



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 04763-19

AGENCY DKT. NO. 2019-29533

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

Petitioners,

v.

GLEN RIDGE BOARD OF EDUCATION,

Respondent.

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

Alyssa K. Weinstein, Esq., for respondent (Busch Law Group, attorneys)

Record Closed: February 12, 2021

Decided: April 1, 2021

BEFORE **SUSANA E. GUERRERO**, ALJ:

STATEMENT OF THE CASE

In accordance with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1415, S.W. and L.L. requested a due process hearing on behalf of their son, D.W., who is classified as eligible for special education and related services. Petitioners assert that the Glen Ridge Board of Education (the Board, or the District) denied D.W. a free and appropriate education (FAPE), and they seek reimbursement for the expenses incurred in unilaterally placing D.W. at SEARCH Learning Group (SEARCH), a private placement.

PROCEDURAL HISTORY

Petitioners filed a request for a due process hearing on or around March 8, 2019, which was transmitted to the Office of Administrative Law (OAL) and filed on April 8, 2019. During a telephone conference on May 8, 2019, a hearing was initially scheduled for September 6, September 9 and November 13, 2019, but adjourned at the request of the parties. The hearing was rescheduled to begin on December 6, 2019, at which time the parties appeared but the hearing did not commence at that time as petitioner requested, and was granted, leave to file an amended petition. On or around December 12, 2019, petitioners filed an amended petition for due process that included claims relating to the parents' unilateral placement of D.W. at SEARCH. Respondent then filed a motion for summary decision on or around March 24, 2020, which was opposed by petitioner. The undersigned denied the motion and issued an Order on May 6, 2020. Following several adjournments of the hearing at the parties' respective requests, the hearing was ultimately conducted on September 4, September 14, September 23, September 29, and October 6, 2020. Due to the COVID-19 pandemic and the continued closure of in-person hearings at the OAL offices, the hearing was conducted via Zoom. The parties submitted post-hearing summation briefs, and the record closed on February 12, 2021.

FACTUAL DISCUSSION AND FINDINGS OF FACT

Issues Presented/Positions of the Parties

D.W. attended the District schools beginning in April 2017, when he attended the half-day preschool program for students with disabilities. The Amended Petition for Due Process asserts that D.W. failed to make meaningful educational progress during the 2017–2018 and 2018–2019 school years, that the District failed to communicate or share information with the parents concerning D.W., his progress or lack thereof, and that the IEPs offered for the 2018–2019 and 2019–2020 school years did not offer D.W. a FAPE. The parents' unilaterally placed D.W. in SEARCH, for the 2019–2020 and subsequent school years. They seek reimbursement for their unilateral placement, and compensatory education.

The issues in this matter are whether the IEP provided to D.W. for the 2018–2019 school year provided him with a FAPE; whether the IEP for the 2019–2020 school year offered D.W. a FAPE; and whether D.W. was denied a FAPE as a result of the District’s alleged procedural violations. If a determination is made that D.W. was denied a FAPE, the issue to be addressed is whether the parents’ unilateral placement of D.W. at SEARCH was reasonable and appropriate, and whether they are entitled to reimbursement for that placement.

The District maintains that the parents are not entitled to reimbursement for their unilateral placement because they failed to reject D.W.’s IEPs; they failed to provide the District with the required notice of their concerns; and their conduct was so unreasonable as to warrant a denial of any reimbursement. The District also maintains that it provided D.W. with a FAPE when he attended the District schools, and that the proposed IEP for the 2019–2020 school year offered D.W. an opportunity to continue to make progress.

Testimony

For Respondent

Lisa Jacobsen

Jacobsen has served as a Learning Disabilities Teacher Consultant (LDTC) in Glen Ridge since 2001, but was first employed by the District as a teacher in 1997. She also often serves as a case manager. Jacobsen was qualified as an expert LDTC and an expert in managing students with disabilities.

Jacobsen started working as D.W.’s interim case manager towards the end of September 2018, his kindergarten year, when his previously assigned case manager took a medical leave of absence. She was not involved in preparing D.W.’s IEP for the 2018–2019 school year.

Jacobsen testified that she had a “meet and greet” by telephone with the parents early in the 2018–2019 school year, at which time the parents filled her in on D.W.’s medical history. During the call, the parents expressed that they wanted to be sure that monthly parent-teacher conferences were going to be scheduled. Jacobsen participated in these monthly conferences, and testified that they discussed D.W.’s academic progress, social progress, and concerns. The parents were shown data during these meetings. The parents looked through the documents, did not ask questions and did not express dissatisfaction. Jacobsen testified that the parents expressed a desire for more mainstreaming or inclusion in the general education classroom, and this was addressed in the IEP. She told them in September that the special education teacher was working with the general education teacher to find the most appropriate times when D.W. could be successful within that classroom. A schedule was developed by the general education and special education teachers, as well as by the Board-Certified Behavior Analyst (BCBA) Shuba Vasan (Vasan), for D.W. to spend some time in the general education classroom.

Jacobsen testified concerning the parents’ request to have Dr. Zaheer and then Dr. Fiorile observe D.W.’s program, and the fact that Dr. Zaheer never produced a report and Dr. Fiorile’s report was not received until after D.W. had left the District.

During the first part of the 2018–2019 school year, the parents also sent an audiological report that recommended that the District have an educational audiology evaluation done, which the District did right away. The report recommended an FM system for first grade, not kindergarten. When the District received the report, they asked the audiologist to send information on the FM system that should be purchased for D.W.

Jacobsen testified that during the early part of the 2018–2019 school year, the parents never expressed that they were considering placing D.W. out of district. The first time she heard that D.W. was being unilaterally placed in an out-of-district school was sometime around the May 20, 2019 IEP meeting.

At the June 2019 meeting, the teachers and therapists reported on D.W.’s progress and the parents did not raise any concerns during the meeting. Jacobsen only recalls

parents' counsel questioning about the VB-MAPP that was provided and stating that the District had not requested consent to administer this assessment. The parents did not entertain a discussion of the program and placement at the meeting, although it was Jacobsen's intention to discuss this with the parents and to collaborate with them to develop goals and objectives regarding parent training. While the child study team (CST) recommended two hours per week of parent training, Jacobsen testified that the goals would have had to be developed collaboratively with the parents.

Jacobsen opined that D.W. made meaningful progress during the 2018–2019 school year based on the data from Rethink that was presented at the meetings,¹ as well as information provided by the teacher and therapists. She also opined that the program proposed for the 2019–2020 school year offered D.W. an opportunity to make meaningful educational progress based on data reported by the teachers and therapists.

Jacobsen testified that she visited SEARCH in the late spring of 2019, when she was informed that D.W. was looking to attend that program. She describes it as a therapeutic center where they have one-to-one ABA services. She does not believe it is an appropriate program for D.W. because, while it provides ABA services, it is not the least restrictive environment for his profile and needs, and it does not include the expertise from speech-language, occupational or physical therapists, nor does it provide counseling or access to typical peers for socialization and social skills development.

Jacobsen agreed that D.W. required and received an intensive ABA program for the 2018–2019 school year. She also conceded that the parents wanted information to be sent to them daily regarding D.W.'s program, and they also asked for access to the online Rethink data in real time. She testified that they were provided with a parent login.

¹ Jacobsen described Rethink as the program that the District uses to input data and track progress for students in the Autism ABA classroom.

John DeWitt

DeWitt has been the Director of Student Services for Glen Ridge since 2015. He was previously a school psychologist with the District for about thirteen years, served as case manager and drafted IEPs. He was accepted as an expert in school psychology, case management and the development of programs relating to IEPs.

DeWitt testified concerning the creation of the District's new autism program in the spring of 2018, including the process of hiring a teacher, paraprofessionals, a part-time BCBA, and obtaining Board and County Superintendent approval for the program. He testified that they were unable to include the new program into D.W.'s IEP for the 2018-2019 school year until it was approved by the County/State and the Board.

DeWitt testified that the only conversations he had with the parents in which they expressed any concerns regarding D.W. or his education were those concerning the immunization of students in D.W.'s classrooms.

DeWitt testified concerning the Primary One Linden School Program (Primary One Program or autism program), that it is classified as a classroom for children on the autism spectrum, and that ABA is the methodology used in the program. He testified that Vasani would work with the teacher and paraprofessionals, write programming for each of the three students, work directly with them, and that she would also accompany the students and paraprofessionals to the mainstream setting and instruct the paraprofessionals how to interact and work with the general education mainstream environment. DeWitt testified that Vasani taught the paraprofessionals how to program, how to monitor the programs and collect data, and use Rethink. He explained that the data inputted into Rethink allows them to analyze progress, chart data, and inform if interventions need to be put in place. DeWitt testified that he believed Vasani maintained data on D.W. in the general education setting.

Rethink was recommended by other directors and also by the District's full-time, on-staff, behaviorist. He also met with the company before adopting the program.

Although the District already had a full-time behaviorist on staff, DeWitt hired Vasan to focus on the three students in the autism program.

DeWitt only became aware that D.W.'s parents were considering moving D.W. out of District towards the end of that 2018–2019 school year. He attended the June 2019 meeting, along with Jacobsen, teacher Lyndsay Batikha (Batikha), speech therapist Heather Goss (Goss), Vasan, the parents and their attorney. While the District staff were going through D.W.'s progress, the parents' counsel objected to continuing because she said that they should be talking about a change in placement and that the meeting was not intended to be an IEP meeting. The parents and their counsel then left. In response to the parents' statement that the June meeting was not an IEP meeting, DeWitt pointed out that the May 29, 2019 letter sent to the parents was an invitation to an IEP meeting for June 14, 2019. DeWitt also testified that the parents' counsel appeared upset that the VB-MAPP was completed by the District. He testified that the VB-MAPP is an assessment tool, not an evaluative measure, and not put into an IEP.

Just prior to the June 2019 meeting, DeWitt learned that the parents were considering placing D.W. at SEARCH, and he therefore made arrangements to observe and learn more about their program. He observed the program with Jacobsen prior to the June 2019 meeting. DeWitt testified that he learned that SEARCH does not offer speech-language therapy, occupational therapy (OT), physical therapy (PT), counseling, nor opportunities to spend time with non-disabled peers.

Heather Goss

Goss is certified as a speech-language specialist and speech-language pathologist, and has been employed as a speech-language pathologist with the District since 2014. She was admitted as an expert in speech-language pathology and in the administration and application of ABA programs.

Goss first became involved with D.W. in the late spring of 2017, when she was assigned to be his speech-language therapist, and she remained his speech-language therapist for the following school year.

Goss testified that in preschool, she worked a lot with D.W. on play skills and socializing. She testified that D.W. made progress in certain areas that she worked on with him during the 2017–2018 school year. Goss testified that D.W. related more to the other students as the year went on; he was carrying over some of the play skills that they worked on within the small groups; he was more attentive during large group session; and she was able to scale back considerably on prompts that she used to cue him as the year went on. She testified concerning her collaboration with Batikha. For kindergarten, they were able to move on to more advanced conversational skills and D.W. was more interested and engaged in his surroundings. He used more vocabulary and was more descriptive when speaking. Goss testified that they also were able to pull back more on the visual cuing in kindergarten. In her opinion, D.W. made progress in the skills that she worked on with him during the 2018–2019 academic year. She had a corner of the classroom blocked off for her to provide services, and she was able to observe what went on in the classroom.

Goss described the kindergarten classroom as a highly structured environment, with one-to-one instruction. The students were also able to go into the mainstream at their structured time and interact with other students.

During the 2017–2018 school year, the speech, occupational and physical therapists wrote daily notes to the parents each time they saw D.W. for therapy, documenting what they worked on, goals and progress. This practice initially continued the following school year but changed in March to a Google doc that the therapists all shared, and the parents had access to.

During the 2018–2019 school year, D.W. spent a structured amount of time in the general education class. Goss observed those times and she agreed that he had successful encounters during this time. He enjoyed recess, but some of the more academic periods were challenging for him and overstimulating.

At the beginning of the 2018–2019 school year, Goss connected with D.W.’s private speech-language therapist to ensure that they were on the same page and working on similar goals.

Goss read Dr. Fiorile’s report and believed it contained inaccuracies and omissions concerning her observation of the District program. She provided an example that Dr. Fiorile incorrectly noted that Goss did not record any data, and Goss also noted that Dr. Fiorile did not ask her any questions related to the recording of any data. Goss testified about the different methods she utilized to record data.

Goss conducted a formal speech-language re-evaluation of D.W. prior to starting kindergarten, which included two standardized assessments that are reliable and generally accepted in the field of speech-language evaluations. The results of her assessments were used to look for the presence of a language or communication impairment, and to develop goals for the IEP related to the areas of receptive, expressive or pragmatic language. This was used to develop D.W.’s goals and objectives for kindergarten, and she testified that the speech and language goals developed for D.W. were sufficiently challenging, reasonably achievable, and allowed for measurable progress. Goss testified that D.W. made meaningful progress in speech and language during the 2018–2019 school year. Speech-language goals were also developed for the 2019–2020 school year, which were different from the 2018–2019 goals and objectives, and she testified that these too were measurable, reasonably achievable, sufficiently challenging, and individualized to D.W.’s circumstances.

