State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 10871-13

AGENCY DKT. NO. 2013 19890

S.S. ON BEHALF OF N.S.,

Petitioner,

v.

BRICK TOWNSHIP BOARD OF EDUCATION,

Respondent.

Julie M. W. Warshaw, Esq., for petitioner (Warshaw Law Firm, LLC, attorneys)

Paul C. Kalac, Esq., for respondent (Schwartz, Simon, Edelstein & Celso, LLC, attorneys)

Record Closed: July 11, 2014 Decided: July 29, 2014

BEFORE **ROBERT BINGHAM II**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On June 18, 2013, petitioner S.S. filed a petition for due process and a request for emergent relief on behalf of her minor son, N.S., contending that respondent, Brick Township Board of Education ("respondent" or "District"), failed to provide and implement an appropriate educational program and placement for N.S. for the 2012–13 and 2013–14 school years. Petitioner also avers that respondent improperly: (1) modified the last agreed-upon individualized education program ("IEP") by changing

its goals and objectives in November 2012, (2) terminated supplemental instruction in April 2013, and (3) held an annual IEP meeting in May 2013 that generated an IEP changing N.S.'s program and placement, in petitioner's absence and without her participation. The New Jersey Department of Education, Office of Special Education Programs ("OSEP"), first transmitted the request for emergent relief to the Office of Administrative Law ("OAL"), where it was filed under OAL Docket No. EDS 8495-13 and scheduled before Administrative Law Judge ("ALJ") Susan M. Scarola on July 1, 2013. At the time, the parties reached a settlement agreement regarding the emergent matter. OSEP subsequently transmitted petitioner's due-process petition to the OAL, where it was filed on August 6, 2013.

The matter was initially assigned to ALJ Patricia Kerins and, following telephone conferences, a hearing date was held on October 18, 2013, which centered on settlement discussions that were ultimately unsuccessful. On November 13, 2013, petitioner filed a motion to enforce "stay put" and for access to school records and staff. Oral arguments were heard on November 22 and 26, 2013, and an oral ruling was rendered on November 27, 2013. By written Order dated December 5, 2013 ("ALJ Kerins's Order"), ALJ Kerins memorialized her oral ruling and ordered, among other things, that stay put was dictated by the terms of the parties' last agreed-upon IEP dated May 31, 2012, and that N.S. be placed in an LLD class in his present high school (BTHS). By Order dated January 27, 2014, ALJ Kerins recused herself from this matter and it was reassigned to this ALJ.

Petitioner thereafter filed an omnibus motion on February 4, 2014, requesting an Order to modify stay put, to enforce the May 2012 IEP, to allow petitioner to renew the prior motion for summary decision, to enforce ALJ Kerins's Order, and to compel the District to allow petitioner's expert to observe the proposed placement. By Order dated March 19, 2014, the undersigned ALJ denied petitioner's motion in all respects except with regard to her request that her expert be allowed to observe the proposed placement, which application was granted but not at public expense. Thereafter, the matter proceeded to hearing and testimony began on May 22, 2014.

On June 5, 2014, respondent filed a motion for a determination that issues raised by petitioner after December 5, 2013, when ALJ Kerins issued a written Order on petitioner's application for emergent relief and summary decision, are moot. Petitioner responded by letter brief filed on June 9, 2014.

On June 10, 2014, petitioner filed a motion for directed verdict, contending that: (1) the District failed to modify the 2012–13 IEP, and yet changed its goals and objectives and also took away the child's supplemental instruction, violating his rights and denying him a free appropriate public education ("FAPE"); (2) the District failed to meet its burden of proof; and (3) numerous procedural violations denied FAPE. Respondent filed its opposition on June 16, 2014, and contended that multiple material facts remained in dispute and, therefore, petitioner's motion should be denied.

On June 25, 2014, before petitioner rested her case and respondent presented rebuttal testimony, the undersigned ALJ issued an oral ruling on the record granting in part and denying in part respondent's motion regarding mootness, and denying petitioner's motion for directed verdict. On June 26, 2014, the undersigned ALJ issued the related written orders, one granting in part and denying in part respondent's motion regarding mootness, and the other denying petitioner's motion for directed verdict.

Testimony was taken on May 22, 29 and 30, and June 2, 5, 13, 17, and 25, 2014. On July 10, 2014, each party filed post-hearing briefs. On July 11, 2014, the parties presented oral arguments and the record was closed.

FACTUAL DISCUSSION

N.S. is currently seventeen years of age and, classified autistic, he receives special education services from the District. For the 2012–13 school year, N.S. was in the ninth grade and attended Brick Memorial High School ("BMHS"), in a learning and/or language disabilities mild/moderate ("LLD/M") special education class, pursuant to an IEP agreed to by the parties on May 31, 2012. Between September 1, 2012, and May 31, 2013, he would thereby be instructed daily in English, math, science, and social studies, and, as related services, would receive: door-to-door bus transportation and

bus aide, individual and group speech and language services once weekly, individual occupational therapy twice weekly, group counseling services provided by District personnel once weekly, and a second set of books/packets for home.[1]

Pursuant to the May 2012 IEP, modifications/supplementary aids were to include: providing materials at the student's level of functioning; rephrasing, repeating directions; positive reinforcement when possible; use of praise and encouragement; small class setting; redirecting attention; breaking down tasks into manageable units; simplifying directions; and providing verbal praise.

The May 2012 IEP's "present levels of academic achievement and functional performance" indicated N.S.'s status as follows: (1) in math he was capable of single-digit addition, subtraction and, with aid, multiplication; comprehending time; recognizing coin value; and completing a single equation with multiple instruction; (2) in language arts he was capable of memorizing definitions and applying the words to sentences and could complete blank sentences with use of a word bank, but had difficulty completing a paragraph of text; (3) in social studies/science he was able to highlight information without gesture prompting and could answer questions if the word sequence of the information was not altered, with 90 percent independence, but "struggles with inferring and comprehending facts to answer questions out of sequence"; (4) in social/classroom behavior he initiated conversation with students and made eye contact with adults when answering questions, and he did "extremely well with routines and will emerge in a community-based situation."

N.S.'s annual Occupational Therapy Review described excellent progress and recommended a decrease of services from twice per week to once per week. His Speech and Language Review listed his strengths as his ability to appropriately greet adults upon entering a room, filling in blanks in sentences, and forming associations. He continued to struggle with following directions with increasing complexity, determining what to do when in a given social situation, and utilizing information that

[1] The May 2012 IEP also provided for language arts, math, reading, science and social studies, as well as individualized group speech and language services, individual occupational therapy, and group counseling as related services between June 1 and June 13, 2012. It further provided for "A.Y.P. Beadleston and Dist. Summer School" and transportation service from July 9 to August 9, 2012.

was presented aloud. Continued therapy was recommended for the 2012–13 school year.

The rationale for removal from general education indicated that N.S. had been in the LLD-M class since September (2011) and was adjusting well. It was considered to be the least restrictive environment due to his "classification of Autism, his learning means, and the need for a smaller learning environment." Indisputably, N.S. is well-behaved and puts forth great effort in his classes.

Respondent sent petitioner a letter dated November 12, 2012, inviting her to attend a "60-day review" scheduled for November 30, 2012. (J-2.) A meeting was held on November 30, 2012, and a document styled as a proposed IEP was generated.[2] The November 2012 IEP's "present levels of academic achievement and functional performance" indicated that N.S. had made satisfactory progress with social skills and life skills, but limited progress academically. In the areas of science, English and math, though he demonstrated improvement in transitioning between activities and was able to transcribe well from the board, he had "tremendous difficulty following along/understanding material being taught within the learning environment." The IEP further described "little active involvement in lessons" and "difficulty with the completion of critical thinking activities or large tasks even when it is broken into manageable units." And it further described his struggles with "finding answers within a text or even when it is narrowed down for him. Once he takes notes and the lesson is taught, there is little recognition that can transfer into a closure activity or an assessment." It was noted that he had a "one-on-one paraprofessional" within two study blocks, but the individual's purpose was not to provide answers for completion of an assignment. The teacher wrote in pertinent part:

> [I]t is my professional opinion that I cannot meet his learning needs within this environment. I feel as though the modifications and material he requires are not appropriate for this program. Curricula and assessments can be modified according to the student's need, but the integrity of

[2] The cover page noted an IEP start date of December 1, 2012, and end date of December 1, 2013.

> the material in the course must be maintained. N.S. would thrive in a classroom environment in which life skills and community-based service were highlighted on a daily basis.

The November IEP further indicated that in social studies, N.S. likewise made progress socially, but had "extreme difficulty comprehending and following along with the material being taught in the learning environment." Classroom participation was "very challenging," and there was little evidence of comprehension of subjects being taught. Similarly, the role of the one-on-one paraprofessional that he had was to guide him, but not provide answers for him. The teacher used study guides, copies of textbook units, and a copy of teachers' notes "to help reinforce material and concepts," and used graphic organizers and highlighters "as a pre-writing activity and learning tool to help N.S. visually organize the information."

The teacher wrote in pertinent part:

> As a special educator, it is my professional opinion that [N.S.'s] learning needs cannot be met in his current environment. Modifications and accommodations that are needed are inappropriate for his current learning environment. I feel [N.S.] would be successful in a program that would highlight his strengths that are mentioned above and build upon them.

The special-education program and placement is the same in a comparison of the May 2012 IEP (J-1) and the November 2012 IEP (J-3). With regard to related services, the November 2012 IEP includes a "Personal Aide shared" that the May 2012 IEP did not, though the May 2012 IEP references "a shared paraprofessional for guidance, support, redirection to tasks" under "modifications in extracurricular and nonacademic activities." Also, the November IEP notes that N.S. "receives supplemental instruction three hours per week for academic support," which does not appear in the May 2012 IEP, and that he was discharged from social skills counseling by parental request. The counseling had been included in the May 2012 IEP.

The November 2012 IEP does not contain a sign-in sheet that indicates attendance at an IEP meeting. However, under "Notice Requirements for the IEP and

Placement," boxes are checked indicating that the IEP was developed "as a result of an amendment" and "Other: 60-Day Review." Under the section describing any options considered and reasons for their rejection, it states:

> [N.S.] was participating in the self-contained academic program at BMHS on a trial basis. At this time, he will remain in the program until the end of the 2012/2013 School Year as per parental request. Another meeting in Spring 2013 will be held with Case Manager, Director of Special Services, teachers, related service providers, along with parent to discuss [N.S.'s] program and placement for the 2013/2014 School Year.

Factors in determining the proposed action included: review of records; parent conference; teacher conference; child study team ("CST") monitoring; progress reports; report-card grades; parent, teacher, therapist, and administration input; and a meeting of the CST, parent and teachers to review N.S.'s academic progress and testing to determine the current plan.

An annual-review IEP meeting was held on May 28, 2013. Petitioner was not in attendance. At that time, an IEP was generated for the (tenth-grade) 2013–14 school year. It listed N.S.'s education needs as including "Transportation, Shared paraprofessional, Speech, OT, Assistive Technology, ESY, Social Skills—Camp Beadleston, Social Skills." It proposed self-contained MD (multiply disabled) classes with functional academics (English/language arts and math), life skills, and pre-vocational skills at BTHS from September 3, 2013, to May 29, 2014.[3] The May 2013 IEP indicates that multiple sources of relevant data were considered in its development. They were CST monitoring; report cards; teacher reports; related-services providers; teacher-assigned grades; curriculum-based assessment; cumulative school record; discipline records; speech therapist input; occupational therapist input; attendance report.

[3] It also proposed the LLD class at BMHS, with individual and group speech-language services, occupational therapy, personal aide—shared, and transportation as related services, from May 29 to June 24, 2013.

Related services included individual and group speech therapy once weekly; occupational therapy twice weekly; social-skills group counseling once weekly; a shared paraprofessional for academics; transportation; assistive technology (iPod, iPod microphone, and talking photo album); extended school year ("ESY"); and "Camp Beadleston" Program and Social Skills group, three times weekly.[4] The Rationale for Removal from General Education indicates that N.S. "progressed socially but struggled academically" in the LLD-M program at BMHS during the 2012–13 school year. And "[d]ue to N.S.'s classification of autistic, his learning needs, and the need for a smaller learning environment, the least restrictive environment is the multiply disabled class at BTHS."

The May 2013 IEP's "present levels of academic achievement and functional performance" indicated, for science, English, and math, that N.S. had made limited progress with regard to academics and was having "tremendous difficulty following along/understanding material being taught within this learning environment," despite his effort. It further states that the volume and content of the material and pace of the class "is too intense for him . . . [and] he is only being assessed on a fraction of the material, as opposed to his classmates." It further describes "difficulty with the completion of critical-thinking activities or large tasks even when it is broken into manageable units." Specific examples were given. The teacher opined that, based upon his ability, N.S. should be placed in a program where social skills and life skills would be highlighted daily, without an environment where there is a rapid pace and a high volume of material.

With regard to social studies class, the May 2013 IEP likewise indicated limited academic progress, including the utilization of modifications and numerous specific accommodations.[5] The teacher opined that the current learning environment was

[4] Modifications included: extended time on tests; provide visual models; provide reinforcement when possible; repeat/clarify directions; ensure student's understanding of what is being asked of him; review materials/assignments orally; give directions in multiple formats; break assignments into shorter parts; provide materials at student's level of functioning. Supplementary aids and services included: calculator; manipulatives; teacher-made materials and tests; technology/software available in classroom.

[5] They included, but were not limited to: "one-on-one with teacher reading the test, answer keys to study guides, assessments shorter in length, choices are narrowed down, and multiple chances given to correct his answer."

detrimental to N.S.'s success and harmful to his educational progress. She wrote that "[i]t is extremely heartbreaking to see [N.S.] struggle with the material on a daily basis," and opined that he "should be in a classroom environment for social/life skills and community-based learning/service are emphasized daily."

On June 18, 2013, petitioner filed a request for emergent relief and the instant petition for due process seeking relief in the form of an appropriate educational program and placement for N.S. On July 1, 2013, when petitioner's request for emergent relief was scheduled, the parties entered a settlement agreement. (J-10.) The written agreement dated that day, and memorialized in a Decision Approving Settlement by ALJ Scarola on July 2, provided for N.S.'s participation in "the 'PIC' program for the summer of 2013." (J-10 at 1.) The parties agreed that "all supplemental instruction, prospective and retrospective, is hereby discontinued. Under no circumstances will the parent or N.S. have 'stay put' rights to any supplemental instruction previously provided to N.S. through the summer of 2013." (J-10 at 2, emphasis added.)[6] The parties further agreed that the District would conduct educational and psychological evaluations of N.S. in July 2013.[7]

Thus, a psychological evaluation dated July 15 and 16, 2013, (J-7) was conducted by school psychologist Hannah Taska Arnone, MA, PD, NCSP, to update N.S.'s scores and obtain additional information regarding his functioning. In pertinent part, it summarized:

> [N.S.] was referred for testing to gain further information regarding his functioning. [N.S.'s] general cognitive ability is within the Extremely Low range of intellectual functioning . . . This means that his overall reasoning abilities exceed those of approximately 0.4% of students his age . . . N.S. performed fairly consistently across ability areas, with the

[6] The parties now disagree as to the extent of that waiver.

[7] A speech evaluation dated May 23, 2013, (J-6) was conducted by Kelly A. Ely, MS, CCC-SLP. It noted N.S.'s diagnosis of autism spectrum disorder and stated the following. "[N.S.] is exhibiting functional articulation skills with a slight lateral distortion of /ch/ and /sh/ in all positions of words. At this time, it is not affecting his intelligibility to the level of impacting on his communication or his ability to be understood by peers."

> exception of Processing Speed, which was stronger than his other skill areas measured. His verbal reasoning abilities are similarly developed to his nonverbal reasoning abilities. [N.S.'s] ability to sustain attention, concentrate, and exert mental control, as measured by the Working Memory Index, was continued to measure in the extremely low range. [N.S.'s] ability in processing simple or routine visual material without making errors is in the Borderline range. These above results are thought to be a valid estimate of [N.S.'s] intellectual abilities since he showed good attention and motivation throughout the testing session.

A brief psychological evaluation dated August 12, 2013, (J-8) was conducted by CST school psychologist Vincent Balestrieri, MA, PD, NCSP, using the TONI-3 assessment and other measures of cognitive functioning. It summarized results as follows:

> [N.S.] obtained an IQ score of 78, which is in the Poor range and at or below 7 percent of his peers. . . . [R]esults are considered [to] be an accurate measure of [N.S.'s] cognitive ability. . . . [T]he TONI-3[8] does not assess the range of cognitive domains that are measured in more comprehensive cognitive assessments. Additionally, cognitive assessment measures academic potential, therefore, achievement scores and functional performance should not be discounted when developing an academic program for [N.S.].

An educational evaluation dated July 10, 2013, (J-9) was conducted by learning disabilities teacher-consultant ("LDT-C") Ann Marie Dayton, to update N.S.'s academic record for the purpose of assisting in his educational planning and placement. In pertinent part, her unsigned report summarized that "[N.S.'s] oral language skills (oral expression and listening comprehension) are [comparatively] very low . . . . [N.S.'s] overall level of achievement is very low. . . . [N.S.'s] academic knowledge, fluency with academic tasks, and ability to apply academic skills, are all within the very low range." She continued:

[8] The evaluation (J-8) states that the TONI-3 is "a language-free, motor-reduced, and culture-reduced measure of intellectual functioning." It "measures abstract, figural, and visual problem solving without using language."

> When compared to others at his age level, [N.S.'s] standard scores are very low in broad reading, basic reading skills, brief reading, broad mathematics, math calculation skills, math reasoning, brief mathematics, broad written language, written expression, and brief writing. His knowledge of phoneme-grapheme relationships is very low. When scores for a select set of his achievement areas were compared, [N.S.] demonstrated significant weakness in broad mathematics and oral language.

Notwithstanding the parties' disagreement over the MD program proposed by the May 2013 IEP for the 2013–14 school year, N.S. began attending BTHS in September 2013 in the disputed MD program. On November 13, 2013, petitioner filed a motion to enforce stay put and for access to school records and staff. ALJ Kerins issued a written Order dated December 5, 2013, ("ALJ Kerins's Order") in which she concluded that stay put was dictated by the terms of the parties' last agreed-upon IEP dated May 31, 2012, and ordered that N.S. be placed in an LLD class in his present high school (BTHS). Therefore, that has remained his current program and placement throughout the course of this litigation.

I so **FIND** as **FACT**.

TESTIMONY

Respondent's witnesses

Peter Panuska, a nineteen-year employee of the District, is an assistant principal and a supervisor of special education at BTHS. As assistant principal, he is primarily responsible for teacher evaluations and student discipline. As supervisor of special education at BTHS, he communicates with the CST and teachers about curriculum, scheduling and educational programs for special-needs students.[9] He has attended approximately 100 to 150 IEP meetings altogether.

