

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 13790-14

AGENCY DKT. NO. 2015-21785

L.A. AND O.A. ON BEHALF OF J.A.

Petitioners,

v.

ALEXANDRIA TOWNSHIP

BOARD OF EDUCATION,

Respondent.

Lori M. Gaines, Esq., for petitioners L.A. and O.A. on behalf of J.A. (Barger & Gaines, attorneys)

Cherie Adams, Esq., for respondent Alexandria Township Board of Education (Adams, Gutierrez & Lattiboudere, attorneys)

Record Closed: August 19, 2015

Decided: August 31, 2015

BEFORE **GAIL M. COOKSON**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On or about September 24, 2014, L.A. and O.A. filed a petition on behalf of their then-four-year-old son J.A. and requested a due process hearing on the issue of whether respondent Alexandria Township Board of Education (District) erred in proposing an in-district placement for him for the 2013-2014 and 2014-2015 school years. The petition also asserted that the District had denied the petitioners certain rights in the procedures by failing to allow them meaningful input. The petition alleges that both the substance and process of J.A.'s Individualized Education Plan (IEP) constituted a denial to J.A. of a

fair and appropriate public education (FAPE), 20 U.S.C. § 1412, as a classified student entitled to services under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 to 1419. J.A. is diagnosed as a preschool child on the Autism Spectrum. The District filed its Answer on or about October 7, 2014.

The due process petition was transmitted by the Office of Special Education Programs (OSEP) to the Office of Administrative Law (OAL) on October 24, 2014. A settlement conference was convened at the OAL on November 12, 2014, before the Honorable Robert Giordano, A.L.J., but it was unsuccessful at resolving the issues in dispute between the parties. Accordingly, the matter was assigned to the Honorable Tahesha Way, A.L.J. for conduct of a plenary hearing. It was transferred to the undersigned on November 19, 2014, upon the prior ALJ's resignation. On December 5, 2014, I convened a telephonic status conference in order to address discovery issues and schedule hearing dates.

During the initial case management conference, I advised counsel of my mandatory protocols as set forth in my Standing Case Management Order for Special Education Cases. In accordance with that Standing Case Management Order, all direct testimony of witnesses are proffered through pre-filed written submissions and the witnesses are then presented for oral cross-examination and re-direct examination, as needed. Pre-filed direct testimonial certifications are made part of the record herein. The plenary hearings were held on February 3, 9, April 7, 8, May 27, and July 1, 2015. The final post-hearing written briefs were received on August 19, 2015, on which date the record closed.

FINDINGS OF FACT

Based upon due consideration of the testimonial and documentary evidence presented at the hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following **FACTS**:

Susan Carothers is a school psychologist and case manager for the District. She has been employed by the District since September 2004 and employed generally as a school psychologist since September 1990. Carothers is a Certified School Psychologist in New Jersey and Pennsylvania. Carothers met J.A. when he was two years old and receiving early intervention services. I qualified her as an expert as a School Psychologist and Child Study Team Member.

On February 13, 2013, a private neurodevelopmental evaluation was conducted of J.A. by Dr. Audrey Mars. Dr. Mars diagnosed J.A. with autism spectrum disorder, dysgraphia, dyspraxia, expressive receptive language disorder, and delayed milestones. Dr. Mars recommended that J.A. receive occupational therapy, speech therapy, and ABA services. Petitioners provided this report to the District and it was considered in determining J.A.'s eligibility for special education and in developing an educational program for him. On March 5, 2013, an initial identification evaluation meeting was held with Petitioners. As a result of the meeting, it was agreed that the District would conduct an educational assessment, psychological assessment, speech/language assessment, and occupational therapy assessment of J.A.

On May 1, 2013, Carothers observed J.A. at his preschool, Bright Tomorrows, along with JoAnn Sei, the District's LDT-C. There were seven children present in the class with one teacher and one assistant, who was directly structuring J.A.'s participation in activities. J.A.'s behaviors appeared to be age appropriate and easily handled by redirection with the interventions provided by the classroom assistant. J.A. was able to sit and eat snack with other students. He was also able to sit for the entire time that the other children did to read books. J.A. attended to the familiar books and participated by interacting during two of the books that were read. Through the observation, Carothers felt that J.A. thrived on consistency in his schedule and familiarity of tasks. She observed that J.A. was able to participate in activities with the other children in the class.

As of June 2013, J.A.'s early intervention providers reported that J.A. made great strides in communication skills and cognitive development. J.A.'s imitation skills were

“blossoming,” there was improved attending and cooperation observed, and a significant improvement in social interactions. On June 10, 2013, an eligibility meeting was held and it was determined that J.A. was eligible to receive special education and related services under the eligibility category preschool child with a disability. J.A.’s eligibility was based upon a diagnosis of autism spectrum disorder and the evaluations and observations of J.A. At the meeting, petitioners provided written consent for the District to provide J.A. immediately with special education and related services.

An IEP had been drafted for J.A. and was presented at the same meeting. Based upon the evaluations, the CST proposed placement in a full-day, integrated preschool program with a special education teacher and an individual aide, three hours per day of ABA therapy, two hours per week of individual speech/language therapy, one hour per week of occupational therapy, consultations by a Board Certified Behavior Analyst (“BCBA”), and parent training. The IEP also programmed for an extended school year (“ESY”), including ABA therapy, transportation, and individual speech/language and occupational therapy services. Home services would be provided during the time between the end of ESY and the beginning of the school year. Parent training would be conducted at home by a BCBA who would also be a certified teacher.

The IEP proposed to cap the classroom size so that J.A. would be in a typical class but with only four other students. Carothers acknowledged that none of the other children had special needs. The staffing included a special education certified preschool teacher with over forty years of experience and an individual aide who is a certified regular education teacher. The 2013-2014 IEP included a component for ABA instruction of three (3) hours per day, ABA consultation with staff for thirty (30) minutes one to two times per week, and parent training of sixty (60) minutes four times per year. Carothers described the program as providing J.A. with the opportunity to interact with typically developing peers through small group classroom activities. J.A. would be provided with individual instruction if he could not sustain a group activity.

Carothers recounted in her testimony that on or about August 29, 2013, petitioners’ counsel transmitted correspondence rejecting the District’s proposed IEP

and indicating that they had unilaterally placed J.A. at SEARCH Consulting (“SEARCH”) for the 2013-2014 school year. Two months later, on October 30, 2013, the District retained the Autism Family Cooperative of New Jersey (“AFCNJ”) to provide staff training in ABA and to consult with the District concerning an ABA program for J.A. notwithstanding that his parents had placed him at SEARCH. On or about November 6, 2013 and November 13, 2013, Nicole Bollenbach, M.A., BCBA and Elise Pozensky-Cohen, M.S., BCBA from AFCNJ conducted observations and trainings. The training session was attended by the members of the Child Study Team, J.A.’s proposed classroom teacher Joann Whiteley, and the certified teacher who would serve as J.A.’s individual aide in the proposed program, and Carothers. The consultants developed modifications and supports to be used throughout the day and how J.A. would participate in the daily classroom routine.

On November 21, 2013, petitioners’ expert, Hannah Hoch conducted an observation of the District’s proposed program for J.A. Carothers accompanied Dr. Hoch during her observation of the preschool classroom. Carothers explained that Dr. Hoch was not observing the program proposed for J.A. because that program was actually not running as J.A. was at SEARCH and there were no other children with autism in the class. Dr. Hoch was able to observe the classroom set up and the designated work station at which he would have received individualized ABA instruction. Carothers felt that Dr. Hoch was unable, therefore, to appreciate the true program proposed by the District.

On July 10, 2014, Carothers observed J.A. at his unilateral placement at SEARCH. Kerri Eisenhardt, the District’s BCBA, and Bollenbach, the Co-Director for AFCNJ, were also present for the observation. Based on her observation and a review of his SEARCH progress reports, it was clear to Carothers that SEARCH did not provide J.A. with an appropriate program during the 2013-2014 school year. SEARCH spent months working on behavioral goals with J.A. instead of his goals and objectives because they were unable to manage his behaviors effectively. Using a token board system provides children with visual information about “how and when” they will earn the reinforcers. Token boards should have been immediately implemented upon J.A.

entering any program. It is expected that he would have learned to use a simple token board, for example, doing five trials before being reinforced, within weeks of being in a program. The fact that J.A. did not understand his token board after a full year demonstrates that the program provided by SEARCH was not working for him.

On August 4, 2014, the Child Study Team met with petitioners for an IEP meeting to develop J.A.'s program and placement for the 2014-2015 school year. The IEP set forth placement in a full-day, integrated preschool program, an individual aide, ABA instruction integrated into the full day, ABA consultation with staff two hours per week, ABA monitoring two hours per week, parent training of one hour per month, individual speech language services for two hours per week, individual occupational therapy services for one hour per week, and transportation. The IEP also set forth ESY programming, including ABA, transportation, and individual speech and occupational therapy services. Carothers considered this proposed IEP to encompass a full-day ABA program for J.A. The preschool classroom proposed for the 2014-2015 school year was the same integrated preschool program taught by Whiteley that was proposed for the 2013-2014 school year yet Carothers viewed this draft IEP as a continuation of the programs from SEARCH with additional programs to teach important social and functional skills in a lesser-restricted environment. In addition, J.A. would have the opportunity to generalize learned skills to the natural classroom environment.

The proposed program included opportunities for parent training and home programming. Ongoing teacher and support staff training would be provided for a number of hours each week from BCBA's from AFCNJ. Data collection, graphing, and graphic analysis would also be overseen and monitored by AFCNJ. Additionally, Eisenhardt is a BCBA employed by the District who would be available on site to provide consultative services and oversee the program. At the IEP meeting, petitioners expressed concern that this ABA program would be new to the school. In addition, they were concerned that J.A. would be the first and only student at this time to be receiving these services. J.A.'s parents were concerned that the BCBA's from AFCNJ would not be on site or in the classroom all day, every day. There was also a concern that J.A. was going to be too distracted in the classroom, would exhibit inappropriate behaviors

in the classroom, and that J.A. was lacking skills needed to socialize appropriately with his peers. On August 4, 2014, the same day as the IEP meeting, petitioners noticed the District through a letter from counsel that they had decided to unilaterally place J.A. in a private program at SHLI.

On January 9, 2015, Carothers observed J.A. in his placement at SHLI. Cohen from AFCNJ was present with her at this observation. J.A. was placed in a room with three other children, one classroom teacher, and four aides that rotated among the four students. The aides have college degrees but do not have any teaching certifications. The classroom teacher is not a BCBA. There is no BCBA in the classroom. Each student had their own cubicle where they received individualized instruction. J.A. was not integrated with any of the other children in the classroom. J.A. does not have any playtime or other free time where he is able to play with other students. Carothers stated that she observed J.A. imitate motor and verbal cues. Carothers concluded her testimony by stating:

We have a team of BCBA's who will consult with us about J.A.'s program and data will be collected and analyzed. . . . The District is able to provide a similar program as J.A. is receiving at SHLI in-district whereby he receives intensive individualized ABA instruction. However, we are also able to provide J.A. with interactions with peers. This is critical for J.A. as he has very good imitation skills and would benefit from the opportunity to interact with and imitate vocalizations and behaviors of typically developing peers. The services J.A. receives at SHLI mimics our proposed program for J.A.

On cross-examination, Carothers acknowledged that J.A. would be the only classified student in the proposed inclusive classroom. She insisted that J.A. would be able to learn from his typically developing peers even though on the Battelle Developmental Inventory Second Edition (BDI-II), he was significantly impaired to the point of testing overall in the bottom 0.2% of children his age. That assessment also confirmed that J.A. is not yet playing with peers and the records indicated that he walks away from peers. Carothers also did not comment on the fact that Dr. Breslin specifically found that J.A. could not learn in an integrated environment.

Carothers insisted that J.A.'s proposed program would be ABA-approved for the entire day with periods of intensive ABA components and occasional interactions with the typically developing peers in the classroom. Yet, she acknowledged that the District had not even retained an ABA consultant until late October 2013, several months after the initial IEP was prepared. She remarked that the school has a full-time BCBA on staff but admitted that she was assigned to be a classroom teacher and not an autism consultant to Whiteley's preschool classroom.

On re-direct examination by the District, Carothers explained that J.A. had been progressing in Early Intervention in a typical preschool with some at-home ABA instruction. During the IEP meeting before J.A. turned three years old, the District offered more services than he had been getting at Early Intervention. Carothers stated that the parents and their advocate at the initial meeting did not provide any input and then came to the second meeting already determined to send J.A. to an out-of-district placement. She felt that the school had tried to accommodate Breslin's request to observe the preschool classroom placement but the school was ending and the next opportunity would be in the fall.

Elise Pozensky-Cohen is a Board Certified Behavior Analyst (BCBA) and owner and co-founder of the Autism Family Cooperative of New Jersey (AFCNJ) along with Nicole Bollenbach. She has a Masters degree in inclusive early childhood special education and also has thirteen years of experience in the field of special education, autism, and applied behavior analysis (ABA). She undertook clinical experience at the New York Child Learning Institute, which is a dissemination site of the Princeton Child Development Institute. Princeton is an ABA based program that has been very successful for children and adults with autism and has served as a model for other schools for children with autism. Cohen then worked in early intervention in New Jersey. After that, she worked as a BCBA in another clinical program called the Garden Academy, which is a private school for children with autism.

As a BCBA, Cohen develops programs specifically targeted to students' individual needs, analyze data collected on the programs, and review and revise

programs as necessary. In schools, she works with teachers and paraprofessionals to train them in ABA teaching methods, prompts, cues, data collection, and data graphing. Cohen stated that she develops holistic programming and trains staff on the student programs. In homes, she trains parents on the tools of ABA so that they are better able to interact with and support their children. Cohen was qualified as an expert in the field of Autism and as a BCBA.

Cohen first became aware of this case and J.A. when her firm was retained by the District on or about October 30, 2013. In November, she and her partner Nicole Bollenback provided a full day workshop to the teachers and related service providers who would have been working with J.A. under his IEP on the principles of ABA including verbal behavior, ethics and confidentiality, teaching methods, data collection, and graphic representation and analysis. They also made an observation of the inclusive preschool classroom taught by Joann Whiteley. After that observation, they made recommendations to Whiteley concerning modifications and supports to be implemented for J.A. in the classroom. For example, they recommended that a full-day activity/classroom schedule be minimized to fit across J.A.'s work table with each page or picture cue determining a specific task or activity. They also recommended visual aids and video modeling.

Additionally, they recommended that J.A. participate in shortened group activities where he could return to individualized instruction to be taught prerequisite skills. They also set up a separate work station for J.A. That daily classroom routine would provide J.A. with the opportunity to interact with his typically developing peers as well as receive intensive individualized ABA instruction. The routine included J.A.'s participation in arrival activities and independent play at the tabletop activities. J.A.'s personal aide would provide physical cues for him to follow the schedule and engage in independent activities. J.A. would participate in activities of daily living, structured motor activities, circle time, table top activities, play time, and dismissal routines. If J.A. were unable to complete a group activity, he would return to his individualized ABA instruction with his personal aide.

