State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 9727-14

AGENCY DKT. NO. 2015 21442

L.R. ON BEHALF OF J.R.,

Petitioner,

v.

CAMDEN CITY BOARD OF EDUCATION,

Respondent.

Jamie Epstein, Esq., appearing for petitioner

Lester E. Taylor, III, Esq., and **Jason Isom**, Esq., appearing for respondent, Camden City Board of Education (Florio, Perrucci, Steinhardt and Fader, LLC, attorneys)[1]

Robert L. Goldstein, Esq., appearing for respondent, Camden City Board of Education insurance carrier (Marshall, Dennehey, Warner, Coleman & Goggin, attorneys)[2]

Record Closed: July 12, 2017 Decided: October 18, 2017

BEFORE **SUSAN M. SCAROLA**, ALJ:

[1] Prior to the conclusion of the hearing, counsel for the Board absented themselves and no longer appeared.

[2] After counsel for the Board no longer appeared, the matter was handled solely by Mr. Goldstein.

STATEMENT OF THE CASE

The petitioner, L.R. on behalf of her child J.R.,[3] alleges that the respondent Camden City Board of Education (District) failed to release J.R.'s student records to her attorney when requested, and that as a result of this procedural failure, the District committed a substantive violation of the Individuals with Disabilities Education Act (IDEA) and New Jersey Special Education Laws.[4]

PROCEDURAL HISTORY

On July 1, 2014, after the District refused to provide the petitioner's attorney with J.R.'s records, the petitioner requested a due-process hearing. On July 8, 2014, the petitioner's due-process request was acknowledged. The Office of Special Education Programs (OSEP) transmitted petitioner's claim to the Office of Administrative Law, where it was filed on July 28, 2014. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

On July 21, 2014, the District filed a motion to dismiss, and on July 22, 2014, the District filed a sufficiency challenge to the due-process petition. On July 25, 2014, the petitioner opposed the challenge. On July 31, 2014, Administrative Law Assignment Judge Lisa James-Beavers ordered that petitioner's complaint was deemed sufficient for a due-process hearing. On August 7, 2014, and August 18, 2014, settlement conferences were held before Administrative Law Judge John Russo, Jr., but the parties were unable to come to an agreement.

On September 2, 2014, the respondent filed a motion to dismiss, and responded to petitioner's discovery request. Following a telephone conference, a Letter Order was issued on September 3, 2014, that ordered the respondent to produce discovery, and set a briefing schedule.

[3] J.R. was born on November 10, 2003, and is almost fourteen years old. She has been diagnosed with "pervasive development disorder not otherwise specified" and is classified as "autistic."

[4] The respondent refused to release the records to petitioner's counsel unless the petitioner executed a release of liability, which she refused to do.

On October 22, 2014, the petitioner filed a motion for summary decision. On November 4, 2014, the respondent cross-moved for summary decision, incorporating a Statement of Undisputed Facts. A hearing on the motions was scheduled for December 10, 2014, but was waived by the parties.

On February 5, 2015, the petitioner's motion for summary decision was granted in part insofar as the District did commit a procedural violation of the IDEA. The District was ordered to produce J.R.'s records to counsel by February 13, 2015. The respondent's motion for summary decision was granted in part, insofar as no procedural violation had been proven that resulted in a denial of a free appropriate public education (FAPE) to J.R. The petitioner was then provided with the opportunity to review the records and to amend her petition to include any substantive violations of the IDEA as the result of the failure to provide them, which was done, over respondent's objection.

The hearing was held on December 7 and 14, 2015, and February 17, March 1, May 9, July 26, August 1 and 2, and November 9, 2016.[5] The respondent filed a written summation on December 1, 2016. The petitioner's reply was received on February 23, 2017. Following a telephone conference, the respondent was permitted to file a supplemental letter brief which was received on July 12, 2017, at which time the record closed.

FACTUAL DISCUSSION

For the Camden City Board of Education

Jill Trainor, senior director of Special Services for the Board since January 2014, testified that she previously worked in other school districts as a teacher, coach, and evaluator in special education. She first became familiar with J.R. in July 2014 and first became involved with J.R.'s IEP[6] in spring 2015. Before that she was not involved. She has never evaluated J.R. Between July 15, 2014, and December 31, 2014, neither

[5] Earlier dates were offered but the attorneys were not available. The last hearing was continued so that the parties could present additional testimony, but as they then declined to do so, the testimony was concluded.

