

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 12086-16

AGENCY DKT. NO. 2016-24752

S.S. AND D.S. ON BEHALF OF S.S.,

Petitioners,

v.

PARSIPPANY-TROY HILLS TOWNSHIP

BOARD OF EDUCATION,

Respondent.

Beth A. Callahan, Esq., for petitioners (Callahan & Fusco, attorneys)

Eric L. Harrison, Esq., for respondent (Methfessel & Werbel, attorneys)

Record Closed: June 20, 2017

Decided: July 31, 2017

BEFORE **KELLY J. KIRK**, ALJ:

STATEMENT OF THE CASE

Petitioners, S.S. and D.S. (parents or petitioners), on behalf of their son, S.S.,¹ filed for a due-process hearing against respondent, Parsippany Troy-Hills Township Board of Education (District), alleging that the District's proposed in-District program for S.S. was not appropriate, and that an out-of-district placement at SEARCH Consulting, LLC, was appropriate.

¹ To avoid confusion, the mother, S.S., shall hereinafter be referred to as "Mom," the father, D.S., shall hereinafter be referred to as "Dad," and the child, S.S., shall hereinafter be referred to by the fictitious name "Sam."

PROCEDURAL HISTORY

On June 22, 2016, petitioners' request for due process was filed with the Office of Special Education. The District's answer was filed with the Office of Special Education on July 14, 2016. The Office of Special Education transmitted the matter to the Office of Administrative Law, where it was filed on August 11, 2016. I heard the matter on January 17, 2017, January 18, 2017, March 27, 2017, and April 18, 2017. Written summations were submitted for a final hearing date, June 20, 2017, on which date the record closed.

FACTUAL DISCUSSION

Victoria Chomut, Anthony Giordano, Johanna Greco and Heather Pane testified on behalf of the District. Carrie Kahana, Katherine DeCotiis Wiedemann, David Sidener and Mom testified on behalf of petitioners.

Background

Having had an opportunity to consider the evidence and to observe the witnesses and make credibility determinations based on the witnesses' testimony, I **FIND** the following **FACTS** in this case:

Sam was born in April 2010. Sam and his parents resided in Alabama. He was diagnosed with autism spectrum disorder (ASD) by Dr. Stacey Ladden, a psychologist, in 2012. Sam attended Mitchell's Place, in Alabama, from August 2012 until February 2016.

An IEP was implemented for the August 2015–August 2016 school year for Mitchell's Place (MP IEP). The MP IEP reflects that Sam was “primarily reinforced by toys that have a cause-and-effect type outcome, musical toys, various iPad games (Fisher-Price animal apps), movies (Elmo, Sesame Street, Dora, Sid the Science Kid, Bubble Guppies), and movement activities, such as running, swinging on a platform

swing and jumping on a trampoline.” (R-3.) The MP IEP also reflects that Sam has behavior that impedes his learning or the learning of others; that he requires assistive-technology devices and/or services; and that barriers to learning include failure to generalize, self-stimulation, and hyperactive behavior.

Victoria Chomut, MSW, LCSW, is a licensed clinical social worker, a certified trauma-counselor specialist, a new Jersey licensed certified school social worker, and a New Jersey licensed social worker. (R-17.) She has been a school social worker in the District since September 1995. Johanna Greco,² MA, LDT-C, holds teaching certificates for Pre-K through 3 and K through 5 Elementary, and for Teacher of Students with Disabilities. She has not worked as a special education teacher, but has worked with students with disabilities. She has been a learning disabilities teacher-consultant (LDTC) since 2015. (R-20.) Greco is a member of the Child Study Team (CST). Heather Pane, MA, BCBA, has been certified as a teacher of the handicapped since 2003. She has been a board-certified behavior analyst (BCBA) since 2005 and is presently a doctoral candidate in applied behavior analysis (ABA). Pane is the co-owner of Pane Consulting, LLC, where she works as a behavior analyst, and she is presently a BCBA for the District and for the Essex Fells Board of Education. (R-25.) Anthony Giordano has been the District’s director of pupil personnel services for almost three years. Giordano holds several New Jersey certifications, as follows: principal; director of school counseling services; supervisor; student personnel services; teacher of the handicapped; and teacher of social studies. He has previously been employed as a special education teacher and a guidance counselor. (R-19.)

On November 6, 2015, Mom emailed Giordano as follows:

I am [Mom] and our family is considering relocating to New Jersey this spring. We are starting the initial phase of identifying school districts that best meet our needs for our five year [old] son who has a[n] ASD diagnosis. What is the process of having a[n] introductory telephone conversation with you about . . . the PTHSD?

[R-27.]

² Johanna Greco was formerly known as Johanna Hedler. She will herein be referred to as Greco.

Giordano replied that he was out of the office that day, and provided his telephone number and advised that Mom could call him on Monday. (R-27.) On November 13, 2015, Mom replied that she had been swamped that week trying to assist their ABA therapist with outside sources and hoped that she could connect with Giordano later that day between 3:00 p.m. and 4:00 p.m., or if not, she could call him Monday afternoon around 3:00 p.m. Giordano advised that if Mom gave him her telephone number, he would call her on Monday at 3:00 p.m. (R-27.) Giordano and Mom spoke on Monday afternoon. On November 17, 2015, Mom emailed Giordano thanking him for taking the call on Monday afternoon and stating that she looked forward to hearing from Giordano on Tuesday morning. (R-27.) Mom attached to the email a brief narrative from Nicole Mishkin, MAE, BCBA, at Mitchell's Place, to explain Sam's current status to help with the conversation. (R-27.)

The Mitchell's Place narrative reflects that Sam was beginning his fourth year in their 1:1 ABA program, attending five days per week; throughout the years Sam made progress in all areas and had always done well in acquiring skills during table-time intensive teaching situations; many areas of concern had come into play in their recent programming with generalization and maintenance of acquired skills over time; they were struggling with the stimulus-and-response generalization components of teaching and with Sam's ability to make verbal conditional discriminations; Sam had difficulty learning to emit a variety of verbal responses to the same verbal stimulus; Sam wants to revert back to the first response he was taught and will engage in escape-maintained behavior (flopping to the floor, crying, hitting therapists) and acts visibly frustrated when further teaching procedures are implemented; Sam struggles with more complex verbal conditional discriminations; Sam struggles when having to attend to stimuli presented in mixed order; Sam's echoic repertoire, taught in a unique way, had increased significantly from when he entered the program; and the use of a response prompt had proved helpful when teaching phrases in the natural environment. (R-27.)

On November 17, 2015, Mom emailed Giordano as follows:

I can not thank you enough for calling me back this morning. I feel so much confident about our upcoming move to your area. I look forward to speaking with your ABA Therapist when she connects with me. I have looked at your school calendar and will likely plan a week long trip there prior to Spring Break. I will keep you posted or connect with any questions that pop up. Thanks for serving with passion!

[R-28.]

Sam attended the BACA Atlas Clinic from January 5, 2016, through January 6, 2016. On January 12, 2016, BACA Atlas prepared an Assessment Report and Recommendations (BACA Report) for Sam. (P-1.) The BACA Report reflects that its recommendations were “based on observations and assessments conducted with [Sam] during his BACA Clinic visit from January 5th through January 6th, 2016, as well as anecdotal reports from [Sam’s] parents with the BACA Atlas Clinical Team.” A Verbal Behavior Milestones Assessment and Placement Program (VB-MAPP) assessment was not completed at that time, but components of the VB-MAPP were tested, and the Intraverbal Subtest was conducted. (P-1.) The BACA Report recommendations include general recommendations, mands, preferred activities/reinforcers, instructional control, tacts, listener responding, echoic, imitation, listener responding by function, feature, and class (LRFFC), intraverbal, classroom routines, and group skills. (P-1.)

On February 8, 2016, Mom emailed Giordano as follows:

I hope that you are well. You and I spoke in great details a few months ago and you told me to connect with you during my visit there as we prepare to relocate. As a refresher the string of emails are below. Are you free next Thursday or Friday between 12:00–2:00 for a brief in person meeting?

[R-29.]

Giordano replied that he was available to meet Thursday, February 18, 2016, at 12:00 p.m. at his office. Mom replied that she would see him then. (R-29.) On February 17,

2016, Mom emailed Giordano that she was looking forward to meeting with him the following day for a brief introductory meeting. (R-30.) Mom met with Giordano on February 18, 2016. On February 26, 2016, Mom emailed Giordano as follows:

I can not thank you enough for taking time to meet with me last week to let me know what Parsippany has to offer. We are still in the process of transitioning there from Alabama. I hope our paths cross again REALLY soon. Your fire, energy and passion are so evident and your students are so fortunate to have you on their team.

[R-31.]

On March 2, 2016, Mom emailed Giordano as follows:

I am thrilled that we are in the process of finalizing a lease agreement for Parsippany. Please let me know where I can start the process of enrolling? The lease should be finalized by Friday, after the three day waiting period. I would like to get the ball rolling before the weekend. We will be in the area March 25–29th and moving there for good Mid-April. I would like the March visit to encompass any visits we need to make in advance of placement. We have a narrative of his barriers from his current BCBA that was written for an outside consultant BACA of Indianapolis. The team at BACA included Dr. Sundberg who's [sic] brother developed the VB-MAPP. We could offer that as well.

[R-32.]

On March 4, 2016, Giordano replied and requested that Mom provide him with her current mailing address so he could mail her the preschool packet and she could start the process of getting her doctor to sign and fill out the form, complete the questionnaire, etc., which all takes time. Giordano advised that once she had a lease, she could contact the school to make an appointment to bring Sam in to meet with the CST. Giordano also requested that she please let him know what her new address would be so he could determine whether to send her either the LH or EL packet, which are the schools where the pre-school programs are housed. (R-32.) Mom replied that they were still hammering out the lease, but provided both her Alabama address and

the potential new address. She also replied that she sent another email stating that Sam would be 6 in April and she was not sure how preschool there works. (R-32.)

On March 13, 2016, Mom emailed Giordano and copied Denise Basile, secretary to Giordano, that she was not sure if they got the email with her home address, because she had not received the packet. Mom provided Basile with the Alabama address and the New Jersey address to help determine which school Sam would be enrolled in. (R-33.) On March 14, 2016, Basile emailed Mom the information regarding the school Sam should register at and the contact information for the school secretary. Basile advised Mom to contact the school secretary, Donna, for further registration procedures and stated that she should visit the website at <www.pthsd.k12.nj.us> for further information and to obtain a registration form online. (R-33.) Mom replied and thanked her, and asked whether registration was online or if she should expect the EL or LH packet so she could have the forms filled out prior to registration in a few weeks. (R-33.) Basile replied as follows:

Hello again—The packet we initially planned on mailing to you is for preschool only. You mentioned that your child will be 6 in April and, therefore, will need to register for first grade. The registration form, health form, and further information is available on our website. Please feel free to download these documents and complete the paperwork prior to your visit to Parsippany. For further registration procedures and to make a registration appointment at the Troy Hills School, please contact the school secretary.

[R-33.]

On March 15, 2016, Mom emailed Donna Martinez at the Parsippany-Troy Hills school district (PTHSD) identifying herself as the family relocating from Alabama and thanking Martinez for taking her call yesterday regarding Sam, who would require special services. Mom attached to the email, which she noted would be the first of two emails due to file size, the following documents: 1) VB-MAPP Language Barriers Scoring Form and VB-MAPP Master Scoring Form; 2) Activity Based Teaching—Play/Center Time—Trains/Trucks; 3) current IEP from Mitchell's Place (which Mom noted had been revamped); and 4) Sam's current tacting list. (R-34.) Thereafter, Mom

emailed Martinez again and attached the following documents: 1) Mitchell's Place narrative; 2) BACA report; and 3) redacted copy of the signed lease. Mom's second email further states as follows:

Lastly, I am working on the registration forms and I hope to have those to you by the end of the week. We will be in the area all day on Monday 3/28 until noon on Tuesday 3/29th. We hope to register at that time and meet with your staff, if possible. We will return the last week of April and we move into our residence May 1. During our March visit I will also bring a hard copy of the attached items which will include his full name and signatures. The current version uses the word student. Thanks so much for your assistance with our transition.

[R-35.]

On March 15, 2016, Martinez thanked Mom in response to the first of the two emails. On March 22, 2016, Mom emailed Martinez as follows:

Last week I sent you information in advance of our enrolling. Would it be possible for us to schedule a time to enroll our son Monday March 21st (after 11:00 am) or Tuesday March 22nd (before 1:00 pm) and perhaps meet the CST. We will be in town for those days and officially moving to the area at the end of April. We the [sic] anticipation of starting school May 2. Thanks in advance for your help.

[R-36.]

Martinez inadvertently replied to Mom, including the emails of March 15, 2016, and March 16, 2016, stating that she had given everyone all the information and asking for advice because she did not really know what to do with this registration. (R-36.) Mom replied, advising Martinez that she may have inadvertently sent the email to her an asking Martinez to check with the intended recipient to see if that person could assist Martinez with the registration. (R-36.) Mom also advised that Martinez could give the intended recipient her contact information and cell phone number if that would expedite the process because they hoped to enroll Sam while they were in town the following week. (R-36.)

