



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 11348-24
AGENCY DKT. NO. 2025-37897

T.W. AND L.W. ON BEHALF OF O.W.,

Petitioners,

v.

**HAZLET TOWNSHIP BOARD OF
EDUCATION,**

Respondent.

Staci J. Greenwald, Esq., for petitioners (Sussan, Greenwald & Wesler, attorneys)

Danielle Pantaleo, Esq., for respondent (The Busch Law Group, LLC, attorneys)

Record Closed: October 6, 2025

Decided: November 10, 2025

BEFORE **KELLY J. KIRK**, ALJ:

STATEMENT OF THE CASE

Petitioners, T.W. (Dad) and L.W. (Mom) (collectively, the parents), on behalf of O.W., filed for due process against the Hazlet Township Board of Education (the Board or the District), seeking an out-of-district placement and compensatory education.

PROCEDURAL HISTORY

On July 9, 2024, the parents filed a Petition for Due Process against the Board alleging, inter alia, that the District's program denied O.W. a free appropriate public education (FAPE) and seeking, inter alia, an out-of-district placement and compensatory education. On August 9, 2024, the Board filed its answer to the petitioners' Petition for Due Process. The matter was transmitted by the New Jersey Department of Education (the Department), Office of Special Education, to the Office of Administrative Law (OAL), where it was filed on August 15, 2024.

The matter was assigned to the Honorable Sarah Surgent, ALJ, and hearings were held on February 26, 2025, March 12, 2025, and May 8, 2025. The matter was reassigned to the undersigned on June 11, 2025, due to the impending retirement of Judge Surgent. Additional hearings were held on July 24, 2025, and July 30, 2025. The record closed on October 6, 2025, upon receipt of the parties' summation briefs.

DISCUSSION AND FINDINGS OF FACT

Findings of Fact

Ashleigh Halpern, Colleen Hopfensperger, Cathy Barney, Terri Kahrer, and Erin Suarez testified on behalf of respondent. Elizabeth Nissim, Melanie Rosenthal, AnneMarie Wernlund, and L.W. testified on behalf of petitioners.

Having had an opportunity to consider the evidence, including the parties' joint stipulation of facts, and to observe the witnesses and make credibility determinations based on the witnesses' testimony, I **FIND** the following **FACTS** in this case:

O.W. was born in September 2011. O.W. experienced developmental delays and qualified for Early Intervention (EI) services. He was diagnosed with autism spectrum disorder at age two.

In 2014, at age three, O.W. aged out of EI services. Petitioners enrolled O.W. in the District, and he was evaluated by the child study team (CST). The CST found O.W. eligible for special education under the category of “preschool child with a disability,” and he was placed in the District’s Preschool Disability program at Sycamore Drive Early Childhood Learning Center five full days per week in a self-contained classroom. (J-1.)

For the 2015–2016 school year, O.W., age four, was placed in a general education classroom and received speech therapy, occupational therapy (OT), physical therapy (PT), intensive teaching, a shared aide, and extended school year (ESY). (J-2.) In October 2015, O.W. was moved full-time to the inclusion classroom for the entire school year, with the same services. (J-3.)

The District conducted evaluations in 2016, including PT, OT, educational, psychological, and speech-language evaluations. (J-4; J-5; J-6; J-7; J-8.) O.W. was found eligible for special education and related services under the classification of “autistic.” (J-9.)

For the 2016–2017 school year, O.W., age five, began kindergarten. O.W. was placed in the self-contained classroom for the majority of his school day, but specials (PE, art, music enrichment), lunch, recess, and a socialization period were with general education peers. (J-9.) O.W. received in-class support for science, health, and social studies. (J-9.) O.W. also received speech-language therapy, OT, PT, a shared aide, and ESY. (J-9.)

For the 2017–2018 school year, O.W., age six, repeated kindergarten at Sycamore Drive Early Childhood Learning Center. O.W. was placed in the “special class placement” with specials in the general education classroom, and received speech therapy, OT, PT, ESY, and a shared aide. (J-11.)

For the 2018–2019 school year (first grade), O.W. was placed in the self-contained Language and Learning Disabilities Classroom (LLD) at the Raritan Valley Elementary School with a 1:1 aide. (J-13.) O.W. received speech therapy, OT, PT, and ESY. (J-13.)

For the 2019–2020 school year (second grade), O.W. was placed in the self-contained LLD Classroom with a 1:1 aide, and received speech therapy, OT, PT, and ESY. (J-14.) Beginning September 2019, O.W. had a behavior intervention plan (BIP) that targeted off-task behavior and non-compliance. (J-17.)

Beginning in October 2019, O.W. attended science, health, gym, music, and art in a general education setting. (J-16.)

As of February 2020, O.W. no longer received weekly PT as a related service. (J-17.)

For the 2020–2021 school year (third grade), O.W. was placed in the self-contained LLD Classroom with a 1:1 paraprofessional. (J-17.) He attended gym, art, and music in a general education setting. (J-17.) He received OT, speech therapy, a 1:1 aide, PT as needed, and ESY. (J-17.) The 1:1 aide was also assigned to accompany O.W. to lunch and recess to assist with socialization.

In 2021, the District conducted evaluations, including an OT evaluation, a psychological evaluation, and an educational evaluation. (J-20; J-21; J-22.) An individualized education program (IEP) meeting was held on February 4, 2021. (J-19.)

O.W. was formally diagnosed with attention deficit hyperactivity disorder (ADHD) in spring 2021, and he began taking medication to treat the ADHD in March 2021 or April 2021. His parents detected no change or improvement at home as a result of the medication.

Joseph Haughey, Psy.D., and Steven Greco, Ph.D., conducted a neuropsychological evaluation on July 13, 2021. (J-24.) The Neuropsychological Evaluation report reflects that O.W. had been diagnosed with ADHD. (J-24.)

For the 2021–2022 school year (fourth grade), O.W. was placed in the self-contained LLD Classroom with a 1:1 aide. (J-23.) He was placed in the general education setting for gym, art, and music. He received speech therapy, OT, PT consult as needed,

intensive teaching, and ESY. (J-23.) An Annual IEP Review meeting was held on April 7, 2022. (J-27.) The IEP for the remainder of the 2021–2022 school year placed O.W. in the general education setting for computers, gym, art, and music, and he received PT consult, speech therapy, OT, and a 2:1 aide—changed from a 1:1 aide. (J-27.)

For the 2022–2023 school year (fifth grade), the IEP reflects that O.W. would transition to the Beers Street School and continue in an LLD classroom with gym, music, art, and computers in a general education setting, and receive OT, speech therapy, PT consult as needed, intensive teaching, and ESY, and would return to a 1:1 aide to aid with the transition to the Beers Street School. (J-27.)

On May 17, 2022, Dr. Elizabeth Nissim (formerly known as Elizabeth Matheis), Ph.D., licensed school and clinical psychologist, evaluated O.W. at the request of petitioners and issued a Psycho-Educational Evaluation, dated July 22, 2022. (P-3.)

On June 20, 2022, and June 21, 2022, Melanie Rosenthal, CCC-SLP, a certified speech-language pathologist, conducted a speech-language evaluation and school observation at the request of petitioners. (P-1.)

In early August 2022, petitioners requested that the District explore potentially appropriate out-of-district schools. The District declined and invited petitioners to an IEP meeting on September 1, 2022, where it offered a revised program, adding a WIN (What I Need) Intervention Period five days per week and counseling once a week. (J-29.)

On September 6, 2022, petitioners notified the District of their disagreement with the IEP. On September 7, 2022, after providing due notice, petitioners unilaterally placed O.W. at The Center School for the 2022–2023 school year (fifth grade).

