



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 04004-26

AGENCY DKT. NO. 2026-40588

M.H. ON BEHALF OF G.G.,

Petitioner,

v.

ELIZABETH CITY BOARD

OF EDUCATION,

Respondent.

David R. Giles, Esq., and Laura C. Gonzalez, Esq., for petitioner (Law Offices
of David R. Giles, attorneys)

Richard P. Flaum, Esq., and Basmah E. Raja, Esq., for respondent
(DiFrancesco, Bateman, Kunzman, David, Lehrer & Flaum, P.C.
attorneys)

Record Closed: July 17, 2026

Decided: August 3, 2026

BEFORE **KIMBERLEY M. WILSON, ALJ:**

STATEMENT OF THE CASE

Petitioner M.H., on behalf of her son, G.G., a student diagnosed with dyslexia and attention deficit hyperactivity disorder (ADHD), filed a petition for due process, alleging

respondent Elizabeth City Board of Education (District) violated the Individuals with Disabilities Education Act (IDEA) for failing to provide G.G. with a free and appropriate public education (FAPE) when it did not prepare an individualized education plan (IEP) upon her request and by the beginning of the 2025–2026 school year.

Did the District's placement offer G.G. a FAPE in the 2025–2026 school year? Yes, as the proposed placement offered significant learning and conferred a meaningful benefit to G.G.

Did the District violate provisions of the IDEA? Yes, because the District did not respond to M.H.'s April 2025 request for an IEP as required under N.J.A.C. 6A:14-2.3. This violation, however, is not substantive, as it did not deprive G.G. of a FAPE. The District's alleged failure to have an IEP prepared for G.G. at the beginning of the 2025–2026 school year, as required under 20 U.S.C. § 1414(d)(2), is not a violation, as M.H. expressed intent to place G.G. in a private school as early as June 2025, and even when the District began preparing an IEP for G.G., M.H. failed to engage in the IEP process.

PROCEDURAL HISTORY

On or around March 6, 2026, M.H. filed a petition for due process with the New Jersey Department of Education, Office of Special Education. The matter was transmitted to the Office of Administrative Law, where it was filed as a contested case on April 9, 2026. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23.

Status conferences were held on April 15, 2026, and April 20, 2026. At the April 29, 2026, status conference, hearing dates were scheduled for July 6, 2026, and July 8, 2026. Additional status conferences were held on June 16, 2026, and June 30, 2026. During the June 16, 2026, status conference, petitioner's motion to admit certain correspondence into evidence was granted, and reasons were placed on the record.

The hearing proceeded on July 6, 2026, and July 8, 2026. Counsel was allowed to submit post-hearing summation briefs by July 17, 2026, which were received.

FACTUAL DISCUSSION AND FINDINGS

G.G. is a sixteen-year-old student eligible for special education and related services who resides with his mother, M.H., within the District. G.G. attended District schools from preschool through the end of eighth grade, which was the 2023–2024 school year. G.G. was first classified as eligible for special education on October 25, 2017, when he was in second grade. G.G.’s classification was specific learning disability for dyslexia and ADHD, inattentive type. (J-3; J-4; J-13; J-19; J-20.)

July 2021 to January 2024

In July 2021, M.H. filed a request for a due process hearing challenging the District’s proposed change of G.G.’s educational placement from an in-class support program to a self-contained program.¹ The parties settled their dispute in June 2022, and G.G. remained in the in-class resource program.

Since 2021, every one of G.G.’s IEPs has stated as a proposed action or option considered either that “it is recommended that [G.G.] participate in the District’s Language and Learning Disability Program” or that the “CST continues to recommend that [G.G.] be placed in a Language and Learning Disability Program that is best suited to meet his academic needs.” (J-3; J-4; J-19; J-20.) Ana Medina, a child study team social worker for the District who was qualified as an expert in IEP development, opined that M.H.’s refusal to agree to place G.G. in the District’s language and learning disability (LLD-M) program since 2021 negatively impacted G.G.’s ability to learn.

According to Nancy Morales-Frigoletto, current District director of special services and a former District supervisor who supervised the child study team that created G.G.’s past IEPs, M.H. refused to place G.G. in the District’s LLD-M program due to concerns that G.G. would be stigmatized and/or bullied for learning in a self-contained classroom. The District offered G.G. additional counseling services to address that concern, which

¹ “Self-contained classrooms are designed for students with moderate to severe disabilities who require a small, structured learning environment throughout the school day.” See Alliant University, <https://www.alliant.edu/blog/different-types-of-special-education-classrooms> (last visited July 27, 2026).

M.H. also refused. An extended school year program was not included in any of G.G.'s prior IEPs. (J-3; J-4; J-13; J-19; J-20.)

In March 2023, when G.G. was in the seventh grade, M.H. filed a mediation request to invoke stay-put. In June 2023, the parties reached a settlement, and G.G. remained in the in-class support program as M.H. requested through the end of his eighth grade.

February 2024 annual review and reevaluation

On February 29, 2024, when G.G. was in the eighth grade, the District convened an annual review IEP team meeting. The District again proposed placing G.G. in the District's LLD-M program for ninth grade. Medina indicated that during this meeting, there was an acknowledgement that G.G. continued to struggle in his classes. M.H. disagreed with the District's recommended placement for G.G. and again requested a due process hearing.

