

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

**FINAL DECISION**

OAL DKT. NO. EDS 9112-17

AGENCY DKT. NO. 2017-26303

**S.R. AND M.R. ON BEHALF OF J.R.,**

Petitioners,

v.

**FRANKLIN TOWNSHIP BOARD**

**OF EDUCATION,**

Respondent.

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**Adam P. Wilson**, Esq., for petitioners (Hinkle, Fingles & Prior, PC, attorneys)

**Amelia Mauriello Lolli**, Esq., for respondent (Connor, Weber & Oberlies, attorneys)

Record Closed: January 24, 2018

Decided: April 9, 2018

BEFORE **LISA JAMES-BEAVERS**, ALJ:

**STATEMENT OF THE CASE**

This case arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1401–1484(a). J.R. is a thirteen-year-old student who is eligible for special education and related services under the IDEA. Petitioners Mr. and Mrs. R. filed a petition for due process alleging that respondent Franklin Township Board of Education (Franklin or the District) failed to provide J.R. with a free appropriate public education. Specifically, petitioners allege that J.R. was the continued target of harassment,

intimidation, and bullying for the entire 2016–2017 school year, and as a result he has been unable to make meaningful educational progress. They also allege that the District did not comply with J.R.’s 504 plan and that J.R.’s speech-only individualized education program did not meet his needs. They allege that he needed an IEP with the classification of “autistic.” Petitioners seek an order granting an out-of-district placement. Franklin counters that its IEP and 504 plan provided J.R. with a free appropriate public education in the least-restrictive environment, and there is no reason for an order granting an out-of-district placement.

### **PROCEDURAL HISTORY**

Petitioners filed a due process petition with the Office of Special Education Programs on May 26, 2017, alleging that the individualized education program (IEP) offered to J.R. failed to provide a free appropriate public education (FAPE) in the least-restrictive environment because J.R. has been classified “speech-language” rather than “autistic”; J.R. has failed to make reasonable progress in the District’s Main Road School; and the IEP has not addressed his deficits. In addition, J.R. and his parents have complained of harassment, intimidation, and bullying (HIB), but the school district has not addressed their concerns. Petitioners allege that procedural violations by the District and its child study team rose to a denial of FAPE. These violations are alleged to have frozen the parents out of participating in the educational decision-making process.

After filing the due process petition, petitioners unilaterally placed J.R. at New Grange, but their claim for reimbursement for the costs of their unilateral placement at New Grange was not included in the petition, and the District’s requests for discovery regarding the placement were unanswered, so I granted the District’s motion to exclude witnesses from New Grange from testifying as to the appropriateness of their school for J.R. after hearing oral argument on December 8, 2017. (See Order on Motion to Exclude Testimony dated December 13, 2017.)

I heard the case on October 30, 2017, November 1, 2017, December 18, 2017, and December 20, 2017. The record closed after confirmation that the documents that made up the record and the written summations had been submitted.

### **FACTUAL DISCUSSION**

The following is undisputed and therefore **FOUND** as **FACT**. J.R. is a ten-year-old student who resides in Franklinville, which is in the Franklin Township School District, Gloucester County. Franklin deemed J.R. eligible to receive special-education services under the classification category “speech-language” pursuant to the IDEA. Franklin also provided J.R. with a 504 plan pursuant to the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. 794(a). J.R. has been attending the District’s Main Road School in Newfield, New Jersey. Franklin determined that J.R. needs academic supports and accommodations, which it believes can be provided by the 504 plan in the Main Road School.

J.R. had a 504 plan for autism spectrum disorder (ASD)/anxiety. His fourth-grade 504 plan for the 2016–2017 school year (R-14<sup>1</sup>) had accommodations as follows:

**Physical Arrangement of Room:** Seating near a positive role model; seating in the front row/close to primary instructional area; avoiding distracting stimuli.

**Lesson Presentation:** Breaking longer presentations into shorter segments, as needed.

**Assignments/Worksheets:** Giving extra time to complete tasks, as needed; breaking work into smaller segments, as needed; use of timers for transitions, as needed; classroom teachers letting J.R. know that he is always allowed to take extra time to finish assignments and that there will be no penalty for doing so, as to reassure him that he is not breaking any rules or getting “in trouble.”

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<sup>1</sup> Although witnesses testified that there was no change in the 504 Plan from third grade to fourth grade, Exhibit R-14, headed as the Grade 4 504 Plan, has social-skills group counseling, but leaves out the wording “on a weekly basis” as set forth in the Grade 3 504 Plan, which is Exhibit Q in petitioner’s binder. Exhibit Q is signed, whereas Exhibit R-14 is not signed.

**Test Taking:** Allowing extra time for classroom tests, as needed; extended time accommodations during standardized testing; note that small group administration is not necessary; as a result of test anxiety, J.R. will be provided the opportunity to retake tests on which he scores a 70 or below.

**Organization:** Weekly communication with parents regarding academic progress and emotional/behavioral changes; providing student with a homework assignment notebook.

**Behaviors:** Praising specific behaviors; allowing for short breaks in between assignments (as needed); implementing a classroom behavior management system; allowing student time out of his seat to run errands, etc.

**Special Considerations:** School counselor will meet with student for social-skills group counseling; allow student to take transition breaks at the water fountain or counselor's office, as needed; providing social-skills group experiences; note that J.R. struggles with being assertive in the classroom and is often triggered by confrontation or when others break the rules. J.R. may need to be asked if everything is okay to ensure success in small group settings and to avoid emotional meltdowns as a result of a change in routine/structure.

**Discipline:** This student's Section 504 Disability would not cause him to violate school rules.

J.R. had a Speech/Language IEP dated June 6, 2016, that was based on a speech evaluation from September 28, 2015. It provided that "his pragmatic language skills do not appear to be negatively impacting him at this time." Therefore, the IEP focused on articulation to improve his precision and accuracy of /r/, vocalic-r and r-blends. It recommended continued speech therapy. He was to get a ninety-minute session once per month with a small group. (R-13 at 0085.) The IEP notes that services may also be performed within the classroom to monitor carryover of learned skills into various academic settings within the school. It notes in the evaluation summary that "with J.R.'s inability to produce developmentally appropriate phonemes,

his academic achievement may be negatively impacted as his workload increases and oral presentations are assigned.” (R-13 at 0079.) J.R. had speech goals and objectives that were to be accomplished by June 6, 2017. He did not have any modifications or supplementary aids or services. He did not have modifications or accommodations in the IEP for State or District assessments. Progress reports were to be given three times per year. There were no parental requests noted, and Mrs. R. signed off on the IEP.

J.R. has been an excellent academic student. His third-grade year (2015–2016) had gone well, so no changes were made to the IEP or 504 plan for the fourth-grade (2016–2017) school year. J.R.’s parents were in frequent email contact with J.R.’s teachers, his counselor, and the principal regarding difficulties with social interactions that J.R. had in fourth grade.

## **TESTIMONY**

### **For Respondent**

#### **Barbara Dobzanski**

Barbara Dobzanski was J.R.’s case manager on the child study team. She is a school psychologist with a supervisor certification. She was qualified as an expert in the areas of special education, program development, implementation, IEPs, and school psychology. She was also the HIB co-coordinator with Mr. Peters. She worked at the Main Road School, which houses third and fourth graders. She oversaw the billing reports and coordinated training on HIB. She creates the HIB report for the board, and the superintendent signs off on it.

When Ms. Dobzanski is a student’s case manager, she writes the IEP. She writes approximately 180 IEPs per year, and attends initial IEP meetings. When a student has a speech-language-only IEP, she could attend the meetings, but she is not required to do so. There are less stringent requirements on who attends 504 meetings.

Referrals can come from parents, teachers, and the Department of Child Protection and Permanency. Parents are welcome to attend. The full child study team must be at an initial identification meeting. Most of the out-of-district placements she sees are for significant behavioral difficulties with high functioning students; The rest are severely autistic students. The purpose of an IEP is to determine what the child needs and set goals that are appropriate to close the gap created by the disability. They try to exhaust all programs they have before sending a student out of district. She met J.R. in pre-kindergarten when the parents were referred due to speech concerns. He was referred again in second grade by the parents. In second grade they decided not to test him, and created a 504 plan. (R-22.)

On July 7, 2017, petitioners were sent an invitation to a special-education evaluation and, if referred, a planning meeting. The date of the meeting was July 18, 2017. Petitioners attended the initial identification meeting on July 18, 2017, with all the members of the child study team. Petitioners presented their concerns, which were discussed at the meeting. They presented the report of an outside neuropsychologist. Pieces of the report were taken and included in the resulting document, along with teachers' input. Teachers gave feedback over email. There was a new diagnosis of Asperger's syndrome.

The annual-review IEP indicated that J.R. was eligible for speech-language services for articulation. His pragmatic language skills were not impacted. J.R. did not have an annual review at the end of fourth grade due to the petitioners' filing of the due process petition. The parents did not attend the reevaluation planning meeting. The same services were offered. The team did not recommend out-of-district placement, because it is the most restrictive, and there is no access to typically developing peers.

Ms. Dobzanski reviewed the petition for due process and addressed the allegations therein. (R-1.) She never received complaints of bullying from the parents. She was not aware of J.R. being bullied or his suicidal ideations. Regarding the allegation that petitioners were frozen out from participating in the planning, petitioners attended every meeting and she was with them. She was always available and the parents could always call her. Ms. Dobzanski had no notice that the parents felt they

could not talk to her or that they felt excluded. The District did find J.R. eligible and gave him an IEP with services. They found that he was not entitled to a classification of autistic because he must be found eligible by the criteria, and then they must determine that his condition adversely affected his performance. There are many children who are autistic and have attention deficit hyperactivity disorder (ADHD) and do not have an IEP. Their areas of weakness can be addressed without an IEP through a 504 plan. Regarding counseling, the District never refused to give J.R. the counseling the petitioners requested.

