



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 09937-18

AGENCY DKT. NO. 2018-28084

J.S. AND J.S. ON BEHALF OF B.S.,

Petitioners,

v.

GREEN BROOK TOWNSHIP

BOARD OF EDUCATION,

Respondent.

Lenore Boyarin, Esq. for petitioners (Sussan, Greenwald & Wesler, attorneys)

Joseph D. Casetlucci, Jr., Esq., for respondent **Marc G. Mucciolo, Esq.,** on
the brief (Methfessel & Werbel, P.C., attorneys)

Record Closed: August 26, 2019

Decided: September 9, 2019

BEFORE **TAMA B. HUGHES, ALJ:**

STATEMENT OF THE CASE

In accordance with the provisions of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1415, J.S. and J.S. (collectively “petitioners”) have requested a due-process hearing on behalf of their son, B.S., who is classified as eligible for special education and related services. Petitioners contend that the Green Brook Township

Board of Education (the “Board” or District”), failed to timely identify their son as eligible for special-education services, and upon doing so, failed to offer him an Individualized Education Program (IEP) that delivered a Free and Appropriate Public Education (FAPE) for the remainder of the 2017/2018 school year and 2018/2019 school year. Petitioners unilaterally placed B.S. at Flex School and seek reimbursement for their expenses as well as compensatory education.

PROCEDURAL HISTORY

The request for due-process was received by the Office of Special Education Programs (OSEP) on May 21, 2018. The matter was transmitted to the Office of Administrative Law (OAL) where it was filed as a contested case on July 16, 2018 pursuant to N.J.S.A. 52:14B-1 to 15; N.J.S.A. 52:14F-1 to 13.

A hearing was conducted on February 20, 2019, February 26, 2019, February 27, 2019, March 25, 2019, April 8, 2019, April 9, 2019, April 10, 2019, May 7, 2019, and May 21, 2019. Closing briefs were submitted and the exhibit list was reviewed on a remaining hear date of August 26, 2019. No further testimony was deemed necessary at that time and the record closed.

FACTUAL DISCUSSION AND FINDINGS OF FACT

Testimony:

Shaune A. Casazza (Casazza), testified that she has been employed by the Board for the past eight years as a Guidance Counselor at the Irene E. Feldkirchner Elementary School (IEF School). Among her many responsibilities she coordinates standardized testing of the students and is the 504 Coordinator. She described a 504 Plan as a plan that is developed to ensure that a child who has a diagnosis which impedes or impacts a major life activity, receives accommodations that will ensure their academic success. Over the years, she has participated in approximately sixty 504 Plan meetings and has counseled hundreds of children. Prior to her employment with

the Board, she was a Middle School teacher in Manchester Township for approximately ten years and before that worked in South Brunswick at the Middle School among other academic settings. In addition to her B.A. in English Communications, she has a Masters in School Counselling. (R-50 at GB1904 – 1905)

Casazza is familiar with B.S. as he was a student in the IEF School from kindergarten through fourth grade and he was also in her social skills group from second through fourth grades. When B.S. first started at the IEF School, he was not classified, nor did he have a 504 Plan. Prior to starting kindergarten, however, J.S. (mother) reached out to IEF Principal, Armand Lamberti (Lamberti) seeking a 504 Plan for her son. He advised J.S. that she (Casazza) would get back to her at the beginning of the school year to discuss the same. In or around this same time frame, a letter was sent to Lamberti from B.S.'s Psychologist, Dr. Stuart Isralowitz (Dr. Isralowitz), who recommended the implementation of a 504 Plan and provided some suggested accommodations. (R-10 at GB 0057)

When school started back up again in September 2013, she reached out to J.S. (mother) who requested a 504 Plan based upon B.S.'s diagnosis of Attention-deficit/hyperactivity disorder (ADHD). She advised J.S. that it was the school's practice to wait until the child came into the school setting so that they could see how he functioned in the classroom. She also reassured J.S. that many of the suggestions provided by Dr. Isralowitz could be implemented without a 504 Plan. Additionally, while a doctor may recommend a certain accommodation, due to the child's level of functioning in the classroom, the accommodation may not be necessary or included in the plan.

Casazza recalled that in first grade, she again spoke to J.S. who had called to discuss social concerns for her son – specifically the fact that he only played with one other little girl. She reassured J.S. that this was not atypical of children at that age and told her to let it go for the time being. No academic concerns were raised at that time and she did not recall B.S. having any social issues such as disciplinary problems, anger issues or inappropriate conduct. She acknowledged that the lack of a disciplinary

problem does not mean that a child isn't struggling. According to Casazza, B.S. was a very amiable bright little boy.

At the end of first-grade year, at the request of the parents and upon receipt of supporting medical documentation, the 504 Committee met for an eligibility determination. This resulted in the development of a 504 Plan for implementation in second grade. (R-10 and R-11) Included in the plan were several of the suggestions provided by Dr. Isralowitz. (R-10 at GB0062 – 0063) She never spoke to Dr. Isralowitz, or any of the other doctors whose reports had been sent over with the exception of Dr. Paul. According to Casazza, the recommendations by the various doctors, had been made without any input from the school. Among the accommodations implemented were: proximal seating; read and write for Google; behavior management – such as free movement as needed; small group; and standardized testing accommodations. (R-11.)

Casazza went on to state that once a 504 Plan is implemented, it is revisited each year in September to see if any changes are required. In B.S.'s case, the 504 Plan was reviewed and "tweaked" in September 2016 for the 2016-2017 school year (third grade). (R-12.) As part of the renewal process, B.S.'s third-grade teacher, Ms. Pirrone (Pirrone) filled out a SNAP-IV Syndrome Rating Scale. (R-12.) The scale assists in measuring the extent to which B.S. diagnosis was impacting his performance in the classroom. Based upon Pirrone's evaluation, it did not appear that B.S.'s disability was significantly impacting him in the classroom. Among the "tweaks" was the addition of a "Talk to Text". The plan also provided a behavior component. While B.S. did not have any behavioral issues, this was included in the plan and allowed B.S. freedom of movement in the classroom as children with ADHD need to move around more freely than children without ADHD.

As the 504 Coordinator, she routinely checked with B.S.'s teachers to ensure that the 504 Plan was implemented. According to Casazza, B.S.'s teachers did not believe that he required a 504 Plan because he was functioning well in the classroom and never had any significant issues. She went on to state that not all children with

ADHD require a 504 Plan or need an IEP. In B.S. case, the 504 Plan was put in place because the parents were insistent that he required one. It was her recollection that B.S. was also on ADHD medications at the time

According to Casazza, J.S. (mother) frequently contacted school personnel. (R-47; R-48; R-49) No matter what the school put in place, it never appeared to be enough for J.S. According to Casazza, B.S. was functioning well in school and his level of achievement and behavior were typical for his age level. Quite often, when she would send home something positive about B.S.'s day, such as an achievement, J.S. would respond by pointing out where B.S. was still deficient. Petitioners portrayed B.S. as being a social misfit and academically challenged which was not what the school was seeing.

On cross-examination, Casazza was questioned what constituted a "major life activity". In response, she stated that learning was a major life activity for a child as was socializing, attentiveness, and organization among other things.

In discussing her training to be the 504 Coordinator, Casazza stated that she was trained by the former administrator and had attended off-site training run by the State. Training for teaching the social skills group came from her years as a teacher, a Masters in School Counselling, and off-site training. The curriculum used in her social skills group consists of "skill streaming and power solving" and other outside resources.

When a child is assigned to her group, either through a 504 Plan or an IEP, she determines how to include them into the group. The curriculum is established for the whole group. So, if a child such as B.S. comes into the group for social skills, the curriculum is not tailored specifically to B.S., rather for the group as a whole. While some lessons may benefit B.S. more than others, the hope is that all of the children will benefit in some way.

When questioned about her earlier testimony regarding J.S. (mother) turning a positive communication into a negative response, Casazza acquiesced that it is

beneficial and appropriate for a parent to let a teacher know that there may be a deficit that needs working on. She also acknowledged that certain emails from J.S. were entirely proper such as when a test was given to B.S. without his accommodations. When questioned whether B.S. took the group off topic, Casazza responded that all the children in the group take the discussion off-topic at one time or another. When a child goes off-topic, she allows them to share their thoughts or what they have learned with the group and then she redirects the group back to the original topic. When asked to reconcile her earlier testimony that B.S. was not the most social of children but that he was an integral part of her social skills group, she provided a lunchroom example where she had to pull B.S. from the lunch table where he was playing a game with other children. Other times he prefers his own company which is not atypical of a lot of children.

Casazza was also asked how she instructed B.S. on peer perspectives, she provided several examples and stated that they would also do role play. She would follow-up with the group the following week to see if they retained what they had learned. Applying this to B.S., there were times that she felt that he understood and internalized the perspectives, other times he did not. She did not administer any kind of social skills inventory test.

Regarding the decision not to implement a 504 Plan upon B.S. entering kindergarten, Casazza testified that it was not a unilateral decision on her part. Rather, it was discussed with Lamberti and the Director of Special Services – all of whom thought it was the proper procedure to wait until B.S. entered kindergarten and they could assess how he functioned.

When questioned about the frequency of observation of B.S. in class in the 2015-2016, Casazza stated that she saw B.S. approximately ten to twelve times in the classroom setting and many times in the cafeteria or at recess. She recalled several occasions where she either directly implemented or saw the accommodations set forth in the 504 Plan implemented. Casazza acknowledged that while Dr. Paul had recommended small group instruction, assistance in note-taking and academic

enrichment, they were not included in the 504 Plan. She went on to state however that in second grade, there is not a lot of note-taking which is why it was intentionally excluded from the accommodations. Additionally, a number of Dr. Paul's recommendations fall under "good teaching" and are implemented in the classroom by the teacher when possible.

Bernadette Szenasy (formally known as Van Pelt) (Szenasy), testified on behalf of the respondent as an expert Learning Disability Teacher Consultant (LDTC) and Case Manager. She has been employed by the school district for seven years as the LDTC. In that capacity, she performs educational testing of students who are suspected of having learning disabilities and is currently the case manager for approximately fifty students. She writes IEP's for students found eligible to receive special education and related services. (R-50 at GB 1869) The IEP contains goals and objectives that are specific to the student and are put in place with the expectation that the child will achieve them within a year's time. Four times a year a progress report is sent home to the parents which outlines their child's progress in this regard. As a case manager, she is required to hold annual review meetings to discuss the progress of a student. In that regard, she works closely with the teachers and stays in communication with the student's parents.

The educational tests which she performs look at the different academic areas where a student could have a learning disability. The test areas include math calculation, math problem solving, written expression, reading comprehension, reading fluency, basic reading skills, and listening comprehension.

There are several academic achievement tests that can be used which include the Woodcock Johnson 4, Wexler Achievement Test, the Wechsler Individual Achievement Test Third Edition (WIAT 3) and the Kauffman Test of Educational Achievement (KTEA). She has been trained in the usage and interpretation of all of them as well as other testing modalities. Over the course of a year, she administers approximately thirty tests.

Szenasy first became involved with B.S. when he was in third grade. He was referred to the Child Study Team (CST) on December 2016, and she was assigned to be his case manager. At the time of referral, which came through the parent's attorney, he had a 504 Plan and was receiving accommodations. B.S.'s parents as well as B.S.'s third-grade teacher, Pirrone were present at the initial planning meeting. The parents explained their concerns and Pirrone also discussed her classroom concerns regarding B.S. Based upon their discussion, it was decided that evaluations were warranted.

She completed an educational evaluation in March 2017. (R-21) As part of her evaluation, she spoke extensively to Pirrone about B.S.'s classroom performance. Pirrone informed her that B.S. had many strengths in math, science, social studies and reading however had weaknesses in other areas such as spelling, handwriting, basic reading and math facts (times tables). In general, Pirrone described B.S. as a good student who did not always put forth his best effort.

Also, as part of her evaluation, she administered three standardized tests: the KTEA; the Test of Auditory Processing Skills – 3 (TAPS-3); and the Beery-Buktenica Developmental Test of Visual-Motor Integration (Berry-VMI). She also reviewed B.S.'s educational records. Based upon the testing, review of records, and interview with Pirrone, she determined that B.S.'s strengths were in math (problem-solving); writing fluency; and listening comprehension. In a majority of the areas, she felt that B.S. fell within the average range and was comparable to his peers. There were other areas that she found weaknesses such as oral expression, writing stamina, handwriting, spelling and reading comprehension (inferential questions) – even though he fell within the average range in some of the categories.

She also provided, as part of the evaluation, classroom recommendations for the teachers. Some of these recommendations included allowing B.S. to use the Chromebook in the classroom because of his handwriting weakness; proper positioning in the chair which affects the handwriting; extended time for assignments and testing; and practicing his math facts. (R-21)

Upon completion of all the evaluations (educational, psychological, speech/language, occupational therapy, social history), an initial eligibility meeting was held with the parents. (R-22 through 25) Also reviewed were other evaluations provided by the parents which included a neurological evaluation. It was determined that B.S. had a variety of issues related to his attention in class; ability to focus; speech-language – specifically pragmatics; social skills; fine motor skills; handwriting skills; and his positioning when sitting in a chair. For her part, she found that, among other things, B.S. had difficulty with oral expression. Szenasy went on to state that many of the issues had previously been identified and addressed in the 504 Plan and at the time, did not appear to rise to the level of requiring special education.

As a result of the evaluations, B.S. was classified as “Other Health Impaired” (OHI). He was classified as OHI because it was determined that B.S.’s medical diagnoses of ADHD and high functioning Autism Spectrum Disorder (ASD), were impacting him in the classroom setting. An IEP was developed for B.S. in April 2017, that was specific to his needs. (R-28) The recommended program was an in-class resource support program. Two teachers would be in the classroom – a general education teacher and a special education teacher, to provide the support that B.S. needed.

The in-class resource support was for reading, language arts, math, science, and social studies. Pull-out supplementary instruction was put in place for basic reading skills such as sounding out words and spelling two times a week. He also received speech-language therapy (once a week, occupational therapy (OT) once a month and social skills group. The set-up allowed B.S. to remain in the general education class with his peers. B.S. was also eligible to receive extended school year (ESY) program, however, the petitioners sent him to a private camp (Power Solving) which had a curriculum that focused on social skills.

Szenasy opined that by providing B.S. in-class support, he could have individualized instruction and/or small group instruction. The placement provides a lot of flexibility and allows the student to stay in the general education class with their

peers - the least restrictive environment. When there are pull-out resources, the environment becomes more restrictive. A further restrictive environment is a self-contained classroom, such as a language and learning disabilities (LLD) classroom. Even more restrictive than that is an out of district placement because the student is not typically with the same aged non-disabled peers. According to Szenasy, being with the same aged non-disabled peer is important as children learn from their peers and socialize with them. This is particularly important for a child with social difficulties as it is important to keep in an environment where they can see their peers modeling appropriate behavior and social skills.

Modifications were also included in B.S.'s IEP to further foster his success in the classroom. (R-28 – GB 0326) Some of the suggested modifications were allowing B.S. to type his responses rather than handwrite them; provide modeling; provide small group instructions within the general education class; using B.S.'s interests to increase his motivation; and modifying tests among other things. It was Szenasy's belief that the IEP put in place in April 2017, provided B.S. with FAPE. Based on his testing, he was in the general education classroom, which is the least restrictive environment, with his non-disabled same-age peers.

When questioned how B.S. progressed upon implementation of IEP, Szenasy stated that the IEP was implemented in the last two months of the school year. B.S.'s progress report for the fourth quarter when it was first implemented marked the goals and objectives as either progressing satisfactorily or progressing gradually in the last quarter. According to Szenasy, this is not unusual because goals are measured over the course of a year – not just in one marking period. (R-30 – GB0381) By comparison, in looking at the B.S. marks one year later at the end of fourth grade, he was showing progress. (R-32) The score most frequently seen was progressing satisfactorily – meaning he was expected to achieve his goals. There were some areas that he had already achieved the goal. She acknowledged, however, that there were some areas that B.S. was not achieving or progressing slowly such as in the social-emotional area. (R-32 – GB 0407)

After the end of B.S. fourth grade year and the IEP had been in place for a year, a team meeting was held which consisted of herself, B.S.'s teachers, related service providers, and the petitioners. (R-29) The purpose of the meeting was to determine what type of program would be appropriate for the following school year – whether it should be the same program or if any changes were needed. B.S.'s teachers were positive about B.S. progress over the course of the year, including with his social skills, and had recommendations for his transition into the middle school (fifth grade). It was their belief that the same type of program with some minor changes would be appropriate for B.S. One of the changes included a reduction in reading specialists services.

According to Szenasy, when there is a reduction in services, it is typically because the student has achieved their goal or that the level of support previously in place, was no longer required. A new IEP was offered, a draft of which was provided to the petitioners, however, they did not provide their consent and the proposed IEP was never implemented. (R-29 – GB0345) Petitioners did not speak much at the IEP meeting and made no request to amend the draft IEP. ESY was also offered to B.S. In addition to academics, the 2018 ESY program included a social skill component - Power Solving, which was identical to the one that B.S. had been exposed to the previous summer. However, B.S. did not attend the Districts ESY program. The next communication received from the petitioner was notice that B.S. had been enrolled in the Flex School.

In discussing the draft IEP, Szenasy stated that an IEP can be amended at any time with the parent's consent. It is a breathing document. The draft IEP that was provided to petitioners, took into consideration the progress that B.S. had made over the course of the year and reflected his needs as of the end of fourth grade. The goals and objectives were measurable and in line with B.S.'s needs at that time. Modifications were also outlined in the draft IEP as were supplementary aids and services. Some of the supplementary aids and services included prompting, cueing and redirecting B.S. This was based upon his attentional needs. Reinforcing his specific goals, providing graphic organizers for writing and provision of study guides

were also included. B.S. would have continued access to the Chromebook which all of the District fourth graders had access to.

Szenasy is familiar with the Flex School and in fact went there to observe B.S. in the classroom setting on January 29, 2019. (R-55) The visit lasted approximately an hour. The class observed was social sciences. The classroom setting was loose in that the children could sit where ever they wanted – on the floor, on top of the desk or on a couch. Some of the children had their shoes off. One of the teachers in the room was talking about the Salem Witch Trials. It appeared to be an interactive lesson and involved a higher order of thinking, however, at the same time there was no individualized instruction. Some of the children at times were socially inappropriate without correction by the teaching staff of which there were a couple. To Szenasy, this was not a teachable moment.

There also appeared to be an inconsistency in how the children were treated – specifically, one child allowed to do one thing while another was not. She watched as an unleashed dog wandered in and out of the classroom. One of the children jumped out of their chair in the middle of the lesson to “cuddle” with the dog and this was allowed. When B.S. attempted to do the same thing, he was told to go back to his seat. The dog was not a therapy dog and appeared to be a distraction which is not good for children with attention issues.

Another teacher was attempting to play a jeopardy game, however, she was not prepared to teach the children and took quite a lot of time drawing on the whiteboard instead of having the material ready. The children had the option of whether they wanted to participate or not. At one point she observed a couple of the children leave their seat in the middle of the lesson to go to the back of the classroom to play legos. This appeared to be permissible.

B.S. was observed moving around the room. He appeared to enjoy participating in the Salem Witch Trial’s activity and engaged in the jeopardy game. When the dog

came in, however, he jumped up out of his chair to go to the dog. There did not appear to be any individualized instruction.

According to Szenasy, the program was in one of the most restrictive environments because the children were not with non-disabled peers in a general education environment. Structure was lacking which was significant because students thrive when there is structure. They understand and know what to expect and what the rules are. This is particularly important for children with autism. From her understanding, the school outsources for service providers. They do not have qualified in-house related service providers. She also found this significant because when a school has in-house service providers, they have the ability to have increased communications with the teachers and allows them to observe the children in the classroom regularly.

Based upon her observations at the Flex School, it was her belief that the most appropriate program for B.S. was in the District's middle school where he could be in a general education classroom with his peers.

On cross-examination, Szenasy acknowledged that B.S. was referred to the CST after petitioner's attorney had sent the District a letter requesting a referral. Included with the letter were several evaluations that petitioner's had obtained from outside professionals - one of which was from Tatyana Elleseff (Elleseff).

In discussing the evaluations that were performed in the eight academic areas, she stated that the purpose of the evaluations was to see if a child has a Specific Learning Disability (SLD) and analyzed to see if there is a discrepancy. To determine if there is a discrepancy, they look to see if there is a twenty-one-and-a-half-point discrepancy between the full-scale IQ and the area tested. Additionally, the scores must be below average. In B.S.'s case, his IQ, as tested by Dr. Muglia, the school's psychologist, was a composite score of 115 – the high average range.

She acquiesced that if B.S. had made progress under the 504 Plan, the services would have been tapered off, adding more support in the form of an IEP. When asked to reconcile her findings that B.S. was weak in oral expression but that his reading comprehension was very high, she stated that his oral weakness had to do with the expression of his ideas verbally as opposed to taking in, listening and being able to respond to questions. She went on state that based upon B.S.'s score in oral testing in comparison to his full-scale IQ, he was not performing commensurate with his cognitive ability.

Based upon the evaluations, another area of weakness that was identified was phonological segmentation. Under the IEP, B.S. was receiving support from the reading specialist. When questioned why, under the draft IEP, this service was terminated, she stated that B.S. had been re-tested by the reading specialist at the end of fourth grade and the results showed progress. Regarding the instructional implications at the end of her evaluation and whether any were remedial, Szenasy stated that other than the math facts which was in a way remedial, there was no other remedial instruction recommended. When questioned about B.S.'s handwriting and the recommended continued use of the Chromebook, she stated that while B.S. handwriting was extremely sloppy, handwriting was not actually worked on in the district and was not a large focus once students get to third and fourth grade. Regarding the recommendation that B.S. receive OT once a month she stated that there was discussion on this point, however, she deferred to the occupational therapist who observed and evaluated him in that area.

She was also familiar with the ESY that was offered to B.S. in the summer of 2017. The program was five days a week for four hours a day. There was math, reading, language arts, arts, and social skills. Students also received related services per their IEP – both individual and group instruction. The program was also attended by neuro-typical peers that year.

Szenasy was also questioned about B.S.'s progress report for the school year 2017-2018 (fourth grade), specifically, his marks for Goal 4 and the Objectives wherein

he progressed gradually throughout the school year. In response, she stated that that Goal would have been carried over into the next IEP which is not uncommon. The scores did not mean that he could not achieve the goal. The same with Goal 5 and the Objectives, adding that sometimes different strategies have to be implemented and things to have be changed to progress. Regarding Goal 19, Objective 19.2, she reiterated her comments that while it's a concern that B.S. was progressing gradually in some areas such as Objective 19.2, at the same time what has to be taken into consideration was B.S.'s diagnosis of ADHD, therefore the goal and objective would need longer than a year to address.

Regarding her testimony regarding petitioner's lack of comment at the IEP meeting regarding B.S.'s progress and the proposed IEP, she acknowledged that prior to the IEP meeting, the parents sent over private evaluations performed by Dr. Petty, Dr. Dranoff, and Elleseff. She acquiesced that the reports in and of themselves voiced the petitioner's concern over B.S.'s progress or lack thereof.

Also questioned was her report on the Flex School observations – specifically the lack of formality in the report. According to Szenasy, her educational evaluations are more formalized but the report in question was not an educational evaluation. Additionally, given the timetable within which she was required to perform the observation and generate a report, which was extremely short, there was insufficient time to put together a more polished report. Regarding her comments that there was no individual instruction, she stated that the class size she observed was small – having only seven students. However, at the IES school, a small group would be three or four students. Depending on the subject, a small group at the IES school could meet every day or every other day. It depends on the student's needs. When the observers came in to see B.S. at the IES school, they observed B.S. in speech/language – a related service, which was a small group. They did not observe a small group in the classroom setting.

Regarding her comments surrounding the dog not being a therapy dog, she acquiesced that she did not know that for a fact.

Szenasy was also questioned about her understanding of a community of learners. She responded that she was familiar with the concept and agreed that children struggling with the same issues could become a community of learners.

Meghan Deutsch (Deutsch), a School Psychologist and Behaviorist for respondent for approximately a year and half, testified as an expert on behalf of the respondent, in school psychology, case management and behavior analyst. She has been a school psychologist for approximately twelve years, is a Certified Elementary School Teacher and a Board-Certified Behavior Analyst. (R-50 – GB 1913)

As a School Psychologist, she conducts student psychological evaluations and counseling. She also writes IEP's and is a case manager as well. In that capacity, she frequently performs classroom observations, consultations with teachers and interacts with parents. As a Behaviorist, she also conducts teacher consultations and behavioral observations of students. She administers functional behavior assessments (FBA) which involves a lot of observations and data collection and writes behavior intervention plans. In describing functional behavior, Deutsch stated that the functions of behavior are to escape. It could be escape from a stimulus, a person, a demand, to attain something such as attention.

She is also trained to administer cognitive assessments (Wechsler Intelligence Scale for Children (WISC), Wechsler Intelligence Scale for Adults (WAIS), Woodcock Johnson Tests, Kaufman Assessment Battery for Children (KABC)). She can also do behavioral rating scales (Behavior Assessment for Children (BASC), Connors Behavior Scales) and is qualified to identify different learning disabilities.

Deutsch is familiar with B.S. through his records and having observed him on one occasion at the Flex School. Among the records that she reviewed, was the Psychological Evaluation by Dr. Muglia – her predecessor. The Psychological Evaluation evaluates an individual's overall performance in comparison to similarly aged peers. It evaluates overall cognitive functioning. Dr. Muglia's evaluation included

a review of records, previous evaluation data, B.S. educational history, classroom observations, interview of B.S., formal teaching rating scale and formalized testing. The formalized testing was the WISC-5.

According to Deutsch, the WISC-5 is broken down into five different areas which make up the Full-Scale IQ score: verbal comprehension index; visual-spatial index; fluid reasoning index; working memory index; and processing speed index. Currently, the average score is between ninety and 109. The mean score is based upon the scores of a majority of similarly aged peers nationally.

In breaking down the testing grid and how the assessment is read, Deutsch opined that the first column “Composite Scores Summary” itemizes the subcategories tested. The second column, “Composite Score”, is the age-adjusted score. The raw score on the assessment is adjusted by comparing the score to similarly aged peers. The third column – “Percentage Rank”, relate the individual’s result to those of all similarly aged peers who took the same test. The fourth column is a reliability indicator – “95% Confidence Interval”. This indicates where the true score would fall for that individual ninety-five percent of the time. The fifth column, “Qualitative Description” is a categorical description. The test itself, WISC-5, is the fifth edition of the assessment and came out in 2014 with the normative data obtained in 2013. According to Deutsch, usage of a prior edition would be invalid as the normative data would be different.

In looking at B.S.’s score on the WISC-5, it was determined that for Verbal Comprehension, his score was 124 which fell into the ninety-five percent range for his age. (R-24) Verbal Comprehension assesses an individual’s ability to think using words, respond to questions using words and appropriately put words together. The subtests used to compile this information are a vocabulary test and a similarity test. The “95% Confidence Interval” was 114-130 and the qualitative description was “very high” which meant he did significantly well.

On Visual Spatial, which was a new indices on the WISC-5, B.S.’s score was 114 which fell into the eighty-second percent range for his age. (R-24) Visual Spatial

assesses non-verbal problem-solving skill ability. The two subtests used to compile this information was block design and visual puzzles. The “95% Confidence Interval” was 105-121 and the qualitative description was high average.

On Fluid Reasoning, also a new indices on the WISC-5, B.S.’s score was ninety-four which fell into the thirty-four percent range for his age. (R-24) Fluid Reasoning is another non-verbal test which assesses problem-solving skills. There is some mathematical knowledge required and some patterns that need to be recognized and fill in the matrices. The “95% Confidence Interval” was 87–102 and the qualitative description was average.

On Working Memory, B.S.’s score was 103 which fell into the fifty-eight percent range for his age. (R-24) Working Memory assesses short term memory. The subtests used to compile this information is a digit span assessment and a picture span. The “95% Confidence Interval” was 95-110 and the qualitative description was high average based upon his scaled score.

On Processing Speed, B.S.’s score was 111 which fell into the seventy-seven percent range for his age. (R-24) Processing Speed assesses an individual’s ability to process visual information in a timely and accurate manner and involves two timed tasks. The “95% Confidence Interval” was 101-119 and the qualitative description was high average range.

B.S.’s Full-Scale IQ was determined to be 115 which fell into the eighty-four percent range for his age and fell within the high average. (R-24) Deutsch went on to state that the next classifications above high average were “very high”. These are individuals performing within the top five percent of their age group and “extremely high” is the classification above that and consists of individuals performing in the ninety-eight to ninety-ninth percentile of their age group. Individuals with a Full-Scale IQ of 130 would be considered a “genius”. Individuals in the top one to two percentiles are typically gifted and talented. Conversely, individuals in the 120–129 range typically are not.

In looking at B.S.'s results as a whole, she found that he had many positive, solid skills. He was above average in most areas. While he was weak in some areas such as visual short-term memory and fluid reasoning, he was still within the average range. There was no stand out concerns

Deutsch went on to discuss how a student gets classified stating that there are fourteen different areas of classification. Therefore, a determination must be made as to what area needs to be assessed (i.e. communication, behavioral, educational, etc.). While a particular assessment may show strengths and weaknesses, a student cannot be classified based upon one test alone – a comprehensive evaluation needs to be done in order to classify or provide appropriate interventions.

In looking at B.S.'s progress report for third grade, while not particularly familiar with the District's grading format, from her cursory review, he appeared to be progressing.

