



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 03120-26

AGENCY DKT. NO. 2024-36966

(ON REMAND EDS 02927-24)

T.R. AND J.R. ON BEHALF OF H.R.,

Petitioners,

v.

**SOUTH RIVER BOROUGH BOARD
OF EDUCATION,**

Respondent.

Lori M. Gaines, Esq., for petitioners (Barger & Gaines, LLC, attorneys)

Eric L. Harrison, Esq., for respondent (Methfessel & Werbel, P.C., attorneys)

Record Closed: April 24, 2026

Decided: May 20, 2026

BEFORE **NICOLE T. MINUTOLI, ALJ**:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

This matter arises under the Individuals with Disabilities Education Act (IDEA). This tribunal previously issued a Final Decision in favor of respondent South River

Borough Board of Education (District).¹ Thereafter, petitioners T.R. and J.R. on behalf of their son H.R. filed an appeal to U.S. District Court. Hon. Georgette Castner, U.S.D.J.,² denied the petitioners' (T.R. and J.R.) motion for summary judgment, granted in part and denied in part the Board's motion for summary judgment, and remanded the case to the Office of Administrative Law (OAL), where it was filed on February 19, 2026, for the administrative law judge (ALJ) to address the following:

- (1) whether the continued reduction in speech language therapy offered the required "basic floor of opportunity" given the 2023 oral language test scores (District Court Op. at *24); and
- (2) whether I properly qualified Dana Morris as a fact witness instead of an expert witness, and if this decision impacted the appropriateness of the May 24, 2024, individualized education program (IEP). (District Court Op. at **26–27).

ISSUES ON REMAND AND FINDINGS OF FACT

Upon reconsideration, the summaries of witness testimony included in the statement of facts of the original decision (ALJ Op.) are hereby adopted and incorporated into this decision as though appearing herein and add additional facts as necessary to address the issues on remand.

1. Whether the continued reduction in speech language therapy offered the required "basic floor of opportunity" given the 2023 oral language test scores.

Petitioners argue that the District provided H.R. with minimal speech-language therapy despite testing proving the severity of his oral deficits, based solely on subjective commentary from his speech-language pathologist. In fact, prior to conducting any standardized testing with H.R., the District reduced his already minimal language therapy

¹ T.R. & J.R. ex rel. H.R. v. South River Borough Bd. of Educ., 2024 N.J. AGEN LEXIS 995 (October 2, 2024) (ALJ Op.).

² T.R. & J.R. ex rel. H.R. v. South River Borough Bd. of Educ. (D.N.J. February 3, 2026) (District Court Op.).

by 33 percent. Even after the October 2023 evaluation in which H.R. scored in the 2nd percentile, the District maintained the lower level of speech-language therapy through the fifth grade.

The District maintains that even though it reduced H.R.'s speech therapy in fifth grade, H.R. received direct oral language not only during his speech-language sessions, but also during daily language arts instruction in resource class and daily individual one-on-one instruction with a certified Wilson and Lindamood Bell instructor. In addition, H.R.'s low oral language score in October 2023 was the product of his autism and did not render the reduction in speech therapy a deprivation of the basic floor of opportunity necessary for a free appropriate public education (FAPE).

During preschool, H.R. received services under the classification of "preschool child with a disability." Upon entering kindergarten, he was reclassified as "autistic." In kindergarten, H.R. was placed in a general education classroom with in-class resource support for all classes. From first through third grade, H.R. received language arts and math instruction in pull-out resource replacement classes, consisting of only classified students. In fourth and fifth grade, he continued to receive pull-out resource replacement instruction in language arts and returned to the general education classroom for math, where he received "in-class resource" instruction, which is a general education class with a special education co-teacher.

H.R. has received speech-language therapy in both individual and group settings. In kindergarten through fourth grade, he received ninety minutes per week of speech language therapy (two thirty-minute individual sessions and one thirty-minute group session). In fifth grade, the District reduced his speech-language therapy to sixty minutes per week (one thirty-minute individual session and one thirty-minute group session).