Ms. Dobzanski noted an example in which the mother reached out to her asking for assistance in selecting a teacher. (R-65 at 703.) She considered the mom's letter and made recommendations. She does take into consideration a parental request for a teacher depending on the reason. She gave the opinion that J.R. received a meaningful education, after reviewing all the data on him. The petitioners never had any concerns and there were many referrals. She did not hear anything from the parents in the last two years. She does not believe an out-of-district placement would be appropriate for J.R. There are more advanced classes in-district, and he made more than adequate progress.

On cross-examination, Ms. Dobzanski indicated that there was never an HIB investigation related to J.R. to her knowledge. A parent does not need to file a form online. It is sufficient for a parent to tell a teacher. She did not see exhibit P-1, the letters written by J.R., until petitioners had filed for due process. She does not know what the school's response was. Typically letters like that do not go into the student's special-education file or discipline file. She knows that there was a problem that Dr. Benson looked into as a conflict between students. She did not get a copy of any report documenting that conflict.

Ms. Dobzanski did not get a copy of Dr. Woldoff's report until after petitioners had filed for due process, so her recommendations were not adopted in an IEP or 504 plan for J.R. (P-2.) There is a difference in the eligibility standard between the two. For a 504 plan, there needs to be a diagnosis and an impact on a major life activity. For an IEP, there must be a need for special-education services. If socialization skills

adversely impact a student's educational performance, there could be a need for services. Dr. Woldoff recommended a functional behavior assessment (FBA) for J.R. (P-2 at 17.) The District did not complete an FBA, but they discussed the need to do it. The parents agreed that it was not going to be done. The initial request for a 504 plan was done at the request of the petitioners. She agreed that a student can receive special-education services based on emotional and social difficulties, and that J.R.'s teacher noted J.R.'s difficulty interacting with peers in the last two years. She is not aware of emotional or social difficulties prior to that time. There were IEP meetings before that time, and she never heard of difficulties that J.R. was having with peer interactions. They were first brought to her attention after the challenges in July. Petitioners filed for due process in May.

Ms. Dobzanski believes that there was a change to J.R.'s teacher made in the third grade, but she does not know if J.R.'s teacher was changed in response to a letter that the petitioners sent on June 16, 2014. (R-66.) J.R. had a very good second-grade year. The child study team did not dispute the diagnosis of autism or general anxiety disorder, but J.R. did not qualify for the classification of autistic because they did not feel that his autism significantly interfered with his performance. What he needed could be provided in a 504 plan. Portions of Dr. Woldoff's report were incorporated in the July 18, 2017, meeting.

### Amy Morley

Amy Morley, principal of the Main Road School, testified that she is certified as a principal and supervisor and has an emergency certification for teacher of the handicapped. She has been at the Main Road School for three years. She was previously an anti-bullying specialist in Upper Deerfield for one and a half years. In Franklin, she was trained in HIB policy and involved in bullying investigations. District parents are made aware of the HIB policies on Back-to-School Night. Ms. Morley was qualified as an expert in the field of HIB policy and procedure.

She became familiar with J.R. and his parents when J.R. was in third grade. At some point, petitioners were not happy with J.R.'s third-grade homeroom and requested

a change. She held a meeting with the petitioners and granted the change. J.R. did very well in the third grade. He did well academically in the fourth grade as well. She received no complaints from the parents regarding J.R.'s academic performance, attendance, or bullying. Regarding the allegations in the due process complaint, Ms. Morley did not agree that J.R. had been the target of HIB. There was one occasion that he was pushed on the ground during recess. She has no knowledge of J.R. having suicidal ideations. If the petitioners had contacted her regarding J.R. having suicidal ideations, she would have followed the crisis procedure and met with them. The parents did come to her with a letter that J.R. wrote and she did an investigation. One letter addressed to Ms. Morley said, among other things, "Why do I need to be in a small group with a kid who's giving me problems? Why does every kid pick on me?" (R-54.) Another letter dated February 9, 2017, said, "I feel like I want to quit school. What these kids have done to me, I feel I want this to end." (R-55.) However, Ms. Morley had prior information that J.R. had made a comment to the students he was complaining about. She and Dr. Loughlin looked into it together. There was minimal information and they were unable to render a conclusion. She could not determine whether the incident happened. She obtained statements of the other students involved. A statement of another student dated February 21, 2017, said "[J.R.] blames me for stuff he does that's wrong and I heard him say the 'B' word." Another student's statement said that "[J.R.] said 'I hope L dies' to a nother [sic] student." (R-53.) Peer mediation was offered, but petitioners did not want it. Ms. Morley did not make an HIB report, nor is she aware of any other staff member making one. J.R. would have been the aggressor if she had filed a report. Threats were not made to J.R., but by J.R. She believes that she had a very good relationship with Mrs. R.

Ms. Morley thought that conflict resolution would help in response to a conflict J.R. had in the classroom. (R-64 at 1.<sup>2</sup>) He was attending counseling to build up his social skills. She always wanted J.R. to be in a class in which he would be challenged. He was a very good student. Ms. Morley allowed J.R. to come in to school early if it would be helpful to him. In September 2015, petitioners applied for school choice. Mrs. R. talked to her about it. They applied to the Upper Pittsgrove and Elk Township

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<sup>2</sup> This number refers to the first page of the exhibit.

school districts. She does not know if J.R. was accepted, but he did not attend either district.

On cross-examination, Ms. Morley recalled conversations about J.R.'s socialization in February 2017. They never did an FBA for J.R. She did not believe that her good relationship with the petitioners changed until she was served with the due process petition. When she asked J.R. what he meant by "wanting this to end," J.R. said that he wanted the relationship between the boys and him to end.

Ms. Morley believes that J.R.'s teachers emailed his parents quite often, as the 504 plan required. (R-14 at 295.) They are able to look at his grades every day. She does not recall a conversation in which she said that the world will not change and J.R. needs to adapt. (R-1.)

#### Melissa Vandine

Melissa Vandine is a fourth-grade English/language arts (ELA) teacher at the Main Road School. She is not a member of the child study team, but she did take part in the formation of J.R.'s 504 plan and saw that it was followed.

J.R. was her student in 2016–2017 for language arts and social studies. She was aware that he had a Speech/Language IEP, as well as a 504 plan. (R-13; R-14.) She testified to the various accommodations in J.R.'s 504 plan as set forth above and how she implemented them. For example, she handed out tickets for good behavior that were traded for prizes. Any disagreement that J.R. had with other students was resolved within five minutes by talking about it. She discussed the 504 plan with Dr. Loughlin at the beginning of the school year.

J.R. did very well in her ELA class. Specifically, J.R.'s DRA, or reading level, was 40 in June 2015 (second grade), 38 in June 2016 (third grade), but 50 in June 2017 (fifth grade). Thus, he was one year advanced over fourth grade.

Neither J.R. nor his parents reported any bullying incidents or suicidal ideations to her. If J.R. had suicidal thoughts, his mother should have immediately contacted the HIB coordinator. Mrs. Vandine tried to follow J.R.'s mom's wishes regarding discipline when Mrs. R. said that J.R. does not handle detention and missed recess well as punishments. There were only a couple of instances in which J.R. had to be disciplined. His attendance was very good.

In reviewing the due process petition, Mrs. Vandine disagrees that J.R. was the target of bullying. She is assigned to recess, and she never saw J.R. pushed to the ground. She does not recall seeing him taunted. J.R. met most if not all standards in the unit assessments. She noted an email she sent in April 2017 regarding the students going around to each classroom to learn and do a craft. J.R. was involved in an incident in which he threatened to stab a student with a pencil. (R-63 at 12.<sup>3</sup>) Later that year, she wrote J.R.'s mother an email that J.R. seemed "a bit off" that day when some girls said that he made inappropriate comments to them, and she had to have him apologize. (R-63 at 389.) In March 2017, J.R.'s mom emailed her that J.R. was upset that the whole class was threatened with losing their recess. She explained that J.R. and many other class members were making fun of another student, and she told them that if they could not learn to get along, they would use recess to practice being kind to one another. (R-63 at 391.) The comment was not directed solely at J.R.

Mrs. Vandine detailed other incidents noted in emails in which J.R. was involved. Specifically, J.R.'s mom emailed her that other students were not sitting with J.R. at lunchtime, and she emailed back that she cannot force other children to sit somewhere in the lunchroom. (R-63 at 392.) Each time J.R.'s parents emailed her, she responded to them. She let them know when J.R. was upset (R-63 at 401), and they sent a document, "My Asperger's Child," to help her and Ms. Kurek understand and work with J.R. (R-63 at 402.) In taking the suggestions in the document, Mrs. Vandine allowed J.R. to move about the classroom, had quiet spots for him to cool off, assigned two buddies to him, and gave warnings to the entire class. She had constant

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<sup>3</sup> Refers to the twelfth page of R-63, as the Bates-stamp number is not readable.

communication with the parents, so she disagrees that they were frozen out of the process.

On cross-examination, Mrs. Vandine reviewed the behavior assessment (BASC-2) she filled out April 7, 2017, in which she noted that J.R. showed the following behaviors often (O) or almost always (AA): 29) Gets upset when plans are changed (O); 49) is easily upset (AA); 94) acts out of control (O); 95) seems unaware of others (O); 96) cries easily (O); 114) easily annoyed by others (AA); 124) complains about being teased (AA); and 131) has trouble making new friends (O). (P-3.) She later explained that J.R. cried if he felt he was going to get in trouble, and often thought a child was teasing him when it was just a look. Mrs. Vandine also reviewed the report of the school psychologist, Ms. Nixon, which noted that, according to her rating form, J.R. was rated high-average for emotional distress, although she denied that she often received emails about J.R. having meltdowns. She agreed that it was not typical to get as many emails as she had regarding one student. In response to the Nixon report, she allowed J.R. to see the counselor and express his feelings when needed.

Mrs. Vandine did not know of any modifications made to the IEP as a result of the document "My Asperger's Child," but believed that they were incorporated into the 504 plan. She would sometimes contact Ms. Morley when J.R. complained of being teased.

Lisa Waechter, Speech/Language Specialist

Lisa Waechter has been employed for twenty-four years as a speech/language specialist in the Franklin Township School District. She is the case manager for students classified as "speech only." She is a member of the child study team; however, she did not provide services to J.R. He would have been her student if he had attended Reutter School. She spoke to J.R.'s previous speech/language therapist in order to perform the evaluation that she was requested to do. Ms. Waechter was qualified as an expert in speech and language.

