

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION

OAL DKT. NO. EDS 02594-14

AGENCY DKT. NO. 2011-20735

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

Petitioners,

v.

NEW MILFORD BOARD OF EDUCATION,

Respondent.

Michael I. Inzelbuch, Esq., for petitioners

Vittorio S. LaPira, Esq., for respondent (Fogarty & Hara, attorneys)

Record Closed: December 8, 2014

Decided: January 21, 2015

BEFORE **MICHAEL ANTONIEWICZ**, ALJ:

STATEMENT OF THE CASE

This is an appeal filed on behalf of B.S. and J.S.'s son, M.S., for relief under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. §§ 1400 to 1419, as reauthorized effective July 1, 2005, P.L. 108-446 (2004), and the implementing federal and state regulations. Petitioner, M.S., at the time of filing of this case, is classified eligible for special education and related services as a student with a disability. M.S. has been diagnosed with Asperger's Syndrome and ADHD. While the parties agree on the nature of his disability, they differ on whether the unilateral placement of the student at the SINAI School is appropriate. Respondent, New Milford Board of Education

(Board or District), opines that the petitioners are not entitled to reimbursement because the SINAI School is not the appropriate placement for M.S., and even if it were, the petitioners' demand for reimbursement should be denied because the petitioners acted unreasonably, disingenuously, and in bad faith. M.S.'s parents' request that the Board pay for continued placement at the SINAI/Maor School and pay for all costs/expenses related to M.S.'s attendance therein; including attorney fees, costs, and expenses.

On July 23, 2014, based on the submissions of both parties seeking summary decision, I decided in favor of the petitioners' request for summary decision on the issue as to whether the District provided FAPE to M.S., i.e., that the District failed to provide FAPE to M.S. Basically in the remainder of this case, the outcome will depend, for the most part, on whether the placement of M.S. in the SINAI School was appropriate and whether the petitioners acted reasonably.

PROCEDURAL HISTORY

On January 28, 2014, petitioners filed a request for a due process hearing with the Office of Special Education Programs (OSEP), a unit of the New Jersey Department of Education. The OSEP conducted a mediation session, which did not result in a resolution of the dispute. Subsequently, the OSEP transferred the matter to the Office of Administrative Law (OAL) where it was filed on March 7, 2014, for a hearing. An unsuccessful settlement conference was held and a hearing was conducted on November 19, 2014. The issue as to whether FAPE was provided to M.S. was decided in petitioners' favor by motion for summary decision filed by both the petitioners and the respondent as set forth herein above. On December 3, 2014, and December 8, 2014, the petitioners and the respondent respectively submitted written summations and on the last day the record closed.

FACTUAL DISCUSSION

TESTIMONY

For the Petitioner

Diane Robertson

Diane Robertson (Robertson) is a SINAI teacher and was accepted as an expert in the area of “education and specifically in special education.” Robertson obtained her Bachelor’s degrees (BS in chemistry and a BA in sociology) from the College of St. Elizabeth in Convent Station, New Jersey. She received a Master’s degree from the New School for Social Research in sociology and a Master’s degree from Seton Hall University in counseling and special services. Lastly, she received a Master’s degree in education from the Bank Street College of Education in New York City.

Robertson has been teaching in SINAI for about seven years. Prior to that Robertson taught in the New York City Public Schools for approximately eighteen to twenty years in special education. Robertson is a Certified Special Education Teacher in New York State and a Teacher of Special Education in New Jersey. Robertson’s testimony was credible and well reasoned.

Robertson taught M.S. during the 2013-2014 school year at SINAI. Robertson taught M.S. English/Language Arts and Geometry, which were special education classes. Although not a certified teacher in English or Geometry, she is a certified teacher of Special Education and had many years of experience teaching special education. Robertson recalled that there were three students in the Geometry class and eight students in the English class. Robertson stated that the Geometry class had the same curriculum as the mainstream class. In the beginning of the class, M.S. had a hard time staying focused and not making irrelevant comments. M.S. was very distracting to himself and to others. Robertson had to do a lot of redirecting to keep M.S. focused. As the year progressed, M.S. got better doing homework and studying,

and his grades reflected that. M.S. had behavioral issues which were not accepted in mainstream classes. Robertson utilized verbal reminders to keep M.S. on task.

Robertson stated that she does monitor the progress of her students and did so for M.S. in geometry. M.S. received a final grade of 79 in Geometry. M.S.'s grades in Geometry throughout the year were up and down. Robertson was surprised by this grade fluctuation because she felt he had more talent in this area. Robertson felt that his grades were the result of his inability to stay focused and his distracting behaviors. Robertson felt that due to the small size of her class, she was able to put focus on M.S. and keep him focused in order to provide M.S. with progress.

Robertson testified that in the SINAI School, there were staff meetings where the whole staff is involved and they discuss the individual students. M.S. also had a support period where he would receive additional help in whatever subject area he may need. The whole school (Maor High School) permitted M.S. to socialize with mainstream students, which would assist with his socialization skills. There is also a social worker on staff in the SINAI School. The social worker, who is also a math teacher, worked with M.S. once a week.

Robertson also taught English/Language Arts III to M.S. There were eight students in that class. Robertson believed that M.S. progressed well in that class. Robertson uses "Genre Studies" in English. "Genre Studies" allowed a student to pick out a genre and pick out two books from a menu.

In Geometry, Robertson would give the students homework and a homework quiz every day. Robertson would then be able to measure effectiveness of the work quickly. Robertson stated that M.S.'s Comprehensive Student Plan called for counseling twice a week. Robertson then reviewed the goals and objectives set up for M.S. This document showed a varied amount of progression in certain areas of study. The progression was based on Robertson's observation and the student's performance in class.

Robertson stressed that the small class size at SINAI was very important to permitting M.S. to learn more proficiently. Last year M.S. had a class of eight students where M.S. had some difficulty in functioning. In this year (2014-2015) M.S. has three students in his class.

Robertson described the Kushner/Maor School as unique because of the fact that the Kushner students fully accept the Maor students in their clubs, teams, in lunch time, etc. This inclusion is by design. The fact that there are a total of twenty-nine students in the Maor/SINAI program benefits M.S. The reason for the benefits is that M.S. knows the staff in school. M.S. knows where to find the staff and can easily deal with them. Robertson noticed progress for M.S. in his schooling. In September, she saw a child who felt socially isolated and by the end of that school year, M.S. felt more integrated into the social fiber. The clubs in the school were not simply SINAI clubs but instead were school-wide clubs where all students (mainstream students and special education students) interacted together.

