

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 09422-17

AGENCY DKT. NO. 2017 26285

K.M. AND D.M. ON BEHALF OF H.M.,

Petitioners,

v.

RIDGEWOOD VILLAGE

BOARD OF EDUCATION,

Respondent.

Beth Callahan, Esq., for petitioners (Callahan & Fusco, attorneys)

David B. Rubin, Esq., for respondent

Record Closed: September 17, 2018

Decided: September 20, 2018

BEFORE **KIMBERLY A. MOSS**, ALJ:

STATEMENT OF THE CASE

Petitioners, K.M. and D.M. on behalf their minor child H.M., requested a due process hearing because they allege the 2016-2017 and 2017-2018 IEPs by Board of Education of Ridgewood (Ridgewood or District) for H.M. did not provide him with a free and appropriate public education (FAPE).

PROCEDURAL HISTORY

The matter was transferred to the Office of Administrative Law (OAL) as a contested matter on July 5, 2017. Hearings were conducted on January 30, 2018, February 23, 2018, March 6, 2018, March 27, 2018, April 18, 2018, and September 17, 2018. I closed the record on September 17, 2018.

FACTUAL DISCUSSION

TESTIMONY

Danielle Wood

Danielle Wood (Wood) is a supervisor for secondary education in Ridgewood. She has a Master's degree in Special Education. She has certifications in special education and teacher of the handicapped. She also has a supervisor's certification. She has been employed by Ridgewood since 2003.

Wood did not have any part in developing the 2016-2017 or 2017-2018 IEPs for H.M. In May 2016, petitioners were concerned with the goals and objectives and reduced minutes for related services in the proposed IEP. H.M was going from elementary school to middle school in September 2016. She worked to update the goals and objectives including when the multi-sensory reading (MSR) would begin and how long it would be. MSR takes in all of the senses. It can include an Ortin Gillingham (OG) instructor. Petitioners were concerned because they could no longer pay for an OG private tutor for H.M.

The 2015-2016 IEP for H.M. provided 225 minutes of MSR per week in five weekly sessions of forty-five minutes. The 2016-2017 IEP provided 160 minutes of MSR in four weekly sessions of forty-minutes. The Benjamin Franklin Middle School (Franklin) was the middle school where H.M. was assigned. At Franklin the students had foreign language and selective English in addition to language arts. Petitioners wanted H.M. to take a writing class with a teacher instead of the English selective.

The 2016-2017 IEP provided for H.M. to have: resource replacement language arts in a small group with a special education teacher, resource in class math, social studies and science, as well as resource program support. The resource program support is a small group with a special education teacher that supports the academic skills that the students are mastering. At Franklin the classes are fifty-seven minutes. There are rotating classes.

The due process petition was filed in June 2016. The stay-put was the fifth-grade program. During the pendency of this matter the stay-put required Franklin to provide H.M. with the equivalent of his 2015-2016 IEP. This was challenging because H.M. was going from elementary school to middle school.

There were emails between the attorneys in this matter determining what H.M.'s stay-put schedule would be for 2016-2017. The resource program minutes were reduced to accommodate the writing class. The MSR had an Orton Gillingham (OG) teacher, Julie Harmon as a supplemental instructor for H.M. H.M. received supplemental writing in a class with Sharon Hanson where he was the only student. These changes were not incorporated into the IEP. In June 2016 there was an offer of a one half of the year writing class in the place of the English selective as well as the additional forty minutes of MSR.

When Wood reviewed H.M.'s present levels in June 2016, she agreed that writing class was something they could try. When he was in elementary school H.M. shared an aide. This was replaced at the middle school by Special Education teacher in class support or a Special Education class. At the time of the 2016-2017 IEP meeting, the petitioners stated that H.M. experienced tremendous growth in the past six months.

The resource program at Franklin addresses reading and writing. Reading and writing was being addressed by the IEP. MSR is addressed in the IEP. Fluency is covered in the MSR class.

Mariann Gelenius

Mariann Gelenius (Gelenius) is a Learning Disability Teacher Consultant (LDTTC) and a case manager at Franklin. She has a certificate in elementary education and Master's degree in special education. She became a certified LDTTC in 2015.

Gelenius attended the 2016-2017 IEP meeting to become familiar with H.M.'s case and for the parents to become familiar with Franklin. She was not involved in the drafting of the 2016-2017 IEP. At the meeting, petitioners were concerned with the difference in what was offered at the elementary school and what was offered at Franklin.

Gelenius became aware that she would be H.M.'s case manager in September 2016. At that time, she received emails that attempts were being made to comply with the stay-put. Some of the classes in the 2015-2016 IEP were not offered at Franklin. The stay-put had to follow the last IEP that the petitioners signed, which was the 2015-2016 IEP. Gelenius does the master schedule for Special Education. She did not put H.M.'s schedule into the master schedule because she was out due to a death in her family. However, when she returned H.M.'s schedule was put into the master schedule.

MSR services had to be contracted with someone out-of-district because Franklin did not offer them. H.M. would have MSR at 2:00p.m. He would be taken out of gym, band, and the resource program for MSR. H.M. was the only student in the MSR class. Supplemental writing had not previously been offered at Franklin. Instead of electives, H.M. was to report to the writing class. He missed activities that occurred in the school because they occurred on Wednesday afternoons and he had MSR at 2:00p.m.

Gelenius observed H.M. in class and checked on his progress with his teachers. She had monthly meetings with petitioners going over H.M.'s subjects and his scores. Prior to the meetings, she would speak to the teachers and go over H.M.'s gradebooks and assignments. There were no meetings for December 2016 or February 2017 with the parents. Gelenius was very familiar with H.M.

The 2017-2018 IEP was not implemented because of the litigation. Stay-put was in place. Gelenius does not know if H.M. was receiving outside services during the 2016-2017 school year. At the May 17, 2017, IEP meeting, petitioners expressed concern about how H.M. was doing. Previously, they had not expressed any concern to her. Prior to the May 17, 2017, she reviewed H.M.'s file, the stay-put, information from the teachers, records, and documentation. The teacher's information was consistent with what she knew about H.M. through her observations. Hanson believed that H.M. could move from replacement English to a collaborative class.

