

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION

OAL DKT. NO. EDS 09552-15

AGENCY DKT. NO. 2015- 22701

R.P. AND B.P ON BEHALF OF N.P.,

Petitioners,

v.

BURLINGTON TOWNSHIP BOARD OF EDUCATION,

Respondent.

R.P. and B.P. o/b/o R.P., petitioners, pro se

Cameron Morgan, Esq., for respondent (Parker McCay, P.A., attorneys)

Record Closed: January 8, 2016

Decided: February 24, 2016

BEFORE **SARAH G. CROWLEY**, ALJ:

PROCEDURAL HISTORY

Petitioner, R.P. and B.P., the parents of N.P., challenge the appropriateness of her classification by the Burlington Township Board of Education (District). The District's child study team (CST) has classified N.P. with a "moderate cognitive impairment" (MCI). The parents argue that she should be classified as having a "specific learning disability (SLD)," or "communication impaired (CI)." The IEP which was developed and presented in the IEP meeting on February 27, 2015 classified N.P. as MCI. The due process petition challenging this classification was filed on April 13, 2015. The contested case was transmitted to the Office of Administrative Law (OAL) on July 1, 2015. The due process hearing was held on November 17, December 9, 2015, and

January 8, 2015. The District submitted a post hearing brief on January 13, 2015, at which time the record closed.

STATEMENT OF UNDISPUTED FACTS

N.P. is a ten-year-old female student who has been deemed eligible for special education services pursuant to the Individuals with Disabilities and Education Act (IDEA) in the District. Prior to her enrollment in the District, N.P. attended kindergarten through third grade in Willingboro. She had been classified in Willingboro as “communication handicapped” until the fall of 2014, when Willingboro conducted their re-evaluation. Willingboro conducted Independent evaluations of N.P. in October and November 2014. Based on the results of the independent evaluations, on January 16, 2014, the Willingboro CST recommended a classification of MCI, and proposed an education program in-district consistent with this classification. Thereafter, N.P. dis-enrolled in Willingboro, and enrolled in the District on January 28, 2015. N.P. was initially placed in a learning disabilities (LD) classroom in the District in a program comparable to her most recent placement in Willingboro.

In accordance with the IDEA, Burlington proceeded to address N.P.’s educational needs and utilized the evaluations that had been completed by independent evaluators for Willingboro. Since there was no disagreement regarding the program or placement of the child, the District began implementation of the Willingboro IEP. An IEP meeting was conducted in Burlington Township within thirty days of her enrollment in the District on February 27, 2015. The Burlington Township CST determined that the correct classification for N.P. was under the category of “Moderate Cognitive Impairment.” Following the February 27, 2015 IEP, N.P. was switched to a self-contained multiple disability classroom. The parents refused to sign the IEP and filed the instant Due Process petition challenging N.P.’s classification.

On June 5, 2015, the District convened its annual review meeting and proposed an IEP for N.P. for the 2015-2016 school year (4th grade). The proposed IEP continued N.P.’s placement in the self-contained multiple disabilities programs at Fountain Woods School in the District with appropriate related services, accommodations and program

modifications. The classification of MCI at issue has been maintained by the District throughout the pendency of this litigation. The District maintains that this is the appropriate classification for N.P. The parents maintain that she should be classified as communication impaired, SLD.

The foregoing background facts are uncontroverted and I **FIND** them as **FACT**.

TESTIMONY

The following fact witnesses testified on behalf of the District:

Valentia Steele-Dadzie, M.S.W., fact witness

Madeline Zacharkow, M.A., special education teacher, fact witness

Margaret Heaney, M.A. , special education teacher, fact witness

The following expert witnesses testified on behalf of the District:

Ellen McHenry, M.Ed., Director of Special Education Services

Merisha L. Sturgis, M.A., Ed. S., licensed school psychologist

Deborah Schaeffler, M.A., LDT/C, learning disabilities consultant

Ms. Steele-Dadzie is N.P.'s case manager. She is a licensed social worker in the State of New Jersey and received a master's in social work. She has worked in the New Jersey public schools for over twenty years. She has been employed by the District for seventeen years. She testified that she has been a case worker for hundreds of students during her career and has been involved in hundreds, if not thousands of IEP meetings for children with special needs. She testified that she is familiar with the classification of special needs children and the criteria to determine of the various categories.