On cross-examination, Robertson admitted that she did not get a Bachelor's or Master's degree in Math or Language Arts even though she was a Math and Language Arts teacher in SINAI. Robertson stated that even when M.S. received a "3" for the entire year—the threes represented a range—like a range in all numbers. The fact that M.S. got threes throughout the year did not mean that there was no progress by M.S. Robertson stated that the Kushner High School (of which SINAI was a part) had about 300 or 325 students. The SINAI students were separate and were about fifty students. M.S. attends classes with mainstream students in the school.

There was a reading from a report written by Carol Krakower (Krakower), a speech therapist, which stated that she observed M.S. eating potato chips instead of doing his work and that Robertson threw a book at M.S. and told him: "Wake up and get to work." Robertson, in response, stated that she did not throw a book at M.S. and would not do so. The Krakower report further stated that she observed M.S. continued to sleep unaware of the teacher's attention for the last fifteen minutes in the class. He spent the first ten minutes eating and arguing, five minutes working, and fifteen minutes

sleeping. Robertson also denied that this occurred in her class with M.S. There was no independent evidence that these events actually occurred.

Judith Leah Karp

Judith Leah Karp (Karp) is the associate dean at SINAI School and was accepted as an expert in “special education and the monitoring and development of programs in special education.” Karp has a Bachelor’s degree from Empire State College in education and a Master’s degree in special education from the University of Southern Maine. Karp worked at the SINAI School for eighteen years. Karp started as the director of SINAI and then became the assistant dean and then became the associate dean. Karp was the associate dean in the 2013-2014 school year. Karp was responsible for designing the curriculum, placing students in the classes, developing both the mainstream opportunities and supervising teachers that are teaching M.S., reviewing the CSP goals and supervising contact with the parents, and contacting M.S.’s therapists.

Karp stated that it was her job to read student evaluations and past history. After reading such evaluations, Karp would develop a school curriculum for the student. Karp stated that she did same for M.S. Karp was aware that M.S. was in Miami-Dade Public Schools and was subject to bullying in that school district due to his disability. Karp spoke to the parents about that history and several professionals in Miami. Karp found that M.S. had difficulty filtering and he said whatever thought occurred to him. For example, M.S. would make comments on other people’s appearance, which they would not appreciate and thus would create social friction. Karp related the use of a pillow by M.S. in school. M.S. had extreme fatigue and needed a pillow as a result. Karp was told by B.S. that M.S. was not falling asleep at night and thus he wanted to sleep in the library. Karp was also in touch with M.S.’s mother on a weekly basis by telephone and discussed a variety of issues. Karp kept up on M.S.’s sleeping habits in order to assess his fatigue. Karp then set up a point system to address M.S.’s behavior and improve same. The parents in working with M.S.’s doctors then tweaked M.S.’s medication and M.S. continued to progress. As M.S. progressed, SINAI changed his program to reflect that growth. Karp stated that M.S. wanted to be a typical student and wanted to be in

as many mainstream classes as possible. Accordingly, they added a US History (mainstream) class to his schedule.

Karp testified that she spends a lot of time getting to know her students. Karp stated that M.S. wanted to learn Hebrew, which was also a mainstream class. It was the first mainstream class M.S. attended. M.S. was also mainstreamed in the class called Intro to Computers. In total, M.S. was mainstreamed in four classes: two Hebrew classes, computers, and gym in the fall of 2013. As the year progressed, additional mainstream classes were added, including History. The remainder of M.S.'s classes were SINAI classes with very small class sizes: eight students in Language Arts, and three students in geometry.

Karp stated that goals and objectives were selected for the students by the teachers developing appropriate goals for the students. Karp would review those goals in order to make sure they were appropriate for the students. M.S. had counseling with Freda Stone, LCSW, who is a New Jersey Department of Education Certified Counselor. M.S. would have one session per week of counseling with Stone. In the beginning of the 2013 school year, M.S. was given one-to-one counseling. In February 2014, M.S. was given group counseling because of a change in M.S.'s needs. M.S. had settled into a nice routine and was responding well to the techniques Stone was working on. M.S. began to look like a mainstream student, so a group counseling session was appropriate. Karp explained that the reason there were no objectives in the report was that the school struggled with confidentiality issues in order to protect the children at that time. This issue has now changed, explained Karp, and the Social Skills groups now have goals reflected in the CSP. As a result of going through the counseling sessions with Stone, M.S. began to filter things in a more appropriate way.

Karp also explained that even if a student receives the same number in his/her assessment throughout the year, that does not mean that he or she is not progressing because, for example, if M.S. needs prompts, but he begins using ten prompts and then reduces to three prompts, he still needs prompts, but he is progressing. It was Karp's opinion as an expert that SINAI was an appropriate placement for M.S. because M.S. had a unique profile. M.S. needs the opportunity to be exposed to typical peers in a

supportive environment. This is accomplished at SINAI. Karp also believed that M.S. made progress during the 2013-2014 school year. This was based on Karp's observation of increased connectedness with the children (both mainstream and special education students). M.S. has also expanded his background of interests.

Karp related that the school also has many clubs. The students have the ability to select clubs as per their interests. M.S. was also instrumental in setting up a Minecraft club with several of his mainstream friends. Karp also felt that M.S. was progressing academically. Karp cited the fact that M.S. went from a special education class in History to a mainstream class. Karp also testified that no one from New Milford came to the SINAI School to observe the program during the 2013-2014 year. Karp stated that the school had consistent contact with M.S.'s mother in order to obtain and give information to and from her

On cross-examination it was stipulated that SINAI is an accredited school but not approved by the New Jersey Department of Education. Karp described the SINAI Schools as a series of schools with M.S.'s school being located in Livingston, New Jersey and being a part of the Maor/Kushner School.

Karp stated that she met with Stone regarding the individual students she meets with and her general caseload. Stone would write confidential reports at the end of the school year and did so for M.S. in June 2014. Karp explained how the goal for M.S. was to complete at least three genres during the course of the school year. This program was tailored specially to M.S. M.S. was described by Karp as being, at first, rigid and inflexible. M.S. sees things in black and white. Having M.S. read from three different genres was difficult for him at first. However, the program made M.S. become a more flexible thinker and to function outside the parameters of what he felt comfortable in.

Karp also admitted that SINAI did not have a certified behaviorist on staff. Karp admitted that the Maor administers and she developed the behavior plans. Karp then reviewed the report written by Caplan. (J-38.) Karp also stated that she was not present for any of Ms. Krakower's observations. Karp agreed that if Robertson had

thrown a book at M.S. or M.S. was permitted to sleep in class, it would not be appropriate. Karp also stated that the school had 76.31 percent non-sectarian in the year 2013-2014. Karp expressed doubt regarding Krakower's allegations about Robertson.

