State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 13568-15

AGENCY DKT. NO. 2016-23282

G.S. AND N.M. ON BEHALF OF E.S.,

Petitioners,

v.

PARSIPPANY-TROY HILLS TOWNSHIP BOARD OF EDUCATION,

Respondent.

Lori M. Gaines, Esq., for petitioners (Barger & Gaines, attorneys)

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

Record Closed: April 29, 2016 Decided: June 3, 2016

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

STATEMENT OF THE CASE

Petitioners, G.S. (Mr. S.) and N.M. (Mrs. M.) (collectively, parents or petitioners), on behalf of their son, E.S., 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 E.S. for the 2015–2016 school year was not appropriate, and that an out-of-district placement at the Institute for Educational Achievement was appropriate.

PROCEDURAL HISTORY

On or about July 16, 2015, petitioners' Petition for Due Process was filed with the Office of Special Education Programs. The Office of Special Education Programs transmitted the matter to the Office of Administrative Law (OAL), where it was filed on September 3, 2015. On or about September 11, 2015, petitioners filed a First Amended Petition for Due Process with the OAL. The District's Answer to Amended Due Process Petition was filed with the OAL on or about September 17, 2015. The matter was heard on December 1, 2015, January 14, 2016, January 27, 2016, and February 10, 2016. Written summations were submitted on a final hearing date, April 29, 2016, on which date the record closed.

FACTUAL DISCUSSION

Background

Certain background facts are largely undisputed. Accordingly, I **FIND** the following to be the **FACTS** of this case:

E.S., the son of Mr. S. and Mrs. M., was born on late April 25, 2012. He resides within the District.

At sixteen months old, E.S. was evaluated by clinical geneticist due to thin scalp hair and an absence of teeth. A Genetics Consultation, dated September 5, 2013, reflects that E.S. was diagnosed with hypohidrotic ectodermal dysplasia, and it was recommended that he be evaluated by a pediatric dentist, a pediatric ENT and an ophthalmologist. (P-3.)

On February 10, 2014, E.S. was referred to the New Jersey Early Intervention System (NJEIS). (J-4.) An initial Individualized Family Service Plan (IFSP) was prepared and consented to by petitioners on March 5, 2014. (P-4.) In-home therapy commenced on March 20, 2014, as follows: occupational therapy for sixty minutes, two

times per week; developmental intervention for sixty minutes, three times per week; and speech therapy for sixty minutes, one time per week.

IFSP Periodic Reviews were conducted on May 20, 2014, June 17, 2014, July 17, 2014, July 31, 2014, August 13, 2014, September 25, 2014, and October 16, 2014. (P-5; P-6; P-7; P-8; P-9; P-10; P-11.) The Periodic Reviews reflect modifications made to the frequency and/or duration of E.S.'s NJEIS services. (Ibid.) Ultimately, E.S. was receiving approximately twenty-two hours per week of Applied Behavior Analysis (ABA) therapy.

Per an email dated December 5, 2014, Kristen Carew, lead service coordinator for the Morris County Early Intervention DAWN Center for Independent Living, contacted Janice Malavarca at the District about E.S. to follow up on their telephone conversation that morning. (J-13.) Malavarca is a licensed social worker and the District's case manager for all incoming preschool students, so the NJEIS contacts Malavarca to start the process into District.

Per another email, dated December 9, 2014, from Carew to Malavarca and Denise Basile of the District's Pupil Personnel Services, Carew advised that she did not hear back from the District about having a District representative attend the transition planning conference (TPC) with E.S.'s family. (J-13.) The email also noted that E.S. was "very involved and it would be helpful for someone from [Malavarca's] team to attend." (J-13.)

On December 15, 2014, the NJEIS generated a notice to Morris Plains that E.S. was receiving intervention services through the NJEIS; he was approaching age three and may be eligible for Part B services; and his parents had not opted out of the notification/referral. (J-12.)

Per an email from Carew to Malavarca and Basile, dated January 9, 2014, Carew advised that the TPC had taken place, and that she was attaching the local education agencies (LEA) notice again because the family had told her that they had not yet heard from the District. (J-13.) Per an email from Malavarca to Carew and Basile, dated

January 9, 2015, Malavarca advised, "I have not heard of this child yet, but looking forward to meeting as soon as we can." (J-13.) Likewise, per an email from Basile to Carew and Malavarca, dated January 9, 2015, Basile advised "Hello—We have not received any information on this child to date; however, I will mail the parent the preschool packet in today's mail." (J-13.)

Per the District's Preschool Disabilities Information Sheet, dated January 14, 2015, the parents noted that E.S. had been diagnosed with autism spectrum disorder and ectodermal dysplasia and that he had social and educational assessments. (J-14.)

Per an email from Malavarca to Carew, dated January 22, 2015, Malavarca requested that Carew attend an identification and evaluation planning meeting scheduled for February 18, 2015. (J-19.) The District had wanted to hold the meeting sooner, but that was the first date on which Mr. S. was available. (J-19.) Per an email from Carew to Malavarca, dated January 28, 2015, Carew advised that the TPC had been held earlier that month and Carew would be unable to attend the identification and evaluation planning meeting. (J-19.)

Per a Pediatric Neurodevelopmental Evaluation, dated February 3, 2015, completed by Tosan O. Livingstone, M.D., E.S. was referred by his pediatrician for a neurodevelopmental evaluation. (J-15.) The Autism Diagnostic Observation Schedule (ADOS) 2 Module 1 was administered, which showed that E.S. was on the autism spectrum. (J-15.) Per the Behavior Assessment System for Children (BASC), E.S.'s behavior was in the at-risk range for atypicality, withdrawal, social skills and activities of daily living. (J-15.) Livingstone's impressions were a genetic disorder (ectodermal dysplasia) and autism spectrum disorder. (J-15.) Dr. Livingstone recommended the following: that E.S. continue with his current services through the NJEIS; that E.S. receive a Child Study Team (CST) evaluation by the local school district for special preschool education at three years of age; that E.S. will benefit from a program where he can continue to receive 1:1 ABA therapy up to twenty-five hours a week; that E.S. will benefit from continuing to receive speech therapy and occupational therapy; and that E.S. will benefit from a home ABA program. (J-15.)

The Battelle Developmental Inventory—Second Edition (BDI-2) Evaluation Information, dated February 7, 2015, reflects E.S.'s "Z-Scores" as follows: Adaptive -2.80; Personal-Social -2.80; Communication -2.80; Motor -.60; Cognitive -2.27. (J-17.) His BDI-2 total Z-Score was -2.60. (J-17.)

On February 18, 2015, the District issued an Initial Identification and Evaluation Planning—Proposed Action notice, notifying the parents that as a result of the identification and evaluation planning meeting, the District proposed that an evaluation was warranted to determine if E.S. has a disability, and that it was determined that E.S.'s areas of suspected disability were preschool child with a disability (physical, including gross motor, fine motor and sensory (vision and hearing)); cognitive; communication; social and emotional; and adaptive. (J-18.) The parents shared with the District the BDI-2 from February 7, 2015, and the Pediatric Neurodevelopmental Evaluation from February 3, 2015. Present at the initial identification and evaluation planning meeting were E.S. and his parents; the general education teacher; CST member Kathleen Attenasio (learning disabilities teacher-consultant—LDTC); Malavarca (case manager); Toni Farneski (District representative); Katrina Wasserman (speech and language specialist); a coordinator from the NJEIS; and a speech-language specialist from the NJEIS. (J-18.) The District proposed conducting a preschool multidisciplinary evaluation, to which the parents consented. (J-18.)

Farneski is a school psychologist on the CST. She has been employed by the District for thirteen years. For the first seven years she served kindergarten through fifth grade, and for the past six she has served preschool through fifth grade. She received a bachelor's degree in psychology, and a master's degree in psychology in 2003. She also obtained a school psychology certificate in 2003, after completing a three-year program consisting of approximately 60 hours of case work and 1,200 hours interning. (J-68.)

Nicole Paterno Bednarski[1] (Paterno) received a bachelor's degree in psychology in December 2009, and a master's degree in ABA in May 2013. She was certified as a board certified behavior analyst (BCBA) in February 2014. (J-72.)

Per an email from Malavarca to Carew, dated February 18, 2015, Malavarca advised Carew that the parents had signed a consent for evaluation that morning and had advised that they would contact Carew to release the results of the recently administered BDI-2 and any other helpful information. (J-19.) On February 19, 2015, Carew provided Malavarca with a copy of the most recent BDI-2 via email. (J-19.) Per an email dated February 20, 2015, Malavarca thanked Carew for the BDI-2 and asked Carew if there was any other information from the NJEIS, because nothing else was received. Carew responded, via email, "[t]hat is the information the family allowed me to release, but we are having a meeting next week and I will ask if I can send you a copy of the IFSP." (J-19.) The District was not provided with any further information from the NJEIS, including any IFSPs, Annual Reviews or the ABA data notebook.

An IFSP Annual Review was conducted on February 26, 2015. (J-16.) Continued eligibility was determined. (J-16.)

An educational/behavioral consultation was conducted at the parents' request by Bridget Taylor, Psy.D., BCBA-D, on February 25, 2015. (J-20.) Dr. Taylor prepared an Educational/Behavioral Report, dated February 25, 2015 (Taylor Report). Per the Taylor Report, Dr. Taylor made the following recommendations for E.S.:

> 1) A full day of instruction.
>
> 2) A twelve month program. The summer program should be an extension of the school program provided during the school year and not a modified summer program. During summer programming, the same number of intervention hours and intensity of services should be provided to maintain skills and avoid regression.

[1] Nicole Paterno is now Nicole Bednarski. For ease of reference, as the documents refer to her as Paterno, she is also referred to herein as Paterno.

3) A one-to-one teaching ratio should be provided across the day to increase learning opportunities and to redirect repetitive and stereotypic responses. This should not be a one-to-one aide assigned to [E.S.], rather it should be the case that the class he attends has a one-to-one teaching ratio and that [E.S.] has the opportunity to work with a number of instructors across the school day.

4) A behaviorally-based (ABA-based) teaching curriculum to address skill deficits and address behavioral challenges.

5) Procedures to systematically assess challenging behavior (e.g. functional analyses) and to develop interventions based on the results of the assessment.

6) Procedures to systematically desensitize [E.S.] to dental and medical examinations.

7) Community-based instruction to transfer compliance to community dental and medical offices.

8) Behavioral assessment of his feeding issues and coordination with medical personnel on increasing consumption.

9) A data-based approach to instruction to systematically validate the effects of teaching and treatment interventions. This should include daily graphing of skill acquisition programs as well graphing of target behaviors. Progress reports should be data-based and reflects [sic] a measure of performance based on the data have been collected.

10) A variety of research-based teaching procedures to include both teacher-directed interventions (discrete trial teaching) and child-directed interventions (incidental teaching).

11) A systematic home programming component or family training program which would include weekly home visitations to address problem behavior and skill deficits displayed in the home. Parents should be trained to implement protocols to increase [E.S.'s] participation in self-care routines.

12) Supervision and staff training provided by a board certified behavior analyst skilled in educating children with autism.

> 13) Regularly scheduled (at least monthly) meetings between parents, teachers and supervisors to problem solve difficult programs and to plan future objectives.
>
> 14) Procedures to promote generalization and maintenance of skills across stimuli, people, settings and time.
>
> In addition to attending a full day behaviorally-based school program, [E.S.] will require after school instruction in order to promote generalization of skills learned at school and to teach him the skills necessary to participate fully in family activities. It is recommended that he receive at least ten hours per week of instruction. Home and school programs should coordinate to ensure consistency in goals and intervention approaches.
>
> [J-20.]

Above and Beyond Learning Group (ABLG), one of E.S.'s home intervention providers, prepared a list of goals and objectives for E.S., beginning in March 2015. (J-21.)

Per an email from Malavarca to Mr. S., dated March 27, 2015, Malavarca advised Mr. S. that E.S.'s BCBA mentioned that E.S. had attended, with her support, a church preschool program one time per week for approximately eight to ten sessions, and Malavarca asked Mr. S. if E.S. was still attending and how the experience was for E.S. (J-23.) Via email, Mr. S. responded that E.S. was no longer attending, as it was very inconsistent due to scheduling reasons, and that his experience was fine, but he did not socialize with other children and needed to be prompted for every activity. (J-23.)