Deutsch also reviewed Dr. Paul's April 2015, evaluation. His report as well as any other report that the parents provided would have been reviewed and taken into consideration by the CST when they met and were developing B.S.'s IEP. One of the things she noted was that Dr. Paul did not utilize the most recent WISC test, having administered the WISC-4, not the WISC-5 which was available at the time of testing. Nor did he provide a disclaimer that the results may be over-inflated given the edition used. She went on to state that usage of an older edition does not provide the most accurate representation of an IQ compared to today's peers. Dr. Paul compared B.S. results to 2003 norms - which may have resulted in an inflation of scores – the Flynn Effect.

Deutsch went on to opine that the Flynn Effect suggests that over time, generations of individuals' intelligence increase. If you compare intelligence today based on old norms, it would higher because the comparison would be with an older generation. As such, there could be up to a six-point range difference. She also noted

that Dr. Paul did not report the confidence intervals – which does not provide anyone looking at the evaluation, an appropriate representation of the student’s abilities. She also pointed out that there were no behavior scales from school and that he had not reached out to the school for their input.

In looking at the tests and B.S.’s results in both the WISC-4 and WISC-5, she stated that you could not compare the two tests because they are different assessments that assess different skills based off of different normative samples of data. Additionally, age makes a difference. When B.S. took the test with Dr. Paul, he was seven-and-a-half-years-old and his Full-Scale IQ was placed at 133. When the school tested him, he was 9.4-years-old and his Full-Scale IQ was placed at 115. Deutsch went on to state that IQ’s start to stabilize when a child is over the age of seven. When a child is young, there is more of an opportunity for a false high score as the assessment tasks are more concrete than at an older age. As the child gets older, the assessment has, for instance, more abstract tasks, therefore weaknesses or deficits observed.

In discussing the differential between the WISC-4 Full-Scale IQ of 133 and the WISC-5 Full-Scale IQ of 115, Deutsch asserted that they were two different assessments, based upon two different normative sample groups - therefore there was going to be a discrepancy.

In discussing other aspects of Dr. Paul’s evaluation, Deutsch noted the various testing that he performed which were the “Disruptive Behavior Rating Scale” and “Barkley Screening Checklist”. The tests involved a series of questions which the parents answered. From Dr. Paul’s notes, it appears that the reported behaviors (restlessness, distractibility, difficulty engaging in activities quietly, etc.) occurred primarily at home. Dr. Paul did not observe B.S. in school. According to Deutsch, when you are looking at a function of behavior, the parents should not be the sole source of reporting. The school setting should be observed which did occur and the teachers and staff should be spoken to which did not occur.

Deutsch also reviewed Dr. Dranoff's psychological evaluation, dated February/March 2018, when B.S. was 10.3 years old. She noted all of the records he reviewed and evaluations performed. While it appeared that he performed an observation at the school, he did not interview the staff or requested that a staff behavior assessment scale be completed. Additionally, the evaluation had discrepant scores for the WISC-5 Full Scale IQ – which made her question the reliability of his findings in that regard and the lack of consistency and/or error was contrary to best practices.

Deutsch went on to talk about the classification of “emotionally disturbed” which she noted was an educational classification, not a medical diagnosis. For this classification, she looks to see if there is documentation that a particular behavior, has been going on for a long period of time and whether it has been disrupting the educational performance of the student to a marked degree. She does not view a student, who is well liked by staff and peers, who at times is viewed as a leader and who has never had a behavior problem or outbursts – internally or externally, as a child that is emotionally disturbed. Examples of external outburst or inappropriate behavior could be the teacher saying good morning and the student cursing and throwing something at the teacher. An internal outburst could be a child with severe social anxiety which affects them to the point that they will not get out of bed or go to school. According to Deutsch, a child that is a leader in a group or in safety patrol is not typically a student with severe anxiety.

While she could not speak to Dr. Dranoff's diagnosis of Oppositional Defiant Disorder (ODD), she did note that in the Diagnostic and Statistical Manual (DSM) the behavior had to be exhibited in multiple settings. Dr. Dranoff's diagnosis appeared to be based on a review of records and the parental and student rating scales - no educational setting. Even the testing environment was not best practices as the testing occurred at the residence. Additionally, while he was not a school psychologist, he made academic programming recommendations for B.S. without ever speaking to the school personnel. While she would have reviewed and considered Dr. Dranoff's

evaluation, given the inconsistencies and lack of teacher feedback, Dr. Muglia's report would carry greater weight given the scope of her evaluation.

Deutsch also observed B.S. at the Flex School on January 29, 2019, along with Senazi. (R-55) The observation was an hour long and took place in B.S.'s classroom. The age group of the class was fifth and sixth graders. While not completely familiar with the Flex School program, she was aware that the school was a private setting for twice exceptional children – students that are gifted and had a learning disability.

The program was very unstructured with the students having the choice of whether to participate or not. Their observation took place during social studies. Some students were playing legos, others were on the floor with a dog that was present in the classroom. The kids sat all over - on the floor, in rolling chairs, bean bag chairs and even on the table. There was little to no prompting or cues for attention or participation. While the academic content that was being presented was appropriate for that level, there was no expectation of engagement by the students.

For a student that has ADHD and is emotionally disturbed, among other things, significant structure is needed, boundaries should be set, social modeling should occur as well as prompting. She did not see any of this during the observation period.

According to Deutsch, based upon his score on the WISC-5, B.S. was high average. While he was a good student, he did not fall within the category of gifted and talented. Given B.S.'s issues, the Flex School would not be an appropriate environment for him given the lack of structure and social modeling. The District on the hand had programs that could provide such an environment. In going through the draft IEP for B.S., given the programming that was proposed, it was her belief that it would provide him with FAPE.

On cross-examination, Deutsch acknowledged that she never had any direct contact with B.S., perform any assessments on B.S. or spoke to any school staff about him. When questioned about B.S.'s composite scores on the WISC-5 for Verbal

Comprehension and Fluid Reasoning, she stated that while there was a discrepancy, it was not significant. She also did not believe that Dr. Muglia's comment that B.S.'s current IQ score was an underestimate of B.S.'s true cognitive ability, supported Dr. Paul's findings. It was her position that the two assessments were different and could not be compared.

Deutsch was also questioned whether or not a student with ADHD should have their executive functioning examined if there is feedback from the teachers that the child is not organizing himself or his materials. In response, she stated that it was rare for a school district to assess for executive functioning. The assessments for ADHD account for organization and distractibility and the traditional behavior scales as well. Thereafter, the strategies imposed in the classroom would address them understanding that each child is different and may have separate needs.

In questioning Deutsch about Dr. Paul's report, specifically his commentary on how B.S. approached each subtest, she stated that there is always some value in having a professional's comments. However, Dr. Paul's observations were not significant to B.S.'s performance on the tests and were in fact consistent with the ADHD diagnosis - therefore not informative. Regarding Dr. Dranoff's evaluation and her testimony that he did not evaluate in two environments, she acquiesced that Dr. Dranoff did observe B.S. at both school and at home - therefore two environments. (P-83)

Deutsch was also asked about the lack of formality in the report that she and Szenasy generated after their observations at the Flex School. In response, she stated that she did not consider it a report. She observed B.S. for an hour at the Flex School and provided a tour of the facility. The staff was cooperative and answered the questioned that were asked. She did not question the staff about the lack of discipline that she had observed.

When questioned about her testimony regarding typical peer models, she stated that children learn from their environment. If there are peers in a child's environment, they will learn from them and model their behavior. The more exposure on a regular

basis, the more the child will learn to generalize skills more efficiently and effectively. This approach does not negate the need for a more restrictive environment – it depends on the skills that need to be addressed.

Michelle Ritter-Lodato (Lodato), an Occupational Therapist for the past fifteen years, testified as an expert in school-based OT. She has been employed by the respondent intermittently over the years, returning full time in 2013. (R-50) As a school-based occupational therapist, she assists students in their school-based roles – to achieve their full function in their environment. Using children that have learning disabilities as an example, she will use the child’s strengths to help in their weaknesses. She looks at student’s fine motor, visual motor, visual perceptual and self-help skills. She reviews IEP’s and looks at all the goals so that she is aware of what is getting worked on in the classroom. In this regard, she focuses a lot on the physical therapy and speech goals to ensure that a collaborative effort put in place.

If an IEP calls for modifications or accommodations, she will incorporate them into her practice and will also see that they are carried over into the classroom. She works with approximately fifty students a year. In her capacity as the occupational therapist for the school, she conducts evaluations. There are different tests depending on the age of the student. Among the tests that she is qualified to administer are visual motor skills test; fine motor and coordination (Bruininks-Oseretsky Test “BOT”); sentence copy test and at times gross motor assessments.

Lodato evaluated B.S. in February 2017. (R-23) As part of her evaluation process, she performed, among other things: a record review; classroom observation; teacher interviews; tests of visual perceptual skills; test of visual motor skills; sensory profile and a BOT-2.

In assessing B.S.’s gross motor skills, she noted that B.S. slouched in his chair which impacts his fine motor skills. One of the goals which she identified was for B.S. to sit upright in his chair. The objectives were to increase core stability; improve

sensory awareness; and improve his fine motor skills utilizing a proper grasp pattern for writing. (R-23 – GB 0205)

To assess his fine motor skills, B.S. was given the BOT-2. He scored in the thirty-seventh percentile for manual control. On visual motor perceptual skills, his overall score was in the eightieth percentile which was above average for his age. The testing was broken down into subtests to see if there was a particular area of weakness. In B.S.'s case, his lowest score was in visual closure wherein he scored in the twenty-fifth percentile.

On testing his visual motor skills, B.S. scored in the fiftieth percentile which was average for his age. A Sensory Profile was also performed by B.S.'s teacher. There were a couple of areas (auditory and visual), where there was a probable difference. (R-23 – Pages GB0214- 0218) Lodato explained that the probable difference is just a few points higher than the typical performance. A timed handwriting test (Wold Sentence Copying Test) was also given. (R-23 – GB0209 - 0267)

The findings from all the evaluations and observations were compiled and placed in her report. (R-23) Thereafter, based upon his scores, she determined what services were required and in what frequency. She attended the June 2018, IEP meeting and provided her findings and proposed goals for the upcoming school year. (R-23, Page GB0342) The proposed IEP offered OT once a month for thirty minutes.

B.S. had also received OT over the past school year (2017-2018). Once a month, she would meet with B.S. and another student in her office to perform their activities. Typically, the services are offered in a small group setting as the children work well together and achieve the goals and activities. Even in a small group setting, she attends to each child's individual needs as she did with B.S. When she met with B.S., they would start by working on his core exercises, then move on to fine motor tasks. She would also work on his visual motor skills.

According to Lodato, B.S. did well and completed most of his tasks quicker than the other students in the group. When this occurred, he was given additional tasks to complete. It was her belief that B.S. had made progress over the year – using as an example his ability to complete his core exercises with greater ease. There was improvement on how he held a pencil; in completing tasks; and manipulating his hands. Additionally, B.S.'s teachers did not report significant concerns on B.S.'s handwriting because it was legible, and he was also using the Chromebook. In the proposed IEP, she recommended that the services continue due to his fatigue with fine motor skills. It was her belief that B.S. would have reached a point where OT services would not be required.

Regarding Sheila Smith-Allen's (Allen) OT Evaluation of B.S., she felt that the scores on the BOT-2 were invalid. She had given him the same test two months prior and the test should not be given more than once within a year. She also questioned the age levels referenced in Allen's report believing them to be in error as well as the low score on bilateral coordination and balance as that evaluation is typically performed by physical therapy, not an occupational therapist. (P-68, Page 13) Lodato also felt that Allen's recommendation that B.S. receive OT every day as excessive as such services are typically reserved for children with severe disabilities. Additionally, the OT that B.S. requires is not medically based, it is school based.

Lodato testified that she reviewed Allen's observation report and noted that Allen did not observe B.S. in her classroom setting. She was also concerned with Allen's comments regarding her observation of B.S. in physical education and his difficulties in throwing the football. Allen concluded that B.S. had motor planning concerns. According to Lodato, the fact that B.S. had never previously learned how to throw a football and had difficulty initially in grasping the technique, did not mean that he had a motor planning issue. Quite the contrary as he had mastered the technique by the end of the gym class. Taking this further, Lodato cited the fact that B.S. plays the piano – such activity requires motor planning between the hand, foot, and body upper body movement.

On cross-examination, Lodato was questioned about her report wherein she stated that B.S. needed cues to sit upright to work on his core strength. More specifically, whether seeing him once a month was sufficient to work on this area of weakness. In response, she stated that once a month was not enough which was why she spoke with his parents and provided a home exercise program to them. She also implemented a strategy with B.S. teacher to work on proper positioning in the classroom.

Lodato was also questioned about the sensory profile findings, specifically the probable difference and need for movement. In response, she stated that to address the issue, B.S. was provided flexible seating in the classroom and she worked with him on self-monitoring. While acknowledging that Allen performed more testing than herself, she continued to disagree with Allen's recommendation that B.S. receive OT three times a week, as it was excessive; causes the student to miss class as it is a pull-out service and may cause the student to fall behind.

Amy Berger (Berger) – a Speech-Language Specialist, testified as an expert on behalf of the respondent in speech and language pathology. She has been employed by the respondent for the past twenty-one years and prior to that worked in various school districts for approximately sixteen years.

She is familiar with B.S. having evaluated him in March 2017, over three sessions. (R-25) As part of her evaluation process, she gathered background information, conducted formal and informal observations, obtained teacher information, and testing, specifically the CASL-2. The CASL-2 has six core tests and fourteen subtests. (R-25, Pages GB 0285 – GB 0286)

The testing showed that B.S. scored anywhere from average to exceptional in the various indexes and subtests. His strengths were in expressive receptive semantic/and syntactic indexes. Relative weaknesses were also found in some of his higher-level skills such as his ability to pick up on social cues or understand the perspective of another person. Another relative weakness which was noted was in his

inability to pick up on an individual's body language or facial expression. While B.S. showed certain areas of relative weakness, most of his scores were in the average to above average range. (R-25, Page GB0286)

Also reviewed and taken into consideration in her recommendation for B.S. and the development of goals, was Elleseff's evaluation of August 2016. While acknowledging that there may be some overlap in disciplines, Berger noted that some of the testing performed by Elleseff would have been done by other specialists in the District who were trained in those specific fields. One example provided was the tests for reading comprehension and phonological processing. These tests would have been done by the District's learning consultant. Another example was the working memory test which would have been performed by the District's psychologist. Also noted was the fact that some of Elleseff's observations were not atypical for a third grader – using B.S.'s lack of greeting upon entering the room as an example.

While Elleseff did not perform the same testing as herself, their findings for the most part were consistent with similar concerns in B.S. higher level language, flexibility of thought and problem solving, and the ability to understand non-verbal cues. Elleseff's goals and recommendations relative to her expertise and discipline, were in line with what she would have implemented in the District with the other remaining goals and objectives being met through the other disciplines within the District.

Berger went on to state that she found B.S. very focused and cooperative. She did not observe the behavior described in Elleseff's evaluation that had been reported to her by the parents (i.e. nonstop talking, hyper focus). When he started to lose focus, she broke off the session. Each session was approximately forty minutes. Among the recommendations that she made for B.S. was to provide visual supports that would help him with retelling a story/ event sequentially; role playing which would work on his nonverbal communication; and inferencing to mention a few. (R-25, Page GB0287) Thereafter goals were set, and B.S. started therapy in April 2017, in accordance with the IEP.

The services provided to B.S. included ST in a small group. The small group focused on high level skills such as understanding cues from other people and flexibility in thinking. The small group setting was important because working on social skills is difficult to do in an individual setting. It was her belief that the goals and objectives that were set forth in the IEP, implemented her recommendations; were measurable; individualized; and provided B.S. with a FAPE.

On cross-examination, Berger was questioned why she did not include examples of some of the issues which she identified and testified to but were not in her report – such as how B.S. responded to open ended questions. In response, she stated that normally she does include examples and agreed that it would have been helpful to the treating Speech Language Pathologist to have such information.

Regarding reports that she reviewed at the time of evaluation, Berger stated that she had only received Elleseff's evaluation. She was not provided the psychological evaluation and was unaware of his intellectual ability. She went on to state that as a speech/language pathologist, she does not usually look at a student's IQ.

Berger was also questioned about the first speech/language goal in the IEP ("B.S. will improve phonological awareness ...") and whether she herself assessed for this. (P-28, Page GB0323) In response, she stated that she did not assess this because it would have been done by the reading person. However, she was aware of the concerns and the school would have worked on this area as needed. She acquiesced that in Elleseff's evaluation, B.S.'s scores in this area were not average to exceptional but went on to explain that she did not look at B.S.'s scores in Elleseff's report, rather took her conclusions. Upon further questioning, Berger acknowledged that she did not collaborate with the LDTC to write the IEP goals or observe B.S.'s ST.

Linda Flora (Flora), testified as an expert Reading Specialist on behalf of the respondent. She has been employed by the respondent for the past twenty-five years. She started with the District as an English Language Arts teacher and in 2013 became the Reading Specialist for the Middle School. She has a Teacher Certification for K –

Eighth Grade; a Masters as a Reading Specialist, a Supervisor Certificate and also has a Practitioner Certification to Teach the Wilson Program. (R-50, Pages GB1915 A-C).

As a reading specialist, she specializes in working with children who have various reading problems. In describing the Wilson Program - which the District started using five years prior, Flora stated that it was a multisensory phonetic program which has decoding and encoding.

She is familiar with B.S. having worked with him for two years in third and fourth grade as a support class twice a week. B.S. required support with his phonic skills – decoding and encoding. Flora went on to explain that from kindergarten into fourth grade, the classroom program provided to the students is Foundations – a multisensory phonics program. In the second half of fourth grade, the program becomes the Wilson Program.

In describing what was meant by multisensory, Flora stated that the program utilizes whatever modalities available (i.e. touch, sound, sight) in the learning process so that the child can learn better. The more modalities utilized, the better the child learns. There are eight steps in the program which is very structured. Using as an example the first step - a magnetic board would be used. Also used is sky writing which uses muscle movement and muscle memory. Half of the program is decoding, and the other half is encoding. In describing decoding, Flora explained that it is the breaking up of the words - sounds, symbols, the blending and segmenting of words and encoding is the spelling of the words. Thereafter, she then went on to describe the various techniques used in the program.

Flora went on to testify that she kept in touch with B.S.'s teacher throughout the year who would provide her feedback on what area he was struggling in. She never personally observed B.S. in his Foundations class. She started working with B.S. in third grade and twice a week she would pull him out of class to provide extra help – reinforcing what was being taught in the classroom by incorporating the area that he was struggling in, into her lesson. She called this a “double dose”. The lessons were

approximately forty minutes long. It was her impression that B.S. had very few areas of weakness, however, the testing (Word Identification Spelling Test “WIST”), which was done in May 2017, at the end of B.S.’s third grade year, showed that he was still struggling a little bit. (R52, Pages GB192-GB1930) More specifically, under the Norm-Referenced Assessment – Descriptive Rating, for Word Identification and Spelling, B.S.’s rating was “average”. He was “below average” in Pseudo Words and Letter Sounds. Under the Record of Informal Assessment, B.S. was determined to be functioning at or above a third-grade level but in looking at his level of functioning for Pseudo Words and Letter Sounds, he was below his grade level.

Flora did not believe that there was a major issue going on with B.S. His raw score for “Read Regular Words” placed him reading at a fifth-grade level. His raw score for “Read Irregular Words” placed him at the sixth-grade level and for “Spell Regular Words”, he was at a fifth-grade level. His “Spell Irregular Words” placed him exactly in third grade. In Pseudo Words he scored twenty-six which placed him at a second-grade level. Flora pointed out, however, that one more point would have placed him at the third-grade level. B.S.’s “Letter Sound” raw score was fifty-nine, which was his lowest score. According to Flora, if a child doesn’t know his letter sounds, they would have trouble later on decoding bigger words. Overall, it was Flora’s belief that B.S. scored well, however, due to his results in the Pseudo Words and Letter Sounds, it was determined that B.S. should continue in the program into fourth grade to work on his sound and symbol relationships.

In May 2018, at the end of his fourth-grade year, B.S. was again tested to see if he needed to continue with the Wilson Program. (R-52, Pages GB1931–1938) Under the Norm-Referenced Assessment – his Descriptive Rating was “average” across the board. His score went up in several areas such as in Read Regular Words, Spell Regular Words, Spell Irregular Words. He also increased his score in Pseudo Words and Letter Sounds. He went from below average in third grade to above average in fourth grade in Sound and Symbol Knowledge. Based upon these results, which showed a marked improvement in all of the categories, it did not appear that B.S.

needed to continue in the phonics program as he had all that he needed to be successful with reading.

On cross-examination, Flora was questioned about her program. In response, she stated that because of her background in the Wilson Program and Foundations Program, she and the District's other reading specialist, pull a lot of techniques from the Wilson Program into the Foundations Program. This is to make the program more multisensory and a little bit different than the classroom. The program is the same however the approach is different as far as the steps are concerned.

She was not aware that B.S. had an IEP in third grade. When questioned about B.S.'s 2017 WIST scores in the sound-symbol subtests, she stated that it was not unusual for a child who was otherwise capable, to be weak in that area. Expanding upon this answer and citing to the testing material for third grade, Flora stated that when B.S. was tested at the end of third grade, he had not been taught many of the sounds. (R-52, Page GB1925) This is why the Foundations Program is extended into the beginning of the fourth-grade year because the students are taught the second half of the book at that time. She went on to add that just because a child can read an entire word, it does not follow that they know the sound symbol relationship.

Jennifer Stetz (Stetz), testified that she has been employed by the respondent for the past eight years. She is currently the Kindergarten Special Education Teacher, however, last year, she taught the Academic Enrichment class which is similar to a gifted and talented class.

Stetz is familiar with B.S. having taught him in her fourth-grade academic enrichment class the year prior. The class met once a week with the curriculum being pre-set. When the children came into her classroom, they worked on different projects. The projects varied – sometimes they were a group project and other times the project consisted of independent research. The students are given multiple options on how to present their work and different learning modalities were also employed. Children had

to test to get into the class. The year she taught the class, there were nine children including B.S.

B.S. was an average student in her class. He completed his work but did not really contribute anything over and above that. Given the nature of the class, she expected the students to contribute and participate more which was not the case with B.S. She did not see any analytical thinking from B.S. during the class. He typically presented his projects online – usually a Power Point presentation with nothing additional.

On cross-examination, Stetz was questioned about her qualifications to teach academic enrichment. In response, she stated that while she had never taught the class prior to that year, she held certifications in elementary, special education and early childhood.

Regarding her comment that B.S. expresses himself in one modality (Power Point), Stetz was asked if she ever attempted to encourage him to expand his expression to which she said yes, however, B.S. was resistant. She went on to note that in group projects that involved a Power Point presentation, B.S. would only present the slide he had prepared. He would refuse to present any other slide that was prepared by one of his group/classmates.

Stetz was aware that B.S. had an IEP and had reviewed it, however, never asked any questions about implementing the accommodations or modifications in her classroom.

Theodore A. Petti, M.D., M.P.H. (Dr. Petti), a Board-Certified Child Adolescent Psychiatrist and General Psychiatry, Psychiatrist, was accepted as an expert in adolescent psychiatry. (P-66) In 2016, B.S. was referred to him by Dr. Paul and he has since been treating him for medication management as well as counselling.

In March 2017, the CST requested a copy of his psychiatric evaluation of B.S. as they were in the process of evaluating B.S. Believing that a psychiatric evaluation would be inadequate given the purpose of the request, he offered to and thereafter provided a report to the CST to be used as part their evaluation process. (P-65.)

His report was broken up into sections: Pertinent History; Past Psychiatric History; Neurodevelopmental Evaluation; Neurological Evaluation; Psychological Evaluation; Language Evaluation; Medical History; Family History; Social History; Mental Status Examination; Standardized Assessment Scales; Child Study Team Evaluations; Diagnostic Impressions and DSM Diagnosis; and Recommendations.

In explaining the breakdown of his report and findings, starting with B.S.'s Pertinent History, Dr. Petti stated that that section provides the reader an understanding of his (Dr. Petti's) perspective in terms of his findings and recommendations. Regarding B.S. Past Psychiatric History, the significance of his findings in that section was the fact that B.S. had been having problems long before he saw him and that he (B.S.) was not really responding to what was being offered to him.

Neurodevelopmental Evaluation – He reviewed the Neurodevelopmental Evaluation performed by Kapila Seshadri, M.D. (Dr. Seshadri) and the Neurological Evaluation by Lewis Milrod, M.D. (Dr. Milrod) to see what the basis was for their diagnoses of ADHD and ADS and the medications prescribed. Additionally, he wanted to see if there were any medical issues that would be germane to the clinical picture and to see what rating scales had previously been used as a baseline.

In a review of Dr. Seshadri's evaluation, B.S. did not appear to have any medical issues, however, she did determine that he met the criteria for psychiatric illness. In the review of Dr. Milrod's evaluation, it appeared that Dr. Milrod had made similar findings as his own.

Psychological Evaluation - For this section, he reviewed Dr. Paul's report. His takeaway was that B.S. had a complex set of strengths and deficits. Due to B.S.'s

intellectual capacity, he has been able to remain in the normal range of achievement but at some point, this would hit a ceiling and thereafter his achievements would decrease.

Language Evaluation - Dr. Petti's comments as it relates to this section were based on his review of Elleseff's report. He felt that her report supported his findings as it related to B.S.'s strengths and weaknesses. He went on to state that one of the recommendations that he had made was a language evaluation so that B.S. could get the services he needed.

Medical History - This section is always included in his reports and includes information regarding how the mother's pregnancy progressed, if there were any risk factors, developmental milestones, eating and/or sleeping concerns and physical growth.

Family History - Similar to Medical History, Dr. Petti stated that he always includes a family history in his reports as it provides a backdrop. In this case, there appeared to be a significant family history of psychiatric illness which was a combination of genetic predisposition, physiologic changes, and psycho-social stressors among other things.

Social History - According to Dr. Petti, the information, if available, provides him an opportunity to see where the child's strengths are. It also allows him to see if there are social pressures that are impinging on the child's ability to function which may be related to the presenting psychiatric symptoms. In B.S.'s case, he was not operating similarly at school and at home. The teachers at school reported, on a standardized scale which they had completed for him, minimal problems with attention and well below clinical levels of hyperactive impulsive behavior. The family on the other hand reported the opposite.

Mental Status Exam - In his examination of B.S., among other findings, he noted that B.S. made few eye contact and that his speech was pedantic and stilted at times.

B.S. reported that he was always sad. His thinking was around material things, but he was socially oriented to an extent. He was creative, likes to invent and likes to be precise. His recent memory was intact as was his immediate and short-term memory for three objects which some children with ADHD have problems with. Serial 3's was done without error to negative 1, and he was able to spell forward and in reverse without error. B.S. was also able to generalize a full range of similarity pairs which, according to Dr. Petti, was above what a normal nine and a quarter year old could do. B.S.'s "Draw a Person" score was below a child of his chronological and mental age which meant that he had some visual motor difficulties. It was Dr. Petti's impression that B.S.'s social orientation did not fit in with somebody diagnosed with ASD.

Standardized Assessment Scales - The Swanson, Nolan, and Pelham (SNAP) are standardized assessments which are always included in his evaluations. B.S.'s parents reported significantly higher levels of inattentive behavior, hyperactive/impulsive behavior and oppositional/defiant behavior than B.S.'s teachers. B.S.'s teachers' assessments in both second and third grades were unremarkable and oppositional/defiant behavior was scored at a zero. According to Dr. Petti, it was rare to see a zero for oppositional/defiant behavior for a child with ADHD and the problems B.S. was presenting with. This made him believe that the demands on B.S. must not have been very great.

Child Study Team Evaluations - Dr. Petti testified that when these are available, he reviews them as part of his assessment. In this case, among other things, he was provided and reviewed the OT Evaluation, the Psychological Evaluation, the Speech/Language Evaluation among other things. Based upon his review of the evaluations, it was his opinion that the District was not totally measuring what the difficulties were. Based upon his entire evaluation, it was his opinion that the current school environment was not meeting B.S. academic, cognitive, social and psychological needs and that did not appear able to provide the range of academic and related interventions recommended in the reports reviewed.

According to Dr. Petti, B.S. used so much psychic energy to be able to function in school, not to be an outcast, and try to please his teachers that there was not much left at home. It was his expectation that eventually the school would see the same type of problems that were occurring at home and that eventually he was going to be disruptive influence at school.

DSM Diagnosis - A DSM diagnosis is always included in his reports. Anyone looking at his report can go to the DSM and know exactly what the criteria is for making a particular diagnosis. His listing of multiple diagnoses for B.S. is not out of the ordinary.

Recommendations - In going through his recommendations, Dr. Petti stated that his first recommendation was to implement the recommendations made by Dr. Paul and Elleseff regarding B.S. significant learning, language and communication deficits. He reviewed B.S.'s IEP for the 2016-2017, 2017-2018 (third and fourth grade) and did not feel that it provided what he had recommended and what B.S. needed. In discussing his recommendation for a Therapeutic Day School, it was his belief that children such as B.S. require special services. If the services are not provided, the problems will become magnified. He also recommended a smaller class size for B.S. It was his recollection that B.S.'s IEP did not provide for that. He felt that B.S. has multiple strengths and weaknesses and that the school was not building on his strengths or addressing his weaknesses. Instead, the school was accentuating the positives and minimalizing the deficits he was experiencing.

Dr. Petti went on to testify that he continued to treat B.S. subsequent to his March 2017, evaluation/report. He saw B.S. in August 2018, and at that time was asked to provide an update. (P-91) He found B.S. to be animated and enthusiastic about the summer program that he was attending and was looking forward to attending the same school in the fall. This was important because B.S. had never previously expressed anything positive. Overall, he found a marked improvement in B.S. who made good eye contact and didn't fidget as much. B.S. told him that he wasn't getting up in the middle of the night to watch TV and that he did not have as much anxiety,

sadness or irritability. Dr. Petti also learned that B.S. had reached out to welcome a new student in the class. This was significant because he previously did not have that the skills to do that.

