

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION

OAL DKT. NO. EDS 05984-13

AGENCY DKT. NO. 2013 19303

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

Petitioners,

v.

MILLBURN TOWNSHIP BOARD OF

EDUCATION,

Respondent.

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

Paul E. Griggs, Esq., for respondent (Lindabury, McCormick, Estabrook & Cooper, attorneys)

Record Closed: October 6, 2014

Decided: April 14, 2015

BEFORE **RICHARD McGILL**, ALJ:

This matter concerns a request for a due process hearing by M.P. and J.P. (hereinafter "petitioners") on behalf of their son, S.P., who is classified as eligible for special education and related services. Petitioners contend that the Millburn Township Board of Education (hereinafter "respondent" or "District") failed to provide S.P. with a free appropriate public education. Petitioners seek reimbursement for costs associated with their unilateral placement of S.P. in an out-of-district residential school and compensatory education.

Respondent maintains that it developed an individualized education program (“IEP”) that would provide S.P. with a free appropriate public education and that reimbursement for the unilateral placement of S.P. is not available for various other reasons. Respondent seeks denial of the relief requested by petitioners.

PROCEDURAL HISTORY

A request for a due process hearing on behalf of S.P. was received by the Office of Special Education on February 8, 2013, and an amended petition was filed on April 19, 2013. The matter was transmitted to the Office of Administrative Law on May 1, 2013, for a hearing in accordance with 20 U.S.C.A. § 1415 and 34 C.F.R. § 300.507. The hearing commenced on April 24, 2014, and continued for a total of six days at the Office of Administrative Law in Newark, New Jersey.

ISSUES

The main issue in this proceeding is whether petitioners should receive reimbursement for their unilateral placement of S.P. at the Eagle Hill School. The first subsidiary issue is whether the IEP proposed by respondent in December 2012 and January 2013 with placement at the Community School would provide S.P. with a free appropriate public education. The second subsidiary issue is whether the unilateral placement at the Eagle Hill School would provide S.P. with an appropriate education. The third subsidiary issue is whether reimbursement should be reduced or denied because of unreasonable actions by the parents. The final issue is whether respondent should be required to provide S.P. with compensatory education for failure to provide a free appropriate public education during the period prior to the unilateral placement.

FACTS

The underlying facts as to the general course of events are essentially undisputed, and I **FIND** as follows: S.P. was born on January 16, 1997, and he attended Kent Place School for preschool and The Darcy School for kindergarten through second grade. S.P. entered respondent's Glenwood School for third grade and remained there through fifth grade. S.P. was evaluated by the child study team during the third grade as the result of diagnoses of an auditory processing disorder and attention deficit hyperactivity disorder ("ADHD"). S.P. had difficulty with reading comprehension and math in school. He was classified as eligible for special education and related services based on the criteria for other health impaired. Services included in-class support for reading, language arts and math in addition to speech/language services.

At the beginning of the fourth grade, S.P.'s program was changed to pull-out replacement for language arts and reading. In fifth grade, S.P. received in-class support for math, science and social studies in addition to pull-out replacement for language arts and reading. Towards the end of fifth grade, M.P. and J.P. met School Social Worker Linda Ariel, who would be S.P.'s case manager from sixth through eighth grade at Millburn Middle School.

In sixth grade, S.P. received in-class support for reading, language arts, math, science and social studies. Nonetheless, S.P. was overwhelmed by long-term projects, and he began to exhibit avoidant behaviors regarding class work and homework.

In seventh grade, S.P. received in-class support for all subjects in the regular education program. Behavior problems emerged at home, and S.P. began to have attendance problems including chronic lateness. On March 10, 2010, S.P.'s IEP was revised to replace in-class support in language and math with pull-out replacement. The school day was modified to begin at second period due to medical issues related to bipolar disorder. On June 21, 2010, S.P.'s IEP was revised again because of S.P.'s

absenteeism, and a plan was implemented for home instruction over the summer in math and language arts.

Because S.P. had become school avoidant, a reevaluation of S.P. was initiated after the end of seventh grade and included a social history, a learning evaluation, a psychological evaluation and a psychiatric assessment. S.P. had average intelligence, and he was suffering from mood dysregulation, anxiety and ADHD. At an IEP meeting on July 28, 2010, S.P.'s eligibility category was changed to emotionally disturbed. S.P.'s program for eighth grade included pull-out replacement for language arts and math. During this school year, S.P. became more school avoidant, and respondent provided counseling to help S.P. access his educational program.

S.P. experienced more difficulty with completion of his homework and aggressive behavior at home, and he became increasingly school avoidant. As a result, the child study team began to explore placement of S.P. at Cornerstone Day School ("Cornerstone"). On March 28, 2011, the child study team members agreed to modify S.P.'s program to reflect placement at Cornerstone. The revised IEP provided that S.P. was placed for the remainder of eighth grade at Cornerstone and that he would receive individual and group counseling.

Cornerstone is a therapeutic day school that provides comprehensive support as well as education for students in grades six through twelve. The students must have a psychiatric diagnosis to be admitted to Cornerstone, and they receive individual and group therapy. Students visit the school psychiatrist at least once a month. Academically, Cornerstone follows the New Jersey Core Curriculum Standards. Cornerstone is accredited by the Middle States Association and by the National Independent Private Schools Association and is licensed by the Department of Human Services as an outpatient mental health facility. All teachers are certified in special education. Cornerstone has expertise in addressing school avoidance.

After a thirty-day period for S.P. to get acclimated to Cornerstone, an IEP meeting was held on May 4, 2011. Within the first month at Cornerstone, S.P. was

attending school regularly, and he did not have a problem with school refusal. Cornerstone provided goals and objections for S.P. There was a question as to whether S.P. should repeat eighth grade or continue in ninth grade. The team agreed to meet again in June to consider this issue.

At an IEP meeting on June 14, 2011, the decision was made that S.P. would remain in the eighth grade and attend a traditional summer school program. Upon the completion thereof, a determination would be made whether to move S.P. to the ninth grade.

At Cornerstone, the school year runs from July 1 through June 30. Typically, on July 1, the students move up to the next grade. The summer period is normally the beginning of the following school year. In some instances, a student completes the previous grade over the summer and then moves up to the next grade in September.

School Psychologist Suzanne Zimmermann became S.P.'s case manager beginning in ninth grade. S.P. continued with the eighth grade curriculum with therapeutic support throughout the summer. S.P. did well in the summer program receiving three A's and a B in his academic subjects. At the end of the summer session, the determination was made that S.P. had successfully completed the course requirements, and he was promoted to the ninth grade. On September 16, 2011, S.P.'s IEP was revised to reflect the change. At that time, there was no discussion of a residential placement.

At Cornerstone, S.P. was taking a college preparatory curriculum, and his academic subjects included biology, world history, English 9, algebra 1 and electives. S.P. received C's in his four academic subjects. During the course of the school year, S.P.'s behavior at home became increasingly dangerous and destructive, even though he continued to attend school. S.P. did not engage in these behaviors at school.

In the fall of 2011, Daniel N. DaSilva, Ph.D., conducted a neuropsychological evaluation of S.P. The recommendations were included in a revised IEP dated March

13, 2012, which followed S.P.'s annual review. At the time, Cornerstone increased tutoring, because S.P. was struggling academically. The IEP meeting continued on May 9, 2012, to discuss the report of Dr. Silva.

In May and June 2012, S.P. continued to have behavioral issues at home, and Cornerstone instituted a crisis plan. In late spring 2012, James Woodley from the Moving on Life Center began to visit S.P. and petitioners as a family crisis counselor. S.P. was causing stress and anxiety in the home environment by engaging in various types of misconduct such as yelling at his mother and becoming physically aggressive with his siblings.

S.P. was scheduled to attend Cornerstone during the summer of 2012. Petitioners decided to send S.P. to a camp program, and he missed two weeks of school. In July 2012, petitioners requested a meeting with Director of Special Services Juliana Kusz to pursue a change in placement for S.P. Nonetheless, S.P. was scheduled to start the next session at Cornerstone in late August 2012 in tenth grade.

Three days after the beginning of school, an incident occurred when S.P. was spending time with friends, and J.P. insisted that he return home. After S.P. got into the car, he became aggressive and started to kick the seat. Because S.P. was creating a dangerous situation, J.P. told him to get out of the car and walk the rest of the way home. When S.P. got home, he proceeded to throw rocks at J.P. and a sibling.

J.P. called the police who took S.P. to Morristown Memorial Hospital. S.P. was transferred to Silver Hill Hospital, which is a psychiatric facility, for crisis treatment. When S.P. was stabilized after approximately five days, he was transferred to Stepping Forward Counseling Center ("Stepping Forward"), which provides an outpatient partial hospitalization program that transitions students from acute care to an alternate placement. S.P.'s last day of attendance at Cornerstone was August 30, 2012, and Cornerstone provided home instruction materials for S.P., while he was at Stepping Forward. S.P. remained in Stepping Forward's program from September through December 2012.

After being discharged from Silver Hill Hospital, S.P. met with Charles Cartwright, M.D., who became S.P.'s treating psychiatrist. Dr. Cartwright suspected that S.P. had a learning disability. Later in September 2012, Holly Blumenstyk conducted an independent educational evaluation of S.P. Ms. Blumenstyk determined that S.P. had learning disabilities in the areas of language, based upon reading comprehension, and math based upon calculation skills.

Ms. Blumenstyk and Dr. Cartwright participated in an IEP meeting held on December 6, 2012. Petitioners and respondent's representatives agreed to change S.P.'s eligibility category from emotionally disturbed to specific learning disability. The school district did not offer a particular placement during that IEP meeting.

On December 17, 2012, petitioners submitted an application to Eagle Hill School for S.P. This would be a residential placement.

On January 4, 2013, an IEP meeting was convened to consider the results of a search for a placement for S.P. At this meeting, the school district representatives offered the Community School, which is a day school with a primary focus on students with language-based learning disabilities. Petitioners notified the meeting participants that they disagreed with the proposed placement at the Community School. A follow-up meeting was held on or about January 10, 2013, at the Community School.

In March 2013, petitioners unilaterally placed S.P. at Eagle Hill School. On April 19, 2013, petitioners amended their due process petition originally filed on February 8, 2013, to reflect a demand for reimbursement for costs incurred in connection for S.P.'s unilateral placement at Eagle Hill School.

SUMMARY OF EVIDENCE

A. Respondent's Witnesses

Respondent presented six witnesses in its case in chief. Three witnesses are respondent's employees including Director of Special Services Juliana Kusz, School Psychologist Suzanne Zimmermann and School Social Worker Linda Ariel. Ms. Ariel's testimony was largely undisputed and was a source for the facts set forth above. Respondent's other witnesses were Gregg Weisman, who is the principal of Cornerstone; Holly Blumenstyk, who conducted an independent educational evaluation of S.P.; and Toby Braunstein, who is employed by the Community School as its Director of Education.

