



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

R.G. ON BEHALF OF R.G.,

Petitioner,

v.

**FLORENCE TOWNSHIP
BOARD OF EDUCATION,**

Respondent.

OAL DKT. NO. EDS 09355-21

AGENCY DKT. NO. 2022-33481

R.G., for petitioner, pro se

Joseph F. Betley, Esq., for respondent (Capehart Scatchard, P.A., attorneys)

Record Closed: June 20, 2023

Decided: June 29, 2023

BEFORE **JUDITH LIEBERMAN**, ALJ:

STATEMENT OF THE CASE

Petitioner, R.G. is the father of minor student R.G.¹ During the times at issue, R.G. entered and attended the Florence Township School District (District) preschool. R.G. was classified as eligible for special education services under the classification of Preschool Child with a Disability. Despite petitioner's request and assertion of eligibility, the District did not find that R.G. was eligible for speech language services. Petitioner claims, in his due process petition, that R.G. was eligible for speech language services

¹ The elder R.G. is referred to as "petitioner" or R.G.'s father herein, to avoid confusion.

from the time the District made its initial determination that he was ineligible until the date the due process petition was filed, October 7, 2021.²

PROCEDURAL HISTORY

On October 10, 2021, petitioner filed his due process petition, in which he contended respondent Florence Township Board of Education (Board or respondent) denied R.G. a free appropriate public education (FAPE) as required by the Individuals with Disabilities Education Act (IDEA). The matter was transmitted by the Department of Education, Office of Special Education Programs (OSEP), to the Office of Administrative Law (OAL), where it was filed on November 12, 2021, as a contested case. N.J.S.A. 52:14B-1 to N.J.S.A. 52:14B-15; N.J.S.A. 52:14F-1 to N.J.S.A. 52:14F-13.

Prehearing conferences were conducted on December 10, 2021, and January 18, 2022. On January 18, 2022, petitioner sought leave to file a discovery motion. A motion briefing schedule was established and the hearing was scheduled for May 23 and 25, 2022. On May 13, 2022, the hearing was adjourned at the request of the parties because they agreed to proceed with evaluations to which petitioner previously objected. The parties offered several status reports during the subsequent months, indicating that they were making progress. On June 20, 2022, they reported that petitioner expressed concerns about the manner in which one of the evaluations was conducted and withdrew his consent. The Board responded in a manner that was satisfactory to petitioner. On August 2, 2022, the parties requested a period of weeks to complete and review the evaluations. However, on October 17, 2022, petitioner advised that he withdrew his consent for the release of his son's records to an outside neuropsychological evaluator and, by November 7, 2022, none of evaluations was completed. Petitioner asserted that the evaluations were conducted inappropriately, while the Board asserted that the evaluations were delayed due to circumstances outside its control and because petitioner withdrew his consent. That day, I directed that the hearing must be conducted concerning the Board's denial of speech/language services, notwithstanding the status of the evaluations, as far too much time had elapsed. Based upon the parties' availability, an

² Petitioner withdrew his request for placement in a full-day preschool program.

in-person hearing was scheduled for January 26, 2023, and a prehearing status conference was scheduled for January 9, 2023.

The Board requested an adjournment of the January 26, 2023, hearing because its counsel would be unavailable due to a medical procedure that would require her to be on a six-week medical leave. It requested that the hearing be rescheduled to a date in late March 2023, when she was expected to return to work. Petitioner objected to this request. The adjournment request was denied; however, the hearing was rescheduled to January 31, 2023, so that another attorney from counsel's firm could familiarize himself with the matter. Two additional hearing dates were added because both parties required additional time to complete their witness examinations. The hearing was thus conducted on January 31, 2023, February 6, 2023, and February 23, 2023. The parties submitted post-hearing briefs on June 1, 2023, after having received the hearing transcripts and extensions of the filing deadline. A hearing date was conducted on June 12, 2023 to discuss, among other matters, the post-hearing submissions of the parties. An additional proceeding was conducted on June 20, 2023, to address a discrepancy involving the transcripts. The record closed that day.

FACTUAL DISCUSSION AND FINDINGS

The following was not disputed. I therefore **FIND** the following as **FACT**:

1. R.G. was enrolled in the District's part-time preschool class for the 2020-2021 school year. His first day of school was November 30, 2020, when he was three years old. His birthday is December 3, 2016.
2. Before R.G. attended school at the District, the District determined that he was eligible for special education services under the classification of Preschool Child with Disability due to a 33% delay in the cognitive domain, as determined by a learning assessment administered by Learning Disabilities Teacher Consultant (LDTC) Elizabeth Rozyn.

3. A speech-language evaluation, administered by speech-language pathologist Sherry Rein, indicated that R.G. did not require speech services as part of his individualized education plan (IEP).
4. Pursuant the IEP, R.G. was placed in a half-day, self-contained preschool disabled program (PSD). Petitioner agreed to the IEP for the 2020-2021 school year.
5. During an IEP meeting near the end of the 2020-2021 school year, it was determined that R.G. would be placed in an inclusion preschool program, which included students with and without IEPs, for the 2021-2022 school year.
6. Petitioner agreed to the IEP for the 2021-2022 school year.

Testimony

The following is not a verbatim recitation of the testimony but a summary of the testimonial and documentary evidence that I found relevant to the above-described issue.

For respondent

Elizabeth Rozyn has worked for respondent for twenty-five years, twenty as an LDTC, and three years for another school district. She earned a Bachelor of Arts degree in elementary education, a master's degree in education, and holds certifications in special education, as a kindergarten through twelfth grade reading specialist. She obtained an LDTC certification in 2002. As LDTC, she conducts evaluations, serves as a case manager, attends meetings with staff and families, and oversees special education students' IEPs. She has conducted approximately 800 to 1,000 learning evaluations.

Rozyn was R.G.'s case manager during the times relevant to this matter. She first met with R.G.'s parents during a February 2020, evaluation planning meeting. The meeting was conducted in response to petitioner's January 16, 2020, email request for a

meeting with the child study team (CST). Petitioner referenced a November 2019, developmental screening conducted by Virtual Health's Pediatric Mobile Services ("Virtua"). Petitioner expressed concern about R.G.'s "reluctance to engage in conversation" and "answer open ended questions." He explained that, although R.G. is very smart and academically advanced, he does not respond to questions such as "what is your favorite toy?" and "what would you like to eat for lunch?" and he would not respond when asked his name. Petitioner also noted that R.G. "tends to get upset at times and throw fits." R-4.

Petitioner attached an unsigned³ and undated Virtua Developmental Screening Form to the email. The form lists tools to assess R.G.'s development, alongside boxes to be checked; none was checked. With respect to "personal-social," a handwritten note provides, "gets stuck in his own self-directed routine – difficulty moving on, becomes upset – difficulty calming." With respect to "communication," a handwritten note provides, "pragmatic concerns –repeating rote phrases" and "difficulty initiating and responding to questions." Virtua recommended review by the District CST and speech therapy. R-5.

An initial evaluation planning meeting was held with petitioner and District personnel on February 5, 2020. R-6 at BOE 35. The District proposed learning and speech language evaluations of R.G. This was based upon a review of records of R.G.'s progress⁴, Virtua's developmental screening, petitioner's reports that R.G. would sometimes repeat what petitioner says rather than answering questions, and his request that R.G. had temper tantrums at home. Id. at BOE 32. Petitioner agreed to the proposed learning and speech/language evaluations. Id. at BOE 34.

Rozyn administered the Battelle Development Inventory, 2d Edition Normative Update ("Battelle") to assess R.G.'s "mastery of early developing skills." R-9 at BOE 51. Battelle is a State-approved assessment used to determine eligibility for a preschool child with a disability. It involves adaptive, personal social, motor, communication, and cognitive domains. The communication domain is administered by the speech therapist.

³ The form does not include name of the person who completed it.

⁴ R.G. attended a private preschool when the Virtua screening was conducted. R-4.

Pursuant to New Jersey regulations, to be qualified as a preschool child with a disability, the child must have a 33% delay in one of the domains or 25% delay in two of the domains. T1⁵ 136:10-23. R.G. was three years, eight months old at the time of the assessment.

Petitioner was interviewed for two of the assessment domains, adaptive⁶ and personal-social. R-9 at BOE 54. The information he provided was used to assess R.G. in these areas. R.G.'s achievement in the self-care subdomain was better than that of approximately less than 1% of children his age. Id. at 53.

Personal responsibility assesses a child's ability to assume responsibility for performing simple chores such as putting away toys. R.G.'s achievement in this subdomain was better than that of approximately 75% of children his age. Id. at BOE 53.

The personal-social domain involves some aspects of communication skills as it assesses "abilities and characteristics that allow a child to engage in meaningful social interaction with adults and peers and to develop his own self-concept and sense of social role." Id. at BOE 54. Overall, in the personal-social domain, R.G. scored better than approximately 30% of children his age, with a developmental quotient of ninety-two, which was in the "average" range. Ibid. He scored better than approximately 75% of children his age in the adult interaction subdomain.

Peer interaction assessed R.G.'s interactions with similarly aged children, including his "ability to form friendships and personal associations, respond to and initiated social contacts with peers, interact effectively in a small group, and cooperate." Ibid. His achievement in the peer interaction subtest was better than that of approximately 50% of children his age. Ibid. In the area of self-concept and social role, R.G.'s achievement was better than approximately 1% of children his age. Overall, in the

⁵ T1, T2 and T3 refer to the transcripts of the January 31, 2023, February 6, 2023, and February 23, 2023, hearings, respectively. They are followed by the referenced page and line numbers.

⁶ This measured R.G.'s "ability to use the information and skills acquired in other domains" and involves "a combination of the self-care⁶ and personal responsibility subdomains." Id. at BOE 52-53.

personal-social domain, R.G. scored better than approximately 30% of children his age, with a developmental quotient of ninety-two, which was in the “average” range. Ibid.

The cognitive domain measured “those skills and abilities most commonly thought of as ‘mental’ and ‘intellectual,’ with the exception of language and communication skills.” It required an evaluation of “attention and memory,” “reasoning and academic,” and “perception and concepts” subdomains. Id. at BOE 57.

The reasoning and academic skills subdomain “assessed the critical thinking skills a child needs to perceive, identify, and solve problems; analyze and appraise the elements of situations; identify missing components, contradictions, and inconsistencies; and judge and evaluate ideas, processes and products.” Id. at BOE 58. His achievement in this subdomain was better than that of approximately 16% of children his age.

The perception and concepts subdomain assessed R.G.’s “ability to conceptualize and discriminate object features such as size and shape, draw relationships among them, and selectively respond to them.” Ibid. His achievement in this area was approximately better than that of less than 1% of children his age. Id. at BOE 59.

The attention and memory subdomain assessed R.G.’s “ability to visualize and auditorily attend to environmental stimuli for varying lengths of time and to retrieve information when given relevant clues to do so, in both the short term and the long term.” Id. at BOE 57. His achievement in this area was better than that of approximately less than 1% of children his age. Id. at BOE 58.

Based upon the above assessments, Rozyn found that R.G.’s achievement in the cognitive domain area was better than approximately 1% of children his age, “with a Developmental Quotient of 66, ‘Significant Developmental Delay’ range.” Id. at BOE 57.

Rozyn explained that the assessment showed that R.G. had a 33% delay in the cognitive domain. T1 33:8-9. She determined that he was eligible for special education as a preschool child with a disability due to this delay. She observed nothing “glaring”

concerning his communication skills. T1 33:22. Based upon the speech-language evaluation, which was conducted by Sherry Rein, R.G. did not require speech therapy.

An eligibility meeting was conducted with petitioner and an IEP, dated October 14, 2020, was developed. R-10. Rozyn prepared proposed goals that were based upon the assessment results. The IEP provided for placement in a half-day PSD class for the 2020-2021 school year. Id. at BOE 60. A special education teacher and one or two aides would be in his class. Following the State's preschool state goals, the class addressed listening and speaking language, reading, math, motor, and social emotional goals and objectives. The program was language-based, which means that "language skills are always infused within the preschool program . . . either it's through play, . . . circle time, . . . answering questions, . . . stories being read aloud or greeting" teachers and other students. T1 43:14.

