



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 10045-21

AGENCY DKT. NO. 2022-33569

D.S. AND J.R. ON BEHALF OF A.S.,

Petitioners,

v.

TENAFLY BOARD OF EDUCATION,

Respondent.

Beth A. Callahan, Esq., for petitioners (Callahan & Fusco, attorneys)

Stacey T. Cherry, Esq., for respondent (Fogarty & Hara, attorneys)

Record Closed: March 22, 2023

Decided: May 1, 2023

BEFORE **SUSANA E. GUERRERO**, ALJ:

STATEMENT OF THE CASE

In accordance with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1415, D.S. and J.R. requested a due process hearing on behalf of their son, A.S., who is classified as eligible for special education and related services. Petitioners assert that the IEP proposed by the Tenafly Boro Board of Education (the Board, or the District) did

not offer A.S. a free and appropriate public education (FAPE). The parents unilaterally placed A.S. in an out-of-district placement, for which they seek reimbursement.

PROCEDURAL HISTORY

Petitioners filed a request for a due process hearing on or around November 11, 2021, which was transmitted to the Office of Administrative Law (OAL) and filed on December 13, 2021. Petitioners filed an Amended Petition for Due Process on or around December 27, 2021, and a second Amended Petition on or around May 12, 2022. The hearing was initially scheduled to begin on March 30, 2022, but was adjourned at the request of the District, and the April 21, 2022 and April 25, 2022 hearing dates were adjourned at the request of the petitioners. The hearing was rescheduled to May 2, 6, and 13, 2022, however these dates were also adjourned at the request of the petitioners. The hearing took place over the course of the following days: June 6, 2022, September 28, 2022, October 19, 2022, October 20, 2022, and October 21, 2022. The parties submitted post-hearing summation briefs on March 22, 2023, at which time the record closed.

FACTUAL DISCUSSION AND FINDINGS OF FACT

Based on the testimony the parties provided, and my assessment of its credibility, together with the documents the parties submitted, and my assessment of their sufficiency, I **FIND** the following as **FACT**:

A.S. was born in October 2018 and resides in the Tenaflly school district. When he was one year old, the parents noticed a regression in his speech. In February 2020, A.S.'s parents took him to Hackensack University Medical Center for an audiological evaluation and a speech/language evaluation, and he was diagnosed with a receptive and expressive language disorder. Early intervention services, with speech and language therapy, were recommended, and he started receiving speech and language therapy in March 2020. In June 2020, A.S. was diagnosed with autism spectrum disorder (ASD) and developmental delays. At around that time, A.S. also began receiving occupational therapy (OT).

A.S. was deemed eligible for early intervention services, but the parents opted to secure private services, including about twenty-five hours per week of in-person ABA (Applied Behavioral Analysis) therapy; OT about twice a week; and speech therapy about three times per week. Prior to turning three years old, including throughout the 2020–2021 school year, A.S. attended a private preschool program where he also had the support of an ABA therapist retained by the parents.

The petitioners' first contact with the District's Special Services was a transition planning conference in late April 2021, at which time they discussed the District's preschool programs. Although J.R. alleged during her testimony that District staff pre-determined A.S.'s placement and/or program at that time, the preponderance of the evidence does not support this assertion.

By letter dated May 5, 2021, noting that A.S. was turning three years old in October 2021, the parents requested that the District evaluate A.S. to determine eligibility for special education and related services. The parents informed the District that A.S. had been diagnosed with autism and displays developmental delays primarily in expressive language, but also fine motor delays, and they provided the District with medical records.¹ These records include a Developmental Pediatrics Initial Consultation report from a June 2020 examination in which the developmental pediatrician diagnosed A.S. (then nineteen months old) with ASD and developmental delays. Dr. Nalven recommended, in part, continued private speech/language (S/L) therapy twice a week, and early intervention services. In a November 2020 follow-up evaluation, Dr. Nalven recommended, in part, continuing with OT and S/L therapies, continuing ABA therapy, and the preschool program with supports "as appropriate." According to the parents, A.S. had done well at the private preschool.

Based on these assessments, the District determined that A.S. was diagnosed with ASD, together with other developmental delays. A.S. had weak expressive and

¹ Records provided to the District are marked as J-1 through J-8, and include evaluations and medical records from 2020, including a Audiological Evaluation; Speech Language Evaluation from Hackensack University Medical Center; ophthalmology report; Occupational Therapy report recommending OT.

receptive language skills, including not responding to his name and having a significantly limited phonemic repertoire. He also displayed low muscle tone, fine motor weaknesses, and sensory issues. A preponderance of the evidence exists that the Child Study Team (CST) considered the information made available to them by the parents, including the recommendations contained in Dr. Nalven's report—that A.S. continue with OT, S/L therapy, and ABA therapy within a pre-school program.

The District scheduled an Initial Identification and Evaluation Planning Meeting for May 24, 2021. Those in attendance included the parents, a District school psychologist, a District speech language (S/L) pathologist, LDTC Maria Lucibello (Lucibello), the case manager/social worker Natalie Bednarczyk (Bednarczyk) and, as requested by the parents, the teacher from the District's CUBS preschool program.

J.R. testified that at the meeting, they talked about how A.S. was nonverbal, had inconsistent eye contact, had difficulty following directions, and had rocking, hand-flapping, and head-banging behavior.

With input from the parents and the CST, and considering the records provided by the parents, the District set forth a Proposed Action Plan which included conducting a number of evaluations, including: an educational evaluation (with a classroom observation at current preschool, and BASC); a psychological evaluation; a social history; a S/L evaluation; an OT evaluation; and later a physical therapy (PT) evaluation. The parents consented to the proposed evaluations.

Evaluations

A Psychological Evaluation was conducted by Emily Appiah, M.A. (Appiah), the District's school psychologist. The School Psychological Report, dated June 15, 2021, notes that the evaluation consisted, at least in part, of a records review, and completion of the BASC-3 by both A.S.'s then-current preschool teacher and D.S. The report notes that A.S.'s receptive language improved significantly but his expressive language continues to be limited and is the primary concern at that time. It notes that the parents' report that A.S. is "very interested in peers and plays with and parallel to them at school."

A.S.'s teacher reported that he does "nicely" in the classroom and benefits from his aide's support, but also that he has done well without her, and that he enjoys the kids in the classroom. The teacher had no "behavioral or emotional concerns" regarding A.S. According to the parent ratings, A.S. exhibited clinically significant levels of concern in the areas of atypicality and functional communication; and she rated the areas of hyperactivity, attention problems, withdraw, social skills and activities of daily living all within the "at-risk" range. On the other hand, A.S.'s classroom teacher did not rate any area as being in the clinically significant range; but she noted his social skills to fall at the "at-risk" range, with all remaining areas as being within the "normal" range. (J-22.)

Given the District witnesses' testimony, a preponderance of the evidence exists that the District considered the differences between the BASC report in determining eligibility, including the parents' concerns in areas of communication, hyperactivity, attention problems and weak social skills. These areas of concern are addressed in the IEP.

A Social History assessment was conducted by social worker Natalie Bednarczyk, MSW (Bednarczyk) using information provided by the parents. (J-23.) The parents conveyed that A.S.'s speech was regressing, and the mother noted that the goal was for A.S. to increase his speech production, and improve his fine motor skills and social skills. No significant concerns were noted in this assessment. The CST took into account the parents' concerns about A.S.'s communication and language, as well as the fact that A.S. spent a lot of time with typical peers since an early age, doing sports, a two-year-old program, and then a three-year-old program.

An Educational Evaluation was conducted on July 1, 2021 by Learning Disability Teacher Consultant (LDTC) Maria Lucibello (Lucibello), and reported to the CST by Nancy Parker (Parker). Lucibello observed A.S. in his preschool classroom and documented her findings. It was reported that, in the classroom, A.S. seemed to work well and was able to follow some directions; he sat in a group and recognized his name in print and had receptive language. The report notes that the school shared that A.S. is improving socially and having more positive peer interactions, is playing more in the classroom and on the playground, and is increasingly more willing to play with his peers

in school. It also notes that A.S. struggles with expressive language and fine motor delays. He was observed to interact with his peers with prompting and was able to answer “yes” or “no” to questions. He was also observed to follow directions. Lucibello worked with A.S. and his mother twice to do assessments, however, he was unable to complete the standardized testing. Since we could not complete this testing, the District did consider J.R.’s report of A.S.’s functional skills, including that he knew his colors and shapes and that he could follow one and two-step directions. Lucibello prepared a report and later revised that report per the parents’ request. (J-25.) These changes included the date of an observation, some misspellings, and the revised draft noted that A.S. possessed stronger receptive than expressive language skills.

A Speech and Language Initial Evaluation was conducted in July 2021 by Cheryl Fitzgerald, M.S., CCC-S/LP (Fitzgerald). (J-27.) Fitzgerald is a licensed speech language pathologist employed by the District. As part of her evaluation, Fitzgerald sent the parents an intake form, which they filled out; she administered the Preschool Language Scales-Fifth Edition (PLS-5) and attempted to administer the Receptive One Word Picture Vocabulary Test (ROWPVT); she reviewed records; and conducted a Functional Speech and Language observation. The ROWPVT was discontinued because A.S. was unable to get past the initial trials. A.S. scored below average on the PLS-5, which assesses auditory comprehension and expressive comprehension. She did not assess his oral and motor function because it was not a concern at the time. Fitzgerald recommended speech therapy four times a week for thirty minutes individually. She found that A.S. possessed weak auditory and expressive communication skills and felt that he needed intensive therapy given his scores from the assessments and his limited verbal output. The results of her evaluation were shared with the parents prior to the August 20, 2021 meeting, and discussed with them at that time.

A PT Evaluation was conducted on August 5, 2021. (J-29.)