During small group instruction twice a day, J.A. would receive individualized instruction by his personal aide or teacher employing the principles of ABA. Data would be collected weekly using probe data and graphed. Cohen or Bollenbach would review and analyze the data on a weekly or biweekly basis. Additionally, it was initially discussed that oversight would be provided one to two times per week; however, the District was open to modifying the number of hours of consultation services as needed. She was of the opinion that his daily schedule would provide J.A. with natural environment learning and the ability to generalize acquired skills in the natural environment. Cohen explained that generalization is the performance of a skill in different places and with different people. For a skill to be maintained and performed all of the time, the student needs to be able to use the skill in more than the discrete trial. In the public school setting, J.A. would have the opportunity to generalize skills with his peers and in different locations.

Cohen testified that J.A.'s ABA programs would be designed and implemented based on the IEP and further assessment using VB-MAPP and AFLS, which are initial assessments used to drive goals. The VB-MAPP is a comprehensive assessment of verbal behavior that covers requesting, labeling, social play, joining play, counting, and math skills. The goal would be to use this assessment when J.A. first begins the program to assess his present levels and guide programming. The VB-MAPP can be administered every six months to assess J.A.'s growth and determine what skills have been mastered and which still need to be taught. The AFLS is a functional living skills tool. Cohen would use pieces of this assessment to assess J.A.'s skills and derive programming from the results. Once these assessments are completed, Cohen and Bollenbach would be able to develop the programs and then train the staff on how to run the programs and how to collect data on the programs. Eventually, the goal would be to train the staff on how to graph and interpret the data.

During the observation conducted by Dr. Hannah Hoch, Cohen was present to explain that they would first have to assess J.A.'s skills before deciding on when to include him in activities with typical peers and when individualized instruction was appropriate. Once Dr. Hoch issued her report in January 2014, Cohen reviewed it. She

commented that the report did not reflect the conversation they had regarding the District's proposed program and included many misrepresentations. Cohen felt that Dr. Hoch had omitted the flexibility of consultation hours and effort conveyed to her during the observation. She also was of the opinion that there was nothing in Dr. Hoch's recommendations that the District could not implement in the public school setting. Dr. Hoch's report recommended an ABA program, BCBA supervision, research-based teaching methods, full-day individualized instruction, instruction by special education teachers, a data-based approach, staff training, parent training, extended school year, and a systematic transition to less restrictive environments.

Cohen also testified that she had participated telephonically in the August 4, 2014 IEP meeting. She described that IEP as setting forth an appropriate educational program for J.A. in the least restrictive setting. Thus, she was of the opinion that the proposed IEP was consistent with the recommendations of Dr. Hoch. The District's program includes intensive ABA instruction and the opportunity to interact with his peers in the community in which he lives. This is critical to J.A.'s success because, while discrete trial has benefits for foundational skills, the research indicates that natural environment learning is imperative that skills be taught naturally.

Cohen also described the observations made by her partner of J.A. at SEARCH. Insofar as Bollenbach was called as a rebuttal witness, I shall set forth her personal observations later without attributing hearsay statements to Cohen. In reviewing the data, however, Cohen noticed that a lot of the programs were discontinued because of J.A.'s behavior. Data collection on educational programs was discontinued because of behaviors, but there was no clear effective behavior reduction program. It appeared from the data that J.A. engaged in aggressive behaviors to escape completing a task or activity. However, there was no plan in place to treat escape.

On January 9, 2015, Cohen also observed J.A. at his unilateral placement at SHLI with Carothers. The observation lasted approximately one hour. J.A. was in a room with three other students set up in separate cubicles. J.A. did not appear to be distracted by the noise from the instruction being provided to the other students in the

classroom. The only behavior plan in place appeared to be a motivation board. Based on Cohen's review of the data collected by SHLI, there was no program to address J.A.'s aggression and no data collected on aggression. This was surprising as the teacher stated more than once that J.A.'s aggression was a problem. Towards the end of the hour, Cohen observed two instances of unwanted behavior. The first was when J.A. earned his last token but was directed to sit before receiving his reinforcer. J.A. dropped the item due to the delay in reinforcement. The second instance was when J.A. was being instructed in the skill of wiping his mouth. The instructor made a lot of corrections but did not provide any reinforcers during this instruction. It was clear that J.A. did not have the skill. His behaviors included non-contextual vocalizations and engaging in non-contextual laughing.

Cohen noted that J.A. has excellent imitation skills and decent echoic skills. J.A. is already imitating the environment around him, and placement in an inclusion classroom will provide him with peer models to imitate. During her observation, Cohen saw that J.A. is able to make choices. He showed that he is motivated, knows what he wants, and is able to indicate what he wants. She also observed J.A. during play and saw the beginning of imaginative play emerging when J.A. opened the doors and windows of a castle. I also learned that J.A. enjoys music and that it would be a great reinforcer for him. J.A. was very isolated at SHLI. He had no interaction with the other students in the classroom and he does not interact with the other students at all during the school day. When passing other students in the hallway, J.A.'s instructor did not prompt him to say hello or wave to the other students.

Cohen found criticism in the fact that SHLI does not provide opportunities for any natural environment learning or peer interaction. Additionally, BCBA oversight of J.A.'s program at SHLI was unclear to her whereas the District has hired a team of BCBA's just for J.A. Nothing in Bollenbach's or her observation of J.A. indicated that J.A.'s needs could not be met in a public school setting even though the ABA program proposed for J.A. is new to the District because it would be guided by Cohen and Bollenbach.

On cross-examination, Cohen acknowledged that AFCNJ was not hired until October 2013 and provided training to the District staff only in November 2013, months after the proposed IEP was formulated and after J.A. would have started school. She understood that her BCBA services would not necessarily be restricted to just two or fewer hours per week but was intended to be fluid in the beginning in order to aid the District with J.A.'s new program. Cohen never interacted with J.A. or his parents. In fact, she had not observed him until January 2015 and did not submit a report of that observation to either the District or the parents. In that one hour observation conducted at SHLI, Cohen noted an instance of J.A.'s aggression and she has read of it taking place at home and in the community in reports.

On redirect examination, Cohen remained critical of SHLI for not graphing or collecting data on J.A.'s problem behaviors. She was also critical of SEARCH for relying too heavily on edible reinforcers instead of using a token board more with J.A. Cohen held steadfast even after she finally observed J.A. that the District could provide an appropriate and workable program for him. On final cross-examination of this witness, Cohen acknowledged that the 2013-2014 IEP contained no provision for ABA monitoring and only one hour per month of ABA parent training and two hours per week of ABA consultation with staff. The 2014-2015 IEP added two hours of ABA monitoring to the program.

Kerrie Eisenhardt was also presented as a witness for the District. She is presently employed as a special education teacher with a certification as a Teacher of the Handicapped. She has been employed for the District since February 2012. She is also a Board Certified Behavior Analyst ("BCBA"). On occasion, she has conducted observations of District students to provide behavioral recommendations. Eisenhardt has worked as a behavioral therapist since September 1997, as a special education teacher since September 2000, and as a BCBA consultant since October 2007. Eisenhardt started with the Douglass program when her nephew was diagnosed with autism. She has seven years of experience working privately as a BCBA providing consultations to families and school districts. She was qualified as an expert in ABA and Autism without objection.

Eisenhardt was present at the June 10, 2013 IEP meeting where the District proposed a program for J.A. for the 2013-2014 school year. The proposed IEP set forth an integrated preschool program with ABA for three hours per day and ABA consultation with staff for thirty minutes one to two times per week. The IEP also set forth an individual aide for ABA, whose role would include collecting data throughout the day. Eisenhardt's role would be to develop the programs and provide support and consultation to the classroom teacher and aide. She would meet with the classroom staff to review and analyze data and provide feedback on instructional delivery. At the time the IEP was written, she had not met J.A. She explained that she would be unable to develop the specific programs for J.A. until he came to the District and assessments such as the VBMAPP and AFLS were conducted to obtain his present levels of performance.

Eisenhardt testified that each program would be developed with a clear definition of what skill is being targeted, what responses are considered appropriate, how to correct incorrect responses, and how data should be collected. She would design the programs and train the classroom teacher and aide on how to run the programs and collect the data. She would also provide supervision and oversee the program. This would include spending time in the classroom and observing ABA instruction to provide immediate feedback on the efficacy of the program. This would also include reviewing the data with District staff to make program decisions going forward and make modifications as appropriate. Eisenhardt felt that she would need to provide approximately three hours per week of consultation services at the beginning of the school year in order to get to know J.A. and develop and implement the initial programs. Once the programs were established and running, the consultation hours would decrease to approximately one to two hours per week.

Eisenhardt observed J.A. at his unilateral placement at SEARCH on July 10, 2014, with Carothers and Bollenbach. J.A. did not seem to have a lot of verbal language. J.A. was attentive to his therapists and able to be engaged. He liked being tickled and being silly. J.A. appeared to be a good candidate for ABA services that

were very clearly defined and structured. While J.A. was using a token system at SEARCH, Eisenhardt thought that the therapists were not consistent in the delivery of tokens and J.A. seemed confused at times as to what the expectations were. J.A. was not always reinforced at appropriate times. The contingencies of the programs were not clearly defined, and it appeared that neither J.A. nor the staff delivering his program had a real understanding of the contingencies that were in place. Additionally, the tasks and programs worked on were not mixed or varied. Instead, J.A. would work on one program for an extended block of time. Ideally, programs should be varied and different skills should be worked on. Eisenhardt also observed that there was no behavior plan in place at SEARCH, even though J.A. exhibited vocal stereotypy. The staff ignored this behavior. A functional behavioral assessment should have been completed to obtain more information about these behaviors and SEARCH should have set up a behavior plan to address the vocal stereotypy.

In the IEP proposed for J.A. for the following 2014-2015 school year, the development of ABA programs and analysis of data collected would be completed primarily by the AFCNJ consultants. However, Eisenhardt would be available on site for immediate assistance, to review the programs and J.A.'s performance, and provide additional input regarding J.A.'s ABA programs. Eisenhardt was of the opinion that J.A. requires a highly structured ABA program but that he did not have to be at an out-of-district placement in order to receive this type of special education and related services. The District is able to provide the intensive ABA program J.A. requires in order to provide him with the opportunity to make meaningful progress and which is in the least restrictive environment.

Eisenhardt was also questioned under cross-examination. She has been a teacher for second and third graders for the District. Eisenhardt admitted that she has not taught preschool and had never evaluated J.A. She recognized that she is responsible for her own classroom but stated that she has a co-teacher so that she could leave her own classroom if needed in a rush. Eisenhardt explained that the outside BCBA consultants would be performing most functions, notwithstanding that they had not been retained until after the IEP and even the start of the school year.

On re-direct examination, Eisenhardt detailed her early preschool educational experience at Douglass, Child's Play, and with other districts to which she consults. Further testimonial exchanges included Eisenhardt admitting that the District had no self-contained preschool classroom but also noting that J.A. was going to be provided structured ABA in the preschool environment the District had and that it could be adjusted to be more like self-contained room if needed.

Joann Whiteley is a certified special education teacher employed by the Alexandria Township School District ("District"). She has been employed by the District since 2005. Whiteley has over forty years of broad experience working with special needs children. She instructed self-contained preschool classes for over thirty years with children who have a wide range of disabilities, including autism spectrum disorder, down syndrome, language disabilities, behavioral issues, developmental delays, blindness, hearing impairments, and other special needs. The last six years, Whiteley has taught preschool inclusion classes, which include both special needs children and typically developing children. In the preschool inclusion setting, both She and an aide work with classified children 1:1 to address the student's individualized needs and work on IEP goals and objectives. She stated that she has worked with a student with autism spectrum disorder who had a similar profile as J.A. As the teacher in charge, Whiteley planned his program, trained the 1:1 paraprofessional, worked 1:1 with the child, and set up generalization activities for him to participate with the general education teacher in the classroom.

Whiteley had the opportunity to observe J.A. at his home for approximately one hour with the District's learning consultant, Joanne Sei. She went to observe J.A. because she likes to meet the incoming preschool students and get to know them before they enter my preschool classroom. When they entered the home, J.A. was playing with a handheld electronic device. His mother led him to the living room, but he did not respond to our greetings or attempts at interacting with him. He then placed a hat on his head and began gleefully watching himself in the reflection of glass doors over the fireplace. Whiteley had brought a bag of toys with her for J.A. to play with. As

she placed the toys near J.A., he showed some interest in them, especially the musical drum. His attention to the toys was short. She began blowing a party favor blower. J.A. looked at her fleetingly and ran behind the couch. Whiteley stated that she then went to the opposite end of the couch and began a “peek-a-boo” game while blowing the party favor. J.A. would laugh and run away, always to return. He would then look at her with a big smile on his face, anticipating her blowing the party favor again. J.A. returned at least two more times. Whiteley concluded that this behavior demonstrated positive signs of relatedness.

Whiteley cited another example of how she was able to relate to J.A. during this home observation. She described that J.A. moved to his toy garage and cars. He put the car on the top of the slide ramp, making it slide down, and repeated the action. Whiteley began saying, “ready, set” then “go!” as the car slid down the ramp. She repeated this play several times. She then began blocking the car from going down the ramp, waiting for J.A. to imitate my “go!” After a few times, J.A. spontaneously said “go!” Whiteley was confident that experiences such as this would be able to occur in her classroom. Additionally, in the inclusion setting there would be an opportunity to have experiences like this using peer models. The first step would be to practice a skill in the 1:1 setting, and then generalize the skill in play situations with the other students in the class. Although J.A.’s attention span was short, and his interest in others was minimal, she felt that J.A. would grow and progress in my classroom.

Whiteley testified that J.A.’s proposed schedule for the 2013-2014 school year included daily ABA dispersed throughout the school day, related services, and participation in snack and circle time with his classmates. The individual instruction would be provided to J.A. by both herself and the classroom assistant. The classroom assistant is a certified teacher and has received ABA training from the District’s consultants and Whiteley. The schedule was designed so that J.A. could participate in group activities with his peers and be provided with individual instruction if he could not sustain a group activity. The schedule provides J.A. with intense individualized ABA instruction and the opportunity to generalize his skills and participate in activities with his classmates. For example, during individualized instruction, Whiteley stated that she

would practice the song “Row Row Row Your Boat” with J.A. Once he was ready, she would bring a typical peer into the space and have the two students sing the song. After that, she would bring J.A. into circle time with all of the students and sing the song. The design of the inclusion program would allow her to take J.A. through these progressive steps to master and generalize a skill.