The Preschool Multidisciplinary Report, dated April 15, 2015, from the District's Special Services Department reflects that the evaluation consisted of structured interviews with the parents, review of referral/background material, the BDI-2, and the Preschool Language Scale—5th Edition. (J-25.) The four persons who contributed to the Preschool Multidisciplinary Report were Malavarca (school social worker), Farneski (school psychologist); Kathleen Attenasio (LDTC), and Katrina Wasserman (speech and

language specialist). Of the four, only Wasserman met with E.S., for a duration of no more than thirty minutes.

An Individualized Education Program (IEP) meeting was held on April 28, 2015, and was attended by the parents and their previous attorney. The District prepared a draft IEP and presented it to the parents at the meeting.

The IEP reflects the initial referral date as January 21, 2015;[2] the initial consent-to-evaluate date as February 18, 2015; and the initial eligibility-determination and IEP-meeting date as April 28, 2015. The IEP reflects the following special education programs and related services for the period May 4, 2015, through June 25, 2015: Special Class Preschool Disabilities Full-Day: 4x Weekly for 360 minutes and 1x Weekly for 240 minutes; Speech-Language Therapy: Individual 2x Weekly for 20 minutes; Behavioral Intervention Services: 1x Weekly for 30 minutes; Personal Aide: Individual 1x Daily for 360 minutes; Occupational Therapy: Individual 2x Weekly for 30 minutes; Special Transportation: Bus with Attendant 2x Daily. The IEP reflects the same special education programs and related services for the period September 4, 2015, through April 27, 2016, with the exception of the occupational therapy. (J-26A.) Finally, the IEP reflects E.S.'s special education programs and related services for the period July 6, 2015, through July 31, 2015, as: Special Class Preschool Disabilities Full-Day: 1x Daily for 240 minutes; Speech-Language Therapy: Individual 2x Weekly for 20 minutes; Behavioral Intervention Consultation: Individual 1x Weekly for 30 minutes; and Special Transportation: Bus with Attendant 2x Daily. (J-26A.) The IEP clarified that E.S. would have a 1:1 paraprofessional to assist him with all areas of his school day as he transitions into the proposed program, which service would be continually reassessed every three months to determine if he required a 1:1 paraprofessional or a shared paraprofessional. (J-26A.) The IEP also reflects that the District's behaviorist would consult with E.S.'s private behaviorist to coordinate discrete trial/behavior programs appropriate to implement within the school setting. (J-26A.)

Additionally, the IEP reflects the "Concerns of the Parent" as follows:

[2] The basis for this date is not clear.

> During the meeting on 2/18/15, parents expressed concerns that despite one year of Early Intervention services, [E.S.] does not make spontaneous eye contact, has no functional or spontaneous language at home and feeding issues continue. [E.S.] will not ask for food, shows no interest in food and has difficulty with different food textures. He is difficult to engage outside of his therapeutic sessions. Neurodevelopmental Evaluations (4/14; 2.3.15) reported diagnosis of Autism Spectrum Disorder. Parents also indicated that opportunities for interaction with peers would be very important. [Mr. S.] shared that briefly [sic] attended a preschool program, 1x/week with support from his BCBA. While his attendance was inconsistent due to scheduling difficulties, the experience was believed to be fine. Reportedly, [E.S.] did not socialize with peers and needed prompting for every activity.

The IEP reflects that on February 18, 2015 the parents shared the BDI-2, dated February 7, 2015, and the Pediatric Neurodevelopmental Evaluation, dated February 3, 2015. The IEP further reflects that "Parents did not consent for their service coordinator to release any records related IFSP (Individualized Family Service Plan)." Likewise, in the "Occupational Therapy" section the IEP reflects that "Early intervention records have not yet been received to review outcomes."

The hours of the Special Class Preschool Disabilities (Preschool Disabled Program) are Monday through Thursday from 9:00 a.m. until 3:00 p.m., and Fridays from 9:00 a.m. until 1:00 p.m. The District holds parent meetings on Friday afternoons, which include private meetings between the parents, the teacher, and the BCBA to review data notebooks and behaviors and to discuss concerns at home or parent support, and include general-topic discussions. Staff trainings also occur on Friday afternoons as well as other times throughout the school day and year. At staff trainings there is an opportunity to review individual progress for each student and then develop programs.

At the IEP meeting, the parents consented to occupational therapy, physical therapy, and feeding evaluations. (J-27.)

Per an email from petitioners' attorney to the District's attorney, dated May 1, 2015, E.S. would not be starting the District's program on May 4, 2015, and the parents'

expert was going to contact the case manager to schedule an observation of the District's program. (J-29.) The parents did not enroll E.S. in the District's program.

The parents retained Anita Breslin, Psy.D./BCBA-D, "for assessment in order to receive professional input regarding [E.S.'s] educational needs." (J-41.) Dr. Breslin initially contacted the District on May 1, 2015, at which time she was out of the country, and multiple emails were exchanged between Dr. Breslin and Farneski during the first two weeks of May 2015. (J-32; J-34.) On May 8, 2015, Farneski emailed Dr. Breslin the District's Extended Day Class Schedule, which reflects the schedule from 9:00 a.m. until 3:00 p.m. daily, including the alternate schedule for Friday. (J-30; J-34.) Additional emails were exchanged later in May 2015 between Dr. Breslin and Farneski, and between Dr. Breslin and the petitioners' previous attorney. (J-36; J-38.)

An Occupational Therapy Evaluation conducted by Melissa Arnot, MS, OTR/L, and Lauren Ogens, MS, OTR/L, dated May 27, 2015, reflects the following as its Summary/Interpretation:

> [E.S.] is an affectionate, happy young boy who enjoys exploring the world around him. The standardized evaluation tool, The Miller Assessment for Preschoolers, was attempted to gain a baseline of [E.S.'s] skill set however, due to lack of understanding of verbal direction and limited attention, the evaluation was unable to be completed in the standardized manner it is intended for therefore percentile ranks were not achieved. [E.S.] has great strength as he can bilaterally pull an accordion tube apart, rip paper, find items in theraputty and maintain tall kneel for more than 3 minutes however his attention, engagement[,] endurance and focus is limited. Currently, school based direct pull-out services are not recommended for [E.S.]. The team should consider allowing the occupational therapist to work with [E.S.] 1x 30 minutes weekly for an integrated session within the classroom. The team should also consider allowing the occupational therapist to work with the classroom teacher and staff on a consultation basis, 1x weekly for 30 minutes for maintenance, development and modifications of classroom fine motor programs, sensory motor activities within the classroom and any other topics that may arise as related to occupational therapy. The consultation will provide the

> classroom staff and classroom teacher with information and training for daily implementation and carryover of skills. As [E.S.] gains exposure to school based tasks and builds upon attention and engagement, service intervention will be reassessed.
>
> [J-39.]

The Occupational Therapy Evaluation also lists suggestions for adaptation and goals and objectives to improve fine motor skills, strength and functioning, and overall focus, attention and engagement for increased success and independence across school settings. (J-39.)

On May 13, 2015, Dr. Breslin observed E.S. at home for approximately one and one-half hours, and on May 14, 2015, and May 19, 2015, Dr. Breslin observed the District's program for approximately one hour and one-half hour, respectively, which was the maximum time allowed Dr. Breslin by the District. Dr. Breslin prepared a Report of Determinations (Breslin Report), dated June 18, 2015. (J-41.)

By letter dated June 24, 2015, petitioners' attorney notified the District's previous attorney, in part, as follows:

> Please be advised that as a result of the District's failure to offer an appropriate placement for [E.S.], his parents will unilaterally place [E.S.] beginning on July 10, 2015 at the Institute for Educational Achievement ("IEA") . . . . In addition, the Parents will hold the District financially accountable for the cost of the program, including transportation and all related costs.
>
> [J-45.]

On June 18, 2015, E.S. was evaluated by Diane D. Barnes, PT, DPT, PCS, who prepared a Physical Therapy Initial Evaluation, dated July 8, 2015. (J-47.) Barnes recommended that E.S. receive physical therapy in school, one time weekly for 30 minutes, in an individual or group setting, to promote gross motor skill development to support participation in preschool play activities with peers; that physical therapy

interventions can include activities to facilitate gross motor skill development and coordination and consultation with E.S.'s educational team to support development of imitation skills and interaction with peers during gross motor play activities; and that consultation with the school nurse and E.S.'s parents is recommended to identify and manage issues related to E.S.'s limited ability to perspire to regulate his body temperature. (J-47.)

On June 25, 2015, E.S. was evaluated at the Center for Pediatric Feeding and Swallowing, and a New Patient Evaluation, dated June 25, 2015 (Feeding Report), was prepared. (J-46.) The chief complaint in the Feeding Report was "food selectivity." (J-46.) The diagnoses were "feeding difficulty and mismanagement" and "constipation unspecified." (J-46.)

Farneski and Paterno prepared notes in response to the Breslin Report, and Pupil Personnel Services prepared a formal Response to the Breslin Report. (J-42; J-43.)

On July 16, 2015, the parents filed a Petition for Due Process. On July 17, 2015, the District mailed to the parents copies of the Occupational Therapy Evaluation, Physical Therapy Initial Evaluation, and Feeding Report. (R-49.) Thereafter, on July 21, 2015, the District's attorney advised petitioners' previous attorney that the reports had been sent directly to petitioners and that the case manager would contact them directly to schedule a meeting to discuss the reports. (R-50.) On August 10, 2015, the District mailed the parents an Invitation for Initial Individualized Education Program (IEP) Development (Invitation) for August 19, 2015. (J-51.) On August 21, 2015, Farneski mailed the IEP, dated August 21, 2015 (August IEP), to the parents. (J-54.) The August IEP reflects the same special education programs and related services for September 3, 2015, through June 24, 2016, as were reflected in the April IEP for September 4, 2015, through June 25, 2016, but added: Occupational Therapy: Individual 2x Weekly for 30 minutes[3]; Physical Therapy: Individual 1x Weekly for 30

[3] It is noted that the District's Occupational Therapy Evaluation states that "school based pull-out services are not recommended for E.S."

minutes; and Physical Therapy Consultation: Individual 2x Monthly for 30 minutes. (J-55.)

On August 21, 2015, petitioners' previous attorney sent a letter to the District's attorney regarding the IEP and the August IEP meeting. (J-56.)

On November 12, 2015, Donna DeFeo, principal of the IEA, mailed a copy of E.S.'s data notebook from the IEA to petitioners' previous attorney. (P-61.) On November 19, 2015, Dr. Breslin prepared a follow-up to the Breslin Report (Breslin Addendum), which reflects school observations she conducted at the IEA on October 28, 2015, November 3, 2015, and November 9, 2015, and a home observation on November 10, 2015. (P-64.)

Testimony

Toni Farneski

Prior to her employment at the District, Farneski was a home therapist who implemented ABA programs to private clients. Farneski is not a behaviorist and is not certified in ABA, but she has thirteen years' experience with case management and development, implementation and assessment of ABA programs within the District. Farneski is scheduled in the ABA building 2.5 days per week, during which time she is intermittently observing students, consulting with the teacher and BCBA, and following up on student progress.

Farneski described the District's proposed ABA program as a classroom based on ABA principles. Throughout the entire day data is taken on the students in various settings. Behaviors targeted to be changed are evaluated and interventions are implemented, and then those interventions are assessed to determine effectiveness. Each student is unique, so the program is adapted to meet a particular student's needs.

As a school psychologist, Farneski primarily assesses students suspected of having a disability. She completes the testing and works with the CST to determine

eligibility. Farneski is in the classroom as a case manager. She monitors progress and consults with the BCBA and the teacher daily to ensure that progress is being made. She has written hundreds of IEPs, including for preschoolers coming to the District for the first time. In writing an IEP, other professionals, such as speech therapists, occupational therapists and physical therapists, perform evaluations and enter goals. IEPs are continuously and consistently revised due to a student's developing needs. As part of the District's program, she has worked with physical and occupational therapists in the classrooms, particularly the ABA classrooms, to develop programs for students in relation to the students' gross motor and fine motor skills. Farneski has managed students with out-of-District placements.

