

**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**DECISION**

OAL DKT. NO. EDS 05079-16

AGENCY DKT. NO. 2016 24067

**L.B. ON BEHALF OF J.B.,**

Petitioner,

v.

**ROSELLE BOROUGH BOARD**

**OF EDUCATION,**

Respondent.

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**Esther Canty-Barnes**, Esq., **Kaitlyn Maltese** appearing pursuant to R. 1:21-3(b), and **Christopher Taillefer** appearing pursuant to R. 1:21-1(e)(8), for petitioner (Rutgers Education and Health Law Clinic)

**Margaret A. Miller**, Esq., and **Janet C. Lucas**, Esq., for respondent (Weiner Law Group, attorney)

Record Closed: December 29, 2017

Decided: April 13, 2018

BEFORE **RICHARD McGILL**, ALJ:

This matter concerns a request for a due process hearing by L.B. (hereinafter “petitioner”) on behalf of her son, J.B., who is now nineteen years old and is eligible for special education and related services. Petitioner contends that the Roselle Borough Board of Education (hereinafter “respondent” or “District”) failed to provide J.B. with a free appropriate public education during the 2012-2013, 2013-2014, 2014-2015 and

2015-2016 school years. As relief, petitioners seek placement of J.B. in an out-of-district therapeutic school, transportation and compensatory education.

Respondent maintains that it provided J.B. with a free appropriate public education during the time in question and that the 2012-2013 and 2013-2014 school years are beyond the statute of limitations. Respondent seeks denial of the relief requested by petitioner and dismissal of the due process petition.

### **PROCEDURAL HISTORY**

Petitioner filed her due process petition with the Office of Special Education on February 26, 2016, and respondent submitted an answer on March 16, 2016. The matter was transmitted to the Office of Administrative Law on April 5, 2016, for a hearing in accordance with 20 U.S.C. § 1415 and 34 C.F.R. § 300.507. The hearing commenced on August 26, 2016, and continued for a total of twenty-five days at the Office of Administrative Law in Newark, New Jersey.

Petitioner's motion for emergent relief in the form of home instruction at the Stepping Forward Counseling Center was granted by Order dated October 21, 2016. Subsequently, petitioner's motion for emergent relief in the form of an out-of-district placement at the New Roads School of Somerset was granted by Order dated September 20, 2017. Thereafter, the parties submitted initial and reply briefs. Petitioner consented to an extension of time to complete the decision in this matter to April 16, 2018.

### **ISSUES**

The main issue in this proceeding is whether the District provided J.B. with a free appropriate public education during school years 2012-2013, 2013-2014, 2014-2015 and 2015-2016. Petitioner contends that the District failed to identify all of J.B.'s disabilities and that each individualized education program ("IEP") failed to provide him with a free appropriate public education. Petitioner also maintains that the District failed to comply with procedural requirements. With respect to relief, the issues are whether

J.B. should be placed in an out-of-district therapeutic placement and whether J.B. should receive compensatory education for the time periods in question.

### **FACTS**

The facts as to the underlying course of events are essentially undisputed, and I **FIND** as follows. J.B. was born on October 13, 1998, and he has been receiving special education and related services since first grade. During the 2011-2012 school year, B.J. attended school in Linden, New Jersey, where he was classified as eligible for special education and related services based on the criteria for communication impaired, and he was placed in a self-contained learning and/or language disabilities program.

For the 2012-2013 school year, J.B. attended the District's Grace Wilday Junior High School for the eighth grade, and he was classified based on the criteria for communication impaired. His program consisted of in-class resource for math and language arts with speech-language therapy as a related service. J.B. was in a general education class with both a regular education teacher and a special education teacher in the classroom. During the 2013-2014 school year, J.B. repeated the eighth grade at L.B.'s request with substantially the same classification, program and placement.

For the 2014-2015 scg43 school year, J.B. advanced to ninth grade at Abraham Clark High School. J.B.'s classification was communication impaired, and his program consisted of in-class resource for English, math, science and social studies and speech-language therapy as a related service. In February 2015, social work consultation was added to J.B.'s program.

On May 20, 2015, an IEP meeting was held for J.B. for tenth grade during the 2015-2016 school year. J.B. had been accepted into the Union County Vocational-Technical High School ("Vo-Tech") for a half-day program, but he would still attend Abraham Clark High School for the other half of the school day. According to the draft IEP, J.B.'s classification was still communication impaired, and his program consisted of

speech-language therapy and individual counseling services as related services with the consultative model in the classroom.

On May 29, 2015, J.B. was admitted to the Adolescent Psychiatric Partial Care Program at High Focus Centers with diagnoses of (1) major depressive disorder, single episode, severe without psychotic features; (2) post-traumatic stress disorder (“PTSD”); and (3) seizure disorder. Believing that J.B.’s condition was the result of bullying in or connected with school, petitioner requested an out-of-district placement on June 8, 2015, to protect him from on-going bullying. J.B. remained at High Focus until August 19, 2015, when he transitioned to outpatient treatment including both medication management and psychotherapy at Central Jersey Behavioral Health. After an IEP meeting on September 8, 2015, the District denied L.B.’s request for an out-of-district placement for J.B.

During the 2015-2016 school year, J.B. went to Vo-Tech in the morning, but he did not actually attend Abraham Clark High School. Another IEP meeting was held on January 5, 2016. B.J.’s classification and placement were still communication impaired and Abraham Clark High School, but his program was changed to a mild/moderate learning or language disabilities (“LLD”) class for language arts, math, reading, social studies and science with individual and group speech language therapy and counseling services. An IEP meeting on January 12, 2016, produced a similar IEP. J.B.’s diagnoses included major depressive disorder, PTSD, generalized anxiety disorder, history of attention deficit hyperactivity disorder (“ADHD”), auditory processing disorder and partial complex seizure disorder. On April 18, 2016, J.B. entered a program at Stepping Forward Counseling Center, where he remained until August 25, 2017.

## **SUMMARY OF EVIDENCE**

### A. Respondent's Witnesses

#### 1. Nicole Rivera-Forbes

Nicole Rivera-Forbes is employed by respondent as a school social worker, and she was accepted as an expert in school social work and special education programming and services. Ms. Rivera-Forbes became J.B.'s case manager in September 2015, when J.B. was entering the tenth grade for the 2015-2016 school year. To familiarize herself with J.B. and his case, Ms. Rivera-Forbes reviewed his file and spoke with some of his teachers, his guidance counselor and his previous case manager. Ms. Rivera-Forbes also spoke with L.B., who said that J.B. did not want to come to school because of peer bullying. Ms. Rivera-Forbes spoke with District employees again, but they were not aware of any evidence of peer bullying. According to the file, J.B.'s most recent classification was communication impaired based upon expressive and receptive language delays. L.B. was in agreement with the Eligibility and Conference Report dated June 4, 2014.

Ms. Rivera-Forbes reviewed an IEP dated May 20, 2015, for J.B. for the 2015-2016 school year. This IEP was based on the consultative model, which is a special education program in the general education setting. Under the consultative model, a student receives academic and social support within the general education classroom based on his need at the time. The special education teacher works with the general education teacher to make modifications and accommodations to tests and the curriculum. According to the IEP, J.B. was receiving speech and language therapy and counseling.

In a revised IEP dated June 18, 2015, the only change related to parental concerns. L.B. was concerned about J.B.'s safety at Abraham Clark High School, and she requested an out-of-district placement. At the time, the District employees on the

IEP team did not believe that there was a sufficient basis to warrant an out-of-district placement.

At the beginning of September 2015, Ms. Rivera-Forbes received a memo dated August 21, 2015, from L.B. requesting an emergency IEP meeting to discuss various topics including an out-of-district placement. The memo refers to attached documentation supporting the request, but Mr. Rivera-Forbes did not receive the attachment at that time.

In response, Ms. Rivera-Forbes scheduled a meeting for September 8, 2015, to discuss the situation. The meeting took place as scheduled with Mr. and Mrs. B. and District representatives in attendance. L.B. was given a copy of a booklet entitled "Parental Rights in Special Education" ("PRISE"). L.B. explained that J.B. was not able to leave home and go into the community because of peer bullying. There was an incident where J.B.'s bicycle was stolen, and he was fearful and hyper vigilant. Ms. Rivera Forbes notes that the bike incident occurred on the weekend. L.B. referred to a psychiatric evaluation of J.B., but she would not provide a copy. The participants raised the possibility of an independent psychiatric evaluation and then went on to discuss J.B.'s attendance and transportation. L.B. wanted door-to-door transportation for J.B. from home to Vo-Tech, but the District would only offer a bus to the high school and another bus to Vo-Tech. L.B. refused the District's offer because J.B. would not go to the high school. District personnel raised the possibility of the mild LLD program, but L.B. wanted an out-of-district placement. L.B. did not offer any medical documentation to support her position other than a prescription form dated May 28, 2015, stating that J.B. has PTSD and anxiety and that he needs counseling and intensive therapy. During the meeting, L.B. was very upset, crying and screaming, and very irate. L.B. did not provide any documentation from High Focus or Central Jersey Behavioral Health. The participants did not reach any agreements at the meeting. J.B. was in a half-day program at Vo-Tech, but he was not attending Abraham Clark High School, because he was too fearful and had severe anxiety.

In September 2015, J.B. started a building services program at Vo-Tech, where he took classes in English and finance. These courses were not taught by special

education teachers. The participants did not agree on any evaluations, because it was not a planning meeting.

After the meeting on September 8, 2015, J.B. continued to attend Vo-Tech, but he was not going to Abraham Clark High School. With the situation unresolved and J.B. not attending school, Ms. Rivera-Forbes scheduled a planning meeting for September 29, 2015. At the meeting, the parties agreed to a speech and language evaluation, an educational evaluation, a social history evaluation, a psychological evaluation, a psychiatric evaluation and a central auditory processing evaluation. L.B. requested a vocational evaluation, but that was denied by the District, because there would be an assessment of J.B.'s needs at the vocational school. L.B. would not provide additional information from High Focus or treating physicians.

Ms. Rivera-Forbes conducted the social history evaluation. Most of the information comes from an interview with the parents and a review of records. On October 9, 2015, Ms. Rivera-Forbes interviewed Mr. and Mrs. B., who reported that J.B. was fearful of interacting with the community and that he stayed at home most of the time. L.B. stated that J.B. enjoyed going to Vo-Tech, but he was not made available for an in-person interview with Ms. Rivera-Forbes. J.B. was given the questions in advance, but he still was not made available for an interview. J.B. provided written answers to the questions, but Ms. Rivera-Forbes could not use them, because she could not ask follow-up questions. Nonetheless, Ms. Rivera-Forbes completed her assessment in accordance with the standard procedure.

After the evaluations were completed, Ms. Rivera-Forbes scheduled an eligibility conference for January 5, 2016. In preparation, Ms. Rivera-Forbes drafted an eligibility conference report and an IEP. Based upon the evaluations, the District recommended a classification of communication impaired for J.B., because it seemed to encompass his whole disability that affected him educationally. L.B. did not agree that this classification encompassed J.B.'s entire disability.

The participants discussed cognitively impaired as a classification for J.B., but it would not be appropriate, because his IQ was not below a certain level. L.B. also

mentioned other health impaired as a classification as well as multiply disabled, but she did not provide an explanation as to why they were appropriate. Ms. Rivera-Forbes did not think that multiply disabled was appropriate, because students with this classification generally have low cognitive abilities, learning disabilities and sometimes physical disabilities and are not able to function in a general education placement. In contrast, J.B. was able to function in a vocational setting in a general education placement and therefore would not meet the criteria. Specific learning disability would not be appropriate, because there was no discrepancy between J.B.'s academic ability and his achievement. Emotionally disturbed would not be appropriate, because students with this classification usually act out on the spur of the moment without any real reason. In contrast, J.B. had no history prior to the incident in which his bicycle was stolen. PTSD would be considered an environmental factor rather than a disability. As a result, the team was not able to reach an agreement as to classification at the meeting. Nonetheless, the team issued an Eligibility/Classification Conference Report in which J.B. was found to be eligible for special education and related services based on the criteria for communication impaired.

With L.B.'s consent, the team proceeded with an IEP meeting. The draft IEP was developed with communication impaired as the basis for eligibility, and the District proposed a mild, moderate LLD program. The District also proposed the consult model. Math, English, science and social studies would be taught in a self-contained class with fifteen or fewer students. The program also has community-based instruction, counseling and speech and language services. The District still recommended a half-day program at Vo-Tech, because J.B. was doing well there and he was learning a trade. The LLD class has one teacher and two paraprofessionals. The students go out of the self-contained class for electives with the paraprofessionals. In Ms. Rivera-Forbes' view, the LLD program is a therapeutic setting that would meet J.B.'s needs. The District also proposed a slow transition back to Abraham Clark High School. The participants did not reach an agreement as to J.B.'s program, and another IEP meeting was scheduled for January 12, 2016.

Ms. Rivera-Forbes prepared a revised draft IEP for the meeting on January 12, 2016. Changes related to parental concerns, student strengths and the transition plan. L.B. would not agree to a plan for J.B. to come back to Abraham Clark High School.

In developing the transition plan, Ms. Rivera-Forbes spoke with Roy Hirschfeld and Dr. Farah Khan from Central Jersey Behavioral Health. After Ms. Rivera-Forbes discussed her conversations with Mr. Hirschfeld and Dr. Khan with L.B., L.B. revoked her consent to speak with them.

As of September 2015, the least restrictive environment for J.B. would be the consultative model at Abraham Clark High School with counseling and speech therapy. The District had no information that would justify an out-of-district placement for J.B. As of January 2016, the least restrictive environment for J.B. would be the LLD program. A program at Middlesex County Vocational School would also meet his needs.

Ms. Rivera-Forbes was aware of allegations of bullying from October 2014 to May 2015, but there was no substantiated bullying. Ms. Rivera-Forbes was also aware that J.B. attended a partial hospitalization program at High Focus. A letter dated September 30, 2015, from High Focus indicates that on May 30, 2015, two of the District's employees, Jordan Siegel and Tenneh Lewis, were notified of J.B.'s admission to High Focus for treatment. As of March 2015, Tenneh Lewis was J.B.'s case manager, and Jordan Siegel was his guidance counselor.

At some point, Ms. Rivera-Forbes received a copy of a letter dated August 14, 2015, from therapist Roy Hirschfeld and Farah Khan, M.D., who is a psychiatrist at Central Jersey Behavioral Health. J.B.'s diagnoses were severe anxiety, depression and PTSD with hyper vigilant behavior. Dr. Khan and Mr. Hirschfeld recommended an out-of-district placement for J.B. in a more supportive, less demanding environment with a smaller student population, smaller class size and with a more therapeutic milieu. Further, J.B. would be at risk if he was placed back in the high school setting. J.B.'s diagnoses of recurrent severe anxiety, depression and PTSD present as recurring dreams/nightmares about bullying, hyper vigilant behavior around peers and a belief that he will be harmed again. Ms. Rivera-Forbes first saw the letter well after August

14, 2015. At some point, the High Focus records were provided to the IEP team. The records contain a note which states that J.B. was unable to attend school and was reluctant to go outside.

