

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION

OAL DKT. NO. EDS 06093-19

AGENCY DKT. NO. 2019-29667

M.F. ON BEHALF OF C.F.,

Petitioner,

v.

HAMILTON TOWNSHIP

BOARD OF EDUCATION,

Respondent.

Robert A. Robinson, Esq., for petitioner (Disability Rights of New Jersey, attorneys)

Eric L. Harrison, Esq., for respondent (Methfessel & Werbel, attorneys)

Record Closed: September 6, 2019

Decided: September 27, 2019

BEFORE **JOSEPH A. ASCIONE**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioners, M.F., on behalf of her daughter C.F. requested a due-process hearing seeking out-of-district placement of C.F. at the Katzenbach School for the Deaf, Trenton, New Jersey (Katzenbach School) claiming the Hamilton School District (“Hamilton” or “District”) has failed to provided C.F. with a Free Appropriate Public Education (“FAPE”) at her present location within the District. C.F. is classified as multiple disabled from her hearing impairment and cerebral palsy.

The New Jersey Department of Education, Office of Special Education Programs, transferred the matter to the Office of Administrative Law (“OAL”) as a contested case on May 7, 2019. The matter was heard on July 16, 22, 23, and 29, 2019. The record closed on September 6, 2019, after receipt of the closing arguments of both sides.

FACTUAL DISCUSSION

C.F., a sixteen-year-old student who currently resides in Hamilton Township, has multiple diagnoses, including cerebral palsy and a profound bilateral sensorineural hearing loss. The student’s education history included placement within district for K, first, and second grades, placement at the Mercer County Special Services School (MCSSS) for third through eighth grades, inclusive, and upon the parent’s request returned to the District for the ninth grade. Her intelligence quotient appears in the mid-50s to low 60s. After exposure to the District, the parent requested the Katzenbach School as they have dissatisfaction with the District educational programs. Allegations by the District include that the parent(s) did not desire the American Sign Language (ASL) instructions until recently, and due to the loss of a hearing aid, the parent have refrained from providing the student with the new hearing aid at school. This deprives the student of the ability to use the FM frequency modulation equipment provided at the District. The District’s concerns relate to the student’s intellectual limitations, and her ability to improve her present limited sign language abilities concurrent with her learning life skill which the District deems critical for her advancement. The District maintains C.F. is not sufficiently proficient in American Sign Language (ASL), their concern in limiting C.F. to a school for the deaf at her present age, will have a greater impact on her ability to learn necessary life skills which the district believes are more important to her educational needs than immersion in a school for the deaf. The matter weighs the parent's/student’s freedom to choose between an exclusive ASL appropriate education at K.S. for a hearing impaired multi disability student; and the District’s concern with switching at the student’s advanced age to ASL to the exclusion of the life science training presently planned by the Child Study team within District. The student appears well liked within the district, has friends and social contacts.

Isabel Sutton (Sutton)

Ms. Sutton earned a B.S. in Education degree from Trenton State College, now College of New Jersey, an M.A. degree in Teaching from Marygrove College, and possesses certifications for teaching Nursery, Elementary, Handicapped, Deaf and Hard of Hearing. She obtained a supervisor's certification from Rutgers. She has taught the deaf for twenty-five years and has supervised the Hamilton High School Child Study Team for the last two years. Personally, she is the child of two deaf parents, one of whom communicated by ASL, the other used other forms of communication, she interceded in her parents relations with the auditory society. She is an employee of the District.

Sutton's first contact with C.F. occurred in February 2018. C.F. had already been placed in the Multiply Disabled classification for school years (SY) 2016 through 2019, with the approval of the parents after they had an opportunity to access the program. Sutton identified exhibits R-3, 4, 5, 6, 8, 9, 10,12,13, 15, 16, 19, 20, 21 and 47, all of which were accepted into evidence. Petitioner did object to the introduction of some of the items, related to the scope and purpose of the exhibits, various items were limited by the tribunal to records kept in the ordinary course, providing the tribunal with historical background as to the student. Sutton was accepted as an expert in special education with specialized knowledge of the handicapped, deaf and hard of hearing.

Sutton describes C.F. as an outgoing, friendly young lady with numerous friends> She suffers from the hearing impairment and physical impairments resulting from the Cerebral Palsy. The latter ailment requiring a limited Contact Manager when C.F. choses to use the stairs to amble between classes rather than the use of an elevator available to her. She expresses her independence by staring at the contact manager when she attempts to offer more direct assistance than C.F. desires. Her learning modalities include lip reading, hearing aids, an I-Pad, body language, and limited sign language.