In the case of a student receiving early intervention, the student's case manager refers the student to the District approximately 120 days prior to the student's third birthday so that evaluations may be completed before the student's third birthday, and the student may then enter a public school preschool program. The NJEIS contacts Malavarca to start this process. Once a student is assessed and programs for the student are discussed, a District case manager is assigned.

On December 15, 2015, the NJEIS notified the District that E.S. was turning three, which prompted the District to invite the parents to discuss evaluations, programs, and the process. In preparing an IEP, Farneski would want to have the student's IFSPs because they provide information on what has been worked on in the home, what strategies were put in place, what progress the student has made, and general information about the student. To her knowledge, permission was never given to release the IFSPs for E.S. In her experience, it is unusual for the District not to have received information from NJEIS about the student by January 9 for a mid-December referral. Typically, once the referral is made, it is the parents' responsibility to contact the District in order to have registration information sent to them for completion to start the process.

The District has invited NJEIS representatives to identification and evaluation planning meetings. The NJEIS coordinator must hold a transition meeting to close the case on a student moving from the NJEIS to public school. The District wants the

NJEIS coordinator at the meetings because the coordinator provides the District with a lot of information, and, in addition, the coordinator is a support and known figure to the parents. Carew's response about not attending the IEP meeting was not typical; usually the NJEIS is more than happy to attend initial meetings with parents and they are typically done together. A TPC can be held, with the District involved, prior to the formal referral of the student to the District.

Farneski relied on the BDI-2 from the NJEIS and the Pediatric Neurodevelopmental Report in developing the IEP. She did not doubt the opinions or recommendations contained in the Pediatric Neurodevelopmental Report, but described the recommendations as "pretty standard" and not very individualized. Farneski concurred with continuing E.S.'s current services through the NJEIS; having an evaluation by the District CST for preschool education at age three; and continuing E.S.'s speech and occupational therapy at school.

Farneski testified that the District has a comprehensive ABA program that includes not only discrete trial implementation in a one-to-one setting, but also taking data and managing behaviors through a student's entire day. A discrete trial is a teaching setting with a student and a paraprofessional or a trained person who implements ABA or discrete-trial programs in which data is taken in a very structured and methodical manner, with skills broken down into very small steps. Farneski would not define one-to-one therapy as only discrete-trial therapy. Rather, she described ABA as a comprehensive theory that is implemented across the school day.

As a school psychologist, Farneski did not believe that twenty-two hours of discrete-trial therapy was appropriate for E.S. It is very isolating and does not allow for teaching in a very natural manner. Farneski sees benefits in having a comprehensive program where social skills are taught, including in natural, spontaneous settings, which are very important for autistic students. Farneski also felt that a home ABA program can be very beneficial to some students, and she has collaborated with many home ABA therapists. A home ABA program was not offered to E.S. because the District did not know E.S. or his levels, what would motivate him, or how he would react to the school setting. It was anticipated that E.S. would enter the District and his program

would be adjusted to meet his needs. A home program would not be offered to a new student because the District needs to get to know the student, learn more about the student, learn what motivates the student, learn how to best work with the student, and learn how the student will respond to interventions provided in school prior to implementing anything in the home. Part of the District's ABA program includes parent training. It is important that parents are trained to develop and implement behavioral changes. After the parents have implemented their training at home, if the parents advise that progress is not being made or there is still difficulty, the District would hold a meeting and offer some type of home services for a short-term basis. Those services would later be reevaluated, and services on a long-term basis are possible. There are District students who have had home ABA programs; it is based on a child's individual needs. Farneski thought Dr. Livingstone's recommendation of a home ABA program was a general recommendation. In the District's program, a student receives approximately twenty-eight hours of an ABA program because the entire program is based upon ABA principles. Data is taken throughout the day and interventions are implemented in every aspect of the student's day, including circle time, where data is taken on how the student is engaging in circle-time activities. During centers, data is taken on initiation of play with other students and adults. It is important that students be taught how to play individually and interactively, as that is the basis of communication and developing relationships with staff members and peers. Twenty-eight hours of ABA is an intensive day for a young child, so while a home program could be beneficial, it could also backfire in that a student receives so much ABA therapy or discrete-trial therapy that the child rejects it and does not perform at home to the levels at which the child performs in school.

There are nine hours of one-to-one ABA discrete trial therapy particular to the general schedule, but once a student enters the program, the student's needs are reevaluated and that amount fluctuates. Farneski's opinion was that solely offering discrete trial therapy would be inappropriate, and there would be no opportunity for E.S. to socialize with other children and no ability for the District to assess or teach skills for centers or circle time. Some students may need more or less than nine hours of discrete-trial therapy, so that number may be increased or decreased. To determine progress in an ABA program, data is charted and taken on each individual skill. How

the data is collected is very methodical, very specific behaviors are targeted, and then interventions or teaching strategies are put into place to change the behavior to make progress. Once progress is made there are determining factors of mastery. Once a skill is mastered, there is a hierarchy of steps, and then the students move on to another step. Farneski has seen meaningful progress in children receiving nine hours of discrete-trial therapy.

Farneski administers the BDI-2, but the District accepted the BDI-2 results from the NJEIS because the test was administered within three months of receipt by the District. The BDI-2 provides information as to where the student falls in terms of developmental abilities, in order to develop goals and objectives for an IEP. For a preschooler to be eligible for special education services the student must have a 33 percent delay in one area or a 25 percent delay in two areas of the BDI-2 assessment. Farneski typically uses standard scores, denoted as "S.S." The standard scores for E.S. reflect that his developmental abilities are low, except for the motor realm. She has seen BDI-2 results like E.S.'s for other students in the District's Preschool Disabled Program. It is not unusual for an autistic preschooler to have such BDI-2 scores. It is difficult to obtain an accurate cognitive assessment of a not-yet-three-year-old through BDI-2 or any other testing instrument. The BDI-2 is a snapshot of time that a student does or does not perform. BDI-2 scores could be different based on how child was feeling that day or the way the administrator presented items. In her experience, a student may be more comfortable with one administrator than another. Farneski did not have any concern based on E.S.'s overall performance on the BDI-2 that the District's program could not meet his needs. Further, once a student enters the District's program and is adjusting to a school setting the District makes a comprehensive assessment of a student. The BDI-2 is very limited in a number of ways and Farneski noted that the District also incorporates results from the Assessment of Basic Language and Learning Skills (ABLLS). The ABLLS is extremely lengthy and it takes approximately six weeks to complete in its entirety. The ABLLS helps the teacher, behaviorist and staff to start to develop a relationship with the student and allows the District to gain much more information on the student, including the student's skill levels. The ABLLS has been used to adjust programs and IEPs.

The preschool multidisciplinary evaluation is performed on preschoolers to determine eligibility for classification and special education. It typically includes the BDI-2 and/or other test results obtained from the NJEIS. A psychological or cognitive evaluation is part of the BDI-2. In addition, a speech and language evaluation by the speech and language therapist and a social assessment by a social worker are completed. Typically, few people from the District observe an incoming preschooler when the District receives information from the NJEIS that can be used. The speech and language therapist had an interaction with E.S., and she reported on her interactions and assessment. Additionally, E.S. attended one meeting with his parents, at which time Farneski met him. Farneski did not feel that the CST did not have an opportunity to gather enough information about E.S. because only a few team members had observed him.

Physical-therapy and occupational-therapy evaluations were ultimately performed. They were not recommended at the initial evaluation and planning meeting because although the District's therapists receive some information from parents and reports, they find it meaningful to evaluate students in the setting in which the student will participate in order to develop goals based on what would be worked on and what would be developmentally appropriate for the student. As part of his IEP, E.S. was to receive occupational-therapy services, during which time an assessment would also be completed.

At the identification and evaluation planning meeting, the parents and the NJEIS coordinator (Gleason) verbally communicated to the team what therapies E.S. had been receiving and their frequency. Although there was an outline of services, no specific information was provided. E.S. had been receiving ABA therapy, speech and language therapy, and occupational therapy. After an identification and evaluation planning meeting, evaluations are scheduled and the parents bring the student in for the assessments. Individuals who do not assess the student, such as Farneski, review the data provided and write a brief summary of the data in the Preschool Multidisciplinary Report.

Farneski received the Taylor Report on April 28, 2015, from the parents so she did not have an opportunity to review the Taylor Report before the IEP was drafted. She reviewed the Taylor Report after the IEP meeting. No formalized testing was described in the Taylor Report and Farneski never had access to the ABA home-therapy data book for E.S. Some of the recommendations contained in the Taylor Report were in the IEP or already part of the District's program. The parents had fifteen days to consider the IEP, after which time it would be finalized. Farneski handed out a draft IEP at the IEP meeting. There were changes made to the draft based on the IEP meeting. Farneski mailed the final IEP to the parents, but it was not signed by the parents.

A full day of instruction was offered in the IEP, as the preschool program is from 9:00 a.m. until 3:00 p.m., with the exception of Friday, which is from 9:00 a.m. until 1:00 p.m. in preparation for parent meetings on Friday afternoons. In addition to specific private meetings among the parents, the teacher, and the BCBA to review data notebooks and behaviors and to discuss concerns at home or parent support, the parents are also invited in for general-topic discussions. Staff trainings also occur on Friday afternoons, as well as other times throughout the school day and year. At staff trainings there is opportunity to review individual progress for each student and to develop programs for these students.

Farneski testified extensively about Dr. Taylor's recommendations and the IEP. In Farneski's view, it is difficult to determine whether it was a problem not to offer a full twelve-month program to E.S., because the District does not know E.S. The District offers an eleven-month program. A twelve-month program does not allow a student to have a rest period from intensive instruction. A one-to-one teaching ratio across the day was offered in the IEP. The District had a one-to-one paraprofessional assigned to E.S. This is typically done if the District finds a need to get to know the student and to be able to assess the student and the student's needs, specifically in a classroom environment. Thereafter, the assignment of a one-to-one paraprofessional is reassessed to determine if the student specifically needs a one-on-one paraprofessional all day or if a shared paraprofessional would be beneficial. The Preschool Disabled Classroom includes discrete one-to-one trial periods, which are done by the teacher, in

addition to shared and/or one-to-one paraprofessionals. In the classroom proposed for E.S., the ratio for the spring of 2015 was 1:1, meaning that for every student there was an adult in the classroom to provide instruction. There was one teacher and the rest were paraprofessionals. E.S. would have been the thirteenth student in that class.

The District could try to desensitize E.S. to dental and medical evaluations by working with the dentist or other physicians, and obtaining instruments or other things from a professional dental or medical office for E.S. to become familiar with. However, Farneski stated that this is very specific and not the level of detail that would go into an IEP, and that the District had limited information on E.S. and would consider this later. Upon a student's entry into the program, the priority is to assess the student and ensure that the student's transition into the program is successful. Community-based instruction to transfer compliance to community dental and medical offices would be a on a case-by-case basis, and there have been home programs in the District that incorporate things of that nature. This was not offered immediately due to the lack of information on E.S., including what motivated him, and what procedures and interventions would work best, and this would be considered later.

The District knew that feeding issues were of concern to the parents. However, the parents provided no data or evaluation to the District. Rather, the parents discussed their concerns regarding E.S.'s feeding, but in Farneski's opinion it was a blasé conversation, and while important, it was not a focus, per se. Additionally, after a feeding evaluation was conducted by the District, Paterno had a discussion with the evaluators who relayed that there was no medical concern, and confirmed that the issue was primarily behavioral in nature.

A data-based approach to instruction to validate effects of teaching and treatment interventions is implemented in the ABA classroom. A variety of research-based teaching procedures was also offered in the IEP. Discrete-trial teaching is the one-to-one teaching time, which is approximately nine hours throughout the scheduled school day. Child-directed interventions are incidental teaching, when students are in play activities or happening in very natural settings, such as walking in from the bus

together in the morning, greeting each other, spontaneous interactions, and modeling of those behaviors. Incidental teaching is part of ABA.

