



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**FINAL DECISION**

OAL DKT. NO. EDS 00690-22

AGENCY DKT.NO. 2022 33741

**A.S. & R.S. ON BEHALF OF G.S.,**

Petitioner,

v.

**ELIZABETH CITY BOARD OF EDUCATION,**

Respondent.

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**Staci Greenwald, Esq.**, for petitioners (Sussan, Greenwald & Wesler,  
attorneys)

**Richard P. Flaum, Esq.** for respondent (DiFrancesco Bateman Kunzman Davis  
Lehrer & Flaum, P.C.)

Record Closed: February 27, 2023

Decided: March 6, 2023

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

**STATEMENT OF THE CASE**

Petitioners, A.S. and R.S. on behalf of their child G.S. allege that respondent, Elizabeth City Board of Education (District) 's Individualized Education Plan (IEP) did not provide G.S. with a free and appropriate public education (FAPE). G.S. requires a

program that can address his needs throughout the school day and that Sinai School (Sinai) is an appropriate placement for G.S.

### **PROCEDURAL HISTORY**

On January 28, 2022, the Office of Special Education Programs transmitted the matter to the Office of Administrative Law (OAL) under Docket No. EDS 00690-2022. The hearings were held on September 12, 2022, September 23, 2022, September 28, 2022, December 14, 2022, and February 27, 2023 after which I closed the record.

### **Testimony**

#### **Emilio Eduardo**

Emilio Eduardo (Eduardo) is employed by the District as a child study team (CST) social worker. He has been in that position for three years. He interacts with staff, students and parents, attends Individual Education Program (IEP) meetings and eligibility meetings. He also does counseling and social assessment. He has a Bachelor of Arts degree in psychology and a master's degree in Social Work. Eduardo is assigned to two schools in the District. He provided counseling to eight students last year and six students this year.

Eduardo case managed G.S. during the 2020-2021 school year. G.S. had in class support in Math and Language Arts for forty minutes each day. The support teacher would pull him out of class. He also had related services in Occupational Therapy (OT) and Speech Therapy (Speech).

G.S. progress notes were prepared by the in-class teacher and the Speech and OT therapist. The notes were put into the IEP regarding how G.S. was doing with his goals. A progress report was sent to the parents. Eduardo spoke to petitioner regarding G.S.'s reading goals. G.S. had difficulty with virtual learning. He had difficulty sitting in front of the laptop. He was also frustrated when there was a miscommunication with the teacher. Petitioner was also concerned that G.S. was not reading at the level he should.

The District was closed from March 2020 through June 2020 services were not being provided at that time. G.S. made progress toward his reading goals when the District was back to in person learning. Eduardo did not discuss G.S.'s Speech goals with petitioners.

An IEP meeting was held June 2, 2021. Classes had been in person for six weeks at that time. The teachers explained how G.S. was doing in class and the related services. Group counseling one time per week for thirty minutes was added to the IEP. The goals were different than the goals in the prior IEP. G.S. had achieved some of the goals from the prior IEP.

G.S.'s social and emotional goals were based on petitioners' concerns regarding G.S.'s anxiety, frustration, and inability to make friends. The goals included peer to peer interaction. Eduardo told petitioners that changes could be made to the IEP.

Eduardo did not develop the 2020-2021 IEP for G.S. He developed the 2021-2022 IEP. He first met with G.S. when in-person learning resumed in April 2021. He did the social history evaluation with G.S.'s mother. He did not do any other evaluations of G.S.

Eduardo had input in the social and emotional goals. His input was based on conversations with the parents and his observations. In class G.S. stayed to himself and became frustrated. Eduardo observed G.S. forty-five minutes virtually and thirty minutes in person. Eduardo observed G.S. in class in May 2021. He generally does in class observations once per month. He also case manages another student in G.S.'s class.

When classes were done virtually the school day was 8:20a.m. to 12:40p.m. This continued through the end of the 2020-2021 school year after in person classes began in April 2021.

Eduardo wrote the 2021-2022 IEP. He spoke to G.S.'s teachers for thirty minutes. He did not speak to G.S. prior to becoming his case manager. The IEP included in class

support for Language Arts and Math. It also included Speech, OT and group Counseling once per week. G.S. present levels of academic achievement and functional performance (PLAAFP) in the social emotional area stated that G.S. would benefit from social skills group twice per month. None of his goals in the IEP specified a social skills group for G.S., although one goal was for G.S. to socially interact with peers. There was no social skills group related service for G.S. in the June 2021 IEP.

G.S. reading goals in the June 2021 IEP were on a first-grade level. However, his current reading level in June 2021 was at beginning kindergarten level. The first grade reading level should have not been carried over into the next IEP. The 2020-2021 IEP goals were modifications of prior goals. Generally, the District does not want to carry over goals to the next IEP even if these goals are not mastered. A new goal would be tailored to him.

G.S. had in class support for Language Arts and Math. He was not recommended for self-contained class or pull-out services. The District wanted to expose him to non-disabled students and give him a chance in a general education class. If G.S. regressed, there could be another IEP meeting where a more restrictive environment would be discussed.

Eduardo did the IEP in collaboration with the teachers. He knew that G.S. was reading at a beginning kindergarten level. The 2021-2022 IEP does not have any writing goals. The District does not have in class support for writing. The 2020-2021 IEP did have writing goals. If G.S. was in a self-contained class, he would have writing goals. In the progress reports G.S. was mainly either progressing gradually or progressing inconsistently.

G.S.'s Math goals from the 2020-2021 IEP were not carried over to the 2021-2022 IEP. One of the math goals of the June 2021 IEP was for G.S. to solve five addition problems using up to ten objects. An objective under this goal was for G.S. to count by

twos, another was for G.S. to use math strategy. The Math goal of telling time with analog and digital clocks was not introduced. It was not continued in the next IEP.

G.S. could count to twenty, he could use those numbers to add or subtract. G.S. cannot form most letters legibly. It was a challenge for him to write letters. There was no specific goal to address his writing. It would be worked on in class. Goals and objectives come from PLAAPFs.

G.S. did not master eight of the Speech goals. In the Speech goal that G.S. would ask/answer eight 'who, what, where, when why and how questions,' G.S. mastered two of the benchmarks. G.S. had twenty-three benchmarks in the 2020-2021 IEP, he mastered three.

The IEP of 2020-2021 did not provide G.S. with an extended school year program (ESY).

The 2021-2022 IEP provided G.S. with forty minutes of in class support for Language Arts and Math. He would have eighty minutes of math and language arts; forty minutes would be in general education and forty minutes would be in class support. G.S. had one to one support during the in-class support.

From March 2020 to April 2021, the district had virtual school only. When G.S. returned to in person classes, he made significant improvements which was why in class support was recommended for the 2021-2022 school year. In 2020-2021 G.S. had virtual one to one Reading and Math instruction.

When the district closed in March 2020, work packets were sent to the students. There was no direct instruction from March 2020 to the end of the 2019-2020 school year.

In September 2022, Eduardo became aware that G.S. had not returned to school and that he was enrolled at the Sinai School.

Christina Adami

Christiana Adami is a Speech Language therapist employed by the District. She services students with speech in their IEP's, does evaluations and is present at IEP meetings. She has evaluated over one hundred students for speech services. She has written over one hundred evaluation reports with recommendations. She has a master's degree in speech language pathology. She has a Speech Language certification from the New Jersey Department of Education.

Adami provided services to G.S. from May 2021 to June 2021. He had speech individual session once per week and group sessions once per week. She worked on his articulation, phonological and language goals. In the individual sessions, G.S. would come to her office and work on the goals. In the group session, she wanted to determine if G.S. could carry over the work done in the individual sessions. She discussed G.S.'s services with his prior speech therapist, who wrote the progress report and PLAAFP

Adami went to the June 2021 IEP meeting. She reviewed the speech PLAAFP and the goals. She told petitioners that she had seen progress in articulation of sounds. He was making progress with the services so there was no need to increase G.S. speech services. There were no concerns raised at the IEP meeting about the Speech services provided.

