



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION

OAL DKT. NO. EDS 10957-13

AGENCY DKT. NO. 2013 19859

P.B. AND M.B. ON BEHALF OF H.B.,

Petitioners,

v.

WASHINGTON TOWNSHIP BOARD

OF EDUCATION,

Respondent.

Amelia Carolla, Esq., for petitioners P.B. and M.B. on behalf of H.B. (Reisman, Carolla, Gran, LLP, attorneys)

Joseph Betley, Esq., for respondent Washington Township Board of Education (Capehart and Scatchard, attorneys)

Record Closed: June 2, 2016

Decided: July 14, 2016

BEFORE **EDWARD J. DELANOY, JR.**, ALJ:

STATEMENT OF THE CASE

This is an appeal on behalf of a ten-year-old child for relief under the Individuals with Disabilities Education Act (“IDEA” or “Act”), 20 U.S.C.A. §§ 1400 to 1482, as reauthorized effective July 1, 2005, Pub. Law 108-446 (2004), and the implementing

federal and state regulations. Petitioner H.B., who advanced from third to fourth grade in September 2013, is classified eligible for special education and related services as “multiply disabled” (autistic and other health impaired). The parties have disagreement on the nature of H.B.’s disability, and they differ on whether the Washington Township Board of Education (“Board” or “District”) offered H.B. a “free and appropriate public education” (“FAPE”), and also on the placement necessary for H.B. to benefit from his education. The District proposes that H.B. remain in his home school’s, Wedgwood Elementary School’s (“Wedgwood”), in-district program.

H.B.’s parents believe that the Board was not and is not prepared for the implementation of the Individualized Education Program (“IEP”) either as written or as it may be modified in light of the objections to the IEP. They request that the Board pay tuition and transportation costs to send petitioner to the Y.A.L.E. School (“YALE”).

In the alternative, his parents assert that the IEP is objectionable on several grounds, and that the deficiencies in the IEP lead to the conclusion that the Board has not offered H.B. a FAPE as that term is used in the IDEA. H.B.’s parents also requested that an appropriate IEP conferring FAPE be developed for extended school year (“ESY”) 2013, and the 2013–2014 school year, and that the Board be ordered to comply with the terms of the IEP. Finally, petitioners seek an order for compensatory education equal to a period where compensatory education was not being rendered. Basically, the outcome will depend on whether the Board has offered to provide petitioner H.B. with a FAPE as that term is used in the IDEA.

Conversely, the Board asserts that based upon H.B.’s report-card grades, scores on various standardized tests, the Jerry Johns Reading Inventory, the STAR reports, unit assessments, the Wilson Assessment of Decoding and Encoding results, occupational-therapy reports, speech/language evaluations, curriculum benchmarks and writing assignments, participation in class, greater volume of writing produced, and less resistance to writing assignments all support the Board’s position that it did offer a FAPE to H.B.

PROCEDURAL HISTORY

On June 13, 2013, petitioner filed a request for a due-process hearing with the Office of Special Education Programs (“OSEP”), a unit of the New Jersey Department of Education. Subsequently, OSEP transferred the matter to the Office of Administrative Law (“OAL”) for a hearing, and the matter was filed at the OAL on August 12, 2013. The OAL held a settlement conference on August 27, 2013, but the matter did not settle. The OAL held hearings on November 25, 2013, January 24, 2014, February 7, 2014, May 14, 2014, May 30, 2014, June 20, 2014, July 9 and 14, 2014, September 29, 2014, October 15, 2014, December 5 and 23, 2014, January 13, 2015, April 15, 2015, June 15 and 27, 2015, July 27, 2015, September 25, 2015, October 20, 2015, December 7 and 9, 2015, February 9 and 19, 2016, and June 2, 2016. On June 2, 2016, the record closed.

FACTUAL DISCUSSION

The following matters are not in dispute and I **FIND** them as **FACT**: H.B. was born December 16, 2003, within the boundaries of the District. H.B. lives with his parents P.B. and M.B. in Grenloch, New Jersey. When H.B. was three years old, his parents began noticing issues with his development, and they consulted experts to assist with a diagnosis. In 2007, H.B.’s neurologist, Dr. Mitra Assadi, from Cooper University Hospital, opined that H.B.’s profile was highly consistent with autism spectrum, most probably Asperger’s syndrome. In July 2009, when H.B. was six years old, Dr. Olga Goldfarb, from Cooper Children’s Regional Hospital, diagnosed H.B. with attention deficit hyperactivity disorder (“ADHD”) in combination with some residual symptoms of Asperger’s syndrome. In February 2011, Dr. David Burgess, of Children’s Hospital of Philadelphia, diagnosed H.B. with pervasive developmental disorder—not otherwise specified (“PDD-NOS”); autism is a type of PDD. In April 2013, Dr. Katherine Perez-Rivera, Ph.D., of Children’s Hospital of Philadelphia, confirmed after testing that H.B. suffered from autism spectrum disorder.

H.B. was initially enrolled in the District’s preschool disabled program in 2007. On August 13, 2009, the District had a psychoeducational evaluation performed on H.B.

(P-3.) In 2010, H.B. was enrolled at the Board's Wedgwood Elementary School. A comprehensive developmental assessment was completed by the District near the end of H.B.'s first-grade year in 2011, and H.B. was classified as "multiply disabled" (autistic and other health impaired). The District has not updated either evaluation since that time. On July 13, 2011, during the summer between H.B.'s first-grade and second-grade years, the District held an eligibility conference. At that time, H.B.'s overall level of academic achievement was low average, and H.B. was deemed eligible for special-education services.

On June 11, 2012, towards the end of H.B.'s second-grade year, the District held an IEP meeting. At that meeting the District proposed a pre-drafted IEP for H.B.'s third-grade year calling for H.B. to remain at Wedgwood, with the following services/program structure: pull-out resource program (solely for disabled children) for reading, math, and Wilson Reading System instruction; in-class resource program for language arts, science and social studies; and general-education "specials." The in-class resource program is a program where the resource-room teacher is an in-class-support teacher within the general-education classroom in order to provide support for classified students in the general-education classroom. Within the general-education classroom, the general-education teacher and the in-class-support/resource-room teacher co-teach in order to present the materials, what will be taught and strategies to be used. Within the in-class resource program, the co-teachers try to ensure that the special-education students are engaged and included within the curriculum of the classroom. The proposed program additionally recommended an extended school year for Wilson instruction, as well as math. H.B. was to have language arts (writing) for five days per week, forty-five minutes; and science and social studies for two days per week each, thirty minutes. H.B. would have "specials," including gym, library, music, and art, in a general-education setting. H.B. would get related services of: Wilson Reading System instruction five times per week, forty-five minutes; speech and language, one time per week, thirty minutes, therapy room; occupational therapy ("OT") one time per week, small group, thirty minutes, various locations; and counseling, two times per month, small group, in the guidance office.

The parents had concerns about the program. Notwithstanding those concerns, in September 2012 H.B. started third grade at Wedgwood Elementary School within the District with language arts (writing), science and social studies in the “in-class resource room.” H.B. was in a general-education class with twenty-two other students, four to five of whom had IEPs. The District had two teachers overseeing the program: one regular-education teacher (Mrs. Panichelli) and one special-education teacher (Ms. Aweau). H.B. had math and reading with special-education teacher Deborah Fast. The class size ranged from three to five students in her resource room.

The parents hired an educational advocate, and on September 28, 2012, the parents filed for mediation. The Request for Mediation stated the nature of the problem as:

Disagreement with portions of presented IEP for 2012–2013 school year. Requesting stay put for 1:1 aide for writing, lunch, recess. Stay put for Occupational Therapy individual. As well as bus transportation. Accepting remainder of IEP at this time.

A resolution was reached in mediation, which resulted in the District providing: a 1:1 aid for H.B. during writing, lunch and recess; OT two times per month in a small group—not to exceed three students including H.B., for thirty minutes per session, and two times per month individual for thirty minutes per session; two hours of individualized OT, all in a pull-out setting; and agreement that the mediation agreement resolves all issues in the due-process petition dated October 2, 2012. On November 12, 2012, H.B.’s third-grade IEP was revised to incorporate the services detailed in the mediation agreement.

On May 31, 2013, an IEP meeting was held whereby the District presented the IEP for the 2013–2014 school year, which recommended a continuation of H.B.’s placement in Wedgwood. Petitioners were represented by counsel at this IEP meeting. On June 13, 2013, petitioners filed the instant due-process petition.

Testimony

Julie Travis has been employed by the Board as a certified social worker for the District's Child Study Team ("CST") for the past fourteen years. She is the case manager for H.B., having begun her relationship with him in H.B.'s first-grade year at the Wedgwood School.

During the 2012 summer between H.B.'s second- and third-grade years, reading and writing became issues for H.B. H.B. struggled with written expression and thought organization. H.B. was put on the Wilson reading program, but his parents discontinued it sometime thereafter. H.B. also had social issues for which he received counseling.

In June 2012 an IEP was created for H.B.'s 2012–13 third-grade school year. IEP goals were chosen from a computer IEP program that allows for a selection of pre-written goals. Although H.B. was reading at a first-grade level, the goals were written for a third-grade student, and Travis did not know how some of the goals were measured. Some goals were measured by looking at the following year's IEP. Modifications were appropriate for H.B. (P-17 at 61–66.) H.B. also received accommodations for New Jersey State tests. (P-17 at 45.) Modifications for taking the STAR test (a District test) were not in the IEP. H.B. received changes to his related services. He did not have a 1:1 aide, but Travis believed an aide was unnecessary. These IEP decisions were made because H.B. made good progress academically and socially during his second-grade year. H.B. had a behavioral plan during his third-grade year, but he was eventually weaned off. According to Jan Sanders, H.B.'s special-education teacher, in June 2012, H.B.'s Guided Reading Level ("GRL") was a level F, reflective of an early first grader. (P-17 at 5.) In math, H.B. suffered from test anxiety. (P-17 at 5.)

H.B. progressed in math during the third grade, and his social skills improved. He was engaging his peers, playing games and showing empathy. His class participation also improved in third grade. During Travis' classroom observations, she did not notice that H.B. was unhappy or depressed. He could get frustrated, but he was able to work through the problem. H.B. advised the principal that he would miss the

school when he left. H.B. did not have discipline or attendance issues. H.B.'s third-year grades were A's and B's, with C's in language arts. (P-30.) The third-grade curriculum could be modified by the teachers if necessary. Travis did not know if H.B. met his third-grade goals, benchmarks or objectives. Travis did not review any progress reports or monitoring of H.B.'s benchmarks or objectives. Travis believed that the benchmarks or objectives were individualized, specific and measurable, but she did not know how they were measured or how and if they were deemed accomplished. H.B.'s teachers did indicate that he made progress.

By March 2013, using STAR test results, H.B.'s reading had improved to a 3.1 level from a 1.3 level in September 2012, and a 2.8 level in January 2013. (P-20 at 4; R-350 to R-352.) This showed significant progress. H.B.'s math had improved to a 3.3 level from a 1.8 level in September 2012, and a 2.8 level in January 2013. (R-346 to R-349.) H.B. was given extended time to complete the STAR test in March 2013.

In September 2012, and again in June 2013, H.B. was given the Wilson Assessment of Decoding and Encoding ("WADE") test. The test results show that H.B. made progress across ten levels, with the exception of one subset in additional sounds. (R-201; R-387 to R-388.) H.B. has been able to move from step one to step five of the Wilson steps, and he continues to get mastery scores.

H.B. was also tested under the Jerry Johns Basic Reading Inventory by special-education teacher Debbie Fast. From September 2012 until April 2013, H.B. made a two-year jump from independent at the first-grade level to independent at the third-grade level in fluency and comprehension, and independent at the second-grade level in word recognition. As H.B. was exiting third grade, he was instructional at a fourth-grade level. (R-6.) H.B.'s primary weakness was in writing, and he still needed the Wilson program. Nevertheless, Travis was concerned about his program and IEP, stating in a May 29, 2013, e-mail to the District's director of Special Education, in part:

The other issue that I brought up earlier this year (following mediation/IEP) is that, at Wedgwood, Wilson is generally provided during science/social studies. This is an ongoing concern, as Wilson students also have science and social

studies in their IEPs!!!! Not sure what we need to do about this. . . . I know it is a scheduling issue. Another parent brought up this concern at her annual review as well.

[P-38 at 410–13.]

H.B. was evaluated on April 16, 2013, by Dr. David Burgess, from the Children’s Hospital of Philadelphia (“CHOP”). Travis did not see Burgess’ report until after November 26, 2013 (P-33), and Travis was not aware of Burgess talking to any District personnel regarding H.B. The information used by Burgess was gleaned solely from the parents. Burgess used no scales or data collected by the District. Travis disagreed that H.B.’s behavior at school was challenging. (P-33 at 9.)

H.B.’s test results were discussed with the parents at the fourth-grade May 31, 2013, IEP meeting. (P-20.) The IEP did not review H.B.’s goals from the third grade. H.B.’s goals were chosen from a computer program called “Real Time,” for a fourth-grade curriculum. Travis did not have any written progress monitoring on H.B.’s goals, and she was unaware of whether the goals were individualized for H.B. (P-20 at 9.) She did not know if any of H.B.’s third-grade goals were met. Social-skills goals were listed under “Counseling.” (P-20 at 12.) The District goal was to develop positive peer relationships, but no specific programs were listed in the May 2013 IEP. (P-20 at 12.) One of H.B.’s goals was to “read on-level text with purpose and understanding.” Travis agreed that there was no way to measure such a goal. Another goal was, “demonstrating a sophisticated sense of sound-symbol relationship, including all phonemes.” Travis agreed that she was unsure of the meaning of this goal, and that there was no way to measure such a goal. Wilson goals were drafted by the Wilson teacher, and the goal was to meet goals four through six that year. (P-20 at 14.) During his fourth-grade year, H.B. was again to be in a general-education setting with in-class support and pull-outs for reading, math and Wilson instruction. (P-20 at 27.) Wilson was reduced from forty-five to thirty minutes a day. (P-20 at 27.) At this IEP meeting, because H.B. met his articulation goal, it was recommended that H.B. be dismissed from speech, although no formal evaluation was done to support this finding. The parents requested forty-five minutes of WADE instruction and the CST agreed. The CST also recommended a learning plan.

At the end of the meeting, the parents discussed consideration of the YALE School, reachable for H.B. by a forty-five minute bus ride. The CST, with the backing of H.B.'s teachers, did not agree with a YALE placement. H.B. was making good progress at the Wedgwood School, especially in third grade, and he was happy, engaging, acquiring new skills, and learning. The YALE School proposed placing H.B. in the multiply disabled classroom consisting of children in grades two, three and four. Speech, language and occupational therapy would be given as a pull-out service. H.B. would get a board certified behavior analyst ("BCBA"), an applied behavior analysis ("ABA") program, and social skills at YALE, but he would receive no exposure to non-disabled peers. YALE would also provide an individual behavior plan, but this was inappropriate for H.B., as he was weaned off such a plan in the second grade. ABA therapy was also not appropriate for H.B., as he was not on the low end of the spectrum, and did not require such therapy. Although H.B.'s social skills had been weak, social skills were not appropriate for H.B., as he had made great gains from his counselors and teachers within the District. The CST based its decision to keep H.B. in the District on assessments showing H.B. making educational and social and emotional progress in the District program. Travis visited YALE for the purpose of evaluating its appropriateness for H.B. Travis spoke to YALE representative Karen Huber and she visited classes. She did not speak to teachers, and her stay lasted one to two hours.

A short time before the May 13, 2013, IEP meeting, Travis had received a psychoeducational evaluation, prepared on behalf of the parents, by Dr. Rhona Brown. (R-495; P-11.) In January 2013, Dr. Brown visited H.B.'s school. (P-38.) Dr. Brown was limited to a forty-five-minute visit. (P-38 at 386.) Travis would have requested additional time for Dr. Brown if Dr. Brown had requested the time. Travis was present for the duration of Dr. Brown's visit. Dr. Brown also requested that District personnel fill out scales and questionnaires. Dr. Brown observed H.B. in his writing class for twenty minutes. During that time, Travis' observation of H.B. was very different than Dr. Brown's clinical observations and mental-status report. Travis never observed H.B. displaying any type of school avoidance, "seeing ghosts," or displaying suicidal behavior. (R-500.) Travis did not believe H.B. was a sad and anxious youngster, nor did she see him as defective, isolated and rejected, or emotionally isolated. (R-523.) At

no time did Travis observe H.B. crying, sad appearing, or upset, nor did she observe him to be depressed, displaying a temper tantrum, or stating that he hated school. Travis did not observe significant fidgeting, awkward walking, an emotional shutdown, or H.B. being overwhelmed by his work. (R-498.) H.B. showed empathy to other children and he was not an outcast, engaging frequently with others on the playground. Although H.B. lacked academic self-confidence, he was improving.

Travis also did not agree with Dr. Brown's summary of staff interviews, stating that Dr. Brown took items out of context to paint a bleak picture of H.B. None of H.B.'s teachers agreed with Dr. Brown's assessment, all believing that H.B. was improving. In summary, Travis was shocked with Dr. Brown's report, stating that it was very different from what she observed in school. Travis believed that H.B. took a leadership role and frequently encouraged other children. Dr. Brown diagnosed H.B. with autism spectrum disorder. (P-11 at 27.) Despite Dr. Brown's report, the CST did not make any changes to the IEP.

H.B.'s spring 2013 New Jersey ASK scores showed him to be partially proficient in reading and math. (P-31 at 1.) In June 2013, Travis had received a report from Dr. Burgess, and she wanted to determine if H.B. had made progress. Ratings scales are only done if requested by a district or parent. Travis stated on direct examination that parental permission was not necessary to undertake scales, but under cross-examination she conceded that parental permission was necessary to undertake scales. At the time Travis gave out the scales, she had no question in her mind that H.B. had autism. Resource-room teacher Fast evaluated H.B.'s pragmatics and discourse skill management. (R-103 to R-104.) H.B. did well on this evaluation despite showing only "occasional" performance in several areas. The sampling of "occasional" performances, however, was not a significant issue. Classroom teacher Sherri Panichelli also evaluated H.B.'s pragmatics and discourse skill management. (R-105 to R-106.) H.B. did well on this evaluation also, despite showing more "occasional" performances. These evaluations were not sent to or shared with petitioners even though the parents had the right to know about the scales. An IEP meeting was not called to address the scales.

Travis gave Fast a Gilliam Asperger's Disorder Scale ("GADS") to complete for purposes of diagnosing Asperger's. (R-107 to R-114.) Travis, as a certified staff member, believed she was qualified to, and did, score the results. However, she agreed that her training consisted only of reading a manual a number of years ago. The parent-interview section (R-112) was not given to the parents because Dr. Brown had completed the parent interview in April 2013. (P-11.) Travis also gave Panichelli, and special-education teacher Reggie Aweau, GADS to complete independently. (R-123 to R-130; R-115 to R-122.) Panichelli found most behaviors were seldom or never observed, as did Aweau. (R-124 to R-125; R-116 to R-117.)

Also in June 2013, Travis gave Aweau a BASC-2 Teacher Rating Scales-Child to execute in order to assist in measuring progress. (R-131 to R-132.) Permission for the execution of this scale was not given by petitioners. Travis wanted to compare the BASC-2 results against the conclusions of Dr. Brown. H.B. received scores in the "at-risk" range. Aweau also found H.B.'s social skills to be normal. (R-194.)

In June 2013, Travis requested that Fast complete a Teacher Rating Scales Report for Behavior Assessment System for Children. (R-170 to R-179.) H.B. was shown to be "at risk" in internalizing problems and behavioral symptoms index, but his social skills were considered normal. (R-173.) Panichelli completed a Teacher Rating Scales Report for Behavior Assessment System for Children. (R-180 to R-189.) H.B. was shown to be "at risk" in adaptive skills, internalizing problems and behavioral symptoms index, but his social skills were again considered normal. (R-183.) However, a finding of "at risk" is not alarming, and does not require that the student be placed out of district. Permission for the execution of this scale was not given by petitioners. Travis concluded that H.B.'s social skills, while weak, did not interfere with his education.