The OT Evaluation was conducted on July 23, 2021 by Isabel Park, ITD, ITR/L (Park). In her report, Park recommended that A.S. participate in school-based OT, and specifically two thirty-minute sessions per week; and that his occupational therapist consult with his future teacher to provide sensory strategies for the classroom. (J-28.) A

preponderance of the evidence exists that A.S.'s weak fine motor and visual motor skills were considered by the CST when recommending services, and developing goals and objectives.

Initial Draft of IEP and Initial Eligibility Determination/IEP Meeting

By letter dated August 12, 2021, the parents were invited to participate in an Eligibility IEP meeting on August 20, 2021.

A Draft IEP was provided to the parents just prior to the meeting. (J-38.) It identified A.S. as being eligible for special education and related services under the classification of preschool child with a disability. The specific preschool program was not identified in this initial draft of the IEP because it was to be discussed at the meeting, but the IEP indicated that he would be placed in a "separate" and "full-day preschool" class. This Draft IEP was intended to be updated following the August 20, 2021 meeting.

A preponderance of the evidence exists that the evaluations conducted by the District, as well as the information provided by the parents, were considered in developing the Draft IEP. Considering A.S.'s language delay and disability, and how it impacted his participation in activities, it was noted that he required modifications to make progress. The modifications identified in the Draft IEP included: providing modeling; breaking down tasks into manageable units; and use of a consistent daily routine. It also provided for individual S/L therapy four times per week for his receptive, pragmatic and expressive language delays; as well as group OT three times a week.

The Initial Draft IEP contained goals and objectives in the areas of S/L (with six separate goals); motor skills (with three goals), and a list of classroom modifications. ESY was recommended. It also stated that the team will reconvene if needed within thirty days of A.S.'s start date to monitor his progress.

Those who attended the August 20, 2021 meeting from the District included: PAWS² teacher Noelle Benz (Benz); another teacher; Bednarczyk; Allison Rappaport, anticipated future case manager for A.S.; Nancy Parker (Parker),³ who reported on the Educational Evaluation; Park; Fitzgerald; and Appiah. The parents and four private providers also participated in the meeting. The meeting lasted an hour and fifteen minutes.

The team found A.S. eligible for special education under the category of preschool child with a disability based on his weakness in language, fine motor, and the ASD diagnosis. The parents did not object to the eligibility category.

At the meeting, the parties discussed the evaluations and the District's recommendations. J.R. and some of the providers provided input and asked questions. The parents expressed their concerns about A.S.'s language, and implementation of a sensory diet. The parents were informed that a sensory diet would be established with the occupational therapist once A.S. joined the program. The parents also mentioned potentially needing a behavior plan because A.S. had some head banging at home, which was not seen at school, and the CST explained that if A.S. demonstrated this behavior, a plan would be developed.

The CST considered A.S.'s weak auditory and expressive communication skills. They discussed doing an oral peripheral examination as recommended by one of the private providers, once A.S. was in the program. Fitzgerald, who was qualified as an expert in S/L therapy, and S/L therapy for students with autism, discussed her S/L recommendations and goals, and she testified credibly that she would administer the oral peripheral exam once A.S. was in the program because it is an invasive assessment and she would want to establish some rapport with A.S. before administering the test. If any pandemic-related protocol did not permit her to conduct the assessment at the time, the

² The PAWS program is a full-day Preschool Handicapped Program in the District. It is described by the District as an ABA-based program.

³ Parker, an LDTC, who was admitted as an expert in the assessment of students with disabilities, in IEP development, and in special education, became involved with the parents when they expressed concerns with the then-current case manager, and asked if Parker could transition the case to a new case manager in the fall. She became the case manager at the end of August.

District expressed willingness to have the assessment conducted by an outside provider, which the parents appeared to be amenable to. Fitzgerald is the S/L therapist assigned to the PAWS program and, in conjunction with the teacher, developed the S/L goals in the IEP. She explained at the meeting that the S/L therapy she provides is carried over throughout the day, and she testified credibly that the recommended S/L therapy constitutes “intensive S/L therapy.” Fitzgerald testified that while she sometimes uses ABA techniques or principles to implement S/L therapy, this is not the only method of providing S/L therapy for students with autism.

J.R. expressed her concern that there were few goals and objectives in the initial draft IEP. It contained goals in the areas of speech and motor skills. The CST, however, agreed to conduct a VB-MAPP or ABLLS within the first thirty days of school, and then meet to go over the results and update the goals and objectives in the IEP once the assessment was completed. J.R. appeared satisfied with this approach and asked that this be incorporated into the IEP. Benz also testified credibly that for new preschool students, these assessments are conducted once the student is in the program and in the school environment with the instructors. It was later learned that the parents actually had a VB-MAPP conducted about a month prior to the August meeting. However, neither the parents nor their private providers disclosed this to the CST at the meeting, nor anytime thereafter prior to filing for due process. Had the VB-MAPP been shared with the CST, it could have been considered in developing the IEP, including the goals and objectives—particularly since J.R. expressed a concern at the meeting about the Draft’s lack of goals and objectives.

The program recommendation was a full-day Preschool Handicapped Program, referred to as the PAWS program. Benz described the program at the meeting. The District witnesses testified credibly that the PAWS program is a full-day ABA-based preschool program that offers individualized instruction in a structured setting with an intense level of intervention and related services, including OT, PT and S/L in the classroom. They also testified credibly that there is a low student-teacher ratio, typically five students with five paraprofessionals and one certified special education teacher in the program. Two Board Certified Behavioral Analysts (BCBA) support the PAWS

classroom: a curriculum consultant BCBA from Learners' Compass,⁴ and another BCBA who specifically addresses behaviors. They are in the classroom on a weekly basis to monitor progress, provide oversight on the academic and behavioral programs, consult with the teachers, and to train the paraprofessionals.

At the meeting, Benz explained that, in the PAWS program, they use discrete trials throughout the day for teaching, that data is collected and plotted throughout the day, every day, that the students have data books, and that the program is very data driven. During the meeting, one of the private providers asked about data collection in the PAWS program and BCBA oversight. Benz testified in detail about how data is collected, reviewed, and used. She explained that she personally reviews the data collected every day and that the BCBA curriculum consultant reviews the data books, and that they monitor progress and adjust the program based on the data collected. She also has a weekly clinic with staff to go over progress.

The District witnesses testified that OT, PT and S/L services are embedded in the program; that it is a language-infused program; and they teach pre-academic skills. At the meeting, Benz talked about conducting a VB-MAPP; about the ESY program; and that she works closely with two BCBA's who support the program and with whom she meets at least once a week. Benz herself is a medical doctor who, at the time of the hearing, was near completing the requirement to become a BCBA.

Benz explained that the ESY program is essentially the same format as the regular school year. She testified that the program is from 9:00 a.m. to 2:45 p.m., Monday through Thursday, and a half-day on Friday, where they do ABA throughout the day, and staff training takes place every Friday afternoon. The District also provides ESY hours in August. The CST planned to meet again, around Teachers' Convention, to discuss ESY.

While the parents did not raise any objection to placement in the PAWS program, J.R. did request that he spend at least part of the day in the CUBS program, which she saw as a less restrictive, half-day preschool program for students with disabilities. She

⁴ Learners' Compass is an ABA intervention agency that consults with the District and provides curriculum for each student in the PAWS program.

stated at the meeting that she thinks A.S. benefitted from being exposed to neurotypical peers at his then-current private preschool and would not want him to withdraw socially in the PAWS program, which she saw as the “most restrictive” preschool program. Moreover, she indicated that, with time, she anticipated A.S. transitioning more into the CUBS program. The District agreed to place A.S. in the CUBS program for one hour a day because, as Parker credibly testified, they agreed that placement was appropriate given, at least in part, that A.S. had already spent a significant amount of time in a mainstream preschool with typical peers, and he seemed to have done well there according to both his teacher and parents. Benz explained that A.S. would go into the CUBS program accompanied by a paraprofessional from the PAWS program.

At the IEP meeting, they discussed parent training provided by the District, and the parents were informed that they were also permitted to observe, or have a private provider observe, the classroom once a month for thirty minutes. The parents also asked for weekly updates and quarterly progress meetings. Benz informed the parents that she communicates with parents frequently, and she testified that she typically does so on a daily basis, and holds progress meetings every six weeks. She also communicates, and coordinates, with home instructors.

At the meeting, and on more than one occasion following the meeting, Parker asked that J.R. provide a written release to allow the District to communicate with A.S.’s private providers, and she asked that the providers send written summaries of what they have been working on with A.S., and of his progress. At no point during the IEP meeting did the parents object to, reject, or express any disagreement with the IEP.

Draft IEP and Events Following IEP Meeting

Later that day, the parents sent an e-mail to Bednarczyk inquiring about transportation to and from school, and specifically requesting the procedure from the District to drop off. The District remained under the impression that the parents intended to consent to the IEP.

Ten days after the meeting, on August 30, 2021, an updated Draft IEP was sent to the parents that contained additional information, including information requested by the parents at the meeting, and other edits reflecting what was discussed and agreed to at the meeting. (J-40.) The IEP remained in draft form as the District was waiting on information from A.S.'s private providers, as discussed at the meeting. A recording of the meeting was also sent to the parents per their request.

This Draft IEP identifies the proposed program as a full-time Preschool with Disabilities program, in the special education classroom. It differs from the one presented prior to the August 20, 2021 meeting in that it states that the parents requested that A.S. push in to the CUBS program for one hour a day and that the District agreed; that the parents and CST will meet again after the ABLLS or VB-MAPP assessment is complete, and that goals will be updated after working more with A.S. Also, OT was changed from "group" to "individual," as requested by the parents; the Draft IEP provides for transportation; it provides an individual personal aide every day; supplementary aids and services include prompting, cueing and redirecting student participation, reinforcing of personal, social, behavioral, and academic learning goals; it also provides for consultation with CST, behavioral specialist, OT, S/L specialist, special education teacher; and states that "the ABA certified specialist behaviorist is . . . [a part] of the PAWS program and regularly observes and monitors students progress." The goals and objectives, and list of modifications, are the same as those in the original draft.