The District referred J.B. to Dr. Mark P. Faber, who completed a psychiatric evaluation on October 15, 2015. Dr. Faber's diagnoses for J.B. were major depressive episode and anxiety, unspecified, with features of generalized anxiety, panic disorder, social anxiety and PTSD. Dr. Faber recommended a gradual transition to the Vo-Tech school. There was no mention of Abraham Clark High School.

By January 2016, Ms. Rivera-Forbes had Dr. Faber's evaluation, the admission report from High Focus and Dr. Khan's letter. Ms. Rivera-Forbes still recommended that J.B. return to Abraham Clark School, because the LLD program provided a small, supportive setting.

Ellen M. Platt, D.O., completed an independent psychiatric assessment of J.B. in December 2015 and January 2016 and issued a report. Dr. Platt's diagnoses for J.B. included generalized anxiety disorder, major depressive disorder and ADHD. Dr. Platt expressed the opinion that J.B.'s severe and pervasive psychiatric symptomatology was significantly impacting his ability to access and participate in his education in a traditional academic setting. Dr. Platt then provided various recommendations.

During the time that Ms. Rivera-Forbes was J.B.'s case manager, he did not attend Abraham Clark High School, and he did not receive speech and language therapy or counseling. The District normally does not provide related services to a child who is not in school.

Ms. Rivera-Forbes commented on other possible bases for classification. If J.B. had been classified as other health impaired, it would not have changed his program or services. Similarly, if J.B. were classified based on a specific learning disability, the District would not have made any additional services available to him. The same is true for cognitively impaired.

High Focus provides a therapeutic program that has psychiatric treatment services. As of September 8, 2015, Ms. Rivera-Forbes did not know the type of treatment that J.B. was getting at High Focus. The District was not provided with a discharge summary from High Focus prior to the meeting on September 29, 2015, despite the fact that J.B. was discharged from High Focus in August 2015. The intake form was first provided on September 29, 2015.

## 2. Rochelle Blum

Rochelle Blum is employed by respondent as a school psychologist, and she was accepted as an expert in school psychology. In October 2015, Ms. Blum was asked to conduct a psychological evaluation of J.B. The purpose of the psychological evaluation is to gain an understanding of a student's general intellectual abilities and functioning. The evaluation consists of a record review, an informal interview, cognitive testing and a social emotional survey.

Ms. Blum followed the normal procedures in evaluating J.B., who was seventeen years old at the time. To Ms. Blum, J.B.'s answers did not seem typical of a depressed individual, and his communication impairment did not impact his ability to answer questions during the interview.

Ms. Blum then administered formal assessment tools and determined that J.B.'s full scale IQ was seventy-two, which placed him in the third percentile and the borderline range. J.B. was in the first percentile on the processing speed composite, which indicates that he needs a lot of extra time for assignments.

Ms. Blum was a participant in the eligibility meeting on January 5, 2016, and she agreed with the District personnel's recommendation that J.B. continue to receive the communication impaired classification, because it was the primary area of weakness affecting him academically. L.B. was not in agreement and suggested other bases for classification including cognitively impaired and multiply disabled. According to Ms. Blum, cognitively impaired requires a significantly lower IQ with adaptive weaknesses, meaning self-help or self-care skills would have to be significantly impaired. J.B.'s IQ

was not low enough, and there were no reports that he had impaired self-help skills. Ms. Blum also did not agree with multiply disabled as the classification for J.B., because he would need a cognitive impairment and a physical disability.

Ms. Blum was surprised that L.B. did not ask that J.B.'s classification be changed to emotionally disturbed. There were reports that J.B. was suffering emotionally with his anxiety, depression and panic. Ms. Blum acknowledged that J.B. was experiencing anxiety and depression, but she expressed the view that there was no need for a change in his classification, because his main area of identified weakness has always been communication. Further, Ms. Blum stated that the District could address J.B.'s social and emotional needs through the recommended LLD program and supports.

Multiply disabled would not be an appropriate classification for J.B., because he does not have a cognitive impairment or a physical disability. Communication impaired cannot be considered one of the areas for multiply disabled. Additionally, a classification of multiply disabled would not result in any change in J.B.'s proposed program, because it is designed to meet all of his needs.

The LLD program has a small class and a low student-to-staff ratio, typically a teacher and an assistant for twelve students. This environment would provide emotional support for J.B. Students receive their core subjects in the self-contained class, and they go out for electives. Ms. Blum considers the LLD class to be a therapeutic program, because a large clinical staff would be available. The District also recommended a transition plan to get J.B. back into school, but L.B. rejected it. The LLD program at Abraham Clark High School would have provided J.B. with the appropriate educational and therapeutic support services. Ms. Blum did not believe that home instruction or an out-of-district placement would be appropriate for J.B. Avoidance of Abraham Clark High School through home instruction or an out-of-district placement would strengthen J.B.'s fear and anxiety.

Ms. Blum acknowledged that she did not see any records from High Focus or letters dated August 14, 2015, October 8, 2015, or January 12, 2016, from Central Jersey Behavioral Health. The High Focus records were faxed to the District on

January 14, 2016. Ms. Blum acknowledged that in the letter dated January 12, 2016, the treating physicians at Central Jersey Behavioral Health recommended an out-of-district placement and specifically that J.B. should not return to Abraham Clark High School, because that is where the anxiety arose. Ms. Blum was not privy to information concerning alleged bullying. Ms. Blum acknowledged that even if activity did not amount to bullying, it would be significant if it caused real emotional distress.

With respect to the psychological evaluation, Ms. Blum acknowledged that she did not utilize an assessment tool that would take input from L.B. At the time that Ms. Blum interviewed J.B., he was attending Vo-Tech and not Abraham Clark High School. Ms. Blum was not aware that J.B. was afraid to return to Abraham Clark High School, until the IEP meeting in January 2016. According to Ms. Blum, a representative from the Central Jersey Behavioral Health informed her colleague that they were in agreement with the transition plan for J.B. Ms. Blum acknowledged that this agreement was not consistent with the letter from Central Jersey Behavioral Health. Ms. Blum found out subsequent to January 2016 that J.B. did not complete the Vo-Tech program.

### 3. Daniel Earle

Daniel Earle is employed by Innovative Health Care, which is a private consulting firm, and he has provided services to the District for four years as a learning disability teacher consultant for pupils with out-of-district placements and also for the high school. Mr. Earle was accepted as an expert in child study teams and as a learning consultant.

Mr. Earle became part of J.B.'s child study team in September 2015, and he conducted an educational evaluation of J.B. on October 27, 2015. Mr. Earle interviewed J.B. and then administered a test of educational achievement designed to determine the student's current level in various areas. J.B.'s test scores were low in all areas including math, reading comprehension and writing. J.B. scored very low in academic fluency which is a timed test covering math, reading and writing a sentence. J.B. also scored very low in the oral language section, which involves receptive and expressive skill, and also in the listening comprehension section. J.B. was in the low area for passage comprehension, word attack and broad written language. J.B.'s low scores

were just short of low average. J.B. had a low average score in basic reading and letter word identification, and he had an average score in spelling. J.B.'s writing samples were in the low average area. J.B.'s scores in broad math and all the subtests were low. The test results would also provide a grade equivalent. The low average scores would be equivalent to the fifth grade.

In view of J.B.'s IQ in the low to mid seventies, Mr. Earle was not surprised by J.B.'s achievement scores. Writing was a strength for J.B., and receptive oral language was a weakness. Timed tests were generally an area of weakness for J.B.

Mr. Earle observed J.B. in his woodshop class at Vo-Tech one week later. J.B. participated in the entire class without leaving the classroom. The teacher told Mr. Earle that J.B. was a typical student and that his attention to details was good. J.B. did not display any social or emotional problems.

Mr. Earle reviewed educational assessments from the Linden school district, where J.B. was described as a typical cooperative student. The achievement test results were similar in the range from very low to low average. An educational evaluation in Roselle in February 2014 showed an increase in grade equivalency of about one grade compared to Linden, indicating progress.

Mr. Earle attended an eligibility meeting on January 5, 2016, and he agreed with the District's recommendation to classify J.B. based on criteria for communication impaired. Petitioner did not agree with the District's proposed classification because of her concern about J.B.'s anxiety, but she did not want him classified as emotionally disturbed. L.B. mentioned specific learning disability, multiply disabled and other health impaired as possible classifications for J.B. According to Mr. Earle, multiply disabled would not be an appropriate classification for J.B., because it normally involves a physical disability. Other health impaired also would not be appropriate for J.B., because that category would not help in the area where J.B. had difficulty. Communication impaired was stronger classification and probably the best for J.B. at that time.

Petitioner's expert, Ms. Deborah Ann Weyland, indicated that there was evidence of a specific learning disability. Mr. Earle stated that in the District a specific learning disability is identified based on a discrepancy between IQ and academic achievement. Mr. Earle explained that a discrepancy in scores of 1.6 standard deviations would equate to an eighteen-point difference from the IQ score. J.B. did not have a difference of this magnitude in any of eight areas based on Mr. Earle's testing.

Ms. Weyland found a discrepancy of 1.5 standard deviations compared to a seventeen-year-old student and not with the result of psychological testing. The discrepancy for purposes of determining whether there is specific learning disability is an eighteen point difference between the IQ and the achievement in any of the eight areas. Mr. Earle would compare J.B.'s total IQ score to his achievement results. Another methodology is based on information from classroom teachers. It would not be appropriate for Ms. Weyland to use this methodology without data from the teachers or a classroom observation of J.B. If J.B. had a specific learning disability in reading, he would get the same help in that area but not in math. Communication impaired would be the stronger classification, because it would provide him with help across the board.

The IEP team was not able to reach an agreement as to the appropriate classification for J.B. Nonetheless, the team proceeded to hold an IEP meeting, and the District personnel recommended an LLD class for J.B. at Abraham Clark High School. Mr. Earle expressed the opinion that J.B. needs special education in a self-contained class such as the LLD program proposed by the District. This program would provide a smaller classroom, an aide in the class and more opportunity for individual help for J.B. In view of J.B.'s testing, this program would provide the least restrictive environment. A transition plan to get J.B. back into school was also discussed at the IEP meeting, but L.B. was not happy with it.

In regard to Ms. Weyland's recommendations, Mr. Earle expressed the opinion that J.B. does not need direct instruction in math, reading, written language, reading comprehension or development of foundation skills necessary for spelling. The District's LLD program would provide most of the services included in Ms. Weyland's recommendations.

Mr. Earle acknowledged that he did not see anything from High Focus or Central Jersey Behavioral Health, and he did not see Dr. Faber's report. Mr. Earle did not see any psychiatric report. Mr. Earle knew that J.B. complained that he was bullied at Abraham Clark High School, but he was not aware that J.B.'s therapist and psychiatrist at Central Jersey Behavioral Health recommended that he not return to Abraham Clark High School.

Vo-Tech is not an out-of-district placement and does not provide special education. During discussions with J.B., he did not raise any concerns about going to Vo-Tech or Abraham Clark High School.

#### 4. Fraidt Silberberg

Fraidt Silberberg has been employed by respondent since 2013 as a speech language pathologist. Ms. Silberberg was accepted as an expert in school speech and language pathology.

Ms. Silberberg began working with J.B. during the 2013-2014 school year, and she was reassigned to him during the 2015-2016 school year. During the latter period, Ms. Silberberg performed a re-evaluation to evaluate the student's language functioning. Because language underlies many academic activities, it is important to have a good picture of the student's language functioning to determine whether there are deficits that impede the student's academic progress.

As part of the re-evaluation, Ms. Silberberg reviewed J.B.'s last agreed upon IEP, which was for the 2014-2015 school year, and she also spoke with L.B. Ms. Silberberg administered several standardized language-related assessments to J.B. including Clinical Evaluation of Language, fifth edition, to provide an overall picture of his receptive and expressive language skills. In core language, which gives an overall picture of the student's language functioning, J.B. had a moderate delay which means that his academic achievement would be impeded by his difficulty with receptive and expressive language. J.B. also had a moderate delay on the receptive language index, which relates to auditory listening and comprehension skills. This means that J.B.

would have difficulty following complex directions or listening to long, complicated discussions or lectures. Ms. Silberberg found that J.B. has a moderate language disorder.

The expressive language index is designed to measure all aspects of a student's expressive language skills. J.B.'s scores indicated that he was marginally delayed. This means that J.B. would have difficulty expressing his ideas. The language content index is a measure of the student's semantic or vocabulary skills. J.B. was severely delayed in this area, which means that J.B. would have the most difficulty acquiring or retrieving vocabulary. The language memory index looks at the student's ability to apply his memory skills to language-based tasks. J.B. was mildly or marginally delayed in this area, which means that J.B. would have difficulty holding a lot of information in his mind, working with it and responding to it.

Ms. Silberberg gives the reading comprehension supplement when a student does poorly on oral comprehension to determine whether the student's difficulty is only with information presented orally or the student has difficulty with language generally. J.B. had the same score on both sections, indicating that it does not make any difference whether the information was presented orally or he read it on his own.

The Expressive One-Word Picture Vocabulary Test indicated that J.B. was severely delayed in expressive language. The Receptive One-word Picture Vocabulary Test indicated that J.B. was slightly delayed in receptive vocabulary.

The Listening Comprehension Test-Adolescent assesses the student's ability to solve problems, reason and identify the main idea. The results indicated that J.B. was mildly delayed, but the vocabulary section brought down his overall score.

As the District's speech and language pathologist, Ms. Silberberg receives and interprets the Audiologic and Auditory Processing Evaluation. The audiologist determined that J.B. had deficits in some areas and not in others.

Ms. Silberberg attended the eligibility conference on January 5, 2016, and she discussed the results of her evaluation. The District personnel recommended a classification of communication impaired. For this classification, a student must demonstrate difficulty in a variety of language areas evidenced by a score below the tenth percentile on two tests, one of which must be a comprehensive language evaluation. J.B. met those criteria. The District personnel believed that J.B.'s difficulty in accessing the general education curriculum was caused by deficits in his language skills and that classification as communication impaired would be appropriate.

L.B. did not agree and she wanted a classification that would address J.B.'s emotional issues as well as his auditory processing deficits. According to Ms. Silberberg, auditory deficits fall under the communication impaired classification. Ms. Silberberg acknowledged that J.B. had obvious emotional issues, but in her view, J.B. should remain with the classification of communication impaired.

L.B. asked the team to consider other categories including emotionally disturbed, other health impaired, specific learning disability, cognitively impaired and multiply disabled. Ms. Silberberg did not think that any of these other categories would be appropriate for J.B. The District personnel recommended the LLD program for J.B., based on the view that his disability was primarily related to language. Ms. Silberberg also recommended speech and language services for J.B. including one individual session weekly and one group session weekly.

Ms. Silberberg reviewed the modifications to J.B.'s program in the IEP dated June 4, 2014, for the 2014-2015 school year, the IEP dated June 18, 2015, for the 2015-2016 school year and also the IEP dated January 12, 2016. Ms. Silberberg also reviewed the goals and objectives for the speech and language area. All of the provisions were reasonable and appropriate for J.B.

Ms. Silberberg commented on the report by petitioner's expert, Theresa Gallagher, of Balaban and Associates. Ms. Gallagher's results were similar to those produced by Ms. Silberberg's testing. J.B. had more deficits with receptive language skills compared to expressive language skills. Ms. Silberberg disagreed with Ms.