Ailya Nagvi

Ailya Nagvi is employed by Trinitas Children's therapy service. They are contracted to provide OT services for the District. She does OT evaluations, works with the CST for IEP's. She services thirty-five students. She has a master's degree in occupational therapy. She provided OT to G.S.

Nagvi discussed G.S.'s OT with her successor therapist. The Board's treating therapist did the PLAAFP and goals for G.S. In June 2021 the IEP continued the

recommended OT. Nagvi did not develop the goal in the 2020-2021 IEP, she implemented the goals. She never evaluated G.S.

#### Aida Mendez-Boud

Aida Mendez Boud employed by Trinitas Children's therapy service. They are contracted to provide occupational therapy services for the District. She is the OT coordinator. She graduated from Union County College as an OT assistant. She has thirty-five years' experience.

Mendez-Boud provided services for G.S. for the end of the 2020-2021 school year. The services were in person once per week for thirty minutes. The services were in fine motor skills, pre-writing and handwriting. The sessions were based on G.S.'s goals. G.S. transitioned well from virtual to in person OT. He made progress on the goals and objectives. They worked on writing, copying letters, coloring inside the line and cutting skills. She allowed G.S. to critique his work. He showed improvement on letter formation.

Mendez-Boud provided input in the IEP. She recommended continued OT in a small group once a week for thirty minutes. She prepared the motor skills PLAAFP for the 2021-2022 IEP. She based the PLAAFP on what she observed and conversations with the other OT therapist. The goals and objectives were based on the April 2021 progress summary, expectations for second grade progress and his abilities. She worked with G.S. for four weeks. G.S. made progress with letter formation, although he cannot form letters legibly. She pulled G.S. out of class when she worked with him. If there was not another student available for group OT, she worked with G.S. individually.

#### Shannon Brennan

Shannon Brennan works for the District. She has been a first-grade teacher for twenty-one years. She teaches all content in the first grade. She taught in a self-contained class.

G.S. was in her class during the 2020-2021 school year. The fall 2020 school year began virtually, students joined the class using Microsoft teams. School was virtual from September 2020 to April 19, 2021. The school day was from 8:20 a.m. to 12:40 p.m. The students logged in and she taught with an easel. Some of the instruction was done with PowerPoint and shared screens. She also used virtual games and workbooks. When the students had their cameras on, she could see them.

G.S. had his camera on most of the time. She could assist him when he held his work up to the camera. Virtual learning was difficult for the students. In Social Studies, she read aloud, and the students made notebook entries and illustrations. G.S. did well in social studies. In Science she read aloud and showed videos. They made notebook entries. G.S. could access the curriculum and did well in Science. He made progress in Science and Social Studies. He had modifications such as having to put less in his notebook and shorter length of assignments.

Assignments were to be handwritten and submitted to her. In Language Arts, she worked on letter sounds, reading aloud and comprehension. G.S. could access the curriculum. He had in class support with the special education teacher, where they worked on the goals in the IEP in a breakout room. The Language Arts homework was done in a workbook and submitted to her.

Math curriculum was done virtually She worked on addition and subtraction. There were video lessons and lessons on a slate. The students had workbook pages to practice the Math. The Math homework was done on the computer. G.S. made progress in Math. G.S. Math and Language Arts assistance was one to one.

G.S. turned in his homework and received passing grades for homework. She looked at the homework more to see if it was complete than if it was accurate.

School began in person on April 19, 2021. G.S. came back in person at that time. The students had to wear masks and remain six feet apart. They had a fifteen-minute



snack break outside. School hours were 8:20 a.m. to 12:40 p.m. There was a virtual support period from 2:00 to 3:00 p.m.

Brennan was present at the June 2, 2021, IEP meeting. She did not prepare G.S.'s present levels. She discussed with the co-teacher how G.S. did in class. G.S. cannot write letters legibly. She wanted him to complete his assignments to the best of his ability. G.S. was not working on a first-grade level, he was working to the best of his ability. Brennan agrees with what the special education wrote on the PLAAFP for G.S. G.S. could understand and comprehend first grade text.

### Marcie Fountain

Marcie Fountain is a licensed New Jersey Speech and Language Pathologist. She met G.S. in June 2021 when his parents wanted an updated language profile. She reviewed G.S.'s records, parent interview, formal and informal testing, and school observations. She reviewed the 2019 school evaluation, IEP, medical information, progress reports. She later reviewed G.S.'s records from Sinai School.

Goals and objectives in an IEP should be met in a year. Fountain expects the student to make progress. If a goal is not mastered, it should not be removed.

The February 2019 IEP did not have any articulation goals in the Speech goals for G.S. The Speech goals in the July 2019 IEP were appropriate. In the progress report of the 2019-2020 school year for speech G.S. did not master the goal of producing the V sound correctly in sentences, this goal was not continued on the following IEP. The goal of producing the H sound was not mastered, this goal was not continued on the following IEP. The goal of eliminating the use of phonological process fronting was not mastered, It was not continued in the following IEP. The goal of eliminating phonological process consonant harmony he progressed inconsistently, and the goal was not continued into the next IEP. G.S. did not master the goal of eliminating cluster simplification. This goal was continued in the next IEP. G.S. did not master the goal of expanded utterance, which was not included in the next IEP. The goal of using ten pronouns in a sentence was not

mastered and not continued in the next IEP. The goal of using twenty vocabulary words was not mastered and not continued in the next IEP. The goal of using twenty linguistic concepts was not mastered and was not continued in the next IEP.

Fountain observed G.S. at Sinai School. Multi-sensory strategies were used and carried over in class. The class size was five students.

The progress report for G.S. at Sinai showed he had Speech five times a week and Social Skills weekly. The goals and objectives at Sinai were appropriate for G.S. as was the staff to student ratio. Based on Fountain's observation, Sinai meets G.S.'s needs and she recommends his placement at Sinai.

Fountain does approximately fifty evaluations per year. Seventy-five percent are for parents. She has been retained by five to ten districts per year to do evaluations. The District was shut down from March 2020 to June 30, 2020. Fountain could not say if G.S. would have reached his goals if school had been in session during that time. She did not have any information as to how the school in Elizabeth operated.

G.S. went back to school in the District in person in April 2021. Petitioners stated that G.S. struggled with virtual learning. He received related services remotely. G.S. was progressing gradually in many areas.

Fountain believes that Sinai would have articulation goals for G.S. He would have a multi-sensory program which would include phonics. She does not know if her therapeutic recommendation was implemented at Sinai.

The District sent G.S. to an articulation program at Kean University. If it was daily and intensive, it would help him. G.S. had daily speech and articulation goals at Sinai.

Dr. Elizabeth McHugh

Elizabeth McHugh is a certified New Jersey School Psychologist. She has a PHD in School Psychology. She trained autism support teachers and is a licensed psychologist in New Jersey. She is a licensed school psychologist in New Jersey and Pennsylvania.

McHugh observed G.S. in the District on June 16, 2021. G.S. was observed in general education classroom and a small group setting for Language Arts. She observed G.S. in the general education class virtually. There were twenty students in the classroom. G.S. stood at the desk and tried to participate. He needed one to one redirection and assistance with academic material. The teacher checked in with G.S. but he needed more support. G.S. was in a first-grade level class and appeared lost and could not keep up. She does not recall if there were two teachers in the class.

In the Language Arts class, G.S. required one to one support. He sat at the desk and engaged with the material, but he had difficulty answering questions. G.S. was receiving eighty minutes intervention a day, he needed intervention all day on his instructional level, not grade level. She does not recall if there were two teachers in the class.