The District offered procedures to promote generalization and maintenance of skills. Paraprofessionals are rotated on a weekly basis so that a student interacts with all of the staff members in the room. If a student performs very appropriately for one staff member and not for another, it is necessary to figure out why. In addition, students are taken in and out of the classroom to change the setting, and they schedule different people to come in for greetings and things like that, or the students go on an errand with their paraprofessional or teacher and meet and greet people in the hallway, as part of generalization.

There was not enough data to support after-school instruction. Farneski did note that E.S.'s levels were low on the BDI-2, and that is something they could incorporate once E.S. entered the program and they were able to assess him. There was no data in the Taylor Report to demonstrate a need for home instruction.

The Above and Beyond Learning Group goals and objectives were provided by that parents at the initial IEP meeting. In Farneski's opinion, these were not very helpful, and the District had toileting and social skills in the IEP, and they did not change anything in the IEP.

Farneski did not have enough data or information from NJEIS that provided an understanding of E.S.'s skill levels and social skills, ideas of what types of activities to introduce to E.S. and how he performed. When a student comes to the District and Farneski has not had benefit of a data book, it is trial and error to choose what to do with respect to each area of focus.

At the April IEP meeting, there were lawyers in attendance, and a draft IEP was presented, which was reviewed page by page. In Farneski's view, when parents bring lawyers to CST meetings and IEP meetings it suggests that the parents are not happy with what the District has done or is proposing to do. The lawyers primarily spoke at the meeting until Farneski took over to review the IEP. The parents did not express many

comments or questions, and there was no comment about the shortened Friday or parent training. E.S.'s parents observed the District's program after the IEP meeting, specifically circle time shortly after the students arrived. Farneski was present and thought the observation went very well.

Behavioral intervention services meant that the BCBA would work directly with E.S. at a minimum of one time per week for thirty minutes in discrete trial in addition to play sessions and social skills sessions. It was not more because the program itself is behaviorally-based. The BCBA oversees the program, but also gains information from working directly with and developing a relationship with the student.

A personal aide means a one-to-one aide. Aides are paraprofessionals trained by the BCBA during work sessions through the school day, as well as on Friday afternoons, on curriculum days and half-days, and before school starts. The aides also participate in instructional seminars. Based on the BDI-2 and the data provided, it was determined that a one-to-one aide would be beneficial to E.S. when he started the program, since his skill levels were low, and they wanted him to be successful in the program. After a student begins the program, the District is able to see how the student functions and transitions, and a one-to-one aide would be continued if needed.

The IEP provided for two weekly occupational therapy sessions because E.S. had been receiving occupational therapy from NJEIS. The District's occupational therapist would then be able to assess E.S. and his skill levels to develop more specific goals to incorporate into IEP.

E.S. has serious behavioral needs. The IEP does not reflect specific behavioral interventions because there is no way of assessing E.S.'s behavioral needs before he started school and they would be assessed after he started school. The District assesses, reassesses and/or modifies and revises IEPs regularly after a student starts school. The District's BCBA also regularly consults with a student's private BCBAs to coordinate services.

Farneski and Paterno worked collaboratively on the IEP goals, which were based on data and information provided, and what prerequisite skills it seemed E.S. needed. She was unsure whether or not E.S. had prerequisite skills needed to participate in a verbal exchange with peers or adults.

During the IEP meeting, the District advised that an air conditioner could be obtained for E.S.'s classroom, and they knew at that point that the entire school building would have air conditioning as of September 2016. The District has had other students who required air conditioning due to medical needs and it has never been an issue.

Farneski testified that having thirteen students in the class did not create a challenge, as it is a large classroom, with sufficient staff to implement the program, and they knew that the classroom size would be reduced to six total, including E.S., in September 2016.

Farneski has not evaluated E.S. or spoken with E.S. She never interviewed the parents. E.S.'s NJEIS providers provided input but Farneski did not interview them. Farneski had no data that E.S. was unable to respond to his own name or had no desire for social interaction.

Farneski testified that she had never hosted Dr. Breslin before, and that the experience greatly differed from her experience with other observers. Dr. Breslin did not have conversations, and was abrupt, demanding, authoritative and belittling. Farneski testified that the District's practice is to limit observations to 45 minutes because it is a distraction, and disrupts teaching and students' learning. She did not believe the District would ever allow an evaluator to spend an entire day in a classroom, but additional dates for observations are allowed. Paterno was present during Dr. Breslin's observation because it is District policy to have at least one CST member and/or behaviorist available when the program is being observed. Paterno could address any questions pertaining to the ABA aspect of the program and Farneski could address questions regarding overall placement or other issues. Dr. Breslin's request to interview staff members was denied based on Farneski's understanding that Dr. Breslin was to observe the program, not interview staff. Dr. Breslin was allowed to speak with

Paterno for ten minutes. The District did not provide Dr. Breslin with copies of sample instructional programs or graphs with data because there were none for E.S. and the District only has information specific to particular students, which is confidential. Farneski testified to what items requested by Dr. Breslin were or were not provided and why. Farneski felt that the Breslin Report was one-sided, not a fair observation, and very negative, so after she and Paterno reviewed it, they prepared a response, which was typed up by Paterno.

Nicole Paterno Bednarski

Paterno is employed by the District as a behavioral analyst. She primarily oversees the preschool extended-day program, which utilizes and implements principles of ABA. She is presently assigned to two classrooms in the building where E.S would have attended the District's program. Paterno looks at trends in data, behaviors, treatment plans, and academics, as well as functional living skills. She is responsible for staff training and parent training, and modifying the curriculum and programs for individual children in the classroom. She testified about ABA, and she works daily with children with special needs being taught using ABA. Paterno previously spent approximately twelve hours per week in E.S.'s proposed class, because she oversaw the preschool programs at two of the District's schools. However, she now is there five days per week and spends approximately twenty-four hours per week in E.S.'s proposed class.

Paterno is in the Preschool Disabled Program classroom five days per week. She oversees some special education students in a general education classroom or resource room, but she is primarily in the preschool-disabled classroom. Upon entry of a student into the Preschool Disabled Program, the District uses the ABLLS to assess the student's baseline level to develop goals that are systematically taught to the student. The ABLLS is approximately a seventy-five-page document by which the District can determine any needed modifications to a student's IEP. She collaborates with the case manager, social worker, learning consultant, speech therapist, occupational therapist, physical therapist, and classroom teacher.

Paterno became aware of E.S. when she was called to a CST meeting in February 2015. She learned of his medical diagnoses of autism and ectodermal dysplasia and that he had a home program and had received early intervention. She spoke to the family about needed modifications that would be made in consultation with the school nurse, such as an air conditioner. Paterno testified that air conditioning was to be installed in the summer of 2016 and earlier if medically necessary, which has been done for other students in District. There is presently air conditioning in E.S.'s proposed classroom.

Paterno testified that when a student is referred from NJEIS, the first step is that the CST meets with the family and obtains all the documentation from NJEIS. The CST notifies Paterno if there is anything in the documentation that the CST believes cannot be serviced in-District. She and the CST had a meeting before the District's first meeting with the parents, during which the CST explained "just a little bit" about E.S.

Paterno reviewed the home programming goals and objectives by ABLG. It is not unusual for an autistic preschool to have a home program in effect. She daily collaborates with the home program team of any student with a home program. The District did not offer a home program in the IEP because the team felt that it was important to first get to know E.S. Although some children highly benefit from a home program, others do not quite have the stamina and Paterno and the team did not want to offer a home program and have it backfire. Paterno testified that a home program was never off the table, and it could have been offered if E.S. had attended the District's program. Paterno testified that E.S. had never been in school before so she did not know if he had stamina to do a home program after school.

E.S.'s limitations with feeding were discussed at the initial identification and evaluation planning meeting. The parents did not have a feeding evaluation at that time, and the District arranged for one. The goals and objectives from the Feeding Evaluation suggested to Paterno that E.S.'s feeding issues were behavioral rather than medical. General education and socialization with other children was important to the parents.

Paterno reviewed the Pediatric Neurodevelopmental Evaluation, but did not analyze it in depth. She considered the recommendation that E.S. would benefit from a preschool program where he can continue to receive one-to-one ABA therapy up to 25 hours a week appropriate. She testified that ABA is a not just discrete trial, and the District's program is based on ABA principles and data collection, and more than 25 hours per week of ABA is provided. E.S. would have received one-to-one discrete trial therapy approximately nine hours per week. When asked to describe the characteristics of students who require strictly discrete trial, she testified, "I think it is hard to say because it is so individualized. So depending on the child we would decipher if he or she could or could not benefit from more appropriate models." Paterno has for some students increased the number of discrete trial hours and decreased or replaced other components of the day. When a student with no history of classroom education with other students comes to her, Paterno determines what portion of ABA time should be discrete trial versus other ABA therapy utilizing the data. It is not a one-size-fits-all, so it is necessary to get to know E.S. One of the clear deficits of autism is generalization and settings. She would want to get to know E.S. in the District's setting before making modifications, but she would have felt comfortable increasing discrete trial time if that was later determined necessary.

Paterno has never met or seen E.S., but she assumed that his parents would know him best and they wanted him to have opportunities for socialization and general education. The District is constantly integrating children into the least restrictive environment and has students transitioning into a less restrictive environmental with general education students. Paterno's thought process was that if E.S. benefited from appropriate models then the District's program would be a great program for him. Paterno was unable to specify what in the BDI-2 let her to believe that the District's program was appropriate, but she did not see anything in the data that led her to conclude that E.S. would not potentially benefit from any type of ABA other than discrete trial. Paterno did not agree with Dr. Breslin's conclusion that E.S. could not benefit from circle time or centers, and appropriate modifications would have been made.

When asked whether never meeting E.S. hindered her ability to help prepare the IEP, Paterno testified that she had all the reports and had spoken with the CST, which had met with him and observed him. When asked if she would have recommended something different had she had an opportunity to observe E.S. for a few hours or a day, Paterno testified that she did not feel comfortable answering that question because she did not observe him. Paterno added that while such an observation would have provided more information and could have possibly provided additional goals, she could not imagine not recommending the District's program. Paterno cited one case where a student with an autism diagnosis was not appropriate for the District's program because he had emotional issues and was very aggressive and she testified that he required a therapeutic setting.

The District's program offered a full day of instruction, with the exception of a half day on Friday, as Friday afternoon is used for parent and staff training. Monthly, there are two opportunities for parents: one is a group setting with a specific topic and the other is individual parent training so that the parent can schedule a meeting with the teacher and BCBA on a consistent monthly basis.

Paterno addressed the recommendations in the Taylor Report, testifying that the majority of recommendations were offered in the District's program. Although the Taylor Report is not summarized in IEP, it was considered. She did not believe that a 12 month program is necessary, as she has seen great progress with the District's 11 month program. She has seen students return in September with skills not as they were, but within a month the skills always come back.

The IEP reflects that behavioral interventions were not appropriate at that time. Paterno explained that she had not met E.S.; he had not yet been in the classroom and a deficit of autism is generalization and presenting differently in various settings so it would not have been appropriate to implement a behavior plan that might not be effective for E.S. After attending the District's program a behavior plan would have been implemented.

Paterno agreed with the recommendation for a feeding assessment. Paterno did not come up with a feeding plan as part of the initial IEP because she had never met E.S. and did not know what he would need or what that plan would look like.

There is formalized training on the Fridays when there are no parent meetings. If they are implementing a new behavior plan or modification, Paterno trains the staff, but stated that on-the-job training is most relevant. During discrete trial sessions, Paterno is floating around to each paraprofessional working one-to-one with the student, providing help with prompting procedures or how to utilize and teach that skill.

E.S. was to have a one-to-one paraprofessional, which would be reassessed more frequently than the three months specified in the IEP. At the time Dr. Breslin observed the program, there were 13 students and 11 or 12 adults, because some students shared a paraprofessional. For the 2015-2016 school year, there are only six students in the class.

In certain cases, the District has offered a home program for the month of August. Paterno could not obtain data from NJEIS and E.S. had never been in a school setting. Whether a home program for the month of August was necessary could be determined later.