[9] He formerly taught at Veterans Memorial Middle School for approximately eleven years and, as supervisor of special education, has had regular contact with special-needs students. According to Panuska, approximately 250 or 300 of 1,550 students who attend BTHS receive special education and/or related services, whereas approximately 400 of 1,750 students at BMHS receive special education and/or related services

At BTHS, the special-education programs include: (1) the inclusion, or "upper-level," program for children with a specific learning disability who are doing fairly well and are mainstreamed in a regular classroom; (2) an LLD-mild program that uses the same standard curriculum as mainstream classrooms, but where lessons are taught at a slower pace according to students' IEPs; (3) an LLD-severe program, or "resource room" program, that uses a self-designed, "lower-level," "slower-paced" instruction, rather than the standard curriculum, with paraprofessionals as well as IEP modifications and accommodations, and an emphasis on life skills and social skills[10] and (4) a self-contained program. At BMHS, on the other hand, the self-contained educational program is currently more rigorous, and it does not have a life-skills component.

Panuska has known N.S. for three years. In reading and English he has a difficult time understanding sentence structure, which results in limited writing skills. Despite daily interaction, N.S. has never engaged in spontaneous speech with Panuska, but would give one-word responses instead.

Panuska testified that N.S. had not done well academically in Ms. Pannucci's class during the 2012–13 school year, based upon his communication with teachers and his review of their assessment. Additionally, he and Pannucci spoke several times weekly regarding their concern about N.S.'s progress. She had shared that even with the assistance of a one-on-one paraprofessional, and doing as much as possible with modifications, he was not keeping up with the class or making sufficient progress. According to Panuska, the IEP had specific modifications and accommodations and was being followed, "and then some."[11]

[10] Panuska described the LLD-severe program as "very intense," and as a program wherein the "teachers work extremely hard with these kids." The LLD-severe program is a self-contained program with separate programs for cognitively impaired students, multiply disabled students, and autistic students, respectively. Though academics are included, the goal is to prepare the children with postgraduate life skills and social skills. There are five teachers with separate classes, all at BTHS. The life-skills component includes, for example, hygiene, cooking, and doing laundry, as well as learning skills in a community-based environment (such as table setting). It builds communication and socialization and is essential for the "post secondary education employment world." The students in that program are lacking those skills.

[11] Panuska read a portion of the IEP where it described some, but not all, of the accommodations that were implemented: "one on one with the teacher, answer key to the study guides, given a week in

On cross-examination, he testified that during the 2012–13 school year, N.S. participated in a volunteer supplemental reading program taught by Ms. Winward, an English teacher.[12] Winward had reported to Panuska that N.S. was "doing okay." In fact, the May 2013 IEP's "present levels of academic achievement and functional performance" indicated that in Winward's supplemental reading class N.S. was reading at a fifth-grade level with assistance, understood content, and answered questions.

With regard to assistive technology, BTHS had laptops that were shared by classrooms, but iPads were not available. However, the speech therapist had informed Panuska that N.S. had used an iPad, though Panuska did not know who owned it. Also, N.S. had been scheduled to use assistive technology through occupational therapy, and there were computers in Ms. Pannucci's class, as well. And at certain times, not all the time, the District provided assistive technology to N.S. for writing.

The May 2012 IEP did not list a one-on-one personal aide as a related service. Rather, under "rationale for removal from general education," it indicates that N.S. would have "a shared paraprofessional for guidance, support, redirection to tasks." Yet, during the 2012–13 school year, N.S. had an aide "work with him 95 percent of the time." According to Panuska, "it wasn't a one-on-one, but we make sure [that] 90–95 percent of the time somebody was working with him."

By comparison, the November 2012 IEP lists "personal aide shared" under related services for "guidance, support, redirection to tasks." It also included transportation, speech-language service, and occupational therapy.

In Panuska's experience as a special-education teacher and administrator, when a child demonstrates difficulties in a current class, the IEP team is duty-bound to meet and decide whether the class or program was appropriate for the child, as was true in this case. Panuska recalled having several non-IEP meetings with petitioner and

advance, smaller assessments with modifications on the test, the teacher narrows down choices for him, he is given multiple chances to correct his answers, etc."

[12] Panuska does not know whether she was a certified instructor in the Wilson Reading System.

educators, one being around November or December 2012. The purpose of that meeting was to determine how N.S. was doing and address petitioner's questions about his progress, as well as the educators' desire to share their concerns with her as to how he was struggling. Petitioner became upset in reaction to those concerns. She did express concern about the program's implementation at BMHS under the May 2012 IEP, but Panuska did not recall her requesting any change in placement.

Panuska acknowledged giving petitioner his word that he would ensure that N.S. was okay at BMHS, telling her, "We'll do the best we can." He further testified, "Absolutely, and that's what we did." He acknowledged that the May 2012 IEP required the teacher to provide instruction at N.S.'s functioning level, and that it would be possible for a teacher to make modifications to accommodate a student's individual needs. However, it is not necessarily true that if a child is failing a class, then the materials and instruction are not being given at his functioning level.

Panuska further testified that the sixty-day review referenced in the letter of November 12, 2012, (J-2) is the same review referenced in the notice page of the May 2012 IEP. It was postponed to November 30 due to Superstorm Sandy, which resulted in school closure for two weeks. The sixty-day review could only have been to review the May 2012 IEP at the beginning of the 2012–13 school year. On cross-examination, Panuska agreed that the notice for a sixty-day-review meeting scheduled for November 30, 2012, (J-2) is not a written parental notice for an IEP meeting. He also acknowledged that the IEP dated November 30, 2012, (J-3) apparently had no sign-in sheet, as is usually required for attendance purposes at IEP meetings. By contrast, the IEP dated May 31, 2012, included a sign-in sheet entitled "IEP meeting participants" that was signed by petitioner.

Comparing the goals and objectives in the May 2012 and November 2012 IEPs, first regarding social studies (J-1) versus U.S. history, social studies (J-3), Panuska testified that, "The objectives are different, but they're asking different things. In other words, we're talking about geography on the first one. In the other one we're talking about basic U.S. history. So an objective's an objective. It could be anything you want." The goals and objectives in the November IEP (J-3) "could be" "high-school-level

curriculum." As to whether N.S.'s progress would be measured by the goals and objectives in the November 2012 IEP, Panuska testified that progress would be measured by Pannucci's assessments in "the works that she created for him." Panuska agreed that the November 2012 IEP would be a standard for use in evaluating whether the student had met his goals and objectives, or, in his words, "a guideline for . . . a teacher . . . this would be an objective for him to meet. He may - - some students may not meet those objectives, but they're stated in there as a goal. Goal and objectives. That's what it is."

Panuska testified, when later asked whether the goals and the objectives of the November 2012 IEP were different from those in the May 2012 IEP, "I've seen that. Yes." When then asked whether it was fair to say that they had been changed in some way, he replied, "As you pointed out to me, yes." He also stated that it is not surprising to see high school goals and objectives, such as contained in the November 2012 IEP, in a high school student's IEP.

Referencing the May 2013 IEP "present levels of academic achievement and functional performance," Panuska read its content describing N.S.'s "tremendous difficulty following along, understanding material taught within this learning environment," and that the content of material and pace of the class "is too intense for him . . . . He is only being assessed on a fraction of the material as opposed to his classmates." That comported with his understanding of how N.S. fared in Pannucci's class. The May 2013 IEP's "present levels of academic achievement and functional performance" indicated that N.S. would benefit from a one-on-one speech class. Panuska did not think that the supplemental reading program was offered for the 2013–14 school year.

Panuska further testified that for the 2013–14 school year, the District offered a "self-contained" MD program at BTHS that included academics and life skills. He described "pre-vocational skills" as those used to determine whether students are able to attend vocational school, but the public schools are not involved in that determination. However, though an IEP could include assisting a student to prepare for a vocational evaluation, the team felt that N.S. was not yet at the level to require pre-vocational

training. The BTHS self-contained programming oriented toward life skills that was recommended (but not implemented) in the May 2012 IEP is the same program that is offered in the May 2013 IEP. However, the May 2013 IEP indicates that N.S. would benefit from a speech class with one-on-one assistance for enunciation. And it otherwise again references one-on-one assistance, yet N.S. was only offered a shared paraprofessional during the 2013–14 school year.

Panuska was also aware that for the fourth quarter of the 2012–13 school year, N.S. was failing all of Ms. Pannucci's classes, and that teachers were supposed to write narratives instead of grades.[13] Panuska was also aware that N.S. was not making progress in social studies.

A typical school day for a general-education or LLD student would be from 7:10 a.m. until 1:30 p.m. LLD students at BTHS are also mixed with general-education students. Students in the West Wing attended school from 9:00 a.m. until 3:00 p.m. And the MD-severe students at BTHS "mix for lunch" with general-education students, as they do get their lunch in the cafeteria.

Panuska was not aware of any severe behavioral problems in any of the self-contained classes at BTHS, nor were there any out-of-school suspensions for any disciplinary problems relative to those classes during the 2013–14 school year, including Karen Morrison's class.[14] Ms. Morrison's class was that offered by the May 2013 IEP and the one that N.S. attended between September and December 2013. He agreed that, with regard to out-of-school suspensions, there are limited situations in which a child with a disability can be suspended, and also that there is a difference between a child being disciplined and one having a functional behavioral plan. But he was not aware of any functional behavioral plans for children in N.S.'s class.

[13] At some point, Panuska had read the narratives. He also agreed that parents do not have the ability to change grades that are listed on the parent portal. According to Panuska, petitioner had opportunities for parent-teacher conferences.

[14] Her class was referenced as the class that N.S. would be in but for this litigation.

Finally, Panuska was aware that the May 28, 2013, IEP meeting was not attended by petitioner, but he was unaware of the reason why. He also knew that N.S. was evaluated for vocational school, but did not know when, and he has not read the vocational evaluations.

Nicole Pannucci, a special education teacher employed by the District, qualified as an expert in the instruction of educationally disabled students. During the 2012–13 (ninth-grade) school year, she taught N.S. language arts, math and science in the LLD program, and another special-education teacher, Courtney Arre, taught social studies.[15] At or about the end of September 2012, Pannucci's class had ten students and three paraprofessionals, one assigned exclusively to N.S. because he was struggling academically. The assignment of a paraprofessional to N.S. on a one-to-one basis had been arranged to better accommodate N.S.'s needs. Specifically, in Pannucci's opinion, N.S. did not "grasp [an] understanding of the concepts" and had "very little retention" in English, math, and science, and he particularly struggled with completion of class assignments, quizzes and tests. However, N.S. had progressed socially, and behaviorally. N.S. was "absolutely incredible," a "beautiful young man."

Pannucci testified that she had reviewed the May 2012 IEP and, as required, had implemented it. Modifications were made to the teaching of a core content curriculum such that, with science, for instance, in "teaching the big ideas and the big concepts" information was modified to meet students' learning needs. Also, supplemental folders with additional worksheets were sent home for N.S. During assessments, Pannucci personally sat next to him and, though his tests were modified with limited choices, she would even assist with limiting yet more choices. And he needed frequent prompting in all of the courses that she taught. But N.S. continued to struggle academically with the volume, content and pace of the material, particularly with regard to applying knowledge. In reading, his comprehension varied, but it was better with fictional material. In writing, he "struggled tremendously," such that he could not write three sentences from a paragraph just read. As in science, progress would vary depending

[15] N.S. was also in a supplemental reading program taught by Ms. Winward.

upon the freshness of the material and the amount of paraprofessional assistance. Admittedly, N.S. did not receive a second set of books as stated in his IEP.

In October 2012, a meeting was held with petitioner, Pannucci and other staff members and they discussed concerns regarding N.S.'s academic and social progress and placement. Petitioner became upset when Pannucci and Arre said the placement was not suitable because the material, pace and volume for the core academic subjects (science, social studies, English and math) were too difficult for N.S.[16] Another meeting was attended by petitioner, Pannucci and other staff on November 30, 2012, for a sixty-day review. Pannucci again expressed her concern about N.S.'s academics, but had to leave before the meeting concluded. She later learned that another placement had been discussed; in particular, a self-contained class at BTHS taught by Karen Morrison that focused on life skills, social skills and job skills and serviced lower-functioning students than those in her class.[17] However, despite Pannucci's concerns, petitioner insisted that N.S. remain in the LLD class at BMHS.

Pannucci denied never requesting further modification in light of his academic struggles, as she and her co-teacher investigated options, involved a supervisor and requested a meeting. But the May 2012 IEP was not modified between September and November 2012, and she used the November 2012 IEP through the end of the 2012–13 school year. So, Pannucci implemented the IEP dated November 30, 2012, on N.S.'s behalf. Despite continuing to receive services of an aide, N.S. continued to struggle academically through the end of April 2013, when yet another meeting was held to discuss his IEP. According to Pannucci, petitioner again was not receptive to Pannucci's report of N.S.'s academic difficulties, and Pannucci left that meeting after being insulted by petitioner. Pannucci did not attend the May 2013 IEP meeting.

On cross-examination, Pannucci testified as to her awareness that goals and objectives in the May 2012 IEP stated that materials should be taught to N.S.'s present

[16] Thereafter, Pannucci and Arre were instructed to return and resume class when the bell rang, and thus did not stay through the entire meeting.

[17] Pannucci's classroom was the lowest functioning self-contained classroom at BMHS.

functional level, that he should be tested on what he knows, and that "the test should stop." The November 2012 IEP contained "program goals," or those expected for children in the program, in addition to N.S.'s goals. She further testified that the May 2012 IEP's goals and objectives in math included: time; measurement; money (addition, subtraction); and calculator skills. All were implemented except measurement, for which there was not sufficient time at the end of the school year. The November 2012 IEP contained the same goals and objectives that were worded differently. In science, the May 2012 IEP listed chemistry, environmental Earth science, biology and physics, and the November 2012 IEP contained the same goals as well, but was also worded differently. Language arts was also worded differently. So, the two IEP's had the same goals and objectives, but were worded differently, and Pannucci did not deviate from those goals and objectives in providing academic instruction to N.S.

Further, the inclusion of general program goals[18] in the November IEP was not educationally harmful. Pannucci did not believe, but could not really say, that there were any differences in related services between the two IEP's. Pannucci further testified that she implemented the goals and objectives in the November 2012 IEP, but did not implement all of them by the end of the year due to the pace of the class, which took into account the cognitive impairment of the children in the class.

Pannucci was asked by Andrew Morgan[19] to draft narratives in lieu of grades for the fourth marking period of the 2012–13 school year. He asked that narratives rather than failing grades be drafted, and that N.S. be given passing grades instead for the school year. Pannucci said, "No. I don't hand out grades." She had never been asked by an administrator to pass a student or alter a student's grade. At that point in time, her grade book closed (as is usually done administratively) and she no longer had access to it, and though she could not recall N.S.'s grades for the final marking period, she would not be surprised if his final grade averaged around 70.

[18] Program goals were described generally as an area of study that a student would be exposed to over the course of his or her matriculation.

[19] Morgan was the former auditor of special education and former interim director of special services.

During the 2012–13 school year, Pannucci interfaced with Marjorie Eckhoff, who provided supplemental instruction to N.S. According to Pannucci, the District's termination of supplemental instruction to special education students in April 2013 was district-wide. And she had no recollection of N.S. being evaluated by the Ocean County vocational technical school throughout the school year as called for by his 2012 IEP.

Though Pannucci did not attend the May 2013 IEP meeting, she knew that the May 2013 IEP offered a different placement because "we felt as though the current placement with us at Brick Memorial was too difficult for him." Based upon her experience as a teacher of students with educational disabilities, Pannucci stated that it is the duty of an IEP team member to offer a placement that is believed to be educationally beneficial.

Darla Novick, an SLE coordinator and fourteen-year employee of the District, qualified as an expert in the fields of development and implementation of IEPs for students with disabilities, and instruction (teacher) of educationally disabled children.[20] Novick, who worked between BMHS and BTHS, testified that the LLD class follows the general curriculum, but on a "watered-down" level; in other words, courses are broken down to make the material easier for the students with disabilities to grasp and understand. She was familiar with Pannucci's LLD class during the 2012–13 school year and had assisted her with students' portfolios, though they had not discussed N.S. in particular.

The May 2013 IEP provided for the LLD class at BMHS (language arts, mathematics, science and social studies) from May 29 to June 24, 2013, and for the MD class at BTHS (language arts, mathematics, life skills and pre-vocation skills) from September 3, 2013, to May 29, 2014. Novick was familiar with the MD class at BTHS taught by Karen Morrison, whose class contained four adults and eight students. While in that class, N.S. received SLE services between September and December 2013, notwithstanding the fact that such services were typically reserved for seniors. The

[20] Novick's experience included teaching the MD program, as well as being an in-class support teacher, and developing and implementing IEPs in both capacities within the program, and she has experience with special education students with a full range of disabilities, including autism.

Walmart program, for instance, was conducted at Walmart and focused on social interaction and problem solving.[21] The student group is aided by a trained job coach and the students learn various tasks, such as zoning and doing returns. When N.S. attended, there were three students altogether, one paraprofessional, and an occupational therapist would participate once weekly and implement services for N.S. at the site. Novick was required to and did visit the Walmart site at least once every ten days and was able to observe N.S. According to Novak, N.S. consistently participated and enjoyed the program and absolutely demonstrated progress.

On cross-examination, Novick testified that students sixteen years of age and older can be considered for SLE. Novick did not speak with petitioner in advance to match N.S.'s interest with the job site, as was normally done with some students. However, the younger students who require group paraprofessionals, like N.S., are always placed at Walmart first. Novick confirmed her opinion that N.S. needed the SLE program at Walmart with a paraprofessional. Though unable to say what tasks he could complete at home rather than at school, Novick knew that he had trouble with multitasking and believed that he would need more help in those areas.

N.S. also participated in job sampling at the Manasquan River Golf Club and the Shorrock Gardens Care Center.[22] Novick, who was familiar with those sites and had assisted MD teachers in establishing those placements, testified that the job-sampling services were beneficial to N.S. by assisting him to decide on the type of job that he might want and exposing the related job skills. On cross-examination, Novick testified that she observed N.S. at job sites at least ten to twelve times between September and December 2013, and did spend extra time just with him, despite observing all of the students. Novick had been involved in meetings preparatory to N.S.'s IEP meetings, as when, in September 2013, SLE was offered and the Walmart placement was discussed, and petitioner expressed a desire to have N.S. try it.

[21] The Walmart program is designed for students who would benefit having a job coach with them.

[22] Job sampling involved students going into the community and sampling a variety of different placements, which provides opportunities for students to grasp more skills and to enhance exposure to their interests.