With special needs children, Whiteley also uses a notebook that goes back and forth between the parents and herself daily. In the notebook, she would provide details about the specific programs that were worked on that day, how the student’s behavior was, and other pertinent information. The notebook also provides parents with the opportunity to tell her what is happening at home and if there are any concerns that need to be addressed in school. This daily communication would have been provided to J.A. during the 2013-2014 and 2014-2015 school years had he attended her class. Whiteley would also conduct monthly meetings with the parents of her special needs students to discuss the student’s present levels, any issues or concerns, share strategies, and provide support to the parents.

Following the November 2013 observation of her classroom by Bollenbach and Cohen, the consultants provided Whiteley with feedback and information about providing instruction to J.A. The consultants provided her with a list of modifications and supports to be used throughout the school day and suggestions based on the daily classroom routine to implement once J.A. entered her class. In previous years when Whiteley had a severely autistic student in my inclusion class, the student would receive 1:1 ABA instruction in an area that was partitioned off from the rest of the class to reduce noise and distractions. The consultants suggested that the best way to start out would be to have J.A. in the classroom with everyone else, where he would be part of the small group area and have his own table and chair. There would not be a blocked off partition introduced unless J.A. could not manage the sound, noise level, and movement of the other students.

Whiteley has known Bollenbach professionally for approximately twelve years. Prior to her observation, she used Bollenbach as a resource when she had questions

and needed assistance with children in her class with behavior issues. Whiteley stated that Bollenbach and she have established a successful professional relationship that will be helpful in working together to provide educational services to J.A.

On cross-examination, Whiteley was queried as to her familiarity with the seven dimensions of ABA. Whiteley remarked that she could set up programs but does not use the ABA terms of art referenced by the petitioner. She was also questioned on her ability to opine that J.A. had the prerequisite skills to be with typical learners when she had only observed him in his home. Whiteley had not observed the programs at either SEARCH or SHLI. She commented that J.A. would only be partitioned from the other students for part of the day when he was being instructed at his own work space.

On re-direct examination, Whiteley clarified that J.A. would be given intensive discrete trial ABA instruction for three hours per day but that ABA principles would be used throughout the day with his 1:1 aide prompting him during snack, lunch, playtime and other group activities and gathering data. It takes a little while to get to know each child and they would provide J.A. with the least restrictive environment that he could handle. She truly believed in his potential and playfulness.

Sara Slack has been employed by the District since September 2005 as a speech/language therapist. She is a certified speech language pathologist, with a Bachelor's degree in Psychology and a Master's degree in Speech/Language Pathology. Prior to working as a speech/language therapist, Slack worked in an autism research lab at the University of Alabama Autism Spectrum Disorders Clinic where she videotaped evaluations of autistic children and would enter the data into a database. Slack also worked directly with students with autism as an aide at the Community Autism Intervention Program in Tuscaloosa, Alabama for approximately one year. She later worked as an aide for special needs children in a preschool setting in Lebanon Township for approximately two years. She has also received formal training on working with students with autism. Slack was qualified as a Speech Language Specialist.

Slack first became involved with J.A. on May 8, 2013 when she conducted a speech-language evaluation of him. She started the day by observing J.A. at his preschool, Bright Tomorrows. She observed J.A. imitating words with clear articulation in his classroom. J.A. said “ouch” to his teacher when he was upset, and his teacher stated that J.A. had a diaper rash and began saying “ouch” to indicate his distress. J.A. said the word spontaneously on his own. Slack considered this to be an indicator that J.A. was beginning to develop functional language. She also observed J.A. independently eating applesauce with a spoon and saying “juice” as he reached for his juice. J.A.’s teacher indicated that he was able to say the following words on a regular basis: all done, swing, again, more, please, applesauce, happy, hat, and juice.

Slack then administered the Preschool Language Scale (5th Ed.) to assess J.A.’s receptive and expressive language skills. J.A. placed in the first percentile in the auditory comprehension subscale. J.A. had difficulty following routines, identifying familiar objects, identifying photographs of familiar objects, following commands, and identifying basic body parts. J.A. placed in the second percentile in the expressive communication subscale. He was able to produce different types of consonant-vowel combinations, use gestures and vocalizations to request objects, imitate a word, and use at least one word. He had difficulty participating in a play routine with another person while using appropriate eye contact, initiating a turn-taking game or social routine, naming objects in photographs, demonstrating joint attention, and using words more than gestures to communicate. Parts of the Verbal Behavior Milestones Assessment were completed to further identify J.A.’s language skill levels. With regard to vocabulary, the Expressive One-Word Picture Vocabulary Test and the Receptive One-Word Picture Vocabulary Test were attempted but unable to be completed because J.A. did not yet demonstrate the requisite skill of labeling pictures or pointing to pictures that are named.

Slack attended the eligibility determination and initial IEP meeting on June 10, 2013. At that time, she recommended that J.A. receive individual speech/language services for thirty (30) minutes four (4) times per week. This recommendation was based upon her observations of J.A., test results, and a review of his early intervention

records. This level of recommended services would be double the level of speech services that he received through early intervention. At the meeting, Slack explained to petitioners that the speech sessions would be flexible and could be reduced to twenty (20) minute sessions if J.A. could not tolerate thirty (30) minutes of therapy. During speech/language sessions, she would do trials for each of the goals in the IEP and provide reinforcement when appropriate and corrections if necessary. Slack would track whether J.A. completed the trial correctly, track his percentage of accuracy, and take note of whether the task was achieved with verbal or visual prompting. The data would be indicative of progress or to indicate where instruction needed to be changed. The speech sessions for J.A. would occur in either a pull-out or push-in setting. During push-in speech sessions in his classroom, Slack would have the opportunity to work with J.A. in different environments and see if he was able to generalize a skill during playtime in the regular classroom.

Slack was also present at the annual IEP meeting on August 4, 2014. At that time, she continued to recommend that J.A. receive individual speech/language services for thirty (30) minutes four (4) times per week. This recommendation was based upon her prior evaluation of J.A. and her review of his progress reports from SEARCH. Slack was of the opinion that the speech/language therapy services set forth in both the June 10, 2013 and August 4, 2014 provided J.A. with the opportunity to make meaningful progress in his communication skills and language development.

Slack continued her testimony at the hearing under cross-examination by petitioners. She stated that she spent approximately two hours with J.A. during her 2013 evaluation. She acknowledged that his skills were so low that she had to abandon some of her usual evaluative testing. Slack also had access to the results of the BDI-II that was administered to J.A. by an Early Intervention therapist on May 19, 2013. The results of the BDI-II indicated delays in all developmental milestones assessed: adaptive, personal/social, communication, motor, and cognitive. J.A. did have significant delays in peer interaction and communication as shown on the BDI-II but Slack believed his progress reports showed a larger picture of J.A.'s abilities.

Under re-direct examination, Slack remarked that these tests are often so rigid that they cannot tap into the genuine potential of a child who needs some prompts or variations. Insofar as J.A. was successful in the Early Intervention program where typical peers were included, Slack was of the opinion that placing him in a self-contained classroom would be going backwards. J.A. needed access to peers before he could make gains in social development. She discounted the consistently low scores J.A. achieved under the Vineland assessment undertaken by Dr. Breslin because his mother was the respondent under that test's protocols. The District rested its case in chief at the close of Slack's testimony.

Petitioner presented the testimony of Dr. Brothers the Executive Director since SHLI's inception in 1999. He described SHLI as a State-approved private school that offers education to children with autism based on the science and principles of ABA. For nearly thirty years, he has been delivering science-based, behavior-analytic educational services in both public and private schools to toddlers, children, adolescents, and adults with autism. He obtained his Ph.D. in ABA from the University of Kansas where the founders of that methodology had developed the field. He has no state licenses or certifications. Dr. Brothers was qualified as an expert in ABA, utilizing ABA in the education of children with autism, and utilizing ABA for parent and staff training. As the Executive Director, Dr. Brothers generally oversees the operations and makes the decisions as to which children will receive placements at SHLI. He also actively engages in the programming decisions for the children attending SHLI. He stated that all programs are written to meet the individualized needs of the children with significant input from their parents.

Dr. Brothers described the range of impacts, limitations and skills that are often found in children on the autism spectrum including, but not limited to, comprehension, receptive and expressive language, social skills, and behavior. He also elaborated on the history of ABA and its research-based methods for applying its principles to students with autism. He emphasized that there are seven dimensions of ABA. Research proves that when operating from all seven dimensions of ABA when educating children with autism, teaching is effective in increasing positive behaviors and

skill acquisition and decreasing interfering or problematic behaviors in students with autism. The seven dimensions are applied, behavioral, analytic, conceptually systematic, effective, technological, and generality. Dr. Brothers went on in his testimony to more fully describe each of those components and how each one must be woven into a child's program to make it consistent with ABA and likely to achieve success. Dr. Brothers commented that the District personnel who would be responsible for J.A.'s IEP and programs did not seem aware of all of the ABA dimensions.

Dr. Brothers emphasized that a child with autism spends approximately thirty hours a week in school but the vast majority of the child's time is at home. For that reason, he has established a parent training requirement. Without consistent training across critical developmental domains, a child with autism will have great difficulty generalizing skills and making progress. He fervently believes that a child's parents must become behavior analysts and therapists in their own right. SHLI averages five home visits per family per month. The SHLI Staff watch the interactions between parents and children around initiations the children might be making. The parents come into the school for this first phase. Staff assists the parents in becoming more skillful when their child initiates. Once parents can independently identify four out of five initiations and respond with appropriate teaching in school across a variety of expectations, staff goes into their home and measures this again. They also go into the community – doctors' offices, restaurants – to promote the parents' generalization of their interactions in those settings. Parents do not send children here to just make the school day better. They send their children for help that is also designed to decrease the manifestations of autism at home and in the community. To observe generalization to home and community, one needs to have a systematic process to enable the learner to generalize his/her skills.

SHLI utilizes a 1:1 teacher to student ratio until the student advances enough to have that thinned to one less teacher than the number of students in two classrooms. There is also a 5:1 teacher to trainer ratio, meaning that there is one trainer available to every five teachers providing onsite supervision. There are a maximum of thirty students at SHLI with six trainers. Dr. Brothers supervises and trains the six trainers at

the facility. Data collection is an integral component of the ABA instruction at SHLI. They collect some data daily and other data at least two to three times per week. Less frequent data collection might be applied to a skill not taught as frequently, such as grocery shopping. Critical foundational skills are measured daily.

Dr. Brothers was critical of the conceptual format to the proposed IEPs for J.A. for the two school years in question, notwithstanding that he had not observed the inclusive classroom. He was concerned about the lack of constant, intensive ABA programming for the child as well as the lack of ongoing supervision of the aides, trainers and teachers. When teachers are effective, children are going to be changing every day. As such, an ABA program often needs to make changes on a daily basis. Not having someone on site all the time to respond to those changes will impede a student's progress and movement towards independence in exhibiting skills. Dr. Brothers is of the opinion that you need side-by-side coaching to facilitate rapid decision-making on an ongoing basis. It is not just the number of people who matter. You also need people who are skilled at analyzing data and behavior-environment relations. At SHLI, he teaches the staff to operate from an outcome-driven decision making process. It is a system that prompts the staff to make decisions based on outcomes. Dr. Brothers testified that they arrange the environment in ways that increases the likelihood that the child is going to learn. They are proactive, not reactive. It is not just about having a 1:1 ratio and hoping it works. It is about having a skillful staff, which has demonstrated skillfulness via their performance evaluation.

Dr. Brothers first became familiar with J.A. in August 2014. He started at SHLI at the end of the extended school year in August 2014. Dr. Brothers was impressed with the eagerness of his parents to undergo the parent training that would help them become auxiliary teachers for J.A. Dr. Brothers described J.A. as a typical SHLI student. Their students are at the more severe end of the autism spectrum as is J.A. His stereotypy was at a very high rate. From his symptom presentation, it was clear that he needed to learn a lot of skills and that he had a lot of excess behaviors that needed to be eliminated. After a student starts at SHLI, the staff conducts pre-tests to determine what skills the student has and what skills the student lacks. For someone

who is J.A.'s age, they assess whether he has certain foundational and pre-requisite learning behaviors (e.g., sitting at a table, attending behaviors, following instructions, respond to "look at me", orienting to a sound, imitation skills). J.A. lacked these foundational learning skills. SHLI needed to teach him how to learn in a very fundamental way. The petitioners were asked during the intake process to name the top three things they wanted him to learn. His parents responded: 1) to play with other kids; 2) to respond to instruction; and 3) to talk more. They also asked his parents to name their top behaviors of concern for J.A., which were: 1) responding to instruction; 2) not being potty trained; 3) high levels of vocal stereotypy; and 4) minimal focus on instruction and tasks.

Dr. Brothers understood from the District's consulting BCBA that in the proposed program, J.A. would have participated in activities of daily living, structured motor activities, circle time, table top activities, play time, and dismissal time with typical peers. Yet, Dr. Brothers expressed that J.A. is still not skilled enough to participate in any of these group activities. J.A. has no appropriate skills to generalize at this time. All he would generalize is his vocal stereotypy, his motor stereotypy, and his challenging behaviors. Dr. Brothers additionally expressed his professional opinion that J.A. is not aware of his peers at this time. They are just objects in a room. They are not social partners. Dr. Brothers also stated his opinion that it is completely unrealistic for the district to expect him to generalize any learning, after he begins to learn, to his peers at this time. This misunderstanding of who J.A. is at the heart of the District's inappropriate proposal for him. If J.A. were placed with his local peers in class now the relationships would be damaged. J.A.'s stereotypy will look extremely odd to the other students and make a social pariah. His inability to initiate or reciprocate social interactions will isolate him and make him the object of ridicule. His aggressions when another student tries to share a toy with him mark him as vicious. Even at four years old, placing J.A. with typically-developing peers would at best be a waste of instructional time for him, and at worst, it would also be socially damaging for him.

Dr. Brothers strongly concurred that the ultimate goal is to re-integrate SHLI students back into the community school or workplace. He described the eleven

quantifiable prerequisites that he utilizes to assess a student's readiness to transition to a less restrictive and more inclusive environment. Dr. Brothers then testified to the degree to which J.A. presently fails to meet any of those criteria for being placed appropriately in an inclusive learning setting. J.A. requires significant instruction and practice before any school can even think about including him with any peers – let alone typical peers. He does not have appropriate play skills to use with anyone, let alone peers. He does not even have appropriate play skills for independent play. This is a form of motor stereotypy. He does not have any of the prerequisites to even engage in observational learning like sitting still long enough and attending to the people and materials, and his language deficits do not permit him to understand what would be going on with other students.