On February 29, 2024, the child study team also held a reevaluation meeting to determine whether G.G. remained eligible for special education services. Members of the child study team requested M.H.'s consent to conduct G.G.'s reevaluation, and M.H. did not provide consent for G.G.'s reevaluation at the meeting. She later agreed to psychological, educational, assistive technology, and occupational evaluations, along with an updated social history, for G.G. A final IEP was proposed on August 21, 2024, as G.G. was preparing to enter ninth grade. (J-5.)

In the August 21, 2024, IEP, G.G. was to receive ninety minutes of English and math daily and forty-five minutes of history and science daily in a mild/moderate learning or language disabilities class. (Ibid.) Also, G.G. was to receive thirty minutes of group counseling services each month. (Ibid.) He would be exposed to general education students between forty and 79 percent of his school day. (Ibid.) An extended school year program was not included in this IEP. (Ibid.)

Medina testified that the LLD-M program was recommended for G.G. in the August 21, 2024, IEP because G.G. needed more supports for all subjects than the in-class

supports that he was then receiving. G.G. was not making progress in the in-class support program, and so that he would make meaningful educational progress, G.G. needed to be placed in the LLD-M program, where he would be exposed to grade-level curriculum modified based on his needs. Teachers would use multisensory strategies, such as auditory and visual presentations, that would assist in helping G.G. to read.

The August 21, 2024, IEP included assistive technology tools that G.G. could use, which included reading, writing, and listening tools. During the meeting, these various tools were discussed, and an issue raised was that G.G. needed to meet with someone at the beginning of the school year to review all the features of the tools. The District did not object to this request.

Development of the District's high school LLD-M program

Michael Ojeda, Ed.D. was the director of curriculum services from August 2023 to July 2025. He was qualified as an expert in curriculum, IEP development, and the LLD-M program at the high school level for the District. During Dr. Ojeda's tenure, he worked with District supervisors of special education and general education to create, modify, and implement curriculum for District students with special needs. He also oversaw the expansion of the LLD-M program in District high schools during his tenure.

This new curriculum was designed to provide opportunities for students to access the general education curriculum through individualized small group instruction and implementing specific learning strategies, including technologies and additional accommodations, to address the student's needs. The curriculum includes multisensory approaches and tools, the Wilson Reading System (Wilson) beginning in the 2025–2026 school year,² aspects of the Sonday System,³ and other programs that instruct students

² The Wilson Reading System “is designed for students in Grades 2–12 and adults with word-level deficits who are not making sufficient progress through their current intervention, have been unable to learn with other teaching strategies, or who require more intensive Structured Literacy instruction due to a language-based learning disability, such as dyslexia.” See Wilson Language Training, <https://www.wilsonlanguage.com/programs/wilson-reading-system/> (last visited on July 23, 2026).

³ The Sonday System “offer[s] structured, systematic, multisensory reading intervention for struggling readers. Instruction is based on skill or stage rather than age or grade. Each lesson plan uses proven Orton-Gillingham methods to provide effective intervention in small group settings. See Imagine Sonday

in the mechanics of Orton-Gillingham⁴-based instruction. G.G.'s teacher in ninth grade, if he had participated in the LLD-M program, was a highly qualified, New Jersey-licensed English teacher who also was a licensed teacher of students with disabilities in the State of New Jersey, and the teacher had access to a wide variety of intervention services and tools for students with reading-related disabilities.

The program includes compensatory tools, such as reading pens, BookShare⁵ and Learning Ally,⁶ and other devices implemented to help students acquire certain learning standards. Also, the program includes additional writing and spelling accommodations, including the Advancement Via Individual Determination model, a national program that includes a high number of strategies around literacy instruction and increasing students' readiness. Dr. Ojeda currently teaches in the high school LLD-M program that he helped to create.

August 21, 2024, IEP meeting

Dr. Ojeda and others participated in the August 21, 2024, IEP meeting. G.G. would be placed at Thomas Jefferson Arts Academy (T.J. Arts Academy) for the 2024–2025 school year. (J-5.) The District's LLD-M program at T.J. Arts Academy high school for 2024–2025 focused on the state standards related to the given courses, along with providing support for students to meet their IEP goals and objectives and increasing their literacy level. Certified special education teachers teach in this program.

System, <https://help.sonday.imaginelearning.com/hc/en-us/articles/31620224073367-Welcome-to-Sonday-Systems-1-2-and-Secondary-1> (last visited on July 23, 2026).

⁴ The Orton-Gillingham approach "is a direct, explicit, multisensory, structured, sequential, diagnostic, and prescriptive way to teach literacy to individuals for whom reading, writing, and spelling do not come easily, such as those with dyslexia. It is most properly understood and practiced as an approach rather than a method, program, or system." See Orton Gillingham Academy, <https://www.ortonacademy.org/resources/what-is-the-orton-gillingham-approach/> (last visited on July 23, 2026).

⁵ "Bookshare is for students who find it difficult to process or comprehend printed words, see text in books or on a screen, or physically manage books or reading devices. To access our copyright library, students must have a qualifying disability." See Bookshare, Parents and Students, <https://www.bookshare.org/parents-and-students> (last visited on July 23, 2026).

⁶ Learning Ally is an audiobook solution that serves as an accommodation for children with learning differences, including those who are dyslexic. See Learning Ally, <https://learningally.org/solutions-for-home/overview> (last visited on July 23, 2026).

Dr. Ojeda opined that the August 21, 2024, IEP would enable G.G. to make meaningful educational progress in the LLD-M program. He testified as follows:

[The IEP] would address not only the - - the literacy deficits that [G.G.] carried and improve upon [his] level of literacy, but it would also give [G.G.] meaningful educational access to the entire general education curriculum that could be modified in order to meet [G.G.'s] specific needs.