Goss attended the May and June 2019 meetings. She confirmed the prior testimony that progress was discussed but that the parents were not receptive when the 2019–2020 program was being proposed. In the proposed IEP, Goss increased the frequency of speech services to include a group session because she thought there were goals, such as generalizing skills, that would be better addressed in a small group with peers. Goss testified that prior to June 2019, the parents never expressed any concerns that they had regarding D.W.’s progress in speech and language.

Goss agreed that during the 2017–2018 school year, D.W. had some interfering behaviors at times, including whining, crying and throwing himself to the floor. While there was no behavioral plan to address these behaviors in 2017–2018, she testified that informal strategies were utilized, and that he did not require a behavior plan during her sessions because he was incredibly compliant and motivated with her.

Goss testified that when D.W. was in preschool, she told the parents that D.W. lacked certain foundational skills (such as eye contact and an ability to sit for a certain amount of time) that would be beneficial in the general education setting. She questioned whether he had the prerequisite skills to benefit from an inclusion setting. At the time, he did not consistently interact with his peers in the self-contained class, and he required a significant amount of prompting. At the IEP meeting prior to kindergarten, Dr. Zaheer and the parents expressed that it was really important for D.W. to be included in the mainstream environment. When Goss expressed her concerns about his readiness for mainstreaming, they did not agree and they felt it was important for D.W. to spend time within the morning meeting time and related arts for socialization and to work on a number of academic skills.

Goss testified that D.W. had significant delays in pragmatic understanding of language. She agreed that in the time she worked with him, he did not meet all of his speech-language goals and objectives set forth in 2017–2018 IEP. She agreed that he did not master the skill of initiating a conversation, and that without prompting he was unable to maintain a conversation for two turns. He was also unable to request information independently with ninety percent accuracy. Goss testified that D.W. was greeting, making comments, requesting actions, and taking turns, although all of these behaviors were not always consistent or independent. Even though D.W. may not have mastered or fully achieved the goals or objectives, he did make progress in each goal/objective. There was prompting that was able to be faded out. With respect to the 2018–2019 school year, there were no goals and objectives towards which he did not make any progress. That year, D.W. had difficulty interacting with his peers without prompting, and she told the team that she thought that time in inclusion should be limited.

Regarding the collection of data, Goss took data for herself and she did not put the data collected onto a graph or into Rethink. A paraprofessional assigned to D.W. would sometimes take data during her sessions when there was a skill that was being targeted. Speech-Language pathologists do not collect ABA data.

Goss agreed that in order for D.W. to master some of the communication skills she was working on, he would need to be able to demonstrate that outside the speech session, such as in his peer group or inclusion setting. She agreed that at the end of the 2018–2019 school year, D.W. was still significantly behind his peers in communication, but not in the production of sound.

Lyndsay Batikha

From November 2017 through June 2018, Batikha taught in the District's preschool disabled program, and she taught the Primary One program during the 2018–2019 school year. She was qualified as an expert as a special education teacher.

Batikha's first involvement with D.W. was when she took over as the teacher for the preschool disabilities class in November 2017. Early in the 2017–2018 school year, she had communication with the parents concerning potty-training D.W. The parents indicated that they were still working on potty-training at home, and they talked about what could be done to carry over training at school. At school, they would have D.W. sit on the potty, which he did not always want to do, and they found ways to encourage him to go, such as by giving him stickers, and rewarding him when he did go. This continued through the extended school year (ESY) and the 2018–2019 school year. Batikha testified that D.W. was not consistent using the bathroom, although his outlook and behavior towards going to the bathroom did improve. While he whined and cried in the beginning, by the middle of his kindergarten year, he knew when or where to go without protest. They utilized a token board to encourage him in the beginning but he did not need it later in the year.

Batikha testified that she used Rethink when she worked in another school district's self-contained classroom. She and Vasan decided which programs in Rethink

D.W. would be working on, and she, Vasan and the trained paraprofessionals collected the data. Vasan trained her and the paraprofessionals on administering Rethink. Vasan also spent time in the general education environment because the parents requested D.W. be mainstreamed and around typical same-aged peers. Batikha also observed D.W. with general education peers during his mainstreaming opportunities during the 2018–2019 school year. She testified that he was successful at lunch and when he would sit with a group of students in the mainstream classroom. They assisted D.W. with socialization, and worked with him on greeting the students, saying their names, and asking them for help when needed. Batikha also saw D.W. playing with the other children at recess; and they would bring small groups of students into their classroom to facilitate a more structured indoor recess activity or game with D.W. For physical education, some students would gravitate towards D.W. and wanted to be his partner for activities. At first, D.W. had some difficulty with lunch, but he improved and showed no interfering behavior during lunchtime. When D.W. was in the preschool class, they collaborated with The Children’s Hospital of Philadelphia (CHOP), and when he was in kindergarten, they were able to have him eat his lunch with minimal to no issues.

Batikha testified that during the 2018–2019 school year, she communicated with the parents every seven to ten days to provide an update on what programs D.W. was working on, his progress, and needs. She also provided progress reports documenting D.W.’s IEP goals and objectives and progress during the 2017–2018 and 2018–2019 school years.

In March 2019, Batikha created a chart for the therapists to communicate what occurred in therapy sessions, which was shared electronically with parents. That school year, she also participated in monthly meetings with staff and the parents to discuss D.W.’s progress and to provide Rethink data. The Rethink data was printed and shared with the parents at these meetings, which they requested, from November 2018 through June 2019. The parents also had the ability to log on to Rethink at any time to see what D.W. was working on. They would have been able to see the objectives, the goals and targets that they worked on, and what was mastered, but Batikha does not believe that it showed the actual raw data collected. Batikha maintains that during these monthly

meetings, the parents never expressed that they felt D.W. was not making adequate progress.

Batikha recalled that Dr. Zaheer attended one of their monthly meetings early in the 2018–2019 school year and she recalled him expressing the importance of D.W. being around his typical, mainstreamed, peers.

Batikha testified that D.W. made academic, social and behavioral progress in the kindergarten year. Near the end of December 2018 or early January 2019, she saw significant improvement in that he was more focused, more attentive, and they saw significantly fewer behaviors transitioning and with the bathroom. In February, they were able to phase out his token board. At around that time, his conversational skills had shown improvement, he was socializing more with his peers, and working for longer periods of time.

Batikha testified that prior to the June 2019 meeting, the parents had never indicated that they were thinking of placing D.W. out of district. At the June meeting, they spoke of D.W.'s progress, and the case manager wanted to talk about the proposed program for first grade but the parents' counsel stopped the meeting and did not allow them to do so.

When she began teaching D.W.'s kindergarten class, Batikha had not been trained in all of the principles of ABA. At the start of that school year, she testified that D.W. was baselined, and that the collection of data started in October. Rethink shows the programs D.W. was working on until the end of the year but it does not show the programs that he mastered earlier in the year. After a program is mastered, Rethink automatically removes it from its report. Batikha testified that for those that were mastered, the data had been collected beforehand and presented during the monthly meetings.

Specific data was not taken on potty-training, and while they worked on potty-training in preschool and kindergarten, D.W. was not potty-trained by the end of the 2018–2019 school year. At the June 2019 meeting, a potty-training protocol was shared with the parents.

Batikha responded to questions concerning the IEP proposed for the 2018–2019 school year, for which she wrote some goals and objectives, including those in the areas of reading and writing. She agreed that the goal in the proposed IEP for D.W. to work steadily for four minutes was not an appropriate one because by the end of kindergarten, D.W. was able to work for longer periods of time, as reflected in Rethink. She testified that the goal to attend and to follow one-step directions was appropriate because that was listed for a ninety percent success rate, and he still needed work on that.

Shuba Vasana

Vasana is a Board-Certified Behavior Analyst (BCBA) and holds a Teacher of the Handicap Certification. She was admitted as an expert in ABA and as a teacher of students with disabilities. When Vasana worked with D.W. in the District, she was employed as a consultant through Uncommon Thread.

Vasana testified extensively on ABA and data collection. She described the Primary One Program as following the science and principles of ABA. She first met D.W. on the first day of school in September 2018. She confirmed that his class was based on the principles of ABA, and that they predominately used a data-based decision-making process in that classroom. At first she conducted baseline assessments to determine where the students were and what programs they needed. A program was then developed for each student, and she trained the staff on implementing the programs. At times she would coach them and model for them while she worked directly with the students.

D.W.'s goals were selected based on the scoring from the initial preliminary baseline assessment in Rethink. She explained that once information is added into Rethink following an assessment, an algorithm indicates the programs that would be suited for the student.

Vasana confirmed that at monthly meetings with the parents, data from Rethink was printed out and reviewed with them, including the progress made. The parents took the

printouts home. She testified that not all of the data collected is found in Rethink because he mastered some of the skills and that the mastered skills no longer appear in Rethink. Vasana testified that the parents did not express concerns regarding progress at all. They did indicate that they wanted more mainstream integration with typically developing peers. D.W. had some mainstream integration, with morning meeting, in preschool, and in response to parental concern, they included D.W. in the lunches, recess and specials (e.g., art, music, library, and gym) with mainstream peers. Vasana testified that he was successful during this time, especially during lunch, recess, and math. During that time, he initially required prompting but then later showed more independence.

Vasana testified that every target in D.W.'s program is customized, and that every program has a baseline that is documented prior to teaching and providing reinforcement. She also testified that once a program is mastered, it no longer appears on the Rethink printouts.

Vasana testified that D.W. made progress throughout the 2018–2019 school year, and that this progress is documented in the Rethink graphs and data. She noted that D.W. initially started the school year displaying a lot of resistance, and that it would take him at least ten minutes to make it into the classroom after refusing to get out of the school van. In October they started to see a change in his behaviors when they started implementing a token board for reinforcement. Eventually, they were able to fade out the token board.

In September, D.W. engaged in whining behavior, he would display resistance by dropping to the floor and scream, and would resist prompts or redirection. They implemented DRA (differential reinforcement of alternative behaviors) in November 2018, and he responded. By January 2019, his resistance to eating was gone. Vasana believes that their use of a token board was effective in mitigating behavior. That year, D.W. displayed some amount of rigidity, but it was not interfering. She also noticed his echolalia decrease. By the end of that year, D.W. was able to work for almost an entire period (more than thirty-five minutes).

Vasan testified that D.W. also expanded his language and social skills, and that he progressed from requiring single-step directions to multi-step directions, where up to three directions could be given. Initially, D.W. ignored his peers and gravitated more towards the adults, but in early February he started responding to requests from peers as well.

With respect to toileting, Vasan testified that D.W. did not respond initially to toilet training efforts, but that by the end of the school year he was able to use the toilet a few times. To address toileting, they used reinforcements every time he approached the bathroom and ultimately entered the bathroom. The parents did not express any concerns regarding toilet training at the monthly meetings. Vasan testified that, in fact, they gave the parents advice on what to do at home.

Vasan testified that Dr. Zaheer, who described himself as a friend and advocate for the parents talked about needing a more inclusive program for D.W. and more opportunities to mainstream and spend time with typically developing peers. He asked what was planned for D.W., and he did not express any concerns. In December 2018, Dr. Fiorile observed D.W. in the classroom, while Vasan took notes.

Vasan testified concerning the June 2019 meeting. She testified that at the meeting, she reviewed the VB-MAPP assessment that she conducted, and proposed a toilet training protocol. The parents and their attorney did not want to read it, they pushed it away and stood up to leave. Vasan testified that prior to the spring of 2019, the parents never indicated that they were considering placing D.W. out of district.

In developing the proposed IEP for the 2019–2020 school year, Vasan collaborated with Batikha and Goss; they reviewed all of D.W.'s programs and goals, the VB-MAPP; and drafted the goals and objectives.

DeWitt asked Vasan to accompany him to visit SEARCH. She testified that students at SEARCH work with RBTs, not a BCBA throughout the day, while the BCBA supervises the RBTs.

Vasan was hired by the District in the summer prior to the 2018–2019 school year, and met with Batikha a few days prior to the first day of school. Training of staff in that classroom did not occur prior to the start of the school year. Vasan trained the staff on how to run the program, and was in the classroom two six-hour days a week. During that time, she also worked with D.W., and also observed him in the inclusion setting, where she also collected data. She testified that data was collected in the inclusion setting, and specifically recalls data being collected on D.W. greeting his peers. Data was also collected on motor imitation in the mainstream music class, and she worked with him on skills based on the movements and actions taught in the class. Vasan testified that they took data on transitioning.

