



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 11125-15

AGENCY DKT. NO. 2015-22847

B.T. AND A.T. ON BEHALF OF R.T.,

Petitioners,

v.

**EDISON TOWNSHIP BOARD OF
EDUCATION,**

Respondent.

Robert J. Pruchnik, Esq., for petitioner (Campbell & Pruchnik, attorneys)

Carolyn R. Chaudry, Esq, for respondent (Scarinci & Hollenbeck, attorneys)

Record Closed: December 4, 2018

Decided: January 14, 2019

BEFORE **MARGARET M. MONACO**, ALJ:

STATEMENT OF THE CASE

This matter arises under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq., and the implementing federal and state regulations. B.T. and A.T. (hereinafter Mr. and Mrs. T.), the parents of R.T., assert that the Edison Township

Board of Education (the District) failed to provide R.T. with a free appropriate public education (FAPE).

PROCEDURAL HISTORY

Mr. and Mrs. T. on behalf of R.T. filed a request for due process with the Office of Special Education Policy and Procedures (OSEPP). Petitioners allege that the District “has, for at least the past 2 school years and for the 2015–16 school year, failed to offer R.T. an Individualized Education Program (IEP) reasonably calculated to provide him with meaningful educational benefits in the least restrictive environment.” Petitioners assert that the “proposed 2015–16 IEP, like previous IEPs, is significantly defective” in that it “fails to incorporate a number of critically important recommendations made by Dr. Glasberg including, but not limited to, an appropriate social skills group, appropriate self-help/life skills, an appropriate individual behavior plan, individualized [applied behavior analysis (ABA)] services both at school and at home to enable R.T. to generalize skills across all settings (school, home and community), appropriate supports for his parents and siblings, and an appropriate school setting which addresses R.T.’s negative treatment by fellow students.” According to the due-process request, “R.T.’s IEP must be supported by and include individualized ABA services at school and at home, including but not limited to 1:1 instruction, parent training and social skills training.”¹ Petitioners request a determination that the District has failed to propose an IEP for R.T. for the 2015–16 school year that is reasonably calculated to provide him with a FAPE in the least-restrictive environment and that, in order to receive a FAPE, the District should be required to immediately develop an IEP for R.T. which includes the recommendations of the parents’ consultants, including Dr. Beth Glasberg and Professor Charles Ehrlich. Petitioners also seek reimbursement for the cost of Dr. Glasberg’s independent evaluation, compensatory education, and reimbursement for all out-of-pocket costs associated with implementation of educational instruction in petitioners’ home, including R.T.’s ABA-based home program. The District filed an Answer to the Petition for Due Process with Affirmative Defenses, and the OSEPP transmitted the matter to the Office

¹ Although petitioners also disagreed with the middle school that R.T. would be attending, which was not his home school, the OSEPP did not transmit this issue.

of Administrative Law, where it was filed for hearing. The matter was heard over the course of fifteen days.² Subsequently, the parties submitted transcripts and post-hearing submissions in support of their respective positions. Oral summations were entertained on December 4, 2018, on which date the record closed.

FACTUAL DISCUSSION

The general sequence of events and background facts are largely undisputed. Based upon a review of the testimony and the documentary evidence presented, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following **FACTS** and accept as **FACT** the testimony set forth below:

At the time of the petition, R.T. was a rising sixth-grade student and eligible for special education and related services under the category of autistic. R.T. lives with his parents and two siblings, who are approximately twenty months younger than R.T. Prior to R.T.'s transition to sixth grade, R.T. and his siblings (who are one grade behind R.T.) attended the Menlo Park Elementary School (Menlo Park).

In April 2005, R.T. was evaluated and found eligible for early intervention services. (See P-5.) In or around August 2005, a developmental pediatrician diagnosed R.T. with autism. (See P-5.) In April 2006, a public school district evaluated R.T. as part of a Child Study Team (CST) assessment for preschool-aged eligibility for special-education services. (P-5.) At the time, R.T. was three years and three months. The Transdisciplinary Evaluation report by that district, along with Mrs. T.'s testimony, reflects that R.T.'s parents did not pursue immediate CST testing upon R.T.'s third birthday and sought out private ABA and occupational therapy. (P-5.) Following the evaluation process, the district determined that R.T. was eligible for special education and related services.

² The hearing was held on April 6, 12 and 20, 2016; June 27, 2016; November 14 and 16, 2016; January 3, 2017; March 1, 6, 7 and 8, 2017; August 7 and 9, 2017; and October 2 and 3, 2017.

2006–2007 and 2008–2009 School Years—Preschool

In August 2006 the T. family moved to Edison, and R.T. began receiving special education and related services from the District in September 2006. An IEP meeting was held on February 26, 2007.³ The IEP provides that R.T.'s program for the period of February 27, 2007, to August 15, 2007, was the in-District full-day Preschool Disabilities Program, which was a self-contained class and "based on the Verbal Behavior/ABA curriculum." (P-6.) R.T.'s related services included individual speech/language; individual physical therapy (PT); individual and group occupational therapy (OT); and ABA services for 300 minutes per week at home. The IEP states that R.T. "receives up to 5 hours weekly of ABA services in the home to address behavioral needs [and] [t]he need for continued ABA services will be discussed at the next Annual Review meeting or when appropriate." R.T.'s projected program for the period of September 4, 2007, to February 26, 2008, continued to be the in-District full-day Preschool Disabilities Program, and R.T. would continue to receive the same level of speech/language and OT services. While not listed under "projected related services," the "Additional Services Information" section states that R.T. "will continue to receive up to 5 hours of ABA therapy in the home as addressed on the previous program page."

The District utilized Above and Beyond Learning Group (Above and Beyond) for the provision of the home-based ABA services. R.T.'s therapists with that agency included Vincent Balestrieri (Balestrieri) and Sharon Saylor (Saylor). The District also utilized teachers to provide these services, including Thomas Macchiaverna (Macchiaverna), who later served as R.T.'s teacher in sixth grade.

On May 8, 2007, R.T.'s case manager, Alyssa Wilson (Wilson), sent a memorandum to the then director of special services, Suzanne Hiatt (Hiatt). (P-7.) The memorandum states that R.T. "is currently attending the district's full day pre-school program" and he is also "integrated into the half-day preschool disabled program for up to two hours weekly to improve socialization and foster appropriate play skills." It indicates that "[s]ince February 2007 [R.T.] has been receiving five hours of ABA

³ The record does not include an IEP for the period of September 2006 to February 26, 2007.

services through Above and Beyond . . . in the home to address behavioral concerns [and] Mr. and Mrs. [T.] have seen great improvement in [R.T.'s] overall behavior and communication since such services have been implemented.” Wilson advised that “an additional 2 hours of ABA services to be split between home and school . . . are being requested to enhance socialization and play skills.” Hiatt approved this request on May 11, 2007. On June 19, 2007, case manager Wilson sent another memorandum to Hiatt. (P-8.) The memorandum recites information from R.T.'s ABA provider (Above and Beyond) and states, “[b]ased on the recent input from the ABA provider, 3 additional ABA hours are being requested,” which would increase R.T.'s ABA services from seven to ten hours per week. Hiatt approved this request on June 18, 2007.

An IEP meeting was held on October 30, 2007. The meeting participants included, among others, Mr. and Mrs. T., case manager Wilson, and ABA provider Balestrieri. (P-9.) The “Parent Concerns” section of the IEP reflects that Mr. and Mrs. T. “have reportedly observed significant improvements in [R.T.'s] behavior in the home and overall functional skills,” and they “are pleased with [R.T.'s] progress in the classroom and would like him to attend the half-day preschool disabled program full time.” The IEP provides that, for the period of November 12, 2007, to June 18, 2008, R.T.'s program would be the self-contained Preschool Disabilities Program, and his related services included individual and group speech/language; individual OT; individual PT; and 600 minutes per week of ABA services.⁴ The “Additional Related/Intensive Service Information” section states that R.T. “receives up to 10 hours weekly of ABA services split between home and school environments to address behavior needs[;] the need for continued ABA services will be discussed at the annual review meeting or when appropriate[; and] the outlined related services will be provided for the duration of the [Extended School Year (ESY)] program.”

R.T. turned five on January 26, 2008, and underwent a CST reevaluation to determine his continued eligibility for special education and related services. In the spring of 2008, Wilson conducted an educational evaluation (P-10); Despina Fassilis (Fassilis), school psychologist, conducted a psychological evaluation (P-11); and Sue

⁴ A later educational evaluation indicates that R.T. attended the Preschool Disabled Program from September 2006 through October 2006 and then transitioned to the half-day Preschool Disabled Program. (P-10.)

Thompson, speech/language specialist, conducted a speech and language evaluation (P-12). Fassilis' report indicates that R.T. was then receiving ABA services, ten hours weekly, split between school and home. According to Mrs. T., the majority of R.T.'s ABA services were provided at home. Fassilis, who testified at the hearing, did not recall whether she had an understanding in 2008 as to why R.T. was receiving those services.

2008–2009 School Year—Kindergarten

An eligibility and IEP meeting was held on May 15, 2008. The IEP Team concluded that R.T. was eligible for special education and related services based on the category of autistic. (P-13.) The IEP meeting participants included, among others, Mr. and Mrs. T., case manager Wilson, Fassilis, and ABA provider Balestrieri. (*Ibid.*) The IEP provides that for the period of September 2, 2008, to May 15, 2009, R.T. would be in the self-contained Pre-Primary Kindergarten program and his related services included individual and group speech/language; individual OT; and 600 minutes of ABA services at “home.” The “Additional Related/Intensive Service Information” section states that R.T. “receives up to 10 hours weekly of ABA services split between home and school environments to address behavioral needs.” Although the “projected related services” section indicates that R.T. would receive 600 minutes of ABA services from September 2, 2008, to May 15, 2009, the “Additional Related/Intensive Service Information” section states that “[t]he need for continued ABA services will be reassessed in September 2008.”⁵ No evidence in the record reveals that a meeting was held in September 2008, or that any assessments were conducted, regarding R.T.'s continued need for ABA services. Fassilis participated in R.T.'s eligibility and IEP meeting and did not express any disagreement with what was proposed in the IEP. She did not know whether a meeting was held in September 2008.

On October 25, 2008, ABA provider Balestrieri reported that R.T. “currently receives ten hours a week of one to one discrete trial instruction in the home setting.” (P-14.) The report sets forth the programs for which data was being collected and/or

⁵ The “Additional Related/Intensive Service Information” section also states that R.T. “will receive PT services on a consultative basis two times during the school year.”

maintained, which addressed social and academic related matters. The report states, “R.T. has benefited from having a structured one to one learning environment as shown through acquisition of skills, improved behavior, and progress in all programs Language and communication are the current focus of R.T.’s intervention. Home program hours provide consistency between school and home programs and maximize learning potential. Home programming hours also ensure carryover and generalization of skills in the home setting.” A document entitled “[R.T.’s] Current Home Programs May/August 2009” lists various matters apparently being worked on by the home provider (e.g., conversations about topics, phonics, social stories) and “target behaviors” (e.g., stereotypic vocalizations, restrictive repetitive behavior) and describes a “token economy” (e.g., pennies delivered upon eye contact, attending skills). (P-15.)

2009–2010 School Year—Kindergarten

An IEP meeting was held on May 22, 2009, regarding R.T.’s program and related services for the 2009–10 school year. The meeting participants included, among others, Mr. and Mrs. T., R.T.’s case manager (Alison Hines), Janice Rhodes, and Elissa Both (Both), who is designated as the “ABA Coordinator.” (P-16.) R.T. was then six years of age and in full-day kindergarten at Martin Luther King Elementary School. The IEP reflects that R.T.’s program for the 2009–10 school year would be full-day kindergarten at Menlo Park, which was R.T.’s home school. Mrs. T. explained that she and her husband did not believe that R.T. was socially or academically ready to be placed in first grade and they requested that he repeat kindergarten. R.T.’s related services for the period of September 3, 2009, to May 22, 2010, included integrated and group speech/language and individual OT. With regard to ABA services, the “Current Program Description” indicates that R.T. would receive services by an ABA therapist at “home” for the period of May 26, 2009, to June 18, 2009, with no minutes specified, and no ABA services are listed for the 2009–10 school year. Rather, the “Additional Related/Intensive Service Information” section states that R.T. “will receive 10 hours of ABA therapy through the duration of the ESY program [and] during that time, he will be assessed to determine the ABA hours for the 2009–2010 school year.” No evidence in

the record reveals that a meeting was held, or that any assessments were conducted, to determine R.T.'s ABA hours for the 2009–10 school year.

On November 30, 2009, Mrs. T. signed a “Written Confirmation of Parental Permission,” which gave the District permission “to request that observations of [R.T.] be conducted both at school [and] at home by the Verbal Behavior Network [and] that these observations be discussed [with] his case manager [and] ABA coordinator [and] parents at an IEP meeting.” (P-17.) The record is bereft of evidence that this assessment was conducted, and Mrs. T. did not recall a report or an observation by that agency.

An IEP meeting was held on January 7, 2010. The meeting participants included, among others, Mrs. T., ABA coordinator Both and Janice Rhodes (Rhodes), who now served as R.T.'s case manager. (P-18.) The IEP provides that for the period of January 15 to June 16, 2010, R.T. would be in the pull-out resource-center program for language arts and math and would continue to receive speech/language and OT. ABA services are not listed as a related service. The “Parental Concerns” section indicates that R.T.'s parents “continue to have significant concerns regarding [R.T.'s] level of functioning in the classroom, particularly relating to his academic performance and behavior”; “they feel that [R.T.] has had a difficult adjustment to the large group setting of a general education Kindergarten class when he was previously in a self-contained environment”; “[a]t home, Mrs. [T.] reported that some stereotypical behaviors have increased, and he is retreating into himself more than he did last year”; and R.T. “is involved in a number of extracurricular activities . . . in an attempt to help him generalize his social skills with peers[;] [h]owever, he continues to demonstrate weaknesses in this area.”

An IEP meeting was held on January 26, 2010. The meeting participants included Mrs. T., case manager Rhodes, general-education and special-education teachers, and a paraprofessional. (P-19.) Neither ABA coordinator Both nor any ABA therapist attended the meeting. The IEP lists, as a related service, four hours of ABA at home for the period of January 27, 2010, to June 16, 2010. The IEP states (in the

section entitled “Include other educational needs that results from the student’s disability”) that R.T. “needs home ABA in order to help him develop age-appropriate skills and to generalize those skills to other environments,” and indicates (in the “Related Service Rationale” section) that R.T. “requires home ABA to address his communication, social and behavioral weaknesses so that he can generalize his skills to the natural environment.”

2010–2011 School Year—First Grade

An IEP meeting was held on June 1, 2010 regarding R.T.’s program and related services for the 2010–11 school year. The participants included Mrs. T., case manager Rhodes, a speech/language specialist, general-education and special-education teachers, and a paraprofessional. (P-20.) Neither ABA coordinator Both nor any ABA therapist attended the meeting. The IEP provides that for the 2010–11 school year R.T. would continue to be in the pull-out resource-center program for language arts and math, he would participate in general education with in-class support for science, social studies, and health, and his related services included small-group speech/language and OT. R.T.’s related services also included ABA services; specifically, for the period of June 16 to June 30, 2010, R.T. would receive six hours of ABA at home, and for the period of September 1, 2010, to June 1, 2011, R.T. would receive two hours per week of ABA at home and one hour per month of parent training at home. The IEP reiterates that R.T. “needs home ABA in order to help him develop age-appropriate skills and to generalize those skills to other environments,” and R.T. “requires home ABA to address his communication, social and behavioral weaknesses so that he can generalize his skills to the natural environment.” The “Other Pertinent Information” section indicates that R.T. received four hours of home ABA services during that year “to address his behavioral difficulties”; “he was owed hours due to difficulties that were encountered with setting up his home program in September”; and “[t]herefore, [he] will continue to receive 6 hours of home ABA through 6/30/10.” It also reflects that R.T. “will receive 2 hours a week of ABA services beginning on 9/1/10” and “his home program coordinator has recommended that his parents receive 1 hour a month of consultation services to

assist them in addressing the changing behavioral issues that will occur as he matures.” The IEP does not explain the basis for the reduction in R.T.’s ABA services.

R.T.’s triennial evaluation was conducted in the spring of 2011. The District conducted an educational evaluation, a speech/language evaluation, and a psychological assessment. (P-22; P-23; P-24.) The psychological assessment included the completion of a Behavior Assessment System for Children (BASC) by R.T.’s teachers, which identified elevated scores in clinical areas assessing hyperactivity, attention problems and atypicality, along with areas of concern related to difficulty adjusting to changes in routine and recovering from setbacks, difficulty with decision making, and trouble with organization, study skills, and communicating ideas clearly. The reports do not include an assessment of R.T.’s behavior at home or address either the continuation or termination of home ABA services. The District did not conduct a functional behavioral assessment (FBA) as part of the triennial evaluation and/or any other evaluation that addressed R.T.’s home ABA or parent-training services. (See P-25.)

2011–2012 School Year—Second Grade

An eligibility and IEP meeting was held on June 10, 2011. The IEP Team concluded that R.T. continued to be eligible for special education and related services based on the category of autistic. (P-25.) The IEP meeting participants included Mrs. T., OT therapists, general-education and special-education teachers, a paraprofessional, and Maria Villar, who then served as R.T.’s case manager. (P-26.) Neither ABA coordinator Both nor any ABA therapist attended the meeting. The IEP provides that for the 2011–12 school year R.T. would continue to be in the pull-out resource-center program for language arts and math and receive in-class support for science and social studies. He also would receive ESY during the summer of 2011. R.T.’s related services for the 2011–12 school year included small-group speech/language and small-group and individual OT.⁶ The IEP does not include the provision of ABA services. The listed sources of information used to develop the IEP

⁶ The IEP states that individual OT services would be for the period of September 7, 2011 to June 20, 2011, which appears to be a typographical error.

do not reference any evaluation regarding R.T.'s ABA services and the IEP does not explain the basis for the termination of these services.⁷ The "Parental Concerns" section states, "After a telephone conversation that followed the IEP meeting to address concerns regarding placement for the next academic year, Mrs. [T.] gave verbal consent to implement the proposed IEP that includes placement in the resource center program for language arts and math but disagree[d] with the recommendation of discontinue the home ABA services."

2012–2013 School Year—Third Grade

An IEP meeting was held on May 30, 2012. The meeting participants included Mrs. T., a speech/language specialist, general-education and special-education teachers, and Sarah Brennessel (Brennessel), who then served as R.T.'s case manager. (P-27.) The IEP provides that for the 2012–13 school year R.T. would continue to participate in the pull-out resource-center program for language arts and math, and his related services included individual OT and small-group speech/language. It also reflects that "[p]articipation in the 2 week Social Skills ESY program was recommended; however, due to involvement in other activities/social opportunities during the summer months, Mrs. [T.] declined [R.T.'s] participation at this time."

2013–2014 School Year—Fourth Grade

An IEP meeting was held on June 6, 2013. The meeting participants included Mrs. T., case manager Brennessel, and general-education and special-education teachers. (P-28.) The IEP provides that for the 2013–14 school year R.T. would continue to participate in the pull-out resource-center program for language arts and math and he would receive in-class resource for science and social studies. His related services included individual OT and small-group speech.

⁷ The evaluations listed in the IEP include the psychological, educational, and speech/language evaluations conducted in 2011; OT and PT evaluations in 2007 and 2008, respectively; and a neurological evaluation on November 12, 2010, by Dr. Jay Selman.

The Present Levels of Academic Achievement and Functional Performance (PLAAFP) section includes summaries by R.T.'s special-education teacher (Ms. Carr) regarding R.T.'s performance in third grade in language arts and math. With regard to language arts, Ms. Carr reported that R.T. "is in need of a small structured setting in order for him to grow socially, emotionally, and academically"; "[s]ocially, [R.T.] can converse very nicely with adults"; and he "has difficulty socializing with his peers," but, "[w]ith prompting, he will interact with others in the classroom appropriately." It also indicates that R.T. "has had a difficult year emotionally"; "[h]e continues to be quite defiant when he is faced with a task that he perceives as difficult or when he just can no longer focus"; "[h]e refuses to complete assignments on a regular basis"; and he "has had numerous behavior plans, but none have been effective for more than a few days or weeks." Ms. Carr further reported that "[i]n order to attempt tasks, [R.T.] needs individual prompting"; [h]e will only attempt to complete a full assignment if the teacher or aide sits with him and continues to prompt"; "[e]ven when he has one to one instruction, he does not always complete the work"; and he "can focus when he chooses to, for example: when we complete art or fun projects during class, play games on the IPAD or go outdoors." Ms. Carr noted that both language arts and math are "extremely difficult" for R.T., and math "often is a time of day that he becomes most oppositional." R.T.'s general-education teacher for science and social studies in third grade (Ms. Guiffrida) reported that "[a]t the beginning of the year, [R.T.] was very compliant in the classroom"; "[d]uring the course of the school year, [R.T.] has become unmotivated and careless about completing tasks in class"; "[e]ven with teacher support, [he] loses focus easily"; "[i]mplementation of the behavior intervention plan was effective for a short time"; and "[a]t this time, [R.T.] requires ongoing teacher support in order to complete assignments during Science and Social Studies."

Mrs. T. described that R.T. continued to have both behavioral and academic difficulties after the termination of his ABA services, and the parents noticed a change in his behaviors. R.T.'s behaviors at home started to escalate, and his third-grade teacher (Ms. Carr) also noted his behaviors in school in the June 6, 2013, IEP. In 2013, the parents privately retained Saylor because the progress the parents had seen with R.T. was "significant." Saylor had been providing the services in the home for most of

the time when the District was providing ABA home services. In or around the summer/fall of 2013, the parents also began working with an educational consultant, Charles Ehrlich (Ehrlich). Mrs. T. expressed to Ehrlich her concerns about the District eliminating R.T.'s ABA home programming and parent training. At that point, the parents' concerns in terms of R.T.'s IEP included "keeping up academically, trying to keep up socially [and] his behaviors at home." In the fall of 2013, R.T. was exhibiting defiance and aggression, and he had been aggressive with his siblings. R.T. exhibited repetitive behaviors. For example, R.T. would constantly bounce a ball, and "it was an emotional and physical outburst" when he was asked to stop or to transition to do homework or get ready for bed. He "tend[ed] to get physical at times when [he was] angry or stressed." R.T. was also exhibiting behavioral difficulties in the community setting.

On October 11, 2013, Brennessel, the school social worker and R.T.'s case manager, sent a letter to R.T.'s parents indicating, "[i]t has come to my attention that your child may benefit from school-based social skills lessons." (P-29.) The letter informed the parents that a social-skills lunch group had been created, which would meet once a week beginning in October 2013, and address topics including how to get along with peers, respecting people and property, appropriate behaviors in the classroom setting, self-esteem, communication skills, feelings, sportsmanship/fairness/following rules, and cooperation/compromise/working with others. The letter requested the parents to complete a form regarding whether they agreed to R.T.'s participation in the weekly social-skills lunch group, which was facilitated by Ms. Brennessel. R.T. participated in that social-skills group during the 2013–14 school year.

The parents requested an informal meeting, which was held on October 30, 2013. The parents' educational consultant (Ehrlich) met with case manager Brennessel regarding R.T.'s inappropriate behaviors at home and the parents' request for in-home ABA services. (See P-31.) An IEP meeting regarding these matters was not convened until December 13, 2013. Prior to that meeting, Brennessel sent a letter to R.T.'s parents dated November 20, 2013, advising that R.T.'s triennial reevaluation was

coming due within the next few months and that the “district is proposing to waive the triennial evaluation” “because additional information is not warranted to determine that the student continues to have a disability . . . which adversely affects the student’s educational performance.” (P-30.) The letter lists the records and factors used in determining the proposed action; states that “[i]n consideration of these evaluations, as well as current 4th grade teacher reports and observations, it has been determined that [R.T.] continues to require supports and is Eligible for Special Education and Related Services”; and requests the parents to sign and return the enclosed consent form if they “consent to waive the triennial reevaluation process and that additional assessment is not required at this time for the student’s continued eligibility for special education and related services . . . and to develop an IEP.” On December 2, 2013, Mrs. T. signed the consent form.

An IEP meeting was held on December 13, 2013. The meeting participants included Mr. and Mrs. T., case manager Brennessel, a speech/language specialist, general-education and special-education teachers, consultant Ehrlich, and a supervisor of special services, Andrew Brandon (Brandon). Brandon reports to the assistant superintendent for pupil services, Christopher Conklin (Conklin). (P-31.) The IEP provides that for the period of January 2, 2014, to June 19, 2015, R.T. would continue to receive pull-out resource support for language arts and math, in-class resource support for science and social studies, individual OT, and group speech/language. The PLAAFP describes that the results of the STAR reading and math assessments administered that year indicate the need for “urgent intervention,” and R.T. had a percentage rank 1. The IEP reflects that a discussion regarding ESY programming was addressed during the meeting and the parents “indicated the intent to decline ESY programming if made available.” The “Concerns of the Parent” section states in part:

An Annual IEP Review meeting was scheduled as a result of an informal meeting that took place on 10/30/2013, at parent request. Mr. and Mrs. [T.] were in attendance, as well as an educational consultant they invited to participate. Despite noting progress being made at school by teachers and related-service providers, as well as progress noted by the parents in the home, parents expressed concerns with [R.T.’s] behaviors at home. These behaviors at home

include perseveration, difficulty with transition, defiance, increasing aggression toward siblings, and anxiety. Due to these concerns, a request was made for in-home ABA services (4 hours/week for 6 months, followed by a review of services). These concerns were addressed and resources, including private insurance and agency supports, were discussed with the parents.

In response to the parents' concerns, the District did not offer to conduct an evaluation, such as an FBA.

After this meeting, the parents filed a request for mediation, which was received by the OSEPP on April 4, 2014. (P-32.) The described nature of the problem states, R.T. "is classified autistic. The parents have been providing ABA, parent training & social skills up to this point and can no longer do so. The District was asked to provide services and said No at a 12/13/13 IEP meeting." Petitioners requested that the District provide "ABA services and parent training."

On April 16, 2014, R.T.'s special-education teacher, Mary Callahan (Callahan), sent an e-mail to another District employee (Beth Greenblatt) attaching a progress letter regarding R.T. (P-54 at 128.) The documentation that appears to be the attachment describes R.T.'s progress in reading, writing, math, work habits, and behavior. (Id. at 126–27.) The behavior section is verbatim to part of her summary in the December 2013 IEP PLAAFP, except that it also states: "At times, [R.T.] has refused to work. On these occasions, he has become belligerent. He threw things on the floor, swung the cord to his headphones, and was argumentative. The day after, he has always come in and apologized for his behavior. I am currently using positive behavior supports and a daily self-assessment. The programs are somewhat effective since he almost always needs to be coaxed to work." In an earlier e-mail that Callahan sent to Mrs. T. on February 24, 2014, she advised, among other things, that R.T. "got moved to red today in the afternoon"; "[b]asically he didn't feel like working"; and he "ended up tossing his book box, running around the room, and banging on the laptops." (P-54 at 131.) In an e-mail Callahan sent to Mrs. T. on March 19, 2014, she advised, among other things, that R.T. "went to red today because . . . [he] wouldn't stop interrupting the lesson no matter how many chances I gave" him. (Id. at 134.)

