

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION
(CONSOLIDATED)

WEST ORANGE BOARD OF EDUCATION,

Petitioner,

v.

H.D. AND N.R. ON BEHALF OF N.D.,

Respondents.

OAL DKT. NO. EDS 18128-18

AGENCY DKT. NO. 2019-29108

H.D. AND N.R. ON BEHALF OF N.D.,

Petitioners,

v.

WEST ORANGE BOARD OF EDUCATION,

Respondent.

OAL DKT. NO. EDS 18129-18

AGENCY DKT. NO. 2019-29043

Bradley Flynn, Esq., appearing on behalf of H.D. and N.R. on behalf of N.D.

Jared S. Schure, Esq., appearing on behalf of West Orange Board of Education

Osama Azer, Eva Dawoud, and Wahid El Nashfan, Arabic Language

Interpreters

Record Closed: December 9, 2019

Decided: December 19, 2019

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

STATEMENT OF THE CASE

Petitioners H.D. and N.A. on behalf of their child N.D., dispute that the IEPs of respondent West Orange Board of Education (District) provide N.D. with FAPE, and allege that the District is required to provide an independent evaluation of N.D. The District denies that IEP's do not provide FAPE and that it is required to provide an independent evaluation of N.D.

PROCEDURAL HISTORY

The matters were transferred to the Office of Administrative Law (OAL) as contested matters on December 20, 2018. There has been previous litigation between the parties. On June 28, 2019, I issued a decision on two of the previous due process petitions and cross-petitions (Docket Nos. EDS 1468-17, EDS 1469-17, EDS 5300-18, and EDS 5303-18) that the IEP's provided FAPE. At the beginning of the 2019-2020 school year the District changed N.D.'s placement from the stay-put placement to the IEP placement in accordance with my June 28, 2019, decision. Petitioner filed a motion for emergent relief on September 24, 2019, regarding the District's change in placement of N.D. The District opposed the motion. Petitioner's motion for emergent relief was denied on October 1, 2019. Hearings were held on the following dates June 14, 2019, June 28, 2019, August 23, 2019, and December 9, 2019.

FACTUAL DISCUSSION AND FINDINGS

Testimony

Wendy Japaz

Wendy Japaz (Japaz) is a fifth-grade general education teacher at the Mount Pleasant School. She is a certified K-8 teacher. She has taught for fifteen years. She was N.D.'s fifth-grade social studies and science teacher, both classes are general education.

There was an IEP meeting for N.D. on November 2, 2018. The Board's attorney, Jared S. Schure, was present at the meeting. He was seated in the corner near Amy Dorst (Dorst). When petitioners arrived, they requested Schure leave the meeting. Mr. Schure declined to leave the meeting. Petitioners would not participate with Schure present and left. Schure did not act in a rude or aggressive manner toward petitioners at the meeting. An Arabic interpreter was present at meeting. Petitioners did not subsequently reschedule the IEP meeting.

The proposed IEP included learning language disabilities (LLD) classes for science and social studies. This would meet N.D.'s needs.

Petitioners have not observed N.D. in his class. N.D. did not make any progress in social studies or science. N.D.'s comprehension in science and social studies was on a basic level.

N.D. uses the FM system in his classes. General education science and social studies are not appropriate for N.D. Dr. Susan Woldoff never observed N.D. in her classes or contacted her.

N.D. has communication disorder and auditory processing disorder. He does not have a behavioral intervention plan (BIP).

Kristen Garces

Kristen Garces (Garces) has certificates in general education, special education, and learning disability consultant. She has worked for West Orange for eleven years. She is currently a special education teacher in a self-contained class. N.D. has been her student in the language arts and reading class for the past three years. The class is tailored to N.D.'s needs. He had discrete trial teaching and non-discrete trial teaching. She has seen progress in N.D. by exposing him to different programs. N.D. did a narrative writing independently. It was done in small parts. However, he struggled with an online writing assignment. N.D. would be sleepy when he arrived at her class, which interfered with his work. He would perk up after approximately twenty minutes.

The November 2018 IEP proposed language arts in an LLD class, which is appropriate for N.D. The material is broken down into smaller parts. N.D. no longer needs discrete trial teaching.

Garces was at the November 2018 IEP meeting which Schure was also present. He was not rude or harsh to petitioners. He sat on a stool. Petitioners did not contact her after the IEP meeting of November 2018. There is a huge gap between N.D.'s comprehension and the comprehension of a typical fifth-grader. General education classes are not appropriate for N.D.; the gap of his understanding language is to large.

Dr. Sarah B. Woldoff observed N.D. in his class. N.D. told Garces that he was sleepy because he had to go to the mosque. Dr. Woldoff left the observation when N.D. went to the rest room.

Colleen Grandinetti

Colleen Grandinetti has certificates in teacher of the handicapped and LDTC. She has been a teacher in West Orange for twenty-eight years. She was present at the November 2018 IEP meeting for N.D. Schure, the Board attorney was present. He was not aggressive or rude to petitioners at the meeting. The proposed IEP had LLD classes for N.D. in the major academic subjects.

Grandinetti does educational assessments. She uses the Woodcock Johnson to test reading, writing, and math. The results are compared to other children of the same age.

Grandinetti did an educational evaluation of N.D in October 2016. N.D.'s basic reading skills were at the first-grade, seventh-month level. His reading comprehensions skills were at the first-grade level. LLD class would address N.D.'s language, comprehension, and reading difficulties. It is taught by a trained special education teacher. General education classes are not appropriate for N.D. The pace of the classes is too fast for him. N.D. requires support before introducing new topics. He

needs modifications as well. A special education teacher can go back and reteach topics to him.