B.S.'s progress reinforced his hypothesis that B.S. needed a smaller program that was integrated and would allow him to be able to function better in the classroom setting and not have to spend all of his energy just trying to fit in. In such an environment he would be able to learn and participate more actively. In Dr. Petti's opinion, the negative cycle which he noted in his earlier opinion, was broken because the environment that B.S. was currently operating in was supportive rather than toxic.

On cross-examination, Dr. Petti acknowledged that he never went to visit the Flex School, nor does he know the specifics of the programs that were offered. What he knows about the school came from the parents. He subsequently modified this statement stating that he does have some idea what the program offers because he saw B.S. report card and what they were doing. What he wrote in his report was a generalization of what B.S. needed - not a recommendation for a particular school. It appears from B.S.'s report card and from what his parents were saying that the current program is meeting his needs. He was getting more individualized attention; functioning at a higher level than a year ago, and was doing better at home now that he didn't have to expend as much energy to fit into the classroom setting.

When pressed to provide further explanation as to how the program at the Flex School was meeting B.S. needs, he stated that it was a smaller class size for one and the teachers were trained to deal with children such as B.S. This last point was speculation on his part based upon B.S.'s report card and what he was told by B.S. and the parents. He later changed this statement by indicating that he came to that conclusion based upon literature, the Academy of Child and Adolescent Psychiatry practice parameters and the American Academy of Pediatric practice guidelines. He was unsure whether B.S.'s teachers were certified special education teachers.

Dr. Petti was also questioned how the Flex School was meeting B.S.'s social needs. In response, he reiterated his earlier testimony about B.S. bringing in a new student and introducing him to the class which he had never done in his old school. On this last point, he admittedly has never spoken to B.S.'s teachers at the IEF school, therefore he could not say that last statement with certainty.

Regarding his reports, Dr. Petti testified that they were not formal reports. If they had been formal evaluations, he would have spoken to B.S.'s teachers at the IEF School. He went on to state that while he did not speak to B.S.'s teachers at the IEF School, they filled out the standardized scales that he had sent them, and he also reviewed the CST evaluation reports. His reports/evaluations addressed what was currently happening - whether or not the medications B.S. was on met his needs and whether the parents were providing the appropriate structure at home.

When questioned about his personal observations of B.S.'s hyperactivity, Dr. Petti he stated that while he saw some fidgetiness, he did not see hyperactive impulsive behavior or minimal inattentive behavior. He went on to state that that was normal in children with ADHD who are in their doctor's office. He acquiesced that it was also normal in children of the same age who don't have ADHD to fidget when they were bored.

Dr. Petti was also asked about his various diagnoses of B.S. Regarding his diagnosis of ODD, it was his belief that B.S. met the DSM criteria. B.S. was defiant, highly sensitive and didn't take responsibility for his actions. He never personally observed the behavior nor was it reported in the school setting – either in the District or at the Flex School. The behavior occurred in the home setting as reported by the parents on the SNAP. According to Dr. Petti, only one setting is needed to make the diagnosis and it supports his hypothesis that B.S. does not have much self-control left by the time he gets home. He felt that this issue had improved since he has been at the Flex School. This was based upon his interview of B.S. and what he was being told.

He was also asked about his testimony that B.S. was not getting the required services in the District. In response, Dr. Petti stated that he based this statement upon the fact that the District did not provide B.S. with the services that were recommended by not only himself but other professionals such as Elleseff. While B.S. did well in school, it was his opinion that it came at a price on a psychic and intellectual level – citing to B.S. lower score on the Wechsler Test. His conclusions were based upon the totality of the information that was both reported and provided to him.

He went on to state that to get to a differential diagnosis, you want objective data as well as subjective data which is what he believes he had in this case. He received objective data from B.S.'s teachers, from the reports and from the family. It was his position that there is a difference between truth and fact. Truth is the way people perceive something and fact is actual data or observations of what is going on. It was his belief, based upon his training and experience, that his interpretation of the material balanced the subjective and objective.

Dr. Petti is not familiar with the Flynn Effect, however, indicated that there were a number of reasons that B.S.'s IQ would have gone down such as paying attention, motivation, environment, relationship to the examiner and even due to aging. He agreed that B.S. could have regressed to the norm given the fact that he was aging up - but it could have also been because he was not being challenged in school and unable to reach his potential in that particular classroom setting. He based the latter statement on his experience and literature on the subject.

He is familiar with the WISC-4 and WISC-5 stating that the tests are a continuum over time. In explaining why B.S.'s score went down when he took the WISC-5, he theorized that it could have been due to the school failing to provide him the environment necessary to continue to grow and develop. When questioned if the first test could have possibly been a high score and the second test was the norm score, he acquiesced that that was also a possibility.

According to Dr. Petti, he continues to see B.S. as a patient and monitors his medications of which there are several. The medications help him across all environments – home and in school. B.S. has been on his present medications since 2017. The medications in question could cause weight loss and affect one’s sleep however, the effects typically stabilize within three years of taking the medications. In B.S.’s case, between the medications and his finicky eating habits, weight loss would not be unexpected.

B.S. also had sleep issues before starting the medications - so it was hard to say whether his sleep issues were a result of the medications or his ADHD. According to the parents, the current regime appears to be helping B.S. who has had no major reported issues. Dr. Petti has not reached out to the Flex School because there does not appear to be any problems at school, and he is doing well.

Additionally, he has provided the parents with recommendations on how to handle B.S. at home due to each parent having a different parenting style - Mom being more open and dad more structured. This has the potential to give mixed signals where one thing could be acceptable by one parent and not with the other. According to Dr. Petti, this was where the oppositional defiance came into play with B.S. because he was not always doing what was asked from him or what he agreed to do. Mom handled the issues more frequently, however, she was not as structured as her husband. It was his belief that B.S.’s issues at home were directly related to what was happening at school. When pressed on these comments, Dr. Petti acknowledged that, while a remote possibility, B.S. may be doing well in school now because the parents are implementing a different parenting style at home. He felt that the latter was unlikely because when B.S. started the Flex School in the summer, his behavior and demeanor immediately changed.

When questioned whether B.S. ever expressed anything negative about either the IEF School or the Flex School, Dr. Petti said “no”. He reiterated that B.S. was having major problems at the IEF School – using so much energy at school to control

himself and to fit in that by the time he got home, he had nothing left in the “psychic tank”. Based upon what he is seeing and hearing, this is not currently the case.

Regarding B.S.’s social skills, he based his opinion on what had been reported to him. He believed that a small class size was important for B.S. This would allow for more individualized attention and the ability to pull together resources – whether its OT, physical therapy (PT), language therapy or counseling all together. He went on to state that what is learned in the classroom can be then generalized in the home setting. When questioned about modeling and whether it was important to have non-disabled peers to model behavior off of, he stated that it would be a reasonable model to consider. However, there are many ways of modeling behavior and not all children learn from watching their peers. In discussing B.S.’s deficits, he determined that B.S. had deficits in his ability to attend in that he was easily distracted; not be impulsive, difficulty with sensory processing, receptive and expressive language, problems with reading verbal and nonverbal clues and cues, and in his ability to express himself appropriately in terms of social communication.

Tatyana Elleseff (Elleseff), a Speech Language Pathologist, testified as an expert on behalf of the petitioners in speech language pathology and literacy – in so far as it represents language in print form and her assessment skills, and as a therapist. (P-50)

She first met B.S. in 2016 when J.S. (Mother) called and requested a comprehensive language and literacy evaluation of him. (P-47) She met with him five times and established a good rapport with him. When she conducts her evaluations, she has a set format. In going through each section of her report, she stated the following:

Formal Testing Results - This section is always included in her evaluation as they provide a snapshot of the standardized scores for the reader. For B.S., it provided information on his standardized strengths and weaknesses which in turn were used to create a comprehensive treatment plan.

Background Information - Background information on the child that is obtained provides insight into the client and may also provide relevant information on the family history. Quite often the information is useful to the clinician who may question whether a child requires a specific diagnosis or treatment. In B.S.'s case, a red flag went up when the parent informed her that B.S. frequently engages in non-stop talking; is frequently hyper-focused and perseverates to the point that his classmates ask that he stop repeating himself. This was a red flag to her as it indicates an individual with a social communication difficulty which is causing a rift in how his peers socialize with him.

Elleseff went on to state that normal conversations between people go back and forth. When you speak to someone frequently, particularly on a topic that doesn't interest them, they start giving the other person a lot of non-verbal body language and signs of disinterest. If that doesn't work, they walk away from the person or cut the conversation short. This would be an example of poor socialization and the child would not be accepted by their typically developing peers.

Another red flag in the family history was that there was a family history of ASD. This meant that the student may display social communication difficulties.

Included in the gathering of background information, was a review of the prior assessments that were performed. One of the assessments that she reviewed was Dr. Paul's report. His report determined B.S. to be a highly intelligent child who was having pervasive social communication deficits. A child who should be functioning better than he was. Elleseff went on to state that the ADHD in and of itself was not the reason for B.S.'s social communication problems. Other factors contributed to the issue such as a very pertinent family history of psychiatric difficulties, and a pattern of behavior from early childhood which presented differently socialization wise.

Adaptive Behavior - According to Elleseff, this section was important particularly for children who display social communication difficulties. It provides the reader an

understanding of what the child is doing during the assessment that may be atypical or noteworthy and indicative of a social communication deficit. As an example, Elleseff talked about B.S.'s excessive fidgetiness which she noted in her report. When he was given "thinking putty", he was able to appropriately use it throughout the assessment to reduce his inattention, hyperactivity, and impulsivity.

Classroom Observation - She conducts a classroom observation to better understand what was happening with B.S. in the classroom setting. She visited his school in November 2016, for approximately an hour and a half. The class had nineteen students. She noted that B.S. had several modifications and accommodations and she was perplexed as to their purpose. Among the activities that she observed was a discussion of a particular book. The children were broken down into groups of three and told to discuss it amongst themselves and share their thoughts. While the other two children in B.S.'s group conversed, B.S. sat silently in his chair and did not face the other children. He had to be redirected a couple of times to participate.

To Elleseff, this showed that B.S. was having difficulty socializing in an academic setting. He was asked to complete a group assignment and he did not. Later, when the teacher read the book out loud and asked questions, B.S. did not appear to comprehend the book or what was being asked of him. His answers were vague and pragmatically inappropriate to the question asked. To Elleseff, his responses meant that his difficulties were not just social, but academic as well because he was not comprehending what he was reading so his responses reflected his social communication difficulties.

As an aside, she also noted that B.S. had a history of using words that he was unable to explain or define. When this occurs, the person is essentially speaking "gibberish". According to Elleseff, this will be judged adversely by not only the teacher but his typically developing peers. Regarding the quality and mechanics of B.S. writing, she found that it was variable. He was able to make grossly accurate predictions with respect to select questions however his sentences were run-on, and the punctuation was improper. At other times, his response was immature and imprecise. Elleseff went

on to state that this was consistent with what the parents had informed her - that he was acting as the rule police, requiring rigid adherence to the rules and constantly reminded the other students of the rules. According to Elleseff, this is a weakness, not a strength in light of his social communication difficulties.

When B.S. left the room, he bumped into her and walked out the door without any sign of recognition or acknowledgment. This was noteworthy as she had seen him several times a couple of months prior in August 2016. Such behavior may be due to simple indifference which demonstrates a social communication difficulty and lack of interest in other people unless something was needed from them, or that he did not recognize her which is known as Facial Agnosia. Facial Agnosia, which is the difficulty in recognizing a familiar face, is consistent with ASD. It was her position that the fact that he bumped into her without any acknowledgement, such as an apology, was an indication of social communication difficulties – particularly given his age.

After the class was over, she went to speak to B.S.'s teacher (Pirrone) to talk about the curriculum that was being used – Foundations. When she had evaluated B.S. the prior August, deficits were found in his phonological awareness, reading fluency and comprehension and writing. The Foundations program used by the District was an Orton Gillingham based program that had a lot of strength with respect to phonics, however, it was lacking in other areas. Because of that, it did not match the deficits that B.S. was displaying. What B.S. needed was a combination of other things in order to address his skill deficiencies.

The school also used the Lucy Calkins' Reading and Writing Project to teach reading and writing. This method teaches children to read by recognizing words as whole pieces of language. Elleseff opined that the proponents of this method believe that language should not be broken down into letters and combinations of letters and "decoded". This may confuse the children because you have a combination of a synthetic phonics program, which B.S. has mastered, and then you have the Lucy Calkins method - a creative program where you are expected to be self-directed. During her assessment, she found that B.S. could not be self-directed and needed a lot

of support and structure. Given all of this, it is her belief that it is difficult for B.S. to comprehend and thrive or even appropriately benefit from the program.

Observations and Conclusions - She determined that B.S. needed actual remediation, not just accommodations in the classroom setting. When she saw him, he did not have any intervention services or an IEP in place. Giving a child, that has notable difficulties with accommodations such as a laptop or speech detect software, does not suffice. You need to work on remediating their actual deficits by giving them therapeutic assistance or at least some form of resource instruction. As an example, she used her observation of B.S. in the classroom where he was praised for using his Chromebook, yet his writing contained numerous errors. She also noted that socially, the use of the Chromebook and headphones increases his isolation because he was not spontaneously interacting with his peers on assignments. While the teacher verbally prompted B.S. to interact with other students during assigned activities, no other facilitation was offered such as teaching or modeling.

She also questioned, after watching B.S. silently read to himself prior to writing his response - whether the method utilized by Pirrone was sufficiently reliable to determine whether B.S. could correctly and fluently read and appropriately comprehend the material.

Given B.S.'s presentation at the time which included her observations, in conjunction with the reports that she had read, it was her belief that he qualified and satisfied the criteria of a "twice exceptional" student who required special education and related services. She also determined that the current instructional practice and accommodations were not appropriately meeting his educational needs. If no further action was taken, then B.S. would continue to fall further behind his peers both academically and socially.

Auditory Function and Peripheral Oral Motor Exam - No formal testing was performed in either of these areas.

Voice, Fluency, Resonance, and Prosody - While J.S. (mother) reported that B.S. had difficulty modulating his tone of voice at home, he fell within normal limits during her evaluation. When someone has difficulty modulating their loudness, it reflects poorly on their social communication.

Articulation and Phonology - She found that B.S.'s speech had some mild residual distortions which would need to be addressed in therapy.

Executive Functions, Memory, Processing and Listening Comprehension - Elleseff described the Executive Functions Test: Elementary (EFT-E), which is composed of multiple subtests, as an assessment that is given to confirm or rule out advanced listening comprehension deficits as it pertains to memory, vocabulary and some aspects of verbal reasoning. In B.S. case, she found that B.S.'s ability to answer critical thinking abstract questions to be borderline which was consistent with his social communication difficulties. This surprised her however given B.S.'s level of intelligence.

Expressive Language and Semantic Flexibility Skills - This formal assessment of expressive language ability included the administration of select subtests from the Word Test 3: Elementary (WT3-E), Expressive Language Test – 2 (ELT-2), as well as the administration of the Vocabulary Awareness subtest from the Test of Integrated Language and Literacy (TILLS). The purpose of these particular tests was to reaffirm that there were no deficits at the simpler level before moving on to more complex tasks.

B.S. scored below average on one of the subtests (Flexible Word Use) of the WT3-E. The example given was his correct and incorrect response when he was asked to provide two different meanings to the word “order”. The error pattern was again seen in the TILLS subtest (Vocabulary Awareness) where he had vague explanations of word relationships. While he scored below average in these tests, she put this down as a strength as opposed to a weakness given his performance on the other tests.

When B.S. was asked to summarize a recently read book or movie, he talked about a movie that he had recently seen. In summarizing his recitation, she found

B.S.'s response to be excessively verbose which was an indication of social communication difficulties. She went on to explain that when a story is so long and excessive, it has a lot of irrelevant detail. At some point, you will lose your listener. His reporting also lacked age-level story summarization and interpretation which was again an example of social communication difficulties. It was her belief that in order to address B.S.'s weaknesses in this area, he requires therapeutic intervention.

Problem Solving, Critical Thinking, and Verbal Reasoning Abilities - In this section, she administered the Test to Problem Solving 3 Elementary (TOPS-3) in which B.S. scored borderline or low average on the test. According to Elleseff, it is important to monitor B.S.'s abilities in this area with ongoing therapy in order to avoid regression due to rising academic demands.

Social Communication - This section is included in her evaluations because social communication is firmly part of language which has three significant areas - content, form, and use. B.S. was given the Social Language Development Test: Elementary (SLDT-E). His total test score was the standard score of seventy-five and a percentile rank of five which was below average. Elleseff stated that this was significant because it confirmed his social difficulties. When viewed in light of his IQ of 133, it showed a huge discrepancy both statistically and clinically which meant that something needed to be addressed and treated.

On Making Inferences subtest, B.S. obtained a standard score of seventy-nine and a percentile rank of eight. The test requires the person to assume the perspective of another person and state what they were thinking. B.S. had difficulty putting himself in another person's shoes.

On Task A – a test designed to have the test taker infer what someone in a picture was thinking, B.S. had had difficulty making the correct inference. He missed the non-verbal body language of the person in the picture. In this case, it was a picture of a man receiving a present that was clearly meant for a female. The look on the man's face was one of incredulity. When questioned what the person may be thinking

– B.S. stated “I got a present” which misinterpreted the man’s look and emotion. While he was able to recognize the problem, was not able to offer an appropriate solution and/or articulate why it was appropriate.

According to Elleseff, it is easier to respond to something that is static because it is in one place and you can analyze it. It is not so easy to respond to something that is dynamic - such as social communication interactions in different settings (i.e. school in the community). If B.S. was having difficulty in static tasks, he would have significant difficulty in dynamic tasks. Moving forward, if there was therapy and intervention and if B.S. was taught new social skills, she would recommend that his teachers and parents place him in scenarios that require him to utilize the skill to see whether he’s generalizing it.

On Task B, B.S. obtained a score of sixty-four and a percentile rank of one indicating a profoundly impaired performance. In this task, B.S. was asked to provide a solution to a problem that was presented – specifically, he and a friend were hiking, and the friend wanted to go down. When asked for a solution, B.S.’s response was “you could go home”. The response was not a first-person perspective – rather a second person pronoun. His response completely removed himself from the scenario. While a surprise given his intelligence, it was consistent with his significant social communication deficits.

On Task C, B.S. was required to provide a justification of why he picked a particular solution and why the solution is superior to others. He scored eighty-one on this task and a percentile rank of ten. B.S. had difficulty placing himself in a situation and therefore his answers were vague – using a second- or third-person perspective.

Another subtest – Interpersonal Negotiation was also administered to B.S. He achieved a standard score of eighty-one and a percentile rank of ten – which, according to Elleseff was higher than she expected. She rationalized that he scored higher than expected because of his response to Task A and his ability to recognize a problem.

On the Multiple Interpretations subtest, B.S. obtained a score of sixty-eight and a percentile rank of two. In this test, the person is shown a picture or video and asked to presume two different scenarios. If the person provides similar responses, it shows rigidity and difficulty in assuming different perspectives which is indicative of social communication difficulties. She found B.S.'s performance in this area severely impaired. According to Elleseff, when a person has difficulty assuming social perspective, they may not be socially flexible. On the academic side, particularly when a child enters the higher grades, there will be difficulty speculating why a character in a book did something or whether the character had a particular motive.

Supporting Peers - on this subtest, B.S. scored an eighty-five and a percentile rank of sixteen which was in the borderline range. According to Elleseff, she did not expect this score. She went on to explain that socially, if a person cannot show supportive reactions to friends and peers, that person would be avoided socially. Academically, that person would have difficulty working in groups.

On the Informal Social Thinking Dynamic Assessment Protocol (ISTDAP), B.S. had difficulty coherently and cohesively explaining certain things such as his home and school life. The same with his friendships at school. The children whom he identified as friends at school appeared to only be casual acquaintances. He did not have any friends outside of school.

Supporting Peers – another subtest of the SLDT-E, was also administered to B.S. He scored an eighty-five, with a percentile rank of sixteen which fell within the borderline range. Elleseff commented that if you can't master the art of a white lie – it is not going to make that person the life of the party. If a person can't show supportive reactions to friends and peers, they would be avoided in social settings. The academic implications are the inability to work in groups and get along. That person would get on his/her peers' nerves and could potentially end up sitting by themselves during recess.

During the "Double Interview" B.S. had difficulty maintaining "give and take" exchanges when the conversation did not pertain to his interests. She also noted that

B.S. failed to acknowledge the interests of others and tended to steer the conversation topic to his interests. Socially- this was significant citing to her earlier example of B.S.'s peers begging him to stop talking about the Titanic. It was also academically significant because you get so focused on what you want to say that you ignore questions and comments from others. When you do speak, others may not be interested in what you have to say, or your comments may be irrelevant to the topic. This may have a significant impact as the child gets older and is required to participate in group projects.

Elleseff went on to state that because of B.S.'s intellect, likeable personality, is easy to talk to and not a behavioral problem, adults outside of his immediate environment may fail to see his social difficulties. However, his peers see it and will pick up on any social oddities or non-accepted behavior right away. They will not tolerate his social quirks or oddities and will avoid him which will further isolate him. According to Elleseff, based on studies, when he gets older, due to his lack of social communication skills, he may not receive promotions or financial increases because he was not as well liked or received in the workplace.

Reading Assessment - For this assessment, the Comprehensive Test of Phonological Processing-2 (CTOPP-2) was administered to B.S. The test was administered to better understand B.S.'s phonological awareness skills. His score for phonological awareness was eighty-eight and seventy-six on his phonological memory. She found these scores significantly discrepant from his IQ. She also administered the Phonemic Awareness subtest of the TILLS. She gave him this test to cross compare to see if there were the same deficits; slightly different deficits; or if there was a discrepancy. In this test, B.S. scored a four and had a percentile rank of nine. Based upon his responses, one of which was his inability to remove initial sounds correctly in nonsense words, it meant that he had residual phonological awareness difficulties. He was also having difficulty removing certain sounds from consonant clusters.

Another subtest of the TILLS, the Nonword Reading test, was administered to B.S. to ascertain his reading abilities. The test was designed primarily as a measure of

reading decoding. B.S. obtained a score of thirteen and a percentile rank of seventy-six which placed him above average for children his age in his ability to decode nonsense words. Based upon his strength in this area, she would not recommend using nonsense words to remediate B.S.'s reading difficulties. Her rationale being that there is no end purpose to decode nonsense words and they do not transfer into a reading fluency task successfully. Instead, she would use rare words that have a true morphology associated with them. This would serve multiple purposes as B.S. would not only learn vocabulary words but prefixes and suffixes as well. This will improve his knowledge as well as his reading vocabulary. Elleseff recommended targeted therapeutic remediation to improve this area which in laymen's terms meant remediating only the areas of deficiency – not areas that are not needed, too simple or too complex.

B.S.'s basic reading comprehension abilities were also assessed through the Test of Reading Comprehension 4th Edition (TORC-4). She administered this test to determine if he can compensate with his existing reading skills and decode basic text. B.S. tested in the average range with a total test score of 108 and a percentile rank of seventy. She noted however that as the testing progressed and the subtest complexity increased, the tests being arranged in the hierarchy of complexity, there was a significant drop on select subtests, in both his score and percentile, which she found atypical.

Informal Reading Assessment - Based upon his earlier results, she administered an informal reading assessment. In analyzing his reading fluency, she found that when B.S. encountered an unfamiliar word, he did not attempt to decode it, he simply read it as "something" and moved on to reading other words. He made no attempt to comprehend the meaning of the words that he read which means he was not really thinking about the text. Elleseff went on to state that if you don't think about the text, then you are going to be very poor at comprehending it. The fact that B.S. did not omit the word, invent a word or skip the word is different than just reading the word as "something" and is indicative of a social communication issue.

The subtest of Main Idea in Text Vocabulary Comprehension was also administered. B.S. was unable to summarize the story in his own words after reading it. This meant that he did not understand the text.

On the Reading Comprehension (with/out text) - an assessment that requires the child to recall and retell details of a story without the text in front of them, B.S. incorrectly responded to the questions asked. He missed the point of the entire story. On the multiple-choice section, B.S. was unable to answer a vast majority of the questions due to his text misreading. This part surprised her as she had expected B.S. to “crush” this section which he did not. According to Elleseff, for remediation purposes, this information would be important so that the remediator can predict, anticipate and replace to ensure that the same errors do not keep continuing. It was her position that while B.S. could compensate at that time, in the future, it would adversely affect his academic performance.

Spelling - A formal assessment was conducted of B.S. spelling language ability. The Assessment included the administration of the Nonword Spelling subtest from the TILLS. Based upon the assessment, she recommended therapeutic intervention targeting spelling due to his multiple spelling errors.

Written Assessment - One of the subtests administered in this area was Contextual Writing subtest. In this test, B.S. was asked to write his own story with an introduction, middle and conclusion based upon a picture prompt. He was provided a time limit of thirty minutes with time allotted to allow him to plot his story on a separate piece of paper before actually writing it. B.S. declined to do so and immediately wrote his story without any planning. This meant that he was not actively thinking regarding the planning of his story. He wrote the story in five minutes. The story was overgeneralized and did not contain relevant details to engage the reader. Additionally, there were issues with his spelling, punctuation, capitalization, immature writing style among other things. His standardized score was seventy-eight and a percentile rank of seven which fell within the poor performance range. For this area, she recommended

that B.S. receive targeted therapeutic intervention which focused on written composition and contextual conventions.

In addition to the written assessment, she also administered an informal assessment of B.S.'s persuasive writing. He was provided a written prompt and asked to develop his thoughts. Based upon what the common core expectations were and after cross comparing those requirements from other sources in the field, Elleseff determined that the content of B.S.'s composition, was immature for his age and grade level.

Impression - According to Elleseff, what she found particularly noteworthy was the fact that none of the weaknesses that she had found, which have gradually increased over the years, were never diagnosed by the school. Had they been recognized earlier, and intervention put in place B.S.'s weaknesses would not have been targeted in her assessment. As part of her impressions, she provided her diagnosis of B.S. as it related to her assessment and a referral to OT for B.S. handwriting, and a SLP Nutritionist to address his diet.

Based on her observations of B.S.'s current classroom set-up, she felt that the school was not meeting his educational needs. This was evidenced by several factors which included: no appropriate identification and remediation of B.S.'s social communication difficulties; no remediation of his reading and writing difficulties; and B.S.'s use of multiple chairs, multiple chrome books and headphones and an over-reliance on the same.

She recommended among other things that: B.S. be provided with an IEP; a classification of SLD; provision of an in-class special education instructor who would actively coordinate with the replacement services teacher; a replacement services which would provide B.S. with a smaller setting and more targeted intervention; weekly targeted language therapy; weekly targeted social communication therapy that focuses on social thinking; and continued accommodations

Suggested Therapy Goals - According to Elleseff, this section is the purpose of the entire assessment. It is included to provide the person that is reading her report an understanding of the scope of her assessment and the areas that B.S. needs to work on. B.S. had a lot of goals which, given his level of intelligence were relatively high in number. To the best of her knowledge, not all of the recommended goals were implemented in B.S.'s April 2017 IEP which she had reviewed. (R-77)

In November 2017, after the implementation of the IEP and at the request of the petitioners, she went to observe B.S. at the IEF School. (P-77) She observed B.S.'s Foundations class. When she later spoke to B.S.'s classroom teacher, she learned that they were using the Wilson Reading Program. She was critical of this because Wilson's Foundations was not typically used in a fourth-grade setting which should have been a different program. Wilson's Foundations was specific for grades kindergarten through third and had a significant phonics component. In fourth grade, children are supposed to be more fluent in reading and the focus is supposed to be on comprehension and morphology.

While observing the class, she noted that the teacher started to assist B.S. because he was spelling his sentences improperly. She was helping him sound out the words, however, she did not provide him with any strategies to correct his spelling. While this was occurring, the other children were told to wait until she was finished with B.S. This too was of significant because it not only singled him out, it could also socially impact him. She did not observe the implementation of any of her recommendations as it related to his spelling during her visit.

She also noted that B.S. did not appear to be appropriately remediated in his identified needs. Neither the general Foundations instruction or the pullout Foundations constituted appropriate remediation of his reading, comprehension, spelling and writing difficulties. She went on to state that she would have had a combination of reading comprehension text and within that, she would have incorporated aspects of vocabulary and morphology. She would have wanted to see more main idea identification and

summarization and identify prefixes and suffixes. Additionally, she would have had a spelling activity.

She also observed B.S.'s ST session which had three children including B.S. One of the things she observed was that the teacher alternated between asking each child their specific therapy related questions, while the other children waited for their turns. According to Elleseff, this cut down on the instructional time provided to each child and was a violation of B.S.'s IEP which called for thirty minutes of instruction. Additionally, B.S. was working on vocabulary words which was the least of B.S.'s problems. This caused her to question why the teacher was working on something that B.S. already knew. Instead, they should have worked on the myriad of social communication goals which she had identified in her earlier evaluation of B.S. All in all, she found that B.S. had not been appropriately remediated in his identified areas of difficulty. She further opined that the present therapy setting was not appropriate for B.S. at that time.

Based upon her overall observations, she concluded that B.S.'s program of instruction (use of Foundations and Undifferentiated Language Therapy Services) was not appropriate and were not meeting his educational needs. It was her recommendation that B.S. be placed out of district. While an IEP had been put in place, it did not have the targeted services that she had recommended and was therefore not meeting his needs. Had the IEP included the recommended targeted services, there would have been a significant impact and progress by B.S. by November 2017.

