

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 5614-18

AGENCY DKT. NO. 2018-27695

S.G. AND A.G. ON BEHALF OF S.G.,

Petitioners,

v.

**TOMS RIVER REGIONAL BOARD OF
EDUCATION,**

Respondent.

S.G. and A.G., petitioners, pro se

R. Taylor Ruilova, Esq., appearing for respondent (Comegno Law Group,
attorneys)

Record Closed: October 30, 2018

Decided: November 13, 2018

BEFORE **MARY ANN BOGAN**, ALJ:

STATEMENT OF THE CASE

Petitioners S.G. and A.G. (petitioners or parents),¹ on behalf of their daughter S.G., age fourteen, allege that S.G. should remain in the mild cognitively impaired program and receive speech therapy and the continued support of a 1:1 paraprofessional, based on their daughter's previous classification of cognitively impaired (CI). The parents assert that the placement in the Language and Learning Disabilities (LLD) class as set

¹ Since the mother and daughter have the same initials, the mother will be referred to as petitioner or parent.

forth in the March 8, 2018, Individualized Education Program (IEP) prepared by respondent Toms River Regional Board of Education (Toms River or District), for the 2018–2019 school year, is not appropriate. The District contends that S.G. is no longer cognitively impaired, and that her placement in the CI class is restrictive and does not provide a free and appropriate public education (FAPE) in the least restrictive environment (LRE).

PROCEDURAL HISTORY

On or about March 20, 2018, the petitioners filed a petition for a due-process hearing with the Office of Special Education, Bureau of Policy and Planning. The matter was transmitted to the Office of Administrative Law (OAL), where it was filed on or about April 19, 2018. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The parties appeared at a settlement conference on or about May 10, 2018, and the matter was not resolved.

The hearing was conducted on October 15, October 16, and October 30, 2018, after which the record closed.

FACTUAL DISCUSSION

For Respondent²

William Fischer is a special education teacher in Toms River. He has been teaching mildly impaired students since the 2013–2014 school year. S.G. has been classified as eligible for special education and related services under the category of multiply disabled (autistic and orthopedically impaired). Fischer became S.G.'s seventh-grade teacher when she was placed in his CI self-contained class for the 2017–2018 school year for math, science, social studies, and language arts. She and her classmates are mainstreamed for activities such as gym, cooking class, and lunch. S.G. received related services for speech therapy five times per month and 1:1 paraprofessional support. The school nurse created an individualized healthcare plan to address S.G.'s

² The District's motion to qualify respondent's witnesses as experts was denied, as they are employed by the District and their testimony makes clear that they are fact witnesses.

scoliosis needs; she wears a brace, utilizes a specialized Rifton chair, and uses a modified desk. The CI class contained twelve to thirteen students ranging from the sixth through the eighth grade. For fifth and sixth grade, S.G. was placed in a self-contained autistic classroom. The CI placement is S.G.'s current placement under stay put.

As part of his teaching duties, Fischer wrote the “needs and goals” section of his students’ IEPs and sets forth material needed to obtain their goals. His classroom curriculum includes a class in life skills—this year he is teaching kitchen safety. Fischer also incorporates teaching independence. Fischer created an app to better collaborate with parents, and to ensure that parents and students are kept informed of school events, student progress, and homework.

In the classroom, Fischer administers the Dynamic Learning Maps and Alternate Proficiency Assessment tests yearly to students. He also works in the extended-school-year (ESY) program. S.G. was a student in his ESY class this past summer.

Prior to the start of the 2017–2018 school year, Fischer received and reviewed S.G.'s IEP, which had all positive reports from staff, who documented that S.G. has a good work ethic, performs at a high level, and has an impressive ability to be independent. Fischer watched S.G. get off the bus in the morning, and he noticed that from the beginning of the 2017–2018 school year S.G. was eager to be at school. S.G. displayed an appropriate “wait and see” approach to her interaction with peers, and became “verbal and interacted verbally with everyone” once she became more familiar with her new surroundings. She made friends, and, “interact[ed] in a socially appropriate manner with her classmates.”

