

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION

OAL DKT. NO. EDS 15077-12

AGENCY DKT. NO. 2013 19003

D.B. AND L.B. ON BEHALF OF H.B.,

Petitioner,

v.

GLOUCESTER TOWNSHIP BOARD

OF EDUCATION,

Respondent.

Christopher Soriano, Esq., for petitioner (Duane Morris, LLP, attorneys)

Audra Pondish, Esq., for respondent (Wade, Long, Wood & Kennedy,
attorneys)

Record Closed: November 6, 2013

Decided: December 23, 2014

BEFORE **ELIA A. PELIOS**, ALJ:

STATEMENT OF THE CASE

This special education case arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. §§ 1401 to 1484(a). In this case, D.B. and L.B. filed a petition for due process on behalf of their daughter H.B. seeking a determination that the Gloucester Township Board of Education (the District) failed to offer H.B. a free and appropriate public education (FAPE) in accordance with the requirements of the IDEA, particularly with respect to inclusion in the least restrictive setting in its proposed IEP's

for the 2012-2013 and 2013-2014 school years. The District contends that P.T. was offered a FAPE at all times throughout that period. On November 13, 2012, the Office of Special Education Programs transmitted the matter to the Office of Administrative Law for final determination, and in accordance with 20 U.S.C.A. § 1415 and 34 C.F.R. §§ 300.500 to 300.587, at which time it was requested that an administrative law judge be assigned to conduct a hearing.

Hearing dates were held on August 13, August 14, August 23, August 27, August 28 and September 30, 2013. After hearing all of the testimony and considering all of the evidence presented in that regard, as well as the parties' written summations, the record was closed on November 6, 2013, when the parties advised the undersigned that a hearing scheduled for that date was no longer needed.

FINDINGS OF FACT AND SUMMARY OF TESTIMONY

The following is undisputed and is **FOUND** as **FACT**. H.B., who was born on June 28, 2000, is the fourteen-year-old daughter of petitioners. She has been enrolled in the Gloucester Township School District since she transitioned from preschool to kindergarten in 2005. At the time of hearing she was enrolled at the C.W. Lewis Middle School.

For the 2011-2012 school year H.B. was placed primarily in an autism support program with twenty minutes each of math and language arts in a general education setting in accordance with a stay-put order. All specials/electives (physical education, music, art) were also provided in the general education setting. After three meetings to develop an IEP for the 2012-2013 school year, the parents did not agree with the proposed placement and challenged implementation of the IEP. The same holds for 2013-2014, and at the time of hearing H.B. remained in the same placement she participated in for 2011-2012. H.B.'s eligibility reason is noted in her IEP as "autistic."

The following is a summary of the witness testimony in this matter.

John Tighe

Tighe was admitted as an expert in special education. He worked for the District for forty-three years as a program supervisor, school psychologist, teacher, and director of Special Services. He retired from the District in 2012. He currently serves as a consultant for the District and helps staff implement IEPs. He is also employed as an adjunct professor at Rutgers, where he teaches courses in evaluation and assessment of special education children. He also provides psychological evaluations, behavior intervention plans, and functional behavior assessments for the Camden County Educational Services Commission. He received a bachelor's degree in psychology, a master's degree in counseling psychology, and he completed all requirements but a dissertation for a Ph.D. He holds certificates as a school psychologist, teacher, principal, superintendent, and supervisor.

2012-2013 IEP

There were three IEP meetings with respect to the IEP designed for H.B.'s transition from fifth grade to sixth grade. Tighe attended two of the meetings, but was not involved in the placement decision. At that point, he was working as a consultant for the District. He advised the IEP team to follow the evaluations, prepare a program that best fits H.B.'s needs, consider the services, aides, and modifications that could be provided, and then choose a placement.

The IEP team discussed a resource-room program, but decided instead to continue the stay-put order, which provides twenty minutes in language arts, twenty minutes in math, and that she would go to all of her exploratories with typically developing peers. The District complied with H.B.'s parents' request that she be allowed to go to advisory in the morning with the teacher that taught her literacy. She was in advisory (homeroom) in the morning for twenty-five minutes with typically-developing peers.

The IEP team discussed the possibility of general education for H.B. and decided that full-time placement in a regular education program would not be successful for her. Tighe said the transition from elementary to middle school is difficult for all children because a student has one teacher in elementary school, but several teachers in middle school. It is particularly challenging for students with autism to participate in regular middle-school classes because they generally have difficulty transitioning from place to place. However, the IEP included opportunities for H.B. to participate with typically developing peers in middle school.

The IEP team also discussed in class and pull-out replacement, and the autism program. H.B.'s parents wanted her in a regular classroom on a full-time basis. Tighe did not think that the potential negatives of a self-contained classroom outweighed the positive effects of the program because the program gives the child the support she needs. H.B.'s teacher not only supported her in the self-contained class, but did all her modifications when she went to her literacy and math programs. The teacher consulted daily with H.B.'s regular education teachers and trained H.B.'s aide. Tighe stated that everyone on the IEP team agreed that support was necessary but that they disagreed as to how much support should occur in that class.

The District incorporated modifications and accommodations suggested by the parents. Tighe explained that all students follow the Core Curriculum Standards, and that for a self-contained student it was common to just modify a specific Core Curriculum Standard down to an educational component that would benefit the student based on the IEP goals.

H.B. did not have any goals for the general education classroom, as the general education classroom was not a recommendation, but rather a stay put, which had been instituted for socialization purposes.

The IEP considered whether H.B.'s goals could be met in the general education classroom and whether the stress of staying so long a period of time in such an environment would be harmful to H.B. in terms of raising her anxiety level where you

would have certain kinds of behaviors. He did not think that a full-time placement in a regular classroom would be of any value and would not fulfill the components of her educational program.

Tighe stated that the teachers lecture more in middle school than in elementary school, and that H.B.'s program history demonstrates that she needs more of a program that is individualized and provided on a one-to-one basis. The Applied Behavior Analysis (ABA) method, including discrete trial instruction, works best for H.B. However, this method cannot be appropriately delivered in the general education classroom because it is significantly different from the kind of instructions provided to the other students. He further suggested that to remove a child from a classroom and sit the child in the corner of a room to use discrete trial instruction defeats the purpose of including the child in the classroom.

For her general education classes, H.B. is pre-taught information by the aide who is sent with her. The pre-teaching took about twenty to thirty minutes for each twenty-minute section. He stated that science and social studies tend to be largely reading-based, and that it is H.B.'s toughest area of literacy. The staff was also worried about safety in the science classroom.

In a general education science class, lessons are presented in a manner that involves one person speaking and other people responding. This method would increase H.B.'s stress level. H.B.'s global delays would not allow her to respond to the same directions that the typically-developing peers do in middle school. For this reason, the material H.B. took with her was modified so that she would be able to effectively work with that material with her assistant being there.