A mediation conference was held on May 6, 2014, which Mr. and Mrs. T., Ehrlich, Conklin, and an attorney for the Board attended. (P-33.) A Notice of Agreement was developed at that conference. Pursuant to that agreement, the District “agree[d] to conduct a[n] . . . [FBA] on R.T.” The parties further agreed that the CST BCBA would conduct the FBA; the FBA “will be completed by the end of the 2013–2014 school year”; the “FBA will include both home and school environments”; and “a meeting to review the results of the above FBA [would be held] within (10) ten days of receipt of the results of the above FBA.” The parents also agreed “to provide all documentation they have (up to one year) not limited to progress notes, reports, goals & objectives from their current service provider of the home program” and “to permit the [District] to interview the current services provider with respect to the current home program,” which “will be conducted with the Ed consultant present.” Prior to this agreement, the District had not conducted an FBA of R.T.

District behaviorist Fassilis conducted the assessment and issued a Functional Behavior Assessment report dated June 19, 2014, which case manager Brennessel sent to the parents on June 20, 2014. (P-34; R-4.) Fassilis conducted observations of R.T. at school on June 9, 11 and 12, 2014, during his resource-center program, his in-class-support program, a general-education art class, and lunch. She also interviewed R.T.’s fourth-grade teachers, who did not testify at the hearing. Fassilis interviewed Mrs. T. and conducted home observations on June 11 and 16, 2014. Fassilis did not interview R.T.’s home service provider (Saylor) or observe R.T.’s home program.

2014–2015 School Year—Fifth Grade

On September 18, 2014, case manager Brennessel sent an Invitation to Review an Evaluation to the parents, which advised that a meeting had been scheduled for September 23, 2014, for the purpose of reviewing the FBA conducted by Fassilis. (P-36.)⁸ The delay in scheduling this meeting appears to have resulted, at least in part,

⁸ The record includes an IEP dated September 18, 2014, which states that it is an “Amendment Agreement without Meeting.” (P-37.) The nature of the amendment, and whether a meeting had been held, was not addressed by the District’s witnesses and is not readily apparent except to the extent that the effective date of the program and services described in the December 13, 2013, IEP was changed to September 3, 2014, to June 17, 2015.

due to scheduling difficulties in the summer both by the parents and the District staff. (See P-35; P-54.) The meeting was held on September 23, 2014, which case manager Brennessel, Fassilis, supervisor Brandon, Mr. and Mrs. T., and Ehrlich attended. (P-38.) On the same day, the parents submitted to Brandon a written request for an independent FBA to be conducted by an FBA specialist chosen by the parents and at the District's expense. (R-1 at Exhibit D.) After the meeting, Fassilis authored a chronology of events regarding her involvement, which she believed Brandon requested, and she sent an e-mail to Conklin on September 24, 2014, summarizing her attempts to schedule home observations and her telephone calls with Ehrlich. (R-3.)

By letter dated September 29, 2014, Conklin denied the parents' request for an independent FBA and the Board filed a Due Process Petition relating to this request on or about October 8, 2014. (R-1 and Exhibit E.) Ultimately, on May 28, 2015, the parents withdrew their request for an independent FBA. (R-2.) Prior to withdrawing their request, the parents retained the services of Beth Glasberg-Katz (Glasberg), who conducted a functional assessment of R.T. during fifth grade, which included home and school observations on December 9, 2014, and issued a Final Report for Consultation dated January 29, 2015. (P-40.)

During the 2014–15 school year, case manager Brennessel sent the parents a letter similar to the prior year, offering R.T. participation in a social-skills lunch group beginning in October 2014. (P-39.) R.T. participated in that social-skills lunch group during the 2014–15 school year. Brennessel did not testify at the hearing and no documents were offered regarding the specific matters that Brennessel addressed during the lunch group in the 2013–14 or 2014–15 school years or how R.T. did during those groups.

On April 17, 2015, counsel for petitioners sent to the District's counsel a copy of "R.T.'s home program binder," which covers the approximate period of May 1, 2014, to date "for review by R.T.'s Child Study Team." (R-5.) In addition to work completed by R.T., the documentation includes a list of steps for showering and graphs depicting

R.T.'s progress in Read Naturally beginning in March 2014, and in reading comprehension and answering questions/listening beginning in January 2014.

The April 29, 2015 IEP

On April 29, 2015, an Annual IEP Review/Grade 6 Transition Planning meeting was held. (See P-43.) The meeting participants included Mr. and Mrs. T., case manager Brennessel, District behaviorist Fassilis, general-education and special-education teachers, speech and OT specialists, an LCSW from the middle school, supervisor Brandon, consultant Ehrlich, and attorneys for petitioners and the Board. (P-42; R-6.) The IEP provides that for the 2015–16 school year R.T. would receive pull-out resource support for language arts and math; in-class resource support for science and social studies; individual OT; group speech-language therapy; pull-out supplementary instruction; and individual counseling services twice a month for thirty minutes.⁹ The IEP reflects that the program and services would be at the Herbert Hoover Middle School, and the determination that R.T. “would benefit from participation” in the ESY program “with emphasis on social skills and language development.” The IEP lists evaluations/reports as “sources of information used to develop the IEP.” Fassilis’ Functional Behavior Assessment in June 2014 is listed but, unlike the other evaluations, the IEP does not include a summary of that assessment. Glasberg’s assessment is not listed. The PLAAFP reflects that on the STAR reading and math assessments in January 2015, R.T.’s reading score was lower than his score in September 2014, his math score was higher, and he still had a percentage rank of 1 on both.

The “Concerns of the Parent” section documents that the “[p]arents indicated concern for the Grade 6 Transition, socially and emotionally, to a school (Herbert Hoover Middle School) that is not [R.T.’s] home school (Woodrow Wilson Middle School),” and “[d]ue to parental concerns regarding [R.T.’s] upcoming transition to middle school, individual, school-based counseling as a related service has been

⁹ The record includes a draft IEP, which sets forth the same program and services except that speech/language therapy was increased from three to six times monthly and individual counseling services were added. (P-41.)

included within this IEP to support [R.T.'s] social and emotional functioning." The section further states:

Questions and concerns were expressed regarding the [FBA], conducted in June 2014 [by Fassilis], and the Final Report for Consultation, conducted on 12/9/2014 [by Glasberg], with emphasis on in-home supports and services. Questions and concerns regarding the [FBA] were addressed during this meeting by [Fassilis]. Additional resources were shared with parents including: Availability to participate in Edison Public School's Rethink Autism program, availability of in-district parent trainings (i.e., Rethink Autism, mini-symposiums), parent training video accessibility, availability of consultation with an in-district BCBA via telephone and/or email, and resources for NJ Children's System of Care.

The IEP indicates (under the section "How the Student's Disability Affects his or her Involvement and Progress in the General Education Curriculum") that R.T. "has been provided with the opportunity to participate in a school-based social-skills lunch group throughout the 2014–2015 school year; this opportunity should continue to be offered to [R.T.] in Grade 6, if available." A "[s]chool-based social skills lunch group, if available" is also listed as one of the "positive supports/inventions" in the "Behavioral Interventions" section. The IEP further memorializes that R.T.'s "behavior impedes his ... learning or that of others" and states that "[a]ppropriate strategies and supports are included within the Modifications and Supplementary Aides and Services section." Although the "Notice Requirements" section states (in the section "describe any other factors that are relevant to the proposed action") that "[c]onsideration has been given to the Final Report for Consultation provided by [the] parents," the IEP does not specifically address the determination made with regard to the various recommendations set forth in Glasberg's report. It also does not address in the section entitled "Describe any options considered and the reasons those options were rejected" or elsewhere the reason why recommendations in her report, including home ABA services and parent training, were rejected. At the hearing, R.T.'s fifth-grade case manager, teachers, and service providers who attended the meeting did not testify. The only District witness who attended this meeting was Fassilis, who had conducted the FBA of R.T. in fourth grade. Other than the information recited in the IEP, the

District did not offer any progress reports, report cards, classwork, or data regarding R.T.'s IEP goals and the like relating to R.T.'s progress or lack thereof in fifth grade.

On April 30, 2015, case manager Brennessel sent a letter to R.T.'s parents requesting to amend the IEP without a meeting. (P-44; R-7.) Specifically, the letter states:

At [R.T.'s] Annual IEP Review/Grade 6 Planning Transition meeting on 4/29/2015, parents expressed concern regarding [R.T.'s] social and emotional functioning as it relates to Grade 6 Transition to a middle school location different from home school. As a result, it has been determined that [R.T.] would benefit from individual, school-based counseling as a related service, 1x per week, for 30 minutes for the remainder of the 2014–2015 school year. The goal of this related service is to support [R.T.'s] social and emotional functioning with this upcoming transition.

The parents did not sign the consent form to amend the IEP, and filed the within due-process request.

2015–2016 School Year—Sixth Grade

In or around August 2015, the District agreed to the parents' request to have R.T. attend his home school, Woodrow Wilson Middle School (Woodrow Wilson), starting in September 2015. According to the District, a pull-out resource-center program for language arts and math as set forth in R.T.'s IEP was not available at that school. The parties agreed to R.T.'s placement in a self-contained autism class for these subjects. The record does not include any documentation memorializing this agreement. The District did not revise, or convene a meeting to revise, R.T.'s IEP to reflect the change in the school and R.T.'s program or to address any needed modification to his goals and objectives due to the program change. Mrs. T. offered undisputed testimony that she had asked R.T.'s case manager to schedule an IEP meeting.

Macchiaverna was R.T.'s teacher in the self-contained autism class. He was R.T.'s teacher for English and math, along with his homeroom teacher. There were five students in his classroom, including R.T. Macchiaverna's classroom had a behavior-modification system (ClassDojo), where students would receive green points for positive behaviors and red points for maladaptive behaviors. The Woodrow Wilson Coffee Shop (coffee shop) is part of his program. The coffee shop is open every Friday, and the students in Macchiaverna's class sell coffee, baked goods, and breakfast sandwiches to the staff. It is structured in different stations, and the students work on different jobs differentiated by their abilities. The self-contained autism program also includes community-based instruction twice a month (e.g., trips to BJ's, Menlo Park Mall).

During the school year, various parent-training sessions were offered to the parents. Rhodes, who previously served as R.T.'s case manager, was the BCBA assigned to Woodrow Wilson. On October 9, 2015, Rhodes sent a letter to R.T.'s parents advising that the District "will again be conducting monthly Parent Training Clinics for families whose children are attending our specialized Autistic programs." (P-47.) The letter states that there will be a total of four individually-scheduled sessions that will alternate on a monthly basis with two school-based group sessions/presentations. The letter advised that the first individual parent-training session was scheduled for October 22, 2015, which Mrs. T. attended. Mrs. T. attended approximately three other clinics, including a clinic on January 19, 2016, during which R.T. was observed during his speech-therapy session (P-49) and on February 26, 2016, during which R.T. was observed working in the coffee shop. (P-50.) The parents did not attend a group presentation by the District's behaviorists on December 7, 2015, that focused on "managing behaviors with an emphasis on the use and implementation of Social Stories (antecedent strategy) and their range of applications." (P-48.) Rhodes, the District behaviorist responsible for conducting the individual training clinics, did not testify at the hearing. Mrs. T. has not utilized the District's on-line Rethink Autism Program ("Rethink") and did not contact an in-district BCBA via telephone and/or email during R.T.'s sixth-grade year.

Several observations of R.T. were conducted after the disputed IEP and when R.T. was in sixth grade. Cheryl Diane Stickel (Stickel), a District behaviorist, conducted school observations on December 16 and 18, 2016, and issued a report dated January 21, 2016. (R-8.) Celia Heyman (Heyman), a BCBA who works with Glasberg, conducted a home observation on March 10, 2016, and a school observation on May 11, 2016, and issued reports dated March 13 and May 16, 2016. (P-52; P-58.) Ehrlich conducted a school observation on June 5, 2016, and issued a report dated June 17, 2016. (P-57.)

THE TESTIMONY

At the hearing, the District offered four witnesses; Fassilis, the District behaviorist who conducted the assessment of R.T. in fourth grade; Conklin, the assistant superintendent of special services; Stickel, the District behaviorist who conducted the assessment of R.T. in sixth grade; and Macchiaverna. Testifying on behalf of petitioners were Mrs. T.; Glasberg, the BCBA who conducted the assessment of R.T. in fifth grade; Heyman, the BCBA who conducted the assessment of R.T. in sixth grade; and Ehrlich. Apart from the evidence that forms the foundation of the above findings of fact, a summary of other pertinent testimony follows.

Despina Fassilis

Fassilis was admitted as an expert in the principles of ABA and conducted observations of R.T. at school and at home during fourth grade in June 2014. Fassilis has been employed by the District since January 2002. She was initially employed as a school psychologist and has served as a District behaviorist since the 2013–14 school year. Fassilis was previously employed by another school district as a school psychologist and holds a master's degree in psychology. She attained her BCBA certification in 2009. She is certified as a school psychologist and holds a supervisor's endorsement. (See R-9.) As a school psychologist for the District, Fassilis worked with preschool and elementary students. She also provided ABA home services for approximately three years that entailed one-on-one direct ABA therapy and parent

training. As a District behaviorist, Fassilis' duties include, among others, supporting primarily the preschool self-contained programs that are based on ABA principles, conducting parent training, and consulting with parents and staff. She does not provide one-on-one ABA therapy in the school or home setting. Fassilis explained that ABA is an empirical approach based on research that looks at the relationship between the environment and behavior and seeks to improve a student's identified problematic behaviors. It is a methodology that involves a systematic approach of interventions, it is very data driven, and it entails manipulating the environment using different approaches to yield more positive results (e.g., using visual schedules, providing social stories or prompts, implementing a reinforcement schedule).

Conklin assigned Fassilis to conduct an FBA of R.T. and provided her with the Notice of Agreement from mediation that specified the parameters and timeline for her assessment. Fassilis used her professional judgment regarding the manner in which she approached the assessment. She understood that there were significant challenges regarding R.T. in the home for which the parents were seeking help, and her role was to analyze what was going on at that point in R.T.'s school and home environments and to perform a comprehensive evaluation that would guide appropriate recommendations. Fassilis initially reviewed R.T.'s recent IEPs. Based on that review, she was aware that R.T. was not receiving ABA home services from the District. She documented in her report the ABA home services that R.T. had previously received from the District.

According to Fassilis, she conducted an evaluation of R.T., and was not able to conduct an FBA in the manner in which an FBA needs to be conducted. She described that an FBA looks at a pattern of identified problematic behavior and it is necessary to define specifically the one or two behaviors that are of concern. Fassilis will then take data over a certain period on when the behavior occurs and what happens immediately before and after the behavior for purposes of determining the function of the behavior which, in turn, guides the specific intervention. Fassilis was not able to perform an FBA under that criteria because, based on interviewing R.T.'s teachers and Mrs. T., it was very difficult to determine the actual behavior that was of significant concern. Fassilis

authored a report regarding her assessment, including her interviews and observations of R.T. (R-4.)

On May 14, 2014, Fassilis conducted a phone interview with Mrs. T. Fassilis testified that Mrs. T. had “various concerns” about R.T.’s behavior but did not indicate any specific behaviors, noting that “different things can trigger R.T. at different times, and sometimes those triggers were unpredictable for him.” Mrs. T. relayed that the school had reported that “completing tasks was difficult” and R.T. had “some meltdowns.” According to her report, Fassilis asked Mrs. T. her primary concern regarding R.T.’s behavior or functioning that needs to be better understood and analyzed. Mrs. T. indicated that it is very hard to answer such a question because “the focus always changes and it is what he needs for that day. It could be academic, behavioral, life skills—it is whatever he needs for that day.” Fassilis reported that, upon attempting to reiterate the typical nature and intent of an FBA, which includes identifying and analyzing maladaptive behavioral areas, Mrs. T. responded “nothing stands out. It depends on his day, the day or the week.” Mrs. T. was asked if there was any one area of significant concern that had been currently reported by his teachers, and Mrs. T. stated that there are several things that have been reported to her, such as not completing assignments, attending difficulties, and having meltdowns, and that “there are many pieces in school as well.” When asked to describe his disposition, Mrs. T. responded, “it’s so hard. Many adjectives can describe him. He is a happy child going through many obstacles. He frustrates, angers, lashes out.” When asked to elaborate what “lashing out” looks like for R.T., Mrs. T. described a morning incident during which R.T. became frustrated in the car and started banging his head and kicking and punching the seat. Mrs. T. also relayed that at home R.T. will climb and jump on the sofa even if someone is sitting there; he tends to wander around until something, such as his Legos or action figures, interests him; he gets upset when Mrs. T. touches or moves his toys; R.T. has difficulty staying seated during dinner; and he needs assistance with some self-help skills. Fassilis reported that overall Mrs. T. indicated that it is very hard to predict R.T.’s behavior or how he will respond to a particular situation.

Fassilis conducted five school interviews; one teacher was interviewed twice. She interviewed all teachers prior to conducting her observation to obtain information, particularly whether the teacher had any specific areas of concern. On June 9, 2014, Fassilis observed R.T. in his pull-out resource language-arts class and at lunch. On June 11, 2014, Fassilis observed R.T. in his in-class support classroom for science/social studies, and she observed R.T. during art on June 12, 2014.

Fassilis described that the reporting by R.T.'s teacher was "pretty consistent." They all "had a wonderful relationship with him"; R.T. "enjoyed learning" and he had made "wonderful success academically, emotionally and socially." The teachers reported that R.T. was doing "great" regarding peer interactions. No teacher expressed concern about R.T.'s social functioning or reported work-avoidance behavior. The "common thread" was R.T.'s "attending skills," but every teacher also reported that they had successful strategies in place to address that issue and R.T. "would respond promptly and without resistance," which Fassilis observed during her observations. It was reported that R.T. at times had difficulty initiating a task, and that prompting and encouragement were required. The teachers reported, and Fassilis observed, that the prompting and encouragement were successful in getting R.T. to attend or to redirect him. The resource teacher had a work-against-the-clock system, developed coping skills with him, and provided breaks if needed. The in-class resource teacher had strategies to keep the momentum going and hold his attention, and she would pace it up a bit if she noted that he was starting to become inattentive. The teachers used physical proximity and verbal prompting. Fassilis' involvement was in June and the teachers reported that it was a very successful year for R.T. and that he had made significant gains, which Fassilis took to mean improvement from where he started. According to the teachers' reports, R.T.'s on-task behaviors were improving with the interventions currently implemented. Two of R.T.'s teachers had R.T. as a student the previous year. Fassilis stated that she had no reason to doubt the teachers when they said that R.T.'s on-task behaviors had improved. She articulated her belief that the teachers are reliable sources because they knew R.T. for an extensive period of time and in some cases knew R.T. from the prior year, and the teachers relayed consistent information. R.T.'s fourth-grade teachers did not testify at the hearing.

During Fassilis' observation of R.T. in the small resource-program setting, she looked at areas based on the parents' concerns to see how he attends, responds, and understands the content of the material, and if he engages in any behavioral difficulties. She testified that overall R.T. did "pretty well." He knew the content of the lesson and responded to verbal prompting to initiate tasks and working against the clock as a motivational strategy. Other than attentional and motivational issues, there were no other behaviors that she observed that stood out as problematic. R.T. "engaged appropriately with his peers," including praising a classmate for a correct answer and responding to social factors in the classroom. R.T. "had a wonderful interactive approach" with the teachers and he was never defiant or oppositional with them. R.T. did not physically interact with the teachers or the students in an inappropriate way and he did not exhibit any maladaptive behaviors that would interfere with his learning. Fassilis did not observe any meltdowns by R.T. in school, which she believed occurred earlier in the year, and the teachers did not report meltdowns as being a problem for R.T. at that point in time. Fassilis completed a Direct Observation Form, which she explained is "a standardized quick assessment" that enables the observer to compare the student who is the focus of an assessment for a ten-minute interval to a typical student in a classroom. She did this assessment in R.T.'s in-class-resource setting. According to her report, R.T.'s on-task score during the ten-minute observation indicates that his on-task behavior was consistent with behavior typically observed for a six-to-eleven-year-old child, and the results suggest that R.T. was not observed to have any more problems in the classroom than are typical for a six-to-eleven-year-old child. At the end of her school observations, Fassilis noted no behavioral difficulties, and no such difficulties were reported.

Fassilis conducted two home observation on June 11, and 16, 2014. During her observations, Fassilis did not observe any visible printed schedules or structured rules around the home. She asked Mrs. T. whether R.T. had any specific schedule, visual schedule, or anything else in place, to structure what he was expected to do when he came home from school. Mrs. T. did not directly respond to this question and relayed that creating such structure was "hard" because she had other children and "there's

always something going on.” Fassilis described that R.T.’s social engagement with her was typical for a non-disabled child and appropriate. She did not observe any meltdowns. Fassilis observed distractions for R.T. in the home when it was supposed to be homework time, which were primarily his siblings. Homework was hard for Ms. T.; she had to keep prompting R.T., who resisted; and Mrs. T. made different efforts to get him to sit down and attend. At one point, R.T. eventually sat down and attended to the task, but it was not sustainable. She noted that there were “distractions going on around” and it “was hard for him.” The “main thing” that Fassilis took away from the home environment was that, “considering that R.T. has attending difficulties, it was a busy environment,” primarily with his siblings. Fassilis opined that it would have been a more productive environment for R.T. to sit and do his homework, which was the “main struggle,” if the environment paralleled the structure in school, if there was more structure and some of the distractions were eliminated, and if some of the successful strategies to initiate his task involvement at school were carried over at home. She stated that ABA principals are good teaching practices and strategies, but they are not a necessary tool to enact those kinds of structures and schedules, and no specific training is required to set up a schedule for homework or a structure in terms of a distraction-free environment.

During her second observation, Fassilis reported that at one point R.T. went into the adjacent room and started bouncing a small ball, which Mrs. T. explained is a perseveratory behavior that R.T. could engage in for hours if not interrupted and that, if this behavior is interrupted abruptly without appropriate behavioral/transitional strategies, it could trigger a significant behavioral response. At another point, R.T. re-entered the family room and continued bouncing the ball while pretending he was on a monorail. According to Fassilis, although R.T. engaged for an extended amount of time bouncing the ball, he readily responded or came back into the kitchen when he was called upon by Mrs. T. or Fassilis, without having a meltdown or being defiant. During this observation, Mrs. T. reported that their ABA home provider has been working with R.T. and the family for many years and works on many areas. For example, “she is supporting what they are doing in school with an ABA approach.” Mrs. T. also relayed that it used to be very difficult for them to leave the home due to R.T.’s functioning, and

the ABA therapist has assisted with transitional strategies as well as going out to the community with R.T. and the family. Mrs. T. advised that R.T.'s meltdowns, which were then not that frequent, could occur randomly without any apparent triggers, and that he experienced behavioral meltdowns five times in school that year. When asked how she handles homework time with R.T., Mrs. T. explained that it is very hard because unless she sits down with R.T. he cannot do it independently, because he has difficulty sitting and concentrating. When asked if there is a certain homework schedule within the home, Mrs. T. explained that it could vary due to the family's hectic schedule with the other children.

The summary of Fassilis' report indicates that, based upon observations and teacher reports, R.T. "is not exhibiting any behavioral difficulties in the classroom"; he "is able to function appropriately and learn in the school setting"; the "current behavioral and emotional supports that are consistently implemented by his teachers are very effective towards obtaining his attention and establishing optimal learning opportunities"; and "[o]verall, [R.T.'s] teachers have established strong instructional controls as was clearly evident." She further stated that, "based upon current concerns expressed by [R.T.'s] mother and home observations, [R.T.'s] difficulties pertaining to his attention, motivation and avoidance behaviors are believed to be influenced by escape and attention." Her report sets forth nine "treatment recommendations," which are "function-based and considered to be best practice for effective behavioral intervention within the home setting." Fassilis recommended the following: (1) Provide R.T. with a structured and consistent schedule daily for homework; (2) When R.T. engages in off-task behavior, verbally prompt him once to comply with the previously specified instruction or task. If additional prompting is necessary, nonverbal and/or visual prompts should be used to assist him; (3) When R.T. engages in inappropriate attention seeking behavior, he will be ignored as soon as the behavior is initiated. Ignoring will consist of eliminating all interaction, including verbal, physical, and visual contact. If attention is given to R.T. by his siblings, it will be redirected away from him in proximity or conversation; (4) Continue to model for R.T. on how to appropriately request adult attention. When it is evident that R.T. needs assistance on a task, before any inappropriate behavior occurs he will be prompted to request help. Recognizing

and praising the efforts of his siblings who request assistance appropriately will continue to allow R.T. to observe correct behavior; (5) Continue to provide R.T. with modeling in order to facilitate natural social and reciprocal interaction with others; (6) Provide breaks frequently and non-contingently; (7) Consider including R.T. in a school-based pragmatic/social-skills group. Areas of focus should include maintaining focus during extended conversations and recognizing how actions and emotions are related (i.e., procrastinating to initiate work); (8) Maximize the amount of positive attention and behavior-specific praise that R.T. receives throughout his day so that it is frequently and non-contingently provided; and (9) A token economy system will be utilized throughout the duration of homework time which should adhere to a consistent and structured daily schedule and is described in Fassilis' report.

Fassilis opined that, other than the school-based social-skills group (#7), the parents could implement the recommendations themselves, and an untrained person could implement the recommendations, which are straightforward and simple recommendations. After her report was completed, the parents did not contact Fassilis to ask how they could implement any of the recommendations. Fassilis described other District resources available to parents. She testified that the District offers parents who have a child in the self-contained specialized programs parent-training clinics. The District also has "Rethink," which has a lot of resources for parents to use including, among others, videos and lessons that deal with specific topics, printable resources, and a hotline that an individual could call regarding a concern. Fassilis did not agree with the statement in Glasberg's report that "R.T. will not be able to make any progress academically, socially or in terms of self-help life skills without skilled interventions to reduce interfering behaviors and build up academic and social skills." Based on her involvement assessing and observing R.T., she opined that he "had a wonderful and successful year across all [of] those domains."

Fassilis testified that no one from the District directed what her recommendations should be or in any way influenced her conclusions. According to Fassilis, Ehrlich attempted to influence her report. She described that during the first week of June he left telephone messages indicating who he was and some general information

regarding the T. family and their circumstances. Fassilis returned his calls; he introduced himself as a “family friend”; he tried to influence her conclusions, suggesting that the family could benefit from six hours; and Fassilis “felt very uncomfortable.” Fassilis did not observe R.T. with his home provider. She made several efforts to coordinate a mutual time with the parent when the provider would be at the home so that she could observe the home program being conducted and what programs were being applied. Her second observation was scheduled on a date that Mrs. T. specifically relayed that the provider would be present, but upon Fassilis’ arrival she learned that the provider had gone on vacation. Fassilis testified that she had to conclude her assessment because she was dealing with a due date based on the mediation agreement.

Fassilis attended a meeting on September 23, 2014, during which she reviewed her report and recommendations. R.T.’s teachers and related-service providers were not at the meeting, which she stated was not an IEP team meeting. Other than her report, Fassilis did not recall what was discussed at the meeting and did not recall having an exchange with the parents about their concerns. Fassilis was not asked at this meeting about the issue of whether R.T. should receive home programming services.

Fassilis acknowledged that the telephone conversation with Ehrlich that made her uncomfortable occurred during the first week of June and she waited until September 24, 2014 to send an e-mail to Conklin about her concerns. She was not aware that Ehrlich had been working with the family as their educational consultant since the Fall of 2013. Fassilis agreed that mediation agreement contemplated that the meeting to review her report would be held on or about June 30, 2014. Fassilis understood that efforts were made to schedule a meeting, but it was a challenge getting everyone over the summer to attend the meeting. She did not know why the meeting was on held September 23, rather than at the start of the school year. Fassilis did not make any effort after her observation in June and before the September 23, 2014, meeting to observe R.T. working with his home provider, and she did not reach out to Conklin or Mrs. T. to try to schedule a follow-up observation with R.T. Fassilis stated

that she had previously made several efforts to observe the home provider in June; she understood that everything had to be completed within the time frame of the mediation agreement; and she had no way of knowing when the meeting would be scheduled. Fassilis also did not find that it was important to attempt to schedule such an observation, considering all the factors.

