

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 07537-17

AGENCY DKT. NO. 2017-26102

E.E. AND L.E. ON BEHALF OF K.M.,

Petitioners,

v.

**RIDGEFIELD PARK BOARD OF
EDUCATION,**

Respondent.

Catherine Reisman, Esq., for petitioners (Reisman Carolla Gran, LLP, attorneys)

Cherie L. Adams, Esq., for respondent (Adams, Gutierrez, Lattiboudere, LLC,
attorneys)

Record Closed: December 17, 2018

Decided: January 15, 2019

BEFORE **BARRY E. MOSCOWITZ, ALJ:**

STATEMENT OF THE CASE

Ridgefield Park provided K.M. with an individualized education program (IEP) for the 2015–16 school year that was appropriately ambitious in light of his circumstances. Did Ridgefield Park provide K.M. with a free appropriate public education (FAPE) for the 2015–16 school year? Yes. Under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 to 1482, and interpretive case law, a FAPE requires an IEP that is appropriately ambitious in light of the child’s circumstances.

PROCEDURAL HISTORY

On April 24, 2017, K.M.'s aunt and uncle, E.E. and L.E., filed a request for a due-process hearing through an administrative complaint with the Office of Special Education Programs (OSEP); on May 17, 2017, Ridgefield Park filed its answer to the complaint; and on May 30, 2017, OSEP transmitted the case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the Special Education Program, N.J.A.C. 1:6A-1.1 to -18.4.

On June 2, 2017, the case was assigned to me for hearing. On June 12, 2017, I held an initial prehearing telephone conference, and at a follow-up telephone conference on June 26, 2017, the parties agreed that respondent should file a motion for summary decision to resolve the statute-of-limitations issue as a threshold issue in this case. On August 25, 2017, Ridgefield Park filed its motion for summary decision.

On September 15, 2017, petitioners filed their opposition; on September 29, 2017, Ridgefield Park filed its reply; and on October 2, 2017, petitioners filed their sur-reply.

On November 28, 2017, I rendered my decision. I ruled that the known-or-should-have-known date is July 1, 2015 (the date petitioners learned of an alleged drop in general intellectual or cognitive ability), and not March 19, 2015 (when respondent implemented the IEP that petitioners claim violates the IDEA). Since I ruled that July 1, 2015, is the known-or-should-have-known date, I also ruled that petitioners filed their complaint within the statute of limitations contemplated by Congress in 20 U.S.C. § 1415(f)(3)(C), and understood by the Third Circuit in G.L. v. Ligonier Valley School District Authority, 802 F.3d 601 (3d Cir. 2015). Therefore, I ruled that Ridgefield Park was not entitled to summary decision at that time.

Just how far back the remedial period goes, I wrote, remained open for interpretation. I noted that Perry A. Zirkel, the esteemed professor emeritus of law and education at Lehigh University, argues that the appropriate approach is to delimit the

backward boundary to the reasonably determined start of the alleged violation. “Of Mouseholes and Elephants: The Statute of Limitations for Impartial Hearings Under the Individuals with Disabilities Education Act,” 35 J. Nat’l Ass’n Admin. L. Judiciary 305 (2015) at 19, <http://digitalcommons.pepperdine.edu/naalj/vol35/iss2/2>. With that in mind, I suggested that July 1, 2015, is that date as well, to encourage settlement, but left the parties to their proofs.

Petitioners, however, moved for summary decision instead. On December 22, 2017, petitioners filed their motion, and on April 6, 2018, I held the motion in abeyance, pending this hearing, and ruled in the meantime that the known-or-should-have-known date for the remedial period in this case is July 1, 2015. I also ruled that the IEP at issue is the IEP for the 2015–16 school year, and that the determination must first be made whether Ridgefield Park provided K.M. with FAPE for the 2015–16 year before any determination could be made whether petitioners are entitled to any compensatory education. In other words, I ruled that if the determination is made that Ridgefield Park did not provide K.M. with FAPE for the 2015–16 school year, then the determination would be made whether petitioners are entitled to compensatory education for that school year, not for time immemorial.

On May 18, 2018, the case proceeded to hearing. It continued July 11, and September 24, 2018. After the hearing, the parties submitted post-hearing briefs.

DISCUSSION AND FINDINGS OF FACT

Thomas Kraljic

Kraljic is the assistant superintendent in Ridgefield Park and the coordinator of Student Personnel Services. Previously, Kraljic served as the director of Special Services for Ridgefield Park. More important, Kraljic was directly involved in the drafting of the IEP that is at issue in this case.

Kraljic testified that Ridgefield Park anticipated in March 2015—during the drafting of the IEP—that K.M. would graduate from Ridgefield Park Jr./Sr. High School in June

2016. Kraljic specified that K.M. told him that he wanted to graduate in June 2016 and that his mother, M.M., told him that she wanted K.M. to graduate in June 2016. The plan was for K.M. to move to Florida to live with another aunt and work at Disney.

Kraljic identified the IEP at issue (P-9), and noted that M.M. consented to its implementation in March 2015. M.M. signed the IEP on March 19, 2015. It provided in-class resource or replacement language arts each day for forty-two minutes, speech-language consultation in a group three times a year for fifteen minutes, and counseling services one-on-one two times a month for twenty minutes each. It noted K.M.'s strengths ("[K.M.] is a very respectful young man who has made tremendous academic progress over his high school career") and M.M.'s concerns ("[M.M.] is concerned about her son's emotional well-being"). It also noted interventions that had worked ("An intervention that has helped is to contact his mother when task avoidance and incomplete work becomes an issue") and additional strengths and concerns ("[K.M.] is able to effectively communicate with his peers" and "[K.M.] is a compassionate boy who cares for others").

The school counselor recommended that counseling services be reduced because K.M. did not want to participate in the counseling sessions. The implication was that the counseling services were no longer necessary. Toward this end, the school counselor noted that K.M.'s language arts teacher reported that K.M. appeared much happier and more productive in class, and that his lower marks were due to his failure to complete assignments and his lack of confidence in his writing ability, not to any counseling issues.

Similarly, the school counselor noted that K.M.'s mathematics teacher reported that K.M. was a "good kid" who merely struggled to "keep up with the speed of note taking." The school counselor continued that K.M.'s mathematics teacher reported that K.M. tried hard, was not afraid to ask questions, worked well in groups, and completed his assignments. Indeed, the school counselor noted that K.M.'s mathematics teacher reported that K.M. was a positive influence in class, had improved throughout the year, and was on track to get a B in his class.

Likewise, the school counselor noted that K.M.'s social studies teacher reported that K.M. was a "great addition" to his class, that K.M. "always participated in a positive way," and that K.M. "rarely missed" an assignment. In fact, the school counselor noted

that K.M.'s social studies teacher reported that K.M. seemed to "really enjoy" history, so much so that his mother even brought up the possibility of K.M. entering a career that involves history. The only class where K.M. reportedly did not apply himself was science.

In their summaries, however, all subject-matter teachers were complimentary. All reported progress. None reported that his disability affected his ability to participate in special-education classes, and none reported regression in any subject matter or domain. His language arts teacher was especially complimentary and forthright:

[K.M.] is a pleasure to have in class. He is respectful and attentive. His peers sometimes frustrate him, but he handles himself well. In a very grown up way, he asked to be moved, and the issue was quickly resolved. [K.M.] struggles with his writing which can sometimes lack structure and content. However, he has come a long way from last year. [K.M.] writes in the middle of the page instead of following the red margins on the white lined paper. We have worked on this, and [K.M.] is aware of the issue. [K.M.] can find meaning and symbolism within a reading excerpt. He struggles to pull relevant quotes to apply to open ended responses. [K.M.] sometimes falls off the homework bandwagon, but he usually will pick it back up. [K.M.] should continue with English resource next year.

[P-9, page 4 of 13, Bates Stamp 0443.]

Post-secondary education was expressly noted, with a meeting to be planned with a transition coordinator for his senior year of high school. Employment after high school was also expressly noted. Finally, it was expressly noted that K.M. was fully capable of mastering all daily-living skills.