Tighe thought the IEP goals and objectives were appropriate for H.B. He agreed with the IEP team's recommendation of forty minutes in language arts in a replacement setting, but thought she should be there for the entire eighty-four-minute period. The parents were able to ask questions of the science and social studies teacher and the resource teachers.

At the beginning of the sixth grade, Tighe observed the regular physical education class due to safety concerns for H.B. and concluded that the school had not made a sufficient effort to better work with H.B. He met with the physical education department to discuss safety options, including the provision of an aide to be with H.B., but decided to have a buddy system instead. If safety were an issue, H.B. would do an activity on the side with a few typically-developing peers. He observed her advisory period and general education math setting. She was called on during math class and correctly identified the median. He did not notice any disruptions caused by H.B.'s presence. He did not see H.B. interact with the other children during her general education literacy class. He stated that the teacher, later in the year, encouraged her children to interact more with H.B.

He was aware of some very minor disruptions in H.B.'s general education classes in the beginning of the school year, but noted that for the most part H.B. concentrated very strongly. The District provided H.B. with a communication device called DynaVox MT4 DynaWrite, but found that H.B. could respond better on her own than waiting for the device to respond.

Tighe discussed an evaluation performed by Dr. Kerry Katz at the beginning of 2010 at the behest of the District. Katz recommended that H.B. receive intensive instruction under the ABA method in a quiet setting with a low student-to-teacher ratio. The IEP team agreed with this recommendation. Tighe stated that the District provided H.B. with Clicker 6 software as a result of an assistive technology evaluation done by Advancing Opportunities, and that she has had success with the software. Tighe agreed with the recommendations of an evaluation done by Karen Schmidt at the behest of the parents. He stated that the recommendations were similar to those of Dr. Katz.

He thought that while H.B. made some progress through her participation in the general education classroom, the overwhelming majority of progress she has made was due to the specialized training she receives in her Autism program.

In the summer of 2013, H.B. attended a camp as part of a stay put order. However, Tighe noted that the District's recommendation was that H.B. would attend the District's extended-school-year (ESY) program. He did not think that the camp fulfilled the purpose of ESY, which is to avoid regression. There was no academic element to the camp.

Tighe thought the placement under the 2012-2013 IEP was appropriate, though he would have preferred that a resource room be recommended. The placement called for forty minutes of literacy in a resource pull-out. He did not know for sure, but thought that the IEP extended her time from two twenty-minute segments in order to see how well she would do. The IEP eliminated her placement in a regular math class. He thought that the recommendations of Dr. Michael Selbst should be implemented and were, in fact, implemented by the IEP team. One of Selbst's recommendations was that H.B. be included in the regular education setting for academic subjects, initially for subject areas in which she has experienced the most success academically and behaviorally. She was included for two twenty-minute segments in the 2012-2013 school year under stay put, but Tighe agreed that there was no regular education placement under the 2012-2013 IEP or 2013-2014 IEP.

2013-2014 IEP

The recommended program was that H.B. would go to a resource room for thirty minutes of literacy and eighty-four minutes of math. Science and social studies would be provided in the autism program. She would be with her typically-developing peers for exploratory subjects, advisory, and lunch and recess. She would receive ABA services at home and would receive language therapy as a related service.

The IEP team discussed with the parents their concerns about a regular education program. All programs and placements were discussed in the IEP meeting. He stated that the parents were afforded appropriate participation in IEP meetings. He attended the IEP meeting for the 2013-2014 IEP, but the only contribution he made was

to suggest that H.B. should spend eighty-four meetings in the resource room. He thought that the resource room would provide a better gauge of whether or not H.B. function in a more difficult environment, and would address her parents' concerns of providing a less restrictive environment.

Tighe thought the proposed 2013-2014 IEP and the 2012-2013 IEP were appropriate. He did not think that H.B. regressed. Even though H.B. worked under stay put, her goals and objectives changed in accordance with her progress.

Adam Ritchie

Ritchie was H.B.'s case manager for the fourth grade and fifth grade. He prepared H.B.'s 2012-2013 IEP. At the May 30, 2012, IEP meeting, the IEP team discussed the goals and objectives in each area of instruction and related services. The parents were given the opportunity to add goals and objectives and to ask questions about goals and objectives. He recalled the parents voicing concerns at the May 2012 IEP meeting about the behaviors of the other students in the autism classroom and the effect those behaviors would have on H.B. He denied being concerned that H.B. might mimic self-talk behaviors of other students, and he denied telling the parents that the autism classroom was noisy and had a lot of activity.

The IEP was not completed at the May meeting, and the next meeting was held on September 5, 2012. The middle school self-contained classroom teacher and some general education teachers were brought in to discuss placement options. At the September 20, 2012, IEP meeting, any subject area teachers who were not at the previous meeting came to talk about middle school classes. It was mostly the science and social studies teachers. The parents had the opportunity to talk with these teachers. The parents wanted H.B. to have goals for the general education classroom, and Ritchie stated his opinion that H.B. has goals for when she's in the general education setting.

Ritchie observed H.B. several times in both the self-contained and general education settings. He thought that she complied with and followed directions well. He was concerned about the amount of prompting she needed to complete a task.

He stated that Dr. Selbst's report played a big role in the IEP. The 2012-2013 IEP included mostly a self-contained autism support program, with forty minutes of a resource pull-out class for language arts. H.B. would be there for forty minutes of the eighty-four minute block because that portion of the class was more teacher directed, which played to H.B.'s strengths. All of H.B.'s non-academic classes were mainstream classes.

The IEP team discussed a general education placement for academics but ruled it out based on evaluations and present levels of performance. The IEP team also ruled out an in-class resource placement for similar reasons. He thought ABA instruction could be provided in a general education classroom, but noted that having her in a room and receiving that type of specialized instruction is not really being in or a part of a general education class. The IEP team discussed the potential benefits and harm of both the general education classroom and the autism support classroom. They also considered all of the supplementary aides and services she would need in order to be successful in a general education or less restrictive environment. He said the school implemented a list of modifications and accommodations submitted by the parents.

In his two years as H.B.'s case manager, he thought she made progress in her academic program due to the services she received at school and at home. He did not think that her academic and social progress was due to her time in a general education classroom. He thought a smaller classroom is better for H.B. because the evaluations indicate that she does better in non-verbal type situations and that dialogue provides more distractions for H.B. However, Ritchie agreed that the size of the classroom is not the only important factor for H.B.'s success. It is also important know what is being offered in a smaller setting or a larger setting.

In meetings with Dr. Selbst, the common discussions related to H.B.'s knee dropping behaviors and experience in the lunchroom. The staff tried to address her behaviors throughout the year. The behaviors occurred across all different environments. However, the 2012-2013 IEP stated that "student does not display behavior that impedes her own or the learning of others."

He thought that the 2012-2013 IEP was appropriate.

Some of the goals and objectives changed for H.B.'s IEPs depending on her progress, and they did not stay the same simply because she was in the same placement under stay put. Ritchie discussed a supplementary aides and services tool kit document put together by teachers and the parents. He disagreed that certain of the strategies could work in the general education class, including appropriate level work materials with modifications and pre-teaching of classroom content. Those would be more appropriately done in the resource room.