Sutton advised that a one-on-one assistant for sign language was denied because C.F. is not sufficiently fluent in ASL. The parent historically opposed instructing C.F. in ASL. The District can accommodate the parents current desire to incorporate ASL into her curriculum.

C.F.'s present class includes a teacher and two aides. Proloquo2Go is used to assist communication in the class as are frequency modulation systems. The latter systems require hearing aids which at times have not been present with C.F. at class, depriving her of the benefits of the latter modality of learning. Sutton does acknowledge that an ASL assistant could be incorporated into C.F.'s classroom placement, but, does not recommend exclusive sign language for C.F. Sutton maintains that C.F. has and is receiving an appropriate public education at the District and disputes other consultants regarding the benefits of immersion in a total ASL program. Sutton opinion is that C.F. needs more training in life skills to provide her with both academic and alternative life skills abilities.

She recognizes the parent has requested placement at K.S.; however, she is of the opinion that such a placement will deprive C.F. of the life skills which the District program offers. The District's program is a less restrictive environment for this socially adept young student under the present circumstances.

Sutton recognizes that the District is responsible for the boots which are attached to hearing aids to equip them to take advantage of the FM equipment, but the District is not responsible for the hearing aids which are a medical item. The parents have displayed some reticence in allowing the new hearing aids to be used. When the student has failed to bring to class her I-pad, a substitute can be provided, however this is not available with the hearing aids which are patient specific.

Sutton acknowledged the District at the parent's request engaged ACES; however, the District does not agree with all of the findings of the evaluation, specifically rejecting placement at K.S.

Marie K. Mahoney (Mahoney)

Ms. Mahoney has been employed by the District for fifteen years. She possesses a B.A. in Psychology and is certified as an MSW and Clinical Social Worker. She qualified

as an expert in Clinical Social Work and Special Education by experience. She has worked in the third, fourth and fifth grade of Yardville and is familiar with the family of C.F. Mahoney acted as C.F.'s case manager in fourth and fifth grades. The parents' concerns prior to entering middle school related to the size of the school, accordingly, prior to entering the 1,200 student middle school, the parents requested the placement at Mercer County Special Services School District, the District, and they were accommodated. There also was concern that the middle school Multiple disability classes were more advanced than C.F.'s abilities. Mahoney identified R-14, 17, 20, 27, 28, and 41, and they were accepted into evidence. C.F. benefitted from her placement as she was fashionable and sociable. She uses the I-pad and some ASL to obtain assistance from the staff. Mahoney believes C.F. is making meaningful progress, as presently placed. She disagrees with placement at Katzenbach School, as it will not teach transitional skill which she believes are necessary for C.F.'s success.

Mahoney identified other state and county resources available to the family, including but not limited to DDD, DVR, PCIL, and SSI. C.F. is making meaningful progress from the District's placement. C.F.'s placement provides her the opportunity to interact with the general education population to her benefit. C.F. is a social, popular young lady. Mahoney opines that she is receiving an appropriate public education and disagrees with placement at Katzenbach School due to the limited restriction of the parents' proposed placement. C.F. has limited knowledge of ASL as a result of the prior parental action.

Mahoney confirms that the school does not provide hearing aids for the students.

Heide A Wolfinger (Wolfinger)

Ms. Wolfinger is a self-employed contractor engaged by the District. She has New Jersey certificates as an Audiologist, and Speech and Language Pathologist. She received her B.S. in Deaf Education from Trenton State, received a Masters of Education from the University of Virginia, and received a national certification as a Teacher of the Deaf. She was qualified as an expert in educational audiology and speech and language pathology by training and experience. She became aware of C.F. when she first came to

the District. She recognized that C.F. did not regularly use her hearing aids as they were loud and uncomfortable for her. The family also did not seek to have C.F. undergo surgery to provide a cochlear implant. Wolfinger understood these decisions. The decisions did limit C.F.'s ability to effectively learn. The District addressed C.F.'s situation through Wolfinger whose responsibility included providing the necessary equipment for C.F. to learn. The District however had no obligation to provide at school hearing aids which are deemed medical equipment. A FM system tower was used to provide C.F. with verbal assistance while attending school. The family at this time opposed the teaching of ASL. Wolfinger advised the tribunal there were three teaching modalities for those with severe hearing impairments. They are auditory, sign or total communication. C.F.'s instructions included total communication.