[6] Individualized Education Program.

L.R. nor her representative contacted her to discuss J.R.'s placement, and neither L.R. nor her representative provided a records authorization form. Trainor did participate in settlement negotiations of the then-pending federal litigation.

Trainor was familiar with the settlement agreement entered in the federal court on January 16, 2015, but she did not know what the lawsuit was about.[7] Paragraph 1A provided that J.R. was to receive fifty weekly sessions of compensatory education, which Trainor said were being provided. As to paragraph 1B, J.R. was to get 100 hours of occupational therapy (OT) over a two-year period. This OT started, but was stopped because Weisman said that J.R. had met all of her goals; however, Trainor did not know how many hours J.R. had received. There was some communication about why, and the District provided information to L.R. by email from a secretary to the Child Study Team (CST). Trainor was the one who approved the bills from Weisman. Trainor did not recall that the District used a substitute provider who charged $85 per session, rather than $428 per session as Weisman usually did. Trainor did not remember when the last occupational-therapy evaluation had been completed.

Access to J.R.'s records was provided to the petitioner in February 2015 when she met with the attorney and the district and they went page by page through the records.

An IEP annual review was held in spring 2015, and there was an eligibility meeting in September at which they attempted to develop an IEP.

Between July 2014 and December 2014 there was no request for any participation in an IEP meeting for J.R. Since January 2015, the District attempted to provide FAPE by having evaluations, and reviewing and attempting to develop an IEP.

Trainor had a conversation about Dr. Margolis, who was one of the evaluators who did the learning evaluation. The petitioner's counsel asked that Margolis draft the IEP. There is no updated IEP, just updated eligibility.

[7] The settlement specifically excluded this matter (EDS 09727-14) and the December 3, 2014, records request, from its provisions.

Trainor did not recall any recommendations from any independent OT evaluation.

The report said that J.R. should have a behavioral-intervention plan (BIP) and OT, but the District has not done this. Since June 15, 2015, J.R. has not received a behavioral program to address self-stimulation behaviors.

Under paragraph 1C of the settlement agreement, the District has not authorized a BIP. Dr. McCabe-Odri recommended a positive-intervention plan, but the District said that it has not been provided with one.

The September 4, 2015, meeting was an eligibility meeting. The petitioner wanted Margolis to draft the IEP. No response was given to having Margolis draft it and the IEP was not received until later.

The District accepted the evaluations and used the reports to update the classification. They needed IEP development and the evaluations to determine what goes into it.

At the time the District accepted the Independent Educational Evaluation (IEE) of May 20, 2015, J.R.'s last IEE had been completed years before when she was four years old.

For years prior to Dr. McCabe-Odri's BIP of July 16, 2015, the District did not have a BIP in place. The OT evaluation was completed in June 2015; the last one had been done years before, if it had ever been done. Trainor was not sure if there had ever been a psychiatric evaluation. A speech evaluation was completed on June 5, 2015; the last one had also been completed years before. The Vineland-II[8] had never been completed either.

[8] The Vineland Adaptive Behavior Scales, Second Edition, referred to as Vineland-II, measures the personal and social skills of individuals from birth through adulthood.

Motion

The petitioner moved for a directed verdict on causation, alleging that the withheld records proved a denial of FAPE. The District contended that the District made efforts to provide FAPE and that the petitioner had been granted access to records in January 2015.

For the petitioner

Dr. Kathleen McCabe-Odri was qualified as an expert in autism, applied behavior analysis and special education. She is co-founder and executive director of Partners in Learning, which is designed to integrate children with autism into regular education. She had previously been involved with J.R. going back to 2011.

Dr. McCabe-Odri had access to the August 9, 2012, IEP at the time she prepared her Functional Behavior Analysis on July 16, 2015. She noted that behaviors had been identified early but they had not been identified in the 2012 IEP, nor had they been identified in IEPs from 2013 and 2014, which she reviewed after preparing her report. No records were provided by the District to show how J.R.'s behavior affected her performance. McCabe-Odri observed J.R. in class and observed behaviors that needed to be addressed. No BIP was being implemented. McCabe-Odri indicated that J.R. needed a one-to-one aide (1:1) with training in academics and support.