On re-direct, Karp stated that M.S. using a pillow was addressed during the school year and near June 2014 this behavior had been corrected. Karp found M.S. was more focused and he was completing his work. In sum, it was Karp's firm belief that M.S. made significant progress.

Susan Caplan, M.Ed., LDTC

Susan Caplan (Caplan) was accepted as an expert in "special education, special education programming and as an LDTC (learning disabilities teacher consultant)." Caplan had worked in the public school system for thirty-two years in New Jersey but did not work at the SINAI (or related) schools. Caplan holds New Jersey certifications as a Teacher of the Handicapped. Caplan, as a witness, was quite credible in terms of the depth and detail of her testimony. It was also clear that Caplan was unbiased and objective.

Caplan stated that M.S. has weaknesses in processing speech and thus it was wise to allow him to use a calculator in order to have a better chance of keeping pace with the activity. Caplan also stated that she never saw M.S. with a pillow. Caplan observed him in Ms. Carle's class in Chemistry. Caplan described M.S. in Carle's class as awake, attentive, and appropriate. It was the opinion of Caplan, an expert in special education, special education programming, and a learning disabilities teacher consultant, that SINAI was an appropriate placement for M.S. The SINAI program is personalized and individualized. Caplan found that there was an extensive amount of communication between the supervisors and the teachers. Caplan has reviewed SINAI on many occasions and at times have found it to be not an appropriate placement for a student, but not in this case with reference to M.S. Caplan found the opportunities for mainstreaming to be terrific. SINAI also individualizes education for its students. There could be three different levels of instruction at once. Caplan considers that to be

unique. Caplan had submitted a report regarding her evaluation of SINAI. (J-38.) Caplan found the ratio of teacher to student at SINAI to be one to three and one to five. Caplan also agreed that even when a student gets all threes in his report card, that does not mean that he is not progressing because there is a range in that score. Caplan had observed Robertson's class and never saw her throw a book at a student. Caplan also never saw M.S. bring a pillow to class. However, Caplan's observations were limited in terms of time.

On cross-examination Caplan stated that in order to write her report, she reviewed M.S.'s report cards, teacher interviews, and conferences with M.S.'s mother. Caplan placed in her report that she made one formal observation of M.S.

B.S.

B.S. is the mother of M.S. and the petitioner in this matter. B.S. stated that she had requested a written plan for her son, M.S. She wanted a plan so she would know what the District was going to do for her son. B.S. registered her son in New Milford in June 2013, and she filled out all of the paperwork. In response, B.S. received a class schedule. B.S. felt that the class schedule did not tell her anything. B.S. was concerned about the schedule and she spoke with the guidance counselor during the summer. When B.S. came back from summer camp, where B.S. served as a drama teacher in a sleep-away camp, the District wanted to set up a meeting. B.S. reached out to the guidance counselor in order to respond to the class schedule she received from the District.

On September 24, 2013, B.S. attended a meeting with representatives from the District. At that meeting, B.S. expressed her concerns, i.e., class size, a liaison, and someone to touch base with and speak with about issues with her son. B.S. recalled that with regard to class size, she was told the class size would be around twenty and ten support students in the class and only one person to support those students. B.S. was concerned about that size class. In SINAI, the class size was around eight students in total. In addition, B.S. discussed the need for a liaison and support to assist M.S.'s social skills.

B.S. advised that her son had Asperger's and thus had social issues. M.S. had a tendency to say inappropriate things and read social situations in the wrong way. Accordingly, M.S. was in need of support and guidance. The District provided nothing to B.S. in writing. B.S. stated that she walked out of the meeting not really knowing anything that was really being offered to M.S. B.S. asked for a written plan both prior to and at the meeting. B.S. confirmed that she did not receive an IEP for 2013-2014.

B.S. stated that she registered M.S. in New Milford because they lived in New Milford. B.S. and her husband and son moved from Florida to New Jersey in 2012 in order to get a better education in New Jersey. After moving to New Jersey, B.S. and her husband had marital issues. Her husband lost his job and thus they could not afford to pay the tuition for SINAI. Accordingly, the parents knew that they would more than likely have to send M.S. to a public school. B.S. stated that she filled out and signed all the forms New Milford gave to her to sign or fill out.

B.S. testified that she owes SINAI money. B.S. signed a cancellable contract with SINAI in July 2013. SINAI contacted B.S. to say that they could not hold a spot for M.S. B.S. did not know what would happen with the public school. The contract with SINAI had a clause that stated that she had until October 7 (or close to that date) to cancel the contract if necessary. B.S. figured that by the end of the summer she would know where to send her son. If the public school was appropriate for M.S., she would send him there without obligation to SINAI.

B.S. stated that she felt as though M.S. was progressing at SINAI. B.S. felt as though it changed M.S.'s life. B.S. is in very close contact with Karp at SINAI. B.S. got a scholarship for M.S. for the 2012-2013 school year. B.S. attempted to get a scholarship for the next year but they would not give one to B.S. because they still owed money from the first year.

On cross-examination B.S. admitted that she did not register any of her children with New Milford when she first moved in 2012. The reason is that she did not register her children in public school in 2012 was that she worked for a private school that gave

a very large discount to the tuition cost and thus she was able to send her children there. B.S. did not send her children to SINAI at that time. It was stipulated that B.S. did not provide a copy of the tuition contract with SINAI to New Milford, nor was it requested by New Milford.

B.S. stated that she spoke to the guidance counselor in July 2013 but did not receive anything in writing from the District in the month of August. B.S. stated that she participated in IEP meeting before when they were in Florida. B.S. did not hear from the District and she did not send anything to the District to inquire as to the status of M.S.'s classes. B.S. did not follow up on the IEP status.

B.S. said that she decided to send her son to SINAI because all she received was the class schedule for the District, which had very little information. Based on that schedule, it did not appear to B.S. to be enough services to M.S. B.S. was hoping to get a schedule with a little more detail. B.S. was not sure who she met with when she registered her son, but she was sure to advise the representatives that M.S. has Asperger's and ADHD. B.S. also mentioned that her son would need a special individualized plan.