Ms. Wolfinger explained the advantages and risks of the cochlear implant, clarity at high frequencies but less valuable at low frequencies. There are also disadvantage regarding care of the surgical site and health implications. The advantages and disadvantages of the hearing aids include clarity at low frequencies, but loud and unclear at higher range frequencies. She explained the two types of FM systems, one of which was personal to the student but require use of the hearing aids, the other a tower whose disadvantages required close proximately to the device for maximum efficiency, and geometric loss of signal the further the distance. She acknowledged ASL as a modality but believed it inappropriate to start C.F. at this late stage in her education. C.F. had been exposed to total communication up until the parent's recent request for an out of district placement at Katzenbach School, and her existing knowledge of ASL was not adequate.

The tools alone do not serve to educate. There is a requirement to take full advantage of the different modalities that the student immerse herself in the modality. Wolfinger stated that either the hearing aids or ASL should be used as much of the student's waking hours as possible with the entire family participating. This is so the audio sensing can teach the student to differentiate the sounds being input. The constant repetition is important. In the case of ASL, the repetition of ASL signs is important. C.F.'s irregular use of the hearing aids and ASL all reduce the advantages of the constant repetitive learning.

Wolfinger acknowledged the District could supplement the present program with ASL instructions. She opined that an appropriate education had been provided C.F. Wolfinger noted that Katzenbach School would not provide any F.M. technology. Wolfinger expressed concern going exclusively sign would be going backward for C.F. She believes the life science modality is important to C.F. C.F. communicates without hearing aids, she uses her iPhone texts and emogies, iPad, some basic ASL, lip reading, and verbal communication. C.F. is socially accepted and has numerous friends. C.F. has successfully operated in a hearing environment, and a greater emphasis on improving her ASL will detract her from learning what the District believes are more important life skills, in the limited time she has until she enters society.

Amy Memeth (Memeth)

Ms. Memeth teaches C.F. She obtained her B.S. in Speech Language Pathology from Towson College. She is an employee of the District and has been with the District for over fifteen years. She has worked individually with C.F. once a week during the last school year. C.F.'s goals are improving her vocabulary and she is progressing meeting her IEP goals, slowly or satisfactorily. C.F. is a friendly student and very social, she is always smiling. She enjoys her group Speech and Language courses which this past year has been twice a week. The proposed IEP for the 2019-2020 school year Memeth expects to swap one group lesson with an additional individual lesson. C.F. communicates with her classmates well with her phone and iPad. Though during the year, due to updates with her iPad, she had to reprogram her contacts and images, which resulted in less use of the iPad. C.F. rarely uses her hearing aids. Memeth understands the mom believes the school lost the hearing aids. Memeth said C.F. uses some ASL but neither she nor C.F. is proficient in ASL. Memeth said that C.F.'s cognitive abilities hamper her ability to progress faster. Memeth acknowledge there is difficulty of communication with C.F. when C.F. raises a question not germane to the topic that is being taught. C.F.'s speech and language goals are directed toward vocabulary and understanding, not aural activities.

Kimberly Mooney, Ph.D. (Dr. Mooney)

Dr Mooney is a learning disability teacher, with specific expertise as a Teacher of the Deaf. She is deaf, though prior to age twenty-one she could hear. Her Doctorate is from Columbia University Teacher's College in Special Education with emphasis on teaching the Deaf. Her B.A. is in Psychology from Montclair State University where she graduated cum laude. Her certificates for teaching special education for the Deaf and Hearing Impaired she obtained from William Paterson College. She received her certificate as a Learning Disabled Teacher and Guidance and Counseling from Montclair State University. She received her certificate as a Teacher of the Deaf and Hearing Handicapped issued from Kean University. She learned ASL at age twenty-four. She operates and owns Assessment Counseling Education Services (ACES). She identified P-1, P-2, P-3, and P-4, all of which were accepted without objection into evidence. The District hired ACES, at the request of the parents to conduct an independent evaluation of C.F. The tribunal accepted Dr. Mooney as an expert in Special Education of the Deaf and Hearing Impaired, a Teacher of the Deaf and Hearing Handicapped and a Learning Disabled Teacher.