Novick agreed that the school must provide instruction and materials to N.S. at his functioning level as stated in his IEP. Novick also agreed that N.S. did not receive credits for the class, as he was enrolled through December 2013, and any grade would have been on a pass/fail system; however, the class ran through February 2013 and she was unable to issue a grade. Nonetheless, N.S. had been successful in the SLE program. Also, in an LLD program, students have limited interaction with general-education peers, including in the cafeteria and gym, but not to the extent of a social-skills group such as that conducted in the MD class.

As to the appropriateness of a life-skills program, Novick further testified that students with cognitive impairments usually need extra help with life skills, and it would be beneficial to N.S. given his autism and cognitive disabilities. Also, Novick performed a career assessment on N.S. that involved a question-and-answer format, and some questions needed clarification because he did not understand.

Based upon her knowledge of N.S.'s educational strengths and weaknesses,[23] Novick believed that he would thrive in a program where social skills and life skills were highlighted on a daily basis. She supported her opinion on the basis of interactions with N.S., who had an inability to initiate a conversation. The social-skills component would benefit him in the workplace or with things he would confront on a daily basis, for instance, just ordering food at a restaurant. Additionally, life skills would help prepare him for transitioning after high school. During the 2012–13 school year at BMHS, he was in an LLD class that did not provide on a daily basis either life skills or social skills that would have benefited N.S.

Based upon her personal knowledge, the SLE and job-sampling programs were beneficial to N.S. from September to December 2013. Further, she was familiar with Morrison's M.D. class and often worked together with her integrating the classroom

[23] For approximately three months, Novick had N.S., who had been "mainstreamed," in her self-contained autistic class, which was "like an MD with some LLD kids in it."

skills that she taught with the SLE. Thus, based upon her knowledge of N.S.'s strengths, weaknesses and educational disabilities—she knows his academic capabilities and performance, having taught him in an academic class previously—and her knowledge of the two different curriculums, Novick opined that an MD class would be more appropriate and beneficial for N.S. because it would assist him with what he will need functionally once he graduates.

Novick testified that she drew her professional opinion, that N.S. would need functional academics, not only from having taught him for approximately three months (though four years earlier) and having observed him at job sites, but also her familiarity with his functioning level and her reading of his proposed 2013–14 IEP, as well as his then-current IEP when he took her class. Certainly, though, the fact that N.S. has an expressive-language disability does not of itself dictate that he is automatically placed in a life-skills program.

Karen Morrison, a special education teacher and nineteen-year District employee, qualified as an expert in the instruction/teaching of children with special needs. She taught N.S. in the MD[24] program in the West Wing of BTHS between September 12 and December 5, 2013, pursuant to the May 2013 IEP. The MD class differed from LLD in that the MD class is self-contained; LLD is less restrictive and includes science, English, math, and electives. LLD has a schedule comparable to a regular high school, but the program is adapted for students who have a more difficult time with academics. No core curriculum classes were taught in Morrison's MD class; rather, one hour was devoted to functional academics, with one-half hour each for English and math, for which there were no formal tests or quizzes. At the request of parents, no homework was given. Vocational skills programs were attended by some West Wing students; however, N.S. did not attend one during his time in Morrison's class. To Morrison's knowledge, N.S. entered and left her class on a fifth-grade reading level. He did use an iPad that had been received midway through her class; he used a calculator for longer equations; and he used a classroom computer for math, as well.

[24] Morrison testified that her class was not an MD-severe class.

Morrison testified that the class consisted of nine students, including N.S., and four adults, including Morrison, a classroom paraprofessional (teacher assistant) and two shared paraprofessionals.[25] The class makeup included four students diagnosed with autism, and the remaining students had multiple disabilities or were otherwise health impaired, which consisted of neurological impairment. None of the students had emotional issues or physical disabilities, though some had attention deficit hyperactivity disorder or attention deficit disorder. Morrison could not give an average IQ for the class because ranges went from low to very high. The students in Morrison's class ranged from fifteen to twenty-one years of age.

The schedule for Morrison's MD students was typically 9:00 a.m. to 3:00 p.m.,[26] whereas general-education and LLD students attended from 7:10 a.m. through 1:30 p.m. N.S. attended from 7:10 a.m. to 3:00 p.m., but he would have begun at 9:00 a.m. if he did not have SLE. According to Morrison, he alone, however, was required to start school early in order to receive academic credits for SLE pursuant to the directive of Andrew Morgan.

Morrison testified that she had worked with N.S. independently because he was new. Morrison, along with Darla Novick, formulated a modified daily schedule for N.S. (R-19) that contained the services pursuant his IEP, and also included an added component: SLE at Walmart where he and two other students, accompanied by a paraprofessional, enhanced social skills. N.S. also received occupational therapy for hands-on training during his SLE attendance at Walmart. N.S.'s smile and one-word affirmative response when he returned from Walmart indicated to Morrison that he enjoyed his SLE experience.

N.S. also participated in a "morning boardwalk do-now activity" wherein students copy daily activities from the board and discuss the activity as a group. N.S. was able to independently copy from the board, but he needed prompting during discussion.

[25] The classroom paraprofessional remains in the class all day, whereas the shared paraprofessionals are there part time, as they assist other students that go to a vocational program or SLE.

[26] One student, though, had attended from 7:00 a.m. to 3:00 p.m. for a few years.

Once or twice N.S. spoke spontaneously; he eventually independently initiated a greeting, “good morning,” and he once asked to go to the bathroom. Generally, he spoke when spoken to and replied with one-word answers.

The life-skills component of class involved planning lunch for the month; preparing weekly grocery lists; and shopping at A&P, where students were shadowed by staff and would have to locate three grocery items. N.S. initially needed assistance locating items in the store, but eventually did well as the weeks progressed. Also, students prepared lunch weekly, and N.S. enjoyed participating in meal preparation. He also participated in physical education that included a combined class accompanied by a paraprofessional to ensure safety and participation in activities.

N.S. also participated in functional academics, or those essential to increase post-graduation independence. Such instruction was significant because after graduation students needed to know how to pay for purchases, with an awareness of the cost, how much to pay and how much change to receive. That included “money math skills,” or instruction designed to increase money awareness skills. And that involved counting money, assimilating purchases, and waiting for change. Though difficult at first, N.S. was able to gradually increase his ability to “pay” a designated amount of money, $2.17 for example. But by December, he had not reached the point of being able to calculate change, such as the amount of change due after paying $3.00 for an item that cost $2.17. At that point, Morrison was still working with him on adding the value of coins, and they did not reach instruction involving adding and subtracting multiple-digit numbers or multiplication.

Functional academics also included language arts and reading, which was comprised of two groups of students organized according to level of reading and comprehension. The assignments included reading food labels and recipes, for instance, rather than reading novels or writing essays, because the students were not capable of that and were still working on sentences. N.S. was able to print his first and last name and was able to read; however, he did not make academic progress with independent comprehension. He would need prompting, with maybe one or two

exceptions, in order to be able to answer a question regarding a paragraph read during small-group activity.

N.S. also participated in job sampling, or "community-based instruction." At Manasquan River Golf Club students participated with table setting and kitchen chores, for example, and N.S. did not need very much encouragement or correction with various activities. According to Morrison, social interaction skills are reinforced with job-sampling activities.

Morrison's MD class also included a fun-oriented group activity wherein all the students interacted with a focus on life-skills lessons, as well as "individual or shared chosen activities" at the end of the day, wherein they could share with another student or have their own independent time.

N.S. was pleasant and well behaved. He spontaneously complied with teaching directives, but often needed prompting to comply with written assignments. Morrison communicated with petitioner regarding N.S.'s educational program through conversation and a daily notebook. Petitioner never observed N.S. in Morrison's classroom.[27]

After referencing assignments completed by N.S. in her MD class in September and October 2013, Morrison admitted that she would be surprised at N.S.'s completion of some assignments in the LLD class in and after January 2014 (P-26), but cautioned that she really would have to know the context within which the assignment was given and completed. And some of the written work reflected short phrases that were not actual sentences.[28]

[27] When petitioner's expert, Dr. Chase, observed Morrison's class, during the one hour of functional academics, Morrison had given the students an activity, "playing pick-up sticks," to have them interact while the classroom was being separated into math groups.

[28] Such as, "Need something body use!" and "Be can too tired."

With regard to the to the class environment, one of the students bothered N.S., continually calling his name, speaking to him or asking him questions, and another West Wing student with behavioral issues may have interacted with N.S. during adapted physical education class. And on occasion, students were heard screaming in the West Wing hallway, but that was no different from other hallways of the building. Morrison denied that some students in the West Wing have behavior intervention plans.

Morrison denied that the West Wing of the school building, where her class and four other special-education classes were located, was "isolated" from the general population, though both LLD classes and general-education classrooms were located at the east end of the building. The lockers for LLD students were in the West Wing. Morrison's class interacted with other MD classes for community-based instruction, with MD and autism classes for adapted physical education, and with general-education students in the library and in the hallway, and occasionally in the gym. Additionally, through groups such as "Pals" and the "Interact Club," there were monthly social activities with teenage high-school students, and N.S. thus participated with general-education students for Halloween and Thanksgiving. Morrison agreed that an MD-severe class is more restrictive than the LLD class, and that her MD class was generally more restrictive in terms of being more self-contained than an LLD class that N.S. was (currently) in as of May 2014.

Morrison testified that based upon her experience in providing special-education services to N.S., it is her expert opinion that he needs life skills as a part of his educational program because upon graduation he will need to be independent to be able to "do things by himself in life." Morrison further opined that N.S. would benefit from the provision of SLE because it is "a part of the life skills and community awareness and work skills for him to learn to progress further in life when he graduates." Further, in her expert opinion, N.S. was appropriately placed in her classroom between September 12 and December 5, 2013, as the program "provided several different opportunities to gain skills in all areas, and the interaction with the kids was very great with him, and I think he could have . . . gone further."

Susan Soltys, a special-education teacher and thirty-three-year District employee, qualified as an expert in the fields of development and implementation of IEPs for students with disabilities, and instruction (teacher) of educationally disabled children. She testified that she taught N.S. since January 6, 2014, in her LLD-M (moderate) class at BTHS, where he had been placed from Karen Morrison's MD class, with which she was familiar. He was placed there pursuant to the December 2013 (ALJ Kerins's) order, rather than by the IEP team. **T**o accommodate petitioner's request that he be in a smaller group, N.S. was put in "Block 4" of Soltys's class, which had nine students. With two paraprofessionals, the adult-to-student ratio was three to one.

Two shared paraprofessionals spent significant time helping N.S. The program included an eighty-minute English class in which N.S. could independently complete some, but not all, daily routines. He could write his name and partial activities from the assignment board into his notebook, but needed prompting within the areas of spelling, reading, literacy and grammar. In spelling he had difficulty completing sentences, though modifications were used and he had the aid of a paraprofessional, and the extent of lessons became limited because he was "frustrating out," or repetitively using random words in an effort to complete the task. In reading, he had difficulty with inferences and comprehension, and he required prompting to complete tasks. He had difficulty in grammar, for example, placing commas and capitalizing proper nouns despite prior instruction on the material. In writing, he was unable to independently write sentences and required the assistance of a one-on-one paraprofessional for prompting. Also, he was unable to follow class lectures and then independently perform a related activity. Though homework assignments were "very accurate" (capitalization, punctuation, phrasing, thought content), he needed prompting to attempt to complete a sentence which, for him, took a long time.

In terms of socialization, N.S. did not initiate contact with classmates and was observed to be nonresponsive to some students' efforts to engage him in conversation; Soltys had not seen any friendships with classmates developed. He does have gym class with LLD and general-education students and goes to the cafeteria, where there is a mixture of all students. Peer interaction admittedly benefits all students, hence the Pals activities.

Soltys testified that in her opinion the instructional material taught in her class was too difficult for N.S. The program that would benefit N.S. would be the MD program at BTHS that was taught by Ms. Morrison, as set forth in the May 2013 IEP. Soltys had experience with Morrison's MD program and explained that it would be beneficial because "It has [an] area of individual education for students to work at their levels for their weaknesses or strengths and it also develops not only the educational levels, but also the employment levels, the social area and the community skill levels that I think would be appropriate."

On cross-examination, Soltys asserted that one-to-one assistance for N.S. did not yield a tendency for him to "get the assignments correct," rather, "You have to lead him to the correctness." Without the one-to-one assistance "there wouldn't be any kind of written activity on his part." She was aware that his IEP had not called for a personal paraprofessional, and she made the modification (one-to-one assistance) for what was needed for N.S. She was also aware that his stay-put IEP required that materials and instruction be provided at his functioning level. She denied that N.S. was failing her class. Rather, his grade was "in the high 70s or 80," but that was not a true grade because he was not working independently, as would be appropriate for the program. His overall grade was based upon his capability with one-on-one assistance. His lowest grades were on tests and quizzes, even with prompting from an aide, and higher grades were from class participation (which was unrelated to an understanding of the material) or homework assignments, with a large gap in between.

Admittedly, a child with disabilities is entitled under the Individuals With Disabilities Education Act ("IDEA") to modifications in order to be successful within a program, but N.S. was receiving "all the modifications needed," including limited writing, and yet was unable to achieve independently. Independence was concededly a goal, not a prerequisite; however, basic skills are nonetheless required. Soltys's class did not use computers or iPads, despite the possibility that assistive technology could benefit a child with an expressive language disability. Soltys agreed that N.S. would benefit from an individualized special reading program, but through an IEP and "at the MD level."

Her students generally performed at a level four years behind their average age, so they were between fourth- and eighth-grade reading levels. Though not a certified reading instructor, she believed that N.S. read at a third-grade reading level. But she was not aware that his proposed May 2013 IEP indicated a prior fourth-grade level and current fifth-grade level, with assistance. And to her knowledge, he had not been offered supplemental reading programs.

Every student's IEP requires that the student be taught on his or her specific level, but for the particular program indicated. She explained that the children in her class were placed there for the English level of curriculum, or the "functional level of the program," rather than there being a different level for each of the nine students. Her students function on a high-school level in a program designed to track them into a regular resource-level class "in the regular environment of the vocational programs." However, N.S.'s functioning level is at the level of the MD program and below that of her LLD program. Notably, the stay-put IEP had referenced the third- through sixth-grade levels. In her professional opinion, rather than a supplemental reading program, she would recommend that N.S. be put at the MD level to get instruction for developing the requisite reading, writing, and word-meaning skills, and where his educational, social, emotional and physical needs would be met.[29]

In testimony on redirect examination, she expounded that N.S.'s functional level is below the level of her program that is based upon "paralleling the high-school curriculum of English using the common core standards." N.S. lacks and needs the strengthening of foundational skills that the MD program, with its individual instruction, could provide. Thus, the material in her English class is above N.S.'s abilities.

Petitioner's witnesses

Nicholas Krupinski is a school psychologist in his sixth year of employment with the District. He testified that he currently works at Veterans Memorial Middle School,

[29] According to Soltys, reading was indeed one focus in the MD program, as they would sometimes borrow her materials with which to work.

and previously worked at BMHS for three years. He is a member of the CST and is N.S.'s former case manager. In middle school during the 2011–12 school year, N.S. had been in an LLD class, taking science, math, history and language arts. Krupinski attended the May 2012 IEP meeting and drafted and signed the May 31, 2012, IEP (J-1). According to him, the CST did not consider whether N.S. was on the honor roll in middle school in formulating the May 2012 IEP.

The May 2012 IEP contained goals and objectives for N.S.'s transition from middle school to high school, including reading goals.[30] It also included modifications and supplementary aids.[31] Krupinski also testified that N.S. was not supposed to have a "personal aide"; if he was supposed to have one, it would have been listed in the IEP. Krupinski knows Marjorie Eckhoff as being a teacher, but does not recall N.S. receiving any supplemental instruction at the time of the May 2012 IEP. If N.S. was receiving supplemental instruction provided by the District for three hours per week, it should be contained in his IEP. Krupinski did not recall any conversations with petitioner during the summer of 2012 regarding test modifications or revising N.S.'s IEP. He also did not recall any revisions actually being made to the IEP.

Susan Winward is a special education teacher of twenty-four years, a twenty-one-year District employee, and a reading specialist certified in the Wilson Reading Program[32] since 1995. During the 2012–13 school year at BMHS, N.S. was in her "second chance" reading class, an Internet-based pilot program wherein students would read aloud and answer comprehension questions at the end. Once weekly, for thirty to forty-five minutes, she worked with N.S. individually by giving him vignette stories that he would read aloud, and questions that he would answer in writing. She started with

[30] They included: increase skills in the area of reading comprehension; recognize details; sequence of events; recognize a main idea; predict outcome.

[31] They were: reducing written tasks; review materials/assignments orally; rephrasing; repeating directions; small class setting; using untimed test; group discussion; provide material at student's level; testing time will be added as needed; parents will be notified of upcoming tests one week in advance, if possible; provide study guides; directions will be repeated, clarified or reworded for classwork and testing; a section of the test will be terminated when N.S. has indicated that he has completed all the items that he can.

[32] The program teaches students different ways to understand "how the English language goes together" and helps them to read better.

the third-grade worksheets, he progressed to working with fourth-grade worksheets, but then had difficulty with the fifth-grade level. Coaxing was required, but for each level he was able to read aloud, comprehend what he read (for the most part) and answer questions afterward, despite his communication deficit. The November 2012 IEP, in fact, references Winward's reading program as the "trial reading program." Winward testified that N.S. demonstrated progress while in her class. N.S. is the first autistic student, in twenty-four years, with whom she has worked.

With regard to the "present levels of academic achievement and functional performance" referenced in the May 2013 IEP, Winward testified as to her recommendation stated therein that N.S. would benefit from a speech class to work one-on-one with enunciation of his words, but she does not know whether N.S. subsequently had such a class. And N.S., like everyone, should continue with supplemental reading. To her knowledge, there are special reading programs offered at BTHS, but she could not be more specific, as she is located at BMHS. She was not surprised that one teacher placed N.S. at a third-grade reading level, as he probably was able to perform at that level in a class environment, whereas she worked with him one-on-one with limited content. She also testified that it is fair to say that, during the period of her instruction with him, "he went up a grade with the reading."

On cross-examination, Winward testified that she worked with N.S. one-on-one to accommodate his communication deficit. The program utilized short-story reading assignments and "super teacher worksheets." N.S. independently read when instructed, but required prompting to write answers to questions. She added that, in her twenty-four years of teaching special education, she does not know of any student who would not benefit from one-on-one instruction.

Andrew J. Morgan testified that he was the District's auditor for special education from February to June 2013 and interim director of special services from July 1 to December 31, 2013. As auditor, he reviewed the procedures and operations of special education, worked with CSTs and related-services providers, and created and sustained a budget. He added that his first obligation in that job was to be an advocate for all children.