[T1, 191:19–192:1.]

M.H. did not agree to place G.G. in the LLD-M program at T.J. Arts Academy. M.H. was concerned that the District would continue to offer G.G. the Sunday program, which she believed did not work. She continued to have concerns about placing G.G. in a self-contained classroom, and she filed a petition for due process.

The Academy

On or around September 2, 2024, M.H. removed G.G. from the District and placed him in a private school, The Academy in Holmdel, New Jersey. On November 14, 2024, M.H. withdrew her due process petition.

G.G. remained at The Academy for the 2024–2025 academic year. The Academy is a school of about twenty students. According to Dr. Ojeda, The Academy's curriculum is instruction around Orton-Gillingham and a multisensory approach to instruction to improve students' literacy levels. No general education students are attending The Academy.

M.H. testified that she wanted to place G.G. at a school other than The Academy for the 2025–2026 school year because she needed to find a program that was working for him. According to M.H., G.G. was not making significant progress the way that he needed to at The Academy, such as his inability to write an essay. She also said that the teachers kept leaving The Academy.

M.H.'s request for an IEP for G.G.

On or around April 21, 2025, counsel for M.H. sent a letter to counsel for the District. (P-5; P-6; P-8.) The letter states that M.H. is a resident of the District. (P-5.) The letter, in relevant portion, requests the following from the District:

I am writing to request that the District resume responsibility for [G.G.'s] education for next year (the 2025–2026 school year) and prepare an IEP for him. [M.H.] also asks that the District refer [G.G.] for placement at Winston Prep[atory School (Winston Prep)] in Whippany.

[Ibid.]

In support of M.H.'s request, counsel enclosed a copy of an independent evaluation by Marisa Brunner, CCC-SLP, S-SL/DI, dated December 13, 2024. (P-7.)

Brunner evaluation

Brunner is a New Jersey-licensed speech and language pathologist and a school-certified speech and language specialist. She was qualified as an expert in speech and language pathology and the assessment of language-based literacy disorders. She prepared a report for M.H. to evaluate G.G.'s then-current level of functioning for written and oral language, observing him in a classroom on December 4, 2024. At this time, G.G. was a student at The Academy.

Brunner determined that G.G.'s dyslexia was severe, as he was reading at a third-grade level, and her recommendations to address it included intensive remediation and structured literacy for his literacy, reading and writing instruction. She determined that G.G. required structured literacy that was systematic, cumulative and multisensory five times a week, which would be in addition to G.G.'s existing English/language arts classes. This structured literacy would be a supplemental period where these concepts would be presented. Brunner also recommended handwriting practice, sight word support, and daily fluency practice.

Brunner testified that she did not believe that the August 21, 2024, IEP was appropriate for G.G. She testified that there was no structured literacy or a reference to additional supplemental literacy such as a reading or writing period, and it was not described in the IEP's goals and objectives. She opined that if a student is not provided with Wilson, Orton-Gillingham or a supplemental reading program on a regular basis, then regardless of what is being offered, the student is not receiving a FAPE. Brunner opined that the modifications and accommodations that the District included in the August 21, 2024, IEP were insufficient to teach G.G. to read.

In March 2026, Brunner observed an English II class in the LLD-M program that G.G. would have taken had he remained in the District. She observed the class for about forty minutes, which was not the full class period but the time length the District allowed. The teacher instructed the students on the notice and note strategy, a strategy that Brunner recommends for comprehension building for her language- and learning-disabled students. Brunner said that there was no evidence of a Wilson-based program in the classroom, such as certain reference materials like student notebooks, posters, and other visuals, and the teacher did not integrate Wilson in classroom discussions.

Brunner opined that based on her observation, the LLD-M program would not have been appropriate for G.G., citing a lack of explicit evidence-based literacy instruction in the classroom. She said that from a review of G.G.'s overall schedule, there was not a place in the program to provide structured literacy.

According to Brunner, G.G. had already gone through special education programs that provided access to the Sunday program and some exposure to Orton-Gillingham. Brunner testified that she had no knowledge of the District's in-class support program and did not know what that curriculum was. She also did not know what the District's curriculum was for the LLD-M program for the middle school.

Brunner acknowledged that she does not have a New Jersey teaching license, and she has never taught in a school district. She does provide speech-language literacy intervention for clients, which is about ten percent of her work caseload.

These facts, along with the fact that Brunner only observed forty minutes of an entire LLD-M program class period, cast serious doubt on the veracity of her opinions that the August 21, 2024, IEP or the proposed placement at T.J. Arts Academy would not provide a FAPE to G.G. In this matter, Brunner was qualified as an expert in the assessment of language-based literacy disorders, not in IEP development, as many of the District's experts were. Brunner was not qualified as an expert in IEP development. Simply put, how can a person whose background is not in education opine on what is and is not a FAPE? For these reasons, I do not find Brunner's testimony on whether the District provided G.G. with a FAPE in these circumstances persuasive.

Interplay between M.H., the District and Winston Prep before the 2025–2026 school year

On June 1, 2025, M.H. applied for enrollment at Winston Prep for G.G. (J-17a). In response to the question why M.H. completed an enrollment application for G.G., M.H. testified as follows:

I mean listen, I was going to continue to advocate for my son and I had to get the ball rolling if Elizabeth wasn't going to be there and help me out with an IEP on time, I had to secure a spot for my son, I wasn't going to just leave him out, especially because at this time it just felt like everything was like I saw a train wreck, that's how I felt.