The IEP also contained goals and objectives in all subjects and listed modifications for success in each of those classes. The stated intent was to provide K.M. with "a high degree of structure and ample reinforcement, a low student-teacher ratio, individualized pacing of instruction, and the opportunity for close monitoring and immediate feedback." The curriculum was to be modified and the instruction reinforced, which could be accommodated in this special-education setting. All of this is reflected in the "Rationale for Removal from the General Education Setting" section of the IEP at P-9, page 10 of

13, Bates Stamp 0452. As such, Kraljic was certain that the IEP was reasonably calculated to provide K.M. with meaningful educational benefit in light of his needs and potential.

Kraljic further testified that during the 2015–16 school year, K.M.'s mother passed away, and that his aunt, E.E., told him that K.M. would be moving to Point Pleasant to live with her, but that an advocate had raised concerns about K.M.'s readiness for graduation. Kraljic explained that Ridgefield Park was firm in its belief that K.M. had met all graduation requirements based on its graduation policy (R-5), his school record (R-8), and his summary of performance (R-3), but would acquiesce to her demands and not graduate K.M., so he could continue high school in Point Pleasant and repeat his senior year there. Kraljic also explained that a vocational assessment had been performed in June 2016 (R-4), establishing that K.M. was a tactile learner, and recommending a vocational school where K.M. could work with his hands. Significantly, no party raised any concern about K.M.'s academic readiness to graduate from Ridgefield Park at that time.

Kraljic was a credible witness who provided careful testimony and measured responses on behalf of Ridgefield Park.

Melissa Sheldon

Sheldon is a special-education teacher at Ridgefield Park and serves as its reading specialist. She was also K.M.'s language arts teacher for his senior year in Ridgefield Park, the 2015–16 school year at issue in this case, and was intimately familiar with K.M.'s work-product throughout that school year. At the hearing, Sheldon testified that K.M. attended class regularly, participated fully, and completed tasks completely. In short, Sheldon was complimentary of K.M. and his work.

More pointedly, Sheldon expanded upon K.M.'s progress in her class. Referring to the curriculum guide for her class, English IV, which is also in the graduation policy (R-5), about twelve pages in, Sheldon testified that K.M. met the goals and objectives of the class and his IEP. Sheldon explained that the class uses a multisensory approach to education, and that she planned her lessons around the goals and objectives of the class

and the IEP. Moreover, Sheldon stated that she measured K.M.'s progress through all his work product (including his writing journal), through K.M.'s grades, and through her comments (including those at parent-teacher conferences). "If he didn't meet [his goals and objectives]," Sheldon said, "[K.M.] wouldn't graduate." Indeed, Sheldon asserted that K.M.'s writing sample, as contained in his educational assessment dated July 21, 2015 (P-12), which she reviewed in advance of the hearing, was consistent with the students in her class and was typical for students like K.M. On cross-examination, Sheldon both clarified and specified that she monitored his progress in terms of pseudoword decoding and word reading through his reading and writing journals.

Above all, Sheldon was complimentary of K.M. and proud of his ability to handle difficult books and difficult subjects. Sheldon testified that K.M. read *A Good Man is Hard to Find*, which Sheldon explained was honors reading, and that that K.M. did "very well" in that unit. Sheldon further explained that K.M. completed a research paper on *A Streetcar Named Desire*, and chose his thesis statement on one of several topics that she characterized as "heavy" or "intense": homosexuality, suicide, depression, domestic violence, and mental health. Sheldon stated that K.M. also read *Oedipus*, which she also characterized as "heavy" or "intense," and that she used a multisensory approach when teaching these topics and subjects. Moreover, Sheldon asserted that K.M. received a 91 on his final exam—which she emphasized was an indication of his progress and success in her class.

In addition, Sheldon testified that K.M. chose "gaming" for his career or vocational exploration and presentation. Sheldon explained that the assignment required an exploration of its salary and benefits as well as its quality of life. Sheldon stated that she had no concerns about K.M.'s independent life skills, noting that K.M. arrived on time to class, presented neatly, participated in class discussions, and interacted with his peers. Likewise, Sheldon noted that K.M. had friends in class and asserted that she saw no red flags about his behavior in class or with his interaction with his peers. In response to a comment that K.M.'s language arts teacher wrote in eleventh grade ("his peers sometimes frustrate him"), Sheldon asserted that she never saw it in her twelfth-grade class.

More expansively, Sheldon testified that she saw no red flags about his performance in class or his readiness to graduate. Referring to both his grades (R-1) and his progress reports (R-2), Sheldon explained that his grades were all passing grades (A's, B's, and C's) and that all comments were positive ("good work ethic/attitude," "working to capacity," and "courteous and cooperative"). In fact, the record reflects that the only negative comment for the fourth marking period was from the gym teacher, who wrote that K.M. was unprepared twice for class and not working to capacity.

In short, Sheldon was a very passionate and very persuasive witness on behalf of Ridgefield Park.

Stacy Puchalik

Puchalik is the school psychologist for Ridgefield Park, and the parties stipulated that she is an expert in school psychology. Puchalik evaluated K.M. during his senior year at Ridgefield Park at the request of his aunt, E.E. Her evaluation is dated May 25, 2016 (P-14). Puchalik noted that another school psychologist, Mary Gaestel, did an update, not a complete evaluation, on July 1, 2015 (P-11). Moreover, Puchalik noted that this testing was only two months after K.M.'s mother had passed away, and that K.M. was understandably depressed. Nevertheless, Puchalik stated that K.M. gave great effort and shared that he was hoping to get an A in language arts.

At the hearing, Puchalik highlighted her report. She testified that her evaluation was more comprehensive than Gaestel's, that K.M. was already living with his aunt, E.E., in Point Pleasant, and that he was taking a class in sociology, which changed his mind about becoming a history teacher. Puchalik stated that they discussed a transition program for K.M., and that K.M. was confident he could already do what would be taught. In short, Puchalik said that K.M. was "neither for nor against anything" and that he was "apathetic" in his affect. More significantly, Puchalik asserted that the reported IQ in 2015 was consistent with the reported general intellectual ability (GIA) score in 2005.

In her review of records, Puchalik wrote that a summary-of-performance meeting had already been held, that K.M. was scheduled to graduate at the end of the school year,

and that K.M. was debating whether to attend community college or seek job placement through the Division of Vocational Rehabilitation Services (DVRS).

During her interview, K.M. said that he no longer wanted to attend community college and shared with Puchalik that he might want to work in Disney.

Returning to the IQ from 2015 and the GIA from 2005, Puchalik testified that K.M. was only seven years old in 2005 when the testing took place. Puchalik explained that abilities grow at different paces and that the GIA was not necessarily a great indicator of cognitive ability at that young age. Meanwhile, Puchalik noted that the test that was administered in 2015 was a different test. Yet they do correlate, Puchalik said.

Puchalik explained that the Woodcock-Johnson test, which was administered in 2005, doesn't test math, which was an area of weakness for K.M., and that the Wechsler test, which was administered in 2015, doesn't test phonemic awareness, which was an area of strength for K.M. Puchalik pointed out that these tests are normed for age, which meant that other students were simply progressing faster than K.M., not that his GIA or IQ had necessarily changed. Plus, there were the emotional factors related to his mother's longstanding illness and eventual passing, which could slow development. It was hard to pinpoint, she said.

Regardless, Puchalik testified that the difference in GIA or IQ raised no questions about the program or programming for K.M. because K.M. was already receiving modified, intensive instruction. Above all, K.M. was succeeding in the program. So, given the functional data, which was primary for Puchalik, she saw no reason to modify the program. Thus, Puchalik concluded that the program was, and had always been, appropriate.

Still, Puchalik noted in her summary that K.M. had been referred for reevaluation for transition purposes at the request of his aunt, E.E., that K.M. was accustomed to relying on others to make decisions for him, and that K.M. should be empowered to make more decisions for himself:

Summary

[K.M.] is a 12th grade student at RPHS who was referred for reevaluation for transition purposes at the request of his aunt, Mrs. [E.]. [K.M.] has been receiving Special Education and Related Services since elementary school under the category Communication Impaired.

[K.M.] presented as a depressed young man who appeared apathetic about his future. He is currently grieving the recent loss of his mother and is adjusting to the many changes in his life. Despite his personal struggles, [K.M.] was respectful, cooperative, and put forth good effort throughout the evaluation.