B.S. was asked when she first retained a lawyer regarding her son's special education issues, to which she answered, "sometime that year," being 2013. B.S. recalls that she did not hire the lawyer prior to registering her son for school in New Milford. B.S. stated that she contacted a lawyer sometime after the District supplied her with a schedule. B.S. also stated that even after receiving a letter stating that if she would like to schedule an IEP meeting, she can contact the District to do so. B.S. did not call the District to schedule an IEP meeting after October 1, 2013. B.S. was asked if she ever got back to the District after the September 24, 2013 meeting as she said she would, to which she responded "yes" as B.S. sent an e-mail to the District in mid-October. This was the only response given by B.S.

For the Board

Raymond T. Dorso

Raymond T. Dorso (Dorso) is the former director of special education at the New Milford Public Schools. Petitioner's attorney first conducted a direct examination of the witness. Dorso stated that he attended the meeting with B.S. on September 24, 2013. Dorso admitted that there was no IEP for the year 2013-2014 for M.S.; however, there was a service plan. Dorso further admitted that an IEP and an ISP are very different things. They are different based on the amount of services that can be provided and offered. A service plan services are a lot less than the services to be provided in an IEP. It was Dorso's belief that it was New Milford's obligation to supply an ISP to M.S. Dorso also stated that New Milford had a limited scope as to the services supplied to M.S. at SINAI. Dorso also admitted that no attempt was made to contact the SINAI School. At the meeting on September 24, 2013, the following people attended: B.S., Dorso, and the case manager. It was not an IEP meeting but simply a meeting to address B.S.'s concerns, which were requesting a liaison for her son and extra support for him as well. After refreshing his recollection, Dorso recalled that the mother had concerns about the class size too.

Dorso also admitted that there was nothing that the District wanted the mother to sign that she refused to sign. Dorso recalled seeing a letter from the mother saying that she did not think the District could meet her son's needs. Dorso stated that the District did not contact SINAI and did not ask for permission to contact SINAI. Dorso also admitted that the District made no attempt to observe M.S. until after the 2013-2014 school year. From looking at the class schedule presented to B.S., Dorso was unable to know how many students were in each class.

On cross-examination by the District's attorney, Dorso stated that B.S. never stated that the District did not answer all of her questions. Dorso confirmed that the September 24 meeting ended with B.S. stating that she would get back to them after reviewing it with her husband. Dorso then supplied the mother with his card. Dorso

then stated that he did not speak with the mother after that. Thereafter, Dorso received nothing further from B.S.

Paula Daloisio

Paula Daloisio (Daloisio) was the case manager at the New Milford Public School District. Daloisio was called by both parties as a witness in this hearing. Daloisio was a witness for the petitioner admitted that she did not observe M.S. during the 2013-2014 school year. In addition, she did not meet M.S. during the 2013-2014 school year. SINAI nor the parent ever told Daloisio that she could not come to the school. B.S. never refused to sign any document regarding her son. Daloisio described B.S. as cooperative and reasonable.

Daloisio stated that she received an evaluation for M.S. on July 15, 2013. She did not contact any of the evaluators of M.S. J-9 was the service plan she was provided with regarding M.S. At the bottom of the service plan it states that the student is attending SINAI and the parent will not be accepting this service. J-11 is the New Milford Public Schools registration dated June 20, 2013. It further stated that M.S. was seen by a child study team. It states that M.S. is classified. Daloisio stated that she got the registration on July 11, 2013. Daloisio admitted that respondent knew M.S. was classified in the summer of 2013. Daloisio stated that M.S.'s mother told her that M.S. had Asperger's and ADHD. Daloisio stated that M.S.'s mother signed the request for student records, and the mother completed the home language survey and her lease. Daloisio admitted that as of June 13, 2013, there was no question that M.S. was registered in New Milford Schools. B.S. also signed the consent for release of information. (J-14.) Daloisio identified J-19 as M.S.'s student schedule from New Milford. The schedule did not identify whether the classes were special education or not and did not identify how long the classes were. J-20 was a copy of the letter from B.S. to the New Milford guidance counselor stating that the mother got the schedule and has decided to keep her son at SINAI, which was received on September 2, 2013. Daloisio then discussed it with the director at New Milford and reached out to the mother to set up a meeting to discuss the mother's concerns. New Milford sent out a letter to the mother and the mother responded to same by letter dated September 10, 2013. (J-21.)

Daloisio admitted that there was no IEP written for the 2013–2014 school year by New Milford. Eventually there was a meeting with B.S. on September 24, 2013. At that meeting there was a review of the mother’s concerns, a list of the services received at SINAI, and the concerns as to whether New Milford could meet those concerns. The meeting ended with the mother stating that she would go home to speak with her husband and she would let New Milford know her decision.

Daloisio stated that the respondent never asked to meet with M.S. nor did they ever ask to evaluate M.S. Then Daloisio had conversations with the SINAI School via the telephone. It was further agreed that M.S. was classified and eligible for services.

Respondent questioned Daloisio in cross-examination form. Daloisio received an e-mail (J-16) from the guidance counselor when she received M.S.’s records. Daloisio then reviewed the records. Daloisio and the guidance counselor then went through M.S.’s needs and determined the best schedule. Thereafter, they called M.S.’s mother. They attempted to develop a schedule with smaller classes, like Geometry, English and other sciences on July 16, 2013. Daloisio did not hear from B.S. from July 16, 2013, to September 2, 2013. Daloisio also stated that she was out of the office much of the summer 2013. She did not receive a call from the child study team on or after July 16, 2013, and did not receive a call from anyone in the District regarding M.S.

FINDINGS OF FACT

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

M.S. was classified eligible for special education and related services as a child with a disability, i.e., Asperger’s and ADHD. M.S. lives with his mother and siblings in New Milford, New Jersey. M.S. was enrolled within the District toward the end of June 2013. In July 2013, B.S. met with the guidance counselor in New Milford in order to supply M.S.’s records and evaluations. B.S. specifically told the District that M.S. was a special needs student and thus required special education and other related services.

B.S. received a class schedule from the District based on an ISP. No IEP was ever offered or supplied to B.S. for M.S. B.S. contacted the District in order to further inquire as to the services to be rendered. B.S. then worked at a camp the balance of the summer. B.S. did not receive any correspondence during August 2013. The District made no attempt to contact B.S. or evaluate M.S. On September 4, 2013, B.S. advised the District that she was unhappy with the offered educational program in New Milford and that she would place her son in the SINAI School.

The District arranged a meeting with B.S. which was held on September 24, 2013, in order to discuss her concerns regarding the District's program. B.S. raised several issues and concerns, including the size of the classes, the level of services, the use of a liaison, and other services to be provided. B.S. left the meeting advising the District that she would speak with her husband and get back to them. Thereafter, B.S. contacted the District in order to advise them that she had decided to place her son in the SINAI School and would not be sending her son to the New Milford Public Schools. SINAI is an accredited, but not approved, school in Livingston, New Jersey.