1. Suzanne Zimmermann

Suzanne Zimmermann is employed by respondent as a school psychologist, and she was accepted as an expert in psychology and psycho-educational assessments. Ms. Zimmermann was S.P.'s case manager beginning in the ninth grade, and she became involved with his educational program in June 2011, when he was transitioning from eighth grade to ninth grade. At the time, S.P. was finishing his eighth grade year at Cornerstone. His program included eighth grade academics; individual, group and family therapy; and psychiatric consultation. Cornerstone is a therapeutic school for students with emotional issues that interfere with their ability to access the education in school as well as presenting with problems at home. The primary focus is to provide therapeutic supports with a college preparatory curriculum. S.P. was placed at Cornerstone because he was refusing to attend school.

During the summer session at Cornerstone, S.P. was progressing socially and academically, but he still had a problem completing his homework. The problem with school refusal had dissipated by that time. S.P. was attending school regularly and was participating in all aspects of the Cornerstone program. S.P.'s parents were pleased with his transition to Cornerstone, although they were still concerned about some

behavioral issues and whether S.P. would be ready to begin ninth grade in September. In fact, S.P. began ninth grade in September consistent with the agreement at the IEP meeting on June 14, 2011, that he would do so if he continued to do well in the summer program.

S.P. had a regular ninth grade college preparatory curriculum in accordance with an IEP meeting on September 16, 2011, and he was doing well and participating actively in his academics. S.P. had various types of assistive technology such as laptop computers and e-books. Cornerstone was planning to provide another study hall so that S.P. could get more of his homework done in school. The principal was going to ask the math teacher to set aside time in the math class to work on basic math skills and facts. The IEP from September 16, 2011, contained goals and objectives related to the ninth grade curriculum as well as individual and group therapy. The IEP contained modifications to S.P.'s program such as preferential seating.

On October 6, 2011, Ms. Zimmermann received an e-mail from J.P., who stated that S.P. had become uncontrollably destructive, dangerous and unsafe at home even though he continued to attend school. As set forth in the e-mail, J.P. requested further testing for appropriate identification of S.P.'s disabilities. Cornerstone had informed Ms. Zimmermann that S.P. was having behavior problems at home and that S.P. had experienced frustration with homework. S.P. was not demonstrating these behaviors at Cornerstone. Up to this point, the child study team had not had any discussions about a residential placement.

A neuropsychological evaluation of S.P. was done by Daniel N. DaSilva, Ph.D., in the fall of 2011, and the recommendations including metacognitive training were incorporated into an IEP dated March 13, 2012. An autism evaluation was done for S.P. by the Children's Specialized Hospital, and the report dated April 17, 2012, was made part of the record. At an IEP meeting in May 2012, petitioners questioned the continued placement of S.P. at Cornerstone. Likewise, a clinical Evaluation of Language Fundamentals by Cornerstone was received by the IEP team at the last meeting in June 2012 and incorporated into the record.

Behavioral issues came to a head in May and June 2012, and Cornerstone put a crisis plan in place. The therapist thought that S.P.'s bipolar disorder was emerging more fully. Cornerstone recommended an increase in medication. There were never behavioral issues in school other than S.P.'s struggles with getting his work completed.

Prior to the summer of 2012, S.P.'s attendance at Cornerstone had been very good. During the summer of 2012, S.P. had significant absences while he participated in camp-like experiences. Over the summer of 2012, petitioners suggested other schools for S.P. including a residential placement.

Over the course of the prior school year, the District was attempting to address the concerns of the family in regard to academics and therapy, but the efforts were falling on deaf ears. No matter what efforts the District made, petitioners wanted more testing or various changes.

At a meeting on September 7, 2012, Ms. Zimmermann, who had been away over the summer, became aware of the incident that led to S.P.'s hospitalization. The purpose of the meeting was to deal with S.P.'s situation. Ms. Zimmermann was aware that the family met with Director Kusz over the course of the summer and that there had been an agreement to look at other placements. By September 7, 2012, S.P. was making the transition from Silver Hill Hospital to Stepping Forward. S.P.'s program would consist of home instruction for academics with Stepping Forward providing therapy.

Ms. Zimmermann attempted to visit S.P., but petitioners partially rescinded their permission to allow her as case manager to speak directly with Stepping Forward without them being present. Ms. Zimmermann felt that this situation was interfering with her ability to monitor S.P.'s program. Eventually Ms. Zimmermann was able to speak with a representative of Stepping Forward without petitioners being present. By November 2012, the child study team was actively looking for and visiting alternative placements on its own and with the family.

The family requested an independent educational evaluation, which was done by Holly Blumenstyk, who is a learning consultant. The report was considered at an IEP meeting on December 6, 2012. Ms. Blumenstyk determined that S.P. had a math disorder and a reading disorder as well as attention deficit disorder, and she recommended a specialized school that deals with learning disabilities. Ms. Blumenstyk was present for the IEP meeting on December 6, 2012.

At that IEP meeting, the decision was made to change S.P.'s classification from emotionally disturbed to specific learning disability. Further, it would be necessary to look at placements that dealt with learning disabilities as the primary issue. The participants agreed to look at various schools for S.P. At this time, S.P. was still at Stepping Forward.

Ms. Zimmermann visited Community School, which is located in Teaneck, New Jersey, to evaluate the program for S.P. S.P. also visited Community School, and he seemed upbeat and interested in pursuing the placement. Petitioners were reluctant to agree to the placement, because Community School did not provide the supports or the academics that S.P. needed. Specifically, Community School did not have the recommended assistive technology. According to Ms. Zimmermann, Community School has assistive technology, and the proposed placement was endorsed by Ms. Blumenstyk as appropriate. District personnel met with the director of Community School and the reading specialist, and they assured her that they would be able to provide S.P.'s program.

The next IEP meeting occurred on January 4, 2013. District personnel recommended Community School as the most appropriate program for S.P. Petitioners did not agree that Community School was appropriate for S.P., and they said that they would submit the reasons for their disagreement in writing.

According to Ms. Zimmermann, Community School was a highly regarded program for students with significant learning disabilities. Community School could provide all of the services recommended by Ms. Blumenstyk, and it had state of the art

programs and equipment such as assistive technology and software. Further, Community School had a population of students whose presenting problem is primarily learning disabilities with attention deficit disorder. Community School also had lots of well organized extracurricular activities. Community School seemed to be a good fit for S.P.

On cross-examination, Ms. Zimmermann stated that her interaction with Cornerstone was primarily through IEP and other meetings with and without S.P. An IEP meeting was held on December 19, 2011, but no changes were made to the IEP at that time. The decision was made to await the results of the neuropsychological evaluation.

The results of the neuropsychological evaluation were implemented during the IEP meeting on March 13, 2012. Ms. Zimmerman observed S.P. in the classroom once, and that was in the spring of 2012. In the spring of 2012, petitioners asked to have a meeting with the Director of Special Services to discuss alternative placements. At the time, Ms. Zimmermann thought that Cornerstone was the appropriate placement for S.P.

S.P. had been hospitalized for psychiatric issues, and then he moved to Stepping Forward. After stating that petitioners put restrictions on her ability to get information from Stepping Forward, Ms. Zimmermann acknowledged that Stepping Forward has a policy that no one comes to see the children during their treatment. Ms. Zimmermann denied that she claimed that it was petitioners' fault that she could not see S.P. Further, J.P. made numerous calls to Stepping Forward to arrange a time when Ms. Zimmermann could meet with S.P. J.P. was not trying to keep information about S.P. from Ms. Zimmermann. Further, J.P. had the right to be present during discussions of S.P.'s psychiatric issues.

Ms. Zimmermann stated that the Director of Special Services was part of the IEP team for S.P. Director Kusz was part of the team making the placement decision, but she did not make the determination herself.

The District and petitioners were contributing to a list of potential placements, and Ms. Zimmermann visited approximately a half dozen potential placements for S.P. The family was cooperative and visited Community School on three occasions. On January 4, 2013, respondent's personnel offered Community School as the placement pending acceptance.

On redirect examination, Ms. Zimmermann stated that she received quarterly updates from Cornerstone regarding S.P.'s academic and therapeutic progress. While she was S.P.'s case manager, Ms. Zimmermann had from five to seven meetings with staff at Cornerstone.

Ms. Zimmermann explained that when a student goes from home instruction to a new placement, the child study team develops a framework for the program that is placed in the IEP. The school in which the student is placed then provides the goals and objectives that they will be addressing in their curriculum and related services. A follow-up meeting is held within thirty days of the placement.

During the IEP meetings on December 6, 2012, and January 4, 2013, respondent's personnel had the beginnings of goals and objectives pending placement at Community School. If Community School had accepted S.P., the goals and objectives would have been finalized at that time. In this case, the parents refused the placement.

In response to questions from the bench, Ms. Zimmermann explained the change in the disability category from emotionally disturbed to specific learning disability. The change was made at the IEP meeting on December 6, 2012, which was attended by various individuals including Ms. Blumenstyk and Dr. Cartwright, who is S.P.'s treating psychiatrist. It was agreed at the meeting that the primary concern was no longer emotional but was learning based. As a result, the participants agreed to change the classification from emotionally disturbed to specific learning disability. The educational evaluation by Ms. Blumenstyk was a source for the idea that S.P. had

learning disabilities. Ms. Zimmermann acknowledged that it is important to know the disability category to develop an educational plan.

When asked how the determination was made that the category “emotionally disturbed” was no longer applicable, Ms. Zimmermann noted that S.P. was in the hospital and then a step down program. The input from Dr. Cartwright indicated that S.P. was performing and behaving better once the stressors were alleviated and that he was now stable and in a position to access his education in an appropriate setting. It was an agreed upon judgment that S.P. was not emotionally disturbed. There was no written evaluation stating that S.P. is not emotionally disturbed.

2. Julianna Kusz

Julianna Kusz is employed by respondent as its Director of Special Services. Director Kusz was accepted as an expert in special education programming and administration. Director Kusz has been involved directly or indirectly with S.P.’s program from middle school to the present, and she is knowledgeable about all aspects of the situation.

Director Kusz stated that Cornerstone was a very appropriate program for S.P. at the time of placement. The main concern at the time was that S.P. was not attending school. Cornerstone personnel were able to come to the home and literally take the student to school, and then they worked with the family and the student therapeutically to resolve any issues that were impeding the student’s ability to attend school.

Cornerstone specializes in problems with school refusal or school avoidance. In addition to sending staff to the student’s home, Cornerstone has a psychiatrist on staff and generally has a comprehensive program that would fit the need profile of a student like S.P. Cornerstone provides a college preparatory program for students of at least average intelligence.