Finally, in June 2013, H.B.'s teachers received the Conners 3 Teacher Response Booklet to execute. (R-137 to R-139.) The purpose of this scale was to gather information about the behaviors and feelings of children. (R-319.) Despite being required by the Conners 3 manual, permission for the execution of this scale was not given by petitioners. Travis scored these responses after reviewing the Conners 3

Manual. (R-316; R-202.) Travis agreed that she was not formally trained to administer the Conners 3 as required in the manual. H.B. was found to be “elevated” or “very elevated” in physical symptoms (R-206; R-299), ADHD (R-209), peer relations (R-233; R-280; R-327), and aggressive behaviors (R-299). H.B. was normal in areas of emotional distress, social anxiety, and social problems. (R-205; R-251.) After undertaking these tests, an IEP meeting was not called, because nothing had changed. Because none of the scores was extreme, Travis believed H.B. was not a candidate for YALE School or any out-of-district program. H.B. has good functioning skills but is deficient in organization, a weakness that can be cured by use of the aide.

During H.B.’s 2013 ESY summer, it was recommended that H.B. take Wilson reading instruction. After several sessions the parents terminated the program, as they had done the previous summer.

On September 20, 2013, H.B. was given a fourth-grade writing baseline assessment. (P-39 at 2–5.) In the assessment, H.B. detailed his negative feelings from the first grade. (P-39 at 5.) The parents were not made aware of this writing. H.B. received a score of “65” on the baseline (P-39 at 2), but he has greatly improved since that time, and he is currently more willing to write. H.B.’s weakness is simply starting his assignments. H.B.’s statements in his writing regarding first grade were concerning but not disturbing, and would have been handled by a guidance counselor.

In October 2013, Travis observed H.B. in a general-education classroom for approximately a half hour. He was playing a game with classmates, including two general-education children, and H.B. was able to explain to his classmates how to play the game by problem-solving their issues and providing leadership. During the 2013–14 school year, Travis did not observe H.B. on the playground or at recess. She did observe H.B. one time at lunch, where he functioned well with other children. H.B. did not have any disciplinary history in the third or fourth grades, except for some playground incidents in the third grade. Those matters were addressed and resolved. H.B. is currently at grade level in math. Travis never heard H.B. say anything negative, and he has not been argumentative or defiant of authority.

Jessica DuBray has been employed by the District since 2005 as a certified speech and language specialist, working with children with language disorders. DuBray works with pragmatic language, which encompasses the rules covering the social use of language in each grade level.

DuBray began working with H.B. in first grade as the related-services provider. At this time, H.B.'s pragmatic skills were at an average to above-average level. During H.B.'s second-grade year, DuBray worked as a consultant on his articulation goals, and determined that he was improving as the year progressed. DuBray prepared the present levels of academic achievement and functional performance evaluation ("PLAAFP") for H.B.'s third-grade IEP. (R-1 at 41, 72.) DuBray recommended that H.B. continue in speech once a week in a small group for third grade, with an emphasis on "th" sounds. The IEP contained one articulation goal. (P-19 at 10–11.) During H.B.'s third-grade year, DuBray found H.B.'s pragmatic language to be good, without any red flags or concerns having arisen. At no time during the third grade did H.B. advise DuBray that he was depressed, stupid, or dumb; that he hated himself or school; or that children were making fun of him. Instead, H.B. had a good attitude and he seemed to enjoy the year, moving up the speech hierarchy.

On May 31, 2013, H.B.'s fourth-grade IEP was prepared. (R-1 at 2; P-20.) At that time, because H.B.'s articulation and speech intelligibility were functional for the classroom environment, DuBray recommended that H.B. be dismissed from speech and language services. (R-1 at 9.) DuBray based this decision on contextual probes that were performed on H.B., as well as improvements in articulation. (R-2 at 342.) DuBray did not use standard articulation testing because she felt she could better analyze H.B.'s status with the probes. She also considered positive input from H.B.'s teachers during the third grade. (R-2 at 344–45.) Parent input forms were not used. DuBray made only brief progress notes for H.B.'s third grade. (R-8 at 539.) Social-skills goals were not offered in the IEP.

In June 2013, DuBray produced a summary of H.B.'s progress. (P-38 at 432.) Her reference therein to above-average scores on standardized tests was taken from 2009 testing. However, a 2011 evaluation revealed that H.B. was below average for

three out of four categories in pragmatic-language skills. (P-5 at 2.) In addition, a 2011 CELF-4 Pragmatics Profile score of 130 was age appropriate (P-5 at 3), and his Core Language score of 96 revealed H.B. to be in the 39th percentile, which falls within the average range. (P-5 at 4.) H.B.'s Working Memory Index score was a 75, placing him in the 5th percentile. (P-5 at 5.) The TOPL-2 assessment showed H.B. to be in the 81st percentile. (P-5 at 5.) H.B.'s TOPL-3 score of 100 ranked him in the 50th percentile. (P-5 at 6.) In summary, H.B. was found to be age appropriate for language, pragmatic language, and critical thinking. (P-5 at 7.) The District has performed no other pragmatics profile testing since the 2011 evaluation.

In June 2013, DuBray asked teachers Fast and Panichelli to do additional evaluations of pragmatics and discourse skill management in the classroom. (R-2 at 103.) This was done because the parents were not happy with the discontinuance of speech without an evaluation of H.B. The evaluation was meant to determine H.B.'s social skills in the classroom. H.B. was ranked "occasionally" on four items by Fast (R-2 at 103–04), and H.B. was ranked "occasionally" on several items by Panichelli. (R-2 at 105–06.) This was not unusual for a third grader enrolled in special education. The evaluations showed that H.B. did not have a pragmatic language disorder.

DuBray is currently delivering speech services to H.B. one time a week in a small group. She does not believe that he needs articulation skills because he is making no "th" errors. H.B. is also helping and encouraging another child in his class.

Catherine Snyder has been employed by the District since 2002. She is currently a resource room/Wilson teacher. She is certified in levels one through six of the Wilson reading program. This is a program for children who are reading below grade level and having difficulty decoding and encoding, such as spelling and reading. The Wilson program teaches word construction using sound and syllable cards. Drills are used for children reading below grade level and for children with problems encoding and decoding. Snyder teaches reading and spelling in Wilson. Students move from one step to another if they master skills. H.B. was recommended for Wilson at the June 2012 end-of-second-grade IEP meeting. (R-1 at 70.) At that time, his GRL was a level F, which is early first grade. (R-1 at 71.)

Snyder worked with H.B. on level one of the Wilson reading program beginning in September 2012, at the beginning of H.B.'s third-grade year. Snyder adopted H.B.'s goals from the Wilson program. The Wilson program recommended forty to sixty minutes of instruction per day, and H.B. was to receive forty-five minutes per day of instruction five days a week. (R-1 at 90.) The program consisted of two students in a pull-out setting, and was considered a most intensive program. H.B. progressed well in Wilson reading and decoding during his third-grade year, reaching a mastery level at the end of the year. Spelling was an issue, and H.B. had difficulty with multisyllabic words. H.B. had a good demeanor and attitude during his third-grade year, responding well to motivation. His occasional bad day did not affect his Wilson program. Snyder maintained a journal to monitor H.B.'s progress, finding that his good days outweighed the bad. (R-9 at 570–81.) H.B. had three or four “bad” days during the 2012–13 school year. On those days, Snyder was able to get him back on track using incentives and motivational tools, including a prize box. Snyder did not make daily entries for H.B.

Snyder prepared the reading PLAAFP in H.B.'s May 31, 2013, IEP (R-1 at 4), but she did not attend the meeting. H.B. was recommended by Snyder to continue in Wilson, and H.B. was given numerous goals in Wilson. (P-38 at 71.) In June 2013, H.B. was completing step three of twelve in Wilson. His mastery report scores showed good progress. (R-2 at 201.) ESY was recommended for H.B. for the summer of 2013, but he only attended for a short time. (P-38 at 404A.) H.B.'s Wilson program was reduced to thirty minutes per day of instruction five days a week for the 2013–14 year. Snyder did not make this recommendation; rather, she believed the case manager made this decision.

H.B. is currently at the end of step six of Wilson. His problem area is primarily with spelling multisyllabic words. H.B. has mastered, or is on his way to mastering, steps three through six of the Wilson program. Steps one through three of Wilson were mastered in the last two years, according to the objective markers.

Margaret McEwan has been an occupational therapist for eighteen years. She is licensed in New Jersey and is nationally board certified. She works at three of the District's schools and is familiar with H.B., having known him since kindergarten.

During H.B.'s 2012–2013 third-grade year, McEwan assisted H.B. with his handwriting. H.B. was to receive OT once a week in various locations in a small-group setting. (R-90.) McEwan tried not to remove H.B. from a primary class to work on handwriting. The 1:1 aide was removed because H.B. did not need that level of service. Although the parents objected to OT, a small group was recommended by the second-grade occupational therapist to wean H.B. from OT. He was meeting his OT goals during this time. H.B. had trouble starting his assignments, especially if he felt that an assignment was hard. He did not like to write. Nevertheless, despite these deficiencies, H.B. did well with McEwan and he progressed and achieved his goals. (P-17 at 13.) His copying improved. McEwan could not quantify how she concluded that his goals were achieved and progress was made, because there was no baseline testing. Her conclusions were based upon clinical observations. H.B.'s handwriting improved and he was printing twenty-four out of twenty-six letters. H.B. also had difficulty tying his shoes, and needed to be refreshed on the skill. McEwan did not believe that H.B. had any sensory issues, as there were no indicators from his teachers or others. McEwan worked from the 2012–2013 IEP. (P-17.) During third grade, H.B. tried to assist other children, and his attitude improved during his fourth-grade year.

McEwan prepared the present levels of academic achievement for occupational therapy for H.B.'s fourth-grade IEP. (R-9.) She also prepared the fourth-grade goals. (P-20 at 12–13.) The “copy legibly” goal was included for a third year. Cursive letters were not mastered in third grade, and this continued as an unwritten goal into fourth grade. There were no self-regulating or sensory goals in the IEP. H.B. required a team approach for his writing deficiencies and additional word processing. The services were to be pull-out services. H.B. was to receive OT twice a month in various locations, and twice a month in the therapy room. (P-20 at 27.)

H.B. had modifications for assistive technology, which McEwan recommended (P-20 at 22.) Certain modifications were not used, including “How Does Your English Run,” a therapy ball, a weighted jacket, and a sensory diet.

H.B.’s third-grade writing was better when done with McEwan (P-27 at 48, 49) than in other classes (P-27 at 26, 39; R-464). In the spring, H.B.’s independent writing samples showed typical work for a classified child. (P-27 at 59.) McEwan only documented eight visits with H.B. in 2012–13. (P-193 to 196.) Nevertheless, she was certain that H.B. received all of his required OT sessions during that year, and also during the following year. Progress notes were sent to Fast on a quarterly basis during H.B.’s third- and fourth-grade years. (P-126; R-585 to R-587.) McEwan admitted that while the progress reports did indicate short-term progress (R-585; R-586), they did not indicate if H.B. made progress on his goals from the beginning of a school year to the end. She agreed that there was no objective testing with which to gauge H.B.’s progress during the school year.

McEwan could remember H.B. becoming dispirited one time during the 2012–2013 year. On one occasion, at the beginning of the year, H.B. told McEwan he could not do an assignment. H.B. was entitled to compensatory OT, and whether he was absent, or if school was open only for a half day, he still received the OT. (P-178.) At the end of third grade, the District recommended terminating H.B.’s OT services, but there had not been formal testing done to support that decision.

Reggie Aweau was employed by the District for thirty-two years until her retirement in June 2014 as a special-education resource-room and pull-out teacher. She is a certified special-education teacher for grades K through eight.

H.B. was her student during his 2012–2013 third-grade year. Aweau was not involved in the drafting of H.B.’s 2012–2013 year IEP. There were six special-education children in a class of twenty-two. The IEP allowed for the modification of the grades through a collaboration of the general- and special-education teachers in social studies, science, and math. (P-19.) Aweau would fill in worksheets in speech so that H.B. could use them as a guide, and she would type in vocabulary word definitions for H.B.

Because of H.B.'s limited time in the classroom, his work load was modified. H.B. was allowed to write less material in his language arts setting, and often times his work would be scribed for him.

H.B.'s writing program was based on a four day schedule with the fifth day used for social studies and science. Fast was also in the class for writing. Panichelli, Fast and Aweau coordinated their efforts. Social studies was taught during the first and third marking periods, while science was taught during the second and fourth marking periods. These subjects were to be taught twice a week for thirty minutes each, but the schedule was meant to be flexible. Spanish was also taught when it could be fit in to H.B.'s schedule. Although the third grade IEP called for H.B. to have five sessions of forty-five minutes of writing per week (P-19 at 30), H.B. only received four sessions of fifty minutes. (P-24 at 10.) Because H.B. was in the Wilson program, he would come approximately a half-hour late to social studies and science. On Thursdays, H.B. would miss part of social studies and science for a fifteen minute Spanish lesson. She believed there were not enough hours in the day for H.B.'s schedule. Aweau's job was to explain the worksheets to H.B. that he had missed based upon this late arrival. Aweau found H.B. to be friendly, verbal, polite, helpful and pleasant. He was not left out of groups, and he volunteered often and had good ideas. He was able to start and maintain conversations. His speech skills were on par with those of regular-education students. H.B.'s only disciplinary issues arose in less structured settings like the playground and hallway, and as such, he was a typical third grader. In a normal day, Aweau saw H.B. for approximately one hour. H.B. often had difficulty getting started in the morning.

H.B. did not enjoy writing and he had difficulty getting his ideas to paper. At the beginning of the third-grade year he would go to the bathroom to avoid writing, but as the year progressed, that behavior discontinued. In addition, at the start of the year, Aweau would have to read any test to H.B., and she would scribe for him on occasion. H.B. did well only on structured reading where he was assisted by words on the blackboard. (P-27 at 86–87.) By the middle of the year, H.B. was reading the test himself (P-27 at 82), and by the end of the year, H.B. was taking the test himself. (P-27 at 59.) This was a tremendous improvement from September of H.B.'s third-grade year,

and H.B.'s legibility, ideas and independent work were all good. Nigro was H.B.'s 1:1 aide for writing, but H.B. did not want her hovering over him because it made him feel different. H.B.'s grades were put on Power School, and H.B.'s tests went home in a "Friday folder." H.B.'s parents would regularly sign the folder and return it to school. H.B. worked with a guidance counselor to assist him in making friends. Fast did H.B.'s progress monitoring on the IEP goals. (P-17 at 9–13.) Improvement on these goals was observed, but no data was compiled to confirm the observations. The IEP did not contain goals for science and social studies.

In January 2013, Aweau did surveys for Dr. Brown so that Dr. Brown could learn more about H.B. A BASC-2 done by Aweau in January 2013 showed H.B. demonstrated that negative behaviors were often occurring. (P-34 at 177–78.) In that survey, Aweau found H.B. often seemed lonely, often said no one liked him, often played alone, always had reading problems, often was negative, was often chosen last by his peers, was always pessimistic, and always had trouble making new friends. (P-34 at 177–78.) The Conners 3 done by Aweau for Dr. Brown also revealed that H.B. had trouble keeping friends, seemed unaccepted by friends, became irritable, and allowed his problems to affect his friendships. (P-34 at 224–25.) H.B. wanted to play with the same group of friends each day, and he did not want to expand his friendships. He had poor social skills, and he lacked an understanding of the feelings of others. H.B.'s academic performance was not affected by his behavior issues.

Dr. Brown observed H.B. during his writing lesson. During that observation, H.B. had surprising difficulty getting started, behaving in a similar fashion as he did at the beginning of the school year. Aweau disagreed with many observations in Dr. Brown's report. (P-11.) Although Aweau did not observe H.B. at lunch or during recess, she did observe him interacting with his peers. While H.B. was sad on occasion, he was never depressed, and he never wanted to hurt himself. H.B. did not shut down emotionally and he did not lack confidence. While H.B. did sometimes feel overwhelmed with certain tasks, Aweau did not recall him answering in the negative, and he was not isolated by his peers. H.B. followed the rules and he was not impulsive. Self-regulation was not an issue, and Aweau never heard H.B. speak of shadows, voices, or ghosts. He was anxious and sometimes sad during writing, but he was generally happy and

communicative. Aweau never saw the downward spiral described by Dr. Brown. Dr. Brown stated that Aweau described H.B. as believing he “belonged nowhere,” but those words were taken out of context. (P-11 at 30.) Aweau was merely describing H.B.’s program and schedule, and that was a comment she would never have made. Aweau felt betrayed by Dr. Brown’s report, and she believed that conversations between staff and Dr. Brown were taken out of context.

Travis took notes during Dr. Brown’s visit. (P-38 at 56.) Aweau agreed that H.B. had decreased confidence in writing. Aweau did not make any of the negative comments listed by Travis in her notes. (P-38 at 56.) Travis noted that H.B. was hard on himself, and that the teachers believed that H.B. would benefit from more classroom time, and that he should not be “pulled too much.” (P-38 at 56.)

In spring 2013, H.B. took the NJ Ask test in a quiet, small-group setting. (P-31.) This test measures a student’s progress against his or her peers within New Jersey. H.B. was given the modifications of additional time, use of a number line, counting chips, and the use of a calculator to take the test. He scored partially proficient (the lowest category) in English and math with scores of 185 and 184 out of a possible 300. (P-31.)

By the end of third grade, H.B. was earning B’s in science and social studies. His writing improved dramatically as well, and by the end of the year H.B. was writing several paragraphs. However, some writing assignments from the spring did not reflect that H.B. was writing several paragraphs. (P-27 at 54–55.) Improvement was measured by using a grade rubric of one (poor) to five (excellent) when comparing an assignment given at the beginning of the year to one given at the end of the year. Aweau could not recall how H.B. did and she did not produce the beginning of the year rubric. Spelling was also improving due to the Wilson program overseen by Fast. The District’s writing-assessment folder revealed that for grade three, H.B. scored a one on the September and winter benchmarks, and no score on the spring benchmark. (R-598.)

Aweau did not attend H.B.'s May 31, 2013, fourth-grade IEP meeting, but she did advise Travis that H.B. was performing well. Aweau wrote the science and social studies PLAAFP section of the May 31, 2013, fourth-grade IEP. (R-8.) Aweau also drafted the modifications (R-15 to R-17) that were individualized to H.B. based on H.B.'s progressions. Aweau believed that if H.B. did not participate in an ESY that summer, his skills would have been affected.

At the beginning of H.B.'s 2013–2014 fourth-grade year, Aweau would observe H.B. in his new classroom for a short time each morning. During this time, H.B. was interacting with the other students. H.B. was given a fourth-grade writing baseline which was graded, but much was still lacking thereon. (P-39.) Aweau was not aware of any third-grade writing baseline. Aweau found that H.B.'s quantity of writing increased over third grade, but that more growth was needed. She agreed it was difficult to measure his improvement in writing.

Deborah Fast has been employed by the District for twenty years. During that time she has been a special-education resource-room and pull-out teacher. She is a certified special-education teacher for preschool handicapped children.

H.B. was her student during his 2012–2013 third-grade year. Fast was the resource-room teacher for H.B. in math and reading and the in-class-support teacher for language arts. During H.B.'s third-grade year, there were approximately four students in her resource room. Writing was the first subject in the morning, and it was taught four days a week in the regular-education classroom. (P-24 at 10.) Fast believed that H.B. would have performed better had he been in a resource room for writing. Four teachers were in the twenty-two-student classroom during writing. Fast saw H.B. for math in her classroom from 11:05 a.m. until 12:15 p.m., and then again from 1:40 p.m. until 2:15 p.m. (P-24.) All times were flexible. Social studies and Spanish were often taught during H.B.'s writing period. Fast believed that all language arts, reading and math modifications were delivered to H.B. during the third grade. (R-49; R-52 to R-54.)