In H.R.'s May 5, 2022, IEP, the Present Levels of Academic Achievement and Functional Performance (PLAAFP) notes provide under speech/language:

[H.R.] currently receives speech and language services 3x weekly (2x weekly individual, 1x weekly group). [H.R.] has

been participating in virtual speech/language sessions for the majority of the 20-21 school year. He began alternating in-person weeks in May. He requires some cues and reminders to remain on task but is easily motivated with a structured session, and is easily redirected during in-person sessions. [H.R.] is working on improving expressive, receptive and social language skills. Therapy has focused on increasing spontaneous language, answering WH questions, increasing sentence length, problem solving skills, describing/vocabulary, and functional social skills. [H.R.] answers “wh” questions following videos and conversation with minimal cues. [H.R.] continues to require cues to answer the question with direct, relevant information. When engaged and interested in the topic, [H.R.] also spontaneously asks wh questions. We are working on carryover of that skill to all topics and situations. [H.R.] continues to require prompts and cues to attend to, recall and comprehend sequences of events. He often adds information that is not relevant to the topic. We are working on extending responses with details and descriptions. [H.R.] has improved descriptive language and is reducing supports needed for comparing and contrasting. In the area of pragmatics, [H.R.] greets and interacts with peers inconsistently. He demonstrates more communication when in a more familiar and comfortable social situation. In-person groups provide [H.R.] with more opportunities to practice social skills and attend to both verbal and nonverbal social communication, as well as provide a peer-model. Participation in social situations is largely dependent upon topic of conversation and interest level for [H.R.]. Additionally, [H.R.] presents with substitutions of /w/ for /l/. He produces /l/ in the initial position of words with cues and a model. Sometimes, he is aversive to producing the “tongue sound.”

[J-23.]

The Child Study Team (CST) proposed modifications to H.R.’s academic support in his May 6, 2022, IEP (2022–2023) as follows: (i) decrease Speech-Language Therapy: Individual one day per week and (ii) increase Speech-Language Therapy: Group one day per week. Modifications to H.R.’s May 6, 2022, IEP were explained in the PLAAFP notes. In speech/language, H.R.’s teacher recommended changes to H.R.’s speech therapy. She noted that:

[H.R.] has been receiving speech and language services 3x weekly (2x individual, 1x group). . . . [H.R.] participates in all

speech activities and requires occasional cues to stay on tasks. He shows great interest in discussing details about friends and families and asks many questions. Therapy has focused on listening comprehension, syntax and grammar, social skills and problem solving. [H.R.] answers concrete “wh” questions (who, what, when, where) with pictures independently. He requires some cues to recall details from videos or orally presented stories. We have used the Story Champs program to provide visual cues for story details and elements. Using this program, [H.R.] has improved recall and retell from orally presented stories with visuals. We are working on increasing independence by fading visual cues. [H.R.] is also working on using appropriate syntax and grammar when retelling stories as well as in conversation. Occasionally, [H.R.] demonstrates errors of syntax, however is able to self-correct. In the area of pragmatics/social skills, [H.R.] has greatly increased his overall interaction with peers. He greets his peers and teachers, and has been observed asking relevant questions. He requires some cues to stay on topic, but [is] always curious and inquisitive. [H.R.] sometimes perseverates on topics of high interest. [H.R.] also produced the /l/ sound in structured tasks as well as mostly in conversation. He demonstrates substitution of /f/ for /th/ (wif for with), but is able to produce the /th/ sound when prompted. Despite this error, [H.R.]’s speech is intelligible. **Overall, [H.R.] has made great progress on his speech and language goals this school year and works very hard.**

[J-24, emphasis added.]

H.R.’s fourth-grade (2022–2023) progress reports show that in speech and language, he was “progressing gradually” in several areas, and in others, he was “progressing satisfactorily” and “achieved.” (J-32.) On his report card at the end of his fourth-grade year, H.R. earned an average final grade of B in language arts (between 80 and 89). His other subjects’ grades included As, Bs, Satisfactory, and Outstanding.

In the May 1, 2023, IEP, the CST proposed modifications to H.R.’s academic support for the upcoming fifth-grade school year (2023–2024): (i) decrease in-class resource: math ten minutes per week; (ii) decrease Speech-Language Therapy: Group one day per week; and (iii) decrease Occupational Therapy: Group.

The modifications to H.R.'s May 1, 2023, IEP were explained in the PLAAFP notes. Specifically, in speech/language, H.R.'s teacher recommended a change in H.R.'s speech therapy. She noted that H.R.:

[h]as shown progress towards all of his speech and language goals. . . . [H.R.] is able to answer concrete "wh" questions after listening to a few sentences. He requires visual and verbal cueing when the story is longer in length and contains more details. . . . [H.R.] has made some progress in regard to inferencing skills. He continues to require verbal cueing to make inferences. He is able to identify the main idea of a short story but requires prompting to identify the supporting details. . . . In regard to pragmatics skills, **[H.R.] has made great progress.** He is able to initiate a conversation and maintain it for more than 2 exchanges.

[J-29 (emphasis added).]