Dr. Mooney testified that the least restrictive environment (LRE) for deaf students differs from those not handicapped by the loss of hearing. The language disability requires direct communication. A deaf student has social needs, and self-esteem concerns. These factors need consideration to assist the deaf student to learn better. The ACES team consisted of Dr. Mooney, Dr. Romeo, a school psychologist who observed C.F. in class, and a Speech and Language Consultant, Ms. Katherine M. Simmons. Dr. Mooney reviewed the IEP, the audiogram, consulted with her colleagues, and interviewed the parents. Dr. Mooney testified C.F. prefers to sign; however, C.F. uses multiple abilities to communicate, eye contact, body language, iPad, occasionally hearing aids. C.F. does not have one intact language skill to communicate. Dr. Mooney testified that the Hamilton does not conform to LRE, because C.F. needs a different LRE. Dr. Mooney did not clearly testify what that need consists of. Dr. Mooney did claim that Hamilton's proposed, and actual program is not good for a deaf person. She opined that Hamilton does not offer an appropriate education for C.F. She opines that a school for the deaf is an appropriate school for C.F. and satisfies the LRE requirement.

Dr. Mooney's opinions were not based on interviews with the Hamilton staff, and appears more based on the parent interviews and their unhappiness with the program. Her opinion, P-4, reflects more of an advocacy for the parent's position than an independent analysis, the opinion states, they were engaged by the parents, not the district. She testified she did not observe C.F. in the classroom, but her colleague, Dr. Romeo observed C.F. in the classroom. Dr. Mooney identified Hamilton did not provide hearing aids, and C.F. did not use the hearing aids she had at home, as a pair had been lost and the parent's blamed the school and would not provide Hamilton, the new set once obtained.

Dr. Mooney questioned the testing scores as not applicable to a deaf student, as the testing is not designed for deaf students. She argued that C.F.'s intellectual ability was likely greater than her testing scoring due to this fact. Dr. Mooney claimed she could not state whether Hamilton made appropriate progress without looking at samples. She thinks there is a lack of support that her cognitive ability in the fifty-eight to sixty range is not accurate. Dr. Mooney opines that C.F. is limited because she has no language, and this is her primary impairment. Dr. Mooney claimed she did not have the necessary materials to determine if adequate progress is being made. C.F. has no auditory means of communicating with her peers. She lacks total communication.

Dr. Mooney does recognize the benefits that could be provided from use of the hearing aids. She answered on cross examination, "The more disabled the child, the more important the parents' cooperation is." There would be better receptive language with the use of the hearing aids. She did not completely address the life skills program but said she could not agree completely with it.

Jeanne Romeo, Ph.D. (Dr. Romeo)

Dr. Romeo is employed by the Montville School District as a School Psychologist. She has worked with them since 2003. She earned her Doctorate from Fairleigh Dickenson University in Psychology; she earned her Master's in Education from Long Island University; and her Bachelor of Science from Mount Saint Mary College in

Psychology. Since 2014, she has worked with ACES. She has worked with the training of students who are not verbal, but is not certified as a teacher of the deaf. The tribunal accepted her as an expert in School Psychology with a specialization in working with the Deaf and Hard of Hearing. She did not qualify as an expert in Special Education, although she has served as a child study team case manager at Montville. Dr. Romeo did testing of C.F. and observed her once for two hours at class in Hamilton. In connection with her opinion, she did review school records. She identified P-5, P-6, P-7, and P-8 which were introduced into evidence. Dr. Romeo believed the one observation sufficient to opine as to the appropriateness of Hamilton's program for C.F.

Dr. Romeo specifically testified to the facts, C.F. came late to the class and her iPad had to be obtained, she did not have hearing aids. She claimed there was no C.F. interaction in class and the lights were off for a slide presentation. As far as Romeo was concerned this indication provided all necessary information regarding the inadequacy of the program. She claimed she did not use the iPad in class. She failed to mention that she used her phone to communicate with the teacher and other students, as was previously testified to by other witnesses. Yet her report on P-7, specifically contradicts her verbal testimony. It states, "C's primary mode of communication was determined to be modified sign language... paired with technology (IPhone)." After the observation, despite an invitation to speak to the teacher, ask more questions or obtain more information, Dr. Romeo chose not to. Dr. Romeo concluded her opinion, Hamilton did not offer C.F. an appropriate education.