O.W. attended The Center School for fifth grade. His IEP included placement at The Center School in the special class multiple disabilities, with group OT (sensory diet), individual OT, group (not to exceed two) speech-language therapy, individual speech-language therapy, group PT, individual counseling services, and group counseling services. (P-21.)

On April 6, 2023, Melanie Rosenthal, CCC-SLP, observed O.W. at The Center School. (P-8.)

On April 20, 2023, Dr. Nissim observed O.W. at The Center School. (P-9.)

In June 2023, petitioners and the District reached a settlement through which the District agreed to contribute to O.W.'s placement at the Center School for the 2022–2023 and the 2023–2024 school years. (J-46.) On June 20, 2023, after the settlement agreement was executed, the District provided notice to the petitioners of an IEP amendment without a meeting, changing O.W.'s placement to The Center School as of July 1, 2023. (R-13.) Related services included speech therapy (group and individual), OT (group and individual), group PT, individual reading support and counseling (group and individual). (R-13; J-47.)

On September 27, 2023, the District provided procedural notice to petitioners for the October 12, 2023, IEP meeting at The Center School. (R-14.) Per the October 12, 2023, The Center School IEP, O.W. was placed in the special class multiple disabilities (language arts, math, social studies, and science), and received group OT (sensory diet), individual OT, group speech-language therapy, individual speech-language therapy, group PT, individual counseling services, and group counseling services. (P-10.) Although not listed under the summary of special education and related services in the IEP, the IEP reflects—under Strengths of the Student and Present Levels of Academic Achievement and Functional Performance (PLAAFP)—that O.W. was receiving 1:1 reading and literacy support from reading specialist AnneMarie Wernlund three times per week for thirty-minute sessions, during which time he received “explicit instruction in phonics and word recognition, fluency, vocabulary, sight word recognition, reading comprehension, and written expression.” (P-10.) The District's October 12, 2023, Annual Review IEP reflects the same out-of-district placement and related services as The Center School IEP but also reflects the individual reading support three times weekly as a related service. (P-10; J-48.)

O.W. attended The Center School for the 2023–2024 school year (sixth grade). The District conducted its triennial evaluations in the spring of 2024. These included an OT evaluation, a PT evaluation, a speech and language evaluation, an educational evaluation, and a psychological evaluation, as well as a behavioral observation at The Center School. (J-32; J-33; J-34; J-35; J-36; J-37.)

On April 17, 2024, the District invited petitioners to attend an IEP meeting on April 29, 2024, to interpret evaluation results and determine eligibility and review/revise the IEP. (R-15.) The District provided petitioners with a copy of each of its reevaluation reports as attachments to the invitation to the eligibility and IEP meeting scheduled for April 29, 2024. (R-15.) The parties met for O.W.'s annual IEP review meeting on April 29, 2024. (J-38.) The District recommended that O.W. return to the District. (J-38.) The April 29, 2024, IEP (Proposed IEP) reflects that O.W. was eligible for special education and related services under the classification "autism," and reflects the proposed placement in the Hazlet Middle School LLD Classroom for English, math, history, and science, with group (2:1) speech services twice weekly for thirty minutes, a PT consult as needed for fifteen minutes, group OT (three or less) once weekly for thirty minutes, group (five or less) social skills once weekly for thirty minutes, individual school-based counseling once weekly for thirty minutes, and a classroom aide. (J-38.)

The District provided petitioners with a copy of the eligibility conference report dated April 29, 2024, and IEP dated April 29, 2024, in a letter dated April 30, 2024. (R-16.)

Melanie Rosenthal, CCC-SLP, evaluated O.W. on May 7, 2024, and May 15, 2024, and observed O.W. on May 9, 2024, and June 6, 2024, and issued a Comprehensive Speech and Language Evaluation & Classroom Observation in June 2024. (P-14.) On June 6, 2024, Laurie Stiga observed the District middle school ELA classroom, academic career exploration (ACE) elective, and lunch, during Rosenthal's observation. (J-40.) On May 16, 2024, and May 31, 2024, Dr. Nissim observed O.W., and on May 17, 2024, Dr. Nissim assessed O.W. and issued a Psycho-Educational Evaluation Update. (P-13.) On May 31, 2024, Colleen Lewandowski observed the LLD math class during Dr. Nissim's observation. (J-39.)

On June 24, 2024, petitioners shared Dr. Nissim's Psycho-Educational Evaluation Update with the District. (P-18; R-17.) Petitioners also provided a June 7, 2024, letter from Dwayne Bagnato-Lumsden, supervisor of pupil services at The Center School, which provided feedback on the behavioral observation and the CST placement recommendation. (P-15; P-18.)

On June 24, 2024, petitioners requested that the District continue O.W.'s placement at The Center School and be responsible for all associated costs. (P-18.) In the same letter, petitioners notified the District of their intention to make a unilateral placement should the District disagree. (P-18.)

On July 1, 2024, petitioners advised the District that they were declining ESY for O.W. in-District, instead choosing to continue O.W. at The Center School. (P-19.) On July 1, 2024, petitioners entered into a contract with The Center School for the 2024–2025 school year, including ESY. (P-50.)

On July 2, 2024, the District responded that they do not agree with placement at The Center School. (R-20.)

On July 8, 2024, petitioners shared Rosenthal's Speech and Language Evaluation & Classroom Observation with the District and reiterated their request for the District to continue O.W.'s placement at The Center School and be responsible for the associated costs. (P-20; R-18.)

On July 9, 2024, petitioners filed a Petition for Due Process.

On August 9, 2024, the District reiterated that it did not agree to the parents' unilateral placement of O.W. at The Center School for the 2024–2025 school year. (R-21.) On August 9, 2024, the District filed an Answer to the Due Process Petition. On August 19, 2024, the District reiterated its disagreement with the unilateral placement of O.W. at The Center School and provided the CST's feedback on Nissim's and Rosenthal's reports. (R-22.)

O.W. attended The Center School for the 2024–2025 school year (seventh grade).

Testimony

While the testimony of the District's witnesses was credible, other than Cathy Barney's testimony, the District's testimony was limited primarily to O.W.'s time in-District—which ended with the 2021–2022 school year. Ashleigh Halpern has been employed by the District as a school psychologist since 2014, and she was O.W.'s case manager for first through fourth grade. Halpern reviewed The Center School records for her evaluation, but did not testify about O.W.'s teachers or related-service providers, nor specifically about the proposed middle school LLD Classroom, except that the LLD Classroom is the only special education classroom at the middle school—there is no multiply disabled or autism classroom—and that there would have been five or six students in O.W.'s LLD Classroom. Colleen Hopfensperger has been a board-certified behavior analyst since 2012 and has held a teacher of the handicapped certification since 2001. Hopfensperger has been employed by the District as a behaviorist since 2023, and she observed O.W. at The Center School in April 2024, but she did not testify specifically about the proposed middle school LLD Classroom. Terri Kahrer has been employed by the District as a special education teacher since 2001 and has literacy training in SRA Reading Laboratory, Wilson Reading Systems—Fundations, Orton-Gillingham, Project Read, Sonday Reading System and Science of Reading—UFLI. Kahrer was O.W.'s teacher for second and third grade, and although she has taught sixth- and seventh-grade ESY, she would not be his teacher in middle school, and she did not testify about the proposed middle school LLD Classroom. Erin Suarez has been employed by the District as a special education teacher for the grades 3–4 self-contained LLD Classroom since 2015, and she is trained in Sonday Reading System and Science of Reading—UFLI. Suarez was O.W.'s fourth-grade special education teacher, but beyond testifying that the middle school had a life-skills program, she had no other knowledge of the proposed middle school LLD Classroom.