On the WAIS-IV, [K.M.] obtained a Full-Scale score of 76, placing him in the Borderline Range of Cognitive Ability. This suggests that he performed better than or equal to 5 percent of same age peers. [K.M.]'s verbal ability, nonverbal reasoning skills, and processing speed fell in the Low Average Range, whereas, his working memory fell in the Borderline Range. Significant strengths and weaknesses were not defined.

[K.M.] is currently at a crossroad[s] in his life. It appears that [K.M.] may be accustomed to relying on others to make decisions on his behalf. Though [K.M.] has [a] supportive network of people who care about him and want to guide him in the right direction, he should be empowered to become more involved in the process of planning for his future. Making informed decisions is critical and [K.M.] should thoroughly explore all of his post-secondary options.

[P-14, Bates Stamp 0464.]

In her recommendations for transition planning, Puchalik wrote that community college, vocational school, and job placement all remained viable options for K.M., as did a return to high school to participate in a life-skills program, although she did note her concern that a return to high school could negatively impact his self-esteem:

Recommendations for Transition Planning

Initially, [K.M.] expressed an interest in attending a community college. Although [K.M.] recently changed his mind about

Bergen Community College, it remains a viable option. Based on [K.M.]’s cognitive ability and current academic performance in the general education curriculum, he can be successful in a college setting as long as he is motivated, chooses a major and career conducive to his interest and skill level, and he receives appropriate accommodations. Accommodations such as extra time and tests and quizzes, the use of a calculator, tape recorded lectures and tutoring can be beneficial.

A vocational/trade school such as Eastwick College should also be explored. Such schools offer a variety of degree, diploma, and certification programs with opportunities for apprenticeships, internships, and job placement. Since [K.M.] has expressed an interest in wood shop and is currently maintaining an A average in his Home Improvement class, a vocational/trade school may be a terrific option.

Another plausible option may be the Division of Vocational Rehabilitation Services (DVRS). DVRS may be helpful to [K.M.], especially since he is undecided about a career path. Some of the services that DVRS provides include: vocational assessments, counseling, job placement, and educational and vocational training.

Lastly, [K.M.] has the option to remain in high school and attend the transition/life skills program. Transition programs offer a comprehensive life skills education in the areas of daily living, occupational preparation, and social skills. Whether or not a transition program is appropriate for [K.M.] is questionable since [K.M.]’s daily living skills appear to be within age expectation and he has been able to function independently throughout his high school career. With that being said, [K.M.] may benefit from a transition program, as long as the curriculum is geared toward his specific needs and skillset and he is educated with children who are not disabled, to the maximum extent appropriate (New Jersey Administrative Code, Chapter 14; 6A; 14-4.2(a)(1)). Careful consideration must be given when placing any student in a more restrictive environment such as a transition program, ensuring that potential gains outweigh potential harmful effects. Harmful effects for [K.M.] may include loss of self-esteem and minimal education benefit if he is not challenged by the curriculum and is not exposed to peers of similar ability level with whom he can establish satisfactory relationships with. Therefore, it would be imperative for [K.M.] to investigate several programs before making a decision.

In sum, [K.M.] is likable young man with the potential to lead a happy and successful life. Although he is grieving and has moments of darkness, his future is bright and full of opportunities.

[P-14, Bates Stamp 0464–65.]

Regarding the vocational assessment from 2016, Puchalik testified that she reviewed it and agreed with its summary, including the assessment that K.M. is a tactile learner who enjoys history and woodshop and wishes to pursue a career in carpentry, construction, and the like:

Summary

[K.M.] is an 18-year-old senior at Ridgefield Park Junior/Senior High School. [K.M.] described himself as a shy and quiet person. Some of the things [K.M.] listed as being his favorite are basketball, football, video games, pop music, Nascar, and baseball. Over his high school career [K.M.] has enjoyed history and woodshop classes most. In summarizing vocational assessment results, it has been established that [K.M.] is a tactile learner, who wishes to pursue a career in carpentry, construction, handyman, etc. [K.M.] would benefit from attending a vocational school where these skills can be learned. Some examples of such schools are Ho-Ho-Kus Vocational School, and Ocean County Vocational Technical School (OCVT offers apprenticeship program) in these areas of study. [K.M.] should be encouraged to participate in community activities and events to assist him in developing friendships and engaging in meaningful interactions with peers.

[R-4.]

Puchalik further testified that she reviewed the proposed IEP for the 2016–17 school year in Point Pleasant, attended the IEP meeting where K.M.'s transition and IQ were discussed, and explained to K.M.'s aunt, E.E., that K.M. was not cognitively impaired, and did not have adaptive-functioning problems. Puchalik stated, however, that the child study team did, in fact, recommend a life-skills program, but since a life-skills program was recommended, no academic goals were needed. Nevertheless, petitioners

never revealed whether K.M. ever received any such life-skills programming in Point Pleasant during the 2016-17 school year.

Finally, Puchalik testified that the triennial evaluations had been waived because the functional data, that is, K.M.'s performance in school, warranted their waiver. Puchalik explained that additional testing is always helpful but not always necessary, and that the programming is based on the student's needs, not the student's classification. Indeed, Puchalik reiterated and concluded in her professional opinion and in no uncertain terms that the IEP for the 2015–16 school year was appropriate.

Puchalik was a credible witness who provided competent testimony on behalf of Ridgefield Park.

Michelle Gonzalez

Gonzalez is the supervisor of special education and social studies at Ridgefield Park and is its learning disabilities teacher consultant (LDTC). Gonzalez has worked in Ridgefield Park for twenty years, and the parties stipulated that she is an expert in learning disabilities as an LDTC. Gonzalez performed an educational assessment of K.M. on July 21, 2015, and wrote a report (P-12).

Like Puchalik, Gonzalez testified that she had no concerns about the program or programming for K.M. because K.M. was already receiving modified, intensive instruction and was succeeding in the program. Gonzalez had noted at the outset that K.M. only needed English and gym to graduate and that he had even elected to take a college-level sociology class—which he passed. So, given the functional data, namely the formal and informal assessments, such as the Present Levels of Academic Achievement and Functional Performance (PLAAFP), she too saw no reason to modify the program, and she too thought that the program was, and had always been, appropriate. In fact, Gonzalez stated that she was “shocked” and “appalled” by the filing of the due-process petition in this case because she thought K.M. had met the graduation requirements and was in fact ready to graduate and transition from high school. Indeed, Gonzalez thought

it was a disservice to K.M. not to graduate him with his friends and said she felt sorry for him.

In her report, Gonzalez summarized that K.M. was being reevaluated as part of his transition program, that he had obtained below-average scores in most of his subjects, and that he would benefit from extended time on tests and quizzes, access to tutoring services, and the use of a calculator and recorder for math and lectures—should he find himself in a post-secondary academic setting.

Like Sheldon, Gonzalez was a very passionate and very persuasive witness on behalf of Ridgefield Park.

Daniel DaSilva

DaSilva is a neuropsychologist specializing in pediatric neuropsychology who testified on behalf of petitioners. The parties stipulated that he is an expert in neuropsychology. DaSilva performed a neurological consultation on January 25, 2017, and wrote a report (P-20). Ostensibly, the report was to assess K.M.'s then-current neurocognitive, educational, and psychological functioning to assist in his diagnosis, treatment, and education planning. It was not to determine the appropriateness of the IEP for the 2015–16 school year in Ridgefield Park, which was problematic, not only for this expert, but also for the other experts petitioners introduced, because they too merely assessed or evaluated K.M.'s then-current functioning in their respective disciplines for planning purposes, and not to determine the appropriateness of the IEP for the 2015–16 school year. As such, I gave their opinions little weight.

More pointedly, DaSilva only evaluated K.M. after he had left Ridgefield Park at the end of the 2015–16 school year, and only observed him when he was in Point Pleasant for the 2016-17 school year, in the Ocean County Vocational School and its extended twelfth-grade program. DaSilva had also never met K.M. before he observed him. Moreover, DaSilva never spoke to K.M.'s mother or anyone in Ridgefield Park about K.M. either before, during, or after his observation and report.

This was true of the other experts petitioners introduced at the hearing as well. They too only evaluated K.M. after he had left Ridgefield Park, and they too had never met K.M. before they observed him. More significantly, they too never spoke to K.M.'s mother or anyone in Ridgefield Park about K.M. either before, during, or after they wrote their reports.

