



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 02927-24

AGENCY DKT. NO. 2024-36966

T.R. AND J.R. ON BEHALF OF H.R.,

Petitioners,

v.

SOUTH RIVER BOROUGH BOARD

OF EDUCATION,

Respondent.

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

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

Record Closed: September 5, 2024

Decided: October 2, 2024

BEFORE **NICOLE T. MINUTOLI, ALJ:**

STATEMENT OF THE CASE

On May 24, 2024, the South River Borough Board of Education (District or South River) proposed an Individualized Education Program (IEP) for H.R., which included, among other things, pull-out instruction in language arts five days a week; pull-out instruction in reading five days a week; in-class resources; science, social studies, and math resources five days a week; speech and language services one day a week; plus

summer supplemental reading instruction and occupational therapy and counseling. Petitioners, however, wanted out-of-district placement. Did South River provide H.R. with an appropriate IEP? Yes. An IEP must be reasonably calculated to provide significant learning and meaningful educational benefits in the least restrictive environment.

PROCEDURAL HISTORY

On January 22, 2024, T.R. and J.R., on behalf of their son, H.R., filed a due-process petition challenging the January 5, 2024, IEP with the New Jersey Department of Education (DOE), Office of Special Education. Petitioners waived mediation, and the matter was transmitted to the Office of Administrative Law (OAL), where it was filed on March 5, 2024, as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23.

On March 13, 2024, and March 26, 2024, the parties appeared for a settlement conference before the Honorable Catherine Tuohy, ALJ. The matter did not settle and was assigned to me for a hearing.

On April 1, 2024, a telephone hearing was held, during which the petitioners requested to file an amended due-process petition. On May 30, 2024, the petitioners filed an amended due-process petition, challenging the May 24, 2024, IEP for failing to provide a free, appropriate public education (FAPE), as required by the Individuals with Disabilities Education Act (IDEA). Instead, the petitioners assert that the District continued the same or essentially the same program that allegedly failed to meet his educational needs. Petitioners also submit that the IEPs proposed by the District for sixth grade violated Section 504 of the Rehabilitation Act of 1973. As such, petitioners seek out-of-district placement.

Hearings were held on July 26, 2024; July 31, 2024; and August 2, 2024. After the parties submitted post-hearing summation briefs and joint stipulations of fact, the record closed on September 5, 2024.

DISCUSSION AND FINDINGS OF FACT

The parties stipulated to the following statements,¹ and therefore, I **FIND** as **FACTS**:

1. H.R. is an eleven-year-old rising sixth-grade student who has received special education and related services from respondent South River Public Schools (the District) since he entered the District as a preschool student.

2. As a toddler, H.R. was diagnosed with Autism.

3. When H.R. was two years old, his Early Intervention provider and parents observed that he could read words.

4. Upon aging out of Early Intervention, H.R. received preschool special education programming from the District.

5. In spring 2018, the District's Child Study Team re-evaluated H.R. in preparation for his transition to kindergarten.

6. The District's March 2018 Speech/Language Evaluation yielded a Total Language Score of 74 on the Preschool Language Scale. This score fell at the 4th percentile. (J-1.)

7. The District's educational evaluation in April 2018 yielded a reading score of 116, which is in the high average range. The evaluator noted that "[H.R.] has mastered letter identification and is reading 2 word phrases. . ." This evaluation also yielded a Word Attack score of 98, which is in the average range. The evaluator noted that "[H.R.] is making sound to symbol connections and is reading words." (J-3.)

¹ I modified the joint stipulation of facts to ensure consistency with the OAL Manual of Style and cited materials.

8. During preschool, H.R. received services under the classification of “preschool child with a disability.” Upon entering kindergarten, he was reclassified as “autistic.”

9. In kindergarten, H.R. was placed in a general education classroom with in-class resource support for all classes. From first through third grade, H.R. received language arts and math instruction in pull-out resource replacement classes, consisting of only classified students. In fourth and fifth grade, he continued to receive pull-out resource replacement instruction in language arts and returned to the general education classroom for math, where he received “in-class resource” instruction, which is a general education class with a special education co-teacher.

10. H.R. has received speech language therapy in both individual and group settings, as well as physical therapy and occupational therapy across his school years. In kindergarten through fourth grade, he received ninety minutes per week of speech language therapy (two thirty-minute individual sessions and one thirty-minute group session). In fifth grade, the District reduced his speech language therapy to sixty minutes per week (one thirty-minute individual session and one thirty-minute group session).

11. In February 2020, when H.R. was in first grade, petitioners requested that a Reading Specialist and a highly qualified Speech Language therapist be assigned to work with H.R. in second grade. (J-7; J-9.)

12. From grade two through grade five, H.R. received supplemental one-on-one reading instruction ninety minutes per week. Until April 2024, the one-on-one instruction consisted exclusively of instruction in the Wilson Reading System.

13. The Present Levels of Academic Achievement and Functional Performance (PLAAFP) of each District IEP over the years documented H.R.’s proficiency with reading decoding and sight word reading and documented his limited reading comprehension skills. (J-5; J-11; J-15; J-23; J-24; J-29; J-84.)

14. The PLAAFPs also documented H.R.'s iReady Diagnostic Reading scores over time. While the iReady assessed word reading (via the phonological awareness, phonics, and high-frequency subtests) and comprehension (via the vocabulary, comprehension literature, and comprehension information text subtests), H.R. "tested out" of the phonological awareness and high-frequency words subtests by second grade and therefore was no longer tested in these areas. He also received the "max" score on the phonics subtests. Thus, as confirmed through testimony in court, the iReady assessment when administered in third through fifth grade measured H.R.'s reading comprehension and not his word reading. H.R.'s reported iReady reading comprehension scores are as follows:

- September 2020: Beginning of 2nd grade: 470, mid-first grade level (J-23);
- April 2021: April of 2nd grade: 474, first grade level (J-23);
- May 2022: May of 3rd grade: 444, first grade level (J-24);
- April 2023: April of 4th grade: first grade level (J-29);
- September 2023: Beginning of 5th grade: 464, first grade level (J-36);
- December 2023: December of 5th grade: 491, second grade level (J-42);
- April 2024: April of 5th grade: 486, second grade level (J-52).

15. As of spring 2022, H.R.'s teachers reported that he had progressed from a Developmental Reading Assessment (DRA) Level D to a DRA Level L. (J-23 at 4.)

16. In fourth grade, H.R.'s school-based speech therapist reported progress in individual and group speech with a focus on reading comprehension. (J-29 at 4–5.)

17. In fall 2023, when H.R. was in fifth grade, H.R. was re-evaluated by the Child Study Team.

18. On the District's Speech Re-Evaluation, H.R. earned a Core Language Score of 68. This score was at the 2nd percentile and within the "Very Low Range/Severe." The evaluator noted that "[t]his places [H.R.] in the range of very low range of language functioning." H.R. earned a Receptive Language Score of 69, also at

the 2nd percentile and in the “Very Low Range/Severe.” Similarly, H.R. earned an Expressive Language score of 69, at the 2nd percentile and in the “Very Low Range/Severe.” (J-34.)