Cathy Barney has been employed by the District as a learning disabilities teacher-consultant on the CST since 2019, and holds certifications as teacher of the handicapped, elementary education K–8, and reading specialist. Barney is also a certified Wilson

dyslexia practitioner and certified Orton-Gillingham associate and is trained in "Steps to Literacy," Corrective Reading, Direct Instruction, Wilson Reading, Project Read, Orton-Gillingham, and Stevenson Reading Programs. Barney testified about her 2021 and 2024 evaluations of O.W. and her credentials as a reading specialist. She also testified that O.W.'s electives would be mainstreamed with general education peers, and that in addition to typical electives like engineering, studio art, robotics, woodworking, and carpentry, the middle school has a "smarts program" designed to work with students on executive functioning (mental skills helping to organize and retrieve info) and "ground works program," an application of the smarts program, that allows students to do things like use planners, organize, figure out how to order things to get them done, and email teachers. Additionally, the middle school has ACE, which is a life-skills program that deals with things like personal information, health and safety, food services, managing finances, cooking, washing dishes, hanging up clothes, making a bed, sewing, and hydroponics. ACE also has a coffee shop, where students make coffee and sell coffee, including taking orders, delivering orders, collecting money, and giving change. The middle school also has "Hurricane-Palooza," which is like a field day for all students, and special education students are matched with general education students for the day, and Unified Partners, a program where general education students volunteer to be a unified partner and are matched with special education students to work with them in a core academic area or accompany them when selling ACE coffee to other schools. The middle school also has a Unified Partnership sports team where special education and general education students are matched, outside of school, after school, or within gym. Based upon her knowledge of O.W., Barney was unable to determine if O.W. would require a one-to-one or other aide to participate in extracurricular activities. Barney conceded that O.W.'s reading interventions at The Center School could be responsible for the increase in his reading skills. Although there were no writing goals in the Proposed IEP, Barney testified that writing would be worked on and the parents would receive progress reports.

Elizabeth Nissim, Ph.D., is a licensed clinical psychologist and certified school psychologist. (P-4.) At petitioners' request, Dr. Nissim evaluated O.W. in May 2022 (fourth grade), April 2023 (fifth grade) and May 2024 (sixth grade). (P-6; P-13.) Nissim testified that at The Center School, O.W. has comprehensive support for reading and writing that includes Orton-Gillingham instruction, instruction by the reading specialist and

speech therapist, and an additional class that is language-based and focuses on social and life skills. He receives Orton-Gillingham instruction in addition to one-to-one individualized instruction with the reading specialist and speech therapist, and the data reflects that he has made progress. The Center School classes are small, with a high amount of 1:1 support in his subjects. She also testified that he has integrated with his peers and formed relationships in school and friendships with his classmates and is involved with and integrated into The Center School community by extracurricular activities, including joining clubs and acting in the school play. O.W. is able to participate in extracurricular activities at the appropriate developmental level. She reviewed and compared O.W.'s academic scores in-District versus at The Center School and opined that his in-District scores reflected a lack of progress while The Center School scores reflected significant progress. She further opined that the in-District program was not an appropriate placement for O.W. and would not be the least restrictive environment.

Melanie Rosenthal is a certified speech-language pathologist. At petitioners' request, Rosenthal evaluated O.W. in June 2022 (fourth grade), April 2023 (fifth grade), and May 2024 and June 2024 (sixth grade). Rosenthal testified that O.W. had made gains in his receptive, expressive, and social communication skills since June 2022, which she attributed to the instruction and related services at The Center School. She testified that O.W. continues to require support to improve his receptive, expressive, and social communication skills, and recommended that he continue with intensive one-to-one direct instruction throughout his day with a professional trained to work with children with autism spectrum disorder, ADHD, language deficits, and reading, writing, and math difficulties. Rosenthal testified that the frequency and duration of speech therapy at The Center School is appropriate, and recommended that the same continue without reduction. She opined that The Center School setting allows O.W. to be successful, and that the in-District placement would not be appropriate.

AnneMarie Wernlund is a certified reading specialist and has a certificate in Elementary Education K-6 and Teacher of Students with Disabilities. (P-31.) Wernlund is an Orton-Gillingham Associate, having completed sixty hours of coursework, and she has been employed by The Center School as a reading/literacy specialist since September 2022, and as supervisor of special education since September 2024. (P-31.)

Wernlund also has working knowledge of Phonics First, Sonday System, and Recipe for Reading. (P-31.) Wernlund has been O.W.'s reading specialist since 2022. She has seen O.W. three times per week, one-to-one for thirty minutes, but for the 2023–2024 and 2024–2025 school years she saw him for an additional co-treat session with the speech-language pathologist to help generalize skills. The purpose of her instruction is to help support and generalize the Orton-Gillingham instruction that is presented in the classroom by his teacher, and to provide additional reading support and instruction to increase fluency, accuracy, and reading comprehension and build reading skills. Wernlund testified that O.W. is making excellent progress and that his IXL scores increased, his Overall Language increased to a 3.1 level, and his Overall Reading increased to a 3.8 grade level—after starting at mid-kindergarten level. She also testified that when O.W. started at The Center School, he had command of only approximately 140 Fry words and testing at The Center School indicated that he did not have command of many of the rules for decoding and encoding and was not able to attend to longer texts independently, so the goals were developed to help him decode and encode single syllable words and answer basic comprehension questions at his instructional level, and to write one single sentence. The District's goals were not appropriate because he lacked the necessary skills for the District's goals.

Discussion

There was extensive testimony from the District's witnesses relative to O.W.'s experience in-District, and Petitioners' witnesses likewise opined on progress or lack thereof while in-District. However, it is noted that O.W. started The Center School in September 2022, and the Petition was filed on July 9, 2024, at the conclusion of O.W.'s sixth-grade year. Whether or not O.W. received a FAPE in Kindergarten, first, second, third, or fourth grade is not at issue in this case—not only because it exceeds time limitations, but because the parties entered into a settlement agreement whereby O.W.'s IEP reflects placement at The Center School for 2022–2023 (fifth grade) and 2023–2024 (sixth grade). Moreover, age and maturity, and effects of ADHD medication, as well as O.W.'s educational experience at The Center School, are all factors in O.W.'s function since, and, therefore, little, if any, weight is afforded testimony relative to what occurred while O.W. attended school in-District, especially given that observations and

assessments were conducted by both parties in 2024. Additionally, even if O.W.'s IEPs did not previously include appropriate goals or objectives or even if O.W. had been denied a FAPE at any point while in-District, that is not dispositive of whether the Proposed IEP is appropriate.

The District's Speech and Language Re-Evaluation, dated March 13, 2024 (examination February 27, 2024), reflects that O.W.'s Comprehensive Assessment of Spoken Language—Second Edition (CASL-2) results were below average for "Receptive Vocabulary" and "Sentence Expression" and deficient for "Grammaticality Judgment," "Nonliteral Language," and "Double Meaning." O.W.'s General Language Ability Index (GLAI) result was deficient, as were his results for "Inference" and "Pragmatic Language." O.W.'s Test of Auditory Processing Skills (TAPS-4) reflects below-average results for all three areas: Phonological Processing Index, Auditory Memory Index, and Comprehension Index. (R-34.) The Re-Evaluation states, "The ability to encode, store, retrieve, and manipulate words in memory is critical for proper language development and use." The Re-Evaluation also reflects the following: O.W.'s reading specialist reported that O.W. had made tremendous progress and was generalizing his inferencing skills; O.W. had difficulty with using regular and irregular past tense verbs, identifying which item did not belong with the group, using antonyms, stating one similarity and one difference of targeted word items, describing word items, and sequencing a task; O.W.'s SLP reported that he sometimes follows conversational routines, initiates conversations, and understands/expresses complex intentions, but does not share/respond to reactions or understand jokes/humor; consultation with his SLP and reading specialist revealed that O.W. has made significant progress; and O.W. requires minimal prompting for follow through and generalization of skills. (R-34.)