H.B. attended a camp during the summer of 2013 as part of her stay-put placement. Ritchie did not think this was appropriate for H.B.

Carole Candidi

Candidi has worked for the District for sixteen years. She is currently a learning disabilities teacher consultant. She has several teaching certificates, including a teacher of the handicapped certificate. She was H.B.'s case manager for the 2012-2013 school year. She observed H.B. in both the special education and general education settings during seven different school days throughout the year. In the general education classroom, she saw H.B. get upset a few times and heard her humming or calling out for "mommy." To address the calling out behavior, the aide would tap H.B.'s wrist or have H.B. look at her. She thought H.B. was isolated in the classroom because there was not much social interaction. Candidi agreed that there are students in the special education classroom who display negative behaviors like self-talking and singing, and that there is a risk that H.B. could mimic those behaviors.

For the 2013-2014 IEP, the recommended placement included the resource room for math and language arts; science and social studies in the autism room; and advisory, lunch, and exploratories in the general education setting. In the IEP meeting, all placement options were discussed, including general education, in-class support, resource room, and a self-contained classroom at another middle school. These options were mistakenly not recorded in the IEP.

The IEP included the District's social skills ESY program as a recommendation. Candidi stated that H.B. does not typically regress academically over the summer because her parents work with her, but that social skills are a concern. She thought that both the District's program and the ESY program the parents wanted—a summer camp called Tall Pines—would be appropriate.

The IEP team recommended eighty-four minutes in a math resource program because evaluations and observations indicated that H.B. performed well at math, and because it represented a logical step out of a self-contained program and into a resource center. A shorter period of time in the language arts resource room was recommended so as to avoid overwhelming H.B. The IEP team felt H.B. was still best served within the autism support program for science and social studies. She thought science and social studies in the general education setting would be difficult for H.B. because of the emphasis on note taking. She would like to see how H.B. does in the resource room for math and language arts before attempting to place her in a resource room for science and social studies. She did not want to overwhelm H.B.

Candidi thought H.B. made academic progress in the 2012-2013 school year, and made some progress socially. She did not think the academic progress came from the general education classroom, but from the special education classroom. However, she thought some of the social skills progress came from gym class, exploratories, lunch, and home room. There are fewer opportunities for socialization in middle school academic classes than elementary school. H.B. is pre-taught material for her general education academic classes. She did not think a general education placement for

academics would benefit H.B. Candidi described the general differences in teaching styles in a resource room and general education classroom. In a language arts resource room, the material is usually two grade levels below the student's grade and there a lot of modifications and repetition. In general education, there is not as much repetition or assistance. She stated that she thought that the modifications and accommodations section of the IEP, which mostly came from the parents, could be applied in any academic setting. She acknowledged that no formal assessment has been done to quantify how much progress H.B. has made in the general education setting.

She thought the 2013-2014 IEP was appropriate.

Dana Henning

Henning was admitted as an expert in teaching, assessing, evaluating, and making educational recommendations for students with autism. She has a master's degree in behavioral training of people with severe disabilities and a doctorate in special education. She has vast experience working with people with disabilities. She estimated that she has provided over 1,500 evaluations for children with severe intellectual disabilities.

In 2010, the parents contacted her to conduct an evaluation of H.B. She observed H.B. for a full day at school, and observed her at church. At church, H.B. was in a Bible study class for children, and she was the only one who had memorized a particular passage. H.B. also behaved very well during a church service, which was loud and attended by several hundred people. Henning also went with H.B. and her parents to a discount warehouse store, where H.B. was able to identify items and put them in the cart when asked. When H.B. tried to sneak a stuffed animal in the cart, she put it back on the shelf without incident when one of her parents told her to put it back. She also was able to order a pizza on her own at a snack bar, and when the worker asked if she wanted "pepperoni or cheese" H.B. answered "cheese, please," without prompting from anyone.

In her 2010 evaluation report, Henning recommended that H.B. needed an inclusive educational program and did not necessarily need to participate in the autism classroom. She had observed H.B. in both the autism classroom and the general education classroom. Although there were minimal supports and H.B. did not stay for entire lessons, H.B. was very attentive in those classes and appeared to enjoy being in those classes.

She explained that inclusive strategies for a student with autism would include working on communication skills like raising a hand or how to talk appropriately to a teacher, and modifying academic material so the student can keep up. Another strategy Henning discussed was “priming,” which involves letting an autistic child know what to expect in the classroom beforehand because autistic children generally do not respond well to surprises. Reading materials could also be modified so a student could keep up even if she operates below grade level.

Henning thought discrete trial instruction is inappropriate for H.B. H.B. should be taught skills in an environment where they can be applied. She should not be taught how to count money with plastic coins in a classroom setting, because she might not be able to transfer the counting skills to a real situation. This is true regardless of H.B.’s IQ. Henning affirmed that discrete trial instruction hindered H.B.’s ability to generalize skills, but disagreed that H.B.’s inability to generalize was due to her global delays. She did not think that removing discrete trial instruction would harm H.B.

She recommended an auditory processing evaluation for H.B. because if she was not hearing things clearly, such an evaluation could determine what supports could help her better process what she hears. She also recommended a sensory integration evaluation that could determine the sensory supports H.B. needed to appropriately respond to her environment. She also recommended a functional behavior analysis to determine the triggers of H.B.’s maladaptive behaviors and be able to deal with such behaviors in the general education classroom rather than moving her out of the classroom.

Henning observed H.B. again in the school setting in 2013. During her observation, she noticed that there were sensory supports in place, but the school had not followed her previous recommendation for a “systematic” functional behavior assessment and she did not get a copy of any auditory processing evaluation, if one had been done.

With respect to the 2012-2013 IEP, Henning found it difficult to determine whether H.B. was making progress. For example, the IEP listed an instructional objective as “improve auditory short term memory.” However, Henning could not tell from the IEP what H.B.’s short term memory was like before instruction, and thus could not tell if it improved. The objective was too general, and not related to a specific task, so Henning could not tell what H.B. would be asked to do in order to improve her auditory short term memory.

She also took issue with the objective, “request verbally: actions, clarification, attention, objects or information,” because it was not specific enough. Each category—action, clarification, etc.—needed to be addressed individually. She did not think the District reported H.B.’s progress using objective progress data, standardized instruments, or any objective measures.

Henning only observed one aide who accompanied H.B. in the general education classroom. She thought this was inadequate and that the aide’s actions in a math class were detrimental. In particular, Henning saw the aide talking to H.B., which interfered with H.B.’s ability to hear the teacher talk. She did not see any need for the aide to do that based on H.B.’s behavior, and Henning thought that H.B. needed to learn to function on her own and that having somebody guiding her every single solitary minute denied her that opportunity.

