



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

**DECISION**

OAL DKT. NOS. EDS 297-10 and EDS  
366-10 (CONSOLIDATED)

AGENCY DKT. NOS. 2010-15572 and  
2010-15530

**SHREWSBURY BOROUGH  
BOARD OF EDUCATION,**

Petitioner,

v.

**R.S. AND M.S. O/B/O R.S.,**

Respondents,

and

**R.S. AND M.S. O/B/O R.S.,**

Petitioners,

v.

**SHREWSBURY BOROUGH  
BOARD OF EDUCATION,**

Respondent.

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**Michael I. Inzelbuch, Esq.,** for R.S. and M.S. o/b/o R.S., petitioners/respondents

**Katherine A. Gilfillan, Esq.,** for Shrewsbury Borough Board of Education,  
petitioner/respondent (Schwartz, Simon, attorneys)

Record Closed: June 8, 2010

Decided: August 17, 2010

BEFORE **ANA C. VISCOMI**, ALJ:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

On January 6, 2010, petitioners R.S. and M.S. (hereinafter “the petitioners”<sup>1</sup>), filed for: emergent relief, seeking a temporary order to place R.S. at the Craig School; and, due process, seeking placement at the Craig School, compensatory education, an Individualized Education Program (IEP) with appropriate goals and objectives, and reimbursement for services and evaluations. The emergent relief petition was denied by Order of Ronald W. Reba, A.L.J., dated January 21, 2010. The due process petition was then assigned to me. By date of February 1, 2010, the school district (hereinafter “the respondent”) filed a due process petition seeking parental consent to release records to potential out-of-district placements and participation in the in-take process. That matter was assigned to Susan Scarola, ALJ, but re-assigned to me. On February 22, 2010, I issued an Order consolidating both matters.<sup>2</sup> The school district’s motion for summary decision was denied and the motion for a temporary stay of these proceedings was denied. The petitioners’ motion seeking to compel the district produce copies of any and all documentation forwarded to schools considered by the district was denied with the exception of communication with the Center School and Craig School, respectively. Additionally, petitioners’ request for documentation evidencing Board minutes’ discussion regarding the district’s financial status was denied. I also Ordered the petitioners’ respective experts to visit the Center School and the respondent’s district staff and/or consultants to visit the Craig School.

During the course of the hearing on these consolidated matters on dates further delineated below, several applications were made.

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<sup>1</sup> The separate petition filed by the school district was dismissed by Order of April 30, 2010, as the petition sought parental consent to release records to potential out-of-district schools and participation in the in-take process. On April 30, 2010, the only out-of-district potential placement for which the district sought this relief for, The Center School in Highland Park, no longer had placement availability for R.S.

<sup>2</sup> I placed my verbal rulings on the record on the first date of hearing. This was later memorialized in a written Order executed on February 26, 2010.

Respondent's motion to disqualify petitioners' counsel on the basis that the district intended to call him as a witness in these cases was denied. Respondent alleged petitioners' counsel had interfered with the potential placement of R.S. at the New Roads School in Marlboro Township, but no evidence was produced in that regard. Counsel was directed to seek relief in the appropriate forum if she was of the opinion petitioners' counsel had acted unethically.

On April 29, 2010, The Center School Director, Linda Fiorentino, testified that although it had previously accepted R.S., no placement was available any longer for the remainder of the 2009-2010 school year and it was unknown if a placement would become available for the 2010-2011 school year. Respondent's counsel then made a verbal application that I set aside a settlement reached by the parties before Joseph Martone, A.L.J., on November 2, 2009, in which the parties agreed that an out-of-district placement would provide a free, appropriate public education (FAPE) in the least restrictive environment (LRE) for R.S. That motion was denied on jurisdictional grounds. Respondent's counsel also requested I continue hearing the respondent's case as to the appropriateness of the proffered placement at the Center School despite the fact that a placement was not available for R.S. That request was denied on mootness grounds. In Re Conroy, 190 N.J. Super. 453, 458 (App. Div. 1983). Because no other placement was offered by the district, although an exhaustive inquiry had purportedly been made, I also Ordered the district to financially secure the placement at the Craig School. These rulings were memorialized in the Order of April 30, 2010.

Relying upon N.J.A.C. 1:6A-10.1 and 34 C.F.R. § 300.512, I issued an Order on May 14, 2010, quashing the subpoena served by the respondent upon the Craig School with the exception of records relating to R.S. that had been provided as part of the intake process and other documentation voluntarily provided by the Craig School. Petitioners' counsel also sought to bar any and all witnesses proffered by the respondent for failure to comply with N.J.A.C. 1:6A-10.1. As respondent's counsel indicated she would not be calling any witnesses, the issue was rendered moot, thus not requiring any ruling on the application.

The consolidated matters were heard on the following dates: February 22, 2010; March 1, 16, 19 and 25, 2010; April 29, 2010; May 3, 4, 6, 11, 17, 21, 25, 26 and 27, 2010; and June 2, 7 and 8, 2010. The record closed on June 8, 2010.

### **FACTUAL DISCUSSION**

Based upon the record presented in this matter, including a review of the evidence and competent, credible testimony before me, I make the following preliminary **findings of fact**.

R.S. is the nine year old son of M.S. and R.S. He has attended school in-district since kindergarten<sup>3</sup> and is classified eligible for special education and related services, although the district sought to de-classify him in an earlier proceeding in 2009. He recently completed the second grade in a mainstream general education setting, with some supports, based upon an agreement reached as part of a due process proceeding. He has been diagnosed with having Attention Deficit Hyperactivity Disorder (ADHD), sensory integration disorder, cluttering, abnormal auditory perception and dyspraxia. The school district has classified him under the eligibility category of Communication Impaired/Other Health Impaired (P-12), but the petitioners seek a classification of Multiply Disabled, pursuant to N.J.A.C. 6A:14-3.5. Classification is not an issue presented in this matter.

The settlement reached by the parties before Judge Martone is relevant to this matter in regard to the potential placement options and, specifically, the indication by the district that the only placement appropriate for R.S. would be an out-of-district placement. Importantly, the district never asserted in the settlement placed before Judge Martone on November 2, 2009, that the district could offer FAPE to R.S. in-district. This is relevant because the district never sought to set aside that settlement in the appropriate forum and indeed – although the seriousness of the district’s efforts in seeking an out-of-district placement is contested – the district, to some extent, inquired about placement at many out-of-district public schools and both New Jersey

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<sup>3</sup> R.S. repeated kindergarten.

Department of Education (DOE) approved private schools and non-approved private schools. It is also noteworthy that although the district agreed to an out-of-district placement before Judge Martone and never asserted that it could offer FAPE in the LRE in-district, and never appealed in the appropriate forum to set aside that settlement, the district persisted during this hearing through cross-examination of petitioners' witnesses to attempt to establish that it has offered FAPE and can continue to do so by continued placement of R.S. in-district. As that position is essentially deemed waived, that testimony is only briefly summarized herein. In the settlement before Judge Martone, the district agreed to forward records to Cambridge School, Bridge Academy, Lewis School and any other school, public or private, as identified by either party. The district agreed to pay for transportation and related services. The district agreed that the program and placement would be "in accord" with the evaluations of Sandra Bendokas, dated October 16, 2009, and Dr. Kathleen Scaler Scott, dated October 13, 2009. The district also agreed that the out-of-district placement would endure for "at least" twelve months.

This concludes the preliminary factual findings.

The following summary of testimony is not meant to represent an exhaustive discussion of all testimony, only that which is relevant to the issues herein. Petitioners called the following witnesses: Kathleen Mulcahy, Gail Arek, Michael Cudia,<sup>4</sup> Marcia Fiorentino,<sup>5</sup> Maryellen Grabowski,<sup>6</sup> Gloria Bland Katz, Sandra Bendokas, Carole

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<sup>4</sup> This witness is a social worker at the Center School. After he testified in this proceeding, the Center School advised placement was no longer available for R.S. as two other students had been accepted in that class. Thus, his testimony will not be recited herein with the exception of this footnote. It is noteworthy, however, that the district determined the Center School an appropriate placement for R.S. despite the fact that approximately 50% of the student population in the class R.S. would be assigned to are classified as eligible for special education and related services with a classification of ODD (Oppositional Defiant Disorder) or Bi-polar Disorder. It should be noted that the NJ DOE website list of approved schools indicates as to the Center School that it has nine classes for students with behavioral disabilities in the age range of 6-18 years and seven classes for students of the same age range with mild to moderate learning/language disorders. (P-7). Cudia also testified that compared to prior years, there has been an increase in students with anger issues this year in the class that R.S. would have been assigned to at the Center School.

<sup>5</sup> Marcia Fiorentino is the Director and Principal of the Center School. She testified that as a result of the acceptance of two additional students in the class that R.S. would have been assigned to, no placement was available to him any longer. Additionally, she testified that no other student in the school has a cluttering issue. The rest of her testimony is irrelevant.

<sup>6</sup> Maryellen Grabowski is the Assistant Director of Student Services at the Center School. Due to the fact that a placement is longer available for R.S. at the Center School, her testimony is not recited herein.

Aitchison, Noelle Cauda-Laufer, Kathleen Scaler Scott, Nancy Baker, Abigail Healy, Susan Smith-Foley, Diane Ames and David Blanchard.

**Kathleen Mulcahy**, an LDTC, is a member of R.S.' child study team (CST) and IEP team, respectively. She conducted a learning evaluation of R.S. that led to the CST's recommendation to de-classify R.S. during the 2008-2009 school year. She testified that she has observed R.S. "a handful" of times this past school year and she does not make any notes of her observations nor tell the parents of her observations. She also testified that R.S performs "on grade level" and that this year, when she observed him, he performed "well, academically." She further testified that as a result of her observations this year, he was completing tasks "with ease" and that he was "at or above grade level." She testified that he has "distractible" behaviors, such as moving around in his chair, placing his feet on a table and playing with the pages in a booklet – all of which require re-direction, but he does not distract other students. She is aware that the November 2009 Measure of Academic Performance (MAP) test revealed "some comprehension" issues, she testified. (P-5). He tested on the "low average" scale for comprehension, she explained. As an LDTC, comprehension issues are within her area of expertise. Mulcahy testified that low comprehension scores could be attributable to the administration of the test or, for R.S., attention might have impacted his score. She did not discuss R.S.' Fall 2009 MAP scores at the February 17, 2010, IEP meeting. She spoke to R.S.' teacher, Gail Arek, who indicated that comprehension deficit was not an issue that was evident in the classroom setting; his comprehension is not low average in the classroom.

She reviewed some of the private evaluation reports and spoke with Director of Special Services Pearl Charatz<sup>7</sup> about the areas that R.S. had demonstrated weaknesses, particularly in speech language. Although she reviewed the various educational evaluations (P-20, P-21) performed by Carole Aitchison, an LDTC retained by the petitioners, she did not include her recommendations in the PLAAFP (Present Levels of Academic Achievement and Functional Performance) section of the February 12, 2010, IEP (P-12) or the October 1, 2009, IEP (P-43) because she "forgot to include

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<sup>7</sup> Ms. Charatz retired during the course of the hearing.

it.” Mulcahy testified that she anticipated the CST would discuss the recommendations at a meeting, but to her knowledge that did not happen and she is not sure why.