The Psychological Evaluation, dated April 15, 2024 (testing March 13, 2024), reflects that O.W. achieved a Full-Scale IQ score of 65, percentile rank of 1, in the "extremely low" range. His WISC-V scores were in the "extremely low" range for Working Memory Index (WMI) and Processing Speed Index (PSI), in the "very low" range on the Verbal Comprehension Index (VCI) and Fluid Reasoning Index (FRI), and in the "low average" range on the Visual Spatial Index (VSI). (J-36.) Additionally, his Vineland 3 scores, based upon parent and teacher reports, reflect that his level of adaptive

functioning was in the “moderately low” range as rated by the parents and in the “low” range as rated by his teacher. (J-36.) Halpern was concerned because O.W. presented as anxious and was picking the skin on his fingers and repeating responses and “uh, yeah” numerous times, which was not behavior she had observed in first through fourth grade.

The Educational Evaluation, dated April 10, 2024 (testing March 22, 2024) reflects the following “very low” range scores on the Woodcock-Johnson IV Tests of Achievement: Reading; Broad Reading; Reading Comprehension; Reading Comp (Ext); Reading Fluency; Reading Rate; Mathematics; Broad Mathematics; Math Calculation Skills; Math Problem Solving; Written Language; Broad Written Language; Written Expression; Academic Skills; Academic Fluency; Academic Applications; Brief Achievement; Broad Achievement; Letter-Word Identification; Applied Problems; Spelling; Passage Comprehension; Calculation; Sentence Reading Fluency; Math Facts Fluency; Sentence Writing Fluency; Reading Recall; Number Matrices; Word Reading Fluency; and Reading Vocabulary. (J-35.) However, the Educational Evaluation also reflects some “low” range scores (Basic Reading Skills, Writing Samples and Oral Reading) and “average” range scores (Phoneme-Grapheme Know and Word Attack), and a “low average” range score for Spelling of Sounds. The Educational Evaluation also reflects the following “very low” range scores on the Woodcock-Johnson IV Tests of Oral Language: Oral Language; Board Oral Language; Listening Comprehension; Speed of Lexical Access; Picture Vocabulary; Oral Comprehension; Rapid Picture Naming; and Understanding Directions. (J-35.) However, the Educational Evaluation also reflects some “low” range scores (Oral Expression and Retrieval Fluency), “average” range scores (Phonetic Coding and Sound Blending), and a “low average” range score for Sentence Repetition. Additionally, Barney identified several specific areas of weakness (Listening Comprehension; Oral Comprehension; Understanding Directions; Reading Comprehension; Math Problem Solving; Applied Problems; Math Facts Fluency; and Academic Applications) and of strength (Basic Reading Skills; Written Expression; Letter-Word Identification; Writing Samples; Word Attack; Spelling of Sounds; and Academic Skills). (P-35.)

The IXL Diagnostic reflects that his overall language in Fall 2022 was 70 (0.7), Fall 2023 was 220 (2.2), and Winter 2024 was 200 (2.0), and his overall reading in Fall 2022

was 50 (0.5), Fall 2023 was 270 (2.7), and Winter 2024 was 280 (2.8). (P-24; P-28.) The DRA3 chart reflects that in Fall 2022 he was mid-kindergarten per IXL and Primer per San Diego Quick Assessment (SDQA), and that his initial DRA instructional level assessment in ESY 2023 was 12 (1.6), Winter 2024 was 18 (2.2), Spring 2024 was 20 (2.3–2.6), and Fall 2024 was 24 (2.7–2.9) (due to reading rate) and that his initial DRA3 independent level assessment in ESY 2023 was 10 (1.5), Winter 2024 was 16 (1.9–2.1), Spring 2024 was 18 (2.2), and Fall 2024 was 2.0 (2.3–2.6). (P-24; P-28.) The TOWRE-2 chart reflects that his sight-word efficiency in Fall 2023 was 1.5 GLE, Winter 2024 was 1.8 GLE, Spring 2024 was 2.2, and Fall 2024 was 2.2, and his phonemic decoding in Fall 2023 was 2.0 GLE, Winter 2024 was 2.5 GLE, Spring 2024 was 2.8, and Fall 2024 was 2.0. (P-24; P-28.)

Additionally, the Present Levels of Academic Achievement and Functional Performance in the Proposed IEP reflect the following for language arts and reading/literacy support:

Language Arts

[O.W.] has shown noticeable progress in both decoding and encoding. During OG lessons he is able to follow the OG sequence, by echoing, tapping and writing. Recently taught concepts are c-le(-ble), -less, compound words, re- and vowel team oa. [O.W.] has consistently achieved an 80% or higher on each OG lesson.

[O.W.] has made significant strides in his writing skill. During his “Do Now” lessons he has started constructing sentences independently utilizing his sight words. With each sentence, he demonstrates a growing command of language.

[O.W.] continues to face challenges in comprehension, particularly in understanding and retaining information presented in stories or academic content. Additionally, staying engaged and focused during the presentation of information continues to be challenging.

[O.W.’s] September TOWRE-2 scores indicated he was on a 1.5 grade level in sight word efficiency scoring him in the <1%. In phonemic decoding scores indicate him to be at a 2.0 grade level scoring him in the 4th%. [O.W.’s] January 2024 TOWRE-2 scores indicated he is now on a 1.8 grade level in

sight word efficiency scoring him in the 1%. In phonemic decoding scores indicate him to be at a 2.5 grade level scoring him in the 7th%. From September 2023 to January 2023 [O.W.] has shown 3 month growth progress which is supported in his progress in his FRY words and 5 month; progress in his decoding ability. This progress is evident in [O.W.'s] reading and writing through classroom assignments. [O.W.] has now begun to initiate tasks on his own, for example taking guided notes.

R. Brana 4/2024

In Language Arts, [O.W.] continues to work on reading comprehension, writing, and listening skills. His class is reading fiction and nonfiction short stories, and the skills addressed are reading and listening comprehension, following directions, and developing content-area and general vocabulary through reading. [O.W.] is reading the "I Survived" series (San Francisco Earthquake and Pompeii) as a cross-curricular activity with Science and Social Studies classes and utilizing the book companion activity packet for each book to reinforce comprehension, vocabulary, story elements, and recall. During the poetry unit, [O.W.] practiced listening to and discussing poetry, as well as writing his own poems.

[O.W.] is encouraged to participate during Language Arts by asking and answering teacher questions and presenting information in front of the class. He utilizes the Framing Your Thoughts curriculum for writing, in which he works on writing complete sentences and correctly expanding on sentences to include more description, sentence forms, or grammatical elements. In terms of grammatical-development and expansion, he continues to work to identify subject and predicate in model sentences, then [write] his own sentences by correctly using nouns, verbs, adjectives and connecting words. Journal writing is used to practice creative writing by following daily writing prompts.