Fischer's class consists of three learning groups, beginning with students who have difficulty sequencing events and answering the who, what, where, how, response, and who are generally emotionally immature. Fischer noticed that S.G., who has an adaptive-function IQ of 77, early in the 2017–2018 school year outperformed her classmates, whose average adaptive score is in the 60s. Within one month of placing S.G. in the highest academic group for the class, he individualized her instruction to provide her with the level of instruction she needs as a student who performs at a level

that is “higher than the highest level [he] previously ever taught in the classroom.” “No other student in the class can relate to S.G.’s unique curriculum,” that he created. S.G. also functions independently in and out of the classroom without the assistance of her 1:1 paraprofessional.

Fischer assigned S.G. work that he “never even expected to teach in [his] class.” In math, S.G. finished 100 questions in less than ten minutes, and answered every question correctly without modification. By the second week of September, she was placed in her own math group. Her science abilities also differentiated her from her peers, creating a need for her own science group. S.G. read the unabridged Magic Tree House series chapter books, which range from seventy-five to ninety pages. She then accurately answered every comprehension question in test format, after reading the series. S.G. advanced to reading the unabridged Harry Potter books. With complete accuracy she answered every single open-ended question, administered in a test format. The test included compound questions that required the reader to comprehend “bits and pieces” of information that continues across five chapters of the book. In order to answer the questions correctly, the student must comprehend information that is found after accurately comprehending multiple chapters. In addition to her excellent comprehension, S.G. properly spelled made-up wizard words and names, which he found “amazing.” No other student in the CI class ever read the Harry Potter series, which is a sixth- to seventh-grade reading level. (J-13; J-14.) The highest reading level in the CI class is third grade. A few students worked on the Magic Tree House series, but they struggled with it.

The parents insisted that S.G. did not answer the questions on the Harry Potter comprehension test, reasoning that S.G. does not write with a pen. The parents also alleged that the testimony under oath by the teacher was not truthful. Fischer rejected these remarks. The parents also believed that S.G. was provided with answers before taking the tests or assessments that she performed so well on. Fischer retorted that sometimes S.G. was provided with a study guide for unit tests—not all tests—and that the study guides do not provide answers. The parents continued to insist that S.G.’s poor spelling makes her unprepared for the LLD class. Fischer explained that S.G. spells much better than other students in the CI class, and LLD-class students struggle with spelling.

In addition, S.G. hands in work that surpasses the requirements of the assignment. For example, if students write two to three sentences on a topic, S.G. provides complete and accurate paragraphs. S.G. also turns in additional unassigned work related to the current topic. "I . . . call her my assistant," Fischer remarked, "her answers are used as a model to help other students."

S.G. also has strong adaptive skills. She works independently on assigned tasks and she is the only student that does not require prompting. She is usually the first student to complete an assignment no matter the subject. S.G. is a self-advocate, she has a high tolerance for frustration, she requires minimal assistance with tests, and she occasionally asks questions by raising her hand. Although her stay-put placement includes a 1:1 paraprofessional to assist with her six to eight transitions each day, S.G. does not rely upon her paraprofessional, and will even prompt the paraprofessional at transition time. S.G. walks in the school hallways and turns the hallway corners far ahead of her paraprofessional.

S.G.'s Progress Report for IEP Goals and Objectives for school year 2017–2018 (J-9) indicates that S.G. achieved many of her IEP goals by March 2018; the remaining goals were all completed by the end of the school year. For example, S.G. was able to produce intelligible speech by increasing her speaking volume during all tasks with 80 percent accuracy by March 2018. She expressed conclusions and main ideas, and conveyed extended explanations and detailed descriptions when answering questions about a story. She also used problem-solving strategies to solve problems, and expressed the predicament presented and offered possible solutions and associated outcomes when given a set of problematic circumstances.

S.G. earned straight A's and some A+'s for the 2016–2017 and 2017–2018 school years. These grades are atypical of a student in the CI placement. (J-11; J-12.) S.G.'s results on tests and assessments created uniquely for her performance level, and administered to her without preparation, are completely accurate.

Fischer was a member of the CST that proposed changing S.G.'s placement to the LLD class for the 2018–2019 school year, and he is fully supportive of the new placement because the LLD class will meet S.G.'s IEP needs. The class is one step above her current placement and will provide S.G. with the supportive small-class educational program that utilizes adaptive material and teaching methods, so that S.G. can acquire and maintain information and have the ability to transfer skills across multiple settings and be introduced to grade-level concepts. (J-5 at 0041.) In addition to S.G.'s adaptive abilities to more challenging academics, the LLD placement still provides S.G. with mainstream placement for activity classes such as gym, lunch, and art, where she will see her peers from her CI placement.