Ms. Waechter evaluated J.R. over two separate dates, August 7 and 10, 2017. Mr. and Mrs. R. came on the first date, and Mrs. R. came with J.R.'s grandmother on the second date. Ms. Waechter noted J.R.'s background, what she observed, and his testing results, and made recommendations based on the information she gathered. (R-3.) Mrs. R. did not mention any specific concerns, but indicated that J.R.'s problems with social skills were a part of his autism spectrum disorder. Regarding receptive language, she is not sure that he understands everything. Mrs. R. stayed in the room with J.R. on both dates, which is not typical unless the child is younger. Mrs. R. did not give her permission to videotape the evaluation.

Ms. Waechter gave J.R. the Non-Standardized Assessment, which consisted of six tasks: 1) asking for help; 2) the double interview; 3) thinking with our eyes; 4) sequencing pictures; 5) social-scenario pictures; and 6) assessing organizational skills. On one, J.R. did not ask for any help, and spelled his mom's and dad's names wrong. On two, he had trouble identifying the people in a picture she gave him, and could not think of questions to ask her other than the ones that she had already asked him, indicating a limited ability to take another person's perspective. The same problem was noted on task three. He was able to sequence the pictures to tell a story correctly on task four, but had an unusual take on the social-scenario picture in task five. On task six, he seemed to be organized.

Ms. Waechter gave J.R. three standardized tests: the Arizona; the Comprehensive; and the Pragmatic. She heard vocal errors, but, overall, his scores were within normal limits appropriate for his age. She summarized her findings, stating that J.R. does not meet the categorical criteria for speech-language services as per N.J.A.C. 6A:14-3.6, but eligibility and appropriate programming will be determined at his reevaluation review meeting. His scores did not show a significant educational impact. She recommended continued work to strengthen his carryover of articulation skills, help with him being able to ask for help and taking another person's perspective, and assistance with correct grammar.

On cross-examination, she noted that she did not have the opportunity to observe J.R. in the classroom or interacting with peers. Also, she did not review the

BASC-2 reports or speak to the teachers who filled them out. She did see letters from Dr. Beyderman, but only the first two, dated July 20, 2017, and March 2, 2017. Dr. Beyderman recommended applied behavior analysis (ABA) therapy at home for J.R. (P-5.) She did not review the report of speech-language pathologist Tovah Feehan dated April 6, 2017, but would have wanted to see it. (P-6.) She cannot say that it is inaccurate. J.R.'s grammar assessment of 25th percentile was in the low-average range. She reiterated that she was not J.R.'s speech therapist.

### Melinda Kurek

Melinda Kurek was J.R.'s fourth-grade math teacher in the 2016–2017 school year. She has a certification in special education and a bachelor's degree in elementary education and biology. She is familiar with the HIB policy at the Main Road School, where she taught J.R. District parents know how to file a complaint of bullying online. She went to her first child study team meeting for J.R. in October 2017. She did not take part in J.R.'s 504 plan meetings, but she was responsible for following J.R.'s IEP and 504 plan. She makes sure that the accommodations and modifications are followed. She reviews the 504 plan throughout the school year. J.R. was one of her top students in math and science. She was aware of his autism spectrum disorder and articulation issues, but those things did not get in the way of his academic performance in her class.

She communicated with J.R.'s parents by email, and sometimes by notebook if it was something of importance. She gave him breaks and extra time. She praised specific behaviors and gave him time out of his seat if needed, all as required in his 504 plan. (R-14.) She also gave him time to speak to Dr. Loughlin if he requested it. She never witnessed an instance of bullying against J.R. The only complaint she had from the parents was that he was not challenged enough and may be bored. She tried to give him higher level problems and assignments to engage him.

At the October 13, 2017, IEP eligibility meeting, Ms. Kurek reported that J.R. was a top student, but had occasional social-interaction problems with his peers. She testified that those problems had no impact on his ability to perform academically in

class, and called them average fourth-grader misunderstandings. However, the written report of her statements from psychologist Kristin Nixon states that J.R. had difficulty when told that he made an error, and he would argue with her. When his beginning diagnostic math scores were compared with his mid-year diagnostic math scores, he went from a 480 to a 486, and she recommended that he be in an advanced math class so he would be challenged. She recalled that the parents did not make any comments at the October 2017 meeting.

Reviewing the petition, Ms. Kurek did not believe that J.R. continued to be the target of HIB, nor was she aware of him having suicidal thoughts. She read the document Mrs. R. sent called "My Asperger's Child." She saw J.R. get upset occasionally, but he would continue working. She would not call it a "meltdown." Her email exchange with Mrs. R. in December 2016 was that on December 5, 2016, J.R. had an incident with another student, and Mrs. R. asked her to "please separate J.R. and the student." (R-63 at 380.) However on December 6, 2016, J.R. was very upset and crying that the student was still in his math centers, and Mrs. R. said that it was increasing J.R.'s anxiety at home, and he expressed that he did not want to go to school anymore. On December 7, 2016, Ms. Kurek told Mrs. R. that J.R. was fine in class, and she had no idea about any problem. However, she would change groups as soon as she could, which would be the next day.

On cross-examination, Ms. Kurek said that J.R.'s parents reported J.R. having anxiety two or three times, but not meltdowns. In the December 2016 incident, the five students were in the same group, but did not have to work together on the same activity. It was not often that a parent reported that a student did not feel safe and secure, as Mrs. R. did. She acknowledged her report of J.R. in the BASC-2 survey, wherein she acknowledged that J.R. complains of being teased and has poor self-control. (P-3.) Although she never saw all of the psychologist's report, it would not surprise her that J.R.'s score for emotional distress was very elevated. (P-4.) She acknowledged that he generally misunderstood the intentions of other students.

Amie Crain Reed, School Social Worker

Amie Crain Reed testified that she was J.R.'s school social worker for his second-grade year. She is a certified school social worker and was qualified as an expert in that field, as well as social assessments. She has completed hundreds of social assessments. She case-manages approximately forty-five students and makes behavior plans. She does social assessments for three schools, and was housed at Main Road School until January 2015. She left when Main Road got Dr. Loughlin. She completed J.R.'s social assessment in August 2015. (R-4.) The principal also requested a counseling evaluation. She spoke to Mrs. R., and thought that J.R. could benefit from the "social-skills lunch bunch." She would invite him and two other students to give them a chance to discuss things and play games.

Mrs. Caine testified as to her social assessment as part of J.R.'s evaluation plan. (R-4.) J.R.'s parents never complained of bullying, nor did she ever observe it. She reviewed the documents of Dr. Beyderman and the rest of J.R.'s file. J.R.'s parents told her about his siblings. She was at the 504 plan meeting when the plan was put into place. She met with the parents, and they did not discuss behavioral concerns or bullying. At no time did they mention New Grange. Mrs. R. called her one day and said that they would be unilaterally placing J.R. at New Grange. She did not know why he needed to be placed at another school. She did not draw conclusions in her assessment. She only collects developmental history and background. She did not attend the eligibility meeting in which J.R.'s eligibility was discussed.

On cross-examination, she stated that she last saw J.R. in second grade. She read Dr. Woldoff's report before she did her social assessment. She believes that Mr. and Mrs. R. asked her to do so. Although she listed it in her review of records, she did not discuss it in her assessment. She noted in her assessment that with friends, J.R. has one-sided relationships, struggles showing interest in what others are doing, struggles with jokes told by others, and has difficulty seeing in the gray area, according to his parents. (R-4 at 2-3.) She did not see what J.R. wrote about the incidents at school. (P-1, Exhibit U.) She would have documented having seen the letters if they were provided. (R-54; R-55.) She was not told that things like he wrote were

happening. She was provided with the report from Epic Health Services (P-7) at the initial identification meeting. She cannot confirm whether it was in J.R.'s file.

Dr. Lauren Benson (nee Loughlin), Anti-bullying Specialist, Main Road School

Dr. Benson testified that she married in August 2017 and became Dr. Benson. She has a doctoral degree in leadership innovation, a master's degree in school counseling, and a bachelor's degree in psychology. She has a New Jersey certification in school counseling, K-12. She started working full time in Franklin in January 2015 as the school counselor, 504 coordinator, and anti-bullying specialist for the Main Road School. Thus, she was responsible for investigations of HIB in grades three and four. She was also a member of the school safety team to make sure students are not being bullied. Parents can report an HIB incident either by electronic referral, email, or a call. It can be done anonymously. She brought the electronic reporting system to the District. Parents are notified of the system by listening to a PowerPoint presentation.

At Main Road School, if there is a student conflict that regularly occurs, she provides counseling to the students. Situations are investigated as HIB if reported as such. If the situation is reported as a conflict, she takes statements and conducts mediation or counseling. There are seven criteria for HIB, the most pertinent of which are: 1) the incident occurs on school grounds or impacts education; 2) the incident creates a hostile environment or impedes learning; 3) the incident is motivated by a certain distinguishing characteristic; and 4) there is a pattern of recurring conduct. She is not a member of the child study team and does not sit on the IEP team unless counseling is a related service. She was qualified as an expert in HIB policies and procedure and school counseling.

Dr. Benson received J.R.'s 504 plan from his former school when he was in third grade. She requested a meeting to revise it and had J.R.'s parents write recommendations. J.R.'s parents attended the meeting and discussed their concerns about J.R.'s Asperger's diagnosis and provided her with "My Asperger's Child." She does not recall any specific issues with plan development. She took into account all the information to create a plan, and the parents signed off on it for third grade without

revision. (R-22.) Later, J.R.'s parents asked to have J.R. moved from peers whom they felt were negative role models after J.R. was using foul language in the lunchroom. They moved J.R. (R-14.) She never received parental complaints regarding J.R.'s academics or his attendance.