The 2017-2018 IEP provided H.M. with in class support math, science, and social studies. These classes were general education classes, taught by a general education teacher with a Special Education teacher in the class to make sure the IEP was being followed. The 2017-2018 IEP did not offer an MSR or writing class for H.M.

Linda Auld (Auld) wrote an Educational Evaluation of H.M. for petitioners. Auld observed H.M. at Franklin in October 2016. Some of Auld's recommendations were taken into account in the 2017-2018 IEP. Auld's recommendation for direct instruction in phonetic decoding multi-syllable words was not followed because H.M. had MSR for the school year and had mastered many of the goals. Her fluency recommendation was used by keeping H.M. in small group English class. Her recommendation regarding spelling irregular words was followed and he was kept in small group reading class. H.M.'s weak spelling skills and difficulty copying were taken into account along with other factors to keep him in the resource program class. He was progressing with math. Auld's recommendation for assistive technology were not strongly considered because all of the students have a Chromebook with read and write app for Google. In addition, he could speak to the computer and it would type out what was said. Teenage students are embarrassed to have support in general education class. They would be more likely to use the supports in a small group. The 2017-2018 draft IEP did not offer MSR. Parents did not address MSR at the May 2017 IEP meeting.

Gelenius was present for Auld's program observation. Auld's testing was accurate and her observations were fair. She does not dispute the factual portion of Auld's program observation report. She disagrees with Auld's commentary. Silent

writing was not done for comprehension, but for writing style. Auld did not talk to the teacher during her observation. She disagrees with Auld's commentary on H.M.'s English. Auld states that H.M has average writing skills, but H.M. has difficulty with grammar and editing. Auld did not observe H.M. in the general education English class.

In the 2016-2017 school year, H.M had classes for eight periods. In two of those periods, H.M. is the only student in the class because Franklin did not previously offer those classes. Early in the school year H.M. wanted to participate in one of the schools Wednesday events, but he couldn't because he had to attend MSR. In the summer of 2016 and 2017 H.M. was in an ESY/MRS reading program that was paid for by the District. He made reasonable progress.

In the sixth grade H.M. was progressing on his goals and objectives. He mastered most of the MSR goals. He was progressing in writing, reading, and resource goals. His writing could be addressed in a general education class with strategies to reach the goals. H.M. has developmental dyslexia.

The 2017-2018 IEP is appropriate. H.M. did not need MSR or a separate writing class. MSR and writing could be done in a small group. In the small group, H.M. would get less one-on-one time with the teacher. The IEP does not have a fluency goal or a fluency program. H.M. has a weakness with fluency but it does not impact him throughout the day. He did not need an individual writing class. There was no reading or writing specialist present at the IEP meeting.

Writing is H.M.'s greatest area of weakness. He also has a weakness in reading but it is not significant enough to require an individual program. H.M. progressed to the advanced level in MSR. As the 2016-2017 school year progressed H.M. did not need MSR. His teachers stated that he was doing well in the MSR program. H.M. can maintain the reading curriculum like his typical peers. At some point in the 2016-2017 school year, Gelenius became aware that H.M. had private OG tutoring.

At the end of the 2016-2017 school year, H.M.'s reading level was appropriate for his grade level. Gelenius has never taught MSR to students with dyslexia.

Sharon Hanson

Sharon Hanson (Hanson) has been a special education teacher with the Ridgewood Board of Education since 1987. She has a New Jersey certification of teacher of the handicapped.

Hanson was assigned to teach H.M. writing in September 2016. He was the only student in the class. She followed the 2015-2016 IEP and worked on errors in capitalization, punctuation, and the writing process with H.M. The class would meet four times per week, except one week it would be three times per week. The writing program for H.M. included revision, editing, spelling rules, and writing topics. His writing skills progressed during the school year. The one-to-one instruction did not hurt H.M. She became aware that H.M. was receiving private tutoring. In the beginning of the year his test scores were thirty percent. At the end of the year his test scores were eighty percent. The class session was fifty-seven minutes. Hanson saw growth in H.M. It is best for him in a less restrictive environment. He did not master all the goals of the 2016-2017 IEP. Some of the writing goals were covered in replacement English class. Revising a draft using a variety of strategies was difficult for H.M. Hanson does not recall if H.M. independently edited work.

Hanson was not at the 2017-2018 IEP meeting. Her input into the IEP was in the writing class. Hanson cannot say that H.M. needed one-to-one instruction. She told the Child Study Team (CST) that H.M. had shown growth and was working independently.

H.M. can get writing skills in his other classes, he does not need a separate individual writing class. Hanson saw Auld's report. Auld's observation was accurate. Hanson focused on grammar and editing with H.M. because that was what the IEP required. An SRA tool was used to help him with new vocabulary words. She did not focus on reading comprehension.

H.M. was not writing at grade level at the end of the school year but he was writing at close to grade level. He scored a ten on the NJ PARC test, which is below age and grade level for H.M. This score does not change her opinion because H.M. did

well in school. The prior year he scored thirty-five on the test which was below grade level. H.M. was doing more editing at the end of the school year. H.M. has significant writing issues.

In H.M.'s 2017-2018 IEP the writing would be done in the replacement language arts class. This class would have approximately ten students. In this class H.M. would have less time for writing than he does in class with Hanson.

Marisa Mahoney

Marisa Mahoney (Mahoney) is employed by Ridgewood as an English replacement teacher. She has a Bachelor's degree in elementary and special education. She also has a Master's degree in guidance counseling and certifications in teacher of the handicapped and student pupil personnel.

Mahoney taught H.M. replacement English during the 2016-2017 and 2017-2018 school years. Mahoney reviewed H.M.'s IEPs. She knew that H.M. had dyslexia and was other health impaired. His modifications included outlines for writing, red words, site words, and unlimited time. She followed the modifications in the IEP.

English replacement class was three to four times per week. Mahoney wrote progress reports for H.M and attended meetings with petitioners and the case manager. The meetings that she did not attend, she provided information in progress notes. On the goals and objectives for the 2016-2017 school year, Mahoney would write in the comment section how the work she did with H.M. related to the goals and objectives. The goals and objectives were from the 2015-2016 stay-put IEP. The student growth objective shows how students are progressing through the year.