Gallagher's recommendation of individual speech therapy for forty minutes twice per week and group speech therapy for forty minutes three times per week, because it would take him away from the regular academic work for too much time.

Ms. Silberberg reviewed the academic goals and objectives from J.B.'s IEP for the 2012-2013 school year that address communication impairment and also for speech and language. Ms. Silberberg then reviewed the goals and objectives from an IEP dated May 20, 2013, for the 2013-2014 school year during which Ms. Silberberg provided direct services to J.B. Those goals and objectives were the same as the ones for the 2012-2013 school year, and they were chosen to address his deficits. Ms. Silberberg explained that the goals and objectives are written broadly such as developing an expanded vocabulary.

During the 2013-2014 school year, Ms. Silberberg provided direct weekly group speech services for J.B. Ms. Silberberg maintained a log to monitor progress. J.B. was a willing participant in the group services. At the time, Ms. Silberberg rated J.B. as progressing satisfactorily for the most part. During the time that Ms. Silberberg worked with J.B., he made meaningful educational progress. J.B. made consistent progress towards all of his objectives throughout the course of the school year. During the 2014-2015 school year, J.B. had another speech therapist whose notes indicate that he was making satisfactory progress towards his speech and language goals. Ms. Silberberg reviewed the results of the tests given to J.B. over several years. The results indicated that J.B. was definitely making progress.

Ms. Silberberg was aware that L.B. had made allegations that J.B. was bullied and that the reports were deemed unfounded as harassment, intimation or bullying. Ms. Silberberg stated that students with communication deficits have difficulty with receptive language, and she expressed the opinion that it is possible that J.B. would misinterpret or not process appropriately information that is being said to him by a peer. Difficulty with auditory processing could create a situation where J.B. thought he heard one thing, when the peer actually said something else. Ms. Silberberg acknowledged that she did not see Dr. Faber's report or any HIB records.

## 5. Tenneh Lewis

Tenneh Lewis has been employed by respondent since 2005 as a school social worker. Ms. Lewis was accepted as an expert in school social work and in special education programs and procedures.

Ms. Lewis was assigned to J.B.'s child study team for the 2014-2015 school year as the school social worker and as the case manager beginning on December 1, 2014. At the time, J.B. was in the ninth grade at Abraham Clark High School. Ms. Lewis reviewed J.B.'s IEP and his first marking period report card, and she spoke with the prior case manager and J.B.'s teachers, who did not mention any particular concerns other than that L.B. wanted to speak with her. Ms. Lewis spoke with L.B., who expressed concerns about J.B. missing Spanish class and about standardized testing, but she did not mention anything about J.B. being bullied at the start of the school year. L.B. also did not mention anything about J.B. experiencing anxiety or depression. Ms. Lewis looked into L.B.'s concerns and, after speaking with J.B.'s Spanish teacher, advised L.B. that J.B. was not missing any additional work. With regard to the standardized testing, J.B.'s IEP was amended to include some accommodations.

In accordance with his IEP, J.B. was in an in-class resource program for math, English, science and social studies. The class was conducted by a general education teacher, but a special education teacher was also present. There were up to ten special education students in the classroom. The special education teacher can provide small group or direct instruction, modify assignments, tests or quizzes, and is responsible for grading. J.B. also received individual speech therapy as a related service. Ms. Lewis was in agreement that the program was appropriate for J.B., because he had been successful in this type of program in the past as evidenced by his report cards and progress reports and therefore he should not be moved to a more restrictive environment. On January 29, 2015, J.B.'s IEP was revised to include a special alert that J.B. had been diagnosed with a seizure disorder.

J.B.'s IEP was amended again on February 11, 2015, at the request of Ms. Lewis such that social studies was changed from in-class resource to a general education

class. The reason for the change was that on February 11, 2015, J.B. made a report of bullying by a particular student in his social studies class. J.B. said that he did not feel comfortable being in class with the student. Ms. Lewis suggested a change in the other student's schedule, but J.B. did not want to take that approach. Instead, the change was made to J.B.'s schedule, and the only class that would fit into his schedule was a general education social studies class. L.B. agreed to the change and signed the amended IEP.

Thereafter, the guidance counselor and a vice principal found a way to modify J.B.'s schedule such that he would be in a different in-class resource class for social studies without the alleged bully. The change was made after an IEP meeting on February 19, 2015. The situation with the alleged bully was mentioned in the parental concerns section of the revised IEP. There was a notation in the IEP that J.B. needs counseling and behavioral strategies to address the issue of bullying. L.B. reported that J.B. was experiencing negative emotions, specifically anxiety, as a result of the perceived bullying. In response, the IEP team added social work consultation to the IEP to provide J.B. with strategies. It also gave Ms. Lewis flexibility to consult with teachers about any behavioral concerns or to meet with J.B. individually. Related social and emotional goals and objectives were also added to the IEP.

Ms. Lewis reviewed the academic goals and objectives in J.B.'s IEP. According to Ms. Lewis, J.B. made adequate progress. Given J.B.'s cognitive ability and academic level, the progress that he made is what she would expect of him.

A student's progress may also be gauged by his quarterly interim reports and report cards. A special education student is graded on the modified work given throughout the marking period. Ms. Lewis then reviewed J.B.'s report cards and his interim reports for the 2014-2015 school year. J.B. received numerical grades in the eighties on his report cards. Considering all of the available information, Ms. Lewis thought that J.B. was making adequate progress. J.B. was making the progress that would be expected of him.

Ms. Lewis stated that J.B.'s IEP for the 2014-2015 school year was appropriate. Ms. Lewis did not consider whether another classification was possible, because J.B. was not due for a re-evaluation while she was his case manager. Ms. Lewis explained that a change in classification would be done at a reevaluation and not at an annual review.

Ms. Lewis had ten counseling sessions with J.B. in accordance with the IEP. School-based counseling is focused on supporting the student so that he may be successful in the academic setting rather than treatment. J.B. was also progressing satisfactorily in regard to his counseling.

As J.B.'s case manager, Ms. Lewis would have been notified of any incident involving J.B. Aside from the situation on February 11, 2015, Ms. Lewis was never notified of any incident involving J.B. During the period from February 19, 2015, to May 20, 2015, L.B. did not report to Ms. Lewis any incident involving J.B. or that he was afraid to go to school.

At an IEP meeting on May 20, 2015, L.B. expressed concerns related to J.B.'s English class. She did not express any concerns in regard to harassment, intimidation or bullying, and she did not say that J.B. was afraid to go to Abraham Clark High School. L.B. did not request an out-of-district placement at that time. For the 2015-2016 school year, Ms. Lewis agreed with the recommendation of consultative support. Under this approach, a special education teacher is assigned to a group of students rather than a classroom. Depending on the lesson and the needs of the students, the special education teachers may provide small group instruction or direct instruction, or they may pull out an individual student or a small group of students. The special education teachers are responsible for modifying the assignments, for collaborating with the general education teacher and for grading. Ms. Lewis agreed with the recommendation because J.B. was successful with in-class support, and with consultative support, he would receive the same or more services. J.B. would also receive support services including speech and counseling. Ms. Lewis reviewed the academic and the social emotional behavior goals in J.B.'s IEP for the 2015-2016 school year and explained why they were appropriate.

On May 26, 2015, L.B. left a message for Ms. Lewis that J.B. was having a meltdown in the high school main office and that she was taking J.B. to the police station. Later, L.B. stopped at Ms. Lewis's office and reported that J.B. had a meltdown because he saw a student who had tried to steal his bike a couple of days earlier. L.B. had previously sent Ms. Lewis an email about this incident which occurred on May 22, 2015, advising that J.B. was outside in the evening about 7:30 p.m. when four or five boys approached and chased him about a block and tried to steal his bike. On or about May 28, 2015, Ms. Lewis received a script dated May 26, 2015, from a doctor, stating that J.B. should be excused from school until further notice because of a medical illness. J.B. did not return to school thereafter.

On June 9, 2015, L.B. sent Ms. Lewis an email requesting an out-of-district placement, because J.B. had a medical condition due to bullying, intimidation and harassment. L.B. did not present any other medical documentation to support the request. As result of L.B.'s email, Ms. Lewis scheduled an IEP meeting for June 18, 2015. At that meeting it was apparent that L.B. was upset, and she asked for an out-of-district placement, because J.B. had been bullied and was not safe at the high school. L.B. did not have any medical documentation to support the request at the meeting. Prior to the meeting, someone at the school provided Ms. Lewis with a doctor's note dated May 28, 2015, diagnosing J.B. with PTSD and anxiety and stating that he needed counseling and intensive therapy. The participants discussed this note at the IEP meeting on June 18, 2015. L.B. stated that J.B. had been bullied since October 2014 and that she did not feel that he was safe in school. The District personnel took the position that they did not have sufficient documentation to warrant an out-of-district placement. During the meeting, Ms. Lewis mentioned a transition plan to get J.B. back into school. L.B. did not specifically mention High Focus during the meeting, and she did not provide the team with an intake form dated May 29, 2015, from High Focus. The bike incident did not occur at Abraham Clark High School, and Ms. Lewis was not aware of any other complaints of harassment, intimidation or bullying of J.B. at the high school. Ms. Lewis was under the impression that L.B.'s request for an out-of-district placement was based on her own opinion as opposed to that of a doctor. L.B. did not subsequently provide the District with medical documentation supporting the request.

On cross-examination, Ms. Lewis acknowledged that school records contain a harassment, intimidation or bullying report concerning incidents on various dates in October and November 2014. The allegations were that one or more students engaged in teasing or name-calling toward J.B. and that they stole his book bag, glasses and coat. J.B.'s statement dated November 13, 2014, indicates that one or more students took his book bag and hit him in the head. In another statement which includes incidents in February 2015, J.B. mentions that he was afraid to go to school.

#### 6. Mark P. Faber, M.D.

Mark P. Faber, M.D., is a psychiatrist whose practice has a concentration in ADHD, depression and anxiety. Dr. Faber was accepted as an expert in general psychiatry and adolescent psychiatry. As part of an evaluation, Dr. Faber reviews any papers submitted by the school district, and he interviews the parents and the student. Dr. Faber then provides a written report to the school district.

Dr. Faber evaluated J.B. on October 15, 2015. Dr. Faber did not conduct any standardized assessments or testing of J.B. During the mental status exam, J.B. was dysphoric and he said that he was angry because he was bullied. J.B. developed significant anxiety and would avoid going outside, going to the high school and being anywhere where he felt he might run into the boys who were bullying him. J.B. perceived Vo-Tech as a safe place, whereas the high school was not, the key consideration being the presence of the boys who were bullying him. J.B. specifically stated that he was afraid to go to Abraham Clark High School but that he was not afraid to go to the Vo-Tech program. The actual facts of an incident are important, but the way in which the student perceives the incident is equally important, even if they are different. J.B. was comfortable at Vo-Tech, and Dr. Faber hoped that J.B. could increase his participation in that setting.

High Focus is a three to five day a week program that occurs during the school day. There is an academic component, but the program involves primarily group-based therapy and medication monitoring. A typical stay is from two to six weeks. The

program is intense, since a partial hospital program is a step below in-patient treatment. J.B. must have been very distressed to end up in a partial hospital program.

The after-care plan from High Focus called for J.B. to see a therapist. J.B. has been seeing a therapist and taking medication that is approved for depression and anxiety. Dr. Faber's diagnoses for J.B. were major depression and anxiety with features of generalized anxiety, panic disorder, social anxiety and PTSD.

In his report Dr. Faber did not make a recommendation regarding placement, because that must be negotiated by the parents and school district based on a variety of concerns. At the hearing, Dr. Faber testified that J.B. needs to be in an educational environment that is supportive and where mutual respect is the rule instead of intimidation. Nonetheless, Dr. Faber could not recall a situation where a student was forced into a dangerous situation by going to school. Dr. Faber was not sure if J.B. would be able to return to Abraham Clark High School. With appropriate interventions J.B. could return to Abraham Clark High School if he felt safe. J.B.'s perception and his ability to feel safe would be most important. In J.B.'s case, the thought of high school got him very worried. He would have to get by that to make the option acceptable.

Dr. Faber stated that J.B. would benefit from appropriate support and supervision. The District's transition plan to get J.B. back into school was reasonable, if he would tolerate any exposure. It would be necessary to try the plan to make this determination. The outcome is predictable to some extent. If the mention of the high school makes J.B. anxious, it stands to reason that the effort to transition him back would make him very, very anxious. Input from J.B.'s treating therapist or psychiatrist would offer that information.

Dr. Faber filed an addendum dated November 20, 2015. According to the addendum, J.B. attends Vo-Tech, but he is unable to attend his high school. Efforts to assist J.B. to return to his high school in a gradual fashion once mood and anxiety symptoms have diminished may be helpful, though it is recognized that J.B. associates prior school-based incidents and fear around certain peers in his high school. Further, if J.B.'s level of clinical improvement is limited or very gradual, alternatives may include a

smaller night school program, a computer-based learning program to meet academic requirements, or home instruction. School staff, J.B.'s family and his clinical treaters should collaborate to make every effort to assist him.

Dr. Faber received another telephone call from the District in regard to the addendum. This is a rare occurrence. Evidently, there was some dissatisfaction with the addendum, and Dr. Faber said that it would be okay with him if the District withdrew it. The addendum does not definitively address the question whether J.B. could return to Abraham Clark High School.

On cross-examination, Dr. Faber reviewed a letter dated August 14, 2015, from J.B.'s treating therapist and psychiatrist at Central Jersey Behavioral Health. Their diagnoses of recurrent severe anxiety, depression and PTSD, which present as recurring dreams/nightmares about the bullying incidents, hyper vigilant behavior around peers and a belief that he will be harmed, are consistent with those of Dr. Faber. The letter recommends that J.B. should not return to Abraham Clark High School. According to Dr. Faber, the District did not provide him with a copy of this letter. A letter dated October 8, 2015, from the same writers specifically recommends that J.B. should not return to Abraham Clark High School. There was a more detailed but similar letter dated January 12, 2016, from the same writers. The District did not show these letters to Dr. Faber.

Dr. Faber was referred to a psychiatric evaluation dated June 1, 2015, by High Focus. Dr. Faber had not previously seen this evaluation.

In regard to the addendum, Dr. Faber stated that the case manager was trying to determine a good placement for J.B. Dr. Faber avoids this topic, but he offered some suggestions. Dr. Faber did not withdraw the addendum, but he said to the District representatives that if it was not useful, he would have no problem if they withdrew it. The addendum did not add much to the original report. Dr. Faber was not aware at the time that L.B. had requested home instruction.

## 7. Shannon Jordan

Shannon Jordan is employed by respondent as a special education teacher. She was J.B.'s teacher for eighth grade math and then for Algebra I in the ninth grade from September to February of the 2014-2015 school year. During these school years, J.B.'s program consisted of in-class resource. Ms. Jordan reviewed J.B.'s IEP, and she considered his goals and objectives to be appropriate. J.B. made satisfactory progress in regard to his goals and objectives.

Ms. Jordan did not have any concerns regarding J.B.'s academic performance. Ms. Jordan described the "Failure is not an option" protocol, which is implemented if a student is failing, but she stated that this protocol was never initiated for J.B. Ms. Jordan thought that J.B. was appropriately classified as communication impaired, and she believes that the in-class resource program was appropriate for J.B., as he was academically successful in that situation. A student who is communication impaired would typically receive more services than one who has a specific learning disability. Further, the in-class support model was the least restrictive environment for J.B. If J.B. had been diagnosed as ADHD, there would not have been any change to his program.