On March 22, 2016, Sam began attending Milestones Behavior Group, Inc. (Milestones) in Alabama. (R-50.)

On March 24, 2016, Martinez replied and advised Mom that she had forwarded the email to everyone who needs to have access to the information, but that she had not heard anything from the CST. Martinez asked Mom to give them a phone call. Mom replied that she would be more than happy to call and asked Martinez to provide her with the CST point-of-contact name and contact information.

On March 28, 2016, Mom emailed Chomut as follows:

This email is a follow up to a message that I left for you last week on your office voicemail. My son, [Sam], will be enrolled in your school by the first week of May. It is my understanding that Donna Martinez has forwarded some preliminary information to you. We are in town until Wednesday 11/30th [sic] and would like to do as much as we can to assist with the process for enrollment and placement. You may call me at [#] with any questions or directives.

On March 31, 2016, Mom emailed Chomut as follows:

We are back in Alabama and headed to Houston later today. I wanted to pause and gather as much as I could but more importantly THANK YOU for taking time to meet with me yesterday for an impromptu conversation. The process is becoming clearer. For some reason and many have explained this to me it is just clicking that referral and out of district placement are essentially the same thing. I thought one meant we would be referred to a private school (and we absorb some of the cost) or out of district placement where you find a school in another district with a suitable program. WOW months of thinking wrong. The good news is that the schools that you wrote down we have looked up. Yesterday I assumed they were public schools in other districts, until I looked them over. To that end, I know we will find a fit. We found out about Epic and Garden through BACA and we are very familiar with what they have to offer, their school and leadership. We are not interested in Epic. To that end, I am

digging through files to see if we need to do an eval again . . . and I look forward to meeting with you in the upcoming weeks to visit other schools and do an eval, if necessary.

On April 3, 2016, Mom emailed Chomut and attached a 2015 Occupational Therapy evaluation for sensory processing therapy and an Interdisciplinary Evaluation and Treatment Planning Report from Mitchell's Place, which Mom stated was Sam's initial evaluation. Mom advised that she had a neurological report from 2015 if something else was needed. Mom also stated that she would "like to visit there on a Thursday and/or Friday in the upcoming weeks to look at schools and to complete enrollment." (R-39.)

On April 4, 2016, Chomut replied that she appreciated the documents that were sent and she requested that the neurological report also be sent. Chomut stated that she was forwarding the information to her colleagues on the CST and checking to see what dates they were available to meet for Mom to sign paperwork. Mom replied and attached "the most recent neuro report from Dr. Richard Frye of Arkansas Children's Hospital." (R-40.) Mom asked Chomut to send the names of the other CST members. Mom also advised that although she suggested a Thursday or Friday because flights were cheaper and sitter options were better, if other days were best to meet sooner, she would adjust. The Autism Clinic Note from Dr. Frye, dated March 17, 2015, reflects that Sam's physical and neurologic exams were rather unchanged from his previous visit, and some testing and treatment recommendations. (R-40.)

On April 4, 2016, Mom emailed Chomut and attached Sam's Occupational Therapy Discharge Summary from Mitchell's Place. (R-41.) Mom advised Chomut that she did not have one for speech because they pulled Sam from that program to focus on ABA during the transition. She further advised that she did have summaries of the weekly reports as recent as a few weeks prior that she could email. (R-41.)

On April 5, 2016, Mom emailed Chomut and attached: 1) the BACA report; 2) Mitchell's Place narrative; and a CST and administrator access letter. The access letter stated that it was official confirmation that the parents were in agreement that Chomut could share Sam's information with the CST, District officials, and other

administrators and/or officials associated with out-of-district institutions and learning facilities that were potential providers for Sam. (R-42.) Mom asked that she be kept abreast as Chomut worked through her list of possible candidates for Sam, and stated that they were available on April 21 or April 22 for morning evaluations and school visits. (R-42.) On April 6, 2016, Mom emailed Chomut as follows:

I hope all is well. Below are the schools that I am interested in. I understand that we may not visit all of them, even if I can go alone just to step foot on their campus that would be helpful. They are listed in priority:

1. Alpine
2. Allegro
3. Children's Institute
4. Deron School
5. New Beginnings
6. Garden (interested but we have visited this one)

Thanks for all that you do[.]

[R-43.]

On April 11, 2016, Milestones prepared a Behavior Intervention Plan and Skill Acquisition Program for Sam. (R-50.)

On April 14, 2016, Mom emailed Chomut and asked if she had an update on the schools open to them visiting next week and a schedule for Sam and his evaluation. (R-44.) On April 19, 2016, Mom emailed Victoria Chomut as follows:

I hope all is well. I wanted to make sure that [Sam's] records were sent to Alpine Learning Group. I spoke with Dr. Taylor this morning and although they do not currently have an opening she is willing to meet with us for about an hour. I told her Friday afternoon would be best. This way it should not interfere with anything you have scheduled. I hope the time that she has open works for you or someone on your team so that you can make the connection as well. Please confirm that Alpine has his records and I look forward to an agenda for the mornings of April 21 and April 22. I will let you know as soon as I am told what time she is free.

[R-4; R-45; P-18.]

Chomut replied to Mom as follows:

I currently have scheduled visits for us to tour schools that have space for [Sam]. (New Beginnings is trying to make a spot and are [sic] working on possibly reconfiguring their classes.) I am working on coordinating exact times and have Deron and New Beginnings booked for Thursday 4/21 and DLC and Allegro booked for Friday 4/22. I am happy to send [Sam's] records to Alpine but since they do not have an immediate opening you may want to schedule that visit for a later date. Perhaps you may be able to extend your trip through next week? The Team is looking forward to evaluating [Sam] for necessary eligibility documentation on Thursday 4/21 at 10 am. I understand that [Dad] will be bringing him to Troy Hills School for this evaluation while you and I are visiting various programs. Please note that [Dad] needs to remain at the School while [Sam] is being tested. If you have any questions please feel free to contact me. I will send you an email with the exact times/address for these appointments tomorrow.

[R-4; P-18.]

On April 19, 2016, Mom emailed Chomut as follows:

[Sam] will see Dr. Taylor of Alpine for a consult at noon Friday. I know you have other commitments and we will be fine without a CST member. We just was [sic] her eyes on him and to learn from her.

On April 20, 2016, Chomut emailed Mom the appointments that Chomut scheduled at various schools on Thursday and Friday. Per the email, they were to tour Deron and New Beginnings on Thursday and Developmental Learning Center and Allegro on Friday. (R-45.) Mom replied and thanked Chomut. On April 21, 2016, Mom emailed Giordano as follows:

I hope you are well. I have hit a wall with the school enrollment process. I am the mom that contacted you in November and who you met with a few months ago as we

transferring [sic] from Alabama. We drove here this week for an evaluation and to visits [sic] schools in advance of our permanent move next week. We have provided the school with a 14 page report from Dr. Sundberg (BCBA) to help guide the process. It is a blue print of services he is in need of. We were told this morning, after arriving for the evaluation, that we could not be evaluated and I am unclear as to why. I asked the Social Worker Vicky Chomut to help me get the ball rolling so that my son is not at home without services for a month then out of school for summer. My husband will be commuting so this is the week we took off to make all the necessary visits etc. Please let me know what we need to do. Thanks [Mom #]. We have, to my knowledge, completed all the necessary paperwork.

Giordano replied that he was out of the office in a meeting for the next three hours or so, and he asked Mom to give him a day to look into it and speak to Chomut and sort it out. (R-46.) Mom replied and thanked him, and stated that she would continue visiting possible schools, but hoped that she could get a morning evaluation because they would be driving back the following afternoon. (R-46.) Giordano replied that the issue was that evaluations cannot be done in one day, particularly if more than one evaluation is needed. He further advised that the team has to meet and review all the documentation she provided and that she should wait to hear from him or one of the supervisors. Mom forwarded Giordano's reply to Chomut and stated as follows:

Please see below. I thought it was an [sic] one hour evaluation. Not sure what is going on with the process. I have been asked to wait to hear from Mr. Giordano. I appreciate you going the extra mile and will wait to hear from you all. I will honor the appointments tomorrow. Please send contact names, if you can. Obviously this turn of events is incredibly disappointing, but we will adjust.

[R-46.]

An Initial Planning Meeting was held on April 21, 2016, and attended by Dad and Greco. (R-5.) As a result of the identification and evaluation planning meeting, the District proposed that an educational evaluation and a psychological evaluation be conducted because Sam's area of suspected disability was "autistic." (R-6.) On April 21, 2016, Dad signed an Authorization for Release/Exchange of Information for the Troy

Hills CST to exchange verbal and written confidential information about Sam with Milestones. (R-7.) On April 22, 2016, Mom emailed Chomut as follows:

We have decided to head home. I think it's best if someone is with me on the visit and that we are on pace to be enrolled so that we can manage our expectations. Please let me know if I need to cancel them.

[R-47.]

Chomut replied and asked if Mom was still in New Jersey, and, if so, that perhaps they should speak. Mom replied that she left a message today because she did not have email, and Mom asked Chomut to let her know what other paperwork was needed because she was leaving Alabama next Friday and wanted to be sure they were covered. (R-47.)

On April 27, 2016, Mom emailed Giordano as follows:

Is there an update on our registration ([Sam] Troy Hills Elem.)? Please let me know if you need anymore [sic] information and when we can expect to get registered and evaluated. We will be there permanently this weekend. Thanks in advance for helping us with this. It goes without saying this has been a very stressful time for our family.

[R-48.]

Giordano replied that someone from the CST should be reaching out to her either that day or the following day and to let him know if she did not hear from them. (R-48.) On April 28, 2016, Mom emailed Giordano and advised that they were now scheduled for meetings.

Sam's last day at Milestones was April 28, 2016. (R-50.) Sam was officially registered in the District on April 30, 2016.

On May 5, 2016, Mom signed Authorizations for Release/Exchange of Information for the Troy Hills CST to exchange verbal and written confidential

information about Sam for Reed, Garden Academy, Alpine Learning Group, and Epic. (R-7.) On May 12, 2016, Mom also signed an Authorization for Release/Exchange of Information for “out of district school per CST suggestions or parent(s) requests.” (R-7.)

On May 5, 2016, a Psychological Evaluation was conducted by Susan Landesberg, M.S. (R-8.) In summary, the Psychological Evaluation reflects that Sam was functioning in the mild/moderate scale across the autistic spectrum; he displays significant delays in the areas of communication, self-help skills and socialization skills; intellectual functioning appeared commensurate with his overall functioning of adaptive skills; relative strengths were noted in his ability to perform rote tasks, identify numbers and letters, perform gross motor activities, and engage in purposeful and routine activities within the home environment; Sam was able to follow one-step directions and two-step directions with prompting; he has benefited from his ABA instruction, requiring prompting and direction in order to perform most tasks; he is interested in specific items and toys and he will tolerate the presence of peers but does not yet seek them out; he shows a preference for specific people and displays signs of affection; his display of feelings is not consistently on par with specific situations but he can make his needs known with or without the use of language; easily distracted, he was able to remain within the evaluation setting and was readily comforted by both his mother and father; and while his mother reports that he can speak in two- to three-word sentences, that was not observed during the evaluation. (R-8.) His Stanford-Binet Intelligence Scales Nonverbal IQ was 59. (R-8.) The Psychological Evaluation further reflects that Mom provided information covering the areas of communication, daily-living skills, socialization, and motor skills using the Vineland Adaptive Behavior Scales, Second Edition, Parent/Caregiver Rating Form. (R-8.) Sam’s scores were as follows:

- Communication—59: Receptive Age Equivalent 1.11; Expressive Age Equivalent 1.7; and Written Age Equivalent 4.5
- Daily Living Skills—66: Personal Age Equivalent 3.2; Domestic Age Equivalent 5.6; and Community Age Equivalent 1.10
- Socialization—59: Interpersonal Relationships Age Equivalent 1.0; Playing and Leisure Time Age Equivalent 1.0; and Coping Skills Age Equivalent 2.5

- Motor Skills—61: Gross Age Equivalent 2.11; Fine Age Equivalent 2.9

On May 8, 2016, Mom emailed Greco to verify that she had the correct email address for Greco to send her some information. Greco responded to Mom that she was looking forward to meeting that week and to feel free to send any information to her. (R-50.) On May 9, 2016, Mom emailed Chomut as follows:

Thanks for visiting our home today. I did look at the information on Douglas School and it is very impressive and seems to be along the lines of ABA driven. I am not sure how to gauge the level of intensity without getting feedback from some of the leaders or visiting. Also, the drive is much further than we would like considering I will be working from home and my husband in Manhattan. The other schools are a drive but not out of our current foot print and not as far. I have to consider so many variables with him being an hour away.

[R-49.]