He first became involved with N.S. in or about April 2013 when CST members expressed concerns that his then-current program in Ms. Pannucci's class was inappropriate to meet his needs and that their recommendation was not being heard. The teachers and related-service providers felt that the program was not addressing N.S.'s real needs. So Morgan and the CST explored ways to enhance the program and improve upon the 2012–13 IEP. He testified on cross-examination that he was aware of the May 2012 IEP, but he was not employed by the District on May 31, 2012, nor did he attend the IEP meeting on that date. The same is true as to the meeting held on November 30, 2012. He thus had no involvement in the offering, development, and implementation of the 2012–13 IEP.

He nonetheless became aware of the November 2012 meeting and understood that petitioner had left the meeting because she became upset. His further understanding was that there was no formal November 2012 IEP meeting, rather, it was like a staff meeting "where you get together and discuss progress or any issues." He is unsure, but does not recall implementation of a November 2012 IEP. Morgan further testified that it would surprise him to learn that goals and objectives of the November 30, 2012, IEP were not agreed upon, but disagreed that petitioner was not aware of a November 30, 2012, IEP meeting, because she was there and became upset and walked out.

Morgan had become aware of N.S.'s grades at the end of the 2012–13 school year, as teachers had explained what the grades were and had become uncomfortable without a narrative because, due to N.S.'s disability, an assessment had been difficult to quantify in a number.[33] So, Morgan discussed with the principal, Dr. Caldes, and assistant principal, Ms. Kavanaugh, with input from the teachers and the team, ways to "fix" the numerical grade. At some point teachers began to use written narratives that, he was told, were shared with petitioner.[34] He gave the example of an effort to assess a

[33] Morgan testified that he had seen on the school transcript that N.S. had grades for the first three marking periods.

[34] Morgan testified that he specifically recalls the ongoing discussion, in earlier legal proceedings, as to whether the narratives were quantifying a grade.

grade for N.S. if, for instance, he had met only three of six specified goals in language arts. So, the idea was to look at the agreed-upon goals and objectives in quantifying a grade. To Morgan's knowledge, the narratives indicated that N.S. was not understanding a great deal of the content, and he gave an example of N.S. giving answers completely unrelated to the content of an assigned story.

Morgan denied that he ever asked special-education teacher Nicole Pannucci to change N.S.'s grades. He knew that N.S. ultimately had passing grades because he had seen the final transcript. He emphasized that the narratives were written not because N.S. was failing his classes, but rather to provide greater clarity as to the challenge he had within the program in an academic setting.

Morgan agreed that N.S. had supplemental instruction for three hours weekly during the 2012–13 school year. He explained that in April 2013 supplemental instruction was being reduced if there was no educational benefit, and it did not tie into the specific goals and objectives. He further testified that in this case it was not eliminated, rather, it was a gradual reduction in services, and it was waived in July 2013 by way of settlement agreement in petitioner's emergent-relief proceeding. He agreed that elimination of supplemental instruction would require changing the IEP, but was not aware of whether N.S.'s IEP was changed or modified in any way to reflect that.

Morgan attended the May 2013 IEP meeting attended by Pannucci and the case manager, as he had been asked to sit in. He was aware that a notice had been sent to petitioner, but was not aware that she had communicated that she would be unable to attend, as that information would be handled by the case manager.

Morgan was aware that the May 2013 IEP "changed" N.S.'s program from an LLD program to an MD program. When asked whether he recalled stating at the June 2013 meeting that N.S. was placed in an MD program due to his IQ level, Morgan replied that that would be a narrow interpretation, because that would be but one factor, and functionality (a problem for N.S.) must be considered. Multiple factors must be

considered, and it is never based on just a number. He understood N.S.'s IQ to be in the area of 48, but pursuant to petitioner's request for additional testing, the District performed psychological testing for both nonverbal and verbal intelligence. To Morgan's best recollection, N.S. scored somewhat higher, but the result nonetheless indicated severe impairment, with low scores on working memory and processing speed.

Morgan testified on cross-examination that at the May 28, 2013, IEP meeting, which he attended, the District offered the program at BTHS, pursuant to the IEP dated that day (J-5), which was sent to petitioner. The June 2013 meeting was characterized as a review of the IEP to discuss disagreements and "work things out." As he recalls, additional testing was agreed to that day. "Everything is truly an IEP meeting when you're discussing any program for [a] child." To his recollection, the differences were not resolved that day, and a subsequent due-process petition and emergent-relief request was filed. At the emergent-relief hearing a settlement agreement was reached whereby N.S. was to participate in the PIC program with a one-to-one aide, in lieu of an ESY program that the District offered but petitioner rejected. By way of the agreement, petitioner also waived the receipt of supplemental instruction, prospectively and retroactively. Further, the District would administer psychological and educational assessments in July 2013.

As to whether he told petitioner to "go file due process" when she telephoned him in June 2013 to "work out" the IEP, Morgan testified that he had multiple conversations with her and had given her his cell-phone number because he wanted to achieve a resolution for N.S.'s benefit, but at that time he did say that she could (file due process) if she did not agree, because she has that right. Morgan recounted a June 2013 meeting where much time was spent trying to create a program that would fit N.S.'s needs. The principal from BTHS had offered an additional component, opportunities for life skills were explored, and it appeared that everyone was pleased. Morgan admittedly had stated at that time that one could not fail a child with special needs, but the caveat is that the IEP must be appropriate.

In further testimony on cross-examination, Morgan stated that an IEP meeting occurred in August 12, 2013, when the IEP was further discussed and there was an attempt to work out a program that would facilitate both motivation and skills. Morgan recalled discussing numerous options for vocational placement at the August 2013 meeting, including a landscaping program, a culinary program and other options. The principal of BTHS, Mr. Filippone, offered a one-to-one supervised program where N.S. would do landscaping. Morgan had the impression that the landscaping option actually offered by Mr. Filippone had been accepted, and everyone seemed pleased. Morgan's understanding was that an agreement had been reached whereby N.S. would attend the MD program at BTHS, with the ability to work one-on-one doing landscaping, and the functional academics would support that. However, at the beginning of the 2013–14 school year, the landscaping option was turned down (by petitioner).[35]

Thus, in September 2013 the parties and their attorneys participated in a lengthy conference call, and the District offered the structured learning experience (SLE) program in order to reach a satisfactory agreement and have the school year progress.[36] To Morgan's best recollection, petitioner was made aware of the SLE option during the conference call in September, and had said that such a program that involved going into the community would be very helpful for N.S. So, that arrangement was accepted by petitioner, and the "stay put" was altered by agreement of both parties, whereby N.S. would participate in the SLE program, first thing in the morning (7:00 a.m. or 7:30 a.m.), and then continue in the MD program. Though he had a longer day, he was in the community a great part of the day because the MD program also had community-based instruction. Thus, for the 2012–13 school year, N.S. began attending the MD program at BTHS, with SLE, as agreed upon by the parties.

[35] Morgan learned a different option had been requested, whereby N.S. would attend a cooking program some distance away.

[36] Morgan described SLE as both a vocational oriented program and one that reinforced functional academics. It is usually offered to juniors and seniors, and not given "matter of factly" to freshmen or sophomores. Morgan testified that the idea was essentially to get a program in place and see how the program developed.

He is aware that N.S.'s schedule was changed sometime in September 2013 from 7:00 a.m. to 1:30 p.m., to 7:00 a.m. to 3:00 p.m. Morgan further testified that it was his decision, in conjunction with the principal, that N.S.'s program run from 7:00 a.m. to 3:00 p.m., in order for N.S. to participate with the community-based classes. He did not agree with the characterization of N.S. having a comparatively longer day, but pointed to the fact that children typically have afterschool activities, and so "that's the experience of high school." He further explained that the functional academics were not limited to the classroom, but also exercised through the community-learning process. He agreed that both math and language arts were scheduled for one-half-hour blocks (R-19).

Morgan denied ever threatening to remove N.S. from the school, and characterized petitioner's claim that he blocked her from the entrance door as "ludicrous." Before retiring on December 31, 2013, Morgan became aware that N.S.'s stay-put placement had been modified to be the LLD program, as set forth in his May 2012 IEP, but at BTHS.

Petitioner S.S. testified that she holds a master's degree in education, is certified to teach special education, and is a reading specialist.[37] As a fact witness, she described N.S. as having a number of outdoor interests, including fishing, boating and landscaping.[38] Indoors, he loves reading, science and game shows, as well as dance and music, and has a routine that includes showering himself, helping his grandmother, and knowing his homework agenda.

Petitioner described N.S. as a "doer," who learns by watching, and his learning style as "very hands-on." She works with him one-on-one and uses different techniques to "get inside his head," as he has become more shy with age. As trained in graduate

[37] Petitioner testified on cross-examination that she received her master's degree in education in 1990 and during her master's program she became a reading specialist for grades pre-K through 12. In or about 2005, she received her certificate in special education that licensed her to teach in that area. According to petitioner, she taught elementary school for two years within the District and later taught special education, perhaps five to seven years, part-time, and at least one year, full-time, though she could not say when.

[38] He also has mowed the grass and stained the deck, and he loves "working on the boat engines."

school, she does not accept one- or two-word answers from him. So, with prompting, he will ask full questions and give full sentences. Petitioner disputed the "44" IQ score on a 2008 psychological evaluation (P-13, not in evidence), though she is not a trained school psychologist and has never administered a third- or fourth-edition Wechsler Intelligence Scale test. She believes that N.S. would be unable to function (sit at a desk, read, go to the bathroom) if that were his true score. When asked whether she ever requested an independent evaluation challenging the score, she replied that she told a case manager that the testing was "not quite right."

N.S. has now been in both the LLD and MD programs, but petitioner never consented to the MD program. She had seen several classes in the "West Wing" of BTHS, and did not want him there because they were not fitting for his gifts. According to petitioner, N.S. has life skills "down pat," and is able to place his own restaurant order, read the restaurant bill, take money to the counter and wait for change. Petitioner is concerned that N.S. be able to promptly explore pre-vocational options, and that he graduate on time, and she foresees him being in the workforce after graduation.[39] Also, it is important that he socialize with typical peers; the LLD program has a mixed population that is not secluded in the West Wing.

Academically, N.S. enjoys reading, but, according to petitioner, he needs a structured reading program. She feels that the core curriculum could be modified to provide academic success without the necessity of an isolated MD/West Wing program. He had once been in an MD program in middle school, but she was able to eventually have him mainstreamed. And at that point, his whole personality changed for the better, because while in the MD class he had been inappropriately acting out at home and had reportedly regressed. However, between September and December 2013, when he was again in the MD program at BTHS, his behavior at home changed for the worse. He became noncompliant and disinterested and experienced regression. But since he returned to the LLD program after December 2013, his behavior has improved and he talks about new friends, teachers and classes.

[39] A related concern is that he has not received all of his academic credits after December 2013.

Petitioner attended the May 31, 2012, IEP meeting and agreed to have that IEP implemented, though she disagreed with the recommendation contained therein that N.S. attend a self-contained program at BTHS oriented toward life skills. She objected to the isolation of the MD class in the West Wing, where she knew children to have behavioral plans, and felt that N.S. had been successful previously in an LLD class. The May 2012 IEP provided that N.S. attend the LLD class at BMHS. Admittedly, at that time and in consultation with Mr. Krupinski, she decided not to have N.S. complete updated CST evaluations, but she refused to admit to waiving the right to do so. She did not recall a full discussion about a review of the program, only that there would be a follow-up at some unspecified time. But she "probably" saw the statement in the May 2012 IEP that the program would be reviewed within sixty days of placement in the fall of 2012.

At home N.S. uses an iPad as assistive technology, especially with English and spelling (he is a good speller), to look up definitions for instance. Though he had initially used an iPod, through school, as assistive technology toward the end of eighth grade, the school has not since returned it to him for further use despite petitioner's requests. According to petitioner, N.S. had been evaluated by a speech pathologist, Janet Krebbs, who told petitioner that N.S. would benefit from using an iPad and that she would send a report (not in evidence) to the District. Petitioner does not believe that the District heeded her suggestions. N.S. attended and did well in summer programs during the summer of 2013 where computer-based technology was utilized and there were activities related to academics and vocational skills. On cross-examination S.S. testified that during the 2012–13 school year, N.S. had use of the District's iPod, including at home. N.S. was awarded an iPad for his participation in the PIC program in the summer 2013, but he did not subsequently use it at school because it was his private iPad and it was the District's obligation to provide one. But he did use it at home for homework lessons. During the 2013–14 school year, N.S. took the District's iPod from home to school as instructed by a teacher, but without petitioner's permission, and petitioner is unaware whether it was used for his educational benefit since September 2013.

On cross-examination, S.S. also testified that N.S. "mastered" life skills "any time after grades four and five," by watching his brother and the petitioner. By middle school, he made his bed, did his laundry, folded clothes, and set the table, and he now makes his own lunch (typically a bagel and cream cheese). When the family goes out to dinner, he usually knows what he wants, but does read the menu and orders his own meal and beverage. With prompting he can recognize (and sometimes add) the total due on the restaurant bill. He understands the concept of tipping, but petitioner would not yet have him calculate a tip.

The next meeting she attended after the May 2012 IEP meeting was sometime around late October 2012 to confer with Peter Panuska, then CST supervisor, and/or the case manager regarding some concerns generally with classes and related services and to get assurances on N.S.'s progress. At some point, Ms. Pannucci had said that N.S. had difficulty academically and petitioner had seen failing grades on the parent portal. Petitioner was particularly concerned that "probably most" of the accommodations in the IEP were not being implemented, specifically including: (1) altered testing rooms, (2) extended time, (3) stopping a test after one or two items or when it became overwhelming, (4) repeating a test, (5) verbal test questions, and (6) repeated directions. However, petitioner only discussed with Panuska general concerns such as N.S.'s schedule and subjects, rather than those relative to specific modifications, and he assured her that the appropriate modifications and implementation of the IEP would be in place. She had no other meeting with him prior to the May 2013 IEP conference.

Petitioner received the District's letter dated November 12, 2012, a request for parental participation to discuss a sixty-day review scheduled for November 30, 2012. Petitioner testified on cross-examination that she did not recall attending that meeting. When directly asked whether she attended that meeting, she stated, "I don't recall, no." When asked for clarification, she testified, "I did not attend a meeting, I did not." When asked to recall Ms. Pannucci's testimony that Pannucci attended the meeting on November 30, petitioner stated that she recalled that Pannucci testified that she (Pannucci) did not attend that meeting. Petitioner also did not recall attending any meeting on November 25, 2012. Regarding the November 2012 IEP, the District never

informed her of her right to dispute it within fifteen days. Also, the District never filed for due process against her during either the 2012–13 or the 2013–14 school year. On redirect examination, petitioner identified J-2 as the notice for parental participation for a sixty-day review scheduled for November 30, 2012, and testified that it says nothing about an IEP meeting. Contrary to her testimony on cross-examination, she then testified that, "yes," she did attend a meeting with the District on November 30, 2012, and her understanding was that it was a sixty-day review meeting. After the meeting, she never received a parental notice of a completed IEP, such as she received after the May 2013 IEP meeting (P-7).

During testimony on re-cross-examination, petitioner confirmed that she attended the November 30, 2012, meeting, attended by some team members and teachers, where N.S.'s then-current program and placement were discussed. Petitioner expressed her concerns regarding his placement and modifications and teachers express theirs. They said he was struggling. Petitioner asked whether they were implementing the modifications set forth in his IEP, but they did not say that they were, notwithstanding the testimony of Ms. Pannucci. Petitioner admittedly did not have a good rapport with Pannucci and had begun to distrust her at the beginning of the year because of "her personality, something about her that just didn't measure up to . . . something about [N.S.] and his needs."

Petitioner had three to five meetings between December 2012 and March 2013 with Ms. Stump, Ms. Badders, and Ms. Anderson (LDTC consultant) to discuss and plan N.S.'s ongoing education. According to petitioner, Anderson gave positive feedback and suggestions for Pannucci for modifications, but petitioner does not believe that they were ever enforced. Badders and Stump were supportive of the idea of exploring options for grading, including a pass/fail system, and were sympathetic to petitioner's frustration over N.S. having received some failing grades. Petitioner feels that if her child had a failing grade, depending on how a test was executed, the District would have failed to implement a required modification. And with failing grades on so many tests and quizzes the District could not have been implementing the modifications, such as teaching to N.S.'s individual level of achievement. She knows that because she was not permitted to observe tests and quizzes as she had requested.

Petitioner did not attend the May 28, 2013, IEP meeting and had asked for it to be rescheduled. She had previously interfaced and attended meetings with Donna Stump, former director of special services, who had always been accommodating with regard to N.S. At this juncture, however, she was unable to reach Stump, and was upset to discover that Andrew Morgan, then a District auditor, had become involved with or had "taken over" N.S.'s case. She felt that he interfered with N.S.'s education and described an altercation with him in September 2013 over N.S.'s hours of attendance. According to petitioner, Morgan threatened to have her removed from the building and also "threatened" to place N.S. back into Nicole Pannucci's class. It was only after Morgan became involved in N.S.'s case that, for the first time, she was unable to resolve N.S.'s educational issues.

Petitioner testified that she did not recall an IEP meeting being scheduled for May 30, 2013, and requesting that it be rescheduled, but "if it's in [P-5], possibly." When asked again, she stated that she "probably had an appointment at that time" and, actually, at that time her "son would be via transportation [sic]." The District rescheduled the meeting for May 28, 2013, a date that she did not request. Admittedly, the email indicates that it is a second notice and that it is to be made so that the District is in compliance, and that the IEP meeting was rescheduled for May 28, 2013. It also indicates the District's strong recommendation that petitioner reconsider observing two particular MD classes.[40] Petitioner was invited to attend and did attend several classes on May 20, 2013, including the classes of: Mr. Burns (8:15 a.m.), Ms. Soltys (8:35 a.m.), Ms. Morrison (9:00 a.m.), and Ms. Barry (9:15 a.m.). However, they were not full visitations.