[T2, 181:15–21.]

On June 24, 2025, M.H. sent a certified letter directly to the District's superintendent, asserting that because the District failed to convene an IEP meeting or offer an IEP for the upcoming school year, the District failed to provide a FAPE to G.G. (P-9.) The letter stated that, as a result, M.H. would make a unilateral placement, specifically at Winston Prep, where she intended to enroll G.G. for September 2025, and that she would seek reimbursement from the District for tuition and related expenses. (Ibid.)

On July 1, 2025, G.G. was accepted for enrollment at Winston Prep for the 2025–2026 school year, G.G.'s tenth grade. (P-14.) M.H. testified that she did not advise

anyone at the District that G.G. had been admitted to Winston Prep for the 2025–2026 school year.

Dr. Ojeda received a copy of this letter and contacted M.H., explaining the process for her to register G.G. in the District, around the third week of July 2025. M.H. told Dr. Ojeda that she would obtain the necessary documents and register G.G. M.H. did not tell Dr. Ojeda that G.G. had been admitted for enrollment at Winston Prep. She testified as follows:

Q. But he was already accepted at another school, so you really never intended to send him back to Elizabeth, isn't that right?

A. I mean at that point I – at that point I had to make a decision, I was in a bind, I was pressed for time, time was of the essence, there was a lot of parts moving, there was a lot going on. Yes, I'm going to – yes, it's true, I was skeptical, but, you know, again, that's a very expensive school and then I said I have to make a decision and then I have my counsel that I needed to get – to hopefully get – hopefully it would get reimbursed, you know, unilateral placement.

[T2, 219:2–13.]

M.H. completed G.G.'s registration with the District in July 2025, with the enrollment finalized on or around July 23, 2025. (J-14; R-20.) Dr. Ojeda testified that registration was necessary to determine a student's residency. If the student was classified for special education services, the District would then determine the student's appropriate placement.

On July 29, 2025, M.H. signed an enrollment agreement for G.G. to attend Winston Prep. (J-17c.) M.H. testified that she did not immediately sign the enrollment agreement with Winston Prep because she was waiting to see what the District would offer in an IEP for a comparison. The agreement includes a limited parent withdrawal right, which provides as follows:

On or before September 15, 2025, you may withdraw [G.G.] from enrollment and be fully released from your obligation to pay Tuition hereunder without penalty, and be reimbursed for any Tuition previously paid only if you: (a) accept a school placement offered by [G.G.'s] school district of residency at a public or State "approved" special education school, and (b) execute and deliver a written notice of such acceptance to Winston [Prep's] Head of School no later than September 15, 2025; provided however, you shall be responsible for payment of Tuition calculated on a per diem basis with respect to days that [G.G.] is enrolled prior to September 15, 2025. If you do not deliver such notice, as required, Section A(1) of this Agreement shall be automatically amended without further action, to provide that Tuition in full is due and payable on September 15, 2025.

[Ibid.]

M.H. did not remember reading this provision when she signed the Winston Prep enrollment agreement.

On August 11, 2025, with the assistance of her counsel, petitioner again filed a due process petition claiming the District failed to provide G.G. a FAPE and requesting reimbursement of Winston Prep's tuition and G.G.'s transportation costs.

On or about August 11, 2025, Ali Malik, supervisor of special services for the District, first learned that M.H. had enrolled G.G. to attend District schools when he received G.G.'s file from his secretary. The District's practice is then to review the file and determine a placement for special education students based on the last IEP. Malik also directed his secretary to call M.H. to advise her that the District was in the process of determining a placement for G.G.

On or around August 18, 2025, Malik mailed a letter to M.H. notifying her of G.G.'s placement at JVJ STEM Academy in an LLD-M classroom. (J-15.) Malik testified that he used G.G.'s August 21, 2024, IEP to determine this placement for G.G. M.H. acknowledged receiving this letter from the District, and she did not contact the District about this placement.

District's efforts to prepare an IEP for G.G.

Lisa Sherer, school social worker for the District, called M.H. on September 4, 2025, to introduce herself and schedule a thirty-day annual review meeting. (R-19.) M.H. testified that at this point, she had committed to sending G.G. to Winston Prep and did not want to disrupt G.G. She also believed that it was too late to evaluate the District's proposed placement.

Sherer called M.H. on September 5, 2025, with a Spanish-speaking interpreter and left a voicemail message. (Ibid.) That same day, Sherer sent M.H. an invitation for a meeting for an annual review of G.G.'s IEP on September 25, 2025. (J-16.) This meeting notice was sent to M.H. in English and Spanish. (Ibid.) The notice provides the following:

We hope that you will make every effort to attend. If this is not a convenient time, please contact me to discuss rescheduling or to arrange for an alternative means of participating such as a telephone conference call.

[Ibid.]

According to the contact log, Sherer also emailed the meeting invitation to M.H. (Ibid.) M.H. acknowledged that she received the meeting notice from Sherer.

Sherer did not hear from M.H. by September 11, 2025, and the contact log indicates that the meeting invitation was sent to M.H. via certified mail, return receipt requested. (Ibid.) Finally, Sherer called M.H. on September 22, 2025, reminding M.H. about the scheduled meeting on September 25, 2025. (Ibid.) M.H. never returned any of Sherer's calls regarding the meeting invitation. M.H. testified that she did not respond to the meeting invitation because the parties were mediating the pending due process petition.

G.G. began attending Winston Prep in September 2025 and did not attend a District school for the 2025–2026 school year. The first day of school for Winston Prep was September 5, 2025.