Mahoney and Hanson monitored H.M.'s writing goals. H.M. grew in class. He volunteered to read and shared about his activities. Betty Ludwig, the OG teacher, showed Mahoney how to apply OG into her lessons. OG has helped H.M. in class. He now uses technology and red words in his writing.

As a rebuttal witness, Mahoney testified that when she has taught H.M. during a typical class, H.M. would receive twenty-five minutes to thirty-five of one-to-one teaching. If H.M. needed help, he would raise his hand. He is doing well in class.

Auld observed the class, but she left before Mahoney did the individual work. She does the group lesson first. She circulates around the class to see if any student is having a problem. There was no specific MSR scope and sequence for H.M. Betty Ludwig, the OG teacher gave her training and information regarding OG. The Fontus/Penal reading program determines students reading levels. MSR teachers use this to measure students' reading level. Mahoney's replacement english class does not have an OG or dyslexia specialist.

Stephanie Spector

Stephanie Spector (Spector) was in the Multi-Sensory Reading Institute for six months. She is certified in kindergarten to fifth grade elementary, kindergarten to twelfth grade English, kindergarten to twelfth grade special education, OG instructor and dyslexia practice. She has a Master's degree in special education and an OG teacher certificate.

Spector began working with H.M. in September 2017 as MSR teacher. The class is fifty-seven minutes three to four times a week. There are two students in the class. H.M. can maintain and generalize skills. She taught him mainly upper-level skills using OG. He has progressed since September 2017. He knows advanced concepts and can generalize them.

The goal in OG is to learn compensatory strategies and utilize them, which H.M. does. H.M. has been doing OG for a long time. He feels overwhelmed. OG is not necessary for him to progress. H.M. has a private OG tutor that he sees twice a week.

For students with dyslexia, the words get harder as they advance in school. OG assists in breaking down words and understanding what they are reading. H.M. applies OG in his other classes.

As a rebuttal witness Spector testified that MSR scope and sequence has four levels. The first and second levels are basic prefixes, suffixes, phonograms like vowel teams, and consonant sounds. Level three and four are more advanced things like Latin roots, Greek combining forms, and more advanced prefixes and suffixes. To be in level four a student must master levels one and two. The report from Franklin Lakes summer program states that H.M. has retained the meanings of many level four prefixes, suffixes, and roots.

The MSR lesson plan for H.M. from 2016-2017 shows that from March to May 2017, all of the new and review materials that H.M. was working on was in level four. Spector administered OG to H.M. three times which covered all of the concepts that he had learned, with that information she used a blank scope and sequence to highlight areas that H.M. needed further instruction. A student no longer needs MSR when they have mastered level four of the scope and sequence and is reading on grade level. There are several items in the May 2017 IEP that relate to fluency. Spector reviewed the goals and objectives of the May 2017 IEP regarding fluency. She has never seen documentation of how H.M. was taught fluency.

The scope and sequence is not typically shared with the parents. If the parents ask for it, she gives them a copy. She gave petitioners a copy of the scope and sequence in April 2018.

Linda Auld

Linda Auld (Auld) has New Jersey certifications as a teacher of the handicapped. She is a certified Learning Disability Teaching Consultant (LDTC). She has worked with dyslexic students since 1970.

Auld was a learning consultant at Far Brook School for fifteen years. She is familiar with the middle school curriculum. The reading involved in language arts, science and social studies would be difficult for H.M. although he could understand it.

H.M.'s reading is in the below-average range. He has good reading comprehension. In 2012-2013 his word reading became stronger, but as his reading increased there was a decline in his word reading ability. Fluency is the ability to read a string of words in an accurate manner. A fluency program has the student practice reading while listening to a fluent reader. Any program for H.M. without OG and a fluency program would be inappropriate because his word reading and spelling are so far below his oral skills.

Individual instruction is needed in an OG program because it has to be done at the skill level of the individual student. OG would be difficult in a group.

Auld observed H.M.'s sixth-grade stay-put program. In observing the writing class, the teacher worked with H.M. on editing, transition words, and written reading comprehension. Auld was concerned because a lot of the class was reading comprehension, with which H.M. does not need assistance. It is Auld's opinion that spelling is a bigger issue for him. She did not have much dialogue with the teacher of the writing class. The English replacement class was not appropriate for H.M. The basic skills instruction is not appropriate for his dyslexia. He would have difficulty keeping up with the assignments. His multi-sensory reading class techniques were appropriate. Auld was told by the district that she was there to observe, not ask questions. A research-based fluency program for H.M. would be appropriate. H.M.'s dyslexia is not addressed in his language arts class. It is addressed in his reading and writing class. She did not observe any fluency skills being worked on. If H.M. does not have multi-sensory reading class over the summer, his skill level will decline because he would lose the skills he gained during the school year.

Untreated dyslexia causes difficulties as a student's goes into higher grades and more independent reading is required. H.M. would not be able to read and write independently without continuing the OG and writing classes.

In writing her report Auld relied upon evaluations provided to her by petitioners. She did not contact the District. She has not seen the challenged IEP. Any OG

program would be appropriate for H.M. Auld does not know if the proposed IEP's of the two years in question would address H.M.'s needs.

D.M.

D.M. is the mother of H.M. When H.M. was four, his teacher told D.M. that he could not keep up with his peers. The CST at Hawes School at that time determined that he did not need to be evaluated. When H.M. was in the kindergarten he continued to struggle. His teacher recommended a basic skills program thirty minutes per day four days per week. H.M. did not show improvement in this program. H.M. was not classified in kindergarten. He was classified in the end of the first grade because he was not reaching milestones in reading, writing, spelling, and comprehension. That IEP covering the last month of the first grade and the second grade included replacement reading and writing. H.M. was still having difficulty in the second grade. He was reversing letters and numbers and could not read out loud. She asked the school for a dyslexia evaluation and was refused.

Petitioner hired Dr. Healy to do a dyslexia evaluation. Prior to this there was a neuro-developmental evaluation done on H.M. by Dr. Bases. Dr. Bases recommended a multi-sensory phonetic based approach to reading, such as OG.