In J.R.'s third-grade and fourth-grade years, his parents would reach out to teachers and they would respond. In September 2016, a leadership club started. Peer leaders would promote positive behavior. She thought it would be good for J.R. However, J.R. did not attend the last three leadership sessions so she assumed he did not want to continue. (R-63 at 939.) There were several incidents when J.R. complained about the conduct of other students, but Dr. Benson found that J.R. instigated the conduct. (R-62 at 2.<sup>4</sup>) Another complaint made was that J.R. was argumentative and speaking loudly to her in leadership club in fall 2016. (R-62 at 4.) He said he was sorry. Continuing with the emails, Ms. Vandine emailed Dr. Benson and the principal that J.R. said that he was going to stab a student with a pencil. J.R. was sent home at Ms. Morley's suggestion. There was no HIB investigation. A teacher reported it, not the student. On February 22, 2017, Mr. Lehrer initiated an email regarding J.R. being disrespectful at his sessions. Dr. Benson would use a whole group session on J.R.'s concerns. She found that J.R. was not getting anything out of their relationship.

The incident that frustrated her was when Ms. Vandine asked her to talk to J.R., and she called him down to her office during morning announcements on or about February 10, 2017. When he did not come, she went to the classroom, because J.R.'s mother said that he was feeling anxious and frustrated. J.R. was in front of the mail office. J.R. said the reason that he did not come is that he had band, and that he would be free after 9:00 a.m. They had spent a lot of time looking for him. She said she was angry because he was being disrespectful. It was one time in two years that she was angry with him. She admitted in cross-examination that autism causes difficulty with changes in his routine, and that day was a change in his routine. He had a substitute teacher and he was upset about being pulled out of band.

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<sup>4</sup> Refers to the second page of R-62, as the Bates-stamp number is not readable.

Dr. Benson noted that in third grade, on or about October 2015, she allowed J.R. to rearrange his seat to sit with students with whom he was friendly. Mrs. R. believed that the students were not positive influences, as J.R. allegedly mouthed a curse. J.R. denied it. It was not an HIB incident. (R-64 at 947.) Also in October 2015, multiple students said that J.R. used the “f” word. No disciplinary action was taken. Mrs. R. felt that the other students were influencing him. (R-64 at 948.) Another accommodation was made to sit J.R. near positive role models in the cafeteria. (R-14.) They switched his homeroom as well. Another privilege they allowed J.R. was to let him have toys at school. They allowed that accommodation at the request of his parents to allow him to play at recess. However, apparently another student took his Lego toys. (R-64 at 685.) Also in October 2015, after lunch he said that he was going to punch a student in the face. (R-64 at 683.) J.R. said students were using words like “stupid” and “dumb” referring to him. (R-64 at 683.)

Dr. Benson denied seeing anxious behavior. Mrs. R. saw things that Dr. Benson did not see. Regarding the petition, Dr. Benson did not receive a report of HIB regarding J.R. She received no report of him being pushed down or taunted by others. If she had heard of J.R. having suicidal thoughts, she would have completed a suicide-risk assessment. She believes that she listened to J.R.’s parents and acted on what they suggested. They moved his lunchroom seat, and provided social-skills training, and she tried to see him each day. None of the incidents she was aware of rose to the level of HIB, in her opinion. She never refused to see J.R. if he asked. She disagrees that he did not get a chance to participate in group counseling.

On cross-examination, Dr. Benson showed counseling dates for J.R. that she prepared for the purpose of litigation from her day planner. (P-82.) The sessions were twenty-five to thirty minutes in length. There were no written goals for the sessions, no baseline, and no indication of whether he was making progress. On page two, she expressed dissatisfaction with his effort. She did not express this to J.R.’s parents. She did not review J.R.’s assessments or the evaluation from Epic Health Services. She never thought J.R. needed an individualized behavior plan. Her opinion is not based on peer-reviewed research. She recalled seeing the letters J.R. wrote. The first letter (R-55), dated February 9, 2017, led to the proposed social-skills group. Her investigation

of the second incident (R-54) consisted of getting J.R. from the lunchroom to discuss what had occurred. The letter followed that discussion. In response to the letter, she proposed a small group with J.R. and the students in the classroom, but he was not comfortable with the intervention. They never had the small-group session. She did not do anything else. She admits that J.R. made no progress in leadership club. He attended seven of the ten meetings. She was aware of J.R.'s autism diagnosis and generalized anxiety disorder. She watched to see if the meltdowns the parents reported at home happened at school. Mrs. R. never reported a specific incident of bullying. For an incident to be HIB, she had to be clear that the student did not have a role in it.

### **For Petitioner**

#### **M.R.**

Mrs. R. (M.R.) is J.R.'s mother. She began having concerns about J.R.'s social interactions when he was eight years old. He needed structure and wanted control over other kids. The second-grade teacher was very helpful in coming to the Asperger's diagnosis. J.R. is very anxious and frustrated. He cries easily and is a target for bullying. He wants to fit in, but does not know how. He is highly intelligent, so academics are not a problem. She tried to have the CST evaluate him, but they unanimously denied him due to the academics. They gave him a 504 plan that includes weekly counseling sessions, but J.R. said that he never saw Dr. Loughlin on a weekly basis, only when he sought her out or she sought him out. The bulk of the incidents were in February 2017.

In December 2016, he began to struggle with the students in math centers. He came home and had meltdowns after holding in his frustrations all day. He said no one will help; no one understands him. He said that conflicts in math centers are common, and that the students made fun of his speech and voice. That same month, a student pushed him to the ground. M.R. reported it to Ms. Vandine and Dr. Loughlin, but she did not see the record of having done so in discovery. J.R. did not have a lunch bunch in fourth grade. She texted her husband to contact the school counselor, then Ms. Morley got upset that her husband yelled at Dr. Loughlin.

In February 2017, J.R. complained of kids mimicking him. Mrs. R. met with Ms. Morley on February 13, 2017, and gave her two pages of conflicts that J.R. was having with his peers in the math centers. Ms. Morley said she would give it to Dr. Loughlin.

On February 23, 2017, J.R. did admit that he used inappropriate language. J.R. has a hard time expressing frustration, and he composed the written statement. (R-55.) M.R. was upset because there were conflicts the year before that she reported, and now the conflicts were recurring. Later in February, she was shocked to find out that Ms. Morley had put J.R. with the same peers. She brought her concerns to her, and Ms. Morley said that she could not move him in fourth grade. Ms. Morley always said that she would reach out to Dr. Loughlin. Ms. Morley only moved J.R. to a different group in the same class. J.R. continued to have conflicts, but Ms. Morley made no other changes after that.

Mrs. R. then sought outside help from Nemours duPont and got an occupational-therapy evaluation and an assessment from Epic Health Services. J.R. was having so many meltdowns that she could not manage him. She believes that J.R. reported bullying. She contacted Dr. Woldoff after being referred by Dr. Beyderman. They confirmed that J.R. has ASD, ADHD and anxiety. Dr. Woldoff recommended that J.R. get an IEP based on his autism. She also asked that an FBA be done. The District never did one. Ms. Dobzanski said that they did not need new reports, and accepted Dr. Woldoff's reports. Mrs. R. did not refuse any assessments the District wanted to undertake.

In addition to being pushed to the ground, J.R. reported to Mrs. R. that a student tried to choke him. J.R. did not want to be labeled a tattletale. He begged her not to go to the school. At the end of the school year, J.R. threatened to harm himself. On June 7, 2017, he started to cry when he came home from school and asked why kids make up things. He said no one will help him. He began to jump up, yell, and scream. He got on the bed and turned the ceiling fan on high so it would hit him. She grabbed the remote and got him off the bed. She put him in the bed with her, and it took him two hours to fall asleep. The next day, she did not send him to school. Mrs. R. contacted

her mom because she is a licensed social worker and in-home therapist. She did not present the incident to the school because there were only seven days of school left.

J.R. now attends another school. Dr. Woldoff recommended other schools, such as Y.A.L.E., which she did not like and did not believe was a good fit for J.R. She decided on New Grange on July 13 or 14, 2017. She sent the letter sent to the District when she decided. J.R. is doing well at New Grange and has friends. At the most recent IEP meeting in October 2017, Mrs. R. did not feel that the District responded to their concerns. J.R. constantly had social problems and brought them to Ms. Morley. Ms. Morley said, "the world is not going to change."

J.R. had a good year in third grade, but fourth grade was worse. The teachers basically said it was "kids being kids." She saw no changes despite all of her communication with the school district.

On cross-examination, Mrs. R. agreed that none of the emails discuss a physical altercation of any kind, such as being pushed to the ground or choked. She said it was an oversight on her part. She did not report that J.R. had threatened suicide, because she did not believe that he was at high risk for self-harm. She did not take him to crisis or outside counseling. Although J.R. said that Ms. Vandine was in the playground when J.R. was pushed to the ground, she has no information that Ms. Vandine saw him get pushed to the ground. She did not request that J.R. be moved in fourth grade the way she did in third grade, when the District complied with the request. The District made modifications to J.R.'s 504 plan based on her suggestions. Although she did not recall making a request of the District not to discipline J.R., Mrs. R. did recall making a request not to take recess away from him. She also recalled telling J.R. not to sit with certain kids.

Mrs. R. testified that none of J.R.'s therapists observed J.R. at school. Brian Lehrer spoke to the teachers, though. Mr. Lehrer discharged the family for lack of compliance and J.R. being disrespectful. He thought Dr. Loughlin could better meet their needs.

Her family applied to a “school choice” school. They declined, however, due to J.R.’s success in third grade. They did not reapply for fifth grade.

Mrs. R. agreed that you cannot force children to be friends. She did not know whether taking J.R. out of school and putting him in a restrictive environment was helpful. She agreed that none of the emails stated that he was being bullied. She cannot say for sure that he was not the instigator of certain incidents. She never filled out an HIB report, but reported her concerns to Mrs. Morley, and reported the push-down incident to Dr. Loughlin. She received the parent handbook with the HIB policy. She did not give the April 17, 2017, evaluation to J.R.’s school when she received it. She does not recall when she gave it to the school. She did not request a change in classrooms during J.R.’s fourth-grade year. She believed that there was no place to move him to other than with the two children giving him problems. She agrees that J.R. has to learn to adapt. She feels that the District did nothing to help J.R. with social skills. She never requested a lunch change in his fourth-grade year.