In language arts, H.R. is:

[w]orking on a modified grade curriculum. He has been exposed to vocabulary and comprehension strategies taken from stories read during whole group and small group instruction. . . . [H.R.]'s strengths are in distinguishing individual sounds and spoken words, decoding multisyllabic words, recognizing frequently occurring words, synonyms, and antonyms, identifying cause and effect relationships in literary text, as well as, with support, identifying the main idea, compare and contrast, and identifying reasons that support points informational text. [H.R.] is working on developing proficiency with below grade level texts in skills such as, asking and answering "WH" questions, sequence of events, making inferences, determining word [meanings], and using general academic and domain-specific vocabulary words to make real-life connections.

[J-29.]

On October 13, 2023, the District completed a speech-language evaluation. The evaluator utilized the Clinical Evaluation of Language Fundamentals—Fifth Edition (CELF-5) to assess H.R.'s receptive and expressive language skills. On the six subtests administered, H.R.'s scores fell within the low to very low range, with his core language score of 68 placing him at just the 2nd percentile, indicating very low language functioning.

H.R. earned a receptive language score of 69, also at the 2nd percentile and in the very low range/severe. Similarly, H.R. earned an expressive language score of 69, in the 2nd percentile and in the very low range/severe. (J-34.)³

On October 23 and 24, 2023, the District completed an educational evaluation, which found that H.R.'s performance ranged from low to very low in broad oral language, oral expression, listening comprehension, and reading comprehension. He was also determined to perform below average in broad written language and written expression. (J-36.)

On October 30, 2023, the District completed a psychological evaluation. The evaluation demonstrated that H.R.'s cognitive abilities were "very low" in verbal comprehension, visual-spatial index, and working memory. He was determined to have a full-scale IQ of 80, which is in the low-average range. (J-37.)

After completion of its re-evaluation, the District's CST convened an Eligibility and IEP Meeting on November 20, 2023. (J-39.) The District's IEP issued at this meeting continued to call for H.R. to attend Speech and Language Therapy for sixty minutes per week (one thirty-minute individual session and one thirty-minute group session) in fifth grade.⁴

Dr. Jeanne Tighe, petitioners' expert speech pathologist, found H.R. had significant oral language deficits based on tests she performed. Dr. Tighe observed H.R. at school on March 6, 2024, for two thirty-minute sessions. First, Dr. Tighe utilized The Children's Communication Checklist-2 (CCC-2), which uses parent reporting to gather information about a child's spoken expression, comprehension, and social interactions in daily life. Petitioner T.R. completed the CCC-2 for H.R. Based solely on T.R.'s responses, Dr. Tighe found H.R.'s overall spoken communication skills in the very low range, at the 1st percentile. Dr. Tighe explained that T.R.'s responses suggest H.R. has

³ Of note, no other objective testing in the area of oral language was presented from 2019 through 2022.

⁴ The same teacher notes in the May 1, 2023, IEP, annual review were transferred to the November 20, 2023, IEP.

significant difficulties with communication skills in daily life, including when talking to peers and adults. (J-51.)

Second, Dr. Tighe administered the Comprehensive Assessment of Spoken Language—Second Edition (CASL-2) to assess H.R.’s oral language proficiency. H.R. earned a standard score of 70, placing him in the 2nd percentile. On the receptive vocabulary subtest of the CASL-2, H.R. scored 85, placing him at the 16th percentile and within the low average range. On the sentence expression subtest of the CASL-2, H.R. scored 75, placing him at the 5th percentile. On the grammaticality judgment subtest of the CASL-2, H.R. scored 67, placing him at the 1st percentile. On the nonliteral language subtest of the CASL-2, H.R. was unable to complete any test items, resulting in a score of 54, placing him at just the 0.1st percentile. Lastly, on the double-meaning subtest of the CASL-2, H.R. placed in the low-average range. (Ibid.)

Overall, on the CASL-2, H.R.’s language skills fell approximately two standard deviations below the mean for his age, consistent with the District’s evaluation in which he earned a comparable score on the CELF-5. (Ibid.)

After receiving Dr. Tighe’s March 8, 2024, report⁵, the CST met to discuss the report. The District revised the proposed IEP with Dr. Tighe’s insights that the CST felt could be beneficial to H.R. and issued a revised version on May 24, 2024. (T-1 at 96.) Pragmatic skills are social skills, including the ability to have appropriate interactions with peers and adults. (T-1 at 101.) The PLAAFP further stated:

[H.R.] continues to demonstrate progress towards all of his speech and language goals. Therapy has focused on reading comprehension skills, higher order thinking skills, and pragmatic skills. [H.R.] can answer concrete “wh” questions after listening to a short text or wordless video. He is successful when visual and verbal [sic] are provided when recalling information, retelling stories or engaging in a story that is longer in length and contains more details. [H.R.] continues to demonstrate progress with his inferencing skills, requiring minimal verbal prompts. Therapy continues to focus

⁵ Dr. Tighe’s March 8, 2024, report was not received by the District until after the April 2024 IEP was drafted.

on [H.R.] identifying supporting details by highlighting critical information within a short text.