Fast also was of the opinion that H.B. had measurable goals in language arts, reading and math. (R-44 to R-46.) Goals were measured using worksheets, journals,

flash cards, games, quizzes and tests. The STAR test was another form of data. Fast was responsible for monitoring H.B.'s progress on his reading and math IEP goals. She did not report H.B.'s progress to his parents because there was no such requirement. Fast was unsure if H.B. mastered the goals from his third-grade IEP. Some goals were difficult to measure and many required 80 percent mastery. (P-19 at 8.) H.B. was able to master many of his goals with 80 percent accuracy, but Fast did not have documentation to support those conclusions. Her conclusions were based on work done by H.B. in the classroom. OT/speech was to provide quarterly progress reports that were IEP-goal specific, but that was not done. (P-19 at 18.) The baseline for measuring H.B.'s progress was created at the beginning of the school year from STAR and Jerry Johns test results and assessments.

Fast found H.B. to be funny, friendly, mature, polite, helpful and pleasant. He was sometimes sad when interacting with his peers, because he believed he was not fitting in. H.B. was also hard on himself, but both issues improved as the year went on, and H.B. participated well in his general-education classroom. He followed the classroom rules. His academic strengths were comprehension, reading aloud, and using picture cues. H.B. had problems with short words. He did not make a great effort at the beginning of the year in writing, but he was motivated in reading and math. His academic weaknesses were memorizing math facts and putting words to paper. Spelling and writing were his weakest subjects. However, as the year went on H.B. was able to get paragraphs to paper. Spelling and vowel sounds were also difficult, and tutoring was discussed with, but not agreed to, by H.B.'s parents. H.B. used avoidance techniques at the beginning of the year, but by November 2012 H.B. was performing much better. (P-38 at 109.) In December 2012, H.B. scored a 96 on a science test. (P-38 at 119.) Beginning in January 2013 he no longer used the bathroom as an opportunity to avoid the classroom. H.B. had problems with aggressively getting into the personal space of other students, but as the year went on this issue improved. He was not left out of groups, and making friends was an important part of H.B.'s experience. Some children gravitated to him, and he was anxious to be a helper and to assist other children. H.B. interacted well with other students on the playground and he was always engaged with other children. He was able to start and maintain conversations with adults.

Nigro was H.B.'s 1:1 aide for writing. H.B. had a good relationship with Nigro but he did not want her hovering over him. As a result, Nigro tended to pull back and act as the shadow. H.B.'s writing improved in the third grade, and by March and April he was starting to read his work aloud to the class. H.B.'s writing output improved if he was interested in the subject.

Two parent conferences were held during H.B.'s third-grade year. Quarterly progress reports were required (P-19 at 18), but formal reports were not made. H.B.'s progress was documented by report cards, benchmarks, unit testing, journals, worksheets and quizzes. Friday folders went home to the parents once a week, and grades were kept on the PowerSchool system, which was available to the parents. Benchmarks were used by the District to assess grade three skills in a unit. (R-390.) Grades would be given and placed on the PowerSchool system and on a spreadsheet and given to the school principal. Benchmarks were eight tests that measured H.B.'s progress through the year. Benchmarks were given in the resource room, and Fast would review each question with her students. There was no time limit and scores were calculated using a rubric. H.B.'s average benchmark score was 78.2 percent and his third-marking-period average was 91 percent as of May 2013. (P-20 at 6.) H.B. progressed during the 2012–2013 school year and his grades were good. (P-30 at 5.)

The first-unit math benchmark was taken in October 2012. (P-27 at 1 to 6.) H.B. received a 64, which equates to a "D." H.B. received an extra 5 points, for a total of 74. This benchmark was dropped from H.B.'s grade. The second-unit benchmark was taken but was ungraded. (R-390.) The third-unit benchmark was taken in January 2013. (R-403.) H.B. received an 80. The fourth-unit benchmark was taken in February 2013. (R-410.) H.B. received an 84. The fifth-unit benchmark was taken in March 2013. (R-416.) H.B. received a 78. The sixth-unit benchmark was taken in March 2013. (R-423.) H.B. received a 75. The seventh-unit undated benchmark was taken and H.B. received an 86. (R-428.) The eighth-unit benchmark was taken in May 2013. (R-449.) H.B. received a 94, despite several questions remaining unanswered. (R-451; R-453; R-454.) Reading benchmarks from the third marking period resulted in a score of 88, and from the fourth marking period, a score of 94. (R-459; R-456.) Fast had

leeway on her grading, and H.B. would often get credit for partial answers, thus inflating his grade. (R-459 to R-474.) Practice math assignments from January 2013 showed that H.B. performed poorly on multiplication problems. (P-27 at 17–19.) A math quiz from March 2013 revealed that H.B. received a grade of 20 out of 38, or about 52 percent. Fast believed that H.B. made some improvement over the course of the 2012–2013 school year, but she could not define a percentage of improvement. She felt that H.B. was on mid-grade-level math by the end of third grade, basing this opinion solely on her observations, and not on any testing.

STAR testing was also used to measure progress in reading and math. Fast administered the test to third-grade students, who would answer questions on the computer. Fast could assist in reading questions to the students, but she could not answer questions. During his third-grade year, H.B. was administered the test on four occasions. In September 2012 H.B. took the STAR test without the benefit of extra time to finish. H.B.'s STAR test results called for urgent intervention. (R-350.) No changes were made to H.B.'s IEP as a result of this score. H.B.'s GRL improved from a level C to an F, which was an improvement from pre-primer to early first grade. By March 2013, using STAR test results, H.B.'s reading had grown and improved to a 3.1 level, from a 1.3 level in September 2012, and a 2.8 level in January 2013. (R-346 to R-352.) This showed significant progress. H.B.'s math had improved to a 3.3 level, from a 1.8 level in September 2012, and a 2.8 level in January 2013. (R-346 to R-354.) H.B. was given extended time to complete the STAR test in April 2013. Extended time meant three times longer than regular-education children. The STAR test results were consistent with his classroom performances. Fast believed that H.B.'s progress on the STAR test was based upon his familiarity with the material, as opposed to receiving extra time. Fast was unsure if H.B.'s performance was measured against students from New Jersey or nationally, or if it tested special- or regular-education students.

H.B. was also tested under the Jerry Johns Basic Reading Inventory by Fast. This test was required by the District for special-education students and was administered by Fast as she sat next to the child. Fast had discretion in grading this test, stating that if the student is basically on target then the student gets credit for the answer. Fast was trained on administering the test for approximately one day several

years ago. From September 2012 until April 2013, H.B. made a two-year jump from independent at a first-grade level to independent at the third-grade level in fluency and comprehension, and independent at the second-grade level in word recognition. As H.B. was exiting third grade, he was instructional at a fourth-grade level. (R-6.) Based on her observations, Fast believed that H.B. was instructional at the mid-third-grade level. Fast was unable to recall what scores would support a finding of independent or instructional, stating that she would need the test protocols to do so; however, the protocols were destroyed, and she could no longer refer to them.

Fast prepared several sections of the May 2013 IEP, including “General Description” (R-4), “Strengths,” “Areas of Weakness,” and “Language Arts” (R-6), and “Math” (R-7). She believed that the best course for H.B.’s fourth-grade year was to continue his program because she was satisfied with his third-grade progress. H.B. was more willing to write, and his sentence and paragraph structures were improving. He was also getting better on his decoding, spelling, and writing, and his small-group setting would assist with those areas. H.B.’s math weaknesses were outlined in the IEP (P-20 at 6), as were the accommodations to assist him in math. (P-20 at 20.) Fast believed that H.B.’s goals in the May 2013 IEP were specific and measurable, but she acknowledged that there is teacher discretion in measuring the goals. Out-of-district placement at the YALE School was also discussed at the May 2013 IEP meeting. Fast and other District personnel disagreed with that strategy, believing that H.B. was comfortable in his setting and that change could harm him. H.B. was making friends and progressing at Wedgwood School. Fast had experience with autistic children and she did not believe that the YALE School would benefit H.B. After this IEP meeting, there were no further discussions with the parents because the relationship was not good. The parents were seeing behaviors at home that the teachers were not seeing in school.

Fast reviewed the psychoeducational evaluation prepared on behalf of the parents by Dr. Rhona Brown. (R-495.) Fast was saddened and angered by the report because it did not depict the H.B. that Fast knew. Fast’s observations of H.B. were very different than Dr. Brown’s. At no time did Fast observe H.B. crying or appearing sad. While H.B. did have occasional issues, he would quickly lighten up and feel better. His

1:1 aide, Nigro, was not around H.B. because H.B. did not want her hovering. Fast did not observe significant fidgeting, but, in any event, H.B. is an ADHD child, and ADHD children do fidget. H.B.'s fidgeting did not interfere with his academics. While H.B. did sometimes feel overwhelmed with certain tasks, his main issue was with getting started in writing. Fast did not observe any emotional shutdowns from January until the end of the school year. Fast did not recall telling Dr. Brown that H.B. always answered in the negative, because he would only sometimes act in that manner. H.B. was easily distracted, but he was easily and quickly put back on task. Fast did not observe H.B. expressing feelings of helplessness. Fast did not hear H.B. speak of shadows, voices, or ghosts. H.B. never wanted to hurt himself. H.B. would frequently engage with others on the playground. Fast disagreed with many of Dr. Brown's observations in her report. Fast did tell Dr. Brown that H.B. was kind and that he contributed, but that was not included in Brown's report. The items raised as concerns in Dr. Brown's report were never raised by the parents prior to Dr. Brown's report. Fast agreed that she mistakenly did not properly complete the Conners 3 survey.

Fast agreed with Travis that H.B. avoided writing in the beginning of the year, but that the avoidance improved over the school year. H.B. was totally engaged in science and social studies. (P-38 at 56.) Fast agreed that H.B. was often pulled from his classes, but she believed he handled it well. (P-38 at 57.) Finally, Fast agreed that the District's third-grade curriculum aligns to the NJ ASK test in order to better prepare the District's students for the NJ ASK testing, and that the NJ ASK test does not allow for teacher discretion in its scoring.

In June 2013, Fast prepared the BASC-2 ratings scale. (P-26 at 37.) She also filled out the Conners 3 questionnaire, which analyzes student behavior. (P-26 at 45.) At the request of the child study team, Fast prepared the GADS booklet concerning H.B.'s autism.

On the last day of the 2012–2013 school year, H.B. told Fast that it was his best year ever, that he did not want the year to end, and that he was going to miss everyone at the school. Fast was aware that H.B. did well in the fourth grade and made progress.

Sherri Panichelli has been employed by the District since 2002 as a regular-education teacher. She is certified as an early childhood, elementary, and special-education teacher. In that capacity, she works with children with language disorders.

Panichelli began working with H.B. in the summer 2012, before H.B.'s third-grade year, as a math tutor. This was a four-week program of 1:1 one-hour sessions, two to three times a week, at Wedgwood School. At this time, H.B. was a pleasant and engaging student, and he did well in the program.

H.B.'s third-grade IEP was drafted in November 2012. (P-19.) Progress on goals and objectives was measured by informal observation, benchmarks and report-card grades. There was no baseline or data for monitoring science and social studies goals, and a baseline in writing was established using on-demand writing assignments. At the beginning of third grade, H.B.'s writing baseline was 1 out of 5. His second benchmark was either one-half or 2. The third and last benchmark was 2 out of 5. There were no goals or requirements for progress monitoring for science and social studies in this IEP. During H.B.'s 2012–2013 third-grade year, Panichelli had H.B. for writing, science and social studies. H.B. was one of twenty-two students in her class. She taught H.B. science during the first and third marking periods, and social studies during the second and fourth marking periods. Panichelli taught H.B. writing for one hour in the morning and science/social studies for forty minutes in the afternoon. (P-24 at 10.) H.B. was pulled out of social studies/science on Mondays and Fridays for OT and speech services. (P-24 at 10.) H.B. would miss time in writing class to be updated on what he missed when he was pulled out for related services. Special subjects like Spanish were often fit in during other subject times. H.B. would sometimes miss the fifteen-minute end-of-day recess to catch up on other subjects, such as science and social studies, which were missed because of Wilson instruction. On Mondays and Fridays, H.B. had five minutes of science or social studies before school was over because of his speech instruction. Although Panichelli believed H.B. had too many pull-outs and that his schedule was difficult, she believed it was working. She felt that H.B. would have benefitted from a self-contained resource classroom for writing, but the District did not have such a class, and she said she wished that there were such a class. H.B. liked science and social studies, and he did well in those areas. H.B.'s

grades improved from B's in science and social studies to A's in the second marking period of each of those classes. (P-30 at 5.) He did well overall, occasionally becoming non-compliant only during writing sessions, but he usually obeyed all the class rules. H.B. resisted starting new tasks unless he enjoyed the topic. Writing sessions were held first in the morning, four to five times a week, and writing lessons were infused into other subjects. Writing was a challenge for H.B., and he did not want his writing aide hovering near him during his writing sessions. H.B. was told that if he did well, the aide would leave him on his own, and this pleased him. His spelling and writing improved over the course of the school year, and a spring project showed his progress. (P-27 at 82, 83.) Panichelli agreed that H.B.'s main area of improvement was in the length of his writing, because at the beginning of the year he only would write one sentence. H.B.'s spelling and spacing improved "a little bit" in third grade. H.B.'s language arts literacy grade was a combination grade from Fast and Panichelli.

H.B. would have the occasional temper tantrum, but it would usually last no more than ten minutes. At the end of the day, students could catch up on their daily work in a study center, and Panichelli worked with H.B. in science and math during this time. Panichelli kept in contact with H.B.'s mother by telephone over the course of the school year. Progress reports were kept online in PowerSchool. As of October 18, 2012, however, H.B. missed assignments in science, social studies, health, and language arts, and his teachers did not count the missing assignments against his grades. (P-28 at 1-4.) H.B. was given a grade of 88 in language arts based on the completion of one out of four assignments. (P-28 at 3.) H.B. also received a check-plus grade on an assignment in which he did not have to answer the majority of the questions. (P-27 at 9.) In reading, Fast would give H.B. credit for incomprehensible written answers that required a verbal explanation from H.B. "Friday Folders" went home to the parents with graded work. H.B.'s parents would review and sign off on the work.

During third grade, H.B. was reading on a third-grade level and following a third-grade curriculum. His writing improved over his third-grade year, but he was a poor speller, and he was in the Wilson program. In the spring, H.B.'s independent writing samples showed improvement from earlier in the year. (P-27 at 59.) H.B. never said he hated school, but, rather, he told Panichelli that he had a great year when it concluded.

H.B. was not a loner, and he loved to talk to adults. He was not disruptive, did not have tantrums, and followed the rules. On the occasion when H.B. did act out, he was spoken to, and the behavior was corrected.

Panichelli saw Dr. Brown's report. (R-5.) The report was first discussed at the May 2013 IEP meeting. Panichelli had issues with Dr. Brown's findings. Dr. Brown's findings were one-sided and not consistent with what Panichelli saw over the school year. In addition, Dr. Brown had spent only approximately twenty minutes observing H.B. It was true that H.B. did not like his aide, but all of the other findings of Dr. Brown were inaccurate and overblown. H.B. was not sad or depressed, he was reluctant. He did not cry, and he was not precarious or self-punitive. He slouched, and would do better after a pep talk.

At the May 2013 IEP meeting, H.B.'s parents discussed sending him to the YALE School because they did not feel H.B. was progressing satisfactorily. Although unfamiliar with the YALE program, Panichelli disagreed, and she believed YALE would be detrimental to H.B. because he was not severely autistic. Panichelli was not involved in the drafting of the goals and objectives in the May 2013 IEP. Panichelli believed that H.B. would best succeed by remaining at the Wedgwood School.

H.B.'s STAR test results improved from a grade equivalent of 1.8 in September 2012 to a 3.3 in May 2013. While H.B. took additional time on each succeeding test, Panichelli believed the time taken was not relevant, and that H.B. could take the maximum time and still get wrong answers. (R-346 to R-349.)

Panichelli observed a video made by H.B.'s parents. (P-35.) She described H.B. as "unrecognizable" in the video. She felt that H.B.'s actions in the video were inconsistent with what she observed in the classroom.

M.B. is the mother of H.B. H.B. started in the Washington Township schools in 2007. H.B. was preschool disabled with an IEP. H.B. began showing symptoms at age two, and by age three was diagnosed by a neurologist with autism spectrum disorder ("ASD"). In 2007, Dr. Assadi diagnosed H.B. with ASD in the form of Asperger's

syndrome. (P-32 at 37.) In 2008, Dr. Assadi again diagnosed H.B. with a form of Asperger's syndrome. (P-32 at 33.) In 2009, in an exam commissioned by the District CST, Dr. Goldfarb diagnosed H.B. with ADHD in combination with residual symptoms of Asperger's syndrome. (P-32 at 30.) M.B. was emphatic that no other doctor has diagnosed H.B. with ADHD.

In February 2011, while in first grade, H.B. was examined by Dr. Burgess at CHOP. (P-4.) Dr. Burgess diagnosed pervasive developmental disorder of childhood, an autistic syndrome, and M.B. believed this to be autism. She provided Dr. Burgess' report to the District. Dr. Burgess did not diagnose ADHD, and H.B. received no ADHD medications in his second- through fourth-grade years.

In February 2012, H.B. was again examined by Dr. Burgess at CHOP (P-9.) Dr. Burgess again diagnosed PDD-NOS, but he also added a diagnosis of probable learning verbal disability. M.B. believed the PDD-NOS diagnosis to be the same as autism. H.B. was using Adderall, but it was ineffective, and he had continuing behavioral issues at home. M.B. believed the symptoms of autism resembled those of ADHD. M.B. provided both of Dr. Burgess' medical reports to Travis; however, at no time did Travis request to speak to Dr. Burgess. Dr. Burgess recommended a more restrictive environment, and he was aware of M.B.'s knowledge of the YALE school. Dr. Burgess also believed that H.B.'s behavioral outbursts at home occurred infrequently, and it was reported by the parents that H.B.'s behavior at school was relatively well controlled.

H.B.'s third-grade IEP was discussed at the June 2012 IEP meeting. M.B. attended with an advocate. At that time, H.B. was classified as "multiply disabled" as a compromise to all parties. The pre-drafted IEP was presented to M.B. at the meeting. (P-17.) There were disagreements about the content of the IEP. No changes were made to the IEP as a result of that meeting, and M.B. left the meeting without an IEP, thinking it was a work in progress. H.B. was offered pull-out resource room for reading, math, and Wilson, and in-class instruction for science, social studies and language arts. M.B. was concerned about the in-class subjects because H.B. had struggled with these in the past. M.B. was concerned that "specials" were to be in the general-education

classroom, with only one teacher. H.B. would begin in the Wilson program for forty-five minutes a day, but M.B. believed that sixty minutes would be preferable. The District disagreed, and forty-five minutes was agreed upon. At that time, M.B. did not request an out-of-district placement for M.B. M.B. received a new draft IEP approximately one week after the June 2012 meeting. There were issues concerning H.B.'s classification. The District offered to meet to discuss the issue (P-24 at 6), but M.B. did not request such a meeting.

H.B. had issues with occupational therapy. He was with a 1:1 aide, but the District believed small-group OT was sufficient. H.B. had difficulty with writing and printing, and with gross and fine motor skills. He also struggled with self-regulation, which could cause him to shut down. He struggled on the school bus, and the District had difficulty finding the proper transportation for him.

When M.B. advised the District about H.B.'s struggles with resistance and negativity with schoolwork at home, she was told that he performed well at school, or that the whole class struggled, or that H.B. was not in class for that lesson. M.B. did not receive quarterly progress reports.

During the summer of 2012, H.B. did attend several ESY Wilson sessions. However, H.B. was unfamiliar with the teacher and he did not want to go because the work was difficult. H.B. told his mother that the teacher made him keep his hands on the desk. M.B. contacted the teacher, who told her that he could not work with M.B. This was a poor environment for H.B., and M.B. requested another teacher. The District did not respond. Although there was no disagreement with the teacher, M.B. decided to discontinue the ESY. H.B. did receive math services from Panichelli that summer.

H.B. began speech therapy in September 2012, but M.B. was concerned about the small group size and that H.B. was not mastering speech skills. M.B. also worried about the District's change from a 1:1 aide to access to an aide. H.B. needed a 1:1 aide, but the District believed this to be overly restrictive and unnecessary. Although M.B. requested progress reports, she did not receive them. M.B. did not believe that H.B.'s social skills were improving, because he still had difficulty with other children.