When asked whether D.W. had the prerequisite skills to benefit from attending an inclusion environment, Vasan testified that he did have some, but she also testified that his scoring on social skills on the VB-MAPP would concern her about his readiness for an inclusion program. She agreed that based on the VB-MAPP, D.W. is significantly impacted by autism because he was rated a level one learner (0-18 mos.) in play and social skills when he was six years old. Vasan agreed that D.W. requires an intensive ABA program to remediate those areas of deficit that the VB-MAPP shows.

Vasan agreed that it was inappropriate to have as a goal in the proposed IEP that D.W. is going to follow one-step directions because that goal was mastered as D.W. was able to work on task for an entire forty-minute period. He would, however, still be working on multi-step directions. With respect to Goal 1:1 -classroom morning routine of unpacking backpack and putting away belongings, she agreed that D.W. mastered part but not all of that routine. She testified that inclusion is reflected in the IEP under the section addressing engaging in taking turns, exchanging during game play, questioning the other person and then requesting or turn-taking. She pointed out a goal in the proposed IEP that strictly addresses his functioning in the mainstream setting. Vasan recognizes the importance of parents obtaining training to carry over a student's skills when learning in an ABA classroom, and she recommended parent training in the proposed IEP.

For Petitioner

Carrie Kahana

Kahana is the current Executive Director of SEARCH. She is certified by the NJDOE as a Special Education Teacher and Elementary Education Teacher and holds a BCBA credential. She has worked with children with autism for twenty years, and she founded SEARCH in 2005. Kahana was accepted as an expert in ABA, special education for students with autism using ABA, and the development of programming for children with autism.

Kahana testified that she was first contacted by the parents in November 2018. They had an intake of D.W. in December 2018. Based on the intake, she recommended a full-time comprehensive behavior analytic program that implements one-to-one direct instruction, with ongoing BCBA direct involvement based on D.W.'s poor attending skills, lack of prerequisite skills and interfering behaviors that she observed. She described the parents as just gathering information at that time, but in the spring of 2019, the parents contacted her and expressed their intention to place D.W. in the program. The parents contracted with SEARCH on May 31, 2019.

Kahana testified to the difficulty children with autism have in generalizing skills, and the importance of providing parent training as part of the program to ensure generalization.

Kahana described the hierarchy at SEARCH, with the two director-level BCBAs; four team leaders below them who are also BCBAs who oversee about four enrolled learners; and the data analysts who provide the direct instruction and have a minimum of a registered behavior technician (RBT) credential.

Kahana testified that based on her review of documents and her intake with D.W., she did not believe that he had the prerequisite skills to benefit from group learning of any kind at the time he arrived at SEARCH. She opined that D.W. has made meaningful educational progress at SEARCH, and that one of the greatest gains that he made is with

regard to his availability for learning, as there has been a meaningful reduction of barriers to his learning by eliminating all of the interfering behaviors. These behaviors include engaging in tantrums, non-compliance, and vocal stereotypy. Kahana also testified that D.W.'s time on task has improved as he is now working for hours at a time.

At SEARCH, progress is reported once a trimester, although it is discussed more frequently. She testified as to the importance of data collection and that all decisions are made based on data.

Kahana testified that D.W. required structured reinforcement at first through a few token boards and a clicker system. She was not concerned that D.W. was not with typically developing peers at SEARCH because she believed that he did not have the prerequisite skills to learn from peers when he joined SEARCH. At that time, they were still working on having him be able to learn one-to-one direct instruction with an adult. She opined that D.W. is not ready for a less-restrictive environment than SEARCH. Although he is able to participate in a small group, he is not acquiring new information in that group. Based on SEARCH's data and direct observation, D.W. continues to require individualized teaching procedures to learn new information, as well as prompting.

With respect to his current strengths, Kahana testified that D.W. developed better attending skills, better understanding and processing of information, he has become less rigid, and his play skills have improved.

Jesse Dello Russo

Dello Russo has worked at SEARCH since September 2016, and since July 2018 she has been the director who supervises the BCBA team leaders who oversee the instructors and programming. Dello Russo was admitted as an expert in ABA and in the development of programs using ABA for children with autism.

Dello Russo testified that in developing a child's individualized program at SEARCH, they look at the child's core deficits of autism and academics or pre-academics.

They also refer to formalized assessments, like the VB-MAPP, and refer to the New Jersey learning standards for academic goals, even though they are not a school.

At SEARCH, those who provide the direct instruction to the students are RBTs, while BCBA provides oversight.

About thirty days prior to D.W.'s start date in September 2019, Dello Russo connected with the parents to obtain information and to set up a time to meet with D.W. D.W. had been working with an instructor that summer. She conducted an academic assessment of D.W. and they developed SEARCH's Individualized Treatment and Education Plan (SITE plan), and reviewed it with the parents to ensure that they agreed with the goals. They used information obtained during intake to develop the goals and objectives in the SITE plan, and the VB-MAPP conducted in September 2019.

According to the VB-MAPP conducted at SEARCH in September, D.W. demonstrated more skills than he did in the June VB-MAPP conducted by Vasan, and Dello Russo could not explain why that was. She also created a "VB-MAPP Transition Assessment District Assessment" and a transition assessment in September. Based on the result of these scores, she opined that D.W. was not ready for a less-restrictive environment than a one-to-one ABA program. Dello Russo testified that in September 2019, D.W. did not have the prerequisite skills to participate in a supported inclusion environment.

Dello Russo described what she believed to be D.W.'s interfering behaviors. These included vocal protests, not responding to direction or demands, motor stereotypies (such as hand clapping), aggression, non-contextual vocalizations, and oral stereotypy.

In the 2019–2020 school year, D.W. had three other students in his classroom, and in January he moved into a classroom with four students with more expansive verbal repertoires, as that was considered to be a more appropriate setting for him.

When D.W. started at SEARCH, Dello Russo testified that the biggest challenges were potty-training; interfering behaviors (screaming, non-compliance, tantrums); his communication skills were “a bit rote”; and he was not generating any new language. She described D.W. as being relatively compliant with working at the desk and on his programs. They initially used a token board, but transitioned away from this when they realized that D.W. was motivated by adult approval and praise. She described D.W.’s eye contact as being poor, and they put programs in place to target eye contact.

Dello Russo opined that D.W. is not ready for a less-restrictive setting despite seeing a reduction of interfering behaviors because there are other skills that still have to be worked on, such as learning information in a group, and continuing to communicate and learn social skills with peers. She opined that D.W. requires one-to-one instruction to learn new information, at least in part due to his lack of observational learning. Prior to the COVID pandemic, he was spending about 90 minutes per day in a group, and during the pandemic he spends about 30-60 minutes per day in a group.

Dello Russo testified that parent training is a required part of the SEARCH program because having parents involved in a child’s program allows the child to achieve the best possible outcome. She agreed that the progress reports provided do not contain data on parent goals.

Dello Russo testified that they noted delays that did not necessarily stem from D.W.’s autism. While she testified that SEARCH collaborated with D.W.’s PT, OT and speech providers, it is unclear to what extent this occurred and how. She testified that while SEARCH does not staff physical, occupational or speech therapists, they address PT, OT and speech therapy needs through ABA.

Dello Russo referred to the VB-MAPP and Progress Report to opine that D.W. made meaningful progress between September 2019 and February 2020. She also opined that the interfering behaviors did decrease, even though they saw increased non-compliant behavior when D.W. was switched to a different classroom in February. On cross-examination, Dello Russo agreed that D.W.’s non-compliance increased from two percent to six percent to ten percent between September and November 2019, which she

attributes to an extinction burst. She agreed that the data also shows increased motor stereotypy between December 2019 and March 2020. His visual stereotypy also increased, and later decreased during remote instruction, and vocal protest behavior substantially increased from December to March as well.

Dello Russo testified that D.W. continued to progress during remote instruction, and referred to the VB-MAPP Assessment from June 2020. Referring to the Progress Report, she testified that those areas of meaningful progress include the reduction of interfering behaviors as he is engaging in almost no tantrums, non-compliance, or vocal protests; he is potty-trained; he is generating new statements; he is initiating interaction with adults; and he made progress with his academic programming. For some programs, D.W. is at grade-level academically. She agreed that while the Progress Reports do not reference toilet training, when D.W. first arrived at SEARCH, he wore pull-ups, and towards the end of October they started to see him begin to initiate to use the restroom. He is now fully potty-trained. She testified that D.W. is learning at a rapid pace and mastered previous units quickly.

L.L.

L.L. testified concerning D.W.'s extensive medical history, and the parents' initial contact with the District.

L.L. testified that she and her husband wanted D.W. to be in an inclusive setting "to the extent that he could be." She testified that during the 2017–2018 school year, she was never informed how D.W. was doing in the inclusion setting, and nobody informed her that D.W. was having significant issues communicating with peers. She was told that he was doing well.

L.L. testified that Dr. Paltin's (CHOP) neuropsychological evaluation of D.W. in February 2018 formally diagnosed him with autism.² L.L. testified that she was not sure

² Dr. Paltin's report recommends that D.W. will continue to benefit from small class special education, and an autism support class should be considered. It also recommends one-to-one and ongoing interventional therapies; and continued participation in the mainstream environment for specials/electives and

whether she agreed with the report because D.W. did not cooperate during testing. Dr. Matthews (CHOP) conducted an assessment in April 2018 and recommended that D.W. remain in the District and be around typically developing peers. At around that time, L.L. was told by Batikha that D.W. was not communicating with peers, and that his progress was not what they had hoped. L.L. testified that she started to become concerned when she was told that progress was not what they had hoped, and because the District refused to provide daily progress reporting. The parents called in an advocate, Dr. Zaheer, who L.L. described as a friend who was the Director of Montclair State University's Center for Evidence-based Practices in Schools. L.L. testified that after his observation of the District's program, Dr. Zaheer told L.L. that he was surprised that the District had no data for him to see.

In April and June 2018, L.L. visited the District's self-contained class. She was informed in April that the District was considering starting a new classroom at Linden Avenue School and that the District did not want to hold the IEP meeting until after a determination was made concerning the classroom. She testified that she met with the District on July 31 to finalize the IEP for the next school year, and that in early August she learned that there would be a new ABA classroom for children with autism.

L.L. testified that she asked Batikha for daily notes on D.W.'s progress at back-to-school night but was told that would not be necessary because she would have access to the data through Rethink. She testified that she did not have access to Rethink data from September through November 2018. She was given a log-in but was unable to access data and nobody guided the parents in interpreting the information contained in it. L.L. maintains that she was never provided documentation or data on how D.W. was doing in the inclusion classroom.

Early in the 2018–2019 school year, L.L. retained counsel and Dr. Fiorile, who was recommended by counsel. Counsel also recommended that she meet with SEARCH to compare a “full-blown ABA program” to the services D.W. was receiving in the District. She initially contacted counsel because of concerns with the classification of the

lunch/recess. The report also encourages the parents to learn about Pivotal Response Training, and to continue speech-language therapy.

classroom, transportation issues, and questions of privacy resulting from the Board's publication of an agenda that identified the new classroom as one for children diagnosed with autism.

L.L. met with Kahana in November 2018, and D.W.'s father took him for an intake at SEARCH in December. Dr. Fiorile was hired to work with D.W. privately. L.L. testified that because they were not comfortable with Dr. Paltin's evaluation, the parents sought another neuropsychological evaluation at Memorial Sloan Kettering. After the evaluation was completed, L.L. testified that she was told that due to the wide disparity in D.W.'s constituent skills, he did not belong in a traditional public school, and they recommended that he go to a full-time ABA program. She then filed for due process because they wanted an out-of-district placement.

L.L. testified that she felt that the District was working on skills that D.W. had already mastered, and that the District did not have a good handle on what he already knew.

When Jacobsen emailed L.L. about scheduling the May IEP meeting, L.L. told her that she had retained counsel and that she should speak with counsel. L.L. testified that they informed the District that they would be willing to attend a resolution meeting, not an IEP meeting, and that the June meeting was a resolution meeting. At the June meeting, the parents were given a VB-MAPP that they were never told was administered to D.W., and they were presented with a formal potty-training protocol for the first time. She was upset that the assessment for the VB-MAPP was given during D.W.'s rests time because she told the District that his rest time should not be disturbed.

L.L. testified that SEARCH was able to offer D.W. placement in September, and she felt comfortable signing the contract with them because the contract had a cancellation clause. She did not enroll D.W. in the District's ESY program because it was only half-day and at the high school, and because Batikha would only be there for part of the summer. She did not think D.W. would get anything out of it, so she opted for private services at home.

L.L. testified as to what she observed to be D.W.'s program at SEARCH from September 2019 through September 2020. She testified that he stopped wearing pull-ups after a week at SEARCH, and was potty-trained within a month. They worked on SEARCH's potty-training protocol at home. She also saw improvement in D.W.'s functional communication and fine motor skills.

L.L. testified that the only behavioral issues that she spoke with the District about was D.W.'s inability to transition into the building at the beginning of the day. During the 2018–2019 school year, the District did not identify behaviors that they were working to reduce.