Director Kusz received e-mails from J.P. dated July 8, 2012, and July 9, 2012, expressing concerns about S.P.'s IEP. On July 16, 2012, M.P. and J.P. sent an e-mail to Cornerstone principal Gregg Weisman asking if it would be acceptable to send S.P. to a camp in Colorado for a week. M.P. and J.P. followed up with another e-mail on July 17, 2012, pressing Principal Weisman for a response. According to Director Kusz, the concern was that the camp was within Cornerstone's school year with the result that S.P. would be missing classes.

During July 2012, petitioners and Director Kusz were discussing the possibility of other placements for S.P. Petitioners requested that the search should not be limited to day programs in New Jersey. Director Kusz agreed to start the process, but she advised petitioners that only the IEP team could make program changes. An IEP meeting would need to be conducted in September, when staff returned, to make changes to S.P.'s IEP. Director Kusz was aware of petitioners' concerns, because there was a lengthy discussion in regard to S.P.'s classification at a meeting in June 2012.

Petitioners sent a letter dated September 14, 2012, to Director Kusz, stating in part that they "do not give permission for the school district to have discussions about [S.] with his treating physicians, psychiatrist, and clinicians without our involvement at this point in time." Director Kusz testified that it is unusual to have a consent rescinded and then qualified so the District responded to their request for conditional consent.

Director Kusz testified that the parents were pushing for the change in classification, but at the IEP meeting on December 6, 2012, there was considerable concern on the part of the IEP team that S.P. still had significant emotional issues despite the fact that the school refusal has dissipated and that he had better insight into his needs and better coping skills. It appeared to the members of the team that S.P. seemed more stable and that he had benefitted from the programs at Stepping Forward and Cornerstone. At that point, the team was willing to make learning disabilities the focus of the program, but there needed to be therapeutic support in place, as

recommended by Dr. Cartwright, because the emotional disturbance did not go away. S.P. still needed the therapeutic supports.

Petitioners sent a letter dated December 10, 2012, to Director Kusz and Ms. Zimmermann, requesting that the District hire an independent consultant who specializes in school placement for children with learning disabilities. Director Kusz responded that an independent consultant was unnecessary, because the District has personnel with this expertise.

Petitioners sent an e-mail dated December 20, 2012, to Ms. Zimmermann expressing concern as to the school that S.P. would be attending on January 2, 2013. Ms. Zimmermann responded by e-mail on the same date, discussing schools under consideration and home instruction. Ms. Zimmermann also mentioned that a request to release S.P.'s records would need to be put in writing. Director Kusz stated that the District immediately started working on placements as early as September 12 or 13, 2012. Records were sent to programs that seemed appropriate, and District representatives visited at least five schools. The District also investigated programs suggested by the parents.

Director Kusz received an e-mail dated December 30, 2012, from petitioners, discussing concerns about S.P.'s program and placement. Director Kusz testified that by that time there had been an extensive search in regard to many placements. Having considered the recommendations of Dr. Cartwright, Stepping Forward and Ms. Blumenstyk, District personnel concluded that Community School was able to implement all of the requirements of S.P.'s IEP. The main focus was on the learning disabilities components within a college preparatory program. In regard to therapeutic supports, Community School provided both individual and group counseling as part of its program. Community School had three social workers on staff as an integral part of its program.

Director Kusz sent a letter dated January 25, 2013, to Toby Braunstein of the Community School to confirm a conversation on January 22, 2013. Director Kusz

testified that Ms. Braunstein had stated that S.P. was an excellent candidate, that he fit the profile of the students in their program, that he would benefit tremendously from the strong reading supports in their program and that they could implement all of the recommendations in the evaluation by Ms. Blumenstyk. The only concern was that “the parents were not on board.”

On cross-examination, Director Kusz stated that the parents expressed their concerns about the academic program at Cornerstone in May 2012. Director Kusz spoke with S.P. during the summer of 2012, and he said that he wanted to be off for the summer so that he would have time with his friends. Director Kusz testified that she told S.P. that she could not give permission, but she also stated that S.P. agreed to go back to Cornerstone in September.

In regard to the request made by petitioners in July 2012 to change S.P.’s placement, it would be necessary to convene the IEP team. An IEP meeting was not called at that time, because staff members were on vacation. If parents request a change in the IEP, it does not have to be made over the summer.

3. Linda Ariel

Linda Ariel is employed by respondent as a school social worker, and she was accepted as an expert in social work. Most of Ms. Ariel’s testimony is reflected in the facts as set forth above.

S.P. was originally classified as eligible for special education and related services based a central auditory processing disability evaluation and a diagnosis of ADHD that met the criteria for “Other Health Impaired.” Later, there was a diagnosis of a mood disorder.

In an IEP dated July 28, 2010, the eligibility category was changed from other health impaired to emotionally disturbed. Ms. Ariel explained that S.P. had become school avoidant in November 2009. Further, although S.P. continued to present with

challenges in the area of organization and attention, which reflected the ADHD diagnosis and the executive functioning diagnosis, the primary impact on S.P. is the mood disorder. S.P. was having tremendous difficulty getting up in the morning and getting out. Ms. Ariel pointed out that “emotionally disturbed” is not a psychiatric or medical diagnosis. In education law, “emotionally disturbed” is a descriptive term for the salient or primary issue that is impacting the student. With respect to S.P., the primary issue concerned his mood disorder, his non-compliance at home and the anxiety that he experienced about coming to school when he was not prepared and not able to do well.

The determination was made at an IEP meeting on March 28, 2011, to place S.P. at Cornerstone as a result of these concerns. S.P. acclimated to Cornerstone fairly well. He was attending school much more regularly, and he was starting to do homework, which was a major problem at his prior placement. At an IEP meeting held approximately a month later on May 4, 2011, Cornerstone personnel provided goals and objectives, and they explained the kinds of therapeutic supports that would be given and the treatment objectives. Petitioners were concerned as to whether S.P. should repeat eighth grade or continue in ninth grade. The determination was made to meet again in June 2011 to revisit this issue. The IEP meeting on June 4, 2011, was Ms. Ariel’s last involvement with S.P.’s program.

On cross-examination, Ms. Ariel would not agree that the primary focus at Cornerstone was on the emotional issues rather than academics, but she could not recall any special education program for reading or math. On redirect examination, Ms. Ariel stated that the parents were in agreement with the change in placement to Cornerstone. S.P. did not achieve his goals and objectives in the eighth grade. The reason was not that S.P.’s program was not appropriate but rather because he did not attend school consistently and complete his work. These factors made it difficult for him to make progress.

4. Gregg Weisman

Gregg Weisman is employed as the principal of Cornerstone Day School. Mr. Weisman testified that S.P. began to attend Cornerstone on March 29, 2011. An IEP meeting was held on May 4, 2011, for a review after thirty days in the new placement. At this type of meeting, consideration is given to whether the placement is going well, whether the student is adjusting, whether the student is getting the services that he needs and whether the placement is a good match for the student. In addition, the goals and objectives and the program going forward are established at the meeting. At the time, Mr. Weisman knew that S.P. suffered from mood dysregulation, anxiety and ADHD and that he was of average intelligence. At Cornerstone, S.P. did not have any significant problem with school refusal.

At an IEP meeting on June 14, 2011, there was a question as to whether S.P. should repeat eighth grade or advance to ninth grade. Mr. Weisman explained that Cornerstone has a twelve-month program running from July 1 to June 30 and that students typically move up to the next grade on July 1. The summer segment is typically the beginning the next school year rather than a continuation of the current school year. On occasion, the summer session is used to make up credits from the previous year and then the student moves onto the next grade.

From March 29, 2011, when S.P. started at Cornerstone to the end of August, he was out of school a total of seven days. In September 2011, S.P. started the ninth grade, because he had successfully completed the requirements over the summer of 2011.

An IEP meeting was held on September 16, 2011, to set up S.P.'s educational plan for ninth grade. The goals and objective aligned with the Core Curriculum Standards. S.P. had no behavioral issues in school. Mr. Weisman was aware that S.P. had behavioral issues at home.

An IEP meeting was held on March 13, 2012, for S.P.'s annual review. At that time, S.P. was struggling academically, and there was an increase in the tutoring that he was receiving after school. S.P. had some difficulty completing homework and staying on track. There was no discussion of an alternate placement at this meeting.

At the time, S.P. had behavioral issues at home, and the parents were considering a residential placement. Cornerstone did not recommend a residential placement, because S.P. was responding positively to various academic interventions that had been put in place.

S.P.'s last day of attendance at Cornerstone was August 30, 2012. S.P. attended Cornerstone in the summer of 2012 with the exception of two weeks. The first week was a family vacation, and he went to camp during the second week. S.P. did not have any behavioral issues during the summer at Cornerstone. S.P. never returned to Cornerstone after Labor Day weekend.

On cross-examination, Ms. Weisman stated that S.P. did not have a specific program for math or reading learning issues. S.P.'s program followed the general curriculum based on New Jersey Core Standards with modifications. S.P. was receiving a therapeutic program and accommodations with tutoring after school.

Mr. Weisman did not recall whether S.P. received home instruction. The normal procedure for a student in a program such as Stepping Forward would be for Cornerstone to provide the materials for use by instructors from the other program.

5. Holly Blumenstyk

Holly Blumenstyk is a learning disability teacher consultant, and she is currently the Director of Learning Associates. Ms. Blumenstyk was accepted as an expert in the development of educational programs for students with learning disabilities.

In September 2012, Ms. Blumenstyk conducted an independent educational evaluation of S.P. As part of the evaluation, Ms. Blumenstyk reviewed background information about S.P. from the time that he was three years old to the present, and she interviewed his parents. Ms. Blumenstyk also administered a number of tests over the course of four two-hour sessions.

The testing indicated that in reading S.P.'s basic skills in terms of word recognition and phonics were solidly within the average range. With respect to reading comprehension, S.P.'s skills were in the low average range and that he had difficulties with higher level vocabulary and verbal reasoning. In general, S.P.'s reading comprehension skills were below his aptitude.

In math, S.P. was in the low range overall which meant that he was in the fourth percentile in his age group. S.P. had a very significant deficit in this area. S.P. did better in math reasoning but for calculation skills he was at the first percentile. This meant that math calculation skills were a very significant problem for him.

Ms. Blumenstyk noted that S.P.'s testing results going back as early as third grade when he was first tested by the child study team showed that he had these problems with reading comprehension and math calculation skills. As early as age three, S.P. had these higher level language problems. This indicates that the results of the testing by Ms. Blumenstyk were consistent with earlier testing. The actual discrepancies between his ability and achievement were in reading comprehension, overall math and math calculation.