She visited both the Center School and Craig School to determine the appropriateness for R.S. and discussed her impressions with the members of the CST. She spent approximately one-and-one-half hours at the Center School and two hours at the Craig School. She and Abigail Healy visited the Craig School together and a receptionist there brought them to visit separate reading classrooms. In her opinion, she found the Center School to be “most appropriate.” She testified that the Center School student population is comprised of students all classified eligible for special education and related services while the Craig school student population also is comprised of students not classified as eligible for special education. She made this assessment of appropriateness based upon a “tour” only and she did not see any of the “academics” while she visited the Center School. Prior to this visit, she knew she would not see any “academics.” At the Craig School, she observed a Reading class and Language Arts class, respectively, and spoke with the speech language therapist. She also testified that she was confident that Center School could address any of R.S.’ “off-task” behaviors she personally observed on three occasions, although she could not recall what they were. She did not inquire during her Craig School visit whether staff could address any off-task behaviors. Mulcahy also testified that the affidavit she submitted in connection with the Federal District Court matter indicated that the reading class she observed at Craig School was inappropriate for R.S. because it was a lower-level reading class, but she conceded that she was not sure whether he would be placed in that class. (P-6). She testified that the ratio of students to teacher at Craig School was 3:1 for reading and 7:1 for Language Arts and that this falls within Kathleen Scaler Scott’s recommendation.<sup>8</sup> (P-10). She also testified that the Craig School could satisfy every recommendation made by Scaler Scott in her August 12, 2009, fluency evaluation. (P-10). She also testified that the Craig School was able to implement the social skills component recommended by Sandra Bendokas even though she did not indicate that in her affidavit. (P-6).

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<sup>8</sup> Kathleen Scaler Scott, a CCC-SLP certified speech therapist was retained by the petitioners in this matter. Abigail Healy, the district’s speech therapist, testified that in order to be CCC (Certificate of Clinical Competence) certified by the American Speech-Language Hearing Association (ASHA), one must hold a graduate degree from an ASHA accredited university.

During the February 17, 2010, IEP meeting, she only addressed the appropriateness of the Center School as a placement. They did not discuss any goals and objectives at that meeting and she testified that this would not be discussed until a placement had been determined. She conceded that R.S. has had a need for academic goals and objectives since September 2009.<sup>9</sup> However, she testified that as he was in a general education class working in a mainstream curriculum, his teacher would monitor his individual needs. She has not discussed these needs with his teacher. Mulcahy testified that the following goals and objectives would be appropriate for R.S.: the ability to comprehend materials effectively, factually and inferentially; the accurate use of grammatical structure in his writing; to increase his ability to write for a variety of purposes; to express ideas clearly in written form so as to communicate in a cohesive manner; and, to elaborate on ideas so as to begin to expand his language.

She conceded that the Center School has “no experience with students diagnosed with cluttering,” (P-4) and that at the Craig School there was a speech language pathologist experienced in cluttering who had worked with two students at the school with a diagnosis of cluttering. She also conceded that cluttering is a “significant” issue for R.S.

Mulcahy also testified that when the CST decided to place R.S. at the Center School, she was the only individual from the district that had visited the Center School. She further testified that she, as the LDTC, and Gail Arek, as R.S.’ teacher, were the only CST members qualified to discuss the academic goals for R.S. at the Center school, but they never discussed it. She conceded he needs an extended school year (ESY) but not a six-week program. The Center School offers a three-week ESY. Mulcahy testified that R.S. “would benefit from support over the summer to continue to address the language areas (she listed as appropriate goals and objectives).”

Mulcahy also testified that parts of the reading program at the Craig School would benefit R.S. as they addressed the goals and objectives she formulated during

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<sup>9</sup> T., March 19, 2010, p. 35, ll. 4-15.



the course of her testimony. Specifically, she testified that she observed the utilization of the “Read Naturally” computer software program and that R.S. would benefit from the communication enhancement of visual verbalizing. (P-3). She also testified that he would benefit from “Framing Your Thought,” a written component of Project Read. (P-3). The “Smart Board” links and Graphic Organizer utilized at Craig would also be helpful to R.S., she testified.

She conceded that when she conducted a learning evaluation on R.S. in February 2009 and March 2009, R.S.’ teacher mentioned that his speech contained disfluencies.

In reviewing the various reports issued by Kathleen Scaler Scott and the recommendations she offered, Mulcahy testified that R.S. would benefit from a small class size as it would help with his attention issues. (P-10, P-27, P-28).

Although she testified that based on her first visit to the Craig School she was of the opinion that the class she visited was inappropriate for R.S. as the students were lower-functioning in reading than him, she conceded that based upon her second visit which incorporated an observation of students reading “Tales of a Fourth Grade Nothing,” this class would not be “too easy” for R.S. (P-79). Mulcahy also vacillated in her testimony, alternatively testifying at one juncture that the teacher she observed failed to use a multi-sensory approach to teaching, which would be beneficial to R.S., to then conceding that the teacher did use a multi-sensory approach to teaching. She also conceded that the reading class she observed at Craig School was utilizing some of the same multi-syllabic vocabulary words that Mrs. Arek was utilizing in R.S.’ in-district class. (P-79, P-80).

**Gail Arek** has been a general education teacher for 31 years, the last 15 of which she has spent teaching second grade at Shrewsbury. She is not certified as a special education teacher. There were 21 students in R.S.’ class for the 2009-2010 school year. She advised his parents at the Parent/Teacher conference in February 2010 that academically, he was “doing well.” She explained that he was an average to above-average student who requires re-direction from off-task behaviors attributable to

his ADHD diagnosis. A 1:1 aide, assigned to him since the end of November or beginning of December 2009, tries to be subtle in the re-direction. She testified that she believes he is progressing. He is strong in certain subjects such as Math, but also does well in Science and Social Studies. She obtains strategies from specialists such as Abigail Healy, for speech. Prior to having R.S. in her class, she has had no experience with cluttering. Arek testified that she has attended several sessions given by Mrs. Mulcahy regarding "Project Read" and she thought this would be positive for R.S. as it incorporates a multi-sensory, including tactile, approach which R.S. likes. "Handwriting Without Tears," currently being utilized at Shrewsbury, but not with R.S., would be beneficial for him.

R.S.' case manager, Nancy Baker, asked for her input for the February 17, 2010, IEP meeting and she advised that he is doing well with the assistance of a 1:1 aide.

For this past school year he received pull-out services for speech (two 46-minute sessions each week) and occupational therapy (one 23-minute session each week). The 1:1 aide, trained by the occupational therapist, provides the sensory diet in the morning and after lunch. She testified she also utilized the IEP (P-43) this year and implemented the speech and language strategies, modified his work and worked on social skills goals with him. She would provide the initial instruction and would re-direct and re-phrase, if necessary. She testified that R.S. responds well to re-direction. The 1:1 aide provides the primary re-direction and she also corresponds with the parents daily through the journal. Arek testified she writes in the journal once weekly.

She testified that she has seen the results of R.S.' MAP test of the fall 2009 (P-5) and has no reason to doubt the scores. She testified that she is familiar with the scoring. She testified the test is administered through the use of computer and headphones. R.S.' low average score in comprehension could be related to distractibility, she testified. She testified that the comprehension portion of the test is "long and drawn out" and R.S. "drifts." To compensate for the drifting, R.S. uses a reading stick. Despite the use of a reading stick, R.S. still has a reading comprehension issue that she utilizes her strategies to address and they are working, she testified. Other than spelling, his ADHD has not affected his grades.

Arek testified that R.S. does not have behavioral issues. During the beginning of this past school year, Heather Overton, a behaviorist affiliated with Rutgers, visited her classroom for observation and, Arek testified, perhaps collected data. Overton shared her results with Arek and recommended R.S. be given preferential seating. She moved his seating after that. A lot of the strategies Overton offered, Arek testified, she was already using. These were primarily based upon positive reinforcement.

She has also spoken with Vivian Attanasio, a behaviorist retained by the parents. Attanasio observed R.S. and noted he has a social issue with regard to space. Attanasio indicated she wanted to work with R.S. during his free time, such as recess and lunch, and Arek testified that this would benefit R.S.

She testified that R.S. “works hard” for her and she really likes having him in her class.

**Gloria Bland Katz** testified as petitioners’ LDTC and speech language pathology expert. She is licensed in the state of New Jersey as a Teacher of the Handicapped, Pre-School Disabled, Speech Specialist, LDTC and Special Education. She holds a CCC certification which is a Certification of Clinical Competency in speech pathology. She has been certified as an LDTC for over 25 years. (P-15).

She never heard of the Craig School prior to this matter. She was asked to visit the school and observe a reading class and to interview personnel, as necessary, and make a recommendation as to the appropriateness of the school for R.S. She reviewed the evaluations completed of R.S. in preparation for her assessment. She also met with R.S. and observed him over the course of 40 minutes. Based upon all of these considerations, she testified the Craig School is appropriate for R.S. She testified that the school population consists of average and above-average classified, non-classified and typically developing peers. This is important for R.S., she testified, for social, language and role modeling, particularly since “he has never had special education.” She testified that the Craig School is a regular education school and all the teachers are certified in special education. “In all the years (she has) done this work, they have the

Cadillac of a reading program,” she testified. She explained that the Craig School utilizes an “eclectic” approach in that it uses various reading methodologies and programs such as Orton-Gillingham, Project Read, Wilson, and Read Naturally, as supported by a computer software program, Lexia, which will not allow a student to proceed to the next level until that student reaches a certain fluency level. She testified that there is no evidence-based data that indicates one program is better than another. She observed all of these reading programs utilized in the reading class on the day she visited the school. Her review of all the evaluations, both district and private, revealed consistent themes of lack of focus, inattentiveness and poor organizational skills on the part of R.S. The reading program she observed at Craig School differentiated not only to his weaknesses but also to his strengths, she testified. She testified that R.S. can be moved along in areas of his strengths and get support in areas of his weaknesses.

She observed a level 2 class which consisted of seven children; second and third graders. Based upon her experience working with students with ADHD, she testified that one of the students in the class had ADHD and required a minor prompt. She did not observe any apparent behavior problems in the school.

She testified that placing R.S. at Craig School gives him the “best of both worlds” in that he will have a general education setting, which presents as the least restrictive environment because he has always been in such a setting, augmented with special education. The literature she received regarding the school indicates Craig follows the New Jersey Core Content Curriculum standards and she observed its application in the classroom.

**Sandra Bendokas**, a behavioral consultant retained by the petitioners, qualified as an expert without any objection. She has worked with numerous school districts in Monmouth and Ocean County as well as with the Jersey Shore Medical Center in Neptune, New Jersey. She is not board-certified as a behaviorist in New Jersey. She testified that her prior work was supervised by Dr. John Burke at the Kennedy Krieger Institute in Baltimore, Maryland, for three-and-one-half years and the Douglas Outreach Center for one year. Her company, NJ Cares, provides behavioral assessments,

program developments and classroom consultations. She has also reviewed placements for parents and rendered opinions as to appropriateness. (P-16).

Although initially contacted by the petitioners to ascertain whether R.S.' existing program could be modified, she was later contacted by Pearl Charatz and asked to conduct an assessment of R.S.' performance. She issued her findings within an October 16, 2009, report. (P-17). As part of her assessment, she interviewed: R.S., his case manager, Nancy Baker, and teacher, Gail Arek. She observed R.S. approximately five times. She noted that he requires significant re-direction on some tasks; she estimated the re-direction rate at every 30 seconds to three minutes. His off-task behaviors consisted of fidgeting and frequent change in posture. She recommended a small group setting ultimately rather than the large classroom in-district. Although she previously did not recommend this, this was due to the fact she was originally asked to ascertain whether his then-current program could be modified. (P-17). She testified that she observed the modifications in place in-district, but they were not working. This could lead to stagnation or at worse, regression, she testified.