19. An educational evaluation determined that H.R.’s performance was Average in Basic Reading Skills, Low Average in Broad Reading Skills, and Low in Reading Comprehension and Passage Comprehension. His Reading Comprehension score of 74 was at the 4th percentile. His Passage Comprehension score of 73 also fell at the 4th percentile. Conversely, his score for Word Attack was 113, at the 81st percentile, in the High Average range, and at the 10.2 grade equivalency. “*Word Attack* measured [H.R.’s] ability to apply phonetic and structural analysis skills in pronouncing phonetically and orthographically regular nonsense, or non-words. He was asked to recall phonemes (sound) associated with each grapheme (letter) and then blend the phonemes into a word. [H.R.] earned a standard score of 113 which falls in the High Average range, demonstrating excellent decoding skills.” H.R. scored in the Low Average range for Broad Written Language and in the Average range for Broad Mathematics. (J-36; J-55.)

20. The District’s Psychological Evaluation yielded a Full Scale Intelligence Quotient (IQ) score of 80. This score falls in the Low Average range. Subtest scores were within the Very Low, Low Average, and Average range. (J-37.)

21. After completion of its re-evaluation, the District’s Child Study Team convened an Eligibility and IEP Meeting on November 20, 2023. (J-39). At this meeting, Mrs. R. “. . .reported being very angry about specialized reading and indicated that she did not know that Wilson was not a primarily comprehension based program. She reported feeling lied to and said she would like to meet with [several district staff members]. A meeting was scheduled for 12/4 to discuss her concerns.” (J-7.)

22. The District’s IEP issued at this meeting continued to call for H.R. to attend the Resource Center for language arts and the General Education for all other classes, with in-class Resource support in math, Pull Out Supplementary Instruction in reading (using the Wilson Reading System), and Speech and Language Therapy for sixty minutes

per week (one thirty-minute individual session and one thirty-minute group session). (J-39.)

23. At a meeting on December 4, 2023, Mrs. R. “. . .indicated being very disappointed and frustrated with the Wilson program.” (J-7.)

24. In fall 2023, H.R. received a DRA score of 28, which placed him at a Level M. According to the Pearson chart, this placed H.R. at a late second-grade level in performance. (J-41; J-75). Also in fall 2023, H.R. received an iReady Diagnostic Reading score of 464, at the first-grade level. (J-38.)

25. In December 2023, Diagnostic Results yielded a Lexile Reading Measure of 520, which placed H.R. in the ninth percentile nationally and at the beginning of third-grade level pursuant to the scoring chart. He also received an iReady Diagnostic Reading score of 491, at the 2nd grade level. (J-42; J-75.) Also, in December 2023, H.R. scored below the 1.0 Grade Equivalency on the Gray Oral Reading Test. (J-44.)

26. In January 2024, at the request of H.R.’s mother, the District offered to add instruction in the Lindamood-Bell Visualizing and Verbalizing language program. In the draft IEP offering this change in methodology, the District expressly stated that “this change in methodology at parental request will be without prejudice to the parents’ right to challenge this IEP.” (J-45 at 16.)

27. At the meeting on January 5, 2024, H.R.’s mother rejected this offer and instead requested that the District pay for H.R. to receive Lindamood-Bell instruction at the Lindamood-Bell Center in Morristown. (J-7 at 8.)

28. When the District rejected this request, petitioners filed the original Request for Due Process Hearing on this matter. (J-47.)

29. Ultimately the District continued to offer Lindamood-Bell instruction, which H.R.’s parents allowed him to begin receiving in April 2024, after their expert, Dr. Jeanne Tighe, had tested and observed H.R. in school in March 2024. (J-51; T-3 at 97.)

30. The District presented a draft IEP on April 25, 2024, calling for an increase in pull-out supplemental one-on-one reading instruction to five times weekly for forty-five minutes per session. The remainder of the program remained the same, including just one hour per week of speech-language therapy. (J-52.)

31. On May 7, 2024, petitioners' counsel sent respondent's counsel a letter enclosing the report of Dr. Tighe and requesting that the District place H.R. in an out-of-district special education school. (J-53.)

32. Dr. Tighe's evaluation confirmed that H.R. is a student with a Severe Mixed Receptive-Expressive Language Disorder. This disorder manifests in several ways and necessitates that H.R. receive very specialized and intensive language-based instruction in both oral language skills and reading comprehension across the entirety of his school day and in all classes. (J-51.)

33. Through her review of records, as included in her evaluation report, Dr. Tighe learned that the District was instructing H.R. in his supplemental reading classes through the Wilson Reading System. Dr. Tighe, a Wilson-certified teacher, wrote that H.R.'s parents ". . . have been concerned about the use of Wilson Reading System with him for some time. Wilson Reading System focuses on explicit, detailed instruction in decoding and encoding skills, which have never been an area of functional deficit for [H.R.]. On the contrary, [H.R.] was word reading since toddlerhood." (J-51 at 3.)

34. According to her report, Dr. Tighe evaluated H.R.'s reading comprehension through two different assessment measures. On the Gray Oral Reading Test, H.R.'s reading rate, accuracy, and fluency all fell within the average range. His reading comprehension, on the other hand, fell at the 1st percentile and a 1.2 grade equivalency. At the time of testing, he was nearly done with fifth grade. On the Qualitative Reading Inventory, he was able to answer only one out of four explicit comprehension questions correctly on a 2nd grade passage after his initial read. He was able to answer only one additional question correctly after looking back at the text. With regard to implicit comprehension questions, he answered none correctly after his initial read of the 2nd

grade passage and still could not answer any correctly after being permitted to look back at the text. Reading at a second-grade level was at a Frustration level for H.R., meaning second-grade text was simply too difficult for him to understand. On a first-grade passage, he was able to retell only 29 percent of the story ideas after reading the text. He answered only three out of four explicit questions correctly when not provided the opportunity to look back at text and answered none of the implicit questions correctly. His comprehension level of this 1st grade text was at a Frustration level after the initial read. When provided the opportunity to look back at the text and re-answer comprehension questions, his performance increased only to the Instructional level. Dr. Tighe concluded that, “Consistently, comprehension testing shows that [H.R.] is limited to first-grade level skills. . . .” She advised that, “[H.R.’s] reading comprehension will need to include intensive work on basic language skills as well as reading comprehension skills and strategies to yield meaningful progress.” Dr. Tighe concluded that “. . . though H.R. has been provided with additional reading instruction, these efforts have been directed inappropriately, as Wilson Reading System targets his strengths (decoding and encoding), rather than his needs – comprehension and expression.” (J-51 at 16–18.)

35. In addition to his reading comprehension deficits, Dr. Tighe’s report concluded that H.R. presents with significant oral language deficits. H.R. earned a General Language Ability Index score at the 2nd percentile on Dr. Tighe’s testing, placing his overall oral language skills within the Deficient range. On the Test of Narrative Language, his overall score fell at just the 3rd percentile with his language comprehension falling below the 1st percentile and at a 5.1 age equivalency. At the time of testing, he was almost eleven years old. (J-51 at 12–16.)