Ms. Blumenstyk recommended placement in a specialized school for students who have language-based learning disabilities, where S.P. would have small classes and assistive technology which is the use of various types of computer software that could help him with his reading. S.P. should also have counseling because he was struggling, and his learning disabilities were having an effect on his self-concept and his self-esteem. Ms. Blumenstyk explained that when students have a very uneven cognitive profile, the messages that they get about themselves in terms of who they are

and what they can and cannot do can be very confusing, and that seemed to be a factor for S.P.

Ms. Blumenstyk's other recommendations included speech/language therapy, a daily study skills period, active reading methods, a cumulative math reference notebook and specialized methods in reading comprehension. Ms. Blumenstyk also recommended many accommodations for S.P. Some of the accommodations were intended to help S.P. focus because of his attention deficit.

Ms. Blumenstyk discussed her recommendations at the IEP meeting on December 6, 2012. There was no discussion of a residential placement for S.P.

In her report, Ms. Blumenstyk made a recommendation with regard to the Lindamood-Bell Visualizing and Verbalizing Program. Ms. Blumenstyk testified that there are other ways to teach visualization that would provide the same benefits.

Ms. Blumenstyk visited the Community School in October 2012. The Community School serves students with language-based learning disabilities, and it provides individualized and small group instruction in academic areas including reading comprehension.

On cross-examination, Ms. Blumenstyk stated that she did not recommend the Orton-Gillingham method for S.P. The Orton-Gillingham method is used primarily for students who have decoding issues. Decoding is not S.P.'s primary reading issue. In fact, decoding is a strength for S.P. Ms. Blumenstyk recommended the Lindamood-Bell Visualizing and Verbalizing Program, because S.P. was weak in higher level reading comprehension skills. Ms. Blumenstyk stated that the Community School teaches reading comprehension. At the IEP meeting on December 6, 2012, Ms. Blumenstyk did not recommend a specific school.

On the Woodcock-Johnson test, the term “low average” places the student between the eleventh and the twenty-fourth percentiles. Low average could be considered below average.

When asked on redirect examination about the fact that the Community School did not have the Lindamood-Bell Program, Ms. Blumenstyk stated that the situation should be viewed flexibly in terms of whether the program could be delivered in another way such as by a speech/language therapist or a reading specialist, who knew how to use it or could be trained to use it. The Lindamood-Bell Program teaches students to form visual images about what they are reading to support their understanding of what they are reading.

6. Toby Braunstein

Toby Braunstein is employed by the Community School as its Director of Education for the high school. Ms. Braunstein’s responsibilities include the admissions and programming for new students.

The focus at Community School is to provide an appropriate program for students who primarily have language-based learning issues. Community School also has students with attention deficit disorder and nonverbal learning disabilities. The primary category at Community School is specific learning disabilities. The average class size would be six or seven. A large majority of the students would be college bound.

The teachers are certified as teacher of the handicapped as well as subject certified teachers. Community School offers a variety of extracurricular activities. Many students have counseling as part of their IEP and see a counselor on a regular basis. Community School provides both individual and group counseling.

The entire curriculum is based on the Orton Gillingham program, which is highly multisensory. Individual Orton Gillingham sessions are primarily devoted to decoding

issues. The Community School follows a multitude of strategies for comprehension. Visualizing is in all the programs. Community School could have provided the program in the IEP dated December 6, 2012, including the related services.

On cross-examination, Ms. Braunstein stated that she got the impression from meetings with petitioners that they did not really want S.P. to attend Community School. This is important because the success of the program depends on parental support. The Community School uses the Orton Gillingham program, which has many meanings. The program teaches decoding, but it is also a philosophy of multisensory learning. With respect to computers, every student has a laptop. Ms. Braunstein could not remember S.P.'s most significant learning issues. All students can benefit from a multisensory approach. By tenth, eleventh or twelfth grade, many students have already come a long way with respect to decoding, so their issues could be fluency or higher order comprehension skills. According to Ms. Braunstein, the Orton Gillingham program is simply good teaching, because it is multisensory and everyone has his own style of learning. Ms. Braunstein never had a student for whom the Orton Gillingham program is not appropriate. The Community School does not have the Lindamood Bell Program.

B. Petitioners' Witnesses

1. Linda Auld

Linda Auld is the managing director of the Suburban Learning Center, which is a group practice specializing in the diagnosis and remediation of children with mild to moderate learning disabilities and attention disorders. Ms. Auld was accepted as an expert in learning disabilities, the evaluation of students with learning disabilities and education of students with learning disabilities.

Ms. Auld's main role in regard to this matter was to determine whether S.P. had made measurable progress since the evaluation that was done by Ms. Blumenstyk in 2012. Ms. Auld was also asked to review the IEP.

Ms. Auld used the same testing instruments that had previously been used in order to do a statistical comparison. Ms. Auld focused on achievement testing. Ms. Auld found that S.P. made substantial progress overall and particularly in the area of reading comprehension where his score went up by sixteen points. S.P.'s score had moved from the below average range to the average range. Ms. Auld acknowledged that S.P.'s score for reading fluency, which is a measure of speed and accuracy, went down four points. Ms. Auld explained that as students learn the strategies of comprehension that they were lacking, their fluency will decline initially. This occurs because it takes time and mental energy to use the new strategies. S.P. made progress in all areas of mathematics.

S.P.'s main issue with respect to language was reading comprehension and not decoding. Ms. Auld would not recommend the Orton Gillingham methodology for S.P., because it is primarily for decoding. Ms. Auld agreed with the recommendations of Ms. Blumenstyk, meaning a program like Lindamood Bell's visualizing and verbalizing and using guided reading and teaching strategies. The Orton Gillingham program is not for every student, and Ms. Blumenstyk did not recommend Orton Gillingham.

Ms. Auld visited the Eagle Hill School in April 2014 at the request of petitioners to observe S.P.'s program. Ms. Auld met with S.P.'s academic advisor, a teacher who is the director of the reading program, his speech language therapist and the reading specialist. Ms. Auld also observed S.P.'s reading fluency class and a speech language session. In 2013 when S.P. arrived at the Eagle Hill School, he had a comprehension imagery class which focused on visualization strategies. Some aspects of the Lindamood Bell Program were used in the comprehension imagery class. The Orton Gillingham program was not being used with S.P. except for a small piece of fluency that has to do with decoding.

The program at Eagle Hill School offered a very organized approach. There are supervised study halls, organized sports and other activities. Each student was required to do some kind of physical activity every day. This would be important for a student such as S.P., who has attention deficit disorder. Ms. Auld stated that the

instruction at Eagle Hill School was designed to meet S.P.'s needs. In particular, S.P.'s classes were addressing his specific reading needs including reading comprehension.

Based upon the test results, Ms. Auld stated that S.P. made meaningful progress between the evaluations in September 2012 and March 2014. S.P. made significant gains in both his reading comprehension and math scores. Ms. Auld attributed S.P.'s progress to good instruction.

Ms. Auld also reviewed the IEP from December 6, 2012. The IEP contained only one goal and objective with respect to reading, and it was very general. In Ms. Auld's opinion, this goal was not objectively measurable. It also was not appropriate for S.P., because it was above his ability level.

S.P.'s IEP from December 6, 2012, did not contain those special education strategies that would address S.P.'s most significant issues. The IEP also did not contain appropriate goals and objectives in regard to math. The IEP dated December 6, 2012, did not contain a placement.

On cross-examination, Ms. Auld stated that S.P.'s test results showed uneven levels of achievement and that his level of disability in math was moderate. Ms. Auld's visit to Eagle Hill School lasted approximately four hours. S.P. had a once per week course in Orton Gillingham at Eagle Hill School, and he was also receiving reading fluency training using Read Naturally and guided reading. He had an expository study skills class, a comprehension imagery class and a reading class.

2. J.P.

J.P. is S.P.'s mother. J.P. testified to the general course of events from the time that she first noticed that S.P. had developmental issues when he was nine months old through his experience at Eagle Hill School. Much of J.P.'s testimony is reflected in the facts as set forth above.

Prior to the change in placement to Cornerstone during eighth grade, S.P.'s classification was changed from other health impaired to emotionally disturbed. Petitioners accepted the change because they could not get S.P. to go to school. At home, S.P. was at one extreme or the other from very aggressive and angry to completely silent and withdrawn. Initially, the change to Cornerstone was successful in that S.P. went to school almost every day. Later, J.P. began to have concerns about the educational program at Cornerstone. After a question was raised as to whether S.P. should repeat eighth grade, the decision was made to promote S.P. to ninth grade. At Cornerstone, S.P. was in a general education classroom, and he was not receiving any special education. J.P. was told that Cornerstone would adjust and modify its program for S.P., but that did not happen. S.P. was quickly overwhelmed by the demands of ninth grade, and he became very angry and aggressive. In the spring of ninth grade, petitioners requested a change in placement for S.P., because he was struggling mightily just to stay afloat in most of his classes. Respondent denied petitioners' request for a change in placement for S.P.

By the end of the school year, S.P. was very frustrated, because he could not do the work and felt like he was drowning. A meeting was held during July 2012 between ninth and tenth grades. The meeting was attended by petitioners, S.P., Director Kusz and others. During the meeting, S.P. expressed his frustration about classes at Cornerstone and his desire for change. Director Kusz agreed to consider other schools, and she mentioned the Community School as a possibility. J.P. first informed the District that petitioners were considering Eagle Hill School in July 2012.

Thereafter, petitioners signed a release, and they visited the Community School during the summer of 2012. During the visit, they met with Ms. Braunstein. This was the first of three visits to the Community School. Petitioners were giving serious consideration to the Community School, because it was a place that addressed learning disabilities as opposed to emotional disabilities. The change of placement did not occur prior to the beginning of tenth grade. The District informed J.P. that an IEP meeting could not be held over the summer, because its personnel had not returned for the

school year, and that a meeting would be held in September. S.P. was extremely disappointed, and he started the school year at Cornerstone.

S.P. went to Cornerstone for three days, and he came home very frustrated every day. By the third day, J.P. was driving S.P. home, when he went “absolutely crazy” in the car. S.P. was hitting the back of the seat and making it dangerous for J.P. to drive the car. J.P. stopped the car and spoke with S.P., who complained about being at Cornerstone. They were still a few blocks from home, and J.P. had S.P. walk the rest of the way. When S.P. arrived at home, he began to throw rocks at J.P. and her daughter. J.P. was unable to calm S.P. down, and as a result she called the police.

The police arrived and they were able to calm S.P. down. The police took S.P. to Morristown Memorial Hospital, where he was placed in a psychiatric unit and stayed overnight. S.P. was then transferred to Silver Hill Hospital, which is a psychiatric hospital, where he stayed five days over a holiday weekend. S.P. was discharged on Tuesday, and he had an appointment with Dr. Charles Cartwright on Thursday. S.P. was sent to Stepping Forward which is an outpatient partial hospitalization program, also called a step down program. S.P. would receive therapy, and he would be getting home instruction through a teacher there. S.P. remained at Stepping Forward from September through late December 2012.