Dr. Brothers criticized the proposed IEPs for J.A. also because they called for ABA monitoring only two hours per week and staff consultation two hours per week. He labeled this “terribly inadequate,” vague and ill-defined. He stated that having the consulting BCBA on site for just a few hours per week means that they will be relying on other people's memory to assess the behavior-environment relations that are at the core of appropriate programming decisions. Dr. Brothers explained that such is not only a terribly flawed system but it is inconsistent with the published literature on appropriate ABA school based services. This level of vague and very limited involvement with no accountability will not ensure the effectiveness of the aide's instruction with J.A. Setting up programs and coming in once a week to review data is not appropriate based on the available ABA research.

Dr. Brothers was also critical of the low-level of parent training insofar as the District's proposed IEP calls for parent training for just 60 minutes per month. At SHLI J.A.'s parents are receiving parent training five days per week at this time. His mother is in school three days per week and his father is in school two days per week. Since J.A. started in late August 2014, he has had thirty-seven (37) parent visits, each about 30-45 minutes. The district's plan for one hour a month of parent training is woefully insufficient to teach his parents how to do anything useful with their child. At SHLI, the parents' training will eventually transition to the home with at least two sessions weekly.

Autism has greatly impacted J.A.'s ability to learn, to attend, to socialize, to communicate. By providing him with a research-based behavioral program, SHLI is delivering what has been shown in the scientific literature to be appropriate for J.A. and which has resulted in real progress in his abilities and behavior. Dr. Brothers concluded that in spite of that progress, J.A. still has an array of deficits and problem behaviors that preclude his ability to get any meaningful education out of an inclusive preschool classroom.

On cross-examination, Dr. Brothers described what he had reviewed to prepare his testimony and admitted that he had not observed the proposed District placement. He was inquired as to the source of the seven dimensions of ABA and whether he is in agreement with a New Jersey Department of Education publication on the Quality Indicators for Autism Programs. Dr. Brothers was not fully aware of that document, nor did he agree as to whether it was evidence-based research. Consistent with the regulations, SHLI must maintain a minimum of twenty-four District-placed students. SHLI currently has twenty-five funded students with some private placements as well.

Dr. Brothers was asked follow-up questions on the ratios of students, aides or teachers, and teacher-trainers, as well as the level of education or certification required of each position. Each teacher-trainer is required to hold a Special Education certificate and they are in each classroom for the entire day. He also described the training process for his staff and commented that staff must earn continued placement each year, without tenure or longer contractual obligations. As the supervisor of the teacher-trainers, Dr. Brothers spends between thirty and sixty minutes in each of the six classrooms each day. He is consulted on some individual IEP program developments as they come up but mostly is involved in reviewing monthly summaries of outcome data, annual reviews on each student, and notebook reviews and evaluations of staff. Dr. Brothers explained that he also is involved in strategic planning for SHLI, its budget, and financial oversight.

Dr. Brothers described the assessments undertaken initially upon a new student's enrollment. Because they are often very young and very disabled, he explained that standardized assessments are often difficult to use or rely upon. He also

described the successes SHLI has had in transitioning students back to their home districts. In the sixteen years of its existence, SHLI has transitioned approximately 30% of its students, 80% of whom went back to regular classrooms and 20% returned to special education environments. Dr. Brothers and SHLI utilize eleven criteria for judging when a child is ready for transitioning. SHLI will sometimes use a district or private school closer to it rather than the home school district when introducing peer networking to a child because they do not want the child to get a stigmatizing reputation from his or her typically developing peers in their home community.

With respect to J.A., Dr. Brothers sat with the child and then his parents when he was first enrolled and he also reviewed available documentation. He has observed that J.A. is beginning to demonstrate an ability to learn and his vocal and motor stereotypy has been reduced. J.A. is not, however, available or aware of other peers. J.A. is not yet generalizing any acquired skills over changes in people or environments and can certainly not be said to have met the eleven criteria for transition.

Caralyn Gaffney was also presented on behalf of the petitioners. Gaffney is a Certified Elementary Teacher and Teacher of the Handicapped who has been employed at SHLI since January 2005. She reiterated that the underlying ABA method used at SHLI is the science from which the SHLI operates to teach any relevant skill that a student may need to learn. It is focused on teaching students socially acceptable behavior while decreasing disruptive routines and stereotypy. Stereotypy can be in the form of vocal or motor behavior that serves no function. She also reviewed the staffing structure used at SHLI, consistent with that detailed by Dr. Brothers.

There are six classrooms with a maximum enrollment of five students in each. There are five teachers in each classroom who work 1:1 with each student on a rotating basis. There is also a teacher trainer in each classroom who supervises the teachers and provides input during the day on each student's ABA instruction. Dr. Brothers supervises the teacher trainers. Gaffney was hired at SHLI after being a student teacher while in college. After nine months of full-time employment at SHLI, she became a lead teacher. For the last eight years, she has been a teacher trainer. She

testified to the responsibilities of each teacher and those extra duties of the lead teacher including, but not limited to, 1:1 student work, collecting and analyzing data, establishing and implementing goals, and reviewing the effectiveness of the program in reaching goals and reducing disruptive behaviors. There is also a significant amount of time devoted to evaluations, progress reports and parent advice and training.

Gaffney stated that the purpose of a rotational system of 1:1 teaching with each student is to help the child with the generalization of skills without dependency on the particular aide. Students with autism often do not generalize skills on their own and therefore staff must systematically plan for generalization as an essential part of the instructional programs. In addition, each student has a program book which contains their individualized instructional programs.

Specifically, Gaffney described what is contained in each program as a written summary of the observable/measurable goal; a standard which specifies the individualized criterion for each program; a measurement procedure which defines the systematic method for collecting data on the target behavior; a description of the conditions across which generalization is assessed; the curriculum being used to teach the targeted skill; a description of the pretest/baseline conditions; the teaching procedure which is a written description of how each skill is taught; a description of the maintenance conditions which defines the conditions under which the maintenance of a skill will be measured; an informed parental consent section in which parents sign and date each program after reviewing the program with teaching staff; a definition of the inter-observer agreement measure which assesses the degree to which two individuals agree about the occurrence or non-occurrence of the target behavior; and an evaluation page which has space for internal and external evaluators to sign after they have evaluated a program.

Gaffney stated that data collection is a key component of an ABA program. Data are analyzed daily to ensure students are acquiring skills in a timely manner. In addition to daily analysis of data, they calculate a monthly mean for each individualized program, and summarize data three times a year for progress reports. Daily data can

reveal improvements, stagnations, or regressions. The SHLI teachers also take data on generalizations of skills. With respect to vocal or physical stereotypes that interfere with learning, SHLI pairs instruction with a high level of reinforcements in the form of tangible rewards (e.g., food) at first and then non-tangible rewards (e.g., tokens earned toward preferred activities or tangibles).

With respect to J.A., Gaffney met him on his first day of school in August 2014. The first day, each classroom teacher and she paired themselves with edible reinforcers so that J.A. would be positively inclined to work with each. On the first few days of school, they conducted pre-tests to identify the skills to target in instruction. The staff assessed motor imitation, direction following, verbal imitation, matching pictures, labeling pictures, pointing to pictures, and following a photographic activity schedule. She quickly learned that J.A. lacked the foundational skills that he will need to learn in order to learn from other people for the rest of his life. For J.A., a lot of what they needed to do was to teach him to follow an instruction the first time it was given, without any disruptive behavior (vocalizations or stereotypic behaviors). He engaged in a high degree of disruptive behavior that made it very difficult for him to sit at a table and attend to instruction. He lacked eye contact, the ability to initiate social interaction, functional play skills, and the ability to play with other children. For example, on his first day at SHLI, another student moved one of J.A.'s trucks that he had lined up. J.A. became very disruptive and attempted to bite that student. It was clear that he did not yet have the social or behavioral skills to be around other students in a social situation.

When J.A. started at SHLI, Gaffney noted that he did not use any language functionally. He could say words and imitate sounds and words but he did not generate language independently for any functional reason. Behaviorally, when J.A. was not being interrupted (meaning he was permitted to engage in his stereotypy) and when the staff were not attempting to teach him, he was pretty easy going for the most part and could entertain himself by looking at a book, dancing, watching videos or using an iPad. Yet, when his stereotypy was interrupted or when instructional demands were placed on him, he engaged in tantrums, grabbed at people, dropped to the floor, punched, and was disruptive with materials. Presentation of novel things would make him cry and become disruptive (e.g., showing him a new book). Because J.A. produces a lot of

nasal mucus, he also engaged in behavior where he would wipe the mucus with both hands and then attempt to swat the teacher with his mucus-covered hands. He also made attempts to bite other people. In fact, J.A. often required 2:1 instruction when he first started to address his challenging behavior. Gaffney needed to provide manual guidance to prevent J.A. from raising his hands in protest so the teacher could present instructional materials. They have worked extensively on getting J.A. to attend to instructional demands without engaging in disruptive behaviors.

Gaffney described how J.A. has learned to complete many activities but the activities are often cluttered with his vocal stereotypy. For J.A. to ever be able to learn in a group setting, his vocal and motor stereotypy must be reduced as otherwise he will be too disruptive to the other students in the group. In addition to being disruptive to other students, his stereotypic behaviors will make him stand out in a negative way amongst his peers. As stated, when you interfere with J.A.'s motor stereotypy in an attempt to get it to stop, he will become disruptive and challenging (e.g., crying, dropping to ground, throwing materials). Clearly his stereotypy is an interfering factor in his learning.

Lunch was challenging for J.A. when he first started at SHLI. If he saw his lunchbox before lunchtime he wanted to eat lunch right away. If he saw his lunchbox at 8:30 a.m., he would cry, engage in challenging tantrum behavior and attempt to get his lunchbox for the four hours leading up to lunch. Gaffney had to originally remove his lunchbox to the lunchroom so he would not be distracted by it and persevere on getting to lunch. The staff has now been able to bring his lunchbox back into the classroom, but this was only after a tremendous amount of instructional work.

Having now worked with J.A. for 5 months, Gaffney commented that even with a very skillful eye towards actively programming for the generalization of every skill he is learning, his ability to generalize his skills is below criteria. He continues to display challenges with regard to generalizing his skills across other instructors. Gaffney reviewed the District's proposed IEP and even though she did not observe the classroom, she felt strongly that the District's underlying theoretical assumption that he can generalize easily to those peers is simply not supported by the data SHLI has

collected on generalization. While the ultimate goal of every program is that he acquires the skill and is capable of generalizing that skill, he is just not there yet.

Gaffney explained in detail quite a few of the challenges facing J.A. and the programs being implemented by SHLI to break down those challenges. For example, J.A. had established a rule for himself that he would only urinate or have a bowel movement in a pull-up training diaper. This presented a huge challenge when it came to appropriate toileting during the day. J.A. needed to learn to go to bathroom in the toilet. When SHLI started toilet training here, they needed three adults to help him sit on the toilet because he had a huge phobia of being on the toilet and he attempted to flee the bathroom. Over time, J.A. has not only learned to go to the bathroom on the toilet but he is now initiating verbally to go the bathroom at school and at home. The progress that he has made has been tremendous. The SHLI interventions have proven effective up to this point and the next steps include reducing the increase in his fluid intake, fading the reinforcement, and removing the communication device used to help him initiate for using the bathroom because those levels of support need to fade in order to say he is successfully toilet trained.

By way of further example, Gaffney described how they have worked with J.A. to be able to follow an activity schedule. When J.A. met criterion on following a one-page schedule, they then systematically increased the number of pages in the schedule while fading the manual guidance. Today, he is able to independently follow a five-page activity schedule with no physical prompting. Nevertheless, J.A. still engages in some stereotypy while engaging in the activities on his activity schedule. When they try to interrupt that stereotypy and have J.A. do the activities without motor movements or vocalizations that do not pertain to the activities at hand, he still engages in disruptive behavior. All of J.A.'s programs are defined such that the goal is for him to exhibit the skill without vocalizations or stereotypy. Gaffney explained that doing activities quietly and without vocalizations or motor stereotypy is a critical skill to learn before a child should be included with his peers. Other programs were also described in great detail by Gaffney, which is reflected in the documentary evidence admitted herein, such as pointing to a picture, a precursor skill to reading, matching pictures, following

instructions, waiting in a designated area, imitating movements, etc. However, even with his successes, J.A. shows significant regression during holiday periods.

Gaffney remarked that the District's outside ABA consultant Cohen observed J.A. at SHLI for a period of about one hour. Gaffney would agree as noted in the latter's certification that there was no behavioral plan in place in the classroom to address J.A.'s aggression and no data collected on his aggression. Gaffney explained that there is not a program designed specifically to decrease his aggression. Rather, they are focusing on increasing his instructional programs so to crowd out his opportunities to engage in aggression and to also teach appropriate replacement behaviors. While Cohen wrote in her certification that she only saw one instance of aggression during her observation, Gaffney testified that J.A. was engaging in challenging behavior for approximately the first fifteen minutes that she was in his classroom. In fact, Gaffney claimed that she had to step in to assist the teacher working with him at that time because of his escalation in behavior. J.A. engages in a variety of responses to protest limits being placed on him or when he is seemingly frustrated. Right now, it is an expected reaction that as they place limits and increase expectations, they will get more challenging behavior. SHLI does not see that as a behavior that needs an immediate reduction but rather a behavior that requires replacement with appropriate alternatives. Gaffney is seeing a reduction in his behaviors through the teaching of appropriate replacement skills.

Gaffney also disagreed with statements to the effect that J.A. is ready to generalize with typically developing peers. She described, by way of illustration, that SHLI has seven imitation programs in place for J.A. being run across all four teachers in the room. There are vocal imitation programs and motor imitation programs. With all of these programs, they assess for generalization across novel movements, novel settings, and across novel people. When they assess him for generalization of skills, J.A.'s performance drops off precipitously. Because his performance drops off, it is empirically incorrect to say that he has "excellent" imitation skills. He is not generalizing to new people and new situations in the way you would expect him to be able to do in a group setting. According to Gaffney, the District's proposed program is based on the

assumption that he can be successfully included with typically developing peers and that inclusion time will be meaningful to him. SHLI's data consistently and strongly rebuts that assumption. He is not generalizing or imitating to the extent necessary for such inclusionary opportunities to be meaningful to J.A. It was the opinion of Gaffney that not only would J.A. not learn from his peers but his behavior would set him so far apart that he would become an outcast with his peers.

On cross-examination, Gaffney acknowledged that she is the only certified teacher in J.A.'s classroom at SHLI. She oversees all the programming and staff in his classroom, which currently consists of three children and three instructional aides. Her responsibilities include making decisions about school and home programming, training the aides in data analysis, and evaluating each aide. Gaffney also attends meetings with parents. Dr. Brothers reviews her goals and objectives for each child but is sometimes in an instructional role 1:1 with a child. He does not just take an evaluative or supervisory posture at the school.

Gaffney explained that she reviews the home programming but that the parent's instruction is undertaken by the data analyst. While there is a minimum standard of parent training of two times per month, most parents far exceed that standard. In this case, J.A.'s parents are at SHLI currently five times per week. For them, progress dictated that the at-home component could commence around December.