36. According to her report, Dr. Tighe’s testing also confirmed that H.R. had significant deficits in writing. Dr. Tighe explained, “Written productivity is a critical component of academic participation in the middle school years and beyond, so this skill should be an area of priority in [H.R.’s] instruction.” She explained, “Overall, [H.R.] clearly needs intensive instruction in sentence construction and composition using written mechanics. Sentence writing skills are the foundation of effective writing. [H.R.] needs to establish basic sentence proficiency and then can work strategically to learn to

compose sequenced thoughts into paragraphs. These must be priority targets for [H.R.] in his Language Arts instruction.” (J-51 at 19–20).

37. Dr. Tighe determined that H.R.’s Severe Mixed Expressive-Receptive Language Disorder significantly impacts his educational and social development. (J-51 at 20.) She advised that his significant problems in developing proficiency in independent reading and writing must be understood within the context of his broader language disability. She explained that, “Given H.R.’s quite severe and pervasive language disorder, he needs an educational program that is truly language-based, a term that is often used in educational conversations but rarely defined. Language-based classroom instruction includes a large portion of the time devoted to building the student’s foundational skills in semantics, morphology, syntax, and discourse in spoken and written activities. . . . Language is used on contextual activities with cross-curricular coordination to build and transfer knowledge and vocabulary. Teachers begin with explicit instruction and gradually release their guidance until the student is applying a new skills [sic] independently. Students are provided with corrective feedback on their performance. These methods are applied using materials (i.e. texts with writing assignments) that are accessible yet appropriately challenging to students based on their skill levels.” (J-51 at 22.)

38. Dr. Tighe, upon observing H.R. in the District’s Resource Center and General Education classroom, concluded that the District was providing neither the language-intensive instruction H.R. requires nor the nature and intensity of reading comprehension instruction he requires. Rather, in both classrooms, she opined, H.R. was provided instruction that was far beyond his Instructional levels and instead at his Frustration levels. “This puts [H.R.] in a position of struggling to engage with material (spoken and written) that is presented at a level far above his functioning rather than experiencing additional opportunities for reading, writing, and language growth at his own level during content classes.” (J-51 at 23.)

39. Dr. Tighe concluded in her report that H.R. requires placement in a “. . . specialized out-of-district program designed to meet the needs of students with significant language disabilities.” (J-51 at 24.) Dr. Tighe also issued a set of

recommendations for programmatic provisions to meet H.R.'s oral language, reading comprehension, and writing needs. This included a nine-prong approach to teaching him reading comprehension skills. (J-51 at 24–28.)

40. Following receipt of Dr. Tighe's report, District staff did not agree that H.R. needed to be sent to an out-of-district special education school. The District made adjustments to the proposed IEP, issuing a revised version on May 24, 2024, which repeated the recommendation for five weekly forty-five-minute sessions of one-on-one reading instruction, pullout resource replacement instruction for language arts, and in-class resource instruction within the general education classroom for math, science, and social studies. (J-57.)

41. The IEP also called for one weekly individual speech therapy session, one weekly group speech therapy session, occupational therapy consultation, and two monthly group counseling sessions. The IEP proposed an extended school year program, including direct reading instruction. (J-57.)

42. In a written response to Dr. Tighe's report, members of the Child Study Team opined, notwithstanding Dr. Tighe's opinion to the contrary, that Wilson Reading instruction was "imperative to his educational success." (J-54.)

43. Dr. Tighe reviewed the updated IEP and concluded that it was inappropriate to meet H.R.'s educational needs in sixth grade. (J-58.)

44. On May 29, 2024, through legal counsel, petitioners asked the District to reconsider its position in light of Dr. Tighe's findings and determinations. In the letter, petitioners asserted that H.R. missed years of valuable instructional time when he should have been receiving reading instruction in his area of deficit—comprehension—rather than his area of strength—decoding. Petitioners also notified the District that they had applied to the Newgrange School on H.R.'s behalf, a school that Dr. Tighe notified them would provide the nature of instruction H.R. requires. (J-59.)

45. On May 30, 2024, petitioners filed the Amended Petition for Due Process, requesting the Court to order the District to place H.R. out-of-district in a school specially designed for students with language disorders, as Dr. Tighe determined H.R. to require, and further requesting the Court to order the District to reimburse petitioners the costs of unilaterally placing H.R. in a specialized out-of-district school should they so place H.R. for the 2024–2025 school year. (J-60.)

46. On June 11, 2024, the District asked H.R. to read a level 30 text, *Busy Helpers*, as part of the Developmental Reading Assessment. (J-85.) While scoring in the Advanced range for reading accuracy, H.R. was able to answer none of the reading comprehension questions correctly. (J-61 at 32.) When asked to retell what happened in the story, H.R. copied sentences from pages of the book on which there were illustrations. He did not independently retell the story. (J-61 at 31.)

47. The Newgrange School is approved as a special education school by the New Jersey Department of Education. The Newgrange School conducted its admissions process with H.R. including a school visit, review of records, a two-day visit, and Wilson Assessment of Decoding and Encoding (WADE) testing. The WADE is an assessment used to determine if a student requires Wilson Reading Instruction and used to assess a student's progress while receiving Wilson Reading Instruction. On the WADE testing, H.R. read 226 out of 240 words correctly, 94 percent. (J-87.)

48. Upon completion of its admissions process, Newgrange determined H.R. to be an appropriate student for its school and offered him admission for the 2024–2025 school year.

49. On July 17, 2024, petitioners again requested that the District reconsider its position and agree to place H.R. at the Newgrange School. Petitioners also notified the District that “. . . should the District continue to reject their request for [H.R.'s] placement out-of-district and should Her Honor's decision not be issued prior to the start of the school year, then it was [their] intention to unilaterally place [H.R.] at the Newgrange School when the 2024–2025 school year starts.” (J-88.)

Witness Testimony

Amanda Johnson (Johnson) testified on behalf of the District. She has been a school psychologist in the District's special education department for five years. She has also worked in special education for six and a half years and is qualified as an expert in school psychology and special education. In her role as a school psychologist, Johnson focuses on ensuring the District meets the needs of its special education population through assessments or social/emotional batteries to understand the students.

Johnson also serves as a case manager for approximately fifty students, ensuring their needs are met and that they receive the education they deserve (T-1 at 36).

Johnson has a Bachelor of Arts in Psychology and English, a Master of Arts in Psychological Studies, an Educational Specialist degree (Ed.S), and a School Psychology Certification. Johnson is in the process of earning her Doctor of Education in school psychology and is twelve credits shy. Johnson is certified by the State of New Jersey as a school psychologist. (T-1 at 35.)

Johnson explained the difference between an education evaluation and an IQ test. An IQ test provides an insight into the student's ability, including their strengths and weaknesses. By contrast, the educational evaluation offers insight into the student's achievements in school. (T-1 at 37.) Further, if an IQ test reveals an area of particularly low scoring, this weakness is expected to transfer to the educational setting within the student's curriculum. (Ibid.)