Elleseff went on to testify that approximately a year later, in December 2018, once again at the petitioner's request, she went to the Flex School to observe B.S. (P-95) As part of her observation/assessment, she reviewed B.S.'s first quarter report card. (P-93) His report card, which contained teacher comments, was consistent with her observations and prior assessments. She sat in on B.S.'s social studies class which was about an hour long and his language arts less for which she was present for approximately fifteen minutes.

The classroom setting was small with the children working on a Jamestown Colony project. As part of the project, they were required to put together a supply list for the inhabitants and given very specific instructions on what they were supposed to do so that they didn't overextend their resources. The project integrated quite a few things such as statistics, math and had the children using executive functioning skills. The class was more than a social studies class, it combined elements of math and language arts. B.S. was very engaged in the project – more so than the other children and it was apparent that the project interested him. There were two teachers present, one of which walked around the room and asking the children “why” and “how” questions to promote their critical thinking and make sure that they understood the project. According to Elleseff, this is what she would have done in therapy and believed the environment at the Flex School was language enriched.

She also noted that B.S. use of technology (laptop) was appropriate and purposeful as it was being used for teaching purposes rather than to occupy his time in a non-learning fashion. She also observed B.S. being pro-social by going up to another child and asking if he wanted help in finishing his colony. Elleseff very pleased at seeing this because she had never seen him previously demonstrate such behavior and it appeared as though he was genuinely trying to help the other student who was having difficulty with his project.

She also toured the school to better understand the environment. The school was unusual with a lot of open spaces with students walking around doing their own thing. She noted however, that it was not a free for all. After taking a brief tour of the school, she went back to B.S.'s class to observe his language arts lesson. There was a therapy dog in the room and at one point during the lesson, B.S. came over to her and as he was trying to get close to the dog to pet him, commented that he thought that the dog was spying. He did not appear to recognize her which was still an issue – however, the important thing was that he approached her and tried to engage her in conversation. Given the content of his comments, it also demonstrated that B.S. still had subtle social communication difficulties.

After observing B.S. at the Flex School, it was her opinion that the school setting and level of instruction appropriately meets his complex needs.

On cross-examination, Elleseff was questioned what she attributed B.S. improvement to – the IEP that the District had put in place or the Flex School. In response, she stated that she did not attribute his improvement to either the District or the Flex School, she was just reporting on his progress. She later modified this statement by saying that when she saw B.S. a year prior, she did not see a lot of progress, however, one year later, she saw a significant amount of progress. She did not believe the progress was due to the implementation of the IEP which, by that time (November 2017), had been in place for six months. She believed that the Flex School was engaging B.S. at his level – giving him tasks that were both commensurate with his intellect and his interest. The school also used a lot of executive function strategies such as continuous questioning of the “why” and “how”.

She was questioned why her testimony added quite a bit of detail regarding her observations of B.S. at the Flex School, but her report lacked the same information, she responded that her report was sufficient to allow the reader to understand what she had observed.

Elleseff was also questioned about her observations at the IEF School. Specifically, why didn't she go into an equal amount of detail in her report regarding the Flex School's reading program as she had when she visited the IEF School. In response, she stated that she observed a social studies class at the Flex School and did not observe their reading program. Therefore, she could not comment on it. When questioned whether it would have been best practice to compare the same programs for purposes of her evaluation, she stated under certain circumstances – yes. But under other circumstances, you can observe something different to see if there is an integration of skills. It was her belief that the activity she observed - B.S. silently reading about his project and thereafter able to attend to his tasks appropriately demonstrated this fact.

She was also asked to justify her comment/criticism in her evaluation that B.S. was not “receiving any recommended social communication as well as writing interventions...” at the IEF School yet she did not criticize the Flex School who did not provide it. In response she stated that these issues were still a concern of hers, however, she looked at his overall functioning at the Flex School and was seeing a difference in his socialization patterns.

When pressed again on the issue, she again reiterated that on the whole, seeing B.S. in the Flex School environment she felt that it was a better fit for B.S. He was engaged, interested and motivated. She went on to state that a child can make progress without the therapies and all of the integrated treatments. However, a child can make greater progress if they receive the targeted remediation and intervention.

When questioned about the inconsistencies in her statement that B.S. would have made better progress had the Flex School implemented the suggested program, but that B.S. couldn't make any progress in the District who had the programs in place, she went back to her observations of his ST class. During that class, he was being taught something which he already excelled at. Therefore, why intervene in a skill that already exists when there are other deficiencies. When questioned further about her conclusions on this point, she stated that during the time that she observed, none of the social communication goals that she had recommended were implemented. While she acquiesced that the District was not bound by her recommendations, they did have to provide B.S. with appropriate goals and objectives which was not what she observed.

When shown an email from B.S.'s Speech Therapist, Sommer Engler (Engler), wherein J.S. (mother) was updated on what they had worked on in class that day, a targeted goal, Elleseff stated that she did not see that when she had observed the class one month prior. (R-48, GB1624) The same with another email updating J.S. about what was worked on in class on that particular day. (R-48, GB1598) In that email, the teacher informed J.S. that they were working on short scenarios, identifying the problem

and working on a solution. Based upon her reading of the emails, Elleseff acknowledged that the District was in fact implementing goals and objectives.

Upon referring back to her observations at the Flex School and her statement that B.S. was getting up and moving around, she stated that while he got up, it was not as frequently as the other children in the class. There was a certain amount of sitting, standing and walking by everyone however nobody was disruptive.

In discussing the testing which she performed, Elleseff stated that they were all standardized or objective tests. In looking at the scores, B.S.'s testing scores, she acknowledged that a majority of the scores fell within the average range, however, she was comparing his scores to his intellectual ability as well as his observed areas of weaknesses which is social communication. She went on to state that social communication is a combination of standardized assessments and subjective measures. The findings set forth in her evaluation were a combination of subjective and objective data integrated. She concurred that many of her conclusions in the evaluation were subjective. This is because standardized social communication testing was still static and didn't take into account many dynamic social situations. Therefore, she supports her conclusions or interpretations with information from studies and available research.

When questioned why, when she subjectively determined that the District was doing something inappropriate or wrong, that the entire program was inappropriate, she stated that she based her findings on her judgment and observations. When she went to the Flex School, she looked at his report card in conjunction with her observations, determined that he was doing better socially and was engaged - despite the lack of services at the school. She put his progress down to the environment and B.S. maturation. While she did not observe any classes other than the social studies and language arts, based upon her observations and experience, it was her belief that B.S. was generalizing the skills being taught in his classes and applying them to his other classes.

Elleseff went on to state that while a school can provide interventions, if they are not appropriate to the student, then there is an issue with the quality of instruction which in turn would account for the limited gains. On the other hand, you could have a school that has a completely different setting which utilizes other types of instructional practices. While the practices may not be perfect, they may be better suited to the students' needs.

The example provided of an inappropriate instructional program was the District's use of Foundations given B.S.'s grade level. The program that he should have been exposed to should have focused on reading and writing, not phonics which was suitable for beginning readers. She acknowledged that she did not know what reading program the Flex School was using or whether it was appropriate.

What she did observe at the Flex School was the classroom working on syntax – subject and predicate review which is in preparation for syntactically correct sentences. According to Elleseff, children such as B.S. who have difficulties in all areas of writing, need basic prerequisite skills in order to write.

Elleseff was also questioned about her credentials as it relates to reading instruction and literacy. In response, she itemized the courses that she had attended and study groups that she was associated with. She acknowledged that she did not have a degree or a State certification as a reading specialist nor was she a learning consultant, however, according to the American Speech Language Association, a degree or certification was not required given her education and training. As a Speech Language Pathologist, she was allowed to address reading, writing, and spelling.

Regarding her earlier testimony that B.S. the accommodations and modifications that B.S. was receiving in the District were insufficient, she stated that she came to that conclusion based upon her observations of B.S. at the IEF School.

She was also asked about B.S.'s IQ. She responded by stating that according to Dr. Paul's report, B.S. had an IQ of 133 which was in the superior range of functioning.

She acknowledged that an IQ can stabilize with age and go a little higher or lower. She went on to state that when she was evaluating B.S., his IQ was not in the equation and what she put in her report were his areas of strengths and weaknesses and what areas needed remediation.

Elleseff was also asked whether she had looked at B.S.'s WIST scores which she had not. (R-52) After being shown the tests and in going through the results, she noted that while B.S. had made an excellent start and showed improvement, there was much more that needed to be done for him to progress from the word level, then to the sentence level and so on. She acknowledged, however, that it was important to build a foundation and then build upon it. She went on to state however that she would not have administered that specific test because it was particular to the Wilson Reading Program, and as such, assesses the words for the Wilson Reading Program. She would have administered a different test that was not associated with the Wilson Reading Program.

When questioned about her earlier testimony that B.S. requires a structured environment and whether the Flex School offered such an environment she stated yes. When pressed on this response given the fact that her observation lasted for approximately an hour and a half during which the students freely roamed the room, sat where ever they liked, and a dog wandering around, she stated that given how B.S. was performing, the school had structure. When asked whether she agreed with the statement that it takes time to make progress, even when an IEP is put in place, she acknowledged that it does take time to make progress.

Shiela Smith-Allen (Allen), an Occupational Therapist testified as an expert on behalf of the petitioners in OT. (P-69) In describing OT she stated that “it was a profession that evaluates and serves to improve people’s problems that are impacting their ability to engage in an occupation or purposeful goal directed activity related to their life roles.”

She first met B.S. in May 2017 (third grade), when he was referred to her for a second opinion – the first evaluation having been done by the IEF School. (P-68) She met with him over a period of four sessions during which she performed clinical testing. When she conducts her evaluations, she has a set format. In going through each section of her report, she stated the following:

Occupational Profile and History - In describing this section, Allen stated that the section focuses on B.S.'s "occupation" or his roles in life at this time. She also lists all the reports that she reviews as part of the evaluative process. By reviewing the collateral reports, she is given further information as to other people's findings. The reports however, are not reviewed until she completes her own evaluation and has made her own findings.

Assessment of Occupational Performance - Allen described this as a summary of her evaluation. In describing B.S., she found him to be a very fast moving and thinking child. To her, the rapidity of his thinking and movement were quite often more than he was able to structure for himself. When she had him do something, he rushed through it. When there was a free choice activity and there were no directions imposed on him, B.S. would spend considerably more time on those activities. To Allen, this meant that B.S. required structure and also noted that he was very responsive to her cues.

One of the tests administered was the Bruininks-Oseretsky Test of Motor Proficiency. B.S. scored in the sixteenth percentile which was the beginning of below normal limits. Allen stated that this was significantly discrepant given B.S. intellectual abilities and below his academic levels. She went on to state that while the IEF School had given B.S. the same test and he had performed comparably, the school did not give him the full battery of subtests, only select ones. She, on the other hand, administered the full test battery.

On the Word Sentence Copying Test, she found that B.S.'s copying speed was fast for a child of his age and the quality was compromised. She noticed notable

qualitative limitations in his writing (letter formation; orientation of words to other words; gradation of his control from light to soft). This was specifically related to the mechanics of his handwriting.

Sensorily, she found B.S.'s patterns of relating to sensory input in daily life to be much more pronounced than typically seen. She felt that he was much more of a sensory seeker than most people but was more apt to be bothered by sensory input and move away from it than others. Allen described a sensory seeker as an individual who has a stronger drive for a certain type of stimulation that is not met through typical kinds of stimulation. The individual looks for more input but at the same time is bothered by the sensory input from others. This is a characteristic of people with sensory processing disorders. In B.S.'s case, he was easily auditorily distracted and certain touches bothered him. He had some oral tactical sensitivities which would tend to take him off task.

Allen used the clicking of a keyboard as an example. Such a noise would capture B.S.'s attention. If the teacher was giving him directions at the same time that the clicking was occurring, more than likely, she would have to repeat the directions before he would actually pay attention to them.

As part of her findings, she identified both B.S.'s educational strengths and weaknesses. Allen went on to state that it was important to note B.S.'s deficits, of which there were many – with all starting out at a foundational level. In reporting the deficits, she not only identifies the deficit but also identifies factors that may be influencing it. The deficits which she identified were categorized as follows: 1.) Sleep; 2.) Diet; 3.) Handwriting; 4.) Formal Education Participation; 5.) Social Participation Within the Classroom Community, with Family and with Peers/Friends.

1. Sleep - Sleep was identified as a foundational level performance deficit. B.S.'s parents filled her in about his sleep issues. This information was important because people at school need to be aware of it due to B.S.'s inadequate postural control in his seat. His sleep issue may be one of the

reasons he has a tendency to move a lot or get up from his seat. It may be related to B.S. keeping himself optimally aroused.

2. Diet - Diet was another foundational level performance deficit that was identified. Due to B.S.'s poor diet, she questioned how his nutritional intake was affecting his academic performance.
3. Handwriting - B.S.'s handwriting was another deficit that was identified. While B.S. was able to make most letters, he was unable to form them in a uniform and consistent manner. Allen went on to state that B.S.'s handwriting issues have been known since he was in first grade.

Among the factors that she believes contributed to his poor handwriting was a suspected visual dysfunction – specifically his ability to control his eye movements. She suspected this given his poor posture and difficulty sustaining visual contact. She believes that B.S.'s awkward positioning was done to place himself into a position to best use his eyes. This could also be related to his lack of accuracy in the forming and orienting his letters. It is draining and tiring for a student if their eyes are not working together and is another thing that compromises B.S.'s ability to fully engage with the task at hand.

Another factor that she identified as affecting B.S.'s handwriting was the persistent, mild influence of the asymmetrical and symmetrical tonic neck reflexes and mature reflex of movement patterns. This went hand in hand with another identified issue which was B.S.'s lack of core muscle strength. In describing this, Allen stated that as we develop, early on we have stereotypic reflexive movement patterns. Over time, the reflexive patterns subside as they are replaced by motor control. Motor control is gained by having core muscle strength. B.S. lacks core muscle strength, so for him, one of the ways that he is able to do things and gain control is to unconsciously revert back. It's another compensation for him that serves to provide more of a qualitative compromise to what he is doing.

Insufficient upper limb coordination was another factor that she found affected B.S.'s handwriting. This finding was based upon his performance on the Bruinlinks-Oserestsky Test of Motor Proficiency 2 which was low. B.S. was not crossing his mid line with his right hand and had a lot of hyper mobility in his elbows. The way he used his pencil was idiosyncratic and he was having challenges with prolonged fine motor tasks because he was weak and did not have a good grasp and pinch strength to sustain. According to Allen, this relates very strongly to visual motor integration score which was at an age equivalent that was low and the Battle Basic Visual Motor Association Test, another visual motor test, wherein he had difficulty going back and forth between the coding information and filling in the squares that required the code.

According to Allen, these issues can be seen in the classroom when for instance, B.S. is required to copy something from the white board to a piece of paper, or just transferring information by handwriting, from one piece of paper to another. She believes that B.S. compensates by using his memory.

Another factor identified which interfered with B.S. handwriting was a relative weakness in visual closure. This was also identified by the school. An example of visual closure is closing a stroke. A weakness would be making a circle and leaving a gap or overlapping the line in the circle. This impacts legibility. It is also may be a visual perception issue - possibly dysfunctional eye movement control.

Mild limitations and sequential processing or the ability to put something in order, was also identified as a factor. She found B.S.'s ability to put a suitable sequence of actions/steps to take to get something done was mildly limited. This could affect his ability to follow through a task that has been provided without specific instructions. Or if there were instructions that were lengthy, his ability to process all of the steps.

The last identified factor was B.S. idiosyncratic letter formation. B.S. has his own way of making letters that appears to be self-taught and wrought with inefficient habits. This has the effect of impacting his school performance. He is a fast thinker and a fast writer because he is trying to keep up with what he is thinking. This in turn affects his legibility as well as his written language output. Allen went on to state that she believes that B.S. compromises by using the computer. He does not have the strength, visual motor control or the precision to be able to write in a manner that lends itself to output. Additionally, if he had a task at hand and his objective was to write neatly, his attention would be diverted from the higher-level aspect of the task and instead be diverted to his handwriting. In other words, it would take him from the academic task to instead focus on the mechanical task of handwriting.

4. Formal Educational Participation - Another identified deficit was Formal Educational Participation. She found this as a deficit due to a combination of things such as his compromised postural positioning, tendency not to stay seated, his handwriting, his distractibility and impulsivity to name a few. The factors which she felt contributed to B.S.'s deficient participation in his formal education included among other things his sleep issues and diet. Other factors she felt contributed to his deficient participation in his formal education were his handwriting issues, balance problems, suspected deficit in his motor planning ability and questionable self-monitoring.
5. Social Participation Within the Classroom Community, With Family and With Peers/Friends - Allen felt that this deficit was a key factor that influenced his ability to perform as a student. As a third grader, he had a history of not playing with others and was perpetuating his tendencies to be a loner on the playground. He did not elaborate on any classmates as friends or playmates - his brother appeared to be his closest playmate.

According to Allen, B.S. had a number of assets which she put together based upon the collateral reports that she reviewed as well as from her own observations.

Impression/Level of Clinical Decision Making - Based upon her assessment and the collateral information reviewed, it was her impression that OT once a month was insufficient in terms of his educational and relevant needs. In her opinion, B.S. required OT thirty minutes each week which would provide him with the intensity of stimulation that he needed to address all his underlying problems.

She went on to note that although B.S. was medicated, he continued to have difficulty regulating himself. Based upon his teachers' and parents' observations of his responses to sensory events of daily life, it strongly indicated sensory processing differences which may be contributing to his insufficient self-regulation. According to Allen, insufficient self-regulation was interfering with B.S.'s ability to be able to pay attention and engage in the activities required of him in the classroom and filter out the extraneous environmental irrelevant stimulation. Teaching a child to self-regulate is part of OT. This was also identified by Lodado in her evaluation wherein she recommended three sensory strategies that he could use in the classroom. Allen herself had identified the same areas of weakness and would have used the same strategies but noted however that she had also identified other areas that were contributing to B.S.'s problems which also needed to be addressed.

Allen was also questioned how, given the areas of weaknesses that Lodado herself had identified (core stability, sensory awareness, and pencil graft), she (Lodado) could adequately address the issues in a thirty-minute session once a month. Additionally, in her opinion, given the frequency, intensity and duration of treatment without a specified means for ongoing regular carryover integrated into B.S.'s school day, was highly insufficient. As an example, she cited the exercises that were provided to B.S. in addition to his monthly group OT. She was unclear what type of monitoring was in place to ensure that the exercises were done. Ideally, she would recommend providing B.S. with individual therapy as well as specified activities that were integrated

into the classroom and then monitored accordingly. This would be in addition to everything else.

Also noted was B.S.'s handwriting, which had been a longstanding concern with him, was still an issue. She recommended that an additional diagnosis of Dysgraphia be added to his list of multiple diagnoses. His writing problems were affecting his ability to get his work done and were also affecting his ability to engage in activities within the classroom. This suggested that his handwriting continued to be a problem and whatever previous instruction he had received had not helped. As a result, his handwriting was idiosyncratic. It was her belief that B.S. required individualized handwriting instruction, three times a week with each session lasting approximately thirty minutes. Additionally, she recommended the program, Writing Without Tears, in which the students get daily practice with structured handwriting activities.

She also recommended a custom plan for school-based typing and word processing. As with his handwriting, B.S. also had an idiosyncratic way of typing. Sometimes he used one hand, others he would use two. He had no real keyboarding skills. It was her belief that it was important, for someone who types a lot, to integrate a higher level of word processing instruction. This was to ensure that his use of word processing for written language was optimized and also individualized to meet his needs as opposed to group instruction. It was her belief that B.S. would also benefit from more structure as it relates to the handwriting and written language demand on him. For instance – what specific assignments are required to be handwritten or typed or can he do something verbally. Allen also thought that speech-to-text technology would be beneficial for B.S. however, recognized that it would not be beneficial for him to have a program that punctuates for him and spells for him – particularly since he has not yet mastered that himself.

Another recommendation was the provision of sensory breaks (i.e. movement, listening to music, etc.) integrated into B.S.'s school day. This would assist in keeping his attention and engaged at a more consistent level. She also felt that daily core strengthening exercises - monitored by the occupational therapist or by someone who

was trained by the occupational therapist, was important. Also proposed was the possibility of adaptive physical education which was an individualized physical education program for B.S. for fitness and development. She also recommended that B.S.'s positioning in the classroom be monitored and if necessary, adaptations made to ensure optimal sustainable positioning for attention, learning and arm/hand use.

Additionally, she strongly recommended a developmental optometric evaluation to verify the status of B.S. functional use of his vision which according to his mother had already been scheduled. Last, she recommended that B.S. continue with his piano lessons which provided him a motor workout as playing the piano required him to use his hands, fingers and coordinate both sides of his body. It also worked on his posture at the same time. She believed that this was very therapeutic for him. Additionally, she also believed that music in general would benefit B.S. with his peers as it was an activity that could translate into being part of a group – playing, singing, moving together in time to the beat.

Test Data - Allen testified that she refers to the objective test findings in the body of her report and for ease of reference, attaches the actual results of the tests to the back of her report. What she found notable in B.S.'s testing was the gaps – he had a number of scores that were within normal limits, but he also had some very significant deficits. Some of B.S.'s results in the Bruininks Oseretsky Test Motor Proficiency were an example of his deficits. On the body coordination, B.S. scored in the fourteenth percentile and on the strength and agility he scored in the second percentile. Both placed him below normal limits.

With regard to the Sensory Processing Measure and Sensory Profile 2, she noted the significance of these two measures as being reflective of performance and daily life.

Allen went on to state that in addition to evaluating B.S. in May 2017, she observed him at the IEF School in October 2017, after which she reported her findings to his parents. (P-73) B.S. was in physical education class (gym) at the time and the

activity was “touchdown relay” where B.S. was in a group of four children. He appeared to be enjoying the activity with some qualitative limitations but was very much participating in the group. In detailing the qualitative limitations, Allen stated that B.S. was having balance problems when he was going up or down into the hiking position and having difficulty throwing the ball. He was also observed watching the other children to figure out what to do in his position. When he was “tagged out”, he sat on the bench and wasn’t interactive with any of the other children. He was also squinting a lot which went back to her thought that he may have vision issues and was squinting to gain motor control for his focus.

When gym ended and they went back to the classroom, B.S. transitioned nicely. He stayed in line and took a seat along the classroom wall with the rest of the children where they were partnered up for their writing class. During this activity, B.S. and his partner did not speak to one another and at one point, B.S.’s partner turned to the other children sitting next to him and started talking to that group while B.S. sat there. The activity did not last long and then the children went to their seats. B.S. had two seats due to his difficulty with sitting appropriately in a chair. This allowed him to sprawl out and place his materials, however, he needed them. No other children had the same set up. Allen did note that at one point, the teacher saw B.S. with his feet on the chair and encouraged him to sit properly in the chair which subsequently morphed into a slouch. Allen went on to state that the teacher was obviously aware of B.S.’s issues, however, was probably too busy with the rest of the class to follow-up on his posture. In her opinion, without follow-through, her encouragement was not effective.

At one point, it was B.S.’s turn to talk to his teacher about the writing assignment. When he went up, he took his Chromebook, which he had been using for the assignment, and positioned himself on the floor next to her chair with his Chromebook balanced on his thigh. She likened B.S.’s seating posture to that of a contortionist. When he returned to his chair, he again assumed a position which was less than optimal for him to complete his work.

As she continued to observe B.S., she saw that he typed very quickly in his own idiosyncratic way. For the lesson that they were working on, the students were given a choice of whether they wanted to hand write the activity or use the Chromebook. B.S. opted to use the Chromebook and was very engaged in completing the assigned task. Allen went on to state that the teacher provided her with a copy of B.S.'s work product. She noted several grammatical issues and a lack of organization. His work product was more like a stream of consciousness and if it was the final draft, it was not acceptable.

When the class moved from the writer's workshop into reading, B.S.'s transition did not go as smoothly. He had a hard time stopping what he was doing as he kept going back to work on something. As a result, he was the last one to get into the circle and everyone was already seated.

In summing up her observations of B.S. at the IEF School, she found that while his teachers were trying to create a supportive environment for his learning and academic performance, it was difficult to do so in a classroom with children who all have their own diverse needs. It was very difficult to provide an individualized experience but at the same time not stick out as being "individualized". Allen used as an example the fact that B.S. had two desks, but other children did not. This made him different from the group. The same with her observation of B.S. and his partner during the writing activity when his partner turned and joined another group, leaving B.S. alone and once again, removed from the group.

Based upon her evaluation and observations, she again reiterated that B.S. required more OT pushed into his classroom and possibly some before and after school.

Approximately a year later, in December 2018, she went to the Flex School to observe B.S. (P-102) She immediately noticed a significant "affective" difference in him. He was engaged and seemed to be part of things. While he was not consistent in his visual regard, he appeared to be listening and his body language was reflective of

his orientation to the teacher and classmates. He followed along in the discussion and readily participated in the same. She also noted that his auditory distraction was minimal and that he was able to redirect himself to the task in that environment.

Also observed was B.S.'s posture. He seemed awake and his posture was more upright, even though the chair/table arrangement was not optimal. The classroom had an array of seating areas and the children all had the ability to get up and move around as needed. His organization and time management appeared to be sufficient. At one point during the observation, the teacher, seeing that B.S. was not participating in the activity, questioned him why to which he provided a proper and reasonable response. Allen stated that she was impressed with how the teacher handled the situation and B.S.'s responsiveness. There were no desks in the classroom however there were big tables, on which B.S. could spread his material over.

In talking about B.S. positioning, she was initially concerned by the fact that the chairs and tables did not provide optimal seating positions, however, upon speaking to his teacher, she learned that furniture had been ordered for him which would provide a better sitting position and table height. She was also impressed with the environment which offered the children the ability to do work, relax and socialize. B.S. appeared to be very comfortable in the environment. She also observed B.S. writing. The teacher explained to her that when B.S. first started, he refused to write his assignments in class, so they worked with him on the issue. He now writes in that class which is what most of the students do. His handwriting itself appears to continue to be an issue but his teachers felt that with time, this too would resolve.

She felt that the Flex School had a nice way of providing structure to B.S. without him feeling like he was being individualized. The school has a style of trying to empower the students with coming to their own ideas of things yet at the same time sets realistic limitations.

She still had concerns over B.S. ocular motor control deficiencies that she believed were interfering with his classroom performance and getting B.S. to wear his

glasses. However, when she discussed it with his teacher, the teacher was optimistic that they could provide support in that regard.

It was her belief that given its small student/teacher ratio, individualization of learning opportunities based on relative strengths and weaknesses and interests, and its emphasis on discussion based experiential educational experiences and the push in OT support, the Flex School was the least restrictive and most appropriate educational environment for B.S. She based this on not only what she observed at the Flex School but at IEF School as well. B.S. appears to be comfortable in his present learning environment and very engaged. He was receptive to everything and with that receptivity, his enthusiasm and his sense of belonging, there was potential to turn things around for him.

On cross-examination, Allen was questioned about her comments regarding the “push-in” OT – specifically, how it was different than group OT. In response, she stated that she did not actually observe the “push-in” OT and did not know how the support was provided. She believes however, that B.S. has benefitted from it based upon her personal observations and her conversation with his teacher who was aware of his issues and how they were going to accommodate him going forward. Allen also stated that given B.S.’s age now, the delivery model (push-in) may be more suitable to him at this time.

Regarding B.S. glasses, she stated that when she observed B.S. at the Flex School, he was not wearing his glasses. Apparently, he had a history of refusing to wear them. She acknowledged that with corrective vision, some of his issues would improve.

In questioning Allen about the Flex School “style” which she had testified about on direct-examination, she stated that she was referring to how the classroom was managed. The teacher had a particular task that needed to be performed but also had an understanding of each child’s individual differences which may affect their engagement in the activity. It was her belief that the teacher was doing a nice job in

keeping the classroom group cohesive while at the same time allowing each child to do what they needed to do to help manage their own needs to keep their attention and continue their engagement.

While unfamiliar with behavior management, she is familiar with instructional strategies. She believes that allowing B.S. to get up and move frequently was an instructional strategy, not an accommodation - even though his IEP had it listed as such. She also felt that the teacher herself provided an instructional strategy. She kept the students engaged in how she spoke to them - bringing them students into conversations, going around the room and observing and commenting on what they were doing, redirecting if necessary and providing positive reinforcement.

Allen was questioned, given the timing of when she first observed B.S. at the IEF School, whether with more time - which would have allowed for further implementation of the IEP, B.S. would have made progress, she stated that she couldn't comment on that. From what she heard from his parents, as the year progressed, B.S. became increasingly frustrated and was less compliant in getting his work done. She herself never witnessed any outbursts or behavioral issues.

Allen was also asked about the private model versus the school-based model of OT. In response she stated that in a school-based model, there is a very focused structure on a specific function such as fine motor and handwriting. In private therapy the area of focus may be less on the child as a student and more their role as a son, brother or friend. In her practice, she primarily provides private therapy and sees approximately sixteen clients weekly.

While she does not know what the legal standard is for a FAPE, she does not believe that the IEF School is meeting B.S.'s OT needs. She went on to state that given the degree of problems that B.S. was experiencing, having group OT once a month was insufficient. Remediation requires frequency, intensity, and duration. Therefore, having a program of such a low level of intensity for someone who has such significant needs, was insufficient. When asked how she could support this

supposition when she had never observed the OT program at the IEF School and was unaware how often Lodato visited the classroom, she responded that she based her opinion on her years of experience. She also noted that the IEP did not have Lodato providing “push-in” support in the classroom.

When pushed further on this response Allen stated that her comments about the Flex School were not necessarily about B.S.’s improvements, rather the behaviors she observed and therefore improvement can be inferred. This statement was altered later in her testimony when she stated that she could not speak to B.S.’s progress at either the Flex School or the IEF School – all she could address was the improvement she saw. Based upon that, in her judgment, the program offered by the District was insufficient to meet B.S.’s needs. This opinion was based upon no new data or updated evaluation. It was her further judgment that the Flex School was currently meeting his needs and that they also working on addressing all his areas of need.