Sarah Woldoff, Ph.D., B.C.B.A.

Dr. Woldoff testified that she has a doctorate from Drexel University in clinical and health psychology. She has experience in education of students with autism. She consulted with Bancroft and Eden regarding curriculum development. She is nationally credentialed. She has done presentations on autism for many public school districts. She was qualified as an expert in psychology, neuropsychology, autism, and autism education. Although she never worked in a public school and is not certified as a school psychologist, she does autism programming in public schools.

Dr. Woldoff evaluated J.R. on March 26 and April 8, 2017. She began her evaluation by reviewing records from the District and from duPont, and orthopedic evaluations. She always does an IQ test. J.R. was very bright, with an IQ of 129, which is the 97th percentile. She performed the Wechsler Intelligence Scale and there was no perceived cognitive delay. He had high verbal ability and the cognitive ability to exceed in a gifted program. His weakness was in visual-spatial concepts, but he was still in the average range. J.R. was very anxious prior to testing. He had a hard time separating

from his mother, but once he got comfortable with Dr. Woldoff, he was able to talk about his experiences at school. He had articulation deficits. They did not have a back-and-forth conversation, but he answered all of her questions. He was worried about being a “tattletale.” He described himself as a “worrier,” and told her that kids were bullies. He had a difficult time answering her question about whether he had a role in the incidents he complained of, which is common in autism.

Based on her testing, Dr. Woldoff noted that J.R. would have difficulty getting multiple task instructions. He had poor planning skills and a tendency to make the same mistakes again and again. Dr. Woldoff performed the Behavior Assessment System for Children-2 (BASC-2). In the parent rating scale, J.R.’s parents endorsed “clinically significant” concerns in the areas of hyperactivity, anxiety, depression, somatization, atypicality, and withdrawal. They endorsed “at risk” concerns for attention problems only. Regarding J.R.’s adaptive skills, they reported concerns in the areas of social skills, leadership, adaptability, functional communication skills, and adaptive skills. Similarly, J.R.’s teachers endorsed concerns in the areas of hyperactivity, aggression, anxiety, depression, attention problems, and withdrawal. They also both endorsed a number of symptoms in the areas of atypicality and school problems. Adaptive skills were also similar, reporting concerns in the areas of social skills, leadership, adaptability, activities of daily living, functional communication, and adaptive skills. J.R. self-reported in line with his parents and teachers that he has a poor attitude toward school and low self-control. She found that the social aspect of school is having a major impact on him.

Dr. Woldoff concluded that J.R. had ADHD and generalized autism. His social skills impact his daily functioning, although he is cognitively and academically self-sufficient. His anxiety and social deficits impact him at school and in the outside environment. She recommends that he attend a school with a low student-to-staff ratio and where social skills are embedded during the day. She believes that students with autism can help him navigate the social setting. J.R. needs a safe space to take a break from the class. He also needs a visual schedule and labeling of all areas of a classroom. When asked if the then current placement was meeting J.R.’s needs, she responded that he was bored given his academic levels. She believes that more could

have been done to meet his social-skills needs. For one, data collection would have shown if he was improving. An IEP can address the teasing issues, as well as the problem he has reading social cues and taking the other student's perspective. She favors an IEP to the 504 plan because the plan lacked specific accommodations regarding social-skills instruction. He needed an IEP with goals and measurable objectives. J.R. would be classified under autism or other health impaired. The Speech/Language IEP of the District did not adequately address his needs by focusing only on articulation.

Dr. Woldoff also recommends preferential seating, with breaks during longer instruction periods. Dr. Woldoff believes that an FBA can develop a behavior plan to address his needs and collect data on what causes his meltdowns, how long they last, and how often they occur. She recommended the schools in her report because they have specific programs for students with high functioning autism.

Dr. Woldoff testified on cross-examination that she is aware that the District has a gifted program for fifth and sixth graders. She is also aware that the administrative code, N.J.A.C. 6A:14-3.5, requires a speech evaluation and a medical physician for an autism diagnosis. She did not consult a speech/language pathologist. She did not observe J.R. with his peers or in his school. She did not communicate with J.R.'s counselor, his principal, or Mrs. Dobzanski. She reviewed the 504 plan, although her report may not specifically indicate that she did. Although she thinks that J.R. was bullied, she thinks there are times that he may be misreading things. Also, she was unaware that the parents had never filed an HIB report. She reviewed only ten emails between the parents and J.R.'s teachers. She was aware that J.R. worked in small groups, and that is when the behaviors would occur. She does not know what J.R.'s counselor offered. She disagreed that a speech-only IEP would not have goals and objectives because speech is social and he had an articulation-only IEP. The parents signed off on the third-grade 504 plan, and it was repeated for the fourth grade. She did not agree with the language that stated, "as needed," because it was not clear who makes that subjective decision. She did not see evidence of harassment and bullying in any District documents.

Dr. Woldoff agreed that her recommendations for preferential seating, breaks during longer instructional periods, and use of a homework book (P-2 at 15) were reflected in his 504 plan. She was aware that the District had a board-certified behavior analyst (BCBA), but as a consultant, not a full-time employee. The teachers did not use the term “bullied,” but they noted that he was chosen last, was easily upset, and worried. She thought that the FBA that was done at home would be shared with the school. It was not for litigation.

G.S., J.R.’s grandmother

G.S. testified that after retiring, she became an intensive in-home therapist, assisting clients with behavior problems, mental health, autism, and end-of-life issues. She sees J.R. once a week and understands his speech better now than she could in 2016–17. She saw him as very unhappy, isolated, and not having any friends. He told her he was teased because of his speech. She also saw him as anxious and not wanting to go to school. She told his mother to seek outside counseling because J.R. seemed to be getting few services from the school. He was becoming more withdrawn. However, she never spoke to J.R.’s teachers or counselor and never observed him at Main Road School.

Barbara Dobzanski

On rebuttal, Ms. Dobzanski testified that the District did not receive the Assessment and Initial Treatment Plan by EPIC Health Services dated April 3, 2017, or the September 11, 2017, update. (P-7.) Similarly, the District did not see the Occupational Therapy Assessment (P-9), Notes of Sensational Kids Behavior Therapy (P-10), letters of Dr. Liya Beyderman (P-5), Speech Language Evaluation (P-6), or the three reports of Nemours duPont Pediatrics from 2016 (P-11) or from 2015 (P-12). The District received Dr. Woldoff’s report the day after she received the due process petition. The District decided that J.R. was not eligible for an IEP, and believed that a 504 plan with additional accommodations would be sufficient to meet J.R.’s needs.

## FINDINGS OF FACT

Where facts are contested, the trier of fact must assess and weigh the credibility of the witnesses for purposes of making factual findings as to the disputed facts. Credibility is the value that a finder of the facts gives to a witness's testimony. It requires an overall assessment of the witness's story in light of its rationality, internal consistency, and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself," in that "[i]t must be such as the common experience and observation of mankind can approve as probable in the circumstances." In re Perrone, 5 N.J. 514, 522 (1950). Overall, the fact witnesses were credible. Their testimony was specific and forthright. Regarding the expert testimony, the credibility of the expert, and the weight to be accorded his or her testimony, is assessed by the trier of fact; any testimonial or experience weaknesses in the testimony may be exposed by cross-examination. Angel v. Rand Express Lines, Inc., 66 N.J. Super. 77, 85–86 (App. Div. 1961). It is well settled that "[t]he weight to which an expert opinion is entitled can rise no higher than the facts and reasoning upon which that opinion is predicated." Johnson v. Salem Corp., 97 N.J. 78, 91 (1984) (citation omitted).

Based on the evidence presented at the hearing as well as on the opportunity to observe the witnesses and assess their credibility, I **FIND** the following **FACTS** in addition to those noted prior to the testimony:

1. J.R. is a student who suffers from autism, generalized anxiety disorder, and ADHD. He has been an excellent academic student and, until December 2016, had always been eager to attend school. His attendance remained good throughout the end of his fourth-grade year, although he did not attend the last seven days of school. J.R. has deficits in social and emotional skills and functional life skills.
2. Barbara Dobzanski is an expert in the areas of special education, program development, implementation, IEPs, and school psychology, and she is the HIB

co-coordinator. She became aware of J.R. having social and emotional difficulties after the petition was filed. The District did not classify him as autistic because his autism did not significantly interfere with his performance, and the accommodations he needed could be provided in his 504 plan. Portions of Dr. Woldoff's report were incorporated in the July 18, 2017, meeting of the team.

3. There was never an HIB investigation into any incident involving J.R. A parent does not need to file a form to start an investigation; telling a teacher is sufficient.

4. Ms. Morley received no complaints from J.R.'s parents regarding J.R.'s academic performance, attendance, or bullying. However, she knew of the incident in which J.R. was pushed down to the ground in December 2016. This incident should have been investigated as a potential bullying incident rather than a conflict that could be resolved by a meeting with the students involved.

5. The parents came to Ms. Morley with J.R.'s letter stating, "Why do I need to be in a small group with a kid who's giving me problems? Why does every kid pick on me?" and another letter dated February 9, 2017, stating, "I feel like I want to quit school. What these kids have done to me, I feel I want this to end." (R-54; R-55.) She should have investigated whether J.R. was the victim of HIB. She did not have information that J.R. had suicidal ideations. If she had minimal information, as she testified, then she should have investigated further.

6. Ms. Morley characterized the other incidents brought to her as conflicts between students, based on the information that J.R.'s teachers and Dr. Benson had, including information that J.R. was sometimes the instigator of the conflict.

7. Although Ms. Morley did not recall a conversation in which she said, "the world will not change and J.R. needs to adapt," she agrees with the sentiment.

8. J.R.'s teachers and Dr. Benson did not have access to J.R.'s letters.

9. J.R. did very well in Mrs. Vandine's fourth-grade language arts and social studies class. She followed J.R.'s 504 plan, and he increased in his reading level by June 2017.