Petitioners hired Auld because they were concerned H.M. was displaying signs of dyslexia and he was not progressing. They wanted her to compare reports and see if there were discrepancies. When H.M. was going into the sixth grade petitioners were concerned with how services would be provided. They went to a transition meeting at Franklin for students with IEP's. The elementary school teachers stated that H.M. was still a grade level behind. He could not do homework independently.

The fifth-grade IEP provided for H.M. to receive resource room pull-out reading, supplemental program pull-out for MSR, resource program pull-out for writing and supplemental math. The sixth-grade IEP meeting was May 24, 2016. The IEP provides for H.M. to receive resource replacement language arts, resource program support and in class support for math, social studies, and science. Petitioners objected to the

removal of MSR and pull-out writing being removed from the sixth-grade IEP. H.M. was making progress and the services should not be removed. H.M. had tremendous reading growth in the fifth grade. D.M. attributes this to a combination of MSR and his tutor.

After the IEP meeting the District offered multi-sensory reading four times a week for forty minutes. She was not sure that the District would provide this because other suggestions were not provided by the District. Those other suggestions were not in the IEP. D.H. was not shown any data to show that H.W. no longer needed the writing services. The only scope and sequence she saw was for the ESY/MSR program. Petitioners were concerned that the District was reducing the reading services when H.M was not reading on grade level. They were told that H.M. did not need the services anymore and that the middle school did not offer them. The MSR goals were not originally included in the IEP, they were added later. Petitioners filed for due process hearing, after which they attempted to resolve their differences with the District.

H.M. went to the Franklin Lakes ESY/MSR program in the summer of 2016. The teacher told D.M. that she was surprised that the scope and sequence said that H.M. was at level four because he was having difficulty with levels two and three. H.M. improved in the ESY/MSR program and with private OG tutoring. At the end of the fifth grade, she was not told that H.M. completed the OG program. The sixth-grade IEP did not offer any services to address H.M.'s dyslexia.

H.M. was in stay-put in sixth grade at Franklin. The stay-put included one-to-one MSR and writing. H.M. needed reading, writing, comprehension, and fluency help entering the sixth grade. While H.M. was in the sixth grade, D.M. was never given evidence of progress in MSR, writing, or language arts. The MSR classes were at 2 o'clock, which caused H.W. to miss assemblies that occurred at that time.

H.M. still has difficulty with homework and has a private OG tutor twice a week. D.M. assists him with his homework almost every day. H.M. has support in math and science. Petitioners hired Auld to see where H.M. was objectively. They wanted to see his strengths and weaknesses. H.M made progress but was not at grade level. She did

not know that H.M. had a fluency issue. H.M. does not have a fluency program at Franklin.

D.M. met with the District monthly. She participated in the IEP for the seventh grade. That IEP removed the MSR and writing programs. There was no evidence that he mastered MSR or the writing programs.

H.M.'s 2016-2017 goals and objectives states that he mastered reading non-phonetic sight words at grade level. In the 2017-2018 the goals and objectives it states he was progressing in reading non-phonetic sight words at grade level. D.M. was not shown objective measurement of either. D.M. was not aware that H.M.'s MSR teacher believed that he no longer needed OG. At CST meetings where she asked to implement the findings of Dr. Bases or Auld, the CST did not ask to speak to Dr. Bases or Auld. D.M. was concerned that H.M. was not given a fluency program. The District did not implement any of Dr. Bases or Auld's recommendations.

D.M. observed the replacement language arts class. It had three students but could have up to twelve students. There would be an aide once there was a certain number of students. The aide was not trained in OG.

H.M. wrote a report (R-15) that D.M. helped him write. It took H.M. ninety minutes to write the report. She was unaware that he was not supposed to work on the report at home. On another writing assignment, the teacher helped him write a catchy first sentence.

H.M. uses Chromebook speech to text technology. He struggles with phonetics and irregular words. He still needs assistance to complete his homework. H.M.'s private tutor says that he still needs OG and that H.M. still struggles with phonetics and spelling. The ESY/MSR program at Franklin Lakes states that H.M is not at level four in OG. He still struggles with phonograms and spelling in levels two and three.

Mark Oliver

Mark Oliver (Oliver) has a Master's degree in elementary education. He has a certification as a dyslexia specialist. He was certified in OG. He is not presently certified in OG. He is a first-grade teacher in Pompton Lakes. He tutors OG. The OG method of teaching can be applied to students at any grade level. It is a multi-sensory way of teaching. Dyslexia is a neuro-biological disability where the person struggles with reading fluency, spelling, and writing.

He began tutoring H.M. in the fall of 2015. He works with H.M. twice a week after school. H.M. has dyslexia. He struggles with consistency in reading, spelling, oral reading and writing sentences. Oliver felt no need to be consistent with what H.M. was doing in school. His knowledge of what H.M. was doing in school came from H.M. Oliver has seen improvement in reading and spelling for H.M., but the progress is inconsistent in performance. Spelling and writing are the weakest areas for H.M. His sessions with H.M. began with reviewing the concept that they had done previously and then teach a new concept. He uses seeing, saying, and tracing a word when H.M. has given a wrong answer. H.M. reads sound words and sight words, breaks down words, and then spelling based on sound. They work on capital letters, order of appearance, punctuation, and spelling.

When he introduces a new sound, he writes it on the white board, talks about it, and traces it. Then H.M. writes it on the student response sheet. H.M. will then write a few words with the new sound. H.M. still struggles with consistency.

MSR Scope and sequence is what to teach and sequence to teach it in. Oliver uses the Fairleigh Dickinson Scope and Sequence, which goes from level one to level four. He does not think that a student with dyslexia is ever done with OG. H.M. needs one-to-one OG. OG addresses fluency, but there are better programs for fluency.

Oliver does not know if it would be a problem for H.M. if the MSR he was taught at school was inconsistent with the MSR Oliver used to teach H.M. Oliver had no contact with the District. He does not know which scope and sequence was used by the

District. The objective evidence of the progress H.M. made is the work H.M. did with Oliver. He makes notes of the errors of H.M. to use in the next lesson.