Allen was also questioned about her testimony regarding B.S.’s lack of core strength. In describing core strength, she stated that it was primarily the strength of the front, back and side muscles of the body that enables it to maintain a suitable upright position and allows the individual to use their extremities. It was also foundational for balance. In B.S.’s case, she was unsure how he was able to assume the various postural positions that he did. One of the reasons she believes that he was able to get into his contortionist positions was because he had some hyper mobility in a lot of his joints.

When asked about her comments that B.S.’s organization and time management were better at the Flex School, and what that was based on, she stated that during her observation of B.S. at the Flex School, he was required to do a timed assignment. She could not state how much time he was allotted or how much time he used to finish the assignment.

When challenged about her testimony that B.S. was redirecting himself, appropriately aroused, awake, and his posture was upright, she stated she was not

talking about improvement per se rather describing what she had observed. She couldn't say whether he was doing the same things at the IEF School.

When asked to clarify her testimony that the Flex School offered B.S. different opportunities that would meet his needs, she cited to the fact that the Flex School allows B.S. to get up out of his chair when he needed to move. When questioned how this provides him structure that she had earlier testified he needed, she stated it wasn't the same. She went on to explain that the structure that she had referenced earlier was how the teacher managed the children in the room. Every student did what they were required to do. There were fewer children in the class therefore more opportunity for movement. The movement was natural with some students taking breaks, other students moving around to another location to do their work. Other opportunities cited was the array of seating in the classroom – some chairs swiveled, some rocked, and there was a couch. The children could sit wherever they wanted to complete their assignments. All the children took advantage of this which she felt was important because no child was singled out as the only one moving around.

Allen was also asked about what IEP or occupational programming data was provided to her by the Flex School which demonstrated that B.S. had improved. Her response was "none".

In questioning her about the lack of a recommendation for PT in her evaluation, she stated that OT could deal with B.S.'s postural issues in addition to gym class or the recommended adaptive physical education. She went on to state that there was overlap between OT and PT. She also did not recommend feeding therapy as she did not feel that B.S. needed it.

Allen could not explain why, in her observation report of B.S. at the IEF School, she was critical of B.S.'s performance in gym class where he self-regulated himself by watching other students to see how to play the game and the position he was in, yet in her observation report from the Flex School, the same behavior was deemed a positive. She later clarified this response indicating that B.S.'s actions in gym class were not so

much self-regulation as it was B.S. getting a reference point. She reiterated, however, that based upon her observations of B.S. at the Flex School, the overall environment was conducive to meeting B.S.'s sensory needs and accomplish the task that's at hand.

Thomas Gavor, Jr. (Gavor), the Head of the Flex School and a Certified Social Worker, testified on behalf of the petitioners as an expert in Special Education Programs, IEP development, and case management administration. As part of his responsibilities, he oversees the daily operations of the school, conducts student interviews, record reviews which include student report cards, parent communications and conducts teacher observations, among other things.

Prior to becoming the Head of the Flex School in May 2018, he was a Social Worker on a CST in Scotch Plains-Fanwood Middle/High School for thirteen years. (P-88) Among his responsibilities at that time were eligibility determinations for classification, development, and implementation of IEP's, liaison between the general education and special education teachers, parent communications and case management. As part of his case management responsibilities, he managed out of district students - most of whom had IEP's.

He met B.S. and his parents when B.S. attended the Flex School ESY program - a twenty-one-day program, in July 2018. In describing the vetting process for entry into the Flex School, he stated that it included interviews and review of any testing that may have previously been done either privately or through the District. Among the testing data reviewed for B.S, were the District's evaluations and the April 2017 IEP. (R-21 – 25; R-28) If a student was deemed a good fit for the school and they had an active IEP, the school tries to implement the recommended programs provided they are appropriate in the Flex School setting and the school's ability to mirror the IEP.

Upon completion of the ESY program, he sent home a progress note. (P-87) According to Gavor, he had spent quite a bit of time in the classroom that summer and saw B.S. three or four hours daily and would occasionally have conversations with him. The class size was approximately fifteen students. When B.S. first arrived, he was a

combination of eager, apprehensive and unsure of himself academically. He had strong academic skills but lacked the confidence and organizational skills to thrive.

Gavor went on to state that B.S. picked up the school culture - a loving and nurturing environment geared towards engaging the children, relatively quickly. Each day he came to school and was engaged. As he became more comfortable in the environment, he started making friends and initiating conversations. His classes included Flex Life, Packing for Mars and the Legos Robotics. As the program progressed, B.S. showed continued improvement in his ability to redirect. According to Gavor, when students become off task, the teachers use various strategies to refocus them such as having the child take a break, go outside and get some fresh air or redirection.

To enter the Flex School for the academic year, the parents are provided an enrollment contract and the student must meet their profile which is gifted and twice exceptional. (P-112) They typically look towards the cognitive testing that is provided to get an idea of where the student's area of giftedness may be and to also weed out students that may have behavioral issues, or who are reluctant to engage in their own learning. The school is not a therapeutic setting therefore they also attempt to deny students who do not meet their profile. B.S. was accepted into the school and started attending in September 2018 (fifth grade).

While he was not able to spend as much time observing B.S. during the school year due to his increased responsibilities, he did stop in on each class weekly. He is familiar with the school's report cards and has first-hand knowledge of what the teachers report.

As it relates to B.S., he was familiar with his Quarter 1 Report Card which reported the following:

English – In English, his teacher reported that B.S. was physically writing more. According to Gavor, the output was not great, and believed that the physical task of

writing was possibly painful for B.S. The way they started to get B.S. to write more was by asking him about things he enjoys. Additionally, he was being taught cursive which may have also alleviated some of the stress associated with writing.

It was also reported that B.S. loved having Marvin, the school's therapy dog in the classroom. Gavor went on to state that many children have never experienced a dog in the classroom. Marvin was popular with the children and not a distraction. The presence of Marvin helped reduce the overall anxiety in the class and had a calming effect on the children.

City Building (Science) – In City Building, B.S.'s teacher reported that eventually B.S. will optimize and change his ideas rather than assume that his vision is one that will continually function. According to Gavor, this was one of the targeted areas for B.S. – for him to understand that there are ideas out there that were equal or better to his and to collaborate with the other person's idea rather than ruling it out. He went on to state that the strategy used to facilitate this was framing and redirecting.

Social Science – In this class, B.S.'s teacher reported that the class was using a multi-sensory approach to learning. In describing what this meant he explained that the classroom had tables, chairs, books, and technology. The expectation is that for certain parts of a lecture, the students are expected to sit in their seats for a period of time. The seats are not assigned. However, if a student feels the need to get up, it is allowed. If there is an activity where the entire class moves around, it is encouraged – hence, a multi-sensory approach or kinetic learning which can be individualized for a student if needed.

Gavor went on to state that for B.S., expectations have been differentiated in the classroom. As an example, early on, B.S. was resisting writing and at times, he would request to create a model rather than do additional writing. This would be allowed and would be an example of individualization of his expectations. He went on to opine that if the method of output for a particular student is compromised due to a disability-based reason, then they allow for other avenues of output.

Photoshop – In this class, B.S.’s teacher reported that B.S., while slow, he always got his work done and did not rush through it.

Applied Engineering - Gavor likened this class to an enhanced woodshop. B.S.’s teacher commented that while B.S. was enthusiastic about the physical work, he tended to overcomplicate things which became magnified when he tried to figure out where he went wrong. Gavor went on to state that in correcting issues such as this, the teacher uses a “teachable moment” to point out to the child where his/her idea may have been right and which steps may have been wrong.

Physical Education – According to Gavor, this is a daily event in which the entire school participates. Some of the daily activities include walking outside or playing organized games in the park. If the weather is inclement, they do yoga or put on dance music and teach the children to dance.

Flex Life – is a class that occurs every Friday. The students are broken up into age groups and rotated throughout the year into different programs such as Health, the Flex Life Newsletter which is a writing-based debate exchange and Woodshop.

He was present when Elleseff visited the school. When questioned about her observation of B.S.’s using a calculator, he stated that mathematical calculations were one of B.S.’s deficits. (P-95) At his age and grade level, it is a skill that B.S. should have already achieved. In going through her report, he agreed with her findings. When questioned about whether the school offered pull-out pragmatic language class, he stated no, it is implemented in the “moment - redirecting teachable moments”.

He was also present when Dr. Dranoff visited the school in December 2018/January 2019. In reviewing his report, Gavor also agreed with Dr. Dranoff’s findings having himself observed B.S. in the classroom setting. One of the things that Dr. Dranoff observed was B.S. getting individualized instruction in math. Regarding this particular observation, Gavor testified that B.S. does not routinely get individualized

instruction in math, however, on this occasion it was needed. If a student requires one on one instruction, a contract would be required between the parents and the school.

Another observation by Dr. Dranoff was that B.S. became somewhat dysregulated and walked around the room - at one point, crawling under one of the seats to spend time with the dog. Gavor testified that while a child may get up and move around, it should not be perceived that they are not listening or learning. To confirm this, the teachers frequently do a "comprehension check" to ensure that she had the attention of the entire class or to bring a student back to the table without bringing negative attention on them.

With regard to Allen's observation of B.S., he was on site that day however did not interact with her. However, upon being read certain excerpts from her report, he agreed with many of her findings, having observed them himself. One such example was B.S. being inconsistent with his visual regard, however, he still followed the discussion and appropriately interacted. Another example was the fact that B.S. did not appear to have any difficulty following his teacher's directives. He went on to opine that the teachers at the school use various strategies to ensure that their directives are understandable. Some of the strategies employed include things like breaking the directions down into smaller components or making sure that the entire class understands the assignment and the expectations before beginning the activity. The teacher may even stop parts of the instruction if there's a collective group of students who are not grasping a concept.

Regarding Allen's observations that B.S. got out of his seat a couple of times and took a break - at one point grabbed therapy putty, Gavor indicated that this was allowed. He went on to state that most likely the teacher probably recognized that B.S. needed a moment to fidget. The environment was not a free for all and there was a lot of structured learning going on.

As to Allen's comment related to B.S.'s increased writing, he stated that part of the school's program was to take an area of weakness and try to exploit it for the better.

In B.S.'s case, they got him to write about something that interested him and from there slowly changed the topic. Once a student learns that they are capable of doing something which they previously thought they could not, the process can be generalized into other concepts and other areas and topics.

Additionally, the school has a Student Support Services Coordinator, Alana Kanofsky (Kanofsky) who is a licensed occupational therapist trained in sensory integration. One of her job responsibilities is to work with the students who have IEP's, related services and students who need instructional support. She reviews the student's reports and identify the areas that need services and thereafter coordinates the services and strategies with the appropriate staff member. As it relates to B.S., she's been working on cursive handwriting with him and they have seen a decrease in frustration when it comes to physical writing. They also allow him to use voice to text or his Chromebook if he needs to.

In January 2019, he sent to the petitioners, B.S.'s Progress Note (Note). (P-111) Through this Note, he advised them of B.S.'s growth since he started at the Flex School. He put this growth down to the culture of the school and B.S.'s comfort level in it. It was his belief that B.S. was now comfortable taking risks and putting himself out there as well. He was also using higher level thinking - such as considering other variables and considering other people's opinions before making his own determination. While he initially had difficulty getting started on his written assignments, his teachers gave him strategies to work on that such as breaking down and managing the tasks and giving him verbal encouragement. B.S. was also getting executive function lessons on a daily basis which were overseen and reinforced by Kanofsky.

According to Gavor, the executive function lessons take place at the beginning of the school day and again at the end of the day. Kanofsky comes into the classroom and asks the children if they have a test that they need to study for, or homework or a project that is due. It is a way for the children to keep track of their day. This is a three-step program. The first part or phase one is the children writing out their schedule and homework assignments daily. The second phase requires the children to place their

schedules into a binder which they can carry around. The third phase is a technological component to the program where the students post their schedule on their personal Flex School Google calendar.

The Note also advised petitioners that B.S. was being encouraged to take on higher level assignments if he's finished with his class work. Gavor stated that the purpose of this was to discourage B.S. from rushing through his work. If he did, he was rewarded with more challenging work. B.S. was also participating in the "Writer's Workshop" which was geared towards addressing his writing production and phonological awareness. The class was similar to a supplemental class wherein the teachers allow the students to pick a topic of their interest and write about it. They then deconstruct the written piece and reconstruct it. The program is very similar to the public-school program which was intentional on the school's part as they want to ensure that the students continue to perform at their grade level equivalent.

Regarding the staffing at the Flex School, Gavor testified that all the teachers are certified elementary school teachers. (P-114) The school itself is accredited, however, it is not on the New Jersey Department of Education (NJDOE) approved education school list. Therefore, if a school district seeks to place a child at the school, they must fill out a "Naples Packet" in accordance with the Naples Act. (P-113)

On cross-examination, Gavor was asked how many teachers at the Flex School held certifications in special education. In response, he stated one possibly two. The student population at the school was forty-two - six of which were neuro-typical students. In describing the range of disabilities, he stated that it was a fair range with some of the children diagnosed with ADS, ADHD, various diagnosis of twice exceptional, anxiety, SLD, and depression to name a few. There were no Board-Certified Behavior Analysis (BCBA) on staff nor was anyone that was on the staff trained in Applied Behavior Analysis (ABA). While they have children at the school that have been diagnosed with autism, none of them require a Functional Behavior Assessment (FBA) to appropriately educate them on a daily basis.

When questioned about their ABA program, Gavor stated that they did not have one. The same with multiple language and learning disability. If a student's special education needs were significant, they either hired a special education teacher or a BCBA to come in and work with that student. However, such a student would really have to be a good fit to be accepted into the school because they were not on the NJDOE list of approved schools. If the child had significant special educational, maladaptive social functioning to the point that they could not interact with other students or psychiatric needs, they too would most likely not be accepted into the school.

When questioned how B.S. was presented to the school by his parents, Gavor could not recall whether the emphasis was on B.S.'s severe deficits that needed remediation or whether it was due to his high average intellect. However, as part of the admissions process, a team of professionals from the school who have varied backgrounds, looked at all of B.S.'s assessments and thereafter talked amongst themselves to determine whether he was a suitable candidate. The school did no testing of its own nor, when he was accepted into the school, was a learning plan put in place. If a child has an IEP when they arrive at the school, they attempt to mimic as best as possible. They do not question whether an IEP is appropriate. He later changed this statement by saying that the school considers the IEP, however, depending on what is recommended, they may not be able to implement the recommendation given the schools' current staffing abilities. It was his belief that B.S. was the smartest kid in his class the IEF School however that was purely an assumption on his part.

Gavor was also asked how the school programs for a child. In response, he stated that they group the children based upon their ability. Using geometry and algebra as an example - if a child proficient in those subjects, an assessment is performed to determine the extent of the child's ability. Depending on the results, the child is placed in the appropriate grouping of students. The group could consist of younger, older or same age kids. The groups themselves are based on the children's

abilities and areas of giftedness with consideration given for their areas of deficit and disability.

He went on to state that the school uses a multi-disciplinary approach to teaching – the teachers work across the disciplinary curriculums. They take into account sensory issues; a child’s comfort level; the child’s strengths and weaknesses. They would for instance attack a science problem through the “lens” of a math problem. The teachers do not follow a State curriculum however create their own. Packing for Mars, which was one of the classes offered in the ESY program, was an example of their multi-disciplinary approach. It combined science, social studies, social science, physics, actual physics, theoretical physics and mathematics. The goal of the class/activity was to transport ten students to Mars and figure out how to sustain life once there. The social functioning aspect of the class was the researched based debates between the students on what was the best society to set up and how. He acquiesced that the class did not specifically address any social skill dysfunction.

The related service providers on staff include a school counsellor, a learning disabilities teaching consultant, occupational therapist and a social worker. If one of the students has additional needs, such as physical therapy, the school hires out.

Gavor has seen B.S.’s IEP and unequivocally feels that the school was meeting the thirty-minute once a month recommendation. Unlike the District, they do not check a box like the IEP indicating that they had met the requirement, instead, the school tracks the progress they see in the child.

When questioned how frequently Kanofsky worked with B.S., Gavor stated that she probably pulls him out at least once a week for not more than an hour – however, nothing is documented so he wasn’t sure when and the length of each session. When asked about Kanofsky, Gavor testified that while she was licensed as an occupational therapist, she was not employed by the school as one.

In shifting gears, Gavor was asked what the purpose of an ESY program. In response, he stated that its origination was for regression and recoupment of academics. However, B.S. was not accepted into the ESY program to address regression or recoupment, rather to see what areas of weakness he needed to be addressed during the school year. He disagreed with the notion that it was impossible for an ESY program to have the same rigorous academics as presented during the school year.

The ESY program at the Flex School was a twenty-one-day program, eight-hours-a-day. The three primary reasons a child would attend the program was for credit recovery, acceleration or maintenance. He acquiesced that when B.S. attended the ESY program, he was in there for the maintenance aspect of the program as he already had the skill sets.

According to Gavor, when B.S. first started the ESY program, he was “dysregulated”. He was apprehensive and rigid in his approach with the staff and other students. There was no transition plan put in place and it took him five to ten days to assimilate. When questioned how B.S. did on the remaining eleven days of instruction if the first ten consisted of him dysregulating, Gavor modified his earlier statement by stating that B.S. was “at times” dysregulated. This statement was also subsequently modified to reflect that B.S.’s dysregulation occurred maybe fifteen minutes a day wherein he was not reachable and needed a break.

When questioned about his earlier testimony that B.S. was so problematic and had academic scar tissue when he started at the Flex School, he stated that this was based on the reports he read and from B.S. himself. According to Gavor, when B.S. came to the school, he was lost, and had little faith in the education system – he had lost a little of his spark and love to learn and possibly felt poorly about himself. Later in his testimony, Gavor modified his earlier comments about B.S. having academic scar tissue and stated that he may have been making a generalization about all new students that come to his school.

Gavor was also asked about his August 6, 2018, Note, wherein he gave accolades on B.S.'s progress, given the length of the program and his earlier testimony about B.S.'s significant issues when he first started. He was also asked what supporting data was available to support B.S.'s progress. In response, he stated that there was no supporting data. When questioned about his comment that B.S. was "implementing skills that were taught in the Flex Life Class" and what specific improvement he was referencing, he again stated that there was no data supporting his statements in the letter. He did not know the name of the curriculum used by the teachers or if the teachers, none of whom had certifications to teach special education, created their own executive functioning curriculum. However, they had teaching certifications and teachers routinely throughout the day implement social skills strategies. Additionally, while the teachers in question did not have certifications to teach special education, one of them had a PhD in Comparative American Literature and the other a PhD in Engineering. At the Flex School, this qualified them to teach the course.

On the issue of Marvin, the dog, Gavor knew only what he was told, that Marvin was a certified therapy dog that was owned by one of the teachers at the school. Even if he was not, given his good temperament and the fact that he brought out the best in the children, he would still allow the dog in the classrooms.

In going through B.S.'s Quarter 1 Report Card, was asked about the accelerated track that he earlier testified to – specifically, was B.S. taking any of the classes. Gavor responded that he was not. When questioned about the applied engineering teacher's comments that B.S. over complicates things and whether there was any supporting data, he stated that this was based on his assignments and the grades he achieved. No additional testing was performed.

Gavor was also asked about his earlier testimony that the school was structured and what he meant by that. In response, he stated that there were desks and physical spaces that the children were expected to be in periods, curriculums and syllabi. When questioned what B.S.'s disabilities were and whether he required structure, he stated

that B.S. was diagnosed with high functioning ASD and ADHD, however, he did not directly answer the question regarding whether B.S. required structure. Instead, he stated that the importance and level of structure depended on the child. What works for one child may not work for another child.

In asking him how the school was addressing B.S.'s ADHD, Gavor stated that they raised his teacher's awareness so that they could work with B.S. in creating a beneficial structure. When questioned what programs were used and the type of training the teachers received to provide this, his response was "it's a feel and it's a skill". When probed on this later on in his testimony, he added that the school also utilizes Global Compliance Network and their modules and that B.S.'s teachers were certified to teach. If they needed assistance or had a question, they could go to the special education teacher who was on staff, Mike Good (Good). Good was not B.S.'s teacher nor did he provide "push-in" services into B.S.'s classroom. The school does not provide B.S. with special education and related services, instead, they provide him with an individualized education.

Gavor was also asked to clarify his earlier testimony that the school focused on a higher order of thinking and how that was facilitated. In response, he stated that a higher order of thinking was the ability to make inferences and go beyond what was being presented. To facilitate this, the teachers ask the students challenging and probing questions. He went on to add that it was part of the school's culture to prove the child wrong in a controlled way so that they can learn to fail and that it's ok, and then they help them pick up the pieces and take a different approach. When again asked how they actually facilitate this, he stated by probing, challenging and asking calculated questions to make the children think outside of the box. The instruction being "in the moment"

When questioned about modeling and the fact that there were only six neuro-typical peers attending the Flex School, Gavor opined that it was his belief that modeling appropriate behavior is more on the adults rather than students. However, he

did agree that it was good for a student who has an area of growth that needed to be worked on to have a role model.

Erik Dranoff, PhD. (Dr. Dranoff), a Licensed Psychologist testified as an expert in Child and Adolescent Psychology and Forensic Psychology on behalf of the petitioners. (P-84) He has been a licensed psychologist for four years and over the course of that time has completed approximately 150 – 200 evaluations. Observations are a large part of his evaluation process.

The petitioners brought B.S. to see him for a forensic evaluation when B.S. was ten-years-old after which he prepared a report. (P-83) A forensic evaluation, unlike a typical psychological evaluation, is conducted to increase the validity and reliability of the information that is being relied on. Therefore, data collection from a lot of different sources is important. In his forensic evaluations, he uses five sources: 1.) record review – any legal, educational and/or mental health records available; 2.) clinical interviewing of the patient and observations during the interview; 3.) interviews which include interviewing the parents and any other mental health providers that may have been involved in the case; 4.) psychological and neuropsychological testing; and 5.) blind observation – a direct observation before even meeting the patient.

According to Dr. Dranoff, the information that converges across that all of the data sources is what he uses to formulate his opinion. In discussing his report/evaluation, he follows a set format. In this regard, and in going through his report, he stated the following:

Reason for Referral and Background Information - The referral reason gives the reader an understanding as to why he was B.S. Background information is important, particularly in this case, because B.S. has a neurodevelopmental disorder. When he sees a patient for the first time, he looks to see if there is a history of developmental problems and if so, when they were first seen.

In B.S.'s case, he was having significant problems at an early age – prior to going into the public schools. He was making high-pitched noises, exhibited social withdrawal, inattention and hyperactivity. This information was provided to him by the petitioners and corroborated by Dr. Nanci-Lebowitz-Naegali, M.D. - his medical doctor, who diagnosed him with ADHD, combined type. It was also corroborated by Dr. Isralowitz, a licensed psychologist. Dr. Isralowitz found B.S. to have significant problems in attention and hyperactivity.

He also found it significant that when B.S. was five-years-old, he was placed on medication by his pediatrician which was unusual and meant that B.S. was having severe psychological problems early on. He also noted that in or around this same time, B.S. was seen by Dr. Kapila Sheshadri, M.D., who reported that B.S. was showing some social problems consistent with individuals with Aspergers. B.S. was reported to get overly preoccupied with preferred tasks; was a stickler for routine, and was not making eye contact. He also found it noteworthy that four mental health professionals identified B.S. as having significant development problems.

Prior to entering kindergarten, Dr. Isralowitz wrote to Lamberti, placing the school on notice of B.S.'s problems and informed them that B.S. would most likely require some intervention services when he entered preschool. It was his belief that the letter was not taken into consideration by the school as B.S. went into elementary school without any special education services put in place. The 504 Team eligibility determination did not take place until B.S. was in first grade. This meant that the school was starting to see that B.S. was having issues which required remediation. It was also in or around this time, that B.S. was diagnosed with ASD and classified, which meant that he was having restrictive repetitive patterns of behavior and was having problems in social and emotional reciprocity. His language development and cognitive was intact so he was classified with higher functioning autism.

Dr. Dranoff's went on to state that it wasn't until B.S. was in third grade that the CST determined that B.S. required an IEP. B.S. was classified as "Other Health

Impaired” and given in-class resource support in math, reading and to a lesser extent social studies and science. He was also given ST, OT and social skills.

When he first started the evaluation, it was unclear why B.S., a child with an ASD and demonstrating significant problems at home and at school, was only getting ST one time a week, OT once a month, and social skills training twenty times a year. When he reviewed B.S.’s progress notes from his IEP, he noted that while B.S. was meeting some of the goals, there were a number that he was not meeting, or he was progressing gradually or inconsistently. This was particularly evident in his writing, ST, OT and social skills. There were also indications that he was struggling socially. He did not find this surprising given B.S.’s history of developmental problems that have impacted his executive and social functioning.

Assessment Procedures - He includes this section to provide an understanding to the reader of his evaluation process. In this evaluation, he had a number of data sources such as B.S.’s records (multiple evaluations, correspondence, academic records, etc.), parent interviews, collateral interviews, direct observations at school and at home and neurological testing. Much of the information about B.S.’s performance at the school was obtained through the IEP evaluations and B.S.’s progress reports. When shown Szenasy class observation of B.S. at the Flex School, he stated that he would not rely upon it due to it’s lack of formality and lack of pertinent information, such as who was being observed and who the observers were.

Sessions with B.S. - He conducted a clinical interview of B.S. on February 16, 2018, and March 18, 2018. Psychological testing was also performed on these same dates. Prior to that, he did a classroom observation at the IEF School on February 13, 2018, and at the end of his evaluation, he conducted a home observation on March 22, 2018.

Tests Administered - According to Dr. Dranoff, he administered a battery of tests that consisted of neuropsychological testing integrated with personality assessment and diagnostic assessment. The first test administered to B.S. was a broadband intelligent

test - the WISC-V for children. He administered the standard subtests (verbal reasoning, non-verbal reasoning, working memory, and processing speed). He also gave the Cognitive Assessment System, 2nd Edition (CAS-2). The purpose of this test was to look at the underlying abilities in verbal and non-verbal reasoning. As part of that, he also gave executive functioning tests which look at planning, organization, error detection. He also gave tests of selective attention.

He also administered the Children and Adolescent Memory Profile (CHAMP) which looked at verbal and non-verbal memory. In addition to this, he also administered select subtests from the WIAT-III and supplemented this by administering the Gray Oral Reading Test (GORT-5). He administered this test because the reading comprehensive test from the Wexler reading test was different. One test allows the person to look at the passage, and the other test takes that passage away. By supplementing the testing, he was able to do a more thorough assessment of B.S.'s reading.

He also administered to B.S., some rating scales on his behavior and social emotional functioning and then gave him the Rorschach Performance Assessment System to rule out any types of problems in reality testing.

The parents were also given rating scales from the Behavior Assessment System for Children, Third Edition (BASC-3-PRS) to look at B.S.'s social, emotional and behavioral functioning as well as his adaptive functioning. They were also given the Emotional Disturbance Decision Tree, Parent Form (EDDT-PF) which looks to see whether B.S. meets the criteria for emotionally disturbed. J.S. (Mother), in addition to the other two rating scales was given the Gillinham Autism Rating Scale which required her to rate B.S. on a variety of behaviors and whether or not those behaviors were consistent with an ASD.

For the classroom observation, he utilized the BASC III Student Observation System. According to Dr. Dranoff, this is a formal rating system for classroom observation. It is a blind observation as he performs the observation prior to meeting

the child. He conducted his observation after he had interviewed the petitioners and reviewed B.S.'s records. He did ask Szenasy to speak to him so that he could obtain additional information, however, she never got back to him.

The first thing he noticed was that B.S. was a child with high functioning autism who was in a classroom with numerous students and one teacher. The lesson at the time was math, and B.S. was not given a lot of individualized instruction and appeared to have lapses of attention. The lack of support was concerning given the fact that B.S. was a child with significant social problems and problems with attention, hyperactivity, and impulsivity.

The next activity he observed was B.S. in the lunch room and at recess. Instead of going to lunch and thereafter recess, B.S. went to social skills group. To him, this was unusual because typically in public schools, social skill group is scattered throughout the day – not at lunch. It was apparent that B.S. did not want to be there. The teacher provided a couple of scenarios that involved picture cards and the children were asked to describe the person's emotions in the card. B.S.'s responses were inappropriate which did not surprise him, however, what was concerning was the lack of feedback or remediation by the teacher.

Overall, he did not see how B.S. was benefitting from the social skills group. No one from the school spoke to him and he was not sure how what was learned in the social skills group was carried over into the classroom. To him, what B.S. learned in the social skills group should be "inoculated" in him all day long, not just every two weeks.

B.S. was next observed during his neuropsychological assessment which was conducted at the family home over a period of two days - February 16, 2018, and March 18, 2018. He believed that testing B.S. in the home environment was appropriate because sometimes a child needs a different testing setting. He thought B.S. performed well on the tests because he was distraction free and could take a break when he needed to.

Throughout the testing, B.S. was alert, adequately attentive, however, his mood was somewhat depressed, and his affect was flat. He was difficult to interview. While he had glasses, he did not wear them. He was on medications and was calm throughout the testing period.

Also conducted was a Clinical Interview of B.S. During this interview, he spoke to B.S. about his social functioning. B.S. informed him that he had a few friends who have come over to his house a couple of times. He also reported, without getting into specifics, that he has on occasion been bullied at school. It was his impression that B.S. had significant problems relating to people and socializing and needed help scaffolding that.

When asked about what services he received at school. B.S. described them which included speech, reading, and social skills. B.S. told him that they just play games in speech with the teacher asking questions which the students answer. For the social skills group, which B.S. stated he did not enjoy, they play feeling related games. The reading class was boring to him.