Grandinetti reviewed Dr. Woldoff's report. Dr. Woldoff evaluated N.D. in May 2019. Grandinetti is familiar with the WIAT-III test, a test Dr. Woldoff used, and can interpret the results. It is similar to the Woodcock Johnson test. On the WIAT-III N.D.'s listening comprehension score was the equivalent of first grade, seventh month. His word reading skills were at third-grade, ninth-month level. His reading comprehensions skills were at the first-grade, ninth-month level. His math problem solving skills were at third-grade, fourth-month level.

N.D. has a learning and language-based disability and ADHD. A specialized program for students with language-based learning disabilities and significant language delays is an LLD program. N.D. does not have the skills needed to learn in a general education class. LLD classes and general education with a one-to-one aid are two different programs. Paraprofessionals do not teach, they provide support.

Kristen Gogerty

Kristen Gogerty (Gogerty) is the Director of Special Services for the Board. She was present at the November 2018 IEP meeting of N.D.

Danielle Emmolo

Danielle Emmolo (Emmolo) has been employed by the board since 2002 as a speech pathologist. She is certified by the State of New Jersey as a speech pathologist. She does speech language evaluations and speech therapy. She has provided speech therapy to N.D. since he was in the Kindergarten through June 2019. She conducted a speech language evaluation on N.D. in September 2016. N.D. needed minimal prompting to sustain attention.

Emmolo attended the November 2018 IEP meeting. Petitioners asked that Schure leave the meeting. Schure declined to leave the meeting. Petitioners left at that time. An Arabic language interpreter was present at the meeting.

She wanted to discuss N.D.'s placement with petitioners, but they left the IEP meeting. Emmolo is not sure if more speech therapy or putting N.D. in a speech-infused situation would be best.

Emmolo is familiar with LLD classes. LLD classes is the most appropriate placement for N.D. In LLD classes instructions are repeated as often as needed. He would also be provided with strategies to acquire, maintain, use, and carryover skills.

Amy Drost

Amy Drost (Drost) is N.D.'s case manager. She is a school psychologist. N.D. completed the fifth grade in June 2019. N.D. began in the District in the preschool disabled program. He was classified as cognitively impaired. The school portion of the child study team (CST) wanted N.D. to be in classes with other cognitively impaired students. Petitioners wanted N.D. in general education classes. He has pull-out language arts and pull-out math. His language arts was discrete trial language arts. He has consistently shown severe and diverse impairment. N.D. has significant expressive and receptive language deficits.

Dorst evaluated N.D. in 2016. Prior to the November 2016 IEP, the District acquiesced to petitioner's request that N.D. remain as much as possible in general education classes. In the November 2016 IEP the District proposed N.D. be placed in LLD classes in math, social studies, science, and language arts.

Drost was present at the November 2018 IEP meeting. An Arabic interpreter was present. She recorded the meeting with a handheld device. Schure was present at the IEP meeting. He did not ask petitioners any questions. Petitioner did not attempt to reschedule the IEP meeting. Dorst requested Schure at the IEP meeting because of the escalation of H.D.'s behavior. She does not feel safe with H.D. Schure was present to keep the peace. Prior to the IEP meeting H.D. objected to Schure's presence at the IEP meeting.

The IEP provided for LLD classes for N.D. LLD classes are appropriate for N.D. Dorst determined this based on his functioning in school, standardized-test results, Dr. Steinhardt's report, and reviewing N.D.'s educational history.

N.D. being placed in all general education classes would not be appropriate because low cognitive function, expressive and receptive language disorder, and ADHD. The District has never definitively been told if N.D. is taking medication or the name of any medications N.D. is taking.

N.D. did not regress in language arts due to the use of discrete trial teaching. The language arts class is called the autistic class. It has a maximum of six students. It is not a class specifically for autistic students.

Dr. Delany determined that N.D. had an auditory-processing disorder. Dorst sent petitioners a letter to meet with the IEP team to discuss Delany's report. Petitioner declined to meet. N.D. was offered increased speech services, but petitioner wanted the services delivered by an audiologist. The District stated that audiologists are hospital and clinic based and parents are responsible for medical-based therapy. The FM system is in the November 2018 IEP. Dorst was given consent by the petitioners to speak to Delany regarding N.D. Delany did not know of N.D.'s express and receptive language disorder. Dorst informed Delany that the FM system was being used in all but the language arts class. Delany agreed that FM system would not be needed in N.D.'s language arts class. Delany asked if N.D. was classified, how long was he in special education, and what was his programming, placement, and IEP-related information. During the conversation, Delany agreed that N.D. should continue in special education programming. Delany stated that N.D. did better on non-language-based tests than language-based tests, which was consistent with what Dorst knew.

Dorst did not have Dr. Woldoff's report at the time of the November 2018 IEP. Dr. Woldoff observed N.D. at the school. The District policy is that the visit is one hour and can occur twice during the school year. Dr. Woldoff observed N.D. on May 30, 2019, the time was set for 8:45-9:45a.m. On that date Woldoff arrived at 9:06 and N.D. arrived at 9:07a.m. Woldoff saw N.D. in the discrete trial language arts class. She did not

observe him in a general education class. Woldoff did not ask to see any specific program and did not choose to see any other program. Dorst was present during Woldoff's observation of N.D. toward the end of the observation, N.D. had his hands in his pockets fondling himself. The teacher told him to go to the rest room and wash his hands. Since it was 10:00 a.m. at that time Dorst told Woldoff "since N.D. is unavailable right now, it would be a good time to leave." They then exited the classroom. Woldoff did not see N.D. exit the rest room and return to his seat, they were out of the classroom by then.