Emily Kopin has been the speech/language specialist for the District for fifteen years. She assesses students for speech/language therapy and treats communication disorders. She provides an out-of-class “pull out” model of services, and an in-class integrated model. Kopin also prepares student evaluations; attends the CST meeting, annual reviews, and yearly IEP meetings; and provides her opinion on student needs.

Kopin met S.G. in September 2017, when S.G. entered Intermediate South and was scheduled to receive speech services. In accordance with the IEP for the 2017–2018 school year, S.G. received pull-out speech services five times per month.³

Kopin had been working with S.G. for half the year when she conducted an evaluation for the 2017–2018 school year. S.G. was pleasant, cooperative, and always on task. Kopin found no severe language need or documented vocal-cord dysfunction, and determined that S.G. did not require speech services for the next school year. S.G. satisfactorily progressed toward her goals, satisfying all of them by the end of the 2017–2018 school year. As part of the evaluation, completed on February 26, 2018, (J-5) Kopin reviewed S.G.'s records, talked to S.G.'s teacher on a daily basis, and observed S.G. in class, multiple times. At the re-evaluation planning meeting, Kopin spoke with her

³ The parents sent an email on October 30, 2017, expressing concern that S.G. missed five sessions of speech for that month without explanation. Kopin responded that S.G. received the recommended five speech sessions that month in accordance with her IEP; some sessions were conducted on different dates due to school holidays. (J-31 at 0193.)

parents, and conducted four additional standardized tests in order to address their concerns. Kopin also observed S.G. communicate effectively with her parents. Although her parents believed speech services should remain as part of S.G.'s IEP, her test results indicate that her overall communication is functional and age appropriate independent of any diagnosis she may have. She is able to ask and answer questions, make requests, and interject comments.

S.G. demonstrated excellent attention and focus to testing tasks for all of her assessments. She demonstrated average knowledge based on the results of the receptive one-word picture vocabulary test. This score reveals that S.G. has the ability to comprehend complex language presented through leveled text and material presented auditorily. S.G. demonstrated average expressive-language skills according to the results of the expressive one-word picture vocabulary test. S.G. successfully labeled objects and items of increased difficulty and provided category titles for groups of items.

S.G.'s clinical evaluation assessed the basic foundation of overall language performance. S.G. demonstrated the ability to listen to a short story and answer direct questions, as well as make inferences, and she was able to draw from general knowledge to make predictions. S.G. displayed appropriate use of grammar and syntax when putting together sentences, and she displayed solid semantic knowledge while logically sequencing and organizing information for word-relationship tasks.

Kopin also observed S.G. express a sense of humor and be creative with her language skills. These abilities are not indicative of a student who requires speech therapy. Kopin pointed out that students who no longer require speech services may have some speech and language struggles, but the struggles do not block their ability to access education.

Kevin Huff is the school psychologist and S.G.'s case manager. He has worked in Toms River for five years. As the assigned case manager, Huff ensures that a student's placement provides FAPE.

Huff became familiar with S.G. in August 2017. Huff was part of the transition team when S.G. transitioned from her placement in the autistic program for school year 2016–2017 to the CI program for the 2017–2018 school year. The parents resisted this placement because they believed the move from the autistic class to the CI class was too much of a jump. The parents viewed the change as “punishment.”⁴

Huff took the parents to view the proposed LLD program last spring. The parents claim they observed the LLD class for two hours and noticed students with “too much down time,” and students working at a kindergarten level.

Fischer explained that the students in the LLD program work in stations and small groups. At times the class schedule incorporates scheduled “down time,” but the students do not stand idle and do nothing for two hours, as S.G.’s parents insisted they observed. The structure of the LLD class is similar to that of the CI class, and this year the class consists of nine students in grades six, seven, and eight.