She thought that the aide did not have to be right next to H.B., because it hindered H.B.’s ability to socialize with other students. She thought the aide could better use visual cues for H.B., subtle reminders of appropriate behavior, such as a

card that read, “be quiet” or “listen to the teacher.” This is less disruptive than tapping on H.B. or talking to her. She saw the aide use visual cues more in the special education class than the general education class.

She also did not see any evidence of “priming,” such that H.B. was prepared for what to expect in math class. Also, H.B. was not working on math skills in the special education room that were similar to the general education room. H.B. was working with plastic coins in the special education room, and when she got to the general education math class, the students were working on Algebraic equations.

Henning thought that H.B. could be educated in the general education setting more than she had been. To do so, H.B.’s IEP would have to be rewritten with clear and objective present levels of academic achievement. H.B.’s teachers, therapists, and parents would need to get together to establish a baseline for H.B.’s social skills in order to figure out what steps to take to improve her social skills. Her objectives need to be prioritized so she can spend more time on high-priority skills.

There is no need to gradually move H.B. to the general education setting. It is important for H.B. to be a part of one group, and not constantly move from one environment to another. She thought that H.B. could benefit from being in a general education setting with supplemental aides and services. Henning did not think there was any benefit for H.B. in the special education classroom because H.B.’s personality and her ability to deal with noise and distractions which occur in the general education setting eliminated any need for one-on-one instruction. H.B. needs to be able to practice social skills in the general education classroom, because it was hard for her to transfer the skills she practiced in the self-contained classroom to the general education classroom. There were no social benefits to the self-contained setting because there wasn’t anybody for her to engage in casual conversation with.

Henning also thought the autism class was too noisy and presented too many distractions for H.B. She also did not observe anything or see anything in H.B.’s records that would lead her to believe H.B. would be a distraction to the other students in the

general education classroom. When she observed H.B., H.B. was very quiet, while other kids were talking. She thought that the IEP team should have had a functional behavior analysis done if they really thought that self-talk, singing, and crying were problem behaviors for H.B. She did not observe any resource rooms.

Henning recommended that the District hire a consultant for developing and implementing more inclusive practices.

Henning reviewed the 2013-2014 IEP. It included a section that stated, "Mathematics, instruction level unknown," and described the results of the assessments and what the school knew about H.B.'s skills in mathematics. Henning thought that section provided no appropriate information useful to plan for H.B.'s mathematics instruction. She thought that the majority of the goals and objectives were not "measurable," and that there should have been goals and objectives in the general education curriculum.

Michael Selbst

Selbst was admitted as an expert in autism spectrum disorder, comprehensive evaluations, the development of IEPs and functional behavior assessments, ABA, and discrete trial intervention. Selbst is a psychologist who serves as the service director of Behavior Therapy Associates, an outpatient mental health practice. He has a Ph.D. in school psychology and is a board certified behavior analyst (BCBA). Over the last five years, he has consulted with approximately twenty to thirty school districts. He helps schools develop social skills programs and manage challenging behaviors for children with developmental delays and other difficulties. He has extensive experience working with and conducting observations, evaluations, standardized testing, and functional behavior assessments for autistic children. He has helped districts develop IEPs and has provided behavioral training for parents. Currently, H.B. is the only student for whom he provides services in the District.

Since 2008, he has consulted with the District four times a year with respect to H.B. On those days, he either observes H.B., reviews data or records, or meets with staff and the parents. The meetings offer staff and the parents opportunities to provide input and ask questions about H.B.'s program.

H.B. has a global developmental delay, which means a delay in multiple areas of development, including cognition, academics, language and communication, fine and gross motor skills, and social/behavioral and daily living skills. He believes H.B. can benefit from ABA methodology, which relies on "evidence-based practices" to determine appropriate practices designed to address a child's programming. The programming should be based upon the child's individual needs and should be data driven. "Discrete trial intervention" is a type of ABA that involves intensive individual teaching. He believes H.B. needs programming based on ABA methodology, but not necessarily discrete trial intervention, and that ABA methodology can be delivered in the general education classroom.

He also believes H.B. can benefit from "reverse mainstreaming," which involves bringing in a typically-developing peer into the special education classroom to serve as a positive role model. He has seen H.B. improve her social skills, like saying "hello" and "goodbye" to teachers and peers with fewer prompts.

He evaluated H.B. in 2006, 2008, and 2011. In 2011, he used assessment tools to gain information about H.B.'s developmental and functioning levels and her behavioral and social issues. He had the parents fill out questionnaires. His report included the observation that her behaviors had improved, but there were still tantrums and knee-dropping when she did not get her way or had to wait for a preferred item. He thought she behaved better when performing a preferred academic task. He discussed with the staff specific strategies to address her behaviors and stated that there were behavioral improvements as a result. He believed that H.B. struggled to make gains in the general education environment and that most of her academic gains resulted from small learning environments and from related services such as speech therapy, occupational therapy, and home programming. He believes H.B. should have

mainstream opportunities, but that they shouldn't come at the expense of H.B. receiving intensive individualized instruction at her appropriate level.

H.B. received twenty minutes each for math and language arts in the general education classroom because that gave her time with typically-developing peers while giving her a greater amount of time to work on her goals and objectives in the special education classroom. H.B.'s special education teacher and general education teachers work collaboratively to prepare H.B. for the general education classes, and H.B. receives pre-teaching in the special education classroom.

He believed H.B.'s math skills were similar to those of her general education peers in terms of computation skills, but that she had problems applying those skills in dealing with problem solving. Historically, H.B. has been strong with word reading and spelling, but her reading speed and comprehension has been lower than typically-developing peers. He thought that some modifications in the general education language arts class could help H.B., but he thought that her ability to obtain new information and the pace of the instruction would be difficult for H.B. Between 2008 and 2011, he noticed improvement in H.B.'s functional academic skills and health and safety skills, but decreases in play and leisure skills.

In recommending a program for H.B., Selbst not only relied on an IQ test, he also relied on an adaptive behavioral assessment, a nonverbal intelligence test, communication assessments and vocabulary and visual motor tests. H.B.'s program should entail individualized teaching of social and life skills that she can transfer to other settings, like the community. H.B. needs ESY programming similar to what she receives during the school year, including ABA methodology, addressing her developmental delays, and interaction with typically-developing peers. Her ESY program should include academics.

His observations of the self-contained and general education classrooms led him to believe that both could be noisy and distracting in certain situations. He found that H.B. could act appropriately in both settings, but that she needs prompting when a

choral response is required in both settings. He did not think that H.B.'s ability to focus in a small or large setting was primarily dependent on the noise level, and he did not see any distractions in either setting that impeded her focus or participation. He also did not think that H.B.'s noise-making greatly distracted students in the general education setting.

He agreed that generalizing skills across environments is a weakness for H.B. He could not say whether discrete trial intervention would help or hurt her ability to generalize. He agreed that ABA strategies can be implemented in any environment, noting that location is not the primary component, and focused more on what was happening within a particular location.