The IEP included consultation with a speech therapist as support for school personnel because petitioner expressed concern about R.G.'s speech. This was included even though speech therapy was not included as a related service in the IEP, as the evaluations of R.G. did not indicate that there was a need for this.

Petitioner signed the IEP, indicating his consent to implement it, on November 16, 2020. Id. at BOE 69. R.G.'s first day in the PSD class was November 30, 2020. Fewer than ten students were in the class. Reema Arora was his teacher and there were two classroom assistants.

Another IEP meeting was convened on December 10, 2020, in response to petitioner's request. Rozyn and Rein were present. A revised IEP was prepared. It differed from the original IEP in that it included a statement of R.G.'s present levels of academic and functional performance (PLAAFP), which was prepared by Arora. She wrote:

[R.G.] began the preschool program on November 30, 2020. He has adjusted very well in the classroom. He identified all of his peers' names and teachers' names. [He] plays on his own. He loves music. However, he appears to not enjoy

writing and coloring activities. [R.G.] participates in circle time. He enjoys singing the songs, and he is successful in answering the questions presented to him. Additionally, [R.G.] has been successful in answering questions during story read-aloud time.

[R-11 at BOE 74.]

Neither Arora nor the classroom aides expressed concern about R.G.'s communication skills. The IEP continued the goals and objectives from the prior IEP as well as consultation with a speech therapist as a support for school personnel. Id. at BOE 77.

Another IEP meeting was held on February 24, 2021, in response to petitioner's request, as he expressed concern about R.G.'s speech. R.G. had attended school approximately three months by this time. A state facilitator, Stefanie Babits, attended, also in response to petitioner's request. R-12 at BOE 103. Arora wrote the following PLAAFP statement:

[R.G.] is a very sweet boy. He greets everyone in the morning when he arrives at school. [He] follows the classroom routine of unpacking, but he occasionally gets distracted and frustrated when he cannot perform the task independently. With verbal prompts, he is able to complete the task. [R.G.] is working on using his words to ask for help when he becomes frustrated. He has begun to make progress in the area of communicating his needs. [R.G.] is able to follow 1-2 step directions with minimal prompting. He sometimes appears unsure of what is being asked, but with prompts and reinforcement, he is able to complete the task.

[R.G.] is beginning to be potty trained. He is on schedule to use the bathroom during the school day. We are working on [R.G.] to initiate in communicating his need to use the bathroom.

[R.G.] uses receptive and expressive vocabulary and is understood by his staff and peers. He is beginning to answer questions presented to him with prompting. He is emerging in his understanding and answering the questions that are asked specifically of other peers in the class. We are working on turn taking skills and waiting skills.

During circle time, [R.G.] enjoys music and loves singing songs and reciting rhymes. [R.G.] is able to identify lowercase and uppercase letters when presented randomly. He is able to identify his name, calendar words, color words, shapes and sight words. [He] is able to trace the letters in his name with minimal assistance. When upset [R.G.] does not become non-compliant. He is reinforced to complete the task.

...

[R.G.] identifies colors and shapes expressively. He is able to sort objects by color, size and shape. He is able to follow simple directions related to positional words.

[R.G.] enjoys positive and verbal praise. [He] is working on behaviors including saying 'no,' dropping to the floor, and getting upset. The behaviors appear when [he] is asked to transition from a preferred activity or work time. We continue to reinforce the skills by using positive reinforcement. [He] loves to help his teacher with calendar activities. He is a great helper. He likes to do things on his own and does not like additional help at times. [R.G.] does well walking in the hallway with minimal prompts and is able to stay in line.

R-12 at 3.

Throughout the school year, Rozyn observed R.G. in his classroom approximately one or two times per week, sometimes more often. She observed that his class participation, communication skills and interactions with adults and students were age appropriate. The CST did not add speech therapy as a related service because it believed it was not warranted. Nonetheless, goals and objectives for speaking, listening and reading comprehension were incorporated into the IEP so that his progress in these areas could be tracked. R-12 at BOE 96-97. The goals and objectives were developed in conjunction with petitioner, who accepted them. The IEP was also amended to require "daily communication with [petitioner] using a checklist." *Id.* at BOE 98. This provision was developed in response to petitioner's concerns. Petitioner did not challenge the IEP and it was implemented.

In April 2021, petitioner requested occupational therapy and functional behavior assessments of R.G. The former was conducted on May 4, 2021, and the latter was conducted on May 24, 2021. R-14, R-15.

An annual review meeting and reevaluation of R.G.'s eligibility for special education services was conducted on June 17, 2021. State facilitator Babits attended the meeting, in response to petitioner's request.

Arora provided an updated PLAAFP statement, which stated:

Study Skills [R.G.] is independent in putting his belongings in the proper place. He displays good manners by saying, "[T]hank you, sorry and please." He greets his teachers and peers as he walks in the classroom and loves to give hugs. [R.G.] is working on potty training this school year.

...

Social/Emotional/Behavioral [R.G.] works independently most of the time when he is in a good mood. [He] has a difficult time transitioning from preferred activities to non-preferred activities[.] [R.G.] does not appear to enjoy tracing and coloring worksheets. That's when he becomes non-complaint and shows disruptive behaviors of throwing away material under the table and walking away from the work area to the rug area. A reward system is in the classroom which includes the use of a timer as well as a "first then chart." Visual reminders of sitting appropriately are also used. [R.G.] participates in group games and other fun activities. He sometimes has difficulty waiting for his turn and following the rules. He will continue to work on the skills of following the classroom rules without becoming upset.

Reading [R.G.] loves circle time and enjoys calendar activities. He is very independent. He loves to recite rhymes and actively participates in singing songs about days of the week, months of the year, and weather songs. He is able to follow simple commands and 1-step directions. [R.G.] enjoys story time and is successful in answering age-appropriate "wh" questions. He enjoys conversation with adults and responds well to what has been asked. He shows compassion to his peers and adults when he sees them upset.

...

Mathematics [R.G.] is able to rote count up to 40. He can count 10 objects using one-to-one correspondence, and he is successful in identifying numbers expressively up to 20. He can put the numbers in order from 1-10. [R.G.] is able to follow simple . . . patters. He identified biggest/smallest, tallest/shortest, more/less. He identifies all the colors and

shapes independently. He is able to sort objects by color, size, and shape. [R.G.] is able to follow simple directions related to positional words.

[R-16 at BOE 131.]

This PLAAFP statement is relevant to whether R.G. required speech therapy because it documents that he demonstrated language skills such as reading and greeting his teachers and fellow students. Also, the fact that he was able to follow simple directions related to positional words further demonstrated that he did not require speech therapy services.

Rozyn continued to observe R.G.. He was able to communicate with his peers and teachers. He did not demonstrate limitations that suggested he needed speech therapy, such as incorrectly answering questions about a story that his teacher read to the class or that he did not have conversations with others. He did have some “challenges.” T1 71:14. He sometimes became “upset” with “writing activities” or if he was not chosen for something. T1 71:16-21. Speech therapist Rein continued to not recommend speech therapy.

In advance of the June 17, 2021, annual review and reevaluation meeting, petitioner presented, as evidence of R.G.’s need for speech services, a March 25, 2021, psychological evaluation of R.G. by Children’s Specialized Hospital (“CSH”). R-19. R.G. was referred to CSH by a doctor for autism testing. In the CSH report, R.G.’s then-current diagnoses were listed as “social communication disorder, mixed receptive expressive language disorder, and fine motor delay.” Id. at BOE 160.

School personnel including Rozyn reviewed the report prior to the meeting and it was discussed during the meeting. Rozyn noted that the Differential Ability Scale, Second Edition (“DAS-II”) addressed R.G.’s need for speech language services. She explained that the “verbal cluster was 108, standard score, seventieth percentile.” T1 84:15-16, R-19 at BOE 168. The report advised that this is “average range” and “reflects overall adequately-developed abilities with receptive and expressive language and naming

abilities.” R-19 at BOE 161. Rozyn added that the subtests within this area tested “the understanding of oral instructions involving basic language concepts.” T1 85:20-21.

Based upon the information provided to CSH by petitioner, CSH reported that R.G.’s “Social composite is in the Average range, with both leisure and social skills within the Average range. Within the Conceptual domain, results showed that Communication skills are in the Average range and Self-direction skills are in the Below Average range.” R-19 at BOE 161-162. Given all of the above, including the CSH report, Rozyn explained to petitioner that R.G. did not require speech therapy services.

During the June 17, 2021, meeting, it was determined that R.G. would be placed in the integrated school program the following school year. The integrated class is less restrictive than the PSD class. The IEP did not include speech therapy, but it continued to require daily consultation with petitioner concerning speech. R-16 at BOE 138.

At the end of the 2020-2021 school year, R.G.’s special education teacher, Arora, prepared a report of his progress toward meeting his IEP goals that were in the February 24, 2021, IEP. R-18.⁷ For the marking period that ended June 2021, R.G. was progressing satisfactorily and was expected to achieve the following goals:

- Goal number five required R.G. to participate in a verbal exchange⁸ related to a preschool level topic or text with peers and adults, and make at least four contributions to the discussion, with 80% success⁹. “[R.G.] is aware of his surroundings and gets upset when things are not in place or missing. He always notices when a student or staff member is absent. He shows his concerns by asking about them. He makes verbal exchanges and participates in the discussion.” Id. at BOE 149.
- Goal number six required R.G. to “demonstrate foundational level auditory comprehension skills by answering four why or how questions pertaining to key details in a preschool level

⁷ These goals were not reported during prior marking periods (ending December and March) because the “speaking listening” goals were added during the February 2021, IEP meeting.

⁸ R.G. was expected to achieve the objectives/benchmarks of participating in four multi-turn communication exchanges with a peer and in four multi-turn communication exchanges with adults. Id. at BOE 149-150

⁹ 80% success criteria applied to each of the following objectives/benchmarks.

text or lesson.” Id. at BOE 150. The associated objective/benchmark was “[R.G.] will answer three questions after listening to a familiar text that has been read aloud.” Ibid.

- Goal number seven required R.G. to “demonstrate foundational level skills needed to use speech and listening skills to describe an activity that occurred at school giving at least four details including the people, objects, and place involved.” Ibid. The associated objective/benchmark was “[R.G.] will expressively describe familiar objects giving at least three details.” Ibid.
- Goal number eight required R.G. to “verbally express four feelings, thoughts and/or ideas using phrases or sentences.” Ibid. The associated objective/benchmark was “[R.G.] will verbally label four feelings given pictures that depict feelings (i.e., happy, sad, angry, scared).” Ibid.

An “Individual Child Report” for R.G. reported his levels of performance as of the end of the 2020-2021 school year, based upon his teacher’s observations. It reported that he was meeting expectations for his communication and language goals. R-28.

R.G.’s teacher for the 2021-2022 school year, Meghan Cobleigh, prepared his progress report for first marking period. R.G. was meeting expectations with respect to following two or more step directions; describing and telling the use of many familiar items; using complete four to six word sentences; and using language in conversations of at least three exchanges. R-22. He was progressing with respect to comprehending language, as he was identifying familiar people, animals and objects when prompted. He was also progressing with respect to talking about another time or place, as he was beginning to tell simple stories; however, he did not include many details and a conventional beginning, middle and end. He was beginning to use appropriate eye contact, pauses, and simple verbal prompts when communicating. Ibid.

District personnel also reviewed the reports that petitioner gave them. However, none of those reports supported the conclusion that R.G. needed speech therapy.

On cross-examination, Rozyn acknowledged that Virtua wrote on its referral form, with respect to Communication, “pragmatic concerns – repeating rote phrases” and

“difficulty initiating and responding to questions” as well as “gets stuck in his own self-directed routine – difficulty moving on; becomes upset –difficulty calming.” R-5 at BOE 30. She also acknowledged that on December 9, 2019, Cooper University Hospital diagnosed R.G. with echolalia.