Dr. Romeo testified the parent did not know if the needs were being met, and her review was independent and impartial. She acknowledged knowing C.F. did not have hearing aids at school. She claimed there were two stories explaining the absence. She acknowledged reviewing documents, and on confronted with the IEP from March 2019, realized that she had to have known the parents' dissatisfaction with the program prior to her observation. Dr. Romeo claims she understood life science programs, she did not request to review the curriculum of the Hamilton program.

Dr. Romeo testified C.F. had no way to communicate in the class, and the teacher could not understand what she wanted. However, the documentation recognized various

modalities the student used to communicate. She acknowledged she could have stayed longer and asked more questions.

Dr. Romeo does support the relief the petitioner's request; however, her opinions provide little evidentiary support to this tribunal, that Hamilton is not providing a free appropriate public education for C.F. Her testimony is inconsistent with her report, and this tribunal will not accept her opinion other than as a net opinion, not supported by her observations, but rather designed to complement the parents' desires.

M.F.

M.F. is the mother of C.F. C.F. lives with the mom, her step-dad, and her two sisters. M.F. and C.F. are now taking private ASL lessons at Princeton Academy. M.F. testified Hamilton never offered C.F. ASL. M.F. testified the speech therapist at her grammar school started to teach C.F. ASL. M.F. testified she did not study sign till recently, as it has been harder to discuss questions C.F. has had.

M.F. testified she never saw C.F. use the iPad, she acknowledged at times C.F. would hide it when it came home. C.F. would on arrival home take her hearing aids out when she took her shoes off. C.F.'s step dad has to direct her to wear her hearing aids, as she doesn't listen to mom.

M.F. testified C.F. has no friends, that the teachers put names in C.F.'s iPhone but that C.F. only repeats the responses sent by others, and of late, there has been no communication from school classmates. M.F. stated that C.F. wants an apple watch phone, but she cannot afford it.

M.F. also pointed out that the school never took responsibility for the loss of the hearing aid, she had to replace them at an out of pocket cost of \$1,900. That is why she would not send the new hearing aids to school. She now testified to understand the importance of the hearing aid at school and home. M.F. works full time and is not at home in the morning to send C.F. to school with her hearing aids, her sisters usually pack her

up for school. As C.F. does not like the hearing aids, C.F. sometimes unpacked them, or the sisters forget to pack them.

M.F. testified she never got the opportunity due to her work to observe C.F. in class. M.F. denied there is bad blood with Hamilton and she likes the team. She just disagreed with them. She is now dedicated to the use of the hearing aids and ASL.

M.F. testified she never heard that the hearing aids were necessary for auditory training at home.

M.F. testified she liked the child study team's members; however, she could not get them to agree with her.

I have reviewed the various IEP's over the past few years and they indicate a well-adjusted liked and socially involved student with various hurdles to improve her overall educational proficiency. Hamilton's goals for C.F. are specific and progress is registered.

FACTUAL FINDINGS

1. C.F., is a sixteen-year-old independent, fashionable, socially aware and accepted student, with friends in the current placement. She currently resides in Hamilton Township, has multiple diagnoses, including cerebral palsy which affects her gait and balance, and is deaf. She is entitled to special-education services under the classification of multiply disabled.
2. C.F. presently uses multi-modalities for communication, including body language, limited ASL, text messaging, occasional use of hearing aids, multiple FM modalities with and without hearing aids, and auditory communication.
3. C.F. currently has limited ASL fluency do to the family's previous decisions to attempt to educate C.F. in an auditory and multi-modality to the minimization of ASL. Hamilton accommodated the parent's decision.

4. C.F. is reaching the end of her structured educational training. Hamilton's existing program for C.F. teaches life skills, important to C.F.'s success.
5. The current Hamilton multi-modal education plan for C.F. is the least restrictive environment. The transition to an exclusive ASL environment is not viewed as least restrictive.
6. The existing placement at Hamilton provides a free appropriate public education.

LEGAL DISCUSSION

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 purposes of the IDEA is “to ensure 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.” 20 U.S.C. § 1400(d)(1)(A). 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 through a uniquely tailored individualized education program (IEP) in the least restrictive environment. 20 U.S.C. §§ 1401(9)(D), 1412(a)(1); Honig v. Doe, 484 U.S. 305, 338 (1988). The responsibility to provide a FAPE rests with the local public-school district, which bears the burden of proving that a FAPE has been offered. 20 U.S.C. § 1401(9); N.J.A.C. 6A:14-1.1(d); N.J.S.A. 18A:46-1.1; see also G.S. v. Cranbury Twp. Bd. of Educ., 2011 U.S. Dist. LEXIS 44933, *6 (D.N.J. 2011) (New Jersey uniquely places the burden of proof and production on the school district).