He did not believe that H.B. required a functional behavior assessment because her behaviors, like knee-dropping, had been reasonably managed through staff interventions, and that an auditory processing assessment could be helpful to understand how H.B. processes information and how competing distractions in a particular environment may impact her.

Selbst thought that the one-to-one aide was an important part of H.B.'s program because she helps with instruction and provides prompts and reinforcement. He thinks that H.B. could benefit from video modeling, which involves a video of how a person or people should act in certain social situations.

During consultation meetings with the staff and parents at the end of 2011 and the beginning of 2012, there was discussion about less prompting for H.B. to say "hello" and "goodbye," mainstream and reverse mainstream opportunities, behavioral reinforcements strategies to promote more socialization during lunch and recess, and how to help H.B. transition to middle school.

He thought that H.B.'s special and general education teachers had done a good job collaborating to meet H.B.'s needs. He expressed concern about planning a twenty-minute block for H.B. in the general education setting because academic demands in

the general education classroom, as well as the pace, have increased to a point that is inconsistent with H.B.'s educational needs. He thinks that, depending on the activity, H.B. could benefit from a different amount of time in the general education setting. He thought a pre-set amount of time was too rigid. He did not think that H.B. benefitted academically from twenty-minute sessions in the general education setting for math and language arts, but that those sessions provided reinforcement of a prepared skill or a prepared activity that had taken place in the special education class. He based this observation on feedback from the special education and general education teachers. He believes H.B. is not being exposed to material which she is involved in in an academic format when she is in the general education class. She is only exposed to material she is pre-taught in the special education classroom.

2012-2013 IEP

He believed the recommended IEP was appropriate in that it provided resource room for language arts, a self-contained class for other aspects, and general education for gym and lunch. He emphasized the need for appropriate modifications and supports. For language arts, the resource room is appropriate due to H.B.'s need for a small classroom with fewer distractions and her difficulty in following the instruction of the general education classroom.

During a consultation meeting at the end of the 2012-2013 school year, he noted that H.B.'s mother was pleased with her progress and did not have any concerns to share. The special education teacher and speech therapist reported improvement in H.B.'s greeting skills. The behavior specialist noted improved behavior. He thought that H.B.'s social skills improved during the school year in terms of greeting peers and teachers, but there was no notable improvement in her ability to initiate questions or make comments to peers and staff.

2013-2014 IEP

Selbst was present at the IEP meeting. The recommended program included thirty minutes in the resource room for language arts, eighty-four minutes in the resource room for math, self-contained room for science and social studies, and general education for exploratories, lunch, and home room. The related services included speech, occupational, and physical therapy, consultation, and home-based programming based on ABA. He believed that the goals and objectives were appropriate. He thought that the overall program was designed to provide H.B. with a meaningful educational benefit, so long as ongoing consultative support, collaboration and review of H.B.'s goals and objectives, instructional strategies, supports and accommodations are provided.

D.B.

D.B. is H.B.'s father. He believes her autism affects her ability to communicate and to interact with others. However, she likes to play with her cousins and brother. She likes to swim, play video games, bake cupcakes, and do puzzles. At home, she is responsible for emptying the dishwasher and folding clothes. She attends church with her family. She likes church and behaves well there. She attends a kids' class at church with her aide. The class involves biblical lessons and learning verses. She has not had any behavioral problems there. She enjoys eating at restaurants and acts appropriately. She attends summer camp with typically-developing peers. She enjoys camp.

Typically, when H.B. gets frustrated she whines, clenches her fist, or pinches someone.

D.B. wants H.B. to be educated in a more inclusive setting.

L.B.

L.B. is H.B.'s mother. She is employed as learning disability teacher/consultant for an elementary school in the Deptford School District. She acts as a case manager who plans and implements IEPs for students with disabilities. She has been doing this for seventeen years. She has a certificate in advanced standing in special education and a master's degree with a certificate as a learning disability teacher/consultant.

H.B. was diagnosed with autism at age two. She spends a lot of time with H.B., running errands and playing. H.B. interacts with her adult relatives and adults at church. She greets adults at church and answers questions when asked. She interacts with her cousins and has had a best friend since kindergarten.

For church services and chores at home, L.B. uses video modeling to teach H.B. how to act appropriately and do things independently. H.B. can brush her teeth, shower, and otherwise take care of her hygiene without prompting. She can feed herself and go to the bathroom by herself. She really just needs prompting on timing—she may stay in bed too long. She also used to stay in the shower too long, but when her mother used video modeling and put a timer next to the shower, H.B. soon learned to take an appropriate amount of time.

If H.B. gets distracted doing her homework, L.B. typically calls her name or taps on her desk to get her to refocus.

H.B. is a highly visual learner, a great speller, and is good at addition, subtraction, multiplication, and division. She is good at following a routine and with transitions.

She wants H.B. to be in a more inclusive educational setting where her individual goals and objectives, particularly social skills, can be mastered.

She visited H.B.'s autism classroom prior to the 2012-2013 IEP. She thought it was noisy and distracting. She thought there were negative behaviors of other students that H.B. imitated. She was concerned about the level of expectations and the generalization of skills to outside settings. She thinks general education settings are less noisy and distracting. She believes her daughter is quiet in general education classrooms, but engages in noise-making and self-talk in the autism class. She expressed these concerns during IEP meetings. She wanted H.B. to have definable academic goals and objectives in general education.

She prepared a document entitled, "Who is [H.]?" for the IEP team. It covers her strengths and weaknesses from L.B.'s perspective.

The District recommended its own ESY program for H.B. so she could work on her academic and social skills. She and her husband preferred Tall Pines Camp, because she could work on her social skills there and because she was not regressing academically. She has been able to improve her motor skills at the camp.

She attended all of the meetings with Dr. Selbst, and was able to ask him questions. In the IEP meetings for the 2012-2013 and 2013-2014 IEPs, L.B. was asked if she wanted to add any modifications or objectives, but she did not provide them.

Jennifer Palcko

Palcko has been a middle school special education teacher in the District for seven years. She became familiar with H.B. during the IEP meetings for the 2012-2013 school year. She attended all three IEP meetings, which involved discussions of possible placements and H.B.'s strengths and weaknesses.

For the 2012-2013 school year, Palcko would modify H.B.'s assignments for her general education math and language arts classes and would pre-teach H.B. the material before she went to the classes. She spent about fifteen to twenty minutes pre-teaching for each subject, but tried to fade the amount of time so as to not take away

from the rest of her program. She keeps logs of H.B.'s activities. She communicates regularly with the parents.

She typically rotates the aides in class so the children do not get used to cues and gestures given by one person and so that they are better able to generalize. She thinks rotating aides for H.B. would be beneficial, but her parents want just one aide. She thought the 2012-2013 IEP goals and objectives were clearly measurable, especially when viewed in context with the report cards. She kept data on H.B.'s progress. She uses tests and informal assessments. She shares her information with the IEP team.

