacqueline Sayers. In the course of working with her, she has previously reviewed outside evaluations that contain both educational and psychological testing. She admitted to relying on Ms. Sayers to go over the scores on the tests. Specifically, she utilized Ms. Sayers' knowledge to parse out strengths and weaknesses as shown in Dr. Cuddy's report. She added that she worked with Ms. Sayers before and in terms of the educational testing, her own expertise and experience with administering the WIAT is what she used to decipher the report as she administered the test frequently as it one of



her preferred assessments. She reviewed the scores on the Dr. Cuddy report based upon her training and experience and was able to explain how she interpreted the educational scores. (R6 p 12). To that end, she noted that G.R.'s total achievement is high average. A standard score of 110. His academics were all in the average to high average range. Including his reading comprehension, spelling, writing, and math problem solving. "Everything was in the average to high average range." She opined that based upon her professional experience in administering academic achievement testing to students, that the significance of these scores were that G.R.: "should be able to perform on an average level in the classroom. He should be able to keep up with his peers." As a result, she and the CST accepted the scores from Dr. Cuddy's report. (R-6). It is undisputed that the District used Dr. Cuddy's evaluations for the scoring and other information but did not accept the recommendations and/or conclusions and thus I so **FIND**.

The CST met to discuss the results of all of the evaluations on June 4, 2021, as reflected in R-8. At the meeting, eligibility was also discussed. As a result of the evaluations the CST determined that OHI based on the diagnosis of ADHD was the appropriate eligibility determination. The parent being a collaborator at the meeting agreed with the eligibility. Ms. Maughan confirmed this and confirmed that she wrote the documents. She testified credibility and her testimony in this regard is corroborated by the documentary evidence, thus as to the procedure of compiling the IEP and the parents' cooperation, I **FIND** it as **FACT**. It was confirmed at oral argument, even though post-hearing submissions discussed it, that eligibility is not in dispute even though there was a change of classification.<sup>2</sup>

As a result of all of the considerations above, Ms. Maughan outlined that the District offered G.R. their in-class resource program for language arts, math, science, and social studies. (R-8) She explained that in-class resource is a general education class that is taught by two (2) teachers- one (1) is certified in a subject area and the other is a certified

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<sup>2</sup> As OHI encompasses both ADHD and the pragmatic language issues; the ultimate classification did not affect the outcome of my decision regarding substantive FAPE nor am I considering it a procedural violation as the parties were made aware.

special education teacher as the class has general education students and special education students in it. She testified that the District attempts to match the special education teacher to the subject area. Regarding related services she noted the speech language therapy would be once a week for thirty (30) minutes in a small group, occupational therapy once a week in a small group for thirty (30) minutes, counseling once a week for thirty (30) minutes in a small group, counseling individually once a week, a personal aide and transportation.

Ms. Maughan continued that the CST team felt the IEP in question reflects FAPE for G.R. after looking at his previous IEP and testing completed on G.R. Specifically, his present levels as per his previous IEP and the scores from the District's evaluations and Dr. Cuddy's evaluation in addition to her observation of G.R. in class at Winston. She noted that the reason for the aide was to help G.R. with his initial transition into the District including tasks such as entering the building, reading his schedule, help with his locker, organization and navigation through the building, etc.... She admitted it was "just an attempt to get G.R. acclimated to the building and to the scenes and structures of a public school, since he would never have been in a public school before." She noted that the aide would be revisited in about thirty (30) days to see if G.R. had made the transition or not.

Ms. Maughan described the sheer size of the school as Edison Middle School (the building where the program would be administered) is just grade six but that all seven of the District's elementary schools funnel into Edison for one year before preparing to go to the Upper School. The total amount of students is approximately 450 students broken into three (3) teams, all of which have never been in the school before. As this is undisputed, I **FIND** it as FACT.

In terms of class size, she was familiar with his proposed schedule and that his language arts class would have thirteen (13) students and the others approximately 14 or 15 with two teachers in every class. She said there was no behavior plan, and she identified the goals and objectives based upon looking at his previous IEP and the Occupational Therapy ("OT") and Speech and Language ("SL") evaluations as well as

her observation via Zoom of G.R. at Winston. She noted that at the meeting, the parents through their attorney disagreed with the proposed IEP.

Ms. Maughan testified that she felt the IEP was appropriate and “comparable” to what G.R. has received at Parkside with identical related services. She also felt that the modifications and academic support would be the same and that he would be able to meet kids from his homeschool and from his neighborhood with non-disabled peers in an inclusion class setting as an opportunity to develop friendships and achieve academically. She concluded with the opinion that the only difference between the Parkside IEP and the District was that he receives speech individually once a week for 30 minutes and two group sessions for 30 minutes each per week. She felt that the pragmatic language deficiencies could not only be serviced in speech and language therapy but also in the general education classroom. She even testified that a learning language-based disability (“LLD”) classroom would not be beneficial or explored as he had average to high-average academic scores and did not evidence any behaviors or issues that could not be remediated in the public school setting, specifically an inclusion class for all of his core subjects.

Ms. Maughan finally disagreed with Dr. Cuddy’s conclusions even while relying on her testing and scores because, she argued, Dr. Cuddy did not observe G.R. in school at any point. Based on all of the above, specifically Dr. Cuddy’s scores, Ms. Maughan opined that G.R. should be able to keep up with the pace of a general education class with support aka an inclusion class.

On cross examination Ms. Maughan admitted several crucial things. She was aware that in G.R.’s Parkside IEP that when he was in a calm, small group he can be flexible and friendly with peers but when stressed his rigidity can increase and it can be difficult for him to collaborate or go with the group plan. She also acknowledged that the Occupational Therapy (“OT”) and Speech and Language (“SL”) assessments do not determine whether a student needs to be in a general education setting. She also admitted that due to G.R.’s difficulties with pragmatics even with his average to above average cognitive potential, Dr. Cuddy said he needed a complicated educational and treatment plan. To that end, that Dr. Cuddy noted that he needs a small language-based

special education school with a small-school environment and classroom with continuous teacher support so he can be taught the skills he is lacking throughout the day. Further, she agreed that Dr. Cuddy concluded that due to G.R.'s language, social and attention needs, any less restrictive setting or larger placement would not be appropriate and that he needed a 12-month intense program. Further, Maughan admitted that Dr. Cuddy noted that any decrease in these supports in this setting would interfere with appropriate progress and that his difficulties with attention would likely lead to significant regression of skills. More to the point, Ms. Maughan acknowledged candidly that Dr. Cuddy noted that placing G.R. in a large public school with general education students is contrary to Dr. Cuddy's recommendations. As this is reflected throughout the documentary and testimonial evidence and Ms. Maughan testified professionally, I **FIND** her admissions regarding Dr. Cuddy's recommendations FACT in this matter.

On cross-examination Ms. Maughan also forthrightly admitted that during her observations of G.R. at Winston, he was being taught with by one teacher and seven students and in language arts he called out at least six (6) times, which she characterized as frequently. Further, she recalled that he was humming in class and that he became rigid while using his chrome book and had a discussion with the teacher about wanting to finish a test. That he was off-task and the teacher redirected him. She also saw him not complying with the teachers' instructions to get a pencil and a highlighter and observed him calling out and getting out of his seat during the class wherein he was already redirected. Again, this was in a class of seven (7) students. She also admitted on cross examination that Dr. Cuddy's scores for executive functioning and processing speeds were low average. Further, she was aware that in G.R.'s Parkside IEP it was reported that G.R. was having issues with peer interactions, anxiety about friendships and a fragile sense of sense of self. On redirect, Ms. Maughan relied heavily on the ultimate conclusion that the District's IEP was appropriate because of his average to high average test scores in academics and thus he should be able to keep up the pace in general education classes. For that reason, he was not offered an LLD class either.

Lastly, Ms. Maughan candidly admitted that Dr. Cuddy's supplemental report did note that she observed the District's program on two different days in November of 2021. She confirmed that the inclusion class was not the same as an LLD or a small resource

room, or a small special education school. Ms. Maughan could not address the crux of the issue, was that Dr. Cuddy's report and the Parkside IEP both heavily relied upon by the District speak about the crucial need for a small school, small class, highly-structured environment for G.R. in a specialized school with similarly situated students all year round. Her answer was consistent that the District felt since his overall scores were average or above-average that he would be able to "keep up" in the general education setting with just one special education co-teacher after the aide dropped off after thirty (30) days. She admitted that Dr. Cuddy opined that without this G.R. would not only not make meaningful progress but he would be likely to regress. As the District did not have any other scores or opinion to refute these facts, I **FIND** Ms. Maughan's testimony regarding his overall cognitive ability being the District's rationale for the IEP absent the low scores on processing speed, pragmatic language and absent Dr. Cuddy's ultimate recommendations and conclusions in that regard.

Specifically, the school's IEP (R8) on page 9 of 25 noted regarding the results of the Neurological Evaluation that he was a 10-year-old boy and quoted verbatim what was later found in Dr. Cuddy's report. Of note was Dr. Cuddy's observations of G.R. during testing, including a positive rapport between Dr. Cuddy and G.R. Further, "Despite fluctuations in attending and some possible issues with motivation, G.R. appeared to put forth his best effort on most tasks presented. Therefore, the results of this evaluation are considered a valid estimate of his current functioning." R-8 at p.9.

Further, Dr. Cuddy's narrative continued and included his Full Scale IQ of 102 as accepted by the District which puts him in the average range or 55<sup>th</sup> percentile. G.R. exhibited relative strengths on tasks of abstract reasoning, and working memory skills as well as visual-spatial tasks as well as on subtests requiring verbal comprehension skills. Id.