Rozyn was asked whether R.G. exhibited communication difficulties, based upon Arora’s February 24, 2021, PLAAFP statement that he “is working on using his words to ask for help when he becomes frustrated.” She replied that R.G. had only begun school on November 30, 2020, and, as Arora noted, he was making progress. Arora specifically wrote that he followed one and two step directions; was beginning to answer questions without prompting; and had begun to make progress in the area of communicating his needs. She reiterated that Arora was addressing R.G.’s needs because “language skills are infused within the preschool classroom.” T1 145:16-17. Also, accommodations and modifications are “always” utilized “in order to gain success over the time period.” T1 146:4-5. Thus, “minimal prompting” and reinforcement was employed when R.G. seemed unsure in following one or two step directions. T1 145: 23 to 146:72.

Rozyn clarified that goals were added to R.G.’s February 24, 2021, IEP in response to petitioner’s concern about R.G.’s ability to answer questions. This was discussed with petitioner during the IEP meeting and it was agreed upon. The intention was the teacher would monitor and record R.G.’s progress with the new goals.

Rozyn was asked to explain why R.G. had not achieved a goal¹⁰ by December 2021, despite the fact that the goal was added February 24, 2021. She reiterated that R.G. had progressed satisfactorily and was expected to achieve the goal. She added that only the first marking period had elapsed by December, thus, two-thirds of the school year remained, during which he would continue to learn and progress.

¹⁰ Reading goal number four, “After listening to narrative and/or informational Preschool level text read aloud, [R.G.] will answer four questions about key details in the text” with 80% success. R-21 at BOE 196.

Sherry Rein is a certified speech therapist and has worked for respondent for twenty-one years. Prior to March 2020, she had conducted between 700 and 800 speech and language assessments for preschool students. She conducted R.G.'s speech and language assessment on March 2020, and wrote an evaluation report. R-7. She administered the following tests:

- **Preschool Language Scale – 5 (PLS-5)**, a “play-based assessment tool” that checks receptive and expressive language skills, auditory comprehension, ability to understand and express language, and expressive communication. T2 106:19-23.
- **Expressive One Word Picture Vocabulary Test (EOWPVT)**, in which Rein showed R.G. pictures and asked him to name what was depicted.
- **Receptive One Word Picture Vocabulary Test (ROWPVT)**, in which Rein showed R.G. four pictures and asked him to point to the pictures that she names.
- **Preschool Language Scale Articulation Screener**
- **Informal Speech and Language Tasks**

[Id. at BOE 36]

Receptive language is what the student is able to understand. Expressive language involves function; how a student plays; and whether he communicates effectively. To be considered for speech and language services, a student must fall below the 9th percentile and have a 33% delay in overall communication.

At the initial assessment meeting, R.G. behaved like a typical preschooler. She observed him play around the classroom; initiate a conversation with his father; name colors; and ask and answer questions. Her observations were relevant to her functional assessment of R.G. His behavior and speed were typical of a preschooler and “was showing evidence that he had language.” T2 16:19-20. He “actively participated in the assessment” and “was engaged and very cooperative.” Ibid.

R.G.'s parents completed a questionnaire in which they described their concerns and observations. They were concerned about delays in R.G.'s expressive language and that he does not initiate conversation or answer questions.

The PLS-5 test assessed R.G.'s auditory comprehension and expressive communication, which evaluated how much he understood and communicated with others. R-7 at BOE 37. On the auditory comprehension portion of the test, R.G. scored 84, which is low average because the average range is 85-115. Id. at BOE 38. On the expressive communication section, the average range is 85-115 and R.G. scored 88, which placed him in the average range. Ibid.

The ROWPVT is designed to assess children's receptive vocabulary. R.G. scored 103, which was within the average range. Id. at 37. He was "able to identify pictures receptively such as: sailboat onion, hatching, number and letter." Ibid.

The EOWPVT assessed R.G.'s "single-word expressive vocabulary[.]" Ibid. R.G. scored 104, which was within the average range and indicates that his "ability to identify and name vocabulary is average for his age." Id. BOE 37. He was able to name words including tiger, bridge, animals and starfish. He substituted eagle for bird, blue for painting, lemon for fruit, and cloud for smoke. Id. at BOE 37. Rein noted that "[e]xpressive productions are primarily characterized by two word utterances. However, he was able to put words together in three, four and five word sentences. During this assessment [he] intermittently said, 'I have colorful blocks,' 'Hi everyone I am here' (when walking down the hall)." Id. at BOE 38.

Rein issued an addendum to her report after petitioner questioned her administration of the tests. Because he "was questioning all of [her] protocols [she] went back through to double and triple-check to make sure [she] hadn't made any errors[.]" T2 21:6-8. She discovered that she inappropriately administered a portion of the OWPVT, as she should have stopped the test at item number fifty-two. She originally found that R.G. scored 103, which was in the average range. After correcting her error, his score was ninety-nine, which was still in the average range. Because he was still in the average

range, the outcome – that he did not need speech-language services—was the same. R-7 at BOE 601. None of the other scores was incorrect.

Pursuant to the provision in the October 14, 2020, IEP, Rein observed R.G. in the classroom. She was there three to four times each week and met with the teacher every day to ask if she had concerns or needed help for R.G. Rein played with him; watched him interact in small groups; and met with his teachers to discuss any concerns they had or whether they needed her assistance. She observed R.G. playing with his friends; asking for help; answering questions, including questions about stories that were read aloud; and following directions, including when playing games. Rein also observed him name his peers and tell his friends to get in line. All of this was significant because it “show[ed] that he’s able to have functional language skills[;]” he had used functional and pragmatic language; and was “functioning appropriately in a classroom.” T2 60:15-16; T2 67:1-2. Reema Arora, R.G.’s teacher, did not relay any concerns about R.G.’s communication skills. If there had been an indication that R.G. might need speech-language services, they would have revisited the provision of these services. “It’s never a closed door. We monitor our preschoolers. We want to make sure that they are successful.” T2 67:8-10.

Rein observed that R.G. has behavioral issues that she described as “meltdowns, tantruming.” T2 76:19. For example, he gets “very upset” if he is not first in line or wins a game. T2 76:21. She observed this multiple times. When asked what was wrong, he would reply that he wanted to be first in line. He would no longer be upset if were placed first in line. It was, thus, “more an emotional issue because he could explain why.” T2 77:2-3. It was not language-based because he could explain why he was upset. There was no basis for finding that his behavior was caused by a language problem.

During the December 10, 2020, IEP meeting, which Rein attended, petitioner raised concerns about R.G.’s ability to answer questions and follow directions. Rein did not recall his comments in detail; however, she recalled that Arora replied that R.G. was functioning appropriately, including answering questions and following directions. Also at the meeting, petitioner told Rein that an outside evaluation concluded that R.G. was eligible for speech and language services. Rein reiterated that R.G.’s test scores and

functional assessment indicated that these services were not “necessary in a school setting at that point.” T2 63:6-7. She recalled that she told petitioner “several times,” that, “he was functioning perfectly with his friends. He was playing. He was initiating conversation. He was greeting. He knew all of his friends’ names. He was answering questions.” T2 63:12-16. She did not observe R.G. exhibit echolalia and his teachers told him that they, too, had not observed it.

R.G. also did not demonstrate scripting, which occurs when a child repeats something at an inappropriate time. Called “gestalt language,” it often occurs when a child spends too much time in front of a screen. A “lot of children” learn language from watching TV and other media, rather than “in their natural environment” if they have “more screen time than is appropriate[.]” T2 64:25 to 65:5.. Based upon the parents’ report, Rein was concerned that R.G. had too much screen time. They wrote that R.G. looked at a screen at least two hours per day and four hours during the weekend.¹¹ According to research, this is too much time for a child of R.G.’s age. Nonetheless, neither she nor the teachers observed him scripting.

For all of these reasons, at the time of the December 10, 2020, IEP meeting, Rein determined that R.G. did not need speech-language services.

Rein discussed a speech and language evaluation that was conducted by Cooper University Hospital speech therapist Jina Mosley on March 12, 2020, eight days after her evaluation. R.G. was referred for “a comprehensive speech and language evaluation secondary to concerns following a Virtua developmental mobile screening[.]” R-8 at BOE 40. She noted that the evaluator inappropriately used the same testing protocol that she used, PLS-5, as it is not to be utilized twice within one year. She explained that if “you showed them these questions before . . . they’re learning that test” or, alternatively stated, “you’re teaching to the document[.]” T2 69:7-12. Nonetheless, she reviewed the evaluation report and considered its findings and recommendations. R.G.’s scores were in the average range. The report detailed that his “Total Language Standard Score” was

¹¹ On the PLS-5 Home Communication Questionnaire, petitioner wrote that, while at home, R.G. watches television two hours per weekday and four hours per weekend day; and uses a tablet two hours per weekday and four hours per weekend day. R-7 at 7.

95, which “place[d] him in the 37th percentile, indicating that he scored the same or better than 37% of his same age-peers.” Id. at BOE 43. The report concluded that his overall receptive and expressive language abilities and overall language skills fell within the average range. The report did not cause Rein to alter her conclusion that R.G. was ineligible for speech language services.

During an IEP meeting, Rein explained to petitioner that, while a child could “clinically” qualify for speech language services, educational requirements are different and are dictated by State regulations. T2 70:16.

During the February 24, 2021, IEP meeting, Rein told petitioner that, having considered the outside evaluation, her testing and functional assessment, and her observations of R.G. in class, he still did not qualify for speech language services. She assured him, however, that “we will still continue to consult and be present and consult with the teacher as well.” T2 75:19-21. Consultation was continued to ensure that R.G. was progressing appropriately and to respond to petitioner’s concerns. It is not routinely provided to students who are not eligible for speech language services. During the meeting, it was agreed that speech and language goals¹² would be added to R.G.’s IEP.

Rein found that R.G.’s needs remained the same at the time of the June 17, 2021, IEP meeting. This was based upon her consultations with his teacher and her observations of R.G. She observed that he communicated with his peers, who he enjoyed playing with and with whom he initiated language. He also encouraged his peers to initiate language. He had “excellent communication skills with adults” and “communicate[d] effectively” with them. T2 85:25 to 86:6. He was comfortable with adults, greeted them in the morning, replied to them, and followed directions.

Petitioner produced an April 6, 2021, report by Cooper University Health Care speech therapist Jessica Goss. R-31. Rein reviewed it and found that R.G. scored in the low average range for core language, sentence structure, word structure, expressive language index and standard language index. He was not eligible for speech language

¹²Speaking and listening goals number five, six, seven and eight. R-12 at BOE 97.

services despite the low average scores on subtests because regulations require that a student must have a 33% delay in language skills or a 25% delay in two areas. R.G.'s scores were not this low.

During the June 17, 2021, IEP meeting, it was recommended that R.G. would enter the integrated preschool program, with typically developing children and children with IEPs, at the start of the next school year. This was based on his demonstrated progress, which she and his teacher observed. Rein observed him in his integrated classroom and saw that he "functioned appropriately with his language skills." T2 93:25 to 94:1.

On cross-examination, petitioner questioned whether the PLS-5 Home Communication Questionnaire that Rein utilized is to be used only for children under two and one-half years old, because it states that it "includes communication behaviors for children age birth to two and one-half years old." R-7 at 7. Rein explained that the form was appropriately used for R.G., who was three years, three months old at the time, because the instruction states that it "includes" younger children and it is used for older children as well. It is a functional assessment tool that is used to obtain a broad array of background information about what children are able to do in their homes and is not limited to only very young children.

Petitioner referenced notes he created when he reviewed testing protocols. P-27. He created a two-column chart listing "AC" (auditory comprehension) and "EC" (expressive communication). Id. at 6. He asked about a space that was left blank (space number twenty-six) by Rein when she completed the form while assessing R.G. She showed R.G. a picture and he was to name the item in the picture. They "were all expressive one-word like ball, spoon, dog, all of which he expressed prior. So [she] could move forward from that." T2 111:17-19. She likely did not mark that portion of the form. Had R.G. answered question number twenty-six incorrectly, Rein would have "moved backward" and asked more questions. This would have given R.G. more opportunities to answer incorrectly. T2 116:9. The number of incorrect answers would be factored into the determination of R.G.'s raw test score.