On May 9, 2016, Mom emailed Greco and Chomut the May 5, 2016, Discharge Summary from Milestones, and advised that she was waiting for the VB-MAPP and Assessment of Basic Language and Learning Skills (ABLLS) results that were compiled. Mom requested that the document be forwarded to the CST to be placed with Sam's file. (R-50.) The Discharge Summary reflects that Sam was receiving approximately forty-five hours of direct ABA therapy from a team of two BCBAs and two registered behavior technicians in a clinical setting. (R-50.) The Discharge Summary includes a Behavior Intervention Plan and Skill Acquisition Program, dated April 11, 2016. (R-50.)

On May 9, 2016, a Social Assessment was performed by Victoria Chomut, MSW, LCSW. (R-9.) Chomut prepared a Social Assessment report on May 10, 2016. (R-9.) Chomut shared local-recreation, special-needs parent, and Division of Developmental Disabilities (DDD) information with Mom, and planned that a CST/parent conference be scheduled to discuss CST evaluations and make appropriate recommendations and plans. On May 10, 2016, Mom emailed Chomut and asked her to call her on

Wednesday if she had time because she had a few questions regarding finding resources to assist with their transition. (R-51.)

On May 12, 2016, an Educational Evaluation was performed by Greco. Greco prepared an Educational Evaluation Report on May 17, 2016. (R-10.) The Woodcock-Johnson IV and the Wechsler Individual Achievement Test, Third Edition (WIAT-III) were attempted but discontinued because Sam did not have the necessary prerequisite skills for the assessments to be valid. During the Functional Assessment, Sam recited the alphabet and identified letters both receptively and expressively; he counted items, both in numeric and picture form; he requested items using the words, "I want _____"; he followed directions with prompts, but required continuous feedback to maintain attention; his formation of letters and numbers was at the beginning stage; he can hold a pencil with proper grip when guided to do so; he traced and wrote letters with hand-over-hand assistance, and when Greco released some pressure, a few letters were noted at the emerging level to classify items; Sam displayed a foundation of basic identification skills in math and letter recognition; and Sam can request items using sentence structure, but did not compose functional sentences beyond that ability during testing. (R-10.)

On May 19, 2016, Landesberg emailed Mom and asked her to forward the neurological report with diagnosis. Mom replied and attached the Autism Clinic Note from Dr. Frye. Landesberg replied and thanked her for the Autism Clinic Note, but advised that they were looking for the initial diagnosis from a psychiatrist or neurologist from when Sam was 2.5 years old. (R-52.) She also asked whether Dr. Frye was a neurologist or psychiatrist. Mom replied and advised that Dr. Frye is a neurologist and that the initial evaluation at 2.5 years old was from a psychologist.

On May 19, 2016, Greco emailed Mom the Educational Evaluation and advised that she would provide a copy at their meeting later that afternoon. (R-53.) An initial eligibility determination with IEP meeting was held on May 19, 2016. (R-12.) The Draft IEP reflects Sam's proposed placement for May 23, 2016, to June 23, 2016, and for September 6, 2016, to June 23, 2017, as Special Class Autism with an individual personal aide daily for 390 minutes.

On May 19, 2016, Mom emailed Greco³ thanking her for the informative meeting earlier that day and asked that she be sent an electronic copy of the evaluation if that had not been done already. She also requested an email copy of the Draft IEP because she wanted to send them to her husband in advance of his return that weekend. (R-54.) On May 20, 2016, Greco replied and attached the Draft IEP. Greco advised that they would continue to make changes to the document until placement was finalized. (R-54.) Mom thanked Greco for the Draft IEP.

On May 24, 2016, the family went to Rockaway Meadow School for a tour of the District's program. After a brief tour, the family and staff convened for a meeting. Later on May 24, 2016, Mom emailed Greco, Chomut, and Landesberg, and asked them to send the revised IEP that was discussed during the meeting earlier that day when she was visiting and learning more about the program. (R-55.) On May 25, 2016, Martinez emailed approximately eight District employees, and copied Mom and approximately five other District employees, as follows:

[Parents] observed the Autistic programs yesterday. [Sam] will be attending Ms. [Cevetello's] class at Rockaway Meadow beginning June 1st as well as the ESY program at Lake Hiawatha on July 1st. Transportation has been arranged and he is registered at Troy Hills School. Paperwork should be forwarded to Rockaway Meadow as soon as possible. A draft of the IEP has been developed. The ABLLS-R (The Adaptive Language and Learning Scale – Revised) will be administered when he begins the program and teachers and therapists can then provide summaries and goals developed from the assessment. Susan Landesberg (Case Manager from Troy Hills) will be at Rockaway Meadow on June 1st along with Vicky Reinhard (Social Worker—Rockaway Meadow). Please feel free to contact if there are any concerns. Some important information concerning [Sam]. Food will be provided by [Mom]. He can neither eat nor drink any items (including drinking from the water fountains!) that do not originate from home. Thank you all for your immediate attention and

³ It appears that the email went to one or more other recipients as well, because Mom stated, "Hello Ladies," but the identity of any others cannot be ascertained.

assistance in meeting [Sam's] educational needs. We look forward to a great year.

[R-56.]

On May 25, 2016, Landesberg emailed Mom that she was glad the parents were able to attend yesterday and that she would be forwarding explicit information and directions to all staff involved, which they would receive, and attaching a copy of the draft IEP. Landesberg explained that the dates were June 1 to May 19 in order to comply with the time of the initial meeting. She advised that teachers and behaviorists would be able to meet with them or provide programs directly into the IEP. (R-57; R-58.) On May 26, 2016, Landesberg emailed Mom that since she had not heard back from Mom, she assumed that she would meet Sam at school when the bus arrives on Wednesday, and if there were any changes she could contact Landesberg on her cell phone.

The final IEP reflects Sam's proposed placement for June 1, 2016, to June 23, 2016, and September 7, 2016, to May 19, 2017, as Special Class Autism with an individual personal aide daily for 390 minutes, and special transportation via bus with attendant (July 1, 2016, to May 19, 2017). The final IEP also reflects occupational therapy one time per week for twenty minutes, speech-language therapy two times per week for twenty minutes. For the extended school year (ESY), the final IEP reflects Sam's proposed placement for July 1, 2016, to July 29, 2016, as Special Class Autism with an individual personal aide daily for 240 minutes, occupational therapy one time per week for fifteen minutes, and speech-language therapy one time per week for twenty minutes. (R-13.)

On May 26, 2016, the parents signed an Agreement for Service for SEARCH Consulting, LLC (SEARCH) in Mountainside, New Jersey. On May 26, 2016, the parents' attorney requested that the District's attorney provide her with Sam's entire educational file, special education file, data book, and correspondence concerning Sam; notified the District's prior attorney that the parents intended to unilaterally place Sam at SEARCH in accordance with N.J.A.C. 6A:14-2.10; and requested referrals for placement at Alpine Learning Group, Somerset Hills Learning Institute, and Princeton

Child Development Institute and a copy of any referral letters and documentation sent to out-of-district schools on Sam's behalf. (R-59.) On June 1, 2016, Chomut emailed Mom a draft copy of Sam's Social Assessment and asked Mom to let her know if there were any corrections she felt needed to be addressed or additions she wanted noted. (R-60.)

Carrie Kahana, MA, BCBA, has been a board-certified behavior analyst since 2007, and she is the founding executive director of SEARCH. (P-14.) SEARCH is not a New Jersey State-approved school. Sam began attending SEARCH on June 6, 2016. Over the first two weeks that Sam attended, SEARCH conducted the VB-MAPP. (P-2.)

On June 15, 2016, the District's prior attorney acknowledged receipt of petitioners' attorney's request for records, but advised that a signed authorization from the parents had not been included and that one should be provided so that records could be sent to petitioners' attorney. The District's prior attorney declined the request to send records to out-of-district placements because the District believed that the in-district program would adequately meet Sam's educational needs. (R-61.) A signed release for the records was provided on June 16, 2016. (R-62.)

On June 22, 2016, petitioners filed a Petition for Due Process. (R-1.) On July 14, 2016, the Board filed its Answer to Due Process Petition. (R-2.)

SEARCH prepared Sam's Goals and Objectives on June 27, 2016. (P-3.) SEARCH prepared a Progress Report for Sam, dated November 11, 2016. (P-6.) SEARCH created a Behavior Reduction Program for Sam on November 18, 2016, to address motor stereotypy and non-contextual vocalizations. (P-4.) SEARCH created an updated Behavior Reduction Program for Sam on January 4, 2017. (P-5.)

Katherine Decotiis Wiedemann, MA, BCBA, is the owner and clinical director of Every Child Behavior Solutions in Stirling, New Jersey. (P-10.) Wiedemann observed Sam at home on July 15, 2016, and August 29, 2016; she observed the Lake Hiawatha School program on July 25, 2016; she observed Sam at SEARCH on August 3, 2016; and she observed the Rockaway Meadow School program on September 19, 2016.

Wiedemann prepared an Educational Program Evaluation and Recommendations report, dated December 23, 2016. (P-11.) On September 19, 2016, Heather Pane observed the classroom during Wiedemann's observation, and documented the observation in a written summary. (R-64.)

David Sidener, Ph.D., BCBA-D, is a board-certified behavioral analyst. He received a master's degree in applied behavioral analysis in 1999 and his doctorate in 2004. At the request of the parents, Dr. Sidener performed an IEP Review. He was employed as the executive director at Garden Academy from 2005 through 2016. He observed Sam on October 25, 2016, at SEARCH; he observed the PTHSD program on October 27, 2016; he observed Sam at home on November 1, 2016; and he observed PTHSD on November 2, 2016. He prepared an IEP Program Review report on November 14, 2016. (P-9.) Pane also observed the classroom during the October 26, 2016, and November 2, 2016, observations of Dr. Sidener, and documented the observations in a written summary. (R-65.)

On November 9, 2016, Sam was observed at SEARCH by Heather Pane, MA, BCBA. (R-15.) Pane prepared an Observation Report on November 29, 2016. (R-15.)

On November 15, 2016, Sam was observed at SEARCH by Johanna Greco. (R-16.) Greco observed that Sam exhibited a skill set in utilizing language to name people, identify colors, count to a single-digit number, and provide personal information (i.e., parents' names, address, phone number, the town he lives in, and the school he attends); he utilized manipulatives to form puzzles and build block formations; he transitioned between work and reward intervals with verbal prompts and sat appropriately at his work table during the forty-five-minute observation; when he displayed off-task behaviors, he was refocused with questions and simple physical demands (tap on the table, touch your nose, etc.); and he was inconsistent in sustaining a thirty-five-second work interval due to self-stimulating behaviors and non-contextual vocalizations. (R-16.)

Testimony

Anthony Giordano

Giordano started his career at a private school for children with autism where, during his three years there, he learned ABA and 1:1 discrete-trial teaching. During their meeting on March 18, 2016, Giordano told Mom about the District's autism program, what the District had to offer, and the process of how the District evaluates students. Giordano also told Mom about students that the District sends out of District and the decision-making process, to wit: if the CST determines that a child requires an out-of-District placement, that information would be presented to Giordano, and he had never refused such placement. Mom had done some research on out-of-District schools and Giordano advised Mom that she could look at some with the case manager, but that was not to say that the recommendation would be to place Sam out of District. It was just a practice of the District that when a student moves into the District, if the CST wants to get the ball rolling, that is acceptable. They spoke about a few out-of-District schools that Mom mentioned, some of which Giordano did not think were very good schools.

Mom had limited time in New Jersey, only two days, so he instructed the case manager to meet with Mom and if need be to take her to look at some out-of-District schools, as well as the in-District program. However, he later became aware that Mom had not completed the registration process, so he advised Chomut that she could not take Mom to look at out-of-District placements until Sam was registered. He was aware that the CST evaluated Sam before he was registered. Giordano gave approval based upon the limited time the family had, but typically he would not authorize that. He rescinded the authorization for Chomut to visit the out-of-District schools with Mom because that would have been difficult to justify when Sam was not registered in District.

The CST wanted time to review all the documentation and conduct evaluations, and Giordano tried to expedite things because of the family's time constraints. Giordano ultimately was advised by the CST that its recommendation was the in-District

program. The CST included Greco, Chomut, and Landesberg, who was a maternity-leave replacement for the school psychologist. He does not get involved in the CST decision-making process on placement.

Giordano first became aware that the family was opposed to the District program when he received the letter from their attorney. Giordano would always send records to an out-of-District school if requested by a parent as long as the parent provides a signed release, unless the Board's attorney instructs otherwise. There is a difference between a request to send records and a request for referral for placement. A records request is to send a photocopy of a student's records, but a request for referral is to complete a referral for a student to be placed in a school.

The District is supposed to hold a meeting with the parents to discuss the parents' issues with the program within ten days of the notice of unilateral placement, unless it is waived. There was no meeting within ten days.

Victoria Chomut

It is part of Chomut's job to have functional knowledge of in-District programs, because there is a myriad of programs both in and out of the District with a spectrum of services, including general education, co-teaching, resource center, self-contained, multiply disabled, autistic, and other services. Chomut's role on the CST varies depending on whether she is the case manager or not. She was not Sam's case manager. She had some early involvement with the family at the request of the secretary.