Socially, [H.R.] will initiate a conversation and maintain a conversation for more than 2 exchanges with minimal support. He is now demonstrating improved humor and initiating word games, where he will ask questions and prompt others for responses. Based on [H.R.]'s continued progress in speech therapy, it is recommended that he continue to receive speech and language therapy to continue improving his receptive, expressive and social language skills.

[J-57.]

The District did not modify/increase H.R.'s speech therapy and continued to provide one weekly individual and one weekly group speech therapy session. (J-57.)

Amanda Johnson is an expert in special education and school psychology and is a school psychologist and case manager with the District. As a school psychologist, she focuses on meeting the needs of the District's special education students through assessments, including IQ and social-emotional tests. As a case manager, she is responsible for managing forty to fifty students, ensuring their IEPs are being met and that they receive the education they deserve. (T-1 at 36.)

Johnson testified that while IQ tests are a good insight into what a student's strengths and weaknesses are, no assessment can necessarily fully represent what a student can do. (Ibid.) When asked about the role of an educational evaluation compared with an IQ test in formulating an appropriate program for a student, Johnson explained that an IQ test provides insight into a student's abilities, including strengths and weaknesses. By contrast, the educational evaluation offers insight into the student's achievements in school. (T-1 at 37.) Further, if an IQ test reveals a particularly low score, this weakness is expected to carry over into the educational setting within the student's curriculum. (Ibid.)

Johnson is aware that H.R. has made slow progress in oral expression and oral receptive language, and she explained that a diagnosis of autism impacts not only pragmatic skills but also communication skills in general, as well as their executive

functioning, which includes planning, coordination, and the effects of working memory. Johnson stated that this has been the situation with H.R. (T-1 at 41.)

In reviewing H.R.'s psychological evaluation, dated April 12, 2018, Johnson explained that the evaluation placed H.R. within the extremely low range of intellectual functioning, with a full-scale IQ of 59. The verbal comprehension index placed H.R. in the extremely low range, the fluid intelligence index placed H.R. in the borderline range (3rd percentile), and the working memory index placed H.R. in the extremely low range. (T-1 at 42–43.) Working memory impacts oral comprehension, i.e., the ability to read a passage or text, retain the information, and retell and provide details. Additionally, verbal comprehension plays a large role in oral comprehension as it encompasses language development in general and word knowledge. (T-1 at 43.)

Johnson stated that H.R.'s psychological evaluation given to him in 2023 showed H.R. within the very low range of intellectual functioning, with a full-scale IQ of 80. While this shows a large difference in H.R.'s cognitive abilities, the very low range means he will still struggle with vocabulary and with expressing word knowledge, impacting oral comprehension and oral expression. (T-1 at 46–47.)

As a case manager, Johnson has to look at a student's cognitive testing alongside educational testing because it helps understand if the student is performing to their ability. In H.R.'s case, the verbal comprehension index is very low, the visual spatial index is very low, the working memory index is very low, and his full-scale IQ of 80 is noted as low average. (T-1 at 49.)

Johnson testified that according to his fourth-grade progress report, H.R.'s performance was consistent with his diagnosis of autism and his cognitive ability in the areas of expressive and receptive language, as well as consistent with his areas of strength and weakness on the psychological testing. (T-1 at 67.)

In reviewing H.R.'s speech evaluation given to him in October 2023, Johnson testified that H.R. was placed in the very low range of language functioning, particularly in receptive language functioning and expressive language functioning. (T-1 at 70.) She

stated that it is typical for autistic children to have deficits in expressive and receptive language, especially in expressive language, i.e., the ability to express oneself verbally. In H.R.'s case, Johnson testified that H.R. has demonstrated improvement in receptive and expressive language, even though he tested in the very low range (2nd percentile). Johnson explained that you need to look at a student as a whole, not just one piece. Looking at H.R. as a whole, based on his earlier IEPs, H.R. was making two- to three-word utterances or sentences. Now he is able to express himself much better and receive information much better. Johnson stated that although H.R. has tested in the low to very low range, he has made meaningful progress over the years; however, receptive and expressive language still remains an area for growth. (T-1 at 71.) Johnson testified that H.R. had demonstrated academic performance consistent with his cognitive ability. (T-1 at 102; J-52.) She also agreed that the level of speech therapy recommended by the District was appropriate. (T-1 at 102.)