Dr. Cuddy continued as is plugged into the IEP (R8):

G.R. exhibited some relative difficulty on processing speed tasks (standard score 83, 13<sup>th</sup> percentile), indicating some difficulty with the pace at which he can take information in, make sense of it, and respond. These difficulties were

especially pronounced when the task involved a graphomotor or memory component. G.R.'s performance on a task of sustained attention indicated issues with attending that met clinical thresholds for attention deficit disorder, and his parents' responses to a parent assessment of ADHD/ADD indicated significant issues with inattention, impulsivity and hyperactivity. These issues were further supported by his responses on the Conners-3 Parent Report. Testing of executive functions revealed uneven abilities, with deficits in flexibility of thinking and cognitive shifting, both verbally and visually. Taken together with his difficulties with processing speed, this can leave G.R. vulnerable to significant learning issues as he will both struggle to maintain necessary levels of attending and process information efficiently. Despite these difficulties, G.R.'s academic performance was in the high average range, with relative strengths in spelling and reading comprehension skills, and these results are likely due to the supportive and highly-structured learning environment he has benefitted from at the Parkside School. While most of the results of an assessment of supra-linguistics fell in average range, G.R. evidenced some relative difficulties in pragmatic language, and results of a social responsiveness scale completed by his parents is indicative of social deficits that are likely significantly impacting his ability to engage in age-appropriate social reciprocity with peers. Taken together with the difficulties he experiences emotionally, this leaves him vulnerable to social-emotional challenges, as well as social struggles that may become more pronounced as he enters adolescence.

G.R.'s desire to interact and average to above average cognitive potential, juxtaposed with his difficulties with attending and pragmatics make for a complicated educational and treatment plan. It is imperative that he attend a small, language-based, special education school with children with at least average intellectual abilities in order to help bolster his skills and give him the opportunity to work up to his potential. G.R. needs not only a small classroom environment but a small school environment with continuous teacher support so he can be taught skills throughout the day with the ability to practice these skills with supports. This environment should be set up for children with similar issues, with occupational and speech supportive services that can be fully integrated in the classroom throughout the day. Given G.R.'s language, social and attention needs, any less restrictive setting or larger placement would not be appropriate. Given his deficits, G.R. needs a 12-month intense program with speech, counseling, and occupational therapy services in individual and group formats. Any decrease in his level of supports will

interfere with appropriate progress, and due to his difficulties with attention and distractibility, would like lead to a significant regression of skills.

Id.

After that, the IEP notes the DSM-V Diagnosis by Dr. Cuddy to be ADHD and Social Pragmatic Communication Disorder. After that, the IEP lists the test scores and I note in the Clinical Evaluation of Language Fundamentals-5 (CELF-5) it shows a deficiency where he lands in the **23rd percentile**. In addition, the Comprehensive Assessment of Spoken Language 2 ("CASL-2) compiled by Dr. Cuddy and again scores accepted by the District, note that in Pragmatic Language he falls in the **12<sup>th</sup> percentile**. Id. at p. 10 of 25.

The IEP from Parkside which Ms. Maughan noted the District relied heavily upon to draft the District's Proposed IEP (R8) the Social/Emotional/Behavioral piece at p. 13 notes "From IEP Dated 3/11/21 The Parkside School":

G.R. is a bright, curious student who is excited to learn when his voice is heard in a small, highly-structured classroom. Although he continues to make consistent progress with appropriate support in place, it has been evident that G.R. struggles with attention, rigidity, interactions with peers, and anxiety. Last year and current school year have been especially challenging for G.R. while the school environment has shifted between online and in person learning often. He has struggled to stay engaged in group activities and discussions and connect with his peers. G.R. benefits from being in a small group when learning and socializing and he thrives when receiving empathic support from his teachers and therapists. With appropriate support, G.R. is an enthusiastic participant and caring member of the classroom community. In addition, when in a calm, small group, G.R. can be a flexible, friendly play partner to his peers. He especially enjoys playing card or board games and teaching his friends new games he has discovered. However, when stressed, his rigidity can increase, and it can be difficult for G.R. to go with the group plan or collaborate with peers. In the individual sessions, G.R. has spent some time to discuss his frustrations for the inconsistency and uncertainty he is experiencing this year. The individual sessions will continue

to provide a safe space for G.R. to process difficult experiences and reflect on his feelings and thoughts. **G.R. continues to struggle with some attention deficits, rigidity, peer interactions, and anxiety around friendship issues and school. With the difficulties that he could face in this day-to-day school life, F.R. is at risk of developing a less-integrated and fragile sense of self. It is strongly recommended that he will continue with both individual and group counseling services in order to progress.**

**Id. Emphasis added.**

Noting that these sections were in the IEP that Ms. Maughan compiled as the case manager, she confirmed that in response, the CST found that G.R. was eligible for special education services under the classification of Other Health Impaired (“OHI”) and as outlined above all of his core classes would be in-class resource in the general education setting. The speech and OT were to take place during specials like art, gym, music computers and gym class. Ms. Maughan testified that she knew that G.R. had a strong interest in graphic design, art and technology. Extended School Year (“ESY”) for learning language disability (“LLD”) was offered for the summer prior to entering the District but was not offered in the IEP at issue. Ms. Maughan confirmed that while these evaluations and scores were provided by the parents the District did not agree with the final conclusions of those evaluations. As this is undisputed, I **FIND** it as **FACT**.

When presented with the need for the highly-structured small school environment as outlined above, again, Ms. Maughan noted that the CST concluded that since his overall intelligence was average and he was progressing in his prior school they felt the IEP was proper and that G.R. would catch up. She did admit that she was aware that the IEP from Parkside did say he benefitted from a small group and can be flexible and friendly with peers but “when stressed his rigidity can increase and it can be difficult for him to go with his group plan or collaborate with his peers.” Further, Ms. Maughan was candid and credible when on cross examination she admitted that she knew that placing G.R. in a large public school with classes with general education students is contrary to Dr. Cuddy’s recommendations. She also did not agree with the 12-month program as recommended by Dr. Cuddy. In addition, she confirmed that in this IEP he was not offered



an LLD class as she “believed the best fit was an inclusion class.” As she was direct and these conclusions are corroborated by the documentary evidence, I **FIND** it as **FACT**.

In short, Ms. Maughan felt the average intelligence and the progress at the prior school should be enough to support the validity of the IEP offered.

Ms. Maughan reviewed all of the evaluations above in the normal course of her job as a case manager and that is how she compiled her information. She is an expert in special education and is an LDTC; the proffer is that she reviewed the reports with the in-district experts and went over the petitioner’s expert neuropsychological report with the assistance of the school psychologist. Thus, in terms of weight, I cannot give Ms. Maughan as much weight as to how the evaluators came to their determinations, but she is an appropriate witness to allow those records to come in, as they were used to compile the IEP as the case manager. It bears mentioning that SL and OT are not the main issues in this case, but the neuropsychological piece is. To that end, I **FIND** Ms. Maughan did her due diligence in reviewing all the reports with the help of experts so she could understand them fully as she routinely does as a case manager, especially one as qualified as an LDTC. Again, those documents speak for themselves and thus I so **FIND**.

Ms. Maughan, as she did not conduct the testing, nor did the District have a neuropsychological evaluation, no one could testify as to how the testing sessions went in terms of G.R.’s behavior, effort, attention, testing environment, etc. except for Dr. Cuddy; the Petitioner’s expert. Further, no neuropsychological was done by the District as Ms. Maughan candidly admits that they were going to utilize only the scores from Dr. Cuddy and NOT the recommendations or conclusions. As she was candid and professional and this is undisputed, I **FIND** it as fact in this case.

Maughan identified the IEP at issue (R-8)) which was dated final June 4, 2021 and noted that G.R.’s parents did not consent to its implementation and rather gave notice via letter from their first attorney that they could not place G.R. at West Orange and requested that Winston Prep be G.R.’s stay-put until their expert Dr. Cuddy could observe. The District rejected that invitation. As a result, again on notice, the parents unilaterally placed G.R. at Winston Prep. (R-9 and R-10). At that point, as petitioner’s counsel advised, the

parents sought emergent relief at the OAL. (see Judge Betancourt's order and timing of the iep meeting and placement at Winston prep) for the 2021-22 school year.

Ms. Maughan confirmed that the parents fully cooperated with the evaluations, the IEP meetings, exchange of G.R.'s documented evaluations and progress reports dating back to early intervention as well as progress from the school he just left Parkside. The parents had their own neuropsychological report by Dr. Cuddy, and I believe L.R. when she testified forthrightly and credibly that she was told the District would use it (Dr. Cuddy's report) to create an IEP for G.R. Instead, the District utilized Dr. Cuddy's report scores and narrative but NOT the corresponding recommendations or conclusions. The parents also observed at least four (4) classes in West Orange to see if any of the classes that were recommended would be suitable for their son based on G.R.'s needs as they dated back from NY since prior to pre-school. There is no allegation that the parents were uncooperative or did not give the District enough notice of the placement months in advance of their moving to New Jersey. In fact, the District admitted that the parents were cooperative throughout. As a result, as the credible testimony and the documentary evidence support this, I **FIND** as **FACT** that the parents were meaningful collaborators of the Child Study Team.

Maughan was a professional witness who provided careful testimony and thoughtful responses on behalf of West Orange. She was honest when confronted with facts from this case that were less than favorable for the District, such as using the Neuropsychological scores and not the conclusions/recommendations and that those scores were relied upon throughout the District's proposed IEP in question. I **FIND** she is a professional with expertise specific to the area of special education and as an LDTC. As such, I she was highly credible and very honest, and I so **FIND**.

### **Dr. Barbara Miller**

Petitioner's first witness was Dr. Barbara Miller, the Director of the Parkside School in New York City. Ms. Miller testified that she serves as the head of the school, and that her responsibilities include being chief financial officer, supervising several classrooms

and supervising staff. She added that Parkside is a special education school approved and funded for children with speech and language and learning disabilities.