Chomut had an impromptu conversation with Mom on March 30, 2016, when Mom was at the school for registration purposes. Chomut talked with Mom about Mom's concerns for Sam. Mom said that he needed intensive services and his current services were not intensive enough. Mom also said she had met with Giordano previously and they had discussed placement and the needs of the student. There was some confusion, and Chomut asked her what was going on with the way he was currently placed. Mom told Chomut about a whole different system than the New Jersey

system, so Chomut went through the New Jersey process. Chomut told Mom about the law and how Sam would have to be evaluated in New Jersey and that they would develop an IEP and look at the programming. Mom mentioned ABA programs like Epic, Alpine, and Garden Academy, and they talked in general about the spectrum of services the District offers. Mom asked what other programs there are, and Chomut said that there is a myriad of programs in New Jersey. Mom asked for the names of some programs Chomut had students in. Mom was writing them down because she wanted to look them up on the internet, but Chomut said she would write them down for her.

Chomut told Mom that Sam would need to be evaluated, and that she would look at the programs with her if it came to that. Mom said she had limited time to look at the programs in New Jersey. Chomut is always interested in seeing out-of-District programs, and would go to any school if a parent suggested one, just to see what the programs are like and to hear firsthand what the schools are telling parents and to ask appropriate questions so parents get all the information, including certifications, licensing, and summer programs. Chomut never said Sam needed to be placed out-of-District. She did not lead Mom to believe that Sam would be recommended for out-of-District placement. They were in the process of evaluating Sam. They were all trying to move forward because Mom wanted to have everything in place when they moved. Chomut did not show or offer to show Mom the in-District program because Mom had asked Chomut to show her the out-of-District programs. Frequently Chomut requests releases so she can contact the schools in order to even discuss a student.

Chomut gave the attachments from Mom's April 3, 2016, and April 4, 2016, emails to the CST and Landesberg, the case manager. Chomut advised that Mom wanted to look at some programs because the team was going to be starting the evaluation process. An occupational therapy evaluation was included. Related-services reports, like speech therapy and occupational therapy, would be offered to the appropriate therapists on staff for input as to whether or not a student requires those services.

Chomut conducted a social assessment of Sam at home. Chomut had some concern that some of the programs mentioned by Mom did not offer speech and

occupational therapy and other related services. Since the family was new to the neighborhood, Chomut also gave Mom some community resources.

Chomut did not attend the May 19, 2016, IEP meeting. Chomut attended the May 24, 2016, meeting at Rockaway Meadow. The family attended and was offered an IEP at that time. Chomut was called to attend as part of the CST. Among others who attended the meeting were Landesberg, Greco, and Nancy Heisler, the school psychologist in charge of the autistic program at Rockaway Meadow School, and a behaviorist. They observed two different classrooms. Sam came into one classroom, but tried to leave, and Dad chased after him and stopped him at the door, several times. The behaviorist was trying to talk with Mom because Dad while involved with Sam. They looked at the program and the physical-education room, and then they all went back into the CST office. Heisler began talking about the ABLLS and the program and summer program. Chomut did not recall any parent comments about the program at the meeting or any reaction from the parents. To Chomut, the parents looked like they were going along with Sam attending there, and they set up transportation. Chomut looked at the IEP before or at the meeting. From the evaluations, she felt it was appropriate to start the program and that it would meet his educational needs.

Chomut did not receive a written report from Alpine Learning Center. She knew Mom had taken Sam there one day. The Social Assessment states, "Later he was privately evaluated at the Autism Research Institute and the Alpine Institute by Autism specialists who recommended that Sam would best be serviced academically through strict top tier intensive ABA programs that exclusively use discrete trial, e.g., EPIC, Garden Academy and Alpine." Chomut explained that the Social Assessment reflects "strict top tier intensive ABA program," because that had been stated by Mom. Chomut was confused by the term "top tier" because she does not use that term, so she made sure to include it in the Social Assessment. Chomut prefers generalized programs for students because as a social worker, the social element is always important to her. Some students in the autism classroom were higher functioning than Sam and some were lower functioning than Sam, and some were more verbal than Sam and some were less verbal than Sam.

Chomut testified that the IEP would be reviewed again in thirty days because by law the IEP had to be reviewed at least every thirty days, and sooner if there was a need to reassess and set up new goals and objectives or look at modifications that have been made to determine whether a student requires more or less intensity or related services or anything else. All those determinations cannot be made before the IEP is issued because they do not have a crystal ball.

Chomut did not participate in the creation of the goals and objectives in the IEP. The CST had discussed that a functional behavioral assessment (FBA) should be conducted. Sam would have started at Rockaway Meadow School, but the ESY would be in a different building, and some, but not all, of the staff would be different.

Mom had said that one of the reasons she was moving was that Mitchell's Place was not giving Sam what he needed. However, Goals were copied from the MP IEP into the IEP as a starting point. Generally, the CST takes goals and objectives it feels are appropriate based upon evaluations and that had been there previously and enters them into the IEP. Goals and objectives were discussed.

No behaviorist was involved directly in the evaluation of Sam by the District. A behavior plan was going to be developed. Chomut did not know how many hours of direct 1:1 with a trained BCBA Sam would have. Sam would be doing some discrete trial during the day.

Johanna Greco

Sam came to school on April 21, 2016, but was not evaluated because he was not formally registered in the District yet.

Greco has had students with the same Woodcock-Johnson test results or below in-District. She was unable to complete the WIAT. Sam engaged in vocal stereotypy. The non-contextual vocalizations interfered with his ability to sustain attention for a period of time. It was off-task, interfering behavior and hard for him to attend when

making the noises, but he was redirected. Greco saw the Milestones Discharge Summary. Greco noted that an FBA would be conducted.

Greco testified that Landesberg created the IEP. Greco did not participate in creating the IEP except to contribute her report. No BCBA or autism expert had any input into the goals and objectives in the IEP. The goals and objectives from the old IEP were used. Landesberg was having trouble downloading and sending documents, so as part of the CST Greco helped Landesberg email the IEP.

Greco observed Sam at SEARCH on November 15, 2016. She was not accompanied by a BCBA or an autism expert from the District. He was sitting with a teacher or paraprofessional, and based upon her tours of the District's program a combined total of approximately forty-five minutes to an hour, Sam was working through a program very similar to what the District would provide. Nothing Greco observed was novel or different from the program proposed for Sam, though Greco admittedly is not a BCBA so she could not and did not analyze the correctness of the data. No BCBA or autism expert in the District evaluated Sam.

SEARCH does not provide related services. This was of concern to Greco because in working with Sam and observing him, she noticed some difficulties in terms of his speech, and in moving manipulatives and things, which would need intervention by an occupational therapist. Based upon his previous IEP and services, he had received speech therapy and occupational therapy.

It usually takes thirty days to conduct evaluations, write reports, and meet with the parents, but in order to expedite the process it was done within a week. The parents did not see the evaluations until the day of the IEP meeting.

The frequency and duration of time Sam would receive 1:1 direct ABA services was not in the IEP because that it is part of the autistic program. Greco did not know how many hours of direct 1:1 services he would receive. She did not know how many hours of discrete trial, but it would be the majority, if not all. Sam would also be in group and adaptive specials.

The IEP does not say it would be revised in thirty days. Typically a case manager would relay that information. IEPs are supposed to be based on evaluations, but it is based on the student and the student's progress in the special education program, and the special education teacher who works most with the student would help create goals.

Heather Pane

Pane has been employed by the District for approximately eleven years. For some of the goals and objectives, 80 percent was a good starting point, but as a behavior analyst, she might make recommendations based on the ABLLS-R to increase it for certain skills or to use it as a starting point and then increase it in subsequent IEPs. Acceptable criterion depends on the student, the skill, the age, and the type of data collection. She stated that it would be anywhere above 80 percent, dependent upon the skill. She gave the example that when teaching "crossing the street," only 100 percent would be acceptable, but if teaching "attending during a group activity," it is probably not possible or necessary for a child to attend 100 percent of the time because they are children and there are distractions. The goals and objectives in the IEP would be more clearly defined in the student's instructional overview page, which reflects the skill being worked on, how it was defined, or response definition for the student and the criterion.

Pane collaborates with the CST on an ongoing basis in the school setting. Once a child is enrolled, Pane helps modify an IEP as necessary. She conducts FBAs that are provided to the CST. She meets with the CST to review the programs and classrooms and the students. When a student enrolls, the District conducts an ABLLS-R assessment, beginning on the student's first day. She and the teacher oversee the ABLLS-R, and the teacher is trained in implementing the ABLLS assessment, which is quite lengthy across all skill areas. Once the results are available, the student's IEP is reviewed and modified based on the assessment and teacher and BCBA observations. They try to tie the IEP with the completed ABLLS-R assessment for specific goals and objectives. The VB-MAPP is a similar assessment to the ABLLS-R. The District used the ABLLS-R because it was decided that it would be most easily used by teachers and

because there is an assessment of functional living skills that is the next step in the ABLLS, so it made more sense to start with the ABLLS-R and continue it.

Pane was told by Nancy Heisler, the Rockaway Meadow School case manager, that Sam would possibly be attending Rockaway Meadow School's autism program. Pane was also provided with Sam's MP IEP and another interdisciplinary report approximately two weeks prior to Sam's visit at Rockaway Meadow School. The MP IEP included many benchmarks or objectives based upon the VB-MAPP, including mands and tacts, which impressed her. The VB-MAPP had been administered in July 2015.

Pane is at Rockaway Meadow School four and one-half days per week. Pane's involvement with a student typically commences when the student starts at Rockaway Meadow School. She has never conducted the ABLLS-R or an FBA prior to the student starting at Rockaway Meadow School. It would be challenging to conduct the ABLLS-R prior to when a student starts school because it is a lengthy assessment, requiring the student to be available for a lengthy amount of time. There is a very large, specific testing kit with materials that is also utilized by the teachers with the other students in the classroom. All of Pane's students have the ABLLS-R implemented. Until the ABLLS-R is conducted, she would handle a student based upon current and previous data, and previous IEP goals and objectives.

Pane did not meet Sam until his visit to Rockaway Meadow School, and she was not directly involved in drafting the IEP. She was aware that another behavior analyst, Gina Orsini, had provided some assistance with goals and objectives, but not a lot of input, so Pane advised Orsini to be sure that the IEP reflected that they would conduct an FBA when Sam arrived at Rockaway Meadow School so if a behavior intervention plan was needed they would be able to move quickly on it. Pane was not comfortable developing a behavior plan at that point because she did not know Sam and had not yet conducted any assessments. An FBA is performed by the behaviorist in the building, which would have been Pane. The FBA takes her several observations, approximately three hours in total. Thereafter, Pane speaks with the teacher and/or paraprofessional to do some indirect assessments by way of a questionnaire, because they are with the

student most often. Pane would also review any previous data. Her observations and the data collected during her observations, as well as the indirect assessments, would be put into a report and summarized, and recommendations would be made.

There would be no difficulty for staff to implement VB-MAPP goals because they are similar to ABLLS-R goals. Pane opined that the IEP generally described an ABA program because it was based on the most recent VB-MAPP. She opined that some of the goals and objectives were very specifically objectively measurable, while others would be more specifically defined after conducting the ABLLS-R. She explained how several of the goals and objectives would be more specifically defined based upon the student. With respect to District's IEP including speech therapy and occupational therapy, Pane believed that ABA can teach a variety of skills, including language, speech, and gross and fine motor skills, but she has learned to work collaboratively with the therapists so they each know what the other is working on. The data collected by the speech therapist is more similar to data that she would take than data collected by the occupational therapist. If she has behavior-analyst concerns that something is being taught in related services that is not functional or should be delivered in a different way, she expresses that concern. If, after observation, she thought that what was being addressed in related services could be or needed to be addressed in the autism classroom due to interfering behavior, she would express that. She felt that the "overall below-average skills" reflected in the MP IEP in the two occupational-therapy areas tested warranted continuation of occupational therapy. Pane opined that because Sam was receiving speech therapy and occupational therapy in the prior IEP, the District was responsible to continue the services.

With respect to discrete trial, typically a young learner or a learner with many deficits will require discrete-trial teaching initially and for quite some time. It would typically be delivered in a 1:1 setting. Incidental teaching is more naturalistic than discrete trial. The program also uses a Picture Exchange Communication System (PECS) for students who are non-verbal. Activity schedules are used within the program that directs a student to complete one task and move on to another. In Sam's proposed classroom two of the five students were on schedules, while three were learning the prerequisite skills to follow schedules. ABA is used in small-group

instruction as well, such as prompting and reinforcement. Small-group instruction starts to teach the students to share attention, unlike the 1:1 discrete trial, and they work toward learning to sit next to other students, and increase on-task behavior in a group without interfering behavior. The ABA prompts, teaching skills, and reinforcements are utilized throughout the day by the paraprofessionals, including in adaptive specials, like physical education.