H.B. stopped getting math homework at some point during the school year because the teacher changed the way she assigned the homework. She began to assign homework at the end of the class, which did not match up with H.B.'s twenty-minute block.

She regularly collaborated with H.B.'s other teachers to plan for H.B.'s needs. In her classroom, there is community-based teaching, and she takes the students to the library and ShopRite. The students make grocery lists and use money to buy the items. She keeps data on the students' progress with community-based instruction, including how much the students perform independently.

She also keeps behavior logs for H.B. The data includes the date, the time of day, and the activity during which the behavior occurred. She works with the parents on how to respond to the behaviors. The behavior specialist, Sarah Logan, helps Palcko understand why the behaviors are occurring. Palcko stated that a lot of H.B.'s behaviors decreased over the course of the year. She has not taken any data on how much noise or disruptions affect H.B.'s performance. Palcko had H.B.'s aide keep track of what H.B. did in her general education classes.

Palcko's classroom can be noisy at times. She could not tell if the noise necessarily affected H.B.'s progress, and noted that all of the kids in the class

contribute to the noise level. The general education teachers reported certain behaviors to Palcko. There were a couple of self-stimulation episodes and episodes in which H.B. ran across the room and lay on the floor. There were also a few vocal outbursts, like crying, that disrupted the class.

She incorporated the modifications listed in the IEP or added later, including breaking down H.B.'s math assignments into specific steps, visual aids to help H.B. find what she needs, and summarizing H.B.'s reading assignments so she can answer questions. She modifies the general education curricula for science and social studies. The modifications help account for H.B.'s reading and comprehension levels. The modifications in the math assignments helped reduce the time for pre-teaching. In class, Palcko uses video models to help with H.B.'s conversational skills. L.B. has also programmed video models on H.B.'s iPod.

She believes H.B. made progress during the 2012-2013 school year. Based on her data, H.B. made strides in her social and communication skills and agrees with the placement recommended in the 2013-2014 IEP. She thought the goals and objectives were measurable. In her experience, the data she collects on H.B. is not included in the written IEP, but shared with the IEP team at meetings. She thought H.B. could handle eighty-four minutes of resource room math based on her past performance and because the math in the resource room is at a more appropriate level than the regular classroom. Language arts was a weaker subject for H.B., so the IEP did not recommend eighty-four minute blocks. Instead, her time was increased from twenty to thirty minutes to coincide with Palcko's lunch preparations. Otherwise, there would not be a teacher in the autism classroom for ten minutes for H.B.

Tina Bridda

Bridda has been an elementary school special education teacher with the District since September 2008. H.B. was in her class from September 2009 to June 2012. Under H.B.'s stay-put program, H.B. was in the regular classroom for twenty-minutes of

math and language arts. She had exploratories, lunch, and recess with general education students. The rest of her time was spent in the autism support classroom.

In Bridda's classroom, there were individual work sessions for two hours in the morning during which students would work on their IEP goals. H.B. would miss forty-minutes to attend a general education exploratory class. This sometimes had a negative impact on H.B. because the time to do some of the discrete trial or repeated practice work needed to be provided in the limited time available.

H.B.'s pre-teaching varied based on the day and the class. Bridda took data to reflect pre-teaching activities and shared it with the parents. She collaborated regularly with H.B.'s speech therapist and general education teachers.

There was community-based instruction in Bridda's class. She would teach students skills in the classroom and try to apply those skills in the community. They went to a local theater, Petco, and A.C. Moore.

She helped with H.B.'s transition to middle school. She toured the classrooms and met with H.B. and her mother almost every Monday over the summer. She worked on targeted skills with H.B. for an hour for about four or five sessions. She included recommendations for the 2012-2013 IEP. She described how her classroom served as somewhere H.B. could go and be secure if she needed to refocus. She wanted people to be mindful of H.B.'s frustration levels as she grew accustomed to new settings. She also mentioned that H.B. was able to improve her communication with repeated practice in a contrived setting prior to going to a natural environment.

She believed it is appropriate for H.B. to have some time in general education, like exploratories, but thought that participation in general education academics would be difficult for H.B.

She thought H.B. could be distracted in any environment, and that noise was not the only thing that could distract her. She took behavioral data from December 6, 2010, to May 2011 and at certain intervals thereafter, when necessary.

She thought H.B. made progress in her classroom in some areas, like social skills. She thought the ABA methodology was helpful.

Holly Pandolfo

Pandolfo has been a full-time ABA trainer for the District since 2003. She holds a Teacher of the Handicapped certificate, and at the time of her testimony she had completed all of the coursework and training hours to become a BCBA, but was waiting to take the final exam.

She has known H.B. since she was four years old. She supervised H.B.'s home program for the 2011-2012 school year.

For the 2012-2013 IEP, Pandolfo's recommendations including an SRA reading program, a flexible resource room placement that would gradually increase to forty minutes, and exploratories, specials, and lunch in the general education setting.

She thought H.B.'s stay-put placement in the general education setting for math and language arts was "very challenging" for H.B. H.B. received pre-teaching for those classes at home and in her autism class. H.B.'s home program included discrete trial instruction. She and other staff kept data to track H.B.'s progress.

She observed H.B. in the general education setting several times during the 2011-2012 school year. During some of her observations, Pandolfo noticed that H.B. exhibited behaviors such as giggling, singing, or vocalizations. She could not recall whether these behaviors interfered with other students' learning.

Although H.B. attended a summer camp that did not include an academic element, she continued to receive academic instruction through her home program six hours a week.

She explained that it is preferable to perform ABA methodology or discrete trial intervention either at home or in the self-contained classroom because if done in the general education classroom, it serves to take H.B. away from the lesson that they're talking about and would create distraction. She does not know of such a practice being performed by anyone.

Pandolfo did not think that H.B. needed to undergo a functional behavior assessment because the frequency and duration of her behaviors were not enough to warrant one, and because behavioral supports and redirections already in place have proven effective. H.B. had a behavior support plan for the special education classroom and her aide was trained to respond to behaviors in the general education setting.

Denise Gliva

Gliva has worked as a speech-language pathologist for the District for twenty-eight years. She was H.B.'s speech therapist from the spring of 2007 through the 2009-2010 school year. She collected data on H.B.'s progress throughout her time with H.B. She evaluated H.B. in 2009 and 2013. In 2009, she observed H.B. during her general education math class. According to Gliva, H.B. engaged to the extent that she was engaged by others, but often needed prompting. Gliva noted that H.B. also exhibited self-stimulatory behaviors such as giggling, laughing, humming, and talking to herself during the class. For her evaluation, Gliva used the CELF-4 Clinical Evaluation of Language Fundamentals, on which H.B. scored below the first percentile. H.B.'s receptive language skills are stronger than her expressive language skills. In comparing her two evaluations, Gliva stated that H.B. seemed to perform better on the skills that had been targeted specifically in her ABA drills or speech and language therapy sessions.