She spent approximately three hours at the Craig School and met with the Director, Janet Cozine, as well as some of the classroom teachers. She observed two literacy programs; one focused on decoding and fluency and the other on comprehension skills. Prior to her involvement in this matter, she had never heard of the Craig School. She has reviewed programs in the past where she has disagreed with parents or school district. She testified that the Craig School could meet her recommendation for a small group setting. (P-18). Additionally, the Craig School provides positive supports and social skills training. It also incorporates visual supports which is important for students with language-based disorders like R.S., and an FM system which is important for children with attention needs, she testified. The school also offers grade-level curriculum, social skills training and, in particular, group socialization, which Bendokas testified is "a nice fit" for R.S. because some of the motivators in his existing program did not meet his needs. She testified the Craig School meets R.S.' needs.

**Carole Aitchison** qualified as petitioners' expert in learning disabilities, regular education and special education. She holds a B.A. in Speech Language Pathology with a Minor in Education, an M.A in Education and a Ph.D. in Elementary and Special Education. She has been certified as an LDTC in New Jersey since 1982 and is also certified as an elementary education teacher, a special education teacher and a supervisor of LDTCs. She was a special education teacher in Chatham for seven years, the Director of the Winston School in Short Hills, and has had her own business, the Chatham Learning Center, since 1992. The Chatham Learning Center offers diagnostic testing, consultation and tutoring services.

When she was originally retained by the petitioners, the district had proposed de-classification. She issued recommendations against that proposal, specifically that he be classified as Multiply Disabled (MD) and that he be provided a 1:1 aide rather than just an aide assigned to the classroom.

When the issue regarding an out-of-district placement arose, she spoke with some of the professionals that had already been retained and offered to meet with the petitioners after all the evaluations had been completed. As a result of these evaluations, she recommended a classroom with low student ratio based upon Children's Specialized Hospital's diagnosis of ADHD. (P-21). She also testified that one of the other experts retained by the petitioners, Kathleen Scaler Scott, is well known in the field for cluttering expertise and she confirmed ADHD, cluttering, word retrieval deficits and articulation disorder. She has been familiar with the Craig School since almost its inception in the mid-1980s. She helped develop the Craig School while she was the Director of the Winston School.

She had not visited the lower school for some years, so she met with Janet Cozine and asked her to describe the academic and social skills programs. She also observed two classes during her recent visit to Craig School. She observed a first period Language Arts class where the students spent the first part of the class on decoding using the Orton-Gillingham method. The remainder of the class was spent on comprehension. The class was reading a story titled "The Stone Fox" which she testified is suitable for third and fourth graders. The teacher utilized the Smart Board for

teaching and the students were at their respective computers following the format for the story they were reading. She testified that this is appropriate for R.S. as it will help him organize. She then visited a classroom consisting of level 2, third and fourth graders, working on encoding. She testified that the Craig School is an independent school with students of average and above-average intelligence. Some of the students were classified while they attended public school, some never attended public school and some are typically developing. The school offers a “strong language-based” curriculum, she testified. The school follows the NJ Core Curriculum Content standards. It is accredited by the Middle States Association of Colleges and Schools. The speech language specialist has experience in cluttering. The school offers a pro-social program designed by a psychologist, Dr. Lakin, whom she has known for almost twenty years, and implemented by her, social workers and teachers in the classroom. The reading methodologies utilized at Craig are appropriate for R.S. She testified that in her opinion, the Craig School can offer R.S. FAPE in the LRE. (P-22).

She reviewed his Fall 2009 MAP test results. (P-5). She also reviewed the Winter 2010 MAP tests results (P-5A) and testified that she did not expect his scores to decrease in the same categories. All of the scores other than comprehension have decreased. (P-5A). Based upon these latest results, she testified that he has not been able to “keep up” with the grade level curriculum in the general education setting. The Craig School would help R.S. in all these areas of deficiencies, she testified, through the structured, sequential approach it offers. She is familiar with the MAP test and does not question the accuracy of the results. (P-5, P-5A).

**Shrewsbury Borough School District**  
**Student Progress Report for R.S.**  
**Shrewsbury Borough**

Growth is measured from Fall to Spring

**Reading Goals Performance – Fall 2009**

Phonological Awareness	HiAvg
Phonics	HiAvg
Concepts of Print	Avg
Vocabulary & Word Structure	Avg
Comprehension	LoAvg
Writing	Avg
(P-5)	

**Reading Goals Performance – Winter 2010**

Phonological Awareness	LoAvg
Phonics	Low
Concepts of Print	High
Vocabulary & Word Structure	LoAvg
Comprehension	LoAvg
Writing	LoAvg
(P-5A)	

**Noelle Cauda-Laufer** is licensed in New Jersey as a Teacher of the Handicapped, Supervisor, Teacher of Elementary Education and a School Psychologist. She qualified as petitioners' expert in these areas.

Cauda-Laufer testified that she had just recently become familiar with the Craig School. She concluded that it was appropriate for R.S. based upon the "plethora of programs (in) Reading and Math."

Additionally, she testified that social skills is a "deficit" for R.S. and the program at Craig would provide an "immeasurable amount" of opportunities during the day for him to improve on this deficit. She explained that the school has a school-wide program that gives a child ten cents for every academic on-task behavior achieved daily, with a maximum earning for each day of 50 cents. At the end of the week, the child can choose an activity which provides a further opportunity to socialize. Additionally she testified that the Craig School has a program whereby the psychologist works with teachers on specific skills to utilize for two weeks with the students. There is also a small group social skills component and a "peer" mentor component whereby an eighth-grader will work on communication skills with the younger students. Individual counseling is also provided with a social worker, clinician or psychologist. She testified that the parental component to the social skills program involves five different workshops during the year whereby parents provide ideas so that the school can target skills to address with the students. A lot of these workshops involve issues related to ADHD, she testified.

Cauda-Laufer testified she visited the school, observed a language arts class and spoke with Janet Cozine. During that visit she observed a language arts reading class with approximately eight students. Two certified teachers conducted the class. The students had organizational binders to copy down tasks and homework, and each student had to sign his or her respective binder. The teachers promoted cooperative skills by having the students work in groups of two on vocabulary; one read the definition and the other identified the appropriate word meeting that definition. (P-25). Cozine advised her that the Craig School can provide services to address R.S.'



cluttering. Cozine also described the ESY available at the Craig School; a combination of academics in the morning and social skills in the afternoon. Based upon R.S.' needs, Cauda-Laufer testified he would suffer regression if he does not engage in social skills training during the Summer and that it would cause him to regress, perhaps even in academics. She noticed that the students at Craig were more higher-functioning socially than R.S. and they could teach R.S. skills he does not presently have.

She also recommended individual counseling during the transition to his new school because based on his "severe deficits," he would benefit from building a rapport with one individual and then progressing to other individuals. She has served as a case manager, and as a school psychologist, has developed transition plans.<sup>10</sup> She testified that she attempted on several occasions to speak with R.S.' current case manager, Nancy Baker, but her calls and e-mail were not returned. (P-24). She testified that the reason for the call was to try to visit R.S.' current program.

**Kathleen Scaler Scott** is licensed in New Jersey as a speech therapist. She holds a B.A. in Speech Pathology, an M.S. in Communication Disorders and a Ph.D. in Applied Language and Speech. She is CCC-SLP certified. She has authored or co-authored an extensive quantity of articles or other publications on cluttering.<sup>11</sup> (P-26). She has treated hundreds of children, she testified. Scaler Scott qualified as petitioners' expert in fluency, cluttering and speech issues.

She was initially retained by the Shrewsbury School District to conduct an observation of R.S. She first evaluated R.S. in a 1:1 setting and determined that he met the classification criteria for cluttering. (P-10).

In October 2009, she observed him in his classroom, saw the "impact," and recommended a reduction in class size. (P-27). She testified she observed a "lack of focus" on R.S.' part that was related to the materials presented and the level of instruction. She testified that "it is his whole disability wrapped together and the level of

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<sup>10</sup> Counsel stipulated to Cauda-Laufer's qualifications as a school psychologist in the development of transition plans.

<sup>11</sup> Cluttering is a form of fluency disorder.

instruction that contribute to the lack of focus.” She testified that she saw R.S. “ignored” by other students in the classroom. He made “multiple attempts” to interact with students. She characterized the interactions as “inappropriate” and the students ignored him. Scaler Scott testified that Gail Arek and Nancy Baker were present while she made these observations. She testified that this is not unusual for children who do not understand social cues; they try to initiate interaction but they don’t know how to do it, so they use inappropriate language by repeating a phrase they have heard before. (P-27). For example, she heard R.S. say “you got a problem with that, missy.” She testified that R.S.’ social issues emerge from his learning issues.

She also determined that he suffers from ADHD, abnormal auditory perception, mild stuttering and dyspraxia. (P-10). These findings were incorporated in her August 12, 2009, report. Because of the multitude of symptoms, she recommended a reduced teacher/student ratio; teachers and staff specifically trained to interpret and respond to the impact of R.S.’ multiple issues upon his school performance, and to set up situations to foster academic success; a language based curriculum to support R.S.’ difficulties with communication in his everyday classroom; intensive speech language therapy (3-4 times weekly, 45 minute sessions) to address cluttered speech, as well as stuttering, word finding, oral motor coordination, articulation and social communication issues; enrollment in a social communication skills group (1 time weekly, 30-45 minute sessions) led by a licensed speech-language pathologist who can address how R.S.’ communication difficulties impact social communication and help R.S. to implement communication strategies into a more functional group setting; and intensive occupational therapy to address sensory integration and other related issues. (P-10). Scaler Scott testified that Baker told her that with the exception of the social skills offered by his parents, none of her eight recommendations were being implemented by the district.

She returned to the Shrewsbury school and spent approximately four hours observing R.S. during lunch, recess, story time, Math and in the library. Additionally, she spoke with Arek and Baker, respectively. (P-27). She testified that in the lunchroom R.S. was passive and kept to himself. No one came to assist him with socializing. She testified that case manager Nancy Baker was with her a majority, if not

the entirety, of the time. (P-27). During recess, she and Baker were together and observed R.S. interact with a boy. They did not hear what was said between the boys but when Baker approached the other boy, he said he did not want to hear R.S. (P-27). During story time, Baker indicated to her that R.S. tends to be less aware of others. This observation by Baker comported with what Scaler Scott testified she observed throughout the day; avoidance and inappropriate speech. Scaler Scott testified that based upon what she observed, it was her opinion that R.S. only comprehended “bits and pieces throughout the day. He was just completing tasks. No one (was) helping him to increase awareness. When this happens, gaps in knowledge base widen.” During Math, Scaler Scott testified that R.S. was unfocused at first; he did not know what he was supposed to do with the quiz. When he was re-directed, he finished in ten seconds, -- before anyone else in the class, -- and all his responses were correct. Scaler Scott testified the Math was too easy for R.S. and he “tuned out.” She testified that Math was not individualized to him.