In Endrew F. v. Douglas County School District RE-1, 137 S. Ct. 988, 1001 (2017), the United States Supreme Court construed the FAPE mandate to require school districts to provide “an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” The Court’s holding in Endrew F. largely mirrored the Third Circuit’s long-established FAPE standard, which requires

that school districts provide an educational program that is “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. (In re K.D.), 904 F.3d 248, 254 (3rd Cir. 2018) (quoting Ridley Sch. Dist. v. M.R., 680 F.3d 260, 269 (3rd Cir. 2012)). In addressing the quantum of educational benefit, the Third Circuit has 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. Andrew F., 137 S. Ct. at 1000–01; T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000); Ridgewood Bd. of Educ. v. N.E. ex rel. M.E., 172 F.3d 238, 247 (3d Cir. 1999), superseded by statute on other grounds as recognized by P.P. v. W. Chester Area Sch. Dist., 585 F.3d 727 (3d Cir. 2009); Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180, 182–84 (3d Cir. 1988). Hence, an appropriate educational program will likely “produce progress, not regression or trivial educational advancement.” Dunn, 904 F.3d at 254 (quoting Ridley, 680 F.3d at 269).

The FAPE requirement is not “a bad faith or egregious circumstances standard,” Ridgewood, 172 F.3d at 249, and, therefore, is not “abridged because the [school] district’s behavior did not rise to the level of slothfulness or bad faith.” Ibid. (quoting M.C. ex rel. J.C. v. Cent. Reg’l Sch. Dist., 81 F.3d 389, 397 (3rd Cir. 1996)). Nor is the child’s entitlement to special education dependent on the parents’ vigilance; rather, it is the school district’s responsibility “to ascertain the child’s educational needs, respond to deficiencies, and place him or her accordingly.” M.C., 81 F.3d at 397.

However, “although the IEP must provide the student with a ‘basic floor of opportunity,’ it does not have to provide ‘the optimal level of services,’ or incorporate every program requested by the child’s parents.” Ridley, 680 F.3d at 269. Hence, while the state must provide an education that offers significant learning, it need not “maximize the potential of every handicapped child.” Ibid. A court reviewing an IEP must determine whether it is “*reasonable*, not whether the court regards it as ideal.” Andrew F., 137 S. Ct. at 999. “A program need not and cannot guarantee a student’s academic progress.” S.C. v. Oxford Area Sch. Dist., 2018 U.S. App. LEXIS 31086, *6 (3rd Cir. 2018) (citing Andrew F., 137 S. Ct. at 999). Hence, the IEP must be “judged prospectively so that any

lack of progress under a particular IEP . . . does not render that IEP inappropriate.” Carlisle Area Sch. v. Scott P., 62 F.3d 520, 530 (3rd Cir. 1995).

The IDEA’s FAPE requirement also includes a mainstreaming component, requiring education in the least restrictive environment. S.H. v. State-Operated Sch. Dist., 336 F.3d 260, 265 (3rd Cir. 2003); 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.” S.H., 336 F.3d at 265 (quoting Carlisle, 62 F.3d at 535).

Is C.F.’s IEP developed by Hamilton reasonably calculated to provide L.B. with a FAPE in the least restrictive environment?

On C.F.’s return to the District from the Mercer County Special Services School District, the District, after consultation with the parent, proposed C.F.’s placement in the Multiply Disabled class at Hamilton Township High School. The parent raised the possibility of attendance at Katzenbach School; however, the school District raised concern about C.F.’s limited proficiency in ASL. Hamilton placed C.F. in the Multiply Disabled class. The parent brought this due-process petition.

There are at least two schools of thought for educating deaf students. One, as this is an auditory world, to educate deaf students to best fit into an auditory environment. Another, to educate deaf student with ASL to provide such a student with the best abilities to achieve under the circumstances of their hearing limitations. The parent here made a choice earlier in C.F.’s education, to discourage education with ASL. They now come near the end of the tenth grade, seeking to intensively train C.F. in ASL. C.F. has not been exposed to intensive ASL training. However, C.F. is in a program teaching her life skills and dealing with her auditory and physical limitations. This tribunal’s concern is a change of placement at this time to an intensive ASL environment will not be the least restrictive environment. Here limited proficiency in ASL, combined with the change of placement will be a substantial risk to C.F.’s life skills education.