It was his belief that for B.S. to say that he was bored in school, meant that he was not engaged and mildly depressed. Additionally, while B.S. did not go into any detail regarding the bullying, this too was concerning as children with ASD and different, places the child at a higher risk for being bullied as they get older.

A home observation was conducted on March 18, 2018, after school. He wanted to observe B.S. after school due to his mother's comments that B.S. was always exhausted throughout the day. When B.S. came in the door, he did not talk to his mom and went to his room. He was not communicative at all. It was his belief that B.S. was exhausted from the day and could not engage in even a simple conversation with his mother.

Cognitive Evaluation - Dr. Dranoff testified that he always reviews prior cognitive assessments that have been performed. In this regard, he reviewed the psychological evaluations that were performed. He is familiar with the Flynn Effect as well as the Migration to Mean. He reviewed the WISC-IV conducted by Dr. Paul in 2015. It was his belief, that despite the fact that the WISC-V was available at the time of administration, the findings, while not invalidated, should be looked at with a grain of salt. He also looked at the WISC-V administered by Dr. Muglia in 2017.

He too administered the WISC-V to B.S. and thereafter did a side by side comparison. B.S.'s scores were generally similar, however, B.S.'s performance in working memory and processing speed was significantly lower. His vocabulary also appeared to go down a bit. Dr. Dranoff acquiesced that this could possibly be due to the Flynn Effect or it could be due to regression given how high his test scores were on the WISC-IV test administered in 2015. He believed that his testing was valid and supported by the collateral data sources that he had obtained. He did note, however, that when he presented his report, he had attached the wrong appendix. His report itself had the accurate information, however, the appendix which contained the raw data was wrong as he had attached the wrong printout of the WISC-V.

On tests of B.S.'s basic academic skills, given B.S.'s high IQ, his academic scores were in the average range. Math and reading comprehension were in the average range and his writing was intelligible. According to Dr. Dranoff, B.S. was a child with academic skills significantly lower than his general cognitive functioning. This could be due to a variety of factors which may include social emotional factors, learning at school or due to the environment. In either event, B.S.'s learning was being impacted and he was not learning at the rate commensurate with his intellectual abilities.

In discussing this further and by way of example he talked about his findings on the WIAT-III and the GORT-5. The WIAT-III allows the student to look at the questions. The GORT-5 takes the passage away and the child is required to answer multiple choice questions without it. B.S. scored below the average range in this test which he

felt unusual given B.S.'s very high IQ. A child with B.S.'s IQ would be expected to perform in the average to above average range.

Personality Structure - Dr. Dranoff testified that while his observations of B.S. with his peers was limited, what he did observe showed B.S.'s lack of interaction with his peers - even in his social skills group. Based upon the findings in the Rorschach test, while there was no evidence of any thought disorder, there was an indication that B.S. had significant social problems – specifically reading social cues. Dr. Dranoff went on to state that it is unclear how interested B.S. is in people. He is disengaged and socially withdrawn. He has a hard time starting conversations, so he avoids social interaction. He has limited coping skills to participate in everyday activities. If a problem arises, he's more likely to become frustrated, negative, mildly depressed and slightly stressed.

He went on to opine that B.S. keeps the stress at bay by using two defense mechanisms – denial and avoidance of stress or not engage. As he gets older, he will not be able to control the stress and will need help navigating the social environment so that he can deal with the social situations more effectively. B.S. also internalizes his emotions and is not one to express himself. What J.S. (mother) experiences after school was an example of his internalization. According to Dr. Dranoff, as time goes on, B.S. may have difficulty controlling his impulses and modulating his emotions which may result in behavioral issues at school. He also went on to note that B.S. does not have any significant problems with self-esteem. This may be attributable to his use of denial and social withdrawal as a coping mechanism.

Current Symptoms and Diagnostic Impressions - In summing up his findings, Dr. Dranoff stated that B.S. has a wide range of emotional, social and behavioral problems consistent with his diagnosis of ADHD, ODD, and ASD. His parents rated him as a child that was irritable, impulsive, hyperactive, defiant, occasionally aggressive who also at times engaged in what would be deemed as strange and repetitive behavior. This was an indication of a child that has a personality structure that is driving significant problems in his social development.

Based upon his evaluation and the information that he obtained as part of the evaluative process, in his opinion, thirty minutes of social skills group every other week was an inappropriate treatment for a child with ASD. B.S. needed to have an environment where he is constantly “inoculated” by other students and other teachers where everyone was working on social skills. While B.S.’s parents have obtained outside services, a “therapeutic milieu” would be the most effective type of intervention.

Collateral Sources - As part of his data collecting processes, he interviewed Dr. Petti whose findings he gave great weight to and were consistent with his own determinations. Among the similarities was that Dr. Petti found B.S. to have a high intellectual potential but with developmental deficits. Without appropriate educational supports, it would be hard for B.S. to achieve his potential. Dr. Petti also believed that B.S. needed educational supports and had recommended a therapeutic day school. Additionally, consistent with his findings, Dr. Petti found that B.S. met the criteria for a variety of neuro developmental disorders, including pragmatic communication disorder due to his problems in understanding the nuances of communication and inability to communicate appropriately with others, ASD and ADHD.

Also interviewed was Dr. Panter a Licensed Psychologist who had been providing B.S. with cognitive behavioral therapy and social skills instruction. While she reported B.S.’s behavior and diagnosis (ASD, restrictive repetitive patterns of behavior, rigid thinking, socially uncomfortable, easily frustrated) she did not provide an opinion as to the appropriate education placement for him.

He also attempted to interview Elleseff, however, she, due to not having seen B.S. for quite some time, she referred him to her report. He felt that this bolstered her credibility as she wasn’t taking on the role of petitioner’s advocate. In a review of Elleseff’s report, she too noted B.S.’s pragmatic communication problems which overlapped with his social skills development. She also reported that B.S.’s current educational program was not appropriate for B.S.

He also interviewed Allen who was concerned about B.S. visual motor skills in that his eyes were not lining up correctly and he wasn't wearing his glasses. Allen was concerned over the fact that B.S. has OT once a month and believed that this was insufficient.

In sum, all the professionals, whom he either interviewed or whose report he reviewed, found that B.S. has an ASD and specific impairments in a lot of different areas and that he needed a variety of therapeutic support along with medication.

Case Formulation - According to Dr. Dranoff, he puts this section in his report to provide a summary in which all of the five sources of data are integrated. What stood out to him was the fact that early on, B.S. was diagnosed with a neuro-developmental disorder and due to its severity, he had to be put on medication which was unusual for one so young.

Three psychiatrists and one psychologist recommended that some type of educational services be put in place - yet this did not occur until B.S. was in kindergarten or first grade. The 504 Plan was not put in place until he was in second grade which was around the same time that his problems worsened, and people started seeing that he met the full criteria for ASD. Additionally, he was most likely not receiving support at that time either because there was no social skill program available and if there was, thirty minutes a week was insufficient.

In third grade, B.S., who was still on medication, was evaluated for problems related to speech and language and found to have significant deficits in pragmatic communication. He was also evaluated by an occupational therapist who identified weaknesses in his visual motor and writing skills. The mental health professionals were all in agreement that B.S. was a child with significant emotional and social problems who was not able to achieve his full potential because he had pragmatic communication weaknesses in social skills and impairments in his ability to write.

It was his belief that due to all the opinions that were presented to the District, B.S. was eventually provided an IEP in third grade. He went from no services to having services in the areas of reading, mathematics, sciences, social studies, OT, speech and language therapy, and social skills development. However, putting him in a classroom without sufficient supports, very limited social skills programming and limited language-based programming and almost no OT services, suggests that the placement in the District was inappropriate for B.S.

Dr. Dranoff went on to state that his findings were consistent with the previous assessments that were done on B.S. He went on to state, however, that there was some indication that B.S.'s symptoms may be increasing in frequency and intensity as he gets older. This finding appears to be consistent with the most recent reevaluations that were done. He found B.S. clearly had a learning disability in reading comprehension and a severe learning disability in written expression.

His evaluation also provided information on B.S.'s current emotional and social functioning. In this regard, he found that B.S. has shown an exacerbation of his mental health problems over the past year. While the problems have been present for quite some time (irritability, hyperactivity, oppositional, difficulty modulating his emotions), he now appears to be experiencing some passive suicidal ideations. This indicates the beginning of some self-esteem problems. While B.S. has been receiving psychiatric and psychological services for the past five years, he has not made any significant progress. This goes towards his belief that B.S. would only benefit from a therapeutic day school where he can be immersed in a variety of therapeutic interventions daily. In this environment, B.S. can be "caught in the moment" – having a small student to teacher ratio would help someone like B.S. with ASD. He needs to be in an environment where there is constant attention to his social problems and not treated like a child that does not have a significant developmental disorder.

It was his opinion that B.S. can be overlooked in a lot of ways because of his high IQ. It was his further belief that it would be in B.S.'s best interest to deal with his social and emotional issues now as opposed to later when he is in middle school or

high school and a lot of changes take place. He further opined that B.S. was not learning from watching his peers or being around neurotypical peers. Instead, B.S. needs to be in a more socially based environment where there are more professionals and children who are struggling with the same issues.

Appendix - This section is always included in a neuro-psychological evaluation so that other people can review the raw data.

Dr. Dranoff testified that subsequent to his evaluation of B.S. in February/March 2018, the petitioners requested him to evaluate B.S. at the Flex School to determine whether the placement was appropriate. The evaluation took place over a period of two days - December 12, 2018, and January 10, 2019. (P-101) To obtain an overview of the school, he met with the founder of the school and the director of social emotional development. He learned that the school provided services to students from fifth grade to twelfth grade and that there were currently forty-eight students in the school. The student body was made up of children that were twice exceptional – those having significant learning, emotional or social problems who had high IQ's. They were aware that B.S. was classified with an ASD and had needs in the areas of OT and social pragmatic speech.

He was informed that B.S. was enrolled in fifth grade, however, was performing at the sixth-grade level. There were seven children in the fifth and sixth grades that were similar to B.S – high intellectual skills but significant social, emotional, or learning problems. What he found noteworthy about the school was that it had a variety of programming that seemed to “inoculate” the students - not only a small student to teacher ratio but programming. Each morning executive functioning and personal responsibility was focused on.

One of B.S.'s teachers had a Master's in Education and the other one had a Master's in School Psychology. On a daily basis he is given OT by Kanofsky. His four main subjects were social studies, english, pre-algebra, city building and flex Fridays which consists of substantial counseling curriculum, including health awareness and

social emotional learning. Additionally, the school has a director of social emotional learning who is constantly inoculating all the students. The environment was exactly what he had recommended - a therapeutic milieu.

In going through the highlights of his tour of the school, Dr. Dranoff stated that on his first observation date, he met with B.S. teachers and other staff members, and thereafter observed B.S. in his math class. While he thought the activity was a usual way to learn math, what he found notable was that B.S. was receiving one on one instruction. At one point during the instruction, another student was invited to participate and both B.S. and other students worked together on a project. It was clear to him that B.S. was socializing better and getting individualized instruction.

When he went back for his second day of observation in January 2019, he sat in on B.S.'s social studies class. The teacher ran the class very smoothly and did not put a lot of pressure on the children. There were not many children in the class, and she was able to provide individual instruction to all.

The environment was unusual in that the students were permitted to walk around if they needed to and there was a therapy dog. He observed B.S. getting on the floor to pet the dog. The atmosphere was structured and not a free for all even though the children were able to get up and roam around. The teacher was able to bring them back to the lecture and ask them questions. It was his belief that the environment allowed the children to discharge their energy in a way that made them more comfortable. This more than likely improved their learning, decreased their emotional problems and improved their social functioning. He found it significant that all the children in the class were involved in a conversation and socializing as the lecture went on. At one point he observed B.S. staring out the window and did not appear to be paying attention however he completed the worksheet at the end of the activity was given individualized attention from his teacher.

On cross-examination, Dr. Dranoff was questioned about the fact that he would not rely upon the District's observations of B.S. at the Flex School citing to its

unreliability, yet he submitted a report with the wrong appendix and without a date. In response he stated that he was unaware until most recently that he had placed the wrong appendix on the report when he generated it in April 2018, and by that point, rather than amend the report, he corrected the error when he was on the stand. He did not believe it was a major mistake because the correct information was in the body of his report.

He was also questioned about the private evaluations that he reviewed and whether he thought they were a hundred percent accurate. In response, he stated that nothing is a hundred percent accurate, however, he believed that the private evaluations that he read, and the recommendations provided therein, made a lot of sense and consistent with his findings and he gave them great weight.

His direct observations of B.S. were another source of data that he obtained to see if it converged with the other data that he had collected. His first observation was a blind observation at the IEF School. He wanted to see B.S. in a natural environment that was not being influenced by his parents or anyone else, including him. He had not yet met B.S., however, he had met his parents prior to observing B.S. at school to better understand B.S.'s background.

His next observations occurred on the first testing date when he conducted his neuropsychological assessment at the residence. During the assessment, B.S. was not wearing his "prism" glasses, but he did not believe that this affected the results of the psychological testing. If B.S. had problems seeing the material, it would have come out in the behavior observations and he would have been getting things completely incorrect. He would not have been able to see the stimuli, which was not the case here.

Dr. Dranoff was also asked about his report wherein he stated that B.S.'s "pencil grasp was grossly normal" yet Allen's report stated that it was not. In response, he stated that he reported what he saw. He was evaluating B.S. for his writing, reading, mathematics, mental speed, and simple motor speed and did not do a comprehensive

OT assessment. He uses the collateral information that he obtains to corroborate his findings and denied ignoring findings that were contrary to his own.

His last observation was his direct observation of B.S. at home after school. Based upon his observation at that time, in his opinion, B.S. was tired and irritable after school which was why he would not engage in conversation with his mother. While he blamed the fatigue on the school day, he acquiesced that the reason for his fatigue could have due to sleeping poorly the night before or from other factors which he did not believe required exploration such as the familial relationships.

He was also questioned about his criticism that the 504 Plan was not implemented until B.S. was in second grade – specifically where was the impact? In response he stated that he did not know, however, the parents informed him that B.S. was having social problems at school and not making friends.

In talking about the 504 Plan, he agreed that intervention services should always be the first course of action and that there is a hierarchy of steps after that. He acknowledged that the process takes time and does not occur overnight but went on to state that it should not take years. He later modified this statement by acknowledging that it could take years to see progress. While familiar with IDEA, he is unfamiliar with the term “least restrictive environment”.

In transitioning over to the psychological testing that was performed and how much time should elapse between testing, he stated that it depends on the test, however, it was best practice to wait six months - not a year. It is up to the evaluator and if a test is re-administered close in time, the “practice” effect would have to be considered.

Regarding his findings in his report and observations of B.S. that he appeared to be bored, Dr. Dranoff denied that he equated boredom to depression in his report. He went on to state, however, that children in kindergarten, first or second grade who are bored, typically have other problems that are going on because children of that age, are

not inherently bored. He based this on his prior training and experience in evaluating children in that age group. He could not say how many children he worked with where boredom was associated with underlying depression. His conclusion in this case that B.S. was depressed was based upon the multitude of data (collateral sources and testing) that he reviewed and converged. The testing in question was the BASC 3 and the Parent Rating Scale. While the BASC-3 does not say that B.S.'s boredom equates to depression, he extrapolated it from all of the data he obtained and thereafter made a conclusion.

Dr. Dranoff was also questioned about his comments that B.S. was not making progress in the District and therefore it was an inappropriate placement. In response, he stated that the progress report itself reflected that B.S. was progressing gradually or inconsistently. His comments were also based upon the fact that B.S. has an ASD; his programming did not involve social skills training; he wasn't having regular OT appointments; speech and language was once a week, and he was in an environment with other students with whom he was unable to appropriately interact with.

He acknowledged that while the Flex School did not have an autism program, it was a therapeutic milieu for children with learning, emotional and social problems who also have a high IQ. It has a low teacher ratio, a therapeutic milieu, social/emotional programming every day, and teachers who were trained in social emotional learning. The school also had a therapy dog which was helpful for children with ASD to regulate their emotions, control their impulses and reduce their anxiety. On this last statement, he admitted that he did not know what specific training the teachers had received or what their credentials were. He did not know how many special education teachers there were on staff or how the school was addressing B.S.'s ADHD.

When questioned on the Flex School's programming, he stated that it offered the core curriculum and a social program. There was OT daily. He did not personally observe the social program nor did he know what programming they were using or what services B.S. was receiving. He is also unfamiliar with the term "related services" or what they were.

In questioning him about the teaching methodologies that were used at the Flex School, Dr. Dranoff stated that the school provided a social emotional program the entire day which was better than what was being provided in the District which was once every two to three weeks. He admitted that he had no idea if B.S. was generalizing what he learned in the social skills group at the IEF School because no one there would speak to him. However, he couldn't fathom it occurring given how infrequently the sessions were. This opinion was based upon his experience as a clinical psychologist, not an educator. He went on to state that B.S. was also being "inoculated" with other students and was overseen by a mental health professional every day at the Flex School. While exposure to typical peers can be helpful for some children, in B.S.'s case, the Flex School environment was more beneficial as he was around children with similar problems and issues.

When asked to explain his continuous use of the word "inoculated", Dr. Dranoff explained, using a social emotional program as the example, that if a child is doing something wrong, the teacher would immediately come to them and explain the right way of doing it. Another student would see it and be part of the experience and learn something. In describing how the Flex School was therapeutic milieu, he explained that the school has a small student to teacher ratio, it focuses on social emotional learning, executive functioning, attention and the children are provided a lot of attention that addresses their issues and problems. He bases this not on his personal observation, rather his interviews with the staff members.

Dr. Dranoff was next asked about his observation at the IEF School. He stated that he was there for an hour and observed B.S.'s math class and social skills program. He again noted that no one from the District wanted to participate in the evaluation process, however, when asked when he invited them to participate, he stated that it was the day of the observation. He never followed up with any of the school personnel to obtain additional information or ask questions. He went on to state that he had an issue with the fact that the social skills program, which was provided every two to three weeks, took place during the lunch/recess period. He feels that children need

lunch/recess to relax and take a break. Instead, they were going to what was in essence another class.

He did not rely on the District's reports because he did not find them to be as comprehensive as the ones that the parents had obtained from the private specialist. He did, however, give some stock to the IQ testing that was conducted by the District whose results were consistent with his own. However, he also gave weight to the testing conducted by Dr. Paul who administered the WISC-IV. He went on to state that usually the Flynn Effect and the regression to mean, may reflect a five-point differential but not an eighteen-point difference which occurred in B.S.'s case.

To him, this meant that there was no change in B.S.'s cognitive functions, however, there was a drastic change between his cognitive skills and his academic functioning. B.S.'s academic functioning was falling below what would be expected given his cognitive skills. He attributes this change to the District – having reached this conclusion based upon his evaluations and petitioner's experts. He did not rely upon the Districts reports/evaluations they did not speak to him and the evaluations lacked substance in his opinion.

J.S. (Mother), testified that she is a college graduate with a degree in fine arts and is currently a stay at home mom. She has two sons, B.S. and A.S. B.S. was diagnosed with ADHD and was referred to Dr. Isralowitz. After evaluating B.S., the initial thought process was to work on some of B.S.'s behaviors before going down the medication path. Given the fact that B.S. was to attend kindergarten in the fall, and to work on his impulsivity and focus, Dr. Isralowitz sent the school a letter suggesting that a 504 Plan be put in place and provided recommendations. (P-1) By email, dated July 2, 2013, Principal Lamberti responded to J.S. that she would need to contact Casazza at the beginning of the school year at which time the possibility of a 504 Plan would be discussed. (P-2) According to J.S., the meeting never occurred.

When B.S. was in first grade, he was tested for a pull-out program – the GATE Program for gifted children. B.S. did not test into the program. She sent his teacher,

Lori Alhanti (Alhanti) an email questioning the program and also questioned whether B.S.'s ADHD was affecting his testing. (P-4) Subsequent to this, she sent an email to Maggie Silver (Silver), the gifted and talented teacher, requesting to speak to her about her son and the recent test. (P-6) In speaking to Silver, she learned that B.S. had been tested, however, he did not meet the criteria, therefore was not to be included in the program.

On October 12, 2014, J.S. heard from Alhanti who informed J.S. that her son was "super bright" but at times was at times fidgety and bored. (P-8) As a proactive measure, Alhanti informed J.S. that she allows B.S. and a few other children to complete some of the work independently and then she reviews it with them. However, by that point in the lesson, B.S. has already lost interest and wants to read a book in the back of the room. A couple of days later, she responded to Alhanti's email, thanking her for her observations and informing Alhanti that B.S. was currently working with his therapist on "flexibility". (P-9)

According to J.S., it was her intent to keep B.S.'s teachers informed as to what outside services were being used to further support B.S.'s learning and vice versa in keeping the doctors informed as to what was happening in school. This included updates on any medication changes. (P-10) At no time did Alhanti complain about the volume of emails that she sent.

In December 2014, an issue arose with B.S. regarding teasing that he was getting for playing with only girls. Alhanti addressed the issue in class by having a lesson on how to deal with bullying and teasing and how to express yourself and also to let an adult know. (P-12, P-13). The issue was discussed with Dr. Isralowitz and Dr. Sheshadri. (P-15) It was Dr. Sheshadri's recommendation that a 504 Plan should be put in place.

It was also Dr. Sheshardri who recommended that they get B.S.'s IQ tested. Based upon that recommendation, in April 2015, they went to see Dr. Paul, for an evaluation. They wanted to get B.S.'s IQ tested and to find out more about his social,

emotional and academic functioning. According to Dr. Paul, B.S.'s IQ was 133 which put him in the top one percent. Dr. Paul's findings and recommendations were sent to the school so that his teachers could better understand B.S.'s potential and where he was struggling both academically and socially. (R-11)

In May 2015, Dr. Isralowitz sent another letter to the District, once again recommending that B.S. be provided with a 504 Plan and provided a number of recommendations. One of the recommendations was to provide B.S. a high-top desk with a stool. (P-19) According to J.S., nothing ever happened with the proposed recommendations by either Dr. Paul or Dr. Isralowitz.

On June 1, 2015, she and her husband sent a letter to the school. Attached to the letter was the Neurodevelopmental Evaluation by Dr. Seshardri; the Neuropsychological Evaluation by Dr. Paul; and the letter from Dr. Isralowitz. Through this letter, they requested that a 504 Plan be put in place and asked for a meeting. (P-20) The meeting was held on June 10, 2015, at which time it was determined that B.S. qualified for a 504 Plan and an Accommodation Plan was developed. (P-21 and P-22) No evaluations were performed by the District in the development of the 504 Plan nor did they (petitioners) receive the Parental Rights in Special Education book. (P-23) Additionally, B.S. was not admitted into the GATE Program at that time.

B.S. report card for his first-grade year showed a lot of "D" for developing and "S" for satisfactory. There were no "I" for independent. J.S. was concerned over this especially knowing how high B.S.'s IQ was. (P-25) According to J.S., she participated in the development of the 2015-2016 (second grade) 504 Plan development. (P-26) Among the accommodations that were supposed to be implemented was the provision that B.S. be allowed to utilize Read and Write Google. This did not occur, and B.S. did not have a Chromebook throughout the school year. Nor were some of the recommendations by Dr. Paul implemented.

As a result, in November 2015, she requested a meeting with the school and requested that representatives from the CST be included. (P-27) She also requested

that Dr. Paul be in attendance at the meeting. (P-29) The request for CST members to be present was declined as it was a 504 matter, not a special education matter. (P-28) No Parental Rights in Special Education (PRISE) booklet was provided to her at that time, however, she did receive the booklet at the beginning of B.S.'s third grade in 2017. J.S. went on to state that she was upset that the CST members were not going to be present. She felt that the experts needed to be present for the meeting to understand Dr. Paul's findings. Dr. Paul was the one who was identifying B.S.'s academic strengths and social pragmatic issues. He recognized that while B.S. was reading at two or three levels ahead, he still did not have basic decoding skills.

The meeting was held on November 15, 2015, and J.S. was angry over the lack of interest and understanding on the part of Lamberti. (P-31 and P-32) However after the meeting, she heard from the IEF school Reading Specialist, Christine Doane (Doane), who informed her that she had administered the Predictive Assessment of Reading Test to B.S. The results showed that B.S. was making average progress in his grade level. Despite it not being in B.S.'s 504 Plan, Doane offered to provide B.S. additional small group instruction in Foundations twice a week. While J.S. requested a six-month follow-up, it never occurred. (P-33)

B.S.'s first progress report was sent home in December 2015. (P-35) One of the observations was that B.S. was unsure of letter sounds when spelling words which is something she had observed. In or around March 2016, concerned about B.S. and his medication levels, they took B.S. to see Dr. Milrod for an evaluation. He recommended that B.S. receive ST and pragmatic language instruction. (P-40) This recommendation was brought to the school's attention; however, nothing was done - the explanation being that B.S. did not qualify for speech language services. According to J.S., there was no speech pathologist involved in that decision.

Later that year, in June 2016, a letter was sent home from the school which stated that B.S. would no longer be required to attend the basic skills classes for reading due to his demonstrated success. (P-42) She disagreed with this determination as he had only been provided support for six months and they were still

seeing B.S. struggle with the same issues. The support was not part of the 504 Plan and was only put in place after Dr. Paul had attended the meeting earlier in the year and described the decoding issues and other issues that B.S. was having. In or around this same time period, they received B.S.'s most recent Student Intervention Log. (P-44) According to J.S., they were never informed of B.S.'s progress or his skill achievements.

Later that month, on June 20, 2016, Dr. Paul performed an arithmetic reassessment. (P-45) J.S. testified that she had previously requested that the District reassess B.S. but they refused to do so. The reason for the request was to obtain a benchmark so that they could thereafter see how B.S. was accelerating given his potential. As a result of his testing, Dr. Paul recommended that B.S. receive academic enrichment which J.S. stated the school did not implement.

Due to the fact that they disagreed with the school's discontinuation of B.S.'s reading services, she sought the opinion of Elleseff who performed a Comprehensive Language and Literacy Evaluation in August 2016. (P-47) J.S.'s takeaway from the report was that B.S. was a very gifted child who had some challenging difficulties. She brought Elleseff's findings to the school's attention.

J.S. went on to testify that she participated in the 2016-2017 (third grade) 504 Plan for B.S. While she agreed to the plan, she did not agree with everything in it. (P-52) One of the things she disagreed with was the number of social skills group which was slated for twelve times a year – a little more than once a month. Given B.S.'s issues, this would not benefit him very much. Regarding the recommendation that the school would work on looking for ways to accommodate B.S.'s needs for enrichment activities, the school never came back with anything. While he had a Chrome Book in third grade and access to "Talk to Text", it was her belief that Talk to Text in a classroom does not work. Additionally, B.S. was frustrated with the program and wouldn't use it – deciding instead to type it in manually. He did not get any specific keyboarding instruction however, he taught himself on how to do the functions on the Chrome Book.

In December 2016, through their attorney, a request was made to the school to refer B.S. to the CST and for an IEP. (P-57) She reviewed the Occupational Therapy Evaluation that was performed by the school and disagreed with the findings. (P-58) More specifically, she did not believe that B.S.'s sensory issues were being adequately addressed. Based upon her disagreement with the school's report she decided to have an outside evaluation done.

At the school's request for additional documentation, she took B.S. to see Dr. Milrod to re-document his diagnosis of high functioning ASD. Dr. Milrod documented his findings in a letter, dated March 9, 2017, which was sent to the school for their review. (P-59 and P-60) Also sent to the school was a request for B.S. to attend the ESY program at HI-STEP. (P-63)

J.S. also sought the services of Dr. Petti who performed a psychiatric evaluation of B.S. One of the recommendations that he had made was that the family seek the services of Perform Care which they did a year ago. They are no longer receiving their services.

She participated in the April 2017, IEP meeting and allowed it to go in effect, however, was not in agreement with everything put forward in the IEP. (P-67) For instance, while she agreed that B.S. needed ST, based upon Elleseff's evaluation and given B.S.'s issues, it should have been more than once a week.

The same with the OT which was once a month. B.S.'s handwriting was illegible, and he was having sensory issues which concerned her tremendously, so she obtained a second opinion through Allen after the IEP had been implemented. Based upon Allen's observation/evaluation, which was shared with the school, B.S. required OT more than once a month. (P-71) One of the things that Allen commented upon was her observation that B.S. did not interact with his group partner who he paired with during one of the activities. According to J.S., this was consistent with what she saw when she was the "classroom mom" and disheartened her as it was her expectation that the

classroom teachers would reengage B.S. and facilitate social skills. J.S. went on to note that when B.S. left the District, he had not achieved any of the OT goals and objectives (improve core stability, sensory awareness and fine motor skills) that were set forth in the IEP.

This also went for the social skills group – which when broken down, equated to meeting every two to three weeks. Given B.S. communication issues, that was insufficient. J.S. expanded upon this last part by stating that B.S. did not have any friends at the time the IEP was put in place. He did not have any play-dates outside of school and, in school, he was isolating himself. This was based upon her personal observation when she visited the school as a “classroom mom”.

In looking at the IEP’s Social Skills Goals and Objectives, she felt that B.S. had already mastered some of the objectives itemized such as saying “hello” and “goodbye” so that was not appropriate. Other goals and objectives such as fostering and maintaining two positive relationships with peers; or identifying specific times of the day and/or triggers that impacted his ability to attend, were never attained by the time he left the District.

With regard to the ESY program offered in the IEP, it was her impression that it was just for special education children so he wouldn’t be with any of his neuro-typical peers. She felt that he needed extreme social thinking intervention, therefore she said not to the proposed ESY program. Instead, B.S. attended the “HI-STEP” program which provided social skills training.