Ms. Miller offered detailed and highly credible testimony regarding the Parkside program and G.R.'s progress there. Ms. Miller was clearly well-versed in what Parkside had to offer, was very familiar with G.R., as she has known him since he was five (5) years old and spoke honestly about his progress and deficits during his stay at Parkside. She testified that G.R. was sent to her office many times where he attempted to "negotiate" matters and he was rigid and needed support in being flexible. As an example, she noted that G.R. does not like loud noises and school assemblies are too overwhelming for him. The amount of support G.R. required depending on his daily mood. She explained that G.R. was placed at Parkside by the NYC Department of Education at the DOE's expense.

She explained that the school had three (3) parent/teacher conferences a year, one of which involved G.R.'s team. Those team meetings were summarized as a matter of course. He also received speech counseling and occupational therapies. She emphasized that he is rigid and needs time to process language and is resistant to new things. He needed language to be broken down by teachers to understand and help him get to the next level. His resistance led him to regression during the pandemic during Zoom classes. She also explained that he needed someone to "regulate" him when he was having issues and when he tended to shut down. She continued that he has a pragmatic language disorder. In addition, she testified he had issues with gaining motor and emotional regulation and was hurting himself. He could not sit still at this desk and needed to get up and move around.

She recounted that he had difficulty interacting with peers as his disorder gives him difficulty in understanding other's perspectives. There was a book used regarding Rock Brain to defeat rigidity. Ms. Miller said there were routines put into place so that he could follow them and "get out of his rigidity." She continued that the small classes at Parkside consisted of a teacher and an associate teacher, all certified in special education. At Parkside he also had a social worker that helped G.R. with his anxiety and understanding social situations. She noted that he had one-to-one attention throughout

the day whether it be in class or dealing with social issues during transitions during the day.

She noted that G.R. suffered from sensory and loud noise issues and he would get dysregulated if there was a lot of activity going on; he would need someone to help him with movement breaks. For example, G.R. did not like loud noises and thus did not like to be in an assembly where there is more than one class in the gym as it was overwhelming for him. She also highlighted many executive functioning issues and how that would be addressed in the small school setting by any of the teachers at any time throughout the day. Because they are so structured at Parkside, they make sure that if a student is having difficulty moving onto the next level that material is broken down and support given.

Ms. Miller concluded on Direct that G.R. should continue in a similar school to Parkside because of his difficulties with social pragmatics of language due to his rigidity and his sensory needs. In short, she believed he needs “a nurturing therapeutic kind of setting to wrap around him.” She knew G.R. from observations, team meetings, and individual meetings. She saw his rigidity as something that took place “every day.” She was clear that in her opinion after listening in on a West Orange social studies class that G.R. is one of the students who would not be able to navigate a big middle school, noisy cafeteria and changing classes with the 450 plus students.

On cross examination, Ms. Miller admitted that she had never worked in a public school in New Jersey and had never been involved in special education in New Jersey. Ms. Miller stated that she remembered going to West Orange school district at some point in her career but could not remember when. Ms. Miller stated that she never reviewed the district’s proposed IEP for G.R., and the information she had regarding the West Orange program was from the parent. Ms. Miller also admitted that she had no familiarity with the Winston program G.R. was attending. These concessions of what she did not know firsthand, added to her candor and thus her credibility, as such I so **FIND**.

In short, Miller opined that although G.R. was “smart” he needed support emotionally regularly to be able to access knowledge. As Ms. Miller’s testimony was

professional, candid, she had no personal stake in the outcome; I gave her testimony enormous weight in terms of the setting required for G.R. and thus, I so **FIND**.

The District argues that Ms. Miller's testimony is "marginally relevant", and it is "not at issue in this case": I wholeheartedly disagree. Her testimony is relevant to show that G.R. made progress at Parkside and that Parkside and Winston had similar programs in that they are small, highly-structured special education schools. While my decision is limited to whether FAPE was offered by the district and whether Winston Prep Placement is appropriate, the Parkside testimony is relevant as to progress he made in his most-recent placement with an administrator who knew him well and saw and documented his progress in a small-class setting with multiple teachers, floaters to redirect him and the absence of general education students. She also demonstrated his social progress even in the face of his pragmatic language disorder which continues to stymie his ability to make friends and had led him to isolation and depression. In light of this, I **FIND** her testimony relevant and credible as to G.R.'s needs and the required setting being small, highly-structured and with special education students.

Lastly, and again I emphasize that comparability is not the metric I am required to use to determine the issues before me, however, I take Judicial Notice that the programs at Parkside and Winston Prep are "comparable" as per Judges Thomas Betancourt, A.L.J. and as affirmed in detail by Claire C. Cecchi, U.S.D.J. (C-1) in the analysis of "stay-put" pursuant to the emergent application. Judge Cecchi's decision is attached for that purpose as she directs the court to the details correctly highlighted by Judge Betancourt. They are not dispositive in this case, but certainly factors I must take into consideration as I make credibility determinations and other factual findings and conclusions of law in this matter, and thus I so **FIND**.

### **Dr. Camilla Zoe Cuddy**

The second witness to testify on behalf of the petitioners was Dr. Zoe Cuddy, a neuropsychologist hired by the parents. During Voir Dire Dr. Cuddy explained that a Neuropsychologist conducts evaluations to determine any behavioral or cognitive challenges or changes that are due to any sort of central nervous system injury disease

or disorder. She explained that she meets the child, observes that child in as many environments as possible including leisure time, how they interact at home and begin an evaluation to measure and score, and gets feedback from teachers and family. As a Board Certified Behavior Analyst ("BCBA") she noted that she studied behavioral science and behavioral interventions and the science and technology of applied behavior analysis and thus is able to determine the need for behavioral interventions in children that present with behavior challenges and then recommends appropriate programming. That data is continually examined to determine whether the intervention is working and whether the child is making progress and those negative behaviors are decreasing and increasing the behaviors you want to see. Dr. Cuddy's employment history includes working in hospitals, schools, specialized schools, clinics, and private practice. She is a member of the American Psychological Association ("APA") the largest professional association for psychologists and the Association for Behavior Analysis International ("ABAI") which is similar for behavior analysts. She has experience drafting IEPs from 2005-2012 when she worked for a non-profit preschool in the Bronx, New York. In addition, she has conducted the relevant testing in this case since 2000. She has completed that testing for schools and in private practice. She testified extensively about her experience as a neuropsychologist in that she determines appropriate programs and placements for students in order to complete evaluations and to determine the child's learning profile, their strengths and weaknesses, areas of deficit and then makes recommendations about the child's unique needs. As a BCBA, she develops an understanding about how an environment can increase or decrease a behavior, and the importance of the appropriate school environment to tamp down problematic behaviors. Dr. Cuddy has testified in court and qualified as an expert in both areas, while the District did not object to her expertise they did not think a BCBA was necessary. Dr. Cuddy explained that while she is only one of approximately forty-seven (47) people in New York who have both certifications, she feels there is a lot of overlap and is able to identify behaviors and the impact on that child's ability to learn. She did note that since 2012 most of her work has been doing private evaluations for parents. As a result of her mountain of expertise, I qualified her as an expert neuropsychologist and BCBA.

On Direct examination, Dr. Cuddy testified extensively regarding her experience as a neuropsychologist in New York City and as to her evaluation of G.R. Dr. Cuddy

stated that she evaluated G.R. starting in late August of 2020 and concluded her evaluation in December of 2020 seeing him several times over the course of that time. Dr. Cuddy stated that G.R. was generally not very happy to be there and not excited to be evaluated, but eventually he became a little more at ease with the process. She explained that throughout the process sometimes he was engaged and other times he was reluctant, so she had to do a lot to support and motivate him to get the testing done. There were six (6) sessions, which lasted approximately two (2) hours each. In addition to the testing, Dr. Cuddy reviewed other evaluations by prior neuropsychologists Dr. Salsberg and Dr. Geffner and received parental input as per her normal protocol. She noted that throughout Dr. Salsberg recommended that G.R. needed to be educated in a small and specialized school and classroom that provided a level of structure and support and that can help direct his attention as well as scaffolding. That opinion stemmed back to kindergarten. As she testified directly and credibly and this is supported by the documentary evidence in the case, I **FIND** it as **FACT**.

Dr. Cuddy stated that during her testing of G.R., there were some variabilities amongst the index scores but notably he scored low on processing speed gleaned from the scores on the WISC. Again, these are the scores that were accepted and thus, undisputed by the District. Dr. Cuddy opined that the low processing speed score impacted G.R.'s ability to sustain attention, scan and discriminate visual information and discriminate auditorial information. Dr. Cuddy stated that G.R. did best when he was asked for very short and concrete responses.

Dr. Cuddy stated that the significance of the variations in his scores indicated that G.R. needed tests and lessons at school to be broken down for him more than typical child and teachers would need to check his understanding of broken-down components as he moves through them. Dr. Cuddy stated that the great area of concern for her was G.R.'s low scoring on the pragmatic language sub-test. Dr. Cuddy stated that despite being able to infer well and gather meaning from context, G.R.'s ability to have output of pragmatic language which was key to social situations including taking in social cues and understanding social norms was very difficult for him.

Dr. Cuddy stated that G.R. could often come across as snarky or sarcastic when in reality he just did not know how to act appropriately in a social setting. Dr. Cuddy stated that students like this often end up being bullied in her opinion and could have really hard time making friends because they rub people the wrong way. For example, with respect to “comprehensive assignment of spoken language” it is very broad and assesses multiple categories of language. Because she was aware of G.R.’s diagnosis of social communications disorder by Dr. Salsberg she found it was predictable that he did not do well in the Pragmatic Language subtest and scored in the 12<sup>th</sup> percentile. So, she explained that while the testing accurately revealed that he could infer quite well, his pragmatic language, which she described as the ability to have output of pragmatic language, that is the language she describes is key to social situations and to take in social cues and understand social norms. She said “that is where he fell apart.” She testified earnestly that this can make it difficult to make friends can cause a person to say the wrong thing or put one’s foot in their mouth. She said especially in a large middle school this can lead to social struggles and bullying or feelings of being isolated or unpopular. In short, she described that this condition could cause him to alienate his peers.