At the hearing, DaSilva highlighted his report. He testified that he thought K.M. could have done more in school throughout his academic career based on K.M.'s potential as DaSilva measured it. Functionally, DaSilva reported that the instructor in the cabinet-making class stated that K.M. came across as "rather immature" for his age but was otherwise doing "very well." More specifically, DaSilva reported that the instructor said that K.M. did well with basic "do-now tasks" at the start of class, which included basic math questions, and that he was able to do these math problems independently, even though he asked a lot of questions. Moreover, DaSilva reported that the instructor asserted that everyone in the class was immature, so K.M. fit right in, and that K.M. was in fact able to answer the math problems correctly.

In addition, DaSilva reported that K.M. smiled as he interacted with a classmate and was proud of himself for being praised for having done "remarkably well" on making an end-table with a custom inlay. DaSilva further reported that K.M. later worked on a project with two other classmates and that they all worked well together. Later still, DaSilva reported that K.M. was ready for a new project since he had just finished another one—one that he had started later than everyone else in the class yet was the second one finished.

In his summary-and-impressions section, DaSilva reported that K.M.'s neurocognitive profile suggests areas of significant cognitive delay with scores spanning the severely-impaired to normal ranges. There was normal functioning in the aspects of attention, visual reasoning, verbal expression, verbal and visual learning and memory, and reading comprehension. On the other hand, there were more notable difficulties in the aspects of executive functioning, including output modulation, deductive reasoning and planning, and inhibition. According to DaSilva, this profile was consistent with dyslexia.

In addition, DaSilva reported that this profile exists in the presence of a significant psychological overlay characterized by anxiety and depression. Coupled with weaknesses in judgment and reasoning, DaSilva continued, significant psychosocial deficits were also present. Thus, K.M. presented with “a rather complex profile.” DaSilva surmised that if managed appropriately, K.M. could be capable of more robust learning, but at this time the development of life skills was more critical.

Accordingly, in his recommendations section, DaSilva wrote that K.M. is a candidate for continued special-education services through a post-graduate program, but that his neuropsychological profile suggested that he could benefit from a more aggressive educational program.

DaSilva continued that comprehensive transition planning was also necessary.

Regarding the post-graduate program, DaSilva wrote that K.M. required close supervision and guidance to manage what he believed was K.M.’s poor decision-making and reasoning abilities. In addition, DaSilva wrote that K.M. could benefit from a program with greater emphasis on developing life skills—including the development of more functionally adaptive reasoning and writing skills through a research-based language program. Meanwhile, DaSilva wrote that K.M. would continue to benefit from vocational training such as the cabinet-making class in which he was already participating. Nevertheless, DaSilva wrote that K.M. would continue to require close guidance and assistance for organization and time management.

DaSilva also wrote that K.M. would benefit from psychotherapy to address his anxiety, depression, and impulse control. Likewise, DaSilva wrote that K.M. remained a candidate for continued psychiatric consultation for medication management and monitoring. Finally, DaSilva wrote that K.M. should be a candidate for referral to DVRS and that E.E. and L.E. were candidates for home-based behavioral supports.

Parenthetically, it was revealed during the hearing that K.M. no longer lives with his aunt and uncle, E.E. and L.E., in Point Pleasant but with another aunt in Florida as originally planned.

Returning to his testimony, DaSilva testified that the psychological evaluation that Ridgefield Park performed in 2015 was not comprehensive enough, noting that it was inadequate for its assessment of social and emotional development, and specifying that Ridgefield Park should have employed other methods of assessment, which could have been used to capture additional spheres.

Yet on cross-examination, it was revealed, as Puchalik had noted during her testimony, that the psychological evaluation in 2015 was meant to be an update of records for transition from high school, not a comprehensive evaluation.

Still, DaSilva testified that the IEP was inappropriate, that it “fell short,” and that he expected a broader range of services across all classes, but he never specified what those services should have been, either at the hearing or in his report. In fact, his report lists no IEP that he reviewed—although he did say at the hearing that he reviewed the IEP for the 2016-16 school year in preparing his report. Nevertheless, his report only states what could be beneficial to K.M. in the future, as opposed to what should have been provided to K.M. in the past.

Similarly, when confronted with his recommendations at the hearing, DaSilva acknowledged that he did not know if Point Pleasant had implemented any of them, effectively frustrating any current assessment of any remedial measures than can or should be undertaken by Ridgefield Park—or even Point Pleasant for that matter.

In short, DaSilva did not have the contemporaneous experience with K.M. to evaluate his needs at the time the IEP was proposed. He was simply too far removed from the date of the IEP to evaluate its appropriateness. Moreover, DaSilva could not determine whether any of the purported deficits were attributable to Ridgefield Park as opposed to Point Pleasant.

Jeanne Tighe

Tighe is a speech-and-language pathologist and a certified dyslexia practitioner who testified on behalf of petitioners. The parties stipulated that she is an expert in both

speech-and-language pathology and language-based learning disabilities. Tighe performed a language evaluation on January 31, 2017, and wrote a report (P-18). Ostensibly, the report was to assess K.M.'s then-current verbal skills, social-communication skills, and reading-and-writing skills so she could make recommendations for an appropriate program in the future. Again, it was not to determine the appropriateness of the IEP for the 2015–16 school year. As such, I give her opinion little weight.

To repeat, Tighe evaluated K.M. after he had left Ridgefield Park, never met K.M. before she observed him, and never spoke to K.M.'s mother or anyone in Ridgefield Park about K.M. either before, during, or after she wrote her report.

At the hearing, Tighe highlighted her report. She noted that no evaluations were conducted from October 2015 to July 2016, and implied that triennial evaluations should have been conducted during this time, but revealed on cross-examination that she was never made aware by petitioners that K.M.'s mother had waived them.

More pointedly, Tighe focused on her recommendations but never learned whether Point Pleasant implemented any of them during the 2016–17 school year, just as DaSilva had failed to do concerning his recommendations, again effectively frustrating any current assessment of any remedial measures that can or should be undertaken, and she too could not determine whether any of the purported deficits were attributable to Ridgefield Park as opposed to Point Pleasant.

Regarding her recommendations, Tighe recommended “daily structured, systematic, evidence-based literacy instruction” for K.M. to improve his basic competencies in reading and writing, and she strongly recommended that K.M. work with a teacher certified in Orton-Gillingham or one of its derivative programs. K.M. specified that individual goals and objectives should be developed for decoding and encoding to improve functional independent reading and that those goals and objectives should be revisited and adjusted in response to his progress monitoring. Tighe added that the instruction should incorporate both decoding and encoding, and that they should be

introduced at the same time, so the reading and spelling skills K.M. would develop could reinforce one another.

Second, Tighe recommended that K.M. receive coaching to make stronger connections between and among sentences, so he could better understand the meaning of paragraphs and narratives.

As a corollary, Tighe recommended that K.M. learn “metacognitive reading strategies” before, during, and after reading, so he could learn how to monitor his own comprehension.

Fourth, Tighe recommended that K.M. practice his functional literacy skills with texts that are at, and not above, his instructional reading level, which Tighe measured as somewhere within the fourth-grade range. “While [K.M.’s] age and interest level need to be considered,” she wrote, “it is also imperative that he have plentiful opportunities to practice functional literacy skills with texts that are accessible to him.” Thus, Tighe underscored the need for the program to strike this balance between texts that are “appropriately mature and meaningful” to K.M. yet are at his “appropriate instructional level.”

But Tighe never wrote or testified what she believed was the appropriate instructional reading level for K.M.

Fifth, Tighe recommended social-skills interventions in as natural a setting as possible, so K.M. could develop new skills and generalize them in a variety of settings. Tighe specified that K.M. should first work with an adult trained in social-communication skills, such as a speech-language pathologist, to develop new skills, and then with a peer to practice those skills. According to Tighe, K.M. had needed social-skills training for a long time but had never received any—which was at odds with all of his educators in Ridgefield Park who had interacted with K.M. on a daily basis.

Sixth, Tighe recommended functional goals for social thinking so K.M. could improve his “theory of mind”—the ability to identify different emotional states in oneself and understand that others have different perspectives, desires, and beliefs.

Seventh, Tighe recommended that K.M. work with a speech-language pathologist two to three times per week for thirty minutes per session to address his spoken-language comprehension and expression in academic and social contexts. Tighe added that once K.M. acquires new language skills, he should have the opportunity to practice them outside individual therapy in as natural a setting as possible. Tighe also suggested some specific targets for such speech-language therapy.