Later that day, on August 30, 2021, the parents informed Bednarczyk that they were gathering comments from A.S.'s providers who attended the meeting. The parents were asked to provide a paragraph with their parental concerns to incorporate into the IEP, which they never provided.

Parker followed up with the parents on September 23 to set up a time to speak and review changes in the IEP, including any available summaries from their providers. D.S. responded by informing her that they had retained counsel, and that they would like to observe the preschool programs. Parker immediately responded to set up an observation.

By letter dated September 22, 2021, the petitioners, through counsel, requested that Dr. Lauren Schnell, BCBA, (Schnell) be allowed to observe the proposed program for A.S., and directed respondent to refer A.S. to out-of-district placements. The District, through counsel, responded by advising that A.S.'s needs could be met at the in-district program, but did arrange the observation as requested. Petitioners also requested that records be sent to the out-of-district private schools Institute for Educational Achievement (IEA), Alpine Learning Group, and Somerset Hills.

The parents never provided any comments or other information from their providers. They never provided consent to communicate with the private providers. They did not provide a statement of their parental concerns for the IEP, nor did they reject or express any concerns about the Draft IEP. Since the District never received any additional information from the parents, and since A.S.'s third birthday was approaching, on September 30, 2021, the District issued a proposed Final IEP, and offered to convene another meeting.

Final IEP (J-51)

The proposed Final IEP places A.S. in the PAWS program, and one hour daily in the CUBS program, with individual OT and S/L (for his receptive, pragmatic and expressive language delays) three and four times per week, respectively; an individual personal aide all day; and transportation. The IEP indicates that A.S. qualifies for special education due to delays in communication and speech and language in the areas of expressive communication; auditory comprehension; and delays in fine motor skills. It also indicates that A.S. requires "an individualized instruction for academic, behavioral, and social growth," that "PAWS will provide individual instruction to improve his overall skill set," and that this "program provides a structured routine, access to reinforcement, social opportunities and targets adaptive skills." A preponderance of the evidence demonstrates that the proposed Final IEP identifies A.S.'s needs, as identified through the evaluations conducted by the District, the records provided by the parents, and input of the private and District professionals, as well as the parents—including his needs relating to expressive, receptive and pragmatic language, fine motor and visual perceptual skills, and academic, behavioral, and social growth.

The Final IEP reflects the parents' request to have A.S. mainstream in a more inclusive environment and have him spend an hour a day in the CUBS program. It reflects that the parents also expressed concerns at the meeting that "the IEP presented no goals and would like goals to be developed once the VB-MAPP or ABLLS is conducted and a meeting" is held to discuss the goals. The parents and home therapist also requested an oral peripheral examination to be conducted once he is in school. It is also noted that the parents and teacher discussed a possible sensory diet; that a behavior plan was not warranted but the parents expressed concerns about head banging, which would be monitored and if warranted a plan would be discussed; and the parents expressed that they would like communication weekly from the teacher and therapist, quarterly progress meetings and communication with home providers.

The Goals and Objectives in the Final IEP include the same S/L and Motor Skills goals found in the Draft IEP. In the area of speech and language, A.S.'s primary area of need, the goals and objectives addressed, in part, producing age-appropriate sounds, using words to make request, follow directions, and building his vocabulary. The Final IEP also includes four Learning Readiness goals⁵ and three Pre-academic goals which were prepared by Benz.⁶ These goals were added to the IEP after the parents expressed concerns about the lack of goals and objectives at the IEP meeting. Parker and Benz testified credibly that following the IEP meeting, and considering the information available at that time, the CST felt that it was appropriate to add these goals for A.S. to start off with until they begin the VB-MAPP, and that these goals were measurable.

The Final IEP also contains the list of modifications contained in the Draft IEP (such as hands-on learning, individual instruction, ABA programming, visual aids, reinforcing and redirection), in addition to providing for the use of a daily visual schedule. The modification section also specifies that the program applies "principles of Applied Behavior Analysis which include but are not limited to: incidental teaching, reinforcement

⁵ These goals include that A.S. will: demonstrate appropriate sitting with 90% success; follow directions with 90% success; imitate gross motor movement with 90% success; and provide eye contact with 90% success.

⁶ These goals include that A.S. will: demonstrate matching skills with 90% success; identify colors with 90% success; and identify shapes with 90% success.

contingencies, task analysis and chaining, shaping, discrete trials, behavioral momentum.” The Final IEP contains the same supports for school personnel, and specifies that “the BCBA is . . . [a part] of the PAWS program and regularly observes and monitors student’s progress.” ESY was recommended and the IEP notes that the team will meet prior to the summer to determine whether A.S. would benefit from ESY.

The Final IEP states that due to A.S.’s delays, he requires an “intense level of intervention and related services,” and describes the PAWS classroom as “an ABA based full day pre-school program, where discrete trials are conducted daily, behavioral interventions are incorporated, and related services are provided.” The Final IEP expressly describes the benefits of participating in the District program, and states that it: “utilizes the principles of Applied Behavior Analysis with low student to teacher ratios (3:1 or less) which includes one to one instruction, dyad instruction and, when appropriate, small group learning. If appropriate, learners are included with their peers in a systematic fashion with appropriate support (e.g., accommodations or aide). Applied Behavior Analysis includes, but is not limited to baseline, function of behavior and ongoing behavior or skill acquisition.” It goes on to further describe the PAWS program and indicates that it offers parent training in and out of school to promote generalization of skills, community-based instruction and promotes social interactions with peers.

The Final IEP also states that the parents requested that the ABLLS or VB-MAPP be used to determine appropriate goals for A.S., and that the District will reconvene an IEP meeting within thirty days after the start of school to discuss the goals that will be placed in the IEP. It also reflects that the parents discussed wanting a more inclusive setting and requesting that A.S. be mainstreamed for about an hour a day in the CUBS program, which the District agreed to.

Subsequent Events

On or about September 27, 2021, the parents observed the District’s PAWS and CUBS programs. The parents’ expert, Dr. Schnell, observed the District’s programs on October 12, 2021, and home program on October 28, 2021.

The parents filed their petition for due process on or about November 11, 2021.

In or around December 2021, the parents informed the District that they were unilaterally placing A.S. at IEA. By this date, the parents had not shared with the District any information from their private providers, and they did not share Schnell's report that was prepared following her observation of the District's programs. They also never informed the District of any specific concerns or objections to the proposed program or proposed Final IEP.

A.S. began at IEA in February 2022. Dr. Rozenblat, the Director of IEA, provided testimony concerning IEA and A.S.'s program there.

Testimony and Expert Opinions

Danielle Fox, M.S., BCBA, is a BCBA employed by Bergen County Special Services, who directly consults with the District's three PAWS classrooms (for different age groups) three days per week, and with the general education population twice a week. She was admitted as an expert in Behavior Analysis and as an expert in the implementation of programs for students with autism. Fox testified that all PAWS classes are ABA-based, and that as part of her duties she conducts FBAs, implements behavior intervention plans, consults with the teacher and the curriculum BCBA consultant, and provide regular staff training.

Fox was present when Schnell observed the PAWS program. She completed a report of her own observation on October 12, 2021. (R-1.) She is in each PAWS classroom at least one day a week and testified that she is in "constant communication with the teachers," the BCBA curriculum consultant from Learners' Compass that comes in for six hours a week, and the S/L and OT therapists who have their own offices in the classroom and "push in" to support staff. Fox testified about the behavior strategies in the classroom, including both non-individualized and individual-specific behavior support strategies.

Fox reviewed Schnell's report and noted that there were a number of inaccuracies in the report. Fox testified that Schnell did not reference the individualized behavior support strategies that are provided; and that Schnell incorrectly noted in her report that the reinforcement schedule was a variable one. Fox testified that during the observation, data was not being taken because it was not necessary at that time, but that they do take data on behavior daily on one-to-one instruction, generalization and maintenance, cubby time, toileting and other self-help skills. She confirmed that the teacher and BCBA consultant from Learners' Compass review the data. Fox also testified that Schnell incorrectly noted that there were no socialization opportunities during snack, and that while data may not be collected during snack and play time, it is not always necessary since they may not be working on specific skills at that particular time. Fox also testified that Schnell incorrectly reported that there was a lack of differentiation. Each student has a file folder containing different skills worked on, and the different reinforcement systems used. Fox testified about the token board used during instruction, and that data is taken when students work in their cubby.

Fox also observed the CUBS classroom with Schnell and documented her observations. (R-2.)

Fox testified credibly that she trains staff on general behavior support strategies, plans, etc., and she sets aside thirty minutes every morning and twenty-five minutes every afternoon for training. Training is also provided for staff every Friday over the summer. She confirmed that the PAWS program offers parent training, despite Schnell's statement to the contrary.

Fox also noted that Schnell improperly criticized her for lacking knowledge on skill-acquisition programming, because Fox's responsibilities is more towards the behavior and general behavior support strategies, while they have a BCBA consult from Learners' Compass to handle the curriculum. Fox also disagreed with Schnell's conclusions about the District's program, and noted that Schnell was incorrect to note that they do not have experimental design within their program, as they do collect data and graph daily, and that this is overseen by the BCBA and the teacher.

Fox opined that the PAWS program is an ABA program that is appropriate for students with autism, and that it is one that would meet A.S.'s needs. She testified that while there was no autism-specific assessment conducted prior to the IEP, the District planned to reevaluate A.S. within thirty days of starting the program to develop more appropriate goals based on the results of the VB-MAPP.

Based on the information available to the District at the time, Fox opined that A.S. had the prerequisite skills to participate in CUBS for a portion of the day, and participate in group settings with minimal behavioral support, particularly since he demonstrated an ability to participate in his preschool program and other programs outside of school, such as those through the JCC.