Pane testified that the IEP goals and objectives were generated from data provided and would be appropriate for Sam. It was also appropriate for the goals and objectives to be based on the VB-MAPP and the MP IEP. Upon starting in the classroom, the additional assessments would be conducted and the IEP would be modified. Pane thought Sam would be a good fit for the autism class, and there was nothing in the data she reviewed, including the evaluations listed in the IEP and the behavioral observation from Milestones, that suggested Sam would be unable to make progress or that he had not made progress on his prior goals and objectives. Pane testified that the CST evaluations—psychological assessment, educational evaluation, and social assessment—are more of an overall summary and give a global understanding of the child and are helpful in understanding cognitive function and skills for standardized testing, but that is often difficult to implement with an autistic child, so she conducts further specific testing like the ABLLS-R to obtain more information about Sam. It might be possible to conduct an observation of the student prior to the student starting in the classroom, but it would be difficult to conduct the ABLLS-R. Once Pane conducted the FBA, interfering behaviors would be identified and a behavior intervention plan would be developed. It is a lengthy process and she wants to assess the behaviors in the school environment. Ideally, she would assess the student within the classroom to see in what context the behaviors are occurring, because behavior at school may be different than behavior at home. Although the IEP does not reflect that the ABLLS-R would be conducted, it is part of the program that the ABLLS-R is conducted, and that results are thereafter referenced in the IEP.

The District's ABA program collects data daily for each skill being taught. They utilize a decision log and track changes. The data is monitored to insure that the teachers and paraprofessionals are also monitoring data frequently, in order to make

changes quickly, rather than have a month go by and realize that no progress was made. Pane testified that the sample data sheet she shared with Wiedemann had sixteen programs listed. Pane explained that the target skills are based on the student's ABLLS-R and IEP goals and objectives. The students spend a majority of the time learning in a 1:1 ratio and their specials are adapted, so they attend in a small group with their paraprofessionals. Token economy is a popular strategy used in ABA, so the students are taught to respond to receiving rewards.

During the observation, Wiedemann commented to Pane after observing the teacher working with the student that the teacher was great. The teacher provides a lot of training to the paraprofessionals. The teacher collects treatment integrity on the data books weekly, two to four books per week. Pane also collects treatment integrity throughout the year. Inter-observer agreement data are also collected quarterly. The data shows what the teacher and paraprofessional are implementing, and if they are doing it correctly. They program for generalization by teaching to multiple exemplars and across staff members. The principles of ABA are used to teach a child to participate in a group activity.

With respect to parent training, parent training is not necessarily in an IEP. A parent can come in and meet with Pane for a consultation and to discuss any concerns they have in terms of parent training. The District in the past has offered to take video of a student, with permission, and then view it privately with parents to provide them with feedback. If a student is not making progress within the school program, or if there are significant behavioral concerns in the home, Pane's role would be to speak to administration and the CST about the possibility of needing a home program. If meaningful progress is not being made within the school setting or if there are substantial behavioral needs that persist after meeting with the parents and giving the parents feedback, she might recommend additional services.

Carrie Kahana

SEARCH is a center-based program for children with autism that utilizes the science of applied behavior analysis. Kahana oversees all staff and students to insure

that they have proper supports and processes in place to deliver highly effective services to young learners with autism. The hierarchy at SEARCH is four tiers. Directly below Kahana is the clinical director, who is also a dually certified special education and elementary education teacher, and is also a BCBA. Below the clinical director are two team leaders who are also BCBA's. Each team leader oversees five students, and works closely with the clinical director. Below the team leaders are the instructor/data analysts responsible for implementing 1:1 direct instruction with the students. The instructor/data analysts receive at least five hours per week of supervision by the BCBA and are responsible for implementing direct instruction, collecting data, and creating the individualized curriculum for the students. The instructor/data analysts are required to have a bachelor's degree, but most of SEARCH's staff are pursuing master's degrees and looking to pursue BCBA certification. Below the instructor/data analysts are two full-time interns who facilitate curriculum preparation and support the other tiers. The interns do not work directly with students.

There are ten students at SEARCH, three of whom receive school-district funding; two where the district reimburses the parent(s); and one contract directly with a district.

Katherine DeCotiis Wiedemann

Wiedemann holds K-5 and teacher of students with disabilities certificates. She graduated in 2008. From 2008 to 2011 she was working in the field of ABA, and she has been a BCBA since 2011. She began her career as a public-school teacher in a pre-school ABA self-contained classroom. She was there two years, and that is where she completed her BCBA independent-field-work hours. Thereafter she consulted mostly to ABA agencies that were providing insurance-based services in the home and community for a little while, and then she settled down at an ABA early-intervention center, The Uncommon Thread in Stirling, New Jersey, for approximately four years. Two of those years she was serving as a primarily center-based BCBA, early intervention, children eighteen months to five or six years old. For the second two years she was the school-district coordinator, so she was mostly consulting to public school districts for The Uncommon Thread, and she did a variety of different projects, like

designing ABA programs and transforming existing programs into ABA programs, or completing FBAs or VB-MAPP assessments. Since 2016 she has been in private practice with her own consultation practice, Every Child Behavior Solutions.

Wiedemann conducted observations of Sam and prepared an Educational Program Evaluation and Recommendations report. Wiedemann conceded that she noticed District staff correctly using prompting procedures and token economies for reinforcement, and that the lead teacher appeared knowledgeable and comfortable with the implementation of discrete-trial training. She had concerns about the experience and instructional confidence of the paraprofessionals in the classroom. Several times during the observation she noted errors in prompting procedures and accidental reinforcement of incorrect or inadequate responding, as well as students not consistently engaged appropriately and not consistently encouraged to elicit language while engaging in play activities. She opined that it was a significant concern that there was no individualized parent training or home programming for Sam. She also opined that the IEP goals were not individualized or objectively measurable.

Wiedemann recommended a minimum of thirty hours per week of intensive ABA therapy; placement in a specialized program or private school that offers intensive ABA services and specializes in working with students with autism; 1:1 direct instruction, where treatment goals are addressed and data is collected, and group instruction should be limited until further skill acquisition; a highly structured learning environment where instruction is delivered by well-trained professionals; experienced professionals in a complex ABA program with direct instruction by BCBA, BCABA or registered behavior technician; objective and measurable IEP goals derived from VB-MAPP or ABLLS; direct, on-site supervision by BCBA no fewer than five hours weekly; development of a behavior intervention plan to address Sam's maladaptive behaviors with both antecedent and consequence strategies; at least monthly parent training both at school and in home/community; summer program and/or supplemental therapy; additional home-based ABA instruction up to fifteen hours per week and open and frequent communication between home and school providers; formal reassessment every three to six months; and consideration and encouragement of return to a less restrictive environment when Sam acquires the necessary skills.

Wiedemann first visited the home on July 15, 2016, for approximately four hours. She also observed the District ESY program for Sam on July 25, 2016. She thereafter observed SEARCH on August 3, 2016. She visited the home again on August 29, 2016. She visited Rockaway Meadow classroom on September 19, 2016. Wiedemann testified that behavior can be different depending on environment. When she has consulted with school districts, she has done home visits, but not always. Her philosophy is that it is important to see a student with autism in the home.

Sam was very large and very tall, and physically presented as a much older child. There are two issues with students with autism: impeding, maladaptive behaviors; and skill acquisition. It took no more than a minute to see he had very significant impeding behaviors, as he engaged in nearly constant stereotypy. Sam engages in oral, motor, visual, and vocal stereotypy. She observed him putting things in his mouth, and making non-contextual vocalizations—like consonant sounds out of the context of conversation or communication. She did not take data that whole time, but did several ten-minute intervals, and measured in interval recording format how frequently the behavior was occurring. Sam can learn, but the first challenge in instruction for Sam would be to tackle the behaviors, because the consistency and frequency of them would make him inaccessible to skill acquisition/learning.

Wiedemann observed the Lake Hiawatha School in July, near the tail end of the ESY program. ESY is tough, because it can be different and there are a lot of variables. It is not always the same staff or building. The room was like a library media room, but the students were corralled off in little working areas. The BCBA talked to her for a majority of the time, and in the second portion of the observation she was able to observe two children who were doing independent work at a distance. She was not sure if the program would be appropriate for Sam because she was not 100 percent sure what she was looking at. She cannot have information about the students. The students seemed older and functioning at a much higher skill level than Sam. One was working on handwriting and a paragraph, and both were vocal/verbal (speaking). She did not know if they would be in Sam's class in September or if the teacher would be his teacher in September. That the staff in summer is different than during the school year

is of concern to her because by the nature of autism, it does not lend itself well to unexpected and frequent change. For a child being taught foundational skills and appropriate behavior, plucking them from a certain person and certain norms and putting them elsewhere but expecting them to respond the same way is not always going to be smooth.

Sam was going to begin school in the District on June 1 and then attend ESY. She was advised that the ESY building was not the building he would be in for the school year. If she was the teacher it would have been a nightmare, just because of the timing of it, and it was nobody's fault, but he would have been in one building for twenty-two days in June and then moved to another for July, and then have August off. She had concerns about staff changing, because that can cause behavior and would probably result in a very real possibility of that time in June being lost. That is a lot of upheaval and inconsistency. She would be surprised if he was able to make progress, and she would be concerned he would form an aversive relationship with school because it is a new state, a new house, and two new schools in a matter of months.

She was not able to review any specific data sheets or the like, so she was not exactly sure what she was watching. As a behavior analyst, when someone comes into her program, that is usually the first thing she shows them, to prove that she is doing a good job. She would have loved to see a redacted data sheet, to see what the student was programmed and what was being targeted and what was being requested; if they were using VB-MAPP or ABLLS; and how they take data, collect data, analyze data, and graph data, or maybe a data notebook. She was told the District was piloting some electronic data-collection software, but it was not shown to her. Wiedemann testified that in order to determine the appropriateness of an ABA program she would have to see the documents that define the program.

The BCBA told her the student-teacher ratio was 1:1 and that is what she observed in the ESY. She was not shown group learning, circle time, or specials. She returned on September 19, because she was not sure about the ESY and wanted to see Sam's regular classroom and teacher. There were five students in the classroom. She did not see either of the ESY students in the class. These students were younger,

more Sam's age group. She was able to see the students working 1:1. There were five students, five paraprofessionals, and one teacher.

One concern was that a child approached her and gave her a ruler without saying anything to her. She was a little shocked and took the ruler, and said, "oh, hi, I'm Katherine." The BCBA was at that time with Wiedemann. The teacher instructed the paraprofessional that the next time the student was given instruction to make sure she was standing nearby and not doing anything else. She gleaned from the incident that the student was supposed to take the ruler and bring it to the teacher, but brought it to her instead. It seemed like nobody knew what to do except the teacher, and in that moment the teacher provided training to the paraprofessional to correct the error. Wiedemann was concerned because she saw Sam in his home and knew every moment for Sam he would learn to respond either correctly or incorrectly. It was scary to her because ABA is knowing what to do in the event of an incorrect response or non-response. There was no response. The student handed her the ruler and went back to the table, and there was no error-correction procedure. The paraprofessional should have been right on it, and delivered the discriminative stimulus again and physically prompted the student to respond correctly. The teacher seemed very good and like she really knew what she was doing and had a background. Wiedemann did not think the paraprofessionals all had a bachelor's degree in a related field and were pursuing BCBA certification, and was concerned about their level of training and ability to handle Sam's needs. She was also concerned that Pane was dividing her four and one-half days per week among the three classrooms, because in her time in an intensive ABA program in the early-intervention center, the protocol was that the BCBA's hours needed to be 20 to 25 percent of the direct-therapy hours the child was receiving. She conceded that is not a requirement, but that would be best practice.

Wiedemann observed a separate incident with a different student and paraprofessional. The student was accessing reinforcement by putting a ball in a tube, and when the ball got stuck, the paraprofessional verbally prompted the student to ask for help and the student did not respond. She repeated the prompt, and Wiedemann was not close enough to hear, but she saw his lips and he said "hhhh" in a whisper and the paraprofessional responded "good, yay, that's asking for help," and gave the student

the ball. From what she assumed about the program, that was not an acceptable response that should have been reinforced because it was inaudible. The paraprofessional instead should have repeated the prompt and modeled the appropriate response and waited for the student to model or imitate that, and then provided the ball and reinforcement. Even if the child had a lot of verbal issues, that would be reinforcing an approximation, so the error-correction procedure was still incorrect. For students with autism, they are learning 100 percent of their day, and so when they are wrong and that error is responded to, they are learning from that. If behavior is not responded to in the way it is to be shaped, it will be shaped incorrectly. Wiedemann testified that this happens all across the board. She works with middle-school teachers who accidentally reinforce attention-seeking behaviors by giving attention to the behavior and wonder why it is getting worse, because they do not have the skill set and knowledge about function-based treatment and ABA.

Wiedemann had not rendered a professional opinion about whether the District's IEP was appropriate for Sam or whether the goals and objectives were appropriate for Sam. She testified that a number of the goals were appropriate, and that she would not say that the content of the goals was inappropriate, but rather the goals were not measurable. She conceded that it is appropriate to include some information in a data book regarding details of measurements that might not be in an IEP, and such information as the criteria for success, and that would not render an IEP inappropriate by itself. She testified that goals and objectives she has written for IEPs were not at the level of detail that SEARCH utilized. If Milestones was the most recent placement, she would have probably preliminarily used Milestone's behavior intervention plan and copied some goals and objectives from the BACA Report. The goals and objectives are scattered throughout the report, including mands, tacts, and intraverbal. Milestones did not have any data reflected that the goals and objectives were actually implemented.