[O.W.] continues to make positive progress in Language Arts and completes his work with moderate support. He participates in class activities and answers teacher questions with minimal prompting during class. In terms of reading aloud, he continues to make steady progress as he gains confidence reading aloud with his peers. At times, he can become distracted, but he is easily redirected and is able to return to work quickly. [O.W.] always comes to class prepared to learn and puts forth his best effort during all classroom activities.

F. Sanders 4/2024

Reading/Literacy Support

[O.W.] currently receives 1:1 reading and literacy support 3x/week for 30 minute sessions. During these sessions, [O.W.] receives explicit instruction in phonics and word recognition, fluency, vocabulary, sight word recognition, reading comprehension, and written expression. He attends all sessions willingly and is prepared to participate in the provided lessons and activities.

In January/February, [O.W.'s] independent reading level was assessed on the DRA3 reading assessment. [O.W.] is currently reading on a developing level 18, equating to the 2.2 grade level. He scored in the independent range in Oral Reading Accuracy, with 2 uncorrected miscues at 98% accuracy. These miscues were made up of substitutions and omissions, such as replacing "you" with "goal," and omitting the word "Choices" in a subheading. Additionally, he had 2 self-corrected miscues. During reading, he read primarily in longer phrases, heeding most of the punctuation. Although not considered an error, it is worth noting that [O.W.] frequently inserted "uh" utterances throughout reading, typically after sentences and sections. His total reading time fell in the independent range, reading at a rate of 55.38 words per minute. [O.W.] scored in the developing range in Comprehension, benefitting from 1–2 prompts to gain further information during his retelling of key ideas and details. When retelling key details, [O.W.] included the names and at least one descriptive detail for each sport outlined in the text, and accurately identified the character's choice at the end. He utilized simple text vocabulary, as well as simplified interpretations, such as "metal stuff" in place of helmets and pads, while still accurately identifying their purpose ("to protect them"). [O.W.] utilized the nonfiction text features to accurately respond to one of the two provided prompts: using the glossary to define a given word. Although he did not receive credit for the chart-dependent question ("Use the chart and tell me something that is the same about soccer and football,") he provided an insightful response demonstrating understanding of the overall content ("Football is the name of the sport but you kick the ball with your foot in soccer"). Based on this assessment, [O.W.] will benefit from additional instruction in the areas of prediction, making connections, and retelling with vocabulary. Since previously tested in July 2023, [O.W.] has increased from an instructional DRA level 12 (1.6 grade level equivalent) to an instructional DRA level 18 (2.2 grade level equivalent). As a note, [O.W.] was

assessed using both fiction and nonfiction texts throughout the process in order to provide a comprehensive overview of his reading comprehension abilities. He will be reassessed utilizing this platform in June.

IXL: Students are assessed on the IXL diagnostic online, adaptive assessment 3x per year. This assessment evaluates overall reading and language ability, with focus on comprehension and vocabulary, sound-symbol correspondence, decoding, and grammar. [O.W.] completed all academic questions in this assessment independently, with support to remain focused and on-task.

Overall ELA Level:

Winter 2024: 200 (2.0 grade level equivalent)

Fall 2022: 70 (0.7 grade level equivalent)

[O.W.] demonstrated a 130 point increase from when [O.W.] began at The Center School in September 2022 to the most recent testing conducted in January 2024. This equates to an increase of 1.3 grade levels.

Overall Reading:

Winter 2024: 280 (2.8 grade level equivalent)

Fall 2022: 50 (0.5 grade level equivalent)

[O.W.] demonstrated a 230 point increase from when [O.W.] began at The Center School in September 2022 to the most recent testing conducted in January 2024. This equates to an increase of 2.3 grade levels.

During 1:1 sessions, [O.W.] receives explicit, multisensory instruction in phonics, word recognition, decoding, and encoding following the principles of Orton Gillingham. This instruction is presented in conjunction with and supplementary to the Orton Gillingham instruction he receives in the classroom. He receives instruction on a variety of skills and syllable patterns, including vowel teams, r-controlled vowels, VCe, and affixes. He demonstrates command of these patterns and skills during the isolated lesson, but meets difficulty in generalization and recall of skills. When reading fiction and nonfiction passages at his instructional level, [O.W.] is able to apply learned word patterns to unfamiliar, regularly spelled single-syllable words. Previously, when faced with a word he was unsure of [O.W.] would skip over the word and move on. However, he will now attempt to utilize learned segmenting skills to decode the unknown word, but continues to meet difficulty reading unknown multisyllabic words independently. With prompting and guided segmenting, he is able to decode these unknown words with support, and is able to recall the guided word when rereading

the sentence or encountering the word later in the same text. [O.W.'s] overall sentence-level and passage-level comprehension was assessed using specialist-designed, discrete trial-based reading opportunities. Chunked across multiple sessions, [O.W.] read sentences and passages written at his instructional level before being prompted to respond to a given 5W question (who, what, when, where, why/how). These questions were generally literal comprehension questions, with only 5/75 (7%) sentence-level questions requiring an inference to be drawn. On the sentence level, [O.W.] responded to 57/75 questions accurately (76%). On the passage level, [O.W.] read 1,678/1,745 words with accuracy (96%,) and responded accurately to 24/35 questions (69%). Results of this assessment indicate that [O.W.] will continue to benefit from text chunking, as well as frequent 5Ws prompting to build comprehension and recall during reading, especially when faced with a longer (multi-paragraph) text. When presented with multiple choice literal comprehension questions, he is able to respond with 75% accuracy independently. With prompting and intensive support, he is able to return to a given section of text to locate and correct his responses.

[O.W.] is also working on developing, writing, and expanding sentences. When presented with a topic or an image, [O.W.] is able to verbally identify relevant details, but meets difficulty when producing a complete sentence independently. With prompting and pre-written details for reference, [O.W.] is able to combine details to develop a sentence without articles and sentence connectors. With intensive prompting, he is unable to identify these missing articles or connectors, and benefits from provided words and encouragement to reread the complete sentence. At times, [O.W.] becomes overwhelmed when sustaining tasks, and expresses his desire to be finished with the activity. He benefits from chunking and clearly defined activity goals (i.e., "We have 2 more sentences to read before we can move on,") and is able to return to the task to meet his goal. [O.W.] frequently meets difficulty maintaining focus on lessons and learning activities, occasionally scripting scenes or becoming distracted by items around the room. With moderate prompting, he is able to return to the task at hand and successfully engage in learning.

[O.W.] also receives 1 co-treated session weekly for 30 minutes with his reading specialist and his speech language pathologist. This session is designed to provide instruction and practical application to bridge [O.W.'s] language comprehension and reading comprehension abilities, and to

help provide opportunities to generalize the skills learned in each isolated session.

A. Wernlund 4/2024

[J-38.]

The Proposed IEP reflects goals and objectives for language arts, reading, math, science, social studies, speech, occupational therapy, and counseling, but does not reflect any goals or objectives for writing.

The Proposed IEP reflects modifications for the special education classroom: allow extra time for task completion; modify curriculum content based on student's ability level; use a consistent daily route; frequently check for understanding; simplify task directions; orient to take and provide support to complete task; provide multisensory instruction; provide short breaks when refocusing is needed; refocusing and redirection; monitor student's comprehension of language used during instruction; provide clear, concise directions and concrete examples for classwork assignments; assign tasks at an appropriate reading level; provide clear and concise classroom expectations and consequences; provide positive praise, encouragement and feedback; allow breaks as needed; and provide hands-on learning activities. (J-38.)