McHugh's recommendation for G.S. is intensive intervention in Reading, Writing and Math. In reading, she recommends dyslexic specific intervention. G.S. was not getting this type of program in the District.

McHugh observed G.S. at Sinai in February 2022 in a phonics class working in a one-on-one setting with a special education teacher. He was working on specific letters using multi-sensory strategies. He was asked to identify letters, letter sounds, and words beginning with a letter. He received reinforcement. The goals and objectives of the Sinai for G.S. were appropriate. Sinai is an appropriate placement for G.S. The instruction is on his instructional level.

McHugh spoke to petitioners about Sinai. She was told that there were a small number of students in the classes with certified teachers. The Sinai program appeared Orton Gillingham based because of the goals, it being multi-sensory, and the goals related to phonics and building a phonological process.

The Sinai progress report does not indicate Orton Gillingham, Wilson or Linda Mood Bell instruction. McHugh did not observe multi-sensory learning in the classroom at Sinai.

Most students regressed during the pandemic, but not to the extent that G.S. regressed. From March 2020 to June 2020 there was no virtual learning according to the petitioners. From the fall of 2020 to April 2021, McHugh cannot recall how the District provided instruction. She did not try to ascertain whether G.S.'s curriculum was modified to his level during virtual learning. The District's modifying the school day does not change her opinions.

The District states that once in person instruction resumed, G.S. improved significantly in math. The District's IEP was not on G.S.'s level. It says that he can count up to twenty and can easily add and subtract numbers within ten. The Sinai CSP has one of G.S.'s first goals to be counting numbers. Although the IEP stated that G.S. could count to twenty, he had not mastered that goal during the next school year at Sinai. Further, G.S. made no progress, at Sinai, counting to thirty or fifty. Counting on a number line is not the same as number identification.

G.S.'s Language Arts and Math program in the District was forty minutes with in class support and forty minutes without in class support. In the IEP G.S. had in class support for math and language arts forty minutes a day for each. He did not have a support for the rest of the day. This is not appropriate for G.S. The multi-sensory support that the District provided to G.S. was not on his instructional level.

When McHugh observed G.S. in District in the in-class support language arts, he was working one to one with a special education teacher. When she observed G.S. in the general education setting in the District there was only one teacher.

G.S. cannot be in a mainstream classroom because there is a large gap in his cognitive and academic levels between him and his same grade peers. He needs support due to his cognitive needs. G.S. being in a class with twenty students and two teachers is not appropriate. The IEP was not appropriate. She would have added full day support and intervention with multi-sensory instruction and a small teacher to student ratio.

The Sinai Comprehensive Student Plan (CSP) in the February 2022 update states that G.S. needs explicit instruction to learn each letter and sound. It states through this multi-sensory approach with prompting he recalls letters and sounds.

The District progress report stated that G.S. could copy thirteen uppercase letters in OT. It states that the objective was achieved in April but in the IEP under reading the teacher states that it is a challenge for G.S., he is unable to form most letters legibility. The writing of letters was not carried over from OT to reading.

### Shoshana Strum

Shoshana Strum is the Assistant Director at Sinai. She started at Sinai in August 2021. She is a liaison between the parents and director. She assists with goals and objectives, staff training, behavioral problems, meets with students to solve problems and staff training.

The Sinai CSP is similar to an IEP. It has goals and objectives. She was involved in G.S. goals and objectives. She helped with monitoring student progress.

The goals at Sinai are established on an ongoing basis. The initial goals are established a few weeks into the school year.

Sinai's intake process is to review all of the student's records and speak to someone who knows the student and has access to the student. G.S.'s parents shared the reports of Fountain and McHugh with Sinai. Most of their recommendations were included in Sinai's CSP.

The students learn skills in school and are provided homework. The parents are instructed to assist the student. All of G.S.'s instruction is small group evidence-based instruction. A Wilson reading dyslexia intervention program is done at Sinai. Multi-sensory learning is done at Sinai.

Strum does not know the date of G.S.'s CSP. The records for G.S.'s CSP were sent to Sinai prior to Strum's start date. G.S. had been accepted to Sinai before she started at Sinai. There are forty students at Sinai. G.S.'s CSP was developed in September 2021, but the goals were developed on an ongoing basis.

She saw the score reports of McHugh and Fountain for G.S. The reports were sent later. She believes that she saw the reports prior to the completion of the CSP but she is not sure. The primary information relied on for G.S.'s CSP was the IEP and Sinai's assessments. The CSP is developed after the teacher accesses the students to get a baseline. The CSP is developed in the third or fourth week of September.

Sinai school is closed for Jewish holidays. In September 2021, Sinai school was closed for eight days due to Jewish holidays.

### R.S.

R.S. is the mother of G.S., who is eight years old and in the third grade at Sinai. R.S. had concerns. In 2019, G.S. was going into kindergarten. An education evaluation was done by Union County.

An IEP meeting was held July 24, 2019. G.S. was eligible for special education services. The IEP had in-class support for Math and Language Arts five times a week,

Speech and OT once a week and in class support for Reading five times a week. No one from the pre-school program was present at the IEP meeting.

G.S.'s 2019-2020 IEP for Kindergarten Language Arts was prepared by the teacher who did his social evaluation. When G.S. was in pre-school, R.S. spoke to his teacher about her concerns. She did ask for an IEP or CST for G.S. when he was in pre-school.

G.S. struggled tremendously. R.S. met frequently with the teachers but no changes were made to the IEP. Kindergarten was in person from September 2019 to March 2020. In March 2020 the school went virtual. From March 2020 to June 2020 pamphlets were sent home for G.S. to work on. R.S. helped him with the work. G.S. could not do the work independently, he needed a lot of help to complete the work. He could not point to letters.

The next IEP meeting was on May 15, 2020. It was the same as the prior IEP. The District was remote during the school year. G.S. worked on the computer. He struggled tremendously. R.S. spoke to the special education teacher Donna Olshansky about her concerns.

School resumed in person in April 2021. G.S. went five days a week. At the 2021-2022 IEP meeting, R.S. expressed concern about G.S.'s program, his grades and the class size. She did not sign the IEP.

She first saw the reports of Dr. Fountain and Dr. McHugh in October 2021. She did not have the reports when she first approached Sinai. During G.S.'s 2020-2021 school year, it was not expressed clearly who G.S.'s case manager was. She came to learn that Eduardo was his case manager. She mentioned her concerns to him but did not request an IEP.

G.S. is doing well at Sinai. He is doing better socially; his articulation is improving, and he is more confident in his studies. He is willing to try to navigate tasks. He knows how to use social skills when he is frustrated. He uses tools and skills that he has learned.

### **FACTUAL DISCUSSION**

After hearing the testimony and reviewing the evidence, I **FIND** the following **FACTS**:

G.S. is an eight-year-old boy who lives in the District. Petitioners noticed that G.S. was having difficulties. When G.S. was two, R.S. realized that his speech was not up to par and he had difficulty in play groups. G.S. was enrolled in early intervention at eighteen months old. He was in a private general education pre-school and R.S. had concerns that he was not developing appropriately, and she had concerns about his behaviors.

G.S. was referred to a CST in 2018. OT and Speech evaluations were done as were cognitive and social assessments. At that time, it was determined that G.S. was eligible for special education services under the classification of preschool child with disabilities. An IEP meeting was done on February 18, 2019. The IEP was in place until June 2019. The IEP provided G.S. with OT in a group and Speech in a group once per week. He did not receive additional services for that school year. R.S. was told that G.S. could not write and misbehaved.