Eighth, Tighe recommended that K.M. receive coaching to improve his executive functioning, so he could become more independent. Tighe suggested that it be integrated throughout his school day, including the academic and vocational portions. Tighe specified his task initiation and persistence, his independent problem solving, his capacity to work independently and flexibly, and his dependence on adults as areas in need of improvement.

Ninth, Tighe recommended that K.M.’s teachers and instructors provide clear and consistent instructions with appropriate prompting, so K.M. could be more productive and independent. Tighe continued that K.M.’s teachers and instructors must make sure that they gain and secure K.M.’s attention before they speak and then make sure that K.M. understands them by requiring K.M. to repeat or rephrase their instructions. Tighe added that K.M. should be encouraged to ask for instructions to be repeated or clarified as needed.

Finally, Tighe recommended that K.M. continue to receive extended-school-year services, so K.M. could make greater use of the time left for him to receive special education and related services at public expense.

Although Tighe did not conduct her evaluation or write her report to provide an opinion about the appropriateness of the IEP for the 2015–16 school year, she provided an opinion at the hearing, which I allowed her to share. Tighe noted that K.M. had limited

skills in reading, writing, and communication, yet was only given support for language arts and not for any other subjects. According to Tighe, K.M. also needed support in math and science.

Yet, Tighe was apparently unaware that K.M. only needed English and gym (and did not need math and science or any other subject or class for that matter) to graduate.

Nevertheless, Tighe explained K.M.'s deficits as outlined in her report, opined that the goals and objectives were inappropriate because they targeted the general-education curriculum, and not a modified-education curriculum, and asserted that K.M. did not progress in a meaningful way.

Tighe further explained that K.M. never ended up meeting the goals and objectives, which targeted the general-education curriculum, because K.M. never developed the skills to meet them.

Indeed, Tighe explained that K.M. never really learned to read and write on par with his IQ, and that it was this failure that adversely affected his cognitive ability. Tighe stated that K.M.'s IQ was in the average range in 2005, but was noticeably diminished by a standard deviation in 2015, and that K.M. never learned the life skills she outlined in her report, including written expression. Referencing page 14 of her report, Tighe asserted that K.M. was not so disabled that his written expression should have been in the <0.1 percentile, and illustrated her point by stating that the writing sample on page 16 is what she would expect from a second grader. As such, Tighe believed that K.M. needed significantly more special education than a replacement class for language arts and significantly more intervention than a speech-language consultation for fifteen minutes three times a year.

When asked what an appropriate program would have looked like for the 2015–16 school year, Tighe answered that K.M. needs help with his social and oral language skills and with his reading and writing skills, and that his IEP should have had a replacement class or in-class support for all his academic subjects, not just language arts, especially since the IEP, on page four, under the heading “How the Student’s Disability Affects his

or her Involvement and Progress in the General Education Curriculum,” states that K.M.’s disability affects his ability to participate in all general-education settings.

The interventions, however, concerned Tighe more. Tighe asserted that K.M. needs basic literacy skills. Toward this end, Tighe recommended an instructional period or one-on-one instruction to address decoding and encoding; speech-and-language services, either one-on-one or in a group, one to two times per week; and social-skills training in a group. In short, Tighe believed that social-skills training, one-on-one with a counselor, was insufficient.

But Tighe, like DaSilva, did not have the contemporaneous experience with K.M. to evaluate his needs at the time the IEP was proposed. Plus, her assertion that K.M.’s IQ in 2005 was noticeably diminished in 2015 was at odds with Puchalik’s determination that K.M.’s GIA or IQ had not necessarily changed, and Puchalik’s notation that K.M. still received intensive instruction even if K.M.’s GIA or IQ had changed. Moreover, Puchalik as a school psychologist, and not Tighe as a speech-and-language pathologist and certified dyslexia practitioner, was the one with the requisite expertise to make such an assertion. Again, Tighe never even opined what she believed was the appropriate instructional reading level for K.M.

More disconcerting, however, is the fact that these recommendations read as the components of an optimal program, not an appropriate one, and that no evidence exists that the absence of these components, whether one, some, or all, renders the IEP for 2015–16 a nullity.

Finally, Tighe’s overreliance on only one writing sample to assert that K.M. needed significantly more education than a replacement class for Language Arts is conjecture at best. Again, Tighe had evaluated K.M. after he had left Ridgefield Park and had never spoken to K.M.’s mother or anyone in Ridgefield Park, including Sheldon, who was his Language Arts teacher, about K.M. and his performance and capabilities in school. As such, Tighe’s opinion is underwhelming and unpersuasive.

Dana Henning

Henning is a specialist in dealing with people with developmental disabilities, and testified on behalf of petitioners. Through Dana Henning Training Programs, Henning provides training seminars, in-service training programs, and programmatic consultations and evaluations for families, providers, schools, and government agencies. She also offers case assessment and intervention recommendations. According to her resume, Henning specializes in the areas of challenging behavior, transition planning, autism spectrum disorder, and the dual-diagnosis of mental illness and developmental disability. Henning also states that she specializes in the areas of aging, life-skills instructional support for persons with severe handicaps, and school-and-community inclusion. As such, Henning was offered as an expert in the following three areas: (1) the development of special-education programming and IEP's, (2) transition programming, and (3) programming to address behaviors.

Ridgefield Park objected to the proffer that Henning be accepted as an expert in the first area, but not the second or third, and I overruled its objection, based on Henning's education, training, and experience, which is detailed in her extensive resume.

Nevertheless, I note that Henning is not certified in New Jersey in any area of education, let alone special education, and has never worked for any school district anywhere. I also note that Henning performed no evaluation or assessment of K.M. She merely reviewed the evaluations and assessments of K.M. from 2005 and the IEP for the 2015–16 school year in Ridgefield Park. More significantly, I note that her expertise in developing special-education programming and IEP's is primarily for the transition-programming component in those IEP's, and that I considered her opinion in light of this limited expertise.

At the hearing, Henning testified from her report (P-22). In her report, Henning wrote that the IEP was inappropriate for K.M. because it did not set forth a challenging educational program that was individualized to meet K.M.'s needs based on his performance and ability levels. She then listed the reasons why. On direct examination, Henning referenced the IEP to provide greater specificity.

Yet Henning did not really know what K.M.'s needs or abilities were because she had performed no evaluations or assessments, had merely reviewed the evaluations and assessments from 2005, and never bothered to speak to anyone at Ridgefield Park or Point Pleasant about K.M. She also failed to review any documents from Point Pleasant. So, what followed was a critique of how well (or how poorly) the IEP for the 2015–16 school year was written. What was always left unanswered, however, were her lingering questions—questions that lingered because she never sought their answers. If Henning did not understand the IEP as written, then the IEP was inappropriate, and she never even considered the fact that the IEP was readily understood by its authors, including K.M.'s mother who consented to it, and the professional staff in Ridgefield Park who implemented it.

First, Henning wrote that the PLAAFP was not specific, objective, or measurable. On direct examination, Henning explained that the two-and-one-half pages of summaries by professional staff were insufficient because they were merely descriptive and neither objective nor measurable. On cross-examination, Henning was more pointed, critiquing that the summaries did not contain any numerical measures to use as a baseline.

Second, Henning wrote that the educational program was not specifically designed to meet K.M.'s needs in language arts. On direct examination, Henning explained that K.M. had been reading at only a first- or second-grade level, and that the educational program did nothing to improve K.M.'s skills. Henning continued that his report card was “meaningless” because it merely stated that K.M. did “good work” and gave “good effort.” Once again, Henning chided it as merely descriptive and not numerical.

Yet Henning, like Tighe, neither wrote nor testified what she believed was the appropriate instructional reading level for K.M.

Similarly, Henning further testified that the final exam was “meaningless.” Henning explained that it was merely multiple choice and that it was unclear to her exactly what was taught and how it was measured. Then on cross-examination, Henning admitted that she spoke to no one at Ridgefield Park to understand exactly what was meant by what was written in the report card or contained in the final exam, as she had already

admitted that she had spoken to no one at Ridgefield Park about anything pertaining to K.M.