In September 2013, M.S. started as a full-time student at SINAI. The District was notified of this change. Petitioners are privately paying the costs of SINAI. Throughout the 2013-2014 school year, M.S. was making excellent progress at SINAI. M.S. is currently much better behaved than he was during his school years in Florida in public school. SINAI incorporates an individualized special education program. M.S. participates in mainstream programs, classes and clubs to a large degree. Written instructional programs are developed and matched for M.S.'s specific skill deficits. Progress reports and supporting testimony reveal that M.S. is gaining skills that would lead to increased independence.

The SINAI School provides a good educational environment with more than adequate supports for M.S. M.S. has progressed and developed well at SINAI. There are adequate counseling provided to M.S. The teachers, although not certified in the areas they teach, have more than adequate teaching backgrounds to serve the educational needs of M.S. The educational program supplied to B.S. by the respondent

failed to supply sufficient information for her to properly assess the program. As to the IEP, I **FIND** that none was developed and none was offered to B.S. as previously found in the Partial Summary Decision. Further, the District did not provide any expert who drafted a proposed IEP for M.S. for the 2013–2014 school year.

LEGAL ANALYSIS

The IDEA was enacted to assist states in educating disabled children. It requires states receiving federal funding under the Act, such as New Jersey, to have a policy in place that ensures that local school districts provide disabled students with FAPE designed to meet their unique needs. See 20 U.S.C.A. § 1412; N.J. Const. art. VIII, IV, 1; N.J.S.A. 18A:46-8; N.J.A.C. 6A:14-1.1 et seq., Hendrick Hudson Cent. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982). State regulations track this requirement that a local school district must provide FAPE as that standard is set under the IDEA. N.J.A.C. 6A:14-1.1. A FAPE and related services must be provided to all students with disabilities from age three through twenty-one. N.J.A.C. 6A:14-1.1(d). A FAPE means special education and related services that: a) have been provided at public expense, under public supervision and direction, and without charge; b) meet the standards of the State educational agency; c) include an appropriate preschool, elementary, or secondary school education in the State involved; and d) are provided in conformity with the individualized education program (IEP) required under sec. 614(d). 20 U.S.C.A. § 1401(9).

In order to provide a FAPE, a school district must develop and implement an IEP. N.J.A.C. 6A:14-3.7. An IEP is “a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” Sch. Comm. of Burlington v. Dep’t of Educ. of Mass., 471 U.S. 359, 368, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385, 394 (1985).

In addition, when scrutinizing a FAPE claim there is a two-part inquiry. A court must first ask whether the state or school district has complied with the procedures of the Act when developing the IEP, and second, whether the IEP developed through the Act’s procedures is “reasonably calculated to enable the child to receive educational

benefits.” Rowley, supra, 458 U.S. at 207, 102 S. Ct. at 3051, 73 L. Ed. 2d at 712. While the IDEA does not require a school district to provide an IEP that maximizes “the potential of a disabled student, it must provide ‘meaningful’ access to education and confer ‘some educational benefit’ upon the child for whom it is designed.” Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999) (citations omitted). In “[e]xamining the quantum of benefit necessary for an IEP to satisfy IDEA,” the Third Circuit held “that IDEA ‘calls for more than a trivial educational benefit’ and requires a satisfactory IEP to provide ‘significant learning,’ and confer ‘meaningful benefit.’” Ibid. (citations omitted).

Following amendments to the State regulations, in 1989 the New Jersey Supreme Court enunciated the standard to be applied in determining the adequacy or the appropriateness of an IEP. The Court in Lascari v. Ramapo Indian Hills Regional School District, 116 N.J. 30, 47-48 (1989), held that the education offered to a disabled child must be sufficient to confer some educational benefit upon the pupil. The Court went on to state that the current standard in New Jersey parallels the federal standard enunciated in Rowley. Lascari, supra, 116 N.J. at 48. This standard provides the foundation upon which the pupil’s IEP is built. Moreover, the IEP establishes “the rationale for the pupil’s educational placement.” N.J.A.C. 6A:14-1.3.

Other Third Circuit decisions have further refined that standard to clarify that such educational benefit must be “meaningful,” “achieve significant learning,” and confer “more than merely trivial benefit.” T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572 (3d Cir. 2000); Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238 (3d Cir. 1999); Polk v. Central Susquehanna Intermediate Unit 16, 853 F.2d 171, 183-184 (3d Cir. 1988), cert. den. sub. nom., Central Columbia Sch. Dist. v. Polk, 488 U.S. 1030, 109 S. Ct. 838, 102 L. Ed. 2d 970 (1989). The Third Circuit has re-emphasized the importance of the inquiry into whether the placement proposed by the district will provide the student with “meaningful educational benefit.” I.H. v. State-Operated Sch. Dist. of Newark, 336 F.3d 260 (3d Cir. 2003).

Consequently, a FAPE is defined in broad terms—a limited definition would not encompass the many needs of such a dynamic population—that are consistent with the

IDEA's corresponding mandate that the states provide each disabled child with specifically designed instruction that is tailored to the child's unique needs and is a "basic floor of opportunity." Rowley, *supra*, 458 U.S. 176, 102 S. Ct. 3034, 73 L. Ed. 2d 690. Notwithstanding the demand that a FAPE is one that is sufficient to confer some educational benefit that is more than trivial or "de minimis," it does not need to maximize the potential of the child. Polk, *supra*, 853 F.2d 171. For this reason, the parents of a disabled child cannot compel a school district to provide an educational benefit that is better than the one under the IEP, providing the IEP is sufficient to confer a meaningful educational benefit that is more than trivial or "de minimis." Generally speaking, children with special needs must be provided an education tailored to their individual needs and that confers meaningful benefit. Ibid.

When a school district fails to ensure that a FAPE is being provided, as was previously determined in this case, parents have the right to unilaterally place their child in a private school and receive reimbursement from the school district for tuition. Burlington, *supra*, 471 U.S. at 370-71, 105 S. Ct. at 2002-03, 85 L. Ed. 2d at 395-96; N.J.A.C. 6A:14-2.10(b). Reimbursement, however, is never required if a school district offered the disabled student a FAPE. N.J.A.C. 6A:14-2.10(a).