In 2019, G.S. was entering kindergarten. An education evaluation was done for him. G.S. was eligible for special education services at the July 24, 2019 IEP meeting. That IEP provided G.S. with in-class support for Math and Language Arts five times per week, Speech, and OT once per week.

Kindergarten was in person from September 2019 to March 2020. In March 2020 the school went virtual. From March 2020 to June 2020 pamphlets were sent home for G.S. to work on. R.S. helped him with the work. G.S. could not do the work independently, he needed a lot of help to complete the work. He could not point to letters.



In his 2019-2020 IEP, G.S. had a goal of identifying his first and last name. He gradually progressed with that goal, but it was not included in the 2020-2021 IEP. In the 2019-2020 progress report in reading, the objective of locating the table of contents of a book was not introduced until April 2020 and he was progressing gradually. The objective of pointing to the front cover, back cover and pointing to a page of a book, G.S. progressed gradually through the school year. The objective of describing the functions of a book was not introduced until April 2020 and G.S. was progressing gradually.

The goal of identifying and producing fifteen letter sounds, G.S. progressed gradually throughout the school year. The benchmarks under that goal which include recite the alphabet by rote, name fifteen letters and produce its sounds and identify, match or produce fifteen rhymes. G.S. progressed gradually in those benchmarks generally.

G.S. had a writing goal of using uppercase letters in the beginning of sentences and the pronoun. He was progressing gradually with all of the benchmarks. He had a goal of spelling fifteen words correctly on request. He progressed inconsistently with this goal. He had a math goal of counting to 100 by one's and by tens. He progressed inconsistently in that goal and its benchmarks. He had a goal of identifying fifteen numbers and fifteen objects. He progressed gradually on some of the benchmarks and progressed inconsistently on others. He had a goal to label fifteen objects by shape color or size and describe their position and order. He progressed inconsistently in this goal and its benchmarks.

G.S. had a Speech goal to produce F and V sounds he progressed inconsistently in this goal and its benchmarks. He had a goal to produce H sound in sentences. He progressed gradually on this goal and on the benchmarks. On the goals of eliminate the use of phonological process fronting, eliminate phonological process consonant harmony, eliminate use of phonological process cluster simplification, eliminate phonological process of liquid simplification, and expand utterances and responses to ten questions to ten mean length utterances. G.S. progressed inconsistently in all of these goals and benchmarks.

In the goals of using ten pronouns correctly, use twenty vocabulary words through categorization, use twenty basic linguistic concepts and wait his turn before given a task, he progressed gradually in all of these goals and objectives. In the goal of improvement on fine motor skill, he initially progressed inconsistently then progressed gradually.

Eduardo case managed G.S. for the 2020-2021 school year. G.S.'s IEP included in class support for Reading/Language Arts and Math five days a week for forty minutes, OT group once a week for thirty minutes, Speech group less than five people once a week for thirty minutes, Speech individual once a week, thirty minutes. In class support is a modified curriculum. G.S. spent eighty minutes a day with a special education teacher, forty minutes for math and forty minutes for reading, language arts, the rest of the day he was in general education class. There were twenty-two to twenty-three students in the general education class.

The District was closed from March 2020 through June 2020. In September 2020 the District had remote learning. They used Microsoft teams. The students were supposed to log on with their laptops. G.S. worked on the computer. He struggled tremendously. R.S. spoke to the special education teacher Donna Olshansky about her concerns. The District had virtual learning through April 19, 2021. In April 2021, the parents had the option for the students to have in person learning or virtual learning.

G.S. attended the virtual learning regularly. G.S.'s Speech and O.T. services were delivered virtually from September 2020 to April 2021. He was in a breakout room with the therapist. At the end of the session, he would rejoin the class. His in-class support for Math and Language Arts was also done one to one in a breakout rooms.

The school day for the 2020-2021 school year was from 8:20 a.m. to 12:40 p.m. Students could receive extra support from 2:00 to 3:00 p.m. Extra support was offered five days a week. G.S. attended the extra support sessions. Petitioners were concerned that it was difficult for G.S. to do OT virtually. OT activities were sent to petitioners to do at home with G.S. Once G.S. was back to in person learning, his OT skills improved.

The 2020-2021 IEP did not have any decoding goals for G.S. The IEP stated that G.S. was reading at beginning kindergarten level. If G.S. mastered the goals in the IEP he would not be reading at grade level. G.S. would be going into the second grade at the end of the IEP. There were no writing goals for G.S. in the 2020-2021 IEP even though he had extreme difficulty writing.

Eduardo wrote the 2021-2022 IEP. He spoke to G.S.'s teachers for thirty minutes. He did not speak to G.S. prior to becoming his case manager. The IEP included in class support for Language Arts and Math forty minutes daily, Speech and OT once a week and group counseling once a week. G.S. present levels of academic achievement and functional performance (PLAAFP) in the social emotional area stated that G.S. would benefit from social skills group twice a month. None of his goals in the IEP specified a social skills group for G.S., although one goal was for G.S. to socially interact with peers. There was no social skills group related service for G.S. in the June 2021 IEP.

In June 2021 G.S. reading level was beginning Kindergarten, however the June 2021 IEP had first grade level reading goals for G.S. The first grade reading level should have not been carried over into the next IEP. The 2021-2022 IEP did not have any writing goals. G.S. did not have in class support for writing. G.S. could not write legibly, yet he had no in class support for writing.

Adami provided services to G.S. from May 2021 to June 2021. He had speech individual session once a week and group sessions once a week. She worked on his articulation, phonological and language goals.

G.S. did not master nine of nine Speech goals in the 2020-2021 progress report. In the speech goal that G.S. would ask/answer eight 'who, what, where, when why and how' questions, G.S. mastered two of the benchmarks. G.S. had fourteen Speech benchmarks in the 2020-2021 IEP, he mastered two.

G.S. achieved making the K sound goal after the progress report was written. He did not master the goal of making the G sound, he progressed gradually. This goal was continued into the next IEP. He did not master cluster simplification, although some progress was made. This goal was continued into the next IEP. In the goal of describing an object, G.S. progressed satisfactorily. The goal was leveled up in the next IEP. He achieved the goal of 'what where and when' questions.

Redirection and reinforcement increased his engagement. Adami did not see G.S. in group often. At times G.S. would have two individual sessions instead of one individual and one group. Adami worked with G.S. for six to seven weeks. She never evaluated G.S. She did not believe that he needed an increase in speech services.

Nagvi provided OT services to G.S. from September 2019 to April 2021. From September 2019 to March 2020 the services were in person. G.S. had OT once a week for thirty minutes. He did well with in person OT and made progress.

OT services were provided virtually to G.S. from September 20220 to April 2021. In the June 2021 IEP, Nagvi contributed how G.S. did during virtual OT.

Initially when doing virtual OT, G.S. would become upset when logging in. It took time for him to engage. He was given actions that he wanted to do to begin and end the session. There was a babysitter with G.S. but she did not give him assistance. He made some progress in virtual OT. The challenge was to get G.S. to participate and engage in activities. If an activity was too challenging, he would refuse to participate and cry.

G.S. had difficulty sustaining attention and had verbal cues to wait his turn. There were modifications to the IEP for task behavior, although he progressed, he still had difficulty sustaining behavior. He made satisfactory progress using a pen and crayon.

He progressed gradually with the fluctuation grip and the goal was continued into the next IEP. The goal of copying shapes and figures were evolved to letters of the

alphabet. Although the 2020-2021 progress report states that G.S. could copy thirteen uppercase letters, this skill did not carry over. The 2021-2022 IEP under reading states that G.S. is unable to form most letters legibly.

Mendez-Boud provided OT services for G.S. for the end of the 2020-2021 school year. The services were in person once a week for thirty minutes. The services were in fine motor skills, pre-writing, and handwriting. The sessions were based on G.S. goals. He made progress on the goals and objectives. They worked on writing, copying letters, coloring inside the line, and cutting skills.