With regard to executive functioning, she administered the Delis-Kaplan Executive Functioning System Test where he scored low in switching gears. This executive functioning piece, not uncommon with ADHD is “the perfect storm” since inattention and inability to shift gears can make getting through your day very difficult.

She outlined much of the testing but also highlighted the Behavioral Assessment System for Children 3 (“BASC 3”) which she explained is a multidimensional and multi-method system for evaluating behaviors and self-perceptions. The parents did their piece as did two sets of teachers and G.R. The teachers were from Parkside.

Dr. Cuddy stated that G.R.’s parents indicated the clinical level of concerns for hyperactivity, conduct problems, attention problems, and difficulties with activities of daily living. G.R.’s teacher from the 2019-2020 academic school year also endorsed hyperactivity, conduct problems, attention problems, atypicality, and that G.R. was at risk for withdrawal and depression. The current teacher had clinical levels of risk about



withdrawal and a risk level of concern regarding aggression, conduct, depression, attention and atypicality, which Dr. Cuddy attributed to the fact that this teacher was seeing him remotely. G.R. did not well with virtual instruction during the pandemic. She explained that “atypicality” means kind of a little off just seems left of center”. She explained that kids with social pragmatic issues are going to look atypical, but not necessarily be on the Autism spectrum. However, without supports, she opined that the risk areas would become problematic.

G.R. himself also completed a rating scale for Dr. Cuddy. Dr. Cuddy felt that G.R.’s self-reporting was clinically significant as that he was a student who did not feel very good about himself and reported isolation and feeling misunderstood. In the conclusion of her report Dr. Cuddy recommended a small school and a small classroom setting for G.R. that was highly structured with predictable and consistent routines. Dr. Cuddy also recommended that expectations be very clear for G.R. at every moment of his day or he would stray from what was desired. Dr. Cuddy recommended materials presented in (limited) reduced language with many visual supports, frequent exposure, repetition of skills and concepts, and reminders to check work. Dr. Cuddy also recommended repetition of directions, consistently monitoring that he understands where he is, cuing, verbal scaffolding, and visual supports. Dr. Cuddy finally recommended additional time on tasks that required that he go through visual material, and that he would need some sort of a social-thinking curriculum that his teachers and all of his classes should be aware of.

Dr. Cuddy recommended integrated services throughout G.R.’s entire school day and specifically stated that she did not feel he would do well in a larger educational setting. Dr. Cuddy based this on her opinion that he had been getting support in a smaller setting at Parkside and was still having challenges in that smaller setting; thus she felt that a larger setting would not be beneficial for him. Dr. Cuddy also recommended a 12-month school program for G.R. as she felt that the summer was “really long” and not a good use of his time if he were not continuing along a trajectory with specific supports and direction.

Dr. Cuddy recommended speech therapy services for G.R., and ability to work on pragmatic language skills, occupational therapy services, targeting self-regulations,

flexibility and motor skills, and emotional and social support in a setting where his types of issues socially and emotionally understood by that environment as a whole.

Dr. Cuddy stated that after her written report she observed the West Orange School District's program on November 22 and 30<sup>th</sup> of November in 2021. Dr. Cuddy stated that based on her observation, she did not feel that the inclusion language arts class will be able to meet G.R.'s needs as there are only verbal instructions from what she could see. Dr. Cuddy stated that she did not see any multisensory or multi-method types of materials provided for students. Dr. Cuddy also opined that G.R. would have a hard time listening to what the teacher was saying and translating that into whatever he was being asked to do on a piece of paper. At the time of her testimony, she observed three (3) classes at West Orange in their proposed program; two (2) language arts and one (1) inclusion math class. She stated directly that she did not believe it would be appropriate for G.R. to be placed with general education students. Specifically, being placed in a class with 13-20 students would not be appropriate for G.R. Further, she learned that West Orange had 446 students divided into teams of 130 each. At lunch those teams would be divided into two groups of sixty-five (65) students who would be supervised by four (4) adults. This would apply to advisory times as well. The inclusion classes were 13 to 14 students throughout the day and the students would be required to switch up to eight (8) classes per day. She also learned that the related services would be provided to G.R. during art or music "which is unfortunate because he really would do well in art and music and that would go a long way in keeping him happy and making him feel confident."

Dr. Cuddy also opined that she did not feel that the District's inclusion of math class that she observed would have been appropriate for G.R., she felt that he needed more individualized instruction and the teachers appears to be providing to the students in those classrooms.

Dr. Cuddy also testified that she did not believe she had any accommodations and modifications being provided to any other students in the classroom. Dr. Cuddy concluded by stating that in her professional and expert opinion she did not believe that the District's program was appropriate for G.R. as it did not offer him the sort of targeted

and integrated educational supports that he required and she was concerned with the large size and large classes that G.R. would have been scheduled to attempt.

Conversely, Dr. Cuddy testified that she believed that the Winston school was appropriate for G.R. Dr. Cuddy admitted that she never personally observed G.R. at the Parkside School. She also admitted that she never personally observed G.R. at Winston School in New Jersey but was very familiar with the program in New York which is the same program at two different locations. She has observed Winston Prep's Qualities of A Sustainable and Independent Learner Program ("QSIL") which is an integrated system where the school determines at the outset exactly what the child needs and then those needs get disseminated throughout the school day, the teachers and the classrooms at the school and the child's progress on those specific issues gets tracked carefully. She explained that due to the consistent progress monitoring, which she described as a remediation program, not a pull-out program. She said it is skill based and those skills get woven into every classroom. He will meet with specialized teachers forty-two (42) minutes four (4) days a week and twenty-five (25) minutes one (1) day a week. That person reviews the homework, and G.R. would then be monitored while completing homework and assignments and being able to push his stamina. He will learn how to organize his binder and thus move toward doing home independent and successful work independently. She described it as a "highly-structured learning environment." There is coordination between teachers and that QSIL person that he meets with as a liaison. She said again, she has not visited the New Jersey site but is "very familiar" with the school in New York and "it's the same program just two different locations."

Based upon all of the above, Dr. Cuddy, whose scores were uncontested and used by the district to craft their IEP, ultimately opined that the program at West Orange would not be appropriate. Specifically, that a general education program with in-class supports would not meet G.R.'s needs. In contrast, she opined that Winston Prep would be appropriate because the program "is really engineered to not only support the student, but systematically teach the student the skills they need and have that student internalize those skills and strategies to compensate for their areas of difficulty, they are able to advocate for themselves, they are able to ask for what they need because they know what they need, and they have been given what they need to now become successful

students. So it's really important to understand that they are not just being handed a set of supports, they are being taught how to support themselves." In short, Dr. Cuddy opined convincingly that if those supports were removed from G.R. he would not do well academically and "would regress from a social/emotional standpoint it would be devastating." As Dr. Cuddy's scores were the only ones utilized in the IEP that were relevant to his major areas of weakness and due to her highly-credible testimony based upon a review of his entire history and observations, I gave her testimony enormous weight, and thus I so **FIND**.

On Cross examination, Dr. Cuddy agreed that the information that she had from the various schools regarding G.R.'s functioning was not the same as seeing him firsthand in an educational setting. Dr. Cuddy also admitted that her conclusions about G.R.'s social interaction were not based on ever seeing him socially interact with peers firsthand. In fact, Dr. Cuddy admitted that she had never seen G.R. interact with anyone outside of herself and the parents in her office setting. However, as a practice, she does not usually see the kids she evaluates socializing unless she gets a glimpse of them in the hallways. She noted that she relies heavily on the reports of the people who see them everyday like teachers, family, etc. ...

Dr. Cuddy also admitted and clarified that Winston School was not a full 12-month program as she had recommended in her report. She clarified and conceded she did not actually mean that the student should go to school for twelve (12) months out of a year, rather that the student should have a 10-month school year program and additional summer services as necessary. Her candor on these oversights only added to her professionalism, credibility and ultimate expert opinion and thus I so **FIND**.

Dr. Cuddy testified that she was aware that Winston Prep is not considered a special education school but noted it is a school that provides integrated supported methodologies for children who have learning disabilities. Lastly, in discussing how the ratios may have been similar, she noted that the District's program would not be equivalent to Winston's even if they had the same student-to-teacher ratio. She explained "the integrated classroom would have the kinds of supports and strategies and methodologies we have discussed woven through every child's—every student's moment

of the day, the general education classroom would not have that.” In short, “the approach is different and so the results would be different.”

As Dr. Cuddy testified professionally, her scores were not only uncontested but utilized by the District, her dual certifications and expertise in neuropsychology and BCBA as well as her almost 25 years of experience on part of districts and parents; I **FIND** her testimony to be unimpeachable as to her testing and highly-credible and well-versed in not only his case but her areas of expertise. She reviewed his entire history, did the exhaustive testing observing him throughout, observed the District’s program after her written report, spoke to the parents and has first-hand knowledge of the Winston Prep schools that mirror each other in New York and New Jersey. Her admissions brought out on cross-examination, only added to her credibility. She is clear and highly-credible in her ultimate opinion that a small highly-structured small school and classroom setting is the only one appropriate for G.R. and that the proposed IEP would not offer him FAPE. Further, that Winston Prep is an appropriate placement for all of the reasons highlighted above and in her exhaustive report and supporting documentation, as such I gave her opinion enormous weight and thus I so **FIND**.

### **Maxine Checchi**

The third witness to testify on behalf of the petitioners was Maxine Checchi. Ms. Checchi is Deputy Senior Executive Director of Special Education Services and Evaluations for the Special Educational Office of the New York City Department of Education. Ms. Checchi testified that she oversees committees on special education, throughout the New York City area and also a central-based support team that manages all students who are placed in State approved non-public schools.

Ms. Checchi testified briefly regarding how the IEP process works in the New York City area, and about the placement of students in out-of-district placements through the New York City Department of Education.