When Elleseff went back to observe B.S. in the classroom setting in November 2017, she reiterated that neither the Foundations or the pull-out Foundations were remediating B.S.’s reading comprehension, spelling, writing and related difficulties. (P-77) Elleseff’s observations were consistent with her own. The same with the ST. One of the things that Elleseff observed was that the children in the group all had different goals and objectives. Therefore, even in that setting, he wasn’t getting the full amount

of allotted time as the teacher spent time working individually with each child which took away from the whole.

When she received B.S.'s progress report for the GATE Program in January 2018, she disagreed with the reported progress. The progress report marked B.S. as satisfactorily in: communicating clearly in writing; expressing himself well verbally; uses problem solving techniques and thinks critically. (P-78) She found the marks impossible given that the fact that these were among B.S.'s major areas of struggle. It was her belief that the GATE Program did not provide B.S. with a curriculum that recognized and brought out his exceptional abilities.

Thereafter in April 2018, the District was placed on notice that they were seeking an out of district placement for B.S. at the Flex School. (P-82) Their decision was based upon their expert reports (Elleseff, Allen, and Dr. Dranoff) that the IEP currently in place for B.S. was inappropriate and that his needs were not being addressed by the District. (P-82) They also notified the District that they were unilaterally placing B.S. at the Flex School for the 2018 ESY. (P-85) The rationale behind placing B.S. at the Flex School for the ESY was to focus on his social communication skills. The school also worked on executive functioning skills and provided academic enrichment.

When they received B.S.'s progress report in June 2018, they disagreed with the findings. (P-86) Many of the goals and objectives were marked as "progressing gradually" which for someone with B.S.'s cognitive abilities, more progress should have been seen. He had had an IEP since April 2017, and it was her belief that the goals and objectives were not as meaningful as they should have been. By comparison, they received B.S.'s progress notes from the Flex School for the ESY which identified B.S.'s academic skills and weaknesses and how he progressed and grew – socially and academically, over the summer. (P-87)

The ESY progress notes from the Flex School were shared with the District and they again requested that B.S.'s IEP be amended to reflect an out of district placement at the Flex School for the 2018-2019 school year. The District was also provided with

a copy of Dr. Petty's progress notes of August 16, 2018, wherein he noted that a number of B.S.'s existing problems (i.e. ODD, Generalized Anxiety Disorder; Language Disorder, etc.) had improved. (P-91) After seeing how well B.S. had done at the Flex School ESY, and wanting to provide him the intervention he needed, they enrolled him in the Flex School for the 2018-2019 school year. (P-112 and P-113)

According to J.S., B.S.'s progress could also be seen in his First Quarter Progress Report from the Flex School. (P-93) Based upon what was reported, it was apparent that the Flex School was targeting all the things that B.S. had been struggling with (i.e. spelling skills, writing skills, inference, observation skills, reading comprehension, etc.) throughout the school year. Using B.S.'s improved writing skills as an example, J.S. stated that it was apparent that someone at the Flex School was working with him and he was getting more comfortable with writing. The progress report also noted areas of weakness. This too pleased J.S. and her husband because the school was not only identifying B.S.'s areas of weakness but addressing them.

B.S.'s progress was also seen by Elleseff when she went to observe B.S. at the Flex School in December 2018. In her report, Elleseff commented upon the teacher/student ratio and overall class size which finding that it promoted individualized attention. She also noted how engaged and focused B.S. was in the classroom and that he was using his Chromebook less. (P-95) After observing B.S. at the Flex School, it was her opinion that B.S. was sufficiently challenged at the Flex School and that his placement there was appropriate.

According to J.S., this sentiment was also mirrored in Dr. Dranoff's report which was generated after he observed B.S. at the Flex School in December 2018. (P-101) In his opinion, the Flex School addresses B.S.'s academic weaknesses and social anxiety and communication issues. One of the observations made by Dr. Dranoff was that B.S. had made friends and was interacting with them in the classroom. J.S. commented that this progress was also for the first time being seen at home with B.S. having playdates and sleepovers.

J.S. went on to testify that Allen was also asked to observe B.S. at the Flex School. Allen found B.S. to be motivated and contributing in the classroom. At the time of observation, there were six students in the class with one on one teaching staff present. While intermittently distracted, he independently redirected himself. He was also able to take sensory breaks and move around. Allen observed that B.S. was not the only child that needed to move around. Based on her observations, it was Allen's opinion that the Flex School was the most appropriate environment for B.S.

She agreed with B.S.'s January 2019 progress note from the Flex School. (P-111) According to J.S., it was apparent that B.S. had grown and made a lot of progress since he had started at the school. According to the progress note, B.S. was now doing his assignments more successfully due to his teachers providing him with built-in executive function instruction. Socially he was doing well and was liked by his classmates with whom he worked cooperatively with. J.S. stated that she particularly liked the fact that if B.S. finishes his assignment before the other students, he is given another higher-level assignment to challenge him. Additionally, his growth at school was also seen at home as B.S. had become a different child. He was no longer fighting her to go to school or giving her problems.

According to J.S., B.S. did not have all of these skills when he started at the Flex School or if he had them, they were not being addressed by the District. After seeing how well B.S. did at the Flex School ESY, and wanting to provide him the intervention he needed, they enrolled him in the Flex School for the 2018-2019 school year. (P-112 and P-113)

On cross-examination, J.S. was questioned why she felt that B.S. was not getting the services that she believed he needed in District. In response, J.S. stated that she had provided multiple expert reports which identified B.S.'s problems and provided recommendations to the District who in turn took no action to address the issues. Using the 504 Plan as an example, when it was finally implemented by the District two years after it was first requested, no specific testing was performed, the plan was just implemented. The 504 Plan was only put in place after they brought Dr. Paul to the

meeting to explain his report on B.S. Thereafter, services were being denied or discontinued without a basis. J.S. went on to state that she initially provided all of the reports to the administration and requested a CST evaluation.

After the 504 meeting, they retained counsel because they were getting nowhere with the District. J.S. acknowledged that B.S. progressed in the District however it was her belief that it was not at the levels that he should have progressed. This last statement was based upon the evaluations and observations done by her experts. When questioned about B.S. IEP Progress Reports, J.S. testified that the level of progress reported was not quantified by data. When pressed on this response, J.S. could not justify her answer. It was her belief, however, that the progress report from the Flex School, reflected a significant amount of progress by B.S. in that it targeted and understood B.S.'s needs. When questioned about the data that was used to back up the Flex School's report, she stated that the school is accredited therefore they were required to meet certain criteria. She went on to state that any back-up data would have to be obtained from the Flex School.

When asked for an example of B.S.'s progress at the Flex School, J.S. relayed an incident between B.S. and another child over the float design and construction for a Mardi Gras parade. The project worked on the children's executive functioning skills and social and emotional skills. B.S. wanted to design and construct the float and so did another child. With the assistance of the teacher, a compromise was reached wherein B.S. agreed that the other child could build the float and he would decorate it. She learned of the incident from the teacher. J.S. felt that this was important for a couple of reasons, one of which was the fact that B.S. was compromising and the other was that the teacher was right there to help direct and redirect him. The situation was fluid and the teacher was right there and able to accommodate the situation.

When questioned how the Flex School was addressing B.S.'s ADHD, she responded by stating through a small classroom environment and working on B.S.'s executive functioning skills. It was her belief that the District was not paying attention to B.S.'s needs – citing as an example the language arts pull-out resource wherein B.S.

received a “double dose” of Foundations two times a week. According to Elleseff, this was insufficient and did not work for him.

J.S. also went on to talk about the friends that B.S. now had. The children also attend the Flex School. While his new friends have never been to their home, they have gone to outside activities. According to J.S., the Flex School also promotes social networking – one of which is a week retreat which helps develop relationships and trust. When questioned whether B.S. has any neighborhood friends or friends through his participation in Boy Scouts, she responded that he did not and that this was in part due to B.S.’s possessory tendencies and rigid thinking which caused conflicts.

When asked how the Flex School was working on B.S.’s social skills and social thinking, she responded that they were working on it. When questioned how it was acceptable for the Flex School to be “working on it” but not acceptable when the District says that B.S. was “progressing”, she referred to Elleseff’s report and the fact that the social skills group was not working. She went on to point out that the District did not listen to what her experts were saying and in fact, one of the evaluations - the OT evaluation by Allen was not even given to the District’s occupational therapist Lodato. Had they listened to what her experts had said and implemented the recommendations, there would have been no need for a hearing.

J.S. was also questioned about the District’s 2017 ESY program and the fact that B.S. could have been provided the same HI-STEP program as the camp that B.S. had attended. In response she stated that she was aware that it was the same program, however, felt that the District’s personnel were not qualified or sufficiently trained to direct such a program. Additionally, B.S. would have been in the program with other special education children. The program doesn’t acknowledge or address the fact that B.S. was a twice exceptional child and that he needs something more than what was being offered.

Upon being asked, J.S. acknowledged that at the time all of this was happening they were having issues with B.S.’s medications. This was in or around May 2017 and

B.S. was in third grade at the time. The medications were changed and while it took a while to get him stabilized, at this time he was doing well on the medication regimen. The medication assists B.S. in controlling his impulsivity and allow him more time to think.

Discussion:

It is the duty of the trier of fact to weigh each witness's credibility and make a factual finding. Credibility is the value a fact finder assigns to the testimony of a witness, and it contemplates an overall assessment of the witness's story considering its rationality, consistency, and how it comports with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963); see In re Polk, 90 N.J. 550 (1982). Credibility findings "are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463 (1999). A fact finder is expected to base decisions on credibility on his or her common sense, intuition or experience. Barnes v. United States, 412 U.S. 837 (1973). A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super 282, 287 (App. Div. 1958).

Petitioner's expert, Allen, a Certified Occupational Therapist, evaluated B.S. in May 2017 (third grade), one month after the IEP was implemented. Among the tests administered was the BOT-2 – the same test that had been administered by Lodato two months prior which is contrary to best practices. While Lodato had identified many of the same areas of weaknesses and made recommendations similar to what she herself would have recommended, she felt that the Districts recommendations were insufficient to meet B.S.'s needs and that they had failed to identify all of B.S. problem areas.

One such area was motor planning – using her observation of B.S. in gym class. Allen's own testimony as to B.S.'s performance in the class does not appear to be consistent with a finding of motor planning issues. Nor is the fact that he plays the

piano - an activity that requires the coordination of both hands and feet, consistent with the and individual who has motor planning issues.

Overall, Allen's testimony did not inspire confidence. While she went into great detail on how well the Flex School was meeting B.S.'s needs, she could not provide concrete examples. When questioned how the Flex School was providing B.S. OT, she admitted that she had never witnessed the program at the Flex School - nor had she ever observed OT at the IEF School. In this regard, she had no idea how often Ladoto came into B.S.'s classroom or spoke to his teacher. Nor did she have any data from the Flex School which reflected B.S. progress – it was an inference on her part based upon her observations and what was being reported to her. At the end of her testimony, Lodato admitted that she could not speak to B.S.'s progress at either the Flex School or the IEF School. It was just her judgement that the Flex School was meeting his needs.

Dr. Dranoff, a Licensed Psychologist testified that he is familiar with the Flynn Effect as well as the regression to mean. He reviewed the WISC-IV conducted by Dr. Paul in 2015, and credibly testified that while the findings are not invalid, they should be looked at with a grain of salt given the fact that the WISC-V was available at the time of administration. His credibility slipped, however, when he went on to testify about the weight he had given to Dr. Paul's findings in arriving at his own conclusions.

Dr. Dranoff also provided broad sweeping statements that lacked foundation. Examples of this were seen when he was questioned about his criticism of the District for not implementing a 504 Plan until B.S. was in second grade – specifically the impact. In response, he stated that he did not know what the impact was and based his commentary upon statements made by the petitioners. He also testified about how qualified the teachers were at the Flex School, and that the school had a low teacher ratio; social/emotional programming every day; and that it was a therapeutic milieu. When questioned about these statements, he admitted that he did not know what type of training or qualifications the teachers had, did not know how many special education teachers were on staff or how the school was addressing B.S.'s ADHD. He also did not

observe the social program at the school, did not know what programming they were using or the specific services B.S. was receiving.

Dr. Dranoff also repeatedly brought up the fact that no one from the IEF School would speak to him. He did not rely on the District's reports because he did not find them to be comprehensive and the staff did not speak to him. Instead, he relied on the petitioner's private specialists reports as they corroborated his findings. What he failed to mention until specifically asked on cross-examination, was that he did not ask to speak to the staff at the IEF School until the day of his observation, and at no time did he follow-up with the school to obtain further information. He did not even request the teacher's at the IEF School to fill out a rating form.

Dr. Petti, a Board-Certified Child and Adolescent Psychiatrist, also testified as an expert for the petitioners. I found his testimony to be subjective and his findings conclusory without a reasonable explanation. As an example, he provided B.S.'s parents and teachers with SNAP assessments. The petitioner's reported oppositional defiant behavior and his teachers at the IEF School reported none. He felt that it was rare to see a "zero" for oppositional/defiant behavior for a child with ADHD and the problems B.S. was presenting with. Therefore, he concluded that the demands on B.S. in school must not have been very great and he diagnosed B.S. with ODD. He never personally observed the behavior and never spoke to B.S.'s teachers – it was all based upon the petitioner's representations.

Another example is when he was questioned about his finding that B.S. was not receiving the appropriate services at the IEF School. According to Dr. Petti he based his opinion on the fact that the services that had been recommended by himself and other professionals such as Elleseff had not been implemented. He subsequently acquiesced that not all of the services that had been recommended were necessary and his assumption that because they were not listed in the IEP, the services were not being provided.

While he acknowledged that B.S. was doing well at the IEF School, he felt that it came at a price on both a psychic and intellectual level. On the intellectual piece, he cited to B.S.'s lower score on the Wechsler test. While he is familiar with the phrase regression to mean, he is not familiar with the Flynn Effect. He also upon further questioning, acquiesced that the first test given by Dr. Paul could have been a high test and the second one was the norm score or that other factors may be in play.

Regarding his testimony that the Flex School was an appropriate placement for B.S., he never went there, had no real knowledge of the program and did not know what qualifications the teachers had.

I found Elleseff to be a credible witness and the testing she performed informative and, as will be later discussed, were in part relied upon by the District in developing B.S.'s IEP. However, I did not give as much weight to her testimony/reports as it relates to her observation of B.S. at the IEF School in November 2017, and at the Flex School in December 2018, as they lacked objectivity and foundation.

As an example, Elleseff, who is not a certified reading instructor or certified in the Wilson Program, was critical of the IEF School for using Wilson's Foundations Curriculum in fourth grade. In the IEF School, the first half of Foundations is taught in third grade and the second half is extended into the beginning of fourth grade and thereafter becomes the Wilson Program. It does not appear that Elleseff had any discussion with B.S.'s teachers as to how and why the curriculum is set up in that fashion and what additional supports were being provided. Additionally, while she observed B.S. approximately six months into the implementation of the IEP, she herself recognized that progress takes time.

Elleseff was also critical of what was being taught in B.S.'s ST class and her belief that her recommendations had not been implemented. However, her observation was limited, and her conclusions flawed as evidenced by the multiple communications between the J.S. (mother) and Engler regarding what had been taught in class that day.

Upon reading some of the emails, she acquiesced that the District was in fact implementing the goals and objectives.

She also used Dr. Paul's findings – specifically his IQ testing, to conclude that B.S. was twice exceptional and that the IEF School was not meeting his needs. As such, she recommended out of District placement. Yet, in her testimony, she stated that his IQ was not a consideration. Not only is this inconsistent, it also calls into question how much she relied upon the WISC-IV data which according to petitioner's own expert, Dr. Dranoff, should be "looked at with a grain of salt".

Additionally, in her observation at the Flex School, Elleseff was very descriptive of how well B.S. was doing and of her overall impression that the school setting was meeting his "complex educational needs". Interestingly, in her observation report from the IEF School, she reiterated all of her recommendations from her August 2016, evaluation which contained multiple recommendations that targeted therapeutic interventions and therapeutic remediation were needed. Yet, the Flex School, who by her own admission lacked many of the services that she had recommended and whose programming she had no knowledge of, was still the appropriate environment for him. It is difficult to reconcile these conflicting statements and as such undermines her observational findings.

I found Gavor to be elusive when responding to questions asked on cross-examination and his responses lacking candor. One such example was when he was questioned about his statement that B.S. had "academic scar tissue" when he first came to the Flex School. After going around on this comment a couple of times, he changed his testimony and stated that it was a generalization of all new students at the Flex School – not B.S. specifically.

Another example was seen when asked about his August 2018, letter to the petitioners providing a glowing report of B.S.'s progress during his participation in the Flex School ESY program which was a twenty-one-day program. Yet, he testified that B.S. was dysregulated when he first started the ESY program and it took him ten days

to assimilate. When asked how B.S. could have made the meaningful progress that he had expounded upon in his August 2018, letter in the remaining eleven days of the program, he changed his statement to reflect that B.S. was “at times” dysregulated. When questioned again how B.S. made such meaningful progress in such a short time period, he again changed his statement yet again to say that B.S. was dysregulated maybe fifteen minutes a day.

His lack of candor was again exhibited when he was questioned about how B.S. was “implementing skills that were taught in the Flex Life Class” and the improvements he referenced. After circling the answer on this question, he ultimately acquiesced that there was no supporting data to his statements and that he did not even know what curriculum was used.

I found that J.S. testified credibly, however, she is not a special education teacher and her view points are understandably subjective. J.S. acknowledged that B.S. was progressing at the IEF School, however, it was her belief, based upon her experts reports, that he was not progressing at the appropriate levels given his cognitive abilities.

The District employees all testified credibly and were familiar with the facts and their respective direct contacts with B.S. throughout the school day as well as their direct contacts with J.S. (Mother) regarding her parental concerns documented in the numerous meetings and emails between the parties. The detailed testimony of B.S.’s teachers who personally worked with and routinely observed B.S. from kindergarten through fourth grade was especially persuasive as they are all educational experts in delivering special instruction to children with disabilities. The testimony was detailed as far as the chronology of events and evaluations completed to assess the suspected areas of B.S.’s disability; his performance in school; the specific teaching methodologies used for instruction; B.S.’s interactions with his teachers and peers; the modifications and supports in place to assist B.W.; and the assessments utilized to determine that B.S. made reasonable and appropriate educational progress.

Based upon due consideration of the testimonial and documentary evidence presented at this hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, **I FIND** the following as **FACTS**:

B.S. was diagnosed with ADHD, combined type when he was five-years-old. In and around that time he was started on a trial of medication by his pediatrician.

Prior to entering kindergarten, J.S. (mother) reached out to Lamberti requesting that B.S. be provided a 504 Plan due to B.S.'s diagnosis of ADHD. This was based upon a recommendation by Dr. Isralowitz, B.S.'s Psychologist, who also suggested that certain accommodations be put in place. (P-1)

In September 2013, Casazza, the 504 Coordinator for the IEF School, reached out to J.S. and advised her that it was the school's practice to wait until the child came into the school setting to see how he functioned in the classroom. J.S. was assured at that time that some of Dr. Isralowitz's suggestions could be implemented without a 504 Plan.

No academic issues, social concerns or disciplinary issues were raised in kindergarten.

In first grade, aside from one incident wherein J.S. reached out to Casazza regarding an incident with B.S. being teased, which was addressed by the school, there were no academic concerns raised or social issues such as disciplinary problems, anger issues or inappropriate conduct. (P-25) From all reports, B.S. was an amiable and bright little boy who was progressing satisfactorily. (P-23 and P-25)

At the end of first grade, at the request of the petitioners and upon receipt of supporting medical documentation which included among other things the evaluations of Dr. Paul, Dr. Sheshadri and Dr. Isralowitz, the 504 Committee met for an eligibility determination which resulted in the development of a 504 Plan for implementation in the 2015-2016 school year (second grade). (P20 – P-21; R-10 and R-11) The

recommendations that were suggested by the doctors were for implementation of a 504 Plan, not for special education or related services.

A 504 Plan is usually formed after a parent comes forward with a diagnosis and a concern about how their child is performing in the classroom in light of the diagnosis. The school then starts the process to determine a child's 504 eligibility. The administration may or may not implement all of the recommendations made by a student's doctor as the doctor is not familiar with how the child functions in the school setting and their recommendation may or may not be appropriate based upon staff observations. The 504 Plan is revisited each year in September to determine if any "tweaks" are necessary.

The 504 Plan provided for B.S. for the 2015-2016 school year (second grade) provided for many of the recommendations proffered by B.S.'s doctors, but not all as some of them fell under "good teaching" and were already being implemented in the classroom when possible. B.S. was routinely observed by Casazza in the classroom, cafeteria and at recess to ensure that he was receiving the accommodations outlined in his 504 Plan. Additionally, he was also part of a social skills group that Casazza administered. The curriculum in the social skills group varied where one lesson may be geared for a student such as B.S. and another lesson may be geared towards another child who has a different deficit. However, all the lessons were designed to benefit the entire group.

In November 2015, J.S. (mother) requested a meeting due to concerns that the 504 Plan did not provide for the services that had been recommended by Dr. Paul. (P-27) The meeting took place on November 19, 2015, and was also attended by Dr. Paul. Thereafter, B.S. was provided additional services in the form of small group instruction in Foundations. (P-33, P-35) B.S.'s grades in second grade reflected that overall he was progressing satisfactorily. (P-46) Throughout this time, petitioners continued to provide the school with copies of the independent evaluations that they had obtained on B.S. behalf.

In September 2016 (third grade) B.S.'s 504 Plan was revisited and amended. (P-52) While the SNAP-IV Syndrome Rating Scale filled out by his teacher (Pirrone) did not reflect that B.S.'s diagnosis was impacting his performance in the classroom, his 504 Plan was amended to add a few additional accommodations such as "Talk to Text". (P-51, P-54, and P-55)

In December 2016, the District was provided with an evaluation that had been performed by Elleseff along with a request that B.S. be referred to the CST for eligibility and an appropriate IEP. (P-47, P-57)

In January 2017, a meeting was set up to decide whether an evaluation was warranted to determine if B.S. had a disability which adversely affected his educational performance and whether he was in need of special education and related services. (R-17) As part of the process a number of things were taken into consideration which included: review of B.S.'s 504 Plan; review of the private evaluations provided by the petitioners; communications from the petitioners; and B.S. cumulative file. Upon review and consideration, it was determined that further evaluations (educational, psychological, social history, speech/language, OT) were required and medical documentation reviewed to establish a medical diagnosis and vision and hearing be obtained. (R-18, R-20)

In addition to medical documentation that had been received from Dr. Lerner and Dr. Seshadri, the District was also provided a letter from Dr. Milrod who noted that in addition to his diagnosis of ADHD, he also diagnosed B.S. with high functioning ASD. (P-59)

The Social Work assessment was conducted in February 2016. (R-22) As part of the assessment process, B.S. student records were reviewed, parent interviews were conducted, a student interview was conducted and B.S. was observed at both lunch and recess. Based upon the totality of evaluation by the school Social Worker, Marydenise Appio, it was determined that B.S. had age appropriate interests both

inside and outside of the school setting. He appeared to get along with other children, however, did not always pick up on social cues.

The Educational Evaluation was conducted over a series of days in March 2017, by Szenasy which included administering a series of tests (KTEA-3, TAPS-3, Berry VMI – sixth edition). (R-21)

On the KTEA-3 assessment for reading, B.S. was able to read grade-level sentences and passages and accurately respond to all types of /wh/ questions. He was also able to respond to literal questions however occasionally confused story details when answering questions and would not refer back to the passage to correct/check his answers. He had difficulty responding to inferential questions.

In phonological processing, he was able to accurately identify rhyming words and words with the same sounds however was inconsistent in his ability to segment words into their individual sounds and delete sounds in words. He was able to read single and multi-syllabic words with automaticity, however, when presented with an unknown word, had difficulty correctly decoding it. B.S. exhibited appropriate reading fluency when reading.

In math, B.S. showed strength in his problem solving skills. His math calculation skills were comparable to about half of his grade level peers. However, he could not perform simple or multi-step calculations involving division or calculations involving fractions. He was having difficulty memorizing his multiplication facts and unable to solve multi-digit multiplication problems.

In writing, B.S. was able to generate creative ideas, however, needed to develop his writing stamina. He completed writing tasks very quickly and did not pay attention to details such as capitalization and punctuation. He does best when using his Chromebook and at times uses his speech to text feature of the Chromebook. Spelling is a relative difficulty for B.S. and he also has difficulty copying words from near point because he tends to not look at his paper when he writes.

B.S. also demonstrated a strength in his listening comprehension skills, however, displayed an area of weakness in his oral expression. On the TAPS-3, his overall score fell within the upper limits of average range of functioning (standard score of 110 and percentile range of seventy-five) which meant that his auditory processing skills were comparable to or higher than seventy-five percent of his age level peers. On the Beery VMI, B.S.'s Visual Motor Integration score, he fell within the upper limits of the low range which indicated that this was an area of weakness.

The Psychological Evaluation was conducted by the school Psychologist, Emilia Muglia over a series of two days in February. (R-24) As part of her evaluation, she administered the WISC-V to assess B.S.'s current cognitive abilities. B.S. had a full-scale IQ of 115 at a ninety-five confidence interval. Dr. Muglia noted that B.S. had been administered the WISC-IV in 2015 when he was seven-years-old and he was now nine-years-four-months and identified a number of factors that may have contributed to the discrepancy. She also recognized that it was easier to receive a false low score than a false high score and therefore proposed that the current IQ score was an underestimate of his true cognitive ability and that he probably falls between the high average and extremely high average range. This is consistent with the finding of Dr. Dranoff who also administered to B.S. when he was 10.3 years old, the WISC-V in 2018 and determined that B.S.'s full scale IQ was 116. I specifically **FIND** Dr. Muglia's findings credible as to B.S. full scale IQ.

On the Speech/Language Evaluation conducted by Berger, she found that B.S. had strengths in receptive, expressive, lexical semantic/and syntactic indexes however noted weaknesses in pragmatic language – particularly in picking up on non-verbal cues; providing more than one solution; recognizing when a communicative breakdown has occurred; and taking the perspective of others into account. Additionally, he does not always relate information in a sequential manner and provide the necessary details when retelling an event. These findings were similar to what Elleseff had determined and consistent with what the parents were reporting and what was observed in his social skills group.

The OT evaluation was conducted by Lodato. (R-23) B.S. scored above average with visual perceptual skills and average for visual motor integration skills. Functionally, he did not sit upright at the table top, therefore it caused decreased stability in his fine motor control. His fine motor skills were below average and if he did not sit upright, his skill decreased. Concerns were raised by his teachers on the sensory profile which they had completed.

Almost all of the evaluations done by the school identified instructional implications and/or recommendations. Upon completion of the evaluations, the CST met with the petitioners on April 5, 2017, to go through the results and develop an IEP. (R-26) The CST also read, reviewed and took into consideration was the information/evaluations provided by Dr. Milrod, Elleseff, Dr. Paul and Dr. Seshadri in developing the IEP as well as the parents concerns. (R-28)

At the April 5, 2017, IEP meeting, the CST determined that B.S. was eligible for special education and related services under the classification of “Other Health Impaired” and eligible to receive ESY. Annual measurable academic and/or functional goals and objectives were provided in the IEP for each identified area of weakness. As part of his programming and related services the IEP proposed that B.S. receive in-class resource (support) in reading/language arts, math, science and social studies. He would also receive pull-out supplementary instruction in reading/language arts for the same period of time. Additionally, he would receive ST group once a week for thirty minutes and OT for thirty minutes (1x month) and social skills group – 30 minutes (20x yearly). (R-28)

In order to prevent regression in B.S. social skills, language skills (including pragmatic/social skills), OT and academic skills, the IEP also offered B.S. the ESY program. The program included in-class services for reading/language arts, math, social skills group and related arts and pull-out services for ST Group. (R-28)

The accommodations and modifications included in the IEP among other things included: allowing extra time for task completion; allow typed rather than handwritten response; use of daily routine; frequently checking for understanding; modeling; small group instruction; directions repeated, clarified or reworded; read directions aloud; use interest to increase motivation; additional time to complete classroom tests/quizzes; modified tests/quizzes; allowed typed rather than handwritten responses; preferential seating; arrange private signal to cue student to off-task behavior; provide short breaks to focus attention; edit written work with teacher guidance; use social skills group to teach skills and provide feedback; use of Chrome book for all writing tasks within the classroom; availability of speech-to-text on the Chromebook for all writing tasks within the classroom. (R-28)

The petitioners consented to the implementation of the IEP, however, reserved their rights to seek changes to the IEP based upon the advice of their personal consultants. (R-28) Thereafter, the IEP was immediately implemented. B.S. report card for third grade found that he was either proficient or that progress was observed. His IEP progress report for the fourth quarter of his third-grade year reflected for the most part, that he was progressing either satisfactorily or gradually in his goals and objectives. (R-32, GB0465 – 0479)

B.S. did not attend the District's ESY program that summer, instead attended a program called Power Solving.

B.S.'s first IEP Progress Report in fourth grade was released in November 2017, and found his progress similar to the one in June 2017. However, as the year went on, a notable trend was seen in B.S.'s progress with each quarter. By the fourth quarter, with a few exceptions in reading, writing and math, B.S. was progressing satisfactorily and in two of the goals (Goal 10 (multiply within 100 with automaticity) and Goal 13 (improve phonological awareness), he had achieved the goal.

Notably, in the first half of the school year, the petitioner's requested that their consultants observe B.S. at the IEF School. Their findings were shared with the CST

and considered as part of the annual IEP review in conjunction with other evaluations/reports that were previously conducted/obtained. (R- 29) One of the reports was from Dr. Dranoff wherein he reported that he had administered the WISC0V to B.S. which placed B.S.'s full scale IQ at 116. This finding was similar to that of Dr. Muglia from the District.