In preparing her report, Fassilis did not review the October 11, 2013, letter from Brennessel regarding the social-skills lunch group; she did not observe R.T. participating in a social-skills group; and she did not know whether R.T. received a social-skills group during the 2013–14 or 2014–15 school years. She did not review the Waiver of Triennial Reevaluation and Planning Meeting form and did not recall whether a triennial reevaluation was conducted in the spring of 2014, prior to preparing her June 2014 report. She was not aware that the parents and their educational consultant had participated in an IEP meeting in December 2013, and the IEP reflects that they reported various behaviors at home and their ongoing concerns about the elimination of ABA services. She was not aware that R.T.'s home provider had worked for Above and Beyond, the agency that had previously been retained by the District to provide home programming services. Fassilis did not interview R.T.'s case manager (Brennessel), R.T.'s OT and speech/language therapists, or R.T.'s siblings. She did not review any progress reports, lesson-plan books, or other data maintained by the fourth-grade teachers she observed. Fassilis did not review any formal behavior intervention plan for R.T. in the classroom setting and did not observe an individualized behavior plan in use when she observed R.T. She did not collect any data when she observed R.T. at home, stating that she did not have a behavior to focus on.

Fassilis acknowledged that the summary in her report of ABA services that R.T. received from the District was not accurate; it did not reference that R.T. received ten hours of ABA therapy as set forth in the May 15, 2008, IEP, that he received ten hours of ABA therapy as set forth in the May 22, 2009, IEP, and that he received six hours of ABA therapy in June 2010 as set forth in the June 1, 2010, IEP. She acknowledged that R.T.'s IEPs reflect that his ABA services were reduced (see P-18) and changed from both home and school to only home (see P-19), and that she was not able to

determine why that occurred. Fassilis agreed that it would be important for the IEP team to have some guidelines, data review, statistics, etc., to support a decision to reduce services. She did not seek to determine why R.T.'s ABA services were terminated in June 2011, and did not discuss that issue with Mrs. T., R.T.'s case manager, or Conklin. Fassilis did not find it important for what she had to accomplish (an FBA) to investigate why the CST had terminated R.T.'s ABA services. She stated that an FBA does not include a determination regarding whether a student requires ABA services, which is an IEP decision.

Fassilis did not agree that R.T.'s IEPs and most recent CST evaluations would identify behaviors that were of a concern to staff members. She agreed that the December 2013 IEP that was in place when she evaluated R.T. indicates that behavioral interventions were appropriate at that time and identifies target behaviors or areas of need. Fassilis stated that she really did not rely on the review of IEPs for her FBA. She described that for an FBA it is necessary to observe a behavior that is currently occurring; a child's functioning could change every six months and she had to do an FBA based on R.T.'s current functioning at that point in time. According to Fassilis, Mrs. T. provided information regarding her concerns about R.T.'s behavior, but only in general terms. Although Mrs. T. relayed specific behavior reported to her by the teachers, Fassilis investigated the three identified areas when she went to the school. R.T. had some behavioral incidences earlier in the year, and the teachers reported that R.T. was functioning very well within their settings and responding very well to the strategies they had implemented, which was corroborated by her observations.

Fassilis testified that the parent-training clinics are open primarily to parents who have children in the District's self-contained specialized programs, and she has also conducted training sessions with parents who do not have a child in a self-contained program. The training is individualized based upon the needs of the parent and the student. Fassilis stated that it is not a CST recommendation and not IEP driven. It is not an IEP service directly to the student but a service offered to train parents. She did not know whether R.T. had a parent-training clinic in fifth grade at Menlo Park because she was not assigned to that school. Fassilis did not recommend parent-training clinics

in her report, stating that it is just a service the District offers, and the recommendations in her report were specifically geared for home implementation, except for number seven. She did not discuss parent-training clinics with Mrs. T. Fassilis did not recommend “Rethink” in her report. She did not believe that R.T.’s teachers were utilizing “Rethink,” stating that it is a program that is used in the self-contained ABA-based program, which was not R.T.’s program at that time. Fassilis described that “Rethink” is for the most part only offered to parents of students who are in self-contained autism classes, and on rare occasions it could be offered to parents with students in other classes. Fassilis stated that she could have recommended “Rethink” to R.T.’s parents, but opined that at the time of her report “it was totally inappropriate” because none of his instructors utilized a data-driven program, so it would have been in isolation.

Fassilis did not know whether R.T.’s IEP was revised to reflect her recommendations, and could not answer what was discussed or deemed appropriate to put in his IEP, stating that she “wasn’t part of any consequent IEP meetings” and “wasn’t involved on that level.” Fassilis later agreed that she attended the April 29, 2015, IEP meeting because of her involvement regarding her June 2014 assessment. Prior to the IEP meeting, Fassilis received Glasberg’s report and reviewed the report in collaboration with Brennessel. She did not develop a written response to Glasberg’s report prior to the meeting. She did not seek the parents’ permission to discuss the report with Glasberg. Prior to the IEP meeting, Fassilis did not speak with R.T.’s then special-education teacher and did not know how R.T. was performing behaviorally and academically in her classes. She did not meet with R.T.’s general-education teacher or his related-service providers. Fassilis stated that she did not interview any of R.T.’s fifth-grade teachers because a child’s functioning could change. She acknowledged that R.T.’s functioning could have changed between when she observed him in June 2014 and when she participated in the development of the April 29, 2015, IEP, but noted that “the rise of a concern needs to be brought to [her] attention to guide [her] involvement in whatever aspect might be deemed necessary.” She could not answer whether an IEP meeting should have been held earlier and did not know why the meeting was scheduled on April 29, 2015.

At the IEP meeting, Fassilis reviewed her report and believed it was discussed in “general terms.” With reference to the section indicating that “[a]dditional resources were shared with the parents, including Edison’s Rethink Autism Program,” Fassilis agreed that the IEP did not provide that R.T. would be in the self-contained program in September 2015, and stated that the District extended it to the parents for training purposes. Fassilis did not recommend “Rethink” at the meeting and did not recall who recommended it, but believed that it was the case manager “in collaboration with obtaining information, what are some resources available for parents.” She could not state whether the IEP team definitively recommended that R.T. participate in the “Rethink” program, but noted that “[i]t was in the IEP” and “[i]t was discussed by [the] case manager, page by page, what the recommendations are or concerns.” She described that the case manager conveyed all of this information to the parent and that the listed resources were available and recommended if the parent wishes. Fassilis agreed that the IEP indicates that R.T. required behavioral interventions and that the listed target behaviors were the same as in earlier IEPs. She observed some of the listed interventions and strategies being implemented in June 2014. Fassilis did not know if they were being implemented as of the 2014–15 school year. She was not involved in “compiling the IEP or developing the content of the IEP,” which was solely Brennessel’s task. Fassilis recommended in her report, “Consider including R.T. in a school-based pragmatic/social skills group,” and stated that the social-skills lunch group described in Brennessel’s October 11, 2013, letter would satisfy her recommendation. She acknowledged that the IEP for the 2015–16 school year refers to a “school based social skills lunch group, if available,” and that recommended elements of a student’s program should be provided and should not be subject to availability. Fassilis acknowledged that she and the other District representatives who attended the meeting did not indicate in the IEP which recommendations in Glasberg’s report they agreed or disagreed with and the reasons why they agreed or disagreed with the recommendations. Fassilis did not remember voicing objections and concerns with Glasberg’s report at the meeting.

On redirect examination, Fassilis opined that R.T. does not require home-based ABA services to make meaningful academic or social progress or meaningful progress with respect to his life skills. She offered this opinion never having observed his home program. Fassilis' testimony does not reveal that she ever expressed this opinion at the earlier meetings or before the hearing, or the factual basis for her opinion as of the 2015 IEP given that her assessment occurred in 2014.

Christopher Conklin

Conklin has served as the District's assistant superintendent for pupil special services since March 2011. He holds a master's degree in special education with a concentration as a learning disabilities teacher consultant; a master's degree in education, administration, curriculum and instruction; and certificates for special-education teacher, general-education teacher (preschool–8), secondary social-studies education, learning disabilities teacher consultant, supervisor, principal, and chief school administrator. Conklin previously worked in other school districts as the director of special services, a learning disabilities teacher consultant, and a teacher, and serves as the executive director of the New Jersey Special Education Directors' Study Council. (See R-12.) Conklin's duties as the assistant superintendent for pupil special services include, among others, overseeing the District's special-education programs, managing home-instruction services, and addressing requests for independent evaluations.

Conklin described social-skills programs offered to R.T. in fifth grade at Menlo Park during the 2014–15 school year. Based upon his communication with Brennessel, Conklin understood that R.T. participated in a social-skills lunch group during the 2013–14 and 2014–15 school years, which worked on social-skills activities. Menlo Park also adopted "positive behavior supports," which use "pillars of character" that are addressed monthly and infused in the curriculum. Conklin did not specifically observe R.T. in fifth grade and did not review any documentation or data regarding the provision of the social-skills lunch group to R.T. Regarding the social-skills programs provided to R.T. in sixth grade at Woodrow Wilson, Conklin testified that, because of the parties' agreement, R.T. was in the self-contained autism class, and the students in that class

are provided with social-skills training within the curriculum. R.T. was also provided support services from the social worker or school counselor, he was involved in the weekly coffee shop, and he was in in-class resource with his general-education peers for science and social studies. As to whether R.T. received any direct services related to social skills, Conklin stated that the IEP provides for counseling twice monthly; speech therapy which, according to Conklin, works on pragmatic discourse (e.g., communication with peers, recognizing social cues, eye contact); and OT, which Conklin indicated often deals with matters such as communication and management. Pursuant to the IEP, R.T. was also offered participation in the social-skills and language-development ESY program, which Conklin stated the parents declined. Conklin did not specifically observe R.T. in his self-contained autism classroom or in-class support classes, but had visited the coffee shop. He never assessed or evaluated R.T. and did not believe that R.T. was in a social-skills lunch group at Woodrow Wilson.

Conklin was aware that the District had provided R.T. with home-based ABA services and home-based parent training for several years, which were discontinued after the 2010–11 school year. He did not know the reason why the District terminated R.T.'s home ABA services, and he did not discuss at that time the decision to discontinue the services with Both or the case manager. In preparation for the May 2014 mediation conference, Conklin had a conversation with Both concerning why the decision was made to discontinue the services, but could not state specifically what Both relayed to him. He also had a conversation with Brennessel, who was R.T.'s case manager at the time of the mediation conference. From what Conklin could recall, Brennessel relayed that R.T. was then "doing very well in school" and he did not "require that level of intervention to be successful." Brennessel was not R.T.'s case manager when the services were discontinued; Conklin did not discuss the issue with R.T.'s then case manager; and he did not review any documentation that explained how the decision was made to discontinue the ABA home programming and parent training in 2011. He did not believe that Both completed any formal evaluation in terms of making the decision to discontinue services at the end of the 2010–11 school year, and he did not know what data she reviewed.

Conklin was not consulted about Brennessel's November 20, 2013, correspondence regarding waiving R.T.'s triennial reevaluation and he did not know why the team made that decision. Brandon attended the December 2013 IEP meeting because the parents brought an educational consultant, and it is his practice in such situations to have a supervisor attend the meeting. He did not know why the meeting to review Fassilis' FBA was held at the end of September, and did not recall whether he had discussions with Brandon, Brennessel, or Fassilis after the meeting. Conklin did not have a discussion with any individual on R.T.'s IEP team after he received Glasberg's January 29, 2015, report, and he simply forwarded the report and requested that it be reviewed as part of the IEP meeting. He did not recall having a specific conversation with the IEP members after the April 29, 2015, IEP meeting concerning what they agreed or disagreed with in Glasberg's report.

Cheryl Diane Stickel

Stickel was admitted as an expert in the principles of ABA. She performed an observation of R.T. at school during sixth grade in December 2015. Stickel has worked for the District as a behaviorist since September 2014 and holds a master's degree in social work and a master's certificate in behavioral analysis. She is certified as a school social worker, attained her BCBA certificate in 2006, and has maintained a private practice since March 2006, which provides behavioral support for children and families. (See R-10.) As a District behaviorist, Stickel supports nine of the District's self-contained autism classrooms. Her primary responsibilities include performing FBAs; providing consults, strategies, and recommendations to teachers; performing parent-training clinics for parents who have a student in the self-contained autism program; and conducting requested observations. Stickel described that ABA is a broad body of science and the study of how to use effective methods to determine the function of a behavior and, once the function of behavior is determined, how to create, shape or eliminate behaviors using environmental contingencies. She uses ABA in her job as a District behaviorist and in her private practice. When Stickel is presented with an issue from a teacher, parent, or other staff regarding the need to create, shape, or extinguish a child's behavior, she first determines the function of the behavior (i.e., why

the behavior is occurring) using an FBA. Once the function of the behavior is determined, she will provide recommendations of ABA strategies to use to ameliorate the problem and train others on how to execute those strategies.

Stickel was requested by an administrator to perform an observation of R.T. at Woodrow Wilson. She was not directed on how to conduct her observation and no one attempted to influence her observations or recommendations. Stickel observed R.T. in his in-class-resource classes, self-contained autism classroom, homeroom, the lunchroom, the gym, and the hallways on December 16, 2015, and in the coffee shop on December 18, 2015. During her observations, she used two timers to take on-task data. She interviewed Rhodes, the behaviorist who provides services to that building, and Macchiaverna. She also did brief interviews with the special-education staff in the environment in which she observed R.T., the paraprofessional in the classroom who also supervises the lunchroom, and the physical-education (P.E.) teacher. Stickel prepared a report dated January 21, 2016, memorializing the results of her observations and interviews. (R-8.)

During her observation, R.T. independently walked into his homeroom, had a conversation with the teacher, made a positive social comment to a peer, and exhibited no maladaptive behavior. R.T. transitioned independently to his social-studies in-class-resource setting. Regarding social studies, Stickel reported that R.T.'s behavior presented as "typical"; he exhibited age-appropriate social, behavioral, and conversational skills with both peers and adults; and no disruptive behavior occurred that would impede R.T. or his peers from accessing academic instruction. R.T. was on-task and focused throughout the class and independently performed transitions and other routines. However, R.T. appeared to require a significant amount of supplementary academic assistance from the special-education teacher to effectively access the information presented. Stickel found that, with these intensive academic teacher supports, R.T. was successful, maintaining a 98 percent on-task rate with no maladaptive behavior manifesting.

R.T. independently transitioned to his self-contained classroom for English. Stickel explained that this class was running the ABA framework as designed for the District and included three different learning centers in the classroom: direct instruction by the special-education teacher with one to three students (center one); a review center that includes paraprofessional-assisted learning (center two); and an independent learning center where the student does activities on their own (center three). Stickel testified that R.T. entered in a “very positive bouncy way.” He did the routines required of students, greeted the teacher, went to a learning center, put up some partitions, got his computer out, and immediately began his activity without prompting. The teacher informed Stickel that R.T. tries to remove distractions when he is performing academic activities, and he made the choice himself to put up the partition to limit the distractions, which the teacher expressed was an appropriate behavior. R.T. had a 100 percent on-task rate in center two, a 95 percent on-task rate in center one, and a 62 percent on-task rate in center three. He exhibited one maladaptive behavior (interrupting the teacher) in center one and no maladaptive behavior in the other centers. Stickel reported that during this class R.T. presented as positive and calm, while exhibiting appropriate social, behavioral, communicative, independence, and problem-solving skills. When engaged in an academic group or computer activity, R.T. had high on-tasks rates. However, when given an independent paper-and-pencil task (i.e., worksheet), R.T.’s on-task rate dropped significantly. During these activities, R.T. remained on-task when a staff member was providing assistance. However, shortly after being left alone to complete the work, he would go off-task and sit silently. Once R.T. became aware of an impending transition to a preferred activity (dependent upon his completion), his on-task performance increased significantly. Stickel testified that when R.T. began his pencil-and-paper activity the rate of on-task performance was very low. The teacher prompted the activity, R.T. began the activity, and Stickel observed R.T. become distracted and off-task, usually just staring, soon after the teacher walked away. The teacher would then come back, prompt R.T., and he would go back on-task, and this went on back and forth for awhile. As lunch approached, and the teacher started prompting the preferred activity that was coming, it appeared to Stickel that the prompt of the motivator of going to lunch helped R.T. increase his on-task rate and focus to complete the activity. He was still off-task, but the rate of on-task

behavior increased, and the task was completed by lunchtime. R.T. had a 95 percent on-task rate when he was receiving direct teacher instruction from Macchiaverna, which decreased to 62 percent in the independent-learning center. Stickel reported that, during group activities, R.T. frequently attempted to assist his partner/peer with the activity in a “big brother/mentor manner.” He showed patience and tolerance with other students’ difficulties and he used appropriate problem solving while remaining physically calm when he was bothered by another student’s behavior.

R.T. independently transitioned to the school cafeteria for lunch. He sat at an assigned table with the three students from his self-contained class, along with a sixth-grade student who was new to the school. During lunch, R.T. had fifty-two social initiations towards other students and staff members, many of which resulted in full conversations with more typical peers, teachers supervising the lunchroom, and the sixth-grade student who sat at his table. Stickel reported that R.T. was very independent with all tasks and routines required of more typical students in the lunchroom, he frequently sought interaction, and his behavior was developmentally appropriate. She described R.T. during lunch as a “very happy,” “social,” and “well-integrated” student in the lunchroom.

After lunch, R.T. independently transitioned to his self-contained classroom for math, which was delivered in the same format as English. During math, R.T. had an 87 percent on-task rate and exhibited one maladaptive behavior (calling out an expletive, i.e., “son of a monorail”). Stickel reported that R.T. presented to have increased difficulty with the academic task, which had a direct impact on his on-task rate; in this format R.T. was more likely to express his difficulty and request assistance from the teacher; and his on-task rates appeared to be closely connected to his understanding of the material, as opposed to previous low on-task rates which appeared to be linked to the format of the activity (paper and pencil).

After math, R.T. transitioned independently to his in-class resource setting for science. Stickel reported that, similar to the social-studies inclusion classroom, R.T. showed to be very socially successful with peers, independent with routines, and have

typical on-task rates during group and hands-on activities. During independent seat-work assignments, R.T. required and received similar significant levels of one-on-one teacher assistance and, without staff attention, R.T. had high off-task rates with paper-and-pencil activities. R.T. showed high participation and compliance rates regarding teacher expectations. When he received a redirection for behavior (balloon noise), he immediately changed his behavior while maintaining a positive attitude. Although multiple students went off-task and seemed very bothered by a coughing student, R.T. presented as extremely agitated and was unable to engage in any work while the student engaged in the coughing behavior. However, while experiencing this agitated state, R.T. engaged in problem-solving behaviors such as covering his ears to dampen the noise input, asking to leave the room to get a drink, and expressing to the teacher what was bothering him. During this time, he did not exhibit any maladaptive behaviors and showed empathy and kindness to the offending student.

R.T. independently transitioned to P.E., which included general and special education students. Stickel observed R.T. for a portion of the class. She reported that R.T. independently went to his assigned spot and engaged in the expected tasks and he was fully engaged and focused on expected tasks, while appropriately socializing with peers. Although not reflected in her report, Stickel testified that she spoke to the P.E. teacher before and after the class, who relayed that he was not having any difficulties with R.T. in P.E.

On a separate day, Stickel observed R.T. in the coffee shop, which she described as a life-skills program. R.T. had a 100 percent on-task rate with no maladaptive behavior. Stickel reported that R.T. was very successful during his life-skills activities. He showed high proficiency in his tasks; he maintained focus on all activities; he was independent with all tasks inside and outside of the coffee shop; he needed little to no direct supervision; he maintained a positive attitude; and he engaged in appropriate social and on-task conversations. When faced with dilemmas, R.T. engaged in appropriate problem-solving behaviors, using language and social cues in an attempt to alter the circumstances. When he was unable to achieve his desired outcome, R.T. remained positive and continued meeting expectations. R.T. was also

observed to seek out social/nonverbal cues to help guide his behavior when unsure how to meet stated requests. Stickel testified that R.T. behaved even more appropriately than expected of a student in that setting because, unlike most of the other students, R.T. was not receiving direct supervision and he was performing the tasks independently.

During Stickel's interview with Rhodes, Rhodes relayed that R.T. is doing very well in his current programming, he has not had any reported maladaptive behaviors and he has not required any individual behavior interventions. Rhodes did not provide any type of reports or data collection to support that statement and Stickel did not know, and did not ask, how often Rhodes observes R.T. in his various classroom settings. Stickel reported that Rhodes also relayed that, new to the self-contained autism program, the parents now have access to the Parent Training Clinic Program.

During Stickel's interview with Macchiaverna, he described R.T. as the most social student with autism that he has ever met. When describing R.T.'s social interactions at the Menlo Park Mall during a community outing, he relayed that R.T. ordered for himself, initiated conversation with unfamiliar people, and was able to maintain conversations successfully. R.T. was also described as being very socially successful with peers. Macchiaverna reported that R.T. does not exhibit any maladaptive behaviors and described R.T. as respectful and compliant. He relayed that when R.T. gets overly frustrated with his work, he may "shut down," which was defined as going off-task and staring off into space. However, once a staff member initiates interaction with him, R.T. will immediately go back on-task, which Stickel observed during her observations. Stickel reported Macchiaverna's advice that this behavior has impeded R.T.'s ability to be independent with some types of academic activities. In these activities (i.e., worksheet), he will begin the assignment; however, he will stop working within a short period of time and remain quietly off-task until a staff member prompts him or helps him continue. Timers often help him stay on-task. Regarding R.T.'s academics, Macchiaverna identified language arts as R.T.'s strongest subject. The Moby Max program assessed R.T. at grade level 1.5 in September 2015 and he had progressed to grade level 2.1 by December. According to the Moby Max program,

R.T. was at a math grade level of 1.1 in September and at grade level 1.9 by December.

Stickel reported that, based upon her observations and interviews, overall R.T. showed himself to be a happy, well-adjusted student who is involved in his programmed activities, independent with all transitions/routines, compliant with teacher direction, and socially and behaviorally successful. Maladaptive behaviors were not reported by teachers or the behaviorist, nor were any maladaptive behaviors observed that were atypical for R.T.'s developmental age. R.T. showed to have high participation in his academic activities when learning in a group, one-on-one with a staff member, hands-on activities, during whole-group class instruction, and when engaged in computer-assisted learning. However, when R.T. is placed in an independent-seat-work condition and is required to perform a "paper-and-pencil" activity, he will quickly go off-task, which usually involves him sitting quietly and staring off into space or just looking around. He is least likely to request assistance in this condition. In addition, her observation revealed that, although R.T. showed to be socially and behaviorally successful in the inclusion classroom, the disparity in academic levels between R.T. and his peers required continuous one-to-one teacher assistance to restate, clarify, instruct, etc., throughout the academic period.

Stickel testified that none of the interviewed staff relayed that they had concerns regarding R.T.'s behavior or that R.T. demonstrated any behavioral difficulties. During her observations, Stickel did not observe R.T. be defiant to a teacher, throw a tantrum, or engage in any other inappropriate behavior. None of those concerns were expressed by the interviewed staff. The only concerns that the teachers expressed related to R.T. requiring a significant amount of assistance for his academic work and needing prompts or redirections under some conditions to remain on-task to complete work. Stickel observed R.T. to be inattentive at times under certain conditions; he was off-task when he was doing independent seat work, performing paper-and-pencil tasks, and doing a computer activity independently. Stickel opined that the prompts and responses by the teachers were effective, meaning that upon teacher prompt R.T. went back on-task 100 percent of the time. She observed two conditions when R.T.'s on-

task rate fell. First, R.T. would likely go off-task quickly in a pencil-and-paper situation once the adult left his presence and, when the adult came back to his presence and gave him a prompt, he would go right back and attempt to continue to do what he was supposed to do. Stickel stated that it appeared that R.T. was capable of doing the work because the teacher never provided more instruction and R.T. did not ask for more instruction. Second, Stickel observed off-task behavior when R.T. was actually struggling with a concept, and his off-task behavior, such as in math, appeared to be directly connected to his inability to perform the assignment. In that situation, R.T. expressed needing help, he accepted additional instruction from the teacher, and he was off-task because he did not understand something as opposed to being off-task in a paper-and-pencil condition, where it appeared as though that particular instructional condition incited more off-task behavior. She did not observe off-task behavior in situations involving hands-on activities, whole-group instruction, small-group instruction, or one-on-one instruction. Stickel observed R.T. engage in social interactions with his peers, which she described as “very positive” and “engaging.” He initiated multiple interactions with peers and received many interactions from peers that were “all very positive.” R.T. did not require adult assistance or direction to initiate social interactions with peers. No interviewed staff reported that R.T. had a problem with social interactions with peers or trouble socially interacting with adults. Stickel observed R.T. interact with adults and described these interactions as appropriate for a typical student. She observed R.T. in environments located in different parts of the school, with different classroom setups and different adults working with R.T. Across these environments, no concerns were expressed or observed regarding R.T.’s behavior. Based on her observations and interviews, Stickel opined that R.T. has the ability to behave appropriately in different environments based on the ABA principle of generalization, and she observed R.T. generalize appropriate behaviors across environments and working with different individuals. She further opined that R.T. is capable of independent work. Stickel noted that R.T. receives social-skills instruction as part of the self-contained autism program, and opined that he did not need a formal social-skills program.

Based on her observations, interviews, and experience, Stickel opined that R.T. did not require individual discrete-trial instruction to make social, behavioral, and academic progress. She testified that students in the District often will have discrete-trial instruction when they are not able to receive instruction in lesser restrictive formats (i.e., whole group or small group), and R.T. was able to receive instruction in those settings based on her observations. She further noted that discrete-trial instruction is a teaching methodology that is usually used for very young learners and not done in middle school. Stickel testified that ABA instruction will not fix or cure a student's off-task behaviors or inattentiveness. However, supports can be put in place, and environmental contingencies can be adjusted, to assist a child to be more attentive, such as having smaller student ratios with teachers. She did not agree with the statement in Glasberg's January 2015 report that "R.T. is in urgent need of behavior analytic services both at school and at home [and] R.T. will not be able to make any progress academically, socially or in terms of self-help life skills without skilled intervention to reduce interfering behaviors and build up academic and social skills." As of her school observations in December 2015, R.T. "was able to make progress socially and with skills and [she] did not see any interfering behaviors" preventing him from building up academic or social skills. Stickel testified that an individual does not have to be a BCBA to implement ABA techniques. Rather, ABA strategies and interventions can be executed by teachers, paraprofessionals, parents, and others who have never had any formal ABA education with the advice and instruction of someone who has developed the interventions specifically for that child. Macchiaverna is using ABA techniques in his classroom (e.g., high rates of reinforcement, a lot of structure) and is not providing discrete-trial instruction. Stickel did not believe R.T. required individual behavioral interventions. She stated that all of the interventions listed in his IEP are behavioral-support interventions that are typical of an ABA self-contained autism classroom. Based on her observations, she opined that R.T. did not need additional behavioral interventions beyond what was already being provided as part of his program. Stickel observed behavioral supports in place and testified as to the items listed in the IEP that she observed. She reviewed Macchiaverna's ClassDojo documentation, which did not indicate maladaptive behaviors of concern and therefore she did not document it in her report.