Dr. Breslin first observed the program from 9:15 a.m. until 10:15 a.m., which was circle time and then discrete trials. Paterno explained to Farneski and Dr. Breslin that she would not be providing staff training at that time because Paterno did not feel Dr. Breslin was there to observe her. Instead, Paterno felt Dr. Breslin was there to observe whether the program was appropriate for E.S. and stated that anyone working with a child with autism knows that an outside observer is distracting and children perform differently. Paterno wanted to be present to verify that Farneski and Dr. Breslin observed what she observed. Paterno did not believe that Dr. Breslin's request to see nap time was appropriate, so Dr. Breslin observed the students during centers. She disagreed with Dr. Breslin's assertions that she did not have visual and auditory access to the students. Dr. Breslin made them use a tape measure to measure how far she was from a particular child, and although Dr. Breslin had access to children all around

the classroom she would ask them to measure the distance to the furthest child. When asked if she could have provided Dr. Breslin with a sample program without identifying information about a student, Paterno testified that she could have, but was advised by the District's previous lawyer as to what she could and could not do.

Paterno's supervisor is not a BCBA, but all the behaviorists meet separately on a monthly basis. There are five full-time behaviorists and four consultants in District. Of the nine, two are BCBA-D level.

The CST did not ask Paterno to evaluate E.S. Paterno never met or spoke with E.S.'s NJEIS providers, never observed E.S. during his NJEIS sessions, never reviewed his NJEIS data book, never interviewed E.S.'s parents, and never observed E.S. at home or in the community. Paterno relied on the District's professionals because they were the individuals who had met and evaluated E.S. She was not aware that of the four people who signed the Preschool Multidisciplinary Report only the speech and language specialist had actually met E.S. She also was not aware that the parents informed the District that E.S. had attended a school program.

N.M.

Mrs. M. is E.S.'s mother. Mrs. M. is a psychiatrist. Mrs. M. testified that when E.S. was around sixteen months his parents started noticing that he was not progressing developmentally and that social skills he had acquired were regressing. He did not respond to this name, make eye contact, or follow a point. She notified E.S.'s pediatrician, who suspected that E.S. could be on the autism spectrum, but no diagnosis was made at that time. Mrs. M. also testified about E.S.'s ectodermal dysplasia, and stated that it is compounded by the fact that he cannot verbalize distress.

Mrs. M. contacted the NJEIS and E.S. was determined eligible for services. He made minimal progress in the first two months and he was evaluated by a neurodevelopmental pediatrician, who suspected that E.S. was on the autism spectrum

and recommended services, including several hours of ABA. As a physician, Mrs. M. knows how ABA works, so she requested more ABA hours, to which the NJEIS agreed.

Mrs. M. testified to the duration and frequency of services provided by the NJEIS. E.S. was ultimately receiving approximately twenty-two hours per week of ABA therapy. He also received speech therapy, occupational therapy, and a family training session with the BCBA once a week for an hour. Mrs. M. also testified that the IFSPs reflect that E.S. was not making progress.

E.S. attended a preschool near their home once a week with one of his NJEIS providers approximately seven or eight times over a period of two months. He did not do well in the preschool setting. Transition was challenging, E.S. would throw up, and he had no skills to be in a group setting.

Mrs. M. had E.S. evaluated by Dr. Livingstone. Dr. Livingstone recommended that ABA services continue up to twenty-five hours per week. Dr. Livingstone reviewed E.S.'s NJEIS data book with the parents. Mrs. M. testified that E.S. had significant global delays. As a physician, Mrs. M. knows that ABA is the only method proven to benefit autistic children, but she felt that the NJEIS was not working for E.S. because he was working with several different providers and it was difficult to work as a team, and the BCBA was not there daily. She did not feel that twenty-two hours of ABA was enough.

Mrs. M. testified to E.S.'s difficulties and deficits in communicating and interacting with his family. After E.S. had ABA therapy for one year and was still globally delayed, she had him evaluated by Dr. Taylor. She chose to have this evaluation done, in addition to the preschool multidisciplinary evaluation, because the District was not going to have a BCBA involved in its evaluation. Dr. Taylor's evaluation was approximately two hours, and Dr. Taylor also went over the NJEIS data notebook.

In connection with the Preschool Multidisciplinary Report, Malavarca interviewed Mrs. M. by phone for approximately forty-five minutes. Mrs. M. does not have confidence in the Preschool Multidisciplinary Report because only one of the four

evaluators met with E.S. and she was not an expert in autism. The District's BCBA never reviewed the NJEIS data book and never asked Mrs. M. to see it.

Mrs. M. did not start E.S. in the District's program because she had concerns about the IEP. She wanted to see the District's program, and did. She also retained Dr. Breslin to assess E.S.'s needs and determine if the classroom was appropriate. At that point, she and Mr. S. had not made a definitive determination not to send E.S. to the District's program. Dr. Breslin reviewed the NJEIS data book, the ABA data book and the IFSPs. She observed E.S. at home and observed the District's program. Mrs. M. first visited the Institute for Educational Achievement after speaking with Dr. Breslin about her observations of the District's program.

Mrs. M. testified that she was told that she was not allowed to observe E.S. during instruction in the District's program and that because E.S. cannot communicate, Mrs. M.'s only means of knowing what went on during his day would be his notebook. Mrs. M. also testified that the District requested the occupational-therapy, physical-therapy and feeding evaluations, not the parents.

Mrs. M. has program sheets, progress notes and data books at home. She did not provide those to the District.

Dr. Anita Breslin

Dr. Breslin reviewed documents and reports relative to E.S. She observed E.S. at home on May 13, 2015, and she observed the District's program on May 14, 2015, and May 19, 2015. She issued the Breslin Report on June 18, 2015. The Breslin Report states: "Since [E.S.'s] parents desired professional input regarding the appropriateness of the District's proposed placement, they retained the current examiner to observe the components of the proposed program and speak with District staff members who would be providing services to [E.S.], if enrolled."

Dr. Breslin reviewed various documents, including the Taylor Report. She observed E.S. during a home programming session on May 13, 2015, for approximately

one and a half hours. The Home Observation portion of the Breslin Report is approximately two pages, while the majority of the report details her May 14 and May 19 observations of the District's program, consisting of approximately one hour and approximately thirty minutes, respectively. The Breslin Report also sets forth at length her determinations as to the appropriateness of the IEP.

Dr. Breslin testified extensively about her background, and about ABA, including its seven different dimensions and its utilization with autism. Dr. Breslin testified that she was referred to the parents by their previous attorney.

Dr. Breslin testified that she concurred with Dr. Taylor's recommendations. She also testified extensively about what she opined were deficiencies in the District's ABA program; errors that were made in the classroom during her observations; and why the IEP did not meet with Dr. Taylor's recommendations. Based upon E.S.'s BDI-2 scores, Dr. Breslin determined that E.S. is profoundly impaired, and that there were significant warning signs that highly specialized intervention would be needed in orded to improve E.S.'s levels of functioning. Dr. Breslin testified that a preschool-aged child cannot have those types of scores and be ready for a group instructional format. Group instruction requires that the child must be able to make eye contact with an instructor, follow instructions and engage in a wide variety of other activities. She testified that one would not put a five-month-old in a preschool program, whether specialized or regular education, and expect the child to benefit in a group instructional format. Dr. Breslin was not permitted to observe Paterno, the District's BCBA, providing staff training, and she did not believe that Paterno's twelve hours per week in the classroom was sufficient.

Dr. Breslin's ultimate conclusion was as follows:

> It is the current examiner's firm determination that [E.S.] requires a full-time data-driven program, developed, implemented and coordinated by trained and experienced behavior analysts. The program should be well organized and should adhere to all of the defining dimensions of Applied Behavior Analysis. The current examiner concurs with the recent determinations of Dr. Bridget Taylor, who

> delineated the required components of an appropriate program for [E.S.].

With regard to the District's program, Dr. Breslin opined that there was no firm evidence of sufficient BCBA involvement; the programming was disorganized; problem behaviors were inappropriately addressed; the instruction was non-intensive with minimum-to-no application of ABA-based teaching procedures; and the instructional services were poorly implemented by classroom staff. Dr. Breslin also opined that the proposed classroom of thirteen students would have been contraindicated, and that E.S. requires more than thirty minutes per week of individual behavioral intervention services from the BCBA. In addition, she opined that one BCBA should not be delivering services without consultative support from others in the field, and Paterno had indicated to her that she is supervised by two administrators who are not BCBAs.

Dr. Breslin testified that a one-to-one aide is not appropriate, as per Dr. Taylor, and that E.S. requires a one-to-one teaching ratio. Dr. Breslin testified that her observations did not reveal any full-day one-to-one instruction and the staff did not rotate regularly across the school day, which does not allow for a full day of intensive instruction and generalization. She also testified that E.S.'s instruction time should not be shortened by parent training, and noted that the thirty-minute rest time would further reduce his instructional time. Additionally, a full-time ABA program would eliminate the need for related speech-therapy and occupational-therapy services. In Dr. Breslin's view, once-per-month parent training for thirty minutes cannot provide sufficient meaningful training for E.S.'s parents, and training should also occur in the context of every environment where he is expected to learn, including school and the community. She opined that it is not possible to provide meaningful or effective support if it is not provided in home and community settings. E.S. also requires a twelve-month program, and the summer program should not be modified, and should provide the same time as the program during the regular school year.

Dr. Breslin opined that E.S. does not have the requisite skills to benefit academically or socially from any inclusion opportunities, including non-academic ones. Anything less than intensive one-to-one instruction for the entire day is not appropriate

for E.S. In addition, E.S. requires programming beyond the regular school day, which should include a minimum of ten hours of additional instruction by BCBAs and substantial monthly parent training to provide an opportunity to promote generalization and maintenance of acquired skills.

Dr. Breslin's also testified about the effects of E.S.'s ectodermal dysplasia. She recommended that he be placed in a setting with air conditioning, and a setting that addresses his medical issues and provides services and supports to him to manage his medical condition.

Dr. Eric Rozenblat

Dr. Eric Rozenblat received a bachelor's degree in psychology. He later received a master's degree in ABA in 2007, and a Ph.D. in ABA in 2013. (J-63.) Dr. Rozenblat was a staff trainer at the IEA from 2009 to 2013. In 2013 he became the IEA assistant director, and he served in that capacity until July 1, 2015, when he became the IEA director.

E.S.'s present class at the IEA consists of six students. There are six teachers in each classroom. To promote generalized behavior change each teacher has specific programs that he or she teaches throughout the day and E.S. rotates working with each teacher daily. The classroom/staff trainer also works with the students and provides training to the staff members.

In addition to testifying about an ABA program in general, as well as some of the services E.S. has been receiving at the IEA, Dr. Rozenblat testified that he was involved in the intake process for E.S., has spent time in his classroom, and is part of the data analysis for E.S. Based upon what he knows of E.S., E.S. is not presently ready to be in group learning situations because he does not possess the prerequisite skills, including skills as simple as sitting and attending for an extended period of time. E.S. does not know how to work under reduced supervision yet. There are many skills that must be accomplished before a student is able to be incorporated within a group setting.

E.S. is not receiving group instruction at the IEA. He cannot learn from other students at this point.

Dr. Rozenblat testified that if a student presented to him with the prerequisite skills or ability to learn in a group setting, given that the IEA is one-to-one, the IEA would not be the right school for that student. Admission is not offered to every student.

There is preliminary information that the IEA obtains, but a rapport with the student must be built and the student's needs must be determined. Meeting with a student is an essential part of the ability to determine if the child needs a school like the IEA, or a less restrictive setting, or a public school. He testified, "you need to meet the student under all conditions." He also testified that as a BCBA he would not be able to render a determination as to whether a student could be in program A or program B if he had not met with the student, and that such a practice would be "against the BACB[4] ethical guidelines to which we abide by."

No one from the District observed E.S. or contacted the the IEA about E.S.'s program. E.S. does not receive speech therapy at the IEA, but his speech and language deficits are addressed by teaching imitation of sounds and words and social interactions. Speech and language skills are addressed through behavior-analysis principles.