H.M.

H.M. is thirteen years old. He is a student at Franklin. He testified that he has dyslexia, which makes reading and writing very difficult. The reading is difficult because the words get larger and he must break down the words. The difficulty with writing is punctuation. He uses text to speech. In MSR, he uses all the senses to read. He breaks down words, traces words, and says words.

In the sixth grade the MSR was similar in and out of school. The review, prefix, suffix, and root words were similar. Red words are words that cannot be sounded out. He needs tricks to remind him about the red words. He should break down words in every subject. The MSR helps him in other classes where the words are larger. The reviewing in MSR helps him to remember.

The MSR was different in the seventh grade. There is another student in the class. In the sixth grade, he was the only student in the class. In replacement English they teach writing skills. He also writes essays. The prefix, suffix, and root words are written on the board. The writing class has a lot of punctuation and spelling. He has to break down the words to spell them. In the seventh grade there are two other students in the writing class. The writing class is helpful with punctuation, spelling, and writing essays.

H.M.'s mother helps him with grammar and punctuation at home. If he did not have MSR it would be more difficult because the skills that he learns in MSR, help him break down words. He has to break down every word and figure them out one by one. H.M. feels that he needs punctuation and spelling help. When he has a written assignment, he does multiple drafts.

H.M. testified that the summer programs were helpful. The MSR reinforced red words and introduced new words. If he does not have reinforcement, he forgets the

skill. H.M. is not good at starting stories or essays. The teacher has helped him with wording and where to put words.

He is concerned that the IEP does not have MSR and writing class. He wants one-to-one MSR writing class. When he was informed that Spector stated that he no longer needs MSR, he was sad. He needs MSR for help with punctuation, spelling, and reinforcement. In his English class, he does not get the reinforcement that he needs.

K.M.

K.M. is the father of H.M. He testified that he attended the May 24, 2016, IEP meeting. He received the IEP after the meeting. He was never told that H.M. no longer needed replacement reading, replacement writing, or MSR. He did not understand why MSR was reduced because H.M. was still having difficulty. At the IEP meeting MSR was not offered four times a week. That was later incorporated into the IEP. MSR four times a week was not enough. He contacted the District to discuss his concerns with the IEP. No one explained the type of MSR H.M. was offered. No one explained why there was no writing class. H.M. at the time of the April 2016 IEP was one and one-half years behind grade level in reading. K.M. was concerned because Dr. Healy's report states if a child is not reading at grade level by the fourth grade, the child will not read normally. Pace of reading and recognition of words is difficult for H.M. K.M. never received a scope and sequence for H.M. in the fifth, sixth, or seventh grades. K.M. does not recall asking for a copy of the scope and sequence. The May 2016 IEP does not state how the MSR goals were to be measured. There was mention of how H.M.'s fluency issues were going to be addressed.

At the IEP for the seventh grade, the MSR teacher and the writing teacher were not present. K.M. did not agree with the IEP. He was never shown any of H.M.'s work in the reading or writing class. He does not know the basis for the District's decision that H.M. no longer needs MSR or Writing. He was told that the MSR and writing were going to be delivered in the language arts class.

FACTUAL DISCUSSION

Having had an opportunity to observe the demeanor of the witnesses and hear the testimony of the witnesses, I **FIND** the following **FACTS**:

H.M. is the son of D.M. and K.M. He receives special education services under the classification of specific learning disabled. H.M. has dyslexia. In the 2015-2016 school year H.M. was a fifth-grade student at Hawes School. At that time his special education related services were resource pull-out reading five time a week for a total of 225 hours; supplemental program pull-out MSR five times a week for a total of 225 hours; resource program pull-out writing five times a week for a total of 225 hours; and supplemental instruction mathematics twice a week for a total of sixty minutes. H.M. went to the Franklin in the sixth grade.

An IEP meeting was held on May 24, 2016. The proposed IEP for H.M. in the sixth grade had related services of resource replacement language arts 3.75 times per week for a total of 214 minutes, resource in class support mathematics 3.75 times per week for a total of 214 minutes, resource in class support social studies 3.75 times per week for a total of 214 minutes, resource in class support science 3.75 times a week for a total of 214 minutes and resource program support 3.75 times a week for a total of 214 minutes. In the notice requirements for the IEP and placement, in the section that describes any options and the reasons those options were rejected, it states that CST is offering MSR four times per week for forty minutes instead of five times per week because H.M. is near grade level. The MSR was added to the IEP after the May 14, 2016, meeting.

Petitioners did not agree with the IEP. Petitioners met with Wood, the Supervisor of Special Education in Ridgewood, in June 2016 to resolve the IEP disagreement. Wood offered H.M. 214 hours of writing as an add on service for the first semester and adding forty minutes to the MSR. These offers were not incorporated into the IEP.

The May 24, 2016, IEP present levels for writing states that H.M. had made steady progress, he can come up with ideas to write about, but has a difficult time

elaborating on his ideas. He can develop a story with simple sentence structure. He struggles transferring skills taught in mini lessons independently. He requires one to one review before he truly understands a concept. The IEP did not include how H.M. did in the goals and objectives of the 2015-2016 school year.

The May 24, 2016, IEP present levels for MSR states that H.M. had significant growth with encoding and decoding skills. Although he does well in weekly review of material, he does not consistently transfer the information to all areas of his schoolwork. He continues to confuse sounds he hears with the letters that he writes representing those sounds when it is out of context from the routine of the class. He was progressing in all of the MSR goals and objectives.

MSR is teaching reading using all of the senses. OG is a method of MSR. OG is an education program methodology to know what sounds are associated with letters or letter strings. OG has proven to be effective for students with dyslexia. It is a multi-sensory way of teaching. It involves reading, visual information and spelling. It is tactile, where students trace sight words and it is auditory. It involves all of the senses. H.M.'s strengths were that he could express himself, good listening and language skills, conversation skills given orally, and he understands the language that he hears. His reading skills of individual words and his reading accuracy are significantly below the level of his oral skills. This occurs in less than five percent of children his age.