Once a forum holds that the public placement violated IDEA, it is authorized to "grant such relief as the court determines is appropriate." 20 U.S.C.A. § 1415(e)(2). Under this provision, "equitable considerations are relevant in fashioning relief." Sch. Comm. of Burlington, *supra*, 471 U.S. 359, 374, 105 S. Ct. 1996, 2005, 85 L. Ed. 2d 385, 398, and the court enjoys "broad discretion" in so doing. Id. at 369. Courts fashioning discretionary equitable relief under IDEA must consider all relevant factors, including the appropriate and reasonable level of reimbursement that should be required. Ibid.

The United States Supreme Court held in an unanimous 1993 decision that, when a public school provides an inappropriate education to a classified child, courts may order reimbursement to those parents who unilaterally place their child in a private school, even if the private school does not meet certain criteria. Florence County Sch. Dist. Four v. Carter, 510 U.S. 7, 114 S. Ct. 361, 126 L. Ed. 2d 284 (1993). In other

words, parents are not held to the same standard as local education agencies in making out-of-district placements. Ibid.

It is clear that B.S. is a caring, thoughtful mother who has M.S.'s best interests at heart. Neither the text of the IDEA nor its legislative history imposes a "requirement that the private school be approved by the state in parent placement reimbursement cases." Florence, supra, 510 U.S. at 11, 114 S. Ct. 364,126 L. Ed. 2d 291. To the contrary, the Court of Appeals concluded that the IDEA's state-approval requirement applies only when a child is placed in a private school by public school officials. N.J.A.C. 6A:14-2.10(b)

In addition, the IDEA includes a mainstreaming requirement requiring education in the "least restrictive environment." See 20 U.S.C.A. § 1412(a)(5)(A). Courts in this Circuit have interpreted this mainstreaming requirement as mandating education in the least restrictive environment that will provide meaningful educational benefit. "The least restrictive environment is the one that, to the greatest extent possible, satisfactorily educates disabled children together with children who are not disabled, in the same school the disabled child would attend if the child were not disabled." Carlisle Area Sch. v. Scott P., 62 F.3d 520, 535 (3d Cir. 1995), cert. den. sub. nom., Scott P. v. Carlisle Area Sch. Dist., 517 U.S. 1135, 116 S. Ct. 1419, 134 L. Ed. 2d 544 (1996). Federal courts have adopted a two-part test for determining whether a school district complies with the statutory preference for the least restrictive environment. The first step is to determine whether the local school can educate the child in a regular classroom with the use of supplementary aids and services. Only if it is determined that the child cannot be educated in the regular classroom with supplementary aids and services does it then become necessary to consider out-of-district placements. Oberti v. Bd. of Educ. of Clementon Sch. Dist., 995 F.2d 1204, 1215 (3d Cir. 1993).

The Third Circuit provided further instruction on the definition of meaningful benefit when it found that the benefit must be meaningful in light of the student's potential; to fulfill this mandate, the student's capabilities as to both "type and amount of learning" must be analyzed. Ridgewood, supra, 172 F.3d at 248. "When students display considerable intellectual potential, IDEA requires a great deal more than a

negligible [benefit].” Id. at 247 (quoting Polk, supra, 853 F.2d at 182). When analyzing whether an IEP confers a meaningful benefit, “adequate consideration [must be given] to . . . [the] intellectual potential” of the individual student to determine if that child is receiving an FAPE. Ridgewood, supra, 172 F.3d at 248. Moreover, there is no bright-line rule to determine the amount of benefit required of an appropriate IEP, and a “student-by-student analysis that carefully considers the student’s individual abilities” is required. Ibid. There must be a degree, intensity, and quality of special education and related services adequate to provide an educational benefit to the individual child. Egg Harbor Twp. Bd. of Educ. v. S.O., 19 I.D.E.L.R. 15, 17 (D.N.J. 1992).

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

if the parents of a student with a disability, who previously received special education and related services from the district of residence, enroll the student in a nonpublic school, . . . or approved private school for the disabled without the consent of or referral by the district board of education, an ALJ may require the district to reimburse the parents for the cost of that enrollment if the ALJ finds that (1) the district had not made a free, appropriate public education available to that student in a timely manner prior to that enrollment and (2) that the private placement is appropriate.

When a court examines whether a district has provided FAPE, the appropriateness of an IEP is not determined by a comparison between the private school unilaterally chosen by parents and the program proposed by the district. S.H. v. State-Operated Sch. Dist. of Newark, 336 F.3d 260, 271 (3d Cir. 2003). Rather, the pertinent inquiry is whether the IEP proposed by the district offered FAPE with the opportunity for significant learning and meaningful education benefit within the LRE. G.B. and D.B. ex rel J.B. v. Bridgewater-Raritan Reg’l Bd. of Educ., EDS 4075-06, Final Decision (June 13, 2007), <http://njlaw.rutgers.edu/collections/oal/>. Upon a finding that the district provided FAPE, the appropriateness of the private school program is irrelevant. H.W. and J.W. ex rel A.W. v. Highland Park Bd. of Educ., 108 Fed. Appx.

731, 734 (3d Cir. 2004). The District bears the burden of proof by the preponderance of the competent and credible evidence that it has provided a FAPE to M.S. in the least restrictive environment. N.J.S.A. 18A:46 -1.1.

I have previously found that an IEP was not properly drafted or offered to B.S. for M.S. for the 2013-2014 school year, and that M.S.'s proposed ISP was not appropriate. It follows that FAPE was not provided for M.S. A glaring omission by the District is the fact that no one from the District had observed M.S. and the SINAI School during the 2013-2014 school year. The evidence presented shows that this was NOT the result of M.S.'s parents' or the SINAI School's failure to cooperate. Further, inactivity on behalf of the District was the Case Manager Daloisio's acknowledgement to receiving prior evaluations of M.S. but making absolutely no effort to contact the evaluators or the Essex Regional Services Commission with reference to their service plan. In this service plan, the District was advised by B.S. that M.S. attends SINAI and would not be accepting this service.

The next consideration was whether the private placement by petitioners of M.S. at SINAI, and the program provided to M.S., was appropriate. SINAI is a New Jersey State accredited school for the education of children with special needs. The witnesses presented by petitioners testified in detail about the SINAI program and M.S.'s progress in the program. Each witness detailed that the program at SINAI was appropriate for M.S., and that he is, and has been, making meaningful educational progress in that program. The testimony of Caplan regarding the appropriateness of SINAI's program was particularly compelling as she has no direct association to SINAI. Conversely, the District did not provide any direct evidence that the program at SINAI was not appropriate for M.S. There is nothing in the record which would lead to any conclusion other than that M.S. was appropriately placed by his parents at SINAI, and that the program provided to M.S. by SINAI is, and has been, appropriate for M.S.'s meaningful educational progress.