L.L. testified that the Rethink reports were difficult to read and understand, and they were not always clearly printed. At the first monthly meeting, Vasani gave them a “walk-through, page by page” of Rethink, but they were just given printouts at subsequent meetings, and they did not go through them in detail. L.L. testified that she asked for help navigating Rethink, which Jacobsen provided, but then testified that nobody sat with them to go over it, and that despite her request, no data was provided, nor was it discussed until close to the middle of the year.

Prior to April 2017, D.W. was generally not allowed any interaction with peers due to his stem cell transplant and time in therapy. L.L. noted that he had some anxiety in his interactions with others, but that it was a surprise to her when the District told her in April 2018 that D.W. was not interacting with his peers, and she asserted that the District should have said something sooner.

In late April 2018, a visit was scheduled for L.L. to see Forest Avenue School's kindergarten program, which at the time was the only self-contained K-2 classroom in the District. L.L. was informed at that time that a new program was being started at the Linden Avenue School for students who might need more support and had a more behavioral style of learning. Over the summer, they were told that there would be a behaviorist in the classroom twice a week, but L.L. testified that it was not explained to her that it would be a full-time ABA program. At the beginning of the 2018–2019 school year, she learned that the classroom was classified as an ABA or autism classroom. Prior to the start of the

school year, L.L. heard from a friend that the school custodian told her that it was a classroom for students with autism. L.L. was upset because she considered the custodian's statement to be a breach of confidentiality, and because she felt the CST was not being upfront with her because the IEP did not say that the classroom was for children with autism.

Carol Fiorile, Ph.D.

Dr. Fiorile has a Ph.D. in special education with a concentration in health and behavior studies. She is a BCBA at the doctoral level, and has worked with children with autism since 1995. She is currently a full-time faculty member at Long Island University, and has a private practice. Dr. Fiorile was qualified as an expert in ABA, in the special education of children with autism using ABA, in the evaluation of students with autism, and in the development of programs and IEPs for children with autism.

Dr. Fiorile observed D.W. a total of four times. She first met D.W. in November 2018 and most recently observed him over the summer of 2020. She prepared a report dated January 2018 and a supplemental report dated November 25, 2019 following her observation at SEARCH via FaceTime.

Prior to issuing her first report, Dr. Fiorile reviewed some documents, interviewed D.W.'s parents, and conducted an observation at the District. She testified that what was significant to her during this observation was that she felt D.W. was being prompted, and that he was not really responding to questions that required a 'yes' or 'no' response, except during his speech therapy session. While Dr. Fiorile agreed that prompting is an appropriate ABA technique, she testified that it was not being done systematically and that the prompting should be faded out once the child meets the criteria at a prompted level. It was her opinion that D.W. was prompt-dependent, and she offered the example of D.W.'s aide carrying his lunch box and jacket for him, which she opined was inappropriate because they should have been moving him towards more independence.

When asked whether she believed the District's program was an ABA program, she responded that she did not see data collection for what was happening. She testified

that the only time D.W. was receiving “intensive teaching based on ABA” was during “bin time,” which was 45-60 minutes per session twice per day.

Dr. Fiorile testified that at the time she wrote her first report, D.W. was not making nor sustaining eye contact and he would speak without first establishing a listener. She did not see any intervention in place to develop this pragmatic skill, and that while D.W. participated in the music class, he had a hard time imitating gross motor movement. Based on the status of his social skills, and his lack of ability to imitate, sustain attention during a task, establish a listener, and make eye contact, she does not think that he would have benefitted from mainstream opportunities when he was in the District. When asked whether it was an appropriate portion of his day to be in that mainstream setting, she responded that it would have benefitted him far more by being provided more intensive instruction at those times.

Dr. Fiorile testified that when she conducted her observation of the District’s program, one of her concerns was that she did not see data collection. She also noted that D.W. had a token system in place, but she did not see any behavior intervention or anyone following a behavioral plan. She opined that ninety percent of his day should have consisted of one-to-one intensive instruction, and that even though there were only three children in the class and they each had an aide, it was not one-to-one instruction. Dr. Fiorile also noted what she considered to be a lack of generalization of the strategies being worked on in speech therapy. She noted that D.W. had echolalia and that while the speech therapist was working on that with him, it was not carried over into other parts of the classroom.

After Dr. Fiorile observed D.W. in school in December 2018, she saw him at his home in January 2019. She felt that he had a lot of capability in terms of reading, as he was able to read over 100 words for her using the Edmark reading program, which the District also uses and which she agrees is a great reading program for him. He was also able to count up to 100. She concluded that the District’s expectations for him were much lower as shown in his IEP goals, and that there was an under-estimation of what he is capable of doing. She opined that the IEP goals prepared by the District were probably based on the results of his standardized testing rather than his actual ability. She also

testified that the IEP goal that D.W. would sustain attention for twenty seconds and then one minute was improper because she was able to work with him for an hour straight without a break.

Dr. Fiorile testified that she felt that the District staff were not well trained in ABA techniques and the use of ABA, and that having a BCBA in the classroom two days a week was insufficient to address D.W.'s behavioral and academic issues. She also testified that parent training is critical for a student like D.W., for continuity and to ensure the parents are holding him to the correct standards, and that it was appropriate during the 2018–2019 school year due to his autism and what he experienced medically. Dr. Fiorile also opined that D.W. should have been toilet trained in kindergarten, that parents are not “experts” in this area and that they rely on experts in a school to address toileting. Dr. Fiorile described D.W. as being significantly impacted in his communication skills, motor skills, social interactions, self-care skills such as toileting, his non-compliance, and his ability to sustain attention.

With respect to the preparation of her second report, Dr. Fiorile testified that she observed D.W. at SEARCH. She noted that he was more spontaneous in commenting; he sustained attention incredibly well; and he was making eye contact with the instructor. She testified that the SEARCH program was appropriate for D.W., and he was benefitting from the program. Dr. Fiorile testified that SEARCH identified D.W.'s non-compliant behaviors, such as tantrums, and they monitored the frequency of those problem behaviors.

When asked whether the proposed IEP for the 2019–2020 school year was appropriate, Dr. Fiorile provided her concerns regarding some of the documented goals, and she also noted that there is no reference to the BCBA supervision in the document. She testified that the goal that D.W. will work steadily on a task for four minutes at eighty-five percent success is a gross underestimate of what he was capable of at that period of time. She opined that the 2019–2020 IEP would not have provided D.W. with meaningful educational progress as written. The skill level of the staff in the classroom was deficient, and she opined that there was a lack of evidence of behavior analysis being implemented in the classroom.

Dr. Fiorile testified to D.W.'s progress since joining SEARCH, including his toilet training, generalizing skills, ability to learn to be interactive in small groups and one-on-one, and progress in reading and comprehension.

Dr. Fiorile testified that she was not aware that her January 2019 report was not shared with the District until October 31, 2019. She was also not aware that when she drafted her report in January 2019, the District and parents were engaged in monthly in-person meetings. Her opinion that the communication between the District and the parents was insufficient was based on her interview of the parents.

Dr. Fiorile agreed that she would not be concerned if a previously mastered goal was not included in a progress report to the parents. When asked whether it would concern her that D.W. did not have an opportunity to socialize with non-disabled peers at SEARCH, she testified that it would have concerned her but for the fact that the parents have provided him with opportunities to interact with other children, but she then added that D.W. lacks the skills to be able to effectively interact with peers on an independent level.

DISCUSSION AND FINDINGS OF FACT

Based upon my consideration of the testimony, and review of the documentary evidence, I **FIND** the following **FACTS**:

D.W. was six years old when the due process petition was filed. He received Early Intervention Services (EIS) from the State of New Jersey beginning in August 2015. Prior to aging out of EIS, he was referred to the District's CST and the District conducted an initial assessment of D.W. in the fall of 2015. The parents shared a private evaluation of D.W. with the District that diagnosed him with developmental delays, hypotonia, sensory integration difficulty, and hyperactivity. D.W. was found to have developmental delays in the areas of communication, motor and cognitive; and he was deemed eligible for special education and related services, and attended the District's half-day preschool program for students with disabilities, where he received OT, PT, and speech therapy.

In early 2016, D.W. began to show signs of illness and in March 2016 he was diagnosed with a form of brain cancer. He underwent brain surgery and remained an inpatient at CHOP through November 2016. Due to his medical treatment and condition, D.W. was absent from school and unable to receive academic instruction from March 2016 through June 2016. An IEP was put into place on September 7, 2016, placing D.W. in the District's preschool disabled program. D.W. was discharged home on October 31, 2016, at which time he began receiving home instruction and therapy services from the District. In early December 2016, D.W. was hospitalized again and received radiation therapy. He returned home in late January 2017, at which time home instruction resumed.

D.W. returned to his District's preschool program in April 2017, after being medically cleared to do so. D.W. used a nasogastric tube when he first returned to the District school, and was not taking food or drink by mouth. His IEP was amended to provide him with a 1:1 aide due to his increased fall risk, and he remained in the preschool disabled program through the end of the school year (approximately six weeks). During that time, D.W.'s teacher provided L.L. with daily updates on D.W.'s progress.

An IEP meeting was held on June 6, 2017, which the parents attended, and they consented to the IEP proposed for the 2017–2018 school year (June 2017 IEP). At the time, D.W. was noted to have developmental delays in the areas of communication, motor and cognition. He attended the District's Extended School Year (ESY) program in 2017.

2017–2018 School Year (Preschool)

For the 2017–2018 school year, D.W. attended the District's full-day Preschool Disabled Program at Linden Avenue School. Per the June 2017 IEP, he received speech-language therapy (three sessions every six-day cycle), OT (three times per week), PT (twice per week), and a personal aide. The IEP contains annual measurable goals and

objectives in various areas,³ and provides for an ESY program. The program also consisted of a mainstream component for one hour each afternoon.

D.W. did not start the 2017–2018 school year until October 2017 because he was attending an inpatient feeding therapy program at CHOP. The initial classroom teacher went on leave in or around November 2017, and was replaced by Batikha, who was D.W.'s teacher for both preschool and kindergarten.

Based on my review of the record and consideration of the testimony, it is evident that D.W. has a complex medical history that significantly impacted his development. Between aging into school in January 2016 and becoming medically able to attend school continuously in October 2017 (a period of 21 months), D.W. was only able to attend school for approximately three and a half months. When D.W. started the 2017–2018 school year in October, he was educationally and developmentally delayed as a result of his medical conditions and intensive treatments. During his many months of treatment, D.W. had almost no exposure to other children. He was not potty-trained, and his teachers worked with him on this during both the 2017–2018 and 2018–2019 school years. He initially resisted going to the bathroom, cried and whined, but through a token economy and a rewards system, his resistant behaviors decreased over time and he was ultimately at least willing to go to the bathroom. D.W.'s teachers communicated with the parents regularly concerning training, and his teacher incorporated toileting into his daily routine. His success in the bathroom was inconsistent, however, and he was not fully potty-trained until about the fall of the 2019–2020 school year, when D.W. was no longer enrolled in the District school. While Dr. Fiorile testified that D.W. should have been trained in kindergarten, there is no evidence in the record that he was developmentally ready to be trained at that time, only that his negative behavior towards going to the bathroom significantly lessened, and his willingness to attempt to go improved over time.

Likewise, with eating lunch at school, D.W. was initially very resistant. This is understandable given his medical history, extended use of a nasogastric tube, and the

³ These include in the areas of language (including speaking and listening); PT; attention; self-help; graphomotor; fine motor; upper extremity and trunk strength; general knowledge; math; socialization; and reading readiness.

fact that he required feeding therapy prior to starting school in October. Through the implementation of a reward system in school, however, D.W.'s resistance to eating decreased and the reward system was eventually able to be faded out. In kindergarten, they were able to have him eat his lunch with minimal to no issues.

Both Batikha and Goss testified credibly and with knowledge concerning D.W., his progress, and communications with the parents. As they were both assigned to him for preschool and kindergarten, they were very familiar with his history and progress in the classroom, I accept their testimony as fact.

Goss specifically testified concerning D.W.'s difficulties and progress in the speech-language areas that she worked with him on, and his progress in general during the 2017–2018 and 2018–2019 school years. During the 2017–2018 school year, she worked with him on classroom-based play skills, socializing, increasing his vocabulary, eye contact and attention. She also worked with him on speech-language skills, such as articulation and other foundational skills, following directions and structured play. She testified credibly that he was more attentive as time went on even during large group sessions, he was carrying over some of the play skills taught, and that over time, he interacted more with others. Goss used prompts that she was able to scale back later in the year.

Goss testified that D.W. did not master all of his speech-language goals/objectives for the 2017–2018 school year (such as independently initiating a conversation with an adult or peer, or taking turns independently), as he still required prompting or cueing for several of these goals/objectives at the end of the school year. For the goals that he did not master, however, he did demonstrate progress that school year. Goss was able to fade out prompting as D.W. continued to work on those goals. The goals that he did not master were continued into the following school year.