In preparing her January 21, 2016, report, the only document Stickel reviewed was R.T.'s then current IEP dated April 29, 2015. She did not observe R.T. working with his OT therapist, receiving individualized counseling, or involved in a social-skills lunch group. Stickel did not confer with R.T.'s case manager in fifth grade or with any District staff who participated in the development of the IEP. In preparing her report, she did not have access to Glasberg's January 2015 report, she did not confer with Fassilis, and she was not aware that Fassilis had evaluated R.T. in June 2014 until after her report was completed.

Stickel testified that "Rethink" and parent-training clinics are offered to parents of students who are in the self-contained autism classes. She agreed that R.T.'s IEP did not indicate that he would be in the self-contained autism program, and references the parents' availability to participate in "Rethink" and District parent-training clinics. Stickel testified that from her knowledge, if R.T. is receiving those services then he would be in the self-contained autism class, and she could not say why those services would be offered if he was not in that program. Stickel does not provide parent-training clinics for parents at Woodrow Wilson, except that she was involved in one group presentation with the other District behaviorists at Woodrow Wilson that addressed antecedent intervention and helping parents learn how to write social stories, which R.T.'s parents did not attend. Rhodes is assigned to Woodrow Wilson. Stickel testified that the training clinics are individualized for the family's needs and described matters addressed during the clinics. She did not have any personal involvement with the delivery of a parent-training clinic to R.T.'s parents and did not confer with Rhodes to determine whether a parent-training clinic has been individualized for R.T. and his parents. Stickel described the District's on-line "Rethink" program, including the various resources that it offers to parents.

Thomas Macchiaverna

Macchiaverna was admitted as an expert in special education. He has been employed by the District as a special-education teacher since September 2009, and he

worked with approximately five cases as an ABA home therapist for the District from April 2009 to 2012. Macchiaverna was R.T.'s teacher in sixth grade, and previously worked as one of his home therapists. He holds a master's degree in special education and certification as an elementary teacher (K-5), social-studies teacher, and teacher of students with disabilities (K-12). He serves on the Governor's Council for Medical Research and Treatment of Autism in New Jersey, and he established the coffee shop. (See R-11.)

During the 2015–16 school year, Macchiaverna taught an ABA self-contained program at Woodrow Wilson and was R.T.'s teacher for English and math, along with his homeroom teacher. In general, his classroom provides highly structured one-on-one attention to every student and positive reinforcement throughout the day. The way he implemented ABA in his classroom, and the type of reinforcement used, depended on the student. The ClassDojo covers the students' day and Macchiaverna could customize the system for individualized behaviors that he wanted a student to exhibit. The students had to earn a certain amount of points each week to, for example, work in the coffee shop or go on a class trip. Macchiaverna opined that it is a "good system" because once the students buy into the system they really rise to the occasion, work for green points, and fear the red point. R.T. immediately bought into the system. The coffee shop works on social and functional life skills. R.T. is at the highest-level station, making breakfast sandwiches, and did a "very good job." In addition to the coffee shop, social skills are embedded into most of Macchiaverna's lessons, and he attempts to find ways to get the students to communicate with each other. Regarding the community-based component of the program, the students are out in the community, learning how to talk to different people and experiencing different things. During these outings, Macchiaverna observed R.T. socially interact with other individuals; R.T. interacted "very appropriately"; and he was a "great model" for the other students.

Macchiaverna confirmed that during his interview by Stickel in December 2015, he described R.T. "as the most social student with autism that he has ever met," and reported that R.T. "does not exhibit any maladaptive behaviors" and was "respectful and compliant." Macchiaverna stands by those statements. Socially R.T. was like the "third

para” in his class; he was a “social butterfly” and a “leader” in the classroom; and he liked to take care of the less functioning students. Macchiaverna opined that R.T. has “some very good communication skills,” and he observed these skills outside of his classroom (e.g., in the hallway, walking to the bus, in the community). R.T. did well academically in his class, and most of the things that he was learning were on his level of functioning, which is lower than the typical sixth-grade student. A “big thing” they worked on with R.T. was being able to start and finish a task mostly independently. In the beginning of the year, R.T. struggled with starting and finishing a task and would rely on a lot of help. Through different reinforcements, R.T. made a lot of progress and was able to complete a list of tasks basically by himself by the end of the school year. Macchiaverna would have to come by every now and then just to redirect him if he lost attention. Macchiaverna supplied Stickel with the academic data set forth in her report for math and language as of December 21, 2015, which is from the MobyMax program. Macchiaverna could input a student’s IEP goals into that program and it basically creates an individualized curriculum for each child. He opined that the charts show that R.T. made “incredible progress” as of December 2015. R.T. did not demonstrate any sexual behaviors in his class. During the school year, he observed R.T.’s hand go under his desk in the area of his genitals on one to three occasions. This type of behavior by a pubescent autistic child, who has less social awareness, was not surprising to Macchiaverna.

Macchiaverna confirmed that he reported to Stickel, “When [R.T.] gets overly frustrated with his work, he may ‘shut down,’ which was defined as going off task and staring off into space,” but “once a staff member initiates interaction with him, he will immediately go back on task.” He stands by that statement. The frequency of R.T. shutting down or staring into space would depend on the task he was doing, and he could go off-task in any given day, but it was not always consistent. In the beginning of the year, R.T. definitely needed more one-on-one attention. By December into January/February, R.T. started getting all of his reading lessons done on his own. Macchiaverna estimated that in or around October he would have to address R.T.’s inattentiveness probably two to three times in a forty-minute lesson, depending on how hard the lesson was. As of April/May, he would need to address R.T.’s inattentiveness

on average once, if at all, during the same forty-minute lesson. R.T. could be easily redirected. To address R.T.'s inattentiveness, Macchiaverna would get R.T. to refocus by tapping into something he likes such as offering him iPad time or the ability to watch a football video. He did not consider R.T.'s shutting down and inattentiveness to be a maladaptive behavior. He explained that being off-task from time to time is expected in a self-contained autism class and the nature of the students who he works with. During the 2015–16 school year, Macchiaverna observed R.T. generalize skills across environments (i.e., in school, in the community). R.T. was able to carry over the skills he learned in the coffee shop into the academic portion of his program, apply life skills to his academics, and generalize those skills in community settings during the class trips.

In preparing to have R.T. in his class in September 2015, Macchiaverna did not speak with R.T.'s special-education and general-education teachers or his speech therapist in fifth grade. No staff from Menlo Park met or called him to discuss R.T.'s special-education program before the start of the school year. Prior to September 2015 he did not speak to Fassilis, but “briefly” reviewed and “definitely skimmed” the FBA prepared by her in June 2014. He did not review Glasberg's January 2015 report. Macchiaverna is sent information on the new students entering the program; he received work samples and documentation from R.T.'s prior year which he reviewed; it is not unusual for him not to speak to a student's prior year's teachers; and he had no questions about R.T.'s work samples or information resulting in the need to speak to his prior teachers. According to Macchiaverna, other than R.T.'s 2015–16 IEP listing the incorrect school and his program for math and language as pull-out resource rather than his self-contained class, Macchiaverna implemented the IEP as written. He did not attend the April 29, 2015, IEP meeting; he had no personal knowledge of the issues discussed; he was not told that the parents had been requesting that home programming and parent-training services be reinstated in R.T.'s IEPs since September 2013; and he was not aware that this programming was an issue at the April 29, 2015, IEP meeting. Macchiaverna did not participate in an IEP meeting in September 2015 to revise R.T.'s IEP to reflect the change in the school and R.T.'s program for math and language arts. He was not asked to rewrite the goals and

objectives for his self-contained autism class for language arts and math, and the goals and objectives that he was implementing were the goals and objectives that were developed for the resource center pull-out class at Herbert Hoover. Macchiaverna acknowledged that there is a difference between a resource center pull-out class and a self-contained autism class. According to Macchiaverna, goals and objective are individualized for a student; a student can have goals and objectives regardless of the placement; and he implemented the goals and objectives in R.T.'s IEP even though it said resource pull-out. During the 2015–16 school year, he did not observe R.T. in his regular-education social-studies or science classes. R.T. did not attend a pull-out social-skills group that year, which Macchiaverna did not believe R.T. needed.

Macchiaverna did not have any interaction with R.T. in his home environment during the 2015–16 school year. To the best of his recollection, he worked with R.T. in the home environment during the 2011–12 school year. He later agreed that the June 11, 2011, IEP did not reflect that R.T. would be receiving home programming services for the 2011–12 school year, and his testimony regarding the year he provided services was an “educated guess.” Macchiaverna estimated that he worked with R.T. at least two hours per week for less than one academic year. He worked on numerous things with R.T. and went on trips in the community with R.T. and Mrs. T. Macchiaverna did not work on academic skills. His services included a parent-training component, and he believed that parental involvement and parental training was an important part of the home programming. According to Macchiaverna, he was the home provider during the last year of R.T.'s home program. He was not asked if the District should discontinue R.T.'s home program, but did not disagree with the IEP team's decision. After the termination of the program, the parents offered to hire him privately to continue to work with R.T.

At the time of his testimony, Macchiaverna was a member of R.T.'s IEP team as his special-education teacher. He would not recommend a home program for R.T. Macchiaverna articulated his belief that it was time for R.T. to take responsibility for the things that he needed to be responsible for; he is capable of taking care of those responsibilities; and he would be capable of getting what he needs to get done for

school if he had a solid routine that could consist of forty-five minutes to an hour every day when he gets home from school. He described that students must be taught to do skills independently for them to reach their greatest potential. In his opinion, R.T. is currently able to do age-appropriate skills independently. He agreed that it is absolutely and critically important for R.T. to generalize the skills that he is learning in his self-contained class, including academic, social, and behavioral skills, in the home setting and in the community setting when he is with his family. Macchiaverna had not observed R.T. at home during the 2015–16 school year; he could not state whether R.T. is generalizing the social and behavioral skills that he is learning in the classroom in the home setting; and he did not know whether R.T. engages in maladaptive behaviors at home or when he is in the community with his family. He opined that R.T. was capable of generalizing those skills in all areas, but acknowledged that he did not know whether it was occurring at the home. Macchiaverna agreed that a problem exists if a student is not generalizing at home the social, behavioral, and academic skills that the student is learning in school. During the 2015–16 school year, the parents did not express to him a need for help with R.T. at home. Macchiaverna described various programs or services available through his classroom and the District to assist parents who need help (e.g., “Rethink,” access to his programs on the internet, tutorials, parent workshops).

Mrs. T.

Mrs. T. did not recall any discussion at the June 10, 2011, IEP meeting as to why R.T.’s ABA services were being terminated and the parents strongly disagreed with that decision. Both had verbally told the parents that R.T.’s ABA services were being discontinued and basically said “it was a done deal” and R.T. is “doing fine.” Mrs. T. did not remember seeing any reports or evaluations that Both relied on. Both did not ever come to the home to observe R.T. or the parent training. Mrs. T. described that R.T.’s behaviors “fluctuate,” meaning that even if a behavior is worked on and put to rest, another behavior replaces that one and it is an “ongoing process.” She stated that R.T.’s behaviors are an “ongoing issue”; he is “always having some kind of behavior, but they do change, and they do have . . . peaks and valleys”; and “[s]ometimes they’re

at a high rate, and sometimes it's at a lower rate, but they're never non-existent." R.T.'s behavioral and academic issues continued after the District terminated his services in 2011, and in the fall of 2013 R.T.'s behaviors were to some degree worse than when he was receiving home programming from the District. Mrs. T. testified that she signed the consent form in December 2013 to waive the triennial reevaluation process because "[a]t the time I didn't know not to sign it [and] . . . didn't know what our rights were," and she was relying on the recommendation of the CST.

Mrs. T. confirmed the accuracy of the reason for the referral, and the accuracy of the information that she reported to Glasberg, as set forth in Glasberg's January 2015 report. Between the fall of 2013 and December 2014, R.T. "had been displaying a lot of stereotypic behaviors, repetitive, bouncing a ball, holding a bracelet in his hand and shaking it back and forth, outbursts, not being able to deal with transition or at times not following instruction or direction, having meltdowns, both physical outbursts and so to speak having a tantrum . . . and getting very vocal and angry and aggressive." Mrs. T. shared with Glasberg that homework completion was a big challenge at home. Mrs. T. has two other children, who were one year behind R.T., and R.T.'s homework issues were different than those of a typical student. Mrs. T. would work on homework with R.T. at the kitchen table, and at times homework could take hours. A fifteen-minute homework assignment could take anywhere from forty-five minutes up to three hours depending on R.T.'s behavior that day. Mrs. T. agreed with Glasberg's recommendations.

Prior to the April 29, 2015, IEP meeting, the parents did not receive a draft IEP and case manager Brennessel did not advise that R.T. would be recommended to attend Herbert Hoover. The parents were "blindsided" at the meeting and very opposed to sending R.T. to a middle school that was not his home school. The parents were concerned that R.T., with his "social setbacks," would "go to a school where he did not know any of the students, as opposed to going with all of the children that he had been in attendance with for the last five years" at Menlo Park, and R.T. would not be at the same middle school as his siblings the next year, who were very supportive of R.T. At the meeting, Fassilis did not go over her report in any detail. The IEP team members

did not go through Glasberg's report thoroughly and did not indicate what recommendations they either accepted or rejected in her report.

The parents requested a follow-up report by Glasberg's firm because R.T. was still displaying certain behaviors for which the parents needed recommendations. The behaviors included homework completion, life skills/personal hygiene, and social interactions with peers and family members. During the year between Glasberg's January 2015 report and Heyman's March 2016 report, R.T. still engaged in the same type of sexualized behaviors that he displayed the prior year and these behaviors had increased in that one-year period. Other behaviors that were reported or observed by Glasberg were still present. She informed Heyman of issues with R.T. brushing his teeth and getting him out of bed for school, both of which continued to be issues as of her testimony. The District was given a copy of Heyman's report and did not schedule a meeting to review the report.

Mrs. T. described that she uses a form of ABA in the home. She uses positive reinforcement for good and appropriate behavior, both verbally and using a reward. She uses positive reinforcement to get R.T. through simple tasks and a "reward system for when good behavior is shown" (e.g., extra computer time). Mrs. T. stated that the reward is "sometimes" effective, and that "there are so many techniques and tools that [she has] . . . to revert back to on a daily basis if [R.T. is] having a bad day." R.T. will comply with the demand because the reinforcement is effective about 50 percent of the time. The other 50 percent of the time "can turn into a meltdown" or a "physical outburst." He can become physical and dangerous to himself and to others and he has at times thrown a glass to the floor and pushed a chair down. Most recently, R.T. tried to hurt Mrs. T. when he did not like what she told him. His siblings know to go to a "safe room" in the house when R.T. is at that level. In the past, Mrs. T. had used a token board. She no longer uses a token board because R.T. "basically aged out of it." R.T. can understand a conversation, what is at stake, what is expected of him, and the consequences if he does not do the things that are expected of him (i.e., he does not earn the positive reinforcement). The reinforcement system that the parents use in the home with R.T. stems from before Saylor. Balestrieri from Above and Beyond gave the

parents training tools and techniques in how to deal with different situations and introduced the token reward system. The token reward system stopped during the period when the District was providing home services. The District teachers sent to the home to provide the services did not use a token board. Mrs. T. did not believe that the District ever sent a BCBA to the home for R.T.'s services.

Saylor has been working with R.T. through the District and then by the parents for at least eight years. Saylor provides home services for R.T. and training for the parents "with the many different obstacles that [they] face with R.T." Saylor "gives [the parents] guidance and support and different ways of approaching his different challenges." In September 2015, when R.T. was in sixth grade, Saylor came to the home two to three times a week for a total of six to eight hours weekly. If it was an eight-hour week, Mrs. T. estimated that Saylor would work with R.T. on average for approximately six hours and the other two hours would be parent training and community-based training. During the hours that Saylor worked with R.T., she did academic work on a one-to-one basis to help support what he was doing in school and to try to keep him at grade level. They would also write their own social stories for different instances. Saylor did not work on homework. They had been working with a reading program that is not used by the District and Saylor pulled her own resources. Mrs. T. stated that she does not employ Saylor as a tutor, and homework is an issue because of R.T.'s behaviors. When Saylor worked with R.T. on the reading program, they sat at the kitchen table and Mrs. T. would listen "to pick up cues" that Saylor was giving R.T. "so that [she] can remember for when [she] need[s] to work with him [and she] can use similar approaches." Mrs. T. described that Saylor was a special-education teacher prior to becoming an ABA therapist. She is aware that Saylor holds a degree from the Caldwell College, a program certified in ABA therapy, but did not know the degrees she held. Mrs. T. did not know if Saylor was documenting outbursts or tantrums, but noted that she is "always very close in proximity" and "can hear what's going on" and they can talk about it at the end of the session or during a break. Approximately one hour a week was devoted to parent training, which could vary depending on R.T.'s behaviors. If R.T. is having a tough time at school or the behaviors are more apparent at home, more time is spent discussing and trying to give the

parents tools and techniques to help R.T. If Mrs. T. needs to spend more time on certain circumstances, Saylor will work with her, and Saylor's time would be more parent training to give Mrs. T. "guidance on how to approach certain behaviors or outbursts." Saylor provided "different tools in helping R.T. help himself with personal hygiene." She initially gave a step-by-step picture schedule for showering. The schedule is now step-by-step instructions in words, which are posted in the bathroom. Mrs. T. will at times refer to them during showering. Saylor will also go with R.T. and Mrs. T. into the community. For example, they would go to the library to facilitate how to behave in the library, choose a book, and check out a book, or to a restaurant to facilitate how to sit down and place an order. Regarding the statement in Glasberg's report that Saylor "comes roughly once a week to help him with academics," Mrs. T. disagreed that Saylor came once a week, stating that she comes several hours a week, but indicated that "it could have been very academic driven" at that time. Regarding the statement in Heyman's report that Saylor "sees R.T. twice a week for two hours each session," Mrs. T. stated that it might have been two hours at that time, she would have to check her calendar, and the number of hours could have been due to scheduling or an average for the month.

Mrs. T. described that she is looking for the District to reinstate R.T.'s home ABA services and parent training and provide a social-skills class. She testified that the services the District had provided was a "support" to R.T. and the family. It provided the parents with "ways of dealing and helping R.T. when he was having challenges, whether they be academic, behavioral, social, [and] to also act as a . . . bridge so that . . . what's being followed at school is the same way we follow things at home." She described that R.T. has "many behavioral issues," he exhibits "inappropriate" behaviors and he needs "help working through stresses and aggravations." At times R.T. "becomes very aggressive, lashes out . . . [and] gets physical." He has "lashed out" at Mrs. T., his grandmother and his siblings. He has "very good days and he has very bad days." R.T. "needs support in getting through these challenges" and he needs support when it comes to asking him to do, for example, his homework. Mrs. T. explained that she does not "need a tutor to help him with the academic component, [b]ut somebody to help through the behaviors that come with the demand of getting his homework

done.” Mrs. T. stated that she is “not an expert,” but a mother, and she has “learned” and has “been given techniques . . . but every day is a new day [a]nd as he grows older, new issues arise.” These are the types of supports that the family is receiving from Saylor, who works with R.T. on his behaviors and personal hygiene and works with Mrs. T. in “guiding [her] on some techniques that can be used to help get through” his behaviors. Saylor worked on similar issues when she came to the home through the District.

Regarding the parent-training clinics during the 2015–16 school year when R.T. was in sixth grade, Mrs. T. believed there were five clinics, one of which she did not attend. She compared the clinics that she attended to the home services that the District had provided. The home program was specifically designed for R.T., and Mrs. T. learned more, noting that a lot of the clinics were just observations of R.T. in his environment (e.g., in the coffee shop). Mrs. T. was informed what “Rethink” offers and believed the October 22, 2015, parent clinic introduced the “Rethink” program that was available to the parents as a resource. She could not state for certain that it was discussed at that clinic, but did recall attending something on “Rethink.” Mrs. T. did not recall “Rethink” being discussed at the April 2015 IEP meeting. She did not believe that “Rethink” was ever offered before the April 29, 2015, meeting; that Fassilis discussed “Rethink” at that meeting or the September 2014 meeting; or that Fassilis attempted to show her how to access “Rethink” during her home observation. The recommendations in Fassilis’ report do not mention “Rethink.”

Beth Glasberg-Katz

Glasberg was admitted as an expert in the field of autism with a concentration in developing educational programs for, and evaluating the needs of, students on the autism spectrum. She has been a BCBA for approximately seventeen years and holds a doctoral-level BCBA certification. Glasberg has doctorate and master’s degrees in clinical psychology and is certified as a supervisor-level BCBA and a continuing-education provider for the Behavior Analyst Certification Board. She is the director of Glasberg Behavior Consulting Services. Among other positions, Glasberg previously

served as an assistant professor and coordinator at Rider University, where she headed up its master's program in applied behavior analysis; as a senior educational specialist at SUNY at Stonybrook in its Cody Center for Individuals with Autism and Developmental Disabilities; as a consultant with the Douglas Developmental Disabilities Center; and as the director of clinical services at the New Jersey Center for Outreach and Services for the Autism Community, now known as Autism New Jersey. She has authored/coauthored three books: "Functional Behavioral Assessment for People with Autism Spectrum Disorders: Making Sense of Seemingly Senseless Behaviors," which focuses on the assessment process; "Stop that Seemingly Senseless Behavior: Functionally Based Interventions for People with Autism," which addresses the interventions that can be used; and "Siblings of Children with Autism: A Guide for Families, Third Edition." She has provided consultation and ABA home-based services and parent training to families and public school districts, including working with a student from the District. (See P-2.)

Glasberg described the methodology of ABA therapy as "using a scientific approach for behavior change," and by "scientific" she means "you want to measure what you're doing and track it and follow to make sure that what you're doing is effective and respond to your measurements so that if what you're doing is working, great, keep doing it, and if it's not working, you want to change what you're doing." To be ABA, it must "be based upon the principles of behavior and learning." Glasberg explained that there "are some basic principles that are empirically sound that we would base our interventions upon, and then also you have to be addressing what we call 'socially significant behavior,'" meaning that "it has to be addressing a behavior that's going to make a meaningful difference in the learner's life . . . [and] something that is going to make them have greater exposure to reinforcing or positive events and to avoid aversive experiences." An FBA "is a set of procedures used to derive the communicative function or the relationship between the behavior and the environmental variables," and the goal of an FBA is to find the function of a behavior. Glasberg explained that "the reason for the functional assessment is to form the behavior intervention plan, because if you create a behavior intervention plan without a functional assessment, you could inadvertently risk making the behavior worse rather than

improving it.” The “assessment gives you the information that you need to plan an effective intervention.” “[T]he demands of a person’s environment dictate what interventions are needed, because everybody has a different environment.” Glasberg described the concept of generalization and the need for a student to be able to perform a skill acquired in school “in different environments with noise or different people asking and different wording, or it hasn’t been a meaningful behavior change.” Educating a student how to generalize skills across environments is clinically appropriate. Glasberg stated that it is “not ABA, if you’re not doing that,” “learning is behavior change,” and “if you’re not doing generalization, you’re not meeting the definition.”

The parents contacted Glasberg in the fall of 2014 due to a number of challenging behaviors that R.T. was exhibiting at home. According to the referral in Glasberg’s report, these “behaviors reportedly interfere with homework completion for [R.T.] as well as that of his siblings” and “present risk to family members.” Glasberg observed R.T. at school and at home on December 9, 2014, and prepared a report regarding her assessment. (P-40.) As part of her assessment, Glasberg reviewed R.T.’s December 2013 IEP; Fassilis’ June 2014 FBA; the educational, speech/language, and psychological evaluations in 2011; and a 2010 developmental behavioral pediatric evaluation. She was aware that the District had provided home-based ABA services for approximately five years and did not see in the reports the reason why R.T.’s services were discontinued. The parents expressed concern about the discontinuation of the services and did not seem to know the reason why they were terminated. Glasberg testified that an FBA should be conducted prior to the implementation of home programming services/parent training, and a reduction or termination of those services “would require . . . data showing that the original problem behaviors are gone” and the behaviors met the established criterion.

Regarding Fassilis’ report, although Glasberg had no reason to believe that Fassilis’ scoring of the Direct Observation Form was incorrect, she found that her summary of the results “seemed inconsistent with the amount of redirection” to task noted in Fassilis’ report. Glasberg further found that Fassilis made “recommendations

for the home that didn't match what was in place in school," and Glasberg "wasn't sure why they were different." Glasberg reported that, although the summary in Fassilis' report "indicated that the practices in place at school were effective, different strategies were recommended for the home." For example, multiple vocal prompts were used at school to keep R.T. on-task, and Fassilis recommended one vocal prompt followed by non-vocal prompts at home, and school was responding to silly behavior and slouching with multiple vocal prompts, but Fassilis recommended ignoring the behavior at home. The summary in Fassilis' report states that R.T. is not exhibiting any behavioral difficulties in the classroom and he is able to function appropriately and learn. Glasberg noted that, while Fassilis may be focusing on disruptive behaviors when stating this conclusion, her report described the need for a lot of prompting to stay on-task. Glasberg testified that the "recommendations that the behaviorist is making seem reasonable," but opined that "somebody needs to train the parent in these issues," and "it would be hard for a parent to read it and know how to do it."

Glasberg observed R.T. in the general-education classroom during lunch and recess; a general-education classroom for math for approximately fifteen minutes; and a pull-out special-education classroom for an extended math period. Brennessel accompanied Glasberg on her school observation. Glasberg was not permitted to ask the teachers questions and was told that she could present questions in writing to Brennessel for R.T.'s special-education teacher, Ms. Hamilton (Hamilton). Brennessel informed her that school-wide positive behavioral supports were not yet fully in place, but some strategies had begun to be implemented this year as a response to the direction of a new administration member. Brennessel also advised that she personally offers social-skill intervention for R.T. through a weekly group of five students who all have social-skill challenges. Regarding her observation at school, Glasberg testified:

[T]he thing that I remember the most from that day was it was difficult to watch, to be honest with you [T]he kids were not very nice to [R.T.], and the teachers didn't intervene, and . . . Brennessel shared that it wasn't her role, . . . but I think she agreed She also saw the same things I saw, which was good that we were together [R.T.] would initiate to kids, and they would turn their back, they would ignore him, they wouldn't respond to him

He would be pleading with them, "Please stop ignoring me." It was everybody It was every kid he initiated to, and he would be pleading with them, "Please stop ignoring me. Please talk to me." And then when they ignored him, he would do like some hand play. It was upsetting to watch, and he . . . would sort of stim a little bit. That's when the hand motions came out, was after kids would ignore him, and that was during lunch and recess.

Glasberg observed R.T. during lunch and recess; both were held in the general-education classroom. Due to the weather, outdoor recess was cancelled. Glasberg did not notice a distinction between recess and lunch. According to her report, the classroom included approximately twenty-four students and a lunch aide, who remained at a desk in the front of the room and was not observed to interact with the students other than an occasional greeting. Glasberg collected data during a randomly selected five-minute period regarding whether R.T. was "on-task" (defined as either eating lunch, interacting appropriately with peers, or appropriately carrying out tasks related to lunch such as throwing garbage away) or "off-task" (other behavior). Peer-comparison data was also collected. Both R.T. and the peer were on-task 100 percent of the intervals. Glasberg collected data during a second randomly selected five-minute period regarding social interaction. R.T. interacted with students 40 percent of intervals while the peer interacted 100 percent of the intervals. In addition, 30 percent of R.T.'s interactions "were initiating to kids who were ignoring him [s]o they weren't successful interactions." R.T. had 10 percent of the intervals with successful interactions and the peer had 100 percent. Between 12:20 p.m. and 12:48 p.m., R.T. initiated to peers using appropriate language at least fifteen times (fifteen instances were observed and recorded, but because Glasberg spoke to Brennessel very briefly additional initiations may have been missed). His appropriate initiations ranged from, "What are you guys doing?" or "Did you see 'America's Funniest Home Videos'?" to pleading not to be ignored, e.g., "Can I please hang out with you guys? Please, please answer me!" Of those fifteen appropriate initiations, peers responded twice; on one occasion R.T. asked if a peer was leaving and the peer replied, "yes." Although R.T. approached multiple students, each student ignored him. R.T. was observed to engage in hand waving and noncontextual vocals on five occasions, each preceded by a pleading initiation that had been ignored.