Although counseling was proposed, it was not done. M.B. received no progress reports concerning counseling. H.B. also had toileting issues in third grade.

M.B. received the 2012–2013 IEP on or about September 12, 2012. (P-17.) Travis drafted the IEP objectives using a drop-down menu. (P-17 at 9–13.) The grade levels mentioned therein were taken from common core standards. M.B. was concerned because H.B. was not performing at the third-grade level. M.B. was not advised how the objectives would be measured, and she did not receive progress reports over the year. M.B. also did not receive evaluation data for H.B.'s reading. Math goals were at the fourth-grade level, but that was too advanced for H.B. (P-17 at 10–12.) H.B. was to show 80 percent mastery, but M.B. received no input to show that was being done. The District determined to discontinue behavioral consultation (P-17 at 25), and M.B. disagreed. The District did not offer any after-school activities or programs to H.B. for his third-grade year. Prior to receiving the IEP, M.B. had not visited the YALE School, but she had done internet research. At the IEP meeting, M.B. was told that H.B. did not need the YALE School, and that H.B. was not sufficiently autistic to warrant his attendance at YALE. M.B. believed YALE had sufficient staff to accommodate H.B., and she did not feel that a long bus ride to YALE would be detrimental to H.B. M.B. was never told by anyone representing YALE that H.B. was not sufficiently autistic to warrant his attendance at YALE, and M.B. was told that YALE would be a good fit for M.B.

During the 2012–2013 school year, H.B. had a negative attitude and he had little confidence. He felt he was stupid. H.B. did not like Fast, as she pushed him hard, and M.B. and Fast did not often agree. M.B. did have a good relationship with Panichelli. M.B. conferred with Fast and Panichelli about H.B. but no changes were made. The teachers had discretion to drop some of H.B.'s poor grades, and grades were often manipulated in math. H.B. struggled with addition, subtraction, and basic math computation.

M.B. had concerns about H.B.'s 2012–2013 schedule. (P-24 at 10.) The 2:55-p.m.-to-3:35-p.m. slot called for social studies on Tuesday, but social studies was preempted by occupational therapy, which was held from 3:00 until 3:30 p.m. The

District maintained that social studies would be infused into H.B.'s writing, reading and language arts. Spelling was done in Wilson, while language arts incorporated reading and writing. H.B. was behind in reading and reading comprehension.

In February 2013, during his third-grade year, H.B. was examined by Dr. Rivera at the Children's Hospital of Philadelphia. (P-10.) An ADOS (Autism Diagnostic Observation Schedule) evaluation administered to H.B. suggested ASD. This was in agreement with Dr. Burgess' conclusion. M.B. provided Dr. Rivera's medical reports to Travis. At no time did Travis request to speak to Dr. Burgess, and no IEP meeting was called to discuss the report. At no time did M.B. request that Dr. Burgess speak to Travis.

M.B. reviewed H.B.'s third-grade classwork. Some writing work was done independently by H.B. (P-27 at 54–55, 57, 61, 85–86), while other assignments required assistance to complete (P-27 at 87). H.B. was upset with his independent writing work because he did not believe it was good. Accommodations were made for math assignments, and H.B. was allowed to make suggested corrections. M.B. did not believe that H.B. could complete some of the math work assigned to him because he was incapable of solving such problems. (P-27 at 8–9.) M.B. did not believe H.B. had the skills to carry over remainders in math assignments. (P-27 at 11.) Some assignments were answered by others, such as the "245" and "495 miles" as set forth in one example (P-27 at 15), the answer "36" as set forth in another (R-485), and the responses given by another student in a social-studies assignment. (P-74 at 88.) By the middle of the 2012–2013 school year, H.B. was capable of undertaking only math multiplication problems that involved multiples of 0 or 1. (P-27 at 17–19, 25; R-480.) Some assignments were done completely by someone other than H.B. (P-27 at 20, 25; R-406.) When H.B. attempted to independently complete math problems, he was unsuccessful. (P-27 at 33; R-390.) H.B. could not complete division problems. H.B. was not well versed on fractions, and he could not do such work independently. (R-449 to R-454.) M.B. would scribe an assignment for H.B., and he would copy it. (P-27 at 59.) Although such an assignment showed improvement, H.B.'s independent abilities were not better. Third-grade unit tests in math ranged from scores of 80 (R-403), 84 (R-410), 78 (R-416), 75 (R-423), 86 (R-428), 85 (R-436), and 94 (R-449.) M.B. was

concerned because H.B. could not do this type of work at home without assistance. M.B. received H.B.'s third-grade report card. (P-30 at 5.) Reading benchmarks returned scores of 88 in the third marking period (R-459), and 94 in the fourth marking period (R-456). H.B. showed weakness in language arts literacy, but the rest of the grades were good. M.B. did not receive any other progress monitoring during that year, and as such was unsure how H.B.'s grades were calculated. M.B. did not believe H.B. made any progress in reading, art, language arts, or math. H.B. missed much of the science and social studies class time.

The summer 2013 extended school year was not completed. H.B. was to have Wilson tutoring at a public library. H.B. was upset by this, and the teacher was unprepared and impatient. M.B. discontinued the ESY when she saw it was not going to be helpful. M.B. was advised that another tutor would be brought in, but that never occurred. H.B. was to have 1:1 math tutoring, but as of August 20, 2013, the District had not set up the tutoring. (P-24 at 38–40.)

H.B. undertook third-grade baseline assessments in 2012–2013. (R-615 to R-626.) These assessments provide a sample of H.B.'s skills. Fourth-grade baseline assessments were also completed by H.B. (R-609 to R-614.)

M.B. contacted Dr. Brown to obtain the opinion of a professional. Dr. Brown undertook testing of H.B. while he was in third grade, which revealed H.B. to be in the low-average range of intellectual ability. (P-34 at 61, 64.) However, Dr. Brown also found that H.B. performed at predicted levels in reading, math, and written and oral language. (P-34 at 64.) M.B. advised Dr. Brown that H.B. had sensory issues. The District disagreed. M.B. advised Dr. Brown that H.B. was often anxious and depressed, that he would have tantrums, and that he had nutritional issues and a poor demeanor. This began to occur when other students began making fun of H.B. H.B. received counseling, but the problem remained at the beginning of fourth grade. H.B. was poor at playing with other children, and M.B. felt he was too often pulled from his class, resulting in a non-fluid school day. M.B. disagreed with the District personnel, who believed that H.B.'s days were great and uneventful. H.B. was unhappy, his school days were difficult, and he did not like school. M.B. discussed other District options with

Dr. Brown, but none were acceptable. M.B. agreed with Dr. Brown that H.B. needed an integrated classroom rather than pull-outs. M.B. forwarded Dr. Brown's report to the District when it was received prior to the May 31, 2013, IEP meeting.

H.B.'s fourth-grade IEP was discussed at the May 31, 2013, IEP meeting. (P-20.) The written IEP was drafted prior to the meeting. Results of STAR and Jerry Johns testing were in the IEP, but M.B. had never previously seen these, nor had the scores ever been explained to her. (P-20 at 4.) The IEP suggested H.B.'s dismissal from speech services, but M.B. disagreed. (P-20 at 7.) M.B. had no input to the IEP's goals. Her concerns that the goals were general and broad, too difficult, and incapable of measurement were ignored. The entire meeting was very argumentative, and school officials did not agree with any of her concerns. The goals were taken from common-core standards, but H.B. was not yet at the fourth-grade level. H.B. was incapable of working with decimals and doing geometric measurements. (P-20 at 11–12.) The IEP team insisted that the goals as written had to be in the IEP. Wilson instruction was reduced to lessen classroom pull-out, but H.B. was not close to completing the program. The issue of the aide was discussed. At the meeting, M.B. asked for an out-of-district placement at YALE, but she was immediately turned down. The District felt that YALE was too restrictive and that H.B. was not severely enough autistic.

In the summer between H.B.'s third- and fourth-grade years, M.B. and H.B. visited and toured the YALE School for the first time. M.B. had some general knowledge of the YALE School program prior to the May 31, 2013, IEP meeting. M.B. understood that YALE enrolled high-functioning autistic children, but that it did not use the Wilson program. Instead, Wilson was generally infused into the school day. The YALE classes were integrated, contained five to seven children, had multiple teachers in the classroom, and did not pull the students out except for special classes. Each student had a checklist that was specific and personalized to the goals in their IEP. M.B. believed that H.B. would be better attending school with children similar to him, and she felt that he would feel more included. H.B. liked YALE, and wanted to attend. M.B. was advised that a spot at YALE was available for H.B. M.B. agreed that neither Dr. Burgess nor Dr. Brown visited YALE as part of H.B.'s case. In contrast to Travis' testimony, M.B. said that she was advised by the YALE School director that speech,

language and occupational therapy would not be given as a pull-out service. The drive to YALE took approximately forty minutes for M.B. At this May 31, 2013, IEP meeting, no members of the CST offered to visit and observe YALE.

H.B. continued in-district for the 2013–2014 school year, but he had the same problems. During this time, M.B. did not receive goals or progress reports. M.B. never gave the District permission to evaluate H.B., and she was not given the results until litigation began. (P-26 at 4–32.) M.B. believed that the May 2013, IEP was not followed, because H.B. did not receive certain modifications, such as a thesaurus, spellcheck, and a dictionary. M.B. agreed that the STAR report from March 2013 had H.B. at a grade 3.1 level, and that the Jerry Johns Inventory had H.B. at third grade independent for fluency and comprehension and at second grade independent for word recognition. (R-6.) M.B. remained concerned for H.B. even after receiving his positive grades, believing that because H.B. continued to struggle at home and at school, his grades were not reflective of his abilities, and he might not actually be learning.

In November 2013, M.B. took an after-school home video of her husband assisting H.B. as he attempted to complete a worksheet. (P-35.) H.B. had difficulty with his homework, and he would get annoyed with M.B. when she attempted to assist him. H.B. was unaware of the presence of the camera.

M.B. was dissatisfied because she did not believe that H.B. was learning and because she thought that his grades were inaccurate. She also believed that H.B. needed a Wilson reading program. H.B. made some progress in the third and fourth grades but it was not sufficient. M.B. was concerned that H.B. received too much homework, and that H.B. could not work independently. MB. agreed that grades and generalized testing were an important part of a student's education, but she disagreed that H.B.'s testing was administered correctly, or that the results reflected his abilities. In fact, M.B. believed that H.B.'s test results showed that he was behind in the educational levels required for his age.

Dr. Rhona W. Brown, Ph.D., holds master's degrees in special education and school psychology. She also received a doctor of philosophy degree from Temple

University in 1999. Dr. Brown is licensed in New Jersey in psychology, in school psychology, and as a learning disabilities teacher-consultant (“LDTC”). Dr. Brown began her career in 1973 as an in-class special-education teacher. She continued her career for many years as an LDTC. She later became a staff psychologist and a school psychologist. As a school psychologist, Dr. Brown was also a member of the CST, and she has participated in the drafting of IEPs. In 2001 she began her private practice as a licensed psychologist, working with children, adolescents and young adults. She currently continues in her private practice, consulting with parents and school districts, and evaluating children involved in special-education matters. Over the last five years, Dr. Brown has performed approximately fifty evaluations on behalf of students. She has previously been qualified as an expert witness in child-custody matters, but never as an expert in special-education matters. Dr. Brown was offered and accepted as an expert witness in the field of school psychology and as an LDTC. (P-11.)

Dr. Brown did not treat H.B. in a clinical fashion, she was acting as an evaluator. Dr. Brown first met H.B.’s parents on November 8, 2012, with the purpose of undertaking an evaluation for program and placement of H.B. (P-34.) The concern was regarding H.B.’s academics and social isolation. The parents were not seeking an out-of-district placement, wanting only an objective opinion on H.B.’s program. Dr. Brown reviewed H.B.’s medical records, and she requested all records of H.B. from the District prior to evaluating H.B. at the Wedgwood School. H.B.’s parents consented to releasing the records in January 2013. (P-24 at 21.) Dr. Brown did not receive the school records until subsequent to her visit, and, as such, did not review unit assessments, benchmarks or the third-grade curriculum. Dr. Brown did not look at H.B.’s second- or third-grade report cards, but she did not believe that H.B.’s receipt of grades of “A” or “B” necessarily showed progress. The extensive accommodations and modifications undertaken by the District interfered with the true value of a good grade, and make it impossible to determine if the good grade was earned. Progress indicators should be objective, without accommodations and modifications. H.B.’s third-grade IEP allowed for modifying grades and tests in the areas of social studies, science, and math. (P-19 at 12–15.) Modification of grades would be by collaboration of general- and special-education teachers. Dr. Brown believed these modifications were too general to be meaningful. Dr. Brown agreed that she did not have expertise in progress

monitoring, and she did not investigate the District's procedure for recording progress. She also agreed that benchmarks and unit testing are a valid way of judging a child's progress, but said that it would be necessary to know what accommodations were given to H.B. Dr. Brown relied primarily on the Woodcock-Johnson test to determine progress. She was not familiar with the Jerry Johns or STAR tests.

Dr. Brown interviewed H.B., and she performed four days of testing on H.B. On January 9, 2013, she made her first observation of H.B. in school. Dr. Brown met with the District staff at that time, and requested that the teachers fill out BASC-2 written rating scales. Although the District wanted to limit her visit to forty-five minutes, the observation lasted approximately two and one-half hours in total. H.B. had difficulty beginning a project, he appeared sad, and he placed his head down on his arms and cried softly. For twenty minutes H.B. was to have been writing, but he could not get started. The teachers agreed with this observation. Dr. Brown observed H.B. for thirty minutes during math. H.B. was fidgeting and he was distracted. H.B. had small-group Wilson instruction, which Dr. Brown believed was helpful, and H.B.'s parents wanted more Wilson programming. H.B. had issues with spelling and comprehension, and he was low average to average in cognitive ability. H.B. was at his predicted levels in reading, but not in math or writing skills. Dr. Brown did not agree that this assessment differed from her test results, in which she determined that H.B. was at his predicted levels in reading, math and writing skills. (P-34 at 64.) She explained that there was no inconsistency, because she used three different discrepancy formulas, including a predicted-achievement formula, and using her charted results in her formula, no discrepancy existed in the predicted levels. (P-11 at 34–35.) Dr. Brown also agreed that a pull-out resource center with a special-education teacher was appropriate for math weakness. In a social setting, H.B. appeared to be craving attention. Although "tapping" was to be used with H.B., Dr. Brown did not see it implemented by Fast. Dr. Brown did not observe H.B. in a science lesson.

Dr. Brown took notes during her interviews with H.B.'s teachers. The following comments about H.B. were made by various teachers:

- “Decreased confidence in writing”;
- “Tends to be negative”;
- “Doesn’t always get jokes”;
- “Doesn’t feel like he belongs”;
- “Beginning of year—sometimes cry, related to self-esteem”;
- “Pulled too much”;
- “Down on self”;
- “Anxiety around social skills”;
- “Sadness about him”;
- “Empathy for others but not himself.”

Dr. Brown agreed that many of those teacher notes did not make it into her report. Panichelli said that H.B. was pleasant and cooperative, that he knew right from wrong, and that he had made it so far. (P-34 at 28.) H.B.’s social skills were not awful, and he had no pragmatic language issues. (P-34 at 29.) The teachers believed that H.B.’s primary diagnosis should have been ADHD. (P-34 at 29.) H.B.’s teachers did not say that he was disruptive or behaviorally challenged, rather, they believed he was deficient with written language skills.

Dr. Brown administered the Millon Pre-Adolescent Clinical Inventory (“M-PACI”) to H.B. It revealed H.B. to be lonely, not accepted and bullied by peers, and using fantasy as an escape method. H.B. was imaginative, and he saw shadows and ghosts, which were comforting to him. H.B. had also revealed this to Dr. Brown, but he was apparently careful not to mention it to others.

The KOPPITZ-2 copying test showed that H.B. was below average, at the level of a five-year-old, while H.B. was over nine years old.

The Wide Range Assessment of Memory and Learning, Second Edition, (“WRAML2”) showed that H.B. could recall short bursts of information, but did poorly in recalling rote information.

The Woodcock-Johnson revealed H.B. to have a low to average IQ. H.B. had deficits that required repeated teaching, and his level of functioning was not keeping pace with his peers. A comparison of his IQ to his functioning levels revealed that H.B. was not achieving to the level expected of a child with his low-average IQ. He showed large gaps in achievement. H.B. was not remembering what he was learning. H.B. was not keeping up with others, and he was not learning at expected levels.

A GADS test was used to identify Asperger's disorder, and it showed high levels of Asperger's disorder symptomatology. As a result, Dr. Brown recommended an ADOS test for autism.

The BASC-2 test consists of ratings scales filled out by teachers and parents. Dr. Brown is qualified to score and interpret the results. The parents' responses indicated clinically significant scores in the areas of adaptive skills and internalizing problems, and at-risk scores in externalizing and adaptive skills. The teacher's scales showed clinically significant scores in externalizing problems, and at-risk behaviors in externalizing and adaptive skills. Panichelli observed at-risk behaviors in internalizing problems and behavioral symptoms. Therefore, all parties observed issues with internalizing problems and behavioral symptoms.

The ADOS test is the "gold standard" used for autism issues. It revealed H.B. to have clinically significant symptomatology, and Dr. Brown agreed with those findings.

The Conners-3 was used for AD/ADHD symptomatology. The assessment revealed that H.B. should have a behavior plan because of his difficulties in getting along with peers and self-regulation. A behavior plan would also help with focus and motivation.

The Behavior Rating Inventory of Executive Function ("BRIEF") test measures brain abilities. It showed that H.B. had issues with some aspects of executive function.

Dr. Brown commented on H.B.'s IEP as follows:

Although [H.B.'s] IEP is written to provide a range of services, it has provided them in a splintered, uncoordinated manner. [H.B.'s] day is one of "pullouts" with questionable curricular consistency or individualization. Reading, Language Arts, and "Wilson" instruction present as particularly chopped and splintered. In addition, there appears to be inconsistent understanding of the role that Autism plays in [H.B.'s] learning profile and social interactions. As cited by Ms. Aweau, he truly finds that he "belongs nowhere."

Like many autistic children, [H.B.] presents as rigid, anxious, unable to generalize, and unable to readily adapt to changing schedules and social interactions. His inability to cope with the unpredictability of social and academic tasks, combined with his very poor self-regulation, metacognitive skills, and mood dysregulation have led to considerable internal decompensation for this child. His organic needs for structure and his very considerable emotional difficulties have led him to seek a world of avoidance from reality and refuge in a world of fantasy which he tries to protect by hiding it. At this time, [H.B.] does not present as able to benefit from his current educational program. He requires a total therapeutic milieu which is highly structured, predictable, individualized and viewed by [H.B.] as safe.

[P-11 at 30.]

Dr. Brown made the following recommendations:

1. [H.B.] is very much in need of a total therapeutic milieu which can appropriately address his multiple emotional, academic and social difficulties. Importantly, this program should provide well-integrated services such as OT, speech and language therapy, counseling, social skills instruction, and specialized academic instruction. The Y.A.L.E. school is able to provide such a program for multiply disabled/ASD students. Rather than providing splintered "pullout" services, all services are provided within the classroom as part of a thoroughly integrated program. Social skills training is omnipresent, and faculty are on hand "in vivo" to intercede, teach skills, and aid in learning to "generalize" essential skills required in effective social

interactions. Classroom populations are small, and each student operates within his own behavioral plan with its specific individualized behavioral goals.

2. [H.B.] would benefit from objective independent evaluations in the areas of Occupational Therapy (examining both fine motor skills and sensory processing skills necessary for self-regulation); Speech and Language (particularly regarding social pragmatics and inferential thinking); and Auditory Processing. Current evaluations in these areas would be very useful in providing updated diagnostic information that can be practically utilized in setting curriculum goals for [H.B.].