Johnson knows and has interacted with H.R. since he was in second grade. H.R. is a very personable and likable student that everyone loves. When H.R. entered fifth grade, Johnson became his case manager. (T-1 at 38–39.) Over the years, the District has supported H.R., and it can continue to provide the appropriate support that will “help him be successful.” (T-1 at 40.)

Johnson acknowledged that there has been slow progress in H.R.'s reading comprehension, oral expressiveness, and oral receptive language. Autism is a program

developmental pervasive disorder that impacts pragmatic skills and communication skills in general and affects the working memory. (T-1 at 40–41.)

After reviewing H.R.'s preschool psychological evaluation, Johnson explained that H.R.'s working memory index score is extremely low. In terms of comprehension, this impacts H.R.'s ability to read a passage or text, retain the information, and retell and provide details, main ideas, and textual concepts. (T-1 at 43.) H.R. also scored in the extremely low range for the verbal comprehension index. This score also plays a significant role in his comprehension, showing his ability to provide and express semantic and conceptual relationships. (T-1 at 43–44.)

Johnson testified that she conducted H.R.'s October 30, 2023, psychological evaluation. (J-37.) Although H.R.'s verbal comprehension index score remains low, he showed improvement from his preschool evaluation. (T-1 at 46.) While there was a large difference in H.R.'s cognitive functioning, he scored average in the working memory index and very low in the visual-spatial index. (T-2 at 46; J-37.)

H.R.'s IQ of 80 falls within the low range compared to same-age children based on the Wechsler Preschool and Primary Scale of Intelligence, Fifth Edition. (Id. at 8.) H.R. performed within the average range on the fluid reasoning index, within the low average range on the processing speed index, and in the very low range on the verbal comprehension index, the visual-spatial index, and the working memory index. (Ibid.)

In reviewing H.R.'s educational evaluation report dated November 1, 2023, and comparing it to H.R.'s cognitive testing, Johnson testified that H.R.'s low reading comprehension score in his education evaluation corresponds to his low verbal comprehension index score in his psychological evaluation. (T-1 at 50.) Johnson further explained that it is typical for students with autism, like H.R., to have a profile of a "discrepant reading style," wherein reading comprehension tends to be lower, yet the student can attack sight words. (T-1 at 50). Johnson testified that H.R. had made meaningful progress using Wilson but that the Lindamood-Bell approach was also acceptable. (T-1 at 80, 81.)

Johnson is aware of the petitioners' criticism of using the Wilson Reading System program (Wilson System/Wilson program), but she contends it is a multi-sensory reading program incorporating comprehension. For example, in the Wilson program steps, a student will retell and talk about a passage and use visual imagery. (T-1 at 54.)

Johnson testified that, in sum, H.R. had demonstrated academic performance consistent with his cognitive ability, that H.R. has and continues to receive a free, appropriate public education in the least restrictive environment (LRE) appropriate to his needs, and that the IEP offered to H.R. for his sixth-grade year provides FAPE in the LRE. (T-1 at 102; J-52.)

Lindsey Wallach (Wallach) testified on behalf of the District. Wallach has a Bachelor of Arts in Special Education with a minor in Elementary Education. She holds a New Jersey license for Elementary School Teachers in Grades K–6 and Teachers of Students with Disabilities K–12. (T-2 at 6–7; J-81.) Wallach is certified to teach Wilson Reading System (Steps 1–6) and Lindamood-Bell, Visualizing and Verbalizing, and teaches both systems. (T-2 at 8.) She has been a special education teacher in the District for fifteen years. She is qualified as an expert in Special Education and Elementary Education, particularly the Wilson Reading System and Lindamood-Bell Visualizing and Verbalizing program. (T-2 at 8.) During her tenure with the District, Wallach taught second through fifth grades in in-class and pull-out resource classes. (T-2 at 6.) During the 2023–24 School Year, Wallach was H.R.'s fifth-grade language arts teacher. She previously taught H.R. in second grade during the 2019–2020 remote instruction school year. (T-2 at 9; J-81.)

Wallach explained that iReady is a tool used to indicate a student's reading level and how they perform in reading and math at that time. It is a benchmark assessment administered to students at the beginning, middle, and end of the school year to measure academic growth. (T-2 at 14.)

Wallach testified that each stage of the Wilson System focuses on "encoding, decoding, word study, foundational reading skills, and fluency and comprehension." The Wilson program records progress through reading comprehension questions at the end

of each section. (T-2 at 17; J-19.) She disagreed with contentions that the Wilson reading program is inappropriate for teaching reading comprehension.

Wallach testified that students with autism generally are better at decoding. She explained that the characteristics inherent to autism include difficulty with expression and understanding, notwithstanding a proficiency with decoding and reading, known as “hyperlexia,” wherein a student reads at a significantly higher reading level but lacks the ability to understand or recall what has been read. (T-2 at 22.)

Wallace explained that H.R.’s fifth-grade December 2023 DRA demonstrated that he progressed from a Level L (in April 2022) to a Level M, associated by the publisher with the end of second grade. Wallach explained that H.R. was only two points away from scoring at the early third-grade level. (T-2 at 27; J-41.) This score corresponds to an overall comprehension at a second-grade level. (T-2 at 30.) Moreover, Wallach stated that H.R.’s fifth-grade iReady Lexile score demonstrated a third-grade level of performance by December 2023, the middle of fifth grade, showing growth from kindergarten and first-grade levels during the prior three years. (T-2 at 28; J-42; J-76.) Results from the iReady test cannot be “fudged” and are not based on subjective input but on answers typed into a computer by the student. (T-2 at 31, 32; J-76.)

H.R.’s failure to make a grade-level leap in a full year does not indicate his failure to make meaningful progress. (T-2) In Wallach’s opinion, H.R.’s performance improved significantly during his fifth-grade year. For example, at the beginning of his fifth-grade year, H.R. provided one-word answers in response to questions. By the end of that year, H.R. could express his ideas in complete sentences. H.R. also grew a great deal socially and would share his personal experiences. (T-2 at 24.)

During her testimony, Wallach described the Lindamood-Bell Visualizing and Verbalizing program as developing concept imagery using pictures. Lindamood-Bell was appropriate, though she also felt that Wilson remained appropriate for H.R. Nevertheless, H.R. began to progress slowly using the Visualizing and Verbalizing program he commenced in spring 2024. (T-2 at 34–38.)

Wallach also reviewed her PLAAFP statement in the May 24, 2024, IEP, opining that it documented meaningful progress during H.R.'s fifth-grade year. A prior version of the IEP did not have express writing goals because writing was taught during general education science and social studies classes. Writing goals were added to the May 2024 IEP because writing would be taught in the special education setting in sixth grade. (T-2 at 42–43.)