Gliva thought that H.B. made progress on her goals and objectives while she was her speech therapist. She was the supervisor of H.B.'s speech therapist for the fall semesters of the 2012-2013 and 2013-2014 school years. She reviewed H.B.'s speech goals and objectives for those years and thought they were appropriate and measurable.

She administered the Evaluating Acquired Skills in Communication (EASIC) inventory in both 2009 and 2013. She noted that H.B. had made progress in about twenty items out of about sixty on the EASIC. H.B.'s primary weakness is pragmatic language, or social communication skills. Due to this weakness, Gliva would be concerned about H.B.'s participation in general education settings because she is not able to communicate or interact socially with others without significant prompting. She also noted that H.B.'s language processing skills continue to need strengthening.

The record reflects a broad difference of opinions articulated by each party's witnesses with respect to the provision of FAPE to H.B. Overall, I found all expert witness testimony to be credible. Nothing which was inherently unbelievable was suggested by anyone on the stand, and testimony was grounded in familiarity with H.B., with her experience, and knowledge of the field.

In particular, I find that the observations, opinions and recommendations of the District's expert witness, Michael Selbst, are entitled to great weight. His experience, both in the field and particularly with H.B., is extensive and thorough. His testimony was detailed, thorough and reflects significant familiarity with and knowledge of H.B.'s experience and situation. He noted that the District's program was well designed for H.B., but appeared to acknowledge the appropriateness of expanding her mainstream opportunities. Although petitioner's witness Dana Henning offered a strong presentation, her testimony was not sufficient to overcome that offered by Selbst, especially when his is buttressed but the sheer volume of detailed, consistent credible testimony from the District's other witnesses, especially with respect to the advisability of placing H.B. in the general education setting for the entirety of the school day at this point.

The testimony of H.B.'s parents certainly had a strong underpinning of credibility. Their testimony was candid, thoughtful and demonstrated a deep commitment and attention to the details of H.B.'s education. Although H.B.'s mother does possess specialized knowledge given her professional background, neither was presented as an expert and their testimony does not overcome the significant of credible expert testimony presented by the District.

Considering the forgoing, I **FIND** that the proposed 2012-2013 and 2013-2014 IEP's do not include any academic time in the general education setting. I further **FIND** that they are designed to convey meaningful educational benefit. However, despite the strong, credible testimony presented by the District's witnesses, the record demonstrates and I further **FIND** that due to invocation of stay put, H.B. has been experiencing twenty minutes daily for mathematics and language arts for a total of forty minutes a day in the general education setting. I further **FIND** that H.B. has made meaningful progress and has not experienced regression in her current setting.

LEGAL ANALYSIS AND CONCLUSION

The Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. § 1400-1487, and its implementing regulations, 34 C.F.R. § 300.1 to –300.756 (2014), provide the framework for special education in New Jersey, as reflected in the statutes at N.J.S.A. 18A:46-1 to –46, and the regulations at N.J.A.C. 6A:14-1.1 to –10.2. The IDEA requires Boards of Education to provide students between the ages of three and twenty-one who suffer from a disability with a free appropriate public education (FAPE). 20 U.S.C.A. § 1412(a)(1). The core of a FAPE is embodied in an individualized education plan (IEP), the package of special educational and related services designed to meet the unique needs of the disabled child. Hendrick Hudson Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 181, 102 S. Ct. 3034, 3038, 73 L. Ed.2d 690 (1982). Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 173 (3d Cir. 1988).

The Supreme Court has construed the IDEA's FAPE mandate to require "education specially 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.” Rowley, supra, 458 U.S. at 188-89, 102 S. Ct. at 3041-42, 73 L. Ed.2d 690. The education provided must “be sufficient to confer some educational benefit upon the handicapped child.” Id., 458 U.S. at 200, 102 S. Ct. at 3048, 73 L. Ed.2d. However, the state is not required to “maximize the potential of handicapped children.” Id., 458 U.S. at 197 n.21, 102 S. Ct. 3046, 73 L. Ed.2d 690; see also Lascari v. Bd. of Educ. Ramapo Indian Hills Reg’l High Sch. Dist., 116 N.J. 30, 48 (1989) (adopting the federal standard). Thus, in assessing whether the educational program embodied in an IEP is appropriate, “[d]istricts need not provide the optimal level of services, or even a level that would confer additional benefits, since the IEP required by IDEA represents only a ‘basic floor of opportunity.’” Carlisle Area Sch. v. Scott P., 62 F.3d 520, 533-34 (3d Cir. 1995) (quoting Rowley, supra, 458 U.S. at 215, 102 S. Ct. at 3055, 73 L. Ed.2d 690). The relevant inquiry is whether an IEP offers a “significant and meaningful” educational benefit. Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247-48 (3d Cir. 1999); Polk, supra, 853 F.2d at 180 (3d Cir. 1988).

The outcome of this case turns on whether the placement offered by respondent was the LRE in which H.B. could receive a FAPE. The LRE component of the IDEA reflects the statute’s goal of mainstreaming children with special needs into regular classrooms. The IDEA requires states to establish “procedures to assure that, to the maximum extent appropriate, handicapped children . . . are educated with children who are not handicapped.” T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 578 (quoting 20 U.S.C.A. § 1415(5)(B)); see also 20 U.S.C.A. § 1412(a)(5)(A). Disabled children should not be removed from the regular educational environment unless education in a regular class cannot be achieved satisfactorily. 20 U.S.C.A. § 1412 (a)(1)(A); see also N.J.A.C. 6A:14-4.2.

The Third Circuit has interpreted the IDEA’s LRE requirement to mean that a disabled child must be placed in the LRE that will provide him with a meaningful educational benefit. See Scott P., supra, 62 F.3d at 535 (“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.”). The correct standard to be applied in determining the LRE is not to find an optimum placement, but to decide whether an appropriate educational placement can be achieved in a non-restrictive setting. Id. at 532.

In Oberti v. Board of Education of Clementon School District, 995 F.2d 1204 (3d Cir. 1993), the Third Circuit adopted a two-part test to determine whether a school district is in compliance with the IDEA’s LRE requirement. See Oberti, supra, 995 F.2d at 1215 (following Daniel R.R. v. Bd. of Educ., 874 F.2d 1036 (5th Cir. 1989)). First, the court must consider whether an education can be achieved in a regular classroom with the use of supplementary aids and services. Ibid. Second, the court must determine whether, despite the need for a more restrictive educational environment, a disabled child is being mainstreamed to the maximum extent possible. Ibid. Thus, pursuant to Oberti, a district must first prove that supplementary aids and services are not sufficient to assure that a child can achieve a satisfactory education in a regular classroom and, second, the district must prove that it appropriately maximized mainstreaming. Oberti, supra, 995 F.2d at 1219-20; see also A.C. and E.C. ex rel. B.C. v. Caldwell-W. Caldwell Bd. of Educ., EDS 9034-01, Final Decision (February 5, 2002), <<http://lawlibrary.rutgers.edu/oal/html>> (citing Hempfield Sch. Dist. 28 IDELR 509, 512 (SEA PA 1998)).