Mendez-Boud provided input in the IEP. She recommended continued OT in a small group once a week for thirty minutes. She prepared the motor skills PLAAFP for the 2021-2022 IEP. She based the PLAAFP on what she observed and conversations with the other OT therapist. The goals and objectives were based on the April 2021 progress summary, expectations for second grade progress and his abilities.

Mendez-Boud receives supervision from an Occupational Therapist but not face to face in the workplace. G.S. made progress with letter formation, although he cannot form letters legibly. She pulled G.S. out of class when she worked with him. If there was not another student available for group OT, she worked with G.S. individually. She worked with G.S. for four weeks.

Shannon Brenan is employed by the District. She has been a first-grade teacher for twenty-one years. She teaches all content in the first grade. She is a general education teacher. The students stay with her all day. G.S. was in her class during the 2020-2021 school year. The fall 2020 school year began virtually. Students joined the class using Microsoft teams. School was virtual from September 2020 to April 19, 2021. The students logged in and she taught with an easel. Some of the instruction was done with PowerPoint and shared screens. She also used virtual games and workbooks. If the students had their camera's on, she could see them.

G.S. had in class support with the special education teacher, where they worked on the goals in the IEP in a breakout room. The Language Arts homework was done in a workbook and submitted to her.

Math curriculum was done virtually Brennan worked on addition and subtraction. There were video lessons and lessons on a slate. The students had workbook pages to practice the math. The Math homework was done on the computer. G.S. Math and Language Arts in class assistance was one to one. G.S. only received multi-sensory learning while he had in class support.

G.S. had two Math goals the goal of write numerals one to one hundred, the benchmark of read numerals up to one hundred and twenty. He progressed inconsistently. On the benchmark of using object to represent four written numerals up to one hundred and twenty, he progressed gradually. The goal of tell and write four examples of time in hours and half hours using a clock was not introduced.

G.S. turned in his homework and received passing grades for homework. Brennan looked at the homework more to see if it was complete than if it was accurate.

Brennan had twenty-two students in the class. She divided the students for the virtual support period. G.S. could attend the virtual support twice a week. There were six students in virtual support.

When in person school returned some students still attended virtually. G.S. returned in person. He sat in front of the class and continued to receive pull out one to one support. In class, G.S. seemed to be motivated. Brennan could see what he was doing so that she could help him.

When the classes were virtual, G.S. receive thirty minutes support with a special education teacher in Language Arts and Math.

During the June 2, 2021 IEP meeting, the program for G.S. remained the same as the prior two IEPs. Brennan was present at the meeting. She did not prepare G.S.'s present levels. She wanted G.S. to complete his assignments to the best of his ability. G.S. was not working on a first-grade level, he was working to the best of his ability.

There were times that G.S. missed part of the instructions. He did not have writing support. There were no writing goals in the IEP. He was read stories; he did not read to himself. In June 2021, G.S. was reading at on a Kindergarten level. He struggled to write words across all areas. Brennan supported him in writing, but he did not have any special education services in writing.

When the school was virtual, Brennan states G.S. could count to eleven. When it went back to in person, he could count to twenty. He could not do higher level math; his work was modified. G.S. was incapable of doing second grade math.

Brennan saw that G.S. struggled socially. He had difficulty initiating and maintaining play skills and was easily frustrated. However, she had no input into the progress report but spoke to the special education teacher about the goals and objectives. He did not master the goal of describing four characters in a text. He did not meet the goal of writing the numbers one to one hundred and twenty. The goal of telling time was not introduced until June 2021. The June 2021 IEP did not have a telling time goal. Brennan believes that G.S. would benefit from additional support from a special education teacher.

Fountain is a New Jersey licensed Speech and Language Pathologist. She works children from toddlers through high school students. She works with language and communication disorders and speech disorders, consults with school districts, evaluations and treatments. She also reviews standardized testing and informal testing. She makes observations of students in school as well as make educational recommendations for students, classroom and therapeutic recommendations. She does approximately fifty evaluations a year and participates in approximately twenty-five IEP

meetings. Some of the students she treats have autism, language disorders, language delays, articulation disorders, ADHD and social communication disorders.

Fountain met G.S. in June 2021. She reviewed his 2019 school evaluation, IEP, medical information, records parent interview formal and informal testing and school observations.

The results of Fountain's testing revealed G.S. had a severe language disorder, articulation disorder and phonological disorder. The Peabody Test is for understanding single words. G.S.'s score was below average. He was not learning vocabulary at an age-appropriate level. The expressive vocabulary test is to view a picture and provide its name. G.S. scored in the impaired range. This impacts his ability to learn vocabulary and interferes with his ability to understand and communicate. The clinical evaluation of language fundamentals test (CLEF-5) looks at following directions. G.S. scored in the in the impaired range. G.S. will struggle with following directions and using age-appropriate grammar and syntax. The test of narrative language measure's ability to understand and produce stories, G.S. scored below average. The preschool language scale score, G.S. scored seventy-two which is in the three percentiles. Ninety-seven percent of students scored better in this test than G.S. On the Oral Passage Understanding Scale (OPUS) test of oral passage understanding, his score was deficient. His scores are less without visual supports. It is critical for G.S. to have visual supports for information. On the Phonological Awareness Tests (PAT) of rhyming, segmentation, isolation, deletion, and substitution, G.S. scored in the impaired range for each subtest.

The June 2, 2021, IEP showed G.S. reading at a Kindergarten level A which is consistent with Fountain's evaluation. He will struggle to learn how to read. The diagnostic evaluation of language looks at pragmatic language. His score was average, but he can't apply this skill. The Goldman-Fristo test of articulation showed that G.S. skills were very low.



G.S. has significant learning needs, severe speech disorder and oral language skills disorder. He needs to be in a small group multi-sensory program throughout the day. He needs support across the board.

In the 2020-2021 progress report for G.S. the goal to produce the G sound fifteen times in words was not mastered, this goal was continued in the next IEP. The goal of eliminating phonological cluster was not mastered. It was included in the next IEP. The goal of liquid simplification was not mastered and not included in the next IEP. This goal is important because G.S.'s speech is unintelligible. The goal of using descriptive language in ten sentences was not mastered and not continued on the next IEP. In the goal of answering ten 'who, what, where why when and how' questions, G.S. mastered what and where but how and why the others. This goal was included in his next IEP. The goal of recall and comprehend a sequence of three events was not met. This is not an appropriate goal for G.S. An appropriate goal would have been for G.S. to recall and comprehend a sequence of two events. The goal of following two step directions was not mastered nor included on the next IEP.

If the goals are not being met, there is no groundwork for G.S. to move to the next step, but those next steps were included in the 2021-2022 IEP's.

Fountain had an in-class District observation on June 16, 2021. It was a virtual observation. G.S. could not do independent work. He could not separate words like doghouse. He was clapping, but not appropriately. He came up with a word with the sound that was being taught, but the next time the teacher could not understand what he was saying. The pace was too fast for G.S. He needed a one-to-one instruction to do the work. There was no multi-sensory support in the classroom. The other children in the class did not need multi-sensory support. There were nineteen students in the class. There was no specialized instruction for G.S. The students were masked and six feet apart from each other. G.S. still had an articulation disorder. When he took his mask down to speak, he still could not be understood.

G.S. language skills are severely impaired. He has expressive and receptive delays. He needs to be in a small group with intensive reading support. The District's program is not appropriate to meet his needs.

Fountain recommends small group instruction with intensive language support because he struggles to understand without visual support. Reading support needs to be carried out throughout the day. Speech services should be five times per week for thirty minutes. He has significant speech delay and needs articulation and language skills to be targeted.