Petitioner's due process petition was withdrawn on October 9, 2025.

Dr. Ojeda opined that G.G. would have made meaningful educational progress in the LLD-M program had G.G. attended District schools in 2025–2026 because G.G. would have been exposed to the District's curriculum, intervention services, and specialized instruction in literacy. G.G. would have had access to and opportunities to interact with general education students as well.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

Under the IDEA, federal funds are available 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. High Sch. Dist., 116 N.J. 30, 34 (1989). As a recipient of federal funds under the IDEA, the State must have a policy that assures that all children with disabilities will receive a FAPE. 20 U.S.C. §1412. A FAPE includes special education and related services. 20 U.S.C. §1401(9); N.J.A.C. 6A:14-1.1.

The responsibility to deliver special education and related services rests with the local public school district. See N.J.A.C. 6A:14-1.1(d). The IDEA "requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 580 U.S. 386, 403 (2017). The Third Circuit determined that Endrew F.'s language "mirrors [its] longstanding formulation [that] the educational program 'must be reasonably calculated to enable the child to receive meaningful educational benefits in light of the student's intellectual potential and individual abilities.'" Dunn v. Downingtown Area Sch. Dist., 904 F.3d 248, 254 (3d Cir. 2018) (quoting Ridley Sch. Dist. v. M.R., 680 F.3d 260, 269 (3d Cir. 2012).

When addressing the educational benefit required under the IDEA, the Third Circuit Court of Appeals has consistently stated that more than a "trivial or de minimis educational benefit" is required, and the appropriate standard is whether the IEP provides for "significant learning" and confers a "meaningful benefit" to the child. T.R. v. Kingwood

Twp. Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000); Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999); Oberti v. Bd. of Educ. of Boro. of Clementon Sch. Dist., 995 F.2d 1204, 1213 (3d Cir. 1993); Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180, 182–84 (3d Cir. 1988), cert. den., Cent. Columbia Sch. Dist. v. Polk, 488 U.S. 1030 (1989).

The IDEA guarantees “an ‘appropriate’ education, ‘not one that provides everything that might be thought desirable by loving parents.’” Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119, 132 (2d Cir. 1998) (citation omitted). Indeed, “meaningful participation does not require deferral to parent choice.” S.K. v. Parsippany-Troy Hills Bd. of Educ., 2008 U.S. Dist. LEXIS 80616, at **34–35 (D.N.J. Oct. 9, 2008) (citation omitted). Nor does the IDEA require that the District maximize a child’s potential or provide them the best education possible; 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 will have satisfied the requirements of the law if it provides the student with “personalized instruction with sufficient support services” as are necessary “to permit [him] to benefit from the instruction.” G.B. v. Bridgewater-Raritan Reg’l Bd. of Educ., 2009 U.S. Dist. LEXIS 15671, *6 (D.N.J. Feb. 27, 2009) (citing Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 203 (1982)).

For a school district to provide FAPE to a disabled child under the IDEA, it must develop and implement an IEP – a “comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” Sch. Comm. of Burlington v. Dep’t of Educ. of Mass., 471 U.S. 359, 368 (1985). An IEP is to be developed by a district’s child study team in conjunction with the parents of the child. See N.J.A.C. 6A:14-2.3; N.J.A.C. 6A:14-3.7(b).

An IEP must contain “a statement of detailed measurable annual academic and functional goals that shall be related, as appropriate, to the New Jersey Student Learning Standards through the general education curriculum unless otherwise required according to the student’s educational needs, or appropriate, student-specific functional needs. For all students, the annual academic and functional goals shall be measurable and apprise parents and educational personnel providing special education and related services to

the student of the expected level of achievement attendant to each goal.” N.J.A.C. 6A:14-3.7(e)(2). An IEP must be in effect at the beginning of each school year and reviewed annually. 20 U.S.C. § 1414(d)(2), (4).

To provide a FAPE, a school district is required to educate a student with disabilities in the least restrictive environment. 20 U.S.C. § 1412(a)(5)(A). “The least restrictive environment is the one that, to the greatest extent possible, satisfactorily educates disabled children together with children who are not disabled, in the same school the disabled child would attend if the child were not disabled.” Carlisle Area Sch. 62 F.3d at 535.

Finally, the District has the burden of proof and production in a due process hearing determining whether a student received a FAPE. N.J.S.A. 18A:46-1.1.

The issue posed in the present due process petition is whether the IEP and proposed placement the District offered G.G. for the 2025–2026 school year provided a FAPE in the least restrictive environment. The District did so, with a caveat, as will be noted below, regarding G.G.’s IEP for that year.

From a review of the evidence and testimony, the parties agreed that G.G. needed additional educational services and supports to address his dyslexia; the disagreement arises in the provision of those services and supports. For five years, the District, through a series of IEPs, suggested that G.G. should attend an LLD-M program to address his academic needs. This recommendation was repeatedly not heeded for years. Instead of G.G. learning in a self-contained classroom, which would allow for focused academic instruction, G.G. received in-class supports in a general education classroom. The idea that in a general education classroom a child with dyslexia and ADHD would be able to focus on instruction, including elements of structured literacy, when it is more than likely that G.G. is learning something different than his peers, and still make meaningful educational progress is nonsensical. It logically follows that G.G. had not made meaningful educational progress, and the District witnesses confirmed that G.G. had not.