When petitioner questioned Rein's ability to recall R.G.'s assessment, she replied that she recently reviewed the assessment documentation. She also "reviewed [her] records multiple times with this case[.]" T2 118:15-16. Petitioner referenced copies of documents that he made by hand during his review of the assessment records. He represented that one document was an exact copy of the PLS-5 Record form. R-27 at 5. His copy contained an articulation screener score. The copy provided by respondent did not include this score. Rein explained that the copies R.G. referenced were her personal notes and that, while she determined this score, she did not write it on her form.

Rein was questioned about the different versions of the documents. She explained that, in approximately December 2022, petitioner sought to have her speech language evaluation expunged from R.G.'s record. She provided all of her documents and testing protocols to the Board and she copied, by hand, "all of [her] protocols" onto "colored copies so that [she] would have it in front of [her] in case [she] was questioned[.]" T2 34:7-12. She also wrote notes on the documents. This would enable her to review her work and reference it if she were questioned by the Board or others. These newly created documents were not her original testing documents. She explained, "I made a clean copy for myself and somehow that was given" to Board counsel. T2 34:13-16. She did not change R.G.'s scores; rather, she wrote the scores in a different area of her copies than on the original forms. She did not alter the original documents, which were produced to petitioner by the Board. R-7 at 9-11. Rein wrote an addendum report after she reviewed R.G.'s scores and found an error. She independently conducted the review because R.G. was "very concerned with his scores." T2 117:3. She advised the Board of her finding.

Rein clarified that petitioner's January 16, 2020, statements about R.G.'s abilities and limitations did not necessarily indicate that R.G. had a problem with vocabulary. Petitioner questioned why she administered the EOWPVT if, in fact, R.G. did not have a problem with vocabulary. Rein explained that she wanted to gauge R.G.'s ability via standardized testing. The tests she administered were appropriate for children with "pragmatic concerns" as indicated on the Virtua Developmental Form. T2 134:15; R-5. While the PLS-5 does not expressly use the word "pragmatic," it references integrative language skills, which is an element of pragmatic language.

Rein reiterated that she had cautioned petitioner that outside evaluators should not use the same assessments as she did, if they were to do so close in time. She gave petitioner a list of her assessments, so that he could relay this information to private practitioners.

Petitioner asked Rein about the following statement in the March 12, 2020, Cooper evaluation: “During the evaluation, [R.G.] was observed using rote phrases/self-talk, blank stares at times, whispering, and echolalia.” R-8 at BOE 41. Rein did not observe this during her assessment or observations of R.G. She noted that the Cooper evaluation report stated that he came to the evaluation with his tablet. She explained, “Sometimes . . . the use of technology and devices can actually stimulate that echolalia and those perseverative behaviors and he was also not in your presence when I tested him and he was . . . alone and they act differently in . . . front of a parent as . . . instead of in the testing situation by themselves.” T2 144:17-24. Rein, however, acknowledged that the report indicated that R.G. was not playing with his tablet but, rather, that petitioner woke him up with the sound of the tablet. She also acknowledged that the report indicated that petitioner was not present in the testing room.

Rein acknowledged that the April 7, 2021, report by a Cooper University Health Care speech therapist referenced “atypical language behaviors including echolalia and scripting.” R-31 at 6. She reviewed this report when she assessed R.G. She reiterated that R.G. did not demonstrate this during her assessment or classroom observations. Also, none of his teachers reported having observed these behaviors.

Rein reviewed the March 25, 2021, CSH psychological evaluation report, which indicated that R.G. engaged in echolalia, repetitive speech, and excessive questioning. Rein did not observe R.G. exhibit these behaviors during her classroom observations. To the extent the report referenced reduced eye contact, Rein noted that, while she did not observe it during her initial evaluation, she sometimes observed it in the classroom. She noted that it is quite difficult to teach eye contact in preschool. To the extent the report referenced difficulties with receptive language skills and social communication, Rein found that this did not impact R.G.’s education and academics in the classroom.

Rein recalled that, prior to conducting her assessment of R.G., he greeted other students by saying, “Hi everyone, I’m here.” T2 168:2. She recorded this in notes that she reviewed prior to the hearing. She did not include this in her report. She explained that she records “a lot of anecdotal notes” to use as part of her functional assessment. T2 168:13. She also wrote that R.G. had “difficulty staying on task at times . . . curious about room, investigated puzzles and games[,]” which is typical of three-year-old children. T2 169:3-5. He was also “engaged and very cooperative” during the evaluation. R-7 at BOE 36. Petitioner asked whether these statements depicted inconsistent behavior. Rein replied that “[i]t can be both[,] . . . He was very engaged and very cooperative. He just had to be reengaged in the task.” T2 169:22 to 170:2.

Petitioner asked Rein if, during the assessment, she said to R.G., “I have colorful blocks” or whether R.G. stated this on his own. She did not make the statement; R.G. did. Rein clarified that R.G. “said a lot of things. He spoke a lot of sentences.” T2 172:23-24. She explained that her notes, which were not provided to petitioner, recorded R.G.’s statements.

Petitioner asked Rein to compare his handwritten copies of the PLS-5 Record Form, ROWPVT, and EOWPVT (P-27), which he recorded when he reviewed the documents at the Board’s office, with her versions of the completed forms. (R-7 at 9-11). She reiterated that petitioner’s version contained more data than her forms because the former contained notes she prepared for herself in preparation of a review of her assessments. She did not know how the versions of the forms with her notes came to be in the file that petitioner reviewed at the Board’s office.

Megan Cobleigh has been a full-time preschool teacher for respondent since 2018. She holds preschool through third grade and kindergarten through sixth grade general education certifications and is a teacher of students with disabilities. She was R.G.’s teacher in his inclusion classroom during the 2021-2022 school year.

Cobleigh attended the June 2021, IEP meeting and met R.G. during an orientation session shortly before school started. The first day of class was September 7, 2021.

R.G.'s class was two and one-half hours long and had nine students aged three through five, six of whom did not have an IEP. The class was language-based, which means language is infused throughout the day. She followed the "Creative Curriculum" program, which aligned with New Jersey Preschool Standards. Language was infused via morning greetings, tabletop activities, circle time, a question of the day, centers, and play with other students. An aide was assigned to the classroom.

Based upon her experience with and observations of R.G., Cobleigh did not have concerns about his expressive language skills. He was able to communicate with other people, including Cobleigh. Although he sometimes became upset, he "was always able to articulate . . . why he was upset." T2 257:7-8. On the first day of school, someone brought water ices to the classroom and he stated which flavor he wanted. When he saw his previous preschool teacher, he asked if he could say hello to her. During the first three to four weeks of school, he approached "his peers when he wanted to play with them as any preschool student at this age." T2 258:3-4. For example, he asked peers, "Will you play with me?' [and,] 'Can you help me make a slide?'" T2 258:10-11.. She or the aide would assist with prompting, if necessary. He knew other students' names and used their names while interacting with them. He answered "WH" questions (who, what, where, when). T2 259:19-23.

Cobleigh did not observe R.G. engage in echolalia, which she described as "repeating what he heard." T2 258:23. She also did not observe him engage in scripting, which is "[r]epeating something that he's heard prior, maybe something on a TV show." T2 259:6-7.

Social skills were addressed every day in her class. Activities designed to facilitate interaction with peers and conversations between students were designed in line with the State standards and were integrated into every class. Cobleigh and her aide observed how well the students communicated with each other. Classroom activities were also designed to address "recognizing and recall[ing], comprehend[ing] language, engag[ing] in language, follow[ing] directions" and "speak[ing] clearly." R-30, T2 269:4-6, T2 268:21. Cobleigh worked with R.G. on these skills and he performed well. He was very intelligent and, although she read directions aloud, he liked to read directions on his own. He played

very well with Cobleigh, and also when peers were incorporated into their play. He played with his peers in the same manner as the other children. When he was upset, he would express why he felt that way.

Cobleigh used the “Classroom Dojo App” to communicate with her students’ parents. Teachers and parents would post public and private messages and pictures. She and petitioner used the application to communicate. She also maintained a log of her communications with petitioner. On September 15, 2021, she wrote to petitioner:

We work a lot on social skills and using our words in the classroom. Especially during out center time. Myself and my [sic] classroom aide are always right there with the students assisting and monitoring conversations and play. It’ll be something I continue to keep an eye on in the classroom and will continue to communicate with you daily.

[R-26 at BOE 247.]

On September 16, 2021, Cobleigh send the following message to petitioner:

I wanted to update you that Mrs. Rein has been observing [R.G.] . . . She has been in our classroom daily in the afternoon consulting with myself [sic] as well as working with [R.G.] during centers and other activities. He does require prompting at times to respond to his peers. He is occasionally distracted by the timer (wondering how much longer in the center) and he will go look to see how much time is left. At times he needs prompting to return to his center. He greatly enjoys the light table and plays independently at this center and at the other centers in the classroom. This time Robert has in centers will engage him with the other students and will help promote his reciprocal play with friends.

[ibid.]

In December 2021, Cobleigh completed a progress report that included R.G.’s progress as of October 7, 2021. Her assessments of his progress were based upon her observations. He progressed satisfactorily with the speaking and listening goals that “demonstrate foundational level auditory comprehension skills” and “foundational level skills needed to use speech and listening skills to describe an activity that occurred at school.” R-21 at BOE 199. He progressed satisfactorily with respect to an objective

within the latter goal.¹³ Ibid. He progressed satisfactorily with respect to the goals of “verbally express[ing] four feeling, thoughts and/or ideas using phrases or sentences,” “[using] a two word phrase or sentence to express his feelings,” and “engag[ing] in cooperative play skills.” Ibid. He progressed satisfactorily with respect to two of the objectives within the latter goal.¹⁴

Based upon Cobleigh’s observations, R.G. was making progress and she saw improvements every day. She did not observe him repeating what the other students said. She also consulted with Rein about R.G.

On cross-examination, Cobleigh discussed when R.G. became upset about his birthday. The “question of the day” in class was about birthdays. She recalled that he wanted his birthday, which was in December, to be in July because none of the other students’ birthdays were in July. She explained that he did not understand that the date of a birthday corresponded to a specific event. She also recalled a lesson during which she recited numbers aloud and asked the students to tell her when she said the number that corresponded to the number of letters in their name. R.G. was able to count to six but he wanted to have five letters in his name. R.G. expressed his upset and Cobleigh understood why he was upset.¹⁵

Petitioner asked Cobleigh to explain the progress report entry that indicated R.G. was progressing gradually with respect to verbal expressions of feelings. R-21 at BOE 199. As of October 2021, R.G. did not independently communicate why he was upset. When she asked him why he was upset, he would answer and explain why. He was thus making some progress, but less than anticipated. This did not adversely impact his school day. Rather, he would sit at his desk and self-regulate for a short period of time and then return to the classroom activities. This was an emotional regulation issue, which was quite typical of children R.G.’s age, and was not related to communication skills.

¹³ Verbally label four feelings given picture that depict feelings. Ibid.

¹⁴ Concerning social interaction with peers. Id. at BOE 200.

¹⁵ He wanted to have the same number of letters in his name as the other students.

Cobleigh clarified that, during the first two weeks of school, if R.G. was upset it was not because he could not express himself. It was quite common for students his age to need time to get used to a new routine. She highlighted that it was his first time in a classroom with typically developing peers. Also, a progress report of “progressing gradually” is not bad. In fact, it indicates that progress was being made.

For petitioner

Christopher Butler is the Director of Special Services for respondent. He oversees the provision of special education services, including speech services, the CST and special education teachers.

Rein’s addendum report concerning R.G.’s assessment was issued after petitioner requested a review of the speech assessment protocol. Petitioner raised concerns about errors in testing to the Board. Butler, Chief School Administrator Dr. Donna Ambrosius, and petitioner met to discuss the speech protocols. After her review, Rein issued her report. He did not recall if she did so in response to the Board’s request.