With respect to J.A.'s admission, Gaffney was involved in his pre-testing on the few programs SHLI would initiate with him. He had very few skills. Staff established reinforcement systems and paired staff with reinforcers. Later, when SEARCH data was made available, Gaffney reviewed them. Even under cross examination, she stated that they might have indicated on paper a higher ability but J.A. had no ability to generalize the skills the data demonstrated so they must be considered a failure. She remarked that such was not uncommon as children change schools.

During Gaffney's tenure at SHLI, six children have transitioned back to their home districts – four to special education classrooms and two to regular education

classrooms. She also confirmed that there are no related services such as speech therapy provided outside the classroom at SHLI. On re-direct examination, Gaffney testified that J.A. is still not generalizing very well but they are seeing some progress with parent training and establishing some controls while reducing his distractibility.

Petitioner O.A. also testified at the hearing on behalf of her son. She described her early concerns for her son's development. Before his first birthday, she and her husband had already referred him to Early Intervention because of missed milestones. J.A. was provided with physical therapy and developmental instruction. At J.A.'s first birthday party, she found that he ignored all the children and acted as if they were not there. This was the first time he really had exposure to children his age as his siblings are ten and twelve years older than him. His lack of reception to language coupled with his disinterest in socializing with his peers caused O.A. to immediately suspect autism. Her oldest son has autism and the difficulties J.A. presented with were strikingly similar to those of the older son when he was that age. In September 2011, J.A. was evaluated by Dr. Audrey Mars, a Neurodevelopmental Pediatrician, whom O.A.'s older son had seen. Her evaluation confirmed his delays in language skills, motor skills and adaptive skills.

In addition to the Early Intervention services J.A. received, we also enrolled him at Bright Tomorrows, a day care center. Our hope was that J.A. would have the opportunity to socialize with typically developing peers of his own age. He started there one day a week which increased to two and then three days per week in an attempt to help with his peer socialization. J.A. was re-evaluated by Dr. Mars in February 2012. At that time, she diagnosed him with an expressive/receptive language disorder, dysgraphia, dyspraxia, and delayed milestones. She recommended that he continue to receive Early Intervention services and that a speech/language evaluation be conducted. Based on that recommendation and follow-up evaluations, J.A. was provided additional related services by Early Intervention for speech/language therapy and occupational therapy.

Progress reports from Bright Tomorrows reflected O.A.'s observations as well, including, but not limited to, J.A. crying a lot, hardly ever smiling or looking at another person, failing to play with other kids, almost no spoken vocabulary. His teachers found him very difficult to work with because J.A. would scream, throw himself on the floor, and would not sit or follow directions. Accordingly, starting in December 2012, Early Intervention started to provide J.A. with ABA through the Douglass Outreach program. He received eight (8) hours per week of ABA. This ABA instruction was provided on the two days when he was not in daycare. Later this changed again so that J.A. was provided ABA services while in daycare in lieu of his mother pulling him out of daycare altogether. Even with the Early Intervention services being provided in the day care setting, his mother observed that J.A. still did not progress socially. He was still distant to the other kids. He would not even look in their direction; it was as if they were not there.

In January 2013, the Early Intervention Coordinator arranged for a transition meeting at petitioners' home because J.A. would be aging out in of Early Intervention that summer, when he turned three. Carothers attended the meeting at which she advised O.A. that Douglass Outreach would continue to provide services to J.A. after his birthday as there would only be a few days left of the ESY. In February 2013, Dr. Mars once again re-evaluated J.A. At this time, Dr. Mars formally diagnosed J.A. with autism spectrum disorder in addition to the dysgraphia, dyspraxia, and expressive/receptive language disorder (which includes auditory processing difficulty) she had previously diagnosed. Dr. Mars recommended that J.A. continue to receive Early Intervention services including ABA until he turned three. She then recommended that upon turning three years old that J.A. be enrolled in a "specialized preschool program which provides Applied Behavior Analysis services geared to children within the autism spectrum disorder and a full-day, extended school year program." (J-2) O.A. noted that J.A.'s day care was housed in the hospital at which Dr. Mars worked. She was familiar with this program and yet she specifically did not recommend that he continue in a program with typical peers.

At the March 5, 2013, identification meeting with the CST, the District opted to rely on the results from Early Intervention's administration of the BDI-II for both educational and psychological information. They also opted to rely just on an Occupational Therapy observation rather than evaluation. The only evaluation the Team proposed actually completing itself was a Speech/Language Evaluation. The same week as the meeting, O.A. went to observe the inclusive preschool classroom that the CST would be proposing for J.A. There were one teacher and two (2) aides for fourteen (14) students, three of whom were classified but none of whom were autistic. O.A. was told that the District expected lower preschool enrollments in the next school year. She was also advised that J.A. would be the only classified student in the room and that his instruction would be in a corner of the classroom behind a screen. In April, 2013, the District obtained Board approval to provide twenty-six (26) hours of ABA to J.A. during August.

On O.A.'s insistence, the District scheduled an IEP meeting with the CST and the petitioners for early June 2013. In the view of O.A., the CST was basing many of its decisions on a lack of real knowledge about J.A. and very few evaluations, as well as their mistaken conclusions from a May observation of him at his daycare setting. They seemed to believe that J.A. was learning from his peers and acting in an age-appropriate manner. O.A. testified that she was shocked by such conclusions. J.A. might sit in a circle appearing to listen to a book with peers but his mother and teacher both knew that he was oblivious to the other children and to the story. The District speech/language pathologist, Sara Slack, took greater care to examine J.A.'s daycare teacher and observe his lack of play or interaction with the other children as well as his lack of spontaneous language.¹

O.A. did note in her testimony as well that Douglass Outreach submitted a summary report when J.A. aged out of Early Intervention in which it was recommending and that the research supported the fact that J.A. required forty (40) hours per week of

¹ While O.A. is the parent and not an expert with credentials in any special education field, she spent some time in her testimony reviewing the evaluation results of J.A. undertaken by others who were experts and who found him to be severely delayed and impacted by his autism. I note that the actual evaluations and reports are in the Joint exhibits and are made part of this record. Those reports are the best evidence of J.A.'s results than a summary of them in the parent's direct pre-filed testimony.

ABA instruction. Notwithstanding that O.A. provided additional reports to the District, including one from Anita Breslin, a BCBA-D, the District proposed an IEP at the June 10, 2013, meeting that would place J.A. in its inclusive preschool classroom with three (3) hours per day of ABA instruction only. O.A. said she was shocked and dismayed that the CST was returning to this placement idea from the winter in spite of all they had learned about J.A.'s global delays in the interim. O.A. felt that the District deliberately never permitted Dr. Breslin to observe the preschool classroom before school concluded. On June 26, 2013, the CST took the word "draft" off the IEP document discussed on June 10 and forwarded it to O.A. for signature. O.A. and her husband, who had used an advocate during the initial IEP meeting, thereafter hired special education counsel in order to challenge the IEP placement for J.A. O.A. had hoped that she and Dr. Breslin would have had input into designing J.A.'s program after the latter's observation but it never happened.

At this point, with the school year about to begin, we researched alternative programs for J.A. that would match the recommendations of Dr. Breslin and Dr. Mars. While Dr. Breslin specifically recommended that J.A. be placed in an ABA school, none were available at that time. As waitlists at these schools are common, Dr. Breslin specifically recommended in her report that should a school-based program not be immediately available that J.A. attend a center-based ABA program pending placement in a school-based program. Unfortunately, none of the schools recommended had openings and we therefore located SEARCH Consulting, a center-based ABA program that provides 1:1 instruction. After an opportunity for petitioner's attorney to provide notice of the voluntary placement to the District and to reply, which it apparently did not, on September 23, 2013, J.A. started his unilateral placement at SEARCH.

O.A. further testified that her son did make some progress at SEARCH, which he attended from September 2013 through August 1, 2014. J.A. made great progress during his time at SEARCH. Whereas before SEARCH he was unable to sit at a desk, she found that SEARCH staff members were able to help him learn to sit at a desk and attend to instruction. SEARCH helped tremendously with his behavior. From January to March 2014 his behaviors were significant and daily. With SEARCH's intervention and

programming his behaviors significantly reduced and he was able to attend to instruction. His eye contact improved. His language improved. He learned to follow some simple directions.

In July 2014, O.A. received a telephone call from Dr. Kevin Brothers who stated that there was an opening for J.A. As she did not want to miss out on the opportunity for him to attend SHLI, she asked Dr. Brothers if he would permit petitioners to unilaterally place J.A. in his school. O.A. understood that there is a “window of opportunity” in autism and that window is before six years of age. They did not want that window to close on J.A.. Petitioner met with the CST on August 4, 2014 for an IEP meeting. Even though J.A. was then four years old, the CST proposed the same preschool inclusive classroom as it had the prior year with just some ABA. O.A. stated that Carothers repeatedly suggested that J.A. would have benefitted from placement in an inclusion class as it would allow for “interactions with typically developing peers.” O.A. firmly believes that J.A. is not interacting with peers and derives no benefit from simply being placed around typically developing peers and that doing so just wastes valuable time better spent working with him under the principles of ABA. O.A. concluded that the District’s misunderstanding of her son’s disability was tremendous, that they do not know him or his impairments very well, and that they do not understand autism as a disorder. Even after a separate meeting with the Special Education Supervisor, O.A.’s request to have J.A. placed at SHLI was rejected. From her perspective, the District simply tried to fit him into the program available in District rather than put him in a program that was appropriate.

O.A. testified that J.A. started at SHLI on August 19, 2014. She commented that the changes he has made at SHLI are tremendous. He is able to call her “mommy,” a dream come true, and to say “hi” to her. He can follow an activity schedule. He can follow simple directions. His eye contact has greatly improved. He looks at her when he asks for something. He can sit down and complete an activity. His behaviors have improved greatly and his aggressive behaviors are almost gone. He can point at pictures. O.A. can engage him in more diverse play activities. He is finally toilet trained. O.A. attributed some of his success to the extensive and comprehensive

parent training provided to them by SHLI. She is shocked that the District is proposing only one hour per month of parent training, some of which would be diverted to reviewing data and other program information.

On cross-examination, O.A. insisted that she provided any of the evaluations that were procured privately with the District, including that of Dr. Mars and any surveys produced by Bright Tomorrows. She also acknowledged that petitioners recorded the first IEP meeting but then so did the District. When asked why petitioners never communicated their concerns to the District, O.A. explained that they were deferring until their expert, Dr. Breslin, had the opportunity to see the proposed preschool program. O.A. understood that the parties would reconvene once that happened but it never did. Without any cooperation with Dr. Breslin, the CST issued the IEP as final and mailed it to petitioners on June 26, 2013. O.A. felt that Carothers purposely made it difficult for Dr. Breslin to observe before the school year ended, perhaps because she assumed Dr. Breslin would be critical of the program. At that point, petitioners retained an attorney who attempted to get an appointment for Dr. Breslin to make her observation. When that still did not occur, they filed for due process.

O.A. described J.A. as receiving some socializing from Early Intervention services. She considered it essential mostly because he has much older siblings. However, there was very little instruction and she was advised to try to get J.A. into a full-time, intensive ABA program. On re-direct examination, O.A. testified that she and Dr. Breslin both knew that a summer program would be very different from the regular classroom being proposed for J.A. While Dr. Breslin had evaluated J.A. and observed him during his home program delivered by Douglass, the District personnel had never met the child before it had already selected his placement.

Petitioners also presented the testimony of Hannah Hoch who is a BCBA-D. She earned her Doctorate Degree in Psychology with a subprogram in Behavior Analysis & Learning Processes Psychology from the City University of New York. Hoch holds a Board Certification in Behavior Analysis since 2004 as well as New York State license in Behavior Analysis since 2014. For more than a decade, Hoch has been a

consultant on autism to parents, home program staff and clinical service programs. Hoch has also been an Adjunct Professor in the Psychology Department of Barnard College of Columbia University since 2006. In the past, she has served, among other positions, as a consultant to the Alpine Learning Group, Paramus, New Jersey, the Assistant Director to the Reed Academy in Garfield, New Jersey, and a Behavioral Consultant with the New York Center for Autism Charter School. In her career, Hoch has evaluated approximately twenty-five (25) students with autism and developed educational programs for approximately two hundred (200) autistic students. I qualified her as an expert in Autism, ABA, and Evaluating Children with Autism.

Hoch provided an overview of ABA similar to and consistent with other witnesses. She also described what a diagnosis of autism entails. Autism is a neuro-developmental disorder that involves deficits in social skills, language and communication. Individuals with autism also have restrictive and repetitive patterns of behavior and interest and activities. As with any disorder, the manifestations of autism in individuals with autism range from mild to severe. The level of severity of a student's autism indicates the intensity of ABA programming that is required. While typically developing students often learn these skills incidentally through observing other students and through hearing directions from adults, students with Autism often do not learn incidentally. They need very explicit instruction, therefore, in not just academic skills and appropriate behavioral skills, but also in basic learning readiness skills, or how to be a student. Once a student has learned these prerequisite skills to learning and socialization then more complex and advanced skills are taught. She also explained that generalization of skills to various environments does not happen naturally for a child with autism. Accordingly, most students with autism must have instruction extended beyond the school setting to the home and the greater community.

Dr. Hoch first met J.A. in the fall of 2013 when petitioners sought an independent evaluation. At the time, he was three years old and attending SEARCH. For her evaluation, she undertook a comprehensive review of past evaluations and current data, a direct observation of J.A. at SEARCH Consulting, a direct observation of the District's proposed program, a meeting with the District's CST, and a meeting with the

child's parents. J.A. presented with significant global developmental delays. His overall development, in fact, was at just the 2/10th of one percentile. His personal-social skills were at the 2nd percentile, with his peer interaction skills falling below the first percentile. His communication skills were also significantly impaired, falling at the 1/10th of one percentile. His motor skills were similarly impaired at the 2nd percentile. Cognitively, his abilities fell at the 3/10th of one percentile. This testing completed at the conclusion of J.A.'s time in Early Intervention confirmed that he was a little boy with severe autism. In fact, the records showed that when he was first tested by Early Intervention in May 2011 his scores were higher than his scores when re-tested two years later in May 2013. His scores in fact dropped over the course of his two years in Early Intervention.

Dr. Hoch disagreed with the District's conclusion that J.A. could benefit from an inclusive classroom setting. She explained that a student with peer interaction skills below the 1st percentile is simply unable to benefit from inclusion with typical peers during instructional time. Her observations of J.A. confirmed his global impairments and corroborated the Early Intervention findings. He had very limited language. While he engaged in a lot of vocal stereotypy, his vocalizations were not functionally communicative in nature. Dr. Hoch also observed him engaging in a lot of tantrum behavior and aggressive behaviors, including kicking, hitting and biting. J.A. had very poor eye contact. He also did not have a repertoire of leisure skills and therefore could not manage down time and he could not exhibit appropriate behavior on his own. He could not socialize with peers. He in fact did not have the skills to engage in any type of social interaction with another student.