Ms. Steele-Dadzie testified that she is familiar with N.P.'s case. She stated that N.P. was initially placed in the LD classroom, but they soon determined that she was struggling in this classroom and decided to move her to a self-contained moderately disabled classroom. She testified regarding her interactions with the parents, her

observations of N.P. and the determination on the proper classification category for N.P. She identified the various reports that she reviewed with respect to N.P. and testified that she was properly classified with a MCI. She personally observed N.P. in the classroom and all the trouble she was having. She observed her crying and refusing to do the work and how low functioning she was. She testified that she concurred with the CST determination that N.P. was classified as MCI. She testified that when she first entered the District at the end of January 2015, they left her in the self-contained classroom for thirty days at the mother's request even though she was not doing well in there. After completing the reevaluations, she was moved to the moderate disabilities (MD) classroom which was more consistent with her needs. The MD classroom is a much slower pace and was more suitable for N.P. She was also provided with related services in speech therapy and occupation therapy.

Ms. Steele-Dadzie testified that when N.P.'s mother came in for the IEP meeting, she crossed out the MCI and stated that she wanted her classified as SLD. She testified that she told her she could not do that, but she did anyway. She testified that no one has ever classified N.P. as SLD, and she did not believe that was a proper classification for her. She reiterated again that based on the reevaluation, that the MCI was a proper classification for N.P. She was questioned on cross-examination as to whether there was a "severe discrepancy in any of the categories." She responded that N.P. did not meet these criteria because she tested low on all categories, and there was not a severe discrepancy in any of the categories. She identified a report which stated that N.P. "may be at risk for dyslexia," but testified that there was nothing more in any of the reports to indicate she was dyslexic. She testified that she considered all the reports on N.P. and their own independent evaluations, and the District CST determined that the classification of MCI was appropriate for N.P.

Madeline Zacharkow was N.P.'s classroom teacher in the third grade, as well as her current fourth grade teacher. Ms. Zacharkow has a master's in special education with an emphasis on children with moderate to severe disabilities. This is her fourth year in Burlington and she teaches a self-contained classroom with children with MD. The children range from MCI to autistic but all are very low functioning. She testified that N.P. was moved from a self-contained classroom to her classroom in March 2015.

She testified that she has nine students in her classroom with one teacher and one aid. She testified that there is more one-on-one ability in her classroom, which N.P. needs. She testified that N.P. is functioning at, or below kindergarten level, she has difficulty spelling and struggles with math. She is inconsistently able to add and can now count from one to twenty. She testified that in her classroom, N.P. is the lowest functioning in math and she is getting better in reading. She testifies that N.P. is writing better and is making progress in her classroom. Ms. Zacharkow testified that during lunch, N.P. still chooses to sit by herself and does not engage with other children. She testified that she is with N.P. all day, with the exception of specials, and she concurred in the classification of N.P. as MCI.

Ellen McHenry, is the interim Director of Special Services for the District. She received a master's in education and was a teacher of the handicapped for thirty-five years. She was qualified as an expert in the field of administration of programs for children with disabilities as well as the diagnosis of special needs. She testified that she has reviewed the records of N.P. and believes that she was properly classified as MCI. She testified that the assessments were conducted by independent experts and the proper psychological and education assessments were done. She testified that N.P. has an IQ of fifty and is in less than the first percentile in her age category and her performance in more than three times below the standard deviation. She testified that she did not qualify for a classification of SLD because there was no severe discrepancy between the different categories. She testified that N.P. had global deficits, and not just in reading. In terms of dyslexia, the report from the parents indicated that she was at risk quite some time ago, but there was never any finding that she was dyslexic. She testified that N.P. is well below grade level in several categories, and she is properly classified as MCI.

Margaret Heaney is a special education teacher for the District. Ms. Heaney received a BA from Rowan University and Certifications from Rider University for elementary education and special education. She also received a master's in special education from Rider University. She has spent the last four years as a special education teacher in Burlington Township in the LD self-contained classroom. She teaches the third grade has approximately nine or ten students. They are all below

grade level in math and reading. She testified that most are cognitively impaired, autistic and SLD.