The fact that there were no written goals and/or objectives for "counseling" was adequately explained by Karp as the result of confidentiality concerns. These concerns were later addressed and resolved after the 2013-2014 school year. Karp testified that

she met weekly with M.S.'s social worker who reported progress and supplied a written report in June 2014. Karp further testified about the CSP and then went on to describe the goals and objectives that were specifically tailored to M.S.'s disability and his needs. Karp and the staff developed a behavior plan for M.S.

I **FIND** no basis to accept the hearsay statements made in the reports written by Carol Krakower (speech therapist) and Vivian Attanasio (behaviorist) as there was no evidence submitted to support those allegations. Furthermore, these allegations were strongly denied by a number of the petitioner's witnesses. As such, these allegations should be denied based on N.J.A.C. 1:1-15.5.

A parental placement may be found to be appropriate even if it does not meet the state standards that apply to education provided by the SEA or LEAs. 3 C.F.R. § 300.148.

Accordingly, the courts recognize that parents who are compelled to unilaterally place their child [as in this case] by necessity to do so without the expertise and input of school professionals that is contemplated by a truly collaborative IEP process. The courts recognize that under these circumstances, parents essentially do the best they can. Accordingly, when a public school system has defaulted on its obligations under the IDEA, a private school placement is proper under the Act (IDEA) if the education provided by the private school is reasonably calculated to enable the child to receive educational benefits.

[K.B. and D.B. o/b/o L.B. v. The Morris Sch. Dist., EDS 15435-12, Final Decision (Nov. 2013), <http://njlaw.rutgers.edu/collections/oal> (citing Florence Cty. Sch. Dist., supra, 510 U.S. at 15, 114 S. Ct. at 366, 126 L. Ed. 2d at 293).]

See L.M. v. Evesham Twp. Bd. of Educ., 25 F. Supp. 2d 290 (D.N.J. 2003); T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 581 (3d Cir. 2000).]

There was quite a bit of testimony that M.S. was making significant progress at SINAI to the point that he was permitted to go into mainstream classes and participate in clubs which included mainstream students. Issues regarding M.S.'s behavior in the

beginning of the 2013 school year were addressed based on his medication being adjusted.

It is difficult to describe B.S.'s actions as being unreasonable. B.S. is obviously a caring and supportive mother to M.S. Even the witnesses for the District stated that B.S. was cooperative in her submission of documents and reports to the District regarding her son and that she acted reasonably. B.S. registered her son early in the process (June 2013). The fact that B.S. signed a cancellable contract with SINAI in July 2013 is of no consequence. The contract with SINAI was a back-up plan to putting her son in New Milford Public Schools. The District still admittedly failed to supply sufficient information to B.S. in order to enable her to make an informed decision as to the appropriateness of the public school education in New Milford. Where class size was a clearly expressed important issue for B.S., the class schedule admittedly failed to provide any information to B.S. in order to determine the size of those classes. I hereby **FIND** that the actions of B.S. were practically without substantive alternative and were reasonable.

The placement will be acceptable if the education provided by the private school is reasonably calculated to enable the child to receive education benefits. Florence County Sch. Dist., supra, 510 U.S. at 11, 114 S. Ct. at 364, 126 L. Ed. 2d at 291. Based on the evidence presented at the hearing, it is clear that the SINAI School provided such educational benefits to M.S. Furthermore, it is clear that the sectarian nature of an otherwise appropriate private school does not bar reimbursement to the parents who so place their children. L.M. by his parents H.M. and E.M. v. Evesham Twp. Bd. of Educ., 256 F. Supp. 2d 290 (D.N.J. 2003).

Respondent has argued SINAI's teachers were not appropriately qualified to teach M.S. It is clear, however, that "private schools' failure to comply with state's licensure requirements or state's educational standards was not a bar to tuition reimbursement." Warren G. v. Cumberland Cty. Sch. Dist., 190 F.3d 80, 83 (1999). There was much evidence presented that despite some licensure shortcomings, the teachers at SINAI were providing a reasonable educational environment for M.S. I was impressed with the general qualifications of the teachers at SINAI, the supervisors

there, and their testimony at the hearing. The petitioners' witnesses were all in agreement that M.S. was receiving an educational benefit and was making progress at the school from the fall of 2013 to the spring of 2014. SINAI used a Comprehensive Student Plan (J-29) to provide M.S. with an individualized educational program and to monitor his progress despite the District argument to the contrary in their closing brief.

As such, I **FIND** that SINAI was reasonably calculated to enable M.S. to receive educational benefits. Since fall of 2013 when M.S. entered SINAI, he exhibited substantial progress to the point that he was entered into many mainstream classes in the school. M.S.'s lack of filter was substantially reduced whereby improving his social skills. M.S.'s language has progressed. M.S. is substantially easier to work with, collaborative, follows directions, and is very interested in other children and how to relate to them. M.S. can work on math tests, is task-oriented, and can work without assistance at times. In sum, M.S. has exhibited significant progress in SINAI since his current placement.

The District argues in its post-hearing brief that reimbursement should be denied to petitioners based upon the unreasonableness of their actions. In particular, the District sets forth that B.S. improperly did not consider the District's program in the summer of 2013 and had no intention of sending her son to New Milford Public Schools when she registered her son and provided the District with her reports and evaluations. In addition, B.S. had signed a contract with SINAI, which was able to be terminated up until October 7, 2013. Moreover, B.S. retained an attorney at some point prior to the September 24, 2013 meeting. The District offers these actions by B.S. as proof that the petitioner had already ruled out M.S.'s placement in the District.

Finally, the District acknowledges that petitioner never withdrew or denied her consent for the District to observe M.S. in his SINAI program. As such, there is no evidence of uncooperativeness by B.S. B.S.'s actions with regard to the New Milford School District did not constitute clearly unreasonable behavior.

I am unable to **FIND** that B.S. committed perjury during her testimony. No direct evidence was presented that would call into question the truthfulness of the testimony of B.S. nor was she given an opportunity to explain any variance in her testimony.

CONCLUSION

Based on the foregoing facts and the applicable law, I **CONCLUDE** that the Board did not offer to provide a free and appropriate education to petitioner, and, therefore, the parents' request for reimbursement for their unilateral out-of-district placement of M.S. at SINAI should be granted.

ORDER

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

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2012) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C.A. § 1415(i)(2); 34 C.F.R. § 300.516 (2012). 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.