On cross-examination, Ms. Checchi testified that she was not familiar with special educational options available in the West Orange School District. She also admitted that

prior to her testimony in this matter, she had never had any involvement with G.R. Ms. Checchi stated that she only reviewed his records in IEP use in preparation for her Court appearance and had not previously seen them. Ms. Checchi admitted that he had never met G.R., had never participated in any meetings regarding G.R., and was never involved in any way in educational decisions made regarding his placement in New York.

I allowed her testimony for the purpose of understanding the placement of special education students in New York. She confirmed the fact that not many children are placed in special education schools, but the placement as with G.R. was a decision made by New York, and never initiated by the parents since pre-school. As she was knowledgeable, had no vested interest in this case and was forthcoming and professional, she was a very credible witness with regard to the process of child find and placement in New York, and thus I so **FIND**.

### **Winston Prep Witnesses**

#### **Greg Koehler**

The fourth witness to testify on behalf of Petitioners was Greg Koehlert, the head of Winston Prep in New Jersey. Mr. Koehlert testified that he oversees the school, including staff oversight and meeting students, as well as helping the team review learning profiles and developing curriculum. He is involved with the development of individualized curriculum and support for each student.

Mr. Koehlert gave an overview of the Winston program, including the philosophy behind it, student profiles, class size, etc. Mr. Koehlert also stated that the setting at Winston is small, and students are not offered related services in a pull-out format in isolation. He has worked at both the New York and New Jersey location and noted clearly that the programs are the same. In fact, he noted the schools share resources.

Mr. Koehler started as a teacher of language and literature, history, math and has run the experiential education program, which included one day experiences for kids to build skills in social communication and problem solving as well as a five and seven day

wilderness-oriented program aimed at developing similar skills that could be transferred to the classroom.

He emphasized that Winston Prep is structured around developing a clinical understanding of students' learning disorders and uses neuropsychological evaluations and/or other relevant testing data. They look for an understanding of the student's diagnosis and the nature of their difficulties to develop a learning profile to develop a skills-based program that is individualized to each student and delivers that skill-based instruction all day, every day in every class that the student is a member of. The school also organizes groups of students to go throughout their day. It's a program where there is "continuous feedback from the students to develop skills with which they are ready to move on to either higher levels or need to practice and work to independence with those skills."

He referenced the QSIL program which as noted by Dr. Cuddy is the Qualities of the Sustainable and Independent Learner:

you'll...gather as we talk today about our diagnostic approach, what in many places, are called soft skills, resilience, problem-solving, executive functioning tasks like organization and management, social communication, social responsibility, for us and for kids that have learning disabilities, these skills are critical to their success, almost regardless of their academic abilities as those evolve. As so, we worked with the National School Climate Center to develop a statistically valid survey where we measure the kids' QSIL skills. We have two teachers answer these survey questions and the student answers the survey questions and the data that's generated from that is the difference between the student's self-understanding and the teachers' objective understanding of the student's skills in those areas based on understanding those differences, then we're able as teams, to help target—help target the development of kids in these areas which are, you know, ultimately, the areas that are effective for... their sustainable independence.

Mr. Koehlert stated that he is familiar with G.R. and sees him every day. Mr. Koehlert testified that G.R.'s program was based upon his expressive and receptive language, executive functioning, and social/emotional needs. Mr. Koehlert testified that

G.R. is in a small class grouped with socially-appropriate peers and is doing well academically in the program. He noted that there are about 9 or 10 students per class one larger than 11, some classes being smaller. Winston Prep serves 4<sup>th</sup> to 12<sup>th</sup> grades and is accredited by the New York Association of Independent Schools (“NYSAIS”) and, NEASC a regional accreditation because they have campuses in the tri-state area.

Before teachers start at Winston Prep they are given a class called Winston 101 and then Winston 102 for teachers advancing to their second year. The teachers meet regularly to discuss students and when there are issues or challenges. The teams meet on Wednesdays to do professional development and have a team meeting about the kids. He continued that the types of disabilities that students generally have that attend Winston include specific learning disorders like executive functioning, autism spectrum disorder, dyslexia, language processing disorders and ADHD. The school has been involved in non-verbal learning disabilities research project for more than 20 years, among other professionally associated partnerships including the Child Mind Institute.

Mr. Koehlert described Winston Prep as a skills-based program whose philosophy is to develop a clinical and diagnostic understanding of children who have learning disorders and to build a program for them that is individualized to meet their learning needs. The students can get remediation in all of their classes, all day every day. They have a FOCUS program which is one-to-one instruction that is skill based and not a pull-out program. It is a 42-minute class period that meets daily during the school day where the student meets with the FOCUS teacher for that one-to-one instruction. That FOCUS teacher regularly communicates with the families during weekly meetings.

Mr. Koehlert confirmed that the number of students at Winston Prep in New Jersey at the time of his testimony was 87 students total and that the school only services students with IEPs and 504 Plans, not children who need general education. All of the students have diagnosed learning disabilities.

Mr. Koehlert stated that G.R. acclimated well to Winston and is well-liked by peers and making friends. He noted that G.R. is popular and happy and has been elected to student council and noted that because he feels safe and understood it helps with



frustration management and has made his transition easier. He confirmed that G.R. has difficulty with perspective-taking and misses social cues. Mr. Koehlert also testified that G.R. underwent admission testing at Winston before he started, which dictated his program and placement. Mr. Koehlert testified that he did not administer any of the testing, and that he was unsure of the specific qualifications of the staff member who did, other than that she was trained by other Winston staff. However, he noted that G.R. transitioned well from Parkside to Winston Prep as Winston Prep understood his learning profile and needs when he arrived, and he was grouped with kids who have similar needs and challenges. As such, the teachers were prepared to meet his needs.

On cross examination, Mr. Koehlert admitted that the initial admissions process took place in January of 2021, as that when the testing was administered by Winston to G.R. He also admitted that the parents likely applied for admission to Winston earlier than that testing took place.

As Mr. Koehlert was well-qualified and testified forthrightly, candidly and professionally and as corroborated by the documentary evidence in this case, I **FIND** his testimony to be highly reliable and as **FACT** in this matter.

### **Jamison Bean**

The fifth witness to testify on behalf of the petitioners was Jamison Bean, one of the deans at Winston. Mr. Bean testified regarding more direct knowledge of G.R.'s academic progress in the Winston program.

Mr. Bean testified that he oversees a group of students with similar needs and classifications, of which G.R. is one. Mr. Bean also testified that he plays an active role in communicating with teachers and families for those students. Mr. Bean identified the specific progress reports and classes in which G.R. was working and reviewed his progress. Generally, Mr. Bean's testimony was that G.R. was having success at Winston. Mr. Bean also testified that G.R. has made friends at Winston.

On cross examination, Mr. Bean stated that he generally observes G.R. infrequently during the school year. Mr. Bean also admitted that he did not know any of the qualifications of the teachers instructing G.R. Mr. Bean was credible, forthright and dispassionate. As such, I **FIND** his testimony credible and relevant as to G.R.'s academic progress at Winston Prep.

### **L.R.**

The last witness to testify on behalf of the petitioners was L.R., the mother of G.R. who was present for all of the trial testimony. L.R. testified to G.R.'s extensive educational history, and the parents' initial contact with the District. L.R. testified that G.R. was first diagnosed by a pediatric neurologist with a disability in New York during early intervention or pre-school as communication disorder, social dysfunction, borderline autism, and behavioral problems. He has needed intensive program of special education services at home from pre-school age with OT, and a structured special educational environment. Throughout, L.R. outlined in detail how many doctors have recommended speech and language evaluations, counseling, and ABA training for his Autism Spectrum symptomology from that young age. As a result, New York has always placed him in a special education setting and has never been in a general education setting. (See P-1 through P-34)

L.R. testified that her son G.R. is bright, creative, unique and "like no one she has ever met". However, she noted he is stubborn, rigid and inflexible. She noted that he needs his environment to be stable and predictable. She noted that he is smart cognitively, but his everyday skills are lacking. For example, his major struggles include his inability to read social cues. She said that even at age 12 when she testified, she cannot leave him alone even for a few minutes as he does not have the capacity to be alone.

Mom continued that his rigidity and stubbornness was exemplified about age 9 when he decided that he needed eyeglasses even though they were not prescribed by a doctor. He got so insistent that they got non-prescription glasses for him and he still wears them every day. She noted that he has a nighttime routine that is required with his

mom, and he needs a predictable environment and needs to know what is going to happen and when. For instance, if he thinks his dad was going to pick him up, even though that was not the plan, he would have a tantrum and then not participate in after-school activity when he learned his father was not the person picking him up.

L.R. explained that he has a hard time with social skills in that he cannot really get input from other people. For example, if he does not like the rules of a game, he will change the rules. She noted his anxiety around other people and that he does best one-on-one. She stated that he cannot interact with more than one person, even friends. For example, if a neighbor or a friend comes over, G.R. won't pay attention and that friend will leave. He has no sense of time management and gets easily distracted.

L.R. testified extensively about G.R.'s developmental and educational history, and about the difficulties he experienced both in school and at home. L.R. testified that the family chose Winston for G.R. as they already had success with his brother at the Winston program and that was the program recommended to her from New York as he was always educated in private schools in New York due to the schools making that determination and ultimate placements. L.R. was asked to and did identify voluminous historical records from G.R.'s time in New York. L.R. testified that she personally observed the District's proposed program for G.R., and was not impressed with what she saw. Specifically, L.R. stated that the classes seemed busy, and it was hard to follow what was expected of the students. After her observation, L.R. continued to have concerns that the proposed placement was not appropriate for G.R. L.R. testified that she had not personally observed G.R. at Winston but had observed classes generally. L.R. testified that she believes the Winston program is appropriate for G.R., and that he is making progress in that setting. L.R. testified that during her correspondence with the District, she was clear that the District would use Dr. Cuddy's report to create the IEP. I believed her wholeheartedly when she said she thought in earnest that they were going to accept the scores and the recommendation of a small private placement. As she has an obvious vested interest in the outcome of this case, I still **FIND** she was a credible witness and cooperative with the process for her son.