When asked whether the District had to provide an IEP by May 31, 2013, petitioner stated that the staff had always previously accommodated her schedule. She testified that where her email indicated that she could not attend the May 28 IEP meeting "due to [N.S.]," the reference was regarding his school departure and door-to-

[40] According to petitioner, one of the teachers, Ms. Barry, had previously said that her MD class would be inappropriate for N.S.

door bus time. Petitioner testified that N.S.'s school hours were until 12:15 p.m. and he would arrive home around 12:45 p.m., and the May 28 IEP meeting was admittedly scheduled for 1:00 p.m., but she "was not able to make it at that time due to his bus schedule; I simply stated that before." Petitioner sent a letter dated May 22, 2013, (P-6) indicating that her husband would be unable to attend the IEP meeting on May 28 due to work. However, he admittedly had not attended the IEP meeting in May 2012, a reevaluation meeting in June 2013, an emergent-relief hearing in July 2013, a mediation session in August 2013, and an IEP meeting in August 2013. Further, petitioner recognized that she had an option to participate in the May IEP meeting by telephone, but would never do so because face-to-face is always better. Petitioner agreed that she had prior notice that Mr. Morgan would be in attendance at the May 28 IEP meeting. She had never been at a meeting with him, but she was uncomfortable with his presence and his title, she felt he was threatening toward her and her son, and she did not want him to attend.

Petitioner testified that at the May 2013 IEP meeting the District offered the MD program without her presence or consent. She received a notice of completed IEP dated June 3, 2013, (P-7) and assumes that the IEP was attached. She was very upset. Within days she telephoned Andrew Morgan, despite her discomfort with him and since she could not reach Donna Stump, and asked to arrange a meeting to discuss the IEP. Though she does not recall the exact words of their discussion, he told her to "go file due process." On June 17 she attended a reevaluation planning meeting where there was a "dispute," not a discussion, regarding N.S.'s program and placement. The following day, petitioner filed for due process and emergent relief and, in accordance with the settlement of the emergent-relief application on July 1, the District performed updated psychological and educational evaluations on or about July 13, and another reevaluation meeting was held.

As to whether she recalled an IEP meeting on August 12, 2013, where N.S.'s program and placement were discussed, petitioner answered "probably," and that any discussion regarding placement for the 2013–14 school year was "tentative." When asked to define tentative, she testified, "I recant that." She also recalled a telephone conference call on or about September 6, 2013. As to whether an agreement over

N.S.'s program and placement was then reached, petitioner first stated that she did not remember the end results, before saying, "probably" an agreement was reached, but that did not indicate her satisfaction with it. She described the agreement as N.S. having to go to the M.D. program or Pannucci's program, which she could not describe.

Petitioner initially testified that at the beginning of the 2013–14 school year she was threatened by Morgan by being given two choices: (1) N.S. would not receive credits if he were not placed in the MD (West Wing) class; or (2) he could go "back across town" to Pannucci's class. Petitioner denied ever receiving the schedule reflecting N.S.'s participation in SLE. (R-19.) When queried further as to how N.S. ended up attending the MD program, petitioner replied that she had no choice and that Morgan threatened her with those options, but then stated again, "I recant that." There were no other options in the District, "everything was MD, MD." She was forced to have N.S. attend the MD class or return to Ms. Pannucci's class. Petitioner further testified that Morgan threatened her when, as she had begun to exit the school building, his "large body" invaded her personal space with his arms outstretched, preventing her from leaving, and he told her to accompany him to the principal's office. Petitioner first testified that she did not comply, and then testified that she did. She further testified that once at the principal's office she stood in the doorway, but then stated "no, I recant that," and said that her feet were "over the line." In any event, she said that Morgan was inside the office standing across from the principal, Mr. Filippone, yelling at her.

Petitioner further testified on cross-examination that she disapproved of the job sampling at Manasquan River Golf Club because she had heard, but did not know firsthand, that N.S. was doing laundry and table setting there, and she expected it to be more "high end." N.S. had absolutely mastered life skills at home, so he did not need to learn them at Manasquan River Golf Club. It was absolutely unnecessary. And it was absolutely beneath him and degrading.

Similarly, petitioner disagreed with the SLE at the A&P store. N.S. had mastered the life skills of shopping from a list and retrieving store items and did not need to go into the community for such a lesson. And petitioner had previously voiced these objections to District staff.

Petitioner testified that she visited the Rugby School near Belmar and feels that it is more appropriate than N.S.'s LLD class at BTHS. Rugby offers a culinary class, theater, music room, technologically equipped classrooms, and "white boards," and a good history of job placements. It had a very welcoming environment and the teachers informed petitioner of the curriculum content and what the school could do for N.S. Also, exposure to nondisabled peers is important. Petitioner could not say whether the Rugby School exclusively services disabled children, but she said it does serve children across a wide spectrum of disabilities.

According to petitioner, N.S.'s current grades are not available at this time on the parent portal as they should be. Beyond that, she would be open to other placements, besides the Rugby School, in the district, but no other placement had been offered. However, she has no current relationship with the District, as there is a lack of trust. Petitioner did not recall the District offering a program that contained LLD academic courses and only one MD class. As to whether she would accept any program with merely one minute in an MD class, petitioner testified that MD is inappropriate for N.S., and she has said that many times before. The parents are usually consulted and asked whether their child should be a part of any program, and that had always been her experience.

Dr. Danielle Chase, a pediatric neuropsychologist, was qualified as an expert in the fields of neuropsychology and the diagnosis of autism and autism disorders.[41] She testified that neuropsychology involves the evaluation of brain behavior relationships and translating targeted areas of functioning. In her practice, Dr. Chase utilizes a battery of tests, based upon the child's developmental, medical, and educational history, and then provides a diagnosis (primary practice) and recommendations that target the child's deficits indicated from the data. She diagnoses children with disabilities and has a special certification in the diagnosis of children with autism. She is also familiar with

[41] Dr. Chase holds undergraduate degrees in educational psychology and neuropsychology, along with master's and doctorate degrees in clinical psychology, and she completed a dual post-doctorate residency in pediatric and adult neuropsychology. In 2008 she was certified to diagnose children with autism, and has diagnosed between 80 and 100 autistic children since that time. (P-29.)

the IEP process through postgraduate training and private practice, having provided evaluation reports for CSTs and having attended numerous IEP meetings.

Dr. Chase did not evaluate N.S. and has no data with which to inform and empirically validate a recommendation on his behalf. Rather, in preparation for observing his then-current program and placement, and a potential out-of-district placement, she reviewed his psychological and academic evaluations, as well as his social, speech and occupational therapy evaluations.[42] Dr. Chase testified that the intelligence scale contained within the District's psychological evaluation dated July 15 and 16, 2013, (J-7) contained an invalid overall score. She did not dispute individual subtest scores, rather, there are "discrepancies within the overall composite scores that don't allow for the direct interpretation of the full-scale IQ." Based on the data, Dr. Chase would "ballpark" N.S.'s full-scale IQ score "in the mid to low 70s," based on the verbal comprehension and perceptual reasoning scores, putting him in a borderline range. So, based upon her interpretation of the data, N.S.'s IQ might be somewhere between 68 and the low to mid 70s, but adaptive measures would still be needed to accurately determine his IQ. Dr. Chase testified that in preparation for this matter, she also reviewed the District's psychological evaluation dated August 12, 2013, (J-8) and the IQ of 78 reflected there was somewhat high, but it would probably still be in the "low 70s," thus strengthening her assessment as to the July 15–16 evaluation.

Dr. Chase observed N.S. in Ms. Morrison's self-contained MD class on September 23, 2013, at BTHS.[43] Initially, there appeared to be an informal math instruction, after which the class reviewed social stories. N.S. needed prompting to respond, as did the rest of the class, but Chase felt that perhaps N.S. was not always

[42] The psychological and academic evaluations were such as those that she would administer in her practice, but she would do only screening for the social, speech and occupational therapy evaluations and then make any necessary referrals for evaluations.

[43] However, atypically: (1) she was unable to speak with any related-services providers, aides or personnel regarding N.S.'s programming during the observation; (2) any and all questions had to be directed toward the employee supervising the observation; and (3) any questions by Dr. Chase for the educational personnel were to be submitted in writing to the supervising employee before leaving the building. To date, she has not received answers to questions that she submitted to the District based upon her observation.

allotted enough time within which to respond,[44] and at times other students responded "over" him. During free time, they engaged in a "pickup sticks" game, but Chase felt that the teacher wasted the time and opportunity to integrate the game into N.S.'s education. Dr. Chase did not really see any academics, rather, only social stories, which, to her, were not academics. Physically, the classroom was "regular," with a chalkboard, yoga mats, microwave oven, and posters, but she did not see any hands-on (manipulative) materials.

Dr. Chase also visited the Rugby School. She described it as having a "full" academic environment: manipulatives everywhere; experiments going on; interactive stations; and periodic table interactions. She did not see sufficient interaction to describe the social environment, but the classes were integrated with different types of students and gave a good amount of exposure to a general-education type of population. The school offers core curricula (English, science, history, math, physical education) throughout the day and the supports to maintain the students in the program, including one-to-one aides. The school also has job coaches and offers vocational training,[45] something N.S. absolutely needs, as he already has life skills. He should be in a vocational program to move forward toward an area of interest. She could not say whether N.S. would definitely have an individualized academic program at the Rugby School, but she had that impression, and the sense that modifications necessary for success would be available. On cross-examination, she testified that there were no students in the classroom when she observed Rugby; her understanding was that the student population is an integration of both typically developing students and atypically developing students with supports.[46] She admittedly was not saying that Rugby is an appropriate placement for N.S., rather, that its classroom presents an appropriately enriching educational environment. When asked to opine whether N.S. would benefit from the Rugby School or a school with a similar environment, Chase replied that the exposure to typically developing peers is critical to N.S.'s ability to progress.

[44] Thirty more seconds, for instance, may have been sufficient.

[45] Dr. Chase describes a vocationally-oriented program as being job focused and one that trains for a vocation.

[46] That information was based upon what she had been told by the director.

In her professional opinion, N.S. can read and, at an IQ of approximately 70, should be reading somewhere between a fourth- and sixth-grade level. Chase did not evaluate N.S. for language disorder; however, his scores did not reflect that he had a language disorder, at least not an expressive language disorder. Additionally, assistive technology is useful, when necessary, for children with disabilities. Based upon Chase's review of the reports and IEPs, there could be a possibility that N.S. would need assistive technology to help with his academics.

As to whether an MD placement would be educationally beneficial for N.S., Dr. Chase opined that if an MD placement had "scientifically based programs in place for children with autism, such as peer-based interaction and interventions, it would be something to consider." However, she would not want her child, or N.S., to be in the classroom that she observed due to the limited academics and limited exposure to typically developing peers and development of vocational skills. She had seen a so-called math lesson with N.S. in Ms. Morrison's MD class, but there was "nothing in front of him" and "no instruction" that she observed.

Dr. Chase described a least-restrictive environment (LRE) as a general-education program with the supports needed for the unique needs of a child. She also described the distinction between the program description and the individualized goals and objectives of the May 2012 IEP. The program description outlined the program (LLD) and related services to be received. "The IEP describes the individualized supports that he needs to achieve in this program. . . . The [IEP] doesn't guide the program, the program guides the supports that the individual child will need to maintain within the program." Chase further testified that N.S. had exposure to typically developing peers in the LLD classes during the 2012–13 and 2013–14 school years, but did not consider him to have such exposure in the MD class that she observed.

On cross-examination, Dr. Chase testified that her observation of N.S.'s M.D. class at BTHS, between 1:35 p.m. and 2:38 p.m., was broken down as follows: 34 minutes for social stories; 10 minutes for free time; 6 minutes for free time; and 13 minutes for math. But she denied that she observed any academic "instruction," because she did not perceive interaction between teacher and student. Her report of

her observation of N.S. at BTHS notes that petitioner was in disagreement with her assessment that N.S. was not a fluent reader. She included the note because she understood petitioner to believe that N.S. was fluent in reading. However, when she heard him read during her classroom observation, he was "disfluent." Chase recalls petitioner being upset with the fact that she reported that N.S. was "disfluent," and Chase wanted to document petitioner's disagreement with her observation.

Chase believed that N.S. was in the MD class because, following an LLD placement in 2012–13 and a change in goals with a November 2012 IEP, the May 2013 IEP placed him in the MD class based upon at his inability to succeed in LLD without supports.[47] She was aware that he attended job training between September and December 2013, but did not feel that it was helpful if the jobs were not in the area of his interest. She was unaware of his chores at the golf course and whether the District has job coaches. She did not know where N.S. was currently attending school, but imagined he would be in the LLD class pursuant to the stay-put placement. Chase was not aware that the MD class only offers functional academics.

She confirmed her report that N.S. did not answer questions independently in class, but added that some other students who seemed impulsive answered over him and that he may have needed more time. However, she never witnessed him independently express himself without prompting. But the need for prompting does not mean that the child does not know the answer to a question. She reiterated that, as far as instruction, she did not observe formal academics. Chase further testified that she was there to observe core curriculum; however, the schedule that she had been given was not in place, thus she did not observe the academic content as expected. She requested an opportunity for further educational observation, which would have been helpful, but was never aware of this ALJ's order granting petitioner's request for access for purposes of additional observation, but not at public expense. Nonetheless, she maintains her opinion that N.S.'s current program is inappropriate, and immediate efforts should be directed to securing appropriate academic placement.

[47] It is notable that it is Dr. Chase's understanding that petitioner did not attend the November 2012 meeting.

Respondent's Rebuttal Witness

Donna Stump is a thirty-year employee of the District, and currently the supervisor of special education services responsible for supervision of teams and teachers, as well as interfacing with parents. She previously was the director of special services for a year, curriculum supervisor for thirteen years, and a special education teacher for fifteen years. She has been involved with N.S. since the end of his eighth-grade year in May 2012.

Stump attended the May 2012 IEP meeting along with petitioner, and recalled discussions at the time when the District first recommended a self-contained program at the BTHS, as reflected in the IEP. The team believed the recommendation would have been a beneficial placement for N.S. because his functioning level was discussed and his teacher had described some of the work that he did, and he had been in a self-contained program at that time. However, petitioner disagreed that he should be in a self-contained program that focused on life skills because she disagreed with the District's assessment of his reading level, did not want to give up on her child, and she did not want him with "those" type of children. Petitioner fully participated in the IEP meeting and the District took into account her concerns.[48] It was agreed in the IEP that there would be a sixty-day review of N.S.'s progress in the LLD program.

By letter dated November 12, 2012, a sixty-day review was scheduled; however, the meeting did not take place until November 30 due to Superstorm Sandy. The sixty-day review meeting was attended by Stump, petitioner, three teachers (Arre, Pannucci, and "Steven") and an occupational therapist. They were there to review N.S.'s progress thus far, and his program and placement were discussed. Petitioner voiced concerns that the District's team answered. District members expressed that N.S. was not being successful and was struggling with the program. One teacher expressed that the coursework was too difficult for him. As to petitioner's concerns regarding

[48] Thereafter petitioner observed LLD programs at both BTHS and BMHS.

modifications, she had questioned the visuals that were being used, except for the male teacher whom she commended. When the topic arose as to changing N.S.'s placement to that which had been originally recommended at the May 2012 IEP meeting, petitioner became emotionally upset and abruptly ended the meeting. N.S. remained in the LLD program at BMHS after the November 30 meeting, and Stump does not believe that any of his related services were then changed. And neither his program nor placement was changed.

Stump had also met with petitioner on November 25 or 26, 2012, and discussed petitioner's concerns about grading and modifications. Stump, along with case manager Crystal Badders, met with petitioner again on December 17, 2012, and discussed N.S.'s lack of success and, according to Stump, they were going to explore selecting just a couple of the IEP's goals and objectives upon which N.S. could focus. Stump had another meeting scheduled with petitioner around January or February 2013, but was unable to attend.

As to whether modifications were made to the May 2012 IEP as a result of the November meeting, Stump testified on cross-examination that modifications were always discussed and the teachers would explain the different things that they did to modify the work that N.S. received; however, she does not recall whether the IEP was actually modified. She agreed that the idea of utilizing a few select goals for N.S. to work on never occurred. He had been provided with assistive technology: an album for recording pictures and thoughts (summer 2012), and an iPod Touch was used with his speech teacher in high school.

As to her relationship with petitioner, Stump testified that she became director of special services in February 2012, and she does not believe that there were any issues at that time. The first meeting she attended was the May 2012 IEP meeting at the end of N.S.'s eighth-grade year. Stump recalled that following the May 2012 IEP meeting, the decision as to where N.S. would attend school would be made after petitioner observed the two LLD programs taught by Ms. Soltys and Ms. Pannucci. She could not say whether the "sixty-day review language in the IEP had been added at a later time."

She agreed that the District did not file due process throughout the 2012–13 and 2013–14 school years.

She agreed that an IEP program should be modified to meet a child's individualized needs. When asked whether such modifications should be made when a child is failing, she replied that modifications were made, but they still were not meeting the needs of the child, in that he continued to struggle. As to whether there were modifications "reflected in the May 2012 IEP," she testified that she was not quite sure because an IEP was in May and then there was the sixty-day review, and modifications were continually discussed. Stump agreed that if a child is struggling in school it would not be reasonable to increase the difficulty of the goals and objectives, and she does not believe that N.S.'s goals and objectives were increased in difficulty.

Summary

A credibility determination 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). A fact finder "is free to weigh the evidence and to reject the testimony of a witness, even though not directly contradicted, when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth." In re Perrone, 5 N.J. 514, 521–22 (1950); see D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997). Additionally, in resolving factual disputes to determine whether, by the preponderance of credible evidence, an IEP is reasonably calculated to provide FAPE, judges must rely upon the determinations of experts in the field of special education. Bd. of Educ. v. Rowley, 458 U.S. 176, 206–08, 102 S. Ct. 3034, 3051, 73 L. Ed. 2d 690, 712–13 (1982), though neither the IDEA nor New Jersey regulations require any specific expert testimony for a district to satisfy its burden of proof.

Having had an opportunity to observe the appearance and demeanor of the witnesses, it is my view that Pannucci was candid in her description of the 2012–13 school year relative to N.S. She gave more factual than expert testimony overall, but it

was consistent with her prior statements and professional opinions indicated in the relevant IEPs and most of the testimony of other District witnesses. Her expertise is nonetheless given deference regarding the significance of any disparity in the goals and objectives between the May 2012 and November 2012 IEPs. Morrison, Novick, and Soltys were sincere and forthright. Each is a trained educator and qualified expert whose testimony was based on sufficient facts, including first-hand knowledge and pedagogical practice, and whose opinions were consistent and deserve considerable weight. As a fact witnesses, Panuska was straightforward and knowledgeable, notwithstanding some contradiction with Pannucci regarding disparate goals and objectives. As a rebuttal fact witness, Stump was entirely credible. She had a truthful and honest demeanor, a clear first-hand knowledge of the facts, and she offered reliable testimony.