McCabe-Odri also noted that there were no distinctions been the 2014–2015 IEP and prior ones. Many areas were repetitive or lacking goals and objectives. There was no section on behavior management. No special teacher training was noted. No extended school year (ESY) was provided. Nothing about the IEP was individualized to J.R. She noted that all of J.R.'s records should have been in her file, including the IEPs, evaluations, progress reports, data collection, and a behavior-management plan. These were missing. Dr. McCabe-Odri felt that J.R. had been deprived of the programs she needed, including remediation, social skills, and OT from 2011 to the present, as none of these were included in her IEP. She noted a pattern of omission of critical services for an extended period of time.

McCabe-Odri's testimony differed from her report, as she based her review on the records she had. When other records were provided to her, she noted that J.R.'s behavior required additional interventions. The lack of a behavior plan, lack of teacher training, and failure to make objective measurements were of significant concern to her. If J.R. were placed in general-education classes, she would require more support, particularly as she aged, as problems are compounded with the passage of time and no interventions. McCabe-Odri acknowledged that although she had testified previously on behalf of J.R., she was changing her recommendations to now include assignment of a one-to-one aide and appointment of a monitor for her program because problems have accumulated during the period when services were not provided. Without full access to records, the collaborative process of the CST was slowed down.

Gaye Pieters, a speech-language pathologist, testified that she performed a speech-language assessment of J.R. at the request of Partners in Learning. She would prefer to review the current IEP, speech-language goals, and progress notes from the speech therapist, but all she had available to her was the IEP. J.R. had speech goals in her IEP, but without the reports she could not gauge her progress in the program. Pieters had also observed J.R. in the classroom. She noted that J.R. needed to be redirected, but her IEP had no program for behavior. She spoke with J.R.'s teacher and therapist and requested records, but they had no records to offer her. It was her understanding that no records existed about J.R.'s speech-language therapy or progress.

After using several tests to assess J.R., Pieters concluded that her scores were in the severe low range, and should not be reflective of a student who had received speech therapy for over eight years. The IEP that she reviewed did not identify J.R.'s present levels of speech and language, and the goals and objectives in the IEP were vague. They did not appear individualized to J.R. Success criteria were not identified for J.R., making it impossible to tell if she were making progress. Because of the deficiencies in the IEP and her autism, she needed more attention to articulation, words, and phrases.

Pieters recommended that J.R. receive more comprehensive language goals and objectives, focused on semantics. She needed to become more age appropriate and to understand common as well as uncommon things. Her language needed to be incorporated into the classroom. Pieters recommended speech therapy three times per week (one time with a one-to-one, and two times with a group with at least one typical peer) and one supplementary service to make up for what was not provided in the IEP. She needed someone to oversee the program to be sure that services were carried out and that progress reports are shared with her family.

Geraldine Healy-Marini, an occupational therapist at Partners in Learning, testified that she completed an OT evaluation for J.R. on June 15, 2015. Her plan was to review previous evaluations and progress notes, as well as teachers' comments and concerns. She was trying to ascertain where J.R. was. She received just limited records and saw only one OT evaluation, and that was from 2012. No progress notes were provided with the IEP. There was no evidence that the recommendations given in the 2012 evaluation had been followed. She had expected to see an initial evaluation or a re-evaluation completed every three years, as well as annual-review summaries, goals and objectives, and frequency and duration of service. Based on the records she was provided, there was no documented progress, so the goals were consistent from year to year.

Healy-Marini reviewed records of prior service providers. The first contained no information on goals and objectives, but was just a service log; many sessions had been missed. The second said J.R.'s progress was significant, but she had not done well, as issues of attention interfered with testing, and no goals or benchmarks were noted. The third only provided four sessions and contained no information about J.R.'s progress. One of the records concluded that J.R. should have OT "consulting" four times per year rather than the services she needed.