Noelle Benz (Benz) is a certified special education teacher, a medical doctor, and, at the time of her deposition, had nearly completed the requirements to become a BCBA. She is the teacher assigned to the PAWS program. She was qualified as an expert in the education of students with autism and the implementation of ABA programs.

Benz testified credibly that in the PAWS classroom, she implements an ABA program, she coordinates home programs for students, and has been a parent trainer for the District for about twelve years. In developing the programs in the PAWS classroom, Benz works with Learners' Compass that develops curriculum. Benz explained that in the program, she breaks up complicated skills into very small, discrete units and uses reinforcement to encourage that behavior. Benz testified that even though there may be moments when data is not taken, data is taken throughout the day at the termination of every opportunity.

Benz testified that the S/L and OT therapists inform her what the student is working on and the topics that are ready for generalization, so that they reinforce and generalize these skills throughout the day in a scheduled way. She testified that the PAWS program also offers parent training hours; they typically communicate daily with the parents, and conduct program monitoring every six weeks; and that S/L goals are incorporated into the curriculum.

Benz testified about errors that she identified in Schnell's report comparable to Fox's testimony. For example, she testified that Schnell was incorrect to state that the behavior strategies outside of each student's work are not individualized, and that behavior strategies are individualized for each student. Data is collected during circle time even though it was not collected when Schnell observed that day, and Benz testified that it is not necessary to take data during circle time every day. According to Benz, Schnell also incorrectly reported that data is not collected during folder time, that folders are not differentiated, and that there were no social opportunities or interaction between the students. Benz testified that Schnell was also incorrect to report that there were no reinforcements, when in fact students were receiving tokens. Benz testified that Schnell also incorrectly noted in her report that there was no task analysis, and that while Schnell claims that there are no detailed program data notebook or systematic program book review by a BCBA, Benz explained that each student does have a program notebook that contains each program running at the time, that they take data on these daily, and chart the data. She testified that she reviews the data books daily and the BCBA reviews them twice weekly. She also testified about the PAWS systematic staff training program.

Katherine DeCotiis Wiedemann, MAT, BCBA, is a Behavior Analyst and special education consultant who was retained by the District as an expert. She was admitted as an expert BCBA in the development and implementation of programs for students with autism; an expert in the development of IEPs for students with autism; and an expert in the evaluation of programs for students with autism. She prepared an extensive report, dated April 20, 2022, containing her findings and recommendations. (R-5.)

Wiedemann first became aware of A.S. when she was contacted by the District in February 2022 to conduct an educational program and placement evaluation for him. She was asked to assess A.S.'s levels of functioning, identify his individual needs, and provide recommendations regarding an appropriate educational program. Prior to formulating her recommendations, Wiedemann reviewed extensive records and Schnell's report; she conducted a functional observation of A.S. at IEA and at his home (Schnell was present during the home observation); she observed Tenafly's PAWS and CUBS programs; and she spoke with District staff (including Fox, the classroom teacher, paraprofessionals, and the case manager), IEA staff, home programming staff, Schnell, and the parents. Her

report is very detailed. She noted that A.S. had been diagnosed with ASD, developmental delays, moderate to severe receptive and expressive language disorder; and that there were concerns with his social interaction and play. She noted that he required speech and language therapy, and that while his receptive language was improving, his expressive language was not.

She was aware that the District proposed the PAWS program, and she was aware of that particular program, how it utilizes the principals of ABA, where related services are provided, the low student-teacher ratio, how instruction is delivered individually, how the program is data-driven program, and parent training is offered. She testified that the proposed Final IEP contained the important aspects of the PAWS program as reflected in R-3, which is consistent of the District witnesses' description of the program.

Wiedemann prepared a report with several recommendations and conclusions. First, she recommended that A.S. be formally evaluated by a S/L pathologist specializing in childhood apraxia of speech, noting that A.S.'s neurologist raised this possibility as a contributor to his expressive language deficits. Wiedemann also noted that, despite nearly a year of intensive ABA therapy, A.S. made no significant improvements in expressive language or speech production despite notable gains in other areas. Second, Wiedemann also wrote that A.S. may also benefit from the use of an augmentative and alternative communication device, to assist in communication while also working on expressive language skills. Third, for reasons outlined in her report, Wiedemann opines that A.S.'s placement at IEA is not appropriate. Fourth, for the reasons outlined in her report and testified to, Wiedemann opines that the District's proposed placement offers A.S. a FAPE. Fifth, she opines that A.S. would benefit from continued home-based ABA therapy services, but notes that this program should be expanded to target social skills and cooperative play skills in the natural environment, while hands-on parent training should be a primary focus of the sessions.

Wiedemann testified that the goals and objectives in the Final IEP were appropriate, and that it was appropriate to plan to update the goals and objectives after conducting a VB-MAPP once A.S. joined the program. She testified that to get an accurate representation of what A.S. can do on a VB-MAPP, the evaluator would first

have to establish a rapport with him. She also testified that the VB-MAPP conducted only one month prior to the IEP meeting, that was not provided to the District, would have been a valuable piece of information that could have been used to develop IEP goals and objectives.

Wiedemann testified that the modifications and accommodations in the IEP are appropriate, and noted that the principles of ABA would be utilized as instructional modification. Based on her review and observations, she concluded that the proposed Final IEP was appropriate, including access to the CUBS program since A.S. appeared to be ready for social interaction and was making social gains. She testified that the PAWS program provides a “really solid ABA program” for skills A.S. needs to work on discreetly, with an opportunity to generalize.

Wiedemann examined the District’s proposed program and IEP in light of the NJDOE’s Autism Program Quality Indicators (which included consideration of the program characteristics, personnel, curriculum guidelines, instructional methods, family involvement and support, and program evaluation), and she opined that the District’s program exceeds criteria for an appropriate program for students with autism.

Wiedemann observed the PAWS program on March 19, 2022, and opined that the program was very well-constructed, and that she was very impressed with the program as a whole. She was particularly impressed by the ratio of adults to students (six adults to five students, so that paraprofessionals could work one-on-one with students while the teacher can coach). She also reviewed a data book from a student, and tried to observe every paraprofessional to assess their level of proficiency. She testified that she has observed many ABA programs, and that this one was very well run. She had no concerns after her observation, and testified that it is a good program for A.S.

Wiedemann also observed A.S.’s home program and IEA. She noted that the staff at his home program were proficient in ABA, that A.S. appeared comfortable working with the staff, and that while she was pleased with the home program, she did express concern about the lack of a social component to the program.

Regarding Schnell's report, Wiedemann testified that her observation of the program did not match with what Schnell described in her report; that Schnell may not have had access to the extent of information that Wiedemann had available to her, and that Schnell incorrectly noted in her report that the IEP failed to contain certain information. She disagreed with Schnell's conclusions.

Wiedemann also had concerns about the IEA program. She testified that they were working on skills with A.S. that he had already mastered in the home setting; there were no expressive language programs that he was working on; and he did not have a functional communication program. She was also concerned that IEA had not conducted a VB-MAPP, and simply relied on record review; that there were only a few data points reported; and that data was reported only once a week, which she considered to be too infrequent. No data was being collected while she observed the program. She was also concerned that there were no peers for A.S. at the time of observation, and she was told most children work one-on-one with an instructor for most of the day. There was also no facilitated play, and no opportunity to work on social skills, cooperative or interactive play. She also opined that while A.S. made some progress in many areas, he did not make significant progress in expressive language and vocal speech production. She opined that gains were minimal, and even with ABA instruction, he did not make significant progress in these areas. She noted that A.S. received no related services at IEA. She also noted that the classroom head is not a BCBA, and that the program should be monitored by a BCBA. She was not sure how involved the Director, who is a BCBA, is in the students' programs. In essence, Wiedemann opined that A.S.'s placement at IEA is inappropriate for him, that it is too restrictive, and does not allow him to work on his expressive language deficits.

Wiedemann testified that the frequency and duration of parent training does not have to be in the IEP. She agreed that the IEP did not specify the frequency and duration of BCBA supervision. She noted that there is nothing in the Autism Program Quality Indicators (APQI) about frequency and duration of BCBA, and that she understands that there needs to be "regular ongoing dedicated supervision" of the program, not that there has to be an express number of hours a week, and that it is based on the child's needs.

She also testified that as this would be A.S.'s first educational placement, a transition plan was not needed.

Wiedemann testified that A.S. would receive sufficient BCBA supervision in the District's program, noting that with BCBA Fox being in the classroom one full day a week, and the Learner's Compass BCBA in eight hours per week, and that the District provides at least two full days of BCBA supervision (consisting of about 40% of direct therapy hours), which she considers to be sufficient supervision for A.S.

Lauren Schnell, Ph.D., BCBA-D is the expert witness retained by the petitioners. She is an Assistant Professor in the Special Education Department at Hunter College, and runs a small private practice. She was qualified as an expert in ABA; in the special education of children with autism using ABA; in the development of programs for students with autism; and in the development of IEPs for students with autism. She observed A.S. in his home program and at IEA, and she observed the District's PAWS and CUBS programs to determine whether they are appropriate programs for A.S.

Schnell observed the PAWS and CUBS programs on October 12, 2021, and the home program on October 28, 2021. She documented her observations in a report dated November 3, 2021. (P-24.) As part of her evaluation, she reviewed an IEP that she identified as the most recent IEP proposed by the District. During her testimony, however, it became clear that her report and opinions were not based on the proposed Final IEP of September 2021, but likely the Draft IEP of August 20, 2021, which was the Draft IEP presented to the parents prior to the IEP meeting and subsequently amended twice. The Final IEP of September 2021 was the most recent IEP at the time Schnell observed the District's programs and issued her report. It is unclear whether Schnell ever reviewed the Final IEP, and she even testified that she was unclear as to which IEP she reviewed.