Dyslexia is a learning disorder where the person has difficulty with word recognition, difficulty with the sounds of words in reading and writing, difficulty in spelling, and difficulty recognizing word forms. There is also difficulty with words that do not follow the rules such as where words cannot be sounded out—the word has to be memorized.

Auld's 2016 evaluation shows that H.M. can follow discussions and be part of the conversation, but when he has to read or write on grade level he has difficulty with word recognition and spelling. His ability to link sound and symbols was relatively strong, but his ability to rapidly and accurately recall words is weak. He over relies on phonetics and sounding out words when he reads. He also spells phonetically over relying on the

sound the word makes. His overreliance on phonetic reading and writing was a concern entering the sixth grade. H.M. has orthographic dyslexia. He has difficulty with sequence of letters in words, he flips position of letters in words and has difficulty with irregular words.

There are various OG programs. Each has a different scope and sequence with various levels. The OG program needs to be completed. If a student moves from one OG program to another the instructor must know what the student mastered in the previous program. H.M.'s current OG program is the Preventing Academic Failure (PAF) program. It has four levels. Red words are words that do not follow rules, basically irregular words which H.M. has difficulty with.

H.M. attended an ESY/MSR program in Franklin Lakes in 2016. The program was a four-level OG program. Level four is the highest level. H.M. had not mastered parts of level two, much of level three, and all of level four. When mastery of all four levels is achieved, there is not a need to continue with MSR. It cannot be determined if the summer MSR program and the school year PAF OG program were working in conjunction. Ridgewood applied for H.M. to do the program in Franklin Lakes. The application does not say what scope and sequence were used in Ridgewood.

H.M. must review a skill until it is mastered. It must be reinforced for him to achieve mastery. He can master level two skills. He reacts well to multi-sensory instruction. H.M.'s dyslexia causes him to have difficulty with spelling. He spells phonetically.

H.M. has difficulty when he must read silently then answer questions silently. His self-correction, which he does when reading orally, is done much less frequently. His silent-reading skills are below average. He has above-average language development. However, his spelling skills are significantly weak. He has difficulty with irregular words. H.M. has to break down word before he reads and writes them.

Since petitioners filed for due process in June 2016, H.M.'s stay-put was the fifth-grade programming. Franklin did not have MSR. It contracted with someone out of

district to provide H.M. with the services. Supplemental Writing was not previously offered at Franklin. Instead of going to an elective class, H.M. went to supplemental Writing class.

The resource support class concentrated on work and study skills in a small group lead by a special education teacher. It could include re-teaching, pre-teaching, and reading and writing instruction. The support classes have up to twelve students. If there are more than six students, the class has an aide assigned. The resource replacement language arts class is taught by a special education teacher. It has reading and writing instruction, but it is more based on reading comprehension.

H.M.'s last objective testing done by Auld was in August and September 2016. The tests were the same tests used by the District. H.M.'s reading score showed that his basic reading was lower than his reading comprehension. His Woodcock Johnson test score was below average.

The writing program for H.M. for the 2016-2017 school year included revision, editing, spelling rules, and writing topics. His writing skills progressed during the school year. He was the only student in the class. In the beginning of the year his test scores in writing were thirty percent. At the end of the year his test scores were eighty percent. The class session was fifty-seven minutes. He demonstrated growth in the writing class. He did not master all the goals of the 2016-2017 IEP. Some of the writing goals were covered in replacement English class. Revising a draft using a variety of strategies was difficult for H.M.

H.M. was not writing at grade level at the end of the school year, but he was writing at close to grade level. He scored a ten on the NJ PARC test, which is below age and grade level for H.M.

The replacement English class had eight students, all of whom had IEPs. It had the same curriculum as the general education class. The class also had an aide. When H.M. was tested in October 2016 he was at a fifth-grade reading level. When he was tested in May 2017, he was at sixth-grade level.

H.M.'s vocabulary expanded and he knew tools on Chromebook. In the beginning of the 2016-2017 school year H.M. could write a one-paragraph essay. He did well on oral presentation and reading comprehension. At the end of the sixth grade, although he could write a five-paragraph essay, H.M. still had issues with writing and grammar. The writing samples would be edited on the Chromebook. The exhibit R-15 is a copy of an unedited essay of H.M. It cannot be determined if H.M. would have done the same without the OG and the extra writing.

In H.M.'s replacement english class at Franklin. The class was one aide and one teacher for eight students. The aide was a substitute teacher. Mahoney does not know the aide's skill with scope and sequence. The class last fifty-seven minutes three to four times per week. There is a group lesson and working independently either in groups or with partners. There are lessons in prefix, suffix, root words, and red words once a week. The students are given four to ten vocabulary words per week to spell. Spelling, reading, and writing are done in her class. There was a no specific scope and sequence for H.M. There was no OG or dyslexia specialist in the replacement English class.

The MSR H.M. was working on from March to May 2017 was in level four. Oliver is a dyslexia specialist. He began private tutoring of H.M. in the Fall of 2015. H.M. struggles with reading, spelling, oral reading, and sentence writing. H.M. has improved in reading and spelling, but the progress is inconsistent. Spelling and writing are the weakest areas for H.M. Oliver works with H.M. on capital letters, order of appearance, spelling, and punctuation. He uses a multi-sensory approach. He uses the Fairleigh Dickinson Scope and Sequence with H.M. which has four levels. He is working with H.M. on level four but there is constant review. He will occasionally go back to level three with H.M. H.M.'s work in level four is inconsistent.

Red words are words that cannot be sounded out. H.M. needs tricks to remind him about red words. He must break down words before he can read or write them. MSR assists him in breaking down words. If skills are not reinforced with H.M. he will forget them. At the end of the sixth grade H.M. still had problems with writing and grammar.

At the end of the 2016-2017 school year, H.M. was not writing at grade level, but close to grade level.

An IEP meeting for H.M.'s program for the seventh grade was held on May 17, 2017. The special education and related services included in the IEP were: resource replacement language arts 3.75 times per week for a total of 214 minutes, resource in class support mathematics 3.75 times per week for a total of 214 minutes, resource in class support social studies 3,75 times per week for a total of 214 minutes, resource in class support science 3.75 times per week for a total of 214 minutes, and resource program support 3.75 times per week for a total of 214 minutes.