Scaler Scott testified that several years ago she looked at the Craig School for cluttering issues because of a colleague’s request. Based upon her recollection of the program and her evaluation of R.S., she recommended to the petitioners herein placement at the Craig School. The proposed class size would be in accordance with her recommendation for R.S. She visited Craig School with the purpose of determining appropriateness for R.S. on March 25, 2010. (D-8). She spoke with Cozine. The speech language pathologists have experience with children with cluttering diagnosis. Language is infused throughout the curriculum. Scaler Scott testified that the various reading programs utilized at Craig would be beneficial for R.S., e.g., Lindamood-Bell has a visualizing component that would assist R.S. in comprehension by the picturing of ideas. (P-29). Everyone is trained in special education. Everyone is experienced in cluttering, and she testified that it doesn’t matter that they are not certified, just that they have the experience. One of the cluttering therapists there, Harriet Hughes Rex, has attended seminars Scaler Scott has conducted as the Coordinator of the International Cluttering Association. Additionally, social communication skills are addressed by multiple faculty and staff at Craig and not limited to just speech therapists. Scaler Scott testified this is beneficial to R.S. because it is important that others reinforce those skills.

Scaler Scott testified that based upon the nature of R.S.' multiple diagnoses, if he does not receive an ESY, he will regress.

She testified, based upon her expert opinion, R.S. would "do well" at Craig. She testified she has never seen such a "well-written" program. Craig School is Middle States accredited. The recommendations in all of her reports (P-27, P-28, and P-29) are within a reasonable degree of certainty in her areas of expertise.

**Nancy Baker** is a New Jersey certified school social worker. She has a Masters in Social Work and has been employed with the Shrewsbury School District for 20 years. She is currently employed in Spring Lake Heights School District as well. She has been R.S.' case manager since 2006 and conducted one social evaluation during the 2006-2007 school year.

She has observed R.S. several times this year and testified she is not qualified to speak with regard to the impact on his education.

She testified that Heather Overton is the behaviorist retained by the district to conduct a Functional Behavioral Assessment (FBA). As a case manager, she testified that she is familiar with the regulatory requirements for an FBA and, specifically, that written authorization from the parents is required. She testified that she has no written authorization from the parents in her file permitting the FBA to be conducted; it was conducted on R.S. without his parents' knowledge or consent. However, she testified that the parents forwarded correspondence, dated June 2, 2009, in which they requested a series of independent evaluations, including an FBA. (D-25). She spoke with Overton regarding her report, which was never forwarded to the parents and not maintained in the CST file for R.S. at the specific direction of counsel<sup>12</sup> for the district, Baker testified. (P-33, P-34). Counsel directed her in November 2009 not to utilize the report.

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<sup>12</sup> Counsel of record advised she was not the attorney that gave the district or Baker, specifically, this directive to conceal the report from the parents. Baker acknowledged receipt of the report in October 2009. (P-32.)

Baker conceded that in October 2009, R.S. was utilizing most of the classroom aide's time. She further conceded that the issue of R.S. having a 1:1 aide was very important. R.S. was provided a 1:1 aide on December 5, 2009. The reason he was provided a 1:1 aide was: to address his attention issues, specifically the inability to stay on task and the lack of focus; to provide his sensory diet; and as part of a settlement agreement. However, she testified that she did not know that his needs were any different from October through December to have warranted the provision of a 1:1 aide.

She testified that after receipt of Overton's review and rejection of Sandra Bendokas' report recommending a special education teacher for R.S. (P-32), the CST did not discuss whether R.S. needed a special education teacher. She changed her testimony moments later and testified that the CST did discuss this issue but she has no recollection of what was stated.

She also testified that she has spoken to Overton three to four times since September 2009 regarding R.S. These discussions centered around the behavioral interventions in the classroom. She testified that she did not tell anyone about Overton's involvement with R.S. However, Baker also testified she specifically advised the CST about Overton's recommendations on behavioral interventions but not the IEP team – thereby specifically excluding the parents from such discussions. She acknowledged that the parents have e-mailed her many times regarding their concerns on behaviors in the classroom, but she did not tell them that Overton was making recommendations to Arek.

She testified that a special education teacher was "never considered" for R.S. She and Overton discussed this and determined a special education teacher "was not" necessary. No indication of this was made in the CST file.

Although Overton was addressing behaviors, Baker testified R.S. was not disruptive in the classroom. Based upon her observations in Arek's classroom, he was distractible, withdrawn at times, infrequently responded to the first attempt of the

teacher to address him and demonstrated off-task behaviors in the classroom. She testified that many of R.S.' behaviors are related to his speech issues.

She testified there was a "general modification plan" specific for R.S. at the beginning of the school year being implemented by Arek, but the plan is "not in writing." No data was collected as it was not required to be collected, Baker testified.

Baker testified the decision as to the appropriateness of the Craig School was made by the CST. She conceded that in her certification, dated January 29, 2010, submitted in connection with the Federal District Court matter, she indicated the district's offer of FAPE in the LRE was the Language Learning Disabilities (LLD) class at the school in Marlboro – a self-contained class for children designated eligible for special education and related services only. (P-36). But, she testified that the focus of the CST was to find an out-of-district, language-based placement that was as close to Shrewsbury as possible. She testified that the CST, consisting of Mulcahy, Healy, Ames and herself, thought the Craig School was inappropriate due to: it is an unapproved school; they assumed R.S. would have to skip from second grade to third grade; and it was 60 miles from home. With regard to the assumption that R.S. would "have to" skip from second to third grade, she conceded that if he was placed in either the Center School or in Marlboro, he would have been placed with second to fourth graders inclusive – and that if it was the same at the Craig School, then that would have satisfied the CST's concern in that regard. Baker conceded she was present at the OAL during the proceeding before Judge Martone in which the district agreed to send R.S.' records to both DOE approved and unapproved schools. She also conceded that she did send records to other unapproved schools such as the Lewis School, New Grange, and Cambridge School, respectively. She specifically contacted those schools to inquire about the programs they respectively offered, but she did not do the same in connection with the Craig School and testified she did not have an answer as to why she did not make that same inquiry.

She testified that at the February 17, 2010, IEP team meeting in which an IEP was offered to the parents designating placement at the Center School (P-12), Craig School was never discussed and she knew the parents wanted placement at the Craig

School. By then only Mulcahy had visited the school. Baker testified the CST did not consider the Craig School because they felt the Center School was “more appropriate” and would “better meet (R.S.’) needs.” She testified the CST had already determined that R.S. did not have academic needs impacted by his disability. Even though Center School did not have anyone experienced in cluttering, the CST had determined it would send an expert once a week to work with R.S. on cluttering. She testified that to her knowledge, Craig School did not have a cluttering expert.

She later changed her testimony to indicate that the CST did discuss the Craig School prior to the February 17, 2010, IEP meeting. She confirmed that by the time the IEP team met on February 17, 2010, the district had the most recent evaluations of Karen Kimberlin and Kathleen Scaler Scott’s report of August 12, 2009. (P-12). She conceded that other evaluations that had been completed were not included in the IEP and that it was her responsibility as a case manager to include those evaluations, but testified she believed it was on oversight on her part.

With regard to the consideration by the CST of the Craig School as a potential placement, Baker testified that there were certain unknowns – whether the school could provide occupational therapy and whether they could provide a sensory diet – that entered into the determination that Craig School was not appropriate. “It was an unknown,” she testified, and no one called to verify the unknowns because “we just went with what (we) knew.” She conceded that they found out there were second graders, so R.S. would not be skipping a grade, and that the speech language pathologists had experience with cluttering.

She conceded that at the Center School there are nine classes of students classified as having behavior disabilities and that R.S. does not have such a disability. (P-7). She testified that although she believes R.S. should be with typically developing peers and that the Center School population does not consist of any typically developing peers, this concern was not mentioned in the IEP offering placement at the Center School and she does not know why. (P-12).

She conceded the following with regard to the Craig School: there are students enrolled with either ADD or ADHD; it is not designated as a school addressing students with behavioral disabilities; the school utilizes whole room FM system; it offers small class sizes of six to eight students; and, a behavior modification system based on a point system is utilized. With regard to language arts, the school utilizes graphic organizers and outlines and this would be appropriate for R.S. The computer class Craig School offers would be appropriate for R.S. The school's focus on students developing independence would be appropriate for R.S. The student/teacher ratio of 6:1 would be appropriate for R.S. The communication enhancement program would be appropriate for R.S. She also testified the social skills program would be positive for R.S.

As part of a settlement agreement, the district was to have provided R.S. with three hours of social skills training weekly and his parents one hour of home training weekly. Baker testified that due to the inability to obtain the agreed-upon provider, those services have not been delivered since December 2009. Her understanding, based upon being present during the settlement placed before Judge Martone, was that either Sandra Bendokas or Vivian Attanasio only could provide those services. She testified the district needs to make up those sessions because neither one of them have been available to date. (D-20, D-21). However, she conceded that one of the providers, Vivian Attanasio, did not indicate in her report of January 17, 2010, that she could not offer the services. (P-64). And she did not understand that she was authorized to utilize an associate of either Bendokas or Attanasio for the delivery of services. Attanasio indicated on or about December 4, 2009, that she could provide the services directly. The Board approved the funding for those services on December 15, 2009. The district was then on vacation from December 22, 2009, through January 5, 2010. (D-21). However, although Attanasio came to the district on January 13, 2010, she left a message for Baker advising that due to a family emergency, she did not know how much time she would have to deliver services. (D-21).

Baker testified that R.S.' speech language therapist last year, Anne Frankel, wrote a note, included in the CST file, that R.S. was not interacting with anyone during lunch-time and that this way "pretty typical" behavior for R.S. (P-65). Baker testified



that she made the same observations but that as case manager she did “nothing at that time (in June of 2009).” She also testified that she observed these same behaviors when R.S. was in the first and second grade and that she did “not recall this being a great area of concern.” However, she also testified that R.S. needs social skills training. His IEP for December 1, 2009, through March 24, 2010, provided for one hour social skills training four times weekly in either a small group or individual setting and one hour parent training at the home. (P-43). The IEP determining placement at Center School provided for 92 minute social skills training weekly. Baker testified she did not know the reason for the decrease in services except that was what was offered by the Center School. (P-12). She testified that she did not recall the educational basis for such a reduction.

She visited the Craig School on April 21, 2010. Baker testified she visited a classroom in which academics was being taught and that both the teacher and students appeared interested and it was a collaborative and “academically stimulating” effort. (P-76). However, she also testified that it appeared to her that the students were lower functioning than R.S. because he is “functioning well now and able to keep up with grade-level work.” (D-28, P-39).

With regard to her attempts to locate out-of-district placements for R.S., Baker testified she contacted Freehold Township, Middletown and Marlboro School Districts, respectively. (D-23). Pursuant to the settlement agreement reached before Judge Martone, she also contacted Cambridge, Bridge Academy and the Lewis School, respectively. (D-23). Both she and Charatz generated a combined list of 18 to 20 schools; whether they contacted all of them is unknown. (D-23). Baker testified that Charatz listed the following public school districts: Brick, Keyport, Neptune, East Brunswick, Herbertsville and Sayreville. Baker did not know whether Charatz contacted them. Baker contacted Eatontown, Regional Day School, Center School, New Grange School and Howell Township. (D-23). Baker contacted Red Bank but was advised there were no openings. (D-23). She and Charatz did not discuss the list they formulated separately. (D-23). She specifically recalls that the School for Children was not contacted even though it was listed. (D-22). She testified that it would not have been appropriate for R.S., but “(she) was just making a list.”

Baker testified that she was concerned about the distance from Shrewsbury to the Craig School, which is located in Mountain Lakes. However, she conceded that the distance from Shrewsbury to other schools the district agreed before Judge Martone to contact; i.e., Cambridge, Bridge Academy, and The Lewis School, respectively, also involve a driving distance of more than one hour.