At a point in the 2014-2015 school year, Ms. Jordan noticed that J.B.'s name was no longer on her roster. Ms. Jordan went to the case manager, who advised that J.B. had been removed from the class as the result of an alleged bullying incident. The incidents were alleged to have occurred in Ms. Jordan's classroom and another classroom. Ms. Jordan did not witness any alleged bullying incident, and J.B. did not report anything to her.

In an IEP dated May 20, 2015, J.B. was scheduled to be with general education students eighty percent or more of the school day using a consultative model. J.B. would have received consultative services by a special education teacher in a general education classroom for English, math, science and social studies to modify assignments and testing five times per week for twenty minutes per subject plus speech and language services one time per week and counseling services one time per week for thirty minutes. Ms. Jordan stated that a consultative model would be appropriate for

J.B. Further, the goals and objectives were appropriate for J.B. The consultative model was never implemented for J.B.

Ms. Jordan attended an eligibility meeting in January 2016 for J.B., and she was in agreement with the District's recommendation of communication impaired as the basis for classification of J.B., because that was his previous classification and he was academically successful. The team considered other classifications suggested by L.B. and explained why they were rejecting the classifications that she requested for J.B. Cognitively impaired would not be appropriate, because J.B.'s IQ is too high. Ms. Jordan did not believe that J.B. met the standard for specific learning disability based on a collaborative effort of the whole team except for L.B. Specific learning disability would not be appropriate, because it refers to a deficit in one particular area. Ms. Jordan drafted the math goals and objectives in the IEP, and she explained why they were appropriate for J.B.

The team also recommended that J.B. be placed in an LLD program, because it would have a smaller group with fewer students and less travel between classes. The smaller environment would be better for a student who experiences anxiety, and there would be fewer distractions. There would also be therapeutic services available in the LLD program.

L.B. wanted J.B. to be sent to any school other than Abraham Clark High School. The child study team also explained why it was rejecting the placements requested by L.B. Ms. Jordan believed that J.B. should return to Abraham Clark High School based upon his academics there, and she did not look at anything else. Ms. Jordan acknowledged that she was not aware that L.B. had received letters from Central Jersey Behavioral Health, stating that J.B. should not return to Abraham Clark High School. Ms. Jordan had no information from High Focus or Central Jersey Behavioral Health about J.B.'s psychological condition.

At the meeting, District participants proposed a transition plan, but L.B. would not accept it. L.B. wanted an out-of-district placement such as a full-day vocational program.

Ms. Jordon also was not aware of any allegations of bullying made by J.B. prior to his removal from her class in February 2015. Ms. Jordan had no reason to believe that there was any significant change in J.B.'s academic performance through the end of the school year.

#### 8. Tara Downing

Tara Downing has been employed by the District since April 2010 as a school psychologist, and she was accepted as an expert in school psychology. Ms. Downing was on leave from September 2012 to January 2013, and she was first assigned to work with J.B. in January 2013 as his case manager. Prior to the 2012-2013 school year, J.B. was attending school in Linden, where his classification was communication impaired, and he was in a self-contained learning and/or language disabilities program. The IEP from Linden said that J.B. needed a small group setting.

Based on an IEP dated October 3, 2012, J.B. went from a self-contained class in Linden to in-class resource for math and language arts. J.B. did not have a special education teacher for social studies or science. Ms. Downing did not find anything in the file, such as written notice, concerning the change from a self-contained class in Linden to an inclusion setting in Roselle. At the time, respondent's Grace Wilday Junior High School did not have a self-contained LLD class. L.B. signed the IEP dated October 3, 2012. Ms. Downing did not draft the IEP for the 2012-2013 school year, but she stated that J.B. would be appropriate for an inclusion setting based upon his psychological evaluation and his educational assessment. J.B.'s cognitive and achievement scores were higher than those of the children in the District's LLD program. The District had another LLD program, but it was in a different junior high school. Ms. Downing reviewed J.B.'s goals and objectives as set forth in the IEP for the 2012-2013 school year and stated that they were developed by the team and his teacher based upon his areas of deficit.

Another IEP meeting was held on January 23, 2013. J.B.'s teachers did not have any serious concerns about his progress. L.B.'s only concerns related to seizures and

J.B.'s glasses, and she did not object to the program that was recommended for J.B. L.B. signed the IEP consenting to its implementation.

Ms. Downing then reviewed J.B.'s progress reports and report cards for the 2012-2013 school year. J.B. received passing grades in each marking period for each subject except one failing grade in science, and he passed each subject for the year. According to Ms. Downing, J.B. satisfactorily completed eighth grade in the 2012-2013 school year.

Eligibility for special education and related services based on the criteria for communication impaired is determined by the speech and language evaluation. If the evaluation shows that in two tests of speech the student is below the tenth percentile, he has some sort of impairment to his communication. With respect to a specific learning disability, the District uses the discrepancy model. Ms. Downing testified that in view of J.B.'s IQ, his achievement scores were within the expected range.

Ms. Downing scheduled an annual review IEP meeting for April 12, 2013. The meeting was cancelled by Ms. Downing and rescheduled for May 20, 2013. Ms. Downing directed that a notice for a meeting on April 12, 2013, be sent to the parents of J.B. A secretary has the responsibility to send the letter. Respondent produced a copy of a letter dated March 7, 2013, to J.B.'s parents advising of a meeting on April 12, 2013. The letter notes that enclosures included the PRISE booklet and a meeting confirmation notice. Ms. Downing was advised by the secretary that she sent the letters. Ms. Downing did not personally mail a letter dated April 19, 2013, advising J.B.'s parents of a meeting on May 20, 2013.

In accordance with the notice, the IEP meeting was held on May 20, 2013. Ms. Downing handed L.B. another copy of the PRISE booklet, and all participants signed the meeting attendance form. At the meeting, Ms. Downing read the procedural safeguards statement to L.B. Ms. Downing prepared a draft IEP for the 2013-2014 school year. During the meeting, L.B. expressed concerns about J.B.'s progress in reading, and she said that she did not want J.B. to continue to the ninth grade. L.B. wanted him to be retained, because he was not ready for the ninth grade. The other members of the

team were not in agreement, because J.B. received passing grades in all of his subjects. Retention also can have negative social and emotional impacts. Nonetheless, the team agreed to retain J.B. in the eighth grade with the approval of the District's Director of Special Services.

J.B.'s program from the 2013-2014 school year was in-class resource for English and math with speech and language therapy as a related service. J.B. also had consultative support by a special education teacher in the general education classroom for science and social studies. This special education teacher was responsible for modifying assignments and differentiating instruction. There was also support by a teacher aide for science and social studies. No consideration was given to respondent's LLD program for J.B. J.B.'s goals and objectives were based on his skill deficits and the areas that he needed to work on. Some modifications were added to the IEP. Ms. Downing then reviewed the progress reports for the 2013-2014 school year. J.B. was progressing satisfactorily in most areas and gradually in a few others.

L.B. did not fail any subjects for a marking period or for the whole year. Ms. Downing assessed J.B.'s academic progress for the 2013-2014 school year as satisfactory and at the expected level because his grades were passing and he was progressing relative to his goals.

Ms. Downing scheduled a reevaluation planning meeting for January 29, 2014. The team decided on a speech/language evaluation, a psychological evaluation and an educational evaluation. At L.B.'s request, the psychological and the speech and language evaluations were to be done outside the District. The speech and language evaluation was completed, but the District never received the psychological evaluation. The educational evaluation was complete by a school psychologist employed by the District.

An eligibility conference was held on June 4, 2014. J.B. remained eligible for special education and related services based on the criteria for communication impaired. L.B. agreed with this classification. Ms. Downing made a determination as to whether J.B. had a specific learning disability. This would involve a comparison

between his IQ and his academic achievement. If there is significant discrepancy, there is a specific learning disability. A discrepancy is significant if there is standard deviation of 1.6, which is generally an eighteen point difference between the student's IQ and the achievement score on the Woodcock-Johnson Educational Assessment. Ms. Downing did not find any discrepancy which would qualify as a specific learning disability. L.B. did not ask Ms. Downing to change J.B.'s classification to any other category.

The participants continued with an IEP meeting on the same day to develop a program for J.B. in the 2014-2015 school year, and Ms. Downing read the procedural safeguards statement to L.B. and would have handed L.B. a copy of the PRISE booklet at the beginning of the meeting. L.B. expressed concern about J.B.'s progress in reading, and she wanted a copy of the math notes and charts to assist J.B. at home. The recommended program for J.B. was in-class resource for English, math, social studies and science with individual speech therapy once a week for thirty minutes. Ms. Downing recommended in-class support for science and social studies in the high school, because the material is more difficult. J.B. did not need an LLD class, because the in-class resource setting provided the support that he needed. L.B. agreed with the in-class resource program. Ms. Downing then reviewed J.B.'s goals and objectives as well as the modifications and accommodations. There would have been no changes to J.B.'s program, if his category for classification was specific learning disability because the program was individualized for J.B.'s unique needs. The program also would have been the same if J.B. had a diagnosis of ADHD. The program in the recommended IEP was reasonably calculated to provide J.B. with a free and appropriate public education. The LLD program would have been more restrictive. Based upon J.B.'s grades, teacher reports and progress reports on his goals, Ms. Downing stated that J.B. made adequate educational progress during the two years that she was his case manager. J.B. made the expected progress during these two school years.

## B. Petitioner's Witnesses

Petitioner testified on her own behalf, and she called as witnesses respondent's Director of Special Services and three experts.

### 1. Monica Ahearn

Monica Ahearn is respondent's Director of Special Services. Director Ahearn described training for special and general education teachers and members of child study teams related to special education. Topics included data collection and the consultative model. In addition, Director Ahearn held meetings with members of child study teams to cover various topics.

The IEP dated May 20, 2015, provides that J.B. is with general education students eighty percent of the school day. Consultative support by a special education teacher is mentioned under supplementary aids and services. The IEP provides that J.B.'s counseling would address concerns such as bullying, conflict resolution and anxiety.

With respect to specific learning disability, the District uses the discrepancy model. Under the discrepancy model, the child's current academic achievement is compared to his intellectual ability.

Director Ahearn became aware of allegations that J.B. was being bullied. All of the complaints were determined to be unfounded. Despite those determinations, the District had a guidance counselor follow J.B. around the school, and no bullying was observed.

On June 8, 2015, L.B. requested an IEP meeting and an out-of-district placement for J.B. On June 10, 2015, the District responded that an IEP meeting would be set up. L.B. did not provide any medical notes stating that it was medically necessary for J.B. to be in an out-of-district placement.

Director Ahearn initially learned that J.B. was at High Focus, when someone from that facility contacted her office in regard to home instruction. There was an IEP meeting on June 18, 2015, at L.B.'s request. The IEP contained a statement that J.B. needed counseling and behavioral strategies in order to address issues of anxiety, conflict resolution, and poor decision making. Thereafter, L.B. sent emails requesting transportation to High Focus and an out-of-district placement, and Ms. Ahearn responded that the matters were for the IEP team.

In regard to High Focus and Central Jersey Behavioral Health, Director Ahearn stated that no one from those facilities ever looked at the District's proposed program or took the time to see what was being offered. It would be difficult to accept recommendations from individuals who had not seen the District's proposed program.

In a partial hospitalization program such as High Focus, home instruction becomes bedside instruction. The facility arranges for bedside instruction. Director Ahearn characterized papers received from High Focus as a summary sheet of everything that was told to the doctor. It is more like an intake forum as opposed to an evaluation.

As of September 2015, J.B. needed to be at school to deal with the issues that caused him to have anxiety. L.B. never provided a doctor's note which stated that J.B. needed home instruction. Three letters dated August 14, 2015, October 8, 2015, and January 12, 2016, along with one telephone call to Ms. Rivera-Forbes were the sum total of the information that the District received from Central Jersey Behavioral Health. This information indicated that J.B. needed an out-of-district placement in a supportive environment that has a smaller student population and a smaller class size with a more therapeutic milieu. Director Ahearn disagreed with this recommendation, because the program at Vo-Tech did not fit this description and J.B. was successful at Vo-Tech.

Transportation to Vo-Tech is provided by the District as opposed to Special Services. With respect to the concern that J.B. was afraid to get on the bus, the District offered solutions such as having someone meet J.B. and transition him to the bus. As a result, the District denied L.B.'s request for door-to-door transportation for J.B. to Vo-

Tech. Director Ahearn was under the impression that J.B. was doing well at Vo-Tech. Up until the due process petition was filed in February 2016, the District had not received any information that J.B. was not attending the program at Vo-Tech or that he did not complete the program.

Director Ahearn acknowledged that in a note dated September 29, 2015, L.B. stated that J.B. was afraid to return to Abraham Clark High School and that Dr. Platt in her report stated that J.B. needed a highly supervised, highly structured class setting with reduced stimulations and distractions, but Director Ahearn noted that there was no recommendation of an out-of-district placement. According to Director Ahearn, the District's LLD program would be consistent with the recommendations in that J.B. would be in a small classroom with therapeutic supports separate from the general education setting.

Dr. Platt did not contact the District to obtain information, and she never observed the program at Abraham Clark High School. In her report, Dr. Platt never stated that Abraham Clark High School or programs offered there would not be appropriate for J.B.

Director Ahearn sat in on IEP meeting for J.B. on January 5, 2016. Director Ahearn does not attend IEP meetings, unless a parent makes a request or an attorney is involved in the process. Director Ahearn does not take part in the decision making process. Dr. Faber's report does not say whether J.B. should return to Abraham Clark High School. An addendum dated November 20, 2015, was submitted by Dr. Faber, but it was subsequently withdrawn. In the addendum, Dr. Faber mentioned home instruction as an alternative to placement at Abraham Clark High School, if J.B.'s level of clinical improvement was limited or very gradual.

Prior to the January 12, 2016 IEP meeting, it was determined that J.B. had a central auditory processing problem. The January 12, 2016 IEP was substantially the same as the January 5, 2016 IEP.

The IEP dated January 12, 2016, provided for the LLD program based upon J.B.'s social and emotional needs. He needed a smaller class setting and a more therapeutic environment. Previously, the team was recommending the collaborative consultative model in the IEP dated June 18, 2015. At the time, J.B. was in the High Focus partial hospitalization program.

## 2. Joseph Plasner, Ph.D.

Joseph Plasner, Ph.D., was accepted as an expert in school and general psychology, teacher of the handicapped and placement of children with special needs. Dr. Plasner conducted an independent evaluation of J.B. on December 15, 2015.

As part of the evaluation, Dr. Plasner conducted a review of the records, and he interviewed J.B. and his parents. Dr. Plasner assessed J.B.'s cognitive intellectual functioning, anxiety, depression and personality. Questionnaires were given to L.B. and one of J.B.'s teachers at Vo-Tech.

Dr. Plasner's diagnostic impressions were as follows: (1) Major Depressive Disorder; (2) Specific Learning Disabilities in all three basic skills areas including reading, written language and mathematics; (3) Language Disorder; (4) ADHD, predominantly inattentive type, mild; and (5) Other Specified Anxiety Disorder with features consistent with generalized and social anxiety. Dr. Plasner noted that his diagnoses were consistent with the findings of Dr. Faber and High Focus.