With regard to D.W.'s behaviors during the 2017–2018 school year, D.W. had some difficulty transitioning during the school day; he had difficulty focusing at times; if he did not want to do something, he would whine and sometimes scream. I **FIND**, however, that D.W.'s behaviors at school were able to be managed effectively, as the

behaviors improved over time, without the need for a behavioral intervention plan. D.W. often required prompting and cueing, such as when interacting with peers, following directions and communicating with teachers. I **FIND** that despite D.W.'s significant delays and his struggles, particularly at the beginning of the school year, he demonstrated progress.

During the 2017–2018 school year, the parents received daily updates on D.W.'s functioning in the classroom. The OT, PT and speech therapists sent the parents updates on what they worked on, goals and progress, on a daily basis.

On March 20, 2018, the parents and members of the CST met for a re-evaluation planning meeting. L.L. consented to a number of proposed evaluation assessments, including an Educational Evaluation, Psychological Evaluation (provided by parents); Speech Language Evaluation, and Vision/hearing screening.

D.W. underwent an Educational Evaluation on or around April 4, 2018. This consisted of a functional assessment (which included a review of school records; interview with teachers and student, and an observation) and the administration of the Woodcock-Johnson IV. His overall level of performance was within the low range as compared to others at his age level. A Speech-Language Re-Evaluation was also conducted in April 2018 by Goss.⁴ D.W. was noted to test in the significantly below-average range in the various areas assessed. As part of the Speech-Language Re-Evaluation, Batikha reported that D.W. had difficulty expressing his language in class and while he communicated with adults, he tended not to communicate or interact with peers unless prompted.

In the spring of 2018, the District developed a new program for students with autism, and the District considered D.W. one of the three District students on the autism spectrum who required this program for the following school year. Earlier that year, Dr.

⁴ The parents also sought a private speech-language evaluation in April 2018 by Dr. Giuffrida. That report recommends that D.W. receive speech therapy once weekly to improve overall communicative skills, including his receptive and expressive disorder. While she writes that his socialization was delayed due to his medical history and extended hospitalization, she also notes that petitioner reported that D.W.'s socialization with peers is slowly improving.

Paltin, a neuropsychologist at CHOP, had diagnosed D.W. with autism spectrum disorder (ASD), level 2. The parents were informed in April 2018 of the District's plans to create this new program. The program, also referred to as the Primary One Linden School Program, received final approval from both the Board and the State in the summer of 2018, and was classified as a classroom for children on the autism spectrum, where ABA would be the methodology used. By email dated July 23, 2018, DeWitt, the Director of Special Services for the District, informed L.L. that the District was proceeding with the new program/classroom.

IEP for 2018–2019 School Year and Creation of New Program

On June 4, 2018, the District convened an IEP meeting, which the parents attended, for purposes of reviewing and considering the evaluation reports recently completed by the CST, and for an annual review. The parents' advocate, Dr. Zaheer, accompanied them and they requested that he be permitted to observe D.W. in his classroom as well as recess settings during the upcoming school year, which the District agreed to accommodate. The parents expressed their concerns about the immunization status of D.W.'s classmates, as they did the year before. They also requested more regular communication regarding D.W.'s progress from his teacher, and the IEP provides for monthly meetings with the parents and staff. The parents also requested and expressed their concern that the District should provide D.W. with greater access to and inclusion among typically developing peers in the general education setting. This was echoed by Dr. Zaheer. The CST agreed to accommodate this request.

In preparing the IEP, the CST considered, among other things, the results of the April Speech-Language Re-Evaluation, the Educational Evaluation, and an April 10, 2018 Audiological Evaluation. The CST also considered Dr. Paltin's February 7, 2018

Neuropsychological Evaluation,⁵ as well as a Neurodevelopmental Evaluation dated April 12, 2018 that diagnosed D.W. in part with ADHD and global developmental delay.⁶

D.W. was deemed eligible for special education and related services under the classification category of Multiply Disabled. This was due to D.W.'s ADHD, global developmental delay, anxiety, PTSD, medulloblastoma, mixed expressive and receptive language disorder, fine and gross motor development delay, ataxia, ASD, and encephalopathy. I **FIND** that based on the record, and taking into account D.W.'s multiple diagnoses, the appropriate educational program for D.W. was one that included services, accommodation, and modifications that addressed his deficits in the areas of expressive and receptive language (i.e., communication); attention; global developmental delays; social/emotional development; fine and gross motor development; and his anxiety.

Another IEP meeting took place on July 31, 2018 to finalize the IEP for the 2018–2019 school year once the District received final approval from the Board and State for the new autism classroom. While the July 2018 IEP identifies D.W.'s program as “Special Class Mild/Moderate Learning or Language Disabilities: Readiness Skills” (LLD program⁷), this was written into the draft IEP prior to the approval of the autism program, and the IEP was never updated to reflect that D.W.'s kindergarten program would be the

⁵ Dr. Paltin's report recommends that D.W. continue to benefit from small class special education, interventional therapies, and that he should continue to participate in the mainstream environment for specials/electives and lunch/recess. The parents did not initially agree with Dr. Paltin's ASD diagnosis because they believed D.W. did not interact well with the examiner, and they sought a second opinion through Dr. Matthews.

⁶ Dr. Matthews disagreed with Dr. Paltin's ASD diagnoses, noting that D.W. is two-plus years behind developmentally, and that his global developmental delays, social skills delays and anxiety can all be explained by his medical history and prolonged hospitalizations. Dr. Matthews' impression included: ADHD, global developmental delay, anxiety, PTSD, medulloblastoma, mixed receptive-expressive language disorder, fine motor delay, gross motor development delay, and ataxia. She noted in her report that D.W. continues to need special education supports and accommodations; that he is behind developmentally but has strong academic skills; that he would do best in a full-day kindergarten, with PT, OT and speech therapies, and should also be with typically developing peers as much as possible to improve his social skills. She notes that D.W. would not benefit from placement in a school that is solely for children with special needs; and that he needs to be with typically developing children his own age. Dr. Matthews notes that, compared to her assessment of D.W. in January 2018, D.W. was less anxious, less self-directed, transitioned easily between tasks, was extremely cooperative and social with everyone, and engaged in more interactive play. She also noted that per her evaluation, D.W.'s expressive language was improved; but that he still had trouble with gross and fine motor coordination, receptive language (following multi-step directions; and needs things repeated); was noted to be inattentive, easily distracted and hyperactive; and that he was appropriate socially.

⁷ The District had a full-time, self-contained, LLD program in another school building. D.W. never attended the LLD program.

Primary One Linden Program. I **FIND** that this failure to update the description of D.W.'s program to reflect the Primary One Linden Program, or an autism class, was an inadvertent oversight on the part of the District; that the parents were aware at the time of the June and July IEP meetings that the proposed program for D.W. would be this new program once it was approved by the Board and State; and that the parents did not dispute or reject this placement. The District had multiple discussions with the parents concerning the creation of this new program beginning as early as April 2018. Moreover, while the parents may not have signed the July 2018 IEP, they were aware that it would be implemented in the absence of a challenge within fifteen days, they raised no objection to the IEP or to D.W.'s placement into the new program, and they allowed him to participate in the program.

The July 2018 IEP provides D.W. with a personal aide; individual PT (twice per week); individual OT (twice per six-day cycle); individual speech therapy (twice per six-day cycle); PT consultation (twice monthly); and counseling (once per six-day cycle). The July 2018 IEP notes that D.W. would be included in the general education setting for physical education class and specials (i.e., art, music and library), and that he would also be included in recess with his general education peers. The IEP indicates that D.W. would be initially included in the general education classroom one hour per day.

The IEP contains a number of Goals and Objectives in the areas of study skills (addressing attention on tasks), reading, writing, math, speech-language (12 goals, including addressing conversational speech), social/emotional/behavioral (including those addressing social interaction with peers), and motor skills. It also includes an extensive list of modifications for both the special education and general education setting; as well as supplementary aids and services, such as prompting, cueing, and redirecting participation.

2018–2019 School Year (Kindergarten Program)

D.W. attended the Primary One Program during the 2018–2019 school year. It consisted of only two other students, a certified special education teacher (Batikha), and two paraprofessionals, one of which was assigned as D.W.'s own personal aide. A Board-

Certified Behavior Analyst (Vasan) was hired as a consultant for the classroom. She guided the creation of the program, and was present in the classroom two full days (twelve hours) per week exclusively for the three students. She worked with and trained Batikha and the paraprofessionals, specifically on data collection and monitoring the programs. While the staff were not trained by Vasan prior to the start of the school year, she trained them in September. Dr. Fiorile opined that the skill level of the staff was deficient in implementing an ABA program, however, I **FIND** that the Batikha was highly trained as a certified special education teacher, and Vasan was trained and skilled in implementing and creating ABA programs. The paraprofessionals were trained on data collection and monitoring the programs at the very start of the school year.

Early in the school year, Vasan conducted a baseline assessment of D.W. and created a program for him. When she was in the classroom, she worked directly with D.W. and the two other students. Vasan testified credibly regarding her involvement with the program, her work with, and assessment of, D.W., and communications with the parents and staff. While petitioners assert that the program was not appropriately supervised by a BCBA because Vasan was only in the classroom two days a week, I disagree and **FIND** that Vasan's supervision of, an involvement in, the program for twelve hours a week was not insufficient to meet D.W.'s needs. Vasan provided regular supervision and support to D.W.'s teacher and paraprofessional, and when Vasan was present in the classroom, she was able to dedicate a great deal of her time to D.W. since he was one of only three students in the program. I find no credible evidence to support the claim that the BCBA should have been in the classroom more than twelve hours per week. Moreover, Vasan's time supervising D.W.'s program is not inconsistent with Dr. Fiorile's testimony that the recommendation in the field is that students receive one hour of BCBA supervision for every five hours of instruction.

The District adopted the Rethink computer application for the Primary One program. Rethink allows the District's professionals to input a student's specific programs, collect data, chart and analyze progress, and it identifies interventions. Petitioners, and the other parents of children in the program, were provided credentials to access their child's program.

Petitioners assert that D.W.'s program was not a true, intensive ABA program. I **FIND** that the program provided to D.W. for the 2018–2019 school year was a program for students with autism that followed ABA methodology. A BCBA developed and supervised D.W.'s program, data on his behavior was collected, progress was tracked, and the data guided the interventions. There is no evidence in the record that the use of the Rethink program was in any way inappropriate, or that the data inputted into the program for D.W. was insufficient or faulty. Data was systematically collected beginning in October. Also, while D.W. may not have received 1:1 instruction for the entire school day, there were only two other students in his program, he was taught by a certified special education teacher and had his own personal aide in a highly structured self-contained program with infused therapies. I **FIND** that there is insufficient evidence in the record to support Dr. Fiorile's opinion, and the petitioners' position, that D.W. required or still requires 1:1 instruction.

Per the parents' request, monthly meetings were held with the parents and D.W.'s teachers to discuss D.W.'s progress in the program and any concerns. These meetings were attended by Batikha, Vasan, Jacobsen, and occasionally Goss. Printouts from the Rethink program pertaining to D.W. were shared with the parents at these meetings beginning in November. At these meetings, the District discussed D.W.'s most recent Rethink data, and they received printouts of Rethink data. While L.L. testified that she did not have access to raw data on Rethink, she did have access to D.W.'s program, what they were working on, goals/targets, and D.W.'s progress. There is no evidence that petitioners ever requested to see the raw data. L.L. conceded that the Rethink data was explained to her, and there is no indication that any questions she may have had, and could have asked at any one of the monthly meetings, were not answered. Targets that are mastered did not appear in the Rethink printouts, but the printouts provided to the parents each month contained data regarding the program that D.W. was working on at the time. If petitioners had any specific questions about the Rethink data, or information in general, they certainly had opportunities to ask these questions at the monthly meetings. There is no indication that the District ever failed to respond to any of the petitioners' questions. Moreover, I **FIND** that the parents never expressed any dissatisfaction with D.W.'s progress at any of these monthly meetings.

Aside from the monthly meetings with the parents, Batikha also sent the parents emails approximately every seven to ten days discussing skills worked on, struggles and progress. She also created a google document, which the parents had access to, in which D.W.'s therapists provided updates as to what D.W. was working on and how he was doing during his sessions. Goss also communicated with D.W.'s private speech-language therapist to collaborate with her as to D.W.'s speech-language goals and progress. Progress Reports reflecting D.W.'s progress on the Goals and Objectives were also provided to the parents at the end of each marking period. These show that in most areas, D.W. was progressing gradually or satisfactorily, while he mastered some areas. While petitioners assert that the District staff failed to adequately communicate with them concerning D.W.'s progress and concerns, I **FIND** that the District staff communicated regularly and adequately with the parents.