Schnell criticizes the IEP that she reviewed as follows: there is no mention of ABA instruction in the IEP; no "criterion-referenced evaluation" related to ASD was conducted to determine IEP goals and objectives; there are only seven goals in the IEP and as the IEP should be for one year, seven goals are insufficient; goals are written without clear and observable criteria; objectives are written without clear and observable criteria; there

are no response measurement systems specified; criteria for mastery is identical for all goals and objectives, “signaling that these are not individualized”; there is no mention of generalization and/or response maintenance in the goals and objectives; there are no goals addressing vocal verbal behavior in the learning and education action of the IEP, and verbal behavioral instruction should occur throughout the entire day, not only in S/L therapy; and with regard to the S/L goals and objectives, clarification is needed on how the S/L pathologist will determine whether the objective has met 80% success through observation, while criteria for mastery is identical for all goals and objectives, indicating the lack of individualization.

In her report, Schnell also opines extensively on the District’s PAWS program, and describes it as functioning like a general preschool disabilities class that does not provide intensive behavior analytic instruction. She opines that A.S. requires at least twenty-five to forty hours per week of intensive ABA, and that the New Jersey benchmarks for students with ASD and ABA are not in place in the proposed program. She recommends that A.S. be placed in a program that “adheres to the principles and procedures of [ABA],” and notes that he has a limited verbal behavior.

Schnell prepared a subsequent report dated March 30, 2022 (P-26), following her observation of A.S. at IEA on March 29, 2022. She describes his program there as a “highly sophisticated, behavior analytic program that uses the principles and procedures of [ABA] to learning.” She opined that A.S. is making steady progress in that program, and that it is an appropriate program for A.S.

On cross-examination, Schnell testified that she did not review any of the CST’s evaluations before issuing her first report criticizing the IEP, but did read the evaluation summaries found in the IEP. She did not observe A.S. in his private preschool program. She agreed that there is no requirement by the NJDOE that a program for students with autism has to meet the ABA Program Evaluation Form that she used to analyze the District’s program here, nor that the NJDOE requires that programs for students with autism meet the APQI that they release.

Schnell testified that she reviewed the Final IEP (J-51) prior to preparing her report, but later testified that she did not receive the Final IEP until sometime after she prepared her November report criticizing the IEP, and after A.S. was already enrolled at IEA. She was questioned extensively about her criticisms of the IEP. Her report criticizes the IEP for not mentioning ABA instruction, but then concedes that the Final IEP does indicate that the proposed program is an ABA-based program. Schnell criticized the report for only having seven goals in the IEP, with only one objective each, but then concedes that the Final IEP actually contains sixteen goals, and more than one objective under some of the goals. She also concedes that the criteria do vary for the goals and objectives. In her report she also criticizes that all S/L goals are set to 80%, but then agreed that was not, in fact, the case and that her report is incorrect. She conceded she did not know how the S/L goals were worked on in the classroom. In her report, Schnell criticized that there was no task analysis when she observed the PAWS program, but later acknowledged that she did observe a picture activity schedule that could have been a task analysis, and that it could be that a task analysis was not done during the two hours she was there.

Schnell agreed that it was sufficient for a BCBA to observe and analyze data on a weekly basis. Despite stating that there was no parent training in the IEP, she later notes that the Final IEP does contain this. She stated that there was “no systemic staff training in place” but then agreed that she was informed later that there is staff training every day, and that staff is trained by the BCBAs. She agreed also that the IEP states that the principles of ABA include incidental teaching, reinforcement contingencies, task analysis and chaining, shaping, discrete trials and behavior momentum—all of which she said in her report were not included in the IEP. She conceded that she viewed *in vivo* adjustment in the classroom.

Schnell agreed that a VB-MAPP should be done for A.S., and she was aware that the District planned to do one here. She agreed that many of the goals and objectives at IEA were comparable to those in the IEP, and that the District also had several goals for vocal communication. Even though she testified that the BCBA is the one who analyzes the data, she also agreed that a BCBA does not do so at IEA, and she agreed that IEA does not take data, or graph, every day on every learning opportunity, even though she testified that this should be done.

Assessment of Testimony and Expert Opinions

Overall, the District witnesses testified in a clear and straightforward manner, and I found them to be credible, particularly regarding the functioning of the PAWS and CUBS programs, their exchanges with the parents, their assessment of A.S., and drafting of the Final, and draft, IEPs. Given their testimony, and my review of the recording of the IEP meeting, a preponderance of the evidence exists that the District staff ensured that the parents, as well as their private providers, were active participants in the process, and that all of their questions and concerns were addressed. The District staff not only considered, but accommodated the parents' requests and suggestions. In fact, there were no items requested by the parents that the District objected to or did not agree with in the Final IEP. It was J.R. who requested that her son spend some time in the CUBS program, and given the information available to the District at the time, they accommodated this request by agreeing to have A.S. spend one hour a day in the CUBS classroom.

I also found Schnell's testimony less reliable than that of the District's witnesses. She did not review any of the six assessments conducted by the District before criticizing the District for failing to identify and address A.S.'s needs, and for not conducting an autism-specific assessment. She was inconsistent as to when she reviewed the Final IEP, and it later became clear that she did not even review the Final IEP—the one at issue here—prior to issuing her expert reports criticizing the IEP. She appeared unsure as to which IEP she reviewed when she prepared her report criticizing the District's program. She made a number of concessions on cross-examination, and essentially conceded that much in her report was factually inaccurate. She conceded, for example, that she incorrectly concluded in her report that the IEP did not include communication with home, positive reinforcement, the use of ABA oversight by a BCBA, parent training, different criteria for goals and objectives for S/L goals, and more than seven goals and objective. Moreover, Schnell's report on her classroom observation also contained several errors and conclusions based on assumptions that she made during her limited observation. Regarding the PAWS program itself, I found the testimony of Benz more reliable. She was in the classroom every day and her testimony was consistent with the

testimony of the other District witnesses', including Wiedemann, who appeared to have more information concerning the program than was available to Schnell. Schnell's credibility was also called into question when she criticized the District for not utilizing an autism-specific assessment, such as a VB-MAPP, prior to developing the IEP, while expressing no concern that IEA never used a VB-MAPP in developing a program for A.S. IEA, like the District, recognized the importance of taking some time to build a rapport with A.S. and assess him before working on specific programs. Given the deficiencies in Schnell's testimony and reports, I find her expert opinions unreliable. I, therefore, afford no weight to her opinions, particularly those concerning the PAWS program; the Final IEP, including whether it offered A.S. a FAPE; the sufficiency of the District's evaluations; whether an autism-specific assessment should have been conducted; and whether it was appropriate to conduct a VB-MAPP once A.S. started the program, and plan to update the IEP based on new information obtained.

Given my assessment of the credibility and reliability of the witnesses' testimony, together with the documents in evidence, I **FIND** the following additional **FACTS**:

The District's PAWS program is a full-day, ABA-based program, with a low student-to-teacher ratio of 3:1 or less, and includes one-to-one instruction. In addition to the teachers and aides in the classroom, there are two BCBAs who oversee the program. One is present in the classroom one day a week and the other for six hours a week. The teacher provides coaching to the staff in the classroom. The related service providers for S/L and OT are stationed in the classroom and provide direct support to the students in the classroom. The PAWS class uses the curriculum from Learners' Compass, an ABA intervention agency. In the PAWS program, student data is taken throughout the day and graphed, and progress is monitored by the teacher and BCBAs. The BCBAs consult about how to address behavioral concerns and skill acquisition, and there are both individualized and non-individualized behavior support strategies implemented in the classroom. The staff members are trained in the use of ABA strategies, and there is about an hour a day set aside for training. Students receive reinforcement throughout the day, including through the use of token boards. File folders are individualized based on the student's needs, with data taken on their progress. ABA strategies are utilized, including discrete trial teaching and task analysis. Students work on skills based on their individual

needs. Parent training is provided, and the teacher communicates with the parents frequently, typically daily.

When students in the PAWS program spend time in the CUBS class, they transition with goals and are accompanied by a paraprofessional. Given that the parents requested that A.S. spend some time in the CUBS class, and in light of the fact that A.S. had attended a private preschool program, where his teacher reported that he “has done so well” in the school, joins in activities and enjoys being around other children, while the parents also reported that A.S. is very interested in peers and plays with them at school, it was reasonable for the District to agree to include one hour a day of the CUBS program in the IEP.

The evaluations conducted by the District were appropriate, as there is no credible evidence to suggest otherwise. While the petitioners assert for the first time in their post-hearing brief that the CST relied on inappropriate and incomplete testing to develop the IEP, and specifically that the school psychologist improperly issued a report based solely on the BASC completed by A.S.’s teacher, the preponderance of the evidence does not support these assertions, and petitioner provided no expert testimony to support these claims. In reviewing Appiah’s report, and the recording of the IEP meeting, it is evident that Appiah considered not only the BASC completed by the teacher, but also the parent’s input and a review of A.S.’s records. The parents were provided with the School Psychological Report prior to the IEP meeting, Appiah went over her findings at the meeting, and neither the parents nor any private provider raised any concerns, or asked any questions, concerning this report.

The Draft IEP shared with the parents prior to the IEP meeting contained goals and objectives in the areas of S/L and motor skills, and J.R. expressed her concern at the meeting that these were the only goals and objectives in the IEP. In order to obtain more information concerning A.S., and better assess his strengths, weaknesses, and needs, the District reasonably agreed to conduct a VB-MAPP once A.S. started in the classroom, and to meet with the parents within thirty days of starting the program to review the results of the assessment and update the goals and objectives. The parents appeared to be fully

in agreement with this approach at the IEP meeting, and that plan was incorporated into the Final IEP, as J.R. requested.