Glasberg had asked for a peer for purposes of obtaining a normative sample and believed that it is “really important to get normative comparison data.” She relayed to Brennessel that she did not want the peer to be the best- or the worst-behaved student, but a typically behaved student, and a boy was nominated by Ms. Price (Price) through Brennessel. After Glasberg collected data at lunch/recess, she was “disappointed” to learn that the other student was a special-education student because she “would have liked [R.T.] to achieve typical,” and that is what she was “trying to compare him against for that room, which was filled with typically developing kids.” Glasberg testified that, although R.T. initiated to peers, “the part that he failed on was recognizing who to initiate to,” and R.T. was aware that he was not being received. Some of the fifteen instances were to two boys who R.T. later identified to Glasberg as his best friends, and “those kids were horrible to him.” R.T. “really had trouble determining who his friends were.” The fifteen instances involved “multiple students” and “different groups of kids throughout the room.” They all ignored him, and it was not “uncommon” for a student to turn their back to R.T. when he approached them. Glasberg did not know whether those students had disabilities or social issues of their own, but noted that it was a general-education class and she would assume that the bulk of the students were general-education students.

After lunch, Glasberg observed R.T. in a general-education math lesson. A group lesson in math was initiated and led by Hamilton, which involved a minute or two of large-group directions followed by independent work. During a randomly selected five-minute period of the lesson, Glasberg collected data indicating whether R.T. and a peer were “on-task” (defined as oriented toward task or instructor, either silently facing teacher if lecturing or actively completing work on worksheet) or “off-task” (other behavior). R.T. was on-task 0 percent of the time; the peer was on-task 100 percent; R.T. did not complete any of the assignment (i.e., a work sheet); and he was given general redirection (e.g., “Get Started”) on three occasions. After the worksheet, Price did a brief math lesson and R.T. attended to the group instruction. Both R.T. and the peer attended 100 percent of the time. No individual praise or redirection was offered to R.T., but group praise and neutral redirection (e.g., turn your books to a certain page)

was offered four times each. During the five minutes, R.T. had seven group-based opportunities to respond and one individual opportunity (e.g., he was called on and answered correctly). Price then initiated a clock exercise on the board. She pulled a number for a student to complete the activity. She asked, “Who is 21?” A peer replied that it was R.T.’s number. A collective giggle ran through the room. A student said something that Glasberg and Brennessel could not hear, and Price laughed. A student called out, “Go [R.],” and R.T. was asked to put the time on a clock on the board. Glasberg testified that this “was a strange interaction.” The students laughed when R.T. was called on, a student made a comment, the teacher laughed, and the students cheered for him and did not cheer for other students.

R.T. then went to the pull-out math group, which started with four students and one teacher and increased to five students. A computer-based fluency drill was initiated first, and Hamilton encouraged the students to try to beat their best score. Each student called out their score and expressed excitement about beating the score. R.T. actively participated in this conversation and peers responded to his comments appropriately. During a randomly selected five-minute period including the fluency-based activity and the instruction and discussion of scores leading up to this activity, Glasberg collected data as to whether R.T. and a peer were on-task, and both were on-task 100 percent. Students were then called to work 1:1 with Hamilton to review homework. R.T. worked with Hamilton for seven minutes, during which he had twenty-two opportunities to respond. He was on-task 100 percent of the time. Although R.T. was on-task, he required prompting to get the correct response for four out of five (80 percent) of the questions presented. The next two students to check homework spent only two minutes with Hamilton, reviewing only three questions each. One student had 100 percent correct responses and the other had two out of three correct. From 1:37 p.m. to 1:52 p.m., R.T. was expected to work independently on the computer while Hamilton met with other students. He was supposed to watch a video on his computer and then complete math problems. He completed zero work during this period. He spent the majority of the time watching a classmate’s computer and spent the final three minutes of the activity playing with his hands (walking them on one another). During this fifteen minutes, Hamilton twice called to R.T. (e.g., “I see you there” or “Are

you okay?") He responded "yes" but did not return to task. The group instruction then began again. When the teacher asked the students to put away their Chromebooks, R.T. complied but engaged in a noncontextual vocal and a stomp while walking back to the desk. The group then worked in pairs to solve math problems based on rolling the dice. Each student was given a white board and a marker. When R.T.'s board was missing a marker, the peer said, "[R.] needs a marker." While working together, the two students laughed together often (e.g., after R.T. would make a fake sneeze), and she helped R.T. with his work (every equation). When Hamilton asked them to stop for a coding activity, R.T. said, "But we are having so much fun." Glasberg testified that special-education class had "a much more positive feeling" and "positive culture" than the other classroom. The students "were kind to each other," "they worked together," the teacher "praised" the students, and R.T. "did really well" during the period that he worked with a "buddy."

Hamilton reported that R.T. is showing improvement in her classroom utilizing the current systems that she has in place. Particular areas that she reported as in need of improvement included "frustration" (which she defined as "inattention, staring into space, or saying 'I don't get It'") and "inattention" (which she linked with "staring into space"). Hamilton described the interventions currently in place in her classroom as offering breaks, structure, routine, and consistent expectations. She described breaks as standing up to get some water or standing by his desk. Glasberg noted that this was not observed during her hour-and-a-half observation. Hamilton reportedly had in place a general reward system for the entire class, which Glasberg also did not observe. The teacher described the period of the observation as typical. Regarding the teacher's advice about R.T. showing improvement, Glasberg did not recall seeing data and stated, "[u]sually, you would measure that."

Glasberg conducted a home observation after her observation at school. She interviewed Mrs. T. and the siblings. At home, R.T. "had a lot of difficult behaviors, both reported and observed," and the siblings "had some difficult experiences with him." Aggression was reported and the siblings were worried for their safety. The brother relayed that he has been slapped and punched by R.T. The sister expressed

frustration with R.T. being too loud, having meltdowns in public, and interfering when friends came over. The sister explained that she can't really tell him "no" about anything or he will have a meltdown. The siblings "were very emotionally upset about the kinds of social things they saw at school." They had seen and reported "similar things that [Glasberg] saw in class about how [R.T.] is treated" by classmates. The sister reported that she had gone to the guidance counselor about it at one point and the brother had his friends look out for R.T. Mrs. T. relayed that homework completion is the biggest challenge at home. She "shared that homework completion was a big source of anxiety for her, because she's aware that he's not getting his homework done, and so . . . that makes things worse." Glasberg reported Mrs. T.'s advice that R.T. will grow dangerous when pushed to complete assignments, including dropping or throwing glasses or punching siblings. He may also punch his brother if he does not like the outcome of a game. He may have a "meltdown" if he does not "get his way" including yelling, hand-flapping, and loud laughing or burping. Mrs. T. relayed an example of R.T.'s refusal to get on a train at Penn Station in New York because it was not a double-decker train, and it was "a big scene out in public." Mrs. T. reported that R.T. insists on bouncing a ball constantly in the house and becomes agitated if it is taken away. He also refuses to brush his own hair or teeth, to shower independently, or to put deodorant on. R.T. frequently puts his hands in his pants in public. These behaviors keep them from eating at various restaurants (he has a meltdown if they go to a restaurant he does not prefer), and from having friends over for the kids (other than those that know the family well). When Glasberg spoke to R.T., he did not grasp these concerns. When asked what he most needed help with, he answered, "writing in cursive." He became agitated when Mrs. T. expressed concerns about behaviors in front of him (e.g., asking him to share how he feels about showering) and demonstrated this agitation by repeatedly forcing his hand over her mouth and yelling to stop telling Glasberg things.

During her observation, R.T. was "very difficult to redirect" and his behavior was "difficult." During free time, R.T. was observed to mostly play video games with his brother. As R.T. spoke to his mother for one reason or another, she consistently demanded he follow household rules (e.g., eye contact, asking for things himself,

saying excuse me after a burp, etc.). Mrs. T. also consistently praised R.T. for appropriate responses (e.g., thank you for coming when I called you). R.T. bounced a specific ball at each moment that he was not playing a video game. Glasberg asked Mrs. T. to have R.T. give her the ball. Mrs. T. had previously reported to Glasberg that R.T. would have a meltdown. Glasberg wanted to confirm the report to see if it happens and to see how Mrs. T. responds because part of the functional assessment is to look at the consequence. In response to Mrs. T.'s request for the ball, R.T. bit his hand twice; hit his head; threw cups and a board game; referred to himself as "a weird kid"; and threatened to punch himself. The episode lasted approximately five minutes, after which his behavior stopped and R.T. laid silently on the couch. After approximately two minutes, Glasberg instructed Mrs. T. that she could return the ball. She could not recall whether R.T. had handed the ball to Mrs. T., or had thrown the ball at Mrs. T., or she had taken the ball. After the ball incident, Glasberg asked to see homework completion. Mrs. T. called R.T. over to start. After twenty-six minutes, R.T. had glanced once at his work from a distance, but still had not started his homework. During this period, R.T. was walking around the room and glanced at the page while walking by; he yelled repeated protests about the homework; and he twisted the skin on Mrs. T.'s arm. He apologized to Glasberg for yelling at his mother in front of her but continued yelling at her. During this twenty-six minutes, R.T. also put his hand down his pants twice until redirected by Mrs. T. not to do that in public. Mrs. T. offered that homework would be quick; she tried counting down, setting a timer, and offering Xbox as a reward. Mrs. T.'s verbal prompts, visual prompt, and offer of a reward failed to lead to R.T. starting his homework. To assess whether these behaviors might be occurring due to the difficulty of the task, Glasberg modified the task, "made the work easier," and created a simpler version of the questions on the sheet (e.g., one-digit rather than two-digit subtraction). She told R.T. that she had made him a new sheet, he looked at the sheet, and he completed it correctly within one minute. For language-arts homework, Glasberg offered to scribe for R.T. He immediately completed the sheet, requiring support via helping him sound out words and correcting his spelling, as well as using Google to look up the plurals of certain words. At the end of the language-arts homework, R.T. again had his hands in his pants and was redirected by Mrs. T.

Glasberg had a telephone conversation with Saylor, and was aware that Saylor previously worked on behalf of the District providing a home program to R.T. Saylor relayed that she came out roughly once a week to help R.T. with academics. She reported that R.T. requires more ABA services in order to make gains in his academics and to improve social skills. Glasberg asked Saylor how she was getting R.T. to do homework, because he was avoiding work at school and was difficult with his mother. Saylor relayed that behavior problems had previously been much more significant for her, but she has implemented a variety of interventions since she began working with R.T. when he was five years old. These strategies have included the use of a token system, social stories, and self-management programs. She currently works with him around building reading fluency. Current strategies she uses are providing antecedent choice (of what to read), goal setting (use of a timer with the aim to beat a certain score), and attention for on-task behavior, along with very structured sessions. During her observation, Glasberg did not observe these strategies being used by Mrs. T. Glasberg was not aware of what training the parents may have received, including whether Saylor was providing parent training.

Based upon her data collection, observations, and interviews, Glasberg opined that R.T. is in urgent need of behavior-analytic services both at home and in school, and he will not be able to make any progress academically, socially, or in terms of self-help/life skills without skilled intervention to reduce interfering behaviors and build up academic and social skills. According to her report, of particular concern is the sexualized behavior, which might be frightening to peers if R.T. ultimately generalizes these responses to school.

Glasberg recommended climate-based interventions. She explained that research shows that “climate affects academic gains as well as social gains and behavioral issues.” Glasberg opined that “school climate is really important,” and she did not believe “that climate was working well” for R.T. She provided examples of specific intervention recommendations to improve classroom climate: using the children’s book “How Full is your Bucket?” as a framework for teaching students to exhibit certain pro-social behaviors (as described in her report) and class-wide

instruction on specific behaviors to be practiced and rewarded (e.g., reward tickets would be issued “catching students being good” or exhibiting the specified pro-social behaviors and the tickets would be entered into a lottery for a larger prize at the end of the week). Glasberg opined that the following strategies to address climate should be put in place as minimum requirements: (a) class-wide policies regarding inappropriate social behavior (e.g., exclusion, ignoring, teasing), which should be explicitly prohibited and a consequence system should be created for when these behaviors are observed; (b) the classroom teacher should be careful to model inclusive and respectful behaviors, including highlighting each student’s successes, treating each student as equal (e.g., expecting them to follow directions and providing the same type of praise as is given to other students), and avoidance of teasing or denigrating students, which Glasberg noted that R.T.’s special-education classroom definitely had in place—his general-education classroom was not observed long enough to identify teacher contributions to climate, but it was unclear why students and the teacher laughed as R.T. was called to the board; and (c) the lunch aide should be responsible for enforcing classroom cultural guidelines during lunch, and she should walk around and supervise student interactions, praising acts of kindness and redirecting acts that violate classroom policies.

Glasberg recommended social-skills instruction and listed specific skills for further instruction (i.e., identifying when a peer is interested or not interested in interacting with you; responding to cues regarding an interest in interaction or not; identifying receptive peers when available; and, if there are no receptive peers, how to occupy time during lunch/recess). Glasberg opined that R.T.’s stereotypic behavior (e.g., hand flapping, noncontextual vocals) required further assessment. She noted that this behavior may be addressed by skill acquisition relevant to responding to peer rejection.

Glasberg recommended the use of a social-skills group as part of the intervention. She recommended redesigning the social-skills group as a lunch/recess club (e.g., music club, library club, etc.) involving typically developing peers, so it “wouldn’t necessarily look to the kids like they’re in a social-skills group.” Glasberg

testified that “by having it be with peers, not only would [R.T.] have more typical role models, but the person facilitating the group would be able to facilitate the interactions between R.T. and the peer” and the students “might find they have something in common and they can form friendships.”

Glasberg recommended strategies to increase R.T.’s on-task behavior at school and at home. She noted in her report that although Fassilis’ FBA states that R.T.’s on-task behaviors were improving with the current interventions, it is impossible to accurately draw this conclusion without ongoing data documenting whether the behavior is in fact worsening or improving. Glasberg opined that it is necessary to “take data to confirm a teacher’s subjective impressions.” She explained that it is not “uncommon” for a teacher to “misjudge with a subjective experience.” She described that a teacher may have a good week and think it is working, or a bad week and think it is not working, but the trend overall is good or bad. Glasberg would treat a teacher’s advice that a student required a lot less intervention at the end of the year “as a hypothesis” and not “as a conclusion.”

Regarding on-task behavior, Glasberg opined that a behavior analyst should regularly monitor, graph, and analyze R.T.’s on-task behavior and work with teachers to develop instructional strategies that positively impact this behavior. R.T. was off-task completely for at least twenty minutes of the hour-and-a-half academic portion of her observation, which Glasberg stated will significantly affect his skill acquisition. Glasberg found that R.T. was most likely to be on-task during activities with high rates of opportunities to respond, and recommended restructuring lectures, independent work, and computer activities to include some type of response requirement such as working with peers, chorale responding during lessons, and calling on him for examples and questions. She noted that the activity when R.T. was partnered with a peer led to both high rates of on-task behavior and a positive affect. R.T. also responded well to the task that had a specific goal. Glasberg recommended setting specific goals and providing peer attention for a variety of tasks. Glasberg found that R.T. responded well to praise. The positive-behavior-support literature indicates that praise supports on-task behavior and suggests a rate of four to five praise or positive statements for each

redirection. Glasberg recommended that the teachers work with a behavior analyst for strategies to achieve these ratios as well as monitoring the success of these strategies. Glasberg found that homework completion was achieved when tasks were modified. She recommended an educational, achievement-based evaluation to see “if the work was at the right level for him,” and noted, “we saw him avoid work in school, and we saw him avoid work at home.” Glasberg stated that instruction should be differentiated to meet R.T.’s needs, and assignments for both school and home should include modifications and supports. At home, simplifying the task and scribing were effective.

Glasberg recommended “parent training and support around homework completion, just for academics, because [R.T.] couldn’t possibly do homework with the current behavioral issues.” Glasberg opined that the issue with homework was “a behavioral issue,” which was “[v]ery extreme, not typical behavior interference with homework.”

Glasberg recommended restricted-access intervention. She reported that significant behaviors were noted at home in response to restricted access to preferred items. At school, while not noted as a problem, R.T. stomped when asked to return his computer. Glasberg opined that a behavior plan must be created to address this behavior, at least at home, and parents must receive training and support in this implementation to avoid safety concerns for family members and to prevent R.T. from requiring extremely intense services as an adult. Glasberg noted in her report that as R.T. experiences people giving him what he wants to avoid meltdowns, this behavior grows more and more likely to generalize.

Glasberg found that R.T. is not acquiring necessary self-help skills such as hygiene-related tasks and is not discriminating between public and private venues for sexual behavior. She opined that it is urgent that these home issues are addressed by a behavior analyst, including assessment, development of a behavior plan, and parent training. Glasberg further opined that home support should involve the siblings so that they may increase their sense of safety and confidence in their interactions with R.T.

No District representative contacted Glasberg after her report and before the April 29, 2015, IEP meeting or after the IEP meeting. Heyman works as a subcontractor for Glasberg. Glasberg supervised and guided Heyman with her reports. Glasberg provided a copy of her report to Heyman; discussed Heyman's observation and recommendations before she issued the reports; and approved Heyman's recommendations, which are also Glasberg's recommendations. No District representative contacted Glasberg to discuss Heyman's reports and she was not aware of any IEP meeting held to review the reports. Glasberg explained why, unlike Heyman, she did not include a specific number of hours with respect to home programming, BCBA oversight, and parent/sibling training. She described her experience of collaboration with the district after a private evaluation is submitted to work together to create a plan moving forward, which ultimately would be included in an IEP. Glasberg testified, "So when I'm collaborating with the District, my ideal first before putting specific numbers is let's work together and see if we can come up with something that will meet our objectives well, but since that didn't happen . . . [and] after the first report, since there wasn't a relationship developed, I thought I would do . . . [the second report] more as an independent [than] with an eye towards collaboration."

Glasberg stated that her report "was the initial steps of a functional assessment" because she did not "have enough data to make conclusive identification of the actual function" of the behaviors that she observed. She noted that "the intervention required at the home, was going to be extensive . . . because it was very complex behaviors" and "it was a lot of work to be done." Glasberg opined that R.T.'s behaviors at home are related to school. She included recommendations for the school "because they're related to the behaviors you're seeing at home." She explained that research exists that "you can't make academic progress in a situation where their climate is not working for you, where it's not a good match [s]o if he can't learn the content in school, when he goes home to do the homework, he's going to have behavior problems." Glasberg opined that an adjustment in the school environment "would contribute to improvement" with the home issues, but added, "you'd still need to adjust those antecedents and consequences at home. You can't just change them in one place. Again, generalization The parents would need training of how to carry things over from

the school environment.” She opined that R.T. “needs very skilled intervention” at home. The strategy she recommended to help the parents with R.T.’s behaviors “is that they get help,” noting that it is “more than a one-shot visit.”

During Glasberg’s observation at the home, she did not observe a behavior plan being implemented or the use of a token system. Regarding whether a token system would be appropriate for a student like R.T., Glasberg testified, “So it’s not that it’s inappropriate. I think it’s great. But . . . when I would do a functional assessment . . . what I look at is the motivation, the antecedent, the behavior and the consequence It wouldn’t be a Band-Aid I could stick on it and think, ‘[R.T.’s] going to get better if he has a token system.’ However, I think it could be helpful.” She believed that a token economy or reward system would be appropriate notwithstanding R.T.’s age because it can look different at different ages (e.g., earn video-game time). Glasberg did not recommend a set reward system at the home, “[b]ecause I don’t think we’re there yet.” She explained, “I wouldn’t know what to tell her to reward [b]ecause he has so many steps,” and “the situation was such that [Glasberg] would definitely recommend consultation for them because it was a difficult situation.” For example, at the time of her report R.T. was not showering independently. Glasberg did not know why R.T. will not take a shower, and an assessment is needed to identify why he is not showering. A behavior analyst needs to work with R.T. over time to find out whether he lacks the skills or if it is due to other reasons (e.g., for attention, avoidance of other tasks). Glasberg would not know what to tell the parents to reward because she does not know where R.T. is at with showering (e.g., should he be rewarded for walking in the bathroom, or getting undressed—where does it break down?).

Regarding whether Fassilis’ recommendation of having a structured and consistent schedule daily for homework required parent training, Glasberg testified, “It depends on what she means by that. I know what I mean when I say that I don’t know if that’s the same thing that she means Does she mean, like, on a clock? It’s a reasonable recommendation for somebody to go [to the] home . . . and help them set up what she means.” Glasberg further did not know what Fassilis meant by a “structured” schedule. She noted that the parents have two other children who are both

involved in activities, and she would “want Mrs. T. to work with a behaviorist to say, ‘Okay, here’s how you tackle it if you have different demands on different days. Here’s how you can set it up for R.T. . . . Maybe use pictures on a schedule . . . There’s a hundred ways that [a] consistent schedule could look.” Glasberg agreed that a parent could review with their children the schedule for the day, but indicated, “you might need help if you have a kid like R.T., figuring out how to convey that to him” (e.g., do you say it to him orally, write it on a list, make a picture). Glasberg noted that she must “go in people’s houses and get them a consistent and structured schedule,” “it’s different for every person,” and she “can’t hand them a note that says that.” Glasberg did not observe a set schedule for R.T. during her observation.

Glasberg had not previously seen the documents identified as Saylor’s home binder, which she stated is not an ABA binder. Saylor informed Glasberg that she did not keep a binder, probably knowing that Glasberg would have been looking for a data binder with instructional programs. Glasberg saw in the documents a task analysis for a shower (i.e., breaking down the steps of a shower). She did not see any data for showering. Glasberg was not surprised that Ehrlich concluded that R.T.’s in-class-support social studies class in sixth grade was an appropriate placement, stating, “I never thought that it wouldn’t be an appropriate placement.” She was not aware that R.T. had been offered an ESY program that involved social-skills training in the June 6, 2013, IEP, which the parents declined. Glasberg agreed that after Mrs. T. counted down for R.T. to do homework, no consequence was imposed, and it is expected that there will be a consequence. There was no consequence after the use of the timer, and Mrs. T. then offered Xbox as a reward, which was not “a good idea.” Glasberg noted that this is why she recommended parent training. At the time of her report and as of her testimony, Glasberg was not aware of any inappropriate, sexualized behaviors by R.T. in the school. Glasberg and Heyman did not observe any such behaviors in school and, based on those two observations, R.T. did not generalize those responses to school.

Glasberg agreed that certain items in R.T.’s April 29, 2015, IEP align with her recommendations. She agreed that “Use peer ‘helpers’ to motivate [R.T.] to complete

assignments in a timely manner,” “School-wide positive behavioral supports (i.e., ‘character counts,’ ‘bucket filling’)” and “Class-wide behavior motivation plan” (as set forth in the “Description of the positive supports/interventions including the conditions under which the supports/interventions would be implemented” section of the IEP), and “Provide opportunities for peer-pairing and peer-attention,” “Break down tasks into manageable units,” and “Simplify task directions” (as set forth in the “Modifications and Supplementary Aids and Services in the General Education Classroom and/or Special Education Classroom” section) align with the recommendations in her report. Glasberg stated that the items “Modified homework” and “Extended time for task completion, if needed” do not conflict with her recommendations and would align with them, provided that there is an evaluation regarding how to modify the work according to R.T.’s specific needs. Regarding her recommendation concerning class-wide instruction on specific behaviors to be practiced and rewarded (e.g., a reward system using tickets), Glasberg agreed that Heyman observed the utilization of a positive-behavior support system in the classrooms she observed. Glasberg testified that the school “had some nice things in place” at the time of Heyman’s observation, such as a higher rate of opportunities to respond and the class-wide system. Glasberg believed that R.T.’s behavior in school looked better in Heyman’s report. There were “strategies that are behavioral in nature” that are now in the 2015 IEP and Heyman’s report indicates that the school “had strategies in that classroom in place that were behavioral strategies,” and Glasberg “believe[d] those strategies are likely why [R.T.] looked better.”

Glasberg opined that “you saw less progress” and “less of a difference” in the home environment between her observation and Heyman’s. She also noted that Heyman “jumped in and helped sometimes,” such as the conversation about not going out to dinner, and Glasberg did not “know what would have happened to that restricted-access situation if [Heyman] didn’t jump in.” Regarding the statement in Heyman’s report that Mrs. T. shared that homework completion has improved from a year ago but it is still a struggle, Glasberg noted that R.T. then had a Chromebook, and she could not say that there was behavioral improvement during homework completion with his parents, because the same demands are not there. R.T.’s behavior was also better when Glasberg scribed for him and took the demand of writing away. Based on the two

observations, Glasberg opined that there was “not a great amount of progress at home,” and R.T.’s progress at home was “not fantastic” and was “insufficient.” Glasberg stated that she is not fluent or an expert in “Rethink.” She has only used it for discrete-trial kinds of programs with students and teachers. Subject to that caveat, Glasberg did not believe that “Rethink” is an appropriate substitute for a trained behaviorist working in the home in this situation. She opined that the parents need someone to create a program with them, model the program, coach as the parents implement it, and then check back and maintain the integrity of the program by taking data on the parents’ implementation of the intervention. To her knowledge about “Rethink,” there is nobody that will observe the parents’ implementation of a program and give feedback on it. In addition, certain aspects of the behavior intervention must be customized, and a behaviorist must design the necessary program and would need to work with the family to help set it up. Glasberg “wouldn’t call a skill mastered . . . until [an individual] can do it in all the settings where they need to use the skill.” For “a skill to be mastered, that you truly obtained the skill or acquired the skill, you should be able to use it where you need to use it.” Based on the reports by her and Heyman, R.T. “did not improve his behavioral skills at home in the way that he did at school, so [Glasberg] would say that he did not generalize those skills.”

Celia Heyman

Heyman was admitted as an expert in autism and conducted a home observation and school observation when R.T. was in sixth grade. She is a BCBA and holds a master’s degree in applied psychology-applied behavior analysis. Heyman has been a behavioral consultant with Glasberg Consulting Services since June 2014 and provides behavior analytic services with Above and Beyond. She also provides consulting services to a public school district and a State-approved private school for the disabled. At the private school, Heyman provides behavior analytic services, classroom intervention, and positive-strategy support. The one-to-one behavior analytic sessions include programs such as executive functioning, self-regulation, emotional management, and discrete-trial instruction in the areas of academics and adaptive life skills. (See P-4.)

Heyman conducted a home observation on March 10, 2016, and prepared a report regarding her assessment. (P-52.) The family requested the follow-up observation due to a number of challenging behaviors that R.T. reportedly continued to exhibit at home, which were described as interfering with homework completion, independent adaptive life skills and hygiene tasks, successful social interactions with peers and family members, and participation in community activities. Heyman explained that the “request was to update . . . [R.T.’s] performance and how R.T. was doing at the home because of social-interaction issues, as well as being able to conduct . . . his own independent adaptive life skills . . . [and] the family ha[d] reported that sexualized behaviors were still being emitted and of concern.” A summary of Heyman’s report of her interviews and observations follows.