As to H.R.'s social interactions, Johnson explained that H.R. is very personable. Johnson has seen H.R. in class, in a large group setting, and in a smaller group setting, interacting with others. She testified that H.R. is engaging and interacting with other children much more than before. (T-1 at 90.)

Wallach, an expert in special and elementary education, taught H.R. second- and fifth-grade language arts. She stated that overall, H.R. has progressed in school. (T-1 at 11.) Wallach explained that oral comprehension is a part of what she teaches and tests in her language arts class. (T-1 at 45.) Wallach stated that she saw improvement in H.R.'s oral comprehension. In particular, H.R. was able to answer questions aloud and engage in conversations about a story. (Ibid.)

Wallach testified that speech therapy focuses on similar language arts skills. Based on her review of the PLAAFPs and the progress reports, Wallach believes H.R. was making progress in speech language. (T-2 at 41.)

Socially and emotionally, Wallach saw improvements in fifth grade. H.R. enjoyed speaking with other students in the classroom and socializing with students in his general education classroom. Wallach concluded her testimony by noting that H.R. is comfortable

in South River and that she is worried about his social and emotional health upon transferring to a school with only special education students. In South River, in contrast, H.R. has social opportunities with all of his peers, including not only special education students but also neurotypical general education peers. (T-2 at 51–52.)

DISCUSSION AND CONCLUSIONS OF LAW

The IDEA requires that a state receiving federal education funding provide a FAPE to disabled children. 20 U.S.C. § 1412(a)(1). School districts provide a FAPE by designing and administering a program of individualized instruction that is set forth in an IEP. 20 U.S.C. § 1414(d). In order to qualify for this financial assistance, New Jersey must effectuate procedures that ensure that all children with disabilities residing in the State have available to them a FAPE consisting of special education and related services provided in conformity with an IEP. 20 U.S.C. §§ 1401(9), 1412(a)(1). The responsibility to provide a FAPE rests with the local public school district. 20 U.S.C. § 1401(9); N.J.A.C. 6A:14-1.1(d). The district bears the burden of proving that a FAPE has been offered. N.J.S.A. 18A:46-1.1.

The United States Supreme Court held that the IDEA “requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 580 U.S. 386, 403 (2017). The Third Circuit determined that Endrew F.’s language “mirrors [its] longstanding formulation [that] the educational program ‘must be reasonably calculated to enable the child to receive meaningful educational benefits in light of the student’s intellectual potential and individual abilities.’” Dunn v. Downingtown Area Sch. Dist., 904 F.3d 248, 254 (3d Cir. 2018) (quoting Ridley Sch. Dist. v. M.R., 680 F.3d 260, 269 (3d Cir. 2012))(emphasis added). In addressing the quantum of educational benefit required, the Third Circuit has made clear that more than a “trivial or de minimis educational benefit” is required, and the appropriate standard is whether the IEP provides for “significant learning” and confers “meaningful benefit” to the child. T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000); Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999); Oberti v. Bd. of Educ. of Boro. of Clementon Sch. Dist., 995 F.2d 1204, 1213 (3d Cir. 1993); Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180,

182–84 (3d Cir. 1988), cert. den. sub. nom., Cent. Columbia Sch. Dist. v. Polk, 488 U.S. 1030 (1989).

Case law recognizes that “[w]hat the [IDEA] guarantees is an ‘appropriate’ education, ‘not one that provides everything that might be thought desirable by loving parents.’” Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119, 132 (2d Cir. 1998) (citation omitted). Indeed, “meaningful participation does not require deferral to parent choice.” S.K. ex rel. N.K. v. Parsippany-Troy Hills Bd. of Educ., 2008 U.S. Dist. LEXIS 80616, at **34–35 (D.N.J. October 9, 2008) (citation omitted).⁶ Nor does the IDEA require that the Board maximize H.R.’s potential or provide him the best education possible. Instead, the law requires a school district to provide a basic floor of opportunity. Carlisle Area Sch. v. Scott P., 62 F.3d 520, 533–34 (3d Cir. 1995). The District will have satisfied the requirements of law by providing H.R. with “personalized instruction with sufficient support services” as are necessary “to permit [him] to benefit from the instruction.” G.B. v. Bridgewater-Raritan Reg’l Bd. of Educ., 2009 U.S. Dist. LEXIS 15671, *6 (D.N.J. Feb. 27, 2009) (citing Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 203 (1982)).

An IEP “turns on the unique circumstances of the child for whom it was created.” Endrew F., 580 U.S. at 404. It is usually “reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” Id. at 401 (quoting Rowley, 458 U.S. at 203–04). “And while parents often play a role in the development of an IEP, they do not have a right to compel a school district to provide a specific program or employ specific methodology in educating a student.” E.E. v. Ridgefield Park Bd. of Educ., 2020 U.S. Dist. LEXIS 102249, *8 (June 11, 2020) (citing Ridley Sch. Dist., 680 F.3d at 269, 278).