Krupinski was earnest, but offered limited knowledge and ability to recall. Winward's testimony was believable and it gave narrow insight to N.S.'s reading potential. Morgan's fact testimony, though offered for petitioner, comported with most of that of the District's witnesses, notwithstanding a discrepancy with the testimony of Pannucci regarding fourth-quarter grades in 2013. Further, his testimony was firm regarding relevant facts and circumstances, especially petitioner's participation in the educational process in 2013. Petitioner is also an educator, but testified as a fact witness, who, of course, is N.S.'s mother and is undoubtedly somewhat biased. Though she gave detailed testimony, it was often evasive, sometimes combative, and occasionally inconsistent, to the extent of jeopardizing her credibility regarding certain aspects of the case. Dr. Chase, who was eminently qualified as an expert in neuropsychology and the diagnosis of autism and autism disorders, was open and sincere. She was constrained, however, to limited bases for her opinion, as she admittedly had no data with which to inform and validate a recommendation regarding functional capacity, and but a limited opportunity to adequately assess academics in N.S.'s MD placement, the primary purpose of her expert evaluation and testimony.

Based upon the testimonial and documentary evidence, and having had the opportunity to observe the appearance and demeanor of the witness, I further **FIND** as **FACT**:

1. N.S. receives special-education services from the District based upon an eligibility classification of autism. The May 2012 IEP "present levels of academic achievement and functional performance, speech and language" indicates that he struggled with following directions with increasing complexity, determining what to do in a given social situation, and writing information that was presented aloud. Psychological assessments from July 2013 placed his cognitive functioning in the "[e]xtremely [l]ow range of intellectual functioning" and "[p]oor range at or below 7 percent of his peers." Though inconclusive, he may have a "borderline" IQ.

2. The May 2012 IEP was a complete annual IEP compiled from relevant data. Although it placed N.S. at the LLD-M program at BMHS, it included an initial recommendation for the self-contained program at BTHS and expressly provided for a sixty-day review after the start of the school year. Petitioner had reviewed the IEP and was aware of the sixty-day review. Though she disagreed with the initial recommendation, she accepted the IEP. When drafted, the May 2012 IEP was reasonably designed to confer a meaningful educational benefit to N.S. in the least restrictive environment. Petitioner actively participated in the IEP process and achieved her preferred program and placement for N.S.

3. Between May 2012 and November 2012, respondent did provide the related services (occupational therapy, speech therapy, social skills, transportation), though a second set of books was not provided, and did implement at least a majority of the modifications set forth in the May 2012 IEP, including supplemental folders with additional worksheets that were sent home for N.S. However, N.S. struggled academically, and his teachers, Ms. Pannucci and Ms. Arre, reported those struggles to petitioner at a meeting in October 2012.

4. Respondent sent petitioner a written notice dated November 12, 2012, to attend a sixty-day review meeting, not an IEP meeting, on November 30, 2012. The purpose of the meeting was to review N.S.'s status and progress at that point, in accordance with the May 2012 IEP. Petitioner attended and asked about the implementation of modifications because she was concerned about poor grades.

District staff, particularly Ms. Pannucci, expressed concern that N.S. was unable to handle the academic requirements, and the staff opined that he would be better served in a self-contained program that emphasized life skills, social skills and job skills, specifically, Ms. Morrison's self-contained class at be BTHS. Petitioner, who disagreed with that proposed program and placement, became upset and left the meeting.

5. An amended IEP (J-3) was generated from the November 30 meeting, despite the lack of written notification specifying an "IEP meeting," as well as the lack of any IEP sign-in sheet. Petitioner did not receive a copy of the amended IEP with notice of a right to object within fifteen days.

6. The November 2012 amended IEP did not change N.S.'s educational program or placement, and he remained in Ms. Pannucci's LLD-M class at BMHS. "Personal Aide shared," not referenced in the May 2012 IEP as a related service, was included as a related service. Additional related services in the November 2012 IEP included supplemental instruction for academic support (three hours weekly), utilization of iPod and talking photo album, and access to "Bookshare."

7. The November 2012 amended IEP added program goals but did not actually change N.S.'s individual goals and objectives, though the wording was different. The goals and objectives contained in the November 2012 IEP were implemented by Ms. Pannucci for the remainder of the 2012–13 school year. Implementation of those goals and objectives, however, did not increase the difficulty of instructional material or the standard of performance for N.S., and did not result in educational harm to him. Additionally, Ms. Pannucci continued to implement modifications set forth in the IEP.

8. In addition to attending the meetings with District staff in October, on November 25 or 26, and on November 30, 2012, petitioner had three to five meetings with Ms. Stump, Ms. Badders, and Ms. Anderson between December 2012 and March 2013 to discuss and participate in the planning of N.S.'s educational program.

9. In April 2013, the District unilaterally terminated supplemental instruction without amending the IEP. Further, the District did not subsequently provide for such

instruction in the May 2013 IEP for the 2013–14 school year. Petitioner's subsequent waiver of supplemental instruction, by the July 1, 2013, settlement agreement, was in the context of negotiating an extended school year for that summer. Nonetheless, there is insufficient conclusive evidence as to a specific and direct adverse impact upon N.S. from the District's termination of supplemental instruction in the spring of the 2012–13 school year. For one thing, N.S.'s academic struggles began at or about the start of the school year, not after April 2013. Also, the MD program at BTHS in 2013–14 consisted of functional academics, even more personal instruction, and was less rigorous.

10. During the school year it became difficult for N.S.'s teachers to quantify his academic performance with standard grades. In the ongoing discourse regarding accommodations, petitioner admittedly discussed the possibility of pass/fail grading with Ms. Stump, Ms. Badders, and/or Ms. Anderson. When, to petitioner's consternation, Andrew Morgan became involved, he asked Ms. Pannucci to adopt a pass/fail system for N.S., but she did not make any grade adjustment. N.S. ultimately received passing grades for the 2012–13 school year.

11. Petitioner also participated in a meeting in April 2013, in advance of the May 2013 IEP. Additionally, she had the opportunity to view numerous classes in May 2013, before the IEP meeting.

12. The District sent petitioner a written notice to attend an annual IEP meeting on May 30, 2013. However, it was rescheduled at petitioner's request and the District scheduled it for May 28, 2013, and sent petitioner a written notice and email that the IEP meeting was rescheduled for that date at 1:00 p.m. and that the District had to ensure compliance. The notice included an offer to accommodate N.S. if she preferred not to include him in the meeting. Petitioner, who was opposed to Mr. Morgan's planned attendance, communicated an inability to attend the May 28 IEP meeting, initially, "due to N.S.," and, subsequently, because her husband (who has rarely if ever participated) could not attend. However, N.S.'s after-school transportation, the first excuse for not attending, would have been completed shortly before the IEP meeting. Thus, petitioner chose not to attend, though it would have been possible.

13. Multiple sources of relevant data were used to develop the May 2013 IEP, based upon the information then available to the District, including: N.S.'s particular learning needs, counting a smaller learning environment; his academic struggles in the LLD-M program; and the potential for educational benefit in a program where there would be smaller class size and smaller group instruction, individualized academic programming, a higher teacher-to-student ratio, and reinforcement of social skills. The CST (with the exception of petitioner, who was absent) agreed that the self-contained MD program at BTHS would be the appropriate educational program and placement for N.S. for the 2013–14 school year. The District promptly sent petitioner a notice of proposed IEP along with the May 2013 IEP.

14. Petitioner, who adamantly disagreed with the proposed program and placement for 2013–14, telephoned and then met with Morgan in June 2013, and conferred with him and/or other District staff in July, August and September 2013 regarding N.S.'s educational program and placement for the 2013–14 school year. As a result of her participation and input, the parties agreed (as opposed to petitioner having been threatened) to modify the May 2013 IEP, and thus N.S. was placed in the self-contained MD class at BTHS, with SLE and job sampling, notwithstanding the fact that it was not petitioner's preferred placement.

15. By the beginning of the 2013–14 school year, N.S. had attained some, but not all, life skills, as well as advancing social skills. N.S. demonstrated educational progress with the SLE program at Walmart and job sampling at the Manasquan River Golf Club and Shorrock Gardens Care Center, and they were beneficial to him.

16. The self-contained program at BTHS provided less exposure to general-education students than did the LLD-M program at BMHS, but it did provide for some interaction with general-education students and for socialization with typical peers through designated organizations.

17. In January 2014, when N.S. returned to the LLD program in Ms. Soltys's class at BTHS, pursuant to the ALJ's Order dated December 2013, he again began to struggle academically. Even with modifications and supports, including one-to-one

assistance that was added by Ms. Soltys, the material was too difficult for his level of functioning. By comparison, the self-contained MD program, with functional academics, SLE and job sampling, provided more educational benefit to N.S.

LEGAL ANALYSIS AND CONCLUSION

The ultimate issues in this case are whether, for the 2012–13 and 2013–14 school years: (1) the IEPs and proposed IEPs for N.S. provided for a free appropriate public education in the least restrictive environment; (2) the District committed procedural violations that denied FAPE; and (3) petitioner is entitled to out-of-district placement and/or compensatory education, including any appropriate reimbursement, should this tribunal find that there was a denial of FAPE.

Petitioner contends that respondent failed to provide and implement an appropriate educational program and placement for N.S., specifically, by failing to: (1) implement modifications and accommodations set forth in the May 2012 IEP; (2) consider his unique needs in the development and implementation of his then current and proposed IEP; (3) reasonably calculate to confer a meaningful educational benefit; and (4) rectify consequential lapses of academic progress. She further alleges specific procedural violations: (1) convening an IEP meeting in November 2012 with defective notice of a sixty-day review; (2) improper change of the May 2012 IEP's goals and objectives in November 2012 without her knowledge or permission, resulting in a higher academic standard that caused failure; (3) unilateral termination of supplemental instruction in April 2013; and (4) development of the 2013–14 IEP, whereby her son's program and placement were changed, without her presence, participation, or approval.[49]

[49] In her prayer for relief, petitioner requests: (1) enforcement of stay-put rights, namely, continuation of supplemental instruction; (2) vocational evaluations to determine appropriate placement; (3) an IEP with appropriate goals and objectives that provides for an appropriate educational program and placement in the LRE, including out-of-district placement; (4) a vocational skills assessment; (5) compensatory education, since April 2013, and reimbursement; and (6) attorney's fees.

The District asserts that N.S. was provided FAPE in the LRE for both the 2012–13 and 2013–14 school years, because the IEPs and proposed IEPs provided for a meaningful educational benefit and N.S. received the educational services, with modifications and accommodations, as required by them. Procedurally, petitioner was notified of the November 2012 sixty-day review meeting that she attended, but left. The goals and objectives in the November IEP did not change those set forth in the May 2012 IEP; they were just worded differently. And the November 2012 IEP did not change N.S.'s program, placement or related services. The May 2013 IEP was generated as required after due notice and opportunity for petitioner to attend, and there was no significant interference with her ability to participate in the formulation of the 2013–14 IEP. Further, any claim to supplemental instruction was waived by Settlement Agreement dated July 1, 2013.

This action is predicated upon the Individuals with Disabilities Education Act, 20 U.S.C.A. §§ 1400 to -1482, which provides the framework for special education in New Jersey as reflected in the statutes at N.J.S.A. 18A:46-1 to -55, and the regulations at N.J.A.C. 6A:14-1.1 to -10.2. Subject to certain limitations, the IDEA requires that participating states implement policies and procedures to ensure that students between the ages of three and twenty-one who have a disability will receive a free appropriate public education. 20 U.S.C.A. § 1412(a)(1). "[T]he IDEA specifies that the education the states provide to these children 'specially [be] designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction.'" D.S. v. Bayonne Bd. of Educ., 602 F.3d 553, 556 (3d Cir. 2010) (citations omitted). The responsibility to provide a FAPE rests with the local public school district. N.J.A.C. 6A:14-1.1(d). Thus, a Board provides a FAPE through an IEP that specifies the special education and related services tailored to the unique needs of the child. See 20 U.S.C.A. 1414(d); N.J.A.C. 6A:14-3.7.

The term "free appropriate public education" means special education and related services that

> (A) have been provided at public expense, under public supervision and direction, and without charge;

> (B) meet the standards of the State educational agency;
>
> (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and
>
> (D) are provided in conformity with the individualized education program required under section 1414(d) of this title.
>
> [20 U.S.C.A. § 1401(9).]

In New Jersey, the District bears the burden of proof at a due-process hearing to show, by a preponderance of the credible evidence, that it has met its legal obligation to provide a FAPE. Lascari v. Bd. of Educ. of the Ramapo-Indian Hills Reg'l High Sch. Dist., 116 N.J. 30, 46 (1989); N.J.S.A. 18A:46-1.1. A school district satisfies its requirement to provide FAPE to a disabled child "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." Hendrick Hudson Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 203, 102 S. Ct. 3034, 3049, 73 L. Ed. 2d 690, 710 (1982). The IDEA does not require a school district to maximize a student's potential or provide the best possible education at public expense. The appropriate standard is whether the IEP offers the opportunity for "significant learning" and "meaningful educational benefit." Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238 (3d Cir. 1999); see also T.R. v. Kingwood Tp. Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000). An oft-cited analogy words this differently, stating that the IDEA requires a board of education to provide disabled students with the educational equivalent of a "serviceable Chevrolet"; it does not require provision of a "Cadillac." C.T. & T.T. ex rel. R.T. v. Robbinsville Bd. of Educ., EDS 4682-10, Final Decision (Jan. 14, 2011), <http://njlaw.rutgers.edu/collections/oal/> (citing Doe v. Bd. of Educ. of Tullahoma City Schs., 9 F.3d 455, 459–60 (6th Cir. 1993).

The requirement is thus for a basic floor of opportunity rather than optimal services. Ridley Sch. Dist. v. M.R. & J.R. ex rel E.R., 680 F.3d 260 (3d Cir. 2012). Therefore, the ultimate inquiry in a matter such as this is whether a school district has offered the child an education designed to allow him to obtain meaningful educational benefit with significant learning, individualized to meet his specific needs.

In summary, the IEP must be tailored to the student's unique needs, reviewed annually, and "reasonably calculated to enable the child to receive educational benefits." Rowley, supra, 458 U.S. at 206–07, 102 S. Ct. at 3051, 73 L. Ed. 2d at 712; 20 U.S.C.A. § 1414(d)(4)(A); N.J.A.C. 6A:14-3.7(i). The appropriateness of an IEP must be determined as of the time it is made, and the reasonableness of the school district's proposed program should be judged only on the basis of the evidence known to the school district at the time at which the offer was made. D.S. v. Bayonne Bd. of Educ., 602 F.3d 553, 564–65 (3d. Cir. 2010). When determining the appropriateness of any given IEP, a court's focus should be on the IEP actually offered by the board and not upon an IEP that it could have offered. Lascari, supra, 116 N.J. at 46–47.

Implementation of the IEP requires that the school district provide significant adherence to its provisions. Houston Indep. Sch. Dist. v. Bobby R., 200 F.3d 341 (5th Cir. 2000). Where, as here, implementation is challenged, there must be "more than a de minimis failure to implement all provisions of the IEP"; there must be a failure to implement "substantial or significant provisions of the IEP." Fisher v. Stafford Twp. Bd. of Educ., 289 F. Appx. 520 (3d Cir. 2008) (citing Houston Indep. Sch. Dist. v. Bobby R., supra, 200 F.3d at 349).

The IDEA also includes a mainstreaming component in its description of FAPE, requiring education "in the least restrictive environment that will provide [the child] with a meaningful educational benefit." T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 578 (3d Cir. 2000); 20 U.S.C.A. § 1412(a)(5)(A).[50] "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 Area Sch. v. Scott P., 62 F.3d 520, 535 (3d Cir. 1995).

[50] The IDEA describes education in the "least restrictive environment" as follows: "To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 20 U.S.C.A. § 1412(a)(5)(A).

The Third Circuit has used a two-prong test to determine if a district is complying with the mandate to provide FAPE within the LRE. Oberti v. Bd. of Educ. of Clementon Sch. Dist., 995 F.2d 1204 (3d Cir. 1993).[51] First, a court must determine "whether education in the regular classroom, with the use of supplementary aids and services, can be achieved satisfactorily." Oberti, supra, 995 F.2d at 1215. Factors the court should consider in applying this prong are: (1) the steps the school district has taken to accommodate the child in a regular classroom; (2) the child's ability to receive an educational benefit from regular education; and (3) the effect the disabled child's presence has on the regular classroom. Id. at 1215–17. Second, if the court finds that placement outside of a regular classroom is necessary for the child's educational benefit, it must evaluate "whether the school has mainstreamed the child to the maximum extent appropriate, i.e., whether the school has made efforts to include the child in school programs with nondisabled children whenever possible." Id. at 1215.

Before reaching the least-restrictive-environment issue, the District must first prove that the child's placement will provide meaningful educational benefit. A school district "cannot bootstrap the meaningful educational benefit with the LRE requirement." S.H. v. State-Operated Sch. Dist. of Newark, 336 F.3d 260, 272 (3d Cir. 2003). If the educational environment is not appropriate, there is no need to consider whether it is least restrictive. Ibid. Further, as the Third Circuit stated in an earlier case, "the goal of placing children in the least restrictive environment does not trump all other considerations." Geis v. Bd. of Educ. of Parsippany-Troy Hills, 774 F.2d 575, 583 (3d Cir. 1985). Accordingly, mainstreaming may not be appropriate for every child with a disability. Removal of a child from a regular educational environment may be necessary when the nature or severity of a child's disability is such that education in a regular classroom cannot be achieved. In such a case, as where a student cannot learn satisfactorily in the parent's preferred setting, FAPE might require placement of a child in a less inclusive classroom setting, such as one for students with like intellectual disabilities. D.W. v. Milwaukee Pub. Schs., 526 F. App'x 672 (7th Cir. 2013).

[51] Oberti has been abrogated in part, but on other grounds. See J.N. v. Pittsburgh City Sch. Dist., 536 F. Supp. 2d 564, 573 (W.D. Pa. 2008).

Regarding modification to compensate for academic lapses, the IEP team must generally review the child's IEP periodically, and at least annually, to determine whether the annual goals for are being achieved, and revise the IEP as appropriate to address any lack of expected progress toward the annual goals and in the general education curriculum, if appropriate. 20 U.S.C.A. § 1414(d)(4); see also 34 C.F.R. § 300.324(b)(ii) (2013) (mirroring the statutory language). Pursuant to N.J.A.C. 6A:14-3.7(i), an IEP team shall meet annually or more often if necessary "to review and revise the IEP and determine placement." An IEP team shall also review "any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate." N.J.A.C. 6A:14-3.7(j)(1). Thus, a district must revise a student's IEP more often than annually if there is "any lack of expected progress toward the annual goals." If, at any time between annual meetings, an IEP team member, including a parent, wishes to revise the IEP, that team member can request an IEP team meeting, and the IDEA sets forth detailed procedures governing the IEP revision process. See 20 U.S.C.A. § 1415; 34 C.F.R. §§ 300.320–324 (2013).