Butler’s office was involved in the production of educational records to the Board’s attorney. He did not recall sending to Board counsel the PLS-5, ROWPVT, and EOWPVT record forms that the Board produced to petitioner. R-7 at 9-11. He provided the protocols that petitioner reviewed on February 3, 2023. He obtained them from Rein.

When asked if he was aware of Mosley’s March 12, 2020, speech and language evaluation and medical records from Cooper University Health care (P-2, P-6), Butler replied that he was aware of the documents in R.G.’s file. All documents supplied in full by parents are included in the file and considered. His predecessor would have reviewed submitted reports and records, if they were submitted prior to when he began as Director.

Petitioner R.G.¹⁶ testified that he knew something was wrong or different with his son since he was three months old. Although R.G. was very smart, he did not achieve

¹⁶ Hereinafter referred to as “petitioner” to avoid confusion.

milestones on time; started talking late; and demonstrated scripting and echolalia, including his first words. For example, his repeated language from videos he watched. He could not communicate if he was thirsty, had to go to the bathroom or was cold or hot. Although he could answer questions that had definitive answers, his social and pragmatic skills – back and forth exchanges – were absent.

Petitioner and R.G.'s mother did not readily understand or accept that R.G. had limitations. Virtua's screening process revealed concerns about R.G. and prompted them to contact the school district. In his email to the school, he provided Virtua's report and diagnosis, which included echolalia, with which petitioner was unfamiliar.

Rein arrived late to her evaluation session with R.G. Petitioner, R.G. and R.G.'s mother were waiting for her in the evaluation room. When she arrived, Rein said, "Hi everyone, I'm here Sorry I'm late." T2 345:3.

Petitioner acknowledged that he did not know the name of the test that Rein administered. He, thus, did not report it, or any other information about Rein's evaluation, to Mosley, the speech language pathologist at Cooper Health Systems, when he met with her eight days later. Also, he acknowledged that, in completing the home questionnaire, he may have recorded that R.G. was capable of doing something because he did it once. This is because, "In your heart, you don't want anything to be wrong with your child." T2 345:15-16.

Petitioner asserted that, contrary to Rein's statement, she did not "[do] an articulation screener[.]" because it was not included in the documents, she claimed were the original testing documents. T2 350:23-24. He also claimed that the parent questionnaire was inapplicable to children R.G.'s age. He contested her claim that R.G. formed three, four and five-word sentences and asserted that his speech was, instead, echolalia and scripting, when he was asked anything other than direct questions.

R.G. began speech therapy, once per week for forty-five minutes, at Cooper Health Systems in September 2020. He asserted that Mosley could not believe he was not found to be eligible for speech therapy.

The first IEP meeting was held in October 2020, and R.G. started school on November 30, 2020. When R.G. came home after his first day at school, he did not answer questions about school. Petitioner described it as “scary.” T2 357:9. In later January or early February 2021, the school nurse called him to advise that R.G. had a tantrum, which was not uncommon, and that he hit his head on the ground. Petitioner did not know about the tantrums; R.G. was still not speaking then and did not share information about school. This prompted petitioner to request daily communication with school personnel, which was included in the February 24, 2021, IEP.

R.G. had received twenty-six, forty-five minute, private speech therapy sessions, over six months, when he was evaluated by a Cooper speech therapist Jessica Goss. R.G. had improved during the six-month period; however, petitioner believed that he was not where he “needed” to be. T2 366:1. For example, petitioner could sometimes get R.G. to “direct his attention to your eyes.” T 367:25 to 368:1. However, R.G. would do this for only a brief moment. He also continued to repeat words and could not engage in back-and-forth conversation.

Goss issued an April 7, 2021, progress report which noted that R.G. was initially evaluated on March 12, 2020, and his therapy began on September 15, 2020. The report advised that, on February 10, 2021, R.G. “has made significant progress on his speech and language goals. However, he continues to demonstrate atypical language behaviors (echolalia, scripting, perseverative language) and weaknesses in pragmatic language skills. Articulation skills are age appropriate at this time.” R-31 at 1. The same report referred to the value of a social skills group. Id. at 6.

Petitioner asserted that he provided the following documents to the school district:

- July 21, 2020, discharge instructions from CSH, which recommended clinical testing for autism. The document noted that petitioner should “consider enrolling [R.G.] in a full day pre-K program with speech and occupational therapy.” P-10.

- January 28, 2021, discharge instructions from CSH that indicated R.G. was “in the process of getting tested by the autism team” and recommended petitioner “consider enrolling him in a full day pre-K program which consists of half-day inclusion setting and half-day self-contained setting. He should receive speech and occupational therapy in school. Additionally, the recommendations from the autism evaluation should be incorporated into his IEP.” P-11.
- June 2, 2021, discharge instructions from CSH that recommend speech and occupational therapy. P-12.

Petitioner asked the Board to permit him to inspect and review the speech language assessment protocols. He did so on December 2, 2021. He reviewed the documents for approximately three hours, during which he copied the assessment forms by hand. P-27. He asserted that the documents he reviewed and copied did not match the documents that respondent relied upon in explaining R.G.’s assessment (R-7). He also took photographs of the documents when he reviewed them again on February 3, 2023. The photographs matched his handwritten notes.

During his review of the assessment documents, R.G. observed that many questions were missed during R.G.’s assessment and an incorrect answer was marked as correct. Although the Board corrected one scoring error, it did not correct all of the errors. He offered examples of the errors he identified, including the following:

- Question twenty-nine of the expressive communication section of the PLS-5 asked if R.G. “verbalizes different word combinations.” It was marked “correct, as if [R.G.] was doing it” and listed five choices of word combinations that were to be selected. None of the choices was checked off. T3 12:1. Also, there was a space to record the word combination that was used. It was also left blank.
- Question thirty-one asked for a three or four word statement used by R.G. The statement recorded on the form was “Hi, everyone[,]” which is only two words. T3 12:11.
- Question thirty-three asked, “Do you have any pets, friends, toys? Tell me about them.” T3 12:17-18. The form indicates that R.G. answered, “Hi, everyone. My, some colorful blocks.” T3 12:18-19. Petitioner believed this answer did not really

respond to the question and that the item was “questionably scored.” T3 12:21-22.

- On the EOWPVT assessment form that R.G. reviewed, number forty-one was left blank and unscored.
- The same form listed target words and the word that R.G. used. The instructions stated that only the target word or the root word could be accepted as a correct answer. For item number twenty-two, the target word was “truck” and the recorded response was “ambulance . . . truck.” T3 13:12, P-27 at 9. For item number twenty-nine, the target word was “sky” but the recorded answer was “clouds.” P-29 at 9.
- Although the instructions stated that every answer was to be recorded, very few words were recorded. P-27 at 9.
- For the ROWPVT, the instructions stated that the “ceiling is the point where the testing is stopped and scored.” T3 15:9-10. The “ceiling was six out of eight consecutive incorrect responses.” T3 15:8-9. Petitioner noted that R.G. responded incorrectly six consecutive times.¹⁷ Although the testing should have stopped at that point, fourteen more questions were asked. P-27 at 12. This was corrected by an addendum to the assessment report.

Petitioner asserted that his observations show “the lack of competency, the lack of validity in the testing . . . done by the District.” T3 16:23-25. He also asserted that the assessment records produced by the Board did not match his handwritten copy of the records he reviewed. The records he reviewed were filled in completely¹⁸, while the versions produced by the Board were not. He thus challenged the authenticity of the Board’s records.

On cross-examination, petitioner clarified that, when he reviewed the assessment protocol, he listed the question numbers and whether it was noted that R.G. answered correctly or incorrectly. He described his notes as “almost an exact picture of the way it was marked.” T3 22:24-25. He did not know if R.G.’s responses could have been recorded in other areas of the test. He relied upon the notes of R.G.’s responses.

¹⁷ The incorrect answers were in response to item numbers forty-five, forty-six, forty-seven, fifty, fifty-one and fifty-two. Items number forty-eight and forty-nine were correct. Thus, petitioner asserted, there were “six out of eight consecutive wrong answers.” T3 15:14-15.

¹⁸ Including the documents petitioner reviewed a second time on February 3, 2023.

Petitioner acknowledged that the wording of the documents that he copied may be “different” from what he wrote in his notes because he “was trying to do this as fast as possible.” T3 25:17-18. He reiterated that he was not given or allowed to make photocopies of the documents so he resorted to making copies by hand. He explained further that, while his notes were very detailed at the beginning of his review, he was simultaneously researching the terminology he was reading in the documents. This caused him to rush and record fewer details. He added that he was rushed because he was abruptly told that his allotted review time would end at lunchtime. However, he acknowledged that he may have reviewed the documents during lunch and that he was mistaken concerning the time. He asked for additional time to review the records and also for a District representative to be present and help him interpret them. He asserted that the law entitled him to this assistance.

Petitioner was asked about question thirty-three on the EOWVT, which he recorded as, “Do you have any pet/friends/toys? Tell me about them.” P-27 at 7. His notes indicate that R.G. replied, “My, some colorful blocks.” Ibid. Although “colorful blocks” are toys, petitioner asserted the answer did not make sense. A correct answer would have been, “I have some colorful blocks.” T3 29:10-11.

Petitioner also criticized the manner in which the test was conducted because Rein also recorded “Hi, everyone” for question thirty-three. He explained that it “does not answer the question at all and does not correspond with what the question was asking. So, it looks like she just wrote down anything the child said during the evaluation to qualify him. ‘My, some colorful blocks’ is not a correct answer to that question.” T3 30:9-14. When asked if he knew whether this phrase was considered correct pursuant to the testing protocols, petitioner replied, “Not if it was given in English.” T3 30:22-25.

With respect to question twenty-two, petitioner noted that Rein recorded that R.G. said, “ambulance” and “truck” when the correct answer (target word) was “truck.” He testified, “I can’t speak on why she wrote ‘ambulance . . . truck.’ If the child said, ‘truck,’ I would feel that there was no need to write ‘ambulance’ as well.” T3 32:22-25. However,

he acknowledged that Rein testified that R.G.'s response was "Ambulance is a truck" and, she marked his response as correct because the target word was "truck." T3 33:9-15.

Petitioner acknowledged that, although he believed Rein scored question twenty-nine incorrectly, he did not know what the target word was for that question.¹⁹ When asked if R.G. replied with a five-word sentence ("clouds are in the sky"), petitioner replied that R.G. could not have done so as he only repeated what others said and did not speak in sentences. When asked about Rein's testimony that R.G. did, in fact, say, "clouds are in the sky," petitioner asserted she was "lying." T3 36:23. He asserted that he would be able to prove that she was lying when he gained access to the test protocol. He also referred to Rein's report in which she wrote that R.G. "substituted eagle for bird, blue for painting, lemon for fruit, and cloud for smoke." R-7 at BOE 37. However, he did not know if Rein marked R.G.'s latter response ("cloud for smoke") as an incorrect answer. He explained, "I didn't record every single target word. I only recorded what was written on the score sheet." T3 39:8-11.

Petitioner was asked to identify what else was scored incorrectly.²⁰ He explained that number twenty-six of the expressive communication section of the PLS-5 was left blank. P-27 at 6. "[I]f it was not administered on R.G. and if it was incorrect, then she would have had to work backwards until R.G. got six correct, therefore, affording him more chances to get incorrect responses which would count against his score." T3 40:7-13. Although Rein testified that she did, in fact, ask R.G. that question and scored it, she left it blank on the form and relied upon her recollection and her review of her notes, which she did not describe or provide. Petitioner asserted that she lied when she testified to this. T3 42:12-14.

Petitioner asserted that Rein's testimony about when she rewrote the test results, as notes for herself, was inaccurate. This is because he reviewed those documents before she claimed to have created them. He acknowledged that R.G.'s scores were the same on sets of documents that he reviewed. However, he asserted that version of the document produced by the Board (R-7) did not contain an articulation screener score,

¹⁹ Petitioner reiterated that he previously subpoenaed the testing records to facilitate his review.