**Abigail Healy** is a certified speech therapist in New Jersey. She holds a Bachelor's degree in Communication Disorders from the University of Massachusetts and a Masters in Speech Pathology from Emerson College. She is CCC certified and participates in continuing education through ASHA. She has worked at the Shrewsbury School District since May 2002. She previously worked at Children's Center in Neptune and currently also provides early intervention services at Monmouth Medical Center in Long Branch, New Jersey.

She has known R.S. since kindergarten during the 2006-2007 school year. His speech concerns are "significant," she testified. During the 2008-2009 school year, she provided R.S. two 23-minute sessions of small group speech language services but no individual services on a weekly basis. During the 2009-2010 school year, she provided R.S. two 46-minute individual sessions of speech language services and one 23-minute session of small group on a weekly basis. She conducted one evaluation during January/February 2009. (P-40). Based upon her evaluation, she determined that he had speech issues that were impacting his performance in the classroom and social skills. (P-40). She testified that R.S. had difficulty with fluency in the intonation in words and with chopping multi-syllabic words.

She reviewed Karen Kimberlin's report and accepted her findings. (P-30, P-41). One of the cluttering experts she consulted with on Kimberlin's report was Kathleen Scaler Scott. Kimberlin's testing was valid and this is why the district increased speech services in the 2009-2010 school year, Healy testified. She agreed with Kathleen Scaler Scott's recommendations regarding R.S.' cluttering issue. She testified that R.S. requires intensive speech language therapy because as he has gotten older, the demands have changed and the expectation is that he would be able to interact with his

peers. She completed the district's acceptance/rejection analysis of Scaler Scott's speech evaluation and accepted her recommendations and noted all of them would be considered when determining eligibility, program and placement. (P-42).

She had already visited the Craig School when she participated in the IEP meeting of February 17, 2010, in which the CST determined placement at the Center School. She spoke with Mulcahy regarding her observations of the reading class she visited and told her that she observed a "faster-paced class." The class was reading a chapter book. She testified that her recommendation was that wherever R.S. was placed, if the school did not have a board-certified cluttering expert, the district should provide one for consultation. This would include the Craig School. She testified that she agreed with all of Scaler Scott's recommendations from the speech, including cluttering, and social skills perspective. (P-28). These include the small classroom size recommendation. She testified that Harriet Rex has cluttering experience and is CCC (Certificate of Clinical Competence) certified. Rex told her she is working with cluttering students. Additionally, the other speech language pathologist at Craig has cluttering experience. Healy agreed with Scaler Scott's December 21, 2009, recommendations. (P-28). She testified that there is no reason to believe that the Craig School could not implement communication skills goals and objectives. Additionally, she testified that the Craig School has a school-wide social communication enhancement program for R.S.' age group. (P-31). It has an FM system. While visiting Craig, she observed multiple modalities – visual, speech and touch – in use, and as R.S. is a visual learner, he would benefit from these, she testified. (P-31). Ultimately, she testified that based upon her area of expertise only, the Craig School could meet R.S.' needs with the modification of the district providing the cluttering expert for consultation. She testified that she advised the CST of this recommendation.

**Susan Smith-Foley** has been an occupational therapist since 1983. She has held New Jersey certification since it was initially required in the mid-1990s. She initially provided occupational therapy (OT) in the hospital setting but began providing school-based services as a consultant in 1988. She has provided private OT through the Avon Treatment Corporation since 2000. (P-46). Smith-Foley qualified, without objection, as petitioners' expert in OT, sensory motor integration dysfunction and sensory diet.

She has personally worked with R.S. since November 2009 and provides him 1:1 OT one hour weekly on Saturdays. Smith-Foley testified that R.S. has a sensory processing disorder; he has visual spatial issues and visual motor issues that manifest as poor handwriting. She conducted an evaluation in June 2009 that included a review of R.S.' school handwriting samples and the administration of several standardized test subtests to evaluate fine motor and gross motor skills, respectively, to determine manual dexterity and fine motor control. (P-47). As a result, she recommended OT twice weekly, 45 minute sessions; group OT, 30 minutes weekly; and a monthly consultation. (P-47).

She testified that she knows Shrewsbury's occupational therapist, Diane Ames, personally and professionally. (P-49).

She spoke with the providers of OT at the Craig School regarding R.S.' needs and testified that she is satisfied they would meet his needs. OT is provided at Craig through the PG Chambers School, she testified. Lisa Brown, the clinical director at PG Chambers advised her that several staff members are sensory certified. She also advised Smith-Foley of the OT equipment utilized, the therapy mats and therapy balls and the use of the Alert Program which helps children move from co-regulation to self regulation. Smith-Foley testified this program would benefit R.S. Despite the appropriateness of the Craig School OT program, as provided by PJ Chambers, Smith-Foley testified that the home-based OT one hour weekly on weekends would still be necessary because of the severity of R.S.' disability. She testified it is necessary for educational progress because of his underlying processing and motor issues. Smith-Foley testified that all of R.S.' evaluations indicate that his sensory issues are significant and the "complexity of (R.S.) is still unfolding." Although he is progressing, she testified, the clinical setting is different from the school-based setting, but her role would continue to be to provide additional support to the educational program.

**Diane Ames**<sup>13</sup> is an occupational therapist at the Shrewsbury School District. She holds a B.A. in Health and Physical Education and an M.A. in OT from New York University.

She provides OT to R.S. She participated in the February 17, 2010, IEP meeting by telephone. She had visited the Center School but did not visit the Craig School prior to that meeting due to time constraints. She was not part of the CST decision that determined Craig School inappropriate for R.S. Prior to May 2010, she was not asked her opinion as to the appropriateness of Craig for R.S. In May she contacted Lisa Brown, whom she knows has a lot of experience in the training of sensory issues. (P-54, P-55). Both she and Brown are SIPT (Sensory Integration and Praxis Tests) certified<sup>14</sup> and have the same experience. She testified that Brown has the experience to provide a sensory program. Brown told her that the sensory diet is provided in the classroom, modifications are made in the classroom and all the equipment necessary is provided in the classroom for the children to use. As the class size is small, the teachers, and not aides, provide the daily sensory diet. Brown told her she also personally trained the teachers in the delivery of the sensory diet. Brown told her she provides direct services twice weekly.

Smith-Foley, who is one of her closest friends, is also well-trained in sensory issues.<sup>15</sup>

She explained that in the utilization of the Alert Program, the teachers and students engage in the sensory diet through the direction of the teacher, but they are working towards leading the student to self regulation. She testified this is the OT goal for R.S. The OT pull-out and push-in services Chambers offers are good for R.S., she testified, as are the small group and individual OT sessions. The school uses tactile

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<sup>13</sup> Immediately prior to the testimony of Diane Ames, counsel conferred and agreed to stipulate that the Craig School is able to provide direct OT services through its contract with the PG Chambers/Cedar Knolls District and that those services are provided at the Wilson School adjacent or across the parking lot from the Craig Lower School.

<sup>14</sup> SIPT applicants take a series of courses in the theory and training of sensory integration. The application is then trained in the administration and interpretation of tests.

<sup>15</sup> Ames testified she increased OT from 30 minutes to 45 minutes after she read Smith-Foley's report regarding her evaluation of July 2009. (P-47, P-56).

mediums such as “Koosh” balls and clay, and these are appropriate for R.S., she testified.

Ames testified that the Craig School is appropriate for R.S. as to OT and can meet his needs, including the provision of a sensory diet.

She also testified that the home program OT during the ESY 2010 is necessary for R.S. She testified that R.S. still has sensory needs and without the provision of OT during the ESY, he would regress. His sensory needs impact his education, Ames testified. She has recommended home programming OT during an ESY for the summers of 2007, 2008, and 2009, respectively. She testified that the needs of a sensory diet are throughout the year. She testified that she agreed with Smith-Foley’s recommendation that the sensory diet should be provided daily.

**David Blanchard** has been the Headmaster for the Craig School for the past six years. He has been a headmaster for 34 years total. Blanchard testified the Craig School is accredited by the Middle States Association of Colleges and Schools. The school follows the New Jersey Core Content Curriculum standards. Sixty-two New Jersey school districts have sent children to Craig. The school has both children classified eligible for special education and related services and typically developing peers. The school is for college-bound students with language-based learning disabilities or difficulties, he testified. Approximately 100 students attend the lower school in which R.S. would attend.

He testified he is familiar with the programming at the Craig School and familiar with R.S., although he has never met him. While R.S. is in the second grade, Craig School will sometimes be able to place second graders with third graders, he testified.<sup>16</sup> In order to be accepted at the school, each prospective student is required to take a test. In addition, the student’s records are reviewed. R.S. also spent a day at the Craig School as part of standard practice. The team at the Craig School also reviewed the

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<sup>16</sup> R.S. was in the second grade when Blanchard testified. One second grader already was attending the Craig School at the time he testified. R.S. has since completed second grade and will enter third grade this September.

evaluations provided prior to making a decision.<sup>17</sup> An application was completed. (P-62). A parent interview, part of the standard process, was also completed. R.S. was considered an “appropriate match,” Blanchard testified, and he was accepted. The WISC IV scores of students in the group that would include R.S. have full scale IQs between 90 and 127, he testified. (P-61). He further testified that an IQ of 90 through 110 is considered average and above 110, above average.

He testified that he is aware that R.S. is very distractible and has a difficult time focusing. Blanchard testified that the Craig School will be able to address the distractibility and focus concerns as there only seven to eight students in the class and the faculty works to bringing students back in focus in non-embarrassing ways. The occupational therapists also work on distractibility.

Blanchard also testified that there are several aspects to the social skills classes. One includes behavior management for grades three to five that addresses short-term and long-term goals and rewards. The second aspect addresses conflict resolution. Social skills goals and objectives are addressed both formally and informally. A social clinician is available if a student is having difficulty and she coordinates with all the teachers. The clinician will organize small groups, as needed, to address any social skills issues. On Fridays, the school schedules various clubs – such as hiking, cooking, and beading – for the students, and these encourage socializing. The clubs vary every two weeks.

Blanchard testified he is aware that R.S. has ADD or ADHD, and language based difficulties, such as cluttering, focus, organization and word retrieval. He testified that a couple of the students have cluttering issues and the speech pathologists work with those students. While he testified that he is confident the school’s speech language pathologists can address the cluttering issues as they have that experience, the school would accept any assistance from a cluttering expert, as a consultant.

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<sup>17</sup> Those materials included: Karen Kimberlin report; Kathleen Scaler Scott reports of October 15, 2009, and August 12, 2009, respectively; Diane Ames report; the psychological evaluation of October 14, 2008; the learning evaluation of February 24, 2009; Sandra Bendokas report of June 18, 2009; NJ Care report of October 16, 2009; Susan Smith-Foley report of June 29, 2009; the psychological evaluation of June 12, 2009; Carole Aitchison evaluation of August 25, 2009; and the IEP of April 29, 2008.

Blanchard testified that all of the teachers are certified in special education or working toward certification. Some of the teachers are LDTC, including the head of the Language Arts department. The faculty is trained in Orton-Gillingham or Lindamood-Bell, or both. The school has a “rigorous” reading program, he testified. Ninety minutes of reading is scheduled daily. The reading class for grades three and four has four teachers, so the students are divided into four groups according to grade level.

All classrooms are equipped and utilize the FM system.

The Language Arts program was developed by the language arts faculty utilizing New Jersey Core Content Curriculum standards and he reviewed it as Headmaster. The Reading program has been developed over a number of years and was carefully reviewed two years ago by the Middle States accreditation committee.