With respect to Pane's summary of the observation, Wiedemann generally agreed with the summary, except that Wiedemann testified that she remembered asking how the target skills were selected and how many programs were listed, but did not recall seeing a physical data sheet. However, she declined to say that Pane was mistaken or inaccurate in saying that one was provided.

David Sidener

Sam was big for his age. His behavior was very consistent with children who have autism. He did not make eye contact and did not appear socially engaged or connected and did not appear to have a lot of social skills or school readiness skills. He needs to be in a very structured ABA program because he needs intensive staffing. He would not work well in a large group setting like a traditional classroom. He was “probably not” ready for group learning, and Sidener most likely would not start with Sam participating in groups. There are prerequisites that would have been more beneficial for him to have been taught.

During Sidener’s home observation, Sam was on-task seven out of ten observations, four times using the iPad and three times when Mom conducted discrete-trial activities with him. When not directly engaged, Sam was off-task, which was consistent with his second observation when Sam was 40 percent on-task, and only when Mom was directly prompting him to interact with her or play ball. He engaged in a high rate of stereotypy.

Sidener agreed with Mom that her concerns for Sam of constant supervision, leisure skills and the ability to work or play independently, and family-interaction skills would be key in a productive experience beyond the school day, and that the parents would require ongoing training in order for them to work on those goals effectively. Sidener recommended an intensive, autism-specific, education/treatment program that is ABA-based with parent training, overseen by qualified and experienced behavior analysts whose caseloads permit appropriate individual attention to each student, and staffed by talented and dedicated instructors. He also recommended that the IEP include highly student-specific, objective, measurable annual goals. He opined that the IEP did not address the areas of need identified by the CST, Dr. Sundberg and previous agencies involved in educating Sam, as the goals were not written in observable, measurable and objective terms, and it was not always clear how progress would be measured. He conversely determined that SEARCH’s goals and objectives were based on the VB-MAPP conducted by SEARCH upon Sam’s enrollment. Sidener opined that

speech therapy and occupational therapy were not necessary services for Sam at that time because a high-quality ABA program for students with autism would address those issues. Sidener also opined that group activities were not recommended because they would not be meaningful to Sam or foster learning. Eighty percent success is appropriate for some goals, but not for others.

Sidener observed the District's program. It was an ABA-based program and there was applied behavior analysis going on in the classroom. He saw a good amount of on-task behavior. Some disruptive behavior occurred, which is not unusual for an autism classroom, but the paraprofessional appeared new to working through disruptive behavior like that and Pane helped her work through it, coaching her and guiding her, which is not unusual, but it was very basic in terms of correcting problem behavior. His concern was that if Pane had not been there it would not have gone as well. There was nothing else about what he saw with the staff that concerned him.

Sidener recommended parent training because Sam needs to be learning after hours, and some of that instruction may come from a program provided by the school or parents, but there is a lot of instruction that would be coming from his parents, who need to be trained to be good teachers for Sam. Sidener also testified that parents of typical children should be taught how to teach their children. Generalization is always an issue for children with autism. He recommends home programming for Sam, because a typical school program is thirty hours per week, which is a little short. Children would probably benefit from more instruction. Sidener thought Sam needed a home program to make progress. Sidener testified that Sam made progress at SEARCH, but thought he would make more progress if he had home instruction and home parent training. He conceded that his goal is to maximize improvements of each of his students.

Sidener thought of some of the goals in the IEP were reflective of Sam's needs, but there was not enough meat in the IEP. Most of the goals would be difficult to measure, and if the goals could be measured, the mastery criterion seemed a little on the low side. Many of the goals were not objectively written or appropriate for an ABA program. He conceded that he did not formulate an opinion in his report as to the

appropriateness of the goals and objectives in the IEP, and that he was aware that typically a public-school employee would be using a program with drop-down goals and objectives. There was not a behavior plan or reinforcement plan in the IEP. There was a reference to reinforcers, but it did not state how they would be used instructionally. If stereotypy was not addressed it would continue to increase and deprive Sam of other learning opportunities. Sidener conceded that at Garden Academy he had a student for whom there was no educational plan in place when the student started, but he would not do that again without having a plan at least sketched out, and then use the first thirty days the child attends to fine-tune the plan. For Sam, he would want a schedule in place with activities and some tools for him to follow. Typically, what that means is a photographic activity schedule set up with activities and curriculum that corresponds to that ready to go, like language programs, leisure activities, and perhaps physical-education activities. He would consider initial IEPs to be working documents to build on over the first thirty days.

Sidener testified that starting at Rockaway Meadow School and then transitioning to another school for ESY seemed challenging. With respect to reviewing the ABA books in the classroom, the teacher probably knows the students better than Pane, but the teacher probably also has far less behavioral expertise and skills in analyzing data. It would concern him if the teacher were reviewing the books, rather than Pane, because the more qualified people that are looking at Sam's data, the better. He did not question Pane's ability to oversee a student's program, but was not sure she would be present enough to have an impact.

Sidener conceded that the manner in which the educational program described in the IEP is to be implemented would be defined in the student's data book. Sam did not have a behavior plan in place, or it was just started, when he observed him at SEARCH.

At SEARCH, Sam was actively engaged in his instructional activities, and sat at a table with his instructor with intermittent breaks. A token system was being used to reward performance. His behavior at SEARCH was very different from when Sidener observed him at home. He needs intensive instruction, meaning that he needs someone who is well trained and highly supervised sitting by him, giving him specific

directions and specific feedback on what he is doing, whether he is doing well or not, correcting as needed. His instructor needs people who can provide supervision, support, training, and mentoring. Sam's program should be thirty to forty hours, because based upon a Lovaas study, forty hours per week of intensive ABA instruction is the best treatment for children with autism.

SEARCH staff go to Sam's home a minimum of one time per month and the parents participate in training a minimum of two times per month. Sidener recommended an additional ten to fifteen hours per week of home ABA and parent training specific to Sam.

With respect to the BACA Report, Sidener assumed, but did not know, that the data was based on actual testing of Sam, because he did not know what they did. The report did not contain any data from the two days.

With respect to the paraprofessionals, Sidener testified that he did not think a person was unqualified if he or she did not have a bachelor's degree, and conceded that a bachelor's degree was not required at Garden Academy. Pane's four and one-half days per week, one day in each classroom, and the rest of the time allocated based upon student needs, was not a violation of any standard for BCBA presence in an ABA classroom.

Mom

Sam had been placed at Mitchell's Place by his parents, and it was funded by his parents. There was no IEP from a local school district. Mitchell's Place was unable to provide him with a program recommended by BACA, and there was no other school past the age of six, so they began looking at other states. Mom liked the location of Parsippany and read tremendous things about its ABA program, and the schools have great reviews.

Giordano had shared with her that the District had an ABA program. The District's ABA program was the reason she moved to Parsippany. The parents wanted

Sam to be in a school with an ABA program. He had never been in a public school, so they did not want to put him in just a public school, but wanted a school that had an ABA program. It did not necessarily have to be a private school. They were overpaying for private school because Sam was not getting results in terms of progress. Prior to meeting with Giordano, she had visited two private New Jersey schools, Garden and Epic.

Via email, she had provided the BACA Report and her lease. The lease was redacted to remove owner and financial information, and there was a version of the BACA Report that only said "student" because she provided the BACA Report to Milestones, but the director wanted to share it with staff, who would be taking it home over the weekend, and she did not want her personal information home with therapists, so she asked BACA for a version that only said "student" for privacy reasons. Via email, she only shared the "student" version with the District. She eventually provided the District with a hard copy and emailed a copy after registration.

When she met with Chomut, she told Chomut she had been to Garden and Epic. Chomut gave her a list of schools they might want to look at or avoid. She did not discuss the District's program. In some of the schools Chomut was referring to, they had speech therapy and occupational therapy, and Mom was very clear that they did not want those services. Sam had been in speech therapy for years and did not make progress. He did not need to learn to speak better, he needed to learn how to talk. She just wanted to keep him in ABA. She sent the information on prior related services to complete the District's file, but was clear that she did not want them moving forward, both in person and via email. Mom was clear that based on what they had learned from BACA, Mitchell's Place was giving Sam credit for things he was unable to do, and so they had concerns about the fidelity of Mitchell's Place's reporting and did not want that IEP to be considered. She was told that the MP IEP was needed to complete his file.

On April 21, 2016, while she was at New Beginnings with Chomut, Chomut took a telephone call and thereafter advised Mom that she could not continue the tour. They continued the rest of the tour without Chomut. After the tour, she returned to the District to see what the issue was with registration, but no one was able to tell her anything.

She was told they were missing Sam's physical, but she had given them the physical report. She had her folder with all the paperwork, so she pulled out the physical report and they made another copy of it. She followed up with Giordano regarding the registration on April 27, 2016.

She canceled the meeting at Alpine with Dr. Bridget Taylor, because Chomut had said there was no opening, and it was nearly impossible to get a placement there, so instead of going for an introductory meeting with Dr. Taylor, she used the time to look at schools that had openings. She had invited Chomut to attend that meeting at Alpine.

Sidener had been recommended by Dr. Sundberg at BACA. Dr. Sundberg had advised that if they moved to New Jersey, they should contact him. Sidener was a colleague of Dr. Sundberg and he said that Sidener would point them in the right direction.

The Discharge Summary from Milestones was a blueprint to set up Sam's environment and let them know what his reinforcers were. She had asked Milestones not to do just a standard discharge summary, but to provide a blueprint or road map for a school. Sam's last day at Milestones was in late April 2016.

Mom was shocked when the IEP recommended the District's autism program. She was caught off guard because they had not talked to her about the District's program. Goals and objectives were not discussed at the meeting. Mom did not see the final IEP until it was provided to her by her attorney. She testified that no one had sent it to her prior to Sam's expected start date of June 1. She had received the Draft IEP at the meeting on May 19, 2016. There was no speech therapy or occupational therapy in the Draft IEP, which was acceptable to her because she was clear he did not need those services. No one at the meeting asked what her goals were for Sam. She was only told what the next steps would be, and Landesberg told her she could sign the IEP and they would add to it as they went on. That concerned her, because that was the first time she was hearing they were recommending in-District, and her husband was not with her at the meeting. It was a joint venture, and she had not had a chance to look at the draft IEP. Greco said she did not have to sign it then, and could take it home

and look it over. She did not share her concerns at the IEP meeting because she really did not have enough information. A tour of the program was scheduled for May 24, 2016. No one asked her for input.

On May 24, 2016, they went to Rockaway Meadow School for a brief tour of approximately ten minutes. They went into the classrooms and saw where the gym was located, and then convened for a meeting. It was not an IEP meeting. During the meeting, they talked about running the ABLLS-R and about Sam going on the bus. She knew about that, but they talked about the actual bus pickup and about him having an aide. She wanted to know who would be with him all day. She did not know terminology and was used to “therapist,” not “paraprofessional.” They had said “aide” or “paraprofessional,” so she had questions about that. She wanted to know the aide’s name, but they could not tell her the name or her classification or her major. The supervisor said she was coming home from college. Mom was very uncomfortable with someone that young and inexperienced, and thought that was probably not going to be successful for Sam. She also asked who would conduct the ABLLS, and Landesberg told her it did not matter because it was basically a cookie-cutter form. When she asked what about gray areas or ambiguity, she was told it did not matter, and it has worked in the past and would be fine. When they were on the tour, she was shocked because the supervisor had said they were going to see speech therapy and occupational therapy. The supervisor told the occupational therapist that Sam would be starting next week. At that point there had been no CST recommendation as to duration and frequency of occupational therapy or speech therapy. When she was there on May 24, 2016, they started talking about speech therapy and occupational therapy, and told her they had an updated IEP. She asked for a copy, but never received it.

As of May 24, 2016, she did not have the report from Chomut. She was concerned that no one that would be working with Sam had met Sam yet, because it is a barrier for him if he is unfamiliar with the person and the person is not familiar with him and what makes him operate. She did not know how much 1:1 ABA-based services he would get, and she did not have confidence that they would base his program on the ABLLS that was going to be conducted by an unknown person. She testified that she did shut down during a portion of the meeting, though she still answered questions,

because of a comment that Landesberg had made. According to Mom, Landesberg has said that at Sam's current functioning level, he could eventually find a job stirring or making beds. Mom was livid about the comment.

Mom testified that the final IEP still does not meet Sam's needs. It does not tell her what the District was going to do. His behavior is his overarching issue, and it was not being addressed. The goals did not say anything, although she has looked at his goals before and they did not tell her anything. She did not know if a BCBA would or would not be involved. She was also aware of the importance of parent training. Mitchell's Place had no home programming or parent training, and because they did not have tools at home, it was affecting Sam's ability to generalize. She had been very vocal about having tools at home to the CST. The BACA Report recommended that there needs to be some continuation. Everyone they have met with said his skills need to be transferrable and generalized. The IEP does not show how they were going to teach him to generalize or treat interfering behavior, or that they would develop a behavior intervention plan. No one explained it at either May meeting.