²⁰ In addition to "cloud/sky," "truck/ambulance" and "toys/blocks." T3 40:1-4.

while the documents he viewed at the Board's office in December 2021, and February 2023, did include this score. Thus, the scores and the documents were not identical.

Petitioner and R.G.'s mother completed the Home Communication Questionnaire, indicating R.G.'s abilities. R-8 at 8. Petitioner and R.G.'s mother indicated that R.G. "speaks in sentences (e.g., I want it. What's that? I go potty)" and "speaks in phrases (e.g., no night-night, more cookie, want that)." Ibid. Despite this, he testified, "At that time that I filled this out, I was unfamiliar with the terms 'echolalia' and 'scripting.'" T3 67:10-12. His representation on the form was inaccurate because he was "unaware that R.G.'s speech was actually him just repeating stuff that he heard –echolalia and scripting." T3 71:5-7. The sentences R.G. used were along the lines of "PBS Kids is brought to you by viewers like you[;]" and "Like us on Facebook, follow us on Twitter[;]" which was "at the end of his videos." T3 71:9-13. R.G. also repeated other people's statements. Despite this, he and R.G.'s mother remained hopeful that R.G.'s speech development was normal.

On the same questionnaire, R.G.'s parents indicated that he said the following words:

- Family names (e.g., mommy, daddy, grandma, granddaddy, brother's or sister's name)
- Animals (e.g., pet's name, dog, kitty, bird, fish)
- Food (e.g., milk, juice, cookie, apple, snack)
- Toys (e.g., ball, dolly, balloon)
- Daily routines (e.g., go bye-bye, eat, bath, night-night)
- Body parts (e.g., eye, nose, mouth, hand)
- Clothing (e.g., shoe, sock, shirt)

[Ibid.]

They also indicated that R.G.'s speech is understood by family members (in and outside of the household), care providers, familiar people and unfamiliar people. Ibid. Petitioner testified that, although knew the school would reply upon his answers to the questions, he believed the questionnaire would "end up in a file somewhere" and not "be given much gravity" because neither he nor R.G.'s mother are "professionals." T3 77:3; T3 78:7-9.

Petitioner acknowledged that he did not tell Mosley, the Cooper speech pathologist, about the tests that Rein administered. Also, Mosley did not reference the prior evaluation in her report or conduct a functional evaluation of R.G. in his District school because he had not yet started school there. She did a functional assessment in a room at the Cooper facility, not in a school environment with other children present. Petitioner did not know if Mosely had worked as a speech and language therapist in a New Jersey public school.

Petitioner acknowledged that Mosely wrote that R.G.'s "screen time" should be limited to one hour per day of "high quality programming." R-8 at BOE 44. He also acknowledged that he wrote on the Home Communication Questionnaire that R.G. averaged two hours per day on a tablet during the week and four hours per day on the weekend. R-7 at 7. He asserted that excessive screen time does not cause echolalia and none of the private practitioners he met with told him there is such a connection.

R.G. was evaluated for autism by pediatric neurologist Dr. Agustin Legido on November 23, 2020. P-6. The doctor reviewed the district's speech language evaluation report and Mosley's report. Petitioner was present during the entire evaluation of R.G. and Dr. Legido did not administer any tests to R.G. or observe R.G. engaged in play activity. This is why petitioner sought another evaluation by CSH. Petitioner acknowledged that Dr. Legido is not a speech language therapist and that he reached his conclusion about R.G.'s communication deficits based upon the two reports he reviewed. He also acknowledged that Dr. Legido's conclusions contradicted Rein and Mosley's findings.

Petitioner dismissed the testimony about R.G.'s speech while at school, based upon observations of professionals who see him every day or many times per week, as lies. The witnesses were dishonest because echolalia and scripting are "all he did[.]" T3 89:23-24. He surmised that perhaps R.G.'s teacher "didn't pay attention to it." T3 90:6-7.

Document Review

The report prepared by Cooper University Hospital speech language pathologist Mosely provided the following:

- R.G. scored in the average range on the Auditory Comprehension subtest, indicating that his “[r]eceptive language skills [are] within the average range.” Id. at 3.
- R.G. scored below the average range on the Expressive Communication subtest, which indicated “[m]ild delay in expressive language skills.” Id. at 4.
- R.G. “earned a Total Language Standard Score of 95, which places him in the 37th percentile, indicating that he scored the same or better than 37% of his same-age peers. This score indicated that [R.G.’s] overall receptive and expressive language abilities fall within the average range. This score suggests [that his] [o]verall language skills [are] within the average range.” Ibid.
- Mosely concluded that R.G. would “benefit from speech therapy to address his expressive language and pragmatic (social) language skills.” Id. at 5. She recommended the following:
 - Pediatric neurology and/or pediatric development evaluations by a physician.
 - Speech-language therapy in an “outpatient setting for at least 12 weeks.” She added that R.G. would be placed on the waiting list at Cooper University Hospital. Ibid.
 - R.G.’s screen time “(e.g., television, tablets, phone, etc.)” should be limited to one hour per day of high quality programming, pursuant to the recommendation of the American Academy of Pediatrics. Ibid.
 - Tools and techniques that “can be worked on at home” including but not limited to picture books, pointing out vocabulary in everyday encounters, encouraging play time with other children his age, building understanding of object names by offering choices, and narration of activities. Mosely explained and provided examples of how each home-based activity could be implemented.

- “Speech-language therapy home program. Home assignments will be assigned each week.” Ibid.
- “Frequency and duration of treatment plan: 45 minute individual speech-language therapy 1x/week for at least 12 weeks.” Ibid.

ADDITIONAL FACTUAL FINDINGS

Witness’ credibility

It is the obligation of the fact finder to weigh the credibility of the witnesses before making a decision. Credibility is the value that a fact finder gives to a witness’ testimony. Credibility is best described as that quality of testimony or evidence that makes it worthy of belief. “Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances.” In re Estate of Perrone, 5 N.J. 514, 522 (1950). To assess credibility, the fact finder should consider the witness’ interest in the outcome, motive, or bias. A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

In determining credibility, I am aware that the District employees would want to support the program they developed for R.G. and would believe that the District’s program would provide him with FAPE. I am also aware that petitioner believes that what he seeks is in the best interest of R.G. In addition to considering each witness’ interest in the outcome of the matter, I observed their demeanor, tone, and physical actions. I also considered the accuracy of their recollection; their ability to know and recall relevant facts and information; the reasonableness of their testimony; their demeanor, willingness, or reluctance to testify; their candor or evasiveness; any inconsistent or contradictory statements; and the inherent believability of their testimony.

As the fact finder, I had the ability to observe the demeanor, tone, and physical actions of the witnesses during the hearing. Rein testified credibly, clearly, authoritatively,

consistently and in measured way. She is qualified to administer the tests at issue and has substantial experience in this regard. She ably explained why she selected the tests that she administered to R.G. and explained how she did so. She relied upon documents in the record, including PLAAFP statements prepared by R.G.'s teacher, to support her conclusions about his capacities and needs. She also conveyed that she genuinely enjoys R.G. and cares about him. Although petitioner attempted to question her recollection or accuracy of testing, her demeanor, tone, consistency and rational responses supported her testimony. While it appears that she could have been more precise and thorough with her record-keeping, this does not diminish the credibility of her account. Moreover, her testimony concerning her desire to revisit her work and review her notes rings true, given petitioner's regular contact with the District and his assertions that he son was improperly assessed. While petitioner suggested that respondent's witnesses had a general motive to deny services to R.G., based upon an unsupported assertion that the services would be costly, there is no evidence in the record to support petitioner's contention that Rein had an improper motive that compelled her to skew R.G.'s testing process and score. I find her testimony to be credible.

Rozyn also has many years of experience in her field, for which she is properly qualified. Although she was nervous during her testimony, she demonstrated a rather good memory, and her testimony concerning her actions, interactions and observations was consistent. As with Rein, there is no evidence in the record to support petitioner's contention that Rozyn had an improper motive that compelled her to skew R.G.'s testing process and score. I find her testimony to be credible.

Furthermore, while petitioner contended that Rein and Rozyn's observations and conclusions were inconsistent with those of the individuals with whom he consulted, he relied upon the hearsay reports of individuals who did not testify.²¹ While these reports

²¹ Hearsay evidence is admissible in the trial of contested cases, and shall be accorded whatever weight the judge deems appropriate taking into account the nature, character and scope of the evidence, the circumstances of its creation and production, and, generally, its reliability. N.J.A.C. 1:1-15.5(a). However, while hearsay evidence is admissible, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness. N.J.A.C. 1:1-15.5(b). Hearsay may be employed to corroborate competent proof, or competent proof may be supported or given added probative force by hearsay testimony, when there is a residuum of legal and competent evidence in the record. Weston v. State, 60 N.J. 36, 51 (1971).

were admitted into evidence, the basis for their conclusions was not explained or explored because respondent was denied an opportunity to cross-examine them. Thus, there is no admissible evidence in the record that corroborates the hearsay statements upon which petitioner relies. Nonetheless, speech-language therapist Mosley found that R.G.'s overall language skills were within the average range (R-8). Also, while Mosley concluded that R.G. would benefit from speech therapy to address his expressive language and pragmatic language skills, she did not recommend school-based speech language services. Instead, she recommended a long list of home-based exercises as well as private therapy. She did so notwithstanding the fact that, at that time, R.G. was in preschool and petitioner was communicating with District personnel about R.G.'s needs.

Similarly, the April 6, 2021, report by Cooper University Health Care speech therapist Jessica Goss (R-31) indicated that R.G. was within the low average range for core language, sentence structure, word structure, expressive language index and standard language index. The scores reported by Goss were not so low as to qualify for school-based services (e.g., a 33% delay in language skills or a 25% delay in two areas).

With respect to the other hearsay reports, there is no evidence in the record that the authors have experience or expertise in the provision of speech and language therapy services in the school context.²² None of these evaluations was conducted in a school setting, with in-school observations of R.G., and there is no evidence showing that the standards and regulations governing the provision of special education in New Jersey was considered by the evaluators. Also, it appears that some of the evaluators did not conduct speech and language evaluations.²³ Without testimony concerning the connection, if any, between the other types of evaluations that were conducted and R.G.'s speech and language skills and needs, their relevance and reliability cannot be assessed.

²² The author of the Virtua Pediatric Mobile Screening report is not identified. R-5 at BOE 30.

²³ Dr. Legido did not conduct a speech-language assessment; rather, he evaluated R.G. for autism and relied upon data provided by Mosley and respondent P-6. Similarly, Dr. Malik's two discharge instructions did not reference speech-language assessments that he conducted or the basis for his conclusions. Petitioner represented that he conducted a neurodevelopmental evaluation of R.G. P-10, P-11. Similarly, APN Shulman-Repole did not reference speech-language assessments that she conducted or the basis for her conclusions. Petitioner represented that she conducted a neurodevelopmental evaluation. P-12.

For all of these reasons, I find that Rein and Rozyn's conclusions about R.G.'s abilities and needs, based upon their objective testing and observations, is credible and not contradicted or outweighed by the conclusions contained in the reports offered into evidence by petitioner.

Cobleigh, a properly certified, qualified and experienced teacher, testified very clearly and explained herself extremely well. Her manner and clarity conveyed certainty about her observations and conclusions. She demonstrated good recall of the facts and petitioner agreed with aspects of her testimony. As with the other witnesses, there is no evidence in the record to support petitioner's contention that she had an improper motive that compelled her to misrepresent her observations of R.G.'s performance and progress. I find her testimony to be credible.

Butler had little involvement with the material aspects of this matter. I find his testimony in this regard to be credible.

Petitioner demonstrated, through his testimony, demeanor, and genuine emotion, that he is deeply concerned about his son's wellbeing. He candidly acknowledged the painful process he and R.G.'s mother went through as they realized that R.G. was not developing in the manner that they believed he should. They pursued varied avenues and resources to identify and address R.G.'s needs. I find his testimony in this regard to be credible.