Huff testified that the IEP dated March 8, 2018, (J-4 at 0038) is appropriate for S.G. because the proposed LLD placement is in a self-contained program; provides direct-education instruction, including prompting, cueing, and redirection; and meets S.G.’s academic needs consistent with her evaluations. This placement also provides S.G. with the opportunity to be around student peers who are of similar learning profiles and in the same age range, which has been shown to increase confidence and self-esteem. In addition, the CI class is no longer appropriate because S.G. does not qualify under the criteria for CI. S.G. no longer needs a 1:1 paraprofessional, because she scored very well in the adaptive testing and demonstrated the ability to navigate the school setting independently. The proposed IEP will provide S.G. with a shared paraprofessional who may work with one to two other students in addition to S.G. S.G.’s standardized-testing scores also demonstrate that she is not in need of speech and language therapy in order to access her education and school-based needs. (See J-28

⁴ The witness stated that the parents constantly interrupted as he provided multiple explanations in response to their concerns. The parents fixated on issues, resulting in meetings that normally would take forty-five minutes taking two and a half hours.

at 0159, where Huff outlines the differences in the programs to the parents and explains why the LLD placement is most beneficial and appropriate for S.G.)

In February 2018, Huff was part of a team of evaluators who, along with the therapist, speech/language teacher, and physical therapist, conducted a psychoeducational evaluation. They used the Wechsler Intelligence Scale for Children to assess S.G.'s cognitive abilities. In the 2018 evaluation, S.G. scored an IQ of 77, which is in the low range, just under low average. Most of her scores fell below average for subjects such as reading, math, and language, and oral expression fell well below average. S.G. displayed no major weakness in social/emotional. She scored a 93 in her adaptive-behavior composite, which is close to normal. These test results are indicative of a student who does not qualify for CI classification. S.G. is more likely to succeed in classes that are at a more appropriate level; she will develop even stronger self-esteem, and will increase her ability to meet higher academic goals by being around students with shared interests. Huff pointed out that it is important to capitalize on the student's gains "when they are happening." To wait may create a risk that she loses out on the opportunity to develop higher level skills, resulting in a disserve to S.G. and her educational potential.

Huff expressed concerns about the parents' history of contact with the school and the nature of the concerns they expressed, especially since the school is not often able to substantiate their concerns. In June 2018, for example, Huff addressed concerns raised by the parents that S.G. was told to complete a recycling activity during her usual snack time instead of eating her snack. She worked while she did not feel well, and the nurse said that S.G. suffered from headaches because she was "severely dehydrated and suffering from starvation." The parents also reported that S.G. was not allowed to buy food during her regularly scheduled lunch because there was going to be a pizza party in the classroom that afternoon. Huff looked into the parents' concerns and learned that on the day in question, S.G. was offered her snack at the usual snack time. After that S.G. went to the nurse's office because she was feeling off that day. Lunch was held as usual, and then S.G. returned to the nurse's office for a second time. After that visit, she returned to class. The pizza party was in addition to the regularly scheduled snack

and lunch, and S.G. did not suffer from severe dehydration or starvation as the parents reported. (J-30 at 0167–68.)

For Petitioners

Petitioner is the mother of S.G., and she testified that she opposes the placement into the LLD class because S.G.'s scores are low in all subjects, and petitioner believes this placement will cause her daughter to lose her self-esteem, resulting in her failing. The LLD class does not address S.G.'s weaknesses and “forgets all of her needs,” and the decision to place her was not based upon her disability and evaluations. She disputes that Huff was present when they visited the LLD class and saw that the instruction was not at an appropriate level for S.G.

Petitioner is also concerned that S.G. will experience negative comments from the peers in her class and will not be able to keep pace with them, which will result in headaches and severe stress. As a result of the placement, S.G. will be unsafe and will be harmed, her future goals will be thwarted, and she will suffer for the rest of her life.

In addition, S.G. requires related services such as bathroom needs, eye drops administered by the nurse, help with her brace that she wears for scoliosis, and help with seven to eight transitions each day. S.G. also needs access to the nurse because she often gets tired and has headaches in school. S.G. also needs a paraprofessional who helps her collect her papers and navigate through the school, helps with organizational skills, copies missing words from the class board, and reminds her to stay on task. Petitioner is also concerned because S.G. has communication problems, especially because she becomes mute when she is sick.

Findings

It is my obligation and responsibility to weigh the credibility of the witnesses in order to make a determination. Credibility is the value that a fact-finder gives to a witness's testimony. The word contemplates an overall assessment of a witness's story in light of its rationality, internal consistency, and manner in which it “hangs together” with other evidence. Carbo v.