The Proposed IEP also reflects extensive modifications to enable O.W. to participate in the general education curriculum: break assignment into segments of shorter tasks; reduce the number of concepts presented at one time; monitor the student's comprehension of language used during instruction; provide clear, concise directions and concrete examples for homework/classwork assignments; assign tasks at an appropriate reading level; utilize manipulative, hands-on activities; cue student by calling his/her name before asking questions; frequently check on progress of independent work; provide clear and well-defined worksheets; repeat, reword directions; seat student in an area free of distractions; use preferential seating; help keep student's work area free of unnecessary materials; provide opportunities for movement/activity change; provide a specific place for turning in completed assignments; provide clear and concise classroom expectations and consequences; consistently enforce school rules; assign activities which require some movement; use praise generously; encourage student to accept responsibility for

behavior; reinforce student for appropriate behaviors; utilize errorless teaching; to assess student knowledge use specific questions rather than more open-ended questions (added per recommendation of 2021 neuropsychiatric evaluation); extended time for assignments; when possible prepare O.W. for schedule changes (added per recommendation of 2021 neuropsychiatric evaluation); provide study guides as needed; utilize graphic organizers; occupational therapist will assess O.W.'s sensory needs and create a formal sensory diet; motivational system to be developed in conjunction with the district behaviorist; provide 1–2 instructions at one time, with checklist that includes additional items that he is required to complete, so he can reference and check off when complete; gain O.W.'s attention and ask him to share understanding of directions or information so teacher can fill in possible gaps; additional modifications recommended by outside reports—provide 1–2 instructions at one time, with a checklist that includes additional items that he is required to complete, so that reference and check-off when completed; when provided with a new task, allow time for O.W. to acclimate to the new task demands—offer him several examples until he feels confident about what he has to do to complete the task—it is important for teachers and classroom support staff to check in with him throughout the task, as this will improve his focus and decrease his anxiety about the task; repeat and reteach information as needed; provide verbal and non-verbal cueing and re-direction; break down complex tasks and assignments into smaller tasks in an effort to improve initiation and follow-through; provide O.W. with positive praise, encouragement, and feedback; discuss newly presented information out loud, as he prefers making connections through verbal discussion; use multisensory instruction as well as multisensory demonstration of a task; schedule movement breaks into O.W.'s schedule; allow O.W. to work in small spurts of time (e.g., fifteen minutes) and then allow a break; break down auditory information into manageable units/steps of information; use visual supports to accompany auditory information; incorporate occasional pauses to assist with comprehension; and repeat and rephrase important information. However, while there are extensive accommodations in place, which are not uncommon to be utilized in a special education setting, it is not clear how—given O.W.'s FS IQ and reading (including comprehension) and writing deficits and the lack of an aide—the instruction outside of English, math, history, and science would be modified to be accessible to O.W. (J-38.)

O.W. was evaluated in the spring of 2024, during which time he had been receiving related services in reading and speech as follows: 2:1 speech services once weekly for thirty minutes, individual speech services twice weekly for thirty minutes, individual reading support three times weekly for thirty minutes, and individual speech/language and reading specialist (combined) once weekly for thirty minutes. The 2024 evaluations revealed significant deficiencies in reading and speech. The Proposed IEP placement is the Hazlet Middle School LLD Classroom for English, math, history, and science, with group (2:1) speech services twice weekly for thirty minutes, a PT consult as needed for fifteen minutes, group OT (three or less) once weekly for thirty minutes, group (five or less) social skills once weekly for thirty minutes, individual school-based counseling once weekly for thirty minutes, and a classroom aide. (J-38.) Thus, the Proposed IEP reflects that in the significant-deficit areas of speech and reading, O.W. would be receiving only 2:1 speech services twice weekly for thirty minutes, and no reading support related services.

DISCUSSION AND CONCLUSIONS OF LAW

The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400–1482, ensures that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living, and ensures that the rights of children with disabilities and parents of such children are protected. 20 U.S.C. § 1400(d)(1)(A), (B); N.J.A.C. 6A:14-1.1. Under the IDEA, a “child with a disability” means a child with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities, and who, by reason thereof, needs special education and related services. 20 U.S.C. § 1401(3)(A).

States qualifying for federal funds under the IDEA must assure all children with disabilities the right to a free “appropriate public education.” 20 U.S.C. § 1412(a)(1); Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176 (1982). Each district board of education is responsible for providing a system of FAPE. N.J.A.C. 6A:14-

1.1(d). A FAPE means special education and related services that (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the state educational agency; (C) include an appropriate preschool, elementary-school, or secondary-school education in the state involved; and (D) are provided in conformity with the individualized education program required under 20 U.S.C. § 1414(d). 20 U.S.C. § 1401(9); Rowley, 458 U.S. 176.

An IEP is a written statement for each child with a disability that is developed, reviewed, and revised in accordance with 20 U.S.C. § 1414(d), 20 U.S.C. § 1401(14), and 20 U.S.C. § 1412(a)(4). When a student is determined to be eligible for special education, an IEP must be developed to establish the rationale for the student's educational placement and to serve as a basis for program implementation. N.J.A.C. 6A:14-1.3, -3.7. FAPE requires that the education offered to the child must be sufficient to "confer some educational benefit upon the handicapped child," but it does not require that the school district maximize the potential of disabled students commensurate with the opportunity provided to non-disabled students. Rowley, 458 U.S. at 200. Hence, a satisfactory IEP must provide "significant learning" and confer "meaningful benefit." T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577–78 (3d Cir. 2000).

The Supreme Court discussed Rowley in Endrew F. v. Douglas County School District RE-1, 137 S. Ct. 988 (2017), noting that Rowley did not "establish any one test for determining the adequacy of educational benefits," and concluding that the "adequacy of a given IEP turns on the unique circumstances of the child for whom it was created." Id. at 996, 1001. Endrew F. warns against courts substituting their own notions of sound education policy for those of school authorities and notes that deference is based upon application of expertise and the exercise of judgment by those authorities. Id. at 1001. However, the school authorities are expected to offer "a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances." Id. at 1002.

Additionally, in accordance with the IDEA, children with disabilities are to be educated in the least restrictive environment (LRE). 20 U.S.C. § 1412(a)(5); N.J.A.C. 6A:14-1.1(b)(5). To that end, to the maximum extent appropriate, children with

disabilities, including children in public or private institutions or other care facilities, are to be educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment should occur only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 20 U.S.C. § 1412(a)(5)(A); N.J.A.C. 6A:14-4.2. The Third Circuit has interpreted this to require that a disabled child be placed in the LRE that will provide the child with a “meaningful educational benefit.” T.R., 205 F.3d at 578.

Petitioners argue that program and placement offered by the District was “inappropriate and not reasonably calculated to confer significant educational benefit or to enable [O.W.] to make progress in light of his individual circumstances,” and “not uniquely tailored to” and “fail[ed] to address” O.W.’s individual needs and did not offer him a FAPE. Petitioners further argue that petitioners acted reasonably and are entitled to reimbursement for The Center School, which was appropriate for O.W. and the least restrictive environment. Conversely, the District argues that the Proposed IEP was appropriate and offered meaningful educational benefit to O.W. in the least restrictive environment, and that petitioners are not entitled to reimbursement for The Center School because the Proposed IEP was appropriate and because the unilateral placement was inappropriate because O.W. did not receive sufficient educational benefit at The Center School. The District bears the burden of proof whenever a due process hearing is held pursuant to the provisions of the IDEA. N.J.S.A. 18A:46-1.1.