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). When

⁶ Unpublished court decisions and administrative decisions are not binding here. They are referenced here because they provide relevant guidance.

determining the appropriateness of any given IEP, a court's focus should be on the IEP actually offered by the board and not upon an IEP that it could have offered. Lascari v. Bd. of Educ. of Ramapo Indian Hills Reg'l High Sch. Dist., 116 N.J. 30, 47 (1989).

Any plan must involve the least restrictive environment (LRE). That is, to the maximum extent appropriate, students are to be educated with children who do not have a disability, in the same school the disabled student would attend if he were not disabled. 20 U.S.C. § 1412(a)(5)(A); N.J.A.C. 6A:14-4.2(a). N.J.A.C. 6A:14-4.2(a)(2) requires a school district to ensure that "[s]pecial classes, separate schooling, or other removal of a student with a disability from the student's general education class occurs only when the nature or severity of the educational disability is such that education in the student's general education class with the use of appropriate supplementary aids and services cannot be achieved satisfactorily."

In addressing the LRE, school districts must ensure that:

9. A student with a disability is not removed from the age-appropriate general education classroom solely based on needed modifications to the general education curriculum;
10. Placement in a program option is based on the individual needs of the student; and
11. Determinations regarding the restrictiveness of a particular program option are based solely on the amount of time a student with disabilities is educated outside the general education setting.

[N.J.A.C. 6A:14-4.2(a)(9)–(11).]

The Third Circuit applies a two-part test to assessing LRE compliance: (i) whether education in the regular classroom, with the use of supplementary aids and services, can be achieved satisfactorily; and (ii) if placement outside of a regular classroom is necessary, whether the school has mainstreamed the child to the maximum extent appropriate, i.e., whether the school has made efforts to include the child in school programs with non-disabled children whenever possible. Oberti v. Bd. of Educ. of Clementon Sch. Dist., 995 F.2d 1204, 1215–17 (3d Cir. 1993) (adopting the test

established in Daniel R.R. v. State Bd. of Educ., 874 F.2d 1036 (5th Cir. 1989)). The District's effort in this regard must be significant:

If the school has given no serious consideration to including the child in a regular class with such supplementary aids and services and to modifying the regular curriculum to accommodate the child, then it has most likely violated the Act's mainstreaming directive. The Act does not permit states to make mere token gestures to accommodate handicapped students; its requirement for modifying and supplementing regular education is broad.

[Id. at 1216 (citations omitted).]

When comparing the educational benefits the child will receive in the regular classroom with supplementary aids and services, with the benefits they will receive in the segregated classroom, "special attention" must be paid "to those unique benefits the child may obtain from integration in a regular classroom which cannot be achieved in a segregated environment, i.e., the development of social and communication skills from interaction with nondisabled peers." Ibid.; see also Daniel R.R., 874 F.2d at 1049 ("a child may be able to absorb only a minimal amount of the regular education program, but may benefit enormously from the language models that his nonhandicapped peers provide" such that mainstreaming is beneficial "even if the child cannot flourish academically").

The regulations specifically require school districts to provide "a continuum of alternative placements . . . to meet the needs of children with disabilities." 34 C.F.R. § 300.115(a) (2025). The continuum must "make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement." 34 C.F.R. § 300.115(b) (2025); Oberti, 995 F.2d at 1216. Indeed, "children with disabilities who are placed in regular classrooms will most likely receive some special education and related services outside of the regular classroom, such as speech and language therapy or use of a resource room[.]" Id. at 1215, n. 21; see also Daniel R.R., 874 F.2d at 1050 ("EHA and its regulations do not contemplate an all-or-nothing educational system in which handicapped children attend either regular or special education.")

In New Jersey, the District bears the burden of proof in a due process hearing to show, by a preponderance of the credible evidence, that it has met its legal obligation to provide a FAPE. Lascari v. Bd. of Educ. of the Ramapo-Indian Hills Reg'l High Sch. Dist., 116 N.J. 30, 46 (1989) N.J.S.A. 18A:46-1.1. In resolving factual disputes to determine whether, by the preponderance of credible evidence, an IEP is reasonably calculated to provide FAPE, judges must rely upon the determinations of experts in the field of special education. Rowley, 458 U.S. at 206–08.