Healy-Marini also observed J.R. in the classroom. She saw behaviors in each class that interfered with J.R.'s tasks and with her completing her work. Healy-Marini tested J.R. and noted difficulties in behaviors, visual/motor skills, and self-care issues. She noted that J.R. was not provided with any assistive technology. The IEP provided

J.R. with OT four times per year. She opined that this IEP was not appropriate for OT: J.R. needed one hour, or one to two sessions, of OT per week, as well as consultation with teachers to incorporate the recommendations in their classes, particularly with some knowledge of sensory integrated theory. Healy-Marini recommended a behavioral program, a sensory program, assistive technology, and social-skills training. Since the OT program did not appear to have been carried out properly, she thought someone should oversee her program and her progress. She had never seen a child receive OT for seven years, as had J.R., without an evaluation. Due to the litigation, J.R. had still not been re-evaluated.

Howard Margolis, a reading and special-education consultant, was accepted as an expert in special education. He reviewed three IEPs for J.R., a proposed one for 2013, one for 2014, and a proposed one for 2015. He found similar problems with all three IEPs and noted that the IEPs did not identify J.R.'s educational needs. Based on his review of the Present Level of Academic Achievement and Functional Performance, the goals and objectives of her IEP could not be identified, and were so lacking that they could not be developed. The vast majority of her goals and objectives were not stated in measurable terms, so he could not determine her performance. They were not individualized for her and there was no strong sense of what J.R. had to accomplish because it was not known at what level she was functioning. He thought J.R.'s teachers and aide were doing a good job, but without good goals and objectives there was no way to determine progress. If written data is not collected, then there is no way to advise the parents or to make adjustments to the program for J.R. While there were statements about the class, there was no evidence of the staff working on J.R.'s goals and objectives.

Margolis tested J.R. in math and reading and ascertained that she was functioning at the lowest level, as an average kindergartener or beginning first-grade reader. But she was in the fourth grade. It was hard for him to determine what the IEPs meant when compared to the interviews and testing, which showed her deficits. She needed a more fundamental curriculum, oriented to safety and ability to function in her community, and to try to prepare her for independence. She was not getting that.

Based on his review of the record available to him, the IEPs were not reasonably calculated to ensure an appropriate educational program, nor were they effective at meeting goals and objectives. Data collection was critical, and without data to see the trend to progress or regression, J.R. was not being served. No personnel were providing this collection for her. While the teacher and aide were excellent in relating to the children, he saw no evidence that the teacher or aide collected data. He asked for data and never received it.

Margolis was willing to be involved in the preparation of an IEP and to incorporate his report into it, but he had no further input. He was willing to act as an independent monitor for J.R.'s IEP, if asked, and to participate in the CST.

Motions

The District made a motion to present rebuttal testimony to address the issues raised by the petitioner in its case, to ensure that the full record of J.R.'s performance was presented, and to address the findings and conclusions testified to by the evaluators. The petitioner objected because the District was aware that its case in chief consisted of one witness; that the District agreed that it had not provided the records when requested, and that the District was aware of the profound deficiencies in the IEPs. The petitioner contended that the result would only be additional delay in completing the hearing. The motion was granted to permit some limited rebuttal testimony to address the evidence presented by the petitioner, but not to permit the reopening of the case in chief.

The petitioner then moved for summary judgment on the merits (essentially a decision in its favor), contending that the District had the burden and had not presented evidence to support its position in its case in chief. Decision on this motion was reserved pending the rebuttal testimony.[9]

[9] This decision disposes of the motion.

The District then moved, for the third time, to recommence and re-open the matter (and re-present its case in chief), which was denied for the third time.

Rebuttal testimony for District

Trainor testified on rebuttal that copies of the IEP are mailed to the parents' homes and that L.R. should have received them. Parents are always able to go to the office to review and get records.

Trainor had never seen a monitor oversee the implementation of an IEP, but she had no objection to an expert participating in or contributing to the implementation of the IEP.

Trainor was aware that J.R. had a one-to-one aide, but the aide was not a certified special-education teacher. She noted that the District was short in special-education teachers and was trying to hire some. She had not provided training to J.R.'s aide.

At the April 2015 annual review, everyone met for preparation of the IEP. J.R. was offered an ESY, but the petitioner declined because J.R. was going to attend a different program. The same was true for prior years. But the IEP did not include a requirement for ESY.