Woldoff results showed N.D. had an IQ of 83. Woldoff noted that N.D. had significant weakness in his processing speed, working memory, and verbal comprehension. On the WIAT II test N.D.'s reading and listening comprehension were on a first-grade level. This was at the time he was graduating from fifth grade. When evaluated by Dorst and Steinmardt N.D.'s IQ was in the fifty to sixty range. N.D. does not present with an IQ of 83. IQ is a stable construct. It does not increase by twenty to thirty points.

Woldoff's report stated that the language-based nature of education will continue to make academic learning difficult for N.D. without intensive and specific remediation. This is offered in the LLD class. The reports states that N.D. would benefit from a specialized program for students with language-based learning difficulties and significant delays. N.D. would get this in the LLD program Dorst does not agree that N.D. should be in general education class with a one to one aide. Dosts believes that N.D. needs a special education teacher, not a paraprofessional. N.D. does not need a supplemental reading program. He has been successful with one-to-one discrete trial instruction. The LLD staff has training about language disorders and language-based learning delays. General education teachers do not have that training.

The District offered extended ESY program for N.D. Petitioners declined this offer. The November 2018 IEP includes ESY. The FM system is included in the November IEP. N.D. is constantly prompted throughout the school day. Woldoff's report states that N.D. is better able to learn through one-to-one instruction. There is more one-to-one instruction in the LLD classes than in the general education classes.

Visual reinforcement is a key part of LLD. In his special education class, N.D. is provided with study guides before tests. Flexibility in completing assignments can be done in the special education class. N.D. does not participate in State-wide testing.

Dr. Sarah B. Woldoff

Dr. Woldoff is a licensed psychologist she has done over 100 neuropsychological exams and has worked with people with auditory-processing disorder. She has a Master's degree and Ph.D. in clinical psychology.

Dr. Woldoff evaluated N.D. on May 19, 2019. She asked to observe N.D. on either May 20, 2019, or May 30, 2019. She observed him at school on May 30, 2019. His diagnosis was expressive and receptive language disorder, auditory-processing disorder, and ADHD.

Dr. Woldoff arrived for the in-school observation fifteen minutes late due to traffic. N.D. had not yet arrived at school. Once N.D. arrived, she observed him in the primary autistic self-contained language arts class. She observed N.D. for one hour, which was the maximum amount of time that the school would allow for the observation. N.D. was tired. He had one-to-one reading instruction. He was not focused, inattentive, struggled with vocabulary, and used visual clues to decipher vocabulary. He was rubbing his eyes and nose and was told to wash his hands. N.D. struggled with focus and responding to where, when, and why questions as well as comprehension. Woldoff sent questions directly to the teachers. Erin DiFrancisco and Kristen Garces responded to her written questions. They gave her a list of N.D.'s strengths and weaknesses as well as a narrative. This class was not appropriate for N.D. Di Francisco, his special education teacher, stated that N.D. has a short attention span, difficulty staying on task and remaining focused, as well as anxiety about test taking.

N.D. had a private tutor who was a teacher, who worked on reading chunk information and reading comprehension weekly. Woldoff contacted the tutor twice and reviewed the work she did with N.D.

Woldoff also observed N.D. in her office. At that time N.D. was inattentive. He responded to redirection. N.D. asked Woldoff questions about her daughter and where she lived. He used incorrect grammar. He struggled with writing without support. N.D.'s processing speed and working memory have deficits. His non-verbal IQ is higher than his verbal IQ. His full-scale IQ score was 83. The average IQ score range is 90 to 109. His global ability score was 87 which is in the low-average range. A borderline IQ score is in the range of 70 to 80. An IQ score below 69 is considered intellectually disabled. N.D.'s IQ score is in the low-average range. The testing was three hours long. Every five minutes in the beginning he would get a token from the token board. She used visual supports, visual timer, and a token board. N.D. had a break every thirty minutes. These techniques may be used in an LLD class.

She reviewed Dr. Morgan and Hahn's report she does not believe its IQ score was valid. Dr Woldoff is familiar with Dr. Steinhardt's evaluation. She has concerns regarding the variability of verbal and non-verbal IQ scores. N.D. has language concerns that affect standard testing. He has difficulty with processing speed and memory especially with language-based problems.

Woldoff performed academic testing on N.D. N.D. was in the fifth grade at the time of the testing. His greatest strength was in math. He scored on a fifth-grade level in numerical operations, math fluency addition, and math fluency subtraction. In math fluency multiplication he scored at a fourth-grade, seventh-month level and on math problem solving his score was third grade, fourth month. She believes that he can excel in general education math. The use of visuals, a highlighter, and support of an aid could be done in a general education class.

N.D. listening comprehension was at first-grade, eighth-month level. His reading comprehension was at first-grade, ninth-month level. His spelling was at third-grade, seventh-month level. N.D.'s oral fluency was at second-grade, ninth-month level; his reading accuracy was at second-grade, first-month level, and his reading rate was at second-grade, seventh-month level. Other than math, N.D. tests at first-, second-, or third-grade level in his other subjects. N.D. made slow progress in language arts.