3. Teaching techniques should include the following:

- Total integration of reading, oral language, and written language instruction throughout the school day
- Overlearning and repetition for Fluency Training
- Emphasis on “the big picture” in vocabulary and concept instruction. [H.B.] must be able to find meaning in learning material, as rote memory will not work for him
- Emphasis on visualization of concepts and facts, and ongoing, repetitive hands-on experiences to associate with learning material

4. [H.B.] would benefit from the inclusion of an Extended School Year (ESY). Vulnerable learners such as [H.B.] are at extremely high risk for loss of academic skills because they have not yet established permanent neural pathways of word and quantitative models. Over a summer of less than adequate use, these word models and neurological connections remain fragile, unstable, and easily deteriorate. In addition, as a youngster with ASD, [H.B.] requires ongoing, uninterrupted, and structured social instruction, modeling, and feedback.

[P-11 at 30–31.]

Dr. Brown opined that H.B.’s November 9, 2012, IEP did not address H.B.’s need for concrete help or a 1:1 aide for assignments to help H.B. initiate and organize his

assignments. (P-19.) In general, H.B.'s third-grade program and IEP were not appropriate, failing to address H.B.'s weaknesses in math and the manner in which he needed to be taught. His deficits were not properly addressed, nor were his emotional issues or social skills. Based on Dr. Brown's data, she did not believe that H.B. made meaningful progress from January to March 2013. Given H.B.'s low-average to average cognitive abilities, H.B.'s achievement scores should have been higher if progress was being made. H.B.'s math goals and objectives were above his abilities, and an out-of-district placement would assist with his social issues. The YALE School was an excellent choice for multiply disabled children on the autism spectrum. H.B. needs proper pre- and post-testing to determine his progress and if grades were correctly being given. The YALE School would assist H.B. by using faculty intervention, rule enforcement, positive reinforcement, and social-skill assistance, and by placing H.B. with friends with similar interests. Dr. Brown would use a Woodcock-Johnson test, or an individualized achievement test, to show H.B.'s progress. She believed that meaningful progress should be made in a three-year program, after which a child should be able to function in a regular setting. If the program was not working, it should be changed. Dr. Brown felt that if H.B.'s fourth-grade IEP were the same as the third-grade IEP, her opinion would be unchanged regarding the sufficiency of that IEP.

Karen Huber is the clinical and admissions coordinator of the YALE School. In that capacity she reviews student records, provides tours of the facility, and makes the final decision on placements at the school after discussion with the school staff. The YALE School is a New Jersey approved school for children with disabilities.

The YALE School enrolls 245 students, who range from three to twenty-one years of age. Students are sent from forty districts, including districts in Pennsylvania and Delaware. The sending school district pays the costs of transportation. YALE teachers are special-education certified, and assistants have earned bachelor's degrees. During the 2013–2014 school year, the YALE fourth-grade class was primarily comprised of high-functioning autistic, verbal, students who wanted to socialize, but had deficits. Some of the students had Asperger's syndrome. There was a maximum of twelve students in each class, and each classroom had one teacher and two assistants, with a few exceptions. ABA programming is the foundation of YALE's curriculum.

At YALE, social skills are infused into the day, and social skills are also taught once a week for forty minutes. Pragmatics and social skills are emphasized. Behavioral plans are created to target shut-down behavior and frustration, and each child has two to four identified goals. A point system is used to reward good behavior. Wilson-trained professionals are on staff, and a Wilson program would have been put into place for H.B. Wilson, as well as occupational and speech therapy, is typically done as a pull-out at YALE. The district IEP is followed, and a thirty-day evaluation is done after the student commences at the school. School records are submitted by the district. Lunch is served in the classroom with a teacher present, and recess is held outside. The school follows the New Jersey Core Curriculum, and follows the 180-day calendar, with five and one-half hours of classes a day. Eighty percent of the 2013–2014 YALE students were on the autism spectrum. H.B. would have been in a classroom with no more than twelve students. The YALE School prefers push-in services over pull-out because pull-out can be disruptive. Related services are integrated and push-in to the greatest possible extent.

At the May 31, 2013, IEP meeting, the District agreed to send H.B.'s records to YALE. On June 14, 2013, the District forwarded H.B.'s records to Huber. (P-32 at 8.) Huber had her initial interview with H.B. on July 24, 2013, during the extended-school-year session, and she recorded her impressions. (P-32 at 2–3.) Huber received H.B.'s records on July 25, 2013. (P-32 at 1.) H.B. was accepted for the fall 2013–2014 school session on July 24, 2013, because Huber felt he would fit in and benefit from the curriculum. (P-32 at 4, 7.) Huber believed the District supported H.B.'s admission to YALE. Huber did not recall speaking to any District representative or to Travis about H.B. The teachers believed H.B. would be attending YALE, and they reviewed his records on September 4, 2013. (P-32 at 6.) After a conversation with M.B., Huber was advised that H.B. would not be attending YALE. Huber did not go to the District to observe H.B.'s program, and she did not recall Travis coming to YALE to observe the YALE program. Huber could not recall any conversation with Travis. M.B. was willing to allow H.B. a longer bus ride and less time with typical peers so that he could attend YALE.

FINDINGS OF FACT

As loving and nurturing parents, P.B. and M.B. want what is best for their son H.B. They want their son to grow and to be happy, and they questioned whether that was possible in the District's educational program. But they are not qualified to advise whether the District's educational program provided H.B. with a FAPE. Conversely, the District maintains that its educational program, and the IEP drafted for H.B., did provide H.B. with a FAPE. To prove that the IEP provided H.B. with a FAPE, the District relied on the testimony of social worker Travis, occupational therapist McEwan, and teachers DuBray, Snyder, Aweau, Fast, and Panichelli. The District staff said that H.B. was pleasant and cooperative, that he knew right from wrong, and that he was performing well. H.B.'s social skills were not awful, and he had no pragmatic-language issues. The teachers believed H.B.'s primary diagnosis should have been ADHD, but like the parents, they are not experts in the field of diagnosing disabilities. As to H.B.'s IEP and program, H.B.'s teachers believed only that H.B. was deficient with written language skills. However, the District's witnesses are also not qualified to advise whether the District's educational program provided H.B. with a FAPE. The District also relied upon test results, grades, progress reports, benchmarks and classroom observations as additional proof that H.B. was provided with a FAPE.

Conversely, petitioners have proffered H.B.'s mother, M.B., and Dr. Brown, a certified learning disabilities teacher-consultant, who holds master's degrees in special education and school psychology, as well as a doctor of philosophy degree. Dr. Brown is also licensed in New Jersey in psychology and school psychology. Dr. Brown has previous experience as an in-class special-education teacher, as a learning disabilities teacher-consultant, and as a staff psychologist and a school psychologist. Dr. Brown has experience as a member of a CST, and she has participated in the drafting of IEPs. Dr. Brown is an evaluation specialist, and as a certified learning disabilities teacher-consultant, she has some expertise in autism. She based her conclusions not only upon her experience and training, but also upon observations of H.B. in evaluative and educational settings, parent interviews and input, test results, review of H.B.'s program history and progress reports from the District, and review of H.B.'s medical and diagnostic history. Brown observed the educational program at the District.

After carefully considering the testimonial and documentary evidence presented, and having had the opportunity to listen to testimony and observe the demeanor of the witnesses, I **FIND** the following to be the additional relevant and credible **FACTS** in this matter:

The June 2012 IEP created for the 2012–2013 third-grade school year contained goals that were chosen from a computer IEP program that allows for a selection of pre-written goals. Although H.B. was reading at a first-grade level, the goals were written for a third-grade student. The District did not know the meaning of some of H.B.'s goals, nor was it aware of how some of the goals were measured. The District had no objective data to prove that H.B. met his third-grade goals. Other goals were measured by looking at the following year's IEP. H.B. also received accommodations for State tests. Modifications for taking the District's STAR test were not in this IEP. H.B. received changes to his related services. He did not have a 1:1 aide. At that time, H.B.'s GRL was a level F, reflective of an early first grader. In math, H.B. suffered from test anxiety.

During the summer of 2012, H.B. did attend several ESY Wilson sessions. However, H.B. was unfamiliar with the teacher and he did not want to go because the work was difficult. The ESY teacher told M.B. that he could not work with H.B. M.B. requested another teacher, and eventually chose to discontinue the ESY. H.B. told his mother that the teacher made him keep his hands on the desk.

The 2012–2013 third-grade IEP was generated on or about September 12, 2012. The IEP objectives were drafted using a drop-down menu. The grade levels mentioned were taken from common-core standards. The District determined to discontinue behavioral consultation. The District did not offer any after-school activities or programs to H.B. for his third-grade year. At the IEP meeting, District representatives opined that H.B. did not need the YALE School, and that H.B. was not sufficiently autistic to warrant his attendance at YALE. M.B. was never told by anyone from YALE that H.B. was not sufficiently autistic to warrant his attendance at YALE.

Another third-grade IEP was drafted in November 2012. In that IEP, progress on goals and objectives was measured by informal observation, benchmarks and report cards. There was no baseline for science and social studies, and a baseline in writing was established using on-demand writing assignments. There were no goals or requirements for progress monitoring for science and social studies in this IEP. At the beginning of third grade, H.B.'s writing baseline was 1 out of 5. His second benchmark was either one-half or 2. The third and last benchmark was 2 out of 5.

H.B.'s third-grade day was congested and hectic. H.B.'s 2012–2013 school-year schedule had conflicts for M.B. The 2:55-p.m.-to-3:35-p.m. slot called for social studies on Tuesday, but social studies was preempted by occupational therapy, which was held from 3:00 until 3:30 p.m. The District infused social studies into H.B.'s writing, reading and language arts. Spelling was done in Wilson, while language arts incorporated reading and writing. Some third-grade writing work was done independently by H.B., while other assignments required assistance to complete. H.B.'s 2012–2013 writing program was based on a four-day schedule, with the fifth day used for social studies and science. Writing sessions were held first in the morning, four to five times a week, and writing lessons were infused into other subjects. These subjects were to be taught twice a week for thirty minutes each, but the schedule had to be flexible. Panichelli taught H.B. writing for one hour in the morning and social studies/science for forty minutes in the afternoon. H.B. was pulled out of social studies/science on Mondays and Fridays. On those Mondays and Fridays, H.B. had five minutes of science or social studies before school was over because of his speech instruction. Spanish was also taught when it could be fit into H.B.'s schedule. H.B. would sometimes miss the fifteen-minute end-of-day recess to catch up on other subjects, such as science and social studies, which were missed because of Wilson instruction. Aweau's job was to explain the worksheets to H.B. that he had missed based upon this late arrival.

Although the IEP called for H.B. to have five forty-five-minute writing sessions per week, H.B. only received four fifty-minute sessions. Because H.B. was in the Wilson program, he would come approximately a half-hour late to social studies/science. On Thursdays, H.B. would miss part of social studies/science for a fifteen-minute Spanish lesson. H.B. was pulled out of social studies/science on Mondays and Fridays for OT

and speech services. H.B. would miss time in writing class to be updated on what he missed when he was pulled out for related services. On Mondays and Fridays, H.B. had five minutes of science or social studies before school was over because of his speech instruction. H.B. had many pull-outs and his schedule was difficult. H.B. would have benefitted from a self-contained resource classroom for writing, but the District did not have such a class.

M.B. did not receive requested progress reports during the year, nor did she receive progress reports concerning counseling. M.B. was not advised how the objectives would be measured. M.B. also did not receive evaluation data for H.B.'s reading. Math goals were at the fourth-grade level. H.B. was to show 80 percent mastery, but M.B. received no input as to how that was being done.

Wilson goals were adopted from the Wilson program. The Wilson program recommended forty to sixty minutes of instruction per day, and H.B. was to receive forty-five minutes per day of instruction five days a week. The program consisted of two students in a pull-out setting, and was an intensive program. Spelling was an issue, and H.B. had difficulty with multisyllabic words. Snyder maintained a journal to monitor H.B.'s progress, but she did not make daily entries for H.B. H.B. is currently at the end of step four of Wilson, but his major problem area is primarily spelling multisyllabic words. H.B. has mastered, or is on his way to mastering, steps three through six of the Wilson program. Steps one through three of Wilson were mastered in the last two years, according to the objective markers.

H.B.'s first-unit math benchmark was taken in October 2012. H.B. received a 69, or an "F," but with extra credit the grade was brought up to a 74, which equates to a "D." This benchmark was dropped from H.B.'s grade. The second-unit benchmark was taken but was ungraded. The third-unit benchmark was taken in January 2013. H.B. received an 80. The fourth-unit benchmark was taken in February 2013. H.B. received an 84. The fifth-unit benchmark was taken in March 2013. H.B. received a 78. The sixth-unit benchmark was taken in March 2013. H.B. received a 75. The seventh-unit undated benchmark was taken and H.B. received an 86. The eighth-unit benchmark was taken in May 2013. H.B. received a 94. Reading benchmarks from the third

marking period resulted in a score of 88, and from the fourth marking period, a score of 94. Fast had leeway on her grading, and H.B. would often get credit for partial answers, thus inflating his grade. At the beginning of third grade, H.B.'s writing baseline benchmark was 1 out of 5. His second benchmark was either one-half or 2. The third and last benchmark was 2 out of 5.

During the 2012–2013 third-grade school year, H.B.'s teachers had discretion to drop some of his poor grades, and grades were often manipulated in math. H.B. struggled with addition, subtraction, and basic math computation. Accommodations were made for math assignments, and H.B. was allowed to make suggested corrections. Some of H.B.'s assignments were answered by others, such as the “245” and “495 miles” as set forth in one example, the answer “36” as set forth in another, and the responses given by another student in a social-studies assignment. Other assignments for H.B. were done completely by someone other than H.B. When H.B. attempted to independently complete math problems, he was mostly unsuccessful. H.B. could not complete division problems. By the middle of the 2012–2013 school year, H.B. was only capable of undertaking math multiplication problems that involved multiples of 0 or 1. H.B. was not well versed on fractions, and he could not do such work independently. Although third-grade unit tests in math ranged from scores of 75 to 94, H.B. was having difficulty doing this type of work at home without assistance. H.B.'s third-grade report card showed reading benchmarks returning scores of 88 in the third marking period and 94 in the fourth marking period. H.B. showed weakness in language-arts literacy, but the rest of the grades were good. M.B. did not receive any other progress monitoring during that year; as such, it could not be determined how H.B.'s grades were calculated. H.B. missed much of the science and social studies class time. H.B.'s quantity of writing increased over third grade, but more growth was needed. The District had difficulty measuring H.B.'s improvement in writing. . According to Panichelli, H.B.'s spelling and spacing improved “a little bit” in third grade.

The District could not quantify how H.B.'s goals were achieved because there was no baseline testing. Teacher conclusions were based upon clinical observations. Progress notes were sent to Fast on a quarterly basis during H.B.'s third- and fourth-grade years. While the progress reports did indicate short-term progress, they did not

indicate if H.B. made progress on his goals from the beginning of the school year to the end. There was no objective testing with which to gauge H.B.'s progress during the school year

Goals in language arts, reading and math were measured using worksheets, journals, flash cards, games, quizzes and tests. There was teacher discretion in measuring the goals. Although Fast was responsible for monitoring H.B.'s progress on his IEP goals, she did not report H.B.'s progress to his parents. Some goals were difficult to measure and many required 80 percent mastery. The District did not have documentation to support the conclusion that H.B. was able to master many of his goals with 80 percent accuracy. The District was unsure if H.B. mastered the goals from his third-grade IEP. Many District conclusions were based on work done by H.B. in the classroom. OT/speech was to provide quarterly progress reports that were IEP-goal specific, but that was not done.

Quarterly progress reports were required during H.B.'s third-grade year, but formal reports were not made. H.B.'s progress was documented by report cards, benchmarks, unit testing, journals, worksheets and quizzes. Friday folders went home to the parents once a week, and grades were kept on the PowerSchool system, which was available to the parents. H.B.'s parents would regularly sign the folder and return it to school. Benchmarks were used by the District to assess grade-three skills in a unit. Grades would be given and placed on the PowerSchool system and on a spreadsheet and given to the school principal. Benchmarks were eight tests that measured H.B.'s progress through the year. Benchmarks were given in the resource room, and the teacher would review each question with her students. There was no time limit and scores were calculated using a rubric. H.B.'s benchmark score was 78.2 percent, and his third-marking-period average was 91 percent as of May 2013.

H.B.'s third-year grades were A's and B's, with C's in language arts. H.B.'s language arts literacy grade was a combination grade from Fast and Panichelli. The third-grade curriculum was modified by the teachers as necessary. Aweau would fill in worksheets in speech so that H.B. could use them as a guide, and she would type in vocabulary-word definitions for H.B. Because of H.B.'s limited time in the classroom,

his work load was modified. H.B. was allowed to write less material in his language arts setting, and oftentimes his work would be scribed for him. As of October 18, 2012, H.B. missed assignments in science, social studies, health, and language arts, and his teachers did not count the missing assignments against his grades. H.B. was given a grade of 88 in language arts based on the completion of one out of four assignments. H.B. received a check-plus grade on an assignment in which he did not have to answer the majority of the questions. In reading, H.B. was given credit for incomprehensible written answers that required a verbal explanation from H.B. The District's writing-assessment folder revealed that for grade three, H.B. scored a 1 on the September and winter benchmarks, and no score on the spring benchmark.

The District's progress monitoring on the IEP goals showed improvement, but no data was compiled to confirm the observations. The IEP did not contain goals for science and social studies. The District did not know if H.B. met his third-grade benchmarks or objectives. Travis did not review any progress reports or monitoring of H.B.'s benchmarks or objectives. The District did not know how benchmarks or objectives were measured or how and if they were deemed accomplished. McEwan admitted that the progress reports did not indicate if H.B. made progress on his goals from the beginning of a school year to the end. She agreed that there was no objective testing with which to gauge H.B.'s progress during the school year.

Dr. Brown met with H.B.'s parents on November 8, 2012, with the purpose of undertaking an evaluation for program and placement of H.B. The concern was regarding H.B.'s academics and social isolation. The parents were not seeking an out-of-district placement at that time, they were seeking an objective opinion on H.B.'s program. Dr. Brown reviewed H.B.'s medical records, and she requested all records of H.B. from the District prior to evaluating H.B. at the Wedgwood School.

A BASC-2 filled out by Aweau in January 2013 showed that negative behaviors by H.B. were often occurring. Aweau found that H.B. often seemed lonely, often said no one liked him, often played alone, always had reading problems, often was negative, often was chosen last by his peers, always was pessimistic, and always had trouble making new friends.

STAR testing was used to measure progress in reading and math. Fast administered the test to third-grade students, who would answer questions on the computer. Fast could assist in reading questions to the students, but she could not answer questions. During third grade, H.B. was administered the test on four occasions. In September 2012, H.B. took the STAR test without the benefit of extra time to finish. Although H.B.'s STAR test results called for urgent intervention, no changes were made to H.B.'s IEP or program as a result of his scores. By March 2013, using STAR test results, H.B.'s reading had improved to a 3.1 level, from a 1.3 level in September 2012, and a 2.8 level in January 2013. H.B.'s math had improved to a 3.3 level, from a 1.8 level in September 2012, and a 2.8 level in January 2013. However, H.B. was given extended time to complete the STAR test in April 2013. Extended time meant three times longer than regular-education children. The District could not determine if H.B.'s performance was measured against students from New Jersey or nationally, or if it tested special- or regular-education students.

In September 2012, and again in June 2013, H.B. was given the WADE test. The test results show that H.B. made progress across ten levels, with the exception of one subset in additional sounds. H.B. was able to move from step one to step five of the Wilson steps.

H.B. was also tested under the Jerry Johns Basic Reading Inventory. This test was required by the District for special-education students and was administered by the teacher as she sat next to the child. Fast had discretion in grading this test, and if the student is basically on target with an answer then the student gets credit for the answer. Fast was trained on administering the test for approximately one day several years ago. From September 2012 until April 2013, H.B. made a two-year jump from independent at a first-grade level to independent at the third-grade level in fluency and comprehension, and independent at the second-grade level in word recognition. As H.B. was exiting third grade, he was instructional at a fourth-grade level. H.B.'s primary weakness was in writing, and he still needed the Wilson program. Based on her observations, Fast believed that H.B. was instructional at the mid-third-grade level. Fast could not recall what scores would support a finding of independent or instructional, because she would

need the test protocols to make that determination. However, as the protocols were destroyed, Fast was unable to refer to them.