The CST met in 2014–2015 and independent educational evaluations were performed. The IEP was to be revised to incorporate those changes. But the IEP and eligibility were not done because of the pending litigation. Trainor became involved too late to know why a placement might be required for J.R. Trainor did not recall the District not approving funding for Dr. Margolis so he could submit his proposed IEP. Trainor was also not familiar with Judge James-Beavers' previous decision involving J.R. and inclusion opportunities.

Clara West testified that she has worked for twenty-seven years in Camden and was J.R.'s case manager from 2013 to 2016. She was involved in a few meetings with

J.R.'s mother and teacher about a one-to-one aide. What was resolved was that J.R. had made progress, and her mother agreed. J.R. was in a self-contained classroom with a total of six students, and in an inclusion class in math and readings. They discussed J.R. having a "shadow," an aide who does not necessarily provide academic support, but who offers other support. This was accepted by the petitioner and they agreed on no one-to-one aide. The IEP did not call for an aide.

As for an ESY, the petitioner said she had other plans for her daughter during the summer, but the IEP is silent on an ESY. West thought that J.R. would benefit from an ESY.

West was aware that Margolis had created an independent IEP. She responded to requests for information from him and others; no one told her the information was not sufficient.

Camden has outside monitors to make decisions. West was not aware that Margolis had sent her a two-page email that stated that J.R.'s teachers were not cooperating. The IEP for J.R. stated that she "does not require ESY at this time," which would contrast with the mother not asking for it. West was not aware that L.R. did not have access to J.R.'s records, although she knew that L.R. had requested them. West provided numerous records of communications but did not remember which ones.

As for the one-to-one aide, West believed there was agreement on no one-to-one aide. But under the IDEA, such consent of the parent must be in writing. West acknowledged that she did not have informed consent in writing from the petitioner that no one-to-one aide would be provided.

Findings

I accept the testimony of the witnesses as truthful and as **FACT**. The witnesses for the District essentially confirmed that the records had not been provided to L.R. upon her request. These witnesses confirmed that the records revealed a lack of appropriate evaluations; a lack of appropriate goals and objectives for J.R.; a lack of record keeping

and data collection; J.R.'s need for additional OT therapy; her need for a BIP; her need for a one-to-one aide; her need for an ESY; and the need for an individualized education program suitable for her needs. The petitioner's witnesses credibly described the services that J.R. should have and could have received as part of her IEP.

The failure to provide the records in the first instance resulted in a failure of the parent to become fully cognizant of the needs of the child. The IEP that was drafted was inadequate to meet the substantial needs of J.R. The failure of the District to create an appropriate IEP that included the services that needed to be provided to J.R. so that she could access her education created substantive violations of the IDEA and denied J.R.'s right to a free appropriate public education.

LEGAL ANALYSIS AND CONCLUSION

This is a matter with a tortured history.[10] On May 16, 2014, the petitioner's counsel asked for access to J.R.'s school records. That request was denied unless the petitioner executed a release of liability. On February 5, 2015, an order was entered compelling the District to give the petitioner and her counsel access to the records. The records were then provided. It quickly became clear that the child had not been re-evaluated, and in some instances, may never have been evaluated in particular areas of concern (OT, speech, psychiatric). Services that were to be provided were not. At first it appeared that the matter could be settled, as the District was willing to provide evaluations; the parties, however, could not reach an agreement because of a singular issue. As a result, a hearing on the merits was required.

The hearing then commenced. The District called one witness who testified briefly and essentially acknowledged that the records had not been provided to the petitioner's counsel when requested. In addition, the records revealed that the child had not been evaluated in several important areas for years, and that her IEP may have been deficient.

[10] The first due-process petition was filed in 2010. Litigation has taken place in this forum, the Superior Court, and the Federal District Court.

The petitioner then moved and was permitted to amend its pleadings to address these alleged deficiencies and to prove that as a result of this procedural due-process violation, a substantive violation had occurred. The District objected to this, contending that it was entitled to respond and to have another sixty-day resolution period. That application was denied, as by that time the matter had not resolved itself in over one year, and there was no indication that any additional time would yield a settlement, rather than simply add to the delay in concluding this matter.