Wallach expressed concern about H.R. leaving South River. In her opinion, he is comfortable in South River. She is worried about H.R.'s social and emotional health when transferring to a school with only special education students. By contrast, H.R. has social opportunities at South River with all his peers, including special education students and neurotypical general education peers. (T-2 at 50–52.)

Dana Morris (Morris) testified on behalf of the petitioners. She is employed by the Newgrange School as a Supervisor of Curriculum and Instruction. She has taught the Wilson System for sixteen years and is a New Jersey-certified Teacher of Students with Disabilities. (T-2 at 114.) As Supervisor of Curriculum and Instruction at Newgrange School, Morris determines the appropriate methodology to address the needs of the approximately ninety students who attend the Newgrange School annually. (T-2 at 123.)

Morris testified that at the Newgrange School, she would not choose Wilson Reading for a student who can decode but cannot comprehend. For a comprehension deficit, “a comprehension program is needed more than a decoding and encoding program.” (T-2 at 120.) Wilson Reading, in her opinion, is not such a program. (T-2 at 121.)

Dr. Jeanne Tighe (Tighe) testified on behalf of the petitioners. She is a speech-language pathologist who is a qualified expert in speech pathology, assessing, diagnosing, treating, and intervention for students with oral and written language-based learning disorders, and the Wilson Reading System. (T-3 at 37.)²

² Most of Tighe's testimony is summarized in the joint stipulation of facts above.

Tighe has a Bachelor of Science in Education of the Deaf and Hard of Hearing, a Master of Arts in Speech-Language Pathology, and a Doctorate of Speech-Language Pathology. (T-3 at 6; J-65.)

She is a New Jersey-licensed speech and language pathologist and a school-certified speech-language specialist. She is credentialed to work in public schools as a speech-language specialist. (T-3 at 6.)

Tighe testified that she reviewed H.R.'s files, spoke to his parents, and visited his school before preparing her report. She did not meet with the child study team (CST) to discuss H.R.'s IEP, nor did she meet with his teacher or case worker. (T-3 at 105,106; 142.)

Tighe opined that the District's program was inappropriate for H.R. After reviewing the April 25, 2024, IEP, which included Lindamood-Bell Visualizing and Verbalizing reading instruction, Tighe testified that it remained her conclusion that the District could not meet H.R.'s educational needs. (T-3 at 140–144.)

T.R., H.R.'s mother, answered several questions to provide background information. She indicated she was very concerned about H.R.'s reading comprehension troubles. (T-3 at 169.)

T.R. testified that from second to fifth grade, H.R.'s IEP said his strengths are decoding, and his weaknesses are in reading comprehension. (T-3 at 182.)

T.R. explained that the District told her that H.R. was progressing well with the Wilson Reading system. (T-3 at 185.) However, T.R. does not believe that the Wilson Reading system helped H.R. in reading comprehension and thought the Lindamood-Bell Reading program was appropriate for H.R. (T-3 at 187–189.) On January 5, 2024, the District offered to add thirty minutes, two times weekly, of Lindamood-Bell instruction to H.R.'s curriculum. She rejected this proposal, instead requesting that H.R. attend the Lindamood-Bell Center at the District's expense. (T-3 at 212; J-7.)

During cross examination, T.R. stated, “I don’t want anything from [the District] anymore. They wasted [H.R.]’s time. . . . For three years they gave him Wilson. They are still digging in their heels that Wilson is the right program for him. No, no thank you.” (T-3 at 212–213.)

Credibility Analysis

It is the obligation of the finder of fact to assess the credibility of the witness' testimony. Credibility is defined as “[w]orthiness of belief; that quality in a witness which renders his [or her] evidence worthy of belief.” Credibility, Black’s Law Dictionary Online, (2d ed.), <https://thelawdictionary.org/credibility/>. “[C]redibility findings. . . are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience. . . .” State v. Locurto, 157 N.J. 463, 494 (1999). It is more than demeanor alone; credibility “apprehends the over-all evaluation of testimony in the light of its rationality or internal consistency and the manner in which it hangs together with other evidence.” Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963).

Having had the opportunity to hear and view all of the witnesses during their testimony and review the exhibits, I accept the testimony from Johnson, Wallach, Morris, and T.R. as credible. Each witness was professional and testified consistently and forthrightly about H.R., whether as case managers, educators, or parents, and their respective work to educate H.R.

I found Tighe’s testimony to be credible based on her professional demeanor and consistency in presenting her statements. Her expertise lies primarily in the field of speech-language pathology. Although she mentioned working with children with autism, it’s important to note that she does not have a role in teaching children with autism. While I accepted Tighe’s testimony, I assigned it limited weight in consideration of these factors.

I also accept Morris’s fact testimony as credible based on the criteria above and my observations of her while testifying. She testified in detail regarding the programs offered at the Newgrange School and her knowledge of the Wilson Reading System and

Lindamood-Bell program. Morris was not qualified as an expert, and her testimony is considered accordingly.

Accordingly, I **FIND** the following additional **FACTS**:

1. H.R.'s academic support for first grade and proposed second grade were reflected in the May 26, 2020, IEP as follows:

(i) ninety minutes five times weekly of pull-out resource replacement in math; (ii) ninety minutes five times weekly of pull-out resource replacement in language arts; (iii) thirty minutes two times weekly of speech-language therapy: individual; (iv) thirty minutes one time weekly of speech-language therapy: group; (v) twenty-five minutes one time weekly in the occupational therapy: group and (vi) thirty minutes three times weekly of supplemental reading instruction starting in second grade.

2. In first grade, H.R. was working on a modified first-grade level. He recognized every sight word learned and could easily identify each word. It is noted in the May 26, 2020, IEP that H.R. made progress with his reading comprehension. Although H.R. required prompting, he could answer comprehension questions when given two options.
3. At the end of H.R.'s first-grade year, H.R. received a report card score of "1" in reading, meaning he was not grasping key concerns, processes, and essential skills.³
4. H.R.'s September 2020 iReady reading comprehension score was 470, which is equivalent to a mid-first-grade level. For the same time period, H.R.'s math iReady score was 417, which is also equivalent to a mid-first-grade level.

³ H.R. spent the majority of his first-grade year receiving remote instruction due to COVID-19.