In the August 21, 2024, IEP, the District proposed again that for high school, G.G. would participate in the LLD-M program at T.J. Arts Academy. This program includes the general education curriculum modified for students with learning differences, including multisensory approaches, individualized small group instruction, specific learning strategies, technology, and additional accommodations. While the high school LLD-M program did not include Wilson in the 2024–2025 school year, it was included in the 2025–2026 school year, when G.G. would have been attending. G.G. would have also had access to the Sonday program and other programs based in Orton-Gillingham, programs designed to help students with dyslexia learn to read. The high school LLD-M program also provided its students with tools, such as access to audiobook solutions and technology to assist them with reading. G.G.'s ninth-grade teacher was a New Jersey-licensed teacher of students with disabilities who had other intervention services and tools available to assist with any reading-related disabilities. G.G. never received this level of instruction from the District in the past when he was enrolled in the District because he was not permitted to learn in a self-contained classroom.

From the evidence presented about the District's high school LLD-M program, this program was reasonably calculated to allow G.G. to make progress appropriate under the circumstances. The District's program was designed to assist students with reading, the outcome that G.G. needs, and this program will provide G.G. with more than just a de minimis benefit. Accordingly, I find that G.G.'s proposed placement in the high school LLD-M program for the 2025–2026 school year would have provided G.G. a FAPE.

As for whether the high school LLD-M program was a least restrictive environment for G.G. for the 2025–2026 school year, it was. Again, the District had been advocating for G.G. to participate in its LLD-M program from 2021 to 2025, because in-class supports for G.G. were not allowing him to make meaningful progress. G.G. needed instruction in a self-contained classroom. However, Dr. Ojeda testified that the high school LLD-M program would have allowed G.G. the opportunity to interact with general education students while receiving the specialized instruction that he needed. I note that for the past two years, G.G. has been attending schools that do not include general education students.

For the foregoing reasons, I **CONCLUDE** that the District's proposed 2025–2026 placement for G.G. in the high school LLD-M program constituted a FAPE in the least restrictive environment.

2. Alleged procedural IDEA violations

The evidence in this matter leads to two alleged procedural violations under the IDEA. The first is M.H.'s April 24, 2025, request to the District for an IEP for G.G. The second is the District's failure to have an IEP in place for G.G. on the first day of school during the 2025-2026 school year.

In an April 24, 2025, letter from M.H., through her attorney, she requested that the District resume responsibility for G.G.'s education, prepare an IEP, and place him at Winston Prep. Here, the District did not immediately prepare an IEP for G.G. because he was no longer enrolled in the District. About two months later, M.H. sent a certified letter directly to the District's superintendent, stating that she would be making a unilateral placement for G.G. at Winston Prep and would enroll him in September 2025.

The act of enrolling a child is not the trigger for a local school district to comply with a request for evaluations under the IDEA. See Moorestown Twp. Bd. of Educ. v. S.D., 811 F.Supp.2d 1057, 1069 (D.N.J. 2011) (stating "residency, rather than enrollment, triggers a district's FAPE obligations.") In Moorestown Twp. Bd. of Educ., subsequent communication from the parents' attorney to the local school district clearly indicated that the parents wished to evaluate the program that the district would propose for the student in an IEP when determining whether to continue the student in a private placement; when the local school district failed to perform that reevaluation, the U.S. District Court found that the local school district failed to provide the student with a FAPE.

There are factual distinctions between the Moorestown Twp. Bd. of Educ. case and the present matter. Here, G.G.'s reevaluation is not at issue, as a reevaluation was not necessary in 2025 because they had just been completed in 2024, but M.H. did request an IEP for G.G. While in Moorestown Twp. Bd. of Educ., the parents made it clear that they wished to evaluate a proposed program from the local school district and

the student's private placement; here, in her April 2025 request, M.H. indicates that she wishes for the District to be responsible for G.G.'s education. She not only requests that the District prepare an IEP for G.G. but also place G.G. at a particular school, Winston Prep. At the time, G.G. was attending The Academy in Holmdel, not Winston Prep. M.H. conveyed this identical sentiment in her June 24, 2025, letter to the District superintendent, where M.H. reiterated that she wanted the District to resume responsibility for G.G.'s education, prepare an IEP, and place him at Winston Prep. On the other hand, there was no indication in Moorestown Twp. Bd. of Educ. that the parents were dictating a placement outcome in the IEP as M.H. did here.

Based on the plain language in M.H.'s letters to the District, the issue was not what educational supports and services the District would be providing to G.G. When requesting an IEP, M.H. told the District what she wanted – an IEP that would place G.G. at Winston Prep. In sum, the question was not what the District would provide to G.G.; the question was who would pay for G.G. to attend Winston Prep. From her April 24, 2025, letter to the District, M.H. was not seeking to find what in-District placement would be available to G.G.

Under N.J.A.C. 6A:14-2.3, local districts have certain notice obligations, including:

(g) Written notice shall be in language understandable to the general public, and shall be provided in the native language of the parent, unless it is clearly not feasible to do so according to N.J.A.C. 6A:14-2.4. Written notice shall include:

1. A description of the action proposed or denied by the district board of education;
2. An explanation of why the district board of education is taking such action;
3. A description of any options the district board of education considered and the reasons why those options were rejected;
4. A description of the procedures, tests, records or reports, and factors used by the district board of education in determining whether to propose or deny an action;

5. A description of any other factors that are relevant to the action proposed or denied by the district board of education;

6. A statement that the parents of a student with a disability have protection under the procedural safeguards of this chapter, the means by which a copy of a description of the procedural safeguards can be obtained, and sources for parents to contact to obtain assistance in understanding the provisions of this chapter; and

. . . .

h) Written notice according to (g) above shall be provided to the parent as follows:

. . . .