As a recipient of federal funds under the IDEA, 20 U.S.C.A. § 1400 et seq., the State of New Jersey has a policy that assures all children with disabilities the right to FAPE. 20 U.S.C.A. § 1412. The responsibility to provide FAPE, including special education and related services, rests with the local public school district. 20 U.S.C.A. § 1401(9); N.J.A.C. 6A:14-1.1 et seq.; N.J.A.C. 6A:14-1.1(d). In accordance with N.J.S.A. 18A:46-1.1, the burden of proving that FAPE has been offered likewise rests with school personnel. The Board will have satisfied the requirements of law by providing J.R. with personalized instruction and sufficient support services "as are necessary to permit [her] 'to benefit' from the instruction." G.B. v. Bridgewater-Raritan Reg'l Bd. of Educ., 2009 U.S. Dist. LEXIS 15671, *5 (D.N.J. Feb. 27, 2009) (citing Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 189, 102 S. Ct. 3034, 3042, 73 L. Ed. 2d 690, 701 (1982)). An IEP must provide meaningful access to education, and confer some educational benefit upon the child. Rowley, supra, 458 U.S. at 192, 102 S. Ct. at 3043, 73 L. Ed. 2d at 703.

The IEP is the agreement between the parties that specifies how special education and related services will be delivered. 20 U.S.C.A. § 1414(d)(1)(A). It is the vehicle through which a child receives FAPE. D.S. v. Bayonne Bd. of Educ., 602 F.3d 553, 557 (3d Cir. 2010); Lascari v. Bd. of Educ. of the Ramapo-Indian Hills Reg'l Sch. Dist., 116 N.J. 30 (1989).

N.J.A.C. 6A:14-2.7(k) provides that procedural violations may lead to a finding that FAPE was denied if the violations impeded the child's right to FAPE; impeded the parents' opportunity to participate in the decision-making process; or caused a deprivation of educational benefits. N.J.A.C. 6A:14-2.7(k). It is "no exaggeration to say

that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process . . . as it did upon the measurement of the resulting IEP against a substantive standard." Rowley, supra, 458 U.S. at 205–06, 102 S. Ct. at 711, 73 L. Ed. 2d at 3049. Our courts have observed that "[t]he procedural requirements of the IDEA are essential to the fulfillment of its purposes." D.B. and L.B. ex rel. H.B. v. Gloucester Twp. Sch. Dist., 751 F. Supp. 2d 764 (D.N.J. 2010).

The failure by the District to permit the parent to have access to the records prevented the parent from meaningful participation in J.R.'s educational process. This failure led to IEPs that were inadequate for J.R. and denied her the appropriate supports and interventions that could have permitted her to fully access her education. I **CONCLUDE** that the procedural violation of access to the records caused a substantive violation of the IDEA. I **CONCLUDE** that J.R. was not provided with FAPE and, accordingly, is entitled to the development of an appropriate IEP; the provision of services; and compensatory education to make up for the deficits that have been identified.

The petitioner seeks:

A. The appointment of a monitor, namely, Dr. Margolis, as a consultant to oversee J.R.'s IEP to include the recommendations of the experts.[11]

B. A licensed special-education teacher in autism, applied behavior analysis, and reading as J.R.'s one-to-one aide.

C. Access to records upon written request.

[11] These recommendations include: articulation goals; a behavioral program; a sensory program using sensory integrative theory; assistive devices; social-skills groups; an "autistic-support class"; occupational therapy; a program for self-control and duration to task; training for her teaching team; academic modifications in the inclusive setting and curriculum, including direct one-on-one instruction and a one-to-one aide; ESY services; coordination with private therapies; life-skill goals and programming; reporting of accomplishments at regular opportunities at school and home; and a curriculum geared toward J.R.'s safety and ability to function in the community.

D. Compensatory education to include: 1. speech therapy (one additional session per week for one school year); 2. Occupational therapy (one additional session per week for one school year); 3. Compensatory education to make up for lost ESY services; and 4. Compensatory educational and behavioral programming.

As for the development of an appropriate IEP to include the recommendations of the experts, the District and the parents are now on notice as to what should and could be incorporated into J.R.'s IEP. The collaborative process will not be disturbed here. I conclude that an appropriate IEP for J.R. shall be developed in consultation with the Child Study Team that is designed to offer her FAPE, including but not limited to curriculum; goals and objectives; language, occupational, and behavioral services; training; assistive devices; ESY; and instruction modifications within the autistic-support class. I do not conclude that, at this time, the District requires a monitor to oversee the development of the IEP or its implementation.