His present levels in writing showed that he still makes mistakes in daily language sentences, but he exhibited growth in identifying his mistakes. Spelling is still a task that he has to put in extra effort. His MSR teacher stated that she was teaching him material in level four of the scope and sequence from March through May 2017. She was teaching him new material as of the time of the IEP. His replacement reading teacher states that he has an A in class. H.M. can now write a five-paragraph essay with a prompt. In the beginning of the school year he was writing one-paragraph essays.

H.M. was progressing in his Resource program support goals and objectives. H.M. was progressing on the goals and objectives in writing, but he does not consistently apply what he has learned. In MSR, H.M. mastered all but three of the objectives. He was progressing on the objectives that he did not master. He was progressing in all of his reading objectives. The IEP states continued MSR and supplemental writing were rejected because H.M. either reached his goals or the goals can be addressed in the language arts class. Petitioners would not consent to the IEP.

In the summer of 2017, H.M. attended the ESY/MSR reading program at Franklin Lakes. The application states that H.M.'s current OG level was four and that he has mastered levels one through three of OG and was working in level four. During the program H.M. was working on level four but still struggled with phonograms from level two through four. He also struggled with recalling and applying spelling rules. MSR is

no longer needed once the student has mastered all four levels of the scope and sequence. H.M. did not master all four levels of the MSR scope and sequence.

Auld is an expert as a special education teacher and a learning disabilities teacher consultant in dyslexia and in treating dyslexia with OG methodology.

There was no testimony regarding an out-of-district placement for H.M. H.M. is presently in the eighth grade at Franklin. This decision is regarding his sixth and seventh grade years at Franklin. The stay-put allowed for H.M. to have 225 hours of MSR per week and supplemental writing class for 225 hours a week.

LEGAL ANALYSIS AND CONCLUSIONS

The 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 [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A). In order to qualify for this financial assistance, New Jersey must effectuate procedures that ensure that all children with disabilities residing in the state have available to them a FAPE consisting of special education and related services provided in conformity with an IEP. 20 U.S.C. §§ 1401(9), 1412(a)(1). The responsibility to provide a FAPE rests with the local public school district. 20 U.S.C. § 1401(9); N.J.A.C. 6A:14-1.1(d). The district bears the burden of proving that a FAPE has been offered. N.J.S.A. 18A:46-1.1.

The United States Supreme Court has construed the FAPE mandate to require the provision of “personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” Rowley, 458 U.S. at 203. New Jersey follows the federal standard that the education offered “must be ‘sufficient to confer some educational benefit’ upon the child.” Lascari v. Bd. of Educ. of Ramapo Indian Hills Reg’l High Sch. Dist., 116 N.J. 30, 47 (1989) (citing Rowley, 458 U.S. at 200). The IDEA does not require that a school district “maximize the potential” of the

student, Rowley, 458 U.S. at 200, but requires a school district to provide a basic floor of opportunity. Carlisle Area Sch. v. Scott P., 62 F.3d 520, 533-34 (3d Cir. 1995). In addressing the quantum of educational benefit required, 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. T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000); Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999); Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180, 182-84 (3d Cir. 1988), cert. den. sub. nom. Cent. Columbia Sch. Dist. v. Polk, 488 U.S. 1030 (1989). In other words, the school district must show that the IEP will provide the student with “a meaningful educational benefit.” S.H. v. State-Operated Sch. Dist. of Newark, 336 F.3d 260, 271 (3d Cir. 2003). This determination must be assessed in light of the individual potential and educational needs of the student. T.R., 205 F.3d at 578; Ridgewood, 172 F.3d at 247-48. The appropriateness of an IEP is not determined by a comparison of the private school and the program proposed by the district. S.H., 336 F.3d at 271. Rather, the pertinent inquiry is whether the IEP offered a FAPE and the opportunity for significant learning and meaningful educational benefit within the least restrictive environment.

Toward this end, an IEP must be in effect at the beginning of each school year and be reviewed at least annually. 20 U.S.C. § 1414 (d)(2) and (4); N.J.A.C. 6A:14-3.7. A complete IEP must contain a detailed statement of annual goals and objectives. N.J.A.C. 6A:14-3.7(e)(2). It must contain both academic and functional goals that are, as appropriate, related to the Core Curriculum Content Standards of the general education curriculum and “be measurable” so both parents and educational personnel can be apprised of “the expected level of achievement attendant to each goal.” Ibid. Further, such “measurable annual goals shall include benchmarks or short-term objectives” related to meeting the student’s needs. N.J.A.C. 6A:14-3.7(e)(3). The New Jersey Supreme Court has recognized that “[w]ithout an adequately drafted IEP, it would be difficult, if not impossible, to measure a child’s progress, a measurement that is necessary to determine changes to be made in the next IEP.” Lasari, 116 N.J. at 48.

In addition, when scrutinizing a FAPE claim, there is a two-part inquiry. A court must first ask whether the state or school district has complied with the procedures of the Act when developing the IEP, and second, whether the IEP developed through the Act's procedures is "reasonably calculated to enable the child to receive educational benefits." Rowley, 458 U.S. at 207. While the IDEA does not require a school district to provide an IEP that maximizes "the potential of a disabled student, it must provide 'meaningful' access to education and confer 'some educational benefit' upon the child for whom it is designed." Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999) (citations omitted).

N.J.S.A. 18A:40-5.4 provides:

In the event that a student is determined through the screening conducted pursuant to section 3 [C.18A:40-5.3] of this act to possess one or more potential indicators of dyslexia or other reading disabilities, the board of education shall ensure that the student receives a comprehensive assessment for the learning disorder. In the event that a diagnosis of dyslexia or other reading disability is confirmed by the comprehensive assessment, the board of education shall provide appropriate evidence-based intervention strategies to the student, including intense instruction on phonemic awareness, phonics and fluency, vocabulary, and reading comprehension.