Third, Henning wrote that the educational program was not specifically designed to meet K.M.'s needs in mathematics. On direct examination, Henning explained that K.M. did not know how to manage his money, that he did not even possess basic math skills, and that the educational program did nothing to improve K.M.'s basic skills. Henning added that she saw no goals or objectives for either basic or functional math in the IEP.

To illustrate her point, Henning testified that the woodshop teacher in the vocational program told her that K.M. struggled with math, including the addition and subtraction of fractions, and that such a deficit was an impediment to his work.

Yet DaSilva, who testified on behalf of petitioners, had testified that the woodshop teacher had told him that K.M. did "very well" in the class. To repeat, DaSilva reported that the woodshop teacher had told him that K.M. had done very well with "do-now tasks," which included basic math; that K.M. was able to do math independently and correctly; and that K.M. had done "remarkably well" on his project. In fact, DaSilva noted that K.M. had finished his project ahead of all but one other student in the class.

Fourth, Henning wrote that there was no transitional assessment, no transitional plan, and no transitional education. Henning specified that the transitional assessment should have assessed K.M.'s independent-living skills, post-secondary educational needs, or vocational skills in terms of his then-present level of skill and interest, and that the transitional assessment should have assessed K.M. across a broad base of vocational options. Similarly, Henning specified that the transitional plan should have been individualized to prepare K.M. for a seamless transition to adulthood. Moreover, Henning specified that the transitional education should have provided K.M. with life-skills instruction in financial management, personal safety, safety in the community, and safety online, as well as vocational-skills instruction. In doing so, Henning was describing an "ideal" transition plan for any and all students, not an "appropriate" transition plan for K.M.

On direct examination, Henning explained that the “Statement of Transition Planning” section was inadequate because it did not contain what the form requires. For example, Henning specified that the “Statement of the Student’s Strengths, Interests, and Preferences” section included no specific strengths, interests, and preferences (even though it stated that K.M. was exploring his interests in all his high-school courses and expressed an interest in history), that the “Courses of Study” section contained no basis for the inclusion of the physical education and Language Arts courses (even though it had been stated that K.M. only needed those two courses to graduate), that the “Related Strategies and/or Activities” section contained an answer she did not understand (even though it stated that Ridgefield Park would collect additional information regarding K.M.’s desire for post-secondary school education), that the “Statement of Consultation” section was unclear to her (even though it expressly stated that K.M.’s needs did not indicate the need for consultation with the DVRS or any other agency at that time but that K.M. would be referred to the DVRS nonetheless for an intake), and that the “Measurable Postsecondary Goals” section was neither specific nor measurable nor objective (even though it did state that K.M. was exploring his post-high-school choices for education, specifically in the area of history, and that he was also exploring his post-high-school choices for work).

Referencing the “Transition Services” section of the IEP, Henning further explained that K.M. should have begun meeting with the transition coordinator when he was fourteen, not when he was a senior as the IEP planned. Henning, however, never said why. Moreover, she never addressed whether this alleged delay would have changed any of her recommendations.

What Henning did instead was explain more generally that Ridgefield Park should have made sure that K.M., as a student preparing for college, knew how to organize himself, and that Ridgefield Park should have provided him with goals and objectives about taking the necessary entry tests, for example, just as it should have done for every student in the school district.

Indeed, on cross-examination, Henning explained that her objection to K.M.’s transition planning is really her standing objection to every student’s transition planning,

as it is her belief that every student should begin meeting with a transition coordinator when he or she is fourteen years old, not later.

Regardless, Henning overlooked the fact that those who completed the “Statement of Transition Planning,” and those who would implement it, understood it as written. She also disregarded the fact that she never bothered to seek clarification about anything in the statement or the plan for herself. Why she never did so was never asked or explained.

More significantly, Henning revealed on cross-examination that she was unaware of the fact that Ridgefield Park later provided another IEP for K.M., so he could transition to Point Pleasant and into a transition program through Point Pleasant. Perhaps Henning would have known this if she had bothered to talk to anyone in Ridgefield Park or Point Pleasant about K.M. As such, Henning had no idea what transition planning was to be implemented in Point Pleasant, whether any of it was implemented, and whether any of it had worked.

Similarly, Henning was dismissive of the vocational assessment that Ridgefield Park performed on June 15, 2016, and unaware of the fact that K.M. later changed his mind about wanting to go to college and becoming a history teacher.

Fifth, Henning wrote that it was unclear to her whether K.M. made any progress between 2013 and 2015 because it seemed to her that the goals and objectives were repeated from 2013 to 2015. She also wrote that she thought they were not individualized for K.M. because she thought they were beyond his capabilities. For example, Henning wrote that K.M. did not have the cognitive ability to achieve the goal and objective, “Draft a thesis statement and support/defend it through highly developed ideas and content, organization, and paragraph development independently 80% of the time,” because his reading-comprehension skills were on a first-grade level.

On direct examination, Henning explained that she thought the goals and objectives were not individualized because she thought they merely matched the general curriculum and would be the same for any and every student. Henning added that she did not understand how the percentage would be measured. For example, Henning

posited whether K.M. would need to meet only 80 percent of the goal and objective 100 percent of the time or 100 percent of goal and objective only 80 percent of the time?

Henning, of course, did not speak to anyone at Ridgefield Park, including K.M.'s language arts teacher, Sheldon, who was also his reading specialist, to ask how she measured the goals and objectives in her class. Henning also did not speak to Sheldon to learn just how proud she was of K.M. and his ability to handle difficult books and difficult subjects. As Sheldon testified, she measured K.M.'s progress through his work product, through his grades, and through her comments, which she shared with his mother. Sheldon also testified that she saw no red flags about K.M.'s performance in her class, his behavior with his peers, or his readiness to graduate. Perhaps Henning would have been pleasantly surprised here too if she had spoken with Sheldon about K.M. and his progress in her class.

Henning might also have been pleasantly surprised if she had spoken with Puchalik to learn about K.M. and his progress in his program. Puchalik testified that she had no concerns about the programming K.M. had been receiving given the modified and intensive instruction in language arts, and the fact that the functional data demonstrated that K.M. was succeeding in his program. Puchalik further testified that she was the one who had made recommendations for transitional planning, and that community college, vocational school, and job placement had remained viable options—as did a return to high school to participate in a life-skills program. Indeed, Puchalik testified that she had reviewed the vocational assessment that Ridgefield Park had performed on June 15, 2016, and that she agreed with its summary, including the assessment that K.M. is a tactile learner who enjoys history and woodshop and wished to pursue a career in carpentry, construction, and the like. Moreover, Henning would have learned from Puchalik had she spoken with her that the proposed IEP for the 2016–17 school year memorialized the fact that K.M. would not be graduating from Ridgefield Park, and that the child study team had recommended a life-skills program for K.M. in Point Pleasant. Reasonable people can disagree about transition planning, but they must first know the circumstances surrounding the transition before they make recommendations for it.

Sixth, Henning wrote that K.M. was classified as “communication impaired” but his IEP did not provide intensive skill development in communication. On direct examination, Henning explained that the “Special Consideration” section of the IEP contained no special consideration for his communication impairment. According to Henning, K.M. needed special consideration given his classification, and she did not understand why he was not given any.

But once again, this is mere speculation. Henning conducted no assessments and no evaluations, and she spoke with no one at Ridgefield Park or Point Pleasant. This is also not her area of expertise. She may have expertise in developing special-education programming and IEP’s, but it is primarily in developing special-education programming and IEP’s for transitions and behaviors, as previously noted. In other words, she has no expertise to comment about what special consideration those who are communication impaired need. If she had only conducted an assessment or evaluation, or at least spoken to someone at Ridgefield Park to understand K.M. better, I would have given her opinion greater weight.

For example, if Henning had spoken to Gonzalez, the supervisor of special education at Ridgefield Park and an LDTC, Henning would have learned that Gonzalez, just like Puchalik, had no concerns about the programming K.M. had been receiving, given the modified and intensive instruction and the functional data, namely, the formal and informal assessments, including the PLAAFP, which demonstrated that K.M. was in fact succeeding in his program.

Seventh, Henning wrote that the IEP did not address K.M.’s “behavior.” As Henning writes, the IEP notes that K.M. did not always do his homework, yet the only plan the IEP had in place was that his teachers were to call his mother, a plan his mother and the other members of the IEP team had devised. According to Henning, the IEP should have included an assessment and plan to teach K.M. to be more motivated to do his homework.