As for the request for relief that a one-to-one aide who is a licensed special-education teacher be appointed, I do not conclude that this request should be granted. Clearly the District is aware that J.R. requires a one-to-one aide with training beyond the high-school level, and will appoint an appropriately trained paraprofessional to serve as J.R.'s one-to-one aide.

As for access to records, that relief is required by law. The Board shall grant access to J.R.'s records to her parent or guardian and her attorney, within a reasonable amount of time, upon written request.

As for compensatory education, such request for relief shall be granted. Speech therapy and occupational therapy shall be provided at one additional session per week for one school year. Other significant compensatory education shall be provided to make up for lost ESY services, and for the omission of intensive instruction and behavior management. The amount of these services shall be determined by the Child Study Team in consultation with the experts to avoid overwhelming J.R. and limiting her ability to focus on her education.

ORDER

I hereby **ORDER** that the following relief is **GRANTED**:

1. An appropriate IEP for J.R. shall be developed in consultation with the Child Study Team that is designed to offer her FAPE, including but not limited to curriculum; goals and objectives; language, occupational, and behavioral services; training; assistive devices; ESY; and instruction modifications within the autistic-support class.

2. The District shall assign J.R. an appropriately trained paraprofessional to serve as J.R.'s one-to-one aide.

3. The Board shall grant prompt access to J.R.'s records to her parent or guardian and her attorney, upon written request.

4. J.R. shall be entitled to compensatory education, including speech therapy and occupational therapy at one additional session per week for one school year commencing immediately. Other compensatory education shall be provided to make up for lost ESY services, and for the omission of intensive instruction and behavior management. The amount of these services shall be determined by the Child Study Team in consultation with the experts to avoid overwhelming J.R. and limiting her ability to focus on her education.

The application for the appointment of an independent expert to draft and/or monitor J.R.'s IEP is hereby **DENIED**.

All other requested relief is hereby **DENIED**.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2017) 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 (2017). 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.

October 18, 2017 _____

DATE **SUSAN M. SCAROLA**, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

SMS/cb

APPENDIX

WITNESSES

For petitioner:

Dr. Kathleen McCabe-Odri

Gaye Pieters

Geraldine Healy-Marini

Howard Margolis

For respondent:

Jill Trainor

Clara West

EXHIBITS

For petitioner:[12]

P-1 Record Release Form

P-2 8/8/12 ABA Progress Report

P-7 1/6/12 Augmentative Communication Evaluation Report

P-13 10/13/11 Pediatric Neurology Report

P-17 3/31/14 IEP

P-33 9/25/13 IEP

P-50 4/11/13 IEP

P-67 8/9/12 IEP

P-84 Placement Scoring Sheet

P-85 5/29/14 Progress Report

P-86 9/9/13 Placement Scoring Sheet

P-94 Articulation Progress Monitoring

P-95 2013–14 Class Assignments

[12] Petitioner's exhibits were referred to by page number.

P-110 2013–2014 Standardized Testing

P-111 Report Cards

P-124 2011–2012 Interactive Kids Consult Log

P-125 2012–2103 Schedule

P-128 Speech Progress Report

P-164 2012 Social Skills Plan

P-171 2010–11 IEP Progress Report

P-177 2011–12 IEP Progress Report

P-202 2012–13 IEP Progress Report

P-215 2013–14 IEP Progress report

P-222 OT Progress report

P-236 Pieters Speech Evaluation

P-243 Marini OT Evaluation

P-251 Tucker Psychiatric Evaluation

P-255 Odri Behavior Assessment

P-265 Saporito Intellectual Evaluation

P-270 Margolis Learning Evaluation

P-314 Marini curriculum vitae

P-318 Odri curriculum vitae

P-325 Margolis curriculum vitae

P-327 Pieters curriculum vitae

P-329 Saporito curriculum vitae

P-332 Tucker curriculum vitae

P-334 Eligibility Conference Report

P-336 Summary of Observation and Recommendations, McCabe-Odri 3/2011

For respondent:

R-1 General Release and Settlement Agreement dated January 16, 2015