Heyman interviewed Mrs. T. and R.T.’s siblings at the home. Mrs. T. reported that homework completion had improved from a year ago, but it is still a struggle for R.T. R.T. “still has problems with homework completion but is having less intensive meltdowns since being in middle school and using the Chromebook that is provided by school. He is able to type more, write less, and assignments are often on the Chromebook.” She relayed that the home therapist continues to work on reading using Soar to Success curriculum and sees R.T. twice a week for two hours each session. Mrs. T. stated that R.T. stopped bouncing the ball in the past two weeks because of the puppy the family recently got, and R.T. still requires support to complete hygiene tasks. Mrs. T. must brush his teeth, and he “will engage in a lot of problem behaviors such as tantrums” when asked to brush his teeth. R.T. is not independently showering. Mrs. T. reported that R.T.’s inappropriate sexualized behavior was still occurring, and he requires multiple prompts and redirection to stop. There had been no reporting of R.T. engaging in sexualized behavior from the school. Mrs. T. advised that R.T. does not have any friends of his own; he just recently got very interested in sports in the past two years; and he does not participate in sports or other recreational activities with peers, but has been taking private baseball lessons. She described that R.T. has aggression at times towards his brother. He has less aggression with his sister, but has been rough with her if she is in his way during one of his tantrums. Mrs. T. also shared a

recent concern regarding R.T. engaging in tantrums when asked to get up in the morning for school (i.e., “I would wake [R.T.] up at 6:30 a.m. and again at 7 a.m. [R.T.] would run and scream up and down the stairs because he has to get out of bed for school. He would tantrum on average once every two weeks.”). The sister relayed that R.T. has been less violent with her, but he still gets upset and would throw things or hit her, and that she is “afraid of him when he has tantrums because he would throw things.” R.T. had hit her about a week and half ago when she took the dog from him. She indicated that she would include R.T. with her friends when they went to the same school, and R.T. “struggles to make friends. He thinks he makes friends, but they are not really his friends.” The brother relayed that it is hard for R.T. to control his emotions, and stated, “It’s kind of scary. I was bringing [the dog] upstairs and he walked into me by accident. He punched me.”

R.T. was watching television in the family room when Heyman entered the home, and Heyman and Mrs. T. talked in the kitchen. Mrs. T. introduced Heyman to R.T., prompted him to greet her, and R.T. complied. Heyman asked R.T. what he was watching, he replied, and Heyman asked R.T. if she could watch with him while waiting for his mom, and R.T. complied. She asked questions about the show and R.T. responded to the questions, but he did not turn around and look at her. At one point during the interview with Mrs. T. about R.T.’s recent interest in sports, R.T. came in the kitchen and conversed with Heyman on the Yankees, Rutgers’ football team, and other sports-related questions. After the interview with Mrs. T., Heyman asked to see how R.T. does with homework completion. Although there was no homework assigned on that day, Heyman requested that Mrs. T. ask R.T. to come to the kitchen table and present demands. Mrs. T. asked R.T. to check his Chromebook for any assignments and emails from his teachers. R.T. did not comply with Mrs. T.’s request. Instead, he continued to play with his dog and asked why he needs to do this. After six minutes had passed and multiple prompts, R.T. grunted but came to the kitchen table and signed onto his Chromebook. He showed Google Classroom pages to Heyman and commented on the teachers for his subjects. Heyman presented a three-digit addition problem requiring carry-over. R.T. responded, “Why are you making me do work?” Heyman responded, “Let’s see how you do. You can ask for help if you need it.” R.T.

complied and computed the problem correctly. Heyman presented a three-digit subtraction problem requiring borrowing, which R.T. computed correctly. Heyman then presented a multiplication problem and R.T. screamed, “Why are you making me do this? I don’t know how to do it!” Heyman responded, “Let’s take a look at the problem and you can ask for help if you don’t know how to do it.” R.T. looked at the problem and wrote, “don’t now” (instead of “don’t know”). Heyman worked through the problem with R.T., he completed it, and she and R.T. exchanged “fist pumps.” Heyman then asked R.T. to write a paragraph on his favorite football team and why. R.T. worked on his paragraph independently. Heyman asked R.T. to wait until she was finished talking to his mom, to check if denied or divided attention would trigger problem behaviors. R.T. waited appropriately one minute while Mrs. T. conversed with Heyman. Mrs. T. asked R.T. to tell Heyman about the time he had a really bad day. R.T. got up from the table, screamed “I don’t want to talk about that—I’m not talking about that,” and walked into the family room. Heyman estimated that R.T. returned to the kitchen within five to fifteen minutes and R.T. had calmed down. Mrs. T. told R.T. that they would not be able to go out for dinner as expected because of the siblings’ activities; R.T. asked if they could go out to dinner after the activities; Mrs. T. said “no”; and R.T. began to look agitated. Heyman suggested going out to dinner another night; R.T. responded, “what about tomorrow night?”; and Mrs. T. agreed. Mrs. T. shared that they have been working on problem-solving skills with R.T., and in the past R.T. might not have handled the change in routine/expectations as well. Heyman testified that R.T. emitted some instances of vocal expressions of not wanting to do homework, she provided various prompts, and R.T. was able to be redirected. She believed that R.T.’s behavior regarding homework was a combination of homework refusal and a behavior manifestation of his autism.

Heyman talked with and observed R.T. alone in the family room; both Heyman and R.T. sat on the couch. R.T. reported that he likes middle school better and that the kids are not mean like in his old school. When asked if he has friends, R.T. mentioned the names of two boys who are in the sixth grade as his friends (which Heyman noted were the brother’s friends), along with the name of another boy in seventh grade. R.T. talked about the Yankees, Rutgers football, and the Jets, during which he made eye

contact with Heyman. Heyman took a time sampling of six minutes using Partial Interval Recording of ten-second intervals on the reported sexualized behavior. An occurrence is scored if R.T. places his hands on/or touches his genitals at any point during the ten-second interval. R.T. scored 70 percent of the intervals whereby he kept his hand (palm down) on his genitals (and occasionally rubbing back and forth) at any point during the interval. In the fifth minute of the six-minute time sampling, Heyman stopped short in the middle of her sentence, paused, looked at R.T.'s hands, and made eye contact with him. R.T. took his hands off his genitals and sat on them. Heyman continued speaking and R.T. did not place his hands on his genitals again. Heyman explained that the sampling she used is partial intervals, not a duration measurement. She did a time sampling of six minutes with ten-second intervals. Any time that R.T. engaged in inappropriate sexualized behavior in that interval is an occurrence. It is an occurrence if he touches it one second during the ten seconds and it is an occurrence if he touches it for a full ten seconds, so it is "not an exact duration," but it "does have an estimation to how often a behavior is happening." During Heyman's interview with the brother at the kitchen table, the brother requested that R.T. come and sit, and he asked R.T. if he had talked to any girls in his class that day. R.T. got up, screamed, "I'm not talking about that—don't make me talk about that," walked into the family room, and threw the football on the floor intensely. The brother said, "oh no," and put his arms and hands up to cover his ears and head in a protective manner. When R.T. walked back into the kitchen, Heyman commented on R.T.'s good effort to calm down. R.T. said, "I'm done right?" and proceeded upstairs to his room. R.T. complied with Mrs. T.'s request to come downstairs to say goodbye to Heyman.

Heyman reported that aggression was reported by multiple family members, and responses indicating expected aggression were displayed by the brother. She observed sexualized behavior and noncompliance coupled with outburst/tantrums in response to academic demands or nonpreferred topics. In addition, R.T. lacks competence in appropriate social skills and adaptive life skills. Based on her interviews with family members and observations, Heyman opined that R.T. is need of home services. She recommended individual social/emotional-skills training; group social-skills training; adaptive-life-skills training; sexuality-education training; academic

support; parent training; and sibling support, as more particularly described in her report. Heyman recommended ten hours per week by a registered behavior technician or direct therapist overseen by a BCBA (possibly Monday–Thursday, two hours per afternoon). She testified that “with direct instruction, consistency is a key,” and two hours per day would “be great to address the areas of adaptive life skill[s], academic skill[s], individual social/emotional regulation, and social skills,” and R.T. could do four days, and then one day on the weekend provide community-support instruction, social skills, and sibling support. She also recommended four hours per month by a BCBA to provide oversight of the home-instruction program (possibly two hours every other week). Heyman explained that this supervision would include “program development, program modification, taking data, teaching the direct person to take data, teaching the person how to provide the direct implementation, and making tweaks along the way if the performance of the learner does not reflect . . . meeting the goal and the mastery criteria.” The BCBA would be the person responsible for taking the baseline on his skills and problem behaviors and putting together program records to teach those skills and to provide goals and objectives. The BCBA would also be reviewing data and making data-based decisions as to needed modifications. Heyman further recommended four hours per month by a BCBA explicitly to provide parent and sibling training (possibly two hours every other weekend), and that parent and sibling training might be revisited in six months to determine if fading is possible due to behavioral improvement and family skill development.

During her home observation, Heyman did not observe any reward system being implemented or a token economy system or self-management program. She did not observe certain behaviors noted in Glasberg’s earlier report (e.g., bouncing the ball, biting his hand, non-contextual conversation) or incidents of aggression with siblings. Heyman did not speak with Saylor or review any of her program documents and did not know the extent of the programs that she was doing. She did not observe R.T. in the community. Heyman did not recall if she was informed that R.T.’s parents had previously received parent training.

Heyman conducted a school observation of R.T. in sixth grade at Woodrow Wilson on May 11, 2016, and prepared a report regarding her assessment. (P-58.) She observed R.T. in four periods: daily living skills, two periods of English, and lunch. Heyman only observed R.T. in his self-contained classes, which had five students. Rhodes and Stickel accompanied Heyman on her observation. Heyman took data on R.T. and a peer for certain target behaviors, such as on-task, appropriate social interactions, and sexualized behavior. Based on her observations and data collection, Heyman did not have any concerns regarding R.T.'s behaviors in the self-contained classes and she observed no sexualized behaviors. A summary of her report follows.

During the daily living-skills class, sample data for the first activity showed that R.T. scored 95 percent (21 out of 22) of the intervals as to on-task behaviors and had six contextual comments made to teacher. During the second activity, R.T. had 100 percent (9 out of 9 opportunities) compliance to the teacher's instructions; he made two appropriate social interactions with a peer; and he made eight contextual comments to the teacher during the lesson. During the third activity, sample data reflected that R.T. made four contextual comments to the teacher and had 100 percent (6 out of 6) compliance to the teacher's instructions. R.T. transitioned in the hallway to his next class independently. Heyman observed R.T.'s second and third periods, which were combined for English with Macchiaverna. Macchiaverna showed a video on visualization strategy for reading comprehension; the students broke out to work on their assigned tasks; R.T. moved to the computer to work on Reading Express; a paraprofessional sat next to R.T.; and R.T. read the passage out loud. Sample data showed that R.T. had 97 percent of the intervals (32 out of 33) as to on-task behaviors. R.T. moved to another part of the room to work on writing and worked independently behind a cubicle divider for most of the intervals. Macchiaverna checked in with R.T. 21 percent of the intervals (6 out of 29). R.T. was engaging in appropriate behaviors on all six intervals where Macchiaverna provided attention. On intervals where R.T. scored off-task, he was either looking at a peer talking to Macchiaverna or at observers. Sample data for this period reflected that R.T. scored 86 percent of the intervals (25 out of 29) as to on-task behaviors. R.T. finished his writing and began typing his written draft on his Chromebook. Sample data for this period reflected that R.T. scored 100

percent of the intervals (9 out of 9) as to on-task behaviors. R.T. worked on prefixes and suffixes on the Moby Max Index and selected to work on the computer. Sample data for this period reflected that R.T. scored 92 percent of the intervals (22 out of 24) as to on-task behaviors and Macchiaverna checked in with R.T. on 25 percent of the intervals (6 out of 24). Another sample data reflected that R.T. scored 95 percent of the intervals (19 out of 20) as to on-task behaviors and Macchiaverna checked in with R.T. on 15 percent of the intervals. Heyman found that during the classes R.T. engaged in high occurrences of on-task behaviors, at times scoring higher than his peers. R.T. had an overall average of on-task behaviors of 94 percent. Other peer-comparison data reflected that R.T. engaged in more contextual comments with the teacher during lessons and a high percentage of compliance in the forms of following instructions three–five seconds after instruction was given. R.T. had eighteen contextual comments and 18 percent compliance. Heyman observed the ClassDojo system being implemented during Macchiaverna’s class. Based on speaking to Macchiaverna and his report of R.T.’s performance, Heyman testified that the “Dojo reinforcement system was something that was beneficial to . . . getting the right behaviors and performance of R.T.” Heyman was informed that the ClassDojo system is only for the self-contained classes and not available in the social-studies and science classes.

Heyman observed R.T. during lunch. Rhodes advised that Macchiaverna’s class eats lunch with the seventh graders instead of the sixth graders due to scheduling reasons. During this observation, R.T. asked Heyman and Rhodes if they would be joining them to eat, and he greeted the gym teacher across the cafeteria. Another sixth grader, who was not in Macchiaverna’s class, joined the table. Rhodes commented that the student might not be eating with the rest of the sixth graders due to a scheduling issue. The peer sat between R.T. and the paraprofessional. R.T. and the peer greeted one another but no other exchanges were made. During lunch, R.T. helped a peer open a bag of chips. Data sample of ten minutes reflected that R.T. had nine initiated or reciprocated comments with adults. R.T. initiated six comments with peers at the same table but only one was reciprocated by a peer at the table. Another data sample showed that R.T.’s social interactions with adults and peers at lunch while seated at the assigned table scored at 32 percent of the intervals (9 out of 28); his

social interactions with an adult scored at 18 percent of the intervals (5 out of 28); and his social interactions with peers scored at 14 percent of the intervals (4 out of 28, with one occurrence attributed to a peer walking by R.T.'s table). At one point, a peer from R.T.'s table accidentally spit juice on R.T.'s arm. R.T. quickly got up, advised Rhodes and Heyman, and got napkins to clean himself. R.T. asked Rhodes if he could go over to the nearby table to say hello to his friends. Although Heyman was unable to hear the details of the conversation, mentioning of sports teams was heard, and exchanges of high-fives, fist pumps, and smiles on both R.T.'s and peers' faces were observed. R.T. returned to his table on his own. Rhodes shared that students generally select their tables in the beginning of the year and stay with that table for the year. R.T. greeted peers who walked by his table, and peers reciprocated greetings and/or comments. R.T. paid attention to the announcement for lunch dismissal and pointed out to a peer that their table was being called. Heyman found that time sampling of how often R.T. engaged in appropriate social interactions during lunch showed a low percentage, possibly due to the lack of opportunities or low frequency of reinforcement at the current table assigned. Heyman's concerns regarding her observation of R.T. during lunch were the "lack of social-interaction opportunities for R.T." during lunch and that he did not have lunch with sixth-grade peers.

Based upon Heyman's observations and the data she collected in the self-contained classes and at lunch, she recommended that the Dojo Points reinforcement system used by Macchiaverna be extended to R.T.'s inclusion classes. She further recommended that R.T. should be provided opportunities to sit at a table with typical peers during lunch; a lunch peer or "buddy" should be assigned during lunch to support R.T. in navigating social-skills interactions; and the District should continue to observe R.T.'s interactions with typical peers in order to make a data-based decision if further intervention is needed. Heyman also recommended that similar data should be taken for R.T.'s inclusion classes and other periods that she did not have the opportunity to observe to assess levels of support required.

No District representative contacted Heyman after she issued her reports. Heyman opined that the services and recommendations in her reports should have

been included in R.T.'s IEP. She stated that a "student's IEP should reflect not just academic skills of the learner, but other domains of learning as well." Her observation of the self-contained classes was "a positive one." She stated, "From my observation, with that one observation on the self-contained classes, I believe that the self-contained teachers provided a good level—an appropriate level—of supports for R.T. to perform well that day" and the program was "appropriate." She opined that a self-contained special-education class is a far different setting than the home setting. Heyman explained:

The supports are a very different level. So, for example, from observation, Mr. Mack was going around, providing attention to R.T., even before R.T. was emitting any kind of inappropriate behaviors—what we call non-contingent reinforcement. The Dojo system was in place. There are supports such as, perhaps, the type of medium that [is] used to do work. R.T. was observed using the computer, doing his activities. So . . . an instructional setting is often very different than the natural environment setting.

Heyman described that "generalization is when you are able to emit the skill throughout time, with different people, in different settings, and when there is no intervention—maintaining the skill." She stated, "Based on my school observation, and it was a limited setting that I saw him at because I only saw him at self-contained—I didn't see him in inclusion or in the mainstream setting, so I don't know how he performed in those settings—but based on just the limited observation, I saw him in the more restricted environment and at the home environment, it shows me that he is not generalizing the skills that he demonstrated in the self-contained classroom outside of that classroom." Heyman articulated the view that "a skill is not mastered until it has been generalized," and that whoever is responsible for teaching a skill must ensure that the learner has generalized that skill. Heyman understood that the District had previously provided R.T. with home programming services, which were discontinued. She stated that the discontinuance of those services should have been based upon an analysis of data collection. During her observations and preparation of her reports, Heyman did not discuss R.T.'s progress academically in school and did not know whether he has progressed in school academically. She did not review any data to make a conclusion

about R.T.'s academic progress, stating that the "academic piece was not in [her] requested service."

Charles Ehrlich

Ehrlich was admitted as expert in special education. Ehrlich has more than forty years' experience in all fields of education, both regular and special education, and has worked as an educational consultant for school districts and families. He is the educational director of the Psycho-Educational Center, which provides ABA program-design consultation and ABA services to districts, both in the home and school settings, and served as an instructor at various colleges and Rutgers Law School. Ehrlich holds certificates as a principal, supervisor, learning-disabilities specialist, teacher of the handicapped, reading specialist, and teacher of social studies and English. During his career, he was employed as, among others, a reading remedial teacher, a learning-disabilities specialist, and the district supervisor of special needs. (See P-1.)

Ehrlich started working with the T. family in August 2013. He spoke with the parents, who provided R.T.'s pupil records, which Ehrlich reviewed. The parents expressed concern about the elimination of ABA home programming from R.T.'s IEP and that R.T. was still exhibiting behavioral issues. Ehrlich expressed concern that "the ABA therapy was abruptly stopped at the end of second grade." He stated, "[h]istorically and with my years of experience . . . I have never seen ABA therapy go from ten hours to zero hours. . . [and] with the over encompassing umbrella of autism . . . the variability of ABA home behavior/parent training hours . . . has to be constantly adjusted to meet the behavioral needs of a student." Ehrlich did not see any documentation regarding why the services were stopped, and stated that "typically when any related service is ceased or canceled or not continued that would be driven by a formal evaluation and a child study team meeting to discuss the implications of that evaluation and what justification or why we are reducing or . . . increasing those services." He later agreed that R.T.'s services did go from ten hours to zero and that there was a reduction in services. Ehrlich agreed with the statement in the October

2008 Above and Beyond report that “Home programming hours ensure carry over and generalization of skills in the home setting,” which he stated “is essential to a complete ABA program . . . and support program.” He testified that “[m]any schools fall into the trap, they believe that [their] only obligation is to . . . provide services that impact academic achievement, but with a child on the autistic spectrum not only the achievement of those goals in the school is essential, but support and carryover and generalization of those skills in the home is actually more important because most of the time in the home professionals aren’t there to support [and] [p]arents are not professionals.” Regarding the data referenced in that report, Ehrlich did see any evidence in the records that the District collected data. He did not see any goals, objectives, or data to show mastery, including how and when it was achieved.

Ehrlich reviewed R.T.’s prior IEPs and e-mails provided by the District, and he articulated his concerns regarding various issues. Although the May 2009 IEP indicates that R.T. will be assessed during the ESY program to determine the ABA hours for the next school year, Ehrlich saw no evidence that the District conducted any type of assessment, which should have been done and discussed at an IEP meeting before the 2009–10 school year. An FBA should have been conducted “to gather data and find out the appropriateness of the previous ABA support program and determine what is appropriate for the next program.” He expressed concern that the District’s request for parental permission to conduct an assessment was not until November 2009, and he did not see any type of an assessment conducted by Verbal Behavior Network. Ehrlich expressed concern that as of the May 2009 IEP R.T. received ten hours per week of ABA therapy, which was reduced to four hours per week in the January 26, 2010, IEP, and he saw no assessments or evaluations done that would explain or justify the reduction in services. He also saw no evidence of any assessment conducted regarding the reduction to two hours per week for the 2010–11 school year. In the next IEP in June 2011, R.T.’s ABA services were discontinued, and the IEP does not indicate that any updated assessments or evaluations regarding the behavioral issues and the ABA home program were performed. Ehrlich was not able to identify any rationale or basis for the discontinuation of the services. He further opined that the evaluations comprising R.T.’s 2011 triennial reevaluation were “incomplete” because a

classified autistic student who “has been receiving support services directly related to that area of his disability . . . should be evaluated in that area.” Ehrlich found it “unusual” that there was no ABA coordinator or therapist at the IEP meeting regarding the May 2012 IEP, and noted that the June 2013 IEP does not reflect that home programming was discussed or considered.

In or around the beginning of his work with the family in August 2013, Ehrlich personally observed R.T. “in a number of settings, . . . at the school, on the playground, in a hallway, in the home, in athletic, . . . free-play environs, [and] interaction with his two younger siblings, . . . which was an area of behavioral concern for the parents.” He also observed R.T. at a family gathering and the funeral for his grandfather, and “got a pretty good idea of [his] diversified behaviors.” In the fall of 2013, Saylor’s hours varied between six and ten hours a week. She worked on “school-related behavioral issues that occurred in the house, . . . [and] generalizing of skills that were developed in the school,” and took R.T. out in the community. Ehrlich stated that Saylor’s “limited hours . . . were better than zero hours,” and the number of hours was limited by the parents’ finances. He “got the sense that more was needed both in school and [at] home,” and believed that R.T. “was in dire need of support programming at home, above and beyond what was being provided by the parents” and Saylor. His review of the records and discussions with the parents did not indicate that “somebody with [an] ABA background ever observed R.T. in the home to validate any of the parents’ concerns that had been ongoing for the past three or four years” or that an FBA had ever been done.

Ehrlich met R.T.’s case manager (Brennessel) on October 30, 2013. Ehrlich informed Brennessel that he saw “a great need for support for R.T.’s social, behavioral, emotional . . . areas”; his “behaviors are increasing”; some of these behaviors “in [his] estimation are dangerous to R.T. and others”; and he wanted “to discuss with [her] as the case manager, how we can work out some type of program.” Ehrlich recommended that R.T.’s IEP be amended to include five or six hours a week of behavioral support in the home for ninety days, which could then be evaluated at a meeting after the ninety days. According to Ehrlich, Brennessel responded, “I can’t do it. I’ll have to check with

the administration and get back to you,” and he replied that “this is a child study team decision, not [an] administrative decision [and] [t]he administrators aren’t part of the child study team.” Ehrlich testified that in his former director capacity he was not a member of the CST, but a supervisor, and he “cannot be part of the team’s decision-making process by law.” Ehrlich later agreed that in a report that he authored on January 25, 2016, he stated that at this meeting he recommended that the CST revise R.T.’s IEP to include six hours of home therapy/parent training, and that the CST and the parents revisit the need for special services in six months; Brennessel “stated that she would convey [his] request to her supervisor and get back to [him] after one week”; and he “was then informed that a formal IEP meeting was required.” (R-13.) Shortly before Ehrlich’s meeting with Brennessel, R.T.’s special-education teacher sent an e-mail to Brennessel on October 22, 2013, which states in part: “I have a meeting scheduled with [R.T.’s] mother tomorrow after school. Is there anything I need to know before I speak with her? The purpose of this meeting is to fill her in on R.T.’s work habits and to discuss possible ideas to get him to complete more of his work. I don’t want to say anything that might cause a problem.” (P-54 at 122.) Ehrlich expressed concern that the implication is that the teacher is asking the case manager what she should say to the mother, and whether she should discuss what was really happening.

Ehrlich was not consulted regarding the District’s proposed waiver of R.T.’s triennial reevaluation, which would mean that R.T.’s next reevaluation would be in the spring of 2017. He testified that this proposed waiver is “highly unusual,” and that “most of the time when triennial reevaluations are waived it happens junior year of high school or in a situation where things have remained constant and there’s no variation in academic achievement levels, psychological, . . . [or] intelligence levels, and it’s waived because things have not changed, but I have never seen in my whole career a waiver of a reevaluation meeting for a child on the autistic spectrum, because typically—not typically, all the time—those children on the autistic spectrum have a higher degree of variability of achievement levels in the social, emotional, behavioral as well as academic areas.” Ehrlich “could see waiving an educational or a psychological if there are no psychological behavior issues and . . . the educational component is stagnant or something like that.” However, he opined that an FBA or an evaluation that sheds light

upon R.T.'s functioning "behaviorally and socially and emotionally" was warranted, explaining that "with a child that has autism . . . those issues are constantly in a state of flux [and] [t]hat's why there's no clear-cut program developed to treat those [and] [i]t's all on an individual basis." He also opined that a reevaluation planning meeting should have been held to discuss the "pros and cons" and the basis for the proposed waiver.

Ehrlich attended the December 13, 2013, IEP meeting. The school psychologist and LDTC did not attend, and to his knowledge no BCBA attended. Brandon attended the meeting and introduced himself as a supervisor for the District. Ehrlich noted that Brandon "wasn't a part of the team," and Ehrlich "was offered no explanation of why he attended." At the meeting, Ehrlich "described the behaviors again . . . for the whole team about what was happening with the difficulty at home." He recalled one of the teachers indicating that the difficulty was really a homework issue, and "homework is . . . not that important [and] . . . we give him breaks . . . for homework, don't really worry about it." Ehrlich responded that "homework is part of the total school program and behavioral difficulties that were occurring in the home were not academically based doing the homework, but getting him behaviorally on task to attempt to do the homework [s]o it wasn't an academic aspect, but it was a behavioral aspect that had to be dealt with." He also "describe[d] increasing aggression towards siblings and a tremendous amount of anxiety," and said that "[d]ue to these concerns a request is made for in-home ABA services." At the meeting, the District did not review any behavioral data, progress reports, or informal/formal tests. It did not propose conducting an FBA or request permission to observe R.T. in the home or in the community. Ehrlich disputed the statement in the IEP that the parents' "concerns were addressed" and that "resources," including "agency supports," were discussed. Ehrlich testified that a district cannot fulfil its IEP obligations by referring a parent to their own insurance, and "the responsibility falls on the district to provide needed services." Although Ehrlich referred to the District offering to pay the parents' insurance deductible if it covered ABA services, he later testified that he did not think that discussion occurred at this meeting. Ehrlich opined that the parents' request for the ABA supports should have been listed in the IEP as one of the options considered, along with an explanation of the action taken and the basis for the decision to deny the parents'

request. In addition, the summary of related services in the IEP was for the period of January 2014 to June 2015, which “doesn’t make sense” to Ehrlich, who added, “How can you project related services for a year and a half?”