10. Mrs. Vandine was assigned to recess, and never saw J.R. pushed to the ground, nor did J.R.'s parents report any bullying incidents to her. However, in March and April 2017, Mrs. Vandine and Mrs. R. exchanged emails regarding various incidents involving conflicts with other students, mostly at recess. She communicated constantly with J.R.'s parents. Mrs. Vandine told Ms. Morley when J.R. complained of being teased.

11. In the BASC-2 assessment she filled out on April 7, 2017, Mrs. Vandine noted that J.R. "almost always" is easily upset; is easily annoyed by others; and complains about being teased. She said J.R. "often" gets upset when plans are changed; acts out of control; seems unaware of others; cries easily; and has trouble making new friends.

12. Lisa Waechter did a speech-language evaluation for J.R. on August 7 and 10, 2017, but she was not his speech-language specialist for the 2016–2017 year. Mrs. R. told her that his problems with social skills were a part of his autism.

13. J.R.'s speech-language specialist for the 2016–2017 year did not testify, despite the fact that J.R. had a speech-only IEP.

14. Ms. Waechter's report noted that J.R. "seemed to have difficulty figuring out the people and relationships" in the pictures she showed him. She also noted that J.R. has "limited ability to take another person's perspective." She concluded that J.R. did not meet the categorical criteria for speech and language services under N.J.A.C. 6A:14-3.6, but she recommended continued work to strengthen articulation skills, being able to ask for help, and taking another person's perspective. His scores on three standardized tests did not show a significant educational impact.

15. Ms. Waechter did not observe J.R. in the classroom or interacting with peers, nor did she review the report of Tovah Feehan, speech-language pathologist.

16. J.R. was one of Ms. Kurek's top students in math and science. His autism did not impact his academic performance in her class. She followed his 504 accommodations and modifications and gave him time to speak to Dr. Benson if he requested it. She received complaints from J.R.'s parents that he was bored, not that he was bullied. She called his social-interaction problems fourth-grader misunderstandings. She recommended that he be placed in an advanced math class.

17. In fourth grade, in response to Mrs. R.'s November 2016 emails to Ms. Kurek stating that J.R. was bored in math, Ms. Kurek said she would try to accommodate Mrs. R.'s request to give him more challenging work. However, in December, J.R.'s mother began to express the problems he had with a student in his math centers. Although Mrs. R. did not specifically request a different class, her email of December 5, 2016, expressed that she wanted J.R. and the student separated "due to recent issues and concerns." Ms. Kurek agreed, but on December 6, 2016, J.R.'s mom expressed that J.R. was once again very upset because the student was still in his math centers, and he did not want to go to school anymore. Ms. Kurek answered after midnight on December 7, 2016, that math centers are on a two-day rotation, so she had to finish the rotation Tuesday, the class would not meet on Wednesday, and the groups would change on Thursday.

18. In February 2017, Mrs. R. again reported in an email that J.R. was bored and wanted to be recommended for "gifted and talented." Ms. Kurek said she would look for more advanced work and recommend him for advanced math in the following year. When Mrs. R. again reported conflicts with two other students on February 9, 2017, Ms. Kurek said that J.R. only told her that two boys were bothering him and did not give details, and the boys said that J.R. was making fun of their names. Ms. Kurek went on to explain, "I only have two high level

groups and I can't put J.R. in the one because he was having a lot of trouble with one of the boys in that group, so I have him in his current group. The other two groups would be way too low for him to be a part of. I'm sure between the two of us we can figure this out."

19. Ms. Vandine and Ms. Kurek both agreed that there was an unusually large amount of communication from J.R.'s parents. Although both teachers reported J.R.'s academic progress, they also self-reported in the BASC-2 their concerns for J.R. in the areas of hyperactivity, aggression, depression, attention problems, withdrawal, school problems, social skills, leadership, activities of daily living, functional communication, and adaptability.

20. Amie Crain noted in her social assessment of August 29, 2017, that according to his parents, J.R. has one-sided relationships with friends, struggles showing interest in what others are doing, struggles with jokes told by others, and has difficulty seeing the gray area. She met with J.R.'s parents and last saw J.R. in second grade. His parents did not complain about bullying or behavioral concerns. She did not know why his parents wanted to place him in another school.

21. Dr. Benson is the anti-bullying specialist for the Main Road School. She investigates a situation as HIB if it is reported as HIB. If it is reported as a conflict, she takes statements and conducts mediation or counseling. She believes that for an incident to be HIB, she has to be clear that the student did not have a role in it.

22. Dr. Benson met with the parents to revise J.R.'s 504 plan when he came to her school in third grade. Throughout third and fourth grade, she would take into account the suggestions of the parents, such as moving J.R. from peers they felt were a negative influence and letting him have toys to play with at recess.

23. Although she was provided with J.R.'s diagnoses and the document "My Asperger's Child" to guide her in dealing with J.R., she got angry with him when

she thought that he was being disrespectful, and denied seeing him display any anxious behavior.

24. Dr. Benson showed dates that she counseled J.R. on a document prepared for the purpose of litigation from her day planner. The document contained no notes about what she discussed with J.R., no goals for the session, and no notes as to whether he was making progress, yet she expressed dissatisfaction with his effort. She found in 2017 that J.R. was not getting anything out of their relationship.

25. J.R.'s and his parents' self-reporting on their concerns for J.R. was consistent with that of the teachers. The District gave J.R. a 504 plan that included weekly counseling sessions, but J.R. never saw Dr. Benson on a weekly basis, only when he sought her out or she sought him out. Ms. Morley did not take any action in response to her complaints of conflicts that J.R. was having. She only moved J.R. to a different group in the same class.

26. Mrs. R. reported to Dr. Benson that J.R. had been pushed down. She did not report it as J.R. was bullied.

27. Mrs. R. had to get evaluations from Nemours duPont (OT), Epic Health Services, and Dr. Woldoff to get help with J.R.'s meltdowns, which were occurring so frequently she could not manage him.

28. Dr. Woldoff's BASC-2 showed that J.R.'s parents both endorsed "clinically significant" concerns in the areas of hyperactivity, anxiety, depression, somatization, atypicality, and withdrawal. They endorsed "at risk" concerns for attention problems only. Regarding J.R.'s adaptive skills, the parents reported concerns in the areas of social skills, leadership, adaptability, functional communication skills, and adaptive skills.

29. Dr. Woldoff, an expert in autism education and neuropsychology, testified that J.R.'s IQ of 129 is in the 97th percentile. Based on her testing, she noted

that J.R. would have difficulty getting multiple task instructions, and that he had poor planning skills. She concluded that his social skills impact his daily functioning, although he is cognitively and academically sufficient. She recommended a school with a low student-to-staff ratio where social skills are embedded during the day. She recommended that J.R. receive an IEP with a classification of autism or other health impaired to address the teasing issues and the problems reading social cues and taking other students' perspectives. She favors an IEP to the 504 plan because the plan lacked specific accommodations regarding social-skills instruction. Speech is social, so J.R.'s articulation-only IEP was inadequate to meet his needs. She recommended that J.R. attend one of three schools that have specific programs for students with high functioning autism.

30. Dr. Woldoff believes that an FBA can give J.R. a behavior plan to address his needs and collect data on what causes his meltdowns.

31. Dr. Woldoff did not observe J.R. in the Main Road School or communicate with J.R.'s counselor, his principal, or Mrs. Dobzanski.

32. J.R.'s parents did not provide the District with Dr. Woldoff's report prior to filing for due process. However, after receiving the report, the District performed its own evaluations, even though J.R. had been unilaterally placed at New Grange.

33. Kristin Nixon performed a psychological evaluation that noted Mrs. Kurek's report that J.R. had difficulty getting along with his peers; and likes to be in charge and tell his peers how they should act, which causes arguments. She reported that there were more issues in the cafeteria and the unstructured areas. Mrs. Kurek rated J.R. as having problems in the areas of emotional distress, social anxiety, defiant/aggressive behaviors, social problems, perfectionism, and compulsive behaviors. (R-7.)

34. Despite the report of Dr. Woldoff, the teachers' reports in the BASC-2, and the evaluation of Kristin Nixon, the members of the IEP team determined that J.R. is not eligible for special education and related services as per N.J.A.C. 6A:14-3.5(c)(1-14). (R-7 at 01275.) The rationale notes that "these behaviors are not adversely impacting his educational performance, as [J.R.] has made consistent and steady progress over the past few years."

35. In addition, the statement concludes that J.R.'s speech errors are not adversely affecting his educational performance, and therefore speech services are no longer warranted.

36. J.R.'s last report on his IEP Goals and Objectives Progress dated June 5, 2017, noted that he had mastered only two of the four articulation objectives. On those where he is noted as still progressing, there is no indication of how much he has achieved, or how close to the objective he is.

### **CONCLUSIONS OF LAW**

The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 to 1485, is designed "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). Under the New Jersey regulations implementing the IDEA, N.J.A.C. 6A:14-1.1 to -10.2, "[e]ach district board of education is responsible for providing a system of free, appropriate special education and related services to students with disabilities age three through 21." N.J.A.C. 6A:14-1.1(d). A free appropriate public education, or FAPE, means, in part, "special education and related services that . . . are provided in conformity with [an] individualized education program [IEP]." 20 U.S.C. § 1401(9); 20 U.S.C. § 1414(d).

In order to satisfy the FAPE requirement, a school district must provide a disabled child with "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." Hendrick Hudson Cent. Sch. Dist.