Woldoff's opinion is that N.D. should not be in a self-contained class with students who have similar learning difficulties as he has.

The November 2018 IEP proposed LLD classes in all academic areas as well as speech twice a week and occupational therapy. Woldoff believes that N.D. should be in general education math class and she has concerns with social skills instruction. Role playing and facilitating activity to start conversation would address the social skills concerns.

Woldoff's recommendations for N.D. in reading are a reading program for students with language processing disorder such as Reading Horizons Elevate Program. She also recommends pre-teaching vocabulary, knowledge of the questions ahead of time, use of post-its, and preview information.

The placement that Woldoff recommends for N.D. is a specialized program for students with learning-based disabilities or general education with supports and one-to-one teaching. She recommends general education most of the day with pull-out language arts and comprehension. The pull-out could be individually or in a small group. Woldoff would be surprised if N.D. was in resource room Math for 2018-2019 and made no progress. N.D. participating in general education specials would not be enough.

Woldoff was provided with math and language arts work samples. All of the samples were given to her by petitioners and on all N.D. had excellent grades. She did not see the same results for N.D. in her examination. Her opinion is based on her observation in class and her evaluation of N.D. She did not write about the IEP present levels in her report, she reviewed them, but the basis of her report are her findings.

N.D. would benefit from a specialized program for students with language-based disabilities and language-based delays.

H.D.

H.D. is the father of N.D. He testified that N.D. was originally classified as communication impaired. His receptive communication has improved. He still has an issue with expressive language. N.D. is currently in LLD classes for all academic subjects. The prior school year N.D. was in general education classes in all academic classes except language arts.

H.D. went to the IEP meeting on November 2, 2018. The teachers, speech therapist, occupational therapist, Gogerty, and the Schure were present. No one from petitioner's attorney's office was present. N.D. stated that he did not want Schure present at the meeting and asked him to leave. He asked Schure to leave because H.D. believed that Schure would take over the meeting. H.D. felt intimidated by Schure being at the meeting. The meeting was recorded by Dorst. H.D. was concerned that the IEP meeting was being taken as a joke. He asked for a copy of the IEP at the meeting, he received a copy three days later. H.D. requested an Arabic interpreter at the IEP meeting. The November 2018 IEP conflicts with the recommendations of Dr. Dolan, Dr. Kornitzer, and Dr. Waldoff. H.D. does not agree with the IEP. H.D. was never rude or aggressive at IEP meeting. He acted in a professional manner. He knew that Schure would be at the November 2018 IEP meeting. The November 2018 IEP meeting lasted two minutes.

H.D. stated that his wife was not allowed to observe N.D. in the autistic class.

Based upon a consideration of the testimonial and documentary evidence presented at the hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following **FACTS**:

N.D. was a fifth-grade student at Mount Pleasant School during the 2018-2019 school year. N.D. receives special education services under the classification of communication impaired. An IEP meeting was scheduled for November 2, 2018. The District's attorney, Schure, was present at the meeting. Petitioners' attorney was not present. An Arabic interpreter was also present. When petitioners arrived, they

objected to Mr. Schure being present at the meeting. When Mr. Schure declined to leave the meeting, petitioners left the meeting. Petitioners left within only a few minutes of their arrival. Petitioners did not contact the District to reschedule the IEP meeting. The November 2, 2018, IEP provided that N.D. would go to the Kelly Elementary School. He would have LLD classes in language arts, math, science, and social studies. N.D. would also have speech-language therapy group twice a week, occupational therapy in a group twice a week, a personal aid five times a week for 360 minutes, and extended summer program and curb-to-curb transportation to and from the school. LLD class size is six to sixteen students.

Gogerty requested the presence of Schure because the staff told her H.D. could be hostile and aggressive, and there was litigation pending. Schure's role was to assist and keep the peace—he would not contribute to the substance of the IEP meeting. Schure was not rude or aggressive toward petitioners.

Japaz was N.D.'s social studies and science teacher for the fifth grade. N.D. did not make any progress in social studies or science. N.D.'s comprehension in science and social studies was on a basic level. His reading was below grade level. Japaz tried to give N.D. material on his reading level. N.D. had a hard time comprehending fifth-grade-level material. Japez provides him with study guides. N.D. briefly retains what he has learned, he studies with his parents for tests, but he does not remember the material later.

N.D. struggles with executive functions. He needs an aide to assist him. He needs to be constantly reminded with unpacking when he comes into the class, homework, agendas, and handing in papers.

Japaz provides modifications to N.D., as she does to her other students with IEP. N.D. receives greater modifications than the other students with IEPs. He has difficulty doing presentations, so she modifies them. He loses focus easily and needs full support. N.D. does not participate in class discussions. He does not volunteer to answer questions. N.D. does best memorizing facts and information.

The fifth grade had a project that included writing a positive message for displaced children. N.D. did not understand the task. What he wrote did not make sense, was not properly addressed, not spaced properly, and had capitalization and spelling errors. His writing is not on a fifth-grade level. In the fifth grade the student should have mastered the ability to write a friendly letter.

The fifth grade was given an assignment to write whether Christopher Columbus was a hero or a villain. The students were given information for their determination if Columbus was a hero or a villain. N.D. wrote one sentence that did not reflect grade-level work. There was no introduction, stated position, or evidence to support position and conclusion. This response was after he received modifications. He was given a model planner of what was expected in the answer.