On direct examination, Henning simply said that this plan was not a good one, evidencing nothing more than a difference of opinion. Ridgefield Park, together with

K.M.'s mother, had decided that calling K.M.'s mother to make her aware that K.M. was not doing his homework was the motivation for K.M. to do his homework in the first place, and Henning does not know whether it was effective because she never bothered to contact anyone to find out. If she had bothered to contact anyone, she could have learned from Kraljic, the assistant superintendent and coordinator of pupil personnel services, that the intervention had worked in the past.

Eighth, Henning returned to her criticism of the course of study for K.M. Henning wrote that the IEP did not prepare K.M. to transition to adulthood because his reading comprehension was only at a first-grade level, yet he was offered English, algebra, foreign language, biology, geometry, math, chemistry, and physics without any special education or related services. Henning continued that the IEP provided no interagency linkages, postsecondary goals, or transition services, including no access to postsecondary educational or vocational options.

But as an expert primarily in developing transition plans in IEP's, as opposed to the educational plans in IEP's, I have trouble, once again, accepting as fact her criticism of the educational plan in this case, given her limited expertise, and thus, give her opinion little weight.

On direct examination, Henning explained that the IEP stated in the "How the Student's Disability Affects his or her Involvement and Progress in the General Education Curriculum" section that "K.M.'s disability affects his ability to participate in all general education settings," yet only listed physical education and English as courses of study in which he would receive special education and related services. Still, Henning acknowledged on direct examination that this section was still unclear to her and that she did not fully understand why K.M. was receiving special education in only one academic subject. The answer, once more, was that K.M. only needed these two courses to graduate, something Henning never bothered to learn. Then, on cross-examination, Henning admitted that K.M. did not even stay in Point Pleasant until he was twenty-one to receive additional educational services, and that she never even considered the psychological evaluation Puchalik performed on May 25, 2016.

All Witnesses

Together, I **FIND** that Kraljic, Sheldon, Puchalik, and Gonzalez were credible witnesses who provided reliable testimony that the IEP for the 2015–16 school year was reasonably calculated to provide K.M. with significant learning and meaningful educational benefit in light of K.M.'s individual needs and potential, that is, that the IEP was appropriately ambitious in light of those circumstances, and that the IEP did so in the least-restrictive environment. As Kraljic testified, K.M. and his mother planned on having K.M. graduate in June 2016, his subject-matter teachers all reported progress, and transition planning for employment after high school was expressly noted. To be sure, K.M.'s IEP contained goals and objectives in all subjects with attendant modifications for success in those classes, and K.M. ultimately achieved success in those classes, as he met all graduation requirements.

Likewise, as Sheldon testified, K.M. attended class regularly, participated fully, and completed tasks timely. In addition, Sheldon testified that K.M. met the goals and objectives of her class and his IEP, and that she measured his progress through all his work product. Indeed, Sheldon was effusive about K.M. and his successful completion of his requirements.

Puchalik for her part, testified that she evaluated K.M., that he was on track to graduate in June 2016, that his GIA or IQ had not necessarily changed, and even if it had, he had received the modified, intensive instruction any change in GIA or IQ would have required. In fact, Puchalik advised against a return to high school. Moreover, Puchalik had explained that K.M. was not cognitively impaired, that he did not have adaptive-functioning problems, and that she merely recommended some life-skills programming.

Finally, Gonzalez testified that she too had assessed K.M., that she too had no concerns about the program or programming for K.M., and that she too believed that K.M. had in fact succeeded in the program. Like Kraljic, Gonzalez asserted that K.M. had met all the graduation requirements and was ready to transition from high school. To underscore, Gonzalez was shocked that K.M. would not be graduated.

Although DaSilva, Tighe, and Henning were credible witnesses, I **FIND** that none provided reliable testimony. None had evaluated or assessed K.M. at or near the time the IEP for the 2015–16 school year was proposed; none had evaluated or assessed K.M. to determine the appropriateness of the IEP for the 2015–16 school year; none had even met K.M. when K.M. was in Ridgefield Park; and none consulted with any of his educators from Ridgefield Park about anything. They did not even know that K.M. only needed language arts and gym to graduate. In short, the purpose of their evaluations and assessments was to detail and explain what K.M. needed to ready himself for his transition from Point Pleasant to future employment, and none could distinguish or differentiate what was supposedly a failure or deficit of Ridgefield Park as opposed to what would have been a failure or deficit of Point Pleasant.

Some of their testimony and reporting was also contradictory. For example, DaSilva reported that K.M. did well with basic math questions, could solve basic math problems independently, worked well with others, and finished his projects relatively quickly. DaSilva also reported that K.M. was capable of more robust learning, but the development of his life skills was more critical. Accordingly, DaSilva reported that K.M. was a candidate for continued special-education services.

Yet DaSilva did not report that Ridgefield Park did not provide appropriate services. Indeed, Ridgefield Park had offered continued services, but K.M. left Ridgefield Park for Point Pleasant, expressly for those services. If K.M. needed better or additional services above or beyond what he was receiving in Point Pleasant, then that is a question for Point Pleasant, not Ridgefield Park.

Likewise, Tighe never learned if Point Pleasant implemented any of her recommendations during the 2016–17 school year.

Similarly, Henning admitted that she is not certified in New Jersey in any area of education, has never worked for any school district anywhere, and is focused primarily on transition planning, but never learned whether K.M. received any such programming in Point Pleasant.

As such, I simply cannot rely on the opinions DaSilva, Tighe, or Henning gave, either together or apart, that the IEP for the 2015–16 school year was not reasonably calculated to provide K.M. with significant learning and meaningful educational benefit in light of K.M.’s individual needs and potential, and repeat that the IEP for the 2015–16 school year was reasonably calculated to provide K.M. with significant learning and meaningful educational benefit in light of K.M.’s individual needs and potential, that is, that the IEP was appropriately ambitious in light of those circumstances, and that the IEP for the 2015–16 school year did so in the least-restrictive environment.

CONCLUSIONS OF LAW

FAPE

This case arises under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 to 1482. One purpose of the Act 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). This “free appropriate public education” is known as FAPE.

Another purpose of the Act is to assist states in the provision of FAPE. See 20 U.S.C. § 1400(d)(1)(C). Toward this end, a state is eligible for assistance if the state has in effect policies and procedures to ensure that it will meet the requirements of the Act. 20 U.S.C. § 1412(a). In New Jersey, such policies and procedures are set forth in the State statute, special schools, classes, and facilities for handicapped children, N.J.S.A. 18A:46-1 to -55, and the implementing regulations, special education, N.J.A.C. 6A:14-1.1 to -10.2. See *Lascari v. Bd. of Educ. of the Ramapo Indian Hills Reg’l High Sch. Dist.*, 116 N.J. 30, 34 (1989).

The primary issue in this case is whether respondent failed to provide K.M. with FAPE for the 2015–16 school year.

The Act defines FAPE as special education and related services provided in conformity with the IEP. 20 U.S.C. § 1401(9). The Act, however, leaves the interpretation of FAPE to the courts. See Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999). In Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 203 (1982), the United States Supreme Court held that a state provides a handicapped child with FAPE if it provides personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. The Court reasoned that the Act was intended to bring previously excluded handicapped children into the public education systems of the states and to require the states to adopt procedures that would result in individualized consideration of and instruction for each child. Rowley, 458 U.S. at 189.

Reasonably Calculated

Yet, the Act did not impose upon the states any greater substantive educational standard than would be necessary to make such access to public education meaningful. Rowley, 458 U.S. at 192. In support of this limitation, the Court quoted Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania, 334 F. Supp. 1257 (E.D. Pa. 1971), and 343 F. Supp. 279 (1972), and Mills v. Board of Education of District of Columbia, 348 F. Supp. 866, 876 (D.D.C. 1972). Rowley, 458 U.S. at 192. The Court reasoned that these two cases were the impetus of the Act; that these two cases held that handicapped children must be given access to an adequate education; and that neither of these two cases purported any substantive standard. Rowley, 458 U.S. at 192–93. The Court also wrote that available funds need only be expended “equitably” so that no child is entirely excluded. Rowley, 458 U.S. at 193, n.15. Indeed, the Court commented that “the furnishing of every special service necessary to maximize each handicapped child’s potential is . . . further than Congress intended to go.” Rowley, 458 U.S. at 199. Thus, the inquiry is whether the IEP is “reasonably calculated” to enable the child to receive educational benefits. Rowley, 458 U.S. at 206–07.