January 21, 2015
DATE

MICHAEL ANTONIEWICZ, ALJ

Date Received at Agency

Date Mailed to Parties:

jb

APPENDIX

WITNESSES

For Petitioners:

B.S.
Diane Robertson
Judith Leah Karp
Susan Caplan, M.Ed., LDTTC
Paula Daloisio
Raymond T. Dorso

For Respondent:

Paula Daloisio
Raymond T. Dorso

EXHIBITS

Joint Exhibits:

- J-1 Multi-Disciplinary Team Report from Miami-Dade County Public Schools
- J-2 M.S.'s 2012-2013 Student Application for the SINAI School, Kushner Maor
- J-3 Individualized Education Plan from the SINAI School, Kushner Maor
- J-4 Educational Evaluation conducted by Frank Falcome, LDTTC (Essex Regional Educational Services Commission)
- J-5 Social History Interview, conducted by Lori Steinreich, LMSW (SINAI School)
- J-6 Psychological Evaluation, conducted by Ronald Friedberg, Ed.D. (Essex County Regional Educational Services Commission)
- J-7 Pediatric Neurodevelopmental Consultation, conducted by Apama Mallik, M.D. of St. Joseph's Hospital and Medical Center (at the request of the Essex County Regional Educational Services Commission)
- J-8 Speech and Language Evaluation, conducted by Kid Clan Center for Learning and Neurodevelopment

- J-9 Chapter 193 Services Plan from Essex Regional Educational Services Commission
- J-10 June 1, 2013, progress report from Freda Stone, MSW, social worker for the SINAI School
- J-11 District Registration Form – signed and submitted by parents on June 20, 2013
- J-12 Request for Student Record – provided to parents on June 20, 2013
- J-13 Completed Registration Information Packet, submitted by parents on June 20, 2013
- J-14 Consent for Release of Information, signed and submitted by parents on June 21, 2013
- J-15 2013-2014 SINAI School Tuition Contract, signed by M.S. and B.S. on July 9, 2013
- J-16 E-mail correspondence from B.S. to Rebecca Chabrow, guidance counselor, attaching copies of M.S.’s recent evaluations and his ISP
- J-17 E-mail correspondence from Rebecca Chabrow to Paula Daloisio (attaching J-4, J-5, J-6, J-7, J-8, and J-9)
- J-18 E-mail correspondence from Rebecca Chabrow to B.S., attaching a copy of M.S.’s 2013-2014 school schedule
- J-19 Proposed 2013-2014 school schedule for M.S. sent to B.S. from Rebecca Chabrow on July 16, 2013
- J-20 Correspondence from B.S. to Rebecca Chabrow notifying of unilateral placement at the SINAI School, Kushner Maor
- J-21 Correspondence from Paula Daloisio, school psychologist, to B.S. responding to September 2, 2013, notice of unilateral placement and requesting a meeting
- J-22 Correspondence from Paula Daloisio to B.S., formally advising that she would be the case manager for M.S. during the 2013-2014 school year
- J-23 Request for Parental Participation in a Meeting, sent from Paula Daloisio to B.S. and M.S.
- J-24 Updated Consent for Release of Information, signed and submitted by parents on September 24, 2013
- J-25 Correspondence from Paula Daloisio to B.S., summarizing the September 24, 2013, meeting between Ms. Daloisio and B.S.

- J-26 Correspondence from Raymond Dorso, director of special services, to M.S. and B.S., advising that M.S. would be removed from the rolls of the District
- J-27 E-mail correspondence from B.S. to Raymond Dorso responding to Mr. Dorso's November 6, 2013, correspondence and advising that M.S. had been unilaterally placed at the SINAI School, Kushner Maor
- J-28 Document entitled "Functional Behavior Assessment", conducted by Vivian Attanasio, BCBA
- J-29 Kushner Maor Comprehensive Student Plan for M.S. for the 2013-2014 Academic Year
- J-30 Paula Daloisio's case notes/contact log, last updated on June 3, 2014
- J-31 Paula Daloisio's handwritten notes concerning Attanasio's visit to NMHS
- J-32 Petitioner's Due Process Petition with Attached Exhibits
- J-33 Respondent's Answer to Due Process Petition
- J-34 Petitioners' Response to District's Document Demand
- J-35 Petitioners' response to District's document demand
- J-36 Petitioners' response to District's document demand
- J-37 Petitioners' response to District's document demand
- J-38 Petitioners' response to district's document demand
- J-39 Respondent's witness list
- J-40 File contents of Carol Krakower, MA, CCC-SLP
- J-41 File contents of Dr. David J. Gallina, M.D.
- J-42 File contents of Dr. Illan Levinson
- J-43 File contents of Miami-Dade County Public Schools
- J-44 File contents/documents of SINAI School
- J-45 File contents/documents of Vivian Attanasio, BCBA
- J-46 Petitioners' (additional) response to Districts Document demand
- J-47 Petitioners' witness list
- J-48 File contents/documents of Susan Caplan, M.Ed., LDT-C
- J-49 Petitioners' (additional) response to District's document demand
- J-50 IEP
- J-51 New Milford Public School's Registration Forms
- J-52 Speech and Language Evaluation of Kid Clan
- J-53 District Motion for Summary Decision

- J-54 Petitioners' response to District's Motion for Summary Decision and Cross-motion for Summary Decision
- J-55 District's reply brief to petitioners' response and cross-motion
- J-56 Petitioners' short reply to District's 5/7/14 letter brief
- J-57 Pre-hearing Order of ALJ Michael Antoniewicz
- J-58 District Supplemental response to petitioners' request for discovery
- J-59 District's Motion to Place burden of proof on petitioners
- J-60 District's invitation to parents to attend an IEP meeting
- J-61 Parents' confirmation of attendance to IEP meeting with confirmation of Susan Caplan's attendance
- J-62 Correspondence of M. Inzelbuch, Esq. to ALJ Michael Antoniewicz forwarding petitioners' reports in accordance with the pre-hearing order
- J-63 Petitioners' response to District's request to shift burden
- J-64 Respondent's reply to ALJ Antoniewicz
- J-65 Parents rejection letter to District
- J-66 Due Process Petition
- J-67 Resume and certification(s) of Freda R. Stone, MSW, LCSW
- J-68 Subpoena to testify to Freda R. Stone, MSW. LCSW
- J-69 Subpoena to testify to Susan Caplan, M.Ed., LDT-C
- J-70 Order – Partial Summary Decision of ALJ Antoniewicz
- J-71 Submission of V. LaPira, Esq. to ALJ Antoniewicz
- J-72 Submission of V. LaPira, Esq. to ALJ Antoniewicz
- J-73 Correspondence of Raymond T. Dorso, director of special services to parents
- J-74 Notice of additional assessment
- J-75 Petitioners' Witness Amendment #1