Dr. Hoch observed J.A. at SEARCH where they worked with him on programs targeting basic early learning, skills, communication, following directions, and imitation. According to Dr. Hoch, SEARCH appropriately focused on teaching J.A. very basic skills, skills that are pre-requisites for age-level tasks that he could not yet achieve. At SEARCH the focus of J.A.'s playtime was to teach him how to play appropriately. Instructors therefore provided direct reinforcement (snacks) during playtime for appropriate play (i.e., playing in the absence of stereotypic behaviors), making eye

contact, and making relevant play comments. J.A. required active teacher prompting in order to engage in play activities. J.A. presented with high rates of problem behavior on a daily basis and very high levels of vocal stereotypy and motor stereotypy. At the time of her observation, Dr. Hoch noted that J.A. had only been in the program for a couple of months. It was clear to her that he required the intensive, individualized 1:1 ABA programming being provided to him. J.A.'s program at SEARCH was appropriate because they were targeting his skill deficits in appropriate ways with appropriate goals.

Dr. Hoch also observed the District's proposed inclusive preschool classroom on November 21, 2013. At the time of her observation, there were five children in the class, none of whom were classified. Dr. Hoch described the activities these typical peers were doing with the teacher and aide. She was of the opinion that J.A. could not successfully participate in any of the activities she observed in the proposed classroom. He simply did not have any of the pre-requisite skills to engage in these activities.

Dr. Hoch reviewed the proposed IEP and explained that the District's plan was for J.A. to receive 1:1 instruction on the side of this classroom behind a divider or screen and then have the opportunity to generalize the skills learned with the other peers in his class. She concluded that such a program would be wholly inappropriate for J.A. For Dr. Hoch, this proposal confirmed the District's grave misunderstanding of J.A.'s educational capabilities and needs. Dr. Hoch was also concerned with this model that J.A. would work primarily with an aide, especially one without direct supervision. Having one person assigned to him for instruction would not permit generalization of skills across individuals. While the classroom teacher would at times also provide some instruction, even having the same two people work with him every day would not promote generalization. While she agrees that he requires 1:1 instruction, it was her professional opinion that this instruction should be delivered by multiple individuals on a rotating basis so that he learns to exhibit the targeted skill with multiple people and not just one or two instructors. It would also be highly inappropriate to have J.A. be the only student pulled to the side for 1:1 instruction behind a divider. It would be highly stigmatizing and isolating for him even at the preschool level.

Dr. Hoch met with many key members of the CST for J.A., including Carothers, Whiteley, Eisenhardt, and Slack, as well as the outside consultants hired by the District at the same time as her observation. She explained to them that while at the time, J.A. had started to show some progress in the areas of language and adaptive behavior at SEARCH, he simply did not yet possess the pre-requisite skills to participate in any group activities. His levels of attending and appropriate engagement were such that he would not benefit from participating in any classroom routines. He could not appropriately converse with, play with, or even greet another child. Dr. Hoch emphasized that she is supportive of the notion of providing students with disabilities inclusion opportunities, however, the child must be ready for those opportunities and J.A. is not. Given his limited skill set, it was her opinion that the District's proposed program would not yield any educational benefits for him.

Dr. Hoch was also critical of the District's plan to rely upon three non-dedicated BCBA's to implement and supervise J.A.'s partial ABA program during one to two consultation sessions per week that would total only an hour or so. The use of a singular 1:1 aide working directly with J.A. was also disfavored by Dr. Hoch because such would not teach him to generalize across different people and would also too heavily rely upon the skills of the lowest trained professional. Further, Dr. Hoch was concerned because the District was not even aware of J.A.'s severe and disruptive stereotypic behaviors and certainly did not have a plan in place to address and redirect them. Jennifer Bills suggested to Dr. Hoch that perhaps J.A. developed these behaviors by being around peers with autism at SEARCH. She suggested he might be imitating down to them. Yet, Dr. Hoch pointed out that this is highly unlikely as J.A. has no peer imitation skills or observational skills and does not attend to other children in any other environments. He therefore did not have the ability to observe and imitate problem behaviors in other students. It was also clear to Dr. Hoch that his record was replete with references to his problem behaviors and his problem behaviors were the first area of concern for his parents. Dr. Hoch found it greatly disturbing that the District was unaware of these areas of need.

Based upon her evaluation, observations, review of the IEP and other school records, Dr. Hoch recommended that J.A. requires a behaviorally based educational

program designed to address skill deficits and behavioral challenges. She reiterated her firm opinion that teaching methods must be based on the principles of ABA. J.A. also requires a data-based approach to instruction, to systematically evaluate the effects of teaching and treatment interventions. Objective data must be collected and recorded on each skill acquisition program, and data should be graphed and analyzed by appropriately qualified staff on a daily or ongoing basis. Dr. Hoch emphasized that all of these components were essential to a full year, that is, twelve-month program, and that the proposed IEP's ESY of one month of instruction for only four hours per day would cause significant regression in skills by J.A. In sum, Dr. Hoch stated that it seemed obvious that the District was attempting to fit J.A. into a program it had rather than put him in a program appropriate to his needs. By contrast, when she subsequently observed J.A. at SHLI on January 8, 2015, Dr. Hoch found the program there to be consistent with her recommendations and the sound ABA principles set forth earlier in her testimony.

Under cross-examination by the District, Dr. Hoch described her initial contact with petitioners and the prior reports with which she had been provided. During her observation of the proposed classroom with Carothers, Dr. Hoch was told that J.A. would be screened off during 1:1 sessions with his aide. That time might even increase if he could not tolerate the group classroom time. Dr. Hoch expressed that this physical set-up would be stigmatizing to J.A. Dr. Hoch also disagreed during cross-examination that the IEP was flexible in terms of the amount of ABA monitoring, consulting and therapy to be included. In general, Dr. Hoch clearly stated that in her opinion, J.A. had significant deficits, had shown minimal progress and that the proposed program was inappropriate to meet his educational needs.

On re-direct examination, Dr. Hoch reiterated that J.A.'s skills as objectively measured on the BDI-II are so low that he is plainly unavailable for any group instruction or peer interaction. She also considered the one hour per month of parent training, especially because that hour would also be used for reviewing data, was completely insufficient. In response to my own questioning, Dr. Hoch explained that J.A. had not improved and then regressed but that his learning and social progression

was typical of a child with severe autism. Also, it might appear to some that he was interacting with others in Early Intervention day care when in fact he was in his own world. He might not have had disruptive behavior in an environment where he was not being challenged but that is not the same as receiving group instruction.

Petitioners also presented the testimony of another BCBA-D, Anita Breslin. Dr. Breslin earned a Doctorate in Psychology from Rutgers University in 1990. She is a licensed Psychologist in New Jersey and is also certified as a School Psychologist. Dr. Breslin has practiced as an independent consultant to schools and parents since 1997, providing assessments or evaluations for over three hundred children. Prior thereto, she was a Psychologist on the Douglass Outreach Assessment Team for seven years. I qualified her as an expert in School Psychology, Evaluating Children with Autism, and ABA.

Dr. Breslin also began her testimony with the broad outlines of what are the characteristics of autism spectrum disorders, how ABA works, the seven dimensions of an ABA program, and how ABA helps an autistic child learn the pre-learning skills needed to access education by decreasing problem behaviors and increasing desirable ones. These statements need not be repeated herein but are made part of the record.

Dr. Breslin was introduced to J.A. when his parents sought an independent evaluation as he was turning three and transitioning from Early Intervention to the District's responsibility. She was provided with and reviewed his records and prior evaluations. Dr. Breslin understood that J.A. had begun Early Intervention at age nine months and that he has an older brother who is also diagnosed on the spectrum. Dr. Breslin reviewed the several BDI-II tests J.A. had already been administered and noted that he had significant impairments across all the skills assessed. She described how the BDI indicated that J.A. did not demonstrate preliminary social skills expected of a child his age. He demonstrated poor eye contact, difficulty responding to the initiations of others and difficulty initiating with others. In fact, his peer interaction skills fell below the 1st percentile, which meant that J.A.'s social skills were far below all other children his age. Eye contact is the most basic social skill that young infants acquire. At almost three years of age, he still did not have this most basic social skill. J.A.'s

communication skills were profoundly delayed. For example, J.A. could not identify family members when named. He could not respond to simultaneous verbal and gestural commands. He also could not look at or point to an object across the room when these objects were named. He could not spontaneously initiate sounds, words, or gestures associated with objects in the immediate environment.

Dr. Breslin explained that J.A. had so many deficits in his ability to pay attention, imitate or follow directions that the prior evaluations had great difficulty assessing his motor skills. Cognitively, J.A. scored at the 0.3rd percentile. The cognitive domain looks at attention and memory reasoning and academic skills, and perception and concepts. The results of the BDI-2 informed her that J.A. could not occupy himself, could not attend to an activity, could not attend to learning a task, could not demonstrate comprehension of a story in a small group, and could not recite memorized lines from books, poems, television shows, or songs. The results also indicated that he could not pull a cloth to obtain an object, nest objects inside one another, match colors, show awareness of new situations, imitate simple facial gestures, match a circle, square or triangle, identify familiar objects by their use and he could not sort by color even when this task was demonstrated. Accordingly, it was nearly impossible to administer the Wechsler Preschool and Primary Scale of Intelligence (WPPSI) to J.A.

Dr. Breslin also reviewed the Speech/Language evaluation conducted by the District by Sara Slack. Dr. Breslin found the results of J.A.'s receptive and expressive language assessments to be consistent with the BDI-2 results discussed above. Slack also attempted to administer the Expressive One-Word and Receptive One-Word Picture Vocabulary Tests. These are ordinarily routine tests to administer. However, J.A. was unable to complete test items because he could not label or point to pictures, skills which are required for test administration. Dr. Breslin stated that Slack's own observations of J.A. were consistent with the significant delays he has been found to have. As a result, Dr. Breslin found it troubling that the District attempted to characterize J.A.'s play as "normal" when it was clearly atypically solitary and immature for his age.

On May 7, 2013, Dr. Breslin observed J.A. at home while he was being presented with 1:1 Early Intervention instructional services. Even in the context of this 1:1 instructional format, she noted that the therapist struggled to engage J.A. and keep him on task. Dr. Breslin determined that he was not equipped with the necessary requisite skills to benefit from instructional formats greater than 1:1 as he displayed great difficulty sustaining his attention and completing what were clearly routine and familiar tasks. J.A. also exhibited aggressive behaviors that Dr. Breslin analyzed to be aimed at task avoidance on his part.

Dr. Breslin supplemented her evaluation of J.A. with the Survey Interview Form of the Vineland Adaptive Behavior Scales given to the child's parents. These scores confirmed that J.A.'s primary areas of deficit are in the communication, socialization, and adaptive domains. She concluded that J.A. had profound developmental delays in the primary areas of communications, socialization and adaptive domains. Dr. Breslin was of the opinion that J.A. required a very intensive and data-driven educational program in order to make meaningful and sustained educational progress.

Dr. Breslin then testified as to the type of specific program that J.A. would need. The severity of J.A.'s autism confirmed for her that he needed a full-time ABA program in order to acquire the skills he has not yet acquired without such highly specialized intervention. These skills would not be acquired by waiting it out and giving him time. In fact, time can be the greatest enemy to children with autism. Failure to provide early and intensive intervention actually restricts and disables the child according to all available research. Because of his severe deficits, J.A. needs an intensive and individualized program just to teach him the foundational skills that will enable him to learn. Dr. Breslin opined that even part-time placement in an integrated classroom would not have been appropriate for J.A. He quite simply did not have the requisite skills to meaningfully benefit from any integration with typically developing peers.

Specifically, Dr. Breslin advised petitioners that J.A. needed a full-day ABA program grounded in the principles and teaching of ABA that was provided in a

primarily 1:1 instructional format. His program needed to be developed and overseen on an ongoing basis by a trained and experienced senior-level behavior analyst. Children like J.A., with complex learning profiles require that a senior level professional with sufficient training and expertise in ABA oversee the development, implementation and ongoing modification of educational programming. He also needs teachers who have received intensive training in the principles of ABA, a very complicated scientific technique, in order to deliver instruction to J.A. in a way he might best be able to receive and benefit from it. Dr. Breslin also expressed that J.A. needed his intensive program to continue year-round and in the home environment in order to enable him to both generalize new skills and reduce disruptive behaviors in other environments. She recommended a number of schools approved in New Jersey for work with autistic children, including SHLI, Alpine Learning Group, REED Academy, Princeton Child Development Institute, and Bernards Township's public self-contained program.

After Dr. Breslin completed her independent evaluation of J.A., the District and petitioners met for the June 2013 initial IEP meeting. She described its major components and noted that despite her strong recommendations for J.A.'s placement in a very specialized data-driven, full-time ABA program designed for students with autism, the District proposed an IEP that called for J.A. to be placed in its integrated preschool classroom with just three hours per day of "ABA" instruction. As prior witnesses had done, she recapped the other major components of the IEP, including, but not limited to, parent training, staff consultation, and ESY. She then detailed her own efforts to observe the proposed classroom during one of the remaining school days of that current school year. Dr. Breslin felt she and Carothers had reached an agreed upon date when Bills rescinded that appointment and required that Dr. Breslin wait until the school year had ended to make any observations of what would by then be an empty classroom. Because Dr. Breslin never was able to observe the inclusive preschool classroom in action, she relied upon her evaluation of the IEP's major components as described in that document and criticized their efficacy for J.A. based upon her evaluation and observation of him. Her testimony on behalf of the petitioners ended with her opinion that SEARCH, a facility with which she had prior familiarity, was

a proper, intensive, data-driven ABA program and was appropriate for J.A. as a voluntary placement.

Dr. Breslin was cross-examined by the District. Dr. Breslin was hired by petitioners just before J.A. turned three. She acknowledged that she testifies most often for parents and not Districts but has had some work with the latter. She has observed hundreds of public school programs over her career and has also recommended “supportive inclusion” classroom settings. Nevertheless, the student has to be ready for such an environment.

While Dr. Breslin agreed that the Early Intervention program for J.A. had some components of a preschool and not just a day care center, she also noted that he was aging out of those services such that she did not give the program a great deal of consideration. By the time of her evaluation, there was no relevance to removing J.A. from that early program. Yet, Dr. Breslin also remarked that the District’s proposed program, even if offering more, was still not a meaningful educational program for J.A. With respect to J.A., she did not recommend SEARCH per se but did recommend an intensive ABA program for him. Dr. Breslin had not observed J.A. at SEARCH or SHLI.