Japaz tried to work with N.D. at his level but he needed much more support and modifications. N.D. is stuck at the basic level of recall and reminder. Sometimes he can get to understanding level, but that is brief and does not last. His self-esteem is affected when he does not get good grades. N.D. cannot complete the work independently. N.D. has difficulty working with textbook, computer, and other documents. N.D. never showed that he understood the things that he memorized.

N.D. uses the FM system in Japaz classes. General education science and social studies are not appropriate for N.D. He has communication disorder and auditory processing disorder. He did not make progress. His grade in science and social studies is a B with an asterisk. The asterisk means that the work is modified. The work was not on grade level. General education students are expected to perform on grade level. N.D.'s grades are not indicative of his ability to function as a general education student.

Garces is N.D.'s teacher in self-contained language arts and reading class. She has been N.D.'s teacher for three years. He had discrete trial teaching and non-discrete trial. N.D.'s sentence structure has improved. He has mastered the Edmark reading system. He mastered non-fiction text. He can generalize that skill over other classes. He independently created a graphic organizer and mastered point of view. He

mastered story elements. He can do verb agreement with less prompting. He has made great progress on narrative essay writing.

N.D. is reading independently at level K, which is a second-grade reading level. There is a huge gap between N.D.'s comprehension and the comprehension of a typical fifth grader. N.D. gets distracted, which is a neurological issue that cannot be addressed by a behavior intervention plan (BIP). He does not use the FM system in Garces class because they sit across from each other, therefore she can make sure that he hears her. An FM system would not be appropriate. The FM system projects the teachers voice.

In 2016 Grandinetti did an educational evaluation of N.D. in 2016. She used the Woodcock Johnson test. A score between ninety and 110 is in the average range. N.D.'s score was sixty-seven, which is very low. His basic reading score was seventy-eight, which was low. His reading comprehension score was sixty-four, which is very low. His reading fluency score was sixty-three, which is very low. His broad math score was seventy-one, which is low. His math calculation score was eighty-six, which is low average. His math problem solving score is fifty-nine, which is very low. His broad written language score is seventy-six, which is low and his written expression score was seventy-seven, which is low.

N.D.'s basic reading skills were at the first-grade, seventh-month level. His reading comprehensions skills were at the first-grade level. N.D.'s written expression skills were below-grade-level expectations. Math is a relative strength for N.D. but still below-grade-level expectations.

Emmolo is a speech pathologist for the District. Emmolo administered the Clinical Evaluation of language Functions (CELF) test to N.D. This test gives a receptive and expressive language score. N.D.'s core language ability score was in the second percentile. His communication score was equal to a five or six year old, but he was eight years old at the time of the test.

Emmolo wrote the present levels in speech for the November 2018 IEP. N.D. had maintained his skill level but had not progressed. Her speech therapy recommendations were based on N.D.'s performance. N.D. originally had speech therapy three times a week individually. He made progress and the speech therapy was lowered to twice a week in a group.

Drost is N.D.'s case manager. She is a school psychologist. N.D. completed the fifth grade in June 2019. N.D. began in the District in the preschool disabled program. He was classified as cognitively impaired at that time. The school portion of the CST wanted N.D. to be in classes with other cognitively impaired students. Petitioners wanted N.D. in general education classes. N.D. had self-contained language arts and pull-out math in 2018-2019. His language arts was discrete trial language arts. He has consistently shown severe and diverse impairment. N.D. has significant expressive and receptive language deficits.

Dr. Steinhardt's independent evaluation of N.D. was done in June 2017. Petitioners chose Dr. Steinhardt to do the evaluation. Dr. Steinhardt observed N.D. at school in the language arts self-contained class and the general education science and social studies classes. He also observed N.D.'s proposed placement at Redwood Elementary School. Dr. Steinhardt concluded that N.D.'s limited cognitive skills limits his ability to perform on age or grade level. Dr. Steinhardt recommended that since it was difficult for N.D. to learn, master and apply concepts, N.D. required a special education setting. Dr. Steinhardt found N.D.'s IQ to be 68, which is in the extremely low range of cognitive functioning. IQ scores are fairly stable over time.

Dorst did the psychological portion of the psycho-educational evaluation of N.D. in October 2016. The Woodcock Johnson showed N.D.'s general intellectual ability at fifty-three. The average score is ninety to 110. N.D.'s score was very low. In seven subsets of the test, his score was under forty. His visual spatial score was average related to math. His areas of need were: oral vocabulary, synonyms and antonyms, verbal attention, story recall and memory. N.D. still had difficulties in these areas in 2018.

Teachers for many years expressed concern with N.D. in a general education setting. He could not understand the material language-wise. He was several years behind in the curriculum. In math he could memorize math facts and had basic math skills but could not do word problems.

In science and social science, N.D. enjoyed the classes when he could focus on the work, which was modified to his level. N.D. produced Kindergarten- to first-grade-level work in the fifth grade. He struggled academically continuously having difficulty with focus, memory speech and attention.

Students with the cognitive difficulties of N.D. need special education instruction in academic areas. The November 2, 2018, IEP provided that N.D. have LLD for math, science, social studies, and language arts. LLD classes have a language-rich environment and multi-sensory instruction. The teacher in LLD class would capitalize on a student's strengths and help with the student's weaknesses.