5. Upon receipt of any written parental request to initiate or change the referral, identification, classification, evaluation, educational placement, or the provision of a free, appropriate public education, a response that meets the requirements of written notice in (g) above shall be provided to the parent within 20 calendar days, excluding district board of education holidays but not summer vacation.

[Ibid. (emphasis added).]

The District failed to respond to M.H. within twenty days, which is a procedural violation under the IDEA.

A procedural violation, however, is not automatically a denial of a FAPE. M.D. v. Colonial Sch. Dist., 539 F.Supp.3d 380, 393 (E.D. Pa. 2021). A parent must prove the following by a preponderance of the evidence to receive compensatory education or tuition reimbursement:

[The] procedural inadequacies (i) [i]mpeded the child's right to a FAPE, (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of the educational benefit. See also C.H. v. Cape

Henlopen Sch. Dist., 606 F.3d 59, 68 (3d Cir. 2010) (citing 34 C.F.R. § 300.513(a)(2)(i), (iii)).

[M.D., 539 F.Supp.3d at 393.]

M.H. did not meet any of these standards.

First, there is no evidence here that the District's failure to respond to the April 24, 2025, letter impeded G.G.'s right to a FAPE. At the time that the letter was sent, G.G. was attending The Academy, and M.H. was requesting an IEP and specific placement for the 2025–2026 school year. An extended school year program was not included in any of G.G.'s prior IEPs. The District did begin the process to develop an IEP for G.G., admittedly almost four months later. Again, from M.H.'s own requests to the District, M.H. wanted a specific outcome from the District with the District remaining responsible for the cost.

Second, M.H. was not significantly impeded in the decision-making process regarding the provision of a FAPE to G.G. When the District began the process to prepare an updated IEP for G.G., M.H. did not engage with the District. She testified that when District representatives reached out to her in early September 2025 about an annual review meeting, she did not respond. At that point, M.H. had already filed a due process petition, which she later dismissed, seeking tuition reimbursement from the District. M.H. testified that at this point, she had committed to sending G.G. to Winston Prep and did not want to disrupt G.G.'s education, even though M.H. could have withdrawn G.G.'s enrollment at Winston Prep by September 15, 2025, if she accepted the District's placement for G.G. M.H. could have asked the District to schedule the September 25, 2025, annual review meeting earlier so that she could have withdrawn his enrollment at Winston Prep, but she did not communicate with the District on this or any other issue.

The evidence, however, indicates that M.H. intended to send G.G. to Winston Prep for the 2025–2026 school year as early as April 2025, when, through her counsel, she sent a letter to the District requesting specific placement. M.H. also believed that it was too late to evaluate the District's proposed placement when the District contacted her about the meeting invitation. School districts will not be held "liable for procedural

violations that are thrust upon it by uncooperative parents.” C.H. v. Cape Henlopen Sch. Dist., 606 F.3d 59, 69 (3rd Cir. 2010). Accordingly, the District will not be held liable for M.H.’s failure to engage in the IEP process in September 2025.

Third, there is no evidence that G.G. was denied an educational benefit resulting from the District’s delay. The delay transpired over a time when G.G. was already privately placed at The Academy and during the summer, when there was no extended school year program offered to G.G. While I find that there was a procedural violation of the IDEA, there is no basis for M.H. to receive tuition reimbursement or compensatory education for G.G.

Last, the District did not have an IEP prepared for G.G. at the beginning of the 2025–2026 school year. While this appears to be a violation of the IDEA under 20 U.S.C. § 1414(d)(2), in these circumstances, it is not. In her June 24, 2025, letter to the District superintendent, M.H. advised the District that she would be placing G.G. at Winston Prep. Districts are not required to prepare IEPs for students when their parents indicate that their children will not be attending a District school. Moorestown Twp. Bd. of Educ., 811 F.Supp.2d at 1068 (stating, “The statutory framework [of the IDEA] logically suggests that [a local educational agency] need not have in place an IEP for a child who has unilaterally enrolled in private school and thereby rejected the district’s offer of a FAPE.”)

Even though the District attempted to prepare an IEP for G.G., albeit four months after M.H.’s initial request, M.H. did not respond to the District’s repeated attempts to schedule the annual review meeting. As already noted, school districts will not be liable for a procedural violation created by parents who do not cooperate. See C.H., 606 F.3d at 69.

Because the District provided G.G. a FAPE, I **CONCLUDE** there is no basis to find that compensatory relief, including a placement at Winston Prep, is appropriate.

Accordingly, I **CONCLUDE** that even though the District violated the IDEA for failing to respond to M.H.’s April 24, 2025, request for the IEP, this violation is not a substantive violation that would deprive G.G. of a FAPE. I also **CONCLUDE** that there

was no violation of the IDEA for the District's failure to have an IEP prepared for G.G. at the beginning of the 2025–2026 school year, because M.H. had already expressed an intent to place G.G. in a private school as early as June 2025 and failed to engage in the IEP process.