Bd. of Educ. v. Rowley, 458 U.S. 176, 203 (1982). While “an IEP need not maximize the potential of a disabled student, it must provide ‘meaningful’ access to education and confer ‘some educational benefit’ upon the child for whom it is designed.” Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999) (citing Rowley, 458 U.S. at 192, 200); see also M.A. v. Voorhees Twp. Bd. of Educ., 202 F. Supp. 2d 345, 361 (D.N.J. 2002), aff’d, 65 Fed. Appx. 404 (3d Cir. 2003) (holding that “the relevant inquiry is not whether the IEP confers more than a trivial benefit, nor whether the IEP confers the optimum benefit, but whether the IEP . . . would confer a *meaningful* educational benefit”). An educational benefit must be “gauged in relation to the child’s potential.” Ridgewood, 172 F.3d at 247 (quoting Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 185 (3d Cir. 1988)). In assessing an IEP, “appropriateness is judged prospectively so that any lack of progress under a particular IEP, assuming arguendo that there was no progress, does not render that IEP inappropriate.” Carlisle Area Sch. v. Scott P., 62 F.3d 520, 530 (3d Cir. 1995). Further, a court should determine the appropriateness of an IEP as of the time it was made, and should use evidence acquired subsequently to the creation of an IEP only to evaluate the reasonableness of the school district’s decisions at the time that they were made. D.S. & A.S. as Guardians ad litem for D.S., F.3d (3d Cir. 2010) (citing Susan N. v. Wilson Sch. Dist., 70 F.3d 751, 762 (3d Cir. 1995)).

In addition, a state must provide a disabled child with a FAPE in the “least restrictive environment.” 20 U.S.C. § 1412(a)(5)(A). “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.” Carlisle, 62 F.3d at 535. Indeed, there is a strong presumption in favor of integrating disabled children in regular classrooms. Oberti v. Bd. of Educ. of Clementon Sch. Dist., 995 F.2d 1204 (3d Cir. 1993).

In New Jersey, a parent or school district may request a due process hearing “when there is a disagreement regarding identification, evaluation, reevaluation, classification, educational placement, the provision of [FAPE], or disciplinary action.” N.J.A.C. 6A:14-2.7(a). In such a hearing, “the school district shall have the burden of proof and the burden of production.” N.J.S.A. 18A:46-1.1. The hearing is conducted by

an administrative law judge (ALJ), whose decision “shall be made on substantive grounds based on a determination of whether the child received a [FAPE].” N.J.A.C. 6A:14-2.7(k). The ALJ’s decision is final. N.J.A.C. 6A:14-2.7(l). If a party disagrees with the administrative findings and decision, the IDEA allows for judicial review in state courts and federal district courts. 20 U.S.C. § 1415(i)(2)(A).

In third grade, when J.R. had conflicts with students, Mrs. R. asked that J.R. be changed to a different class, and the District made that change. After the change, J.R. went on to have a good academic year with the supports and accommodations provided in the 504 plan, including individual and group therapies. In fourth grade, J.R. was given the same speech IEP and 504 plan with accommodations, except the word “weekly” was not in the counseling accommodations. J.R., through his mother, expressed in November 2016 emails that he was bored in math and would like more challenging work. Ms. Kurek tried to accommodate Mrs. R.’s request. However, in December, J.R.’s mother began to express the problems J.R. had with a student in his math centers. The email exchanges between Mrs. R. and Ms. Kurek show the extent to which the District teachers tried to assist J.R. with his difficult social interactions. These difficulties did not start until well into the school year; therefore, I **CONCLUDE** that the IEP and 504 plan were appropriate at the start of the year, viewed prospectively.

Ms. Kurek’s email also explains why Ms. Kurek could not separate J.R. from the students with whom he was having conflict, and also why Mrs. R. did not seek a classroom change. Mrs. Kurek had the higher level math class, and there was nowhere else for J.R. to go until fifth grade, when the District offered a gifted-and-talented program. J.R. did not have a problem with math; he had a problem with social interactions. What J.R. needed was more assistance with his social skills. This was not the task of Mrs. Kurek, but the task of Dr. Benson and J.R.’s speech-language teacher. Dr. Benson expressed that she got angry with J.R. only once; however, there is little in the record about how she tried to help him or what social-skills training she gave him. During the year, it should have become evident that J.R. needed more social-skills training and more help with social speech, not just articulation. However, Mrs. R. was left to address J.R.’s problems teacher by teacher, instead of the IEP team reconvening

and comprehensively looking at all the issues surrounding J.R.'s difficult social interactions.

Petitioners first allege that J.R. failed to make meaningful educational progress due to the bullying he suffered while a fourth grader at Main Road School. J.R. perceived that he was being bullied, and expressed that to his parents and grandmother. However, petitioners have set forth very little actual evidence that J.R. was bullied. Petitioners do not point out any specific email as evidence that bullying occurred. Even when J.R. reported being shoved to the ground at recess, Mrs. R. apparently did not reference it in any email to J.R.'s teachers or to his counselor. Despite numerous emails to J.R.'s teachers and counselor, petitioners never made an actual complaint of bullying, which Mrs. R. states was an oversight. However, Mrs. R. testified credibly that she told Dr. Benson. Also, Ms. Morley said she was aware of the incident in which J.R. was shoved to the ground, and said that it should have been investigated as HIB. J.R.'s teachers did not witness bullying or believe he was bullied. However, they noted J.R.'s difficult time getting along with other students, and noted to Ms. Nixon that he likes to be in charge and tell his peers what to do and how to act, which causes arguments. Most times the issues were in the lunchroom. Petitioners point to numerous emails that "reference treatment [J.R.] was subjected to which should be considered bullying if it occurred." Nevertheless, Mrs. Morley also was given J.R.'s letters saying that he is being teased. Therefore, I **CONCLUDE** that Ms. Morley should have investigated the push-down incident and J.R.'s claims of being teased as HIB. Since she did not, we have no way of knowing whether it would have been determined to be HIB or not. Although Ms. Morley did not recall saying that the world will not change and J.R. needs to learn to adapt, she admitted to agreeing with the sentiment. With that in mind, I **CONCLUDE** that although J.R. made meaningful educational progress at the Main Road School, the District needed to do more to teach him the skills to adapt and interact with typical peers.

The next allegation of petitioners was that the District failed to conform to the procedural requirements of the IDEA. The District was able to prove that it complied with the procedural notice requirements of the IDEA, and, indeed, petitioners did not really contest the District's proofs that the parents' input was always welcome and

considered, although they may not have received the outcome that they desired. However, the procedural requirements of the IEP may not have been met.

An IEP is a detailed written statement that is prepared at a meeting of the child's IEP team, which shall include representatives of the school district and the child's parents or guardians. 20 U.S.C. § 1414(d)(1)(B); N.J.A.C. 6A:14-2.3(k)(2). An IEP includes a description of the child's current levels of academic achievement and functional performance, the child's annual academic and functional goals, and the special education and related services and supplementary aids and services that the child will receive. 20 U.S.C. § 1414(d)(1)(A); N.J.A.C. 6A:14-3.7(e). The measurable goals "shall, as appropriate, be related to the core curriculum content standards through the general education curriculum unless otherwise required according to the student's educational needs," and "shall include benchmarks or short-term objectives" that allow the child to participate and progress in the general education curriculum." N.J.A.C. 6A:14-3.7(e)(2), (3). At the start of every school year, "the district board of education shall have in effect an IEP for every student who is receiving special education and related services from the district," and the IEP must be reviewed "not less frequently than annually to determine whether the annual goals for the child are being achieved." N.J.A.C. 6A:14-3.7(a)(1); 20 U.S.C. § 1414(d)(4). An IEP is the "primary mechanism for delivering a [FAPE]" to a disabled child. Susan N. v. Wilson Sch. Dist., 70 F.3d 751, 756 (3d Cir. 1995).

If a parent alleges a procedural violation of the IDEA, an ALJ may decide that the student did not receive a FAPE only if any procedural inadequacies result in substantive harm, such that a procedural violation: (1) impeded the student's right to a FAPE; (2) significantly impeded the student's opportunity to participate in the decision-making process regarding the provision of a FAPE; or (3) caused a deprivation of educational benefits. Ibid.; Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 525–26 (2007) (citing 20 U.S.C. § 1415(f)(3)(E)(ii)); C.H. v. Cape Henlopen Sch. Dist., 606 F.3d 59, 66–67 (3d Cir. 2010).

By the definition in the regulation set forth above, the Speech/Language IEP meets the technical minimum requirements. However, it did not meet J.R.'s needs.

N.J.A.C. 6A:14-3.5(c)(3) also requires a statement of detailed measurable annual academic and functional goals that shall, as appropriate, be related 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." There was no testimony from J.R.'s speech therapist or any other member of the IEP team as to how J.R. progressed on the goals and objectives of his IEP during his fourth-grade year. There is no explanation on the end-of-year progress report that indicates how close he is to mastering the goals that are still noted as "progressing." Yet, the IEP the District developed after J.R. left Main Road School provides that he is not eligible for speech services or any special-education services at all. Thus, either New Grange was able to improve his speech within a short period of time, or the speech evaluation did not consider the areas in which he had not yet mastered his goals as important enough to warrant mastery.

Petitioners argue that the District should have followed the recommendations in Dr. Woldoff's report, classified J.R. as autistic or other health impaired, and placed him out of district. However, because petitioners did not provide the District with Dr. Woldoff's report until after they filed for due process, the request for an out-of-district placement was genuinely a surprise to the members of the child study team. Dr. Woldoff did not talk to the members of the team or observe J.R. at the Main Road School before concluding that he needed an out-of-district placement. Dr. Woldoff never actually testified that the Main Road School is inappropriate. She described an appropriate school as being one with smaller class size and the ability for J.R. to take frequent breaks, but since she did not observe Main Road School or talk to the administrators or teachers, she could not say that those things cannot be provided there. As stated above, the expert report can rise no higher than the facts upon which it is based. With regard to the need for an out-of-district placement, even the petitioners did not take the recommendation of Dr. Woldoff as to the schools that she said would be appropriate for J.R. New Grange was not one of them. Therefore, the evidence that J.R. is in need of an out-of-district placement is lacking.

Although it was not clear to J.R.'s teachers and counselor that J.R. was bullied, it is clear that J.R. needed more assistance with social skills than his speech IEP for articulation only was able to provide. He has not made any progress in the areas of social and emotional development because he does not have goals and measurable objectives regarding those things. Based on his teachers' ratings on the BASC-2 and in the psychologist's report, J.R.'s disabilities began to significantly interfere with his learning in the fourth grade. They interfered with his ability to make friends, have positive social interactions, and get along in the math centers in which he was required to work with typical peers. When he kept having conflicts, there was no other class in which to put him, so the answer should have been to address it as a social-skills rather than a math-teacher problem. The Main Road School met his academic needs, but did not meet his needs for progress in the areas of social and emotional development, thereby increasing his anxiety disorder.