Mom first visited SEARCH on May 10, 2016. She let Greco know during her evaluation. She was told about SEARCH by Dr. Taylor. She had canceled her visit with Dr. Taylor, but then rescheduled it for May 3, 2016. She told Chomut she had met with Dr. Taylor during Chomut's evaluation, and they had an extensive conversation about it. With respect to Chomut's report, Sam never went to the Autism Research Institute. She thought maybe Chomut was referring to BACA. They signed a contract with SEARCH on May 26, 2016. Sam has made progress at SEARCH.

Mom never asked to see the District's program. She was told by Giordano that she could not see the District's program until she was registered. She did not ask Chomut thereafter because Chomut never brought it up, so Mom thought Chomut thought the District program was not appropriate. Mom never had the impression that Chomut was offering her any of the out-of-District placements. There was no commitment to the offering of an out-of-District placement by the District at any time.

Mom testified that she was unable to open the revised IEP, but did not reply that she was unable to open it. At that time she already had an attorney. She likewise did not reply to the email regarding meeting Sam at the bus on Wednesday. It would not have mattered what the revised IEP said because she could not imagine there was anything much different than what she had already seen, and she had made the decision to send him to SEARCH. She never asked anyone from the District to provide a description of what Sam's first days of school would be like. She was more concerned with the therapists at that time. She was not satisfied with the District's staffing. She also wanted to know what the District would be doing, what was being targeted, and how it would be measured. She wanted to know why he was in speech and occupational therapy, how his progress would be tracked, and what their home-programming philosophy and home-programming components were. She did not ask those questions after she got the draft IEP, except to ask the question about the therapist who would conduct the ABLLS, because that was the overriding question.

SEARCH might not have had a formal behavior intervention plan when Sam started, but they addressed his behaviors with positive behavior supports and error correction.

LEGAL ANALYSIS AND CONCLUSIONS

The Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. §§ 1400–1487, ensures that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and ensures that the rights of children with disabilities and parents of such children are protected. 20 U.S.C.A. § 1400(d)(1)(A), (B); N.J.A.C. 6A:14-1.1. A “child with a disability” means a child with intellectual disabilities, hearing impairments, speech or language impairments, visual impairments, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities, and who, by reason thereof, needs special education and related services. 20 U.S.C.A. § 1401(3)(A). There is no dispute that Sam has been diagnosed with autism.

States qualifying for federal funds under the IDEA must assure all children with disabilities the right to a free “appropriate public education.” 20 U.S.C.A. § 1412(a)(1); Bd. of Educ. v. Rowley, 458 U.S. 176, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982). Each district board of education is responsible for providing a system of free, appropriate special education and related services. N.J.A.C. 6A:14-1.1(d). A “free appropriate public education” (FAPE) means special education and related services that (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under 20 U.S.C.A. § 1414(d). 20 U.S.C.A. § 1401(9); Rowley, *supra*, 458 U.S. 176, 102 S. Ct. 3034, 73 L. Ed. 2d 690. Subject to certain limitations, FAPE is available to all children with disabilities residing in the State between the ages of three and twenty-one, inclusive. 20 U.S.C.A. § 1412(a)(1)(A), (B).

An individualized education program (IEP) is a written statement for each child with a disability that is developed, reviewed, and revised in accordance with 20 U.S.C.A. § 1414(d). 20 U.S.C.A. § 1401(14); 20 U.S.C.A. § 1412(a)(4). When a student is determined to be eligible for special education, an IEP must be developed to establish the rationale for the student’s educational placement and to serve as a basis for program implementation. N.J.A.C. 6A:14-1.3, -3.7. At the beginning of each school year, the District must have an IEP in effect for every student who is receiving special education and related services from the District. N.J.A.C. 6A:14-3.7(a)(1). Annually, or more often, if necessary, the IEP team shall meet to review and revise the IEP and determine placement as specified in N.J.A.C. 6A:14-3 *et seq.* An IEP must be “reasonably calculated to enable the child to receive meaningful educational benefits in light of the student’s intellectual potential.” D.S. v. Bayonne Bd. of Educ., 602 F.3d 553, 557 (3d Cir. 2010) (citations omitted). The education offered to the child must be sufficient to “confer some educational benefit upon the handicapped child,” but it does not require that the school district maximize the potential of disabled students commensurate with the opportunity provided to non-disabled students. Rowley, *supra*, 458 U.S. at 200, 102 S. Ct. at 3048, 73 L. Ed. 2d at 708. Hence, a satisfactory IEP

must provide “significant learning” and confer “meaningful benefit.” T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 578 (2000).

In accordance with the IDEA, children with disabilities are to be educated in the least restrictive environment. 20 U.S.C.A. § 1412(a)(5); N.J.A.C. 6A:14-1.1(b)(5). To that end, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are to be educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment should occur only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 20 U.S.C.A. § 1412(a)(5)(A); N.J.A.C. 6A:14-4.2. The Third Circuit has interpreted this to require that a disabled child be placed in the least restrictive environment that will provide the child with a “meaningful educational benefit.” T.R., supra, 205 F.3d at 578. Consideration is given to whether the student can be educated in a regular classroom with supplementary aids and services, a comparison of benefits provided in a regular education class versus a special education class, and the potentially beneficial or harmful effects that placement may have on the student with disabilities or other students in the class. N.J.A.C. 6A:14-4.2(a)(8).

The District contends that its proposed IEP would have provided a FAPE to Sam in the least restrictive environment for his needs, and further contends that SEARCH is a private school that is not approved by the New Jersey Department of Education. Conversely, petitioners contend that the District’s proposed program for Sam was not appropriate, and that an out-of-district placement at SEARCH was appropriate.

The district bears the burden of proof and the burden of production whenever a due-process hearing is held pursuant to the provisions of the IDEA, chapter 46 of Title 18A of the New Jersey Statutes, or regulations promulgated thereto, regarding the identification, evaluation, reevaluation, classification, educational placement, the provision of a free, appropriate public education, or disciplinary action, of a child with a disability. N.J.S.A. 18A:46-1.1. When a student with a disability transfers from an out-of-state school district to a New Jersey school district, the district CST shall conduct an

immediate review of the evaluation information and the IEP and, without delay, in consultation with the student's parents, provide a program comparable to that set forth in the student's current IEP until a new IEP is implemented. N.J.A.C. 6A:14-4.1(g). If the student transfers from an out-of-state district, the appropriate district staff shall conduct any assessments determined necessary and, within thirty days of the date the student enrolls in the district, develop and implement a new IEP for the student. N.J.A.C. 6A:14-4.1(g).

The extensive records support that the District made a good-faith effort to comply with applicable laws. Sam was officially registered in the District on April 30, 2016, and the family began residing in New Jersey on May 1, 2016. A psychological evaluation was conducted on May 5, 2016, a social assessment was conducted on May 9, 2016, and an educational evaluation was conducted on May 12, 2016. The District CST reviewed Sam's prior evaluations and MP IEP, obtained information from the parents, and developed a draft IEP for the initial eligibility determination and IEP meeting on May 19, 2016, and the IEP was thereafter revised. The final IEP provides for placement in the "Special Class Autism" with a 1:1 personal aide daily.

Petitioners argue that procedural violations by the District resulted in a deprivation of a FAPE. Not all procedural violations amount to a substantive deprivation of FAPE. Under 20 U.S.C.A. § 1415(f)(3)(E)(ii), in matters alleging a procedural violation, it may be found that a child did not receive a free appropriate public education only if the procedural inadequacies: (I) impeded the child's right to a free appropriate public education; (II) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or (III) caused a deprivation of educational benefits.

While the District's BCBA had not yet evaluated Sam, to suggest that the CST did not have adequate training or information to determine that Sam required an ABA program or to place him in the District's autism ABA program is inconsistent with the volume of information provided to the District, some even prior to enrollment, and is inconsistent with the IEP, which in fact reflects that Sam requires an ABA program. The District conducted those evaluations that could reasonably be conducted prior to Sam

starting the District's program, but it was clear from the testimony that the ABLLS-R and an FBA would be conducted upon starting the program, which is not inconsistent with Sam's prior placements, or with what occurred at SEARCH. Specifically, Sam started at SEARCH on June 6, 2016. SEARCH conducted the VB-MAPP after Sam started at SEARCH and SEARCH did not prepare goals and objectives until June 27, 2016, and did not prepare a formal behavior-reduction program until November 18, 2016. Additionally, Pane testified that she reviewed Sam's MP IEP and another interdisciplinary report approximately two weeks prior to Sam's visit to Rockaway Meadow School, and it included many benchmarks or objectives based on the VB-MAPP. Based upon the documentation, the District was aware that Sam's maladaptive behaviors would have to be addressed. Pane testified that another behavior analyst, Gina Orsini, had provided some assistance with goals and objectives, and Pane told Orsini to be sure the IEP provided for an FBA to be conducted, which it does. Additionally, Pane testified that the frequency and duration of time Sam would receive 1:1 direct ABA services was not in the IEP because that is part of the autistic program.

It is noted that while Mitchell's Place was not Sam's last placement, and the parents were not happy with Mitchell's Place, the MP IEP is nevertheless the last IEP Sam had prior to registering in the District. There is a Discharge Summary for Milestones, but no IEP, and Sam only attended Milestones from March 22, 2016, until April 28, 2016. With respect to the District asking for parental input, a draft IEP was provided to Mom at the May 19, 2016, IEP meeting. While no one at the IEP meeting may specifically have requested parental input, certain parental concerns were well known and documented in a multitude of emails and reports. Mom did not share any concerns about the proposed program at the IEP meeting, though she testified that it was because she did not have enough information. The draft IEP did not include speech therapy or occupational therapy, and it did not include goals and objectives, and several of the District's reports had not been included. However, a revised IEP was emailed to Mom on May 24, 2016, after the tour and meeting at Rockaway Meadow School that included all of the foregoing. Mom testified that she was unable to open the file, but she never advised the District that she was unable to open the file, and that she expected the IEP would essentially be the same as the Draft IEP.

The petitioners' witnesses were BCBA's and not speech therapists or occupational therapists, and there was testimony that Sam does not receive speech therapy and occupational therapy at SEARCH, and that those related services are part of an ABA program and should not have been separate related services. It is observed that the IEP reflects occupational therapy for twenty minutes, once per week, and speech-language therapy for twenty minutes, twice per week. While an ABA program would naturally encompass those areas, the related services would not have been more than one hour per week and Pane credibly testified that she collaborates with the related-services therapists to insure that the services are not contrary to ABA. Further, Sam had received speech therapy and occupational therapy at Mitchell's Place, and the Occupational Therapy Discharge Summary recommends, *inter alia*, that "Sam would benefit from continued occupational therapy."

I **CONCLUDE** that there was no procedural violation that impeded Sam's right to a FAPE, that significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE to Sam, or that caused a deprivation of educational benefits.

There is no dispute that Sam requires an ABA program, and the IEP reflects that Sam would be placed in the autism classroom for that reason. Both the draft and final IEPs reflect that Sam was classified as "autistic," and the eligibility statement is as follows:

Due to [Sam's] significant delays in the areas of communication[,] self-help and socialization skills, as well as those behaviors [that] would impede his ability to function within a mainstream general education setting, he requires a self-contained ABA based program for children with autism. This setting would provide the one to one individualized instruction as well as an ongoing behavioral program if needed.

[R-12, R-13.]

Further, the IEP reflects that Sam “requires direct intervention and the use of ABA techniques and programs to address development of the skills needed to learn.” Although the Special Considerations section of the IEP should reflect that he has communication needs and that his behavior impedes his earning or that of others, those are obvious considerations in educating a child diagnosed with autism, and those considerations are noted elsewhere in the IEP, including in the summaries of the most recent evaluations. Additionally, among the goals and objectives in the IEP are several relating to manding and tacting, which are ABA terms.

Wiedemann testified that part of her reason for stating that the goals and objectives in the IEP were inappropriate was that she felt that the IEP lacked certain goals, primarily goals to address maladaptive behaviors. However, the IEP reflects:

A Functional Behavior Assessment (FBA) will be conducted by the behavior analyst upon entrance into the district program. A decision to develop a behavior plan will be based on the FBA.

[R-13.]

Wiedemann also conceded that sometimes data sheets contain additional, more specific information, and that the main overarching goal is what appears in the IEP.

Petitioners argue that behavioral supports and interventions to be used are not listed in the IEP. While the IEP does not specifically reflect that the District was going to conduct the ABLLS-R, Mom was advised at the May 24, 2016, meeting that the ABLLS-R would be conducted, which was confirmed by the May 25, 2016, email from Martinez, and I credit the testimony of Pane that the ABLLS-R is conducted for every child in the autism classroom. I further credit the testimony of Pane that the IEP would be revised pursuant to the results of the ABLLS-R and FBA. Petitioners’ assertion that this is inappropriate is inconsistent with their position that SEARCH is appropriate, because SEARCH Consulting did not conduct the VB-MAPP until Sam had started, and SEARCH Consulting did not prepare its goals and objectives until June 27, 2016, or a behavior-reduction program until November 18, 2016. Further, Wiedemann agreed that

tools like the VB-MAPP and ABLLS-R were the best way to write IEP goals for skill acquisition, and testified that she might initially forego her own testing and rely on previous testing with the intent to insure they were appropriate when Sam arrived. However, the VB-MAPP administered by Milestones did not include any compiled results or even a scoring grid, and its Discharge Summary suggested that an ABLLS-R should be conducted.