However, petitioner offered what amounted to an expert opinion concerning his son's diagnosis, and the selection, administration and interpretation of assessments. He was not qualified as an expert in special education, speech language pathology or a related subject matter. His testimony concerning R.G.'s diagnoses was permitted with the caveat that he was only relaying his understanding of diagnoses made by professionals who evaluated R.G. Moreover, petitioner acknowledged that his notes may not have been identical reproductions of the assessment forms he copied by hand; and that he did not record all of the entries on the forms that he copied. Importantly, he based his conclusion that R.G.'s responses were improperly assessed on his personal understanding of what a "correct" answer to an assessment question should be. He

asserted that certain words or combinations of words were patently inappropriate; however, he did not have support for this assertion and acknowledged that he relied upon his personal sense of what was appropriate. Moreover, there is no reliable evidence in the record supporting petitioner's assertion that R.G.'s behavioral difficulties were caused by communication deficits.

Further, petitioner claimed that, when he completed the Home Communication Questionnaire for Rein, he did not believe R.G. had a communication problem, as he had not yet perceived that there was, in fact, a problem. However, before he completed the questionnaire, he approached the school district to express his significant concerns about his son's communication skills. He wrote this in his email to District personnel. His testimony to the contrary appears to have been an effort to distance himself from his own statements about R.G.'s capacity to speak in sentences and his other communication skills. He also attempted to distance himself from his statements by claiming that he did not consider the questionnaire to be important. Given that petitioner was actively advocating on behalf of his son and seeking multiple assessments and consultations at that time, his attempt to distance himself from his statements on the questionnaire is not credible.

Lastly, petitioner did not assert that the goals and objectives in R.G.'s IEPs or the supports provided to him in his classes were inappropriate. He also did not contest the teachers' reported observations, and corresponding evidence of R.G.'s progress. He did, however, agree that it was appropriate for R.G. to move from a self-contained special education classroom to an inclusive classroom, which is warranted when progress is demonstrated.

For all of these reasons, I cannot credit petitioner's testimony to the extent he offered opinions concerning R.G.'s diagnosis or the manner in which assessments should be conducted. I also question his representations about R.G.'s capacity, as he attempted to negate his own written statements about his son's communication at home.

Petitioner's assertions concerning documents

Petitioner objected to the admission of three documents, based upon his assertion that they were forged: the PLS-5 Record Form, ROWPVT form, and EOWPVT, which contained handwritten notes by Rein about R.G. R-7 at 9-11. He claimed that, when he personally inspected the Board's testing records and protocols, he observed different versions of these documents, which he photographed.²⁴ Rein was questioned about the different versions of the documents. She explained that, in approximately December 2022, petitioner sought to have her speech language evaluation expunged from R.G.'s record. She provided all of her documents and testing protocols to the Board and she copied, by hand, "all of [her] protocols" onto "colored copies so that [she] would have it in front of [her] in case [she] was questioned[.]" T2 34:7-11. She also wrote notes on the documents. T2 34:22. This would enable her to review her work and reference it if she were questioned by the Board or others. These newly created documents were not her original testing documents. She explained, "I made a clean copy for myself and somehow that was given" to Board counsel. T2 34:13-16. She did not change R.G.'s scores; rather, she wrote the scores in a different area of her copies than on the original forms. She did not alter the original documents, which were produced to petitioner by the Board.

During a colloquy, petitioner was asked if the scores that are reflected on his copies of the documents, which he recorded by photographing the documents, differed from the scores on the documents offered into evidence by respondent. He acknowledged that the scores were the same. He persisted in arguing that the documents that the Board produced (R-7) are, nonetheless, not the original version of the documents because they do not match the documents he examined and photographed at the Board office. He also asserted that, based upon his review, that the documents he reviewed were produced before the version that was produced by the Board (R-7).

During the colloquy, I asked Rein why she rewrote the documents rather than simply photocopy them. She explained that it helped her to work from color versions of

²⁴ He was not permitted to photograph the documents for reasons explained in the March 4, 2022, Order denying his motion to compel production of the testing protocols.

the documents, as she could easily differentiate them from the other documents. She proceeded to write notes on these versions of the documents, to use in the event she was questioned about her work and the forms. She was required to turn over the original documents (which are the documents found in R-7) but she did not retain photocopies of them. She explained that she used “new form[s]” so that she “could make [herself] notes[.] . . . This has been going on for three years and I needed to refresh and to know and all I did was recopy the information.” T2 50:15-19. The data in the documents found in R-7 is the same as in the color forms that she created and which petitioner photographed. The only difference is that she added “notes to her[self.]” T2 51:12. She identified the notes on the color copies that were photographed by petitioner. T2 51:14 to 53:13. The notes corresponded to the scores that are reflected in respondent’s exhibit (R-7).

After the above questioning, the colloquy continued as follows:

Q. (By Judge) Is it your position that the data on both the photograph documents and the data in the exhibits is the data that you found and relied upon in making your recommendations concerning the child?

A. Yes, Judge.

Q. And that the data in both the photograph document and the photocopy document is contained in your report[?]

A. Yes, Judge.

[T2 53:18 to 54:1]

Based upon the foregoing, I concluded that the data in respondent’s exhibits (R-7) matched the data in the photographs of the color versions of the documents. There was no basis to conclude that the exhibits offered into evidence, which the Board asserts are the original documents upon which it relied, were forged. The documents were admitted into evidence and petitioner was advised that he could address his concerns about the reliability of the exhibits during his cross-examination of the witness.

Petitioner's request for an adverse inference

Petitioner also contends that an adverse inference should be drawn from respondent's failure to comply with his subpoena for documents from respondent's speech language assessment of R.G. Pet. Brf. at 4. Petitioner has not produced a copy of his subpoena. He asserts that respondent "did not refuse to comply with the subpoena for the testing protocols out of copyright concerns, but instead they did not comply to hide the fact that the assessment" did not meet the standards required by N.J.A.C. 6A:14-3.4(f)2, which requires that assessments shall "[a]pply standards of validity, reliability, and administration for each assessment by trained personnel in accordance with the protocols and instructions of the producer of the assessment."

N.J.A.C. 1:1-11.4 provides, "A party who refuses to obey a subpoena may be subject to sanctions under N.J.A.C. 1:1-14.4 or may suffer an inference that the documentary or physical evidence or testimony that the party fails to produce is unfavorable." A party who wishes to enforce a subpoena must do so by bringing an action in the Superior Court pursuant to the New Jersey Court Rules. N.J.A.C. 1:1-11.5. Furthermore, N.J.A.C. 1:1-11.1, which addresses when subpoenas may be used in OAL hearings and who may issue them, states in part that: "a subpoena which requires production of books, papers, documents or other objects designated therein shall not be used as a discovery device in the place of discovery procedures otherwise available under this chapter, nor as a means of avoiding discovery deadlines established by this chapter or by the judge in a particular case." N.J.A.C. 1:1-11.1(d).

An adverse inference is not to be automatically applied. In re Tenure Hearing of Geiger, 2015 N.J. Super. Unpub. LEXIS 2649, *20 (November 18, 2015). In Geiger, the Appellate Division held that "the appropriate remedy when a person fails to answer a subpoena is to 'seek enforcement' through 'an action in the Superior Court pursuant to the New Jersey Court Rules.' N.J.A.C. 1:1-11.5." Ibid. Because the parties that issued the subpoena in Geiger did not seek this remedy "while the matter was pending before the ALJ" the ALJ's determination that an adverse inference did not apply was appropriate. Ibid.

Here, it is understood that the documents that petitioner subpoenaed were also the subject of his motion to compel. The motion was denied on March 4, 2022, for two reasons. First, the controlling law and regulations direct that parents have the right to inspect and review these records but do not require school to provide copies of the records except when the parent cannot reasonably inspect and review the documents. Petitioner acknowledged that respondent permitted him to inspect and review the documents and, in fact, he did so twice. Second, the Federal Office of Special Education Programs (OSEP) has directed that copywritten test protocols, such as those at issue here, may not be reproduced, transmitted, distributed, or publicly displayed. A “derivative work” may not be created from the copywritten material without express permission from the copyright owner, unless allowed under the Fair Use Doctrine. Letter to Price, 57 IDELR 50, *2, 111 KPR 45419 (October 13, 2010). Instead, inspection and review of the documents, by the requesting parent, is permissible. For these reasons, I denied petitioner’s motion to compel production of copies of the speech-language evaluation protocol documents.

However, I noted that in respondent’s opposition to the motion to compel it asserted that “an assessment . . . is meant to be administered and interpreted by those individuals who meet the publisher’s qualifications” and indicated that it had not been apprised of an expert who will testify on behalf of petitioner or an individual “who could properly interpret the protocols requested or [who is] qualified to receive copies of them” in accord with the publisher’s requirements. The Order thus provided that, if petitioner were to enlist the assistance of such an individual, he should communicate with respondent about the release of copies of the documents.

Therefore, contrary to petitioner’s argument in his post-hearing brief, respondent did not withhold the above-referenced documents because it sought to hide malfeasance or error. Rather, respondent did not produce copies of the documents in accord with the March 4, 2022, order denying petitioner’s motion to compel. As noted, it made the documents available for review by petitioner on two occasions and petitioner did not retain an expert who could have been able to obtain and review the documents. He did not appeal the March 4, 2022, Order and did not seek enforcement of the subpoena pursuant

N.J.A.C. 1:1-11.5. For these reasons, I find that there is no basis for drawing an adverse inference.

Accordingly, based upon the testimonial and documentary evidence, and having had the opportunity to observe the appearance and demeanor of the witnesses, I **FIND** the following as **FACT**:

Objective testing, including functional assessments, showed that R.G. did not score within the range that warranted speech language therapy.²⁵ This was bolstered by the observations of school personnel, including Rozyn, Rein and R.G.'s teachers, who routinely observed, monitored and assessed R.G.'s progress with his speech and language skills. None observed him engage in or use forms of communication, including echolalia or scripting, which would have indicated a need for speech therapy. There is no evidence in the record supporting petitioner's contention that R.G.'s behavior, such as expressions of his being upset, was the result of an inability to express himself.

Despite this, school personnel responded to petitioner's genuine and ongoing concerns about his son by including speech and language goals and objective in his IEPs. They also instituted a daily communication requirement, so that petitioner and R.G.'s teachers could regularly communicate about his progress and needs. This was in addition to his special education classroom program, that addressed language skills throughout the day and in which accommodations and modifications such as prompting and reinforcement were utilized when necessary.

R.G. progressed with respect to his speech and language skills. This is evidenced by the three PLAAFP reports prepared by his teacher, Reema Arora. She did not raise concerns about his communication skills. Rather, she documented that he demonstrated language skills and was progressing. For example, in February 2021, he used receptive and expressive vocabulary; was understood by staff and peers; and was beginning to answer questions, with prompting. He was making progress in communicating his needs

²⁵ As noted above, I also **FIND** as **FACT** that the scores on the versions of the speech-language assessment forms that petitioner asserted were the original forms are the same as the scores on the forms offered into evidence by respondent.

and asking for help when he became frustrated. He was also progressing with respect to understanding and answering questions. In June 2021, she reported that R.G. successfully answered “Wh” questions; enjoyed conversations with adults; and responded well to questions. The end of the year progress report prepared by Arora documented that R.G. progressed with respect to his IEP goals.

Cobleigh, who taught R.G.’s inclusion class, also observed and documented that he progressed satisfactorily with his speaking and listening goals. He also communicated with her when he became upset or frustrated. To the extent he was progressing gradually, he was, in fact, progressing and was expected to continue to progress to the point of achieving the goal. She did not observe him engage in scripting or echolalia or other speech behavior that indicated that therapy was necessary. The reports provided by petitioner also did not support the need for school-based speech therapy.

Parties’ Arguments

The Board contends that it established, by a preponderance of the credible evidence, that R.G. was not eligible for speech services and that he received a free, appropriate public education (FAPE) from the time he was determined eligible for special education through October 7, 2021, the date petitioner filed his due process petition. R.G.’s IEPs allowed him to obtain meaningful educational benefits, notwithstanding the absence of speech services.