N.D.'s math present levels in the November 2018 IEP in math show that he is prepared and benefits from being in small groups, he needs to be prompted to take out his homework, and to write his name on his assignment. He struggles with complex visual or language-based thinking. In science and social studies, he needed full support. He needs prompts to take out his work. He does nothing independently. In language arts his reading level is the end of first-grade level. In language arts he does not move to the next skill until he masters the previous skill.

N.D. did not regress in language arts due to the use of discrete trial teaching. The Language Arts class is called the autistic class. It has a maximum of six students. It is not a class specifically for autistic students.

N.D. had a central auditory processing evaluation in November 2017 by Dr Katherine Delany. An auditory processing disorder is when the brain has difficulty processing oral information. N.D. was diagnosed with central auditory processing disorder (CAP). Students with CAP have difficulty tuning out extraneous noise in the

classroom. Delany concluded that N.D.'s CAP was affecting him in school. Dorst received Delany's report in December 2017 from petitioner's attorney.

The District implemented the use of an FM system for N.D. to address his CAP. The teachers speak into a microphone in the FM system and the sound projects around the classroom. This was installed in N.D.'s general education classes and his math classes. Petitioner requested FM system in language arts class, but since it is taught with the student inches away from the teacher, N.D. did not have the FM system in language arts.

Cues are used with N.D. for redirection. They always try to use non-verbal clues.

Dorst did not have the Woldoff and Associates report at the time of the November 2018 IEP. Dr Woldoff observed N.D. The District policy on observations is that the visit is one hour and can occur twice during the school year. Dr. Woldoff observed N.D. on May 30, 2019, the time was set for 8:45-9:45. On that date Woldoff arrived at 9:06 and N.D. arrived at 9:07. Woldoff saw N.D. in the self-contained language arts class. She did not observe him in a general education class. Dorst was present during Woldoff's observation. N.D. was tired. He had one-to-one reading instruction. He was not focused, inattentive, struggled with vocabulary, and used visual clues to decipher vocabulary. He was rubbing his eyes and nose and was told to wash his hands. N.D. struggled with focus and responding to where when and why questions as well as comprehension. When N.D. went to the rest room to wash his hands, it was 10:00 at that time Dorst told Woldoff "since N.D. is unavailable right now, it would be a good time to leave." They then exited the classroom. Woldoff did not see N.D. exit the rest room and return to his seat, they were out of the classroom by then.

A Functional Behavioral Analysis (FBA) is used to identify cause or function of inappropriate behavior. It is typically done for students who have significant externalized behaviors such as aggression, non-compliance, and physical altercations. N.D. does not need an FBA. His behaviors distractibility and staying on task are internal behaviors due to his ADHD. A behavioral intervention plan (BIP) gives the student positive reinforcement to increase positive behavior. The intervention for

students with distractibility is the use of a paraprofessional or medication. N.D. did not have any difficulty getting along with the other students.

Dr Woldoff is a licensed psychologist. She has a Master's degree and Ph.D. in clinical psychology. Dr. Woldoff evaluated N.D on May 19, 2019. His diagnosis was expressive and receptive language disorder, auditory processing disorder and ADHD.

Woldoff also observed N.D. in her office. At that time N.D. was inattentive. He responded to redirection. N.D. asked Woldoff questions about her daughter and where she lived. He used incorrect grammar. He struggled with writing without support. N.D.'s processing speed and working memory have deficits. Steinhardt determined N.D.'s IQ to be 68 in 2017. Woldoff determined N.D.'s IQ score to be 83. This is a significant difference. Woldoff's observation of N.D. is consistent with his teacher's description of N.D.

Woldoff performed academic testing on N.D. He was in the fifth grade at the time of the testing. His greatest strength was in math.

N.D.'s vocabulary is very low. He struggles with nonverbal reasoning. He also struggles with sentence structure and sustaining age-appropriate conversation. N.D.'s verbal comprehension is in the tenth percentile; his working memory is in the fourth percentile, and his processing speed is in the ninth percentile.

Woldoff administered the WIAT II academic achievement test to N.D. that showed his reading comprehension was at a first-grade, ninth-month level. His listening comprehension was at a first-grade, eight-month level. His word reading on a third-grade, ninth-month level. His pseudoword decoding is on a third-grade, first-month level. N.D.'s oral reading fluency is on a second-grade, ninth-month level. His oral reading accuracy is at a second-grade, first-month level and his oral reading rate is at a second-grade, seventh-month level. His spelling is at a third-grade, seventh-month level. His math problem solving is at a third-grade, fourth-month level. N.D.'s math fluency addition is at a fifth-grade, fourth-month level. His math fluency subtraction is at a fifth-grade, eighth-month level.

During the 2018-2019 N.D.'s placement was a stay-put placement due to due process litigation pending for the 2016-2017 and 2018-2018 school year. That placement was general education science and social studies, pull-out math and self-contained language arts. Woldoff did not observe the LLD classes that are proposed in the November 2018 IEP. She only observed the stay-put self-contained language arts class, which was not proposed in the November 2018 IEP for N.D.'s placement.. She did not find out anything about the LLD classes. Woldoff stated that the District's LLD program could be appropriate for N.D. with appropriate accountability. The placement that Woldoff recommends for N.D. is a specialized program for students with learning-based disabilities or general education with supports and one-to-one teaching. These appear to be two contradictory programs. The general education class would not have a special education teacher who specialized in students with learning-based disabilities. Woldoff does not know if N.D.'s IEP had general education classes other than the academic classes.