Petitioners’ argument that O.W. did not make meaningful progress in-District is unpersuasive. Aside from the untimeliness of this argument, even if O.W. had not made progress or had regressed while in-District years ago, that is not dispositive of whether the District’s Proposed IEP would provide O.W. with a FAPE in the 2024—2025 school year. That O.W. had a BIP and a one-to-one aide while in-District is also not dispositive of a failure on the part of the District, and while he may have struggled with peer relationships and social interactions while in-District, the Proposed IEP reflects social skills—not previously a related service—and O.W. has had several years of social skills at The Center School. Petitioners’ argument that goals and objectives were repeated is likewise unpersuasive. The goals and objectives in the Proposed IEP are not the same

as his prior in-District IEPs, and the Proposed IEP is not judged by any prior alleged deficiency or failure on the part of the District. That said, while the Proposed IEP may have conferred meaningful benefit in other areas, given O.W.’s significant deficits in reading/literacy, the lack of any specificity as to his reading and writing program in the Proposed IEP and the removal of all related services in this area is fatal. The District failed to offer a cogent and responsive explanation for the removal of related services to address O.W.’s reading/literacy and writing deficits or for how the in-District program and placement is reasonably calculated to enable O.W. to make appropriate reading and writing progress in light of his individual circumstances. Per Barney’s testimony, the LLD Classroom is the sole special education classroom in the middle school, but there is no indication that O.W.’s program was individualized to address his significant reading/literacy requirements. Removal of all reading/literacy related services in favor of group instruction in the LLD Classroom with a classroom aide is not adequate for his reading and literacy needs.

The record reflects that the District reviewed any reports provided by parents and adjusted O.W.’s program and placement and related services accordingly, and that the parents and District worked collaboratively. The testimony of the District’s witnesses reflected sincere efforts at inclusion and mainstreaming O.W. to the greatest extent possible at Hazlet Middle School, which the District witnesses testified was the least restrictive environment. While Hazlet Middle School is a less restrictive environment, in that it is the in-District middle school attended by the District’s general education students, and O.W. would have opportunities for instruction alongside typical peers in gym, cycles, and extracurricular activities, Hazlet Middle School is not the least restrictive environment from which O.W. would receive a FAPE at this time. Of concern, both Rosenthal and Nissim testified that the instruction in the LLD Classroom would be beyond O.W.’s skill level—and there was no compelling testimony from the District about the reading instruction that O.W. specifically would receive in the middle school LLD Classroom.

Based upon the extensive testimony and documentary evidence, with respect to reading/literacy—critical to education—I **CONCLUDE** that the Proposed IEP was not “appropriately ambitious” in light of O.W.’s circumstances in the area of reading/literacy and would be of negligible benefit and certainly would not confer “significant learning.” I

further **CONCLUDE** that the Proposed IEP failed to provide O.W. with a FAPE in the least restrictive environment. As such, I **CONCLUDE** that the District should create an IEP (within thirty days of issuance of this Final Decision) reflecting O.W.'s out-of-district placement at The Center School for the 2024—2025 school year.

Pursuant to 20 U.S.C. § 1412(a)(10)(C)(i), and subject to 20 U.S.C. § 1412(a)(10)(A), a local education agency is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in such private school or facility. However, if the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency has not made FAPE available to the child in a timely manner prior to that enrollment. 20 U.S.C. § 1412(a)(10)(C)(ii). When a state fails to provide a free appropriate public education, it must reimburse parents for resulting private-school costs. See T.R., 205 F.3d at 577 (citing Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 370 (1985)). Such reimbursement is subject to limitation as set forth in 20 U.S.C. § 1412(a)(10)(C)(iii).

There is disagreement between the parties about whether O.W. is making progress at The Center School, and whether certain tests and assessments could be compared to show progress or regression, especially if they were not within a year and a day of the other. There was also conflicting testimony from the District that an increase in scores does not reflect progress if it is within the same range, but that a decrease in scores reflects regression. That said, although the record reflects that some scores increased and some scores decreased, including in math, there is sufficient evidence, including reading level, that O.W. has made progress at The Center School, and I am satisfied with the concurring opinions of the petitioners' witnesses that a decrease in some scores was not unexpected given the focus on specific areas, especially reading, and it was expected that those scores would improve as the focus expands. Given O.W.'s diagnoses and evaluations, it is not expected that O.W. should improve to the point of

scoring on par with typical peers, but there was no testimony that O.W. has plateaued or reached the limit he is capable of or testimony that his reading and writing cannot be increased beyond his current level.

As set forth above, the District's Proposed IEP failed to provide O.W. with FAPE. Based upon the parties' settlement agreement—placing O.W. at The Center School for two years, and evidence in the record, including the summaries in the PLAAFP, and testimony, and having reviewed the criteria for reimbursement limitation and having determined that no limitation should apply, I **CONCLUDE** that the District should reimburse petitioners for the cost of O.W.'s placement at The Center School for the 2024—2025 school year.

With respect to the Section 504 claim, Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504), provides, "No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . ." 29 U.S.C. § 794(a). Such program or activity includes the operations of a local educational agency. 29 U.S.C. § 794(b)(2)(B); see also 34 C.F.R. § 104.3 (2025). 34 C.F.R. Part 104 effectuates Section 504. 34 C.F.R. § 104.1 (2025). An "individual with a disability" is defined under the Rehabilitation Act as any person who has "a physical or mental impairment that substantially limits one or more major life activities of such individual," has "a record of such an impairment," or is "regarded as having such an impairment." 29 U.S.C. § 705(20)(B); 42 U.S.C. § 12102(1). The school district must provide a FAPE to each qualified individual with a disability within its jurisdiction, regardless of the nature or severity of the person's disability. 34 C.F.R. § 104.33 (2025).

To establish a violation of Section 504 of the Rehabilitation Act, it must be established that (1) O.W. has a disability; (2) O.W. was "otherwise qualified" to participate in school programs or activities; (3) the District received federal financial assistance; and (4) O.W. was excluded from participation in, denied the benefits of, or subjected to discrimination under any school programs or activities. Ridley Sch. Dist. v. M.R., 680 F.3d 260, 280 (3d Cir. 2012). Section 504's "negative prohibition" is similar to the IDEA's

“affirmative duty” and requires schools to provide a FAPE to each qualified individual with a disability. Ibid. To offer a FAPE, “a school district must reasonably accommodate the needs of the handicapped child so as to ensure meaningful participation in educational activities and meaningful access to educational benefits.” Ibid. However, a petitioner “cannot make out [a Rehabilitation Act] claim simply by proving (1) that he was denied some service and (2) he is disabled.” Andrew M. v. Del. Cnty. Office of Mental Health & Mental Retardation, 490 F.3d 337, 350 (3d Cir. 2007) (citing Menkowitz v. Pottstown Mem'l Med. Ctr., 154 F.3d 113, 124 (3d Cir. 1998) (holding that the disability must be the cause of the discrimination or denial of benefits or services)). The school district must have failed to provide the service for the sole reason that the child is disabled. Ibid. There is no such evidence in the record. Accordingly, I **CONCLUDE** that there was no violation of Section 504 of the Rehabilitation Act.

Although the Petition seeks compensatory education, petitioners unilaterally placed O.W. at The Center School in September 2022 for the 2022—2023 school year, and pursuant to a settlement agreement between the parties, dated June 2023, O.W.’s placement remained at The Center School for the 2023—2024 school year, and all claims to that point were waived. O.W. was thereafter unilaterally placed at The Center School for the 2024—2025 school year, not in the District. Accordingly, I **CONCLUDE** that compensatory education is not warranted and should be denied. It is also noted that during the February 26, 2025, hearing, petitioners’ attorney stated that petitioners are not seeking compensatory education.