There is a two-part inquiry when reviewing alleged violations of the IDEA: whether the district “complied with the procedures set forth in the Act” and whether the IEP “developed through the Act's procedures [is] reasonably calculated to enable the child to receive educational benefits.” Rowley, 458 U.S. 176 at 206–07. Not all procedural violations will rise to a substantive deprivation of FAPE. Rather, this forum may find that a child did not receive a FAPE “only if the procedural inadequacies . . . impeded the child's right to a free appropriate public education”; “significantly impeded the parents’ opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child”; or “caused a deprivation of educational benefits.” 20 U.S.C. 1415(f)(3)(E)(ii); see N.J.A.C. 6A:14-2.7(k).

Evidence and testimony indicate that H.R. has shown appropriate progress considering the circumstances. From first- through sixth-grade years, H.R.’s CST proposed ten different IEPs to address H.R.’s varying academic needs. With each successive IEP, the CST tracked H.R.’s progress, identified goals for H.R., and modified each subsequent IEP accordingly. They also added goals and objectives in other areas, including writing, mathematics, science, and social studies. The District regularly advised H.R.’s parents, T.R. and J.R., about H.R.’s IEP goals and objectives. The CST documented H.R.’s progress on each subject through timely progress reports, quarterly report cards, and IEP meetings, demonstrating the District’s ongoing efforts to meet H.R.’s needs. The CST developed each IEP to advance H.R.’s academic growth.

As to H.R.’s oral language, the PLAAFPs that were prepared by H.R.’s teachers each year explaining how H.R. was progressing, albeit gradually, the annual report cards showing satisfactory grades, the progress reports showing H.R. was performing

satisfactorily or better and meeting his goals, and the testimony of Johnson, special education teacher, and Wallach, special education teacher, make it clear that H.R. was receiving an appropriate program for oral language in the least restrictive environment. As mentioned earlier, I found Johnson's testimony credible and convincing. Johnson noted that H.R. has displayed academic performance consistent with his cognitive ability. H.R.'s diagnosis of autism impacts his receptive and expressive language functioning, and this is his area of weakness.

Regarding the October 2023 speech evaluation, H.R.'s score was consistent with his cognitive abilities, as evidenced by the 2023 educational and psychological evaluations. Looking at H.R. as a whole, based on his earlier IEPs, H.R. was making two- to three-word utterances or sentences. Now he is able to express himself much better and receive information much better. In fact, H.R.'s reported progress in speech/language prompted his speech language pathologist to recommend a reduction in speech language therapy. The question is whether the IEP is reasonable, not whether the court regards it as ideal. See *Endrew F.*, 580 U.S. at 399. Here, I **FIND** that the speech language therapy provided in the May 24, 2024, IEP is appropriate and provides the basic floor of opportunity consistent with H.R.'s disability.

2. Whether I properly qualified Dana Morris as a fact witness instead of an expert witness, and if this decision impacted the appropriateness of the May 24, 2024, individualized education program (IEP).

During the hearing on July 31, 2024, I accepted Dana Morris as an expert in special education and the Wilson Reading System. (T-2 at 126.) I further assessed Morris' credibility and analyzed the facts considering Morris as an expert witness. However, in my Final Decision, I inadvertently wrote "fact" witness instead of "expert" witness. This clerical error did not impact my evaluation of Morris' testimony or the appropriateness of the May 24, 2024, IEP.

Based on the above, I **CONCLUDE** that the District has demonstrated, by a preponderance of the credible evidence, that it crafted a program and provided a placement for sixth grade that was reasonably calculated to provide H.R. with significant

learning and meaningful benefit in light of his individual needs and potential, and thus did provide H.R. a FAPE in sixth grade.

ORDER

Based upon the foregoing, it is **ORDERED** that the petitioners' due-process petition is **DENIED** and **DISMISSED**.

This decision is final pursuant to 20 USC § 1415(i)(1)(A) and 34 CFR § 300.514 (2025) 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 (2025). 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 20, 2026

DATE



NICOLE T. MINUTOLI, ALJ

Date Received at Agency:

Date Mailed to Parties:

NTM/tc

APPENDIX

Witnesses

For petitioner:

Dana Morris
Dr. Jeanne Tighe
T.R.