Factual Discussion

A credibility determination requires an overall evaluation of the testimony in light of its rationality or internal consistency and the manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Testimony to be believed must not only proceed from the mouth of a credible witness, but must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546, 555 (1954). It must be such as the common experience and observation can approve as probable in the circumstances. Gallo v. Gallo, 66 N.J. Super. 1, 5 (App. Div. 1961). "The interest, motive, bias, or

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prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony.'" State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

It is also necessary to consider the nature of the evidence presented. Hearsay evidence is admissible in the trial of contested cases, and accorded whatever weight the judge deems appropriate taking into account the nature, character and scope of the evidence, the circumstances of its creation and production, and, generally, its reliability. N.J.A.C. 1:1-15.5(a). However, notwithstanding the admissibility of hearsay evidence, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness. N.J.A.C. 1:1-15.5(b).

Review of the email correspondence between Dr. Breslin and the District, and between Dr. Breslin and petitioners' previous attorney, as well as the testimony of the witnesses, suggests that Dr. Breslin was neither objective nor entirely reasonable in her review of the District's program. Dr. Breslin's various emails to the District at times included a list of demands and deadlines by which the District was to respond, and they appear to have created considerable conflict between Dr. Breslin and the District. By way of example, per her May 14, 2015, email, Dr. Breslin requested that the District "[p]lease provide all of the requested documentation no later than Tuesday, May 19th." Said documentation included: Copies of sample instructional programs; Sample graphs (with data); A full written description of your staff training and evaluation procedures; A definite schedule for Ms. Paterno regarding her involvement in the classroom (number of hours of in-class services, number of days in which she is present in the classroom each week, total student caseload (based on the number of classrooms in which she provides behaviorally based services)); written stipulations as to the identity of Ms. Paterno's direct supervisors; written stipulation as to the direct supervisor of the classroom aides; written description of parent training provided and a stipulation of home- and community-based intervention services; person or persons responsible for data notebooks; full description of data collection procedures—frequency, scope, procedure(s) for assessing the fidelity/reliability of data collected, etc.; and sample

copies of documents contained in all data notebooks (not specific documents in the notebooks of enrolled students).

The multiple emails from Dr. Breslin to the District and to petitioners' previous attorney reflect a lack of collaborative efforts and a litigious undertone. Additionally, the testimony and documents reveal personality conflicts and a power struggle between Dr. Breslin and the District's staff, which seem to have undermined the goal of determining an appropriate placement for E.S. and resulted in the District at times unreasonably limiting observations or information. In view of the foregoing, little weight is afforded to Dr. Breslin's assessment of the District's program. Additionally, although I found the District's witnesses to be generally credible, their interactions with Dr. Breslin appear to have imparted some bias and prejudice on their part. Conversely, I found Dr. Rozenblat's testimony to be matter-of-fact, reasonable and credible under the circumstances.

Preschool Disabilities Program

Given Dr. Rozenblat's testimony and the lack of records from NJEIS, it is troubling that the District's BCBA never met or observed E.S. before determining that it was appropriate to place him in the Preschool Disabled Class with the standard schedule of nine hours of discrete-trial ABA and the remaining nineteen hours in group ABA. Although I do not doubt the testimony of the District's witnesses that E.S. would be evaluated upon his entry in the District's program and continually reevaluated thereafter, the District significantly reduced his prior levels of discrete-trial therapy without any concrete reason, other than that it had been conveyed to the District that E.S. was not making progress with his twenty-two hours of discrete-trial therapy, so the District determined that discrete-trial therapy in that quantity was either not appropriate or not being performed correctly. However, it is noted that E.S. is presently receiving only discrete-trial therapy at the IEA, and the District concedes that he is making progress.

It is observed that all four individuals who contributed to the Preschool Multidisciplinary Report attended the identification and evaluation planning meeting at

which E.S. was present. However, it is troubling that only the speech and language specialist met with E.S. in connection with the preschool multidisciplinary evaluation, for no more than thirty minutes, after NJEIS had deemed E.S. a "very involved" child, and the District had not been provided with NJEIS records. It is also troubling that the District's BCBA was unaware that the other three individuals had never met with E.S. in connection with the Preschool Multidisciplinary Report.

Numerous assertions made by Dr. Breslin were denied by the District's witnesses. By way of example, Dr. Breslin asserts that she was not provided with auditory and visual access to other special education students in the classroom, while the District's witnesses assert that she was provided with adequate auditory and visual access while maintaining student confidentiality. Additionally, some of the issues in dispute were the extended school year and the Behavior Intervention Plan. However, comparing the District's program, with one month off, to the IEA program, with one week off, results in a difference of three weeks. The evidence falls short of establishing that an eleven-month program versus a twelve-month program denied E.S. an appropriate education. Likewise, the evidence falls short of establishing that a four-hour summer program versus a six-hour program would be a denial of an appropriate education. Additionally, while the "IEP Information" specifies "No" for Behavior Intervention Plan, the IEP also reflects that E.S. was to be in an ABA classroom full-day, with a paraprofessional, and was also to receive individual behavioral intervention services one time weekly for thirty minutes.

While the District's program may not have included each "requirement" itemized in the Taylor Report, it included many of them and it is noted that some are not necessarily directly related to E.S.'s education. Both the Taylor Report and the Breslin Report appear calculated to maximize benefit to E.S. Certainly, the parents cannot be faulted for wanting E.S.'s program to provide him with maximum benefit. However, that certain items "required" by Dr. Taylor and Dr. Breslin are absent from the District's Preschool Disabled Program does not in and of itself lend support for a conclusion that the District cannot provide E.S. with an appropriate education or with meaningful educational benefit. There was sufficient credible evidence that the District's program was an ABA program, overseen by a BCBA. Overall, the evidence falls short of

establishing that the District's Preschool Disabled Program program was deficient or not an ABA program.

NJEIS Records

The record contains nine IFSPs, including Periodic Review Summaries and Documentation of Continued Eligibility Discussion and Decision, beginning on March 5, 2014. Malavarca requested from the NJEIS the BDI-2 and "other information that would be helpful" on February 18, 2015, a little more than two months before E.S.'s third birthday. However, only the February 2015 BDI-2 was provided, and the response was, "[t]hat is the information the family allowed me to release." Although Mrs. M. testified that she told the NJEIS to give the District everything, Farneski testified that the District had not seen the IFSPs until petitioners' attorney provided them in discovery. Mrs. M. testified that she thought all the NJEIS documentation had been released based upon her having declined "opt-out." However, it is observed that the signed notification states, in part:

> This serves as notification of children residing in your district receiving early intervention services through the New Jersey Early Intervention System (NJEIS). The children are approaching age three and may be eligible for Part B services. Federal Part C of IDEA and NJEIS policy permit parents of children approaching age three to "opt-out" of this notification. The parents listed below have not opted out of this notification/referral.

This form makes no reference to the release of records to the District. Additionally, it is noted that the IEP states that the "[p]arents did not consent for their service coordinator to release any records related IFSP," and states "[e]arly intervention records have not yet been received to review outcomes." There was no testimony that this was disputed either verbally or in writing by the parents or their previous attorney, all of whom were present at the IEP meeting, and there is no other documentation or release in the record to reflect that consent had been provided. (J-26A.)

Accordingly, I **FIND** that the District was not provided with the IFSPs or NJEIS Annual Review prior to the Petition for Due Process being filed. I also **FIND** that while the parents provided the NJEIS data notebook to Dr. Taylor, as it is referenced in the Taylor Report, and to Dr. Breslin per Mrs. M.'s testimony, the NJEIS data notebook was never provided to the District. That the ABA data notebook was not provided to the District is particularly troubling given the testimony of each of the educational professionals that all ABA programs maintain data notebooks, and given that petitioners' witnesses also stressed the importance of data notebooks. Indeed, petitioners contend that the District should have provided Dr. Breslin with sample and/or redacted data notebooks for its program. I also **FIND** that parents did not consent to the release of the records from NJEIS to the District, and the parents' unreasonable failure to provide the NJEIS records withheld significant information from the District and limited the District's ability to create an appropriate IEP for E.S.

Hypohidrotic Ectodermal Dysplasia

The Genetics Consultation reflects that E.S. was diagnosed with hypohidrotic ectodermal dysplasia, and states that he requires avoidance and management of hyperthermia. (P-3.) It also states that management of the different forms of hypohidrotic ectodermal dysplasia is similar; that prevention of hyperthermia is quite important during hot weather; and that affected individuals need to have access to an adequate supply of water and a cool environment, including cooling vests, a wet t-shirt, a spray bottle of water, and air conditioning. (P-3.) However, the record is devoid of evidence that this Genetics Consultation had been provided to the District. Further, even if this Genetics Consultation had been provided, no medical doctor testified as to E.S.'s medical requirements specific to hypohidrotic ectodermal dysplasia, and Dr. Breslin's testimony that he must be placed in a setting with central air conditioning is unpersuasive given that she is not a physician. There was insufficient evidence establishing when and whether an air conditioner is required or what ambient temperature E.S. requires. Instead, the District was provided with the Pediatric Neurodevelopmental Evaluation, which reflects only that E.S. was diagnosed with hypohidrotic ectodermal dysplasia, without further information relative to that concern.

The District's witnesses further offered credible testimony that they had researched the diagnosis online and had spoken to the school nurse; that the topic of air conditioning was discussed with the parents; that the District would obtain an air conditioner for the classroom; and that the school would be air conditioned by the end of the following year. Accordingly, I **FIND** the absence of a specific plan related to E.S.'s hypohidrotic ectodermal dysplasia does not deny E.S. an appropriate education.

Likewise, although it was clear that the absence of teeth has dental implications, the evidence reflects that E.S.'s feeding issues were predominantly type and texture selectivity, or behavioral in nature, rather than medical. Accordingly, I **FIND** the absence of a specific plan related to feeding does not deny E.S. an appropriate education.

BDI-2

Petitioners rely upon the 2014 BDI-2 Z-Scores reflected in an IFSP dated March 5, 2014 to contend that the 2015 BDI-2 results confirm that E.S. had regressed over the prior year and that the gap between E.S. and his peers had widened. Review of these results reflects that E.S. generally scored well below his peers. Per the IFSP, E.S.'s 2014 BDI-2 Z-Scores were as follows: Adaptive -2.33; Personal/Social -1.67; Communication -3.00; Gross Motor -.67; Fine Motor -.67; and Cognitive -1.73. (P-17.) In addition, E.S.'s most recent BDI-2 results are as follows:

Domain/Subdomain	RS	AE	CSS	SS	PR	Z-Score
Adaptive	5	-	406	58	0.3	-2.80
Self-Care	4	1	361	1	<1	-3.00
Personal Responsibility	1	<24	451	2	<1	-2.67
Personal-Social	33	-	421	58	0.3	-2.80
Adult Interaction	13	5	408	1	<1	-3.00
Peer Interaction	0	<24	407	1	<1	-3.00
Self-Concept & Social Role	20	16	448	2	<1	-2.67
Communication	37	-	409	58	0.3	-2.80
Receptive Communication	13	5	384	1	<1	-3.00
Expressive Communication	24	16	433	2	<1	-2.67
Motor	106	-	480	91	27	-0.60
Gross Motor	57	23	465	6	9	-1.33
Fine Motor	32	31	481	8	25	-0.67
Perceptual Motor	17	34	495	11	63	0.33

Cognitive	48	-	456	66	1	-2.27
Attention & Memory	22	10	434	1	<1	-3.00
Reasoning & Academic Skills	12	24	474	7	16	-1.00
Perception and Concepts	14	19	461	3	1	-2.33
BDI-2 Total	229	-	434	61	0.5	-2.60

Many of the subdomains reflect an age equivalent of less than twelve months, including one month for self-care and five months for adult interaction and receptive communication. At face value, this suggests that E.S. is severely impaired. However, certain results seem to be contradicted somewhat by the personal observations of both Dr. Taylor and Dr. Breslin. Specifically, Dr. Taylor's observation of E.S. on February 25, 2015, was summarized as follows:

> [E.S.] was observed at my office for approximately two hours. He was accompanied to the consultation by his mother and father. During the consultation, I observed his interaction with toys, his interaction with adults, and performed an informal skill assessment. [E.S.] did not look at me when I greeted him in the lobby. Eye contact in general was fleeting but more consistent when he wanted something.
>
> [E.S.] did not readily approach toys located in the office. He preferred to watch a video on an iPhone. He became upset and cried when the iPhone was taken away. He picked up some toys but did not play with them. Repetitive behavior was observed such as walking on his toes, walking in circles, and some idiosyncratic movements of tapping others with a closed fist. [E.S.] was difficult to engage and actively avoided my attempts to interact with him. He did not respond to my bids for joint attention and walked away when I offered toys for him to play with. Spontaneous interactions with parents was limited.
>
> [E.S.] apparently has about 100 words. During today's observation, [E.S.] communicated primarily by leading, whining and crying. He did not readily imitate sounds or words during play contexts but during an informal assessment when tangible items were used as reinforcers, vocalizations were more consistent. [E.S.] also approximated a few words to fill in familiar phrases and labeled some items.