In this matter, the issues are whether the May 24, 2016, IEP and the May 17, 2017, IEP provide FAPE to H.M. In the 2015-2016 IEP H.M. had 225 minutes of pull-out writing. Writing was eliminated from the May 24, 2016 IEP. The May 24, 2016, writing present levels state that H.M. has difficulty elaborating on ideas and struggles transferring skills taught in mini lessons independently. It also states that he requires one-to-one review before he understands a concept. Writing is H.M.'s greatest area of weakness, yet the May 24, 2016, IEP eliminates the pull-out writing class. In the beginning of 2016-2017 school year H.M.'s writing test scores were thirty percent. At the end of that school year his scores were eighty percent. H.M. had significant problems with writing, yet the May 24, 2016, IEP eliminated writing class.

The May 24, 2016, IEP reduced MSR hours for H.M. from 225 hours in the 2015-2016 IEP to 160 hours. The summer ESY program showed that H.M. had not mastered parts of level two, much of level three, and all of level four of OG program scope and sequence. The reading levels in the May 24, 2016, IEP show that although he improved, he confuses sounds with the appropriate letter when he writes. All four levels of the MSR scope and sequence OG program must be mastered for a student to no longer need MSR.

I **CONCLUDE** that Ridgewood did not provide FAPE to H.M. for the 2016-2017 school year because the IEP eliminated the writing class when H.M. clearly had significant difficulties in writing. It also reduced the MSR when H.M. had not mastered all four levels of the MSR scope and sequence program. In fact, H.M. was still having difficulties with level two, most of level three, and all of level four.

The May 17, 2017, IEP offers the same special education related services as the May 24, 2016, IEP except it eliminates MSR. It does not include a separate writing class. H.M.'s present levels in writing showed growth but he still mistakes in daily language sentences and spelling was still difficult. In the beginning of the school year he was writing one-paragraph essays. H.M. began working on level four of the scope and sequence of the OG program in March 2017. In the ESY/MSR program H.M. was working in level four but still had trouble with phonograms in level two through four. H.M. made improvements from the 2016-2017 school year to the 2017 2018 school year. During both years the stay-put was in effect. H.M. had not mastered the four levels of the scope and sequence of the OG program at the time of the May 17, 2017, IEP meeting, yet the District eliminated the MSR from the IEP. The District's witness, Mahoney, testified that MSR is no longer needed after all four levels of the scope and sequence are mastered. Yet, the District eliminated the MSR knowing that H.M. did not master all four levels at the time of the IEP.

I **CONCLUDE** the May 17, 2017, IEP did not provide FAPE to H.M. because it eliminated the MSR before H.M. mastered the four levels of the scope and sequence.

ORDER

Based on the foregoing, it is hereby **ORDERED** that the relief requested by petitioner regarding the failure of the District to provide FAPE in the 2016-2017 and 2017-2018 IEPs is **GRANTED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2018) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516 (2018). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education Programs.

September 20, 2018

DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency

September 20, 2018

Date Mailed to Parties:
ljb

September 20, 2018

WITNESSES

For Petitioner:

Linda Auld
Mark Oliver
D.M.
H.M.
K.M.

For Respondent:

Danielle Wood
Mariann Gelenius
Sharon Hanson
Marisa Mahoney
Stephanie Spector

EXHIBITS

Joint Exhibits:

- J-1 School Year 2015-2016 IEP dated June 2, 2015
- J-2 Educational Evaluation of J. Liuzzi dated April 29, 2015
- J-3 Psychological Evaluation of H. Askin dated May 5, 2015
- J-4 Occupational Therapy Evaluation of L. Franklin dated April 29, 2015
- J-5 Assistive Technology Evaluation of M. Velasquez-Walters, dated March 19, 2015
- J-6 School Year 2016-2017 IEP dated May 24, 2016
- J-7 Proposed School Year 2017-2018 IEP dated May 17, 2017
- J-8 Report Cards of H.M. for grades kindergarten through seventh grade

For Petitioner:

- P-1 Not in Evidence
- P-2 Not in Evidence
- P-3 Pediatric Neurological Evaluation of Dr. Hugh Bases dated April 25, 2012

- P-4 Psychoeducational and Neuropsychological Evaluation of Dr. Jane Healy dated February 27, 2013, March 7, 2013, and March 14, 2013
- P-5 Letter to Mrs. Neese from petitioners dated February 2015
- P-6 Linda Auld Curriculum Vitae
- P-7 Linda Auld Educational Evaluation dated August 26, 2016, and September 1, 2016
- P-8 Linda Auld Comparison of Evaluation Data
- P-9 Linda Auld Program Observation dated October 10, 14, 21, 2016
- P-10 Multi-Sensory Scope and Sequence Summer Program 2015
- P-11 Multi-Sensory Scope and Sequence Summer Program 2016
- P-12 Multi-Sensory Scope and Sequence Summer Program 2017
- P-13 Marc Oliver Curriculum Vitae
- P-14 Marc Oliver Lesson Plans Support
- P-15 Not in Evidence
- P-16 Not in Evidence
- P-17 Not in Evidence
- P-18 Not in Evidence
- P-19 Marc Oliver Lesson Plans
- P-29 Emails of May 24, 2016, and June 6, 2016

For Respondent:

- R-1 Correspondence and E-mails dated August 2016 to January 2018
- R-2 Program Report and Work Samples, School year 2016-2017
- R-3 Not in Evidence
- R-4 Not in Evidence
- R-5 Multi-Sensory Ready Program Application 2015-2017
- R-6 Emails to/from K.M. /D.M. and K. Buxenbaum, dated May 22-23, 2016
- R-7 2016-2017 Multi-Sensory Reading Documentation
- R-8 E-mails to/from D. Rubin, Esq., B. Callahan, Esq., and K.M. /D.M., dated August 11, 2016 through August 17, 2016
- R-9 Goal Monitoring Documentation 2016-2017
- R-10 Goal Monitoring Documentation 2017-2018
- R-11 Supplemental Writing Documentation 2017-2018

R-12 Not in Evidence

R-13 Franklin Lakes Public Schools Documentation

R-14 Correspondence from E. Ludwig re: Multi-Sensory Reading

R-15 Miscellaneous Student Work

R-16 2017-2018 Multi-Sensory Reading Documentation

R-17 Not in Evidence