L.R. also admitted that although she said she did not see visual cues being given during her observation of the District's program, she could not define a visual cue other than "something visual." L.R. also admitted that the proposed 1:1 aide for G.R. was only a 30-day initial trial to help him transition to the public school setting. She agreed that although she felt that G.R. would be stigmatized by having the aide, she did not know whether other students in the proposed program had aides as well. L.R. also admitted that G.R. has been in a special education school his whole life and has never been exposed to non-disabled peers in a school setting. Overall, L.R. was a solid, credible witness whose first-hand knowledge of her son's disabilities were spot on with the concerns of the multitude of expert evaluations dating back to age 2; I **FIND** that her testimony confirmed his rigidity and ultimately his inability to partake in a large general education school and classroom setting.

### **The Expert Testimony**

The expert testimony offers diametrically opposed viewpoints regarding G.R.'s ultimate placement, not his educational disabilities but more specifically what is the appropriate educational environment for him. An expert's opinion must be weighed based on the cogency of his or her reasoning, the circumstances of his or her involvement in the case, and the relevance of his or her experience. The weight to be given an expert depends on his or her candor, intelligence, and knowledge. County of Ocean v. Landolfo, 132 N.J. Super. 523, 528 (App. Div. 1975). And our courts have held that "[t]he weight to which an expert opinion is entitled can rise no higher than the facts and reasoning upon which that opinion is predicated." Johnson v. Salem Corp., 97 N.J. 78, 91 (1984) (citation omitted).

Maughan and Cuddy were both well-qualified experts in their fields, both of whom testified in a professional and thoughtful manner. Although, it is crucial to note that Ms. Maughan and the collaborating experts on the CST relied on the scores of the Petitioner's expert Neuropsychologist Dr. Zoe Cuddy. To that end, the IEP ignores the extremely low scores in the BASC which measures the social emotional piece that is of primary importance in this case, given his pragmatic language issues stemming back for decades, and thus I have to give the most weight to Dr. Cuddy. As noted above, her test scores

were relied upon and uncontested, and note that G.R. is at risk or has clinically significant issues with hyperactivity, conduct problems, depression, attention, adaptability, withdrawal, social skills and functional communication amongst others. Dr. Cuddy denotes a DSM-V Diagnosis of ADHD as well as Social (Pragmatic) Communication Disorder which she noted throughout her report and in the recommendations “G.R. requires a small and highly-structured classroom within a small specialized school setting” and then lists which supports and accommodations should be made in that small school and classroom setting. R-6, p.13

Maughan was credible, however I cannot give her testimony as much weight because she relied on Dr. Cuddy’s report and the Parkside IEP to draft most of the IEP. Furthermore, G.R.’s classification which is not in dispute here is OHI and it is based upon his ADHD but most-importantly his pragmatic language issues dating back to early intervention affecting his social skills in a critical way. The IEP finalized by the CST does not keep in mind that both the most-recent Parkside (NY) IEP and the Dr. Cuddy’s Neuropsychological recommendations do not contemplate general education. Quite to the contrary, both note that not only does the rigidity and inability of G.R. to make friends and transition depend on a small class size, but also a highly-structured small school setting. This was not incorporated at all by the District. While general education with in-class resource is oftentimes the LRE, it is not the one that will allow G.R. a FAPE. I **FIND** that Maughan’s testimony while strong and professional, could not overcome that of Dr. Cuddy, the Parkside personnel, the Parkside IEP and the teachers from Winston Prep who have worked with him daily.

### **DISCUSSION**

It is within an Administrative Law Judge’s “province to determine the credibility, weight, and probative value of the expert testimony.” State v. Frost, 242 N.J. Super. 601, 615 (App. Div.), 37cert. denied. 127 N.J. 321 (1990). The weight to be given to an expert’s testimony depends upon “[sic] candor, intelligence, knowledge, and especially upon the facts and reasoning which are offered as foundation of [their] [sic] opinion.” County of Ocean v. Landolfo, 132 N.J. Super. 523, 528 (App. Div. 1975). Further, “the

weight to which an expert opinion is entitled can rise no higher than the facts and reasoning upon which that opinion is predicated.” Johnson v. Salem Corp., 97 N.J. 78, 91 (1984).

A trier of fact may reject testimony as “inherently incredible,” and may also reject testimony when “it is inconsistent with other testimony or with common experience” or it is “overborne” by the testimony of other witnesses. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958). Similarly, “[t]he interests, motive, bias or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony.” State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), 38 cert. denied, 10 N.J. 316 (1952) (citation omitted).

Having had an opportunity to hear the testimony in conjunction with a thorough review of the documentary evidence, **I FIND** that Ms. Maughan was a highly qualified and credible witness, with specialized experience as a Case Manager and an LDTC. However, her testimony did not overcome the plethora of information given to the District to draft the IEP. While she did convince me that the IEPs on paper were extremely similar, in practice and in the setting offered at West Orange, her testimony did not convince me that the IEP in question was reasonably calculated to provide G.R. with significant learning and meaningful educational benefit in light of G.R.’s individual needs and potential, that is, the IEPs were not appropriately ambitious in light of those circumstances, and they did not do so in the least-restrictive environment. As Maughan and Dr. Cuddy as well as most of the witnesses testified, G.R. was unilaterally placed in New York since early intervention. It is also true that his parents unilaterally placed him from Parkside in New York to Winston Preparatory School in New Jersey upon moving to New Jersey after putting the District on notice and giving them ample chance to work together for an appropriate program. It is also true, that while my analysis for FAPE does not include comparability, it would be irresponsible of me not to highlight the Federal Court’s affirmance of Judge Betancourt’s analysis that his stay-put should be at Winston Prep rather than the District due to the major differences not in the wording of the IEP or the physical building, but the programming and the size of the schools. (See C-1,

emphasis added) At Parkside, G.R.'s teachers reported progress both academically and socially. G.R.'s proposed IEP contained goals and objectives in all subjects with attendant modifications in those classes, however, I **FIND** that G.R. would ultimately have been unsuccessful in District as the class size and his pragmatic language issues leading to social isolation and withdrawal and bullying would ultimately not be appropriate as general education and a large setting was never contemplated for this student.

As for Dr. Cuddy, Petitioner's expert; I **FIND** that I **CAN** give the ultimate opinion as memorialized in her report incredible weight. As noted above, she reviewed all of his history, performed the uncontested testing, gathered all of the information from his prior schools and his parents all before she authored her report. She also visited the District's proposed programs before her testimony. In addition, she was very familiar with the Winston Prep School in New York which has an identical program in New Jersey. Perhaps most persuasively, the District accepted her scores and her report although did NOT adopt her ultimate recommendations or conclusions. In addition to her thoroughness, I **FIND** that she was forthright on cross examination when she made some of the admissions listed above only adding to her credibility.

### **All Witnesses**

#### **L.R.**

As for L.R., I **FIND** that she was a caring and zealous advocate for her son who knows his entire educational and social history. Additionally, with regard to the issues directly before me I **FIND** she was extremely credible. She has an obvious self-interest in the outcome of this matter as there is a large financial cost associated with the Winston placement. However, and more importantly, she and her husband were cooperative and meaningful collaborators with the District. It was clear throughout her testimony and corresponding documentary evidence that L.R. was following the placement suggested to her by New York and regardless, attempted to give the District a chance by timely providing all of G.R.'s educational documentation dating back to early intervention including two (2) neuropsychological examinations. In addition, the parents also observed four (4) of the District's inclusion classes and timely attended all IEP meetings

and inquiries in order to allow the District to offer FAPE. Lastly, the District candidly admitted that the parents were cooperative. Her testimony was supported by overwhelming credible testimonial and documentary evidence and as such, **I FIND I can give her testimony substantial weight in this regard.**

### **Winston Prep Witnesses**

G.R. attended Parkside School in New York city and was to age out in fifth grade during the 2020/2021 school year. Winston Preparatory was the next placement for him in New York. It's sister schools in New Jersey are/not approved by the New Jersey Department of Education as a clinic or as a private school for students with disabilities, and it does not offer related services, such as speech therapy, Occupational Therapy and/or Physical Therapy. However, it is a special education school as approved by New York and regionally and only has special education students who are similarly situated with G.R. and his needs. It bears mentioning that the District's own expert noted that Winston Prep is "comparable" to the education he was getting at Parkside in New York. Lastly, the parents only unilaterally placed after they asked West Orange to keep Parkside the stay-put for the summer while the school evaluated G.R. and attempted to come up with an appropriate IEP. See Ms. Greenwald's letter and District's response. R-9 and R-10.

The Winston Prep witnesses were direct, professional and dispassionate. They outlined their program in detail and in keeping with the documentary evidence. They were all well-qualified and most of them knew G.R. personally. Undoubtedly, they all agreed Winston Prep was a small school, small class setting in a highly-structured learning environment where G.R. was progressing not only academically but socially, and I so **FIND.**

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

This case arises under the Individual with Disabilities Education Act (IDEA), 20 U.S.C. § 1401 et seq., which makes available federal funds to assist states in providing an education for children with disabilities. Receipt of those funds is contingent upon a



state's compliance with the goals and requirements of the IDEA. Lascari v. Bd. of Educ. of Ramapo-Indian Hills Reg. Sch. Dist., 116 N.J. 30, 33 (1989). As a recipient of Federal funds under the IDEA, the State of New Jersey must have a policy that assures that all children with disabilities will receive FAPE. 20 U.S.C. §1412. FAPE includes Special Education and Related Services. 20 U.S.C. §1401(9); N.J.A.C. 6A:14-1.1 et seq. The responsibility to deliver these services rests with the local public-school district. N.J.A.C. 6A:14-1.1(d). To meet its obligation to deliver FAPE, the school district must offer G.R. "an educational program reasonably calculated to enable him to make progress appropriate in light of his circumstances." Endrew F. v. Douglas Cnty. Sch. Dist., 137 S. Ct. 988 (2017)

The primary issues in this case are whether the District failed to provide or offer G.R. with FAPE for the 2021/2022 school year. And if not, whether the placement at Winston Preparatory was appropriate. Lastly, if FAPE was not offered, whether the parents are entitled to any reimbursement for same.