Given the parents' concern about the goals and objectives in the Draft IEP, the PAWS classroom teacher and the CST later incorporated learning readiness and pre-academic goals and objectives into the proposed Final IEP. Benz and the CST determined that learning readiness and pre-academic goals would be appropriate goals to work towards while the VB-MAPP was being administered during A.S.'s first thirty days in the program. Benz testified credibly that the goals and objectives developed were measurable and appropriate in light of the information available to the District at that time. While these specific goals and objectives may have been added to the proposed Final IEP without specifically discussing them with the parents, they were reasonably added in response to the parents' concern, and with the plan to revisit them once the VB-MAPP was completed. Once they were incorporated into the Final IEP, the parents never expressed any concern regarding these additional goals and objectives, and they do not assert that these goals and objectives fail to address A.S.'s needs.

A preponderance of the evidence demonstrates that the Final IEP was not generated unilaterally by the District, but with parental input. Even after the IEP meeting, the CST attempted to obtain additional information from the parents—such as reports from the private providers—and they considered all of the information provided by the parents, and accommodated most, if not all, of their requests. The parents requested that A.S. spend some time in the CUBS program, which the District reasonably accommodated, and they requested that certain information be included in the Final IEP. The parents assert in their post-hearing summation brief that the District wrongly failed to include specific items requested by the parents at the IEP meeting, including: a transition plan for CUBS, the frequency and duration of one-to-one ABA therapy, parent training, parent communication, and amount of supervision by a BCBA. While a specific “transition plan” was not included in the IEP, the IEP does include access to the CUBS program and the District explained to the parents at the IEP meeting how A.S. would transition into that classroom, that he would be accompanied by a paraprofessional, and that his progress would continue to be monitored there. Also, while the IEP may not specify precisely the frequency and duration of one-to-one ABA therapy, or the specific amount of BCBA

supervision in the program, the parents did not request that this specific information be included in the IEP, and Benz explained at the IEP meeting how the PAWS program functions, how the program is supervised by two BCBAs, and that they are in the classroom on a weekly basis. Also, the parents' request for weekly updates and quarterly progress meetings is reflected in the IEP, and while the IEP does not specify that the District *will* communicate with the parents or provide progress reports with a specific level of frequency, Benz explained at the IEP meeting that she communicates frequently with the parents, typically daily, and that she has progress meetings with the parents every six weeks. Also, while the frequency of parent training is not specified in the IEP, Benz explained that the PAWS program offers parent training hours, called POP hours, and that the classroom teacher and aides also go to the home for training, to support generalization.

LEGAL ANALYSIS AND CONCLUSIONS

This case arises under the Individual with Disabilities Education Act (IDEA), 20 U.S.C. § 1401 et seq., which makes available federal funds to assist states in providing an education for children with disabilities. Receipt of those funds is contingent upon a state's compliance with the goals and requirements of the IDEA. Lascari v. Bd. of Educ. of Ramapo-Indian Hills Reg. Sch. Dist., 116 N.J. 30, 33 (1989). As a recipient of Federal funds under the IDEA, the State of New Jersey must have a policy that assures that all children with disabilities will receive FAPE. 20 U.S.C. §1412. FAPE includes Special Education and Related Services. 20 U.S.C. §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). To meet its obligation to deliver FAPE, the school district must offer A.S. "an educational program reasonably calculated to enable him to make progress appropriate in light of his circumstances." Endrew F. v. Douglas Cnty. Sch. Dist., 580 U.S. 386 (2017); 137 S. Ct. 988; 197 L. Ed. 2d 335. The IDEA also required that a FAPE be provided in the least restrictive environment, per 20 U.S.C. § 1412(a)(5)(A). In order to provide a FAPE, a school district must develop and implement an individualized education program (IEP). N.J.A.C. 6A:14-3.7.

Here, the District maintains that the proposed Final IEP was appropriate. This included the plan to conduct a VB-MAPP once A.S., who was not yet of age to attend the preschool program, started the program, and to reconvene thirty days later to update the IEP, including the goals and objectives, as needed. While the petitioners maintain in their summation brief that with this “caveat,” the District was essentially admitting that the IEP would only be appropriate in the future after additional changes were made to the IEP, I do not agree. The District maintains that the Final IEP offers A.S. a FAPE based on the totality of the information it had at the time that it was created. The District recognized that in order to better assess A.S.’s language development and needs, they should develop a rapport with the child and conduct the VB-MAPP in the educational setting to ensure that the appropriate goals and objectives were added to the IEP. This approach was similar to that taken by IEA—IEA did not conduct a VB-MAPP before A.S. started in that placement, and it also took time to develop a rapport with A.S. before implementing a full program. Moreover, the parents expressed no concern with the District’s proposed plan at any time. J.R. appeared to be fully in agreement with that approach at the IEP meeting and asked that the plan be incorporated into the IEP.

The petitioners maintain that the Final IEP denied A.S. a FAPE, and because the unilateral placement was appropriate, they are entitled to full reimbursement for tuition at IEA. More specifically, the petitioners assert that the CST relied on “inappropriate and incomplete testing” to develop the IEP; that the goals in the IEP were written with no parental input, and by a teacher who had never met A.S.; and that the IEP failed to state the frequency and duration of critical services such as one-to-one ABA therapy, parent training, parent communication, amount of supervision by a BCBA; and a transition plan for the CUBS program.

Were There Procedural Violations on the Part of the District and, if so, Did They Rise to the Level of Denying A.S. a FAPE?

In their post-hearing summation, the parents allege procedural violations on the part of Tenafly. Procedural violations on the part of a school district may justify compensatory education or tuition reimbursement when the procedural defects caused such substantial harm that a FAPE was denied. C.H. v. Cape Henlopen Sch. Dist., 606

F.3d 59, 66-67 (3d Cir. 2010). When a procedural violation is alleged, “an administrative law judge may decide that the child did not receive a FAPE only if the procedural inadequacies: (1) [i]mpeded the child’s right to a FAPE, (2) [s]ignificantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of FAPE to the child; or (3) [c]aused a deprivation of the educational benefit.” N.J.A.C. 6A:14-2.7(k).

Here, petitioners allege procedural violations as to how the Final IEP was developed, and specifically that the District did not consider the parents as part of the IEP team; that the parents had no input, including input into A.S.’s goals; that the goals were written weeks after the IEP meeting by a teacher who had never met A.S.; that the District relied on “flawed information,” the BASC; and improperly took the position that goals would be added or amended after A.S. started the program.

Upon my review of the entire record, including my review of the recording of the IEP meeting, I **FIND** that the District included the parents as integral members of the CST and that there was parental input into the development of the IEP. The CST considered all information provided by the parents; they answered all of the parents’ questions; they answered all of the private providers’ questions at the IEP meeting; the CST requested, on multiple occasions, additional information from the providers to include in the IEP (which they never received); the CST accommodated the parents’ request to have A.S. spend some time in the CUBS program; they accommodated the parents’ request to make certain edits to the Educational Evaluation; they accommodated the parents’ request to reference the VB-MAPP in the IEP, and to work on adding additional goals and objectives to the IEP once the results of the VB-MAPP were obtained and reviewed; they asked the parents to provide a written summary of their “parental concerns” (which they never did); they asked the parents on multiple occasions to provide a written release to be able to communicate with the private providers (which they never provided); and after not obtaining any of the requested information from the parents, the District sent them the proposed Final IEP with an offer to meet with them again (which the parents did not accept). The District clearly took a collaborative approach in developing A.S.’s IEP.

Also, as I found above, the evidence does not support the petitioners' assertion that the District relied on any "flawed" information in developing the IEP, or that the District acted unreasonably in planning to include additional goals and objectives in the IEP after conducting a VB-MAPP. The parents asked for the VB-MAPP and appeared to be fully in agreement with that plan to conduct this assessment and reconvene in thirty days to make any necessary updates to the IEP. While they now criticize the District for not conducting this assessment prior to entering the program, this criticism seems disingenuous—the program at AIE never conducted a VB-MAPP prior to A.S. entering that program; IEA, like the District, recognized the benefit of establishing a rapport with the child in a classroom setting prior to conducting any such assessment or developing a full program; and while the parents actually had a VB-MAPP done just prior to the IEP meeting (which potentially could have been used to develop the IEP), they intentionally withheld that information from the District. Even assuming *arguendo* that the District committed a procedural violation by including in the Final IEP the pre-academic and learning readiness goals that were prepared by Benz without the parents' express input, or by taking the position that goals would be added or amended after A.S. started the program, there is no evidence that A.S.'s right to a FAPE was in any way impeded by these alleged violations, that the parents' opportunity to participate in the decision-making process regarding the provision of FAPE to A.S. was significantly impeded, or that this caused any deprivation of an educational benefit.

Therefore, I **CONCLUDE** that the District did not violate any procedural safeguards of the IDEA that rose to the level of denying A.S. a FAPE.

**Did the Final IEP Offer A.S. a FAPE? If not, are the Petitioners
Entitled to Reimbursement for Their Unilateral Placement?**

The petitioners allege that the Final IEP denied A.S. a FAPE. In support of this position, they assert that the IEP was deficient in the following ways: it failed to contain a "transition plan" for the CUBS classroom; it did not include parental communication; it failed to have the frequency and duration of one-to-one intensive ABA, parent training, or BCBA supervision; it lacked the frequency and duration of "critical services"; it failed to include "specific information" about the PAWS program and their use of ABA principles;

it failed to use A.S.'s evaluations and results of his evaluations to address his weaknesses in the IEP; the goals and objectives were not measurable and specific to A.S.; and it was incomplete because it did not account for the results of an autism-specific assessment because the District planned to update the IEP after conducting a VB-MAPP.