Petitioner contends that R.G. was eligible for speech services, from the time he was determined eligible for special education through October 7, 2021, the date he filed his due process petition. He asserts that the denial of speech services was the result of the inappropriate selection of testing assessments; failure to properly consider outside evaluation reports; the invalid and unreliable administration of the selected assessments; and Board employees’ “dishonesty” and their refusal to acknowledge R.G.’s “atypical speech language behaviors.” Pet. Brf. at 1. He also argues that the Board has attempted to “hide” evidence of this by refusing to comply with a subpoena for documents relating to the speech language assessment administered by the Board. Ibid.

CONCLUSIONS OF LAW

The IDEA requires that a state receiving federal education funding provide a “free appropriate public education” (FAPE) to disabled children. 20 U.S.C. § 1412(a)(1). School districts provide a FAPE by designing and administering a program of individualized instruction that is set forth in an IEP. 20 U.S.C. § 1414(d). 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 education²⁶ and related services²⁷ 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 held that the IDEA “requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Endrew F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 1001 (2017). The Third Circuit determined that Endrew F.’s language “mirrors [its] longstanding formulation [that] the educational program ‘must be reasonably calculated to enable the child to receive meaningful educational benefits in light of the student’s intellectual potential and individual abilities.’” Dunn v. Downingtown Area Sch. Dist., 904 F.3d 248, 254 (3d Cir. 2018) (quoting Ridley Sch. Dist. v. M.R., 680 F.3d 260, 269 (3d Cir. 2012)). 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).

²⁶ Special education is “specially designed instruction . . . to meet the unique needs of a child with a disability[.]” 20 U.S.C. §1401(29), N.J.A.C. 6A:14-1.3 (Appendix C).

²⁷ Related services include speech-language pathology and audiology services. 34 C.F.R. 300.34(a), N.J.A.C. 6A:14-1.3 (Appendix B).

The IDEA thus does not require that the District maximize R.G.'s potential or provide him the best education possible. Carlisle Area Sch. v. Scott P., 62 F.3d 520, 533–34 (3d Cir. 1995). The District will have satisfied the requirements of law by providing R.G. with personalized instruction and sufficient support services “as are necessary to permit [him] ‘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)²⁸ (citing Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 189 (1982)).

An IEP “turns on the unique circumstances of the child for whom it is created.” Andrew F., at 1001. It is usually “reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” Id. at 999 (quoting Bd. of Ed. of Hendrick Hudson Ctr. Sch. Dist., Westchester Cty. v. Rowley, 458 U.S. 176, 203-04 (1982)). “And while parents often play a role in the development of an IEP, they do not have a right to compel a school district to provide a specific program or employ specific methodology in educating a student.” E.E. v. Ridgefield Park Bd. of Educ., 2020 U.S. Dist. LEXIS 102249, *8 (June 11, 2020)(quoting Ridley Sch. Dist., 680 F.3d at 269, 278).

The appropriateness of an IEP must be determined as of the time it is made, and the reasonableness of the school district’s proposed program should be judged only on the basis of the evidence known to the school district at the time at which the offer was made. D.S. v. Bayonne Bd. of Educ., 602 F.3d 553, 564–65 (3d Cir. 2010). When determining the appropriateness of any given IEP, a court’s focus should be on the IEP actually offered by the board and not upon an IEP that it could have offered. Lascari v. Bd. of Educ. of Ramapo Indian Hills Reg’l High Sch. Dist., 116 N.J. 30, 47 (1989). Our courts have confirmed that “neither the statute nor reason countenance ‘Monday morning quarterbacking’ in evaluating a child’s placement.” Susan N. v. Wilson Sch. Dist., 70 F. 3d 751, 762 (3rd Cir. 1995).

In Damarcus S. v. District of Columbia, 190 F.Supp. 3d 35 (D.C. Cir. 2016), the court addressed a dispute concerning the appropriate educational program or method. In that case, the plaintiffs asserted that FAPE was denied because the school district

²⁸ Unpublished and administrative cases are not precedential. They are cited here because they provide relevant guidance.

utilized inappropriate educational programs. For example, they argued that the selected reading program taught the student to recognize pictures rather than to read. They contended that a specific program other than the one used by the school was the appropriate program for a student with his cognitive deficits. The court observed, “This is precisely the type of thorny educational policy question that courts are ill-suited to answer, and thus deference to both the Hearing Officer and [the student’s] IEP team is appropriate.” 190 F.Supp. 3d at 56. The court cited to Rowley, which held that the “IDEA does not ‘invite the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.’” Ibid. (quoting Rowley, 458 U.S. at 206); see also E.E. v. Ridgefield Park Bd. of Educ., 856 Fed. Appx. 367, *7 (3d Cir. 2021).

An IEP is “a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” Sch. Comm. of Burlington v. Dep’t of Educ. of Mass., 471 U.S. 359, 368 (1985). The IEP team should consider the strengths of the student and the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluations of the student; the student’s language and communications needs and the student’s need for assistive technology devices and services. The IEP establishes the rationale for the pupil’s educational placement, serves as the basis for program implementation and complies with the mandates set forth in N.J.A.C. 6A:14-1.1 to N.J.A.C. 6A:14-10.2. It must contain a detailed statement of annual goals and objectives. N.J.A.C. 6A:14-3.7(e)(2). 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 Supreme Court has also held that “only those services necessary to aid a handicapped child to benefit from special education must be provided, regardless how easily” the service could be provided. Irving Independent School Dist. v. Tatro, 468 U.S. 883, 894 (1984). Thus, a school district must include a particular service as a related service in an IEP only where that service is necessary for the student to benefit from special education. In addition, a district has discretion for determining the methodology to be used for providing that educational benefit.

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

To determine whether a school is compliant with the Act's mainstreaming requirement, a court must first determine whether education in the regular classroom with the use of supplementary aids and services can be achieved satisfactorily. Id. at 1215. If such education cannot be achieved satisfactorily, and placement outside of the regular classroom is necessary, then the court must determine whether the school has made efforts to include the child in school programs with nondisabled children whenever possible. Ibid. This two-part test is faithful to the Act's directive that children with disabilities be educated with nondisabled children to the maximum extent appropriate and closely tracks the language of the federal regulations. Ibid.

A "'student with a disability' means a student who has been determined to be eligible for special education and related services according to N.J.A.C. 6A:14-3.5 or 3.6." N.J.A.C. 6A:14-1.3. N.J.A.C. 6A:14-3.5 addresses when a preschool student shall be deemed eligible for special education and related services. It provides, in relevant part:

(c) A student shall be determined eligible and classified "eligible for special education and related services" under this chapter when it is determined that the student has one or more of the disabilities defined in (c)1 through 14 below, the disability adversely affects the student's educational performance, and the student is in need of special education and related services. Classification shall be based on all assessments conducted, including assessment by child study team members, and assessment by other specialists as specified below.

...

10. "Preschool child with a disability" means a child between the ages of three and five who either:

- i. Is experiencing developmental delay, as measured by appropriate diagnostic instruments and procedures, in one or more of the areas in (c)10i(1) through (5) below, and requires special education and related services. As measured by a standardized assessment or criterion-referenced measure to determine eligibility, a developmental delay shall mean a 33 percent delay in one developmental area, or a 25 percent delay in two or more developmental areas.

- (1) Physical, including gross motor, fine motor, and sensory (vision and hearing);
- (2) Intellectual;
- (3) Communication²⁹;
- (4) Social and emotional; and
- (5) Adaptive; or
- ii. Has an identified disabling condition, including vision or hearing, that adversely affects learning or development and who requires special education and related services.

Here, while petitioner sought to undermine the reliability of respondent's assessment of R.G., the preponderance of the credible and reliable evidence in the record supports the conclusion that it was conducted appropriately. Respondent has demonstrated that it used appropriate testing to evaluate R.G. and identify his strengths and weaknesses. That testing showed that R.G. was not eligible for speech and language therapy. In response to its objective testing, functional assessment, and the observations of R.G.'s teachers and LDTC, and taking into consideration the reports provided by petitioner and his and R.G.'s mother's statements on the Home Communication Questionnaire, respondent developed an educational program that was tailored to R.G.'s strengths and weaknesses. Petitioner agreed to the first IEP that placed R.G. in the PSD class and did not provide speech therapy. Respondent revised R.G.'s programming in

²⁹ Defined at N.J.A.C. 6A:14-3.5(c)(4): "Communication impairment" means a language disorder in the areas of morphology, syntax, semantics, and/or pragmatics/discourse that adversely affects a student's educational performance and is not due primarily to an auditory impairment.

response to petitioner's requests and amended his IEP accordingly. Petitioner again agreed to the revised IEPs.

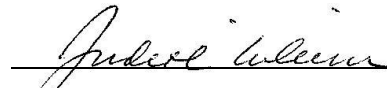
Although R.G.'s test results did not qualify him for speech therapy, the District carefully monitored his capacity, needs and progress in this area. His teachers, LDTC, and the speech-language therapist documented this throughout the time at issue. They incorporated speech and language goals into his IEP, notwithstanding his ineligibility for speech services. They reported, based on R.G.'s class performance and their observations, that he achieved his speech and language goals and objectives or was progressing appropriately toward achievement. His overall success in his PSD class – even though he did not start school until November 30, 2020 -- was such that placement in a less restrictive learning environment the following year was appropriate. Petitioner agreed to that placement and the corresponding IEP.

For the foregoing reasons, I **CONCLUDE** that respondent properly determined that R.G. was not eligible for speech language therapy services and that it crafted a program and provided a placement for R.G. that was reasonably calculated to provide him with significant learning and meaningful educational benefit in light of his individual needs and potential. I, thus, also **CONCLUDE** that the District provided petitioner a FAPE under the IDEA. Petitioner is, therefore, not entitled to the relief he seek—an order directing respondent to provide speech language therapy.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2022) 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 (2022). 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.

June 29, 2023

DATE



JUDITH LIEBERMAN, ALJ

Date Received at Agency:

Date Mailed to Parties:

JL/jm/lam

APPENDIX

WITNESSES

For petitioner

Christopher Butler
R.G.

For respondent

Elizabeth Rozyn
Sherry Rein
Megan Cobleigh

EXHIBITS

For petitioner

P-6 Neurological evaluation, Dr. Legido, November 23, 2020
P-8 McDonald letter, October 2, 2015
P-10 Neurodevelopmental evaluation, Dr. Malik, July 21, 2020
P-11 Neurodevelopmental evaluation, Dr. Malik, January 28, 2020
P-12 Neurodevelopmental evaluation, Shulman-Repole, APN, June 2, 2021
P-20 Pearson Assessment comparison of PLS-5 and CELF assessments
P-27 Petitioner's notes from November 2, 2021 "inspect and review" of District's speech and language evaluation of R.G.

For respondent

R-4 Email from R.G., January 16, 2020
R-5 Virtua Development Screening Form
R-6 Initial Identification and Evaluation Planning Form
R-7 Rein evaluation, addendum, personal notes, assessment forms
R-8 Mosley evaluation, March 12, 2020
R-9 Rozyn learning assessment, August 31, 2020, and September 9, 2020
R-10 IEP, October 14, 2020

- R-11 IEP, December 10, 2020
- R-12 IEP, February 24, 2021
- R-13 Reevaluation planning meeting documents, April 20, 2021
- R-14 OT evaluation, May 4, 2021
- R-15 FBA, May 24, 2021
- R-16 IEP June 17, 2021
- R-17 IEP summary
- R-18 Progress report, November 3, 2021
- R-19 CSH Psychology Department evaluation, March 25, 2021
- R-19.1 Dr Yoskowitz psychology evaluation, March 25, 2021
- R-20 2020-2021 Progress Report
- R-21 2021-2022 Progress Report
- R-22 "My Teaching Strategies" progress report, Fall 2020-2021
- R-25 "My Teaching Strategies" progress report, Winter 2020-2021
- R-26 DoJo communications
- R-27 Rein resume and certifications
- R-28 "My Teaching Strategies" progress report, Spring 2020-2021
- R-30 Cobleigh lesson plans
- R-31 Cooper progress report and results of reevaluation