5. In mid-year second grade, H.R.'s academic support in the February 22, 2021, IEP for the 2020–2021 school year remained the same as proposed in the May 26, 2020, IEP.
6. According to the February 22, 2021, IEP, PLAAFP notes that in speech/language, H.R. “has been participating in virtual speech/language sessions. He is cooperative and enthusiastic about activities. He requires some cues and reminders to remain on task but is easily motivated with a structured session. [H.R.] is working on improving expressive, receptive, and social language skills.” In language arts, H.R. is “working on a modified second grade level with modifications and accommodations to meet his individual needs. He is being instructed using the Wonders Reading Program, Foundations, and Wilson Reading System, used during his specialized reading instruction. . . [H.R.] is able to read and decode at his grade level.” In math, H.R. “is working on a modified second grade level with modifications and accommodations to meet his individual needs.”
7. At the end of H.R.'s second-grade year, his report card showed improvement. H.R. received a “2” in all four marking periods in the reading areas, meaning he is beginning to grasp and apply key concepts, processes, and essential skills. H.R. also earned “2s” and “3s” in all other subjects.
8. H.R.'s academic support for third grade (May 5, 2022, IEP) remained unchanged from the previous year.
9. In mid third grade, according to the May 5, 2022, IEP, PLAAFP notes that in speech/language, H.R. “has been participating in virtual speech/language sessions for the majority of the 20-21 school year. . . [H.R.] answers ‘wh’ questions following videos and conversation with minimal cues. [H.R.] continues to require cues to answer the questions with direct, relevant information.” In language arts, H.R. is “able to answer concrete questions (i.e. Who, what, where when) about a story if he is looking at the book. He often has difficulties recalling details without the text in front of him. In writing, [H.R.]

has done well with writing short stories.” In math, H.R. “has done extremely well in the areas of place value, addition and subtraction, telling time, money, measurements and geometry. He is able to add and subtract 4-digit numbers with and without regrouping. [H.R.] has memorized and mastered learning all of his multiplication facts from 0-9.”

10.H.R.’s April 2021 iReady reading comprehension score was 474, which is equivalent to a first-grade level. His math iReady score was 443, which is equivalent to a mid-second-grade level.

11.At the end of H.R.’s third-grade year, his report card showed H.R. earned an average final grade of B for the year in language arts (between 80–89). H.R.’s other grades included "As," "Satisfactory," and "Outstanding" in his other subjects.

12.Upon entering fourth grade, the CST proposed modifications to H.R.’s academic support in his May 6, 2022, IEP (2022–2023) as follows: (i) decrease Speech-Language Therapy: Individual one day per week and (ii) increase Speech-Language Therapy: Group one day per week.

13.Modifications to H.R.’s May 6, 2022, IEP were explained in the PLAAFP notes. In speech/language, H.R.’s teacher recommended changes to H.R.’s speech therapy. She noted that H.R.:

[h]as improved recall in retail from orally presented stories with visuals. We are working on increasing independence by fading visual cues. H.R. is working on using appropriate syntax and grammar when retelling stories as well as in conversation. Occasionally, [H.R.] demonstrates errors in syntax, however is able to self-correct. In the area of pragmatics/social skills, [H.R.] has greatly increased his overall interaction with peers. He greets his peers and teachers and has been observed asking relevant questions. He requires some cues to stay on the topic, but is always curious and inquisitive. [H.R.] sometimes perseverates on topics of high interest. [H.R.] also produced the /l/ sound in structured tasks as well as mostly in conversation. He demonstrates substitution of /f/ for /th/ (wif for with), but is able

to produce the /th/ sound when prompted. Despite this error, [H.R.'s] speech is intelligible. Overall, [H.R.] has made great progress on his speech and language goals this school year and works very hard.

14. H.R.'s May 6, 2022, IEP reflected his progress in language arts and math. According to the PLAAFP notes, H.R. tested out of phonological awareness and high-frequency words in language arts. He scored a first-grade level in vocabulary, literature comprehension, and informational comprehension, and a second-grade level in phonics. He can answer "WH" questions with future support when text is read aloud. In math, H.R. is at an early third-grade level with a score of 455. This is a 39-point increase and one grade level higher from the 416 he scored in September.
15. H.R.'s fourth-grade interim progress reports show he was progressing satisfactorily in language arts.
16. On his report card at the end of his fourth-grade year, H.R. earned an average final grade of B for the year in language arts (between 80 and 89). His other subjects' grades included As, Bs, Satisfactory, and Outstanding.
17. In the May 1, 2023, IEP, the CST proposed modifications to H.R.'s academic support for the upcoming fifth-grade school year (2023–2024): (i) decrease in-class resource: math ten minutes per week; (ii) decrease Speech-Language Therapy: Group one day per week; and (iii) decrease Occupational Therapy: Group.
18. The modifications to H.R.'s May 1, 2023, IEP were explained in the PLAAFP notes. Specifically, in Speech/Language, H.R.'s teacher recommended a change in H.R.'s speech therapy. She noted that H.R.:

[h]as shown progress towards all of his speech and language goals. . . . [H.R.] is able to answer concrete "wh" questions after listening to a few sentences. He requires visual and verbal cueing when the story is longer in length and contains more details. . . . [H.R.] has made some progress in regard

to inferencing skills. He continues to require verbal cueing to make inferences. He is able to identify the main idea of a short story but requires prompting to identify the supporting details. . . . In regard to pragmatics skills, [H.R.] has made great progress. He is able to initiate a conversation and maintain it for more than 2 exchanges.

19. In language arts, H.R. is:

[w]orking on a modified grade curriculum. He has been exposed to vocabulary and comprehension strategies taken from stories read during whole group and small group instruction. . . . [H.R.]’s strengths are in distinguishing individual sounds and spoken words, decoding multi-syllable words, recognizing frequently occurring words, synonyms, and antonyms, identifying cause and effect relationships and literary text, as well as, with support, identifying the main idea, compare and contrast, and identifying reasons that support points in informational text. [H.R.] is working on developing proficiency with [] below grade level texts in skills such as, asking and answering “WH” questions, sequence of events, making inferences, determining word [meanings], and using general academic and domain-specific vocabulary words to make real-life connections.

20. H.R.’s fifth-grade progress report stated that he was “progressing gradually” or was “progressing satisfactorily” toward all goals and objectives.

21. In November 2023, the District updated H.R.’s IEP to include the results of the three evaluations conducted but did not change H.R.’s academic support.

22. On January 5, 2024, the CST met to assess H.R.’s progress, review and revise his fifth-grade IEP (for the school year 2023–2024), and address H.R.’s parents’ request that he attend Lindamood-Bell Center in the afternoon.

23. Following the January 5, 2024, CST meeting, the District offered to provide H.R. Lindamood-Bell Visualizing and Verbalizing Language instruction three times weekly for the remainder of H.R.’s fifth-grade school year.

24. H.R. didn't begin receiving Lindamood-Bell instruction until April 2024 due to his parents' delayed consent.

25. On April 25, 2024, the District prepared a draft IEP for H.R.'s sixth grade (2024–2025 school year). It proposed an increased pull-out, supplemental Lindamood-Bell reading instruction for five days per week, weekly, and summer instruction.

26. Specifically, the draft April 25, 2024, IEP proposed:

(i) eighty-six minutes five times weekly in pull-out resource replacement in language arts; (ii) forty-five minutes five times weekly pull-out supplementary instruction: reading; (iii) eighty-six minutes five times weekly in supplemental resource: math; (iv) eighty-three minutes five times weekly in supplemental resource: science; (v) eighty-three minutes five times weekly in supplemental resource: social studies; (vi) thirty minutes two times weekly of speech-language therapy: individual; (vii) thirty minutes one time weekly of speech-language therapy: group; and (viii) thirty minutes two times monthly of counseling; (ix) fifteen minutes one time monthly in the occupational therapy: group; and (x) summer 2024 one hundred and twenty minutes five days weekly of Lindamood Bell instruction.