> [E.S.] inconsistently looked when his name was called. His receptive language is reportedly "good," but during today's observation he did not readily follow instructions. It was difficult to determine if [E.S.'s] nonresponding was due to not understanding the instruction or noncompliance.
>
> When I worked with [E.S.] to assess his responsiveness to behavioral teaching strategies, he required repeated prompts to attend to me and the task. With tangible reinforcers held in view, [E.S.] followed simple instructions, labeled some objects and matched a few puzzle pieces to their locations. On several occasions, he attempted to escape the teaching interaction by pulling away and crying. Nonetheless, [E.S.] showed good potential for learning with behaviorally-based teaching strategies (e.g., use of tangible reinforcers, systematic prompting and prompt fading).
>
> According to his parents [E.S.] has not yet visited a dentist due to resistance. This is of concern because [E.S.'s] medical condition of Hypohidrotic Ectodermal Dysplasia will require that he have multiple oral examinations and surgeries to for [sic] dental implants. [E.S.] also has difficulty eating which may also be partly due to his medical condition but also compounded by autism. He is on PediaSure for nutrient increase. The family has an appointment with a feeding clinic at Morristown Memorial Hospital. [E.S.] also has trouble sleeping and reportedly has never slept through the night.
>
> In general, the parents report that [E.S.] is difficult to engage and [they] are unable to play with him. He is "different" in therapy sessions than he is with them around the house. But, he may tantrum in therapy sessions, and it sometimes takes two people to get him to sit in a chair.
>
> A review of the data book from the ABA-based home therapy sessions indicated that [E.S.] is working on a variety of receptive language programs, as well as programs to increase his vocalizations. Data on programs revealed inconsistent skill acquisitions. In addition, some programs appeared too challenging considering his overall skill level (e.g., "prepositions").
>
> [J-20.]

Additionally, Dr. Breslin's observation of E.S. on May 13, 2015, was summarized as follows:

The current examiner observed [E.S.] for most of one instructional session on the morning of May 13th. The session was implemented by therapist Allison Osur of Above and Beyond Learning Group, the agency providing [E.S.'s] home-based intervention services. The observation commenced at 9:30 a.m. and continued for a period of 1½ hours. Services were provided in a one-to-one instruction format, implemented in a room specifically set up for [E.S.'s] programming. The room contained a work table, chairs, preferred activities, and instructional materials.

[E.S.] spontaneously gave his mother a kiss before entering the therapy room and showed no anxiety when separated from her. He promptly approached and sat down in a chair near his work table. He was provided the opportunity to look through a storybook. He receptively identified a zebra depicted on the back cover of the book when directed to do so. His therapist directed [E.S.] to close the book, and he readily complied. [E.S.] was guided to the carpet to complete a number puzzle of large interlocking shapes. While seated on the carpet, [E.S.] began assembling the pieces. He was praised for his appropriate behavior. [E.S.] carefully scanned all of the pieces and was praised for doing so. [E.S.] completed the puzzle independently, working at a consistent pace. After tapping his therapist on the shoulder, his therapist helped him to verbalize a request for an earned snack (i.e., small piece of chocolate). His therapist recorded information on a data sheet and informed [E.S.] that it was time to wash his hands. [E.S.] willingly allowed the therapist to take his hand. A doorway gate was opened and [E.S.] was guided to the bathroom. Standing on a stool to reach the sink, [E.S.] completed all hand washing steps with assistance from his therapist, receiving behavior-specific praise for each step completed. He returned to the therapy room without incident, guided by his therapist.

[E.S.] required assistance to clean up the pieces of the puzzle he had assembled and received a choice reward of two preferred items. [E.S.] chose a small piece of chocolate over an animal figurine. He practiced verbalizing a request for this reinforcer. The therapist provided [E.S.] with a Lightning McQueen storybook as she readied materials for [E.S.'s] activity schedule. The therapist informed [E.S.] that it was time to complete his activity schedule. [E.S.] opened the loose-leaf notebook, turning to the first page, which depicted an alphabet puzzle. [E.S.] retrieved the puzzle and assembled all of the pieces. A timer sounded during completion of this and subsequent table tasks, since the

therapist was tracking [E.S.'s] ability to sit approximately for 5-minute periods. He demonstrated the ability to clean up the puzzle pieces and returned the pieces to a large Ziploc bag. [E.S.] earned a break, during which time he maneuvered several trains on a laminated map.

[E.S.] moved away from the central area of the room and placed a train through the gated doorway. He was not able to retrieve the train, which had dropped onto the floor on the opposite side of the gate. The therapist guided [E.S.] to request "help" and she assisted him in retrieving the train. [E.S.] returned to the assortment of trains and spontaneously assembled nine of the train parts together. He was praised for doing so and directed to clean up. [E.S.] assisted with clean up, placing the trains into a compartmentalized box. When directed to close a storybook that accompanied the trains, [E.S.] did so.

During the therapy session, [E.S.'s] mother entered and briefly interacted with him. She departed the room after several minutes and [E.S.] transitioned to the work table to resume the completion of prescribed activities. [E.S.] sustained his attention for a book that contained words with missing letters. He was able to discriminate among assorted letter tiles, filling in the first letter of several words depicted on the pages of the storybook with a letter tile. [E.S.] earned the opportunity to play with a favorite animal figurine (a zebra) after completing the prescribed activity. [E.S.] briefly played with the zebra but did not sustain his interest in this toy for more than a few moments. He was offered some Play-Doh and the opportunity to place small items into wads of Play-Doh.

[E.S.] was expected to complete a variety of additional tasks for the remainder of the session. For example, he imitated various two-syllable words, imitated actions with body parts, listened to a story narrated by the therapist, and completed several interlocking puzzles. Through the session, [E.S.] snacks [sic], preferred activities and praise were used to reinforce appropriate behavior.

During the session, [E.S.] evidenced some repetitive behaviors, although these appear to be under fairly good instructional control in the context of his early intervention program. Toe walking and humming are evident in his behavioral repertoire. [E.S.] also exhibited intermittent inattention and non-compliance behavior, although for the most part he completed all tasks with minimal difficulties.

[J-41.]

Farneski has administered the BDI-2, and testified that the results can be impacted by external factors, including how the child was feeling that day, the way the administrator presented items, and the student's comfort level with the administrator. Farneski also testified that it was not unusual for an autistic preschooler to have such BDI-2 scores, and that there are other students with similar scores in the District's program. However, the District presented no further evidence to establish the typical scores for an autistic preschooler, nor was there evidence of the specific programming for other students with similar scores. Further, given Farneski's testimony about the potential unreliability of the BDI-2, it is not clear why the District did not attempt other means of evaluating E.S. before creating the IEP.

In view of the foregoing, I **FIND** that the BDI-2 alone is not an entirely reliable means by which to establish E.S.'s overall abilities, and does not alone establish what type of ABA therapy or program is required. Moreover, the 2014 BDI-2 results were never provided to the District, so it had no means by which to compare the two.

April 28, 2015, IEP Meeting

Although it is noted that the meeting took place a few days after E.S.'s third birthday, the evidence reflects that there was delay occasioned by both the District and the parents. Initially, the District had not responded to the NJEIS or attended the TPC, and thereafter the date of the initial evaluation and planning meeting was delayed by the parents.

It is also noted that the IEP meeting was held on April 28, 2015, and that the parents attended the meeting with their previous attorney. According to the testimony, there were not many comments or questions by E.S.'s parents, no request for modifications or discussion of other placements, and most of the talking was done by the attorneys. There was likewise no formal response to the proposed IEP.

Despite having signed a consent form to allow the District to conduct occupational therapy, physical therapy and feeding evaluations on April 28, 2015, the parents' previous attorney notified the District on May 1, 2015, that E.S. would not be beginning the District program on May 4, 2015, and that the parents' expert would contact the District to schedule an observation. The District was contacted by Dr. Breslin on May 1, 2015. She observed the District's program on May 14, 2015 and May 19, 2015, prepared her report on June 18, 2015, and the District was notified on June 24, 2015 that E.S. would be unilaterally placed at the IEA on July 10, 2015.

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 (including deafness), speech or language impairments, visual impairments (including blindness), 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).

"Preschool child with a disability" corresponds to preschool handicapped and means a child between the ages of three and five experiencing developmental delay, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas, and requires special education and related services: (i) physical, including gross motor, fine motor and sensory (vision and hearing); (ii) cognitive; (iii) communication; (iv) social and emotional; and (v) adaptive. N.J.A.C. 6A:14-3.5(c)(10). In the present matter, there is no dispute that E.S. has been diagnosed with autism and hypohidrotic ectodermal dysplasia.

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, a 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 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. Children with disabilities attaining age three shall have a free, appropriate public education available to them provided by the district board of education. N.J.A.C. 6A:14-1.3. Each district board of education shall have policies, procedures, and programs approved by the Department of Education through the county office of education that are in effect to ensure that children with disabilities participating in early intervention programs assisted under IDEA Part C who will participate in preschool programs under this chapter experience a smooth transition and that by the student's third birthday an IEP has been developed and is being implemented according to N.J.A.C. 6A:14-3.3(e). N.J.A.C. 6A:14-1.2(b)(10).

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. A FAPE requires that 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 (LRE). 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 LRE 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 the program offered to E.S. provided a FAPE in the LRE, and that the petitioners failed to work in a collaborative and cooperative manner with the District, and obstructed the District's educational efforts. Conversely, petitioners contend that the District failed to develop an appropriate IEP and denied E.S. a FAPE, and that an out-of-district placement at the IEA was appropriate for the 2015–2016 school year.

When a preschool-age or school-age student is referred for an initial evaluation to determine eligibility for special education programs and services, a meeting of the CST, the parent and the regular-education teacher of the student who is knowledgeable about the student's educational performance or, if there is no teacher of the student, a teacher who is knowledgeable about the district's programs, shall be convened within twenty calendar days (excluding school holidays, but not summer vacation) of receipt of the written request. This group shall determine whether an evaluation is warranted and, if warranted, shall determine the nature and scope of the evaluation, according to N.J.A.C. 6A:14-3.4(a). N.J.A.C. 6A:14-3.3(e). The team may also determine that an evaluation is not warranted and, if so, determine other appropriate action. Ibid. The parent shall be provided written notice of the determination(s), which includes a request for consent to evaluate, if an evaluation will be conducted, according to N.J.A.C. 6A:14-2.3. Ibid. To facilitate the transition from early intervention to preschool, a CST member of the district shall participate in the preschool TPC arranged by the designated service coordinator from the early intervention system. Ibid. The district representative at the transition planning conference shall: (i) review the Part C Early Intervention System Individualized Family Service Plan; (ii) provide the parents written district registration requirements; (iii) provide the parents written information on available district programs for preschool students, including options available for placement in general education classrooms; and (iv) provide the parent a form to utilize to request that the district board of education invite the Part C service coordinator from the Early Intervention System to the initial IEP meeting for the child after a determination of eligibility. N.J.A.C. 6A:14-3.3(e)(1).

The evidence reflects that the NJEIS made efforts to have the District attend the TPC. While there was some testimony that Malavarca may have had a medical issue, that does not absolve the District of its legal obligations. Likewise, there was testimony that sometimes the TPC and initial evaluation and planning meetings are combined. Here, while the District failed to attend the TPC in violation of applicable law, this failure did not deny E.S. a FAPE, because two NJEIS representatives attended the identification and evaluation planning meeting and were able to provide input.