The school offers an ESY consisting of morning academics from 9 a.m. to 12:00 p.m. and an optional afternoon recreation program which focuses on social skills.

Blanchard testified that at least one student has a sensory diet in the lower school but there may be more. The occupational therapist coordinates the delivery of the sensory diet which is individualized and normalized so as to not stigmatize the student. It is provided during lunch, pre-school or during breaks. If a parent objects to the delivery of sensory diet services in the classroom, the school will accommodate the concern because the delivery is to prevent embarrassment to the student. Many of the faculty arrives at 8:00 a.m. when the sensory diet could be provided or after school during the after-school “help” program, which runs from school dismissal at 2:45 p.m. until 4:00 p.m.

Blanchard further, unless specifically exempted pursuant to an IEP, testified that students must comply with state requirements for statewide assessments and some students take these assessments in their respective home districts while in some cases, the districts request the statewide assessments be provided at the Craig School. The school accommodates either request, Blanchard testified.



That concludes a discussion of the relevant testimony presented at this hearing.

Having considered the evidence, and having had the opportunity to evaluate the credibility of the witnesses, I make the additional **findings of fact** and analysis.

Although the issue of the appropriateness of the Center School is moot since a placement is not available any longer; nonetheless, the decision-making of the CST in that regard is relevant for purposes of determining the respective credibility and appropriate weight to be accorded to the CST members' respective testimony relating to the only placement option available to R.S. at this juncture, – placement at the Craig School. While R.S. does not have behavioral issues, the district nonetheless sought to place him in the Center School, a DOE-approved school in which more than half of the classes are for children with “behavioral disabilities.” (P-7). The student population composition was confirmed by Center School’s social worker, Michael Cudia, who even indicated that compared to prior years, there has been an increase in students with anger issues this year in the class that R.S. would have been assigned to at the Center School. Nonetheless, the district offered the Center School as an appropriate placement for R.S. Nancy Baker, his case manager, later conceded that he should be placed with typically developing peers but does not know why that was not discussed at the IEP meeting of February 12, 2010, designating placement at the Center School. Placement at the Center School would be in a self-contained class with children all designated eligible for special education and with a significant population of students with behavioral issues, while placement at the Craig School ensures a varied student population that will encourage, and not repress or cause to regress, the development of social skills for R.S. The Center School does not have any speech language pathologists with experience in cluttering. The district’s LDTC, Kathleen Mulcahy, conceded that cluttering is a significant issue for R.S. and that the Craig School has two speech language pathologists with experience in cluttering and currently working with students who are clutterers. Mulcahy submitted an affidavit in connection with a related United States District Court, District of New Jersey matter indicating placement at the Center School was more appropriate for R.S. than the Craig School.

Mulcahy conducted one learning evaluation during the 2008-2009 school year that led to the CST's recommendation to de-classify R.S. She observed him this year and concluded that he performed "well, academically." He tested "low average" on the Fall 2009 MAP test in the area of comprehension, but she spoke with R.S.' teacher Gail Arek who indicated that comprehension deficit is not evident in the classroom. (P-5). Arek has been a general education teacher for 31 years and is not certified as a special education teacher. She told the parents in February of this year during a Parent/Teacher conference that academically, R.S. was "doing well." His academic strengths are in Math, Science and Social Studies. She testified that she had no reason to doubt his Fall 2009 MAP test scores. (P-5). Carole Aitchison, petitioners' expert in learning disabilities, regular education and special education, has been certified as an LDTC in New Jersey since 1982 and is also certified as an elementary education teacher, special education teacher and supervisor of LDTCs. She is familiar with MAP tests. She testified that all of R.S.' scores in the Winter 2010 MAP tests decreased other than comprehension and, based upon these results, he has not been able to "keep up" with the grade level curriculum in the general education setting. (P-5, P-5A). She does not question the accuracy of these results.

The February 17, 2010, IEP designating placement at the Center School was formulated by the CST and then provided to the parents. (P-12). The CST failed to consider the Craig School although, it should be noted, the respective testimony of Mulcahy and case manager Baker is unreliable as to whether the CST even discussed the Craig School as a potential placement. As LDTC, it was Mulcahy's responsibility to include the findings of the educational evaluation performed by the petitioners' expert, Carole Aitchison, in the PLAAFP section. She failed to include it because she "forgot." Additionally, the CST failed to discuss any academic goals and objectives even though Mulcahy conceded that R.S. has had a need for academic goals and objectives since September 2009. The district maintained R.S. in a general education mainstream setting with no delineated academic goals and objectives even though the LDTC assigned to him knew he needed academic goals and objectives. The teacher, Gail Arek, was expected to monitor his individual needs while teaching the remainder of her approximate 20 students in that class. Mulcahy conceded only she and Arek were qualified to discuss R.S.' academic goals and objectives but they never did. It wasn't

until asked at this hearing that Mulcahy formulated any academic goals and objectives for R.S. They are: to comprehend materials effectively, factually and inferentially; to improve upon the accurate use of grammatical structure in his writing; to increase his ability to write for a variety of purposes; to express ideas clearly in written form so as to communicate in a cohesive manner; and to elaborate on ideas so as to begin to expand his language. Mulcahy conceded that some aspects of the reading program she observed at the Craig School would benefit R.S. as they addressed the goals and objectives she formulated during this hearing.

Mulcahy conceded that the student/teacher ratio at the Craig School fell within Kathleen Scaler Scott's recommendation as to class size. (P-10). She also conceded that the Craig School could satisfy every recommendation Scaler Scott made in her August 12, 2009, fluency evaluation; i.e., a reduced teacher/student ratio; teachers and staff specifically trained to interpret and respond to the impact of R.S.' multiple issues upon his school performance, and to set up situations to foster academic success; a language based curriculum to support R.S.' difficulties with communication in his everyday classroom; intensive speech language therapy (3-4 times weekly, 45-minute sessions) to address cluttered speech, as well as stuttering, word finding, oral motor coordination, articulation and social communication issues; enrollment in a social communication skills group (1 time weekly, 30-45 minute sessions) led by a licensed speech-language pathologist, who can address how R.S.' communication difficulties impact social communication, and help R.S. to implement communication strategies into a more functional group setting; and intensive occupational therapy to address sensory integration and other related issues. (P-10). She also conceded that the Craig School was able to implement the social skills component recommended by Sandra Bendokas. (P-6). In the settlement placed on the record before Judge Martone on November 2, 2009, the district agreed the out-of-district placement proffered would be "in accord" with the evaluations of Sandra Bendokas and Dr. Kathleen Scaler Scott. It (P-12) was not.

Although the district has taken the position that the students of Craig School are lower functioning in reading than R.S., Mulcahy conceded that during her second visit to the Craig School, she observed a reading class that was working on material that was age appropriate and would not be "too easy" for R.S. And, Healy advised Mulcahy

prior to the February 17, 2010, IEP meeting that the reading class she observed was working on a chapter book, clearly not below R.S.' reading level, and it was a "faster-paced" class. Thus, the district's conclusion that the Craig School student population is lower functioning than R.S. is premised on Mulcahy's conclusion that was not only erroneous, but also clearly ignored what Healy, the district's competent speech therapist advised her – that the children in the class were reading a "chapter book" and that it was a "faster paced" class. This is representative of the district's rush to find a placement for R.S. without considering his specific academic and related needs as a child classified eligible for special education and related services with diagnosis of ADHD, sensory integration issues and speech related issues such as dyspraxia, cluttering and oral articulation disorder. Baker's response of "we went with what we knew" or "we were just making a list" or the failure to provide earlier social skills training because it was not "a great area of concern" exemplifies the failure of the district to provide R.S. of FAPE.

Based upon a review of R.S.' evaluations, and a meeting and an observation of him, Gloria Bland Katz, an LDTC and speech language pathology expert who is CCC certified, determined Craig School appropriate for R.S for a variety of reasons. First, R.S. would be transferring from a general education setting to a setting comprised of typically developing peers and children classified eligible for special education. Additionally, the Craig School utilized what Bland Katz described as an "eclectic" approach to reading, which also termed the "Cadillac" of reading methodologies and programs in that multiple programs such as Orton-Gillingham, Project Read, Wilson and Read Naturally are utilized in conjunction with a computer software program, Lexia, which does not allow a student to proceed to the next level until that student reaches a certain fluency. Since R.S. benefits from a multi-sensory approach to learning, the use of the computer program would be appropriate for him.

Sandra Bendokas, a behaviorist, testified the Craig School will meet R.S.' needs and is in accordance with her social skills recommendations. To reach that determination she interviewed him, his case manager and teacher, respectively. She also observed him approximately five times. The Craig School incorporates a small group setting, positive supports and social skills training. Bendokas also testified that

the modifications in R.S.' program at Shrewsbury were not working and that this could lead to stagnation, or at worse, regression. Shrewsbury identified R.S.' social issues going back to the first grade, according to Baker, but she did "not recall this being a great area of concern" although she concedes that he needs social skills training. The IEP Baker assisted in formulating designating placement at the Center School decreased the level of social skills training, based not on R.S.' needs but rather on what Center School offered. Thus, what the district was prepared to offer was once again, not based on the individualized needs of R.S. but rather, what the placement offered. Baker conceded the district has not provided social skills training since December 2009, in accordance with the settlement placed before Judge Martone. This was to have included three hours training weekly and one hour of home training weekly to the parents.

Aitchison, who helped develop the Craig School in the mid-1980s, testified within her areas of expertise that the Craig School can offer FAPE in the LRE for R.S.

Cauda-Laufer testified that based upon R.S.' needs, he would suffer regression if he does not engage in social skills training during the summer. Similarly, Scaler Scott testified that based upon R.S. multiple diagnoses, he would regress without an ESY. Mulcahy conceded R.S. needs an ESY.

Cauda-Laufer's expertise as a school psychologist in the development of transition plans was stipulated to by counsel. Based upon R.S' "severe deficits," he would benefit from a transition plan designed to help him build rapport with one individual and then progressing to other individuals.

Kathleen Scaler Scott's renown as a CCC-SLP certified speech language pathologist with an expertise in, amongst areas, cluttering, was accepted by the district's own speech language therapist, Abigail Healy. From October 2009, when she first observed R.S. in his classroom at Shrewsbury, she noticed the "impact" of class size on him and recommended a reduction in class size. She also observed then, in the presence of his teacher and case manager, that the lack of social skills led to inappropriate attempts to interact with other students. But this was already known to

the district because as previously indicated, they observed his lack of interaction with other students since 2006, but it was not “a great area of concern” to his case manager, social worker Baker.

Although R.S. is diagnosed with ADHD, Scaler Scott also determined that “the level of instruction (at Shrewsbury) contribute(s) to the lack of focus.” This is not meant as a critique of Mrs. Arek, who after 31 years of teaching is still a vibrant educator who is clearly interested in her students and teaching. It is a critique however, of CST members, specifically Mulcahy and Baker, respectively, and the now former Director of Special Services, for permitting this student to remain in a program, from which he would simultaneously not derive any meaningful educational benefit, and worse, stagnate and regress. This is evident in a comparison of MAP tests scores from the Fall 2009 with the Winter 2010. (P-A, P-5A). Further, as noted by Scaler Scott, Math, an area in which R.S. excels, was not individualized to him. He completed a quiz in ten seconds, with all correct answers and then became distracted. It is frankly unconscionable that the district would even consider de-classifying him at a time period when his disabilities began becoming more pronounced. As noted by the district’s own witness, Healy, R.S. requires intensive speech language therapy because “as he has gotten older, the demands have changed and the expectation is that he would be able to interact with his peers.” That clearly has not happened with the program provided to him in-district despite the best individual efforts of Mrs. Arek, Abigail Healy and Diane Ames, respectively, all of whom are professionals.