G.S. has a syntax disorder across the board. His IEP and the Sinai CSP address syntax. Both also address articulation. One of G.S.'s goals at the District was to copy nineteen of twenty-six letters in the 2020-2021 school year. By April 2021, G.S. could copy thirteen uppercase letters. Copying letters is a visual skill. Understanding letters is a different skill. In the phoneme-grapheme correspondence test G.S. could not name letters and sounds that correspond.

As of June 2022, G.S. was working on writing and identifying letters. There were certain things G.S. could not do consistently at Sinai such as writing the letter J. In the June 2022 progress report from Sinai, G.S. was not reading. Decoding letters and sounds come before reading. The June 2021 IEP states that it is hard for G.S. to write letters. This is inconsistent with what the OT therapist states. G.S. is not generalizing these skills.

Fountain observed G.S. at Sinai School. Multi-sensory strategies were used and carried over in class. The class size was five students. The reading was two to one which was appropriate. He was distracted but easily redirected. Her recommendations were implemented. He was learning skills appropriate for his age. He had speech five times a week and social skills weekly at Sinai School. At Sinai school the goals and objectives were appropriate and the staff to student ratio was appropriate. Based on her observation, Sinai meets G.S. needs and she recommends placing G.S. at Sinai school. He was learning skills for his level of function.

The IEP is not appropriate because it does not provide G.S. with the level of support he needs to make progress.

The June 2022 Sinai update reinforces using a multisensory approach for G.S. The articulation goals target different letters than the IEP and includes jaw stability.

G.S. needs writing instruction. The June 2021 IEP did not provide writing instruction to G.S. The IEP had no writing goals other than writing single letters. At Sinai G.S. had an instructor in 2021-2022 with certificate in Wilson Reading. Sinai also had a teacher certified in the Orton Gillingham reading method.

Elizabeth McHugh is a certified New Jersey School Psychologist. She has a PHD in school psychology. She is a licensed psychologist in New Jersey. She is a licensed School Psychologist in New Jersey and Pennsylvania. She was a school psychologist in Scotch Plains and Fanwood. She has done evaluations; formatted IEPs wrote goals and did progress monitoring. She has made recommendations for programs and placements. As a neuropsychologist, she has additional training. She does approximately 100 evaluations a year. Thirty to fifty percent of her evaluations include classroom observation.

Dr. McHugh met with G.S. in June 2021. She did a neuropsychological evaluation of G.S. and an observation at both schools. She reviewed all G.S.'s IEPs, testing and progress reports. Petitioners provided background information.

During the evaluation, G.S. speech sometimes was unintelligible and difficult to understand. He was a happy social child, but the evaluation was difficult for him. He had difficulty responding and did not understand the tasks.

The WISCV test was administered to G.S. There was a significant difference between his IQ and his general ability. His processing speed score was sixty. But his verbal comprehension score was eighty-nine. He was in the twenty-third percentile in

verbal comprehension but in the first percentile in processing speed. G.S. needs a slower rate of learning than his peers. His working memory is in the first percentile. He needs repetition with his instruction. He needs a small group school setting with a small teacher to student to teacher ratio. Visual spatial is a weakness for G.S. he needs multi-sensory instruction. If he is in an appropriate program, he can learn.

G.S. was given the Kaufman test of educational achievement. The reading composite portion included letter word recognition, nonsense word decoding and reading comprehension. Decoding and phonics need to be added to G.S.'s IEP.

G.S. had the Woodcock Johnson test administered more than once. He was tested in 2021 in letter word identification, word comprehension and word attack. He was previously given the Woodcock Johnson test in 2019, he has regressed in these areas since the 2019 testing. G.S. regressed in spelling. His score from the 2019 Education evaluation score of seventy-eight. His spelling score when McHugh tested him was fifty-eight. On writing samples during the 2019 testing G.S. scored in the fourth percentile with a score of 73. In 2021 G.S. scored in the first percentile with a score of sixty-two. He regressed. In math computation as tested by McHugh, G.S. scored in the first percentile. He regressed in this since he was tested in 2019.

In McHugh's testing, G.S. was reading at level A which is early Kindergarten level reading. It would be difficult for G.S. to function in a general education setting. He could not function without support in a mainstream classroom. His problems with identifying the sound of letters makes it difficult for him to function with same age peers.

The June 2021 IEP had a reading goal of when given six words from a reading narrative on the first grade level, G.S. will correctly decode the words seventy percent of the time. Another of the goals in the June 2, 2021 IEP is for G.S. to describe two major events and the connections among them from first grade level material. These are not appropriate for G.S. because of the first-grade level material. G.S. is at beginning

kindergarten level for reading. He needs to master letter and sound recognition before reading. G.S. has difficulty with decoding.

A goal should be for G.S. to write simple words or letter combination sounds. There were no writing goals in the IEP. An IEP without writing goals is not appropriate for G.S. G.S. had regressed in math, reading and writing.

The Sinai CSP for G.S. has a goal in phonics of identifying letters and sounds of letters. This is an appropriate goal for G.S. The June 2021 IEP has a Math goal of G.S. solve five addition problems up to ten using objects, drawing and equations, but an objective under that goal was counting two by two. The objective is not related to the goal.

McHugh observed G.S. in the District on June 16, 2021. G.S. was observed in general education classroom and a small group setting for English language arts. She observed G.S. in the general education class virtually. There were twenty students in the classroom. G.S. stood at the desk and tried to participate. He needed one to one redirection and assistance with academic material. The teacher checked in with G.S. but he needed more support. G.S. was in a first-grade level class and appeared lost and could not keep up. She does not recall if there were two teachers in the class.

In the Language Arts class, G.S. required one to one support. He sat at the desk and engaged with the material, but he had difficulty answering questions. G.S. was receiving eighty minutes intervention a day, he needed intervention all day on his instructional level, not grade level.

McHugh's recommendation for G.S. is intensive intervention in reading, writing and math. In reading, she recommends dyslexic specific intervention. G.S. was not getting this type of program in the District.

McHugh observed G.S. at Sinai in February 2022 in a phonics class working in a one on one setting with a special education teacher. He was working on specific letters using multi-sensory strategies. He was asked to identify letters, letter sounds, and words beginning with a letter. He received reinforcement. The goals and objectives of the Sinai for G.S. were appropriate and Sinai is an appropriate placement for G.S. according to McHugh. The instruction is on his instructional level. McHugh did not observe multi-sensory learning in the classroom at Sinai.

McHugh spoke to petitioners about Sinai. She was told that there were a small number of students in the classes with certified teachers. There was intervention all day, with phonics-based curriculum and multi-sensory. She was informed by a teacher at Sinai the phonics was Orton Gillingham based. The Sinai program appeared Orton Gillingham based because of the goals, it being multi-sensory, and the goals related to phonics and building a phonological process.

The Districts IEP lists multi-sensory learning as a modification in G.S.'s IEP. On McHugh's June 16, 2021 observation in the District, she observed G.S. receiving one to one reading with multi-sensory instruction. She did not observe multi-sensory learning in the general education class during her observation.

Although the IEP stated that G.S. could count to twenty, at Sinai he had not mastered that goal during the next school year. At Sinai, G.S. made a small amount of progress counting up to thirty and no progress counting up to fifty. Counting on a number line is not the same as number identification.

In the District's IEP G.S. had in-class support for language arts for forty minutes a day and in class math support for forty minutes a day. He did not have support for the rest of the school day. There is a large cognitive and academic gap between G.S. and his same grade peers. McHugh believes that G.S. needs support due to his cognitive needs and his being in a class with twenty students and two students is not appropriate. He needs explicit instruction to learn letters and sounds.