Ehrlich noted that the day before the December 2013 IEP meeting Brennessel sent an e-mail to Rhodes, which indicated that she had an IEP meeting the next day at the parents’ request, with the parent and their educational consultant/advocate. The e-mail states that, “despite a positive school year, their concern is behavior at home [and] [t]hey are requesting in-home ABA 4x week to address physical aggression towards his siblings, some difficulty with HW completion/timers, and some perseverative behaviors.” It further indicates that Brennessel “spoke to Andy about options we can offer (aside from insurance covering ABA and the Perform Care/CMO supports suggested)” and “he mentioned possible behavioral consultation with the parent to provide some strategies to use at home,” “[n]ot a formal service, but perhaps a meeting in school to provide the parent with support.” (P-54 at 114.) Ehrlich found this e-mail “very alarming.” He stated that it was not “a positive school year” and the parents’ concern was not just behavior at home. Regarding the statement that Brennessel spoke to Andy about options the District can offer, Ehrlich found this statement “alarming,” stating that “it shows involvement with administration about what we can offer to handle the situations” and “implies that there were discussions and planning meetings separate and distinct from the Child Study Team meeting where the whole team was going to be there to discuss these options.” Regarding the reference that Andy mentioned possible behavioral consultation with the parent, Ehrlich did not believe that Brandon was a behaviorist. The reference to parent consultation and not a formal service was “alarming” to him “because with every meeting [he] had with . . . [Brennessel] and every indicator of behavioral issues prior to this meeting, it was agreed upon that there were behavioral issues and behavioral issues at home, and a formal service, an IEP directed service, . . . was necessary,” and he and Brennessel “talked about that . . . and realized a need for that.”

Regarding the May 2014 mediation agreement, Ehrlich testified that “[t]he purpose of the FBA on the parents and my perspective was to have an instrument, a

formal instrument conducted by a properly trained certified person, rather than just observations, . . . to determine or substantiate the need for implementing FBA services.” In his view, the District did not comply with the agreement (i.e., it was not completed by the end of the 2013–14 school year, Saylor was not interviewed, he was not present, and a meeting to review the FBA was not held within ten days). Ehrlich attended the meeting on September 23, 2014, to review the District’s FBA. The school psychologist, LDTC, and R.T.’s teachers did not attend this meeting. At the meeting, Ehrlich articulated his disagreement with Fassilis’ report, which indicated that R.T. was not exhibiting any behavioral difficulties in the classroom and was able to function appropriately and learn in a school setting, because he observed behaviors both in the school and outside of the school. He explained, “the main crux of my reaction and my negative reaction at this meeting . . . was . . . I saw all these indicators of behaviors that would impact R.T.’s total educational program, academically, socially, . . . emotionally, behaviorally, . . . and these recommendations [by Fassilis] should have covered both home and school environments, because generalization of skills learned in school . . . [has] to be supported and controlled and continued in the home.” Ehrlich recalled asking, “You’re saying there are behaviors?,” Fassilis responding “Yes,” and Ehrlich replying, “Are you proposing that the school recognizes it’s their responsibility to provide this training and these supports?” Fassilis could not give him an answer, and supervisor Brandon interjected and said, “The document will stand for itself. We aren’t recommending any behavioral supports.” At the meeting, Ehrlich asked Fassilis how many FBAs she had conducted, and she replied, “This is the first one I’ve ever done.” There was no mention of “Rethink” at this meeting or the December 13, 2013, IEP meeting.

Ehrlich noted that before the September 23, 2014 meeting Brennessel sent an e-mail to Fassilis dated September 5, 2014, which states in part: “I spoke to Andy about the meeting to review the FBA conducted for [R.T.] He said this is not an IEP meeting and we are simply meeting for you to review the assessment. There will not be teachers or therapists in attendance, and he did not advise that Janice [Rhodes] participate.” (P-54 at 109.) Ehrlich articulated his concern that a supervisor was telling the case manager whether the meeting should be an IEP meeting and who should

participate. He opined that it was important for R.T.'s teachers and speech therapist to have attended this meeting "because the behaviors that would have been outlined in the FBA [and] in the recommendations could have been refuted or supported . . . by the teachers and what they saw in the classroom and the implications it has on delivering the educational program." He opined that an IEP meeting should have been held, and stated, "It is my professional belief and practice that any time a document is entered into the record you have to have a full Child Study Team there to discuss it, because even though it's an FBA conducted by a BCBA, there are other implications for the team to consider . . . [and] the whole team has to be there to discuss the implications of program and supports." Ehrlich described that the recommendations in Fassilis' report were the District's responsibility and an IEP should have been developed. He explained, "it's a training program that should be directed by a behaviorist . . . that tries certain programs, and if they don't work, can modify it to see what does work, because there is no behavioral ABA . . . that works for every kid [a]nd the goal of that eventually is to reduce the number of training hours so that the parent can assume the direction." Ehrlich was not aware of any provision in the IDEA or 6A:14 that requires an IEP meeting every time an evaluation is done.

Ehrlich drafted a letter requesting an independent FBA, which he presented at the September 23, 2014 meeting, and described his disagreement with Conklin's later letter denying the parents' request. He recommended to the parents that "rather than fight" the District's due-process petition, they should hire an independent unbiased expert. He "wanted to have a valid FBA done . . . to come up with a valid conclusion of what's needed for R.T.'s program." Ehrlich had "the uneasy feeling that the FBA . . . conducted by the District was done pre-conceived to show that everything is good and we don't need any more help or any more services." He referred the parents to Glasberg, who holds a BCBA/D, which is a higher level of training. Ehrlich had never worked with Glasberg before. He believed that Glasberg's January 2015 report "was a very accurate, unbiased . . . assessment, a very, very thorough review of record." He stated that "the component that was missing from the District was included here, its reviews and written input by the current home-based ABA therapist," which he believed "is an integral part of conducting any FBA." "All the record reviews were . . . accurate,

and [he] thought it was very thorough.” Glasberg’s findings regarding R.T.’s behaviors were consistent with Ehrlich’s earlier observations. Glasberg also saw behaviors that he never observed, such as physical aggression and self-injurious behavior. Ehrlich opined that Glasberg’s observations of R.T. during homework completion with his mother reflected a behavioral issue. As he had explained to the teacher at the IEP meeting, “[h]omework and adjustment to work and schedule in an academic arena is an integral part of learning,” and the concern is “the behavioral issues that occurred trying to get R.T. to conform or agree or calm down enough to attempt to do a school-related and required task.” He agreed with Glasberg’s criticism of Fassilis’ FBA that referred to R.T.’s on-task behaviors improving with the current interventions, in that “[i]t’s impossible to accurately draw this conclusion without ongoing data documenting whether the behavior is in fact worsening or improving,” and no previous FBA had been conducted. Regarding Glasberg’s comment about “the sexualized behavior which might be frightening to peers if he generalizes these responses in the school setting,” Ehrlich testified that “the most alarming aspect of the dysfunctional behaviors that [he had] seen were the ones in the sexual realm,” which he described. Regarding Glasberg’s decision not to recommend a specific number of ABA services in school and at home, he explained that “some BCBA’s will recommend duration and frequency” and some will “highlight areas of need and recommendations and leave it up to the team to decide what’s appropriate.”

Ehrlich opined that Fassilis’ report was “inadequate” and “not objective,” and he believed that it was influenced “by higher ups” in the District. He opined that Fassilis’ “FBA was incomplete and not accurate because it did not offer any substance of how we were going to treat a recognized disability in need of home therapy.” Her failure to speak to Saylor or view the home program was “not as consequential or as important.” Ehrlich explained that an FBA should not only have recommendations for programming but should specify where, when, duration, and who was going to deliver those services and who would support and monitor the services. In his view, the parents were not capable of implementing the recommendations in her report. Ehrlich also found it “unusual” that Stickel conducted the second observation rather than Rhodes, who was the BCBA assigned to R.T.’s school and familiar with R.T.

Ehrlich attended the April 29, 2015, IEP meeting. Fassilis did not discuss Glasberg's report at the meeting and the CST did not include an analysis or discussion of her recommendations in the notice section of the IEP. Although e-mails between Fassilis and Brennessel in late March 2015 refer to drafting comments or a "comparison write-up" (see P-54 at 66, 71–74), this was not discussed at the meeting. "There was no write-up of a comparison between the district's FBA . . . [and] Glasberg[s]" and no "write-up about the pros and cons" of Glasberg's FBA. Ehrlich opined that this analysis should have been addressed. There was no discussion regarding the implementation of R.T.'s goals and objectives in fifth grade and no fifth-grade data was reviewed, including what had to be modified and implemented in sixth grade. Ehrlich described the reasons why he disagreed with the CST's recommendation that R.T. attend Herbert Hoover, and that the parents were "diametrically opposed" to the CST's recommendation. He recounted that the team mentioned that "academically" Woodrow Wilson "wouldn't be the most suitable." At the meeting, Ehrlich explained his belief as an educator that "the social/behavioral adjustment was more important than the academic adjustment"; "the parents would be willing to accept . . . a different structure but a lower instructional-level environment in order to get a better social/behavioral environment for R.T."; "the title of the class . . . doesn't necessarily dictate the level of instruction, that a good special-ed teacher can individualize levels and try to give the appropriate level instruction to R.T."; and "the benefits would be far . . . greater socially and behaviorally than academic." He agreed that an ESY program was offered, but did not believe it was discussed, and did not believe R.T. attended it. Regarding the IEP itself, Ehrlich noted that Fassilis' FBA was not summarized in the PLAAFP and the PLAAFP does not reference Glasberg's report. The other listed evaluations were done in 2007, 2010, and 2011, which "refers back to [his] original interpretation that the District was remiss in not conducting a reeval in 2014." "Rethink" is not listed as a related service and no goals and objectives are developed for "Rethink." The IEP states that the opportunity to participate in a school-based social-skills lunch group should continue to be offered to R.T. in sixth grade "if available." Ehrlich stated that if the CST is recommending a related service it should be included in the student's IEP, and by putting "if available," there is no guarantee that it will be provided. A follow-up

IEP meeting was not scheduled. The day after the IEP meeting, Brennessel sent a “Request to Amend an IEP Without a Meeting” that proposed to amend R.T.’s IEP to include counseling for thirty minutes a week for the remainder of the 2014–15 school year, which Ehrlich described as “a Band-Aid over an open wound.”

The agreement that R.T. would attend Woodrow Wilson occurred around August 2015 and an e-mail reflects that Woodrow Wilson staff was on notice by August 18, 2015, that R.T. would be attending the school. (P-54 at 30.) Ehrlich opined that R.T.’s IEP should have been revised to reflect the change in R.T.’s program from resource-center pullout for language arts and math to the self-contained autism class. He explained that “[t]he goals and objectives have to reflect the current program, and the goals and objectives in the self-contained autism class both academically and behaviorally would be different than if you were in a pullout resource or an in-class support [setting].” Ehrlich noted an e-mail from R.T.’s case manager dated October 15, 2015, which indicated that R.T. was listed under Herbert Hoover in IEP Direct, which the case manager realized “when teachers couldn’t access him in IEP Direct.” (P-54 at 34.) He expressed concern about the e-mail “because by law, his teachers have to review the current IEP and realize what the recommended accommodations were in all academic settings and address their instructional model with those accommodations,” and he believed by law that “a teacher has to sign within the first couple of weeks of school that they reviewed [the] current IEP and have reviewed the accommodations.” Ehrlich did not know whether the teachers had in fact reviewed R.T.’s IEP. He noted that in an e-mail from Macchiaverna dated September 21, 2015, he stated in part: R.T. “is more of an early 1st grade reader looking back at the numbers. Don’t know where I came up with early 3rd grade. However, his Lexile level is at 180 at this point according to Reading Express. He is 1.5 (first grade) in Language according to Moby Max.” (P-54 at 10.) Ehrlich, who is a New Jersey Department of Education certified reading specialist, opined that this “is an indication that [R.T.] is severely disabled in the area of reading and that some supportive reading program should have been developed to address his reading language weaknesses.” He commented that now that the teacher realizes that R.T. is two years below the level the teacher thought he was at, “a new set of goals and objectives should have been delivered, and an individualized program

should have been developed at that level”; “[t]he IEP should stipulate in the area of reading and language arts how they are going to address R.T.’s current levels . . . in reading”; and “[a] program should have been proposed, discussed and developed with goals and objectives that target his level.” Ehrlich reviewed Glasberg’s follow-up reports by Heyman in March and May 2016. Regarding the home-observation report, he thought she “was right on” and could not “find any fault in the report.” He stated, “These are her observations and her professional recommendations of how to address the enumerated issues that are there . . . and she is justifying every area that she recommends support in, including an area that I haven’t seen in dealing with the sibling training, which I think is essential also, because the siblings have been and will become more profoundly a major support system in R.T.’s life.” The District did not schedule an IEP meeting to review Heyman’s reports.

Ehrlich observed R.T. in sixth grade at Woodrow Wilson on June 5, 2016, and prepared a report memorializing his observation. (P-57.) He observed two classes: in-class-support social studies and health. Rhodes and Stickel accompanied him on the observation. Ehrlich testified that the social-studies class “was a very invigorating, enthusiastically conducted class.” He reported that R.T. was supported in the class by a teacher, who sat next to him, and another student; R.T. worked interactively with the support teacher and utilized a laptop and written materials to answer questions; and the teacher was dynamic and involved all the students in discussions. The second half of the lesson involved “role playing” of historical characters, with students putting costumes on; the lesson was well developed and well supported by the support teacher; R.T. was actively involved in all aspects of the lesson; and the teacher’s support was essential for behavioral and academic concerns. Whenever R.T. lost focus or started to stim (R.T. sat on a “stability ball” during the entire class) the teacher refocused him and helped him navigate through the lesson. Ehrlich found that R.T. “participated in and benefitted socially and academically” in the class, but noted that “there were no academic pressures put on him.” He opined that the class “was appropriate, well supported, and staffed by 2 energetic, sensitive professionals that obviously knew R.T., and his specific needs, which helped him meet his academic objectives.”

The second class was a Health 7 class with one instructor and twenty-five students. Ehrlich testified that the class “was all over the place” and R.T. “was frequently off-task and wandering.” He described that it was “a seventh-grade regular health class” and the “topic of the lesson was ‘sexual differences, pregnancy and menstruation’ . . . which right away set an alarm to [him],” stating, “[h]ere is a kid that’s having difficulty with sexual issues and appropriateness, and here he is thrown into a regular health class with older kids, . . . with video reinforcement, graphic reinforcement of female genitals and operations and physical characteristics of a female and how they become pregnant.” He reported that R.T. was assigned “Brain Pop” & Quiz on his Chromebook program and R.T. was frequently off-task. The teacher went over to him and gave him two papers to work on; R.T. again appeared “lost” at times; and he was talking to classmates, playing with his headset and wires, and looking around. After ten minutes, the teacher went to R.T. and redirected him to his computer. R.T. was making oral sounds (grunts), and talking to a girl in another group, and he closed his computer five minutes before the lesson was over. R.T. was told to move to another table for another group lesson. He moved, opened his laptop, and asked the teacher to help him locate the “Brain Pop.” He then put his headset on, proceeded to view the video, and asked the teacher for help. He could not answer the questions on the video and said out loud, “I stink at puzzles.” He began to talk with his group mates, and then said out loud, “I’m not done yet,” when told to listen to directions by the teacher for the next lesson. As she spoke to the whole class, R.T. said out loud, “What if I don’t finish?” and the teacher responded, “You have to take it home.” By the latter part of the class R.T.’s attention, behavior, and focus were diminishing. The teacher again had to go over to him and show him what to do and redirect him to the worksheet. R.T. put down the question sheet in frustration and just sat there. When the class ended, the two behaviorists and Ehrlich spoke to the teacher, who said, “It’s a tough class; I have 5 special-education students and 3 E.L.L. students, and no instructional support.” Ehrlich found that the health class “was a disaster both academically and behaviorally.” He opined that the “class structure, age, size and grade level is inappropriate for R.T.”; the “topic . . . touches an area of behavior that is at risk for R.T.’s current social -- sexual profile and should be addressed in a more delicate environment”; and “[i]nstructionally

the format of the program did not provide the instructional, behavioral, and technical supports or accommodations that R.T. needs to be successful academically” in health class.

Based on his observations, Ehrlich concluded that R.T. “needs supports, both academic and behavioral, as well as social, if he is to be successful at Woodrow Wilson,” and the “need for a formal social-skills program to address current and future issues is essential for R.T.’s success.” His recommendation regarding a formal social-skills program was based on his observations of the two classes, his informal prior observation of Macchiaverna’s class, and his knowledge of developmental abilities of special-education students. He was not aware of R.T. engaging in any physical aggression or sexual behavior in school during sixth grade.

Ehrlich opined that R.T.’s June 6 and December 13, 2013, IEPs were not reasonably calculated to provide R.T. with a FAPE and detailed the basis for his opinion. He further opined that R.T.’s April 29, 2015, IEP was not reasonably calculated to provide R.T. with a FAPE. He explained that the goals are not individualized; there are no measurable statistics, goals, or progress reporting in place; and the evaluative procedures are informal measures, which cannot be measured quantitatively. The goals have not changed from previous IEPs, and the IEP fails to provide proper behavioral supports for R.T. It lists a social-skills lunch group “if available,” and does not include home programming, including direct therapy to R.T. and parent training.

LEGAL DISCUSSION

The IDEA provides federal funds to assist participating states in educating disabled children. Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 179–80 (1982). One of the purposes of the IDEA is “to ensure that all children with disabilities have available to them a [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. §1400(d)(1)(A). To qualify

for this financial assistance, New Jersey must effectuate procedures that ensure that all children with disabilities residing in the state have available to them a FAPE consisting of special education and related services provided in conformity with an IEP. 20 U.S.C §§ 1401(9), 1412(a)(1). The responsibility to provide a FAPE rests with the local public-school district. N.J.A.C. 6A:14-1.1(d). The district shoulders the burden of proving that a FAPE has been offered. N.J.S.A. 18A:46-1.1.

A FAPE includes both “special education” and “related services.” 20 U.S.C. § 1401(9). “Special education” is “specially designed instruction . . . to meet the unique needs of a child with a disability” and “related services” are the support services “required to assist a child . . . to benefit from” that instruction. 20 U.S.C. § 1401(26)(A) and (29). The FAPE mandate requires the provision of “personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” Rowley, 458 U.S. at 203.

In order “[t]o meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Endrew F. v. Douglas Cty. Sch. Dist. RE-1, 137 S.Ct. 988, 999 (2017). The United States Supreme Court has recognized that “this standard is markedly more demanding than the ‘merely more than de minimis’ test,” and “a student offered an educational program providing ‘merely more than de minimis’ progress from year to year can hardly be said to have been offered an education at all.” Id. at 1000–01. In addressing the quantum of educational benefit required, the Third Circuit has also made clear that more than a “trivial” or “de minimis” educational benefit is required and articulated that the appropriate standard is whether the IEP provides for “significant learning” and confers “meaningful” educational benefit to the child. S.H. v. State-Operated Sch. Dist. of Newark, 336 F.3d 260, 271 (3d Cir. 2003); T.R. v. Kingwood Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000); Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999); Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180, 182–84 (3d Cir. 1988), cert. den. sub. nom. Cent. Columbia Sch. Dist. v. Polk, 488 U.S. 1030 (1989). The determination of whether a given IEP has satisfied the

required standard must be assessed in light of the individual potential and educational needs of the student. T.R., 205 F.3d at 578; Ridgewood, 172 F.3d at 247–48.

The IEP has been described as “the centerpiece of the statute’s education delivery system for disabled children.” Honig v. Doe, 484 U.S. 305, 311 (1988). It is the means by which special education and related services are “tailored to the unique needs” of a particular student. Rowley, 458 U.S. at 181. An IEP must be in effect at the beginning of each school year and be reviewed at least annually. 20 U.S.C. § 1414 (d)(2) and (4); N.J.A.C. 6A:14-3.7(a)(1) and (i). It must “be drafted in compliance with a detailed set of procedures,” which “emphasize collaboration among parents and educators and require careful consideration of the child’s individual circumstances.” Andrew F., 137 S.Ct. at 994. The IEP team shall review any lack of expected progress toward the annual goals and in the general curriculum; the results of any reevaluation; information about the student, including information provided by the parents, current classroom-based assessments and observations, and the observations of teachers and related-services providers; the student's anticipated needs; and other relevant matters. N.J.A.C. 6A:14-3.7(j).

An IEP must also include various elements. See 20 U.S.C. § 1414(d)(1)(A); N.J.A.C. 6A:14-3.7(e). It must include a statement of the student’s present levels of academic achievement and functional performance and a statement of measurable annual academic and functional goals. N.J.A.C. 6A:14-3.7(e)(1) and (2). The annual academic and functional goals must be “measurable and apprise parents and educational personnel . . . of the expected level of achievement attendant to each goal” and include benchmarks or short-term objectives related to meeting the student’s needs. N.J.A.C. 6A:14-3.7(e)(2) and (3). The IEP must further include, among others, a statement of the special education and related services and supplementary aids and services that will be provided for the student, along with any program modifications or supports, and a statement specifying the projected date for the beginning of the services and modifications and the anticipated frequency, location, and duration of those services and modifications. N.J.A.C. 6A:14-3.7(e)(4) and (8). In the words of the New Jersey Supreme Court, “[w]ithout an adequately drafted IEP, it would be difficult, if

not impossible, to measure a child's progress, a measurement that is necessary to determine changes to be made in the next IEP." Lascari v. Bd. of Educ. of Ramapo Indian Hills Reg'l High Sch. Dist., 116 N.J. 30, 48 (1989). The case manager, who must "[b]e knowledgeable about the student's educational needs and program," is charged with the responsibility of "coordinat[ing] the development, monitoring and evaluation of the effectiveness of the IEP," "facilitat[ing] communication between home and school," and "coordinat[ing] the annual review and reevaluation process." N.J.A.C. 6A:14-3.2(b) and (c).

"The IEP must aim to enable the child to make progress," and the "reasonably calculated" qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials." Andrew F., 137 S.Ct. at 999. The issue of whether an IEP is appropriate is fact sensitive in nature. In connection with this determination, "the focus should be on the IEP actually offered and not on one that the school board could have provided if it had been so inclined." Lascari, 116 N.J. at 30. It is necessary to "determine the appropriateness of an IEP as of the time it was made" D.S. v. Bayonne Bd. of Educ., 602 F.3d 553, 564–65 (3d. Cir. 2010). "[E]vidence acquired subsequently to the creation of an IEP" should "only" be used "to evaluate the reasonableness of the school district's decisions at the time that they were made." Id. at 565. "Neither the statute nor reason countenance 'Monday Morning Quarterbacking' in evaluating the appropriateness of a child's placement." Fuhrman v. E. Hanover Bd. of Educ., 993 F.2d 1031, 1040 (3d Cir. 1993). Judge Mansmann's concurring decision in Fuhrman "underscores and emphasizes the importance of this threshold determination." Ibid. Judge Mansmann explained:

Rowley's requirement that a school district's program be "reasonably calculated" to enable a child to receive educational benefits is prospective; it is based on an evaluation done by a team of experts prior to the student's placement. At the time of the child's evaluation, the IEP must be reasonably calculated to enable the child to receive educational benefits. Thus I would not view Rowley's test of "appropriateness" as whether the child actually receives educational benefit as a result of his school placement. Instead, the appropriateness of a student's placement must be assessed in terms of its appropriateness at the time it is

created and not at some later date when one has the benefit of the child's actual experience.

[Id. at 1041.]

The adequacy of a given IEP will turn “on the unique circumstances of the child for whom it was created.” Endrew F., 137 S.Ct. at 1001. The Endrew F. Court observed that the “absence of a bright-line rule . . . should not be mistaken for ‘an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.’” Endrew F., 137 S.Ct. at 1001 (quoting Rowley, 458 U.S. at 206). This “deference is based on the application of expertise and the exercise of judgment by school authorities,” who are vested “with responsibility for decisions of critical importance to the life of a disabled child.” Endrew F., 137 S.Ct. at 1001. In this regard, “[a] reviewing court may fairly expect those authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” Id. at 1002.

There is a two-part inquiry when reviewing alleged violations of the IDEA: whether the district “complied with the procedures set forth in the Act” and whether the IEP “developed through the Act’s procedures [is] reasonably calculated to enable the child to receive educational benefits.” Rowley, 458 U.S. 206–07. Not all procedural violations will rise to a substantive deprivation of FAPE. Rather, this forum may find that a child did not receive a FAPE “only if the procedural inadequacies . . . impeded the child’s right to a free appropriate public education”; “significantly impeded the parents’ opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents’ child”; or “caused a deprivation of educational benefits.” 20 U.S.C. 1415(f)(3)(E)(ii); see N.J.A.C. 6A:14-2.7(k).

ANALYSIS AND CONCLUSIONS

Prior to addressing the critical issue concerning whether the District offered a FAPE to R.T., it is necessary to discuss the scope of the claims in this proceeding. The

issues for disposition are limited to the claims set forth in the petition. 20 U.S.C. § 1415(f) (3)(B); see N.J.A.C. 6A:14-2.7(c) (the request for due process must “state the specific issues in dispute, relevant facts and the relief sought”). Petitioners argue in their post-hearing submissions that the District failed to offer IEPs for the 2013–14, 2014–15 and 2015–16 school years that were reasonably calculated to provide R.T. with a FAPE. In short, I agree with the District’s stance that petitioners’ challenge to the 2013–14 and 2014–15 IEPs is beyond the scope of petitioners’ due process request. Although that request tangentially mentions the 2013–14 or 2014–15 IEPs, the focus of the factual allegations relate to the 2015–16 IEP and the requested relief seeks a determination that “the Respondent, for the 2015–16 school year, has failed to propose an IEP for R.T. which is reasonably calculated to provide him with a ‘free, appropriate public education’ in the least restrictive environment” (Emphasis added.) That petitioners’ claims relating to the 2013–14 and 2014–15 IEPs would not be barred by the two-year limitation embodied in 20 U.S.C. § 1415(f)(3)(C) does not permit petitioners to expand the issues beyond the 2015–16 IEP set forth in their request for due process. In fact, during the hearing, petitioners’ counsel confirmed that “this hearing is limited to the IEP that was proposed for the 2015/2016 school year,” and no behavioral expert was offered as to observations and/or opinions relating to needed services in school or at home before Glasberg’s evaluation in December 2014. Accordingly, I **CONCLUDE** that petitioners’ claims and any appropriate relief are limited to those relating to the April 29, 2015 IEP.

Nevertheless, the evidence prior to the 2015–16 IEP provides the background portrait against which the instant dispute arises. The undisputed evidence discloses that the District recognized R.T.’s need for ABA services to address behavioral concerns as early as February 2007. Initially the District provided five hours of ABA services per week, which the District increased to ten hours by June 2007. The District also apparently determined around that time that R.T. required these services to address his behavioral needs both in school and at home. The hours continued at that level throughout R.T.’s first Kindergarten year (2008–09). Although documents refer to the District conducting an assessment to determine R.T.’s ABA hours for the 2009–10 school year, there is no evidence that any assessment was conducted.

Notwithstanding, the January 26, 2010 IEP provided that R.T. would then receive only four hours of ABA services per week, which were changed to just the home environment. The District explicitly recognized in that IEP R.T.'s need for such services to "help him develop age-appropriate skills and to generalize those skills to other environments" and to address R.T.'s "communication, social and behavioral weaknesses." R.T.'s IEP for first grade reiterated the need for such services but further reduced the ABA services to two hours per week and one hour per month of parent training, and R.T.'s IEP for second grade terminated the ABA services completely. No basis for that reduction and termination of services can be ascertained from the IEPs and the evidence offered at the hearing.