Japaz is an expert in general education. Garces is an expert in general education and Special Education Learning Disabilities. Grandinetti is an expert in Special Education Learning Disabilities. Emmolo is an expert in speech pathology and evaluations and diagnosis and treatment of communication disorders. Dorst is an expert in school psychology and the case management of students with disabilities. Woldoff is an expert in neuropsychology and special education.

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, 172 F.3d at 247 (citations omitted).

In this matter an IEP meeting was scheduled for November 2, 2018. The District’s attorney, Schure was present at the IEP meeting. Once petitioners arrived, they objected to Schure being present and left without continuing with the IEP meeting. Petitioners on their own decided to leave before the November 2, 2018, IEP meeting could begin. Petitioners did not attempt to reschedule the IEP meeting for a time when their attorney could be present. An Arabic interpreter was present on November 2, 2018, for the IEP meeting. In Horen v. Bd of Educ., 655 F.Supp. 2d 794,804 (N.D. Ohio 2009) the Court stated in regard to the Board’s attorney attending an IEP meeting;

The statute expressly permits attendance of persons “at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel.”

The Board having Schure present did not exclude petitioners from the IEP team. Petitioners voluntarily left the meeting when they saw that Schure was present and that he would stay for the meeting.

The November 2, 2018, IEP provided that N.D. would go to the Kelly Elementary School. He would have LLD classes in language arts, math, science and social studies. N.D. would have speech-language therapy group twice a week, occupational therapy in a group twice a week, a personal aid five times a week for 360 minutes, and extended summer program and curb-to-curb transportation to and from the school.

The WAIT testing of Woldoff showed that N.D. is significantly behind grade level in all except math addition, subtraction, and multiplication. In areas other than math he is at a first-, second-, or third-grade level. Dr. Woldoff did this testing in May 2019, which was the end of N.D.'s fifth-grade year.

N.D. needs to constantly be reminded of homework, agendas, and handing in papers. He did not work on a fifth-grade level in science and social studies even with modifications. He had difficulty working with textbook, computers, and other documents. He gets distracted. Although he is at grade level in some of the math skills like addition, subtraction, and multiplication, he is not on grade level with problem solving. He cannot do word problems.

Woldoff stated that LLD classes may be appropriate for N.D. She stated that N.D. should be placed in a specialized program for students with learning-based disabilities or general education with supports and one-to-one teaching. The LLD program is a specialized program for students with learning-based disabilities.

I **CONCLUDE** the IEP's of November 2, 2018, would provide N.D. with a free and appropriate education and that petitioners were not excluded as members from the IEP team. Since the IEP provides N.D. with a free and appropriate education, I **CONCLUDE** that he is not entitled to compensatory education.

N.D. has been in a general education class with a one-to-one aid. He has not made progress. The teachers state that he cannot do fifth-grade-level work. He approaches fifth-grade-level work in math calculations but not word problems. Other than math, his work is primarily on the first and second grade level. An LLD class would be more appropriate for N.D. because the classes are smaller. He would have a special education teacher trained in language disorders and language-based learning delays. General education teachers do not have this training.

A BIP is used with students with significant externalized behaviors such as agreeing or incompletion. N.D.'s behaviors are distractibility and difficulty staying on task are internal behaviors as a result of his ADHD. The intervention for students with distractibility is a para-professional or medication.

I **CONCLUDE** that a general education placement with a one-to-one aid is not appropriate for N.D.

N.D. did not have a behavioral intervention plan. Students with external behaviors such as aggression could require a BIP. His behaviors distractibility and staying on task are internal behaviors due to his ADHD. The intervention for students with distractibility is the use of a paraprofessional or medication. N.D. did not have any difficulty getting along with the other students.

N.D. had an independent evaluation by Dr. Steinhardt did an independent evaluation of N.D. in 2017.

I **CONCLUDE** that N.D. does not need a BIP or another independent evaluation.

ORDER

It is hereby **ORDERED** that the relief requested by petitioner be **DENIED**.

It is further **ORDERED** that respondents request denying independent evaluations is **GRANTED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2019) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516 (2019). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education Programs.

December 19, 2019

DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency

December 19, 2019

Date Mailed to Parties:

December 19, 2019

APPENDIX

WITNESSES

For Petitioner:

Dr. Sarah B. Woldoff

For Respondent:

Wendy Japaz

Kristen Garces

Colleen Grandinetti

Kristen Gogerty

Daniello Emmolo

Amy Drost

EXHIBITS

For Petitioner:

- 1 Parents' five-day disclosure letter
- 2 Due Process Complaint
- 3 Invitation to IEP Meeting dated November 5, 2018
- 4 Proposed IEP November 2018
- 5 Recording of IEP meeting of November 2018
- 6 CV for Dr Sarah Woldoff
- 7 Report of Dr Sarah Woldoff
- 8 Petitioners email dated November 2, 2018
- 9 Attorney Correspondence
- 10 Letter dated October 10, 2018
- 11 Emails
- 12 Letter from Dr. Kornitzer

For Respondent:

- 1 Petition for due process dated November 16, 2018
- 2 Answer and Cross-Petition dated December 4, 2018
- 3 Independent Neuropsychological evaluation June 8, 2013
- 4 IEP dated February 29, 2016
- 5 Re-evaluation Consent form September 26, 2016
- 6 Speech Language Evaluation October 5, 2016
- 7 Psychological Evaluation October 25, 2016
- 8 Occupational Therapy Evaluation October 27, 2016
- 9 Private Developmental Pediatric Evaluation November 10, 2016
- 10 IEP November 17, 2016
- 11 Letter from Totowa Pediatric Group December 2, 2016
- 12 Private Neurological Report December 13, 2016
- 13 Letter from private neurologist January 19, 2017
- 14 Email from C. Salimbeno to S. Nachbar regarding neurologist letter January 20, 2017
15. Email from C. Salimbeno to private neurologist February 2, 2017
16. Notes from telephone conference with Dr. Kornitzer February 13, 2017
17. Email from M. Mucciolo to D. Rekem May 31, 2017
18. Email Chain regarding WISC and Kornitzer Report June 5, 2017
19. Email and writing samples to Dr. Steinhardt June 9, 2017
20. Email and attachments to Dr. Steinhardt regarding “stay-put” social studies June 13, 2017
21. Independent Neuropsychological Evaluation June 13, 2017
22. Work samples and assessments
23. Report Card 2016-2017
24. Correspondence from M. Mucciolo to D. Rekem August 4, 2017
25. MAP Scores September 29, 2017
26. Email regarding crying during MAP testing October 1, 2017
27. Finalized IEP October 19, 2017
28. Parents response to proposed IEP
29. Private CAP Evaluation (St Barnabas) November 14, 2017
- 30 Email chain regarding CAP evaluations

31. Email chain regarding IEP changes
 32. Email chain regarding communication with parents March 14, 2018, and March 15, 2018
 33. Email from J. Schure to B. Flynn regarding consent to contact Barnabas Hearing Center
 34. Report Card
 35. Progress reports and communication
 36. Work samples and assessments
 37. Report Card 2017-2018
 38. Recording of IEP meeting November 2, 2018
 39. IEP November 2, 2018
 40. Pre-Hearing Order January 29, 2019
 41. Sign-in sheet for parent-teacher conference March 27, 2019
 42. Report Card 2018-2019
 43. Speech/language therapy work samples 2018-2019
 44. ELA work samples
 45. CV Erin DiFrancisco
 46. CV Amy Drost
 47. CV Danielle Emmolo
 48. CV Kristen Carces
 49. CV Kristen Gogerty
 50. CV Colleen Grandinetti
 51. CV Wendy Japaz
 52. CV Shaina Weitz
 53. Writing Sample
-
15. IEP dated May 27, 2014
 16. Report card 2013-2014
 17. IEP dated March 4, 2015
 18. Report card 2014-2015
 19. Report card 2015-2016
 20. Interview scores of December 2015

- 21 IEP dated February 29, 2016
- 22 Re-evaluation consent form dated September 26, 2016
- 23 Speech/language evaluation dated October 5, 2016
- 24 Psychoeducational evaluation dated October 25, 2016
- 25 OT Evaluation dated October 27, 2016
- 26 Private development pediatric evaluation dated November 10, 2016
- 27 IEP dated November 17, 2016
- 28 Letter from Totowa pediatric group dated December 2, 2016
- 29 Private Neurological Report dated December 13, 2016
- 30 Letter from private neurologist, dated January 19, 2017
- 31 Email from C. Salimbeno to S. Nachbar regarding neurologist's letter dated January 20, 2017
- 32 Email from C. Salimbeno to private neurologist, dated February 2, 2017
- 33 Notes from telephone conference with Dr. Kornitzer, dated February 13, 2017
- 34 Email from M. Mucciolo to D. Rekem, dated May 31, 2017
- 35 Email chain regarding WISC and Kornitzer report dated June 5, 2017
- 36 Email and writing samples to Dr. Steinhardt, dated June 9, 2017
- 37 Email and attachments to Dr. Steinhardt regarding "stay put" social studies, dated June 13, 2017
- 38 Independent neuropsychological evaluation, dated June 13, 2017
- 39 Work samples - Ms. Hoit
- 40 Report card comments - Hoit
- 41 Progress reporting and communication - Garces
- 42 Work samples and assessments - Garces
- 43 Report card, 2016-2017
- 44 Correspondence from M. Mucciolo to D. Rekem, dated August 4, 2017
- 45 MAP Scores, dated September 29, 2017
- 46 Email regarding crying during MAP testing, dated October 1, 2017
- 47 Draft IEP, dated October 19, 2017
- 48 Finalized IEP dated October 19, 2017
- 49 Parent's response to proposed IEP
- 50 Private CAP evaluation St. Barnabus, dated November 14, 2017
- 51 Email chain regarding CAP evaluation dated December 18, 2017

- 52 Email chain regarding IEP changes, December 22, 2017
- 53 Email chain regarding communication with parents March 14 -15, 2018
- 54 Email from J. Schure to B. Flynn regarding consent to contact Barnabas Hearing Center dated March 21, 2018
- 55 Report card comments (Wolk)
- 56 Progress reporting and communication - Garces
- 57 Work samples and assessments - Garces
- 58 Report card, 2017-2018
- 59 CV Erin DiFrancisco
- 60 CV Amy Drost
- 61 CV Danielle Emmolo
- 62 CV Kristin Garces
- 63 CV Kristin Gogerty
- 64 CV Colleen Grandinetti
- 65 CV Paige Hoit
- 66 CV Constance Salimbeno
- 67 CV Michael Steinhardt
- 68 CV Deborah Struble
- 69 CV Shaina Weitz
- 70 CV Julie Wolk
- 71 CV Julie DiGiacomo
- 72 CV Michael Steinhardt
- 73 Email