For respondent:

Amanda Johnson
Lindsey Wallach

Exhibits

Jointly submitted:

- J-1 speech/language evaluation, March 29, 2018
- J-2 psychological evaluation, April 12, 2018
- J-3 educational evaluation, April 20, 2018
- J-4 IEP—re-evaluation eligibility determination with IEP, April 24, 2018
- J-5 IEP—an annual review, February 28, 2019
- J-6 speech therapy outpatient evaluation, June 17, 2019
- J-7 K. Urrutia Notes, 2019–2024
- J-8 MP1 progress report 19–20, October 18, 2019
- J-9 detailed BCBA meeting notes, January 19, 2020
- J-10 MP2 progress report 19–20, January 27, 2020
- J-11 IEP—amended agreement without meeting, May 26, 2020
- J-12 final report card 19–20, June 20, 2020
- J-13 MP1 progress report 20–21, October 15, 2020
- J-14 MP2 progress report 20–21, January 8, 2021
- J-15 IEP—amendment agreement without meeting, February 22, 2021
- J-16 MP3 progress report 20–21, March 11, 2021
- J-17 MP4 progress report 20–21, May 13, 2021

- J-18 final report card, June 23, 2021
- J-19 Wilson progress documents, October 13, 2012– March 4, 2024
- J-20 MP1 progress report 21–22, October 18, 2021
- J-21 MP2 progress report 21–22, January 7, 2022
- J-22 MP3 progress report 21–22, March 14, 2022
- J-23 IEP—amendment agreement without meeting, May 5, 2022
- J-24 IEP—an annual review—May 6, 2022
- J-25 MP4 progress report 21–22, May 17, 2022
- J-26 H.R. final report card 21–22, June 22, 2022
- J-27 MP1 progress report 22–23, October 24, 2022
- J-28 MP2 progress records 22 to 23, February 3, 2023
- J-29 IEP, May 1, 2023
- J-30 MP3 progress report 22–23, May 8, 2023
- J-31 final report card 22–23, June 21, 2023
- J-32 IEP progress report 2022–2023, June 21, 2023
- J-33 PT3 re-eval, October 6, 2023
- J-34 speech re-eval, October 13, 2023
- J-35 MP1 progress report 23–24, October 20, 2023
- J-36 Triennial educational re-eval, October 30, 2023
- J-37 psychological re-eval, October 30, 2023
- J-38 reading evaluation—iReady, November 16, 2023
- J-39 IEP—re-evaluation eligibility determination with IEP, November 20, 2023
- J-40 MP2 report card 23–24, December 11, 2023
- J-41 Fall 2023 DRA score, December 15, 2023
- J-42 ELA iReady scores, December 20, 2023
- J-43 Megan Bowlin Center Dir. recommendation Lindamood-Bell, December 22, 2023
- J-44 Learning ability evaluation summary—Lindamood-Bell, December 22, 2023
- J-45 IEP final (17) pages, January 5, 2024
- J-46 Dr. Jimenez diagnosis and treatment, January 11, 2024
- J-47 due process and attachment filed by parents, January 22, 2024
- J-48 District’s answer to due process, February 2, 2024
- J-49 Gaines to Harrison letter, February 26, 2024

- J-50 updated CBA notes, March 6, 2024
- J-51 comprehensive oral and written language evaluation Dr. Tighe, March 8, 2024
- J-52 IEP—the annual review, April 25, 2024
- J-53 Gaines to Harrison letter, May 7, 2024
- J-54 staff response to Dr. Tighe’s report, May 15, 2024
- J-55 Score report from the District educational evaluation dated November 1, 2023 (received May 23, 2024)
- J-56 Score report 2 from the District educational evaluation dated November 1, 2023 (received May 24, 2024)
- J-57 IEP—assess progress and review or revise IEP, May 24, 2024
- J-58 Dr. Tighe IEP review letter, May 24, 2024
- J-59 Gaines to Harrison letter, May 29, 2024
- J-60 amended petition for due process, May 30, 2024
- J-61 DRA documents, June 11, 2024
- J-62 answer to amended petition for due process, June 11, 2024
- J-63 progress report 23–24, June 20, 2024
- J-64 ASHA scope of practice in speech-language pathology
- J-65 CV—Dr. Jeanne Tighe
- J-66 Wilson reading evidence of program effect (from District records)
- J-67 Wilson tiers
- J-68 CV—Dana Morris
- J-69 academic resources—Newgrange School
- J-70 student copy Sea Turtles lesson 25 DMS
- J-71 Wilson reading system scope and practice 1–6
- J-72 CV—Kim Urrutia
- J-73 Wilson certificates
- J-74 Newgrange website information packet—Bates stamped
- J-75 scholastic description of the book—Number of Stars
- J-76 Pearson DRA chart
- J-77 implementation—Wilson language training corporation
- J-78 CV—Lisa Hinz
- J-79 CV—Amanda Johnson

- J-80 CV—Laura Trippodi
- J-81 CV—Lindsey Wallach
- J-82 CV—Monica Neves
- J-83 Woodcock RPI table
- J-84 IEP, February 19, 2020
- J-85 DRA busy helpers
- J-86 Dana Morris Wilson credentials
- J-87 Newgrange WADE documents
- J-88 Gaines to Harrison letter, July 17, 2024