S.P. never returned to Cornerstone. The materials for home instruction were provided by Cornerstone, and after completion, they were returned to Cornerstone. S.P. was living at home while in the outpatient program at Stepping Forward. Cornerstone stopped providing educational materials around the beginning of November, because the school received a letter from Director Kusz stating that S.P. would no longer be a student there. The District had made no arrangement for an alternative educational program for S.P. The teacher at Stepping Forward provided some educational materials for S.P.

J.P. located Ms. Blumenstyk and requested an independent educational evaluation. Respondent agreed to pay for the independent educational evaluation,

which was done by Ms. Blumenstyk. Petitioners met with Ms. Blumenstyk about the time that she issued her report, and she said that S.P. was at the fourth grade level in both reading and math. At the time, S.P. was in the tenth grade. Ms. Blumenstyk also said that the information that she was reporting to petitioners was known to the District when S.P. was in the third grade. Ms. Blumenstyk further stated that the District did not address S.P.'s learning issues. Ms. Blumenstyk made specific recommendations as to S.P.'s program.

Meanwhile, petitioners met with Dr. Cartwright, who is a psychiatrist whom S.P. had been seeing since September 6, 2012. Dr. Cartwright told petitioners that S.P. is extremely frustrated because he feels a total failure in school and that he does not understand why with his intelligence he cannot succeed in school. That is the primary issue for S.P. Further, the most important thing for S.P. was to get the education that he needed at that point in time. Petitioners shared Dr. Cartwright's report with respondent's child study team prior to the IEP meeting in December 2012.

Ms. Blumenstyk was present for the IEP meeting on December 6, 2012, and Dr. Cartwright participated by telephone. Dr. Cartwright stated that his primary concern was that S.P.'s learning disabilities be addressed first and foremost but that during the transition to the next phase of his educational career S.P. needed support in the form of therapy. Dr. Cartwright also stated that consideration should be given to a residential program. Ms. Blumentyk's comments at the meeting reflected the contents of her report.

S.P.'s application to Eagle Hill School was dated December 17, 2012. J.P. went ahead with the application, after the District offered no placement at the IEP meeting on December 6, 2012. At the hearing, J.P. presented a list of the credentials of the staff at Eagle Hill School. J.P. also provided a copy of S.P.'s grades for the 2013-14 school year.

Petitioners met with Toby Braunstein of the Community School on several occasions including December 2012 or January 2013. During the last meeting, there

was a discussion about the Lindamood Bell Program at Community School. J.P. said that the independent evaluation was very clear that this program would be a requirement for S.P. given his specific learning disability and reading disorder. Ms. Braunstein said that the Community School did not offer the Lindamood Bell Program and it would not. Ms. Braunstein further stated that petitioners could make a request to the District for S.P. to receive that program during the summer. J.P. responded that S.P. needed the Lindamood Bell Program as part of his education all year.

Director Kusz offered on behalf of the District to pay for the Lindamood Bell Program at Community School. Ms. Braunstein rejected the offer and said that Community School had a program that was successful and that they would be using their own program. Ms. Braunstein was very clear that she would not be making changes for S.P.

This circumstance factored strongly in petitioners' decision not to send S.P. to the Community School. Further, after S.P. visited the Community School, he came home very glum. One of his concerns was that there was no outdoor activity. S.P. said that he did not want to go to the Community School.

S.P. was at Stepping Forward through mid-December 2012. Thereafter, S.P. was at home, and he began to receive home instruction in January 2013 from the District.

At an IEP meeting in January 2013, the District offered placement at the Community School and J.P. rejected the offer. Petitioners placed S.P. at the Eagle Hill School, and he started there at the very beginning of March 2013. The transition went very smoothly. S.P. is doing well academically, socially and behaviorally. J.P. states that she did not send S.P. away because she did not want to deal with him any longer.

S.P. receives individual therapeutic counseling at Eagle Hill School once per week, and there is a lot of structure built into the entire program. S.P. still receives counseling from Dr. Cartwright, because J.P. believes that the emotional damage to

S.P. is extensive, and that it will take a long time for him to recover. Further, J.P. thinks that without that kind of support, S.P. would regress and fall inward on himself. S.P. is also receiving counseling from James Woodley.

J.P. believes that if S.P. had gone to the Community School, he would have fallen right back in his emotional, social and academic development. J.P.'s concern was that the Community School did not have the programs that were recommended by Ms. Blumenstyk.

On cross-examination, J.P. stated that the specific reasons for the rejection of the Community School were that it did not have an appropriate academic program and that did not have the emotional supports in place that would have allowed him to make meaningful progress. Specifically, the Community School did not have the Lindamood Bell Program.

3. Charles Cartwright, M.D.

Charles Cartwright, M.D., is a psychiatrist who has treated S.P. Dr. Cartwright was accepted as an expert in psychiatry and treatment of adolescents with learning disabilities.

S.P. visited Dr. Cartwright on September 6, 2012, for an initial evaluation shortly after being discharged from Silver Hill Hospital, which has an acute unit for the assessment and stabilization of children and adolescents with mental health issues. At the time, S.P. was emotionally fragile, and he was being treated with medication to stabilize his mood and emotions. S.P. had a difficult set of experiences going back all the way to his early education years.

Dr. Cartwright suspected from his evaluations that S.P. had a learning disorder not otherwise specified. Dr. Cartwright diagnosed S.P. with a mood disorder not otherwise specified and an anxiety disorder not otherwise specified with the possibility

of intermittent explosive disorder. Later, Dr. Cartwright determined that S.P. did not meet the criteria for intermittent explosive disorder.

S.P. had a long history of learning difficulty, and he was very aware of it. S.P. was not feeling competent academically, and Dr. Cartwright attributed this to a long-standing history of learning difficulty. Dr. Cartwright has seen S.P. eight or nine times approximately once every two or three months.

Dr. Cartwright participated in the IEP meeting on December 6, 2012, by telephone at the request of petitioners. At that point, Dr. Cartwright had seen S.P. on three occasions.

The period from September 2012 to February 2013 was a crisis for S.P. in that he was emotionally fragile and needed clarity as to what was going to happen, but there was none as to an appropriate educational placement. As a result of the lack of clarity, S.P. was struggling with irritability, anxiety and depressed mood. S.P. was also getting into some conflict with family members.

At the IEP meeting on December 6, 2012, Dr. Cartwright was asked for his opinion about placement and to give a summary of S.P.'s emotional, behavioral and learning issues. Dr. Cartwright stated at the meeting that S.P. was a child with long-standing learning issues, which had an eroding effect on his self-esteem, emotional functioning and choices of behavior from the third grade all the way to the seventh grade, and that this progressive deterioration in functioning led to his placement at Cornerstone in eighth grade. This primary learning issue was having a significant impact on S.P.'s emotional and social functioning and over many years got worse, and it manifested itself in severe self-esteem issues. This ultimately led to S.P.'s hospitalization and the severe deterioration that occurred prior to his admission.

With respect to the fact that inappropriate behaviors occurred at home rather than at school, Dr. Cartwright stated that it is not unusual for a child who is struggling with self-esteem issues and with emotional functioning to do their best job to hold it

together in a structured environment outside of the home and then to come home and deteriorate significantly. The child then manifests emotional and behavioral features of dysregulation in the home. If an individual had a severe psychiatric disorder, the symptoms would manifest themselves both at home and at school, but S.P.'s condition was such that he could control himself at school.

At the IEP meeting on December 6, 2012, Dr. Cartwright further stated that the appropriate placement for S.P. was a residential setting. Dr. Cartwright explained that at the core of the learning and behavioral issues is a very fragile child. The complexity of S.P.'s social, emotional and academic difficulties at home, in the community and at school led Dr. Cartwright to conclude that S.P. needs a comprehensive program to build self-esteem, address the learning issues and allow him to develop social relationships with appropriate peer models that would then further improve his self-esteem and rebuild him in an appropriate way. Dr. Cartwright did not hear any response to his recommendation.

Dr. Cartwright stated at the hearing that his assessment and recommendations have proven to be very accurate in view of S.P.'s performance and progress at Eagle Hill School. Dr. Cartwright stated that it is very important for a student such as S.P. to be in agreement with the appropriateness of the program.

Dr. Cartwright has continued to treat S.P., since he entered Eagle Hill School. Dr. Cartwright has seen continued growth in a relatively short period of time. S.P. is much more emotionally resilient now, and he is much more positive in his focus on learning. S.P. is optimistic about his future, and he has engaged and formed an attachment with Eagle Hill School. In addition to S.P., Dr. Cartwright has had interactions with petitioners and personnel at Eagle Hill School. S.P. is now more confident about engaging the act of learning. Eagle Hill School has strengthened S.P.'s sense of self-esteem and competency.

Dr. Cartwright saw S.P. two weeks before this hearing in June 2014. Dr. Cartwright saw a dramatic improvement in S.P.

Dr. Cartwright expressed the opinion that given the level of severity of both S.P.'s learning and emotional issues at the time of the IEP meeting in December 2012, a day school placement with S.P. living at home was not appropriate and would not be sufficient to give rise to the kinds of change and improvement that were necessary to basically rescue S.P. from a sharp decline.

Dr. Cartwright further expressed the opinion that S.P. would not have achieved the same degree of improvement if he had not been placed in a setting like Eagle Hill School. Dr. Cartwright is familiar with the Community School, which he describes as a school that addresses learning issues but its infrastructure and services are insufficient to address the kind of emotional sequelae of an adolescent who has serious and significant learning disabilities. Community School would not be appropriate for S.P. Dr. Cartwright expressed the opinion that S.P. still needs psychiatric treatment and that he continues to need the level of support that he receives at the Eagle Hill School due to a significant risk of regression both academically and emotionally.

Dr. Cartwright stated that Cornerstone was an inappropriate placement, because it is a school primarily for children with mental health issues. The concern that was neglected was the severe learning issues that were having an impact on S.P.'s emotional and behavioral functioning. These issues were not being adequately addressed in a school like Cornerstone.

Dr. Cartwright agreed with the change in classification from emotionally disturbed to specific learning disability. In view of the way that S.P.'s emotional and behavioral issues had developed over time, Dr. Cartwright believed that the primary problem was the neglect of the severity of learning issues that then secondarily had impacts on emotional and behavioral functioning. By addressing only the emotional and behavioral issues, one was then not focusing on the primary problem.