Ms. Heaney testified that when N.P. transferred into the District, she was placed in her classroom for approximately thirty days. She testified that she was several levels below kindergarten level. She did bench mark assessments to determine N.P.'s level of functioning. She testified that N.P. was not able to keep pace with other students in the classroom and needed an adult right next to her at all times to function. Ms. Heaney testified that N.P. would get frustrated and upset and she would cry and fall asleep on a regular basis. She needed constant redirection. Ms. Heaney discussed an incident in the bathroom when N.P. took her shoes, socks and pants off. She testified that the students in her class are all pretty independent, and she knew immediately that N.P. could not function in her classroom. Ms. Heaney testified that she contacted the case manager right away, and she recommended that N.P. be placed in the moderately disabled classroom where there was more support academically and socially.

Merish Sturges is the school psychologist for the District. She graduated from Douglas College and received a master's degree in psychology. She was qualified as an expert in psychology, cognitive testing and educational diagnosis. She testified that N.P.'s full scale IQ is fifty. She testified that she does case management for all categories of special education. She discussed the different classification categories, such as CI, SLD and MCI. She testified that this last category used to be called moderate intellectual disability. Ms. Sturges testified that if a student is more than three standard deviations apart in any of the category, they would qualify for the SLD. However, N.P. did not meet this test. Furthermore, N.P.'s overall global cognitive deficits would disqualify her from being classified as SLD. She testified that there was very little deviation in her overall performance in all the categories. She testified that she had not witnessed her in the community, which is one of the categories, but there were reports of her abilities and the observations of her in the classroom were sufficient for the scoring. She testified that she did not meet the criteria for SLD or communication handicapped and that she was properly classified as MCI.

Deborah Schaeffler, M.A., LDT/C., testified on behalf of the District. Ms. Schaeffler was qualified as an expert in the diagnosis of LD, the placement of children with disabilities, and the administration of testing of students with disability. She testified that she is familiar with the testing protocols for determining the level and classification of learning disabled children. She testified that she has reviewed the testing results done on N.P. and that the classification of MCI is appropriate and that all proper protocols were followed in the testing of N.P. She testified that N.P. meets all three of the prongs of the classification criteria for MCI.

For petitioner:

N.P.'s mother R.P. and N.P.'s father B.P. testified on her behalf:

R.P. testified regarding her daughter's abilities. She testified that she felt her daughter should be classified as communication handicapped or SLD. She testified that she did not sign off on the last IEP from Willingboro which changed her classification from CI to MCI. She testified that the District did not do the proper evaluations and that they disregarded an evaluation from 2012, which indicated that N.P. was at risk for dyslexic. R.P. provided no other documentation in support of argument that she is dyslexic or that she should be classified as CI or SLD. R.P. argued that there was no general education teacher present at the meeting which was conducted in Willingboro, and thus, the Willingboro IEP is procedurally deficient. However, I note that the Willingboro IEP is not the subject of this due process hearing. She testified that she thought there were significant deviations in her scores and that she could function at home, and thus, the MCI classification was improper.

B.P., N.P.'s father testified in support of the appeal. B.P. and R.P. have been separated and living apart for several years. B.P. testified that he moved back to Burlington Township in January 2015, and N.P. is currently living with him. B.P. argues that the District did not have the ability to evaluate N.P.'s performance at her home or in her community which is one of the elements of MCI, and therefore, she was classified improperly. He testified that she is able to take care of herself at home and that she is

independent. He provided no testimony, factual or expert which would support a finding of CI or SLD.

Based upon the testimony and documentary evidence, and having had the opportunity to observe the appearance and demeanor of the witnesses, I **FIND** the foregoing as **FACT**. Furthermore, the expert testimony of the District's expert witnesses was uncontroverted, and I find as **FACT**.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

The sole issue in this case is the proper classification of N.P. The parents have urged a classification of CI or SLD. The District has placed N.P. in the classification category of MCI. They have placed her in a classroom consistent with this classification. N.P. was classified at MCI in Willingboro School District, before being transferred by her parents to the District in January 2015. Although the parents disagreed with this classification in Willingboro, they did not challenge the classification, since they dis-enrolled her from Willingboro and enrolled her in Burlington at that time. There was no disagreement at the time of her entry into the District to place her in a learning disabled classroom, consistent with the services that she was receiving in Willingboro. Consistent with the regulatory requirements, an evaluation of a transferring student was conducted within thirty days of N.P.'s enrollment in the District. The District's CST had an IEP meeting on February 27, 2015. The IEP continued her in the classification of MCI and switched her to the self-contained multiple disability classroom. The classification of MCI is the only issue raised in the due process petition.