One concern that the parents expressed was that D.W. should spend more time in inclusion and with his mainstream peers. While Goss (who did not accompany D.W. in the general education classroom) expressed her concern to the parents during the 2017–2018 school year that she believed D.W. lacked some of the foundational skills, such as making eye contact with peers, that would be beneficial in an inclusion environment, the parents did not agree with her and they felt strongly that it would benefit him with respect to socialization and to improve his academic skills. At the time that the 2018–2019 IEP was being developed, not only the parents, but their expert Dr. Zaheer expressed the need to have D.W. included in the mainstream setting as much as possible. Dr. Zaheer repeated the need for more inclusion when he observed D.W. in his program in October. Moreover, D.W.'s doctors at CHOP, Drs. Matthews and Paltin, both recommended that D.W. continue to participate in the mainstream environment for specials/electives and lunch/recess, and that he be with typically developing peers “as much as possible to improve his social skills.” I **FIND** that given the information available to the District at the time, its decision to accommodate the parents’ request and place D.W. in general education physical education, art, music and library; include him in recess with his general education peers; and include him in the general education classroom initially for one hour per day, as reflected in the 2018–2019 IEP, was reasonable and appropriate. When asked whether it was an appropriate portion of D.W.'s day to be in that mainstream

setting, Dr. Fiorile only responded that she believed it would have benefitted him more by being provided more intensive instruction at those times.

In response to the parents' request, Batikha, Vasana and the general education teacher worked together to develop a schedule with appropriate times for D.W. to have some exposure to the general education environment. His schedule, therefore, allowed D.W. to spend lunch and recess, specials (art, music, gym, library), morning meeting and math centers with the kindergarten mainstream class. I **FIND** that the District was thoughtful in their development of D.W.'s schedule which allowed him opportunities to spend some time in the inclusion setting while also receiving the necessary educational and support services. While in the mainstream environment, D.W. was accompanied by his aide, and at times Vasana also accompanied and assisted D.W. in the inclusion setting. Vasana testified credibly that D.W. had some foundational skills to benefit from inclusion, and that data was kept while D.W. was in the inclusion setting. Throughout the year, he communicated more with peers during lunch, recess and gym. He needed prompting to engage with peers but by February 2019 he showed more independence. The District worked with D.W. on those social and communication skills, such as maintaining eye contact, that would benefit him in the mainstream environment. D.W. would participate by singing with a group in morning meeting, and he has demonstrated some success there, such as by mastering saying the pledge of allegiance with a mean performance of 70%. D.W. mastered several targets throughout the year in math. I **FIND** that D.W. demonstrated progress while participating in gym, morning meeting, math, recess and lunch with the mainstream class.

There were no speech-language goals and objectives during the 2018–2019 school year towards which D.W. did not make any progress. Batikha testified extensively and credibly about the academic, social and behavioral progress D.W. made in kindergarten, and how as the year went on, he was more focused and attentive; they saw fewer behaviors when transitioning, using the bathroom, eating; his conversation skills improved; he socialized more with peers; and he was able to work for longer periods of time. The record demonstrates, and I **FIND**, that in the 2018–2019 school year, D.W. made significant progress with transitions; there was a reduction in target behaviors (whining, flopping to the floor, screaming) following the introduction of a token board

(which has since been faded out); his response to direction improved and language skills learned became generalized; he was able to engage in whole group responses; while his language and social skills are significantly deficient, D.W. demonstrated progress in these areas; and he was able to follow multi-step directions. While Dr. Fiorile criticized the use of prompts, she also recognized that this is an acceptable ABA technique.

Of the ninety-plus goals and objectives listed in the 2019–2020 IEP, Goal 2.1 (that D.W. will work steadily on task for four minutes) is improper because D.W. had already mastered that objective.

At the parents' request, Dr. Zaheer, their advocate, observed D.W.'s classroom in October 2018. A report from Dr. Zaheer was never provided to the District, and Dr. Zaheer never expressed any concerns regarding D.W.'s program to the District, only that he should spend more time in the general education setting. Dr. Fiorile then observed D.W.'s program at the parents' request on December 17, 2018. I **FIND** that although Dr. Fiorile completed her report in January 2019, the parents never provided the District with a copy of her report, nor did they inform the District of Dr. Fiorile's findings or recommendations, until approximately October 31, 2019, months after D.W. had already left the District.⁸

Also in the fall of 2018, at the petitioner's request, the District hired an independent educational audiologist to assess D.W.'s academic environment. The audiologist issued a report following an observation that recommended D.W. be provided with a sound field FM system when he enters first grade, and noted that "[b]ecause he is currently being provided one on one instruction and controlled classroom participation, as well as the style of teaching in a typical kindergarten classroom, the sound field FM system is not as critical this year." The District subsequently requested information on the recommended device for D.W. for the 2019–2020 school year, and the proposed 2019–2020 IEP

⁸ Dr. Fiorile was hired in October 2018, around the time petitioners hired counsel. Dr. Fiorile's January 2019 report, which was not made available to the District while D.W. attended the District school, notes a number of deficits that Dr. Fiorile observed in D.W.'s program, and concludes that it is not an effective program for D.W.

provides that if D.W. can participate in a general education classroom, the sound field device will be provided for the classroom.

On or around March 8, 2019, the petitioners filed a Petition for Due Process against the District seeking, among other relief, an order requiring the District to provide D.W. with a program and placement at SEARCH. The Petition did not indicate that the parents planned to unilaterally place D.W. in a private placement. The Petition stated that Dr. Fiorile found that D.W.'s program was not meeting his individualized educational needs and that she recommended an out-of-district placement. I **FIND** that the first time the District was made aware that the parents were considering placing D.W. out of District was when the District received the Petition for Due Process in March 2019. I also **FIND** that prior to filing for Due Process, there is no evidence that the parents had ever informed the District that they felt the program was not meeting D.W.'s needs, nor did they express specific concerns regarding D.W.'s progress or program.

May/June Meetings and Proposed IEP

On May 3, 2019, D.W.'s case manager, Jacobsen, emailed L.L. to inform her that D.W.'s annual review meeting was being scheduled for May 20, 2019, and to confirm her availability. L.L. responded by informing Jacobsen that until the Due Process is resolved, "an IEP meeting can not be held." By letter dated May 13, 2019, parents' counsel informed the District that D.W. was being unilaterally placed at SEARCH and that the parents would seek reimbursement of tuition and costs. The parents did not attend the May 2019 IEP meeting. I **FIND** that the first time the District was informed that D.W. was being unilaterally placed at SEARCH, and that the parents were seeking tuition reimbursement, was when the District received the May 13, 2019 letter.

The District subsequently sent the parents an Invitation for an Annual Review IEP Meeting for June 14, 2019, and a copy of a proposed IEP was sent to the parents and parents' counsel for their consideration. The parents attended the June 2019 meeting with their counsel. While the parents asserted that the meeting was to be a resolution meeting, not an IEP meeting, the invitation to the meeting indicates that it was for an Annual Review IEP meeting. The rest of the CST considered this meeting to be the

annual IEP meeting that had been rescheduled from May. As they typically do in IEP meetings, they reviewed D.W.'s progress with the parents and were prepared to discuss the proposed program. However, the parents and their counsel refused to hear about the proposed program for the 2019–2020 school year and they left the meeting. I **FIND** that the parents refused to attend the May IEP meeting, and that the parents did not communicate any specific concerns about D.W.'s then-current or proposed program at the June 2019 meeting. Rather, they abruptly left the meeting when it became clear to them that the District did not agree with the out-of-district placement at SEARCH.

During this meeting, Vasana also presented the parents with a VB-MAPP that she had recently administered to D.W. The District did not obtain parental consent before administering this assessment. I **FIND** that the VB-MAPP administered by Vasana in May 2019 was to help monitor D.W.'s progress and to create goals/objectives for his program, not to determine his eligibility for special education services, nor as part of a re-evaluation.

The proposed IEP for the 2019–2020 school year continues D.W.'s placement in the "Special Class Autism: ABA" class. The proposed IEP provides for an individual aide and the same related services provided during the 2018–2019 school year, in addition to group speech-language therapy (once every six-day cycle), and parent training once per week for two hours. ESY and related services are also included in the proposed IEP, as well as a number of modifications, supplementary aids and services. The proposed IEP provides that D.W. will be mainstreamed for lunch, recess, and physical education. This constitutes a reduction in mainstreaming as compared to the 2018–2019 school year, where he attended all the specials (art, music, library, gym), and morning meeting, in the general education classroom, and also joined his mainstream peers for lunch and recess.

The proposed IEP includes multiple Goals and Objectives in the areas of study skills, reading, writing, math, speech-language, social/emotional/behavioral, motor skills, daily living skills, and speaking/listening.

The parents did not consent to, nor expressly reject, the proposed IEP for the 2019–2020 school year, and they unilaterally placed D.W. in SEARCH.

SEARCH and Petitioners' Engagement with SEARCH

D.W. has attended SEARCH since September 2019. SEARCH is a behavior analytic center for children with autism. Its program is based on the science of ABA where each student receives one-to-one instruction, and a BCBA provides oversight. It is not approved by the New Jersey Department of Education as a clinic or as a private school for students with disabilities, and it does not offer related services, such as speech therapy, OT and PT.

The parents first met with SEARCH in November 2018, and D.W. participated in an intake at SEARCH in early December 2018. This was before Dr. Fiorile conducted her observation of D.W. in the District's program. Shortly after the intake at SEARCH, Kahana recommended that D.W. be placed there, and the parents contacted her in the spring of 2019 to inform her that they were interested in placing D.W. at SEARCH.

I **FIND** that, unbeknownst to the District even at the June 2019 meeting, the parents had signed a contract with SEARCH on May 31, 2019, enrolling D.W. for the 2019–2020 school year, and paid a \$5,000 retainer fee deposit at the time. I also **FIND** that the parents did not provide the District with any written notice of their concerns regarding D.W.'s program or progress prior to unilaterally placing him at SEARCH.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

This case arises under the Individual with Disabilities Education Act (IDEA), 20 U.S.C. § 1401 et seq., which makes available federal funds to assist states in providing an education for children with disabilities. Receipt of those funds is contingent upon a state's compliance with the goals and requirements of the IDEA. Lascari v. Bd. of Educ. of Ramapo-Indian Hills Reg. Sch. Dist., 116 N.J. 30, 33 (1989). As a recipient of Federal funds under the IDEA, the State of New Jersey must have a policy that assures that all children with disabilities will receive FAPE. 20 U.S.C. §1412. FAPE includes Special Education and Related Services. 20 U.S.C. §1401(9); N.J.A.C. 6A:14-1.1 et seq. The responsibility to deliver these services rests with the local public-school district. N.J.A.C. 6A:14-1.1(d). To meet its obligation to deliver FAPE, the school district must offer D.W.

“an educational program reasonably calculated to enable him to make progress appropriate in light of his circumstances.” Endrew F. v. Douglas Cnty. Sch. Dist., 580 U.S. ____ (2017);137 S. Ct. 988; 197 L. Ed. 2d 335.

Did any Procedural Violations on the part
of the District rise to the level of denying D.W. a FAPE?

Procedural violations on the part of a school district may justify compensatory education or tuition reimbursement when the procedural defects caused such substantial harm that a FAPE was denied. C.H. v. Cape Henlopen Sch. Dist., 606 F.3d 59, 66-67 (3d Cir. 2010). When a procedural violation is alleged, “an administrative law judge may decide that the child did not receive a FAPE only if the procedural inadequacies: (1) [i]mpeded the child’s right to a FAPE, (2) [s]ignificantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of FAPE to the child; or (3) [c]aused a deprivation of the educational benefit.” N.J.A.C. 6A:14-2.7(k).

In their post-hearing summations, petitioners assert several procedural violations on the part of the District. First, petitioners assert that the District failed to include the parents as integral members of the CST, that the parents had no input into the development of the 2019–2020 IEP; and that the District failed to work with D.W.’s outside providers or even speak to them. I saw no evidence in the record to support the assertion that the District ever failed to include the parents as integral members of the CST or that they were denied any input into the development of any IEP. The District considered all reports provided by the parents. They also accommodated the parents’ requests, including their request to have their advocate and expert observe D.W.’s program; their request to provide D.W. more mainstream opportunities; and they agreed to meet with the parents at least monthly, to communicate nearly every week, and to provide daily updates on therapies. In fact, it is the parents who chose not to collaborate with the District with respect to the proposed programming for 2019–2020; they refused to attend the May 2019 IEP meeting, and they failed to express any specific concerns with respect to the program or D.W.’s progress at the June meeting (or any IEP meeting).

I also found no support in the record to sustain the parents' assertion that the District failed to work with D.W.'s outside providers when requested to do so. Goss testified credibly that she collaborated with D.W.'s outside speech therapist. There is insufficient evidence in the record that the District ever failed to collaborate with outside providers when requested. There is also no evidence in the record that any failure on the part of the District to speak or work with an outside provider impeded D.W.'s right to a FAPE or caused a deprivation of an educational benefit.

Second, the parents assert that the "District's reports identify numerous deficits in D.W.'s profile and that none of those are addressed in the IEP either by program or goal and objectives," and that no one recommended D.W. stop going to inclusion and receive individualized services to address prerequisite skills to participate in inclusion. Petitioners do not identify what those "numerous deficits" are that the IEP allegedly fails to address. The IEPs do address D.W.'s many deficits, including his deficits in speech and language and socialization, among many others.