In November 2020, R.S. looked into other options for G.S. but decided to keep him in the school, however, she felt G.S. was a fit at Sinai School. On August 11, 2021, Petitioners requested the District place G.S. out of District at the Sinai School. Petitioners unilaterally placed G.S. at the Sinai school for the 2021-2022 school year.

Shoshana Strum is the Assistant Director of Sinai. Sinai's CSP is similar to an IEP. It has goals and objectives. Strum was involved in developing G.S. goals and objectives. It evolves during the school year.

Sinai is a special education elementary school. The class sizes are five to nine students and several adults. At the beginning of the school year G.S. was tested by Sinai to discover his baseline. Documents provided by the parents were reviewed. The score reports of Fountain and McHugh were reviewed. Once Fountain and McHugh's reports were received, they were also reviewed. The core classes are in smaller groups. There were five students in G.S.'s class and four adults. G.S. had OT, physical therapy, speech and social related services. Classes are divided by skill level and age. Sinai has forty students.

The goals for the CSP at Sinai are established on an ongoing basis. The initial goals are established a few weeks into the school year. Strum helps the teachers develop goals and objectives. IEPs are one of the factors Sinai looks at when developing goals and objectives. It also looked at the assessments done by Sinai.

G.S. Math goals in the IEP included counting on a number line up to twenty, which the IEP stated he could do. He had difficulty with one on one correspondence when counting objects. The Sinai CSP had a Math goal of counting to thirty in which G.S. had difficulty with this goal. However, the District's IEP states that G.S. can count to twenty. Strum does not believe the District's goal of G.S. writing the numbers one to twenty is appropriate for G.S.

G.S. has phonics at Sinai. In phonics, he learns letters sounds and key words for each letter. G.S. has phonics five times a week. He and one other student are in this class. The phonics teacher is certified in Wilson reading and handwriting without tears. These curriculums are used. G.S.'s phonics group is chosen based on skill level. Phonics class is multi-sensory.

At Sinai G.S. had a phonics goal to work on letter sounds and writing letters. By the end of the school year G.S. had four or five phonics goals. Snack and recess at Sinai involve structural play, social skills and working on communication skills. The staff at Sinai are trained in social thinking.

Language Arts is broken down into phonics and reading comprehension. G.S. reads at a Kindergarten Level A according to the IEP. When G.S. came to Sinai, he could not function at Kindergarten A level, he could not read at all.

G.S. has social and emotional goals at Sinai. He has these goals because he becomes easily deregulated. G.S. has once a week in a pull out session with two other students in counseling and social skills goals and objectives are worked on in these sessions. The counseling is pull out with three other students. He also has counseling and social skills in class, eight times per week.

G.S. has adaptive physical education and physical therapy twice a week. He has goals and objectives in these areas. There are four students in the adaptive physical education/physical therapy class. The second session of Adaptive physical therapy is a push in session where physical therapy goals are worked on.

G.S. has Speech five times a week with two different providers. He has Speech four times a week in a group of three or five students and one individually. In this class, he works on expression and oral and motor skills. He has speech and language goals. G.S.'s Monday schedule includes reading comprehension taught by a special education teacher, who uses trade books commercially available which the teacher selects for the



goals. It is multi-sensory instruction with two students in the class. G.S. has reading comprehension eight times per week. He has reading comprehension goals.

In structured game time the students work together to choose a game, which is directed by the teacher. Social and speech goals are used. G.S. has science or social studies once a week. On Fridays, G.S. has closing circle which wraps up the week using language skills.

Sinai did not follow all of the writing recommendations for G.S. because he was not at the level of the recommendations. Some of the Math recommendations were followed but others were not because they were above G.S.'s current level. Social and pragmatic skills were implemented at Sinai. Many of G.S. attention and emotional recommendations were implemented at Sinai.

. From August 29, 2021 to December 31, 2021, Strum observed classes daily. She would rotate to make sure she saw every student. Before a student is accepted into Sinai, they are tested in Math, Reading, and Social Skills for their levels. Strum knew that part of G.S.'s time in the District was virtual.

CSP has a scale of how students are doing. Four is mastering the goal. Five is continuing to one hundred percent mastery. Strum did an informal assessment of G.S. The teachers assess G.S. day to day. Strum did not prepare the CSP, but she was involved in the goals and objectives. Some parts of a student's GSP are done collaboratively like social emotional, others are done individually. Strum is provided documents from teachers prior to the goals and objectives being done. The primary information relied on for G.S. CSP was the IEP and Sinai's assessments.

Science was done for half of the school year and social studies was done for the other half for G.S. because his needs in other areas was so pronounced. Sinai is closed for Jewish holidays. In September 2021, Sinai was closed for eight days due to Jewish holidays.

R.S. hired McHugh and Fountain to find out what G.S. problems were. They evaluated G.S. in June and July 2021. The reports showed that all of G.S. grades were low, and he could not complete most tasks. He needed intensive support. R.S. contacted Sinai to see if that was the right fit for G.S. R.S. shared G.S.'s test scores with the District and requested he be placed in the Sinai School on August 11, 2021.

### **LEGAL ANALYSIS**

The IDEA provides federal funds to assist participating states in educating disabled children. Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 179, 102 S. Ct. 3034, 3037, 73 L. Ed. 2d 690, 695 (1982). One of purposes of the IDEA is “to ensure that all children with disabilities have available to them a [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C.A. §1400(d)(1)(A). In order to qualify for this financial assistance, New Jersey must effectuate procedures that ensure that all children with disabilities residing in the state have available to them a FAPE consisting of special education and related services provided in conformity with an IEP. 20 U.S.C.A. §§ 1401(9), 1412(a)(1). The responsibility to provide FAPE rests with the local public school district. 20 U.S.C.A. § 1401(9); N.J.A.C. 6A:14-1.1(d). The district bears the burden of proving that a FAPE has been offered. N.J.S.A. 18A:46-1.1.

The United States Supreme Court has construed the FAPE mandate to require the provision of “personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” Rowley, supra, 458 U.S. at 203, 102 S. Ct. at 3049, 73 L. Ed. 2d at 710. New Jersey follows the federal standard that the education offered “must be ‘sufficient to confer some educational benefit’ upon the child.” Lascari v. Bd. of Educ. of Ramapo Indian Hills Reg’l High Sch. Dist., 116 N.J. 30, 47 (1989) (citing Rowley, supra, 458 U.S. at 200, 102 S. Ct. at 3048, 73 L. Ed. 2d at 708). The IDEA does not require that a school district “maximize the potential” of the student, Rowley, supra, 458 U.S. at 200, 102 S. Ct. at 3048, 73 L. Ed. 2d at 708, but requires a school district to

provide a basic floor of opportunity. Carlisle Area Sch. v. Scott P., 62 F.3d 520, 533–34 (3d Cir. 1995). In addressing the quantum of educational benefit required, the Third Circuit has made clear that more than a “trivial” or “de minimis” educational benefit is required, and the appropriate standard is whether the IEP provides for “significant learning” and confers “meaningful benefit” to the child. T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000); Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999); Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180, 182 84 (3d Cir. 1988), cert. den. sub. nom. Cent. Columbia Sch. Dist. v. Polk, 488 U.S. 1030, 109 S. Ct. 838, 102 L. Ed. 2d 970 (1989). In other words, the school district must show that the IEP will provide the student with “a meaningful educational benefit.” S.H. v. State-Operated Sch. Dist. of Newark, 336 F.3d 260, 271 (3d Cir. 2003). This determination must be assessed in light of the individual potential and educational needs of the student. T.R., supra, 205 F.3d at 578; Ridgewood, supra, 172 F.3d at 247 48. The appropriateness of an IEP is not determined by a comparison of the private school and the program proposed by the district. S.H., supra, 336 F.3d at 271. Rather, the pertinent inquiry is whether the IEP offered a FAPE and the opportunity for significant learning and meaningful educational benefit within the least restrictive environment.