The evidence falls short of establishing that the proposed IEP and District program do not have the necessary elements of ABA and are therefore inappropriate. Wiedemann conceded that she noticed District staff correctly using prompting procedures and token economies for reinforcement, and that the lead teacher appeared knowledgeable and comfortable with the implementation of discrete-trial training. Although she had concerns about the experience and instructional confidence of the paraprofessionals in the classroom, it seemed that this stemmed in part from other programs, such as SEARCH, utilizing persons with more advanced credentials or those working toward BCBA certification. However, there was no evidence that there are particular educational requirements not met by the paraprofessionals at Rockaway Meadow School. Further, Sidener observed at Rockaway Meadow School twice, for approximately forty-five minutes each time. His report reflects that the classroom was relatively quiet, with occasional sounds of vocal stereotypy and/or mild disruptive behavior, with two students with moderate disruptive behavior that required intervention from the classroom teacher or Pane. His on-task measurements of the class, during three five-minute sessions, were at 67 percent, 83 percent and 93 percent. He conducted two observations of occasions for responding (OFR). The first included thirty-three OFR in a five-minute session, which indicated a high level of instructor engagement and targeted several directions to be followed. The second included twenty-seven OFR, of which eleven were attempts to re-direct a student back to task during a mildly disruptive episode and sixteen were task-related. Pane assisted the paraprofessional to work through the episode by coaching to give specific verbal directions and use the student's token system. Praise and behavior-specific praise (BSP) were scored in two five-minute sessions; the first included fourteen instances of praise and BSP, and the second included seven instances of praise and BSP and one affirmation, which he deemed a low rate for a five-minute session. Some disruptive

behavior was observed, but nothing extreme or out of the ordinary for a self-contained autism-specific classroom of kindergarten and first-grade students. Pane coached a paraprofessional to redirect a disruptive student using more natural and less friendly commands to address disruptive behavior, rather than a high-five.

Based upon the evidence, the classroom teacher and BCBA were fully familiar with behavioral interventions and would have addressed behaviors as necessary pending a full evaluation. Petitioners argue that the IEP is inappropriate on its face because Sam would not and could not benefit from group learning. However, with respect to classroom routines and group skills, it is observed that the BACA Report states as follows:

This area was not targeted due to time constraints. However, since group time is a portion of [Sam's] day it is suggested that specific goals be outlined for those times based on his current levels of group instruction. The skills that are appropriate for a group setting will vary depending on group size and what the activity is. Example goals would be: sitting in group for 5 minutes without disruptive behavior, responding to 50% of group instruction, vocally responds to 2 teacher SDs in a group setting, imitates group activities with objects, and participates in group movement and song activities. As noted earlier in [this] report, we need to evaluate each group activity for its appropriateness and ability to provide meaningful learning opportunities for [Sam].

Accordingly, the BACA Report does not state that Sam cannot or should not participate in group activities. Based on testimony, group activities would account only for a small portion of Sam's day, and there is no evidence that some group activity would void any educational benefit of the District's program. Additionally, while Sidener's opinion was that he most likely would not start with Sam participating in group activities, he never stated that Sam should be precluded from group activities.

Petitioners argue that the District should have implemented an intensive ABA program without undue delay "similar to what [Sam] was getting in Alabama at Milestones." This is unreasonable both because Sam had only attended Milestones for a month and because this would create an untenable possibility that parents could

enroll their child in any program for a short duration prior to a move and a new school district would thereafter be required to provide a comparable program. The BACA Report does not preclude group instruction, and in fact reflects that Sam was receiving some group instruction. Perhaps he was not receiving group instruction at Milestones, but he had only been placed at Milestones a month before the family's final move to New Jersey.

I am not persuaded that the District's program is not an ABA program or that the District "failed to offer even a single minute of ABA services." Petitioners reliance upon G.S. is unavailing, as G.S. is distinguishable for many reasons, including, *inter alia*, the child's age and disabilities, the nature and extent of available evaluations, and the testimony and credibility of the experts. Likewise, petitioners' Lascari concerns are unpersuasive.⁴ There were extensive records regarding Sam, all reflecting that Sam required an ABA program, which he was provided. As required by law, until the District could conduct further evaluations, some of his programming was dictated by his prior programming. Nevertheless, the evidence did not establish that the District's IEP was not reasonably calculated to provide Sam with meaningful educational benefit or an appropriate education.

While there may exist other schools that exclusively utilize BCBA's or utilize higher levels of education for staff than the District, or that require greater oversight, this does not render the District's program inappropriate, and there was no testimony that the duration of time or staff levels of education in the District were in violation of any ABA program requirements. Additionally, it is noted that Sam left Mitchell's Place in February 2016, and then attended Milestones for approximately one month, until April 28, 2016. While not optimal that Sam would have started school at Rockaway Meadow School and shortly thereafter would have attended a different school for ESY, especially after only attending Milestones for one month, that was dictated by circumstance, in that the family did not move to New Jersey until shortly before the end of the school year. Moving to a new district shortly before the end of the school year should not dictate an out-of-district placement.

⁴ Lascari v. Bd. of Educ. of the Ramapo-Indian Hills Reg'l High Sch. Dist., 116 N.J. 30 (1989).

Based upon the testimony and documentary evidence, I **CONCLUDE** that the District's IEP was appropriate to meet Sam's educational needs for the remainder of the 2015–2016 school year and for the 2016–2017 school year, and was reasonably calculated to provide him with FAPE and a meaningful educational benefit.

Since the District's IEP was reasonably calculated to provided Sam with FAPE in the least restrictive environment, I **CONCLUDE** that it was not reasonable for petitioners to unilaterally place him at SEARCH. There was no documentation or testimony that the parents requested that any additional or more specific information about the ABA program or behavioral interventions be included in the IEP, and while they had previously shared numerous evaluations and documents with the District, other than the parents' observation of the classroom subsequent to the IEP meeting, it appears that any collaborative process ended upon the parents learning that the District was proposing an in-District placement, rather than a private school, and there was no further interaction between the District and the parents after May 24, 2016. The core of the IDEA is the cooperative process that it establishes between parents and schools. Schaffer v. Weast, 546 U.S. 49, 53 126 S. Ct. 528, 532, 163 L. Ed. 2d 387, 394 (2005). Pursuant to 20 U.S.C.A. § 1412(a)(10)(C)(i), and subject to 20 U.S.C.A. § 1412(a)(10)(A), a local education agency is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in such private school or facility. As set forth above, the District's IEP was reasonably calculated to provide Sam with a FAPE. Therefore, reimbursement does not apply.

ORDER

Based on the foregoing, it is hereby **ORDERED** that the relief sought by petitioners is **DENIED**, and petitioners' Petition of Appeal is **DISMISSED**.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2016) 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 (2016). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education Programs.

July 31, 2017

DATE

KELLY J. KIRK, ALJ

Date Received at Agency

7/31/17

Date Mailed to Parties:

id

APPENDIX

Witnesses

For Petitioners:

Carrie Kahana
Katherine DeCotiis Wiedemann
David W. Sidener
S.S.

For Respondent:

Anthony Giordano
Victoria Chomut
Johanna Greco
Heather Pane

Exhibits

For Petitioner:

- P-1 BACA Atlas Assessment Report and Recommendations, dated January 12, 2016
- P-2 VB-MAPP Master Scoring Forms and Charts
- P-3 SEARCH Consulting Goals and Objectives, dated June 27, 2016
- P-4 SEARCH Consulting Behavior Reduction Program, dated November 18, 2016
- P-5 SEARCH Consulting Behavior Reduction Program, dated January 4, 2017
- P-6 SEARCH Consulting Progress Report for S.S., dated November 11, 2016
- P-7 SEARCH Consulting Program Planning List, dated September–November 2016
- P-8 Curriculum vitae of David Sidener
- P-9 Sidener Report, dated November 14, 2016
- P-10 Curriculum vitae of Katherine DeCotiis Wiedemann
- P-11 Wiedemann Report, dated December 23, 2016
- P-12 (Not in Evidence)
- P-13 (Not in Evidence)

- P-14 Curriculum vitae of Carrie Kahana
- P-15 (Not in Evidence)
- P-16 (Not in Evidence)
- P-17 (Not in Evidence)
- P-18 E-mails between Chomut and Mom, dated April 19, 2016
- P-19 (Not in Evidence)
- P-20 (Not in Evidence)
- P-21 (Not in Evidence)
- P-22 SEARCH Consulting Contract
- P-23 (Not in Evidence)

For Respondent:

- R-1 Petition for Due Process
- R-2 Answer to Petition for Due Process
- R-3 Mitchell's Place IEP, 2015–2016
- R-4 E-mails between Mom and District, dated April 19, 2016
- R-5 Initial Planning Meeting Attendance Sheet, dated April 21, 2016
- R-6 Initial Identification and Evaluation Planning—Proposed Action
- R-7 Authorizations for Release/Exchange of Information
- R-8 Psychological Evaluation, dated May 5, 2016
- R-9 Social Assessment, dated May 9, 2016
- R-10 Educational Evaluation, dated May 12, 2016
- R-11 VB-MAPP Scoring Form
- R-12 Draft IEP, dated May 19, 2016
- R-13 IEP, dated May 19, 2016
- R-14 (Not in Evidence)
- R-15 Pane Observation Report, dated November 9, 2016
- R-16 Johanna Greco Observation Report, dated November 15, 2016
- R-17 Curriculum vitae of Victoria Chomut
- R-18 (Not in Evidence)
- R-19 Curriculum vitae of Anthony Giordano
- R-20 Curriculum vitae of Johanna (Hedler) Greco, LDTC

- R-21 (Not in Evidence)
- R-22 (Not in Evidence)
- R-23 (Not in Evidence)
- R-24 (Not in Evidence)
- R-25 Curriculum vitae of Heather M. Pane, MA, BCBA
- R-26 (Not in Evidence)
- R-27 Emails between Mom and Giordano, dated November 6–17, 2015
- R-28 Emails between Mom and Giordano, dated November 17, 2015
- R-29 Emails between Mom and Giordano, dated November 6, 2015, to February 8, 2016
- R-30 Email from Mom to Giordano, dated February 17, 2016
- R-31 Email from Mom to Giordano, dated February 26, 2016
- R-32 Emails between Mom and Giordano, dated March 2–4, 2016
- R-33 Emails between Mom and District, dated March 2–14, 2016
- R-34 Email from Mom to District, dated March 15, 2016
- R-35 Email from Mom to District, dated March 15, 2016
- R-36 Emails between Mom and District, dated March 15–24, 2016
- R-37 Email from Mom to Chomut, dated March 28, 2016
- R-38 Email from Mom to Chomut, dated March 31, 2016
- R-39 Email from Mom to Chomut, dated April 3, 2016
- R-40 Email from Mom to Chomut, dated April 4, 2016
- R-41 Email from Mom to Chomut, dated April 4, 2016
- R-42 Email from Mom to Chomut, dated April 5, 2016
- R-43 Email from Mom to Chomut, dated April 6, 2016
- R-44 Email from Mom to Chomut, April 14, 2016
- R-45 Emails between Mom and Chomut, dated April 19–20, 2016
- R-46 Email from Mom to Chomut, dated April 21, 2016
- R-47 Emails between Mom and Chomut, dated April 21–22, 2016
- R-48 Emails between Giordano and Mom, dated April 21–28, 2016
- R-49 Email from Mom to Chomut, dated May 9, 2016
- R-50 Email from Mom to Greco, dated May 9, 2016
- R-51 Email from Mom to Chomut, dated May 10, 2016
- R-52 Emails between Mom and Landesberg, dated May 19, 2016

- R-53 Email from Greco to Mom, dated May 19, 2016
- R-54 Emails between Mom and Greco, dated May 20, 2016
- R-55 Email from Mom to CST, dated May 24, 2016
- R-56 Email from Landesberg, dated May 25, 2016
- R-57 Email from Landesberg to Mom, dated May 25, 2016
- R-58 Email from Landesberg to Mom, dated May 26, 2016
- R-59 Correspondence from B. Callahan, Esq., to E. Harrison, Esq., dated May 26, 2016
- R-60 Email from Chomut to Mom, dated June 1, 2016
- R-61 Correspondence from K. Gilfillan, Esq., to B. Callahan, Esq., dated June 15, 2016
- R-62 Records request from B. Callahan, Esq., dated June 16, 2016
- R-63 (Not in Evidence)
- R-64 Pane Notes, dated September 9, 2016
- R-65 Pane Notes, dated October 26, 2016, and November 2, 2016
- R-66 (Not in Evidence)
- R-67 (Not in Evidence)
- R-68 Email from Pane to Sidener, dated January 11, 2017