On re-direct examination, Dr. Breslin reiterated that J.A. is at the significantly impaired end of the spectrum for autism disorders. She also stated that her observations and evaluation of J.A. were consistent with the Vineland and BDI-II testing results. When she recommended either an approved school or a center-based clinic to petitioners, it was because she was aware of the waiting lists at many of the schools. She also was aware that SEARCH adhered to ABA principles and that it could be appropriate for J.A. if the program remained as it was when she last observed it some years ago. With respect to an ESY program, Dr. Breslin agreed that such could be a different program than the school year and the child might not make meaningful educational progress so long as it prevented regression. In her review of the District’s proposed ESY, she noted that it was in a middle school building for only four hours per day, four days per week. In addition, the District proposed half as much speech and

occupational therapy during ESY as during the school year. Dr. Breslin did not consider the District's ESY to be appropriate for J.A.

The final witness to testify on behalf of the petitioners was Carrie Kahana. She earned a Master's Degree in Communication Sciences and Disorders at Montclair University in 2007. She did her undergraduate degree in Special Education and Elementary Education at Seton Hall University. Kahana is a BCBA (2007), as well as certified as a Teacher of the Handicapped (1999) and Elementary School Teacher (1999) in New Jersey. She helped implement the then-newly established Bernards Township ABA program for students with autism as a preschool teacher from 1999 to 2005, and had the distinction of being named New Jersey's Teacher of the Year in 2003. Since then, Kahana has been employed as the Executive Director of SEARCH. I qualified her as an expert in Autism, ABA, and Special Education.

After reviewing the general principles of ABA, Kahana described her responsibilities at the Bernards program, including, but not limited to, training and supervising aides, conducting home and school visits with parents, data collection, and development of IEP goals and objectives. At SEARCH, children with autism between the ages of eighteen months and nine years are offered full day, year round ABA programming on a 1:1 basis with BCBA supervision. Kahana's role as Executive Director is to supervise all instructional programming. She designs the goals and objectives, the teaching procedures and the data collection procedures.

Kahana met with petitioners after Dr. Breslin recommended a center-based ABA program if J.A. could not get into a specialized ABA school. She met with petitioners and J.A. commenced at SEARCH in September 2013 as a voluntary placement rather than having J.A. attend the inclusive preschool classroom proposed by the District. At the time of his enrollment, J.A. was administered the VB-MAPP to assess his strengths and weaknesses. Kahana described J.A. at that time as being unable to respond to his name, to follow simple one-step directions, to identify body parts, objects or pictures. J.A. had difficulty working at a table or attending to an instructor. He exhibited vocal and physical stereotypy as well as non-compliant behaviors and aggression.

At SEARCH, Kahana and her staff were focused on just the task of getting J.A. used to 1:1 teacher-driven instruction, which was difficult for him. He started with twenty hours of ABA instruction per week in September 2013 and then increased to thirty hours per week in May 2014. His programming was geared to very simple skills, such as making eye contact, matching simple objects, following basic directions, and simple play. After his November progress report, Kahana tried to increase the program to include photographic activity schedule and motivational system use but J.A.'s disruptive behaviors increased with the program demands made of him. He became less available for instruction as his negative behaviors increased, especially his non-contextual vocalizations, to the point where he became disruptive whenever he was asked to conduct work at his table.

Kahana suspended all new instructional programs for J.A. as they concentrated on reducing his disruptive behaviors. She instituted a Differential Reinforcement of Other Behavior (DRO) to reward him for the absence of the negative behaviors. She testified as to how DRO is implemented and how it works. Kahana also contradicted any inferences presented by District witnesses to the effect that J.A. learned the disruptive behavior from the other autistic children in the center. Not only were the other children not exhibiting those behaviors but Kahana pointed out that J.A. simply did not have the imitation skills to observe and learn from other children for good or naught. The DRO showed significant reduction in the target behaviors between their introduction and February 2014.

By March, SEARCH was able to begin to introduce new skill instruction to J.A. again while remaining vigilant to his vocal stereotypy, which was his strongest negative behavior. In general, Kahana noted that J.A. could not stay quiet for thirty seconds, could not engage in relational play, and was certainly not ready for peer group lessons. His self-directed play was riddled with stereotypy and he was not open to play with peers. The fact that Early Intervention daycare did not result in as much disruptive behavior from J.A. only meant that his behaviors were driven by the new instructional demands placed on him in a preschool setting as opposed to a daycare one.

Kahana summarized that J.A. did acquire new pre-learning skills at SEARCH but always needed very frequent reinforcement and a significant amount of support. Her testimony includes most if not all of the baseline and post-teaching success rates on the list of skills on which he was instructed. For example, J.A. could not identify any of his family members when he started with SEARCH but could with accuracy at the end of that year. Nevertheless, he was still very weak on the if-then contingencies of rewards and therefore, the instructors were still dependent on using edible reinforcements in addition to the more indirect token board system. While J.A. enjoyed some success at SEARCH, Kahana concluded that he still presented with very significant educational needs that could only be met with very intensive programming. There were just so many global deficits that J.A. was still a long ways away from being able to even socialize with a peer let alone access education through an inclusive setting.

Kahana was cross-examined on her experience starting the Bernards Township program and SEARCH. When she initiated SEARCH, it was a home program and she was the provider. As SEARCH grew in the provision of services and after she had obtained her BCBA, it moved to a center-based program. Three of her current staff have Master degrees and are working toward their BCBA's, while several have Bachelor degrees and are pursuing their Master degrees. Kahana also described the ABA treatment model used at SEARCH as 1:1 utilizing discrete trial, incidental, audio modeling, and video modeling, among its ABA methods. Each child has a unique instructional area within its three classrooms. When J.A. was enrolled in SEARCH, there was a total of eight children and eleven to twelve staff. Home programming is made available two hours per month but is not required. Kahana stated that petitioners did not avail themselves of home services although O.A. did get trained at the SEARCH facilities about once per month.

Kahana acknowledged that SEARCH is not an approved private school but they have had district placements through agreement of or mediation with the parties. As she recalled, J.A. had been referred to the center by Dr. Breslin. They conducted some

intake at the center as part of his application process. Kahana also reviewed some of the reports made available to get a sense of J.A.'s areas of difficulty. She could discern that J.A. lacked foundational skills such as making eye contact, reacting to his name being called, following one-step directions, staying at a table, etc. J.A. was beginning to learn some skills through discrete trial, however, as the instructional demands increased in October and November, J.A.'s aggressive behaviors and noncontextual verbalizations also increased. Kahana described J.A. as kicking, swatting, head butting, or lunging toward instructors, peers or objects. Because his verbal imitation skills were poor, the staff had difficulty getting him to substitute contextual words for the negative behaviors.

As a result of J.A.'s behaviors, Kahana reiterated on cross-examination that they spent the winter months focusing on his interfering behaviors and backing off of skill instruction through an approach referred to as differential reinforcement of other behavior. Only by March of that year was SEARCH able to start to integrate skill acquisition back into his school day. By the time he stopped attending SEARCH, J.A. could label some family members, imitate some words and simple songs, and he reacted to his name being called. Kahana was not surprised that SHLI found that he lacked foundational skills and lacked generalization. SHLI was a new setting and J.A. had required significant support and very heavy reinforcement even at the end of his tenure at SEARCH.

Kahana set forth that J.A. attended SEARCH twenty hours per week. The center offers programs up to thirty hours per week but it is left to the discretion of the family. Even into the spring, J.A. needed continued behavioral modifications, frequent direct edible rewards, and verbal praise in order to be even somewhat available for instruction. Kahana noted that J.A. never seemed to have internalized the indirect token system by the end of the school year. She also acknowledged that the notes taken by District personnel of their observations at SEARCH seemed accurate.

While Kahana had only general knowledge of SHLI, based upon J.A.'s needs, she maintained her opinion that SHLI was an appropriate placement for him. She was

also asked about the prospects for children who attend her center. Kahana responded that SEARCH is not intended to be a long-term placement and that children “graduate” to other placements usually as a result of a mutual decision. Of the 60-65 students who have attended SEARCH in its history, approximately twenty are in public schools. Of those, 60-70% would have had intermediate ABA private school placements prior to returning in-district.

On limited follow-up examination, Kahana repeated that J.A. needed intensive 1:1 ABA programming to learn even basic learning skills that he still did not have. He had difficulty attending to instruction even with 1:1 instruction and was not ready or available for group instruction. J.A. simply did not have the prerequisite skills to initiate conversation or engage in question/answer instruction. The only type of public setting instruction that Kahana could envision as appropriate for J.A. would be the type of intensive 1:1 ABA programming with onsite BCBA oversight and supervision that a program such as Bernards Township offered.

The District presented one rebuttal witness, Nicole Bollenbach. Bollenbach is the co-owner of AFCNJ with Cohen. She has a Masters degree in ABA and has been a BCBA since January 2013. Bollenbach has worked with students with disabilities for thirteen years in various private and public capacities, including four years on staff at the Garden Academy, a Princeton Child Development Institute dissemination site. There, she worked 1:1 with one student each year. At AFCNJ in Hunterdon County, she and Cohen mostly work with parents and siblings to target behaviors of concern for children at risk of autism behaviors. In the past, AFCNJ had a contract with Hampton Borough Board of Education but presently they are working with just Alexandria Township as a public client on an as-needed basis, and four individual family clients. Bollenbach was qualified as having expertise as a BCBA and a Special Education Teacher.

Bollenbach became familiar with J.A. when her company was contacted by the District in October 2013 to review the proposed IEP for J.A., to make sure it was appropriate, and to provide in-service training to the District staff. Bollenbach

understood that if J.A. were to attend in-District, that she and Cohen would be retained to monitor the set-up and implementation of his program. They would assess J.A. and continue to train staff in data collection. Bollenbach anticipated that their role would be more involved in the beginning of his attendance in the proposed inclusive preschool classroom, with lesser oversight once the program was more established.

Initially, Bollenbach reviewed the proposed IEP and buttressed the offering with certain ABA standards that needed to be incorporated. AFCNJ provided one day of training attended by the Special Education Director, the inclusive preschool classroom teacher and aide, and the related service providers, who would all be involved in J.A.'s program. Bollenbach testified that J.A.'s program was a work in progress because he had not been assessed and the programs that would meet his needs could not yet be developed. The VB-MAPP would be the comprehensive assessment tool that she would use to discover his gaps. Bollenbach was not concerned about J.A.'s ability to be around typically developing peers. In the proposed inclusive classroom, he would get a combination of 1:1 ABA instruction as well as peer interaction.

Bollenbach made an observation of J.A. at SEARCH on July 10, 2014. Carothers and Eisenhardt were also present during that visit. Based upon that observation, Bollenbach commented that it was her opinion that SEARCH was not responding consistently to J.A.'s negative behaviors and was utilizing too low a rate of rewards or other reinforcement system. She did not observe a systematic behavior reduction program in place. It appeared to her that the DRO was on hold and not in use with J.A. Bollenbach also differentiated between J.A.'s "challenging" behaviors and any "aggressive" behaviors, finding that the latter did not occur while she was observing. Part of the package of necessary actions that she would recommend would include a functional behavioral analysis for J.S.

Based upon her observations of both the proposed inclusive classroom and J.A. at SEARCH, Bollenbach recommended to the District that SEARCH protocols stay in place at the in-district placement while assessments of J.A. were completed. The proposed IEP would need to be amended to include reinforcement protocols and the

structural approach to peer interaction. Data collection would need to be more specific and programmatic. While she admitted that J.A. lacked social skills, Bollenbach envisioned pairing peers with reinforcers to aid J.A. in generalizing skills being taught 1:1 to those peers. She also commented that the District program was not an appropriate place for J.A. to be taught toileting skills.

Bollenbach disagreed with petitioners' experts that J.A.'s lack of social skills made it inappropriate for him to be in a group setting with peers at times. Programs could be formulated and implemented that would teach him play skills in that context. Obviously, J.A. would be introduced to group instruction very gradually and with proper supports. In sum, Bollenbach was of the opinion that J.A. would be able to learn in the proposed inclusive classroom placement and make meaningful educational progress.

On cross-examination, Bollenbach admitted that she was hired only ten months after she had achieved her BCBA and several months after the District prepared the initial IEP. She stated that she had never interviewed the parents, had undertaken no evaluation of J.A., and had made no observation of him in the home or his community. Her opinion at the hearing was based on her forty minute observation of him in July 2014. Bollenbach was also asked to review the minimal components in that IEP for ABA consultation and parent training. She noted that there was no ABA monitoring included in that IEP. While Bollenbach considered the IEP a "working document," she acknowledged that it is a firm document upon which this hearing is based. Bollenbach also recognized that the BCBA who was on staff had a separate teaching position and would not be acting in that credentialed capacity for J.A. It also became apparent that Bollenbach was unaware that J.A. would be the only special needs child in the proposed preschool classroom.

Bollenbach was further questioned on the results of J.A.'s assessments done by others, including Dr. Breslin, such as the BDI-II and the Vineland assessments. Notwithstanding the extremely low scores J.A. achieved on those tests in many areas including peer interaction, play, and interpersonal skills, Bollenbach maintained that an inclusive classroom was appropriate. She would agree that he needs year round

consistent programming because of his difficulty with the generalization of skills but she was unaware that the ESY proposed in the IEP reduced his ESY services.

On final questioning by respondent, Bollenbach noted that J.A. would be receiving forms of ABA instruction throughout his day across all services, with discrete trial being only one component. She reiterated that she has been working in the ABA field for thirteen years. She also commented that it is not unusual for ABA specialists to not be able to list the seven dimensions emphasized by petitioners' experts. Lastly, Bollenbach was not aware that Early Intervention services were provided in a daycare setting without an instructional component.

LEGAL ANALYSIS AND CONCLUSIONS

State and federal laws require local public school districts to identify, classify and provide a free and appropriate public education (FAPE) to children with disabilities. 20 U.S.C.A. Section 1412; N.J.S.A. 18A:46-8, -9. As a recipient of federal funds under the IDEA, the State of New Jersey has a policy that assures all children with disabilities the right to FAPE. 20 U.S.C.A. § 1412. The responsibility to provide FAPE, including special education and related services, rests with the local public school district. 20 U.S.C.A. § 1401(9); N.J.A.C. 6A:14-1.1(d). In accordance with N.J.S.A. 18A:46-1.1, the burden of proving that FAPE has been offered likewise rests with school personnel. FAPE is an education that is "specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction. G.B. v. Bridgewater-Raritan Reg'l Bd. of Educ., 2009 U.S. Dist. LEXIS 15671, *5 (D.N.J. Feb. 27, 2009) (citing Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 189, 102 S. Ct. 3034, 3042, 73 L. Ed. 2d 690, 701 (1982)). FAPE includes special education and related services that are provided at public expense under public supervision and direction and without charge; that meet the standards of the State Educational Agency; that include an appropriate preschool, elementary and secondary school education; and that are provided in conformity with an IEP as required under 20 U.S.C.A. Section 1414(d).