On cross-examination, Dr. Cartwright stated that S.P. needed to be in an environment that addressed the combination of the core issues of his learning difficulty

and his emotional issues. Dr. Cartwright acknowledged that he has not been to Eagle Hill School, but he stated that he has looked at the website and spoken with S.P.'s parents and personnel from Eagle Hill School. Dr. Cartwright considered this information to be a reliable based upon repeated contacts, different sources and his observations of S.P. Community School does not have the kind of wraparound supports that are needed by an adolescent such as S.P. The primary focus of the placement should be on S.P.'s learning difficulty, because that is the underlying cause of his emotional and behavioral issues. In a letter dated February 15, 2013, Dr. Cartwright stated that S.P. had achieved a level of emotional stability that would allow him to transition into a placement.

Dr. Cartwright stated that a residential placement would provide a wraparound comprehensive approach to the treatment and education of S.P. A day school would be insufficient in providing these necessary services to S.P. Group and family counseling in the type of program provided by the Community School would not be adequate for S.P., because he needs a wraparound twenty-four hour level of service.

By February 2013, Dr. Cartwright felt emphatically that a residential placement was appropriate for S.P. The Community School does not accept students with significant behavioral or mental health issues.

On redirect examination, Dr. Cartwright stated that the change in classification for S.P. from emotionally disturbed to specific learning disability did not change his fragility or need for social, emotional and therapeutic support. A change in classification did not in itself address S.P.'s ongoing and chronic emotional difficulties.

4. James C. Woodley

James C. Woodley is currently employed by Family Services Bureau of Newark as a therapist and a crisis counselor, and he is also a contract consultant with the Moving on Life Center. Mr. Woodley was accepted as an expert in family counseling.

Mr. Woodley became involved with the P. family in May 2012 as an in-home crisis counselor. At the time, S.P. was in crisis along with the entire family due to his behavior. Mr. Woodley's role was to bring stability to the home.

S.P. was very oppositional and extremely defiant, and he could become physical at times. He would also shut down and become very reclusive at other times. He was not adhering to rules set forth in his home. At the time, S.P. was attending Cornerstone.

Initially, S.P. was not a willing participant in the therapy. Once Mr. Woodley established a relationship with S.P., they discussed academics. It was apparent that S.P. had a lot of anxiety about school, which seemed to be the root cause of his problems. S.P. felt inadequate because he was not able to perform the school work satisfactorily. S.P. also felt that he was not getting the support that he needed at school. S.P. started to express that he was struggling in school, and no one is doing anything about it. S.P. needed help to deal with behavior, conduct and academics together. S.P. was struggling with math and reading. Mr. Woodley determined that the primary cause of S.P.'s anger was his interactions in school. S.P. lacked support and structure. S.P.'s school and academics were extremely important to the family. Mr. Woodley attempted to bring structure to the home, and the parents were very supportive of his efforts.

Mr. Woodley was aware that S.P. had been hospitalized at Silver Hill. Mr. Woodley described the cause of the hospitalization as a manic moment, when S.P. had a very aggressive explosion. Mr. Woodley was also aware that S.P. was being treated

by Dr. Cartwright. Mr. Woodley saw the family two hours weekly, while S.P. was at home.

Mr. Woodley continued to work with S.P. after he came out of Silver Hill. Mr. Woodley described the situation while S.P. was receiving no school program as total regression. S.P. was very volatile, and at times he became reclusive. S.P. was very angry with his mother. S.P. wanted to get out of the house to be with his friends.

Mr. Woodley is familiar with the Community School. It does not have the services or therapeutic support needed by S.P. S.P. visited the Community School and did not like it. If S.P. did not like the school, he would not do well.

Mr. Woodley continued to work with S.P., when he came home from Eagle Hill School. Mr. Woodley found a young man who had made a complete turnaround. S.P. was communicative, he was engaging, and he was excited about school.

S.P. was confident in his ability, and he had developed appropriate responses to behaviors. Since S.P. had been at the Eagle Hill School, the levels of stress and anxiety and the oppositional and defiant behaviors have been reduced dramatically.

On cross-examination, Mr. Woodley stated that behavior is always indicative of a larger issue. For S.P., the larger issue was frustration outside the home.

Mr. Woodley acknowledged that he never visited S.P. at Eagle Hill School. Mr. Woodley's knowledge of Eagle Hill School came from petitioners and S.P. Mr. Woodley attributed S.P.'s improvement to the support and resources that he received at Eagle Hill School.

C. Respondent's Rebuttal

Director of Special Services Juliana Kusz testified as respondent's rebuttal witness. When a student enters an out-of-district placement, it is standard practice to

refine the goals and objectives after the student has spent some time at the new school. The goals and objectives are usually developed with input from the receiving school within thirty days. The new goals and objectives are more specific and are revised as appropriate

Testing by Ms. Blumenstyk revealed that decoding was not an issue for S.P. Reading comprehension was the predominant issue that needed to be addressed in his program. S.P.'s attention deficit disorder and his cooperativeness also influenced greatly his ability to progress in that area.

At the IEP meeting on December 6, 2012, Ms. Blumenstyk did not state that the Lindamood Bell Program was critical for S.P. Ms. Blumenstyk stated that the Lindamood Bell Program would be appropriate and helpful for S.P.

The Community School focused on reading, because it is a school for students with learning disabilities. The Community School has an extremely comprehensive program focused on reading.

In regard to the Lindamood Bell Program, Ms. Braunstein of the Community School stated that as long as the District provided the materials, the Community School would use the Lindamood Bell Program along with other methodologies. There was also discussion of other means to implement the Lindamood Bell Program. Director Kusz offered to purchase the materials and provide them for S.P. Ms. Braunstein never rejected the District's proposal. Ms. Braunstein said that they would work cooperatively with the District to provide all of the elements in Ms. Blumenstyk's recommendation in their program. Ms. Braunstein never refused to make specific changes for S.P.

During a meeting on January 10, 2013, Director Kusz asked whether the Community School could implement the recommendations in Ms. Blumenstyk's report. The reading specialist said that it could, including a part called "visualizing and verbalizing," so long as the District provided the materials.

LAW AND ANALYSIS

As a recipient of Federal funds under the Individuals with Disabilities Education Act (“IDEA” or “Act”), 20 U.S.C.A. § 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.A. § 1412(a)(1). A free appropriate public education includes special education and related services. 20 U.S.C.A. § 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. Unilateral Placement

When a state fails to satisfy the statutory mandate to provide a free appropriate public education, the parents have the right to reimbursement for a unilateral placement in a private school. Burlington v. Department of Educ. of Commonwealth of Mass., 471 U.S. 359, 370; 85 L.Ed. 2d 385, 105 S.Ct. 1996 (1985); T.R. v. Kingwood Township Bd. of Educ., 205 F. 3d 572, 577 (3d Cir. 2000). In this jurisdiction, the right to reimbursement for a unilateral placement is codified at N.J.A.C. 6A:14-2.10.

One requirement for reimbursement under N.J.A.C. 6A:14-2.10(b) is that the local school district had not made a free appropriate public education available to the student in a timely manner prior to the unilateral placement. A second requirement is that the private placement is appropriate. N.J.A.C. 6A:14-2.10(b). Additionally, the parents must provide notice to the district board of education of their concerns and their intent to enroll their child in a nonpublic school at public expense. N.J.A.C. 6A:14-2.10(c). If the parents engage in unreasonable actions, the cost of reimbursement may be reduced or denied. N.J.A.C. 6A:14-2.10(c)4.

The first issue in this proceeding is whether the District has made a free appropriate public education available to S.P. in a timely manner. A State satisfies the

requirement that it provide a child with disabilities with a free appropriate public education by providing personalized instruction 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, 102 S.Ct. 3034, 73 L.Ed.2d 690, 710 (1982). 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, supra, 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; 73 L.Ed.2d at 710. 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.

The District's offer is contained in an IEP dated December 6, 2012, as modified on January 4, 2013, to include placement in the Community School. The parties to this proceeding focused primarily on the question whether the Community School could implement the IEP. Nonetheless, the threshold question is whether the IEP completely and accurately describes S.P.'s disability. This step is essential in order to tailor the educational program to the unique needs of the student.

The fact that S.P.'s disability as set forth in his IEPs changed completely on two occasions heightens the concern that the IEPs do not fully and accurately describe S.P.'s disability. In an IEP revised on June 21, 2010, S.P.'s eligibility category was "other health impaired." The category was based on diagnoses of an auditory

processing disorder and ADHD. After an IEP meeting on July 28, 2010, a new IEP stated S.P.'s eligibility category as emotionally disturbed. The eligibility determination report mentions the diagnoses of ADHD and auditory processing deficits and additionally bipolar disorder. The report concludes, "Currently, although [S.] continues to present with challenges in the area of organization and attention, the primary issue impacting on [S.] is the mood disorder The IEP Team met and has concluded that [S.] is eligible for Special Education and Related Services, based on an Eligibility Category of Emotionally Disturbed." It is evident from this language that the IEP team recognized that S.P. still had the conditions that led to his prior determination of eligibility based on the criteria for other health impaired. Nonetheless, the IEP team proceeded as if it had to choose S.P.'s "primary issue." This approach is directly contrary to N.J.A.C. 6A:14-3.5(c), which refers to classification when a student has one or more disabilities.

The pattern was similar when S.P.'s eligibility category was changed for a second time. After an IEP meeting which began on March 13, 2012, and continued on May 9, 2012, a new IEP again stated S.P.'s eligibility category as "Emotionally Disturbed." The next IEP meeting was held on December 6, 2012, and the eligibility category was changed to specific learning disability. The eligibility determination report states in part as follows: "[S.] has a long-standing history of ADHD and . . . is currently regarded as emotionally stable by treating professionals." The report concludes: "The IEP Team met and has concluded that [S.] is eligible for Special Education and Related Services, based on an Eligibility Category of 'Specific Learning Disability.'"

This determination of the eligibility category is flawed in two respects. Again, the IEP disregarded the previous eligibility based on the criteria for other health impaired while still acknowledging S.P.'s ADHD. More importantly, the reference to "emotionally stable" does not accurately and completely reflect Dr. Cartwright's views as to S.P. While Dr. Cartwright stated during the IEP meeting on December 6, 2012, that S.P. was ready to return to an educational placement, it is evident from the above summary of his testimony that he views S.P. as having extensive emotional needs to the point of

requiring a residential placement. Dr. Cartwright's point of view is completely lost in the eligibility determination report.

The IEP dated December 6, 2012, understates S.P.'s disability in two respects. First, as respondent acknowledges, S.P. still suffers from ADHD. Second, there is no evidence that S.P. is no longer emotionally disturbed. It is noteworthy that none of respondent's witnesses testified that S.P. is not emotionally disturbed. In fact, they seemed to be very careful to state only that "it was agreed" to change S.P.'s classification to specific learning disability.