By letter, dated April 26, 2018, the District was placed on notice that the petitioners were seeking an out of district placement at the Flex School. Through this letter, the petitioners asserted that B.S.'s was a twice exceptional student for whom the IEP and in-district program was not appropriately ambitious. Petitioner's further claimed, among other things, that B.S.'s IQ had dropped due in part to his program and services received in the District which was not appropriately meeting his learning needs. It was their belief that B.S. required a smaller environment where all the children were dealing with similar issues and the school offered a high level of academics but at the same time offered in vivos support. (P-82)

In June 2018, the school scheduled an annual IEP meeting to assess B.S.'s educational progress and to review and revise if necessary, his IEP. As part of the evaluation process, his teachers provided an outline of B.S. accomplishments and areas where he was progressing slowly such as in the social/emotional goals and objectives. (R-29) The CST also read, reviewed and took into consideration, among other things, the information/evaluations provided by Dr. Dranoff, Elleseff, Allen, Dr. Paul and Dr. Petti in developing the IEP as well as the parents' concerns.

Given the progress that B.S. had made, the same type of program was offered which provided measurable goals and objectives with some minor changes that were appropriate for B.S.'s needs. The IEP also recognized the achievements that B.S. had made over the course of the year and accordingly reduced the services as he no longer required the same level of support. One such example of that was in reading.

As part of his programming and related services the IEP proposed that he would receive in-class resource (support) for reading/language arts, math, science and social

studies. He would also receive pull-out supplementary instruction in reading/language arts and receive ST group, OT group and social skills group. Additionally, an ESY program was also offered to B.S. that among other things, included a social skill component (Power Solving) which was identical to the program that B.S. had attended the year before.

(R-29)

The accommodations and modifications offered in the IEP for the 2018-2019 academic year included among other things: allowing extra time for task completion; allowing typed rather than handwritten responses; frequent checks for understanding; provide modeling; provide small group instruction; directions repeated, clarified or reworded; read directions aloud; use interest to increase motivation; additional time to complete classroom tests/quizzes; modified tests/quizzes; preferential seating; arrange private signal to cue student to off-task behavior; provide short breaks to focus attention; edit written work with teacher guidance; use social skills group to teach skills and provide feedback; use of Chromebook for all writing tasks within the classroom; availability of speech-to-text on the Chromebook for all writing tasks within the classroom. (R-29)

The petitioners did not consent to the implementation of the proposed IEP for the 2018-2019 academic year nor did B.S. attend the 2018 ESY program which the District had offered.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

This case arises under the Individuals with Disabilities Education Act, 20 U.S.C.A. §§ 1400 to 1482. One purpose of the Act, among others, is to ensure that all children with disabilities have available to them a “free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C.A. § 1400(d)(1)(A). This “free appropriate public education” is known as FAPE. In short, the Act defines FAPE as special education and related services

provided in conformity with the IEP. See 20 U.S.C.A. § 1401(9). A FAPE and related services must be provided to all students with disabilities from age three through twenty-one. N.J.A.C. 6A:14-1.1(d). A FAPE means special education and related services that: a) have been provided at public expense, under public supervision and direction, and without charge; b) meet the standards of the State educational agency; c) include an appropriate preschool, elementary, or secondary school education in the State involved; and d) are provided in conformity with the individualized education program (IEP) required under sec. 614(d). 20 U.S.C.A. § 1401(9); N.J.A.C. 6A:14-1.1 et seq. The responsibility to deliver these services rests with the local public-school district. N.J.A.C. 6A:14-1.1(d).

In order to provide a FAPE, a school district must develop and implement an IEP. N.J.A.C. 6A:14-3.7. An IEP is “a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” Sch. Comm. of Burlington v. Dep’t of Educ. of Mass., 471 U.S. 359, 368, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385, 394 (1985). An IEP should be developed with the participation of parents and members of a district board of education’s CST who have participated in the evaluation of the child’s eligibility for special education and related services. N.J.A.C. 6A:14-3.7(b). The IEP team should consider the strengths of the student and the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluations of the student; the student’s language and communications needs; and the student’s need for assistive technology devices and services. The IEP establishes the rationale for the pupil’s educational placement, serves as the basis for program implementation, and complies with the mandates set forth in N.J.A.C. 6A:14-1.1 to -10.2.

The Act, however, leaves the interpretation of FAPE to the courts. See Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999). In Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 203, 102 S. Ct. 3034, 3049, 73 L. Ed. 2d 690, 710 (1982), the United States Supreme Court held that a state provides a handicapped child with FAPE if it provides personalized

instruction with sufficient support services to permit the child to benefit educationally from that instruction. The Court reasoned that the Act was intended to bring previously excluded handicapped children into the public education systems of the states and to require the states to adopt procedures that would result in individualized consideration of and instruction for each child. Rowley, 458 U.S. at 189, 102 S. Ct. at 3042, 73 L. Ed. 2d at 701. The Act did not, however, impose upon the states any greater substantive educational standard than would be necessary to make such access to public education meaningful. Rowley, 458 U.S. at 192, 102 S. Ct. at 3043, 73 L. Ed. 2d at 703. In support of this limitation, the Court quoted Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania, 334 F. Supp. 1257 (ED Pa. 1971) and 343 F. Supp. 279 (1972), and Mills v. Board of Education of District of Columbia, 348 F. Supp. 866 (DC 1972). Rowley, 458 U.S. at 192, 102 S. Ct. at 3043-44, 73 L. Ed. 2d at 703. The Court reasoned that these two cases were the impetus of the Act; that these two cases held that handicapped children must be given access to an adequate education; and that neither of these two cases purported any substantive standard. Rowley, 458 U.S. at 192-93, 102 S. Ct. at 3043-44, 73 L. Ed. 2d at 703-04.

In addition, the Court noted that available funds need only be expended “equitably” so that no child is entirely excluded. Rowley, 458 U.S. at 193, 102 S. Ct. at 3044, 73 L. Ed. 2d at 704, n.15. Indeed, the Court commented that “the furnishing of every special service necessary to maximize each handicapped child’s potential is . . . further than Congress intended to go.” Rowley, 458 U.S. at 199, 102 S. Ct. at 3047, 73 L. Ed. 2d at 707. Therefore, the inquiry is whether the IEP is “reasonably calculated” to enable the child to receive educational benefits. Rowley, 458 U.S. at 206-07, 102 S. Ct. at 3051, 73 L. Ed. 2d at 712.

The Board will have satisfied the requirements of law by providing B.S. with personalized instruction and sufficient support services “as are necessary to permit [him] ‘to benefit’ from the instruction.” G.B. v. Bridgewater-Raritan Reg’l Bd. of Educ., 2009 U.S. Dist. LEXIS 15671 (D.N.J. Feb. 27, 2009) (citing Rowley, 458 U.S. at 189, 102 S. Ct. at 3042, 73 L. Ed. 2d at 701). The IDEA does not require the Board to maximize B.S.’s potential or provide him the best education possible. Instead, the

IDEA requires a school district to provide a basic floor of opportunity. Carlisle Area Sch. v. Scott P., 62 F.3d 520, 533–34 (3d Cir. 1995). But an IEP must provide meaningful access to education and confer some educational benefit upon the child. Rowley, 458 U.S. at 192, 102 S. Ct. at 3043, 73 L. Ed. 2d at 703. To meet its obligation to deliver FAPE, a school district must offer an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. Endrew F. v. Douglas Cnty. Sch. Dist., 580 U.S. (2017);137 S.Ct. 988; 197 LEd 2d 335.

“The educational opportunities provided by our public school systems undoubtedly differ from student to student, depending upon a myriad of factors that might affect a particular student's ability to assimilate information presented in the classroom.” Rowley, 458 U.S. at 198, 102 S. Ct. at 3047, 73 L. Ed. 2d at 707. The Rowley Court recognized that measuring educational benefit is a fact-sensitive, highly individualized inquiry, and that “[i]t is clear that the benefits obtainable by children at one end of the spectrum will differ dramatically from those obtainable by children at the other end, with infinite variation in between.” Rowley, 458 U.S. at 202, 102 S. Ct. at 3049, 73 L. Ed. 2d at 709.

Based upon the testimony and documentary evidence, I **CONCLUDE** that the June 2018, IEP proposed by the District offered B.S. a FAPE with the opportunity for meaningful educational benefit and progress appropriate in light of B.S.’s circumstances, within the least restrictive environment.

I **CONCLUDE** that the program offered B.S. by the District constituted FAPE as that term is defined by law. A review of the evidence reveals that B.S. steadily progressed in his educational program, and that the CST regularly monitored and adjusted his program in an ongoing effort to personalize his instruction and address his educational needs. School personnel testified convincingly as to B.S.’s progress, and the burden of proof and production rests with the Board. N.J.S.A. 18A:46-1.1

The IDEA also includes a mainstreaming requirement requiring education in the “least restrictive environment.” 20 U.S.C.A. § 1412(a)(5) mandates that

[t]o the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

The law describes a continuum of placement options, ranging from mainstreaming in a regular public school setting as least restrictive, to enrollment in a residential private school as most restrictive. 34 C.F.R. § 300.115 (2015); N.J.A.C. 6A:14-4.3. Federal regulations further require that placement must be “as close as possible to the child’s home.” 34 C.F.R. § 300.116(b)(3) (2015); N.J.A.C. 6A:14-4.2; Oberti v. Clementon Bd. of Educ., 789 F. Supp. 1322 (D.N.J. 1992).

Courts in this Circuit have interpreted this mainstreaming requirement as mandating education in the least restrictive environment that will provide meaningful educational benefit. “The least restrictive environment is the one that, to the greatest extent possible, satisfactorily educates disabled children together with children who are not disabled, in the same school the disabled child would attend if the child were not disabled.” Carlisle Area Sch. v. Scott P., 62 F.3d 520, 535 (3d Cir. 1995), cert. den. sub. nom., Scott P. v. Carlisle Area Sch. Dist., 517 U.S. 1135, 116 S. Ct. 1419, 134 L. Ed. 2d 544 (1996).

The IEF School is B.S.'s home school and is the least restrictive environment that will provide B.S. a meaningful educational benefit. The evaluations conducted in 2017 revealed among other things that B.S. had difficulty with maintaining focus in class, pragmatics, social skills, fine motor skills, handwriting skills, positioning when sitting in a chair and oral expression. As a result of the evaluations, B.S. was classified as "Other Health Impaired" because it was determined that his ADHD and ASD were impacting him in the classroom setting. He was appropriately placed in the general education class with in class supports for reading/language arts, math, science and social studies. He was also provided pull out supplementary instruction in reading/language arts and also received OT and was in the social skills group.

Due to the demonstrative progress he made over the 2017-2018 (fourth grade) school year, the IEP offered for the 2018-2019 (fifth grade) academic year, contained many of the same services and supports with some modifications. It provided services and accommodations tailored to his unique needs and set measureable goals and benchmarks based upon his individual abilities and intellectual capabilities.

Parents who unilaterally withdraw their child from public school and place him in a private school without consent from the school district "do so at their own financial risk." School Comm. of Burlington v. Mass. Dep't of Educ., 471 U.S. 359, 374 (1985). They may be entitled to reimbursement for the costs of their unilateral private placement only if a court finds that the proposed IEP was inappropriate and that the private placement was appropriate under the IDEA. 20 U.S.C. § 1412(a)(10)(C)(ii); N.J.A.C. 6A:14-2.10(b).

When a court examines whether a district has provided FAPE, the appropriateness of an IEP is not determined by a comparison between the private school unilaterally chosen by parents and the program proposed by the District. S.H. v. State-Operated Sch. Dist. of Newark, 336 F.3d 260, 271 (3d Cir. 2003). Rather, the pertinent inquiry is whether the IEP proposed by the District offered FAPE with the opportunity for significant learning and meaningful educational benefit within the LRE. G.B. and D.B. ex rel J.B. v. Bridgewater-Raritan Reg'l Bd. of Educ., EDS 4075-06, Final Decision (June 13, 2007), <http://njlaw.rutgers.edu/collections/oal/>. Upon a finding that the District provided FAPE, the appropriateness of the private school program is irrelevant. H.W. and J.W. ex rel A.W. v. Highland Park Bd. of Educ., 108 Fed. Appx. 731, 734 (3d Cir. 2004). The District bears the burden of proof by the preponderance of the competent and credible evidence that it has provided a FAPE to B.S. in the least restrictive environment. N.J.S.A. 18A:46 -1.1.

In this case, the District has proven by a preponderance of the competent and credible evidence that the IEP proposed by the District offered B.S. a FAPE with the opportunity for meaningful educational benefit appropriate in light of B.S.'s circumstances, within the least restrictive environment. To the extent that I have concluded that the District has provided a FAPE to B.S., the appropriateness of a placement at the Flex School is irrelevant.

Child Find Claim

Petitioners also allege claims against the District arising from the requirement in Federal Law that local public-school districts locate and identify children in need of special education services. Known as "child find," the requirements of 20 U.S.C. §1412(a)(3)(A) provide for the implementation of policies and procedures designed to ensure that "[a]ll children with disabilities residing in the State, . . . regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located and evaluated. . ." See also: 34 C.F.R. §300.111; N.J.A.C. 6A:14-3.3.

Respondent had a continuing obligation under the IDEA to identify and evaluate students reasonably suspected of having a disability. P.P. ex rel. Michael P. v. West Chester Area Sch. Dist., 585 F.3d 727, 738 (3d Cir. 2009). But case law interpreting this obligation has recognized that it is not, and cannot be, the intent of the law that school districts locate and service each and every struggling student. The courts have recognized that “the IDEA is not an absolute liability statute and the ‘child find’ provision does not ensure that every child with a disability will be found.” J.S. v Scarsdale Union Free Sch. Dist., 826 F. Supp. 2d 635, 660(S.D.N.Y. 2011), quoting A.P. v. Woodstock Bd. of Educ., 572 F. Supp. 2d 221 (D.C. Ct. 2008). The courts have moreover recognized that where a disability is not clear, the student or their parents have some obligation to bring their concerns to the school district’s attention. See e.g. B.J. v River Vale Bd. of Educ., EDS 1335-06, Final Decision (June 19, 2007) <http://njlaw.rutgers.edu/collections/oal/>>.

Petitioners argument that the District failed to meet its obligations to timely identify B.S. as a special education student is not persuasive. B.S. progressed in kindergarten and first grade and had no academic or social issues that would have triggered the need for a 504 Plan.

At the end of first grade, upon receipt of additional medical documentation and request by the petitioners for the development of a 504 Plan, the 504 Committee met for an eligibility determination which resulted in the development of a 504 Plan for implementation in the 2015-2016 school year (second grade). The 504 Plan remained in place through second grade and for most of the 2016-2017 (third grade) academic year. Of note, it was revisited in September 2016, and amended.

In December 2016, the petitioners requested that B.S. be referred to the CST to determine his eligibility which occurred in January 2017. Evaluations were conducted and B.S. was found eligible for special education and related services and an IEP was developed in April 2017 and immediately implemented.

At all times, the District was responsive and acted appropriately. Accordingly, I **CONCLUDE** that the District has met its “child find” obligations set forth in the IDEA in identifying and classifying B.S. as a student in need of special education and related services. I further **CONCLUDE** that the petitioners are not entitled to reimbursement for the costs incurred for their experts prior to B.S.’s referral to the CST.

ORDER

Based on the foregoing, the due-process petition is **DISMISSED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2019) 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 (2019). 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.



September 9, 2019
DATE

TAMA B. HUGHES, ALJ

Date Received at Agency

Date Mailed to Parties:

TBH/dm

APPENDIX

Witnesses

For Petitioners:

J.S.
Theodore Petti, M.D.
Tatyana Elleseff
Erik Dranoff, Ph.D.
Thomas Gavor
Sheila Allen-Smith

For Respondent:

Amy Berger
Linda Flora
Jennifer Stetz
Shaune Aileen Casazza
Bernadette Szenasy (f/k/a Van Pelt)
Meghan Deutsch
Michell Ritter-Lodato

Exhibits

For Petitioners:

P-1 June 19, 2013, letter from Stuart Isralowitz, Ph.D. to Armand Lamberti
P-2 Email from Armand Lamberti to J.S.
P-3 December 20, 2013, letter from US Department of Education to Dr. Jim
Delisle
P-4 Email from J.S. to Lori Alhanti
P-5 Email exchange between J.S. and Lori Alhanti
P-6 Email from J.S. to Maggie Silver

- P-7 Email exchange between J.S. and Lori Alhanti
- P-8 Email from J.S. to J.S. forwarding Email from Lori Alhanti
- P-9 Email exchange Between J.S. and Lori Alhanti
- P-10 Email from J.S. to Lori Alhanti
- P-11 Grade history
- P-12 Email Exchange between J.S. and Lori Alhanti
- P-13 Email from Lori Alhanti to J.S.
- P-14 Email from J.S. to Lori Alhanti
- P-15 Email from J.S. to Stuart Isralowitz, Ph.D.
- P-16 Email exchange between J.S. and Lori Alhanti
- P-17 Psychological Evaluation by Howard Paul, Ph.D.
- P-18 Curriculum Vitae of Howard A. Paul, Ph.D.
- P-19 May 29, 2015, letter from Howard Paul, Ph.D. to Armand Lamberti
- P-20 June 1, 2015, letter from J.S. and J.S. to Armand Lamberti
- P-21 June 10, 2015, 504 Team Eligibility Determination
- P-22 504 Plan
- P-23 June 15, 2015, 504 Evaluation Summary & Determination of Eligibility
- P-24 Email from Lori Alhanti to J.S. & J.S.
- P-25 B.S. Grade 1 Report Card
- P-26 2015-2016 504 Plan
- P-27 Email from J.S. to Armand Lamberti
- P-28 Email from Armand Lamberti to J.S.
- P-29 Email from J.S. to Armand Lamberti
- P-30 Conner's Abbreviated Teacher Rating Scale
- P-31 November 2015, 504 Plan Accommodation Plan Summary
- P-32 Email from J.S. to Dr. Howard Paul
- P-33 Email exchange between J.S. and Chris Doane
- P-34 Email exchange between Chris Doane and Shaune Casazza
- P-35 RTI Student Intervention Log
- P-36 Student Progress Report
- P-37 Conner's Abbreviated Teacher Rating Scale
- P-38 Gilliam Asperger's Disorder Scale (Rater, Kathleen Guide)

- P-39 Gilliam Asperger's Disorder Scale (Rater, JS)
- P-40 March 8, 2016, letter from Lewis Milrod, M.D.
- P-41 Email from J.S. to Dr. Howard Paul
- P-42 June 2, 2016, letter from Derek Ressa to J.S. and J.S.
- P-43 Email from J.S. to Shaune Casazza
- P-44 RTI Student Intervention Log
- P-45 Arithmetic re-assessment by Dr. Howard Paul
- P-46 Report Card and Progress Report
- P-47 Comprehensive Language & Literacy Evaluation by Tatyana Elleseff, M.A., CCC-SLP
- P-48 Parent chronology of events
- P-49 Spell-2
- P-50 Curriculum Vitae of Tatyana Elleseff, M.A., CCC-SLP
- P-51 SNAP-IV Syndrome Rating Scale
- P-52 2016-2017 504 Plan
- P-53 September 27, 2016, letter from Lenore Boyarin, Esq. to Derek Ressa
- P-54 SNAP-IV Syndrome Rating Scale
- P-55 SNAP-IV Syndrome Rating Scale
- P-56 October 14, 2016, letter from Lenore Boyarin, Esq. to Derek Ressa
- P-57 December 15, 2016, letter from Lenore Boyarin, Esq. to Stephen M. Bacigalupo, Esq.
- P-58 February/March 2017 Occupational Therapy Evaluation
- P-59 March 9, 2017, letter from Lewis M. Milrod, M.D.
- P-60 March 15, 2017, letter from Lenore Boyarin, Esq. to Stephen M. Bacigalupo, Esq.
- P-61 SD Speech/Language Evaluation by Amy Berger, M.A., CC-SLP
- P-62 SD Psychological Evaluation by Emilia Muglia, Psy.D.
- P-63 March 23, 2017, letter from Lenore Boyarin, Esq. to Stephen M. Bacigalupo, Esq.
- P-64 SD Education Evaluation
- P-65 Psychiatric Evaluation Report by Theodore A. Petti, M.D.
- P-66 Curriculum Vitae of Theodore A. Petti, M.D., MPH

- P-67 In Evidence as R-28
- P-68 Occupational Therapy Evaluation by Sheila Smith Allen, M.A., OT
- P-69 Curriculum Vitae of Sheila Smith Allen, M.A., OT
- P-70 August 30, 2017, letter from Lenore Boyarin, Esq. to Stephen M. Bacigalupo, Esq.
- P-71 September 13, 2017, letter from Lenore Boyarin, Esq. to Stephen M. Bacigalupo, Esq.
- P-72 September 18, 2017, letter from Lenore Boyarin, Esq. to Stephen M. Bacigalupo, Esq.
- P-73 Observation Report of Sheila Smith-Allen, M.A., OT
- P-74 October 26, 2017, letter from Lenore Boyarin, Esq. to Stephen M. Bacigalupo, Esq.
- P-75 October 27, 2017, letter from Lenore Boyarin, Esq. to Stephen M. Bacigalupo, Esq.
- P-76 November 27, 2017, letter from Lenore Boyarin, Esq. to Stephen M. Bacigalupo, Esq.
- P-77 School Visit Observation Report of Tatyana Elleseff, M.A., CCC-SLP
- P-78 January 29, 2018 - Academic Enrichment & Talented Programs Student Progress Report
- P-79 January 29, 2018, Progress Report for IEP Goals and Objectives
- P-80 February 15, 2018, letter from Lenore Boyarin, Esq. to Stephen Bacigalupo, Esq.
- P-81 April 18, 2018, Progress Report for IEP Goals and Objectives
- P-82 April 26, 2018, letter from Lenore Boyarin, Esq. to Stephen M. Bacigalupo, Esq.
- P-83 Psychological Evaluation of Erik Dranoff, Ph.D.
- P-84 Curriculum Vitae of Erik Dranoff, Ph.D.
- P-85 June 20, 2018, letter from Lenore Boyarin, Esq. to Stephen M. Bacigalupo, Esq.
- P-86 June 22, 2018, Progress Report for IEP Goals and Objectives
- P-87 Flex School Progress Report Note
- P-88 Curriculum Vitae of TJ Gavor

- P-89 August 15, 2018, letter from Lenore Boyarin, Esq. to Marc Mucciolo, Esq.
- P-90 August 16, 2018, letter from Lenore Boyarin, Esq. to Marc Mucciolo, Esq.
- P-91 Progress Note by Theordore A. Petti, M.D.
- P-92 August 21, 2018, letter from Lenore Boyarin, Esq. to Marc Mucciolo, Esq.
- P-93 Flex School Quarter 1 Report Card
- P-94 December 14, 2018, letter from Lenore Boyarin, Esq. to Joseph Castellucci, Esq.
- P-95 Observation Report of Tatyana Elleseff, M.A., CCC-SLP
- P-96 January 2, 2019, letter from Lenore Boyarin, Esq. to Joseph Castellucci, Esq.
- P-97 "Feeling Guy" handout created by B.S.
- P-98 Responsible Action sheet created by B.S.
- P-99 January 15, 2019, letter from Lenore Boyarin, Esq. to Joseph Castellucci, Esq.
- P-100 January 15, 2019, letter from Lenore Boyarin, Esq. to Joseph Castellucci, Esq.
- P-101 Observation Report of Erik Dranoff, PhD.
- P-102 Observation Report of Sheila Smith-Allen, M.A.,OT
- P-103 January 16, 2019, letter from Lenore Boyarin, Esq. to Joseph Castellucci, Esq. enclosing Dr. Petti's file; Dr. Petti's file.
- P-104 January 16, 2019, letter from Lenore Boyarin, Esq. to Joseph Castellucci, Esq. enclosing Dr. Paul's file; Dr. Paul's file.
- P-105 January 18, 2019, letter from Lenore Boyarin, Esq. to Joseph Castellucci, Esq. enclosing Tatyana Elleseff's file; Tatyana Elleseff's file.
- P-106 January 16, 2019, letter from Lenore Boyarin, Esq. to Joseph Castellucci, Esq. enclosing Dr. Dranoff's Observation Report.
- P-107 January 21, 2019, letter from Lenore Boyarin, Esq. to Joseph Castellucci, Esq. enclosing Observation Report of Sheila Smith-Allen.
- P-108 January 21, 2019, letter from Lenore Boyarin, Esq. to Joseph Castellucci, Esq. enclosing Sheila Smith-Allen's file; Sheila Smith-Allen's file.
- P-109 January 23, 2019, letter from Lenore Boyarin, Esq. to Joseph Castellucci, Esq. enclosing Dr. Dranoff's file; Dr. Dranoff's file.

- P-110 January 24, 2019, letter from Lenore Boyarin, Esq. to Joseph Castellucci, Esq.
- P-111 Flex School Progress Note
- P-112 Flex School Enrollment Contract
- P-113 Flex School Naples Packet
- P-114 Flex Teacher Certifications
- P-115 Documents pulled from discovery documents received from the District on January 25, 2019
- P-116 Curriculum Vitae of Amy Berger
- P-117 Curriculum Vitae and Certifications of Bernadette T. Szenasy
- P-118 Curriculum Vitae and Certifications of Beth Stanton
- P-119 Curriculum Vitae and Certifications of Deborah D. Rizzoli
- P-120 Curriculum Vitae and Certifications of Derek Ressa
- P-121 Curriculum Vitae and Certifications of Donna Pirrone
- P-122 Curriculum Vitae and Certifications of Jason S. Bayly
- P-123 Curriculum Vitae and Certifications of Jennifer L. Grant (Stanislao)
- P-124 Curriculum Vitae and Certifications of Jennifer Stetz
- P-125 Curriculum Vitae and Certifications of Linda Kenny
- P-126 Curriculum Vitae and Certifications of Mary Denise Appio
- P-127 Curriculum Vitae and Certifications of Michelle Ritter-Lodato
- P-128 Curriculum Vitae and Certifications of Shaune A. Casazza
- P-129 Curriculum Vitae and Certifications of Sommer Engler Ott
- P-130 Curriculum Vitae and Certifications of Susan K. Wardell
- P-131 Curriculum Vitae and Certifications of Meghan Drews Deutsch
- P-132 Flex School 2018-2019 Q2 Report Card

For Respondent:

- R-1 October 7, 2016, letter from Lenore Boyarin, Esq. to Derek Ressa
- R-2 March 23, 2017, letter from Lenore Boyarin, Esq. to Stephen Bacigalupo, Esq.
- R-3 Prehearing Order
- R-4 January 9, 2019, letter from Joseph Castellucci, Jr., Esq. to Lenore

- Boyarin, Esq.
- R-5 January 11, 2019, letter from Lenore Boyarin, Esq. to Joseph Castellucci, Jr., Esq.
 - R-6 January 25, 2019, letter from Joseph D. Castellucci, Jr., Esq. to Lenore Boyarin, Esq.
 - R-7 January 25, 2019, letter from Joseph D. Castellucci, Jr., Esq. to Lenore Boyarin, Esq.
 - R-8 Letter and Subpoena Duces Tecum, Dated January 30, 2019, from Joseph D. Castellucci, Jr. to Jacqui Byrne
 - R-9 January 30, 2019, Email chain
 - R-10 Section 504 Accommodation Plan, dated June 2015
 - R-11 Section 504 Accommodation Plan, dated September 2015
 - R-11A June 18, 2014, Neurodevelopmental Initial Evaluation
 - R-12 Section 504 Accommodation Plan, dated September 2015
 - R-13 Conference outline, dated October 24, 2016
 - R-14 Notice regarding B.S.'s missing homework assignments
 - R-15 Self-Evaluation by B.S.
 - R-16 Teacher rating scales
 - R-17 Invitation for initial identification and evaluation planning meeting, dated January 13, 2017
 - R-18 Initial identification and evaluation planning – proposed action, dated January 19, 2017
 - R-19 Correspondence enclosing evaluations from Bernadette Van Pelt to Petitioners, dated March 27, 2017
 - R-20 Health/Vision/Audiometric summary, dated January 19, 2017
 - R-21 March 24, 2017, Educational Evaluation
 - R-22 February 28, 2017, Social Work Assessment
 - R-23 March 3, 2017, Occupational Therapy Evaluation
 - R-24 March 22, 2017, Psychological Evaluation
 - R-25 March 2017, Speech/Language Evaluation
 - R-26 Invitations to IEP meetings
 - R-27 Request for additional assessment, dated May 22, 2017

- R-28 May 1, 2017, IEP
- R-29 June 14, 2018, Annual Review of IEP (Draft)
- R-30 2016-2017 and 2017-2018 Report Cards
- R-31 Report Cards 2015-2016 school years
- R-32 June 22, 2018, letter from Bernadette Van Pelt to J.S. and J.S. and B.S.
Progress Report for IEP Goals and Objectives 2017-2018
- R-33 NJ PARCC score reports
- R-34 Speech Language data
- R-35 Related services sign in sheets
- R-36 Social Skills attendance forms
- R-37 Assessments for independent reading levels
- R-38 Scot Foresman Baseline Group Test
- R-39 Reading logs
- R-40 Word identification assessment
- R-41 Communication logs
- R-42 Reflection questions
- R-43 Writing samples
- R-44 Communication logs from Mr. Bayley's class
- R-46 Work samples
- R-47 2016 Emails
- R-48 2017 Emails
- R-49 2018 Emails
- R-50 Curriculum Vitae's
- R-51 Supplement to subpoena to Jacqueline Byrne dated January 31, 2019
- R-52 WIST Score Reports
- R-53 January 25, 2019, Email Chain
- R-54 Supplemental report, dated February 12, 2019
- R-55 January 29, 2019, Observation Report