United States, 314 F.2d 718, 749 (9th Cir. 1963). Credible testimony has been defined as testimony that must proceed from the mouth of a credible witness, and must be such as common experience, knowledge, and common observation can accept as probable under the circumstances. State v. Taylor, 38 N.J. Super. 6, 24 (App. Div. 1955) (quoting In re Perrone's Estate, 5 N.J. 514, 522 (1950)). In assessing credibility, the interests, motives, or bias of a witness is relevant, and a fact-finder is expected to base decisions of credibility on his or her common sense, intuition, or experience. Barnes v. United States, 412 U.S. 837 (1973). Credibility does not depend on the number of witnesses, and the finder of fact is not bound to believe the testimony of any witness. In re Perrone's Estate, 5 N.J. 514.

The witnesses from the District testified credibly as to their knowledge of the Toms River Regional school system and the educational plans established for S.G. The District provided testimony and evidence to prove that S.G. progressed well beyond her current placement and demonstrated that the current placement may create a risk to her education and development of higher level skills, which is in direct contradiction to the goals set forth in the Individuals with Disabilities Education Act to educate students with disabilities. District witnesses testified in a direct and articulate manner. The District also referenced documentary evidence such as evaluations, which S.G. completed with excellent attention and notable focus, and her scores which demonstrate that S.G. no longer meets the CI classification; tests that were almost always completed with accuracy; her early IEP-goal success as set forth in the 2017–2018 Early Success IEP Goals and Objectives; and her report card, with atypical grades earned of all A's, to support its conclusions. In addition, S.G. scored 93 on her adaptive-behavior composite, which is close to normal, and her score on the receptive one-word picture vocabulary test indicates her ability to comprehend complex language. In particular, Fischer, S.G.'s current teacher in the stay-put placement, provided compelling testimony about his daily observations of S.G. in the classroom, noting her attention, superior work habits, independence, and proper interaction with peers and the District's professional staff. He described her impressive and unique adaptive skills, which he explained will support her academic transition to the LLD placement. Even more compelling is the creation of a particularized curriculum for S.G. that far surpasses the work of the other students in the class, and S.G.'s ability to produce work that met and exceeded Fischer's expectations. S.G.'s impressive ability to be independent was observed in her previous autistic placement and

was observed by Fischer both in and out of the classroom ever since she entered his class in September 2017. Not only did S.G.'s speech/language evaluation results indicate that she no longer requires speech services, so did the four additional standardized tests conducted by the District to address the parents' concerns. The results prove that her communication is functional and age appropriate, and there is no indication of a severe language need or documented vocal-cord dysfunction. Even more, S.G.'s teacher and the District's professional staff demonstrated a keen interest in the growth and development of S.G., whom they are proud to say represents a true special-education success story. I accept the District's testimony and **FIND** the testimony as fact.

In contrast to the District's testimony, the testimony from the parents was less than direct, and did not specifically address the District's fact-driven testimony, and the exhibits that support the District's conclusions. It is clear that the parents believe that they are seeking the best program and placement for their child, however, their conclusions contradict the progress notes and credible testimony of the District witnesses. Accordingly, I **FIND** that the parents' testimony was not credible.

It is undisputed, and I **FIND** that S.G. no longer qualifies under the CI criteria, she performs at an academic level that is head and shoulders above the rest of the class. As for S.G.'s needs related to her scoliosis, and other care needs, an individualized healthcare plan is in place to respond to those needs.

LEGAL ANALYSIS AND CONCLUSION

The Individuals with Disabilities Education Act (IDEA) provides federal funds to assist participating states in educating disabled children. Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 179 (1982). One of the purposes of the IDEA is "to ensure that all children with disabilities have available to them a [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). In order to qualify for this financial assistance, New Jersey must effectuate procedures that ensure that all children with disabilities residing in the state have available to them a FAPE consisting of special education and related services

provided in conformity with an IEP. 20 U.S.C. §§ 1401(9), 1412(a)(1). The responsibility to provide a FAPE rests with the local public-school district. 20 U.S.C. § 1401(9); N.J.A.C. 6A:14-1.1(d). The district bears the burden of proving that a FAPE has been offered. N.J.S.A. 18A:46-1.1.