The Supreme Court has recently clarified that to meet the substantive standard of a FAPE, a “school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Endrew F., 137 S. Ct. at 999; R.S. & M.S. v. Somerville Bd. of Educ., 2011 U.S. Dist. LEXIS 748, *29 (D.N.J. 2011). An appropriate program is one that is tailored to meet the unique needs of the student. Endrew F., 137 S. Ct. at 994 (quoting Rowley, 458 U.S. at 994). The Third Circuit has always had a heightened standard, holding that an IEP must provide a disabled child with “significant learning” and confer a “meaningful benefit.” Polk v. Central Susquehanna Intermediate Unit 16, 853 F.2d 171, 184 (3d Cir. 1988); see also Mary Courtney T. v. Sch. Dist., 575 F.3d 235, 242 (3rd Cir. 2009) (noting that a private placement is appropriate when it provides significant learning and confers meaningful benefit) (quoting Lauren W. v. DeFlaminis, 480 F.3d 259, 276 (3d Cir. 2007)). A placement at Katzenbach School would hopefully improve C.F.’s ASL proficiency; however, it will deprive C.F. of her existing environment, which has provided her educational as well as social benefits.

I **CONCLUDE** C.F.’s education at Hamilton’s multiple disability placement will provide a meaningful educational benefit to C.F.

I **CONCLUDE** that C.F.’s 2018–19 IEP offered by the District is reasonably calculated to provide C.D. with a FAPE in the LRE.

Education, however, is not an exact science, and unfortunately, parent’s desired placement cannot always be accommodated. The existing placement is reasonably calculated to enable her to make meaningful progress in light of her circumstances.

Petitioner appropriately utilized their due-process rights to challenge what she believed to be an inappropriate IEP. The parent’s actions in discouraging ASL education in the earlier years, and not diligently pursuing C.F.’s use in school of her hearing aids, contributed to reduce the efficacy of the Hamilton program and audio abilities. Hopefully, Hamilton and the parent will work together to not only improve C.F.’s ASL skills, but also to provide C.F. with her medical devices to take full advantage of the tools available at Hamilton. The experts have provided the parents with the knowledge of the importance of enforcing the use of the medical devices at home, so C.F. obtains the best advantage

of those devices. I **CONCLUDE** that petitioners' previous actions were un-cooperative with the District. While the parents now desire, an ASL exclusive school, I cannot conclude that such a placement would be in C.F.'s best interests in obtaining a FAPE in the least restrictive environment.

ORDER

Based on the above conclusions respondent's 2019 IEP provides a free appropriate public education and petitioners' petition is **DISMISSED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2019) 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 (2019). 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.

September 27, 2019
DATE

JOSEPH A. ASCIONE, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

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APPENDIX

WITNESSES

For petitioners:

M.F. mother
Kimberly Mooney, Ph.D., LDTC, LPC
Jeanne Romeo, Psy.D.

For respondent:

Isabelle Sutton, Hamilton Township
Marie Mahoney, Hamilton Township
Heidi Wolfinger, Hamilton Township
Amy Nemeth, Hamilton Township

EXHIBITS

For petitioners:

P-1 CV, Kimberly Mooney, Ph.D. LDTC, LPC
P-2 Mooney's Certificate-Disabilities Consultant
R-3 Mooney's Certificate-Teacher of the Deaf
P-4 ACES Report
P-5 CV, Jeanne Romeo, Psy.D.
P-6 Romeo's Psychologist, Certificate
P-7 Romeo's Evaluation
P-8 Romeo's Observation Report
P-15 E-mails between Mooney and Mooney

For respondent:

R-3 to	Various IEPs
R-6	
R-7	Audiological Report
R-8	IEP 2016/2017
R-9	Psychological and educational evaluations
R-10	IEP goals and progress reports
R-12	IEP 4/21/17
R-13	IEP 11/15/17
R-14	E-mail exchange
R-15	IEP 2/9/18
R-16	IEP 2/22/18
R-17	E-mail exchange
R-19	Evaluation 4/29/18
R-20	IEP 6/6/18
R-21	Correspondence 9/21/18
R-27	E-mail exchange
R-28	IEP 3/12/2019
R-31	Progress Report
R-41	CV Marie Mahoney
R-42	CV Amy Nemeth
R-47	CV Isabel Sutton
R-49	CV Heidi Wolfinger