Dr. Plasner stated that it was clear that J.B. had more than one disabling condition, including depressive disorder, PTSD, ADHD, communication disorder, which would be his language disorder, and unspecified anxiety disorder with regard to generalized anxiety and also social anxiety. J.B. would meet the criteria for classification on the basis of other health impaired and possibly emotionally disturbed, and he should be classified as multiply disabled. In that case, J.B. would have a program with elements that address the emotional component of his disability.

Dr. Plasner recommends that J.B.'s academic needs be implemented in a program that would give him consistent emotional support throughout the school day. Further, J.B. should have a placement/program that meets his needs for security, safety, social relatedness, and sense of well-being so that he becomes more emotionally available for learning, and he should have the opportunity to generalize his skills. J.B. needs the right program in the right placement. The placement should have a sufficiently small student-to-teacher ratio that he feels that he is accepted and has a sense of belonging. J.B. needs counseling for emotional support and guidance as well as ongoing medical treatment and psychotherapy. J.B. would also benefit from an extended school year. Dr. Plasner also recommended various accommodations and modifications.

Dr. Plasner stated that J.B. would have a great deal of difficulty in a general education class due to his level of anxiety. Further, placement at Abraham Clark High School is not appropriate for J.B. for several reasons. First, during the interview J.B. said he was afraid to go to Abraham Clark High School. It would be harmful and punitive to require J.B. to go back to that school, because that is where his symptoms were created in regard to anxiety, major depressive episode and PTSD. Even asking J.B. to approach that school could cause a great deal of anticipatory anxiety, recurrent thoughts and possible panic disorder. J.B. could develop agoraphobia and not go to school at all. In view of J.B.'s anxiety and its cause, Abraham Clark High School would not be an appropriate placement for him. Second, there is a danger that J.B. would develop a second major depressive episode. Third, J.B.'s program calls for him to attend two schools, Abraham Clark High School and Vo-Tech. This situation would create a great deal of stress for J.B., because he would be educated with general education students without the necessary emotional support. A bifurcated program would not be appropriate for J.B., because he would not have the consistency of a full day in one place and he would likely experience a great deal of stress and anxiety. He would not have the benefit of a small setting and a low student-to-teacher ratio.

Based on the IEP dated January 12, 2016, J.B. would be enrolled in the mild to moderate LLD program for his English, math and science classes. He would also receive thirty minutes per week of group counseling, thirty minutes per week of

individual speech and language therapy, and thirty minutes per week of group speech and language therapy. Dr. Plasner expressed the opinion that J.B. would not be receiving sufficient counseling under this IEP. J.B. would need a therapeutic program that offers a smaller student-to-teacher ratio in one school setting throughout the entire school day. Teachers in an LLD program are not normally trained to deal with J.B.'s disabilities.

The IEP dated January 12, 2016, contains a plan to transition J.B. back to Abraham Clark High School. Dr. Plasner expressed the opinion that this plan would not be appropriate for J.B. because of his anxiety. The plan would make J.B. the center of attention and cause a great deal of stress. Likewise, the social emotional behavioral goals are not appropriate for J.B. in that they are not sufficiently comprehensive and they are very difficult to measure.

The IEP dated January 12, 2016, does not contain any behavioral interventions. There should be interventions to target behaviors that relate to J.B.'s anxiety, mood and executive functioning such as remaining on task and completing homework assignments.

An IEP dated October 3, 2012, placed J.B. in an in-class resource program for math and language arts. Dr. Plasner expressed the opinion that this IEP would not be appropriate for J.B. because he would be in the presence of general education students eighty percent of the time. According to Dr. Plasner, it is almost impossible to give direct instruction that would address his level of functioning with an eighth grade curriculum. Further, J.B. would not have in-class resource for social studies and science. Without in-class resource, J.B. would be floundering, and he would get frustrated and experience a high level of stress.

An IEP dated May 20, 2013, set forth J.B.'s program for the 2013-2014 school year. Dr. Plasner expressed the opinion that this IEP was not appropriate for J.B. for the same reasons as the IEP for the 2012-2013 school year.

An IEP dated June 4, 2014, set forth J.B.'s program for the 2014-2015 school year at Abraham Clark High School. Dr. Plasner expressed the opinion that this IEP was not appropriate for J.B. The IEP provided for in-class support for English, math, science, and social studies but did not address his functional level. This situation would likely create a great deal of frustration and anxiety for J.B., who would have difficulty answering any question presented to him after reading ninth grade material.

Another IEP was adopted on February 19, 2015. Dr. Plasner expressed the opinion that this IEP was not appropriate for J.B. for essentially the same reasons as the prior one. This IEP noted that J.B. needs counseling and behavioral strategies in order to address issues of bullying. J.B.'s difficulty with bullying began in October 2014, but there were no strategies or a behavior plan in the IEP.

An IEP dated May 20, 2015, set forth J.B.'s program for tenth grade during the 2015-2016 school year. Dr. Plasner did not see any special education program on the first page of the IEP other than individual speech and language therapy and individual counseling as related services. The goal for reading refers to J.B.'s level as the beginning of fourth grade. At this level, J.B. would not be able to function in a general education tenth grade class. The IEP provided for consultative support by a special education teacher in the general education classroom for English, math, science and social studies five times per week for twenty minutes. Dr. Plasner expressed the opinion that this approach would not be appropriate for J.B., because he still would not be able to function at the tenth grade level. The IEP was modified on June 18, 2015, to reflect L.B.'s concerns about J.B.'s safety at Abraham Clark High School and her request for an out-of-district placement. Overall a program with J.B. in an LLD class for half the day and a vocational school for the other half would not be appropriate for J.B.

Dr. Plasner expressed the opinion that J.B.'s program should be therapeutic in nature and in one school setting. The program should have counseling and teachers who are trained to deal with students with multiple disabilities, especially anxiety and depression. There should be close monitoring and supervision, and J.B. should have the opportunity to establish peer friendships and interpersonal relationships, because he is socially immature. J.B. needs the opportunity to practice any social skills that he

learns in his group. Academically, J.B. needs a structured and systematic sequential approach that offers him direct instruction in language literacy. The academic program must be presented in a setting where he feels safe and secure to reduce his level of anxiety. A school for children with behavioral disorders most likely would not be appropriate J.B.

The IEPs are not appropriate in part because the category for classification is not current. Additionally, the program for J.B. in the IEPs is not appropriate. The main concern is that J.B. needs to receive services in a therapeutic setting throughout the course of the school day. A therapeutic setting must have social workers on staff, counseling services and teachers who are specifically trained in delivering services to students who have anxiety and mood disorders. The program that was offered by the District did not meet J.B.'s need for a therapeutic setting throughout the course of the school day. Also, the program should be in one school. Two large high schools would be inconsistent with J.B.'s need for a small school setting.

Dr. Plasner acknowledged that his opinion that J.B. had a specific learning disability was based on the Diagnostic and Statistical Manual, fifth edition, and that the requirements for a specific learning disability are different from the definition under the New Jersey Administrative Code. Nonetheless, the educational evaluation shows a severe discrepancy in math, reading and written language in the eighth grade. The school district has discretion whether to set the standard for a severe discrepancy at 1.0 or 1.5 percent. For math, J.B. had a discrepancy of 1.5 standard deviations. The classification of specific learning disability is important because it suggests that J.B. had multiple disabilities.

Dr. Plasner acknowledged that he did not observe the District's LLD program at Abraham Clark High School, but he stated that observations of the LLD class would not change his opinion. Dr. Plasner also acknowledged that he was not thoroughly familiar with the consultative educational model. The opportunity for collaboration between the high school and Vo-Tech is probably non-existent or very limited.

The amount of counseling in the IEP was inadequate. J.B. should have the opportunity for counseling throughout the school day. J.B.'s behavioral issues did not involve acting out, but his goals and objections need to address his ADHD. Those issues could be addressed in a behavior plan especially if a student has social and emotional difficulties or social immaturity. J.B.'s behaviors that need to be addressed include remaining off task, not completing his homework, and poor organizational skills. This service has to be delivered somewhere, and if it is in the classroom, it would be very embarrassing for a student with a social anxiety disorder.

### 3. Deborah Ann Weyland

Deborah Ann Weyland was accepted as an expert in learning disabilities, learning disability teacher consultant and teacher of the handicapped. Ms. Weyland conducted an educational learning evaluation of J.B. on December 23, 2015. Ms. Weyland's assessment was based on the Wechsler Individual Achievement Test, which assesses all areas of achievement. Ms. Weyland also administered assessments of reading comprehension and oral and written language.

After reviewing the results of the assessments, Ms. Weyland expressed the opinion that J.B. has learning disabilities evidenced by his mathematical, reading and written language deficiencies that are significantly below grade level expectations. Ms. Weyland determined that J.B. has a specific learning disability by comparing where he should be functioning with his age level peers or grade level peers to his current achievement. There was a gap between where J.B. should be functioning and his actual achievement.

Ms. Weyland's major recommendation is that J.B. should receive direct instruction in a small group setting. Because J.B.'s current achievement is well below grade level, he needs to go back and have those skills taught in a way that would still be of interest to someone his age. It would take a lot of modifications and accommodations by a special education teacher to provide those services. It would be very difficult for J.B. to read and comprehend materials at a higher level. Any task with a time limit would cause J.B. to experience anxiety.

Ms. Weyland found significant discrepancies in Mr. Earle's test of J.B.'s achievement from October 27, 2015. There were significant weaknesses in regard to math calculation skills, sentence reading fluency, math facts fluency, sentence writing and overall academic fluency. These weaknesses indicate that J.B.'s speed of doing things is quite low and that he has a specific learning disability.

Ms. Weyland also reviewed an educational evaluation with testing on March 17, 2014. Significant discrepancies were found in reading comprehension, broad math, math calculation skills and written expression. According to this evaluation, reading instruction should be presented at the late third grade to early fifth grade level. Math instruction should be at the mid-third to mid-fourth grade level. Writing should be taught at the middle third grade to fourth grade level.

With respect to the 2012-2013 school year, Ms. Weyland expressed the opinion that the in-class resource model would not support the direct instruction and remediation of skills needed by J.B. because his functioning was so far below the eighth grade level. Therefore, the program would not be appropriate for J.B. The program for the 2013-2014 school year when J.B. repeated eighth grade was very similar and would be inappropriate for the same reasons. The IEP for the 2014-2015 school year when J.B. began ninth grade at Abraham Clark High School was also inappropriate for the same reasons. Ninth grade instruction would be well beyond J.B.'s capabilities. J.B.'s IEP was amended on January 29, 2015, but the new IEP was essentially the same and was also inappropriate for J.B.

The IEP for the tenth grade during the 2015-2016 school year differed in that J.B. would have consultative support by a special education teacher in the general education classroom rather than in-class resource. Despite the change, Ms. Weyland did not see a way to implement goals at a tenth grade level in the proposed program.

In January 2016, the District proposed to modify J.B.'s IEP to provide for a self-contained LLD class. Ms. Weyland was concerned that there was no mention of social studies in the LLD program and a lack of goals for science and social studies.

An eligibility conference was conducted on June 4, 2014. The IEP team members determined that J.B. was eligible for special education and related services based on the criteria for communication impaired. Ms. Weyland would expect J.B. to be classified as multiply disabled based upon the additional category of specific learning disability. There should have been a speech language pathologist present at the meeting since communication impaired was the primary category under consideration. With respect to specific learning disability, there may be a discrepancy between IQ and achievement, but there is also a method based on intra-achievement discrepancies. In the latter, the score for oral expression or reading comprehension is used for comparison of achievement in other areas. Ms. Weyland acknowledged that a special or regular education teacher in a public school district is required to expose children to their grade level curriculum.

#### 4. Theresa Gallagher

Theresa Gallagher was accepted as an expert in speech and language pathology. Ms. Gallagher conducted a speech and language evaluation of J.B. on December 20, 2015, and the results indicated that J.B. was performing significantly below his age expected levels. J.B. would have difficulty understanding the language in a classroom setting, and he would have difficulty expressing himself at an age appropriate level. J.B.'s difficulties with language would adversely affect his academic performance. This would become more of a problem as J.B. gets older and language becomes more complicated. Ms. Gallagher's diagnostic impression was that J.B. had a moderate language disorder, which is in the middle of the range of severity. Ms. Gallagher also reviewed a report concerning J.B.'s central auditory processing. The report indicated that J.B. has an auditory processing disorder. Ms. Gallagher did not make a determination that J.B. was communication impaired because that would require a classroom observation. J.B. would be eligible for speech and language services.

Ms. Gallagher recommended small group speech and language therapy three times per week for forty-minute sessions and individual speech and language therapy two times per week for forty-minute sessions via a collaborative-consultative-inclusive

service delivery model. Ms. Gallagher based the number of direct treatment sessions per week on her clinical experience over thirty years. Ms. Gallagher would consider her recommendation to be intensive treatment. Ms. Gallagher recommended goals and objectives for J.B.

Ms. Gallagher also recommended implementation of the recommendations from the central auditory processing report. Ms. Gallagher is not an expert in central auditory processing, but she included the recommendations from the evaluation in her report, because the treatment is usually implemented by the speech and language pathologist.

At an eligibility conference on June 4, 2014, the team accepted a report from JFK Medical Center even though a speech language pathologist was not present for the meeting. A speech language pathologist should have been present at the meeting for the team to classify J.B. based on the criteria for communication impaired.

Ms. Gallagher reviewed a semi log of speech therapy during the 2012-2013 school year. The first session occurred on November 19, 2012, which would be near the end of the first marking period. There were many missed sessions and none in June 2013. The log for the 2013-2014 school year was similar in that there were many missed sessions with the first on October 4, 2013, and the last on June 6, 2014.

J.B. had three therapists during the 2014-2015 school year, and they kept more detailed notes. Most of the notes say "maintained," which means that J.B. neither progressed or regressed.

The IEP for the 2012-2013 school year provided for speech and language therapy one time per week in a group. Ms. Gallagher expressed the opinion that therapy one time per week would not be enough to address J.B.'s needs and the objectives in the IEP. Ms. Gallagher also stated that the goals and objectives for speech and language are not measurable. J.B. did not have in-class resource for social studies and science. This would present a problem for J.B., because he would not be able to follow the language level of the teacher and the speed at which it would occur.

Likewise, the speech and language services in the IEP for the 2013-2014 school year would not be appropriate for J.B. A group therapy session once per week would not be adequate to meet his needs. Further, the goals and objectives are not measurable, and data would be necessary to determine whether J.B. progressed or regressed.

The IEP for the 2014-2015 school year provides individual therapy once per week and in-class resource for all major subjects. Ms. Gallagher expressed the opinion that this program would not provide J.B. with the learning opportunities that he needs to make progress. The present level of academic achievement and functional performance would not be adequate to give a therapist a starting point. Ms. Gallagher accepted one of two goals for J.B., but she stated that the objectives were not appropriate for him. The other goal would be too difficult for J.B., and the objectives likewise would not be appropriate for J.B. The speech and language portion of the IEP dated February 19, 2015, would also not be appropriate for J.B. for the same reasons.