On January 9, 2013, Dr. Brown made her first observation of H.B. in school. Dr. Brown observed H.B. during his writing lesson for twenty minutes. The observation lasted approximately two hours in total. H.B. had difficulty beginning a project, he appeared sad, and he placed his head down on his arms and cried softly. The teachers agreed with this observation. Aweau described H.B. as believing he “belonged nowhere.” Travis noted that H.B. was hard on himself, and the teachers believed that H.B. would benefit from more classroom time, and that he should not be “pulled too much.” Dr. Brown observed H.B. for fifteen minutes during math. H.B. had issues with spelling and comprehension, and he was low average to average in cognitive ability.

Dr. Brown undertook several evaluations of H.B. The M-PACI test revealed H.B. to be lonely, not accepted and bullied by peers, and using fantasy as an escape method. H.B. was imaginative, and he saw shadows and ghosts, which were comforting to him. The KOPPITZ-2 copying test showed that H.B. was below average. The WRAML2 showed that H.B. could recall short bursts of information, but did poorly in recalling rote information. The Woodcock-Johnson test revealed H.B. to have a low to average IQ. H.B. had deficits that required repeated teaching, and he was not keeping pace with his low-scoring peers. A GADS test was used to identify Asperger’s disorder, and it showed high levels of ASD symptomology. The ADOS test is the “gold standard” used for autism issues. It revealed H.B. to have clinically significant symptomatology, and Dr. Brown agreed with those findings. The Conners-3 was used for AD/ADHD symptomology. The BRIEF test showed that H.B. had issues with some aspects of executive function.

Dr. Brown found that H.B. was at his predicted levels in reading, but not in math or writing skills. Dr. Brown agreed that a pull-out resource center with a special-education teacher was appropriate for math weakness. In a social setting, H.B. appeared to be craving attention. Dr. Brown disagreed that H.B.’s receipt of grades of “A” or “B” necessarily showed progress. The extensive District accommodations and modifications interfered with the true value of a good grade, and make it impossible to

determine if the good grade was earned. H.B.'s third-grade IEP allowed for modifying grades and tests in the areas of social studies, science, and math. Modification of grades would be by collaboration of general- and special-education teachers. Dr. Brown found these modifications too general to be meaningful. Although benchmarks and unit testing are a valid way of judging a child's progress, Dr. Brown opined that it would be necessary to know what accommodations were given to H.B. Progress indicators should be objective, without accommodations and modifications. Dr. Brown relied primarily on the Woodcock-Johnson test to determine progress. Dr. Brown diagnosed H.B. with autism spectrum disorder. Despite Dr. Brown's report, the CST did not make any changes to the IEP.

H.B.'s fourth-grade IEP was discussed at the May 31, 2013, IEP meeting. The written IEP was drafted prior to the meeting. The IEP suggested H.B.'s dismissal from speech services. M.B. had no input as to the IEP's goals, which were taken from common-core standards using a computer program called "Real Time" for a fourth-grade curriculum. There was no discussion of H.B.'s third-grade goals in this IEP. At that time, H.B. was not yet at the fourth-grade level. The IEP team did not change the goals in the IEP. M.B. asked for an out-of-district placement at YALE, but she was rejected. H.B.'s test results were discussed with the parents at the IEP meeting. The IEP did not review H.B.'s goals from the third grade. One of H.B.'s goals was to "read on level text with purpose and understanding." The District agreed that there was no way to measure such a goal. Another goal was, "demonstrating a sophisticated sense of sound-symbol relationship, including all phonemes." Travis was unsure of the meaning of this goal, and stated that there was no way to measure such a goal. Wilson goals were drafted by the Wilson teacher, and the goal was to meet goals four through six that year. During his fourth-grade year, H.B. was again to be in a general-education setting with in-class support and pull-outs for reading, math and Wilson instruction. Wilson was reduced from forty-five to thirty minutes a day to lessen classroom pull-out. The District again did not have any written progress monitoring on H.B.'s goals, and was unaware of whether the goals were individualized for H.B. The District did not know if any of these goals were met. The District goal was to develop positive peer relationships, but no specific programs were listed in the May 2013 IEP. At this IEP meeting, because H.B. had met his articulation goal, it was recommended that H.B. be

dismissed from speech, although no formal evaluation was done to support this finding. DuBray made only brief progress notes for H.B.'s third-grade year, and social-skills goals were not offered in the IEP.

The OT "copy-legibly" goal was the third year worked on this goal. Cursive letters were not mastered in third grade, and this continued as an unwritten goal into fourth grade. There were no self-regulating or sensory goals in the IEP. H.B. required a team approach for his writing deficiencies and additional word processing. The services were to be pull-out services. There was teacher discretion in measuring the goals. At the end of third grade, the District recommended terminating H.B.'s OT services, but there had not been formal testing done to support that decision. H.B.'s Wilson program was reduced to thirty minutes per day of instruction five days a week for the 2013–2014 school year

At the end of the meeting, the parents discussed consideration of the YALE School, reachable for H.B. by a forty-five-minute bus ride. The CST, with the backing of H.B.'s teachers, did not agree with a YALE placement.

H.B.'s spring 2013 NJ ASK scores showed him to be partially proficient in reading and math. This test measures a student's progress against his or her peers within New Jersey. H.B. took the NJ ASK test in a quiet, small-group setting. H.B. was given the modifications of additional time, use of a number line, counting chips, and the use of a calculator to take the test. He scored partially proficient (the lowest category) in English and math with scores of 185 and 184 out of a possible 300. The NJ ASK does not allow for teacher discretion in its scoring. The District's third-grade curriculum aligns to the NJ ASK test in order to better prepare the District's students for the NJ ASK.

As a result of Dr. Brown's evaluations, the District chose to undertake its own evaluations or scales. Travis gave the teachers GADS to complete for purposes of diagnosing Asperger's. Travis' training for the GADS consisted only of reading a manual a number of years ago.

Aweau executed a BASC-2 Teacher Ratings Scales-Child to assist in measuring progress. Permission for the execution of this scale was not given by H.B.'s parents. Aweau found H.B.'s social skills to be normal. H.B. showed increased hyperactivity and executive functioning during that time. H.B.'s scores on the BASC 2 improved between January and June 2013 in areas of loneliness, likeability, joining groups, pessimism, and friendships. Aweau found that as the year progressed, H.B. was getting more comfortable and willing to take risks, and his social skills were improving.

Fast also completed a BASC-2 Teacher Ratings Scales Report. H.B. was shown to be "at risk" in Internalizing Problems and Behavioral Symptoms Index, but his social skills were considered normal.

Panichelli completed a BASC-2 Teacher Ratings Scales Report. H.B. was shown to be "at risk" in Adaptive Skills, Internalizing Problems and Behavioral Symptoms Index, but his social skills were again considered normal. Permission for the execution of this scale was not given by H.B.'s parents.

In June 2013, H.B.'s teachers filled out the Conners 3-Teacher Response Booklet. The purpose of this scale was to gather information about the behaviors and feelings of children. Despite being required by the Conners 3 Manual, permission for the execution of this scale was not given by H.B.'s parents. Travis scored these responses after reviewing the Conners 3 Manual. Travis was not formally trained to administer the Conners 3, as required in the manual. H.B. was found to be "elevated" or "very elevated" in physical symptoms, peer relations, and aggressive behaviors. H.B. was normal in areas of emotional distress, social anxiety, and social problems. The Conners 3 answered by Aweau revealed that H.B. had trouble keeping friends, seemed unaccepted by friends, became irritable, and allowed his problems to affect his friendships. H.B. wanted to play with the same group of friends each day, and he did not want to expand his friendships. He had poor social skills, and he lacked an understanding of the feelings of others. Fast mistakenly did not properly complete the Conners 3 survey.

In June 2013, Fast and Panichelli did additional evaluations of Pragmatics and Discourse Skill Management in the Classroom. The evaluation was used to determine H.B.'s social skills in the classroom. H.B. was ranked "occasionally" on four items by Fast, and was ranked "occasionally" on several items by Panichelli. These evaluations were not sent to petitioners.

The summer 2013 extended school year was not completed. H.B. was to have Wilson tutoring at a public library. H.B. was upset by this, and the teacher was unprepared and impatient. M.B. discontinued the ESY when she saw that it was not going to be helpful. H.B. was to have 1:1 math tutoring, but as of August 20, 2013, the District had not set up the tutoring.

YALE infused Wilson programming into the school day. YALE classes were integrated, contained five to seven children, had multiple teachers in the classroom, and did not pull the students out except for special classes. Each student had a checklist that was specific and personalized to the goals in their IEP. H.B. liked YALE, and wanted to attend. A spot at YALE was available for H.B. The drive to YALE took approximately forty minutes for M.B.

The YALE School proposed placing H.B. in the multiply disabled classroom consisting of children in grades two, three and four. Speech, language and occupational therapy would be given as a pull-out service. H.B. would get a BCBA, an ABA program, and social skills at YALE, but he would receive no exposure to non-disabled peers. YALE would also provide an individual behavior plan. The CST based its decision to keep H.B. in the District on assessments showing H.B. making educational and social and emotional progress in the District program.

On September 20, 2013, H.B. was given a fourth-grade writing baseline assessment. In the assessment, H.B. detailed his negative feelings from the first grade. The parents were not made aware of this writing. H.B. received a score of "65" on the baseline. H.B. continued in-district for the 2013–2014 fourth-grade school year, but he had continuing problems. During this time, M.B. did not receive goals or progress reports, and M.B. never gave the District permission to evaluate H.B. In a November

2013, after-school home video, M.B.'s husband is assisting H.B. as he attempts to complete a worksheet. H.B. had difficulty with his homework, and he would get annoyed with M.B. when she attempted to assist him.

LEGAL ANALYSIS

Pursuant to 20 U.S.C.A. §§ 1412, any state qualifying for federal assistance under the IDEA must adopt a policy that assures all children with disabilities the right to a free appropriate public education. Hendrick Hudson Cent. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 102 S. Ct. 3034, 73 L. Ed.2d 690 (1982). State regulations track this requirement that a local school district must provide “a free, appropriate public education” (“FAPE”) as that standard is set under the IDEA. N.J.A.C. 6A:14-1.1. FAPE 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 IEP required under 20 U.S.C.A. § 1414(d). 20 U.S.C.A. § 1401(9).

In Rowley, the seminal case interpreting the IDEA and FAPE, the Court determined that although the Act mandates that states provide a certain level of education, it does not require them to provide services that will maximize a disabled child’s potential. The Court pointed out:

Implicit in the congressional purpose of providing access to a “free appropriate public education” is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child. It would do little good for Congress to spend millions of dollars in providing access to a public education only to have the handicapped child receive no benefit from that education. The statutory definition of “free appropriate public education,” in addition to requiring that States provide each child with “specially designed instruction,” expressly requires the provision of “such . . . supportive services . . . as may be required to assist a handicapped child *to benefit* from special education.” We therefore conclude that the “basic floor of opportunity” provided by the Act consists of access to

specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.

[Rowley, supra, 458 U.S. at 200–01, 102 S. Ct. at 3048, 73 L. Ed.2d at 708 (citations omitted).]

In addition, when scrutinizing a FAPE claim, there is a two-part inquiry. A court must first ask whether the state or school district has complied with the procedures of the Act when developing the IEP, and, second, whether the IEP developed through the Act's procedures is "reasonably calculated to enable the child to receive educational benefits." Rowley, supra, 458 U.S. at 207, 102 S. Ct. at 3051, 73 L. Ed.2d at 712.

Third Circuit decisions have further refined that standard to clarify that such educational benefit must be "meaningful," "achieve significant learning," and confer "more than merely trivial benefit." T.R. v. Kingwood Tp. Bd. of Educ., 205 F.3d 572 (3d Cir. 2000); Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238 (3d Cir. 1999); Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 183–84 (3d Cir. 1988), cert. denied sub. nom. Central Columbia Sch. Dist. v. Polk, 488 U.S. 1030, 109 S. Ct. 838, 102 L. Ed.2d 970 (1989). The Third Circuit has reemphasized the importance of the inquiry into whether the placement proposed by the district will provide the student with "meaningful educational benefit." S.H. v. State-Operated Sch. Dist. of Newark, 336 F.3d 260 (3d Cir. 2003).

Consequently, a FAPE is defined in broad terms—a limited definition would not encompass the many needs of such a dynamic population—that are consistent with the IDEA's corresponding mandate that the states provide each disabled child with specifically designed instruction that is tailored to the child's unique needs and is a "basic floor of opportunity." Rowley, supra, 458 U.S. at 200–01, 176, 102 S. Ct. at 3048, 73 L. Ed.2d at 708. Notwithstanding the demand that a FAPE is an education that is sufficient to confer some educational benefit that is more than trivial or "de minimis," it does not need to maximize the potential of the child. An IEP must have a plan of instruction where educational progress is likely. Polk, supra, 853 F.2d at 183. For this reason, the parents of a disabled child cannot compel a school district to provide an educational benefit that is better than the one under the IEP, providing the

IEP is sufficient to confer a meaningful educational benefit that is more than trivial or “de minimis.” Generally speaking, children with special needs must be provided an education that is tailored to their individual needs and that confers meaningful benefit. Ibid.

In addition, the IDEA includes a mainstreaming requirement requiring education in the “least restrictive environment.” See 20 U.S.C.A. § 1412(a)(5)(A). Courts in this Circuit have interpreted this mainstreaming requirement as mandating education in the least restrictive environment that will provide meaningful educational benefit. “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), cert. den. sub. nom. Scott P. v. Carlisle Area Sch. Dist., 517 U.S. 1135, 116 S. Ct. 1419, 134 L. Ed.2d 544 (1996). Federal courts have adopted a two-part test for determining whether a school district complies with the statutory preference for the least-restrictive environment. The first step is to determine whether the local school can educate the child in a regular classroom with the use of supplementary aids and services. Only if it is determined that the child cannot be educated in the regular classroom with supplementary aids and services does it then become necessary to consider out-of-district placements. Oberti v. Bd. of Educ. of Clementon Sch. Dist., 995 F.2d 1204, 1215 (3d Cir. 1993).

The Third Circuit provided further instruction on the definition of meaningful benefit when it found that the benefit must be meaningful in light of the student’s potential; to fulfill this mandate, the student’s capabilities as to both “type and amount of learning” must be analyzed. Ridgewood Bd. of Educ. v. N.E., supra, 172 F.3d at 248. “When students display considerable intellectual potential, IDEA requires ‘a great deal more than a negligible [benefit].’” Id. at 247 (quoting Polk, supra, 853 F.2d at 182). When analyzing whether an IEP confers a meaningful benefit, “adequate consideration [must be given] to [the] intellectual potential” of the individual student to determine if that child is receiving a FAPE. Id. at 248. Moreover, there is no bright-line rule to determine the amount of benefit required of an appropriate IEP, and a “student-by-student analysis that carefully considers the student’s individual abilities” is required. Ibid. There must

be a degree, intensity, and quality of special education and related services adequate to provide an educational benefit to the individual child. Egg Harbor Twp. Bd. of Educ. v. S.O., 19 I.D.E.L.R. 15, 17 (D.N.J. 1992).

When a school district fails to ensure that a FAPE is being provided, parents have the right to unilaterally place their child in a private school and receive reimbursement from the school district for tuition. Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 370, 105 S. Ct. 1996, 2002–03, 85 L. Ed.2d 385, 395–96 (1985); N.J.A.C. 6A:14-2.10(b). Reimbursement, however, is never required if a school district offered the disabled student a FAPE. N.J.A.C. 6A:14-2.10(a).

The law is also plain that where, as here, a school district has denied a student FAPE under the terms of the IDEA, compensatory education is an equitable remedy available to the student. The right to compensatory education accrues from a point where a school district knows or should have known that a student was being denied FAPE. See, e.g., Ridgewood, supra, 172 F.3d 238; M.C. v. Cent. Reg'l Sch. Dist., 81 F.3d 389 (3d Cir. 1996). The Third Circuit Court of Appeals has held that a student who is denied FAPE “is entitled to compensatory education for a period equal to the period of deprivation, but excluding the time reasonably required for the school district to rectify the problem.” M.C., supra, 81 F.3d at 397.

A school district must develop an objective means of measuring a student's progress. M.S. & D.S. ex rel M.S. v. Mullica Twp. Bd. of Educ., EDS 4741-05, Final Decision (Nov. 9, 2005) (citing K.H.J. v. Ringwood Bd. of Educ., 2003 N.J. AGEN LEXIS 566 (N.J. Admin. 2003)), <<http://njlaw.rutgers.edu/collections/oal/>>. As the New Jersey Supreme Court explained, measurement of a child's progress on annual goals is “necessary to determine changes to be made in the next IEP. . . . [A]n IEP that is incapable of review denies parents the opportunity to help shape their child's education and hinders their ability to assure that their child will receive the education to which he or she is entitled.” Lascari v. Bd. of Educ., 116 N.J. 30, 48–49 (1989). Even when a district uses recognized measures of progress, if the criteria on those measures does not correlate with the goals stated in the IEP, and the IEP does not contain measurable

objectives, the IEP violates the IDEA and is procedurally deficient. D.B. v. Ocean Twp. Bd. of Educ., 985 F. Supp. 457, 535–36 (D.N.J. 1997).

Failure to measure progress (or lack thereof) and report those measures to parents violates the IDEA's requirement that school districts regularly (at least as often as nondisabled students receive report cards) inform parents of their child's progress toward the annual goals in the IEP and whether the progress is sufficient to meet the goals. M.S., supra, EDS 4741-05, Final Decision (Nov. 9, 2005) (citing 20 U.S.C.A. § 1414(d)(1)(viii)(II); 34 C.F.R. § 300.347(a)(7)(ii); N.J.A.C. 6A:14-2.7(d)(14)), <<http://njlaw.rutgers.edu/collections/oal/>>. In M.S., the district's "failure to provide the parents with regular progress reports showing M.S.'s movement, if any, towards accomplishing the goals and objectives, not only made it impossible for the Mullica Township staff to see whether M.S.'s IEP provided him with FAPE, but it also deprived the parents of a meaningful opportunity to help shape an appropriate education for M.S., a clear violation of IDEA." Ibid. (citing Lascari, 116 N.J. at 48–49).

Finally, the New Jersey Administrative Code requires that certain prerequisites be fulfilled before an administrative law judge ("ALJ") can require the school district to reimburse parents for the unilateral placement of their child in a school. N.J.A.C. 6A:14-2.10(b) requires that

[i]f the parents of a student with a disability, who previously received special education and related services from the district of residence, enroll the student in a nonpublic school . . . or approved private school for students with disabilities without the consent of or referral by the district board of education, an administrative law judge may require the district to reimburse the parents for the cost of that enrollment if the administrative law judge finds that the district had not made a free, appropriate public education available to that student in a timely manner prior to that enrollment and that the private placement is appropriate.

When a court examines whether a district has provided FAPE, the appropriateness of an IEP is not determined by a comparison between the private school unilaterally chosen by parents and the program proposed by the district. S.H. v.

State-Operated Sch. Dist. of Newark, 336 F.3d 260, 271 (3d Cir. 2003). Rather, the pertinent inquiry is whether the IEP proposed by the district offered FAPE with the opportunity for significant learning and meaningful educational benefit within the LRE. G.B. & D.B. ex rel J.B. v. Bridgewater-Raritan Reg'l Bd. of Educ., EDS 4075-06, Final Decision (June 13, 2007), <<http://njlaw.rutgers.edu/collections/oal/>>. Upon a finding that the district provided FAPE, the appropriateness of the private-school program is irrelevant. H.W. & J.W. ex rel A.W. v. Highland Park Bd. of Educ., 108 Fed. Appx. 731, 734 (3d Cir. 2004).