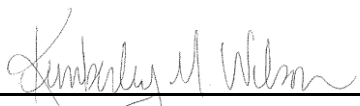
ORDER

It is **ORDERED** that the District's proposed 2025–2026 placement for G.G. in the high school LLD-M program constituted a FAPE in the least restrictive environment. It is **ORDERED** that there is no basis to find that compensatory relief, including a placement at Winston Prep, is appropriate. It is **ORDERED** that even though the District violated the IDEA for failing to respond to M.H.'s April 24, 2025, request for the IEP, this violation is not a substantive violation that would deprive G.G. of a FAPE. I **FURTHER CONCLUDE** that there was no violation of the IDEA for the District's failure to have an IEP prepared for G.G. at the beginning of the 2025–2026 school year, because M.H. had already expressed an intent to place G.G. in a private school as early as June 2025 and failed to engage in the IEP process.

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.

August 3, 2026

DATE



KIMBERLEY M. WILSON, ALJ

Date Received at Agency:

August 3, 2026

Date Mailed to Parties:

KMW/ml

APPENDIX

Witnesses

For petitioner:

Erica B. Piche
Emily McBeth
Marisa Brunner, CCC-SLP, S-SL/DI
M.H.

For respondent:

Ana Medina
Nancy Morales-Frigoletto
Michael Ojeda, Ed.D.
Ali Malik

EXHIBITS

Jointly submitted:

- J-1 Settlement agreement in OAL Dkt. No. 08391-22
- J-2 Mediation agreement dated May 16, 2024
- J-3 IEP for G.G. dated February 8, 2023
- J-4 IEP for G.G. dated February 29, 2024
- J-5 IEP for G.G. dated August 21, 2024
- J-6 Social history report for G.G. by Ana K. Medina dated June 6, 2024
- J-7 Assistive history evaluation for G.G. by Karym L. Hawrylak-Hoens, MS/CCC-SLP AT/AAC specialist dated June 7, 2024
- J-8 Occupation history evaluation for G.G. by Sarah Bauer dated June 11, 2024
- J-9 Psychological assessment for G.G. by Amy Watkins, Psy.D. dated June 9, 2024
- J-10 Educational evaluation for G.G. by Lora Cuiffo, LDT-C dated June 14, 2024
- J-11 Email from M.H. to child study team and others dated September 2, 2024

- J-12 Pre-participation physical for G.G. dated June 25, 2025
- J-13 IEP for G.G. dated February 4, 2021
- J-14 Registration Packet dated July 14, 2025
- J-15 Letter from Ali Malik regarding G.G.'s 2025–2026 placement dated August 18, 2025
- J-16 Invitation to 30-day annual review from District to M.H. dated September 5, 2025 (in Spanish)
- J-17a Winston Prep student application form
- J-17b Winston Prep transcripts
- J-17c Winston Prep 2025–2026 enrollment agreement
- J-17d Winston Prep 2025–2026 class schedule
- J-17e Winston Prep 2025–2026 fall report card
- J-17f Winston Prep 2025–2026 fall report progress report
- J-17g Winston Prep 2025–2026 winter progress report
- J-18 Progress tracking
- J-19 IEP for G.G. dated July 22, 2021
- J-20 IEP for G.G. dated December 20, 2022

For petitioners:

- P-1 Psychological evaluation by Roseann Pizzi, Psy.D. dated September 1, 2018
- P-2 Psychological evaluation by Steven Hertler, Psy.D. dated September 12, 2020
- P-3 Diagnostic evaluation by Susan E. Miller, M.A., LDT/C dated May 25, 2021
- P-4 21–22 IEP review and recommendations by Susan E. Miller, M.A., LDT/C dated August 3, 2021
- P-5 Letter from Giles to Flaum dated April 21, 2025
- P-6 Email from Giles to Flaum dated April 21, 2025
- P-7 Oral and written language evaluation by Marisa Brunner, CCC-SLP, C-SL/DI dated December 13, 2024
- P-8 Emails between Giles and Flaum dated April 21, 2025
- P-9 Letter from M.H. to Dr. Olga Hugelmeyer dated June 24, 2025

- P-10 U.S. Postal Service certified mail receipt
- P-11 Letter from M.H. to Dr. Hugelmeyer dated June 24, 2025
- P-13 Wechsler Individual Achievement Test 4 score report for G.G. dated July 1, 2025
- P-14 Letter from Winston Preparatory School to M.H. dated July 1, 2025
- P-16 Statement from Winston Preparatory School regarding 2025–2026 tuition for G.G.
- P-19 Winston Preparatory School spring report 2025–2026 for G.G.
- P-20 Spring 2025–2026 Wechsler Individual Achievement Test, fourth edition test results and report card for G.G.
- P-21 Record review and observation by Marisa Brunner, CCC-SLP, C-SL/DI dated April 15, 2026
- P-22 Marisa Brunner, CCC-SLP, C-SL/DI resume
- P-23 Erica B. Piche, M.A., CCC-SLP resume
- P-24 Emily McBeth resume

For respondents:

- R-1 Letter from Andrew I. Meltzer, Esq. to Kim Murray regarding mediation dated March 2, 2023
- R-2 Letter from Andrew I. Meltzer, Esq. to Kim Murray regarding mediation dated March 18, 2024
- R-3 Letter from Andrew I. Meltzer, Esq. to Kim Murray requesting due process dated August 28, 2024
- R-13 Emails M.H. and Flaum between November 17, 2024, and November 18, 2024, for OAL Dkt. No. EDS 13512-24
- R-14 Nancy Morales-Frigoletto resume
- R-15 Ana K. Medina resume
- R-18 Michael Ojeda, Ed.D. resume
- R-19 Contact log
- R-20 G.G.'s PowerSchool enrollment history
- R-22 District special services registration checklist

The nonsequential numbering of exhibits reflects the fact that numerous pre-marked exhibits were neither identified nor offered into evidence.