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

In addition, when scrutinizing a FAPE claim, there is a two-part inquiry. A court must first ask whether the state or school district has complied with the procedures of the Act when developing the IEP, and second, whether the IEP developed through the Act's procedures is "reasonably calculated to enable the child to receive educational benefits." Rowley, supra, 458 U.S. at 207, 102 S. Ct. at 3051, 73 L. Ed. 2d at 712. While the IDEA does not require a school district to provide an IEP that maximizes "the potential of a disabled student, it must provide 'meaningful' access to education and confer 'some educational benefit' upon the child for whom it is designed." Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999) (citations omitted).

One issue in this matter is whether the District provided FAPE to G.S. The 2021-2022 IEP provided for G.S. to have in class resource Math and Language Arts forty minutes each day, OT in a group once a week for thirty minutes and speech in a group and individually once a week for thirty minutes. These were also the provisions in the 2020-2021 IEP. G.S has difficulty writing letters and numbers, but there were no writing services provided to G.S. in the IEP. The first reading goal from the 2020-2021 IEP is for after recounting stories or reading first grade level text, G.S. would state the main topic. G.S. progressed gradually in this goal during the 2020-2021 school year. He did not master the goal and the goal was not included on the 2021-2022 IEP. The reading goals in the 2021-2022 IEP had G.S. working on first grade level reading, when he was reading a beginning Kindergarten level.

The 2021-2022 IEP PLAAFP in the social emotional area states that G.S. would benefit from social skills group twice a month, which was not incorporated into the IEP. During the 2020-2021 school year G.S. was not working on grade level. In June 2021, G.S. had not mastered the goal of writing his numbers from one to twenty. G.S.'s teacher had difficulty understanding what he was saying. In a phonemegrapheme correspondence test G.S. could not name letters and the sounds that correspond. As of June 2022, G.S. still could not write many capital letters. He could not read when he began at Sinai.

Although the OT therapist stated that G.S. could write letters, this is contradicted in the IEP. He did not generalize those skills.

The IEP provided speech once a week in a group session for thirty minutes and once a week individually for thirty minutes. G.S. has difficulty with articulation. He cannot always be understood when he speaks. Although the District is aware of this, it did not increase the speech services to G.S. in the 2021-2022 IEP.

I **CONCLUDE** that G.S. was not provided with FAPE by the District because although G.S. could not write there were no writing goals in the IEP and G.S.'s reading level was beginning kindergarten, but the IEP had reading goals on a first grade level, he did not have adequate speech services and he did not have social skills services.

The next issue is whether Sinai is an appropriate placement for G.S. Sinai is a special education school. The classes are small with five to nine children and several adults. At Sinai Language Arts are broken down into reading comprehension and phonics. In Phonics G.S. learns letter sounds and key words for each letter. G.S. has phonics five times a week. The phonics teacher is certified in the Wilson reading method and handwriting without tears. Sinai has social and emotional goals for G.S. He has Speech four times a week in a group of three to five students and once a week individually. He has reading comprehension with one other student eight times a week. Sinai's CSP has goals and objectives for G.S. He also has language therapy five times a week at Sinai.

Sinai's initial CSP is done in the beginning of the school year after the student has been in class for a few weeks. The goals and objectives are established on an ongoing basis. G.S. needs small class size to achieve academic progress. Sinai is the least restrictive alternative for G.S.

I **CONCLUDE** Sinai is an appropriate placement for G.S. G.S. required an out of district placement because the District's IEP did not provide him with the small class size he needed, which was provided for him at Sinai.

There was no testimony from the District that it could provide G.S. with a small class environment. Petitioners are entitled to reimbursement from the District of tuition it has paid to Sinai. Petitioners requested a placement for G.S. from the District. The District program did not provide FAPE to G.S. Petitioners enrolled G.S. at Sinai which is an appropriate placement.

I **CONCLUDE** that that the District did not provide FAPE to G.S. and that petitioners are entitled to an out of district placement at Sinai and reimbursement for the cost of G.S.'s placement.

### **ORDER**

Based on the foregoing, it is **ORDERED** that G.S. requires and out of district placement and Sinai is an appropriate out of district placement.

It is **FURTHER ORDERED** that petitioners be awarded reimbursement of tuition for G.S. placement at Sinai School.

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

March 6, 2023



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DATE

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**KIMBERLY A. MOSS, ALJ**

Date Received at Agency

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March 6, 2023

Date Mailed to Parties:  
ljb

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March 6, 2023

## **WITNESSES**

### For Petitioner

Marcie Fountain  
Dr. Elizabeth McHugh  
Shoshana Strum

### For Respondent

Emilio Eduardo  
Christina Adami  
Ailya Nagvi  
Aida Mendez-Boud  
Shannon Brennan

## **EXHIBITS**

### Joint Exhibits

J-1 IEP Dated June 2, 2021  
J-2 CSP 2021-2022

### For Petitioners

P-1 Letter from Petitioner to Respondent dated October 31, 2018  
P-2 Respondent invitation for Initial Identification and evaluation Planning meeting  
dated November 5, 2018



P-3 Occupational Therapy Assessment of Tiffany Charles Dated December 12, 2018

P-4 Cognitive Assessment by Edite Costa Dated December 18, 2018

P-5 Initial Speech and Language Evaluation by Mary Falis Dated January 2, 2019

P-6 Initial Social Assessment Report by Catherine Hagler Dated January 28, 2019

P-7 Not in Evidence

P-8 IEP Dated February 8, 2019

P-9 Physical Therapy Services Assessment by Lisa Yuschak Dated April 29, 2019

P-10 Educational Assessment of Marian O'Leary Dated June 12, 2019

P-11 Speech/Language Re-evaluation by Brie Bussanich Dated June 13, 2019

P-12 IEP Dated July 24, 2019

P-13 IEP Dated May 15, 2020

P-14 Not in Evidence

P-15 Not in Evidence

P-16 Not in Evidence

P-17 Not in Evidence

P-18 Not in Evidence

P-19 Not in Evidence

P-20 Not in Evidence

P-21 Not in Evidence

P-22 Comprehensive Speech Language Evaluation by Marcie Fountain dated July 1,  
2021

P-23 Score Report by Marcie Fountain by Marcie Fountain Dated July 1, 2021

P-24 Curriculum Vitae of Marcie Fountain

P-25 Neuropsychological Evaluation by Elizabeth McHugh Dated July 6, 2021

P-26 Score Report of Elizabeth McHugh Dated July 6, 2021

P-27 Curriculum Vitae of Elizabeth McHugh

P-28 Letter from Staci Greenwald, Esq to Richard Flaum, Esq. Dated August 11, 2021

P-29 Letter from Staci Greenwald, Esq to Richard Flaum, Esq. Dated August 16, 2021

P-30 Not in Evidence

P-31 Not in Evidence

P-32 Not in Evidence

P-33 Not in Evidence

P-34 Not in Evidence

P-35 Classroom Observation Report of Elizabeth McHugh Dated May 9, 2022

P-36 2018-2019 IEP

P-37 2020-2021 IEP

P-38 2021-2022 IEP

P-39 NJAC 6A:14

P-40 Not in Evidence

P-41 Sinai Description and Teacher Resumes

For Respondent

R-1 IEP Dated June 2, 2021

R-2 Not in Evidence

R-3 Not in Evidence

R-4 Not in Evidence

R-5 2020-2021 Progress Report

R-6 Not in Evidence

R-7 Resume Emilio Eduardo

R-8 Not in Evidence

R-9 Resume of Ailya Naqvi

R-10 Not in Evidence

R-11 Resume of Shannon Brennan

R-12 Resume of Christina Adami

R-13 Resume of Aida Mendez-Boud