The district conducted an FBA on R.S. without the knowledge or consent of his parents in contravention to N.J.A.C. 6A:14-2.3. Although the district contends the parents requested independent evaluations, including an FBA, this does not relieve the district of the regulatory requirement. Indeed, if it did, why would counsel instruct case manager Baker not to provide the FBA to the parents, not to discuss the FBA with the CST, not to utilize it and not to include it in R.S.’ CST file? Although I found that Baker’s testimony at times was not credible because she appeared to deliberately attempt not to answer questions or to be less than candid and often provided contradictory testimony, she was clearly very uncomfortable answering questions regarding who instructed her to bury the FBA report prepared by Overton in her personal file. And she deliberately

withheld this information from the parents despite acknowledging their numerous inquiries regarding R.S.' behaviors in the classroom.

Baker conceded that everything the Craig School has to offer; i.e., small class size; FM system; behavior modification point system; use of graphic organizers; computer class; focus on students developing independence; and social skills – would be appropriate and positive for R.S.

Baker, as case manager, and Charatz, as Director of Special Services, generated a hodge-podge list of approximately twenty schools, public and private, DOE approved and not-approved as possible considerations for placement. Some of these schools were in accordance with the agreement placed on the record before Judge Martone and others, like the School for Children, were clearly inappropriate from the outset. Baker's approach to finding the appropriate placement was devoid of any consideration for R.S.' academic and related needs as she was "just making a list." This comment reflects her overall attitude towards her responsibility as R.S.' case manager. No serious thought was given by CST members Baker and Mulcahy, respectively, to determine the appropriateness of the Craig School, a request made by the parents. It was rejected from the outset without any thought as to whether it could provide FAPE to R.S. in the LRE. Similarly, no explanation, plausible or otherwise, was provided by either Mulcahy or Baker, respectively, as to why independent evaluations were not considered by the CST. Only Healy and Ames considered the independent evaluations in the areas of their respective expertise, OT and speech language therapy.

Healy presented as a competent, credible witness. She has known R.S. since he was in kindergarten. She readily acknowledged that his speech concerns are "significant" and impact his performance in the classroom and social skills. Based upon the testing conducting by Karen Kimberlyn, which she verified on her own initiative with Scaler Scott, she increased the level of speech services for this past school year, she testified. Healey agreed with Scaler Scott's recommendations. After her visit to the Craig School, she told Mulcahy that she observed a "faster paced (reading) class" than the one Mulcahy described observing in an affidavit submitted in connection with a related federal matter.

Healy also confirmed that the Craig School's speech language pathologist has cluttering experience and is CCC certified. Healy confirmed there is no reason to believe the Craig School could not implement R.S.' communication skills goals and objectives. Based upon her area of expertise, she testified that the Craig School could meet R.S.' needs with the modification of the district providing a cluttering expert for consultation. The district indicated from the outset it was ready to provide this consultation service, albeit to a different school.

R.S. has a sensory processing disorder that requires the provision of OT. The parties have stipulated that the Craig School is able to provide direct OT services through its contract with the PG Chambers/Cedar Knolls District and that those services are provided at the Wilson School adjacent to or across the parking lot from the Craig Lower School. However, because of the severity of his disability and the fact that the complexity "is still unfolding," Susan Smith-Foley testified the one hour weekend home-based OT is still necessary. Diane Ames, who provides OT services in Shrewsbury, knows the level of experience that Lisa Brown, the provider of OT at Craig has, and based on the inquiry made by Ames, whose opinion as to OT was not sought by the CST in formulating the IEP of February 17, 2010, the district stipulated to the appropriateness of OT at Craig.<sup>18</sup> Based on Smith-Foley's evaluation of R.S., Ames had increased OT services to R.S. in-district. Ames also confirmed the necessity of the home program OT and the need for OT during the ESY.

Although the Craig School is not a DOE approved school for children classified eligible for special education and related services, it is accredited by the Middle States Association of Colleges and Schools. It follows the New Jersey Core Content Curriculum Standards. It is a non-sectarian, college preparatory, independent school with students of average and above-average intelligence, typically developing peers and students classified eligible for special education and related services. The entire faculty consists of certified special education teachers or teachers in the process of obtaining certification. The school offers a "strong language based" curriculum according to the

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<sup>18</sup> The only reason the district stipulated to this was because Ames was about to testify to the appropriateness of the OT program at Craig.



numerous highly qualified experts retained by the petitioners. Language is infused throughout the curriculum and is multi-sensory, an approach both the district staff that testified and petitioners' experts agree is suited to R.S. and specifically addresses his lack of focus and distractibility. It offers an ESY geared both toward R.S.' academic needs and related social skills needs. It offers speech language services to meet his needs in accordance with Scaler Scott's recommendation; thus, pursuant to the settlement placed before Judge Martone on November 2, 2009. It offers a comprehensive social skills program in accordance with Sandra Bendokas' recommendations; thus, pursuant to the settlement placed before Judge Martone on November 2, 2009. It offers the services of speech language pathologists with experience with students diagnosed with cluttering. The district has stipulated that OT is able to be provided at the Craig School through PG Chambers. The district has conceded that the consultation services of a cluttering expert it was willing to provide R.S. at the Center School, it would provide to the Craig School, which has agreed to accept those services. The district has conceded that with the addition of this consultation, the speech language services available to R.S. at the Craig School would provide him FAPE.

Based on the factual findings and analysis as set forth above, I further find the Craig School is an appropriate placement for R.S. that will provide him a FAPE in the LRE and meets the requirements of N.J.A.C. 6A:14-6.5(b). The most appropriate placement for R.S. is at the Craig School as no other suitable program can be provided to him in accordance with N.J.S.A. 18A:46-14. The program offered shall meet the requirements of R.S.' IEP once that is properly formulated as a result of this Decision. This program meets the requirement of a thorough and efficient education as defined by N.J.S.A. 18A:7A-5, as modified by the IEP to be formulated in accordance with this Decision.

### **LEGAL ANALYSIS**

As indicated at the outset of this Decision, petitioners filed for due process seeking placement at the Craig School, compensatory education, an Individualized

Education Program (IEP) with appropriate goals and objectives, and reimbursement for services and evaluations.

N.J.S.A. 18A:46-14 provides that school age students with disabilities may be placed in accredited non-public school which are not specifically approved for the education of students with disabilities by order of an administrative law judge as a result of a hearing. In the context of the hearing, the authority of the Commissioner of Education to consent to such a placement in accordance with the statute, is delegated to the administrative law judge when the judge makes a factual determination in accordance with the requirements of N.J.A.C. 6A:14-6.5(b). As noted in the factual findings above, the placement of R.S. at the Craig School does meet that statutory and regulatory requirement and further will provide R.S. a FAPE in the LRE. 34 C.F.R. §§ 300.145 and 300.146, N.J.S.A. 18A:46-14. Thus, I **ORDER** placement at the Craig School for the 2010-2011 school year.

Compensatory education is a remedy not specifically provided for in the IDEA. It “is a judicially designed cure for school district failures to provide [a FAPE].” Metzger, “Compensatory Education Under the Individuals With Disabilities Education Act,” 23 Cardozo L. Rev. 1839, 1840 (2002). “Congress expressly contemplated that the courts would fashion remedies not specifically enumerated in IDEA.” W.B. v. Matula, 67 F.3d 484, 494-95 (3d Cir. 1995). Thus, a student deprived of a FAPE may be entitled to an award of compensatory education, which is an available remedy even after the student has reached age twenty-one. Ridgewood Bd. of Educ. v. N.E. for M.E., 172 F.3d 238, 249 (3d Cir. 1999);<sup>19</sup> M.C. v. Central Reg. Sch. Dist., 81 F.3d 389, 395 (3d Cir. 1996); Carlisle Area Sch. Dist. v. Scott P., 62 F.3d 520, 536 (3d Cir. 1995); Lester H. v. Gilhool, 916 F.2d 865, 873 (3d Cir. 1990), cert. denied, 499 U.S. 923, 111 S. Ct. 1317, 113 L. Ed. 2d 250 (1991).

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<sup>19</sup> The holding in Ridgewood that there was no federal statute of limitations for compensatory education claims, has been superseded by statute, 20 U.S.C.A. § 1415, P.P. v. West Chester Area Sch. Dist., 585 F.3d 727 (3<sup>rd</sup> Cir. 2009)( A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint).

The legal standard for the granting of such relief is summarized by the Third Circuit as follows:

[A] school district that knows or should know that a child has an inappropriate IEP or is not receiving more than a de minimis educational benefit must correct the situation. If it fails to do so, a disabled child is entitled to compensatory education for a period equal to the period of deprivation, but excluding the time reasonable required for the school district to rectify the problem.

[M.C., supra, 81 F.3d at 397.]

As is evident in this matter, the district concedes, through the CST LDTC assigned to R.S., Nancy Mulcahy, that he has needed academic goals and objectives since September 2009; a full school year ago. But rather than advancing forward R.S.' academic and related needs for such goals and objectives, the district rather undertook efforts to de-classify him. Thus, I conclude that the district knew that R.S. had an inappropriate IEP. N.J.A.C. 6A:14-1.3 requires an IEP to set forth present levels of academic achievement and functional performance and measureable annuals goals and short-term objectives or benchmarks. Mulcahy knew the academic goals and objectives that should have been included in the IEP or IEPs for the 2009-2010 school year because she was able to formulate them during the course of this hearing. And the district failed to consider the private evaluations obtained by the petitioners, particularly the educational evaluation of LDTC Carole Aitchison when formulating the October 2009 IEP (P-43) because Mulcahy "forgot." This was not forgetfulness but rather an exemplification of the systematic disregard by this district for the academic and related needs of R.S. who is classified eligible for special education and related services. Under the circumstances, I **ORDER** the district provide compensatory education for one additional year. Thus, beyond the one year the district agreed in a settlement before Judge Martone that an out-of-district placement would be provided to R.S. along with transportation and related services, I **ORDER** the district continue to provide this placement at the Craig School for an additional year, provided it is still appropriate in accordance with the requirements of N.J.A.C. 6A:14-6.5(d), along with transportation and related services. Additionally, by way of compensatory relief, I also

**ORDER** the district to provide the social skills training that case manager Baker conceded have not been provided in accordance with the settlement reached before Judge Martone since December 2009 so that it does not otherwise conflict in time or methodology with the social skills training to be provided at the Craig School. This would include, but not be limited to, the one hour weekly home parent training.

An ESY program provides for the extension of special education and related services beyond the regular school year. N.J.A.C. 6A:14-4.3(c). An extended school year program is provided in accordance with the student's IEP when an interruption in educational programming causes the student's performance to revert to a lower level of functioning and recoupment cannot be expected in a reasonable length of time. Ibid. Taking into account all relevant factors, the IEP team must make an individual determination regarding the need for an extended school year program. Ibid.

The district board of education cannot limit extended school year services to particular categories of disability or limit the type, amount, or duration of those services. N.J.A.C. 6A:14-4.3(c)(1). The district must ensure that such services are available, as necessary, to provide a FAPE. 34 C.F.R. § 300.106. In this matter, the district's own CST members testified that R.S. needs an ESY which includes OT, social skills training, speech language related therapies and academics. Thus, I **ORDER** the district to provide the ESY offered at the Craig School as a means of transition and if such ESY has already been provided by the petitioners while awaiting this Decision, I **ORDER** the district to reimburse the petitioners for that cost, including, but not limited to, transportation.