27. The draft April 25, 2024, IEP PLAAFP noted that H.R.'s iReady April 2024 reading comprehension score showed second-grade-level performance.

28. The petitioners sent Tighe's report to the District in May 2024. After review, the District did not agree that out-of-district placement at a special education school was the best placement for H.R.

29. The District adjusted the proposed April 25, 2024, IEP for the 2024–2025 school year, issuing a revised version on May 24, 2024.

30. The May 24, 2024, IEP repeated the recommendations in the April 25, 2024, IEP and proposed an additional extended school year program:

(i) one hundred and twenty minutes four days weekly of Lindamood Bell; (ii) thirty minutes one time weekly of speech-language therapy: group; (iii) thirty minutes one time weekly of speech-language therapy: individual; and (iv) two hundred and forty minutes four days weekly supplemental reading instruction; and (v) thirty minutes two times weekly of speech/language therapy- integrated -individual.

DISCUSSION AND CONCLUSIONS OF LAW

Under the Individuals with Disabilities Education Act (IDEA), 20 USC § 1401, et seq., federal funds are available 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'l High Sch. Dist., 116 N.J. 30, 34 (1989). As a recipient of federal funds under the IDEA, the State must have a policy ensuring that all children with disabilities receive a 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.

The local public school district is responsible for delivering special education and related services. See N.J.A.C. 6A:14-1.1(d). During any such related hearing, the District has both the burden of proof and the burden of production. N.J.S.A. 18A:46-1.1. To meet its obligation to deliver FAPE, the school district must offer H.R. "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. 386, 403 (2017).

For a school district to provide FAPE to a disabled child under the IDEA, they must develop and implement an IEP—a "comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs." Sch. Comm. of Burlington v. Dep't of Educ. of Mass., 471 U.S. 359, 368 (1985). An IEP is to be developed by a district's child study team in conjunction with the child's parents. See N.J.A.C. 6A:14-2.3; N.J.A.C. 6A:14-3.7(b). It must contain:

[a] statement of detailed measurable annual academic and functional goals that shall be related, as appropriate, to the New Jersey Student Learning Standards through the general education curriculum unless otherwise required according to the student's educational needs, or appropriate, student-specific functional needs. For all students, the annual academic and functional goals shall be measurable and apprise parents and educational personnel providing special education and related services to the student of the expected level of achievement attendant to each goal.

[N.J.A.C. 6A:14-3.7(e)(2).]

From H.R.'s first- through sixth-grade years, his CST proposed ten different IEPs to address H.R.'s varying academic needs. With each successive IEP, the CST tracked H.R.'s progress, identified goals for H.R., and modified each subsequent IEP accordingly, particularly in reading and speech/language. They also added goals and objectives in other areas, including writing, mathematics, science, and social studies. The District regularly advised H.R.'s parents, T.R. and J.R., about H.R.'s IEP goals and objectives. The CST documented H.R.'s progress on each subject through timely progress reports, quarterly report cards, and IEP meetings, demonstrating the District's ongoing efforts to meet H.R.'s needs. The CST developed each IEP to advance H.R.'s academic growth.

As H.R. progressed, the CST modified H.R.'s IEP to specifically fit H.R.'s needs. For instance, based on H.R.'s progress in speech/language and his teacher's recommendation, H.R.'s individual therapy was decreased, and his group therapy increased, as reflected in his May 6, 2022, IEP. Also, after the District conducted the educational, psychological, and speech/language evaluations in late 2023, the CST increased H.R.'s pull-out supplemental reading instruction from twice to three times weekly. The District also proposed, at H.R.'s parents' request, adding Lindamood-Bell instruction to assist H.R. in reading comprehension.

Last, after receiving and reviewing Dr. Tighe's report, the District adjusted the proposed April 25, 2024, IEP for the 2024–2025 school year and issued a revised version on May 24, 2024, which included additional supplemental reading instruction and an extended school year program. It is evident that the District's continuous review and modifications to H.R.'s academic support were done to advance his education.

Petitioners' argument regarding H.R.'s reading comprehension ability—equating it to a lack of progress—is not availing here. A student's slow progress, on its own, does not indicate that an IEP was deficient. See K.D. v. Downingtown Area School. Dist., 904 F.3d 248, 255 (3d Cir. 2018). The inquiry is whether the IEP is reasonable, not whether it is ideal. Ibid. (citing Endrew F. Douglas Cnty. Sch. Dist. RE1, 580 U.S. 386, 399 (2017)). Based on the review of the case, the IEPs the District provided were reasonable.

Evidence and testimony indicate that H.R. has shown appropriate progress considering the circumstances. As mentioned earlier, I found Johnson's testimony credible and convincing. Johnson noted that H.R. has displayed academic performance consistent with his cognitive ability. Specifically, students with autism, like H.R., often have a "discrepant reading style," where reading comprehension tends to be lower, but the student can recognize sight words. This aligns with H.R.'s test scores and supports Johnson's opinion.

In addition, H.R.'s second- and fifth-grade language arts teacher, Wallach, confirmed that H.R.'s performance improved significantly during his fifth-grade year. For instance, at the beginning of his fifth-grade year, H.R. provided one-word answers to questions. By the end of that year, H.R. was able to express his ideas in complete sentences. This progress aligns with the educational goals set in the 2023–24 IEP. H.R.'s iReady test scores from 2021 through 2024 also show an improvement from first-grade level to second-grade performance. Although the progress is slow, it is still progress.

In the October 30, 2023, psychological evaluation, H.R.'s verbal comprehension index score showed improvement from his extremely low preschool psychological evaluation. Johnson noted a significant improvement in his cognitive functioning. H.R.'s teacher mentioned in the 2023–24 PLAAFP that H.R. has increased his peer interaction. Transferring schools may negatively impact his socialization.

Petitioners never outright rejected any of H.R.'s IEPs.⁴ While this is not decisive, it indicates that H.R.'s parents agreed with H.R.'s educational support. H.R.'s parents raised concerns during IEP meetings, and these concerns were heard and reflected in the IEPs themselves. The parents were active participants throughout the process, and the CST appropriately modified H.R.'s IEP.

Based on the joint stipulation of facts and the evidence presented, I **CONCLUDE** that the District met its burden in establishing that the May 24, 2024, IEP proposed by the District offered H.R. a free and appropriate public education with the opportunity for meaningful educational benefit and meaningful progress in light of H.R.'s circumstances.

The IDEA also includes a mainstreaming component in describing a FAPE, which consists of an education in the least restrictive environment. S.H. v. State-Operated Sch. Dist. of City of Newark, 336 F.3d 260, 265 (3d Cir. 2003). “The least restrictive environment is the one that, to the greatest extent possible, satisfactorily educates disabled children together with children who are not disabled, in the same school the disabled child would attend if the child were not disabled.” Carlise Area Sch. v. Scott P., 62 F.3d 520, 535 (3d Cir. 1995); 20 U.S.C. §1412(a)(5)(A). As such, the IDEA provides that when possible, the IEP must be designed so that the child may “be involved in and make progress in the general education curriculum.” 20 U.S.C. §1414(d)(1)(A)(i)(IV).