ALJs have “broad discretion” to “grant such relief as the court determines is appropriate,” crafting an equitable remedy under the IDEA that is tailored to the unique needs of a student with disabilities. 20 U.S.C.A. § 1415(i)(2)(c)(iii). The right to injunctive relief in the form of an order for prospective placement of a student with disabilities in an approved private school that is able to provide a FAPE is central to the IDEA framework enforced by courts. In Burlington, *supra*, 471 U.S. at 369–70, 105 S. Ct. at 2002–03, 85 L. Ed.2d at 395, the Supreme Court stated:

[i]n a case where a court determines that a private placement desired by the parents was proper under the Act and that an IEP calling for placement in a public school was inappropriate, it seems clear beyond cavil that “appropriate” relief would include a prospective injunction directing the school officials to develop and implement at public expense an IEP placing the child in a private school.

As in a case seeking tuition reimbursement, an award of prospective payment of tuition is warranted if (1) the school failed to offer a FAPE; (2) the private placement is proper; and (3) equitable considerations do not warrant reduction or denial of the tuition or placement. Burlington, *supra*, 471 U.S. at 370, 105 S. Ct. at 2002–03, 85 L. Ed.2d at 395; Florence Cnty. Sch. Dist. 4 v. Carter ex. rel. Carter, 510 U.S. 7, 13, 114 S. Ct. 361, 365, 126 L. Ed. 2d 284, 292 (1993); Draper v. Atlanta Indep. Sch. Sys., 518 F.3d 1275, 1286 (11th Cir. 2008).

First, the parents argue that they were entitled to meaningful participation in the development of the IEP as outlined in the IDEA. They believe that the District

predetermined the IEP because the District came to the 2012–2013 and 2013–2014 IEP meetings with fully drafted, completed IEPs. This would be actionable if the parents’ opportunity to participate in the decision process was significantly impeded. I disagree. While the parents did receive fully drafted, completed IEPs, they were allowed to discuss and review the IEPs, and to suggest changes thereto. As such, I **CONCLUDE** that the parents were members of the IEP team, and no violation of the IDEA occurred as a result of the District’s actions.

Next, the parents also urge that the District violated the IDEA by conducting evaluations without parental consent. School districts may not conduct “any assessment as part of a reevaluation” of a student with disabilities without first seeking “informed parent consent” in writing. 20 U.S.C.A. § 1414(c)(3); N.J.A.C. 6A:14-1.3, “consent”; N.J.A.C. 6A:14-2.3(a)(3). To demonstrate that such consent was sought, districts must show first that parents were informed, and then that “reasonable measures” were taken to elicit consent. Ibid. Informing parents requires that the district provides “all information relevant to the activity for which consent is being sought,” “describes that activity and lists the records (if any) that will be released and to whom,” and ensures that the parent “[u]nderstands and agrees in writing to the implementation of the activity for which consent is sought” and knows that granting consent is voluntary and that consent can be revoked. N.J.A.C. 6A:14-1.3.

Required evidence that the school district took “reasonable measures” to provide all this information and obtain consent in writing includes records of attempts to call the parents, correspondence to and from the parents, and even records of visits to the parents’ home or place of employment. 34 C.F.R. § 300.322(d) (2016); N.J.A.C. 6A:14-2.3(a), (k)(7) (2016). If the parents then do not affirmatively respond, the district may evaluate the child; if the parents refuse consent, the district may seek the right to evaluate the child via court order by filing for due process. 34 C.F.R. § 300.300(a) (2016).

The term “evaluation” is defined in 34 C.F.R. § 300.15 (2016) as “procedures used in accordance with §§ 300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that

the child needs.” Any evaluation that is specific to an individual child and involved in determining the child’s continuing eligibility for services or changes to those services in an evaluation under 34 C.F.R. § 300.15 (2016) requires parental consent.

Procedural violations like these “do not automatically render an IEP legally defective, but an IEP will be set aside where there is 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 benefit.” J.L. and J.L. ex rel E.L. v. Park Ridge Bd. of Educ., EDS 9211-01, Final Decision (April 23, 2003), <<http://njlaw.rutgers.edu/collections/oal/>> (citing Roland M. v. Concord Sch. Comm., 910 F.2d 983, 994 (1st Cir. 1990)). In June 2013, after the IEP meeting, the District conducted five evaluations and assessments without notifying the parents or seeking their permission: (1) the speech/language assessment entitled “Evaluating Pragmatics and Discourse Skill Management”; (2) the GADS; (3) the BASC-2; (4) the Conners Comprehensive Behavior Rating Scales (“CBRS”) and (5) the Conners 3. These are tests that are not performed on every student in the District. Rather, the tests are special-education testing instruments, so permission is needed. Travis advised H.B.’s teachers via e-mail that the scales were “needed because parents had filed for due process,” and they were needed for “the Superintendent to give to the attorney.” Travis stated that she did not need to get the parents’ consent, and as case manager, she did not share the information with the parents. She did not call an IEP meeting to share the results with the parents, discuss any of the issues in the documents, or further amend H.B.’s programming.

Travis ultimately agreed that undertaking scales would require parental permission, and that the parents have the right to know if information is being gathered about their child. This procedural violation leads to the rational conclusion that H.B.’s parents’ opportunity to participate in the process was hampered. An assumption must be drawn that, had the parents known about the scales, they would have made some response, such as revoking consent, asking for an Independent Educational Examination, or obtaining a private evaluation. Despite being required by the Conners 3 Manual, permission for the execution of this scale was not given by H.B.’s parents.

Travis scored these responses after reviewing the Conners 3 Manual. However, Travis was not formally trained to administer the Conners 3 as required in the manual. Notwithstanding, H.B. was found to be “elevated” or “very elevated” in physical symptoms, peer relations, and aggressive behaviors. The Conners 3 answered by Aweau revealed that H.B. had trouble keeping friends, seemed unaccepted by friends, became irritable, and allowed his problems to affect his friendships. H.B. wanted to play with the same group of friends each day, and he did not want to expand his friendships. He had poor social skills, and he lacked an understanding of the feelings of others. Finally, the qualification of Travis to administer the scales was called into question by petitioners, and, as such, the tests results, even if considered, may be invalid. However, even if the test scales were admissible, the results show that the teachers had significant concerns about H.B.’s levels of functioning and his emotional needs. I **CONCLUDE** that the District’s conduct in conducting evaluations without parental consent results in a basis for declaring the IEP invalid.

It is necessary to examine the IEP for 2012–2013, and the proposed program for H.B. As to the 2012–2013 IEP, I **CONCLUDE** that H.B.’s program was not appropriate, and that he regularly missed academic classes on a weekly basis so he could have all of the related services he needed to attend school. He missed time in math, science, social studies, and writing. H.B.’s IEP called for him to have writing five days a week, but he did not receive that service. It was only provided to H.B. for four days because the District operated on a four-day cycle; H.B. also did not receive all of the related services to which he was entitled. The IEP placed H.B. in a general education class for his weakest subject of writing, with twenty-two other students.

H.B.’s 2012–2013 IEP did not have specific, individualized, and measurable goals. The District did not properly monitor progress on any of the goals contained in H.B.’s IEP. The IEP did not address all of H.B.’s areas of need, with regard to speech and language therapy. The District failed to evaluate H.B. in his regard after receiving sufficient information to warrant either supplying the service or conducting an evaluation to ascertain his needs. The IEP had inadequate programming for H.B.’s documented social-skills deficit, and it had no appropriate goals or objectives with regard to social skills. There also was no data reporting or progress monitoring on H.B.’s social skills.

There was no data collecting or progress monitoring with regard to H.B.'s occupational-therapy needs. As H.B. repeatedly had the same goals, the District could not ascertain with objective data that H.B. had made progress. Finally, H.B. did not fully receive the services enumerated in his IEP for ESY 2012 or ESY 2013.

Science and social studies were missed because of Wilson instruction. Although the IEP called for H.B. to have five sessions of forty-five minutes of writing per week, H.B. only received four sessions of fifty minutes. Because H.B. was in the Wilson program, he would come approximately a half-hour late to social studies and science. On Thursdays, H.B. would miss part of social studies and science for a fifteen-minute Spanish lesson. H.B. was pulled out of social studies/science on Mondays and Fridays for OT and speech services. H.B. would miss time in writing class to be updated on what he missed when he was pulled out for related services. On Mondays and Fridays, H.B. had five minutes of science or social studies before school was over because of his speech instruction. H.B. had many pull-outs and his schedule was difficult. H.B. would have benefitted from a self-contained resource classroom for writing, but the District did not have such a class. In September 2012, H.B. took the STAR test without the benefit of extra time to finish. Although H.B.'s STAR test results called for urgent intervention, no changes were made to H.B.'s IEP or program as a result of this score.

H.B.'s third-grade goals were chosen from a computer IEP program that allows for a selection of pre-written goals. Although H.B. was reading at a first-grade level, the goals were written for a third-grade student. The District did not know how some of the goals were measured. Other goals were measured by looking at the following year's IEP. There were no goals or requirements for progress monitoring for science and social studies in the IEP. Math goals were at the fourth-grade level. Wilson goals were adopted from the Wilson program. The Wilson program recommended forty to sixty minutes of instruction per day, and H.B. was to receive forty-five minutes per day of instruction five days a week. One of H.B.'s goals was to "read on level text with purpose and understanding." The District agreed that there was no way to measure such a goal. Teacher conclusions were based upon clinical observations. H.B. was not given a third-grade writing baseline. H.B.'s quantity of writing increased over third grade, but more growth was needed. I **CONCLUDE** that H.B.'s computer-chosen goals

were not satisfactorily specific, measurable, or individualized for H.B. to meet his learning requirements.

Progress on goals was not properly monitored by the District. Progress on goals and objectives was measured by informal observation, benchmarks and report cards. Goals in language arts, reading and math were measured using worksheets, journals, flash cards, games, quizzes and tests. No data was compiled to confirm teacher observations. There was no baseline for science and social studies, and a baseline in writing was established using on-demand writing assignments. Teacher conclusions were based only upon clinical observations, and there was teacher discretion in measuring the goals. The teachers believed they were not required to report progress to the parents. M.B. did not receive requested progress reports during the year, nor did she receive progress reports concerning counseling. As such, it could not be determined how H.B.'s grades were calculated. M.B. was not advised how the objectives would be measured.

In reading, H.B. was to show 80 percent mastery, but M.B. received no input as to how that was being done. The District did not have documentation to support the conclusion that H.B. was able to master many of his goals with 80 percent accuracy. Snyder maintained a journal to monitor H.B.'s progress, but she did not make daily entries for H.B. While the progress reports that were made did indicate short-term progress, they did not indicate if H.B. made progress on his goals from the beginning of the school year to the end. There was no objective testing with which to gauge H.B.'s progress during the school year. The District cannot prove that H.B. made progress in reading.

The District had difficulty measuring H.B.'s improvement in writing, and at the end of third grade there was no definitive way to measure H.B.'s writing progress. The District's writing-assessment folder revealed that for grade three, H.B. scored a 1 on the September and winter benchmarks, and no score on the spring benchmark. The District cannot prove that H.B. made progress in writing.

Math progress was also questionable. During the 2012–2013 third-grade school year, H.B.'s teachers had discretion to drop some of his poor grades, and grades were often manipulated in math. H.B. struggled with addition, subtraction, and basic math computation. Accommodations were made for math assignments, and H.B. was allowed to make suggested corrections. Some of H.B.'s assignments were completed by someone other than H.B. When H.B. attempted to independently complete math problems, he was mostly unsuccessful. H.B. could not complete division problems. By the middle of the 2012–2013 school year, H.B. was only capable of undertaking math multiplication problems that involved multiples of 0 or 1. H.B. was not well versed on fractions, and he could not do such work independently. Although third-grade unit tests in math ranged from scores of 75 to 94, H.B. was having difficulty doing this type of work at home without assistance. The District cannot prove that H.B. made progress in math.

OT/speech was to provide quarterly progress reports that were IEP-goal specific, but that was not done. At the end of third grade, the District recommended terminating H.B.'s OT services, but there had not been formal testing done to support that decision. Quarterly progress reports were required during H.B.'s third-grade year, but formal reports were not made. The District did not know if H.B. made progress on his goals unless the following year's IEP was reviewed. In short, the District was unsure if H.B. mastered the goals from his third-grade IEP. The District did not know how benchmarks or objectives were measured or how and if they were deemed accomplished. I **CONCLUDE** that proper progress reporting was not done by the District on H.B.'s IEP goals, and, as a result, H.B.'s parents could not know if H.B. was progressing on his IEP goals. This was a violation of the terms of H.B.'s IEP.

The 2013–2014 IEP was discussed at a meeting on May 31, 2013. The IEP suggested H.B.'s dismissal from speech services because H.B. had improved in articulation. No formal evaluation was done to support this finding. M.B. had no input as to the IEP's goals. The goals were taken from computer-generated common-core standards, but H.B. was not yet at the fourth-grade level. The IEP team did not change the goals in the IEP. Wilson instruction was reduced from forty-five to thirty minutes a day to lessen classroom pull-out, but H.B. still required substantial Wilson services. The

District did not have any written progress monitoring on H.B.'s goals from the third grade in this IEP, and was unaware of whether the goals were individualized for H.B. The District did not know if any of these goals were met. The District goal was to develop positive peer relationships, but no specific programs were listed in the May 2013 IEP, and it was unknown how H.B. would progress on this goal. H.B. was to read with purpose and understanding, but such a goal could not be measured. DuBray made only brief progress notes for H.B.'s third-grade year, and social-skills goals were not offered in the IEP. The OT "copy legibly" goal was the third year worked on this goal. Cursive letters were not mastered in third grade, and this continued as an unwritten goal into fourth grade. There were no self-regulating or sensory goals in the IEP. H.B. required a team approach for his writing deficiencies and additional word processing. The services were to be pull-out services. There was again teacher discretion in measuring the goals. Accommodations and modifications were the same as in the third-grade IEP. As in third grade, H.B. had many pull-outs and his schedule was difficult. At the meeting, M.B. asked for an out-of-district placement at YALE, but she was rejected. The District proposed that H.B. attend the exact same program as in 2012–2013, but with fewer services. For all of the reasons the 2012–2013 IEP was not appropriate, the 2013–2014 IEP continued to be insufficient to meet H.B.'s needs. The District wanted to reduce H.B.'s time with his Wilson teacher to fit his schedule. In addition, the District wanted to reduce H.B.'s speech and language services without doing an evaluation of his pragmatic skills, despite evidence that he has deficits. Continuing into his fourth-grade year, M.B. did not receive goals or progress reports.

Dr. Brown reviewed H.B.'s IEPs. Dr. Brown provided comprehensive testimony concerning her evaluation of H.B. Contrary to the argument of respondent, Dr. Brown was well qualified to render her expert opinion regarding the status of H.B. In her credible expert opinion, the District provided H.B. with services in a splintered, uncoordinated manner. H.B.'s many "pull-outs" offered little in consistency or individualization. This as corroborated by Aweau, who described H.B. as believing he "belonged nowhere," as well as H.B.'s teachers, who believed that H.B. would benefit from more classroom time, and that he should not be "pulled too much." Reading, language arts, and Wilson programming were particularly splintered. Dr. Brown diagnosed H.B. with autism spectrum disorder. Despite Dr. Brown's report, the CST did

not make any changes to the IEP. Dr. Brown directly observed and teachers reported verbatim to Dr. Brown much of the language used in her report about H.B.'s serious emotional needs, deficits in social skills, anxiety, low self-esteem, and relations with peers. Dr. Brown's objective testing provides persuasive data that shows that H.B. has far too many low scores, or "valleys," for a student with a low-average IQ. As such, H.B. is spending most of his time at frustration level, and not learning in the placement. All of the teachers' reported rating scales and assessments provided elevated levels of concern in many areas, supporting the fact that H.B. is withdrawn, anxious, and isolated at school. Dr. Brown's recommendation of a more cohesive, therapeutic placement is essential to H.B. receiving FAPE. Dr. Brown's testimony that H.B. is not making appropriate progress in the District's program, based upon her objective testing, is compelling. The District has not done any testing of H.B. in years, and it has no objective data or evidence to the contrary. Dr. Brown's opinions were based on extensive data collection, evaluation, and observation. The District did not present any expert testimony to refute Dr. Brown's expert opinions and recommendations. Absent a contrary expert opinion from a District psychologist or learning disabilities consultant, I must accept Dr. Brown's compelling opinions. While the District argues that Dr. Brown's credibility is questionable, I disagree. There is no evidence in the record that would compel a conclusion that Dr. Brown's opinions should be disregarded.

For all the aforementioned reasons, I **CONCLUDE** that the District failed to provide H.B. with an appropriate IEP for 2012–2013, and that H.B.'s proposed program was not appropriate. I also **CONCLUDE** that the District failed to provide H.B. with an appropriate IEP for 2013–2014, and that H.B.'s proposed program was also not appropriate for that school year.

Notwithstanding the appropriateness of the IEPs, the District alleges that there are many indicators that H.B. was progressing well and that it provided FAPE to H.B. One such indicator upon which the Board relies is the STAR test results. H.B.'s reading improved to a 3.1 level, from a 1.3 level in September 2012, and a 2.8 level in January 2013. H.B.'s math had improved to a 3.3 level, from a 1.8 level in September 2012, and a 2.8 level in January 2013. Unfortunately, the Board's witness that administered the STAR test was unsure if H.B.'s performance of grade level 1.3 was measured against

students from New Jersey or nationally, or if it tested special- or regular-education students. In addition, H.B. was given extended time to complete the test in March 2013, in which he showed significant improvement. Extended time meant three times longer than the amount of time allotted to regular-education children. Although Fast believed that H.B.'s progress on the STAR test was based upon his familiarity with the material, as opposed to receiving extra time, this opinion is speculative, and not corroborated by any factual data. It is therefore unclear whether H.B. improved because he was learning more, or because he was given so much additional time to take the test. This lack of clarity raises concerns about the usefulness of the STAR test in proving that H.B. did make progress, and the fact that H.B. was given three times the amount of time allotted to regular-education students to complete the test renders the results of the test questionable at best.

The Board also relies on the results of the Jerry Johns Reading Inventory. From September 2012 until April 2013, H.B. made a two-year jump from independent at a first-grade level to independent at the third-grade level in fluency and comprehension, and independent at the second-grade level in word recognition. As H.B. was exiting third grade, he was instructional at a fourth-grade level. However, Fast had discretion in grading this test, stating that if the student is basically on target then the student gets credit for the answer. In addition, Fast was unable to recall what scores would support a finding of independent or instructional, stating that she would need the test protocols to do so. However, the protocols were destroyed, and Fast could no longer refer to them. This lack of clarity raises concerns about the usefulness of the Jerry Johns test in proving that H.B. did make progress, and the fact that Fast had discretion in accepting H.B.'s answers renders the results of the reading inventory somewhat speculative, as well.

Next, the Board relies on the results of its benchmarks to show that H.B. made progress. However, on September 20, 2013, H.B. was given a fourth-grade writing baseline assessment, and he received a failing score of "65" on the baseline. Math benchmarks were better, but also included teacher discretion in grading. The first math benchmark score of 69 was dropped from H.B.'s grade. Reading benchmarks from the third marking period resulted in a score of 88, and from the fourth marking period, a

score of 94. However, because Fast had leeway on her grading, H.B. would often get credit for partial answers, thus inflating his grade. This renders the results of the reading benchmarks speculative.

H.B.'s spring 2013 NJ ASK scores showed him to be partially proficient in reading and math. This test measures a student's progress against his or her peers within New Jersey. H.B. took the NJ ASK test in a quiet, small-group setting. H.B. was given the modifications of additional time, use of a number line, counting chips, and the use of a calculator to take the test. He scored partially proficient (the lowest category) in English and math with scores of 185 and 184 out of a possible 300. Because the NJ ASK does not allow for teacher discretion in its scoring, it is a more valuable indicator of a student's progress. In addition, because the District's third-grade curriculum aligns to the NJ ASK test in order to better prepare the District's students for the NJ ASK, H.B.'s poor performance on the NJ ASK reflects poor proficiency in his third-grade curriculum.