The speech and language portion of the IEP dated May 20, 2015, for the 2015-2016 school year also would not be appropriate for J.B. The statement of J.B.'s present level is inadequate. The goals are not achievable for J.B., and the objectives are not measurable. The speech and language portion of the IEP dated June 18, 2015, is essentially the same and would not be appropriate for J.B.

An IEP dated January 12, 2016, placed J.B. in a moderate LLD class and increased his speech and language therapy to one individual and one group session. Nonetheless, Ms. Gallagher expressed the opinion that the program would not provide J.B. with an adequate amount of learning opportunities to expect significant progress. The goals are appropriate for J.B., but they are not measurable. J.B. is capable of learning, and he should have an extended school year.

Ms. Gallagher acknowledged that J.B. was receiving forty minutes of speech and language services per week while he was attending the Linden public schools and that the report from JFK Medical Center recommended speech and language services for J.B. one or two times per week in thirty-minute sessions. Ms. Gallagher countered that

those recommendations may have been different if they had the central auditory processing test report.

Ms. Gallagher acknowledged that she did not observe the program proposed by the District for J.B., but she stated that her general knowledge of the language skills of children in the ninth or tenth grade and J.B.'s developmental level would be sufficient to support her opinion.

#### 5. L.B.

L.B. is a resident of the District, and she has also been employed by the District since 2010. L.B. was hired as a third grade teacher, and she has been a basic skill instructor and a testing coordinator since 2014. Before L.B. re-enrolled J.B. in the District, he was in a self-contained LLD class in the Linden School District.

L.B. re-enrolled J.B. in the District for the 2012-2013 school year for the eighth grade. The case worker called L.B. a day or two ahead and told her to show up for an IEP meeting on October 3, 2012. L.B. did not receive written notice of the meeting. At the meeting on October 3, 2012, the case manager was the only other person present. A sheet entitled "Meeting Participants" is signed by three other District employees, but they were not actually present at the meeting. J.B. is also listed, but he was not at the meeting. L.B. was not given a copy of the IEP at the meeting, which lasted about twenty minutes. L.B. was told that J.B. would be placed in a general education and inclusion class. L.B. did not agree and asked why J.B. was being placed in this type of class. The response was that he was high enough to be placed in the general education inclusion class.

The section of the IEP entitled "Concerns of the Parent" does not list all of L.B.'s concerns. L.B. was concerned about the new placement among other things. One of the modifications calls for a list of daily objectives to be provided to L.B. L.B. never received this list. Another modification calls for two sets of textbooks including one for home. J.B. received only one math textbook near the end of the school year. Another modification called for use of a planner to log assignments as well as notification of

homework to the parent. According to L.B. there was no planner. L.B. signed the case manager's copy of the IEP consenting to implementation, because he said that she had to do so if she wanted services without delay.

L.B. eventually received an IEP in the mail, but it did not have any goals and objectives. The summary of special education programs and related services states that J.B. will receive group speech and language therapy one time per week for fifty minutes. The copy of the IEP that L.B. signed on October 3, 2012, provided for group speech and language therapy once per week for thirty minutes.

After consenting to the implementation of the IEP, LB. did not receive feedback from the teachers, and J.B. was not bringing any school work home. L.B. did not believe that the District was implementing J.B.'s IEP. L.B. sent various emails to J.B.'s teachers and the case manager. In an email dated December 19, 2012, L.B. stated that J.B. was not successful in the inclusion class and that he did not like it. L.B. expressed her believe that J.B. needed to be back into a self-contained class. On December 23, 2012, L.B. received an email stating that Tara Downing would be J.B.'s case manager after the break. By email dated January 2, 2013, L.B. requested an IEP meeting, because she felt that J.B. was not being successful and she thought that the general education inclusion class was not appropriate for J.B. He was having a hard time focusing, and he did not like to work in a group, because the kids would make fun of him. On January 13, 2013, L.B. sent Ms. Downing an email stating that J.B. needed to go back to a self-contained class. Ms. Downing scheduled a meeting, and L.B. met with her and three teachers. L.B. expressed her concerns, but no changes were made to J.B.'s program. J.B. continued to struggle and he still did not have books or academic support.

L.B. denied receiving a notice dated March 7, 2013, or another dated April 19, 2013, from the District. L.B. received notice of meetings by email or telephone call. On April 11, 2013, L.B. received an email from Ms. Downing reminding L.B. that J.B.'s IEP meeting was scheduled for the following day. L.B. had received prior notice of the meeting by a telephone call. On April 12, 2013, L.B. received an email stating that the

IEP meeting would be rescheduled. L.B. was notified by email that the IEP meeting was scheduled for May 20, 2013.

The meeting attendance sheet contained J.B.'s name, but he was not present at the meeting. The section of the IEP entitled "Concerns of the Parent" does reflect all of L.B.'s concerns. L.B.'s other concerns were that his placement was not appropriate for him, that he did not have any work to show what he was doing, that he still did not have textbooks and that he did not have enough support. On June 7, 2013, L.B. sent an email to Ms. Downing requesting an extended school year for J.B.

L.B. wanted J.B. to repeat eighth grade because he was struggling throughout the whole year. He was coming home crying and frustrated, because he could not do the work. L.B. thought that J.B. was not ready to do ninth grade work at the high school. The District personnel were opposed to retention, but L.B. was informed over the summer that J.B. would be retained in the eighth grade.

During the 2013-2014 school year, J.B. repeated eighth grade. The teachers told L.B. that J.B. was doing well, and he got high grades on his report card. The IEP for the 2013-2014 school year sets forth a modification such that J.B. would receive two sets of textbooks including one for home. L.B. never received the set of textbooks for home.

At a re-evaluation planning meeting on January 29, 2014, the participants agreed that there would be speech/language, psychological and educational evaluations. A notation indicates that the speech/language evaluation would be done at JFK Hospital, and in fact, it was completed there at L.B.'s request. The psychological and educational evaluations were to be done by the District. L.B. did not receive prior written notice of the re-evaluation planning meeting.

The educational evaluation was dated March 17, 2014, but the District did not send a copy to L.B. L.B. had the speech and language evaluation, and she provided a copy to the District. The psychological evaluation was not conducted at that time.

An Eligibility/Classification Conference was held on June 4, 2014. L.B. signed the Report without reading it, and she did not receive a copy. L.B. also did not receive a copy of the PRISE booklet on that date. L.B. did not know what it was at that time.

The participants continued with an IEP meeting on June 4, 2014. The speech/language and educational evaluations were not discussed at the meeting. L.B. still did not have a copy of the educational evaluation. The section of the IEP entitled "Concerns of the Parent" lists two items, but L.B. had others. One concern was that L.B. thought that J.B. should be in a self-contained classroom. The response was that J.B. was almost at grade level and that he would be too high for a self-contained class. The IEP contained a modification which stated that J.B. would receive two sets of books. J.B. never received the second set of books. L.B. requested an extended school year for J.B., but the District rejected the request.

J.B. experienced problems when he began the ninth grade at Abraham Clark High School. The English teacher sent L.B. an email asking her to talk to J.B. about settling down in class because he was easily distracted and was calling out a lot. L.B. received a second email from the English teacher stating that J.B. was still calling out and that it had to stop. The math teacher sent L.B. an email stating that a problem in J.B.'s homework that was not solved correctly, and she attached a copy of an equation that would be on J.B.'s quiz. According to L.B., the equation was too difficult for J.B., and he could not understand it. There were emails to and from other teachers concerning J.B.'s assignments. At this point, Tenneh Lewis was J.B.'s case manager.

Aside from his school work, J.B. had a problem in that particular school year in that he was being bullied by several other students. J.B. started to complain about being bullied in October 2014. A report was filed by L.B. and a vice principal said that she had witnessed several incidents of kids hitting J.B. The kids were teasing J.B. and calling him names. They also took J.B.'s belongings and hid them or threw them in the garbage. The bullying continued with other incidents.

L.B. requested an IEP meeting because she was concerned about the bullying and she did not believe that J.B.'s placement was correct. L.B. was also concerned that some of the teachers did not know that J.B. had epilepsy and that he takes medication.

J.B.'s IEP was amended on January 29, 2015, to reflect his seizure disorder. The section entitled "Concerns of the Parent" has two items, but there were others. Most notably, L.B. was concerned that other students were bullying J.B.

L.B. continued to request an IEP and sent an e-mail with various copies including one to the football coach, because some of the boys who were bullying J.B. were on the football team. J.B. was afraid to walk in the hallways and was having meltdowns in school. The incidents of bullying continued into February 2015, and J.B. wrote a summary for the vice principal. Other students were teasing and hitting J.B., and he did not want to go to school. L.B. did not receive any HIB reports at that time. Later, L.B. became aware that the District did not find that any HIB took place. L.B. had to talk J.B. into going to school on multiple occasions.

A meeting was held on February 11, 2015, in regard to bullying of J.B. L.B., Ms. Lewis and a vice principal were present. There was no written notice for this meeting. The IEP dated February 11, 2015, contained a notation about J.B.'s seizures, but still there was no mention about L.B.'s concern with bullying. Nonetheless, L.B. signed the consent to implement the IEP dated February 11, 2015.

Another IEP meeting was held on February 19, 2015. The section entitled "Concerns of the Parent" is incomplete in that it does not mention L.B.'s concerns about J.B.'s safety. A section entitled "Social/Emotional/Behavioral" mentions bullying.

Another IEP meeting was held on May 20, 2015, and the District proposed to change J.B.'s program from in-class support to the consultative model. Ms. Lewis described the consultative model as an extra service. The section entitled "Concerns of the Parent" did not mention L.B.'s concerns about J.B.'s safety and bullying. Bullying is mentioned in a section on counseling. The description of consultative support under the section entitled "Supplementary Aids and Services" is different from the model

described by the case manager in that there is no direct instruction. The placement category still indicates that J.B. will be in the presence of general education students eighty percent of the school day.

The IEP dated May 20, 2015, indicates that J.B. would receive consultative support by a special education teacher. L.B. was told that J.B. would receive one-on-one tutoring to give him extra support. An IEP dated June 18, 2015, provided essentially the same services to J.B.

J.B. went to the nurse multiple times during the 2014-2015 school year for various reasons. Oftentimes, J.B. wanted to go home. L.B. stated that when J.B. got home, he said that he was afraid.

L.B. filed another HIB complaint on May 25, 2015, in regard to a situation where students tried to steal J.B.'s bicycle during a Friday evening on May 22, 2015. L.B. also filed a police report. The response was that the incident was not a school-related matter.

J.B. stopped attending school a few days later, and he entered the partial hospitalization program at High Focus. As a result, another IEP meeting was held on June 18, 2015. According to the IEP, J.B. was to spend eighty percent of the school day with general education students. The section entitled "Concerns of the Parent" mentions that L.B. is concerned about J.B.'s safety and that she wants an out-of-district placement. There are two references to bullying and one to anxiety in sections related to counseling. The IEP does not provide for an extended school year.

On May 30, 2015, High Focus notified Mr. Jordan Siegel and Ms. Tenneh Lewis that J.B. entered the Adolescent Psychiatric Partial Care Program at High Focus on May 29, 2015. L.B. also informed one of the District's employees on May 29, 2015. High Focus sent a letter dated September 30, 2015, to this effect. J.B. did not have any home instruction during the time that he was at High Focus.

By email dated June 8, 2015, L.B. requested an out-of-district placement for J.B. because he was terrified of going outside and returning to school. As a result, an IEP meeting was held on June 18, 2015, and L.B. received a PRISE booklet. The new IEP provided essentially the same program for J.B., and L.B. did not consent to its implementation.

In August 2015, L.B. was seeking transportation to VoTech for J.B. Ms. Rivera Forbes advised L.B. that J.B. would not receive any services if he did not come back to Abraham Clark High School, and L.B. expressed her disagreement in an email. On August 19, 2015, and again on September 2, 2015, L.B. requested an IEP meeting to discuss J.B.'s placement along with other issues.

On August 25, 2015, L.B. sent the District a request for an IEP meeting, and she attached a letter dated August 14, 2015, from Farah A. Khan, M.D., who is a psychiatrist at Central Jersey Behavioral Health. The letter contained diagnoses and a recommendation of an out-of-district placement.

An IEP meeting was held on September 8, 2015. L.B. was not given a copy of the PRISE booklet at that meeting, and she did not sign any documents including a sign-in sheet. During the meeting, L.B. made various requests including evaluations and an out-of-district placement. At the meeting, L.B. was told that J.B. would not get any services and that he would not be allowed to go to Vo-Tech, if she did not bring him back to Abraham Clark High School. Further, the District was not going to re-evaluate J.B. L.B. disagreed with these determinations. By letter dated September 8, 2015, the District denied L.B.'s request for an out-of-district placement for J.B.

L.B. then described J.B.'s program at High Focus. J.B. began the program a few days after he last attended school in the District. J.B. attended High Focus from May to August 2015, and he transitioned to Central Jersey Behavioral Health, where he received medication and group and individual therapy. Central Jersey Behavioral Health is considered a step down from High Focus. In a letter dated October 8, 2015, Dr. Khan and Mr. Hirschfeld stated that J.B. should not be attending Abraham Clark High School, which is where the bullying and his anxiety arose. Further, they

recommended an out-of-district placement for J.B. They made substantially the same recommendation in a letter dated January 12, 2016. L.B. provided a copy of a psychiatric evaluation to District personnel three times with the first in August 2015.

During an IEP meeting on September 29, 2015, L.B. wrote a letter stating that J.B. was afraid to return to Abraham Clark High School. L.B. requested that J.B. be placed on home instruction and that he be provided transportation to Vo-Tech, until such time as the evaluations have been completed. Despite the letter, none of these items were discussed at the IEP meeting. The meeting ended with an agreement to have various evaluations completed including educational, psychological, social, speech/language, psychiatric and central auditory processing. L.B. requested a vocational evaluation, but the response was that an assessment would be done at Vo-Tech. The evaluations were completed in accordance with the plan, and there was also a vocational assessment, which was conducted much later in June 2016.

The social assessment was done by Ms. Rivera Forbes, who met with L.B. and her husband at Abraham Clark High School. L.B. and her husband answered questions, and they filled out a form. Ms. Rivera Forbes gave L.B. a form for J.B. to fill out. On the form, J.B. indicated that his biggest problem in life was being bullied.

Home instruction for J.B. was supposed to begin in January 2016, but he did not get any. J.B.'s schedule at Vo-Tech went from 8:00 a.m. to 10:00 a.m.

L.B. did not get any progress reports for J.B. during the ninth grade, and she could not get them from the parent portal, because it is partially blocked. Likewise, L.B. never received any speech reports.

An IEP dated January 5, 2016, provided an LLD class for J.B. L.B. did not sign the IEP because she did not think that it was appropriate for J.B. The IEP dated January 12, 2018, had the same program and placement for J.B.

The IEP had a plan to transition J.B. back to Abraham Clark High School. A staff member would assist J.B. in transitioning from the bus to the classroom at Abraham

Clark High School for two weeks. According to L.B., this plan would not be appropriate for J.B., because he could not even drive by the school without having a panic attack.

L.B. gave Ms. Rivera Forbes consent to contact Central Jersey Behavioral Health. L.B. knew that Mr. Hirschfeld did not think that it was appropriate for J.B. to go back to Abraham Clark High School. Nonetheless, Ms. Rivera Forbes stated J.B.'s psychiatrist was in agreement with the plan to return J.B. to Abraham Clark High School. L.B. later spoke with Dr. Khan, who said that she did not give that information to the District representative. Nonetheless, the District put the transition plan in the IEP.