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. Here, the parents did not provide the District with certain evaluations, including: the Genetics Consultation; the Taylor Report, which was completed on February 25, 2015, but not provided to the District until the IEP meeting on April 28, 2015; and the NJEIS records, including the data notebook. However, although the parents' actions limited the District's ability to create an appropriate IEP for E.S., there is no evidence that the District took any meaningful steps to request or to otherwise obtain the NJEIS records. Thus, the District cannot repeatedly assert as a defense that it did not know E.S. or that records were not provided when there is no evidence that the District notified the parents that their refusal to provide the records was going to result in the District being unable to create an appropriate IEP and likewise no evidence that the District requested a due-process hearing when it was unable to obtain the required consent for release of the records. See N.J.A.C. 6A:14-2.7(b). Further, the District asserts that the IEP nevertheless provides E.S. with a FAPE in the LRE.

Although the evidence does not establish that the District's ABA program is deficient or cannot be appropriate for E.S., the evidence falls short of establishing that the proposed IEP would have provided E.S. in particular with a FAPE. From the testimony and evidence, it appears that E.S.'s proposed programming was simply the District's standard ABA Preschool Disabled Program, which had not been in any manner specifically tailored to meet E.S.'s individual needs. There was repeated testimony from the District's witnesses that evaluations would be conducted and modifications would be made after E.S. started the program. Although this testimony was credible, and continual evaluations and modifications as necessary are certainly critical, the District failed to provide any credible support for why it was appropriate for E.S., who previously had received only one-to-one therapy and no group therapy, to receive only the standard nine hours of discrete trial ABA and remainder in group. There was testimony that occupational therapy had been offered in the initial IEP

because E.S. had been receiving it from the NJEIS and the District offered it for continuity, and that the continued need for it would be evaluated. However, there was no reason given for why the District did not similarly continue E.S.'s present levels of discrete trial, and evaluate the need for discrete trial versus group ABA after he started the District's program. While the evidence does not support that E.S. would derive no benefit from group ABA, given his evaluations and test scores, albeit not entirely reliable on a child that age, there is insufficient evidence to establish that E.S. would derive meaningful education benefit from group activities, like centers or circle time. Additionally, although Farneski testified that the assertion that E.S. was not making progress with NJEIS meant that twenty-two hours of one-to-one was not working, there was credible testimony from Dr. Rozenblat that E.S. is making progress at IEA receiving only one-to-one therapy.

While I agree that the District cannot anticipate exactly how E.S. would transition in the District's program and that the District's staff would need to get to know E.S. and build a relationship with him which may necessitate changes to his program, short of the testimony that he was provided with a one-to-one paraprofessional, which is not always provided, there is insufficient evidence that the standard preschool disabled class was in any way tailored to specifically address E.S.'s individualized needs. Indeed, it is troubling that the neither the District's BCBA nor any District representative with experience in autism made efforts to observe or to meet with E.S., especially given that the District had not received any of the NJEIS records, including the IFSPs and his data notebook. Although the record reflects that the District intended to perform a comprehensive assessment of E.S. after he stated the program, the District cannot first assume that a certain program will provide him with meaningful education benefit and then figure it out later.

Based upon the testimony and documentary evidence, I **CONCLUDE** that the District's IEP was not appropriate to meet E.S.'s educational needs for the 2015–2016 school year, and did not provide E.S. with a FAPE.

The District stipulated that the IEA program that was provided unilaterally by the parents is an appropriate program as defined under the law. In view of the foregoing, no

conclusion is made with respect to the appropriateness of the IEA program. However, I **CONCLUDE** that because the District failed to provide E.S. with a FAPE, it was reasonable for petitioners to unilaterally place E.S. at the IEA for the 2015–2016 school year.

In view of the foregoing, I further **CONCLUDE** that the District should create an IEP (within thirty days of issuance of this Decision) that reflects that E.S. should be placed out of district at the IEA for the 2015–2016 school year.

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 a FAPE available to the child and the parents elected to place the child in such private school or facility. However, if the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency has not made FAPE available to the child in a timely manner prior to that enrollment. 20 U.S.C.A. § 1412(a)(10)(C)(ii). When a state fails to provide a free appropriate public education, it must reimburse parents for resulting private school costs. See T.R., supra, 205 F.3d at 577 (citing Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 370, 105 S. Ct. 1996, 85 L. Ed. 2d 385 (1985)). However, such reimbursement is subject to limitation as set forth in 20 U.S.C.A. § 1412(a)(10)(C)(iii), including a finding of unreasonableness with respect to actions taken by the parents. 20 U.S.C.A. § 1412(a)(10)(C)(iii)(III). See also N.J.A.C. 6A:14-2.10(c)(4).

As set forth above, the District failed to provide E.S. with a FAPE. However, it is noted that "the IDEA was not intended to fund private school tuition for the children of parents who have not first given the public school a good faith opportunity to meet its obligations." C.H. by Hayes v. Cape Henlopen, 606 F.3d 59, 72 (3d Cir. 2010). The parents have an "obligation to cooperate and assist in the formulation of an IEP." Ibid.

The core of the IDEA is the cooperative process that it establishes between parents and schools. Schaffer v. Weast, 546 U.S. 49, 53 (U.S. 2005). A multidisciplinary report in the case of a preschool student should include a review of the student's developmental/educational history, including records and interviews, and a review of interventions documented by the classroom teacher(s) and others who work with the student. N.J.A.C. 6A:14-3.4(f)(4)(iii) and (iv). Certainly, the parents should have provided the NJEIS IFSPs, data notebook and any other information relevant to E.S. to the District. However, the evidence suggests that the actions of parents and their experts were calculated to result in an out-of-district placement, without any attempt at the District's program. A year's worth of NJEIS records from providers who daily worked closely with E.S. were not provided to the District. Further, there does not appear to have been much collaboration or cooperation between the petitioners and the District, as the petitioners had already retained a lawyer to attend the initial IEP meeting, and there were few questions or comments from the parents at the IEP meeting. There is no evidence that modifications or other options, such as an out-of-district placement, were suggested by the parents at the IEP meeting or thereafter. Additionally, although the District asserts that it need not accept the Taylor Report, I concur with petitioners that the IEP should reference the Taylor Report in the section reflecting the most recent evaluations or reports. However, it is noted that despite the Taylor Report having been completed on February 25, 2015, it was not provided to the District until more than two months later, at the IEP meeting. Finally, although it does not absolve the District from creating an appropriate program, it is noted that the parents more than once advised the District that they wanted opportunities for general education and peer interaction, but now argue that the District's program is not appropriate because it provides for group ABA.

Having reviewed the criteria for reimbursement limitation, I **CONCLUDE** that reimbursement should be limited as a result of the parents' unreasonable failure to produce significant documents and failure to work collaboratively and cooperatively with the District. However, the record falls short of establishing that reimbursement should be denied in its entirety, as it is likewise noted that there were some procedural and other deficiencies on the part of the District and the District refused to provide Dr. Breslin with certain documents that likely were relevant and restricted her ability to

observe the District's program. Given the conduct of both parties, I **CONCLUDE** that the District should reimburse petitioners for one-half the cost of E.S.'s placement at the IEA for the 2015–2016 school year.

ORDER

Based on the foregoing, it is hereby **ORDERED** that the relief sought by petitioners is **GRANTED in part** and **DENIED in part**. Specifically, it is **ORDERED** that petitioners and the District should meet within thirty days of this Final Decision to create a new IEP for E.S. to reflect his placement at the Institute for Educational Achievement for the 2015–2016 school year. It is further **ORDERED** that the District should reimburse petitioners for one-half the costs of E.S.'s placement at the Institute for Educational Achievement, including tuition and transportation, for the 2015–2016 school year.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2015) 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 (2015).

June 3, 2016
DATE

KELLY J. KIRK, ALJ

Date Received at Agency

Date Mailed to Parties:

APPENDIX

Witnesses

For Petitioners:

N.M.
Anita Breslin
Eric Rozenblat

For Respondent:

Toni Farneski
Nicole Paterno Bednarski

Exhibits

Joint Exhibits

J-1 Amended Due Process Petition and Exhibits dated September 11, 2015
J-2 Answer to Amended Due Process Petition dated September 16, 2015
J-3 -11(Not in Evidence)
J-12 NJEIS Notification/Referral to Local School District dated December 15, 2014
J-13 Emails between NJEIS and CST dated December 2014–January 2015
J-14 Preschool Disabilities Program Information Sheet dated January 14, 2015
J-15 Neurodevelopmental Evaluation and Psychological Evaluation dated February 3, 2015
J-16 (Not in Evidence)
J-17 Battelle Developmental Inventory dated February 7, 2015
J-18 Initial Identification and Evaluation Meeting with CST dated February 18, 2015
J-19 Emails between NJEIS and CST dated January 22, 2015–February 20, 2015
J-20 Alpine Educational/Behavioral Consultation dated February 25, 2015
J-21 Above and Beyond Learning Group Goals and Objectives dated March 2015
J-22 (Not in Evidence)
J-23 Email between CST and Mr. S. dated March 27, 2015

J-24 (Not in Evidence)
J-25 Preschool Multidisciplinary Report dated April 15, 2015
J-26 (Not in Evidence)
J-26A Proposed Initial Eligibility Determination with IEP dated April 28, 2015
J-27 Request for Additional Assessment, with petitioners' consent, dated April 28, 2015
J-28 (Not in Evidence)
J-29 Emails between Gilfillan and petitioners' counsel dated April 30, 2015–May 1, 2015
J-30 Schedule for Proposed Program
J-31 (Not in Evidence)
J-32 Emails between Farneski and Dr. Breslin
J-33 (Not in Evidence)
J-34 Email from Farneski to Dr. Breslin dated May 8, 2015
J-35 (Not in Evidence)
J-36 Emails between Farneski and Dr. Breslin dated May 14, 2015–May 22, 2015
J-37 (Not in Evidence)
J-38 Email from Farneski to Dr. Breslin dated May 22, 2015
J-39 Occupational Therapy Evaluation and Goals & Objectives dated May 27, 2015
J-40 (Not in Evidence)
J-41 Report of Determination of Dr. Breslin dated June 18, 2015
J-42 Notes in response to Dr. Breslin's Report
J-43 Response to Report of Determination
J-44 (Not in Evidence)
J-45 Letter from petitioners' counsel to Gilfillan dated June 24, 2015
J-46 Pediatric Feeding and Swallowing Evaluation dated June 25, 2015
J-47 Physical Therapy Initial Evaluation, Physical Therapy Recommendations to District, and Physical Therapy Goals and Objectives dated July 8, 2015
J-48 (Not in Evidence)
J-49 Letter from Farneski to parents dated July 17, 2015
J-50 Letter from Gilfillan to petitioners' counsel dated July 21, 2015
J-51 Invitation to IEP meeting dated August 10, 2015
J-52 (Not in Evidence)
J-53 (Not in Evidence)
J-54 Letter from Farneski to parents dated August 21, 2015

J-55 Second proposed IEP dated August 21, 2015

J-56 Letter, petitioners' counsel to Gilfillan dated August 21, 2015

J-57 (Not in Evidence)

J-58 (Not in Evidence)

P-59 (Not in Evidence)

P-60 IEA Brochure/Website

P-61 IEA program book and data book

J-62 Anita Breslin, CV

J-63 Eric Rozenblat, CV

J-64 Report of Dr. Breslin dated November 19, 2015

J-65 (Not in Evidence)

J-66 (Not in Evidence)

J-67 (Not in Evidence)

J-68 Toni Farneski, CV

J-69 (Not in Evidence)

J-70 (Not in Evidence)

J-71 (Not in Evidence)

J-72 Nicole Paterno, CV

Petitioners' Exhibits

P-1 -2 (Not in Evidence)

P-3 Genetics Consultation dated September 5, 2013

P-4 IFSP dated March 5, 2014

P-5 IFSP dated May 20, 2014

P-6 IFSP dated June 17, 2014

P-7 IFSP dated July 17, 2014

P-8 IFSP dated July 31, 2014

P-9 IFSP dated August 13, 2014

P-10 IFSP dated September 25, 2014

P-11 IFSP dated October 16, 2014

P-12 -15(Not in Evidence)

P-16 IFSP dated February 7, 2015