The Board relies on H.B.'s grades for the 2012–2013 year to show that progress was made. However, classroom grades earned in special-education classes or from the use of modifications do not evidence meaningful educational benefit if not supported by standardized test scores and other objective measures of progress. High grades are not unambiguous evidence of an IEP's sufficiency. Where students are given extensive supports and modifications, grades take on less significance. H.B.'s third-grade curriculum was modified by the teachers as necessary. Aweau would fill in worksheets in speech so that H.B. could use them as a guide, and she would type in vocabulary-word definitions for H.B. Because of H.B.'s limited time in the classroom, his work load was modified. H.B. was allowed to write less material in his language arts setting, and oftentimes his work would be scribed for him. As of October 18, 2012, H.B. missed assignments in science, social studies, health and language arts, and his teachers did not count the missing assignments against his grades. H.B. was given a grade of 88 in language arts based on the completion of one out of four assignments. H.B. received a check-plus grade on an assignment in which he did not have to answer the majority of the questions. In reading, Fast would give H.B. credit for incomprehensible written answers that required a verbal explanation from H.B. The District's writing assessment folder revealed that for grade three, H.B. scored a 1 (poor) on the September and winter

benchmarks, and no score on the spring benchmark. Some assignments for H.B. were done completely by someone other than H.B. When H.B. attempted to independently complete math problems, he was mostly unsuccessful. Dr. Brown also testified credibly that H.B.'s receipt of grades of "A" or "B" did not necessarily show progress. Accommodations and modifications could interfere with the true value of a good grade, and make it impossible to determine if the good grade was earned. H.B.'s third-grade IEP allowed for modifying grades and tests in the areas of social studies, science, and math. Modification of grades would be by collaboration of general- and special-education teachers. Dr. Brown found these modifications too general to be meaningful. All of the foregoing renders the grades received by H.B. to be of somewhat questionable value, and reveals that according to the District's own records, H.B. did not make any progress in writing during his third-grade year.

I **CONCLUDE** that H.B.'s grades, benchmarks, and District-administered testing include less than objective factors, and are not reliable indicators of H.B.'s academic achievement or progress. H.B.'s grades, benchmarks, and District-administered testing cannot be reconciled with the results of the fully objective New Jersey-administered ASK Test, which revealed H.B. to be partially proficient and in the lowest category in English and math with scores of 185 and 184 out of a possible 300. In addition, as mentioned above, H.B. received a failing score of "65" on the District's own fourth-grade writing baseline assessment. H.B.'s grades, benchmarks, and District-administered testing are therefore not sufficient to prove that H.B. received a FAPE consistent with the IDEA.

I have found that H.B.'s IEP was not properly drafted and was not appropriate for H.B., and that H.B.'s proposed program was not appropriate. As such, I **CONCLUDE** that the IEP was not reasonably calculated to enable the child to receive educational benefit, and did not provide more than trivial or de minimis benefit. As such, it would not have conferred a meaningful benefit, and FAPE was not provided for H.B. While H.B. teachers, therapists and social workers were of the opinion that H.B. did receive a FAPE, they are not experts and were not qualified as such. Their opinions can also fairly be assessed through the prism of their circumstances. Obviously, because they are H.B.'s teachers and employees of the District, they have a direct interest in proving

that their work was effective in teaching H.B. They rightly saw H.B. in a most positive light. It would be unusual for a teacher to agree that he or she did a poor job of educating a student, or that the school's program was not working.

Conversely, H.B.'s parents were of the opinion that H.B. did not receive a FAPE, but they are not experts and also were not qualified as such. Their opinions can also be assessed through the prism of their circumstances. They are the parents, and they believe that H.B. was not performing up to his capabilities. They have a direct interest in proving that H.B. could have done better. They also rightly saw H.B. in a most positive light. The only real impartial expert witness in the case is Dr. Brown, who, while retained on behalf of the parents, undertook testing and an evaluation of H.B. and his program. She believed that a FAPE was not provided by the District, and that H.B. would not have received meaningful benefit from the District's program. Petitioners have proven that H.B. required significant learning. Conversely, the District did not provide any expert who reviewed the proposed IEP and program for H.B. and concluded that a FAPE was provided. The evidence provided by the District does not prove by a preponderance of the evidence that a FAPE was provided.

As to the least restrictive environment, H.B. did not demonstrate the prerequisite skills to fully benefit from interaction with his typically developing peers. The District's exposure of H.B. to typically developing children was inclusion, but the IEP did not provide for sufficient positive inclusion opportunities for H.B. As such, the least restrictive environment for H.B. is not a program that educates with typically developing peers. As such, I **CONCLUDE** that the District did not offer H.B. a FAPE in the least restrictive environment.

The next consideration is whether the private placement requested by petitioners of H.B. at the YALE School, and the proposed program to be provided to H.B., would be appropriate. YALE is a New Jersey State-approved non-profit school for the education of children with disabilities, and services children with anxiety, autism, ADHD, as well as many other disabilities. H.B. would be able to attend YALE and receive all of his instruction in a small setting (twelve children or less). YALE's program involves integrating social skills and occupational-therapy techniques in the day and

classroom for all students, so H.B. would not need to be pulled out and miss much of his academics. YALE has certified Wilson instructors. YALE's program is data-driven and could be tailored to provide H.B. with a positive-behavior-support plan that would allow him to make progress in reducing his shut-down behaviors. YALE reviewed all of H.B.'s paperwork and H.B. was accepted at YALE as an appropriate candidate. YALE infused Wilson programming into the school day. YALE classes are integrated, contain five to seven children, have multiple teachers in the classroom, and do not pull the students out except for special classes. Each student has a checklist that is specific and personalized to the goals in their IEP. H.B. liked YALE, and wanted to attend. A spot at YALE was previously available for H.B. The drive to YALE took approximately forty minutes, a reasonable period of time. The YALE school proposed placing H.B. in the multiply disabled classroom consisting of children in grades two, three and four. Speech, language and occupational therapy would be given as a pull-out service. H.B. would get a BCBA, an ABA program, and social skills at YALE. YALE would also provide an individual behavior plan.

Dr. Brown's uncontradicted expert opinion was that the YALE School is an excellent choice for multiply disabled children like H.B. who are on the autism spectrum. H.B. needs proper pre- and post-testing to determine his progress and to determine if grades were correctly being given. The YALE School would assist H.B. by using faculty intervention, rule enforcement, positive reinforcement, and social-skill assistance, and by placing H.B. with friends with similar interests. The District did not present any expert opinion with regard to the appropriateness of YALE.

I therefore **CONCLUDE** that YALE would be an appropriate placement for H.B, and that H.B. likely would make meaningful educational progress in that program. The testimony of Dr. Brown regarding the appropriateness of H.B.'s program was particularly compelling, as she has no association to YALE. Conversely, the District did not provide any evidence that the program at YALE was not appropriate for H.B. There is nothing in the record that would lead to any conclusion other than that H.B. should be placed by his parents at YALE, and that the program that will be provided to H.B. by YALE will be appropriate for H.B.'s meaningful educational progress. As a result, as compensatory education, H.B.'s parents are entitled to reimbursement for a future placement of H.B. at

YALE, and their request is **GRANTED**. This reimbursement shall be for two school years, including extended school years, plus transportation costs. This compensatory education is for H.B.'s 2012–2013 and 2013–2014 school years at the District. The District shall meet with petitioners and YALE staff to develop an IEP with appropriate goals and objectives, and to make a determination of placement for the next available school year. There are no equitable considerations present that would warrant a reduction or denial of the prospective tuition payments or placement.

CONCLUSION

Based on the foregoing facts and the applicable law, I **CONCLUDE** that the Board did not offer to provide a free and appropriate education to H.B. and, therefore, that the parents' request for two years of compensatory education for placement of H.B. at YALE is **GRANTED**.

ORDER

It is **ORDERED** that the relief requested by petitioners as set forth above is **GRANTED**.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2016) 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 (2016). 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 14, 2016

DATE

EDWARD J. DELANOY, JR., ALJ

Date Received at Agency

July 14, 2016

Date Mailed to Parties:

July 14, 2016

mph

WITNESSES

For petitioners:

M.B.

Dr. Rhona W. Brown, Ph.D.

Karen Huber

For respondent:

Julie Travis

Jessica DuBray

Catherine Snyder

Margaret McEwan

Reggie Aweau

Deborah Fast

Sherri Panichelli

EXHIBITS

For petitioners:

- P-1 Petitioners' Complaint for Due Process, dated June 13, 2013
- P-2 District's Answer to Complaint for Due Process
- P-3 Psychoeducational Evaluation report, dated August 18, 2009,
Washington Township Public Schools
- P-4 Developmental Pediatrics Evaluation, Dr. David Burgess,
Children's Hospital of Philadelphia, February 14, 2011
- P-5 Speech and Language Evaluation, dated May 2011, Washington
Township Public Schools
- P-6 Learning Evaluation, dated May 2011, Washington Township
Public Schools
- P-7 Occupational Therapy Evaluation, July 2011, Gloucester County
Special Services

- P-9 Developmental Pediatrics Evaluation, Dr. David Burgess, Children's Hospital of Philadelphia, dated February 16, 2012
- P-10 Evaluation, Katherine Perez-Rivera, Ph.D., Children's Hospital of Philadelphia, dated April 16, 2013
- P-11 Confidential Psychoeducational Evaluation, Rhona W. Brown, Ph.D.
- P-12 Curriculum Vitae, Rhona W. Brown, Ph.D.
- P-13 Developmental Pediatric Evaluation, Dr. David Burgess, Children's Hospital of Philadelphia, dated April 16, 2013
- P-13A Not in evidence
- P-14 Eligibility Conference Report, dated July 13, 2011
- P-17 2012–2013 IEP with cover letter from Julie Travis, dated September 12, 2012
- P-19 2012–2013 IEP with revisions after November 2012 mediation
- P-20 2013–2014 IEP, dated May 31, 2013
- P-21 Present Levels from August 28, 2013, Settlement Conference
- P-22 Parental Request for Mediation/Due-Process Hearing, dated September 28, 2012
- P-23 Notice of Mediation Agreement, November 5, 2012
- P-24 (pp. 3–4) E-mail, dated June 19, 2012, from advocate Martha Brecher to case manager Julie Travis
- P-24 (pp. 5–6) Letter from Paul Jacques, District Special Services, to Martha Brecher, dated July 9, 2012
- P-24 (pp. 9–10) E-mail, dated October 5, 2012, from Deborah Fast to M.B. attaching H.B.'s daily schedule
- P-24 (p. 13) E-mail, dated October 16, 2012, from M.B. to Deborah Fast regarding dropped grade on District benchmark math test
- P-24 (p. 14) Letter dated October 16, 2012, from Amelia Carolla, Esq. to Kimberly Sukinik, Esq., regarding changing H.B.'s OT from individual to group
- P-24 (pp. 16–17) E-mail from Julie Travis to M.B., dated January 2013, regarding Dr. Brown's request for records

- P-24 (pp. 19–20) E-mail dated December 11, 2012, from Pat Jorgenson to M.B. regarding when H.B.’s compensatory occupational therapy would be scheduled
- P-24 (p. 21) E-mail dated January 16, 2013, from M.B. to Julie Travis regarding Dr. Brown’s request for records
- P-24 (p. 31) Letter dated June 13, 2013, from Amelia Carolla, Esq., to OSEP filing Complaint for Due Process
- P-24 (p. 32) E-mail dated June 19, 2013, from Caitlin Pletcher, Esq., to Amelia Carolla, Esq., indicating H.B.’s records were sent to Y.A.L.E.
- P-24 (p. 33) Letter dated June 25, 2013, from Amelia Carolla, Esq., regarding H.B.’s invitation to visit Y.A.L.E.
- P-24 (p. 34) Letter dated July 3, 2013, from Amelia Carolla, Esq., to Caitlin Pletcher, Esq., regarding H.B.’s invitation to Y.A.L.E.
- P-24 (p. 35) Letter dated July 22, 2013, from Amelia Carolla, Esq., to Caitlin Pletcher, Esq., regarding H.B.’s invitation to visit Y.A.L.E.
- P-24 (p. 36) Letter dated July 24, 2013, from Y.A.L.E. to Julie Travis accepting H.B. for 2012–2013
- P-24 (pp. 38–40) E-mail thread between Amelia Carolla, Esq., and Capehart firm regarding missing math instruction for ESY 2013
- P-24 (pp. 43–44) E-mail dated September 20, 2013, from Kristen Attardi to Melissa Brown regarding H.B.’s fourth-grade schedule
- P-24 (pp. 46–53) Letter dated September 24, 2013, from S. Dev, Esq., to A. Carolla, Esq., and enclosed evaluation plan
- P-24 (pp. 57–58) Letter dated September 25, 2014, from A. Carolla, Esq., to S. Dev, Esq., with questions regarding evaluations the District requested for H.B.
- P-24 (p. 73) E-mail dated October 8, 2013, from Kristen Attardi to M.B. regarding H.B.’s retesting in math
- P-24 (p. 74) E-mail dated October 9, 2013, from Kristen Attardi to Melissa Brown regarding H.B.’s retesting in math and spelling
- P-25 Not in evidence

- P-26 Letter dated August 28, 2013, from Joseph Betley, Esq., to Amelia Carolla, Esq., enclosing assessments for H.B., received by counsel on September 2, 2013 (pp. 3–102)
- P-27 Samples of student work (pp. 27, 1–6, 9–19, 20–25, 26, 35, 48, 60–65, 74–78, 82, 86, 76)
- P-28 Power School print-out of student’s work (pp. 1–4)
- P-29 Not in evidence
- P-30 H.B.’s third-grade report card (p. 5)
- P-31 H.B.’s spring 2013 NJ ASK Individual Student Report
- P-32 Documents received from Y.A.L.E. regarding H.B.
- P-33 Not in evidence
- P-34 Dr. Brown’s file received by the District in response to their subpoena
- P-35 CD video recording of H.B. doing homework
- P-37 2012–2013 school calendar
- P-38 (pp. 31–33) E-mails from M.B. to Mitzi McEwan regarding when H.B. receives OT
- P-38 (pp. 56–57) Handwritten notes from case manager Julie Travis from January 2013 meeting with Dr. Rhona Brown and H.B.’s teachers
- P-38 (pp. 59–68) Handwritten notes from Julie Travis re H.B.
- P-38 (p. 78) E-mail from Deborah Fast to M.B., dated October 16, 2012
- P-38 (pp. 79–87) Numerous e-mails from November 2012 between Julie Travis and various District staff explaining that parent had filed for due process over change from individual to group OT (not location)
- P-38 (p. 112) E-mail dated November 9, 2012, from Deborah Fast to Mitzi McEwan regarding scheduling H.B. for OT at 11:30
- P-38 (p. 120) E-mail dated January 8, 2013, from Julie Travis to various staff regarding Dr. Brown’s visit
- P-38 (p. 132) E-mail from Julie Travis to various staff regarding M.B.
- P-38 (pp. 331–34) E-mail from Julie Travis dated June 13, 2012, to various staff regarding H.B.’s story

- P-38 (pp. 336–42) Numerous e-mails from June 2012 between Martha Brecher and District staff regarding parents' requested changes to 2012–2013 IEP
- P-38 (p. 359) E-mail dated October 23, 2012, between Julie Travis and various District staff regarding dispute over OT being 1:1 or individual
- P-38 (p. 362) E-mail dated November 8, 2012, between Pat Jorgensen and District staff regarding settlement of mediation and provision of compensatory OT
- P-38 (pp. 364–85) Numerous e-mails dated November 2012 between District staff regarding provision of compensatory services due by way of mediation agreement and when they will be provided
- P-38 (pp. 387–88) E-mail dated December 13, 2012, from Julie Travis to various staff regarding Dr. Brown's visit
- P-38 (p. 389) E-mail dated January 2, 2013, from Julie Travis to M.B. regarding changes to H.B.'s IEP
- P-38 (pp. 410–13) E-mail dated May 29, 2013, between Julie Travis and various District employees regarding H.B.'s missing science and social studies to have Wilson
- P-38 (p. 431) E-mail dated June 17, 2013 from Julie Travis to H.B.'s teachers requesting that they do updated evaluations for H.B.
- P-38 (p. 439) E-mail dated September 23, 2013, from Kim Amendt to Julia Travis regarding H.B.
- P-39 (pp. 1–5) Letter dated February 10, 2014, from Joseph Betley, Esq., to Amelia Carolla, Esq., enclosing H.B.'s first fourth-grade writing baseline assessment

For respondent:

- R-1 through R-37 May 31, 2013, IEP for 2013–2014
- R-38 through R-69 November 12, 2012, Revised IEP for 2012–2013
- R-70 through R-100 June 11, 2012, IEP for 2012–2013
- R-103 through R-104 Evaluating Pragmatics and Discourse Skill Management in the Classroom

- R-105 through R-106 Evaluating Pragmatics and Discourse Skill Management in the Classroom
- R-107 through R-115 GADS Response Booklet by Deborah Fast
- R-115 through R-122 GADS Response Booklet by Reggie Aweau
- R-123 through R-130 GADS Response Booklet by Sherri Panichelli
- R-133 through R-134 BASC 2 Rating Scales by Sherri Panichelli
- R-137 through R-139 Conners 3 Response Booklet by Sherri Panichelli, dated June 19, 2013
- R-135 through R-136 BASC 2 Rating Scales by Deborah Fast, dated June 19, 2013
- R-143 through R-145 Conners 3 Response Booklet by Deborah Fast, dated June 19, 2013
- R-146 through R-153 Conners CBRS Response Booklet by Deborah Fast, dated June 19, 2013
- R-154 through R-161 Conners CBRS Response Booklet by Reggie Aweau, dated June 19, 2013
- R-170 through R-179 BASC 2 Scoring and Report by Deborah Fast from test, dated June 19, 2013
- R-180 through R-189 BASC 2 Scoring and Report by Sherri Panichelli from test, dated June 19, 2013
- R-190 through R-200 BASC 2 Scoring and Report by Reggie Aweau from test, dated June 19, 2013
- R-201 WADE Summary of Scores, dated June 7, 2013
- R-202 through R-228 Conners CBRS Scoring and Report by Deborah Fast from test, dated June 19, 2013
- R-229 through R-247 Conners 3 Scoring and Report by Deborah Fast from test, dated June 19, 2013
- R-248 through R-275 Conners CBRS Scoring and Report by Reggie Aweau from test, dated June 19, 2013
- R-276 through R-294 Conners 3 Scoring and Report by Reggie Aweau, dated June 19, 2013
- R-295 through R-322 Conners CBRS Scoring and Report by Sherri Panichelli, dated June 19, 2013

R-323 through R-341 Connors 3 Scoring and Report by Sherri Panichelli from test, dated June 19, 2013

R-342 through R-345 Contextual Probes of Articulation Competence by Jessica Dubray, dated March 15, 2013

R-346 through R-349 STAR Math Reports

R-350 through R-354 STAR Reading Reports

R-363 through R-386 Catherine Snyder (Wilson Reading Teacher) Records

R-387 through R-388 WADE Summary of Scores September 2012 and June 2013

R-390 Grade 2 Unit 2 Math Assessment

R-403 Grade 3 Unit 3 Math Assessment

R-410 Grade 3 Unit 4 Math Assessment

R-416 Grade 3 Unit 5 Math Assessment

R-423 Grade 3 Unit 6 Math Assessment

R-428 Grade 3 Unit 7 Math Assessment

R-449 Grade 3 Unit 8 Math Assessment

R-456 Benchmark for Reading (fourth marking period)

R-459 Benchmark for Reading (third marking period)

R-460 through R-485 Third-Grade Student Work

R-486 through R-493 Reevaluation Plan

R-494 through R-529 Dr. Rhona Brown's Psychoeducational Evaluation of H.B. and documents from Dr. Rhona Brown provided by petitioners

R-535 through R-538 Correspondence between counsel re: Y.A.L.E.

R-539 Speech/Language Progress Notes

R-540 through R-581 Wilson Reading Dictation Sheets and Notes

R-585 through R-587 Occupational Therapy Progress Notes

R-588 through R-591 STAR Reports from fourth grade

R-598 Writing Assessment Folder document

R-615 through R-626 Third-Grade Writing Baselines