From the time that J.B. was fourteen, there was never any discussion about transition planning or transition services. L.B. claims that she never received a copy of a draft IEP or a PRISE booklet at an IEP meeting.

### **LAW AND ANALYSIS**

As a recipient of Federal funds under the Individuals with Disabilities Education Act ("IDEA" or "Act"), 20 U.S.C. § 1400 et seq., the State of New Jersey must have a policy that assures all children with disabilities the right to a free appropriate public education. 20 U.S.C. § 1412(a)(1). A free appropriate public education includes special education and related services. 20 U.S.C. § 1401(9). The requirement of a free appropriate public education is implemented in New Jersey through regulations codified at N.J.A.C. 6A:14-1.1 et seq. The responsibility to provide a free appropriate public education is specifically placed on the district board of education. N.J.A.C. 6A:14-1.1(d).

#### **A. FAPE**

A State satisfies the requirement that it provide a child with disabilities with a free appropriate public education by providing personalized instruction specially designed to meet the unique needs of the handicapped child with sufficient support services to permit the child to benefit educationally from that instruction. Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 203 (1982). As the United States

Supreme Court stated, “The IDEA . . . requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Andrew F. v. Douglas Cnty. Sch. Dist. RE-1, 580 U.S. \_\_\_, 137 S. Ct. 988, 197 L.Ed.2d 335, 352 (2017). The quantum of educational benefit necessary to satisfy IDEA varies with the potential of each pupil. Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999). For example, in Rowley, Amy Rowley was classified because she was deaf, but she was otherwise a good student and was being educated in the regular classrooms of the public school system. Her IEP should be reasonably calculated to enable her to achieve passing marks and advance from grade to grade. Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. at 204. For a severely retarded pupil, IDEA requires more than a trivial or de minimis educational benefit but rather mandates meaningful benefit which generally implies progress as opposed to regression. Polk v. Central Susquehanna Intermediate Unit 16, 853 F.2d 171, 180-185 (3d Cir. 1988). However, the State is not required by IDEA to maximize the child’s potential. Ibid. In addition to compliance with this substantive standard, the district must also comply with the procedural requirements of the Act. Fuhrmann v. East Hanover Bd. of Educ., 993 F.2d 1031, 1034 (3d Cir. 1993). In an administrative hearing in regard to the provision of a free appropriate public education, the burden of proof is on the school district. N.J.S.A. 18A:46-1.1.

J.B.’s educational programs for the 2012-2013, 2013-2014 and 2014-2015 school years may be considered together because the IEPs were very similar. J.B.’s program consisted of in-class resource provided by a special education teacher in a general education classroom.

A determination as to the adequacy of an IEP is a matter of expert opinion. Johnston v. Ann Arbor Public Schools, 569 F. Supp. 1502, 1508-09 (E.D. Mich. 1983). Several of respondent’s employees including school psychologist and case manager Tara Downing, school social worker and case manager Tenneh Lewis and special education teacher Shannon Jordan expressed the opinion that the program set forth in the IEPs was reasonably calculated to provide J.B. with a free appropriate public education. The main considerations were that in their view J.B. would be appropriate

for an inclusion setting based upon his psychological evaluation and his educational assessment and that he made satisfactory progress in that setting.

As set forth in greater detail above, Dr. Plasner and Ms. Weyland expressed the opinion that J.B. could not be successful in an eighth or ninth grade class because he was functioning on a third to fifth grade level in various areas. The problem was particularly severe at the times when he did not have in-class resource for science or social studies. In regard to related services, Dr. Plasner expressed the opinion that the counseling was not sufficient for J.B. Similarly, Ms. Gallagher expressed the opinion that speech and language therapy once per week was not sufficient for J.B.

Another consideration is that a student's IEP is required to have a transition plan in place for the school year in which he turns fourteen. N.J.A.C. 6A:14-3.7(e)11. J.B. turned fourteen in October of the 2012-2013 school year. Yet, none to the IEPs contains a transition plan for J.B.

On balance, petitioner's experts were more persuasive. Respondent's witnesses offered no detailed explanation for the initial assertion that J.B.'s psychological evaluations and educational assessments indicated that an inclusion class would be appropriate for him. In contrast, Dr. Plasner provided a cogent and detailed analysis to support his opinion. Generally, petitioner's experts have more experience and expertise. Based on the opinions of petitioner's experts, I **FIND** that respondent failed to provide a free appropriate public education for J.B. during the 2012-2013, 2013-2014 and 2014-2015 school years.

Both parties presented evidence as to whether J.B. has a specific learning disability. Respondent used the severe discrepancy model as set forth in N.J.A.C. 6A:14-3.5(c)12i. This method involves a comparison of current achievement with intellectual ability. Respondent's witnesses were persuasive that psychological and educational testing did not show a severe discrepancy in any of the eight areas set forth in N.J.A.C. 6A:14-3.5(c)12i.

Other methods to identify a specific learning disability are permitted under N.J.A.C. 6A:14-3.5(c)12. A specific learning disability may be determined by utilizing a response to scientifically based interventions methodology as set forth in N.J.A.C. 6A:14-3.4(h)6. Dr. Plasner determined that J.B. has a specific learning disability based on a definition in the Diagnostic and Statistical Manual, fifth edition, which defines psychiatric conditions, but he conceded that it was not appropriate for educational purposes. Ms. Weyland also determined that J.B. has a specific learning disability based on a comparison of his achievement with other students of the same age, but she did not demonstrate that her approach complied with N.J.A.C. 6A:14-3.5(c)12i or N.J.A.C. 6A:14-3.4(h)6. Therefore, I **FIND** that J.B. does not have a specific learning disability.

It is also noteworthy that a finding that J.B. had a specific learning disability would not mean that he was multiply disabled. The existence of two disabling conditions standing alone does not mean that a student is multiply disabled. N.J.A.C. 6A:14-3.5(c)6. In order for a student to be classified as multiply disabled, two or more disabling conditions must be such that the combination causes such severe educational needs that they cannot be accommodated in a program designed solely to address one of the impairments. N.J.A.C. 6A:14-3.5(c)6. There is no credible evidence that the educational needs of a student who is communication impaired and has a specific learning disability could not be addressed in the same program.

A comment is in order in regard to the allegations of bullying during the 2014-2015 school year. It is noteworthy that there was no direct evidence of bullying in that no witnesses testified to seeing such conduct. Further, the District determined that each alleged incident of bullying was unfounded. On the other hand, the alleged incident with J.B.'s bike during the evening of May 22, 2015, may be unfounded in the sense that it did not occur at school or during the school day. Nonetheless, as explained by at least two witnesses, the incident could impact J.B. in regard to school if other students were involved in chasing him and trying to steal his bicycle. It is also noteworthy that four psychiatrists and one psychologist credited J.B.'s accounts in regard to bullying as the conditions that impacted him during the 2015-2016 school year.

The next question is whether the District identified all of J.B.'s disabilities which impacted him during the 2015-2016 school year. Both Dr. Faber and Dr. Plasner diagnosed J.B. with major depressive disorder and anxiety disorder. Psychiatrists at High Focus and Central Jersey Behavioral Health as well as Dr. Platt, who performed an independent psychiatric evaluation, produced the same diagnoses among others. Based upon this evidence, I **FIND** that J.B. had major depressive disorder and generalized anxiety disorder during the 2015-2016 school year. The District did not add any disability to J.B.'s IEP as a result of these diagnoses.

Dr. Plasner expressed the opinion that J.B. meets the criteria for other health impaired and possibly emotionally disturbed and that he should be classified as multiply disabled. The first disability in question is "other health impaired," which is defined in N.J.A.C. 6A:14-3.5(c)9, which provides in pertinent part as follows:

"Other health impaired" . . . means a disability characterized by having limited strength, vitality or alertness, including a heightened alertness with respect to the educational environment, due to chronic or acute health problems, such as attention deficit disorder or attention deficit hyperactivity disorder, . . . or any other medical condition, such as Tourette Syndrome, that adversely affects a student's educational performance. A medical assessment documenting the health problem is required.

Major depressive disorder and anxiety disorder are certainly medical conditions, and they affected J.B.'s educational performance to the point where he was unable to attend school. It follows that J.B. met the criteria for "other health impaired."

The next disability to consider is "emotionally disturbed," which is defined in N.J.A.C. 6A:14-3.5(c)5 as follows:

"Emotionally disturbed" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance due to:

. . .

- iv. A general pervasive mood of unhappiness or depression; or
- v. A tendency to develop physical symptoms or fears associated with personal or school problems.

Here, J.B. was diagnosed with depression, and he developed fears associated with school. J.B. experienced those conditions over a long period of time and to a degree that he was unable to attend school. It follows that J.B. meets the criteria for “emotionally disturbed.”

The meaning of multiply disabled was discussed above. Here, J.B. has three disabilities as defined in N.J.A.C. 6A:14-3.5(c). Dr. Plasner testified that teachers in an LLD program are not normally trained to deal with J.B.’s disabilities. Under the circumstances, I accept Dr. Plasner’s opinion and **FIND** that J.B. meets the criteria for multiply disabled.

The next issue is whether J.B.’s IEPs provided a FAPE during the period from September 2015 through February 2016. It is noteworthy that L.B. filed another petition for a due process hearing. As a result, the proofs in this proceeding are limited to the period ending February 2016, when this petition for due process was filed. The period thereafter will be treated in the second filing.

For the period from September 2015 to January 2016, respondent proposed a consultative model in a general education classroom. The description of this method gave no indication that it was appropriate for a student who is multiply disabled with major depressive disorder and anxiety disorder. Further, the same can be said for the LLD program proposed by the District in January 2016. It is noteworthy that several members of the IEP team working for the District including the school psychologist testified that they had not seen the report from High Focus or the letters from Central Jersey Behavioral Health. It seems evident that important information was withheld from the IEP team. These circumstances undermine the reliability of the IEP team’s determinations in regard to J.B.’s program and placement for the 2015-2016 school year.

Dr. Plasner described the type of program that would be appropriate for J.B. Dr. Plasner’s recommendation is accepted as an appropriate program for J.B. Based upon Dr. Plasner’s recommendation, I **FIND** as follows. J.B. needs a program that would give him consistent emotional support throughout the school day. The program should meet

J.B.'s needs for security, safety, social relatedness, and sense of well-being so that he becomes more emotionally available for learning. The placement should have a sufficiently small student-to-teacher ratio that he feels that he is accepted and has a sense of belonging. The program should be therapeutic in nature and in one school setting with a smaller class size. The program should have counseling and teachers who are trained to deal with students with multiple disabilities, especially anxiety and depression. There should be close monitoring and supervision.

The program proposed by the District for J.B. for the 2015-2016 school year fell well short. The consultative model did not provide the small class size, low student-to-teacher ratio and emotional support needed by J.B. In addition, J.B. would still be in two large high schools. Abraham Clark High School would be particularly problematic, because that is the location where his psychiatric disorders arose. The LLD program provides a smaller class, but J.B. would still be in the large high school, where he developed his psychiatric disorders. Further, in both settings, J.B. would not have the necessary emotional support and teachers trained to deal with students with multiple disabilities. Therefore, I **FIND** that the programs proposed by the District for J.B. for the 2015-2016 school year would not provide a FAPE.

Based upon the above, I **CONCLUDE** that the District failed to provide J.B. with a FAPE during the 2012-2013, 2013-2014, 2014-2015 and 2015-2016 school years through February 2016. In view of this conclusion, it is unnecessary to consider the alleged procedural violations.

## B. Statute of Limitations

Respondent maintains that petitioner's claim should be limited to the two-year period prior to the filing of the due process petition on February 26, 2016. The applicable regulation is N.J.A.C. 6A:14-2.7(a)1, which provides as follows:

A request for a due process hearing shall be filed within two years of the date of the party knew or should have known about the alleged action that forms the basis for the due process petition. The two-year period for filing

for a due process hearing may be extended by an administrative law judge if:

- i. A district board of education specifically misrepresented to the parent that the subject matter of the dispute was resolved to the satisfaction of the parent; or
- ii. The district board of education withheld information that was required by law to provide to the parent.

The first question concerns the time when L.B. knew or should have known about the alleged action that forms basis for the due process petition. In an email dated December 19, 2012, L.B. stated that J.B. was not successful in the inclusion class and that he needed to be back in a self-contained class. It follows that L.B. knew or should have known that J.B. was in a class that she thought would not be appropriate for him on December 19, 2012. Therefore, the limitations period for the 2012-2013 school year began to run on December 19, 2012, and ended on December 19, 2014, which was prior to the filing of the due process petition on February 26, 2016.

The IEP meeting to establish J.B.'s program for the 2013-2014 school year was held on May 20, 2013. The IEP for 2013-2014 school year provided for essentially the same program as the prior year. It follows that L.B. knew or should have known that J.B.'s program was not appropriate for him as of May 20, 2013. Therefore, the limitations period of the 2013-2014 school year began on May 20, 2013, and ended on May 20, 2015, which was prior to the filing of the due process petition on February 26, 2016.

The next question is whether the two-year period for filing for a due process hearing should be extended on the basis of N.J.A.C. 6A:14-2.7(a)i and ii. L.B. claims that she was not aware of her due process rights because she never received a copy of the PRISE booklet until June 18, 2015, and that therefore the limitations period should not begin to run until that date.

L.B.'s contention raises the question of her credibility. On cross-examination, L.B. gave many unresponsive answers, and she was generally extremely evasive. L.B. gave some contradictory answers, and her testimony conflicted that of the District's witnesses, who are considered to be more credible. L.B.'s testimony tracked

documented events to a large extent, and her observations of J.B. are considered to be credible. Nonetheless, L.B.'s testimony concerning notices, meeting and communications with District personnel, including in particular the claim that she did not receive a PRISE booklet until June 18, 2015, is not considered to be credible.

It follows that the limitations period should not be extended on the basis of N.J.A.C. 6A:14-2.7(a)1i and ii. Therefore, I **CONCLUDE** that L.B.'s claims concerning the 2012-2013 and 2013-2014 school years are barred by N.J.A.C. 6A:14-2.7(a)1.

### C. Relief

One form of relief requested by petitioner is a determination that respondent did not provide J.B. with a FAPE during the school years in question. That determination was made herein, but it must be restricted to the 2014-2015 school year and the 2015-2016 school year through February 2016 due to the limitations period.

Another form of relief requested by petitioner is placement of J.B. in a school where he will receive a FAPE. This form of relief is warranted in view of the determinations made herein. As emergent relief, J.B. was placed in the New Roads School of Somerset. Based on the information provided by Dr. Plasner, this school can provide a FAPE for J.B. Therefore, the New Roads School of Somerset should be J.B.'s placement. Petitioner also requested transportation as related service. Transportation to the New Roads School of Somerset is an appropriate form of relief.

Finally, petitioner requests compensatory education for the period that J.B. did not receive a FAPE. The right to compensatory education accrues when the school knows or should know that the IEP is not providing an appropriate education. Ridgewood Bd. of Educ. v. N.E., 172 F.3d at 249. A disabled child is entitled to compensatory education for a period equal to the period of deprivation, excluding the time reasonably required for the school district to rectify the problem. M.C. v. Central Reg. Sch. Dist., 81 F.3d 389, 397 (3d Cir. 1996).