Federal law is complied with when a local school board provides a handicapped child with a personalized education program and sufficient support services to confer some educational benefits on the child. Rowley, supra. In Rowley the Court determined that although the Act mandates that states provide a certain level of education, it does not require states to provide services that necessarily maximize a disabled child's potential. Instead, the IDEA requires a school district to provide a basic floor of opportunity. Carlisle Area Sch. v. Scott P., 62 F.3d 520, 533-34 (3d Cir. 1995). While our courts have consistently held that the IDEA does not mandate an optimal level of services, an IEP must provide meaningful access to education, and confer some educational benefit upon the child. Rowley, supra, 458 U.S. at 192. In order to be appropriate, the educational benefit conferred must be more than trivial. Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238 (3d Cir. 1999).

The educational opportunities provided by a public school system will differ from student to student, based upon the "myriad of factors that might affect a particular student's ability to assimilate information presented in the classroom." Rowley, supra., 458 U.S. at 198. The Rowley Court recognized that measuring educational benefit is a fact-sensitive, highly individualized inquiry, and that "[i]t is clear that the benefits obtainable by children at one end of the spectrum will differ dramatically from those obtainable by children at the other end, with infinite variation in-between." Id. at 202.

Here, the issues in dispute are clear even if their resolution is in dispute:

1. Did the District offer FAPE when it proposed a placement to an in-district inclusive preschool classroom for both the 2013-2014 and 2014-2015 school years?
2. If the District failed to offer J.A. FAPE, were SEARCH Consulting and Somerset Hills Learning Institute appropriate voluntary placements?
3. Did the District pre-determine her placement without meaningful input from petitioners in violation of the IDEA?

I **CONCLUDE** that I need only reach the first and second questions. In determining where to deliver instruction, the district must be guided by the strong statutory preference for educating children in the “least restrictive environment.” 20 U.S.C.A. § 1412(a)(5) mandates that:

[t]o the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

The law describes a continuum of placement options, ranging from mainstreaming in a regular public school as least restrictive to enrollment in a non-approved residential private school as most restrictive. 34 C.F.R. § 300.115 (2009); N.J.A.C. 6A:14-4.3. Federal regulations further require that placement must be “as close as possible to the child’s home.” 34 C.F.R. § 300.116(b)(3) (2009); see also N.J.A.C. 6A:14-4.2.

In Oberti v. Board of Education, 995 F.2d 1204 (3d Cir. 1993), the Third Circuit established a two-pronged test for determining whether a school district has complied with the IDEA’s mainstreaming mandate: first, whether education in the regular classroom, with use of supplementary aids and services, can be achieved satisfactorily; and second, if placement outside of the regular classroom is necessary for the child’s educational benefit, whether the district has included the child in school programs with non-disabled children to the maximum extent appropriate. Id. at 1215. Before placing a child outside the district, “the school must consider the whole range of supplemental aids and services, including resource room and itinerant instruction, speech and language therapy, special education training for the regular teacher, behavior modification programs, or any other available aids or services appropriate to the child’s particular disabilities.” Id. at 1216; N.J.A.C. 6A:14-4.2. As the Oberti court astutely noted:

In passing the Act, Congress recognized “the importance of teaching skills that would foster personal independence . . . [and] dignity for handicapped children” . . . Learning to associate, communicate and cooperate with nondisabled persons is essential to the personal independence of children with disabilities. The Act’s mainstreaming directive stems from Congress’s concern that the states, through public education, work to develop such independence for disabled children.

[Oberti, supra, 995 F.2d at 1217.]

In this matter, I **CONCLUDE** that the great weight of competent evidence proves that J.A. is a child who has been globally and significantly impacted by autism and is incapable at this time of making any meaningful educational progress in an inclusive classroom as structured by the District. As convincingly set forth by petitioners’ witnesses, J.A. may seem docile and self-occupied if one leaves him to his own devices and toys, but no real learning of skills or material is taking place; and when structured learning is demanded of him, he engages in disruptive and avoidance behaviors with a great deal of stereotypy. The occasional access to a BCBA or ABA monitoring, the paucity of parent training, the failure to give weight to J.A.’s extremely immature social interaction skills and almost nonexistent generalization skills, the part-day only nature of the ABA programming, and reduction in ESY program are all factors that I consider compelling.

I **CONCLUDE** that greater weight should be accorded the opinions and assessments presented by petitioners because they were more detailed, more objectively based, had spent a greater amount of time with J.A., and had more extensive credentials and experience in the field. For instance, Bollenbach and Cohen are relatively new as providers of the monitoring and consulting services for which the District retained them, and they were only retained months after the District became responsible for J.A.’s education and developed his IEP. In addition, the District failed to conduct those consultations or engage in a serious or thorough evaluation of J.A. prior to informally and then formally proposing his placement in a preschool classroom with typically developing peers. It is not unusual, unfortunately, but this is one of those cases where the parties seem to be discussing different children entirely.

It is well-established that the appropriateness of an IEP is not determined by a comparison of the petitioner's desired placement and the program proposed by the district. S.H. v. State-Operated Sch. Dist. of Newark, 336 F.3d 260, 271 (3d Cir. 2003). Rather, the pertinent inquiry is whether the district's IEP offered FAPE and the opportunity for meaningful educational benefit within the least-restrictive environment. Having found the credible and competent factual and expert testimony weighs heavily in favor of recognizing the severe limitations J.A. presently struggles with, I **CONCLUDE** that it was inappropriate for the District to have proposed an inclusive preschool classroom for him. While the room might constitute "least restrictive" in a generic location sense and while I agree that the law does not require the District to maximize a child's educational opportunity, I **CONCLUDE** that the District here did not propose an opportunity for J.A. to receive a meaningful educational benefit.

Recognizing that the more rural districts in New Jersey do not have a sizeable population of special needs children, it becomes more difficult for them to provide as wide a continuum of education to those children.² Sometimes there is a fit that provides FAPE and sometimes there is not and then it can become an exercise in maladapting a "square hole" classroom for a "round peg" child. The latter is the case here. J.A. is too severely impacted by his autism to be ready to model peers or learn in an inclusive environment, albeit one with some minor ABA modifications. In sum, and as observed by several of petitioners' witnesses, I **CONCLUDE** that the District was attempting to fit J.A. into a program it had rather than put him in a program appropriate to his needs. For the reasons set forth herein and on the basis of the extensive hearing record, I **CONCLUDE** that respondent failed to offer FAPE to J.A. for either of the two school years in question.

Having concluded that the District did not offer FAPE to J.A., it is necessary to examine whether the programs at SEARCH and SHLI were appropriate. As described extensively on the record, SEARCH is a center-based, full-day ABA program and SHLI

² It might be an interesting pilot program for some counties to establish centralized autism programs to which the individual districts could enroll their special needs children, with economies of scale both educationally and with respect to transportation.

is an approved full-day, private ABA school. Both have high staff to student ratios and worked 1:1 with J.A. in addition to having onsite supervisors and BCBAs. Both collect and analyze data on his instructional programs. Both make parent training opportunities available although SHLI has a more extensive, intensive and mandatory component.

Both programs also utilize well-established ABA protocols to teach J.A. pre-social skills, pre-learning skills, reinforce appropriate behaviors, and decrease disruptive behaviors. It is clear from the descriptions of each of their efforts as well as the weight of the professional evaluations conducted that J.A. is missing critical learning, socialization, generalization, and personal care skills. He suffers from a lot of verbal stereotypy. Each voluntary placement uses direct edible reinforcers and indirect token systems consistent with ABA protocols although his negative behaviors required both to step-back to direct edibles, especially at the beginning of his tenure with each. Each continues the same 1:1 ABA instructional program through the entire year, thus providing more than any public school ESY program.

Notwithstanding that J.A. had some regression during his year at SEARCH, I **CONCLUDE** that this was due, as supported by the greater weight of the expert testimony, to the new instructional demands being placed on him in comparison to the Early Intervention Services that I **CONCLUDE** were more in the nature of non-instructional day care services. As stated earlier, J.A.'s behaviors became more disruptive, even if not also aggressive (and they clearly sometimes were that as well), when he was required to attend to the acquisition of new skills. Furthermore, the objective data showed that J.A. was progressing in skill acquisition once his disruptive behaviors were lessened and yet his ability to generalize was far behind. The care and tedium demonstrated at SHLI just to get J.A. over his dislike of toilets and toileting is a clear example of the challenges faced by both SEARCH and SHLI, and to which the District seemed less cognizant. I **CONCLUDE** that both voluntary placements were appropriate and consistent with the recommendations of the preponderance of the competent expert testimony produced at this hearing.

In sum, I **CONCLUDE** that the IEP proposed by the District for the 2013-2014 and 2014-2015 school years were not designed to confer a meaningful educational benefit on J.A. I further **CONCLUDE** that the District program was not appropriate to meet J.A.'s needs and thus did not provide FAPE. I also **CONCLUDE** that the petitioner's voluntary placements in SEARCH and then SHLI were appropriate and reasonable and that petitioners are entitled to reimbursement for those placements, as well as their transportation expenses.

ORDER

For the reasons set forth above, it is **ORDERED** that the relief sought in petitioner's due process petition is **GRANTED**. It is further **ORDERED** that the Alexandria Township Board of Education shall implement an IEP for J.A. for the 2015-2016 school year that places him at and transports him to the Somerset Hills Learning Institute for attendance at its intensive full-day ABA program and ESY.

It is further **ORDERED** that the Alexandria Township Board of Education shall reimburse the petitioners for the voluntary placement of J.A. at SEARCH Consulting and Somerset Hills Learning Institute for the prior two school years.

All rights and all defenses on the issue of an award of attorney's fees and costs to which petitioners may be entitled as the prevailing parties are specifically reserved to a court of competent jurisdiction. This order is without prejudice to either party with respect to establishing appropriate placements for J.A. in future school years.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2014) 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 (2014). 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.

August 31, 2015

DATE

GAIL M. COOKSON, ALJ

Date Received at Agency

8/31/15

Date Mailed to Parties:

8/31/15

id

APPENDIX

LIST OF WITNESSES

For Petitioners:

Kevin Brothers
Caralyn Gaffney
Hannah Hock
O.A.
Anita Breslin
Carrie Kahana

For Respondent:

Susan Carothers
Elise Pozensky-Cohen
JoAnn Whiteley
Kerrie (Dolan) Eisenhardt
Sara Slack
Nicole Bollenbach

LIST OF EXHIBITS IN EVIDENCE

Joint

- J- 1 Early Intervention Progress Summary Form, dated November 20, 2012
- J- 2 Neurodevelopmental Evaluation, Dr. Audrey Mars, dated February 13, 2013
- J- 3 Initial Identification Evaluation Determination Plan, dated March 5, 2013
- J- 4 Observation of Susan Carothers, dated May 1, 2013
- J- 5 Speech Language Evaluation, Sara Slack, dated May 8, 2013
- J- 6 Battelle Developmental Inventory, by Deborah Gates-Maten, dated May 19, 2013
- J- 7 Occupational Therapy Report, by Teresa S. R. Gover, dated May 20, 2013

- J- 8 Early Intervention Progress Summary, dated May 23, 2013
- J- 9 Assessment Report, by Anita Breslin, dated May 29, 2013
- J- 10 Early Intervention Progress Summary Form, dated June 7, 2013
- J- 11 Eligibility Determination, dated June 10, 2013
- J- 12 IEP, dated June 10, 2013
- J- 13 Modifications and Support for J. for Full Day Inclusion
- J- 14 Schedule 2013-2014 School Year
- J- 15 Letter from Petitioners' Counsel Paul Barger to Respondent's Counsel Cherie Adams, dated July 9, 2013
- J- 16 Letter from Petitioners' Counsel Paul Barger to Respondent's Counsel Cherie Adams, dated July 11, 2013
- J- 17 Letter from Petitioners' Counsel Paul Barger to Respondent's Counsel Cherie Adams, dated July 26, 2013
- J- 18 Letter from Petitioners' Counsel Paul Barger to Respondent's Counsel Cherie Adams, dated July 31, 2013
- J- 19 Letter from Petitioners' Counsel Paul Barger to Respondent's Counsel Cherie Adams, dated August 29, 2013
- J- 20 Observation Notes, by Susan Carothers, dated November 21, 2013
- J- 21 Consultation Report, by Hannah Hoch, dated January 8, 2014
- J- 22 Observation Notes, by Nicole Bollenbach, dated July 10, 2014
- J- 23 IEP Draft, dated August 4, 2014
- J- 24 Letter from Petitioners' Counsel Paul Barger to Respondent's Counsel Cherie Adams, dated August 4, 2014

For Petitioner:

- P-1 Pre-Filed Direct Testimony of O.A.
- P-2 Pre-Filed Direct Testimony of Carrie Kahana
- P-3 Pre-Filed Direct Testimony of Dr. Hannah Hoch
- P-4 Pre-Filed Direct Testimony of Dr. Kevin Brothers
- P-5 Pre-Filed Direct Testimony of Cara Gaffney
- P-6 Pre-Filed Direct Testimony of Anita Breslin
- P-7 Evaluation Assessment Summary, dated June 13, 2011

- P-8 Neurodevelopmental Evaluation, Dr. Audrey Mars, dated September 27, 2011
- P-9 Neurodevelopmental Evaluation, Dr. Audrey Mars, dated February 10, 2012
- P-10 Bright Beginnings Progress Report, dated May 8, 2012
- P-11 Bright Tomorrows' Transition Tip Sheet, dated July 12, 2012
- P-12 Neurodevelopmental Evaluation, Dr. Audrey Mars, dated August 8, 2012
- P-13 Neurodevelopmental Evaluation, Dr. Audrey Mars, dated August 23, 2014
- P-14 SEARCH Consulting Progress Reports, 2013-2014 School Year
- P-15 SEARCH Data Notebook
- P-16 Somerset Hills Learning Center Data Notebook
- P-17 Resume of Anita Breslin
- P-18 Resume of Hannah Hoch
- P-19 Resume of Carrie Kahana
- P-20 Resume of Cara Gaffney
- P-21 Resume of Kevin Brothers
- P-22 Hannah Hoch Observation Report

For Respondent:

- R- 1 Pre-Filed Direct Testimony of Susan Carothers
- R- 2 Pre-Filed Direct Testimony certification of Elise Pozensky-Cohen
- R- 3 Pre-Filed Direct Testimony of Kerrie Eisenhardt
- R- 4 Pre-Filed Direct Testimony of Joann Whiteley
- R- 5 Pre-Filed Direct Testimony of Sara Slack
- R- 6 Resume of Susan Carothers
- R- 7 Resume of Elise Pozensky-Cohen
- R- 8 Resume of Kerrie Eisenhardt
- R- 9 Resume of Joann Whiteley
- R- 10 Resume of Sara Slack
- R- 11 Resume of Nicole Bollenback
- R- 12 N.J. Autism Program Quality Indicators