ORDER

It is hereby **ORDERED** that certain relief sought by petitioners is **GRANTED** as to the 2024—2025 school year. Specifically, it is **ORDERED** that the District reimburse petitioners for the costs of O.W.’s placement at The Center School for the 2024—2025 school year. It is further **ORDERED** that petitioners and the District should meet within thirty days of this decision to create an IEP to reflect O.W.’s placement at The Center School for the 2024—2025 school year.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2025) 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 (2025). 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.



November 10, 2025

Date

KELLY J. KIRK, ALJ

Date Received at Agency

Date Mailed to Parties:
am

APPENDIX

Witnesses

For Petitioners:

Ashleigh Halpern
Colleen Hopfensperger
Cathy Barney
Terri Kahrer
Erin Suarez

For Respondent:

Elizabeth Nissim
Melanie Rosenthal
AnneMarie Wernlund
L.W.

Exhibits

Joint:

- J-1 IEP—Initial, dated August 5, 2014
- J-2 IEP—Annual Review, dated May 12, 2015
- J-3 IEP—Amendment, dated October 28, 2015
- J-4 Physical Therapy Evaluation, dated March 14, 2016
- J-5 Occupational Therapy Re-Evaluation, dated March 28, 2016
- J-6 Educational Evaluation, dated April 14, 2016
- J-7 Psychological Evaluation, dated April 21, 2016
- J-8 Speech/Language Evaluation, dated April 21, 2016
- J-9 Eligibility Conference Report—Re-Evaluation, dated April 27, 2016
- J-10 IEP—Amendment, dated December 20, 2016
- J-11 IEP—Annual Review, dated March 22, 2017
- J-12 Goals and Objectives Progress Reporting, dated June 22, 2017

- J-13 IEP—Annual Review, dated March 15, 2018
- J-14 IEP—Annual Review, dated March 6, 2019
- J-15 Goals and Objectives Progress Reporting, dated September 10, 2019
- J-16 Statement of Special Education and Related Services & Special Team Considerations—Grade 2
- J-17 IEP—Annual Review, dated February 11, 2020
- J-18 Goals and Objectives Progress Reporting, dated June 30, 2020
- J-19 IEP—Annual Review, dated February 4, 2021
- J-20 Occupational Therapy Re-Evaluation, dated February 26, 2021
- J-21 Psychological Evaluation, dated March 25, 2021
- J-22 Educational Evaluation, dated April 15, 2021
- J-23 IEP—Re-Evaluation, dated May 11, 2021
- J-24 Neuropsychological Examination, dated July 13, 2021
- J-25 Goals and Objectives Progress Reporting, dated January 26, 2022
- J-26 (Not In Evidence)
- J-27 IEP—Annual Review, dated April 7, 2022
- J-28 Goals and Objectives Progress Reporting, dated July 6, 2022
- J-29 IEP, Amendment, dated September 1, 2022
- J-30 Case Process Note (Barney Observation), dated January 26, 2023
- J-31 Case Process Note (Pizanie Observation), dated January 26, 2023
- J-32 Occupational Therapy Evaluation, dated March 5, 2024
- J-33 Physical Therapy Evaluation, dated March 6, 2024
- J-34 Speech and Language Re-Evaluation, dated March 13, 2024
- J-35 Educational Evaluation, dated March 22, 2024
- J-36 Psychological Evaluation, dated March 15, 2024
- J-37 Behavioral Observation Report, dated April 15, 2024
- J-38 Eligibility Conference Report—Re-Evaluation, dated April 29, 2024, & IEP—Re-Evaluation, dated April 29, 2024
- J-39 Case Process Note (Lewandowski Observation), dated May 31, 2024
- J-40 Case Process Note (Stiga Observation), dated June 6, 2024
- J-41 Emails
- J-42 Emails
- J-43 Emails

- J-44 Emails
- J-45 Emails
- J-46 Final Decision Approving Settlement, dated July 11, 2023
- J-47 IEP—Amendment, dated June 20, 2023
- J-48 IEP—Annual Review, dated October 12, 2023
- J-49 N.J.A.C. 6A:14
- J-50 Draft Tuition Agreement, dated July 1, 2024

For Petitioners:

- P-1 Speech and Language Evaluation and School Observation, dated June 2022
- P-2 Melanie Rosenthal resume
- P-3 Psycho-Educational Evaluation, dated July 22, 2022
- P-4 Elizabeth Matheis (Nissim) resume
- P-5 (Not in Evidence)
- P-6 (Not in Evidence)
- P-7 CS Progress Report for IEP Goals and Objectives, dated April 6, 2023
- P-8 School Observation, dated April 6, 2023
- P-9 Classroom Observation, dated April 20, 2023
- P-10 CS IEP, dated October 12, 2023
- P-11 Reading Support, dated April 2024
- P-12 (Not In Evidence)
- P-13 Psycho-Educational Evaluation Updated, dated May 17, 2024
- P-14 Comprehensive Speech and Language Evaluation & Classroom Observation, dated May/June 2024
- P-15 CS letter, dated June 7, 2024
- P-16 (Not In Evidence)
- P-17 Report Card 2023—2024
- P-18 Greenwald letter, dated June 24, 2024
- P-19 Greenwald letter, dated July 1, 2024
- P-20 Greenwald letter, dated July 8, 2024
- P-21 CS IEP, dated October 10, 2022

- P-22 Report Card 2022—2023
- P-23 CS Teacher Updates, December 2022
- P-24 CS Testing
- P-25 Report Card 2024—2025, MP1
- P-26 Progress Report for IEP Goals and Objectives 2023—2024, dated January 13, 2025
- P-27 Photographs
- P-28 CS Reading Data
- P-29 CS Progress Summary of Speech-Language Services, dated February 13, 2025
- P-30 Fountas & Pinnell Instructional Level Expectations for Reading, Raz-Kids Level Correlation Chart and IXL Technical Report
- P-31 Wernlund resume
- P-32 CS IEP, dated April 29, 2024

For Respondent:

- R-1 (Not In Evidence)
- R-2 (Not In Evidence)
- R-3 Halpern resume
- R-4 Barney resume
- R-5 (Not In Evidence)
- R-6 (Not In Evidence)
- R-7 (Not In Evidence)
- R-8 Hopfensperger resume
- R-9 (Not In Evidence)
- R-10 Kahrer resume
- R-11 (Not In Evidence)
- R-12 (Not In Evidence)
- R-13 Notice of IEP amendment without a meeting, dated June 20, 2023
- R-14 Invitation to review/revise IEP, dated September 27, 2023
- R-15 Invitation to interpret evaluation results and determine eligibility and to review/revise IEP, dated April 29, 2024

- R-16 Lewandowski letter, dated April 30, 2024
- R-17 Email, dated June 24, 2024
- R-18 Email, dated July 17, 2024
- R-19 Suarez resume
- R-20 Pantaleo letter, dated July 2, 2024
- R-21 Pantaleo letter, dated August 9, 2024
- R-22 Pantaleo letter, dated August 19, 2024
- R-23 (Not In Evidence)
- R-24 (Not In Evidence)
- R-25 Report Card (2018—2019)
- R-26 Report Card (2019—2020)
- R-27 Report Card (2020—2021)
- R-28 (Not In Evidence)
- R-29 (Not In Evidence)
- R-30 (Not In Evidence)
- R-31 Goals and Objectives Progress Reporting, dated April 9, 2021
- R-32 Goals and Objectives Progress Reporting, dated April 25, 2022
- R-33 Goals and Objectives Progress Reporting, dated July 6, 2022
- R-34 RethinkEd