The category of "moderate intellectual disability" (formerly moderate cognitive impairment) is defined and set forth in N.J.A.C. 6A:14-3.5(c) 3. Moderate intellectual disability is defined as "a level of cognitive development and adaptive behavior that is moderately below age expectation with respect to the following:

- (1) The ability to use symbols in the solution of problems of low complexity;

(2) The ability to function socially without direct and close supervision in home, school and community settings; and

(3) Performance on an individually administered test of intelligence that falls three standard deviations or more below the mean.

The District's experts all testified that N.P. met the standards set forth in the foregoing definition of MCI. The undisputed testimony from the District's fact and expert witnesses confirm that N.P. met the criteria for classification under the MCI category. The test results and testimony from the teachers as well as the experts demonstrated that N.P. was unable to use symbols in the solution of problems of low complexity. The experts testified that N.P. testing scores fell more than three standard deviations below the mean, and there was no severe discrepancy between them. All of the experts and the fact witnesses were familiar with the tests and confirmed the results. The fact witnesses testified that N.P. was unable to function socially without direct and close supervision. They had observed her in the school environment and one of the experts had observed her in the community setting. They all concluded that she was unable to function socially without close supervision.

The testimony from both R.P. and B.P. was sincere and credible. They both challenge the District's finding of N.P.'s ability to function in the community and home. Although their testimony that she could function at home was sincere, this testimony from the parent was inconsistent with the observations and findings of the fact and expert witnesses. Furthermore, the parents provided no testimony, fact or expert regarding the other prongs or to dispute the classification of N.P. as MCI.

I therefore, **CONCLUDE** that the February 27, 2015, IEP which placed N.P. in the classification category of MCI is supported by the overwhelming weight of the evidence. I further **CONCLUDE** that the February 27, 2015 IEP is appropriate for her. Based on the foregoing, together with the record as a whole, I **ORDER** the District maintain N.P.'s current IEP and her placement consistent with this classification of MCI and that the petition for due process be and is hereby **DISMISSED**.

This decision is final pursuant to 20 U.S.C.A. § 1415(l)(1)(A) and 34 C.F.R. § 300.514 (2012) 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.A. § 1415(i)(2); 34 C.F.R. § 300.516 (2012). 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.

February 24, 2016
DATE

SARAH G. CROWLEY, ALJ

Date Received at Agency

February 24, 2016 (emailed)

Date Mailed to Parties:

/mel

APPENDIX

Witnesses

For Petitioner:

R.P.

B.P.

For Respondent:

Valentia Steele-Dadzie, M.S.W.

Madeline Zacharkow, M.A.

Margaret Heaney, M.A.

Ellen McHenry, M.Ed.

Merisha L. Sturgis, M.A., Ed. S.

Deborah Schaeffler, M.A., LDT/C

Exhibits

For Petitioners:

None

For Respondent:

R-2 Dyslexia Institutes of America Report dated May 4, 2012

R-3 Initial Identification/Evaluation Consent (Willingboro) dated May 23, 2012

R-4 Initial Speech and Language Evaluation (Willingboro) dated June 7, 8, and 13, 2012 (Linda Sniscak)

R-5 Initial Educational Evaluation (Willingboro) dated June 7, 2012 (Linda Headley)

R-6 Initial Psychological Assessment (Willingboro) dated July 13, 2012 (Michelle Robertson)

R-7 Initial Occupational Therapy Evaluation (Willingboro) dated July 20, 2012 (Jeanne Havlick)

R-8 Initial Social Evaluation (Willingboro) dated July 26, 2012 (Linda Headley)

- R-9 Initial Eligibility Determination (Willingboro) dated October 12, 2012
- R-10 Willingboro IEP dated October 12, 2012
- R-11 Willingboro IEP dated April 16, 2013
- R-12 Audiological and Auditory Processing Evaluation dated August 23, 2013
(Matthew Basara)
- R-13 Vision Evaluation dated September 4, 2013 (Michael Gallaway)
- R-14 Willingboro IEP dated May 20, 2014
- R-15 Independent Education Evaluation (BCSSSD) dated November 4, 2014
(Megan Pavlik)
- R-16 Independent Psychological Assessment (BCSSSD) dated October 22,
2014 (Juliet Limmani)
- R-17 Willingboro IEP dated January 16, 2015
- R-18 Burlington Township IEP dated February 27, 2015
- R-19 Burlington Township IEP dated June 5, 2015