The considerations in regard to compensatory education are similar to those related to the limitations period. L.B. alerted District representatives about her belief that J.B. should be in a self-contained class rather than a general education class on December 19, 2012. The balance of the school year would be an abundance of time to rectify the problem. J.B. should receive compensatory education, but as a result of the limitations period, it should be limited to the 2014-2015 school year plus six months of the 2015-2016 school year from September 2015 through February 2016.

Accordingly, it is **ORDERED** that:

1. The determination is made herein that J.B. did not receive a FAPE for the 2014-2015 school year and the six-month period from September 2015 through February 2016.
2. J.B.'s placement shall be the New Roads School at Somerset.
3. Respondent shall provide J.B. with transportation to the New Roads School at Somerset.
4. Respondent shall provide J.B. with one school year plus six months of compensatory education.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2017) 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 (2017). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education Programs.

April 13, 2018

\_\_\_\_\_  
DATE

\_\_\_\_\_  
**RICHARD McGILL, ALJ**

Date Received at Agency

April 13, 2018\_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

ljb

## APPENDIX

### WITNESS LIST

For petitioner:

Monica Ahearn  
Dr. Joseph Plasner  
Deborah Weyland  
Theresa Gallagher  
L.B.

For respondent:

Nicole Rivera-Forbes  
Rochelle Blum  
Daniel Earle  
Fraidi Silberberg  
Tenneh Lewis  
Dr. Mark P. Faber  
Shannon Jordan  
Tara Downing

### EXHIBIT LIST

- J-1 IEP for the 2011-2012 School Year, Linden Public School District,  
dated March 31, 2011
- J-2 Linden Public Schools – Strategies and Recommendations for JB  
dated June 28, 2011
- J-3 IEP for the 2012-2013 School Year, dated October 3, 2012
- J-4 IEP for the 2013-2014 School Year, dated May 20, 2013
- J-5 IEP for the 2014-2015 School Year, dated June 4, 2014
- J-6 IEP for the 2014-2015 School Year, dated January 29, 2015

- J-6A IEP for the 2014-2015 School Year, dated February 11, 2015
- J-7 IEP for the 2014-2015 School Year, dated February 19, 2015
- J-8 IEP for the 2015-2016 School Year, dated May 20, 2015
- J-9 IEP for the 2015-2016 School Year, dated June 18, 2015
- J-10 IEP for the 2015-2016 School Year, dated January 5, 2016
- J-11 IEP for the 2015-2016 School Year, dated January 12, 2016
- J-12 IEP for the 2015-2016 School Year, dated April 12, 2016
- J-13 IEP for the 2016-2017 School Year, dated June 14, 2016
- J-14 Reevaluation Plan, dated September 29, 2015
- J-15 Documentation provided by the parent at the September 29, 2015  
Reevaluation Planning Meeting
- J-16 Social Evaluation conducted by Roselle Public Schools,  
dated October 9, 2015
- J-17 Psychiatric Evaluation completed by Mark P. Faber, M.D.,  
dated October 15, 2015
- J-18 Follow-up Consultation report from Dr. Faber, July 29, 2016
- J-19 Independent Psychiatric Evaluation conducted by Dr. Ellen Platt,  
dated March 8, 2016
- J-20 Educational Evaluation conducted by the Linden Public School District,  
dated February 11, 2011
- J-21 Educational Re-Evaluation conducted by the Linden Public School District,  
dated February 11, 2011
- J-22 Educational Evaluation conducted by the Roselle Public School District,  
dated March 17, 2014
- J-23 Educational Evaluation conducted by Balaban & Associates, L.L.C.,  
dated October 27, 2015
- J-24 Educational Learning Evaluation conducted by Balaban & Associates, L.L.C.  
dated December 23, 2015
- J-25 Speech/Language Evaluation conducted by the Linden Public Schools,  
dated November 23, 2009
- J-26 Speech and Language Evaluation conducted by Johnson Rehabilitation Institute,  
dated March 11, 2014
- J-27 Speech and Language Evaluation conducted by the Roselle Public School

- District, dated November 12, 2015
- J-28 Speech and Language Evaluation conducted by the Balaban & Associates, L.L.C.  
dated December 20, 2015
- J-29 Audiological Evaluation conducted by Speech & Hearing Associates,  
dated November 30, 2015
- J-30 Audiological Evaluation conducted by Speech & Hearing Associates,  
dated November 30, 2015
- J-30 Psychological Evaluation conducted by the Linden Public School District,  
dated March 18, 2011
- J-31 Confidential Psychological Assessment conducted by the Roselle Public School  
District, dated November 10, 2015
- J-32 Psychological Evaluation conducted by Balaban & Associates, L.L.C.,  
dated December 15, 2015
- J-33 Addendum to Psychological Evaluation conducted by Balaban & Associates, L.L.C.,  
dated August 8, 2016
- J-34 Short Term Diagnostic Vocational Evaluation conducted by Goodwill Industries,  
dated July 5, 2016
- J-35 Eligibility/Conference Report, dated June 4, 2014
- J-36 Eligibility/Classification Conference Report, dated January 6, 2016
- J-37 Letter from Central Jersey Behavioral Health, L.L.C., dated August 14, 2015
- J-38 Letter from Central Jersey Behavioral Health, L.L.C., dated October 8, 2015
- J-39 Letter from Central Jersey Behavioral Health, L.L.C., dated January 12, 2016
- J-40 Treatment Summary from Stepping Forward Counseling Center, L.L.C.,  
dated June 2, 2016
- J-41 "All about Me – Interest Survey" completed by J.B., dated February 1, 2016
- J-42 Roselle Board of Education Special Services – Social Assessment Form
- J-43 2012-2013 Report Card
- J-44 2013-2014 Report Card
- J-45 2014-2015 Report Card
- J-46 Progress Reports for the 2012-2013 School Year
- J-47 Progress Reports for the 2013-2014 School Year
- J-48 Progress Reports for the 2014-2015 School Year
- J-49 Progress Reports for IEP Goals and Objectives, 2013-2014

- J-50 Progress Reports for IEP Goals and Objectives, 2014-2015
- J-51 Service Log for Speech/Language
- J-52 Service Log for Counseling
- J-53 Nurse Log
- J-56 Invitation for Reevaluation Planning Meeting, dated January 29, 2014
- J-57 Invitation for Reevaluation Planning Meeting, dated September 22, 2015
- J-58 Invitation to Assess Progress and Review or Revise IEP, dated September 4, 2015
- J-59 Contact Log
- J-60 Handwritten Letter from L.B. (Provided at Planning Meeting),  
dated September 29, 2015
- J-61 Letter from L.B. to "Whom It May Concern", dated August 21, 2015
- J-62 Letter from High School Child Study Team to Parent/Guardian of J.B.,  
dated September 8, 2015
- J-63 Letter from Esther Canty-Barnes, Esq. to Margaret A. Miller, Esq.,  
dated April 12, 2016
- J-64 HIB Investigation Report Form – October 2014
- J-65 HIB Investigation Report Form – November 5, 2014
- J-66 Handwritten Notes of J.B. – November 13, 2014
- J-67 HIB Parent Form – December 8, 2014
- J-68 HIB Board Report Form – February 2015
- J-69 Abraham Clark High School – February 11, 2015 letter to Parents of KW for  
actions against J.B.
- J-70 HIB Parent Form – February 5, 2015
- J-71 Dates of Incidents – typed and signed by J.B.
- J-72 HIB Investigation Report Form – February 6, 2015
- J-73 Notification of HIB Reports Results – March 25, 2015 – from High School VP  
to Petitioner
- J-74 Notification of HIB Report Results – April 15, 2015 – from High School VP  
to Petitioner
- J-75 HIB Reporting Form – May 22, 2015
- J-76 Handwritten Statement of Alleged Perpetrator – June 1, 2015
- J-77 HIB Investigation Report Form – May 22, 2015
- J-78 NJ ASK Spring 2011 Individual Student Report for J.B.

- J-79 NJ ASK Spring 2013 Individual Student Report for J.B.
- J-80 NJ ASK Spring 2014 Individual Student Report for J.B.
- J-81 New Jersey Biology Competency Test, dated May 2015
- J-82 PSAT/NMSQT Report- Undated
- J-83 PARCC- English Language Arts/Literacy – Grade 9 Assessment Report, 2014-2015
- J-84 PARCC – Mathematics – Algebra Assessment Report, 2014-2015
- J-85 E-mail from Ahearn to Petitioner – J.B. IEP Meeting- June 16, 2015
- J-86 E-mail from Ahearn to Petitioner – J.B.'s Placement – July 30, 2015
- J-87 E-mail from Petitioner to Ahearn- J.B.'s Placement- July 30, 2015
- J-88 E-mail from Ahearn to Petitioner – Transportation Needs – August 19, 2015
- J-90 Rivera-Forbes letter to Petitioner – Home to School Transportation – September 4, 2015
- J-91 E-mail from Petitioner to Rivera-Forbes – September 14, 2015
- J-92 E-mail from Petitioner to Ahearn – Response to Concerns and Issues – September 14, 2015
- J-93 E-mail from Migliorini to Rivera-Forbes – J.B.'s Academic and Behavioral Status- May 23, 2016
- J-94 E-mail from Yihjye Twu to Migliorini – J.B.'s Academic and Behavioral Status – June 7, 2016
- J-95 Prescription for J.B. from Dr. Anjali Viswanathan, dated May 28, 2015
  
- P-1 Dr. Plasner Addendum to Psychological Evaluation August 2016
- P-5 JFK Neuroscience Institute VEED December 2014
- P-6 JFK In-patient Admission December 2014
- P-8 Judge's Decision on Settlement Jan 2016
- P-9 E-mails re: Vocational Technology Application and Procedure
- P-10 Union County Vocational Technical HS Release Forms and IEP 3/23/15
- P-11 Union County Vocational Technical HS schedule and grades 2015-2016
- P-12 Attendance Union County Vocational Technical HS 2015-16
- P-13 Emails re bullying and reports
- P-14 Police report re Attempted Robbery of J.B.
- P-15 High Focus Admission
- P-16 Request for Out of District Placement and Transportation 6/8/15 & 8/21/15

- P-17 Email re IEP Amendment 2015
- P-18 Emails re IEP, program and meeting 2015
- P-19 Emails re Transportation to Union County Technical High School
- P-20 District rejection of L.B.'s request for Out of District Placement 9/8/15
- P-21 Emails re District evaluations for J.B. 2016
- P-24 Emails re J.B. 2014-2015
- P-25 2014 Photo of J.B. receiving Honors end of 2013-2014
- P-26 Emails re J.B. 2012- 2013
- P-27 Request for FMLA 2015
- P-29 Correspondence July 20, 2016
- P-35 Correspondence re Discovery January 8, 2016
- P-36 Correspondence re Discovery December 11, 2015
- P-37 Correspondence re Discovery and Release of Information, December 2, 2015
- P-38 Correspondence from Therapist and update October 13, 2015
- P-39 Correspondence re pupil Records September 16, 2015
- P-41 Balaban and Associate Resumes (3)
- P-45 Student Interview for District
- P-47 Email chain ending with Tenneh Lewis to Maragret A. Miller dated November 1, 2016,  
8:11 p.m.
- P-48 Email chain ending with Tenneh Lewis to Margaret A. Miller dated November 1, 2016,  
8:25 p.m.
- P-49 Email chain ending with Tenneh Lewis to Margret A. Miller dated November 1, 2016,  
8:23 p.m.
- P-50 Observation Notes
- P-51 Email chain ending with Tenneh Lewis to Margaret A. Miller dated November 1, 2016,  
8:11 p.m.
- P-52 Email chain ending with Tenneh Lewis to Margret A. Miller dated November 1, 2016,  
at 8:03 p.m.
- P-53 Email chain ending with Tenneh Lewis to Margret A. Miller dated November 1, 2016,  
at 8:05 p.m.
- P-54 Email chain ending with Taylor Lang to Leonor Gomez dated November 3, 2016
- P-55 Email chain ending with Tenneh Lewis to Monica Ahearn dated May 19, 2015
- P-55A Roselle Public Schools Special Service Department Child Study Team

- P-56 Individualized Education Program dated October 3, 2012
- P-57 30 X 3 Perspective Teaching
- P-58 Roses and Responsibilities
- P-59 Attendance Sign In Sheet for Collaborative Consultation
- P-60 Child Study Team Meeting Agenda – September 16, 2015
- P-62 Full Team Meeting Agenda – January 5, 2016
- P-63 Sign In Sheet for Special Education Teacher Monthly Meeting on January 11, 2016
- P-64 Roselle Public Schools Professional Development – November 3, 2015
- P-66 Email dated June 17, 2015, from L.B. to Monica Ahearn
- P-67 Health History and Appraisal
- P-68 Letter dated December 5, 2016, from Maragret A. Miller, Esq., to Esther Canty-Barnes, Esq., with attachments
- P-69 Consent for Homebound Instruction dated May 28, 2015
- P-70 Order Emergency Relief dated February 6, 2012, in L.B. on behalf of J.K.B., L.B. and J.B. v. Board of Education of the City of Linden, Union County, OAL Dkt. No. EDU 01271-12, Agency Dkt. No. 16-1/12
- P-75 Conference Log
- P-76 Letter dated December 2, 2015, from Charlotte Martin to Margaret A. Miller, Esq., with attached medical records
- P-77 Release of Information dated September 17, 2015
- P-78 Initial Evaluation dated July 15, 2015
- P-79 Email from March 2017 concerning parent record request
- P-80 Email chain ending June 6, 2015
  
- R-1 Resume/Curriculum Vitae- Tara Downing
- R-2 Resume/Curriculum Vitae- Rochelle Blum, ED, CSP
- R-3 Resume/Curriculum Vitae- Nicole Rivera Forbes, LSW
- R-4 Resume/Curriculum Vitae- Daniel P. Earle, MS, LDT-C
- R-5 Resume/Curriculum Vitae-Tenneh Lewis, LSW
- R-6 Resume/Curriculum Vitae- Chantell Jasey
- R-7 Resume/Curriculum Vitae – Monica Ahearn
- R-8 Curriculum Vitae- Mark P. Faber, MD
- R-9 Resume/Curriculum Vitae – Fraidi Silberberg, MS, SLP-CC

- R-10 Invitation for Annual Review of IEP, PRISE Annual Notice, dated March 7, 2013
- R-11 Invitation for Annual Review of IEP, PRISE Annual Notice, dated April 19, 2013
- R-12 Email chain ending with Tenneh Lewis to Margaret A. Miller dated January 5, 2016,  
at 10:01 a.m.
- R-13 Email chain ending with Tenneh Lewis to Margaret A. Miller dated January 5, 2016,  
at 10:02 a.m.
- R-14 Note dated May 26, 2015, from Anjali Viswanathan, M.D.
- R-15 Progress Notes from High Focus Centers
- R-16 Progress Notes from High Focus Centers
- R-17 Comprehensive Assessment by High Focus Centers
- R-18 Decision of Commissioner of Education in L.B. on behalf of children, J.K.B., L.B.  
and J.B. v. Board of Education of the City of Linden, Union County, OAL Dkt.  
No. EDU 1271-12, Agency Dkt. No. 16-1/12
- R-19 Progress Note