Significant Learning and Meaningful Benefit

The Third Circuit later held that this educational benefit must be more than “trivial.” See Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180 (3d Cir. 1988). Stated otherwise, it must be “meaningful.” Id. at 184. Relying on the phrase “full educational opportunity” contained in the Act, and the emphasis on “self-sufficiency” contained in its legislative history, the Third Circuit inferred that Congress must have envisioned that “significant learning” would occur. Id. at 181–82. The Third Circuit also relied upon the use of the term “meaningful” contained in Rowley, as well as its own interpretation of the benefit the handicapped child was receiving in that case, to reason that the Court in Rowley expected the benefit to be more than “de minimis,” noting that the benefit the child was receiving from her educational program was “substantial” and meant a great deal more than a “negligible amount.” Id. at 182. Nevertheless, the Third Circuit recognized the difficulty of measuring this benefit and concluded that the question of whether the benefit is de minimis must be answered in relation to the child’s potential. Id. at 185. As such, the Third Circuit has written that the standard set forth in Polk requires “significant learning” and “meaningful benefit”; that the provision of “more than a trivial educational benefit” does not meet that standard; and that an analysis of “the type and amount of learning” of which a student is capable is required. Ridgewood, 172 F.3d at 247–48. In short, such an approach requires a student-by-student analysis that carefully considers the student’s individual abilities. Id. at 248. In other words, the IEP must confer a meaningful educational benefit in light of a student’s individual needs and potential. See T.R. ex rel. N.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 578 (3d Cir. 2000).

Appropriately Ambitious

In Endrew v. Douglas County School District, 137 S. Ct. 988 (2017), the United States Supreme Court returned to the meaning of FAPE. The Court explicated that while it had declined to establish any one test in Rowley for determining the adequacy of the educational benefits conferred upon all children covered by the Act, the statute and the decision point to a general approach: “To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress

appropriate in light of the child's circumstances." 137 S. Ct. at 999. Toward this end, the IEP must be "appropriately ambitious" in light of those circumstances. 137 S. Ct. at 1000.

The Court continued that a student offered an educational program providing merely more than de minimis progress from year to year could hardly be said to have been offered an education at all, and that it would be tantamount to sitting idly until they were old enough to drop out. 137 S. Ct. at 1001. The Act demands more, the Court asserted. "It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." Ibid.

Thus, in writing that the IEP must be "appropriately ambitious in light of the child's circumstances," the Court sanctioned what has already been the standard in New Jersey: The IEP must be reasonably calculated to provide significant learning and meaningful benefit in light of a student's individual needs and potential.

Least-Restrictive Environment

An IEP must not only be reasonably calculated to provide significant learning and meaningful benefit in light of a student's needs and potential, but also be provided in the least-restrictive environment. See 20 U.S.C. § 1412(a)(5)(A). To the maximum extent appropriate, children with disabilities are to be educated with children without disabilities. Ibid. Thus, removal of children with disabilities from the regular-education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. Ibid. Indeed, this provision evidences a "strong congressional preference" for integrating children with disabilities in regular classrooms. Oberti v. Bd. of Educ. of Clementon Sch. Dist., 995 F.2d 1204, 1214 (3d Cir. 1993).

To determine whether a school is in compliance with the Act's mainstreaming requirement, a court must first determine whether education in the regular classroom with the use of supplementary aids and services can be achieved satisfactorily. Id. at 1215. If such education cannot be achieved satisfactorily, and placement outside of the regular classroom is necessary, then the court must determine whether the school has made

efforts to include the child in school programs with nondisabled children whenever possible. Ibid. This two-part test is faithful to the Act's directive that children with disabilities be educated with nondisabled children to the maximum extent appropriate and closely tracks the language of the federal regulations. Ibid.

Accordingly, a school must consider, among other things, the whole range of supplemental aids and services, including resource rooms and itinerant instruction, speech and language therapy, special-education training for the regular teacher, or any other aid or service appropriate to the child's needs. Id. at 1216. "If the school has given no serious consideration to including the child in a regular class with such supplementary aids and services and to modifying the regular curriculum to accommodate the child, then it has most likely violated the Act's mainstreaming directive." Ibid. Indeed, the Act does not permit states to make mere token gestures to accommodate handicapped children, and its requirement for modifying and supplementing regular education is broad. Ibid.

To underscore this point, the Third Circuit has emphasized that just because a child with disabilities might make greater academic progress in a segregated special-education classroom does not necessarily warrant excluding that child from a general-education classroom. Id. at 1217.

This Case

Since I found that the IEP for the 2015–16 school year was reasonably calculated to provide K.M. with significant learning and meaningful educational benefit in light of K.M.'s individual needs and potential, that is, the IEP was appropriately ambitious in light of those circumstances, and that the IEP did so in the least-restrictive environment, I **CONCLUDE** that Ridgefield Park provided K.M. with a FAPE under the IDEA and interpretive case law for the 2015–16 school year, that petitioners are not entitled to any compensatory education for that school year, and that their petition for due process should be dismissed in its entirety.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the petition for due-process hearing in this case is **DISMISSED**.

This decision is final under 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 thinks that this decision is not being fully implemented with respect to a program or services, this concern should be communicated in writing to the Director, Office of Special Education Programs.

January 15, 2019

DATE

BARRY E. MOSCOWITZ, ALJ

Date Received at Agency

January 15, 2019

Date Mailed to Parties:
dr

January 15, 2019

APPENDIX

Witnesses

For Petitioners:

Daniel DaSilva
Jeanne Tighe
Dana Henning

For Respondent:

Thomas Kraljic
Melissa Sheldon
Stacy Puchalik
Michelle Gonzalez

Exhibits

Joint:

- P-1 Pediatric Neurologic Consultation by Damon Fellman dated April 25, 2005
- P-2 Cognitive Learning Evaluation by Deborah Ann Weyland performed April 29, April 30, and May 7, 2005
- P-3 Speech Language Assessment by Linda Klein dated October 18, 2005
- P-4 Reevaluation Evaluation Plan (Waived) dated October 2, 2008
- P-5 Reevaluation Evaluation Plan dated March 16, 2011
- P-6 Reevaluation Evaluation Plan Waiver dated March 14, 2012
- P-7 Parents Rights in Special Education revised September 2012
- P-8 Invitation for Annual Review dated February 23, 2015
- P-9 IEP for 2015–16 school year signed March 19, 2015
- P-10 Cover letter dated March 31, 2015, enclosing IEP for 2015–16 school year
- P-11 Psychological Evaluation by Mary Gaestel dated July 1, 2015
- P-12 Educational Assessment by Michele Chiarello dated July 21, 2015
- P-13 Cover letter dated July 23, 2015, enclosing Educational Assessment and Psychological Assessment

- P-14 Psychological Evaluation by Stacy Puchalik dated May 25, 2016
- P-15 IEP for 2016–17 school year dated June 20, 2016
- P-16 Student Transfer Verification Form dated June 2016
- P-17 Parents Rights in Special Education revised August 2016

- R-1 Report Cards for 2015–16 school year
- R-2 Progress Reports for 2015–16 school year
- R-3 Meeting Attendance Sheet dated February 12, 2016, together with Summary of Performance dated February 12, 2016

Petitioners:

- P-18 Comprehensive Language Evaluation by Jeanne Tighe dated January 31, 2017
- P-19 Curriculum vitae of Jeanne Tighe undated
- P-20 Neuropsychological Consultation by Daniel DaSilva dated March 11, 2017
- P-21 Curriculum vitae of Daniel DaSilva undated
- P-22 Report of Dana Henning dated April 30, 2018
- P-23 Curriculum vitae of Dana Henning undated
- P-24 Not in Evidence
- P-25 Not in Evidence
- P-26 Position Statement of American Speech-Language-Hearing Association undated

Respondent:

- R-4 Vocational Assessment by Patricia Comgalton dated June 15, 2016
- R-5 High School Graduation Policy dated February 2017
- R-6 Curriculum vitae of Stacy Puchalik undated
- R-7 Curriculum vitae of Michele Chiarello undated
- R-8 Secondary School Record dated May 17, 2018
- R-9 Final Exam for English 4 dated June 2016