There is a line of cases that discuss "failure-to-revise violations," where a District fails to revise a student's IEP. See, e.g., K.E. v. Indep. Sch. Dist. No. 15, 647 F.3d 795 (8th Cir. 2011); M.M. ex rel. L.R. v. Special Sch. Dist. No. 1, 512 F.3d 455 (8th Cir. 2008). In Special School District No. 1, the appellate panel found that the district did not violate the IDEA by failing to revise a child's IEP prior to a school transfer because the parent did not request a revision in the IEP, and walked out of her child's pre-transfer IEP meeting, even though her input was critical to developing an appropriate IEP. Special Sch. Dist. No. 1, 512 F.3d, supra, at 465.

Here, N.S. is classified with autism. According to the information available when the May 2012 IEP was made, he needs overall improvement of language skills and would benefit from individual academic programming, a small class size with high teacher-to-student ratio and reinforcement of social skills. At that time, the rationale for removal from general education indicated that N.S. had been in the LLD-M class since September 2011 and was adjusting well, so the placement in the LLD-M program in Ms. Pannucci's class at BMHS was considered to be the least restrictive environment

due to his "classification of Autism, his learning needs, and the need for a smaller learning environment." That consideration, however, also included an initial recommendation for the self-contained program at BTHS and expressly provided for a sixty-day review after the start of the school year to review N.S.'s status. So, when it was created, the May 2012 IEP was reasonably designed to confer a meaningful educational benefit with significant learning, individualized to meet his specific needs.

Moreover, the District implemented the IEP. The collective testimony of Pannucci, Panuska and Stump evidences that between May 2012 and November 2012, respondent provided the related services, with most of the accommodations and modifications set forth in the May 2012 IEP. Pannucci specified that some of the modifications included simplifying information to meet learning needs; tests were modified with limited choices; she personally sat with N.S. during tests and assisted with limiting yet more choices; and supplemental folders with additional worksheets were sent home. Panuska testified that specific modifications and accommodations of the IEP had been implemented, "and then some." Pannucci also interfaced with Marjorie Eckhoff, who provided supplemental instruction, investigated options for additional accommodations along with Ms. Arre (co-teacher), involved a supervisor and requested a meeting. She also reported N.S.'s academic struggles to petitioner at meetings in October and November 2012. The November 2012 amended IEP added program goals but did not actually change N.S.'s individual goals and objectives. Pannucci implemented the goals and objectives contained in the November 2012 IEP, which did not result in educational harm, and she continued to implement modifications set forth in the IEP.

On the other hand, petitioner offered mere conjecture to posit the notion that most of the modifications and accommodations were not provided. She speculates that N.S. could not have received poor grades if they had been. And she knows specifically that modifications were not provided because she was not permitted in the classroom during testing.

As stated, the District did convene a meeting in November 2012 to address N.S.'s academic standing. As in M.M., petitioner left the meeting. The District

nonetheless amended the IEP, adding related services, and kept N.S. in the program and placement that petitioner preferred. It continued to involve petitioner in the ensuing months in the educational process. The District continued to implement the modifications and accommodations in the IEP, and N.S. completed the ninth grade, despite having had low grades during the school year. Thus, the District did not fail to act to rectify lapses of academic progress.

Petitioner has also tangentially raised the issue that the District's failure to revise modifications and accommodations in N.S.'s IEP constituted a violation of the IDEA's "child find" requirement, pursuant to which states are obligated to identify, locate and evaluate all children with disabilities residing in the state to ensure that they receive needed special-education services. Forest Grove Sch. Dist. v. T.A., 557 U.S. 230, 245, 129 S. Ct. 2484, 2495, 174 L. Ed. 168, 182 (2009); 20 U.S.C.A. §1412(a)(3)(A). Courts have characterized the child-find obligation as a "continuing" obligation, because in cases where a district has conducted an evaluation and concluded that a student is not disabled, the district is then afforded a reasonable time to monitor the student's progress before exploring whether further evaluation is needed. Ridley, supra, 680 F.3d at 273 (stating that "[t]he IDEA does not require a reevaluation every time a student posts a poor grade.") However, the child-find provision is inapplicable to the facts in this matter, because N.S. has already been classified as in need of services under a diagnosis of autism. Child find does not require a district to locate students that are already classified, and review their IEPs more frequently than what is required by 20 U.S.C.A. § 1414(d)(4).

I **CONCLUDE** that the IEPs for the 2012–13 school year provided an opportunity for significant learning and a meaningful educational benefit, that the District substantially implemented the IEPs for the 2012–13 school year, and that the District did not fail to act to rectify lapses of academic progress.

As for the 2013–14 school year, the May 2013 IEP was developed using multiple sources of relevant data, as previously indicated. The IEP's "rationale for removal from general education" referenced N.S.'s particular learning needs; his academic struggles in the LLD-M program; and the potential for educational benefit in a program where

there would be smaller class size and smaller group instruction, individualized academic programming, a higher teacher-to-student ratio, and reinforcement of social skills.

It bears repeating that the May 2013 IEP's "present levels of academic achievement and functional performance" indicates, for science, English, and math, that N.S. had made limited progress with regard to academics and was having "tremendous difficulty following along/understanding material being taught within this learning environment," despite his effort. It further states that the volume and content of the material and pace of the class "is too intense for him . . . [and] he is only being assessed on a fraction of the material, as opposed to his classmates." It further describes "difficulty with the completion of critical thinking activities or large tasks even when it is broken into manageable units." Specific examples were given. The teacher opined that, based upon his ability, N.S. should be placed in a program where social skills and life skills would be highlighted daily, without an environment where there is a rapid pace and a high volume of material.

With regard to social studies class, the May 2013 IEP likewise indicated limited academic progress, including with the utilization of modifications and numerous specific accommodations.[52] The teacher opined that the current learning environment was detrimental to N.S.'s success and harmful to his educational progress. She wrote that "[i]t is extremely heartbreaking to see [N.S.] struggle with the material on a daily basis," and opined that he "should be in a classroom environment for social/life skills and community-based learning/service are emphasized daily." The CST (with the exception of petitioner, who was absent) agreed that the self-contained MD program at BTHS would be the appropriate educational program and placement for N.S. for the 2013–14 school year.

The testimony of Morrison, Novick, and Soltys, in particular, supported the District's position in that regard. Based upon her knowledge of N.S.'s educational strengths and weaknesses, as well as her knowledge of the two different curriculums in

[52] They included, but were not limited to: "one-on-one with teacher reading the test, answer keys to study guides, assessments shorter in length, choices are narrowed down, and multiple chances given to correct his answer."

the MD and LLD programs, Novick's expert opinion was that he would thrive in a program where social skills and life skills were highlighted daily, and that the MD class would be more appropriate and beneficial for him. Morrison's expert opinion, based upon her experience providing special education services to N.S., was that he needs life skills as a part of his educational program, that he benefits from the provision of SLE, and that he was appropriately placed in her MD classroom between September 12 and December 5, 2013. Soltys testified that N.S.'s functioning level is at the level of the MD program and below that of her LLD program. In her expert opinion, N.S. should be put at the MD level to get instruction for developing the requisite reading, writing, and word-meaning skills, and where his educational social, emotional, and physical needs would be met. It is also noteworthy that Dr. Chase observed first-hand that N.S. was not a fluent reader, and she specifically noted in her assessment petitioner's disagreement with and upset over her observation. It is also noteworthy that Dr. Chase neither absolutely declared that an MD program would be inappropriate for N.S., nor definitely recommended placement at the Rugby School.

I **CONCLUDE** that the IEP for the 2013–14 school year was reasonably designed to provide an opportunity for significant learning and a meaningful educational benefit, and it presented a floor of opportunity, if not optimal services, for N.S.

With regard to the LRE, the self-contained program at BTHS provided less exposure to general-education students than did the LLD-M program at BMHS, but it did provide for some interaction with general-education students and for socialization with typical peers through designated organizations. As the Third Circuit stated in Geis, "the goal of placing children in the least restrictive environment does not trump all other considerations." Geis, supra, 774 F.2d at 583. And as stated above, mainstreaming may not be appropriate for every child with a disability, and removal from a regular educational environment may be necessary to appropriately accommodate the nature or severity of a child's disability. The District attempted to accommodate N.S. in a more inclusive class environment during the 2012–13 school year, but he struggled academically and it was not educationally beneficial. Unfortunately, education in a more inclusive class environment with supplementary aids and services cannot be achieved satisfactorily, and the school has included N.S. in school programs with nondisabled

children whenever possible. Oberti, supra, 995 F.2d at 1215–17; D.W. v. Milwaukee Pub. Schs., supra, 526 F. App'x 672.

Therefore, I **CONCLUDE** that under these facts and circumstances, FAPE has been provided in the LRE.

As indicated above, petitioner has also alleged a number of procedural violations. In order for procedural violations of the IDEA to be actionable, the violations must amount to a substantive deprivation of a free appropriate public education. 20 U.S.C.A. § 1415(f)(3)(E)(i) (stating that decisions of hearing officers must be made on substantive grounds based on a determination of whether a child received FAPE).[53] Where a petitioner alleges a procedural violation, the hearing officer may find that a child did not receive FAPE only if the procedural inadequacies: (1) impeded the child's right to FAPE; (2) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE to the child; or (3) caused a deprivation of educational benefits. 20 U.S.C.A. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2) (2013); N.J.A.C. 6A:14-2.7(k); C.H. v. Cape Henlopen Sch. Dist., 606 F.3d 59, 67 (3d Cir. 2010); G.N. and S.N. ex rel. J.N. v. Bd. of Educ. of Livingston, 52 IDELR 2 (3d Cir. 2009).

Therefore, in evaluating whether a procedural defect has deprived a student of FAPE, "the [c]ourt must consider the impact of the procedural defect, and not merely the defect per se." Weiss ex rel. Weiss v. Sch. Bd. of Hillsborough Cnty., 141 F.3d 990, 995 (11th Cir. 1998). For example, in Weiss, the court determined that although a procedural violation had occurred, it did not rise to the level of a substantive deprivation of rights because the child was placed in the program where his parents initially wanted him, and they actively participated in his educational placement. The Eleventh Circuit explained that it was concerned with the purpose behind the procedural requirements—full and effective participation in the IEP process. Id. at 996. Similarly, in Bend-LaPine School District v. D.W. ex rel. T.W., 28 IDELR 734 (9th Cir. July 16, 1998), the court

[53] Under New Jersey law, a "hearing officer" is an administrative law judge. J.M. ex rel. J.M. v. Deptford Twp. Bd. of Educ., EDS 2998-99 & EDS 4308-99 (consolidated), Final Decision (July 23, 1999) <http://njlaw.rutgers.edu/collections/oal/>.

found that there was no denial of FAPE even though intermediate review of short-term objectives was not completed, and all the services listed in the IEP were not provided, because the impact on educational opportunity was not severe. Overall, the case law is clear that courts should be cautious about transforming procedural violations into substantive rights violations:

> Courts must strictly scrutinize IEPs to ensure their procedural integrity. Strictness, however, must be tempered by considerations of fairness and practicality: procedural flaws do not automatically render an IEP legally defective. Before an IEP is set aside, there must be some rational basis to believe that procedural inadequacies compromised the pupil's right to an appropriate education, seriously hampered the parents' opportunity to participate in the formulation process, or caused a deprivation of educational benefits.
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> [Roland M. v. Concord Sch. Dep't, 910 F.2d 983 (1st Cir. 1990).]

"[A]lthough it is important that a school district comply with the IDEA's procedural requirements, compliance is not a goal in itself; rather, compliance with such procedural requirements is important because of the 'requirements' impact on students' and parents' substantive rights.'" Ridley, supra, 680 F.3d at 274 (citation omitted).

Petitioner alleges that the District committed a procedural violation when it notified her that a sixty-day-review meeting, not an IEP meeting, would be held on November 30, 2012, but then created a new or amended IEP for N.S. She also alleges that the District unilaterally changed the goals and objectives of the May 31, 2012, IEP when it drafted the November 2012 IEP. She further states that the District then implemented the amended November 2012 IEP without her consent, and that the November 2012 IEP contained more difficult goals and objectives that N.S. was unable to attain, thus setting him up for failure and ultimately denying him a FAPE. Finally, she alleges that the May 2013 IEP changed N.S.'s program and placement, and was developed without her presence, participation, or approval.

The sixty-day-review notice

An IEP is defined as a written plan which sets forth present levels of academic achievement and functional performance, "measurable annual goals and short-term objectives or benchmarks," and describes a program of individually designed instructional activities necessary to achieve the stated goals and objectives. N.J.A.C. 6A:14-1.3. IEPs must be reviewed at least annually. 20 U.S.C.A. § 1414(d)(4)(A)(i); N.J.A.C. 6A:14-3.7(i). Parents and adult students must receive written notice of the IEP meeting "early enough to ensure that they will have an opportunity to attend." N.J.A.C. 6A:14-2.3(k)(3).

In order for parents to effectively participate in and contribute to the process of developing an appropriate IEP for their child, they need to know what the school proposes to do and why, and what has been going on with the child at school. K.A. v. Fulton Cnty. Sch. Dist., 741 F.3d 1195 (11th Cir. 2013). Therefore, prior written notice to the parents is required whenever a local educational agency proposes to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. 20 U.S.C.A. § 1415(b)(3); N.J.A.C. 6A:14-2.3(f)(1) The written notice shall include, among other things, "a description of the action proposed or refused by the agency," "an explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record or report the agency used as a basis for the proposed or refused action," "a description of other options considered by the IEP Team and the reason why those options were rejected," and "a description of the factors that are relevant to the agency's proposal or refusal." 20 U.S.C.A. § 1415(c)(1); N.J.A.C. 6A:14-2.3(g) (echoing the IDEA's requirements).

However, notice deficiencies that have no impact on a parent's full and effective participation in the IEP process, and do not result in harm to the child, do not constitute a violation of the IDEA. Weiss, supra, 141 F.3d at 996; Doe v. Alabama, 915 F.2d 651, 662 (11th Cir. 1990). Petitioner has not alleged specific harm to N.S. as a result of the defective notice, and as discussed more fully below, she attended the IEP meeting and was given an opportunity to meaningfully participate.

In Woods v. Northport Public School, 487 F. App'x 968 (6th Cir. 2012), the plaintiffs claimed that the school denied their son a FAPE, in part on grounds that the school denied them participation in the IEP process, since the goals and objectives of their son's IEP were developed outside of their presence. The plaintiffs requested that academic goals be developed at the IEP meeting, but the request was denied and the IEP team developed goals later. The Sixth Circuit determined that this constituted a procedural violation. The Woods court distinguished its facts from those in Hjortness v. Neenah Joint School District, 2006 U.S. Dist. LEXIS 43642 (E.D. Wis. 2006), where the district sought to develop specific goals and objectives during a two-and-a-half-hour meeting, and specifically asked the mother for her input; however, instead of participating, she made clear that she did not believe that the district could provide FAPE. After receiving the IEP, she did not immediately alert the school as to her concerns regarding the changes in goals and objectives. These cases highlight that the pivotal inquiry in determining whether the district's action constitutes a procedural violation is whether the district frustrated the petitioner's ability to meaningfully participate.

Here, on November 12, 2012, the District sent petitioner written notice to attend a "60 day review" meeting, not an IEP meeting. (J-2.) The notification letter had an option that the District could have checked off to signify that an IEP meeting would be occurring. Although the box was not checked off, a draft IEP was prepared at this meeting. Boxes are checked on the IEP indicating that an IEP was developed "as a result of an amendment." Thus, notice was inadequate under the statute and regulations.

Despite receiving defective notice, petitioner attended the November 30, 2012, IEP meeting. Accordingly, she was afforded a meaningful opportunity to participate in the decision-making process regarding her son's education. In addition, prior to the meeting, on November 25 or 26, Ms. Stump met with petitioner to discuss petitioner's concerns about N.S.'s grading and modifications. At the sixty-day-review meeting, she had the opportunity to participate in establishing goals and objectives for the proposed draft IEP. As Ms. Stump, who was in attendance at the November 30, 2012, IEP

meeting, has testified, petitioner was informed that her son was struggling academically in the program, and she was invited to participate in formulating a solution. Ms. Stump also testified that when respondent merely mentioned N.S. participating in the MD program, petitioner became visibly upset, started crying, and then abruptly ended the meeting. Petitioner had three to five meetings between December 2012 and March 2013 with Ms. Stump, Ms. Badders, and Ms. Anderson to discuss and plan N.S.'s ongoing education, and to make modifications to his program. Specifically, on December 17, 2012, petitioner met with Ms. Stump and case manager Ms. Badders to discuss what goals and objectives from N.S.'s IEP he could work on. These facts align more with the situation in Hjortness than that in Woods, because the testimony indicates that petitioner's ability to meaningfully participate in the IEP process was not significantly impeded.

Therefore, I **CONCLUDE** that the District's notification to petitioner of a sixty-day-review meeting, when a proposed IEP was generated at the meeting, constitutes a procedural violation for defective notice. However, the evidence does not show that the requisite prejudice or harm resulted from the deficient notice as required by 20 U.S.C.A. § 1415(f)(3)(E)(ii). The procedurally defective notice did not "significantly impede" petitioner's opportunity to participate in the decision-making process relative to the November 2012 IEP.

November 2012 Goals and Objectives

Next, petitioner alleges that the District unilaterally changed the goals and objectives of N.S.'s IEP. The IEP also reflects related services not contained in the May 2012 IEP. The question then becomes, did the District's unilateral altering of the wording of the goals and objectives, and addition of related services, in the November 2012 IEP constitute a procedural violation that rose to the level of a denial of FAPE? And, did implementation of that IEP, without parental consent, constitute a procedural violation that rose to the level of a denial of FAPE?

The IDEA and the United States Code provide that an IEP may be amended at an IEP team meeting, or without a formal IEP meeting when the parent and district

agree to do so. 20 U.S.C.A. § 1414(d)(3)(D), (F); 34 C.F.R. § 300.324(a)(4)(i) (2013). The parents and district may agree to develop a "written document" to amend or modify the child's current IEP. Ibid. If such changes are made to the child's IEP, the district must ensure that the child's IEP team is informed of those changes. 30 C.F.R. § 300.324(a)(4)(ii) (2013). Changes to the IEP may be made by amending or modifying the IEP rather than redrafting the entire IEP. 20 U.S.C.A. § 1414(d)(3)(D); 34 C.F.R. § 300.324(a)(6) (2013). In an Eleventh Circuit case, K.A. v. Fulton County School District, supra, 741 F.3d 1195, the local district sought to amend a student's IEP a month after she entered first grade, but the parents did not agree to the amendment. An IEP team meeting was held and the team adopted the amendment.[54] The court found that an IEP team can amend an IEP at a team meeting even if the parents do not consent to the proposed change. The court emphasized that "the statute expressly requires parental consent for a written amendment when there is no team meeting, and conspicuously omits a requirement of parental consent if the IEP is amended at a team meeting." K.A., supra, 741 F.3d at 1205–06.