With respect to Dr. Cartwright's testimony, it is noteworthy that "emotionally disturbed" is an educational category and not a medical or psychiatric diagnosis. Nonetheless, Dr. Cartwright testified extensively as to aspects of S.P.'s educational program that would be necessary for his emotional needs. This testimony has two implications. First, the IEP does not accurately reflect S.P.'s individualized needs for his educational program. Second, the Community School could not provide counseling services that would meet S.P.'s needs. Dr. Cartwright impressed as a perceptive witness, and his analysis was cogent. Under the circumstances, his assessment is accepted as accurate and true.

Dr. Cartwright stated that S.P. was ready for an educational placement, but this does not mean that S.P. was not emotionally disturbed. In fact, S.P. was classified as eligible for special education and related services based upon the criteria for emotionally disturbed during the entire time that he was at Cornerstone.

It is noteworthy that S.P. was deemed eligible for special educational and related services based on the criteria for emotionally disturbed initially due to the fact that he was coming to school late. After S.P. was out of his educational placement and in psychiatric facilities for three to four months due to inappropriate behavior, the IEP deleted emotionally disturbed as the basis for eligibility. This result does not make sense.

Finally, Ms. Braunstein testified that Community School could implement S.P.'s IEP, but she did not demonstrate that she had full knowledge of S.P.'s emotional issues. Under the circumstances, her testimony on this point is not considered to be reliable.

Based upon the above, I **FIND** that the IEP dated December 6, 2012, as supplemented on January 4, 2013, does not accurately and completely describe S.P.'s disabilities, and I **FURTHER FIND** that the Community School would not be able to deal with S.P.'s emotional issues.

Therefore, I **CONCLUDE** that respondent failed to provide S.P. with a free appropriate public education based upon the IEP dated December 6, 2012, as modified on January 4, 2013.

A brief comment is warranted in regard to petitioners' contention that the Lindamood Bell Program was essential for a placement to provide S.P. with a free appropriate public education. In fact, Ms. Blumenstyk stated in her report that S.P. "would benefit" from the Lindamood Bell Visualizing and Verbalizing Program. Further, Eagle Hill School uses other similar methods. Under the circumstances, the fact that the Community School does not use the Lindamood Bell Program would not be sufficient reason in itself to reject that placement.

The next issue in this proceeding is whether the placement of S.P. at the Eagle Hill School is appropriate. To be entitled to reimbursement, not only must the District have failed to provide a free appropriate public education, but the alternative private placement must be proper. Burlington v. Department of Educ. of Commonwealth of Mass., 471 U.S. at 369-70. A private placement is proper if it is appropriate and provided in the least restrictive environment. Ridgewood Bd. of Educ. v. N.E., 172 F.3d at 248. In this context, "appropriate" means that the placement provides significant learning and confers meaningful benefit. Lauren W. ex rel. Jean W. v. DeFlaminis, 480 F.3d 259, 276 (3d Cir. 2007). It is not necessary for the private placement to satisfy each requirement that must be met by a public school district. Florence Cnty. Sch. Dist.

Four v. Carter, 510 U.S. 7, 12-13, 114 S.Ct. 361, 126 L.Ed. 2d 284 (1993). Further, the parents are not required to locate the perfect private placement. Mary T. v. Sch. Dist of Phila., 575 F.3d 235, 242 (3d Cir. 2009); Ridgewood Bd. of Edu. v. N.E., 172 F.3d at 249 n. 8.

School districts are responsible for the costs of a disabled child's placement if a residential placement is "necessary to provide special education and related services." 34 C.F.R. § 300.104. A residential placement may be necessary when the disabled child needs a highly structured environment in order to obtain educational benefit. Munir v. Pottsville Area Sch. Dist., 723 F.3d 423, 431 (3d Cir. 2013). If the residential placement is required for educational purposes, the school district is obligated to bear the cost. Mary T. v. Sch. Dist. of Phila., 575 F. 3d at 244; Kruelle v. New Castle County School District, 642 F.2d 687, 693-94 (3d Cir. 1981). If the residential placement is necessitated by medical, social or emotional problems that are segregable from the learning process, the cost of the placement is the responsibility of the parents or social service agencies. Ibid. When the social, emotional, medical and educational problems are so intertwined that they cannot realistically be separated, the residential placement is an essential prerequisite for learning. Ibid. If a residential placement is necessary for educational purposes, it is the least restrictive environment. Kruelle v. New Castle County School District, 642 F.2d at 695.

Ms. Auld's testimony addressed the academic aspects of S.P.'s educational program at Eagle Hill School including his specific learning disabilities. Her testimony in regard to S.P.'s program and progress at Eagle Hill School was fully credible, and the above summary is **FOUND AS FACT**. According to Ms. Auld, the program at Eagle Hill School is designed to address S.P.'s specific learning disabilities. Further, S.P. has made substantial progress at Eagle Hill School in the areas of his learning disabilities. It follows that the placement at Eagle Hill School provides significant learning and confers meaningful benefit for S.P.

Mr. Woodley testified in regard to S.P.'s emotional issues. Mr. Woodley was a credible witness, and his testimony is accepted as true. Therefore, the above summary

of his testimony is **FOUND AS FACT**. When S.P. returns home from Eagle Hill School, he displays great improvement in regard to his mood, emotions and behaviors. It follows that S.P. has made substantial progress in regard to his emotional issues and that Eagle Hill School has conferred this meaningful benefit.

As noted above, Dr. Cartwright was a perceptive observer, his analysis was cogent, and his assessment of the situation was accurate. Dr. Cartwright was fully credible, and the above summary of his testimony is **FOUND AS FACT**. Dr. Cartwright's testimony indicates that S.P.'s learning disabilities are the root cause of his emotional issues. Further, S.P.'s emotional issues have reached the point of interfering with his educational program. In fact, S.P.'s inappropriate behaviors which resulted from his emotional issues caused him to be out of his educational placement and in psychiatric facilities for three to four months. Additionally, the absence of an educational program was causing S.P. emotional distress. Dr. Cartwright expressed the opinion that S.P. needed a comprehensive wraparound program to get off this downward spiral. Dr. Cartwright's opinion indicates that S.P.'s learning and emotional disabilities are so intertwined that he needs a residential placement to provide a comprehensive program in a highly structured environment. Dr. Cartwright's opinion is accepted as true. It follows that S.P. needs a residential placement for educational purposes. Therefore, I **CONCLUDE** that the private placement of S.P. at Eagle Hill School is appropriate.

Reimbursement for the costs of a unilateral placement may be reduced or denied as the result of unreasonable actions by the parents. N.J.A.C. 6A:14-2.10(c)4. Here, respondent maintains that petitioners unreasonably withdrew their consent to speak with personnel at Stepping Forward. The difficulty with respondent's position is that petitioners were simply trying to comply with a policy of Stepping Forward in regard to contact during the time when treatment was being provided to the patients. There is no indication that petitioners were attempting to frustrate the efforts of respondent's personnel to develop an appropriate educational program for S.P. Therefore, I **FIND** that petitioners' actions were not unreasonable, and I **CONCLUDE** that the reimbursement should not be reduced or denied pursuant to N.J.A.C. 6A:14-10(c)4.

Based upon the above, I **CONCLUDE** that petitioners should be reimbursed for their unilateral placement of S.P. at Eagle Hill School.

B. Compensatory Education

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). A parent or agency must request an impartial due process hearing within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint. 20 U.S.C.A. § 1415(f)(3)(C).

Petitioners initially requested compensatory education for extended school year 2012 and the 2012-2013 school year until S.P.'s placement at the Eagle Hill School. In their post-hearing brief, petitioners requested compensatory education for seventh, eighth, ninth and half of the tenth grade in the form of additional school years at Eagle Hill School including therapeutic and speech services.

Ms. Blumenstyk's testimony indicates that as of September 2012, S.P. was far below his aptitude level in both reading comprehension and math calculation skills. Further, Dr. Cartwright testified that S.P. had a long-standing learning disorder that adversely affected his emotional well-being. The placement at Cornerstone addressed S.P.'s problem with lateness but not his learning disabilities. Moreover, this situation was leading to an emotional crisis that ended with S.P. in psychiatric facilities for three to four months. Under the circumstances, any benefit to S.P. was more than offset by detrimental effects. Therefore, I **FIND** that the placement at Cornerstone did not provide S.P. with an appropriate education.

The next question concerns identification of the point in time when the District knew or should have known that S.P. was not receiving an appropriate education. The placement at Cornerstone was initially made in view of S.P.'s problems with school avoidance and lateness in particular. Cornerstone specialized in dealing with this type of problem, and at first, S.P. did reasonably well there completing eighth grade and being promoted to ninth grade.

In ninth grade, S.P. was quickly overwhelmed, and he became angry and aggressive. It was apparent to J.P. that S.P. could not do the work and that his frustration was school related. By the spring S.P. was struggling and petitioners asked for a change in placement for him. In view of these circumstances, I **FIND** that the District should have known that the placement at Cornerstone was not providing an appropriate education for S.P. by the spring of 2012. With an allowance of time for the District to rectify the situation, a new educational program should have been in effect by July 1, 2012. Since S.P. began to attend Eagle Hill School at the beginning of March 2013, I **CONCLUDE** that S.P. should receive eight months of compensatory education corresponding to the period from July 1, 2012, through February 2013.

There are several difficulties with respect to petitioners' request for compensatory education for seventh and eighth grades. First, this request was not included in the amended petition and was first mentioned in the post-hearing brief. It follows that respondent was not on notice that it had to defend its educational program for S.P. during this time frame. Second, the evidence that was presented in regard to seventh and eighth grades does not support a finding that S.P. did not receive a free appropriate public education. Respondent's witnesses described programs that seemed to be reasonably calculated to provide meaningful educational benefit, while Ms. Blumenstyk and Dr. Cartwright did not see S.P. until he had started the tenth grade. Finally, most of this time was beyond the two-year statute of limitations. Under the circumstances, I **CONCLUDE** that S.P. should not receive compensatory education for the time that he was in seventh and eighth grades.

Accordingly, it is **ORDERED** that:

1. Respondent shall reimburse petitioners for their unilateral placement of S.P. at the Eagle Hill School including tuition and the costs of residence and related services.
2. Respondent shall provide S.P. with eight months of compensatory education.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2012) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C.A. § 1415(i)(2); 34 C.F.R. § 300.516 (2012). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education.