In determining if an education can be achieved in a regular classroom with the use of supplementary aids and services, the court should consider three factors: (1) the steps that 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 possible negative effects the disabled child may have on the education of other children in the regular classroom. Oberti, supra, 995 F.2d at 1215-17.

With regard to the first prong, the record reflects that most steps taken by the District to mainstream H.B. were done so reluctantly, as a result of a prior litigation and pursuant to stay-put provisions.

With regard to the second prong, the record is clear that H.B. has been receiving some of her education in the mainstream setting and has made progress while doing so without evidence of regression. While the parties disagree in a chicken-egg argument as to whether she is progressing due to her time in the mainstream class or in spite of it and due to her time in the special education classroom. Whatever the result of the argument, the record demonstrates that H.B. is able to receive (and has received) an education in a less restrictive environment than the one proposed by the District and able to make meaningful progress while doing so.

Addressing the third and final prong, there is scarce evidence in the record to lead to a conclusion that H.B.'s presence has had or would have a detrimental effect on other students in the mainstream setting. Again, bearing in mind that she has been in that setting for a portion of each day, the most frequent observation made by most of the District's witnesses was of some humming to herself and occasional giggling. While admittedly potential distracting behavior, the occasional giggling student does not seem to be something foreign to the general education setting in a junior high school and hardly seems the reason to justify keeping H.B. full time in a more restrictive setting.

The record makes it clear that the District has spent much time and effort in working with H.B. Her teachers and aides clearly care for her and the District is committed to ensuring H.B.'s success in her educational experience. However, while the District makes a very strong and compelling case in support of its proposed IEP's, one cannot ignore the plain facts that pursuant to a stay put provision, H.B. has been spending time in the mainstream setting and has been making meaningful progress. Applying the facts of this matter to the Oberti analysis, and considering the documentary and testimony placed in evidence along with the arguments put forth by the parties, I **CONCLUDE** that the District has failed to offer H.B. a FAPE in the least restrictive setting in its proposed 2012-2013 and 2013-2014 IEP's.

That is not to endorse Henning's suggestion that this be an all or nothing proposition; that H.B. should move immediately and entirely into the mainstream

setting. It was noted above that the parties argue whether H.B.'s progress is attributable to her time in the special education classroom or to her time in the mainstream setting. More likely, it is a product of the totality of the education she has been receiving, which involves necessarily striking a delicate balance in order to properly craft a program which conveys the benefit received in the most appropriate setting. Accordingly, I **CONCLUDE** that the partnership should begin with the drafting of an IEP which reflects the current realities of H.B.'s actual situation and progress and includes at a minimum time in the mainstream setting no less than she is already receiving pursuant to the stay put. Since that time will be formalized supports should be proposed with that placement in mind.

With regard to petitioners' request for compensatory education, it is noted that the purpose of compensatory education is to remedy past deprivations of a FAPE. There must be a finding that the child has received an inappropriate education. M.C. ex rel. J.C. v. Cent. Reg. Schl. Dist., 81 F.3d 389, 397 (3d Cir. 1996). There has been no such finding here. H.B. has done well in her current setting and the recommendation is to formalize that setting as a jumping off point going forward. Accordingly, I **CONCLUDE** that the request for compensatory education should be **DENIED**.

ORDER

It is hereby **ORDERED** that the IEP team will create a new IEP that offers H.B. FAPE in the least restrictive environment that is individualized to address her unique abilities. The IEP developed will have scheduled opportunities for exposure to non-disabled peers with supports to be provided to promote successful transitions, but must contain at a minimum the academic time and other school time she already receives in the general education setting pursuant to the current stay put.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2014) 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 (2014). 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.

December 23, 2014
DATE

ELIA A. PELIOS, ALJ

Date Received at Agency

December 23, 2014

Date Mailed to Parties:

December 23, 2014

LIST OF WITNESSES:

For petitioner:

Dana Henning
D.B.
L.B.

For respondent:

John Tighe
Adam Ritchie
Carole Candidi
Michael Selbst
Jennifer Palcko
Tina Bridda
Holly Pandolfo
Denise Gliva

LIST OF EXHIBITS:

For petitioner:

P-51 Henning Curriculum Vitae.
P-52 Henning Evaluation/Report-2/19/10.
P-53 Henning Evaluation/Report-6/20/13.

For respondent:

R-1 Mr. Tighe's Resume.

- R-2 Selbst Curriculum Vitae.
- R-4 Mr. Ritchie's Resume.
- R-7 Pandolfo Resume.
- R-8 Denise Panella Gliva Resume.
- R-9 Palcko Resume.
- R-10 Bridda Resume.
- R-11 Selbst Psychological and Program Evaluations – 2/14/08 and 3/13/08.
- R-12 H.B.'s Sixth Grade IEP.
- R-13 Pandolfo Observation Report in General education Math.
- R-14 Pandolfo Observation Report in General education Math.
- R-15 Pandolfo Observation Report in General education Spelling.
- R-16 Pandolfo Observation Report in General education Word Study.
- R-17 Pandolfo Observation Report in General education Spelling.
- R-18 Pandolfo Observation Report in General education Math.
- R-19 Pandolfo Observation Report in General education Word Study.
- R-20 Pandolfo Observation Report in General education Math.
- R-21 Selbst Psychological Evaluation Report – 8/10/11.
- R-22 Gloucester Township Publis School Speech and Language Evaluation Report Dated 9/16/09.
- R-23 Trail Device Called a DynaVox MT4, DynaWrite.
- R-24 Evaluation Conducted by Kerry Katz (phonetic).
- R-25 Autism Program Quality Indicators.
- R-26 Autism Program in Gloucester Township.
- R-27 Pandolfo Summary of Home Program Progress.
- R-28 Educational Tool Kit Components.
- R-29 Observation of H. on 9/19/12.
- R-30 Technology Evaluation by Advancing Opportunities.
- R-31 Independent Evaluation by Karen Schmidt (phonetic), Braemar Report.
- R-36 Bridda Behavioral Data Summary.
- R-37 Bridda Preparation Time Data Chart.

- R-41 Palcko Behavior Data Sheet.
- R-43 Palcko General education Language Arts Assignment/Data Sheets.
- R-44 Placko General education Math Assignment/Data Sheets.
- R-45 Selbst Consultation Sum – 9/27/11.
- R-46 Selbst Consultation Sum – 12/22/11.
- R-47 Selbst Consultation Sum – 3/20/12.
- R-48 Selbst Consultation Sum – 5/1/12.
- R-49 Selbst Consultation Sum – 10/8/12.
- R-50 Selbst Consultation Sum – 12/3/12.
- R-54 Seventh Grade Draft IEP.
- R-55 Selbst Consultation Sum – 1/28/13.
- R-56 Selbst Consultation Sum – 4/26/13.
- R-57 Follow-Up Evaluation by Ms. Katz.
- R-58 Gloucester Township Public School Speech and Language Evaluation Report.