The United States Supreme Court has construed the FAPE mandate to require the provision of “personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” Rowley, 458 U.S. at 203. The Rowley standard was recently questioned by the United States Supreme Court in Endrew F. v. Douglas County School District RE-1, 580 U.S. ____, 137 S. Ct. 988 (2017). The Supreme Court determined that to meet its obligation to deliver FAPE, a school district must show a cogent and responsive explanation for its decisions that shows that the IEP is reasonably calculated to enable the child to make progress that is appropriate considering the particular student’s circumstances. The Court declined to devise a “bright-line rule” for “what ‘appropriate’ progress will look like from case to case,” because “[t]he adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” Endrew F., 137 S. Ct. at 1001.

In addressing the quantum of educational benefit required, the Third Circuit has always made clear that more than a “trivial” or “de minimis” educational benefit is required, and the appropriate standard is whether the IEP provides for “significant learning” and confers “meaningful benefit” to the child. 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); Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180, 182–84 (3d Cir. 1988), cert. den. sub. nom. Cent. Columbia Sch. Dist. v. Polk, 488 U.S. 1030 (1989).

In other words, the school district must show that the IEP will provide the student with “a meaningful educational benefit.” S.H. v. State-Operated Sch. Dist. of Newark, 336 F.3d 260, 271 (3d Cir. 2003). This determination must be made in light of the individual potential and educational needs of the student. T.R., 205 F.3d at 578; Ridgewood, 172 F.3d at 247–48. “When students display considerable intellectual potential, IDEA requires ‘a great deal more than a negligible [benefit].’” Ridgewood, 172 F.3d at 247 (quoting Polk, 853 F.2d at 182). The pertinent inquiry is whether the IEP offered a FAPE and the

opportunity for significant learning and meaningful educational benefit within the least restrictive environment.

The IDEA describes education in the “least restrictive environment” as follows:

[t]o the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs 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).]

The law describes a continuum of placement options, ranging from mainstreaming in a regular public school setting as least restrictive, to enrollment in a residential private school as most restrictive. 34 C.F.R. § 300.115 (2018); N.J.A.C. 6A:14-4.3.

Courts in this circuit have interpreted this mainstreaming requirement as mandating education in the least restrictive environment that will provide meaningful educational benefit. “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. v. Scott P., 62 F.3d 520, 535 (3d Cir. 1995), cert. den. sub. nom. Scott P. v. Carlisle Area Sch. Dist., 517 U.S. 1135 (1996).

The education of a child with a disability must be tailored to the unique needs of the child through an IEP, and the provisions of the IEP must be reviewed and, if appropriate, revised periodically, but not less than annually. 20 U.S.C. § 1414(d)(4)(A). An IEP should be developed with the participation of parents and members of a district board of education’s child study team who have participated in the evaluation of the child’s eligibility for special education and related services. N.J.A.C. 6A:14-3.7(b). The IEP team should consider the strengths of the student and the concerns of the parents for

enhancing the education of their child; the results of the initial or most recent evaluations of the student; the student's language and communication needs; and the student's need for assistive-technology devices and services. The IEP establishes the rationale for the pupil's educational placement, serves as the basis for program implementation, and complies with the mandates set forth in N.J.A.C. 6A:14-1.1 to -10.2.

The parents here, who are dissatisfied with S.G.'s IEP, appropriately filed for an administrative due-process hearing. 20 U.S.C. § 1415(f). The burden of proof is placed on the school district. N.J.S.A. 18A:46-1.1.

This case presents an unusual dynamic between the District and the parents. On the one hand the District provides a list of S.G.'s glowing achievements, supported by test scores, evaluations, classroom work, observations of her teacher and school professionals, S.G.'s remarkable adaptive skills, and her excellent attention and focus to testing tasks for all of her assessments, which demonstrates her readiness to advance to the Language and Learning Disabilities class. On the other hand, the parents present contrary testimony without any corroborating evidence, then they reject their daughter's achievements, and resist the recommendations made by the District for her education.

The parents, along with the educators and experienced professional who work with the child each day, are part of the child study team that can best determine a child's education placement. Here the record is clear. The parent's input and desire to keep S.G. in the CI placement is simply not reasonable or appropriate. This student hit the ground running when she advanced into the CI placement from a more restrictive autistic placement. She has since outperformed the academics offered in the CI placement, having excelled in all subjects; has demonstrated remarkable adaptive skills; and is currently at risk of a compromised education if she is not immediately advanced to the District's proposed LLD placement.