In considering the appropriateness of an IEP, case law instructs that actions of the school district cannot be judged exclusively in hindsight. The appropriateness of an IEP must be determined as of the time it is made, and the reasonableness of the school district's proposed program should be judged only on the basis of the evidence known to the school district at the time at which the offer was made. D.S. v. Bayonne Bd. of Educ., 602 F.3d 553, 564–65 (3d Cir. 2010) citing Susan N. v. Wilson Sch. Dist., 70 F. 3d 751, 762 (3rd Cir. 1995). An IEP is “based on an evaluation done by a team of experts prior to the student's placement.” Fuhrmann v East Hanover Bd. of Educ., 993 F.2d 1031, 1041 (3rd Cir. 1993) (emphasis in original). Thus, “in striving for ‘appropriateness,’ an IEP must take into account what was, and was not, objectively reasonable [when] the IEP was drafted.” Ibid. Our courts have confirmed that “neither the statute nor reason countenance ‘Monday morning quarterbacking’ in evaluating a child's placement.” Susan N., 70 F.3d at 762, citing Fuhrmann, 993 F.2d at 1040.

The Third Circuit in Ridgewood Bd. of Educ. v. N.E. for M.E., 172 F.3d 238, 247 (3d Cir. 1999) stated that the appropriate standard is whether the IEP offers the opportunity for “significant learning and confers meaningful educational benefit.” The benefit must be meaningful in light of the student's potential; the student's capabilities as to both “type and amount of learning” must be analyzed. Id. at 248.

Here, a preponderance of the evidence exists that the evaluations conducted by the District were appropriate, and despite the petitioners' assertion in its summation brief, a preponderance of the evidence exists that the CST considered the entirety of the evaluations in determining A.S.'s eligibility for special education and assessing his needs. The evaluations are summarized in the IEP, and the CST reviewed them with the parents at the IEP meeting, where they had an opportunity to ask questions and raise any objections. The CST also considered information provided by the parents, such as the reports by the developmental pediatrician who diagnosed A.S. with ASD, as well as their

suggestions and requests. In fact, J.R. made a number of requests pertaining to the evaluations and the IEP, and the District did not deny any of these.

A.S. qualified as a Preschool Child with a Disability, primarily due to delays in communication. His speech and language delays were primarily in the area of expressive communication, but also, receptive and pragmatic language. It is undisputed that A.S. required an intense level of intervention and related services, including S/L therapy. A.S. was also identified to have motor and perceptual delays, for which he required OT. The CST recognized his ASD diagnosis and acknowledged that he required an individualized instruction for academic, behavioral and social growth, and that the PAWS program, a special education program that utilizes principles of ABA, would provide him with individual instruction, a structured routine, access to reinforcement, social opportunities, and target adaptive skills to improve his overall skillset. The PAWS classroom provides discrete trials daily, behavioral interventions are incorporated, and S/L and OT are provided in the classroom. The District witnesses testified credibly that, given A.S.'s needs at the time, as demonstrated by all of the information available to the District (including the six evaluations conducted by the District, and private evaluations and all other information provided by the parents), the PAWS program, which uses ABA-methodology, and incorporates S/L and OT therapy, and the one hour per day inclusion into the CUBS program, would have given A.S. an opportunity to make meaningful education progress.

The proposed placement incorporates several components of what is considered a high-quality and effective program for students with ASD, as referenced in the APQI. These include: length of the school day (full-day and ESY exceeds recommended 210 days per year); low student-to-teacher ratio; instructional planning (plan to develop additional goals and objectives based on the results of the VB-MAPP); daily data collection on performance, with graphing, documentation of effectiveness; personnel skilled/trained in ABA, with supervision/training by two BCBA who are each on-site at least once a week, as well as certified S/L, P/T and OT providers; professional development provided by District; curriculum provided by Learners' Compass aligns with ABA philosophy/principles; instructional methods derived from principles of ABA are used, with natural environment teaching, generalization and maintenance of skills

addressed systematically; parent training is offered, coordination of efforts is fostered, frequent communication with parents with progress reports every six weeks; A.S. was individually assessed by CST and VB-MAPP will be administered upon entrance to the program; proactive strategies are used to prevent challenging behaviors, data is collected/analyzed to treat, and staff is trained on handling these behaviors; opportunities to interact with more typically developing peers; and the program uses a systematic process for assessing student progress and modifying the program depending on skill mastery. Also, while the parents now contest the appropriateness of A.S.'s placement in the CUBS program, a placement that they initially requested, joint placement in the PAWS program and the CUBS program (where A.S. would have an opportunity to generalize skills and interact with peer models) was appropriate and reasonable given the results of the evaluations, input from A.S.'s teacher, parents' input, and even the report of prepared by A.S.'s developmental pediatrician.

Moreover, I also **FIND** that the Final IEP was comprehensive and sufficiently detailed, specifically in describing the proposed program, A.S.'s needs, and modification and services to be provided. The IEP identifies a summary of the special education programs and related services offered, as well as the duration of these services; it summarizes the parents' expressed concerns; it identifies A.S.'s disability category, and the basis for the classification; it describes the impact of A.S.'s disability; it summarizes his needs; it identifies ABA principles that will be utilized; it describes a host of supplemental supports to be provided; it specifies that a BCBA is part of the program and regularly observes and monitors student progress; and the "Rationale for Removal from General Education" section provides a detailed description of the PAWS program and ABA methodology used in the program. While the IEP does not explicitly include a "transition plan" for the CUBS program, nor does it specify the frequency and duration of one-to-one instructional ABA, parent training, or BCBA supervision, there is no evidence that the failure to include these in the IEP denied A.S. a FAPE, or that the District was required to include that level of specificity in the IEP. At the IEP meeting, the parents were informed how transitioning into the CUBS program would occur; that two separate BCBAs supervise the program and are each in the classroom at least once a week; how the PAWS program operates, in detail; and that regular parent training at school and at the home is provided. The parents were also informed that the District communicates and

coordinates with outside providers, and that they communicate frequently, typically daily, with the parents of students in the PAWS program. Moreover, despite the petitioners' assertion in the summation brief, the IEP does include specific information about the PAWS program and the use of ABA practices, and the parents were provided with additional, detailed, information about that program at the IEP meeting.

Petitioners do not dispute the present levels of academic achievement and functional performance, but they do assert that the IEP's goals and objectives are not measurable and specific. Each IEP must have a "statement of measurable annual goals, including academic and functional goals designed to...(A) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and (B) to meet each of the child's other educational needs that result from the child's disability." 34 C.F.R. § 300.320. Without goals and objections, there is no functional IEP, and IEPs containing vague or immeasurable goals may constitute a denial of FAPE.

Here, Fitzgerald, the only expert on S/L therapy who testified at the hearing, credibly testified about the appropriateness of the S/L goals and objectives in the IEP. The IEP contains specific criteria for mastery and, on its face, the six S/L goals and eight objectives appear to be measurable. Regarding the learning readiness and pre-academic goals and objectives, Benz credibly testified that the PAWS classroom utilizes trial-by-trial data to measure student progress on the goals and objectives, and that they were measurable. For example, A.S. "will remain seated in a chair for small group (2 to 7 Students) for a duration of 5 minutes" with 90% success is specific and measurable. These learning readiness and pre-academic goals and objectives were developed based on the information available to the District at the time, and it was expected that they be updated once the VB-MAPP was completed. Both Parker and Wiedemann also credibly opined that the goals and objectives in the IEP were measurable and appropriate. Without reliable expert testimony, the petitioners failed to sufficiently rebut the District's testimony concerning the adequacy of the goals and objectives, or the District's testimony that the Final IEP offered A.S. a FAPE in the least restrictive environment. I therefore **FIND and CONCLUDE** that the goals and objectives in the IEP are measurable, clear, specific, and appropriate.

Finally, while the petitioners assert that the Final IEP was incomplete because it did not account for the results of an autism-specific assessment, the petitioners did not present any credible expert testimony to support its assertion that such an assessment was required prior to starting the program or that the failure to include the results of such assessment here rendered the IEP “incomplete” or inappropriate, particularly in light of the several evaluations, records and reports available to the CST at the time of the IEP meeting. As explained above, the District’s plan to conduct a VB-MAPP and meet in thirty days was reasonable, and the petitioners have failed to show how this plan failed to comply with the IDEA or denied A.S. a FAPE.

The testimony offered by the petitioners and Schnell simply failed to rebut the District’s proofs that the IEP, and proposed program, was appropriately tailored to A.S.’s needs and that it would provide A.S. with a meaningful educational benefit. I **CONCLUDE** that the Board met its burden of proving by a preponderance of the evidence that the Final IEP proposed to the petitioners allowed A.S. the opportunity to make meaningful progress, and that it was reasonably calculated to provide A.S. with a FAPE in the least restrictive environment. Having reached this conclusion, it is not necessary to analyze whether placement at IEA was appropriate under the IDEA.

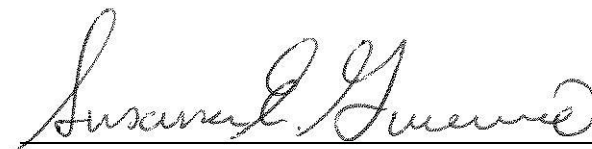
ORDER

Based on the foregoing, it is **ORDERED** that the relief requested by the petitioners be and hereby is **DENIED**, and that the petition is **DISMISSED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2022) 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 (2022). 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.

May 1, 2023

DATE



SUSANA E. GUERRERO, ALJ

Date Received at Agency

Date Mailed to Parties:

jb

APPENDIX

WITNESSES

For Petitioner:

J.R.

Eric Rozenblat, Ph.D.

Lauren Schnell, Ph.D.