Given the knowledge that the teachers and parents shared of J.R.'s difficulties with social skills, attention problems, and withdrawal, I give substantial weight to Dr. Woldoff's opinion and **CONCLUDE** that more could have been done to meet J.R.'s social-skills needs by giving J.R. an IEP with goals and measurable objectives regarding social-skills instruction, and addressing his difficulty reading social cues and taking the other student's perspective, along with data collection to show if he's improving. I **CONCLUDE** that J.R.'s Speech/Language IEP did not adequately address his needs by focusing only on articulation. Although Mrs. R. testified and the due process petition provides that the 504 plan set forth that he is to meet with the counselor once a week, the 504 plan in evidence appears to say only that he will meet with the counselor for social-skills group counseling, without indicating how often, and he will take transition breaks at the counselor's office "as needed," which is vague, and leaves to a fourth grader when to determine he needs services. Again, however, it must be emphasized that the District did not receive Dr. Woldoff's report until May 2017, after the parents had filed for due process. I cannot conclude on the record before me that J.R. should be classified under "autistic," because that classification requires an assessment by a certified speech-language specialist and an assessment by a physician trained in neurodevelopmental assessment. N.J.A.C. 6A:14-3.5(c)(2). I therefore **CONCLUDE** that an updated evaluation with speech pathologist Tovah

Feehan and an assessment by a physician trained in neurodevelopmental assessment are necessary to determine whether a classification of “autistic” is needed, or “other health impaired” is sufficient.

As set forth above, a procedural violation of the IDEA is actionable if it: (1) impeded the student’s right to a FAPE; (2) significantly impeded the student’s opportunity to participate in the decision-making process regarding the provision of a FAPE; or (3) caused a deprivation of educational benefits.

The United States Supreme Court said in Endrew F. v. Douglas County School District RE-1, 137 S. Ct. 988, 1001 (2017), that “[t]he adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” The Court went on to say, however, that “[t]his absence of a bright-line rule, however, should not be mistaken for ‘an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.’” Endrew F., 137 S. Ct. 1001 (citing Rowley, 458 U.S. at 206). Surprisingly, neither party here cited the Endrew F. decision, despite that the case involved a fourth grader with autism. The Endrew F. Court made it clear that the determination of whether FAPE was provided depends on the child.

Considering that IEPs are to be viewed prospectively, I **CONCLUDE** that the Main Road School was an appropriate placement for J.R. I **CONCLUDE** that the District proved by a preponderance of the credible evidence that J.R. made educational progress at the Main Road School and that the Main Road School is the least-restrictive environment giving J.R. the greatest opportunity to interact with typical peers. However, the District could not refute the evidence in the record that by February 2017, J.R. was fraying at the edges. He was having numerous problems with his social interactions, making it difficult for him to access the curriculum. Even the District’s speech therapist, Ms. Waechter, said it was likely to get worse. These difficulties made him increasingly upset, withdrawn, and anxious, as noted by his teachers on the BASC-2 and the psychologist report; therefore, I **CONCLUDE** that for J.R., making meaningful educational progress would mean progressing in the areas of social skills and social speech, as determined by goals and objectives to address those issues and the taking

of data to determine his progress. I **CONCLUDE** that the failure to provide measurable goals and objectives to address J.R.'s disabilities and the ways in which they impact his education was a failure to provide FAPE.

### **DECISION AND ORDER**

For the reasons set forth above, with regard to the petitioners' request for judgment in the due process petition:

(a) The request for an Order that to derive meaningful benefit from his education, J.R. requires an alternative educational placement at a school such as Y.A.L.E., New Hope Academy, or the Center School is **DENIED**;

(b) The request for an Order providing that respondent has failed to provide J.R. with a free and appropriate education, and has denied him the benefits of an appropriate education and related services, is **GRANTED**, insofar that J.R. needed measurable goals and objectives regarding social skills, data to determine his progress, and weekly social-skills group counseling that he did not receive;

(c) The request for an Order requiring respondent to provide compensatory education for J.R. for the time that it has failed to provide J.R. with a free and appropriate public education is **GRANTED**, and will consist of the weekly social-skills group counseling that he should have received from December 2016 to the end of the 2016–2017 school year, with a counselor other than Dr. Benson. If J.R. returns to the District, compensatory education must also cover transition counseling;

(d) The request for an Order to reimburse petitioners for out-of-pocket expenses incurred or that will be incurred in an attempt to ensure that J.R. receive an appropriate education, together with other costs of this litigation, is **GRANTED** for the reports of Dr. Woldoff and Tovah Feehan (speech-language therapist), along with the expense of any therapy Tovah Feehan provided, but it

is **DENIED** as to the OT evaluation, because there was no testimony as to why it was done, and attorney's fees, because I am not authorized to grant them;

(e) The request for an Order requiring respondent to develop an individualized education program that conforms to the relief ordered is **GRANTED**, with the District to pay for evaluations by speech pathologist Tovah Feehan and "a physician trained in neurodevelopmental assessment" to determine whether J.R. needs to be classified as "autistic" or "other health impaired"; and

(f) If J.R. received social-skills counseling or one-to-one counseling from New Grange, reimbursement for same can be provided as part of the compensatory-education award.

This decision is final pursuant to 20 U.S.C. §1415(e) and 34 C.F.R. § 300.509 (2017) and is appealable by filing a complaint and bringing a civil action either in the Superior Court of New Jersey or in a District Court of the United States. 20 U.S.C. §1415(e)2, 34 C.F.R. § 300.511 (2017). If either party feels that this decision is not being fully implemented, this concern should be communicated in writing to the Director, Office of Special Education Policy and Procedure.

April 9, 2018  
\_\_\_\_\_  
DATE

\_\_\_\_\_  
**LISA JAMES-BEAVERS**  
Acting Director and Chief  
Administrative Law Judge

Date Received at Agency \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

/caa/cmo

**APPENDIX**  
**WITNESSES**

**For Petitioner:**

M.R.  
Sarah Woldoff, Ph.D., B.C.B.A.  
G.S.

**For Respondent:**

Barbara Dobzanski  
Amy Morley  
Melissa Vandine  
Lisa Waechter  
Melinda Kurek  
Amie Crain Reed  
Dr. Lauren Loughlin Benson

**EXHIBITS**

**For Petitioner:**

- P-1 Letters written by J.R. to school and parents 2016–2017
- P-2 Program evaluation performed by Sarah Woldoff, Ph.D., BCBA
- P-3 BASC-2 Self-Report and teacher assessment dated April 6, 2017
- P-4 Confidential Psychological report dated August 8, 2017, performed by Kristin Nixon for Township of Franklin Park Schools
- P-6 Speech and Language Evaluation performed by Wendy S. Cook, M.D., of Nemours duPont Pediatrics dated April 13, 2017
- P-7 Assessment and Initial Plan performed by EPIC Health Services dated April 3, 2017, and update dated September 11, 2017
- P-8 Curriculum Vitae of Dr. Sara Woldoff

- P-9 Occupational Therapy Assessment dated March 31, 2017, performed by Wendy S. Cook, M.D., of Nemours duPont Pediatrics
- P-10 Selection of Consultation notes from Sensational Kids Behavior Therapy Treatment from 2015–2017

**For Respondent:**

- R-1 Due Process Complaint
- R-3 Speech Language Assessment—September 14, 2017
- R-4 Social Assessment—August 30, 2017
- R-5 Psychological Evaluation dated August 8, 2017
- R-7 Eligibility Conference Report dated October 13, 2017
- R-8 Various Correspondence Noticing/Confirming July 18, 2017, Meeting
- R-9 Identification and Evaluation Plan Conference Report dated July 18, 2017
- R-10 Various Correspondence Noticing/Confirming June 1, 2017, IEP Meeting
- R-12 Various Correspondence Noticing/Confirming June 6, 2016, Meeting
- R-13 IEP—Annual Review dated June 6, 2016
- R-14 ADA/504 Individualized Evaluation Report and Accommodation Plan for 2015–2016 School Year (Mrs. Vandine, Grade 4)
- R-15 Various Correspondence Noticing/Confirming November 30, 2015, Meeting
- R-16 IEP Re-Evaluation dated November 30, 2015 (also dated December 14, 2015, and December 2, 2015)
- R-18 Various Correspondence Noticing/Confirming September 18, 2015, Re-Evaluation Meeting
- R-19 Identification and Evaluation Plan Report dated September 18, 2015
- R-20 Various Correspondence Noticing/Confirming June 5, 2015, Annual Review Meeting
- R-21 IEP dated June 5, 2015
- R-22 ADA/504 Individualized Evaluation Report and Accommodation Plan for 2015–2016 School Year (Mrs. Cocchi, Grade 3)
- R-25 Various Correspondence Noticing/Confirming November 4, 2014, Meeting
- R-51 Disciplinary Referral Form dated April 13, 2017

- R-52 Student Report Statements dated February 21, 2017
- R-53 Student Report Statement dated February 16, 2017
- R-54 Letter to Ms. Morley from J.R. dated February 13, 2017
- R-55 Letter from J.R. dated February 9, 2017
- R-57 Curriculum Vitae of Lauren Benson
- R-58 Curriculum Vitae of Barbara Dobzanski
- R-59 Curriculum Vitae of Amy B. Morley
- R-60 Curriculum Vitae of Amie K. Reed
- R-62 Curriculum Vitae of Lisa M. Waechter
- R-63 E-Mails from 2016–2017 School Year from District
- R-64 Emails from 2015–2016 School Year from District
- R-65 Emails from 2014–2015 School Year from District
- R-66 Correspondence from Mr. and Mrs. R. to Ms. Dobzanski re: teacher selection dated June 16, 2014
- R-68 I-Ready Dated for 4th-grade comparison of beginning-of-year and end-of-year math scores for J.R. (Ms. Kurek's class)
- R-70 Instructional Level Chart (June 2015 to June 2017)
- R-81 School Choice Forms
- R-82 Counseling dates for J.R.