Also, with respect to the parents' assertion that someone should have recommended D.W. stop going to inclusion and receive individualized services to address prerequisite skills to participate in inclusion, Goss did express her concerns, as the speech-language therapist, that D.W. lacked some prerequisite skills, but the parents and their advocate expressed disagreement with her impression. Moreover, as I found earlier, the inclusion of a mainstream component in D.W.'s IEP for the 2018–2019 school year was reasonable and appropriate given the information available to the District at the time. Moreover, the District professionals confirmed that D.W. did have at least some of the prerequisite skills to benefit from an inclusion setting, and that he did make progress in that setting. There is also no evidence that D.W.'s limited and structured participation in the inclusion setting during the 2018–2019 school year harmed D.W. in any way, impeded his right to a FAPE or caused any deprivation of any educational benefit. D.W.'s participation in the inclusion setting was requested by the parents on multiple occasions, recommended by their advocate who observed the District's program early in the 2018–2019 school year, and participation in the mainstream environment with typically-developing peers had also been recommended by two of D.W.'s physicians at CHOP. Finally, the record shows that the District professionals, including Goss, Batikha and

Vasan, were working with D.W. on “prerequisite skills,” such as communication skills and eye contact (establishing the listener) during the 2018–2019 school year.

Third, petitioners assert that the District was required to obtain consent from the parents in order to conduct an assessment for the VB-MAPP, pursuant to N.J.A.C. 6A:14-2.3, and that their failure to inform the parents that the VB-MAPP was being conducted ignored their rights as members of the IEP team. N.J.A.C. 6A:14-2.3 requires parental consent prior to conducting any assessment as part of an initial evaluation; and prior to conducting “any assessment as part of a reevaluation,” with limited exceptions. Here, the VB-MAPP was not administered to determine D.W.’s eligibility for special education services, nor was it conducted as part of a re-evaluation. Vasan and DeWitt testified credibly that Vasan, as the BCBA who oversaw D.W.’s program and worked with him twice a week, administered the VB-MAPP assessment to assist in programing and develop goals and objectives. While it may have been advisable for the District to inform the parents of their intention to administer this assessment, I **CONCLUDE** that the administration of the VB-MAPP assessment by Vasan does not violate N.J.A.C. 6A:14-2.3, nor does the failure to inform the parents of this assessment rise to the level of a procedural violation that denied the parents any meaningful involvement in the IEP process, or that denied D.W. a FAPE.

Fourth, the parents assert that the District violated stay-put by holding the IEP meeting and developing a program in May/June 2019, and “refusing to even discuss the parent’s request” for placement at SEARCH. The District is responsible for holding annual IEP meetings, and in scheduling an IEP meeting in May 2019, the District was simply attempting to comply with its legal obligation. While the District was legally restricted from unilaterally altering D.W.’s placement after the Due Process Petition was filed in March, there is no regulation or statute that restricts the District from holding an IEP meeting after Due Process is filed. I **CONCLUDE** that while the District offered or proposed an IEP for the 2019–2020 school year, there is no evidence that it unilaterally changed D.W.’s placement, or that the proposed IEP ever took effect. I **CONCLUDE** that the District did not violate the “stay put” law by holding the meetings in May and June 2019, or by developing a program for the following school year, because there was no change in placement that ever took effect.

Moreover, there is no evidence in the record that the District “refused to even discuss” the parents’ request for placement. The District did not ignore the parents’ request for placement. This is evident by the fact that at least three District professionals observed the SEARCH program once D.W.’s parents requested that he be placed there.

Based on my review of the record and the arguments raised by petitioners, I **CONCLUDE** that the District did not violate any procedural safeguards of the IDEA that rose to the level of denying D.W. a FAPE.

Did the 2018–2019 IEP and Program Provide D.W. with a FAPE?

The petitioners argue that the IEPs here lacked specificity, appropriate measurable goals and objectives, and intensive ABA services with one-to-one instruction. The petitioners also argue that the IEPs were a “form document” and not reasonably calculated to address D.W.’s needs. They maintain that D.W. requires “an intensive one-to-one full-time program based on the science and principles of [ABA],” and that an appropriate program for D.W. would include “full-time intensive one to one ABA services, parent training, a behavior plan, and a home program.”

In considering the appropriateness of an IEP, case law instructs that actions of the school district cannot be judged exclusively in hindsight. The appropriateness of an IEP must be determined as of the time it is made, and the reasonableness of the school district’s proposed program should be judged only on the basis of the evidence known to the school district at the time at which the offer was made. D.S. v. Bayonne Bd. of Educ., 602 F.3d 553, 564–65 (3d. Cir. 2010) citing Susan N. v. Wilson Sch. Dist., 70 F. 3d 751, 762 (3rd Cir. 1995). An IEP is “based on an evaluation done by a team of experts prior to the student’s placement.” Fuhrmann v East Hanover Bd. of Educ., 993 F.2d 1031, 1041 (3rd Cir. 1993) (emphasis in original). Thus, “in striving for ‘appropriateness,’ an IEP must take into account what was, and was not, objectively reasonable [when] the IEP was drafted.” Ibid. Our courts have confirmed that “neither the statute nor reason countenance ‘Monday morning quarterbacking’ in evaluating a child’s placement.” Susan N., 70 F.3d at 762, citing Fuhrmann, 993 F.2d at 1040.

The Third Circuit in Ridgewood Bd. of Educ. v. N.E. for M.E., 172 F.3d 238, 247 (3d Cir. 1999) stated that the appropriate standard is whether the IEP offers the opportunity for “significant learning and confers meaningful educational benefit.” The benefit must be meaningful in light of the student’s potential; the student’s capabilities as to both “type and amount of learning” must be analyzed. Id. at 248. When analyzing whether an IEP confers a meaningful benefit, “adequate consideration [must be given] to . . . [the] intellectual potential” of the individual student to determine if that child is receiving a FAPE. Ibid. The IDEA requires an IEP based on the student’s needs and “so long as the IEP responds to the needs, its ultimate success or failure cannot retroactively render it inappropriate.” Scott P., 62 F. 3d at 534.

First, with respect to both the 2018–2019 and proposed 2019–2020 IEPs, I do not agree with petitioners that these IEPs were “form documents” and not reasonably calculated to address D.W.’s needs. The IEPs identify and address D.W.’s educational, behavioral, social, emotional, and therapeutic needs. They explicitly include services, accommodations and modifications that address D.W.’s deficiencies in communication, attention, social/emotional development, fine and gross motor skills, and anxiety, in a small, highly-structured, self-contained ABA classroom. The District was also thoughtful in developing D.W.’s schedule for the year so that he could spend some time in the mainstream setting while also receiving the necessary educational and support services. I **CONCLUDE** that the 2018–2019 and 2019–2020 IEPs are both reasonably calculated to address D.W.’s needs as they were known to the District at the time.

Given the information available to the District when preparing the 2018–2019 IEP, including the information and reports provided to the District by the parents, it was reasonable to include a mainstream component into D.W.’s IEP. The parents and their advocate had requested that D.W. be included with his mainstream peers, and D.W.’s doctors also recommended some mainstreaming to address his socialization and educational needs. While he may not have had all of the prerequisite skills to fully benefit from an inclusion environment, he did have some, and the record shows that the District staff worked with D.W. on those prerequisite skills, and as the year went on, he demonstrated progress in that setting.

Petitioners assert that the 2018–2019 IEP improperly failed to contain a potty-training protocol, and a behavior plan to address interfering behaviors and feeding. While the District may not have had a formal behavioral intervention plan in place, D.W.’s behaviors significantly improved through the strategies and interventions utilized, and there is insufficient evidence in the record that a formal behavior plan was needed. With respect to feeding, D.W.’s resistance significantly decreased due to interventions used. Likewise, while D.W. was never fully potty-trained while at the District, he did show progress in this area. I **CONCLUDE** that the absence of a potty-training protocol and behavior plan in the IEP did not deny D.W. a FAPE.

The 2018–2019 IEP does not offer parent training (which was later added to the 2019–2020 proposed IEP). While I recognize the benefit of parent training in an ABA program, there is insufficient evidence in the record that this training was required in order for D.W. to make meaningful progress in the program. The parents were regularly kept apprised of what D.W. was working on and his progress, and they had numerous exchanges with the District concerning how to address potty-training and feeding issues, for example. While parent training may have complemented D.W.’s program and benefitted D.W., I nonetheless **CONCLUDE** that the absence of parent training in the 2018–2019 IEP did not deny D.W. a FAPE.

D.W.’s program was one that used ABA methodology. While it may not have been as “intensive” as the program offered at SEARCH, and while it may not have provided full-time one-to-one instruction to the extent provided at SEARCH, it was an ABA program that offered him an opportunity to make meaningful educational progress as it addressed his individualized educational needs. D.W. received personalized instruction in a very small, highly-structured, classroom setting by a certified special education teacher, he had a personal aide, and a BCBA was present twice a week to provide support. The IEP also offered D.W. the PT, OT and speech-language therapy he needed, as well as exposure to mainstream peers in a neighborhood school. I **CONCLUDE** that the 2018–2019 IEP offered D.W. a FAPE in the least restrictive environment, and allowed him an opportunity to make meaningful progress.

Moreover, the record also demonstrates that D.W. did in fact make educational progress in the District's program during the 2018-2019 school year. This progress is reflected in the progress reports issued, Rethink data, and testimony of Goss, Batikha and Vasan. D.W. came to the District with significant developmental delays in several areas, he had a complex medical history, and has also been diagnosed with ASD. Although the progress may not have been as speedy or substantial as the parents or anyone else would have preferred, there was progress nonetheless.

Case law recognizes that the IDEA does not require the Board to provide D.W. with the best possible education, S.H. v. State Operated Sch. Dist. of Newark, 336 F. 3d 260, 271 (3d Cir. 2003), or one that provides "everything that might be thought desired by loving parents," Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119, 132 (2d Cir. 1998) (citation omitted). Nor does the IDEA require that the Board maximize D.W.'s potential or provide him the best education possible. Instead, the law requires a school district to provide a basic floor of opportunity. Carlisle Area Sch. v. Scott P., 62 F.3d 520, 533-34 (3d Cir. 1995) The district must provide personalized instruction with sufficient support services to permit D.W. to benefit educationally from instruction. Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 203, 102 S. Ct. 3034, 3049 (1982). Noting that Rowley involved a student who, though disabled, was fully integrated in a general education classroom, the United States Supreme Court explained that while "a child's IEP need not aim for grade-level advancement if that is not a reasonable prospect, [the IEP] must be appropriately ambitious in light of his circumstances[.]" Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 580 U.S. ____, 137 S.Ct. 988, 992 (2017). The Third Circuit found the directions of the Supreme Court in Endrew to treat "a child's intellectual abilities and potential as among the most important circumstances to consider" to be consistent with its standard that an "IEP must provide significant learning and confer meaningful benefit." Dunn v. Dowlingtown Area Sch. Dist., 904 F.3d 248, 254 (3rd Cir. 2018). "IEPs must be reasonable, not ideal [and] slow progress does not prove" the deficiency of an IEP. Ibid. Here, the 2018-2019 IEP was reasonable and D.W. demonstrated progress.

The IDEA also requires states to educate disabled children in the LRE to the maximum extent appropriate, with children without disabilities. See, 20 U.S.C.

§1412(a)(5)(A). Thus, removal of children with disabilities from the general education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. Ibid. “This provision evidences a ‘strong congressional preference’ for integrating children with disabilities in regular classrooms.” Oberti v. Bd. of Educ. of Clementon Sch. Dist., 995 F.2d 1204, 1214 (3d Cir. 1993) (citations omitted).

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

Did the IEP offered for the 2019–2020 School Year offer D.W. a FAPE?

The IEP proposed for the 2019–2020 school year provides D.W. with continued placement in the District's autism program utilizing ABA methodology with a 1:1 aide, PT, OT, additional speech-language services, and multiple modifications and accommodations. Parent training was also added to the IEP.

Considering D.W.'s needs and progress during the 2018-2019 school year, and for the reasons stated above, I also **CONCLUDE** that the proposed IEP for the 2019–2020 school year offered D.W. a FAPE in the least restrictive environment, and provided D.W. an opportunity to make meaningful progress.

While one or two of the ninety-plus goals/objectives was inappropriate in the proposed IEP; the IEP does not explicitly contain a parent training schedule (which could have been developed with input from the parents at the IEP meeting); and the IEP does

not expressly identify how many hours a BCBA will be in the classroom; I **CONCLUDE** that the proposed IEP offers a FAPE.

Is Placement at SEARCH Appropriate, and are
the Parents Entitled to Reimbursement for their Unilateral Placement?