Although the termination of R.T.'s ABA services in 2011 is not the subject of this proceeding, the evidence is also insufficient to support a conclusion that R.T.'s academic, behavioral, and social weaknesses had progressed to a point that he no longer needed ABA services. Indeed, the evidence reveals that after the District terminated the services, R.T. exhibited various behavioral and academic issues in school during third grade. As described by Mrs. T. and corroborated in the PLAAFP of the IEP developed on June 6, 2013, R.T.'s third grade teachers reported that R.T. exhibited defiance and a refusal to complete assignments on a regular basis. He was oppositional and unmotivated and his numerous behavior plans were not effective for more than a few days or weeks. R.T.'s inappropriate behaviors at home also escalated, including defiance and aggression toward family members and behavior that impacted school-related tasks. Although the District conducted a triennial evaluation prior to terminating the ABA services, that evaluation did not include an FBA or any other evaluation that addressed R.T.'s behavior or need for ABA services. Further, notwithstanding the reports of R.T.'s third grade teachers, along with the parents' request to reinstitute the home programming beginning at least as of Ehrlich's meeting with case manager Brennessel in October 2013, the District did not conduct an FBA or any other evaluation to verify or address the identified issues. Rather, after being apprised of the various issues and before convening an IEP meeting, Brennessel sent a letter on November 20, 2013 proposing to waive R.T.'s triennial evaluation. Similarly, the District did not propose to conduct an evaluation, such as an FBA, or offer any

services in response to the parents' concerns at the December 13, 2013 IEP meeting. Instead, it was not until after the parents filed for mediation in April 2014 that the District for the first time conducted an FBA, even though the ABA services had been provided in the past due to R.T.'s behavior and the District's records are devoid of data justifying the termination of those services. The evidence further supports that R.T. continued to exhibit behavioral issues during the 2013–14 school year based on R.T.'s teacher's e-mails to Mrs. T. in February/March 2014, the teacher's progress letter in April 2014 and Fassilis' description of reported disruptive or aggressive behavior during the course of her FBA interviews in June 2014 (e.g., punching the car seat, teachers' reports of meltdowns).

In addition, a review of R.T.'s prior IEPs reveals that the District did not, among other things, consistently list the ABA services as a related service, conduct envisioned evaluations or explain the basis for action taken or options considered. The December 2013 IEP, which apparently was the IEP in place prior to the one in issue, covered a period of approximately a year and a half in contravention of the requirement that the IEP team must meet at least annually to review the IEP. After the parents filed this request for due process, the parties agreed to a change in R.T.'s program. Although that program is not the subject of this proceeding, it is observed that R.T.'s IEP for the 2015–16 school year does not accurately reflect R.T.'s school or program for language arts and math. Rather, the IEP continues to list a pull-out resource program at Herbert Hoover for these subjects, rather than the self-contained autism program at Woodrow Wilson. The District did not amend the IEP to reflect the change requested by the parents and agreed to by the District and did not convene a meeting to address the impact, if any, that this change in program may have on other portions of the IEP. See N.J.A.C. 6A:14-3(d)(1) and (3) (An IEP may be amended without a meeting of the IEP team "if the parent makes a written request to the district board of education for a specific amendment to a provision or provisions of the IEP and the district agrees," and any such amendment "shall be incorporated in an amended IEP or an addendum to the IEP, and a copy of the amended IEP or addendum shall be provided to the parent within 15 days of receipt of parental consent by the school district."). Further, no evidence suggests that any District representative, at a minimum, undertook a review of

the goals and objectives in R.T.'s April 2015 IEP to determine whether any modifications were necessitated as a result of R.T.'s new program. Succinctly stated, the District's unexplained actions relative to its discontinuation of the ABA services, failure to conduct an FBA or other assessment before the parents filed for mediation, proposed waiver of R.T.'s triennial evaluation, failure to conduct envisioned assessments, and failure to amend the IEP in issue to reflect R.T.'s correct program place in question the manner in which the District handled the services offered to R.T.

Against this backdrop, the pivotal issue is whether the IEP for the 2015–16 school year was reasonably calculated to provide R.T. with the opportunity for significant learning and meaningful educational benefit. The District shoulders the burden of establishing, by a preponderance of the credible, competent evidence, that it provided a FAPE to R.T. See In re Revocation of the License of Polk, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962). In evaluating whether the District has satisfied its required burden, it is necessary for me to assess and weigh the credibility of the witnesses. Credibility is the value that a finder of the facts gives to a witness's testimony. It requires an overall assessment of the witness's testimony in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself," in that "[i]t must be such as the common experience and observation of mankind can approve as probable in the circumstances." In re Perrone, 5 N.J. 514, 522 (1950). A trier of fact may reject testimony as "inherently incredible" and may also reject testimony when "it is inconsistent with other testimony or with common experience" or "overborne" by the testimony of other witnesses. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958). It is further necessary to evaluate and weigh the competing expert testimony offered at the hearing. It is well settled that "[t]he weight to which an expert opinion is entitled can rise no higher than the facts and reasoning upon which that opinion is predicated." Johnson v. Salem Corp., 97 N.J. 78, 91 (1984) (citation omitted). The nature of the evidence presented must also be considered. Hearsay evidence is admissible in administrative proceedings and "shall be accorded whatever weight the judge deems appropriate

taking into account the nature, character and scope of the evidence, the circumstances of its creation and production, and, generally, its reliability.” N.J.A.C. 1:1-15.5(a). Notwithstanding the admissibility of hearsay evidence, the “residuum rule” requires that “some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness.” N.J.A.C. 1:1-15.5(b); see Weston v. State, 60 N.J. 36, 51 (1972) (a “fact finding or a legal determination cannot be based upon hearsay alone” and “for a court to sustain an administrative decision, which affects the substantial rights of a party, there must be a residuum of legal and competent evidence in the record to support it.”).

Turning to the evidence, I found Mrs. T. to be a credible witness. The record clearly demonstrates that she is a devoted parent who is actively involved in R.T.’s academic, behavioral and social performance, which is further evidenced by the fact that the parents privately hired Saylor and began working with an educational consultant after the termination of R.T.’s ABA services and the increase of R.T.’s behaviors in school and at home. I accept as **FACT** Mrs. T.’s testimony regarding R.T.’s behaviors, including those reported to Glasberg, Heyman and Fassilis. This evidence reveals that R.T. exhibited, among others, meltdowns and a failure to complete assignments as reported by R.T.’s teachers, and outbursts, aggression, opposition to completing school-related tasks, sexualized behaviors, and a refusal to do facets of personal hygiene at home. Although the District elicited testimony by various witnesses indicating that Mrs. T. did not use a token economy system or establish a set daily schedule for homework, and/or challenging the appropriateness of the manner in which Mrs. T. implemented positive rewards or consequences, this evidence does inure to the District’s benefit but, instead, lends further support as to the need for parent training.

The foundation of the District’s case that the April 29, 2015 IEP was reasonably calculated to confer meaningful educational benefit to R.T. is predicated solely on the testimony of Fassilis. Although I found Macchiaverna and Stickel to be highly qualified, devoted professionals and credible witnesses, they were not involved in the

development of the IEP and had no personal knowledge of R.T.'s progress or behaviors at that time. In opposition to Fassilis' testimony, petitioners offered testimony by BCBA Glasberg. In evaluating the strength of the competing expert testimony, I find that the scales tip substantially in Glasberg's favor. Beyond Glasberg's impeccable credentials and extensive experience in the realm of autism, ABA, FBAs and appropriate interventions and educational programs for students on the autism spectrum, Glasberg offered credible, candid and persuasive testimony concerning her evaluation and R.T.'s needs, coupled with cogent reasons to support her various opinions, which were not discredited by counsel's thorough cross-examination. Accordingly, I accept as **FACT** Glasberg's testimony describing her school and home observations. This evidence demonstrates that during her home observation, R.T. bit his hand twice; hit his head; threw cups and a board game; referred to himself as "a weird kid"; threatened to punch himself; engaged in repetitive ball bouncing; did not start homework for at least twenty-six minutes after being asked; yelled repeated protests about the homework and twisted the skin on Mrs. T.'s arm; and engaged in sexualized behavior. During Glasberg's observations at school, R.T. exhibited, among other behavior, issues with social interaction with peers.

I find a lack of competent, credible evidence to support the suggestion that Fassilis' FBA was improperly influenced by the District administration or that Ehrlich inappropriately attempted to influence her FBA. However, I found Fassilis' testimony and the conclusions reached by her to be overborne by that offered by petitioners. In contrast to Glasberg's assessment, which occurred approximately four months before the IEP meeting, Fassilis conducted her assessment more than ten months before the meeting, when R.T. was in an earlier grade, and her assessment sheds limited insight concerning R.T.'s status at the time of the IEP meeting. A canvas of Fassilis' testimony raises doubt as to the accuracy and reliability of her testimony and the weight to be afforded to her assessment. For example, Fassilis initially denied that she even attended an IEP meeting after her assessment, which casts a cloud of suspicion as to the accuracy of her later testimony recounting what occurred at that meeting. Further, in contrast to Glasberg, Stickel and Heyman, who took data throughout their respective observations, Fassilis' data collection was limited to the ten-minute period when she

completed the Direct Observation Form, the results of which facially appear to be irreconcilable with the amount of prompting and redirection described throughout her report and testimony. In connection with her assessment, Fassilis did not interview R.T.'s case manager or review any data to confirm the accuracy of the teachers' verbal reports. However, Fassilis recognized R.T.'s difficulty in completing school-related tasks at home due to his behavior and recommended a litany of behavioral intervention strategies that should be implemented. And, Glasberg offered persuasive testimony explaining that certain suggested strategies were at variance with those utilized in school and that a trained behaviorist was required to not only design the necessary individualized program for R.T., but to train the parents and collect data.

At the hearing, the District did not offer testimony by Brennessel, who served as R.T.'s case manager since at least May 30, 2012, and had direct involvement in the IEP meetings in 2012 and 2013, the meeting with Ehrlich in October 2013, the waiver of R.T.'s triennial evaluation in 2013, the September 2014 meeting regarding Fassilis' assessment, R.T.'s participation in the social skills lunch group during the 2013–14 and 2014–15 school years, and the 2015 IEP meeting in issue. In addition, the District did not present any of R.T.'s fifth grade teachers or service providers and Fassilis had no personal knowledge regarding R.T.'s academic, behavioral or social performance during fifth grade. In other words, the record is bereft of testimony by a District representative who possessed first-hand knowledge regarding R.T.'s progress or lack of progress, either academically, behaviorally or socially, and R.T.'s needs at the time of the offered IEP, along with the appropriateness of that IEP. Further, other than the information recited in the PLAAFP, the District offered no documentation, such as report cards, classwork, testing, progress reports and the like in support of the offered IEP and no evidence regarding R.T.'s progress in meeting his goals and/or the development of the goals in the 2015 IEP. The District's reliance on the teachers' reports to Fassilis regarding R.T.'s academic progress and lack of behavioral issues in fourth grade is clearly misplaced. Apart from the fact that this evidence has limited value for purposes of evaluating R.T.'s IEP for sixth grade, none of the fourth-grade teachers testified, and Fassilis did not verify the accuracy of the information relayed by the teachers through a review of documentation. Additionally, the recounted reports of

the teachers, who cannot be cross-examined, are plainly hearsay and insufficient to support an ultimate finding of fact as to R.T.'s progress or behavior under the residuum rule.

Equally lacking is any information in the IEP as to which recommendations by Glasberg, if any, were accepted or rejected and the reason supporting the action taken. See N.J.A.C. 6A:14-2.3(g). Although Glasberg readily agreed that certain items in the IEP aligned with her recommendations, and the District refers to other items in its brief, some of the items were not new to R.T.'s IEP and had been included in R.T.'s December 2013 IEP (e.g., class-wide behavior motivation plan, use of peer helpers). Fassilis' testimony did not address the manner in which the CST considered Glasberg's report, and/or incorporated recommendations from that report, and Brennessel, who apparently drafted the IEP, did not testify. Given the lack of testimony and specific information in the IEP regarding Glasberg's recommendations, the evidence falls short of establishing that items in the IEP resulted from a deliberate consideration of Glasberg's report. Contrast T.W. & L.W. ex rel. E.W. v. Parsippany-Troy Hills Bd. of Educ., OAL Dkt. No. EDS 12854-12, Final Decision (February 4, 2014) (where the school district employees who testified at the hearing had "agreed" with the independent evaluator and adopted her recommendation of speech, the petitioners could not argue the district had not "considered" the evaluation because it did not include the frequency of speech that the evaluator had recommended). Indeed, the section of the IEP listing the evaluations/reports as sources of information used to develop the IEP does not list Glasberg's report.

Fassilis conducted her assessment pursuant to the mediation agreement that resulted from the parents' mediation request seeking ABA services. Fassilis' report does not include a determination regarding whether R.T. required home programming services and, according to Fassilis, she was not asked about the need for such services at the September 2014 meeting to discuss her assessment. Beyond the delay in holding an IEP meeting to address Fassilis' June 2014 assessment until April 29, 2015, no evidence suggests that Fassilis discussed the issue of home programming and/or parent training at the IEP meeting or voiced any objections to the recommendations in

Glasberg's report at that meeting. Simply put, I afford no weight to Fassilis' opinion at the hearing that R.T. did not require home-based ABA services, an opinion which does not appear to have been articulated before the hearing, lacks an adequate factual foundation and is at best based on an assessment that was done more than ten months before the IEP in issue. This opinion is also overborne by Glasberg's testimony.

Although both Fassilis and Glasberg had recommended that R.T. participate in a social skills group and/or receive social skills training, an area of need that Brennessel had also recognized through R.T.'s participation in the social skills lunch group for two years, the IEP does not provide this related service. Rather, the IEP indicates that a school-based social-skills lunch group "should continue to be offered to [R.T.] in Grade 6, if available." Clearly, a needed service must be provided irrespective of whether the middle school offered a lunch group. Neither the IEP nor any witness addressed the reason why the concurring recommendations of the two behaviorists were not accepted or deemed unnecessary. It is further unknown how R.T. had progressed in the social skills lunch groups that he attended for two years inasmuch as no documentation was introduced and Brennessel did not testify. The District notes in its post-hearing submission that a social/emotional/behavioral goal in R.T.'s IEP (i.e., R.T. "will demonstrate the ability to adapt to middle school transitional changes in his environment") includes the objective for R.T. to "maintain and foster positive relationships with peers by initiating and maintaining positive social interaction (i.e., conversational skills, identifying similarities/interests, suggesting an interactive activity)", and that the IEP provides that R.T. would receive group speech therapy and includes a speech goal to "use problem solving strategies" with the objective that "[w]hen given a set of problematic circumstances, [R.T.] will express the predicament presented and offer possible solutions and associated outcomes." The District argues that "[b]oth of these goals would address social skills training and so would involvement in extra-curricular clubs which will now be available at the Middle School." Simply put, the individual responsible for implementing and/or developing these goals did not testify, and the District offered no evidence to support a conclusion that speech, counseling and/or the clubs mentioned in the District's brief, or the offered ESY program, would be

an adequate substitute for the type of social skills group and/or training recommended by the two behaviorists and/or previously provided by the District. This District's position is further undermined by the IEP's reference that R.T. should continue to be offered to a school-based social-skills lunch group "if available."

The reference in the IEP that "[a]dditional resources were shared with the parents," including, among others, "availability to participate in . . . [the] Rethink Autism program [and] availability of in-district parent training," provides no solace to the District. Sharing resources that may be available is not a substitute for providing needed services with related goals and objectives. The totality of the evidence does not support the conclusion that the listed resources obviated the need for the ABA services recommended by Glasberg. Stickel's testimony further raises some doubt regarding whether "Rethink" and parent training clinics were then even available to the parents since R.T. was not proposed to be in a self-contained autism class pursuant to the developed IEP, and no evidence suggests that the parents were provided access to "Rethink" or invited to a parent clinic before R.T. was placed in the self-contained autism class. These resources were also not previously recommended by Fassilis, who opined that at the time of her report "Rethink" was inappropriate, and Rhodes (the BCBA who conducted the parent training at the middle school) did not testify.

In sum, the District failed "to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable . . . [R.T.] to make progress appropriate in light of his circumstances." Andrew F., 137 S.Ct. at 1002. The District's reliance on R.T.'s performance in sixth grade does not serve to mitigate the deficiencies in District's proofs. It is necessary to determine the appropriateness of an IEP, and whether it was reasonably calculated to enable the child to receive educational benefits, as of the time it was created. D.S., 602 F.3d at 564–65. The appropriateness of an IEP is not assessed with the benefit of hindsight and evidence acquired after the creation of an IEP should "only" be used "to evaluate the reasonableness of the school district's decisions at the time that they were made." Id. at 565. The testimony by Stickel, Macchiaverna and Heyman supports that R.T. is doing well in his self-contained autism program. However, the self-contained autism program is not the program set

forth in R.T.'s IEP and, thus, any progress in that program cannot demonstrate the reasonableness of the District's decisions at the time of the IEP. Indeed, the evidence establishes that the parents were willing to accept a less demanding academic program to address R.T.'s behavior and social needs and the District agreed to this arrangement during the pendency of this proceeding. The totality of the evidence also fails to establish that R.T.'s program is an adequate substitute for the type of social skills group and/or training recommended by Fassilis and Glasberg prior to the IEP, which Heyman and Ehrlich both opined continued to be needed after R.T.'s placement in the self-contained autism program.

Based upon a consideration of the testimonial and documentary evidence presented, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following additional **FACTS**. The IEP offered by the District did not adequately address R.T.'s individualized academic, behavioral and social needs. R.T.'s behavior at home negatively impacts his ability to complete educational-related tasks and adversely interferes with his learning. The provision of ABA services at the home is a necessary support service to address R.T.'s academic, behavioral and social needs and to enable R.T. to benefit educationally from his instruction. A home program is necessary to complement the educational program at school. The services are required to enable R.T. to make academic, behavioral and social progress and to confer meaningful educational benefits to R.T. R.T. also requires social skills training.

Based upon the foregoing, I **CONCLUDE** that the District failed to sustain its burden of proving, by a preponderance of the credible, competent evidence, that the IEP offered for the 2015–16 school year was appropriate and provided a FAPE to R.T. I further **CONCLUDE** that, to the extent there were any procedural shortcomings on the part of the District, which petitioners did not assert in their request for due process, the evidence fails to establish that any such procedural violation impeded R.T.'s right to a FAPE, significantly impeded the parents' opportunity to participate in the decision-making process or caused a deprivation of educational benefits.

Petitioners seek reimbursement for the costs associated with the home program funded by the parents. I **FIND** that the record not only fails to demonstrate the number of hours Saylor worked and details regarding her services, but also fails to establish that she was providing the type of ABA data-driven program deemed necessary by petitioners' experts. Accordingly, I **CONCLUDE** that petitioners are not entitled to reimbursement for Saylor's services.

Petitioners seek reimbursement for the cost of Glasberg's evaluation. It is well established that the IDEA contains no provision for the recoupment of fees for services rendered by experts in IDEA actions. Arlington Cent. Sch. Dist. v. Murphy, 548 U.S. 291 (2006). Petitioners retained Glasberg after the District denied their request for an independent evaluation, which petitioners ultimately withdrew. The totality of the circumstances reasonably supports that Glasberg was retained in anticipation of litigation. Accordingly, I **CONCLUDE** that petitioners are not entitled to reimbursement for cost associated with Glasberg's evaluation.

Finally, petitioners seek compensatory education. I **CONCLUDE** that petitioners should be awarded compensatory education as a remedy for the District's failure to offer an appropriate IEP. In designing the appropriate remedy, I **CONCLUDE** that R.T.'s IEP should be revised to include the recommendations set forth in Heyman's report. Specifically, the IEP should be revised to include for a period of one year the provision of ten hours per week of behavior analytic services to R.T. at home by a registered behavior technician or behavioral therapist and four hours per month of oversight by a BCBA. The IEP should also be revised to include an additional four hours per month by a BCBA to provide parent and sibling training and an IEP meeting should be held in six months to determine if a reduction or termination of that training is appropriate due to behavioral improvement and family skill development. Inasmuch as Heyman's report includes the needed social skills training as part of the home hours, no additional social skills group at school will be required.

I **CONCLUDE** that the parties should meet within thirty days of this Decision to create a new IEP to reflect the above services. It is further urged that the parties

consider at that IEP meeting Heyman's recommendations that R.T. should be provided opportunities to sit at a table with typical peers during lunch and a lunch peer or "buddy" should be assigned during lunch to support R.T. in navigating social-skills interactions. These recommendations, however, are not being required by this Decision.

ORDER

I **ORDER** that petitioners and the District shall meet within thirty days of this Decision to create a new IEP for R.T. to include for a period of one year the provision of ten hours per week of behavior analytic services to R.T. at home by a registered behavior technician or behavioral therapist and four hours per month of oversight by a BCBA. I further **ORDER** that the IEP shall also be revised to include an additional four hours per month by a BCBA to provide parent and sibling training and that an IEP meeting shall be held in six months to determine if a reduction or termination of that training is appropriate. I **ORDER** that the remaining claims of the request for due process are **DISMISSED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2018) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516 (2018). 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 Programs.

January 14, 2019
DATE



MARGARET M. MONACO, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

jb

APPENDIX

List of Witnesses

For Petitioner:

Mrs. T.

Charles Ehrlich

Beth Glasberg-Katz

Celia Heyman

For Respondent:

Despina Fassilis

Cheryl Diane Stichel

Thomas Macchiaverna

Christopher Conklin

List of Exhibits in Evidence

For Petitioner:

P-1 Resume of Charles S. Ehrlich

P-2 Curriculum Vitae of Beth Glasberg

P-3 No exhibit in evidence

P-4 Curriculum Vitae of Celia L. Heyman

P-5 Transdisciplinary Evaluation dated April 26, 2006

P-6 IEP; February 26, 2007, meeting date and letter from Alisa Wilson to Parent(s)/Guardian(s) of R.T. dated March 1, 2007

P-7 Memorandum from Alisa Wilson to Suzanne Hiatt dated May 8, 2007

P-8 Memorandum from Alisa Wilson to Suzanne Hiatt dated June 19, 2007

P-9 IEP; October 30, 2007, meeting date and letter from Alisa Wilson to Parent(s)/Guardian(s) of R.T.

P-10 Educational Evaluation by Alisa B. Wilson dated March 24, 2008

- P-11 Psychological Assessment by Despina Fassilis dated March 17, 2008
- P-12 Speech and Language Evaluation by Sue Thompson dated April 29, 2008
- P-13 IEP; May 15, 2008, meeting date and letter from Alisa Wilson to Parent(s)/Guardian(s) of R.T. dated June 16, 2008
- P-14 Report by Vinnie Balestrieri dated October 25, 2008
- P-15 Document entitled R.T.'s "Current Home Programs May August 2009"
- P-16 IEP; May 22, 2009, meeting date and letter from Alison Hines to Parent(s)/Guardian(s) of R.T. dated June 11, 2009
- P-17 Written Confirmation of Parental Permission dated November 30, 2009
- P-18 IEP; January 7, 2010, meeting date and letter from Janice Rhodes to Mr. and Mrs. T. dated January 14, 2010
- P-19 IEP; January 26, 2010, meeting date and letter from Janice Rhodes to Mr. and Mrs. T. dated April 8, 2010
- P-20 IEP; June 1, 2010, meeting date and letter from Janice Rhodes to Mr. and Mrs. T. dated June 23, 2010
- P-21 Report by Monica McCullough and Hillary Kruger dated October 25, 2010
- P-22 Educational Evaluation by Mary Ellen Kaulius dated May 11, 2011
- P-23 Speech/Language Evaluation by Miriam Kafker dated May 5, 2011, and letter from Maria Villar to Mr. and Mrs. T. dated May 6, 2011
- P-24 Psychological Assessment by Anna Yang-Chiu dated May 13, 2011, and letter from Maria Villar to Mr. and Mrs. T. dated May 13, 2011
- P-25 Eligibility Conference Report; June 10, 2011, meeting date
- P-26 IEP; June 10, 2011, meeting date
- P-27 IEP; May 30, 2012, meeting date and letter from Sarah Brennessel to Mr. and Mrs. T. dated June 5, 2012
- P-28 IEP; June 6, 2013, meeting date and letter from Sarah Brennessel to Mr. and Mrs. T. dated June 11, 2013
- P-29 Letter from Sarah Brennessel to Parent(s)/Guardian(s), dated October 11, 2013
- P-30 Letter from Sarah Brennessel to Parent/Guardian of R.T. dated October 20, 2013, and Consent to Waive Triennial Reevaluation and Planning Meeting
- P-31 IEP; December 13, 2013, meeting date
- P-32 Parental Request for Mediation dated December 23, 2013

- P-33 Notice of Agreement dated May 6, 2014
- P-34 Functional Behavior Assessment by Despina Fassilis dated June 19, 2014, and letter from Sarah Brennessel to the Parent(s)/Guardian(s) of R.T. dated June 20, 2014
- P-35 Letter from Peter Weiss to Mr. and Mrs. T. dated July 7, 2014
- P-36 Invitation to Review an Evaluation dated September 18, 2014
- P-37 IEP dated September 18, 2014
- P-38 Meeting Attendance Sign-In Sheet dated September 23, 2014
- P-39 Letter from Sarah Brennessel dated October 15, 2014
- P-40 Final Report for Consultation by Beth Glasberg dated January 29, 2015
- P-41 Draft IEP; April 29, 2015, meeting date
- P-42 IEP; April 29, 2015, meeting date
- P-43 Annual IEP Review/Grade 6 Transition Planning Agenda
- P-44 Letter from Sarah Brennessel to Parent(s)/Guardian(s) of R.T. dated April 30, 2015
- P-45 No exhibit in evidence
- P-46 Functional Assessment by Gina M. Selpe dated July 20, 2015
- P-47 Letter from Janice Rhodes to Parent(s)/Guardian(s) dated October 9, 2015
- P-48 Letter from Janice Rhodes to Parent(s)/Guardian(s) dated November 10, 2015
- P-49 Letter from Janice Rhodes to Parent(s)/Guardian(s) dated January 4, 2016
- P-50 Letter from Janice Rhodes to Parent(s)/Guardian(s) dated January 27, 2016
- P-51 Letter from Janice Rhodes to Parent(s)/Guardian(s) dated February 29, 2016
- P-52 Home Observation Report/Addendum to Functional Assessment Report by Celia L. Heyman dated March 13, 2016
- P-53 Letter from Katherine Harrison to Parent/Guardian of R.T. dated March 22, 2016, and Progress Report for IEP Goals and Objectives 2015–2016
- P-54 Packet of e-mails and text messages
- P-55 Request and Amended Request for Due Process
- P-56 Letter from Douglas Silvestro, Esq., to Peggy McDonald dated June 3, 2015, and Answer to Petition for Due Process with Affirmative Defenses
- P-57 School Observation Report by Chuck Ehrlich dated June 17, 2016

P-58 School Observation Report/Addendum to Report by Celia L. Heyman dated May 16, 2016

For Respondent:

- R-1 Petition for Due Process dated October 8, 2014, with exhibits
- R-2 E-mail and letter from Robert Pruchnik, Esq., to Douglas Silvestro, Esq., dated May 28, 2015
- R-3 Chronology of Events; e-mails from Despina Fassilis to Mrs. T. dated May 14, June 2 and 12, 2014; and e-mail from Despina Fassilis to Christopher Conklin dated September 24, 2014
- R-4 Functional Behavior Assessment by Despina Fassilis dated June 19, 2014
- R-5 Letter from Robert Pruchnik, Esq., to Douglas Silvestro, Esq., dated April 17, 2015, enclosing "home program binder"
- R-6 IEP; April 29, 2015, meeting date
- R-7 Letter from Sarah Brennessel to Parent/Guardian of R.T. dated April 30, 2015
- R-8 Redacted Report by C. Diane Stickel dated January 21, 2016
- R-9 Resume of Despina Fassilis
- R-10 Resume of C. Diane Stickel
- R-11 Resume of Thomas J. Macchiaverna
- R-12 Resume of Christopher Conklin
- R-13 Cumulative Educational Report by Charles S. Ehrlich dated January 25, 2016