### **Did the June 4, 2021, IEP Offer G.R. with a FAPE for 2021/2022?**

The petitioners argue that the District's June 4, 2021, IEP did not provide G.R. with a FAPE. The petitioners claim broadly that the District failed, in that they used Dr. Cuddy's scores solely without conducting their own psychological or educational evaluations, and not the recommendations/conclusions that, it itself, amounts to a denial of FAPE. I **FIND** this argument to be supported by the credible testimony in this case.

In considering the appropriateness of an IEP, case law instructs that actions of the school district cannot be judged exclusively in hindsight. The appropriateness of an IEP must be determined as of the time it is made, and the reasonableness of the school district's proposed program should be judged only on the basis of the evidence known to the school district at the time at which the offer was made. D.S. v. Bayonne Bd. of Educ., 602 F.3d 553, 564–65 (3d Cir. 2010) citing Susan N. v. Wilson Sch. Dist., 70 F. 3d 751, 762 (3rd Cir. 1995). An IEP is "based on an evaluation done by a team of experts prior to the student's placement." Fuhrmann v East Hanover Bd. of Educ., 993 F.2d 1031, 1041 (3rd Cir. 1993) (emphasis in original). Thus, "in striving for 'appropriateness,' an

IEP must take into account what was, and was not, objectively reasonable [when] the IEP was drafted.” Ibid. Our courts have confirmed that “neither the statute nor reason countenance ‘Monday morning quarterbacking’ in evaluating a child’s placement.” Susan N., 70 F.3d at 762, citing Fuhrmann, 993 F.2d at 1040.

The Third Circuit in Ridgewood Bd. of Educ. v. N.E. for M.E., 172 F.3d 238, 247 (3d Cir. 1999) stated that the appropriate standard is whether the IEP offers the opportunity for “significant learning and confers meaningful educational benefit.” The benefit must be meaningful in light of the student’s potential; the student’s capabilities as to both “type and amount of learning” must be analyzed. Id. at 248. When analyzing whether an IEP confers a meaningful benefit, “adequate consideration [must be given] to . . . [the] intellectual potential” of the individual student to determine if that child is receiving a FAPE. Ibid. The IDEA requires an IEP based on the student’s needs and “so long as the IEP responds to the needs, its ultimate success or failure cannot retroactively render it inappropriate.” Scott P., 62 F. 3d at 534.

With respect to the proposed IEP, I **agree** with petitioners that it was not reasonably calculated to address G.R.’s needs. The IEP *identifies* his needs as per the Petitioner’s Neuropsychological Report (Dr. Cuddy), and yet does not include its own evaluations outside of O/T and S/T, and it is silent with regard to his need for a small classroom and school setting, and does not address G.R.’s educational, behavioral, social, emotional, and therapeutic needs and notably ignores Dr. Cuddy’s conclusions and recommendations. Not surprisingly, the modifications in the large middle school with all inclusion general education classes are insufficient and the goals and objectives are inappropriate to address the petitioners’ valid concerns. As a result, these oversights amount to an unreasonable conclusion in the IEP. As a result, I **CONCLUDE** that the June 4, 2021 IEP is not reasonably calculated to address G.R.’s needs as they were known to the District at the time even given the parents’ full cooperation and ample notice to prepare same.

I **CONCLUDE** that the June 4, 2021, IEP offered to G.R. did not offer a FAPE in the least restrictive environment and did not allow him an opportunity to make meaningful progress as it did not adequately address his repeated need from an early age for small

classroom and small school settings, a highly-structured learning environment to address attention and pragmatic language issues, social anxiety and other sensitivities.

Case law recognizes that the IDEA does not require the Board to provide G.R. with the best possible education, S.H. v. State Operated Sch. Dist. of Newark, 336 F. 3d 260, 271 (3d Cir. 2003), or one that provides “everything that might be thought desired by loving parents,” Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119, 132 (2d Cir. 1998) (citation omitted). Nor does the IDEA require that the Board maximize G.R.’s potential or provide him the best education possible. Instead, the law 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). The district must provide personalized instruction with sufficient support services to permit G.R. to benefit educationally from instruction. Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 203, 102 S. Ct. 3034, 3049 (1982). Noting that Rowley involved a student who, though disabled, was fully integrated in a general education classroom, the United States Supreme Court explained that while “a child’s IEP need not aim for grade-level advancement if that is not a reasonable prospect, [the IEP] must be appropriately ambitious in light of his circumstances[.]” Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 137 S.Ct. 988, 992 (2017). The Third Circuit found the directions of the Supreme Court in Endrew to treat “a child’s intellectual abilities and potential as among the most important circumstances to consider” to be consistent with its standard that an “IEP must provide significant learning and confer meaningful benefit.” Dunn v. Dowlingtown Area Sch. Dist., 904 F.3d 248, 254 (3rd Cir. 2018). “IEPs must be reasonable, not ideal [and] slow progress does not prove” the deficiency of an IEP. Ibid. Here, the IEP in question attempted to plug in the prior placement and program G.R. was getting in New York as placed by New York public schools where G.R. demonstrated progress. Instead, the District changed the program and placement so dramatically without the benefit of their own neuropsychological evaluations and thus did not independently assess noted areas of improvement and areas of continued weakness. In fact, the District took the data of Dr. Cuddy but concluded that the large middle school would be an appropriate placement where for all the reasons stated above, would likely have been a recipe for lack of meaningful progress and likely regression.

The IDEA also requires states to educate disabled children in the LRE to the maximum extent appropriate, with children without disabilities. See 20 U.S.C. §1412(a)(5)(A). Thus, removal of children with disabilities from the general education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. Ibid. “This provision evidences a ‘strong congressional preference’ for integrating children with disabilities in regular classrooms.” Oberti v. Bd. of Educ. of Clementon Sch. Dist., 995 F.2d 1204, 1214 (3d Cir. 1993) (citations omitted).

To determine whether a school follows the Act's mainstreaming requirement, a court must first determine whether education in the regular classroom with the use of supplementary aids and services can be achieved satisfactorily. Id. at 1215. If such education cannot be achieved satisfactorily, and placement outside of the regular classroom is necessary, then the court must determine “whether the school has made efforts to include the child in school programs with nondisabled children whenever possible.” Ibid. This two-part test is faithful to the Act's directive that children with disabilities be educated with nondisabled children to the maximum extent appropriate. Ibid. In G.R.'s case, I **CONCLUDE** the Least Restrictive Environment is Winston Preparatory.

**Is Placement at Winston Preparatory Appropriate, and are  
the Parents Entitled to Reimbursement for the Winston Placement?**

The next issue I must decide is whether Winston Prep is an appropriate placement for G.R. Winston uses continuous feedback throughout the day to tailor the program to its students who are similarly situated. There are very small classrooms usually 8 up to 11 students with an aide. The entire school population is around 84 students. The teacher can break down assignments, utilize scaffolding, redirect, have G.R. visit the principal when needing a break to re-focus.

The students each have a FOCUS teacher they meet with daily one on one. That teacher acts as the liaison between the student, teacher and staff. Speech and social skills are integrated throughout the day. Social and emotional learning is provided

throughout the day. The smaller class size is necessary for G.R. due to his ADHD (OHI) and his Social Pragmatic Communication Disorder which requires a small and highly structured classroom and school environment that is predictable, consistent, and weaves social instruction as well as executive functioning instruction throughout the day.

At Winston learning through experience is done with executive functioning as well as social and emotional learning provided throughout the day weaved into its academics for twelve (12) months.

As found repeatedly above, this is what is required to combat G.R.'s rigidity and inability to interact with other students especially those in the average to above-average cognitive potential like himself. As Dr. Cuddy noted specifically, he requires a small classroom, small school and a highly-structured learning environment like Winston for all 12 months being educated with children with similar issues so that he can be given the speech supportive services, social and attention needs in both individual and group formats. "Any decrease in his level of supports will interfere with appropriate progress, and due to his difficulties with attention and distractibility, would likely lead to a significant regression of skills." As a result of my findings above, I **CONCLUDE** Winston Prep is an appropriate placement for G.R.

Even assuming that the IEP was sufficient, I **CONCLUDE** that the parents are entitled to reimbursement for their expenses at Winston Preparatory during the time period in question. A court may reduce or deny reimbursement costs based on the parents' unreasonable behavior during the IEP process. 20 U.S.C. § 1412(a)(10)(C)(iii). New Jersey regulations specifically require that parents advise the district at the "most recent IEP meeting" that they were rejecting the IEP, and that they give written notice "of their concerns or intent to enroll their child in a nonpublic school" to the district at least ten business days' prior to removal. N.J.A.C. 6A:14-2.10(c)(1) and (2). The cost of reimbursement may be reduced or denied "[u]pon a judicial finding of unreasonableness with respect to actions taken by the parents." N.J.A.C. 6A:14-2.10(c)(4).

Here, the parents informed the District from the very start that New York City DOE placed G.R. and their older son at Winston Preparatory. The petitioners informed West Orange of that recommendation and placement before they moved into West Orange to give

them adequate notice. In addition, they provided a neuropsychological report and did not unilaterally place G.R. but rather sought permission first before having to file an emergent application and subsequently received an Order from Judge Betancourt which did a comparability analysis and noted that Winston Prep should be the stay put during the pendency of the due process hearing as it was comparable as upheld by the District Court in Judge Checchi's opinion. (C-1)

The petitions rejected the District's IEP and wanted G.R. to attend Winston like his older brother. The District did not offer small, structured classes to G.R. and the middle school he would have been entering had seven (7) different elementary schools pooling there simultaneously with a large population of approximately 450 students rather than a total of about 84. G.R.'s Parkside/New York IEP did not consider general education classes for G.R. The District did not do a psychological or educational evaluation of G.R., nor did it do a social history. It also relied upon Dr. Cuddy's scoring for same as encompassed and detailed in her neuropsychological report, which was incorporated into the District's proposed IEP, save the ultimate recommendations for G.R.