Having found that the Board offered a FAPE to D.W., it is not necessary to analyze whether placement at SEARCH is appropriate under the IDEA. It is well-established that the appropriateness of an IEP is not determined by a comparison of the private school and the program offered by the District. S.H. v. State Operated Sch. Dist. of Newark, 336 F. 3d at 271. Rather, the pertinent inquiry is whether the District's IEP offered FAPE and the opportunity for meaningful educational benefit in the LRE. G.B. and D.B. ex rel J.B. v. Bridgewater-Raritan Reg'l Bd. of Educ., EDS 4075-06, Final Decision (June 13, 2007), <http://njlaw.rutgers.edu/collections/oal/>. Upon a finding that the district provided FAPE, the appropriateness of the private placement is irrelevant. Ibid. (citation omitted); Scott P., 62 F. 3d at 533.

Even assuming that the IEPs somehow fell short, I **CONCLUDE** that the parents are not entitled to reimbursement for their expenses at SEARCH during the 2019–2020 and 2020–2021 school years. A court may reduce or deny reimbursement costs based on the parents' unreasonable behavior during the IEP process. 20 U.S.C. § 1412(a)(10)(C)(iii). New Jersey regulations specifically require that parents advise the district at the "most recent IEP meeting" that they were rejecting the IEP, and that they give written notice "of their concerns or intent to enroll their child in a nonpublic school" to the district at least ten business days' prior to removal. N.J.A.C. 6A:14-2.10(c)(1) and (2). The cost of reimbursement may be reduced or denied "[u]pon a judicial finding of unreasonableness with respect to actions taken by the parents." N.J.A.C. 6A:14-2.10(c)(4).

Here, unbeknownst to the District, the parents began exploring SEARCH and another out-of-district placement early in the 2018–2019 school year, even before retaining Dr. Fiorile to observe the District program. An intake took place at SEARCH in December 2018, and D.W. was offered a spot in the program for the 2019–2020 school year, before Dr. Fiorile observed the District's program. It was with the filing of the March 2019 Due Process Petition that the District was first made aware that the parents were seeking an out-of-district

placement, and by letter dated May 13, 2019, the District became aware of the parents' intent to unilaterally place D.W. at SEARCH. This was ten days after Jacobsen emailed L.L inviting her to an annual review IEP meeting for May 20, 2019, which petitioners refused to attend. The District then scheduled a meeting for June 14, 2019. Before attending the June meeting, however, the parents had already decided to unilaterally place D.W. at SEARCH—they signed a contract with SEARCH on May 31, 2019, and paid a \$5,000 deposit, for the 2019–2020 school year. I **FIND** that since the parents had already signed the contract with SEARCH, and paid a substantial deposit, they had no intention at that time of discussing or considering the District's proposed program for the 2019–2020 school year. At the June meeting, the parents refused to discuss the proposed program and they did not inform the District that they had already signed a contract with SEARCH.

Despite having monthly meetings with District staff throughout the year, and regular communications with D.W.'s teacher throughout the 2018–2019 school year, the parents never expressed any specific concerns that they may have had concerning D.W.'s program or his progress, and it was not until mid-May that the District was first notified that the parents intended to place D.W. at SEARCH. Dr. Zaheer, who observed the program in October, never informed the District of any concerns with D.W.'s progress or program (only that he should be included more in the mainstream setting). Also, while Dr. Fiorile observed the District program in December 2018 and prepared her expert report in January 2019, the parents never provided the District with her report, nor did they ever communicate Dr. Fiorile's concerns with D.W.'s progress or program, nor her recommendations, until at least two months after D.W. was already attending SEARCH. This was almost an entire year after Dr. Fiorile observed the District program and prepared her report. I **CONCLUDE** that the parents' failure to provide the District with Dr. Fiorile's report, or at least inform the District of Dr. Fiorile's specific concerns and recommendations, prior to the unilateral placement was unreasonable and denied the District any opportunity to address these concerns.

I also **CONCLUDE** that the petitioners acted unreasonably and denied the District any opportunity to address their concerns when they: refused to attend the May 2019 IEP meeting; only informed the District of their intent to unilaterally place D.W. at SEARCH by letter dated May 13, 2019 (which did not even express any concerns with the District's program) while the District was attempting to schedule the May IEP meeting; signed the

contract and paid a \$5,000 retainer fee on May 31, 2019, unilaterally placing D.W., without even informing the District of same, not even at the June 2019 meeting; and refusing to even discuss the District's proposed program or their concerns at the June 2019 meeting. I **CONCLUDE** that the petitioners' unreasonable conduct and refusal to collaborate with the District in good faith warrants a complete bar to the relief they seek.

ORDER

Based on the foregoing, it is **ORDERED** that the relief requested by petitioners as set forth above be and hereby is **DENIED**, and that the petition of appeal be **DISMISSED**.

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

April 1, 2021
DATE



SUSANA E. GUERRERO, ALJ

Date Received at Agency

April 5, 2021

Date Mailed to Parties:

jb

APPENDIX

LIST OF WITNESSES

For Petitioner:

Carrie Kahana
Jessie Dello Russo
L.L. (D.W.'s mother)
Carol Fiorile

For Respondent:

Lisa Marie Jacobsen
John DeWitt
Heather Goss
Lyndsay Batikha
Shuba Vasan

LIST OF EXHIBITS IN EVIDENCE

For Petitioners:

- P-1 Not in evidence
- P-2 Not in evidence
- P-3 Correspondence from Dr. Jean Belasco, April 5, 2017
- P-4 CHOP Speech and Language Evaluation, November 1, 2017
- P-5 CHOP Neuropsychological Assessment, January 15, 2018
- P-6 CHOP Neuropsychological Assessment, February 7, 2018
- P-7 Not in evidence
- P-8 CHOP Developmental and Behavioral Pediatrics Report, April 16, 2018
- P-9 not in evidence
- P-10 West Essex Speech Language Associates Speech and Language Evaluation,
April 26, 2018
- P-11 Not in evidence
- P-12 Not in evidence

- P-13 Not in evidence
- P-14 SEARCH Intake, December 13, 2018
- P-15 SEARCH Initial Site Plan, July 1, 2019
- P-16 Report of Dr. Carol Fiorile dated January 2019
- P-17 Addendum to Dr. Fiorile's Report dated November 25, 2019
- P-18 CV of Dr. Carol Fiorile
- P-19 Neuropsychological Evaluation for Educational and Treatment Planning Purposes prepared by Memorial Sloan Kettering, April 28, 2019
- P-20 Not in evidence
- P-21 VB-MAPP given to SEARCH by the parents
- P-22 VB-MAPP Transition Assessment created by SEARCH based on information provided by parents
- P-23 Not in evidence
- P-24 SEARCH Program Planning List, September 2019
- P-25 SEARCH Goal and Objectives, September 30, 2019
- P-26 SEARCH VB-MAPP, September 20, 2019
- P-27 SEARCH VB-MAPP Barriers Assessment Description, October 2019
- P-28 SEARCH VB-MAPP Transition Assessment, October 2019
- P-30 SEARCH Interfering Behavior Plan
- P-31 SEARCH IXL Continuous Diagnostic Action Plan, October 28, 2019
- P-32 SEARCH PLAAFP, November 2019
- P-33 SEARCH Data Sheet 2019
- P-34 SEARCH Program Planning List, November 2019
- P-35 SEARCH IXL Continuous Diagnostic Action Plan, November 18, 2019
- P-36 VB-MAPP Barriers Assessment, June 2019
- P-37 Carrie Kahana, CV
- P-38 Jessie Dello Russo, CV
- P-39 Not in evidence
- P-40 Not in evidence
- P-41 Not in evidence
- P-42 Not in evidence
- P-43 SEARCH Clinical Team List, for module D, March 2020
- P-44 SEARCH Parent Training/Home Visit Log

- P-45 SEARCH Data Sheet
- P-46 SEARCH Program Planning List, February 2020
- P-47 Not in evidence
- P-48 SEARCH Site Plan, September 6, 2019
- P-49 SEARCH Contract for Services, 2019-2020
- P-50 SEARCH VB-MAPP Milestones Master Scoring Form, February 28, 2020
- P-51 SEARCH VB-MAPP Barriers Scoring Form, February 28, 2020
- P-52 SEARCH Barriers Descriptions
- P-53 SEARCH VB-MAPP Master Transition Scoring Form, February 28, 2020
- P-54 SEARCH VB-MAPP Transition Description
- P-55 Not in evidence
- P-56 Not in evidence
- P-57 Not in evidence
- P-58 Not in evidence
- P-59 Not in evidence
- P-60 Not in evidence
- P-61 Dr. Tara Matthews February 5, 2020 Developmental Pediatric update
- P-62 January 6, 2020 Speech update, West Essex Speech
- P-63 Not in evidence
- P-64 Not in evidence
- P-65 Not in evidence
- P-66 SEARCH Progress Report for D.W., December 2019
- P-67 SEARCH Progress Report for D.W., May 2020
- P-68 Glen Ridge Schedule for D.W.
- P-69 Dr. Tara Matthews July 14, 2020 Developmental Pediatric update
- P-70- Not in evidence
- P-71 Not in evidence
- P-72 Not in evidence
- P-73 Not in evidence
- P-74 Not in evidence
- P-75 Electronic mail correspondence regarding parental concerns for outsourced transportation

- P-76 Electronic mail correspondence regarding parental concerns for lack of data and progress documentation
- P-77 Not in evidence
- P-78 Email correspondence
- P-79 Not in evidence
- P-80 Not in evidence
- P-81 SEARCH Progress Report for D.W., August 2020
- P-82 Report of Dr. Carol Fiorile's dated August 2020
- P-83 SEARCH VBMAPP during remote instruction

For Respondent:

- R-1 Glen Ridge Battelle Developmental Inventory Initial Evaluation dated October 21, 2015
- R-2 Eligibility Conference Report and Initial IEP dated November 25, 2015
- R-3 Pediatric Occupational Therapy Initial Evaluation & Progress Updates dated January 25, 2016
- R-4 Consent to Amend IEP w/o meeting – add OT & PT dated February 10, 2016
- R-5 IEP dated September 7, 2016
- R-6 Consent to Amend IEP w/o meeting – add 1:1 aide dated April 6, 2017
- R-7 IEP dated June 6, 2017
- R-8 Emails re potty training
- R-9 Reevaluation Plan dated March 20, 2018
- R-10 Physical Therapy Progress Report dated March 2018
- R-11 Glen Ridge Educational Evaluation dated April 4, 2018
- R-12 Glen Ridge Speech Language Re-Evaluation dated April 25, 2018
- R-13 Email from DeWitt to Parent re new program dated July 23, 2018
- R-14 IEP dated July 31, 2018
- R-15 Daily Schedule for 2018-2019 SY
- R-16 Emails b/w Parent & SEARCH Learning Group dated November 2018
- R-17 Not in evidence
- R-18 Not in evidence
- R-19 Report by Jobi M. Schwartz, Au.D., CCC-A dated December 18, 2018
- R-20 Emails between Parents & SEARCH November and December 2018

- R-21 Not in evidence
- P-22 Not in evidence
- P-23 Not in evidence
- P-24 Not in evidence
- R-25 Progress Report for IEP Goals and Objectives dated March 17, 2019
- R-26 Physical Therapy Progress Report dated March 2019
- R-27 Progress Report by Shuba Vasan, BCBA dated April 28, 2019
- R-28 Emails re May 20, 2019 Annual Review Meeting dated May 3, 2019
- R-29 Letter from Parents' counsel to Glen Ridge counsel re unilateral placement at SEARCH dated May 13, 2019
- R-30 Not in evidence
- R-31 Not in evidence
- R-32 Physical Therapy Annual Report dated May 2019
- R-33 Emails from teacher to Parents re progress May and June 2019
- R-34 Correspondence re June 14, 2019 IEP meeting, and proposed draft IEP
- R-35 Emails between Parent and SEARCH re related services not provided May 2019
- R-36 Not in evidence
- R-37 Parent declination of Glen Ridge Summer Program dated June 7, 2019
- R-38 VB-MAPP Assessments and Scoring Forms dated June 10, 2019
- R-39 Not in evidence
- R-40 Rethink Progress Report March 13, 2018 to March 13, 2019
- R-41 Rethink Progress Report September 1, 2018 to June 13, 2019
- R-42 Therapy Comments dated June 14, 2019
- R-43 Not in evidence
- P-44 Not in evidence
- P-45 Not in evidence
- R-46 Heather Goss, M.S., CC-SLP comments re: Fiorile Report dated November 2019
- R-47 Not in evidence
- P-48 Not in evidence
- P-49 Not in evidence
- P-50 Not in evidence
- P-51 Not in evidence
- R-52 Certification of John DeWitt dated March 10, 2020

R-53 Not in evidence

R-54 Not in evidence

R-55 CV and Certificates List of Lisa Jacobsen

R-56 CV and Certificates List of Heather Goss

R-57 CV and Certificates List of Lyndsay Batikha

R-58 CV and Certificates List of Shuba Vasani

R-59 CV and Certificates List of John M. DeWitt