I **CONCLUDE** that the placement offered S.G. by the Board in the March 8, 2018, IEP constituted FAPE as that term is defined by law. Respondent has considered and made plans for the transitions that S.G. will encounter, and the 2018–2019 IEP is sufficiently individualized to meet S.G.'s needs. All school personnel testified

convincingly as to S.G.'s progress. Moreover, the District's placement is less restrictive than the placement recommended by the parents and meets the requirement that students with disabilities shall be educated in the least restrictive environment.

Based on the foregoing, I **CONCLUDE**, by a preponderance of the credible evidence, that the 2018–2019 IEP provides S.G. with a free and appropriate public education reasonably calculated to provide a meaningful educational benefit to her in the least restrictive environment.

ORDER

Based on the foregoing, it is hereby **ORDERED** that the petition for due process be **DISMISSED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2018) 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 (2018). 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 Programs.

November 13, 2018 _____

DATE

MARY ANN BOGAN, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

APPENDIX

WITNESSES

For petitioners:

S.G.

A.G.

For respondent:

William Fischer

Emily Kopin

Kevin Huff

EXHIBITS

Jointly submitted:

- J-1 Due Process Request, dated March 16, 2018
- J-2 Respondent's Answer with Affirmative Defenses to Due Process Request, dated April 6, 2018
- J-3 IEP, dated June 8, 2017
- J-4 IEP, dated March 8, 2018
- J-5 Speech and Language Evaluation, dated February 26, 2018
- J-6 Psycho-Educational Evaluation, dated February 26, 2018
- J-7 Physical Therapy Evaluation
- J-8 Occupational Therapy Evaluation
- J-9 Goals and Objectives Progress Report, dated May 2, 2018
- J-10 Goals and Objectives Progress Report, dated June 30, 2018
- J-11 Report Card 2016–2017
- J-12 Report Card 2017–2018
- J-13 S.G. Tests 1
- J-14 S.G. Tests 2
- J-15 Ocean Eye Institute Progress Report
- J-16 Kelly Umbach curriculum vitae

- J-17 Emily Kopin curriculum vitae
- J-18 Kevin Huff curriculum vitae
- J-19 William Fischer, Jr., curriculum vitae
- J-20 Emails between petitioners and District, September 2018
- J-21 Petitioners' email regarding Gym, dated September 19, 2018
- J-22 Petitioners' signed medical release form
- J-23 Meridian Medical Group Health Note, dated September 7, 2018
- J-24 District email to petitioners, dated June 15, 2018
- J-25 Petitioner letter to District regarding homework, dated June 12, 2018
- J-26 Petitioners' email to District, dated June 11, 2018
- J-27 District email to petitioners, dated May 3, 2018
- J-28 District email to petitioners, dated March 20, 2018
- J-29 Re-evaluation planning letter, dated January 9, 2018
- J-30 Emails between petitioners and District, January to June 2018
- J-31 Emails between petitioners and District, September to November 2017
- J-32 District letter to petitioners regarding request, dated August 15, 2017
- J-33 Petitioners' letter to District regarding request, dated August 14, 2018
- J-34 Meridian Medical Group Health Note, dated August 14, 2017
- J-35 District letter regarding verbal parental request, dated August 2, 2017
- J-36 District letter regarding administrative response, dated August 1, 2017
- J-37 District email to petitioners regarding request to consider placement, dated August 1, 2017
- J-38 Petitioner letter to District, dated June 28, 2017
- J-39 Petitioner letter to District, dated June 6, 2018

For petitioners:

- P-1 Due Process Request, dated March 16, 2018
- P-2 U.S. Postal Service receipts
- P-3 Delivery Confirmation
- P-4 Additional receipts
- P-5 Emails from petitioner to District, dated April 9, 2018
- P-6 Emails from petitioner to District, dated March 2018
- P-7 Report of Progress, page 7, dated July 1, 2016–June 30, 2017

- P-8 Report of Progress, page 11, dated July 1, 2016–June 30, 2017
- P-9 Report of Progress, page 12, dated July 1, 2016–June 30, 2017
- P-10 Email from petitioner to Kevin Huff, dated October 12, 2018
- P-11 Invitation for Annual Review of IEP Meeting Confirmation Form, dated March 6, 2018
- P-12 Re-evaluation Planning—Consent for Additional Assessment, dated January 9, 2018