By maintaining H.R. in-district, the IEP delivers services to him in the “least restrictive environment.” 20 U.S.C. § 1412(a)(5)(A) mandates that

[t]o the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

⁴ Although J.R. signed the January 5, 2024, IEP, he noted, “even with this change, I do not believe the District’s program is appropriate.”

Here, a placement within H.R.'s school district, where he is already socially acclimated, allows him to interact within the mainstream of his local community and is consistent with the concept of the least restrictive environment.

I **CONCLUDE** that the District, in this case, has proven by a preponderance of the competent and credible evidence that the IEP proposed by the District offered H.R. a free and appropriate public education with the opportunity for meaningful educational benefit appropriate in light of H.R.'s circumstances, within the least restrictive environment. To the extent that I have concluded that the District has provided a FAPE to H.R.⁵, and for the reasons expressed above, the appropriateness of a placement at Newgrange School is irrelevant.

ORDER

It is **ORDERED** that because the District provided H.R. with a FAPE, an out-of-district placement for H.R. is **DENIED**. Any request for compensatory relief is also **DENIED**.

⁵ I determined that the District met its burden under the IDEA and Section 504 of the Rehabilitation Act of 1973.

This decision is final pursuant to 20 USC § 1415(i)(1)(A) and 34 CFR § 300.514 (2024) 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 (2024). 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.

October 2, 2024

DATE



NICOLE T. MINUTOLI, ALJ

Date Received at Agency:

Date Mailed to Parties:

NTM/dw

APPENDIX

Witnesses

For petitioner:

Dana Morris
Dr. Jeanne Tighe
T.R.

For respondent:

Amanda Johnson
Lindsey Wallach

Exhibits

Jointly submitted:

- J-1 speech/language evaluation, March 29, 2018
- J-2 psychological evaluation, April 12, 2018
- J-3 educational evaluation, April 20, 2018
- J-4 IEP—re-evaluation eligibility determination with IEP, April 24, 2018
- J-5 IEP—an annual review, February 28, 2019
- J-6 speech therapy outpatient evaluation, June 17, 2019
- J-7 K. Urrutia Notes, 2019–2024
- J-8 MP1 progress report 19–20, October 18, 2019
- J-9 detailed BCBA meeting notes, January 19, 2020
- J-10 MP2 progress report 19–20, January 27, 2020
- J-11 IEP—amended agreement without meeting, May 26, 2020
- J-12 final report card 19–20, June 20, 2020
- J-13 MP1 progress report 20–21, October 15, 2020
- J-14 MP2 progress report 20–21, January 8, 2021

- J-15 IEP—amendment agreement without meeting, February 22, 2021
- J-16 MP3 progress report 20–21, March 11, 2021
- J-17 MP4 progress report 20–21, May 13, 2021
- J-18 final report card, June 23, 2021
- J-19 Wilson progress documents, October 13, 2012– March 4, 2024
- J-20 MP1 progress report 21–22, October 18, 2021
- J-21 MP2 progress report 21–22, January 7, 2022
- J-22 MP3 progress report 21–22, March 14, 2022
- J-23 IEP—amendment agreement without meeting, May 5, 2022
- J-24 IEP—an annual review—May 6, 2022
- J-25 MP4 progress report 21–22, May 17, 2022
- J-26 H.R. final report card 21–22, June 22, 2022
- J-27 MP1 progress report 22–23, October 24, 2022
- J-28 MP2 progress records 22 to 23, February 3, 2023
- J-29 IEP, May 1, 2023
- J-30 MP3 progress report 22–23, May 8, 2023
- J-31 final report card 22–23, June 21, 2023
- J-32 IEP progress report 2022–2023, June 21, 2023
- J-33 PT3 re-eval, October 6, 2023
- J-34 speech re-eval, October 13, 2023
- J-35 MP1 progress report 23–24, October 20, 2023
- J-36 Triennial educational re-eval, October 30, 2023
- J-37 psychological re-eval, October 30, 2023
- J-38 reading evaluation—iReady, November 16, 2023
- J-39 IEP—re-evaluation eligibility determination with IEP, November 20, 2023
- J-40 MP2 report card 23–24, December 11, 2023
- J-41 Fall 2023 DRA score, December 15, 2023
- J-42 ELA iReady scores, December 20, 2023
- J-43 Megan Bowlin Center Dir. recommendation Lindamood-Bell, December 22, 2023
- J-44 Learning ability evaluation summary—Lindamood-Bell, December 22, 2023
- J-45 IEP final (17) pages, January 5, 2024
- J-46 Dr. Jimenez diagnosis and treatment, January 11, 2024

- J-47 due process and attachment filed by parents, January 22, 2024
- J-48 District's answer to due process, February 2, 2024
- J-49 Gaines to Harrison letter, February 26, 2024
- J-50 updated CBA notes, March 6, 2024
- J-51 comprehensive oral and written language evaluation Dr. Tighe, March 8, 2024
- J-52 IEP—the annual review, April 25, 2024
- J-53 Gaines to Harrison letter, May 7, 2024
- J-54 staff response to Dr. Tighe's report, May 15, 2024
- J-55 Score report from the District educational evaluation dated November 1, 2023 (received May 23, 2024)
- J-56 Score report 2 from the District educational evaluation dated November 1, 2023 (received May 24, 2024)
- J-57 IEP—assess progress and review or revise IEP, May 24, 2024
- J-58 Dr. Tighe IEP review letter, May 24, 2024
- J-59 Gaines to Harrison letter, May 29, 2024
- J-60 amended petition for due process, May 30, 2024
- J-61 DRA documents, June 11, 2024
- J-62 answer to amended petition for due process, June 11, 2024
- J-63 progress report 23–24, June 20, 2024
- J-64 ASHA scope of practice in speech-language pathology
- J-65 CV—Dr. Jeanne Tighe
- J-66 Wilson reading evidence of program effect (from District records)
- J-67 Wilson tiers
- J-68 CV—Dana Morris
- J-69 academic resources—Newgrange School
- J-70 student copy Sea Turtles lesson 25 DMS
- J-71 Wilson reading system scope and practice 1–6
- J-72 CV—Kim Urrutia
- J-73 Wilson certificates
- J-74 Newgrange website information packet—Bates stamped
- J-75 scholastic description of the book—Number of Stars
- J-76 Pearson DRA chart

- J-77 implementation—Wilson language training corporation
- J-78 CV—Lisa Hinz
- J-79 CV—Amanda Johnson
- J-80 CV—Laura Trippodi
- J-81 CV—Lindsey Wallach
- J-82 CV—Monica Neves
- J-83 Woodcock RPI table
- J-84 IEP, February 19, 2020
- J-85 DRA busy helpers
- J-86 Dana Morris Wilson credentials
- J-87 Newgrange WADE documents
- J-88 Gaines to Harrison letter, July 17, 2024