April 14, 2015

DATE

RICHARD McGILL, ALJ

Date Received at Agency

Date Mailed to Parties:

ljb

APPENDIX

WITNESS LIST

For petitioners:

Linda B. Auld
J.P.
Charles Cartwright
James C. Woodley

For respondent:

Suzanne Zimmermann
Juliana Kusz
Linda Ariel
Gregg Weisman
Holly Blumenstyk

EXHIBIT LIST

- P-1 Summary of scores from tests administered by Linda Auld
- P-10 Psychiatric Evaluation dated September 6, 2012, by Charles Cartwright, M.D.
- P-14 Application for Admission to Eagle Hill School dated December 17, 2012
- P-17 Discharge Treatment Summary dated January 4, 2013, from Stepping Forward Counseling Center
- P-18 Letter dated February 15, 2013, from Charles N. Cartwright, M.D.
- P-19 List of credentials and certifications dated September 16, 2013, for teachers at Eagle Hill School

- P-21 S.P.'s report card for school year 2013-2014 at Eagle Hill School
- P-22 Letter dated February 5, 2014, from Linda Auld to Mr. and Mrs. M.P.
- P-23 Educational Update by Linda Auld
- P-25 Resume of Linda Auld, M.A., LDTC, NCED
- P-26 Comments dated January 15, 2014, by Louise Dowd concerning S.P.'s reading fluency class at Eagle Hill School

- R-3 Individualized Education Program dated December 15, 2010
- R-4 Individualized Education Program revised March 28, 2011
- R-5 Individualized Education Program revised May 4, 2011
- R-6 Individualized Education Program revised June 14, 2011
- R-7 Individualized Education Program revised September 16, 2011
- R-8 List of IEP Meeting Participants with attachments
- R-9 Notice Requirements for IEP and Placement with attachments
- R-10 Individualized Education Program dated March 13, 2012
- R-11 List of Meeting Participants with attachments
- R-12 List of IEP Meeting Participants with attachments
- R-13 Individualized Education Program dated December 6, 2012
- R-14 List of IEP Meeting Participants with attachments
- R-15 Progress Reports for S.P.
- R-16 Social History dated July 2, 2010, by Linda Ariel
- R-17 Learning Evaluation dated July 2, 2010, by Ronnie Thompson
- R-18 Psychological Evaluation dated July 19, 2010, by Linda A. Randazza
- R-19 Letter dated October 6, 2011, from Adam J. Cohen, M.D.
- R-20 Occupational Therapy Evaluation dated October 20, 2011, by Christina L. Gilmore
- R-21 Neuropsychological Evaluation dated January 20, 2012, by Daniel N. DaSilva, Ph.D.
- R-22 Psychological Evaluation dated April 17, 2012, by Ilya Weiner, Ph.D.
- R-23 CELF-4 Summary Report dated May 15, 2012

- R-24 Educational Evaluation dated September 24, 2012, by Holly L. Blumenstyk
- R-25 Addendum to Evaluation dated October 12, 2011
- R-26 Progress Reports/Report Cards
- R-27 Letter dated March 22, 2011, from Allan J. Blau to Linda Ariel
- R-28 Cornerstone calendar for 2010-2011 school year
- R-29 Letter dated May 10, 2011, from Sarah Coiro to Linda Ariel
- R-30 Letter dated March 20, 2012, from Sarah Coiro to Mr. and Mrs. M.P.
- R-31 Letter dated April 30, 2012, from Gregg Weisman to Suzanne Zimmermann
- R-32 Letter dated October 4, 2011, from Gregg Weisman to Suzanne Zimmermann
- R-33 Monthly Attendance Reports
- R-33A Recommendations from S.P.'s homeroom teacher
- R-34 Letter dated April 26, 2011, from Christopher D. Cerf to Dr. James Crisfield
- R-35 Acknowledgement of Receipt dated April 13, 2011, May 16, 2011, and June 23, 2011
- R-36 Letter dated January 3, 2013, from Jill Pringle to Suzanne Zimmermann
- R-37 Treatment Summary dated November 30, 2012, from Stepping Forward Counseling Center
- R-37A Discharge Treatment Summary dated January 4, 2013, from Stepping Forward Counseling Center
- R-38 Letter dated February 25, 2013, from Beth A. Callahan to Athina Lekas-Cornell, Esq.
- R-39 Release for Cornerstone Day School
- R-39A Release for Community School
- R-39B Release for Calais School and Hunterdon Learning Center
- R-39C Letter dated July 31, 2012, from Julianna Kusz to Joseph Orlando
- R-39D Letter dated July 31, 2012, from Juliana Kusz to Toby Ray Lloyd
- R-39E Release for Grove School
- R-39F Letter dated August 15, 2012, from Juliana Kusz to Kelly Webster

- R-39G Letter dated October 25, 2012, from David R. Turner to Suzanne Zimmermann
- R-39H Letter dated October 25, 2012, from Dr. Diane Manno to Suzanne Zimmermann
- R-39I Release for Collier School, Craig School and Community School
- R-39J Letter dated December 12, 2012, from Suzanne Zimmermann to Toby Braunstein
- R-39K Letter dated December 21, 2012, from Suzanne Zimmermann to Marci Taub
- R-39L Letter dated January 2, 2013, from Juliana Kusz to Eagle Hill School
- R-39M Letter dated January 25, 2013, from Juliana Kusz to Toby Braunstein
- R-39N Release for Newmark High School and Holmstead School
- R-39O Release for Bergen County Special Services
- R-39P Release to Banyan Upper School and Calais School
- R-39Q Letter dated February 4, 2013, from Suzanne Zimmermann to Holmstead School
- R-39R Letter dated February 4, 2013, from Juliana Kusz to Bergen County Special Services School District
- R-39S Letters dated February 12, 2013, and February 4, 2013, from Julianna Kusz to Banyan Upper School
- R-39T Letter dated February 12, 2013, from Juliana Kusz to the Calais School
- R-39U Letters dated February 12, 2013, and February 4, 2013, from Juliana Kusz to Newmark School
- R-39V Letters dated February 12, 2013, and February 8, 2013, from Juliana Kusz to Chapel Hill Academy and release for Chapel Hill Academy
- R-39W Letters dated February 12, 2013, and February 6, 2013, from Juliana Kusz to Mitch Bodner
- R-39X Letter dated February 13, 2013, from Dr. Seema Lodhi to Juliana Kusz
- R-39Y Letter dated February 14, 2013, from Dr. Diane Manno to Juliana Kusz
- R-39Z Acknowledgement of Receipt dated November 4, 2013
- R-40 Letter dated July 19, 2012, from Juliana Kusz to Regina Hoppe

- R-41 Individualized Education Program from meeting on March 13, 2012, with petitioners' written comments
- R-42 Parental input for Individualized Education Program dated June 14, 2011
- R-43 Parental input for Individualized Education Program from meeting on March 13, 2012
- R-44 Letter dated April 20, 2012, from J.P. to Suzanne Zimmermann
- R-45 E-mail chain between Denise Bird and J.P.
- R-46 E-mail from J.P. to Linda Ariel
- R-47 E-mail from J.P. to Claudia Sohr
- R-48 E-mail from J.P. to Dawn Geannette and Linda Ariel
- R-49 E-mail from Linda Ariel to Mark Lanzi
- R-50 E-mail chain between J.P. and Linda Ariel
- R-51 E-mails among J.P., Linda Ariel and Sarah Coiro
- R-52 E-mails among J.P., Linda Ariel and Marina Reilly
- R-53 E-mails from J.P. to Suzanne Zimmermann and Gregg Weisman
- R-53A E-mail from Suzanne Zimmermann to J.P.
- R-54 E-mail chain between Suzanne Zimmermann and J.P.
- R-54A E-mail from J.P. to Suzanne Zimmermann
- R-54B E-mail from J.P. to Ed Callaghan
- R-55 E-mail from J.P. to Suzanne Zimmermann
- R-56 E-mails between J.P. and Juliana Kusz
- R-56A E-mails from M.P. and J.P. to Gregg Weisman
- R-56B E-mail from Juliana Kusz
- R-56C E-mails between J.P. and Suzanne Zimmermann
- R-56D Letter from J.P. and M.P. to Juliana Kusz and Suzanne Zimmermann
- R-58 Letter dated December 21, 2012, from Juliana Kusz to M.P. and J.P.
- R-59 Letter dated December 30, 2012, from J.P. and M.P. to Juliana Kusz
- R-60 E-mails between J.P. and M.P. and Suzanne Zimmermann
- R-61 E-mail from Suzanne Zimmermann to J.P.
- R-62 Letter from J.P. and M.P. to Juliana Kusz
- R-63 Letter from Suzanne Zimmermann to J.P. and M.P.
- R-64 Letter from J.P. and M.P. to Suzanne Zimmermann

- R-65 Letter dated November 13, 2013, from Juliana Kusz to Dr. Peter McDonald
- R-66 Source for reading comprehension strategies
- R-67 Letter dated September 10, 2012, from Gregg Weisman to Millburn Board of Education
- R-68 Letter dated September 24, 2012, from Gregg Weisman to Millburn Board of Education
- R-69 Letter dated October 1, 2012, from Gregg Weismann to Millburn Board of Education
- R-70 Letter dated October 15, 2012, from Gregg Weisman to Millburn Board of Education
- R-71 Letter dated October 22, 2012, from Gregg Weisman to Millburn Board of Education
- R-72 Letter dated November 12, 2012, from Gregg Weisman to Millburn Board of Education
- R-73 Letter dated November 19, 2012, from Gregg Weisman to Millburn Board of Education
- R-74 E-mails between J.P. and Susan Cicenia
- R-76 Fax dated March 14, 2011, form Doreen Muschio to Linda Ariel
- R-77 Letter dated August 2, 2012, from Juliana Kusz to M.P.
- R-78 E-mails between J.P. and Suzanne Zimmermann
- R-79 E-mails between J.P. and Juliana Kusz
- R-80 Letter dated September 14, 2012, from J.P. and M.P. to Juliana Kusz
- R-81 E-mails between M.P. and Juliana Kusz
- R-83 Curriculum vitae of Juliana Kusz
- R-84 Curriculum vitae of Suzanne N. Zimmermann
- R-85 Curriculum vitae of Linda Ariel
- R-86 Written notice and list of reevaluation review meeting participants
- R-87 Individualized Education Program revised June 21, 2010
- R-88 Letter dated June 22, 2010, from Linda Ariel to Mr. and Mrs. M.P., acknowledgement of receipt dated June 22, 2010, and unsigned form dated June 22, 2010

- R-89 Individualized Education Program dated July 28, 2010
- R-90 E-mail from Linda Ariel to J.P.
- R-91 Stanford Achievement Test Scores
- R-92 Statement dated February 3, 2012, from J.P. and M.P.
- R-93 E-mail from J.P. and M.P. to Suzanne Zimmermann
- R-95 Letter dated February 15, 2013, from Athina Lekas Cornell to Karen F. Elder, Esq.
- R-96 Application dated December 17, 2012, for admission to Eagle Hill School
- R-97 Letter dated January 27, 2014, from Beth A. Callahan to Athina Lekas-Cornell, Esq.
- R-98 Notes of Juliana Kusz dated January 30, 2014
- R-98A Notes of Juliana Kusz dated January 31, 2014
- R-100 Curriculum Vitae of Barbara Mayer
- R-100C Curriculum Vitae of Holly Ledis Blumenstyk