For Respondent:

Noelle Benz

Annunziata (Nancy) Parker

Danielle Fox

Cheryl Fitzgerald

Katherine DeCotiis Wiedemann

EXHIBITS

Joint:

- J-1 Audiological Evaluation, Hackensack Meridian Health
- J-2 Letter from Hackensack Meridian Health enclosing Speech/ Language Evaluation and CCC/SLP and Speech and Language Technical Data dated February 24, 2020 by Stephanie Harding, M.A.
- J-3 Developmental Pediatrics Initial Consultation by Lisa Nalven, M.D., MA, FAAP dated June 3, 2020
- J-4 Letter from Pamela F. Gallin, M.D., to Avigayil Elkin, M.D., dated June 9, 2020
- J-5 Occupational Therapy Report from Kids Therapy Place, LLC, by Aviva Lipner, MA, OTR/L, dated June 23, 2020
- J-6 Quest Diagnostic Chromosomal Report dated July 13, 2020
- J-7 Letter from Lisa Nalven, M.D., to parents dated July 16, 2020
- J-8 Developmental Pediatrics follow-up Evaluation Summary by Lisa Nalven, M.D., dated November 17, 2020
- J-9 Letter from Parents to Suzanne Bassett dated May 5, 2021

- J-10 Information to open new case form dated May 6, 2021
- J-11 Registration information for Tenaflly School District dated May 7, 2021
- J-12 E-mails between parents and Natalie Bednarczyk dated May 11 and 12, 2021
- J-13 E-mail from Natalie Bednarczyk with google meet invitation dated May 14, 2021
- J-14 E-mail between Natalie Bednarczyk and parents dated May 14, 2021
- J-15 E-mail between Natalie Bednarczyk and parents
- J-16 E-mail from parents to Natalie Bednarczyk enclosing meeting confirmation form dated May 17, 2021
- J-17 E-mail from Natalie Bednarczyk with google meet invitation dated May 20, 2021
- J-18 E-mail between Natalie Bednarczyk and parents dated May 24, 2021
- J-19 E-mail between parent and Natalie Bednarczyk; and Initial Identification and Evaluation Planning-Proposed Action dated May 25, 2021
- J-20 E-mail between Natalie Bednarczyk and parents; signed Initial Identification and Evaluation Planning-Proposed Action dated May 25, 2021
- J-21 New Jersey Early Intervention System Part B Notification/Referral to Local School District dated May 26, 2021
- J-22 School Psychological Report by Emily Appiah, M.A., NCSP and cover letter to parents from Cathy Mascarelli dated June 22, 2021
- J-23 Social Assessment by Natalie Bednarczyk, MSW and cover letter to parents from Cathy Mascarelli dated August 17, 2021
- J-24 E-mail between Natalie Bednarczyk and parents dated July 1, 2021 and July 2, 2021
- J-25 Learning Disabilities Teacher Consultation Report by Maria Lucibello, LDTC and cover letter to parents from Cathy Mascarelli dated August 11, 2021
- J-26 E-mail between Natalie Bednarczyk and parents dated July 17, 2021 and July 19, 2021
- J-27 Speech and Language Initial Evaluation by Cheryl Fitzgerald, MS, CCC/SLP; cover letter to parents from Cathy Mascarelli dated July 22, 2021 and e-mail from Cheryl Fitzgerald to parents dated August 11, 2021
- J-28 Occupational Therapy Evaluation by Isabel Park, OTD, OTR/L dated July 23, 20121 and e-mails between Isabel Park, parents and Natalie Bednarczyk
- J-29 Physical Therapy Evaluation by S. Tate Hegarty, PT, DPT and cover letter to parents from Cathy Mascarelli dated September 21, 2021

- J-30 E-mail from parents to Natalie Bednarczyk dated August 6, 2021
- J-31 E-mail between Maria Lucibello and parent with attached Learning Disability Teacher Consultation Report dated July 16, 2021
- J-32 E-mail between Maria Lucibello and parents; and Learning Disability Teacher Consultation Report (revised) by Maria Lucibello, LDT dated July 16, 2021; and cover letter to parents from Cathy Mascarelli with signed copy of revised report dated September 27, 2021
- J-33 E-mail between Natalie Bednarczyk to parents and Social Assessment dated June 2021
- J-34 E-mail from Natalie Bednarczyk to parents dated August 9, 2021 and August 10, 2021
- J-35 Invitation for Initial Eligibility Determination and IEP Development dated August 12, 2021
- J-36 E-mail from Natalie Bednarczyk enclosing google meet invitation of August 16, 2021
- J-37 E-mail from Natalie Bednarczyk to parents dated August 16, 2021; Social Assessment (revised) dated June 2021; and signed meeting confirmation dated August 17, 2021
- J-38 Draft IEP and cover e-mail to parents in advance of meeting from Natalie Bednarczyk
- J-39 E-mail from parents to Natalie Bednarczyk
- J-40 E-mail between Natalie Bednarczyk to parents enclosing draft IEP on August 30, 2021
- J-41 E-mail between parents and Natalie Bednarczyk from August 20, 2021 to August 30, 2021
- J-42 E-mail between parents and Natalie Bednarczyk from August 20, 2021 to August 30, 2021
- J-43 E-mail between parents to Nancy Parker and prior correspondence between parents and Natalie Bednarczyk from August 20, 2021 to August 31, 2021
- J-44 E-mail between Natalie Bednarczyk and parents and prior e-mails from August 20, 2021 to September 1, 2021
- J-45 E-mail between parents and Natalie Bednarczyk enclosing Notification of Initial Eligibility Determination form

- J-46 E-mail from Marie Lucibello to parents dated September 20, 2021 enclosing Learning Disability Teacher Consultation Report (revised) dated July 16, 2021
- J-47 E-mail between parents and Nancy Parker; letter from Beth Callahan, Esq., to Shauna DeMarco and Monica Heinze dated September 22, 2021
- J-48 E-mail from Nancy Parker to parents and prior correspondence on September 23, 2021 and September 24, 2021
- J-49 E-mail between Nancy Parker to parents dated September 23, 2021 and September 24, 2021
- J-50 Letter from Stacey Therese Cherry, Esq., to Beth Callahan, Esq., dated September 28, 2021
- J-51 E-mail from Nancy Parker to parents enclosing final IEP dated August 20, 2021
- J-52 E-mail from Monica Heinze to parents dated September 30, 2021
- J-53 E-mail from Nancy Parker to parents dated October 5, 2021, enclosing a release form
- J-54 E-mail from parents to Nancy Parker dated October 7, 2021, enclosing a signed release form
- J-55 Letter from Beth Callahan, Esq., to Stacey Therese Cherry, Esq., dated December 6, 2021
- J-56 Autism Program Quality Indicators, New Jersey Department of Education brochure
- J-57 Not in evidence
- J-58 Not in evidence
- J-59 Not in evidence
- J-60 Not in evidence
- J-61 Curriculum Vitae and certification/license for Chery Fitzgerald, MS, CC-SLP
- J-62 Curriculum Vitae and certification/license for Noelle Benz
- J-63 Curriculum Vitae and certification/license for Annunziata (Nancy) Parker
- J-64 Not in evidence
- J-65 Not in evidence
- J-66 Curriculum Vitae for Katherine DeCotiis Wiedemann, MAT, BCBA
- J-67 Not in evidence
- J-68 Not in evidence
- J-69 Curriculum Vitae and Certification for Danielle Fox, MS, BCBA
- J-70 Recording of IEP meeting of August 20, 2021

J-71 E-mail from Monica Heinze to Lauren Schnell and attached PAWS Preschool Schedule

For Petitioners:

- P-1 Not in evidence
- P-2 Not in evidence
- P-3 Not in evidence
- P-4 Not in evidence
- P-5 Lesson Plans week of September 27 to October 1
- P-6 Tenaflly District Observation Protocol for Outsider Observer for Lauren Schnell October 12, 2021 and Observation Release dated October 11, 2021
- P-7 Not in evidence
- P-8 Not in evidence
- P-9 Not in evidence
- P-10 Not in evidence
- P-11 IEA progress graph and report – following One-Step direction graph and report – beginning February 2022
- P-12 IEA progress graph and report – Motor Imitation – beginning February 2022
- P-13 IEA progress graph and report – Model building with an Activity Schedule – beginning February 2022
- P-14 IEA progress graph and report – completing puzzles – beginning February 2022
- P-15 IEA progress graph and report – number identification – beginning February 2022
- P-16 IEA progress graph and report – letter identification – beginning February 2022
- P-17 IEA progress graph and report – eye contact – beginning February 2022
- P-18 IEA progress graph and report – following a photographic activity schedule – beginning March 2022
- P-19 IEA progress graph and report – following a photographic activity schedule – beginning March 2022
- P-20 IEA progress graph and report – doing exercises using a video model – beginning March 2022
- P-21 IEA progress graph and report – drinking from a cup – beginning March 2022
- P-22 Not in evidence
- P-23 Not in evidence

- P-24 School Program Evaluation Report by Lauren Schnell, Ph.D., BCBA-D, dated November 3, 2021
- P-25 School Program Evaluation Report by Lauren Schnell, Ph.D., BCBA-D, March 30, 2022
- P-26 Curriculum Vitae of Lauren K. Schnell, Ph.D., BCBA-D
- P-27 Not in evidence
- P-28 Curriculum Vitae of Eric Rozenblat, Ph.D., BCBA-D
- P-29 Not in evidence
- P-30 Not in evidence
- P-31 Not in evidence
- P-32 E-mail from Monica Heinze to Lauren Schnell dated May 5, 2022
- P-33 PAWS Preschool Schedule received by Lauren Schnell on May 5, 2022 by e-mail from Monica Heinze, Director of Special Education
- P-34 E-mails and attachments between parents and District from May 3, 2021 to October 12, 2021

For Respondent:

- R-1 PAWS Preschool Program Observation by Danielle Fox, MS, BCBA, dated October 12, 2021
- R-2 CUBS Preschool Program Observation by Danielle Fox, MS, BCBA, dated October 12, 2021
- R-3 PAWS Program description
- R-4 Not in evidence
- R-5 Educational Placement and Program Evaluation by Katherine DeCotiis Wiedemann, MAT, BCBA