In accordance with N.J.A.C. 6A:14-2.10, parents may receive reimbursement for a unilateral placement as follows:

- (b) if the parents of a student with a disability who previously received special education and related services from the district of residence enroll the student in a nonpublic school, an early childhood program or approved private school for students with disabilities without the consent of, or referral by, the district board of education, an administrative law judge may require the district board of education to reimburse the parents for the cost of enrollment if the administrative law judge finds that the district board of education and not made a free, appropriate public education available to the student in a timely manner prior to enrollment and that the private placement is appropriate.

The OAL regulation mirrors well-established Federal Law. Parents who unilaterally withdraw their child from public school and place him in private school without consent from the school district “do so at their own financial risk.” School Comm. Of Burlington v. Mass. Dep’t of Educ., 471 U.S. 359, 374, 105 S.Ct. 1996, 2004, 85 L. Ed. 2d 385, 397 (1985). See also: N.J.A.C. 6A: 14-2.10(b)(1). They may be entitled to reimbursement for the costs of their unilateral private placement only if a court finds that the proposed IEP was inappropriate, and the private placement was appropriate under the IDEA. 20 U.S.C.A. Section 1412(a)(10)(C)(ii). Once a court holds that the public placement violated IDEA, it is authorized to “grant such relief as the court determines is appropriate.” 20 U.S.C.A. Section 1415(e)(2).

Parents who are compelled to unilaterally place their child in the face of a denial of FAPE, need not select a school that meets state standards. Florence County Sch. Dist. v. Carter, 510 U.S. 7, 15, 114 S.Ct. 361, 366, 126 L. Ed. 2d 284, 293 (1993); L.M. ex rel H.M. Evesham Twp. Bd. Of Educ., 256 F. Supp. 2d 290 (D.N.J. 2003). The Third Circuit has held that “parents [are] entitled to reimbursement even [when a] school lacks[s] state approval because the [FAPE] state standard requirements... [apply] only to placements made by a public entity.” Id. at 297 (citing T.R. v. Kingwood Twp. Bd. Of Educ., 205 F.3d 572, 581 (3d Cir. 1999)). Accordingly, our courts recognize that parents who unilaterally place their child by necessity do so without the expertise and input of school professionals that is contemplated by a truly collaborative IEP process. The courts recognize that under these circumstances, parents essentially do the best they can, and hold that, “when a public school system has defaulted on its obligations under the IDEA, a private school placement is ‘proper under the act.’ (IDEA) if the education provide by the private school is ‘reasonably calculated to enable the child to receive educational benefits.’” Florence, 510 U.S. at 11, 114 S. Ct. at 365, 126 L. Ed. 2d at 293 (quoting Rowley, 458 U.S. at 207, 102 S. Ct. at 351, 73 L. Ed. 2d at 712).

Under this standard, **I CONCLUDE** that Winston Prep is appropriate. In so concluding, I note that it is not a school that is not a school that is approved by the NJ Dept of Education. However, it is approved in New York and regionally in the tri-state area. It is also a special education school, highly-structured with many qualified special education teachers and specifically taught to weave instruction in throughout the day. In addition,

Winston is appropriate because as per Dr. Cuddy's uncontroverted testimony, as supported by Winston Prep witnesses, the cornerstone of its day is a small class and school environment where his social, emotional, pragmatic language, attention and executive functioning needs are addressed throughout the day, again in the appropriate educational setting. Notwithstanding his strong cognitive profile, he will make little progress in a large middle school and will likely regress.

Pursuant to N.J.A.C. 6A:14-2.10(c)(4), reimbursement for a unilateral placement can be reduced or denied upon a finding of unreasonableness as outlined above. The Board admitted that the parents were cooperative, and I **CONCLUDE** in keeping with my findings above, that they were not only cooperative but were a meaningful and collaborative part of the IEP process and rejected the IEP in good faith.

I **FURTHER CONCLUDE** that the petitioners acted reasonably and allowed the District the opportunity to address their concerns when they participated in the IEP process, provided all of their medical records and a current neuropsychological report relied upon by the District. They also timely responded to the District's requests and observed the in-District school and program. Specifically, they reviewed and obtained reports evaluations, did in-district observations and informed the District of their specific concerns and recommendations, prior to the unilateral placement. As such G.R.'s family was reasonable and gave the District any opportunity to address these concerns as detailed above. It bears repeating that Petitioner's expert Dr. Cuddy opined quite convincingly that G.R. required small classes and also observed the District's program twice. She reviewed all of his records, conducted the testing, reviewed the proposed IEP and considered all of that information prior to authoring her report and before giving her entirely professional and credible testimony.

In light of my conclusion that Winston is appropriate and that, as acknowledged by the District, that the parents cooperated and were meaningful collaborators throughout the process to see what the District's program had to offer, I **CONCLUDE** that they are entitled to reimbursement for their expenses at Winston Prep.



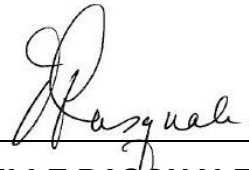
**ORDER**

Based on the foregoing, together with the record as a whole, I **CONCLUDE** that the District's proposed IEP did not provide G.R. with a FAPE. Thus, it is **ORDERED** that the Board is directed to place G.R. at Winston Prep, transport him there and reimburse his parents for their expenses in unilaterally enrolling him in Winston Prep, including transportation, retroactive to the date of his enrollment.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2022) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516 (2022). 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.

March 22, 2023

DATE



DANIELLE PASQUALE, ALJ

Date Received at Agency

March 22, 2023

Date E-Mailed to Parties:

March 22, 2023

Ir

**APPENDIX**

**LIST OF WITNESSES**

**For Petitioner:**

Dr. Barbara Miller, Director of Parkside School NYC  
Expert, Dr. Zoe Cuddy, Neuropsychologist  
Maxine Checchi, Deputy Executive Director of Special Education Services NYC  
Gregory Koehlert, Winston Prep  
Mr. Jamison Bean, Winston Prep  
L.R., Petitioner's Mother

**For Respondent:**

Susan Maughan, L.D.T.C., Case Manager Director for District of West Orange  
BOE

**LIST OF EXHIBITS IN EVIDENCE**

**Joint Exhibits:**

None were submitted due to the emergent stay-put order, the parties wanted to expedite the hearing where possible and pending the appeal to the District Court of Judge Betancourt's Emergent Order. **Attached hereto as Court's Exhibit-1.**

**For Petitioners:**

P-1 Letter from OT, Certification for home-based services  
P-2 Report from SEIT re: ABA services  
P-2A Report from SEIT, 2014  
P-2B Report from SEIT, 2014

P-3 Parkside Acceptance Letter  
P-4 Classroom observation, NYC DOE, 2015  
P-5 thru P-8 Team Meeting Conference Notes 2015, 2016, 2018  
P-9 Reading Conference Notes  
P-10 Math Conference Notes  
P-11thru P-18 Mid-Year and Year End Reports  
P-19 thru P-25 IEPs 2015-2021  
P-27 Social History Update, NYC DOE, 1/21/21  
P-28 Pediatric Neurodevelopmental Evaluation from Dr. J. Cross, 6/6/12  
P-29 Psychological Evaluation, Dr. Barbara Binestock  
P-30 Letter from Dr. John T. Wells  
P-31 Auditory Processing Evaluation, 12/13/14  
P-32 Dr. Salsberg Neuropsychological Report- 2014 and Addendum 2015  
P-33 Dr. Cuddy Neuropsychological Report 1/21/21  
P-34 Dr. Cuddy West Orange Program Review Report 11/2021  
P-35 Letter from Parkside School social worker, 12/26/21  
P-46 Test of Non-Verbal Intelligence, 4<sup>th</sup> Edition (TONI-4)  
P-47 Wechsler Individual Achievement Test, 3<sup>rd</sup> Ed. (WIATT-III)  
P-48 Wilson Assessment of Decoding and Encoding (WADE)  
P-49 Berry Test of Visual-Motor Integration (Berry-VMI)  
P-51 Progress Report, Fall 2021  
P-52A Progress Report, Winter 2021  
P-52-B Report Card, 2021/2022  
P-53 Dr. Cuddy, Curriculum Vitae  
P-55 Dr. Checchi Curriculum Vitae  
P-56 Gregory Koehlert, Curriculum Vitae  
P-57 Jameson Bean, Curriculum Vitae  
P-58 Miller Curriculum Vitae

**For Respondent:**

All in evidence with the exception of R-11

R-1 Ltr. To Maughan from Director of Special Services

- R-2 5/4/21 Correspondence from Greenwald to Harrison enclosing NYC IEP dated 5/3/21
- R-3 4/7/21 Reevaluation Plan
- R-4 4/23/21 CST Occupational Therapy Evaluation
- R-5 5/24/21 CST Speech Evaluation
- R-6 1/2/21 Private Neuropsychological Evaluation, Dr. Cuddy
- R-7 5/10/21 Observation Report of Susan Maughan, Case Manager
- R-8 IEP/ June 4, 2021
- R-9 Ltr to Case Manager Maughan from Director of Special Services
- R-10 Email from Eric Harrison, Esq. to Staci Greenwald, Esq. regarding proposed IEP
- R-11 Resume of Susan Maughan, LDTC (only marked for identification, not moved into evidence)
- R-12 3/8/22 Observation report of Susan Maughan, Case Manager