New Jersey's regulations are worded differently than the IDEA and the United States Code. The State regulations provide that an IEP may be amended without a meeting of the IEP team when the parent makes a written request for specific amendments and the district agrees, or the district provides the parent with a written proposal to amend the IEP and the parent consents within fifteen days. N.J.A.C. 6A:14-3.7(d)(1), (2). New Jersey's regulations do not expressly authorize amending an IEP at a team meeting without parental consent.

Regarding the notice a district is required to give a parent after amending an IEP, the IDEA and Federal Code also differ from the New Jersey regulations. The IDEA and Federal Code provide that "[u]pon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated." 20 U.S.C.A. § 1414(d)(3)(D) (emphasis added); 34 C.F.R. § 300.324(a)(6) (2013) (emphasis added). New Jersey's regulations, on the other hand, are mandatory—all amendments made without an IEP

[54] An IEP team includes the child's parents, a regular-education teacher if applicable, at least one special-education teacher of the child, a representative of the public agency, an individual who can interpret the instructional implications of evaluation results, other individuals at the discretion of the parent or agency, and the child, where appropriate. 34 C.F.R. § 300.321 (2013); 20 U.S.C.A. 1414(d)(1)(B) to (d)(1)(D).

team meeting shall be incorporated into an amended IEP or an addendum to the IEP, and a copy shall be provided to the parent within fifteen days. N.J.A.C. 6A:14-3.7(d)(3) (emphasis added).

The November 2012 IEP was an amended IEP, as it altered the wording of the goals and objectives in the May 2012 IEP and added related services. The November IEP (J-3) states that it was developed "as a result of an amendment" pursuant to a sixty-day review. Whether it was developed at an "IEP team meeting" is less clear. However, because the pre-meeting parental notice and IEP itself reflected that the meeting was for a sixty-day review of the IEP, it appears that the IEP was not amended at a "team meeting," and thus, parental consent is required by the IDEA, the Federal Code and New Jersey's regulations. Petitioner did not receive a copy of the amended IEP and notice of the right to object within the required fifteen days as required by N.J.A.C. 6A:14-3.7(d)(1), (2). Thus, procedurally, the amendment of the May 2012 IEP by way of the November 2012 IEP was defective.

But again, petitioner had a meaningful opportunity to participate in the decision-making process at the November 2012 meeting, preceded by a meeting with Ms. Stump just days earlier and followed by three to five meetings between December 2012 and March 2013 with Ms. Stump, Ms. Badders, and Ms. Anderson. Indeed, the program and placement that she preferred were maintained by the District. As in Hjortness, the testimony indicates that petitioner's ability to meaningfully participate in the IEP process was not significantly impeded. And there is no evidence that it interfered with N.S.'s right to FAPE or caused a deprivation of educational benefits.

The remaining question is whether implementation of the amended IEP denied N.S. FAPE. On that point, the November 2012 IEP was reasonably calculated to provide N.S. with FAPE. It did not change N.S.'s educational program or placement, and he remained in Ms. Pannucci's LLD-M class at BMHS. It provided for a shared personal aide, three hours of supplemental instruction, utilization of an iPod and talking photo album, and access to "Bookshare." Although the amended IEP added "program goals" and worded individual goals and objectives differently, the goals implemented did not increase the difficulty of instructional material for N.S. Because the May 2012 IEP

conferred a meaningful educational benefit to N.S., and the amended IEP did not deviate from that IEP in any way that adversely impacted N.S.'s education, the November 2012 IEP did not deny N.S. FAPE.

Therefore, I **CONCLUDE** that the District's unilateral altering of the wording of the goals and objectives in the November 2012 IEP, along with the addition of related services, constituted a procedural violation, because petitioner was not provided with a copy of the amended IEP; however, neither the amendment of the IEP nor the implementation of the amended IEP rise to the level of denying N.S. FAPE.

Termination of supplemental instruction

The IDEA affords parents of a child with a disability certain procedural protections, including the right to written prior notice whenever the local educational agency proposes to initiate or change "the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child." 20 U.S.C.A. § 1415(b)(3). Changes to the IEP may be made either by the entire IEP team or by parental agreement with the district to amend the IEP without a meeting. 20 U.S.C.A. § 1414(d)(3)(D), (F).[55] Again, every student with a disability eligible under the IDEA is entitled to receive FAPE, which is defined at 34 C.F.R. § 300.17 (2013) to mean "special education and related services" that are provided at public expense and "in conformity with an individualized education program." Therefore, the parents have a right to prior written notice before a District changes a student's services, such as supplemental instruction. However, supplemental instruction given to a student when not called for in his IEP may be considered "optimal" services, and, thus, the procedural protections of the IDEA would not apply upon their termination. See, e.g., E.L. v. Chapel-Hill Carrboro Bd. of Educ., 975 F. Supp. 2d 528 (M.D.N.C. 2013) (failure to provide one-on-one services where not provided for in an IEP, but the student had

[55] An IEP is defined as a "written statement . . . that is developed, reviewed, and revised in accordance with [20 U.S.C.A. § 1414(d)]" that includes, among other things, "a statement of the special education and related services and supplementary aids and services . . . to be provided to the child." 20 U.S.C.A. § 1414(d)(1)(A)(i)(IV).

nevertheless been receiving one-on-one services, could not be the basis for finding that the student was deprived of FAPE).

The record shows that N.S. had been receiving supplemental instruction for three hours per week with Marjorie Eckhoff during the 2012–13 school year.[56] However, on April 25, 2013, Crystal Badders sent an e-mail to N.S.'s supplemental instructor indicating that supplemental instruction in the District would be terminated "as of April 30, 2013." (P-11.) Ms. Pannucci and Mr. Morgan testified that the termination of supplemental services was District-wide. Mr. Morgan acknowledged that where supplemental services are terminated, the IEP must be modified to reflect that. Although the May 2012 IEP does not state that N.S. was to receive supplemental instruction, N.S.'s November 2012 IEP provides for "Supplemental instruction—3 hours per week." (J-3.) At no time was N.S.'s May 2012 or November 2012 IEP ever modified to reflect the termination of supplemental instruction.

Although the IDEA entitles a parent to notice prior to a change in special education and related services, those services are defined as being provided "in conformity with an IEP." In this case, the last agreed-upon IEP did not purport to provide such services. Therefore, the District did not commit a procedural violation by terminating those services without notice to petitioner.

On the other hand, the November 2012 IEP does indicate that N.S. was receiving supplemental instruction. Assuming, for the sake of argument, that the November 2012 IEP provided an enforceable right to supplemental instruction, there is no evidence that its termination in April 2013 denied him FAPE or deprived him of an educational

[56] The supplemental instruction offered by Marjorie Eckhoff is to be distinguished from the voluntary supplemental trial reading program taught by Ms. Winward. As Mr. Panuska and Ms. Winward testified, during the 2012–13 school year, N.S. participated in a volunteer supplemental trial reading program taught by Ms. Winward, an English teacher. Although Mr. Panuska testified that Ms. Winward's class was two to three days per week in lieu of N.S.'s ceramic class, Ms. Winward and J-3 indicate that the volunteer supplemental reading program was once per week for thirty to thirty-five minutes. In contrast, the "supplemental instruction" taught to N.S. at home was for three hours per week. (See J-3.) Petitioner is contesting the termination of the supplemental services provided by Marjorie Eckhoff to N.S. at home. It is critical to note that although J-1 does not indicate that N.S. would be provided with either Ms. Winward's class or Ms. Eckhoff's supplemental instruction, J-3 indicates that he would be provided with both services.

benefit.[57] "[A] school district's failure to comply with the procedural requirements of the Act will constitute a denial of FAPE only if that failure causes substantive harm to the child or his parents." C.H. v. Cape Henlopen Sch. Dist., supra, 606 F.3d at 66. There is no credible evidence demonstrating that the termination of those services constituted a "loss of educational opportunity" or a "deprivation of educational benefits." See D.S. v. Bayonne Bd. of Educ., 602 F.3d 553, 565 (3d Cir. 2010). In fact, Morgan testified that the reason why supplemental instruction was being reduced throughout the District was because it was not conferring an educational benefit.

Additionally, the evidence indicates that the termination of supplemental services did not directly result in N.S.'s academic decline. N.S. struggled academically earlier in the 2012–13 school year—his struggles did not begin after the termination of supplemental services on April 30, 2013. Specifically, Mr. Panuska testified that N.S. had not done well academically in Ms. Pannucci's class during the 2012–13 school year, based upon his communication with teachers and his review of their assessment. He testified that Ms. Pannucci shared that even with the assistance of a one-on-one paraprofessional, N.S. was not keeping up with the class or making sufficient progress. Ms. Pannucci also credibly testified that N.S. was not doing well in her class prior to termination of the supplemental instruction.

Therefore, I **CONCLUDE** that the District did not commit a procedural violation that denied FAPE by terminating N.S.'s supplemental instruction in the 2012–13 school year without either notice to, or knowledge of, the petitioner, because the May 2012 IEP did not provide for supplemental instruction. Even if N.S. was entitled to such services by way of the November 2012 IEP, there is no evidence that their termination denied N.S. FAPE or deprived him of an educational benefit.

[57] It is curious that petitioner simultaneously asserts that the November 2012 IEP was unlawful, yet insists that her son is entitled to services that were provided for primarily if not exclusively in that IEP.

Participation in the development of the May 2013 IEP

No specific timelines are imposed in conjunction with the notice required for an IEP meeting. 34 C.F.R. § 300.322(a)(1) (2013) and N.J.A.C. 6A:14-2.3(k)(3) simply require that a school district notify parents "early enough to ensure they will have an opportunity to attend." Consistent with other requirements of the IDEA that are not regulated by timelines, a standard of reasonableness is applied in determining whether a notice is timely. Letter to Constantian, 17 IDELR 118 (OSEP 1990). A district must schedule the meeting at a mutually agreed-on time and place. 34 C.F.R. § 300.322(a)(2) (2013); N.J.A.C. 6A:14-2.3(k)(4). If neither parent can attend, the district must use other methods to ensure parent participation, including individual or conference calls. 34 C.F.R. § 300.322(c) (2013); N.J.A.C. 6A:14-2.3(k)(4).

Petitioner alleges that an annual review IEP meeting was held on May 28, 2013, without her presence, despite her having notified the District through e-mail and by certified mail that she could not attend at that time. An IEP was generated at that meeting which proposed self-contained MD classes at BTHS. Petitioner claims that her concerns were not taken into consideration. Petitioner claims that from May 2013 until December 5, 2013 (when Judge Kerins issued a modified stay-put Order), N.S. did not have a valid IEP in effect as a result of these procedural violations.

The District complied with the IDEA by making a sufficient attempt to accommodate petitioner in scheduling the May 28, 2013, IEP meeting; however, petitioner chose not to attend of her own volition. N.S.'s 2012 IEP was set to expire at the end of May 2013, and the District asserted a duty to develop an IEP for the 2013–14 school year by that time. The District first notified petitioner of its intent to schedule an annual review meeting on April 29, 2013, approximately a month before N.S.'s 2012 IEP was set to expire. (R-9.) The notice set a proposed meeting date of May 30, at 12:15 p.m. On or about May 14, 2013, petitioner cancelled this meeting, and it was rescheduled by the District to May 28, 2013. Petitioner then stated she could not attend the second meeting "due to [N.S.]" (P-5.) The District tried to accommodate her by offering that N.S. could stay in the child study team office during the meeting if she did not want him to participate. (Ibid.) Then, on May 22, petitioner gave a conflicting

excuse as to why she would not be able to attend the May 28, 2013, meeting date, namely, that her husband would be unable to attend. (P-6.) However, petitioner's husband rarely, if ever, participated in the educational process.[58] Petitioner testified that her initial excuse, "due to [N.S.]," was because his after-school transportation would have been completed shortly before the IEP meeting. This, however, would not have precluded her from attending, since he would have been home by 12:45 p.m. (P-25) and the meeting was scheduled to begin at 1:00 p.m. (P-5). Accordingly, the District made a reasonable effort to accommodate petitioner, but she chose not to attend the meeting.

Petitioner further asserts that the May 28, 2013, IEP "changed" her son's placement without her consent. A student's placement cannot be changed unless the parties agree to do so, or a judicial decision is rendered. 20 U.S.C.A. § 1415(j) (commonly known as the "stay-put" provision). The District asserts that it merely proposed an IEP at the May 28, 2013, meeting,[59] but that this does not automatically constitute a change in placement.

Once a program or placement is offered, a parent has the right to review and consider the proposed IEP for fifteen days. N.J.A.C. 6A:14-2.6, -2.7. If a parent disagrees, the parent may request mediation or a due-process hearing. 20 U.S.C.A. § 1415(b)(6); 20 U.S.C.A. § 1415(k)(3); N.J.A.C. 6A:14-2.6, -2.7. While parents are equal participants in the IEP process, that does not mean that they have veto power. It is an incorrect interpretation of the IDEA that the parents and District each have "one vote"—parents do not have an equal vote in formulating a student's IEP. N. Kingstown Sch. Dist., 114 L.R.P. 17623 (July 26, 2013) (citing Buser v. Corpus Christi Indep. Sch. Dist., 20 IDELR 981 (S.D. Tex. 1994), aff'd, 22 IDELR 626 (5th Cir. 1996). If the parents do not agree with the IEP proposed by the team, they may request mediation or

[58] Respondent points to the evidence that petitioner's husband never attended the previous IEP meetings held on May 31, 2012, November 30, 2012, May 28, 2013, or August 12, 2013. Additionally, petitioner's husband was not listed on the caption of the due-process petition. He did not attend the June 18, 2013, reevaluation planning meeting, the July 1, 2013, emergent-relief hearing, the August 1, 2013, mediation session, or the August 14, 2013, settlement conference.

[59] The IEP document itself states that it was proposed and developed as a result of an annual review, "to propose a change in placement." (J-5.)

a due-process hearing to resolve their differences. 20 U.S.C.A. § 1415(b)(6); 20 U.S.C.A. § 1415(k)(3); N.J.A.C. 6A:14-2.6, -2.7. When an appeal has been requested regarding a change in placement, "the child shall remain in the then-current educational placement." 20 U.S.C.A. § 1415(j).

In this matter, petitioner filed for due process on June 18, 2013. Once this occurred, N.S.'s last agreed-upon placement automatically, by operation of stay put, became the placement during the pendency of the due-process hearing. However, in September 2013 N.S. began attending BTHS pursuant to an agreement between the parties. In short, although petitioner did not agree with the proposed placement of the May 2013 IEP, she contested the placement, as appropriate, through the filing of due process. She then agreed to modify the IEP in September 2013, resulting in N.S. attending the MD program at BTHS, with SLE and job sampling.

Therefore, I **CONCLUDE** that the District did not commit a procedural violation relative to the 2013–14 school year by proposing an IEP that offered a different program and placement from the prior year where it made a reasonable attempt to accommodate petitioner's participation in the May 2013 IEP meeting, petitioner chose not to attend the IEP meeting, but, upon due notification, she thereafter meaningfully participated in effectively modifying the proposed program.

In summary, I **CONCLUDE** that the District has proved by a fair preponderance of the credible evidence that for the 2012–13 and 2013–14 school years the IEPs and proposed IEPs for N.S. provided for FAPE in the LRE and that, although the District committed procedural violations as set forth above, those procedural violations do not rise to the level of denying N.S. a FAPE. Accordingly, petitioner is not entitled to out-of-district placement, compensatory education, or reimbursement.

ORDER

Accordingly, it is **ORDERED** that petitioner's due-process petition be and is hereby **DISMISSED**.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2013) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C.A. § 1415(i)(2); 34 C.F.R. § 300.516 (2013). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education.

July 29, 2014
DATE

ROBERT W. BINGHAM, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

/bdt

APPENDIX

WITNESSES

For Petitioner:

Nicholas Krupinski
Susan Winward
Andrew Morgan
Dr. Danielle Chase
S.S.

For Respondent:

Peter Panuska
Nicole Panucci
Darla Novick
Karen Morrison
Susan Soltys
Donna Stump

EXHIBITS

Joint:

J-1 Annual Review IEP for the 2012–13 school year, dated May 31, 2012
J-2 Request for parental participation in a sixty-day-review meeting, dated November 12, 2012
J-3 IEP for the 2012–13 school year, dated November 30, 2012
J-4 Request for parental participation in an Annual Review and Planning Meeting, dated May 7, 2013
J-5 Annual Review IEP for the 2013–14 school year, dated May 28, 2013
J-6 CST Speech Evaluation by Kelly Ely, MS CCC-SLP, dated May 23, 2013
J-7 CST Psychological Evaluation by Hannah Taksa Arnone, PD, NJSP, dated July 15 and 16, 2013

J-8 CST Brief Psychological Evaluation by Vincent Balestrieri, dated August 12, 2013

J-9 CST Educational Evaluation by Ann Marie Dayton, LDTC, dated July 10, 2013

J-10 Judge Scarola's Order, dated July 2, 2013, and attached Settlement Agreement

For Petitioner:

P-5 Email correspondence, dated May 14, 2013, and May 17, 2013, between petitioner and Crystal Badders

P-6 Letter from petitioner to Crystal Badders, dated May 22, 2013

P-7 Parental Notice of Completed IEP, dated June 3, 2013

P-10 2012–13 report cards and progress reports for N.S.

P-11 Email from Ms. Badders to Marjorie Eckhoff, Donna Stump, and Sue Russell, dated April 25, 2013

P-21 Brick Township Assistive Technology Evaluation Referral Form, dated May 1, 2013

P-23 Email correspondence between the parties (P-23a through P-23p)

P-25 N.S.'s current daily bus schedule

P-26 Classroom work and correspondence with teacher in stay-put temporary placement (pages 1, 2, 3, 4, 5)

P-37 Class work from current stay-put placement and homework pad assignments (pages 6, 7, 8, 10, 11, 12, 13, and 24)

P-38 Schedules, parent portal information (including grades and progress reports), and email correspondence

P-39 Email correspondence between the parties

For Respondent:

R-19 Modified stay-put daily schedule for the 2013–14 school year

R-29 Curriculum vitae of Karen Morrison, special education teacher

P-30 Curriculum vitae of Nicole Pannucci, special education teacher

P-35 Curriculum vitae of Darla Novick, SLE coordinator

R-45 Curriculum vitae of Peter Panuska, vice principal of special education at Brick Township High School/Brick Memorial High School

The nonsequential numbering of exhibits reflects the fact that numerous pre-marked exhibits were not identified and/or not offered into evidence.