I further **ORDER** the IEP team formulate an IEP consistent with this decision setting forth placement at the Craig School, with the appropriate goals and objectives to incorporate the recommendations of Carole Aitchison, Kathleen Scaler Scott, Sandra Bendokas, Abigail Healy, Diane Ames, Susan Smith-Foley and Noelle Cauda-Laufer. I further **ORDER** the IEP team include a transition plan for R.S. to incorporate the recommendations of Noelle Cauda-Laufer, if she is available to provide such services and I **ORDER** the district to provide remuneration for that plan. In the event Cauda-Laufer is not available to prepare a transition plan for R.S., the petitioners shall be

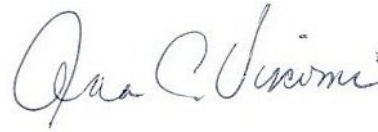
entitled to designate another suitably qualified professional to prepare that plan and the district shall be responsible for payment of the development of that plan. The placement of R.S. at the Craig School shall not be delayed pending completion of that plan. I further **ORDER** the district to continue to provide the services of Susan Smith-Foley for the provision of the continued home-based OT one hour weekly on weekends or according to a schedule arranged between the parents and Ms. Smith-Foley. I further **ORDER** the district to provide the consultation services of Kathleen Scaler Scott as the cluttering expert, as deemed needed, by Scaler Scott and the speech language pathologists at the Craig School.

### **DECISION AND ORDER**

Based on the foregoing, I **FIND AND CONCLUDE** that placement at the Craig School will provide FAPE in the LRE and meets the requirements of N.J.S.A. 18A:46-14, N.J.A.C. 6A:14-6.5, and 34 C.F.R. §§ 300.145 and 300.146. The petitioners' request for placement at the Craig School is hereby **GRANTED**. I further **ORDER** the relief previously addressed within this Decision without further delineating it in this section of this Decision. Additionally, I **ORDER** the respondent to reimburse the petitioners, for services and evaluations, including but not limited to, fees associated in connection with visits of the schools I previously ordered petitioners' experts and consultants to undertake as well as costs related to this hearing. I further **ORDER** the respondent to comply with the requirements of N.J.A.C. 6A:14-6.5(d).

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2009) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a District Court of the United States. 20 U.S.C.A. § 1415(i)(2); 34 C.F.R. § 300.516 (2009).

August 18, 2010



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DATE

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**ANA C. VISCOMI, ALJ**

**APPENDIX**

**WITNESSES**

**For Petitioners:**

Kathleen Mulcahy  
Gail Arek  
Michael Cudia  
Marcia Fiorentino  
Maryellen Grabowski  
Gloria Bland Katz  
Sandra Bendokas  
Carole Aitchison  
Noelle Cauda-Laufer  
Kathleen Scaler Scott  
Nancy Baker  
Abigail Healy  
Susan Smith-Foley  
Diane Ames  
David Blanchard

**For Respondent:**

None

**EXHIBITS**<sup>20</sup>

**For Petitioners:**

- P-1 Kathleen Mulcahy Learning Evaluation, February 24, 2009 and March 3, 2009
- P-2 Kathleen Mulcahy's plan meeting notes for R.S., dated January 13, 2009
- P-3 Kathleen Mulcahy's Craig School notes, dated February 1, 2010
- P-4 Kathleen Mulcahy's Center School notes, undated
- P-5 MAP testing results, Fall 2009
- P-5A MAP testing results, Winter 2010
- P-6 Affidavit of Kathleen Mulcahy, and other documentation filed in connection with RS v Shrewsbury BOE, US District Court – D.N.J., 3-10-cv-00671
- P-7 DOE website printout – Center School
- P-8 Center School program information
- P-9 Craig School program information
- P-10 Kathleen Scaler Scott fluency evaluation, dated August 12, 2009
- P-11 Affidavit of Gail Arek filed in connection with RS v Shrewsbury BOE, US District Court – D.N.J. 3-10-cv-00671
- P-12 February 17, 2010 IEP, Center School placement
- P-13 Kathleen Mulcahy's typed notes regarding Center School
- P-14 Petitioners' subpoena upon Center School, cover letter from Michael Inzelbuch dated February 16, 2010
- P-15 Gloria Katz resume
- P-16 Sandra Bendokas resume

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<sup>20</sup> It is important to note that discrepancies may exist in how a specific exhibit was identified during the course of the hearing and how it appears within this Decision and appendix. This occurred due to counsel not having sufficient copies of the exhibits during the course of the hearing. As a result, the ALJ numbered the exhibit in the manner it was identified during the course of the hearing but counsel may have numbered it differently. During the reconciliation of the evidence, the discrepancy surfaced and counsel agreed to particular numbering as noted within this appendix and ultimately the Decision. It should also be noted that the failure to provide sufficient copies of the exhibits during the course of the hearing was attributable, at times, to respondent's failure to comply with the discovery deadlines as set forth in N.J.A.C. 1:6A-10.1 and 34 C.F.R. § 300.512.



- P-17 Sandra Bendokas report, dated October 16, 2009
- P-18 Sandra Bendokas report, dated January 14, 2010, only as to Craig School
- P-19 Sandra Bendokas report dated, June 18, 2009
- P-20 Carole Aitchison education evaluation, dated June 22, 2009
- P-21 Carole Aitchison addendum, dated August 25, 2009
- P-22 Carole Aitchison school observation of the Craig School, dated March 1, 2010
- P-23 Children's Specialized Hospital evaluation summary, dated June 18, 2009
- P-24 Noelle Cauda-Laufer report, dated February 1, 2010
- P-25 Noelle Cauda-Laufer report addendum, dated March 5, 2010
- P-26 Kathleen Scaler Scott CV
- P-27 Kathleen Scaler Scott report, dated October 15, 2009
- P-28 Kathleen Scaler Scott report, dated December 21, 2009
- P-29 Kathleen Scaler Scott addendum of February 21, 2010
- P-30 Karen Kimberlin report of June 2009
- P-31 Abigail Healy's handwritten notes, dated February 1, 2010 regarding Craig School
- P-32 Acceptance/Rejection Form, dated October 28, 2009, re Bendokas report
- P-33 Rutgers FBA, dated October 17, 2009
- P-34 Rutgers Pilot Program Instructions, dated October 17, 2009
- P-35 "Things to do" form
- P-36 Certification of Nancy Baker, dated January 29, 2010
- P-37 Nancy Baker notes regarding documentation of contact with Craig School
- P-38 Fax cover sheet, dated January 7, 2010 re documentation of contact with Craig School
- P-39 Craig School notes made by Mrs. Baker on April 21 as to class did not observe on first visit
- P-40 Abigail Healy speech evaluation of January/February 2009
- P-40A Kathleen Mulcahy Learning Evaluation, dated February 24, 2009

- P-41 Acceptance/Rejection form re Karen Kimberlin evaluation completed by Abigail Healy
- P-42 Acceptance/Rejection form re Kathleen Scaler Scott speech evaluation of August 12, 2009, completed by Abigail Healy
- P-43 IEP with implementation, dated of October 1, 2009
- P-44 Abigail Healy e-mail, dated June 9, 2009 to petitioners re authorization form
- P-45 Abigail Healy notes
- P-46 Susan Smith Foley CV
- P-47 Susan Smith Foley OT evaluation, dated July 14, 2009
- P-48 Susan Smith Foley OT Progress Summary Report, dated February 21, 2010
- P-49 E-mail of January 11, 2010
- P-50 April 21, 2006 Ames report
- P-51 January/February 2009 Ames reevaluation
- P-52 2009 Ames three-page fax to K. Gilfillan, Esq.
- P-53 June 12, 2009 psychological evaluation by Lawrence Halpern
- P-54 Mrs. Ames' notes
- P-55 Mrs. Ames' notes re: phone messages
- P-56 Acceptance/Rejection form completed by Ames re Foley
- \*\*
- P-58 Memo of May 18, 2006
- \*\*
- \*\*
- P-61 WISC IV scores of students in group that RS would be in at Craig
- P-62 Application to Craig
- \*\*
- P-64 January 17, 2010 Attanasio report, limited to interviews as to Baker and Arek, respectively
- P-65 FBA observation notes of Mrs. Frankel, June 2009
- P-66 Progress notes of Camp Excel
- P-67 July 5, 2006–May 18, 2007 IEP
- P-68 May 1, 2007–May 1, 2008 IEP

- P-69 September 15, 2008–April 24, 2009 IEP
- P-69A IEP March 2009, re declassification
- P-70 FBA completed by H Overton October 17, 1989 (with coral-colored highlighted marks made by Mrs. Baker)
- P-71 E mails, dated January 17, 2010, MS to Baker and reply
- P-72 New Road School
- P-73 Notes re discussion with Cindy Morley re New Road School
- P-74 Letter from Pearl Charatz to Craig
- P-75 Mrs. Baker’s notes re Craig
- P-76 More Mrs. Baker’s notes re Craig
- P-77 Mrs. Baker’s notes on IEP tracker system
- P-78 Handwritten objectives by Mrs. Mulcahy
- P-79 Craig notes by Mrs. Mulcahy, visit #2
- P-80 Vocabulary words’ sign utilized in Mrs. Arek’s class
- P-81 NJ DOE list of schools, School for Children
- P-82 April 7, 2010 letter Attanasio to Baker

**For Respondent:**

- D-1 E mail Janet Cozine to MS
- \*\*
- D-3 Craig School History and Mission
- D-4 Holly Ricker report
- D-5 Kathleen Scaler Scott Pediatric Fluency Case History Form
- D-6 R.S. Chart of Evaluations
- D-7 Kathleen Scaler Scoot “Tuning In to Listener Feedback” with attached e-mail from Harriett Hughes-Rex, dated May 4, 2010 re cluttering therapy
- D-8 Kathleen Scaler Scott observation notes of Craig School limited to March 25, 2010
- \*\*
- D-10 Craig Lower School – Strategies for Learning
- D-11 October 3, 2008 Mrs. Charatz to Mrs. Baker
- D-12 Subpoena served upon Craig School, limited as per my ruling

- D-13 Craig School curriculum
- D-14 Handwritten consent order by Michael Inzelbuch re matter before Judge Martone
- D-14A Craig School schedule
- D-15 Craig school visit
- D-15A Mrs. Baker's handwritten notes re Marlboro school visit
- D-16 Prospective student visit
- D-17 October 2009 Acceptance/Rejection form completed by Mrs. Mulchahy re: Aitchinson June 2009 report
- D-18 Summary of settlement prepared by Schwartz, Simon
- D-19 Mrs. Baker's notes re: final consent Order
- D-20 Handwritten notes regarding retaining Mrs. Attanasio
- D-21 Letter to OSEP from Schwartz, Simon re OSEP complaint
- D-22 Notes by Mrs. Baker re contacts with Mrs. S regarding out-of-district placement
- D-23 Notes re: contacts on potential placements prepared by Mrs. Baker and Mrs. Charatz, respectively
- \*\*
- D-25 June 2, 2009 parent request re independent evaluations
- \*\*
- D-27 Mediation agreement of June 17, 2008
- D-28 April 21, 2010 Craig school notes of Mrs. Baker

\*\* Intentional interruption in numerical sequence; denotes exhibit marked for identification but not admitted into evidence